

- (d) Supreme Court decision in 53 Phil. 423 and 53 Phil. 942;
 - (e) Proceedings in CFI Laguna Case No. 6663, entitled *Guevara et al. v. Young et al. Sobre Cumplimiento, de Contrato e Interdicto Mandatorio* appealed to the Court of Appeals, CA—G. R. No. 3739, CA—G. R. No. 3301; and to the Supreme Court, G. R. No. 46698, 70 Phil. 48;
 - (f) Proceedings in CFI Laguna No. 6790, entitled *Alvarez et al. v. Commonwealth et al.*, re interpleading, appealed to Supreme Court, G. R. No. 45315, 65 Phil. 302;
 - (g) Proceedings in CFI Laguna No. 3052, entitled *Municipal Council of San Pedro v. Colegio de San Jose* re escheat or reversion, appealed to the Supreme Court as G. R. No. 45460, 65 Phil. 318;
 - (h) Decision of Supreme Court in G. R. No. 45713, entitled *Municipality of San Pedro v. Castillo et al.*, 65 Phil. 240;
 - (i) Proceedings in CFI Laguna No. 9039, entitled *Colegio de San Jose v. Guevara et al.*, for revival of judgment with petition for receivership;
 - (j) Proceedings in CFI Laguna No. 8039, entitled *Alviar et al. v. Rural Progress Administration*, re action to annul sale of homestead, appealed to Supreme Court as G. R. No. L-1736;
 - (k) Proceedings in CFI Manila No. 2889, entitled *Alviar et al. v. Cullum "Para Poner En Vigor Una Interdición Civil,"* appealed to Supreme Court as G. R. No. L-2523, 47 O. G. 142.
7. Excerpts from Spanish Title of the Hacienda de San Pedro Tunasan.

COMMENT

TWO POINTS ON PERSONS:

 I. THE CLASSIFICATION OF CHILDREN
 II. WHOSE CONSENT IS NEEDED FOR
 VOLUNTARY RECOGNITION OF
 NATURAL CHILDREN?

by EDGARDO L. PARAS*

I. THE CLASSIFICATION OF CHILDREN

Kinds of Children

All opinions to the contrary notwithstanding, there are only two kinds of children which the law recognizes, namely, *legitimate*¹ and *illegitimate*.² Of course there also exists the "adopted" child, who is granted *as a rule*,³ all the rights of legitimate children,⁴ but then he is really, insofar as his parents by consanguinity are concerned, either a legitimate or an illegitimate child. Then we have the so-called "legitimated" child, but this child again is really an illegitimate child who, upon the fulfillment of certain

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¹ See Arts. 255, 256, 258, 264 (new Civil Code).

² See Arts. 257, 287 (new C. C.); also the whole of Chapter 4 (Illegitimate children involving Arts. 276-289).

³ That an adopted child has the same rights and duties of a legitimate child is only the general rule (see Art. 341, new C. C.). One exception is illustrated in Art. 343 which states that "If the adopter is survived by legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child."

⁴ Art. 341 (new C. C.).

requisites,⁵ is converted by operation of law into a legitimate child⁶ with all the rights and obligations possessed by a legitimate child.⁷

Kinds of Illegitimate Children

Illegitimate children may be classed into two, namely the "natural" child⁸, and the "illegitimate child other than natural," more commonly referred to as the "spurious child."⁹ Natural children may be divided into the "real natural children" and the "natural children by legal fiction."¹⁰ Real natural children may in turn be divided into "natural children by presumption"¹¹ and "natural children proper."¹² Natural children proper may then be divided into the "recognized natural children"¹³ and the "unrecognized natural children." Recognized natural children are those recognized either *voluntarily*¹⁴ or by *judicial compulsion*.¹⁵ On the other hand "spurious children" may be classed into those who are "recognized" (voluntarily or by judicial declaration of filiation¹⁶), and those who are "unrecognized."¹⁷ These distinctions are important because unless the illegitimate child is recognized one way or

⁵ The requisites for legitimation are: (a) The child must either be a natural child (Art. 269) or a natural child by legal fiction (since this latter child possesses all the rights and obligations of an acknowledged natural child) (Art. 89); (b) The child must have been recognized by both parents before or after the celebration of the marriage (Art. 271); (c) There must be a subsequent valid marriage between the parents of the child (Art. 270).

⁶ See Art. 272 (new C. C.).

⁷ Art. 272 (new C. C.).

⁸ Art. 269 (new C. C.).

⁹ Art. 287 (new C. C.).

¹⁰ Arts. 269 and 89 (new C. C.).

¹¹ Art. 277 (new C. C.); see also *Borres and Barza v. Mun. of Panay*, 42 Phil., 643.

¹² By natural child *proper*, I mean a child born outside of wedlock, both of whose parents were not disqualified, at the time of the conception of the child, by an impediment to marry each other, as distinguished from a natural child by *presumption*, who ceases to be a natural child upon proof of the incapacity of the other parent. (See Arts. 269, 277.)

¹³ Art. 282 (new C. C.).

¹⁴ See Art. 278 (new C. C.).

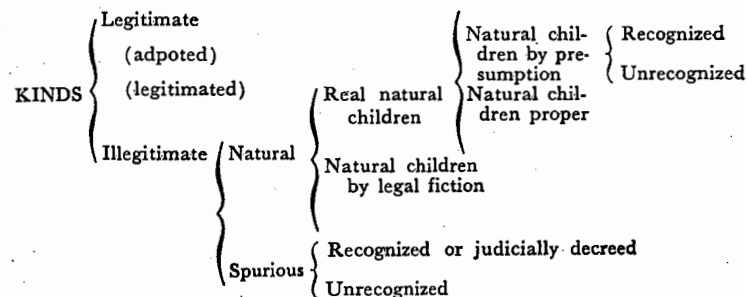
¹⁵ See Arts. 283, 284 (new C. C.).

¹⁶ See Arts. 289, 887 (new C. C.).

¹⁷ An unrecognized spurious child is a spurious child who has not been acknowledged either voluntarily or by judicial compulsion.

the other, he is *not* entitled either to *support* or to any *successional right*.¹⁸

Graphical Re-statement



Definitions

A natural child is one born outside of wedlock of parents who at the time of the conception of the child were not disqualified by any impediment to marry each other.¹⁹ If this requirement is not complied with, the illegitimate child is "spurious". If the child truly fulfills this requirement, he is a *real natural child*. However, if, even *without being* really a natural child, he is considered *by the law* as a natural child, then he is termed a "natural child by legal fiction". There are *two* kinds of natural children by legal fiction: those born or conceived of marriages which are *void ab initio*; and those conceived *after a voidable* marriage has been annulled.²⁰ To illustrate, if Jose, a married man, has carnal knowledge with Maria, his paramour, and Maria conceived a child, the child is *not* a natural child, for the parents (Jose and Maria) could not legally marry each other at the time of the conception of the child. Would the child then be a spurious child? The answer would be in the affirmative if Jose and Maria are *not* married, even bigamously. On the other hand, if the two had entered into a bigamous marriage (Jose's wife being still alive), the marriage would be *void ab*

¹⁸ See Arts. 291, 887 (new C. C.).

¹⁹ Art. 269 (new C. C.).

²⁰ Art. 89 (new C. C.).

initio, and the child would by express provision of the law,²¹ be a "natural child by legal fiction", with all the rights and obligations given to an acknowledged natural child.²² It will be noticed that the child here is *not* really a natural child,²³ but in view of the celebration of a prior marriage (bigamous that it is), the law prefers to grant it more rights, hence, the name "natural child by legal fiction."

If a parent, recognizing by herself alone her illegitimate child, was fully capacitated to marry at the time the child was conceived, said child is *presumed* to be a natural child, that is, *both* parents are presumed to have been capacitated to marry, hence the name "natural child by presumption."²⁴ The presumption however may be rebutted by proof that the *other* parent was not so capacitated, in which case the child reverts to the status of a spurious child. On the other hand, if it is proved that the said other parent was really capacitated, the child would now be a "natural child proper."²⁵ If a natural child is recognized, it becomes a "recognized natural child" of whomever recognizes him, otherwise he is an "unrecognized natural child." Even if the parent refuses to recognize him voluntarily, still if there is a ground to compel recognition and the action is brought within the proper prescriptive period, the parent may by judicial decree be compelled to acknowledge or recognize him,²⁶ although of course said judicial declaration of filiation is really sufficient by itself to make the child a "recognized natural child."

Spurious children may be classed into "recognized spurious children" and "unrecognized spurious children," depending upon *whether or not* recognition has been made voluntarily or by judicial decree or declaration. While it is true that apparently only natural children may be recognized, this only means that only natural children may be recognized as *natural children*. A spurious child who has been recognized, say, in a will, is indeed a recognized

²¹ See Arts. 80, 89 (new C. C.).

²² Art. 89 (new C. C.).

²³ See Art. 269 (new C. C.).

²⁴ See Art. 277 (new C. C.). See also the case of *Borres and Barza v. Mun. of Panay*, 42 Phil., 643.

²⁵ See Note 12.

²⁶ Arts. 283, 284 (new C. C.).

spurious child. There is no need of judicial compulsion here for the recognition has already been voluntarily made.

Other Appellations Given to Illegitimate Children

Various terms have been employed to identify illegitimate children, the most common being "incestuous", "sacrilegious", "adulterous", and "*manceres*". The terms are not however referred to in the new Civil Code, for as we have seen, there are only two kinds of illegitimate children which the law describes, the "natural" and the "illegitimate child other than natural" (commonly called "spurious", although this term is not found in the law itself).

"Incestuous" children are those born or conceived of incestuous relations,²⁷ whether there be a marriage or not. "Sacrilegious" children are those born of sacrilegious relations, that is, of parents who have taken religious vows of chastity. "Adulterous" children are born of adulterous relations, while "*manceres*" are supposed to be children of prostitutes, that is, conceived during an act of prostitution.

But all the above-mentioned terms are not mentioned in the law because they may really overlap one another, the principle of division or classification being different. For instance, if a prostitute has carnal knowledge with her first cousin, who is also a married priest, the child born of such relation would be (a) *incestuous*, because of the first cousin relationship²⁸ (b) and *sacrilegious*, because the man is a priest, (c) and *adulterous*, because the man is married to another, (d) and finally a *manceres*, because it was conceived during an act of prostitution. These various appellations, though all true, have however no legal significance — the important thing is that the child is a *spurious* child, that is, an illegitimate child other than natural. If it is recognized as such, it possesses certain rights demandable of the recognizing parent, otherwise, no right is given to it under the law.

²⁷ See Art. 81 (new C. C.).

²⁸ Art. 81 (new C. C.).

II—WHOSE CONSENT IS NEEDED FOR THE VOLUNTARY
RECOGNITION OF NATURAL CHILDREN?

Where Recognition Made (Art. 278, new C. C.)	Consent of Child Who Is To Be Recognized	Consent of Court	Consent of Parents of Recognizer When Recognizer Does not Need Parental Consent for Marriage	Consent of Parents of Recognizer When Recognizer Needs Parental Consent for Marriage
(1) Record of Birth ⁶	(a) If child is of age—consent needed ¹ (b) If child is a minor—consent not needed ²	Not Needed ³	Not Needed ⁴	Needed ⁵
(2) Will ⁷	ditto	Not Needed ³	ditto	Not Needed ⁵
(3) Statement Before a Court of Record ⁸	ditto	(a) If child is of age— Not Needed ³ (b) If a minor— Needed ³	ditto	Needed ⁵
(4) Authentic Writing ⁹	ditto	(a) If child is of age— Not Needed ³ (b) If a minor— Needed ³	ditto	Needed ⁵

Notes to the Foregoing Chart

1. Art. 281, (1st Paragraph), New C.C. There is however one exception to this, and the exception comes in the case of "automatic acknowledgment or recognition" referred to in the 2nd Paragraph of Art. 271, for here, in case the full-blood brother or sister of a *sui juris* is recognized, the *sui juris* is automatically recognized, his consent being implied unless he impugns the recognition within four years from the time of such recognition.

2. See Art. 281, (1st Paragraph), which by implication

allows the recognition of a minor without his consent. However this minor is allowed to impugn the recognition within four years following the attainment of his majority (3rd Paragraph, Art. 281).

3. Art. 281, 2nd Paragraph.

4. See Art. 279.

5. Art. 279.

6. The record of birth referred to is the record of birth in the Civil Registry created under the Civil Registry Law (Act No. 3753) effective three months after Nov. 26, 1930. Before said law, there was no Civil Registry in the Philippines (*Samson v. Tan*, 48 Phil., 401). An unrecorded birth certificate will not serve as voluntary recognition, though it may be introduced as part of the *res gestae*, as explanatory of a verbal act, and may serve therefore as a ground for compulsory recognition (See Art. 283, No. 4). Furthermore the record of birth must have been made *with the intervention* of the parent alleged to have voluntarily recognized the child, for under Art. 280, "When the father or the mother makes the recognition separately, he or she shall not reveal the name of the person with whom he or she had the child; neither shall he or she state any circumstance whereby the other parent may be identified." Thus, if made with the intervention of the mother alone, the father cannot be said to have voluntarily recognized the child. (See Sec. 5, Act No. 3753; see also *Madridejo v. De Leon*, 55 Phil., 1).

7. The will must be a valid one, that is, extrinsically valid either as a notarial or holographic will or codicil, otherwise, it cannot be said to be a will (*Onyaga v. Omilia*, 56 Phil., 820). Hence, a recognition made by a person less than 18 years of age in a will, cannot be valid (as a recognition in a will) for the will itself is invalid. However such invalid will may be considered an authentic writing, and the recognition may be valid *as such* (as recognition *in an authentic writing*), provided, in this particular case, the court gives its consent for the child is still a minor. (See Art. 281, 2nd Paragraph.)

The will referred to however in Art. 278 does not need

to have been probated (*Guevara v. Guevara*, G.R.-C.A. No. 7564).

Moreover, once recognition is validly made in a valid will, the subsequent revocation of the will does not necessarily revoke the recognition previously made (Art. 834). The reason is simple: while a will is essentially revocable (Art. 828), a recognition of an illegitimate child is not. As has been already held by the Supreme Court, the revocation of the recognition of an illegitimate child must not be whimsical or capricious; indeed the revocation must be based on a reason justified by the law (*Remigio v. Ortega*, 33 Phil., 614). Furthermore, the intent to revoke must be clear, for if a person properly recognizes his child, and later on, in a will states that he never had a child, the recognition should remain and the child should inherit. (See *Mercado v. Mercado*, C.A., O.G. Sept. 6, 1941, p. 2111.)

8. The statement may be made orally or in writing and the case during which it is made may be either civil or criminal. In the case of *Dorado v. Dorado*, 55 Phil., 861, it was held that certified true copies of complaints filed in court by the alleged parent, *alleging parenthood over a certain child*, should be considered as judicial records, and proof of voluntary recognition.

9. The authentic writing referred to in Art. 218 may be either a public or a private instrument. It is evident that the new Civil Code gives liberal rules for acknowledgment. (See the *Report of the Code Commission*, p. 87.) What is important is that the authentic writing really contains a recognition and that the document is a genuine one, that is, not a forgery. Besides, the writing must have been signed by the alleged recognizer (*Madrideo v. De Leon*, 55 Phil., 866).

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