

CHAPTER IV

APPLICABILITY CLAUSE OF THE MUSLIM CODE

Article 13 of the Muslim Code provides for its applicability clause. It provides that:

(1) The provisions of this Title shall apply to marriage and divorce wherein both parties are Muslims, or wherein only the male party is a Muslim and the marriage is solemnized in accordance with Muslim law or this Code in any part of the Philippines.

(2) In case of a marriage between a Muslim and a non-Muslim, solemnized not in accordance with Muslim law or this Code, the Civil Code of the Philippines shall apply.

(3) Subject to the provisions of the preceding paragraphs, the essential requisites and legal impediments to marriage, divorce, paternity and filiation, guardianship and custody of minors, support and maintenance, claims for customary dower (mahr), betrothal, breach of contract to marry, solemnization and registration of marriage and divorce, rights and obligations between husband and wife, parental authority, and the property relations between husband and wife shall be governed by this Code and other applicable Muslim laws.

This title refers to Title II of Book II of the Muslim Code. It is the law of marriage and divorce which is provided under Article 13 to 57 of the Muslim Code.

Generally, the provisions of this title of the Muslim Code shall apply to marriage and divorce when the following requirements occur.¹

- (1) Both parties are Muslims; or only the male party is a Muslim;
- (2) The marriage is solemnized in accordance with the Muslim law or the Muslim Code; and
- (3) The marriage is solemnized in any part of the Philippines.

With regard to the parties in a marriage, it should be interpreted that Muslims are citizens of the Philippines because the Muslim Code is a personal law of the Muslims in the Philippines. In the event that the female party is not a Muslim, it should be construed that she belongs to the people of scripture in a liberal context to conform to the present condition and social practice in the country. Otherwise, the marriage cannot be solemnized in accordance with the Muslim law or the Muslim Code.² However, this law is subject to exception in the case of the conversion of non-Muslim spouses to Islam. The Code provides that the conversion of non-Muslim spouses to Islam shall have the legal effect of ratifying their marriage as if the same had been performed in accordance with the provisions of this Code or Muslim law, provided that there is no legal impediment to the marriage under Muslim law.³

With regard to the law under which the marriage must be solemnized, the Muslim law as aboved mentioned refers to the Shari'ah in a wider context⁴ while the Muslim Code refers to the Presidential Decree No. 1083.⁵ However, this is subject to the following exception: 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 the Muslim law provided the spouses register their mutual desire to this effect.⁶

Moreover, if both parties are Muslims, there is a presumption that the Muslim Code or Muslim law is complied with. If together with it or in addition to it, the marriage is likewise solemnized in accordance with the Civil Code of the Philippines, in a so-called combined Muslim-Civil marriage rites, whichever comes first is the validating rite and the second

rite is a merely ceremonial one.⁷

With regard to the place of solemnization, the Muslim Code expressly provides that the marriage is solemnized in any part of the Philippines. In view of the foregoing, the Muslim Code shall not be applied to a marriage entered into by Filipino Muslims in a foreign country. Therefore, it is humbly submitted that the Muslim Code would be more comprehensive like the Family Code⁸ if express provisions were provided under the Muslim Code recognizing foreign marriages among Muslim Filipinos.

Notes

1. Code of Muslim Personal Laws of the Philippines, (otherwise known as Presidential Decree No. 1083 which took effect on February 4, 1977), Art. 13 (1). (To shorten the citation, this Code shall be cited in this dissertation as M.C.).
2. Jainal D. Rasul and Ibrahim Ghazali, Commentaries and Jurisprudence on Muslim Code of the Philippines, 98 (1984).
3. M.C., Art. 178
4. M.C. Art. 7(h).
5. M.C., Art. 7(i).
6. M.C., Art 186(2).
7. Supra Note 2.
8. The Family Code of the Philippines, (otherwise known as Executive Order No. 209 which took effect on July 6, 1988), Art. 10.