

IN THE  
SUPREME COURT  
OF THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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**MD. RAFIQUL ISLAM,**  
Appellant,

v.

**MARIA CARMEN AYUYU ISLAM and ANA BELLA CALLOS ISLAM,**  
Appellees.

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**SUPREME COURT NOS. 2008-SCC-0021-FAM and 2008-SCC-0025-FAM**  
SUPERIOR COURT NOS. FCD-DI Civil Actions 08-0018 and 07-0535

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**Cite as: 2009 MP 17**

Decided December 22, 2009

Joseph E. Horey, Saipan, Commonwealth of the Northern Mariana Islands, for Appellant.  
Jane Mack, Micronesian Legal Services Corp., for Appellee Maria Carmen Ayuyu Islam.  
BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice;  
JOHN A. MANGLONA, Associate Justice

DEMAPAN, C.J.:

¶ 1 Appellant Md. Rafiqul Islam (“Islam”) appeals a trial court order denying his petition for annulment of his 2002 marriage to Ana Bella Callos Islam (“Callos”) in the Philippines, arguing that the marriage did not meet the requirements of either Islamic or Philippine law.<sup>1</sup> Islam also appeals the trial court’s decision to grant a divorce to his second wife, Maria Carmen Ayuyu Islam (“Ayuyu”), under 8 CMC § 1331(b), claiming that his failure to inform Ayuyu of his marriage to Callos was not sufficiently egregious to justify granting a divorce. Because Islam has not produced sufficient evidence to overcome the strong presumption of validity of his marriage to Callos, the trial court did not err by recognizing a valid marriage. However, because Islam’s marriage to Callos was valid at the time of his subsequent marriage to Ayuyu, the latter marriage was void, and the trial court should have granted Ayuyu’s petition for an annulment. Accordingly, we AFFIRM the trial court order granting a divorce rather than an annulment in Islam’s marriage to Callos. We REVERSE the trial court order granting a divorce in Ayuyu’s case against Islam, and REMAND this matter to the trial court for entry of an annulment of Ayuyu’s marriage to Islam.

## I

¶ 2 Islam is a Bangladeshi citizen who has resided in Rota at all times relevant to this case. Callos is a Filipino citizen currently living in the Philippines. Callos and Islam previously engaged in a non-marital sexual relationship while Callos was temporarily residing in the Commonwealth. This relationship produced two children, born in the Philippines in 1995 and 1997. Shortly after the birth of their second child, Callos permanently relocated to the Philippines with her children.

¶ 3 Islam testified that Philippine law required children who were born out of wedlock to take their mother’s surname. Appellant’s Opening Br. at 3. If the child’s parents are subsequently married, the child may then take the father’s surname. *Id.* Callos informed Islam that their children were subject to constant ridicule by their peers due to their apparent status as illegitimate children. She asked Islam to travel to the Philippines and register a legal marriage so their children could take his surname, thereby shedding their stigma as illegitimate children. Islam obliged, and on July 4, 2002, the couple completed a marriage certificate at the Baguio Muslim Mosque Center. The certificate was signed by Callos, Islam, and a purported solemnizing officer, who noted that the marriage was performed in accordance with Islamic

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<sup>1</sup> The Appellees’ involvement in this case derives from separate petitions for divorce in the trial court and separate appeals to this Court. The cases, however, have been consolidated because our holding in one case necessarily affects the outcome of the other.

custom. Under Philippine law, couples who marry under Islamic custom are exempt from the general requirement to obtain a marriage license; thus, Callos and Islam did not obtain one. Appellant's Excerpts of Record ("ER") at 51-52. Islam returned to Rota shortly thereafter. In the meantime, Callos was able to use the marriage certificate to legally change her children's names on their birth certificates and passports. ER at 75-76.

¶ 4 On July 28, 2005, Islam married another woman, Maria Carmen Ayuyu Islam, in the Commonwealth. Before they were married, Ayuyu was aware that Islam had two children with Callos; however, Islam did not tell her that he had registered a marriage with Callos in the Philippines. It was not until two years later, when the two were planning to travel to Guam for immigration reasons, that he informed Ayuyu about his previous marriage to Callos. Upon learning of Islam's first marriage, Ayuyu testified that she was very disturbed by the revelation and that she had lost all trust in him.

¶ 5 At trial, Islam did not offer any evidence indicating that his marriage to Callos had been dissolved by annulment or divorce prior to his marriage to Ayuyu. He claims that his sole purpose for registering his marriage to Callos was to create a "false record of marriage, so as to circumvent the Philippine naming laws, and allow their daughters to take their father's surname." Appellant's Opening Br. at 4. He asserts that he "did not understand himself to be married to Ana Bella [Callos]," and that neither he nor Callos intended to enter into a marital relationship. Appellant's Opening Br. at 5. He additionally claims that the first marriage did not meet formal marriage requirements under either Philippine or Islamic law. Islam asserts that the imam<sup>2</sup> who solemnized the marriage was actually a clerk in the Baguio Muslim Center office with no authority to solemnize marriages, and that the couple bribed him with a cell phone to forge the documents. Also, he notes that Callos is Catholic, not Muslim, thereby precluding her from marriage under Islamic custom.

¶ 6 On September 20, 2007 Islam filed for annulment, or in the alternative divorce, from Callos in the trial court.<sup>3</sup> Even though he attempted to correct any legal deficiencies in his relationship with Ayuyu by legally parting ways with Callos, Ayuyu separated from Islam on October 10, 2007. In January 2008, Ayuyu similarly filed for annulment or divorce from Islam. She testified that Islam's lack of candor about his previous marriage was the impetus for her

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<sup>2</sup> An "imam" is a member of the Muslim clergy.

<sup>3</sup> Callos defaulted on Islam's petition for annulment or divorce. She has not appeared and has not been represented in any proceeding relevant to this case.

decision to seek a divorce.<sup>4</sup> The trial court heard both cases together. In Islam’s divorce action against Callos, the trial court denied Islam’s request for annulment and instead granted a divorce on June 20, 2008 pursuant to 8 CMC § 1331(h), which permits divorce if a couple has not cohabitated for two consecutive years. In the divorce decree, the trial court declined to make any specific findings of fact regarding the validity of the first marriage. It simply held “[t]he Court finds that this marriage was valid.” *Md. Rafiqul Islam v. Ana Bella Callos Islam*, FCD-DI Civ. No. 07-0535 (NMI Super. Ct. June 20, 2008) (Divorce Decree at 1). However, the trial judge’s statements from the bench indicate that he relied heavily on the Philippine passport agency’s recognition of a valid marriage in making his own determination that the marriage was valid. On May 19, 2008, the trial court also granted Ayuyu’s petition for divorce from Islam pursuant to 8 CMC § 1331(b), which permits divorce when a party’s “cruel treatment, neglect or personal indignities, whether or not amounting to physical cruelty . . . render[s] the life of the other burdensome and intolerable and their further living together unsupportable.” 8 CMC § 1331(b).

## II

¶ 7 Islam appeals the trial court’s refusal to annul his Philippine marriage to Callos. “[W]hether a person has been legally married to another is a mixed question of law and fact.” *In re Cummings’ Estate*, 479 A.2d 537, 541 (Pa. Super. 1984). The inlaid questions of law are subject to de novo review. *Commonwealth v. Demapan*, 2008 MP 16 ¶ 50. However, the trial court’s findings of fact are reviewed under the clearly erroneous standard. *Reyes v. Reyes*, 2004 MP 1 ¶ 3. Islam also appeals the trial court’s decision to grant Ayuyu’s petition for divorce pursuant to 8 CMC § 1331(b), claiming that his failure to inform Ayuyu of his previous marriage to Callos does not constitute “cruel treatment, neglect or personal indignit[y].” 8 CMC § 1331(b). Whether the trial court erred in determining that Islam’s behavior rose to such a level is a question of law subject to de novo review. *Ada v. Sablan*, 1 NMI 415, 422 (1990). We examine each marriage in turn to determine their current legal status and what effect, if any, one marriage had on the other.

### *Islam’s Marriage to Callos in the Philippines*

¶ 8 As previously stated, the trial court denied Islam’s petition for annulment of his marriage to Callos and instead granted a divorce pursuant to 8 CMC § 1331(h). On appeal, Islam contends

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<sup>4</sup> Q: “[T]he only reason you had for wanting a divorce from Mr. Islam is that he registered this marriage in the Philippines, is that right?” A: “Yes.” ER at 14; Q: “[I]f he had told you all this stuff that came out before you two actually got married, would you still have married him if he’d been honest with you?” A: “Yes, if he’s [sic] been honest with me.” ER at 58; *see also* ER at 12, 17. Ayuyu further testified that she no longer loves or trusts Islam and does not wish to be married to him anymore, “[n]o matter what.” ER at 59.

that the trial court improperly relied on the Philippine passport agency's "presumption of the accuracy of the Philippine marriage certificate." Appellant's Reply Br. at 9. He claims, based on the reasons set forth below, that his marriage to Callos was never legitimate, and that the trial court should have granted an annulment for any legal relationship that may have existed rather than a divorce from a recognized marriage.

¶ 9 Under Commonwealth law, "[a] decree annulling a marriage may be rendered on any ground existing at the time of the marriage which makes the marriage illegal and void or voidable." 8 CMC § 1321. We must therefore determine whether the trial court erred in finding that no legal deficiency existed when Islam and Callos registered their marriage in the Philippines.

¶ 10 To begin our discussion on the validity of Islam's first marriage, we note the "longstanding presumption of law that a marriage entered in due form is valid." *Clark v. Clark*, 719 S.W.2d 712, 713 (Ark. App. Div. I 1986). "Once the existence of a marriage is established, a strong though rebuttable presumption arises that such marriage is valid." From a public policy perspective, the presumption to support the validity of marriages arises from the importance of marriage as a social institution. *See Madewell v. United States*, 84 F. Supp. 329, 332 (E.D. Tenn. 1949).

¶ 11 In the instant case, there is substantial evidence indicating the existence of a marriage, not the least of which is Islam's own admission that he and Callos registered the marriage for the sake of their children. Additionally, included in the record is the marriage certificate signed by both Islam and Callos, the amended birth certificates that recognize a "subsequent marriage," and the name changes in the children's passports. This evidence clearly raises the rebuttable presumption that Islam's first marriage was valid.

¶ 12 As the party who initiated the annulment proceeding, Islam bears the burden of proving that the marriage is not valid due to a particular legal deficiency. *Blair v. Blair*, 147 S.W.3d 882, 885 (Mo. App. 2004) ("The burden of proving the invalidity of a marriage rests upon him who asserts such invalidity . . .") (quoting *In re Marriage of Burnside*, 777 S.W.2d 660, 664 (Mo. App. 1989)); *Clark*, 719 S.W.2d at 713 ("[T]he burden of proving a marriage invalid is upon the party attacking its validity."). Since 8 CMC § 1321 requires us to examine Islam's and Callos's circumstances at the time of marriage, and the marriage was contracted in the Philippines, we must determine whether all necessary steps were taken to validate the marriage under Philippine law, and if any factors existed that would make the marriage illegal, void, or voidable.

¶ 13 The Philippine law governing marriages is located in Title I of the Family Code of the Philippines.<sup>5</sup> Articles 2 and 3 of Title I enumerate two categories of marriage requirements, both of which must be satisfied to legally contract for marriage. Those two categories are “essential requisites,” governing the substance of the contract, and “formal requisites,” governing procedural requirements. The “essential requisites” require the contracting parties to have (1) legal capacity, and (2) freely given consent in the presence of a solemnizing officer. There is no dispute that these requisites were satisfied. The parties’ fulfillment of the “formal requisites,” however, is in question. Those requirements are as follows:

- (1) Authority of the solemnizing officer;
- (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
- (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

*Id.* at art. 3. Satisfaction of the “formal requisites” is a mandatory requirement for a valid marriage. “The absence of any of the essential or formal requisites shall render the marriage void *ab initio* . . . .” *Id.* at art. 4

¶ 14 Islam claims that requirements (1) and (2) of the formal requisites were not met. First, he asserts that the individual solemnizing the marriage did not have the authority to do so under either Philippine or Islamic law. Article 7 of the Family Code of the Philippines states that a “[m]arriage may be solemnized by . . . any priest, rabbi, imam, or minister . . . duly authorized by his church or religious sect . . . and registered with the civil registrar general . . . .” Islam testified that the man who purportedly solemnized his marriage “was a clerk in a Muslim affairs office, who processed the paperwork for [him] and Ana Bella because they bribed him with a cell phone.” Appellant’s Opening Br. at 5 (citing ER at 20, 29, 37). If this was indeed true, then all of the formal requisites would not have been met, and the marriage would have been void *ab initio*.

¶ 15 Islam also argues that formal requisite (2) – requiring a valid marriage license – was not met, as he and Callos never obtained one. However, “[m]arriages among Muslims or among

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<sup>5</sup> The sections of the Philippine Family Code at issue were established by Executive Order 209, (available at <http://www.chanrobles.com/executiveorderno209.htm>) (promulgated 1987, accessed online July 13, 2009). At trial, Islam’s witness Auralou Sabangan, a Philippine attorney, testified as to the contents and requirements of Philippine marriage law. ER at 49–54. The exhibits of Philippine law offered by Islam were obtained from the above-cited website. ER at 77–82. Although the website is not an official source of Philippine law, Commonwealth Rule of Civil Procedure 44.1 states, “[t]he court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Commonwealth Rules of Evidence. The court’s determination shall be treated as a ruling on a question of law.”

members of the ethnic cultural communities may be performed validly without the necessity of marriage license, provided they are solemnized in accordance with their customs, rites or practices.” Family Code of the Philippines art. 33. The marriage certificate completed by Islam and Callos indicates that their marriage was performed under this licensure exemption.

¶ 16 Islam testified that while he and Callos registered their marriage by way of the Muslim marriage license exception, there were many ceremonial defects which should render their marriage void under Islamic and Philippine law. In support of this assertion, Islam produced a local imam at trial to testify about the required formalities of a customary Islamic marriage. First, the imam testified that both the bride and groom must be Muslim. ER at 45. While Islam is Muslim, he claims that Callos is not. Additionally, the imam testified that an Islamic marriage requires an “*ijab* (a formal offer of marriage), *qabul* (an acceptance of the offer), and *mahr* (a gift of dowry from the husband to the wife).” ER at 44-45. Furthermore, there must be at least two witnesses present during the *ijab*, *qabul*, and the arrangement of the *mahr*. Islam asserts that none of these requirements were met, and that his marriage to Callos is void as a result.

¶ 17 Although Islam’s testimony regarding the invalidity of his first marriage was uncontroverted, the trial court still found the marriage to be valid. In reviewing this finding, we are mindful that “[t]he trier of fact has wide latitude in deciding which witnesses to believe and disbelieve.” *Commonwealth v. Camacho*, 2002 MP 6 ¶ 109 (citing *United States v. Terry*, 760 F.2d 939, 942 (9th Cir. 1985)). “[I]t is a ‘well settled notion’ that it is the ‘exclusive function’ of the trier of fact to determine the credibility of witnesses, to resolve evidentiary conflicts, and to draw reasonable inference from proven facts.” *Commonwealth v. Zhang*, 2009 MP 6 ¶ 13 (quoting *Commonwealth v. Taitano*, 2005 MP 20 ¶ 15).

¶ 18 Since Callos defaulted, all of Islam’s assertions rest solely on his own testimony. He states that “all the evidence with respect to the certificate was that it had been procured under false pretenses and contrary to the requirements of Philippine law for a valid marriage.” Appellant’s Reply Br. at 8.

¶ 19 It is true that all of the evidence on record supports Islam’s contention that his marriage to Callos did not satisfy all legal requirements. However, the only actual evidence is his uncorroborated and unopposed testimony. Unopposed testimony of a fact is not the same as satisfying the burden to prove that fact. In *Maduro v. Maduro*, 145 P.2d 683 (Cal. Ct. App. 1944), an appeal from a denial of annulment, the defendant wife defaulted at trial, but the trial court still denied the husband’s prayer of annulment. The only evidence the husband offered in support of his petition was his own testimony. The husband argued “that the evidence produced by him, as a matter of law, was legally sufficient to require the trial court to enter the decree.” *Id.*

at 685. The appellate court rejected his argument and deferred to the trial court, stating, “[i]t was for the trial court to pass upon the credibility of the witnesses and the weight to be given their testimony.” *Id.*

¶ 20 Like the plaintiff in *Maduro*, Islam was denied an annulment despite the fact that his alleged wife had defaulted. Also similar was the lack of any evidence other than one party’s unsupported testimony in support of annulment. Furthermore, each trial court declined to attach much weight to the plaintiffs’ testimony. Just as the *Maduro* court deferred to the trial court on its assessment of the “credibility of the witnesses and the weight to be given their testimony,” *Maduro*, 145 P.2d at 685, so too must we defer to the trial court in its determination that the marriage was valid. There is insufficient evidence to show that the trial court was clearly erroneous in refusing to attach credibility to Islam’s testimony. As Ayuyu notes, “[h]e impeached himself by insisting he committed a fraudulent act in the Philippines,” Appellee’s Br. at 5, and this Court is in no position to second-guess the trial court’s factual findings.

¶ 21 Another case, *In re Petition of Zabala*, 573 F. Supp. 665 (E.D.N.Y 1983), demonstrates the adequacy of evidence sufficient to prove that a marriage requirement was not met. In that case, the petitioner contended that his Philippine marriage was invalid despite the fact that there was a marriage certificate, which appeared to be regular on its face showing him to be married. The petitioner attacked the marriage’s validity by arguing that one of the requisites of marriage in the Philippines was not satisfied — specifically, that he was not even present at the marriage ceremony before the solemnizing officer. *Id.* at 666-67; *see also* Family Code art. 3.<sup>6</sup> In support of his contention, the petitioner provided a personal affidavit and corroborating affidavits from the bride and one of the witnesses who signed the marriage contract. The other two individuals who had signed the marriage contract – the solemnizing officer, and the second witness – were deceased. “Thus, the only three signatories to the marriage contract who [were then alive] all claim[ed] that [the petitioner] was not present at the ceremony.” *Zabala*, 573 F. Supp. at 667. The district court held that the petitioner had proven the invalidity of the marriage.

¶ 22 The instant case is similar to *Zabala* in that Islam has asserted that some of the marriage requirements were not met. In *Zabala*, it was the plaintiff’s physical absence from the marriage ceremony; in the instant case it is the lack of authority of the solemnizing officer and nonconformance to Islamic custom. However, in *Zabala*, evidence was supplied by not only the plaintiff, but two other witnesses as well. In essence, all of the remaining “signatories to the

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<sup>6</sup> The *Zabala* case predates the adoption of the Family Code of the Philippines, and instead cites to articles of the Civil Code of the Philippines. However, the text of the Civil Code of the Philippines dealing with marriage and annulment is largely analogous to the Family Code of the Philippines.



marriage contract” confirmed the petitioner’s assertion. *Zabala*, 573 F. Supp. at 667. Here, the only evidence that Islam produced was his uncorroborated testimony. He has failed to provide statements or testimony from those others who potentially have firsthand knowledge of whether he and Callos failed to satisfy Philippine marriage requirements.

¶ 23 Furthermore, unlike the physical presence requirement attacked in *Zabala*, which could likely only come in the form of witness testimony, in the instant case it is absolutely possible to investigate documentary evidence to support Islam’s contention. For example, according to the Family Code of the Philippines, in order for an imam to be an authorized solemnizing officer, the imam must be “registered with the civil registrar general.” Family Code of the Philippines art. 7. Thus, Islam could have attempted to contact the civil registrar general’s office in the Philippines in order to obtain a statement as to whether or not the imam was registered in that office. If Islam has performed any such investigation, however, he has not disclosed it to this Court. Additionally, it may have been possible to procure a registry from Callos’s Catholic diocese showing that she was indeed a member at the time of her marriage to Islam. Such evidence would support Islam’s testimony by showing that she was not a member of the Islamic faith, thereby precluding her from marriage under the Muslim licensure exception.

¶ 24 Lastly, Islam contends that an “intent to enter into a true marital relationship as husband and wife” is essential for a valid marriage to result, and that he and Callos never had such intent. Appellant’s Reply Br. at 12-13 (citing various state cases holding marriage void “where it is entered into for the sole purpose of legitimating a child, without any intent to live as husband and wife afterward” and also federal cases holding marriages void when entered solely for obtaining immigration status). He draws the Court’s attention to the Commonwealth legislature’s findings “that marriage for immigration purposes ‘subvert[s] the institution of marriage . . . .’” Appellant’s Reply Br. at 13. He also notes that Commonwealth law denies legal incidents of marriage and even imposes criminal sanctions for those entering into marriage for the sole reason of changing one’s immigration status. *Id.* at 13-14. Islam claims that “[s]uch laws as these evince a public policy of the Commonwealth that marriage will be recognized as valid only when entered into for the purpose of establishing a life together as husband and wife.” *Id.* at 14. In essence, Islam suggests that the trial court should have invalidated his Philippine marriage because it would be contrary to Commonwealth public policy if executed here.

¶ 25 The Commonwealth Code is silent on the issue of annulments of foreign marriages for policy reasons. The Restatement (Second) of Conflict of Laws § 283(2) (1971) (hereinafter

“Restatement”),<sup>7</sup> states that “a marriage which satisfies the requirements of the state where the marriage was contracted will everywhere be recognized as valid unless it violates the strong public policy of another state which had the most significant relationship to the spouses and the marriage at the time of the marriage.”<sup>8</sup> The state that had the most significant relationship to the parties at the time of marriage was clearly the Philippines. The marriage was contracted in the Philippines under Philippine law, Callos is a Philippine citizen, and the couple’s children are Philippine citizens. In instructing courts as to whose policy to consider, the Restatement says the following:

The prime question for the forum . . . is whether the courts of the state of most significant relationship would themselves have invalidated the marriage if the question had come before them. For if these courts would not have invalidated the marriage, it is apparent that . . . the policy . . . is not sufficiently strong to warrant invalidation of the marriage.

Restatement § 283(2) cmt. k. Since the Philippines was the state with the most significant relationship to the contracting parties at the time the marriage contract was executed, it follows that Philippine policy is the only relevant policy in examining Islam’s assertion that his marriage to Callos was invalid. The Family Code of the Philippines does not require the parties to have an “intent to enter into a true marital relationship as husband and wife,” nor does it render a marriage void which was entered into solely to legitimate children. Appellant’s Reply Br. at 12.

¶ 26

In arguing that the Commonwealth legislature would frown upon the marital agreement entered into by him and Callos, Islam seems to ignore the fact that Commonwealth public policy is basically irrelevant when it comes to annulment of foreign marriages. Even assuming for illustrative purposes that the Commonwealth was the “state which had the most significant relationship to the spouses and the marriage at the time of the marriage,” *id.* at § 283(2), it is highly doubtful that there is a “strong public policy” in the Commonwealth which would justify annulment under Restatement § 283. Islam has cited Commonwealth statutes that punish

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<sup>7</sup> In the absence of written or local customary law, we look to the common law as expressed in the Restatements. 7 CMC § 3401.

<sup>8</sup> Restatement § 283(2) refers only to cases involving the law of two or more States within the United States, and does not specifically address cases such as this involving the law of at least one other sovereign foreign nation. However, Restatement § 10 states that the same rules governing interstate conflicts of law generally also govern international conflicts of law. Accordingly, we interpret Restatement § 283(2) to be applicable to this case even though Philippine law is at issue. In support of this interpretation, we note that other state courts have incorporated foreign law into their analysis when the parties were married in the foreign jurisdiction. *See Auten v. Auten*, 124 N.E.2d 99, 101 (N.Y. 1954) (relying on the Restatement to support application of English law to a divorce case filed in a New York state court).

marriage for immigration purposes, but he has not cited Commonwealth statutes or case law that would invalidate a marriage that was contracted for the purpose of legitimating a child. Thus, the guidelines for annulment due to policy considerations do not apply in the instant case regardless of the parties' ties to a particular state. Accordingly, Islam's first marriage must "everywhere be recognized as valid." Restatement § 283(2).

*Islam's Subsequent Marriage to Ayuyu*

¶ 27 At trial, Ayuyu sought a divorce from Islam, or in the alternative a decree of annulment under 8 CMC § 1321. On May 19, 2008, the trial court granted Ayuyu's petition for divorce pursuant to 8 CMC § 1331(b), which permits divorce when a party's "cruel treatment, neglect or personal indignities, whether or not amounting to physical cruelty . . . render[s] the life of the other burdensome and intolerable and their further living together unsupportable." 8 CMC § 1331(b). Islam appeals the divorce decree, arguing that his failure to inform Ayuyu about his prior marriage to Callos was not sufficiently egregious to justify granting a divorce under that section. For the reasons set forth below, we need not address this issue, as the marriage was void as a matter of law from its inception.

¶ 28 Concerning annulment of marriages, the Commonwealth Code states, "[a] decree annulling a marriage may be rendered on any ground existing at the time of the marriage which makes the marriage illegal and void or voidable." 8 CMC § 1321. The legislature's use of the phrase "[a] decree annulling a marriage *may* be rendered" seems to give the trial court discretion to refrain from granting an annulment even if factors making the marriage illegal, such as the existence of a living spouse, were present at the time of marriage. *Id.* (emphasis added). While the trial court may have discretion to grant an annulment when a marriage is merely voidable, we do not adopt this interpretation for a clearly unlawful marriage.

¶ 29 The legislature's coupling of the words "illegal and void" signals that an illegal marriage is per se void. 8 CMC § 1321; *see Brown v. Parks*, 160 S.E. 238, 240 (Ga. 1931) ("If at the time of marriage one of the parties had a living spouse, of course the marriage is void."). Under Commonwealth law, certain requirements must be fulfilled before one can legally enter into a marriage. *See* 8 CMC §§ 1201-05. Allowing the trial court to refrain from granting an annulment despite one's failure to fulfill these requirements is tantamount to a judicial declaration that he or she acted lawfully when, in fact, he or she did not. Judicial recognition of a marriage in such a case is akin to ratification of illegal behavior. The legislature would not have set forth strict and clear requirements for marriage only to allow parties to later bypass those requirements at the trial court's discretion. Accordingly, if the party seeking an annulment demonstrates that

the parties did not meet the legal requirements for marriage, the trial court must grant a petition for annulment, and may not in the alternative grant a divorce.

¶ 30 Having interpreted 8 CMC § 1321 as non-discretionary when the party seeking an annulment shows that a marriage is legally deficient, we now turn to the facts before us. The Commonwealth Code sets forth certain prerequisites that must be met for parties to enter into a valid marriage contract. One such prerequisite, found in 8 CMC § 1202(b), is that neither party has a lawful living spouse. The trial court found, and this court affirmed, a valid marriage between Islam and Callos from July 4, 2002 – the date the couple executed the marriage certificate in the Philippines – until June 20, 2008 – the date the trial court entered a divorce pursuant to 8 CMC § 1331(h). On July 28, 2005, which was during the period of Islam’s marriage to Callos, he attempted to enter into another marriage with Ayuyu in the Commonwealth. In light of the previous marriage, all legal requisites were not met for Islam’s marriage to Ayuyu to be valid under 8 CMC § 1202. Consequently, the marriage was never a legal relationship and is void as a matter of law. By granting a divorce rather than annulment, even though it was apparent that Islam could not have lawfully entered into a marriage with Ayuyu, the trial court exercised discretion that it did not actually have.

### III

¶ 31 In sum, we find no error in the trial court’s decision to recognize the validity of Islam’s marriage to Callos. Because Islam was legally married to Callos, he was not able to enter into a subsequent marriage with Ayuyu. Accordingly, we AFFIRM the trial court’s order granting a divorce rather than an annulment in Islam’s marriage to Callos. However, we REVERSE the trial court’s judgment of divorce in Ayuyu’s case against Islam, and REMAND this matter for entry of an annulment decree pursuant to 8 CMC § 1321.

SO ORDERED this 22nd day of December 2009.

/s/  
MIGUEL S. DEMAPAN  
Chief Justice

/s/  
ALEXANDRO C. CASTRO  
Associate Justice

/s/  
JOHN A. MANGLONA  
Associate Justice