



Adoption and the Right to Succeed: A Brief Overview

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The legal institution of adoption goes back to the ancient Roman Law, to which we, being of the civil law tradition, must look back for a history of its development. The Roman law on adoption was contained, at various stages, in the provisions on *arrogatio* and *adoptio*, the former more ancient than the latter.

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Adoption was provided for in the Code of 1889, after the initial general sentiment against its inclusion was overcome, thanks to the arguments of the most influential members of the Comisión Codificadora (the Code Commission).

Thus, the Philippine law on adoption must be traced through the Spanish Civil Code, which was our law until from the time it was extended to the Philippine Islands in 1889, the same year it took effect in Spain.

This Article will attempt to trace the development of two aspects of the law on adoption, both have had a long, varied — and tortuous — history. The lines of development will include several laws: the Spanish Civil Code, the Code of Civil Procedure, Act No. 3997, the Civil Code of the Philippines, the Child and Youth Welfare Code, the Family Code, and the Domestic Adoption Act of 1998, which is the current governing law.

The first aspect is simpler of the two: the right of the adopter and the adopted to succeed each other by compulsory and intestate succession.

In this paper, any reference to succession will, unless otherwise indicated, refer to compulsory and intestate succession.

I. COMPULSORY/INTESTATE SUCCESSION BETWEEN ADOPTER AND ADOPTED

A. The Spanish Civil Code

There was no right of reciprocal succession between adopter and adopted. The Spanish Code provided:

177. El adoptante no adquiere derecho alguno a heredar al adoptado. El adoptado tampoco lo adquiere a heredar, fuera de testamento, al adoptante, a menos que en la escritura de adopción se haya éste obligado a instituirle heredero. Esta obligación no surtirá efecto alguno cuando el adoptado muera antes que el adoptante...¹

It is interesting to note that by virtue of the amendments of 1981 (which removed the distinction between legitimate and illegitimate children), the Spanish Code now gives the adopter and adopted the same reciprocal rights of succession as those possessed by biological parents and children, *viz*:

1. "The adopter acquires no right to inherit from the adopted. Nor does the adopted acquire any right to inherit from the adopter otherwise than by will, unless the adopter shall have agreed in their deed of adoption to institute the adopted as his heir. This obligation shall produce no effect if the adopted dies before the adopter..."

108. ...La filiación matrimonial y la no matrimonial, así como la adoptiva, surten los mismos efectos, conforme a las disposiciones de este Código.²

B. The Code of Civil Procedure (Act No. 190)

Under this law, the adopted became a compulsory and intestate heir of the adopter but the right was not reciprocal, inasmuch as the adopter was not given right to succeed the adopted, either by legitimate or by intestacy.

The natural parents, except when such child is adopted under the provisions of the second preceding section shall, by such order, be divested of all legal rights and obligations of obedience and maintenance with respect to them. Such child shall be to all intents and purposes the child and legal heir of the person so adopting him or her, entitled to all the rights and privileges and subject to all obligations of a child of such person begotten in lawful wedlock. *Provided, nevertheless*, That the child so adopted shall still remain the legal heir of his father and mother, and in case of the death of the child, his father and mother and relatives by nature, and not by adoption, shall remain his legal heirs.³

C. Act No. 3977

This law retained the rule in the Code of Civil Procedure, except that it provided for a *reserva adoptiva*. As amended by Act No. 3977, the pertinent portion reads:

...[p]rovided, nevertheless, That the child so adopted shall still remain the legal heir of his real father and mother, and in case of death of the child without direct descendants, his father and mother and relatives by nature, and not by adoption, shall remain his legal heirs, *except as to property inherited by the adopted child from either of his parents by adoption, which shall become the property of the legitimate relatives of the parents by adoption from whom it originally came, who shall participate in the order established by the Civil Code for intestate estates.*⁴

The Rules of Court of 1940 preserved the *reserva adoptiva* of Act No. 3977 but also provided for a *reversión*, thus:

...the child shall thereupon become the legal heir of its parents by adoption, and shall also remain the legal heir of its natural parents. In case of the death of the child, his parents and relatives by nature, and not by adoption shall be his legal heirs except as to property received or inherited by the adopted child from either of his parents by adoption, which shall

2. "Marital and non-marital filiation, as well as adoptive filiation, produce the same effects in conformity with the provisions of this Code."

3. The Code of Civil Procedure, Act No. 190, § 768 (1901).

4. *Id.*, as amended by Act No. 3977 (emphasis supplied).

become the property of the latter or their legitimate relatives, who shall participate in the order established by the Civil Code for intestate estates.⁵

Prescinding from the validity of the procedural rules laying down substantive provisions, we have in the 1940 Rules both a *reserva* and a *reversión* in adoption.

D. The New Civil Code

The new Code⁶ essentially preserved the rule of Acts No. 190 and 3977, with one modification: the adopted had, for purposes of compulsory and intestate succession, the same status as a legitimate child,⁷ but if the adopter was survived by the adopted concurring with legitimate parents or ascendants, the successional position of the adopted was made equivalent only to that of an acknowledged natural child,⁸ meaning that the adopted did not exclude the parents or ascendants, and that his legitime was only one-fourth of the estate, the parents/ascendants receiving one-half. The adopter likewise remained disqualified from inheriting from the adopted by compulsory or legal succession.⁹

Furthermore, the *reserva adoptiva* provided in Act No. 3977 and the *reserva/reversión* of the 1940 Rules were not retained. That was in conformity with the intent of the Code Commission to suppress the *reservas* and *reversiones* contained in the old law. (The *reserva troncal*, as we know, found its way to the new Code at the last minute.)

E. The Child Youth and Welfare Code (Presidential Decree No. 603)

The Child Youth and Welfare Code¹⁰ retained unchanged the right of the adopted to succeed the adopter by compulsory and intestate succession, including the qualification laid down in article 343 of the Civil Code:

Effects of Adoption. – The adoption shall...

5. The 1940 Rules of Court, Rule 100, § 5.
6. An Act to Ordain and Institute the Civil Code of the Philippines [NEW CIVIL CODE].
7. *Id.* art. 341 (3) (“[t]he adoption shall... make the adopted person a legal heir of the adopter.”).
8. *Id.* art. 343 (“[i]f the adopter is survived by the legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child.”).
9. *Id.* art. 342 (“[t]he adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him.”).
10. The Child and Youth Welfare Code, Presidential Decree No. 603 (1974).

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Make the adopted person a legal heir of the adopter: *Provided*, That if the adopter is survived by the legitimate parents or ascendants and by an adopted person, the latter shall not have more successional rights than an acknowledged natural child: *Provided, further*, 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: *Provided, finally*, That in the last case, should the adopted leave no property other than that received from the adopter, and he is survived by illegitimate issue or a spouse, such illegitimate issue collectively or the spouse shall receive one-fourth of such property; if the adopted is survived by illegitimate issue and a spouse, then the former collectively shall receive one-fourth the rest of any case reverting to the adopter, observing in the case of the illegitimate issue the proportion provided for in Article 895 of the Civil Code.¹¹

Under this law, the adopter, as a general rule, remained disqualified to succeed the adopted by compulsory and intestate succession, but, this time, there is an exception: if the biological parents have predeceased the adopted, in which case the adopted takes their place in substitution. This is provided for in the last paragraph of said provision:

The adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him, except that if the latter are both dead, the adopting parent or parents take the place of the natural parents in the line of succession, whether testate or intestate.¹²

F. The Family Code of the Philippines

The Family Code¹³ gives the adopted child the same rights, in relation to the adopter, as a legitimate child.

Adoption shall have the following effects:

For civil purposes, the adopted shall be deemed to be a legitimate child of the adopters and both shall acquire the reciprocal rights and obligations arising from the relationship of parent and child, including the right of the adopted to use the surname of the adopter;¹⁴

As far as the adopted's right to succeed the adopter by compulsory and intestate succession is concerned, the Family Code removed the qualification contained in articles 343 and 349 (4) of the New Civil Code and the Child and Youth Welfare Code respectively.

11. *Id.* art. 39 (4).

12. *Id.* art. 39 (last paragraph).

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

14. *Id.*, art. 189 (i).

On the other hand, the right of the adopter to succeed the adopted by intestate (and by implication, by compulsory) succession was regulated by an intricate set of rules laid down in article 190 of the Family Code. Briefly put, the adopter concurred with the adopted's biological parents. The rules of article 190 will be discussed in this paper in greater detail below.

Once again, the protean *reserva/reversion adoptiva* has undergone a sea-change, this time vanishing altogether.

G. The Domestic Adoption Act (Republic Act No. 8552)

The Domestic Adoption Act¹⁵ simplifies the rules on succession between the adopter and adopted. It simply makes the adoptive relationship an exact equivalent of that of legitimate paternity and filiation. Suppressed are the Family Code provisions (article 190) on concurrence between adopter and biological parents and ascendants.

It should be noted that the relationship between adopter and adopted is confined to the two parties. Thus, the adopted cannot inherit, by compulsory or intestate succession, from the ascendants and other relatives of the adopter. Neither can the adopter inherit in that manner from the ascendants or relatives of the adopted.

The cases of *Teotico v. Del Val*¹⁶ and *Sayson v. Court of Appeals*¹⁷ contain clear statements of the rule. In *Teotico*, the Supreme Court emphasized the rule of exclusivity between the adopter and the adopted, subject to certain limitations.

Under our law, the relationship established by the adoption is limited solely to the adopter and the adopted and does not extend to the relatives of the adopting parents or of the adopted child except only as expressly provided by law. Hence, no relationship is created between the adopted and the collaterals of the adopting parents. As a consequence, the adopted is an heir of her adopter but not of the relatives of the adopter.¹⁸

The relationship established by the adoption, however, is limited to the adopting parent, and does not extend to his other relatives, except as expressly provided by law. Thus, the adopted child cannot be considered as a relative of the ascendants and collaterals of the adopting parents, nor of the legitimate children which they may have after the adoption, except that the law imposes certain impediments to the marriage by reason of adoption.

15. 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].

16. *Teotico v. Del Val*, 13 SCRA 406 (1965).

17. *Sayson v. Court of Appeals*, 205 SCRA 321 (1992).

18. *Teotico*, 13 SCRA at 412.

Neither are the children of the adopted considered as descendants of the adopter. The relationship created is exclusively between the adopter and the adopted, and does not extend to the relatives of either.¹⁹

Relationship by adoption is limited to the adopter and adopted, and does not extend to other family members of the family of either; but the adopted is prohibited to marry the children of the adopter to avoid scandal.²⁰

In *Sayson*, the Court further stated:

...while it is true that the adopted child shall be deemed to be a legitimate child and have the same right as the latter, these rights do not include the right of representation. The relationship created by the adoption is between only the adopting parents and the adopted child and does not extend to the blood relatives of either party.²¹

II. COMPULSORY/INTESTATE SUCCESSION BETWEEN ADOPTED AND HIS BIOLOGICAL PARENTS/RELATIVES

We come now to the peskier question of the successional rights between the adopted and his or her biological parents or relatives.

A. Spanish Civil Code

Under article 177 of the Spanish Civil Code, the adopted retained the right to succeed, by legitimate and by intestacy, from his biological parents as well as his other biological relatives: "[e]l adoptado conserva los derechos que le corresponden en su familia natural, a excepción de los relativos a la patria potestad."²²

It could be implied from the first sentence of the aforementioned article, that the adopted's biological family also retained the right to inherit from him.

B. The Code of Civil Procedure (Act No. 190)

The Code of Civil Procedure allowed the adopted to succeed his biological father and mother (no mention is made of other biological ascendants or

19. *Id.* (citing I ARTURO M. TOLENTINO, CIVIL CODE OF THE PHILIPPINES 515 (1960)).

20. *Id.* (citing I JOSE B.L. REYES & RICARDO C. PUNO, AN OUTLINE OF PHILIPPINE CIVIL LAW 313 (1958 ed.)) (emphasis supplied). See, I EDUARDO P. CAGUIOA, COMMENTS AND CASES ON CIVIL LAW 312-13 (1955); I EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES 515 (1959 ed.).

21. *Sayson*, 205 SCRA at 330.

22. "The adopted retains the rights which pertain to him in his biological family except those relating to parental authority."

collaterals). Conversely, the provision gave the father and mother, also *relatives by nature*, the right to succeed him:

... *Provided, nevertheless*, That the child shall still remain the legal heir of his father and mother, and in case of the death of the child, his father and mother and relatives by nature, and not by adoption, shall remain his legal heirs.²³

C. Act No. 3977

This law reproduces the provision of the Code of Civil Procedure on reciprocal succession between adopted and biological parents and relatives, qualified only by the *reserva adoptiva*.

D. The New Civil Code

The Civil Code of 1950 provided that biological parents (again, there is no mention of other blood relatives) were the compulsory and intestate heirs of the adopted, in default of the legitimate children and descendants. In the new Civil Code, article 342 provides that "the adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him."²⁴

Puzzlingly, the new Civil Code was silent on whether the adopted retained the right to inherit, by compulsory or intestate succession, from his biological parents. Tolentino had this to say on this matter:

The present Code has omitted the express provision of the Rules of Court that the adopted child shall remain a legal heir of its parents by nature. Notwithstanding this omission, such provision must be considered as still in force. It is not inconsistent with any provision of the present Code, and can be considered in force by virtue of Article 345. Besides, succession, unless otherwise provided by law, is reciprocal. Under Article 342, the parents by nature inherit from the adopted child; by reciprocity, the adopted child must inherit from his parents.²⁵

To the same effect was Caguioa's opinion,²⁶ as well as that of Paras²⁷ and Padilla.²⁸

23. Act No. 190, § 768.

24. NEW CIVIL CODE, art. 342.

25. ARTURO M. TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 705 (1985 ed.).

26. I EDUARDO P. CAGUIOA, COMMENTS AND CASES ON CIVIL LAW 481 (1967 ed.).

27. I EDGARDO L. PARAS, CIVIL CODE OF THE PHILIPPINES 712 (1981 ed.).

28. I AMBROSIO B. PADILLA, CIVIL LAW 1063 (1971 ed.).

The Rules of Court was less reticent. It provided: "The adopted person or child shall... remain the legal heir of his natural parents."²⁹

Again here, we have to skirt the question whether rules of procedure can validly provide for substantive matters not covered by existing legislation.

D. The Child and Youth Welfare Code (Presidential Decree No. 603)

Like the Civil Code of 1950, Article 39 of the Child and Youth Welfare Code is silent on whether the adopted could succeed his biological parents or other blood relatives.

Note that although the biological parents inherited from the adopted by compulsory and intestate succession, the *reversión adoptiva* established in the preceding paragraph of this article³⁰ constituted an exception.

E. The Family Code of the Philippines

The Family Code is clear on the right of the adopted to succeed his biological parents, and indeed his other blood relatives.³¹ On the matter of the biological parents' right to succeed the adopted, the Code laid down an elaborate set of rules covering six situations, involving various concurrences of adopters, biological parents and ascendants, collaterals, spouses of the adopted, and illegitimate children:

Legal or intestate succession to the estate of the adopted shall be governed by the following rules:

1. Legitimate and illegitimate children and descendants and the surviving spouse of the adopted shall inherit from the adopted, in accordance with the ordinary rules of legal or intestate succession;
2. When the parents, legitimate or illegitimate, or the legitimate ascendants of the adopted concur with the adopter, they shall divide the entire estate, one-half to be inherited by the parents or ascendants and the other half, by the adopters;
3. When the surviving spouse or the illegitimate children of the adopted concur with the adopters, they shall divide the entire estate in equal

29. The 1940 Rules of Court, Rule 100, § 5.

30. P.D. No. 603, art. 39 ("[t]he adopter shall not be a legal heir of the adopted person, whose parents by nature shall inherit from him, except that if the latter are both dead, the adopting parent or parents take the place of the natural parents in the line of succession, whether testate or intestate.").

31. FAMILY CODE, art. 189 (3) ("[t]he adopted shall remain an intestate heir of his parents and other blood relatives.").

shares, one-half to be inherited by the spouse or the illegitimate children of the adopted and the other half, by the adopters.

4. When the adopters concur with the illegitimate children and the surviving spouse of the adopted, they shall divide the entire estate in equal shares, one-third to be inherited by the illegitimate children, one-third by the surviving spouse, and one-third by the adopters;
5. When only the adopters survive, they shall inherit the entire estate; and
6. When only collateral blood relatives of the adopted survive, then the ordinary rules of legal or intestate succession shall apply.³²

As already noted above, the *reversión adoptiva* of the Child and Youth Welfare Code was suppressed.

Article 190 suffers from two defects:

1. Only total intestacy is provided for; nowhere does the article specify the legitimes of the enumerated heirs, leaving unclear how much the adopted could dispose of by will.
2. The enumerated instances do not cover all the possibilities. Not provided for are the following combinations:
 - a. legitimate or illegitimate parents/legitimate ascendants alone
 - b. legitimate or illegitimate parents/legitimate ascendants + surviving spouse + adopters
 - c. legitimate or illegitimate parents/legitimate ascendants + illegitimate child + adopters
 - d. legitimate or illegitimate parents/legitimate ascendants + surviving spouse + illegitimate child + adopters
 - e. legitimate or illegitimate parents/legitimate ascendants + surviving spouse
 - f. legitimate or illegitimate parents/legitimate ascendants + illegitimate child
 - g. legitimate or illegitimate parents/legitimate ascendants + surviving spouse + illegitimate child

These two defects in the law presented serious problems — problems that could be answered only by inference, conjecture and surmise.

F. *The Domestic Adoption Act (Republic Act No. 8552)*

32. *Id.* art. 190.

Then came the Domestic Adoption Act, which took effect in 1998.

First the good news: the adopter excludes the biological parent as the adopted's³³ compulsory and intestate heir. Gone are the numerous combinations of the Family Code. According to the new law, "[i]n legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation."³⁴

Two questions, however are now unanswered.

In default of the adopter, do the biological parents succeed the adopted? The last sentence of section 18 of the statute which reads, "[h]owever, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern."³⁵ is unavailing to provide an answer to that question because it merely states in effect that the adopted can by will institute his biological parents to (the free portion of) his estate, and vice-versa. This is of course superfluous, because the rule is that a testator can institute anyone by will, provided the heir/legatee/devisee is not incapacitated.³⁶

The other question is: does the adopted have the right to succeed his biological parents or relatives by compulsory or intestate succession? The answer is a deep and baffling silence. Section 16 of the same law cannot be looked to for an answer:

Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).³⁷

"All legal ties" are severed — therefore the legal ties of succession too? Hardly. Note that the section heading of the statute indicates *Parental Authority*. What then?

This is an unnecessary obscurity in the law, particularly in view of the fact that the predecessor of the law — the Family Code — despite its own imperfections, already provided for clearly the right of the adopted to

33. The law used the word "adoptee" to refer to the adopted.

34. DOMESTIC ADOPTION ACT OF 1998, art. V, § 18.

35. *Id.*

36. NEW CIVIL CODE, art. 842:

One who has no compulsory heirs may dispose by will of all his estate or any part of it in favor of any person having capacity to succeed.

One who has compulsory heirs may dispose of his estate provided he does not contravene with the provisions of this Code with regard to the legitime of said heirs.

37. DOMESTIC ADOPTION ACT OF 1998, art. V, § 18.

succeed his biological parents and other blood relatives by compulsory and intestate succession.

III. CONCLUSION

The Civil Code provides, "[n]o judge or court shall decline to render judgment by reason of the silence, obscurity and insufficiency of the laws."³⁸ In this situation, there is silence, obscurity and insufficiency indeed! Judges, however, (as also teachers, commentators, law practitioners, students and bar reviewees) have to have an answer, and therefore have to make the best of a bad situation. They can take either of two positions.

First is that the adopted has no right of compulsory and intestate succession to his biological parents and relatives. In support of this position, the following may be advanced:

- a) The non-inclusion of article 189 (3) of the Family Code manifests and intends to suppress it.
- b) In order for the right to succeed to exist, there must be a provision of law granting it.
- c) There seems to be intent in the new law to sever all links between the adopted and his biological family. This can be gleaned from sections 16, 17 and 18, above referred to.

The opposite view is that the adopted retains his right to succeed his biological parents and relatives. The following arguments may be put forward:

- a) The repealing clause³⁹ of the new law does not explicitly repeal Article 189 (3) of the Family Code. Repeals are not favored; in case of doubt, an anterior law stands. Additionally, the adopted's right to succeed his biological parents is neither contrary to, nor inconsistent with, the adoptive relationship. Proof of this is that this right of succession had existed in prior adoption legislation.
- b) The right in question is favorable to the adopted. Doubts should be resolved in favor of the adopted.

38. NEW CIVIL CODE, art. 9.

39. DOMESTIC ADOPTION ACT OF 1998, art. VIII, § 26 ("[a]ny law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with the provisions of this Act is hereby repealed, modified, or amended accordingly.").

In the recent case of *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*,⁴⁰ the Supreme Court, in an *obiter*, stated that "under article 189 (3) of the Family Code and Section 18 of the Domestic Adoption Act, the adoptee remains an intestate heir of his/her biological parent."⁴¹ Being an *obiter*, the statement of course does not bind. The issue in that case was whether an illegitimate child, upon adoption by her natural father, could use the surname of her natural mother as her middle name. Furthermore, there are *obiters* and *obiters*, and this particular one is, at best, less than impressive. The Domestic Adoption Act will be scanned in vain for any reference to the right of the adopted to succeed his biological parents by compulsory and intestate succession.

And so the matter stands. Until the issue is presented squarely for judicial resolution, or the law is amended, the question must remain unanswered. Meanwhile, all of us ordinary mortals must remain groping in the dark.

40. *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia*, 454 SCRA 541 (2005).

41. *Id.* at 552.