

# TRAINING TOOLKIT

Vietnam Land Access for Women (LAW) Program

Photograph courtesy of ISDS



## Inheritance Law, Wills and Women's Rights



**USAID**  
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This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of ICRW and ISDS and do not necessarily reflect the views of USAID or the United States Government.

## **ACKNOWLEDGEMENTS**

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# Contents

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<b>About this Toolkit</b> .....	5
<b>Inheritance Law, Wills, and Women Rights</b> .....	<b>7</b>
Module Objectives.....	7
Handouts.....	7
<b>Legal Provisions on Inheritance in Vietnam</b> .....	8
Lecture: Laws on Inheritance (15 minutes) .....	8
Key Legal Provisions on Women’s Equal Rights to Inheritance.....	8
Exercise: What Happens When Someone Dies? (1.5 hours).....	8
Lecture: Women’s Rights to Inheritance.....	9
Discussion: Women and Inheritance.....	9
<b>Joint Property, Private Property</b> .....	10
Lecture (30 minutes) .....	10
<b>Testate Succession and Testaments</b> .....	12
Lecture: General Provisions on Inheritance .....	12
Lecture: Inheritance at Law .....	12
Lecture: Testamentary Inheritance.....	12
Lecture: How to Carry Out a Testament After a Person Has Died.....	13
Discussion: How Testaments Can Help Women and Girls.....	13
<b>The Community Volunteer’s Role in Inheritance</b> .....	14
Discussion: Your Potential Role in Inheritance .....	14
Exercise: Giving Advice on Inheritance .....	14
<b>Handout 1: Women and Inheritance</b> .....	15
Key Points About Women’s Equal Rights to Inheritance .....	15
Specific Provisions on Inheritance .....	15
Inheritance of Land Use Rights.....	17
<b>Handout 2: Testaments and Women</b> .....	18
<b>Handout 3: If the Deceased Leaves a Testament</b> .....	19
Legal Provisions on Testament and Testamentary Inheritance .....	19
Steps of Testamentary Inheritance .....	24
<b>Handout 4: If the Deceased Does Not Leave a Testament (Inheritance at Law)</b> .....	25
Legal provisions for Inheritance at Law.....	25
Steps of Inheritance by Law .....	27
<b>Handout 5: Inheritance Story</b> .....	28
Discussion.....	28



# About this Toolkit

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The right to access, use, and have control of land is a fundamental right enshrined in the Universal Declaration of Human Rights (and Convention on Elimination of all forms of Discrimination Against Women). Access to and control of land are important because property allows people to build a home and/or to sustain a livelihood for themselves and their families. Individual ownership of homes and land can increase individuals' power within their households, communities, and states. However, the ability to own and use land depends on the complex interaction between legal and social contexts. While both men and women may be denied their land (and property) rights, women are more frequently marginalized due to gendered social and legal norms that block their exercise of these rights.

The Vietnam Land Access for Women (LAW) Program addresses this gap in (women's) land and property rights. The LAW Program is carried out Washington-based International Center for Research on Women (ICRW) and Hanoi-based Institute for Social Development Studies (ISDS) with the support of the U.S. Agency for International Development (USAID). This Program aims to increase farmers' awareness of land rights, facilitate their ability to exercise these rights, collect evidence on the (key) barriers farmers face in upholding land rights, and strengthen the capacity of local civil society organizations and mass organizations to advocate for gender equitable application of existing laws. A key activity in the project is the organization and support of teams of Community Volunteers for Gender Equality Advocacy (CVGEA) to help farmers, particularly women farmers, in the northern province of Hung Yen and the Mekong Delta province of Long An to improve their understanding of land rights.

The Property Rights and Gender Training Toolkit for CVGEA seeks to strengthen understanding of property rights—specifically those to land—for

women and men as equal citizens. However, because women are often not treated as equal citizens, the materials pointedly highlight their rights throughout the manual, in order to fully inform participants about what rights women do have, how to communicate effectively on the topic, the obstacles preventing women from having and/or exercising their rights, and how to address those issues in practice.

With the help of the Property Rights and Gender Training Toolkit for CVGEAs, ICRW and ISDS aim to:

- Increase women's knowledge of their legal rights to land according to current law, and increase their understanding and recognition of women's and men's equality before Vietnamese law, particularly their access to land rights;
- Raise awareness of gender-based challenges in implementing land rights in rural areas;
- Increase awareness of how women can exercise and protect their own land rights while respecting the rights of their fellow citizens.

ICRW and ISDS believe that the first step to securing land rights requires raising awareness of *everyone's* legal rights, and emphasizing that women's rights are protected by law and are just as important as men's.

The toolkit has five modules:

- Rights and Gender in Vietnam
- Land Law and Gender
- Land Rights in Marriage and Family
- Inheritance Law, Wills, and Women
- Monitoring Skills for the CVGEA

The modules are designed so that trainers can choose to do all of the modules, or focus on a particular one. However, we recommend beginning with Module 1, Rights and Gender in Vietnam, especially for CVGEAs who have received little previ-

ous training in either gender or human rights. The module uses a human rights-based approach to introduce women’s rights, land rights, and gender, which the toolkit originators—Institute for Social Development Studies (ISDS) and ICRW—have found to be a positive starting point for discussions on women’s land rights.<sup>1</sup>

The modules use five different methods to engage participants.

- Background sections introduce new material, explain new concepts, and discuss the gendered aspects of the module topic. Facilitators can use the background information as a short lecture, a reading exercise for participants, or as introduction to new topics.
- Lecture sections provide specific information about the module topic. Facilitators

need to present all of the information in lecture sections clearly.

- Discussion sections promote group conversation, encouraging participants to ask questions and share their experiences, which highlights differences between custom and written law. The facilitator’s role is more to guide the conversation than to present information.
- Exercise sections give participants a chance to practice a new skill or idea. Exercises can be used to make ideas in the Background, Lecture, and Discussion sections more concrete.
- Handouts and Resources, featured at the end of every module, can be used during the training, and also by community rights workers in their own outreach or sensitization work.

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1. This toolkit is inspired by previous work by ICRW and the Uganda Land Alliance (ULA) with paralegals in Uganda.

This toolkit was designed to serve as a guide for training Community Volunteers on Gender Equality (CVGEA). The modules contain legal reference material for the CVGEAs to support their delivery of legal advice and community sensitization activities in this capacity. Specifically, the handouts presented in this module are meant to be used only by the CVGEAs as part of preparation for sensitizations or legal counseling services.



# Inheritance Law, Wills, and Women Rights

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## Module Objectives

Community rights workers will **understand**:

- What a will is
- What needs to be in a will
- How to implement a will
- How to manage property when a person dies without a will

Community rights workers will be able to **communicate**:

- How having a will can protect a person's family and help avoid conflicts
- Women can own property that is given to them in a will and wills are a means to protect family members, especially women and girls, from property grabbing
- How to make a will

Community rights workers **bring to their communities**:

- Increased awareness of wills
- Knowledge and services to write and witness wills

- Support to follow correct and legal procedures in managing property of the deceased, including the cases when the person died abroad or owned property abroad

## Handouts

At the end of the Module are five handouts that can be used both during the training and by community rights workers in outreach or sensitization in their own communities

- Handout 1: Women and Inheritance
- Handout 2: Wills and Women
- Handout 3: If the Deceased Leaves a Will
- Handout 4: If the Deceased Does **Not** Leave a Will
- Handout 5: Case Study – An Inheritance Story

**Time:** 8 hours

# Legal Provisions on Inheritance in Vietnam

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When someone who owned property dies, issues of inheritance and succession arise. The distribution of the deceased person's property may either be according to the deceased person's will (testate succession), or according to a prescribed set of laws for property division if the person died without leaving a will (intestate succession).

The law in Vietnam protects women's right to inheritance. However, in practice, women's inheritance rights are often violated. It is not unusual for widows to be denied the right to inherit their deceased husband's property, especially land. Some have even been denied the right to look after their own children. Widows have been chased out of the matrimonial home or deprived of the right to use the family land to grow food for their families. Girls are sometimes denied the right to inherit their father's property.

## **Lecture: Laws on Inheritance (15 minutes)**

There are statutory documents on inheritance. The 2013 Constitution clearly stipulates in Article 26: "Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the right to and opportunities for gender equality." This is the basic principle on which other legal documents of Vietnam built the regulations regarding women's and men's inheritance rights.

The most important law on inheritance is the 2005 Civil Code of Vietnam, which has specific provisions on inheritance in Chapter 22 – General Provisions; Chapter 23 – Testamentary Inheritance; Chapter 24 – Inheritance at Law; Chapter 25 – Payment and Division of Estate; and Chapter 33 – Inheritance of Land Use Rights.

The 2006 Law on Gender Equality confirms the principle of equality in rights and obligations among husband and wife in family life.

The 2014 Law on Marriage and Family also has clear provisions on inheritance between husband and wife.

Among other rights, the 2013 Land Law gives land users the right to inherit or donate his/her land use right.

## **Key legal provisions on women's equal rights to inheritance**

1. Every individual shall be equal in the right to bequeath his/her property to another person and the right to inherit property under a testament or according to law. (Article 632, 2005 Civil Code)
2. Husband and wife are equal, having equal rights and obligations in all family affairs and in the performance of citizens' rights and obligations prescribed in the Constitution, this Law, and relevant laws. (Article 17, Law on Marriage and Family 2014)
3. Wife and husband have equal rights and duties in possessing common assets and are equal in using their common income and in deciding their family resources. (Clause 2, Article 18, Law on Gender Equality 2006).
4. Organizations, households, individuals, and communities may acquire land use rights through receipt of inherited land use rights. (Item D, Clause 1, Article 169, Land Law 2013)

## **Exercise: What Happens When Someone Dies? (1.5 hours)**

This exercise will promote discussion and draw out the differences between what happens under custom and under recorded law after men and women die. The exercise is also intended to gauge participants' familiarity with inheritance law.

1. Introduce a fictional family, either by drawing a picture of the members or by listing their names and relationships.

2. Divide the participants into four small groups and give the following instructions.

- Ask Group 1 to prepare a 5-10 minute role play showing what happens in the family in terms of managing property if the husband dies, especially addressing issues of who does and does not receive property and where the wife and children will live. Ask the group to make sure that all the people who are usually involved in deciding about property or receiving property appear in the role play (even if some participants must play more than one part).
- Ask Group 2 to do the same exercise but in the event that the wife dies.
- Ask Group 3 to draw pictures of what happens after a person dies when s/he has written a will.
- Ask Group 4 to do the same for a person who dies without making a will.

3. Have each group present their work and have a discussion on the differences they see between what happens under custom and under the law, as well as the differences when someone dies with or without a will. Ask the participants:

- Why did characters in the role plays and pictures make the decisions they did?
- Were there any decisions or actions that treated women differently from men or treated girls differently from boys?

### **Lecture: Women's Rights to Inheritance**

In Vietnam, due to the son preference for family line continuation and the customs of ancestor worship, daughters are not usually given inheritance of her family land. Once married, a daughter in-law rarely gets a share of land or housing from her parents-in-law, and can only use land and house together with her husband. If the husband dies, the wife can face the risk of not being able to continue living on the land of the husband, unless she lives there with her son and does not remarry. Even if the land is common property of the couple, the woman sometimes still vulnerable if the husband died but the woman does not have proof of her right to the land and the house. More vulnerable women are those who remain unmarried, widowed, divorced, childless, women infected with HIV or fatal disease, women with disabilities.

### **Discussion: Women and Inheritance (30 minutes)**

1. Have the participants read aloud the Handout 1, "Women and Inheritance," with each person taking turns to read a different point.
2. Ask the following questions:
  - If a man and woman are not married but are living together, does the law recognize their claims over each other's property or property they acquired together? What about if they are legally married?
  - Do women without children have a legal right to inherit property?
3. Invite the participants to ask questions.

# Joint property, private property

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## **Lecture: Joint property, private property (30 minutes)**

The 2013 Constitution stipulates in Article 32, Item 2, that a citizen's rights to private ownership and inheritance shall be protected by law. The 2005 Civil Code gives women and men the rights to own property separately as individuals, and to own property jointly with other people. Land, houses or other buildings, and businesses are examples of properties that people often own jointly.

It is important for friends, family, or spouses who acquire property together, especially land, to clearly decide if they wish to hold the property as one unit, or whether they each have a defined share of the property. The following articles will give an overview of ownership rights defined and protected by the 2005 Civil Code.

### **Article 214: Common ownership**

Common ownership means ownership of property by more than one owner. Common ownership comprises common ownership by shares and common ownership by integration. A property under common ownership is a common property.

### **Article 215: Establishment of common ownership right**

A common ownership right is established under the agreement of the owners, under the provisions of law or in accordance with practices.

### **Article 216: Common ownership by shares**

1. Common ownership by shares means common ownership in which each owner's share of the ownership right to the common property is determined.

2. Each of the owners of property under common ownership by shares shall have his/her rights and obligations to such property corresponding to his/her share of the ownership right, unless otherwise agreed upon.

### **Article 217: Common ownership by integration**

1. Common ownership by integration means common ownership in which each owner's share of the ownership rights to the common ownership property is not determined.
2. Common ownership by integration comprises divisible common ownership by integration and indivisible common ownership by integration.
3. Owners of property under common ownership by integration shall have equal rights and obligations to the property under common ownership.

### **Article 219: Common ownership by husband and wife**

1. Common ownership by husband and wife is common ownership by integration.
2. Husband and wife who jointly establish and develop the common property through the efforts of each shall have equal rights in the possession, use, and disposition of such property.
3. Husband and wife shall discuss, agree, or authorize each other to the possession, use, and disposition of the common property.
4. The common property of husband and wife may be divided by their agreement or by a decision of the Court.

How property was held during the deceased's life affects how it may be lawfully distributed after death. Property the deceased owned by herself/himself will be disposed of according to her/his

wishes in a will or according to the laws. Several articles of the 2005 Civil Code are relevant to this topic. See Handout 1, and specifically the following articles.

- Article 634: The Estate
- Article 636: Time when the heir's rights and obligations arise

- Article 637: The fulfillment of property obligations left by the deceased

Handout 1 also reviews the 2014 Law on Marriage and Family stipulation in Article 66 about the settlement of property of husband and wife in cases where a spouse is dead or has been declared dead by a court.

# Testate Succession and Testaments

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When a person who owned property dies, his/her estate must be distributed in accordance with the law. If the deceased person left a will, the distribution of his/her estate has to follow the dictates of the will (testate succession). If the person died without leaving a will, his/her estate will be divided in accordance with the law for property division (intestate succession). As outlined below, the 2005 Civil Code has various provisions on estate distribution.

## **Lecture: General Provisions on Inheritance (30 minutes)**

Use Handout 1 to supplement this lecture. Specifically, highlight the 2005 Civil Code provisions on inheritance in the following articles from Part 4, Chapter 12.

- Article 631: Inheritance right of individuals
- Article 632: Individuals' right of equality in inheritance
- Article 633: Time and place for opening inheritance
- Article 634: Estate
- Article 635: Heirs
- Article 636: Time at which the heir's rights and obligations arise
- Article 641: Inheritance by persons entitled to mutually inherit each other's estate, who die simultaneously
- Article 645: Statute of limitations for initiating inheritance-related lawsuits
- Article 643: Persons not entitled to inherit estate

## **Lecture: Inheritance at Law (30 minutes)**

If the person died without leaving a will, his/her estate will be divided in accordance with the law for

property division (intestate succession) as prescribed in the 2005 Civil Code. In order to ensure equal rights to inheritance, community volunteers should communicate about the importance of protecting women's rights to inheritance and provide people, especially women, with knowledge about the relevant legal provisions.

Use Handout 4 to supplement this lecture. Specifically, highlight the 2005 Civil Code provisions on inheritance at law in the following articles.

- Article 674: Inheritance at law
- Article 675: Cases of inheritance at law
- Article 676: Heirs at law
- Article 677: Inheritance by substitution
- Article 680: Inheritance in cases where wife and husband have divided their common property, are applying for divorce, or have married another person

## **Lecture: Testamentary Inheritance (30 minutes)**

Use Handout 3 to supplement this lecture. Specifically, highlight the 2005 Civil Code provisions on testamentary inheritance in the following articles from Chapter 23.

- Article 646: Testaments
- Article 647: Testators
- Article 648: Rights of the testator
- Article 649: Forms of testament
- Article 650: Written testaments
- Article 651: Oral testaments
- Article 652: Lawful testaments
- Article 653: Contents of written testaments
- Article 654: Witnesses to the making of testaments
- Article 655: Written testaments made without witnesses

- Article 656: Written testaments made in the presence of witnesses
  - Article 658: Procedures for making testaments at public notary offices or People’s Committees of communes, wards, or townships
  - Article 662: Amendment, supplementation, substitution, and annulment of testaments
  - Article 663: Joint testament of husband and wife
  - Article 664: Amendment, supplementation, substitution, and annulment of joint testaments
  - Article 665: Custody of testaments
  - Article 668: Legal effect of joint testament of husband and wife
3. After the time of opening the inheritance, the testament announcer must send copies of the testament to all concerned persons related to the contents of the testament.
  4. The persons who receive copies of the testament shall be entitled to request the comparison thereof with the original.

In cases where the testament is made in a foreign language, it must be translated into Vietnamese and must be notarized.

**Lecture: How to Carry Out a Testament After a Person Has Died (15 minutes)**

**Article 672: Announcement of testaments**

1. In cases where a written testament is kept at a public notary office, the public notary shall be the person to announce the testament.
2. In cases where the testator appoints a testament announcer, the latter shall have the obligation to announce the testament; if the testator does not appoint or has appointed a testament announcer but the appointee refuses to announce the testament, the surviving heirs shall agree to appoint the testament announcer.

**Discussion: How Testaments Can Help Women and Girls (30 minutes)**

1. Have the participants read aloud from Handout 2, “Testaments and Women.”
2. Ask the following questions:
  - Do you know anyone who has left property to a daughter or wife, or who might want to leave property to a daughter, wife, or other female relative?
  - Have you ever seen any resistance to daughters, sisters, or other female relatives inheriting property? If yes, please explain.
  - How might children be better off if their parents made testaments?
  - What could you say to people in your community to help them become open to the idea of testaments?
3. Invite the participants to ask questions.

# The Community Volunteer's Role in Inheritance

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## **Discussion: Your Potential Role in Inheritance Issues (30 minutes)**

1. Ask the group to list or describe what they can do as rights workers to help their communities in matters of inheritance and succession.
2. Write their responses on the flipchart.
3. Probe or make suggestions to ensure that the following roles are included.
  - Educate communities about the importance of making testaments.
  - Help members of the community write their testaments.
  - Be a witness to testaments if and when requested by people making testaments. However, do not be a witness of a testament that you helped draft.
  - Educate communities about the procedures to follow when a person dies with or without a testament.
  - Assist people, especially widows and orphans, with obtaining the necessary documentation for processing a court decision.
  - Assist people, especially widows and orphans, with following up on cases in courts, directing them to the right location and person with power to judge their disputes.
  - Provide advice and mediate in cases where there are family disputes about property divi-

sion, ensuring that widows' and orphans' rights are protected.

- Report any cases of interference in or mismanagement of estates to the local authorities and/or relevant state agencies.

## **Exercise: Giving Advice on Inheritance (1 hour)**

Now that the participants have a general understanding of testate and intestate succession, and the roles and mandates of the courts and Administrator General, practice giving advice about inheritance problems using the case studies below. Use Handout 5 for this exercise.

1. Divide the participants into small groups. Assign different questions to each group.
2. Ask the groups to read through the case study and determine what advice they would give the client and why. Emphasize that their role is to explain the law to help people reach their own informed decisions.
3. Have each group present their group work and ask the others for feedback.
4. Refer to the "Answers" section at the end of Handout 5 to ensure that all relevant points are covered during discussion.
5. Wrap up the session by correcting any wrong or misleading advice given.



# Handout 1

## Women and Inheritance

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### Key points about women's equal rights to inheritance

- According to the 2013 Constitution and the 2005 Civil Code, women have the same right to inherit property as men. The Constitution says that women have the right to be treated equally with men.
- The Constitution bans any laws, customs, cultures, and traditions that treat women unfairly or deny women the same opportunities as men.
- Women can inherit any kind of property, including land.
- All women, regardless of their marital status or station in life, can inherit property and be named as heirs. This includes childless women, women with disabilities or living with HIV/AIDS, single women, women with only girl children, etc.
- The Constitution, Civil Code, and the Law of Marriage and Family all state that widows have the right to inherit the property of their deceased spouse, and the right to look after their children if their spouse dies.
- For a wife or husband to have a legal claim to inherit a spouse's property, s/he must either be legally married under one of the recognized forms of marriage in Vietnam, or be mentioned in the deceased's testament. Therefore, having a marriage legally registered is important for protecting both men's and women's rights to inheritance.

### Specific provisions on inheritance

Article 66 of the 2014 Law on Marriage and Family stipulates the following provisions regarding the

settlement of marital property in cases where a spouse is dead or has been declared dead by a court.

1. When a spouse is dead or has been declared dead by a court, the surviving spouse shall manage common property, unless another person is designated to manage the estate under the deceased's testament, or if the designated heirs agree to have another person manage the estate.
2. When there is a request for division of the estate, unless the couple had reached agreement on the property regime, the common property of husband and wife shall be divided in half. The property portion of the spouse who is dead or declared dead by a court shall be divided in accordance with the inheritance law.
3. In cases where the division of the estate would seriously affect the life of the surviving spouse and family, this spouse has the right to request a court to restrict the division of the estate, in accordance with the Civil Code.
4. Unless otherwise prescribed by business law, the property of husband and wife used for business activities shall be settled according to Clauses 1, 2, and 3 of this Article.

The 2005 Civil Code has the following provisions on inheritance in Part 4, Chapter 12.

### **Article 631: Inheritance right of individuals**

Every individual shall have the right to make a testament to dispose of his/her property; to bequeath his/her property to his/her heir(s) at law; and to inherit property under a testament or according to law.

### **Article 632: Individuals' right of equality in inheritance**

Every individual shall be equal in the right to bequeath his/her property to another person and the right to inherit property under a testament or according to law.

### **Article 633: Time and place for opening inheritance**

1. *The time for opening inheritance* is the time when the owner of property dies. In cases where the Court declares that a person is dead, the time for opening the inheritance shall be the date when the Court declares the person is dead.
2. *The place for opening inheritance* is the last place of residence of the deceased; if such place cannot be identified, the place for opening inheritance shall be the place where all or most of his/her estate is located.

### **Article 634: Estate**

Estate includes the deceased's own property and his/her shares in property in common with others.

### **Article 635: Heirs**

If an heir is an individual, he/she must be alive at the time of opening the inheritance, or must be born and still alive after the time of opening the inheritance, but must be conceived before the death of the estate leaver. In cases where a testamentary heir is an agency or organization, such agency or organization must be in existence at the time of opening the inheritance.

### **Article 636: Time at which the heir's rights and obligations arise**

As from the time of opening the inheritance, the heirs shall have the property rights and obligations left by the deceased.

### **Article 637: Performance of property obligations left by the deceased**

1. The persons enjoying the inheritance shall have the responsibility to perform the property obligations within the limit of estate left by the deceased, unless otherwise agreed upon.
2. In cases where the estate has not yet been divided, the property obligations left by the deceased shall be performed by the estate administrator in agreement with the heirs.
3. In cases where the estate has already been divided, then each of the heirs shall perform the property obligations left by the deceased, which correspond to, but not exceed, the portion of property he/she has received, unless otherwise agreed upon.

### **Article 641: Inheritance by persons entitled to mutually inherit each other's estate, who die simultaneously**

If two people with the right to inherit each other's estate die simultaneously, or are considered to have died simultaneously because it is impossible to determine who died first, then they shall not inherit each other's estate, but the estate of each person shall be inherited by his/her respective heir(s).

### **Article 642: Disclaimer of inheritance**

1. An heir shall have the right to disclaim an estate, except for cases where such disclaimer is aimed at shirking his/her property obligations toward another person.
2. A disclaimer of estate must be made in writing; the person who disclaims must communicate the disclaimer of estate to other heirs, the person tasked to divide the estate, the Notary Public Office, or the People's Committee of the commune, ward, or township where such inheritance is opened.
3. The time limit for disclaiming an estate shall be six months counting from the date of opening

the inheritance. After six months counting from the date of opening the inheritance, if there is no disclaimer of estate, the heirs are considered as having accepted the inheritance.

**Article 643: Persons not entitled to inherit estate**

The following persons shall not be entitled to inherit estate:

1. Persons who are convicted of having intentionally infringed upon the life or health of the estate leaver, or of having maltreated, or physically or mentally abused the estate leaver, or of having seriously infringed upon the honor or dignity of such person;
2. Persons who seriously breach their obligations to support the estate leaver;
3. Persons who are convicted of having intentionally infringed upon the life of other heirs for the purpose of acquiring part or all of the portion of the estate to which such heirs are entitled;
4. Persons who deceive, coerce, or hinder the estate leaver while the latter make his/her testament;
5. Persons who forge, modify, or destroy a testament in order to acquire part or all of the estate against the will of the estate leaver.

**Article 645: Statute of limitations for initiating inheritance-related lawsuits**

The statute of limitations for an heir to request the division of estate, to determinate his/her rights to inheritance, or deny the inheritance rights of an

other person, shall be ten years counting from the time of opening the inheritance. The statute of limitations for initiating a lawsuit to demand an heir fulfill the property obligations left by the deceased shall be three years counting from the time of opening the inheritance.

**Inheritance of land use rights**

Chapter 33 of the 2005 Civil Code stipulates the following specific provisions on the inheritance of land use rights.

**Article 733: Inheritance of land use rights**

The inheritance of land use rights means the transfer of land use rights from the deceased to his/her heir(s) under the provisions of this code and the land law.

**Article 734: Individuals entitled to bequeath land use rights**

Individuals who are assigned or leased land by the State, or are transferred the land use rights, shall have the right to bequeath the land use rights as provided for in Part Four of this code and the land law.

**Article 735: Inheritance of the rights to use land assigned to households by the State**

If a member of a family household assigned land by the State dies, such member's land use rights shall be left to his/her heirs in accordance with the provisions of Part Four of this code and the land law.

## Handout 2

# Testaments and Women

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- A good way to protect the inheritance rights of women and girls is through testaments. A testament ensures that if the deceased person wanted to give property to women and girls, his/her intentions are clear and have legal authority.
- When making a testament, a husband must ensure provision is made for his wife and for his female and male children. Otherwise, the testament can be contested. The wife must also make provision for her husband and children, or the testament could be contested.
- Women can be named as executors of property and/or can be given authority by the court to administer the estate of a person who dies intestate.
- Women have a right to make a testament to give away property they own.

# Handout 3

## If the Deceased Leaves a Testament

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### Legal provisions on testament and testamentary inheritance

The 2005 Civil Code stipulates the following provisions on testamentary inheritance.

#### **Article 646: Testaments**

A testament is the expression of an individual's will to transfer his/her own property to other person(s) after his/her death.

#### **Article 647: Testators**

1. A person who has attained adulthood is entitled to make a testament, except in cases where such person is affected by a mental disease or other ailment, which prevents him/her from being aware of, or controlling, his/her acts.
2. A person who is between fifteen and eighteen years of age may make a will with the consent of his or her parents or guardian.

#### **Article 648: Rights of the testator**

The testator shall have the following rights:

1. To designate his/her heirs(s); to disinherit an heir;
2. To divide his/her estate for each of his/her heirs;
3. To set aside part of his/her estate for donation and/or worship;
4. To assign obligations to his/her heir(s);
5. To designate a person to keep the testament, the administrator of his/her estate, and the distributor of the estate.

#### **Article 649: Forms of testament**

A testament must be made in writing; if the testament cannot be made in writing, it can be made orally. Ethnic minority people shall be entitled to make their testaments in their own ethnic minority scripts or languages.

#### **Article 650: Written testaments**

A written testament may be:

1. A written testament made without witnesses;
2. A written testament made in the presence of witnesses;
3. A notarized written testament;
4. An authenticated written testament.

#### **Article 651: Oral testaments**

1. In cases where a human life is threatened by a disease or other causes, which prevent him/her from making a written testament, he/she may make an oral testament.
2. After three months counting from the time the oral testament is made, if the testator is still alive and clear-minded, such oral testament shall be automatically annulled.

#### **Article 652: Lawful testaments**

1. A testament shall be considered lawful when it meets all the following conditions:
  - a. The testator is clear-minded while making the testament; he/she is not deceived, threatened, or forced;

- b. The content of the testament is not contrary to law and/or social ethics; the form of testament is not contrary to the provisions of law.
2. The testament of a person aged between full fifteen years and under eighteen years must be made in writing and such person must get the consent of his/her parents or guardian.
  3. The testament of a person who is physically handicapped or illiterate must be put into writing by a witness and notarized or authenticated.
  4. A written testament without notarization or authentication shall be considered lawful only if it satisfies the conditions specified in Clause 1 of this article.
  5. An oral testament shall be considered lawful if the oral testator expresses his/her last will before at least two witnesses and immediately after that the witnesses write such down and jointly sign or press their fingerprints. Within five days from the date the oral testator expresses his/her last will, the testament must be notarized or authenticated.

**Article 653: Contents of written testaments**

1. A testament must contain:
  - a. Day, month, year, on which the testament is made;
  - b. Full name and place of residence of the testator;
  - c. Full names of the person(s), agency(ies), or organization(s) entitled to the estate or the clear definition of conditions for individuals, agencies, or organizations to enjoy the estate;
  - d. The inheritance bequeathed and the location of such estate;
  - e. The person(s) appointed to perform the obligations and the contents of such obligations.
2. No abbreviations or symbols shall be used in testaments; if a testament comprises many pag-

es, then each page must be ordinally numbered and signed or fingerprinted by the testator.

**Article 654: Witnesses to the making of testaments**

Every person may serve as a witness to the making of a testament, except the following persons:

1. Heirs under the testament or at law of the testator;
2. Persons with property rights and obligations related to the contents of the testament;
3. Persons who have not yet reached full eighteen years or persons having no civil act capacity.

**Article 655: Written testaments made without witnesses**

The testator must himself/herself write and sign the testament. The making of written testaments without witnesses must comply with the provisions of Article 653 of this code.

**Article 656: Written testaments made in the presence of witnesses**

In cases where a testator is unable to write the testament by himself/herself, he/she may ask another person to write it, but in the presence of at least two witnesses. The testator must sign or fingerprint the testament in the presence of the witnesses; the witnesses shall certify the signature or fingerprint of the testator and sign the testament. The making of testaments must comply with the provisions of Article 653 and Article 654 of this code.

**Article 658: Procedures for making testaments at public notary offices or People’s Committees of communes, wards, or townships**

The making of testaments at public notary offices or People’s Committees of communes, wards, or townships must comply with the following procedures:

1. The testators shall announce the contents of their testaments before public notaries or persons competent to authenticate them at the commune/ward/township People's Committees. The public notaries or the persons competent to authenticate must record in writing the contents stated by the testators. The testators shall sign or fingerprint the testaments after certifying that their testaments have been accurately recorded and correctly express their will. The public notaries or persons competent to authenticate at the commune/ward/township People's Committees then sign the testaments;
2. In cases where testators cannot read, hear, sign, or fingerprint the testaments, they must request the assistance of witnesses who shall have to sign the testaments for certification in the presence of the public notaries or persons competent to authenticate at the commune/ward/township People's Committees. The public notaries or persons competent to authenticate at the commune/ward/township People's Committees shall certify the testaments in the presence of the testators and witnesses.

**Article 662: Amendment, supplementation, substitution, and annulment of testaments**

1. Testators may amend, supplement, substitute, or annul their testaments at any time.
2. In cases where a testator makes any supplement to his/her testament, the already made testament and the supplement shall have equal legal effect; if a part of the already made testament and the supplement are contradictory, only the supplement shall have legal effect.
3. In cases where a testator replaces his/her testament with a new testament, then the previous testament shall be annulled.

**Article 663: Joint testament of husband and wife**

Husband and wife may make a joint testament to dispose of their common property.

**Article 664: Amendment, supplementation, substitution, and annulment of joint testaments**

1. Husband or wife may amend, supplement, substitute, or annul their joint testament at any time.
2. When a wife or husband wishes to amend, supplement, substitute, or annul their joint testament, she or he must get the consent of the other; if one of them has already died, the other can only amend or supplement the testament related to his/her own share of common property.

**Article 665: Custody of testaments**

1. A testator may request a public notary office or another person to keep his/her testament in its/his/her custody.
2. In cases where the public notary office keeps the testament, it must maintain and preserve the testament in accordance with the provisions of law on notary public.
3. The individual entrusted to keep the testament shall have the following obligations:
  - a. To keep its contents confidential;
  - b. To safeguard and preserve the testament; if the testament is lost or damaged, he/she must immediately notify the testator thereof;
  - c. Upon the testator's death, to hand back the testament to the testator's heir(s) or to the person competent to announce the testament. The handover of the testament must occur in the presence of two witnesses, and be confirmed in writing by the signatures of both the person who hands it over and the recipient.

**Article 666: Lost or damaged testaments**

1. If at the time of opening the inheritance a testament has been lost or damaged to such an extent that it does not fully express the will of the testator, and if there is no evidence to demon-

strate the true wish of the testator, the testament shall be deemed non-existent and the provisions of law on inheritance at law shall apply.

2. In cases where the testament is found before the estate is divided, then the estate shall be divided according to the testament.

### **Article 667: Legal effect of testaments**

1. A testament shall take effect at the time of opening the inheritance.
2. A testament shall be considered wholly or partially invalid in the following cases:
  - a. The testamentary heirs die before or at the same time with the testator;
  - b. The agency or organization designated as a heir is no longer in existence at the time of opening the inheritance.
  - c. In cases with more than one testamentary heir where one of them dies before or at the same time as the testator, or if one of the agencies or organizations designated as heir is no longer in existence at the time of opening the inheritance, then only the part of the testament that relates to the person who died before or simultaneously with the testator, or such defunct agency or organization, shall be legally ineffective.
3. A testament shall have no legal effect if the estate left to the heir(s) is no longer in existence at the time of opening the inheritance; if only part of such estate is still in existence, then the testamentary part related to the remaining part of the estate shall remain effective.
4. If a part of the testament is unlawful but does not affect the validity of the rest of the testament, then only such part shall have no legal effect.
5. If a person leaves more than one testament regarding a property, then only the latest testament shall take legal effect.

### **Article 668: Legal effect of joint testament of husband and wife**

A joint testament of husband and wife shall take effect as from the time the last of them dies or at the time both the husband and wife die simultaneously.

### **Article 669: Heirs independent from contents of testaments**

If an estate is divided according to law, the following persons shall be entitled to a portion equivalent to two-thirds of the portion given to an heir at law, even if they are not authorized by the testator to inherit the estate or have inherited a portion less than two-thirds of their due part, unless they have disclaimed the estate according to the provisions of Article 642 or they are not entitled to the estate according to the provisions of Article 643 of this code:

1. Minor children, father, mother, wife, or husband;
2. Adult children without working capacity.

### **Article 670: Estate used for worshipping**

1. In cases where a testator has allocated part of the estate for worshipping, that part of his/her estate shall not be divided for inheritance, but shall be entrusted to a person designated in the testament for management to service the worship; if the designated person fails to comply with the testament or with the heirs' agreement, the heirs shall be entitled to entrust such part of the estate to another person for management and use thereof for worshipping.
2. In cases where the estate leaver does not designate an administrator of the worship estate, the heirs shall designate a person to manage the worship estate.
3. In cases where all the testamentary heirs have died, the estate portion reserved for worshipping shall belong to the current lawful administrator of such estate among people entitled to inheritance at law.



4. In cases where the whole property of the deceased is not enough for fulfillment of his/her property obligations, no part of the estate shall be reserved for worshipping.

### ***Article 672: Announcement of testaments***

1. In cases where a written testament is kept at a public notary office, the public notary shall be the person to announce the testament.
2. In cases where the testator appoints a testament announcer, the latter shall have the obligation to announce the testament; if the testator does not appoint, or has appointed a testament announcer but the appointee refuses to announce the testament, the surviving heirs shall agree to appoint the testament announcer.
3. After the time of opening the inheritance, the testament announcer must send copies of the testament to all concerned persons related to the contents of the testament.
4. The persons who receive copies of the testament shall be entitled to request the comparison thereof with the original.
5. In cases where the testament is made in a foreign language, it must be translated into Vietnamese and notarized.

### ***Article 673: Interpretation of testaments***

In cases where unclear content in a testament leads to different interpretations, then the testament announcer and the heirs must interpret the testament contents together, based on the true will

of the deceased before his/her death, taking into consideration the relationship between the deceased and his/her testamentary heir(s). Where such persons fail to agree on the interpretation of the contents of the testament, such testament shall be deemed non-existent and the estate shall be divided in accordance with the provisions of inheritance law on inheritance.

In cases where part of a will is unclear but the remainder of the will is unaffected, only that part which is not able to be interpreted shall be legally void.

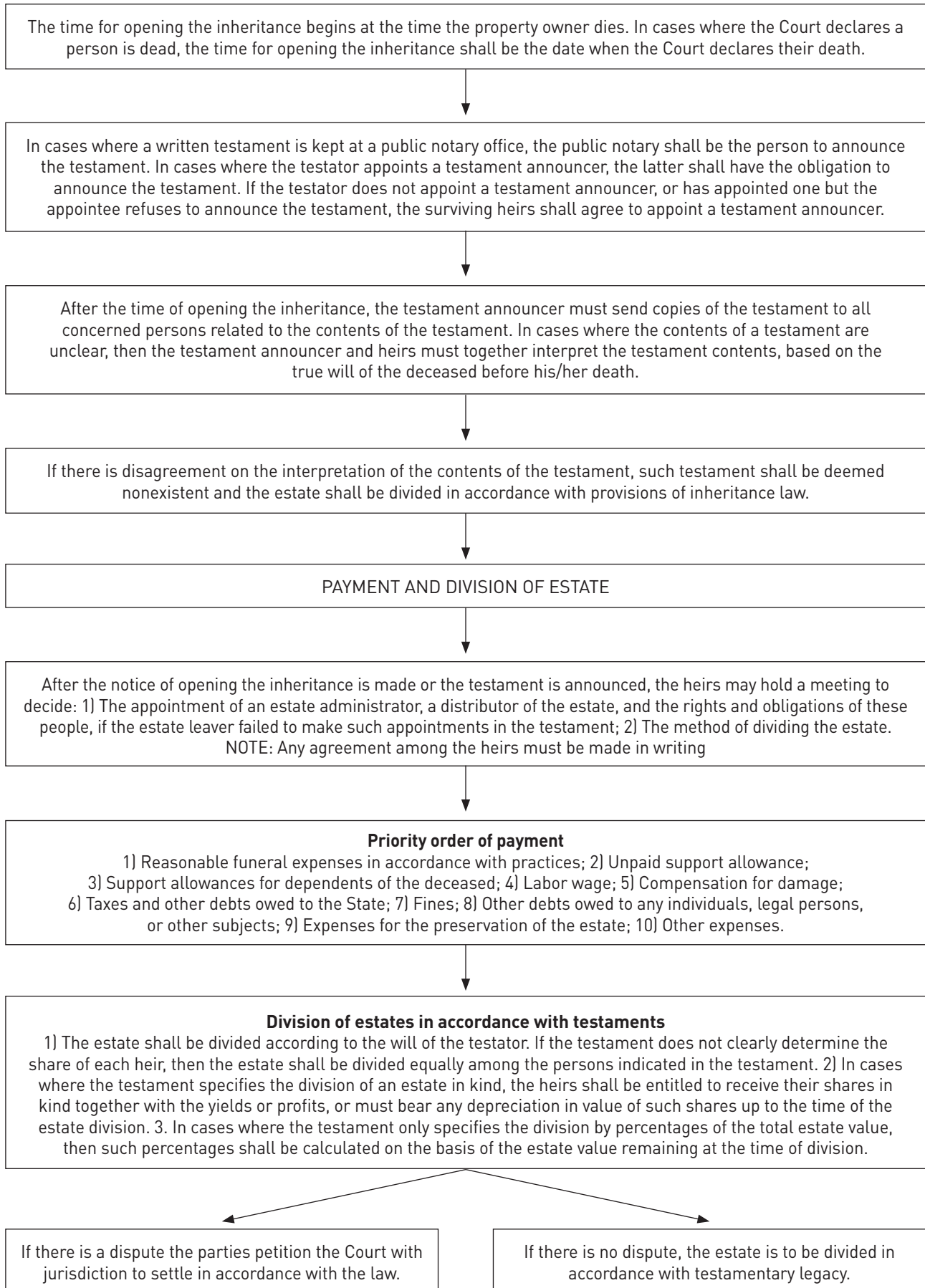
### ***Article 767: Inheritance law involving foreign elements***

1. The estate must comply with the laws of countries of the estate leavers' nationalities.
2. Inheritance rights to immovable assets must comply with the laws of the countries where such immovable assets are located.
3. Heirless immovable assets shall belong to the countries where such immovable assets are located.
4. Heirless movable assets shall belong to the countries of the estate leavers' nationalities.

### ***Article 768: Testamentary inheritance***

1. The capacity to make, change, and cancel testaments must comply with the laws of the countries where the testators are citizens.
2. Forms of testament must comply with the laws of the countries where the testaments are made.

## Steps of testamentary inheritance



## Handout 4

# If Deceased Did NOT Leave a Testament (inheritance at law)

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### Legal provisions for inheritance at law from the 2005 Civil Code

#### ***Article 674: Inheritance at law***

Inheritance at law is inheritance in accordance with the ranks, conditions, and order of inheritance provided for by law.

#### ***Article 675: Cases of inheritance at law***

1. Inheritance at law shall apply in the following cases:
  - a. There is no testament;
  - b. The testament is unlawful;
  - c. All the testamentary heirs die before or at the same time as the testator; the agency or organization designated as testamentary heir is no longer in existence at the time of opening the inheritance;
  - d. The persons designated as testamentary heirs shall not have the right to inherit or have disclaimed their inheritance rights.
2. Inheritance at law shall also apply to the following parts of the estate:
  - a. Part of the estate not disposed of in the testament;
  - b. Part of the estate related to an invalid part of the testament;
  - c. Part of the estate related to a testamentary heir, who, however, does not have the right to inherit, or who has disclaimed his/her inheritance rights, or who dies before or at the same time as the testator; or part of the

estate related to an agency or organization designated as testamentary heir, which is no longer in existence at the time of opening the inheritance.

#### ***Article 676: Heirs at law***

1. Heirs at law are classified in the following order:
  - a. First rank of inheritance shall include wife, husband, biological father, biological mother, adoptive father, adoptive mother, biological children, and adopted children of the deceased;
  - b. Second rank of inheritance shall include paternal grandfather and grandmother, maternal grandfather and grandmother, natural brother(s) and sister(s) of the deceased; grandchildren of whom the deceased is the paternal or maternal grandfather or grandmother;
  - c. Third rank of inheritance shall include paternal and maternal great-grandparents; paternal and maternal uncles and aunts by blood of the deceased; nephews and nieces of whom the deceased is the paternal or maternal uncle or aunt by blood; great-grandchildren of whom the deceased is the paternal or maternal great-grandparents.
2. Heirs belonging to the same rank of inheritance shall be entitled to equal portions in the estate.
3. Heirs belonging to the subsequent rank of inheritance shall be entitled to inheritance only if none of the heirs of the preceding rank of inheritance is left because they have died, are not entitled to the estate, are disinherited, or disclaim the estate.

### ***Article 677: Inheritance by substitution***

In cases where a child of an estate leaver dies before or at the same time as the estate leaver, then his/her grandchild shall be entitled to inherit the part of the estate that his/her father or mother would have inherited if he or she was still alive; if such grandchild also dies before or at the same time as the estate leaver, then the great-grandchild of the estate leaver shall be entitled to inherit the part of the estate that his/her father or mother would have inherited if he or she was still alive.

### ***Article 678: Inheritance relationship between adopted children and their adoptive fathers, adoptive mothers and their biological parents***

An adopted child and his/her adoptive father and/or mother shall be entitled to inherit each other's estate, and can also inherit the estate in accordance with the provisions of Articles 676 and 677 of this code.

### ***Article 679: Inheritance relationship between stepchildren and their stepfathers and/or stepmothers***

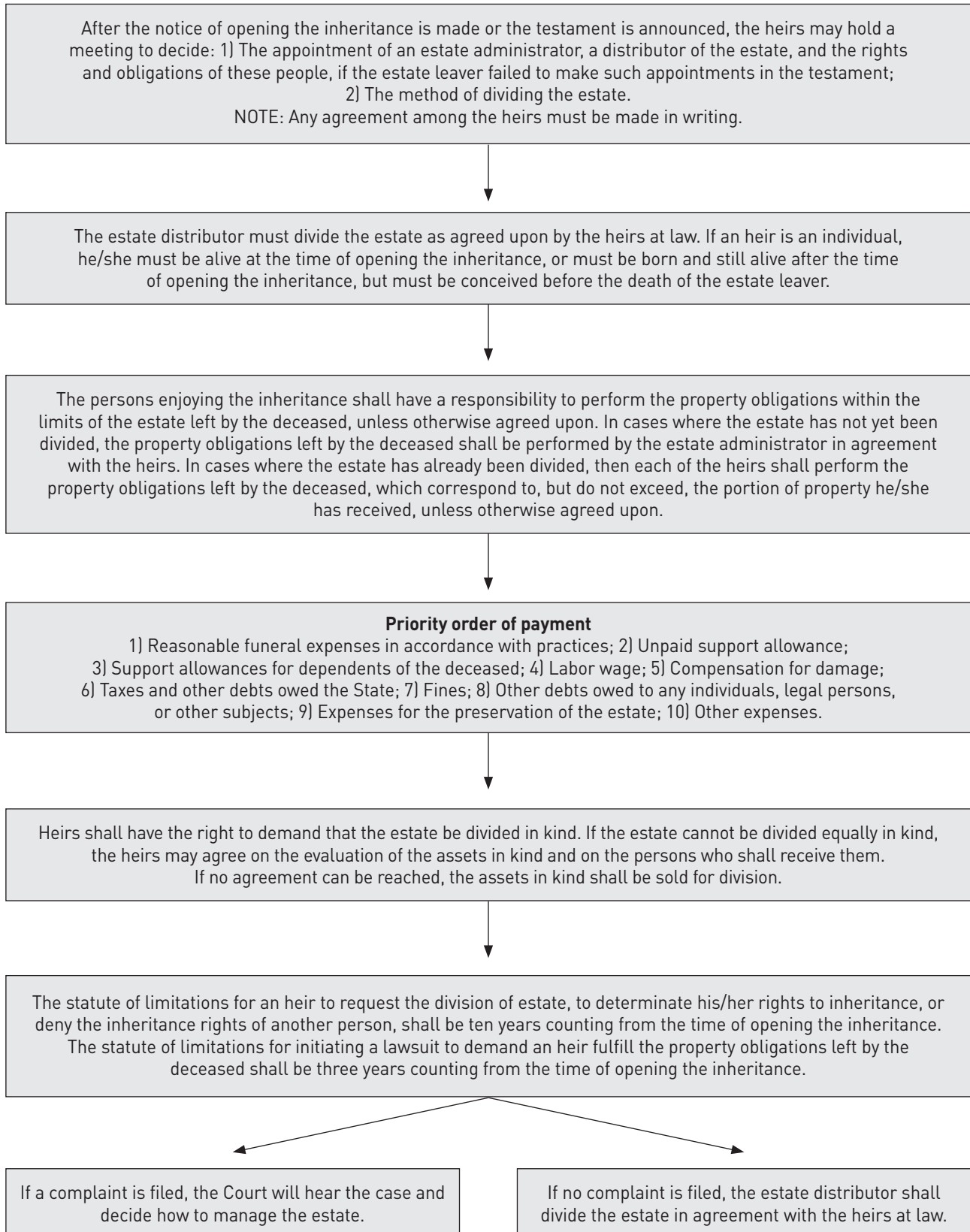
If a stepchild and his/her stepfather and/or stepmother have a relationship of mutual care and

support, as between a biological father and a biological child or between a biological mother and a biological child, then they shall be entitled to inherit each other's estate, and can also inherit the estate in accordance with the provisions of Articles 676 and 677 of this code.

### ***Article 680: Inheritance in cases where wife and husband have divided their common property, are applying for divorce, or have married another person***

1. If husband and wife divided their common property while their marriage still exists and one of the spouses thereafter dies, then the survivor shall still be entitled to inherit the other's estate.
2. If wife and/or husband have/has applied for divorce but the divorce has not yet been approved, or has already been approved by a court through a judgment or decision which is not legally effective yet, and one of the spouses thereafter dies, then the survivor shall still be entitled to inherit the other's estate.
3. A person who was still wife or husband of the deceased at the time the latter dies shall still be entitled to inherit the deceased's estate, even if he/she later marries another person.

## Steps of inheritance by law



# Handout 5

## Inheritance story

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Mr. An and Mrs. Han had five children. Twelve years ago, Mrs. Han got sick and passed away three days after giving birth to her youngest son. Thanh is the eldest child and the only girl among the five siblings. Feeling sorry for her father, who was raising the children alone due to their mother's premature death, Thanh decided to not marry, but to stay single and assist her father with her four brothers, Lam, Hung, Tan, and Dan.

Nowadays, three brothers have grown up and have their own families. Lam married Mai and had two children, Tam and Linh. Hung married Van and had a daughter, Thao. Tan married Ha and had a daughter, Le. A few years ago, when Ha was pregnant with Le, Tan died in a car accident. Thanh is now living with her youngest brother, Dan, who will be turning 12 in the next few months.

Mr. An passed away a few weeks ago. Mr. An had a notarized testament, which clearly states that the 350 million Dong in his Techcombank savings account was to be divided evenly among five children. Of Mr. An's 500m<sup>2</sup> of residential land, three sons—Lam, Hung, and Tan—would each be given a 100m<sup>2</sup> share. The 150m<sup>2</sup> property where his house stands and where he had lived with his daughter, Thanh, and his youngest son, Dan, was to be used for family worship. A piece of land of about 50m<sup>2</sup> next to this house would be given to Ms. Thanh if she remained unmarried. Dan is not mentioned in Mr. An's testament.

In a family meeting after Mr. An's funeral, Mr. Lanh, the younger brother of Mr. An, announced the testament. Although Mr. An's children and grandchildren acknowledged his testament as true, lawful, and fully reflective of his intent, they all believe that, as a daughter, Thanh has no right to inherit the family land. According to local custom, this type of land can only be divided among sons. Moreover,

this land traditionally belongs to the head of the clan, who is responsible for ancestor worship. This would make it impossible for Ms. Thanh to build her own house and live on that piece of land.

### Discussion

**Instructions:** Divide the participants into five groups and ask each group to discuss two of the following questions for discussion. Give them the answers after discussing each question separately.

1. What did Mr. An leave as his estate? According to the law, who are Mr. An's heirs?
2. How should the payment and distribution of the estate be made after announcement of Mr. An's testament? When he died, Mr. An had a debt of 16 million Dong borrowed from the Agriculture and Rural Development Bank. Who is supposed to pay back Mr. An's debt?
3. As the daughter of Mr. An, does Ms. Thanh have the right to receive the residential land bequeathed to her by her father?
4. Dan is Mr. An's son, but he inherited almost nothing. Can Dan do anything to challenge his father's testament?
5. If Mr. An had no testament, how would his estate be divided, who would be the heirs?
6. What does Thanh have to do to protect her rights if her brothers and uncle do not allow her to inherit the land designated by her father's testament?
7. Mr. Tan died while he and his wife were applying for divorce. Is she entitled to inherit Mr. Tan's share of his father's estate?
8. Mr. Tan died while his wife was pregnant with their daughter, Le. Is Le entitled to inherit her father's estate?

9. Mr. Tan and Mrs. Ha had joint assets of 300 million Dong. Mr. Tan had private assets of 50 million Dong. How should his estate be divided?
10. Mr. Lam is the richest among Mr. An's five children. Therefore, he doesn't want his portion and proposes to give 150m<sup>2</sup> of land on which the house was built to Le (Mr. Tan's daughter). Is Mr. Lam's proposal acceptable or not? If Mr. An had not left a testament, who would be entitled to his estate and how would it be distributed?
11. (This question can be added at the end for the big group). Three years after Mr. Tan passed away, Mrs. Ha got remarried to Mr. Minh. The couple decided to build a house on land that Mr. An designated for Mr. Tan in his testament. Some relatives in Mr. An's clan said that Mrs. Ha and her husband had no right to live on her deceased husband's land. Did Mrs. Ha act lawfully?

## Answers

### Question 1:

According to the 2005 Civil Code, the estate that Mr. An left includes a house on 500m<sup>2</sup> of land and 350 million Dong savings in Techcombank. The heirs of first rank are Ms. Thanh, Mr. Lam, Mr. Hung, Dan, and Le (substituted heir). The heirs of second rank include Mr. An's grandchildren—Trang, Linh, and Thao—and Mr. An's brother, Lanh.

### Question 2:

As stipulated in Articles 681 and 683 of the 2005 Civil Code, after Mr. Lanh (Mr. An's brother) announced Mr. An's testament, all member of Mr. An's family have to meet to discuss the appointment of an administrator for management and distribution of the estate, and to determine the rights and obligations of the heirs. In this case, Mr. Lanh was appointed by Mr. An as estate administrator, so under Mr. An's will, Mr. Lanh is supposed to distribute the estate.

Under the provisions of Clause 1, Article 637 of the 2005 Civil Code: "The persons enjoying the inheritance shall have the responsibility to perform the property obligations within the limits of the estate left by the deceased, unless otherwise agreed upon." The property obligation here is the financial debt Mr. An had not re-paid before he died.

Because Mr. An's children inherited his estate, they are responsible for meeting his financial obligations within scope of his estate. The payment of financial obligations and inheritance must be made in the following order: reasonable expenses for funeral in accord with local customs; taxes and other debts (if any) to the State; other loans to individuals, organizations, and other subjects (if any). According to his testament, Mr. An has 350 million Dong in a Techcombank saving account. After subtracting funeral costs and the debts of 16 million to the Agriculture and Rural Development Bank, the remaining amount will be divided among the heirs as outlined by Mr. An in his testament.

### Question 3:

Articles 16 and 26 of the 2013 Constitution stipulate: "All people are equal before the law; No one is subject to discriminatory treatment in political, civil, economic, cultural, or social life" (Article 16); Male and female citizens have equal rights in all fields. The State shall adopt policies to guarantee the rights to and opportunities for gender equality; The State, society, and family shall create conditions for women to develop comprehensively and to advance their role in society." (Article 26).

Ms. Thanh does not fall into any category barring inheritance, as described in Article 643 of the 2005 Civil Code. Therefore, Thanh is entitled to the 50m<sup>2</sup> portion of residential land and share of financial savings that her father left according to his testament. Because Ms. Thanh is equal to her four brothers before the law, her rights are protected by the State.

#### Question 4:

Although the law states that an individual has the right to bequeath his/her property to anyone, Dan can contest being left out of his father's testament. Dan is only 12 years old, but according to Article 699 of the 2005 Civil Code, he still can be entitled to an inheritance equivalent to two-thirds of the portions given to each of his siblings.

#### Question 5:

First, Ms. Thanh should call a family meeting to present her aspirations. She should request that Mr. Lanh read her father's testament to remind all family members that their father determined her share. If her relatives refuse to follow her father testament, she must submit a written request to the village head for mediation. If the village head rejects her proposal, she may request an intervention from the Commune Justice Unit. If mediation fails and her relatives still refuse her rights, Thanh can bring the case to court to dispute the inheritance.

According to Article 645 of the 2005 Civil Code: "The statute of limitations for an heir to request the division of estate, to determinate his/her rights to inheritance, or deny the inheritance rights of another person shall be ten years counting from the time of opening the inheritance."

As stipulated in Article 633 of the 2005 Civil Code, the inheritance is opened at the time the property owner dies. Therefore, to protect her rights, Ms. Thanh can submit her petition to the People's Court with relevant jurisdiction within ten years from the date of her father's death.

Under the provisions of Clause 2, Article 25 and Clause 1, Article 33 of the Amendment of Civil Procedure Code, the district level People's Court has jurisdiction to settle disputes related to inheritance.

#### Question 6:

Clause 2, Article 680 of the 2005 Civil Code stipulates: "In cases where wife and/or husband have/has applied for divorce but the divorce has not yet been approved, or has already been approved by a court through a judgment or decision which is not legally effective yet, and one of the spouses thereafter dies, then the survivor shall still be entitled to inherit the other's estate."

Thus, although Mr. Tan and Mrs. Ha were applying for divorce, they had received no verdict of the court before Mr. Tan died. Therefore, Mrs. Ha is still entitled to inherit Mr. Tan's share of his father's estate.

#### Question 7:

According to Clause 1, Article 685 of the 2005 Civil Code: "If at the time of estate division, an heir of the same rank of inheritance has been conceived but not yet born, then a part of the estate equal to the share which another heir of the same rank is entitled to shall be set aside for inheritance by the unborn heir if he/she is born alive; if this heir is stillborn, then the other heirs shall be entitled to his/her share."

Also, Article 677 of the 2005 Civil Code states: "In cases where a child of an estate leaver dies before or at the same time as the estate leaver, then his/her grandchild shall be entitled to inherit the part of the estate that his/her father or mother would have inherited if he or she was still alive; if such grandchild also dies before or at the same time as the estate leaver, then the great-grandchild of the estate leaver shall be entitled to inherit the part of the estate that his/her father or mother would have inherited if he or she was still alive."

Because Mr. Tan died before his father, Mr. An, this is a case of substitute inheritance. When Mr. Tan died, Mrs. Ha was pregnant with Le. Le was born afterward, so Le is entitled to inherit the estate of Mr. Tan. Le is entitled to a portion equal to Thanh, Lam, Hung, and Dan.



### Question 8:

According to Clause 1, Article 33 of the 2014 Law on Marriage and Family, the amount of 300 million Dong was common property during their marriage. This amount will be regulated in accordance with Clause 1, Article 28: "Husband and wife have equal obligations and rights in the creation, possession, use, and disposition of their common property, without discrimination between domestic work and income generating work." Therefore, Mr. Tan's portion is 150 million Dong of the 300 million Dong of common property. Furthermore, under Article 43 of the 2014 Law on Marriage and Family, spouses have the right to independently own property during the marriage. Thus, the total of Mr. Tan's estate includes 150 million Dong plus 50 million Dong. This estate will be distributed in accordance with Mr. Tan's testament.

According to the Clause 1, Article 648 of the 2005 Civil Code, a testator has the right to designate his/her heirs(s) and to disinherit an heir. If Mr. Tan left a testament, then his estate will be divided according to his will.

If Mr. Tan did not leave a testament, his estate will be distributed according to law.

### Question 9:

As stipulated in Article 642 of the 2005 Civil Code: An heir shall have the right to disclaim an estate, except for cases where such disclaimer is aimed at shirking his/her property obligations toward another person. A disclaimer of estate must be made in writing. The person who disclaims must notify other heirs, the person tasked to divide the estate, the Notary Public Office or the People's Committee of the commune, ward, or township where the inheritance was opened.

Thus, within six months of the date the inheritance was opened, if Mr. Lam does not want to receive

his portion, he must submit a disclaimer in writing to the proper authorities, the other heirs, and his uncle.

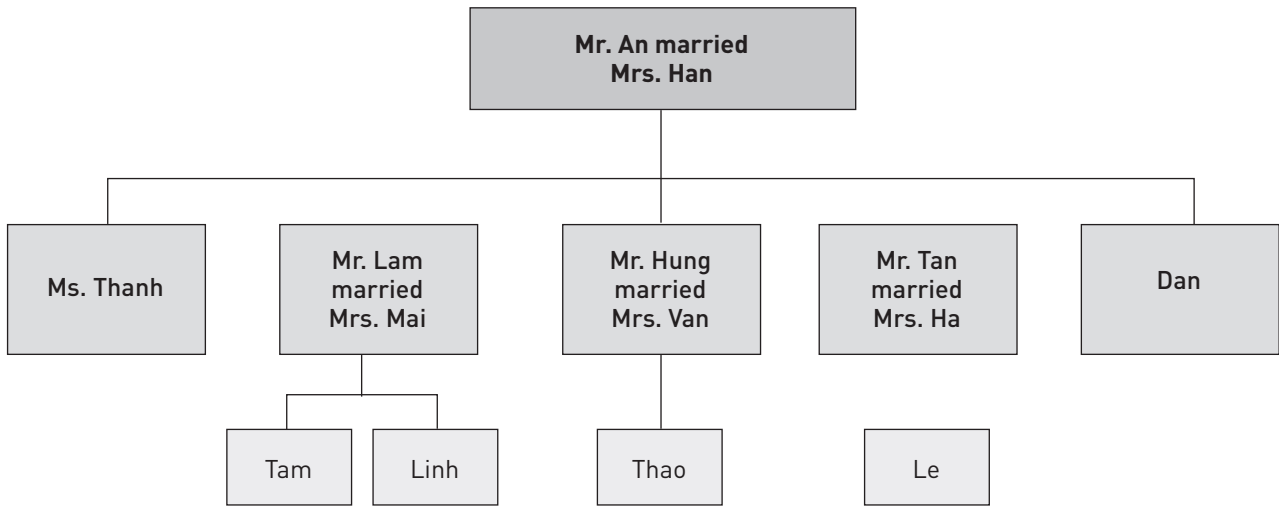
Mr. Lanh was designated administrator of the 150m<sup>2</sup> residential land on which the house was built, which Mr. An left for ancestor worship. If Mr. Lanh does not comply with the testament or the agreement of the heirs, then the latter have a right to assign another person to manage this portion of land and take responsibility for worship.

### Question 10:

Under the provisions of articles 675 and 676 of the 2005 Civil Code, if Mr. An had not left a testament, or his testament was judged unlawful, his estate would be distributed according to law. The first rank of Mr. An's heirs are Ms. Thanh, Mr. Lam, Mr. Hung, Dan, and Le (substitute heir). Because Le's father, Mr. Tan, died before Mr. An, Le became his substitute heir and should receive the share to which her father would be entitled if he was still alive. The share Le is entitled to is equal to the share of her aunt, Ms. Thanh, or each of her uncles, Mr. Lam, Mr. Hung, and Dan. The second rank of heirs include Mr. An's brother, Mr. Lanh, and Mr. An's grandchildren, Tam, Linh (daughters of Lam and Mai), and Thao (daughter of Hung and Van).

### Question 11:

Ms. Ha and her husband (Minh) have a right to live on the land that Mr. Tan inherited from his father. According to the Article 676 of the 2005 Civil Code, Ms. Ha and Le are Mr. Tan's heirs of first rank. Therefore, Ms. Ha is entitled a half of the land. Moreover, Ms. Ha and her husband, Minh, are now raising Le together because Le is still small. When Le is grown up, she can ask Ms. Ha to share half of the land with her, or she can give her share to her mother.





# TRAINING TOOLKIT

Vietnam Land Access for Women (LAW) Program



Photograph courtesy of ISDS

## Inheritance Law, Wills and Women's Rights



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