

PRETERITION – IN THE LIGHT OF RECENT DECISIONS

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Prefatory Statement

The legitime, as Article 886 of the Civil Code puts it, "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." The heir is called compulsory, not because he has to accept the beneficence of the testator, but because the testator is not at liberty to deprive him of his legal right to participate in the disposition of the property of the testator upon the latter's death. The system of legitimes, therefore, is a statutory restriction on the freedom to dispose one's own property, insofar as dispositions *mortis causa* are concerned. The reservation is made by law in favor of certain relatives by setting aside the minimum amounts for each of them, which the executor or the administrator of the estate must pay, unless a legal excuse is available to justify the departure from the pattern expressly provided by law. The payment, therefore, of the legitime to compulsory heirs is a statutory necessity which can only be dispensed with through valid disinheritance by the testator, or repudiation by the heir himself.

The sanctity of the legitime has been so scrupulously safeguarded that even the testator himself is deprived of control over the same. As a general rule, he cannot subject it to conditions, burdens, encumbrances, substitutions, or other similar charges. Moreover, in the computation of the same, the total patrimony of the testator is taken into account, including gratuitous conveyances made by the decedent *inter vivos*. Any such gratuitous conveyance which may impair the legitime of compulsory heirs may be reduced or abated — thereby imposing upon a prior recipient of a gift the duty to return the value of the excessive and inofficious grant, if only to satisfy the full amount of the legitime.

The legitime, therefore, paved the way for the development of the legal concept known as preterition. As a basic philosophy underlying the law on hereditary succession, it appears to have acquired authority and popular acceptance from the biblical passage which reads: "Give to Caesar what is due Caesar, and to God what is due God." Parenthetically, the law on preterition conveys to us the supreme message of succession: give the legitime to compulsory heirs, and the free portion to whomsoever you wish to favor.

under the will." (Underscoring supplied.)

This doctrine was reiterated thirty-one years later, in the case of *Eleazar v. Eleazar*⁵⁸ with Justice Moran summarily stating that:

"The will insofar as it deprives the appellant as legitimate father of the deceased, of his legal portion, is null and void, but is valid with respect to the other half which the testator could freely dispose of and which should be considered a legacy."

Two years later, the case of *Neri v. Akutin*⁵⁹ reversed the ruling in the *Escuin* and *Eleazar* cases. The Court, through Justice Moran, annulled totally the institution of heirs, and did not consider the free portion of the estate as legacy to the instituted heirs. Said the Court:

"In the instant case, while the children of the first marriage were mentioned in the will, they were not accorded any share in the hereditary property, without expressly being disinherited. It is, therefore, a clear case of preterition as contended by appellant. x x x x Except as to "legacies and betterments" which "shall be valid insofar as they are not inofficious, preterition avoids the institution of heirs and gives rise to intestate succession. In the instant case, no such legacies or betterments have been made by the testator. "Mejoras" or betterments must be expressly provided according to Articles 825 and 828 of the Civil Code and where no express provision therefor is made in the will, the law would presume that the testator had no intention to that effect." (Underscoring supplied)

This ruling was reiterated in the case of *Nuguid v. Nuguid*⁶⁰ where the Supreme Court, through Justice Sanchez, annulled completely the institution of heirs on the ground of preterition, without considering the free portion of the estate as a legacy to the instituted heir. Thus:

"Legacies and devises merit consideration only when then they are so expressly given as such in the will. Nothing in Article 854 suggests that the mere institution of a universal heir in a will - void because of preterition - would give the heir so instituted a share in the inheritance. As to him, the will is in existence. There must be, in addition to such institution, a testamentary disposition granting him bequests or legacies apart and separate from the nullified institution of heirs." (Underscoring supplied)

This ruling has not yet been reversed to date.

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FOOTNOTES

1. Article 854, Civil Code of the Philippines.
2. See Paras, Civil Code of the Philippines, Annotated, Vol. III, page 147 (1976 ed.) citing 6 Manresa 381, 389 and 6 Sanchez Roman 1133.
3. Article 1073 - "The donee's share of the estate shall be reduced by an amount equal to that already received by him; and his co-heirs shall receive an equivalent, as much as possible, in property of the same nature, class and quality."
4. Article 906, Civil Code - "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."
5. Article 290 - "Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance, according to the social position of the family. Support also includes the education of the person entitled to be supported until he completes his education or training for some profession, trade, or vocation, even beyond the age of majority."
6. Article 291 - "The following are obliged to support each other to the whole extent set forth in the preceding article:
(2) Legitimate ascendants and descendants;
x x x x"
7. Article 725, Civil Code of the Philippines.
8. Article 126, Civil Code of the Philippines.
9. Ordinary donations are governed by Articles 748 and 749 as to formalities, whereas donations *propter nuptias* are governed by paragraph 2, Article 1403 (statute of frauds) as mandated by Article 127 of the Civil Code.
10. Article 1061 - "Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition."
11. Reyes and Puno, Outline of the Philippine Civil Code, Vol. III p. 207.
12. Articles 1061 and 1073, Civil Code of the Philippines.
13. Section 5, Chapter IV, Title IV, Civil Code, i.e., Articles 1061 to 1077 inclusive.
14. Article 1062 - "Collation shall not take place among compulsory heirs if the

- donor should have so expressly provided, or if the donee should have so expressly provided, or if the donee should repudiate the inheritance, unless the donation should be reduced as in officious."
15. Article 887 – "The following are compulsory 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 widow or widower;
 4. Acknowledged natural children, and natural children by legal fiction;
 5. Other illegitimate children referred to in Article 287.
x x x x"
 16. *Nuguid vs. Nuguid*, No. L-23445, June 23, 1966 (17 SCRA 449).
 17. Article 903 – "The legitime of the parents who have an illegitimate child, when such child leaves neither legitimate 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. x x x"
- Article 993 – "If an illegitimate child should die without issue, either legitimate or illegitimate, his father or mother shall succeed to his entire estate; and if the child's filiation is duly proved as to both parents, who are both living, they shall inherit from him share and share alike.
18. Article 887, paragraph 2, *supra*.
 19. Article 889 – "The legitime of legitimate parents or ascendants consists of one-half of the hereditary estates of their children and descendants. The children or descendants may freely dispose of the other half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided."
 20. Article 970 – "Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited."
 21. Article 1027 on incapacity arising from possible undue influence, and Article 1032 on incapacity by reason of unworthiness.
 22. Article 923 – "The children and descendants of the person disinherited shall take his or her place and shall preserve the rights of compulsory heirs with respect to the legitime; but the disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime."
 23. Article 887, paragraph 1, *supra*.
 24. Article 887, paragraph 3, Articles 892, 893, 894, 898, and 899, Civil Code of the Philippines.
 25. Article 133 – "Every donation between the spouses during the marriage shall be void. This prohibition does not apply when the donation takes effect after the death of the donor. Neither does this prohibition apply to moderate gifts which the spouses may give each other on the occasion of any family rejoicing."

26. See Paras, *Civil Code of the Philippines*, Annotation, Vol. III, pp. 148-149 (1976 ed.).
 27. L-39247, June 27, 1975, (Second Division) 64 SCRA 452.
 28. *Ibid*, p. 460.
 29. Article 784
 30. Article 121 – "In order that any modification in the marriage settlements may be valid, it must be made before the celebration of the marriage, subject to the provisions of Article 191."
- Article 122 – "The marriage settlements and any modifications thereof shall be governed by the statutes of frauds and executed before the celebration of the marriage."
31. Article 818 – "Two or more persons cannot make a will jointly, or in the same instrument, either for their reciprocal benefit, or for the benefit of a THIRD PERSON..."
- Article 819 – "Wills, prohibited by the preceding articles, executed by Filipinos in a foreign country, shall not be valid in the Philippines, even though authorized by the laws of the country where they may have been executed."
32. See Articles 804 to 810 inclusive.
 33. Article 930 – "The legacy or devise of a thing belonging to another person is void, if the testator erroneously believed that the thing pertained to him. But if the thing bequeathed, though not belonging to the testator when he made the will, afterwards becomes his, by whatever title, the disposition shall take effect."
 34. Article 931 – "If the testator orders that a thing belonging to another be acquired in order that it be given to a legatee or devisee, the heir upon whom the obligation is imposed or the estate must acquire it and give the same to the legatee or devisee; x x x x."
 35. Article 712 – "Ownership is acquired by occupation and by intellectual creation. Ownership and other real rights over property are acquired and transmitted by law, by donation, by testate and intestate succession, and in consequence of certain contracts, by tradition. They may also be acquired by means of prescription."
 36. Article 777, *Civil Code of the Philippines*.
 37. Article 1042, *Civil Code of the Philippines*.
 38. *Davies v. Lahann*, C.C.A. N.M., 145 F. ed 656, 659.
 39. *In re Chamber's Estate*, 183 N.Y.S. 520, 528, 112 Misc. 551.
 40. *Grimes v. Grimes*, 207 N.C. 778, 178 S.E. 573.
 41. 4 Valverde 473
 42. *Santos-Yñigo, et al. v. Republic*, 95 Phil. 244; *McGee v. Republic*, L-5387, April 29, 1954, 94 Phil. 820.
 43. *Malkinson v. Agrava*, 54 SCRA 66; *Santos, Jr. v. Republic*, 21 SCRA 379.
 44. Article 363, *Civil Code*, Article 8, P.D.603.
 45. *Colgate-Palmolive Philippines, Inc., v. Jimenez*, 1 SCRA 267 *Oliva v. Lamadrid*, 21 SCRA 737.
 46. Article 39, P.D. 603.
 47. Paragraph 4, Article 39, P.D. 603.
 48. Article 979, paragraph 2.
 49. Articles 316 and 318, *Civil Code*; Article 44 and 45, P.D. 603.
 50. Articles 320, 321, 323, *Civil Code*.

51. Paragraph 2, Article 3, P.D. 603.
52. Article 996 – “If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children.”
53. Paragraph 2, Article 892 Civil Code – “If there are two or more legitimate children or descendants, the surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children or descendants.”
54. See ruling in *Balanay, Jr. v. Martinez*.
55. G.R. No. L-57848, June 19, 1982.
56. Article 992 – “An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother, nor shall such children and relatives inherit in the same manner from the illegitimate child.”
57. G.R. No. 4359, September 24, 1908, 11 Phil. 332.
58. G.R. No. 45978, April 24, 1939, 67 Phil. 497.
59. G.R. No. 47799, June 13, 1941, 72 Phil. 322.
60. G.R. No. L-23445, June 23, 1966, 17 SCRA 449.

BOOK REVIEWS

I

UNIFORM LAW FOR INTERNATIONAL SALES

Under the 1980 United Nations Convention

Author: John Honnold* Kluwer Law and Taxation Publishers

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Our sales law, for the last thirty years, has been a hodgepodge of provisions drawn from both the Spanish Civil Code and the Uniform Sales Act of the United States of America. The apparent lack of any serious effort to integrate these alien legal provisions, if that were at all possible, has necessarily given rise to irreconcilable conflicts.¹ To this day, in the area, for example, of allocation of the risk of loss during the specific period from the moment of the perfection of the contract but before delivery of the thing sold, our textbook writers differ on which provision of law to apply. One relies, as is the traditional teaching, on Article 1480 (reproduced from Article 1452 of the Spanish Civil Code) as bolstered by Article 1538, a “new” provision, immediately shifting risk of loss to the buyer.² Another points to Article 1504 (lifted from Sec. 22 of the Uniform Sales Act of the United States of America) as the applicable provision whereby risk of loss remains with the seller.³

If formulating a domestic sales law can be attended by so much difficulty and ambiguity one can only marvel at the unquestionably enormous amount of dedication, scholarship and talent which went into the drafting of this uniform law for international sales. One all the more ought to marvel at the fact that sixty-two (62) states with disparate cultures, languages and legal systems unanimously approved this convention.

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1 Ferrer, *Philippine Sales Law – A Conflicting Hodge-podge of Spanish and Anglo-American Law*, XII *Ateneo L.J.* 101 (1962).

2 De Leon, *Comments and Cases on Sales* (1st ed., 1978) p. 49.

3 Baviera, *Sales* (U.P. Law Center, 1981) p. 81.