

**SUGGESTED REFORMS OF CIVIL CODE PROVISIONS ON
INTESTATE SUCCESSION BASED ON
FILIPINO CUSTOMS**

(Continued)

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5. *The Moros*.—Succession matters among the Moros are governed by the Luwaran Code, which has preserved the ancient customs of preferring the surviving spouse to all other heirs, except children, and of allowing the same to inherit in concurrence with the latter. The salient feature of the Luwaran Code lies in the marked discrimination against the wife, or, more accurately yet, against a woman, in the amount of share she takes in the different cases wherein she is called to inherit. Thus, (1) when the husband dies leaving no children she takes only one-fourth of the husband's property (Art. LXXXIII) : whereas, if the wife dies under the same circumstances, the husband receives one-half of the wife's property (Art. LXXXI). Again, when the husband dies and leaves children or grand-children, the wife inherits only one-eighth (Art. LXXXIV) : whereas, under the same circumstances, *mutatis, mutandis*, the husband gets one-fourth (Art. LXXXII) : thus the wife always takes only one-half of what the husband takes under the same circumstances. The same may be said as regards the shares that the son and a daughter take, as may be seen from the following Article of the Luwaran Code:—

“ARTICLE LXXX

“Section 1. A son, the only child, shall inherit all the estate of his father and mother.

“Section 2. A daughter, the only child, shall inherit half the estate of her father and mother.

“Section 3. Two or more sons, the only children, shall share the estate of their father and mother equally.

“Section 4. In case one son and one daughter are the only children, the estate of the father and mother shall be divided into three equal parts, of which the son shall receive two parts and the daughter one part.

“Section 5. In case of multiplications of sons and daughters, the estate shall be so divided as to give each daughter half the share of one son.”

Article LXXXV of the Luwaran Code gives the order of intestate succession under the Moro law as follows :

“Sec. 1. A father or son or wife or husband can not be disinherited by other heirs.

"Sec. 2. A son disinherits full brothers and sisters and other heirs.

"Sec. 3. Full brothers and sisters disinherit more remote heirs.

"Sec. 4. A grandfather, a father, and a grandson disinherit a brother and a sister from the mother alone to other heirs.

"Sec. 5. A grandfather, brother, son and uncle or aunt and uncle or aunt on the father's side disinherit a full nephew or niece, or more remote heirs.

"Sec. 6. A full nephew disinherits another nephew who is not from a full brother or sister.

"Sec. 7. A nephew on the father's side disinherits a full cousin and more remote heirs.

"Sec. 8. A full uncle or aunt disinherits an uncle or aunt on the father's side.

"Sec. 9. A full cousin disinherits a cousin on the father's side.

"God's knowledge surpasses our knowledge."

6. *Albay*.—The prevailing inheritance customs are more or less in conformity with the present legal provisions on the subject. The three centuries of Spanish rule must have modified them gradually until they have reached their present stage of development. However, there are still a few old customs which have survived, and the following may give an idea of what they are today:

(1) When a person dies intestate, his children and descendants succeed him. The children get equal shares in the inheritance. However, the youngest who is usually the pet of the family is given liberty to choose the best share. Those who have had the benefit of education are given smaller shares, and in not a few instances, they renounce their inheritance in favor of the others. Natural children do not take a fixed or definite share in the inheritance, so whatever they get depends upon the charity of the other heirs.

(2) The surviving spouse does not get any share from his or her deceased consort's estate. However, he or she becomes the administrator thereof with full power to encumber, mortgage or alienate any portion of the property.

(3) If the deceased leaves some ascendants, the brothers and nephews do not participate in the inheritance.

(4) If he dies without leaving any ascendant, his whole estate is inherited by his brothers in equal shares. If he is survived by his parents, the latter succeed him.

(5) If he leaves none of the foregoing, his nearest relatives inherit his property. The term "nearest relative" however, does not have the meaning that it has under the Civil Code. It is not

determined by the proximity of degrees of relationship. Its construction depends upon the whims and caprices of the elders who decide who among the various relatives should succeed the deceased. The usual practice is to give a share to every one regardless of the degree of relationship.

A rather unique custom is that which requires that the house of the parents be given to the youngest son in the family. It is a practice strictly adhered to by everybody. The youngest son always inherits the house regardless of its value.

Dependents or servants who have rendered faithful service are always given some share in the inheritance. Sometimes, they get a share equal to that of the other heirs. (Atty. J. T. S. Virac, Albay.)

7. *Batangas*.—Very few persons, especially those in the barrios ever make a will in disposing of their property, and judicial intervention is seldom needed in the distribution of inherited property, which, by the way is well distributed, almost everyone owning a small piece of land. The majority of the people being ignorant of the provisions of the Civil Code, the following is observed in succession matters:

(1) When a person dies leaving no wife, but descendants and ascendants, the latter get the property. There is however no uniform manner of distribution or division of the property except when all such descendants are of legal age. But, if the parent dies while the youngest is small he gets a larger share, the ratio being usually one and one-half of what the others get.

(2) If the deceased leaves a wife and children, the wife administers both the conjugal property and the private property for the benefit of the family.

(3) If the deceased leaves only brothers and parents the former get the property unless the parents are too poor in which case the brothers must support the parents out of the income of the property thus inherited.

(4) In the absence of the above, the ascendants get the property, provided there are no nephews, as in this case the latter get it, under the same condition as when brothers get it in concurrence with such ascendants.

(5) If there are none of the above, the nearest relative gets the whole property.

(6) Natural and illegitimate children do not get anything, on the ground that they are a curse to the honor and reputation of the family. (Atty. D. S. C. Batangas, Batangas.)

8. *Bulacan*.—There are many interesting inheritance customs to be found in the following paragraphs which mark at the same time in a way the order of intestate succession obtaining in this province:—

(1) When there are legitimate children, the property usually goes to the children, but out of respect to their mother, she is usually allowed to administer the property until she marries for the second time, or dies as the case may be. Legitimate children are generally given equal shares in all the properties of the deceased person after deducting of course the just debts and funeral expenses. In certain cases the youngest is given a certain consideration on his share in the inheritance. Likewise, a daughter is usually given what they term “mejora” despite the fact that the parent did not say anything about it is. This is considered as a moral obligation on the part of the brothers in recognition of the services that the sister has rendered as a housekeeper and in taking care of the mother or the father at the death bed.

With regard to the youngest child, he or she is given a little preference on account of the fact that usually this child is considered as the “pet” of the family. Another reason for this is that the parents seldom survive to see the youngest married or old enough to make his own living. The usual consideration or advantage given to him is the “house” of the parents. In some cases, where the property consists only of a carabao, a house, and a small parcel of land (a solar), the parents usually order at their death-bed that the youngest child be allowed to inherit the whole property. This is especially true when the parents die before the marriage of the youngest of the children. The reason for this disposition is that the parents have already spent something for the older children on account of their marriage; so the small property is designated to defray the expenses of the marriage of the youngest child.

(2) If there are no children and the property is very small, the surviving spouse is generally accepted as the sole and exclusive heir. However, in some cases some relatives who may happen to be interested in the property question her exclusive right and then create the whole trouble. They usually settle this amicably before a *teniente del barrio* or a man whom they believe to be authoritative in this matter. This trouble happens when the deceased died without making a verbal disposition of his property previous to his death. As in case he disposes of his property before he breathes his last, especially when he is at his death bed, this disposition is held to be sacred and is sel-

dom disobeyed. They call this "testamento" just the same, despite the fact that no written document evidences the same.

(3) The parents or ascendants never get a share when there are either children or spouse; but when none of these survive, the parents inherit. If the property is of little importance, the parent with whom the deceased has been living or whom he liked better gets it.

(4) Brother's or nephew's shares: The same as in the Civil Code.

(5) Any other relation's shares: in the absence of the above-named persons the person living with the deceased as an adopted child, though not legally adopted, is considered to be the sole heir to the deceased. And in some cases the right of the adopted child is considered even superior to the rights of the brothers or nephews of the deceased.

(6) As to the rights of a natural child, unless such child is brought up and is living with the deceased, which, by the way, it seldom happens, he is considered to be entitled to nothing as he is looked upon with contempt. The prevailing idea is that a natural child does not inherit intestate and that he may get a share only when the deceased parent verbally willed it. Such is tolerated among the poor, but when it comes to the case of a rich family, some trouble arises which oftentimes reaches the courts of justice.

With reference to the shares of dependents or servants of the house, the verbal disposition of the deceased is the law. It is to be noted that in many cases these persons who are serving a well-to-do family are relatives, distant or near, who are poor and thus considered as "alilang kanin," because they receive no pay and merely get free subsistence and other necessities. When the servants are like this they are usually given a share of at least twenty-five (P25.00) as a recognition of their services to the deceased. This seems to be a small pay but the favor or privileges granted to the parents of these "alilang kanin" whether in allowing a loan or in the cultivation of a parcel of land of the well-to-do person are more than a sufficient compensation before the eyes of these poor people. (Atty. D. G. D., Malolos, Bulacan.)

9. *Ilocos Norte*.—The order of succession in this province follows:

(1) Children and descendants who divide the property share and share alike. Real property is not generally divided, the fruits thereof being merely distributed.

(2) The surviving spouse, unless the same marries for a second time, is virtually the owner of the property as he or she administers at her own will, without any interference from anybody. But the community is the surviving spouse's altogether.

(3) When there are neither children nor surviving spouse, brothers and sisters get the property. Parents very seldom meddle with it, the reason being that they are too old to need much for their subsistence and comfort; but they are given support from the property thus inherited. Brothers take share and share alike, even if they are only of half blood. Nephews take the share of a deceased parent.

(4) Parents very seldom take inherited property. When some such right accrues to them they leave it to their nearest younger relatives and in the absence of the same they even give it to the children of first cousins.

(5) In the absence of all the above, the nearest relatives inherit.

(6) The State or municipality never meddles in these matters.

(7) Natural children are only given a share surreptitiously, if ever. If the parent has ordered a share given to them, they get it, and unless this is done they take nothing even if they are recognized and live with the legitimate children. They never raise any trouble about this.

Dowry property given by the husband to the wife, in case of the latter's death never reverts to him but it goes to the parents of the deceased wife, as it is considered sacred.

When property under the administration of parents is misused, children never bring the matter up to the courts. Instead they merely consult the elders of the family who intervene to settle the matter. (Public Lands Inspector C. J., Sarrat, Ilocos Norte.)

10. *Ilocos Sur*.—There is a prevailing custom in this province to the effect that a dying person calls near his death-bed all the members of his household and then and there tells them the persons who are to inherit the property left by him and the share that each should receive. Such a way of disposing the estate of the deceased is never put to writing but the words of a dying person are so sacred that they are always followed strictly unless it is grossly manifest that the deceased committed a great injustice in the distribution of his estate to the direct heirs.

The legitimate children are the first called upon to succeed in the estate of their deceased parents. The children divide the

estate share and share alike. No matter whether any of the children receive expensive schooling during the lifetime of the deceased parent, the same will not affect the equal division of the property. The reason, perhaps, for this is that all the children had all equal chances while the parent was still living. But if one of the heirs receives during the lifetime of the deceased, a valuable gift such as a real property, that is brought to collation but no account need be made for the fruits thereof.

Adopted children altho not legally recognized, are considered as legitimate descendants and enjoy the status of the latter, particularly regarding the succession to the intestate estate of the deceased adopted parent. In case such adopted children survive with legitimate children, the former are given the same share as the latter.

(1) In case the mother survives with the children, the latter do not usually ask for the the division of the property altho they are already of age but let the mother manage the property in any way she deems wise without being later called to account to the heirs on the result of her management of the estate. As to the father, he administers the property only when the children are minors, but once they are no longer under age, the heirs take the management of their own shares of the estate. The reason, perhaps, why surviving mothers are given more consideration than surviving fathers is due to the fact that the latter are more of spendthrift and more inclined to vices than the former.

(2) If the deceased had no children and the spouse survives with the parents of the deceased the surviving spouse, and not the parents, is first called to inherit the property of the deceased. This rule is the more true in cases where the parents have contributed nothing to the amassing of the family wealth. It thus depends upon the surviving spouse whether the same should give or not any share to the parents or ascendants of the deceased.

(3) If an ascendant survives with the children of the deceased and the former is already of old age and has nothing for his support, he is usually given for that purpose a share of the estate, for him to keep until his last days, when it reverts to the estate.

(4) Brothers, nephews or any other relatives are not considered in case there are surviving children or spouse. If they were, however, living in the house of, and had rendered some services to, the deceased, they are given some share to be determined by the surviving children. If there are neither children nor spouse nor ascendants, brothers come next in order to suc-

ceed and if there are no brothers, all the other relatives succeed without distinction as to the proximity of their relationship with the deceased.

(5) Children not legally acknowledged have no standing before the eyes of the heirs. They are not even given any support. But if before the death of the deceased, he assigns a certain share to his illegitimate children, the will of the deceased is respected, as already stated elsewhere in this memorandum.

(6) No fixed shares are given to the other dependents of the house. The share given to them usually depends upon the liberality of the deceased or of the surviving heirs. But if it happens that the deceased has left neither children, spouse, ascendants nor relatives, the whole estate goes to the dependents or servants of the family, who divide the same equally among themselves. (Atty. P. R. P., Sta. Cruz, Ilocos Sur.)

11. *La Union*.—From the following paragraphs, the order of intestate succession in this province may be drawn:

(1) The legitimate children without distinction as to age or sex succeed the parents. They divide the property inherited in equal parts after the funeral expenses had been deducted. If they have natural brothers the latter are, as a rule, not given any share in the property especially when the legitimates are not in good terms with their natural brothers.

(2) The surviving spouse has no definite share in the deceased consort's property, but he is entitled to administer same during the minority of the children. Upon reaching majority or even before, on agreement of the parties, the property is divided by the children, no provision, as a rule, being made for the surviving spouse. He or she depends entirely upon the generosity of his children by living alternately with them. There are cases, however, when some property is left undivided for the use of the surviving spouse during the time that he or she lives; the same to be divided among them (children) upon his or her death.

(3) In the absence of descendants, the parents inherit the property of the deceased children to the exclusion of other relatives. Cases, however, are not lacking in which the deceased adopted a child and in that even the adopted child get some share of the property usually the portion indicated by the deceased when still living. That desire is always respected by the surviving relatives.

(4) In the absence of either descendants or ascendants, the brothers and nephews, the latter in representation of their deceased parents, succeed in equal parts, that is, the children of one deceased brother receive as much share as that of a surviving brother.

(5) I am not aware of any custom in my locality where other relatives are given any share of the deceased property, especially when there are descendants, ascendants or brothers.

(6) Not legally adopted children in intestate succession are not given a share at all of the property of the deceased. There are exceptions, however, when before his death the deceased expressed the desire to give certain particular parcels of land or property to his illegitimate child or children. This is true also with the dependents or servants of the house. (Atty. G. B. Bauang, La Union.)

12. *Manila*.—Attempts were made to secure some particular or distinguishing customs on intestate succession in this city, but they were of no avail, as the provisions of the Civil Code have established a strong foothold in the locality.

13. *Occidental Negros*.—Not very much information was obtained in this province; but the few remarks hereunder jotted down may prove of some interest in the development of the subject of this thesis.

Upon the death of the father or the real head of the family the one who has been helping him in the management of the business during his lifetime continues its management and administers whatever estate he leaves. But these customs only prevail among the poorer class where there is not much property to speak of, because in cases where the amount involved justifies a more formal division a lawyer is generally consulted, and of course the Civil Code is applied.

While the children or other members of the family remain under the parental roof they receive support and other material aid from the common fund but upon severing their connections with it, either through marriage or otherwise, they work out for themselves and generally do not demand any further participation or share in whatever might have been left by their common ancestor, which finally remains and becomes the sole property of the one who administered the business.

14. *Pampanga*.—The order of intestate succession in this province (which is the writer's) is as follows:

(1) Children and descendants who usually take share and share alike, only as to the property that was exclusively the deceased parent's. Such property is understood to be that wherein the surviving spouse did not take a more or less direct part in its acquisition. But the spouse remains as the administrator of all the property with almost unlimited power. He generally takes charge of all the family property not only to take his share of the community property, nor to manage what belongs to the

children merely in the capacity of administrator, but almost as his own and disposes of it at his own will, regardless of the rights of his children, and for all that he has nothing to give an account to anybody as a matter of course. And what is more interesting to note is that the spouse, in thus disposing of the property that should rightfully belong to the children, is not usually taken to task by the rightful heirs for his actions, out of respect and reverence for an ancestor which is an inveterated custom among our people.

(2) The surviving spouse as to the property acquired thru his activities. This should not be understood as generally excluding the wife from inheriting property acquired during the marriage as the fact is that she generally helps the husband about his doings; many times she even actually holds the reins in the affairs of the family, insofar as the administration or management of the fields or property is concerned.

(3) In the absence of children the parents or ascendants take the property of the deceased. They however generally renounce all that is not necessary for their subsistence in favor of some favorite nephew or grandchild, the child of a brother of the deceased.

(4) After the ascendants, brothers and sisters are called to the inheritance, together with the nephews who are the children of some deceased brother or sister, representing their parents.

(5) Collateral come next after the brothers and sisters and the nearest exclude all others. Relatives other than first uncles, first cousins, and nephews, the children of these, do not usually take much interest in getting a share from a remote relative's inheritance to avoid an embarrassing situation necessarily ensuing therefrom, as it is the prevailing custom in the province to look down upon what they usually qualify as "inheritance-hunters" ("Mamalimana").

Persons who die intestate in the present legal sense dispose usually at their deathbed verbally what they wish to be done with their property after they are gone, and their will as announced thereat is generally carried out faithfully, many times even to the injury of the heirs themselves. Of course there are instances when the heirs themselves fail in this, but the practice seems to be general to the effect that they follow the testator's verbal will as if it were written and made in accordance with the law, and if such testator has left a legacy, the legacy is almost sure to be delivered to the legatee.

(To be continued)