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1. L. Jaramillo, *Naturaleza del Derecho Internacional Privado*. Revista *Estudios de Derecho*, vol. XXIII, No. 65, pág. 69 (Univ. de Antioquia, Medellín, Colombia)


3. J. Vallet de Seytrado, *Conflictos de leyes en materia de Regímenes Matrimoniales y Sucesorios*, Rev. de Per. y C. Soc. (Univ. de Concepción, Chile) Año XXXIII, No. 133 f. 3
   No. 134 f. 3 (Oct.-Dic. 1965)
Inheritance

1. The word inheritance, heir.
Although the word inheritance has the same Latin root as the Italian word the French Heir, the Spanish herencia, the concept as that of the heir is different.

It could be said in a general way that an heir according to the common law is the person on whom the real property of the deceased devolves by operation of law if the deceased (deceased) owns interests.

2. Two basic concepts of Inheritance.
In the history of law two basic and opposite concepts of inheritance prevail.
The Roman and the Germanic.
According to the Germanic inheritance is composed of the things left by the decedent. It is a simpler and less sophisticated concept like the Roman.

3. Roman Concept of Inheritance.
In the Roman concept the inheritance is an abstract or ideal entity which is not only formed by the assets left by
the deceased or decedent but also
by the liabilities or obligations.

This Roman concept has been
accepted by the continental law in France
Italy, Spain, Germany, the Americas, etc.

It could also be said that the
basic principles of Roman law in
intestacy such as universal succession,
forced heirship, representation and
prohibition of the bust concept have
been retained in the modern civil law
with its consequences for unexecuted ultra vires

4. Civil Law Concept

Inheritance according to the
civil law is the succession in
most of the rights of the deceased
and most of his obligations. It
could be generally stated that all
the rights that have an economic
value which are not extinguished
by death are transferable by the
inheritance to the successor.

Among these rights which are
not transferable or indivisible are: usu-
fruct, use and occupancy, the action
of revocation of a donation because
of neglect (at 653 Civil Code) and of
course the political rights.
Therefore, when we read in the America
Corpus Juris Stackly by some decisions
such as Adams v. Akerlund, 168 Ill. 632, 48 NE 454,
457, (C.J. 4:31 p. 1199) that in Civil Law "Inheritance
is the succession to all the rights of deceased
we know it is not completely right.

Black's Law Dictionary 3rd. Ed. p. 963 referring
to inheritance in the Civil Law states: "The
succession of the heir to all the rights
and property of the estate-leaver.

This expression rather unusual in English
is very interesting because it works on by
the hand to that which the essence of
the civil law inheritance; the concept
of patrimony.

5. **Patrimony**

In a strict juridical sense patrim-
mony (estate) is the aggregate (conflits)
of the juridical relations of a person
susceptible of an economic value.

According to the classical concept-
patrimony is an evanation of a person
which

1. Is undeniable
2. Everyone has it
3. No one can have more than one
The core deal is these concepts:
1. Assets and liabilities.
2. Potential capacity
3. It remains with the individual until his death.

6. Origin of this whole concept

The theory more accepted and logical is that this concept was a consequence of the original political conception of the Roman family. At the death of the chief - Peter families - another one comes into the leadership.

7. Types of Inheritance
   Testate - By will
   Intestate - By law
   Contractual - By contract - Germany and Switzerland

8. Intestate
   Both American and French law only call heir the successor intestate. If it is by a will the Americans call it legatee. If it is relative to personal property and decedent's real estate.
   In French legatee universal if is written by will and legation particular if in a bequest.
9. Systems to regulate the intestate inheritance
Substantive or personal: Based on ful succession
Alleged if based on the origin of the res.

10. The French, Italian, and Spanish
Belong to the substantives and are based on the proximity of the degree of relationship,
the rights of family and the principle of representation.

11. Orders of Succession
Descendant
Descendant relatives
Collaterals

12. Classes of Successors
Legitimate relatives - leg. familiari
Natural relatives - leg. congeneri
3 powers - leg. matrimonium
4 state - leg. imperi

13. The intestate inheritance is called
Art. 912 of the Civil Code
Besides the provision of the article:
a. When the testamentary clause is null
b. Incapacity to make a will
c. Revocatory condition
Relationship:

It is established taking into account the degrees and lines.

According to art. 9/5 the nearness of relationship is determined by the number of generations. Each generation forms a degree. The line is formed by degrees.

Art. 9/5 determines the relationship.

Priorities in Succession:

Those in degrees closer to the decedent exclude those further with the exception of the right of representation. The decedent line has preference over the descendant line.

The ascendants time indent by line that is the mother and father.

The natural child legally recognized a child.
16. **Right of Representation**

One can inherit by his own right (jure propriis) or by representation (jure representationis).

**By his own right - *jure propriis***

1. When called alone to the inheritance.
2. When many are called but are all descendants of the same immediate ascendant.

**Examples:**

1. ![Diagram of family tree]


2. ![Diagram of family tree]

**By Representation - *jure representationis***

1. When the grandfather dies and leaves one or more sons and grandchildren of a son who died before. The succession is by stipps and the grandchildren will take the place of their father.

![Diagram of family tree]
2. When a brother dies without successors, he leaves a brother and sons of another brother who issue before. These nephews will inherit by representation

```
A --- B --- C+
     \   \    \    
      D   E
```

3.

```
A --- B + --- C+
    \       \    \    
     D   E   F  H
```

By an express provision of the Code (art. 927) if nephews succeed to the inheritance by themselves without any uncle there will not be representation but all the nephews will inherit per capita.

4. **Basic Principles**

a) Representation only in the intestate's estate.

b) **Never in the ascending line.**

c) **Not collateral outside of children.**

```
A --- D --- E+
     \   \    \    
      B   F
```

4. **D inherits all F cannot represent E.**

d. The representative does not inherit the one represented but the sesquipes.

e) It is curious that the Spanish Civil Code (art. 925) went to the jointure principle (Nov. 113, chapter 2) in the provision that in the collateral line only the sons...
of brothers, nephews could exercise the right of representation, but not other descendants as grandsons which was the principle followed by the French (art. 742) and the Italian (art. 732. Code of 1865) and art. 468 of the 1842 Code.)
17. Interstate Succession

When a person dies without a will, his relations have a right to be his successors in his estate or inheritance according to the provisions of the law, e.g., Civil Code.

This type of succession is called intestate or ab intestato or legitimate succession because the source of the right to succeed comes from the estate and not from the will of an individual.

18. Where does this type of succession take place?

Fundamentally, when there is no will and the deceased dies intestate. However, there are other situations, some provided in a specific article of the Code, art. 912, and others not which also determine the intestate succession. These provided by the Code are:

a. Void will

b. There is a will but no heir appointed to all or part of the property.

c. Condition is lacking by the appointed heir

d. The heir is disqualified
Those not provided in the code are:
a. The clause designating the heir is void
b. Frustration of restitutory condition
c. Disappearance of the will
d. Inability to make a will
e. Institution of an heir for a term.
f. Repudiation of the inheritance.

1. Heirs - Priorities
1st. Descendants
2nd. Ascendants
3rd. Natural son
4th. Privileged collateral - Brothers and Sisters
5. Spouse
6. Other collateral down to the ninth degree
7. The state
20. Right of Accretion

Because of the difficulty to find a clear and precise rule which would cover all cases that could come up, there was a current of opinion to leave out of the Civil Code this Roman juristic institution source of many legal conflicts.

21. In Roman law, the reason for the right of accretion was different in relation to heirs than in legatees. In heirs was due to the fact that if accretion would not take place, that fact unsealed of the inheritors would have to go to the intestate heirs but there was a principle that none would rise fact testaite or pat rite. Nemo pro parte tentatus pro parte intestatibus decreceret peteset.

In relation to the legatees the right took place because it was thought to be the will of the testator which in the same reason that cut for nowadays regarding both the heirs and legatees.
22. Requisites of the right in the Testamentary Succession.

a. Two or more persons designated to the same inheritance to the same portion thereof without a special designation of shares.

b. That one of the persons designated dies before the Testator or survives the inheritance is not qualified to receive it.

The constant requisites of this institution is the joint call and a vacant portion of the inheritance.

23. Joint call

Very obscure in the Code art. 983
Res tantum
Verbis
Res et Verbis tantum

Scaevola, Catan and the Decision of the Supreme Court Regulation. The courts have interpreted in the sense that there is a joint call when surcease by shares without mentioning specific lives (ret)
24. Vacant lot or part of the inheritance. The vacant part can come under:
   a. The heir overt before the testator
   b. Inability to receive it
   c. Rejection

25. In the ascertainment right subject to donor irrevocable

   The majority of the professors (Scaesola, Costa, de Renz, etc.) are of the opinion that in the Testamentary inheritance, the ascertainment is voluntary and in the intestate, it is obligatory.

   In the Italian and French Codex, the ascertainment is compulsory, but in Chile, the heir can reject the ascertainment and obtain her own part in the inheritance.

   The Spanish Supreme Court has declared that the usufruct gives to two sons, if one of them dies, the other by ascertainment continues or her part of the usufruct.
26 Right of Transmission - Transfer
When an heir dies after the deceased
without having accepted or rejected the
inheritance, his heirs alone, by the
right of transfer, the right of acquit
inheritance. However this right,
different from the representation right,
has gone into the patrimony of the heir
who demanded it to his own heirs.

27 Representation and Acquittal
The representation right has priority
over the right of acquittal.
Substitutions

The reason for the substitution in Roman law was because the testamentary heater wanted to make certain that he would not be intimated. That is why the inheritance was not very attractive. The decedent named substitute a slave who was compelled to accept the inheritance.

Nowadays, the reason for the substitution is to respect the will of the decedent.

2.9 Types of substitutions.

There are two types of substitution: the direct and indirect.

The direct substitution is the "rulgar" in which the decedent names an heir and a substitute in case the heir does not want or can not accept the inheritance.

In the indirect or "fiduciary" substitution, the first called must keep the profession inherited which will belong to the substitute when the first called dies.

In the indirect, the original substitution can only be made by the heir in accordance with the testamentary relations to the son that were without having the "testamentary effect" on the former to make a will. It refers not only to the
state of the family but also of the son at
and immediate reaction of movement

When the occurrence refers to one specific
case of substitution, the others cannot
be presented as if he says of. Darwin
before he 1850, other cases such as rejecting
the inheritance are not complicated.

I have no belief now in which

Subsequent to my travels, I have not

Up to this point, and to me, he

The general rule is that the maker of

As far as I know, it was not

Two other men, it was this movement

and as he put it, the man of genius was

As far as I know, it was not

As far as I know, it was not

As far as I know, it was not

30. Wills in General.

Everyone can make a will, with the exception of those who are not yet 14 years of age and those who are insane.

Even the insane in a period of sanity can make a will.

As any other personal act, the will made under insane or fraudulent void.

The will is a very personal act that cannot be done on behalf of somebody.

Testamentary clauses should be interpreted in the literal meaning of the words, in case of doubt, the mean (will) of the testator must prevail.

The testator can dispose of his estate by naming heirs or legatees.

31. Types of Wills

Military, Special, Foreign, Country

Train, Common, Geographic

Closed
32. Rescission of Wills

Wills are essentially revocable clauses annulling future provisions are considered ineffectual.

To rescind is necessary the same formalities.

33. Capacity to receive by Inheritance

Every person can receive by inheritance or succession.

To this effect, a human person is that born with a human form and has twenty-four hours entirely separated from the mother's womb.

Capacitation and assentation are allowed by the law.

34. Specific incapacities (testamentary infancy)

1. Persons that have been named away in last sickness that has performed the testator (art. 752)
2. The testator's guardian if the testamentary clause has been made before the final accounts have been approved.
3. The testator and his relatives (art. 754)
4. Witness to the will
5. Insanity (art. 756)

It can be rescinded a foreman by the executor.
35. Antinomy of Articles 759 + 799 of the Code

The present section refers to a word at work and at state.

If a person is considered limited

Then only can never acquire

Thus in general, even acquiring insight

Relevant place and at another

Identified as we would make another

Moreover, eventually as above, all

Supplementary noting amount, until in all most satisfying of it good, according

Speech as will be at once right to ask all

And we can make it mentioned

Therefore, not mentioned here to it
36. Forcible Heirs. (Forced Forzors)

Everyone who has ascendants, ancestors, a wife or husband is compelled by law to leave a certain portion of his estate to them.

Natural ascendants and wife are always forced heirs no matter with whom they come to intend one of their portions vary according with whom they are called.

Ascendants are only forced heirs when there are no legitimate children.

37. Legitimate Portions.

The estate or inheritance is divided in three portions called: Shaft forced portion, long 1/3 forced portion, and the last third can be willed as pleased by the executors.

Descendants always have a right to 2/3 of the inheritance and ascendants to 1/3 of it.
The third of settlement (major) can only be distributed among the descendants.

38 Legitimate rights of the widow:

No problem when she comes to the inheritance with only one child, she receives a third 1/3 of the property.

The problem arises when she comes to the inheritance with more than one child.

The reason for this problem is the phrase of article 834 which states: "shall have a portion in equal parts to that corresponding by way of legal portion to each of the legitimate children or descendants who have not received any settlement."

This phrase has caused different theories of interpretation.

The most accepted theory is the one called "changeable (variable) medium amount" (Quincenito medio variable). This theory is focused on each case which is the amount that corresponds to the "long forced partition" i.e., the 2/3 of the inheritance.

Example: 120,000 left to the 2 sons.

The long legitimate partition of each son is 40,000
so the widow will receive $40,000 in
resurfuit.

de Buz, el conyuge vivido más que un de
nuevo a ser incluido bajo eso que
tienen en el seguro o una renuncia.

39. Legitimate (regular rights) of the illegitimate
children only recognized.

The "natural" children have a right
to receive 1/2 the portion in amount of
that which has the legitimate
children who has no legitimate (major)
The theory mostly accepted is
the same as the one accepted for the
survivor, i.e., dividends are a variable
in a case of 1/20,000 the natural can
that goes with 1 legitimate some receive.

40. Preterition - Art. 814

In Roman law, at the beginning the father
could dispose of his inheritance as he saw fit.
The XIX tables had a provision that said
the legatus pater families super pecunia
utelavem see see, it just cuts all that
the father disposes of his estate in its
law.
From that complete freedom to dispose by will, when thecontents changed, appeared the formal necessary succession. The decedent had to mention some of his relations. It was required only to mention them, otherwise the will was void.

From the above, in a latter period of Roman law, it was required to name heir the foremost heirs. This same idea went into the Code of Justinian but the Civil Code it is only needed that the foremost heir receive something to avoid pretension.

Practical reason to determine whether is a pretension or a disinherance.

41. **Disinherance**

Acts 553 specify the different causes by which the testator can disinhere his foremost heir.

The testator can forgive

Some are of the opinion that disinherance can not be conditioned bears no

The majority of the clientele do not accept a partial disinherance.
40. Requests

Definition. A bequest is a testamentary disposition under a singular title by which the testator leaves one or more specific things to one or more persons called legatees, to be delivered to them by his heirs or executors of his intestate after his death.

There is no question that it is a testamentary disposition.

It has a tendency to be a liberality, better

When the bequest precedes the

forced partition (legitima) the bequest is reduced

The French Code wanted to avoid the

confusion between legatees and heir

and mit. art. 1002 prohibited that testa-

mentary dispositions are universal. A little

universal on a little particulars.

The universal legatees had the "recevoir"
in some cases and therefore had the effect
of ultra vires hereditatis.
41. Types of legacies: See classification.

42. Revocation - Tact Revocation:
There are some doubtful cases - the diamond and the building.

43. Acceptance of the Inheritance:
1. Cannot be subject to condition or term
2. Irrevocability
3. Cannot be made later - Some have never been
erenewed.
4. At the right time.
5. Act 1006
6. Expressly or tacitly

44. Benefit of Inventory:
Rome at the beginning only knew the pure
and simple acceptance which had
the confirmation of patrimonies or ultim
ures beneficiales.

Empiras Gracianus established the
benefice of inventory for military men.
and justiceman extended it to everyone.

Registrah
1. Solenn acceptance in this manner
2. Inventory

The heir who accepts under the inventory benefit not only does not have to pay the debt of the inheritance but also keeps the own rights against it.

The benefit is lost:
1. If the heir sold or purchased some possession of the inheritance
2. If the heir sells possession of the inheritance without renunciation of the will.

45. Executors (Allavars)
1. Very personal
2. Non assignable (transferrable)
3. Temporary
4. Inheritance
5. Testamentary
6. Voluntary

Types of Executors: [Testamentary, Legitimacy, Patrimonial, Successor, Solidary]
General Powers of the Executor

1. Put in effect the good deeds of the testator (subrogation)
2. Pay the money legacies or bequests
3. Watch to comply with the wishes of the testator
4. Take the necessary precautions to preserve and custody of the possession of the testator

As soon as the heirs are in agreement on the administration of the inheritance, the executor (also deceased) cease.
Libros y Publicaciones que hay que Revisar

Suttonridge - Comparative Law. An Introduction to the Comparative Method of Legal Study and Research. Cambridge University Press 2nd Ed. 1949

Pommier. Introduction au Droit Comparé. These, Renner 1902.


Frases y pensamientos sobre el Derecho Comparado

1. "Presenciamos actualmente en España una saludable reacción, en sentido universalista, respecto a los estudios jurídicos. Durante un periodo ya centenario, venimos influyendo con corrientes continentales, y hoy no remite esa actitud para con un espíritu amplio, aprovechar todas las corrientes jurídicas que procedan de alguna manera, para perfeccionar nuestro sistema jurídico. La reacción nos viene a través de los estudios del Derecho Comparado que comienza a romper los vínculos de continencia y nacionalismo continental." B. Díez-Pastor. Rev. Gen. Leg. Int. T. XXXIV (202) P. 462.

2. M. Sarfati - "El Derecho Comparado como una ciencia autónoma es" aquella ciencia que fomente un continuo acercamiento entre las legislaciones sujetas a comparación y extraír de su aparente diversidad el fondo común de las instituciones y en los conceptos que en ellas existe latente, reconociendo así un conjunto de principios comunes que permita, con una lejana perspectiva, la coesigüiente unificación del Derecho. (Introducción al estudio del Derecho Comparado, trad. del Inglés Rev. Conf. Mexico 1925, 70)
todo lo contrario, Rev. En. de Ley y Jur. T. XXXVII
P. 303.

Gutierrez. El Derecho Comparado (Introducción al estudio de los Derechos extranjeros y el método comparativo) 1954.

Gutierrez. El Derecho Comparado (Introducción al método comparativo en la investigación y en el estudio del Derecho) ed. por Gandi, Barcelona, Instituto de Derecho Comparado, 1954, P. 232. "las causas en que se basa la aspiración hacia la uniformidad del Derecho son, principalmentemente, aunque no únicamente, de carácter económico. Es evidente que la amenaza jurídica es un factor de perturbación en el comercio inter

...cional."

Locus de este Articulo

1. Le droit anglais s'est formé des mêmes éléments que le notre (français) quoique combinés dans des proportions différentes. Le droit germanique, les coutumes normandes, le droit canonique et le droit romain, en sont les éléments constitutifs.

2. El concepto "specie", contratos sellados nunca a la vez para transmitir el domínio y como modo general de contratas.

3. Otros contratos de múltiples especificaciones en una especie de contrato real similar a la "en praestita" de la ley bávara, que refiere que el acreedor retiene o la realiza la propiedad mueble del deudor y se luego a las servienté de "delt y de "determiné".

4. En el derecho inglés la fuerza obligatoria del consentimiento tiene que producirse en forma que la promesa tenga un contra-parte de una virtura traducible en diversa pena; el promitente no un actentario pen-
ni tiene apoyado por el extranjero que tengo una relación cercana con la fraternidad.

5.- En cuanto que el sistema contractual del derecho inglés tiene por fundamento desde antiguos el " deed " o contrato formalista, como el sistema contractual del derecho romano se centra en la reiteración.
Liberias en la América Latina

Argentina:
1. Librería del Colegio S.A.
   Buenos Aires
   El Prof. Elyme
   Alcón y Bolívar, Buenos Aires
   mandó un trabajo
   Ariely Colón
   A través de este
   licenciado.