

Legal issues and family matters



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Can nephews and nieces inherit from their grandparents, unmarried uncles or aunts?

I received this inquiry several months ago:

I have an aunt, Rowena, with no surviving ascendants, who never married and has no legitimate or illegitimate children. She is survived by a younger sister, Josefa, a widower. Rowena's other siblings, two brothers and another sister, have died.

All of Rowena's siblings, Josefa and the three deceased, have children.

In case Rowena dies, who will inherit her estate? Josefa alone? Or Josefa jointly with the children of Rowena's deceased brothers and sisters (meaning the nephews and nieces)?

A variation of this situation is when among several brothers and sisters, one has died. Then the father or mother dies. Will the children of the deceased sibling (the nephews and nieces) have the right to inherit from the deceased grandparent?

If a person dies without a spouse, parents, legitimate or illegitimate children, then the collateral relatives (brothers and sisters, nephews and nieces, etc) will inherit

Articles 1003 to 1010 are the NCC's governing rules on the right of collateral relatives to inherit:

Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

Art. 1004. Should the only survivors be brothers and sisters of the full blood, they shall inherit in equal shares.

Art. 1005. Should brothers and sisters survive together with nephews and nieces, who are the children of the decedent's brothers and sisters of the full blood, the former shall inherit per capita, and the latter per stirpes.

Art. 1006. Should brother and sisters of the full blood survive together with brothers and sisters of the half blood, the former shall be entitled to a share double that of the latter.

Art. 1007. In case brothers and sisters of the half blood, some on the father's and some on the mother's side, are the only survivors, all shall inherit in equal shares without distinction as to the origin of the property.

Art. 1008. Children of brothers and sisters of the half blood shall succeed per capita or per stirpes, in accordance with the rules laid down for the brothers and sisters of the full blood.

Art. 1009. Should there be neither brothers nor sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood.

Art. 1010. The right to inherit ab intestato shall not extend beyond the fifth degree of relationship in the collateral line.

The "iron barrier" between the legitimate and illegitimate sides of the family

Please take note however of Article 992 of the New Civil Code of the Philippines which states:

An illegitimate child has no right to inherit ab intestato from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

This is known as the “iron barrier” which separates the legitimate and illegitimate sides of a family. Thus, in the example I cited in the introduction, if the nephews and nieces are illegitimate, then they are prohibited by Article 992 from inheriting from the relatives of their father or mother like their uncles or aunts, or even from their grandparents. (Anselma Diaz vs. IAC, G.R. No. L-66574 February 21, 1990)

Right of representation

Coming back to the question posted above, can these nephews and nieces whose parents predeceased (died before) their grandparent or unmarried uncle or aunt have the right to inherit? The legal issue here is the right of representation which is governed by Articles 970 to 977 of the New Civil Code of the Philippines (NCC). Let’s take note first of Article 1025 NCC which states:

“In order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens, except in case of representation, when it is proper.

A child already conceived at the time of the death of the decedent is capable of succeeding provided it be born later under the conditions prescribed in Article 41.”

There is some confusion on this issue because of the wording of Article 1025. A lot of lawyers will tell you that these nephews and nieces do not have the right to inherit since their parents predeceased the aunt. These lawyers have misread the phrase “no exception” as discussed in the book “Civil Code of the Philippines Annotated, Volume III, Wills and Succession” by Justice Edgardo Paras. As Justice Paras says in page 474 of his book, *“Even in case of representation, the representative must already be alive or at least conceived at the time the succession opens. He himself must be capable of succeeding the decedent.”*

Please take note that grandnephews and grandnieces cannot inherit by right of representation (Article 972 NCC).

Nephews and nieces already alive when the grandparent, unmarried aunt or uncle died can inherit by representing their predeceased parents

The proper interpretation of Article 1025 is this: *Were the nephews and nieces already alive when the succession opened, that is, when the aunt died? If yes, then they have the right to inherit by way of representation of their parents. They will inherit together with the surviving brothers and sisters of the aunt. Their share is whatever the share of each brother or sister, to be divided equally among them.*

Moreover, Art. 1005 NCC expressly provides for the right of these nephews and nieces to inherit. The said article states: *Should brothers and sisters survive together with nephews and nieces, who are the children of the decedent’s brothers and sisters of the full blood, the former shall inherit per capita, and the latter per stirpes.*

For another example, let’s say there are five brothers and sisters A, B, C, D and E. Then A died before E, leaving four children who are all alive at the time their aunt E died. Let’s call the four children (nephews and nieces of E) as U, V, W and X. Let’s say that each of the brothers and sisters (including A who predeceased E) is entitled to Php 500,000. as their share in the inheritance on a *per capita* basis. The four children (the nephews and nieces) will then divide among themselves the Php 500,000. share of A on a *per stirpes* basis.

Per stirpes and per capita division of the inheritance

The *per stirpes* basis means that the four children’s individual shares will not be equal to the share of the remaining siblings. The four siblings (A, B, C and D) are entitled to inherit from E on a *per capita* basis. Since A has died, his children (nephews and nieces U, V, W and X) will inherit by representing their father A. Their share in the inheritance will be on a *per stirpes* basis.

The shares of the siblings (B, C and D) who are still alive are greater than that of the nephews and nieces U, V, W and X. This is because they will inherit fully their share while the nephews and nieces will divide among themselves the respective share that was supposed to go to A.

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23

Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31

Confess and repent of your sins. Luke 13:3, Isaiah 1:18

Delay not in receiving Jesus Christ into your heart. 2 Corinthians 6:2, Proverbs 27:1

Pray and ask the Lord to save you now: “Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus’ name. Lord Jesus, I now accept you as my Savior. Amen.”

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