XXXII

INDUSTRIAL PROPERTY

A. Patents

1. Basic Principles and Current Legislation

The legal basis for patents in Panama is contained in Article 50 of the Constitution, which states: "Every author or inventor enjoys the exclusive ownership of his work or invention during the time and in the manner prescribed by law"; and in Article 1987 of the Administrative Code, which provides that any discovery or invention gives its author the exclusive right to exploit it. This right is guaranteed by letters patent issued by the executive under the name of patent for invention.

Fundamentally, the owner of the patent of invention has the right to exclusive enjoyment of his invention in the form he wishes: exploiting it; manufacturing or selling it directly; partial or total transfer of his rights in the patent to third parties.

He also has the right to bring civil and criminal suit against any person who tries to or does imitate, falsify, or adulterate the products or utilize the procedures of the invention; engages in unfair competition with the same, for example, by bribing his employees in order to obtain secrets of the invention. (Arts. 1987, 1999, 2000 of the Administrative Code; Arts. 20, 21 of the General Inter-American Convention for Trade Mark and Commercial Protection, signed at Washington in 1929.1)

The laws governing the subject, based on the two above principles, are: Chapter One, Title VII, Book IV, of the Administrative Code; Executive Decree 1 of March 3, 1939, of the Ministry of Agriculture, Commerce, and Industry; Decree 18 of April 20, 1940; and, in supplementary form, the Commercial, Penal, Judicial, Civil, and Fiscal Codes.

2. What Is Patentable

In general, the following may be patented: any machine, mechanical apparatus, combination of materials, or procedure which is useful in industry, art, or science or any manufactured or industrial product which, in the inventor's opinion, is an invention or improvement of an invention.

1. The parties to this convention are Colombia, Cuba, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, Peru, and the United States.
The declaratory system is in force in Panama, according to which the government issues patents without prior study of the usefulness of the object and without taking into consideration whether it actually is an invention or improvement. On so granting, the government does not declare that the invention or improvement is a true or useful one, that the patentee is actually the inventor, that the object is new, or that it is true to the specifications or model.

Third parties must prove the contrary in ordinary suit before the competent courts.

Any invention or improvement which is harmful to public health, or contravenes good customs or the above rights may not be patented. Hence, patents may not be applied for or granted if:

a) The discoveries or inventions are already in public use or in the public domain.

b) The applicant is not the inventor or discoverer himself, or his heir, assignee, or attorney.

c) The object contravenes morality, public order, or good customs, or is dangerous to public health and safety.

d) They violate rights already belonging to other persons who do not give their consent.

e) The applicant, his heirs, assignees or attorneys do not submit specifications of the invention which are sufficiently complete and clear, with all the formulas and details necessary, to make the article and its use readily recognizable. (Arts. 1988, 1997, 1998 of the Administrative Code; Executive Decree 1 of 1939.)

3. Procedure for Obtaining a Patent

The Trademark Office (Oficina de Marcas) of the Ministry of Agriculture, Commerce and Industry is in charge of receiving applications for patents of invention and of the processing of their issuance or denial.

To obtain a patent, the interested party must appear at the Trademark Office to declare the invention or improvement of which he is the author, or do so through an attorney. This application must be presented on the type of paper required, bearing the stamps required by the Fiscal Code, and be accompanied by the following documents:

a) An explanation of the invention which is concise but complete and clear enough to give an exact idea of the patentee’s article;

b) A design of the article;

c) A receipt from the Treasury showing that tax has been paid in accordance with the number of years of proprietorship applied for (five balboas per year); a legal power of attorney when the application is made in the name of a third party; and a model, if possible and desired, of the invention or improvement, for reference in case of controversy.

The detailed explanation of the invention or improvement and the corresponding designs referred to in 2 (e) above must be presented in duplicate so that one copy
of each, stamped with the office seal and bearing the signature of the interested party and the Ministry of Agriculture, Commerce, and Industry, may be attached to the patent.

To validate a foreign patent one must submit: a copy of the patent from the country of origin, officially certified by an accredited Panamanian consul in that country, together with a power of attorney, also authenticated by the Panamanian consul. If the description and claims are in a foreign language, a translation of these by an official translator must be attached.

When application is made for a patent, it is checked to see if the foregoing formal requirements of the Administrative Code have been met. If they have, publication in the Gaceta Oficial, with two insertions, will be ordered. If no claims are presented within 90 days after the first publication, the patent applied for will be issued by decree.

Patents are issued on printed forms of fine quality linen paper in which the decree ordering the issuance of the patent and a description of the invention or improvement are set forth. These patents are supposed to be published in two consecutive issues of the Gaceta Oficial, although this is not carried out in practice. (Arts. 1993-1996 of the Administrative Code.)

Once the patent is obtained, it should be recorded in the public register as required by law, so that it will have validity against third parties.

4. Use and Duration of Patents

Patents granted for new industries lapse if not used during the first third of the period for which they have been issued. "Use" is considered to be the manufacture, distribution, sale, or importation of the patented article, machine, pharmaceutical product, tool, cosmetic, etc.

There is no government agency in Panama that investigates whether patents are exploited or not; however, there is always the danger that a third party might bring suit to prove that the patent is not being exploited and should be voided. (Arts. 2002, 2003 of the Administrative Code.)

Patents become void when their issuance has infringed on the rights of third parties, in the judgment of the competent court. (Arts. 2001, 2002 of the Administrative Code.)

Patent rights may also become void if it is shown at trial that the article is not useful or legitimate, that it lacks novelty, or that the patentee is not the inventor. (Art. 1997 of the Administrative Code.)

In the case of foreign patents validated in Panama, the proprietors are not required to establish factories; the importation, distribution, and sale of the product covered by the patent is sufficient.

National patents may be issued to Panamanians or foreigners for a period of 5 to 20 years. The executive, on action by the Office of the Attorney General, may reduce the life of a patent applied for to 5, 10, or 15 years, according to the merit of the invention or improvement. The interested parties may appeal this decision to the Supreme Court of Justice.
Foreign patents validated in Panama are granted for 15 years but, within that time limit, they may not exceed the period of validity of the original patent of the country of origin. That is, if the foreign patent has 8 years left to run before expiring, it will not be valid in Panama for a period longer than 8 years; should 15 years remain before expiration, then it may be valid for as long as 15 years; if it has 20 years to run, it is valid for only 15 years in Panama, which is the maximum term granted.

When issued for a term shorter than that authorized by law, both types of patents have the right to be extended, if the invention or improvement is of sufficient importance to warrant extension in the opinion of the executive, which shall determine the number of years of extension to be granted. Renewal may be applied for at any time up to one month before the date of expiration of the patent issued. (Arts. 1989-1992 of the Administrative Code.)

5. Conveyance or Transfer of Patents

After obtaining the patent, the proprietor may transfer his rights to it in full (sale, gift) or in part, through a licensing contract in accordance with the provisions of the Civil Code on contracts. Patent law does not contain any special provisions covering conveyance or transfer of patents.

6. Protection of Foreign Patents

Foreign patents enjoy the same protection as national patents except in regard to period of duration as indicated under the heading, "Use and Duration of Patents". They must be validated as indicated in section 3 above.

B. Trademarks

1. Principles and Laws in Force

The legislation governing trademarks is contained in Chapter I, Title VIII, Book IV, of the Administrative Code; Executive Decree 1 of March 3, 1939; Decree 18 of April 20, 1940; the General Inter-American Convention for Trade Mark and Commercial Protection, of Washington, February 20, 1929; Decree 3 of March 19, 1937; Decree 12 of November 24, 1937; Decree 6 of January 13, 1937; Decree 136 of September 25, 1941; and supplementary provisions of the civil, penal, fiscal and commercial codes.

2. Permissible Trademarks

Any word, phrase, sign or combination thereof that is original and serves to distinguish a product intended for industry or commerce may be used and registered as a manufacturer's or merchant's trademark. (Art. 2005 of the Administrative Code.)

However, within this general concept of words, phrases and signs that may be used as trademarks, the following are prohibited by law for reasons of public order, public interest, and unfair competition:

a) Foreign manufacturer's trademarks not previously registered in their country of origin;
b) Manufacturer's trademarks exhibiting the flag or coat of arms of Panama, its municipalities, or foreign countries;

c) Manufacturer's trademarks exhibiting either the image or name or both of living persons if these have not given their consent, or of dead persons if such consent is not given by the heirs; the images or names of historical figures are excepted;

d) Manufacturer's trademarks consisting exclusively of data as to type, date and place of manufacture, quality, purpose, price, quantity, or weight of the merchandise, or the customary name in the language of the place of origin of the article or product under consideration;

e) Manufacturer's trademarks that are identical to another registered or known trademark in use by another person to distinguish products, articles, or merchandise that are identical or similar or have the same properties as those for which the new trademark is intended;

f) Manufacturer's trademarks that are the same as or similar to another trademark already registered or in use by another person to distinguish products, articles or merchandise that are identical, similar, or have the same properties as those for which the new trademark is intended, as long as this sameness or similarity is capable of giving rise in the public mind to errors, confusions, mistakes, or misrepresentation as to the class, quality, age, origin, or nature of the article;

g) Manufacturer's trademarks exhibiting words, phrases, drawings, illustrations, or vignettes that contravene proper morality, which are intended for an illegal business, or for therapeutic products or medicines that have not been approved by the National Pharmaceutical Board. (Arts. 2012, 2013 of the Administrative Code; Art. 14 of Executive Decree 1 of 1939; Art. 2, Decree 136 of September 1941.)

3. Registration Procedure

Any Panamanian or foreigner who is the proprietor of a trademark may obtain exclusive rights to its use in Panama by registering it in the Trademarks Office of the Department of Agriculture, Commerce and Industry.

In order to apply for the registration of the trademark, the person must appear through an attorney at the Trademarks Office and present:

a) An application on stamped paper bearing the required revenue stamps and containing the general particulars regarding the proprietor of the trademark; whether the proprietor is a foreign company or association and the name of the state or nation under whose laws it was set up; the description of the component elements of the trademark; the exact description of the type and nature of the articles or products on which the trademark is being or will be issued; the date upon which the trademark was or will be put into use;

b) A sworn statement by the proprietor of the trademark that the signatory is the proprietor of the trademark; no other physical or juridical person has the right to use the said trademark; the said trademark is in use by the
signatory in Panama, in the internal commerce of the country of origin, or in international trade; the description and design of the trademark attached to the said statement constitute an exact representation of the trademark which it is desired to protect and register; the samples show the trademark in the exact form in which it is being and will be used;

c) A cliché of the trademark;

d) Six labels, two of which shall be signed by the attorney;

e) A power of attorney;

f) An internal revenue receipt showing payment of the legal registration fees (B/25.00 for foreign trademarks; B/12.50 for national trademarks).

Foreign trademarks must also be accompanied by authentication of the power of attorney by the accredited Panamanian consul in the country of origin; authenticated copy of the registry certificate of the country of origin; official translation of the foreign language documents accompanying it. If registration of the trademark has not yet been granted but is pending, a certified statement to that effect shall be included under the condition that the certificate of registration shall be attached within one year of the date.

National merchants' trademarks may be granted only to businessmen legally established in the country. (Arts. 2006, 2022 of the Administrative Code; Arts. 22, 25, 26, 47 of Executive Decree 1 of 1939).

After the certificate establishing the right to the exclusive use of the trademark has been issued, the proprietor must register it in the commercial register if it is to be valid against third parties.

Apart from the registered trademark, there is also the trademark in use. This is the trademark which, although not registered, is being used.

Only the proprietor of a registered trademark has the right to its exclusive use and to oppose use of it by a third party.

The holder of a trademark in use does not have the right to oppose its use by another person but may oppose its registration by a third party (Art. 18 of Executive Decree 1 of 1939.)

4. Use of Trademarks and Their Duration

Use of a manufacturer's trademark is understood to mean the production, manufacture, processing or preparation of articles, products or merchandise under that trademark and the subsequent marketing thereof on the national or international market (Art. 23 of the Executive Decree 1 of 1939).

In the case of merchant's trademarks, use is understood to mean the commercial handling, sale or distribution of the articles, products or merchandise covered by the said trademark even though such articles, products or merchandise may not have been produced, manufactured or prepared by the proprietor of the trademark (Art. 48 of Executive Decree 1 of 1939).
Trademarks are registered for 10 years but may be renewed indefinitely on application and payment of the renewal fee.

Registered trademarks and trademarks in use may expire when: declared void by competent courts; not exploited; expressly relinquished by the proprietor; expropriated by the government; the establishment producing the products covered by the trademark is nonexistent (Arts. 2018, 2035 of the Administrative Code; Art. 46 of the National Constitution; Art. 9 of the General Inter-American Convention for Trade Mark and Commercial Protection; Art. 43 of Executive Decree 1 of 1939).

5. Assignment or Transfer

Manufacturer's trademarks and, by analogy, legally recognized merchant's trademarks are not transferable without the concomitant transfer of the company producing the articles covered by the trademarks. Consequently, the transfer of a trademark carries with it the right to exploit the products it covers. No special formalities are required for transfer and it is carried out in accordance with civil law, but it should be registered in the Trademark Office and the commercial register since it will not be valid against third parties unless the requirements of these agencies are met. (Art. 2019 of the Administrative Code; Art. 45 of Executive Decree 1 of 1939.)

6. Protection of Foreign Trademarks

The law makes no distinction between the protection of national and of foreign trademarks. Therefore, these are protected equally by the laws of industrial property and Panamanian law in general. See section 3 above for special registration requirements.

G. Other Categories of Industrial Property

1. Trade Names

The law governing trade names is contained principally in Chapter One, Title VIII, Book IV of the Administrative Code; Executive Decree 1 of March 3, 1939; and Law 24 of March 24, 1941.

The principle of the protection of the trade name is found in Article 2016 of the Administrative Code, which states: "The name of a businessman or of a business or industrial firm constitutes a property in itself. Through registration in accordance with the established requirements, the same rights as in the case of national trademarks may be obtained with regard to the name or designation of a firm dealing or carrying on business in any business center of Panama except that it will be applicable only in the particular locality."

Ownership of a trade name or designation is acquired through use. However, the exclusive right to the trade name or designation is protected through its registration in the Trademarks Office. Consequently, in order to oppose the use of a trade name or designation by another person, it is necessary for the said title to be registered. It is not necessary, however, for a trade name or designation to be registered in order to oppose its registration by another person; the opponent need only prove ownership by prior use.
A trade name or designation may be registered by any natural or juridical person engaged in commerce or industry, with preference going to the one who used it first. If this circumstance cannot be established, preference will be given to the first application for registration.

A trade name or designation may be registered before its use is initiated as long as the right of another person is not injured. However, if use of the said commercial name or designation is not initiated within one year after registration, this registration lapses and any person has a right to adopt and use it for himself.

Use of a trade name or designation is understood as meaning its adoption for distinguishing the establishment or establishments in a way that is clearly visible to the public.

Registration of a trade name or designation may not be applied for or granted in the following cases:

a) If a third party has registered the trade name or designation in his favor;
b) If it contains the first or second name of persons other than the proprietors or proprietors of the establishment concerned, or in the case of a juridical person; of parties who do not belong to the company, if these parties or whoever represents their interests do not give their written consent;
c) If the applicant does not have the corresponding commercial license;
d) If it contravenes morality and public order;
e) If the trade name or designation consists exclusively of information as to the location, type, or business of the firm in question.

The requirements for registration of a trade name or designation are the same as those for the registration of national trademarks, with the difference that the petition in application must contain the following data:

a) The name to be registered;
b) In the case of natural persons, the name, nationality, marital status, and address of the person or persons in whose favor the registration is to be made;
c) In the case of a juridical person, the name of the company or association in whose favor the registration is to be made and the names of the natural persons who legally represent that company or association;
d) Designation of the commercial license of the natural or juridical persons in whose favor the registration is to be made;
e) In the case of a juridical person, the registration in the commercial register.

After ownership of the title or trade name has been obtained by registration, the certificate of ownership must be recorded in the commercial register.

Duration of the proprietorship and registration of a trade name or designation is for as long as the name is kept in use. Abandonment of the name for one year nullifies its registration, and any other person may adopt and register it for himself.

The ownership rights of trade names or designations are transferred together with the ownership of the establishments covered by those names; but the transfer must be registered and notation made of it on the original registration of the trade name or designation in question. However, when an establishment covered by a
registered trade name or designation is sold or transferred, it may be stipulated that the buyer or person acquiring it shall not acquire the right to the use of the trade name or designation, in which case the new proprietor may not continue to use that name for the same establishment. (Arts. 2016, 2019 of the Administrative Code; Arts. 49 to 60 of Executive Decree 1 of March 3, 1939; Art. 17 of Law 24 of March 24, 1941.)

2. Models

Industrial models are protected by the laws governing patents for invention. (Art. 1988 of the Administrative Code.)

D. Unfair Competition

There is no statute in Panama specifically governing unfair competition; however, in accordance with Article 22 of the General Inter-American Convention for Trade Mark and Commercial Protection, signed in Washington on February 20, 1929, the parties that have not yet enacted legislation governing the acts of unfair competition mentioned in the convention shall apply the sanctions contained in their laws on trademarks or any other laws, and on petition by injured parties shall order such acts to cease, and those committing them shall be liable to the injured parties for damages and injuries caused.

Unfair competition, in general, is any act or deed that contravenes good business faith or the normal and honorable conduct of industrial or commercial activities and, therefore, is unfair and prohibited, such as: false descriptions of goods, false designations of the place of origin or geographical source of goods; actions whose purpose is to give the impression, directly or indirectly, that the articles or commercial activities of a manufacturer, businessman, merchant, or farmer belong to or are the responsibility of another manufacturer, businessman, merchant, or farmer from any other signatory countries. (Arts. 20, 21 of the General Inter-American Convention for Trade Mark and Commercial Protection.)

Imitation, falsification, and similar offenses against the proprietorship of patented articles or industries are punishable under industrial property laws; infringement of trademark rights and the improper use of manufacturer's or merchant's trademarks do not in principle constitute acts of unfair competition, but do have the character of offense against industrial property rights. (Arts. 2000, 2024, 2025 of the Administrative Code.)

E. Applicable Treaties or Conventions

In the field of industrial property, Panama applies the General Inter-American Convention for Trade Mark and Commercial Protection, signed in Washington on February 20, 1929, as well as its internal laws; however, it denounced the Protocol on the Inter-American Registration of Trade Marks through the note of the Department of Foreign Relations dated November 18, 1946.

Panama is also a party to the Convention on Patents of Invention, Drawings and Industrial Models, Trade-Marks, and Literary and Artistic Property, signed at Rio de Janeiro on August 23, 1906; the Convention on the Protection of Trade Marks, signed at Buenos Aires on August 20, 1910; and the Convention on Inventions, Patents, Designs and Industrial Models, signed at Buenos Aires on August 20, 1910.
XXXIII

MARRIAGE AND ITS DISSOLUTION

A. Marriage

The Constitution of Panama, in its substantive section on social rights, establishes that the state protects marriage as the legal basis of the family and delegates the power to the law to govern the marital status. Article 88 of the Civil Code states that the law governs civil marriage but recognizes marriages made legally under the Catholic Church or any other religion having legal status in Panama as valid for all civil purposes.

1. The Engagement

Engagement does not impose the obligation to marry. If a promise to marry set forth in a public or private document by a person who is of age or by a minor accompanied by the person authorized or required to give consent, or if the banns have been published, and the party refuses without due cause to carry out the marriage, he is obligated to pay the expenses incurred by the other party on account of the projected marriage and damages resulting because of the promise.

Petition for repayment of expenses and for damages in case an engagement is broken without due cause must be made within a year from the date of the refusal to celebrate the marriage.

2. Age and Consent To Marry

Male persons may marry when they have reached 14 years of age, and female persons when they have reached 12. Individuals under 21 years of age who wish to marry must have the prior and express consent of whoever has patria potestas or guardianship, as the case may be, over such minors.

3. Impediments and Prohibitions

The following are impediments to entering into marriage contracts:

a) If the male is under 14 years of age and the female under 12;
b) Being of unsound mind at the time of contracting marriage;
c) Suffering from absolute or relative physical impotence for consummating the marriage, or suffering from any serious illness such as venereal disease, tuberculosis, leprosy, cancer, epilepsy, or similar illnesses;
d) Subsisting marriage with another;
e) Being of the same sex;
f) Relationship as ascendant-descendant, by consanguinity or affinity;
g) Relationship as brother and sister;
h) Conviction as the authors or author and accomplice in the death of the spouse of one of the parties.

The following are prohibited from entering into marriage contracts:

a) Persons who have not reached the age of 21 years, without the consent of whoever has patria potestas or guardianship over them.

b) A widow, until 301 days after the death of her husband or, if she was left pregnant, until the birth of the child; and a woman whose marriage had been annulled, within 301 days after the decree.

c) The widower or widow who has legitimate children under patria potestas as long as court inventory has not been made of the property of such children that is being administered; and under the same condition, the spouse who is divorced or whose marriage has been annulled, and the natural father or mother.

d) A guardian and his descendants to parties who have been his wards, until the accounts have been approved after the termination of the guardianship, unless the father, or in his absence, the mother of the ward has authorized the marriage by will or public document.

4. Formalities

Persons who intend to enter into civil marriage must present before a judge of the domicile of either party a statement signed by both in which the names, professions, and domiciles or residences of the contracting parties and their parents are set forth. This statement must be accompanied by the birth certificates of the contracting parties and a physician licensed to practice in Panama must certify that neither of them suffers from a serious contagious disease.

In the case of religious marriage applications, the persons intending to marry must present the above-mentioned medical certificates to the judge together with their application. In Panama, marriage may be celebrated personally or by specially empowered proxy. In the latter case, however, the presence of the contracting party whose domicile or residence is in the district of the judge who must authorize the marriage is necessary.

After approval of the application presented to the judge, he will order the publishing of the edict or the banns for 15 days and will also call upon anyone with knowledge of any impediment to the marriage to make it known. The judge will also send the same edict to the districts in which the parties have resided or had their domicile in the last two years.

The government may waive publication of the edict when there is a serious reason that has been duly verified and dispensation has been paid to the treasury. A municipal judge may authorize the marriage of a person in imminent danger of death whether domiciled in the city or a transient; in these cases, the marriage is considered conditional until the prior freedom of the parties is attested.

The marriage may proceed if no impediment to the marriage has been made known 15 days after publication of the banns. If any person alleges an impediment
before the marriage is solemnized, the ceremony will be suspended until the objection is disposed of.

5. **Solemnization of the Marriage**

The marriage will be solemnized with the appearance before the judge of the contracting parties, or one of them and the proxy, and two competent witnesses. The judge will proceed to read the article of the Civil Code referring to the rights and obligations between spouses. He will then ask the parties if they still wish to marry, and if they answer in the affirmative he will issue the marriage certificate with all the necessary particulars attesting to fulfilment of the requirements of the Code. The certificate must be signed by the judge, the contracting parties, the witnesses, and the clerk of the court.

6. **Marriage Contracted Abroad**

Accredited consuls and vice-consuls abroad will act as municipal judges for the purpose of marriage between Panamanians or between Panamanians and foreigners.

Article 90 of the Civil Code provides that marriages performed in a foreign country in accordance with the laws of that country or the laws of Panama will produce the same effects in Panama as if performed there. However, if through the performance of the marriage in a foreign country the Panamanian violates the laws of Panama in any way, this violation will produce the same effects as if it had occurred in Panama.

When Panamanians resident in Panama have been married abroad, they must register the marriage certificate in the civil register within three months after returning to the country. If they do not, the change in status produces no legal effects in Panama.

Panamanian law requires registration of the marriage certificate in the civil register for marriages performed in Panama or abroad.

B. **Rights and Duties of Husband and Wife**

Husband and wife have equal rights under Panamanian law. They are obligated to live together and to protect, and be faithful and respectful to each other.

Although, in principle, the husband is the one who must support the family, the wife is obligated to contribute to this expense in accordance with her means.

**Property rights.** The husband and wife may make all the arrangements regarding the property of each and draw up the articles of marriage before the marriage is performed. When no articles of marriage are drawn up, each of the contracting parties is the owner of the property and fruits belonging to him or her on contracting matrimony as well as those acquired in any form, and may freely dispose of them.

**Community property.** The Panamanian Code covers in detail this system of community property, known as sociedad de gananciales. It is a partnership in the earnings after marriage. Upon dissolution of the marriage the husband and wife
share in equal parts the benefits obtained by either of the spouses during the marriage if these arise from property acquired during the marriage with common funds or from the fruits, rents, or interest produced by the common property or property obtained through the effort, work, or wages of either of the spouses.

Although by general rule the husband is the administrator in the community property system, he may not dispose of more than half the community property by will.

Separation of property. This may be provided for in the articles of marriage or by judicial decision.

When separation of property is decreed, the community property agreement is dissolved and the assets liquidated according to the provisions of law. When this separation applies to real property, a notation to that effect must be recorded in the public register.

The wife is authorized to administer the property when she is her husband's guardian or when he has been declared in absentia. In such cases, as administratrix of her husband's property she has the same powers and liability as the husband did; however, the courts will establish limitations when the husband is missing or is a fugitive from justice.

C. Separation

Marriage is not dissolved through separation but its effects are suspended.

The grounds for separation are the same as those for divorce with the addition of habitual drunkenness and narcotics addiction.

The same legal procedures are followed in separation as in divorce proceedings. However, even though the same effects are produced as in divorce, once the separation has been decreed by the competent authority the separated spouse cannot remarry while the other spouse is living, unless the separation is legally converted into divorce.

D. Divorce

1. Grounds

Article 114 of the Civil Code lists the grounds for divorce in order of gravity:

a) Adultery by the wife;
b) Public concubinage by the husband;
c) Attempt against the life of one spouse by the other;
d) Cruelty, when it endangers the life of one or both spouses or makes domestic peace and tranquility impossible;
e) The proposal of the husband to prostitute his wife;
f) The attempt by the husband or wife to corrupt their children, prostitute their daughters, or complicity in their corruption or prostitution;
g) Absolute neglect by the husband of his marital or paternal duties and by the wife of her marital or maternal duties, if six months have elapsed.
between the time of initiation of the ground and the date of presentation of suit for divorce;
h) Habitual drunkenness, except when it already existed at the time of marriage;
i) Actual separation for more than four years;
j) Legally declared incurable insanity;
k) Mutual consent.

Mutual consent is not grounds for divorce in the following cases: (a) if the husband and wife are under 21 years of age; (b) if two years has not elapsed since the marriage was solemnized; (c) if the parties do not ratify their application for divorce four months after filing it.

In case of mental derangement or contagious disease in either husband or wife, the judge can immediately and summarily suspend the duty of cohabitation, but marital obligations towards the sick spouse remain in force, because in such cases these are not considered grounds for divorce.

2. Court Actions and Provisional Measures

Except for insanity, separation, and mutual consent, action for divorce may only be brought by the innocent spouse. Divorce action is extinguished by the death of either of the spouses but the heirs may prosecute the suit or institute counter suit limited to the effects of inheritance.

When both spouses are guilty and the defendant files a counter suit, the more serious ground for divorce, in accordance with the order listed above, will be the one admitted.

While the divorce action is in process, the trial judge will order the provisional measures indicated in Article 118 of the Civil Code as temporary recourse, namely:

a) Separation of the husband and wife, if they are not already separated;
b) Placing the children in the care of one of the spouses or of another person, according to the circumstances;
c) When the wife earns no salary and administers no property, the judge will determine the amount the husband must pay her for costs of litigation unless she lives publicly with another man;
d) Determine the allotment to be given for support of the wife and children, according to the circumstances;
e) Precautionary measures must be ordered in case the wife is pregnant, if the husband so petitions.

3. Alimony and Division of Property

Dissolution of marriage by judicial decree does not produce legal effects until the divorce is recorded in the civil register. The husband may remarry after registration of the divorce and the wife may remarry 300 days after its registration.

In principle, the custody, upbringing, and education of the children will be entrusted to the innocent spouse except in cases in which for reasons of convenience in benefit of the children custody is given the other spouse if that person possesses the moral attributes required by law for a guardian.
Regardless of who has custody of the children, both husband and wife are obligated to bring them up and educate them.

The divorce decree may also assign alimony to be paid by the guilty spouse to the innocent one sufficient to maintain the social position held during the marriage.

When divorce is not voluntary, the guilty spouse loses the right to benefits from the property of the innocent spouse.

4. Private International Law

Panama adopted the Bustamante Code through Law 15 of 1928 and, consequently, the dissolution of marriage is governed by Articles 52 to 56 of that private international law code. Divorce, in this context, is regulated by the law of conjugal domicile. It cannot be founded, however, on causes prior to the acquisition of that domicile unless they are authorized with equal effect by the personal law of both spouses.

Each contracting state has the right to permit or recognize, or not, the divorce or new matrimony of persons divorced abroad, with effects or for causes not admitted by their personal law.

For execution of the foreign decree in Panama, it must fulfill the requirements of the Code of Procedure. The Supreme Court of Justice decrees the execution of foreign sentences in Panama.

The law of the court before which the litigation is pending determines the judicial consequences of the action and terms of the judgment with respect to the spouses and children.
XXXIV
THE FAMILY


Among the social rights in the doctrinal part of the national Constitution there is a section devoted to the family in which the general principle is established that the state protects the family and fosters its social and economic progress. Another general principle of Panamanian law is that regulations governing marital status and the family are of public interest and their effects outside the country are governed by the personal law. The juridical aphorism that legislation on family rights follows man like the shadow follows the body provides a graphic illustration of this principle.

2. Adoption

The legal adoption of a child who is not one’s progeny is an accepted and commonly practiced institution in Panama.

The Civil Code and Law 7 of 1961 contain the requirements for adoption. The adopting parent must be of age (21 years) and at least 15 years older than the person being adopted.

Adoption may take place only between persons of the same sex. When the person to be adopted owns property and is a minor or is under the authority or guardianship of another person for any reason, the adoption may not take place unless the adopting parent provides bond guaranteeing liability for the property that is satisfactory to the parent or guardian or person of whom the child to be adopted is a dependent. Such guarantee must be approved by the court. The property referred to must be received pursuant to notarized or court inventory.

Permission from the judge of the circuit court of the domicile of the adopted child is also required. The judge is limited to granting judicial permission authorizing the adopting parent to adopt the intended person. For the adoption to have effect, this permission must be officially notarized in an instrument signed by everybody who took part in the act, and if the person adopted is a minor it is required that this instrument be signed by the person who gave consent to the adoption. After the judicial permission has become a public document it must be recorded in the civil register. Registration is fundamental in character for purposes of the rights and duties arising from the act.

3. Guardianship

Title XVII, Book I, of the Civil Code governs this subject.

Unemancipated minors are considered subject to guardianship. Panamanian law recognizes three types of guardianship: testamentary, legitimate, or by court
Persons who leave substantial legacies or inheritances to incapacitated minors may be appointed as their guardians if they are not under patria potestas of the parents.

The judge will not authorize guardianship unless the guardian provides bond covering the value of the income and products of the ward's real property for an average of two years' yield, the value of the personal property, and that of the chattels and cattle on rural property. This bond is not cancelable until the accounts of guardianship have been approved.

The posting of bond is waived only in case of the following persons:

a) The spouse and legitimate ascendants;
b) The testamentary guardian whom the testator has expressly excused from this obligation;
c) The guardian of the foundling, who is the person who adopted and supported the child;
d) The guardian who does not administer property.

When the amount to be guaranteed is not more than 200 balboas, the judge may waive the posting of bond if the guardian is a person of good character.

Before he may commence to exercise guardianship, the guardian must receive the property pursuant to court inventory, the preparation of which must be initiated by the guardian eight days after acceptance of the guardianship. The guardian cannot enter into administration of the ward's property until he has received it pursuant to inventory (Art. 279).

The guardian is obligated to support and educate the minor in accordance with his position and means; to reprimand and discipline the minor in moderation and to represent him in all civil acts; and the minor, in turn, must respect and obey his guardian. However, the guardian must have the authorization of the court to do the following after the manifest necessity or benefit thereof has been demonstrated:

a) Alienate or encumber real property, stocks, bonds, public securities, or any kind of assets consisting of negotiable documents belonging to the minor;
b) Divide real property or legacies belonging to the minor jointly with others;
c) Borrow money in the name of the minor;
d) Repudiate inheritances, bequests or donations;
e) Carry out operations and make commitments involving the rights or property of the minor.

The guardian must render a yearly accounting of the estate of the minor to the judge of the domicile setting forth the income and expenditures of the previous year.

When the guardianship expires, the guardian is obligated to render an accounting of his administration to the minor or his representatives; this requisite may not be waived. The account may not be considered closed without court approval. On expiration of the guardianship, the guardian must return the ward's property without waiting to render the accounting, and property whose nature does not permit immediate return must be returned within the term ordered by the judge.
XXXV

DOMICILE

1. General Principles

According to Article 39 of the Civil Code, natural persons are divided into nationals and foreigners, domiciled and transients. The criterion that has been followed for determining domicile is that it depends upon the person's place of residence and his intention of establishing himself there, as stated in Article 76: "The domicile of an individual for civil matters is in the place where he is habitually employed or carries on his profession, trade or business or where he has his chief establishment."

In Panamanian law, the domicile for civil matters is associated with the home, and, as a consequence, domicile is not considered changed by the sole fact that a person works for a long time in a place, voluntarily or under compulsion, if he keeps his family or has his chief place of business elsewhere. Domicile may also be constituted by declaration before the principal authority of the district of intention to establish domicile there (Art. 79).

Mere residence in a place is considered to constitute a person's domicile in civil matters if he has no formally established domicile elsewhere. Panamanian law also permits the establishment of a special domicile for the performance of certain acts or contracts. When a domicile is abandoned and no immediate action is taken to establish another one, it is considered that performance takes place in the place where it was executed or in the domicile of the obligee. With regard to juridical persons, the general principle is that their domicile is the place where they have their address or office unless their charter or special laws governing this subject provide otherwise. However, when juridical persons have branches or agencies in various places separate from where the central office or headquarters is established the law also considers as domicile the place where the branch or agency is located for matters related to acts or contracts executed or carried into effect through the agent.

Marital status of the person is also taken into consideration in establishing domicile. Although this has already been taken up partially in Chapter XXXIII, "Marriage and Its Dissolution", it is important to point out that in case no express declaration or prior agreement has been made as to the conjugal domicile, it is considered that the wife has adopted the domicile of the husband.

Minors living under patria potestas are considered to have the parental domicile. The domicile of the guardian or curator is considered to be that of the ward or person under curatorship. Furthermore, the domicile of a person is also that of his servants and other dependents residing in the same house.
2. Absent or Missing Persons

Articles 47 to 63 of the Civil Code govern absence or presumption of death, and provide the provisional measures to be adopted in case of absence.

When a person disappears from his domicile without having left an attorney to administer his property, and his whereabouts are unknown, the court of the district of the domicile may appoint a person to represent the missing individual in all necessary matters when so petitioned by a legally qualified party or the Attorney General's Office. A missing spouse will be represented by the spouse who is present, if they are not legally separated, and if not present by parents, children, grandparents, and brothers and sisters preferably of full blood, in that order.

a) Declaration of absence. Article 50 of the Civil Code provides that a person may be declared missing when two years have passed with no news of the missing person or since the last news was received or when five years have passed in case a person has been left in charge of the administration of his property. The following persons may petition for a declaration of absence: the spouse present; testamentary heirs; parents who would inherit ab intestato; persons who would have a subordinate right over the property of the missing person arising from his death.

The judicial decree does not produce effects until six months after its publication in the Gaceta Oficial.

b) Administration of the property of missing persons. If the person appointed to administer the property of the missing person in accordance with the order described above is the wife and she is of age, she is authorized to dispose freely of her own property but she may not do so with the husband's own property or that of the marriage community without a court order. If the administration is assigned to the children and they are minors, a guardian will be appointed for them to take charge of the administration of the property. Administration terminates when the missing individual appears in person or through an agent, when the death of the missing person has been proved and his heirs appear, and when a third party appears who is able to give satisfactory proof that he has legally acquired the property of the missing person.

c) Presumption of death. Article 57, amended by Law 1 of 1959, states, "When five years have passed since the missing person disappeared or since the last news of him was received, or 60 years from the time of his birth, or three months since his disappearance because of war, shipwreck, fire or any other calamity or accident, upon petition of an interested party, the court will declare him to be presumed dead."

The decree of presumption of death, like the declaration of absence, may not be executed until six months after its publication in the Gaceta Oficial.

After final sentence of presumption of death, determination of succession to the property of the missing person will be opened and proceedings initiated in accordance with whether there is a will or not.
In case the missing person appears or proof of his existence is presented, he acquires the rights over his property, recovering it in its existing condition, and the amount in money of what was alienated, but he does not have a right to claim fruits and rents.

When a missing person is entitled to a share in the estate, his part will be added to that of his coheirs if there is no person with a *propio jure* right to claim it. An inventory must be made of such property with the participation of the Attorney General's Office.