



Legal issues and family matters

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Can a husband and wife in a notarized document declare that they are free to marry other persons and they will not file charges against each other?

Several persons have asked me about situations where the husband and wife have decided to call it quits after a long period of physical separation, physical or psychological abuse, or because of the loss of love for each other. Instead of going through the judicial process of having their marriage declared null and void, however, the husband and wife have asked a lawyer-notary public (in some instances even a judge) to prepare and notarize a document where they have declared that both parties are now free to marry other persons and that they will not file charges of adultery or concubinage against each other. The question I have been asked is, Is this document legally valid?

The Supreme Court has ruled consistently since as far back as 1933 (that's 75 years ago!) in the case of *Panganiban vs. Borromeo* 58 Phil. 367 that **such documents are illegal, immoral and void because they undermine and subvert the institution of**

marriage. Judges, lawyers and notaries-public who have prepared and signed such documents have been reprimanded severely (in terms of suspension or disbarment) by the Court. And yet, either because of ignorance or misconceptions of the law by the man on the street and by the desire of some lawyers-notaries public to make a fast buck, this kind of agreement and document still seems to be floating around.

In the 1976 decision of the Supreme Court in the case of "*Redentor Albano, complainant, vs. Municipal Judge Patrocinio C. Gapusan of Dumalneg, Ilocos Norte, respondent*", Judge Gapusan (before his appointment to the judiciary) prepared and notarized a document providing for the personal separation of husband and wife and the extrajudicial liquidation of their conjugal partnership. The Supreme Court censured Judge Gapusan for his act of preparing and notarizing such a document.

Redentor Albano in a verified complaint dated August 18, 1975 charged Municipal Judge Patrocinio C. Gapusan of Dumalneg and Adams, Ilocos Norte with

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incompetence and Ignorance of the law for having prepared and notarized a document providing for the personal separation of husband and wife and the extrajudicial liquidation of their conjugal partnership. In 1941 or five years before his appointment to the bench, Judge Gapusan notarized a document for the personal separation of the spouses Valentina Andres and Guillermo Maligta of Barrio 6, Vintar, Ilocos Norte and for the extrajudicial liquidation of their conjugal partnership. It was stipulated in that document that if either spouse should commit adultery or concubinage, as the case may be, then the other should refrain from filing an action against the other.

Judge Gapusan denied that he drafted the agreement. He explained that the spouses had been separated for a long time when they signed the separation agreement and that the wife had begotten children with her paramour. He said that there was a stipulation in the agreement that the spouses would live together in case of reconciliation. His belief was that the separation agreement forestalled the occurrence of violent incidents between the spouses.

There is no question that the covenants contained in the said separation agreement are contrary to law, morals and good customs (Biton vs. Momongan, 62 Phil. 7). Those stipulations undermine the institutions of marriage and the family, "Marriage is not a mere contract but an inviolable social institution". "The family is a basic social institution which public policy

cherishes and protects." (Arts. 52 and 216, Civil Code). Marriage and the family are the bases of human society throughout the civilized world (Adong vs. Cheong Seng Gee, 43 Phil. 43).

To preserve the institutions of marriage and the family, the law considers as void "any contract for personal separation between husband and wife" and "every extrajudicial agreement, during the marriage, for the dissolution of the conjugal partnership" (Art. 221, Civil Code). A notary should not facilitate the disintegration of a marriage and the family by encouraging the separation of the spouses and extrajudicially dissolving the conjugal partnership. Notaries have been severely censured by the Supreme Court for notarizing such documents. (Selanova vs. Mendoza, Adm. Matter No. 804-CJ, 1975).

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23

Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31

Confess and repent of your sins. Luke 13:3, Isaiah 1:18

Delay not in receiving Jesus Christ into your heart. 2 Corinthians 6:2, Proverbs 27:1

Pray and ask the Lord to save you now: "Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus' name. Lord Jesus, I now accept you as my Savior. Amen."

If you want people to pray for you for you, please surf to this prayer room for men and women:
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