

The Legal Impediments to the Application of Islamic Family Law in the Philippines

ANSHARI P. ALI

Abstract

This study examines the legal impediments to the application of Islamic Family Law in the Philippines. It is carried out by critically analyzing the legal effects of the secular principles, the Constitution and other laws of the state towards the enforcement of Islamic family law in the Philippines. This research establishes that the Islamic family law in the Philippines is part and parcel of the Philippine secular laws, the enforcement of which is not a consideration of the religious beliefs of the Filipino Muslims, but rather of their cultural traditions. The religious characteristics of Islamic family law are not implemented in the country. The Shari'ah court in the country is an integral part of the Philippine judicial system, yet deprived of the authority to enforce religious rulings or to administer Islamic religious institutions. A woman or a non-Muslim is not legally disqualified for appointment as judge in the Shari'ah court. The decision of the Shari'ah court can be appealed to the Supreme Court of the Philippines, whose decision may possibly deviate from the basic teachings of the Shari'ah. Whether such a decision has deviated from the basic teachings of the Shari'ah or not, it will still become part of the Muslim legal system in the country. These are among the legal impediments, restrictions, conflicts and contradictions of enforcing the Islamic family law in a secular polity.

Introduction

This study deals with the legal impediments to the application of Islamic family law in the Philippines. It is designed to examine the legal effects of the secular principles, the constitution, and other laws of the state toward the enforcement of Islamic family law in the country. In the Philippines, the new issues of the application of Islamic family law arose after the codification of the Muslim Personal law through Presidential Decree 1083 on 4 February 1977. The promulgation of the Muslim personal law as part of the laws of the state has indeed undergone certain processes and stages designed to ensure the conformity of the code to the constitution. This started when the then President Ferdinand Marcos signed Memorandum Order No. 370 (1973) creating a research staff whose tasks were: (1) to survey, collect and gather materials from all available sources with particular emphasis on current Philippine laws affected by Islamic law; (2) to collect and reconcile Philippine laws with Muslim laws; and (3) to prepare a preliminary draft of the proposed code of the Philippine Muslim law and its implementing agencies. Following the submission of the draft of the proposed Muslim code, the Supreme Court summoned the heads of the Research Staff to answer questions as to the suitability of the proposed code to the Constitution. Consequently, Executive Order No. 442 (1974) was issued creating a presidential code commission to review the proposed code. The idea of choosing members of the code commission from the different government legal

institutions was to ensure the conformity of the proposed code with the Constitution. Finally, the issuance of Presidential Decree 1083 (P.D. 1083) on 4 February 1977 codifying the Muslim personal law as part of the Philippine laws was guided by Sec. 2 of Article 15 of the 1973 Constitution which states that “the State shall consider the customs, tradition, beliefs and interests of the national cultural communities in the formulation of state policies.”

The issue on the enforcement of Islamic family law in the country is an interesting one due to the fact that the Philippines has been labeled as the only Christian country in Asia whose Christian followers constitute 90% of its total population. On the other hand, the Muslim minority, who constitute less than 10% of the country’s population, were granted the legal right to adhere to the basic principles of *Shari’ah* dealing with personal and family relations, subject, however, to the legal apparatus set up by the government. This includes the secular principle of the state according to which its affairs are divorced from any religion or religious belief.

This means that the adoption of secular principles in the Philippine Constitution is an important element within the framework of which the limitations on the application of Islamic family law in the country can be understood. However, before dealing with the effects of the state’s secular principles on the application of Islamic family law, it seems necessary to present the background of the concept of secularism.

Secularism and Islam

The term secularism is derived from the Latin word *saeculum* which conveys a dual connotation of time and location.¹ As a concept, “secular” refers to a condition of the world at the particular time or period or age.² It stands in contrast to the sacred, making it an approach to life divorced from the influence of religion, and thus determined by temporal or worldly concerns.³ According to Western world philosophical thought, secularism is an ideology which disenchant nature, desacralized politics, and deconsecrated values.⁴ The disenchantment of nature involves the freeing of nature from its religious overtones and the dispelling of animistic spirits, gods, and magic from the natural world so that nature is no longer regarded as divine entity in which man is free to act upon it.⁵ The desacralization of politics means the abolition of sacral basis of political power and authority as a prerequisite of political and social changes in the evolutionary process.⁶ The deconsecration of values implies the consideration of all cultural creations as transient and relative so that every value system including religion and worldview are open to change on the basis of an evolutionary process.⁷

Secularism denotes the disappearance of religious symbol of political and social aspects of life.⁸ This was a result of the Western man’s interpretation of biblical faith and the long history of philosophical and metaphysical conflict in the religious and purely rationalistic worldview of the Western scholars.⁹ In other words, secularism is a Western concept whereas secularization is a process that is located in the West.¹⁰ The former arose in the West as a result of the power struggle between the church and the state over the swords of temporal and spiritual authority, both claimed by the Roman Pope and the Holy Roman Empire, whereas the latter involved the movement from a sacred to a secular society in the sense of abandoning any commitment to religious and traditional values and practices by accepting change and founding of actions on a rational and utilitarian basis.¹¹ According to Auguste Comte, science replaces religion and philosophy in understanding human society.¹²

However, it is worthy of note that such a secular ideology being developed in the Western world on the basis of Western philosophical thought is not exactly suitable in an Islamic society due to some conflicts and contradictions between the principles of secularism and the Islamic worldview. In his book *Islam and Secularism*, Syed Muhammad Naquib al-Attas consistently argued that:

Islam totally rejects any application to itself of the concepts of secular, or secularization, or secularism as they do not belong and are alien to it in every respect; and they belong and are natural only to the intellectual history of Western-Christian religious experience and consciousness.¹³

Al-Attas also asserted that the political system in Islam is based on Divine Authority and on the sacred authority of the Prophet (peace be upon him) reflecting God's authority, but every Muslim individually, and collectively as society and nation deny to anyone, to any government and state, sacred legitimacy unless the person or the government or the state conforms with the practice of the Prophet (peace be upon him) and follow the injunction of the Sacred Law revealed by God.¹⁴

The State Policy towards The Church

The separation of church and state principle of secularism has been adopted in the constitutions of some non-Muslim states in Asia. In India, such a model of secularism was adopted in the Constitution as a guarantee of equal treatment to all religious communities being part of the state commitment to the reformation of religious communities by establishing the fundamental rights of their respective members.¹⁵ In other words, the religion of a citizen is irrelevant in the matter of his fundamental rights. However, while the Constitution bars the state from taking any official religion, it guarantees to all religious denominations the right to establish and maintain religious and charitable institutions, and to manage their affairs in religion and administer their properties. Both the Muslims and Christians who are considered minorities in the country share this important right with other religious communities in India.¹⁶

In Singapore, the secular principle of the state may not be the same as the American type of secularism in which the independence of the church from the affairs of the state is strictly observed. In their book *Constitutional Law in Malaysia and Singapore*, Kevin Tan and Thio Li-Ann described secularism in Singapore as 'Quasi-Secularism'¹⁷ as Singapore did not prescribe any official religion of the state, but the government lends support to the better administration of the Malay Muslim religious institution according to the framework of the state policies and the interest of the nation. This was manifested in the enactment of the Administration of Muslim Law Act which has created the Majlis Ugama Islam Singapore (Islamic Religious Council of Singapore) which is basically designed to advise the government on matters relating to the Muslim Affairs.¹⁸ Also, the Majlis used to administer Muslim family law, Islamic schools, mosques, *waqf* (endowment) and Hajj (pilgrimage).¹⁹ Recently, the government created the Maintenance of Religious Harmony Act (MRHA) which is intended to regulate the harmonious relations between the different religious communities, including the atheists and agnostic groups, in order to live together peacefully.²⁰

In the Philippines, the principle of separation of the church from the state is patterned from the American principles of secularism.²¹ Such principle was designed to determine the boundaries between the two institutions in order to prevent such infringement by one against the other.²² Accordingly, the state is prohibited from interfering or participating

directly or indirectly in purely religious matters or organization or group whereas the church is barred from meddling or taking part in purely temporal affairs of the state.²³

Such a doctrine has been strengthened by the constitutional provision stating that "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof."²⁴ The said provision means that the state is prohibited from setting up a church or from passing a law in aid of one religion or all religions or preference of one religion over another.²⁵ Nor government tax can be levied intended to support a religious institution or activities or teaching a particular religion.²⁶ It is also against the law to impose any religion to any citizen or to compel or force a person to go away from a church or mosque against his will.²⁷ In other words, the state adopted a position of neutrality whereby no preference is to be accorded to any religion or sect.²⁸

Freedom of Religion

One of the manifestations of secularism as adopted by many states nowadays involves the freedom of every citizen to profess his religion or religious beliefs. In India, freedom of religion was clearly stated in the Constitution whereby every one can freely renounce his religion or change it for another.²⁹ For instance, a born Muslim can remain a Muslim all his life, renounce Islam and become an unbeliever, or embrace another religion, notwithstanding the Islamic law on apostasy.³⁰ Similarly, any non-Muslim may embrace Islam. In other words, apostasy has no place in the public law of India, since the state cannot enforce the dictates of any particular religion on apostasy or conversion to Islam.³¹

In Singapore, the Constitution clearly stated such a freedom of religion. Paragraph 38 (11) of the Report of the 1966 Constitutional Commission states:

(1) Every person has the right to profess and practice his religion and to propagate it. (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own. (3) Every religious group has the right (a) to manage its own religious affairs; (b) to establish and maintain institutions for religious or charitable purposes; and (c) to acquire and own property and hold and administer it in accordance with law.³²

In the Philippines, freedom of religion was reflected in the Constitution which states "The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall forever be allowed."³³ In the country, religious freedom is deemed as fundamental personal right and liberty designed to protect the broadest possible freedom of conscience of everyone to believe according to his conscience, to profess such beliefs and to live on the basis of his beliefs consistent with the liberty of others and with the common good.³⁴

Such a freedom of religion also means the complete freedom of every individual either to believe in a particular religious belief or to disbelief by way of totally rejecting any religion or religious belief or becoming atheist. According to Justice Isagani Cruz, the individual is free to believe (or disbelieve) as he pleases concerning the hereafter.³⁵ He may invoke his own theories about life and death, worship any god, or none at all, embrace or reject any religion, acknowledge the divinity of God or any being, recognize or deny the immortality of his soul. He has full freedom to believe as he pleases without such a requirement to prove it and no punishment shall be inflicted upon him, under the law, for his inability to do so.³⁶

Therefore, it is within this constitutional principle on religious freedom that the status of apostasy in the Philippines can best be understood. By inference, a born Muslim has complete freedom to embrace Islam wholly or partly either in the entire span of his life or not, to renounce Islam and adopt Christianity or become atheist without any consideration to the Islamic penalty for apostasy. On the other hand, a Christian has total liberty to convert to Islam and practice it until the end of his life without any fear of the state intervening in his faith as it is considered a private affair guaranteed in the Constitution.

As far as the Philippine constitutional principle was concerned, the freedom of religious profession and worship is of two aspects, such as freedom to believe and freedom to act on one's beliefs. While the former is deemed absolute, provided it is confined within the realm of thought, the latter may be subjected to some restrictions, especially when it affects the public welfare.³⁷ For instance, such a freedom to disseminate religious information or *da'wah* can be restrained when a clear danger to life is involved in which the state has the right to interfere.³⁸ Also, religious freedom can be enjoyed with proper regard to the rights of others.³⁹ In other words, if the profession of such a religious belief adversely affects the civil and fundamental rights of others, it needs to be restrained.

The Constitution states that "No religious test shall be required in the exercise of civil or political rights."⁴⁰ The Political rights refer to the individual rights to participate directly or indirectly in the establishment and administration of the government, whereas the civil rights include such physical, intellectual, social, and economic rights.⁴¹ The said constitutional provision is designed to bar the government from preventing an individual from exercising his civil and political rights by reason of his religious belief.⁴²

Going back to the effect of the secular principle of the state to the application of Islamic family law in the Philippines, the constitution has explicitly prohibited the use, application, or appropriation of public money or property to the benefit or support of any sect, church, denomination, sectarian institution or system of religion.⁴³

It can be inferred from the said principle that the enactment of the Muslim personal law does not signify the application of an Islamic religious law, but its adoption into the positive laws of the state implies that such law is a Mundane law representing the cultural traditions of the Muslim minority, as distinct from the cultural practices of the rest of the Filipino peoples. In short, the promulgation of P.D. 1083 is a matter of consideration of its importance in the cultural civilization of the Filipino nation derived from the customary practices of the Muslim minority in the country.

The Constitutional Limitations

The secular nature of the Philippine Constitution is also an important factor that has affected the application of Islamic family law in the country. In the Philippines, the Constitution is deemed as the charter creating the government which has the status of a fundamental law binding on all individual citizens and all organs of the government.⁴⁴ It is the supreme law of the state to which all other laws must conform and to which all persons including the highest officials of the state must defer whereby no act shall be valid if it contradicts its provision.⁴⁵

For the supremacy of the Constitution over any other laws, the Civil Code states that "when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."⁴⁶

The promulgation of the Code of Muslim Personal Laws of the Philippines was basically founded on Sec. 2 of Article 15 of the 1973 Constitution. Therefore, P.D. 1083 is not an independent legal system that operates without regard to other laws or the national interest but, like other laws of the state, it is subject to the Constitution.⁴⁷ Otherwise, any construction on the provision of P.D. 1083 that runs counter to the Constitution may be considered void without having legal effect in the Philippines. According to the constitutional postulate, all laws being enforced within the Philippines are presumably devoid of their attachment to religious beliefs, otherwise any enacted law pushed by religion or religious belief must be declared invalid being contrary to the Constitution.⁴⁸

However, Islamic family law is naturally attached to the belief in God. For instance, the prohibition of a marriage between a Muslim woman and a non-Muslim man is grounded on the religious beliefs of a Muslim woman as prescribed in the Holy Qur'an. The Holy Qur'an states that "Nor marry (your girls) to unbelievers until they believe: A Muslim slave who believes is better than an unbeliever" (Qur'an, Al-Baqarah 2: 221). On the other hand, P.D. 1083 which contains an Islamic family law is now part and parcel of the positive laws of the Philippines whose enforcement in the country must be consistent with the Constitution, otherwise it may be declared void without legal effect as being unconstitutional.

This means that any provision of the Islamic family law that runs contrary to the Constitution is not enforceable in the country. Therefore, the religious implication of Islamic family law is not legally enforceable in the Philippines as it is contrary to the Constitution.

In India, Islamic family law is applied to the Muslims under the authority of the state. The courts apply such a law being part of the comprehensive Indian civil law which the state wants it to be applied to the Muslims.⁴⁹ However, its application to the Muslims is not a consideration of the Islamic religious principles that the Muslims are bound to adhere to the law of Islam, because the secular state of India does not enforce the dictates of any religion. According to Tahir Mahmood, the Indian legislation and judicial precedent, both of which derive their binding nature from the Constitution, constitute the authority of the Indian courts to apply Muslim law.⁵⁰

P.D. 1083 and Other Laws

The legal status of P.D. 1083 in relation to the other laws also reflects limitations to the application of Islamic family law in the Philippines. Actually, P.D. 1083 does not embody the entire *al-Ahwal al-Shakhsiyyah al-Islamiyyah* (Islamic personal laws) contained in the basic sources of Islamic law as expounded in *fiqh* (Islamic jurisprudence). What it codified is just a personal law relating to personal status, marriage and divorce, rights and obligations, and property relations between spouses, paternity and filiation, parental authority, support and maintenance, and succession or inheritance.⁵¹

Islamic laws which are contained in the primary sources, such as the Qur'an and Sunnah, relating to *al-Ahwal al-Shakhsiyyah* but not embodied in this code may only be given consideration if they do not contradict the Constitution, public order, public policy and public interest.⁵² Similarly, for purposes of applying the provisions of P.D. 1083, only the rules found in the four Sunni (Orthodox) schools of law, the Hanafi, Hanbali, Maliki, and Shafi'i schools are recognized. It is important to note that the Muslims in the country are generally adherents of the Sunni sect of Islam.

However, in the construction of the provisions of P.D. 1083, should there be a conflict between the Sunni schools of law,⁵³ whichever *madhhab* is in consonance with the

Constitution of the Philippines, public order, public policy and public interest shall be given legal effect.⁵⁴ It implies that the provisions of P.D. 1083 are not exclusively derived from a single *madhhab*, but a selection from the four Sunni schools of law designed to enforce a portion of Islamic personal laws suitable to the Philippine context.

Regarding the status of P.D. 1083 in relation to the other laws of the state, it can be inferred from the rules of statutory construction prescribing the relation between a special law and laws of general application according to which the former always prevails over the latter.⁵⁵ By law of general application, it applies throughout the state whose subject matter is common to all the people,⁵⁶ in contrast to a special law which operates upon a particular place or a selected class of people rather than upon the public in general.⁵⁷ Thus, P.D. 1083, applicable only to the Filipino Muslim minority within the state, may prevail over the Civil Code and the Family Code that are applicable to all Filipinos, should a conflict between them arise.⁵⁸

It can be understood from the above discussion that though P.D. 1083 is part and parcel of the Philippine legal system designed to operate in accordance with the Philippine context, it does not operate independently without regard to the other laws of the state, like the Family Code, Revised Penal Code and the Rules of Courts. All provisions of the latter laws that are consistent with the provisions of P.D. 1083 shall apply suppletorily.

Registration of Marriage

Registration of marriage, according to P.D. 1083, also manifests the limited application of Islamic family law in the country. However, it seems that there is a point of conflict between the provisions of the Family Code and P.D. 1083 pertaining to the authorized person who may solemnize a Muslim marriage. The former authorizes the *imam* (religious leader),⁵⁹ while the latter empowers the proper *wali* of the woman.⁶⁰ However, since P.D. 1083 is considered as a special law in relation to the Family Code, it prevails over the latter.

Accordingly, the proper *wali* of a woman is basically vested with the authority to solemnize the marriage, but the *imam* can solemnize the marriage only upon authority of the proper *wali*. This means that the absence of authority from the proper *wali* disqualifies the *imam* from performing the solemnization. In this case, P.D. 1083 follows the Shafi'i school and excludes the Hanafi school's opinion according to which a woman at the age of maturity can contract marriage even without the consent of a guardian.

P.D. 1083 requires that marriages should be registered in the Muslim Registry as part of the functions of the *Shari'ah* court in which the Clerk of Court is, in addition to his regular functions, acting as registrar of Muslim marriage, divorce, the revocation of divorce and conversion to Islam.⁶¹

The solemnizing officer is required to send copies of the marriage certificate to the *Shari'ah* Court of the place where the marriage was solemnized not later than 15 days after the marriage,⁶² but failure to register the marriage entails penalty according to P.D. 1083.⁶³ Also a solemnizing officer must always ascertain his legal authority to do so before performing such an act; otherwise, he shall be penalized with two years imprisonment and a fine of up to 2,000 pesos.⁶⁴ However, registration of marriage in the Muslim registry does not affect the intrinsic validity or invalidity of the registered marriage.⁶⁵ Also, failure of the contracting parties in marriage to register the act with the circuit registrar does not render the marriage void nor affect its validity under Islamic law.

In comparison, Indian Muslim law does not prescribe such a registration of marriage to be obligatory.⁶⁶ As far as Indian Muslim law is concerned, registration of marriage does not affect its validity nor a proof for the validity of transaction.⁶⁷ Under the Muslim law in Singapore,⁶⁸ all *qadhis* and *naib qadhis* are deputy registrars of Muslim marriages who must keep the books and registers thereof.⁶⁹ Parties to a marriage are required to apply for a prescribed registration,⁷⁰ as failure for registration constitutes a punishable crime.⁷¹

In the Philippines, however, registration of marriage shall be construed to mean a requirement mandated by the state which cannot be ignored since it is part of the formal requisites for contracting marriage under state laws thereby enforced.

Subsequent Marriages

The procedure of practicing polygamy according to Islamic family law in the Philippines also indicates legal limitations on the application of P.D. 1083. The provisions of the Family Code pertaining to marriage are generally applicable to all Filipinos, including the Muslims. Under the Family Code, the contracting of a subsequent marriage by any spouse while the former marriage subsists is barred, being void.⁷² Similarly, the dissolution of a valid marriage may only take place upon the death of either spouse due to the legal impediment of dissolving the marriage by the free consent of the spouses.⁷³ Moreover, such contracting of a subsequent marriage by any spouse while the former marriage subsists does not only mean the nullity of the marriage, but also entails a penalty of imprisonment by *prision mayor*.⁷⁴

Since the bar on practicing polygamy applies to all Filipino citizens, the Muslims may only be exempted from such a rule if they adhere to the provisions of P.D. 1083 in contracting their marriages.⁷⁵ In other words, any Muslim husband aspiring to contract a subsequent marriage while the former marriage is existing is required to comply with the conditions as well as the procedures prescribed in P.D. 1083. Otherwise, a Muslim husband who contracts a subsequent marriage without having followed the procedures of P.D. 1083 shall be liable to the penalty of imprisonment of *arresto mayor*⁷⁶ and a maximum fine of 2,000 pesos.⁷⁷

Regarding the conditions of contracting a subsequent marriage under the Islamic marriage law of the Philippines, Article 27 of P.D. 1083 states:

Notwithstanding the rule of Islamic law permitting a Muslim to have more than one wife but not more than four at a time, no Muslim male can have more than one wife unless he can deal with them with equal companionship and just treatment as enjoined by Islamic law and only in exceptional cases.⁷⁸

In the said provision, there are at least three conditions that a husband desiring to contract a subsequent marriage must satisfy: (1) he must have the ability to deal with equal companionship among his wives; (2) he must have the ability to treat them justly; and (3) the subsequent marriage is an exceptional case.⁷⁹

For the condition of having the ability to deal with his wives with just treatment and equal companionship, the husband aspiring to contract a subsequent marriage must prove such ability. As the husband is bound to deal with his wives with just treatment as enjoined by Islamic law, to give every wife her due as prescribed by law is believed to be a manifestation of justice, but to deprive each of the wives of her legal right under Islamic law is an indication of injustice.

The condition that the subsequent marriage shall be allowed “only in exceptional cases” has reference to the meritorious reason for contracting a subsequent marriage such as sterility, physical unfitness for conjugal relation, or insanity on the part of the wife.⁸⁰ Contracting a subsequent marriage is also considered a remedial measure to avoid possible commission of prostitution which is now a rampant phenomenon in the modern world.

According to P.D. 1083, a husband desiring to contract a subsequent marriage is required to file a notice with the *Shari'ah* Circuit Court of the place where his family resides about his proposal to contract a new marriage.⁸¹ Such notice shall be sent to the *Shari'ah* Circuit Court which shall send a copy of the notice to the wife in order to determine her position regarding the proposal of her husband to contract a new marriage. If the wife does not object to the proposal, the husband shall be permitted to proceed with the subsequent marriage. If she objects, the Agama Arbitration Council should be created whose membership are the representatives of both the husband and wife, with the Clerk of Court as chairman.⁸²

The council is designed to investigate both the reasons for the husband to contract the subsequent marriage and the compliance of the conditions prescribed in P.D. 1083 as well as the objections of the wife to the proposal. Also, it is authorized to look for any amicable settlement of the dispute before its elevation to the formal proceedings of the court.⁸³ This means that if the council fails to arrive at an amicable settlement of the case, the issue may be forwarded to the formal proceedings of the court so that it may, subject to the conditions prescribed in P.D. 1083 and that evidence submitted by the Agama Arbitration Council, render an order over the issue. Such an order is either to allow the husband to proceed with his proposal or bar him from doing so.

In other word, permission of the wife is not necessary for contracting a subsequent marriage, but the order of the court is binding to the parties. If the court allows the husband to proceed with the subsequent marriage, the objections of the wife become immaterial but, if the proposal is denied, it is considered dead. However, if the husband ignores the order of the court and instead contracts such a subsequent marriage, he shall be liable for imprisonment or a fine or both including a penalty for contempt which is left to the discretion of the court.⁸⁴

It can be concluded, therefore, that under the Islamic family law of the Philippines, the practice of polygamy is subject to the conditions as prescribed by P.D. 1083. Although P.D. 1083 does not alter the conditions as prescribed in the basic texts of Islamic law, it provides a procedure implying a restriction on the practice of polygamy. The procedure signifies the important role of the *Shari'ah* court which is vested with the authority either to permit or bar a Muslim husband from contracting a subsequent marriage.

Once again, any Muslim husband who contracts a subsequent marriage while the former marriage is subsisting without having followed the procedure prescribed by P.D. 1083 shall be liable for a fine or imprisonment.⁸⁵ This means that the requirement of following the procedure under P.D. 1083 may be construed as a departure from the traditional way of contracting a subsequent marriage in which the husband is permitted to contract a new marriage without the intervention of the *Shari'ah* court or consultation with the wife. However, this seems to be part of the reformation on the practice of polygamy in the modern period. In fact, similar procedures and even some restrictions for contracting a subsequent marriage while the former marriage subsists can be found in certain Muslim countries.

In Malaysia, the Islamic family law of the Federal Territory prescribes that no man during the subsistence of a marriage, shall, except with the prior permission in writing

of the court, contract another marriage with another woman nor shall such a marriage contracted without such permission be registered.⁸⁶ It also prescribes a procedure whereby application for permission shall be submitted to the court accompanied by a declaration stating the grounds on which the proposed marriage is alleged to be just and necessary, the present income of the applicant, the number of his dependents and whether the consent or views of the existing wife or wives on the proposed marriage have been obtained.⁸⁷ Thereafter, the court shall summon the applicant and his wife or wives to a hearing in which the order of the court shall either be to sustain or deny the application. A person who contracts a subsequent marriage during the subsistence of a former marriage without having followed the procedure prescribed by law shall be penalized.⁸⁸

In Singapore, the Muslim law permitted for a Muslim male to have more than one wife at a time, but subject to the compliance of the prescribed requirements.⁸⁹ For instance, such a subsequent marriage may be solemnized only by the *qadhi* or by his permission, after being satisfied of the reasons of the man and the woman whom he wants to marry or her guardian for contracting such a marriage during their attendance at the inquiry session.⁹⁰

The Jurisconsult (*Mufti*)

One of the mechanisms for the application of Islamic family law in the Philippines is the office of the Jurisconsult (*mufti*) in Islamic law created according to the provisions of P.D. 1083. However, before dealing with the functions of the Jurisconsult as provided in P.D. 1083, it is necessary to present the role of the *mufti* in some other Muslim countries.

In the modern period, office of the *mufti* is usually attached to the state within the various Muslim countries with having official function, such as the case of the Muftis in Indonesia, Jordan, Lebanon, Malaysia, Saudi Arabia, Sudan, and Yemen. In the case of Jordan, *muftis* are attached to the *Shari'ah* courts in all main districts. Such *muftis* still enjoy the high respect of the people despite their lower official privileges compared to judges.⁹¹ In Sudan, the *mufti* holds a position of importance second only to the Grand *Qadhi* and his legal opinion is circulated in the printed media, which serves as the religious-legal standard by which a future act or behavior is measured as lawful or not.⁹²

In Malaysia, every state currently has its own *mufti*⁹³ who is appointed with a written *tauliah* (a letter of authority) signed by the Sultan.⁹⁴

The Mufti of Selangor is the Chief Authority, after the Sultan, in all matters pertaining to *Hukum Syara*.⁹⁵ Upon publication in the Gazette, the *fatwa* of the Mufti pertaining to any controversial question relating to *Hukum Syara* shall be binding on every Muslim residing in the State of Selangor.⁹⁶ Similarly, such a *fatwa* shall be recognized by all Courts in the State as authoritative on all matters laid down therein.⁹⁷ In the Federal Territory, to defy or disobey the *fatwa* of the *mufti* is deemed a crime punishable according to the Syariah Criminal Offenses Act.⁹⁸ As far as the rule is concerned, no one even among the *'ulama* is permitted to give, propagate or disseminate an opinion on any point of Islamic law that contradicts the established *fatwa* of the state *mufti*.⁹⁹

In Singapore, the *mufti* is a member of the *Majlis Ugama Islam Singapore* (Singapore Islamic Religious Council), the members of which are appointed by the President of Singapore.¹⁰⁰ The functions of the *Majlis* are: (1) to advise the President of Singapore in matters relating to the Muslim religion in Singapore; (2) to administer matters relating to the Muslim religion and Muslims in Singapore including any matter relating to the

Haj or *Halal* certification; (3) to administer all Muslim endowments and funds vested in it under any written law or trust; (4) to administer the collection of *zakat* and *firah* and other charitable contributions for the support and promotion of the Muslim religion or for the benefit of Muslims in accordance with this Act; (5) to administer all mosques and Muslim religious schools in Singapore; and (6) to carry out such other functions and duties as are conferred upon the *Majlis* by or under this Act or any other written law.¹⁰¹

The *Majlis* has a legal committee consisting of five members and is headed by the *mufti*.¹⁰² The functions of the said committee include the giving of *fatwa* on any point of Islamic law upon request of any interested person.¹⁰³ Accordingly, such an opinion (*fatwa*) issued by the legal committee shall be in the name of the *Majlis Ugama Islam Singapore*.¹⁰⁴ In issuing a *fatwa*, the committee is usually bound to follow the Shafi'i *madhhab*, unless the committee or the *Majlis* are certain that a particular rule in another *madhhab* needs to be applied for public interest.¹⁰⁵ Usually, any court including the *Shari'ah* court in Singapore which adjudicates Muslim law cases may refer to the *Majlis* for its opinion when the need arises.¹⁰⁶

In the Philippines, P.D. 1083 prescribes the qualifications of the Jurisconsult (*mufti*) in Islamic law. For instance, he must be an eminent scholar of the Qur'an and Hadith and of Islamic jurisprudence (*fiqh*). In the country, the *mufti* is appointed by the President of the Philippines for a term of seven years.¹⁰⁷ However, the Office of the *mufti* and the personnel thereof are under the administrative supervision of the Supreme Court.¹⁰⁸ As far as the Philippines is concerned, the office of the *mufti* is officially recognized as being attached to the Philippines judicial system. Technically, it is designed to facilitate the operation of the *Shari'ah* courts, as judges in the *Shari'ah* courts, while adjudicating Muslim law cases, may refer to the office of the *mufti* for a *fatwa* concerning any point of Islamic law. However, the *mufti* has, on the written request of any interested party, not just *Shari'ah* judge, the legal authority to render legal opinions (*fatwa*) based on recognized authorities regarding any question relating to Muslim law. The *fatwa* issued by the *mufti*, upon request by any interested party, may be in accordance with any of the four Sunni (Orthodox) *madhahib*, provided such an opinion is in line with the Constitution of the Philippines, P.D. 1083, public policy, public order and public interest. The *mufti* may, if necessary, consult or ask for the consensus of the *'ulama*. The office of the *mufti* shall keep a compilation of and seek the publication of all the legal opinions of the Jurisconsult.

However, under P.D. 1083, the legal opinion of the *mufti* on any question of Islamic law is merely advisory to anyone who seeks such an opinion without having a binding effect on the party.¹⁰⁹ This is different from the decision of a judge of the *Shari'ah* court which is binding upon the disputing parties.

It is true that, everywhere in the Muslim world, the *fatwa* of a *mufti* pertaining to any question of Islamic law is merely advisory as is the case of the *fatwa* of the Jurisconsult under P.D. 1083. However, in some Muslim countries, the *fatwa* of a *mufti* on any controversial issue of Islamic law may be binding on the Muslims within a particular state upon enforcement by the government. As pointed out earlier, in Malaysia the *Shari'ah* courts are also bound to recognize the authority of the *fatwa* of the *mufti* in all matters laid therein.

Therefore, what makes the role of the Jurisconsult (*mufti*) under P.D. 1083 less important in the administration of Islamic family law in the Philippines is the lack of office authorized to enforce his *fatwa* pertaining to the question of Islamic family law in the country, even though such an opinion is consistent with the provisions of the Constitution. Also, the *Shari'ah* courts are not mandated by P.D. 1083 to uphold or recognize such *fatwa* of the Jurisconsult in Islamic law.

The *Shari'ah* Courts

Legal limitation on the application of Islamic family law in the Philippines can also be inferred from the status of the *Shari'ah* court in relation to the Philippine Judicial System. In the country, there are two kinds of *Shari'ah* courts created under P.D. 1083, the *Shari'ah* District Court which is of the same rank as the Court of First Instance now replaced by the Regional Trial Court, and the *Shari'ah* Circuit Court which is of the same rank as the Municipal Circuit Trial Court. P.D. 1083 created five *Shari'ah* district courts and 51 *Shari'ah* circuit courts, established in the Five *Shari'ah* Judicial Districts in Mindanao.

The *Shari'ah* courts are not independent courts which operate without regard to the laws of the state, but are an integral part of the Philippine court system. The said courts are subject to the administrative supervision of the Supreme Court of the Philippines.¹¹⁰

However, the *Shari'ah* courts are special courts charged with the administration of justice and disposition of Islamic family law cases among the Filipino Muslims according to the provisions of P.D. 1083. They are different from the regular courts which are enforcing laws of general application applicable to all the Filipino peoples.

However, the fact that the *Shari'ah* courts are established in accordance with the Philippine context, as part and parcel of the Philippine judicial system and are under the administrative supervision of the Supreme Court supports the idea that they are Philippine-type *Shari'ah* courts implementing a Philippine-type Islamic family law.

In India, unlike Singapore in which the *Shari'ah* court is empowered to administer the Muslim law,¹¹¹ there is no *Shari'ah* court to enforce the Islamic personal law, but the ordinary civil courts, lower or higher, are vested with the judicial authority to administer the Muslim law.¹¹²

The Qualifications of a Judge

The qualifications and appointment of a judge in the *Shari'ah* court created by P.D. 1083 also reflects the limited application of Islamic family law in the country. In Islam, the basic qualifications of a judge have been prescribed by the *fuqaha'* (jurists). However, in the Philippines, the general qualifications of judges in all courts are also applicable to judges in the *Shari'ah* courts. The Constitution prescribes that no one shall be appointed member of the judiciary unless he is a citizen of the Philippines, a member of the Philippine bar, and a person of proven competence, integrity, probity and independence.¹¹³ The qualifications of a *Shari'ah* District Judge is that, in addition to his knowledge of Islamic law and jurisprudence, he must also have the same qualifications as the Judge of the Court of First Instance,¹¹⁴ as prescribed in the Judiciary Reorganization Act of 1981. Accordingly, a judge must be a natural-born citizen of the Philippines, at least 35 years of age, and have been engaged in the practice of law for at least ten years in the Philippines or held a public office in the Philippines requiring admission to the practice of law.¹¹⁵ The provisions of the said Judiciary Reorganization Act, which requires a judge in the Court of First Instance to possess such membership in the Philippine bar, implies that a member has passed the regular bar examinations given by the Supreme Court which qualifies him to practice his profession in all courts in the country, not just in the *Shari'ah* courts. Such an examination is different from the special *Shari'ah* bar examinations which are designed for the *Shari'ah* courts only. In the *Shari'ah* bar examinations, the *'ulama* who have graduated from Islamic law and

jurisprudence in some Muslim countries are permitted to take the examination through Arabic language. It should be noted, however, those who were qualified for appointment as judges in the *Shari'ah* Circuit Court may not be qualified in the *Shari'ah* District Court unless they passed the regular bar examinations and have been engaged in the practice of law in the Philippines for at least ten years or have held public office in the Philippines requiring knowledge of law for the same period.

This means that the appointment of a judge in the *Shari'ah* District Court is exclusive to the regular members of the Philippine bar excluding the *'ulama* who do not have such qualifications. Also, those *'ulama* who have served as judges in the *Shari'ah* Circuit Courts for ten years are still disqualified for appointment in the *Shari'ah* District Court unless they have passed the regular bar examinations. However, the qualifications of a judge in the *Shari'ah* District Court are more difficult to obtain than the qualifications of a judge in the Court of First Instance or Regional Trial Court, as the former requires knowledge of Islamic law and jurisprudence.

The qualifications for a judge in the Municipal Trial Circuit Court, a court that is of the same rank as the *Shari'ah* Circuit Court, are that he must be a natural-born citizen of the Philippines, at least 30 years of age, and, for at least five years have been engaged in the practice of law in the Philippines, or held a public office in the Philippines requiring admission to the practice of law, and are all indispensable requisites.¹¹⁶ The requirement for membership of the Philippine bar implies that the member who has completed a four-year bachelor of laws degree from any law Institute in the Philippines has passed the regular bar examinations.

However, in the case of the *Shari'ah* Circuit Court, P.D. 1083 prescribes that a person must be a natural-born citizen of the Philippines, at least 25 years of age, and have passed an examination in the *Shari'ah* and Islamic jurisprudence (*fiqh*) given by the Supreme Court as admission to special membership of the Philippine bar to practice in the *Shari'ah* courts."¹¹⁷ The *Shari'ah* Circuit Court requires just membership to the Philippine *Shari'ah* bar, but no such five-year practice of law experience. Therefore, this qualification is less difficult to achieve than the qualification of a judge in the Municipal Trial Circuit Court.

The *Shari'ah* bar examinations are open to holders of a bachelor of law degree or graduates of Islamic law and jurisprudence from some recognized universities. Also, a *thanawi* (high school) graduate from any *ma'had* (institute) in the country can take the examination provided he has completed the 45 days *Shari'ah* training seminar conducted by the Office on Muslim Affairs. The said training seminar has a limited scope covering only four courses; *fiqh* (Islamic jurisprudence), personal and family relations, succession and inheritance and the special rules of procedure in the *Shari'ah* Court of the Philippines which are covered in the *Shari'ah* bar examinations. There are some cases of *thanawi* graduates who, after completing the said training seminar, have successfully passed the *Shari'ah* bar examinations. Technically, these *thanawi* graduates who passed the *Shari'ah* bar examination can be qualified as judges in the *Shari'ah* Circuit Courts according to the provision of P.D. 1083.

However, a close examination of the educational qualifications of a *thanawi* (high school) graduate whose knowledge of Islamic law might be dependent on his participation in the 45-day *Shari'ah* training seminar without having any experience of the practice of law in the country may lead one to question his ability to preside on the *Shari'ah* Circuit Court just after passing the *Shari'ah* bar examinations. Indeed, his ability to discharge the duties of the court and the efficiency of his judgment on a case brought to his court must be in doubt.

This may be compared with the qualifications of *Shari'ah* judges in some Muslim countries where judges are men of experience in the court system and respected members of the community due to their sufficient knowledge of Islamic law. In Sudan, the *Shari'ah* judge is a respected member of the community who has proper knowledge of Islamic law with experience in the court system and a good reputation for fair and learned judgment in law.¹¹⁸ Also, the procedure of appointing a member of the judiciary is by means of examination for those who have graduated from *Shari'ah* courses, as well as by interview for the successful examinees after which those qualified will be trained for at least four months before their assignment as legal assistants of an experienced judge for one or two years prior to being able to preside over their own courts.¹¹⁹

Regarding the issue on the qualification of a woman to preside over the *Shari'ah* court, P.D. 1083 does not clearly bar a Muslim woman from being appointed as a judge thereof.¹²⁰ Under Philippine law, being a woman is not a disqualification for appointment in the judiciary. In other words, the absence of any legal impediment for a Muslim woman to become judge in the *Shari'ah* court leads to the conclusion that being a woman is not a disqualification for appointment as judge in the *Shari'ah* courts in the country, provided she possesses the qualifications required by Philippine law.

As far as Singapore is concerned, the Muslims Ordinance specifically stated that a *Shari'ah* judge (*qadhi*) must be a male Muslim of good character and of suitable educational attainments.¹²¹ Accordingly, a female Muslim or a non-Muslim male may be disqualified from presiding the *Shari'ah* courts.

Concerning the issue of the qualification of a non-Muslim to be a judge in the *Shari'ah* court in the Philippines, there is no explicit provision of P.D. 1083 that bars a non-Muslim from presiding over the *Shari'ah* court.¹²² The secular principle of the state does not allow the role of religion in the exercise of civil rights. Pursuant to that principle, a religious belief is not a legal impediment for appointment as judge in the *Shari'ah* court. By analogy, belief in Christianity is not a disqualification for appointment as judge in the *Shari'ah* court. It is probably the main reason why P.D. 1083 does not explicitly bar a non-Muslim from being appointed as a judge in the *Shari'ah* court.

Therefore, the absence of the provision of P.D. 1083 disqualifying a non-Muslim from being a judge in the *Shari'ah* court leads to the conclusion that a non-Muslim can be a judge in the *Shari'ah* court of the Philippines, provided he possesses the qualifications prescribed by Philippine law on the matter.

In other words, since P.D. 1083 does not disqualify a non-Muslim from being appointed as a judge in the *Shari'ah* court, it may be construed as being a departure from the unanimous agreement of the *fuqaha* (jurists) according to which a non-Muslim is disqualified from being a *qadhi* in the *Shari'ah* Court.¹²³ In Singapore, the Administration of Muslim law Act prescribes that a judge of the *Shari'ah* court, any member of the Appeal Board and the Registrar of the Muslim marriage may be appointed by the President of Singapore.¹²⁴ However, only Muslims may be qualified for appointment to the said positions.¹²⁵ In the Philippines, the President of the Philippines is vested with the authority to appoint a judge in the *Shari'ah* court.¹²⁶ The constitutional provision empowers him to appoint members of the Supreme Court and judges in all lower courts including the *Shari'ah* courts.¹²⁷ Under Philippine law, all applications for a vacancy in the judiciary must be submitted to the Judicial and Bar Council of the Supreme Court in order for the Council to examine the qualifications of all applicants, and to recommend to the office of the President at least three qualified candidates. The President will then select one for appointment.¹²⁸ This procedure also governs

appointments to the *Shari'ah* courts. As far as the said procedure is concerned, every applicant wishing to become a judge in the *Shari'ah* court is required to express his desire to hold the said position.

Judges in the *Shari'ah* courts are entitled to the same compensation and salaries and enjoy the same privileges as those judges in the regular courts. They perform their duties until they reach the age of 70 years or become incapacitated from discharging the duties of their office and unless removed from office for the same causes and manner provided by law for judges of the regular courts.¹²⁹ The Constitution empowers the Supreme Court to discipline and remove from office any judge of the lower courts including the *Shari'ah* courts.¹³⁰

In other words, the office of the President of the Philippines shall appoint judges of all courts including the *Shari'ah* courts, but the Supreme Court is authorized to discipline or remove them from office when the legal cause arises.

The Jurisdictions of the Court

The limited jurisdiction of the *Shari'ah* courts in the Philippines as provided in P.D. 1083 also reflects the limited application of Islamic family law in the country. In the previous pages, the *Shari'ah* courts are described as special courts of limited jurisdiction charged with the administration and disposition of Muslim personal law cases.

In Singapore, the *Shari'ah* court shall have jurisdiction to hear and determine actions and proceedings, in which all parties are Muslims or in which the parties were married according to Muslim law, relating to marriage, divorce, betrothal, nullity, or judicial separation, disposition or division of property upon divorce, maintenance, and *mut'a* (consolatory gift).¹³¹ The decision or order of the *Shari'ah* court can be enforced by the state in the same manner as the enforcement of the decisions or orders of the Magistrate's court.¹³² In comparison, India has no *Shari'ah* courts to administer the Muslim law, but the civil courts have full authority to adjudicate cases in which the rule of decision is based on Muslim law.¹³³

In the Philippines, there are two kinds of *Shari'ah* courts, each court has its clearly defined jurisdiction. The *Shari'ah* Circuit Court shall have jurisdiction over all cases involving offenses defined by P.D. 1083. The offenses are the illegal solemnization of marriage punishable by imprisonment for two years and a maximum fine of 2,000 pesos;¹³⁴ marriage before expiration of *'iddah* with the penalty of a maximum of 500 pesos;¹³⁵ violation of procedure relating to subsequent marriage, divorce, and revocation of divorce to be penalized with *arresto mayor* and a fine of a maximum of 2,000 pesos;¹³⁶ failure to report for registration concerning the civil status of a person with a maximum fine of 2,000 pesos;¹³⁷ and neglect of duty by registrars.¹³⁸

The said offenses are the only delinquencies under the jurisdiction of the *Shari'ah* Circuit Court as the court is deprived of the jurisdiction to adjudicate other criminal cases.¹³⁹ However, it does have jurisdiction over all actions and proceedings between parties who are Muslims or have been married according to the provisions of P.D. 1083 involving disputes relating to marriage, divorce, betrothal, or breach of contract to marry, dower (*mahr*), disposition and distribution of property upon divorce, maintenance, support, consolatory gifts (*mut'a*), restitution of marital rights, and all cases involving communal property.¹⁴⁰

The *Shari'ah* District Court shall have jurisdiction over cases involving custody, guardianship, legitimacy, paternity, wills, succession, inheritance, and all actions arising from customary contracts in which the parties are Muslims, if they have not specified which

law shall govern their relations.¹⁴¹ Also, the court shall have appellate jurisdiction over all cases tried in the *Shari'ah* Circuit Courts within its territorial jurisdiction.¹⁴² Mention was made previously of the distribution of five *Shari'ah* District Courts and 51 *Shari'ah* Circuit Courts in the five *Shari'ah* judicial districts in Mindanao. Every *Shari'ah* judicial district has one *Shari'ah* District Court and some *Shari'ah* Circuit Courts depending on the Muslim population of the district. As the *Shari'ah* District Court has appellate jurisdiction over all cases decided by the *Shari'ah* Circuit Courts within a particular *Shari'ah* judicial district, the issue arises as to the authority of the *Shari'ah* courts to acquire jurisdiction over cases between Muslim parties which occurred outside the five *Shari'ah* judicial districts. It seems that the *Shari'ah* courts can be deprived of jurisdiction over cases between Muslim spouses when they reside outside the five *Shari'ah* judicial districts. A good example of a case which arose outside the five *Shari'ah* judicial districts in which the *Shari'ah* court has been divested of its jurisdiction is the case of *Rulona al-Awadhi versus Astih*.¹⁴³

In its decision depriving the *Shari'ah* District Court of Marawi City of its jurisdiction over the case, the Supreme Court held (among others) that, in view of the admitted facts, the parties did not reside within the Fourth *Shari'ah* Judicial District embracing the provinces of Lanao del Norte and Lanao del Sur, and the cities of Iligan and Marawi since both of them resided in the province of Bohol, it should have been self-evident to the Fourth *Shari'ah* District Court that it had no jurisdiction over the spouses or their marriage, nor over the custody and guardianship of their children.¹⁴⁴

Under Philippine law, the final decision of the Supreme Court on a case appealed from the lower court shall become part of the laws of the land.¹⁴⁵ Therefore, the decision of the Court over the above cited case became part of the law pertaining to the administration of Islamic family law in the Philippines. In other words, the said decision of the Supreme Court serves as proof of the limited jurisdiction of the *Shari'ah* courts over family law cases between parties residing within the five *Shari'ah* judicial districts. Similarly, the *Shari'ah* courts have no jurisdiction to try cases involving the settlement of the estate of a deceased Muslim when the residence of the deceased or the location of the estate is outside the five *Shari'ah* judicial districts as mentioned earlier. In the case of *Manuela Vda. de Maraung versus Silapan* in which the Supreme Court awarded the case to the Regional Trial Court of Davao City, the said Court held that the "Presidential Decree No. 1083 does not preclude Muslims from resorting to the remedies available in ordinary courts if they reside in provinces where there are no *Shari'ah* courts."¹⁴⁶

Therefore, those cases involving the settlement of the estate of a deceased Muslim can be submitted to the *Shari'ah* court when the deceased is a resident within the five *Shari'ah* judicial districts or the property under litigation is located within one of the districts. Otherwise, the Court of First Instance or Regional Trial Court of the place where the deceased resides or the property is located shall be the proper venue for the case.

The Special Rules of Procedure

One of the important issues affecting the application of Islamic family law in the country involves the procedure which governs the *Shari'ah* court. The Philippine Constitution prescribes the power of the Supreme Court to promulgate rules concerning pleading, practice, and procedure in all courts.¹⁴⁷ The authority of the Supreme Court to promulgate the rules of procedure that govern the *Shari'ah* court has been acknowledged in the provisions of P.D. 1083.¹⁴⁸

Therefore, the Supreme Court promulgated the Special Rules of Procedure in the *Shari'ah* court, known as *Ijra'at al-Mahakim al-Shari'ah*. These Special Rules of Procedure are simple, expedient, and almost summary in character and do away with any technicalities that hamper the speedy disposition of the case. It has been pointed out that the Rules of Court of the Philippines and all provisions of laws relative to the Regional Trial Court and the Municipal Circuit Court that are not inconsistent with the provisions of P.D. 1083 shall be applicable to the *Shari'ah* court suppletorily.¹⁴⁹

According to the Special Rules of Procedure in the *Shari'ah* court, the decision of the *Shari'ah* Circuit Court on any case can be appealed to the *Shari'ah* District Court, while the decision of the latter whether of its original jurisdiction or on appeal can be elevated to the Supreme Court.¹⁵⁰ The Supreme Court shall have the constitutional power to reverse, modify or affirm on appeal or *certiorari* (a writ from a higher court to a lower court requesting the submission of the records of a case for review), the final judgments and orders of the *Shari'ah* courts.¹⁵¹ As pointed out earlier, the decision of the Supreme Court on any case whereby laws were applied and interpreted is final and shall form part of the Philippine legal system.¹⁵² Therefore, the decision of the Supreme Court on any case appealed from the *Shari'ah* District Court shall become part of the Islamic legal system in the country.

In Singapore, the decision of the *Shari'ah* court can be appealed to the Appeal Board.¹⁵³ The Appeal Board consists of three members, who are Muslims, appointed by the President of Singapore.¹⁵⁴ The Board may affirm, vary or reverse the decision of the *Shari'ah* court.¹⁵⁵ The decision of the Board on any case appealed from the *Shari'ah* shall be final and executory.¹⁵⁶ This means that the decision of the Board on any case appealed from the *Shari'ah* court could not be elevated to the Singapore Supreme Court for further revision.

As far as the procedures of the *Shari'ah* court in the Philippines are concerned, there is no guarantee that the decision of the Supreme Court on a case appealed from the *Shari'ah* Courts may not deviate from the basic principles of Islamic law as all members of the said Court are non-Muslims. However, even if the said decision deviates from the basic principles of the *Shari'ah*, it remains part of the Philippine Islamic legal system.

Conclusion

The secular principle of the Philippine Constitution has played an important role in the application of Islamic family law in the Philippines and has caused the deviation of the Muslim law from the basic principles of the *Shari'ah*. The basic characteristic of Islamic family law being attached to a religious belief is excluded from the enforcement of Islamic family law in the Philippines. The enactment of P.D. 1083 as part of the positive laws of the state does not signify a respect for the religious belief of the Filipino Muslims, but a matter of consideration to their cultural traditions as a contribution to the cultural civilization of the Filipino nation. The secularization of the provisions of P.D. 1083 is one of the instances that can be encountered in applying Islamic family law in a secular polity.

The application of Islamic family law in the country must always conform to the Philippine Constitution which is the fundamental law of the state. P.D. 1083 is considered as a special law in relation to the other general laws of the states, but it is not an independent legal system which operates without regard to the general laws of the state.

Regarding the machinery for the administration of Islamic marriage law, P.D. 1083 creates the office of the Jurisconsult (*mufti*) in Islamic law that is authorized to render

legal opinion (*fatwa*) pertaining to the question of Islamic family law, but such *fatwa* is merely advisory and not binding to anyone who seeks it.

The *Shari'ah* courts of the Philippines are under the administrative supervision of the Supreme Court. The qualifications of a judge in the *Shari'ah* Circuit Court as provided in P.D. 1083 are very low compared to the qualifications of a judge in the Municipal Trial Circuit Court. A woman can be a judge in the *Shari'ah* courts of the Philippines provided she possesses the qualifications prescribed by Philippine law. A non-Muslim can be a judge in the *Shari'ah* court as long as he possesses the qualifications of a judge as prescribed in the Philippine Judiciary Law.

The Supreme Court shall have the constitutional power to review on appeal the decisions of the *Shari'ah* District Court. This rule is a unique characteristic of Islamic family law in the Philippines as all members of the Supreme Court are non-Muslims. Therefore, there is no guarantee that the decision of the Supreme Court in a case appealed from the *Shari'ah* court will not deviate from the basic teachings of the *Shari'ah*. However, even if such a decision runs counter to the basic teachings of the *Shari'ah*, it will become part of the Islamic legal system in the Philippines.

Politically, the enactment of the Islamic family law is designed to redress Muslim grievances in the southern Philippines. This law, however, is not beyond improvement, and relies on the continuous efforts of the young Muslim generation in the country along with the positive cooperation of the national government. The resolution of the ongoing Mindanao problem through peaceful negotiation may have better prospect for the development of Islamic law in the country.

NOTES

1. This definition was provided by Syed Muhammad Naquib al-Attas in his book *Islam and Secularism*, which is the earliest and most comprehensive account by a Muslim scholar on the historical and philosophical meaning of the terms secular, secularization, and secularism. For further reading, see Syed Muhammad Naquib al-Attas, *Islam and Secularism*, Kuala Lumpur: Muslim Youth Movement of Malaysia (ABIM), 1978, pp. 14–49.
2. *Ibid.*, pp. 14–15.
3. See *ibid.*, pp. 14–46; also see W. L. Reese, *Dictionary of Philosophy and Religion*, Atlantic Highlands, NJ: Humanities Press Inc., 1980, p. 519; also Malcolm B. Hamilton, *The Sociology of Religion*, London: Routledge, 1995, p. 165.
4. Al-Attas, *Islam*, *op. cit.*, p. 17; for further reading about secularization, see Keith A. Roberts, *Religion in Sociological Perspective*, Belmont, TN: Wadsworth Publishing Company, 1990, pp. 303–323; also see Hamilton, *The Sociology*, *op. cit.*, p. 165.
5. Al-Attas, *Islam*, *op. cit.*, p. 16; Roberts, *Religion*, *op. cit.*, p. 306; Hamilton, *The Sociology*, *op. cit.*, p. 166.
6. Al-Attas, *Islam*, *op. cit.*, p. 16; Roberts, *Religion*, *op. cit.*, p. 306.
7. Al-Attas, *Islam*, *op. cit.*, p. 16; Roberts, *Religion*, *op. cit.*, p. 307.
8. Al-Attas, *Islam*, *op. cit.*, p. 15; Roberts, *Religion*, *op. cit.*, p. 304.
9. See Al-Attas, *Islam*, *op. cit.*, p. 18; Roberts, *Religion*, *op. cit.*, p. 305; Hamilton, *The Sociology*, *op. cit.*, p. 166.
10. Al-Attas, *Islam*, *op. cit.*, p. 18; for further reading, see Rudolf Heredia, “Secularism and Secularisation: Nation Building in a Multi-Religious Society,” in *Secularism and Liberation*, eds. Rudolf C. Heredia and Edward Mathias, New Delhi: Indian Social Institute, 1995, pp. 11–37.
11. Hamilton, *The Sociology*, *op. cit.*, p. 167.
12. See C. M. Renzetti and Daniel J. Curran, *Living Sociology*, Boston, MA: Allyn and Bacon, 2000, p. 8; also Hamilton, *The Sociology*, *op. cit.*, p. 165.
13. Al-Attas, *Islam*, *op. cit.*, pp. 23–24.
14. *Ibid.*, p. 30.
15. Heredia, “Secularism and Secularisation,” *op. cit.*, pp. 27–28.

16. Tahir Mahmood, ed., "Freedom of Conscience and Conversion to a Minority Religion: Legal Parameters and Social Realities," in *Minorities and State in the Indian Law*, New Delhi: Genuine Publications, 1991, pp. 58–91.
17. See Kevin Yi Tan and Thio Li-Ann, *Constitutional Law in Malaysia and Singapore*, Singapore: Butterworths Asia, 1997, p. 888.
18. Tan and Li-Ann, *Constitutional Law*, *op. cit.*, p. 889; also see Singapore Administration of Muslim Law (Amendment) Act (1999).
19. Tan and Li-Ann, *Constitutional Law*, *op. cit.*, p. 889; Singapore Administration of Muslim Law (Amendment) Act, *op. cit.*
20. Tan and Li-Ann, *Constitutional Law*, *op. cit.*, p. 927.
21. See Isagani Cruz, *Constitutional Law*, Quezon City: Central Law Book Publishing Co., Inc., 1991, pp. 170–171; also Enrique Fernando, *The Constitution of the Philippines*, New York: Oceana Publications, Inc., p. 575; also see P. B. Gajendragadkan, *Secularism and the Constitution of India*, Bombay: University of Bombay, 1971, pp. 2–21; also Hector De Leon, *Text Book on the New Philippine Constitution*, Manila: Rex Book Store, 1989, p. 71.
22. Cruz, *Constitutional Law*, *op. cit.*, p. 168.
23. *Ibid.*, pp. 169–170.
24. The Philippine Constitution, Art. 3, Sec. 5, *Religious Freedom*.
25. Cruz, *Constitutional Law*, *op. cit.*, p. 170; Fernando, *The Constitution*, *op. cit.*, p. 578; Gajendragadkar, *Secularism and the Constitution*, *op. cit.*, p. 13; De Leon, *Text Book*, *op. cit.*, p. 71.
26. Gajendragadkar, *Secularism and the Constitution*, *op. cit.*, p. 13.
27. Cruz, *Constitutional Law*, *op. cit.*, p. 170; Fernando, *The Constitution*, *op. cit.*, p. 578; Gajendragadkar, *Secularism and the Constitution*, *op. cit.*, p. 13; De Leon, *Text Book*, *op. cit.*, p. 72.
28. Fernando, *The Constitution*, *op. cit.*, p. 579; De Leon, *Text Book*, *op. cit.*, p. 71; Cruz, *Constitutional Law*, *op. cit.*, p. 169.
29. Mahmood, "Freedom of Conscience," *op. cit.*, p. 58.
30. *Ibid.*
31. *Ibid.*
32. This is cited in No. 38 of the 1966 "Report of the Constitutional Commission." For further reading about the freedom of religion under the Constitution of Singapore, see Kevin Tan, Yeo Tiong Min and Lee Kiat Seng, *Constitutional Law in Malaysia and Singapore*, Singapore: Malayan Law Journal, 1991, pp. 688–700.
33. The Constitution, Art. 3, Sec. 5, *op. cit.*; for further information, see De Leon, *Text Book*, *op. cit.*, p. 113; also Cruz, *Constitutional Law*, *op. cit.*, p. 176.
34. Fernando, *The Constitution*, *op. cit.*, p. 573.
35. Cruz, *Constitutional Law*, *op. cit.*, p. 177.
36. *Ibid.*
37. *Ibid.*, p. 177; De Leon, *Text Book*, *op. cit.*, p. 114.
38. Fernando, *The Constitution*, *op. cit.*, p. 586; Cruz, *Constitutional Law*, *op. cit.*, p. 178.
39. *Ibid.*, p. 178; De Leon, *Text Book*, *op. cit.*, p. 114.
40. The Constitution, Art. 3, Sec. 5; for further reading, see Cruz, *Constitutional Law*, *op. cit.* p. 178.
41. Fernando, *The Constitution*, *op. cit.*, p. 584; Cruz, *Constitutional Law*, *op. cit.*, p. 176; De Leon, *Text Book*, *op. cit.*, p. 115.
42. Fernando, *The Constitution*, *op. cit.*, p. 585; De Leon, *Text Book*, *op. cit.*, p. 172; Cruz, *Constitutional Law*, *op. cit.*, p. 170.
43. Fernando, *The Constitution*, *op. cit.*, p. 581; Cruz, *Constitutional Law*, *op. cit.*, p. 167; De Leon, *Text Book*, *op. cit.*, p. 171.
44. *Ibid.*, p. 26; Cruz, *Constitutional Law*, *op. cit.*, p. 4; Fernando, *The Constitution*, *op. cit.*, p. 32.
45. Cruz, *Constitutional Law*, *op. cit.*, p. 4; De Leon, *Text Book*, *op. cit.*, p. 26; Fernando, *The Constitution*, *op. cit.*, p. 32.
46. Republic Act 386, Art. 7, *Effect and Application of Laws*, 1946.
47. Republic Act 386, otherwise known as the Civil Code of the Philippines. For further reading, see Edgardo L. Paras, *Civil Code of the Philippines Annotated*, Manila: Rex Book Store, 1994, p. 50; also see Esteban B. Bautista, *An Introduction to the Code of Muslim Personal Laws*, Quezon City: Central Law Book Publishing Co., 1977, p. 3.
48. See Fernando, *The Constitution*, *op. cit.*, p. 565; Cruz, *Constitutional Law*, *op. cit.*, p. 168; De Leon, *Text Book*, *op. cit.*, p. 71; Jose N. Nollado, *Student's Manual on the New Constitution*, Mandaluyong City: National Book Store, 1996, p. 7.

49. See Tahir Mahmood, *The Muslim Law of India*, Allahabad: Law Book Company, 1982, pp. 8–9.
50. *Ibid.*, p. 9.
51. P.D. 1083, Art. 13 (3), *Application*; for further reading, see Ibrahim Gazali and Jainal Rasul, *Commentaries and Jurisprudence on the Muslim Code of the Philippines*, Quezon City: Central Law Book Publishing Co., Inc., 1984, p. 50; also see Mangontawar Gubat, “Marriage Laws: A Comparative Analysis,” *Mindanao Law Journal*, Vol. 3, No. 1, 1988, pp. 36–63.
52. P.D. 1083, Art. 5, *Proof of Muslim Law*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 63.
53. The four Sunni schools of law which were recognized in the Code of Muslim Personal laws of the Philippines are the Hanafi, Hanbali, Maliki, and Shafi’i schools.
54. P.D. 1083, Art. 6, *Conflict in Islamic Schools of Law*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 64.
55. Ruperto G. Martin, *Statutory Construction*, 6th edn, Manila: Premium Book Store, 1984, p. 149.
56. See Henry Campbell Black, *Black’s Law Dictionary* s.v. “Law of a general nature”, Manila: Merriam & Webster, Inc., 1983.
57. *Ibid.*, s.v. “Special Law.”
58. P.D. 1083, Art. 3 (3), *Conflict of Provisions*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 54.
59. E.O., Art. 7 (2); also see Pama L. Muti, “The Family Code and the Muslim Code: Confluence and Divergence,” *Mindanao Law Journal*, Vol. 4, No. 1, 1988, p. 50; also Gubat, “Marriage Laws”, *op. cit.*, p. 44.
60. P.D. 1083, Art. 15; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 109.
61. P.D. 1083, Art. 81, *District Registrar*; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 249.
62. E.O., Art. 23; Also P.D. 1083, Art. 17 *Marriage Ceremony*; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 111.
63. P.D. 1083, Art. 184, *Failure to Report for Registration*; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 419.
64. P.D. 1083, Art. 181, *Illegal Solemnization of Marriage*; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 419.
65. P.D. 1083, Art. 86, *Legal Effects of Registration*.
66. Tahir Mahmood, *Statute-Law Relating to Muslims in India*, New Delhi: Institute of Objective Studies, 1995, p. 125.
67. *Ibid.*
68. This is cited in Sec. 7 of the 1999 Administration of Muslim Law (Amendment) Act, Singapore; also see Ahmad M. Ibrahim, *Legal Status of Muslims in Singapore*, Singapore: Malayan Law Journal, 1965, p. 18.
69. *Ibid.*
70. Ahmad M. Ibrahim, *Family Law in Malaysia and Singapore*, Singapore: Malayan Law Journal, 1984, p. 212.
71. Ibrahim, *Legal Status*, *op. cit.*, p. 18.
72. E.O., Art. 41; for further reading, see Melencio S. Sta. Maria, Jr, *Persons and Family Relations Law*, Manila: Rex Bookstore, p. 159; also Paras, *Civil Code*, *op. cit.*, p. 390.
73. Paras, *Civil Code*, *op. cit.*, p. 430; Sta. Maria, *Family*, *op. cit.*, p. 251.
74. The Revised Penal Code as amended, Art. 349, *Bigamy*, 1932. The term *prision mayor* refers to a form of imprisonment as provided in the Revised Penal Code where the duration of imprisonment is from 6 years and 1 day to 12 years.
75. P.D. 1083, Art. 180, *Law applicable*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 417.
76. The term *arresto mayor* is a form of imprisonment as provided in the Revised Penal Code where the duration of imprisonment is from 1 month and 1 day to 6 months; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 419.
77. P.D. 1083, Art. 183, *Offenses Relative to Subsequent Marriage, Divorce, and Revocation of Divorce*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 419.
78. P.D. 1083, Art. 27, *By Husband*; for further explanation see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 138.
79. *Ibid.*, p. 139
80. *Ibid.*, p. 138.
81. P.D. 1083, Art. 162, *Subsequent Marriage*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 139.
82. P.D. 1083, Art. 161 (2), *Divorce by Talaq and Tafdud*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 367.
83. P.D. 1083, Art. 163, *Offenses against Customary Law*; Gazali and Rasul, *Commentaries*, *op. cit.*, p. 139.

84. P.D. 1083, Art. 183, *Offenses Relative to Subsequent Marriage, Divorce, and Revocation of Divorce*; also Art. 180, *Law Applicable*; for more information, see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 140.
85. See P.D. 1083, Art. 183; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 140.
86. Islamic Family Law (Federal Territories) Act, Art. 23 (1) Polygamy (1984).
87. *Ibid.*, Sec. 23 (3).
88. *Ibid.*, Sec. 23 (7).
89. See Ibrahim, *Family Law*, *op. cit.*, p. 206.
90. *Ibid.*
91. Aharon Laysh, "The Fatwa as an Instrument of Accommodation," in *Islamic Legal Interpretation*, ed. Muhammad Khalid Masud, Brinkley Messick and David Powers, London: Harvard University Press, 1996, pp. 270–277.
92. Carolyn Fluehr Lobban, *Islamic Law and Society in Sudan*, London: Frank Cass and Company Limited, 1987, p. 65.
93. Abdullah Alwi Haji Hassan, *The Administration of Islamic Law in Kelantan*, Kuala Lumpur: Dewan Bahasa dan Pustaka, 1996, p. 148.
94. *Ibid.*, p. 149.
95. Selangor, Administration of Islamic Law Enactment 1989, Sec. 30, *Authority of Mufti*.
96. *Ibid.*, Sec. 31(1) and (2).
97. *Ibid.*, Sec. 31(4).
98. This is cited in the Sec. 9 of the (Federal Territories) Act 559 (1997), otherwise known as the Syariah Criminal Offences.
99. Act 559, Sec. 12.
100. M. B. Hooker, *Islamic Law in South-East Asia*, Singapore: Oxford University Press, 1984, p. 110.
101. This is stated as Amendment No. 3 of the Administration of Muslim Law (Amendment) Act 1999.
102. Hooker, *Islamic Law*, *op. cit.*, p. 111.
103. This was cited in Sec. 32 of the 1966 Administration of Muslim Law Act. For further reading see Hooker, *Islamic Law*, *op. cit.*, p. 111.
104. This was stated in Sec. 32(2) of the 1966 Administration of Law Act, and in Sec. 26 of the 1999 Amendment to the said Act; also see Hooker, *Islamic Law*, *op. cit.*, p. 111.
105. This was also cited in Sec. 33(1) of the 1966 Administration of Muslim Law Act; also see Hooker, *Islamic Law*, *op. cit.*, p. 111.
106. See Sec. 32 (4) and (5), 1966 Administration of Muslim Law Act; also Hooker, *Islamic Law*, *op. cit.*, p. 111.
107. P.D. 1083, Arts. 164 (1) and 165, *Qualifications*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 367.
108. P.D. 1083, Art. 164 (2), *Creation of Office and Appointment*; also see Hamid A. Barra, "The Shari'ah Court System in the Philippines: A Study in Muslim Procedural Law," unpublished PhD dissertation, International Islamic University Malaysia, 1994, p. 391.
109. P.D. 1083, Art. 160; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 367.
110. P.D. 1083, Art. 137 (2), *Creation*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 358–361; Fernando, *The Constitution*, *op. cit.*, p. 370–371; De Leon, *Text Book*, *op. cit.*, p. 325; Nollado, *Manual*, *op. cit.*, p. 67.
111. This is stated in Secs 33–56 of the 1966 Administration of Muslim Law Act; also see Sec. 7 of the 1999 Administration of Muslim Law (Amendment) Act; also see Hooker, *Islamic Law*, *op. cit.*, p. 111.
112. See Tahir Mahmood, *The Muslim Law of India*, Allahabad: Law Book Company, 1982, p. 12.
113. The Constitution, Art. 8, Sec. 7, Par. 2; also see De Leon, *Text Book*, *op. cit.*, p. 326; Nollado, *Manual*, *op. cit.*, p. 69.
114. P.D. 1083, Art. 140, *Qualifications*; also see Judiciary Reorganization Act of 1981, Sec. 15.
115. B.P. 129, Sec. 15, *Qualifications*; also Gazali and Rasul, *Commentaries*, *op. cit.*, p. 363.
116. See Judiciary Reorganization Act of 1981, Sec. 26 *Qualifications*; also De Leon, *Text Book*, *op. cit.*, p. 327.
117. P.D. 1083, Art 152, *Qualifications*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 364.
118. See Lobban, *Islamic Law and Society*, *op. cit.*, p. 61.
119. *Ibid.*, p. 63.
120. Article 140 of the P.D. 1083 states that "No person shall be appointed Shari'a District Judge unless, in addition to the qualifications for judges of Court of First Instance fixed in the Judiciary Law, he is learned in Islamic Law and Jurisprudence". Sec. 15 of the Judiciary Reorganization Act of 1981

prescribes the qualification of a judge in the Regional Trial Court (formerly the Court of First Instance). It states that “No person shall be appointed Regional Trial Judge unless he is a natural born citizen of the Philippines, at least thirty-five years of age, and for at least ten years has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requirement”. Also Article 152 of the P.D. 1083 prescribes the qualification of a judge in the *Shari’ah* Circuit Court. It states that “No person shall be appointed judge of the Shari’a Circuit Court unless he is a natural born citizen of the Philippines, at least twenty five years of age, and has passed an examination in the Shari’a and Islamic Jurisprudence (*fiqh*) to be given by the Supreme Court for admission to special membership in the Philippine Bar to practice in the Shari’a Courts.”

121. This is stated in Sec. 4 (1) of the Muslims Ordinance of 1957; also see Hooker, *Islamic Law*, *op. cit.*, p. 102.
122. The P.D. 1083 does not have any provision which has explicitly disqualified a non-Muslim from being appointed as judge in the *Shari’ah* court. The principle of secularism embodied in the Philippine Constitution does not make the religion or religious belief of a person as grounds for disqualification from holding any position in the government including the Judicial Department in which the *Shari’ah* court belongs.
123. See Abu al-Hassan ‘Ali Muhammad Ibn Habib al-Mawardi, *al-Ahkam al-Sultaniyyah*, Beirut: Dar al-Kutub al-‘Alamyyah, 1983, p. 99.
124. Administration of Muslim Law (Amendment) Act, Sec. 16; also see Ibrahim, *Legal Status*, *op. cit.*, p. 21; also Hooker, *Islamic Law*, *op. cit.*, p. 107.
125. Ibrahim, *Legal Status*, *op. cit.*, p. 21.
126. P.D. 1083, Arts 139 and 151, *Appointment of judges*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 363.
127. The Constitution, Art. 8, Sec. 9; also see De leon, *Text Book*, *op. cit.*, p. 330; Nollado, *Manual*, *op. cit.*, p. 70.
128. The Constitution, Art. 8, Sec. 9; also De Leon, *Text Book*, *op. cit.*, p. 331; Nollado, *Manual*, *op. cit.*, p. 70.
129. The retirement age of a judge in the *Shari’ah* court was 65 years, but this was increased to 70 years in the 1987 Constitution. See the Constitution, Art. 8, Sec. 11; also De Leon, *Text Book*, *op. cit.*, p. 33; Nollado, *Manual*, *op. cit.*, p. 67.
130. The Constitution, Art. 8, Sec. 11; also see De Leon, *Text Book*, *op. cit.*, p. 334.
131. This is stated in Sec. 35 of the 1966 Administration of Muslim Law Act; also see Sec. 14 of the 1999 Administration of Muslim Law (Amendment) Act; also see Hooker, *Islamic Law*, *op. cit.*, p. 111.
132. Ibrahim, *Legal Status*, *op. cit.*, p. 21.
133. Tahir Mahmood, *Statute*, *op. cit.*, p. 104; also Mahmood, *Muslim Law in India*, *op. cit.*, p. 8.
134. P.D. 1083, Art. 181, *Illegal Solemnization of Marriage*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 418.
135. P.D. 1083, Art 182, *Marriage before Expiration of ‘idda*; Gazali and Rasul, *Commentaries*, *op. cit.*, p. 418.
136. P.D. 1083, Art. 183, *Offenses relative to subsequent marriage, divorce, and revocation of divorce*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 419.
137. P.D. 1083, Art. 184, *Failure to Report for Registration*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 419.
138. P.D. 1083, Art. 185, *Neglect of duty by registrar*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 419.
139. See Maraim Saidona Tagoranao, “The Islamic Law of Inheritance under the Muslim Code of the Philippines and under the Muslim Law of the Peninsular Malaysia: A Comparative Study,” unpublished PhD dissertation, International Islamic University Malaysia, Kuala Lumpur, 1998, p. 352.
140. P.D. 1083, Art. 55, *Jurisdiction*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 364.
141. P.D. 1083, Art. 143 (1), *Original Jurisdiction*; also see Gazali and Rasul, *Commentaries*, *op. cit.*, p. 364.
142. P.D. 1083, Art. 144, *Appellate Jurisdiction*; Gazali and Rasul, *Commentaries*, *op. cit.*, p. 363.
143. This is cited in the case “Rulona-Al-Awadhi vs. Astih,” in Supreme Court Reports Annotated 165 (1988), p. 771.
144. *Ibid.*, p. 772.
145. The rule that the judicial decision of the Supreme Court on any case shall constitute a part of the Philippine law is cited in the Republic Act 386, otherwise known as the Civil Code of the

- Philippines. Its Art. 8 states that "Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." For further readings, see Paras, *Civil Code, op. cit.*, pp. 60–61.
146. This is cited in the case "Manuela Vda. de Maraog vs. Silapan" in Supreme Court Report Annotated 128, (1984), p. 471.
 147. The Constitution, Art. 8, Sec. 5. par. 5; also see Fernando, *The Constitution, op. cit.*, p. 362; also De Leon, *Text Book, op. cit.*, p. 321; also Jose N. Nollado, *Rules of Court in the Philippines*, Mandaluyong City: Rex Bookstore, 1997, p. 1.
 148. P.D. 1083, Arts 148 and 158, *Special Procedure*; also see Gazali and Rasul, *Commentaries, op. cit.*, p. 364.
 149. P.D. 1083, Arts 149 and 159, *Applicability of Other Laws*; also see Tagoranao, *Muslim Code, op. cit.*, p. 359.
 150. See Hamid A. Barra, "The Shari'ah Court System in the Philippines: A Study in Muslim Procedural Law," unpublished PhD dissertation, International Islamic University Malaysia, Kuala Lumpur, 1994, p. 258.
 151. The authority of the Supreme Court to review the decision of the *Shari'ah* Court was reflected in the case "Rulona al-Awadhi vs. Astih" in which the order of the *Shari'ah* District Court of Marawi City was reversed by the Supreme Court. For further reading, see Supreme Court Reports Annotated No. 165 (1988), 771; also see the Constitution, Art. 8, Sec. 2.
 152. Republic Act No. 386, Art. 8.
 153. This is cited in Sec. 16 of the 1999 Administration of Muslim Law (Amendment) Act, Singapore; also see Ibrahim, *Legal Status, op. cit.*; also see, Hooker, *Islamic Law, op. cit.*, p. 107.
 154. See The Singapore Administration of Muslim Law (Amendment) Act (1999), Sec. 7; also Hooker, *Islamic Law, op. cit.*, p. 107; also Ibrahim, *Legal Status, op. cit.*, p. 21.
 155. See Hooker, *Islamic Law, op. cit.*, p. 107.
 156. Administration of Muslim Law (Amendment) Act, Sec. 17; also see Hooker, *Islamic Law, op. cit.*, p. 107.

Copyright of *Journal of Muslim Minority Affairs* is the property of Routledge and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.