

Some Legal Aspects of Chinese Marriages in the Philippines¹

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The fact that a Chinese national domiciled in the Philippines decides to enter into the marital status calls for the application of the Conflicts Rules of Philippine Private International Law. Under these rules, marriage as a status will be governed not by the law of his domicile but by the law of his nationality, i.e., Chinese law.

Thus, while "aliens who wish to marry in the Philippines must obtain certificates of legal capacity to contract marriage from their respective diplomatic or consular officials before they can apply for a marriage license," this does not necessarily mean that "they must follow the same procedure as do the Filipinos, if their marriage is to be legally registered." The situation posed by Prof. Reynolds' statement appears to be based on the assumption that aliens domiciled here must be married according to Philippine law, which is erroneous. Generally, aliens must be married in accordance with the requirements of their national law. By way of exception, if they do get married in the Philippines, they may choose to do so under Philippine legal requirements and, doing so, they will be considered as validly married by Philippine law.

However, the fact that their marriage satisfies Philippine requirements does not mean that they will be recognized as validly married by the law of their nation-

ality. Their national law governs them even while residing in the Philippines, insofar as their civil status is concerned. Thus, even if they should be validly married under Philippine law, if they have omitted to observe the requirements laid down by their national law, they would still not be validly married insofar as the latter law is concerned.

The converse difficulty arises when a Chinese national becomes a naturalized Filipino. If he has failed to secure his home ministry's authorization to renounce his Chinese citizenship, naturalization as a Filipino does not divest him of his original citizenship. Thus, under international law, he possesses a dual citizenship. This is one of the reasons why many Philippine courts have been very strict in the grant of naturalization petitions. Citizenship, the basis for loyalty of allegiance, would be divided in their case, and the security of the state may not be well-served by the over-eager and hasty naturalization of aliens.

The strict requirements imposed on aliens who wish to be naturalized as Filipinos are intended not for their inconvenience and prolonged discomfort but for the protection of Filipino citizens. The length of time it takes to see a petition for naturalization through, and the number of papers and documents required of petitioners are calculated to test his sincerity. If a man is unwilling to go through the inconveniences of the whole process, then it attests to his lack of sincerity. It

¹ Comment on Harriet Reynolds' "Marriage as a Focal Point in Cultural Orientation of Chinese Adults and Children in Ilocos," *Philippine Sociological Review*, XIII, 249-259.

cannot be argued that he may have little money to spend for the purpose of his petition, because the lack of a lucrative trade or profession is precisely one of the disqualifying factors in naturalization petitions. Furthermore, naturalization is not a right of any alien; it is a privilege accorded by the state, a privilege the exercise and enjoyment of which it may limit and restrict.

There are, under our civil law and the jurisprudence surrounding it, six requisites for a valid marriage, and not merely four, as the Civil Code (cited by Prof. Reynolds) taken by itself would seem to indicate. Thus, the following requisites must be fully satisfied: (1) legal capacity to contract marriage, which does not consist merely in being unmarried but rather in the attainment of the required age of 16 for the male and 14 for the female, and in the absence of any impediment of relationship either by reason of affinity, consanguinity or public policy; (2) the consent of the parties, freely given; (3) authority of the person performing the marriage; (4) a marriage license (save in marriages of exceptional character); (5) difference in sex of the parties; and (6) a marriage ceremony. All these requisites must concur. The absence of any of them results in the nullity of the marriage, which is void *ab initio*.

While the so-called "common-law marriage" may be a social fact, Philippine law does not recognize it as a legal fact, whether directly or even indirectly (as Mrs. Reynolds suggests). The very term itself denotes a type of relationship recognized under Common (Anglo-American) Law, while the Philippine law on persons and family relations is of a distinct Civil Law origin. These are two essentially different legal systems. Their underlying philosophies differ as do the resultant rights and obligations which they give rise to.

Philippine law provides that "no marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being married, have lived together as husband and wife for five years, desire to marry each other." This is styled as a marriage of exceptional character under the Civil Code, the license requirement being dispensed with.

This is not a legal recognition, direct or indirect, of the existence of the institution. The law merely exempts the parties from the license requirement, the purpose being to encourage them to legally ratify their illicit relationship by offering them the chance to do so with the least possible publicity, social embarrassment and *hiya*. This is as far as the law goes. It does not recognize the common-law marriage as such, nor does it grant the parties thereto any of the rights and obligations pertaining to the marital relation. Thus, one who cohabits with another is not, by virtue of such cohabitation, entitled to inherit as the compulsory, forced or intestate heir of the other. The resulting recognized natural and other illegitimate children, if any, are given successional rights, not because the cohabitation between the parties has given rise to these rights, but because it is the policy of the law not to punish children and descendants for the transgressions of their parents or ascendants. Under the old Civil Code this was not so. The new Civil Code has been more socially realistic in this sense.

If one is to apply Philippine law to Chinese unions, one must keep in mind some of the social bases of this law. It acknowledges the importance of the family in the social structure. Marriage, as a step in the formation of this family, therefore acquires considerable importance. While the law does not condone the existence of illicit relationships, it nevertheless seeks to protect the children that may result from these relationships.

When the naturalization law requires "proper and irreproachable conduct" of petitioners, this conduct is to be measured not by the standards of their original country, but by Philippine standards. The fact that one wishes to become a citizen is taken to indicate a willingness to embrace the social standards and customs of the Philippines. And irreproachable conduct is not merely "good" conduct, for the latter will not suffice.

One other social basis of Philippine law deserves mention: the solidarity of the

family. Whatever is conducive to the disruption of this solidarity is looked upon with disfavor by the law. Thus, illicit relationships outside marriage are not condoned, and the courts will go to great lengths to preserve the existence of marriages. Even where legal separations (or what amount to relative divorces) have been allowed by the courts, any reconciliation between the parties thereto will immediately render nugatory the decree of separation and preserve the unity of the marriage.

Modernization in Asia

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The readers of the *Philippine Sociological Review*, and other such publications, should be informed of a highly significant Conference held in Seoul, Korea, last June 28 to July 4, 1965. It was called, "International Conference on the Problems of Modernization in Asia."

Although, apparently, little publicity was given to the gathering by the press outside of Korea, there was full recognition of its importance by the press in Seoul. Both front page news and editorial comment were in evidence, as indicated by *The Korea Times* and *The Korean Republic* during the Conference.¹

Moreover, top official recognition was extended to the participants of the Conference by both the Mayor of the city of Seoul and the national Premier of Korea, along with the American Embassy on a limited basis. In addition, officials of the sponsoring institution, Korea Uni-

versity, tendered receptions and dinners in honor of the participants.

Organization and Administration

The Conference was held in connection with the 60th Anniversary of Korea University, which as a private, non-governmental educational institution, has been a quiet, unselfconscious social force in the process of modernization. And, of course, Korea University symbolized the whole effort in Asia towards modern forms of education. Somewhat unique was the *Asiatic Research Center* of Korea University which was responsible for the administration of the Conference. An especially able job was accomplished by the Center under the leadership of Dr. Lee, Sang-eun, who serves as its Director.

There was an over-all Conference Chairman and a Chairman of the General Meetings. Next came the Organizing Committee, the Steering Committee, the Drafting Committee, and the Secretary.

¹ *The Korea Times*, June 29, 1965, and *The Korean Republic* July 1, 1965.