

# FAMILY LAW IN MEXICO

JOSÉ ANTONIO MÁRQUEZ GONZÁLEZ



Wolters Kluwer

Law & Business

# **Family Law in Mexico**

**José Antonio Márquez González**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Family and Succession Law.

General Editor: Roger Blanpain

Associate General Editor: Michele Colucci

Volume Editor: Walter Pintens



**Wolters Kluwer**

Law & Business

*Published by:*  
Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*  
Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspenpublishers.com](mailto:customer.service@aspenpublishers.com)

*Sold and distributed in all other countries by:*  
Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-3462-2

© 2011 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed in Great Britain.

# Table of Contents

The Author	3
List of Abbreviations	11
Preface	13
General Introduction	15
§1. GENERAL BACKGROUND OF THE COUNTRY (DEMOGRAPHIC DATA)	15
§2. HISTORICAL BACKGROUND OF FAMILY AND SUCCESSION LAW	15
§3. SOURCES OF FAMILY AND SUCCESSION LAW	16
I. Constitution	16
II. Legislation	17
III. Treaties	17
IV. Jurisprudence	18
§4. THE COURTS ADMINISTERING FAMILY AND SUCCESSION LAW	18
Selected Bibliography	21
Part I. Persons	25
Chapter 1. The Status of a Person	25
§1. DEFINITION OF A PERSON	25
§2. CAPACITY	26
§3. ABSENTEES	27
Chapter 2. Registration of Civil Status	29
§1. THE REGISTRAR	29

**Table of Contents**

§2. REGISTERS AND CERTIFICATES	30
I. Birth Certificates	31
II. Certificates of Recognition	32
III. Certificates of Adoption	32
IV. Certificates of Guardianship	32
V. Certificates of Emancipation	33
VI. Marriage Certificates	33
VII. Divorce Certificates	33
VIII. Death Certificates	33
IX. Certificates of Inscription of Statements That Declare or Modify the Marital Status	34
X. Certificates of Correction, Modification and Clearing Up of the Own Certificates of the Registry	34
 Chapter 3. Personal Rights	 35
 Chapter 4. Names	 37
§1. COMPOSITION OF A NAME (FIRST NAME, SURNAME, INDIVIDUAL NAME, TITLE OF NOBILITY)	37
§2. SURNAME	38
I. Acquisition of the Surname	38
II. Change of the Surname	39
§3. FIRST NAME	40
 Chapter 5. Nationality	 41
 Chapter 6. Domicile and Residence	 43
 Chapter 7. Mentally Handicapped Persons	 45
 Part II. Family Law	 47
 Chapter 1. Marriage	 47
§1. THE NATURE OF MARRIAGE	47
§2. THE CAPACITY TO MARRY	48
§3. FORMALITIES OF MARRIAGE	49
§4. EFFECTS OF MARRIAGE	51
§5. VOID AND VOIDABLE MARRIAGES	54

## Table of Contents

Chapter 2. Divorce	57
§1. GROUNDS	57
§2. PROCEDURE	57
§3. EFFECTS	63
Chapter 3. Cohabitation without Marriage	66
Chapter 4. Filiation	68
§1. CHILDREN BORN IN WEDLOCK	68
§2. CHILDREN BORN OUT OF WEDLOCK	70
Chapter 5. Adoption	75
Chapter 6. Parental Authority	80
Chapter 7. Guardianship	85
Chapter 8. Kinship and Relationships of Affinity	95
Part III. Matrimonial Property Law	97
Chapter 1. Rights and Obligations of Spouses	97
§1. GENERAL PRINCIPLES	97
§2. THE HOUSEHOLD EXPENSES	98
§3. THE MATRIMONIAL HOME	98
§4. TRANSACTIONS BETWEEN SPOUSES	99
Chapter 2. The Marriage Settlement	101
Chapter 3. Conventional Matrimonial Regimes	102
Chapter 4. The Legal Matrimonial Regime	106
Part IV. Succession Law	107

**Table of Contents**

Chapter 1. Intestate Succession	107
§1. THE OPENING OF THE SUCCESSION	107
I. Death	107
II. Missing Persons and Absentees	108
§2. THE HEIR	109
I. Capacity to Succeed	109
II. Simultaneous Death	109
III. Unworthiness to Succeed	109
§3. SUCCESSION RULES	112
I. The Classes of Heirs	112
A. Surviving Spouse	113
B. Descendants	114
C. Ascendants	114
D. Collaterals	114
E. Concubines	115
II. Representation	115
III. Adoption	118
§4. THE RIGHTS OF STATE ON THE <i>BONA VACANTIA</i>	118
Chapter 2. Testamentary Succession	120
§1. THE CAPACITY TO MAKE A WILL	121
§2. DIFFERENT TYPES OF WILLS	122
§3. THE JOINT WILL	129
§4. REVOCATION OF A WILL	130
§5. PROVISIONS IN A WILL	131
§6. RESTRICTIONS	132
I. The Legitim	132
II. Maintenance Provisions	132
§7. INTERPRETATION OF A WILL	134
Chapter 3. Acts <i>Inter Vivos</i> Related to the Estate	136
§1. ESTATE PLANNING	136
§2. DONATIONS	137

## Table of Contents

§3. TRUSTS	137
§4. INSURANCE CONTRACTS	140
§5. OTHERS	141
Chapter 4. Acquisition and Administration of the Estate	143
§1. THE ACQUISITION OF THE ESTATE	143
§2. THE ADMINISTRATION OF THE ESTATE	145
Index	155



# **Family Law in Mexico**

**José Antonio Márquez González**

This book was originally published as a monograph in the International  
Encyclopaedia of Laws/Family and Succession Law.

General Editor: Roger Blanpain  
Associate General Editor: Michele Colucci  
Volume Editor: Walter Pintens



**Wolters Kluwer**

Law & Business

*Published by:*

Kluwer Law International  
PO Box 316  
2400 AH Alphen aan den Rijn  
The Netherlands  
Website: [www.kluwerlaw.com](http://www.kluwerlaw.com)

*Sold and distributed in North, Central and South America by:*

Aspen Publishers, Inc.  
7201 McKinney Circle  
Frederick, MD 21704  
United States of America  
Email: [customer.service@aspublishers.com](mailto:customer.service@aspublishers.com)

*Sold and distributed in all other countries by:*

Turpin Distribution Services Ltd.  
Stratton Business Park  
Pegasus Drive, Biggleswade  
Bedfordshire SG18 8TQ  
United Kingdom  
Email: [kluwerlaw@turpin-distribution.com](mailto:kluwerlaw@turpin-distribution.com)

**DISCLAIMER:** The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

*Printed on acid-free paper.*

ISBN 978-90-411-3462-2

© 2011 Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: [permissions@kluwerlaw.com](mailto:permissions@kluwerlaw.com)

Printed in Great Britain.

## The Author



Dr José Antonio Márquez González graduated from the Faculty of Law of the University of Veracruz with honours. He specialized in Private law and obtained the degree of Doctor in Law at the National University of Mexico, also successfully.

Later on, he took postgraduate courses in civil and international commercial law in Spain, Italy, Austria and Brazil.

Dr Márquez González has published several books and essays in specialized magazines both Notaries official magazines in Mexico and abroad. He was the director of 'Escribano', and 'Revista Notarial', and he is member of the editorial coun-

selling of 'Estudios Jurídicos' and 'Lawyers of Veracruz' reviews.

He has participated in TV programmes on scientific disclosures with the National University and belongs to the Association of Professors of the Mexican Notary Law Academy. He is also a lecturer, visiting professor at various universities in the country and National Researcher.

He is currently a corresponding member of several associations and academies. He also belongs to the Mexican Notaries' International Affairs Committee and the International Informatic Commission. He was also President of the Notarial Academy of the International Association of the Latin Notaries with headquarters in Buenos Aires.

At the moment, Dr Márquez González works as a Notary Public in Orizaba and has been teaching Civil Law and Family Law at the University of Veracruz for twenty-three years.

## The Author

# Table of Contents

The Author	3
List of Abbreviations	11
Preface	13
General Introduction	15
§1. GENERAL BACKGROUND OF THE COUNTRY (DEMOGRAPHIC DATA)	15
§2. HISTORICAL BACKGROUND OF FAMILY AND SUCCESSION LAW	15
§3. SOURCES OF FAMILY AND SUCCESSION LAW	16
I. Constitution	16
II. Legislation	17
III. Treaties	17
IV. Jurisprudence	18
§4. THE COURTS ADMINISTERING FAMILY AND SUCCESSION LAW	18
Selected Bibliography	21
Part I. Persons	25
Chapter 1. The Status of a Person	25
§1. DEFINITION OF A PERSON	25
§2. CAPACITY	26
§3. ABSENTEES	27
Chapter 2. Registration of Civil Status	29
§1. THE REGISTRAR	29

## Table of Contents

§2. REGISTERS AND CERTIFICATES	30
I. Birth Certificates	31
II. Certificates of Recognition	32
III. Certificates of Adoption	32
IV. Certificates of Guardianship	32
V. Certificates of Emancipation	33
VI. Marriage Certificates	33
VII. Divorce Certificates	33
VIII. Death Certificates	33
IX. Certificates of Inscription of Statements That Declare or Modify the Marital Status	34
X. Certificates of Correction, Modification and Clearing Up of the Own Certificates of the Registry	34
Chapter 3. Personal Rights	35
Chapter 4. Names	37
§1. COMPOSITION OF A NAME (FIRST NAME, SURNAME, INDIVIDUAL NAME, TITLE OF NOBILITY)	37
§2. SURNAME	38
I. Acquisition of the Surname	38
II. Change of the Surname	39
§3. FIRST NAME	40
Chapter 5. Nationality	41
Chapter 6. Domicile and Residence	43
Chapter 7. Mentally Handicapped Persons	45
Part II. Family Law	47
Chapter 1. Marriage	47
§1. THE NATURE OF MARRIAGE	47
§2. THE CAPACITY TO MARRY	48
§3. FORMALITIES OF MARRIAGE	49
§4. EFFECTS OF MARRIAGE	51
§5. VOID AND VOIDABLE MARRIAGES	54

## Table of Contents

Chapter 2. Divorce	57
§1. GROUNDS	57
§2. PROCEDURE	57
§3. EFFECTS	63
Chapter 3. Cohabitation without Marriage	66
Chapter 4. Filiation	68
§1. CHILDREN BORN IN WEDLOCK	68
§2. CHILDREN BORN OUT OF WEDLOCK	70
Chapter 5. Adoption	75
Chapter 6. Parental Authority	80
Chapter 7. Guardianship	85
Chapter 8. Kinship and Relationships of Affinity	95
Part III. Matrimonial Property Law	97
Chapter 1. Rights and Obligations of Spouses	97
§1. GENERAL PRINCIPLES	97
§2. THE HOUSEHOLD EXPENSES	98
§3. THE MATRIMONIAL HOME	98
§4. TRANSACTIONS BETWEEN SPOUSES	99
Chapter 2. The Marriage Settlement	101
Chapter 3. Conventional Matrimonial Regimes	102
Chapter 4. The Legal Matrimonial Regime	106
Part IV. Succession Law	107

## Table of Contents

Chapter 1. Intestate Succession	107
§1. THE OPENING OF THE SUCCESSION	107
I. Death	107
II. Missing Persons and Absentees	108
§2. THE HEIR	109
I. Capacity to Succeed	109
II. Simultaneous Death	109
III. Unworthiness to Succeed	109
§3. SUCCESSION RULES	112
I. The Classes of Heirs	112
A. Surviving Spouse	113
B. Descendants	114
C. Ascendants	114
D. Collaterals	114
E. Concubines	115
II. Representation	115
III. Adoption	118
§4. THE RIGHTS OF STATE ON THE <i>BONA VACANTIA</i>	118
Chapter 2. Testamentary Succession	120
§1. THE CAPACITY TO MAKE A WILL	121
§2. DIFFERENT TYPES OF WILLS	122
§3. THE JOINT WILL	129
§4. REVOCATION OF A WILL	130
§5. PROVISIONS IN A WILL	131
§6. RESTRICTIONS	132
I. The Legitim	132
II. Maintenance Provisions	132
§7. INTERPRETATION OF A WILL	134
Chapter 3. Acts <i>Inter Vivos</i> Related to the Estate	136
§1. ESTATE PLANNING	136
§2. DONATIONS	137



**Table of Contents**

§3. TRUSTS 137

§4. INSURANCE CONTRACTS 140

§5. OTHERS 141

Chapter 4. Acquisition and Administration of the Estate 143

§1. THE ACQUISITION OF THE ESTATE 143

§2. THE ADMINISTRATION OF THE ESTATE 145

Index 155