

# Filipino Reporter

**FAIR, FEARLESS, FACTUAL**

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## May marry if hubby's unheard of 7 years

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Are you free to marry in the Philippines if your spouse has been unheard of for seven years and his whereabouts are a mystery? What happens if you get married and your spouse suddenly turns up?

Take the case of a young man who raped a 15-year-old virgin and, through the intercession of influential persons in the community, the young man agreed to marry her to avoid criminal prosecution.

Four months after the marriage, the young man disappeared and, for a period of more than 6 years, nothing was heard of him; in fact some said he died somewhere.

In the meantime, the girl married an American and begot a child. Then the American husband filed a visa petition on behalf of the girl so that she may follow him to the United States. Out of the blue, the first husband appeared.

Question: Who was her legal husband?

The New Civil Code of the Philippines provides that any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such spouse is void. An exception to this rule is when the first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse knowing he was alive. If the absence is less than seven years, the exception still applies as long as the absent spouse is generally considered as dead and believed to be dead by the spouse present at the time of contracting such subsequent marriage.

The law also provides that the second marriage is valid until it is declared void by a competent court.

The mere appearance of the first spouse is not enough to nullify the second marriage. The first marriage stands but all its effects with respect to personal and property relations are deemed suspended.

In this case, the wife executed an affidavit stating that she had been abandoned for more than six years without any communication between them. The first husband also took a common law wife by whom he had two children. She further averred that she was no longer interested to resume her marriage relationship with the first husband.

The Immigration Board consulted with leading authorities, including former Senator Arturo Tolentino. They all agreed that under the law, the second marriage is clothed with validity. They, however, disagreed as to whether the good faith of the wife in this case was enough to accord validity to the second marriage when the absence was for less than seven years and he was not generally considered dead.

The California Civil Code, which was the basis of the Philippine law, is enlightening. Under its pertinent provision, when a person contracts two successive marriages, a presumption exists holding the second marriage as valid, and it is for the party attacking the marriage to show that the first marriage had not been dissolved by the death of the first spouse.

Thus, although seven years had not elapsed and the husband was never considered generally dead, the second marriage of the girl carried the presumption of validity. In the absence of any judgment annulling the first marriage, the second marriage was valid for all intents and purposes. And certainly, it was a valid marriage in the eyes of the immigration officials who decided to approve the visa petition for immediate relative status filed on behalf of the wife.