

Recognition of Absolute Divorce in Mixed Marriages under Philippine Law: A Critical Analysis.

Arturo de Castro

51 ATENEO L.J. 520 (2006)

SUBJECT(S): CIVIL LAW, FAMILY LAW

KEYWORD(S): ABSOLUTE DIVORCE, MIXED MARRIAGES

Marriage is an inviolable social institution and a special contract of permanent union vested with state interest. In the Philippines, a marriage may be dissolved only in specific cases as provided by law.

Absolute divorce is not recognized in the Philippines. The country is predominantly Catholic and divorce is viewed as being contrary to public policy, the recognition of the Filipino family as the foundation of the nation and the commitment to strengthen its solidarity. Even an absolute divorce obtained by a Filipino abroad is not recognized as valid in the Philippines. It is only by way of exception that the Family Code recognizes divorce and only in cases where an alien spouse legally married to a Filipino spouse obtains an absolute divorce.

Even prior to the enactment of the Family Code, the Supreme Court had occasion to rule on the situation contemplated by the said provision. In *Van Dorn v. Romillo, Jr.*, a Filipino and an American got married and later obtained a divorced in Nevada, United States. The foreigner, after the said divorce, claimed that business owned by the Filipino is conjugal property. The court then sought to resolve the effect of the foreign divorce on the parties. The court held that the divorce in Nevada released the foreigner from the marriage and that the purpose and effect of a decree of divorce from the bond of matrimony by a court of competent jurisdiction are to change the existing status or domestic relation of husband and wife, and to free them both from the bond.

There is no question that if at the time of the celebration of the marriage, there is a mixed marriage between a Filipino and an alien and the alien gets a divorce abroad, the divorce is valid in the Philippines even as to the Filipino spouse.

The rationale behind the second paragraph of article 26 of the Family Code quoted above is to avoid the absurd and unjust situation of a Filipino

citizen still being married to his or her alien spouse, although the latter is no longer married to the Filipino spouse because he or she has obtained a divorce abroad. This is the clear legislative intent.