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**Mater: What are the widow's rights to inherit in Puerto Rico?**

By the nature of the subject, this paper is mainly based on the Puerto Rico Civil Code of 1930 as amended, known as the Code. The issue is explained and defined clearly in the current code, which governs most aspects of people life, including the civil relations between them. The Code includes issues like the definition of person, marriage, property, contracts, obligations, and inheritance, among others subjects.

I tried not to get into complex definitions, but rather to explain in a simple and clear way of introduction or what are the subjects of Civil Law, what is a Code, and within the Civil Code the definition of conjugal partnership, when it is dissolved and what go the death of one spouse. These issues have been examined in detail by our Supreme Court and numerous case law is available if requested.

**Introduction:**

The modern Puerto Rico originally was ruled by the Spanish government which brought the legal system known as the Germanic Roman Civil Law, implementing the Spanish Civil Code. It derived from the French Civil Code or Napoleonic<sup>1</sup> Code a legal system prevailing at present. Later, in 1898 Puerto Rico formed part of the United States, specifically the July 25, 1898, in the Spanish-American War. In 1900, the Jones Act gives Puerto Rico a political system similar to that of the United States.

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<sup>1</sup> Aprobado por la Ley de 21 de marzo de 1804 y todavía en vigor, durante el gobierno de Napoleón Bonaparte es uno de los códigos civiles mas conocidos del mundo.

But is not until 1922 that the Supreme Court of the United States<sup>2</sup> interpreted the Jones Act stating that Puerto Rico was not an incorporated territory, a phrase that describes those territories in the process of integration to the United States as an additional state. The US Supreme Court stated that Puerto Rico is an unincorporated territory of the United States. This means that Puerto Rico is within the United States of America, but not a State or an incorporated territory. According to the Insular Cases resolved by the Supreme Court of the United States, constitutional rights are not automatically extended to all territories under U.S. control. The territories and their citizens are entitled to the protection of the U.S. Constitution, despite a few exceptions, such as Incorporated States that are an "integral part" of the nation. The relationship of the government of Puerto Rico with the U.S. federal government is for many comparable to the federal government's relationship with their states.

And since then, and based on this relationship is that the Roman Germanic Civil Law have coexisted with the Anglo-Saxon Common Law, that comes from the United States.

The legal system of Puerto Rico is a mixed jurisdiction. The system of mixed jurisdiction can be defined as a legal system in which the Romano Germanic tradition has become suffused to some degree by Anglo-American law."<sup>3</sup> This system exhibits characteristics of both traditions such as Louisiana and Quebec.

For Puerto Rico not being a State of the American nation it has not had an assimilation of common law as pronounced as in Louisiana, it is for this reason that Civil Law predominate PR.

Civil Law is body of law derived and evolved directly from Roman Law, the primary feature of which is that laws are struck in writing; codified, and not determined, as in the common law, by the opinions of judges based on historic customs.

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<sup>2</sup> Balzac v. Porto Rico, 258 U.S. 298 (U.S. 1922)

<sup>3</sup> F.P. WALTON, *The Scope and Interpretation of the Civil Code*, Wilson & Lafleur Ltée, Montreal (1907), reprinted by Butterworths, Toronto (1980), with an introduction by M. TANCELIN, 1

Basically, in common law jurisdictions, most rules are found in the jurisprudence and statutes complete them. In civil law jurisdictions, the important principles are stated in the code, while the statutes and jurisprudence complete them. In Law a Code is a systematic statement of a body of law; especially: one given statutory force.<sup>4</sup> (Merriam-Webster, Incorporated, 2012)

### **Issue – What are the widow's rights to inherit in Puerto Rico?**

There is a widow who has a real estate property in Puerto Rico that has been sold. The question is who is entitled to the proceeds of the sale?

In order to answer that question, we have to understand 2 basic doctrines: Joint Ownership of Property by husband and wife; and intestate inheritance law and the forced heirship principle.

### **Community Property of Husband and Wife / Joint Ownership of Property by Husband and Wife and how it is dissolved.**

When a couple gets married in Puerto Rico, has two options to establish its economic organization: the legal conjugal partnership (Joint Ownership of Property of Husband and Wife) or complete separation of property.<sup>5</sup> If they are interested in maintaining the complete separation of property must establish a premarital agreement in writing and signed before a notary public. Without the premarital agreement, their property shall be governed by the legal conjugal partnership. The Puerto Rico Civil Code of 1930 Article 1295<sup>6</sup> states: "*By virtue of the conjugal partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.*"

Our interest here is that it says share and share alike (in Spanish is “harán suyos por mitad, what literally translate to “makes his or her by halves”), at dissolution of marriage. The article 95<sup>7</sup> of the

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<sup>4</sup> Merriam – Webster Dictionary (2012). Retrieved June 18 , 2012 <http://www.merriam-webster.com/dictionary/code?show=0&t=1340202898>

<sup>5</sup> 31 L.P.R.A. §3551 - Capitulaciones matrimoniales; cuando no se ha celebrado el contrato

<sup>6</sup> 31 L.P.R.A. §3621 - Conjugal partnership; ownership of earnings and profits

<sup>7</sup> 31 L.P.R.A. §301 - How dissolution effected; see also 31 L.P.R.A. §2681 - When partnership terminates

Code states when the marriage is dissolved: "*The marriage is dissolved in the following cases: (1) By the death of the husband or wife, (2) By divorce legally obtained, (3) if the marriage be declared null."*

Therefore, a married couple who did not establish a premarital contract is governed by conjugal partnership. On the death of one of them, by function of law, it has to be dissolved. With the consequence that half of all assets and liabilities that have this couple would go to the surviving spouse and the rest will form part of the body of estate.

The portion of the assets and liabilities that goes to the body of the estate of the deceased goes directly to his or her heirs. It gives us the question: What are the widow's rights to inherit in Puerto Rico?

The general principle governing jurisdictions in inherited property are:

- a. Real property – is regulated by the laws of the place where property are located.
- b. Personal property – is regulated by the laws where the deceased person resided or was domiciled.

In regards the real estate property located in Puerto Rico we have to review the general inheritance law of Puerto Rico. The Civil Code of 1930, articles 875 to 1040<sup>8</sup> set the details on intestate inheritance establishing the order to inherit, inventory, assessment and finally the division.

Puerto Rico's inheritance law works in the principle of forced heirship, this type of inheritance do not recognize total freedom to testator. Louisiana has a similar provision, but is less extensive than Puerto Rico's provision. But the Code does not have a forced heirship provision for spouses. However

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<sup>8</sup> 31 L.P.R.A. §2591 – §2936

as stated before, at death the spouse's interest in any community property is converted to his or her separate property, like divorce.

In case of intestate inheritance the body of the estate is made up of all the assets and liabilities that the deceased had at the time of his death.<sup>9</sup> And this is primarily to the descendant line, Civil Code, 1930, section 893.<sup>10</sup> In general, the followings are called to inherit in strict order, considering that the closest exclude more distant.<sup>11</sup>

- a. The descendants, in the absence of descendants;
- b. The ascendants, in case of no ascendants;
- c. The preferred side relatives, which include the brothers, sisters, nephews and nieces. In case no preferred side relatives;
- d. The surviving spouse, in the absence thereof;
- e. The collateral relatives until the sixth grade, and in case no collateral relatives;
- f. The Commonwealth of Puerto Rico through the University of Puerto Rico.

As the Code establish the widows inherit in the fourth position. That means that for the widower inherits there should be no descendants, ascendants (parents, grandparents and so on) or close relatives.

More over, the widow inherits a usufruct, which is granted on a portion of the inherited property. A usufruct is a right to use the products or income from a portion of the estate. Or as defined in the Puerto Rico's Civil Code, 1930, art. 396<sup>12</sup> is the right of having benefit from a thing that is owned by

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<sup>9</sup> 31 L.P.R.A §2083 - What included in sucession

<sup>10</sup> 31 L.P.R.A §2641 - To whom succession pertains in first place

<sup>11</sup> Puerto Rico Civil Code, 1930 sections 893, 895 and 909- 31L.P.R.A. §2641, §2643 and §2677

<sup>12</sup> 31 L.P.R.A §1501 – Usufructo: definición

other, perceiving all products, profits and benefits that occur, with the obligation to keep its shape and substance, unless the title of their constitution or otherwise authorized by law.

There are different types of usufruct, this one is called the “widows usufruct” (usufructo viudal in Spanish), and have its own special regulations and is for life. Is computed according to people who inherit; as an example when inherited together with 2 children of the deceased, the widow usufruct will use half of the third part of the body of the estate<sup>13</sup>. Bearing in mind that the widow only has the right to use or get the products of this portion.

As a practical operation when the body of the estate is sold the actual value of the usufruct has to be determined and pay it off to the widow. This procedure is called the commutation of the usufruct. For this computation must be taken into account: the value of the body of the estate at the date of the death, the widower's life expectancy, his gender (male or female), the number of heirs who concurs, the annual revenue as a percentage, and the present value of the property in usufruct.

Continuing the example above, when the male widow at 80 years old concurs with two heirs, with a body of the estate of \$120,000.00 and an annual income of the usufruct of 6%, the commutation value would be about \$ 9,924.47. In conclusion this case widow inherits \$9,924.47 from his deceased wife. The formula for the commutation of the usufruct is not discussed in detail because it's complexity and the variables such as life expectancy and the present value.

## **Conclusion**

Due to the Civil legal tradition of Puerto Rico, there are different rules on the disposition of property than the rules of the jurisdiction of American Common Law tradition. As a matter of fact, the

treatment given to the assets of the marriage and then to the left in inheritance is one in which protecting the interests of the descendants, rather than the spouse.

As previously stated when a husband dies, it have to be divided the property in a similar way when a divorce happens. Only after this exercise you can proceed to divide the estate of the deceased, in which the widow is not a common heir. Rather should not be called heir, because he or she enjoys the property only in usufruct which by definition is a right to use and not a title itself.

This article does not cover the topic of the Last Will and the freedom it gives to distribute the estate in a different way to that provided by law. Moreover, to help the widow or widower can inherit from their deceased spouse. We should clarify that Testaments provide a degree of freedom to the testator, yet still present the system of forced inheritance.

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<sup>13</sup> Puerto Rico Civil Code, 1930 section 761- 31L.P.R.A. §2411