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JULY - SEPTEMBER 2000 VOL. 2, ISSUE NO. 5

Statement of Facts on G.R. No. 119064

Neng "Kagui Kadiguia" Malang, Petitioner
v.
Hon. Corocoy Moson, Presiding Judge of 5th Shari'a District Court, Cotabato City Hadji Mohammad Ulyssis Malang, et al., Respondents.

Decision
Justice Minerva P. Gonzaga-Reyes

Compliance by Amicus Curiae
Justice Ricardo C. Puno, Sr.

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TABLE OF CONTENTS

Officials of the Supreme Court of the Philippines .... *v*

Officers of the Philippine Judicial
Academy of the Philippines .... *vi*

Foreword
Justice Ameurfina A. Melencio Herrera .... *xi*

Statement of Facts on G.R. No. 119064:
Neng "Kagui Kadiguia" Malang, Petitioner
v.
Hon. Corocoy Moson, Presiding Judge
of 5th Shari'a District Court, Cotabato City 1

Decision
Justice Minerva P. Gonzaga-Reyes 6

Compliance by Amicus Curiae
Justice Ricardo C. Puno, Sr. 42

Compliance by Amicus Curiae
Attorney Michael O. Mastura *71*

Foreword

Our issue centers on "Family Law." One interesting feature of the Philippine legal landscape is the fact that in it are found strands of the great legal traditions. Our Civil Code, our Penal Code, the vital provisions of the Code of Commerce and some aspects of procedure are of Spanish vintage, and are therefore of the "civil law" tradition. The rule of *stare decisis*, doctrines found even in contract law, the entire concept of trust, corporation law and other fields of commercial law as well as our hospitality to equity, are traces of "common law" influence. And to make our legal mosaic even more interesting, P.D. 1083 establishes the regime of Shari'a law in Muslim Philippines.

Obviously, three legal traditions observed in one jurisdiction make not only for a very interesting legal regime, but one also fraught with problems of harmonization and reconciliation. Decidedly, our legal system is as *mestizo* as our people are. This is certainly nothing to be ashamed of. It bespeaks of our capacity to accommodate and to adopt. We may not always have ready answers to the vexatious problems that accompany pluralism, but we manage.

The case of *Malang vs. Moson* that takes up this entire issue is intriguing, not only because it poses an academic puzzle, but because it makes us examine what our priorities, values, and principles are, as these are embodied in law and espoused by the judicial system. What underlies the whole case is the issue of how a legal system can remain cohesive and can, in the very same measure, accommodate divergent ways of life, ideologies and cultures.

We are happy to publish in the same issue the submissions of the *Amici Curiae,* former Justice Ricardo C. Puno, Sr., one of the great living institutions in civil law in this jurisdiction, and Atty. Michael O. Mastura, an acknowledged authority on Islamic law. It is significant that on occasion, the Supreme Court invites the comment and enlightenment of *Amici Curiae*. Their

presence almost always signals ferment and blazes new trails in judicial and legal thinking.

The issue gives us just one more occasion to appeal for that alertness for novelty that can make the law and its application dynamic. Stability and innovation are not antithetical. In fact, the only way to stay relevant is to work with both!

AMEURFINA A. MELENCIO HERRERA
Chancellor

G.R. No. 119064

NENG "KAGUI KADIGUIA" MALANG,
Petitioner,
v.
HON. COROCOY MOSON, Presiding Judge of 5th Shari'a District Court, Cotabato City,
HADJI MOHAMMAD ULYSSIS MALANG, et al.,
Respondents.

STATEMENT OF FACTS

For the Court's resolution is a petition for review on certiorari of the decision of the 5th Shari'a District Court, Cotabato City, declaring that the properties acquired during the marriage of petitioner to the deceased Hadji Abdula Malang for which petitioner sought the issuance of letters testamentary, are not conjugal because Hadji Abdula had three other wives at the time of his marriage to petitioner; and that the property regime of the marriage between petitioner and Hadji Abdula is complete separation of property, per Article 38 of the Code of Muslim Personal Laws.

Petitioner Neng "Kagui Kadiguia" Malang is the eighth wife of the deceased Hadji Abdula Malang. The marriage to her was subsisting, and the spouses were living together, when Hadji Abdula died on December 18, 1993.

Private respondents are Hadji Abdula's other wives, namely Jubaida Kado Malang, Nayo Omal Malang, and Mabay Ganap Malang; and the chil-

dren by these wives, namely Hadji Mohammad Ulyssis Malang, Hadji Ismael Malindatu Malang, Fatima Malang, Datulna Malang, and Lawanbai Malang.

After Hadji Abdula died, petitioner filed a petition for letters of administration before the 5th Shari'a District, praying that letters of administration be issued to her niece Tarhata Lauban, whom petitioner had asked to administer the estate of her deceased husband. In her petition, petitioner identified three surviving heirs of her husband, his children by his late first wife. She also enumerated the real and personal properties left by her husband.

Hadji Abdula's son Hadji Mohammad Malang, who was among the children identified in the petition, opposed the petition, on the ground that the person for whom letters of administration were sought was incompetent and did not have any interest in the estate of the decedent. He identified other heirs of the decedent, including three other wives aside from the petitioner.

Mohammad prayed that letters of administration be issued instead in his and his brother Ismael's favor, since the two of them were the ones assisting their late father in his business transactions during his lifetime.

The Shari'a Court appointed petitioner and Ismael administrators of the properties found in Cotabato City, while Mohammad was appointed administrator of the properties located in Maguindanao.

Petitioner claimed that several properties belonging to the decedent were conjugal properties, having been acquired during their marriage. She presented in evidence several certificates of title to land in which the decedent was identified as "married to Neng Malang," and deeds of sale that also identified decedent as "married to Neng Malang."

Petitioner argued that, even if it were true that the decedent married the three other wives identified by Mohammad, the marriage to her is the only one valid because it was celebrated after the death of the decedent's first wife. Petitioner alleged that the other three marriages were celebrated while the first wife was living, and therefore polygamous and void.

On the other hand, private respondent, as oppositors, presented in evidence other certificates of title in which decedent is identified as being married to Jubaida Kado Malang, to Nayo Omar Malang, and to Mabai Malang.

The Shari'a Court found that the decedent married eight women during his lifetime. Four of these marriages are still subsisting, including that to petitioner, who is the eighth wife. The court ruled that the rules on conjugal partnership are inapplicable in the present case, where the husband had several wives. That the phrase "married to Neng Malang" appears in the titles to the properties of the decedent was not indicative of the properties' conjugal nature, but was merely descriptive of the

decedent's civil status. Moreover, the Shari'a Court pointed out that petitioner did not present any proof that she contributed funds for the acquisition of the subject properties. She also did not appear to have participated in the businesses of the decedent.

The Shari'a Court decreed the manner by which the decedent's estate should be divided, with petitioner getting 2/64 of the properties.

Hence, this petition.

Petitioner insists that the provisions of the Civil Code must govern the property relations between him and the decedent, since their marriage was celebrated in 1972, prior to the enactment of the Muslim Code (1977). According to petitioner, the Muslim Code could not be retroactively applied because doing so would impair vested rights.

Petitioner points out that under the Civil Code, the property relations between spouses are governed by the rules on conjugal partnership of gains, absent any stipulation. Properties acquired by the spouses during the marriage are presumed conjugal.

Petitioner argues that the three other marriages could only be void, having been celebrated while the decedent's marriage to his first wife was still subsisting. She assails the testimonies of the three other wives as regards their marriage to the decedent as self-serving and inadmissible. Petitioner contends that the marriage to her is the only valid marriage.

At the same time that petitioner invokes the provisions of the Civil Code as applicable to govern the property relations between her and decedent, she also invokes the Muslim Code as regards the distribution of the estate of the decedent.

For their part, private respondents assert that the law that must govern the case is the Code of Muslim Personal Laws, the parties being Muslims.

EN BANC

G.R. No. 119064

NENG "KAGUI KADIGUIA" MALANG
Petitioner,

-versus-

HON. COROCOY MOSON, Presiding Judge of 5th Shari'a District Court, Cotabato City, HADJI MOHAMMAD ULYSSIS MALANG, HADJI ISMAEL MALINDATU MALANG, FATIMA MALANG, DATULNA MALANG, LAWANBAI MALANG, JUBAIDA KADO MALANG, NAYO OMAL MALANG and MABAY GANAP MALANG,
Respondents.

Present:
Davide, Jr., *C.J.*, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., *JJ*

Promulgated: August 22, 2000

DECISION

Gonzaga-Reyes, *J.*:

Presented for resolution in this special civil action of certiorari is the issue of whether or not the regime of conjugal partnership of gains governed

the property relationship of two Muslims who contracted marriage prior to the effectivity of the Code of Muslim Personal Laws of the Philippines (hereafter, "P.D. 1083" or "Muslim Code"). The question is raised in connection with the settlement of the estate of the deceased husband.

Hadji Abdula Malang, a Muslim, contracted marriage with Aida (Kenanday) Limba. They begot three sons named Hadji Mohammad Ulyssis, Hadji Ismael Malindatu and Datulna, and a daughter named Lawanbai. Hadji Abdula Malang was engaged in farming, tilling the land that was Aida's dowry (*mahr* or *majar*). Thereafter, he bought a parcel of land in Sousa, Cotabato. Hadji Abdula and Aida already had two children when he married for the second time another Muslim named Jubaida Kado in Kalumamis, Talayan, Maguindanao. No child was born out of Hadji Abdula's second marriage. When Aida, the first wife, was pregnant with their fourth child, Hadji Abdula divorced her.

In 1965, Hadji Abdula married another Muslim, Nayo H. Omar but they were childless. Thereafter, Hadji Abdula contracted marriage with Hadji Mabai (Mabay) H. Adziz in Kalumamis, Talayan, Maguindanao and soon they had a daughter named Fatima (Kueng). Hadji Abdula and Hadji Mabai stayed in that place to farm while Hadji Abdula engaged in the business of buying and selling of rice, corn and other agricultural products. Not long after, Hadji Abdula married three other Muslim women named Saaga, Mayumbai and Sabai, but he eventually divorced them.

Hadji Abdula then migrated to Tambunan where, in 1972, he married petitioner Neng "Kagui Kadiguia" Malang, his fourth wife, excluding the wives he had divorced. They established residence in Cotabato City, but they were childless. For a living, they relied on farming and on the business of buying and selling of agricultural products. Hadji Abdula acquired vast tracts of land in Sousa and Talumanis, Cotabato City, some of which were cultivated by tenants. He deposited money in such banks as United Coconut Planters Bank, Metrobank and Philippine Commercial and Industrial Bank.

On December 18, 1993, while he was living with petitioner in Cotabato City, Hadji Abdula died without leaving a will. On January 21, 1994, petitioner filed with the Shari'a District Court in Cotabato City a petition for the settlement of his estate with a prayer that letters of administration be issued in the name of her niece, Tarhata Lauban.

Petitioner claimed in that petition that she was the wife of Hadji Abdula; that his other legal heirs are his three children named Teng Abdula, Keto Abdula and Kueng Malang, and that he left seven (7) parcels of land, five (5) of which are titled in Hadji Abdula's named "married to Neng P. Malang," and a pick-up jeepney.

On February 7, 1994, the Shari'a District Court ordered the publication of the petition.[1] After such publication[2] or on March 16, 1994, Hadji Mohammad Ulyssis Malang ("Hadji Mohammad" for brevity), the eldest son of Hadji Abdula, filed his opposition to the petition. He alleged among

other matters that his father's surviving heirs are as follows: (a) Jubaida Malang, surviving spouse; (b) Nayo Malang, surviving spouse; (c) Mabay Malang, surviving spouse; (d) petitioner Neng Malang, surviving spouse; (e) oppositor Hadji Mohammad Ulyssis Malang who is also known as "Teng Abdula," son; (f) Hadji Ismael Malindatu Malang, also known as "Keto Abdula," son; (g) Fatima Malang; also known as "Kueng Malang," daughter; (h) Datulna Malang, son, and (i) Lawanbai Malang, daughter. Oppositor Hadji Mohammad Ulyssis Malang alleged that since he and his brother, Hadji Ismael Malindatu Malang, had helped their father in his business, then they were more competent to be administrators of his estate.[3]

On March 30, 1994, Jubaida Malang , Ismael Malindatu Malang, Nayo Malang, Fatima Malang, Mabay Malang, Datulna Malang and Lawanbai Malang filed an opposition to the petition, adopting as their own the written opposition of Hadji Mohammad.[4]

On April 7, 1994, the Shari'a District Court issued an Order appointing Hadji Mohammad administrator of his father's properties outside Cotabato City. The same order named petitioner and Hadji Ismael Malindatu Malang as joint administrators of the estate in Cotabato City. Each administrator was required to post a bond in the amount of P100,000.00.[5] On April 13, 1994, letters of administration were issued to Hadji Mohammad after he had posted the required bond. He took his oath on the same day.[6] The following day, Hadji Isamel and petitioner likewise filed their respective

bonds and hence, they were allowed to take their oath as administrators.[7]

On April 25, 1994 and May 3, 1994, petitioner filed two motions informing the court that Hadji Abdula had outstanding deposits with nine (9) major banks.[8] Petitioner prayed that the managers of each of those banks be ordered to submit a bank statement of the outstanding deposit of Hadji Abdula.[9] The Shari'a District Court having granted the motions,[10] Assistant Vice President Rockman O. Sampuha of United Coconut Planters Bank informed the court that as of April 24, 1994, the outstanding deposit of Hadji Abdula amounted to one million five hundred twenty thousand four hundred pesos and forty eight centavos (P1,520,400.48).[11] The Senior Manager of the Cotabato branch of Metrobank also certified that as of December 18, 1993, "Hadji Abdula Malang or Malindatu Malang" had on savings deposit the balance of three hundred seventy-eight thousand four hundred ninety-three pesos and 32/100 centavos (P378,493.32).[12] PCIB likewise issued a certification that Hadji Abdula had a balance of eight hundred fifty pesos (P850.00) in his current account as of August 11, 1994.[13]

During the pendency of the case, petitioner suffered a congestive heart failure that required immediate medical treatment. On May 5, 1994, she filed a motion praying that on account of her ailment, she be allowed to withdraw from UCPB the amount of three hundred thousand pesos (P300,000.00) that shall constitute her advance share in the estate of Hadji Abdula.[14] After due hearing,

the Shari'a District Court allowed petitioner to withdraw the sum of two hundred fifty thousand pesos (P250,000.00).[15]

On May 12, 1994, the Shari'a District Court required petitioner and Hadji Ismael, as joint administrators, to submit an inventory and appraisal of all properties of Hadji Abdula.[16] In compliance therewith, Hadji Ismael submitted an inventory showing that in Cotabato City, Hadji Abdula had seven (7) residential lots with assessed value ranging from P5,020.00 to P25,800.00, an agricultural land with assessed value of P860.00, three (3) one-storey residential buildings, and one (1) two-storey residential building.[17] All these properties were declared for taxation purposes in Hadji Abdula's name.

For her part, petitioner submitted an inventory showing that Hadji Abdula "married to Neng Malang" had seven (7) residential lots with a total assessed value of P243, 840.00 in Cotabato City, an Isuzu pick-up jeepney valued at P30,000.00, and bank deposits.[18]

In the Memorandum that she filed with the Shari'a District Court, petitioner asserted that all the properties located in Cotabato City, including the vehicle and bank deposits, were conjugal properties in accordance with Article 160 of the Civil Code and Article 116 of the Family Code while properties located outside of Cotabato City were exclusive properties of the decedent.[19]

On the other hand, the oppositors contended in their own Memorandum that all the properties left by Hadji Abdula were his exclusive properties for various reasons. First, Hadji Abdula had no conjugal partnership with petitioner because his having contracted eight (8) marriages with different Muslim women was in violation of the Civil Code that provided for a monogamous marriage; a conjugal partnership presupposes a valid civil marriage, not a bigamous marriage or a common-law relationship. Second, the decedent adopted a "comple separation of property regime" in his marital relations; while his wives Jubaida Kado, Nayo Hadji Omal and Mabay Ganap Hadji Adziz contributed to the decedent's properties, there is no evidence that petitioner had contributed funds for the acquisition of such properties. Third, the presumption that properties acquired during the marriage are conjugal properties is inapplicable because at the time he acquired the properties, the decedent was married to four (4) women. Fourth, the properties are not conjugal in nature notwithstanding that some of these properties were titled in the name of the decedent "married to Neng Malang" because such description is not conclusive of the conjugal nature of the property. Furthermore, because petitioner admitted in her verified petition that the properties belonged "to the estate of decedent," she was estopped from claiming, after formal offer of evidence, that the properties were conjugal in nature just because some of the properties were titled in Hadji Abdula's name "married to Neng Malang." Fifth, if it is true that the properties were conjugal properties, then these should have been registered in the names of both

petitioner and the decedent.[20]

In its Order of September 26, 1994, the Shari'a District Court presided by Judge Corocoy D. Moson held that there was no conjugal partnership of gains between petitioner and the decedent primarily because the latter married eight times. The Civil Code provision on conjugal partnership cannot be applied if there is more than one wife because "conjugal partnership presupposes a valid civil marriage, not a plural marriage or a common-law relationship." The court further found that the decedent was "the chief, if not the sole, breadwinner of his families" and that petitioner did not contribute to the properties unlike the other wives named Jubaida, Nayo and Mabay. The description "married to Neng Malang" in the titles to the real properties is no more than that – the description of the relationship between petitioner and the decedent. Such description is insufficient to prove that the properties belong to the conjugal partnership of gains. The court stated:

> *"In the instant case, decedent had four (4) wives at the time he acquired the properties in question. To sustain the contention of the petitioner that the properties are her conjugal property with the decedent is doing violence to the provisions of the Civil Code. Be it noted that at the time of the marriage of the petitioner with the decedent, there were already three (3) existing marriages. Assuming for the moment that petitioner and the decedent had agreed that the*

property regime between them will be governed by the regime of conjugal partnership property, that agreement is null and void for it is against the law, public policy, public order, good moral(s) and customs.

Under Islamic law, the regime of property relationship is complete separation of property, in the absence of any stipulation to the contrary in the marriage settlements or any other contract (Article 38, P.D. 1083). There being no evidence of such contrary stipulation or contract, this Court concludes as it had begun, that the properties in question, both real and personal, are not conjugal, but rather, exclusive property of the decedent."[21]

Thus, the Shari'a District Court held that the Islamic law should be applied in the distribution of the estate of Hadji Abdula and accordingly disposed of the case as follows:

"WHEREFORE, premises considered, the Court orders the following:

1. *That the estate shall pay the corresponding estate tax, reimburse the funeral expenses in the amount of P50,000.00, and the judicial expenses in the amount of P2,040.80;*

2. *That the net estate, consisting of real and personal properties located in*

Talayan, Maguindanao and in Cotabato City, is hereby ordered to be distributed and adjudicated as follows:

a) Jubaida Kado Malang -
2/64 of the estate;
b) Nayo Omar Malang -
2/64 of the estate;
c) Mabai Aziz Malang -
2/64 of the estate;
d) Neng "Kagui Kadiguia" Malang -
2/64 of the estate;
e) Mohammad Ulysis Malang -
14/64 of the estate;
f) Ismael Malindatu Malang -
14/64 of the estate;
g) Datulna Malang -
14/64 of the estate;
h) Lawanbai Malang -
7/64 of the estate ;
i) Fatima (Kueng) Malang -
7/64 of the estate;

Total: 64/64

3. That the amount of P250,000.00 given to Neng "Kagui Kadiguia" Malang by way of advance be charged against her share and if her share is not sufficient, to return the excess; and

4. That the heirs are hereby ordered to submit to this court their Project of Partition for approval, not later than

> *three (3) months from receipt of this order.*

SO ORDERED."

On October 4, 1994, petitioner filed a motion for the reconsideration of that Order. The oppositors objected to that motion. On January 10, 1995, the Shari'a District Court denied petitioner's motion for reconsideration.[22] Unsatisfied, petitioner filed a notice of appeal.[23] However, on January 19, 1995, she filed a manifestation withdrawing the notice of appeal on the strength of the following provisions of P.D. No. 1083:

> *"Art. 145. Finality of Decisions – The decisions of the Shari'a District Courts whether on appeal from the Shari'a Circuit Court or not shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the Constitution."*

Petitioner accordingly informed the court that she would be filing "an original action of certiorari with the Supreme Court."[24]

On March 1, 1995, petitioner filed the instant petition for certiorari with preliminary injunction and/or restraining order. She contends that the Shari'a District Court gravely erred in: (a) ruling that when she married Hadji Abdula Malang, the latter had three existing marriages with Jubaida Kado Malang, Nayo Omar Malang and Mabay Ganap Malang and therefore the properties acquired

during her marriage could not be considered conjugal, and (b) holding that said properties are not conjugal because under Islamic Law, the regime of relationship is complete separation of property, in the absence of stipulation to the contrary in the marriage settlement or any other contract.[25]

As petitioner sees it, "the law applicable on issues of marriage and property regime is the New Civil Code," under which all property of the marriage is presumed to belong to the conjugal partnership. The Shari'a Court, meanwhile, viewed the Civil Code provisions on conjugal partnership as incompatible with plural marriage, which is permitted under Muslim law, and held the applicable property regime to be complete separation of property under P.D. 1083.

Owing to the complexity of the issue presented, and the fact that the case is one of first impression – this is a singular situation where the issue on what law governs the property regime of a Muslim marriage celebrated prior to the passage of the Muslim Code has been elevated from a Shari'a Court for the Court's resolution – the Court decided to solicit the opinions of two *Amici Curiae,* Justice Ricardo C. Puno[26] and former Congressman Michael O. Mastura.[27] The Court extends its warmest thanks to the *Amici Curiae* for their valuable inputs in their written memoranda[28] and in the hearing of June 27, 2000.

Resolution of the instant case is made more difficult by the fact that very few of the pertinent dates of birth, death, marriage and divorce are

established by the record. This is because, traditionally, Muslims do not register acts, events or judicial decrees affecting civil status.[29] It also explains why the evidence in the instant case consisted substantially of oral testimonies.

What is not disputed is that: Hadji Abdula contracted a total of eight marriages, counting the three which terminated in divorce; all eight marriages were celebrated during the effectivity of the Civil Code and before the enactment of the Muslim Code; Hadji Abdula divorced four wives – namely, Aida, Saaga, Mayumbai and Sabai – all divorces of which took place before the enactment of the Muslim Code; and, Hadji Abdula died on December 18, 1993, after the Muslim Code and Family Code took effect, survived by four wives (Jubaida, Nayo, Mabay and Neng) and five children, four of whom he begot with Aida and one with Mabay. It is also clear that the following laws were in force, at some point or other, during the marriages of Hadji Abdula: the Civil Code, which took effect on August 30, 1950; Republic Act No. 394 ("R.A. 394"), authorizing Muslim divorces, which was effective from June 18, 1949 to June 13, 1969; the Muslim Code which took effect February 4, 1977; and the Family Code, effective August 3, 1988.

Proceeding upon the foregoing, the Court has concluded that the record of the case is simple inadequate for purposes of arriving at a fair and complete resolution of the petition. To our mind, any attempt at this point to dispense with the basic issue given the scantiness of the evidence before us could result in grave injustice to the parties in this

case, as well as cast profound implications on Muslim families similarly or analogously situated to the parties herein. Justice and accountability dictate a remand; trial must reopen in order to supply the factual gaps or, in Congressman Mastura's words, "missing links," that would be the bases for judgement and accordingly, allow respondent court to resolve the instant case. In ordering thus, however, we take it as an imperative on our part to set out certain guidelines in the interpretation and application of pertinent laws to facilitate the task of respondent court.

It will also be recalled that the main issue presented by the petition – concerning the property regime applicable to two Muslims married prior to the effectivity of the Muslim Code – was interposed in relation to the settlement of the estate of the deceased husband. Settlement of estates of Muslims whose civil acts predate the enactment of the Muslim Code may easily result in the application of the Civil Code and other personal laws, thus convincing the Court that it is but propitious to go beyond the issue squarely presented and identify such collateral issues as are required to be resolved in a settlement of estate case. As *Amicus Curiae* Congressman Mastura puts it, the Court does not often come by a case as the one herein, and jurisprudence will be greatly enriched by a discussion of the "watershed of collateral issues" that this case presents.[30]

The Court has identified the following collateral issues, which we hereby present in question form: (1) What law governs the validity of a Muslim marriage celebrated under Muslim rites

before the effectivity of the Muslim code? (2) Are multiple marriages celebrated before the effectivity of the Muslim Code valid? (3) How do the Court's pronouncements in *People vs. Subano*, 73 Phil. 692 (1942), and *People vs. Dumpo*, 62 Phil. 246 (1935), affect Muslim marriages celebrated before the effectivity of the Muslim Code? (4) What laws govern the property relationship of Muslim multiple marriages celebrated before the Muslim Code? (5) What law governs the succession to the estate of a Muslim who died after the Muslim Code and the Family Code took effect? (6) What laws apply to the dissolution of property regimes in the cases of multiple marriages entered into before the Muslim Code but dissolved (by the husband's death) after the effectivity of the Muslim Code?, and (7) Are Muslim divorces effected before the enactment of the Muslim Code valid?

The succeeding guidelines, which derive mainly from the Compliance of *Amicus Curiae* Justice Puno, are hereby laid down by the Court for the reference of respondent court, and for the direction of the bench and bar:

First Collateral Issue: The Law(s) Governing Validity of Muslim Marriages Celebrated Before the Muslim Code

The time frame in which all eight marriages of Hadji Abdula were celebrated was during the effectivity of the Civil Code which, accordingly, governs the marriages. Article 78 of the Civil Code[31] recognized the right of Muslims to contract marriage in accordance with their customs and rites, by providing that –

"Marriage between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.

However, thirty years after the approval of this Code, all marriages performed between Muslims or other non-Christians shall be solemnized in accordance with the provisions of this Code. But the President of the Philippines, upon recommendation of the Commissioner of National Integration, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Muslims and non-Christian inhabitants of any of the non-Christian provinces."

Notably, before the expiration of the thirty-year period after which Muslims are enjoined to solemnize their marriages in accordance with the Civil Code, P.D. 1083 or the Muslim Code was passed into law. The enactment of the Muslim Code on February 4, 1977 rendered nugatory the second paragraph of Article 78 of the Civil Code which provides that marriages between Muslims thirty years after the approval of the Civil Code shall be solemnized in accordance with said Code.

Second and Third Collateral Issues: The Validity of Muslim Multiple Marriages Celebrated Before the Muslim Code; The Effect of People vs. Subano and People vs. Dumpo

Prior to the enactment of P.D. 1083, there was no law in this jurisdiction which sanctioned multiple marriages.[32] It is also not to be disputed that the only law in force governing marriage relations between Muslims and non-Muslims alike was the Civil Code of 1950.

The Muslim Code, which is the first comprehensive codification[33] of Muslim personal laws,[34] also provides in respect of acts that transpired prior to its enactment:

> *"Art. 186. Effect of code on past acts – (1) Acts executed prior to the effectivity of this Code shall be governed by the laws in force at the time of their execution, and nothing herein except as otherwise specifically provided, shall affect their validity or legality or operate to extinguish any right acquired or liability incurred thereby."*

The foregoing provisions are consistent with the principle that all laws operate prospectively, unless the contrary appears or is clearly, plainly and unequivocably expressed or necessarily implied;[35] accordingly, every case of doubt will be resolved against the retroactive operation of laws.[36] Article 186 aforecited enunciates the general rule of the Muslim Code to have its provisions applied

prospectively, and implicitly upholds the force and effect of a pre-existing body of law, specifically, the Civil Code – in respect of civil acts that took place before the Muslim Code's enactment.

Admittedly, an apparent antagonism arises when we consider that what the provisions of the Civil Code contemplate and nurture is a monogamous marriage. "Bigamous or polygamous marriages" are considered void and inexistent from the time of their performance.[37] The Family Code which superseded the Civil Code provisions on marriage emphasizes that a subsequent marriage celebrated before the registration of the judgment declaring a prior marriage void shall likewise be void.[38] These provisions illustrate that the marital relation perceived by the Civil Code is one that is monogamous, and that subsequent marriages entered into by a person with others while the first one is subsisting is by no means countenanced.

Thus, when the validity of Muslim plural marriages celebrated before the enactment of the Muslim Code was touched upon in two criminal cases, the Court applied the perspective in the Civil Code that only one valid marriage can exist at any given time.

In *People vs. Subano, supra,* the Court convicted the accused of homicide, not parricide, since –

> *"(f)rom the testimony of Ebol Subano, father of the deceased, it appears that the defendant has three wives and that the deceased was the last in point of time.*

> *Although the practice of polygamy is approved by custom among these non-Christians, polygamy, however, is not sanctioned by the Marriage Law,[39] which merely recognizes tribal marriage rituals. The deceased, under our law, is not thus the lawful wife of the defendant and this precludes conviction for the crime of parricide."*

In *People vs. Dumpo, supra,* Mora Dumpo was prosecuted for bigamy when, legally married to Moro Hassan, she allegedly contracted a second marriage with Moro Sabdapal. The Court acquitted her on the ground that it was not duly proved that the alledged second marriage had all the essential requisites to make it valid were it not for the subsistence of the first marriage. As it appears that the consent of the bride's father is an indispensable requisite to the validity of a Muslim marriage, and as Mora Dumpo's father categoraically affirmed that he did not give his consent to her union with Moro Sabdapal, the Court held that such union could not be a marriage otherwise valid were it not for the existence of the first one, and resolved to acquit her of the charge of bigamy.

The ruling in *Dumpo* indicates that, had it been proven as a fact that the second marriage contained all the essential requisites to make it valid, a conviction for bigamy would have prospered.[40]

Fourth Collateral Issue: Law(s) Governing Property Relations of Muslim Marriages Celebrated Before the Muslim Code

This is the main issue presented by the instant petition. In keeping with our holding that the validity of the marriages in the instant case is determined by the Civil Code, we hold that it is the same Code that determines and governs the property relations of the marriages in this case, for the reason that at the time of the celebration of the marriages in question, the Civil Code was the only law on marriage relations, including property relations between spouses, whether Muslim or non-Muslim. Inasmuch as the Family Code makes substantial amendments to the Civil Code provisions on property relations, some of its provisions are also material, particularly to property acquired from and after August 3, 1988.

Which law would govern depends upon: (1) when the marriages took place; (2) whether the parties lived together as husband wife; and (3) when and how the subject properties were acquired.

Following are the pertinent provisions of the Civil Code:

> *"Art. 119. The future spouses may in the marriage settlements agree upon absolute or relative community of property, or upon complete separation of property, or upon any other regime. In the absence of marriage settlements, or when the same are void, the system of relative community*

or conjugal partnership of gains as established in this Code shall govern the property relations between husband and wife.

Art. 135. All property brought by the wife to the marriage, as well as all property she acquires during the marriage, in accordance with Article 148, is paraphernal.

Art. 136. The wife retains the ownership of the paraphernal property.

Art. 142. By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net gains or benefits obtained indiscriminately by either spouse during the marriage.

Art. 143. All property of the conjugal partnership of gains is owned in common by the husband and wife."

The Civil Code also provides in Article 144:

"When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work

or industry or their wages and salaries shall be governed by the rules of co-ownership."

In a long line of cases, this Court has interpreted the co-ownership provided in Article 144 of the Civil Code to require that the man and woman living together as husband and wife without the benefit of marriage or under a void marriage must not in any way be incapacitated to marry.[41] Situating these rulings to the instant case, therefore, the co-ownership contemplated in Article 144 of the Civil Code cannot apply to Hadji Abdula's marriages celebrated subsequent to a valid and legally existing marriage, since from the point of view of the Civil Code, Hadji Abdula is not capacitated to marry. However, the wives in such marriages are not precluded from proving that property acquired during their cohabitation with Hadji Abdula is their *exclusive* property, respectively.[42] Absent such proof, however, the presumption is that property acquired during the subsistence of a valid marriage – and in the Civil Code, there can only be one validly existing marriage at any given time – is conjugal property of such subsisting marriage.[43]

With the effectivity of the Family Code on August 3, 1988, the following provisions of the said Code are pertinent:

.

"Art. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them

in equal shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition of the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of the cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default or of waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall

belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

Art. 148. In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith."

It will be noted that while the Civil Code merely requires that the parties "live together as husband and wife," the Family Code in Article 147

specifies that they "live *exclusively* with each other as husband and wife." Also, in contrast to Article 144 of the Civil Code as interpreted by jurisprudence, Article 148 of the Family Code allows for co-ownership in cases of cohabitation where, for instance, one party has a pre-existing valid marriage, provided that the parties prove their "actual joint contribution of money, property or industry" and only to the extent of their proportionate interest therein. The rulings in *Juaniza vs. Jose,* 89 SCRA 306, *Camporodendo vs. Garcia,* 102 Phil. 1055, and related cases are embodied in the second paragraph of Article 148, which declares that the share of the party validly married to another shall accrue to the property regime of such existing marriage.

Fifth and Sixth Collateral Issues: Laws(s) on Succession and Dissolution of Property Regimes

Hadji Abdula died intestate on December 16, 1993. Thus, it is the Muslim Code which should determine the identification of the heirs in the order of intestate succession and the respective shares of the heirs.

Meanwhile, the status and capacity to succeed on the part of the individual parties who entered into each and every marriage ceremony will depend upon the law in force *at the time of the performance of the marriage rite.*

The status and capacity to succeed of the children will depend upon the law in force *at the time of conception or birth* of the child. If the child was conceived or born during the period covered by the

governance of the Civil Code, the Civil Code provisions on the determination of the legitimacy or illegitimacy of the child would appear to be in point. Thus, the Civil Code provides:

> *"Art. 255. Children born after one hundred and eighty days following the celebration of marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.*
>
> *Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.*
>
> *This physical impossibility may be caused:*
>
> *1. By the impotence of the husband;*
> *2. By the fact that the husband and wife were living separately, in such a way that access was not possible;*
> *3. By the serious illness of the husband.*
>
> *Art. 256. The child shall be presumed legitimate, although the mother may have declared against its legitimacy*

or may have been sentenced as an adulteress."

If the child was conceived or born during the period covered by the governance of the Muslim Code, i.e, from February 4, 1977 up to the death of Hadji Abdula on December 18, 1993, the Muslim Code determines the legitimacy or illegitimacy of the child. Under the Muslim Code:

"Art. 58. Legitimacy, how established. – Legitimacy of filiation is established by the evidence of valid marriage between the father and the mother at the time of the conception of the child.

Art. 59. Legitimate children. –

1. Children conceived in lawful wedlock shall be presumed to be legitimate. Whoever claims illegitimacy of or impugns such filiation must prove his allegation.

2. Children born after six months following the consummation of marriage or within two years after the dissolution of the marriage shall be presumed to be legitimate. Against this presumption no evidence shall be admitted other than that of physical impossibility of access between the parents at or about the time of the conception of the child.

Art. 60. Children of subsequent marriage. - Should the marriage be dissolved and the wife contracts another

marriage after the expiration of her 'idda,' the child born within six months from the dissolution of the prior marriage shall be presumed to have been conceived during the former marriage, and if born thereafter, during the latter.

Art. 61. Pregnancy after dissolution – If, after the dissolution of marriage, the wife believes that she is pregnant by her former husband, she shall, within thirty days from the time she became aware of her pregnancy, notify the former husband or his heirs of that fact. The husband or his heirs may ask the court to take measures to prevent a simulation of birth."

Upon determination of status and capacity to succeed based on the foregoing provisions, the provisions on legal succession in the Muslim Code will apply. Under Article 110 of the said Code, the sharers to an inheritance include:

a) The husband, the wife;
b) The father, the mother, the grandfather, the grandmother;
c) The daughter and the son's daughter in the direct line;
d) The full sister, the consanguine sister, the uterine sister and the uterine brother.

When the wife survives with a legitimate child or a child of the decedent's son, she is entitled to one-eighth of the hereditary estate; in the absence

of such descendants, she shall inherit one-fourth of the estate.[44] The respective shares of the other sharers, as set out in Article 110 abovecited, are provided for in Articles 113 to 122 of P.D. 1083.

Seventh Collateral Issue: Muslim Divorces Before the Effectivity of the Muslim Code

R.A. 394 authorized divorce among Muslims residing in non-Christian provinces, in accordance with Muslim custom, for a period of 20 years from June 18, 1949 (the date of approval of R.A. 394) to June 13, 1969.[45] Thus, a Muslim divorce under R.A. 394 is valid if it took place from June 18, 1949 to June 13, 1969.

From the seven collateral issues that we discussed, we identify four corollary issues as to further situate the points of controversy in the instant case for the guidance of the lower court. Thus:

1. *Which of the several marriages was validly and legally existing at the time of the opening of the succession of Hadji Abdula when he died in 1993?*

   The validly and legally existing marriage would be that marriage which was celebrated at a time when there was no other subsisting marriage standing undissolved by a valid divorce or by death. This is because all of the marriages were celebrated during the governance of the Civil Code, under the rules of which only one marriage can exist at any given time.

Whether or not the marriage was validly dissolved by a Muslim divorce depends upon the time frame and the applicable law. A Muslim divorce under R.A. No. 394 is valid if it took place from June 18, 1949 to June 13, 1969, and void if it took place from June 14, 1969.[46]

2. *There being a dispute between the petitioner and the oppositors as regards the heirship of the children begotten from different marriages, who among the surviving children are legitimate and who are illegitimate?*

   The children conceived and born of a validly existing marriage as determined by the first corollary issue are legitimate. The fact and time of conception or birth may be determined by *proof* or *presumption* depending upon the time frame and the applicable law.

3. *What properties constituted the estate of Hadji Abdula at the time of his death on December 18, 1993?* The estate of Hadji Abdula consists of the following:

   a. Properties acquired during the existence of a valid marriage as determined by the first corollary issue are conjugal properties and should be liquidated and divided between the spouses under the Muslim Code, this being the law in force at the time of Hadji Abdula's death.

   b. Properties acquired under the conditions prescribed in Article 144 of the Civil Code during the period August 30, 1950 to

August 2, 1988 are conjugal properties and should be liquidated and divided between the spouses under the Muslim Code. However, the wives other than the lawful wife as determined under the first corollary issue may submit their respective evidence to prove that any of such property is theirs exclusively.

c. Properties acquired under the conditions set out in Articles 147 and 148 of the Family Code during the period from and after August 3, 1988 are governed by the rules on co-ownership.

d. Properties acquired under conditions not covered by the preceding paragraphs and obtained from the exclusive efforts or assets of Hadji Abdula are his exclusive properties.

4. *Who are the legal heirs of Hadji Abdula, and what are their shares in intestacy?* The following are Hadji Abdula's legal heirs: (a) the lawful wife, as determined under the first corollary issue, and (b) the children, as determined under the second corollary issue. The Muslim Code, which was already in force at the time of Hadji Abdula's death, will govern the determination of their respective shares.

As we have indicated early on, the evidence in this case is inadequate to resolve in its entirety the main, collateral and corollary issues herein presented and a remand to the lower court is in

order. Accordingly, evidence should be received to supply the following proofs: (1) the exact dates of the marriages performed in accordance with Muslim rites or practices; (2) the exact dates of the dissolutions of the marriages terminated by death or by divorce in accordance with Muslim rites and practices, thus indicating which marriage resulted in a conjugal partnership under the criteria prescribed by the first, second, and third collateral issues and the first corollary issue; (3) the exact periods of actual cohabitation ("common life" under a "common roof") of each of the marriages during which time the parties lived together; (4) the identification of specific properties acquired during each of the periods of cohabitation referred to in paragraph 3 above, and the manner and source of acquisition, indicating joint or individual effort, thus showing the asset as owned separately, conjugally or in co-ownership; and (5) the identities of the children (legitimate or illegitimate) begotten from the several unions, the dates of their respective conceptions or births in relation to paragraphs 1 and 2 above, thereby indicating their status as lawful heirs.

Amicus Curiae Congressman Matura agrees that since the marriage of petitioner to decedent took place in 1972, the Civil Code is the law applicable on the issue of marriage settlement,[47] but espouses that customs or established practices among Muslims in Mindanao must also be applied with the force of law to the instant case.[48] Congressman Mastura's disquisition has proven extremely helpful in impressing upon us the background in which Islamic law and the Muslim Code need to be interpreted, particularly the interconnectedness of

law and religion for Muslims[49] and the impracticability of a strict application of the Civil Code to plural marriages recognized under Muslim law.[50] Regrettably, the Court is duty-bound to resolve the instant case applying such laws and rights as are in existence at the time the pertinent civil acts took place. Corollarily, we are unable to supplant governing law with customs, albeit how widely observed. In the same manner, we cannot supply a perceived hiatus in P.D. 1083 concerning the distribution of property between divorced spouses upon one of the spouses' death.[51]

WHEREFORE, the decision dated September 26, 1994 of the Fifth Shari'a District Court of Cotabato City in Special Proceeding No. 94-40 is **SET ASIDE**, and the instant petition is **REMANDED** for the reception of additional evidence and the resolution of the issues of the case based on the guidelines set out in this Decision.

SO ORDERED.

(Sgd.) MINERVA P. GONZAGA-REYES
Associate Justice

WE CONCUR:

DAVIDE, JR. *CJ*, BELLOSILLO, MELO, PUNO, VITUG, KAPUNAN, MENDOZA, PANGANIBAN, QUISUMBING, PURISIMA, PARDO, BUENA, YNARES-SANTIAGO, DE LEON, JR., *JJ*.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

(Sgd.) HILARIO G. DAVIDE, JR.
Chief Justice

ENDNOTES

[1] Record, p. 14.
[2] Exhs. C-1, D-1 & E-1.
[3] Record, p. 20.
[4] Ibid., p. 28.
[5] Ibid., p. 31.
[6] Ibid., pp. 32-36.
[7] Ibid., pp. 37-49.
[8] These banks were allegedly: (1) United Coconut Planters Bank; (2) Solidbank; (3) Far East Bank and Trust Company; (4) Philippine Commercial and Industrial Bank; (5) Bank of the Philippine Islands; (6) Metrobank; (7) Philippine National Bank; (8) Lank Bank of the Philippines, and (9) Development Bank of the Philippines.
[9] Record, pp. 50 & 59.
[10] Ibid., p. 52 & 61.
[11] Ibid., p. 220 (Exh. CC).
[12] Ibid., p. 219 (Exh. BB).
[13] Ibid., p. 221 (Exh. DD).
[14] Ibid., pp. 62-63.
[15] Ibid., p. 102-103.
[16] Ibid., p. 97.
[17] Ibid., pp. 123-126.
[18] Ibid., p. 108.
[19] Ibid., pp. 229-232.

[20] Ibid., pp. 222-228.

[21] Order of September 26, 1994, pp. 12-13; Rollo, pp. 25-56.

[22] Ibid., pp. 280-281.

[23] Ibid., p. 282.

[24] Ibid., p. 284.

[25] Petition, pp. 5 & 10.

[26] Retired Justice of the Court of Appeals and former Minister of Justice, author, noted civil law professor, and law practitioner. He was also a member of the Family Code Revision Committee.

[27] Former Congressman, law practitioner, and member of the Presidential Code Commission which reviewed P.D. 1083.

[28] Justice Puno's Compliance by *Amicus Curiae* was submitted on June 27, 2000 while Congressman Mastura's Memorandum was submitted on March 29, 2000.

[29] The registration of marriages, divorces, revocations of divorce and conversions into Islam is now required under Title VI (Civil Registry) of P.D. 1083.

[30] TSN, Oral Argument of July 27, 2000. p. 26.

[31] As amended by Republic Act No. 6268, which was approved on June 19, 1971 and was made to take effect as of June 18, 1969.

[32] Article 27 of P.D. 1083 now provides: "Notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases."

[33] The Explanatory Note to the Draft Muslim Code states: "This (Code) is the first fundamental concept that the Muslim legal system breathes into the Philippine legal system which has recognized to the present only the application of jural rules of mainly non-Muslim origin."

[34] Includes all laws on personal status, marriage and divorce, matrimonial and family relations, succession and inheritance, and property relations between spouses. Muslim Code, Art. 7, par. (i).

[35] *Commissioner vs. Lingayen Gulf Electric Power Co., Inc.,* 164 SCRA 27; *Castro vs. Collector of Internal Revenue*, 6 SCRA 886; *Ichiong vs. Hernandez*, 101 Phil. 1155.

[36] *Segovia vs. Noel*, 47 Phil. 220.

[37] Civil Code, Art. 80, par. 4.

[38] Family Code, Arts. 52, 53.

[39] The Marriage Law, approved on December 4, 1929, preceded the Civil Code of 1950 and was the governing law when *People vs. Subano* was promulgated.

[40] This is significantly changed by the enactment of P.D. 1083, Article 180 of which provides: "The provisions of the Revised Penal Code relative to the crime of bigamy shall not apply to a person married in accordance with the provisions of this (Muslim) Code or, before its effectivity, under Muslim law."

[41] *Adriano vs. Court of Appeals*, G.R. No. 124118, March 27, 2000; *Belcodero vs. Court of Appeals*, 227 SCRA 303; *Juaniza vs. Jose*, 89 SCRA 306; *Camporodendo vs. Anzar*, 102 Phil. 1055; *Osmeña vs. Rodriguez,* 54 O.G. 5526; *Malajacan vs. Rubi*, 42 O.G. 5576.

[42] In *Osmeña vs. Rodriguez, supra*, the Court ruled that a parcel of land acquired in the subsistence of a prior valid marriage did not belong to the conjugal estate of such marriage, in the face of evidence submitted by the common-law wife that such land was her exclusive property.

[43] Civil Code, Art. 160; *Adriano vs. Court of Appeals*, *supra, Belcodero vs. Court of Appeals*, *supra.*

[44] Art. 112, Muslim Code.

[45] The 20-year period expired on June 13, 1969, considering that there were five leap years (1952, 1956, 1960, 1964, and 1968) since the approval of R.A. 394 in 1949.

[46] Divorce provisions are now embodied in Articles 45 to 55 of the Muslim Code. Under Article 13 of the same Code, the provisions on divorce apply to marriages "wherein both parties are Mulims, or wherein only the male party is a Muslim and the marriage "wherein both parties are Muslim, and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines."

[47] Memorandum of *Amicus Curiae,* p. 9.

[48] Ibid., pp. 9, 27, 35-37, 42. Congressman Mastura particularly suggests that the Court take judicial notice of the principle of *sa-pancharian* on property acquired through the joint efforts of the husband and wife, judicially recognized by the Muslim courts of Malaysia and Singapore and also allegedly practiced as custom by Muslims in Mindanao.

[49] Ibid., pp. 12, 18; TSN, Oral Argument, pp. 15-17.

[50] TSN, Oral Argument, p. 18 *et. seq.*

[51] TSN, Oral Argument, p. 24, Memorandum of *Amicus Curiae,* p. 14.

REPUBLIC OF THE PHILIPPINES
SUPREME COURT
MANILA

G.R. NO. 119064

NENG "KAGUI KADIGUIA" MALANG
Petitioner,

- versus -

HON. COROCOY MOSON,
Presiding Judge of 5th Shari'a District Court, Cotabato City, HADJI MOHAMMAD ULYSSIS MALANG, HADJI ISMAEL MALINDATU MALANG, FATIMA MALANG, DATULNA MALANG, LAWANBAI MALANG, JUBAIDA KADO MALANG, NAYO OMAL MALANG and MABAY GANAP MALANG,
Respondents.

COMPLIANCE BY AMICUS CURIAE

May it please this Honorable Court.

The undersigned Amicus Curiae, in compliance with the invitation graciously extended by this Honorable Court in its Resolution dated 29 February 2000, respectfully submits this memorandum in relation to the principal purpose of the hearing of ____________________.

PREFATORY FACTS

Hadji Abdula Malang, a Muslim, entered into a contract of marriage with Aida (Kenanday) Limba. The couple begot three sons (Hadji Mohammad Ulyssis, Hadji Ismael Malindatu and Datulna) and a daughter (Lawanbai). Two children were already born to Aida when Hadji Abdula entered into a second marriage with another Muslim named Jubaida Kado in Kalumamis, Talayan, Maguindanao. No offspring was begotten in Hadji Abdula's second marriage with Jubaida Kado. The first wife, Aida, was still pregnant with their fourth child, when Hadji Abdula decided to divorce her.

Hadji Abdula married another Muslim (Nayo H. Omar) in 1965. No child was born out of this third marriage.

Not long thereafter, Hadji Abdula contracted a fourth marriage with Hadji Mabai (Mabay) H. Adziz in Kalumamis, Talayan, Maguindanao. They begot a daughter named Fatima (Kueng). Hadji Abdula married three other Muslim women, shortly thereafter, namely: Saaga, Mayumbai and Sabai. However, he eventually divorced the three of them.

In 1972, Hadji Abdula moved from Talayan to Tambunan where he married Petitioner Neng "Kagui Kadiguia" Malang. They later established residence in Cotabato City. No child was born to the eighth marriage.

While living with Petitioner in Cotabato City, Hadji Abdula died on December 18, 1993, without

leaving a last will and testament.

On January 21, 1994, Petitioner filed with the Shari'a District Court in Cotabato City a petition for the settlement of the estate of Hadji Abdula with a prayer for the issuance of letters of administration in favor of her niece, Tarhata Lauban.

Petitioner alleged in her petition that she was the wife of Hadji Abdula, and that his other legal heirs are his three children named Teng Abdula, Keto Abdula and Kueng Malang. Petitioner also claimed that he left a pick-up jeepney and seven (7) parcels of land, five (5) of them titled in the name of Hadji Abdula "married to Neng P. Malang."

The petition was opposed by herein Private Respondents.

In this special civil action of certiorari, the main issue presented for resolution is whether or not the regime of conjugal partnership of gains governed the property relationship of the two Muslims, Hadji Abdula and Neng Malang, who contracted their marriage prior to the effectivity of the Code of Muslim Personal Laws of the Philippines (hereafter referred to as "P.D. 1083" or "Muslim Code"). The question is interposed in relation to the settlement of the estate of the deceased husband, Hadji Abdula.

COLLATERAL ISSUES

The determination of the main issue hinges upon the following collateral issues that require resolution by this Honorable Court:

1. What law governs the: (a) formal, and (b) essential requisites for the validity of a Muslim marriage celebrated under Muslim rites before the effectivity of the Muslim Code?

2. Are multiple marriages celebrated before the effectivity of the Muslim Code valid?

3. How do the Supreme Court's pronouncements in *People vs. Subano*, 73 Phil. 692, and *People vs. Dumpo*, 62 Phil. 246, affect Muslim multiple marriages celebrated before the effectivity of the Muslim Code?

4. What laws govern the property relationship of Muslim multiple marriages celebrated before the Muslim Code?

5. What laws govern the succession to the estate of a Muslim who died after the Muslim Code and the Family Code took effect?

6. What laws apply to the dissolution of property regimes in the cases of multiple marriages entered into before the Muslim Code but dissolved (by the husband's death) after the effectivity of the Muslim Code?

7. Are Muslim divorces effected before the enactment of the Muslim Code valid?

First Collateral Issue

1. **WHAT LAW GOVERNS THE: (A) FORMAL, AND (B) ESSENTIAL REQUISITES FOR THE VALIDITY OF A MUSLIM MARRIAGE CELEBRATED UNDER MUSLIM RITES BEFORE THE EFFECTIVITY OF THE MUSLIM CODE?**

The time frame during which the marriages in question took place appears to be covered by the Civil Code of 1950 which, accordingly, governs the marriages. The pertinent articles provide:

> *"Art. 52. (C.C.) Marriage is not a mere contract but an inviolable social institution. Its nature, consequences and incidents are governed by law and not subject to stipulation, except that the marriage settlements may to a certain extent fix the property relations during the marriage.*
>
> *Art. 53. (C.C.) No marriage shall be solemnized unless all these requisites are complied with:*
> 1. *Legal capacity of the contracting parties;*
> 2. *Their consent, freely given;*
> 3. *Authority of the person performing the marriage; and*
> 4. *A marriage license, except in a marriage of exceptional character.*

Art. 54. (C.C.) Any male of the age of sixteen years or upwards, and any female of the age of fourteen years or upwards, not under any of the impediments mentioned in Articles 80 to 84, may contract marriage.

Art. 55. (C.C.) No particular form for the ceremony of marriage is required, but the parties with legal capacity to contract marriage must declare, in the presence of the person solemnizing the marriage and of two witnesses of legal age, that they take each other as husband and wife. This declaration shall be set forth in an instrument in triplicate, signed by signature or mark by the contracting parties and said two witnesses, and attested by the person solemnizing the marriage.

In case of a marriage on the point of death, when the dying party, being physically unable, cannot sign the instrument by signature or mark, it shall be sufficient for one of the witnesses to the marriage to sign in his name, which fact shall be attested by the minister solemnizing the marriage.

Art. 56. (C.C.) Marriage may be solemnized by:

1. *The Chief Justice and Associate Justices of the Supreme Court;*

2. *The Presiding Justice and the Justices of the Court of Appeals;*
3. *Judges of the Courts of First Instance;*
4. *Mayors of cities and municipalities;*
5. *Municipal judges and justices of the peace;*
6. *Priests, rabbis, ministers of the gospel of any denomination, church, religion or sect, duly registered, as provided in Article 92; and*
7. *Ship captains, airplane chiefs, military commanders, and consuls and vice-consuls in special cases provided in Articles 74 and 75."*

For twenty (20) years after the approval of the Civil Code of 1950, the law recognized as valid all marriages between Muslims and pagans subject to the requirements of Article 78 of the Code which reads:

> *"Art. 78. (C.C.) Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.*[1]
>
> *However, twenty years after the approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance*

> *with the provisions of this Code. But the President of the Philippines, upon recommendation of the Secretary of the Interior, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces."*

One (1) year is computed at 365 days. Hence, the twenty-year period expired on June 13, 1969. From the date of approval of the Civil Code of 1950 on June 18, 1949, there were five (5) leap years (1952, 1956, 1960, 1964 and 1968) during the succeeding twenty (20) years.

Second And Third Collateral Issues

2. ARE MULTIPLE MARRIAGES CELEBRATED BEFORE THE EFFECTIVITY OF THE MUSLIM CODE VALID?

3. HOW DO THE SUPREME COURT'S PRONOUNCEMENTS IN *PEOPLE VS. SUBANO*, 73 PHIL. 692, AND *PEOPLE VS. DUMPO*, 62 PHIL. 246, AFFECT MUSLIM MULTIPLE MARRIAGES CELEBRATED BEFORE THE EFFECTIVITY OF THE MUSLIM CODE?

In answer to these two questions, prevailing jurisprudence prior to the effectivity of the Muslim Code has decreed that Muslim multiple marriages may result in bigamy, provided that the prior and

subsequent marriages comply with the requisites for a valid Muslim marriage. The consequence of the rulings in Subano and Dumpo is that for purposes of both Civil Law and Criminal Law, the first marriage is valid and the second and succeeding marriages are, in effect, void and bigamous. This means that only one valid marriage can legally exist at any given time.

In *PEOPLE vs. PILUS SUBANO, (supra),* the Supreme Court held:

> *"From the testimony of the father of the deceased, it appears that the defendant has three wives and that the deceased was the last in point of time. Although the practice of polygamy is approved by custom among these non-Christians, polygamy, however, is not sanctioned by the Marriage Law which merely recognizes tribal marriage rituals. The deceased, under the law, is not thus the lawful wife of the defendant and this precludes conviction for the crime of parricide."*

Instead, the Court ruled that the crime committed was homicide.

In *PEOPLE vs. MORA DUMPO, (supra),* the Supreme Court ruled:

> *"In the case at bar we have the uncontradicted testimony of Tahari, an Iman or Mohammedan priest authorized*

to solemnize marriages between Mohammedans, to the effect that the consent of the bride's father or, in the absence thereof, that of the chief of the tribe to which she belongs is an indispensable requisite for the validity of such contracts. If the absence of this requisite did not make the marriage contract between Mohammedans void, it was easy for the prosecution to show it by refuting Iman Tahari's testimony inasmuch as for lack of one, there were two other Imans among the State witnesses in this case. It failed to do so, however, and from such failure we infer that the Iman's testimony for the defense is in accordance with truth. It is contended that, granting the absolute necessity of the requisite in question, tacit compliance therewith may be presumed because it does not appear that Dumpo's father has signified his opposition to this alleged marriage after he had been informed of its celebration. But this presumption should not be established over the categorical affirmation of Moro Jalmani, Dumpo's father, that he did not give his consent to his daughter's alleged second marriage for the reason that he was not informed thereof and that, at all events, he would not have given it, knowing that Dumpo's first marriage was not dissolved.

x x x

> *"It is an essential element of the crime of bigamy that the alleged second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage. It appearing that the marriage alleged to have been contracted by the accused with Sabdapal, her former marriage with Hassan being undissolved, cannot be considered as such, according to Mohammedan rites, there is no justification to hold her guilty of the crime charged in the information."*

The foregoing precepts providing for the invalidity of Muslim multiple marriages still apply from the purely <u>Civil Law</u> standpoint. Only one (1) valid marriage can legally exist at any given time.

However, for purposes of Criminal Law, the rule on bigamy has been amended ever since February 4, 1977, when Article 180 of the Muslim Code took effect. It reads:

> *"ARTICLE 180. (M.C.) LAW APPLICABLE. –*
>
> *The provisions of the Revised Penal Code relative to the crime of bigamy shall not apply to a person married in accordance with the provisions of this Code or, before its effectivity, under Muslim law."*

Fourth Collateral Issue

1. WHAT LAWS GOVERN THE PROPERTY RELATIONSHIP OF MUSLIM MULTIPLE MARRIAGES CELEBRATED BEFORE THE MUSLIM CODE?

The property relationship may be governed either by the Civil Code of 1950 or the Family Code.

Which law would govern depends upon:

a) When the marriages took place.
b) Whether the parties lived together as husband and wife.
c) <u>When</u> and <u>how</u> the subject properties were acquired.

The Civil Code of 1950 provides:

"Art. 135. (C.C.) All property brought by the wife to the marriage, as well as all property she acquires during the marriage, in accordance with Article 148, is paraphernal.

Art. 136. (C.C.) The wife retains the ownership of the paraphernal property.

Art. 142. (C.C.) By means of the conjugal partnership of gains the husband and wife place in a common fund the fruits of their separate property and the income from their work or industry, and divide equally, upon the dissolution of the marriage or of the partnership, the net

gains or benefits obtained indiscriminately by either spouse during the marriage.

Art. 143. (C.C.) All property of the conjugal partnership of gains is owned in common by the husband and wife.

Art. 144. (C.C.) When a man and a woman live together as husband and wife, but they are not married, or their marriage is void from the beginning, the property acquired by either or both of them through their work or industry or their wages and salaries shall be governed by the rules on co-ownership."

Article 144 (C.C.) applies to properties acquired during the period from the effectivity of the Civil Code of 1950 on August 30, 1950 and before August 3, 1988 when the Family Code took effect, provided that the conditions prescribed in this Civil Code Article are met.

The Family Code, on the other hand, provides:

"Art. 147. (F.C.) When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, their wages and salaries shall be owned by them in equal, shares and the property acquired by both of them through their work or industry shall be governed by the rules on co-ownership.

In the absence of proof to the contrary, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition of the other party of any property shall be deemed to have contributed jointly in the acquisition thereof if the former's efforts consisted in the care and maintenance of the family and of the household.

Neither party can encumber or dispose by acts inter vivos of his or her share in the property acquired during cohabitation and owned in common, without the consent of the other, until after the termination of their cohabitation.

When only one of the parties to a void marriage is in good faith, the share of the party in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all of the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall take place upon termination of the cohabitation.

Art. 148. (F.C.) In cases of cohabitation not falling under the preceding Article, only the properties acquired by both of the parties through their actual joint contribution of money, property, or industry shall be owned by them in common in proportion to their respective contributions. In the absence of proof to the contrary, their contributions and corresponding shares are presumed to be equal. The same rule and presumption shall apply to joint deposits of money and evidences of credit.

If one of the parties is validly married to another, his or her share in the co-ownership shall accrue to the absolute community or conjugal partnership existing in such valid marriage. If the party who acted in bad faith is not validly married to another, his or her share shall be forfeited in the manner provided in the last paragraph of the preceding Article.

The foregoing rules on forfeiture shall likewise apply even if both parties are in bad faith."

Articles 147 (F.C.) and 148 (F.C.) apply to properties acquired during the period from and after the effectivity of the Family Code on August 3, 1988, under the requisite conditions respectively prescribed in the two Articles.

There are two notable differences between Article 144 of the Civil Code of 1950 and Articles 147 and 148 of the Family Code. One difference is that the Civil Code merely requires that the parties "live together as husband and wife" while the Family Code specifies that they "live exclusively with each other as husband and wife."

The other difference is that the Civil Code makes no distinction in Article 144 (C.C.) as to whether or not the man and the woman "are capacitated to marry each other." On the other hand, in the Family Code, Article 147 (F.C.) requires them to have capacity to "marry each other as husband and wife" and presumes that properties procured during cohabitation have been acquired equally by their joint efforts; while Article 148 (F.C.) does not expressly require that that the man and the woman be "capacitated to marry each other" and their joint acquisition must be proven, and not presumed.

Fifth And Sixth Collateral Issues

5. WHAT LAWS GOVERN THE SUCCESSION TO THE ESTATE OF A MUSLIM WHO DIED AFTER THE MUSLIM CODE AND FAMILY CODE TOOK EFFECT?

6. WHAT LAWS APPLY TO THE DISSOLUTION OF PROPERTY REGIMES IN CASES OF MULTIPLE MARRIAGES ENTERED INTO BEFORE THE MUSLIM CODE BUT DISSOLVED (BY THE HUSBAND'S DEATH) AFTER THE

EFFECTIVITY OF THE MUSLIM CODE?

The status and capacity to succeed on the part of the individual parties each and every marriage ceremony will depend upon the law in force at the time of the performance of the marriage rite.

The status and capacity to succeed on the part of the children will depend upon the law in force at the time of conception or birth of each child.

The identification of heirs in the order of intestate succession and the respective shares of these heirs will be determined by the Muslim Code which took effect on Februarv 4, 1977 and was already in force when Hadji Abdula died on December 16, 1993.

Subject to the enlightenment afforded to this Honorable Court by Amicus Curiae Former Congressman Michael Mastura, the following relevant provisions of The Muslim Code may be cited:

> *"ARTICLE 89. (M.C.) SUCCESSION DEFINED. –*
>
> *Succession is a mode of acquisition by virtue of which the estate of a person is transmitted to his heirs or others in accordance with this code.*
>
> *ARTICLE 90. (M.C.) SUCCESSIONAL RIGHTS, WHEN VESTED. -*

The rights to succession are transmitted from the moment of the death of the decedent. The right to succession of any heir who predeceases the decedent shall not be transmitted by right of representation to his own heirs.

ARTICLE 91. (M.C.) REQUISITES OF SUCCESSION.-

No settlement of the estate of a deceased person shall be effected unless:

a) The death of the decedent is ascertained;
b) The successor is alive at the time of the death of the decedent; and
c) The successor is not disqualified to inherit.

x x x

TITLE III. Legal Succession

Chapter One

SHARERS

ARTICLE 110. (M.C.) WHO ARE SHARERS. The following persons shall be entitled to the inheritance as sharers to the extent set forth in the succeeding articles:

a) The husband, the wife;
b) The father, the mother, the grandfather, the grandmother;
c) The daughter and the son's daughter in the direct line;
d) The full sister, the consanguine sister, the uterine sister and the uterine brother.

ARTICLE 111. (M.C.) SHARE OF SURVIVING HUSBAND.

The husband surviving together with a legitimate child or a child of the decedent's son shall be entitled to one-fourth of the hereditary estate; should there be no such descendants, he shall inherit one-half of the estate.

ARTICLE 112. (M.C.) SHARE OF SURVIVING WIFE.

The wife surviving together with a legitimate child or a child of the decedent's son shall be entitled to one-eighth of the hereditary estate; in the absence of such descendants, she shall inherit one-fourth of the estate."

The rest of the "sharers" and their respective shares are set forth in the articles following Article 112.

If the child was <u>conceived or born</u> during the period covered by the governance of the Civil Code of 1950 (August 30, 1950 to February 3, 1997[2]) the

Civil Code of 1950 determines the legitimacy or illegitimacy of the child.

The Civil Code of 1950 provides:

"ART. 255. (C.C.) Children born after one hundred and eighty days following the celebration of the marriage, and before three hundred days following its dissolution or the separation of the spouses shall be presumed to be legitimate.

Against this presumption no evidence shall be admitted other than that of the physical impossibility of the husband's having access to his wife within the first one hundred and twenty days of the three hundred which preceded the birth of the child.

This physical impossibility may be caused:

1. *By the impotence of the husband;*
2. *By the fact that the husband and wife were living separately, in such a way that access was not possible;*
3. *By the serious illness of the husband.*

ART. 256. (C.C.) The child shall be presumed legitimate, although the mother may have declared against its legitimacy or may have been sentenced as an adulteress."

However, if the child was conceived or born during the period covered by the governance of the Muslim Code (February 4, 1977 up to the death of Hadji Abdula on December 18, 1993), the Muslim Code determines the legitimacy or illegitimacy of the child.

The Muslim Code provides:

"ARTICLE 58. (M.C.) LEGITIMACY, HOW ESTABLISHED.

Legitimacy of filiation is established by evidence of valid marriage between the father and the mother at the time of the conception of the child.

ARTICLE 59. (M.C.) LEGITIMATE CHILDREN.

1. *Children conceived in lawful wedlock shall be presumed to be legitimate. Whoever claims illegitimacy of or impugns such filiation must prove his allegation.*

2. *Children born after six months following the consummation of marriage or within two years after the dissolution of the marriage shall be presumed to be legitimate. Against this presumption no evidence shall be admitted other than that of the physical impossibility of access between the parents at or about the time of the conception of the child.*

ARTICLE 60. (M.C.) CHILDREN OF SUBSEQUENT MARRIAGE.

Should the marriage be dissolved and the wife contracts another marriage after the expiration of her "idda," the child born within six months from the dissolution of the prior marriage shall be presumed to have been conceived during the former marriage, and if born thereafter, during the latter.

ARTICLE 61. (M.C.) PREGNANCY AFTER DISSOLUTION.-

If, after the dissolution of marriage, the wife believes that she is pregnant by her former husband, she shall, within thirty days from the time she became aware of her pregnancy, notify the former husband or his heirs of the fact. The husband or his heirs may ask the court to take measures to prevent a simulation of birth."

Seventh Collateral Issue

7. ARE MUSLIM DIVORCES EFFECTED BEFORE THE EFFECTIVITY OF THE MUSLIM CODE VALID?

Absolute divorce according to Muslim custom was legally recognized among Moslems, residing in non-Christian provinces, for a period of

twenty (20) years from and after June 18, 1949 when Republic Act 349 was approved.

The twenty (20) year period expired on June 13, 1969, considering that there were five (5) leap years (1952, 1956, 1960, 1964 and 1968) during the succeeding twenty (20) years.

COROLLARY ISSUES

From the seven (7) collateral issues, four (4) corollary issues arise, which may clearly collate the points of controversy and be decisive, taking into consideration the dates of effectivity of the pertinent laws, to wit:

Republic Act No. 394 (authorizing Moslem divorces)	June 18, 1949 up to June 13, 1969
The New Civil Code (Republic Act. No.386)	August 30, 1950
[except Article 78 C.C (authorizing Moslem marriage rites)	June 18, 1949 up to June 13, 1969]
The Muslim Code	February 4, 1977
The Family Code	August 3, 1988

First Corollary Issue

QUESTION I: WHICH OF THE SEVERAL MARRIAGES WAS VALIDLY AND LEGALLY EXISTING AT THE TIME OF THE OPENING OF THE SUCCESSION OF HADJI ABDULA WHEN HE DIED IN 1993?

The validly and legally existing marriage would be that marriage which was celebrated at a time when there was no other subsisting marriage standing undissolved by a valid divorce or by death. The rule is that only one (1) valid marriage can exist at any given time. Whether or not the marriage was validly dissolved by a Muslim divorce depends upon the time frame and the applicable law.

A Muslim divorce is valid if it took place from June 18, 1949 to June 13, 1969 (Republic Act 394).

A Muslim divorce is void if it took place from and after June 14, 1969 (Republic Act 394).

Second Corollary Issue

QUESTION II: THERE BEING A DISPUTE BETWEEN THE PETITIONER AND THE OPPOSITORS AS REGARDS THE HEIRSHIP OF THE CHILDREN BEGOTTEN FROM DIFFERENT MARRIAGES, WHO AMONG THE SURVIVING CHILDREN ARE LEGITIMATE AND WHO ARE ILLEGITIMATE?

The children who were conceived or born of a validly existing marriage as determined by the First Corollary Issue are legitimate. The fact and time of conception or birth may be determined by proof or by presumption depending upon the time frame and the applicable law.

Third Corollary Issue

QUESTION III: WHAT PROPERTIES CONSTITUTED THE ESTATE OF HADJI ABDULA AT THE TIME OF HIS DEATH ON DECEMBER 18, 1993?

1. Properties acquired during the existence of a valid marriage as determined by the First Corollary Issue are conjugal properties and should be liquidated and divided between the spouses under the Muslim Code as the law in force at the time Hadji Abdula died on December 18, 1993.

2. Properties acquired under the conditions prescribed in Art. 144 (C.C.) of the Civil Code during the period from August 30, 1950 to August 2, 1988 are governed by the rules on co-ownership.

3. Properties acquired under the conditions prescribed in Art. 147 (F.C.) and Art 148 (F.C.) of the Family Code during the period from and after August 3, 1988 are governed by the rules on co-ownership.

4. Properties acquired under conditions not covered by the preceding paragraphs and obtained from the exclusive efforts or assets of Hadji Abdula are his separate private properties.

Fourth Corollary Issue

QUESTION IV: WHO ARE THE LEGAL HEIRS OF HADJI ABDULA? WHAT ARE THEIR SHARES IN INTESTACY?

1. The intestate heirs are:
   a) The lawful wife, as determined, under the First Corollary Issue;
   b) The children as determined under the Second Corollary Issue.

2. Their respective shares are in accordance with the Muslim Code which was in force when Hadji Abdula died on December 18, 1993.

THE EVIDENCE REQUIRED FOR ADJUDICATION

The record of this case appears to be inadequate to resolve in their entirety the main, collateral and corollary issues in justiciable controversy.

From all indications, a remand of this case to the Court a quo may be proper or necessary to supply the missing links for purposes of providing the bases for judgment.

It is respectfully submitted that evidence should accordingly be received to supply the following proofs:

A. The exact dates of the marriages performed in accordance with Muslim rites or practices;

B. The exact dates of the dissolutions of the marriages terminated by death or by divorce in accordance with Muslim rites and practices, thus indicating which marriage resulted in a conjugal partnership under the criteria prescribed by the First, Second, and Third Collateral Issues and the First Corollary Issue;

C. The exact periods of actual cohabitation ("common life" under a "common roof") of each of the marriages during which time the parties "lived together."

D. The identification of specific properties acquired during each of the periods of cohabitation referred to in Paragraph C above, and the manner and source of acquisition, indicating joint or individual effort, thus showing the asset as owned separately, conjugally or in co-ownership.

E. The identities of the children (legitimate or illegitimate) begotten from the several unions, the dates of their respective conceptions or births in relation to Paragraphs A and B above, thereby indicating their status as lawful heirs.

CODA

In resume, it is respectfully submitted that this Honorable Court, in the exercise of its supreme judicial power, may exercise its superior authority

to remand this case to the Court a quo for further proceedings, and enable presentation of evidence that will provide the missing links.

A few concluding words on a personal note if it may please the Court.

Your "*Amicus*" begs to express most humbly his profound thanks to the Chief Justice and the Members of this Honorable Court for the rare and distinct honor of this invitation to appear as *Amicus Curiae* before Your Honors at this hearing.

Other similar invitations were previously extended, twelve (12) years ago when this Honorable Court's Resolution of October 27, 1988 directed my appearance as Amicus Curiae on November 17, 1988 in *Diaz et al vs. Intermediate Appellate Court* (18 SCRA 427), and again four (4) years ago in this Court's Resolution of August 21, 1996 directing anew my participation as Amicus Curiae on December 3, 1996 in *Republic vs. Court of Appeals and Molina* (268 SCRA 198).

Despite the twilight now dimming with the passing years and the ravages wrought by time on an aging mortal frame, I respectfully and humbly nurture the hope that the honor of this latest gracious invitation might not yet be the last.

Pasig City, Metro Manila for Manila, Philippines.

Respectfully submitted:

RICARDO C. PUNO
Former Justice of the Court of Appeals
Retired Minister of Justice
AMICUS CURIAE
12th Floor, Philippine Stock Exchange Centre
Exchange Road, Ortigas Center
Pasig City, Metro Manila

ENDNOTES

[1] ART. 92. Every priest, or minister, or rabbi authorized by his denomination, church, sect, or religion to solemnize marriage shall send to the proper government office a sworn statement setting forth his full name and domicile, and that he is authorized by his denomination, church, sect, or religion to solemnize marriage, attaching to said statement a certified copy of his appointment. The director of the proper government office, upon receiving such sworn statement containing the information required, and being satisfied that the denomination, church, sect, or religion of the applicant operates in the Philippines, shall record the name of such priest or minister in a suitable register and issue to him an authorization to solemnize marriage. Said priest or minister or rabbi shall be obliged to exhibit his authorization to the contracting parties, to their parents, grandparents, guardians, or persons in charge demanding the same. No priest or minister not having the required authorization may solemnize marriage.

[2] The Muslim Code took effect on February 4, 1997.

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. NO. 119064

NENG KAGUI KADIGUIA MALANG,
Petitioner,

- versus -

HON. COROCOY MOSON,
Presiding Judge of 5th Shari'a District Court, Cotabato City, HADJI MOHAMMAD ULYSSIS MALANG, HADJI ISMAEL MALINDATU MALANG, FATIMA MALANG, DATULNA MALANG, LAWANBAI MALANG, JUBAIDA KADO MALANG, NAYO OMAL MALANG, AND MABAY GANAP MALANG,
Respondents.

MEMORANDUM

THIS REPRESENTATION, complying with the resolution of the Honorable Court *en banc* dated 29 February 2000, respectfully submits this Memorandum.

Prefatory Statement

The views herein are stated in my capacity as one who was actively involved in the drafting of

the Code of Muslim Personal Laws of the Philippines and as an officer of this Honorable Court who assisted in crafting the Special Rules of Procedure governing the Shari'a Courts. The statements are expressed in the opinion of an *Amicus Curiae* and not as a party-in-interest to the dispute at bar.

The Antecedents

This is a Petition for Certiorari under Rule 65 for review and reversal of the decision of the 5th Shari'a District, Cotabato City, in SPL. PROC. No. 94-40 dated 26 September, ordering the distribution and adjudication of properties, real and personal, belonging to the decedent in accordance with Islamic law [P.D. No. 1083].

The case from which this Petition arises commenced when Petitioner Neng Kagui Kadiguia Malang filed on 20 January 1994 a verified petition in the matter of the intestate estate of Hadji Abdula Malang and for issuance of letters of administration before Presiding Judge Corocoy D. Moson, herein Public Respondent. The children of the decedent Hadji Ismael Malindatu Malang as heirs filed opposition thereto. Jubaida Kado Malang, Nayo Omal Malang, and Maby Ganap Malang as surviving widows and other heirs Datulna and Lawanbai are claimants.

At trial, the Shari'a District Court appointed Hadji Mohammad Ulyssis Malang as administrator of all properties located in the Province of Maguindanao. Neng Kagui Kadiguia Malang and Hadji Ismael Malindatu Malang were appointed

joint administrators of all properties, real and personal, found existing in Cotabato City.

The joint administrators submitted inventories of property left by the deceased Hadji Abdula Malang consisting of parcels of land covered by ten (10) titles located in Maguindanao Province; land covered by twelve (12) titles located in Cotabato City; one (1) motor vehicle; and bank deposits in Cotabato City.

The Shari'a District Court named as lawful heirs the four wives of the decedent, his three sons and two daughters in the court order of adjudication and distribution dated 16 September 1994. The dispositive portion reads:

> *"WHEREFORE, premises considered, the Court orders the following:*
>
> *1. That the estate shall pay the corresponding estate tax, reimburse the funeral expenses in the amount of P50,000.00 and the judicial expenses in the amount of P2,040.80;*
>
> *2. That the net estate, consisting of real and personal properties, located in Talayan, Maguindanao and in Cotabato City is hereby distributed as follows:*
>
> *a) Jubaida Kado Malang - 2/64 of the estate;*

b) Nayo Omar Malang -
2/64 – do – ;
c) Mabai Aziz Malang -
2/64 – do – ;
d) Neng "Kagui Kadiguia" Malang -
2/64 – do – ;
e) Mohammad Ulyssis Malang -
14/64 – do – ;
f) Ismael Malindatu Malang -
14/64 – do – ;
g) Datulna Malang -
14/64 – do – ;
h) Lawanbai Malang -
7/64 – do – ;
i) Fatima (Keung) Malang -
7/64 – do – ;

Total: 64/64

3. That the amount of P250,000.00 given to Neng "Kagui Kadiguia" Malang by way of advance be charged against her share and if her share is not sufficient, to return the excess; and

4. That the heirs are hereby ordered to submit to this court their Project of Partition for approval, not later than three (3) months from receipt of this order.

SO ORDERED."

The Shari'a Court denied on 10 January 1995 a motion for reconsideration of Petitioner after Private Respondents filed an opposition thereto.

Hence this recourse under Rule 65 of the Rules of Court.

Facts Appearing from the Records

Evidence for Petitioner consisted of documents and testimonial witnesses but at trial she did not testify in her own behalf. Private Respondents, oppositors below, offered corroborative testimonies together with their witnesses.

Petitioner and Private Respondents are all Muslims and the intestate property and effects in question are located in Cotabato City and the Province of Maguindanao. It is admitted that Hadji Abdul Malang died intestate on 18 December 1993 in Cotabato City.

From the averments of the parties, it is not disputed that Hadji Abdul Malang and Neng Kadiguia Malang lived together as husband and wife since 1972 up to the time of his death on 18 December 1993. The story of the decedent's marital relationships goes back in time when Abdul Wagai – a name he was known prior to performing the *hajj* - married and then divorced his first wife, Aida Limba, also identified as "Kenenday." Subsequently, Hadji Abdul Malang married herein Private Respondents Jubaida Kado, Nayo Omal, Mabay Ganap, and herein Petitioner Neng Kadiguia Malang.

It appears on the original records of the case that the first wife was still alive when Hadji Abdul Malang entered into his second marriage. All

succeeding marriages were entered into after he divorced the first wife who died later. No exact dates were given of such facts. Under these circumstances, an issue arises whether the fact of death of the first wife took place before or after the subsequent marriage of Hadji Abdul Malang to the Petitioner.

The trial judge, Public Respondent herein, was satisfied by oral evidence adduced at the intestate estate proceedings that three (3) prior marriages were "existing before the decedent married the petitioner" and, therefore, "conjugal partnership" between the deceased and petitioner could not be sustained.

On the face of records, the preliminary point was taken by the learned judge that the phrase "married to Neng Malang" appearing in the certificate of title (Exhs. "K" to "DD") is merely descriptive of the civil status of Hadji Abdula Malang, the decedent. The mere fact that Petitioner relied on her being the only lawful widow shifted the burden of evidence to the oppositors. Private Respondents introduced similar proofs of such entry in the certificates of title in which the decedent is likewise described as one "married to Aida Limba," married to Nayo Omal," and "married to Mabay Adji Adzis." On the face of these documents, the year 1972 appears as factual point of reference to the civil status of Hadji Abdula Malang, the registered owner and his spouses.

In the course of trial, oppositors conceded in open court the fact of marriage of petitioner to the decedent as a matter of abbreviating the

proceedings. The circumstances of record in this case provide no contracts or registrations in respect of the unregistered eight (8) marriages. The party litigants clearly proceeded upon the assumption that these marital relationships have been solemnized "according to Muslim rites, customs and practices" as recognized under Article 78 of the Civil Code.

Evidence supports the finding that Hadji Abdul Malang sustained a life of plural marital status from 1972 until he died in 1993. Whether he had in fact married Saaga Malang, Mayumbai Malang, and Sabai Malang, one after the other, the trial judge found it of little legal consequence for the decedent divorced all of them later. Not one of them intervened in the proceedings nor testified in court. Still, it is the very essence of evidence (*bayynat*) as distinguished from statements of witnesses (*shuhud*) in Shari'a Court proceedings under the Special Rules of Procedure, Sec. 6 (2) [1983] promulgated for the Shari'a Courts, that it gives information of that fact at issue. As oral evidence, its practical effect was to adduce the preferred proof as to the number of unregistered marriages that the decedent had during his lifetime.

As in juristic rule logic, evidence relating to a fact can be one-sided but regard for the principle of case logic makes provision for excluding falsity or possible errors in the trial judge's finding of facts. As a proof, it substantiates the multiple marriages and previous divorces that the decedent contracted or repudiated according to Muslim customs, rites, or practices during his lifetime.

As a matter of law, the Shari'a District Court took judicial notice of R.A. No. 394 [1949] as then applicable to decedent's divorce from his first wife and the dissolution of marriages with three other wives. H.B. No. 343 was filed amending R.A. No. 394 [1949] which, however, was overtaken by P.D. No. 1083.

At the conclusion of the trial, Public Respondent herein found that the decedent had, at the time of his death, four (4) wives including herein Petitioner. The estate court ruled that the legal heirs entitled to inherit are four (4) widows and five (5) other surviving heirs. The existing three marriages are disputed in the instant Petition.

The undisputed facts are that, at the time of his death, no child was born to the second and third marriages, but Hadji Abdul Malang was survived by a total of five (5) children. Three are full-blood brothers and one sister, and one consanguine sister who is a minor.

Three sons – herein Respondents Hadji Mohammad Ulyssis (also identified as "Teng Abdula"), Hadji Ismael Malendatu (also identified as "Keto Abdula"), Datulena, are all by his first spouse, Aida Limba. One daughter – herein Respondent Lawanbai is also by his first spouse, Aida Limba. One daughter – herein Respondent Fatima (also identified as "Keung"), is by his other spouse, Mabay Ganap.

The declaration of the children as surviving heirs of the decedent is supported by evidence,

acknowledged in the petition and opposition, and the prayer for distribution of the property in question.

The factual setting of the household is traditional in that the late Hadji Abdula Malang was the chief and sole breadwinner of all his families. It is clear from the evidence of both parties that his source of income were farmlands and from "buy-and-sell" business. Out of his own earnings as well as from gains in business with his partner Hadji Salim Alim, he purchased lands in Cotabato City.

The uncontroverted facts are that Hadji Abdula Malang introduced into his matrimonial household Jubaida Kado, Nayo Omal, Mabay Ganap and received them as spouses who actually worked on his farmlands in Talayan, Maguindanao.

The estate court found no evidence relating to the participation of spouse Neng Kagui Kadiguia in farming nor in running the business of her husband. The undisputed testimony revealed that only his sons Hadji Mohammad Ulyssis and Hadji Ismael Malindatu by the first wife assisted him in the business.

The Issues

Petitioner assails the finding of the Shari'a Court and ascribes the errors as follows:

I. In ruling that at the time petitioner married the decedent, the latter had "three existing marriages" in consequence of which the

properties acquired during the marriage of the decedent and petitioner could not be considered conjugal.

II. In holding that "the properties in question are not conjugal" because under Islamic law the regime of relationship is complete separation of property, in the absence of any stipulation to the contrary in the marriage settlement or any other contract.

Petitioner, in her Memorandum, poses as the pivotal issue:

> *"Whether or not the properties acquired during the marriage of petitioner with the decedent (Exhs. "K" through "DD") were conjugal."*

We should start off with a query in developing this issue in our own opinion.

1. If the issue is taken in the affirmative, in what capacity (as Muslim or not) and under what law did Petitioner establish her marriage status and right to inherit properties acquired during coverture?

2. A negative view gives rises t o another query: Is the surviving wife upon death of the husband entitled to claim more than her distributive share in the property under consideration given the Islamic rules of intestacy under P.D. 1083?

Petitioner invokes the general principle in Civil Law that conjugal partnership between the decedent and petitioner was created in 1972 by the mere fact of marriage and that all the assets for settlement are presumed conjugal partnership gains. She draws the conclusion that the Muslim Code enacted in 1977 is not applicable to determine the marital status and regime of property with retroactive effect as it would impair vested rights of herein Petitioner. My further question is:

3. Does not Petitioner's status as the only lawful wife negate her submission that her property interest must be deduced first as governed by the Civil Code before the net remainder could be distributed to the heirs in pursuant to P.D. 1083?

Private Respondents, in their Comments, insist that in regard to the rights of parties to inheritance the main <u>issue</u> is:

> *"Whether or not Public Respondent has to apply P.D. 1083 in settling the estate of the Muslim decedent whose religion allowed him to have four wives."*

Therefore, in reply to the issue posed above, Private Respondents contend that the argument advanced is flawed because the existence of four marriages argued against Petitioner's partnership theory of conjugality. As we see it, both Public Respondent and Private Respondent reduce argument thus to bargaining outcomes:

4. If partnership or co-ownership did exist, by whose marriage (first, second, third, fourth or with all) and with what property sustained such legal relation?

5. Should Petitioner maintain that decedent's plural marriages are bigamous or polygamous, then, could not her personality be thought of equally under the law in terms of similar bigamous status?

The Problem in Focus

Much of what the law's concern with civil status and property system is as principal determinants to marriage settlement, divorce settlement, intestate or testate settlement. The determination of the net estate of the decedent, the status and right of succession of the litigants dispose of the case before us.

We are here in need of an analytical framework to apply the finding of facts to law. Legal theorists describe property ownership in terms of a "bundle of rights." The present controversy on review by *certiorari* will subject Muslim law legislation, in its effects, to civil law principles and will test the criteria for proof of Muslim customs. The problem appears to focus on statutory presumption of acquired property during coverture thus:

1. Assume in intestate proceedings, *ex hypothesi*.

Once it is proved that property is jointly acquired during marriage coverture or that widow/s children had assisted in working on it, a wife of a Muslim deceased husband claims a half of it as hereditary share.

Now the law presumes that the property in question was conjugal property.

Therefore it falls on other spouse/s heir/s who denies the claim to rebut the presumption. Can she deduct one-half and distribute shares under Muslim law?

2. Affirm or Reverse or Modify decision in proceedings.

Now the estate court finds that property in question was exclusive property of the husband and so decides to apply Muslim law/custom.

Therefore it relieves the spouse/s' heir/s who oppose/s the claim of presumption in order to establish their claims to have shares. Is distribution of hereditary shares under Muslim law proper?

Discussion and Analysis

We agree, as Petitioner contends, that since the marriage of the decedent to her took place in 1972, the applicable law in this case is the Civil Code [R.A. No. 386] on the issue of marriage settlement. It is my view that, whereas the Muslim Code [P.D. No. 1083] which became only effective only in 1977

was applied in the case at bar, the nature of the property in question has not been sufficiently argued before the Shari'a District Court based on the finding of facts.

Review under Rule 65, not Rule 45:
Juristic rules and procedure

To clear the way, it is not out of context to suggest that this most learned Court take local custom or customary law seriously as having the force of law. After the submission of party litigants have been made and replied to, we beg leave of the Court to explain briefly the novelty in procedural process as embodied in P.D. No. 1083. The Organic Act for the Autonomous Region in Muslim Mindanao provided for a Shari'a Appellate Court with limited jurisdiction (R.A. No. 6734, Sec. 2).

We submit that such Appellate Court is not functioning is beside the point. No appeal and adequate remedy is available in the ordinary courts of law, hence the petition for certiorari with the prayer to annul or modify judgement in the proceedings (Rule 65, Sec. 1). What is the intent behind the provision of P.D. No. 1083 that reads:

> *"Art. 145. Finality of Decisions. – The decisions of the Shari'a District Courts, whether on appeal from the Shari'a Circuit Court or not, shall be final. Nothing herein contained shall affect the original and appellate jurisdiction of the Supreme Court as provided in the constitution."*

The Shari'a courts are not so constrained by case law in exercising *ijtihad* or using independent reasoning on a point of Islamic law. A judge hearing a fresh suit in the Shari'a court is free to follow or ignore an earlier decision, even if the facts and issues involved are to all intent and purpose in *pari materia*, in the exercise of his own *ijtihad* vis-à-vis given circumstances of each case brought before him.

Our drafters of P.D. No. 1083, known as the Code of Muslim Personal Laws of the Philippines (MPC, *for brevity*), were aware that upon petition for review, it would entail a juristic act to receive in evidence proof of Islamic law. The reason is that once a case is reviewed on its sound discretion (Rule 45, Sec. 6) and difficult questions of law decided by the Supreme Court, the effect of leaving the question open is eliminated. In such case the doctrine of precedent applies authoritatively, unless overturned in another case. Needless to say, to understand Islamic law properly, one must have knowledge of the religion of Islam.

May we point out to this Court that Articles 4, 5, 6 and Article 186 of P.D. No. 1083 (Muslim Code) are provisions intended in aid of procedural efficiency of the litigation process. To review the substantive provisions in the light of juristic rules might be more appropriate to the Court of last resort to ascertain and apply Islamic law as known and administered in our jurisdiction. This consideration for *fiqh* or *(juris) prudentia* should be read in relation to the power of the Supreme Court to promulgate the Special Rules of Procedure Governing the Shari'a Court [1983].

It takes "judicial activism" more than "adversary advocacy" to hold a view that makes both possible and desirable for disputes to be decided by appeal to considerations of justice or equity rather than by reference to strict legal rules. In the Shari'a Court, evidence consists of two parts: The first must be directed to the facts of the case and the second is focused on the proofs of Muslim law (*shari'a*) and jurisprudence (*fiqh*) within its jurisdiction. Admission in evidence of matters of local custom (*adat*) or established practices and its existence among local Muslims as applicable to the case is a function of the second part.

The matter of family status has not been sufficiently argued in this Court and so it is my privilege to participate as an *Amicus Curiae*. The point of personal laws, which is often not grasped by expositors of the law, is that these include family status relating to religion. It is of judicial notice that in neighboring jurisdictions, personal laws are very much part of their family laws, and not just as special legislation. With the permission of this Court, I shall offer relevant jurisprudence and the latest exposition on the law.

Marriage of Exceptional Character:
Art. 77 Art. 78, Civil Code

The marriage of Petitioner and the decedent Hadji Abdula Malang was one – in the contemplation of the Civil Code – of an *exceptional character* authorized in Chapter 2 of Title III. The provision of the Civil Code reads:

> *"Art. 78. Marriages between Mohammedans [sic] or pagans [sic] who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92" [amended by R.A. No. 6268].*

This peculiar provision was meant to be both a transitional rule and a transition period as the second paragraph says what it is. "However, twenty years after the approval of this Code, all marriages performed between Mohammedans [term is politically incorrect] or pagans shall be solemnized in accordance with the provisions of this Code" unless extended by the President. Second paragraph of Art. 78 would be in a public law the counterpart to the Administration of Muslim Marriage Enactment in Indonesia, Malaysia, Singapore, Sri Lanka, Pakistan and India. Our own proposed enabling Draft Code was reviewed and modified by the Presidential Commission. In our jurisdiction it is presently covered by the Code of Muslim Personal Laws. In our Report dated 29 August 1975 we stated:

> *"Consequently, the present 'Code of Muslim Personal Laws of the Philippines' which the Commission has drafted, differs substantially from the 'Proposed Code of the Administration of Philippine Muslim Laws of 1974' prepared by the Research Staff created under*

> *Memorandum Order No. 370. The former is primarily substantive whereas the latter is principally administrative in nature and content. For all practical purposes, it may be said that with reference to the draft Code reviewed by the Commission, this Code is almost in its entirety a new one."*

It is my conviction that the transition period was a public policy approach to the law's reluctance to impose a secular moralist view of matrimonial union. There is a rationale, furthermore, to find a distinction between the nature of a Muslim marriage (*nikah*) from a purely civil marriage.

Article 77 of the Civil Code covers a situation when "two persons married in accordance with law desire to ratify their union in conformity with the regulations, rites, or practices of any church, sect, or religion." This represents an adverse objective condition because "it shall no longer be necessary to comply with the requirements of Chapter 1 of this Title and any ratification so made shall merely be considered as a purely religious ceremony." It appears that in the eyes of the law in a civil marriage, the parties do not act on account of religious belief or on *shari'a* pinciple. Quite to the contrary effect, if the marriage does not fulfill the conditions prescribed by the tenets of Islam, it will be invalid in the opinion of Muslim jurists.

(Parenthetically, this point has been reviewed and incorporated in Art. 36 of the Family Code and has become a watershed in jurisprudential exposition of both civil law and canon law).

Precedent calls for an affirmance in order to remove uncertainty of proof of marriage as a basis of legal right.

We are thus faced with divergent rule logic and case logic alongside tests that focus on equity and substantive justice. Of question-begging analogy, it has been said that arguments can be right for wrong reasons. And so, from the way the formulation of the assignment of errors is made, we get a specific understanding of the workings of the legal order facing a Muslim family constituted by subsequent marriage relationships. In my view, such celebrations of matrimony were not civil marriages *per se,* but considered *in extenso* marriages of exceptional character envisioned under the New Civil Code [R.A. No. 386, 1949, Art. 78] that was the law then in force.

R.A. No. 6268 [19 June 1971] amended the second paragraph of Art. 78, extending to thirty years its applicability, with a proviso that it shall not apply to marriages sought to be validated therein if the contracting parties are separated at the time of its approval. This exceptional character is carried into the Family Code as follows:

> *"Art. 34. Marriages among Muslims or among members of the ethnic cultural communities may be performed validly without the necessity of a marriage license, provided they are solemnized in accordance with their customs, rites or practices."*

Thus, non-Muslim polygamous marriages are not possible, but a Muslim can validly perform such marital relations subject to the provisions of the Muslim Code [P.D. 1083].

Effect of Bigamy Rule on Subsequent Marriages

There is a *dilemnatic* choice of rules of decision here that has implications for case logics in our jurisdiction. Just the same we might as well remind ourselves of the paradox in *Lee v. Jones*, 224 La. 231 [1953], that judges "do not base their dissent on the logic of rule." Needless to say, this learned Court cannot overturn the axiom that public policy sacrifices the individual to the general good. Law is a normative system and its norms must derive from given sources and its roots in some external institutions. To say that, in this sense, a given legal system is prone to penetration by the norms and power relations in the larger society is true.

Questions of value judgement often creep into individual acts such as the one reformulated here leading to *mea culpa* or *déjà vu* logic.

Should Petitioner maintain that decedent's plural/multiple marriages are bigamous or polygamous, then, could not her personality be thought of equally under the law in terms of similar status?

There never was doubt in our mind as drafters of the Muslim Code to protect Muslim marriages and divorces contracted before this Code that were bigamous at Civil Law. No proof of nullity

under the law or custom was offered in evidence in regard to their plurality such as being "bigamous"or "polygamous" in the dispute at bar. Yet it has become a contentious point of what is or what is not admissible in the light of the assigned error that Public Respondent has no legal and factual basis because –

> *"[T]hose alleged three marriages could not exist at the same time under the New Civil Code for being polygamous, especially so that those alleged three wives allegedly married the decedent during the lifetime of Aida Limba, the first wife (See Page 2, Item 2 of Opposition to Motion for Reconsideration filed by Private Respondents marked as Annex C, and TSN Page 36 of the hearing on August 18, 1994). Hence, the petitioner who married the decedent after the death of Aida Limba is the only legal wife."*

Public Respondent, in his comment on this point [Memorandum, Sept. 12, 1996, p. 2] says that the divorce was not only valid under Islamic law but also under Philippine law, citing R.A. No. 394. Lawful or "legal wife" must be established under Muslim law.

From my point of view, that she predeceased him makes the issue of divorce no less important than when exactly did she die or he got remarried. That the decedent divorced his first wife Aida Limba and when was it precisely becomes important before this Court because remarriage in the case at bar is

put at issue. Was it revocable (*talak raj'iy*) or irrevocable (*talak bain sugra*)? Between husband and wife there occurs inheritance in the period of *iddah* from a *talak raj'iy*, according to all the four schools of Islamic law. This principle is adopted in the Muslim Code. There is no succession between divorced persons, except for the natural right that exists during the period of *iddah* [Art. 96 (1), P.D. 1083]. Is this a hiatus in the Muslim Code?

This point needs to be explained in relation to division of "acquired property" upon dissolution of marriage by divorce. Article 54 (e) says that a divorce as soon as it becomes irrevocable (*faskh*) has the effect of discharging the husband from his obligation to give support in accordance with Art. 67. The conjugal partnership, if stipulated in the marriage settlements, shall be dissolved and liquidated [Art. 54, (f), P.D. 1083].

We observe, in the context of facts and oral evidence, that the rationale of the decision of the Shari'a District Court was informed by the spouse's personal status on religious grounds or customs established as practices before the Muslim Code [1977] P.D. No. 1083 went into effect. We cannot overlook this fact: Petitioner is the last wife of the decedent [Cf. Public Respondent Memorandum] of an exceptional character.

We need to stress that the Supreme Court once faced this dilemma and, in dealing with the admission of the facts of Muslim culture including its legal component, said:

> *"We formulate no general statement regarding the requisite necessary for the validity of a marriage between Moros according to Mohammedan rites. This is a fact of which* ***no judicial notice may be taken and must be subject to proof in every particular case*** *[emphasis mine]. It is an essential element of the crime of bigamy that the alleged second marriage, having all the essential requisites, would be valid were it not for the subsistence of the first marriage" (People v. Mora Dumpo, 62 Phil 247).*

Whenever thin lines are drawn, as in the case of *Republic of the Philippines v. Court of Appeals and Roridel Olaviano Molina* (G.R. No. 108763, February 13, 1997), this Court finds always a harmonizing precept to suit to the view of a case as Panganiban J. penned:

> *"Ideally – subject to our law on evidence – what is decreed as canonically invalid should also be decreed civilly void." Inversely, as herein, what in juristic edict is deemed valid should be decreed civilly valid. Considered juristically, Muslim marriage is a contract, not a sacrament."*

Be that as it may, P.D. No. 1083 categorically suspends the effect of the felony defined as bigamy in the Revised Penal Code. It fills up the legal lacunae with a "rule on bigamy" stated as follows:

> *"Art. 180. Law applicable. – The provisions of the Revised Penal Code relative to the crime of bigamy shall not apply to a person married in accordance with the provisions of this Code or, before its effectivity, under Muslim law."*

Public Respondent, in his Memorandum, invokes Art. 1080 in taking judicial notice of the fact of divorce of the decedent and remarriage to Private Respondents Jubaida Kado Malang, Nayo Omal Malang, Maby Ganap Malang and Petitioner Neng "Kagui Kadiguia" Malang. The estate court ruled that all of the wives of the decedent Hadji Abdula Malang are entitled to inherit under Islamic law.

We want to put on record, with leave of this Honorable Court, that when we drafted the Muslim Code in all its intendment and operative effect, we aimed to reconstruct the boundaries for decriminalization of bigamous or polygamous marriages. These are familiar grounds: Civil laws have no retroactive effect, unless otherwise provided therein (NCC, Art. 4). Penal laws have a retroactive effect insofar as favorable to the accused (RPC, Art. 22). And thus, the "Rule on Bigamy" in Chapter One of P.D. No. 1083 must be read in correlation to Chapter Two, Section 1 on requisites of marriage, Section 2 on prohibited marriages, Section 3 on void (*batil*) and irregular (*fasid*) marriages.

The transitory provisions are designed to cover some of the awkward gaps in the Civil Code:

"Art. 186. Effect of Code on past acts. –

(1) Acts executed prior to the effectivity of this Code shall be governed by the laws in force at the time of their execution, and nothing herein except as otherwise specifically provided, shall affect their validity or legality or operate to extinguish any right acquired or liability incurred thereby.

(2) A marriage contracted by a Muslim male prior to the effectivity of this Code in accordance with non-Muslim law shall be considered as one contracted under Muslim law provided the spouses register their mutual desire to this effect."

Two points are contemplated under this provision. The first provides a mode of proof available to a party to his prior acts: for instance, in pursuance to Art. 4 on proving a law or custom (*adat*) in evidence as a fact or in correlation to the codal provision concerning proof of Muslim. The second point is a technical one as to the registration of marriages or divorces, giving retroactive effect to the codal provisions concerning proof of Muslim law or custom.

Prior acts necessarily must be scrutinized in the light of the Transitional Provisions of the Civil

Code in the same manner that the Muslim Code makes its provisions suppletory in its application. The principles upon which the transitional provisions of the Civil Code are based can, by analogy, be applied to the Muslim Code not specifically regulated by them. Thus, in rights to inheritance the amount can be reduced if in no other manner can every compulsory heir be given his full share (Art. 2263, R.A. 386) in relation to the Muslim Code as to reduction of shares from the totality of all shares assigned (Art. 129, P.D. 1083).

Petitioner, in her Memorandum, argues that the retroactive application of the Muslim Code on matters involving marital and property relations would impair vested rights. Viewed in the light of Art. 2254 of the Civil Code, she did not acquire the right to the property in question until the husband's moment of death. This Court in *Luque v. Villages* [30 SCRA 417] ruled that a vested right is one that is already established or fixed free from further contingency, uncertainty or controversy. If an analogy is to be made that no legal impediment can result in the retroactivity of adjective provisions of the Muslim Code, as herein, it could be made to the case of *Cabanatuan v. CFI* [51 SCRA 171]. The law applicable to successional rights to the estate of a deceased person is that which governs at the time of his death (*Balais v. Balais* [1959 SCRA 47]).

<u>*Qua* Contract of Muslim Marriage permits Separate Legal Relations</u>

Problems of proof become difficult in qualifying or excluding boundaries of the private

states and personal status. Noteworthy is how we re-institutionalize in a statutory form Islamic mandatory injunction against a Muslim person who contracts subsequent marriages.

When we think about the interconnectedness of law and religion among Muslims, it is to understand the bearing of these words on the institution of marriage and divorce:

> *"Art. 27. By husband – Notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases [P.D. 1083]."*

My opinion on the dispute at bar picks from this clause, "notwithstanding the Islamic law that permits a Muslim to have more than one wife, no Muslim can have more than one wife unless." The permissible is given but the absolute prohibition comes not while the *first* marriage is in effect but on the *fourth* one. The definition of marriage in P.D. No. 1083, Art. 14, is not only a c ivil contract that implies conditions of capacity and performance. Neither is it a sacrament but a civil contract that is concerned with law (*shari'a*) and an act only done with religious intent (*niyyat*). It is, as a rule, formulated *per verb de praesanti*. Once done it becomes an act of will to perform a duty.

As a matter of law, it is that portion of *shari'a* applied to Muslim personal status implying relation or social institution. Under the Muslim Code, the provisions that merit consideration are the provisions on legal capacity and its restrictions relative to operative effect. For purposes of the administration of justice – Who is to be considered a *Muslim*? Because the courts of law treat all religions with equality, we have to discover some objective tests to answer the question. The components of this question are the profession of faith, existence of belief, and tenets of true conversion [precedents exit].

In the dispute at bar, we submit that the rule of decision on the matter is Islamic law that qualifies the personality. There are a number of precedents that can be cited but it can create also some considerations of statutory construction and interpretation. In the case at bar, it is undeniable that all party-litigants are Muslims. The Civil Code considers void *ab initio* those marriages solemnized without marriage license, save marriages of exceptional character, Art. 78 and those bigamous or polygamous marriages not falling under Art. 83, No. 2. This is now reproduced under Art. 35 of the Family Code.

It is of public knowledge that local Muslims get married to more than one up to four wives validly under Islamic law. This state of marital "cohabitations" were not "live-in relationships" had it not for the personal situation in which they found themselves under state laws - as couples 'heedless of civil sanctions' - so aptly described in *Republic of*

the Philippines v. Court of Appeals in the *Separate Opinion* of Romero J.

The premise of Petitioner's argument is built upon family status governed by Civil Law as the general law of the land. There never was a marriage settlement contract, but Petitioner's position is not innovative of the *Nepomuceno v. Court of Appeals* (139 SCRA 206 [1985]) decision of this Honorable Court upholding the petitioner and the decedent who "lived together in an ostensible marital relationship" for 22 years until his death. In the case at bar, their family relationship continued for 20 years until 1993. There is a question from the records about the fact of a prior marriage and a divorce between the decedent and his first wife before the cohabitation between Petitioner and the deceased husband, not to mention the supervening cohabitation and marital reputation.

Rule on Acquired Property during Coverture

For a moment we may neglect the issue of marriage, and focus on the *ex hypothesi* that Petitioner now adopts on the matter of the property acquired during the subsistence of marriage with the decedent.

In the Philippines, the general provisions of the Civil Code, Family Code, and Muslim Code are identical in the order in which property relations between husband and wife are determined. Thus the spouses may stipulate the system to govern their property rights by contract that decides on the marriage settlement in case of dissolution or death

of one spouse. In the absence thereof, the provisions of law or custom established by practices are applied (NCC, Art. 118, FCP, Art. 74, CMP, Art. 37). The law governs family relations as status. No custom, practice or agreement that is destructive of the family shall be recognized or given any effect (NCC, Art. 218). The law requires that a custom must be proved as a fact, according to the rules of evidence (NCC, Art. 12, *Yao Kee v. Sy-Gonzales*, 167 SCRA 736).

There is here, for the Honorable Court, a matter of formulating rule of decision in dividing property upon divorce or death of one of the spouses on the bases of customs or established practices among Muslims in Mindanao, and as governed by Muslim personal law.

Petitioner anchors her claim to and right of succession to the property under intestacy proceedings based on Civil Law. The point is that unlike Civil Law, Islamic Law is essentially jurists' (*fuqaha*) law. In what can best fit into the context of facts and rules of decision, the Shari'a District Court turned to the question of applicability of the Muslim Code in that intestate proceedings upon considerations of our pluralistic, legal system. It might help at this stage to be more specific on my query No. 4:

> *"If other partnership or co-ownership form was established, by whose marriage (first to fourth) and with what jointly acquired property sustained such legal relations?"*

Where, as herein, the intent (*niyyat*) of the parties is not plain, there is a presumption in law as to the standard governing property ownership. Article 220 says, in case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or fact leans toward the community of property during marriage (NCC, Art. 220). On the other hand, the Muslim Code clearly indicates that the regime of complete separation of property pursuant to its provisions and, in a suppletory manner, by the general principles of Islamic law and the Civil Code shall apply unless marriage settlement is stipulated (CMP, Arts. 38, 39). Its effects bear on jointly acquired property.

Petitioner insists that Public Respondent <u>erred in applying</u> this particular provision of the Muslim Code to the intestate estate of Hadji Abdula Malang who died on December 18, 1993. She contends in her pleadings that the applicable provision is Art. 160 of the Civil Code in the case at bar. She holds ground that death terminates conjugal partnership of gains under Art. 175 only to assert it as a reckoning point that determines the property regime of the spouses.

Now, as Petitioner asserts, that conjugal property relation commences precisely on the date the marriage is celebrated (NCC, Art. 119). In the absence of marriage settlements or when the same are void, the regime of conjugal partnership governs the property relations between husband and wife (NCC, Art. 119). That operative phrase, "in the absence of settlements or when the regime agreed upon is void," defines the relative community of

property as established in the Civil Code, but now under the Family Code, the prevailing principle is the absolute community of property (FCP, Art. 75).

Again, on that presupposition, Private Respondents concede that on the question of the decedent's extant marriages, the Civil Code governed the same, but they qualify the presumption to apply only to the first marriage of decedent with Aida Limba, not with respect to his subsequent spouses.

On re-reading the Court Order dated 26 September 1994, now subject of this review in certiorari, in the opinion of the Shari'a District Court:

> "1. *No evidence was adduced by petitioner that a regime of conjugal partnership was ever formed or at least could have existed between them. Hence, the contention of the petitioner that these properties are conjugal because they were acquired during the existence of her marriage with the decedent does not merit the consideration of this Court.*
>
> 2. *Article 160 of the Civil Code and Article 116 of the Family Code cannot be applied because said provisions of law are only applicable if there is only one wife. In the case at bar, evidence has clearly established that the decedent x x x at the time of his death, had four wives x x x that the decedent*

had contracted eight marriages during his lifetime.

3. *In this jurisdiction, conjugal partnership presupposes a valid civil marriage, not a plural marriage or common law relationship.*

4. *Under Islamic law, the regime of property relationship complete separation of property, in the absence of any stipulation to the contrary in the marriage settlement or any other contract (Art. 38, P.D. 1083). There being no evidence of such contrary stipulation or contract, this court concludes as it had begun, that the properties in question, both real and personal, are not conjugal, but rather exclusive property of the decedent."*

Effect of Burden of Evidence: Change of Theory of Case?

Public Respondent Judge plausibly proceeded upon a premise that the estate assets in question are the exclusive property of the decedent Hadji Abdula Malang. To my mind, Public Respondent Judge is correct in ruling that conjugal property cannot exist in plural marriages. We agree with the estate court that the marriage could not be a civil marriage because it was not monogamous.

What is it that puzzles us? The challenged Court Order rested on a premise that rules out the

applicability of Art. 160 of the Civil Code based on the evidence that affirms the factuality of decedent's existing marriages. Put another way, the fact that decedent was survived by four widows at the time of death overturns the legal presumption of conjugality. What it does simply is to determine the operative law governing their marital relationships. The burden of proof remains where it is. But the burden to show the nature of the property rests on the one alleging that it pertains exclusively to the decedent or the petitioner or the surviving wives or heirs, and the general presumption now operates in favor of the one who transfers the ownership.

My more basic question turns to the effect of the burden of evidence on the statutory presumption of property relations between the spouses. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage x x x the community of property during marriage (Art. 220). The assailed decision derives from the negation of the statutory presumption under Art. 160, thus giving support to the application of Art. 148 governing exclusive property of each spouse. Petitioner invoked Art. 145 and Art. 146 that conjugal partnership commences precisely on the date of the marriage and that a waiver or any stipulation to the contrary is void. It is not disputed that the decedent got married to the spouses in 1974, prior to the date when P.D. No. 1083 took effect in 1977.

To my mind, the correlative provisions applicable in the case at bar are Art. 148 of the Civil Code and Art. 41 of the Muslim Code. The court

assumed that, even in point of time, if the parties agreed on a regime of conjugal partnership gains, it would have been contrary to the Islamic-law prescribed regime of complete separation of property and directed public policy considerations.

Contrariwise, Public Respondent applied Art. 38 of the Muslim Code. My careful evaluation and reading of codal texts of the Civil Code, particularly Arts. 145, 146, and 160, cannot be reconciled to Art. 38, P.D.1083 as correlatives and opposites. Arguments put up appear to me as a fallacy based on the negation of opposites rather than the affirmation of legal order. The proper interpretation of the second sentence in Art. 119 of the Civil Code in relation to Art. 38 of the Muslim Code and Art. 75 of the Family Code will settle the options on the regime of property relations between spouses. This will become clear when we deal with the facts of the case at bar. The core correlatives of legal systems are Art. 37 of the Muslim Code and Art. 118 of the Civil Code, and now Art. 74 of the Family Code because these operate to create relations and situations we in the bench and bar state as legal order or rule of law.

Situation makes less abstract the ground rules under the Civil Code and Muslim Code that apply to property acquired during coverture for a valid civil marriage:

Situation A

In which Petitioner finds its position per Memorandum: Petitioner as the only legal wife

surviving with children of first wife.

Art. 143. All property of the conjugal partnership of gains	Civil Status: legal spouses Property Relations
i. is owned in common ii. by the husband and wife	[*Sharikat* or partnership law] Conjugal partnership, 147 NCC
Art. 160. All property of the marriage i. Presumed to belong to the conjugal partnership, unless	Acquired property [coverture] [No legal presumption in *sharikat* Common fund/Co-owners
ii. It be proved that it pertains exclusively to the husband or to the wife	Exclusive property, Art. 148 NCC [Or Art. 41, P.D. 1083]

Legal or Statutory Presumption;
Admission of Proof of Presumption

Not only does Petitioner cite the provision of law that "all property of the marriage is presumed to belong to the conjugal partnership (NCC, Art. 160), she also banks on the fact that legal presumption stands in place of evidence. But the burden of proof exists only with a fact in issue (C.J.S. 711). It is a basic rule that the effect of a statutory presumption upon burden of evidence is to relieve those favored thereby of proving the fact presumed (*Velasco v. Masa*, 10 Phil 272). In the dispute at bar, the admission in open court by the Private Respondents of the fact of marriage of Petitioner to the decedent sustains the burden of evidence (*bayyinat*) on that point which it covers only. Objective probability is taken into account, which is a reverse of the presumption.

The burden of proof remains with the Petitioner to establish her claim to the property in question. On this point, the *onus probandi* is on the parties to sustain their respective contentions. The

burden of evidence merely creates a *prima facie* case in her favor that seems to impress the Private Respondents as a change in Petitioner's "theory of conjugality." The effect of the legal presumption of conjugal ownership is to create the necessity of presenting evidence on the part of Private Respondents to overcome the *prima facie* case which, if they fail to dispute or rebut with evidence, will prevail. In support of her averment, Petitioner has submitted evidence of facts established by judicial admissions of Private Respondents as well as family portraits, certificates of titles, tax declarations, deeds of sale, car registration, and certificates of bank deposits all originally marked as Exhibits "K" to "DD."

At this juncture, it occurs to me, that part of the bone of contention of the party litigants arising from the rebutable or disputable presumption is that under the provision of the Civil Code, the phrase "*acquired during the marriage*" does not appear in Art. 160 as worded. The progeny of such phrase is traceable to case laws that "properties acquired during coverture" are conjugal as against the claim that these are exclusive properties. Presumption of conjugal partnership is rebuttable. The Court, *a quo,* requires *clear*, *satisfactory* and *convincing proof* in rebuttal of statutory presumption (*Ahem v. Julian*, 30 Phil. 607). It may be pointed out that in the counterpart of Art. 160 as now reproduced in the Family Code as Art. 116, the clause "acquired during the marriage, whether the acquisition appears to have been made, contracted or registered in the name of one or both spouses" is inserted. Proof of acquisition during the coverture is a condition *sine*

qua non for the operation of the presumption in favor of conjugal ownership (*Maramba v. Lozano*, 20 SCRA 474).

Public Respondent now contends that there is no allegation whatsoever in the petition that said properties are conjugal and notes that Petitioner's "theory of conjugality is rather strange and newly adopted, having raised it only after the decision was rendered" [Memorandum]. It is here pertinent to point out that under juristic rules, no such presumption arises in rights to property or co-ownership under Islamic law. The opposite principle of antedating an event as little as possible operates in favor of Respondents. They reject Petitioner's conjugal theory as a "newly-adopted posture."

On the other hand, Private Respondents relying on the decision in *Wong v. Court of Appeal*s (204 SCRA 297) contend that properties to be conjugal by nature must be proven by clear proofs that they were acquired during the marriage. To determine the nature of property acquired during the coverture, the controlling factor is the source of the money utilized in the purchase thereof (*Wongs v. Intermediate Appellate Court,* 200 SCRA 792). On record, it appears that Public Respondent Judge approved the granting of cash advance from the intestate assets the amount of P250,000 for her medical expenses despite the objection of Private Respondent. It appears that Petitioner assumed that the property exclusively belonged to the husband from the very beginning of the settlemnet proceedings for there is no clear allegation of

partnership in the petition.

At trial, the estate court observed that Petitioner did not testify orally in her behalf whereas the Private Respondents and their witnesses who, despite appearing illiterates, testified naturally. The estate court found that neither the evidence of the opposition nor that of petitioner shows that petitioner Neng "Kagui Kadiguia" Malang had any participation in the farming and business activity of the decedent.

Public Respondent Judge found that Petitioner failed to adduce evidence showing that she had contributed to the funds used in the acquisition of the properties in question. At the close of the proceedings, the estate court gave credence to the oral evidence that proved other members of the families contributed, notably wives Jubaida Kado, Malang, Nayo Omar Malang, and Mabay Aziz Malang who were also farming the property.

Public Respondent Judge held that the properties covered by Exhibits "K" to "DD" cannot be considered conjugal and do not form parts of a conjugal property regime. The sharing in the conjugal partnership of gains and benefits is the first test applied in determining whether a partnership exists.

The estate court, in applying the law to the evidence relating to the decedent's property acquired during marriage, ruled that conjugal partnership was not contemplated. The estate court merely followed a rule of decision in *Magallon v.*

Montejo (146 SCRA 282), *Litam v. Rivera* and *Stuart v. Yatco* (12 SCRA 718), holding that once entry on the certificate of title has been established by evidence, it is no longer disputable as resulting from mistake or fraud [i.e., rule of indefeasibility of title]. But it does not necessarily prove that the land is "conjugal" property. Thus, in a case such as under consideration, the phrase "married to Neng Malang" in said certificate of title is "merely descriptive of the civil status" of the registered onvner.

Established Practices as Customary law (*Adat*)

The consideration of what corresponds to "acquired property during coverture" in Islamic law or Muslim local custom was inadequately passed upon at initial proceedings before the Shari'a District Court. In my view there is an alternative approach that falls within the contemplation of the Muslim Code, Civil Code, and Family Code. In my view there is a misapplication of the provisions on conjugal partnership gains, for under Muslim law and custom, there is no "statutory separate estate" of the wife as a sharer.

It is incumbent upon the Shari'a Courts to examine in reference to the joint effort or contribution in the production of income with which the properties in question were acquired during the subsistence of marriage as *sharikat* or *sa-pacharian* property. Settled is the rule in Kadi Courts of Malaysia and the Shari'a Court of Singapore that once it is clearly established that property was "acquired during coverture," a presumption arises under *adat* or customary law that it is *harta*

sapancharian (*Zainoon v. Mohammed Zain* [1981] 2 M.L.J.111). This ruleof law is Muslim custom rather than of Islamic law which the court must take judicial notice of, and then it proceeds to consider the wife's claim based on Islamic law as in the Order herein challenged.

The similarity in Mindanao, Basilan, Sulu and Palawan is evident in the custom relating to betrothal and marriage which gives proof of their property relations. It is in respect of only one land [OCT NO. P-05317] registered in his given names "Abdul Wagai married to Aida Limba" that we find the full implication of what rules govern the partition and distribution of property jointly acquired on divorce or death of one spouse.

It is recognized in the Muslim Code that the dowry (*mahr*) of the wife and nuptial gifts (*hiba*) to each spouse is determined under Muslim custom and Islamic law (Art. 41 (d), P. D. 1083). This is considered exclusive property. Noteworthy is the provision on the order of preference of claims under Title IV covering Settlement and Partition of Estate that includes unpaid dowry alms (Art. 136, P. D. 1083).

Situation B

In which Private Respondents find its alternative position per Memorandum: Deceased first wife as co-owner, three other widows as co-owners on joint efforts. Consider that Art. 144 applies the rules of co-ownership to common properties:

Art. 144. When a man and a woman live together as husband and wife	Personal status live-in
i. but they are not married, or	"Common law"
ii. their marriage is void from the beginning	Illegal
iii. property acquired by either or both of them	Joint efforts
iv. through their work or industry or their wages and salaries	Joint earnings Art. 484-501
shall be governed by the rules on co-ownership	Common properties

This could have been the provision applied to the dispute were it not for the fact that unions without marriage are not acceptable from the Islamic *shari'a* viewpoint. The counterpart provision as now reworded under the Family Code uses "capacitated to marry each other" to imply possible removal of impediments.

In my opinion, the marriage in the case at bar cannot be "common-law relation" because it is not a monogamous union. Strictly speaking, there is no such thing as a widow's estate in Islamic law of succession because upon the death of an owner, his property will be divided into numerous fractions, following extremely rigid rules.

We are of course aware of the early decisions, *Layson v. Aliquino et al.*, (C.A. O.G. 4216) and *Del Castillo, et al. v. Ventura, et al.*, (C.A, G.R. Nos. 13263 [1957]), that ruled on the effects of void marriages such as the bigamous marital relations of the parties. The point is whether the marriage is in good faith or bad faith on the part of both or one of them, their common property was divided between them and shared alike.

The principle we are interested in at the moment is that decisions of the Court declare the parties have an equal interest in properties acquired through their *joint efforts*. Art. 144 provides that the property be *acquired by either or both of them* to create civil partnership. Given the structural relations of plural law situation obtaining now in this jurisdiction and the legal constraints of *Malang's relationship* to his spouses and to his families cannot continue to be informed by the law's inner ideal that Panganiban J. reasons out in *Molina's situation*. Here the judicial task is to use case logic to strive toward a more purposive jurisprudence.

Situation C:

Modifications in which we give effect to marriage of *exceptional character* under the Civil Code and subsequent marriages under adjective provisions of the Muslim Code (P.D. No. 1083) without prejudice to Art. 2255 re: vested or acquired right.

The question for decision here is not simply civil status but the determination in Civil Law, Islamic law, customs or established practices on the rights or claims to property in cases of intestacy and divorce.

Can a wife/widow, upon divorce or on death of the husband, claim greater share in the hereditary estate consisting of properties, real and personal, acquired jointly by the spouses or one of them during the subsistence of marriage?

If law is, as suggested, a function of undisclosed attitudes of judges that influence their decision on private interests, it will be on grounds of equity and public policy:

> *"Art. 218. The law governs family relations. No custom, practice or agreement which is destructive of the family shall be recognized or given any effect.*
>
> *Art. 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression."*

Where, as herein, we decide to look into property relations between husband and wife in analogous citation can be found in P. D. No. 1083, Arts. 37 and 118 of R.A. No. 386 and Art. 74 of E.O. No. 209. It is essential to understand their jurisprudential structures, borrowing a phrase from equity, in the confluence of two streams in one channel that do not mix but move on in continuum. Islamic law is a system of *jus* (law of edicts) rather than a *lex* (marriage regulation) for it preceded the state's existence meant to be something more than mere custom. Subjecting the provisions of the Muslim code to the test of repugnancy against the

Civil Code provisions finds common ground in customary law.

With respect to law and equity as it is in the original jurisdiction of this Court, it is such rule of decision which would have been applied by it to a case, if Art. 37 (c) and Art. 118 (3) and Art. 74 (3) had not been rendered operational by law.

Common Grounds for the Codal Provisions

Statutory exceptions are not so unusual as exemptions that are shown here. In case of conflict between any provision of the Muslim Code and laws of general appilication, the former shall prevail (Art. 3, P.D. 1083).

Muslim code [P.D. No. 1083]	Person's situation under the law
Art. 37. How governed. - The property relations between husband and wife shall be governed in the following order:	Legal relations of two persons Or, separate legal relations with each of the two
a. By contract before or at the time of the celebration of marriage	No marriage settlement or agreement
b. By the provisions of this Code	Conflict of provisions
c. By custom	Applicable

Civil Code [R.A. No. 386]	Family Code [E.O. No. 209]
Art. 118. The property relations between husband and wife shall be governed in the following order:	Art. 74. The property relations between husband and wife shall be governed in the following order:
1. By contract executed before the marriage	1. By marriage settlements executed before marriage
2. By the provisions of this Code	2. By provisions of this Code and
3. By custom	3. By local custom

What is common to these provisions of the Muslim Code, Civil Code, and Family Code? To this question, various answers can be made but what we are interested here at the moment is legal order or sequence in which law and family are bound by a rule of decision. Out there, in Muslim Mindanao, there is a search for companionship in the household, familial relationships and, at times, a tendency to live and lead a life outside state law. Out there, reason or logic is not the kind that disputes between *is* and *ought* proposition.

At intestate estate proceedings, there is clear evidence that the party litigants are *Muslims* who have been engaged in traditional occupation of working on farmlands and whose properties are mostly confined to lands and animals. As head of the family, Hadji Abdula Malang took up residence at Cotabato City where he owned lands, conducted business and kept bank accounts, and drove his motor vehicle to his farms. The type of interests in land and the methods of transferring those property interests are very much part of what the disputed shares to inheritance and succession before us.

The theory of Islamic Jurisprudence on which the right of succession and inheritance is based assumes that even after death, the decedent's right to his property still inhere in him to answer for charges and claims (Art. 135). The estate of a deceased Muslim in the Philippines is administered under the provisions of P.D. No.1083. The inheritance is defined as follows:

> *"Art. 92. Inheritance (mirath). - The inheritance of a person includes all properties of any kind, movable or immovable, whether ancestral or acquired either by onerous or gratuitous title, as well as all transmissible rights and obligations at the time of his death and those that accrue thereto before partition."*

The law applicable to the inheritance of a deceased Muslim is the school of law according to which rite he professed at the time of his death. If the deceased person's *madhab* is known, the Shafi'i school of law may be given preference together with the special rules of procedure adopted to this Code (Art. 134, Par. 2).

> *"The cause for inheritance among the people are three, everyone of which entitles the possessor thereof the right to inherit provided that there is no impediment. They are **nikah** (marriage), **wala'** (relationship) and **nasab** (kinship). There is no other cause for inheritance besides these [Ilmul Fara'id]."*

Vesting of Rights to Inheritance Upon Death of the Husband

The question of vesting of inheritance rests entirely upon the time when the person, through whom the heirs claim, died. On the death of a Muslim person, inheritance is vested in his heirs according to their respective shares. The

transmission of hereditary estate to his heirs and others is governed by the Muslim Code (Art. 89; NCC Art. 777). Muslim heirs are independent owners of their shares and they succeed to the whole of the deceased person's estate as common owners in specific shares at the moment of his death. The physical distribution takes place much later than the appointment in the eye of the law. Petitioner's claim for half-share will not be in the nature of vested rights, but adverse claims and the *residuim* is not the same as the *tasib* (residue) in Islamic law.

Evidence of Private Respondents has clearly established that decedent Hadji Abdula Malang, at the time of his death, was survived by four wives and children by his first and fourth wife. Evidence further shows that the decedent had contracted eight (8) marriages during his lifetime including the herein Petitioner. The dispute at bar is a rare case where the husband maintained four wives after divorcing his first wife with a *talaq ba'in* (irrevocable). And, having remarried three wives, he married a fourth wife in her stead, then divorced her only to marry and divorce twice before marrying herein Petitioner the last of the fourth, but the eighth. The marriage was potentially polygamous from the beginning. The processes of law adaptation that is designed to promote compromises not only have prospective but also retroactive effect under Art. 2266 (NCC). Muslim custom is subject in its effect both to Civil law and Islamic law.

The Shari'a District Court applied the Muslim Code citing the proof of Islamic law as follows:

"Under Islamic law, the share of a wife is 1/8 of the hereditary estate, if the decedent has descendant; if no descendant, 1/4 of the estate (Art. 112, P.D. 1083; 4:12, Holy Qur'an). If more than one wife but not exceeding four, they share equally in the 1/8 or 1/4 as the case may be. The children or descendants of the decedent, if male and female concur, inherit as residuaries; the share of a male is double the share of a female (Art. 122, par. (1), P.D. 1083; 4:11, Holy Qur'an)."

Now it may well be that the Shari'a District Court was hard put to find the objective of property rights in partnership (*sharikat*) in the Muslim Code. No legal presumption in the Shafi'i school of law arises in favor of claim against the estate even if it is shown that the property was acquired during the marriage. There exists only among Muslims in the South the customary practice of *pancharian* meaning *joint earnings* of a husband and his wife as distinct from *waris pusaka* meaning inherited or ancestral property. The first thing that might have been looked into would be Art. 43 of P.D. 1083 for it says household property that customarily pertains to or is used by either spouse shall be *prima facie* presumed to be the property of said spouse.

The common term for property is *tamok* among the Maguindanaons and Maranaos amd *harta* among the Tausogs. The question at this juncture is how to apply customary (*adat*) law to the facts of the case at bar. There has been no decision in this Court of the applicability of the principle of *tamok a-*

pantiarian or *harta sapancharian*. It is settled rule in Brunei, Indonesia, Malaysia and Singapore jurisdictions that *harta sapancharian* is not so much based on Islamic jurisprudence as on customs practiced by (Muslims) Malays. Conceived initially as a part of custom to be verified by Kathi Court and village elders, it had earned judicial notice and received the stamp of certainty, if not predictability.

Cases and Rules of Islamic Jurisprudence on Custom

There is much to be quoted than said for the approach to *adat* or customary law, decision viewed, in the Courts of law. Shari'a courts have likewise consistently applied the rules of *fiqh* or Islamic jurisprudence. Standard treatises and works on Muslim law and jurisprudence shall be given persuasive weight in the interpretation of Muslim law (Art. 4., par. (2), P.D. 1083). In this regard, the landmark case on the widow's claim for a share of *harta sepacarian* [variation in spelling] upon her husband's death is *Hujah Lijah binti Jamal v. Fatima binti Mat Diah* [1930] (16 M.L.J. 63) for its definition:

> *"The phrase* ***harta sepancarian*** *I understand to mean "acquired property" with the specialized meaning in this context of "property acquired during the subsistence of their marriage by a husband and a wife out of their resources or by their joint efforts." The acquisition referred to may extend to cover mere enhancement of value by reason of cultivation or development."*

The *Hujah Lijah v. Fatimah* decision says a widow's suit for *harta sepancharian* is not a claim for a share of the deceased's estate, but a claim adverse to the estate for property of the claimant held in the name of the deceased husband. The share is usually one-half (1/2). This share is apart from any question of her claim to a distributive share in the (*fara'id*) intestate estate. By way of comparison, the extreme circumstance is one who is "so situated that they cannot inherit under Islamic law" which we have recognized in Art. 93 of our Muslim Code. By operation of law, it also provided under our Muslim Code: "The parent or spouse, who is otherwise disqualified to inherit in view of Art. 93 (c) shall be entitled to one-third of what he or she would have received without such disqualification" (Art. 107, P. D. 1083).

Jurisprudence rests upon recognition of the part played by the divorced spouse in the acquisition of the property. The High Court's holding on divorce in *Boto binti Taha v. Jaafar bin Muhamed* ([1985] 2 M.L.J.98) holding on divorce established the "automatic entitlement" to "a minimum one-third (1/3)" with *results* further than "a mere rebuttal presumption." One-third (1/3) share of property acquired during the marriage goes up to one-half (1/2) share if she assisted in the cultivation of the land or the acquisition. Writing for the majority, Sallah Abas, C. J. opined:

> *"In my judgement the fact of the plaintiff accompanying the defendant in his business trips and giving up employment because of the marriage must*

amount to her joint efforts in the acquisition of these properties. Granting that the plaintiff took no direct part in the defendant's fish business, but her constant companionship was responsible for the defendant's peace of mind which enabled him to function effectively as a businessman x x x Thus, it is the fact of the marriage and what the parties did during their marriage that makes these properties ***harta sepancarian.***"

The following rules are parallel to our own Special Rules of Procedure Governing the Shari'a Court (*Ijra-at Mahakim al-Shari-ah*) taken from the celebrated case of *Zainuddin v. Anita* [1979] (Wilayah Persekutuan Syarikat Court of Appeals, Civil Appeal No. 12.79) issued as guidelines:

"Where properties have been acquired through the joint efforts of the husband and wife, and the parties now dispute their contribution, the dispute shall be settled as follows:

i. If there is sufficient evidence to prove the contribution of the person making the claim, then the claimant is entitled to a share in that property (in proportion to the value of such contribution);

ii. In the absence of any evidence establishing such contribution, both

parties should take the oath. If both of them took the oath, the properties are to be divided equally. If both parties refused to take the oath, the properties are also to be divided equally. Where only one party was willing to take the oath whereas the other refuses to do so, the properties will be given absolutely to the one taking the oath. If either party or both of them have died, the oath should be taken by the heirs of the deceased, if they so desire; and

iii. *If there is a custom or established practice according to which one party puts in more effort than the other, the division of properties will be made by agreement in accordance with such customs or established practice. If the parties disagree, the division will be settled in accordance with the principles stated in (i) and (ii) above."*

In that case, the wife claimed a half-share in the matrimonial home acquired during coverture as *harta sepencarian* upon the husband's divorce which the Chief Kadi's Court granted. The husband filed an appeal. The Court of Appeals found that the Chief Kadi had not actually made a specific finding that the property was *harta sepencarian* but merely gave his opinion that the wife was entitled to a share of the property. The Court of Appeals then provided the above guidelines for dealing with claims of *harta sepancarian* upon divorce. In our jurisdiction, no

judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws (Art. 9, NCC).

Mutual oath (*tahalif*) is provided in Section 15 of our Special Rules of Procedure. The *Zainuddin* ruling was based on both parties taking the oath that the party was *harta sepencarian*. The Chief Kadi's decision was consequently affirmed. As our Court recognizes in *Midapak Tampar, et. al. v. Esmael Usman*, et. al. (G.R. No. 8207, August 16, 1991), we had to put up with a contrasting worldview. There, this Court shared the concern of petitioners in the use of the "*yamin*" (oath) in the proceedings, and for that matter, before Philippine Shari'a courts. This Court in *Tampar* gives a gist with respect to the effect of custom on judicial decision under Section 7, Special Rules of Procedure:

> *"If the plaintiff has no evidence to prove his claim, the defendant shall take an oath and judgement shall be rendered in his favor by the Court. On the other hand, should defendant refuse to take an oath, plaintiff may affirm his claim under oath, in which case judgement shall be rendered in his favor.*
>
> *Said provision effectively deprives a litigant of his constitutional right to due process. It denies a party his right to confront the witness against him and to cross-examine them (Sec. 6, Rule 132, Rules of Court). It should have no place even in the Special Rules of Procedure of*

the Shari'a Courts of the country.

The possible deletion of this provision from the said rules should be considered. For this purpose, a committee should be constituted by the Court to review the said special rules, including the above discussed provision so that appropriate amendments thereof may be undertaken by the Court thereafter."

And this *obiter,* if it pleases this Court, makes good footnote in case law. There existed probably some dissatisfaction among the Justices but this Court found no necessity to make changes. The *ponente* somewhat applied the "hard cases make bad law" approach but had he looked hard enough to the persuasive weight of *Zainuddin,* the comments in *Tampar* would have been tempered with better appreciation of the process.

Now the point to be made is that our Shari'a District Court could have turned to customs as established procedurally under the Muslim Code: Art. 37(c) by custom guided by Art. 4: Construction and Interpretation and Art. 5: Proof of Muslim Law and *Adat*, and Art. 6: Conflict in Islamic Schools of Law and, suppletorily, through Arts. 118, 218 and 12 of the Civil Code. As a general rule, resulting from compelling considerations as well *of justice* as *of policy*, it is my submission that this Court, if the case is sent for retrial, must lay down principles and practices in the clearest term "what must amount to joint efforts in the acquisition of these properties." The fact of multiple marriages and divorces that the

decedent entered into bears the bonds of matrimony with exceptional character. The unintended consequences of the double–edged body of rules were not, after all, intended to be applicable to abstract persons and acts but real life situations.

Comments on Petitioner's Prayers

I. Turning back to the First Assignment of Errors we answer Query No. 1.

We are not called here to pass upon a conflict of laws. In reviewing the statutory construction of the Muslim Code, we draw an uncertain line but cross the path in code harmonization of P.D. No. 1083 and R.A. No. 386 and to some extent E.O. No. 209.

A basic postulate of our plural law situation is that those deriving joint ownership, those arising from matrimonial regime and duty of support, and even those devolving by universal succession have unprecedented point of contact with Islamic law. Of more fundamental import is how the law exists in the life of the person to whom that law applies and whose activities it affects. The question *who* is considered a *Muslim* person becomes evident in the ground or cause of inheritance such as marriage, relations and kinship. Thus, the nature of contract of the marriage is determined by *lex actus* on this point of adjective law rather than *lex loci*. The concept of a Muslim person's responsibility is subsumed under that of his capacity. The need to look into the capacity arises from the need for a

primary rule of recognition in the choice of law situation governing the adherence to a particular school of law for purposes of the Muslim Code (Art. 6, P.D. 1083).

In my view, Muslim marriages were considered of exceptional character because of the circumstances in which the parties were situated either as modifying or limiting their capacities. *Lex actus* governs in choice of law situation. Issues on the three marriages situate the parties to a conflict of personal laws within bounds of the state.

Not only is there absence of arbitrariness but Public Respondent Judge did not err in giving credence to oral evidence of marriages contracted by the decedent. It matters in the dispute at bar that the form of admission (*iqrar*) of the fact of marriages of Private Respondents were admitting the right of another against themselves which therefore can not be taken as self-serving. After decedent divorced (*talak ba'in*) his first wife and remarried thus entered into potentially polygamous unions performed under customary rites. An essential element to this was that the succeeding fourth wife was introduced and received by the existing families who are the respondents herein.

The admission of oral evidence in order to prove the three marriages was not an erroneous or capricious exercise of judgement on the part of the respondent judge. The term *'shuhud'* in the Special Rules of Procedure governing the Shari'a courts [Sec. 6 (2)] means statement of witnesses and derives from *'shahada'*, in the sense of testimonial proof, can mean

either testimony or witnessing. In the Muslim system of procedure and evidence, it might help to explain here that it is the deposition made before a judge, of a witness supporting the claim of one person against another in a lawsuit. The testimony is based upon prior knowledge as to statements about a fact or facts. Hence, the identity of the *shuhud* who gave it is analogous to the offer of document and its acceptability. Witnesses must testify to the formal acknowledgement (*iqrar*) made by the parties and not just their affirmation [Fat. 'Alam, 423].

This is at the heart of the issue: Muslims will always be Muslims as a *Muslim*. The legislature did not step in and validate or invalidate those plural marriages between Muslims performed in accordance with the customs, rites or practices. This is evident from Art. 80 (4), Art. 83 (2) and Art. 144 which provisions, when read together, treat bigamous or polygamous marriages as excepted upon removal of the impediments thus exempting for the time being those so situated from the general prohibition. And so, we stress the point, statutory exceptions are not so unusual as exemptions.

II. Turning to the Second Assignment of Error, we answer Query No. 2.

Questions of property and Muslim inheritance seldom reach the court of litigation as great cases are settled out of court. Such matters often end up in compromise or agreement and the tendency is to provide the widow more than her share under Muslim law. The aliquot part of the

wife sums up low. In vast number of Muslim families, *one-eighth* of the estate does not provide the widow with enough subsistence. The matter of claim of the wife therefore has been regulated by custom having the force of law with regard to the interest of those concerned. My query No. 2 is:

Is a surviving wife on death of the husband entitled to claim more than her distributive share in jointly acquired property given the Islamic rule of intestacy under P. D. 1083?

Petitioner's prayers for relief is premised upon the allegation that the estate court has amply regarded Private Respondents 96.875% of the estate and a meager share of only 3.125%. The heirs of first wife were awarded 75% of the properties under consideration. To compare, in my view, the totality or universality of assets and liabilities of the estate and the net remainder under Civil Law with Islamic Law can be misleading. [Suffice it to explain here that <u>sharers</u> are *persons* who take a definite fraction and <u>residuaries</u>, those who take the residue after the sharers are satisfied, or the whole if there are no sharers, but nothing until the sharers, if any, have been deducted.] Making a whole number of the fixed-fractional shares each person is entitled to, is the first primary rule of calculation which must not be conceived as some heirs taking the bulk of the property. My query turns now to No. 3:

Does not Petitioner's status, allegedly as the only wife, negate her submission that her property interest must be deducted first as governed by the New Civil Code

before the net reminder could be distributed to the heirs pursuant to P. D. 1083?

It is incorrect to say that the widow Petitioner has a separate conjugal share of one-half for whatever action she takes against the estate of the deceased husband are in the nature of an adverse claim to and share in the estate of the decedent. The influence of Civil Law is certainly felt in the assigned error because a widow's claim under Islamic Law to a "share" in the intestate estate of her deceased husband is confined to her distributive share in his estate as hereditary property (*waris pusaka*). The fact is - and this is important - that it is only the "residue" that is available for distribution among the heirs. Whether a widow is entitled to any greater inherited share (*farai'd*) in the estate of her deceased husband than her *waris pusaka* inherited or ancestral would amount to *harta sa-panchirian* acquired by joint earnings or joint efforts during coverture.

As we observed it, this Court has to consider that the relief Petitioner seeks ultimately is to declare co-ownership of the properties acquired during her marriage with the decedent and to distribute the net estate to herself and the children of the decedent with his first wife (now deceased).

We are of the opinion as *Amicus Curiae* that the conclusion arrived at by the learned judge of the 5th Shari'a District Court on this part of the case is correct.

Petitioner's claim for conjugal partnership is untenable other than as rights of partnership (*sharikat*) suit adverse to Hadji Abdula Malang's intestate estate that is rarely brought by a Muslim widow. Working on the land is more visible than monetary contributions to the joint earnings or joint efforts. It is very difficult in most cases for the woman to prove the purchase of the land from monies acquired by joint labor. The family purse being a private matter between husband and wife can seldom be proved by extraneous evidence to rebut presumptions. But the fact that the deceased husband is the registered owner of property or the title holder is not itself sufficient to dismiss the wife's claim or widow's shares, as in the dispute at bar. In real life situation, it is natural as it is often a customary practice among Muslims in Mindanao for the title to be registered in the name of the husband.

We seriously think that such types of claim or forms of ownership have not been contemplated in the Muslim Code in its present statutory form, in other manner except as *sa-pancharian* joint earnings or efforts during coverture.

Where, due to the personal relation of parties as Muslims, the Court may justifiably grant that the Islamic rule of intestacy governs the case, what is to be done?

1. We submit, as *Amicus Curiae*, for this Court's resolution to uphold Public Respondent Judge in holding that the property in question was the exclusive property of decedent based on Art. 160

of the Civil Code in correlation to Art. 41 of P.D. 1083 as the operative principles, and to Art. 145 of the Code only in regard to establishing the date of celebration of marriage.

2. We submit for this Court's resolution to modify the order of respondent judge in consideration of the effect of the provisions of Arts. 27and 38 of P.D. 1083 that operates in the absence of marriage settlement. The Court should take judicial notice of the customary form of jointly acquired property by husband and wife subject to rules of evidence on dissolution of marriage by divorce or death of one spouse.

RECOMMENDATION

A further question emerges as to whether or not the Supreme Court is the proper forum, or a legislative enactment is needed on questions of the rights of parties upon divorce, and upon succession to the estate of deceased intestates. A statutory definition is not necessary for we have applicable codal provisions under the Civil Code, the Family Code, and the Muslim Code. *Legis constructio non facit injuriam*. By statutory construction, we respectfully submit, this Honorable Court En Banc can set a precedent. The jurisdiction of this Court to decide questions of law and existing jurisprudence on the matter can be very well be made use of in order to determine the rights of the parties.

WHEREFORE, it is respectfully submitted that this Honorable Court take consideration of the following –

1. Judicial notice of the governing principle of *sa-panchiarian* as part of the Muslim custom in Mindanao being enforceable and not contrary to law, public order or public policy.

2. Judicial guidelines as to reception of evidence in disputes on property, real or personal, acquired during coverture for the court to take judicial notice on dissolution of marriage by divorce or death of spouse.

3. Judicial holding that once proof is adduced that the immovable property is acquired during coverture, a rebuttable presumption arises as *sa-panchiarian.*

4. Justiciable issue to form bases of action for a wife upon dissolution of marriage or widow upon death of the husband on her claim to property acquired during coverture by joint earnings, efforts or resources.

5. Recognition of custom established as practice to award a wife or widow one-third to one-half share over and above their one-eighth distributive share.

There is merit in the claim of Petitioner adverse to the estate that *sa-pancharian* properties jointly acquired by husband and surviving spouses during coverture recognized by custom were apparently included in the total inventory of the intestate assets.

The *quantum* of *sa-pancharian* to be awarded to each spouse is one-half of the undivided portion of land as identified or one-third as compensatory entitlement if unidentifiable before dividing the shares between them and the residues to be distributed according to Islamic rules of inheritance under P.D. No. 1083. The distribution in the Order of the estate court should be confirmed with adjustment made for this purpose.

Judicial guidelines set along the lines in the *Zainuddin* decision should be adopted and incorporated in this Court's holding applicable to disputes on acquired property upon divorce or in intestacy proceedings before the Shari'a District Courts.

As to Relief, the decision rendered by the Presiding Judge of the 5th Shari'a District Court, Cotabato City should stand insofar as it affects the status of surviving heirs and their distributive portion. Said court order dated 26 September 1994 should be modified to provide for each of the surviving widows one-third to one-half of the property acquired on joint earnings and joint efforts based on the *quantum* of customary *sa-pancharian* inventoried, above their one-eighth portion as Qur'anic shares.

Decision is modified with instruction that the Shari'a District Court determine joint earnings and joint efforts in accordance with local custom or established practice under Art. 160, Title 11 of P. D. No. 1083 which is applicable.

Manila City, Philippines, March 29, 2000.

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[EXPLANATION]
Pursuant to Sec. 6 of Rule 45 and Sec. 6 of Rule 65

The foregoing Memorandum is submitted with no copies being served to the party litigants. We beg leave of the Honorable Court for the format taken and our inability to reproduce enough copies. This Representation recognizes the special and important reasons for its Resolution En Banc dated 29 February 2000 and will appear as *Amicus Curiae*. Therefore, as an officer of the learned Court, we have taken liberty to raise justiciable issues that in our opinon arises out of the assignment of errors in the case at bar.

(Sgd.) Michael O. Mastura
Amicus Curiae

ANNEX

As adduced from records, the decedent's marital relations is covered by Art. 78 of the New Civil Code when "marriages between Mohammedans (Muslims)" are performed in accordance with "their customs, rites or practices."

Here is a matrix of the marriages:

Chronology of Marriage	*Status at the Time of Death*	*Surviving Children*
1st marriage to Aida Limba	Divorced/Predeceased. Name indicated in Certificate of Title, Annex 1.	Mohammad Ulyssis Ismael Malendatu Datulna Lawanbai
2nd marriage to Jubaida Kado	Subsisted to December 18, 1993.	without issue
3rd marriage to Nayo Omal	Subsisted to Dec. 18, 1993. Name indicated in Certificate of Titles, Annex 2, 2-A, 2-B, 2-C, 2-D, 2-E, 2-F.	without issue
4th marriage to Mabay Ganap	Subsisted to December 18, 1993. Name indicated in Certificates of Title, Annex 3, 3-A, 3-B, 3-C.	Fatima "Kueng"
5th marriage to Saaga	Divorced prior to Dec. 18, 1993.	without issue
6th marriage to Mayumbai	Divorced prior to Dec. 18, 1993.	without issue
7th marriage to Sabai	Divorced prior to Dec. 18, 1993.	without issue
And the 8th to Neng Kagui Kadiguia	Subsisted to December 18, 1993. Name indicated in Annex B, C, D, E, F, G and H of the petition.	without issue

NOTES

Rules for calculation of inheritance is considered to be one of the major achievements of Muslim scholars. To simplify:

Take the whole of the property. From it, take a share according to the dictates of the Qur'an, and let the residue, which in most cases constitute the bulk of property, go to the residuaries.

The Quranic heirs consisting mainly of women, with a few exception, are called the sharers. Residuaries so called are heirs through the male line, hence the Agnatic heirs.

The fractional portions mentioned in the Qur'an are 1/2, 1/4, 1/8, 2/3, 1/3 1/6. The role of the fraction's denominator is most vital for making a whole number from the problem.

The preferences on order of payment of taxes, debts, funeral expenses are recognized.