# RECOGNITION OF DIVORCE

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# PREFACE

After being in the practice of law for several years, we, the senior authors, know how difficult and challenging it is to prove recognition of divorce in the Philippines.

This work is our attempt to encourage lawyers and litigants to understand the existing conditions as well as to propose solutions to the problems at hand.

It is hoped that both the litigators and the litigants will find this book useful.

We would like to thank all those who helped and contributed in this book. We would like to specially acknowledge the help of Magdalena Cecilia L. Arriola and Louielyn de la Cruz whom we recognize as co-authors of the book. Also, we would like to mention Hon. Judge Ester Veloso and Hon. Judge Christine Muga-Abad, whom we have interviewed for this book. Lastly, all the staff of Lepiten and Bojos Law Offices has contributed immensely with their learnings and realizations they have encountered in the cases for Recognition of Divorce. We also thank our families and friends for their support.

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## A. Introduction

The Philippines is the only state apart from Vatican City that does not have a law on divorce. However, divorce obtained in other countries can be recognized in the Philippines through court proceedings.

Recognition of Foreign Divorce is provided for in Article 26 of the Family Code.

> ART. 26. 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.
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> 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. (Emphasis supplied)

This provided Filipino citizens with another means, aside from legal separation and annulment, to have their marriage dissolved or to obtain separation from their spouse.

However, upon the interpretation of Article 26 of the Family Code in *Republic v. Orbecido* and other similar cases that involved the interpretation of the same law, confusion emerged among the legal community as to the judicial process of having a foreign divorce recognized. Questions were raised as to which court has jurisdiction over such a case; whether to treat such a case as a correction of entry or a civil case; and the legal documents required by the courts, among others.

Hence, this book.

The Civil Code provides that "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."[1]

Although divorce may be obtained by Filipinos in other countries, they are still bound by their status if they return and remain as Filipino citizens. The current laws regarding family relations cannot be circumvented. However, despite the absence of a law on divorce, it is still possible for a Filipino citizen to obtain a divorce or to have a foreign divorce recognized. This chapter will discuss the kinds of divorce that are existing in the Philippines.

## B. The History of Divorce in the Philippines

Divorce has been practiced in the Philippines long before the Spaniards came. Torralba-Titgemeyer (1997) said that divorce was practiced for various reasons such as infertility, infidelity, failure to fulfill familial obligations, among others. If the wife was found at fault, her family was obliged to return the dowry and if it was the husband, he lost his rights to the dowry. The divorced couple share custody of their children.

Divorce was practiced among indigenous people like the Gaddang of Nueva Vizcaya, the Igorot and Sagada of the Cordilleras; the Manobos, Bila-ans and the Tagbanwas of Palawan.[2]

The law on divorce in the Philippines during the Spanish regime was governed by the Siete Partidas but the Partidas only allowed relative divorce. It was not until March 11, 1917 when Act No. 270 known as the Divorce Law was introduced in the Philippines.[3] Act No. 2710 provided for absolute divorce which can be filed by the innocent spouse[4] on the grounds of adultery or concubinage.[5] It dissolves the community of property and the bonds of

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[1] Civil Code, Art. 15

[2] An Act Instituting Absolute Divorce in the Philippines And for Other Purposes, H.B. No. 116, 17th Congress.(2016). Retrieved from: http://www.congress.gov.ph/legisdocs/basic_17/HB00116.pdf

[3] Jesus R. Aguilar (1967), Validity of Foreign Divorce Decrees, 42 PHIL. L.J. 526.

[4] ACT NO. 2710, Sec. 3

[5] ACT NO. 2710, Sec. 1

matrimony and thereby allowing the spouses to remarry.[6] Act No. 2710 was repealed during the Japanese period and was replaced by Executive Order No. 141 promulgated by the Executive Commission. This provided for eleven grounds for divorce. Subsequently, General Arthur's proclamation of 1944 repealed Executive Order No. 141 and declared in full force and effect all the laws of the Commonwealth including Act No. 2710.[7]

The Civil Code took effect in 1949, repealing Act No. 2710. The Civil Code does not provide for absolute divorce but merely allows relative divorce in the form of legal separation. Nevertheless, as will be discussed, there is jurisprudence under the Civil Code that allowed for the recognition of foreign divorce decree on the ground of comity.

Both the subsequent Constitutions, namely, the 1973 and 1987 Constitutions recognize the role of the State in strengthening the family. However, it was only under the 1987 Constitution that marriage has been characterized as an inviolable social institution. To wit, Article XV, Section 2 of the 1987 Constitution provides that:

> Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Pursuant to this Constitutional policy, when the Family Code was promulgated, no provision on absolute divorce was provided. The only effective law in the Philippines which provides for absolute divorce is the Code of Muslim Personal Laws but its operation is limited to marriages wherein both parties are Muslim or only the male party is Muslim and the marriage is celebrated in accordance with Muslim law.[8] Thus, up to this date, the Philippines is the only country aside from the Vatican wherein absolute divorce is not legal.[9]

Nevertheless, in mixed marriages, foreign divorce decrees may be allowed to operate in the Philippines and the emerging jurisprudence continues

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[6] ACT NO. 2710, Sec. 11

[7] Aguilar, *supra*.

[8] CODE OF MUSLIM PERSONAL LAWS, Title II, Art. 13

[9] Ana Santos (August 23, 2016), There's just one country other than the Vatican where divorce is illegal - and some want to change that, L.A. TIMEs, Retrieved at http://www.latimes.com/world/asia/la-fg-philippines-divorce-snap-story.html

to change the guidelines in cases involving recognition of foreign divorce decrees.

## C. Muslim Divorce

A ***Muslim*** is a person who testifies to the oneness of God and the Prophethood of Muhammad and professes Islam.[10] This is the definition provided for in the PD No. 1083 or known as the Code of Muslim Personal Laws of the Philippines. The ***"Code of Muslim Personal Law" ("CMPL")*** includes all laws relating to personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses as provided for in this Code.[11]

Muslims have a right to divorce. Under par. 4[12] of Art. 34, the mutual rights and obligations of spouses includes the right to divorce in accordance with the said law. Art. 45 of PD 1083 defines divorce as the formal dissolution of the marriage bond in accordance with this Code to be granted only after the exhaustion of all possible means of reconciliation between the spouses. Divorce, in this sense, refers to absolute divorce and it has the effect of a complete and final dissolution or termination of the marriage. Divorce can only be secured in the grounds and manner specifically enumerated in the Code. Lastly, it can only be granted after there is proof that all possible means of reconciliation between the couple has been exhausted.

The provisions on marriage and divorce under the CMPL are applicable in only two instances: (1) wherein both parties are Muslims or (2) wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or under PD 1083 in any part of the Philippines.

In case of marriage between a Muslim and a non-Muslim and that the said marriage is not solemnized in accordance with Muslim law or under PD No. 1083, then, it would the be Civil Code of the Philippines that shall apply.[13] In which case, divorce is not possible because the Civil Code does not provide for divorce.

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[10]Art. 7 par. G of PD 1083, Code of Muslim Personal Laws of the Philippines (CMPL)

[11]Art. 7 par. I of PD 1083, Code of Muslim Personal Laws of the Philippines (CMPL)

[12]Section 5. Rights and Obligations Between Spouses. — Art. 34. Mutual rights and obligations.(4) The husband and the wife shall have the right to divorce in accordance with this Code.

[13] CMPL, Book Two, Title II, Chapter I, Article 3

Under the CMPL, divorce may be effected by:

(a) Repudiation of the wife by the husband (talaq);
(b) Vow of continence by the husband (ila);
(c) Injurious assimilation of the wife by the husband (zihar);
(d) Acts of imprecation (li'an);
(e) Redemption by the wife (khul');
(f) Exercise by the wife of the delegated right to repudiate (tafwid); or
(g) Judicial decree (faskh).

These grounds provide the husband or the wife the capacity to file for divorce. In case of termination of marriage by divorce, the wife is required to observe an *idda* or a waiting period for three monthly courses. She may not contract a subsequent marriage unless she has observed this 'idda counted from the date of divorce. However, if she is pregnant at the time of the divorce, she may remarry only after delivery.[14] The provisions of the Revised Penal Code relative to the crime of bigamy does not apply to a person married in accordance with Muslim Law.[15] Instead, a widow or divorced woman who contracts another marriage before the expiration of the prescribed 'idda will suffer the penalty of a fine not exceeding five hundred pesos.[16]

In the case of a divorce by talaq, a husband who repudiates his wife shall have the right to take her back within the prescribed ida by resumption of cohabitation without need of a new contract of marriage. Should he fail to do so, the repudiation shall become irrevocable.[17] Moreover, the husband who has pronounced a talaq shall, without delay, file with the Clerk of Court of the Shari'a Circuit Court of the place where his family resides a written notice of such fact and the circumstances attended thereto, after having served a copy thereof to the wife concerned. The notice filed shall be conclusive evidence that talaq has been pronounced.[18] If he fails to comply with this requirement, he shall be penalized by arresto mayor or a fine of not less than two hundred pesos but not more than two thousand pesos, or both, in the discretion of the

[14] CMPL, Book Two, Title II, Chapter II, Section 3, Article 29
[15] CMPL, Book Five, Title V, Chapter I, Sec. 180
[16] CMPL, Book Five, Title V, Chapter II, Sec. 182
[17] CMPL, Book Two, Title II, Chapter III, Sec. 1, Art. 46
[18] CMPL, Book Four, Title II, Sec. 161

court.[19]

After observance of the *idda* and in case of dissolution of marriage by ila, zihar, li'an, khul', after compliance with other requirements in Islamic law have been fulfilled with, the divorce has the following effects:

(a) The marriage bond shall be severed and the spouses may contract another marriage in accordance with this Code;
(b) The spouses shall lose their mutual rights of inheritance;
(c) The custody of children shall be determined in accordance with Article 78 of this code;
(d)The wife shall be entitled to recover from the husband her whole dower in case the talaq has been affected after the consummation of the marriage, or one-half thereof if effected before its consummation;
(e) The husband shall not be discharged from his obligation to give support in accordance with Article 67; and
(f) The conjugal partnership, if stipulated in the marriage settlements, shall be dissolved and liquidated.[20]

The wife is entitled to support up to the expiration of 'idda in case of divorce by talaq. However, if the wife is pregnant at the time of separation, she shall be entitled to support until delivery. Moreover, any divorced nursing mother who continues to breastfeed her child for two years shall be entitled to support until the time of weaning.[21]

Divorce is an option that can only be exercised by Muslims as there is no divorce law yet for non-Muslims. However, it is possible for a Muslim and a Christian to divorce as the Code of Muslim Personal Laws of the Philippines states that divorce is applicable to cases wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or under PD 1083 in any part of the Philippines. But when the marriage is celebrated initially under the Civil Code and between non-Muslims and subsequently the husband converted to Islam, divorce would still not be available to the spouses as the law that will govern is the Civil Code.

When marriage is celebrated both under the Civil Code and under Islamic rites or under the Code of Muslim Personal Laws ("CMPL"). In which

[19] CMPL, Book Five, Title V, Chapter II, Sec. 183
[20] CMPL, Book Two, Title II, Chapter III, Sec. 1, Art. 54
[21] CMPL, Book Two, Title II, Chapter III, Sec. 1, Art. 67

case, the case of *Zamoranos v. People* which cites the Commentaries and Jurisprudence on the Muslim Code of the Philippines written by Justice Rasul and Dr. Ghazalis:

> If both parties are Muslims, there is a presumption that the Muslim Code or Muslim law is complied with. If together with it or in addition to it, the marriage is likewise solemnized in accordance with the Civil Code of the Philippines, in a so-called combined Muslim-Civil marriage rites whichever comes first is the validating rite and the second rite is merely ceremonial one. But, in this case, as long as both parties are Muslims, this Muslim Code will apply. In effect, two situations will arise, in the application of this Muslim Code or Muslim law, that is, when both parties are Muslims and when the male party is a Muslim and the marriage is solemnized in accordance with Muslim Code or Muslim law. A third situation occur[s] when the Civil Code of the Philippines will govern the marriage and divorce of the parties, if the male party is a Muslim and the marriage is solemnized in accordance with the Civil Code.[22]

Nevertheless, despite this discussion of the Code of Muslim Personal Laws, it remains as a fact that to the majority of the Filipino citizens, absolute divorce is not an option based on the declared public policy of the state.

## D. Recognition of Foreign Divorce Decree

### *Nationality Principle*

The Philippines is one of the civil law countries which follow the nationality rule.[23] Under this principle, it is the nationality or citizenship of the individual that determines the law relating to his family rights and duties, or to his status, condition and legal capacity.[24] This nationality principle is embodied

[22] Zamoranos v. People, G.R. No. 193902, June 1, 2011.

[23] Coquia, J. & Pangalangan, E. (2000), *Conflict of Laws: Cases, Materials and Comments.* Centra Professional Books, p. 155

[24] Keppel vs. Keppel, G.R. No. 202039, August 14, 2019

in Article 15 of the Civil Code. This Article originates from Article 9 of the Spanish Civil Code which was in turn taken from Article 3 of the Code of Napoleon.[25] Article 15 of the New Civil Code provides:

> 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. (9a)

Pursuant to this rule, Filipinos are governed by Philippine laws while foreigners are governed by their own national law.[26] Regardless of where a citizen of the Philippines might be, he or she will be governed by Philippine laws with respect to his or her family rights and duties, or to his or her status, condition and legal capacity.[27] Thus, a foreign divorce between Filipino citizens, sought and decreed after the effectivity of the new Civil Code (Republic Act No. 386), is not entitled to recognition as valid in the Philippines,[28] the same being considered contrary to the country's concept of public policy and morality.[29]

Under the rule of comity, final judgments of foreign courts of competent jurisdiction are respected and given effect.[30] However, equally recognized is the principle of private international law that a foreign judgment would not be extended if it is contrary to the law or fundamental policy of the State of the forum.[31] This rule has been embodied in the last part of Article 11 of the Old Civil Code which provides:

> . . . prohibitive laws concerning persons, their acts and their property, and those intended to promote public order and good morals shall not be rendered without effect by any foreign laws or judgments or by anything done or any agreements entered into a foreign country.

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[25] Coquia, J. & Pangalangan, E. (2000), *Conflict of Laws: Cases, Materials and Comments.* Centra Professional Books, p. 156

[26] Paras, E. (2013), Civil Code of the Philippines: Annotated, Volume I: Persons and Family Relations, REX Printing Company, p. 105

[27] Perez vs. Court of Appeals, G.R. No. 162580, January 27, 2006

[28] Tenchavez vs. Escaño, G.R. No. L-19671, November 29, 1965

[29] Vda. de Catalan vs. Catalan, G.R. no. 83622, February 8, 2012

[30] Vitug, J. (2003). *Civil Law: Persons and Family Relations*, REX Book Store, p.27

[31] Arca vs. Javier, G.R. No. L-6768. July 31, 1954

This has been subsequently carried over in Article 17 of the New Civil Code:

> Article 17. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.
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> When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.
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> Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country. (11a) (Emphasis supplied).

Hence, notwithstanding that it was a court of competent jurisdiction abroad that decreed the divorce, if such divorce involves individuals who are both Filipinos at the time of marriage, Article 15 and Article 17 of the Civil Code would apply. The divorce will not be recognized in the country because of the prohibition on absolute divorce.

Conversely, Philippine law finds no application as far as the family rights and obligations of foreign nationals are concerned.[32] Thus, only Philippine nationals are covered by the policy against absolute divorces.[33] Hence, in the case of *Van Dorn vs. Romillo,*[34] it was held aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. Citing *Atherton vs. Atherton*, the Court ratiocinated:

> "The purpose and effect of a decree of divorce from the bond of matrimony by a court of competent jurisdiction are to change the existing status or domestic relation of husband and

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[32] Keppel vs. Keppel, G.R. No. 202039, August 14, 2019
[33] Vda. de Catalan vs. Catalan, G.R. no. 83622, February 8, 2012
[34] G.R. No. L-68470. October 8, 1985

> wife, and to free them both from the bond. **The marriage tie, when thus severed as to one party, ceases to bind either. A husband without a wife, or a wife without a husband, is unknown to the law.** When the law provides, in the nature of a penalty, that the guilty party shall not marry again, that party, as well as the other, is still absolutely freed from the bond of the former marriage." (Emphasis supplied)

The Court stated that the Filipino spouse should not be discriminated against in her own country if the ends of justice are to be served. It concluded that the foreign spouse has no more right over the alleged property as he represented in the divorce proceedings that he had no community property with his former wife. This ruling in Van Dorn is subsequently reiterated in the cases of *Pilapil vs. Ibay-Somera*[35] and *Quita vs. Court of Appeals.*[36]

## *Article 26, par. 2 of the Family Code*

Executive Order E.O. No. 2019 otherwise known as *The Family Code of the Philippines* took effect on August 3, 1988 but shortly thereafter, or on July 17, 1987 Executive Order No. 227 was issued. This amended Articles 36 and 39 of the Family Code and added a second paragraph to Article 26.[37] The said provision provides:

> ART. 26. 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.
>
> 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. (Emphasis supplied)

This second paragraph is said to trace back its origin to the 1985 case of *Van Dorn*. The deliberations of the Family Code would show that the intent of

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[35] G.R. No. 80116. June 30, 1989
[36] G.R. No. 124862, December 22, 1998
[37] Republic vs. Orbecido III, G.R. No. 154380. October 5, 2005

this paragraph, according to Judge Alicia Sempio-Diy, a member of the Civil Code Revision Committee, is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.[38]

The various jurisprudence decided under the Family Code has provided the guidelines on the application of this Article, particularly its second paragraph.

## *Unions Covered by Article 26*

It was in *Republic vs. Orbecido III*[39] where the Court was confronted with the issue of whether or not the second paragraph of Article 26 extends to a situation where the husband and wife were Filipinos at the time of marriage but one of them becomes naturalized in another country. The Court ruled herein that Article 26 of the Family Code applies to 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.

By taking into consideration the legislative intent behind the paragraph, the Court ruled that in these cases, the Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage; to rule otherwise would be to sanction absurdity and injustice.

The Court laid down these guidelines in the application of Article 26:

1. There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner;
2. A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry.

It further added that the reckoning point is not the citizenship of the parties at the time of the celebration of the marriage, but their citizenship at

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[38] Id.
[39] G.R. No. 154380, October 5, 2005

the time a valid divorce is obtained abroad by the alien spouse capacitating the latter to remarry.

The Court unanimously interpreted the said provision to allow a Filipino citizen, who has been divorced by a spouse who had acquired foreign citizenship and remarried, also to remarry. However, considering that there is no sufficient evidence submitted and on record, the Court did not rule whether or not petitioner-husband was capacitated to remarry and instead held that the respondent husband should first submit the evidence of the divorce.

The case of *Republic vs. Manalo* further expanded the application of paragraph 2 of Article 26. In this case, the Court held:

> Paragraph 2 of Article 26 speaks of "a divorce x x x validly obtained abroad by the alien spouse capacitating him or her to remarry." 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. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding.
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> Assuming, for the sake of argument, that the word "obtained" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. [...]
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> xxx
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> [...] Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who

> initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instance, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.

The Court further held that Article 26 of the Family Code is an exception to the nationality principle embodied in Article 15 of the New Civil Code, and thus, the Filipino spouse should be allowed to initiate a divorce proceeding and to enjoy the effects thereof. The Court cited the cases of *Van Dorn, Fujiki, Dacasin vs. Dacasin,*[40] and *Medina vs. Koike*,[41] in proving that the Court had already given effect to divorce decrees wherein it was the Filipino spouse who initiated the proceedings.

The case of *Manalo* has been cited in subsequent cases to give effect to divorce decrees regardless of who initiated the divorce proceedings. The Court consistently held in these cases that Article 26 (2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) obtained jointly by the Filipino and foreign spouse; and (iii) obtained solely by the Filipino spouse.[42]

However, with regard to the spouse who may initiate the proceedings for the recognition of the divorce decree, the Court clarified, in the case of *Corpuz vs. Sto. Tomas,*[43] that the second paragraph of Article 26 may only be invoked by the Filipino spouse and it confers no right to the alien spouse. However, in the same case, the Court qualified that the foreign divorce decree itself, after its authenticity and conformity with the alien's national law have been duly proven according to our rules of evidence, serves as a presumptive evidence of right in favor of the alien spouse, pursuant to Section 48, Rule 39 of the Rules of Court which provides for the effect of foreign judgments. The

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[40] G.R. No. 168785. February 5, 2010

[41] G.R. No. 215723. July 27, 2016

[42] Juego-Sakai vs. Republic, G.R. No. 224015, July 23, 2018; Morisono vs. Morisono, G.R. No. 226013, July 2, 2018; Nullada vs. Civil Registrar, G.R. No. 224548, January 23, 2019; Galapon vs. Republic, G.R. No. 243722, January 22, 2020

[43] G.R. No. 186571, August 11, 2010

Court explained:

> The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.

## E. Proving the Validity of Divorce

A divorce decree obtained abroad by an alien spouse is a foreign judgment relating to the status of a marriage. As in any other foreign judgment, a divorce decree does not have an automatic effect in the Philippines. Consequently, recognition by Philippine courts may be required before the effects of a divorce decree could be extended in this jurisdiction.[44] Before a foreign divorce decree can be recognized by our own courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.[45]

### *Requisites in proving the Validity of Divorce*

In *Garcia vs. Recio,*[46] the petitioner-wife, a Filipina, sued the respondent-husband, an Australian citizen, for bigamy when she learned of the prior marriage of the respondent with another Filipina. As a defense, the respondent-husband invoked the divorce decree he obtained from the Australian court.

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[44] Sarto y Misalucha vs. People, G.R. No. 206284, February 28, 2018
[45] Republic vs. Orbecido III, G.R. No. 154380, October 5, 2005
[46] G.R. No. 138322. October 2, 2001

In deciding this case, the Court reiterated the doctrine that a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. It was in this case that the Court first laid down the rule that the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. This proceeds from the principle that our courts do not take judicial notice of foreign laws and judgments; hence, like any other fact, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence. The Court stated herein:

> At the outset, we lay the following basic legal principles as the take-off points for our discussion. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it. A marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad, because of Articles 15 and 17 of the Civil Code. In mixed marriages involving a Filipino and a foreigner, Article 26 of the Family Code allows the former to contract a subsequent marriage in case the divorce is "validly obtained abroad by the alien spouse capacitating him or her to remarry." A divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.
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> A comparison between marriage and divorce, as far as pleading and proof are concerned, can be made. *Van Dorn v. Romillo Jr.* decrees that "aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law." Therefore, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. Presentation solely of the divorce decree is insufficient.

Furthermore, the Court stated that the burden of proof lies with the party alleging it, thus, if the divorce decree is raised as a defense, the burden of proving it would lie on the respondent. The Court also stated that in order for the divorce decree to capacitate the Filipino spouse to remarry, it must also be proven that the divorce was absolute which terminates the marriage between

the parties.

After laying down such guidelines, the Court found that there was no evidence that proved respondent's legal capacity to marry petitioner. Thus, the Court deemed it most judicious to remand the case to the trial court.

This case has then been repeatedly cited in subsequent decisions[47] of the Court in providing for guidelines in establishing divorce.

However, *Roehr vs. Rodriguez*[48] provided that for the legal effects of a divorce decree to be recognizable in our country, it is also essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy. courts. Before *res judicata* effect can be given to a foreign judgment, it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of Court (i.e. want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.)

Nevertheless, a petition to recognize a foreign judgment does not require relitigation because the Philippine courts cannot presume to know the foreign laws under which the foreign judgment was rendered. The courts cannot substitute their judgment on the status, condition and legal capacity of the foreign citizen who is under the jurisdiction of another state. They are only limited to the questions of whether to extend the effect of a foreign judgment in the Philippines.

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

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[47] I.e. *Vda de Catalan vs. Catalan-Lee,* G.R. No. 183622. February 8, 2012; *San Luis vs. San Luis,* G.R. No. 133743 & G.R. No. 134029, February 6, 2007; Noveras vs. Noveras, G.R. No. 188289, August 20, 2014; Sarto y Misalucha vs. People, G.R. No. 206284, February 28, 2018;

[48] Roehr vs. Rodriguez, G.R. No. 142820, June 20, 2003

part of the comity of nations. Section 48 (b), Rule 39 of the Rules of Court states that the foreign judgment is already "presumptive evidence of a right between the parties." Upon recognition of the foreign judgment, this right becomes conclusive and the judgment serves as the basis for the correction or cancellation of entry in the civil registry.[49] Recognition of the divorce decree, however, need not be obtained in a separate petition filed solely for that purpose. Philippine courts may recognize the foreign divorce decree when such was invoked by a party as an integral aspect of his claim or defense.[50]

## *Proof of foreign divorce decree*

A divorce obtained abroad is proven by the divorce decree itself, as the best evidence of a judgment is the judgment itself. The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country.Under Sections 24 and 25 of Rule 132 (of the Old Rules of Court as cited in this case), a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.[51]

In relation to this, Section 25 of the same Rule states that whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.[52] However, if the opposing party fails to properly object, the divorce decree is rendered admissible as a written act of the foreign court.[53]

In recent jurisprudence, the Court has allowed other competent proof

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[49] Fujiki vs. Marinay, G.R. No. 142820, June 26, 2013
[50] Sarto y Misalucha vs. People, G.R. No. 206284, February 28, 2018
[51] Garcia vs. Recio, G.R. No. 138322, October 2, 2001
[52] Lavadia vs. Heirs of Luna, G.R. No. 171914, July 23, 2014
[53] Republic vs. Manalo, G.R. No. 221029, April 24, 2018

of the fact of divorce which need not be a judgment issued by the court. In the case of *Moraña vs. Republic,*[54] the trial court dismissed the petition for failure to present in evidence the Divorce Decree itself. However, when it reached the Supreme Court, the Court ruled therein that the Divorce Report submitted by the petitioner was the equivalent of a divorce decree:

Records show that the Divorce Report is what the Government of Japan issued to petitioner and her husband when they applied for divorce. There was no "divorce judgment" to speak of because the divorce proceeding was not coursed through Japanese courts but through the Office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan. In any event, since the Divorce Report was issued by the Office of the Mayor of Fukuyama City, the same is deemed an act of an official body in Japan. By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband.

Nevertheless, this case ended to a remand to the trial court because the foreign law was not sufficiently proven.

In the case of *Arreza vs. Toyo,*[55] the fact of divorce was proven through the submission of the Divorce Certificate/Agreement and the Certificate of Acceptance of the Notification of Divorce. The case of *Morisono vs. Morisono*[56] also involved a Divorce Agreement instead of a divorce granted by a court.

**ILLUSTRATIVE CASE OF INSUFFICIENT PROOF OF DIVORCE**

SARTO Y MISALUCHA VS. PEOPLE
G.R. No. 206284, February 28, 2018

**FACTS:**

Redante and Maria Socorro, both natives of Buhi, Camarines Sur, were married on 31 August 1984 in a ceremony held in Angono, Rizal. Sometime thereafter, Maria Socorro left for Canada to work as a nurse. While in Canada, she applied for Canadian citizenship. The application was eventually granted and Ma. Socorro acquired Canadian citizenship on 1 April 1988. Maria Socorro

[54] G.R. No. 227605, December 5, 2019
[55] G.R. No. 213198, July 1, 2019
[56] G.R. No. 226013. July 2, 2018

then filed for divorce in British Columbia, Canada, to sever her marital ties with Redante. The divorce was eventually granted by the Supreme Court of British Columbia on 1 November 1988. Sometime in February 1998, Redante met Fe to whom he admitted that he was previously married to Maria Socorro who, however, divorced him. Despite this admission, their romance blossomed and culminated in their marriage on 29 December 1998 at the Peñafrancia Basilica Minore in Naga City. Their relationship, however, turned sour when Ma. Socorro returned to the Philippines and met with Redante to persuade him to allow their daughter to apply for Canadian citizenship. After learning of Redante and Maria Socorro's meeting and believing that they had reconciled, Fe decided to leave their conjugal home on 31 May 2007. On 4 June 2007, Fe filed a complaint for bigamy against Redante. In its judgment, the RTC found Redante guilty beyond reasonable doubt of the crime of bigamy. The trial court ratiocinated that Redante's conviction is the only reasonable conclusion for the case because of his failure to present competent evidence proving the alleged divorce decree; his failure to establish the naturalization of Maria Socorro; and his admission that he did not seek judicial recognition of the alleged divorce decree. In its assailed decision, the CA affirmed the RTC's Judgment.

**RULING:**

Aside from the testimonies of Redante and Maria Socorro, the only piece of evidence presented by the defense to prove the divorce, is the certificate of divorce allegedly issued by the registrar of the Supreme Court of British Columbia on 14 January 2008.

This certificate of divorce, however, is utterly insufficient to rebut the charge against Redante. First, the certificate of divorce is not the divorce decree required by the rules and jurisprudence. As discussed previously, the divorce decree required to prove the fact of divorce is the judgment itself as rendered by the foreign court and not a mere certification. Second, assuming the certificate of divorce may be considered as the divorce decree, it was not accompanied by a certification issued by the proper Philippine diplomatic or consular officer stationed in Canada, as required under Section 24 of Rule 132. Lastly, no copy of the alleged Canadian law was presented by the defense. Thus, it could not be reasonably determined whether the subject divorce decree was in accord with Maria Socorro's national law.

Further, since neither the divorce decree nor the alleged Canadian law was satisfactorily demonstrated, the type of divorce supposedly secured by Maria Socorro — whether an absolute divorce which terminates the marriage or a limited divorce which merely suspends it — and whether such divorce capacitated her to remarry could not also be ascertained. As such, Redante failed to prove his defense that he had the capacity to remarry when he contracted a subsequent marriage to Fe. His liability for bigamy is, therefore, now beyond question.

## ILLUSTRATIVE CASE OF SUFFICIENT PROOF OF DIVORCE

RANCHO VS. TANAKA
G.R. No. 199515. June 25, 2018

## FACTS:

Racho and Seiichi Tanaka (Tanaka) were married on April 20, 2001 in Las Piñas City, Metro Manila. They lived together for nine (9) years in Saitama Prefecture, Japan and did not have any children. Racho alleged that on December 16, 2009, Tanaka filed for divorce and the divorce was granted. She secured a Divorce Certificate issued by Consul Kenichiro Takayama (Consul Takayama) of the Japanese Consulate in the Philippines and had it authenticated by an authentication officer of the Department of Foreign Affairs. She filed the Divorce Certificate with the Philippine Consulate General in Tokyo, Japan, where she was informed that by reason of certain administrative changes, she was required to return to the Philippines to report the documents for registration and to file the appropriate case for judicial recognition of divorce. She tried to have the Divorce Certificate registered with the Civil Registry of Manila but was refused by the City Registrar since there was no court order recognizing it. When she went to the Department of Foreign Affairs to renew her passport, she was likewise told that she needed the proper court order. She was also informed by the National Statistics Office that her divorce could only be annotated in the Certificate of Marriage if there was a court order capacitating her to remarry. She went to the Japanese Embassy, as advised by her lawyer, and secured a Japanese Law English Version of the Civil Code of Japan, 2000 Edition. On May 19, 2010, she fied a Petition for Judicial Determination and Declaration of Capacity to Marry with the Regional Trial Court, Las Piñas City. On June 2, 2011, the Regional Trial Court, Las Piñas City rendered a Decision, finding that Racho failed to

prove that Tanaka legally obtained a divorce. It stated that while she was able to prove Tanaka's national law, the Divorce Certificate was not competent evidence since it was not the divorce decree itself. Racho filed a Motion for Reconsideration, arguing that under Japanese law, a divorce by agreement becomes effective by oral notification, or by a document signed by both parties and by two (2) or more witnesses. In an Order dated October 3, 2011, the Regional Trial Court denied the Motion, finding that Racho failed to present the notification of divorce and its acceptance. On December 19, 2011, Racho filed a Petition for Review on Certiorari with this Court. In its January 18, 2012 Resolution, this Court deferred action on her Petition pending her submission of a duly authenticated acceptance certificate of the notification of divorce.

**RULING:**

Respondent's national law was duly admitted by the Regional Trial Court. Petitioner presented "a copy [of] the English Version of the Civil Code of Japan (Exh. "K") translated under the authorization of the Ministry of Justice and the Code of Translation Committee."

To prove the fact of divorce, petitioner presented the Divorce Certificate issued by Consul Takayama of Japan on January 18, 2010. This Certificate only certified that the divorce decree, or the Acceptance Certification of Notification of Divorce, exists. It is not the divorce decree itself. Thus, while respondent's national law was duly admitted, petitioner failed to present sufficient evidence before the Regional Trial Court that a divorce was validly obtained according to the national law of her foreign spouse. The Regional Trial Court would not have erred in dismissing her Petition.

Upon appeal to this Court, however, petitioner submitted a Certificate of Acceptance of the Report of Divorce, certifying that the divorce issued by Susumu Kojima, Mayor of Fukaya City, Saitama Prefecture, has been accepted on December 16, 2009. The seal on the document was authenticated by Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan.

The probative value of the Certificate of Acceptance of the Report of Divorce is a question of fact that would not ordinarily be within this Court's

ambit to resolve. Issues in a petition for review on certiorari under Rule 45 of the Rules of Court are limited to questions of law.

The court records, however, are already sufficient to fully resolve the factual issues. Additionally, the Office of the Solicitor General neither posed any objection to the admission of the Certificate of Acceptance of the Report of Divorce nor argued that the Petition presented questions of fact. In the interest of judicial economy and efficiency, this Court shall resolve this case on its merits.

Under Rule 132, Section 24 of the Rules of Court, the admissibility of official records that are kept in a foreign country requires that it must be accompanied by a certificate from a secretary of an embassy or legation, consul general, consul, vice consul, consular agent or any officer of the foreign service of the Philippines stationed in that foreign country.

The Certificate of Acceptance of the Report of Divorce was accompanied by an Authentication issued by Consul Bryan Dexter B. Lao of the Embassy of the Philippines in Tokyo, Japan, certifying that Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan was an official in and for Japan. The Authentication further certified that he was authorized to sign the Certificate of Acceptance of the Report of Divorce and that his signature in it was genuine. Applying Rule 132, Section 24, the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the fact of divorce between petitioner and respondent.

The Regional Trial Court established that according to the national law of Japan, a divorce by agreement "becomes effective by notification." Considering that the Certificate of Acceptance of the Report of Divorce was duly authenticated, the divorce between petitioner and respondent was validly obtained according to respondent's national law.

Here, the national law of the foreign spouse states that the matrimonial relationship is terminated by divorce. The Certificate of Acceptance of the Report of Divorce does not state any qualifications that would restrict the remarriage of any of the parties. There can be no other interpretation than that the divorce procured by petitioner and respondent is absolute and completely terminates their marital tie.

## *Proof of foreign law*

To prove a foreign law, the party invoking it must present a copy thereof and comply with Sections 24 and 25 of Rule 132 of the Revised Rules of Court.[57] Since the national law of the alien, recognizing his or her capacity to obtain a divorce is also an official act of a sovereign authority, the aforementioned Rules should also be complied with. To reiterate, these Sections require proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.[58]

**ILLUSTRATIVE CASE OF INSUFFICIENT PROOF OF FOREIGN LAW**

ARREZA VS. TOYO
G.R. No. 213198, July 1, 2019

**FACTS:**

On April 1, 1991, Genevieve, a Filipino citizen, and Tetsushi Toyo (Tetsushi), a Japanese citizen, were married in Quezon City. After 19 years of marriage, the two filed a Notification of Divorce by Agreement. It was later recorded in Tetsushi's family register as certified by the Mayor of Toyonaka City, Osaka Fu. On May 24, 2012, Genevieve filed before the Regional Trial Court a Petition for judicial recognition of foreign divorce and declaration of capacity to remarry. The Regional Trial Court rendered a Judgment denying Genevieve's Petition. It decreed that while the pieces of evidence presented by Genevieve proved that their divorce agreement was accepted by the local government of Japan, she nevertheless failed to prove the copy of Japan's law.

**RULING:**

[57] ATCI Overseas Corp., et. al. vs. Echin as cited in Nullada vs. Civil Registar of Manila

[58] Corpuz vs. Sto. Tomas

When a Filipino and an alien get married, and the alien spouse later acquires a valid divorce abroad, the Filipino spouse shall have the capacity to remarry provided that the divorce obtained by the foreign spouse enables him or her to remarry.

Nonetheless, settled is the rule that in actions involving the recognition of a foreign divorce judgment, it is indispensable that the petitioner prove not only the foreign judgment granting the divorce, but also the alien spouse's national law. This rule is rooted in the fundamental theory that Philippine courts do not take judicial notice of foreign judgments and laws.

Both the foreign divorce decree and the foreign spouse's national law, purported to be official acts of a sovereign authority, can be established by complying with the mandate of Rule 132, Sections 24 and 25 of the Rules of Court.

Here, the Regional Trial Court ruled that the documents petitioner submitted to prove the divorce decree have complied with the demands of Rule 132, Sections 24 and 25. However, it found the copy of the Japan Civil Code and its English translation insufficient to prove Japan's law on divorce. It noted that these documents were not duly authenticated by the Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs.

Notwithstanding, petitioner argues that the English translation of the Japan Civil Code is an official publication having been published under the authorization of the Ministry of Justice and, therefore, is considered a self-authenticating document.

Petitioner is mistaken.

In *Patula v. People*, this Court explained the nature of a self-authenticating document:

> The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is

> self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.

The English translation submitted by petitioner was published by Eibun-Horei-Sha, Inc., a private company in Japan engaged in publishing English translation of Japanese laws, which came to be known as the EHS Law Bulletin Series. However, these translations are "not advertised as a source of official translations of Japanese laws;" rather, it is in the KANPŌ or the Official Gazette where all official laws and regulations are published, albeit in Japanese. Accordingly, the English translation submitted by petitioner is not an official publication exempted from the requirement of authentication.

Neither can the English translation be considered as a learned treatise. Under the Rules of Court, "[a] witness can testify only to those facts which he knows of his [or her] personal knowledge[.]" The evidence is hearsay when it is "not . . . what the witness knows himself [or herself] but of what he [or she] has heard from others." The rule excluding hearsay evidence is not limited to oral testimony or statements, but also covers written statements.

The rule is that hearsay evidence "is devoid of probative value[.]" However, a published treatise may be admitted as tending to prove the truth of its content if: (1) the court takes judicial notice; or (2) an expert witness

testifies that the writer is recognized in his or her profession as an expert in the subject.

Here, the Regional Trial Court did not take judicial notice of the translator's and advisors' qualifications. Nor was an expert witness presented to testify on this matter. The only evidence of the translator's and advisors' credentials is the inside cover page of the English translation of the Civil Code of Japan. Hence, the Regional Trial Court was correct in not considering the English translation as a learned treatise.

Finally, settled is the rule that, generally, this Court only entertains questions of law in a Rule 45 petition. Questions of fact, like the existence of Japan's law on divorce, are not within this Court's ambit to resolve.

Nonetheless, in *Medina v. Koike*, this Court ruled that while the Petition raised questions of fact, "substantial ends of justice warrant that the case be referred to the [Court of Appeals] for further appropriate proceedings.

**ILLUSTRATIVE CASES OF SUFFICIENT PROOF OF FOREIGN LAW**

In *Rancho vs. Tanaka,* the Court no longer discussed the merits regarding the national law of the alien spouse since respondent's national law was duly admitted by the Regional Trial Court. Petitioner herein presented "a copy [of] the English Version of the Civil Code of Japan (Exh. "K") translated under the authorization of the Ministry of Justice and the Code of Translation Committee." Similarly, in *Galapon vs. Republic,* sufficiency of the evidence presented by petitioner to prove the issuance of said divorce decree and the governing national law of her husband Park was not put in issue. The Court quoted the Court of Appeal's ruling with regard to the sufficiency of evidence presented:

> x x x [T]he records show that [Cynthia] submitted, inter alia, the original and translated foreign divorce decree, as well as the required certificates proving its authenticity. She also offered into evidence a copy of the Korean Civil Code, duly authenticated through a Letter of Confirmation with Registry No. 2013- 020871, issued by the Embassy of the Republic of Korea in the Philippines. **These pieces of evidence may have been <u>sufficient</u> to establish the authenticity and**

> **validity of the divorce obtained by the estranged couple abroad** but [the CA agrees] with the OSG that the divorce cannot be recognized in this jurisdiction insofar as [Cynthia] is concerned since it was obtained by mutual agreement of a foreign spouse and a Filipino spouse. (Emphasis and underscoring supplied by the Court)

An exceptional ruling was also made in the case of *Bayot vs. Court of Appeals,* wherein the Court ruled the presentation of a copy of foreign divorce decree duly authenticated by the foreign court issuing said decree is deemed sufficient because it had been established that petitioner was an American citizen when she secured the divorce and the Court used jurisprudence in noting that divorce is recognized and allowed in any of the States of the Union.[59]

## *Effect of Amended Rules and the Apostille Convention*

The aforementioned cases have all been decided under the 1997 Rules of Court. However, the 2019 amendments on the 1997 Rules on Civil Procedure and Rules on Evidence provided modifications for the relevant sections regarding proof of foreign divorce decree and foreign law, specifically Sections 24 and 25 of the Rule 132. To wit:

> **Sec. 24. *Proof of official record.*** - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.
>
> If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its

[59] Bayot vs. CA, G.R. No. 155635 & G.R. No. 163979, November 7, 2008

equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being prima facie evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality. (24a)

**Sec. 25.** ***What attestation of copy must state.*** - Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he or she be the clerk of a court having a seal, under the seal of such court. (25a) (Emphasis and underscoring supplied)

In relation to this, the Philippines acceded to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents (Apostille Convention) on May 14, 2019.[60] The Apostille Convention abolishes the legalisation process and replaces it with a single formality: the issuance of an authentication certificate – called an "Apostille"– by an authority designated

[60] De Leon, Susan (June 4, 2019), DFA now affixes 'Apostille' instead of 'red ribbon' as proof of authentication, Republic of the Philippines: Philippine Information Agency, retrieved from: https://pia.gov.ph/news/articles/1022873

by the State of origin – called the "Competent Authority".[61]

## *Insufficient proof upon elevation to the Supreme Court*

The validity of the foreign divorce decree and the existence of foreign divorce laws are questions of fact. If the evidence on record is insufficient to establish the divorce decree and the governing personal law of the alien, they cannot be ruled upon by the Court, in accordance with the principle that the Supreme Court is not a trier of facts.[62] Thus, in cases reaching the Supreme Court wherein the validity of the divorce decree is an issue but there is no sufficient proof as to the foreign law or to the authenticity of the divorce decree, the Court remands the case to the trial court or refers it to the Court of Appeals.

## *Proper Proceedings*

In the case of *Ando vs. Department of Foreign Affairs*,[63] the Court ruled that a Petition for Declaratory Relief is not the proper remedy for her prayer for the recognition of her second marriage as valid; petitioner should have filed, instead, a petition for the judicial recognition of her foreign divorce from her first husband. However, it is the case of which illustrates the best recourse that may be availed in the recognition of foreign divorce. In *Corpuz vs. Sto. Tomas,* the Court stated that a petition for recognition of a foreign judgment is not the proper proceeding, contemplated under the Rules of Court, for the cancellation of entries in the civil registry. However, this should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry — one for recognition of the foreign decree and another specifically for cancellation of the entry. The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact.

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[61] The Hague Conference on Private International Law, (2013), Apostille Handbook: A Handbook on the Practical Operation of the Apostille Convention, retrieved from: https://www.hcch.net/en/publications-and-studies/details4/?pid=5888

[62] Medina vs. Koike, G.R. No. 215723, July 27, 2016.

[63] G.R. No. 195432, August 27, 2014

With regard to the the governing rules, *Fujiki vs. Marinay*[64] stated that A.M. No. 02-11-10-SC does not apply in cases of recognition of foreign judgments on marriage. The Court stated therein:

> For Philippine courts to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. [...]
>
> xxx
>
> To hold that A.M. No. 02-11-10-SC applies to a petition for recognition of foreign judgment would mean that the trial court and the parties should follow its provisions, including the form and contents of the petition, the service of summons, the investigation of the public prosecutor, the setting of pre-trial, the trial and the judgment of the trial court. This is absurd because it will litigate the case anew. It will defeat the purpose of recognizing foreign judgments, which is "to limit repetitive litigation on claims and issues."
>
> xxx
>
> A petition to recognize a foreign judgment declaring a marriage void does not require relitigation 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 explained that Philippine courts exercise limited review on foreign judgments. Courts are not allowed to delve into the merits of a foreign judgment. Philippine courts are incompetent to substitute their judgment on

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[64] G.R. No. 196049. June 26, 2013

how a case was decided under foreign law. Thus, Philippine courts are limited to the question of whether to extend the effect of a foreign judgment in the Philippines. Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, i.e., want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. This rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states.

The inapplicability of A.M. No. 02-10-11 to the recognition of foreign divorce decrees has been subsequently and concretely pronounced in the case of *Republic vs. Cote.*[65]

## F. International Law on Divorce

The Hague Convention on Recognition of Divorce and Legal Separations was concluded on June 1, 1970 and entered into force on August 24, 1975. The Convention aims to facilitate the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State. It assures divorced and separated spouses that that their new status shall receive the same recognition abroad as in the country where the divorce or separation is obtained. It simplifies the possibility of remarriage and clarifies the legal relationship of the couple concerned. It further recognizes that this factor can prove very important for the dependent children of a new relationship. It envisages combating "forum shopping" in the field of divorce. The Convention applies to the recognition of divorces and legal separations which follow judicial or other proceedings officially recognised in a Contracting State and which are legally effective there. It covers not only decrees granted by a court but also divorces or legal separations resulting from legislative, administrative or religious acts. However, it only applies to the decree of divorce or legal separation, not to findings of fault or to ancillary orders pronounced on the making of the decree of divorce or legal separation. Furthermore, the annulment of marriages does not fall within the scope of the Convention.[66]

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[65] G.R. No. 212860. March 14, 2018

[66] Hague Conference on Private International Law (September 2008). Outline: Hague Divorce Convention, p. 1, Retrieved from:

For the divorce or legal separation to be recognized in all other Contracting State, it is necessary that at the date of the institution of the proceedings in the State of divorce or legal separation, the respondent should have had his habitual residence there or both spouses were nationals of that State. It may also be recognized if the petitioner had his habitual residence but in addition thereto, it must also be shown that such habitual residence had continued for not less than one year immediately prior to the institution of the proceedings or that the spouses last habitually resided there together. Another alternative condition that may be fulfilled is that the petitioner was a national of that State and petitioner had his habitual residence there or he had habitually resided there for a continuous period of one year falling, at least in part, within the two years preceding the institution of the proceedings. Last alternative would be for petitioner to satisfy all the following conditions: (1) the petitioner for divorce was a national of that State, (2) the petitioner was present in that State at the date of institution of the proceedings and (3) the spouses last habitually resided together in a State whose law, at the date of institution of the proceedings, did not provide for divorce.[67] However, the latter rule only applies to divorce and cannot be extended to legal separations by analogy.[68] "Habitual residence" shall be deemed to include the term domicile, where the State of origin of a divorce or legal separation uses the concept of domicile as a test of jurisdiction in matters of divorce or legal separation.[69]

A Contracting State may refuse to recognize divorce when at the time it was obtained, both the parties were nationals of States which did not provide for divorce and of no other contracting state.[70] If, in the light of all the circumstances, adequate steps were not taken to give notice of the proceedings for a divorce or legal separation to the respondent, or if he was not afforded a sufficient opportunity to present his case, the divorce or legal separation may be refused recognition.[71] They may also refuse to recognise a divorce or legal separation if it is incompatible with a previous decision determining the matrimonial status of the spouses and that decision either was rendered in the State in which recognition is sought, or is recognised, or fulfils the conditions

https://www.hcch.net/en/instruments/conventions/full-text/?cid=80

[67] Convention on the Recognition of Divorces and Legal Separations, Article 2

[68] Hague Conference on Private International Law (September 2008). Outline: Hague Divorce Convention, p. 2, Retrieved from: https://www.hcch.net/en/instruments/conventions/full-text/?cid=80

[69] Convention on the Recognition of Divorces and Legal Separations, Article 3

[70] Convention on the Recognition of Divorces and Legal Separations, Article 7

[71] Convention on the Recognition of Divorces and Legal Separations, Article 8

required for recognition, in that State.[72] Furthermore, Contracting States may refuse to recognise a divorce or legal separation if such recognition is manifestly incompatible with their public policy.[73]

Currently, the Convention has twenty Contracting States, but unfortunately, Philippines is not one of them.[74]

The European Union has likewise adopted Council Regulations with regard to legal separation and divorce. These are binding on all 27 member countries of the European Union. They were adopted with the objective of maintaining and developing an area of freedom, security and justice, in which the free movement of persons is assured. These are measures relating to judicial cooperation in civil matters having cross-border implications.

Council Regulation (EC) No 2201/2003 of 27 November 2003 concerns jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility. This regulation also proceeds from the principle of mutual recognition of judicial decisions. It sets out rules on jurisdiction, *lis pendens*, the non-necessity of a special procedure for the recognition of the judgment, and the grounds for non-recognition, among others. On the other hand, the Council Regulation (EU) No 1259/2010 of 20 December 2010 implements enhanced cooperation in the area of the law applicable to divorce and legal separation. This regulation also aims to ensure compatibility of the rules applicable in the Member States concerning conflict of laws. The regulation implements enhanced cooperation in the area of the law applicable to divorce and legal separation. It provides for the rules on agreement on choice of law, determination of validity of such agreement, and governing law in case of absence of a choice, among others.

## G. Proposed Bills on Divorce

House Bill (HB) No. 100 or the proposed Absolute Divorce Act

[72] Convention on the Recognition of Divorces and Legal Separations, Article 9

[73] Convention on the Recognition of Divorces and Legal Separations, Article 10

[74] Hague Conference on Private International Law, Status Table: Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations, Retrieved from: https://www.hcch.net/en/instruments/conventions/status-table/?cid=80

authored by Albay 1st District Representative Edcel Lagman has been approved by the House Committee on Population and Family Relations last February 5, 2020. The bill seeks to legalize absolute divorce in the Philippines.[75] This bill has been the result of consolidation of a total of three proposed bills in the House. Under this bill, the grounds for absolute divorce are: (1) legal separation of more than 2 years; (2) the same grounds as annulment of marriage under Art. 45 of the Family Code; (3) separation in fact for five years and reconciliation is no longer possible; (4) psychological capacity under Art. 36 of the Family Code but there is no need for the incapacity to be present at the time of the celebration of the marriage; (5) when one of the spouses undergoes a gender reassignment surgery or transitions from one sex to another; and (6) irreconcilable marital differences and conflicts which have resulted in the total breakdown of the marriage beyond repair, despite earnest and repeated efforts at reconciliation.

The Senate also has proposed bills on divorce. At the start of the 18th Congress, Sen. Ana Theresia "Risa" Hontiveros promptly refiled her divorce bill[76] just like what Rep. Lagman did.[77] Sen. Hontiveros is currently the chairperson of the committee on women, children, family relations and gender equality.[78]

The other champion for divorce, Sen. Pia Cayetano, on the other hand, filed a bill for the automatic recognition of foreign divorce [79] at the Senate. She had previously filed in the House of Representative a similar bill, H.B.

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[75] Mara Cepeda & Karen Cepeda (February 5, 2020). *Divorce bill hurdles House committee level*. Rappler. Retrieved from: rappler.com/nation/divorce-bill-hurdles-house-committee

[76] Hontiveros refiles divorce bill. (2019, July 10). Cebu Daily News. Retrieved from: https://cebudailynews.inquirer.net/244138/hontiveros-refiles-divorce-bill?utm_term=Autofeed&utm_medium=Social&utm_source=Facebook&fbclid=IwAR0pxEj3UMy0OGvtnSqPYi1b8Ezy8MtN1nGu_jjHgnIw9mAytv56LkEWSH0#Echobox=1562754557

[77] Reganit, Jose Cielito, (2019, July 1), FOI, divorce among bills refiled in House of Representatives, Philippine News Agency. Retrieved from: https://www.pna.gov.ph/articles/1073784

[78] Rey, Aika. (2019, July 23) LIST: Senate committee chairmanships for the 18th Congress. Rappler
Retrieved from: https://www.rappler.com/nation/235936-list-senate-committee-chairmanships-18th-congress

[79]An Act Recognizing the Foreign Decree of Termination of Marriage and Allowing its Subsequent Registration with the Philippine Civil Registry, Amending for the Purpose of Executive Order No. 209, Otherwise Known as the Family Code of the Philippines. S.B. No. 67. 19th Congress. (2019) Retrieved from: https://www.senate.gov.ph/lisdata/3029727125!.pdf

7185[80], which was approved on third reading last March, 2018[81] and was also a co-sponsor of H.B. 7303 on absolute divorce.

In March, 2018[82], for the first time in the last 68 years[83], the House of Representatives, by a vote of 134-57 with two abstentions, approved on third and final reading H.B. No. 7303.[84] The Senate, however, failed to act on it. Sen. Hontiveros' proposed Senate version of the bill S.B. No. 2134[85] remained pending at the committee level.

Many are hopeful that Congress will finally pass the divorce law. Sen. Hontiveros in arguing for S.B. 2134's passage in the 17th Congress wrote:

"The number of Filipinos who are separate has been increasing over time -- demonstrating that the denial of legal remedies to those seeking to dissolve their union has largely been an ineffective way of upholding the policy of the State to keep families together.

It has been well-documented that the absence of divorce has had a disproportionate effects on women who are more often the victims of abuse within marriages, and who are forced to remain in joyless and unhealthy unions

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[80] An Act Recognizing the Foreign Decree of Termination of Marriage and Allowing its Subsequent Registration with the Philippine Civil Registry, Amending for the Purpose of Executive Order No. 209, Otherwise Known as the Family Code of the Philippines. H.B. No. 7185. 18th Congress. (2018) Retrieved from: http://www.congress.gov.ph/legisdocs/first_17/CR00610.pdf

[81] Congress of the Philippines.(2018) House oks foreign divorce and allows registration with PHL Civil Registry. [Press Release] Retrieved from: http://www.congress.gov.ph/press/details.php?pressid=10601&key=divorce

[82] Congress of the Philippines.(2018) House approves "Absolute Divorce Act of 2018," [Press Release]
Retrieved from: http://www.congress.gov.ph/press/details.php?pressid=10587&key=divorce

[83] Patag, Kristine Joy. (2018, March 20) Legalizing divorce in the Philippines: What you need to know.
The Philippine Star. Retrieved from:https://www.philstar.com/headlines/2018/03/20/1798661/legalizing-divorce-philippines-what-you-need-know

[84] An Act Instituting Absolute Divorce and Dissolution of Marriage in the Philippines, H.B. No. 7303, 18th Congress.(2018). Retrieved from: http://www.congress.gov.ph/legisdocs/first_17/CR00640.pdf

[85] An Act Instituting Absolute Divorce in the Philippines, S.B. No. 2134, 17th Congress. (2018)
Retrieved from: https://www.senate.gov.ph/lisdata/2923525831!.pdf

because of the dearth of legal options. Studies have shown that breaking free from such unions and being given a fresh start result in improved health outcomes for women. Studies likewise show that it is not divorce that creates the well-being issues for children, it is bearing witness to troubled marriages of parents....""(Footnotes omitted)

In closing, Sen. Hontiveros wrote that while the State is duty bound to promote the sanctity of family life, it is also duty bound to promote and protect the well-being of its citizens and that their well-being is compromised by their inability to break free from such irretrievably broken marriage.

The Philippine Commission on Women in its policy brief also recommended for the passage of the divorce bill by pointing out that married couples have limited options, either seeking legal separation or in ending the marriage through lengthy, expensive and inhumane annulment proceedings.

"Married couples who want to end their problematic/dysfunctional marriage should have a legal recourse through a simplified and inexpensive divorce process with grounds as stated under legal separation; hence this proposed measure. This proposed measure considers the plight of women trapped in a marriage ridden with violence, abuse, oppression and deprivation to be completely free to start a better life."[86]

[86] Adopting Divorce in the Family Code. Policy Brief No. 12. (2017) The Philippine Commission on Women. Retrieved from:https://www.pcw.gov.ph/wpla/adopting-divorce-family-code

# Chapter 2: Cases

**Ramirez vs. Gmur**
**G.R. No. 11796**
**August 5, 1918**

## EXECUTIVE SUMMARY:

Samuel Bischoff Werthmuller died, leaving a valuable estate of which he disposed of by will wherein everything was given to his widow, Doña Ana Ramirez, except for a real property in Switzerland which he bequeathed in favor of his brothers and sisters. However, it turned out that he had an acknowledged daughter, Leona Castro. Leona Castro had two sets of children. She had three children with Frederick von Kauffman. Then, the husband obtained a divorce decree in Paris. Thereafter, she married Doctor Ernest Emil Mory and had three children with him. The Mory children and the Kauffman are all claiming the share of Leona Castro in the estate of Samuel Bischoff. The Supreme Court ruled that it was sufficiently proven that Leona Castro is an acknowledged daughter of the decedent. As a forced heir, Leona Castro, if living, was entitled to one-third of the estate and this share cannot be prejudiced by the will made by the decedent. The Supreme Court ruled that the divorce granted by the French court must be ignored as there was no bona fide residence established therein and thus the French court did not acquire jurisdiction to dissolve the matrimonial bonds between Leona Castro and Frederick von Kauffman. As a result, the claims of the Mory children to participate in the estate of Samuel Bischoff must be rejected. The right to inherit is limited to legitimate, legitimated and acknowledged natural children so as children of adulterous relations, the Mory Children are wholly excluded.

## FACTS:

Samuel Bischoff Werthmuller, native of the Republic of Switzerland, but for many years a resident of the Philippine Islands, died in the city of Iloilo on June 29, 1913, leaving a valuable estate of which he disposed of by will. A few days after his demise the will was offered for probate in the Court of First Instance of Iloilo and, upon publication of notice, was duly allowed and established by the court. His widow, Doña Ana M. Ramirez, was named as executrix in the will, and to her accordingly letters testamentary were issued.

By the will, everything was given to the widow, with the exception of a piece of real property located in the City of Thun, Switzerland, which was devised to the testator's brothers and sisters. However, in the making of the will, the decedent ignored the possible claims of two sets of children, born to his natural daughter, Leona Castro. Samuel Bischoff tacitly recognized Leona as his daughter and treated her as such.

In the year 1895, Leona Castro was married to Frederick von Kauffman, a British subject, born in Hongkong, who had come to live in the city of Iloilo. Three children were born of this marriage, namely, Elena, Federico, and Ernesto. In the year 1904, Mr. Kauffman went to the City of Paris, France, for the purpose of obtaining a divorce from his wife under the French laws; a divorce was thereafter decreed on January 5, 1905, in favor of Mr. Kauffman and against his wife, Leona, in default. Though the record recites that Leona was then in fact residing at No. 6, Rue Donizetti, Paris, there is no evidence that she had acquired a permanent domicile in that city. Soon after the decree of divorce was entered, Doctor Ernest Emil Mory and Leona Castro married in the City of London, England. They had three children: Leontina Elizabeth, Carmen Maria, and Esther. On October 6, 1910, Leona Castro died.

In the present proceedings, Otto Gmur has appeared as the guardian of the three Mory claimants, while Frederick von Kauffman has appeared as the guardian of his own three children.

As will be surmised from the foregoing statement, the claims of both sets of children are founded upon the contention that Leona Castro was the recognized natural daughter of Samuel Bischoff and that as such she would, if living, at the time of her father's death, have been a forced heir of his estate and would have been entitled to participate therein to the extent of a one-third interest. Ana M. Ramirez, as the widow of Samuel Bischoff and residuary legatee under his will, insists that Leona Castro had never been recognized at all by Samuel Bischoff. The Mory claimants argue that the bonds of matrimony which united Frederick von Kauffman and Leona Castro were dissolved by the decree of divorce and the marriage ceremony which was soon thereafter celebrated between Doctor Mory and Leona in London was in all respects valid; and that therefore these claimants are to be considered the legitimate offspring of their mother. The Kauffman claimants insisted that the decree of divorce was wholly invalid, that all three of the Mory children are the offspring of adulterous relations, and that the von Kauffman children, as the legitimate offspring of Leona Castro, are alone entitled to participate in the division of

such part of the estate of Samuel Bischoff as would have been inherited by their mother, if living.

**ISSUE:**

Whether the children of Leona Castro (daughter of the deceased) from her wedding to Doctor Mory are entitled to a share in the estate of the deceased - NO because there was no valid divorce with regard to the first marriage of Leona Castro

**RULING AND DOCTRINE:**

The status of Leona Castro as a recognized natural daughter of Samuel Bischoff is fully and satisfactorily shown. From the fact that Leona Castro was an acknowledged natural daughter of her father, it follows that had she survived him she would have been his forced heir and as such a forced heir she would have been entitled to one-third of the inheritance. With reference to the rights of the von Kauffman children, it is enough to say that they are legitimate children, born to their parents in lawful wedlock; and they are therefore entitled to participate in the inheritance which would have devolved upon their mother, if she had survived the testator.

The decree of divorce upon which reliance is placed by the representation of the Mory children cannot be recognized as valid in the courts of the Philippine Islands. The French tribunal has no jurisdiction to entertain an action for the dissolution of a marriage contracted in these Islands by persons domiciled here, such marriage being indissoluble under the laws then prevailing in this country. The evidence shows conclusively that Frederick von Kauffman at all times since earliest youth has been, and is now, domiciled in the city of Iloilo in the Philippine Islands; that he there married Leona Castro, who was a citizen of the Philippine Islands, and that Iloilo was their matrimonial domicile; that his departure from Iloilo for the purpose of taking his wife to Switzerland was limited to that purpose alone, without any intent to establish a domicile elsewhere; and finally that he went to Paris in 1904, for the sole purpose of getting a divorce, without any intention of establishing a permanent residence in that city. The evidence shows that the decree was entered against the defendant in default, for failure to answer, and there is nothing to show that she had acquired, or had attempted to acquire, a

permanent domicile in the City of Paris. It is evident of course that the presence of both the spouses in that city was due merely to the mutual desire to procure a divorce from each other.

It is established by the great weight of authority that the court of a country in which neither of the spouses is domiciled and to which one or both of them may resort merely for the purpose of obtaining a divorce has no jurisdiction to determine their matrimonial status; and a divorce granted by such a court is not entitled to recognition elsewhere. It follows that, to give a court jurisdiction on the ground of the plaintiff's residence in the State or country of the judicial forum, his residence must be *bona fide*. If a spouse leaves the family domicile and goes to another State for the sole purpose of obtaining a divorce, and with no intention of remaining, his residence there is not sufficient to confer jurisdiction on the courts of that State. This is especially true where the cause of divorce is one not recognized by the laws of the State of his own domicile.

As the divorce granted by the French court must be ignored, it results that the marriage of Doctor Mory and Leona Castro, celebrated in London in 1905, could not legalize their relations; and the circumstance that they afterwards passed for husband and wife in Switzerland until her death is wholly without legal significance. The claims of the Mory children to participate in the estate of Samuel Bischoff must therefore be rejected. The right to inherit is limited to legitimate, legitimated, and acknowledged natural children. The children of adulterous relations are wholly excluded. The word "descendants," as used in article 941 of the Civil Code cannot be interpreted to include illegitimates born of adulterous relations.

Indeed it is evident, under the express terms of the proviso to section 753 of the Code of Civil Procedure, that the forced heirs cannot be prejudiced by the failure of the testator to provide for them in his will; and regardless of the intention of the testator to leave all his property, or practically all of it, to his wife, the will is intrinsically invalid so far as it would operate to cut of their rights.

**LINK:**
https://drive.google.com/file/d/1lTg9Qbu3FcgNaqW-GDHvgaO3Vg6Mcd2r/view?usp=sharing

**Gorayeb vs. Hashim**
**G.R. No. 25577**
**March 3, 1927**

**EXECUTIVE SUMMARY:**

Afife Abdo Cheyban Gorayeb has obtained a judgment requiring the defendant (who is also her husband) Nadjib Tannus Hashim, to pay to her a monthly stipend by way of support. The plaintiff filed a motion to cite defendant in contempt when he failed to pay the pension per month which was awarded to her. In response to this motion, the defendant pleaded the decree of divorce obtained by him from the Nevada court, claiming that said decree had the effect of dissolving the bonds of matrimony between himself and the plaintiff and of relieving him from all liability to pay the pension claimed. The trial court absolved him from the charge of contempt ruling that his defense was put forth in good faith but the trial court also held that he should continue the payment of pension to the plaintiff notwithstanding the decree of divorce he obtained. The Supreme Court ruled that the procuring of the divorce in Nevada was a mere device on the part of the defendant to rid himself of the obligation created by the judgment of the Philippine court and that his temporary sojourn in the State of Nevada was a mere ruse unaccompanied by any genuine intention on his part to acquire a legal domicile in that State. Thus, the divorce granted by the Nevada court cannot be recognized by the courts of this country.

**FACTS:**

The plaintiff in Civil Case No. 19115, Afife Abdo Cheyban Gorayeb, has obtained a judgment requiring the defendant (who is also her husband) Nadjib Tannus Hashim, to pay her a monthly stipend by way of support. While the question of the defendant's civil liability for the support claimed by the plaintiff was still undetermined, the defendant sought refuge in the State of Nevada; and, on December 1, 1924, there obtained a decree of divorce from the plaintiff in the court of the Second Judicial District of the State of Nevada. He then returned to the Philippine Islands, and on October 20, 1925, the plaintiff filed a motion in civil case No. 19115, alleging that the defendant had failed to pay the pension of P500 per month, which had been awarded to her in the decision of December 24, 1923, and praying that he be adjudged to be

in contempt of court and that he be fined and sentenced to imprisonment for six months and until he should comply with the order. In response to this motion the defendant pleaded the decree of divorce obtained by him from the Nevada court, claiming that said decree had the effect of dissolving the bonds of matrimony between himself and the plaintiff and of relieving him from all liability to pay the pension claimed.

Upon hearing the cause the trial court found that, while, as a matter of fact, the defendant was in arrears in the payment of the pension, nevertheless the defense asserted by him had been put forth in good faith. His Honor therefore absolved the defendant from the contempt charge, with costs de oficio. At the same time, it was declared that the civil obligation created by the previous orders of the court remained in full force and effect, notwithstanding the decree of divorce upon which the defendant relied, and he was ordered to continue the payment of the pension at the reduced rate of P100 per month. From so much of this order as declares the defendant civilly liable for the pension claimed by the plaintiff the defendant appealed, and it is this appeal that is now before us.

**ISSUE:**

Whether or not the husband is obliged to give support to the wife despite a divorce decree issued in Nevada - YES because the divorce decree was ineffective

**RULING AND DOCTRINE:**

The procuring of the divorce in Nevada was a mere device on the part of the defendant to rid himself of the obligation created by the judgment of the Philippine court and that his temporary sojourn in the State of Nevada was a mere ruse unaccompanied by any genuine intention on his part to acquire a legal domicile in that State. This being true, the divorce granted by the Nevada court cannot be recognized by the courts of this country.

A divorce granted in one State may be called in question in the courts of another and its validity determined upon the evidence relating to domicile of the parties to the divorce. This undoubtedly involves a collateral attack upon the decree of divorce; but, as has been said by the Supreme Court of the United States, it is now too late to deny the right collaterally to impeach a decree of divorce in the courts of another State by proof that the court granting the

divorce had no jurisdiction, even though the record purports to show jurisdiction and the appearance of the parties.

For reasons already stated, the decree itself is of no force in this jurisdiction. It supplies therefore no justification for the defendant's failure to pay alimony

**LINK:**
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**Hix vs. Fluemer**
**G.R. No. 34259**
**March 21, 1931**

**EXECUTIVE SUMMARY:**

E. Randolph Hix and Annie Cousins were married in Shanghai in China. Annie instituted an action in CFI Manila to compel her husband to provide adequate support for herself and for her son. Judgment was rendered in her favor which was affirmed by the Supreme Court. Hix filed a complaint for divorce with the Circuit Court of Randolph County, West Virginia. Having procured the divorce, Hix returned to Manila in 1927, where he continued to live and engaged in business up to the time of his death in 1929. The petitioner, Annie Cousins Hix, appealed from the order issued by the CFI Manila in the course of the intestate proceedings of E. Randolph Hix. The lower court ruled that the divorce procured by Hix was valid in this jurisdiction and thus she is not entitled to pension. The Supreme Court ruled that since E. Randolph Hix was not a *bona fide* resident of the State of West Virginia, the divorce decree he obtained from the Circuit Court of Randolph County, is null and void, said court having failed to acquire jurisdiction over the subject matter. Moreover, the summons by publication in a complaint for divorce does not confer jurisdiction upon the court over the person of the wife when she has not entered an appearance in the case. The decree of divorce was also impeached on the ground of fraud due to the false allegations made by Hix.

**FACTS:**

While E. Randolph Hix was living in Manila in 1912, he met the appellant and married her in Shanghai, China, on or about June 24, 1913 and returned to Manila where they established their domicile. A son was born of this union in Boston, Massachusetts, on July 1, 1915, named Preston Randolph Hix. On December 7, 1922, the appellant instituted an action in the Court of First Instance of Manila against her husband, E. Randolph Hix, for the purpose of compelling him to provide adequate support for herself and her son, Preston Randolph Hix. The trial court adjudicated the case in her favor and ordered the defendant E. Randolph Hix to pay her the sum of P500 in advance on or before the 5th day of each month for the maintenance of herself and her son. The case was appealed to this court and on February 27, 1924, the judgment of the court below was affirmed.

In the month of May, 1925, Hix filed a complaint for a divorce with the Circuit Court of Randolph County, West Virginia. As the appellant was not a resident of the State of West Virginia, she was summoned upon the complaint for divorce by publication, and not having entered an appearance in the case, either personally or by counsel within the term fixed, the Circuit Court of Randolph County, West Virginia, rendered judgment against her in 1925 declaring her marriage with the plaintiff dissolved. Having procured the divorce, E. Randolph Hix returned to Manila in 1927, where he continued to live and engaged in business up to the time of his death in 1929. The petitioner, Annie Cousins Hix, appeals from the order issued by the Court of First Instance of Manila in the course of the intestate proceedings of E. Randolph Hix which ruled that the divorce procured by Hix was valid in this jurisdiction and thus she is not entitled to pension.

**ISSUE:**

Whether or not the decree of divorce issued by the Circuit Court of Randolph County, West Virginia, is null and void - YES

**RULING AND DOCTRINE:**

One of the conditions for the validity of a decree of absolute divorce is that the court granting it has acquired jurisdiction over the subject matter, and to this end the plaintiff must be domiciled in good faith, and for the length of time fixed by the law, in the state in which it was granted. Although the

opponent and appellee attempted to show that E. Randolph Hix went to West Virginia with the intention of residing there permanently, as alleged in the complaint for divorce, such an intention was contradicted by the fact that before leaving the City of Manila, he did not liquidate his business, but placed it under the management of said opponent, and once having obtained his divorce, he returned to the City of Manila to take up his residence and to continue his aforesaid business, and that his purpose in going to West Virginia was to obtain a divorce.

This ruling has not been weakened in the present case by the fact that E. Randolph Hix was a citizen of the United States and of the State of West Virginia, since it is not the citizenship of the plaintiff for divorce which confers jurisdiction upon a court, but his legal residence within the State where he applies for a divorce.

Since E. Randolph Hix was not a bona fide resident of the State of West Virginia, the divorce decree he obtained from the Circuit Court of Randolph County, is null and void, said court having failed to acquire jurisdiction over the subject matter. But even if his residence had been taken up in good faith and the court had acquired jurisdiction to take cognizance of the divorce suit, the decree issued in his favor is not binding upon the appellant; for the matrimonial domicile of the spouses being the City of Manila, and no new domicile having been acquired in West Virginia, the summons made by publication, she not having entered an appearance in the case, either personally or by counsel, did not confer jurisdiction upon said court over her person.

The divorce may also be impeached by evidence of fraud, according to section 312 of the Code of Civil Procedure because of his allegations in the complaint, being false and which tended to deceive and did in fact deceive the aforesaid Circuit Court of Randolph County in West Virginia into granting the decree of divorce applied for. Had he alleged in his complaint that his wife lived apart from him by mutual consent, as was a fact, said court would not have granted the divorce.

**LINK:**
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**Gonzalez vs.Gonzalez**
**G.R. No. 37048**
**March 7, 1933**

**EXECUTIVE SUMMARY:**

Plaintiff Manuela Barreto Gonzalez and defendant Augusto Gonzalez are citizens of the Philippines who were married in the City of Manila. The husband left the Philippines and secured in Nevada an absolute divorce. He subsequently remarried. Shortly after his return to the Philippines, his wife brought an action in the CFI Manila requesting that the decree of divorce be ratified. The Supreme Court ruled that at all times the matrimonial domicile of this couple has been within the Philippine Islands and the residence acquired in the State of Nevada by the husband for the purpose of securing a divorce was not a bona fide residence and did not confer jurisdiction upon the court of that State to dissolve the bonds of matrimony.

**FACTS:**

Plaintiff Manuela Barreto Gonzalez and defendant Augusto Gonzalez are citizens of the Philippine Islands and at present, residents of the City of Manila. They were married in the City of Manila on January 19, 1919, and lived together as man and wife in the Philippine Islands until the Spring of 1926. They voluntarily separated and since that time have not lived together as man and wife. The husband left the Islands, took himself to Reno, Nevada, and secured in that jurisdiction an absolute divorce on the ground of desertion, which decree was dated November 28, 1927. Shortly thereafter the defendant moved to California and returned to these Islands in August 1928, where he has since remained. On the same date that he secured the divorce in Nevada he went through the forms of marriage with another citizen of these Islands. Defendant, after his departure from these Islands, reduced the amount he had agreed to pay monthly for the support of his wife and four minor children and has not made the payments fixed in the Reno divorce as alimony. Shortly after his return his wife brought action in the Court of First Instance of Manila requesting that the courts of the Philippine Islands confirm and ratify the decree of divorce issued by the courts of the State of Nevada.

**ISSUE:**

Whether or not the divorce decree obtained from Nevada by the

husband can be enforced in the Philippines - NO

**RULING AND DOCTRINE:**

The entire conduct of the parties from the time of their separation until the case was submitted to this court, in which they all prayed that the Reno divorce be ratified and confirmed, clearly indicates a purpose to circumvent the laws of the Philippine Islands regarding divorce and to secure for themselves a change of status for reasons and under conditions not authorized by our law. At all times the matrimonial domicile of this couple has been within the Philippine Islands and the residence acquired in the State of Nevada by the husband for the purpose of securing a divorce was not a *bona fide* residence and did not confer jurisdiction upon the court of that State to dissolve the bonds of matrimony in which he had entered in 1919. Litigants by mutual agreement can not compel the courts to approve of their own actions or permit the personal relations of the citizens of these Islands to be affected by decrees of foreign courts in a manner which our Government believes is contrary to public order and good morals.

**LINK:**
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**Arca vs. Javier**
**G.R. No. L-6768**
**July 31, 1954**

**EXECUTIVE SUMMARY:**

Plaintiff Salud and Alfredo Javier had their marriage solemnized by Judge Nable of the Municipal Court of Manila. Alfredo left for the United States to serve as part of the US Navy, but as their relation became strained, he brought an action for divorce against Salud before the Circuit Court of Mobile County, State of Alabama, USA. Notwithstanding Salud's contention regarding the court's jurisdiction, Alfredo was able to secure a divorce decree. He married for the second time but his American wife divorced him. When he returned to the Philippines, he married for the third time. Plaintiff Salud filed a case against him for bigamy but the case was dismissed on the premise that

Alfredo contracted the subsequent marriage in good faith; however, Alfredo was adjudged to give montly allowance to Salud and to pay attorney's fees. Thus, Alfredo appealed, contending that the divorce decree should be given legal effect. However, the Supreme Court ruled that where a local resident went to a foreign country, not with the intention of permanently residing there, or of considering that place as his permanent abode, but for the sole purpose of obtaining divorce from his wife, such residence is not sufficient to confer jurisdiction on the foreign court.

**FACTS:**

On November 19, 1937, plaintiff Salud R. Arca and defendant Alfredo Javier had their marriage solemnized by Judge Mariano Nable of the Municipal Court of Manila. Sometime in 1938, defendant Alfredo Javier left for the United States on board a ship of the United States Navy. Salud chose to live with defendant's parents at Naic, Cavite. But for certain incompatibility of character, plaintiff Salud had found it necessary to leave the defendant's parents' abode and transfer her residence to Cavite — her native place. Since then their relation became strained such that on August 13, 1940 defendant Alfredo Javier brought an action for divorce against Salud before the Circuit Court of Mobile County, State of Alabama, USA. Notwithstanding Salud's averments in her answer, contesting the jurisdiction of the Circuit Court of Mobile County, State of Alabama, judgment was rendered decreeing dissolution of their marriage and granting Alfredo a decree of divorce. After securing a divorce from plaintiff, defendant Alfredo Javier married Thelma Francis, an American citizen. In 1949, Thelma obtained a divorce from him. After his arrival in the Philippines, Alfredo married Maria Odvina before Judge Natividad Almeda-Lopez of the Municipal Court of Manila on April 19, 1950. At the instance of plaintiff Salud R. Arca an information for bigamy was filed by the City Fiscal of Manila on July 25, 1950 against defendant Alfredo Javier with the Court of First Instance of Manila. Defendant Alfredo Javier was acquitted of the charge of Bigamy, predicated on the proposition that the marriage of defendant Alfredo Javier with Maria Odvina was made in all good faith and in the honest belief that his marriage with plaintiff Salud R. Arca had been legally dissolved by the decree of divorce obtained by him. However, the Court of First Instance of Cavite ordered him to give a monthly allowance of P60 to plaintiffs beginning March 31, 1953, and to pay them attorney's fees in the amount of P150.

**ISSUE:**

Whether or not the divorce decree obtained from Alabama by the husband is valid in the Philippines - NO

**RULING AND DOCTRINE:**

The Court ruled that one of the essential conditions for the validity of a decree of divorce is that the court must have jurisdiction over the subject matter and in order that this may be acquired, plaintiff must be domiciled in good faith in the State in which it is granted. It is true that Salud R. Arca filed an answer in the divorce case instituted at the Mobile County in view of the summons served upon her in this jurisdiction, but this action cannot be interpreted as placing her under the jurisdiction of the court because its only purpose was to impugn the claim of appellant that his domicile or legal residence at that time was Mobile County, and to show that the ground of desertion imputed to her was baseless and false. Such answer should be considered as a special appearance the purpose of which is to impugn the jurisdiction of the court over the Case.

It cannot be said that the Mobile County Court of Alabama had acquired jurisdiction over the case for the simple reason that at the time it was filed appellant's legal residence was then in the Philippines. He could not have acquired legal residence or domicile at Mobile County when he moved to that place in 1938 because at that time he was still in the service of the U.S. Navy and merely rented a room where he used to stay during his occasional shore leave for shift duty. That he never intended to live there permanently is shown by the fact that after his marriage to Thelma Francis in 1941, he moved to New York where he bought a house and a lot, and after his divorce from Thelma in 1949 and his retirement from the U.S. Navy, he returned to the Philippines and married Maria Odvina of Naic, Cavite, where he lived ever since. It may therefore be said that appellant went to Mobile County, not with the intention of permanently residing there, or of considering that place as his permanent abode, but for the sole purpose of obtaining divorce from his wife. Such residence is not sufficient to confer jurisdiction on the court.

**LINK:**
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**Tenchavez vs. Escaño**
**G.R. No. L-19671**
**November 29, 1965**

**EXECUTIVE SUMMARY:**

Vicenta Escaño was married to Pastor Tenchavez without the knowledge of her parents. They subsequently became estranged. Later on, she sought and obtained a divorce from the State of Nevada and subsequently married a certain Russell Moran. Tenchavez initiated a complaint against Vicenta and her parents whom he charged with having dissuaded and discouraged Vicenta from joining her husband and alienating her affections. The appealed judgment did not decree a legal separation, but freed the plaintiff from supporting his wife and to acquire property to the exclusion of his wife. It allowed the counterclaim of Mamerto Escaño and Mena Escaño for moral and exemplary damages and attorney's fees against the plaintiff-appellant. The Supreme Court ruled that in this jurisdiction Vicenta Escaño's divorce and second marriage are not entitled to recognition as valid. It follows, likewise, that her refusal to perform her wifely duties, and her denial of consortium and her desertion of her husband constitute in law a wrong caused through her fault, for which the husband is entitled to the corresponding indemnity. Wherefore, her marriage and cohabitation with Russell Leo Moran is technically "intercourse with a person not her husband" from the standpoint of Philippine law, and entitles plaintiff appellant Tenchavez to a decree of legal separation under our law, on the basis of adultery. However, the plaintiff-appellant's charge that his wife's parents, Dr. Mamerto Escaño and his wife, the late Doña Mena Escaño, alienated the affection of their daughter and influenced her conduct toward her husband are not supported by credible Evidence.

**FACTS:**

On February 24, 1948, Vicenta Escaño exchanged marriage vows with Pastor Tenchavez without the knowledge of her parents before a Catholic chaplain. The marriage was the culmination of a previous love affair and was duly registered with the local civil registrar. As of June, 1948 the newlyweds were already estranged. On 22 August 1950, she filed a verified complaint for divorce against the herein plaintiff in the Second Judicial District Court of the

State of Nevada on the ground of "extreme cruelty, entirely mental in character". On 21 October 1950, a decree of divorce, "final and absolute", was issued in open court by the said tribunal. In 1951 Mamerto and Mena Escaño (Vicenta's parents) filed a petition with the Archbishop of Cebu to annul their daughter's marriage to Pastor. On 10 September 1954, Vicenta sought papal dispensation of her marriage. On 13 September 1954, Vicenta married an American, Russell Leo Moran, in Nevada.

Tenchavez initiated the proceedings at bar by a complaint in the Court of First Instance of Cebu against Vicenta F. Escaño, her parents whom he charged with having dissuaded and discouraged Vicenta from joining her husband, and alienating her affections, and against the Roman Catholic Church, for having, through its Diocesan Tribunal, decreed the annulment of the marriage, and asked for legal separation and one million pesos in damages. Vicenta claimed a valid divorce from plaintiff and an equally valid marriage to her present husband, Russell Leo Moran; while her parents denied that they had in anyway influenced their daughter's acts, and counterclaimed for moral damages. The appealed judgment did not decree a legal separation, but freed the plaintiff from supporting his wife and to acquire property to the exclusion of his wife. It allowed the counterclaim of Mamerto Escaño and Mena Escaño for moral and exemplary damages and attorney's fees against the plaintiff-appellant.

**ISSUE:**

Whether or not the divorce decree obtained by the wife absolved her from the obligation to live together with petitioner-husband - NO; therefore, she's liable for damages to petitioner husband

**RULING AND DOCTRINE:**

The Court ruled that the valid marriage between Pastor Tenchavez and Vicenta Escaño remained subsisting and undissolved under Philippine Law, notwithstanding the decree of absolute divorce that the wife sought and obtained. At the time the divorce decree was issued, Vicenta Escaño, like her husband, was still a Filipino citizen. She was then subject to Philippine law, and Article 15 of the Civil Code of the Philippines (Republic Act. No. 386), already in force at the time. For the Philippine courts to recognize and give

recognition or effect to a foreign decree of absolute divorce between Filipino citizens would be a patent violation of the declared public policy of the state, specially in view of the third paragraph of Article 17 of the Civil Code.

From the preceding facts and considerations, there flows as a necessary consequence that in this jurisdiction Vicenta Escaño's divorce and second marriage are not entitled to recognition as valid; for her previous union to plaintiff Tenchavez must be declared to be existent and undissolved. It follows, likewise, that her refusal to perform her wifely duties, and her denial of consortium and her desertion of her husband constitute in law a wrong caused through her fault, for which the husband is entitled to the corresponding indemnity (Civil Code, Art. 2176). Wherefore, her marriage and cohabitation with Russell Leo Moran is technically "intercourse with a person not her husband" from the standpoint of Philippine law, and entitles plaintiff appellant Tenchavez to a decree of legal separation under our law, on the basis of adultery (Revised Penal Code, Art. 333).

However, the plaintiff-appellant's charge that his wife's parents alienated the affection of their daughter and influenced her conduct toward her husband are not supported by credible Evidence. Plaintiff Tenchavez, in falsely charging Vicenta's aged parents with racial or social discrimination and with having exerted efforts and pressured her to seek annulment and divorce, unquestionably caused them unrest and anxiety, entitling them to recover damages. While his suit may not have been impelled by actual malice, the charges were certainly reckless in the face of the proven facts and circumstances. Court actions are not established for parties to give vent to their prejudices or spleen.

**LINK:**
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**Van Dorn vs. Romillo**
**G.R. No. L-68470**
**October 8, 1985**

**EXECUTIVE SUMMARY:**

Petitioner is a citizen of the Philippines while private respondent is a citizen of the United States. They married in Hong Kong but private

respondent subsequently obtained a divorce decree in Nevada. Private respondent sued petitioner for his share in her Galleon Shop. Petitioner filed a Motion to Dismiss contending that private respondent is bound by his representation in the divorce proceedings that they have no community of property but private respondent alleges that the divorce decree has no effect in the Philippines because of the country's public policy. The trial court dismissed petitioner's motion, hence, she brought the case to the Supreme Court. The Supreme Court ruled that only Philippine nationals are covered by the policy against absolute divorces, the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law. Private respondent is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate. Thus, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.

**FACTS:**

Petitioner is a citizen of the Philippines while private respondent is a citizen of the United States. They were married in Hongkong in 1972. After the marriage, they established their residence in the Philippines. They begot two children born on April 4, 1973 and December 18, 1975, respectively. The parties were divorced in Nevada, United States, in 1982 and petitioner has re-married also in Nevada, this time to Theodore Van Dorn. Private respondent filed suit against petitioner stating that petitioner's business in Ermita, Manila, (the Galleon Shop) is conjugal property of the parties, and asking that petitioner be ordered to render an accounting of that business, and that private respondent be declared with right to manage the conjugal property. Petitioner moved to dismiss the case, contending that respondent is estopped from laying claim on the alleged conjugal property because of the representation he made in the divorce proceedings before the American Court that they had no community of property. Respondent avers that the Divorce Decree issued by the Nevada Court cannot prevail over the prohibitive laws of the Philippines and its declared national policy. The Court below denied the Motion to Dismiss of petitioner on the ground that the property involved is located in the Philippines so that the Divorce Decree has no bearing in the case.

**ISSUE:**

Whether or not the divorce decree obtained in Nevada for a marriage in Hong Kong between an American and a Filipino is effective in the Philippines - YES; thus, the husband no longer has the right to manage the conjugal properties

**RULING AND DOCTRINE:**

The Nevada District Court, which decreed the divorce, had obtained jurisdiction over petitioner who appeared in person before the Court during the trial of the case and over private respondent who authorized his attorneys in the divorce case. The decree is binding on private respondent as an American citizen.

It is true that owing to the nationality principle embodied in Article 15 of the Civil Code, only Philippine nationals are covered by the policy against absolute divorces the same being considered contrary to our concept of public policy and morality. However, aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law.

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. Thus, pursuant to his national law, private respondent is no longer the husband of petitioner. He would have no standing to sue in the case below as petitioner's husband entitled to exercise control over conjugal assets. As he is bound by the Decision of his own country's Court, which validly exercised jurisdiction over him, and whose decision he does not repudiate, he is estopped by his own representation before said Court from asserting his right over the alleged conjugal property.

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. She should not be discriminated against in her own country if the ends of justice are to be served.

**LINK:**
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**Pilapil vs. Ibay-Somera**
**G.R. No. 80116**
**June 30, 1989**

**EXECUTIVE SUMMARY:**

Petitioner, a Filipino citizen, and private respondent, a German National were married in Germany. Subsequently, the private respondent obtained a divorce in Germany. However, five months after obtaining a divorce decree, two complaints for bigamy were filed against petitioner at the instance of private respondent. Petitioner filed a motion to dismiss but the trial court denied her motion. Hence, petitioner filed this special civil action contending that the court is without jurisdiction "to try and decide the charge of adultery, which is a private offense that cannot be prosecuted de officio (sic), since the purported complainant, a foreigner, does not qualify as an offended spouse having obtained a final divorce decree under his national law prior to his filing the criminal complaint." The Supreme Court ruled that the law specifically provides that in prosecutions for adultery and concubinage the person who can legally file the complaint should be the offended spouse, and nobody else. In the present case, the fact that private respondent obtained a valid divorce in his country, the Federal Republic of Germany, is admitted. Said divorce and its legal effects may be recognized in the Philippines insofar as private respondent is concerned in view of the nationality principle in our civil law on the matter of status of persons. Private respondent, being no longer the husband of petitioner, had no legal standing to commence the adultery case under the imposture that he was the offended spouse at the time he filed suit.

**FACTS:**

On September 7, 1979, petitioner Imelda Manalaysay Pilapil, a Filipino citizen, and private respondent Erich Ekkehard Geiling, a German national, were married before the Registrar of Births, Marriages and Deaths at Friedensweiler in the Federal Republic of Germany. After about three and a half years of marriage, such connubial disharmony eventuated in private respondent initiating a divorce proceeding against petitioner in Germany before the Schoneberg Local Court in January, 1983 and subsequently, such

court promulgated a decree of divorce on the ground of failure of marriage of the spouses. More than five months after the issuance of the divorce decree, private respondent filed two complaints for adultery before the City Fiscal of Manila alleging that, while still married to said respondent, petitioner "had an affair with a certain William Chua as early as 1982 and with yet another man named Jesus Chua sometime in 1983". Two complaints for adultery against the petitioner were filed and raffled to two branches of the Regional Trial Court of Manila. In the course of the proceedings, petitioner filed a motion to quash but the motion was denied by the respondent judge. On October 27, 1987, petitioner filed this special civil action for certiorari and prohibition, with a prayer for a temporary restraining order, seeking the annulment of the order of the lower court denying her motion to quash. The petition is anchored on the main ground that the court is without jurisdiction "to try and decide the charge of adultery, which is a private offense that cannot be prosecuted de officio (sic), since the purported complainant, a foreigner, does not qualify as an offended spouse having obtained a final divorce decree under his national law prior to his filing the criminal complaint."

**ISSUE:**

Whether or not the husband can file a case for adultery despite the issuance of a foreign divorce decree - NO.

**RULING AND DOCTRINE:**

Under Article 344 of the Revised Penal Code, the crime of adultery, as well as four other crimes against chastity, cannot be prosecuted except upon a sworn written complaint filed by the offended spouse. It has long since been established, with unwavering consistency, that compliance with this rule is a jurisdictional, and not merely a formal, requirement. Corollary to such exclusive grant of power to the offended spouse to institute the action, it necessarily follows that such initiator must have the status, capacity or legal representation to do so at the time of the filing of the criminal action. As cogently argued by petitioner, Article 344 of the Revised Penal Code thus presupposes that the marital relationship is still subsisting at the time of the institution of the criminal action for adultery.

American jurisprudence, on cases involving statutes in that jurisdiction which are *in pari materia* with ours, yields the rule that after a divorce has been decreed, the innocent spouse no longer has the right to institute proceedings

against the offenders where the statute provides that the innocent spouse shall have the exclusive right to institute a prosecution for adultery. Where, however, proceedings have been properly commenced, a divorce subsequently granted can have no legal effect on the prosecution of the criminal proceedings to a conclusion.

We see no reason why the same doctrinal rule should not apply in this case and in our jurisdiction, considering our statutory law and jural policy on the matter. We are convinced that in cases of such nature, the status of the complainant vis-a-vis the accused must be determined as of the time the complaint was filed. Thus, the person who initiates the adultery case must be an offended spouse, and by this is meant that he is still married to the accused spouse, at the time of the filing of the complaint. In the present case, the fact that private respondent obtained a valid divorce in his country, the Federal Republic of Germany, is admitted. Said divorce and its legal effects may be recognized in the Philippines insofar as private respondent is concerned in view of the nationality principle in our civil law on the matter of status of persons.

Under the same considerations and rationale in Van Dorn, private respondent, being no longer the husband of petitioner, had no legal standing to commence the adultery case under the imposture that he was the offended spouse at the time he filed suit. The allegation of private respondent that he could not have brought this case before the decree of divorce for lack of knowledge, even if true, is of no legal significance or consequence in this case. When said respondent initiated the divorce proceeding, he obviously knew that there would no longer be a family nor marriage vows to protect once a dissolution of the marriage is decreed. Neither would there be a danger of introducing spurious heirs into the family, which is said to be one of the reasons for the particular formulation of our law on adultery, since there would henceforth be no spousal relationship to speak of.

**LINK:**
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**Quita vs. CA**
**G.R. No. 124862**
**December 22, 1998**

## EXECUTIVE SUMMARY:

Fe D. Quita and Arturo T. Padlan, both Filipinos, were married in the Philippines on 18 May 1941. Fe sued Arturo for divorce in San Francisco, California, U.S.A and thereafter, she obtained a final judgment of divorce. On 16 April 1972 Arturo died. He left no will. In the estate proceedings of the Arturo, it was only petitioner and Arturo's brothers who were declared as intestate heirs. Respondent Blandina Dandan (also referred to as Blandina Padlan), claiming to be the surviving spouse of Arturo Padlan, and Claro, Alexis, Ricardo, Emmanuel, Zenaida and Yolanda, all surnamed Padlan were not declared as heirs. The trial court disregarded the divorce between petitioner and Arturo. Consequently, it expressed the view that their marriage subsisted until the death of Arturo in 1972. However, partial reconsideration was granted declaring the Padlan children, with the exception of Alexis, entitled to one-half of the estate to the exclusion of Ruperto Padlan, and petitioner to the other half. Private respondent was not declared an heir because she and Arturo were married on 22 April 1947 and their marriage was clearly void since it was celebrated during the existence of his previous marriage to petitioner. The appellate court declared the orders and the decision of the trial court as null and void for lack of hearing, and ordered the remand of the case to the trial court. Petitioner contends the remand to the trial court, insisting that the case could already be resolved. The Supreme Court remanded the case to the trial court to determine petitioner's citizenship at the time of the issuance of the foreign divorce decree in order to determine her hereditary rights as spouse. Once proved that she was no longer a Filipino citizen at the time of their divorce, Van Dorn would become applicable and petitioner could very well lose her right to inherit from Arturo.

## FACTS:

Fe D. Quita and Arturo T. Padlan, both Filipinos, were married in the Philippines on 18 May 1941. Somewhere along the way their relationship soured. Eventually Fe sued Arturo for divorce in San Francisco, California, U.S.A and thereafter, she obtained a final judgment of divorce in 1954. Three (3) weeks thereafter she married a certain Felix Tupaz in the same locality but their relationship also ended in a divorce. Still in the U.S.A., she married for

the third time, to a certain Wernimont. On 16 April 1972 Arturo died. He left no will. On 31 August 1972 Lino Javier Inciong filed a petition with the Regional Trial Court of Quezon City for issuance of letters of administration concerning the estate of Arturo in favor of the Philippine Trust Company. Respondent Blandina Dandan (also referred to as Blandina Padlan), claiming to be the surviving spouse of Arturo Padlan, and Claro, Alexis, Ricardo, Emmanuel, Zenaida and Yolanda, all surnamed Padlan, named in the petition as surviving children of Arturo Padlan, opposed the petition and prayed for the appointment instead of Atty. Leonardo Cabasal, which was resolved in favor of the latter. On 7 October 1987 petitioner moved for the immediate declaration of heirs of the decedent and the distribution of his estate.

The trial court disregarded the divorce between petitioner and Arturo. Consequently, it expressed the view that their marriage subsisted until the death of Arturo in 1972. Neither did it consider valid their extrajudicial settlement of conjugal properties due to lack of judicial approval. As regards Ruperto, it found that he was a brother of Arturo. Only petitioner and Ruperto were declared the intestate heirs of Arturo. Accordingly, equal adjudication of the net hereditary estate was ordered in favor of the two intestate heirs.

In their appeal to the Court of Appeals, Blandina and her children assigned as one of the errors allegedly committed by the trial court the circumstance that the case was decided without a hearing; in violation of Sec. 1, Rule 90, of the Rules of Court, which provides that if there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases. Respondent appellate court found this ground alone sufficient to sustain the appeal declaring null and void the orders of the trial court and directed the remand of the case to the trial court for further proceedings. Petitioner insists that there is no need to remand the case because, first, no legal or factual issue obtains for resolution either as to the heirship of the Padlan children or as to their respective shares in the intestate estate of the decedent; and, second, the issue as to who between petitioner and private respondent is the proper heir of the decedent is one of law which can be resolved in the present petition based on established facts and admissions of the parties.

**ISSUE:**

Whether petitioner was still entitled to inherit from the decedent considering that she had secured a divorce in the U.S.A. - REMANDED TO THE TRIAL COURT

**RULING AND DOCTRINE:**

The finding on their citizenship pertain solely to the time of their marriage as the trial court was not supplied with a basis to determine petitioner's citizenship at the time of their divorce. The doubt persisted as to whether she was still a Filipino citizen when their divorce was decreed. The trial court must have overlooked the materiality of this aspect. Once proved that she was no longer a Filipino citizen at the time of their divorce, V*an Dorn* would become applicable and petitioner could very well lose her right to inherit from Arturo.

We emphasize however that the question to be determined by the trial court should be limited only to the right of petitioner to inherit from Arturo as his surviving spouse. Private respondent's claim to heirship was already resolved by the trial court. She and Arturo were married on 22 April 1947 while the prior marriage of petitioner and Arturo was subsisting thereby resulting in a bigamous marriage considered void from the beginning under Arts. 80 and 83 of the Civil Code. Consequently, she is not a surviving spouse that can inherit from him as this status presupposes a legitimate relationship.

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**Llorente vs. CA**
**G.R. No. 124371**
**November 23, 2000**

**EXECUTIVE SUMMARY:**

On February 22, 1937, Lorenzo and petitioner Paula Llorente were married before a parish priest, Roman Catholic Church, in Nabua, Camarines Sur. In 1943, Lorenzo was admitted to United States citizenship. He discovered that his wife Paula was pregnant and was "living in" and having an

adulterous relationship with his brother, Ceferino Llorente. Lorenzo returned to the United States and on November 16, 1951 filed for divorce with the Superior Court of the State of California in and for the County of San Diego. Paula was represented by counsel, John Riley, and actively participated in the proceedings. An interlocutory judgment of Divorce was issued which became final on December 4, 1952. Lorenzo returned to the Philippines and married Alicia F. Llorente in Manila in 1958. They lived together as husband and wife and their twenty-five (25) year union produced three children, Raul, Luz and Beverly, all surnamed Llorente.

Lorenzo executed a Last Will and Testament and he filed a petition for the probate and allowance of the same but before the proceedings could be terminated, Lorenzo died. Paula filed a petition for letters of administration over Lorenzo's estate in her favor. The trial court granted the letters of administration in favor of Paula as it found the divorce decree granted to the late Lorenzo Llorente void and inapplicable in the Philippines. Moreover, the trial court declared the intrinsic disposition of the will of Lorenzo Llorente as void. The trial court also declared Paula entitled as conjugal partner thereby entitling her to one-half of their conjugal properties. As primary compulsory heir, she is also entitled to one-third of the estate. One-third of the estate then should go to the illegitimate children for them to partition in equal shares and both Paula and the children are also entitled to the remaining free portion in equal shares. On appeal, the Court of Appeals affirmed the decision of the trial court with the modification that Alicia is declared as co-owner of whatever properties she and the deceased may have acquired during the twenty-five years of cohabitation.

Petitioner contends this decision of the appellate court. The Court reversed the decision of the Regional Trial Court and recognized as valid the decree of divorce granted in favor of the deceased Lorenzo N. Llorente by the Superior Court of the State of California in and for the County of San Diego, made final on December 4, 1952. Further, the Court remanded the case for determination of the intrinsic validity of Lorenzo N. Llorente's will and determination of the parties' successional rights allowing proof of foreign law.

**FACTS:**

On February 22, 1937, Lorenzo and petitioner Paula Llorente were

married before a parish priest, Roman Catholic Church, in Nabua, Camarines Sur. On November 30, 1943, Lorenzo was admitted to United States citizenship and Certificate of Naturalization No. 5579816 was issued in his favor by the United States District Court, Southern District of New York. Upon the liberation of the Philippines by the American Forces in 1945, Lorenzo was granted an accrued leave by the U.S. Navy, to visit his wife. Upon visiting the Philippines, he discovered that his wife Paula was pregnant and was "living in" and having an adulterous relationship with his brother, Ceferino Llorente. Lorenzo refused to forgive Paula and live with her. Lorenzo returned to the United States and on November 16, 1951 filed for divorce with the Superior Court of the State of California in and for the County of San Diego. Paula was represented by counsel, John Riley, and actively participated in the proceedings. An interlocutory judgment of Divorce was issued which became final on December 4, 1952. Lorenzo returned to the Philippines and married Alicia F. Llorente in Manila in 1958. Apparently, Alicia had no knowledge of the first marriage even if they resided in the same town as Paula, who did not oppose the marriage or cohabitation. From 1958 to 1985, Lorenzo and Alicia lived together as husband and wife and their twenty-five (25) year union produced three children, Raul, Luz and Beverly, all surnamed Llorente.

On March 13, 1981, Lorenzo executed a Last Will and Testament and on December 14, 1983, Lorenzo filed with the Regional Trial Court, Iriga, Camarines Sur, a petition for the probate and allowance of his last will and testament but on June 11, 1985, before the proceedings could be terminated, Lorenzo died. On September 4, 1985, Paula filed with the same court a petition for letters of administration over Lorenzo's estate in her favor. The trial court found that the divorce decree granted to the late Lorenzo Llorente is void and inapplicable in the Philippines, therefore the marriage he contracted with Alicia Fortunato on January 16, 1958 at Manila is likewise void. This being so the petition of Alicia F. Llorente for the issuance of letters testamentary is denied. Likewise, she is not entitled to receive any share from the estate even if the will especially said so as her relationship with Lorenzo having gained the status of paramour. On the other hand, the trial court declared the intrinsic disposition of the will of Lorenzo Llorente dated March 13, 1981 as void and declared Paula entitled as conjugal partner and entitled to one-half of their conjugal properties, and as primary compulsory heir, she is also entitled to one-third of the estate. One-third should go to the illegitimate children for them to partition in equal shares and the children and Paula are also entitled to the remaining free portion in equal shares.

On appeal, the Court of Appeals promulgated its decision, affirming the decision of the trial court with the modification that Alicia is declared as co-owner of whatever properties she and the deceased may have acquired during the twenty-five years of cohabitation. Petitioner contends this decision of the appellate court.

**ISSUE:**

Whether or not the letters of administration should be granted to the second wife in light of the dissolution of the first marriage by a divorce decree issued in California - REMANDED TO THE TRIAL COURT

**RULING AND DOCTRINE:**

For failing to apply the doctrines in *Van Dorn vs. Romillo*, *Quita vs. Court of Appeals*, and *Pilapil vs. Ibay-Somera*, the decision of the Court of Appeals must be reversed. We hold that the divorce obtained by Lorenzo H. Llorente from his first wife Paula was valid and recognized in this jurisdiction as a matter of comity. Now, the effects of this divorce (as to the succession to the estate of the decedent) are matters best left to the determination of the trial court.

The clear intent of Lorenzo to bequeath his property to his second wife and children by her is glaringly shown in the will he executed. We do not wish to frustrate his wishes, since he was a foreigner, not covered by our laws on "family rights and duties, status, condition and legal capacity." Whether the will is intrinsically valid and who shall inherit from Lorenzo are issues best proved by foreign law which must be pleaded and proved.

**LINK:**
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**Garcia vs. Recio**
**G.R. No. 138322**
**October 2, 2001**

**EXECUTIVE SUMMARY:**

Rederick A. Recio, a Filipino, was married to Editha Samson, an Australian citizen, in Malabon, Rizal, on March 1, 1987. On May 18, 1989, a decree of divorce, purportedly dissolving the marriage, was issued by an Australian family court. On June 26, 1992, respondent became an Australian citizen. Petitioner — a Filipina — and respondent Rederick Recio were married on January 12, 1994 in Our Lady of Perpetual Help Church in Cabanatuan City. Petitioner filed a Complaint for Declaration of Nullity of Marriage on the ground of bigamy. She claimed that she learned of respondent's marriage to Editha Samson only in November, 1997. While the suit for the declaration of nullity was pending, respondent was able to secure a divorce decree from a family court in Sydney, Australia because the "marriage had[d] irretrievably broken down." The trial court declared the marriage dissolved on the ground that the divorce issued in Australia was valid and recognized in the Philippines. The Australian divorce had ended the marriage; thus, there was no more marital union to nullify or annul. The Supreme Court ruled that respondent presented a decree *nisi* or an interlocutory decree — a conditional or provisional judgment of divorce. It is in effect the same as a separation from bed and board, although an absolute divorce may follow after the lapse of the prescribed period during which no reconciliation is effected. It did not absolutely establish his legal capacity to remarry according to his national law. Hence, the Supreme Court found no basis for the ruling of the trial court, which erroneously assumed that the Australian divorce *ipso facto* restored respondent's capacity to remarry despite the paucity of evidence on this matter. Neither can the Supreme Court grant petitioner's prayer to declare her marriage to respondent null and void on the ground of bigamy for it may turn out that under Australian law, he was really capacitated to marry petitioner as a direct result of the divorce decree. Hence, the Supreme Court remanded this case to the trial court to receive evidence, if any, which shows the respondent's legal capacity to marry the petitioner.

**FACTS:**

Rederick A. Recio, a Filipino, was married to Editha Samson, an

Australian citizen, in Malabon, Rizal, on March 1, 1987. They lived together as husband and wife in Australia. On May 18, 1989, a decree of divorce, purportedly dissolving the marriage, was issued by an Australian family court. On June 26, 1992, respondent became an Australian citizen, as shown by a "Certificate of Australian Citizenship" issued by the Australian government. Petitioner — a Filipina — and respondent were married on January 12, 1994 in Our Lady of Perpetual Help Church in Cabanatuan City. In their application for a marriage license, respondent was declared as "single" and "Filipino." Starting October 22, 1995, petitioner and respondent lived separately without prior judicial dissolution of their marriage. While the two were still in Australia, their conjugal assets were divided on May 16, 1996, in accordance with their Statutory Declarations secured in Australia. On March 3, 1998, petitioner filed a Complaint for Declaration of Nullity of Marriage in the court a quo, on the ground of bigamy — respondent allegedly had a prior subsisting marriage at the time he married her on January 12, 1994. She claimed that she learned of respondent's marriage to Editha Samson only in November, 1997. On July 7, 1998 — or about five years after the couple's wedding and while the suit for the declaration of nullity was pending — respondent was able to secure a divorce decree from a family court in Sydney, Australia because the "marriage ha[d] irretrievably broken down."

The trial court declared the marriage dissolved on the ground that the divorce issued in Australia was valid and recognized in the Philippines. It deemed the marriage ended, but not on the basis of any defect in an essential element of the marriage; that is, respondent's alleged lack of legal capacity to remarry. Rather, it based its Decision on the divorce decree obtained by respondent. The Australian divorce had ended the marriage; thus, there was no more marital union to nullify or annul.

**ISSUE:**

Whether or not the marriage can be nullified on the ground of bigamy since the divorce of respondent's first marriage was not proven - REMANDED TO THE TRIAL COURT

**RULING AND DOCTRINE:**

(1) Whether the divorce between respondent and Editha Samson was

proven - NO

At the outset, we lay the following basic legal principles as the take-off points for our discussion. Philippine law does not provide for absolute divorce; hence, our courts cannot grant it. A marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad, because of Articles 15 and 17 of the Civil Code. In mixed marriages involving a Filipino and a foreigner, Article 26 of the Family Code allows the former to contract a subsequent marriage in case the divorce is "validly obtained abroad by the alien spouse capacitating him or her to remarry." A divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.

A comparison between marriage and divorce, as far as pleading and proof are concerned, can be made. *Van Dorn v. Romillo Jr.* decrees that "aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law." Therefore, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. Presentation solely of the divorce decree is insufficient.

A divorce obtained abroad is proven by the divorce decree itself. Indeed the best evidence of a judgment is the judgment itself. The decree purports to be a written act or record of an act of an official body or tribunal of a foreign country. Under Sections 24 and 25 of Rule 132, on the other hand, a writing or document may be proven as a public or official record of a foreign country by either (1) an official publication or (2) a copy thereof attested by the officer having legal custody of the document. If the record is not kept in the Philippines, such copy must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

The burden of proof lies with the "party who alleges the existence of a fact or thing necessary in the prosecution or defense of an action." In civil cases, plaintiffs have the burden of proving the material allegations of the complaint when those are denied by the answer; and defendants have the burden of proving the material allegations in their answer when they introduce new matters. Since the divorce was a defense raised by respondent, the burden of proving the pertinent Australian law validating it falls squarely upon him. It

is well-settled in our jurisdiction that our courts cannot take judicial notice of foreign laws. Like any other facts, they must be alleged and proved. Australian marital laws are not among those matters that judges are supposed to know by reason of their judicial function. The power of judicial notice must be exercised with caution, and every reasonable doubt upon the subject should be resolved in the negative.

(2) Whether respondent was proven to be legally capacitated to marry petitioner.

In its strict legal sense, divorce means the legal dissolution of a lawful union for a cause arising after marriage. But divorces 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. There is no showing in the case at bar which type of divorce was procured by respondent. Respondent presented a decree *nisi* or an interlocutory decree — a conditional or provisional judgment of divorce. It is in effect the same as a separation from bed and board, although an absolute divorce may follow after the lapse of the prescribed period during which no reconciliation is effected. It did not absolutely establish his legal capacity to remarry according to his national law. Hence, we find no basis for the ruling of the trial court, which erroneously assumed that the Australian divorce *ipso facto* restored respondent's capacity to remarry despite the paucity of evidence on this matter.

To repeat, the legal capacity to contract marriage is determined by the national law of the party concerned. The certificate mentioned in Article 21 of the Family Code would have been sufficient to establish the legal capacity of respondent, had he duly presented it in court. A duly authenticated and admitted certificate is prima facie evidence of legal capacity to marry on the part of the alien applicant for a marriage license. As it is, however, there is absolutely no evidence that proves respondent's legal capacity to marry petitioner.

Neither can we grant petitioner's prayer to declare her marriage to respondent null and void on the ground of bigamy. After all, it may turn out that under Australian law, he was really capacitated to marry petitioner as a direct result of the divorce decree. Hence, we believe that the most judicious

course is to remand this case to the trial court to receive evidence, if any, which show respondent's legal capacity to marry petitioner.

**LINK:**
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**Roehr vs. Rodriguez**
**G.R. No. 142820**
**June 20, 2003**

**EXECUTIVE SUMMARY:**

Petitioner Wolfgang O. Roehr, a German citizen, married private respondent Carmen Rodriguez, a Filipina, on December 11, 1980 in Hamburg, Germany. Their marriage was subsequently ratified on February 14, 1981 in Tayasan, Negros Oriental. On August 28, 1996, private respondent filed a petition for declaration of nullity of marriage before the Regional Trial Court of Makati City. Meanwhile, petitioner obtained a decree of divorce from the Court of First Instance of Hamburg-Blankenese, promulgated on December 16, 1997. In view of said decree, petitioner filed a Second Motion to Dismiss on the ground that the trial court had no jurisdiction over the subject matter of the action or suit as a decree of divorce had already been promulgated dissolving the marriage of petitioner and private respondent. The judge issued an order granting petitioner's motion to dismiss. But upon Motion for Reconsideration, the respondent judge issued the assailed order partially setting aside her previous order for the purpose of tackling the issues of property relations of the spouses as well as support and custody of their children. Petitioner hereby ascribes lack of jurisdiction of the trial court and grave abuse of discretion on the part of respondent judge. The Supreme Court ruled that a judge can order a partial reconsideration of a case that has not yet attained finality. In this case, the divorce decree issued by the German court has not been challenged by either of the parties. However, the legal effects of divorce, e.g., on custody, care and support of the children, must still be determined by our courts. In the present case, it cannot be said that private respondent was given the opportunity to challenge the judgment of the German court so that there is basis for declaring that judgment as res judicata with regard to the rights of petitioner to have parental custody of their two children. Absent any finding in the divorce decree that private respondent is unfit to obtain custody of the children, the trial court was correct in setting the

issue for hearing to determine the issue of parental custody, care, support and education mindful of the best interests of the children. However, respondent judge has no basis to assert jurisdiction in this case to resolve the property relations between the spouses which was a matter no longer deemed in controversy.

**FACTS:**

Petitioner Wolfgang O. Roehr, a German citizen and resident of Germany, married private respondent Carmen Rodriguez, a Filipina, on December 11, 1980 in Hamburg, Germany. Their marriage was subsequently ratified on February 14, 1981 in Tayasan, Negros Oriental. Out of their union were born Carolynne and Alexandra Kristine on November 18, 1981 and October 25, 1987, respectively.

On August 28, 1996, private respondent filed a petition for declaration of nullity of marriage before the Regional Trial Court (RTC) of Makati City. Petitioner filed a motion to dismiss, but it was denied by the trial court; the motion for reconsideration was also denied. Petitioner filed a petition for certiorari with the Court of Appeals but the appellate court denied the petition and remanded the case to the RTC. Meanwhile, petitioner obtained a decree of divorce from the Court of First Instance of Hamburg-Blankenese, promulgated on December 16, 1997. In view of said decree, petitioner filed a Second Motion to Dismiss on the ground that the trial court had no jurisdiction over the subject matter of the action or suit as a decree of divorce had already been promulgated dissolving the marriage of petitioner and private respondent.

On July 14, 1999, Judge Guevara-Salonga issued an order granting petitioner's motion to dismiss. Private respondent filed a Motion for Partial Reconsideration, with a prayer that the case proceed for the purpose of determining the issues of custody of children and the distribution of the properties between petitioner and private respondent. The respondent judge issued the assailed order partially setting aside her order dated for the purpose of tackling the issues of property relations of the spouses as well as support and custody of their children. Petitioner filed a timely motion for reconsideration which was denied by respondent judge in an order. Petitioner hereby ascribes lack of jurisdiction of the trial court and grave abuse of

discretion on the part of respondent judge.

**ISSUE:**

Whether or not the divorce decree's award of custody of children to petitioner should be enforced - NO

**RULING AND DOCTRINE:**

(1) Whether or not respondent judge gravely abused her discretion in issuing her order dated September 30, 1999, which partially modified her order dated July 14, 1999

It is clear from the foregoing rules that a judge can order a partial reconsideration of a case that has not yet attained finality. Considering that private respondent filed a motion for reconsideration within the reglementary period, the trial court's decision of July 14, 1999 can still be modified.

(2) Whether or not respondent judge gravely abused her discretion when she assumed and retained jurisdiction over the present case despite the fact that petitioner has already obtained a divorce decree from a German court.

In *Garcia v. Recio*, *Van Dorn v. Romillo, Jr.*, and *Llorente v. Court of Appeals*, we consistently held that a divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. Relevant to the present case is *Pilapil v. Ibay-Somera*, where this Court specifically recognized the validity of a divorce obtained by a German citizen in his country, the Federal Republic of Germany. We held in Pilapil that a foreign divorce and its legal effects may be recognized in the Philippines insofar as respondent is concerned in view of the nationality principle in our civil law on the status of persons.

In this case, the divorce decree issued by the German court has not been challenged by either of the parties. In fact, save for the issue of parental custody, even the trial court recognized said decree to be valid and binding, thereby endowing private respondent the capacity to remarry. Thus, the present controversy mainly relates to the award of the custody of their two children, Carolynne and Alexandra Kristine, to petitioner.

As a general rule, divorce decrees obtained by foreigners in other

countries are recognizable in our jurisdiction, but the legal effects thereof, e.g., on custody, care and support of the children, must still be determined by our courts. Before our courts can give the effect of res judicata to a foreign judgment, such as the award of custody to petitioner by the German court, it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of Court

In the present case, it cannot be said that private respondent was given the opportunity to challenge the judgment of the German court so that there is basis for declaring that judgment as *res judicata* with regard to the rights of petitioner to have parental custody of their two children. The proceedings in the German court were summary. As to what was the extent of private respondent's participation in the proceedings in the German court, the records remain unclear. The divorce decree itself states that neither has she commented on the proceedings nor has she given her opinion to the Social Services Office. Unlike petitioner who was represented by two lawyers, private respondent had no counsel to assist her in said proceedings. More importantly, the divorce judgment was issued to petitioner by virtue of the German Civil Code provision to the effect that when a couple lived separately for three years, the marriage is deemed irrefutably dissolved. The decree did not touch on the issue as to who the offending spouse was. Absent any finding that private respondent is unfit to obtain custody of the children, the trial court was correct in setting the issue for hearing to determine the issue of parental custody, care, support and education mindful of the best interests of the children.

In sum, we find that respondent judge may proceed to determine the issue regarding the custody of the two children born of the union between petitioner and private respondent. Private respondent erred, however, in claiming cognizance to settle the matter of property relations of the parties, which is not at issue. Given the factual admission by the parties in their pleadings that there is no property to be accounted for, respondent judge has no basis to assert jurisdiction in this case to resolve a matter no longer deemed in controversy.

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**Republic vs. Orbecido III**
**G.R. No. 154380**
**October 5, 2005**

**EXECUTIVE SUMMARY:**

On May 24, 1981, Cipriano Orbecido III married Lady Myros M. Villanueva in Lam-an, Ozamis City. In 1986, Cipriano's wife left for the United States bringing along their son Kristoffer. A few years later, Cipriano discovered that his wife had been naturalized as an American citizen. Sometime in 2000, Cipriano learned from his son that his wife had obtained a divorce decree and then married a certain Innocent Stanley. Cipriano thereafter filed with the trial court a petition for authority to remarry invoking Paragraph 2 of Article 26 of the Family Code. Finding merit in the petition, the court granted the same. The OSG contends that Paragraph 2 of Article 26 of the Family Code is not applicable to the instant case because it only applies to a valid mixed marriage; that is, a marriage celebrated between a Filipino citizen and an alien. The Supreme Court ruled that the records of the proceedings of the Family Code deliberations showed that the intent of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse. Thus, the Court, taking into consideration the legislative intent and applying the rule of reason, held that Paragraph 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. In view of the foregoing, the twin elements for the application of Paragraph 2 of Article 26 as follows: (1) There is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (2) A valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry. 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.

However, considering that in the present petition there is no sufficient evidence submitted and on record, the Court was unable to declare that respondent is now capacitated to remarry. Such declaration could only be made properly upon respondent's submission of the aforecited evidence in his favor. Accordingly, the petition by the Republic is granted.

**FACTS:**

On May 24, 1981, Cipriano Orbecido III married Lady Myros M. Villanueva at the United Church of Christ in the Philippines in Lam-an, Ozamis City. Their marriage was blessed with a son and a daughter, Kristoffer Simbortriz V. Orbecido and Lady Kimberly V. Orbecido. In 1986, Cipriano's wife left for the United States bringing along their son Kristoffer. A few years later, Cipriano discovered that his wife had been naturalized as an American citizen. Sometime in 2000, Cipriano learned from his son that his wife had obtained a divorce decree and then married a certain Innocent Stanley. Cipriano thereafter filed with the trial court a petition for authority to remarry invoking Paragraph 2 of Article 26 of the Family Code. Finding merit in the petition, the court granted the same. The Republic, herein petitioner, through the Office of the Solicitor General (OSG), sought reconsideration but it was denied. The OSG contends that Paragraph 2 of Article 26 of the Family Code is not applicable to the instant case because it only applies to a valid mixed marriage; that is, a marriage celebrated between a Filipino citizen and an alien. The proper remedy, according to the OSG, is to file a petition for annulment or for legal separation. Furthermore, the OSG argues there is no law that governs respondent's situation.

**ISSUE:**

Whether or not a divorce decree obtained by a Filipino citizen later naturalized as a foreign citizen capacitates the other Filipino spouse to remarry - YES

**RULING AND DOCTRINE:**

Records of the proceedings of the Family Code deliberations showed that the intent of Paragraph 2 of Article 26, according to Judge Alicia Sempio-Diy, a member of the Civil Code Revision Committee, is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse.

Thus, taking into consideration the legislative intent and applying the rule of reason, we hold that Paragraph 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. The Filipino spouse should likewise be allowed to remarry as if the other party were a foreigner at the time of the solemnization of the marriage. To rule otherwise would be to sanction absurdity and injustice. Where the interpretation of a statute according to its exact and literal import would lead to mischievous results or contravene the clear purpose of the legislature, it should be construed according to its spirit and reason, disregarding as far as necessary the letter of the law. A statute may therefore be extended to cases not within the literal meaning of its terms, so long as they come within its spirit or intent.

In view of the foregoing, we state the twin elements for the application of Paragraph 2 of Article 26 as follows: (1) there is a valid marriage that has been celebrated between a Filipino citizen and a foreigner; and (2) a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry. 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.

However, we note that the records are bereft of competent evidence duly submitted by respondent concerning the divorce decree and the naturalization of respondent's wife. Considering that in the present petition there is no sufficient evidence submitted and on record, we are unable to declare, based on respondent's bare allegations that his wife, who was naturalized as an American citizen, had obtained a divorce decree and had remarried an American, that respondent is now capacitated to remarry. Such declaration could only be made properly upon respondent's submission of the aforecited evidence in his favor. Accordingly, the petition by the Republic is granted.

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**Perez vs. Court of Appeals**
**G.R. No. 162580**
**January 27, 2006**

**EXECUTIVE SUMMARY:**

Private respondent Tristan A. Catindig married Lily Gomez Catindig twice on May 16, 1968. Several years later, the couple encountered marital problems that they decided to separate from each other and decided to obtain a divorce from the Dominican Republic. Thereafter, the private respondents filed a joint petition for dissolution of conjugal partnership with the Regional Trial Court of Makati which ordered the complete separation of properties between Tristan and Lily. On July 14, 1984, Tristan married petitioner Elmar O. Perez in the State of Virginia in the United States and both lived as husband and wife until October 2001. Their union produced one offspring. On August 13, 2001, Tristan filed a petition for the declaration of nullity of his marriage to Lily with the Regional Trial Court of Quezon City. Subsequently, petitioner filed a Motion for Leave to File Intervention which the trial court granted. Petitioner's complaint-in-intervention was also ordered admitted. Tristan filed a petition for certiorari and prohibition with the Court of Appeals seeking to annul the order of the trial court. The Court of Appeals granted the petition and declared the order as null and void. Petitioner claims that her status as the wife and companion of Tristan for years vests her with the requisite legal interest required of a would-be intervenor under the Rules of Court. The Supreme Court ruled that petitioner's claim lacks merit. Under the law, petitioner was never the legal wife of Tristan, hence her claim of legal interest has no basis. The divorce decree that Tristan and Lily (both Filipinos) obtained from the Dominican Republic never dissolved the marriage bond between them.

**FACTS:**

Private respondent Tristan A. Catindig married Lily Gomez Catindig twice on May 16, 1968. The marriage produced four children. Several years later, the couple encountered marital problems that they decided to separate from each other. Upon advice of a mutual friend, they decided to obtain a divorce from the Dominican Republic. Tristan and Lily executed a Special

Power of Attorney addressed to the Judge of the First Civil Court of San Cristobal, Dominican Republic, appointing an attorney-in-fact to institute a divorce action under its laws. Thereafter, the private respondents filed a joint petition for dissolution of conjugal partnership with the Regional Trial Court of Makati. The civil court in the Dominican Republic ratified the divorce by mutual consent of Tristan and Lily. Subsequently the Regional Trial Court of Makati City ordered the complete separation of properties between Tristan and Lily.

On July 14, 1984, Tristan married petitioner Elmar O. Perez in the State of Virginia in the United States and both lived as husband and wife until October 2001. Their union produced one offspring. During their cohabitation, petitioner learned that the divorce decree issued by the court in the Dominican Republic which "dissolved" the marriage between Tristan and Lily was not recognized in the Philippines and that her marriage to Tristan was deemed void under Philippine law. When she confronted Tristan about this, the latter assured her that he would legalize their union after he obtains an annulment of his marriage with Lily. On August 13, 2001, Tristan filed a petition for the declaration of nullity of his marriage to Lily with the Regional Trial Court of Quezon City. Subsequently, petitioner filed a Motion for Leave to File Intervention claiming that she has a legal interest in the matter in litigation because she knows certain information which might aid the trial court at a truthful, fair and just adjudication of the annulment case, which the trial court granted. Petitioner's complaint-in-intervention was also ordered admitted.

Tristan filed a petition for certiorari and prohibition with the Court of Appeals seeking to annul the order of the trial court. The Court of Appeals granted the petition and declared the order as null and void. Petitioner contends that the Court of Appeals gravely abused its discretion in disregarding her legal interest in the annulment case between Tristan and Lily.

**ISSUE:**

Whether the petitioner has legal standing to file a Motion for Intervention in the petition for nullity of marriage between her husband and his first wife - NO

**RULING AND DOCTRINE:**

Petitioner claims that her status as the wife and companion of Tristan for years vests her with the requisite legal interest required of a would-be intervenor under the Rules of Court. Petitioner's claim lacks merit. Under the law, petitioner was never the legal wife of Tristan, hence her claim of legal interest has no basis.

When petitioner and Tristan married on July 14, 1984, Tristan was still lawfully married to Lily. The divorce decree that Tristan and Lily (both Filipinos) obtained from the Dominican Republic never dissolved the marriage bond between them. It is basic that 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. Regardless of where a citizen of the Philippines might be, he or she will be governed by Philippine laws with respect to his or her family rights and duties, or to his or her status, condition and legal capacity. Hence, if a Filipino regardless of whether he or she was married here or abroad, initiates a petition abroad to obtain an absolute divorce from spouse and eventually becomes successful in getting an absolute divorce decree, the Philippines will not recognize such absolute divorce. When Tristan and Lily married on May 18, 1968, their marriage was governed by the provisions of the Civil Code which took effect on August 30, 1950. Thus, petitioner's claim that she is the wife of Tristan even if their marriage was celebrated abroad lacks merit. Petitioner never acquired the legal interest as a wife upon which her motion for intervention is based.

Since petitioner's motion for leave to file intervention was bereft of the indispensable requirement of legal interest, the issuance by the trial court of the order granting the same and admitting the complaint-in-intervention was attended with grave abuse of discretion. Consequently, the Court of Appeals correctly set aside and declared as null and void the said order.

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**San Luis vs. San Luis**
**G.R. No. 133743 & G.R. No. 134029**
**February 6, 2007**

**EXECUTIVE SUMMARY:**

Felicismo San Luis married three times. His first marriage was with Virginia Sulit out of which were born six children, namely: Rodolfo, Mila, Edgar, Linda, Emilita and Manuel. Virginia predeceased Felicisimo. Five years later after her death, he married Merry Lee Corwin, with whom he had a son, Tobias. However, Merry Lee, an American citizen, filed a Complaint for Divorce before the Family Court of the First Circuit, State of Hawaii, United States of America, which issued a Decree Granting Absolute Divorce. Subsequently, Felicisimo married respondent Felicidad San Luis; they had no children with respondent but lived with her for 18 years from the time of their marriage up to his death. Respondent filed a petition for letters of administration before the RTC of Makati but Motions to Dismiss were filed by the children of Felicismo in his first marriage. They contend that the venue was improperly laid since Felicismo's residence was Sta. Cruz, Laguna and that the marriage between Felicismo and respondent was void-bigamous. They insist that Article 26 (2) of the Family Code cannot be given retroactive effect as it would affect their vested rights. The trial court ruled in their favor but the appellate court reversed this decision.

The Supreme Court ruled that the venue was not improperly laid, as it was sufficiently proven that the decedent also maintained residence in Muntinlupa, which at the time of the filing of the case was a Municipality under the jurisdiction of the Regional Trial Court of Makati. Moreover, the Court held that it need not retroactively apply the provisions of the Family Code, particularly Art. 26, par. (2) considering that there is sufficient jurisprudential basis to rule that respondent has the legal capacity to file the petition. It cited the cases of *Van Dorn vs. Romillo, Pilapil vs. Ibay-Somera* and *Quita vs. Court of Appeals*. The divorce decree allegedly obtained by Merry Lee which absolutely allowed Felicisimo to remarry, would have vested Felicidad with the legal personality to file the present petition as Felicisimo's surviving spouse. However, the records show that there is insufficient evidence to prove the validity of the divorce obtained by Merry Lee as well as the marriage of respondent and Felicisimo under the laws of the U.S.A. Therefore, this case should be remanded to the trial court for further reception of evidence on the

divorce decree obtained by Merry Lee and the marriage of respondent and Felicisimo. However, even assuming that Felicisimo was not capacitated to marry respondent in 1974, the latter still has the legal personality to file the subject petition for letters of administration, as she may be considered the co-owner of Felicisimo with regard to the properties that were acquired through their joint efforts during their cohabitation. Thus, respondent's legal capacity to file the subject petition for letters of administration may arise from her status either as the surviving wife of Felicisimo or as his co-owner under Article 144 of the Civil Code or Article 148 of the Family Code.

**FACTS:**

The instant case involves the settlement of the estate of Felicisimo T. San Luis (Felicisimo), who was the former governor of the Province of Laguna. During his lifetime, Felicisimo contracted three marriages. His first marriage was with Virginia Sulit on March 17, 1942 out of which were born six children, namely: Rodolfo, Mila, Edgar, Linda, Emilita and Manuel. On August 11, 1963, Virginia predeceased Felicisimo. Five years later, on May 1, 1968, Felicisimo married Merry Lee Corwin, with whom he had a son, Tobias. However, on October 15, 1971, Merry Lee, an American citizen, filed a Complaint for Divorce before the Family Court of the First Circuit, State of Hawaii, United States of America (U.S.A.), which issued a Decree Granting Absolute Divorce and Awarding Child Custody on December 14, 1973. On June 20, 1974, Felicisimo married respondent Felicidad San Luis, then surnamed Sagalongos, before Rev. Fr. William Meyer, Minister of the United Presbyterian at Wilshire Boulevard, Los Angeles, California, U.S.A. He had no children with respondent but lived with her for 18 years from the time of their marriage up to his death on December 18, 1992.

Respondent filed a petition for letters of administration before the Regional Trial Court of Makati City but petitioner Rodolfo San Luis, one of the children Felicisimo by his first marriage, filed a motion to dismiss on the grounds of improper venue and failure to state a cause of action. They claimed that the petition for letters of administration should have been filed in the Province of Laguna because this was Felicisimo's place of residence prior to his death. He further claimed that respondent has no legal personality to file the petition because she was only a mistress of Felicisimo since the latter, at the time of his death, was still legally married to Merry Lee. The siblings of

Rodolfo later joined in the proceedings. The motions to dismiss were denied and reconsiderations were filed.

The trial court held that, at the time of his death, Felicisimo was the duly elected governor and a resident of the Province of Laguna. Hence, the petition should have been filed in Sta. Cruz, Laguna and not in Makati City. It also ruled that respondent was without legal capacity to file the petition for letters of administration because her marriage with Felicisimo was bigamous, thus void ab initio. It found that the decree of absolute divorce dissolving Felicisimo's marriage to Merry Lee was not valid in the Philippines and did not bind Felicisimo who was a Filipino citizen. It also ruled that paragraph 2, Article 26 of the Family Code cannot be retroactively applied because it would impair the vested rights of Felicisimo's legitimate children. The Court of Appeals reversed and set aside the orders of the trial court In the instant consolidated petitions, Edgar and Rodolfo insist that the venue of the subject petition for letters of administration was improperly laid and that respondent's marriage to Felicisimo was void and bigamous.

**ISSUE:**

Whether or not respondent had the capacity to file the petition for letters of administration - REMANDED TO THE TRIAL COURT; but Court declared that if divorce and marriage was proven, then respondent had the capacity of the wife under Article 144, but if not proven, respondent still has the capacity as co-owner of the properties in the estate under Article 148.

**RULING AND DOCTRINE:**

(1) Whether venue was properly laid

It is incorrect for petitioners to argue that "residence," for purposes of fixing the venue of the settlement of the estate of Felicisimo, is synonymous with "domicile." The rulings in *Nuval* and *Romualdez* are inapplicable to the instant case because they involve election cases. Needless to say, there is a distinction between "residence" for purposes of election laws and "residence" for purposes of fixing the venue of actions. In election cases, "residence" and "domicile" are treated as synonymous terms, that is, the fixed permanent residence to which when absent, one has the intention of returning. However, for purposes of fixing venue under the Rules of Court, the "residence" of a person is his personal, actual or physical habitation, or actual residence or place

of abode, which may not necessarily be his legal residence or domicile provided he resides therein with continuity and consistency.

In the instant case, while petitioners established that Felicisimo was domiciled in Sta. Cruz, Laguna, respondent proved that he also maintained a residence in Alabang, Muntinlupa from 1982 up to the time of his death. The subject petition was filed on December 17, 1993. At that time, Muntinlupa was still a municipality and the branches of the Regional Trial Court of the National Capital Judicial Region which had territorial jurisdiction over Muntinlupa were then seated in Makati City as per Supreme Court Administrative Order No. 3. Thus, the subject petition was validly filed before the Regional Trial Court of Makati City.

(2) Whether respondent has legal capacity to file the subject petition for letters of administration.

The Court held that it need not retroactively apply the provisions of the Family Code, particularly Art. 26, par. (2) considering that there is sufficient jurisprudential basis to rule that respondent has the legal capacity to file the petition. It cited the cases of *Van Dorn vs. Romillo, Pilapil vs. Ibay-Somera* and *Quita vs. Court of Appeals.*

Petitioners cite Articles 15 and 17 of the Civil Code in stating that the divorce is void under Philippine law insofar as Filipinos are concerned. However, in light of this Court's rulings in the cases discussed above, the Filipino spouse should not be discriminated against in his own country if the ends of justice are to be served.

The divorce decree allegedly obtained by Merry Lee which absolutely allowed Felicisimo to remarry, would have vested Felicidad with the legal personality to file the present petition as Felicisimo's surviving spouse. However, the records show that there is insufficient evidence to prove the validity of the divorce obtained by Merry Lee as well as the marriage of respondent and Felicisimo under the laws of the U.S.A. With regard to respondent's marriage to Felicisimo allegedly solemnized in California, U.S.A., she submitted photocopies of the Marriage Certificate and the annotated text of the Family Law Act of California which purportedly show that their marriage was done in accordance with the said law. As stated in *Garcia*,

however, the Court cannot take judicial notice of foreign laws as they must be alleged and proved. Therefore, this case should be remanded to the trial court for further reception of evidence on the divorce decree obtained by Merry Lee and the marriage of respondent and Felicisimo.

Even assuming that Felicisimo was not capacitated to marry respondent in 1974, nevertheless, we find that the latter has the legal personality to file the subject petition for letters of administration, as she may be considered the co-owner of Felicisimo as regards the properties that were acquired through their joint efforts during their cohabitation. Thus, respondent's legal capacity to file the subject petition for letters of administration may arise from her status as the surviving wife of Felicisimo or as his co-owner under Article 144 of the Civil Code or Article 148 of the Family Code.

**LINK:**
https://drive.google.com/file/d/1uDbcyV_ES5rS9BISeXbVwQ86E7a_Uuol/view?usp=sharing

**Bayot vs. Court of Appeals**
**G.R. No. 155635 & G.R. No. 163979**
**November 7, 2008**

**EXECUTIVE SUMMARY:**

Vicente and Rebecca were married on April 20, 1979 in Sanctuario de San Jose, Greenhills, Mandaluyong City. On its face, the Marriage Certificate identified Rebecca to be an American citizen born in Agaña, Guam. Sometime in 1996, Rebecca initiated divorce proceedings in the Dominican Republic. The Dominican court issued Civil Decree No. 362/96, ordering the dissolution of the couple's marriage and "leaving them to remarry after completing the legal requirements", but giving them joint custody and guardianship over Alix. Over a year later, the same court would issue Civil Decree No. 406/97, settling the couple's property relations pursuant to an Agreement they executed on December 14, 1996. Rebecca filed another petition before the Muntinlupa City RTC, for declaration of absolute nullity of marriage on the ground of Vicente's alleged psychological incapacity. In it, Rebecca also sought the dissolution of the conjugal partnership of gains with application for support. Vicente filed a Motion to Dismiss alleging the grounds of lack of cause of action and that the petition is barred by the prior judgment of divorce. The RTC denied Vicente's motion to dismiss and granted Rebecca's

application for support pendente lite. The Supreme Court ruled that Rebecca, at the time she applied for and obtained her divorce from Vicente, was an American citizen and remains to be one, absent proof of an effective repudiation of such citizenship. Given the validity and efficacy of divorce secured by Rebecca, the same shall be given a *res judicata* effect in this jurisdiction and consequent to the dissolution of the marriage, Vicente could no longer be subject to a husband's obligation under the Civil Code. Upon the foregoing disquisitions, it is abundantly clear to the Court that Rebecca lacks, under the premises, cause of action. However with regard to the issue of back support for their daughter, which allegedly had been partly shouldered by Rebecca, the Court deemed it proper to remand the case for it to be best litigated in a separate civil action for reimbursement.

**FACTS:**

Vicente and Rebecca were married on April 20, 1979 in Sanctuario de San Jose, Greenhills, Mandaluyong City. On its face, the Marriage Certificate identified Rebecca, then 26 years old, to be an American citizen born in Agaña, Guam, USA to Cesar Tanchiong Makapugay, American, and Helen Corn Makapugay, American. On November 27, 1982 in San Francisco, California, Rebecca gave birth to Marie Josephine Alexandra or Alix. From then on, Vicente and Rebecca's marital relationship seemed to have soured as the latter, sometime in 1996, initiated divorce proceedings in the Dominican Republic. On February 22, 1996, the Dominican court issued Civil Decree No. 362/96, ordering the dissolution of the couple's marriage and "leaving them to remarry after completing the legal requirements", but giving them joint custody and guardianship over Alix. Over a year later, the same court would issue Civil Decree No. 406/97, settling the couple's property relations pursuant to an Agreement they executed on December 14, 1996.

Less than a month from the issuance of Civil Decree No. 362/96, Rebecca filed with the Makati City RTC a petition for declaration of nullity of marriage but she later moved and secured approval of the motion to withdraw the petition. On May 29, 1996, Rebecca executed an Affidavit of Acknowledgment stating under oath that she is an American citizen; that, since 1993, she and Vicente have been living separately; and that she is carrying a child not of Vicente. On March 21, 2001, Rebecca filed another petition, this time before the Muntinlupa City RTC, for declaration of absolute nullity of

marriage on the ground of Vicente's alleged psychological incapacity. In it, Rebecca also sought the dissolution of the conjugal partnership of gains with application for support pendente lite for her and Alix. Rebecca also prayed that Vicente be ordered to pay a permanent monthly support for their daughter Alix in the amount of PhP220,000. On June 8, 2001, Vicente filed a Motion to Dismiss alleging the grounds of lack of cause of action and that the petition is barred by the prior judgment of divorce. To the motion to dismiss, Rebecca interposed an opposition, insisting on her Filipino citizenship, as affirmed by the Department of Justice (DOJ), and that, therefore, there is no valid divorce to speak of.

Meanwhile, Vicente, who had in the interim contracted another marriage, and Rebecca commenced several criminal complaints against each other. Specifically, Vicente filed adultery and perjury complaints against Rebecca. Rebecca, on the other hand, charged Vicente with bigamy and concubinage.

The RTC denied Vicente's motion to dismiss and granted Rebecca's application for support pendente lite. Vicente went to the CA on a petition for certiorari. The CA issued the desired TRO and by a Decision dated March 25, 2004, effectively dismissed Civil Case No. 01-094, and set aside incidental orders the RTC issued in relation to the case.

**ISSUE:**

Whether or not the divorce decree obtained in the Dominican Republic can be validly recognized in the Philippines - YES

**RULING AND DOCTRINE:**

(1) Whether petitioner Rebecca was a Filipino citizen at the time the divorce judgment was rendered in the Dominican Republic on February 22, 1996

There can be no serious dispute that Rebecca, at the time she applied for and obtained her divorce from Vicente, was an American citizen and remains to be one, absent proof of an effective repudiation of such citizenship. The following are compelling circumstances indicative of her American citizenship: (1) she was born in Agaña, Guam, USA; (2) the principle of *jus soli* is followed in this American territory granting American citizenship to those

who are born there; and (3) she was, and may still be, a holder of an American passport. And as aptly found by the CA, Rebecca had consistently professed, asserted, and represented herself as an American citizen, particularly: (1) during her marriage as shown in the marriage certificate; (2) in the birth certificate of Alix; and (3) when she secured the divorce from the Dominican Republic. Mention may be made of the Affidavit of Acknowledgment in which she stated being an American citizen.

(2) Whether the judgment of divorce is valid and, if so, what are its consequent legal effects

First, at the time of the divorce, as above elucidated, Rebecca was still to be recognized, assuming for argument that she was in fact later recognized, as a Filipino citizen, but represented herself in public documents as an American citizen. At the very least, she chose, before, during, and shortly after her divorce, her American citizenship to govern her marital relationship. Second, she secured personally said divorce as an American citizen, as is evident in the text of the Civil Decrees. Third, being an American citizen, Rebecca was bound by the national laws of the United States of America, a country which allows divorce. Fourth, the property relations of Vicente and Rebecca were properly adjudicated through their Agreement and duly affirmed by Civil Decree No. 406/97.

To be sure, the Court has taken stock of the holding in *Garcia v. Recio* that a foreign divorce can be recognized here, provided the divorce decree is proven as a fact and as valid under the national law of the alien spouse. Be this as it may, the fact that Rebecca was clearly an American citizen when she secured the divorce and that divorce is recognized and allowed in any of the States of the Union, the presentation of a copy of foreign divorce decree duly authenticated by the foreign court issuing said decree is, as here, sufficient.

It bears to stress that the existence of the divorce decree has not been denied, but in fact admitted by both parties. And neither did they impeach the jurisdiction of the divorce court nor challenge the validity of its proceedings on the ground of collusion, fraud, or clear mistake of fact or law, albeit both appeared to have the opportunity to do so. The same holds true with respect to the decree of partition of their conjugal property. As the records show, Rebecca, assisted by counsel, personally secured the foreign divorce while

Vicente was duly represented by his counsel, a certain Dr. Alejandro Torrens, in said proceedings. As things stand, the foreign divorce decrees rendered and issued by the Dominican Republic court are valid and, consequently, bind both Rebecca and Vicente.

Finally, the fact that Rebecca may have been duly recognized as a Filipino citizen by force of the June 8, 2000 affirmation by Secretary of Justice Tuquero of the October 6, 1995 Bureau Order of Recognition will not, standing alone, work to nullify or invalidate the foreign divorce secured by Rebecca as an American citizen on February 22, 1996. For as we stressed at the outset, in determining whether or not a divorce secured abroad would come within the pale of the country's policy against absolute divorce, the reckoning point is the citizenship of the parties at the time a valid divorce is obtained.

Given the validity and efficacy of divorce secured by Rebecca, the same shall be given a *res judicata* effect in this jurisdiction. As an obvious result of the divorce decree obtained, the marital *vinculum* between Rebecca and Vicente is considered severed; they are both freed from the bond of matrimony. Consequent to the dissolution of the marriage, Vicente could no longer be subject to a husband's obligation under the Civil Code. Upon the foregoing disquisitions, it is abundantly clear to the Court that Rebecca lacks, under the premises, cause of action. The Court to be sure does not lose sight of the legal obligation of Vicente and Rebecca to support the needs of their daughter, Alix. At any rate, we do note that Alix, having been born on November 27, 1982, reached the majority age on November 27, 2000, or four months before her mother initiated her petition for declaration of nullity. Hence, the issue of back support, which allegedly had been partly shouldered by Rebecca, is best litigated in a separate civil action for reimbursement.

**LINK:**
https://drive.google.com/file/d/1zu4Z4FvDOSM3FrLorIfwPv9B7XMxUaBN/view?usp=sharing

**Dacasin vs. Dacasin**
**G.R. No. 168785**
**February 5, 2010**

## EXECUTIVE SUMMARY:

Petitioner Herald Dacasin, American, and respondent Sharon Del Mundo Dacasin, Filipino, were married in Manila. They have one daughter, Stephanie. In June 1999, respondent sought and obtained from the Circuit Court, 19th Judicial Circuit, Lake County, Illinois against petitioner. In its ruling, the Illinois court dissolved the marriage of petitioner and respondent, awarded to respondent sole custody of Stephanie. On 28 January 2002, petitioner and respondent executed in Manila a contract (Agreement) for the joint custody of Stephanie. In 2004, petitioner sued respondent in the RTC to enforce the Agreement. Petitioner alleged that in violation of the Agreement, respondent exercised sole custody over Stephanie. The trial court sustained respondent's motion and dismissed the case for lack of jurisdiction. The Supreme Court ruled that the trial court has jurisdiction to entertain petitioner's suit but not to enforce the Agreement which is void. However, factual and equity considerations militate against the dismissal of petitioner's suit and call for the remand of the case to settle the question of Stephanie's custody. The Agreement is not only void ab initio for being contrary to law, it has also been repudiated by the mother when she refused to allow joint custody by the father. The Agreement would be valid if the spouses have not divorced or separated because the law provides for joint parental authority when spouses live together. However, upon separation of the spouses, the mother takes sole custody under the law if the child is below seven years old and any agreement to the contrary is void. Nor can petitioner rely on the divorce decree's alleged invalidity. *Van Dorn v. Romillo* has settled that an alien spouse of a Filipino is bound by a divorce decree obtained abroad. The case was remanded for the trial court to settle the question of Stephanie's custody.

## FACTS:

Petitioner Herald Dacasin (petitioner), American, and respondent Sharon Del Mundo Dacasin (respondent), Filipino, were married in Manila in April 1994. They have one daughter, Stephanie, born on 21 September 1995. In June 1999, respondent sought and obtained from the Circuit Court, 19th

Judicial Circuit, Lake County, Illinois (Illinois court) a divorce decree against petitioner. In its ruling, the Illinois court dissolved the marriage of petitioner and respondent, awarded to respondent sole custody of Stephanie and retained jurisdiction over the case for enforcement purposes. On 28 January 2002, petitioner and respondent executed in Manila a contract (Agreement) for the joint custody of Stephanie. The parties chose Philippine courts as exclusive forum to adjudicate disputes arising from the Agreement. Respondent undertook to obtain from the Illinois court an order "relinquishing" jurisdiction to Philippine courts. In 2004, petitioner sued respondent in the Regional Trial Court of Makati City, Branch 60 (trial court) to enforce the Agreement. Petitioner alleged that in violation of the Agreement, respondent exercised sole custody over Stephanie. Respondent sought the dismissal of the complaint for, among others, lack of jurisdiction because of the Illinois court's retention of jurisdiction to enforce the divorce decree. The trial court sustained respondent's motion and dismissed the case for lack of jurisdiction. the trial court denied reconsideration, holding that unlike in the case of respondent, the divorce decree is binding on petitioner under the laws of his nationality. Hence, this petition.

**ISSUE:**
Whether the trial court has jurisdiction to take cognizance of petitioner's suit and enforce the Agreement on the joint custody of the parties' child - NO

**RULING AND DOCTRINE:**

The trial court has jurisdiction to entertain petitioner's suit but not to enforce the Agreement which is void. However, factual and equity considerations militate against the dismissal of petitioner's suit and call for the remand of the case to settle the question of Stephanie's custody. The trial court's refusal to entertain petitioner's suit was grounded not on its lack of power to do so but on its thinking that the Illinois court's divorce decree stripped it of jurisdiction. This conclusion is unfounded. What the Illinois court retained was "jurisdiction . . . for the purpose of enforcing all and sundry the various provisions of [its] Judgment for Dissolution." Petitioner's suit seeks the enforcement not of the "various provisions" of the divorce decree but of the postdivorce Agreement on joint child custody. Thus, the action lies beyond the zone of the Illinois court's so-called "retained jurisdiction." The foregoing notwithstanding, the trial court cannot enforce the Agreement which is contrary to law.

The Agreement is not only void ab initio for being contrary to law, it has also been repudiated by the mother when she refused to allow joint custody by the father. The Agreement would be valid if the spouses have not divorced or separated because the law provides for joint parental authority when spouses live together. However, upon separation of the spouses, the mother takes sole custody under the law if the child is below seven years old and any agreement to the contrary is void. Thus, the law suspends the joint custody regime for (1) children under seven of (2) separated or divorced spouses. Simply put, for a child within this age bracket (and for commonsensical reasons), the law decides for the separated or divorced parents how best to take care of the child and that is to give custody to the separated mother. Indeed, the separated parents cannot contract away the provision in the Family Code on the maternal custody of children below seven years anymore than they can privately agree that a mother who is unemployed, immoral, habitually drunk, drug addict, insane or afflicted with a communicable disease will have sole custody of a child under seven as these are reasons deemed compelling to preclude the application of the exclusive maternal custody regime under the second paragraph of Article 213.

Nor can petitioner rely on the divorce decree's alleged invalidity — not because the Illinois court lacked jurisdiction or that the divorce decree violated Illinois law, but because the divorce was obtained by his Filipino spouse — to support the Agreement's enforceability. The argument that foreigners in this jurisdiction are not bound by foreign divorce decrees is hardly novel. *Van Dorn v. Romillo* settled the matter by holding that an alien spouse of a Filipino is bound by a divorce decree obtained abroad.

Instead of ordering the dismissal of petitioner's suit, the logical end to its lack of cause of action, we remand the case for the trial court to settle the question of Stephanie's custody.

**LINK:**
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**Corpuz vs. Sto. Tomas**
**G.R. No. 186571**
**August 11, 2010**

## EXECUTIVE SUMMARY:

Petitioner Gerbert R. Corpuz was a former Filipino citizen who acquired Canadian citizenship through naturalization. Gerbert married respondent Daisylyn T. Sto. Tomas, a Filipina, in Pasig City. He was shocked to discover that his wife was having an affair with another man so he returned to Canada and filed a petition for divorce which was granted by the Superior Court of Justice, Windsor, Ontario, Canada. The divorce decree took effect a month later. Years later, desirous of marrying his new Filipina fiancée in the Philippines, Gerbert went to the Pasig City Civil Registry Office and registered the Canadian divorce decree on his and Daisylyn's marriage certificate. Gerbert also filed a petition for judicial recognition of foreign divorce and/or declaration of marriage as dissolved with the RTC. In its October 30, 2008 decision, the RTC denied Gerbert's petition and held that Gerbert was not the proper party to institute the action for judicial recognition of the foreign divorce decree as he is a naturalized Canadian citizen. It ruled that only the Filipino spouse can avail of the remedy, under the second paragraph of Article 26 of the Family Code. The Supreme Court held that the RTC was correct in limiting the applicability of the provision for the benefit of the Filipino spouse. In other words, only the Filipino spouse can invoke the second paragraph of Article 26 of the Family Code; the alien spouse can claim no right under this provision. However, the foreign divorce decree itself, after its authenticity and conformity with the alien's national law have been duly proven according to our rules of evidence, serves as a presumptive evidence of right in favor of Gerbert, pursuant to Section 48, Rule 39 of the Rules of Court which provides for the effect of foreign judgments.

## FACTS:

Petitioner Gerbert R. Corpuz was a former Filipino citizen who acquired Canadian citizenship through naturalization on November 29, 2000. On January 18, 2005, Gerbert married respondent Daisylyn T. Sto. Tomas, a Filipina, in Pasig City. Due to work and other professional commitments, Gerbert left for Canada soon after the wedding. He returned to the Philippines sometime in April 2005 to surprise Daisylyn, but was shocked to discover that his wife was having an affair with another man. Hurt and disappointed,

Gerbert returned to Canada and filed a petition for divorce. The Superior Court of Justice, Windsor, Ontario, Canada granted Gerbert's petition for divorce on December 8, 2005. The divorce decree took effect a month later, on January 8, 2006.

Two years after the divorce, Gerbert has moved on and has found another Filipina to love. Desirous of marrying his new Filipina fiancée in the Philippines, Gerbert went to the Pasig City Civil Registry Office and registered the Canadian divorce decree on his and Daisylyn's marriage certificate. Despite the registration of the divorce decree, an official of the National Statistics Office informed Gerbert that to be enforceable, the foreign divorce decree must first be judicially recognized by a competent Philippine Court. Accordingly, Gerbert filed a petition for judicial recognition of foreign divorce and/or declaration of marriage as dissolved with the RTC.

In its October 30, 2008 decision, the RTC denied Gerbert's petition. The RTC concluded that Gerbert was not the proper party to institute the action for judicial recognition of the foreign divorce decree as he is a naturalized Canadian citizen. It ruled that only the Filipino spouse can avail of the remedy, under the second paragraph of Article 26 of the Family Code. From the RTC's ruling, Gerbert filed the present petition.

**ISSUE:**

Whether the second paragraph of Article 26 of the Family Code extends to aliens the right to petition a court of this jurisdiction for the recognition of a foreign divorce decree - NO, but it may serve as presumptive evidence of a right in favor of the foreign spouse

**RULING AND DOCTRINE:**

As the RTC correctly stated, the provision was included in the law "to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse." The legislative intent is for the benefit of the Filipino spouse, by clarifying his or her marital status, settling the doubts created by the divorce decree. Essentially, the second paragraph of Article 26 of the Family Code provided the Filipino spouse a substantive right to have his or her marriage to

the alien spouse considered as dissolved, capacitating him or her to remarry. If the court finds that the decree capacitated the alien spouse to remarry, the courts can declare that the Filipino spouse is likewise capacitated to contract another marriage. No court in this jurisdiction, however, can make a similar declaration for the alien spouse (other than that already established by the decree), whose status and legal capacity are generally governed by his national law.

Given the rationale and intent behind the enactment, and the purpose of the second paragraph of Article 26 of the Family Code, the RTC was correct in limiting the applicability of the provision for the benefit of the Filipino spouse. In other words, only the Filipino spouse can invoke the second paragraph of Article 26 of the Family Code; the alien spouse can claim no right under this provision.

However, the Court qualified the above conclusion — i.e., that the second paragraph of Article 26 of the Family Code bestows no rights in favor of aliens — with the complementary statement that this conclusion is not sufficient basis to dismiss Gerbert's petition before the RTC. In other words, the unavailability of the second paragraph of Article 26 of the Family Code to aliens does not necessarily strip Gerbert of legal interest to petition the RTC for the recognition of his foreign divorce decree. The foreign divorce decree itself, after its authenticity and conformity with the alien's national law have been duly proven according to our rules of evidence, serves as a presumptive evidence of right in favor of Gerbert, pursuant to Section 48, Rule 39 of the Rules of Court which provides for the effect of foreign judgments.

The recognition that the RTC may extend to the Canadian divorce decree does not, by itself, authorize the cancellation of the entry in the civil registry. A petition for recognition of a foreign judgment is not the proper proceeding, contemplated under the Rules of Court, for the cancellation of entries in the civil registry. However, that this ruling should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry — one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding by which the applicability of the foreign

judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

**LINK:**
https://drive.google.com/file/d/12CQDwfiD4aLP6FMGF5weAaZQHbFNO3Ho/view?usp=sharing

**Vda de Catalan vs. Catalan-Lee**
**G.R. No. 183622**
**February 8, 2012**

**EXECUTIVE SUMMARY:**

Orlando B. Catalan was a naturalized American citizen. After allegedly obtaining a divorce in the United States from his first wife, Felicitas Amor, he contracted a second marriage with petitioner herein. Orlando died intestate in the Philippines. Petitioner filed with the RTC a Petition for the issuance of letters of administration for her appointment as administratrix of the intestate estate of Orlando. While said case was pending, respondent Louella A. Catalan-Lee, one of the children of Orlando from his first marriage, filed a similar petition. Petitioner prayed for the dismissal of this second petition on the ground of litis pendentia. On the other hand, respondent alleged that petitioner was not considered an interested person qualified to file a petition for the issuance of letters of administration of the estate of Orlando since a criminal case for bigamy was filed against petitioner for marrying first one Eusebio Bristol. The RTC had acquitted petitioner of bigamy. The trial court ruled that since the deceased was a divorced American citizen, and since that divorce was not recognized under Philippine jurisdiction, the marriage between him and petitioner was not valid. The RTC of Burgos, Pangasinan dismissed the Petition for the issuance of letters of administration filed by petitioner and granted that of private respondent. Contrary to its findings in the criminal case, the RTC held that the marriage between petitioner and Eusebio Bristol was valid and subsisting when she married Orlando. The Supreme Court ruled that the trial court failed to take note of the findings of fact on the nonexistence of the marriage between petitioner and Bristol. It appears that the trial court no longer required petitioner to prove the validity of Orlando's divorce under the laws of the United States and the marriage between petitioner and the deceased. Thus, there is a need to remand the

proceedings to the trial court for further reception of evidence since it is imperative for the trial court to first determine the validity of the divorce to ascertain the rightful party to be issued the letters of administration over the estate of Orlando B. Catalan.

**FACTS:**

Orlando B. Catalan was a naturalized American citizen. After allegedly obtaining a divorce in the United States from his first wife, Felicitas Amor, he contracted a second marriage with petitioner herein. On 18 November 2004, Orlando died intestate in the Philippines. Thereafter, on 25 February 2005, petitioner filed with the Regional Trial Court (RTC) of Burgos, Pangasinan a Petition for the issuance of letters of administration for her appointment as administratrix of the intestate estate of Orlando.

On 3 March 2005, while Spec. Proc. No. 228 was pending, respondent Louella A. Catalan-Lee, one of the children of Orlando from his first marriage, filed a similar petition. Petitioner prayed for the dismissal of this second petition on the ground of litis pendentia. On the other hand, respondent alleged that petitioner was not considered an interested person qualified to file a petition for the issuance of letters of administration of the estate of Orlando. In support of her contention, respondent alleged that a criminal case for bigamy was filed against petitioner. Apparently, Felicitas Amor filed a Complaint for bigamy, alleging that petitioner contracted a second marriage to Orlando despite having been married to one Eusebio Bristol on 12 December 1959.

On 6 August 1998, the RTC had acquitted petitioner of bigamy. The trial court ruled that since the deceased was a divorced American citizen, and since that divorce was not recognized under Philippine jurisdiction, the marriage between him and petitioner was not valid. Furthermore, it took note of the action for declaration of nullity then pending action with the trial court in Dagupan City filed by Felicitas Amor against the deceased and petitioner. It considered the pending action to be a prejudicial question in determining the guilt of petitioner for the crime of bigamy. Finally, the trial court found that, in the first place, petitioner had never been married to Eusebio Bristol.

On 26 June 2006, Branch 70 of the RTC of Burgos, Pangasinan dismissed the Petition for the issuance of letters of administration filed by petitioner and granted that of private respondent. Contrary to its findings in

Crim. Case No. 2699-A, the RTC held that the marriage between petitioner and Eusebio Bristol was valid and subsisting when she married Orlando. After the subsequent denial of her Motion for Reconsideration, petitioner elevated the matter to the Court of Appeals which ruled against her.

**ISSUE:**

Whether or not petitioner should be issued the letters of administration of the estate of Catalan - REMANDED TO THE TRIAL COURT

**RULING AND DOCTRINE:**

At the outset, it seems that the RTC in the special proceedings failed to appreciate the finding of the RTC in Crim. Case No. 2699-A that petitioner was never married to Eusebio Bristol. Thus, the trial court concluded that, because petitioner was acquitted of bigamy, it follows that the first marriage with Bristol still existed and was valid. By failing to take note of the findings of fact on the nonexistence of the marriage between petitioner and Bristol, both the RTC and CA held that petitioner was not an interested party in the estate of Orlando. Second, it is imperative to note that at the time the bigamy case in Crim. Case No. 2699-A was dismissed, we had already ruled that under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality.

Under the principles of comity, our jurisdiction recognizes a valid divorce obtained by a spouse of foreign nationality. This doctrine was established as early as 1985 in *Van Dorn v. Romillo, Jr.* Nonetheless, the fact of divorce must still first be proven as we have enunciated in Garcia v. Recio.

It appears that the trial court no longer required petitioner to prove the validity of Orlando's divorce under the laws of the United States and the marriage between petitioner and the deceased. Thus, there is a need to remand the proceedings to the trial court for further reception of evidence to establish the fact of divorce. Should petitioner prove the validity of the divorce and the subsequent marriage, she has the preferential right to be issued the letters of administration over the estate. Otherwise, letters of administration may be issued to respondent, who is undisputedly the daughter or next of kin of the deceased, in accordance with Sec. 6 of Rule 78 of the Revised Rules of Court.

Thus, it is imperative for the trial court to first determine the validity of the divorce to ascertain the rightful party to be issued the letters of administration over the estate of Orlando B. Catalan.

**LINK:**
https://drive.google.com/file/d/1SoVh410rPVH3Ni6mNpTXQ0KErNoxARZN/view?usp=sharing

**Fujiki vs. Marinay**
**G.R. No. 196049**
**June 26, 2013**

**EXECUTIVE SUMMARY:**

Petitioner Minoru Fujiki (Fujiki) is a Japanese national who married respondent Maria Paz Galela Marinay (Marinay) in the Philippines on 23 January 2004. Eventually, they lost contact with each other. In 2008, Marinay met another Japanese, Shinichi Maekara (Maekara). Without the first marriage being dissolved, Marinay and Maekara were married on 15 May 2008 in Quezon City, Philippines. However, Marinay allegedly suffered physical abuse from Maekara. Fujiki and Marinay were able to reestablish their relationship. In 2010, Fujiki helped Marinay obtain a judgment from a family court in Japan which declared the marriage between Marinay and Maekara void on the ground of bigamy. On 14 January 2011, Fujiki filed a petition in the RTC entitled: "Judicial Recognition of Foreign Judgment (or Decree of Absolute Nullity of Marriage)." The RTC ruled that the petition was in "gross violation" of the provisions of A.M. 02-10-11 pertaining to the venue and the party who may file the petition. The RTC took the view that only "the husband or the wife," in this case either Maekara or Marinay, can file the petition to declare their marriage void, and not Fujiki. The Supreme Court ruled that A.M. No. 02-11-10-SC does not apply in a petition to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country. Since the recognition of a foreign judgment only requires proof of fact of the judgment, it may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court. Moreover, the Court held that Fujiki has the personality to file a petition to recognize the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy because the judgment concerns his civil status as married to Marinay. For the same reason, he has the personality to file a petition under Rule 108 to cancel the entry of marriage

between Marinay and Maekara in the civil registry on the basis of the decree of the Japanese Family Court.

**FACTS:**

Petitioner Minoru Fujiki (Fujiki) is a Japanese national who married respondent Maria Paz Galela Marinay (Marinay) in the Philippines on 23 January 2004. The marriage did not sit well with petitioner's parents. Thus, Fujiki could not bring his wife to Japan where he resides. Eventually, they lost contact with each other. In 2008, Marinay met another Japanese, Shinichi Maekara (Maekara). Without the first marriage being dissolved, Marinay and Maekara were married on 15 May 2008 in Quezon City, Philippines. Maekara brought Marinay to Japan. However, Marinay allegedly suffered physical abuse from Maekara. She left Maekara and started to contact Fujiki. Fujiki and Marinay met in Japan and they were able to reestablish their relationship. In 2010, Fujiki helped Marinay obtain a judgment from a family court in Japan which declared the marriage between Marinay and Maekara void on the ground of bigamy. On 14 January 2011, Fujiki filed a petition in the RTC entitled: "Judicial Recognition of Foreign Judgment (or Decree of Absolute Nullity of Marriage)." The RTC immediately issued an Order dismissing the petition. The RTC ruled that the petition was in "gross violation" of the provisions of A.M. 02-10-11 pertaining to venue and the party who may file the petition. The RTC took the view that only "the husband or the wife," in this case either Maekara or Marinay, can file the petition to declare their marriage void, and not Fujiki. The RTC resolved to deny petitioner's motion for reconsideration.

**ISSUE:**

Whether the husband of the first marriage can file a petition to recognize a foreign judgment nullifying the second marriage between his wife and her second husband - YES

**RULING AND DOCTRINE:**

(1) Whether the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) is applicable.

The Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages (A.M. No. 02-11-10-SC) does not apply in a petition to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country.

For Philippine courts to recognize a foreign judgment relating to the status of a marriage where one of the parties is a citizen of a foreign country, the petitioner only needs to prove the foreign judgment as a fact under the Rules of Court. To be more specific, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule 132, Sections 24 and 25, in relation to Rule 39, Section 48 (b) of the Rules of Court.

To hold that A.M. No. 02-11-10-SC applies to a petition for recognition of foreign judgment would mean that the trial court and the parties should follow its provisions, including the form and contents of the petition, the service of summons, the investigation of the public prosecutor, the setting of pre-trial, the trial and the judgment of the trial court. This is absurd because it will litigate the case anew. It will defeat the purpose of recognizing foreign judgments, which is "to limit repetitive litigation on claims and issues." The interpretation of the RTC is tantamount to relitigating the case on the merits. In *Mijares v. Rañada*, this Court explained that "[i]f every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering immaterial the previously concluded litigation."

A petition to recognize a foreign judgment declaring a marriage void does not require relitigation 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.

Section 48 (b), Rule 39 of the Rules of Court provides that a foreign judgment or final order against a person creates a "presumptive evidence of a right as between the parties and their successors in interest by a subsequent title." Courts are not allowed to delve into the merits of a foreign judgment. Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits, i.e., "want of jurisdiction,

want of notice to the party, collusion, fraud, or clear mistake of law or fact." The rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states.

Divorce involves the dissolution of a marriage, but the recognition of a foreign divorce decree does not involve the extended procedure under A.M. No. 02-11-10-SC or the rules of ordinary trial. While the Philippines does not have a divorce law, Philippine courts may, however, recognize a foreign divorce decree under the second paragraph of Article 26 of the Family Code, to capacitate a Filipino citizen to remarry when his or her foreign spouse obtains a divorce decree abroad. There is therefore no reason to disallow Fujiki to simply prove as a fact the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy. While the Philippines has no divorce law, the Japanese Family Court judgment is fully consistent with Philippine public policy, as bigamous marriages are declared void from the beginning under Article 35 (4) of the Family Code.

Since the recognition of a foreign judgment only requires proof of fact of the judgment, it may be made in a special proceeding for cancellation or correction of entries in the civil registry under Rule 108 of the Rules of Court.

(2) Whether a husband or wife of a prior marriage can file a petition to recognize a foreign judgment nullifying the subsequent marriage between his or her spouse and a foreign citizen on the ground of bigamy AND (3) Whether the Regional Trial Court can recognize the foreign judgment in a proceeding for cancellation or correction of entries in the Civil Registry under Rule 108 of the Rules of Court.

Fujiki has the personality to file a petition to recognize the Japanese Family Court judgment nullifying the marriage between Marinay and Maekara on the ground of bigamy because the judgment concerns his civil status as married to Marinay. For the same reason he has the personality to file a petition under Rule 108 to cancel the entry of marriage between Marinay and Maekara in the civil registry on the basis of the decree of the Japanese Family Court.

There is no doubt that the prior spouse has a personal and material interest in maintaining the integrity of the marriage he contracted and the property relations arising from it. There is also no doubt that he is interested

in the cancellation of an entry of a bigamous marriage in the civil registry, which compromises the public record of his marriage. The interest derives from the substantive right of the spouse not only to preserve (or dissolve, in limited instances) his most intimate human relation, but also to protect his property interests that arise by operation of law the moment he contracts marriage. These property interests in marriage include the right to be supported "in keeping with the financial capacity of the family" and preserving the property regime of the marriage.

**LINK:**
https://drive.google.com/file/d/18UNePk5Vfx899UQEMPzJE9VhTBsSDGb7/view?usp=sharing

**Lavadia vs. Heirs of Luna**
**G.R. No. 171914**
**July 23, 2014**

**EXECUTIVE SUMMARY:**

Atty. Luna was married to Eugenia Zaballero-Luna with whom he begot seven children. However, he obtained a divorce decree of his marriage with Eugenia from the Civil and Commercial Chamber of the First Circumscription of the Court of First Instance of Sto. Domingo, Dominican Republic. Also in Sto. Domingo, Dominican Republic, on the same date, Atty. Luna contracted another marriage, this time with Soledad. Thereafter, Atty. Luna and Soledad returned to the Philippines and lived together as husband and wife until 1987. Atty. Luna died, leaving behind properties such as the (1) 25/100 share in a condominium unit and (2) law books found in the law office. These properties became the subject of a complaint filed by Soledad as she contended that the she should be declared as co-owner of such to the extent of 3/4 pro-indiviso share consisting of her 1/2 share in the said properties plus her 1/2 share in the net estate of Atty. Luna which was bequeathed to her in the latter's last will and testament.

The trial court rendered its decision declaring that the share in the condominium unit was acquired by Atty. Juan through his sole industry and thus plaintiff has no right as owner or under any other concept over the said property. However, she was declared to be the owner of the books found in the condominium unit. On appeal, the Court of Appeals ruled that the divorce decree obtained by Atty. Luna did not terminate his prior marriage, thus, it

adjudged nothing to the respondent and gave all the properties to the heirs of Atty. Luna from his first marriage.

The Supreme Court ruled that conformably with the nationality rule, however, the divorce, even if voluntarily obtained abroad, did not dissolve the marriage between Atty. Luna and Eugenia, which subsisted up to the time of his death on July 12, 1997. As such, the marriage between Atty. Luna and Soledad is void-bigamous and their property relations would be governed by the rules on co-ownership. However, Soledad was not able to prove his contributions to the acquisition of the subject properties. Moreover, given the subsistence of the first marriage between Atty. Luna and Eugenia, the presumption that Atty. Luna acquired the properties out of his own personal funds and effort remained. Consequently, the sole ownership of the 25/100 *pro indiviso* share of Atty. Luna in the condominium unit, and of the lawbooks pertained to the respondents as the lawful heirs of Atty. Luna. Petitioner, the second wife of Atty. Luna, by virtue of the invalidity of the divorce between Atty. Luna and his first wife is thus entitled to no share.

**FACTS:**

Atty. Luna, a practicing lawyer, was at first a name partner in the prestigious law firm Sycip, Salazar, Luna, Manalo, Hernandez & Feliciano Law Offices at that time when he was living with his first wife, herein intervenor-appellant Eugenia Zaballero-Luna, whom he initially married in a civil ceremony conducted by the Justice of the Peace of Parañaque, Rizal on September 10, 1947 and later solemnized in a church ceremony at the Pro-Cathedral in San Miguel, Bulacan on September 12, 1948. In Atty. Luna's marriage to Eugenia, they begot seven (7) children, namely: Regina Maria L. Nadal, Juan Luis Luna, Araceli Victoria L. Arellano, Ana Maria L. Tabunda, Gregorio Macario Luna, Carolina Linda L. Tapia, and Cesar Antonio Luna. After almost two (2) decades of marriage, Atty. Luna and Eugenia eventually agreed to live apart from each other whereby they agreed to live separately and to dissolve and liquidate their conjugal partnership of property. On January 12, 1977, Atty. Luna obtained a divorce decree of his marriage with Eugenia from the Civil and Commercial Chamber of the First Circumscription of the Court of First Instance of Sto. Domingo, Dominican Republic. Also in Sto. Domingo, Dominican Republic, on the same date, Atty. Luna contracted another marriage, this time with Soledad. Thereafter, Atty. Luna and Soledad

returned to the Philippines and lived together as husband and wife until 1987.

Sometime in 1977, Atty. Luna organized a new law firm named: Luna, Puruganan, Sison and Ongkiko (LUPSICON) where Atty. Luna was the managing partner. On February 14, 1978, LUPSICON through Atty. Luna purchased the 6th Floor of Kalaw-Ledesma Condominium Project at Gamboa St., Makati City. Sometime in 1992, LUPSICON was dissolved and the condominium unit was partitioned by the partners; the parties stipulated that the interest of Atty. Luna over the condominium unit would be 25/100 shares. Atty. Luna thereafter established and headed another law firm with Atty. Renato G. De la Cruz and used a portion of the office condominium unit as their office. The said law firm lasted until the death of Atty. Luna on July 12, 1997. After the death of Atty. Juan, his share in the condominium unit including the law books, office furniture and equipment found therein were taken over by Gregorio Z. Luna, Atty. Luna's son of the first marriage. Gregorio Z. Luna then leased out the 25/100 portion of the condominium unit belonging to his father to Atty. Renato G. De la Cruz who established his own law firm named Renato G. De la Cruz & Associates.

A complaint was filed by Soledad against the heirs of Atty. Luna with the RTC of Makati City on September 10, 1999 alleging that the subject properties (the share in the condominium unit and the law books) were acquired during the existence of the marriage between Atty. Luna and Soledad through their joint efforts that since they had no children, Soledad became co-owner of the said properties upon the death of Atty. Luna to the extent of 3/4 pro-indiviso share consisting of her 1/2 share in the said properties plus her 1/2 share in the net estate of Atty. Luna which was bequeathed to her in the latter's last will and testament; and that the heirs of Atty. Luna through Gregorio Z. Luna excluded Soledad from her share in the subject properties.

The trial court rendered its decision declaring that the share in the condominium unit was acquired by Atty. Juan through his sole industry and thus plaintiff has no right as owner or under any other concept over the said property. However, she was declared to be the owner of the books found in the condominium unit. On appeal, the Court of Appeals ruled that the divorce decree obtained by Atty. Luna did not terminate his prior marriage, thus it adjudged nothing to the respondent and gave all the properties to the heirs of Atty. Luna from his first marriage.

**ISSUE:**

Whether or not the 25/100 pro indiviso share in the condominium unit and the law books of the deceased husband is part of his conjugal property with his second wife, petitioner herein - NO.

**RULING AND DOCTRINE:**

The first marriage between Atty. Luna. and Eugenia, both Filipinos, was solemnized in the Philippines on September 10, 1947. The law in force at the time of the solemnization was the Spanish Civil Code, which adopted the nationality rule. The Civil Code continued to follow the nationality rule, to the effect that Philippine laws relating to family rights and duties, or to the status, condition and legal capacity of persons were binding upon citizens of the Philippines, although living abroad. Pursuant to the nationality rule, Philippine laws governed this case by virtue of both Atty. Luna and Eugenia having remained Filipinos until the death of Atty. Luna.

It is true that on January 12, 1976, the Court of First Instance (CFI) of Sto. Domingo in the Dominican Republic issued the Divorce Decree dissolving the first marriage of Atty. Luna and Eugenia. Conformably with the nationality rule, however, the divorce, even if voluntarily obtained abroad, did not dissolve the marriage between Atty. Luna and Eugenia, which subsisted up to the time of his death on July 12, 1997. This finding conforms to the Constitution, which characterizes marriage as an inviolable social institution, and regards it as a special contract of permanent union between a man and a woman for the establishment of a conjugal and family life. The non-recognition of absolute divorce in the Philippines is a manifestation of the respect for the sanctity of the marital union especially among Filipino citizens. It affirms that the extinguishment of a valid marriage must be grounded only upon the death of either spouse, or upon a ground expressly provided by law. For as long as this public policy on marriage between Filipinos exists, no divorce decree dissolving the marriage between them can ever be given legal or judicial recognition and enforcement in this jurisdiction.

Considering that Atty. Luna and Eugenia had not entered into any marriage settlement prior to their marriage on September 10, 1947, the system of relative community or conjugal partnership of gains governed their property

relations. The mere execution of the Agreement by Atty. Luna and Eugenia did not per se dissolve and liquidate their conjugal partnership of gains. The approval of the Agreement by a competent court was still required under Article 190 and Article 191 of the Civil Code.

The approval of the Agreement by the CFI of Sto. Domingo in the Dominican Republic was insufficient in dissolving and liquidating the conjugal partnership of gains between the late Atty. Luna and Eugenia. The approval took place only as an incident of the action for divorce instituted by Atty. Luna and Eugenia, for, indeed, the justifications for their execution of the Agreement were identical to the grounds raised in the action for divorce. With the divorce not being itself valid and enforceable under Philippine law for being contrary to Philippine public policy and public law, the approval of the Agreement was not also legally valid and enforceable under Philippine law. Consequently, the conjugal partnership of gains of Atty. Luna and Eugenia subsisted in the lifetime of their marriage.

Due to the second marriage between Atty. Luna and the petitioner being void ab initio by virtue of its being bigamous, the properties acquired during the bigamous marriage were governed by the rules on co-ownership. In such a situation, whoever alleges co-ownership carries the burden of proof to confirm such fact. To establish co-ownership, therefore, it became imperative for the petitioner to offer proof of her actual contributions in the acquisition of property. However, as found by the CA, the petitioner, as the party claiming the co-ownership, did not discharge her burden of proof. Her mere allegations on her contributions, not being evidence, did not serve the purpose. In contrast, given the subsistence of the first marriage between Atty. Luna and Eugenia, the presumption that Atty. Luna acquired the properties out of his own personal funds and effort remained. It should then be justly concluded that the properties in litis legally pertained to their conjugal partnership of gains as of the time of his death. Consequently, the sole ownership of the 25/100 pro indiviso share of Atty. Luna in the condominium unit, and of the law books pertained to the respondents as the lawful heirs of Atty. Luna.

**LINK:**
https://drive.google.com/file/d/1aH4ftO8tSruDNZZvEcV5Y7f14uBcdWon/view?usp=sharing

**Noveras vs. Noveras**
**G.R. No. 188289**
**August 20, 2014**

## EXECUTIVE SUMMARY:

David and Leticia are US citizens who own properties in the USA and in the Philippines. Leticia obtained a decree of divorce from the Superior Court of California in June 2005 wherein the court awarded all the properties in the USA to Leticia. With respect to their properties in the Philippines, Leticia filed a petition for judicial separation of conjugal properties. The RTC rendered judgment which stated among others that the absolute community of property of the parties is declared as dissolved. The net assets of the absolute community of property of the parties in the Philippines were awarded to respondent David A. Noveras only, with the properties in the United States of America remaining in the sole ownership of petitioner Leticia Noveras. One half of each of these properties were awarded to their children. On appeal, the Court of Appeals modified the trial court's Decision by directing the equal division of the Philippine properties between the spouses.The Supreme Court ruled that the trial court erred in recognizing the divorce decree which severed the bond of marriage between the parties. Based on the records, only the divorce decree was presented in evidence but the required certificates to prove its authenticity, as well as the pertinent California law on divorce were not presented. Absent a valid recognition of the divorce decree, it follows that the parties are still legally married in the Philippines. The trial court thus erred in proceeding directly to liquidation. However, the Court granted the petition for judicial separation of absolute community of property after having established that Leticia and David had actually separated for at least one year, pursuant to Article 135 of the Family Code. It likewise affirmed the modification made by the Court of Appeals with respect to the share of the spouses in the absolute community properties in the Philippines, as well as the payment of their children's presumptive legitimes.

## FACTS:

David A. Noveras and Leticia T. Noveras were married on 3 December 1988 in Quezon City, Philippines. They resided in California, United States of

America (USA) where they eventually acquired American citizenship. They then begot two children, namely: Jerome T. Noveras, who was born on 4 November 1990 and Jena T. Noveras, born on 2 May 1993. Upon learning that David had an extra-marital affair, Leticia filed a petition for divorce with the Superior Court of California, County of San Mateo, USA. The California court granted the divorce on 24 June 2005 and judgment was duly entered on 29 June 2005. The California court granted to Leticia the custody of her two children, as well as all the couple's properties in the USA. On 8 August 2005, Leticia filed a petition for Judicial Separation of Conjugal Property before the RTC of Baler, Aurora. The RTC rendered judgment which stated among others that the absolute community of property of the parties is declared as dissolved. The net assets of the absolute community of property of the parties in the Philippines were awarded to respondent David A. Noveras only, with the properties in the United States of America remaining in the sole ownership of petitioner Leticia Noveras. One half of each of these properties were awarded to their children. On appeal, the Court of Appeals modified the trial court's Decision by directing the equal division of the Philippine properties between the spouses. In the present petition, David insists that the Court of Appeals should have recognized the California Judgment which awarded the Philippine properties to him because said judgment was part of the pleading presented and offered in evidence before the trial court. David argues that allowing Leticia to share in the Philippine properties is tantamount to unjust enrichment in favor of Leticia considering that the latter was already granted all US properties by the California court.

**ISSUE:**

Whether or not the absolute community of property of the spouses should be liquidated by virtue of the divorce decree granted to the petitioner - NO but petition for judicial separation of property was granted based on another article in the FC

**RULING AND DOCTRINE:**

At the outset, the trial court erred in recognizing the divorce decree which severed the bond of marriage between the parties. The requirements of presenting the foreign divorce decree and the national law of the foreigner must comply with our Rules of Evidence. Specifically, for Philippine courts to recognize a foreign judgment relating to the status of a marriage, a copy of the foreign judgment may be admitted in evidence and proven as a fact under Rule

132, Sections 24 and 25, in relation to Rule 39, Section 48 (b) of the Rules of Court.

Based on the records, only the divorce decree was presented in evidence. The required certificates to prove its authenticity, as well as the pertinent California law on divorce were not presented. Absent a valid recognition of the divorce decree, it follows that the parties are still legally married in the Philippines. The trial court thus erred in proceeding directly to liquidation.

Separation in fact for one year as a ground to grant a judicial separation of property was not tackled in the trial court's decision because the trial court erroneously treated the petition as liquidation of the absolute community of properties. The records of this case are replete with evidence that Leticia and David had indeed separated for more than a year and that reconciliation is highly improbable. First, while actual abandonment had not been proven, it is undisputed that the spouses had been living separately since 2003 when David decided to go back to the Philippines to set up his own business. Second, Leticia heard from her friends that David has been cohabiting with Estrellita Martinez, who represented herself as Estrellita Noveras. Having established that Leticia and David had actually separated for at least one year, the petition for judicial separation of absolute community of property should be granted.

Moreover, the Court also affirmed the finding of the Court of Appeals that the Philippine courts did not acquire jurisdiction over the California properties of David and Leticia. Thus, liquidation shall only be limited to the Philippine properties. It likewise affirmed the modification made by the Court of Appeals with respect to the share of the spouses in the absolute community properties in the Philippines, as well as the payment of their children's presumptive legitimes

**LINK:**
https://drive.google.com/file/d/1ayeD8CH2HFQgAKF4frKq7tdy1JtLU6GL/view?usp=sharing

**Ando vs. Department of Foreign Affairs**
**G.R. No. 195432**
**August 27, 2014**

## EXECUTIVE SUMMARY:

On 16 September 2001, petitioner married Yuichiro Kobayashi, a Japanese National, in a civil wedding solemnized at Candaba, Pampanga. Yuichiro Kobayashi sought in Japan, and was validly granted under Japanese laws, a divorce in respect of his marriage with Petitioner. Said Divorce Certificate was duly registered with the Office of the Civil Registry of Manila. Believing in good faith that said divorce capacitated her to remarry and that by such she reverted to her single status, petitioner married Masatomi Y. Ando on 13 September 2005 in a civil wedding celebrated in Sta. Ana, Pampanga. In the meantime, Yuichiro Kobayashi married Ryo Miken on 27 December 2005. Recently, petitioner applied for the renewal of her Philippine passport to indicate her surname with her husband Masatomi Y. Ando but she was told at the Department of Foreign Affairs that the same cannot be issued to her until she can prove by competent court decision that her marriage with her said husband Masatomi Y. Ando is valid until otherwise declared. Petitioner filed with the RTC a Petition for Declaratory Relief. At first, the petition was denied for want of cause and action, as well as jurisdiction but the motion for reconsideration was granted and the case was endorsed and raffled to the Family Court. However, the trial court dismissed the Petition anew on the ground that petitioner had no cause of action. The Supreme Court ruled that petitioner availed of wrong remedy because she should have, at first, appealed the decision of the DFA to the Secretary of Foreign Affairs and with regard to her prayer for her second marriage to be acknowledged, petitioner should have filed, instead, a petition for the judicial recognition of her foreign divorce from her first husband. As held by the RTC, there appears to be insufficient proof or evidence presented on record of both the national law of her first husband, Kobayashi, and of the validity of the divorce decree under that national law. Hence, any declaration as to the validity of the divorce can only be made upon her complete submission of evidence proving the divorce decree and the national law of her alien spouse, in an action instituted in the proper forum.

## FACTS:

On 16 September 2001, petitioner married Yuichiro Kobayashi, a Japanese National, in a civil wedding solemnized at Candaba, Pampanga. On

16 September 2004, Yuichiro Kobayashi sought in Japan, and was validly granted under Japanese laws, a divorce in respect of his marriage with Petitioner. Said Divorce Certificate was duly registered with the Office of the Civil Registry of Manila. Believing in good faith that said divorce capacitated her to remarry and that by such she reverted to her single status, petitioner married Masatomi Y. Ando on 13 September 2005 in a civil wedding celebrated in Sta. Ana, Pampanga. In the meantime, Yuichiro Kobayashi married Ryo Miken on 27 December 2005.

Recently, petitioner applied for the renewal of her Philippine passport to indicate her surname with her husband Masatomi Y. Ando but she was told at the Department of Foreign Affairs that the same cannot be issued to her until she can prove by competent court decision that her marriage with her said husband Masatomi Y. Ando is valid until otherwise declared.

On 29 October 2010, petitioner filed with the RTC a Petition for Declaratory Relief, which was later raffled off to Branch 46. She impleaded the Department of Foreign Affairs (DFA) as respondent and prayed for the declaration as valid and subsisting the marriage between petitioner Edelina T. Ando and her husband Masatomi Y. Ando, declaration of petitioner as entitled to the issuance of a Philippine Passport under the name "Edelina Ando y Tungol"; and for the Department of Foreign Affairs to honor petitioner's marriage to her husband Masatomi Y. Ando and to issue a Philippine Passport to petitioner under the name 'Edelina Ando y Tungol". In an Order dismissing the Petition for want of cause and action, as well as jurisdiction, the RTC held there is no showing that petitioner herein complied with the requirements set forth in Art. 13 of the Family Code — that is obtaining a judicial recognition of the foreign decree of absolute divorce in our country.

The RTC granted her motion for reconsideration and the case was endorsed and raffled to the Family Court. However, the trial court dismissed the Petition anew on the ground that petitioner had no cause of action.The motion for reconsideration of the petitioner was denied by the Court considering that neither the Office of the Solicitor General (OSG) nor respondent was furnished with copies of the motion.

**ISSUE:**

Whether or not petitioner can pray in a Petition for Declaratory Relief that her second marriage be recognized - NO

**RULING AND DOCTRINE:**

First, with respect to her prayer to compel the DFA to issue her passport, petitioner incorrectly filed a petition for declaratory relief before the RTC. She should have first appealed before the Secretary of Foreign Affairs, since her ultimate entreaty was to question the DFA's refusal to issue a passport to her under her second husband's name. Second, with respect to her prayer for the recognition of her second marriage as valid, petitioner should have filed, instead, a petition for the judicial recognition of her foreign divorce from her first husband.

While it has been ruled that a petition for the authority to remarry filed before a trial court actually constitutes a petition for declaratory relief, we are still unable to grant the prayer of petitioner. As held by the RTC, there appears to be insufficient proof or evidence presented on record of both the national law of her first husband, Kobayashi, and of the validity of the divorce decree under that national law. Hence, any declaration as to the validity of the divorce can only be made upon her complete submission of evidence proving the divorce decree and the national law of her alien spouse, in an action instituted in the proper forum.

**LINK:**
https://drive.google.com/file/d/1F9qVDCxXAsfMzxDH8RcqRpyyi57OUz4I/view?usp=sharing

**Medina vs. Koike**
**G.R. No. 215723**
**July 27, 2016**

**EXECUTIVE SUMMARY:**

Petitioner Doreen Grace Parilla, a Filipino citizen, and respondent Michiyuki Koike, a Japanese national, were married on June 14, 2005 in Quezon City, Philippines. Doreen and Michiyuki, pursuant to the laws of Japan, filed for divorce before the Mayor of Ichinomiya City, Aichi Prefecture,

Japan. Doreen filed a petition for judicial recognition of foreign divorce and declaration of capacity to remarry. The RTC denied Doreen's petition, ruling that in an action for recognition of foreign divorce decree pursuant to Article 26 of the Family Code, the foreign divorce decree and the national law of the alien recognizing his or her capacity to obtain a divorce must be proven in accordance with Sections 24 and 25 of Rule 132 of the Revised Rules on Evidence. The Supreme Court ruled that considering that the validity of the divorce decree between Doreen and Michiyuki, as well as the existence of pertinent laws of Japan on the matter are essentially factual that calls for a re-evaluation of the evidence presented before the RTC, the issue raised in the instant appeal is obviously a question of fact that is beyond the ambit of a Rule 45 petition for review. Nonetheless, in the interest of orderly procedure and substantial justice, the case was referred to the Court of Appeals for appropriate action including the reception of evidence to determine and resolve the pertinent factual issues.

**FACTS:**

Petitioner Doreen Grace Parilla, a Filipino citizen, and respondent Michiyuki Koike (Michiyuki), a Japanese national, were married on June 14, 2005 in Quezon City, Philippines. Their union bore two children, Masato Koike, who was born on January 23, 2006, and Fuka Koike who was born on April 4, 2007. On June 14, 2012, Doreen and Michiyuki, pursuant to the laws of Japan, filed for divorce before the Mayor of Ichinomiya City, Aichi Prefecture, Japan. They were divorced on even date as appearing in the Divorce Certificate and the same was duly recorded in the Official Family Register of Michiyuki Koike. Seeking to have the said Divorce Certificate annotated on her Certificate of Marriage on file with the Local Civil Registrar of Quezon City, Doreen filed on February 7, 2013 a petition for judicial recognition of foreign divorce and declaration of capacity to remarry. The RTC denied Doreen's petition, ruling that in an action for recognition of foreign divorce decree pursuant to Article 26 of the Family Code, the foreign divorce decree and the national law of the alien recognizing his or her capacity to obtain a divorce must be proven in accordance with Sections 24 and 25 of Rule 132 of the Revised Rules on Evidence.

The RTC ruled that while the divorce documents presented by Doreen were successfully proven to be public or official records of Japan, she

nonetheless fell short of proving the national law of her husband, particularly the existence of the law on divorce. The RTC observed that the "The Civil Code of Japan 2000" and "The Civil Code of Japan 2009," presented were not duly authenticated by the Philippine Consul in Japan as required by Sections 24 and 25 of the said Rules, adding too that the testimony of Doreen relative to the applicable provisions found therein and its effect on the matrimonial relations was insufficient since she was not presented as a qualified expert witness nor was shown to have, at the very least, a working knowledge of the laws of Japan, particularly those on family relations and divorce. It likewise did not consider the said books as learned treatises pursuant to Section 46, Rule 130 of the Revised Rules on Evidence, since no expert witness on the subject matter was presented and considering further that Philippine courts cannot take judicial notice of foreign judgments and law. Doreen's motion for reconsideration was denied by the trial court.

**ISSUE:**

Whether or not the RTC erred in denying the petition for judicial recognition of foreign divorce - REFERRED TO THE CA

**RULING AND DOCTRINE:**

Since our courts do not take judicial notice of foreign laws and judgment, our law on evidence requires that both the divorce decree and the national law of the alien must be alleged and proven like any other fact. Considering that the validity of the divorce decree between Doreen and Michiyuki, as well as the existence of pertinent laws of Japan on the matter are essentially factual that calls for a re evaluation of the evidence presented before the RTC, the issue raised in the instant appeal is obviously a question of fact that is beyond the ambit of a Rule 45 petition for review. Well entrenched is the rule that this Court is not a trier of facts. Nonetheless, despite the procedural restrictions on Rule 45 appeals, the Court may refer the case to the CA under paragraph 2, Section 6 of Rule 56 of the Rules of Court. In the interest of orderly procedure and substantial justice, the case was referred to the Court of Appeals for appropriate action including the reception of evidence to determine and resolve the pertinent factual issues.

**LINK:**
https://drive.google.com/file/d/1yCXS_cCWHeQQy2KP2nECtEMt9TvCTtko/view?usp=sharing

**Sarto y Misalucha vs. People**
**G.R. No. 206284**
**February 28, 2018**

## EXECUTIVE SUMMARY:

Redante and Maria Socorro were married on 31 August 1984 but sometime thereafter, Maria Socorro left for Canada to work as a nurse and while in Canada, she acquired Canadian citizenship. Maria Socorro then filed for divorce in British Columbia, Canada, to sever her marital ties with Redante which was eventually granted by the Supreme Court of British Columbia. Sometime in February 1998, Redante met Fe to whom he admitted that he was previously married to Maria Socorro who, however, divorced him. Despite this admission, their romance blossomed and culminated in their marriage on 29 December 1998. However after learning of Redante and Maria Socorro's meeting and believing that they had reconciled, Fe decided to leave their conjugal home. Then, Fe filed a complaint for bigamy against Redante. In its judgment, the RTC found Redante guilty beyond reasonable doubt of the crime of bigamy. The trial court ratiocinated that Redante's conviction is the only reasonable conclusion for the case because of his failure to present competent evidence proving the alleged divorce decree; his failure to establish the naturalization of Maria Socorro; and his admission that he did not seek judicial recognition of the alleged divorce decree. In its assailed decision, the CA affirmed the RTC's Judgment. The Supreme Court ruled that before the divorce decree can be recognized by our courts, the party pleading it must prove it as a fact and demonstrate its conformity to the foreign law allowing it. However, in this case, Redante failed to prove the existence of the divorce as a fact or that it was validly obtained prior to the celebration of his subsequent marriage to Fe. As such, Redante failed to prove his defense that he had the capacity to remarry when he contracted a subsequent marriage to Fe. His liability for bigamy is, therefore, now beyond question.

## FACTS:

Redante and Maria Socorro, both natives of Buhi, Camarines Sur, were married on 31 August 1984 in a ceremony held in Angono, Rizal. Sometime thereafter, Maria Socorro left for Canada to work as a nurse. While in Canada,

she applied for Canadian citizenship. The application was eventually granted and Ma. Socorro acquired Canadian citizenship on 1 April 1988. Maria Socorro then filed for divorce in British Columbia, Canada, to sever her marital ties with Redante. The divorce was eventually granted by the Supreme Court of British Columbia on 1 November 1988. Sometime in February 1998, Redante met Fe to whom he admitted that he was previously married to Maria Socorro who, however, divorced him. Despite this admission, their romance blossomed and culminated in their marriage on 29 December 1998 at the Peñafrancia Basilica Minore in Naga City. Their relationship, however, turned sour when Ma. Socorro returned to the Philippines and met with Redante to persuade him to allow their daughter to apply for Canadian citizenship. After learning of Redante and Maria Socorro's meeting and believing that they had reconciled, Fe decided to leave their conjugal home on 31 May 2007.

On 4 June 2007, Fe filed a complaint for bigamy against Redante. In its judgment, the RTC found Redante guilty beyond reasonable doubt of the crime of bigamy. The trial court ratiocinated that Redante's conviction is the only reasonable conclusion for the case because of his failure to present competent evidence proving the alleged divorce decree; his failure to establish the naturalization of Maria Socorro; and his admission that he did not seek judicial recognition of the alleged divorce decree. In its assailed decision, the CA affirmed the RTC's Judgment.

**ISSUE:**

Whether or not accused is no longer guilty of bigamy since the first marriage was dissolved by divorce obtained abroad - NO. Divorce was not sufficiently proven.

**RULING AND DOCTRINE:**

A divorce decree obtained abroad by an alien spouse is a foreign judgment relating to the status of a marriage. As in any other foreign judgment, a divorce decree does not have an automatic effect in the Philippines. Consequently, recognition by Philippine courts may be required before the effects of a divorce decree could be extended in this jurisdiction. Recognition of the divorce decree, however, need not be obtained in a separate petition led solely for that purpose. Philippine courts may recognize the foreign divorce decree when such was invoked by a party as an integral aspect of his claim or defense. Before the divorce decree can be recognized by our courts, the party

pleading it must prove it as a fact and demonstrate its conformity to the foreign law allowing it. Proving the foreign law under which the divorce was secured is mandatory considering that Philippine courts cannot and could not be expected to take judicial notice of foreign laws. For the purpose of establishing divorce as a fact, a copy of the divorce decree itself must be presented and admitted in evidence. This is in consonance with the rule that a foreign judgment may be given presumptive evidentiary value only after it is presented and admitted in evidence.

Applying the foregoing, the Court is convinced that Redante failed to prove the existence of the divorce as a fact or that it was validly obtained prior to the celebration of his subsequent marriage to Fe. Aside from the testimonies of Redante and Maria Socorro, the only piece of evidence presented by the defense to prove the divorce, is the certificate of divorce allegedly issued by the registrar of the Supreme Court of British Columbia on 14 January 2008. This certificate of divorce, however, is utterly insufficient to rebut the charge against Redante. First, the certificate of divorce is not the divorce decree required by the rules and jurisprudence. As discussed previously, the divorce decree required to prove the fact of divorce is the judgment itself as rendered by the foreign court and not a mere certification. Second, assuming the certificate of divorce may be considered as the divorce decree, it was not accompanied by a certification issued by the proper Philippine diplomatic or consular officer stationed in Canada, as required under Section 24 of Rule 132. Lastly, no copy of the alleged Canadian law was presented by the defense. Thus, it could not be reasonably determined whether the subject divorce decree was in accord with Maria Socorro's national law. Further, since neither the divorce decree nor the alleged Canadian law was satisfactorily demonstrated, the type of divorce supposedly secured by Maria Socorro — whether an absolute divorce which terminates the marriage or a limited divorce which merely suspends it — and whether such divorce capacitated her to remarry could not also be ascertained. As such, Redante failed to prove his defense that he had the capacity to remarry when he contracted a subsequent marriage to Fe. His liability for bigamy is, therefore, now beyond question.

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**Republic vs. Cote**
**G.R. No. 212860**
**March 14, 2018**

**EXECUTIVE SUMMARY:**

At the time of their marriage, the spouses were both Filipinos and were already blessed with a son, Christian Gabriel Manongdo who was born in Honolulu, Hawaii, United States of America (USA). On August 23, 2002, Rhomel filed a Petition for Divorce before the Family Court of the First Circuit of Hawaii on the ground that their marriage was irretrievably broken. This was granted by the issuance of a decree that stated that the bonds of matrimony between [Rhomel] and [Florie] are dissolved and the parties are restored to the status of single persons, and either party is permitted to marry from and after the effective date of this decree. Seven years later, Florie commenced a petition for recognition of foreign judgment granting the divorce before the Regional Trial Court (RTC). The RTC granted the petition and declared Florie to be capacitated to remarry. Rhomel filed a Notice of Appeal but the RTC, believing that the petition was covered by A.M. No. 02-11-10-SC denied the appeal because the notice was not preceded by a motion for reconsideration. Rhomel then filed a petition for certiorari with the CA claiming that the RTC committed grave abuse of discretion but the CA denied the petition.

The Supreme Court ruled that it was error for the RTC to use as basis for denial of petitioner's appeal Section 20 of A.M. No. 02-11-10-SC. A decree of absolute divorce procured abroad is different from annulment as defined by our family laws. A.M. No. 02-11-10-SC only covers void and voidable marriages that are specifically cited and enumerated in the Family Code of the Philippines. Since Florie followed the procedure for cancellation of entry in the civil registry, a special proceeding governed by Rule 108 of the Rules of Court, an appeal from the RTC decision should be governed by Section 3 of Rule 41 of the Rules of Court and not A.M. No. 02-11-10-SC. Although the Court agrees with petitioner that the RTC erroneously misapplied A.M. No. 02-11-10-SC, the Court denied the petition as such error does not automatically equate to grave abuse of discretion.

**FACTS:**

On July 31, 1995, petitioner Rhomel Gagarin Cote (Rhomel) and

respondent Florie Grace Manongdo-Cote (Florie) were married in Quezon City. At the time of their marriage, the spouses were both Filipinos and were already blessed with a son, Christian Gabriel Manongdo who was born in Honolulu, Hawaii, United States of America (USA). On August 23, 2002, Rhomel filed a Petition for Divorce before the Family Court of the First Circuit of Hawaii on the ground that their marriage was irretrievably broken. This was granted on August 23, 2002 by the issuance of a decree that stated that the bonds of matrimony between [Rhomel] and [Florie] are dissolved and the parties are restored to the status of single persons, and either party is permitted to marry from and after the effective date of this decree. Seven years later, Florie commenced a petition for recognition of foreign judgment granting the divorce before the Regional Trial Court (RTC). Florie also prayed for the cancellation of her marriage contract, hence, she also impleaded the Civil Registry of Quezon City and the National Statistics Office (NSO). The RTC granted the petition and declared Florie to be capacitated to remarry after the RTC's decision attained finality and a decree of absolute nullity has been issued. The RTC ruled, *inter alia,* that Rhomel was already an American citizen when he obtained the divorce decree. Petitioner filed a Notice of Appeal on May 17, 2011. However, the RTC, believing that the petition was covered by A.M. No. 02-11-10-SC or the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages, applied Section 20 of said Rule and denied the appeal because the notice was not preceded by a motion for reconsideration. Petitioner then filed a petition for certiorari with the CA claiming that the RTC committed grave abuse of discretion. In a Decision dated January 21, 2014, the CA denied the petition.

**ISSUE:**

Whether or not the provisions of A.M. No. 02-11-10-SC 12 applies in a case involving recognition of a foreign decree of divorce - NO

**RULING AND DOCTRINE:**

The CA is correct when it ruled that the trial court misapplied Section 20 of A.M. No. 02-11-10-SC. A decree of absolute divorce procured abroad is different from annulment as defined by our family laws. A.M. No. 02-11-10-SC only covers void and voidable marriages that are specifically cited and enumerated in the Family Code of the Philippines. Void and voidable

marriages contemplate a situation wherein the basis for the judicial declaration of absolute nullity or annulment of the marriage exists before or at the time of the marriage. It treats the marriage as if it never existed. Divorce, on the other hand, ends a legally valid marriage and is usually due to circumstances arising after the marriage. It was error for the RTC to use as basis for denial of petitioner's appeal Section 20 of A.M. No. 02-11-10-SC. Since Florie followed the procedure for cancellation of entry in the civil registry, a special proceeding governed by Rule 108 of the Rules of Court, an appeal from the RTC decision should be governed by Section 3 of Rule 41 of the Rules of Court and not A.M. No. 02-11-10-SC. Although the Court agrees with petitioner that the RTC erroneously misapplied A.M. No. 02-11-10-SC, such error does not automatically equate to grave abuse of discretion.

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**Republic vs. Manalo**
**G.R. No. 221029**
**April 24, 2018**

**EXECUTIVE SUMMARY:**

Respondent Marelyn Manalo filed a petition for cancellation of entry of marriage in the Civil Registry of San Juan by virtue of a judgment of divorce rendered by a Japanese court. However, the trial court denied the petition and ruled that the divorce obtained by Manalo should not be recognized because Article 15 of the New Civil Code does not afford Filipinos the right to file for a divorce. On appeal, the CA overturned the decision. The Supreme Court ruled that Art. 26, par. 2 of the FC allows the recognition of a divorce decree from proceedings filed by a Filipino abroad based on (1) clear and plain reading of the law; (2) the Court's interpretation of the intent of the law; and (3) the provision as an exception to the nationality rule in Art. 15 of the CC. Thus, the Court held that Article 26, par. 2 should not make a distinction between a divorce initiated by the alien spouse and a divorce initiated by the Filippino spouse. However, the respondent's case is remanded for further proceedings as proof on Japanese law on divorce was not submitted.

**FACTS:**

Respondent Marelyn Tanedo Manalo filed a petition for cancellation of entry of marriage in the Civil Registry of San Juan, Metro Manila, by virtue of a judgment of divorce rendered by a Japanese court. She was married in the Philippines to a Japanese national named YOSHINO MINORO and later on a case for divorce was filed by petitioner in Japan and after due proceedings, a divorce decree dated December 6, 2011 was rendered by the Japanese Court. In ruling that the divorce obtained by Manalo in Japan should not be recognized, the trial court opined that, based on Article 15 of the New Civil Code, the Philippine law "does not afford Filipinos the right to file for a divorce, whether they are in the country or living abroad, if they are married to Filipinos or to foreigners, or if they celebrated their marriage in the Philippines or in another country" and that unless Filipinos "are naturalized as citizens of another country, Philippine laws shall have control over issues related to Filipinos' family rights and duties, together with the determination of their condition and legal capacity to enter into contracts and civil relations, including marriages." On appeal, the CA overturned the RTC decision. It held that Article 26 of the Family Code is applicable even if it was Manalo who filed for divorce against her Japanese husband because the decree they obtained makes the latter no longer married to the former, capacitating him to remarry. The appellate court ruled that the meaning of the law should be based on the intent of the lawmakers and in view of the legislative intent behind Article 26, it would be the height of injustice to consider Manalo as still married to the Japanese national, who, in turn, is no longer married to her. For the appellate court, the fact that it was Manalo who filed the divorce case is inconsequential. The OSG filed a motion for reconsideration, but it was denied; hence, this petition.

**ISSUE:**

Whether or not a foreign divorce decree obtained by the Filipino spouse against an alien spouse is binding in the PH - YES, but remanded for the trial court for reception of proof of the foreign law

**RULING AND DOCTRINE:**

The Court stated in this case that based on a clear and plain reading of

the Article 26, 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. It does not distinguish whether the Filipino spouse is the petitioner or the respondent in the foreign divorce proceeding.

Assuming, for the sake of argument, that the word "obtained" should be interpreted to mean that the divorce proceeding must be actually initiated by the alien spouse, still, the Court will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act. The purpose of Paragraph 2 of Article 26 is to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after a foreign divorce decree that is effective in the country where it was rendered, is no longer married to the Filipino spouse. Whether the Filipino spouse initiated the foreign divorce proceeding or not, a favorable decree dissolving the marriage bond and capacitating his or her alien spouse to remarry will have the same result: the Filipino spouse will effectively be without a husband or wife. A Filipino who initiated a foreign divorce proceeding is in the same place and in like circumstance as a Filipino who is at the receiving end of an alien initiated proceeding. Therefore, the subject provision should not make a distinction. In both instances, it is extended as a means to recognize the residual effect of the foreign divorce decree on Filipinos whose marital ties to their alien spouses are severed by operation of the latter's national law.

The Court further held that the nationality principle found under Article 15 of the Civil Code, is not an absolute and unbending rule. In fact, the mere existence of Paragraph 2 of Article 26 is a testament that the State may provide for an exception thereto. Moreover, blind adherence to the nationality principle must be disallowed if it would cause unjust discrimination and oppression to certain classes of individuals whose rights are equally protected by law. The courts have the duty to enforce the laws of divorce as written by the Legislature only if they are constitutional. A Filipino who is married to another Filipino is not similarly situated with a Filipino who is married to a foreign citizen. There are real, material and substantial differences between them. Ergo, they should not be treated alike, both as to rights conferred and liabilities imposed. On the contrary, there is no real and substantial difference between a Filipino who initiated a foreign divorce proceedings and a Filipino who obtained a divorce decree upon the instance of his or her alien spouse. In the eyes of the Philippine and foreign laws, both are considered as Filipinos

who have the same rights and obligations in an alien land.

Based on the above-mentioned, the Court ruled that Article 26, par. 2 of the Family Code allows the recognition of a divorce decree from proceedings filed by a Filipino abroad. However, the case is remanded for further proceedings as proof on Japanese law on divorce was not submitted.

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**Racho vs. Tanaka**
**G.R. No. 199515**
**June 25, 2018**

**EXECUTIVE SUMMARY:**

Racho and Seiichi Tanaka (Tanaka) were married on April 20, 2001 in Las Piñas City, Metro Manila. They lived together for nine (9) years in Saitama Prefecture, Japan and did not have any children. Racho alleged that on December 16, 2009, Tanaka filed for divorce and the divorce was granted. She filed a Petition for Judicial Determination and Declaration of Capacity to Marry with the Regional Trial Court, Las Piñas City. On June 2, 2011, the Regional Trial Court, Las Piñas City rendered a Decision, finding that Racho failed to prove that Tanaka legally obtained a divorce. It stated that while she was able to prove Tanaka's national law, the Divorce Certificate was not competent evidence since it was not the divorce decree itself. The Supreme Court ruled that recent jurisprudence, holds that a foreign divorce may be recognized in this jurisdiction as long as it is validly obtained, regardless of who among the spouses initiated the divorce proceedings. Moreover, the national law of the foreign spouse states that the matrimonial relationship is terminated by divorce. The Certificate of Acceptance of the Report of Divorce does not state any qualifications that would restrict the remarriage of any of the parties.The Supreme Court then granted the petition and declared that petitioner is capacitated to remarry.

**FACTS:**

Racho and Seiichi Tanaka (Tanaka) were married on April 20, 2001 in Las Piñas City, Metro Manila. They lived together for nine (9) years in Saitama Prefecture, Japan and did not have any children. Racho alleged that on December 16, 2009, Tanaka filed for divorce and the divorce was granted. She secured a Divorce Certificate issued by Consul Kenichiro Takayama (Consul Takayama) of the Japanese Consulate in the Philippines and had it authenticated by an authentication officer of the Department of Foreign Affairs. She filed the Divorce Certificate with the Philippine Consulate General in Tokyo, Japan, where she was informed that by reason of certain administrative changes, she was required to return to the Philippines to report the documents for registration and to file the appropriate case for judicial recognition of divorce. She tried to have the Divorce Certificate registered with the Civil Registry of Manila but was refused by the City Registrar since there was no court order recognizing it. When she went to the Department of Foreign Affairs to renew her passport, she was likewise told that she needed the proper court order. She was also informed by the National Statistics Office that her divorce could only be annotated in the Certificate of Marriage if there was a court order capacitating her to remarry.

She went to the Japanese Embassy, as advised by her lawyer, and secured a Japanese Law English Version of the Civil Code of Japan, 2000 Edition. On May 19, 2010, she filed a Petition for Judicial Determination and Declaration of Capacity to Marry with the Regional Trial Court, Las Piñas City. On June 2, 2011, the Regional Trial Court, Las Piñas City rendered a Decision, finding that Racho failed to prove that Tanaka legally obtained a divorce. It stated that while she was able to prove Tanaka's national law, the Divorce Certificate was not competent evidence since it was not the divorce decree itself. Racho filed a Motion for Reconsideration, arguing that under Japanese law, a divorce by agreement becomes effective by oral notification, or by a document signed by both parties and by two (2) or more witnesses. In an Order dated October 3, 2011, the Regional Trial Court denied the Motion, finding that Racho failed to present the notification of divorce and its acceptance. On December 19, 2011, Racho filed a Petition for Review on Certiorari with this Court. In its January 18, 2012 Resolution, this Court deferred action on her Petition pending her submission of a duly authenticated acceptance certificate of the notification of divorce.

**ISSUE:**

Whether or not the Certificate of Acceptance of the Report of Divorce is sufficient to prove the fact that a divorce between petitioner and respondent was validly obtained by the latter according to his national law - YES

**RULING AND DOCTRINE:**

Upon appeal to this Court, however, petitioner submitted a Certificate of Acceptance of the Report of Divorce, certifying that the divorce issued by Susumu Kojima, Mayor of Fukaya City, Saitama Prefecture, has been accepted on December 16, 2009. The seal on the document was authenticated by Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan. The probative value of the Certificate of Acceptance of the Report of Divorce is a question of fact that would not ordinarily be within this Court's ambit to resolve. The court records, however, are already sufficient to fully resolve the factual issues. Additionally, the Office of the Solicitor General neither posed any objection to the admission of the Certificate of Acceptance of the Report of Divorce nor argued that the Petition presented questions of fact. In the interest of judicial economy and efficiency, this Court shall resolve this case on its merits.

The Certificate of Acceptance of the Report of Divorce was accompanied by an Authentication issued by Consul Bryan Dexter B. Lao of the Embassy of the Philippines in Tokyo, Japan, certifying that Kazutoyo Oyabe, Consular Service Division, Ministry of Foreign Affairs, Japan was an official in and for Japan. The Authentication further certified that he was authorized to sign the Certificate of Acceptance of the Report of Divorce and that his signature in it was genuine. Applying Rule 132, Section 24, the Certificate of Acceptance of the Report of Divorce is admissible as evidence of the fact of divorce between petitioner and respondent.

The Regional Trial Court established that according to the national law of Japan, a divorce by agreement "becomes effective by notification." Considering that the Certificate of Acceptance of the Report of Divorce was duly authenticated, the divorce between petitioner and respondent was validly obtained according to respondent's national law.

The Office of the Solicitor General, however, posits that divorce by agreement is not the divorce contemplated in Article 26 of the Family Code. Considering that Article 26 states that divorce must be "validly obtained abroad by the alien spouse," the Office of the Solicitor General posits that only the foreign spouse may initiate divorce proceedings. The Solicitor General's narrow interpretation of Article 26 disregards any agency on the part of the Filipino spouse. It presumes that the Filipino spouse is incapable of agreeing to the dissolution of the marital bond. It perpetuates the notion that all divorce proceedings are protracted litigations fraught with bitterness and drama. Some marriages can end amicably, without the parties harboring any ill will against each other. The parties could forgo costly court proceedings and opt for, if the national law of the foreign spouse allows it, a more convenient out-of-court divorce process. This ensures amity between the former spouses, a friendly atmosphere for the children and extended families, and less financial burden for the family. In any case, the Solicitor General's argument has already been resolved in *Republic v. Manalo*. Recent jurisprudence, therefore, holds that a foreign divorce may be recognized in this jurisdiction as long as it is validly obtained, regardless of who among the spouses initiated the divorce proceedings. The question in this case, therefore, is not who among the spouses initiated the proceedings but rather if the divorce obtained by petitioner and respondent was valid.

The Regional Trial Court found that there were two (2) kinds of divorce in Japan: judicial divorce and divorce by agreement. Petitioner and respondent's divorce was considered as a divorce by agreement, which is a valid divorce according to Japan's national law. In this case, respondent's nationality was not questioned. The Regional Trial Court duly admitted petitioner's presentation of respondent's national law. The wording of the provision is absolute. The provision contains no other qualifications that could limit either spouse's capacity to remarry. Here, the national law of the foreign spouse states that the matrimonial relationship is terminated by divorce. The Certificate of Acceptance of the Report of Divorce does not state any qualifications that would restrict the remarriage of any of the parties. There can be no other interpretation than that the divorce procured by petitioner and respondent is absolute and completely terminates their marital tie. The Court then granted the petition and declared that petitioner is capacitated ro remarry.

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**Morisono vs. Morisono**
**G.R. No. 226013**
**July 2, 2018**

## EXECUTIVE SUMMARY:

Luzviminda was married to private respondent Ryoji Morisono (Ryoji) in Quezon City on December 8, 2009. She and Ryoji submitted a "Divorce by Agreement" before the City Hall of Mizuho-Ku, Nagoya City, Japan, which was eventually approved on January 17, 2012 and duly recorded with the Head of Mizuho-Ku, Nagoya City, Japan on July 1, 2012. She filed a petition for recognition of the foreign divorce decree obtained by her and Ryoji before the RTC. The RTC denied Luzviminda's petition. It held that while a divorce obtained abroad by an alien spouse may be recognized in the Philippines — provided that such decree is valid according to the national law of the alien — the same does not find application when it was the Filipino spouse, i.e., petitioner, who procured the same. The Supreme Court held that pursuant to Manalo, foreign divorce decrees obtained to nullify marriages between a Filipino and an alien citizen may already be recognized in this jurisdiction, regardless of who between the spouses initiated the divorce; provided, of course, that the party petitioning for the recognition of such foreign divorce decree — presumably the Filipino citizen — must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. However, as Luzviminda has yet to prove the fact of her "Divorce by Agreement" obtained in Nagoya City, Japan and its conformity with prevailing Japanese laws on divorce the case was remanded to the trial court.

## FACTS:

Luzviminda was married to private respondent Ryoji Morisono (Ryoji) in Quezon City on December 8, 2009. Thereafter, they lived together in Japan for one (1) year and three (3) months but were not blessed with a child. During their married life, they would constantly quarrel mainly due to Ryoji's philandering ways, in addition to the fact that he was much older than Luzviminda. As such, she and Ryoji submitted a "Divorce by Agreement" before the City Hall of Mizuho-Ku, Nagoya City, Japan, which was eventually approved on January 17, 2012 and duly recorded with the Head of Mizuho-

Ku, Nagoya City, Japan on July 1, 2012. In view of the foregoing, she filed a petition for recognition of the foreign divorce decree obtained by her and Ryoji before the RTC so that she could cancel the surname of her former husband in her passport and for her to be able to marry again. The RTC denied Luzviminda's petition. It held that while a divorce obtained abroad by an alien spouse may be recognized in the Philippines — provided that such decree is valid according to the national law of the alien — the same does not find application when it was the Filipino spouse, i.e., petitioner, who procured the same.

**ISSUE:**

Whether or not the RTC correctly denied Luzviminda's petition for recognition of the foreign divorce decree she procured with Ryoji - NO. Case was remanded back to the trial court for petitioner to have an opportunity to prove the foreign law.

**RULING AND DOCTRINE:**

The rules on divorce prevailing in this jurisdiction can be summed up as follows: first, Philippine laws do not provide for absolute divorce, and hence, the courts cannot grant the same; second, consistent with Articles 15 and 17 of the Civil Code, the marital bond between two (2) Filipino citizens cannot be dissolved even by an absolute divorce obtained abroad; third, an absolute divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws; and fourth, in mixed marriages involving a Filipino and a foreigner, the former is allowed to contract a subsequent marriage in case the absolute divorce is validly obtained abroad by the alien spouse capacitating him or her to remarry.

According to Republic v. Orbecido III, the following elements must concur in order for Article 26 (2) to apply, namely: (a) that there is a valid marriage celebrated between a Filipino citizen and a foreigner; and (b) that a valid divorce is obtained abroad by the alien spouse capacitating him or her to remarry. In the same case, the Court also initially clarified that Article 26 (2) applies not only to cases where a foreigner was the one who procured a divorce of his/her marriage to a Filipino spouse, but also to instances where, at the time of the celebration of the marriage, the parties were Filipino citizens, but later on, one of them acquired foreign citizenship by naturalization, initiated a divorce proceeding, and obtained a favorable decree.

Pursuant to *Republic v. Manalo*, foreign divorce decrees obtained to nullify marriages between a Filipino and an alien citizen may already be recognized in this jurisdiction, regardless of who between the spouses initiated the divorce; provided, of course, that the party petitioning for the recognition of such foreign divorce decree — presumably the Filipino citizen — must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it.

In this case, a plain reading of the RTC ruling shows that the denial of Luzviminda's petition to have her foreign divorce decree recognized in this jurisdiction was anchored on the sole ground that she admittedly initiated the divorce proceedings which she, as a Filipino citizen, was not allowed to do. In light of the doctrine laid down in Manalo, such ground relied upon by the RTC had been rendered nugatory. However, the Court cannot just order the grant of Luzviminda's petition for recognition of the foreign divorce decree, as Luzviminda has yet to prove the fact of her "Divorce by Agreement" obtained in Nagoya City, Japan and its conformity with prevailing Japanese laws on divorce. Notably, the RTC did not rule on such issues. Since these are questions which require an examination of various factual matters, a remand to the court a quo is warranted.

**LINK:**
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**Juego-Sakai vs. Republic**
**G.R. No. 224015**
**July 23, 2018**

**EXECUTIVE SUMMARY:**

Petitioner Stephen I. Juego-Sakai and Toshiharu Sakai got married on August 11, 2000 in Japan pursuant to the wedding rites therein. After two (2) years, the parties, by agreement, obtained a divorce decree in said country dissolving their marriage. Thereafter, on April 5, 2013, petitioner filed a Petition for Judicial Recognition of Foreign Judgment before the Regional Trial Court Camarines Norte. The RTC granted the petition and recognized the divorce between the parties as valid and effective under Philippine Laws.

The CA affirmed the decision of the RTC. In an Amended Decision, however, the CA revisited its findings and recalled and set aside its previous decision because the divorce herein was consensual in nature, obtained by agreement of the parties, and not by Sakai alone. The Supreme Court held that applying the ruling in Manalo, despite the fact that petitioner participated in the divorce proceedings in Japan, and even if it is assumed that she initiated the same, she must still be allowed to benefit from the exception provided under Paragraph 2 of Article 26. Consequently, since her marriage to Toshiharu Sakai had already been dissolved by virtue of the divorce decree they obtained in Japan, thereby capacitating Toshiharu to remarry, petitioner shall likewise have capacity to remarry under Philippine law. Nevertheless, petitioner has yet to comply with certain guidelines before the courts may recognize the subject divorce decree and the effects thereof. What remains to be proven is the pertinent Japanese Law on divorce considering that Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.

**FACTS:**

Petitioner Stephen I. Juego-Sakai and Toshiharu Sakai got married on August 11, 2000 in Japan pursuant to the wedding rites therein. After two (2) years, the parties, by agreement, obtained a divorce decree in said country dissolving their marriage. Thereafter, on April 5, 2013, petitioner filed a Petition for Judicial Recognition of Foreign Judgment before the Regional Trial Court (RTC), Branch 40, Camarines Norte. In its Decision dated October 9, 2014, the RTC granted the petition and recognized the divorce between the parties as valid and effective under Philippine Laws. On November 25, 2015, the CA affirmed the decision of the RTC. In an Amended Decision, however, the CA revisited its findings and recalled and set aside its previous decision because the divorce herein was consensual in nature, obtained by agreement of the parties, and not by Sakai alone. Thus, since petitioner, a Filipino citizen, also obtained the divorce herein, said divorce cannot be recognized in the Philippines. In addition, the CA ruled that petitioner's failure to present authenticated copies of the Civil Code of Japan was fatal to her cause.

**ISSUE:**

Whether or not a divorce decree obtained by agreement can be enforced in the Philippines - YES. Case was remanded back to the trial court for petitioner to have an opportunity to prove the foreign law.

**RULING AND DOCTRINE:**

The issue before Us has already been resolved in the landmark ruling of R*epublic v. Manalo*, the facts of which fall squarely on point with the facts herein.

Applying the ruling in *Manalo*, despite the fact that petitioner participated in the divorce proceedings in Japan, and even if it is assumed that she initiated the same, she must still be allowed to benefit from the exception provided under Paragraph 2 of Article 26. Consequently, since her marriage to Toshiharu Sakai had already been dissolved by virtue of the divorce decree they obtained in Japan, thereby capacitating Toshiharu to remarry, petitioner shall likewise have capacity to remarry under Philippine law.

Nevertheless, as similarly held in *Manal*o, We cannot yet grant petitioner's Petition for Judicial Recognition of Foreign Judgment for she has yet to comply with certain guidelines before our courts may recognize the subject divorce decree and the effects thereof. Time and again, the Court has held that the starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself.

In the instant case, the Office of the Solicitor General does not dispute the existence of the divorce decree, rendering the same admissible. What remains to be proven, therefore, is the pertinent Japanese Law on divorce considering that Japanese laws on persons and family relations are not among those matters that Filipino judges are supposed to know by reason of their judicial function.

**LINK:**
https://drive.google.com/file/d/1yOp963rfvJMGpO5QCvDhYBF3yI-p9CLB/view?usp=sharing

**Nullada vs. Civil Registrar**
**G.R. No. 224548**
**January 23, 2019**

## EXECUTIVE SUMMARY:

Marlyn and Akira got married in Katsushika-Ku, Tokyo, Japan, as evidenced by a Report of Marriage that was issued by the Philippine Embassy in Tokyo, Japan. Their relationship, however, eventually turned sour and so they later decided to obtain a divorce by mutual agreement. In 2009, Akira and Marlyn secured a divorce decree in Japan. As she sought recognition of the divorce decree in the Philippines, Marlyn filed with the RTC the Petition for registration and/or recognition of foreign divorce decree and cancellation of entry of marriage that was filed under Rule 108 of the Rules of Court. The RTC rendered its Decision denying the petition. For the trial court, the fact that Marlyn also agreed to the divorce and jointly filed for it with Akira barred the application of the second paragraph of Article 26 of the Family Code. The Supreme Court ruled that applying the same legal considerations and considering the similar factual milieu that attended in Manalo, the present case warrants a reversal of the RTC's decision. However, under prevailing rules and jurisprudence, the submission of the decree should come with adequate proof. In any case, similar to the remedy that was allowed by the Court in *Manalo* to resolve such failure, a remand of the case to the RTC for further proceedings and reception of evidence on the laws of Japan on divorce is allowed.

## FACTS:

On July 29, 1997, Marlyn and Akira got married in Katsushika-Ku, Tokyo, Japan, as evidenced by a Report of Marriage that was issued by the Philippine Embassy in Tokyo, Japan. The document was registered with both the Office of the Local Civil Registry of Manila and the then National Statistics Office, Civil Registry Division. The union of Marlyn and Akira resulted in the birth of a child, Shin Ito. Their relationship, however, eventually turned sour and so they later decided to obtain a divorce by mutual agreement. In 2009, Akira and Marlyn secured a divorce decree in Japan. The Divorce Certificate was issued by the Embassy of Japan in the Philippines. Marlyn and Akira's acceptance of the notification of divorce by agreement was supported by an Acceptance Certificate that was issued by the Head of Katsushika-ku in Japan, an English translation of which forms part of the records. As she sought a

recognition of the divorce decree in the Philippines, Marlyn filed with the RTC the Petition for registration and/or recognition of foreign divorce decree and cancellation of entry of marriage that was filed under Rule 108 of the Rules of Court. The RTC rendered its Decision denying the petition. For the trial court, the fact that Marlyn also agreed to the divorce and jointly filed for it with Akira barred the application of the second paragraph of Article 26 of the Family Code, which would have otherwise allowed a Filipino spouse to remarry after the alien spouse had validly obtained a divorce. Dissatisfied, Marlyn moved for reconsideration but her motion was denied by the trial court via an Order dated April 26, 2016. This prompted Marlyn to file the present petition for review on certiorari.

**ISSUE:**

Whether or not a divorce was mutually agreed upon by the spouses is enforceable in the Philippines - YES

**RULING AND DOCTRINE:**

The facts in *Manalo* are similar to the circumstances in this case. Applying the same legal considerations and considering the similar factual milieu that attended in Manalo, the present case warrants a reversal of the RTC's decision that refused to recognize the divorce decree that was mutually obtained by Marlyn and her foreigner spouse in Japan solely on the ground that the divorce was jointly initiated by the spouses. The Court finds no reason to deviate from its recent disposition on the issue, as made in *Manalo*. The dismissal of Marlyn's petition based on the trial court's interpretation of Article 26 of the Family Code is erroneous in light of the Court's disposition in *Manalo*. The fact that the divorce was by the mutual agreement of Marlyn and Akira was not sufficient ground to reject the decree in this jurisdiction.

While Marlyn and Akira's divorce decree was not disputed by the OSG, a recognition of the divorce, however, could not extend as a matter of course. Under prevailing rules and jurisprudence, the submission of the decree should come with adequate proof of the foreign law that allows it. The Japanese law on divorce must then be sufficiently proved. Marlyn failed to satisfy the foregoing requirements. The records only include a photocopy of excerpts of The Civil Code of Japan, merely stamped LIBRARY, Japan Information and

Culture Center, Embassy of Japan, 2627 Roxas Boulevard, Pasay City. This clearly does not constitute sufficient compliance with the rules on proof of Japan's law on divorce. In any case, similar to the remedy that was allowed by the Court in Manalo to resolve such failure, a remand of the case to the RTC for further proceedings and reception of evidence on the laws of Japan on divorce is allowed, as it is hereby ordered by the Court."

**LINK:**

https://drive.google.com/file/d/1xpLEBP1ktyUAAQVH57ORqLnGzvlgWZ84/view?usp=sharing

**Arreza vs. Toyo**
**G.R. No. 213198**
**July 1, 2019**

**EXECUTIVE SUMMARY:**

On April 1, 1991, Genevieve, a Filipino citizen, and Tetsushi Toyo (Tetsushi), a Japanese citizen, were married in Quezon City. After 19 years of marriage, the two filed a Notification of Divorce by Agreement. It was later recorded in Tetsushi's family register as certified by the Mayor of Toyonaka City, Osaka Fu. On May 24, 2012, Genevieve filed before the Regional Trial Court a Petition for judicial recognition of foreign divorce and declaration of capacity to remarry. The Regional Trial Court rendered a Judgment denying Genevieve's Petition. It decreed that while the pieces of evidence presented by Genevieve proved that their divorce agreement was accepted by the local government of Japan, she nevertheless failed to prove the copy of Japan's law. The Supreme Court ruled that the rule in actions involving the recognition of foreign divorce judgment is that it is indispensable that the petition prove not only the foreign judgment but also the alien spouse's national law. In this case, the documents petitioner submitted to prove the divorce decree have complied with the demands of Rule 132, Sections 24 and 25. However, the copy of the Japan Civil Code and its English translation are insufficient to prove Japan's law on divorce. These documents were not duly authenticated by the Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs. Accordingly, the English translation submitted by petitioner is not an official publication exempted from the requirement of authentication. Neither can the English translation be considered as a learned treatise. However, in the interest of orderly procedure and substantial justice,

the case was referred to the Court of Appeals.

**FACTS:**

On April 1, 1991, Genevieve, a Filipino citizen, and Tetsushi Toyo (Tetsushi), a Japanese citizen, were married in Quezon City. They bore a child whom they named Keiichi Toyo. After 19 years of marriage, the two filed a Notification of Divorce by Agreement, which the Mayor of Konohana-ku, Osaka City, Japan received on February 4, 2011. It was later recorded in Tetsushi's family register as certified by the Mayor of Toyonaka City, Osaka Fu. On May 24, 2012, Genevieve filed before the Regional Trial Court a Petition for judicial recognition of foreign divorce and declaration of capacity to remarry. The Regional Trial Court rendered a Judgment denying Genevieve's Petition. It decreed that while the pieces of evidence presented by Genevieve proved that their divorce agreement was accepted by the local government of Japan, she nevertheless failed to prove the copy of Japan's law. The Regional Trial Court noted that the copy of the Civil Code of Japan and its English translation submitted by Genevieve were not duly authenticated by the Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs. Aggrieved, Genevieve filed a Motion for Reconsideration, but it was denied in the Regional Trial Court's June 11, 2014 Resolution. Thus, Genevieve filed before this Court the present Petition for Review on Certiorari.

**ISSUE:**

Whether or not the Regional Trial Court erred in denying the petition for judicial recognition of foreign divorce and declaration of capacity to remarry filed by petitioner - NO, but the case was referred to CA for petitioner to have an opportunity to prove the foreign law

**RULING AND DOCTRINE:**

When a Filipino and an alien get married, and the alien spouse later acquires a valid divorce abroad, the Filipino spouse shall have the capacity to remarry provided that the divorce obtained by the foreign spouse enables him or her to remarry. Nonetheless, settled is the rule that in actions involving the recognition of a foreign divorce judgment, it is indispensable that the petitioner

prove not only the foreign judgment granting the divorce, but also the alien spouse's national law. This rule is rooted in the fundamental theory that Philippine courts do not take judicial notice of foreign judgments and laws. Both the foreign divorce decree and the foreign spouse's national law, purported to be official acts of a sovereign authority, can be established by complying with the mandate of Rule 132, Sections 24 and 25 of the Rules of Court.

Here, the documents petitioner submitted to prove the divorce decree have complied with the demands of Rule 132, Sections 24 and 25. However, the copy of the Japan Civil Code and its English translation are insufficient to prove Japan's law on divorce. These documents were not duly authenticated by the Philippine Consul in Japan, the Japanese Consul in Manila, or the Department of Foreign Affairs.

Petitioner argues that the English translation of the Japan Civil Code is an official publication having been published under the authorization of the Ministry of Justice and, therefore, is considered a self-authenticating document. Petitioner is mistaken. The English translation submitted by petitioner was published by Eibun-Horei-Sha, Inc., a private company in Japan engaged in publishing English translation of Japanese laws, which came to be known as the EHS Law Bulletin Series. However, these translations are "not advertised as a source of official translations of Japanese laws;" Rather, it is in the KANPŌ or the Official Gazette where all official laws and regulations are published, albeit in Japanese. Accordingly, the English translation submitted by petitioner is not an official publication exempted from the requirement of authentication. Neither can the English translation be considered as a learned treatise.

The Regional Trial Court did not take judicial notice of the translator's and advisors' qualifications. Nor was an expert witness presented to testify on this matter. The only evidence of the translator's and advisors' credentials is the inside cover page of the English translation of the Civil Code of Japan. Hence, the Regional Trial Court was correct in not considering the English translation as a learned treatise. Finally, settled is the rule that, generally, this Court only entertains questions of law in a Rule 45 petition. Questions of fact, like the existence of Japan's law on divorce, are not within this Court's ambit to resolve. Nonetheless, in *Medina v. Koike*, this Court ruled that while the Petition raised questions of fact, "substantial ends of justice warrant that the case be referred to the [Court of Appeals] for further appropriate

proceedings." Thus, in the interest of orderly procedure and substantial justice, the case was referred to the Court of Appeals.

**LINK:**
https://drive.google.com/file/d/19-EIwP4qNTSwrUGx4IlSGQQ017XS65BP/view?usp=sharing

**Moraña vs. Republic**
**G.R. No. 227605**
**December 5, 2019**

**EXECUTIVE SUMMARY:**

Petitioner and Minoru Takahasi got married in San Juan, Metro Manila but ten years later, the couple got estranged.The husband refused to give support and even cohabited with another woman. Because of her persistent demand for financial support, her husband suggested they secure a divorce so the Japanese government would give financial assistance to their children. Thus, petitioner agreed to divorce her husband and they jointly applied for divorce before the Office of the Mayor of Fukuyama City. It was granted and they were issued a corresponding Divorce Report. Petitioner then filed with the RTC-Manila an action for recognition of the Divorce Report but the trial court dismissed the petition for failure to present in evidence the Divorce Decree itself. The motion for reconsideration was denied and the CA affirmed the decision of the trial court.

The Court ruled that records show that the Divorce Report is what the Government of Japan issued to the petitioner and her husband when they applied for divorce. There was no "divorce judgment" to speak of because the divorce proceeding was not coursed through Japanese courts but through the office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan. In any event, since the Divorce Report was issued by the office of the Mayor of Fukuyama City, the same is deemed an act of an official body in Japan. By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband.

However, what petitioner offered in evidence were mere printouts of

pertinent portions of the Japanese law on divorce and its English translation. Nevertheless, the Court gave petitioner a chance to prove the Japanese law by remanding the case back to the trial court.

**FACTS:**

On June 24, 2002, petitioner and Minoru Takahashi got married in San Juan, Metro Manila. Thereafter, they moved to live in Japan where they bore two (2) children, namely: Haruna Takahashi (born on January 5, 2003) and Nanami Takahashi (born on May 8, 2006). Ten (10) years later, the couple got estranged. Petitioner alleged that her husband failed to perform his marital obligations to her. He refused to give support to their two (2) children, and worse, started cohabiting with another woman. Because of her persistent demand for financial support, her husband suggested they secure a divorce so the Japanese government would give financial assistance to their children and send them to school. Believing it was for the good of their children, petitioner agreed to divorce her husband. Consequently, they jointly applied for divorce before the Office of the Mayor of Fukuyama City, Japan. On May 22, 2012, the Office of the Mayor of Fukuyama City granted their application for divorce and issued the corresponding Divorce Report. On October 2, 2012, petitioner filed with the Regional Trial Court-Manila an action for recognition of the Divorce Report. The trial court dismissed the petition for failure to present in evidence the Divorce Decree itself. The trial court held that the Divorce Report and Certificate of All Matters cannot take the place of the Divorce Decree itself which is the best evidence here. Besides, the authenticated Divorce Certificate issued by the Japanese government was not even included in petitioner's formal offer of evidence aside from the fact that it was a mere photocopy and was not properly identified nay authenticated in open court. Too, on cross, it appeared that petitioner herself was the one who secured the Divorce Decree which fact is not allowed under Philippine laws. The trial court denied petitioner's motion for reconsideration. On appeal, the CA affirmed the decision of the trial court. Petitioner now seeks affirmative relief from the Court and prays that the dispositions of the Court of Appeals be reversed and set aside.

**ISSUE:**

Whether or not the divorce obtained in Japan may be enforced in the Philippines even if there was no divorce decree but merely a divorce report - YES

**RULING AND DOCTRINE:**

*Republic v. Manalo* emphasized that even if it was the Filipino spouse who initiated and obtained the divorce decree, the same may be recognized in the Philippines. *Racho v. Tanaka* further enunciated that the prohibition on Filipinos from participating in divorce proceedings will not be protecting our own nationals. Verily, therefore, even though it was petitioner herself or jointly with her husband who applied for and obtained the divorce decree in this case, the same may be recognized in our jurisdiction.

Records show that the Divorce Report is what the Government of Japan issued to petitioner and her husband when they applied for divorce. There was no "divorce judgment" to speak of because the divorce proceeding was not coursed through Japanese courts but through the office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan. In any event, since the Divorce Report was issued by the office of the Mayor of Fukuyama City, the same is deemed an act of an official body in Japan. By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband.

However, here, what petitioner offered in evidence were mere printouts of pertinent portions of the Japanese law on divorce and its English translation. There was no proof at all that these printouts reflected the existing law on divorce in Japan and its correct English translation. Indeed, our rules require more than a printout from a website to prove a foreign law. At any rate, considering that the fact of divorce was duly proved in this case, the higher interest of substantial justice compels that petitioner be afforded the chance to properly prove the Japanese law on divorce, with the end view that petitioner may be eventually freed from a marriage in which she is the only remaining party. Thus, the case was remanded to the trial court.

**LINK:**
https://drive.google.com/file/d/1q48PDxDZSMuVQ793mIhMuuidsUYYSFw-/view?usp=sharing

**Galapon vs. Republic**
**G.R. No. 243722**
**January 22, 2020**

## EXECUTIVE SUMMARY:

Cynthia, a Filipina, and Park, a South Korean national, got married in the City of Manila, Philippines on February 27, 2012. Unfortunately, their relationship turned sour and ended with a divorce by mutual agreement in South Korea. Cynthia filed before the RTC a Petition for the Judicial Recognition of a Foreign Divorce. The RTC granted the petition but the OSG filed a Motion for Reconsideration. The Motion for Reconsideration was denied by the RTC. The OSG appealed to the CA and the CA granted the appeal, hence this petition. The Supreme Court ruled that as confirmed by the ruling in Manalo, the divorce decree obtained by Park, with or without Cynthia's conformity, falls within the scope of Article 26 (2) and merits recognition in this jurisdiction.

## FACTS:

Cynthia, a Filipina, and Park, a South Korean national, got married in the City of Manila, Philippines on February 27, 2012. Unfortunately, their relationship turned sour and ended with a divorce by mutual agreement in South Korea. After the divorce was confirmed on July 16, 2012 by the Cheongju Local Court, Cynthia filed before the RTC a Petition for the Judicial Recognition of a Foreign Divorce. The RTC granted the petition but the OSG filed a Motion for Reconsideration arguing that (1) The Recognition Petition should have been filed in the RTC of Manila because the marriage was celebrated and was recorded in the City Civil Registry of Manila and (2) considering that the divorce was obtained not by the alien spouse alone but by both spouses, Cynthia is not qualified to avail of the benefits provided by [Article] 26 of the Family Code. The Motion for Reconsideration was denied by the RTC. The OSG appealed to the CA and the CA granted the appeal, hence this petition.

## ISSUE:

Whether the divorce decree obtained jointly by a Filipina spouse and her foreign spouse can be recognized in the Philippines - YES

**RULING AND DOCTRINE:**

In the recent case of *Manalo*, the Court en banc extended the scope of Article 26 (2) to even cover instances where the divorce decree is obtained solely by the Filipino spouse. Pursuant to the majority ruling in *Manalo*, Article 26 (2) applies to mixed marriages where the divorce decree is: (i) obtained by the foreign spouse; (ii) obtained jointly by the Filipino and foreign spouse; and (iii) obtained solely by the Filipino spouse. Based on the records, Cynthia and Park obtained a divorce decree by mutual agreement under the laws of South Korea. The sufficiency of the evidence presented by Cynthia to prove the issuance of said divorce decree and the governing national law of her husband Park was not put in issue. Thus, the Court ruled that as confirmed by *Manalo*, the divorce decree obtained by Park, with or without Cynthia's conformity, falls within the scope of Article 26 (2) and merits recognition in this jurisdiction.

**LINK:**
https://drive.google.com/file/d/1nyCQFSEDUEVEB2k9KvY3bPFhU9uA5Anw/view?usp=sharing

**Kondo vs. Civil Registrar General**
**G.R. No. 223628**
**March 4, 2020**

**EXECUTIVE SUMMARY:**

Edna S. Kondo, a Filipina and Katsuhiro Kondo, a Japanese national were married in Japan but after nine years of marriage, they obtained a divorce by agreement in Japan for which they were issued a Report of Divorce. Edna, through her sister and attorney-in-fact, filed a petition for judicial recognition of the divorce of decree. The RTC denied the action on the ground that (1) it was not obtained by an alien spouse but obtained through mutual agreement and (2) there was no evidence presented that the husband had capacity to remarry by virtue of the divorce decree. Edna filed a Motion for New Trial on the ground of newly discovered evidence as she obtained a copy of Katsuhiro's Report of Divorce, indicating that he had already married a certain Tsukiko Umegaki. However, the trial court denied Edna's Motion for New Trial. When elevated to the Court of Appeals, the appellate court affirmed the trial court.

The Supreme Court ruled that the Divorce Report was not a newly discovered evidence. However, the Court added that considering the recent jurisprudence on mixed marriages under Article 26 of the Family Code, procedural rules should be relaxed. Hence, the Supreme Court granted the petition to set aside the Order of the RTC and thus, it allowed Edna another chance to prove the capacity to remarry of her former husband.

**FACTS:**

On March 15, 1991, petitioner Edna S. Kondo and Katsuhiro Kondo, a Filipina and Japanese national, respectively, were married before the Head of Hirano Ward in Japan. But on July 3, 2000, after around nine (9) years of marriage, they obtained a divorce by agreement in Japan for which they were issued a Report of Divorce. On November 7, 2012, Edna, through her sister and Attorney-in-Fact Luzviminda S. Pineda, filed a petition for judicial recognition of the divorce decree, citing Article 26 (2) of the Family Code. The trial court denied the petition and noted that under Article 26 (2) of the Family Code, the foreign divorce should have been obtained by the alien spouse, not by mutual agreement, as here. Moreover, the provisions of the Japanese Civil Code, as presented to the trial court, did not show that Katsuhiro was allowed to remarry upon obtaining a divorce. On May 20, 2014, Edna filed a Motion for New Trial, alleging she had newly discovered evidence which could alter the result of the case — a copy of Katsuhiro's Report of Divorce, allegedly indicating that he had already married a certain Tsukiko Umegaki. The trial court denied Edna's Motion for New Trial. Aggrieved, Edna assailed the trial court's Resolution before the Court of Appeals but the Court of Appeals affirmed the resolution of the trial court. Hence, she filed a Petition for Review on Certiorari with the Supreme Court.

**ISSUE:**

Whether or not petitioner-wife should be granted the opportunitiy to present evidence of husband's capacity to remarry - YES. REMANDED TO THE TRIAL COURT.

**RULING AND DOCTRINE:**

The Court ruled that the Divorce Report was not a newly discovered evidence. Edna herself did not deny, as she in fact admitted that the second Divorce Report was already existing during the proceedings below. To be sure,

Katsuhiro allegedly married Tsukiko as early as May 30, 2001. If this were true, she should have promptly secured and presented a copy of the document during the trial. The Divorce Report could not therefore be deemed as newly discovered evidence. More so, since the trial court gave her an additional opportunity to present evidence through its Order dated December 3, 2013, but she still failed to present the second Divorce Report.

However, the Court added that considering the recent jurisprudence on mixed marriages under Article 26 of the Family Code, the trial court should have been more circumspect in strictly adhering to procedural rules. For these rules are meant to facilitate administration of fairness and may be relaxed when a rigid application hinders substantial justice.

The Court cited the cases of *Republic vs. Manalo, Racho vs. Tanaka, Moraña vs. Republic of the Philippines,* and *Garcia vs. Recio* to note that it has time and again granted liberality in cases involving the recognition of foreign decrees to Filipinos in mixed marriages and free them from a marriage in which they are the sole remaining party. In the aforementioned cases, the Court has emphasized that procedural rules are designed to secure and not override substantial justice, especially here where what is involved is a matter affecting lives of families. The Court saw no reason why the same treatment should not be applied in this case so it relaxed the procedural rules and granted the petition for Edna to present evidence.

**LINK:**
https://drive.google.com/file/d/1aDrhqQBvQtgCGq5-kIG2IQ60rr81SArU/view?usp=sharing

**MATRIX OF CASES:**

| Case Title | Citizenship at the time of marriage | Citizenship at the time of divorce | Nature of the case filed in the trial court | Decision | Place of Divorce |
|---|---|---|---|---|---|
| Ramirez vs. Gmur | British (husband) - Filipino (wife) | British (husband) - Filipino (wife) | Settlement of estate | Divorce not recognized | France |
| Gorayeb vs. Hashim | Not stated in the case but may be presumed as Filipinos | Not stated in the case but may be presumed as Filipinos | Complaint for support (divorce was alleged as a defense) | Divorce not recognized | Nevada |
| Hix vs. Fluemer | American (husband) - Not stated (wife) | American (husband) - Not stated (wife) | Settlement of estate | Divorce not recognized | USA |
| Gonzalez vs.Gonzalez | Filipino (husband) - Filipino (wife) | Filipino (husband) - Filipino (wife) | Ratification/Recognition of decree of divorce | Divorce not recognized | USA |
| Arca vs. Javier | Filipino (husband) - Filipino (wife) | Not stated (husband) - Filipino (wife) | Complaint for bigamy | Divorce not recognized | USA |
| Tenchavez vs. Escaño | Filipino (husband) - Filipino (wife) | Filipino (husband) - Filipino (wife) | Complaint for damages | Divorce not recognized | USA |

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|---|---|---|---|---|---|
| Van Dorn vs. Romillo | American (husband) - Filipino (wife) | American (husband) - Filipino (wife) | Complaint for damages | Divorce recognized | USA |
| Pilapil vs. Ibay-Somera | German (husband) - Filipino (wife) | German (husband) - Filipino (wife) | Complaint for bigamy | Divorce recognized | Germany |
| Quita vs. CA | Filipino (husband) - Filipino (wife) | Filipino (husband) - not proven (wife) | Settlement of estate | Case remanded | USA |
| Llorente vs. CA | Filipino (husband) - Filipino (wife) | American (husband) - Filipino (wife) | Settlement of estate | Case remanded | USA |
| Garcia vs. Recio | Filipino (husband) - Australian (wife) | Filipino (husband) - Australian (wife) | Complaint for Declaration of Nullity of Marriage on the ground of bigamy | Case remanded | Australia |
| Roehr vs. Rodriguez | German (husband) - Filipino (wife) | German (husband) - Filipino (wife) | Petition for Declaration of Nullity of Marriage (divorce judgment was raised as a defense on | Divorce recognized but case remanded as to the issue of | USA |

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|---|---|---|---|---|---|
| | | | the ground of lack of jurisdiction) | custody | |
| Republic vs. Orbecido III | Filipino (husband) - Filipino (wife) | Filipino (husband) - American (wife) | Petition for authority to remarry (Petition for declaratory relief on the basis of Art. 26(2) of FC) | Divorce not recognized | USA |
| Perez vs. Court of Appeals | Filipino (husband) - Filipino (wife) | Filipino (husband) - Filipino (wife) | Petition for declaration of nullity of marriage but divorce was tackled in relation to the respondent's right to intervene | Divorce not recognized | Dominican Republic |
| San Luis vs. San Luis | Filipino (husband) - American (wife) | Filipino (husband) - American (wife) | Settlement of estate | Case remanded | USA |
| Bayot vs. Court of Appeals | Filipino (husband) - American (wife) | Filipino (husband) - American (wife) | Complaint for bigamy | Divorce recognized | Dominican Republic |
| Dacasin vs. Dacasin | American (husband) - Filipino (wife) | American (husband) - Filipino (wife) | Enforcement of Agreement on custody | Divorce recognized but case remanded as to the issue of custody | USA |

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|---|---|---|---|---|---|
| Corpuz vs. Sto. Tomas | Canadian (husband) - Filipino (wife) | Canadian (husband) - Filipino (wife) | Petition for judicial recognition of foreign divorce and/or declaration of marriage as dissolved | Case remanded | Canada |
| Vda de Catalan vs. Catalan-Lee | American (husband) - Filipino (wife) | American (husband) - Filipino (wife) | Settlement of estate | Case remanded | USA |
| Fujiki vs. Marinay | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for judicial recognition of foreign judgment | Case remanded | Japan |
| Lavadia vs. Heirs of Luna | Filipino (husband) - Filipino (wife) | Filipino (husband) - Filipino (wife) | Settlement of estate | Divorce not recognized | Dominican Republic |
| Noveras vs. Noveras | Filipino (husband) - Filipino (wife) | American (husband) - American (wife) | Petition for judicial separation of property | Divorce not proven but petition granted | USA |
| Ando vs. Department of Foreign Affairs | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for declaratory relief | Divorce not proven but incorrect action so not remanded | Japan |

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|---|---|---|---|---|---|
| Medina vs. Koike | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for judicial recognition of divorce and declaration of capacity to remarry | Case referred to the CA | Japan |
| Sarto y Misalucha vs. People | Filipino (husband) - Filipino (wife) | Filipino (husband) - American (wife) | Complaint for bigamy | Divorce not recognized | USA |
| Republic vs. Cote | Filipino (husband) - Filipino (wife) | American (husband) - Filipino (wife) | Petition for recognition of foreign judgment | Divorce recognized | USA |
| Republic vs. Manalo | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for cancellation of entry of marriage | Case remanded | Japan |
| Racho vs. Tanaka | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for judicial determination and declaration of capacity to marry | Divorce recognized | Japan |
| Morisono vs. Morisono | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for recognition of foreign divorce decree | Case remanded | Japan |
| Juego-Sakai vs. Republic | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for judicial recognition of foreign judgment | Case remanded | Japan |

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|---|---|---|---|---|---|
| Nullada vs. Civil Registrar | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for registration and/or recognition of foreign divorce decree and cancellation of entry of marriage | Case remanded | Japan |
| Arreza vs. Toyo | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for judicial recognition of foreign divorce and declaration of capacity to remarry | Case referred to the CA | Japan |
| Moraña vs. Republic | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for recognition of the Divorce Report. | Case remanded | Japan |
| Galapon vs. Republic | Korean (husband) - Filipino (wife) | Korean (husband) - Filipino (wife) | Petition for the Judicial Recognition of a Foreign Divorce | Divorce recognized | Korea |
| Kondo vs. Civil Registrar General | Japanese (husband) - Filipino (wife) | Japanese (husband) - Filipino (wife) | Petition for judicial recognition of the divorce decree | Case remanded | Japan |

## SUMMARY OF DATA:

There are a total of 35 cases decided regarding the recognition of divorce. Out of these 35 cases, 23 were decided under the Family Code. Only two cases were decided En Banc: one decided before the Family Code and one decided under the Family Code.

Number of cases according to place of divorce (out of 35 total cases)

1. USA: 16
2. Japan: 11
3. Dominican Republic: 3
4. Canada: 1
5. Australia: 1
6. Germany: 1
7. France: 1
8. Korea: 1

Number of cases according to place of divorce (out of 23 cases under FC)

1. Japan: 11
2. USA: 7
3. Dominican Republic: 2
4. Canada: 1
5. Australia: 1
6. Korea: 1

Number of cases according to result (out of total number cases):

1. Case remanded: 13
2. Divorce not recognized: 10
3. Divorce recognized: 6
4. Cases referred to the CA: 2
5. Divorce recognized but still remanded on issue custody: 2
6. Divorce not proven but court granted the petition: 1
7. Divorce not proven but incorrect action so no remand: 1

Number of cases according to result (out of cases under FC):

1. Case remanded: 10
2. Divorce recognized: 4
3. Divorce not recognized: 3

4. Cases referred to the CA: 2
5. Divorce recognized but still remanded on issue custody: 2
6. Divorce not proven but court granted the petition: 1
7. Divorce not proven but incorrect action so no remand: 1

Before *Van Dorn*, all cases that reached the Supreme Court did not result in the recognition of divorce. The Supreme Court's rulings were primarily hinged on the lack of good faith in establishing domicile in another country. From *Van Dorn* onwards, the Court focused more on the determination of the citizenship of the parties at the time they obtained the divorce. Finally, it was in *Garcia vs. Recio* wherein the Court also required that there must be both proof of divorce and proof of foreign law.

The two cases decided under the Family Code wherein divorce was not recognized at all and no remand was ordered were Republic vs. Orbecido III and Perez vs. Court of Appeals. In Republic vs. Orbecido III, the Court set aside the decision of the trial court declaring private respondent Cipriano Orbecido III capacitated to remarry because there was no evidence on record that would prove the fact of divorce and the divorce law applicable; however, unlike subsequent decisions, the fallo contained no pronouncement as to the remand to the trial court for respondent to submit such evidence. In Perez vs. Court of Appeals, the divorce was not recognized as it was proven that both the husband and the wife were Filipinos at the time of the divorce.

Cases remanded to the trial court or referred to the Court of Appeals are those with insufficient evidence to prove the divorce but the Supreme Court gave the parties a chance to present further evidence by relaxing the rules of procedure and giving more weight to the ends of substantial justice.

Out of the six cases decided under the Family Code wherein divorce was recognized, three of them originated from a petition for the recognition of divorce and one was a complaint for bigamy. In the remaining two, divorce was recognized but still resulted in a remand for the determination of the issue of custody.

# Chapter 3:
# Procedure in Court for Recognition and/or Enforcement of Foreign Divorce

## A. Summary of Procedure

When an alien or naturalized alien spouse obtains a valid divorce abroad, this does not necessarily mean that both spouses are automatically capacitated to remarry upon the issuance of the divorce decree by the foreign tribunal. From the time of issuance, the divorce decree is not yet recognized by the Republic of the Philippines, and the civil status of both parties, in the records of the Philippines, is still considered as married. The divorce decree issued in the foreign court must still undergo the process of having that decree recognized by the Court.

The issue of whether the divorce was properly issued by the Foreign Court will not be relitigated by the Philippine Courts. Philippine courts are incompetent to substitute their judgment on how a case was decided under a foreign law.[87] For the foreign divorce decree to be recognized in the Philippines, the party is only required to prove the divorce decree as a fact and demonstrate its conformity with the foreign law allowing it.[88] Philippine courts are only limited to the question of whether to extend the effect of a foreign judgment in the Philippines.[89] For this purpose, they 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 other party, collusion, fraud, or clear mistake of law or fact.

The Judicial Recognition and/or Enforcement of Foreign Divorce is initiated through a special proceeding under Rule 108 as stated by the Supreme Court in Corpuz v. Sto. Tomas. A separate Petition for Judicial Recognition independent of the Special Proceeding under Rule 108 for Cancellation or Correction of Entries in the Civil Registry is not necessary. As the Court has stated, "the object of special proceedings (such as that in Rule 108 of the Rules

[87] Fujiki v. Marinay, G.R. No. 196049, June 26, 2013.
[88] Republic vs. Orbecido III, G.R. No. 154380. October 5, 2005.
[89] Fujiki v. Marinay, G.R. No. 196049, June 26, 2013.

of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

After the court issues a judgment recognizing the divorce decree, there is a separate administrative process of having said judgment annotated to the local civil registry in order to change the civil status of the pleading party. Once the judgment is issued, it does not automatically revert the civil status of the party to single and it does not automatically capacitate the party to remarry. The judgment must first be furnished to the Local Civil Registry of the place where the marriage was recorded, the Local Civil Registry of Manila, and the Philippine Statistics Office.

## B. Checklist Before Going to Court

In order to facilitate the filing of the case in court, the client must furnish his/her attorney with the following list of documents in the original. It is important to note that current rules of evidence allow the submission of foreign issued documents obtained from countries that are signatories to the Apostille convention to be apostilled only. Once the documents are apostilled, there is no need for these documents to be authenticated by the Philippine embassy once they are issued.

Checklist of documents for Recognition and/or Enforcement of Divorce:

1. **CHRONOLOGY OF EVENTS.** The client must provide a Chronology of events in the filing of the divorce decree. They can provide a brief outline of how the divorce was obtained.

2. **FINAL JUDGMENT OF DIVORCE.** The Final judgment of divorce must be duly authenticated by the Philippine Embassy in the country where the divorce decree/judgment was issued or apostilled. If the document is not in English, it must be accompanied by an official English translation. All other supporting documents must likewise be translated in English.

3. **DOCUMENTS RELATED TO DIVORCE DECREE.** All the important pleadings and documents in connection with the divorce like petition, etc. must also be duly authenticated or apostilled, as determined by the counsel of the petitioner.

4. **CERTIFICATION OF FOREIGN LAWYER (IF AVAILABLE).** Certificate issued by the foreign lawyer filing for the divorce stating that he/she complied with the law and procedure in securing for the divorce, which will be authenticated by the Philippine Embassy in the country where the divorce decree was issued or apostilled.

5. **AUTHENTICATED OR APOSTILLED DIVORCE LAW.** Divorce law is proven through the submission of either of the following:
    a. official publication of the law on divorce or
    b. copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.
    c. certificate or its equivalent shall be in the form prescribed by the applicable treaty or convention subject to reciprocity.

    Since this is sometimes challenging to get, what we do is require the petitioner to get a lawyer in the country where the divorce was obtained to certify or execute an affidavit that the divorce was obtained according to their law and attached a copy of the law and its English translation (if the law is in another language.) Most regional trial courts accept this as proof of the divorce law.

6. **MARRIAGE CERTIFICATE.** If marriage is celebrated abroad then the marriage certificate must be authenticated by the Philippine Embassy in the country where the marriage was celebrated, apostilled or the NSO registration of marriage must be presented.

7. **BIRTH CERTIFICATE OF CHILDREN, IF ANY**.If the birth was recorded abroad, then the certificate must be authenticated by the Philippine Embassy in the country where the birth was registered or the NSO registration of the birth must be presented.

8. **PROOF OF CITIZENSHIP.** Proof of citizenship as an alien such as passport, or other documents showing citizenship of another country

9. **PROOF OF NATURALISATION.** Proof of naturalisation is needed if the client is a former Filipino and obtained a divorce when he/she became a naturalised citizen of another country.

10. **TITLES TO PROPERTY.** If the spouses have common properties in the Philippines, then the client needs to submit titles to these properties such as tax declarations or transfer certificate titles in order for the Court to settle the issue of distribution and ownership.

11. **DIVORCE CERTIFICATE.** For purposes of registration with the Manila Local Civil Registry, as part of administrative proceedings once divorce decree is recognized by the court:

    a. Divorce certificate issued by the respective country's Embassy in the Philippines
    b. Authentication by the Department of Foreign Affairs or Apostilled

Before the filing of the case in court, the following procedure under Rule 108 must be taken into consideration otherwise the case will be dismissed.

1. Verified petition must be filed with the RTC of the province where the corresponding civil registry is located (Section 1, Rule 108)

2. The civil registrar and all persons who have or claim any interest must be made parties to the proceedings (Section 3, Rule 108)

3. The time and place for hearing must be published in a newspaper of general circulation once a week for three (3) consecutive weeks (Section 4, Rule 108)

## C. Process for Recognition and/or Enforcement of Divorce

### *1. General Overview*

The entire process for the recognition and/or enforcement of divorce generally follows a series of seven steps. The entire process in Court usually takes about one year or more if all the necessary documents for the filing of the petition are in order.

This one year period excludes the time where the judgment issued by the Court has to be annotated in the Local Civil Registry and the Philippine Statistics Authority/Civil Registrar General. The annotation is an entirely separate administrative process from the court procedure and takes around four to six months before the client can receive a copy of his/her annotated marriage certificate indicating that a valid divorce decree has been obtained.

The estimated time stated above presupposes that no appeal has been filed by the Office of the Solicitor General. If the Regional Trial Court issues a judgment recognizing the validity of the divorce decree, this does not signal the finality of the court process. The decision becomes final if the court receives proof that none of the parties filed a motion for reconsideration or appeal.

If within 15 days from judgment, there is an appeal filed by the Office of the Solicitor General, then the case will be delayed as the client and his/her lawyer will have to prepare for the appeal.

### *2. The Petition*

The first step in the process is the filing of the Petition in Court. Once the case has been filed, the judge will set the date for the initial hearing and will cause the said order to be published in a newspaper of general circulation.

During this interim period of publication, any interested party can file his/her opposition to the petition in court.

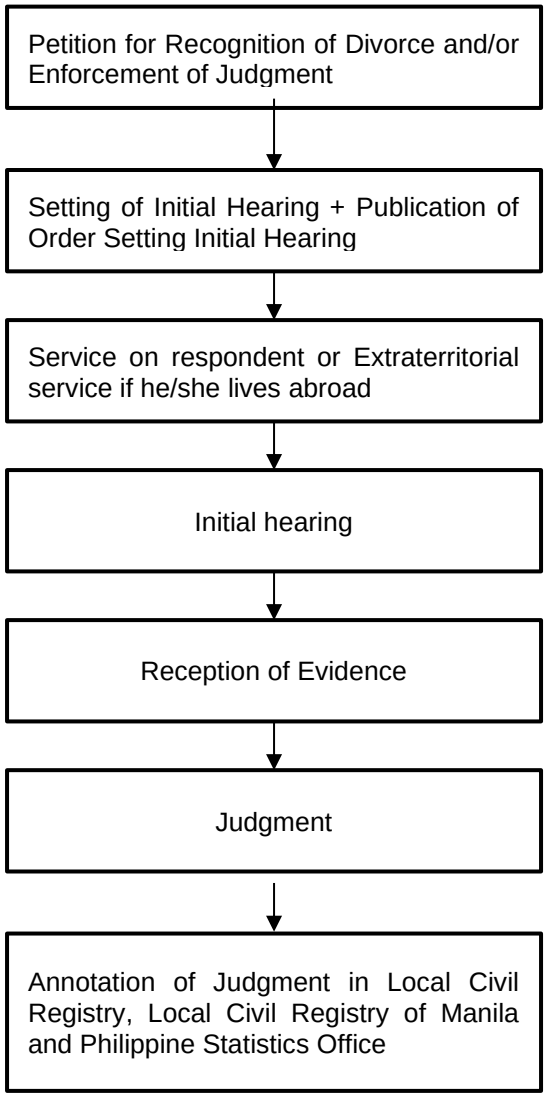
If the other spouse lives abroad, the court may order for an extraterritorial service with the assistance of the Department of Foreign Affairs and the appropriate Philippine embassy in order to serve the opposing spouse a copy of the petition. If the other spouse is just residing in the Philippines, reasonable notice of the petition shall be given to him/her either through personal service, registered mail, or through other forms of service provided in the Rules of Court.

Aside from the respondent spouse, other parties to the case are the Office of the Solicitor General, the prosecutor, the Local Civil Registrar and the Civil Registrar General. The Solicitor General, as a rule, authorizes the local prosecutor to appear on its behalf, on the case.

There will be an initial hearing to be attended by the pleading party, his/her counsel, the public prosecutor, and the respondent. If the respondent does not appear, he/she will be declared in default and the case will proceed.

After the initial hearing, the next stage is the reception of evidence where the pleading party will present his evidence and his testimony as to the divorce decree. At this stage, the pleading party and all his/her other witnesses will have to testify in court, have their Judicial Affidavits presented, and will be cross-examined by the public prosecutor. After all the evidence has been presented, and after it is formally offered in the court, the judge will issue a judgment either granting or denying the petition. If the judgment is granted and there is no appeal filed by the opposing spouse or the Office of the Solicitor General, then the judgment shall be final and is ready for annotation at the Local Civil Registry and Philippine Statistics Authority/Civil Registrar General.

The flowchart below will illustrate the entire process for recognition and/or enforcement of divorce.




## *3. Case Studies*

Since not all parties are situated in the same position, there will be some differences in how the case will proceed for some clients. Sample case studies will be presented in this section to show the differences in the process for each situation. The case studies presented in this section will also provide for more detailed information on what will happen during each stage and the documents needed.

### a. Case study 1: Petitioner is a Filipino or Petitioner is an Alien

The same process usually follows when the petitioner is the Filipino spouse or the Alien spouse. This situation presupposes that there is no dispute as to properties.

The procedure to be illustrated applies to the following cases:

**Case 1-A**
Time of Marriage: P (Filipino) + R(Filipino)
Time of Divorce: P (Filipino) + R(Naturalized Alien)

**Case 1-B**
Time of marriage: P(Filipino) + R(Alien)
Time of divorce: P(Filipino) + R(Alien)

**Case 1-C**
Time of marriage: P(Alien) + R(Filipino)
Time of divorce: P(Alien) + R(Filipino)

*Note: P stands for petitioner and R stands for respondent. This symbol will be followed in the current and subsequent illustrations in this book.*

***Case Study 1 Procedure***

1. File Petition for Judicial Recognition and/or Enforcement of a Foreign Judgment of Divorce under Rule 108. Attachments might include:

    a. Certificate of Marriage
    b. Birth Certificate of children, if any
    c. Divorce Order of Foreign Court and other certifications related to the Divorce. *Note: Include English translation of Divorce Order if it is in a foreign language*
    d. Relevant Divorce Law of the Foreign Country notarized and authenticated by a notary public in the Foreign Country and authenticated or apostilled by the relevant Foreign Embassy.

e. Note: Local civil registrar and the Philippine Statistics Authority should be included as party in the proceeding

2. Setting of Initial Hearing and the Publication of Order for Initial Hearing/

    a. Any interested party may appear and show cause why petition should not be granted

3. Service shall be made on the respondent. If living abroad, there is a need for extraterritorial service. The following documents are required in Court for the transmittal to DFA for extra-territorial service:

    a. Certified True Copy of Petition with annexes
    b. Certified True Copy of Order setting initial hearing
    c. Certified True Copy of Order mandating extra-territorial service by the DFA

4. Initial Hearing

    a. There will be an admission of exhibits for purposes of complying with jurisdictional requirements, to wit:

        i. Petition; Signature of Petitioner
        ii. Initial Order of Hearing; Notice to Local Civil Registrar; Notice to petitioner's counsel; Notice to the Office of the Solicitor General; Notice to the Philippine Statistics Office
        iii. Compliance; Registry Receipt to the Office of the Solicitor General; Personal Receipt by the Office of the City Prosecutor
        iv. Notice of Appearance from the Office of the Solicitor General; Letter of Authority from OSG
        v. Affidavit of publication; Relevant Newspaper clippings

    b. If respondent does not attend or is not represented, he will be declared in default

5. Reception of Evidence

    a. Petitioner will be presented on direct examination by his counsel and then for cross-examination by the prosecutor
    b. Judicial Affidavit of Petitioner will be submitted. No other witnesses required to testify
    c. Evidence will be marked and submitted
    d. Submission of Formal Offer of Evidence which might include the following:
        i. Petition; Signature of Petitioner
        ii. Initial Order of Hearing; Notice to Local Civil Registrar; Notice to petitioner's counsel; Notice to the Office of the Solicitor General; Notice to the Philippine Statistics Office
        iii. Compliance; Registry Receipt to the Office of the Solicitor General; Personal Receipt by the Office of the City Prosecutor
        iv. Notice of Appearance from the Office of the Solicitor General; Letter of Authority from OSG
        v. Affidavit of publication; Relevant Newspaper clippings
        vi. Judicial Affidavit of Petitioner; signature of petitioner
        vii. Marriage Certificate
        viii. Birth certificate of children, if any
        ix. Divorce Order; Divorce Certificate; and other related Divorce documents apostilled or authenticated
        x. Pertinent provisions of the law; authentication from the Philippine Embassy; Apostille
6. Judgment

**b. Case study 2: Petitioner is former Filipino and is now a naturalized alien**

For this case, there is a caveat in the judgment of the Regional Trial Court as the Philippine court cannot resolve the issue of whether the former Filipino and now naturalised alien is capacitated to remarry under the foreign law. Since the pleading party is now a naturalised alien, his/her capacity to remarry shall be governed by his/her foreign laws and not by Philippine law.

The procedure to be illustrated applies to the following cases:

**Case 2:**
Time of marriage: P (Filipina) + R (Alien)
Time of Divorce: P (Naturalized Alien) + R(Alien)

*Note: the items in bold and italicized are the additional documents and/or evidence not included in the procedure for case study 1.*

***Case study 2 procedure***

1. File Petition for Judicial Recognition and/or Enforcement of Foreign Judgment
    a. Implead Civil Registrar General and Local Civil Registrar
    b. Attachments:
        i. Marriage Certificate
        ii. Birth Certificate of children, if any
        ***iii. Certificate of Naturalisation***
        iv. Divorce Order of Foreign Court and other certifications related to the Divorce. Note: Include English translation of Divorce Order if it is in a foreign language
        v. Relevant Divorce Law of the Foreign Country notarized and authenticated by a notary public in the Foreign Country and authenticated or apostilled by the relevant Foreign Embassy.
        vi. Note: Local civil registrar and the Philippine Statistics Authority should be included as party in the proceeding

2. Setting of Initial Hearing and the Publication of Order for Initial Hearing

    a. Any interested party may appear and show cause why petition should not be granted

3. Service shall be made on the respondent. If living abroad, there is a need for extraterritorial service. The following documents are required in Court for the transmittal to DFA for extra-territorial service:

a. Certified True Copy of Petition with annexes
b. Certified True Copy of Order setting initial hearing
c. Certified True Copy of Order mandating extra-territorial service by the DFA

4. Initial Hearing

a. There will be an admission of exhibits for purposes of complying with jurisdictional requirements as detailed in Case Study 1.
b. If respondent does not attend or is not represented, he will be declared in default

5. Reception of Evidence

a. Petitioner will be presented on direct examination by his counsel and then for cross-examination by the Prosecutor
b. Judicial Affidavit of Petitioner will be submitted. No other witnesses required to testify
c. Evidence will be marked and submitted
d. Submission of Formal Offer of Evidence which might include the following:
    i. Petition; Signature of Petitioner
    ii. Initial Order of Hearing; Notice to Cebu City Local Civil Registrar; Notice to petitioner's counsel; Notice to the Office of the Solicitor General; Notice to the Philippine Statistics Office
    iii. Compliance; Registry Receipt to the Office of the Solicitor General; Personal Receipt by the Office of the Cebu City Prosecutor
    iv. Notice of Appearance from the Office of the Solicitor General; Letter of Authority from OSG
    v. Affidavit of publication; Relevant Newspaper clippings
    vi. Judicial Affidavit of Petitioner; signature
    vii. Marriage Certificate
    ***viii. Certificate of Naturalisation; authentication from the Philippine Embassy; Apostille***
    ix. Divorce Petition; Notice from the court;

authentication from the Philippine Embassy; Apostille

x. General Form of Order -Ancillary Relief; authentication from the Philippine Embassy; Apostille
xi. Amended Order; authentication from the Philippine Embassy; Apostille
xii. Final Decree of Divorce; authentication from the Philippine Embassy; Apostille
xiii. Pertinent provisions of the law; Statutory Declaration of Solicitor ; authentication from the Philippine Embassy; Apostille

6. Judgment

a. Judgment is qualified to the extent that the Court cannot grant the petitioner's prayer that he/she be declared capacitated to marry. Since petitioner is now a naturalised alien, her capacity to remarry is governed by the foreign law where he/she was naturalised and not Philippine law.

### c. Case study 3: Petitioner is an Alien with Properties in the Philippines

The process becomes more complicated when the spouses have properties together in the Philippines. The pleading party will have to submit proof of titles to these parties, and will need to present additional witnesses in court in order to strengthen his/her claim over the properties.

It should be noted that under the Constitution, aliens are incapacitated to own land with very limited exceptions such as if the said land was acquired through hereditary succession[90] or if the alien was a natural born citizen who has his Philippine citizenship.[91] If the properties in dispute consist of land properties located in the Philippines, it is unlikely the court will distribute it in favor of the alien spouse even if the said alien spouse solely used his financial resources to finance the purchase of the said land properties.

The procedure to be illustrated applies to the following cases:

[90] Consti, art. XII, sec. 7.
[91] Consti, art. XII, sec. 8.

**Case 3:**
Time of Marriage: P (Alien) + R (Filipino)
Time of divorce: P(Alien) + R (Filipino)

*Note: the items in bold and italicized are the additional documents and/or evidence not included in the procedure for case study 1.*

***Case study 3 procedure***

1. File Petition for Judicial Recognition and/or Enforcement of a Foreign Judgment of Divorce under Rule 108. Attachments include:

    a. Certificate of Marriage
    b. Birth Certificate of children, if any
    c. Divorce Order of Foreign Court and other certifications related to the Divorce. Note: Include English translation of Divorce Order if it is in a foreign language
    d. Relevant Divorce Law of the Foreign Country notarized and authenticated by a notary public in the Foreign Country and authenticated or apostilled by the relevant Foreign Embassy.
    ***e. Tax declarations and titles of respective properties in the Philippines owned by the spouses***
    f. Note: Local civil registrar and the Philippine Statistics Authority should be included as party in the proceeding

        Note: It is advised that petition have 3 causes of action namely:

        i. Recognition of Divorce
        ii. Dissolution and Distribution of Absolute Community of Property
        iii. Administration of Absolute Community of Property

2. Setting of Initial Hearing and the Publication of Order for Initial Hearing

    a. Any interested party may appear and show cause why petition should not be granted

3. Service shall be made on the respondent. If living abroad, there is a need for extraterritorial service. The following documents are required in Court for the transmittal to DFA for extra-territorial service:

    a. Certified True Copy of Petition with annexes
    b. Certified True Copy of Order setting initial hearing
    c. Certified True Copy of Order mandating extra-territorial service by the DFA

4. Initial Hearing

    a. There will be an admission of exhibits for purposes of complying with jurisdictional requirements
    b. If respondent does not attend or is not represented, he will be declared in default

5. Reception of Evidence

    a. Petitioner and his/her witnesses will be presented on direct examination by his counsel and then for cross-examination by the Prosecutor
    b. Judicial Affidavit of Petitioner will be submitted.
    ***c. Judicial Affidavit of Petitioner's witnesses will be submitted.***
    d. Evidence will be marked and submitted
    e. Submission of Formal Offer of Evidence might include the following:
        i. Petition; Signature of Petitioner
        ii. Initial Order of Hearing; Notice to Cebu City Local Civil Registrar; Notice to petitioner's counsel; Notice to respondent; Notice to Petitioner Notice to the Office of the Solicitor General; Notice to the Philippine Statistics Office
        iii. Affidavit of publication; Relevant Newspaper clippings
        iv. Notice of Appearance from the Office of the Solicitor General; Letter of Authority from OSG
        v. Marriage Certificate
        ***vi. Relevant Transfer Certificate of Title (TCTs) and Tax Declarations of the properties owned by the***

***spouses***

vii. Apostilled copy of the divorce decision; English translation of divorce decision

viii. Certified copy of registration of the divorce decision; English translation of certified copy of registration of the divorce decision

ix. Pertinent provisions of the law; Statutory Declaration of Solicitor; ; authentication from the Philippine Embassy; Apostille

6. Judgment

**d. Case study 4: Japanese Divorce Reports**

Many of the Japanese issued divorce decrees are peculiar in a way that they are not issued by the courts of Japan but by an administrative body. However, the Supreme Court has already ruled on the validity of such divorce decrees in the case of *Moraña vs. Republic*[92] where it was ruled that:

> Records show that the Divorce Report is what the Government of Japan issued to petitioner and her husband when they applied for divorce. There was no "divorce judgment" to speak of because the divorce proceeding was not coursed through Japanese courts but through the office of the Mayor of Fukuyama City in Hiroshima Prefecture, Japan. In any event, since the Divorce Report was issued by the office of the Mayor of Fukuyama City, the same is deemed an act of an official body in Japan. By whatever name it is called, the Divorce Report is clearly the equivalent of the "Divorce Decree" in Japan, hence, the best evidence of the fact of divorce obtained by petitioner and her former husband.

However, in the said case, the Court remanded the case to the lower courts as the parties failed to prove the Japanese law on divorce. This case study will show the specific documents needed in order to have the said Divorce Reports recognized under Philippine laws.

[92] Moraña vs. Republic, G.R. No. 227605, December 5, 2019

The procedure to be illustrated applies to the following cases:

**Case 4-A:**
Time of Marriage: P (Filipino) + R (Japanese)
Time of Divorce: P (Filipino) + R(Japanese)

**Case 4-A:**
Time of Marriage: P (Japanese) + R (Filipino)
Time of Divorce: P (Japanese) + R(Filipino)

*Note: the items in bold and italicized are the additional documents and/or evidence not included in the procedure for case study 1.*

***Case study 4 procedure***

1. File Petition for Judicial Recognition and/or Enforcement of a Foreign Judgment of Divorce under Rule 108. Attachments include:

    a. Certificate of Marriage
    b. Birth Certificate of children, if any
    ***c. Application for divorce after separation by license filed with Local Civil Registry in Japan***
    ***d. Family Registry certificate showing that the divorce is recognized***
    e. Other certifications related to the Divorce. Note: Include English translation of Divorce Order and certifications if it is in a foreign language
    f. Relevant Divorce Law of the Japan notarized and authenticated by a notary public in Japanese and authenticated or apostilled by the relevant Foreign Embassy.
    g. Note: Local civil registrar and the Philippine Statistics Authority should be included as party in the proceeding

2. Setting of Initial Hearing and the Publication of Order for Initial Hearing

    a. Any interested party may appear and show cause why petition should not be granted

3. Service shall be made on the respondent. If living abroad, there is a

need for extraterritorial service. The following documents are required in Court for the transmittal to DFA for extra-territorial service:

a. Certified True Copy of Petition with annexes
b. Certified True Copy of Order setting initial hearing
c. Certified True Copy of Order mandating extra-territorial service by the DFA

4. Initial Hearing

a. There will be an admission of exhibits for purposes of complying with jurisdictional requirements
b. If respondent does not attend or is not represented, he will be declared in default

5. Reception of Evidence

a. Petitioner and his/her witnesses will be presented for direct examination by his counsel and for cross-examination by the Prosecutor
b. Judicial Affidavit of Petitioner's witnesses will be submitted.
c. Evidence will be marked and submitted
d. Submission of Formal Offer of Evidence which might include the following:
    i. Petition; Signature of Petitioner
    ii. Initial Order of Hearing; Notice to Local Civil Registrar; Notice to petitioner's counsel; Notice to respondent; Notice to Petitioner Notice to the Office of the Solicitor General; Notice to the Philippine Statistics Office
    iii. Affidavit of publication; Relevant Newspaper clippings
    iv. Notice of Appearance from the Office of the Solicitor General; Letter of Authority from OSG
    v. Marriage Certificate
    ***vi. Report of Divorce in Japanese with notarial certificate; English translation of report of divorce***
    ***vii. Family register in Japanese; Family register with English Translation; authentication from***

***Philippine Embassy or apostille***

***viii. Civil Code of Japan; Notarial Certificate by Tokyo Legal Affairs Bureau; Apostille; Certificate of Acceptance of Report of Divorce English Translation; Certificate of Acceptance of Report of Japanese***

ix. Judicial affidavit of petitioner; signature of petitioner

6. Judgment

## D. Proving the Foreign Divorce Decree and Foreign Law on Divorce

Despite the Supreme Court issuing rulings recognizing the capacity of the Filipino spouse to remarry due to a subsequently issued divorce decree in a foreign country, numerous decisions have been issued remanding the case to the lower courts due to the failure of the petitioner to properly prove the foreign divorce decree and/or the relevant foreign law on divorce. As stated by the Supreme Court, Philippine courts do not take judicial notice of foreign judgments and laws. They must be proven as fact under our rules on evidence.[93]

In petitions for the recognition, the Supreme Court has stated that it is indispensable that the petitioner prove not only the foreign judgment granting the divorce, but also the alien spouse's national law.[94] Two documents must be proved in order to ensure that the petition will be granted and these are (1) the divorce decree (2) alien spouse's national law on divorce. The common question that arises among litigants and lawyers is how to properly prove both of these documents in court.

The applicable rules in proving the foreign divorce decree and the foreign divorce law are laid down in Rule 132, Sections 24 and 25 of the Rules of Court. Under the Rules of Evidence, as amended by A.M. No. 19-08-15-SC, it is provided:

**SECTION 24. Proof of Official Record.** — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any

[93] Arreza v. Toyo, G.R. No. 213198, July 1, 2019.
[94] Arreza v. Toyo, G.R. No. 213198, July 1, 2019.

purpose, may be evidenced by an **official publication thereof** or by a **copy attested by the officer having the legal custody of the record, or by his or her deputy**, and accompanied, if the record is not kept in the Philippines, **with a certificate that such officer has the custody.**

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the **certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity** granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the **certificate may be made by a secretary of the embassy or legation, consul general, consul, vice- consul, or consular agent or by any officer in the foreign service** of the Philippines stationed in the foreign country in which the record is kept, and **authenticated by the seal of his or her office.**

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being prima facie evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality. (24a)

**SECTION 25. What Attestation of Copy Must State**. — Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he or she be the clerk of a court having a seal, under the seal of such court. (25a)

A foreign judgment of divorce and the foreign law on divorce are considered public documents under the Rules of Evidence. They may either be considered as "the written official acts, or records of the sovereign

authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;" under Section 19 (a), Rule 132, or they may be "documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of source" under Section 19(c), Rule 132.

The following are three ways by which the foreign divorce judgment and foreign divorce law may be proved in court:

1. official publication;
2. copy attested by the officer having the legal custody of the record, or by his or her deputy and accompanied by:
    a. certificate that such officer has custody
    b. authenticated by the seal of his or her office;
3. certificate or its equivalent shall be in the form prescribed by the applicable treaty or convention subject to reciprocity.

The third option was introduced by the amended rules which came into effect in May 2020. The particular treaty referred to in this provision is the Apostille Convention of which the Philippines is now a part of. The purpose of the Convention was to abolish the traditional requirement of legalisation, replacing it with the issuance of a single Apostille certificate by a Competent Authority in the place where the document originates.[95] Due to the amendments, parties now have the option of having their foreign divorce judgments and foreign divorce laws authenticated through the issuance of an Apostille certificate by a competent authority in the foreign country. Prior to this amendment, the authentication of a public document is through an Authentication Certificate ("red ribbon") issued by the Philippine embassy. Now, parties can either choose to authenticate the public documents through the issuance of an authentication certificate ("red ribbon") or through an apostille certificate. However, when the country that issued the foreign divorce judgment is not a party to the Apostille convention, the parties can only authenticate the foreign judgment and the foreign law through an authentication certificate ("red ribbon") issued by the Philippine embassy.

For proving the foreign divorce judgment, it is recommended that the official publication of the foreign divorce judgment be presented in court. The said foreign judgment may either be authenticated through the issuance of an

[95] HCCH, https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille. (last visited 24 November 2020).

authentication certification ("red ribbon") by the Philippine embassy or it may be apostilled by a competent authority in the country where it was issued. For proving the applicable foreign divorce law, it is recommended that a copy of it be obtained as well as a translation thereof. The copy and the translation should be notarized by a lawyer or government official abroad and the said copy and seal should be either authenticated through an authentication certificate ("red ribbon") by the Philippine embassy or it may be apostilled by a competent authority in the country where it was issued.

## E. Matrix: Validity of Different Types of Divorce

The following matrix will help determine whether the foreign divorce obtained will be valid under the Philippines. The determining point in knowing whether the divorce obtained is valid or not, is the citizenship of the parties at the time when the divorce is obtained. If both are still Filipinos when the foreign divorce is obtained, then it will not be recognized in the Philippines. The important rule to follow is that Filipinos are not allowed to obtain any divorce. The only exception to this rule is when their Spouse are Aliens, whether naturalised or not.

| Time of marriage | Time of Divorce | Place of marriage | Recognition of Divorce |
|---|---|---|---|
| Pet (F) + Resp (F) | Pet (F) + Resp (F) | Philippines | Not Valid |
| Pet (F) + Resp (F) | Pet (F) + Resp (F) | Abroad | Not Valid |
| Pet (F) + Resp (F) | Pet (F) + Resp (naturalised A) | Philippines | Valid |
| Pet (F) + Resp (F) | Pet (F) + Resp (naturalised A) | Abroad | Valid |
| Pet (A) + Resp (F) | Pet (naturalised A) | Philippines | Valid |

| | | | |
|---|---|---|---|
| | + Resp (F) | | |
| Pet (A) + Resp (F) | Pet (naturalised A) + Resp (F) | Abroad | Valid |
| Pet (A) + Resp (F) | Pet (A) + Resp (F) | Philippines | Valid |
| Pet (A) + Resp (F) | Pet (A) + Resp (F) | Abroad | Valid |
| Pet (A) + Resp (A) | Pet (A) + Resp (A) | Philippines | Valid |
| Pet (A) + Resp (A) | Pet (A) + Resp (A) | Abroad | Valid |
| Pet (F) + Resp (A) | Pet (F) + Resp (A) | Philippines | Valid |
| Pet (F) + Resp (A) | Pet (F) + Resp (A) | Abroad | Valid |

# Chapter 4:
# Annotation with the Civil Registrar

## A. Annotation of Judgment in Local Civil Registry and Philippine Statistics Office

After the judgment from the court is obtained, there is a separate process of having the judgment annotated in the Local Civil Registry and the Philippine Statistics Authority/Civil Registrar General.

Without this annotation, the marriage certificate to be obtained by the client for any future legal purpose will still indicate that he/she is still married to his/her former spouse. The records in the Philippines will still specify his/her status as married and will not indicate in the said marriage certificate that a divorce decree has been obtained.

The annotation of the judgment recognizing the foreign divorce decree entails a four-step process. The first step is securing the documents from the court for the annotation of the decision. It will take about a few days to a week to get all the documents required like the certified true copy of the judgment, the petition, and the certificate of the finality of the decision.

The second step is the annotation of the judgment in the Local Civil Registry where the judgment was rendered by the court and where the marriage was celebrated. Remember that the case can only be filed in the place where the marriage is recorded, thus, only one civil registry is involved.

It may take one week to two weeks to finish this step depending on the availability of the petitioner, the court, the documents to be submitted, and other factors.

The third step is the annotation of the judgment in the Local Civil Registry of Manila.

The fourth step is the annotation of the judgment in the Philippine

Statistics Authority which is located in Quezon City.

**FIRST STEP:** Getting the documents from the court.

It is advisable that the following documents be secured from the court which rendered the favorable decision:

1. A certified true copy of the Petition
2. A certified true copy of the Judgment
3. A certified true copy of the Entry of Judgment or Certificate of Finality.
4. A certified true copy of the Foreign Divorce

**SECOND STEP:** Annotation of judgment in the Local Civil Registry (Located in the province where marriage certificate is recorded)

It is advisable that the following documents be submitted to the Local Civil Registry:

1. A certified true copy of the Entry of Judgment or Certificate of Finality
2. Certified True Copy of Marriage Certificate
3. Certified True Copy of the Petition
4. Certified True Copy of Decision
5. Certified True Copy of the Foreign Divorce

**THIRD STEP:** Annotation of judgment in the Local Civil Registry of Manila

It is advisable that the following documents be submitted to the Local Civil Registry of Manila:

1. Certified True Copy of Final Divorce Decree
2. Certified True Copy of Marriage Certificate with annotation from LCR
3. Certified True Copy of Marriage Certificate without annotation from LCR
4. Certified True Copy of Petition
5. Certified True Copy of Decision
6. Certified True Copy of Certificate of Finality
7. Endorsement Letter from LCR
8. Registration fee P 2,450.00

**FOURTH STEP:** Annotation of judgment in Philippine Statistics Office (Located in Quezon City)

It is advisable that the following documents be submitted to the Philippine Statistics Authority:

1. Cover Letter - Request for Annotation Re Court Decree Nullity of Marriage
2. In case of personal processing, authorization letter specifically naming person processing the papers with photocopy of valid ID of petitioner
3. Original Certificate of Marriage with annotation issued by the Local Civil Registrar
4. Original First Endorsement issued by Local Civil Registrar
5. Original Certificate of Marriage without annotation issued by the Local Civil Registrar
6. Original Certificate of Registration issued by Local Civil Registrar
7. Original Certificate of Authenticity issued by Local Civil Registrar
8. Certified True Copy of Decree of Judgment/Certificate of Finality.
9. Certified True Copy of Judgment
10. Certified True Copy of Petition.

Note that the client/lawyer can subsequently request online for the marriage certificate with the annotation that it has been declared null and void by virtue of the foreign divorce. The PSA no longer accepts requests to personally mail a copy of the requested marriage certificate.

# Chapter 5:
# Foreign Law on Recognition of Divorce

## A. International Treaties on Divorce[96]

It is unavoidable that marriages will be entered into by parties having different nationalities and whose status is thereby governed by different laws. There has been movement in the area of international law to simplify the process of recognizing divorces obtained in a country different from where the divorce decree is sought to be effected. The Hague Convention on the Recognition of Divorce and Legal Separation and the European Divorce Law Pact are just some of the international treaties entered into by different countries to help expedite the procedure for the recognition of foreign divorce.

The international treaties mentioned, unfortunately, have no effect on the civil status of Filipinos who obtained divorce decrees abroad and in no way helps facilitate nor simplify the process for having such divorce decree recognized in the Philippines. These international treaties would affect a Filipino citizen if such Filipino becomes a naturalised Alien of another country and the said country is a contracting party to the aforementioned treaties.

## B. Hague Convention on The Recognition of Divorce And Legal Separation

The Hague Convention on the Recognition of Divorce and Legal Separations [97]was concluded on June 1, 1970 and entered into force on August 24, 1975.[98] The convention aims to facilitate the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State and thus assure divorced and separated spouses that that their new status shall receive the same recognition abroad as in the country where the divorce or separation is obtained.[99]

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[96] See Annex for full text

[97] Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations (HCCH 1970 Divorce Convention).

[98] Outline Hague Divorce Convention, https://assets.hcch.net/docs/1fc38f44-e769-44c7-a3d0-ee9eebc02a57.pdf (last visited 24 November 2020)

[99] Id.

Under Article 1 it is provided that the Convention shall apply to the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State which follow judicial or other proceedings officially recognised in that State and which are legally effective there. However, the convention does not apply to findings of fault or to ancillary orders pronounced on the making of a decree of divorce or legal separation; in particular, it does not apply to orders relating to pecuniary obligations or to the custody of children.

Article 2 of the convention provides when such divorces are recognized:

Such divorces and legal separations shall be recognised in all other Contracting States, subject to the remaining terms of this Convention, if, at the date of the institution of the proceedings in the State of the divorce or legal separation (hereinafter called "the State of origin") -

(1) the respondent had his habitual residence there; or

(2) the petitioner had his habitual residence there and one of the following further conditions was fulfilled -

a) such habitual residence had continued for not less than one year immediately prior to the institution of proceedings;
b) the spouses last habitually resided there together; or

(3) both spouses were nationals of that State; or

(4) the petitioner was a national of that State and one of the following further conditions was fulfilled -

a) the petitioner had his habitual residence there; or
b) he had habitually resided there for a continuous period of one year falling, at least in part, within the two years preceding the institution of the proceedings; or

(5) the petitioner for divorce was a national of that State and both the following further conditions were fulfilled -

a) the petitioner was present in that State at the date of institution of the proceedings and

b) the spouses last habitually resided together in a State whose law, at the date of institution of the proceedings, did not provide for divorce.

The instances when said divorce decree may be refused recognition by a Contracting State are provided for in Article 7-9. Under the said articles, a contracting States may refuse to recognise a divorce when, at the time it was obtained, both the parties were nationals of States which did not provide for divorce and of no other State;[100] if, in the light of all the circumstances, adequate steps were not taken to give notice of the proceedings for a divorce or legal separation to the respondent, or if he was not afforded a sufficient opportunity to present his case;[101] and if the divorce decree is incompatible with a previous decision determining the matrimonial status of the spouses and that decision either was rendered in the State in which recognition is sought, or is recognised, or fulfils the conditions required for recognition, in that State.[102]

Currently as of 2020, the 1970 Hague Recognition of Divorce Convention has currently 20 Contracting States which includes Australia, China, Denmark, Egypt, and Italy among others.[103] Unfortunately, the Philippines is not a party to the convention and cannot benefit from its provisions.

However, it is provided under Art. 28 of the convention that any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force. The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession.[104]

Hence, if the Philippine government later on decides that the convention

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[100] HCCH 1970 Divorce Convention, Article 7.
[101] HCCH 1970 Divorce Convention, Article 8.
[102] HCCH 1970 Divorce Convention, Article 9.
[103] HCCH, https://www.hcch.net/en/instruments/conventions/status-table/?cid=80 (last visited 24 November 2020)
[104] HCCH 1970 Divorce Convention, Article 28.

will be beneficial to its citizens, it can still choose to accede to the convention.

## C. European Divorce Law Pact

The European Union has issued Council Regulation (EU) No 1259/2010[105], otherwise called the European Union Divorce Law Pact or Rome III Regulations which governs issues relating to the applicable law on divorce of member states covered by the regulations.

The Regulation aims to create a clear, comprehensive legal framework in the area of the law applicable to divorce and legal separation in the participating Member States, provide citizens with appropriate outcomes in terms of legal certainty, predictability and flexibility, and prevent a situation from arising where one of the spouses applies for divorce before the other one does in order to ensure that the proceeding is governed by a given law which he or she considers more favourable to his or her own interests.[106] The regulation specifies that it applies only to grounds for divorce and legal separation and does not cover marriage annulment.[107] The regulation specifically provides that it shall not apply to (a) the legal capacity of natural persons; (b) the existence, validity or recognition of a marriage; (c) the annulment of a marriage; (d) the name of the spouses; (e) the property consequences of the marriage; (f) parental responsibility; (g) maintenance obligations; and (h) trusts or successions even if they arise merely as a preliminary question within the context of divorce or legal separation proceedings. [108]

More particularly, Rome III Regulations allows spouses to designate the applicable to divorce and legal separation provided that it is one of the following laws: (a) the law of the State where the spouses are habitually resident at the time the agreement is concluded; or (b) the law of the State where the spouses were last habitually resident, in so far as one of them still resides there at the time the agreement is concluded; or (c) the law of the State of nationality

[105] Council Regulation (EU) No 1259/2010, December 20, 2010, https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:343:0010:0016:EN:PDF (last visited 24 November 2020)

[106] Council Regulation (EU) No 1259/2010, whereas (9).

[107] Council Regulation (EU) No 1259/2010, whereas (10).

[108] Council Regulation (EU) No 1259/2010, art. 1.

of either spouse at the time the agreement is concluded; or (d) the law of the forum.[109]

In absence of any choice agreed upon by the spouses as to the applicable law on divorce and legal separation, the Rome III Regulations provide that the divorce and legal separation shall be subject to the law of the State: (a) where the spouses are habitually resident at the time the court is seized; or, failing that (b) where the spouses were last habitually resident, provided that the period of residence did not end more than one year before the court was seized, in so far as one of the spouses still resides in that State at the time the court is seized; or, failing that (c) of which both spouses are nationals at the time the court is seized; or, failing that (d) where the court is seized.[110]

Currently, Rome III Regulations apply in 17 EU countries: Austria, Belgium, Bulgaria, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Portugal, Romania, Slovenia and Spain.[111] Non-participating EU states continue to apply their own rules to determine which national law should apply to a divorce.[112]

[109] Council Regulation (EU) No 1259/2010, art. 5.

[110] Council Regulation (EU) No 1259/2010, art. 8.

[111] Divorce and Separation, Information on divorce law applicable in cases of international couples in the EU, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/civil-justice/family-law/divorce-and-separation_en, (last visited 24 November 2020).

[112] Id.

# Chapter 6:
# Solutions to Problems Encountered

As litigators know, there are various problems involved in having the divorce recognized by the court. Below are discussions of the problems, and the solutions being proposed.

## A. Problems Encountered

The following are the problems encountered in recognizing the divorce:

1. Getting the divorce decree/order/status recognized.

   Divorce is sometimes only an administrative matter in some countries like Japan, Netherlands, and Thailand, among others.

   It is sometimes challenging for Philippine courts to recognize these divorces because they do not have court decrees.

   In Japan, for example, what they just submit is a form for divorce to their local civil registrar/family register. The proof of divorce is their family register showing that they are divorced.

   Some courts are not recognizing it, as is seen by the many Supreme Court cases where Japan divorce was obtained.

2. Getting the divorce law.

   Many countries do not have a central authority who determines what the law is.

   It is challenging for the litigators to know which agency in a certain country certifies the law. In Guam, there is a compiler of laws which is responsible for officially publishing the Session Laws of the Guam Legislature, the Guam Code Annotated and updates thereto,

the Guam Administrative Rules and Regulations, Supreme Court of Guam Opinions, Executive Orders and Attorney General Opinions. It is thus easy to have the divorce law identified.

But for the United States of America, for example, each state has its own divorce law. As to who certifies the law is a question that has to be determined by every state.

Usually, it is best to coordinate with a lawyer in the country where the divorce was obtained, to figure this out.

3. Getting the divorce decree and law authenticated/apostilled.

Many clients also need assistance in having the divorce decree and law authenticated or apostilled.

Some will get the divorce decree authenticated/apostilled but will not get the divorce law.

So they have to be informed that our law requires both the divorce decree and the law to be authenticated/apostilled.

4. Translations of the divorce decree and the law.

There are many countries where divorce is issued in other languages like French or Netherlands.

The divorce decree and the law have to be translated to English.

5. Contested divorces

Recognition of contested divorces can also be challenging.

In these cases,there is a need to present all the pleadings and not just the divorce decree, in court. This is to prove that the respondent's right to due process was respected.

These are among the many problems encountered in having a divorce recognized in the Philippines.

## B. Varying Interpretation of The Constitutional Policy on Family

The Philippine Constitution provides for specific provisions on family relations which are often cited in arguments for and against enacting a law on Divorce in the Philippines. The Constitution lays down in Section 1 and Section 2 of Article XV its policy on the family:

Section 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

Section 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

Nowhere in the above mentioned provisions does it state an absolute prohibition on divorce. It is arguable that the term "inviolable" in section 2 can further the proposition that divorce is prohibited under the Constitution but absent any specific ruling by the Supreme Court, it is still to be determined whether the passage of a divorce law is constitutional in the Philippines.

**It is our contention that divorce is constitutional.**

## C. Pending Divorce Bills

Sen. Pia Cayetano has refiled a bill for the automatic recognition of foreign divorce[113] at the Senate. She had previously filed in the House of

[113]An Act Recognizing the Foreign Decree of Termination of Marriage and Allowing its Subsequent Registration with the Philippine Civil Registry, Amending for the Purpose of Executive Order No. 209, Otherwise Known as the Family Code of the Philippines. S.B. No. 67. 19th Congress. (2019) Retrieved from: https://www.senate.gov.ph/lisdata/3029727125!.pdf

Representative a similar bill, H.B. 7185[114], which was approved on third reading last March, 2018[115] and was also a co-sponsor of H.B. 7303 on absolute divorce.

Cayetano proposed the following amendments to the Family Code for recognition of divorce:

Section 1. Article 13 of Executive Order No. 209, otherwise known as the Family Code of the Philippines, is hereby amended to read as follows:

"Art. 13. In case either of the contracting parties has been previously married, the applicant shall be required to furnish, instead of the birth or baptismal certificate required in the last preceding article, the death certificate of the deceased spouse [or the judicial decree of the absolute divorce, or], the judicial decree of annulment or declaration of nullity of [his or her] THE previous marriage[.], OR A FOREIGN DECREE OF TERMINATION OF MARRIAGE DULY AUTHENTICATED BY THE PHILIPPINE EMBASSY OR CONSULAR OFFICE WHERE THE FOREIGN DECREE WAS ISSUED.

THE FILIPINO SPOUSE NEED NOT SEEK JUDICIAL RECOGNITION OR ENFORCEMENT OF THE FOREIGN DECREE OF TERMINATION OF MARRIAGE. THE REGISTRATION OF THE DULY-AUTHENTICATED FOREIGN DECREE OF TERMINATION OF MARRIAGE IN THE PHILIPPINE CIVIL REGISTRY SHALL BE SUFFICIENT PROOF OF CAPACITY TO REMARRY."

In case the death certificate cannot be secured, the party shall make an affidavit setting forth this circumstance and [his or her] actual civil status and the name and date of death of the deceased spouse.

Sec. 2. Article 26 of Executive Order No. 209 is hereby amended to read as follows:

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[114] An Act Recognizing the Foreign Decree of Termination of Marriage and Allowing its Subsequent Registration with the Philippine Civil Registry, Amending for the Purpose of Executive Order No. 209, Otherwise Known as the Family Code of the Philippines. H.B. No. 7185. 18th Congress. (2018) Retrieved from: http://www.congress.gov.ph/legisdocs/first_17/CR00610.pdf

[115] Congress of the Philippines.(2018) House oks foreign divorce and allows registration with PHL Civil Registry. [Press Release] Retrieved from: http://www.congress.gov.ph/press/details.php?pressid=10601&key=divorce

"Art. 26. 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.

Where a marriage between a Filipino citizen and a foreigner is [validly] celebrated and a [divorce] DECREE OF TERMINATION OF MARRIAGE is thereafter [validly] obtained abroad by [the alien] EITHER spouse [capacitating him or her to remarry,] AND SUBSEQUENTLY REGISTERED IN THE PHIUPPINE CIVIL REGISTRY AS PROVIDED IN ARTICLE 13 HEREOF, the Filipino spouse shall likewise have capacity to remarry under Philippine law."

ARTICLE 412 OF THE CIVIL CODE SHALL NOT APPLY IN RECOGNIZING THE TERMINATION OF MARRIAGES REFERRED HEREIN. ANY AGREEMENT ON THE LIQUIDATION, PARTITION AND DISTRIBUTION OF THE PROPERTIES OF THE SPOUSES, THE CUSTODY AND SUPPORT OF COMMON CHILDREN, THE DELIVERY OF THEIR PRESUMPTIVE LEGITIMES INCLUDED IN THE DECREE OF TERMINATION OF MARRIAGE SHALL BE RECOGNIZED. IN THE ABSENCE THEREOF, THE PROVISIONS OF THE FAMILY CODE SHALL BE IN FORCE THE PROVISIONS OF THIS ACT CAN BE AVAILED BY A FILIPINO: (A) WHO IS MARRIED TO A FOREIGNER WHOSE MARRIAGE HAS BEEN TERMINATED ABROAD BY EITHER SPOUSE, INCLUDING A FILIPINO WHOSE MARRIAGE HAS BEEN TERMINATED ABROAD PRIOR TO THE EFFECTIVITY OF THIS ACT; (B) WHO HAS BEEN DIVORCED FROM A SPOUSE WHO HAD SUBSEQUENTLY ACQUIRED FOREIGN CITIZENSHIP; AND (C) WHO HAS SUBSEQUENTLY ACQUIRED FOREIGN CITIZENSHIP AND WHO HAS DIVORCED FROM THE FILIPINO SPOUSE ABROAD."

It is the authors wish that this bill will be passed into law.

As of February 2020, a bill proposing the legalization of divorce authored by Albay 1st District Representative Edcel Lagman was approved by the House Committee on Population and Family Relations in the House of

Representatives.[116]

This bill has been the result of consolidation of a total of three proposed bills in the House. Under this bill, the grounds for absolute divorce are: (1) legal separation of more than 2 years; (2) the same grounds as annulment of marriage under Art. 45 of the Family Code; (3) separation in fact for five years and reconciliation is no longer possible; (4) psychological capacity under Art. 36 of the Family Code but there is no need for the incapacity to be present at the time of the celebration of the marriage; (5) when one of the spouses undergoes a gender reassignment surgery or transitions from one sex to another; and (6) irreconcilable marital differences and conflicts which have resulted in the total breakdown of the marriage beyond repair, despite earnest and repeated efforts at reconciliation.

According to Lagman in defense of the bill, "divorce is not a monster that will destroy marriages and wreck marital relationships. Let us [be] clear about this – the monsters that lead to the demise of a marriage are infidelity, abuse, financial problems, lack of intimacy and communication, and inequality,"[117]

This isn't the first time that a bill legalizing absolute divorce was proposed in Congress. Previously in 2018, a divorce bill, House Bill 7303, passed the lower house of Congress with 134 votes in favour and 57 against, with two abstentions.[118] Even prior to 2018, numerous bills on absolute divorce were proposed since 1999 but failed even to pass the lower house.[119]

In the declaration of policy in the pending bill, it is provided that the the State "shall also give the opportunity to spouses in irremediably failed marriages to secure an absolute divorce decree under limited grounds and well-defined judicial procedures to terminate a continuing dysfunction of a long broken marriage; save the children from the pain, stress, and agony consequent to their parents' constant marital clashes, and grant the divorced spouses the right to marry again for another to achieve marital bliss."

The grounds for absolute divorce are provided in Section 5 of the

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[116] Mara Cepeda and Karen Cepeda, *Divorce Bill Hurdles House Committee Level,* https://www.rappler.com/nation/divorce-bill-hurdles-house-committee, February 5, 2020.

[117] Id.

[118] *Philippines moves closer to allowing divorce*, https://www.bbc.com/news/world-asia-43457117, March 19, 2018.

[119] Id.

divorce bill[120] which states:

Sec. 5 Grounds for Absolute Divorce. - The following are the grounds for a judicial decree of absolute divorce:

a) The grounds for legal separation under Article 55 of the Family Code of the Philippines, modified or amended, as follows

(1) 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 or chronic gamblig of the respondent;
(6) Homosexuality of the respondent;
(7) Contracting by the respondent of a subsequent bigamous marriage, whether in the Philippines or abroad;
(8) Marital infidelity or perversion or having a child with another person other than one's spouse during the marriage, except when upon the mutual agreement of the spouses, a child is born to them by in vitro or similar procedure or when the wife bears a child after being a victim of rape;
(9) Attempt by the respondent against the life of the petitioner, a common child or a child of the petitioner; or
(10) Abandonment of petitioner by respondent without justifiable cause for more than one (1) year.

When the spouses are legally separated by judicial decree for more than two (2) years, either or both spouses can petition the proper court for an absolute divorce based on said judicial decree of legal separation.

[120] H. No. 0100, 18th Cong., 1st Sess. (2020).

b) Grounds for annulment of marriage under Article 45 of the Family Code of the Philippines, restated as follows:

(1) That the party in whose behalf it is sought to have the marriage annulled was eighteen (18) years of age or over but below twenty--one (21), 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 (21), such party freely cohabited with the other and both lived together as husband and wife;

(2) Either party was of unsound mind, unless such party after coming to reason, freely cohabited with the other as husband and wife;

(3) 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) 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) Either party was physically incapable of consummating the marriage with the other, and such incapacity continues and appears to be incurable;

(6) Either party was afflicted with a sexually -transmissible disease found to be serious and appears to be incurable.

Provided,That the grounds mentioned in number 2, 5, and 6 existed either at the time of the marriage or supervening after the marriage.

c) When the spouses have been separated in fact at least five (5) years at the time the petition for absolute divorce is filed, and reconciliation is highly improbable.

d) Psychological incapacity of either spouses as provided for in Article 36 of the Family Code of the Philippines, whether or not the incapacity was present at the time of the celebration of the marriage or later.

e) When one of the spouses undergoes a gender reassignment surgery or transitions from one sex to another, the other spouse is entitled to petition for absolute divorce with the transgender or transsexual as respondent, or vice versa.

f) Irreconcilable marital differences and conflicts which have resulted in the total breakdown of the marriage beyond repair, despite earnest and repeated afford at reconciliation, shall entitle either spouse or both

spouses to petition for absolute divorce.

The last ground provided under the bill provides for a catch-all provision for situations that cannot be encapsulated by other grounds. A lot of cases would most likely fall under this category. Currently, most spouses have their marriage declared null and void based on the psychological incapacity of either spouse under Article 36. However, the difficulty of this option is that it is more difficult to prove the psychological incapacity of the other spouses and it is more costly as it requires the legal testimony of an expert witness to testify on the relationship of the spouses. With the addition of this catch-all provision as a ground for absolute divorce, it would make it easier for spouses to dissolve their marriage.

Aside from the bill filed in the House of Representatives, a separate bill legalizing divorce was also filed in the Senate by Sen. Risa Hontiveros. Sen. Hontiveros is currently the chairperson of the committee on women, children, family relations and gender equality.[121]

Sen. Hontiveros previously filed the divorce bill during the 17th Congress, however, the said bill languished at the Committee level.[122] Under the proposed bill, physical violence and "grossly abusive conduct" are considered grounds for divorce. Other grounds for divorce are when the spouses are legally separated by judicial decree for at least two years or when they have been separated "in fact" for at least five years and reconciliation is highly improbable.[123]

During the first Senate hearing on the divorce bill, numerous groups voiced their opposition to the passage of a law legalizing divorce. Most of the opposition's arguments were mainly focused on the negative effects of divorce on the family. Fenny Tatad of the Catholic Bishops Conference of the Philippines (CBCP) stated, "In almost every country where divorce has been legalized, marriage and the family are in serious trouble. Divorce has not been

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[121] Rey, Aika. (2019, July 23) LIST: Senate committee chairmanships for the 18th Congress. Rappler
Retrieved from: https://www.rappler.com/nation/235936-list-senate-committee-chairmanships-18th-congress

[122] Dharel Placido, *Hontiveros refiles absolute divorce bill,* https://news.abs-cbn.com/news/07/10/19/hontiveros-refiles-absolute-divorce-bill, July 10, 2019.

[123] Id.

a solution to the problem, it has become the problem."[124]

The passage of a law legalizing divorce does not mean that there is no longer need to forego the process of having foreign divorce decrees recognized in the Philippines. The governing law for the foreign divorce decree is ultimately the country in which it was obtained. The only role of Philippine courts being to see to it that the said divorce decree is obtained in accordance with the laws of the appropriate foreign country and whether or not it is contrary to public policy. The passage of a law legalizing absolute would only mean that Filipino spouses and Filipinos married to aliens can file for a divorce in the Philippines and need not seek a divorce from a foreign tribunal.

Many are hopeful that Congress will finally pass the divorce law. Sen. Hontiveros in arguing for S.B. 2134's passage in the 17th Congress wrote:

"The number of Filipinos who are separate has been increasing over time -- demonstrating that the denial of legal remedies to those seeking to dissolve their union has largely been an ineffective way of upholding the policy of the State to keep families together.

It has been well-documented that the absence of divorce has had a disproportionate effects on women who are more often the victims of abuse within marriages, and who are forced to remain in joyless and unhealthy unions because of the dearth of legal options. Studies have shown that breaking free from such unions and being given a fresh start result in improved health outcomes for women. Studies likewise show that it is not divorce that creates the well-being issues for children, it is bearing witness to troubled marriages of parents...."'(Footnotes omitted)

In closing, Sen. Hontiveros wrote that while the State is duty bound to promote the sanctity of family life, it is also duty bound to promote and protect the well-being of its citizens and that their well-being is compromised by their inability to break free from such irretrievably broken marriage.

The Philippine Commission on Women in its policy brief also recommended for the passage of the divorce bill by pointing out that married couples have limited options, either seeking legal separation or in ending the

[124] Aika Rey, Hontiveros: Divorce bill is 'pro-family, pro-children', https://www.rappler.com/nation/hontiveros-says-divorce-pro-family-children, September 17, 2019.

marriage through lengthy, expensive, and inhumane annulment proceedings.

"Married couples who want to end their problematic/dysfunctional marriage should have a legal recourse through a simplified and inexpensive divorce process with grounds as stated under legal separation; hence this proposed measure. This proposed measure considers the plight of women trapped in a marriage ridden with violence, abuse, oppression and deprivation to be completely free to start a better life."[125]

**The authors believe that we should already have a divorce law.**

## D. New Rule on Recognition of Divorce

***The Supreme Court should issue a new rule which will allow courts to take judicial notice of the existence of divorce laws in other countries and admit proof of foreign law via copies taken from official government websites.***

It was in 2001 when the Court laid down the rule in *Garcia vs. Recio* that both the divorce decree and the national law of the foreign spouse must be alleged and proven like any other fact. Around twenty-two cases have reached the Supreme Court since then, and out of this number, it was only in three cases wherein the foreign law was sufficiently proven. All other cases were remanded to the trial court or referred to the Court of Appeals for the lower courts to receive evidence on the foreign law alleged.

In two out of these three cases, the Court did not need to make its own finding on the sufficiency of the proof of foreign law. It merely gave credence to the ruling of the lower courts which deemed the evidence of the foreign law as satisfactory. It was only in the case of *Bayot vs. Court of Appeals* wherein the Court determined the sufficiency of the proof of foreign law on the record. However, in this case, the Court dispensed with the proof of foreign law altogether and instead noted, with the use of judicial precedent, that the United States allows absolute divorce. As a result, the Court deemed the presentation of a copy of foreign divorce decree duly authenticated as sufficient proof of

[125] Adopting Divorce in the Family Code. Policy Brief No. 12. (2017) The Philippine Commission on Women. Retrieved from:https://www.pcw.gov.ph/wpla/adopting-divorce-family-code

the divorce.

As a general rule, where a foreign law is not pleaded or, even if pleaded, is not proved, the international law doctrine of processual presumption comes into play. The presumption is that foreign law is the same as ours.

However, in cases of recognition of divorce, it has been laid down by existing jurisprudence that the foreign law must be proven in the same way as the divorce decree. It is deemed as a sovereign act and thus, its proof must comply with Rule 132, Sections 24 and 25. However, unlike divorce decrees, official copies of laws are not given, as a matter of due course, by government bodies. The paucity of jurisprudence with regard to proving foreign law sufficiently results in the lack of clear guidelines which litigators can follow in practice. This is further complicated by the fact that not all countries have government agencies which act as repositories of their laws.

To address this concern, it is recommended that the Supreme Court issue new rules which will allow courts to take judicial notice of the existence of divorce laws in other countries.

Under the Rules of Court, courts have the discretion to take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions. It is already of public knowledge that only the Philippines and the Vatican are the states which do not allow absolute divorce. Thus, similar to the ruling in *Bayot vs. Court of Appeals,* the courts should only require the proof of due execution and authenticity of the divorce decrees.

The necessity of proving foreign law is premised on the requirement of proof that the divorce was obtained according to the national law of the spouse and that the alien spouse is allowed to remarry under such law. It is hereby submitted the due execution and authenticity of the divorce decrees should suffice as proof of conformity of divorce with the foreign law. Other competent evidence should be allowed to show the alien spouse's capacity to remarry. In jurisprudence, the lack of conditions in the divorce decree and the subsequent remarriage of the alien spouse had been taken as proof of the alien spouse's capacity to remarry.

Another innovation that the Supreme Court may adopt is the admissibility of proof of foreign law via copies taken from official government

websites. Most governments already have an electronic site for their official gazette, including the Philippines. Allowing this would be in consonance with the Rules on Electronic Evidence which provides that an electronic document shall be regarded as the equivalent of an original document under the Best Evidence Rule if it is a printout or output readable by sight or other means, shown to reflect the data accurately. The Supreme Court should recognize that the age of technology has paved the way for the digitalization of most documents, including laws of foreign countries. After it has been established that the law is the same as the one reflected in the government website, courts should allow testimonial or documentary evidence for the translation of the said law.

## E. Foreign instruments on recognition of divorce

Internationally, there have been efforts to simplify the process of recognizing divorces obtained in a country different from where the divorce decree is sought to be effected.

The Hague Convention on the Recognition of Divorce and Legal Separation and the European Divorce Law Pact are just some of the international treaties entered into by different countries to help expedite the procedure for the recognition of foreign divorce.

**It is hoped by the authors that the Philippines will soon be one of the countries that are signatories to the Hague Convention on Recognition of Divorce.**

# Chapter 7:
# Common Queries of Clients and Litigators

This section will provide some answers to common questions faced by clients and litigators when filing petitions for recognition and/or enforcement of judgment. The first section primarily deals with questions from clients and the second half deals primarily with questions raised by litigators

## A. Common Inquiries of Clients

1. Q: If a divorce is validly obtained abroad by the alien spouse and either of the spouses did not initiate the filing of a petition for recognition and/or enforcement of divorce in the Philippines, does that mean the divorce is not recognised in our law, in the Philippine Statistics Authority, or in the civil registry?

   A: No, the divorce will not be recognised in the Philippines even if it was validly obtained abroad in accordance with the laws of the country where it was issued. As ruled by the Supreme Court, Philippine courts do not take judicial notice of foreign judgments and laws. They must be proven as fact under our rules on evidence.[126]

2. Q: How long will the Petition for Recognition and/or Enforcement last?

   A: The entire process in Court usually takes about one year or more if all the necessary documents for the filing of the petition are in order. This one year period excludes the time where the judgment issued by the Court has to be annotated in the Local Civil Registry and the Philippine Statistics Authority. The annotation is an entirely separate administrative process from the court procedure and takes around six months before the client can receive a copy of his/her annotated marriage certificate indicating that a valid divorce decree has been obtained.

3. Q: What is the role of the client in the litigation process for the Petition for Recognition and/or Enforcement of Judgment?

[126] Arreza v. Toyo

A: The role of the client is to help obtain the documents stated in the checklist provided for in Chapter 3 of this book. The client will also assist in the authentication of the divorce judgment and the applicable foreign law. Lastly, the client will have to testify in court as to the circumstances surrounding the divorce judgment.

4. Q: What documents does a client need to obtain in filing the Petition for Recognition and/or Enforcement of Judgment?

A: The clients will need to obtain the following documents

a. Final judgment of divorce
b. Document related to divorce decree
c. Certification of foreign lawyer filing the divorce
d. Authenticated or apostilled divorce law
e. Marriage certificate
f. Birth certificate of children, if any
g. Proof of citizenship
h. Titles to property held in common, if any
i. Authenticated or apostilled divorce certificate for purposes of annotation in the Civil Registry, and the Philippine Statistics Authority (See Checklist in Part 2: Procedure in Court)

5. What is the difference between an apostille and an authentication certificate (red ribbon)?

An Apostille is a certificate that authenticates (meaning to show that it is true and genuine) the origin of a public document. It is a certificate issued pursuant to the Apostille convention which the Philippines has become a part of. It is issued by a competent authority of a country that is a party to the Apostille Convention to be used in another country which is also a party to the Convention.

An authentication certification (red ribbon) is issued by the Philippine embassy to authenticate a public document. The process of obtaining an authentication certification is usually longer and more costly compared to obtaining an Apostille.

However, an Apostille is only applicable where the country that issued the public document is also part of the Apostille Convention.

## B. Common Inquiries Of Litigators

1. A Filipino is married to an Alien abroad and the marriage was reported to the Philippine embassy. Subsequently, the foreign spouse obtained a divorce and had the judgment recognized by a Philippine court. Where should the Judgment granting the Petition for Recognition and/or Enforcement of Judgment be annotated?

   A: Based on guidelines issued by the Integrated Bar of the Philippines and the Public Attorney's Office to various Philippine embassies, the petition should be filed in the Regional Trial Court in Manila.[127] The guidelines stated that "the registered document shall be submitted to the Local Civil Registrar where the marriage is registered. If the marriage was registered overseas, the registered document shall be submitted to the City Civil Registry Office at the Manila City Hall (CCRO Manila)." The registered document refers to the court decision recognizing the foreign divorce decree.

2. A former Filipino who is now a naturalised alien obtains a divorce abroad. The former Filipino files a case in court to have the divorce recognized, however, the court dismissed the case on the ground that Art. 26 (2) is inapplicable to the case. What are the possible remedies?

   A: File a Motion for Reconsideration or refile the case citing Corpuz v. Sto. Tomas and Fujiki v. Marinay where the Court has ruled that the foreign spouse has the personality to file a petition for recognition of foreign judgment.

   A more pragmatic solution would be to have the client "obtain" dual citizenship and then refile the case in order to comply with the requirement that the petitioner be a Filipino.

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[127] *See* https://parispe.dfa.gov.ph/images/Forms/JUDICIAL%20RECOGNITION%20OF%20FOREIGN%20DIVORCE.pdf; https://www.philippineconsulatela.org/wp-content/uploads/2017/12/Judicial-Recognition-of-Divorce-in-the-Philipines.pdf; https://tokyo.philembassy.net/consular-section/services/civil-registration/judicial-recognition-of-foreign-divorce/;

3. Who will testify to prove the law of foreign country?

   A: It is recommended that a copy of the law and its translation be notarized by a lawyer or public official in the country which issued the divorce decree and have such copy of the law apostilled, or have it authenticated by the Philippine embassy.

   The petitioner can then testify as to the law of that country.

4. Is a party-spouse a proper party to testify on the foreign law of divorce?

   A: No, either of the spouses are not a proper party to testify. But usually in the Regional Trial Courts, they will recognize the petitioner to testify on the foreign law on divorce.

5. How do you authenticate the Foreign Divorce and the law?

   A: For proving the foreign divorce judgment, it is recommended that the official publication of the foreign divorce judgment be presented in court. The said foreign judgment may either be authenticated through the issuance of an authentication certification ("red ribbon") by the Philippine embassy or it may be apostilled by a competent authority in the country where it was issued. For the proving the applicable foreign divorce law, it is recommended that a copy of it be obtained as well as a translation thereof in English, if it is in another language. The copy and the translation should be notarized by a lawyer or government official abroad and the said copy and seal should be either authenticated through an authentication certificate ("red ribbon") by the Philippine embassy or it may be apostilled by a competent authority in the country where it was issued.

6. Who can help you in getting the foreign divorce and the law authenticated or apostilled?

   A: Your client can help. If not your client, then his/her ex-spouse if they are on talking terms. Perhaps the friend of your client who is the country where the divorce was obtained. But you can also request that

your client secure the help of a lawyer in that country to obtain the foreign divorce and law, have it apostilled, and also execute a statement regarding the validity of the divorce obtained and the law providing for divorce.

7. How do you move for recognition of the divorce when the foreign spouse who obtained it, is not cooperative with your client?

   A: If the foreign spouse is not cooperative and your client does not have other means of securing the foreign law and the divorce, then just file for nullity of marriage on the ground of psychological incapacity. This is the only remedy in cases like this.

# ANNEXES

## A. Relevant Provisions in the Constitution

### ARTICLE XV THE FAMILY

**Section 1.** The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

**Section 2.** Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

**Section 3.** The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development;

(3) The right of the family to a family living wage and income; and

(4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

**Section 4.** The family has the duty to care for its elderly members but the State may also do so through just programs of social security.

## B. Relevant Provisions of the Civil Code

**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. (9a)

**Article 16.** Real property as well as personal property is subject to the

law of the country where it is stipulated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found. (10a)

**Article 17.** The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country. (11a)

## C. Relevant Provision of the Family Code

**Art. 26.** 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), 3637 and 38. (17a)

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. (As amended by Executive Order 227)

# D. Relevant Provisions of the Rules of Court

## RULE 39
## Execution, Satisfaction and Effect of Judgments

**Section 48. Effect of foreign judgments or final orders.** — The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order, is conclusive upon the title to the thing, and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. (50a)

## RULE 132
## Presentation of Evidence

**SECTION 19. Classes of Documents.** — For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

(a) The written official acts, or records of the sovereign authority, o□ cial bodies and tribunals, and public o□ cers, whether of the Philippines, or of a foreign country;

(b) Documents acknowledged before a notary public except last wills and testaments;

(c) Documents that are considered public documents under treaties and conventions which are in force between the Philippines and the country of

source; and

(d) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (19a)

**SECTION 24. Proof of Official Record.** — The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his or her deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody.

If the office in which the record is kept is in a foreign country, which is a contracting party to a treaty or convention to which the Philippines is also a party, or considered a public document under such treaty or convention pursuant to paragraph (c) of Section 19 hereof, the certificate or its equivalent shall be in the form prescribed by such treaty or convention subject to reciprocity granted to public documents originating from the Philippines.

For documents originating from a foreign country which is not a contracting party to a treaty or convention referred to in the next preceding sentence, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice- consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his or her office.

A document that is accompanied by a certificate or its equivalent may be presented in evidence without further proof, the certificate or its equivalent being prima facie evidence of the due execution and genuineness of the document involved. The certificate shall not be required when a treaty or convention between a foreign country and the Philippines has abolished the requirement, or has exempted the document itself from this formality. (24a)

**SECTION 25. What Attestation of Copy Must State. —** Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he or she be

the clerk of a court having a seal, under the seal of such court. (25a)

## RULE 108
## Cancellation Or Correction Of Entries In The Civil Registry

**Section 1. Who may file petition.** — Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located.

**Section 2. Entries subject to cancellation or correction.** — Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births: (b) marriage; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgments declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss or recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

**Section 3. Parties.** — When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

**Section 4. Notice and publication.** — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

**Section 5. Opposition.** — The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

**Section 6. Expediting proceedings.** — The court in which the

proceeding is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

**Section 7. Order. —** After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotated the same in his record.

## E. Hague Convention on the Recognition of Divorce and Legal Separations

### CONVENTION ON THE RECOGNITION OF DIVORCES AND LEGAL SEPARATIONS
### (Concluded 1 June 1970)

The States signatory to the present Convention,

Desiring to facilitate the recognition of divorces and legal separations obtained in their respective territories,

Have resolved to conclude a Convention to this effect, and have agreed on the following provisions -

Article 1

The present Convention shall apply to the recognition in one Contracting State of divorces and legal separations obtained in another Contracting State which follow judicial or other proceedings officially recognised in that State and which are legally effective there.

The Convention does not apply to findings of fault or to ancillary orders pronounced on the making of a decree of divorce or legal separation; in particular, it does not apply to orders relating to pecuniary obligations or to the custody of children.

Article 2

Such divorces and legal separations shall be recognised in all other

Contracting States, subject to the remaining terms of this Convention, if, at the date of the institution of the proceedings in the State of the divorce or legal separation (hereinafter called "the State of origin") -

(1) the respondent had his habitual residence there; or

(2) the petitioner had his habitual residence there and one of the following further conditions was fulfilled -

*a)* such habitual residence had continued for not less than one year immediately prior to the institution of proceedings;

*b)* the spouses last habitually resided there together; or

(3) both spouses were nationals of that State; or

(4) the petitioner was a national of that State and one of the following further conditions was fulfilled -

*a)* the petitioner had his habitual residence there; or

*b)* he had habitually resided there for a continuous period of one year falling, at least in part, within the two years preceding the institution of the proceedings; or

(5) the petitioner for divorce was a national of that State and both the following further conditions were fulfilled -

*a)* the petitioner was present in that State at the date of institution of the proceedings and

*b)* the spouses last habitually resided together in a State whose law, at the date of institution of the proceedings, did not provide for divorce.

Article 3

Where the State of origin uses the concept of domicile as a test of jurisdiction in matters of divorce or legal separation, the expression "habitual

residence" in Article 2 shall be deemed to include domicile as the term is used in that State.

Nevertheless, the preceding paragraph shall not apply to the domicile of dependence of a wife.

Article 4

Where there has been a cross-petition, a divorce or legal separation following upon the petition or cross-petition shall be recognised if either falls within the terms of Articles 2 or 3.

Article 5

Where a legal separation complying with the terms of this Convention has been converted into a divorce in the State of origin, the recognition of the divorce shall not be refused for the reason that the conditions stated in Articles 2 or 3 were no longer fulfilled at the time of the institution of the divorce proceedings.

Article 6

Where the respondent has appeared in the proceedings, the authorities of the State in which recognition of a divorce or legal separation is sought shall be bound by the findings of fact on which jurisdiction was assumed.

The recognition of a divorce or legal separation shall not be refused -

*a)* because the internal law of the State in which such recognition is sought would not allow divorce or, as the case may be, legal separation upon the same facts, or,

*b)* because a law was applied other than that applicable under the rules of private international law of that State.

Without prejudice to such review as may be necessary for the application of other provisions of this Convention, the authorities of the State in which recognition of a divorce or legal separation is sought shall not examine the merits of the decision.

Article 7

Contracting States may refuse to recognise a divorce when, at the time it was obtained, both the parties were nationals of States which did not provide for divorce and of no other State.

Article 8

If, in the light of all the circumstances, adequate steps were not taken to give notice of the proceedings for a divorce or legal separation to the respondent, or if he was not afforded a sufficient opportunity to present his case, the divorce or legal separation may be refused recognition.

Article 9

Contracting States may refuse to recognise a divorce or legal separation if it is incompatible with a previous decision determining the matrimonial status of the spouses and that decision either was rendered in the State in which recognition is sought, or is recognised, or fulfils the conditions required for recognition, in that State.

Article 10

Contracting States may refuse to recognise a divorce or legal separation if such recognition is manifestly incompatible with their public policy ("*ordre public*").

Article 11

A State which is obliged to recognise a divorce under this Convention may not preclude either spouse from remarrying on the ground that the law of another State does not recognise that divorce.

Article 12

Proceedings for divorce or legal separation in any Contracting State may be suspended when proceedings relating to the matrimonial status of either party to the marriage are pending in another Contracting State.

Article 13

In the application of this Convention to divorces or legal separations obtained or sought to be recognised in Contracting States having, in matters of divorce or legal separation, two or more legal systems applying in different territorial units -

(1) any reference to the law of the State of origin shall be construed as referring to the law of the territory in which the divorce or separation was obtained;

(2) any reference to the law of the State in which recognition is sought shall be construed as referring to the law of the forum; and

(3) any reference to domicile or residence in the State of origin shall be construed as referring to domicile or residence in the territory in which the divorce or separation was obtained.

Article 14

For the purposes of Articles 2 and 3 where the State of origin has in matters of divorce or legal separation, two or more legal systems applying in different territorial units -

(1) Article 2, sub-paragraph (3), shall apply where both spouses were nationals of the State of which the territorial unit where the divorce or legal separation was obtained forms a part, and that regardless of the habitual residence of the spouses;

(2) Article 2, sub-paragraphs (4) and (5), shall apply where the petitioner was a national of the State of which the territorial unit where the divorce or legal separation was obtained forms a part.

Article 15

In relation to a Contracting State having, in matters of divorce or legal separation, two or more legal systems applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 16

When, for the purposes of this Convention, it is necessary to refer to the law of a State, whether or not it is a Contracting State, other than the State of origin or the State in which recognition is sought, and having in matters of divorce or legal separation two or more legal systems of territorial or personal application, reference shall be made to the system specified by the law of that State.

Article 17

This Convention shall not prevent the application in a Contracting State of rules of law more favourable to the recognition of foreign divorces and legal separations.

Article 18

This Convention shall not affect the operation of other conventions to which one or several Contracting States are or may in the future become Parties and which contain provisions relating to the subject-matter of this Convention.

Contracting States, however, should refrain from concluding other conventions on the same matters incompatible with the terms of this Convention, unless for special reasons based on regional or other ties; and, notwithstanding the terms of such conventions, they undertake to recognise in accordance with this Convention divorces and legal separations granted in Contracting States which are not Parties to such other conventions.

Article 19

Contracting States may, not later than the time of ratification or accession, reserve the right -

(1) to refuse to recognise a divorce or legal separation between two spouses who, at the time of the divorce or legal separation, were nationals of the State in which recognition is sought, and of no other State, and a law other than that indicated by the rules of private international law of the State of

recognition was applied, unless the result reached is the same as that which would have been reached by applying the law indicated by those rules;

(2) to refuse to recognise a divorce when, at the time it was obtained, both parties habitually resided in States which did not provide for divorce. A State which utilises the reservation stated in this paragraph may not refuse recognition by the application of Article 7.

Article 20

Contracting States whose law does not provide for divorce may, not later than the time of ratification or accession, reserve the right not to recognise a divorce if, at the date it was obtained, one of the spouses was a national of a State whose law did not provide for divorce.

This reservation shall have effect only so long as the law of the State utilising it does not provide for divorce.

Article 21

Contracting States whose law does not provide for legal separation may, not later than the time of ratification or accession, reserve the right to refuse to recognise a legal separation when, at the time it was obtained, one of the spouses was a national of a Contracting State whose law did not provide for legal separation.

Article 22

Contracting States may, from time to time, declare that certain categories of persons having their nationality need not be considered their nationals for the purposes of this Convention.

Article 23

If a Contracting State has more than one legal system in matters of divorce or legal separation, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its legal systems or only to one or more of them, and may modify its declaration by submitting another declaration at anytime thereafter.

These declarations shall be notified to the Ministry of Foreign Affairs of the Netherlands, and shall state expressly the legal systems to which the Convention applies.

Contracting States may decline to recognise a divorce or legal separation if, at the date on which recognition is sought, the Convention is not applicable to the legal system under which the divorce or legal separation was obtained.

Article 24

This Convention applies regardless of the date on which the divorce or legal separation was obtained.

Nevertheless a Contracting State may, not later than the time of ratification or accession, reserve the right not to apply this Convention to a divorce or to a legal separation obtained before the date on which, in relation to that State, the Convention comes into force.

Article 25

Any State may, not later than the moment of its ratification or accession, make one or more of the reservations mentioned in Articles 19, 20, 21 and 24 of the present Convention. No other reservation shall be permitted.

Each Contracting State may also, when notifying an extension of the Convention in accordance with Article 29, make one or more of the said reservations, with its effect limited to all or some of the territories mentioned in the extension.

Each Contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the sixtieth day after the notification referred to in the preceding paragraph.

Article 26

The present Convention shall be open for signature by the States represented at the Eleventh Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Eleventh Session of the Hague Conference on Private International Law which is a Member of this Conference or of the United Nations or of a specialised agency of that Organisation, or a Party to the Statute of the International Court of Justice may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for a State acceding to it on the sixtieth day after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the sixtieth day after the deposit of the declaration of acceptance.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The extension will have effect only as regards the relations with such Contracting States as will have declared their acceptance of the extensions. Such a declaration shall be deposited at the Ministry of Foreign Affairs of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The extension will take effect in each case sixty days after the deposit of the declaration of acceptance.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands, at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following -

*a)* the signatures and ratifications referred to in Article 26;

*b)* the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;

*c)* the accessions referred to in Article 28 and the dates on which they take effect;

*d)* the extensions referred to in Article 29 and the dates on which they take effect;

*e)* the denunciations referred to in Article 30;

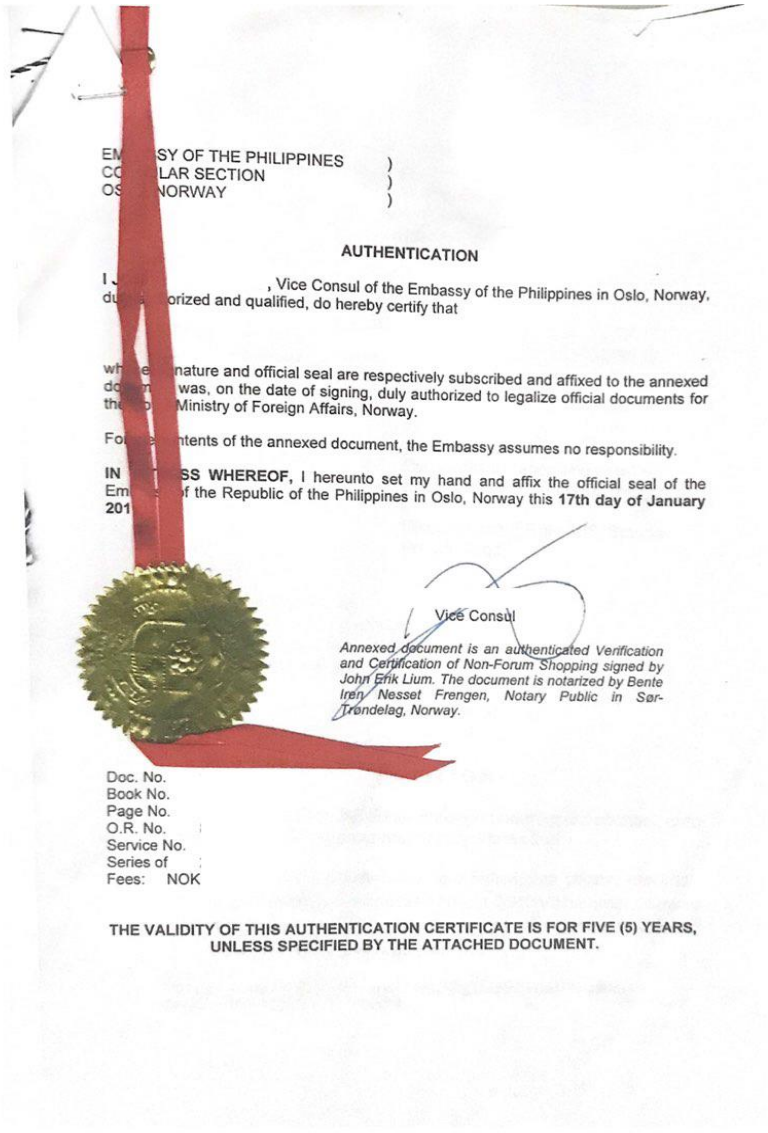
*f)* the reservations and withdrawals referred to in Articles 19, 20, 21, 24 and 25;

*g)* the declarations referred to in Articles 22, 23, 28 and 29.

In witness whereof the undersigned, being duly authorised thereto, have signed the present Convention.

Done at The Hague, on the first day of June, 1970, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent, through the diplomatic channel to each of the States represented at the Eleventh Session of the Hague Conference on Private International Law.

# F. Sample Picture of a Red Ribbon Certificate



EM SY OF THE PHILIPPINES )
CO LAR SECTION )
OS NORWAY )

**AUTHENTICATION**

I J , Vice Consul of the Embassy of the Philippines in Oslo, Norway, du orized and qualified, do hereby certify that

wh nature and official seal are respectively subscribed and affixed to the annexed do was, on the date of signing, duly authorized to legalize official documents for th Ministry of Foreign Affairs, Norway.

Fo ntents of the annexed document, the Embassy assumes no responsibility.

**IN SS WHEREOF,** I hereunto set my hand and affix the official seal of the Em f the Republic of the Philippines in Oslo, Norway this **17th day of January 201**

Vice Consul

*Annexed document is an authenticated Verification and Certification of Non-Forum Shopping signed by John Erik Lium. The document is notarized by Bente Iren Nesset Frengen, Notary Public in Sør-Trøndelag, Norway.*

Doc. No.
Book No.
Page No.
O.R. No.
Service No.
Series of
Fees: NOK

**THE VALIDITY OF THIS AUTHENTICATION CERTIFICATE IS FOR FIVE (5) YEARS, UNLESS SPECIFIED BY THE ATTACHED DOCUMENT.**

# G. Sample Picture of an Apostille Certificate

# H.Proposed Rule on Recognition of Divorce

## RE: PROPOSED RULE ON JUDICIAL RECOGNITION AND/ ENFORCEMENT OF FOREIGN JUDGMENT OF DIVORCE

Whereas, there are so many Filipino women and men who are divorced abroad,

Whereas, there is a need to recognize their divorce in the Philippines in the most practicable yet judicious manner,

Whereas, it is also important to emphasize the importance of good faith, due process, justice and equity,

Resolves, as it is hereby resolved, to adopt the following rule on recognition of divorce:

**Section 1.** *Scope* - This Rule shall govern petitions for judicial recognition and/ enforcement of foreign judgment of divorce.

The Rules of Court shall apply suppletorily.

**Section 2.** *Petition for recognition of divorce.*

*(a) Who may file.* - A petition for recognition of divorce may be filed by the husband or the wife.

In case of their death, their successors may file recognition, for the following related matters, namely, not excluding others:

a. Support
b. Custody
c. Property ownership or relations

A party in interest may also file also for recognition of divorce. A party

in interest is one who stands to be benefited or injured by the judgment in the suit, or the **party** entitled to the avails of the suit.[128]

*(b) Who may answer/oppose* - The other spouse may answer or oppose. Successors may also do so as well as a party in interest.

*(c) Where to file.* - The petition shall be filed in the Family Court of the province or city where the petitioner resides, or where the respondent resides, where the marriage was registered, or where any of their properties is located at the election of the petitioner/successor/party in interest.

*(d) Imprescriptibility of action or defense.* - An action or defense for the recognition of divorce shall not prescribe.

*(e) What to allege.* - A petition under the second paragraph of Article 26 of Family Code shall especially allege the complete facts showing the fact of marriage and the fact of divorce obtained either by the foreign spouse or the Filipino spouse or former Filipino spouse.

**Section 3.** *Contents and form of petition.* - (1) The petition shall allege the complete facts constituting the cause of action.

(2) It shall state the names and ages of the common children of the parties and specify the regime governing their property relations, as well as the properties involved.

If there is no adequate provision in a written agreement between the parties, the petitioner may apply for a provisional order for spousal support, the custody and support of common children, visitation rights, administration of community or conjugal property, and other matters similarly requiring urgent action.

(3) Every pleading stating a party's claims or defenses shall provide the following

(a) Names of witnesses who will be presented to prove a party's claim or defenses;

[128] For example, a buyer of a property sold by parties who have divorced should be able to file for recognition of the divorce so that the property can eventually be transferred to his name.

(b) Summary of the witnesses' intended testimonies, provided that the judicial affidavits of said witnesses shall be attached to the pleading and form an integral part thereof. Only witnesses whose judicial affidavits are attached to the pleading shall be presented by the parties during trial. Except if a party presents meritorious reasons as basis for the admission of additional witnesses, no other witness or affidavit shall be heard or admitted by the court; and

(c) Documentary and object evidence in support of the allegations contained in the pleading.

(4) It must be verified and accompanied by a certification against forum shopping. The verification and certification must be signed personally by the petitioner. No petition may be filed solely by counsel or through an attorney-in-fact.

The said pleading must be verified by the petitioner. The verification should be attached to the pleading, and shall allege the following attestations:

(a) The allegations in the pleading are true and correct based on his or her personal knowledge, or based on authentic documents;

(b)The pleading is not filed to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(c) The factual allegations therein have evidentiary support or, if specifically so identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The signature of the affiant shall further serve as a certification of the truthfulness of the allegations in the pleading.

The plaintiff or principal party shall also certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he or she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best

of his or her knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he or she should thereafter learn that the same or similar action or claim has been filed or is pending, he or she shall report that fact within five (5) calendar days therefrom to the court wherein his or her aforesaid complaint or initiatory pleading has been filed.

The authorization of the affiant to act on behalf of a party, whether in the form of a secretary's certificate or a special power of attorney, should be attached to the pleading.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his or her counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

If the petitioner is in a foreign country, the verification and certification against forum shopping shall be apostilled/authenticated by the duly authorized officer of the Philippine embassy or legation, consul general, consul or vice-consul or consular agent in said country.

(5) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, the Civil Registrar General and the local civil registrar within five days from the date of its filing and submit to the court proof of such service within the same period.

Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.

**Section 4.** *Notice and publication.* — Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause reasonable notice thereof to be given to the persons named in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province.

**Section 5.** *Opposition.* - The civil registrar and any person having or claiming any interest in the case may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

**Section 6**. *Expediting proceedings.* — The court in which the proceeding is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

**Section 7**. *Jurisdiction of the Court* - The court shall hold a hearing to verify if it has jurisdiction over the case and also to hold a pre-trial of the case.

**Section 8.** *Pre-trial.* -

*(1) Pre-trial mandatory.* - A pre-trial is mandatory. The court shall set the pre-trial on the same date of hearing of jurisdictional facts.

*(2) Notice of pre-trial.* -

(a) The notice of pre-trial shall contain:

(i) the date of pre-trial conference; and

(ii) an order directing the parties to file and serve their respective pre-trial briefs in such manner as shall ensure the receipt thereof by the adverse party at least three days before the date of pre-trial.

(b) The notice shall be served separately on the parties and their respective counsels as well as on the public prosecutor. It shall be their duty to appear personally at the pre-trial.

(c) Notice of pre-trial shall be sent to the respondent even if he fails to file an answer. In case of summons by publication and the respondent failed to file his answer, notice of pre-trial shall be sent to respondent at his last known address.

**Section 9.** *Contents of pre-trial brief.* - The pre-trial brief shall contain the

following:

(a) A statement of the willingness of the parties to enter into agreements as may be allowed by law, indicating the desired terms thereof;

(b) A concise statement of their respective claims together with the applicable laws and authorities;

(c) Admitted facts and proposed stipulations of facts, as well as the disputed factual and legal issues;

(d) All the evidence to be presented, including expert opinion, if any, briefly stating or describing the nature and purpose thereof;

(e) The number and names of the witnesses and their respective affidavits, if there are additional witnesses; and

(f) Such other matters as the court may require.

Failure to file the pre-trial brief or to comply with its required contents shall have the same effect as failure to appear at the pre-trial under the succeeding paragraphs.

**Section 10.** *Effect of failure to appear at the pre-trial.* -

(a) If the petitioner fails to appear personally, the case shall be dismissed unless his counsel or a duly authorized representative appears in court and proves a valid excuse for the non-appearance of the petitioner.

(b) If the respondent has filed his Opposition but fails to appear, the court shall proceed with the pre-trial and require the public prosecutor to investigate the non-appearance of the respondent and submit within fifteen days thereafter a report to the court stating whether his non-appearance is due to any collusion between the parties. If there is no collusion, the court shall require the public prosecutor to intervene for the State during the trial on the merits to prevent suppression or fabrication of evidence.

**Section 11.** *Pre-trial conference.* -At the pre-trial conference, the court:

(a) May refer the issues to a mediator who shall assist the parties in reaching

an agreement on matters not prohibited by law.

The mediator shall render a report within one month from referral which, for good reasons, the court may extend for a period not exceeding one month.

(b) In case mediation is not availed of or where it fails, the court shall proceed with the pre-trial conference, on which occasion it shall consider the advisability of receiving expert testimony and such other makers as may aid in the prompt disposition of the petition.

**Section 12.** *Pre-trial order.* – (a) The proceedings in the pre-trial shall be recorded. Upon termination of the pre-trial, the court shall Issue a pre-trial order which shall recite in detail the matters taken up In the conference, the action taken thereon, the amendments allowed on the pleadings, and except as to the ground of declaration of nullity or annulment, the agreements or admissions made by the parties on any of the matters considered, including any provisional order that may be necessary or agreed upon by the parties.

(b) Should the action proceed to trial, the order shall contain a recital of the following;

(1) Facts undisputed, admitted, and those which need not be proved subject to Section 14 of this Rule;

(2) Factual and legal issues to be litigated;

(3) Evidence, including objects and documents, that have been marked and will be presented;

(4) Names of witnesses who will be presented and their testimonies in the form of affidavits; and

(5) Schedule of the presentation of evidence.

(c) The pre-trial order shall also contain a directive to the public prosecutor to appear for the State and take steps to prevent collusion between the parties at any stage of the proceedings and fabrication or suppression of evidence during the trial on the merits.

(d) The parties shall not be allowed to raise issues or present witnesses and evidence other than those stated in the pre-trial order.

The order shall control the trial of the case, unless modified by the court to prevent manifest injustice.

(e) The parties shall have five days from receipt of the pre-trial order to propose corrections or modifications.

**Section 13.** *Prohibited compromise.* - The court-shall not allow compromise on prohibited matters, such as the following:

(a) The civil status of persons;

(b) The validity of a marriage or of a legal separation;

(c) Any ground for legal separation;

(d) Future support;

(e) The jurisdiction of courts; and

(f) Future legitime.

**Section 14.** *Trial.* - (1) The presiding judge shall personally conduct the trial of the case. No delegation of the reception of evidence to a commissioner shall be allowed except as to matters involving property relations of the spouses.

(2) The grounds for recognition of divorce may be proved by the presentation of the apostilled or authenticated divorce decree or order or its administrative equivalent like a family register.

(3)The court shall take judicial notice of the existence of divorce law in the country where the divorce was obtained and shall require only a copy of the same for reference.

(4) The court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring a party to testify in open court would not enhance the ascertainment of truth; would cause to the party psychological harm or inability to effectively communicate due to embarrassment, fear, or timidity; would violate the right of a party to privacy; or would be offensive to decency or public morals.

(5) No copy shall be taken nor any examination or perusal of the records of the case or parts thereof be made by any person other than a party or counsel of a party, except by order of the court.

**Section 15.** *Decision.* - (1) If the court renders a decision granting the petition, it shall declare therein that the recognition of divorce shall be after compliance with Article 50 and 51 of the Family Code as implemented under the Rule on Liquidation, Partition and Distribution of Properties.

(2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.

(3) The decision becomes final upon the expiration of fifteen days from notice to the parties. Entry of judgment shall be made if no motion for reconsideration or new trial, or appeal Is filed by any of the parties the public prosecutor, or the Solicitor General.

(4) Upon the finality of the decision, the court shall forthwith issue the corresponding decree if the parties have no properties.

If the parties have properties, the court shall observe the procedure prescribed in Section 17 of this Rule.

The entry of judgment shall be registered in the Civil Registry where the marriage was recorded.

**Section 16.** *Appeal.* -

*(1) Pre-condition.* - No appeal from the decision shall be allowed unless the appellant has filed a motion for reconsideration or new trial within fifteen days from notice of judgment.

*(2) Notice of appeal.* - An aggrieved party or the Solicitor General may appeal from the decision by filing a Notice of Appeal within fifteen days from notice of denial of the motion for reconsideration or new trial. The appellant shall serve a copy of the notice of appeal on the adverse parties.

**Section 17.** *Liquidation, partition and distribution, custody, support of common children and delivery of their presumptive legitimes.* - Upon entry of the judgment granting the petition, or, in case of appeal, upon receipt of the entry of judgment of the appellate court granting the petition, the Family Court, on motion of either party, shall proceed with the liquidation, partition and distribution of the properties of the spouses, including custody, support of common children and delivery of their presumptive legitimes pursuant to Articles 50 and 51 of the Family Code unless such matters had been adjudicated in previous judicial proceedings.

**Section 18.** *Issuance of Recognition of Divorce*

(a) The court shall issue the Decree after;

(1) Registration of the entry of judgment granting the petition for declaration of nullity or annulment of marriage in the Civil Registry where the marriage was celebrated;

(2) Registration of the approved partition and distribution of the properties of the spouses, in the proper Register of Deeds where the real properties are located; and

(3) The delivery of the children's presumptive legitimes in cash, property, or sound securities.

(b) The court shall quote in the Decree the dispositive portion of the judgment entered and attach to the Decree the approved deed of partition.

**Section 19.** *Registration and publication of the decree; decree as best evidence.* - (a) The prevailing party shall cause the registration of the Decree in the Civil Registry in the province or city where the Regional Trial Court presides, where the marriage was registered and in the Philippine Statistics Authority. He shall report to the court compliance with this requirement within thirty days from receipt of the copy of the Decree.

(b) In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation.

(c) The registered Decree shall be the best evidence to prove the recognition of divorce and shall serve as notice to third persons concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children.

**Section 20.** *Effect of death of a party; duty of the Family Court or Appellate Court.* - (a) In case a party dies at any stage of the proceedings before the entry of judgment, the court shall order the case closed and terminated, without prejudice to the settlement of the estate in proper proceedings in the regular courts.

(b) If the party dies after the entry of judgment, the judgment shall be binding upon the parties and their successors in interest in the settlement of the estate in the regular courts.

**Section 21.** *Effectivity.* - This Rule shall take effect on _____following its publication in a newspaper of general circulation not later than _____.