

under Sections 84 (b) (1) and (c). The accused may file with the Supreme Court a petition for review or certiorari of a decision of the Court of Military Appeals referred to in Section 84 (b) (2). Such review shall be limited to questions of law, although in cases of offenses punishable by death or life imprisonment questions of facts may be considered in addition to question of law [Section 86 86 (f)].

The Provost Courts shall have jurisdiction over offenses punishable by confinement of not more than 6 years or a fine less than P2,000.00 or illegal possession of firearms and explosives and offenses related to it as long as the penalty and fine imposed falls under its jurisdiction. A summary investigation as that of the military commission shall be conducted unless the offense is punishable by a penalty of less than six (6) months of imprisonment and for fine of less than P200.00. After trial, no sentence of the provost court shall be executed unless the same is approved and ordered executed by the President of the Philippines. In like manner, decisions of the provost court may be reviewed by the Court of Military Appeals [Sections 75 (b): 80: 84 (b)].

The Court of Military Appeals hereinabove mentioned shall likewise have the power to review every record of trial by General Courts Martial [Section 87 (d)].

AMNESTY

An amnesty may be decreed by the President from time to time as he may deem warranted by circumstances. An amnesty commission is created to carry out the purposes of Section 89. Amnesty has been declared so far in certain offenses committed in certain provinces of Mindanao and Sulu; for violation of RA 1700 otherwise known as the Anti-Subversion Acts; for Filipino Muslims; to ranking leaders of the Communist Party of the Philippines; to political expatriates and to such other persons qualified and who have complied with the conditions of such grant (Sections 88; 89; 94; 96 and 98) as provided in Chapter VIII of the Code.

CONCLUSION

Incidentally, Section 102 of the National Security Code on Amendments provides that the Code shall be subject to such modifications, alterations or revocations as the President/Prime Minister may from time to time deem necessary.

The discussions above are geared towards providing a working knowledge of one of the major Presidential legislative acts, the National Security Code. As to how the code, with its related implementing rules, will substantially affect our fundamental rights remains to be seen.

RIGHTS AND STATUS OF COMMON LAW SPOUSES UNDER PHILIPPINE LAW AND JURISPRUDENCE

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The existence in our society of the so-called "common-law marriages" which is brought about when a man and woman having capacity to marry, live together as husband and wife without the benefit of marriage, is a fact that cannot be denied. Their union is not accepted from the moral viewpoint and neither is it sanctioned by law. Yet, various questions arise as a result of attempts of parties to marry, and yet avoid some of the consequences of marriage, or to enjoy some of the rights of marriage without being married. Foremost among these is the question of what rights is a common-law spouse entitled to under our various laws.

In the United States, while many states have since rejected the doctrine, a marriage contracted pursuant to its requirements, in states continuing to recognize common law marriages, is just as effective and valid as a ceremonial marriage contracted in full compliance with applicable statutes. A common-law marriage carries with it the same rights and incidents as a ceremonial marriage.¹ In *Catlett v. Chestnut*,² a U.S. court said that it approved the principle that the only difference between a formal marriage under license and a common-law marriage is in the method of expressing consent. "A common-law marriage is an agreement between a man and woman that they thereby do then and there take each other as husband and wife. It differs from a ceremonial marriage only in the respect that the agreement does not have to be in the presence of witnesses or pronounced by an official having legal authority to perform marriage ceremonies."

In England, however, by the ancient common law, common-law marriages although binding and indissoluble, would not entitle the parties to all those legal privileges they would enjoy if married according to the forms required by statute or ecclesiastical law. The ecclesiastical courts had exclusive jurisdiction to determine the question of the legality of a marriage, and held that the wife of a common-law marriage was not entitled to any inheritance and the children of the marriage were illegitimate. The husband and wife of such a marriage could be

¹52 AM JUR 2d 899

²Catlett v. Chestnut 107 FLA 498

bringing suit in the spiritual court, compel the other to solemnize the marriage in the manner prescribed by the tribunal, and the evident design of the ecclesiastical courts was to make it compulsory upon such persons who should enter into private contract of marriage to solemnize the marriage according to the rules and regulations prescribed by the church³

Philippine jurisprudence, although not sanctioning the validity of common-law marriages, has recognized that when a couple live together without the benefit of marriage the relationship between the two should be regulated by law. However, it is interesting to note that the law only regulates the property rights between them, it does not provide for any personal rights to the common-law spouses.

CIVIL LAW

As early as 1925, our Supreme Court already declared that where a man and a woman, not suffering from any impediment to contract marriage, live together as husband and wife, an informal civil partnership exists and made the pronouncement that each of them has an interest in the properties acquired during such union and is entitled to participate therein if said properties were the product of their joint efforts.⁴

Our lawmakers taking notice of the existence in our society of a certain kind of relationship brought about by couples living together as husbands and wives without the benefit of marriage, acquiring and bringing properties into said union, and probably realizing that while the same may not be acceptable from the moral point of view they are as much entitled to the protection of the laws as any other property owners, incorporated Art. 144 of the New Civil Code to govern their property relations.⁵ Said Article reads as follows:

"Art. 144. When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownerships."

Therefore, in the absence of proof that the property was acquired with the man's exclusive capital, or before his cohabitation with the woman, and the man and the woman are living together as husband and wife without the benefit of marriage, the property is presumed to have been bought with their common funds and belongs to them in co-ownership pursuant to the above article.⁶

³35 AM JUR 340

⁴Marata v. Dionio GR No. 24449 Dec. 31, 1925

⁵Aznar v. Garcia 102 Phil. 1055

⁶Bermudez v. Baltazar 3 CAR 64

However, for Art. 144 to be applicable, both man and woman must be living together as husband and wife.⁷ Cohabitation means more than sexual intercourse, in fact; a U.S. court ruled that it need not be accompanied by sexual intercourse.⁸ It means to live or dwell together in the same place as husband and wife. Such cohabitation must be constant and exclusive and entered into with intent to be husband and wife.⁹ Cohabitation which is merely casual, transient and occasional is not sufficient.¹⁰

The second requirement is that there is no impediment for a legal marriage between them.¹¹ And lastly, that the property which constitutes the co-ownership must have been acquired by the joint efforts of the two, thus, to be entitled each spouse must have really contributed to the acquisition of the property involved.¹² Contribution may take the form of capital or labor. Where there is no showing that the property was earned by the joint efforts of the two the property must be deemed to have been the property of the party who acquired it.¹³

This informal civil partnership between common-law spouses terminates upon the separation of the spouses. In *Aznar v. Garcia*,¹⁴ the Supreme Court ruled that "there being no provision of law governing the cessation of such informal civil partnership, if it ever existed, same may be considered terminated upon the separation or desistance to continue said relations. Furthermore, no subsequent reconciliation took place." it may be inferred from the court's ruling that had a reconciliation between the common-law spouses taken place, the informal civil partnership comes into existence again.

However, should the common-law spouses later on decide to contract a formal marriage, the property acquired by both before their marriage acquires the character of conjugal properties by reason of the subsequent marriage contracted by them.¹⁵

⁷Novina v. CA 8 SCRA 279

⁸Hunt v. Hunt 172 MISS 732

⁹52 AM JUR 2d. 908

¹⁰Parco v. Salamillas 5 CA Rep. 956

¹¹Lesaca v. Lesaca 91 Phil. 135

¹²Yapinchay v. Torres 28 SCRA 489

¹³Lesaca, *IBID.*

¹⁴*IBID.*

¹⁵Phil. Alien Property Adm. v. Woodfire (CA) 52 OG 5879

In 1971, the Supreme Court in *Matabuena v. Cervantes*¹⁶ had an opportunity to rule on the question of whether the ban on donations between legally married spouses should apply to a common-law relationship. Art. 133 of the New Civil Code provides that "every donation between spouses during the marriage shall be void." Said provision, however does apply to donations *mortis causa* or to moderate gifts on occasion of any family rejoicing. The Supreme Court ruled in the affirmative stating that, "While Art. 133 considers as void a donation between the spouses during the marriage, policy considerations of the most exigent character as well as the dictates of morality require that the same prohibition should apply to a common-law relationship." The court went further and citing *Buenaventura v. Bautista*¹⁷ said that "so long as marriage remains the cornerstone of our family law, reason and morality alike demand that the disabilities attached to marriage should likewise attach to concubinage." Had it ruled otherwise then such irregular relationship of being visited with disabilities would be attended with benefits."¹⁸

From the *Matabuena* case our Supreme Court laid down a principle which is evident from an examination of our civil laws affecting common-law spouses, namely, that a common-law relationship is indeed saddled with numerous disabilities and disadvantages.

One major disability of a common-law spouse is that he or she is not considered a compulsory heir of the other. The common law spouse cannot inherit through intestacy from the deceased partner. Justice Paras in his comments on Art. 995 of the New Civil Code which provides that the surviving spouse is one of the primary intestate heirs states that the surviving spouse must be legitimate, for common-law marriages are not recognized in the Philippines.¹⁹ However, the surviving common-law spouse is not precluded from inheriting from the deceased should the former be named as an heir, legatee or devisee in the will of the latter provided the will be valid. Therefore, the condition of being a surviving spouse under the laws of succession requires that there should have been a valid marriage between the deceased and the survivor.

A common-law wife cannot even ask for support from the husband. For an action for support or alimony *pendente lite* to prosper the claimant must prove possession of the civil status of a spouse — that is, a marriage, without which one has no right to support.²⁰

¹⁶*Matabuena v. Cervantes* 38 SCRA 284

¹⁷*Buenaventura v. Bautista* 50 OG 3679

¹⁸*Matabuena, IBID.*

¹⁹Paras, Civil Code of the Phil. Annotated, Vol. III, p. 397.

²⁰*Yangco v. Rohde* 1 Phil. 404.

REMEDIAL LAW

Rule 130 Sec. 20(b) of the Revised Rules of Court provides that "a husband cannot be examined for or against his wife without her consent, nor a wife for or against her husband without his consent, except in a civil case by one against the other or in a criminal case for a crime committed by one against the other."

However, the rule on marital disqualification extends only to couples who are legally married. If they live together in illicit cohabitation, they are entitled to the privilege.²¹

Sec. 21(a) of the same rule provides that "the husband or the wife during the marriage or afterwards, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage."

Francisco²² comments that in order that a husband or wife may claim the privilege, it is essential that they be legally married. Again, if they live together in illicit cohabitation, they are not entitled to the privilege. It is immaterial whether they believed in good faith that they were legally married, if in fact they were not.

A common-law wife has no right to intervene in the probate proceedings of the deceased²³ unless she is named as an heir, legatee or devisee or is a creditor of the deceased. In fact, should no executor be named in the will, or is incompetent, refuses the trust or fails to give bond, or the person dies intestate, Rule 78 Sec. 6 provides that the surviving spouse should be given preference in the appointment as administrator of the deceased spouse's estate. However, Moran²⁴ believes that the order of preference in favor of the surviving spouse is predicated on the interest which the person to be appointed has in the estate left by the decedent. Thus, the widow or widower appears first on the order because she or he is presumed to be entitled to at least 1/2 of the residue besides his or her legitime. Since the common-law marriage does not produce a conjugal partnership nor is the common-law spouse entitled to a legitime, he or she is not the spouse entitled to preference in the administration.

However, since the principal consideration in the appointment of the administrator of the estate of a deceased person is the interest in said estate of the one to be appointed, equity prescribes that the common-law spouse should be allowed to be appointed administrator although the question of whether he or she should be

²¹*State v. Hancock* 28 Nev. 300.

²²Francisco, Rules of Court, p. 249.

²³*Aznar v. Garcia* 102 Phil. 1055

²⁴Moran, Comments on the Rules of Court, Vol. 3, p. 435.

given preference is one of our courts to determine. After all, he or she is a co-owner of the properties acquired, during their cohabitation, through their joint efforts.

LABOR LAW

Sec. 9 of the Code of Agrarian Reforms provides that "in case of death or permanent incapacity of the agricultural lessee to work his landholding, the leasehold shall continue between the agricultural lessor and the person who can cultivate the landholding personally, chosen by the agricultural lessor xxx from among the following: (a) surviving spouse; (b) the eldest direct descendant by consanguinity; or (c) the next eldest descendent xxx."

In *Bautista v. Salazar*²⁵ the Court of Appeals held that the common-law wife has no legal right to succeed the common-law husband as the tenant. The court said, "The land reform code is explicit in its use of the word 'spouse' which means a man or a woman joined in wedlock or a married person. Since the deceased and plaintiff were not legally married, the latter therefore cannot claim to have the right to succeed the former as tenant over the land in question. She is not the spouse contemplated by the provisions of Sec. 9 because she was a mere common-law wife."

CONCLUSION

Philippine jurisprudence has looked down upon the common-law marriage depriving the common-law spouse of the rights and privileges ordinarily afforded to those validly married to each other. Whenever the law speaks of the word "spouse," the common-law spouse is not included within its meaning for to do so would be lending legitimacy to an illegal relationship. Yet, when the law imposes restrictions on the relationship between legally married persons, common-law spouses are included within such restrictions such as the ban on donations between the spouses as ruled upon by our Supreme Court in *Matabuena v. Cervantes*.²⁶

Unlike the common-law prevailing in England during the time of the ecclesiastical courts, the common-law wife or husband cannot even compel the other to solemnize the marriage in accordance with our law. Although our courts have laid down the principle that cohabitation without the formalities of marriage between persons possessing no legal impediment to marry is not sanctioned by law, the principles of equity and justice dictate that either of the common-law spouses should be given the right to compel the other, during their cohabitation, to formalize the marriage and thereby put an end to this illicit relationship."

Furthermore, Art. 144 of the New Civil Code, which is evidently the only right granted to common-law spouses, that is, the formation of an informal civil

²⁵Bautista v. Salazar 18 CAR 951.

²⁶IBID.

partnership, as interpreted by our Supreme Court is too restrictive in its terms. The law provides that "xxx the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership" thereby implying that even if only one of the common-law spouses should acquire property through his or her individual effort or money, the property acquired will still be owned by both of them in common. Still our courts have interpreted this provision to mean that the property should have been acquired by their joint efforts and in the absence of proof or allegation that said property was acquired thru their joint efforts or labor, no partnership results.²⁷ In *Yapinchay v. Torres*,²⁸ the Supreme Court laid down the rule that "xxx the creation of the civil relationship envisaged in Art. 144 is circumscribed by conditions, the existence of which must first be shown before rights provided thereunder may be deemed to accrue. One such condition is that there must be a 'clear showing' that the common-law spouse had, during cohabitation, really contributed to the acquisition of the property."

The construction given by our courts seems to be at odds with the wordings of the law. Art. 144 if literally construed would mean that if the man alone paid the price or worked for it, whatever is acquired shall be owned 50-50 by the common-law spouses. And this is but fair because even if for instance the common-law wife contributes nothing financially, there is no doubt that she is, thru her love, affection and sacrifice in taking care of their children and her husband, contributing to the latter's ability and capacity to earn a living.

²⁷Flores v. RFC 94 Phil. 451.

²⁸IBID.