

PART 2 – LEGAL OPINION:

Instruction: Assuming that you are Atty. Sales, identify the problems confronting your client, Teresa. After having done so, sort out the facts that are relevant to the opinions you would render on those problems then write down your advice to her with supporting laws and court rulings (95% credit). Use the attached little “library” of laws and rulings. Be warned, however, that like any library, not all such laws and rulings apply to the case. Look for the right ones.

Legal Form: Prepare along with your legal opinion a PRENUPTIAL AGREEMENT between Roy and Teresa (5% credit).

Teresa Campos came to see Atty. Elmer Sales at his law office to consult with him. Their conversation went this way:

TERESA: Attorney, I have a serious problem.

ATTY. SALES: Before you begin, can you tell me Teresa where you live?

TERESA: Yes, Attorney, at 95 Tindalo Street, Ayala Alabang, Muntinlupa City.

ATTY. SALES: Now, tell me your problem.

TERESA: About last year, I met Roy Lopez and fell in love with him. He was a salesman in his uncle’s sewing machine company and I met him when he tried to sell us their machines. I work in my father’s garments company, which manufactures the “Baro” brand of ready-to-wear clothes. Our products are well known. We have branches in several high-end malls in the Metro.

ATTY. SALES: Can you tell me the address of Roy for my record?

TERESA: Yes, he lives at 297 Dian Street, Palanan, Makati City.

ATTY. SALES: Go ahead with your story.

TERESA: Roy is really a nice person and we have been seriously thinking of getting married. A few months ago, in January, however, Roy confessed to me that five years ago he had a relationship with Ester Salva, a former employee in his uncle’s company. He never told me about Ester because when we started dating, we agreed that with us, past is past.

He also kept that relationship secret from his uncle and his family because they were seriously trying to match him with other girls they knew. Roy was especially concerned with his mother who suffered a stroke in 2004. She wanted a say on whom he would marry and Roy did not want to worry or disappoint her. But, with her idea of a wife for Roy, he knew she would never approve of Ester. Unfortunately, Ester became pregnant with his child during their affair.

ATTY. SALES: Did Roy love Ester?

TERESA: That is also the point. Roy told me that he was not sure that he did. He was young and adventurous. He said that he dated Ester until they had an affair. When she got pregnant, she wanted to marry him. But he was honest enough to tell her that they were not meant for each other and that he was afraid that it would break his Mom’s heart if he did.

ATTY. SALES: How did Ester take it?

TERESA: Roy said that she was not happy about it but she accepted his decision. They had since broken up their relationship but he has consistently given support to their child whom they named Melinda.

ATTY. SALES: Did Roy register Melinda as his daughter?

TERESA: He said that it was Ester who registered their daughter, using his surname Lopez. She told Roy about the registration long afterwards.

ATTY. SALES: So what happened?

TERESA: Roy and I decided to get married and got the blessings of our parents. In fact, we have set it next month on December 17. The preparations for it have been on-going. All the suppliers have been booked and the invitations have been sent out. Then, last month, I received by mail copies of a marriage license issued by the Civil Registrar’s office of Imus, Cavite, dated September 17, 2005 in favor of Roy and Ester and a certificate of marriage showing that they were married at the office of some religious pastor at the back of Manila City Hall on August 4, 2005.

ATTY. SALES: Oh, so did you show these to Roy?

TERESA: Yes, I did. He was really shocked by those documents and insisted that he never married Ester. And I believe him because the handwritten details on the marriage license application form were clearly not Roy’s writing. The information about where he lived and the

names of his parents were all wrong. I had a handwriting expert examine the documents and Roy's specimen handwritings and signatures. The expert said that the writings and signatures on the documents were definitely not those of Roy.

ATTY. SALES: So what did you and Roy do?

TERESA: Roy confronted Ester about it and she confessed that in 2005 out of sheer desperation, she got the marriage license from Cavite with someone's help and paid for the marriage certificate from an office near the city hall of Manila.

ATTY. SALES: Was it Ester who sent you those documents?

TERESA: She said no but she suspects that it was her father who resented the fact that Roy would be getting married to someone else. Ester's father appeared to have said that he would file charges of bigamy against Roy if he marries me. The documents are forgeries but they are part of the official records of the Manila Civil Registry and the National Statistics Office. I am afraid for Roy and myself. Could he really be charged with bigamy if he marries me? Someone said that we cannot get married until Roy's supposed marriage with Ester has been annulled in court. But our wedding in December has been set. Can we still continue with the wedding? If ever, would it be valid? What should we do Attorney?

ATTY. SALES: There are several issues that we are dealing with here. I have to study the matter first. Give me a little time and I will prepare an opinion for you.

TERESA: There's another problem Attorney. My family is quite concerned about Roy's illegitimate child. I come from a well-off family and I want to protect my properties from the possibility that Roy's illegitimate child would someday make a claim on my properties. I don't mind Roy, I know he's marrying me for love. But I am concerned about the rights of my future children. What remedies should I take?

ATTY. SALES: Well, if you get married, it would be best that you have a prenuptial agreement.

TERESA: Can you make one for us, Attorney?

ATTY. SALES. Oh, yes.

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LAWS AND JURISPRUDENCE

REVISED PENAL CODE

Art. 349. *Bigamy*. — The penalty of prison mayor shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The elements of bigamy are: (1) the offender has been legally married; (2) the first marriage has not been legally dissolved, or in case his or her spouse is absent, the absent spouse has not been judicially declared presumptively dead; (3) the offender contracts a subsequent marriage; (4) the subsequent marriage would have been valid had it not been for the existence of the first. (*People v. Dumpono*, 62 Phil. 246 (1935))

Art. 350. *Marriage contracted against provisions of laws*. — The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract marriage knowing that the requirements of the law have not been complied with or that the marriage is in disregard of a legal impediment.

If either of the contracting parties shall obtain the consent of the other by means of violence, intimidation or fraud, he shall be punished by the maximum period of the penalty provided in the next preceding paragraph.

FAMILY CODE

REQUISITES OF MARRIAGE

Art. 2. No marriage shall be valid, unless these essential requisites are present:
(1) Legal capacity of the contracting parties who must be a male and a female; and
(2) Consent freely given in the presence of the solemnizing officer.

Art. 3. The formal requisites of marriage are:
(1) Authority of the solemnizing officer;
(2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
(3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

Art. 4. The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2).

A defect in any of the essential requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.

VOID AND VOIDABLE MARRIAGES

Art. 35. The following marriages shall be void from the beginning:

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(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so;

(3) Those solemnized without license, except those covered the preceding Chapter;

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Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

“It is now settled that the fact that the first marriage is void from the beginning is not a defense in a bigamy charge. As with a voidable marriage, there must be a judicial declaration of the nullity of a marriage before contracting the second marriage. Article 40 of the Family Code states that x x x. The Code Commission believes that the parties to a marriage should not be allowed to assume that their marriage is void, even if such is the fact, but must first secure a judicial declaration of nullity of their marriage before they should be allowed to marry again. x x x.” (Mercado vs. Tan, G.R. 137110, August 1, 2000, 337 SCRA 122)

The present case is analogous to, but must be distinguished from *Mercado vs. Tan*. In the latter case, the judicial declaration of nullity of the first marriage was likewise obtained *after* the second marriage was already celebrated. We held therein that: A judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statutes as “void.”

It bears stressing though that in *Mercado*, the first marriage was actually solemnized not just once, but twice: first before a judge where a marriage certificate was duly issued and then again six months later before a priest in religious rites. Ostensibly, at least, the first marriage appeared to have transpired, although later declared void *ab initio*.

In the instant case, however, no marriage ceremony at all was performed by a duly authorized solemnizing officer. Petitioner and Lucia Barrete merely signed a marriage contract on their own. The mere private act of signing a marriage contract bears no semblance to a valid marriage and thus, needs no judicial declaration of nullity. Such act alone, without more, cannot be deemed to constitute an ostensibly valid marriage for which petitioner might be held liable for bigamy unless he first secures a judicial declaration of nullity before he contracts a subsequent marriage. (*Morigo v. People, G.R. No. 145226, February 6, 2004, 422 SCRA 376*)

MARRIAGE SETTLEMENTS

Art. 75. The future spouses may, in the marriage settlements, agree upon the regime of absolute community, conjugal partnership of gains, complete separation of property, or any other regime. In the absence of a marriage settlement, or when the regime agreed upon is void, the system of absolute community of property as established in this Code shall govern.

Art. 77. The marriage settlements and any modification thereof shall be in writing, signed by the parties and executed before the celebration of the marriage. They shall not prejudice third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of properties.

Art. 91. Unless otherwise provided in this Chapter or in the marriage settlements, the community property shall consist of all the property owned by the spouses at the time of the celebration of the marriage or acquired thereafter.

Art. 92. The following shall be excluded from the community property:

- (1) Property acquired during the marriage by gratuitous title by either spouse, and the fruits as well as the income thereof, if any, unless it is expressly provided by the donor, testator or grantor that they shall form part of the community property;
- (2) Property for personal and exclusive use of either spouse. However, jewelry shall form part of the community property;
- (3) Property acquired before the marriage by either spouse who has legitimate descendants by a former marriage, and the fruits as well as the income, if any, of such property.

Art. 93. Property acquired during the marriage is presumed to belong to the community, unless it is proved that it is one of those excluded therefrom.

Art. 94. The absolute community of property shall be liable for:

(1) The support of the spouses, their common children, and legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;

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Art. 106. Under the regime of conjugal partnership of gains, the husband and wife place in a common fund the proceeds, products, fruits and income from their separate properties and those acquired by either or both spouses through their efforts or by chance, and, upon dissolution of the marriage or of the partnership, the net gains or benefits obtained by either or both spouses shall be divided equally between them, unless otherwise agreed in the marriage settlements.

Art. 109. The following shall be the exclusive property of each spouse:

(1) That which is brought to the marriage as his or her own;

(2) That which each acquires during the marriage by gratuitous title;

(3) That which is acquired by right of redemption, by barter or by exchange with property belonging to only one of the spouses; and

(4) That which is purchased with exclusive money of the wife or of the husband. (148a)

Art. 110. The spouses retain the ownership, possession, administration and enjoyment of their exclusive properties.

Either spouse may, during the marriage, transfer the administration of his or her exclusive property to the other by means of a public instrument, which shall be recorded in the registry of property of the place the property is located.

Art. 116. All property acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses, is presumed to be conjugal unless the contrary is proved.

Art. 121. The conjugal partnership shall be liable for:

(1) The support of the spouse, their common children, and the legitimate children of either spouse; however, the support of illegitimate children shall be governed by the provisions of this Code on Support;

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Art. 144. Separation of property may refer to present or future property or both. It may be total or partial. In the latter case, the property not agreed upon as separate shall pertain to the absolute community.

SUPPORT

Art. 197. In case of legitimate ascendants; descendants, whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouse obliged upon the liquidation of the absolute community or of the conjugal partnership.