RESTORATION OF REVERSION ADOPTIVA: A STUDY

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INTRODUCTION

A significant highlight of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, is the chapter dealing with adoption. With the express repeal of Articles 334 up to 348 inclusive of the new Civil Code on adoption by Article 26 of the Child and Youth Welfare Code, all substantive matters relating to adoption are now governed by the latter law.

There is a dearth of legal literature on adoption in the Philippnes, unlike other countries of the world where legal writers and scholars have written numerous volumes on the matter. This attention is not surprising since adoption is a very important legal mechanism for institutionalizing legal relations of paternity and filiation and bringing about the entire legal consequences of such relationship between persons who generally are not so related by blood.

One of the more important aspects of adoption introduced by the Child and Youth Welfare Code deals with the revival of *reversion adoptiva* which is now embodied in its Article 39(4). While the question of inheritance is undoubtedly the most troublesome of all questions which arise subsequent to adoption, the restoration of *reversion adoptiva* presents more questions which will prove puzzling to the law student and the lawyers. This paper therefore attempts to make an in-depth analysis of the institution and restoration of *reversion adoptiva* in the Philippines by presenting some problem-areas which are certain to be encountered in actual cases. This article will encourage a closer scrutiny of the subject.

SOURCES AND NATURE OF RESERVA, REVERSION

The institution of *reservas,* as limitations to the right to legitime, is frowned upon by modern codifiers. It may be recalled that the old Civil Code (Spanish Code of 1889) provided for three kinds of *reservas,* namely: *reserva viudal, reserva legal* and *reserva troncal.*[1] The three *reservas* were eliminated by the Code Commission pursuant to the objective of the new Civil

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[1] *Reserva viudal* was embodied in Articles 968, 969 and 980 of the old CIVIL CODE; *Reserva legal* in Article 812 of the old CIVIL CODE; *Reserva troncal* in Article 811 of the old CIVIL CODE which is now Article 891 of the new CIVIL CODE.

Code of preventing the entailment of property within a certain family for generations.[2] However, during the deliberation on the draft of the present Civil Code in the now defunct Congress, the provision of the Old Code on *reserva troncal* was restored and embodied in Article 891 of the new Civil Code.

Reserva had its most pristine form in *reserva viudal* which found its roots in the *Codex Juris Civilis*.[3] Articles 968, 969 and 980 of the Spanish Code of 1889 provided that a widow or widower who contracted a subsequent marriage, or, who, while remaining in such status and though not having contracted a new marriage, may have had a natural child acknowledged or juridically declared as such, was obliged to reserve for the children and descendants of the first marriage the ownership of all the property acquired from the deceased spouse (or from any of the children of his or her first marriage or that received from the relatives of the deceased by reason of their regard for the latter) by intestate succession, by donation, or by any other lucrative title; but not his or her half of the conjugal property.

The provision on *reversion legal* was contained in Article 812 of the old Civil Code which stated that ascendants succeed to the exclusion of all others to the things given by them to their children or descendants, who died without issue, when the very objects donated exist in the hereditary estate.

In Article 811 (now Article 891) of the old Civil Code there was created a *reserva* in favor of "relatives who are within the third degree and who belong to the line from which such property come." The person obliged to reserve was "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." Thus, the *reserva* created a double resolutory[4] condition to which the right of ownership of the person obliged to reserve was subjected. These resolutory conditions were: (1) the death of the ascendant obliged to reserve (*reservista*); and (2) the survival at that moment of relatives.[5]

Rule 100, Section 5 of the old Rules of Court contained a *reserva* and a *reversion* — "in case of the death of the adopted child, his parents and re-

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[2] See COMMISSION REPORT, pp. 116-117.

[3] Codex Juris Civilis, De Secundis Nuptiis.

[4] The propriety of the use of the term "resolutory condition" is seriously doubted considering the fundamental principle that an event which is not uncertain but must necessary happen cannot be a condition; the obligation will be considered as one with a term. Thus, although the death of a person may be in the future, the certainty of its happening makes it a term and not a condition. (8 MANRESA, CODIGO CIVIL ESPAÑOL 129 (1914), cited in 4 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 139 (1973).

[5] 6 SANCHEZ ROMAN, DERECHO CIVIL (1934); MORELL, 304, 305.

latives 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 become the property of the latter or their legitimate relatives, who shall participate in the order established by the civil code for intestate estates."

Reserva Distinguished From Reversion

It is relevant at this juncture to distinguish *reserva* from *reversion*. *Reserva* and *reversion* are similar in the sense that they both have the purpose of setting aside property in favor of certain person or persons. The law mandates that the property be given to a particular person or group of persons, expressly providing for its reservation or reversion, as the case may be, for the benefit of the same. The law delineates the parties to such juridical arrangement, clearly defining their respective duties and obligations.

There are, however, certain fundamental differences between a *reserva* and a *reversion*. Some of them are as follows:

a. *As to parties*

There are generally three parties in a *reserva*, namely: (1) the source or progenitor of the property; (2) the *reservista* who received the property from the progenitor; and (3) the beneficiary or receiver of the property or *reservatarios*.

On the other hand, there are two parties in a *reversion*: (1) the source or giver of the property; and (2) the beneficiary or receiver of the property.

b. *As to effect*

In a *reserva*, the property reserved goes to the person or persons designated by law to receive it. The property is set aside for the benefit of persons or group of persons other than the source thereof. For instance, in the case of *reserva troncal*, the *reservista* is obliged to reserve the property he received for the benefit of relatives who are within the third degree and who belong to the line from which said property came. In the case of *reversion*, the property given reverts to source or giver upon the death of the beneficiary who is without issue when the very object donated exists in the hereditary estate.

In the case of *reserva*, the persons in whose favor the property is reserved must be alive at the time of the progenitor's death. Whereas in *reversion*, the operation thereof is thwarted in the event the source of the property predeceases the beneficiary or when the latter has legitimate issue.

The implications of these distinctions will be better understood in a subsequent section of this paper.

History and Operation of Reversion Adoptiva

The Spanish Code of 1889 did not give the adoptive child the right to inherit from the adopting parent except by will and unless the latter agreed in the deed of adoption to institute the person adopted as his heir.[6] Furthermore, it was also provided that the successional right of the adopter in cases when it was proper should cease if the person adopted predeceased the adopting parent.

Rule 100, Section 5 of the old Rule of Court, however, categorically made the adopted child the legal heir of the adopting parents although it also remained the legal heir of its natural parents. The same principle is followed in Rule 99, Section 5 of the Revised Rules of Court which provides that the adopted child shall become the legal heir of his parents by adoption and shall remain the legal heir of his natural parents.

Article 341 of the new Civil Code gives, as one of the general effects of adoption, to the adopted person the same rights and duties as if he were a legitimate child of the adopter. Thus, by adoption the child becomes a legal heir of his adopting parents. He succeeds to the property of the adoptive parents in the same manner as a legitimate child,[7] except when he concurs with legitimate parents or ascendants of the adopter, in which case his successional rights are limited to those of an acknowledged natural child.[8] Under the same Code, the adopter is not a legal heir of the adopted child; the adopter is therefore barred from succeeding by intestacy.[9]

Article 39, paragraph 4 of Title II, Chapter 1, Section B of the Child and Youth Welfare Code,[10] while affirming the rule on the right of the adoptive child to inherit from the adopting parent, modifies to a considerable extent the rule of heredity succession applicable to all cases of adoption. The institution *reversion adoptiva* is restored providing for the reversion to the adoptive parent of properties gratuitously given to the adopted in case the latter should predecease the former without legitimate issue. The restoration of *reversion adoptiva* is a radical deviation from the rule enunciated in Article 344 of the new Civil Code which allowed the adopted person to

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[6] Article 177 of the SPANISH CIVIL CODE states in full: "The adopter acquires no right to inherit from the adopted. Neither does the adopted acquire any right to inherit from the adopter, unless by will, excepting when the adopter in the deed of adoption has obliged himself to institute him as heir. This obligation shall produce no effect when the adopted dies before the adopter. The adopted retains the rights belonging to him in his natural family excepting those referring to the parental authority".

[7] CIVIL CODE, art. 979.

[8] CIVIL CODE, art. 343.

[9] CIVIL CODE, art. 984.

[10] The CHILD AND YOUTH WELFARE CODE was promulgated as Pres. Decree No. 603 on 10 December 1974 and took effect in June, 1975. The Code expressly repeals in its Article 26, Article 334 up to 348 inclusive of the new CIVIL CODE.

acquire irrevocable ownership over properties received from the adopting parents. Furthermore, the rule in Article 342 of the new Civil Code is modified by Article 39(4) of the Child and Youth Welfare Code by allowing the adoptive parents to take the place of the natural parents in line of succession, whether testate or intestate, when the parents by nature are both dead.

The restoration of the *reversion adoptiva* is, at least from the academic standpoint, one of the highlights of the Child and Youth Welfare Code. It is therefore but fitting at this juncture to trace its beginnings. Emphasis is laid on its evolution in the Philippine juridical setting, its various forms, and its operation.

Reversion adoptiva has a curious history in the Philippines. It first appeared under Act No. 190, Section 768 as amended by Act No. 3977 which stated in part: "The adopted child shall continue to be the compulsory heir of his parents by blood, and in case of the adopted child's death without any direct ascendants, his parents and relatives by blood and not by adoption, shall be his compulsory heirs as to all his properties, except those properties which the adopted child may have inherited from any of his adopting parents, which properties shall be transmitted to the legitimate relatives of the adopter, from whom the property originated; such legitimate relatives shall inherit according to the order established by the civil code with respect to intestate succession." The operation of the aforecited provision may be illustrated as follows:

> A adopts X. A dies leaving some properties to X who survives him. If X should subsequently die without direct descendants, the properties received by X from A by inheritance are reserved for A's legitimate relatives who will inherit according to the order established by the Civil Code for intestate succession. Herein, the operation of the *reserva* is thwarted if the adopted predeceases the adopter.

It is clear from the above illustration that Section 768 as amended by Act No. 3977 of the Code of Civil Procedure provided for a *reserva*.

Rule 100, Section 5 of the old Rules of Court provided in part that "in case of the death of the adopted child[11] 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 become the property of the latter or their legitimate relatives,

[11] Significantly, Section 5, Rule 100 omitted the phrase "without direct ascendent". This Section 5 amplifies the provision of Act No. 3977 to the effect that any property received by the child from the parents by adoption shall revert upon its death, to the latter if they survive, otherwise to their heir. (Intestate Estate of Lucia Luz Reyes, G.R. No. L-3238, April 27, 1951, 88 Phil. 580 [1951]).

who shall participate in the order established by the civil code for intestate estates." The above provision contemplated both a *reserva* and *reversion*. An illustration is in order:

> A adopts X. X receives certain properties by donation form A during their lifetime. If X predeceases A, the properties X received from A will go back to the latter. We have here a clear case of *reversion*. The properties received by the adopted from the adopter revert to the source himself — the adopting parent. Note that the *reversion* operates only when the adopted predeceases the adopter.
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> Thus, should A predecease X a different situation obtains. A *reserva* is instead created in favor of A's legitimate relatives who will participate in the order established in the Civil Code for intestate estate. The properties go back to persons other than the source himself.

Rule 100, Section 5 of the old Rules of Court therefore contained a *reversion* and a *reserva*.

Article 39(4) of the Child and Youth Welfare Code provides for a genuine *reversion*. It provides that the property received gratuitously by the adopted from the adopter will revert to the adopter should the former predecease the latter without legitimate issue unless the adopted has during his lifetime, alienated such property. The second proviso states that should the adopted leave no property other than that received from the adopter, and he is survived by illegitimate issue or 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, and the latter also one-fourth, the rest in 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.

The operation of this provision is illustrated, thus:

> A adopts X. X receives from A by way of a donation a parcel of land during their lifetime. Subsequently, X dies leaving no legitimate issue. The parcel of land donated by A to X returns to the adopter A in case X had not alienated it while living. Should X, during his lifetime, alienate the parcel of land donated nothing will revert to A. By so alienating the land, X prevents the operation of the *reversion*.
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> Suppose X marries S but unfortunately does not have children by her. However, X has a child I by another woman. Upon X's death, if the parcel of land donated by A to X is the only one left in X's estate at the time of his death, the land will be divided in the proportion provided in the third proviso of Article 39(4). Thus, if X is survived by S (spouse) or I (illegitimate child) and A (adopter), S or

I gets one-fourth of the parcel of land while A (by virtue of the *reversion*) gets the remaining three-fourths.

Suppose, however, X is survived by this spouse S, his illegitimate child I and his adopter A. The survivors get their shares in the parcel of land according to the proportion set by the second part of the third proviso in Article 39(4). Thus, S gets one-fourth, I gets one-fourth and A gets the remaining one-half by way of *reversion*.

The operation of the *reversion* is thwarted should A (the adopter) predecease X (the adopted) or when X should have legitimate issue.

It can be seen in the above illustration that *reversion* may be effected fully or partially. There is full *reversion* when the adopted predeceases the adopter and the property received gratuitously by the adopted from the adopter has not yet been alienated by the adopted during his lifetime. There is partial *reversion* when the adopted child leaves no property other than that received from the adopter, and is survived by illegitimate issue and/or spouse. The obvious purpose of this partial *reversion* is to provide the spouse and/or the illegitimate issue sustenance after the adopted child's death. It is to the merit of the drafters or the framers of the Child and Youth Welfare Code that a novel form of *reversion* is first introduced to our legal system.

It may be noticed from the above recital of the brief history of *reversion adoptiva* that we have a curious case of a legal institution which started as a *reserva* and ended up as a *reversion*.

Comments and Criticisms

I. *General*

Reversion adoptiva is introduced for the first time in its genuine form by Article 39, paragraph 4 of the Child and Youth Welfare Code. This important qualification to the right to legitime, before the promulgation of said Code, took varied forms. It first appeared as a *reserva*, then later on as both a *reserva* and a *reversion* and finally as a *reversion* in its authentic form.

The institutions of *reservas* and *reversiones*, as limitations to the right to legitime, as scowled upon by modern codifiers. As noted elsewhere in this paper, the defunct Code Commission, faithful to the modern trend, eliminated all the *reservas* and *reversiones* which were embodied in the Spanish Code of 1889, the Code of Civil Procedure, and later on in the old Rules of Court. It is not surprising therefore that the original draft of the Child Welfare Code[12] which was completed in 1969 by the defunct Code Commission did

[12] As of 26 June 1973, the Law Center was directed by the Cabinet Coordinating Committee to make studies and proposals on the Child and Youth Welfare Code which was originally drafted in 1966 but was completed in 1969.

not include any provision on *reversion adoptiva*. This was of course in keeping with the objective of preventing the estate from being entailed indefinitely.

Rule 100, Section 5 contains both a *reserva* and a *reversion*. Upon the effectivity of Republic Act No. 386 (new Civil Code) on August 30, 1950, the Code Commisison deleted the *reversion* embodied in the old Rules of Court.[13] The new Civil Code merely reproduced the general rule which is, as expressed in Article 342 thereof, that the heirs of the adopted child shall be its parents by nature and not the adopting parent. It is evident that there is no reciprocity of successional rights between adoptive parents and children by adoption. The reasons behind this are that: (1) adoption is for the benefit of the child, and (2) adoption should not be employed as a means of enrichment from the estates of orphans.[14] Furthermore, Article 344 of the new Civil Code provides that the "adopted may donate property, by act *inter vivos* or by will, to the adopted person who shall acquire ownership in the property donated by the adopter to the adopted." This last mentioned article, by vesting full ownership in the property to the adopted, removes the last shred of doubt that the codifiers intended to abolish *reversiones* in all forms.

Keeping track with the trend, Rule 99, Section 5 of the Rules of Court, which took effect on January 1, 1964,[15] deleted the last sentence of Rule 100, Section 5 on *reversion adoptiva*. Section 5 of Rule 99 in turn was taken substantially from Sections 767 and 768 of Act No. 190, which in turn were based on Sections 3139 and 3140, respectively, of the Ohio Code of Civil Procedure.[16] The conclusion therefore is inevitable that the Code Commission intended to do away with *reservas* and *reversiones* once and for all.

The wisdom of the restoration of *reversion adoptiva* is open to serious doubt. The modern trend among codifiers is to abolish all forms of *reservas* and *reversiones*.[17] These institutions found their roots in times of the decline of the once-grandiose Roman Empire. These institutions, incompatible with the principles of law and social economy, have been justly relegated to history.[18] The trend now among progressive codes is to simplify the legitimary structures. The operation of *reversion adoptiva* clutters up legitimary structure. This atavistic attitude of the law is a step backward and therefore undermines

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[13] See *Memorandum of the Code Commission*, 1 LAW REV. 105-106 (Nov.-Dec., 1950).

[14] 3 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 231 (1973).

[15] REV. RULES OF COURT, Rule 144.

[16] JACINTO, SPECIAL PROCEEDINGS 354 (1965 ed.).

[17] The *Burgerlich Gesetzbuch* (The GERMAN CIVIL CODE) as well as the Swiss Civil Code do not contain *reservas* or *reversiones*. They were abolish in the new Code of Uruguay as early as 1869. The French Committee for Reform of the Civil Code has proposed the suppression of *le retour legal* (right of return).

[18] Nin y Silva, p. 33, cited in 3 TOLENTINO, *op. cit.*, p. 244.

whatever grounds the defunct Code Commission had gained towards the simplification of the legitimary structure.

The most serious defect of *reversion adoptiva* is the confinement of property within a certain family for generations. Needless to say, this spawns economic oligarchy — the very evil that the modern state is trying to obliterate. Moreover, the revival is certainly not in consonance with the principle of socialization or democratization of property which the State ought to promote.[19] It would seem therefore that all the reasons advanced by the Code Commission for eliminating all *reservas* and *reversiones* apply with more resounding force and persuasiveness.[20]

The reason behind the institution of *reversion adoptiva* is questionable and therefore not well-founded. The second proviso of Article 39(4) of the Child and Youth Welfare Code states in no uncertain terms "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." Under Article 1350 of the new Civil Code, the cause in contracts of pure beneficence is the mere liberality of the benefactor. Through the mere generosity of the benefactor, there occurs a voluntary conveyance without any valuable consideration whatever in favor of the beneficiary. The donor parts with the property gratuitously given with no expection at all that the same will revert to him. This is the essence of an alienation by pure liberality. Liberality therefore is the essential, direct, immediate and proximate reason which prompts the donor to bestow the property to the donee. It is therefore presumed that once a person donates property to another, the former intends to part with the same forever. Otherwise, we will have the incongruous case of an act of liberality with strings attached.

II. *Specific*

The second proviso in Article 39(4) 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.*"

Under the aforecited provision, the operation of *reversion adoptiva* may be thwarted by the occurrence of any or a combination of the following: (1) the adopted child predeceasing the adoptive parent without legitimate

[19] Article II, section 6 of the Philippine Constitution provides: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."

[20] See COMMISSION REPORT, pp. 116-117.

issue; or (2) alienation by the adopted child of the property gratuitously given by the adopter during the adopted child's lifetime. But a question may be asked: Does this alienation cover both onerous and gratuitous transfer?

It must be noted at the outset that the obvious intendment of the law in adopting the above provision is for the property to revert to the source thereof — the adopter. It would seem that by a literal reading of the law both onerous and gratuitous transfers are contemplated. *Ubi lex non distinguit nec nos distinguere debemus.* Since we are not allowed to distinguish when the law does not, we are forced to concede that both onerous and gratuitous alienations are intended.

But it is so? It may have been the purpose of the drafters of the Code in reviving *reversion adoptiva* to ensure the return of the property gratuitously given to its progenitor or source in the absence of adopted child's relative by nature or of a surviving spouse.[21] One of the situations sought to be avoided is that envisioned in Article 1011 of the new Civil Code whereby the adopter cannot inherit by intestacy from the adopted child. By virtue of this article, the properties of the deceased adopted child will pass to the State. The Child and Youth Welfare Code therefore seeks to remedy this injustice committed to the adopting parent by giving the latter successional rights to the estate of the deceased adopted child where both parents are dead.

A literal construction of the law in point is fraught with unpleasant consequences. Applying the literal meaning of the term "alienation", it follows therefore that it is to cover both onerous and gratuitous alienation. But does not this construction render nugatory the very purpose of the law? For if it is followed to its logical conclusion, the adopted child may, during his lifetime, donate the property received gratuitousy to any person thus preventing the operation of the *reversion.* This in effect makes the adopted the sole arbiter of the fate of *reversion.* With the view of the unequivocal intendment of the law, the instant situation is certainly not contemplated by the Code. The solution to the case presented must therefore depend upon a forced construction of the law.

Somewhat similar is the situation presented by the following illustration:

> Suppose A adopts B. A donates a parcel of land to B worth ₱20,000. B has two legitimate children B1 and B2. In the meantime, B donates by will the parcel of land worth ₱20,000 which A has given to him to his (B's) natural parents X and Y. B subsequently

[21] This intendment is made more evident by the last paragraph of Article 39(4) which provides that: "The adopter shall 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 parens in the line of succession, whether testate or intestate."

dies leaving in his estate the donated property and his own property worth ₱50,000. The total amount of B's estate is ₱70,000. Under the law on succession, B1 and B2 will get one-half of the estate or ₱35,000. The donation of the parcel of land to B's natural parents is valid there being no impairment of the legitime of the legitimate heirs.

It will be recalled that the existence of legitimate children thwarts the operation of the *reversion*. Again, the purpose of the *reversion* is to prevent the property given gratuitously to the adopted by the adopter from going back to the natural parents. But in the instant case, the very purpose of the law is rendered nugatory by the disposition of the properties received gratuitously by will in favor of the natural parents of the adopted. In effect, the natural parents get by indirection what they could not get directly. Is this not an emphatic circumvention of the law? In the above case and under the law, there is nothing to stop the adopted child to institute his natural parents as voluntary heir, or as a legatee or devisee. This, it would seem, is the import of the law and the law is defective in this respect.

The third and final proviso in Article 39(4) of the Child and Youth Welfare Code provides: "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 . . ."

The above provision contemplates of a situation where the adopted predeceases the adopter and leaves no property other than that received from the adopter. Based upon a literal application of the law, it would seem that for the *reversion* to operate the adopted child must have left no property other than that received from the adopter. Hence, if the adopted leaves any property of puny amount other than that received from the adopter the operation of *reversion* is prevented. This implication may be illustrated, thus:

A adopts X. A executes a deed of donation in favor of X transferring to the latter a parcel of land worth ₱100,000. X subsequently dies leaving no property other than the same parcel of land donated by A to him during his lifetime. The parcel of land, by virtue of the above provision, reverts to A upon X's death.

Suppose, however, that in the above illustration X leaves after his death not only the parcel of land donated to him but also a book worth ₱10.00. The fact that X leaves another property, no matter how inconsequential the value may be, completely prevents *reversion* from operating.

This is indeed an absurd situation. This absurdity is made more glaring by the realization of the fact that rarely, if ever, will the adopted leave no other property. This is a situation which is beyond the wildest intendment of the law. It is submitted that the Code should have specified a definite proportion between the value of the property received from the adopter and

the property not received. By this, the purpose of the *reversion* is not defeated and would therefore ensure equitable proportioning of properties.

Another problem may be posed: Is the property object of *reversion* considered part of the assets of the decedent adopted child? This question has far-reaching importance to adopted child's creditors. It is most relevant when the decedent adopted child dies with certain indebtedness in favor of his creditors.

It may be fruitful to inquire whether the rule vis-a-vis *reserva troncal* can be applied by analogy. The Supreme Court in two cases held that the reservable property is not part of the estate of the deceased *reservista* that may be sold for the satisfaction of his debts.[22] We cannot adopt the above ruling in the case of *reversion* because it runs counter to the idea that the adopted child can prevent operation or *reversion adoptiva* by alienating the property received gratuitously. Since the adopted acquires title fee simple over properties given him by the adopter, he may therefore exercise all acts of dominion over the same. The adopted child therefore becomes the sole arbiter of the fate of the *reversion*. Thus, the rule on *reserva troncal* cannot be applied in the case of *reversion*. The reason for this conclusion lies deeply in the essential differences between *reversion* and *reserva*.

Suppose the adopted child, before his death, donates the property received from the adopter. It is clear that the donee is preferred to the creditors of the adopted child. Thus, if the property given by the adopter to the adopted is all that is left in the decedent's estate, the adopted child's creditors are left with no recourse. Obviously, the adopted child's creditor's are prejudiced by such alienation. Unfortunately, this is an injustice which the Code fails to provide a remedy for.

It is submitted that the property received by the adopted from the adopter be considered part of the decedent adopted child's estate and therefore may be subject to execution by the adopted child's creditors. Therefore, the one-fourth in the proviso should mean *one-fourth of the property after the debts are paid*. It is interesting to note that the French Civil Code[23] contains a provision remedying the problem presented above. It is believed that this is the most equitable solution under the situation presented.

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[22] Cano v. Director of Lands, G.R. No. L-10701, January 16, 1959, 105 Phil. 1 (1959); Padura v. Baldovino, G.R. No. L-11960, December 27, 1958, 104 Phil. 1065 (1958).

[23] Article 351 of the FRENCH CIVIL CODE provides in full: "If the adopted person dies without legitimate descendants, any property or thing given to him by the adopter, or acquired as part of the adopter's succession and which still exists in kind at the death of the person, reverts to the adopter or his descendants, *subject to this, that such property or thing will be liable to contribute its proportional part of the debts of the adopted person, such reversion however, to be without prejudice to any rights of third parties therein.*" (Underscoring supplied)