



Legal issues and family matters

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If a husband and wife have not seen each other for seven years, is their marriage automatically void?

It is not accurate to say that if spouses have not seen or communicated with each other for more than seven years that the marriage is terminated automatically or is considered void. In situations where one spouse has not seen for a number of years or does not know what has happened to the other spouse, he or she must file a petition asking the court to declare the missing spouse as presumptively dead for purposes of remarriage.

The Family Code, specifically Articles 41 to 44, deals with the declaration of presumptive death for purposes of remarriage. There are a lot of misconceptions however about this portion of the Family Code. Please let me explain.

[1] Article 40 provides that persons cannot take the law into their own hands and simply declare by themselves that their marriage is null and void. A person who wants to remarry must first obtain a court decision declaring the previous marriage null and void before he or she can get married again.

[2] The Family Code only provides for a period of two years (extraordinary absence like in war, shipwreck, storm, etc) or four years (ordinary absence) for a person to be able to go to court and file a petition for declaration of presumptive death of the missing spouse. The seven year period of separation that people usually refer to was previously provided for by the New Civil Code of the Philippines.

[3] The court will however require the petitioner to present proof that he or she exerted earnest and diligent efforts to locate the whereabouts of the missing spouse. These efforts include asking the police or NBI for help in locating the missing spouse, using the media like newspapers or radio, etc. The court will deny the petition if the petitioner cannot present such evidence of earnest and diligent efforts to locate the missing spouse.

[4] If the court declares the missing spouse as presumptively dead, then the petitioner will be able to remarry.

[5] But the problem is, if any person (friend, relative, barangay official, etc) discovers that the missing spouse is really alive, then that person can file an

affidavit of reappearance with the Local Civil Registrar. If the petitioner had already gotten married, then that subsequent marriage is automatically terminated, as provided for by Article 42 (below). This can however be disputed in court by the spouse who remarried:

The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested person, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed.

Article 43 enumerates some of the effects of the termination of the subsequent marriage:

(1) The children of the subsequent marriage conceived prior to its termination shall be considered legitimate;

(2) The absolute community of property or the conjugal partnership, as the case may be, shall be dissolved and liquidated, but if either spouse contracted said marriage in bad faith, his or her share of the net profits of the community property or conjugal partnership property shall be forfeited in favor of the common children or, if there are none, the children of the guilty spouse by a previous marriage or in default of children, the innocent spouse;

(3) Donations by reason of marriage shall remain valid, except that if the donee contracted the marriage in bad faith, such donations made to said donee are revoked by operation of law;

(4) The innocent spouse may revoke the designation of the other spouse who acted in bad faith as beneficiary in any insurance policy, even if such designation be stipulated as irrevocable; and

(5) The spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.

Note: Please surf to <http://www.familymatters.org.ph> to read Articles 40 to 44 of the Family Code.

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23

Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31

Confess and repent of your sins. Luke 13:3, Isaiah 1:18

Delay not in receiving Jesus Christ into your heart. 2 Corinthians 6:2, Proverbs 27:1

Pray and ask the Lord to save you now: "Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus' name. Lord Jesus, I now accept you as my Savior. Amen."

For more info, please contact Pastor Gerry Nable, Bethany Baptist Church; 1718 Dian corner Emilia Sts. Palanan, 1235 Makati City, Philippines; 831-7734, 833-4576 to 77; bethanymakati@yahoo.com