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COL Midterms:

Definition of Conflicts of Law

Spot whether there is conflicts of law

Jurisdiction

WON there is Jurisdiction

choice of law vs. jurisdiction

how jurisdiction is acquired over the subject matter, over persons leaving abroad

- check rule 9, 14, 17 and 18 through intl convention, check 2019. amendment

- if case action in personam...

- what are in rem or quasi in rem proceedings

- art. 15, 16 and 17 (memo)

PIL Study Material

BAR REVIEWER IN CONFLICTS OF LAW

By: Atty. Enrique V. dela Cruz, Jr.

I. GENERAL PRINCIPLES

What is Private International Law? How is it distinguished from Public International Law?

ANSWER:

Private International Law (Conflicts) is that part of the law of each state which determines whether, in dealing with a legal situation, the law of some other state or nation will be recognized, given effect, or applied. (American Restatement of Conflict of Laws)

It can be distinguished from Public International Law (PIL) as follows:

As to source: PIL sources are international customs, treaties, general principles of law recognized by civilized nations, juridical decisions, and teachings of the most highly qualified publicists. Conflicts, on the other hand, are generally derived from the internal law of each state and not from any international or external sources.

As to Subject Matter: PIL governs only states and international organizations while Conflicts govern private individuals and corporations.

As to remedies: In case of violation of PIL, a state may resort to diplomatic protest, sanctions from the UN Security Council or from international tribunals, use of force short of war, or even war. While in Conflicts, all the remedies are provided by internal laws of the state, such as resort to courts or administrative tribunals.

What is meant by the Principle of Territoriality?

ANSWER:

It provides that penal statutes are applicable only within the territorial jurisdiction of the enacting state. Thus, a crime is punishable only within the territorial jurisdiction where it is committed. (Article 14, Civil Code).

An exception to this rule is the corollary principle of **extra-territoriality**, which provides that penal statutes may find application even outside the territorial jurisdiction of an enacting state pursuant to treaty obligations and general principles of public international law. An example of extra-territoriality is Article 2 of our Revised Penal Code.²

May a Filipino convicted of a crime abroad serve his sentence in the Philippines?

ANSWER: No. Under the principle of territoriality, a crime is punishable only in the territorial jurisdiction where it is committed. Thus, our government only recognizes crimes which are committed within our territory and in violation of our penal laws. Allowing a Filipino convicted abroad to serve sentence in the Philippines will be tantamount to recognizing and enforcing a foreign judgment which is penal in nature. This is contrary to our public policy on territoriality (Article 14, Civil Code).

The rule, however, is subject to treaty stipulations and the principles of universality and extra-territoriality. If there is a treaty for exchange of prisoners, the treaty becomes part of our laws and a Filipino convicted for a crime abroad may serve his sentence in the Philippines. If a Filipino is convicted of crimes against humanity, he may also serve his sentence here under the principle of universality, which makes such crimes punishable in any jurisdiction regardless of the place of commission.

Ricky and Arlene got married in Manila. Ricky thereafter went to London and married Rita. After a month, Ricky went to San Francisco and married Sheila. May Ricky be prosecuted for Bigamy in the Philippines at the instance of his first wife, Arlene? Why?

ANSWER: No, Ricky did not commit any crime within Philippine territory. Bigamy is committed by entering into a second or subsequent marriage. Ricky's first marriage with Arlene, which was entered into in the Philippines, is not bigamous. The subsequent marriages, which are the bigamous marriages, were all entered into abroad, or outside Philippine territory, and therefore beyond our criminal jurisdiction.

Define or explain the rule of "forum non conveniens." (1994 and 2002 Bar Exam Question)

ANSWER: The doctrine of *forum non conveniens*, literally meaning 'the forum is inconvenient', emerged in private international law to deter the practice of global forum shopping, that is to prevent non-resident litigants from choosing the forum or place wherein to bring their suit for malicious reasons, such as to secure procedural

advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. Under this doctrine, a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere. [*Bank of America v. Court of Appeals*, G.R. No. 120135. March 31, 2003].

May a Philippine Court validly refuse to entertain a case on the ground of "forum non conveniens"?

ANSWER: Whether a suit should be entertained or dismissed on the basis of *forum non conveniens* depends largely upon the facts of the particular case and is addressed to the sound discretion of the trial court. In the case of *Communication Materials and Design, Inc. vs. Court of Appeals* [260 SCRA 673 (1996)], the Supreme Court held that ". . . [a] Philippine Court may assume jurisdiction over the case if it chooses to do so; provided, that the following requisites are met: (1) that the Philippine Court is one to which the parties may conveniently resort to; (2) that the Philippine Court is in a position to make an intelligent decision as to the law and the facts; and, (3) that the Philippine Court has or is likely to have power to enforce its decision."

Moreover, the Supreme Court enunciated in the case of *Philsec. Investment Corporation vs. Court of Appeals* [274 SCRA 102; 113 (1997)], that the doctrine of *forum non conveniens* should not be used as a ground for a motion to dismiss because Sec. 1, Rule 16 of the Rules of Court does not include said doctrine as a ground. The Supreme Court further ruled that while it is within the discretion of the trial court to abstain from assuming jurisdiction on this ground, it should do so only after vital facts are established, to determine whether special circumstances require the court's desistance; and that the propriety of dismissing a case based on this principle of *forum non conveniens* requires a factual determination, hence it is more properly considered a matter of defense.

Bill Gates, an American, enters into a contract with Sony, a Japanese corporation based in Tokyo, for delivery by the latter of a certain quantity of computer software to Bill's residence in New York. The contract is entered into in Paris, France. Sony also does business in Manila. For failure of Sony to make good on its contract, Bill sues the corporation for specific performance before a Manila Regional Trial Court. Should the Court assume jurisdiction? Explain.

ANSWER: NO. While the RTC of Manila may have jurisdiction, it should dismiss the case on the ground of *forum non conveniens*.

Forum non conveniens is a doctrine whereby a court of law having full jurisdiction over a case brought in a proper venue declines to determine the case on its merits because justice would be better served by the trial of the case in another forum. In other words, the RTC of Manila is not a convenient forum. Such inconvenience pertains to the tribunal and not to the parties. This doctrine often relates to *forum shopping* – the underhanded and contemptible practice of a plaintiff in choosing the forum out of several available courts or tribunals the world over in order to secure certain procedural advantages. This is prohibited in most jurisdictions.

In this case, Bill is an American residing in New York, the place of performance of the contract. But the action was not instituted in New York. The place of execution of the contract is Paris, where the witnesses are presumably residing. But the case was not filed before a Paris court. Neither was the case filed in Tokyo, the home office of the defendant Corporation, Sony.

The only connection of Manila to the case is the fact that Sony maintains a branch office here. Bill may have chosen to come here thinking that the Philippine legal system and our courts may be more lenient to his cause than the other foreign courts. This is a clear case of *forum shopping*, and the case should be dismissed on the ground of *forum non conveniens*.

In a class suit for damages, plaintiffs claimed they suffered injuries from torture during martial law. The suit was filed upon President EM's arrival on exile in HI, a U.S. state. The court in HI awarded plaintiffs the equivalent of P100 billion under the U.S. law on alien tort claims. On appeal, EM's Estate raised the issue of prescription. It argued that since said U.S. law is silent on the matter, the court should apply: (1) HI's law setting a two-year limitation on tort claims; or (2) the Philippine law which appears to require that claims for personal injury arising from martial law be brought within one year.

Plaintiffs countered that provisions of the most analogous federal statute, the Torture Victims Protection Act, should be applied. It sets ten years as the period for prescription. Moreover, they argued that equity could toll the statute of limitations. For it appeared that EM had procured Constitutional amendments granting himself, and those acting under his direction, immunity from suit during his tenure.

In this case, has prescription set in or not? Considering the differences in the cited laws, which prescriptive period should be applied: one year under Philippine law, two years under HI's law, ten years under U.S. federal law, or none of the above? Explain. (2004 BAR Exam Question No. VII-B)

ANSWER: The US Court will apply US law, the law of the Forum, in determining the applicable prescriptive period. While US law is silent on this matter, the US Court will not apply Philippine law in determining the prescriptive period.

It is generally affirmed as a principle in private international law that procedural law is one of the exceptions to the application of foreign law by the Forum. As a general rule, a foreign procedural law will not be applied in the forum. Procedural matters, such as service of process, joinder of actions, period and requisites for appeal, and so forth, are governed by the laws of the forum. This is true even if the action is based upon a foreign substantive law (Restatement of the Conflict of Laws, Sec. 685; Salonga, Private International Law 131 [1979]).

In the case of *Cadalin v. POEA*, 238 SCRA 721 (1994), the Supreme Court ruled that prescription is a matter of procedural law. Thus, the US Court will apply either HI or Federal law in determining the applicable prescriptive period and not Philippine law.

What are the instances when our courts may refuse to apply a foreign law even if it is deemed applicable to a conflicts case?

ANSWER: Despite the fact that the case involves a foreign element, the forum may be forced to apply the internal law or *lex fori* in three (3) instances:

1. When the conflicts rule so provides;
2. When the proper foreign law (*lex causae*) has not been properly pleaded and proven; and
3. When the case falls under any of the eight (8) basic exceptions to the application of the foreign law (*lex causae*), as follows:

- i. when the foreign law, judgment or contract is contrary to a sound and important public policy of the forum;
- ii. when the foreign law, judgment or contract is contrary to recognized principles of morality (*contra bonos mores*);
- iii. when the foreign law or judgment is penal in nature;
- iv. when the foreign law is procedural in nature;
- v. when the foreign law is fiscal (revenue-producing) or administrative in nature;
- vi. when the application of the foreign law, judgment or contract may work injustice to residents of the state;
- vii. when the application of the foreign law, judgment or contract may work against the vital interests and national security of the state; and
- viii. when the case involves real or personal property situated in the forum (*lex situs*). (Dean Honorato Aquino, *Review Notes in Conflicts of Law*, pg. 40, 2000 ed.)

The Japan Air Lines (JAL), a foreigner corporation licensed to do business in the Philippines, executed in Manila a contract of employment with Maritess Guapa under which the latter was hired as a stewardess on the aircraft plying the Manila-Japan-Manila route. The contract specifically provides that (1) the duration of the contract shall be two (2) years, (2) notwithstanding the above duration, JAL may terminate the agreement at any time by giving her notice in writing ten (10) days in advance, and (3) the contract shall be construed as governed under and by the laws of Japan and only the court of Tokyo, Japan shall have the jurisdiction to consider any matter arising from or relating to the contract.

JAL dismissed Maritess on the fourth month of her employment without giving her due notice. Maritess then filed a complaint with the Labor Arbiter for reinstatement, backwages and damages. The lawyer of JAL contends that neither the Labor Arbiter nor any other agency or court in the Philippines has jurisdiction over the case in view of the above provision (3) of the contract which Maritess voluntarily signed. The contract is the law between her and JAL. Decide the issue. (1991 BAR EXAM Question No. VII-A)

Answer: Labor laws are generally intended as expressions of public policy on employer-employee relations. The contract therefore, between Japan Air Lines (JAL) and Maritess may apply only to the extent that its provisions are not inconsistent with Philippine labor laws intended particularly to protect employees.

Under the circumstances, the dismissal of Maritess without complying with Philippine Labor Law would be invalid and any stipulation in the contract to the contrary is considered void. Since the law of the forum in this case is Philippine law, the issues should be resolved in accordance with Philippine law.

Where under a State's own conflicts rule that domestic law of another State should apply, may the courts of the former nevertheless refuse to apply the latter? If so, under what circumstance? (1991 BAR EXAM Question No. VII-B)

Answer: The third paragraph of art. 17 of the Civil Code provides that:

"Prohibitive laws concerning persons, their acts or property, and those which have for their object order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country."

ART 17
Persons
Acts
Property

Accordingly, a state's own conflict of laws rule may, exceptionally be inapplicable, given public policy considerations by the law of the forum. Going into the specific provisions of the contract in question, I would rule as follows:

1. The duration of the contract is not opposed to Philippine Law and it can therefore be valid as stipulated;

2. The second provision to the effect that notwithstanding duration, Japan Air Lines (JAL) may terminate her employment is invalid, being inconsistent with our Labor laws;

3. That the contract shall be construed as governed under and by the laws of Japan and only the courts of Tokyo, Japan shall have jurisdiction, is invalid as it is clearly violative of the above-quoted third paragraph of Art. 17, and of Art. 1700 of the Civil Code, which provides:

"Art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lock outs, closed shop, wages, working conditions, hours of labor and similar objects."

In Private International Law (Conflict of Laws), what is:

- 1) ***Cognovit? (1%)***
- 2) ***A borrowing statute? (2%)***
- 3) ***Characterization? (2%)***

Answers:

1. ***Cognovit*** is a confession of judgement whereby a portion of the complaint is confessed by the defendant who denies the rest thereof (Philippine Law Dictionary, 3rd Ed.) (Ocampo v. Florenciano, L-M 13553, 2/23/50).

2. ***"Borrowing Statute"*** – Laws of the state or jurisdiction used by another state in deciding conflicts questioned involved in the choice of law (Black's Law Dictionary, 5th ed. 1979).

3. ***"Characterization"*** is otherwise called "classification" or "qualification". It is the process of assigning a disputed question to its correct legal category (Private International Law, Salonga).

II. MARRIAGE AND DIVORCE

Art. 15. CIVIL CODE. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

Theories on Personal Law:

1. ***Domiciliary theory*** - the personal laws of a person are determined by his domicile

2. **Nationality theory** - the nationality or citizenship determines the personal laws of the individual
- Under Article 15, the Philippines follow the nationality theory. Family rights and duties, status and legal capacity of Filipinos are governed by Philippine law wherever they go. ❄

Art. 26. FAMILY CODE. All marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5), and (6), 36, 37, and 38.

- **General Rule:** Under Article 26 of the Family Code, all marriages solemnized outside the Philippines in accordance with the laws in force in the country where they were solemnized and valid there as such, is also valid in the Philippines.
- **Exception:** If the marriage is void under Philippine law, then the marriage is void even if it is valid in the country where the marriage was solemnized.

Regine and Jaya, both Filipinas, enter into a same-sex marriage in Denmark, where such marriage is valid. Is the marriage also valid in the Philippines? Explain.

ANSWER: NO. The marriage is not valid in the Philippines because it runs counter to an important public policy of the forum.

While it may be true that Article 26 of the Family Code declares that marriages celebrated abroad and valid there as such, shall likewise be valid in the Philippines --- an exception to this rule is when the marriage is contrary to a sound public policy of the forum, as in this case.

Under Philippine laws, there is a strong public policy that a marriage should be between a man and a woman. The 1987 Constitution (Sec. 2, Art. XV) declares that marriage is an inviolable social institution and is the foundation of the family. Article 1 of the Family Code defines marriage as a special contract of permanent union between a man and a woman. Thus, the marriage of Regine and Jaya will not be valid in the Philippines.

Romy and Sonia, husband and wife, are both Filipinos who got married in New York, USA, where they are currently residing. The law of what state governs their property relations? Assuming that Romy thereafter was able to secure a divorce in New York capacitating him to remarry, will such divorce be valid under Philippine laws? Explain.

ANSWER: Philippine law shall govern the property relations of Romy and Sonia. Under Article 15 of the Civil Code pertaining to the principle of *lex nationalii* or the **Nationality Principle**, "laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad."

More particularly, Article 80 of the Family Code provides that the property relations of the "spouses shall be governed by Philippine laws, regardless of the place of the celebration of the marriage and their residence."

The divorce obtained by Romy in New York will not be valid under Philippine laws. Under the **Nationality Principle**, the recognition of an absolute divorce granted in another State rests on the citizenship of the parties at the time the divorce was granted. Since Romy is still a Filipino national at the time he secured the divorce decree, the public policy in the Philippines against divorce will follow him wherever he may be. Thus, the divorce he secured in New York will not be valid under Philippine laws.

Ricky (a citizen of California, USA) and Sheila (a Filipina national) were married in Manila in 2003. After two (2) years of problematic marriage, Ricky went to Los Angeles, California and secured a divorce --- capacitating him to remarry. Brokenhearted, Sheila went back to Manila and decided to go on with her life. She now asks you:

(i) How will such foreign decree of divorce be enforced or recognized in the Philippines?

(ii) Assuming she remarries without first having enforced such foreign decree of divorce in the Philippines, may she be successfully prosecuted for the crime of Bigamy? Explain.

ANSWER (i): A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree of divorce is valid according to the national law of the alien spouse. However, the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence.

Based on the first paragraph of Article 26 of the Family Code, marriages solemnized abroad are governed by the law of the place where they were celebrated (*lex loci celebrationis*). In effect, our laws require the presentation of the foreign law to show the conformity of the marriage in question to the legal requirements of the place where the marriage was performed.

In the case of *Garcia vs. Recio* (366 SCRA 437 [2001]), the Supreme Court explained that Philippine law does not provide for absolute divorce; hence, our courts cannot grant it. A marriage between two Filipinos cannot be dissolved even by a divorce obtained abroad, because of Articles 15 and 17 of the Civil Code. In mixed marriages involving a Filipino and a foreigner, Article 26 of the Family Code allows the former to contract a subsequent marriage in case the divorce is "validly obtained abroad by the alien spouse capacitating him or her to remarry." A divorce obtained abroad by a couple, who are both aliens, may be recognized in the Philippines, provided it is consistent with their respective national laws.

In the case of *Van Dorn v. Romillo Jr.* (139 SCRA 139 [1985]) the Supreme Court held that "aliens may obtain divorces abroad, which may be recognized in the Philippines, provided they are valid according to their national law." Therefore, before a foreign divorce decree can be recognized by our courts, the party pleading it must prove the divorce as a fact and demonstrate its conformity to the foreign law allowing it. Presentation solely of the divorce decree is insufficient.

ANSWER (ii): No. Sheila cannot be prosecuted for Bigamy because the first marriage has already been dissolved by the decree of divorce obtained by Ricky. While it may be true that before a foreign judgment is given presumptive evidentiary

value, the document must first be presented and admitted in evidence. – this can be done in the same case for Bigamy. Sheila need not file a separate petition to enforce the foreign decree of divorce.

A divorce obtained abroad is proven by the divorce decree itself. Indeed the best evidence of a judgment is the judgment itself. Thus, Sheila may submit a copy of that judgment in the proceedings against her for Bigamy. Applying Article 26 of the Family Code, the foreign decree of divorce must be recognized. Sheila cannot, therefore, be prosecuted for Bigamy.

Ana and Basilio, both Filipinos and of legal age, were married in 1950 in Antique but they never lived together. Ana subsequently left the Philippines and secured a divorce in Nevada, US. in 1953 on the ground of extreme mental cruelty. In 1955, Ana sought papal dispensation of the marriage and then married Carl, an American in Nevada. She lived with him in California and begot children. She acquired US citizenship in 1959.

Will the divorce decree obtained abroad accorded validity in the Philippines? What law supports your answer?

What is the status of the marriage of Ana and Carl under our laws? (1978 BAR EXAM Question No. 10)

Answer: The divorce decree obtained abroad will not be accorded validity under our laws. This is pursuant to the nationality principle. Under this theory, Filipino nationals are governed by our national laws even though they may be living abroad. And under our national laws, Filipinos are not allowed to obtain divorce decrees. Hence, the marriage between Ana and Basilio still subsists. Therefore, the marriage being still subsisting, the subsequent marriage of Ana with Carl is bigamous under our laws. Even the papal dispensation obtained by Ana will not come to her aid.

In 1989, Maris, a Filipino citizen, married her boss Johnson, an American citizen, in Tokyo in a wedding ceremony celebrated according to Japanese laws. One year later, Johnson returned to his native Nevada, and he validly obtained in that state an absolute divorce from his wife Maris.

After Maris received the final judgment of divorce, she married her childhood sweetheart Pedro, also a Filipino citizen, in a religious ceremony in Cebu City, celebrated according to the formalities of Philippine law. Pedro later left for the United States and became naturalized as an American citizen. Maris followed Pedro to the United States, and after a serious quarrel, Maris filed a suit and obtained a divorce decree issued by the court in the state of Maryland.

Maris then returned to the Philippines and in a civil ceremony celebrated in Cebu City according to the formalities of Philippine law, she married her former classmate Vincent likewise a Filipino citizen. 1992 BAR EXAM Question No. 1

- a) **Was the marriage of Maris and Johnson valid when celebrated? Is their marriage still validly existing now? Reasons.**
- b) **Was the marriage of Maris and Pedro valid when celebrated? Is their marriage still validly existing now? Reasons.**
- c) **Was the marriage of Maris and Vincent valid when celebrated? Is their marriage still validly existing now? Reasons.**

d) At this point in time, who is the lawful husband of Maris? Reasons.

Answer:

a. The marriage of Maris and Johnson was valid when celebrated because all marriages solemnized outside the Philippines (Tokyo) in accordance with the laws in force in the country where they are solemnized (Japan), and valid there as such, are also valid in the Philippines.

Their marriage no longer validly subsists, because it has been dissolved by the absolute divorce validly obtained by Johnson which capacitated Maris to remarry (Art. 26, Family Code).

b. The marriage of Maris and Pedro was valid when celebrated because the divorce validly obtained by Johnson in Manila capacitated Maris to marry Pedro.

The marriage of Maris and Pedro is still validly existing, because the marriage has not been validly dissolved by the Maryland divorce (Art. 26, Family Code).

c. The marriage of Maris and Vincent is void *ab initio* because it is a bigamous marriage contracted by Maris during the subsistence of her marriage with Pedro (Art. 25 and 41, Family Code).

The marriage of Maris and Vincent does not validly exist because Article 26 does not apply. Pedro was not a foreigner at the time of the marriage with Maris and the divorce abroad (in Maryland) was initiated and obtained not by the alien spouse, but by the Filipino spouse. Hence, the Maryland divorce did not capacitate Maris to marry Vincent.

d. At this time, Pedro is still the lawful husband of Maris because their valid marriage has not been dissolved by any valid cause (Art. 26 Family Code)

In 1977, Mario and Clara, both Filipino citizens, were married in the Philippines. Three years later, they went to the United States of America and established their residence in San Francisco, California. In 1987, the couple applied for, and were granted, U.S. citizenship. In 1989, Mario, claiming to have been abandoned by Clara, was able to secure a decree of divorce in Reno, Nevada, U.S.A. In 1990, Mario returned to the Philippines and married Juana who knew well Mario's past life. (1997 BAR EXAM Question No. 11)

(a) Is the marriage between Mario and Juana valid?

(b) Would the *renvoi* doctrine have any relevance to the case?

Answer: A. Yes. The Nationality Principle provides that the recognition of an absolute divorce granted in another State rests on the citizenship of the parties at the time of the divorce was granted (Art. 15 of the Civil Code and Art. 26 of the Family Code). Applied in this case, the divorce decree issued to Clara and Mario will be recognized as valid here considering that at the time the foreign decree was granted, both Clara and Mario are citizens of the USA, a country which grants/allows absolute divorce. Since the marriage between Mario and Clara has been validly terminated, Mario and Juana can freely marry each other.

B. No. The *renvoi* doctrine is not relevant in this case. *Renvoi* is relevant only in cases where one country applies the domiciliary theory and the other the nationality

theory, and the issue involved is which of the laws of the countries should apply to determine the order of succession, the amount of successional rights, or, the intrinsic validity of testamentary provisions. Such issue is not involved in this case.

Gene and Jane, Filipinos, met and got married in England while both were taking up post-graduate courses there. A few years after their graduation, they decided to annul their marriage. Jane filed an action to annul her marriage to Gene in England on the ground of the latter's sterility, a ground for annulment of marriage in England. The English court decreed the marriage annulled. Returning to the Philippines, Gene asked you whether or not he would now be free to marry his former girlfriend. What would your legal advice be? (2003 BAR Exam Question No. II)

Answer: No, Gene is not free to marry his former girlfriend. His marriage to Jane is valid according to the forms and solemnities of British law, is valid here (Article 17, 1st par., Civil Code). However, since Gene and Jane are still Filipinos, although living in England, the dissolution of their marriage is still governed by Philippine law (Article 15, Civil Code). Since, sterility is not one of the grounds for the annulment of a marriage under Article 45 of the Family Code, the annulment of Gene's marriage to Jane on that ground is not valid in the Philippines (Article 26, Family Code).

In 1985, Sonny and Lulu, both Filipino citizens, were married in the Philippines. In 1987, they separated, and Sonny went to Canada, where he obtained a divorce in the same year. He then married another Filipina, Auring, in Canada on January 1, 1988. They had two sons, James and John. In 1990, after failing to hear from Sonny, Lulu married Tirso, by whom she had a daughter, Verna. In 1991, Sonny visited the Philippines where he succumbed to heart attack. (2005 BAR Exam Question No. II)

- a) Discuss the effect of the divorce obtained by Sonny and Lulu in Canada.
- b) Explain the status of the marriage between Sonny and Auring.
- c) Explain the status of the marriage between Lulu and Tirso.
- d) Explain the respective filiation of James, John and Verna.

Answer:

a. Sonny's capacity to contract marriage is governed by Philippine law – i.e., the Family Code – pursuant to Art. 15, Civil Code, which provides that our laws relating to, among others, legal capacity of persons are binding upon citizens of the Philippines even though living abroad. Therefore, since Sonny is still a Filipino citizen when he obtained the divorce and Philippine law does not recognize divorce then the divorce obtained by Sonny is void or has no effect to his marriage with Lulu.

b. The Marriage between Sonny and Auring is void. Sonny's capacity to contract marriage is governed by Philippine law – i.e., the Family Code – pursuant to Art. 15, Civil Code, which provides that our laws relating to, among others, legal capacity of persons are binding upon citizens of the Philippines even though living abroad. Hence, at the time of his marriage to Auring he was still validly married to Lulu for our national law does not allow divorce.

c. The marriage of Lulu and Tirso is void *ab initio* because it is a bigamous marriage contracted by Lulu during the subsistence of her marriage with Sonny (Art. 25 and 41, Family Code).

d. James, John, and Verna are products of bigamous marriage and as a result they are all illegitimate child of Lulu and Sonny. Art 15 of the NCC. Provides that the Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad. Therefore, since James, John, and Verna are Citizens of the Philippines as provided by our Constitution and since they are product of a bigamous marriage and our laws provide that their status shall be governed by Philippine laws then they are all illegitimate children.

III. WILLS AND SUCCESSION

Art. 16, CIVIL CODE. Real property as well as personal property is subject to the law of the country where it is stipulated.

However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.

Eric is a Filipino citizen residing in Los Angeles, California, USA. State what laws govern:

- a. His capacity to contract marriage in California, USA.
- b. His successional rights as regards his deceased Filipino father's property located in Texas, USA.
- c. The extrinsic validity of the last will and testament, which Eric executed while residing in Japan.
- d. The intrinsic validity of said will.

ANSWER:

a. Eric's capacity to contract marriage is governed by Philippine law – i.e., the Family Code – pursuant to the *Nationality Principle* enunciated in Art. 15 of the Civil Code, which provides that our laws relating to, among others, legal capacity of persons are binding upon citizens of the Philippines even though living abroad.

b. By way of exception to the general rule of *lex rei sitae* (law of the place where the property is located) prescribed by the first paragraph of Art. 16 of the Civil Code, a person's successional rights are governed by the national law of the decedent. The 2nd paragraph of Art. 16 of the Civil Code provides that:

“However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found.”

Art. 1039. of the Civil Code relevantly provides: “Capacity to succeed is governed by the law of the nation of the decedent.” Since Eric's deceased father was a Filipino citizen, Philippine law governs his successional rights.

c. The extrinsic validity of Eric's will may be governed by either: (a) Japan law, it being the law where the will was made pursuant to the principle of *lex loci celebrationis*. Art. 17 of the Civil Code provides that: "The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed." Or (b) Philippine law, as stated in Art. 815 of the Civil Code, which provides that:

"Art. 815. When a Filipino is in a foreign country, he is authorized to make a will in any of the forms established by the law of country in which he may be. Such will may be probated in the Philippines."

d. The intrinsic validity of his will is governed by Philippine law, it being his national law, pursuant to Art. 16, Civil Code, which provides that:

"However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found."

Tiger Woods, an American from California residing in the Philippines, recently died in Manila leaving a Will and two (2) parcels of land: one in Manila and the other in Tokyo, Japan. He provided in his Will that the distribution of his estate shall be governed by Philippine law. Assuming that a case was filed before the RTC of Manila for the settlement of his estate, the law of what state governs the succession to both parcels of land?

ANSWER:

With respect to the parcel of land located in Manila, the law that governs the succession is California Law, the national law of the decedent, as provided in the second paragraph of Article 16 of the Civil Code.

The testamentary provision mandating application of Philippine law is contrary to an important public policy of the forum; hence, it is null and void. In contemplation of law such a provision is non-existent.

But with respect to the parcel of land located in Tokyo, Japan, the RTC of Manila should refrain from assuming jurisdiction under the principle of *forum non conveniens*. It should not raise false hopes by assuming jurisdiction if it is in no position to enforce its judgment. The forum has no particular interest in the case, and there are other courts which may better try and decide the case. This notwithstanding the *colatilla* in the second paragraph of Article 16, which states, "regardless of the country where said property may be found." We have no right to legislate for other countries. (*Time, Inc. v. Reyes*, 39 SCRA 303, 313).

(a) Pursuant to private international law or conflict of laws, to what law is real property as well as personal property subject? Are there any exceptions to the rule? If there are, name them. (1988 BAR EXAM Question No. 12)

Answer:

Real property as well as personal property is governed by the *lex situs*, or the law of the place where such property is situated. The exceptions to this rule are as follows:

1. Succession. Under the second paragraph of Article 16 of the Civil Code, the national law of the decedent governs the order of succession, the amount of successional rights and the intrinsic validity of testamentary provisions. It also governs the capacity of an heir to succeed (Article 1039, Civil Code).

2. Contracts involving property but which do not affect title to the property, or when the property is merely incidental to the contract.

3. Contracts where property is given as security for a personal contract (usually loan), the principal contract is governed by its proper law; but the accessory contract of mortgage is governed by the *lex situs*.

Question: (b) What are the four aspects of succession that are governed by the national law of the decedent if he is a foreigner?

Answer: The matters governed are: (i) the order of succession, (ii) the amount of successional right, (iii) the intrinsic validity of the will, and (iv) the capacity to succeed.

Question: (c) A, a citizen of California, died testate in Manila, survived by two acknowledged natural children, B and C. In his will, he left more than P500,000.00 to B and only P3,000.00 to C. It is admitted that under the Civil Code of California, the domiciliary laws of the decedent shall govern questions involving the validity of testamentary provisions. C, who is contesting the validity of the disposition in favor of B now contends that Philippine laws with respect to succession are applicable. Is this correct? Give your reasons?

Answer: Yes, this is a clear case of *renvoi*. *Renvoi* is a French word that means "a referring back". It is a term used in Conflict of Laws to denote the phenomenon where the conflicts rule of the forum makes a reference to a foreign law, but the foreign law is found to contain a conflicts rule that returns or refers back the matter to the law of the forum.

As a rule, it is the decedent's national law which will govern but it is admitted that California laws refer back to our domiciliary laws. So the Philippine law shall govern and C shall be given a share which must not be smaller than his legitime as required by Philippine laws.

A and B husband and wife respectively, are both citizens of Texas, USA and domiciled in Manila. B dies in Quezon City, leaving properties in Makati, Rizal. Illustrate how the renvoi doctrine applies. (1976 BAR EXAM Question No. 5-a)

Answer:

According to the Civil Code which follows the national theory, successional rights shall be governed by the law of the nation of the decedent, but according to the domiciliary theory, successional rights are determined by the law of his domicile. B, being an American but domiciled in Manila, there lies the conflict. If Texas law follows the domiciliary theory, therefore Texas law will refer the matter to Philippine law, the situs of B's domicile, in which case the Philippine law will apply. This is how the *renvoi* operates.

Question No. 5-b

Which law will govern the successional rights?

Answer:

Article 16, par. 2 provides that **successional rights** shall be regulated by the **national law of the person whose succession is under consideration**. Since B is a citizen of Texas, the law that should govern the successional rights shall be Texas law. However, if the law of Texas recognizes the domiciliary rule that successional rights shall be governed by the law of the domicile of the decedent, then the Philippine law on succession will apply.

Question No. 5-c

May our courts take judicial notice of the laws of Texas? Explain.

Answer:

No, because our courts may take judicial notice only of local laws and foreign laws must be pleaded and proved in evidence. However, **in the absence of proof of what the foreign law is, it shall be presumed that the foreign law is the same as Philippine law.** This is pursuant to the doctrine of **processual presumption**. The doctrine was enunciated in the case of *Miciano vs. Brimo* (50 Phil. 867 [1924]), where the Supreme Court held that **in the absence of evidence to the contrary, foreign laws on a particular subject are presumed to be the same as those of the Philippines.**

A, while traveling in Tokyo, Japan executed his will before a diplomatic official of the Philippines. Only two witnesses signed the attestation clause. Upon his return to the Philippines, A filed a petition for the probate of his will. The petition is opposed on the ground that the will is not attested by three witnesses. Assuming that in Japan only two witnesses are required to sign the will, may the will of A be admitted to probate here? (1975 BAR EXAM Question No. 2)

Answer:

No, A's will may not be admitted to probate here in the Philippines. Although under article 815, a Filipino in a foreign country is authorized to make a will in accordance with the laws of the place where he may be, **Art. 17 of the Civil Code is more explicit and provides that when acts, such as a will are executed before diplomatic or consular officials of the Philippines, the solemnities established by Philippine laws shall be observed in their execution.** Art 17, par 2, is more of a special provision while Art 815 is but a reiteration of the general principle of *lex loci celebrationis* embodied in the first paragraph of Art 17. And one of the solemnities required by our laws regarding wills is the attestation and subscription of at least three witnesses.

In his lifetime, a Pakistani citizen, ADIL, married three times under Pakistani law. When he died an old widower, he left behind six children, two sisters, three homes, and an estate worth at least 30 million pesos in the Philippines. He was born in Lahore but last resided in Cebu City, where he had a mansion and where two of his youngest children now live and work. Two of his oldest children are farmers in Sulu, while the two middle-aged children are employees in Zamboanga City. Finding that the deceased left no will, the youngest son wanted to file

intestate proceedings before the Regional Trial Court of Cebu City. Two other siblings objected, arguing that it should be in Jolo before a Shari'a court since his lands are in Sulu. But Adil's sisters in Pakistan want the proceedings held in Lahore before a Pakistani court.

Which court has jurisdiction and is the proper venue for the intestate proceedings? The law of which country shall govern succession to his estate?
(2004 BAR EXAM Question No. 10-B)

Answer: The proper venue for the intestate proceedings is either the court of the place where the decedent last resided or the court of the place where he has estate. In this case, the intestate proceedings should be filed in the Sulu court where Adil had his estate. It is the most proper venue since it has jurisdiction and control over the estate of Adil, which would then be distributed to his heirs.

The applicable law for the distribution of his estate would be Pakistani law. This is based on Art. 16 of the Civil Code which provides that the intrinsic validity of wills, THE ORDER OF SUCCESSION, THE AMOUNT OF SUCCESSIONAL RIGHTS, and THE CAPACITY TO SUCCEED, is governed by the national law of the decedent. Since Adil was a Pakistani citizen at the time of his death, then Pakistani law would govern the succession to his estate.

Jacob, a Swiss national, married Lourdes, a Filipina, in Berne, Switzerland. Three years later, the couple decided to reside in the Philippines. Jacob subsequently acquired several properties in the Philippines with the money he inherited from his parents. Forty years later, Jacob died intestate, and is survived by several legitimate children and duly recognized illegitimate daughter Jane, all residing in the Philippines.

(a) *Suppose that Swiss law does not allow illegitimate children to inherit, can Jane, who is a recognized illegitimate child, inherit part of the properties of Jacob under Philippine law?* **NO**

(b) *Assuming that Jacob executed a will leaving certain properties to Jane as her legitime in accordance with the law of succession in the Philippines, will such testamentary disposition be valid?* (1991 BAR EXAM Question No. VIII) **NO**

Answer: a. **No.** The applicable law is the national law of the decedent (Art. 16, Civil Code). Swiss law does not allow illegitimate children to inherit. Thus, Jane cannot inherit from the estate of Jacob. In the case of *Bellis v. Bellis* (1967), the Supreme Court ruled that whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to the succession of foreign nationals. For it has specifically chosen to leave, under Art. 16 of the Civil Code, the amount of successional rights, to the decedent's national Law.

b. The testamentary disposition will not be valid if it would contravene Swiss law; otherwise, the disposition would be valid. In the case of *Miciano vs. Brimo*, 50 Phil. 867, a provision in a foreigner's will to the effect that his properties shall be distributed in accordance with Philippine law and not with his national law, is illegal and void, for his national law cannot be ignored in regard to those matters that Article 16 of the Civil Code states said national law should govern.

Juan is a Filipino citizen residing in Tokyo, Japan. State what laws govern:

1. His **capacity to contract marriage in Japan.**
2. His **successional rights** as regards his deceased Filipino father's property in Texas, U.S.A.
3. The **extrinsic validity of the last will and testament which Juan executed while sojourning in Switzerland.**
4. The **intrinsic validity of said will.** (1998 BAR EXAM Question No. I)

Nationality rule
Nationality rule
law in Switzerland
Phil- law

Answer:

1. Juan's capacity to contract marriage is governed by Philippine law – i.e., the Family Code – pursuant to Art. 15, Civil Code, which provides that our laws relating to, among others, legal capacity of persons are binding upon citizens of the Philippines even though living abroad.

2. By way of exception to the general rule of *lex rei sitae* prescribed by the first paragraph of Art. 16, Civil Code, a person's successional rights are governed by the national law of the decedent (2nd par., Art. 16). Since Juan's deceased father was a Filipino citizen, Philippine law governs Juan's successional rights.

3. The extrinsic validity of Juan's will is governed by (a) Swiss law, it being the law where the will was made (Art. 17, 1st par. Civil Code), or (b) Philippine law, by implication from the provisions of Art. 816, Civil Code, which allows even an alien who is abroad to make a will in conformity with our Civil Code.

4. The intrinsic validity of his will is governed by Philippine law, it being his national law. (Art. 16, Civil Code)

Manuel, a Filipino, and his American wife Eleanor, executed a Joint Will in Boston, Massachusetts when they were residing in said city. The law of Massachusetts allows the execution of joint wills. Shortly thereafter, Eleanor died. Can the said Will be probated in the Philippines for the settlement of her estate? (2000 BAR EXAM Question No. III)

Answer: Yes, the will may be probated in the Philippines insofar as the estate of Eleanor is concerned. While the Civil Code prohibits the execution of joint wills here and abroad, such prohibition applies only to Filipinos. Hence, the joint will which is valid where executed is valid in the Philippines but only with respect to Eleanor. Under Article 819, it is void with respect to Manuel whose joint will remains void in the Philippines despite being valid where executed.

Alex was born a Filipino but was a naturalized Canadian citizen at the time of his death on December 25, 1998. He left behind a last will and testament in which he bequeathed all his properties, real and personal, in the Philippines to his acknowledged illegitimate Filipina daughter and nothing to his two legitimate Filipino sons. The sons sought the annulment of the last will and testament on the ground that it deprived them of their legitimes but the daughter was able to prove that there are no compulsory heirs or legitimes under Canadian law. Who should prevail? Why? (2001 BAR EXAM Question No. I)

Answer: The daughter should prevail because Art. 16 of the new Civil Code provides that intestate and testamentary succession shall be governed by the national law of the person whose succession is under consideration. In the case of *Bellis v. Bellis* (1967), the Supreme Court ruled that whatever public policy or good customs may be involved in our system of legitimes, Congress has not intended to extend the same to the

succession of foreign nationals. For it has specifically chosen to leave, under Art. 16 of the Civil Code, the amount of successional rights, to the decedent's national Law.

Felipe and Felisa, both Filipino citizens, were married in Malolos, Bulacan on June 1, 1950. In 1960, Felipe went to the United States, becoming a U.S. citizen in 1975. In 1980, he obtained a divorce from Felisa, who was duly notified of the proceedings. The divorce decree became final under California law. Coming back to the Philippines in 1982, Felipe married Segundina, a Filipino citizen. In 2001, Felipe, then domiciled in Los Angeles, California, died, leaving one child by Felisa, and another one by Segundina. He left a will which was executed in Manila, under which he left his estate to Segundina and his two children and nothing to Felisa.

Segundina files a petition for the probate of Felipe's will. Felisa questions the intrinsic validity of the will, arguing that her marriage to Felipe subsisted despite the divorce obtained by Felipe because said divorce is not recognized in the Philippines. For this reason, she claims that the properties left by Felipe are their conjugal properties and that Segundina has no successional rights.

A. *Is the divorce secured by Felipe in California recognizable and valid in the Philippines? How does it affect Felipe's marriage to Felisa? Explain. (2002 BAR EXAM Question No. III)*

B. *What law governs the formalities of the will? Explain.*

C. *Will Philippine law govern the intrinsic validity of the will? Explain.*

Answer:

A. The divorce secured by Felipe in California is recognizable and valid in the Philippines because he was no longer a Filipino at the time he secured it. Aliens may obtain divorces abroad which may be recognized in the Philippines provided that they are valid according to their national law (Van Dorn v. Romillo, Jr., 139 SCRA 139 [1985]; Quita v. Court of Appeals, 300 SCRA 406 [1998]; Llorente v. Court of Appeals, 345 SCRA 592 [2000]).

B. The foreigner who executes his will in the Philippines may observe the formalities prescribed in the law of the country of which he is a citizen under Art. 817 of the New Civil Code, or Philippine law, being the law of the place of execution, under Art. 17 of the Civil Code.

C. Philippine law will not govern the intrinsic validity of the will. Article 16 of the Civil Code provides that the intrinsic validity of testamentary provisions shall be governed by the national law of the person whose succession is under consideration. California law will therefore govern the intrinsic validity of the will.

IV. CONTRACTS

Art. 17. CIVIL CODE. The forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed.

When the acts referred to are executed before the diplomatic or consular officials of the Republic of the Philippines in a foreign country, the solemnities established by Philippine laws shall be observed in their execution.

Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

- *Lex loci celebrationis* (formal requirements of contracts, wills, and other public instruments are governed by the country in which they are executed)
- There is no conflict between the 1st ¶ of Article 16 and the 1st ¶ of Article 17 since they talk of 2 different things.
- Thus, the formal requirements of a contract involving real property in the Philippines must follow the formal requirements of the place where the contract was entered into. However, if what is involved is not the formal requirements, then the law of the place where the properties (whether real or personal) are located shall govern.

X and Y entered into a contract in Australia, whereby it was agreed that X would build a commercial building for Y in the Philippines, and in payment for the construction, Y will transfer and convey his cattle ranch located in the United States in favor of X. What law would govern: (1992 BAR EXAM Question No. XIV)

- The validity of the contract?**
- The performance of the contract?**
- The consideration of the contract?**

Answer:

- The validity of the contract will be governed by Australian law, because the validity refers to the element of the making of the contract in this case.
- The performance will be governed by the law of the Philippines where the contract is to be performed.
- The consideration will be governed by the law of the United States where the ranch is located.

While in Afghanistan, a Japanese by the name of Sato sold to Ramoncito, a Filipino, a parcel of land situated in the Philippines which Sato inherited from his Filipino mother. (1995 BAR EXAM Question No. 2)

- What law governs the formality in the execution of the contract of sale? Explain your answer and give its legal basis.**
- What law governs the capacity of the Japanese to sell the land? Explain your answer and give its legal basis.**
- What law governs the capacity of the Filipino to buy the land? Explain your answer and give its legal basis.**

Answer:

- Under Art. 16 par. 1, NCC, real property is subject to the law of the country where it is situated. Since the property is situated in the Philippines, Philippine law applies. The rule of *lex rei sitae* in Article 16 prevails over *lex loci contractus* in Article 17 of the NCC.
 - Japanese law governs the capacity of the Japanese to sell the land being his personal law on the basis of an interpretation of Art. 15, NCC.
 - Philippine law governs the capacity of the Filipino to buy the land. In addition to the principle of *lex rei sitae* given above, article 15 of the NCC specifically provides that Philippine laws relating to legal capacity of persons are binding upon citizens of the Philippines no matter where they are.
-

Alma was hired as a domestic helper in Hongkong by the Dragon Services, Ltd., through its local agent. She executed a standard employment contract designed by the Philippine Overseas Workers Administration (POEA) for overseas Filipino workers. It provided for her employment for one year at a salary of US\$1,000.00 a month. It was submitted to and approved by the POEA. However, when she arrived in Hongkong, she was asked to sign another contract by Dragon Services, Ltd. which reduced her salary to only US\$600.00 a month. Having no other choice, Alma signed the contract, but when she returned to the Philippines, she demanded payment of the salary differential of US\$400.00 a month. Both Dragon Services, Ltd. and its local agent claimed that the second contract is valid under the laws of Hongkong, and therefore binding on Alma. Is their claim correct? Explain. (1996 BAR EXAM Question No. XVIII)

Answer: Their claim is not correct. A contract is the law between the parties but the law can disregard the contract if it is contrary to public policy. The provisions of the 1987 constitution on the protection of labor and on social justice (Sec. 10, Art. II), embody a public policy of the Philippines. Since the application of Hongkong law in this case is in violation of that public policy, the application shall be disregarded by our Courts. (Cadalin v. POEA, 238 SCRA 762)

Felipe is a Filipino citizen. When he went to Sydney for vacation, he met a former business associate, who proposed to him a transaction which took him to Moscow. Felipe brokered a contract between Sydney Coals Corp. (Coals), an Australian firm, and Moscow Energy Corp. (Energy), a Russian firm, for Coals to supply coal to Energy on a monthly basis for three years. Both these firms were not doing, and still do not do, business in the Philippines. Felipe shuttled between Sydney and Moscow to close the contract. He also executed in Sydney a commission contract with Coals and in Moscow with Energy, under which contracts he was guaranteed commissions by both firms based on a percentage of deliveries for the three-year period, payable in Sydney and in Moscow, respectively, through deposits in accounts that he opened in the two cities. Both firms paid Felipe his commission for four months, after which they stopped paying him. Felipe learned from his contacts, who are residents of Sydney and Moscow, that the two firms talked to each other and decided to cut him off. He now files suit in Manila against both Coals and Energy for specific performance. (2002 BAR EXAM Question No. XIII)

- A. Define or explain the principle of "lex loci contractus."
- B. Define or explain the rule of "forum non conveniens."
- C. Should the Philippine court assume jurisdiction over the case? Explain.

A. *Lex loci contractus* may be understood in two senses, as follows:

1. It is the law of the place where contracts, wills and other public instruments are executed and governs their "forms and solemnities", pursuant to the first paragraph, Article 17 of the New Civil Code; or

2. It is the proper law of the contract; i.e., the system of law intended to govern the entire contract, including its essential requisites, indicating the law of the place with which the contract has its closest connection or where the main elements of the contract converge. As illustrated by *Zalamea v. Court of Appeals* (228 SCRA 23 [1993]), it is the law of the place where the airline ticket was issued, where the passengers are nationals and residents of, and where the defendant airline company maintained its office.

B. *Forum non conveniens* means that a court has discretionary authority to decline jurisdiction over a cause of action when it is of the view that the action may be justly and effectively adjudicated elsewhere.

C. No, the Philippine courts cannot acquire jurisdiction over the case of Felipe. Firstly, under the rule of *forum non conveniens*, the Philippine court is not a convenient forum as all the incidents of the case occurred outside the Philippines. Neither are both Coals and Energy doing business inside the Philippines. Secondly, the contracts were not perfected in the Philippines. Under the principle of *lex loci contractus*, the law of the place where the contract is made shall apply. Lastly, the Philippine court has no power to determine the facts surrounding the execution of said contracts. And even if a proper decision could be reached, such would have no binding effect on Coals and Energy as the court was not able to acquire jurisdiction over the said corporations. (*Manila Hotel Corp. v. NLRC*, 343 SCRA 1, 13-14 [2000])

On 8 December 1991 Vanessa purchased from the Manila office of Euro-Aire an airline ticket for its Flight No. 710 from Dallas to Chicago on 16 January 1992. Her flight reservation was confirmed. On her scheduled departure Vanessa checked in on time at the Dallas airport. However, at the check-in counter she discovered that she was waitlisted with some other passengers because of intentional overbooking, a Euro-Aire policy and practice. Euro-Aire admitted that Vanessa was not advised of such policy when she purchased her plane ticket. Vanessa was only able to fly two days later by taking another airline.

Vanessa sued Euro-Aire in Manila for breach of contract and damages. Euro-Aire claimed that it cannot be held liable for damages because its practice of overbooking passengers was allowed by the U.S. Code of Federal Regulations.

Vanessa on the other hand contended that assuming that the U.S. Code of Federal Regulations allowed intentional overbooking, the airline company cannot invoke the U.S. Code on the ground that the ticket was purchased in Manila, hence, Philippine law should apply, under which Vanessa can recover damages for breach of contract of carriage. Decide. Discuss fully. (1995 BAR EXAM Question No. 10)

ANSWER: Vanessa can recover damages under Philippine law for breach of contract of carriage.

Philippine law should govern as the law of the place where the plane tickets were brought and the contract of carriage was executed. In *Zalamea v. Court of Appeals* (G.R.

No. 104235, Nov. 10, 1993) the Supreme Court applied Philippine law in recovery of damages for breach of contract of carriage for the reason that it is the law of the place where the contract was executed.

A

There was no showing from the given facts that the U.S. law or regulation allegedly authorizing overbooking was proved. Foreign laws do not prove themselves nor can the courts take judicial notice of them. Like any other fact, they must be alleged and proved. Written law may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied with a certificate that such officer has custody. The certificate may be made by a secretary of an embassy or legation, consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

C

Even if the claimed U.S. Code of Federal Regulations does exist, the same is not applicable to the case at bar in accordance with the principle of *lex loci contractus* which requires that the law of the place where the airline ticket was issued should be applied by the court where the passengers are residents and nationals of the forum and the ticket is issued in such State by the defendant airline. Since the tickets were sold and issued in the Philippines, the applicable law in this case would be Philippine law.

Northwest Airlines, a corporation organized under the laws of the State of Minnesota, U.S.A., and Sharp Company, a corporation incorporated under Philippine laws, through its Japan branch, entered into an International Passenger Sales Agency Agreement, whereby the former authorized the latter to sell its air transportation tickets. Unable to remit the proceeds of the ticket sales, Northwest sued Sharp in Tokyo, Japan, for collection of the unremitted proceeds of the ticket sales, with claim for damages.

After the two attempts of service were unsuccessful, the judge of the Tokyo District Court decided to have the complaint and the writs of summons served at the head office of Sharp in Manila. The Director of the Tokyo District Court also requested the Supreme Court of Japan to serve the summons through diplomatic channels upon the defendant's head office in Manila.

Despite receipt of the summons, Sharp failed to appear at the scheduled hearing. Thus, the Tokyo Court proceeded to hear the plaintiff's complaint and rendered judgment in favor of Northwest. The judgment became final and executory.

Northwest was unable to execute the decision in Japan, hence, a suit for enforcement of the judgment was filed in the RTC of Manila

a. *May the judgment be enforced in the Philippines?*

b. *Did the Japanese court validly acquire jurisdiction over SHARP, a Philippine corporation doing business in Japan, by serving summons through diplomatic channels on the Philippine corporation at its principal office in Manila after prior attempts to serve summons in Japan had failed?*

ANSWER (a):

Yes. The foreign judgment may be enforced in the Philippines.

A foreign judgment is presumed to be valid and binding in the country from which it comes, until the contrary is shown. It is also proper to presume the regularity of the proceedings and the giving of due notice therein.

Under Section 50, Rule 39 of the Rules of Court, a judgment in an action in personam of a tribunal of a foreign country having jurisdiction to pronounce the same is presumptive evidence of a right as between the parties and their successors-in-interest by a subsequent title. The judgment may, however, be assailed by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. Also, under Section 3 of Rule 131, a court, whether of the Philippines or elsewhere, enjoins the presumption that it was acting in the lawful exercise of jurisdiction and has regularly performed its official duty.

In the case of *Northwest Airlines vs. Court of Appeals (1995)*, where the facts are similar to the problem, the Supreme Court held that the party attacking a foreign judgment has the burden of overcoming the presumption of its validity.

Applying the law and jurisprudence to the facts of this case, SHARP --- being the party challenging the judgment rendered by the Japanese court, had the duty to demonstrate the invalidity of such judgment.

ANSWER (b):

The Japanese Court validly acquired jurisdiction over SHARP.

In the case of *Northwest Airlines vs. Court of Appeals (1995)*, where the facts are similar to the problem, the Supreme Court held that it is settled that matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the *lex fori* or the internal law of the forum.

In this case, it is the procedural law of Japan where the judgment was rendered that determines the validity of the extraterritorial service of process on SHARP. As to what this law is -- is a question of fact, not of law. It may not be taken judicial notice of and must be pleaded and proved like any other fact. Sections 24 and 25, rule 132 of the Rules of Court provide that it may be evidenced by an official publication or by a duly attested or authenticated copy thereof. It was then incumbent upon SHARP to present evidence as to what that Japanese procedural law is and to show that under it, the assailed extraterritorial service is invalid. It did not. Accordingly, the presumption of validity and regularity of the service of summons and the decision thereafter rendered by the Japanese court must stand.

Alternatively, in the light of the absence of proof regarding Japanese law, the presumption of identity or similarity or the so-called *processual presumption* may be invoked. Applying it, the Japanese law on the matter is presumed to be similar with the Philippine law on service of summons on a private foreign corporation doing business in the Philippines. Section 14, Rule 14 of the rules of Court provides that if the defendant is a foreign corporation doing business in the Philippines, service may be made: (1) on its resident agent designated in accordance with law for that purpose, or, (2) if there is no such resident agent, on the government official designated by law to that effect, or (3) on any of its officers or agents within the Philippines.

CASE UPDATES:

1. GRACE J. GARCIA, v. REDERICK A. RECIO, (G.R No. 138322 October 2, 2001)

QUESTION: The foreign spouse of a Filipina obtained a divorce abroad capacitating him to remarry. Will such decree of divorce automatically capacitate the Filipina to re-marry under Philippine laws?

ANSWER: NO. "A divorce obtained abroad by an alien may be recognized in our jurisdiction, provided such decree is valid according to the national law of the foreigner. However, the divorce decree and the governing personal law of the alien spouse who obtained the divorce must be proven. Our courts do not take judicial notice of foreign laws and judgments; hence, like any other facts, both the divorce decree and the national law of the alien must be alleged and proven according to our law on evidence."

2. WOLFGANG O. ROEHR, vs. MARIA CARMEN D. RODRIGUEZ, [G.R. No. 142820. June 20, 2003.]

QUESTION: Will a foreign decree of divorce operate as res judicata to any proceedings arising from the marriage of the parties under Philippine laws?

ANSWER: NO. "As a general rule, divorce decrees obtained by foreigners in other countries are recognizable in our jurisdiction, but the legal effects thereof, e.g. on custody, care and support of the children, must still be determined by our courts. Before our courts can give the effect of res judicata to a foreign judgment, such as the award of custody to petitioner by the German court, it must be shown that the parties opposed to the judgment had been given ample opportunity to do so on grounds allowed under Rule 39, Section 50 of the Rules of Court (now Rule 39, Section 48, 1997 Rules of Civil Procedure)."

"It is essential that there should be an opportunity to challenge the foreign judgment, in order for the court in this jurisdiction to properly determine its efficacy. In this jurisdiction, our Rules of Court clearly provide that with respect to actions in personam, as distinguished from actions in rem, a foreign judgment merely constitutes prima facie evidence of the justness of the claim of a party and, as such, is subject to proof to the contrary."

3. PAULA T. LLORENTE, vs. COURT OF APPEALS, [G.R. No. 124371. November 23, 2000.]

QUESTION: Lorenzo and Paula, both Filipinos, were married in the Philippines. Lorenzo later became an American Citizen. Paula engaged in an adulterous relationship with Llorente, and they bore a son. Because of this, Lorenzo secured a divorce from a court in Nevada, USA to sever his marriage with Paula.

Lorenzo then returned to Manila and married Alicia. They bore three children. Lorenzo executed a will where he bequeathed all his property to Alicia and their three children. The will was probated and Alicia was appointed administrator of his estate. Thereafter, Lorenzo died in Manila.

1. What law will govern the intrinsic validity of Lorenzo's will?
2. Was the foreign divorce obtained by Lorenzo valid?

ANSWER:

What law will govern the intrinsic validity of Lorenzo's will?

The applicable law is the national law (New York, USA) of the decedent – Lorenzo. (Articles 15 and 16 of the Civil Code).

"True, foreign laws do not prove themselves in our jurisdiction and our courts are not authorized to take judicial notice of them. Like any other fact, they must be alleged and proved."

"While the substance of the foreign law was pleaded, the Court of Appeals did not admit the foreign law. The Court of Appeals and the trial court called to the fore the renvoi doctrine, where the case was "referred back" to the law of the decedent's domicile, in this case, Philippine law."

"We note that while the trial court stated that the law of New York was not sufficiently proven, in the same breath it made the categorical, albeit equally unproven statement that **"American law follows the 'domiciliary theory'** hence, Philippine law applies when determining the validity of Lorenzo's will."

"First, there is no such thing as one American law. The "national law" indicated in Article 16 of the Civil Code cannot possibly apply to general American law. There is no such law governing the validity of testamentary provisions in the United States. Each State of the union has its own law applicable to its citizens and in force only within the State. It can therefore refer to no other than the law of the State of which the decedent was a resident. Second, there is no showing that the application of the renvoi doctrine is called for or required by New York State law."

"The trial court held that the will was intrinsically invalid since it contained dispositions in favor of Alice, who in the trial court's opinion was a mere paramour. The trial court threw the will out, leaving Alice, and her two children, Raul and Luz, with nothing."

"The Court of Appeals also disregarded the will. It declared Alice entitled to one half (1/2) of whatever property she and Lorenzo acquired during their cohabitation, applying Article 144 of the Civil Code of the Philippines."

"The hasty application of Philippine law and the complete disregard of the will, already probated as duly executed in accordance with the formalities of Philippine law, is fatal, especially in light of the factual and legal circumstances here obtaining."

Was the foreign divorce obtained by Lorenzo valid?

Yes. Lorenzo was already an American citizen at the time he secured the divorce. Thus, he is no longer bound by Philippine laws, which prohibits divorce.

"In *Van Dorn v. Romillo, Jr.* [139 SCRA 139 (1985)], we held that owing to the nationality principle embodied in Article 15 of the Civil Code, **only Philippine nationals are covered by the policy against absolute divorces, the same being considered contrary to our concept of public policy and morality. In the same case, the Court ruled that aliens may obtain divorces abroad, provided they are valid according to their national law.**"

"Citing this landmark case, the Court held in *Quita v. Court of Appeals* [300 SCRA 406 (1998)], that **once proven that respondent was no longer a Filipino citizen when he obtained the divorce from petitioner, the ruling in Van Dorn would become applicable and petitioner could "very well lose her right to inherit" from him .**"

"In *Pilapil v. Ibay-Somera* [174 SCRA 653 (1989)], we recognized the divorce obtained by the respondent in his country, the Federal Republic of Germany. There, we stated that **divorce and its legal effects may be recognized in the Philippines insofar as respondent is concerned in view of the nationality principle in our civil law on the status of persons.**"

"For failing to apply these doctrines, the decision of the Court of Appeals must be reversed. We hold that the divorce obtained by Lorenzo H. Llorente from his first wife Paula was valid and recognized in this jurisdiction as a matter of comity. Now, the effects of this divorce (as to the succession to the estate of the decedent) are matters best left to the determination of the trial court."

4. ELMAR O. PEREZ, vs. COURT OF APPEALS, [G.R. No. 162580. January 27, 2006.]

QUESTION: Tristan and Lily, both Filipinos, were married in the Philippines. Several years later, the couple encountered marital problems that they decided to obtain a divorce from the Dominican Republic. Thereafter, they secured an order from the RTC of Makati for the complete separation of their conjugal properties.

Tristan then married Elmar (a Filipina) in the US and their union produced one offspring. During their cohabitation, Elmar learned that the divorce decree issued by the court in the Dominican Republic was not recognized in the Philippines and that her marriage to Tristan was deemed void under Philippine law. Tristan then filed a petition for the declaration of nullity of his marriage to Lily with the RTC of Quezon City. Subsequently, Elmar filed a Motion for Leave to File Intervention claiming that she has a legal interest in the matter in litigation because she knows certain information which might aid the trial court at a truthful, fair and just adjudication of the annulment case.

Can Elmar validly intervene in the annulment case?

No. "Legal interest, which entitles a person to intervene, must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by direct legal operation and effect of the judgment." Such interest must be actual, direct and material, and not simply contingent and expectant."

"Petitioner claims that her status as the wife and companion of Tristan for 17 years vests her with the requisite legal interest required of a would-be intervenor under the Rules of Court. Petitioner's claim lacks merit. Under the law, petitioner was never the legal wife of Tristan, hence her claim of legal interest has no basis."

"When petitioner and Tristan married on July 14, 1984, Tristan was still lawfully married to Lily. The divorce decree that Tristan and Lily obtained from the Dominican Republic never dissolved the marriage bond between them. It is basic that laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad. **Regardless of where a citizen of the Philippines might be, he or she will be governed by Philippine laws with respect to his or her family rights and duties, or to his or her status, condition and legal capacity.** Hence, if a Filipino regardless of whether he or she was married here or abroad, initiates a petition abroad to obtain an absolute divorce from spouse and eventually becomes successful in getting an absolute divorce decree, the Philippines will not recognize such absolute divorce."

"Thus, petitioner's claim that she is the wife of Tristan even if their marriage was celebrated abroad lacks merit. Thus, petitioner never acquired the legal interest as a wife upon which her motion for intervention is based."