

THE INVISIBLE PRE-NUP PART 2

Last article, we looked at a situation where the law gives protection to a spouse *akin* to that of a prenuptial agreement. We saw that when a person has legitimate descendants from a previous marriage (that has been terminated) and later remarries, properties acquired during the first marriage shall exclusively belong to the remarrying spouse, the reason being to protect the inheritance of the legitimate descendants from being diluted by the second marriage.

Today we'll discuss another instance where the law applies *asimilar* type of treatment in the event of remarriage.

Articles 103 and 130 of the Family Code states that should the surviving spouse, who fails to settle the estate of the deceased spouse, later remarry, a mandatory regime of complete separation of property shall govern the property relations of the subsequent marriage. This means that the subsequent marriage shall operate under the dictum, "*What's mine is mine, what's yours is yours.*" – notwithstanding the absence of a pre-nuptial agreement.

Here, the two elements required to trigger the application of this law are 1) a subsequent marriage has been contracted and 2) the estate of the deceased first spouse had not been settled at the time of the subsequent marriage.

Let's elaborate on these two elements.

A man gets married, has legitimate children, and later dies. The surviving spouse (wife) does not bother settling the estate since she and her deceased husband only owned a residential property and some funds in the bank and the children are still minors. If the wife were to remarry, will the law apply?

Yes. In such a case, the wife will remain the exclusive owner of her share in the residential property and the funds in the bank, notwithstanding the second marriage because both elements are present.

Now suppose the wife uses her funds in the bank to purchase another property during the second marriage while the second husband also purchases a property with his own funds. Will these properties be exclusive to the each respective spouse?

Yes. Even properties acquired during the second marriage shall be exclusive to the spouse that acquired them because under Articles 103 and 130, a complete separation of property became the MANDATORY regime that governed their property relations. In other words, by operation of law, the spouses of the subsequent marriage had no choice but to have a complete separation of property. Again, this is notwithstanding the fact that they did not enter into a pre-nuptial agreement.

Note also that the failure to settle the estate of a deceased restricts the ability of the heirs to dispose of the inherited property. At best, the only thing that an heir can sell, while the estate has not been settled, is his *fractional interest* in the undivided estate.

This seems to be the rationale behind the law in that it ensures that the unsettled properties are not commingled with the second spouse, which would amount to an indirect disposition.