

## THE NEW ADOPTION LAW

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"x x x Provided, That Articles 338 up to 348 inclusive on adoption, are hereby expressly repealed by Section B of this Chapter." The Child and Youth Welfare Code thus introduces our new law on adoption.<sup>1</sup>

For discussion purposes, the new law may be roughly divided into two (2) categories as follows: (1) the amendatory provisions, or those provisions amending the Civil Code, particularly on matters of qualifications and disqualifications of the adopter and the effects of adoption, and (2) the new provisions, or those provisions, which were not contained in the Civil Code.

### THE AMENDATORY PROVISIONS

The proviso in Article 27 that the adopter be in a position to support and care for the legitimate, legitimated, acknowledged natural children or natural children by legal fiction or other illegitimate children in keeping with the means, both material and otherwise, of the family has two aspects. The first introduces an additional (a third) requirement to the age-and-full-possession-of-civil-rights requirement. The second removes the disqualification of parents from adopting. Under the Civil Code, those who have legitimate, legitimated, acknowledged natural children or natural children by legal fiction cannot adopt. The first is not new. The requirement regarding the capacity of the adopter to give adequate support and care as an additional qualification has always been judicially recognized. On that count, the proviso is redundant. The second, however, is of far-reaching effect as it overturns well-established jurisprudence and gives a more realistic definition of the philosophy behind the law on adoption. In *Ball v. Republic*,<sup>2</sup> the petitioner Norman Ball sought to adopt his stepson after a daughter was born of his marriage to Sophie S. Farr. The Supreme Court, on the basis of Articles 335 and 339, ruled that the adoption cannot be allowed. Quoting Manresa, it declared that the funda-

mental reason for adoption is to console those without any child. Hence, with the birth of the legitimate daughter, there was no more reason for adopting the stepson, that is, for rendering consolation to the spouses. This argument, however, loses sight of the universally-accepted purpose of adoption which is the promotion of the best interests of the child. This doctrine, however logical, defeats the very purpose of adoption. The law, especially regarding paternity and filiation, should not always follow a rigidly mathematical formula of rights and obligations. It should be ever mindful of humane considerations. Thus, in *Malkinson v. Agrava*, a fitting prelude to the Child and Youth Welfare Code, is stated:<sup>3</sup>

Adoption statutes, being humane and salutary, hold the interest and welfare of the child to be of paramount consideration and are designed to provide homes, parental care, and education for unfortunate, needy, or orphaned children and give them the protection of family and society in the person of the adopter as well as to allow childless couples or persons to experience the joys of parenthood and gives them legally a child in the person of the adopted for the manifestation of their natural parental instincts.

Article 28 on who may not adopt requires the consent (to the adoption) of the spouse to be written, disqualifies any person convicted of a crime involving moral turpitude, regardless of the period of imprisonment,<sup>4</sup> and removes the residence requirement concerning aliens while requiring that the alien likewise be qualified to adopt according to the laws of his own country. The removal of the residence requirement among aliens poses a very difficult question in the matter of jurisdiction. In the case of *Ellis v. Republic*,<sup>5</sup> the Supreme Court, through Justice Concepcion, held that in adoption cases, which are proceedings in rem, the Court must have jurisdiction over the personal status of the parties. Our Civil Code in Article 15 adheres to the theory that jurisdiction over the status of a natural person is determined by the latter's nationality. Pursuant to this theory, we have jurisdiction over the status of Baby Rose, she being a citizen of the Philippines, but not over the status of the petitioners who are foreigners.<sup>6</sup> Under our Political Law, personal status in general is determined by and/or subject to the jurisdiction of the domiciliary law. This, perhaps, is the reason why our Civil Code does not permit adoption by non-resident aliens.

Lately, the Department of Social Welfare issued rules and regulations governing foreign adoptions. In the light of the *Ellis* doctrine, what would be the status of these adoptions? Article 39, while retaining the old formula, states in greater detail the effects

<sup>3</sup> 54 SCRA 66.

<sup>4</sup> Under the Civil Code, the crime involving moral turpitude disqualifies a person from adopting when the penalty imposed is six (6) months imprisonment or more.

<sup>5</sup> 7 SCRA 962.

<sup>6</sup> Petitioners, husband and wife, had been in the Philippines for three (3) years at the time of the hearing of the petition for adoption, the husband being assigned as staff sergeant in the US Air Force Base in Angeles City, Pampanga.

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<sup>1</sup> Articles 27-42, P.D. 603, The Child and Youth Welfare Code.

<sup>2</sup> 94 Phil. 106.

of adoption, particularly on matters of succession. The proviso in paragraph (1) that an adopted child cannot acquire Philippine citizenship by virtue of such adoption is an unnecessary provision, if not entirely misplaced. It is well-settled jurisprudence that citizenship cannot be transmitted by the simple expedience of adoption.<sup>7</sup> The importance of Article 39, however, lies in paragraph (4) where the law enumerates the effects of adoption on successional matters not hitherto appearing in the Civil Code. The new law provides for reversion<sup>8</sup> and substitution<sup>9</sup> (in favor of the adopter). Reversion takes place when the adopted, not having alienated the property received gratuitously from the adopter during his lifetime, predeceases the adopting parents without legitimate issue. The reversion may be total or partial. It is total when the adopted has no survivors. It is partial when he is survived by a spouse and/or illegitimate children in which case the spouse gets one-fourth and the illegitimate children get collectively another one-fourth, the rest reverting to the adopter. Substitution, on the other hand, takes place when the parents by nature of the adopted are both dead, in which case the adopting parents take the place of the deceased parents by nature. The re-enactment of reversion in addition to the provision on substitution neutralizes the radical effects of adoption on the law of succession. Reversion, on the one hand, affords adequate security against the evil that properties inherited might leave the direct line from which it originated without unnecessarily emasculating the rights of the adopted child to alienate, dispose, or in any way encumber these properties subject to reversion. Substitution, on the other hand, grants the adopter a corresponding but conditional right to inherit from the adopted so that in case the parents by nature predecease the adopted child, the adopter takes their place in the order of intestate succession. By making the adopter's right conditional, the law avoids the danger that adoption would be sought for mercenary reasons.

## THE NEW PROVISIONS

Of the many other provisions appearing sporadically in P.D. 603 that touch on adoption, Articles 33, 35 and 38 are worthy of special mention. Article 33 mandates that a case study be undertaken for every adoption case in order to determine the propriety of granting the decree of adoption. Article 35 speaks of a supervised trial custody which will last for at least six (6) months before the final decree of adoption is granted. Article 38, however, stresses the confidential nature of the proceedings and the records of adoption under pain of penalty ranging from imprisonment of at least two (2) months to a fine in an amount not exceeding five hundred pesos, or both in the discretion of the court.<sup>10</sup>

<sup>7</sup> Ching Leng v. Galang, 104 Phil. 1058.

<sup>8</sup> The provision on reversion is a re-enactment of a similar provision found in Section 768 of the Old Code of Civil Procedure, as amended by Act No. 3977.

<sup>9</sup> The term "substitution" is used here not in the technical sense as understood in the law of succession, but for lack of a better term.

<sup>10</sup> Article 7, P.D. 603, The Child and Youth Welfare Code.

## IMPRESSIONS

The new law impresses upon us one factor in the process of adoption, i.e. the active participation of the Department of Social Welfare. Article 33 states that a case study has to be undertaken in every adoption case. While before P.D. 603, the matter was purely the concern of the parents (both the parents by nature and the adopting parents) and the child, now the petition in order to prosper must show the consent of the Department. Which leads us to the essence of the law: public interest in the child's welfare. Manresa says that the purpose of adoption is to bring consolation to those who are not blessed with children. That, therefore, parents are not allowed to adopt because they are in no need of such consolation as those who do not have children are. And that adoption admits a stranger into the family which might prejudice the rights of the children by nature.<sup>11</sup> While we cannot just brush aside this point of view, we must not lose sight of the principal reason behind the new law: the child's welfare. This, the law achieves by liberalizing the qualifications of the adopter and providing strict supervision by the Department of Social Welfare over the whole process.

The law should not be blind to the realities of our time. We are faced with such problems as illegitimate births, orphans, vagrancy and similar others. Adoption is one answer. P.D. 603 makes it more available.

<sup>11</sup> 2 Manresa 6, ed. 108.