

## A Child's Voice and Choice in Custody Disputes: A Search for a Standard

*Lida P. Abad Santos*

39 *ATENEO L.J.* 50 (1994)

*SUBJECT(S):* FAMILY LAW, CHILDREN'S RIGHTS

*KEYWORD(S):* CHILD CUSTODY, PARENTAL AUTHORITY

This Note won Second Best Thesis of the Ateneo Law School Class of 1994. It contends that the determination as to which party will obtain custody of the child is so sweeping that the courts have a broad discretion to consider many factors in arriving at a judgment securing the best interests of the child. According to the Author, the Philippines has scanty, if not very vague laws relating to the custody and care of children. To achieve the objectives of the Note, the case of *Luna v. Intermediate Appellate Court* is extensively utilized. It discussed parental authority as it relates to child custody. Foremost to the right of parental authority is of course the right of the parents to be in the company of their children. Thus, the Note considers parental authority as a basis of custodial right. The Author then extensively discusses the "parental preferential rule" and the jurisprudence regarding it. Then, the "best interest of the child doctrine" is defined and discussed. This said doctrine is contrasted with the parental right doctrine in the sense that in the former, it is the welfare of the child that is the paramount consideration. Subject to the "tender years" rule, the choice of the child in custodial proceedings is limited. The Note then discusses the various considerations in the resolution of custody disputes. These include: moral character and emotional stability, income and other economic conditions, and love and affection. Each of these is discussed along with the supporting jurisprudence. The Author contends in the end that the ruling in *Luna* to the effect that custody was awarded to the grandparents is in harmony with Philippine law and jurisprudence. Also at the end, the Author proposes a summary of standards in determining right to custody.