

A group of people, including men and women, are seated around a table in what appears to be a mediation or meeting session. They are looking towards the center of the table, suggesting a collaborative discussion. The background is slightly blurred, focusing attention on the participants.

MEDIATION:
Reaching Its Potential In
Family Law Cases

DCA NIMFA CUESTA VILO



Family Mediation: Dates Back To Roman Civilization / Started 2007 In Philippines In As Component Of Court-Annexed Mediation / Used By 256 Courts / Addresses 60% Of Court Case Inflow- 50% Of 80,000 Mediated / 82% Success Rate



**Family: Asian Context Is
Close-Knit Relationship Of
Parents, Spouses, Siblings,
Grandparents, In-Laws /
Basic Social Institution**

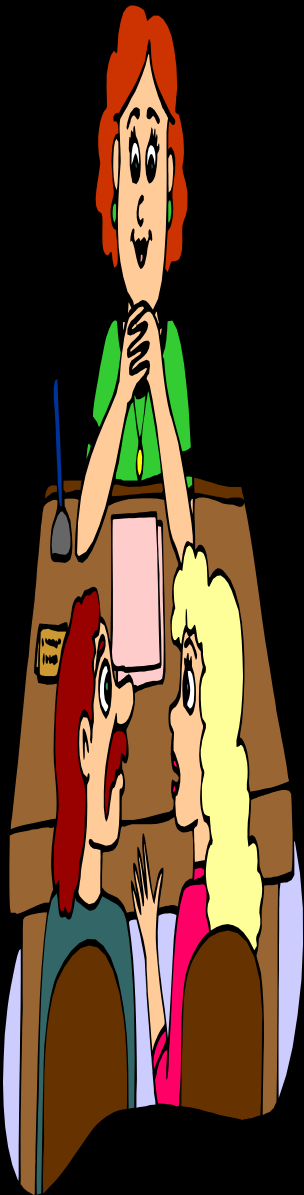
**Marriage: Maybe Arranged,
With Dowry / Permanent,
Presumed / Union Not Only Of
Bride, Groom But Families,
Investments And Community**



**Building Peace In Troubled World
To Asians, Indigenous Cultures
Starts With Families / Even If It
Means Involving Religious Elders,
Community Members Or Dealing
With Impact Of Shaming, “Losing
Face” Away From Courtrooms To
Preserve Family Goodwill –
*Mediation Reaches Its Potential***

Matters Referred To Family
Mediation : Child Custody
And Care, Support, Access Or
Visitation, Property Matters /
In Philippines, Compromise
Is Not Allowed For Status
Of Persons, Grounds For
Spousal Separation, Others /
Screening Mechanism For
Domestic Violence, Crimes





Best Reasons: Family Members Interested In Change For The Future Than Revenge / Rights -Based Options Not Viable / Need For Third Person To Intervene / Humane Milieu / Women, Children Benefit More / Fair Process / Heal / Build Ties [Future Mediation]

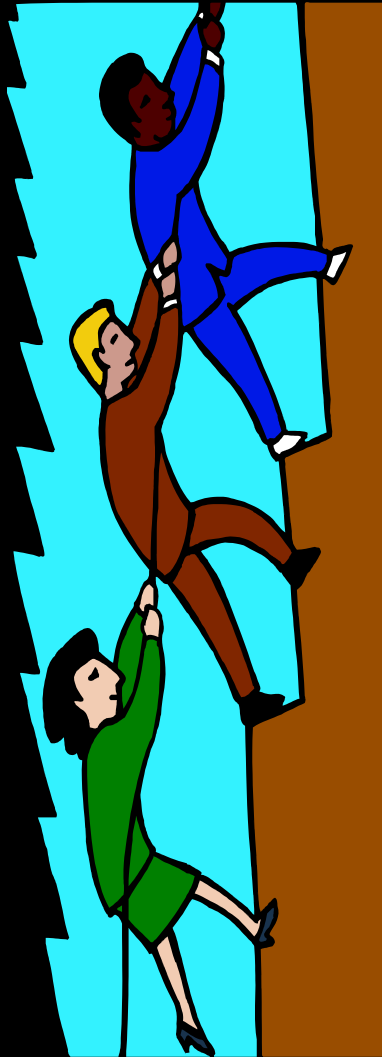
**Best Time: Family Issues
Mediated Before, After
Separation / Before
Conclusion Of Agreement
Or After / During Pre-Trial /
During, After Trial / After
Litigation To Deal With
Changed Situations Of Kin
Members Or Clarify Court
Orders / Before Decision**



Male-Female Co-Mediation Team:

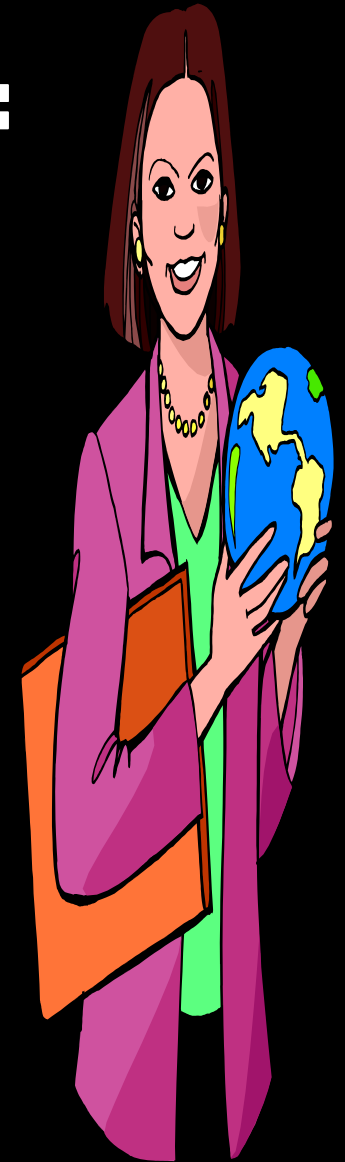
Many Participants / Gender Issues Inherent / At Least One Of Mediators Skilled Therapist / More Creative / Parties Have Sense Of Balance / Less Intimidating / Registers A Higher Success Rate





**Attributes Of A Good
Family Mediator: Training,
Experience, Good People,
Communication Skill /
Knowledge Of Child
Development, Family
Dynamics, Domestic
Violence, Substance Abuse,
Human Behavior / Ethical
Standards / Boundary Limit**

Ensure Justice, Fairness:
**Stop Mediation When
Domestic Violence, Crimes
Are Indicated- Return Case
With Dispatch To Court / Not
Conducted In Manner That
Mitigates Rights, Weakens
Position Of One Party
[Woman, Child] As When
Mediation Rigorously Based
On Culture Or Religion / *No
Privatization Of Family Law***





**Mediating Emotionally-Packed
Cases: Challenging / Bitter
Disputes, Emotions Important
Than Talk- Acknowledge /
Each Concerned With Personal
Survival / Recognize Emotion
As Rightful, Allow Each Side
To Let Off Steam [Set Rules] /
Listen, Don't Interrupt Until
Last Word Spoken / Other Tools
[Handshake, Flowers, Gifts]**

**Translating Plans To
Commitment : Family
Mediator Starts Things
Right, With Idea How
Agreement Looks Like /
Closure On Issues, Letting
Parties Debrief / Family Kin
Feels Satisfied / Reduce
Agreement Into Writing /
Submit For Court Approval**





**Turning Agreement Into
Court Order : **Compromise**
Out Of Mediation - Not
Contrary To Law, Morals
And Public Policy *[Based On*
Law, Legal Principles And
International Instruments] /
Signed By Parties, Lawyers
/ Approved By Court For
Compliance, Execution***



**MEDIATION: Solution
To Family Diversity
[Survey Of Supreme Court
Decisions]**

HOW TO PROPERLY MEDIATE?



**“WHERE ARE YOU
DAD..?”**

[SUPPORT]

Maowee And Moanaa Are Legitimate Daughters Of Edward And Wife Lea. After Moanaa Was Born Or When Maowee Was Only 2 Years Old, Edward Abandoned The Conjugal Abode Virtually Forcing Mother And Infant Daughters To Seek Shelter

**From One Relative To Another,
Shuttling From Dwelling To
Dwelling For 18 Years Due To
Dire Financial Difficulties.**

**The Sisters Asked For Support
From Their Father Edward Who
Failed Give Since 1976 Despite
Having Pieces Of Valuable
Lands. Lea's Debt Is P600T**

1] Are Daughters And Mother Entitled To Support? Yes, Under Article 195 Of Family Code, Parents And Legitimate Children Are Obligated To Support Each Other

2] How Much? P2,496,00.00 Less P124,000.00 Given By The Father Edward For 2 Years Support *Pendente Lite*

3] May Edward Pay Even Without Demand? Yes, No Need For Judicial / Extrajudicial Demand - Due At Time Person Entitled Needs It [Art. 303, FC]

4] If Uncle Of Children Paid Support, Under Art. 207 Of FC, Must Be Reimbursed [*Lacson vs. Lacson*, 499 SCRA 677]



**‘MOMMIE
DEAREST...’
[Custody]**

Joey And Loreta Are Live-In Partners Both Working In Japan. They Have A 6 - Year Old Son Michael Kevin Also Born In Japan. Loreta Claims That She And Joey Have Separated And Joey Was Deported From Japan While Their Son Michael Kevin Has Been Living With Parents

**Of Joey Also Because Of The
Illicit Affairs Of Joey. Loreta
Says She Married A Japanese
National Only For The Reason
That She Wants To Avail Of the
Privileges Of Staying In Japan
And At The Same Time Work
There. She Wants To Be
Awarded Custody Of Their Son.**

1] May Joey Have Joint Custody Over Michael Kevin When Loreta Is Away? No, Under Art. 176 Of Family Code, Illegitimate Children Are Under Parental Authority Of Their Mother And They Cannot Be Deprived Nor Mothers May Renounce Parental Authority

2] Maternal Preference Rule
In Art. 213, FC, States That
No Child Under 7 Years Of
Age Shall Be Separated From
The Mother Unless Court Finds
Reason To Order Otherwise

3] In Custody Cases The *Best*
***Interest* Of The Child, Not That**
Of The Parents Are Paramount

**4] Unfit / Ample Justification –
Neglect, Abandonment,
Unemployment, Immorality,
Habitual Drunkenness, Drug
Addiction, Maltreatment,
Insanity, Affliction With
Communicable Disease**

***[Briones vs. Miguel, 440
SCRA 455, 2004]***



**“MOMMIE
DEAREST...”**

[Part 2]

Franklin Hirsch And Agnes Got Married In Bacolod City But Decided To Reside In Boracay Island. A Daughter Was Born To The Couple Named Simone. After 5 Years, The Spouses Started To Have Marital Problems. Agnes Wanted To Live In Makati City While

Franklin Wanted To Remain In Boracay Island. Once, Agnes Asked Money From Franklin And Secured Permission To Bring Simone To Makati City For A Vacation Which Franklin Readily Agreed. However, It Was Discovered That Agnes And Simone Are Not Returning.

**Franklin Filed With The Court
Of Appeals Petition For Writ Of
Habeas Corpus In Relation To
Custody Of Minor Child Simone
Wherein The Court Of Appeals
Granted Joint Custody Of
Franklin And Agnes Over
Simone. Agnes Sought From
The Supreme Court A TRO.**

1] In Custody Cases, What Is The Primary Consideration? – Under The UN Convention On The Rights Of The Child, It Is The Promotion Of The *Best Interests* Of The Child

2] Is *Joint* Custody Proper?- No, Agnes Was Given *Sole* Custody Of Minor Daughter

For The Reason That Under *Art. 213* Of The Family Code, The “*Tender Age Presumption*” [Maternal Preference Rule] Is Overcome Only By Compelling Evidence Which Was Not Proven During Trial. [*Gamboa-Hirsch vs. CA, Franklin Hirsch, G.R. No. 174485, 11 July 2007*]



**“WHO TAKES
CARE OF US?”
[CHILDREN OF
MIXED
MARRIAGES]**

Wolfgang Roehr, A German Citizen Married Filipino Carmen Rodriguez In Hamburg, Germany And They Have Two Children- Carolynne And Alexandra Kristine. The Couple Divorced In Germany And A Hamburg-Blankenese Court Granted Custody To The German Father.

**The Filipino Mother Challenged
The Decision In The Philippine
Courts As To Custody Of
Young Children.**

**1] Is Divorce Of Wolfgang And
Carmen Valid? Yes. While
Divorce Is Not Allowed In The
Philippines, Their Divorce Is
An Exception Because It Was**

**The Foreigner Spouse Who
Filed It Under Article 26,
Paragraph 2 Of Family Code.**

**2] Who Shall Have Custody Of
The Two Daughters? While
Foreign Judgment Recognized
In The Philippines, The Effects
Such As Custody, Support,
Access And Property Matters**

**Are Determined By The
Philippine Courts. It Is A
Condition, However, That The
Filipino Wife Was Heard And
Represented During The
Divorce Proceedings In
Germany.**

**3] Did Carmen Participate In
The Divorce Petition? No.**

**The Divorce Decree Itself Stated
That Carmen Did Not Give
Opinion In The Social Services.
Wolfgang Had Two Lawyers,
Carmen Had No One. There Was
No Proof Also In The German
Court That Carmen Is Unfit
Mother. *[Roehr vs. Rodriguez,
G.R. No. 142820, 20 June 2003]***



**“OH, MY
PAPA...”**
[Visitation]

**Carlitos Silva, A Married
Businessman, Cohabited With
Actress Suzzane Gonzales. The
Union Saw The Birth Of 2
Children Roman Carlos And
Rica Natalia. The Couple Had A
Rift When According To Carlitos
Suzzane Resumed Her Acting
Career Although According To**

**Suzzane Herself She Never
Stopped Working. They
Eventually Parted Ways.**

**Suzzane Later Got Married To
A Dutch National And They,
With The 2 Children Migrated
To Holland. Suzzane Refused
To Let Carlitos Visit Their
Children Contending That He**

Was Engaged In “Gambling And Womanizing” Which She Feared Would Affect The Moral And Social Values Of The Children.

1] What Is Visitation Right? – It Is The Right Of Access Of A Non- Custodial Parent To Children Even If Illegitimate.

***Art. 150* Of Family Code States**

**That Family Relations Include
Those Between Parents And
Children / *Arts. 209 And 220*
Provide That It Is The Natural
Right And Duty Of Parents To
Keep Children In Their
Company / Under *Art. 49* Of
Family Code, Visitation Rights
Are Accorded To Parents Who**

**Are Not Given The Rights To
Custody Of Their Children /
The Constitution Itself Lays
Down The Natural And
Primary Rights Of Parents
In The Rearing Of Youth**

***[Carlitos Silva vs. Court Of
Appeals And Suzzanne
Gonzales, 275 SCRA 604]***



**“HOW MUCH
IS MINE!?”**

**[Division Of
Property]**

Noel Filed A Petition For Declaration Of Nullity Of Marriage Against Wife Isabel Singh Under *Art. 36* Of Family Code On Her Psychological Incapacity But Amended The Petition To State That Both Of Them Are Psychologically Incapacitated. The Marriage

**Was Declared Null And Void
Ab Initio By The Family Court
Granting P2.5M Moral
Damages And P1M Exemplary
Damages Plus 6% Interest
From Date Of Decision. Isabel
Was Given 50% Of The
P3,675,335.79 Retirement
Benefits And 1/2 Of Outstanding**

Shares Of Stock With Manila Memorial Park And Provident Group Of Companies.

1] Is The Grant Of Moral And Exemplary Damages Proper By Reason Of Psychological Incapacity? – No, As The Same Is Beyond The Control Of The Party Due To Innate Inability

To Perform Essential Marital Obligations And Was Not Done With Malice

2] What Shall Govern The Division Of Property? – Since The Case Does Not Involve Declaration Of Nullity Of A Bigamous Marriage, *Art. 50* In Relation To *Arts. 41 And 42*

**Dissolution Of Conjugal
Partnership Or Absolute
Community Of Property Will
Not Apply Rather The
General Rule That In Marriages
Declared Ab Initio, Co-
ownership Governs, Sharing Is
Equal *[Buenaventura vs. CA,
454 SCRA 261, 2005]***

A dark, pixelated image of a person's face, possibly a woman, with a red, textured background. The image is heavily stylized with a low-resolution, dithered appearance. The person's face is mostly black and dark grey, with some red highlights. The background is a vibrant red with a grid-like pattern.

**“AND HOW MUCH
IS YOURS!?”**

[Division Of Property]

Elna And Bruno Were Live-In Partners In Cebu City. They Have A Son, Michael Bruno. Two Years After, Elna And Bruno Got Married. They Purchased On Installment Basis A Condo Unit Before Their Marriage Wherein Elna Signed As A Witness Using The


Name “Elna Mercado Fehr”.
Upon Completion Of Payment,
The Title Was Issued In Her
Name.

1] What Will Govern The
Property Relations Of Elna And
Bruno? – Co-ownership, Hence
The Condo Unit Is Owned By
Them In Equal Shares

2] What Is The Proof? – It Is *Prima Facie* Presumed To Have Been Obtained Through Joint Efforts And A Party Who Did Not Participate In The Acquisition Is Still Considered As Having Contributed Jointly If “Efforts Consisted In The Care And Maintenance Of Family

Household”

3] In What Instances Does This Rule Apply? – a] Capacitated To Marry Each Other; b] Live Exclusively As Husband, Wife; c] Union Without Benefit Of Marriage, Void Marriage [Elna Fehr vs. Bruno Fehr, G.R. No. 152716, 23 October 2003]



**“WHO OWNS
WHAT!?” [Settlement Of
Estate]**

Audrey O'Neill And W. Richard Guersey Were American Couple Who Lived In The Philippines For 30 Years. Audrey Died And Left A Will Bequeathing Entire Estate To Husband Richard. They Have Adopted Daughter Kyle. Richard Then Married A Filipino Woman, Candelaria,

With Whom He Had Two Children. After 3 Years, Richard Died And Left A Will Bequeathing All Properties To Wife Candelaria Except His Interests And Shares Over A/G Interiors That He Left To Kyle.

1] What Law Shall Be Applied? Being A Foreign National, The

Intrinsic Validity Of Audrey's Will Is Determined By Laws Of Her Country- Maryland, USA.

2] Who Owns The Makati City, Philippines Property? The Constitution Prohibits Aliens From Acquiring Property In The Philippines, But Since That Property Is Now Owned

**By Candelaria, The Filipino
Wife, Manner By Which Audrey
And Richard Acquired The
Property Is Inconsequential It
Being In The Hands Now Of A
Filipino Citizen And The
Objectives Of Constitution
Have Been Achieved [*Ancheta
vs. Candelaria Guersey, G.R.
No. 139868, 8 June 2006*]**



**“And Then Who
Gets This
Home..?”**

A Family Home Cannot Be Immediately Partitioned Even If Passed By Succession To The Co-Ownership Of The Heirs Especially If There Are Minor Children For At Least 10 Years After The Death Of Decedent Or Longer If A Beneficiary Still Living There *[Arriola vs. Arriola, 542 SCRA 666, 2008]**



**“IN MEDIATION, THE
FAMILY ENDS UP MUCH
HAPPIER THAN THEY
WERE... BEFORE!”**

THANK YOU!!!