MY LIVE-IN PARTNER, MY HEIR?

In the last article, we saw a fairly uncommon instance of two property regimes operating in the same union of a man and a woman who lived together as husband and wife without the benefit of marriage. This gave us the opportunity to distinguish between the property relations of live-in couples.

Now we expound on the matter by going back to the story of Romualdo– who lived-in with Pacita while he was still married to Amanda – and applying it to inheritance.

In our story, remember that Romualdo never married Pacita even after his wife, Amanda,had died. They remained live-in partners up to the very end. As such, Romualdo and Pacita never became *compulsory heirs* of each other. Apart from descendants or ascendant, a compulsory heir can only be the *surviving spouse*. Not having married each other even if they already could after the death of Amanda, Romualdo and Pacita would not qualify as surviving spouse of each other upon death of the other.

The interesting question posed then is this…can either of them nevertheless name the other as a *voluntary heir* in a Will?

Just as in the previous article, the answer is two-fold.

While Amanda (the legal wife) was still alive, Romualdo and Pacita were clearly not *capacitated* to get married. In fact, they could have been guilty of adultery or concubinage. Under the law, persons with whom a donor is guilty of adultery or concubinage is disqualified from receiving a donation from said donor. The same principle applies in inheritance: persons with whom the testator is guilty of adultery or concubinage cannot be named as an heir in a Will. Therefore, even if Romualdo or Pacita had left a Will naming the other as voluntary heir, the same could be contested and eventually struck down by a court of law.

On the other hand, after Amanda died, there was no longer any impediment to Romualdo and Pacita'spossible marital union. Although they never married, their continued co-habitation was no longer a bar to instituting each other as heir in their respective Wills. Both were now free to bequeath to the other had they decided to write their Wills.

It should be emphasized that a *voluntary heir*needs to be instituted in a valid Will. In other words, without a valid Will instituting the other as voluntary heir along with compulsory heirs, intestate succession sets in. Intestate succession takes place in the absence of a valid Will and in such a case, only compulsory heirs are qualified to inherit.

Since Romualdo and Pacita were never married, they were never compulsory heirs of each other and therefore could not have inherited from each other in the absence of a Will.

Thus, if live-in partners, who are capacitated to marry, intend to bequeath a portion of their estate to their live-in partner, a last will and testament is an indispensable requirement.

(Based on G.R. No. 141501, July 21, 2006 and Articles 739& 1028 of the New Civil Code)