

LAW OF SUCCESSIONS

CHAPTER ONE

DEVOLUTION OF SUCCESSIONS

General considerations of THE devolution of A succession

1) The Concept of Patrimony- is the estate that descended from the father to his descendants. However, this does not exclude the estate that descends from the mother to her descendants and/or from other ancestors in the paternal as well as in the maternal line.

2) Opening of Succession- Article 826 of the CC, the succession of the person opens at the place he/she had his/her principal residence (174) at the time of his/her death.

3) Things making up a Succession- Art. 827 - As a matter of principle, all of the property which were owned or possessed by the deceased on the day of his/her death (hereditary estate) shall constitute his/her inheritance.

*Life insurance Art. 691 Com C.

*Public Servants' Pensions Proclamation № 345/2003 and the amendment Proclamation № 424/2004. Pension is money payable to the spouse, children or parents of the deceased person based on conditions

Art 35(1) of this Proclamation, if a person who is a government employee dies, the widow or the widower would be entitled to receive 50% of the pension to which the deceased was or would have been entitled.

The spouse or the relative of the pensioner has no right to pass the pension allowance to which he/she is entitled to his/her heirs when he/she (the spouse or the relative) dies. Therefore, pension allowance does not constitute the hereditary estate of the deceased.

Pension money is not the estate left by the deceased at the time of his death. The purpose of pension is to support the pensioner when he is unable to earn his livelihood through his work or to support those who were dependent on the pensioner (only spouse and very close relatives)

*indemnity cannot form part of the inheritance of the deceased. For instance, if the person who is entitled to receive the indemnity payment dies, the money cannot go to his heirs.

3) Capacity to Succeed- Articles 830 & 831, the heir and/or legatee must survive the deceased (alive at the time of the death of the deceased) & the heir and/or legatee must not be unworthy.

the law assumes that such persons have died simultaneously (at the same time) and hence no one has survived the other (called Commorientes) Art. 832.

these persons have not survived one another and they cannot succeed each other.

Art. 833, if the heir himself dies, all the rights of the heir in the succession of the deceased shall pass to the heirs of the heir.

in order to succeed the deceased, the heir and/or the legatee must not be an unworthy person. An heir and/or a legatee can become unworthy because of his criminal actions, 838- 840

When the father of a merely conceived child dies, the law considers that the interest of the child requires his consideration as a person.

The law of succession makes no distinction based on the status of a child whether such child is born in marriage, outside a wedlock marriage or he is an adopted child.

with respect to nationality of the heir, no distinction. But this rule is subject to the provisions of the CC which restrict ownership of immovable property by foreigners. Arts 390 — 393.

INTESTATE SUCCESSIONS Articles 842 to 848

the deceased leaves no will at all or a court for various reasons invalidates the will made by him, it is said that the succession is intestate.

Devolution according to the degree of relativity

A) First r/p- Children or other descendants are number one candidates to succeed a person (See Art. 842(1)). representation could be taken as an exception to the rule of survivorship.

B) Second r/p- the father and the mother of the deceased. In the case where one of the parents has died before the deceased, such parent shall be represented by his/her children (or other descendants).

C) third r/p- If the deceased is survived by all of the four grandparents, half of the hereditary estate shall be devolved on the paternal grandparents and the rest half will go to the maternal grandparents.

D) forth r/p- A person has eight great-grandparents, four on the paternal line and the other four on the maternal line.

Paterna paternis-materna maternis Art 851

The exceptional rule of paterna paternis materna maternis is designed to allocate an immovable property that is obtained by the deceased from one of the lines by way of donation or succession to the heirs of the line from which the property is obtained.

Escheat- When there are no heirs of the deceased up to the 4th relationship, the property shall devolve on the State.

Representation and renunciation- Representation is an exception to the requirement of surviving the deceased. As a rule, the heir must survive the deceased.

Renunciation is a refusal to accept the succession. A person may renounce the succession for various reasons. If he is relatively in a better economic position.

WILLS

A will is a juridical act that shall have a legal effect after the death of the testator or the will maker.

The law is very strict with respect to the formality of making a will. A will that does not satisfy the required formalities is invalid by the court of law.

Will is a unilateral juridical act which is different from contract, in which the latter needs at least two parties.

* Conditions for the validity of wills

1) Personal nature of wills - No any other person may take part in the making of a will on behalf of the testator or by way of assisting him.

According to Article 858 of the Civil Code, no two persons may make a will together using the same document, no joint wills.

2) Capacity to make a will- testamentary capacity commences upon the completion of the 16th year. Prior to this, the minor cannot make a will even with the consent of his/her legal representative. Art. 295 of RFFC .

judicial interdicted Arts 861, 368 and 862.

3) Provisions difficult or impossible to execute- Art 865 (1)- For instance, Ato Ayalew, in his will, gave the building of the Ministry of Education to his friend Lemma.

4) Illicit provisions- 865- If the purpose of the will is unlawful or immoral, its provision shall be of no legal effect.

4) Violence- Violence vitiates the freedom of making, modifying and revoking a will. it may not necessarily be directed toward the testator. Articles 1706-1709 and 1808-1818 are the provisions of the general contracts and they shall apply by analogy.

5) Undue influence- Although such influence affects the mind of the testator, it is not considered as a serious threat. However, there are exceptional circumstances in which undue influence could be a ground to invalidate a will or reduce the amount indicated in the will.

6) Fraud- In the case of undue influence, the testator seeks others' help. In the case of fraud, the testator may not necessarily be in a weak position. For instance, the fraudster may promise to do something to the testator, if the testator makes a will to the benefit of such a fraudster.

7) Error- it is not logical to invalidate a will for every trivial or minor error.

* Form and proof of wills- There are three types of wills (See Art 880).

1) A public will is a will that is read in the presence of the testator and of four witnesses. The testator can write the will in the presence of the witnesses. He/she can also write the will in the absence any person. He may write the will by himself or he may get it written by another person under his dictation in the presence of witnesses or even in the absence of the latter.

The law prescribes the fulfilment of very stringent formalities when one makes a will. The reason is the testator is not in a position to defend his/her positions if someone makes some fraudulent act against the will.

A deaf person, If he is unable to read the contents of the will, his presence serves no useful purpose as he has no mechanism of knowing the contents of the will.

2) Holograph will is a will that is totally made by the testator himself/herself in the absence of witnesses. Only literate persons may make it.

3) Oral will is a will made verbally to two witnesses. Art 892 of the Civil Code, the testator does not make an oral will under normal circumstances. He makes such a will when he feels that he is going to die within short period of time, particularly after accidents, shocks or similar situations. It can be said that oral will is not a proper will. The testator can make only restricted testamentary dispositions through an oral will.

* Revocation and lapse of wills- By another will, By an express intention to revoke, made in the same manner as a will, i.e., this must comply with the formalities set out by the law, By destruction, By alienation of the thing bequeathed

Lapse of will takes place by the operation of the law.

1) a holograph will shall lapse where it is not deposited with a notary or in a court registry within seven years since it has been made.

2) If a child is born after a will is made (whether a public or a holograph will) such a will, shall lapse if the newly born child accepts the succession.

3) However, such a legacy cannot lapse where the marriage is dissolved by death (but by court or divorce, it will lapse)

4) When the legatee dies before the testator.

5) When the legatee cannot succeed the testator, unworthiness.

6) When the legatee does not want to take the legacy.

* Contents and interpretation of wills- Art 909 lists down the contents of a will. But this should not be seen as an exhaustive list.

Courts, especially the Supreme Court may construe (or interpret) a will.

The general rule of interpretation is that words must be construed in their usual, or literal, sense.

* Conditional Legacies- suspensive condition or condition precedent, the legatee shall wait until a certain time lapses or until a certain circumstance occurs.

Resolutive condition or condition subsequent is a situation where the legatee brings back what he received from the succession when a certain condition is fulfilled.

* Charges- Charge is the order of a testator against his heirs and/or legatees in which he binds them to take some responsibility or take care of one or more persons.

* Substitutio vulgaris- An alternative heir was appointed in the event that the person instituted as the primary heir failed to become the heir (e.g. because he died before the testator or refused the inheritance). Article 928

* Entails- It is a restriction of inheritance to a limited class of descendants for at least several generations. It is mainly linked with real estate. The object of entail is to preserve large estates in land from the disintegration.

* Disherison- is an order passed by the testator to exclude his heirs from the succession. It usually serves as a means of punishment for the misbehavior of his heirs.

Express disherison is a kind of disherison in which the testator excludes his/her heir from the succession in an explicit manner by stating clearly that he/she has disinherited the heir.

The law does not list down what things are justifiable and not justifiable. A justifiable reason is a subjective standard.

The court has a power to examine and decide whether the reason given by the testator is justifiable or not. it cannot ascertain whether the given reason is true or false. It is not possible to pass a decision by hearing only

one party. Any statement that the testator gives is a true statement. Therefore, the heir cannot claim that the statement of the testator is untrue.

CHAPTER TWO

LIQUIDATION OF SUCCESSION

The Essence of "Liquidation" Article 944

Liquidation is the settlement of accounts or the winding up of the business. [It is] the act or process of making of clear, fixed and determined that which was before uncertain or unascertained.

Payment, satisfaction, collection, or realization of assets and discharges of liabilities; winding up or settling with creditors and debtors.

heirs-at-law 1061(1) and/or legatees by universal title 915(1)

The Guiding Principles of Liquidation - Art. 942- So long as a succession has not been liquidated, it shall constitute a distinct estate.

But, what does "a distinct estate" mean? Literally, a distinct estate means some property set aside for a special purpose.

the law considers the succession a distinct estate. The primary reason behind this move seems to be the protection of the interests of rightful persons.

Who is the "Liquidator"?- Article 946

The liquidator, therefore, is nothing but the institution designated with the task of carrying out the liquidation of a given succession, natural or physical persons.

Mechanisms of Appointment of a Liquidator

1) Designation by Law- Where a person dies wholly intestate; or where the deceased dies without leaving a will at all; or where he dies leaving a will, but the will is either subsequently declared invalid by court or fails to appoint a liquidator, the function of liquidator will devolve to his heirs-at-law.

Article 947 “ipso facto” or “Designation by the law” - heirs automatically become liquidators by the operation of the law. They assume the office because of the mere fact that they happen to be the heirs-at-law of the deceased.

2) Appointment by Will- any person he thinks fit but he may choose one or more of his heir-at-law to be the liquidator of his succession.

the deceased may have left a valid will but had failed to make any express disposition as to whom he wishes to be the liquidator. Article 948(2) “**ipso jure**” to the legatees by universal title appointed in the will.

Akin to the term “**ipso facto**” in Article 947, the term “**ipso jure**” in Article 948(2) of the Civil Code appears to be confusing. The two terms seem to be misplaced erroneously. They both would have been more sensible if they switched places.

3) Incapable Liquidator- A person may be the heir-at-law of the deceased or might have been appointed a legatee by universal title by the deceased in his will.

Eg the law assigns the tutor of the incapable person to represent the latter.

4) Appointment by Court- It appoints a liquidator upon the application of any interested person. In the present context, a legatee by singular title or the public prosecutor could be regarded as interested person.

5) Other Cases of Judicial Appointment- The court may replace a liquidator already appointed in terms of Articles 947, 948, 949, or 950. Z grounds r 950 (1,2,3)

the court acts upon the application of any interested person (an heir-at-law, a legatee by universal or singular title, or the public prosecutor)

Nature of the Functions of the Liquidator- The function of liquidator is voluntary. No person is bound to take the office of the liquidator without his consent & may resign after starting his functions (Article 954(2) cum. Article 961).

Powers and Duties of the Liquidator

the liquidator may not resign while there are perishable goods out there that seek his immediate attention.

Powers and Duties of the Liquidator

- Search for a will of the deceased - Determination of persons who are called to the succession
- Determination of the property that constitutes the succession
- Administration of the succession

Option of Heirs and Universal Legatees

Since succession is obviously an individual right, any person who has right to succeed a deceased person is at liberty to make an election as to whether he will accept the succession.

the rights of such creditors shall not be affected by the heir renouncing the succession in fraud of their interests. the creditors may, where it is prejudicial to them, apply to the court to annul the renunciation by invoking the device of “**Actio Pauliana**”

Certificate of Heir- an heir can before that apply to the court and obtain a “certificate of heir” Article 996 (1)

Petitio Haereditatis A lawful heir may sue the person who has obtained a certificate of heir without a valid title with a view to redeeming his right. The suit such an heir institutes is technically called the action of “**petitio haereditatis**”. Article 999

Art 1000- It is no good even if the defendant invokes the provision of property law that authorizes acquisition of ownership through possession in good faith. He cannot avail himself of this provision by claiming to have become the owner of such property as a result of his good faith.

administration succession- The liquidator is expected to administer the properties of the succession with the prudence and zeal of a **bonus pater familias**¹. must act as honestly and diligently as a good head of a family does.

payment of debts claimed from the succession-

1) debts which are imputable to the deceased- include the expense of the deceased's funeral, debts he assumed during his lifetime, claims of maintenance by his rightful, and properties he bequeathed to legatees by singular title.

claimants of these particular debts are creditors of the deceased, rather than of the succession.

2) debts that are attributable to the succession- include the expenses of administration, liquidation, and partition of the succession such as those incurred for affixing of seals, drawing up of inventory, preservation of property, partition and delivery of the inheritance to the heirs, etc.

for purposes of payment, creditors are treated differently on the basis of the priority attached to the debts they claim.

Funeral expenses - Articles 1014 (a) and 1015 (1). Expenses incurred for purposes of administration and liquidation should be paid next to the funeral expenses art 1014 (b)

Debts of the Deceased - could be contractual, non-contractual, or penal by nature.

Creditors with special privilege are such creditors as workers claiming payment under employment contracts. Ordinary creditors are creditors who do not have any security or who are not conferred with a special privilege by the law.

Ordinary creditors whose debts are exigible are creditors with liquidated and mature claims.

creditors not exigible r wiz debts that are not yet liquidated and mature, those who have conditional claims over the estate may require deposit of securities from the liquidator to ensure that he will later pay their claims when they fall due or when the conditions attached to the claims materialize.

A legacy by singular title is a disposition whereby the testator calls a person, otherwise called a legatee by singular title, to receive a specific

property which forms part of the inheritance, 912

In the normal course of events, a legatee by singular title may not get his legacy at all if the entire property of the inheritance is spent early serving the debts with precedence.

closure of liquidation - Article 1052 - 1059

CHAPTER THREE

PARTITION OF SUCCESSION

After the liquidation process comes to an end, the following phase is partition of the remaining hereditary estate among the heirs and universal legatees.

This phase shall exist only if some property is left from the liquidation phase.

Partition may not necessarily follow when liquidation comes to an end. The coheirs may jointly own the property that they acquired from the succession.

The joint ownership of property by the coheirs is different from the community of property of spouses. partition of the property may be made after some time if a co-heir applies to the court

-In the case of spouses, every property in the hands of the spouses is presumed to be a common property, while only the property obtained from the succession is the common or joint property of the coheirs.

-The common property of the spouses remains their common property so long as their marriage exists, but the joint ownership of coheirs stays only for a limited time, unless the co-heirs agree to jointly own for longer time.

-The spouses have an equal right over their common property, but the coheirs may have a different proportion, especially in the case of testate succession.

Art. 1064 (1) seems to lay down yet another exception to Art. 1062.

Collation by coheirs-art 1064- 1078 -bringing back of properties that were given by donation to a descendant by the ascendant during the lifetime of the latter into the succession. Collation is devised to bring equality among the coheirs.

it is only descendant that has accepted the succession who should be obliged to bring back the donations he/she has received from his/her ascendant or parent. The testator may also exempt his descendant from collation

Modalities of partition- art 1079- 1096- be made as per the terms of the agreement to be made as between the coheirs.

Where the coheirs fail to agree on how partition should be made, it shall be made in accordance with the provisions of the law.

As a rule, partition must be made in kind.² That is, instead of selling the property and dividing the liquid cash or the money, the law considers it good to divide the property as it is.

Z r/n b/n or among coheirs after partition- Basically, there will be no binding relation, whether contractual or legal. However, arts 1097- 1112.

Conventions relating to an inheritance

the law does not recognize any agreement made in connection with the inheritance of a person while he is still alive.

Any agreement as to how the succession of the deceased shall devolve on the heirs or an agreement made between third parties and heirs, particularly before the opening of the succession shall be of no effect.

Pacts on Future Successions- A “pact” is an agreement made between two or more people. The law does not allow people to make agreements on a succession that has not yet opened.

Partitions made by Donations- any contract or unilateral undertaking relating to the succession of a person who is alive will have no legal effect, unless it is expressly authorized by law.

² Article 1086 (1), *Id.*

However, under certain conditions, the law allows certain persons to validly partition their properties by way of donations while they are still alive - Article 1117

Such distribution is technically different from succession. Nevertheless, without prejudice to their technical differences, the two processes produce somehow similar legal effects.

partition should be made in compliance with the formality requirements prescribed by the law for donations **inter vivos**.³ Articles 2427 through 2470 of the Civil Code, which specifically govern donations, provide for those requirements.

Donation **inter vivos** is a donation made while the donor is alive. The donee receives the donated property during the lifetime of the donor.

Donation **mortis causa** is a donation given effect after the death of the donor. It is similar with a bequest left by a will. As such, it is subject to the provisions governing wills. art 2428 .

³

Article 1118, *Id.*

