

# LAST-MINUTE TIPS

ni Atty. G



# CIVIL LAW

# 1

## FAMILY CODE

### Parental Authority

- ❑ Parental authority is the mass of **obligations** and rights imposed and granted upon the parents over their **minor** children. This includes the right to have permanent **custody** of their minor child.
- ❑ Limited parental authority:
  - Parental consent in marriage (18-21 y.o.)
  - Vicarious liability for tort, if the child is living within their company.
- ❑ Parental authority covers the child's **person** and **property**.

# 1

## FAMILY CODE

### Parental Authority

❑ General rule: **Parental authority, including custody, cannot be transferred, waived, or renounced.**

❑ Exception: In cases allowed by law, e.g., adoption, guardianship.

⚠ Note: The surrogate mother is the illegitimate mother of the child. She cannot waive or transfer the child's custody by contract. *Surrogacy contracts are void under Philippine law.*

# 1

## FAMILY CODE

### Parental Authority

#### PARENTAL AUTHORITY (PA) OVER LEGITIMATE CHILD

- If parents are living together - **joint** PA; husband's decision prevail but wife may question the husband's decision through court action;
- If only one parent survives - the **surviving** parent exercises PA;
- If parents are separated:
  - Child <7 y.o. - apply the **tender age presumption**; mother has custody and the parents cannot agree otherwise, unless there is a compelling reason;
  - Child  $\geq$ 7 y.o. - either parent, as designated by the court (considering the **best interest** of the child), or agreed by them.



# 1

## FAMILY CODE

Parental Authority

### PA OVER ILLEGITIMATE CHILD

- The **mother has sole parental authority**, unless she is proved unfit;
- If the mother is found unfit, the parental authority shall be exercised by persons having **substitute parental authority** in order of priority under the Family Code (not by the illegitimate father).

# 1

## FAMILY CODE

### Parental Authority

#### SUBSTITUTE PARENTAL AUTHORITY

1. Surviving grandparents;
  - a. If legitimate child - maternal and paternal;
  - b. If illegitimate child - only maternal;
  - c. Tender age presumption does not apply.
2. Oldest sibling >21 y.o., unless unfit;
3. **Actual custodian** >21 y.o., **including the illegitimate father**, unless unfit;
4. Heads of accredited children's homes, orphanages, and similar institutions.

*\*\*The order of priority is not applied mechanically. The court must consider the best interest or welfare of the child, specifically the factors stated in the Rule on Custody of Minors.*

# 2

## FAMILY CODE

Void Marriages; RA 11596

### RA 11596, Prohibiting the Practice of Child Marriage (2021)

- Child marriage - a marriage where one or both parties are children (civil, church, customary), including cohabitation without marriage;
- Child - a person below 18 years, or a person 18 years and above but unable to fully take care of and protect himself or herself;
- Illegal acts:
  - Facilitating child marriage
  - Solemnizing child marriage
  - Cohabiting of an adult with a child
- Child marriages are *void ab initio*
  - Under Family Code, also void for lack of legal capacity.

# 3

## FAMILY CODE

Void Marriages; Psychological Incapacity

- ❑ Psychological incapacity pertains to the **personality structure** of a person or the durable and enduring aspects of one's personality.
- ❑ "Personality structure," manifests itself through clear acts of dysfunctionality that undermines the family. The spouse's personality structure must make it impossible for him or her to understand and, more important[ly], to comply with his or her essential marital obligations.
- ❑ **Psychological incapacity is neither a mental incapacity nor a personality disorder.**
  - **Expert opinion is not indispensable;**
  - **Ordinary witnesses can testify** as to the spouse's behavior or environment before marriage or while growing up;
  - Clear and convincing evidence, considering the totality.

# 3

## FAMILY CODE

Void Marriages; Psychological Incapacity

### ❑ Gravity

- So serious that it renders the spouse unable to understand or fulfill the essential marital obligations;
- It need not be rooted in a mental illness or personality disorder.

### ❑ Incurability

- Relative to a specific partner;
- The incapacity need not be absolutely incurable, or be a medically or clinically permanent condition.

### ❑ Juridical antecedence

- Existing before marriage;
- Ordinary witness may testify as to the spouse's behavior before marriage.



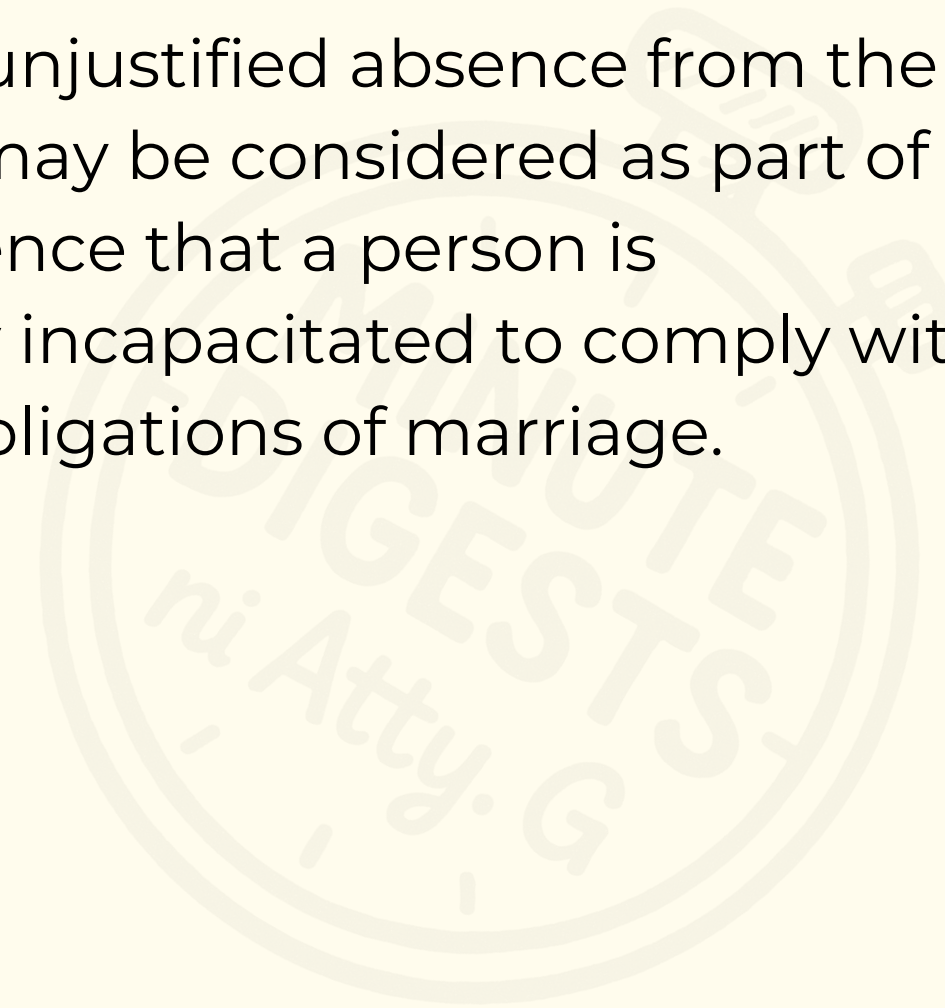
# 3

## FAMILY CODE

Void Marriages; Psychological Incapacity

### **Dela Cruz v. Lanuza, Jr. (2024)**

Decades-long unjustified absence from the marital home may be considered as part of the totality of evidence that a person is psychologically incapacitated to comply with the essential obligations of marriage.



# 4

## FAMILY CODE

### Mixed Marriages and Foreign Divorce

- ❑ General rule: Absolute divorce is not recognized in Philippine law.
- ❑ Exception: In case of mixed marriages, a foreign divorce decree may be recognized in the Philippines.
- ❑ Requirements for recognition of foreign divorce decree:
  - A valid divorce was obtained abroad;
    - **Even if the Divorce Decree was initiated and obtained by the Filipino spouse.**
  - The divorce decree capacitated the alien spouse to remarry;
  - The foreign divorce decree and the foreign law were properly pleaded and proven.

# 5

## EFFECT AND APPLICATION OF LAWS

- ❑ Laws shall take effect after *fifteen days* following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, **unless it is otherwise provided.**
  - Proviso pertains to the 15-day period but not the requirement of publication, which is mandatory;
  - Laws “effective immediately” take effect after complete publication.
- ❑ In case of conflict between the versions of the law as published in the Official Gazette, and the copy stored in the National Library, the former prevails.

# 6

## NATURE AND EFFECTS OF OBLIGATIONS

### Defense of Fortuitous Event

- ❑ A fortuitous event is an event that is:
  - Unforeseen
  - Inevitable
  
- ❑ General rule: No one shall be liable for fortuitous events.
  
- ❑ Exceptions:
  - the parties expressly provide;
  - the law provides;
  - the nature of the obligation requires assumption of risk, e.g., insurance contracts;
  - contributory negligence.

# 7

## CONTRACTS

NCIP v. Macroasia Corporation  
*G.R. No. 226176, 09 August 2023*

### **Principle of Freedom to Stipulate or Autonomy of Wills**

The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy (Art. 1306, NCC)



# 8

## PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS

### Easement of Right of Way

❑ **Compulsory Easement of ROW** - The right of the owner of the dominant estate to pass through, and the obligation of the owner of the servient estate to allow the passage of persons or vehicles through his property, and to not make constructions or do other acts that will obstruct this passage

❑ Requirements - **SNIP**:

- No adequate outlet to a public highway;
- Isolation not due to the fault or acts of the owner of the dominant estate;
- Payment of indemnity;
- Shortest or least prejudicial point.

# 8

## PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS

Easement of Right of Way

⚠ Note:

- A lessee cannot demand ROW. Only the owner of the dominant estate, or a person exercising real right over it, may demand ROW;
- ROW is discontinuous and apparent. It can only be acquired by title, but not by prescription;
- Annotation of easement to the property's title is not proper remedy.

Good!  
Luck!