

THY WILL BE DONE by Atty. Chester Ogismer

Of Inheritance and Prenuptial Agreements

A prenuptial agreement is a form of contract between future spouses whereby they mutually agree on what type of property relations shall govern their union as husband and wife. They may agree upon a regime of conjugal partnership of gains, separation of property, or on any other regime not prohibited by law. In the absence of an agreement, the default property relations that shall govern is the absolute community of property.

A *prenup*, to be valid, must be in writing, signed and executed by the parties prior to the marriage. Any modification in the *prenup* must likewise be done before the celebration of the marriage. Further, in order to bind third parties, it must be registered in the local civil registry where the marriage contract is recorded and also in the proper Register of Deeds where the pieces of property of the future spouses are located.

One of the followers of *Thy Will Be Done's* Facebook page asked, "How do prenuptial agreements affect succession and is it provided in special laws?"

To answer this, one must realize that *prenups* only govern the property relations of spouses while they are alive. It does not affect their successional rights as spouses. The reason for this is simple: **a prenuptial agreement is a form of a contract and our laws are explicit that no contract may be entered into upon future inheritance except in cases expressly authorized by law** (Civil Code, 2nd par. of Art. 1347). Examples of contracts on future inheritance expressly authorized by law include an instance when a person partitions his estate to his heirs during his lifetime (Art. 1080), or when a person expressly provides in a deed of donation that the lifetime gift to his compulsory heir shall not be subject to collation (Art. 1062).

Going back to *prenups*, perhaps the follower's question arose out of a very common misconception that such an agreement could be used to completely shield a person's properties from his or her spouse, whether in life or in death. We often think of rich and famous couples whose son or daughter is about to get married to a "commoner." Unpleasant as it may sound, the parents worry about losing their hard earned fortune that they've given to their child to someone who is not related to them by blood.

Fortunately, our succession and inheritance laws give protection to compulsory heirs and one of those considered as compulsory heir is the spouse. This means that no amount of legal maneuvering in the *prenup* can deprive a spouse of his or her inheritance – not in our jurisdiction anyway. In other countries, like the United States, they allow *prenups* to provide for the complete deprivation or waiver of future inheritance between spouses. This is probably the reason why most of us assume that the future spouse could be excluded in the inheritance through a *prenup*. We have been exposed to news about Hollywood celebrities with similar arrangements. However, as I said, this is not allowed in the Philippines.

Nevertheless, a *prenup* is a useful tool between spouses in the event of legal separation, or dissolution of their marriage by virtue of declaration of nullity or annulment. In the given circumstances, the spouses' property regime will be dissolved and a *prenup* can determine how such dissolution is to be given effect. A *prenup*, for example, may provide for a complete separation of property including the fruits and income thereof, such that in case of legal separation, one spouse will not get a single share from whatever was acquired by the other spouse. Another example, a *prenup* may establish a conjugal partnership of gains such that in case of annulment of marriage only the pieces of property acquired during the marriage will be divided equally between the spouses while they respectively get to keep what they already own before their marriage.

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