Freedom in Death: Expanding the Disposing Power of the Decedent and Providing for a More Rational Sharing of Legitimes

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I. INTRODUCTION

The Civil Law world is characterized by the concept of forced heirship. The Philippines, being one of the civil law countries, has consequently embraced not only the Roman Law based will-making power of the testator-decedent, but also the well-entrenched *limitation to such power* — the legitimes of compulsory heirs.

The purpose of reserving a portion of the decedent's estate for his forced or compulsory heirs is to secure the needs of the family long after he has died. Its effectiveness in carrying out its purpose, however, has been proven to be questionable through time. The sharing-scheme of legitimes provided by the law for the compulsory heirs is made arbitrarily, resulting in complications and confusion in the manner of dividing the estate, and, sometimes its application results in absurdity and inequality. There are also instances when the reserved portion allocated for a compulsory heir is excessive or insufficient, thereby defeating the primary purpose of sustaining such heirs after the testator's death. As it runs counter to the very purpose and essence of forced heirship, it thereby unduly limits the will-making power of the testator. An ineffective compulsory heirship scheme would result in an infringement of a person's right to dispose of his estate *mortis causa*. The current system of legitimes also tends to cause bickering and indolence among compulsory heirs, further justifying its reduction.

The author proposes that the interest of both the heirs and the testator will be better served if these legitimes are reduced and the disposing power of the testator expanded.

II. THE EVOLUTION OF THE SYSTEM OF LEGITIMES IN THE PHILIPPINES

A. The Spanish Civil Code of 1889

On 31 July 1889, the Queen Regent Maria Cristina issued a royal decree extending the application of the Spanish Civil Code of 1889 to the islands of Cuba, Puerto Rico and the Philippines. Primarily influenced by the *Las Siete Partidas*, several Roman law principles and provisions were enacted and adopted in it, including the legitime.

Under the Code of 1889, the estate of a person was divided into two: (i) the legitimes, over which the testator exercised but minimal control,[1] and (ii) the free portion, or that portion which the testator can give to anyone not

1. The testator can exercise some control over the long legitimes of his children or descendants under the *mejora* or he could disinherit them for lawful causes.

otherwise disqualified by law. The legitime was defined as "that part of his property which the testator cannot dispose because the law has reserved it for certain heirs, called, on that account, forced heirs."[2] It was a limitation on the freedom of the testator to dispose of his property in order to protect those heirs for whom the testator is presumed to have an obligation and to reserve certain portions of his estate, from his unjust ire or weakness or thoughtlessness.[3]

The law on legitimes flows from natural law. It ensures that the property of a person should not pass to strangers but to his natural successors.[4] Nevertheless, it does not consist in determinate or specific property which the testator must reserve for his forced heirs. It consists of a part or fraction of the entire mass of the hereditary estate. The standard or measure for its determination is fixed by law, but the quantity may vary according to the number and relation of the heirs to the testator.[5]

Forced heirs are those for whom the legitime is reserved by the law and who succeed, whether the testator likes it or not; they cannot be deprived of their participation in the inheritance except by disinheritance properly effected.[6] The testator cannot deprive his heirs of their legitime, except in cases expressly determined by law. Neither can he impose upon them any burden, condition or substitution of any kind whatsoever, saving the provisions concerning the usufruct of the surviving spouse.[7] Forced heirs can demand completion should he receive from the testator property less than the legitime due to him.[8] In case of preterition,[9] the institution of the heir

2. 1889 Código Civil de España [SPANISH CIVIL CODE] art. 806.

3. ARTURO M. TOLENTINO, SUCCESSION, WILLS AND ADMINISTRATION 215 (1948) [hereinafter TOLENTINO, SUCCESSION].

4. *Id.* at 217.

5. *Id.* at 216.

6. *Id.*

7. SPANISH CIVIL CODE, art. 813.

8. *Id.* art. 815.

9. An Act to Ordain and Institute the Civil Code of the Philippines [NEW CIVIL CODE] art. 854. Preterition is the

> [o]mission of one, some, or all the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the insitution of heir; but the devisees and legacies shall be valid insofar as they are not inofficious.

by the testator shall be void but the legacies and betterments shall be valid in so far as they are not inofficious.[10]

Under the Spanish Civil Code of 1889, the following were forced heirs:

1. Legitimate children and descendants, with respect to their legitimate parents and ascendants;
2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
3. The widower or widow, natural children legally acknowledged, and the father or the mother of the latter, in the manner and to the extent established by articles 834, 835, 840, 841, 842 and 846.[11]

Since in the ordinary course of nature, the father or mother should die ahead of the child, the law confers preferential legitime rights upon the children and descendants.[12] Subject to the principle in succession that the descendant nearest in degree to the testator should enjoy preference in the order of succession, the succession rights of the descendants to the legitime should be limited only in cases of representation or in the absence of the testator's child. Adopted children, on the other hand, were given the status of a legal heir of the adopter under Act 190.[13]

1. Legitimate and Legitimated Children

Under article 808 of the Spanish Civil Code, the legitimes of legitimate children and descendants consisted of two-thirds of the estate of their father or mother. Either may, however, dispose of one of the two-thirds forming part of the legitimes in order to apply it as a betterment to their legitimate children or descendants. The two-thirds legitimes was what was known as long legitimes — divided equally into the strict legitimes and the *mejora* or betterment.

The strict legitimes (forming one-third of the estate) was the portion which forced heirs cannot be deprived of, except for legal causes of disinheritance, and which cannot be burdened by any conditions, charges,

10. SPANISH CIVIL CODE, art. 814.

11. *Id.* art. 807.

12. TOLENTINO, SUCCESSION, *supra* note 3, at 217.

13. An Act Providing A Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands, Act No. 190, § 768 (1901) [hereinafter 1901 CODE OF CIVIL PROCEDURE].

and substitutions of any kind. Over it, the testator had absolutely no control insofar as it went to the children and descendants by force of law.

The *mejora* or betterment consisted of one-third of the total estate (or one-half of the long legitimes). It gave the testator limited freedom in disposing his estate — the father or mother's control over this one-third portion may only be exercised in favor of their legitimate children or descendants.[14] Hence, the testator was free to dispose of the *mejora*, but in no case in favor of persons who were not children or descendants.[15] If the testator did not make use of his right to give *mejora*, or if he disposed of all save only a part of the third available for the purpose, the undisposed portion shall continue to form part of the long legitimes, to which the forced heirs would succeed in equal shares.[16]

Legitimated children enjoyed the same preferential rights given to legitimate children and were likewise considered preferred forced heirs. Article 122 of the Spanish Civil Code provided that "children legitimated by subsequent marriage shall enjoy the same rights as legitimate children."[17] Article 124 stated: "[t]he legitimation of children who died before the celebration of the marriage shall redound to the benefit of their descendants."[18]

2. The Adopted, the Adopters, and the Natural Parents

An adopted child, on the other hand, had very limited rights under the Spanish Code. The adopted child did not have the right to inherit from the adopting parent except by will and unless the latter agreed in the deed of adoption to institute the persons adopted as his heir.[19] Moreover, such right to inherit from the adopter ceased if the adopted predeceased the adopter.[20]

The 1901 Code of Civil Procedure later amended the rights of an adopted child in succeeding to his adopter's estate. It was stated that the adopted would be considered as a legal heir of both his adopting and natural

14. SPANISH CIVIL CODE, art. 823.

15. TOLENTINO, SUCCESSION, *supra* note 3, at 217.

16. *Id.* at 222.

17. *Id.* at 217 (citing SPANISH CIVIL CODE, art. 122).

18. *Id.* (citing SPANISH CIVIL CODE, art. 124).

19. I VICENTE FRANCISCO, CIVIL CODE OF THE PHILIPPINES: ANNOTATED AND COMMENTED 887 (1953).

20. SPANISH CIVIL CODE, art. 177.

parents.[21] The adopted child was, for all intents and purposes, a forced heir of both his adopter and the natural parents.

The Code of Civil Procedure also introduced the *reversion adoptiva*: in case of the death of the adopted without direct descendants, his father and mother and relatives by nature (not by adoption) shall remain his legal heirs, except as to property inherited by the adopted child from either his adopting parents. The latter property shall become the property of the legitimate relatives of the adoptive parents (from whom it originally came) who participated in the order established by the Civil Code for intestate estates.[22] This was reinforced by the 1940 Rules of Court which introduced three changes in the provisions relating to reversion of property upon the death of the adopted child.[23]

Prior to the enactment of the 1950 Civil Code, succession rights given to an adopted child were not reciprocally extended to his adopter as adopting parents were never treated as forced heirs of their adopted children.

3. Natural and Legally Acknowledged Children and Illegitimate Children

Illegitimate children had limited succession rights under the Spanish Civil Code based on the societal rationale that, the family being the very cornerstone of society, the law places greater consideration upon the fruits of legal unions than those from relations not sanctified by matrimony. Seeking

21. 1901 CODE OF CIVIL PROCEDURE, § 768.

22. *Id.*

23. TOLENTINO, SUCCESSION, *supra* note 3, at 375-76.

a. Under the Code of Civil Procedure, the reversion took place only when the adopted child dies without direct descendants, while in the Rules of Court, this qualification was not made, thereby giving way to reversion even if the adopted child had legitimate descendants of his own;

b. Under the Code of Civil Procedure, the revertible property consisted only of those inherited by the adopted child from either adopting parent, while under the Rules of Court, all property received or inherited from such parents were revertible, thereby including also those received through donations inter vivos;

c. Under the Code of Civil Procedure, the reversion was established only for the benefit of the relatives of the adopting parents, while under the Rules of Court, it was for the adopting parents themselves and their relatives.

to minimize illicit relations, the law, thus, limited the rights of those born out of legal marriage.[24]

Only natural and legally-acknowledged children were entitled to a portion of the testator's estate.[25] Natural children were those who were born outside wedlock of parents who, at the time of the conception of the child, were not disqualified to marry each other.[26] All other illegitimate children were granted only the right to support from their parents and the heirs of the latter.[27]

When the testator left legitimate children or descendants as well as natural and legally acknowledged children, the latter were entitled to one-half of the portion pertaining to each of the legitimate children who had not received any betterment, provided that it did not exceed the free portion after burial and funeral expenses have been paid.[28] This was modified under Rule 91, section 1 of the 1940 Rules of Court. Debts and expenses were first paid before the estate could be distributed among the heirs and funeral and burial expenses were no longer chargeable against the free portion, but against the entire hereditary property. Thus, the share of each natural and legally acknowledged child depended on the number of legitimate and other natural and legally acknowledged children with whom he may concur and such could not exceed the free portion.[29]

Another significant distinction between legitimate children or descendants and natural and legally acknowledged children was that, in the presence of legitimate children, legitimate parents or ascendants of the testator were excluded from legitime succession.[30] In case legitimate parents or ascendants survived a testator with natural and legally acknowledged children, however, the existence of the latter was not a bar to the attainment of succession rights by the former.[31]

24. *Id.* at 250.
25. SPANISH CIVIL CODE, art. 840.
26. *Id.* art. 119.
27. *Id.* art. 845.
28. *Id.* art. 840.
29. TOLENTINO, SUCCESSION, *supra* note 3, at 253.
30. *Id.* at 218.
31. SPANISH CIVIL CODE, arts. 841 & 809.

Natural and legally-acknowledged children surviving the testator alone, were entitled to one-third of the estate.[32]

4. Ascendants

The legitimate parents and ascendants of the testator were only secondary heirs pursuant to the fundamental principle in succession that the legitimate descendants cut-off the ascendants from the inheritance.[33] Their right to succeed to the legitimes was only in default of legitimate descendants.[34] If they survive the testator alone, however, their legitimes were equivalent to one-half of the estate.[35]

The distribution of the legitimes among the parents and ascendants was controlled primarily by the rule that the nearest relative excludes the more remote ones. If both mother and father survived, they divide the legitimes equally; but if only one of them survived, he obtained the entire legitime even if there were other ascendants. No right of representation existed in the ascending line.[36]

The next rule that applied was that of division by the lines. If there were descendants of the same degree, some in the paternal and others in the maternal line, the legitime was divided equally between the two lines, irrespective of the number of persons in each line.[37]

The third rule was that of equal division. The share that went to each line was to be divided equally by the persons in that line who were entitled to the legitimes. These rules were without prejudice to the provisions of article 811 on *reserva troncal* and article 812 on *reversion legal*.[38]

When the legitimate parents and ascendants concur with natural and legally acknowledged children, the sharing of legitimes was one-half and one-fourth, respectively.[39]

32. *Id.* art. 82.
33. TOLENTINO, SUCCESSION, *supra* note 3, at 262.
34. SPANISH CIVIL CODE, art. 807.
35. *Id.* art. 809.
36. TOLENTINO, SUCCESSION, *supra* note 3, at 224.
37. *Id.*
38. *Id.*
39. SPANISH CIVIL CODE, arts. 841 & 809.

5. The Surviving Spouse

While the surviving spouse was recognized as a forced heir,[40] his or her legitime rights were limited to a usufructuary right over a certain portion of the testator's estate. Moreover, to qualify as a forced heir, the surviving spouse should not have been divorced from the testator or should have been divorced due to the fault of the testator.[41]

If the spouse survived with one legitimate child or descendant of the testator, the former had a right of usufruct over a third of the estate available for betterment.[42] Nevertheless, if the spouse survived with several children or descendants of the testator, the former was entitled in usufruct to a portion of the estate equal to the legitime of each of the legitimate children or descendants who had not received any betterment.[43] If the spouse survived the testator alone, he or she was entitled to one-half of the estate in usufruct.[44] In all of these cases, the usufructuary share of the spouse was taken from the third of the estate available for the betterment of the children.[45] This usufructuary share cannot be prejudiced even if the surviving spouse concurs with a natural and legally acknowledged child of the testator. It is important to note that the usufruct was upon the properties of the deceased spouse, and not upon the properties of the survivor, such as his or her share of the conjugal properties.[46]

6. Exceptions

Exceptions to the rules governing testamentary dispositions and legitimes were provided for in the rules on *reserva* and *reversion*: 1) *reserva troncal* or *lineal*, 2) *reserva viudal*, 3) *reversion legal*, and 4) *reversion adoptiva* under Act 190.[47]

In *reserva troncal*, the ascendant who inherited his descendant's property, which the latter acquired by a lucrative title from another ascendant, a brother, or a sister, was obliged to reserve what he had acquired by

40. *Id.* art. 807.
41. *Id.* art. 834 (1).
42. *Id.* art. 834 (2).
43. *Id.* art. 834 (1).
44. *Id.* art. 837.
45. SPANISH CIVIL CODE, art. 835.
46. TOLENTINO, SUCCESSION, *supra* note 3, at 246.
47. *Id.* at 300.

operation of law in favor of the relatives who were within the third degree and who belonged to the line from where such property came.[48] This provision's principal aim was to maintain, as absolutely as possible, a separation between the paternal and maternal lines, so that property of one line may not pass to the other or through them to strangers.[49]

Reserva viudal (governed by article 968 of the Spanish Code) — or the obligation to reserve imposed upon a widow or widower who contracted a second marriage, or who had an acknowledged a natural child while in a condition of widowhood — had for its purpose the preservation of certain properties within the family from which it came.[50] The last obligation became effective from the birth of such child.[51] The mere birth of the natural child, however, without acknowledgment, did not give rise to the obligation to reserve, because, without acknowledgment, there could be no natural child under the law.[52] In case of a subsequent marriage, the obligation to reserve arose from the date of the second marriage.[53]

Reversion legal in article 812 provided that ascendants would succeed to the things given by them to their children or descendants, who died without issue, to the exclusion of all others. If these had already been alienated, they succeeded to all rights of action the donee may have had with respect to such, to the price thereof, if they had been sold, or to the property substituted for them, if they had been bartered or exchanged. This supplements the *reserva troncal*. If the ascendant who has given a donation to the descendant survives the latter, who left no issue, then there is reversion legal. If the ascendant donor dies before the descendant, and upon the death of the latter the property passes to another ascendant by operation of law, the *reserva troncal* would apply.[54]

Like *reserva viudal* and *reserva troncal*, reversion legal applies to legitimate ascendants only and did not exist between persons illegitimately filiated.[55]

48. SPANISH CIVIL CODE, art. 811.
49. TOLENTINO, SUCCESSION, *supra* note 3, at 300-01.
50. *Id.* at 330.
51. SPANISH CIVIL CODE, art. 980.
52. TOLENTINO, SUCCESSION, *supra* note 3, at 331 (citing Valverde 79).
53. *Id.*
54. *Id.* at 361.
55. *Id.* at 362.

Reversion adoptiva, introduced by Act 190, as amended, and adopted by Rule 100, section 5 of the 1940 Rules of Court was already discussed above under the succession rules in cases of adoption.

B. Amendments by the 1950 Civil Code of the Philippines

Of the 2,270 articles of the 1950 Philippine Civil Code, 57 percent thereof was derived either by verbatim translation or by adaptation from the Spanish Civil Code,[56] evincing the clear influence of the Spanish Code in our succession rights. In fact, evidence of such influence is the continuation of the system of legitimes, albeit, with some substantial changes and departures.

1. The Share of the Surviving Spouse Upgraded to Full Ownership

If the legitime right of the surviving spouse was limited to a usufructuary share over the estate under the Spanish Code, the Civil Code of 1950 upgraded her hereditary legitime right to that of a compulsory heir in absolute ownership.[57] The rights of the surviving spouse can be simplified as follows:

1. If the testator's legitimate children concurs with his surviving spouse, the former is entitled to one-half of the estate while the latter gets a share equal to that of one legitimate child;[58]
2. If the testator's legitimate child concurs with his surviving spouse, the former is entitled to one-half of the estate while the latter gets one-fourth;[59]
3. If the testator's legitimate and natural children concur with his surviving spouse, the sharing shall be one-half; one-half of the legitimate child's share; and a share equal to one legitimate child;[60]
4. If legitimate, natural, and other illegitimate children and the spouse of the testator concur, the sharing shall be as follows: one-half of the estate; one-half of a legitimate child's share; four-fifths of the one-half share of the natural child; and a share equal to that of a legitimate child;[61]
5. If the spouse survives with an illegitimate child of the testator, both shall be entitled to one-third each of the estate;[62]
6. If the spouse survives alone, he or she shall be entitled to one-half of the estate[63] or one-third if the marriage was celebrated *in articulo mortis*, under Article 900, paragraph 2;
7. If the spouse survives with the legitimate parents of the testator, they will be entitled to one-fourth and one-half of the estate respectively;[64]
8. If the spouse survives with the legitimate parents and illegitimate children of the testator, the sharing shall be one-fourth, one-half and one-eight respectively;[65]
9. If the spouse survives only with illegitimate children of the testator, both shall receive one-third of the estate;[66] and
10. If the spouse survives with the illegitimate parents of the testator, each shall get one-fourth of the estate.[67]

2. The Elimination of the *Mejora*

The Code Commission also eliminated the *mejora* from the Code for the many reasons,[68] including the recognition that the testator has more freedom

56. RUBEN F. BALANE, THE SPANISH ANTECEDENTS OF THE PHILIPPINE CIVIL CODE 43 (1979).
57. III EDUARDO CAGUIOA, COMMENTS AND CASES ON CIVIL LAW 215 (1970).
58. NEW CIVIL CODE, art. 892 (2).
59. *Id.* art. 892 (1).
60. *Id.* arts. 892 & 895.
61. *Id.* arts. 888, 892, & 895.
62. *Id.* art. 894.
63. *Id.* art. 900 (1).
64. NEW CIVIL CODE, art. 893.
65. *Id.* art. 899.
66. *Id.* art. 894.
67. *Id.* art. 903.
68. III ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 264 (1992) [hereinafter III TOLENTINO, 1992].

> 1. The supposed equalization of natural inequalities among children through the system of the *mejora* is in many cases but imaginary, because parents often act upon other bases, such as rewarding the better qualities of character of one of the children;
> 2. Such reward may be effected by the father or mother by disposing of part or all the free half; and

in disposing his estate by will. Although its elimination contributed to the simplification of the system of legitimes, Justice J.B.L. Reyes, however, commented that this limits "the freedom of choice of the testator to a greater extent than under the Code of 1889, for the testator under the law could at least select the individual descendants who should receive the third of betterment."[69]

3. Changes in the Succession Rights of the Adopted *vis-à-vis* the Adopter

The 1950 Civil Code continued to recognize the adopted as a legal heir of his adopter[70] sharing equally with and can be disinherited only for the same reasons as legitimate children. Nevertheless, the adoption cannot have the effect of eliminating the natural parents of the adopted as compulsory heirs.[71] The prohibition on the adopters from inheriting from their adopted children under Rule 100, section 5 of the 1940 Rules of Court, except by will, was maintained.[72]

Reversion adoptiva under the same rule was, however, abolished. Article 344 granted full or absolute ownership to the adopted child over property donated or given by will by the adopting parent without making any provision for reversion or reservation.[73] All reservations and reversions in the old Civil Code were intended by the Code Commission to be eliminated (save *reserva troncal*); thus, reversion in cases of adoption not provided in the new Code, were considered repealed and abolished.[74]

The 1950 Code also introduced a new provision intended to prevent filiation by legal fiction between the adopted and the adopter's ascendants by consanguinity.[75]

Moreover, article 343 of the Civil Code provides that if the adopter is survived by legitimate parents or ascendants and by an adopted person, the

3. The testator should have greater freedom to dispose of his estate by will.

69. JOSE B. L. REYES, *IPSE LOQUITUR*: A COLLECTION OF ESSAYS AND LECTURES 209 (1994).

70. NEW CIVIL CODE, art. 341 (3).

71. I ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 645 (1953) [hereinafter I TOLENTINO, 1953].

72. NEW CIVIL CODE, art. 342.

73. *Id.* art. 344.

74. I TOLENTINO, 1953, *supra* note 71, at 649.

75. *Id.*

latter shall not have more succession rights than an acknowledged natural child — an exception to the general principle that an adopted child inherits from the adopter as a legitimate child of the latter. The legitimate parents or ascendants would continue to inherit from the adopter in concurrence with the adopted child to prevent injustice.[76] This provision did not apply, however, if the adopted child is, at the same time, the illegitimate child of the adopter. This was excluded as the article presupposed the right of the adopted child as based exclusively on legal fiction. With illegitimate children who are adopted, the adoption merely legalizes the natural blood relation.[77]

4. Changes in the Succession Rights of Illegitimate Children

The Civil Code of 1950 provided for three kinds of illegitimate children, all of whom were given the recognition as compulsory heirs of their parents: (i) natural and acknowledged children, (ii) natural children by legal fiction, and (iii) other illegitimate children. Previously, only the first two types of illegitimate children were given rights to succeed to the legitime while the third kind was only given the right to support from the parent and the heirs of the latter. As in the Spanish Civil Code, the illegitimate children were classified only as concurring heirs of the testator, and the traditional inequality between the sharing of legitimes with the legitimate children was retained. The change lies in the fact that the 1950 Civil Code extended legitime rights to all kinds of illegitimate children, albeit in different rates and proportions.

The legitime of natural and acknowledged children and the natural children by legal fiction consisted of one-half of the legitime of each of the legitimate children or descendant. On the other hand, the legitime of an illegitimate child who is neither an acknowledged natural child nor a natural child by legal fiction, was equal to four-fifths of the legitime of the acknowledged natural child.[78]

5. The Elimination of the Reservations and Reversions, Except for the *Reserva Troncal*

The draft Code submitted to Congress in 1948 had abolished all four reservations and reversions in the Spanish Code but the legislature decided to

76. FRANCISCO, *supra* note 19, at 891.

77. I TOLENTINO, 1953, *supra* note 71, at 650.

78. CIVIL CODE, art. 895.

retain the *reserva troncal*.[79] Justice J.B.L. Reyes commented that this provision was correctly retained as the *reserva* works as a compensation for the principle of non-representation in the ascending line. It is designed, primarily, to assure the return of the reservable property to the third degree relatives belonging to the line from where the property originally came and to avoid its dissipation by the relatives of the inheriting ascendant.[80]

C. *Amendments to the Succession Rights of Adopters and Adoptees under the Child and Youth Welfare Code*

The enactment of the Child and Youth Welfare Code,[81] limited and modified the succession rights of the blood relatives of the adopted, especially with respect to property originally coming from the adopter.[82] Under the Civil Code, adopting parents were not given the right to inherit from their adopted children; such was allowed only between the adopted and his blood relative.[83] Under the last paragraph of article 39 of P.D. No. 603, if both natural parents predecease the one adopted, the adopting parents take their place in the line of succession, whether testate or intestate. The right of the natural parents to inherit from the adopted, to the exclusion of the adopting parent, was not extended to the other relatives of the adopted.[84] The rule not only permitted the adopting parent to inherit whatever the adopted person may have received or earned during his lifetime, but also whatever property he may have inherited from his natural parents, to the exclusion of the adopted person's grandparents or other ascendants, his spouse, his brothers and sisters, nephews and nieces, and other collateral relatives to the fifth degree.[85]

Article 39, paragraph 4 of P.D. No. 603, thus, revived a form of succession reversion. The provision states that any property received gratuitously by the adopted from the adopter shall revert to the adopter should the former predecease the latter, without legitimate issue, unless the adopted has, during his lifetime, alienated such property. It is therefore a reversion and not a *reserva* similar to the *reserva troncal* because the one

79. RUBEN F. BALANE, JOTTINGS AND JURISPRUDENCE IN CIVIL LAW (SUCCESSION) 305 (2002 ed.) [hereinafter BALANE, JOTTINGS].

80. *Id.* at 316 (citing Padura v. Baldovino, 104 Phil. 1065).

81. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).

82. REYES, *supra* note 69, at 163.

83. NEW CIVIL CODE, art. 342.

84. REYES *supra* note 69, at 163.

85. *Id.*

adopted is not barred from alienating *inter vivos* such property, nor was there a provision for the return of the value of the property so alienated to the donor adopter.[86]

D. *Amendments by the Family Code to the Succession Rights of Illegitimate and Adopted Children*

The Family Code[87] made two very important changes in respect of illegitimate children's succession rights, namely, (i) the different classifications of illegitimate children were abolished, and (ii) illegitimate children were given equal shares in the estate of the parents, albeit smaller than the share allotted for legitimate children.

Under article 165 of the Family Code, children conceived and born outside a valid marriage are illegitimate, unless otherwise provided in the Code. It made no mention of the traditional classifications of illegitimate children.

With respect to legitimes, the Family Code moved a step closer in giving equal rights to legitimate and illegitimate children. Illegitimate children are given a share of one-half that enjoyed by legitimate children.[88] The present article requires nothing more than the illegitimate child proving his filiation,[89] which, obviously, does not mean that they must first be recognized by their putative parents.

86. *Id.* at 164-65. The rules of reversion in case the estate of the adopted one consists exclusively of property gratuitously received by him from his adopter may be outlined as follows:

1. If the one adopted leaves no issue, there shall be a full reversion to the surviving adopter;
2. If he leaves legitimate issue, there will be no reversion;
3. If the adopted dies leaving only illegitimates or only a spouse, there shall be a reversion of three fourths to the surviving parent; and
4. If the adopted leaves both illegitimate issue and a spouse, there shall be a reversion of one-half (Accordingly, since the effectivity of the Family Code on Aug. 3, 1988, illegitimate children were no longer classified into natural and spurious.).

87. The Family Code of the Philippines [FAMILY CODE].

88. *Id.* art. 176.

89. 1 ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 546 (1990).

On the other hand, the adopted child, under the Family Code, is entitled to inherit from his adopting parent, as a compulsory heir, as well as from his natural parents[90] and grandparents, and other blood relatives. Clearly, the adopted remains an intestate and compulsory heir of his natural parents and other blood relatives; thus, he cannot be deprived of his legitime.[91]

One important and major amendment introduced by the Family Code is the repeal of article 39 of P.D. No. 603. The Family Code provides that even if the legitimate parents or ascendants of the adopter survive together with the adopted child, the latter succeeds as a legitimate child to the adopter.[92] The adopter on the other hand cannot inherit from the adopted, except in certain instances provided by law.[93]

E. Amendments by the Domestic Adoption Act of 1998

The most significant change introduced by the Domestic Adoption Act[94] may be found in section 18 which gave both the adopter and the adopted reciprocal rights of succession without distinction from legitimate filiation.[95] Nevertheless, unlike its predecessor laws, it is silent as to the succession rights between the adopters and the adopted.

Under article 189, paragraph 3 of the Family Code, the adopted remains an intestate heir of his parents and other blood relatives. Thus, the adopted child was entitled to a legitime both from his adopter and his biological parents. The present law on the succession rights of the adopted and his biological parents, however, is silent on the matter. It neither gives nor denies an adopted child the right to a legitime from his biological parents. The matter cannot be answered or clarified by section 16 of the Domestic Adoption Act of 1998 because such section — which states that all legal ties between the biological parents and the adoptee shall be severed — has to do with parental authority, not succession rights.[96]

90. *Id.* at 566 (citing Succession of Hawkins, 139 La. 228, 71 So. 492).

91. *Id.* at 566.

92. *Id.*

93. FAMILY CODE, art. 190.

94. An Act Establishing the Rules and Policies on the Domestic Adoption of Filipino Children and for Other Purposes, Republic Act No. 8552 (1998) [hereinafter DOMESTIC ADOPTION ACT OF 1998].

95. *Id.* § 18.

96. BALANE, JOTTINGS, *supra* note 79, at 290.

III. THE CURRENT LEGITIME SYSTEM IN THE PHILIPPINES

A. Persons Entitled to Legitimes

Article 886 of the new Civil Code, a verbatim translation of article 806 of the Spanish Civil Code, defines legitimes as that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs, called compulsory heirs. It consists of a part or fraction of the entire mass of the estate that the testator cannot dispose gratuitously to the prejudice of his compulsory heirs. It is to be noted, however, that, although the system of legitimes limits the testator's right to dispose of his property *mortis causa*, the limitation upon acts *inter vivos* is confined to dispositions by lucrative or gratuitous title. When the disposition is for valuable consideration, there is no diminution of the estate but merely a substitution of values.[97]

The compulsory heirs of a person are the legitimate children and descendants, the legitimate parents and ascendants, the surviving spouse, the illegitimate children, and the illegitimate parents.[98] They are classified as primary, secondary, or concurring compulsory heirs.[99] Primary compulsory heirs are those preferred in the order of succession to the legitime, thus, excluding secondary heirs. They include legitimate children and descendants. Secondary compulsory heirs, on the other hand, are those who receive their legitime only in the absence of primary heirs. These are legitimate parents or ascendants succeeding only in default of legitimate children and descendants. Illegitimate parents also belong to this category but their succession to the legitime is contingent on the absence of both legitimate and illegitimate children. Lastly, concurring compulsory heirs are those who succeed to the legitime together with the primary and secondary heirs. The surviving spouse belongs under this category.[100]

Legitimate children, as primary compulsory heirs, are those who were conceived or born pursuant to articles 54 and 164 of the Family Code.[101]

97. *Id.* at 250.

98. NEW CIVIL CODE, art. 887.

99. BALANE, JOTTINGS, *supra* note 79, at 280.

100. *Id.*

101. FAMILY CODE, arts. 54 & 164.

> Art. 54. Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory shall be considered legitimate. Children

Legitimated and adopted children are included in this category, pursuant to Article 179 of the Family Code[102] and section 18 of the Domestic Adoption Act,[103] respectively. Illegitimate children, on the other hand, are those conceived and born outside of a valid marriage.[104] All illegitimate children are now entitled to one-half of what a legitimate child would get from the estate as legitime.[105] It is, therefore, apparent that the legitimes of children are graduated according to their status: the illegitimate child gets less than what the legitimate child gets.

The legitimate parents and ascendants, as secondary compulsory heirs, succeed to the legitime only in the absence of legitimate children or descendants. Ascendants, however, only inherit in default of the parents pursuant to the rule that the nearer relative excludes the more remote.[106] Lastly, the legitime of the legitimate parents and ascendants may be subject to *reserva troncal* under article 891 of the Civil Code.[107]

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conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.

Art. 164. Children conceived or born during the marriage of the parents are legitimate.

102. *Id.* arts. 177 & 179.

Art. 177. Only children conceived and born outside of wedlock of parents who, at the time of the conception of the former, were not disqualified by any impediment to marry each other may be legitimated.

Art. 179. Legitimated children shall enjoy the same rights as legitimate children.

103. DOMESTIC ADOPTION ACT OF 1998, § 18:

In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.

104. FAMILY CODE, art. 165.

105. *Id.* art. 176.

106. BALANE, JOTTINGS, *supra* note 79, at 281.

107. NEW CIVIL CODE, art. 891:

The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came.

Succession to the legitime in the ascending line is limited to the parents only in cases of illegitimate relationships. While illegitimate parents are classified as secondary heirs, they are excluded from the inheritance by the legitimate and illegitimate children of the testator.[108] Illegitimate parents are compulsory heirs of their children only in the cases and to the extent provided for by such provision.

As mentioned, the surviving spouse is now a compulsory heir entitled to receive, in absolute ownership, his or her share in the legitime. The condition of being a surviving spouse requires that there should have been a valid marriage between the deceased and the surviving spouse.[109]

B. The Sharing-Scheme Among Compulsory Heirs

The legitime system contained in the 1950 Civil Code rests on a double foundation of exclusion and concurrence. Consequently, the variations of the portions assigned as legitime can be bewildering, depending as they do on the given combination.[110]

The amount of legitime that a type or group of compulsory heirs is entitled to is stated in articles 888 to 903 of the Civil Code. Nonetheless, these different combinations can be summarized to a basic general rule that admits of only three exceptions. There is a basic amount of one-half that is given to one heir or group of heirs except only in the following instances:[111]

1. In case the surviving spouse concurs with illegitimate children in which case both will receive one-third of the estate each;[112]
2. If the surviving spouse was married to the testator in *articulo mortis*, under the condition set forth by law;[113] and

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108. *Id.* art. 903:

The legitime of the parents who have an illegitimate child, when such child leaves neither legitimate descendants, nor a surviving spouse, nor illegitimate children, is one-half of the hereditary estate of such illegitimate child. If only legitimate or illegitimate children are left, the parents are not entitled to any legitime whatsoever. If only the widow or widower survives with parents of the illegitimate child, the legitime of the parents is one-fourth of the hereditary estate of the child, and that of the surviving spouse also one-fourth of the estate.

109. III TOLENTINO, 1992, *supra* note 68, at 257.

110. BALANE, JOTTINGS, *supra* note 79, at 288.

111. *Id.*

112. NEW CIVIL CODE, art. 894.

3. In case the surviving spouse concurs with the illegitimate parents of the testator, in which case both will get a share of one-fourth of the estate each.[114]

The different combinations on legitimes can be simplified as follows:[115]

1. *Legitimate children alone*: 1/2 of the estate divided equally;[116]
2. *Legitimate children and surviving spouse*:

   Legitimate children: 1/2 of the estate,

   Legitimate spouse: a share equal to that of one child;[117]
3. *One legitimate child and surviving spouse*:

   Legitimate child: 1/2 of the estate,

   Surviving spouse: 1/4 of the estate;[118]
4. *Legitimate children and illegitimate children*:

   Legitimate children: 1/2 of the estate,

   Illegitimate children: each will get 1/2 of share of one legitimate child;[119]
5. *Legitimate children, illegitimate children, and surviving spouse:*

   Legitimate children: 1/2 of the estate,

113. *Id.* art. 900:

> If the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate of the deceased spouse, and the testator may freely dispose of the other half.
>
> If the marriage between the surviving spouse and the testator was solemnized in *articulo mortis*, and the testator died within three months from the time of the marriage, the legitime of the surviving spouse as the sole heir shall be one-third of the hereditary estate, except when they have been living as husband and wife for more than five years. In the latter case, the legitime of the surviving spouse shall be that specified in the preceding paragraph.

114. *Id.* art. 903.

115. BALANE, JOTTINGS, *supra* note 79, at 288.

116. NEW CIVIL CODE, art. 888.

117. *Id.* art. 892, ¶ 2.

118. *Id.* art. 892, ¶ 1.

119. *Id.* art. 176.

Illegitimate Children: each will get 1/2 of the share of one legitimate child,

Surviving spouse: a share equal to that of one legitimate child;[120]

6. *One legitimate child, illegitimate children, and surviving spouse*:

   Legitimate child: 1/2 of the estate,

   Illegitimate children: each will get 1/2 of share of the legitimate child,

   Surviving spouse: 1/4 of the estate;[121]
7. *Legitimate parents alone*: 1/2 of the estate;[122]
8. *Legitimate parents and illegitimate children*:

   Legitimate parents: 1/2 of the estate,

   Illegitimate children: 1/4 of the estate;[123]
9. *Legitimate parents and surviving spouse*:

   Legitimate parents: 1/2 of the estate,

   Surviving spouse: 1/4 of the estate;[124]
10. *Legitimate parents, illegitimate children, and surviving spouse*:

    Legitimate parents: 1/2 of the estate,

    Illegitimate children: 1/4 of the estate,

    Surviving spouse: 1/8 of the estate;
11. *Surviving spouse alone*: 1/2 of the estate (or 1/3 of the estate if the marriage, being in *articulo mortis*, falls under article 900, paragraph 2[125]);[126]
12. *Surviving spouse and illegitimate children*:

    Surviving spouse: 1/3 of the estate,

    Illegitimate children: 1/3 of the estate;[127]

120. *Id.* art. 895.

121. *Id.*

122. NEW CIVIL CODE, art. 889.

123. *Id.* art. 896.

124. *Id.* art. 893.

125. *Id.* art. 900, ¶ 2.

126. *Id.* art. 900, ¶ 1.

13. *Surviving spouse and illegitimate parents*:

    Surviving spouse: 1/4 of the estate,

    Illegitimate parents: 1/4 of the estate;[128]

14. *Illegitimate children alone*: 1/2 of the estate;[129] and

15. *Illegitimate parents alone*: 1/2 of the estate.[130]

C. Legal Protection Given to Compulsory Heirs

1. Prohibition Against Testamentary Dispositions in Excess of the Free Portion and the Imposition of Burdens on the Legitime

In Philippine succession laws, absolute testamentary freedom or freedom of disposition by will is only allowed if the testator has no compulsory heirs.[131] Nonetheless, one who has compulsory heirs may dispose of his estate, provided that he does not violate the provisions of the law on legitimes.[132]

The law is zealous in guarding the rights of the compulsory heirs with respect to their legitimes and in making sure that said rights are not impinged, whether or not the same was done intentionally. The main provision of the Civil Code that aims at guarding the right of the compulsory heirs with respect to their legitimes is article 842. This provision was enacted pursuant to the system of partial reservation adopted by the Philippines in its succession laws. Under this system, the amount of legitime may either be a variable or a fixed quota. Distribution of the legitime among the compulsory heirs may be done exclusively by law, exclusively by the will of the testator, or by both the law and the will.[133] As explained earlier, the testamentary freedom of the testator to the free portion of his estate, or that part which is not burdened by the legitimes of his compulsory heirs, is limited. This provision is supported and reinforced by articles 863-864, 869, 872, 904, 906, and 907.[134]

127. *Id.* art. 894.

128. NEW CIVIL CODE, art. 903.

129. *Id.* art. 901.

130. *Id.* art. 903.

131. *Id.* art. 842 (1).

132. *Id.*

133. III TOLENTINO, 1992, *supra* note 68, at 248.

134. NEW CIVIL CODE, arts. 863-864, 869, 872, 904, 906 & 907.

The most important among these support provisions are articles 872 and 904. The former provides that "[t]he testator cannot impose any charge, condition, or substitution whatsoever upon the legitimes prescribed in the Code. Should he do so, the same shall be considered as not imposed." Article 904, on the other hand, states that "[t]he testator cannot deprive his compulsory heirs of their legitime, except in cases expressly specified by law." This is pursuant to the principle that the legitime is beyond the testator's control and such passes to his compulsory heirs by operation of law.[135] The exception provided for by law is disinheritance legally made.[136]

Article 904 also reiterates the prohibition on imposing any burden, encumbrance, condition, or substitution of any kind whatsoever upon the legitimes.[137] One result of this prohibition is the limitation of the power of

> Art. 863. A fideicommissary substitution by virtue of which the fiduciary or first heir instituted is entrusted with the obligation to preserve and to transmit to a second heir the whole or part of the inheritance, shall be valid and shall take effect, provided such substitution does not go beyond one degree from the heir originally instituted, and provided further, that the fiduciary or first heir and the second heir are living at the time of the death of the testator.
>
> Art. 864. A fideicommissary substitution can never burden the legitime.
>
> Art. 869. A provision whereby the testator leaves to a person the whole or part of the inheritance, and to another the usufruct, shall be valid. If he gives the usufruct to various persons, not simultaneously, but successively, the provisions of Article 863 shall apply.
>
> Art. 872. The testator cannot impose any charge, condition, or substitution whatsoever upon the legitimes prescribed in this Code. Should he do so, the same shall be considered as not imposed.
>
> Art. 904. The testator cannot deprive his compulsory heirs of their legitime, except in cases expressly specified by law.
>
> Neither can he impose upon the same any burden, encumbrance, condition, or substitution of any kind whatsoever.
>
> Art. 906. Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied.
>
> Art. 907. Testamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive.

135. BALANE, JOTTINGS, *supra* note 79, at 355.

136. NEW CIVIL CODE, art. 915.

137. *Id.* art. 904 (2).

the testator to grant usufructs through his will.[138] This, however, is without prejudice to the testator's right to prohibit the partition of his estate for a period not exceeding 20 years.[139]

Article 864 of the Civil Code prohibits a fiduciary substitution from burdening the legitime. A fiduciary substitution is a process by which the fiduciary or first heir instituted is entrusted with the obligation to preserve and to transmit to a second heir the whole or part of the inheritance; such shall be valid and shall take effect, provided such substitution does not go beyond one degree from the heir originally instituted, and provided further, that the fiduciary or first heir and the second heir are living at the time of the death of the testator.[140] It must be remembered that the legitime passes by strict operation of law, and that the testator has no power over it.[141] This article merely repeats the rule in articles 872 and 904.[142]

In case the testator makes a prejudicial and detrimental disposition of the estate, the compulsory heirs are given the right to ask for the reduction of his testamentary dispositions insofar as it may be inofficious.[143] Aside from this remedy, they may demand that their legitimes be satisfied.[144]

2. Inofficiousness of Certain Donations *Inter Vivos*

A donation is an act of liberality whereby a person disposes gratuitously a thing or right in favor of another who accepts it.[145] A donation is made *inter vivos* when the donor intends that the donation shall take effect during the lifetime of the donor, though the property shall not be delivered until after the donor's death.[146] On the other hand, donations *mortis causa* are those that take effect upon the death of the donor and shall be governed by the rules established for succession.[147]

138. *Id.* art. 869.

139. *Id.* art. 1083.

140. *Id.* art. 863.

141. BALANE, JOTTINGS, *supra* note 79, at 259.

142. III TOLENTINO, 1992, *supra* note 68, at 215.

143. NEW CIVIL CODE, art. 907.

144. *Id.* art. 906.

145. *Id.* art. 725.

146. *Id.* art. 729.

147. *Id.* art. 728.

Donations may comprehend all the present property of the donor, or part thereof, provided he reserves (in full ownership or in usufruct) sufficient means for the support of himself and of all relatives who are, at the time of the acceptance of the donation, by law, entitled to be supported by the donor. Without such reservation, the donation shall be reduced upon petition by any person affected.[148] This is limited by another provision to the effect that "[t]he provisions of article 750 notwithstanding, no person may give or receive, by way of donation, more than he may give or receive by will, otherwise the donation shall be inofficious."[149] This limitation naturally applies only to persons who have compulsory heirs at the time of their death.[150]

The more important provisions on donation that affect the legitime are articles 771 and 772 of the Civil Code. The former provides that inofficious donations under article 752 shall be reduced with regard to the excess and that such reduction shall be further subject to articles 911 and 912.[151] The

148. *Id.* art. 750.

149. NEW CIVIL CODE, art. 752.

150. II EDGARDO PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 821 (1995).

151. NEW CIVIL CODE, arts. 911 & 912.

> Art. 911. After the legitime has been determined in accordance with the three preceding articles, the reduction shall be made as follows:
>
> (1) Donations shall be respected as long as the legitime can be covered, reducing or annulling, if necessary, the devises or legacies made in the will;
>
> (2) The reduction of the devises or legacies shall be pro rata, without any distinction whatever.
>
> If the testator has directed that a certain devise or legacy be paid in preference to others, it shall not suffer any reduction until the latter have been applied in full to the payment of the legitime.
>
> (3) If the devise or legacy consists of a usufruct or life annuity, whose value may be considered greater than that of the disposable portion, the compulsory heirs may choose between complying with the testamentary provision and delivering to the devisee or legatee the part of the inheritance of which the testator could freely dispose.
>
> Art. 912. If the devise subject to reduction should consist of real property, which cannot be conveniently divided, it shall go to the devisee if the reduction does not absorb one-half of its value; and in a contrary case, to the compulsory heirs; but the former and the latter shall reimburse each other in cash for what respectively belongs to them.

right to demand the reduction of inofficious donations is limited by article 772. It provides that only those who, at the time of the donor's death, have a right to the legitime and their heirs and successors-in-interest may ask for the reduction of inofficious donations.[152] The donor himself cannot ask for the reduction of an inofficious donation. This is because it is only upon his death that the officiousness or inofficiousness of the donation can be determined.[153] In addition, if the son of a donor consents to the donation to a stranger or expressly tells his father that he waives the right to ever bring suit to reduce the inofficious donation, he may still do so after the father's death.[154]

3. Protection Against Preterition

Preterition means the total omission of a compulsory heir from the inheritance. It consists in the silence of the testator with regard to a compulsory heir, in effect, omitting him in the testament, either by not mentioning him at all, or by not giving him anything from the hereditary property without expressly disinheriting him, even if he is mentioned in the will. There is no preterition where the testator allotted to a descendant a share less than the legitime, since there was no total omission of a forced heir.[155]

The requisites of preterition are: (i) that there is a total omission; (ii) that the person omitted is a compulsory heir in the direct line; and (iii) that the compulsory heir omitted survives the testator.[156]

In order that there be preterition, it is essential that the heir must be totally omitted. In case, however, that such heir received a donation *inter vivos* from the testator, the heir is not considered to have been preterited because such donation is chargeable to his legitime.[157] The donation *inter vivos* is treated as an advance on the legitime under articles 906, 909, and 1062 of the Civil Code.[158] Also, even if the heir is not mentioned in the will

> The devisee who is entitled to a legitime may retain the entire property, provided its value does not exceed that of the disposable portion and of the share pertaining to him as legitime.

152. *Id.* art. 772.

153. PARAS, *supra* note 150, at 853.

154. *Id.* at 854.

155. III TOLENTINO, 1992, *supra* note 68, at 187.

156. *Id.* at 188.

157. CACUIOA, *supra* note 57, at 156.

158. NEW CIVIL CODE, arts. 906, 909, & 1062.

nor was recipient of a donation *inter vivos* from the testator, but not all of the estate is disposed of by the will, there is no preterition. The omitted heir in this instance would still receive something by intestacy, from the portion not disposed of by will.[159] Therefore, for there to be preterition, the heir in question must have received nothing from the testator by way of (i) testamentary succession, (ii) legacy or devise, (iii) donation *inter vivos*, or (iv) intestacy.[160]

Preterition only takes place when the heir who was totally omitted from the inheritance is a compulsory heir in the direct line. It includes a compulsory heir in the direct line "whether living at the time of the execution of the will or born after the death of the testator."[161] All persons who are compulsory heirs are included within its scope, including illegitimate children and the illegitimate father or mother.[162] The surviving spouse does not fall within the purview of this provision because, although a compulsory heir, he or she is not in the direct line.[163] His or her rights to the legitime is, however, amply protected by article 842 of the Civil Code, which provides that "One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of the Code with regard to the legitime of said heirs."[164]

> Art. 906. Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied.
>
> Art. 909. Donations given to children shall be charged to their legitime.
>
> Donations made to strangers shall be charged to that part of the estate which the testator could have disposed of by his last will.
>
> Insofar as they may be inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code.
>
> Art. 1062. Collation shall not take place among compulsory heirs if the donor should have so expressly provided or if the donee should repudiate the inheritance, unless the donation should be reduced as inofficious.

159. BALANE, JOTTINGS, *supra* note 79, at 227.

160. *Id.*

161. *Id.*

162. III TOLENTINO, 1992, *supra* note 68, at 189.

163. BALANE, JOTTINGS, *supra* note 79, at 228.

164. III TOLENTINO, 1992, *supra* note 68, at 193.

Should the preterited heir predecease or be unworthy to succeed the testator, the question of preterition of that heir becomes moot. Nevertheless, should there be a descendant of that heir who is himself preterited, the effects of preterition will arise.[165] Thus, if the preterited heir has children entitled to represent him, and they have also been left out in the will, the institution shall be annulled just the same, even if the preterited heir died before the testator.[166] The preterition of the surviving spouse does not annul the whole institution of heir. The same is only partially annulled, by reducing the rights of the instituted heir to the extent necessary to satisfy the legitime of the surviving spouse. This differs from the preterition of the compulsory heirs in the direct line, which produces total intestacy, saving legacies and devises.[167]

If the heir totally omitted from the inheritance is in the direct line, the institution is totally annulled, saving only legacies and devises which are not inofficious. But if the mentioned heir is not in the direct line, only his legitime is given to him and the institution is annulled only to that extent.[168] Preterition abrogates the institution of heir but respects legacies and devises insofar as these do not impair the legitimes.[169]

D. Collation

The act of collation means to bring back or to return to the hereditary mass, in fact or by fiction, property which came from the estate of the decedent during his lifetime, but which the law considers as an advance from the inheritance.[170] Collation in the Civil Code, however, carries three different meanings:

1. Collation as computation, whereby the value of all donations *inter vivos* made by the decedent is added to his available assets in order to arrive at the value of the net hereditary estate;
2. Collation as imputation, whereby donations *inter vivos* made by the decedent are correspondingly charged either to the donee's legitime or against the disposable portion; and

165. BALANE, JOTTINGS, *supra* note 79, at 229.

166. III TOLENTINO, 1992, *supra* note 68, at 190.

167. *Id.* at 193.

168. *Id.* at 191.

169. BALANE, JOTTINGS, *supra* note 79, at 239.

170. III TOLENTINO, 1992, *supra* note 68, at 569.

3. Collation as return, which takes place when a donation *inter vivos* is found to be inofficious and so much of its value as is inofficious is returned to the decedent's estate to satisfy the legitimes.[171]

For the purpose of determining the legitime, all persons whether compulsory heirs or strangers are obliged to collate all property received by them *inter vivos* from the decedent by gratuitous title. It is in this manner that the legitime and the free portion can be determined for the purpose of finding out which donations are inofficious or subject to reduction.[172] Another purpose of collation is to attain equality among the compulsory heirs with respect to the distribution of their legitime — whatever has been received by an heir during the lifetime of the decedent shall be considered as an advance on such legitime.[173]

Collation applies to both donations *inter vivos* and testamentary dispositions. Article 1061 provides that a compulsory heir succeeding with other compulsory heirs should bring into the estate any property or right which he may have received from the decedent, during the latter's lifetime by donation or any other gratuitous title; this is for the determination of the legitime of each heir. This article seems to suggest that only donations *inter vivos* to compulsory heirs need be computed. On the contrary, all donations *inter vivos*, whether made to compulsory heirs or to strangers, should be included in the computation of the net estate.[174] The provisions of the Code on collation are limited to compulsory heirs only because of the need for a more detailed and specialized regulation among compulsory heirs.[175] The surviving spouse is not included in this article, even though he is a compulsory heir, because donations *inter vivos* between spouses, except for moderate gifts given to each other on occasion of any family rejoicing, is prohibited.[176]

Only the value of the property at the time of donation is computed since, in donations, ownership is transferred at the time the donation is perfected. Thus, any subsequent increase in value is for the donee's benefit and any decrease in value is for his account as well.[177]

171. BALANE, JOTTINGS, *supra* note 79, at 497.

172. III TOLENTINO, 1992, *supra* note 68, at 569.

173. *Id.*

174. BALANE, JOTTINGS, *supra* note 79, at 498.

175. III TOLENTINO, 1992, *supra* note 68, at 570-71.

176. FAMILY CODE, art. 87.

177. BALANE, JOTTINGS, *supra* note 79, at 498.

In donations *inter vivos* to compulsory heirs, the donation should be imputed to the heir's legitime since such is considered as an advance on the legitime. This shall, however, be imputed to the free portion instead if the donor provides otherwise or if the donee renounces the inheritance. In the latter case, the donee gives up his status as a compulsory heir and, therefore, cannot be considered as one.[178] It must be pointed out, however, that the exemption of the compulsory heir from collation simply means that the donation shall not be charged against the legitime, provided that it does not impinge on the legitime of the other compulsory heirs.[179] Donations *inter vivos* that are subject to collation shall be governed further by articles 1064 to 1070.[180]

178. *Id.* (*see,* NEW CIVIL CODE, art. 1062).

179. III TOLENTINO, 1992, *supra* note 68, at 573.

180. NEW CIVIL CODE, arts. 1064-70.

> Art. 1064. When grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, they shall bring to collation all that their parents, if alive, would have been obliged to bring, even though such grandchildren have not inherited the property.
>
> They shall also bring to collation all that they may have received from the decedent during his lifetime, unless the testator has provided otherwise, in which case his wishes must be respected, if the legitime of the co-heirs is not prejudiced.
>
> Art. 1065. Parents are not obliged to bring to collation in the inheritance of their ascendants any property which may have been donated by the latter to their children.
>
> Art. 1066. Neither shall donations to the spouse of the child be brought to collation; but if they have been given by the parent to the spouses jointly, the child shall be obliged to bring to collation one-half of the thing donated.
>
> Art. 1067. Expenses for support, education, medical attendance, even in extraordinary illness, apprenticeship, ordinary, or customary gifts are not subject to collation.
>
> Art. 1068. Expense incurred by the parents in giving their professional, vocational or other career shall not be brought to collation unless the parents so provide, or unless they impair the legitime; but when their collation is required, the sum which the child would have spent if he had lived in the house and company of his parents shall be deducted therefrom.

Property left by will is not deemed subject to collation, if the testator has not otherwise provided, but the legitime shall in any case remain unimpaired.[181] The general rule is that testamentary dispositions should not be imputed to the legitime but to the free portion. In such a case, the compulsory heir receives the testamentary disposition in addition to his legitime, unless the contrary is expressly provided for by the testator.[182]

IV. PROBLEMS AND COMPLICATIONS IN THE CURRENT SYSTEM OF LEGITIMES

A. Complications in the Sharing-Scheme Among the Different Compulsory Heirs

Under the present law, compulsory heirs who cannot be deprived of the fixed portion of their legitime are divided into three classifications: (i) primary, (ii) secondary, and (iii) concurring. These compulsory heirs may either be legitimate and illegitimate children or descendants, legitimate and illegitimate parents or ascendants, or the surviving spouse. The shares of these compulsory heirs vary according to their birth status and proximity in terms of degree to the testator. These varying shares have led to the long-standing confusion that attaches to the tradition of the system of legitimes. As Professor Rubén Balane stated, "[t]he variations of the portions assigned as legitime can be bewildering, depending as they do on the given combination, resulting into a crazy quilt."[183]

At present, there are 15 possible combinations on how legitimes may be shared. The mere number of combinations is itself a source of confusion and complication. Some of these combinations are either a result of an age-old prejudice against the status of a particular group of heirs or just simple arbitrariness in the designation of their respective shares.

One major source of confusion in the sharing of the legitimes is brought about by the different portions or shares that a surviving spouse is entitled to

> Art. 1069. Any sums paid by a parent in satisfaction of the debts of his children, election expenses, fines, and similar expenses, shall be brought to collation.
>
> Art. 1070. Wedding gifts by parents and ascendants consisting of jewelry, clothing, and outfit, shall not be reduced as inofficious except insofar as they may exceed one-tenth of the sum which is disposable by will.

181. *Id.* art. 1063.

182. BALANE, JOTTINGS, *supra* note 79, at 500.

183. *Id.* at 288.

receive depending on whether he or she survives alone or whether he or she survives with other compulsory heirs. Normally, if a spouse survives the testator alone, he or she is entitled to half of the estate as his or her legitime. Where, however, the testator died according to the circumstances provided for under article 900, paragraph 2 of the Civil Code, the surviving spouse shall only be entitled to one-third of the estate as legitime. According to the aforementioned provision, in a marriage solemnized in *articulo mortis*, where the testator-spouse died within three months from such marriage, the legitime of the surviving spouse, as the sole heir, is one-third of the estate — this is with exception a situation where they had been living as husband and wife for more than five years.[184] In the latter case, the legitime of the surviving spouse shall be that specified in the preceding paragraph.

Another source of confusion is article 893 of the Civil Code. It provides that "[i]f the testator leaves no legitimate descendants, but leaves legitimate ascendants, the surviving spouse shall have a right to one-fourth of the hereditary estate." Therefore, if the spouse concurs with the legitimate parents or ascendants of the testator, the former will receive one-fourth and the latter one-half of the estate as their respective legitimes. What is curious in this provision is the fact that it fails to consider that legitimate parents are mere secondary heirs. Had the testator died with a legitimate issue, the parents would have been excluded altogether, while the spouse retains her one-fourth share in the legitimes. Where article 893 is applicable, however, the parents get the bulk of the estate while the spouse still receives only one-fourth of it. Also, when the spouse survives with two or more legitimate children of the testator, such spouse gets a share equal to what one legitimate child will get.[185] In one case, the spouse is given only half of what is given to the legitimate parents, who are only secondary heirs; in yet another case, the same spouse receives a share equal to what a *primary* heir receives as their respective legitimes.

Another source of complications and confusions in the sharing-scheme of legitimes is caused by the distinction made between the legitime rights of the legitimate and illegitimate child. The present sharing of legitimes involving an illegitimate child in the distribution of the testate estate, as part of the enumeration earlier, can be broken down as follows:[186]

1. *Legitimate children and illegitimate children*:

   Legitimate children: 1/2 of the estate,

   Illegitimate children: each will get 1/2 of share of one legitimate child;[187]

2. *Legitimate children, illegitimate children, and surviving spouse*:

   Legitimate children: 1/2 of the estate,

   Illegitimate children: each will get 1/2 of the share of one legitimate child,

   Surviving spouse: a share equal to that of one legitimate child;[188]

3. *One legitimate child, illegitimate children and surviving spouse*:

   Legitimate child: 1/2 of the estate,

   Illegitimate children: each will get 1/2 of the share of the legitimate child,

   Surviving spouse: 1/4 of the estate;[189]

4. *Legitimate parents and illegitimate children*:

   Legitimate parents: 1/2 of the estate,

   Illegitimate children: 1/4 of the estate;[190]

5. *Legitimate parents, illegitimate children, and surviving spouse*:

   Legitimate parents: 1/2 of the estate,

   Illegitimate children: 1/4 of the estate,

   Surviving spouse: 1/8 of the estate;

6. *Surviving spouse and illegitimate children*:

   Surviving spouse: 1/3 of the estate,

   Illegitimate children: 1/3 of the estate;[191]

7. *Illegitimate children alone*: 1/2 of the estate.[192]

The present laws on the legitime rights of illegitimate children readily reveal that our legislature is still bound by the ancient prejudice against these children. As it stands, seven of the fifteen combinations for the sharing-

184. NEW CIVIL CODE, art. 900 (1).

185. *Id.* art. 892 (2).

186. BALANE, JOTTINGS, *supra* note 79, at 288.

187. FAMILY CODE, art. 176.

188. NEW CIVIL CODE, art. 895.

189. *Id.*

190. *Id.* art. 896.

191. *Id.* art. 894.

192. *Id.* art. 901.

scheme of the legitime in the testate estate are caused by the disparity imposed and duly recognized by law on children based on their status. The sharing of legitimes could be much easier and simpler were it not for these distinctions.

It can be understood from the law and the combinations enumerated above that, in almost all instances wherein both the spouse and the illegitimate children concur as compulsory heirs (combinations 2, 3, and 6), the spouse always gets a share greater or at least equal to the share of the illegitimate child.

If the spouse, under combination 2, concurs with both legitimate and illegitimate children, the spouse will get a share equal to what one legitimate child will receive. The illegitimate child, on the other hand, is only entitled to one-half of what one legitimate child will receive. Thus, the share of the illegitimate child in this case is a half less than what the surviving spouse is entitled to as his legitime.

In combination 3, the lone legitimate child, the spouse, and the illegitimate children will get a share of one-half, one-fourth, and one-fourth, respectively. The illegitimate child is entitled to one-fourth of the estate if there is only one illegitimate child or a smaller share if there are two or more illegitimate children. Thus, illegitimate children are only entitled to one-half of what a legitimate child gets. In the first situation, the illegitimate child gets a share equal to that of the surviving spouse. In the second scenario, however, the share of the illegitimate children will be less than what the spouse receives.

An inconsistency also arises in combination 5. It is the only situation where the spouse receives a legitime less than what the illegitimate children, either singly or collectively, will receive. In the event the spouse concurs with the legitimate parents and illegitimate children of the testator, the spouse will only get one-eight, the parents one-half, and the illegitimate children one-fourth of the estate. What is apparently clear from this combination is the fact that the share of the surviving spouse was reduced drastically in order to accommodate the one-half share of the parents. Again, this is a case of a secondary heir getting more rights and portions than is usually given to the spouse and the illegitimate children, who should be treated as primary compulsory heirs.

B. Arbitrariness in Designating the Shares of the Compulsory Heirs

Succession laws work together with Family Law to protect the family patrimony and, thus, the economic integrity of the social structure of the system.[193] The security of the family is the central anchor of forced heirship laws as it ensures that, upon the death of the testator, his family can rely upon his estate to maintain them. The decedent is forced to provide for those related to him by blood and to those whom the law presumes he has given his affection. By reserving a minimum portion of the estate for his family, the law is able to make sure that the family will be amply provided for after the testator's death.

Forced inheritance for the purpose of support has the advantage of certainty and judicial economy since no court award is necessary; however, that it lacks the flexibility to ensure adequate support or prevent overpayment is evident. The amount received by forced heirs is a fixed amount that does not correspond to their actual needs.[194]

Given this situation, the compulsory portion should, in the future, no longer be determined according to percentages, but instead be oriented directly to the needs of the family. The problem with the present system of legitimes is that the designation of the shares is not based on the actual needs of the recipient. It is simply a product of a rough estimation of what the law perceives to be the amount needed by the forced heirs for their support and maintenance long after the testator has died. The system of fixed shares applies a mathematical computation involving a fictitious average surviving spouse.[195] The law treats alike the deserving and the undeserving, the rich and the poor, the old and the young, the strong and the weak, those burdened with small children or those childless.[196] Parents or testators are forced to treat their children or heirs similarly and equally while, in fact, these children or heirs have different needs that may be unheeded by the current sharing-scheme of legitimes.

As the system of forced heirship bears no direct relation to the needs of the heirs and would, in many instances, seriously interfere with thoughtful

193. Katherine Connell-Thouez, *The New Forced Heirship in Louisiana: Historical Perspectives, Comparative Law Analyses and Reflections Upon the Integration of New Structures into A Classical Civil Law*, 43 LOY. L. REV. 1, 9 (1997).

194. Cynthia Samuel, *Letter from Louisiana: An Obituary for Forced Heirship and a Birth Announcement for Covenant Marriage*, 12 TUL. EURO. CIV. LF 183, 186 (1997).

195. Joseph Laufer, *Flexible Restraints on Testamentary Freedom: A Report on Decedents' Family Maintenance Legislation*, 69 HARV. L. REV. 277, 282 (1955).

196. *Id.* at 280.

estate-planning.[197] In this sense, it becomes an arbitrary award.[198] The legitime would, therefore, not effectively safeguard the maintenance of the compulsory heirs. It is this arbitrariness in the designation of shares that forms part of the reasons why the system of forced heirship cannot find widespread support in the United States of America.[199]

The root of the legal problem is that the true science of the law must be in the establishment of its postulates with a view of how accurately measured social desires may be achieved, rather than measuring such using tradition.[200] The needs of the compulsory heirs are beyond the determination of the drafters of the law. Children or heirs cannot and should not be treated equally because they are all differently situated. Needs are highly dependent upon age or even the life that one has pursued or wished to pursue. A fixed mathematical formula or standard cannot be concocted to establish a fool-proof sharing of legitimes that can directly answer the needs of the compulsory heirs. Furthermore, the fractions provided for by the law in its system of sharing can lead to two undesirable and unintended ends: it can result in the award of an excessive portion of the estate to one or more compulsory heir, or, even worse, it can leave a needy and financially-challenged heir to a portion that is not enough to sustain him.

It has always been argued that the testator can always provide for his more needy children or compulsory heirs by giving them a share of the free portion. Nonetheless, this solution is based on the presumption that there is a free portion that will be available for further disposition. Therefore, in the absence of the free portion, the testator will be simply left powerless to adequately and sufficiently provide for all his compulsory heirs. This is not a rare situation. The result is that the fractions implemented zealously by our courts have the effect of bringing even more inequality among the recipients.

For example, under the law, a testator who dies with two legitimate children and two illegitimate children and a spouse is legally compelled to leave one-half of his property to his legitimate children, one-fourth of the same estate shall be given to his surviving spouse, while the illegitimate shall

197. Ronald Chester, *Disinheritance and the American Child: An Alternative from British Columbia*, 1998 UTAH L. REV. 1, 19 (1998).

198. Ralph C. Brashier, *Disinheritance and the Modern Family*, 45 CASE W. RES. L. REV. 83, 171 (1994).

199. Chester, *supra* note 197, at 173.

200. Anne-Marie E. Rhodes, *Abandoning Parents Under Intestacy: Where We Are, Where We Need to Go*, 27 IND. L. REV. 517, 523 (1994).

get one-half of what one legitimate child will get — in this case, one-fourth each, both to be taken from the free portion. In this scenario, the whole estate will be distributed only among these compulsory heirs.[201]

To further elucidate this point, assume that Legitimate Child 1 (LC 1) is single, gainfully employed, of legal age, and financially stable. Legitimate Child 2 (LC 2), a rank and file employee, is a family man with a wife and has children of his own. Illegitimate Child A and B are both financially-challenged. If we are to apply the law, both LC 1 and LC 2 will get one-fourth of the estate each, even though the need of LC 2 is greater compared to that of LC 1. With respect to the illegitimate children, each will receive only one-eighth of the estate, although their financial condition would have justified a greater share from the estate. In such a case, the testator cannot address this resulting inequality because, as mentioned earlier, the whole estate is already bound to satisfy the shares of all the compulsory heirs and there is no free portion from which he may rely upon to increase the share of his more needy compulsory heirs.

It can be argued that the system of legitimes is still the best vehicle to ensure the maintenance of the family. The purpose, however, of providing heirs with adequate property in order to maintain and sustain their social and economic being cannot effectively be carried out by solely imposing sharing fractions that have no legal or practical basis, except for age-old prejudice and approximation. The testator must be given more power to decide who the recipient of his estate shall be: the law may simply provide for a bare minimum part of the estate for the satisfaction of legitimes and expand and provide for a fixed free portion available for the testator's disposal.

C. Undue Infringement on the Property Rights of the Owner-Testator

The fundamental attraction of naked ownership is that the asset is the individual's own. He or she may do as they please with property they own. On the contrary, in countries which apply forced heirship rules, the hegemony of the naked owner can prove illusory upon death as not only will the deceased's estate, but also his lifetime gifts, be inherited according to the law, rather than his wishes.

"Ownership is the independent and general right of a person to control a thing particularly in his possession, enjoyment, disposition and recovery, subject to no restrictions except those imposed by the state or private

201. An even worse situation is when the estate cannot even satisfy all the legitime shares of the compulsory heirs.

persons, without prejudice to the provisions of the law."[202] Under article 428 of the Civil Code, the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law. Under Roman law, the rights of an owner over his property are as follows: (i) *jus possidendi*, or the right to possess; (ii) *jus utendi*, or the right to use; (iii) *jus fruendi*, or the right to the fruits; (iv) *jus abutendi*, or the right consume; (v) *jus dispodendi*, or the right to dispose; and (vi) *jus vindicandi*, or the right to recover.[203] Nevertheless, even with all these rights that attach to ownership, it is given that such rights are not absolute. As such, the right of ownership cannot be a barrier to the gradually-modifying general interests of humanity, progress, and civilization.[204] As a result, limitations over the exercise of dominion have been statutorily imposed.

As regards legitimes, one of the limitations imposed by law is that imposed by article 886[205] of the Civil Code. As a general rule, a person is free to dispose his property either gratuitously or for consideration. The power of the owner to dispose of his property *inter vivos* is primarily limited by article 750 wherein it is provided that, the donor must reserve, in full ownership or in usufruct, sufficient means for his support and for the support of all who, at the time of the donation, are entitled to receive support from him. Also, article 752 provides that "no person may give or receive by way of donation more than he may give or receive by will." In contrast, with respect to gratuitous dispositions *mortis causa*, freedom of testation is the exception, rather than the rule. The freedom to dispose property *mortis causa* is limited by the operation of the legitimes of the compulsory heirs. Accordingly, the power of the testator to dispose his property is limited to the free portion of his estate, subsequent to the satisfaction of his compulsory heirs' legitimes.

While the imposition of the legitime is a valid exercise of legislative power, the manner of its imposition is arbitrary. The shares designated for each heir has no basis in fact and in law, but is only based on a poor estimation of the actual need of the recipients and on traditional and historical prejudices against the status of a person. Hence, the unjustified imposition of the portions allotted for the compulsory heirs results in an

202. PARAS, *supra* note 150, at 71.

203. *Id.* at 74.

204. II ARTURO TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 59 (1992).

205. NEW CIVIL CODE, art. 886 ("[l]egitime is 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.").

undue infringement and restriction on the property rights of the testator, tantamount to a violation of the owner's right to substantive due process.

Under article III, section 1 of the Constitution, "[n]o person shall be deprived of life, liberty and property without the due process of the law. Neither shall anyone be denied the equal protection of the laws."[206] Under the present provision, property stands a good chance of serving and enhancing the life and liberty of all. In fact there are various provisions in the Constitution protecting property, such always with the explicit or implicit reminder that property has a social dimension and that the right to property is weighed with a social obligation.[207]

Due process always has two aspects: first, substantive due process, which shall be dealt with in this article, and procedural due process. The former simply means and requires that enacted laws should not only aim at a legitimate government and societal purpose, *but it must also be implemented through justifiable means.* It requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty or property. The inquiry in this regard is not whether or not the law is being enforced in the prescribed manner but whether or not, to begin with, it is a proper exercise of legislative power.[208] Procedural due process, on the other hand, was understood to relate chiefly to the mode of procedure which government agencies must follow; it is understood as a guarantee of procedural fairness. Its essence was expressed by Daniel Webster as a "law which hears before it condemns."[209]

While the power to enact laws intended to promote the general welfare of society is inherent in every sovereign state, such power is not without limitations.[210] In *Hurtado v. People of California*,[211] it was held that arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as a decree of a personal monarch or of an impersonal multitude.[212] In the case of *United States v. Toribio*,[213] the

206. PHIL. CONST. art III § 1.

207. JOAQUIN G. BERNAS, THE 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES: A COMMENTARY 112 (1996).

208. ISAGANI A. CRUZ, CONSTITUTIONAL LAW 102 (2000).

209. Lopez v. Director of Lands, 47 Phil. 23, 32 (1924).

210. Municipality of Lucban v. National Waterworks and Sewerage Authority, 3 SCRA 208, 212 (1961).

211. Hurtado v. People of California, 110 U.S. 516 (1884).

212. *Id.* at 536.

213. United States v. Toribio, 15 Phil. 85 (1910).

Philippine Supreme Court laid down the criteria in determining the substantive soundness and validity of a law that restricts and impinges on the property rights of the people. It was stated that a large discretion is given to the legislature when state interference is demanded by public interest —this entails not only what public interest requires but also the measures necessary for the protection of such interest. For the first element, the interest must be public, as distinguished from those of a particular class. As for the second element, the means should be both reasonably necessary for the accomplishment of such purpose as well as not unduly oppressive upon individuals. Arbitrary interference with private business and imposition of unusual and unnecessary restrictions on lawful occupations are not allowed in the exercise of police power and its proper exercise is always subject to the supervision of courts.[214]

The testator, as owner, has the right to dispose of his property in ways others might consider unfair, morally-offensive, or a product of bad judgment and the legitime is unquestionably a significant constraint on testamentary freedom.[215]

V. PROPOSED AMENDMENTS

A. Reduction and/or Adjustment of the Shares in the Legitimes

Under the law, in cases of testamentary succession, the decedent's power to dispose of his properties *mortis causa* depends primarily on the number of compulsory heirs that he will leave behind at the time of his demise. He cannot bequeath or dispose of any fraction of his estate, or any specific portion thereof, without first satisfying the legitimes of his compulsory heirs.

No positive act is required of the testator before his compulsory heirs can receive their shares in the estate. These shares are mandated by law to be given to the compulsory heirs. The fact that the testator did not provide for provisions in his will for the satisfaction of their legitimes is of no moment. The law steps in and meddles with the testamentary intent of the testator to the point of declaring dispositions that impinge on the legitimes as null and of no effect.

A person's property is generally subject to his whims and caprices and limited only by laws enacted pursuant to compelling public interest and policy considerations. While it is contended that the current system of

214. *Id.* at 97-98.

215. Brashier, *supra* note 198, at 117.

legitimes in Philippine succession laws promotes and protects the interests of the family, it has already been shown that the designation of the shares of the compulsory heirs were arbitrarily made and has either resulted in an award of excessive or insufficient shares to one heir. While the legitimes aim to provide protection to the compulsory heirs of the testator after he dies, it cannot serve such purpose if the manner of its distribution does not directly meet the needs of the heir head-on. One cannot seek refuge by saying that if one of the testator's compulsory heirs is in more dire need of property, that the testator can solve this problem by awarding or bequeathing additional property to that particular heir from the free portion; this solution is very much contingent on the existence or non-existence of a free portion.

No mathematical formula can be provided to accurately determine the needs of one person; nor can any fixed formula be provided ensuring that what a compulsory heir will receive from the estate of the decedent will sufficiently meet his needs. This may elucidate why no explanation was given to justify the fractions provided for in the Civil Code with respect to the sharing of legitimes. The law is of the presumption that the testator will leave enough properties to those related to him by blood and affection, so as not to make them additional burdens to the state, and, concomitantly, that the portions reserved by law will be enough to sustain them.

As conceded, there is a problem in the definite formula provided in the law which determines the respective shares of the compulsory heirs. In order to provide for a more responsive sharing of legitimes, it is put forth that a reduction of the legitimes of the compulsory heirs be had. Through such a reduction, the possibility of awarding an excessive or insufficient property or portion of the estate can be lessened, if not, totally avoided. The testator will have more leeway in treating his children and other compulsory heirs equitably by acknowledging the fact that they are, more often than not, unequally situated. Minimal legitime portions will allow the testator to dispose of his property to his children or relatives who need such properties more. Therefore, in no case should the free portion of the estate be less than fifty percent of the total hereditary estate.

Again, the main purpose of will-making is to allow the testator to control, to a certain extent and within limits prescribed by law, the disposition of his property after his death. The property left by the testator cannot be distributed solely based on his desires. Into every will executed, the testator is deemed to have incorporated the mandatory provisions of the Civil Code on legitimes. His disposing power is actually limited to, usually, less than one half of his estate. In short, he is forced to will that his compulsory heirs receive the portions designated by law. Nevertheless, the power of the testator to control the disposition of his property after his death

should be expanded. This expansion of the testator's disposing power may be justified by logical, practical, and social reasons.

The estate of the testator-decedent is composed of properties that he had earned through his labor or prior inheritance. While it may be argued that his immediate family members had contributed much to its accumulation, that alone will not justify the award of an excessive portion of the estate to them. Still, at the end of it all, the estate is the property of the testator. Logic dictates that he should be allowed to dispose of it as he may see fit, qualified by the minimum needs of his family.

The purpose of the legitime is to amply provide enough property to the compulsory heirs of the deceased in order to sustain them long after the death of the testator. It is submitted, however, that the portions currently provided for by law to be distributed to the compulsory heirs are either excessive or insufficient, and are sometimes iniquitous. The law, by giving equal portions to a particular group of compulsory heirs, has practically disregarded the varying needs of heirs.

The expansion of the disposing power of the testator would spell the reduction of the legitime shares of the compulsory heirs. The testator would be given more control over his estate and he can directly meet the needs of his heirs. Also, it is a better presumption that the testator is aware of the financial condition and status of his compulsory heirs and will therefore address the problem by bequeathing to these needy heirs more property from the free portion.

This fact of inequality was the moving spirit behind the *mejora* under the Spanish Civil Code. Through the *mejora,* the parents were allowed to give an additional one-third of the long-legitime to any of their children or descendants. On this point, Justice J.B.L. Reyes said, "[t]he 1950 Civil Code restricted the testamentary freedom of the testator, compared to the Spanish Civil Code since in the latter Code, the testator at least can designate the descendant who will receive the additional property as betterment."[216]

The testator should be given the benefit of the doubt. That given enough property, he will provide for those compulsory heirs who are more in need of such. Instead of being bound by the strict application of the law on legitimes, his testamentary freedom should be expanded so that the law, instead of assuming what the testator intends to do, can allow the latter to actually do what he intends to.

216. REYES, *supra* note 69, at 209.

Further, by expanding the testamentary freedom of the testator, it allows him to dispose of his property in accordance to his conscience not only among his family, but among those other people for whom he has the deepest affection. In the end, such may serve a higher societal purpose as man is not only a member of a family but is likewise a member of society. As such, he can entertain not only family affections, but also wholly legitimate affection and gratitude for friends, associates, and fellowmen. Therefore, his hands should not be absolutely restrained from disposing property according to the dictates of his generosity.[217] The testator should be allowed to bequeath, if he wishes, properties to non-family members who helped him in accumulating his fortune or whom had extended him loyalty and friendship. He should be allowed to give property to charity and give back to society the blessings that he has received from it. All of these will be hard to perform if the testator is bound by the large legitime portions reserved for his compulsory heirs, often leaving him very little property to dispose of.

In addition, the reduction of the legitime portions will aid in achieving the intended diffusion of property ownership under the 1987 Constitution. This intent may be achieved if the reserved portion of the estate will be reduced, as it would avoid the continuing concentration of wealth in only a few families since the testator *may* will that the greater part of his estate's free portion be given to a non-family member. The unrestricted right to inherit has caused a great concentration of wealth and has exaggerated the economic power of a few families.[218]

Another important effect of the reduction of the reserved portion will be the benefit to the compulsory heirs themselves. Some parents believe that totally or partially disinheriting a child will help the child become a better person and a more responsible member of society. They believe that the individual and society will benefit more if the child is not riding on the coattails of his parents. It has been suggested that, in most cases, the very knowledge of the certainty of the inheritance may often deprive children of any motive to lead a useful and productive life.[219] The transfer of wealth through inheritance may promote indolence, which may subsequently lead to vice and encourage frivolous consumption.[220]

217. III TOLENTINO, 1992, *supra* note 68, at 250.

218. Efrain G. Tejera, *Mortis Causa Wealth Transfer and the Protection of the Family: The Spanish-Puerto Rican Experience,* 60 TUL. L. REV. 1231, 1246 (1986).

219. Briann C. Brennan, *Disinheritance of Dependent Children: Why Isn't America Fulfilling Its Moral Obligation,* 14 QUINNIPIAC PROB. L.J. 125, 129 (1999).

220. Tejera, *supra* note 218, at 288.

B. Elimination of the Distinction Between Illegitimate and Legitimate Children

The move towards equalizing the legitime rights of the illegitimate child with that of the legitimate child gained good ground at the enactment of the 1950 Civil Code. With the enactment of the Family Code, the rights of the illegitimate children improved and was raised a notch higher. At present, the legitime of the illegitimate child shall consist of one-half of the legitime of a legitimate child, making no distinction among the traditional classifications of illegitimate children. The Family Code Commission was even open to the idea of granting illegitimate children rights equal to those of legitimate children. The following excerpt from the minutes of the Family Code drafters is noteworthy:

> Prof. Baviera asked if the members are agreeable that the rights of the illegitimate children should at most be equal to those of legitimate children. Prof. Romero replied that this is where they are silent but that later, it may evolve to be so. Prof. Baviera commented that if there is no more distinction insofar as their rights are concerned. Justice Puno pointed out the term used in the principle is "exceed" and therefore, the rights of legitimate and illegitimate children could be equal but that the latter's rights shall not exceed those of the former, with which the other members concurred.[221]

Therefore, while the Family Code Commission was open to the possibility of increasing and equalizing the rights of illegitimate children with that of legitimate children, so long as the rights to be given to the illegitimate children shall not exceed those granted to children who are legitimate, still, the enacted Family Code only resulted into the equalization of rights with respect to the different kinds of illegitimate children. According to the above-cited excerpt, what is recognized is only the possibility of raising the rights of the illegitimate children in the future. It may be presumed, therefore, that, at the time of the deliberations and the drafting of the Family Code, it was not yet time to grant equal rights to both illegitimate and legitimate children.

It is unfortunate that succession and legitime laws drew distinctions between the heirs based on their birth status.[222] "The status of illegitimacy has expressed, through the ages society's condemnation of irresponsible

221. MINUTES OF THE CIVIL CODE REVISION COMMITTEE MEETINGS 11 (Nov. 9, 1985).

222. Neely S. Grifith, *When Civilian Principles Clash With The Federal Law: An Examination of Interplay Between Louisiana's Family Law and Federal Statutory and Constitutional Law*, 76 TUL. L. REV. 519, 524 (2001).

liaisons beyond the bonds of marriage."[223] The illegitimate child's place in society and in the family was never easily secured nor firmly established. As a result, most states refuse an illegitimate child the right of inheritance from his father on a theory that a grant of equal status to the children of a father's illicit affairs will undermine the position of the mother and the lawful children, and will, thereby, weaken the overall strength of the family institution. That same state, nevertheless, might also impose upon the parents of an illegitimate child full responsibility for his support and welfare while they are living.[224]

While Philippine laws do not go to the extent of totally denying illegitimate children their share in the legitime, the distinction imposed by our laws as to the manner of sharing in the legitime is still unjustified and uncalled for.

The most common and maybe the most persuasive defense against granting equal rights to both illegitimate and legitimate children are the protection of the family as an institution, the promotion of legitimate family life, and the attempt to prevent parents from entering into adulterous relationships. Notwithstanding these noble objectives, such laws result in the violation of the rights of the illegitimate children, especially their right to the equal protection of the laws.

According to a plethora of cases, equal protection of the laws simply requires that all persons or things similarly situated be treated alike, both as to rights conferred and responsibilities imposed. Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.[225]

The equal protection clause does not require the universal application of the laws, that is, that they operate on all the people without distinction. Such an application might, in fact, sometimes result in unequal protection.[226] Accordingly, the legislature is allowed to classify the subjects of legislation. If the classification is reasonable, the law may operate only on some, and not all, of the people without violating the equal protection clause.[227]

223. Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1960).

224. *The Rights of Illegitimates under the Federal Statutes*, 76 HARV. L. REV. 337, 341 (1962).

225. CRUZ, *supra* note 208, at 120.

226. *Id.* at 123.

227. *Id.*

A valid classification shall require the concurrence of the following requisites: (i) it must be based upon substantial distinctions; (ii) it must be germane to the purpose of the law; (iii) it must not be limited to existing conditions only; and (iv) it must apply equally to all members of the class.[228]

Statutes distinguishing between legitimate and illegitimate children deny illegitimate children the equal protection of laws.[229] Under article III, section 1 of the Philippine Constitution, "[n]o person shall be deprived of life, liberty and property without the due process of the law. Neither shall anyone be denied the equal protection of the laws."[230] It is hereby submitted that the distinctions made by the law with respect to the hereditary and legitime rights of illegitimate children *vis-à-vis* the rights of legitimate children in testamentary succession fail and violate the constitutional mandate of equality before the law.

The distinctions made between illegitimate and legitimate children with respect to their succession and legitime rights fail the first two requirements of a valid legal classification. Superficial differences do not make for a valid classification. The distinction, to be valid, must be substantial.[231] It proscribes classification that is arbitrary and unreasonable. The U.S. Supreme Court has frequently stated that there is no constitutionally-sufficient justification for denying essential rights to children simply because their natural mother did not marry their natural father. Statutes distinguishing between legitimate and illegitimate children deny illegitimate children the equal protection of laws.[232] In *Weber v. Aetna Casualty & Surety Co.*,[233] the Court rejected the state's justification for its classification as protecting legitimate family relations, stating that "no child is responsible for his birth and penalizing the illegitimate child is an ineffectual — as well as an unjust — way of deterring the parent."[234] Illegitimacy is not the result of a child's own actions.[235] Laws that discriminate against the illegitimate child do so based on his or her

228. People v. Cayat, 68 Phil. 12, 18 (1920).

229. Levy v. Louisiana, 391 U.S. 68, 71 (1968).

230. PHIL. CONST. art III, § 1.

231. CRUZ, *supra* note 208, at 124.

232. Levy v. Louisiana, 391 U.S. 68, 71 (1968).

233. Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1960).

234. *Id.* at 179.

235. *Id.*

status. Laws may only discriminate against illegitimacy when the law substantially relates to an important government interest.[236]

In *Trimble v. Gordon*,[237] the court rejected the proposition that the promotion and protection of legitimate family relations justifies the denial of equal rights between legitimate and illegitimate children. The state has an interest in legitimate family relationships and in encouraging fathers to take the necessary steps to acknowledge their illegitimate offspring.[238] A state may not, however, use such interests to justify the exclusion of illegitimate children when they are powerless to prevent their position.[239]

The government should not add to the burdens that illegitimate children, inevitably, acquire at birth because we are committed to the proposition that all men are created equal.[240] Again, in *Weber*, it was stated that visiting society's condemnation of illicit relations on the head of an infant is illogical and unjust.[241] "[L]egal burdens should bear some relationship to individual responsibility or wrongdoing."[242] Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the equal protection clause does enable us to strike down discriminatory laws relating to status of birth, especially where the classification is justified by no legitimate state interest.[243]

As stated earlier, the rationale behind the discriminatory laws against illegitimate children is to protect the family as a basic social institution, to protect and promote legitimate family relations, and, lastly, to prevent the parents from entering into adulterous relationships. These objectives, while valid and sound, should not in any way prejudice the rights of the illegitimate children; on the contrary, the latter must be treated as unwilling victims of their parents' unlawful acts. Punishment should always be meted

236. Timothy G. Barret, *Discrimination Against Illegitimate Children Worthy of Stricter Scrutiny Under the Constitution?: The Relationship Between State Intestate Succession Statutes and the Social Security Act in Claims for Child Benefits for Illegitimate Children*, 33 U. LOUISVILLE J. FAM. L. 79 (1995).

237. Trimble v. Gordon, 430 U.S. 762 (1977).

238. *See generally, id.*

239. Susan E. Satava, *Discrimination Against the Acknowledged Illegitimate Child and the Wrongful Death Statute*, 25 CAP. U. L. REV. 933, 941 (1996).

240. Matthews v. Lucas, 427 U.S. 495, 516 (1976) (Brennan, J., Stevens, J., and Marshall, J., dissenting).

241. Weber v. Aetna Casualty & Surety Co., 406 U.S. 164, 175 (1960).

242. *Id.*

243. *Id.*

out to those who caused the wrong and the victims should always be protected and their rights vindicated.

The classification, even if based on substantial distinctions, will still be invalid if it is not germane to the purpose of the law.[244] Although recognizing the importance of the state interest in protecting legitimate family relationships, and the regulation and protection of the family unit, still, people will not shun illicit relations because the offspring may not one day receive a share, or an equal share, from the estate of the erring father.[245] The state has an interest in legitimate family relationships and in encouraging fathers to take the necessary steps to acknowledge their illegitimate offspring. A state may not use such interests to justify the exclusion of illegitimate children when they are powerless to prevent their position.[246]

In addition, the State may not attempt to influence the actions of men and women by imposing sanctions on the children born of their illegitimate relationships. "[P]arents have the ability to conform their conduct to societal norms, but their illegitimate children can affect neither their parents' conduct nor their own status."[247] The purpose of the law, notwithstanding its soundness and nobility, can never be achieved as long as the punishment imposed by the law is directed to the victims of illegitimate relationships, rather than the malefactors themselves.

As stated by the Code Commission, the social transgressions committed by parents should not be too severe on illegitimate children. The law should not be too severe, be they natural children or otherwise, because they do need the equal protection of the State. They are born with a social handicap and the law should help them surmount the disadvantages that face them arising from the misdeeds of their parents.[248] With this pronouncement, one can only wonder why such strong statement was never, in fact, given any teeth as evidenced by the resulting Family Code.

Parents have a responsibility to their children, regardless of whether the latter are legitimate or illegitimate. Illegitimate children, the consequence of either unmarried relationships or adulterous liaisons, must be afforded protection by the law. If the purpose of segregating a forced portion of the

244. CRUZ, *supra* note 208, at 129.

245. Satava, *supra* note 239, at 945.

246. *Id.*

247. Trimble v. Gordon, 430 U.S. 762, 770 (1977).

248. REPORT OF THE COMMISSION ON THE PROPOSED CIVIL CODE OF THE PHILIPPINES 89 (1949) [hereinafter CODE COMMISSION].

estate to be distributed among the compulsory heirs, including illegitimate children, is to satisfy their needs long after the testator has died, then there would be no reason for treating children differently based on their status. In all legislations involving the rights of children, their best interest is always the paramount consideration. The interest of the child should never be altered nor trampled upon by the fact of his birth status. Children are children, not because of their birth status, but because they are vulnerable and deserve the full protection of the State.

C. Eradication of the Legitime Distinction under Article 900 of the Civil Code

A major cause for confusion and complication in designating the share of the compulsory heirs, especially the surviving spouses, is the *articulo mortis* provision of article 900.

Generally, the surviving spouse who has survived alone is entitled to one-half of the estate left by his deceased spouse. Under article 900 of the Civil Code, if the marriage between the surviving spouse and the testator was solemnized in *articulo mortis*, and the testator died within three months from the celebration, the legitime of the surviving spouse, as the sole heir, shall be one-third of the hereditary estate; this is except when they have been living as husband and wife for more than five years. In the latter case, the legitime of the surviving spouse shall be that specified in the preceding paragraph.

This provision of the Civil Code is new and had no counterpart in its predecessor Code. The law considers such a marriage as scandalous and for the sole purpose of inheriting from the sick spouse.[249] Yet, adequate support cannot be found to justify the varieties introduced in the legitime of the spouse when surviving alone.[250]

Justice J.B.L. Reyes critically observed that, under the legal precept embodied in article 900, the making of a will by a consort married in *articulo mortis* and deceased without issue or ascendants, becomes highly impossible, since the legitime of the survivor spouse — and, consequently, the extent of the part for free disposal — depends, not only on the duration of their cohabitation prior to the marriage, but also upon the testator's unpredictable dying within a matter of months from the date of the marriage.[251]

249. III TOLENTINO, 1992, *supra* note 68, at 317.

250. REYES, *supra* note 69, at 17.

251. *Id.*

Apparently, the Code is bent on convincing people married in *articulo mortis* that it is better that they die intestate.

Therefore, it is submitted that the elimination of this provision in the Civil Code will greatly contribute to the simplification of the system of legitimes.

VI. CONCLUSION

The system of legitimes has long been a part of the Philippines' civil law tradition. Unfortunately, we inherited from the same tradition the flaws and the complications attached to the system and it is therefore submitted that an amendment of the same is timely and necessary. It has attempted to provide protection to the heirs of the testator by ensuring that they will receive a portion of the hereditary estate, unless, they are validly disinherited.

When the Civil Code of 1950 was drafted, the Commission recognized the need to enact a Civil Code that is more in touch with Filipino culture. The Commission even admitted that the code that they drafted is far from perfect. In the exact words of the Commission:

> [w]e are not unmindful of the fact that the proposed Civil Code is susceptible of improvement. But such as the work is, with all its shortcomings and imperfections which others may perceive, each and every one.[252]

Fifty-six years later, majority of the provisions of the 1950 Civil Code on the system of legitimes are still in effect. This length of time alone is already persuasive evidence of the need to effect its revision. The law should not be static but vital and ever-growing. While there ought to be stability in the laws, they ought not to be so inflexible as to destroy their very essence, which is the supremacy of rights.[253]

The different combinations provided for by law in the sharing of the hereditary estate can lead to absurdity, especially when the portions are arbitrarily provided for and simply based on the rough estimation of the actual need of the recipient compulsory heir. While it is submitted that no accurate formula can be used in determining the actual need of the heirs, because it is actually better determined on a case-to-case basis, still, the system of legitimes can be made more effective by giving the testator enough freedom to dispose of his properties, hence, enabling him to distribute such to his heirs "equitably." Expanding the testamentary rights and disposing

252. CODE COMMISSION, *supra* note 248, at 175.

253. *Id.* at 6.

power of the testator will allow him to allocate property according to the greater or lesser needs of his heirs, without the threat of the legally-provided portions allocated for them.

Finally, the simplification of the sharing system will lead to a more efficient settlement of estates and eradicate historical prejudices against certain groups of compulsory heirs.

It is proposed, therefore, that the current system of legitimes in testamentary succession can be simplified through the enactment of the following amendments to the Civil Code:

Article 887, which provides for the enumeration of compulsory heirs, should be amended as follows:

> Art. 887. The following are compulsory heirs:
>
> 1. Legitimate and illegitimate children and descendants, with respect to their parents and ascendants;
> 2. In default of the foregoing, parents and ascendants, with respect to their children and descendants; and
> 3. The widow or widower.
>
> In all cases of illegitimate children, their filiation must be duly proved.

The provisions on the sharing of legitimes (articles 888 to 890, 892 to 901, and 903) should be repealed by the following suggested provisions:

> Art. 888. The free portion of the estate shall in no case be less than one-half of all the assets of the decedent at the time of his death.
>
> Art. 889. The legitime of children and descendants shall be one-half of the hereditary estate.
>
> If the decedent is survived by only one child alone, the latter shall be entitled to one-fourth of the hereditary estate.
>
> Art. 890. When the children survive with the surviving spouse, all of them shall equally share the reserved one-half portion of the estate.
>
> If only one child survives with the surviving spouse, each will receive one-fourth of the estate.
>
> If the surviving spouse survives alone, he shall be entitled to one-fourth of the hereditary estate.
>
> Art. 891. In the absence of children or any other descendant, the parents, both legitimate and illegitimate, shall receive one-fourth of the hereditary estate.
>
> If the parents concur with the surviving spouse, they shall share equally the reserved one-half portion of the estate.