THE LEGITIME OF ACKNOWLEDGED NATURAL CHILDREN AS SOLE AND CONCURRING FORCED HEIRS IN INTESTATE SUCCESSION

By ANGEL COVITA
Philippine Law School

THE CIVIL CODE defines natural children as those born out of wedlock of parents who, at the time of the conception of such children, could have legally married each other. As they are born out of wedlock, they are, therefore, illegitimate children.

Natural children are either acknowledged or unacknowledged. When either or both of their parents recognize them as their children, it is said that they are acknowledged natural children. In the absence of such recognition, they are considered as unacknowledged natural children.

Unacknowledged natural children are not entitled to any right whatsoever against their putative parents except, perhaps, the right to compel acknowledgment when they have proper grounds therefor according to law. Acknowledged natural children, on the other hand, are entitled to certain rights against their acknowledging parents among which is the right to inherit as the forced heirs of the latter. The difference lies on the ground that unacknowledged natural children are legally without parents against whom such right may be asserted—a natural and physical impossibility which by fiction the law makes as possible for purposes of public policy.

In the law of succession, acknowledged natural children may either be the sole or concurring forced heirs of the acknowledging parent. They are said to be the sole heirs of such parent when the latter died without leaving legitimate descendants or ascendants. In which case, Article 939 of the Civil Code provides that they succeed to the entire inheritance without prejudice, however, to the right of the surviving spouse of the deceased according to law. When, however, they survive with legitimate descendants or ascendants of the deceased parent who acknowledged them, such children are said to be concurring forced heirs of such parent.

When the acknowledged natural children concur with the legitimate ascendants of the acknowledging parent, Article 841 of the Civil Code provides that such children are entitled to one-half of the estate of the deceased, which share is to be taken from the half available for free disposal. This is understood, however, to be without prejudice to the legitime of the surviving spouse, which consists of the usufruct of one-third of the inheritance to be taken also from the half available for free disposal, according to Article 836 of the Code. So that, when the spouse survives with the acknowledged natural children together with the legitimate ascendants of the deceased, whatever is lacking to complete the legitime of the children shall be allotted to them only in naked ownership as long as the surviving spouse lives.

When, however, the acknowledged natural children concur with the legitimate descendants of the acknowledging parent, Article 840 of the Civil Code lays down the rule that each of the acknowledged natural children is entitled to a share equal to one-half of that which pertains to each of the legitimate children not bettered, provided that it be comprised within the one-third part for free disposal from which it must be taken after deducting the burial and funeral expenses. Sanchez Roman, explaining this rule, said that the equality refers both to quantity as well as to quality. (6 Sanchez Roman, 901-908). This opinion of the distinguished commentator is also the opinion of our Supreme Court expressed in the case of *In re* Tad-Y, 46 Phil. 557.

However, Article 834 of the Civil Code provides that when the deceased is survived by his widow or her widower who, at the time of his or her death is not divorced or is so due to his or her fault, such widow or widower shall be entitled in usufruct to a portion of the estate of the deceased equal to that which pertains as legitime to each of the legitimate children or descendants not bettered. And if only one legitimate child or descendant survives, the widow or widower shall be entitled in usufruct to the third portion of the estate destined for betterment, the former retaining the naked ownership until dominion is consolidated in him by the death of the surviving spouse.

Let us now assume that the deceased died intestate leaving his widow and two children, one legitimate and the other acknowledged natural child. Applying the rule, the acknowledged natural child gets as his share a portion of the inheritance equal to one-half in quantity and in quality to that which pertains to the legitimate child, which share is to be taken from the free portion. In this case, the share of the natural child is equal to one-third of the entire inheritance and, therefore, consumes the entire free portion, which constitutes one-third of the entire estate. The legitime of the widow, consisting in usufruct, is to be taken from the third portion of the estate available for betterment and, in this case, consumes entirely that portion. The legitimate child gets the naked ownership of that same portion and in full ownership the third remaining part or the short legitime. But will the natural child get the entire free portion in full ownership? Manresa answers the question in the affirmative. He says:

"La concurrencia del cónyuge supérstite no influye en la legitima del hijo natural en los casos normales en que debe gravar el tercio de la mejora." (6 Manresa, 597).

Sanchez Roman, on the other hand, is of different opinion. He says:

"Si existiere viudo, pero no mejora, la cuota viudal consistirá en el usufructo del segundo tercio, destinado por la ley á mejora, reduciéndose la legitima del hijo ó descendiente legitimo que le represente á un tercio de la herencia en pleno dominio, y el otro, cuyo usufructo se adjudica al viudo, en nuda propiedad (art. 834 2.o párrafo, y 840); haciendose, por necesaria analogia, distinción semejante en el doble concepto de aplicación de bienes en pago de la legitima al hijo natural, la mitad de cuyo importe se le adjudicará en pleno dominio, y la otra mitad en nuda propiedad, y el usufructo de esta segunda mitad quedará de libre disposición y se consolidará á la muerte del cónyuge viudo." (6 Sanchez Roman, 901).

This opinion finds explanation in the fact that if the acknowledged natural child gets as his share the entire free third in full ownership, then he gets more than what the law gives him; that is, one-half in quantity and in quality to that which the legitimate child not bettered gets as his legitime. And in this case, the legitimate child gets his share one-half of which is in naked ownership and the other half in full ownership. Therefore, in order to maintain the proportion established by law, Sanchez Roman says that the natural child should also get his share one-half of which is in naked ownership and the other half in full ownership; the usufruct of that which he receives in naked ownership constitutes a free portion, but upon the death of the widow, shall be consolidated to the natural child.

Again, on this particular point, our Supreme Court has the same opinion as that of Sanchez Roman as expressed in the Tad-Y case, *supra*. In that case, the following facts were proven:

On December 26, 1922, Vicente Tad-Y died in the Municipality of Iloilo, Province of Iloilo, leaving his widow Rosario Elser, a legitimate son Jose Tad-Y, and an acknowledged natural daughter Maria Tad-Y, who are declared in the judgment appealed from as his only legal heirs. In said judgment there was adjudicated to Rosario Elser the usufruct of the third

of the estate of the deceased available for betterment, to Jose Tad-Y the third constituting the short legitime in full ownership, and the naked ownership of the third available for betterment, and to Maria Tad-Y the free third in full ownership. This allotment made by the trial court was held by the Supreme Court as against the law. In reversing the decision appealed from, the Supreme Court laid down the following rule:

"To determine the share that pertains to the natural child which is but one-half of the portion that in quality and quantity belongs to the legitimate child not bettered, the latter's portion must first be ascertained. If a widow share in the inheritance, together with only one legitimate child, as in the instant case, the child gets, according to the law, the third constituting the legitime in full ownership, and the third available for betterment in naked ownership, the usufruct of which goes to the widow. The natural child must get one-half of the free third in full ownership and the other half of this third in naked ownership, from which third his portion must be taken, so far as possible, after deducting the funeral and burial expenses. And excess would result consisting in the usufruct of the surplus remaining of the other half of this third, which for lack of testamentary provision must go to the legitimate child. As upon the death of the widow, the usufruct of the third available for betterment will pass to the legitimate child, in order to maintain this proportion established by the law, the natural child must in turn get the usufruct of the surplus of this half of the free third."

Accordingly, the Supreme Court made the following allotment: The portion allotted to Jose Tad-Y was the third constituting the short legitime in full ownership, and the third available for betterment in naked ownership; to Maria Tad-Y, one-half of the free third in full ownership and the other half of this third in naked ownership, after deducting the burial and funeral expenses; to Rosario Elser, the usufruct of the third available for betterment; and to Jose Tad-Y, the usufruct of the remaining half of the free third, which upon the death of Rosario Elser shall pass to Maria Tad-Y.

It should, however, be noted that from the language of Section 735 of the Code of Civil Procedure, repeated in Section 7, Rule 87 of the New Rules of Court, which will take effect on July 1, 1940, it is evident that in all cases the funeral and burial expenses are to be paid from the mass of the estate of the deceased. Therefore, so much of the rule which refer to funeral and burial expenses should now be eliminated. So that the rule is settled that the share of each of the acknowledged natural children, concurring with the legitimate children and descendants of the deceased parent, is equal to one-half in quantity and in quality to that which pertains to each of the legitimate children not bettered. But is the rule applicable in all cases where natural children concur with legitimate children and descendants of the deceased? In other words, does not the rule admit of any exception? This brings us to the provision of Article 839 of the Civil Code in relation to Articles 834 and 840 of the same Code already cited and discussed.

Article 839 of the Civil Code provides that in case there survive children of two or more marriages, the usufruct pertaining to the widowed spouse of the second marriage (which means the last marriage of the deceased) shall be taken from the third available for the free disposal of the parents.

Let us now suppose that the deceased is survived by his widow and four children; two of whom are legitimate belonging to two different marriages, and the other two are acknowledged natural children of the deceased. Acording to Article 834, the widow is entitled in usufruct to a portion of the inheritance equal to that which pertains as legitime to each of the legitimate children or decendants not bettered. Therefore, in the example given, she is entitled in usufruct to one-third of the entire estate which usufruct according to Article 839, is to be taken from the third available for free disposal, because the legitimate children belong to two different marriages. Her usufruct, therefore, burdens the entire free third.

But according to the rule, each of the acknowledged natural children is entitled to a share in the inheritance equal to one-half in quantity and in quality to that which pertains to each of the legitimate children not bettered, which share is also to be taken from the free third. Inasmuch as the share of both of the natural children herein is equal to one-third of the entire inheritance, it therefore consumes also the entire free portion. But because that entire portion is totally burdened by the usufruct of the widow, therefore, the share of the natural children is reduced to a mere naked ownership, while the share of the legitimate children is in full ownership. Therefore, the share of each of the natural children in this case is not anymore equal to one-half in quantity and in quality to that which pertains as legitime to each of the legitimate children or descendants not bettered. Is not then the rule applicable in this instance?

We can only apply the rule by doing either of two ways: (1) by applying Article 834 instead of Article 839 with regard to the portion from which the usufruct of the widow is to be taken, or (2) by reducing proportionately the share of the legitimate children.

If we apply Article 834 instead of Article 839 in this case, in the sense that the usufruct of the widow is to be taken from the betterment instead of the free portion, then the rule can be applied by merely following the allotment made in the Tad-Y case, *supra*. But it seems that this course is not warranted by the law. It is because Article 839 or any other article of the Civil Code does not provide for any such exception. And if there be none, the court cannot, by interpretation provide for one. The application of Article 839 in this case might work an injustice to the natural children. But the court cannot do otherwise but to apply it. It is only for the Legislature to alter the law so as to make it conformable to justice.

We can also apply the rule by reducing proportionately the share of the legitimate children. This is done by reducing it into a mere naked ownership like that of the natural children, so that the usufruct therefore becomes a free portion which the deceased could have freely disposed of by will. But again this course does not seem to find any justification in the law. It is because it is not legally possible to create a free portion from the legitime of the legitimate children.

It seems clear, therefore, that when the acknowledged natural children concur with that of the widow and the legitimate children of the deceased, the rule that each of the natural children receives as his share a portion of the inheritance equal in quantity and in quality to one-half of that which as legitime pertains to each of the legitimate children not bettered, suffers an exception where the legitimate children belong to different marriages. In which case, the natural children may suffer a reduction to their inheritance caused by the usufruct of the widow, without any corresponding reduction to the legitime of the legitimate children.

STATUTE NOT TO BE CONSTRUED ISOLATEDLY

"A STATUTE is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws. It is not to be expected that a statute which takes its place in a general system of jurisprudence shall be so perfect as to require no support from the rules and statutes of the system of which it becomes a part, or so clear in all its terms as to furnish in itself all the light needed for its construction. It is proper to look to other statutes, to the rules of the common law, to the sources from which the statute was derived, to the general principles of equity, to the object of the statute, and to the condition of affairs existing when the statute was adopted . . . . 'Construction has ever been a potent agency in harmonizing the operation of statutes, with equity and justice.' Statutes are to be construed as to make the law one uniform system, not a collection of diverse and disjointed fragments."—Elliott, J. in Humphries v. Davis (1884), 100 Ind. 274, 284. (From the United States Law Review, Vol. LXXI, No. 12 p. 701).