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THE PHILIPPINES

Overview

Over 90% of the population of the Philippines are Christian, however there is a small Muslim minority who are mainly of the Shafi tradition. The Philippines was formerly a Spanish, then an American colony and the character of the legal system exhibits these influences. The personal status law of Christians and other non-Muslim groups is governed by civil law, whereas the personal status of Muslims is governed by Presidential Decree No.1083 of 1997 known as the Code of Muslim Personal Laws of the Philippines. This Code reads that the legal system of Muslims is recognised in the Philippines as part of the law of the land. Article 13 reads that this Code is applicable in matters such as marriage, divorce, paternity, filiation and custody where both parties are Muslim or if the man is Muslim and the marriage was conducted according to Muslim law. If a marriage between a Muslim man and a non-Muslim woman was not conducted according to Muslim law then civil law is applied to them in family law cases.

Court Structure

The regular court system is based on 4 levels of court. At the first level are the Municipal and City Courts. These are called Municipal Circuit Trial Courts when they cover more than 1 municipality, Municipal Trial Courts when they cover 2 or more municipalities, those based in the capital city Manila are known as Metropolitan Trial Courts and those in cities outside Manila are known as Municipal Trial Courts in Cities. The jurisdiction of these courts includes criminal cases with a maximum punishment of 4 years and 2 months and/or a fine of up to 4000 Pesos. Their jurisdiction in civil cases extends to cases where the value of property or demand does not exceed 20,000 Pesos.

At the next level are the Regional Trial Courts, which hear appeals from the municipal and city courts. They also have original jurisdiction over all criminal cases that do not fall within the jurisdiction of any other court and over civil cases where the subject of litigation is incapable of pecuniary estimation or where the demand or claim is more than 20,000 Pesos. Decisions from these courts can be appealed to the Court of Appeals. There is a Supreme Court at the apex of the system.

The Code of Muslim Laws establishes a Sharia Court system made up of Sharia District Courts and Sharia Circuit Courts. There are 5 Sharia District Courts. Their jurisdiction includes all cases involving custody, guardianship, legitimacy, paternity and filiation arising under the Code of Muslim Laws. The Sharia District Courts also have appellate jurisdiction over all cases tried by the Sharia Circuit Courts. The Sharia Circuit Courts have jurisdiction over all cases involving offences defined and punished under the Code of Muslim Laws, all civil actions and proceedings between Muslims or have married in accordance with Muslim law in disputes relating to marriage, divorce, betrothal, dower, distribution of property on divorce, maintenance and restitution of marital rights.

The Family Courts Act 1997 establishes a Family Court in every province and city in the Philippines. These courts have original and exclusive jurisdiction over:

1. Criminal cases where one or more of the accused is below 18 years of age but not less than 9 years of age or where one or more of the victims is a minor.
2. Petitions for guardianship, custody of children, habeas corpus in relation to the latter.
3. Petitions for adoption of children and the revocation thereof.
4. Applications for the annulment of a marriage, declaration of nullity of marriage and those relating to marital status and property relations of husband and wife or those living together under different status and agreements, and petitions for dissolution of conjugal partnership of gains.
5. Petitions for support and/or acknowledgment.
6. Summary judicial proceedings brought under the provisions of Executive Order No. 209, otherwise known as the "Family Code of the Philippines".

7. Petitions for declaration of status of children as abandoned, dependent or neglected children, petitions for voluntary or involuntary commitment of children; the suspension, termination, or restoration of parental authority and other cases cognisable under Presidential Decree No. 603, Executive Order No. 56, (Series of 1986), and other related laws.
8. Cases against minors cognisable under the Dangerous Drugs Act, as amended.
9. Violations of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act," as amended by Republic Act No. 7658.
10. Cases of domestic violence against women or children.

Family Law Applied to Christians and other Non-Muslims

Filiation

Article 163 of the Family Code Act 8533 of 1987, reads that the filiation of children may be by nature or by adoption and that natural filiation may be legitimate or illegitimate. Children conceived or born during the marriage of the parents are legitimate. The filiation of legitimate children is established by the record of birth appearing in the civil register, a final judgment, or an admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. Article 176 of the Family Code of the Philippines was amended to read that illegitimate children shall use the surname and be under the parental authority of the mother unless the father has recognized his filiation with the child through the record of birth appearing in the civil register, in which case the child may use the father's surname. Children can also be legitimated by a subsequent valid marriage between parents.

Guardianship and Custody

Article 17 of the Child and Youth Welfare Code 1974 reads that during marriage the mother and father exercise parental authority jointly, however if there is a dispute the father's authority prevails. If one of the parents is deceased the surviving parent exercises parental authority. Remarriage of the surviving parent does not affect their right to parental authority. If both

parents are deceased the court can appoint a guardian. These principles are confirmed in the Family Code. If the parents separate, parental authority is exercised by the parent designated by the Court. The Court takes into consideration all relevant factors, placing emphasis on the choice of the child, if he or she is over seven years of age.

Parental authority normally continues until the child reaches the age of majority. Article 234 of the Family Code of the Philippines reads that majority commences at the age of 18 or earlier upon the marriage of a minor.

Muslim Family Law

Filiation

Paternity is established by the birth of a child at least 6 months after the contracting of a marriage and less than 2 years after the dissolution of a marriage. The father can also acknowledge a child.

Custody

Article 78 of the Code of Muslim Laws reads that children under the age of 7 should reside with their mother. If the mother cannot exercise this custody then priority is accorded to the maternal grandmother, then the paternal grandmother, the sister and then the aunts. After the age of 7 and until puberty the children may choose with whom they wish to reside. After puberty an unmarried female child must live with the father, while a male child should live with the mother.

Guardianship

During marriage the mother and father exercise parental authority jointly, however if there is a dispute the father's authority prevails. If one of the parents is deceased the surviving parent exercises parental authority. If this is the mother and she subsequently remarries she will lose parental authority unless her spouse is related to the child within the prohibited degree.

Guardianship of the property of the child is for the father, followed by the father's executor, the paternal grandfather, the paternal grandfather's executor and finally the court.

Nationality

Article IV section 1[2] of the Constitution states that a child born to either a father or mother with citizenship of the Philippines also acquires citizenship of the Philippines.

Leaving the Jurisdiction

Section 5 (f) of the Philippine Passport Act of 1996 reads that for an applicant who has not reached the age of majority, an affidavit of consent from a parent is needed if the minor is travelling with either parent. If the minor is travelling with a legal guardian or a person other than a parent the clearance of the Department of Social Welfare and Development is required. Section 8 reads that the application for passport may be denied, cancelled or restricted when so requested by the natural or legal guardian, if the applicant is a minor.

International Law

The Philippines ratified the UN Convention on the Rights of the Child in 1990 without reservation.

Child Abduction

The kidnapping of minors is dealt with in Articles 270-1 of the Penal Code 1930. Article 270 reads that the penalty of reclusion perpetua shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians. Article 271 reads that imprisonment and a fine not exceeding 700 pesos shall be imposed upon anyone who shall induce a minor to abandon the home of his parent or guardians or the persons entrusted with his custody. However, if the person committing the crimes covered by articles 270-1 is the father or the mother of the minor, the penalty shall be arrest for 1-6 months or a fine not exceeding 300 pesos, or both.

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EI 16/08/05