

REPUBLIC OF VIET NAM

Code of the Family

PREAMBLE
of
THE BILL ON THE FAMILY

Presented by Madame Ngo Dinh Nhu,
Deputy of the National Assembly,
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The Constitution of the Republic of Vietnam promulgated on October 26, 1956, specifies in Article 5 that "all citizens, without distinction as to sex, are born with equal rights and duties and shall conduct themselves in their relations with each other in a spirit of love and cooperation".

The Constitution further specifies in Article 25 that "The Nation recognizes the family as the foundation of society and encourages the unity and cohesion of the family".

Unfortunately, despite the promulgation of the Constitution, and despite the categorical and unmistakable affirmation of these two fundamental and revolutionary principles, no change has yet been made in legislation concerning the family.

Legally the Vietnamese family is still governed by a complex and divisive legislation, to be precise, by the "Tonkin" code, the "Annam" code and, for "Cochin China", by the "Précis de législation" of 1883.

This backward legislation, established by the colonial legislator steeped in the spirit of the Code of Napoleon and in reminiscences of the "cité antique" is wholly alien to the true traditions of Vietnam. It also has impeded the evolution of the Vietnamese woman, an evolution illustrated in the XVth century by the favorable dispositions of the Code of Hồng-Đức, referred to as the Code of the Lê dynasty, and reduced her to the status of an incompetent and a minor.

Thus, under the present legislation, a woman has no right to act without the permission and participation of her husband or her guardian. Within the family the husband, and he alone, can administer and dispose of the family property.

With respect to conjugal duties, the husband is not even bound to be faithful to his wife. While adultery by the wife is in any case and in any place a crime, a husband is only punishable if he maintains a mistress in the family home. This leaves him free to cohabit elsewhere with as many women as he pleases. He may also take one or more legitimate wives of second rank and legally recognize all his natural children. Similarly, although repudiation of a wife is forbidden, this prohibition is ineffective, for divorce, although rare, is permissible, with the result that a divorced wife, guilty or not, is usually expelled from her husband's family and stripped of all her possessions, the family property going entirely to the husband, except in very rare cases.

This state of affairs, a relic of a bygone age, is a flagrant injustice. It is all the more shocking that, despite the promulgation of the Constitution, the "Précis de législation" of 1883 is still at this very moment applied to our fellow countrymen of the South, and the Codes of Tonkin and Annam to those in the North and the Center.

This coexistence of three different sets of laws on one soil and in one and the same nation is an unacceptable survival from the colonial era when foreign masters applied themselves to use against us the dictum: Divide and Rule.

This situation cannot continue.

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The spiritual evolution and the political, economic, and social progress of our people have inspired the Constitution, which has solemnly consecrated the principle of the equality of men and women, in rights as in duties, and the importance of the family, considered as the foundation of society and hence of the nation.

It would thus be an affront to our Constitution and to our people to have them screen any longer such an unjust and paradoxical state of affairs.

The importance of this problem has not escaped the National Assembly, which is considering a new unified Civil Code, applicable throughout the country and fully in accord with the spirit of the Constitution of the Republic of Vietnam.

However, such a task cannot be accomplished in a day. For example, it has taken ten years to draft the new French Civil Code.

Our society cannot wait so long. That is why it is desirable to begin by providing ourselves immediately with a law of the Family, a law which applies the principles mentioned above.

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This bill, which is a first contribution to the composition of a new family legislation, is inspired by the two fundamental Articles 5 and 25 of the Constitution.

As a whole this bill retains old institutions provided in the "Précis de législation" of 1883 and the Tonkin and Annam Civil Codes when they are not contrary to its spirit. Numerous rules of form, substance and procedure are inspired by foreign civil codes.

On the other hand, new provisions are included to implement in law and in practice what the Constitution has proclaimed.

Consequently, it is necessary to give woman the same rights as man. Within the family, the conjugal community is henceforth represented jointly by the two spouses.

Woman has become man's equal. She is no longer legally an incompetent. Just as man, she has full legal competence. She administers the community property jointly with her husband and she is also entitled to property of her own.

The system of community property is proposed as the common law system in Vietnam.

The unity and cohesion of the family are safeguarded as polygamy is abolished, each party may have only one spouse, persons bound by marriage ties are not permitted to recognize natural children, and repudiation and divorce are forbidden.

Regulations punishing violations of marital obligations and prohibiting concubinage strike at practices which, hitherto encouraged by impunity or tolerance, have always resulted in undermining and destroying the family union.

Adoption permits abandoned children to be given a family. Both married and unmarried persons may adopt, which helps to increase the number of foster parents. Strict conditions are established in the adoption procedure to prevent material or moral abuse of adopted children.

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In summary, this bill seeks to put both the letter and the spirit of the Constitution into effect. It aims to defend the Family, at the same time remedying the injustice now suffered by the Vietnamese woman, but without injuring the rights of man.

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TEXT

OF THE FAMILY CODE

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Law Number 1/59 of January 2, 1959

concerning "the Family"

TITLE I

CHAPTER I

Marriage

Article 1. - Polygamy is henceforth abolished.

SECTION I

Betrothal

Article 2. - A betrothal is valid only if solemnly concluded with the consent of the two persons betrothed and after acceptance by the parents of the fiancée of gifts offered by the parents of the fiancé.

Article 3. - The promise of marriage resulting from betrothal may be broken at any time by one of the betrothed persons, or by the parents or guardian of either, if a minor.

Article 4. - If either party breaks a betrothal without good reason or provokes its breach by his or her fault, he or she is obliged to compensate the other party for the damage resulting therefrom and to return the gifts, unless they are consumable products. On the other hand, the injured party is entitled to retain the gifts in lieu of damages.

If a betrothal is broken by the death of either party, no compensation is due, but gifts shall be returned.

Article 5.- Actions resulting from a betrothal are barred after six months following the breach.

SECTION II

Conditions Required to Contract Marriage

Article 6. - No man under 18 years of age nor any woman under 15 years of age may contract marriage.

Article 7. - It is forbidden to contract a second marriage before the dissolution of a prior marriage.

Article 8. - The consent of the two future spouses is essential to a marriage.

Article 9. - Minors less than 21 years of age may not contract marriage without the consent of their father and mother. If either parent is dead or unable to express his or her will, the consent of the other is sufficient.

If the father and the mother are deceased or unable to express their will, the consent of the paternal grandfather and grandmother, or the maternal grandfather and grandmother if the paternal grandfather and grandmother are deceased, is required. In case of disagreement between the grandfather and grandmother, this division of opinion constitutes consent.

If the grandparents are deceased or unable to express their will, the consent of the guardian is necessary.

Article 10. - Marriage is prohibited between persons lineally related by blood or marriage in any degree, whether the relationship be legitimate, natural, or the result of an adoption.

Marriage is also forbidden between the following collaterals:

1)- Brothers and sisters, whether born of the same mother and father, born of the same father, born of the same mother, or adopted, whether between themselves or with their adopted brothers and sisters.

2)- Uncles and nieces, aunts and nephews, grand-uncles and grand-nieces, grand-aunts and grand-nephews, whether related by blood or marriage.

3)- Wives of uncles and nephews of their husbands, husbands of aunts and nieces of their wives, wives of grand-uncles and grand-nephews of their husbands, husbands of grand-aunts and grand-nieces of their wives.

4)- First and second cousins.

5)- Sisters-in-law and brothers-in-law.

Article 11. - For exceptionally grave reasons the President of the Republic may waive the age limit.

SECTION III

Celebration of Marriage

Article 12. - Prior to the celebration of a marriage, the Registrar must publish the banns by posting a notice at the door of the town halls of the place of domicile and of residence of each of the future spouses.

This notice shall state the family names, given names, professions, domiciles, and residences of the future spouses and of their parents, as well as the place where the marriage is to be celebrated.

Article 13. - The notice provided in the preceding Article must remain posted at the door of the town halls for ten days.

The marriage may not be celebrated until after the tenth day of publication, exclusive of the day of publication.

Article 14. - If the marriage is not celebrated within one year, starting from the expiration of the publication period, it may not be celebrated without a new publication pursuant to the requirements above.

Article 15. - Instruments of opposition to marriage must be signed, in original and duplicate, by those opposing the marriage or by their duly authorized representatives. They must be served on the parties in person or at their domicile and on the Registrar of the place where the marriage is to be celebrated who will place his seal upon the original.

Article 16. - A person bound by marriage to one of the future spouses has the right to oppose the celebration of the marriage.

Article 17. - The father or the mother, or in default of the father and mother, the paternal or maternal grandfathers or grandmothers, or in default of the grandfathers or grandmothers, the guardian or the Tộc-Trưởng (head of the "clan") may oppose the marriage of their descendants or wards, even if of age.

Once an opposition to a marriage raised by an ascendant has been legally rejected, no other opposition lodged by another ascendant may be received or delay the celebration of the marriage.

Article 18. - Each instrument of opposition must state the opponent's qualification to oppose, contain an election of domicile in the place where the marriage will be celebrated, and state the basis of opposition and the text of the law on which the opposition is based. If the foregoing conditions

are not met, the instrument is null and void, and the official or his agent who signed it will be suspended from office for one year.

Article 19. - The court of first instance must issue its decision within fifteen days on a petition for rejection, submitted by the future spouse in respect to whom the opposition is raised.

Article 20. - In case of appeal, the court of first instance must not retain the record for more than fifteen full days, and the Court of Appeal must issue its decision within fifteen days from the date of filing the case on its docket. If the judgment being appealed has rejected the opposition, the Court must pronounce judgment without delay.

Article 21. - The marriage must be celebrated publicly at the place where one of the spouses has his or her domicile or residence.

Article 22. - On the day designated by the parties, after the expiration of the publication period, the Registrar must read aloud to the future spouses, in the Town Hall and before two witnesses, whether or not related to the parties, documents relating to their status and to the formalities of marriage. He must ask the future spouses, and if they are minors, their ascendants present at the celebration and authorizing the marriage, to declare whether or not a marriage contract has been made.

He must receive separate declarations from the parties that they are willing to take each other as spouses, then declare them united in marriage and, in the name of the law, immediately draw up the certificate of marriage.

However, in case of grave difficulty, the Registrar may go to the domicile or residence of either party to perform the marriage.

The declaration of marriage by the Registrar and its entry in the civil register create the bond of marriage.

Article 23. - The marriage certificate must include:

1)- The family names, given names, professions, ages, dates and places of birth, domiciles and residences of the spouses.

2)- The family names, given names, professions, domiciles and residences of the fathers and mothers. If they are deceased, this fact must be mentioned.

3)- The consent of the fathers and mothers, grandfathers and grandmothers, or guardians, if required.

4)- The declaration of the parties to take each other for husband and wife and the declaration of their marriage by the Registrar.

5)- The family names, given names, professions and domiciles of the witnesses and the declaration that they are of age.

6)- The declaration that a marriage contract has or has not been made, the date of the contract, and the name and residence of the notary or authorities who received it.

Notation of the celebration of the marriage must be made on the margin of the birth certificate of the spouses.

Article 24. - A marriage contracted abroad between Vietnamese or between a Vietnamese and a foreigner and celebrated by the local authorities without the presence of Vietnamese diplomatic or consular officials is valid if performed according to the procedure of that country; provided, that it was preceded by the publication prescribed in Articles 12, 13, and 14 of this Law, and provided, that the Vietnamese has not violated the provisions of the preceding section with respect to the conditions required to contract marriage.

The same applies to any marriage contracted abroad between Vietnamese or between a Vietnamese and a foreigner if celebrated by Vietnamese diplomatic or consular officials in accordance with the provisions of this law.

Article 25. - Within three months of the return of the Vietnamese to Vietnam, the marriage certificate must be transcribed in the marriage register of the current year of the place of his or her domicile and noted on the margin of the birth certificate of each spouse.

Article 26. - Any marriage not performed publicly or not celebrated before a competent public official may be challenged by the spouses themselves, by any person with an interest, resultant and existing, or by the Public Prosecutor.

If the marriage certificate is not transcribed as provided in Articles 24 and 25, the Vietnamese spouse may be fined from 1,000 to 20,000 piasters.

Article 27. - If the celebration of a marriage is not preceded by the required publication, or if a legal waiver is not obtained, or if the required publication period is not observed, the Registrar and the parties, or those under whose authority they acted, may be prosecuted and fined from 1,000 to 20,000 piasters.

SECTION IV

Nullity of Marriage

Article 28. - A marriage is null and void in the absence of the consent of the spouses or of either of them.

A marriage may be challenged as null and void when the consent of either spouse has been vitiated by error or coercion.

Error is a cause for nullity only if it concerns the person or his or her identity.

Article 29. - Only the spouse who is victim of error or coercion, if of age, may challenge the marriage as null and void. If he or she is a minor, those whose consent is required to the marriage may challenge it as null and void.

If the interested party is still a minor and if the persons whose consent is required are unwilling to challenge the marriage as null and void, the party may petition the court for a special authorization to bring the action alone.

An action is barred if not brought within six months of the discovery of the error or of the cessation of the coercion .

Article 30. - A marriage may be challenged as null and void for the permanent impotence of one spouse, which existed prior to the marriage.

The action for nullity may only be brought by the other spouse. This action is barred one year after discovery of the impotence.

Article 31. - A marriage may be challenged as null and void:

1)- When contracted by a man less than eighteen years of age or a woman less than fifteen years of age, unless a waiver is obtained.

The ground for nullity ceases from the day the spouse reaches the legal age or if the wife becomes pregnant.

2)- When the spouses are related within the degrees legally prohibited.

Any interested party may bring an action for nullity. It may also be brought by the Public Prosecutor on his own initiative.

Article 32. - A marriage may be challenged as null and void if the wife remarries less than ten months after her prior marriage has been declared null and void or if a widow remarries less than ten months after the decease of her husband.

The action for nullity may be brought by the husband, or in default of the husband by the children of the prior marriage, or in their default by the Tộc-Trưởng of the deceased husband.

Article 33. - Any marriage contracted before the dissolution of a prior marriage may be challenged as null and void by the spouses themselves, by any person with an interest, or by the Public Prosecutor, without prejudice to criminal prosecution for bigamy.

Article 34. - A man or woman convicted of bigamy is barred from any public office of authority and from assuming any elective mandate.

Article 35. - A marriage may be challenged as null and void for lack of consent of the parents or the persons entitled to give consent.

An action for nullity may be brought only by persons entitled to give consent and whose consent has not been requested.

The ground for nullity ceases from the day the minor becomes of age or if the wife becomes pregnant or gives birth to a child.

Persons whose consent is required may manifest such consent expressly or tacitly. If, after learning of the marriage, such persons fail to challenge it during one year, their silence suffices to eliminate the nullity.

Article 36. - Children born of a marriage declared null and void are considered as natural children.

The property of spouses whose marriage is declared null and void is liquidated as if the marriage had never taken place.

A marriage declared null and void nevertheless produces civil effects with respect to children and to the bona fide spouse or spouses.

Article 37. - When final, a judgment declaring a marriage null and void must be transmitted to the Registrar who recorded the marriage so that he may note it on the margin of the certificate of the marriage declared null and record it on the marriage register of the current year.

The judgment must also be noted on the margin of the birth certificates of the parties.

Article 38.- If the marriage is declared null and void due to one party acting in bad faith, he or she may be sentenced to imprisonment for three months to one year, and may also be fined from 1,000 to 100,000 piasters.

The court may also award damages to the party who is the victim of the voiding of the marriage.

SECTION V

Effects of Marriage

Article 39.- The husband, head of the family, and the wife have in common the obligation for insuring the prosperity of the marriage and providing for the support and education of their children.

Article 40.- The spouses mutually owe each other fidelity, aid and assistance.

Article 41.- For needs of the household, the marriage is represented by the wife as well as by the husband.

Article 42.- The spouses must cohabit. The conjugal domicile is chosen by joint agreement of the two spouses. In case of disagreement, they must seek the advice of the Tộc-Trưởng of their respective families. Should the latter disagree, the presiding judge shall decide after hearing the parties.

The refusal of either party to live with his or her parents-in-law shall be considered legitimate if the spouses have sufficient means to live on their own.

Article 43.- A married woman, just as her husband, has full legal competence.

The exercise of such competence is governed by law and by the marriage contract if one exists.

Article 44.- A husband or wife may exercise a separate profession from that of his or her spouse, unless the latter opposes.

Such opposition is effective only if based upon grounds considered legitimate by the court.

CHAPTER II

Marriage Property System

Article 45.- The law governs the conjugal partnership, with respect to property, only in default of special covenant which the spouses may make as they see fit, provided that such covenant is not contrary to good morals, public order or the interests of the children.

Article 46. A marriage covenant must be drawn up prior to the declaration of the marriage either by a notorized or certified instrument. It may not be changed after the declaration of the marriage.

A marriage contract must have the approval of the persons whose consent is necessary to the validity of the marriage.

To be valid against third parties, a marriage covenant must be mentioned in the marriage certificate, to which a copy must be attached. Extracts of the marriage certificate and of the marriage contract must be delivered by the Registrar to anyone who requests.

Article 47.- In default of special covenant, the spouses shall be governed by the community property system which shall include all the property and revenues of both the husband and the wife.

The community property system shall be the common law system.

The community, whether under law or contract, begins the day the marriage is contracted before the Registrar.

Article 48.- The personal and real property owned by each of the spouses at the time of the declaration of marriage, or which accrues to either during the marriage by succession or by any other free gift, constitutes his or her contribution and enters into the community property of the marriage, unless the testator or donor provides otherwise.

Property brought to the marriage by the husband or by the wife, acquired jointly by the two spouses during the marriage, acquired by either spouse during the marriage for a consideration, and the revenues from these properties, belong indivisibly to the two spouses.

Article 49.- The husband and the wife jointly administer the community property.

Article 50.- The husband or the wife may not contract obligations, alienate or acquire, with or without consideration, real property, titles or shares without the participation of the other spouse in the instrument, or without his written consent.

All obligations, alienations or acquisitions, with or without consideration, relating to the above-mentioned property, made during the marriage by the husband or wife without the participation or consent of the other spouse, may be challenged by the latter.

Article 51.- If the participation or consent of the spouse is necessary and if the latter is unable to express his or her will or if his or her refusal is not justified, the other spouse may be authorized by the court to proceed without it.

Article 52.- The husband or the wife may, for due cause, attach the salary, revenues, payments to or profits of the other spouse.

Article 53.- The husband or wife may open deposit accounts in credit institutions, banks, or organizations entitled to issue checks.

The opening of an account must be accompanied by a declaration of the name and age of the other spouse and the address of the conjugal domicile. The credit institutions must notify the other spouse of the account, and the latter may at any time demand a report of the balance of the account.

For due cause, each of the spouses may be authorized by the court to oppose any withdrawal of funds by the other spouse.

Article 54.- Community property is liable for:

- 1)- Debts contracted by the spouses prior to marriage;
- 2)- Debts contracted by the spouses during the marriage; and,
- 3)- Debts resulting from illegal acts of the husband or of the wife.

CHAPTER III

Legal Separation

SECTION I

Causes for Legal Separation

Article 55. - To encourage the unity and cohesion of the family, repudiation and divorce are forbidden.

However, in certain cases whose exceptional nature only the President of the Republic may determine, a divorce may be granted. The President of the Republic shall decide after consulting the President of the Court of Cassation and the First President of the Court of Appeal of the place of domicile of the spouses, and after hearing the Tộc-Trưởng of the spouses and the spouses themselves.

This decision is final and shall settle at the same time all questions relating to the effects of the divorce.

Article 56. - Either spouse may bring an action for legal separation against the other spouse for one of the three offenses stated below. This offense must constitute so serious a violation of the conjugal duties and obligations as to render life together intolerable:

- 1)- Adultery in any place whatsoever
- 2)- Greivous mal-treatment or excess
- 3)- Extreme physical or mental cruelty

SECTION II

Procedure for Legal Separation

Article 57. - A petition for legal separation must be brought before the civil court of the place of the conjugal domicile.

Article 58. - The husband or wife who wishes to petition for legal separation must present, in person, his or her petition to the President of the Court or the Judge acting as such.

The petition must contain a description of the offenses alleged.

Article 59. - The judge, after hearing the petitioner and making to him or her whatever remarks he considers advisable, shall order the parties to appear before him at a day and hour fixed by him and appoint a bailiff to serve the summons.

Article 60. - The petition and the order must be served on the defending spouse at the same time as the summons, at least 3 days before the date fixed for appearance in court, plus time allowed for distance.

Article 61. - On the appointed day, the spouses shall appear in person; the Judges shall hear them and shall endeavor to conciliate them.

If either spouse is unable to appear, the judge determines the place where the conciliation shall be attempted. In case of default or of non-conciliation, the judge shall issue an order noting the non-conciliation or the default.

By the same order, the judge decides, if necessary, the residence of the spouses during the proceedings, the delivery of personal effects, the provisional administration of the property, the provisional custody of the children, the right of spouses to visit the children, and the petition for alimony.

The order is temporarily enforceable and may be appealed.

Article 62. - Six months after the first attempt at conciliation, the spouses shall again appear before the judge for another attempt at conciliation.

The judge may not transfer the case to the court until after a third attempt at conciliation, six months after the second attempt.

Article 63. - Whoever, by fraudulent acts or by false allegations, keeps or tries to keep his or her spouse in ignorance of proceedings for legal separation brought against that spouse, may be sentenced to imprisonment for 3 months to 1 year or fined from 1,000 to 100,000 piasters, or both.

If the offense is repeated, the penalty of imprisonment must be imposed.

Article 64. - The case is examined in the ordinary procedure in chambers, the Public Prosecutor being heard. A separation decree is pronounced in open court. A judgment denying a petition for legal separation is rendered in chambers.

A counterpetition for legal separation may be brought merely by filing a motion.

Publications in the press concerning legal separation proceedings are strictly forbidden.

Article 65. - Legal separation terminates on reconciliation of the husband and wife.

Reconciliation, occurring after a petition for legal separation has been filed, is subject only to the formality of depositing with the clerk of the court a declaration of reconciliation by the petitioner and his or her spouse.

If the reconciliation occurs after judgment, the two spouses must petition the President of the court to revoke by order the provisions of the judgment.

The foregoing petition and order must be served upon the third person, if any, to whom the judgment awarded custody of the children and administration of the property.

SECTION III

Effects of Legal Separation

Article 66. - The separation decree does not terminate the community property.

The administration of the community property is awarded to the spouse in whose favor the legal separation is decreed, unless the court, at the request of the Public Prosecutor and after examination of documentary evidence produced by the latter, determines that in the interest of the family the administration of all or part of the property should be awarded to the spouse against whom the separation is decreed or to a third person.

The spouse against whom the legal separation is decreed is entitled only to alimony, and loses to the other spouse all advantages given him in the marriage contract, even if reciprocity be stipulated therein. These advantages accrue to the spouse in whose favor the legal separation is decreed.

Article 67. - The spouse in whose favor the separation is decreed is entitled to alimony, the amount of which shall depend on his or her own needs and the resources of the other spouse.

Article 68. - Custody of the children shall be awarded to the spouse in whose favor the separation is decreed, unless the court, at the request of the Public Prosecutor, and after examining documentary evidence produced by him, decides that in the interests of the children, the custody of all or some of the children should be awarded to the other spouse or to a third person.

Article 69. - If the legal separation is based on the reciprocal faults or offenses of both spouses, the court may award the administration of the community property to either spouse or to a third person.

The court shall also decide, according to circumstances, each spouse's share of the revenues and income from the community property.

If there are children, the court shall decide their custody as provided by the preceding article.

Article 70. - Mixed marriages between a Vietnamese and a foreigner are subject to the provisions of this law, except as affected by international agreement.

CHAPTER IV

Violation of Marriage Obligations

Article 71. - Adultery in any place by either spouse is punishable by imprisonment from 3 months to 2 years or by a fine of 1,000 to 100,000 piasters, or both.

If the offense is repeated, the penalty of imprisonment must be imposed. The guilty party may moreover be sentenced to local banishment from 6 months to 2 years.

The adultery of either spouse may only be prosecuted on complaint of the other spouse. By withdrawing the complaint the complaining spouse may terminate the prosecution or suspend the execution of the judgment.

Proceedings for adultery must be heard in camera.

Publications in the press concerning adultery cases are strictly forbidden.

Article 72. - The accomplice of the adulterous spouse is subject to the penalties provided in the preceding article.

Withdrawal of the complaint by the complaining spouse in favor of his or her spouse does not operate to the benefit of the accomplice.

Article 73. - Either spouse may prohibit his or her spouse from having too free relations with a given person of the opposite sex which he or she considers harmful to the marriage.

If, despite this prohibition, the spouse and the accomplice continue to see each other alone, without due cause, whether or not in public places, and if a formal record thereof is made at the request of the other spouse, two times in the same year, by a bailiff or an authorized police official, the guilty spouse and the accomplice are liable to a fine of 1,000 to 50,000 piasters.

If the offense is repeated, a penalty of imprisonment from 1 to 6 months may be imposed.

The complaining spouse, by withdrawing the complaint, may terminate the prosecution or suspend the execution of the judgment.

Such withdrawal does not operate to the benefit of the accomplice.

Article 74. - Either spouse who, without due cause, abandons the conjugal domicile for more than one month may be sentenced to imprisonment from 3 months to one year or fined from 1,000 to 50,000 piasters or both.

The one month period may be interrupted only by return of the spouse to the conjugal domicile with the will to resume family life.

If the offense is repeated, the penalty of imprisonment must be imposed.

Article 75. - Either spouse who, without due cause, refuses to receive his or her spouse in the conjugal domicile, for more than 15 days, after and despite an injunction, may be sentenced to imprisonment from 3 months to one year or fined from 1,000 to 50,000 piasters or both.

If the offense is repeated, the penalty of imprisonment must be imposed.

Article 76. - Whoever, in contempt of a judicial decision, order or judgment, fails for two months to pay in full the alimony owed to his or her spouse or to persons legally entitled thereto, is liable to imprisonment from 3 months to 1 year or a fine of 1,000 to 100,000 piasters or both.

Non-payment is presumed voluntary unless otherwise proved.

Insolvency resulting from habitual misconduct or idleness is in no case a valid excuse for the debtor.

TITLE II

Concubinage

Article 77.- Concubinage is the cohabitation of a man and a woman not joined in marriage.

The family being the foundation of society, concubinage is strictly prohibited.

Article 78.- The Public Prosecutor, on request or on his own initiative, may order an inquiry.

If the results of the inquiry are conclusive, the Public Prosecutor shall notify the parties that they have a period of two months in which to terminate their cohabitation or regularize their status by marriage. If the parties are unmarried and have living children born of their cohabitation, the regularization of their status is compulsory.

Article 79.- In case the parties must terminate their concubinage, an adequate indemnity shall be paid by one of the concubinaries to the one without resources.

Article 80.- If the concubinaries are related in a degree prohibited by law for marriage or if either is already married, they must terminate their illegal status and separate immediately upon the injunction of the Public Prosecutor, without prejudice to penalties provided in the penal code.

If there are children born of this concubinage the concubinaries are jointly and severally liable to support them.

Article 81.- If the injunction of the Public Prosecutor is after two months without effect, the Public Prosecutor shall decide whether to adopt the procedure of direct summons or of preliminary inquiry in an action against the concubinaries.

Article 82.- Concubinaries who have not obeyed the injunction of the Public Prosecutor within the time provided in Article 78, are liable to imprisonment from 3 months to one year or a fine of 1,000 to 50,000 piasters or both.

If the offense is repeated, the penalty of imprisonment must be imposed. The guilty parties may moreover be sentenced to local banishment from 6 months to 2 years .

All accomplices, whether or not related to the principal offender, are liable to the same penalties as the latter.

TITLE III

FILIATION

CHAPTER I

Legitimate Filiation

Article 83.- A child conceived during marriage has as father the husband of the mother.

Conception is presumed to have taken place during marriage when birth occurs more than 180 days after celebration of the marriage or within 300 days of its dissolution.

Article 84.- A child born less than 180 days after the marriage is presumed to have as father the husband of the mother, unless the husband brings an action of disavowal.

The husband may not disavow the child in the following cases:

1)- If he knew of the pregnancy before the marriage, or

2)- If he was present at the drawing up of the birth certificate, or if the certificate is signed by him, or contains his declaration that he does not know how to write his signature.

Article 85.- An action to disavow paternity must be brought against the child and against the mother.

The husband who wishes to disavow a child of his wife must prove that, from the 300th to the 180th day before the birth, it was physically impossible for him to be the father of the child, either by reason of being apart from his wife or for any other impediment.

Article 86.- Adultery by the wife, even duly established, is not in itself sufficient ground for disavowal. However, the action by the husband may be allowed if, the offense being established, it clearly appears from the circumstances that the husband is not the father of the child.

Article 87.- The legitimacy of a child born more than 300 days after the dissolution of a marriage may be contested.

Article 88.- An action by the husband to disavow must be brought within one month following the birth of the child. If the husband is absent at that time, the period is 2 months after his return. When the birth is concealed from the husband, the period is also two months after the discovery of the fraud.

Article 89. - If the husband is deceased or if he becomes incapable of discernment before the expiration of the period for disavowal, the co-heirs of the child or those whom the child excludes from succession may bring an action to disavow within two months following the date they learn of the birth.

Article 90. - If the husband tacitly or expressly recognizes the child, or if the period allowed has expired, the action may not be brought, unless the petitioner establishes that he was induced by fraudulent acts either to recognize the child or not to disavow him.

In such case, the petitioner is granted a new period of 2 months in which to act, to date from the discovery of the fraud.

Article 91. - The judgment upholding the disavowal shall order the name of the husband stricken from the birth certificate and shall dispossess the child of the family name of the husband.

Article 92. - When final, the judgment shall be transmitted to the Registrar who drew up the birth certificate in order that it may be recorded on the birth register of the current year and noted on the margin of the corrected birth certificate.

Article 93. - Filiation of legitimate children is proved by the birth certificates regularly recorded in the civil registers. These certificates constitute full legal proof in themselves.

Article 94. - When for any reason the birth certificate cannot be produced, in its place all legal means may be used to establish that the child has the status of legitimacy.

Article 95. - The status of legitimacy may be established by a sufficient collection of facts indicating the connection of filiation and relationship between an individual and the family to which he claims he belongs.

Chief among such facts are:

- 1)- That the individual has always borne the family name of the father, with the consent of the father and the mother,
- 2)- That the father and the mother have always treated him as their own child and as such have provided for his education, support and establishment,
- 3)- That he has constantly been recognized as such in society, and
- 4)- That he has constantly been recognized as such by the family of the father and of the mother.

CHAPTER II

Filiation of Natural Children

Article 96.- Natural children are those born of a father and mother not joined in marriage.

The filiation of natural children is established by the birth certificate, when the father or the mother has, in the certificate, made a declaration of recognition.

Article 97.- If the recognition is made by only one parent, natural filiation is only established with respect to the one who declared it.

Article 98.- Natural filiation may also be established by an instrument of recognition subsequent to the declaration of the birth.

In such case, the instrument of recognition is drawn up by the Registrar of the place of domicile of the declarant, and recorded in the birth register of the current year in the presence of two witnesses who are of age. Moreover, the declaration of recognition must be noted on the margin of the birth certificate of the natural child.

Article 99.- Natural children born from an adulterous or incestuous relationship may not be recognized, except as provided in Article 102.

Article 100.- Natural children legally recognized by their mother and father are legitimated by the subsequent marriage of the parents. Such legitimation is automatic.

Natural children not yet recognized are legitimated when their father and mother recognize them at the time of celebration of the marriage. The declaration of recognition, family name, given name, date and place of birth of the child must be noted on the marriage certificate.

A natural child, recognized subsequent to the marriage of his mother and father, is only legitimated when the declaration of recognition is validated by a judgment pronounced in open court, which judgment must establish that the child, since the celebration of the marriage of his parents, has had the status of their mutual child.

In all cases the legitimation must be noted on the margin of the birth certificate of the child.

Article 101. - Recognition by one spouse, before marriage, of a natural child born before the marriage but of another person than his or her spouse, cannot prejudice the rights of the spouse nor of children born of the marriage. The natural child thus recognized shall only be entitled to support and may not claim the rights of a legitimate child.

Article 102. - A natural child of parents, one of whom is bound by marriage, may be recognized only by the unmarried parent, whose family name he shall bear.

Article 103. - A child born of adultery between parents both of whom are bound by marriage to others, may not bear the family name of either his natural father or his natural mother. His custody shall be awarded to a third person, to the public welfare authorities, or to a private welfare society legally recognized by the State.

Article 104. - A child born of an incestuous or adulterous relationship shall in no case be permitted to bring a paternity or maternity action.

Article 105. - A natural child who has not been recognized may not bring a paternity or maternity action except in the exceptional cases provided in the third paragraph of this article.

The action of paternity or maternity shall be brought by the father or the mother. If the father or the mother is deceased, or is incapable of discernment, the action may be brought by the guardian. If the child is not recognized by either the father or the mother, the public welfare authorities or the private welfare society may bring the action.

If the father or the mother is deceased or has become incapable of discernment before the period allowed for bringing action has expired, and the guardian or public welfare authorities or private welfare society does not bring the action within the allowable period, the child when he becomes of age may bring the action of paternity or maternity within one year after he reaches majority.

Article 106. - Paternity out of wedlock may be judicially declared with respect to an unmarried father:

1)- In case of abduction or rape, when the time thereof coincides with that of the conception.

2)- In case of seduction with the aid of fraudulent acts, abuse of authority, or promise of marriage or of betrothal.

3)- In case letters or other writings of the alleged father exist and contain an unequivocal admission of paternity.

4)- In case the alleged father and the mother lived in concubinage during the legal period of conception.

5)- In case the alleged father provided or participated in the support and education of the child as father.

Article 107.- The mother, or the persons and organizations allowed to bring a paternity action in accordance with Article 105 above, may do so only within two years after the date of birth.

However, in the cases provided in paragraphs 4 and 5 of the preceding Article, the action may be brought within the two years following the cessation of the concubinage or of the father's participation in the support and education of the child.

Article 108.- A paternity action is not admissible:

1)- If it is established that during the legal period of conception the mother had commerce with another man,

2)- If the alleged father was, during the same period, physically unable to be the father of the child, either by reason of being apart from the mother or of any other impediment.

Article 109.- A maternity action is admissible with respect to an unmarried mother within two years after the birth.

The father, or the persons or organizations allowed to bring the action, as provided in Article 105, must prove:

1)- that the alleged mother did give birth; and

2)- that the child is the one to whom the alleged mother gave birth.

Article 110.- Proof may be established by all legal means. The action must be brought against either the alleged mother or father or against the heirs of either.

Article 111.- A judgment declaring natural filiation has the same effect as an instrument of voluntary recognition.

The judgment when final must be transmitted to the Registrar for recording in the birth register of the current year and for notation on the margin of the birth certificate of the child.

Article 112. - A judgment declaring natural paternity may also compel the father to indemnify the mother for her confinement expenses and the cost of supporting the child since birth.

Moreover, a sum of money may be awarded to the mother as damages when the father has promised marriage or if he has otherwise abused the mother.

Article 113. - The court must always award support to the child commensurate to the resources of the father or the mother.

This support is payable in advance, according to terms fixed in the judgment, up to the 18th year of the child.

The father or the mother may be released from this obligation if he or she takes the child in his or her charge and treats him as his or her own child.

Article 114. - A natural child bears the family name of the father or mother who has recognized him or whose recognition has been judicially imposed.

If a natural child has been voluntarily recognized by both parents he bears the family name of the father.

Article 115. - In case an action of paternity or maternity is rejected by the court for obvious bad faith, the petitioner may be sentenced to imprisonment from 3 months to 1 year or fined from 1,000 to 100,000 piasters or both.

This sentence may be pronounced by the civil court seized of the case, the Public Prosecutor having been heard.

TITLE IV

Adoption

Article 116. - Adoption is permitted only if there are good reasons and if it is advantageous to the adopted person.

Adoption may not be revoked, except in the cases provided by law.

An adoptive parent may have several adopted children, but no one may be adopted by more than one person, except by a husband and wife.

Article 117. - Adoption by married persons is permitted only if done jointly by husband and wife, one of whom must be more than 25 years of age.

If the adoptive parent is unmarried, he must be at least 25 years older than the adopted person.

Article 118. - If the person to be adopted still has a father and a mother, both must consent to the adoption. If either parent is deceased or unable to express his or her will, the consent of the other suffices.

Article 119. - In the case provided in the preceding Article, consent is given in the adoption instrument itself or in a separate certified instrument. These instruments must be drawn up in the presence of a notary or before qualified authorities.

Article 120. - If a minor has neither father nor mother, or if they are unable to express their will, consent is given by the grandparents, or in their default by the guardian.

In the cases of a natural child not recognized or of an abandoned child in the custody of a private welfare society or of the public welfare authorities, consent is given by the private welfare society or by the public welfare authorities.

Article 121. - In the case of children in the custody of a private welfare society or of the public welfare authorities, an adoption instrument may only be completed after inquiry made by these organizations into the good character and financial status of the adopting person.

Article 122. - The adoption instrument must be ratified by the civil court of the place of domicile of the adopting person.

The court to which the petition is submitted shall sit in chambers, and after having obtained pertinent information, shall verify:

- 1)- That all the requirements of law have been met, and
- 2)- That there are good reasons for the adoption and that the adoption is advantageous to the adopted person.

Article 123. - After having heard the Public Prosecutor and without other procedure, the court decides whether or not to ratify the adoption.

If ratification is refused, each of the parties may, within one month after the judgment, appeal the case to the Court of Appeal, which shall proceed according to the same procedure as the lower court.

The judgment of the primary or appellate court which ratifies the adoption is pronounced in open court.

The judgment of ratification, when final, shall be transmitted to the Registrar of the place of birth of the adopted person for notation on the margin of his or her birth certificate.

An extract of the judgment shall be posted at the town hall of the place of domicile of the adopting person.

Article 124. - The adopted person must observe all the obligations and duties of a legitimate child with respect to the adopting person.

He retains his rights of succession to the property of his natural parents.

Article 125. - The adopting person, with the consent of the other spouse and of the Tộc-Trưởng, may confer his or her family name on the adopted person or appoint him or her as cultural heir.

The instrument conferring the family name of the adopting person on the adopted, and the instrument appointing him or her as cultural heir must be ratified by the civil court of the place of domicile of the adopting person. The judgment, when final, shall be transmitted to the Registrar of the place of birth of the adopted person for notation on his or her birth certificate.

An extract of the judgment shall be posted at the town hall of the place of domicile of the adopting person.

Article 126. - A widower, widow or unmarried person must obtain the consent of his or her Tộc-Trưởng if he or she wishes to confer his or her family name upon an adopted person or to make the latter his or her cultural heir.

Article 127. - The adopted person is entitled to inherit from the adopting person a share equal to that of a legitimate child.

The adopted person and his or her descendants are not entitled to inherit from the father, mother and other members of the family of the adopting person.

If the adopted person is appointed as cultural heir of the adopting person, he or she must bear the family name of the latter and is entitled to the Hưởng-Hòa (the share of property given the cultural heir, to provide for the cult of the ancestors) established by the adopting person.

Article 128. - Marriage is strictly prohibited between the adopting and adopted persons. The prohibitions against marriage because of family relationship are the same as if the adopted child were the adoptive parent's own child.

Article 129. - The birth of a child to the adopting person deprives the adopted child of the status of cultural heir, if he or she was so designated.

Article 130. - If adoptive parents die without appointing a guardian for a minor adopted child, the presiding judge of the civil court will appoint one.

Article 131. - If the adopting person neglects the adopted child, mistreats him or her, the court on its own initiative or on request of any relative of the adopted person, may revoke the status of adoptive paternity or maternity.

Article 132. - A judgment revoking an adoption shall provide for the custody and guardianship of a minor adopted child.

Article 133. - When final, a judgment revoking an adoption shall be transmitted to the Registrar of the place of birth of the adopted person for notation on the margin of his birth certificate.

An extract of the judgment shall be posted at the town hall of the place of domicile of the adopting person.

Article 134. - Abandoned children, taken in by or entrusted to any person, must be immediately delivered to the public welfare authorities or to a private welfare society recognized by the State.

If the person who found the child or to whom the child was entrusted wishes to adopt him or her, that person must comply with the formalities and conditions provided by this law.

The said person shall have priority for adoption of the child and, pending the decision of the court, may petition the presiding judge of the court for provisional custody of the child.

GENERAL PROVISION

Article 135. - All provisions contrary to this law are abrogated.

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