

「法律名称」

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Part V Succession

CHAPTER I HEIRS TO PROPERTY

Article 1138 Heirs to property other than the spouse come in the following order:

- (1) Lineal descendants by blood;
- (2) Parents;
- (3) Brothers and sisters;
- (4) Grandparents.

Article 1139 Among persons of the first order provided in the preceding Article, the person nearest in degree of relationship comes first as the heir.

Article 1140 Where an heir of the first order provided in Article 1138 has died or lost the right to inheritance before the opening of the succession, his lineal descendants shall inherit his entitled portion in his place.

Article 1141 Where there are several heirs of the same order, they inherit in equal shares as per capita, unless it is otherwise provided by law.

Article 1142 (Repealed)

Article 1143 (Repealed)

Article 1144 Each spouse has the right to inherit the property of the other, and his or her entitled portion is determined according to the following Subparagraphs:

- (1) Where the spouse inherits concurrently with heirs of the first order, as provided in Article 1138, his or her entitled portion is equal to the other heirs;
- (2) Where the spouse inherits concurrently with heirs of the second or third order as provided in Article 1138, his or her entitled portion is one-half of the inheritance;
- (3) Where the spouse inherits concurrently with heirs of the fourth order as provided in Article 1138, his or her entitled portion is two-thirds of the inheritance;
- (4) Where there is no heir of any of the four orders provided in Article 1138, his or her entitled portion is the entirety of the inheritance.

Article 1145 A person shall forfeit his right to inherit in any of the following events:

- (1) Where he has been sentenced to criminal penalty for having intentionally caused or attempted the death of the deceased or of a person entitled to inherit;
- (2) Where he has, by fraud or by duress, induced the deceased to make, withdraw or alter a will relating to inheritance;

(3) Where he has, by fraud or by duress, prevented the deceased from making, withdrawing or altering a will relating to inheritance;

(4) Where he has forged, altered, concealed or destroyed the deceased's will relating to inheritance;

(5) Where he seriously ill-treated or insulted the deceased and has been forbidden to inherit by the deceased.

If, in the cases provided by Subparagraphs 2 to 4 of the preceding Paragraph, the deceased has forgiven the offender, his right to inherit is reassumed.

Article 1146 Where the right to inherit has been infringed upon, the injured party or his statutory agent may claim its restitution.

The right to claim as provided in the preceding Paragraph is extinguished if not exercised within two years from the date of knowing such infringement. The same rule applies where ten years have elapsed from the time of the opening of the succession.

CHAPTER II SUCCESSION TO PROPERTY

Section 1 EFFECTS

Article 1147 Succession opens with the death of the deceased.

Article 1148 Unless it is otherwise provided for in this Code, an heir assumes all the rights and

obligations pertaining to the estate of the decedent at the time of the commencement of the succession, except those rights and obligations which exclusively belong to the decedent.

An heir's obligations to the debts of the decedent are limited to the extent of the property acquired from the estate.

Article 1148-1 If an heir receives gifts in property (assets) from the decedent within two years prior to the opening of succession, the assets shall be deemed as estate.

If property mentioned in the preceding paragraph is transferred or lost, the value of the property in question shall be calculated as when it was given.

Article 1149 A person who had been financially provided by the deceased before the latter's death shall be allocated a certain portion of the deceased's property by the family council, taking into consideration the extent of maintenance he used to receive and other relationships with the deceased.

Article 1150 Expenses relating to the management and partition of the deceased's property and the execution of the will are to be paid out of that property except those that have been incurred by the faults of the heir.

Article 1151 Where there are several heirs, the whole of the

deceased's property is, before its partition,
owned in common by the heirs.

Article 1152 In regard to the property in common provided
by the preceding Article, the heirs may elect a
person among themselves for its management.

Article 1153 Heirs shall be jointly liable for the debts of the
decedent but liabilities are limited to the extent
of the property acquired from the estate.
Among the heirs, each heir is liable for the
decedent's debts based upon their relative
share of the total estate, unless otherwise
provided by law or agreed upon by the heirs.

Setcion 2 (Repealed)

Article 1154 Heirs' rights and obligations towards the
decedent shall not be extinguished by virtue of
the succession.

Article 1155 (Repealed)

Article 1156 An heir shall report to the court along with an
inventory of the property of the decedent
within three months after becoming aware of
his or her right to the inheritance.
In regard to the three-month period in the
preceding Paragraph, the court, if necessary,
may extend the duration for filing an inventory
report upon a petition of the heir.
If one of the heirs, based on Paragraph 1, has
submitted an inventory of the property to the
court, all other heirs are considered as if they
have submitted an inventory of the property to

the court.

- Article 1156-1 A creditor may request the court to order the heirs to submit within three months an inventory of the property.
When a court is aware of creditors taking proceedings or other actions against heirs to request for payment of debt resulting from succession, the court may order heirs of the decedent submit within three months an inventory of the property.
The provisions of the preceding article paragraph 2 and 3 apply *mutatis mutandis* to the case provided in the preceding paragraph 1 and 2.
- Article 1157 Where the heir submits an inventory report to the court in accordance with the preceding two Articles, the court shall give public notice according to the procedure of public summons, calling upon the creditors of the decedent to present their claims within a specified period of time.
The specified period of time provided by the preceding Paragraph shall not be less than three months.
- Article 1158 An heir shall not, within the specified period of time provided by the preceding Article, make repayment to any of the deceased's creditors.
- Article 1159 Upon the expiration of the specified period of

time provided in Article 1157, an heir shall make repayment out of the deceased's property to such creditors as have presented their claims within the said period of time and to other creditors who are known to him in proportion to the amounts of their respective claims, but the rights of the preferential creditors must not be injured.

An heir shall, from the opening of the succession, make payments according to Paragraph 1, even the debts are not yet due.

Article 1160 Until an heir has performed his obligations in accordance with the preceding Article, he shall not hand over any legacy to a legatee.

Article 1161 An heir who has caused damages to the creditors of the deceased by acting contrary to Article 1158 to Article 1160 is liable to make compensation.

A person who has suffered damages as provided in the preceding Paragraph may claim reimbursement from such a creditor or a legatee who has improperly received repayments of the amount one has received improperly.

An heir shall not claim from the creditors or legatees the amount which they have received improperly.

Article 1162 Any creditor of the deceased who has failed to present one's claims within the specified period of time provided in Article 1157, and

were also unknown to the heir, may exercise his right only upon such part of the deceased's property as remains after all other legal repayments.

Article 1162-1 An heir, who does not report to the court an inventory of the property of the decedent according to Articles 1156 and 1156-1, shall make repayment out of the decedent's property to the decedent's creditors' all rights in proportion to the amounts of their respective claims, but the rights of the preferential creditors must not be injured.

Until the preceding heir has performed his obligations in accordance with the preceding Article, he shall not hand over any legacy to a legatee.

An heir shall, from the opening of the succession, make payments according to Paragraph 1, even the debts are not yet due.

Article 1162-2 For a violation of Article 1162-1 by an heir, the creditors of the decedent may exercise their rights upon the part which shall be performed but not yet performed.

The heir's obligations to the preceding creditors' debts which shall be performed but not yet performed are not limited to the extent of the property acquired from the estate. This shall not apply to heirs who are persons of no or limited in capacity.

An heir who has caused damages to the

creditors of the deceased by acting contrary to Article 1162-1 is liable to make compensation.

A person who has suffered damages as provided in the preceding Paragraph may claim reimbursement from such a creditor or a legatee who has improperly received repayments of the amount one has received improperly.

An heir shall not claim from the creditors or legatees the amount which they have received improperly.

Article 1163 In any of the following cases, an heir shall be disqualified to claim the benefit provided by Article 1148, Paragraph 2:

- (1) Where the heir has grossly concealed the decedent's property;
- (2) Where the heir grossly falsifies entries in the inventory report of the decedent's property;
- (3) Where the heir has disposed of the decedent's property with the intention of fraudulently infringing upon the rights of the deceased's creditors; or

Setcion 3 PARTITION OF INHERITANCE

Article 1164 An heir may at any time demand the partition of the inheritance unless it is otherwise provided by law or agreed upon by contract.

Article 1165 Where the will of the deceased has determined, or asked a third person to determine the method of partition of the inheritance, the

method so determined shall be followed.

Where a will prohibits the partition of the deceased's property, the effect of such prohibition is limited to ten years.

Article 1166 Where one of the heirs is an unborn child, partition of the deceased's property by the other heirs shall not take place unless the entitled portion of such child has been reserved.

In regard to such partition of inheritance, the mother acts as agent of the unborn child.

Article 1167 (Repealed)

Article 1168 After the partition of the inheritance each heir bears, in proportion to the share he has acquired, the same obligation of warranty as that of a seller in regard to the property that the other heirs have acquired by the partition.

Article 1169 After the partition of the inheritance each heir is, in regard to claims acquired by other heirs consequent upon the partition, bound to warrant, in proportion to the share he has acquired, the solvency of the debtor at the time of the partition.

Where a claim provided by the preceding Paragraph is subject to a condition precedent or where the time of performance of the obligation is not yet due, each heir is bound to warrant the solvency of the debtor at the time when the obligation is to be performed.

- Article 1170 Where one of the heirs bound for warranty under the two preceding Articles is insolvent and cannot make reimbursement for the amount he undertakes, the part which he is unable to reimburse is borne by the heir, who has the claim for reimbursement, and the other heirs respectively in proportion to the shares they have acquired. But if the inability to reimburse was caused by the fault of the claimant, he is barred to demand the others to divide up such burden.
- Article 1171 If after the partition of the deceased's property, the creditors have consented to the assignment of the deceased's repayment liability to one heir or to its division among the heirs, each heir is thus released from their joint liability. The heirs are released from their joint liability at the expiration of five years from the time of the partition of the inheritance, or, if the date of performance comes after the partition, from that date.
- Article 1172 If one of the heirs is in debts with the deceased, the amount of the debt shall at the time of partition of the inheritance, be deducted from that heir's entitled portion.
- Article 1173 If one of the heirs has, before the opening of succession, received gifts in property from the deceased for the purpose of concluding a marriage, separation from home, or carrying on trade, the value of such gifts shall be added

to the inheritable property at the opening of the succession, thus constituting together the property of the succession. But this does not apply where the deceased has made a contrary declaration of intention at the time of giving. The value of such gifts as provided in the preceding Paragraph shall, at the time of the partition of inheritance, be deducted from the entitled portion of the heir in question. The value of a gift in question shall be calculated as when it was given.

Section 4 WAIVER OF INHERITANCE

Article 1174 An heir may waive his or her right to an inheritance.

Such waiver provided by the preceding Paragraph must be asserted by a written declaration to the court within three months after becoming aware of his or her right to the inheritance.

After the waiver of inheritance, he or she shall notify in writing the person who is entitled to succeed the inheritance due to his or her waiver unless such a notification is impractical.

Article 1175 Waiver of inheritance takes effect retroactively at the opening of the succession.

Article 1176 Where one of the first priority heirs as provided in Article 1138 waives his or her right to the inheritance, his or her entitled

portion shall accrue to those other heirs whose rights to the inheritance accrued concurrently with him or her.

Where one of the second, third or forth priority heirs waives his or her right to the inheritance, his or her entitled portion shall accrue to the other heirs of the same priority.

Where all the heirs in the same priority as the decedent's spouse waive their rights to the inheritance and there is no heir in the subsequent priority, their entitled portions shall accrue to the spouse.

Where the spouse waives his or her right to the inheritance, the entitled portion shall accrue to those other heirs whose rights to the inheritance accrued concurrently with him or her.

For heirs of first priority, if all those closest in degree of relationship to the decedent waive their right to the inheritance, the lineal descendants by blood to heirs of first priority in the next degree of relationship shall inherit.

Where all preceding order of priority waive their right to the inheritance, the heirs who are next in order shall inherit their entitled portions. If it is not certain whether or not there is an heir in the next order of priority or all the heirs in the fourth order waive their right to the inheritance, the relevant provisions in this law regulating unacknowledged

succession shall apply.

Where a person, who becomes an heir due to the waiver of other heirs, waives his or her right to the inheritance, such waiver must be conducted within three months after becoming aware of his or her right to the inheritance

- Article 1176-1 A heir who has waived the right to inheritance shall continue to manage the property of the deceased with the same degree of caution as managing his own property before other heir(s) or manager(s) begin to take over the management.

Section 5 UNACKNOWLEDGED SUCCESSION

- Article 1177 Where, upon the opening of the succession, it is not clear whether or not there is an heir, the family council shall appoint a manager for the property of the deceased within one month, and report to the court the opening of the succession and the appointment of the manager.

- Article 1178 Upon report of the family council pursuant to the preceding Article, the court shall give public notice in accordance with the procedures of public summons, calling upon the heirs to acknowledge the succession within a period of not less than six months.
- In the absence of a family council, or where the family council fails to appoint a manager for the property of the deceased within the

time specified in the preceding Article, any interested party or public prosecutor may apply to the court for appointment of a manager for the property of the deceased, and then the court shall give public summons pursuant to the preceding Paragraph.

Article 1178-1 The court may, where it is not clear whether there is an heir upon the opening of the succession, and prior to the appointment of a manager for the property of the deceased, adopt necessary measures to preserve the property upon application of an interested party or a public prosecutor.

Article 1179 The functions of a manager for the property of the deceased are as follows:

- (1) To draw up an inventory of the property of the deceased;
- (2) To take such measures as are necessary for the preservation of the property of the deceased;
- (3) To request the court to give public notice in accordance with the procedure of public summons, fixing a period of time not less than one year and ordering the creditors and legatees of the deceased to make within such period a statement of their claims or a declaration as to whether they are willing to accept the legacies. Where the creditors and legatees of the deceased are already known to the manager, they shall be notified

respectively;

(4) To settle claims, and to deliver legacies;

(5) To hand over the property in cases where the succession has been acknowledged by an heir or the property accrues to the Treasury.

The manager shall draw up the inventory of the deceased's property provided in

Subparagraph 1 of the preceding Paragraph within three months after coming into office.

The settlement of claims under Subparagraph 4 shall precede the delivery of legacies. Where it is necessary for settling claims or delivering legacies, the manager may sell the deceased's property with the consent of the family council.

Article 1180 The manager shall, at the request of the family council, the creditors or legatees of the deceased, make a report on or given an explanation for the deceased's property.

Article 1181 The manager for the property of the deceased shall not settle any obligation with creditor(s) of the deceased nor deliver any legacy to legatee(s) of the deceased before expiration of the period provided in Subparagraph 3 of Paragraph 1 of Article 1179.

Article 1182 Creditors or legatees of the deceased who fail to make such statement or declaration as provided in Subparagraph 3 of Paragraph 1 of Article 1179 may exercise their right only upon such part of the deceased's property as

remains over.

Article 1183 A manager for the property is entitled to remuneration, the amount of which shall be determined by the court in consideration of his or her relation with the deceased, management challenges and any other relevant circumstances. The court may order the applicant to pay in advance if necessary.

Article 1184 Where an heir acknowledges the succession within the period provided in Article 1178, the manager, in regard to acts done by him in the course of performing his functions before such acknowledgement by the heir, is legally deemed to have been the agent of the heir.

Article 1185 Where no heir acknowledges the succession, on the expiration of the period provided in Article 1178, such part of the property of the deceased as remains over after the settlement of claims and the delivery of legacies accrues to the Treasury.

CHAPTER III WILLS

Section 1 - GENERAL PROVISIONS

Article 1186 A person without disposing capacity may not make a will.
A person limited in disposing capacity may make a will without first obtaining the approval of his statutory agent. But a person who has not completed his sixteen years of age may not make a will.

- Article 1187 A testator may freely dispose of his property by a will so far as it does not contravene the provisions in regard to compulsory portions.
- Article 1188 The provisions of Article 1145 concerning the forfeiture of the right to inheritance apply to legatees *mutatis mutandis*.

Section 2 FORMALITIES

- Article 1189 A will shall be made in one of the following forms:
- (1) A holograph will;
 - (2) A notarized will;
 - (3) A sealed will;
 - (4) A "dictated" will;
 - (5) An oral will.
- Article 1190 For making a holograph will, the testator must himself write the whole text, stating the year, month and day and sign it. In case of any insertion, cancellation, erasure or alteration, he must make and sign an additional note stating the place in the text where words have been inserted, erased or altered, and the number of such words.
- Article 1191 For making a notarized will, the testator must designate at least two witnesses and make an oral statement of his testamentary wishes before a public notary. The statement must be written down, read over and explained by the public notary, and, after the testator has given approval, signed by him together with the

witnesses and the testator, stating the year, month and day. In case the testator is not able to sign his name, the public notary must state the circumstances and make him affix his fingerprint in lieu of signature.

The functions of a public notary as provided in the preceding Paragraph may be exercised by a court clerk in a place where there is no public notary, or by a Chinese consul when a overseas Chinese makes a will in the place where such consul resides.

Article 1192 For making a sealed will, the testator must, after signing it, have it securely enveloped, affix a signature across the seam of the envelope, designate at least two witnesses, and declare before a public notary that it is his will, and, if not written by himself, also declare the name and domicile of its draftsman; the public notary must state on the envelope the date on which the will is brought and the declaration of the testator, and sign together with the testator and the witnesses.

The provisions of Paragraph 2 of the preceding Article apply mutatis mutandis to the situation provided in the preceding Paragraph.

Article 1193 A sealed will which may be defective as regards the formalities provided in the preceding Article but is otherwise in compliance with the formalities of a holograph will provided in Article 1190 has the effect of

a holograph will.

Article 1194 For making a "dictated" will, the testator must designate at least three witnesses, make an oral statement of his testamentary wishes, have it written down, read over and explained by one of the witnesses; after the testator has given his approval, the statement bearing the year, month and day, and the name of the draftsman, must be signed by all the witnesses and the testator together. Where the testator is not able to sign his name, he must affix his fingerprint in lieu of signature.

Article 1195 Where a testator by reason of imminent danger of death or other exceptional circumstances is unable to make a will in any other form, he may make it orally in one of the following forms:

(1) For making an oral will, the testator must designate two or more witnesses, state orally his testamentary wishes; one of the witnesses must set down these wishes correctly in writing, state the year, month and day, and sign together with the witnesses.

(2) The testator must designate two or more witnesses, state orally his testamentary wishes, his name, the year, month and day; all the witnesses must make an oral statement as to the genuineness of such will and their names, have it and the oral will of the testator all tape recorded, make the recording tape securely

enveloped on the spot, bear the year, month and day on the envelop, and affix the signatures of all the witnesses across the seam of the envelop.

Article 1196 In case, the testator is able to make a will in another way, an oral will shall be invalid after three months accordingly.

Article 1197 An oral will must be brought up by one of the witnesses or an interested person, within three months after the death of the testator, for decision by the family council as to its genuineness. Where objections arise regarding the decision of the family council, application may be made to the court for a judgment.

Article 1198 The following persons may not act as witness of will:

- (1) A minor;
- (2) A person who is subject to the order of the commencement of guardianship or assistantship;
- (3) An heir, his spouse or his lineal relatives by blood;
- (4) A legatee, his spouse or his lineal relatives by blood;
- (5) Persons who are assistants to, or employed by, or living together with, the public notary or the person that exercises the functions of a public notary.

Section 3 - EFFECTS

- Article 1199 A will takes effect from the time of the death of the testator.
- Article 1200 When a legacy provided in a will is subject to a condition precedent, it takes effect from the time when such condition is fulfilled.
- Article 1201 If the legatee dies before the will becomes effective, the legacy does not take effect.
- Article 1202 If certain property is made the subject of legacy by the testator and, at the time of the opening of the succession, part of the property does not belong to the property of the deceased, such part of the legacy is invalid. If the whole property does not belong to the property of the deceased, the whole legacy is invalid. If however, a special intention is expressed in the will, such intention is to be followed.
- Article 1203 Where the testator has acquired a right against a third person on account of the loss, destruction, damage or artificial alteration of the substance which forms the subject of the legacy, or the loss of its possession, such right is presumed to have been made the subject of the legacy. The same applies where, because the substance that forms the subject of a legacy is joined to or mixed with another thing, the testator has acquired a right over the composite or mixed thing.
- Article 1204 Where the right to use and to collect fruits

from the property of the deceased is made the subject of a legacy, and the time limit for the restitution [of such property] is not provided in the will nor can it be determined by the nature of the legacy, the time limit is the lifetime of the legatee.

Article 1205 Where the legacy is burdened with an obligation, the legatee is responsible for the performance only to the extent of the benefit received from the legacy.

Article 1206 A legatee may waive a legacy after the death of the testator.
The waiver of a legacy takes effect retroactively as from the time of the death of the testator.

Article 1207 An heir or other interested person may fix a reasonable period of time and call upon the legatee to declare within such period whether or not he accepts the legacy. If no declaration has yet taken place upon the expiration of the period, the legacy is legally deemed to have been accepted.

Article 1208 Where a legacy is invalid or waived, the property of the legacy remains part of the property of the deceased.

Section 4 EXECUTION

Article 1209 A testator may by will designate an executor or entrust a third person to do so.
A person so entrusted must, without delay,

designate an executor and notify the heir thereof.

Article 1210 A minor or a person who is subject to the order of the commencement of guardianship or assistantship may not act as executor of a will.

Article 1211 Where a will has not designated an executor or entrusted another person to make the designation, the family council may elect an executor. Where cannot be elected by the family council has failed to elect an executor, an interested party may apply to the court to designate one.

Article 1211-1 An executor of a will is entitle to equitable remuneration for his or her performance of duty, the amount of which shall be determined by agreement between the heir(s) and the executor, unless the testator instructs otherwise. The court shall determine the amount of remuneration when the parties fail to reach an agreement.

Article 1212 The custodian of a will must, as soon as he has knowledge of the opening of the succession, shall deliver the will to the will executor; and use proper method to inform those known heirs. For those who have no will executors shall inform known heirs, debtors, legatees, and any other interested persons. The same applies in case an heir discovers the will of which there is no custodian.

- Article 1213 A sealed will may not be opened unless in the presence of the family council or the office of public notary in the Court.
Upon opening of the will pursuant to the preceding Subparagraph, record for whether or not the sealed will is damaged or whether or not there is any particular matter shall be made and signed by persons present.
- Article 1214 After an executor comes into office, if it is necessary to draw up an inventory of the property related to the will, he must without delay draw up such an inventory and deliver it to the heir.
- Article 1215 An executor is under an obligation to manage the property of the deceased and to do all acts necessary for the execution of his duty.
The executor is deemed to be the agent of the heir in regard to acts done by him in the course of performing his duty as provided in the preceding Paragraph.
- Article 1216 While an executor is executing his duty, an heir may not dispose of any property related to the will, or obstruct the executor in the execution of his duty.
- Article 1217 Where there are several executors, their duties are performed in accordance with a majority vote; but if a special intention is declared in the will, such intention has to be followed.
- Article 1218 If an executor neglects his duty, or if there be

other grave causes, an interested person may apply to the family council for the election of another executor. If the executor in question was designated by a court, an application may be made to the court for the designation of another.

Section 5 WITHDRAWAL

Article 1219 A testator may at any time withdraw the whole or a part of his will in one of the forms prescribed for making a will.

Article 1220 If a will of an earlier date and a will of a later date conflict, the former is deemed to have been withdrawn as regards the conflicting parts.

Article 1221 Where acts done by the testator after having made a will conflict with such will, the will is deemed to have been withdrawn as regards the conflicting parts.

Article 1222 Where the testator has intentionally destroyed or Repealed a will, or stated in the will his intention of annulling it, the will is deemed to have been withdrawn.

Section 6 COMPULSORY PORTIONS

Article 1223 The compulsory portion of an heir is determined as follows:

- (1) For a lineal descendant by blood, the compulsory portion is one half of his entitled portion;
- (2) For a parent, the compulsory portion is one

half of his entitled portion;

(3) For a spouse, the compulsory portion is one half of his entitled portion;

(4) For a brother or a sister, the compulsory portion is one-third of his or her entitled portion;

(5) For a grandparent, the compulsory portion is one-third of his entitled portion.

Article 1224 A compulsory portion is determined by deducting the amount of debts from the property of the succession as reckoned according to Article 1173.

Article 1225 A person entitled to a compulsory portion may have the amount of the deficit deducted from the property of a legacy, if the amount of his compulsory portion becomes deficient on account of the legacy made by the testator. If there are several legatees, deductions must be made in proportion to the value of the legacies they severally receive.