

Legal issues and family matters



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If a wife gets pregnant by a man not her husband, will the child be legitimate or illegitimate?

Most of you will probably say that, of course, the child will be illegitimate. But I wish to discuss here the following issues which give us a different answer:

- [1] Conception as a result of artificial insemination
- [2] Presumption of legitimacy of a child born during the marriage of the parents
- [3] Ways legitimacy can be impugned or questioned
- [4] DNA testing to prove legitimacy or illegitimacy

Conception as a result of artificial insemination

The 2nd paragraph of Article 164 of the Family Code states:

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child.

Artificial insemination can either be AIH (artificial insemination by husband) or AID (artificial insemination by donor). Both husband and wife must have given their consent in a written document recorded with the Local Civil Registrar's office.

Why would couples resort to artificial insemination?

Please take time to read the following articles by Sandra Glahn from www.bible.org: (1) Infertility: Myths and Facts;

(2) Infertility Tries Patients' Patience; (3) Facing the No-Baby Blues; and (4) A Heart's Desire: Encouragement for Couples Facing Infertility

Presumption of legitimacy of a child born during the marriage of the parents

The first paragraph of Article 164 of the Family Code states that "children conceived or born during the marriage of the parents are legitimate". This presumption can be disputed; Article 166 provides the grounds for questioning the legitimacy of a child. This presumption on legitimacy can however become conclusive as the Supreme Court explained in the case of *Dizon vs. De Jesus* G.R. No. 142877, October 2, 2001:

There is perhaps no presumption of the law more firmly established and founded on sounder morality and more convincing reason than the presumption that children born in wedlock are legitimate. This presumption indeed becomes conclusive in the absence of proof that there is physical impossibility of access between the spouses during the first 120 days of the 300 days which immediately precedes the birth of the child due to (a) the physical incapacity of the husband to have sexual intercourse with his wife; (b) the fact that the husband and wife are living separately in such a way that sexual intercourse is not possible; or (c) serious illness of the husband, which absolutely prevents sexual intercourse.

The child is considered legitimate even though the mother has been convicted of adultery

The law favors the legitimacy of the child as Article 164 provides. Moreover, Article 167 provides that "the child shall be considered legitimate although the mother may have declared against its legitimacy or may have been sentenced as an adulteress."

The law favors the legitimacy of a child

Please read carefully the 2005 Supreme Court decision in the case of “Gerardo Concepcion vs. Court of Appeals and Ma. Theresa Almonte” <<http://sc.judiciary.gov.ph/jurisprudence/2005/aug2005/123450.htm>>. In this case, Gerardo filed a case for declaration of nullity of his marriage to Theresa on the ground that their marriage was bigamous. Theresa was already married to a certain Mario when they got married (and Mario was still alive and living in Quezon City.) As a result, the trial court declared their son Jose Gerardo to be an illegitimate child. When the trial court denied Theresa’s motion to have Jose Gerardo’s surname changed to her maiden surname, she brought the case up to the Court of Appeals.

The CA ruled, to the shock of both Gerardo and Theresa, that Jose Gerardo was not the son of Ma. Theresa by Gerardo but by Mario during her first marriage. The CA ruling, later on affirmed by the Supreme Court, declared that every presumption must be in favor of legitimacy. The Supreme Court ruled that:

During the period that Gerardo and Ma. Theresa were living together in Fairview, Quezon City, Mario was living in Loyola Heights which is also in Quezon City. Fairview and Loyola Heights are only a scant four kilometers apart.

Not only did both Ma. Theresa and Mario reside in the same city but also that no evidence at all was presented to disprove personal access between them. Considering these circumstances, the separation between Ma. Theresa and her lawful husband, Mario, was certainly not such as to make it physically impossible for them to engage in the marital act.

Sexual union between spouses is assumed. Evidence sufficient to defeat the assumption should be presented by him who asserts the contrary. There is no such evidence here. Thus, the presumption of legitimacy in favor of Jose Gerardo, as the issue of the marriage between Ma. Theresa and Mario, stands.

The Supreme Court ruled that it was only Mario (the first husband) or in the proper case, his heirs, who could question the legitimacy of Jose Gerardo.

Ways legitimacy can be impugned or questioned

Article 166 of the Family Code provides the ways by which legitimacy can be impugned or questioned:

(1) That it was physically impossible for the husband to have sexual intercourse with his wife within the first 120 days of the 300 days which immediately preceded the birth of the child because of:

(a) the physical incapacity of the husband to have sexual intercourse with his wife;

(b) the fact that the husband and wife were living separately in such a way that sexual intercourse was not possible; or

(c) serious illness of the husband, which absolutely prevented sexual intercourse;

(2) That it is proved that for biological or other scientific reasons, the child could not have been that of the husband, except in the instance provided in the second paragraph of Article 164; or

(3) That in case of children conceived through artificial insemination, the written authorization or ratification of either parent was obtained through mistake, fraud, violence, intimidation, or undue influence.

Periods within which to question legitimacy

Article 170 provides for certain periods within which the husband can question the legitimacy of the child:

The action to impugn the legitimacy of the child shall be brought within one year from the knowledge of the birth or its recording in the civil register, if the husband or, in a proper case, any of his heirs, should reside in the city or municipality where the birth took place or was recorded.

If the husband or, in his default, all of his heirs do not reside at the place of birth as defined in the first paragraph or where it was recorded, the period shall be two years if they should reside in the Philippines; and three years if abroad. If the birth of the child has been concealed from or was unknown to the husband or his heirs, the period shall be counted from the discovery or knowledge of the birth of the child or of the fact of registration of said birth, whichever is earlier.

Briefly, the period is one year from knowledge of the birth of the child or its recording in the civil register if the husband or his heirs live in the same town or city where the child

was born. The period is two years if the husband or his heirs if they reside elsewhere in the Philippines. The period is three years if the husband or his heirs are living abroad.

Article 171 provides for the grounds whereby the husband's heirs can question the legitimacy of the child:

The heirs of the husband may impugn the filiation of the child within the period prescribed in the preceding article only in the following cases:

(1) If the husband should die before the expiration of the period fixed for bringing his action;

(2) If he should die after the filing of the complaint without having desisted therefrom; or

(3) If the child was born after the death of the husband.

Can the action to question the legitimacy of a child be filed beyond the periods provided by Article 170?

This question was raised in the 2000 case of "Teofista Babiera, petitioner, vs. Presentacion B. Catotal, respondent" < <http://sc.judiciary.gov.ph/jurisprudence/2000/june2000/138493.htm>>. The Supreme Court clarified that:

[1] Articles 170 and 171 of the Family Code apply to instances in which the father impugns the legitimacy of his wife's child. The provisions, however, presuppose that the child was the undisputed offspring of the mother.

[2] These articles govern a situation where a husband (or his heirs) denies as his own a child of his wife. These articles do not contemplate a situation where a child is alleged not to be the child of nature or biological child of a certain couple.

DNA testing to prove legitimacy or illegitimacy; the need to amend Articles 170 and 171 of the Family Code

What these provisions of the FC are saying is that if the period (one, two or three years) has already passed, the husband or his heirs can no longer question the legitimacy of the child. These periods provided by the Family Code, as far as I can recall, were taken verbatim from the New Civil Code of the Philippines. The NCC became effective in 1949 while the Family Code became effective in 1998. As far as I can recall from my Persons and Family relations class in MLQU in 1987-88, these periods were provided because of the fickleness of human memory.

Today, however, DNA testing can very easily determine the paternity of children. This is one area where the Family

Code has not kept pace with technology. Perhaps our senators and congressmen can modify Article 170 of the Family Code so that any father who wants to question the legitimacy of a child can do so even beyond these periods.

In one instance, for example, a family wanted to immigrate. The embassy required all members of the to undergo DNA testing. The results showed that one of the children was not the biological offspring of the father. In other words, that child was the result of sexual relations between the mother and another man. Since the prescriptive periods provided by Article 170 had already lapsed however, the father could no longer question the filiation of the child.

Please read my Legal Updates blog post "DNA testing to prove legitimacy or illegitimacy of children; Supreme Court's New Rule on DNA Evidence" < <http://famli.blogspot.com/2007/12/dna-testing-to-prove-legitimacy-or.html>>.

Summing up

Life can indeed be so complicated. In cases of a physical separation between a couple, and the wife becomes pregnant, both are faced with a legal dilemma. The wife no longer wants to have anything to do with her husband but her child is considered legitimate if it is born within their marriage. If the husband fails to comply with the periods stated in Article 170, then he or his heirs can no longer question the legitimacy of the child. The child may find that he or she is in a limbo - legitimate from the legal point of view but illegitimate biologically.

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."

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