

CONTESTING EXCESSIVE DONATIONS

Just this July, Warren Buffet set the record for the largest *single* charitable donation in history by giving \$2.8 billion to the Bill and Melinda Gates Foundation. Warren Buffet has been consistently donating billions of dollars every year after pledging in 2006 that he would be giving away \$31 billion to the said foundation (which also set the record for the highest *non-single* charitable donation in history).

And Warren Buffet isn't alone in his altruism. Other personalities, from the lesser known (Bill and Joyce Cummings, Chuck Feeney) to the vaguely familiar (Michael Bloomberg, Ted Turner) to household names (George Lucas, Jackie Chan), have either already given or pledged to give away anywhere from 50-90% of their fortunes to charity.

Should a kind-hearted Filipino tycoon decide to follow suit, is there anything in our laws that would deter him?

Our laws do allow a person to donate to charity provided that such donation is not inofficious. The New Civil Code defines "inofficious donations" as one that exceeds what a person can give by way of a will. This simply means that a donation cannot impair the *legitime* or the rightful share of a compulsory heir in the inheritance.

To illustrate:

Let us suppose that a widower has two children. Under the law, the rightful share of the children in the inheritance (*legitime*) is 50% (or 25% each). If the parent decides to donate 90% of everything he owns to charity during his lifetime, the children's *legitime* will effectively be impaired because only 10% will be left for the children to inherit. Such donation is inofficious.

The interesting question is when is the proper time to contest the donation as inofficious, upon death of the parent or immediately after the donation is made?

The Supreme Court clarified the matter for our benefit.

Gregorio owned a parcel of land. He has two children – Rolando and Constancia. Later, he donated the parcel of land to Rolando only.

After Gregorio died thirteen years later, Constancia assailed the donation alleging that since the parcel of land was all that Gregorio owned, the same was inofficious because it prejudiced her *legitime*. Rolando countered that

Constancia's action was belated and should have been filed earlier after the donation was made. Having failed to do so, the case should be dismissed.

The Supreme Court ruled that the action to contest an inofficious donation arises only after the death of the donor-decedent. It is only during this time that his estate is computed for purposes of satisfying his heir's legitimes. Therefore, Constancia was not wrong in only recently filing her case after Gregorio's death.

It ordered that one half (1/2) of the lot donated by Gregorio to Rolando be awarded to Constancia and the remaining one-half (1/2) be retained by Rolando.

(It is the opinion of the staff of Thy Will Be Done however that only one-fourth of the lot should have been awarded to Constancia since her legitime or rightful share in the inheritance is only 25%).

(Based on G.R. No. 154942, August 16, 2005)