

Preterition — In the Light of Recent Decisions

Avelino M. Sebastian, Jr.

27 ATENEO L.J. 51 (1982)

TAG(S): CIVIL CODE, SUCCESSION, PRETERITION

The Civil Code defines a legitime as “that part of the testator’s property which he cannot dispose of because the law has reserved it for certain heirs, who are, therefore, called compulsory heirs.” As such, it becomes a limitation imposed by the statute on the testator’s act of disposing his properties. The sanctity of such a legal concept is further highlighted by the fact that it can only be dispensed with either through a valid disinheritance or by the heir’s act of renouncing it. Closely linked, and in fact included in, the concept of a legitime is that of preterition, which entails leaving out one, some or all of the compulsory heirs in the direct line.

In this Article, the Author examines the concept of preterition and its ramifications in the realm of the law. The discussion follows an outline form, with the elements of preterition constituting the headings of each portion. First, an analysis of the element of total omission is given, which includes a discourse on the effects of a Donation Propter Nuptias and a wedding gift. Subsequently, the elements of an omitted compulsory heir as well as the heir being in the direct line are discussed. Under the latter, an analysis of the preterition of the surviving spouse and of an adopted child ensues. The last element, which is the survival of the preterited heir, is examined followed by the effects of preterition.