

## CONJUGAL PARTNERSHIP: RIGHTS AND REMEDIES OF THE WIFE

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THE law discourages suits between members of the same family unless there really exists a complete want of domestic tranquility. Nor even in the latter event, suits must not at once be filed or maintained in Court between them unless it should appear that earnest efforts towards a compromise have been made, but that the same have only proved to be futile and vain.<sup>1</sup> Notwithstanding this intendment and policy of the law, still cases between husband and wife and between their heirs consistently keep crowding before courts of justice for judicial determination.

In civil cases most specially, the litigation between them often involves their property rights and interest in the conjugal partnership, if not, in their inheritance. Cases concerning their property rights, or cases involving the validity of certain alienations whether real or personal property made by the wife,<sup>2</sup> and more often than not, those made by the husband who usually administers the conjugal partnership property,<sup>3</sup> are settled and adjudicated upon by courts, yet controversies of similar nature still file up high in the dockets of our courts.

Just recently in a decided case,<sup>4</sup> our Supreme Court, in its discussion, stumbled upon a point concerning the property rights of a wife in the conjugal partnership, but the Court did not pass upon it because the main issue in the appeal pertained solely to some other matter. However, the Supreme Court, realizing the importance of the question therein involved, recommended it as a good topic for debate which would serve as a good guidance in case of future controversies. The legal question raised was this: May a husband validly agree that upon his death certain conjugal money deposited in the bank shall belong to his brother, and thereby deprive his wife of her share in the conjugal partnership?<sup>5</sup>

\* LL.B., 1957.

<sup>1</sup> Art. 222 CIVIL CODE OF THE PHILIPPINES (hereinafter cited as NEW CIVIL CODE). See also: art. 2268 NEW CIVIL CODE; RULE 123 § 26 (d).

<sup>2</sup> See: *Papa v. Montenegro*, 54 Phil. 331 (1932); *Ward v. Delfin*, (CA) 45 O.G. 2941 (1949).

<sup>3</sup> Arts. 112, 165 NEW CIVIL CODE. See also: *Nable Jose v. Nable Jose*, 41 Phil. 713 (1921).

<sup>4</sup> *Borromeo v. Borromeo*, G.R. No. L-6363, Sept. 15, 1955.

<sup>5</sup> *Ibid.*

Under a regime of conjugal partnership of gains, can this really be done? Apparently, a stipulation like this runs counter to the very nature and affects deeply the very essence of the conjugal partnership itself as established by law. The policy of the law deems it necessary to protect the rights and interests of the members of the family and it leans towards its protection to preserve and perpetuate the security, harmony and confidence between husband and wife primarily. In other words, can a person enter into an agreement depriving the other spouse of certain conjugal rights in the partnership?

### *Conjugal Partnership System.*

The husband and the wife in their ante-nuptial agreement or marriage settlements, are allowed by the law to stipulate what system of property relations will govern their proprietary rights. The property relations between them, however, shall be governed either by a contract executed before the marriage; by the provisions of the law; and by custom.<sup>6</sup> Therefore, the husband and the wife may not provide for such stipulations that are contrary to law or good customs which are the basic limitations to the freedom to contract,<sup>7</sup> and also for such stipulations which are derogatory to the respective authority of the spouses in the family.<sup>8</sup>

Under the present law, therefore, the future spouses may stipulate in their marriage settlements what system of property relation they may desire and agree upon to govern their property rights and interests. They may agree upon any of the following: (a) absolute community;<sup>9</sup> (b) relative community of property;<sup>10</sup> (c) complete separation of property;<sup>11</sup> and (d) upon any other regime provided it is not contrary to law and good customs. But the law, above all, is inclined to have the system of relative community or conjugal partnership of gains<sup>12</sup> rule the property relations of the husband and the wife. This may be presumed from the fact that when there is no marriage settlements regarding the property relations of the spouses, or when they so stipulate but the same is void, the law declares that the system of relative community or conjugal partnership of gains shall govern their property relations.<sup>13</sup> It cannot be doubted, there-

<sup>6</sup> Art. 118 NEW CIVIL CODE.

<sup>7</sup> See art. 1306 NEW CIVIL CODE.

<sup>8</sup> "The law governs family relations. No custom, practice or agreement which is destructive of the family shall be recognized or given any effect." Art. 218 NEW CIVIL CODE.

<sup>9</sup> Arts. 198-211 NEW CIVIL CODE.

<sup>10</sup> Arts. 142-197 NEW CIVIL CODE.

<sup>11</sup> Arts. 212-215 NEW CIVIL CODE.

<sup>12</sup> "By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage." Art. 142 NEW CIVIL CODE.

<sup>13</sup> Art. 119 NEW CIVIL CODE.

fore, that the law favors the conjugal partnership more than any other regime of property relation to govern the rights of the husband and wife regarding their property.<sup>14</sup> Under this system, the husband and the wife own in common all the property of the conjugal partnership.<sup>15</sup> It is similar to co-ownership and to a conventional partnership.<sup>16</sup>

#### *Administration by the Husband.*

In administering the conjugal partnership, the husband is the legal administrator of its property.<sup>17</sup> By law, the husband is the managing head of the family and the statutes securing to the married women their paraphernal property have wrought no change in this general rule. The husband, being by law, the administrator of the conjugal partnership's property, a receiver, therefore, may not be appointed in order to deprive him of his administration.<sup>18</sup>

The law explicitly vests the management and administration of the partnership property to the husband and not to the wife except in extreme cases, the former being more energetic and less tied up to the family cares and is in a better position to assume the management.

The ganancial partnership, like all other partnerships, needs management and administration. The said partnership being constituted solely by the husband

<sup>14</sup> Zaide v. Concepcion, 32 Phil. 403 (1917).

<sup>15</sup> Art. 143 NEW CIVIL CODE.

<sup>16</sup> "The conjugal partnership shall be governed by the rules on the contract of partnership in all that is not in conflict with what is expressly determined in this Chapter." Art. 147 NEW CIVIL CODE.

"Conjugal partnership is created by the mere celebration of marriage, while ordinary partnerships come into existence through the affirmative act or consent of the partners. The law regulates conjugal partnerships, but ordinary partnerships are placed under the control of the partners. In conjugal partnerships, the profits are divided equally, whereas the distribution of net gains in other partnerships is based on the agreement of the parties and in the absence thereof, upon the amount of capital contributed by each partner. The rights of the husband and the wife relative to the management of the community of property are not the same. On the other hand, in an ordinary partnership, the partners are put in the same condition with regard to such rights, unless they designate one or more partners as managers. (9 Manresa 557-558)." 1 PADILLA, CIVIL LAW 251 (1953 ed.).

<sup>17</sup> Arts. 112, 165 NEW CIVIL CODE. Also: Harden v. Peña, 48 O.G. 1307 (1952); Obliosca v. Obliosca, 47 O.G. 4267 (1951); De la Rosa v. Barruga, G.R. No. L-2368, June 30, 1950; People's Bank & Trust Co. v. Register of Deeds, 60 Phil. 167 (1933); Abella de Diaz v. Erlanger & Galinger, 59 Phil. 326 (1937); Gibbs v. Government, 59 Phil. 293 (1937); Bank of P.I. v. Posadas, 56 Phil. 214 (1934); Gallion v. Gayeres, 53 Phil. 43 (1931); Prades v. Tecson, 49 Phil. 230 (1928); Flores v. Flores, 48 Phil. 288 (1927); Uy Coque v. Navas L. Sioca, 45 Phil. 431 (1925); Borja v. Addison, 44 Phil. 895 (1924); Nable Jose v. Nable Jose, 41 Phil. 713 (1921); Javier v. Osmeña, 34 Phil. 336 (1918); Jacinto v. Salvador, 22 Phil. 376 (1913); Marigsa v. Macabuntoc, 17 Phil. 107 (1911); Falcon v. Manzano, 15 Phil. 441 (1910); Consunji v. Tison, 15 Phil. 81 (1910); Enriquez v. Victoria, 10 Phil. 10 (1908); Alfonso v. Natividad, 6 Phil. 240 (1906); Parsons Hardware Co. v. Acosta, (CA) 39 O.G. 1014 (1941).

<sup>18</sup> Javier v. Osmeña, 34 Phil. 336 (1918).

and the wife, the law has to decide in the first instance if that management should be conceded to both, jointly or separately, or to only one of them . . . .

Rationally, it was necessary to confer upon only one of the spouses the management and administration of the partnership, and the solution of this case offered no doubt. The husband being the stronger, the more energetic, more in touch with society or external world, and less tied to family cares and domestic duties, he is naturally in a better position to assume that management. The husband is the head of the family by unanimous agreement of all legislations, ancient and modern.<sup>19</sup>

According to our Supreme Court, the reasons of the law in vesting the administration of the conjugal property to the husband are based on necessity and convenience.

The law making the husband the sole administrator of the property of the conjugal partnership is founded upon necessity and convenience as well as upon the presumption that, from the very nature of the relation between husband and wife, the former will promote and not injure the interest of the latter. So long as this harmonious relation, as contemplated by law, continues, the wife cannot and should not interfere with the husband in his judicious administration of the conjugal property.<sup>20</sup>

By reason of good administration and to prevent possible collision of rights, the law does not allow that identical powers be conferred upon the husband and wife.

To give identical powers to both spouses so that they may act by mutual accord would certainly be to embarrass the operation of the partnership, because as to cases where both managers should disagree, the intervention of the judicial authority would have to be imposed, thereby giving rise to disputes and displeasures so grave and lamentable that they would not only perturb the simple partnership relations but also the peace and harmony of the family within the home.

The power, on the other hand, of acting separately and independently would produce confusion and intolerable disorder, because each one would be able to run counter with the function of the other, thus propelling the partnership without any fixed bearing and with possible collisions of rights, if each one of the managers resolved the same question in opposite ways, or contracted with respect to the same property with distinct persons.<sup>21</sup>

Therefore, joint management of the partnership property is not allowed, since the husband is the manager of the conjugal partnership property.<sup>22</sup>

<sup>19</sup> 9 MANRESA 671-72, cited in 1 FRANCISCO, CIVIL CODE OF THE PHILIPPINES 537-38 (1953 ed.).

<sup>20</sup> De le Viña v. Villareal, 41 Phil. 13 (1921).

<sup>21</sup> 1 FRANCISCO, *op. cit. supra* note 19, at 538.

<sup>22</sup> De la Rosa v. Barruga, G.R. No. L-2368, June 30, 1950.

*Administration by the Wife.*

It is true that the law explicitly vests the management and administration of the conjugal partnership in the husband, but in some instances such management and administration may be granted or transferred to the wife.

Without judicial intervention, the wife may administer the conjugal partnership (1) if its administration was conferred upon her by stipulation in the marriage settlement;<sup>23</sup> or (2) if by virtue of a public instrument, the consent of the husband having been duly obtained, she was appointed as administratrix of the conjugal partnership property.<sup>24</sup>

With the permission and approval of the court, however, the wife may also administer and manage the conjugal partnership, subject to the limitations which the judicial authority may impose on her, in the following instances: (1) when the husband abuses his powers in administering the conjugal partnership property;<sup>25</sup> (2) when the husband commits fraud against the interest of the wife in the conjugal partnership;<sup>26</sup> (3) when the husband lavishes the family fortune;<sup>27</sup> (4) when the husband has abandoned his wife without any just cause for at least one year;<sup>28</sup> and (5) in all those cases provided for in article 196 of our New Civil Code.<sup>29</sup>

In the event that the administration and management of the conjugal partnership property have been given to the wife, she, as administratrix of such property, shall have the same powers and responsibilities which the husband also has as administrator, but always subject to such limitations which the court may deem proper and advisable.<sup>30</sup>

<sup>23</sup> Art. 112 NEW CIVIL CODE.

<sup>24</sup> Art. 168 NEW CIVIL CODE. See also: *Jose v. Damian*, 14 Phil. 104 (1910).

<sup>25</sup> Art. 167 NEW CIVIL CODE.

<sup>26</sup> *Harden v. Peña*, 48 O.G. 1307 (1952).

<sup>27</sup> "Where the husband has a paramour and lavishes the family fortune on her the wife may ask for administration of the conjugal property, or plead only for separation of property." *Cabahug-Mendoza v. Varela*, G.R. No. L-5099, April 29, 1953.

<sup>28</sup> "The separation in fact between husband and wife without judicial approval, shall not affect the conjugal partnership, except that:

(3) If the husband has abandoned the wife without just cause for at least one year, she may petition the court for a receivership, or administration by her of the conjugal partnership property, or separation of property." Art. 178 NEW CIVIL CODE.

<sup>29</sup> "With the conjugal partnership subsisting, the administration of all classes of property in the marriage may be transferred by the courts to the wife:

(1) When she becomes the guardian of her husband;  
(2) When she asks for the declaration of his absence;  
(3) In case of civil interdiction of the husband.

"The courts may also confer the administration to the wife, with such limitations as they deem advisable, if the husband should become a fugitive from justice or be in hiding as a defendant in a criminal case, or if, being absolutely unable to administer, he should have failed to provide for administration." Art. 196 NEW CIVIL CODE.

<sup>30</sup> Art. 197 NEW CIVIL CODE.

*Alienations by the Wife.*

The wife cannot bind the conjugal partnership without the consent of the husband duly had, except in those cases which are provided for by law when she can do so.<sup>31</sup> The reason behind this is that the husband is the administrator of the conjugal partnership.<sup>32</sup> Therefore, she can not bind the conjugal partnership without the consent of her husband except in those instances where she may legally bind the partnership property.<sup>33</sup> Exceptions to this rule are the usual daily expenses of the family<sup>34</sup> and when she has been appointed as administratrix of the conjugal partnership.<sup>35</sup> A wife, therefore, may not alienate or mortgage the conjugal partnership property without her husband's consent.<sup>36</sup>

While the marriage exists, the wife, without judicial authority or the consent of the husband, cannot alienate or encumber any real property which has been allotted to her in case of a separation or the management of which may have been given to her, and in the absence of clear and convincing proof of disability or necessity, such authority should not be granted.<sup>37</sup> When the wife then sells or alienates the property of the conjugal partnership, the administration or disposal of which lies only in the hands of the husband who did not empower his wife to dispose and sell said property, the deed of sale executed by the wife may be avoided by the husband because it was made without his consent and authority.<sup>38</sup>

*Alienations by the Husband.*

Under the system of conjugal partnership of gains, may a husband validly agree that upon his death certain conjugal money deposited in the bank shall belong to his brother, and thereby deprive his wife of her share in the conjugal partnership?<sup>39</sup>

This was the legal question raised by the Supreme Court in the case of *Borromeo v. Borromeo*,<sup>40</sup> which as stated earlier, the tribunal had no opportunity to decide.<sup>41</sup> The facts of this case are as follows:

<sup>31</sup> Art. 172 *id.*

<sup>32</sup> Art. 165 *id.* See also: note 17 *supra*.

<sup>33</sup> Art. 161 (1) NEW CIVIL CODE.

<sup>34</sup> Arts. 115, 138 (2) *id.*

<sup>35</sup> Arts. 167, 168, 178, 196 *id.*

<sup>36</sup> *Mercado v. Tan-Lingco*, 27 Phil. 319 (1915).

<sup>37</sup> *Samson v. Carratala*, 50 Phil. 647 (1929).

<sup>38</sup> *Ward v. Delfin*, (CA) 45 O.G. 2941 (1949).

<sup>39</sup> *Borromeo v. Borromeo*, G.R. No. L-6363, Sept. 15, 1955.

<sup>40</sup> *Ibid.*

<sup>41</sup> "An error, not assigned by the appellant in his brief or discussed during the course of the trial in both instances, cannot be considered by the Supreme Court in finally deciding the action on appeal." *Hernaez v. Montelibano*, 34 Phil. 954 (1918). "If, then, no errors will be considered unless they are specifically assigned, certainly if none are assigned, no question can be considered." *Tan Ne Nio v. Collector of Customs*, 34 Phil. 944 (1918).

*M. B.* and *J. B.* were husband and wife respectively. During the lifetime of *M. B.*, he entered into an agreement with his brother and a third party in the following terms:

We, the undersigned, agree with one another and with the Bank of the Philippine Islands hereinafter called the Bank, that all moneys heretofore, now, or hereafter deposited, by us, or any of us, to the credit of this Saving Account or Current Account, are and shall be received and held by the Bank with the understanding, and upon the condition that said money deposited, without reference to previous ownerships, and all interest, dividends and credits thereon shall be the property of all of us as joint owners and shall be payable to and collectible by anyone of us, during our lifetimes and after the death of any one of us shall be the sole property of and payable to the survivors, or survivor, provided that this last deposition is not contrary to provisions of laws now in force or may hereafter be in force in the Philippines.<sup>42</sup>

When *M. B.* died leaving no ascendants or descendants, except his widow, *J. B.*, his brother administered the estate of the decedent as provided for in the will. Without any authority from the Court and taking advantage of his position as such, the brother withdrew the money deposited in the Bank with the purpose of hiding the same from the widow and excluding it from the assets of the estate to be administered by him. Proceedings were had for his removal as such administrator for acts committed against the interest of the estate, one of the several reasons being the withdrawal of the funds. He tried to justify his position by citing the aforementioned agreement.

As stated before, the only issue in the appeal involved the legality of the removal of the executor.<sup>43</sup> However, the Supreme Court expressed, in *obiter*, its opinion on the matter, saying:

There is at least some ground to doubt whether a husband may stipulate that upon his death certain conjugal money deposited in the bank shall belong to his brother, and thereby defraud his wife of her share in the conjugal partnership. According to Art. 1413 of the Civil Code,<sup>44</sup> no alienation or agreement which the husband may make with respect to the conjugal property in fraud of the wife shall prejudice her or her heirs.<sup>45</sup>

We can readily see from the opinion stated in the decision that a grave doubt is cast upon the validity of such stipulation or agreement entered into by the husband depriving his wife of her share in the conjugal partnership. Is there room for a contrary view? We hardly think so. A stipulation or

<sup>42</sup> *Borromeo v. Borromeo*, note 39 *supra*.

<sup>43</sup> "Claim of gift from decedent.—Where an executor, in answer to a petition for his removal on the ground of maladministration in claiming property of the estate, alleged a gift by decedent to him of the property, he manifested an interest adverse to the beneficiaries, authorizing his removal; but the county court had no jurisdiction to determine the question of gift." *Ibid*, citing *In re Manser*, 60 Ore. 240, 188 Pac. 1024 (1911). (Emphasis added).

<sup>44</sup> Now Art. 166 NEW CIVIL CODE.

<sup>45</sup> *Borromeo v. Borromeo*, note 39 *supra*.

agreement depriving the wife of her share will undoubtedly work manifest injustice and great prejudice to the interest and right of the wife to share equally with the husband in the resultant gains and benefits of the conjugal partnership.<sup>46</sup> An agreement of such import is clearly inimical to the welfare of the community. The law can not countenance and sanction such covenant because it is manifestly opposed to the very institution of conjugal partnership wherein the husband and the wife must share and share alike the profits derived from it.

Under this system of property relation, the husband and the wife shall divide equally, upon the dissolution of the marriage or of the partnership,<sup>47</sup> the net gains or benefits obtained indiscriminately by either spouse during the marriage,<sup>48</sup> unless a different basis of division was agreed upon in the marriage settlements.<sup>49</sup> However, the spouses may waive the gains or effects of the conjugal partnership during the marriage only in case of judicial separation between them, and if this waiver takes place by reason of separation, or after the marriage has been dissolved or annulled, the same must appear in a public instrument.<sup>50</sup> The waiver of the rights of one spouse in the conjugal partnership during the marriage is void, except in case of judicial separation.<sup>51</sup> The guilty spouse, however, shall forfeit his or her share of the conjugal profits<sup>52</sup> and in case of annulment of marriage, the spouse in bad faith shall likewise forfeit his or her share of the conjugal gains.<sup>53</sup> These are the cases provided by law when a spouse may be deprived, by way of forfeiture, of his or her share in the benefits and profits of such partnership, and not otherwise.

As mentioned previously, the conjugal partnership shall also be governed by the rules on contracts of partnership in all that is not in conflict with the specific provisions of the law that govern this particular type of property relations between the husband and the wife<sup>54</sup> and under the law governing a conventional partnership, a stipulation which excludes one or more

<sup>46</sup> See arts. 142, 185 NEW CIVIL CODE. Also: *Ramirez v. Bautista*, 14 Phil. 528 (1910).

<sup>47</sup> "The conjugal partnership of gains terminates:

- (1) Upon the death of either spouse;
- (2) When there is a decree of legal separation;
- (3) When the marriage is annulled;
- (4) In case of judicial separation of property under article 191." Art.

175 NEW CIVIL CODE.

During the marriage, the spouse cannot agree for the extra-judicial dissolution of the conjugal partnership between them. Art. 221 NEW CIVIL CODE. However, they may agree for its dissolution, even though the marriage still subsists, subject to judicial approval. Art. 191 par. 4 NEW CIVIL CODE.

<sup>48</sup> Art. 142 NEW CIVIL CODE.

<sup>49</sup> Art. 185 *id.*

<sup>50</sup> Art. 146 *id.*

<sup>51</sup> *Baz v. Gonzales*, (CA) 48 O.G. 235 (1952). See also: *De la Rosa v. Baruga*, G.R. No. L-2368, June 30, 1950.

<sup>52</sup> Art. 176 NEW CIVIL CODE.

<sup>53</sup> Art. 177 *id.*

<sup>54</sup> Art. 147 *id.*

partners from any share in the profits or losses is void.<sup>55</sup> Seemingly, therefore, a stipulation between the husband and the wife depriving one or the other of his or her share in the conjugal partnership is void.

It is in the very nature of the conjugal partnership of gains that the spouses shall divide equally between them the remainder estate after liquidation.<sup>56</sup> In connection with the present discussion, can the husband legally, by an act mortis causa, deprive his wife of her share in the conjugal partnership? The provisions of the law on the matter do not tolerate such an act to be done. We find support from the provision which states that "the husband or the wife may dispose by will of his or her half of the conjugal partnership profits."<sup>57</sup> Note that what may only be disposed of by the spouse is his or her share in the conjugal partnership, thus making it clear that the husband can not, by an act mortis causa, deprive the wife of her share in the partnership by disposing of by will that half interest which belongs to her.

A will or testament takes effect upon the death of the testator or testatrix. If the will is executed during the marriage, and the husband or wife who makes it disposes of whatever may pertain to him or her as share in the net assets of the conjugal partnership, the testamentary disposition can be given full force and effect. But if the will bequeaths some particular or specific property of the conjugal partnership, such testamentary provision can be effective only if the property is adjudicated to the testator or testatrix in the liquidation of the conjugal partnership.<sup>58</sup> The law allows disposition mortis causa so that none of the spouses may make a donation inter vivos.<sup>59</sup> It is to be observed that the husband may dispose of by will only that which may pertain to him as his share in the net assets of the partnership, but not the share of his wife. It is true that the wife has no absolute right to one-half the income of the conjugal partnership properly. Her right is only inchoate during the existence of the conjugal partnership<sup>60</sup> but the husband can not make any disposition which may impair her one-half share in the community. He may not, therefore, by an act mortis causa, deprive her of her proportionate share in the conjugal partnership.

The law specifically enumerates when and in what cases or instances the

<sup>55</sup> Art. 1799 *id.*

<sup>56</sup> See arts. 142, 185 *id.*

<sup>57</sup> Art. 170 *id.* See also: art. 803 *id.*

<sup>58</sup> 1 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE 413-14 (1953 ed.).

<sup>59</sup> *Obliosca v. Obliosca*, (CA) 47 O.G. 4267 (1951).

<sup>60</sup> *Madrigal v. Rafferty*, 38 Phil. 414 (1919).

husband may dispose of the conjugal partnership property.<sup>61</sup> So then, as long as the husband as administrator of the conjugal partnership performs his duty and acts in good faith for the benefit of the community and not in fraud of his wife or her collateral heirs, he will be accorded a wide discretion on the matter and the law will uphold his right to do so.<sup>62</sup> The husband, therefore, may dispose of the conjugal partnership property, even without the consent of the wife, in those cases and only for those purposes as may be recognized by law.<sup>63</sup>

Under the present Civil Code,<sup>64</sup> the husband, before he may dispose any real property of the conjugal partnership which was acquired after the ef-

<sup>61</sup> "The husband may dispose of the conjugal partnership property for the purposes specified in articles 161 and 162." Art. 171 New CIVIL CODE.

"The conjugal partnership shall be liable for:

(1) All debts and obligations contracted by the husband for the benefit of the conjugal partnership, and those contracted by the wife, also for the same purpose, in the cases where she may legally bind the partnership;

(2) Arrears or income due, during the marriage, from obligations which constitute a charge upon property of either spouse or of the partnership;

(3) Minor repairs or for mere preservation made during the marriage upon the separate property of either the husband or the wife; major repairs shall not be charged to the partnership;

(4) Major or minor repairs upon the conjugal partnership property;

(5) The maintenance of the family and the education of the children of both husband and wife, and of legitimate children of one of the spouses;

(6) Expenses to permit the spouses to complete a professional, vocational or other course." Art. 161 *id.*

"The value of what is donated or promised to the common children by the husband, only for securing their future or the finishing of a career, or by both spouses through a common agreement, shall also be charged to the conjugal partnership, when they have not stipulated that it is to be satisfied from the property of one of them, in whole or in part." Art. 162 *id.*

<sup>62</sup> *Uy Coque v. Navas L. Sioca*, 45 Phil. 431 (1925).

<sup>63</sup> "Disposition without wife's consent.—The consent of the wife is not necessary for the acts of the husband in disposing of the conjugal property in the following cases.

(1) Disposition of personal property. If real property acquired after the effectivity of the present code is sold or encumbered with the consent of the wife, the proceeds of the sale or encumbrance becomes subject to the disposition by the husband without need of the wife's consent.

(2) Disposition of real property acquired prior to the effectivity of the new Civil Code. If such property, however, is alienated, and new real property is acquired with the proceeds after the effectivity of the present Code, such new property cannot be disposed of by the husband without the consent of the wife.

(3) Disposition of real property acquired after the effectivity of the present code, when the wife is insane, or is confined in a leprosarium, or is under civil interdiction.

(4) Disposition of any kind of property as donation to the common children for securing their future or finishing their career. (Arts. 162 and 171).

(5) Disposition of any kind of property for the payment of the obligations of the conjugal partnership enumerated in article 161. (Art. 171).

(6) Disposition of any kind of property as a moderate gift for charity. (Art. 174)" 1 TOLENTINO, *op. cit. supra* note 58, at 411.

<sup>64</sup> Art. 166 NEW CIVIL CODE.

According to Francisco, this article is a modification of art. 1413 of the old code, inspired by article 172a of the Civil Code of California. However, according to Tolentino, this article is not taken from art. 1413 of the old code; but in reality this is a new provision, similar to article 235 of the Brazilian Code.

fectivity of the Code, must first obtain the consent of the wife,<sup>65</sup> thus changing the rule under the old Civil Code, where the husband may dispose of the community property, real or personal, even without the consent of the wife being first had.<sup>66</sup> In those cases where her consent is required, it may be given either expressly or impliedly, and before or after the alienation. If given *before* it will validate the act and if given *after*, it will ratify the act inasmuch as the alienations made by the husband without the consent of the wife are voidable at the instance of the wife or her heirs.<sup>67</sup>

The wife, upon the acquisition of any conjugal property, becomes immediately vested with an interest and title therein equal to that of her husband, subject to the husband's power of management and disposition.<sup>68</sup> But the latter cannot make any transfer or alienation for any purpose which is designed to defraud the wife of her rights in the community property, and if he should do so, such act will be treated as a nullity at her instance.<sup>69</sup> Does this action then to annul said transfer prescribe in ten years as provided in the present article?<sup>70</sup> We do not think so. If the contract is absolutely fictitious or simulated, it is a complete nullity; it is void from the beginning, as if it did not exist at all.<sup>71</sup> There is really no alienation, and the action to declare the inexistence of such contract does not prescribe.<sup>72</sup> The property supposed to have been alienated under such a simulated contract must still be considered as part of the community property.<sup>73</sup> However, those contracts or conveyances with onerous considerations, but which are executed in violation of the provision of the law, or which tend to defraud or impair the interests of the wife in the conjugal partnership, are not necessarily void but merely voidable, and the right to avoid it belongs exclusively to the wife or her heirs who may exercise the rights and remedies granted by law.<sup>74</sup>

The principle of law that the husband, thru his fraudulent acts, may not deprive his wife of her share in the conjugal partnership is settled. In a

<sup>65</sup> "Disposition with wife's consent.—In the following cases, the acts of the husband require the consent of the wife:

(1) Alienation and encumbrance, gratuitously acquired after the effectivity of the present code.

(2) Donations, whether of personal or real property of the conjugal partnership, made to strangers, except moderate donations for charity." 1 TOLENTINO, *op. cit. supra* note 58, at 408-09.

<sup>66</sup> Art. 1413 SPANISH CIVIL CODE.

<sup>67</sup> 1 CAGUIA, COMMENTS AND CASES ON CIVIL LAW § 278 (1955).

<sup>68</sup> Gibbs v. Government, 59 Phil. 293 (1937).

<sup>69</sup> "While the husband, as manager of the conjugal partnership, may alienate the property for a valuable consideration without the consent of the wife, a conveyance made in fraud of the wife and without consideration is a nullity." Gallion v. Gayeres, 53 Phil. 43 (1931).

<sup>70</sup> See arts. 1142, 1144 NEW CIVIL CODE.

<sup>71</sup> Arts. 1346, 1409 *id.*

<sup>72</sup> Art. 1410 *id.*

<sup>73</sup> 1 TOLENTINO, *op. cit. supra* note 58, at 418-19.

<sup>74</sup> 1 MANRESA 324, cited in 1 TOLENTINO, *op. cit. supra* note 58, at 410. See also: Montederamos v. Ynonoy, 56 Phil. 457 (1934).

decided case,<sup>75</sup> wherein the husband named his estate as the sole beneficiary of a life insurance the premium of which was paid largely by conjugal funds, our Supreme Court ruled that it could not be done because it would constitute a fraud on the right of the wife in the conjugal partnership. According to the Court, although the husband is the manager of the conjugal partnership, he cannot of his own free will convert the partnership property into his own exclusive property. Hence, with respect to the proceeds of the policy the premiums of which were paid with conjugal money, the wife is entitled to one-half of the same of which she cannot be deprived.

Except in case of moderate donation for charity, the husband or the wife may donate any property of the conjugal partnership provided the consent of the other spouse has been duly obtained.<sup>76</sup> Hence, the husband cannot donate the property of the conjugal partnership; but both spouses may do so. A donation executed by the husband after the dissolution of the partnership caused by the wife's death, is null and without effect as regards the half corresponding to the wife.<sup>77</sup> Thus, the husband can not make a donation of any property of the conjugal partnership which will injure or defraud the rights of the wife to her share in the conjugal partnership, as was done in the case of *Baello v. Villanueva*.<sup>78</sup> The facts and ruling of this case are:

*J. S.* and *E. B.* were spouses legally married. *J. S.* during his lifetime donated all the land in question mentioned in the complaint as belonging to the conjugal partnership of *J. S.* and *E. B.*, to the grandchildren of his brother. After his death, *E. B.* filed a complaint to set aside the gift of one-half of the land donated, alleging that such land belonged to the conjugal partnership of *E. B.* and *J. S.*

The Court said:

<sup>75</sup> Bank of P.I. v. Posadas, 56 Phil. 215 (1934). In this case, the husband took out an endowment life insurance policy on his life, payable as "directed by will." He paid the premiums thereon out of the community funds, and by his will made the proceeds of the policy payable to his own estate. The Court held that the proceeds were community property, one-half of which belonged to the wife. The Supreme Court further said: "When a married man has his life insured and names his own estate after death, beneficiary, he makes no alienation of the proceeds of the conjugal funds to a third person, but appropriates them himself, adding them to the assets of his estate, in contravention of the provisions of Art. 1401, par. 1, of the Civil Code [the Old Code], which provides that 'To the conjugal partnership belongs: (1) property acquired for a valuable consideration during the marriage at the expense of the common fund, whether the acquisition is made for the partnership of for one of the spouses only.' Furthermore, such appropriation is a fraud practised upon the wife, which cannot be allowed to prejudice her, according to Art. 1413, par. 2, of said Code. Although the husband is the manager of the conjugal partnership property, he cannot of his own free will convert the partnership property into his own exclusive property."

<sup>76</sup> Art. 174 NEW CIVIL CODE.

<sup>77</sup> Penetrante v. Gatmaitan, (CA) 44 O.G. 602 (1948).

<sup>78</sup> 54 Phil. 213 (1932).

The Civil Code specifies the cases in which the husband may donate property belonging to the legal conjugal partnership. This specification is an implied prohibition of such donations in other cases. The gift in question, made by *J. S.* to the defendants, does not come within any of the cases permitted by law. It is, therefore, contrary to law.

According to Article 1413 of the Civil Code, any transfer or agreement upon conjugal property made by the husband in contravention of its provisions, shall not prejudice his wife or her heirs. As the conjugal property belongs equally to husband and wife, the donation of this property made by the husband prejudices the wife in so far as it includes a part or whole of the wife's half, and is to that extent invalid.<sup>79</sup>

In the case of *Harden v. Peña*,<sup>80</sup> which was recently decided, the husband tried to transfer fraudulently to some foreign country a considerable amount of conjugal money with the manifest intent of depriving the wife of such funds. Our Supreme Court, in upholding the right of the wife to her equal share, said:

The husband is the manager. He may for valuable consideration alienate and encumber their property without the consent of the wife. But alienations in fraud of the wife shall not prejudice her or her heirs.<sup>81</sup>

The law entitles the wife the right to share equally with her husband in the conjugal partnership. She is entitled to the one-half of such conjugal property after liquidation of the partnership, of which share she can not be deprived by the stealthy acts or fraudulent conveyances made by the husband which are prejudicial to her interest. The law granting to the wife the right to the one-half of the conjugal property also entitles her heirs to succeed to the same in the event that the dissolution of the partnership is caused by her death. Her heirs are entitled to that one-half share. Accordingly, the husband cannot legally dispose of that half to the injury of her nearest relatives and heirs. The above doctrine has been consistently applied by our Supreme Court in numerous cases:

Upon the death of one of the spouses, the community does not continue between the survivor and the heirs of the deceased. While the heirs of the deceased wife have no direct interest in the conjugal partnership property in the nature of an estate, either legal or equitable, they have such an interest in the liquidation of the affairs of the partnership that they may compel the husband to discharge his duty in that regard; hold him responsible for any fraud upon their rights which he may be guilty of; and restrain him from the commission of such frauds in any case wherein they can establish the intent to do so.<sup>82</sup>

The surviving spouse is obliged to settle the conjugal partnership. After payment of the debts incurred during the marriage, the remainder should be equal-

<sup>79</sup> *Ibid.*

<sup>80</sup> 48 O.G. 1307 (1952).

<sup>81</sup> *Ibid.*

<sup>82</sup> *Nable Jose v. Nable Jose*, 41 Phil. 713 (1921).

ly divided and the wife's share handed over to the probate court settling her estate.<sup>83</sup>

By operation of the law, the half of the conjugal partnership of the deceased wife passes into the ownership of her intestate heirs; and the husband cannot dispose of said half to the injury of her nearest relatives and heirs.<sup>84</sup> A sale by the surviving spouse of the deceased spouse's half-share in the conjugal estate, after the heirs have filed claim for the property is fraudulent, null and void, and the purchaser cannot make a valid sale to another who purchases in good faith.<sup>85</sup> So also, a sale of registered land which was conjugal property by the surviving spouse having left two children, is void as to the 1/2 thereof, and the court will order the vendee to reconvey 1/2 of the property.<sup>86</sup>

While a husband has the power to dispose of the property pertaining to the conjugal partnership either during the life of his wife or afterwards, nevertheless where a transfer of conjugal property is made by the husband upon a fictitious consideration for the purpose of defrauding the wife and her collateral heirs, such transfer is invalid, and its nullity will be declared in an action instituted by the heirs of the wife after her death.<sup>87</sup>

The husband, therefore, who has turned spoliator of his wife's estate and who has been removed as administrator may be required to pay over the wife's share to her proper legal representative and to account for such portion thereof as he may have squandered.<sup>88</sup>

From the rulings cited, we do take note of the fact that the law does not countenance any disposition or conveyance made by the husband that will also prejudice the rights of the heirs of the wife.<sup>89</sup>

#### *Remedies of the Wife.*

If there is a right, legal or equitable, which the wife cannot be deprived of and to which right law gives her protection, there must also be, conversely, a corresponding remedy to make such right effective, otherwise, the same will be plainly barren and nugatory.

The wife's right to protect her share in the conjugal partnership is thus explained:

She has, by virtue of the share which in her own sphere she has contributed toward the acquisition and conservation of such properties, rights therein which have been always safeguarded against the fraudulent or inconsiderate acts of her husband with relation thereto, and for the assertion and safeguarding of

<sup>83</sup> *Sochayseng v. Trujillo*, 31 Phil. 153 (1917).

<sup>84</sup> *Corona v. Ona*, 33 Phil. 456 (1918).

<sup>85</sup> *Ibid.*

<sup>86</sup> *De Guinoo v. Court of Appeals*, G.R. No. L-5541, June 25, 1955.

<sup>87</sup> *Uy Coque v. Navas L. Sioca*, 45 Phil. 431 (1925).

<sup>88</sup> *Ibid.*

<sup>89</sup> *Escutin v. Escutin*, 60 Phil. 922 (1938).

which she has been given access to appropriate judicial remedies both before and after the time when her said rights and interests would ripen and become vested through the death of the husband or other severance of the marriage relation, whenever such rights and ultimate interests were affected by or threatened with such forms of invasion.<sup>90</sup>

Under the Spanish Civil Code, the decisions of the Supreme Court seem to have recognized that the wife has at least these courses of action: (a) to annul the fraudulent alienation;<sup>91</sup> (b) to ask for separate maintenance or divorce<sup>92</sup> with preliminary injunction;<sup>93</sup> (c) to convert the conjugal estate into an ordinary tenancy in common;<sup>94</sup> and (d) to record in the Register and in the title of the donees any lien or claim of the wife on the estate donated, in case of donation of real property.<sup>95</sup> These remedies provided under the old Spanish Civil Code are still available.<sup>96</sup>

Under the New Civil Code,<sup>97</sup> in case of abuse of powers of administration of the conjugal partnership property by the husband, the courts, on petition of the wife, may provide for the following remedies: (a) receivership;<sup>98</sup> (b) administration by the wife of the conjugal property;<sup>99</sup> and (c) separation of property.<sup>100</sup> In addition to these remedies, the wife may, during the marriage, and within ten years from the transaction questioned, (d) ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property. Should the wife fail to exercise this right, she or her heirs, after the dissolution of the marriage, may (e) demand the value of property fraudulently alienated by the husband.<sup>101</sup>

<sup>90</sup> *Harden v. Peña*, 48 O.G. 1307 (1952), quoting *Stewart v. Stewart*, 249 Pac. 196 (1926).

<sup>91</sup> *Uy Coque v. Navas L. Sioca*, 45 Phil. 431 (1925); *Gallion v. Gayeres*, 53 Phil. 43 (1931).

<sup>92</sup> Act No. 2710, otherwise known as the Divorce Law, has been abolished. Instead, we have the legal separation of the spouses which is provided for in arts. 97-103 of the New Civil Code.

<sup>93</sup> *De la Viña v. Villareal*, 41 Phil. 13 (1921).

<sup>94</sup> *Aenlle v. Bertrand Rheims*, 52 Phil. 553 (1930).

<sup>95</sup> *Baello v. Villanueva*, 54 Phil. 213 (1932).

<sup>96</sup> *I PADILLA*, *op. cit. supra* note 16, at 304.

<sup>97</sup> Art. 167 NEW CIVIL CODE.

<sup>98</sup> "A new provision based on similar provisions in the *Partidas*. Under the old Code, in case of abuse of powers of administration by the husband, as when he disposes of the conjugal property in fraud of the rights of the wife, ordinarily she was without a remedy except at the time of the liquidation of the conjugal partnership. The Code Commission deemed this unjust to the wife, and in the present provision, extends to the wife certain alternative remedies which she may avail of even prior to the liquidation of the conjugal partnership." 1 FRANCISCO, *op. cit. supra* note 19, at 549.

<sup>99</sup> See note 81 *supra*.

<sup>100</sup> *Ibid.*

<sup>101</sup> Art. 167 NEW CIVIL CODE. See also: *Cabahug-Mendoza v. Varela*, G.R. No. L-5099, April 29, 1953.

<sup>102</sup> Art. 173 NEW CIVIL CODE.

The wife is given the right to annul any transaction entered into by the husband without her consent, when consent is necessary, or any act or contract which tends to defraud her or impair her interest in the community property. But at what time can she complain against the alienations or obligations in fraud of her or in contravention of the provisions of law? Two conditions are undoubtedly necessary. She must first prove the existence of prejudice to her interest; and secondly, she must be able to show the intention to cause her damage, before her claim will be heard.

The law requires undoubtedly two conditions. The *first* is the existence of a prejudice to the wife for without it she cannot be conceived to have an interest. The *second* is the intention to cause damage, the intention to prejudice, the bad faith on the part of the husband, the deliberate abuse of his power to cause damage, whoever the person benefited, or the contravention of the Code, the illegality of the act itself, be it intentional or not. Considering now the last point of view which refers more to acts that are ostensibly illegal, it treats of conditions which apparently are legal but involve or conceal a fraud, and in them both, prejudice and the intention to damage are questions of fact which should be appreciated in every case by the courts.<sup>102</sup>

The interest of the wife in the community property, and in case of her death, of her heirs, is an interest inchoate, a mere expectancy, which constitutes neither a legal nor an equitable estate, and does not ripen into title until it appears that there are assets in the community as a result of the liquidation and settlement.<sup>103</sup> During the marriage, the wife can not complain against the alienations or agreements made and entered into by the husband.

There was almost a unanimity of opinion that, during the marriage the wife *could not* complain against the alienations or agreements of the husband; but she must wait for the liquidation of the partnership and exercise her action only in case she could not obtain indemnification from the share of the husband in the partnership or from his separate property. It then resulted as a consequence, that the wife suffered damages that could only be repaired by annulling or setting aside the alienations or agreements of the husband after the marriage.<sup>104</sup>

It seems to follow, therefore, that the wife or her heirs cannot sue during the marriage, for the annulment of any contract entered into by the husband until after the liquidation of the partnership affairs. It is only at this stage that a determination can be had as to whether the wife or her heirs are prejudiced in their right or interest in the conjugal partnership, before the conveyance can be said to defraud them of their rights. Consequently, the nullity of a donation, although held invalid in so far as it

<sup>102</sup> *Parsons Hardware Co. v. Acosta*, (CA) 39 O.G. 1014 (1941).

<sup>103</sup> See note 82 *supra*.

<sup>104</sup> 9 MANRESA 680, cited in 1 FRANCISCO, *op. cit. supra* note 19, at 546-47.



prejudices the wife, cannot be decided until after liquidation.<sup>105</sup> However, in those cases where the fraudulent transaction is simulated or fictitious for the sole purpose of prejudicing the wife, the action for annulment evidently can be brought at any time since this is not a voidable contract but void *ab initio* and the action to declare its nullity never prescribes.<sup>106</sup> Consequently, where the sale of conjugal property was fictitious and therefore, non-existent, the widow who has an interest in the property subject to the sale, may be allowed to contest the sale, even before the liquidation of the conjugal partnership, making the executor party-defendant if he refuses to institute the suit.<sup>107</sup>

Against any fraudulent alienation made by the husband, what is then the right or remedy that may be availed of by the wife or her heirs after the dissolution of the marriage or of the conjugal partnership? The law affords to her or to her heirs the right to have such alienation set aside in order to protect her share.

Upon the liquidation of the conjugal partnership, the husband or his heirs must bring to collation numerically the value of the alienations which may have been made illegally or in fraud of the wife or her heirs. This value is added to the net remainder constituting the conjugal partnership property after the liquidation; and the total amount is then divided into two equal parts between husband and wife or their respective heirs. The value of the property illegally or fraudulently alienated is charged against the share of the husband; so that, if the share of the husband exceeds or at least equals the value of the property alienated, there is no resulting prejudice to the wife or her heirs, who get exactly what pertains to them even if the alienation had not taken place. But if the value of the property exceeds the share of the husband, it means that part of the property should have belonged to the wife or her heirs, and an action to set aside the alienation is proper.<sup>108</sup>

Under the New Civil Code,<sup>109</sup> the wife seems to have a clearer right on the matter, because she may, during the marriage and within ten years from the transaction questioned, ask the courts for annulment of any contract entered into without her consent, when such consent is required, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership property.

The marriage might, however, last many years, proofs might disappear, the property might pass to the hands of third persons, and the damage or prejudice to the wife would be consummated. As the law did not desire these nor were they conformable to justice, the wife must, *during the marriage*, have the

<sup>105</sup> Baello v. Villanueva, 54 Phil. 213 (1932).

<sup>106</sup> 1 CAGUIOA, *op. cit. supra* note 67, at 171.

<sup>107</sup> Pascual v. Pascual, 73 Phil. 561 (1942); Borromeo v. Borromeo, 52 O.G. 1392 (1956).

<sup>108</sup> 9 MANRESA 685, cited in 1 FRANCISCO, *op. cit. supra* note 19, at 547.

<sup>109</sup> Art. 173 NEW CIVIL CODE. According to Francisco, "in cases of legal separation or relative divorce, and judicial separation of the conjugal partnership, the above article is not applicable." 1 FRANCISCO, *op. cit. supra* note 19, at 556-57.

right to expose the fraudulent or illegal acts and to prevent future damage. The acts themselves did not cease to have effect during the marriage but their fraudulent or illegal character would be made potent for the future.<sup>110</sup>

The new rule seems to have modified the rule provided for in the Spanish Civil Code, wherein the wife may not sue for annulment of such transactions made by the husband which are in contravention of the Code or which are in fraud of her rights or of her heirs until after the liquidation of the conjugal partnership.<sup>111</sup>

#### *Rule at Common Law.*

The rule ordained and followed here in the Philippines is similar to that which is observed and followed in those states of the American Union where the community property system obtains, specially in California, Texas and Washington. The following rules that obtain in common law are mentioned just to show the similarity with the rules that are observed here in our jurisdiction.

The husband is considered the head and the master of the conjugal partnership.<sup>112</sup> As such, he has, therefore, the general management and administration of all the conjugal properties,<sup>113</sup> whether personal<sup>114</sup> or real,<sup>115</sup> and whether registered in his name or in that of his wife, and he is entitled to their possession.<sup>116</sup> His authority to manage and administer them does not depend on the delivery of the properties to him,<sup>117</sup> and his authority may not be impaired by his wife possessing them.<sup>118</sup>

The husband in performing his duties, acts in a representative or fiduciary capacity as agent of the conjugal partnership,<sup>119</sup> or of his spouse,<sup>120</sup> and in a limited sense, he is sort of a trustee for his wife as to the conjugal property.<sup>121</sup> In executing his powers of administration, he must act in good faith for the benefit of the conjugal partnership and never in fraud of the rights

<sup>110</sup> 9 MANRESA 684, as cited in 1 FRANCISCO, *op. cit. supra* note 19, at 546-47.

<sup>111</sup> See 9 MANRESA 680, cited in 1 FRANCISCO, *op. cit. supra* note 19, at 546.

<sup>112</sup> De Lappe v. Commissioner of Internal Revenue, 113 F.2d 48 (1940).

<sup>113</sup> Jones v. Weaver, 123 F.2d 403 (1941); Johnson v. Commissioner of Internal Revenue, 88 F.2d 952 (1937); Best v. Turner, 67 F.2d 786, 90 A.L.R. 1293 (1933).

<sup>114</sup> Frost v. Mighetto, 71 P.2d 932, 22 Cal. App. 2d 612 (1937).

<sup>115</sup> Jack v. Wong Shee, 92 P.2d 449, 33 Cal. App. 2d 402 (1939).

<sup>116</sup> Security-First National Bank of Los Angeles v. Stack, 90 P.2d 337, 32 Cal. App. 2d 586 (1939); *In re Sayre's Estate*, 300 Pac. 833, 114 Cal. App. 649 (1931); *In re Wyss' Estate*, 297 Pac. 100, 112 Cal. App. 487 (1931).

<sup>117</sup> Scott v. Scott, 170 P.2d 237 (1914).

<sup>118</sup> Salveter v. Salveter, 26 P.2d 836, 135 Cal. App. 238 (1933).

<sup>119</sup> De Lappe v. Commissioner of Internal Revenue, 113 F.2d 48 (1940).

<sup>120</sup> Atkins v. Dodds, 121 S.W.2d 1010 (1938).

<sup>121</sup> Arnold v. Leonard, 273 S.W. 799, 114 Tex. 539 (1925); Weir v. King, 166 S.W.2d 187 (1942); Keller v. Keller, 122 S.W.2d 270 (1938).

of his spouse,<sup>122</sup> and as long as he does this, his authority is unlimited,<sup>123</sup> and he will be given a wide discretion on the matter.<sup>124</sup>

Though the husband has the authority to dispose or alienate the conjugal property, he may not make any disposition thereof for the purpose of defeating the rights of his wife and should he do so, she will be entitled to have said alienation set aside up to that indispensable extent to protect her share.<sup>125</sup> The husband, as agent of the partnership, may not act fraudulently to the detriment of the interest of the wife.<sup>126</sup> Thus, he may not dispose of any property of the partnership in fraud of her rights,<sup>127</sup> or make any deliberate alienation for the purpose of defrauding or defeating her claims.<sup>128</sup>

In the absence of fraud or express legal prohibition, the husband has the power to transact with the community and its properties as their owner.<sup>129</sup> In general, he possesses complete authority to dispose all conjugal personal properties as if they were his own.<sup>130</sup> His power to alienate the same is, however, subject to the implied limitation that he may not dispose of them in fraud of his wife's rights.<sup>131</sup>

Any transfer of real properties made by the husband during the coverture with intent to defeat the rights of his wife is considered fraudulent and void as to her.<sup>132</sup> The transfer is deemed void as in fraud of the wife if it is simulated and fictitious as when the conveyance appears to be absolute in its face but in reality, it covers up the husband's guise to retain possession and ownership of the property during his lifetime with the manifest scheme to defraud his wife.<sup>133</sup> The intent of the husband while making a gift of his property to deprive the wife of her one-half share amounts to an intent to defraud her, and renders such gift void as to her.<sup>134</sup>

The husband may not dispose of his real or personal property for the purpose of preventing the wife to share in such property at his death.<sup>135</sup>

<sup>122</sup> Greer v. Goesling, 97 P.2d 213, 54 Ariz. 488 (1939); Coe v. Winchester, 33 P.2d 286, 43 Ariz. 500 (1934).

<sup>123</sup> Citizens' Nat. Bank at Brownwood v. Turner, 14 F. Supp. 495 (1936).

<sup>124</sup> *In re Coffey's Estate*, 81 P.2d 283, 195 Wash. 379 (1938).

<sup>125</sup> Smith v. Smith, 12 Cal. 216, 73 Am. Dec. 533 (1859); Guidry v. Grivot, 14 Am. Dec. 193 (1823).

<sup>126</sup> Goodell v. Koch, 282 U.S. 118 (1930).

<sup>127</sup> Arnett v. Reade, 220 U.S. 311 (1911); Garrozi v. Dastas, 204 U.S. 64 (1907) (under Code of Puerto Rico providing that acts in fraud of the wife's rights shall be void).

<sup>128</sup> 11 AM. JUR., *Community Property* § 56, at 211.

<sup>129</sup> Garrozi v. Dastas, 204 U.S. 64 (1907).

<sup>130</sup> Schofield v. Gold, 26 Ariz. 296, 225 Pac. 71, 37 A.L.R. 275 (1924); La Tourette v. La Tourette, 15 Ariz. 200, 137 Pac. 426, Ann. Cas. 1915B 70 (1914).

<sup>131</sup> Kohny v. Dunbar, 21 Idaho 258, 121 Pac. 544, 39 L.R.A. (n.s.) 1107, Ann. Cas. 1913D 492 (1912).

<sup>132</sup> Kratli v. Booth, 191 N.E. 180, 99 Ind. App. 178 (1934).

<sup>133</sup> President and Directors of Manhattan Co. v. Janowitz, 14 N.Y.S.2d 375, 172 Misc. 290 (1939).

<sup>134</sup> Murray v. Murray, 90 Ky. 1, 13 S.W. 244, 8 L.R.A. 95 (1890).

<sup>135</sup> Martin v. Martin, 138 S.W.2d 509, 282 Ky. 411 (1940).

Hence, if he alienates during his lifetime, personal property as a scheme by which he also retains its ownership, and he seeks to deprive his wife of her rights at the time of his death, such transfer shall be considered as fraud exercised upon her rights.<sup>136</sup>

The law entitles the wife to share in her husband's estate or she is given the right to share therein after the debts of the decedent are paid. The will of the decedent can not deprive her of her share. According to some authorities, the husband's inconsiderate transfer or gift of his personalty in contemplation of his death so as to deprive the wife of her rights granted by law may be annulled at her instance to protect her interest.<sup>137</sup> The husband, therefore, may not deprive the wife of her interest or right in the conjugal partnership by voluntary alienation for the mere purpose of defeating her claim or share to the property.<sup>138</sup>

Hence, the wife during the marriage may avail herself of appropriate legal remedies to protect the conjugal partnership against the husband's prejudicial acts and dispositions.<sup>139</sup> Courts will grant the appropriate relief,<sup>140</sup> and the husband may be enjoined from entering into any transaction or agreements involving the conjugal property which are clearly inimical and obnoxious to the economic welfare of the conjugal partnership.<sup>141</sup>

#### Conclusion.

Comparing, therefore, the rules followed in our jurisdiction with those that are observed in common law, specially in those jurisdictions where community property system obtains, we observe that the husband may not deprive the wife of her one-half share in the conjugal partnership. Neither can he enter into an agreement with the patent purpose of defrauding his wife of her rights and interests in the community property. The law does not sanction nor countenance such an agreement. A stipulation of such import is clearly prejudicial to the rights of the wife as well as to the welfare of the community. It is against the policy and intendment of the law securing to the wife her property right or interest in the conjugal partnership which is equal to that of her husband. Covenants perpetuating fraud and sanctioning unjust deprivations of private property are not allowed to be performed or executed. The law does not tolerate such practice, otherwise, at an instant ill-feeling or mere caprice of the husband, the property of the wife can be gradually seized, if not totally removed, without sanction. Justice and

<sup>136</sup> *In re Sides' Estate*, 228 N.W. 619, 11 Neb. 314 (1930).

<sup>137</sup> Murray v. Murray, 90 Ky. 1, 13 S.W. 244, 8 L.R.A. 95 (1890); Thayer v. Thayer, 14 Vt. 107, 39 Am. Dec. 211 (1842).

<sup>138</sup> Gustin v. Byam, 240 Pac. 600, 41 Idaho 538 (1925).

<sup>139</sup> Johnson v. National Surety Co., 5 P.2d 39, 118 Cal. App. 227 (1931).

<sup>140</sup> Weir v. King, 166 S.W.2d 187 (1942).

<sup>141</sup> *In re Coffey's Estate*, 81 P.2d 283, 195 Wash. 379 (1938).

equity have never conceived of such idea under any possible circumstance because it will not only strike deep into the very sentiments, trust and confidence between husband and wife, but it will also destroy the economic establishment of the family, that social institution, sacred, inviolable and zealously protected by the provisions of the law.

## REFERENCE DIGEST

**CRIMINAL LAW: TREASON.** Our Philippine law on Treason is provided for in article 114 of the Revised Penal Code. It is of Anglo-American origin. Tracing its history and development, we have to start around the middle of the 14th century in England. The law on treason was first passed in 1351 by the English Parliament. During that time, treason was so vague and indeterminate that men were convicted or acquitted simply by the whims of the King's justices.

Treason as defined in article 114 of the Revised Penal Code is but a portion of the great Treason Act of 1352, which reads in part: ". . . if a man do levy war against our lord the king in his realm, or be adherent to his enemies in his realm, giving them aid or comfort in the realm or elsewhere, and thereof be provably attainted of open deed . . ." Treason is considered the most heinous of all crimes that the state protects itself by putting men to death sometimes even on mere conjecture.

From England, we now sway to the colonial legislation in the United States in tracing the development of the treason law. Taking the colonial period as a whole, in most of the Colonies, the definition of the offense was clearly thought of in terms of the English legislation on the matter. The striking characteristic of all these legislations was the emphasis on the safety of the state and the subordinate role of any concern for individual liberties. When the Federal Convention met in Philadelphia to frame the American Constitution, all the delegates agreed that treason, alone among the myriad crimes which man can commit, must be defined in the Constitution. Accordingly, treason was defined as a "crime against constituted democracy."

For fear that prosecution for treason might be abused, the two-witness rule was adopted. "It seems that the fundamental sense of justice of mankind recognizes the danger of convictions of the innocent as a result of perjury and passion." This two-witness requirement was a familiar precept of the Mosaic law and of the New Testament. In modern legislation, this procedural requirement started as early as 1547.

Under the English legislation, the witnesses may be permitted to testify to the same overt act, or one of them to another overt act of the same treason. Under the American procedural system, however, the two-witness-to-the-same-overt-act rule prevails. The reason behind this is that "because of the nature of the crime of treason and the stigma that is attached not only to the criminal but to his family, it is considered the better policy to allow many to go free than to convict an innocent one."