THE LAW ON SUCCESSION [1]

[1] Transcribed lecture of Atty. Rillorta [SLU- Baguio]; some of the contents were taken from the audio-lectures of Dean Navarro & Balane Notes.

GENERAL PRINCIPLES

1. No one can stop me from becoming a lawyer! The Supreme Court cannot, all that it can do is to delay me 4 times!
2. When one speaks of **succession**, he cannot evade speaking about **death**. **Succession happens occurs only** when there is **death**.

QUESTION: WHAT IS DEATH?

In the philosophical circle, **Death "is the possibility of the absolute impossibility of Dasein"** [Martin Heidegger, German philosopher] - in short death is the most certain thing in human life and even in the eyes of the law.

Philosophically, death is the **total, permanent**, and **irreversible cessation** of essential bodily functions.

Ergo: In law there is no such thing as temporary death! It is either you are dead or not.

Illustration:

Santiago W. was rushed to the hospital. He was declared DOA. He was brought home for the wake. The next day he woke up and asks for water.

QUESTION: Is there succession that happened during the time that Santiago was dead? - NONE! There is no death that happened.

IMPORTANT PRINCIPLES OF SUCCESSION (this permeates the entirety of succession)

1. Succession cannot take place while the owner of the estate is alive. The heir has a mere expectancy right to the property of the decedent, during the lifetime of the latter.
2. Interest of the family may override the will of the decedent because of compulsory heirs. There is a legitime reserve for the family. A will cannot impair the legitime.
3. The estate passes or devolves to the family unless the decedent expressly orders otherwise in a will. Family covers spouse, ascendants, descendants, and collateral relatives.
4. The family can not be entirely deprived of the estate because of the system of legitime.
5. Within the family, heirs of equal degree/proximity inherit in equal shares (Presumption of equality). This is only the general rule. There are exceptions.
6. The state has a share in the inheritance through taxes.
7. The heirs are not liable for the debts of the estate beyond their share in the inheritance. Estate is liable for the debts left by the decedent. Debts are to be deducted before the heirs can get theirs.

CONCEPT OF SUCCESSION

- Succession is a mode of acquisition of inheritance transmitted to the heirs upon the death of the decedent through a will or by operation of law.

Is tradition required for ownership to transfer inheritance? - No! Ownership is transferred by succession, not by any other mode.

What are transferred to the heirs?

- Property of the decedent
- Rights of the decedent
- Obligations of the decedent

Does it follow that all obligations of the decedent are transmitted to the heirs? - NO! There are some obligations of the decedent which cannot be transmitted to the heirs. These obligations include monetary obligations of the decedent.

INTRANSMISSIBLE OBLIGATIONS OF DECEDENT

Monetary obligations- Intransmissible

General rule: The estate pays for them before the estate is partitioned.

Exceptions:

1. The heirs are liable to pay the monetary obligation of the decedent if the obligation was not paid in the settlement proceedings.
2. If the decedent fraudulently disposed of the property during litigation. The heirs cannot escape liability. Eventhough they did not inherit the property, the monetary equivalent thereof was devolved into the mass of the estate which the heirs inherited.

Some intransmissible rights of the decedent:

1. Annulment/ Legal separation
2. Parental Authority
3. Support
4. Claim of legitimacy
5. Consortium
6. Agency/ partnership

TRANSMISSIBLE OBLIGATIONS OF THE DECEDENT

Non-monetary obligations such as in a contract of lease. The heirs have the obligation to keep the lessee in the peaceful possession.

1. Actions: personal and real
2. Contracts

To whom property is transmitted? Heirs, which includes legatees and devisees.

Heir- One who succeeds by universal title or to a share (aliquot) of the estate.

Devisee- One who succeeds by particular title to real property.

Legatee- One who succeeds to a specific personal property.

NOTE: IS IT IMPORTANT TO DISTINGUISH BETWEEN HEIR, DEVISEE AND LEGATEE? No! Except in one instance, in case of PRETERITION. Institution of heir is annulled while devise and legacy are not, so long as there is no impairment of the legitime.

When are these inheritance transmitted? The rights of succession are transmitted from the moment of the death of the decedent (Art. 777).

Problem: When is there death? There is death when there is total, permanent, and irreversible cessation of essential bodily functions.

What is the coverage of death for purposes of succession? It does not only contemplate the presence of a physically dead person for succession to come in. It includes PRESUMPTIVE DEATH.

PRESUMPTIVE DEATH UNDER THE NEW CIVIL CODE

ORDINARY ABSENCE- **General Rule**: 10years; **Exception:** 5 years for those aged 75 and above.

Question: When is death deemed to have occurred for purposes of succession? Starts after the last day of the 10 year period.

EXTRAORDINARY ABSENCE- 5 years

Question: When is death deemed to have occurred for purposes of succession? It starts on the first day of the 5 year period, which is the moment the person boarded the plane or others...

How inheritance is transmitted?

1. By the will of the decedent, either notarial or holographic (Testamentary succession); OR
2. By operation of law (Intestate succession)

TESTAMENTARY SUCCESSION

General Principle:

- Testamentary succession is only in the free portion, the testator cannot touch the legitime by disposing them. The legitime is reserved by law to the compulsory heirs.

What is the importance of testamentary succession? It gives the realization that the law recognizes the fact that when a person made a will the state should not interfere in the disposition of the decedent's property as long as the legitimes are protected.

What are the conditions before a person makes a will?

1. Intent to dispose of the property
2. Testamentary capacity
3. Soundness of mind

Who has testamentary capacity? All natural persons. Corporations cannot make wills.

What is a will? It is an act whereby a person is permitted, with the formalities prescribed by law, to control a certain degree the disposition of his estate,

to take effect after his death.

CHARACTERISTICS OF A WILL:

1. **Purely personal**- non-delegable; personal participation of the testator is required.
2. **Ambulatory in nature** - Essentially revocable while the testator is still alive**.**
3. **Mortis causa**- takes effect after a person's death.
4. ***Animus testandi***- there must be intent to dispose mortis causa the property of the testator. There must be a real intent to make a will or a disposition to take effect upon death. Said intent must appear from the words of the will.
5. **Individual**- one person alone. Joint wills are prohibited.

"Will making power is non-delegable"

General Rule: **Art. 784**- "The making of a will is a STRICTLY PERSONAL ACT; it cannot be left in whole or in part to the discretion of a third person, or accomplished through the instrumentality of an agent of an attorney."

Art. 785- "The duration or efficacy of the designation of heirs, devisees or legatees, or the determination of the portions which they are to take, when referred to by name, cannot be left to the discretion of a third person."

Exception: Art. 786- "The testator may entrust to a third person the distribution of specific property or sums of money that he may leave in general to specified classes or causes, and also the designation of the persons, institutions or establishments to which such property or sums of money are to be given or applied."

Meaning of "Making a will as purely personal act"- It is the DISPOSING POWER which cannot be delegated. But the physical act of making a notarial will can be delegated to the secretary BUT NOT THE EXECUTION OR MAKING OF HOLOGRAPHIC WILLS.

"The testator may not make a testamentary disposition in such manner that another person has to determine whether or not it is to be operative.

EXAMPLES OF DISPOSING POWER: Cannot be delegated to 3rd persons by the testator.

1. Designation of heir, legatee or devisee, e.g. I hereby appoint X as my executor and it is in his discretion to distribute to distribute my estate to whomever he wants to give it. This cannot be done.
2. Duration or efficacy of such disposition like, "Bahala ka na Kwarog."
3. Determination of the portion to which they are to succeed, when referred to by name.
4. Cannot delegate the designation of the amount of property, e.g., I hereby set aside the sum_____ which my executor may determine for the cause of mental health. The amount is not specified.
5. Cannot delegate the determination of causes or classes to which a certain amount is to be given, e.g., I hereby set aside 1M for such worthy causes as you may determine. This is not valid because the cause is not specific.

Components of disposing power that can be delegated- The testator must specify (1) the amount of property; (2) the cause of classes of property-- before the delegation can take effect.

Illustrations:

1. The designation of person or institution falling under the class specified by the testator. Choosing the members of the class but is restricted by the class designation, e.g., I hereby set aside the sum of 1M for the development of AIDS research. M will choose which institution. This is allowed because you have guided already M's decision. However, M cannot designate Manila Hotel.

2. The manner of distribution or power of apportioning the amount of money previously set aside or property specified by the testator, e.g., I designate the following hospitals to get the share in my estate and appoint M to apportion the amount of 10M. I set aside 250, 000 for the following institutions: UP, PGH, SR, in an amount as my executor may determine.

INTERPRETATION OF WILLS

What if there is ambiguity in the will?
Rule:

- The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be gathered, and that other can be ascertained.
- Testacy is favored over intestacy.
- The interpretation by which the disposition is operative shall be preferred.

Ergo: The court should not immediately disregard the will. If the uncertainty arises upon the face of the will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will (INTRINSIC EVIDENCE), taking into consideration the circumstance under which it was made(EXTRINSIC EVIDENCE- written declarations of the testator), EXCLUDING ORAL DECLARATIONS.

If inspite of evidence the ambiguity cannot be cured, then annul the will.

Why oral declarations of the testator are not admitted as evidence? Because they cannot be questioned by the deceased. Also because they are easy to fabricate.

KINDS OF AMBUGUITY

1. **Patent/ Apparent**
   > That which appears in the face of the will, e.g., "I give 1/2 of my estate to one of my brothers." Who among the brothers? This is patently ambiguous.

2. **Latent/ Hidden**
   > Perfectly clear on its face. The ambiguity does not appear until you apply the provisions of the will, e.g., "I give to M the property intersecting Bonifacio road and Session road. The ambiguity is determined only when the will is probated. That is, when it appears that I am the owner of all 4 corners of the lot. Now, which of those lots?

Note: Solution: look for extrinsic (written, not oral declarations of the decedent) and intrinsic evidence (other provisions of the will). If despite the presence of evidences the ambiguity cannot be cured, then annul the will. Legal succession will take effect. Never apply the shotgun method.

Por ejemplo: "I give to one of my brother my ½ of my estate." Who among the 3 brothers- **shotgun method**- "bibigyan lahat ang tatlong kapatid para siguradong mabibigyan un tinuntumbok ng testator. This cannot be done because it is contrary to the intent of testator. Intention niya eh isa lang un pagbibigyan ng ½ ng kayamanan.

Does invalidity of a testamentary disposition invalidates the whole will? NO! The invalidity of one of several dispositions contained in a will does not result in the invalidity of the other disposition, unless it is to be presumed that the testator would not have made such other dispositions if the first invalid disposition had not been made.

General Rule: Severability. A flaw does not affect the other provisions.

Exception: If it was meant that they were to be operative together as seen in the will.

What if after making the will, the testator acquired additional properties, and he died without changing his will. Who are entitled to the additional properties? (Applicable provision- Art. 793) A distinction must be made if the successor is an heir or a legatee or devisee.

General Rule: Subsequent properties acquired after making of the will be bequeathed to the HEIR, because an heir is entitled to the whole or an aliquot of the decedent's estate. It will not go to the legatees or devisees because they are entitled only to what is written in the will.

Exception: If in the will the decedent wrote " I will give X my 2 cars and all other cars which I may acquire, when I die."

As to what extent a legacy or devise convey the interest of the decedent? Art. 794- "Every devise or legacy shall convey all the interest (INCLUDES ACCESSIONS and ACCESSORIES) which the testator could devise or bequeath in the

property disposed of, unless it clearly appears from the will that he intended to convey a less interest."

General Rule: Legacy or devise will pass exactly the interest of the testator over the property.

Exception: Unless it appears from the will that he is giving less.

E.g., say you own a parcel of land. Only the ownership of the land can be given. If the testator is a usufructuary, he can only bequeath his rights as usufructuary, nothing more, and nothing less.

SOUNDNESS OF MIND

Who can make a will?

General Rule: All persons have the testamentary capacity to make a will.

Exception: Incapacity, when expressly prohibited by law:

1. Disqualified by reason of age.
2. Disqualified by reason of mental incompetence.

Principles to remember:

1. Soundness of mind is determined at the time of the execution of the will.

   ERGO: Subsequent insanity, after making the will does not invalidate the will, nor an invalid will be validated by the recovery of the senses of the testator (ART. 801).

2. In succession insanity is relative. What constitutes insanity in succession is not knowing one or all of the following:
   a. The nature of your estate.
   b. The proper objects of your bounty.
   c. The character of the testamentary act.

Note: Insanity in marriage and contracts is different from insanity in wills.

Soundness of mind; what constitutes?

- Does not require that the testator be in full possession of his reasoning capacity or that it be wholly unbroken, unimpaired or unshattered.
- The primordial consideration is the **presence and clarity of the testator's reason and intellect** even if the testator is physically infirmed at the time of making of the will.
- It also means realization or knowing the following:
  1. **The nature of his estate-** this does not mean that the testator has to know the description of his property in detail. It is enough that he has more or less a fairly accurate idea what his properties are.
  2. **Proper objects of his bounty.** Know immediate relatives. Experience tells that you give to people who are attached to you by blood. Immediate relatives referred to are spouses, parents, children, brothers, BUT NOT FIRST COUSINS. First cousins usually are not known especially if they live abroad.
  3. **Character of the testamentary act**- knows the essence of making a will. Know that you are **(1)** making a document that disposes (freely, gratuitously) of your property **(2)** to take effect upon your death.

Note: Even if you are insane as to other things, as long as you know these 3 things, you have testamentary capacity.

Rules on unsoundness of mind

General Rule: All persons are presumed to be of sound mind (Art. 800).

Exceptions:

1. 1 month or less before making the will, the testator was publicly known to be insane.
2. If there had been a judicial declaration of insanity and before such order has been revoked.
   - **Judicial declaration of insanity consists of:** (1) a guardian appointed by the court by reason of insanity, (2) if the insane was hospitalized by order of the court.

A MARRIED WOMAN

A married woman may make a will without the consent of her husband, and without authority of the court.

A married woman may dispose by will of all her separate property as well as her share in the conjugal partnership or absolute community property.

VALIDITY OF A WILL

Principle: The law that determines the validity of a will is the law that is applicable at the time the will was made.

I. FORMAL VALIDITY

1. **Time criterion**

   Gen. Rule: law at the time of execution determines the validity of the will.

   Exception: subsequent laws may apply retroactively if the law expressly provides.

   Exception to the Exception: the subsequent law will not apply if the testator is dead, for he has no chance to change his will.

2. **Place criterion-** Under Art. 815- 817, 5 choices are available to the testator regarding the forms of his will.
   - **a.** citizenship
   - **b.** residence
   - **c.** domicile
   - **d.** execution
   - **e.** Philippines

II. INTRINSIC VALIDITY

Time criterion- time of the death of testator because of article 777.

Place criterion- law of citizenship of decedent (National law principle).

Can a person asks for the probate of his will even if he is still alive? Yes! But only for the determination of its formal validity.

Can a Filipino citizen who is abroad execute a will according to the law of that country, and be validly probated in the Philippines? Yes, but only as to the form of the will. The intrinsic provisions must be according to Philippine laws.

Can an alien execute a will following the formalities of Philippine law regarding succession? Yes, the will of an alien who is abroad produces effect in the Philippines if made with the formalities prescribe in that country....OR IN CONFORMITY WITH THOSE WHICH THIS CODE PRESCRIBES (Phil. law on succession) (Art. 816).

Can a Filipino living abroad be allowed to make a will according to the formalities of a will prescribe by Philippine laws? By way of implication, if a foreigner can make his will in Philippine law, how much more to a Filipino, living abroad, who is more conversant with Philippine laws.

Can a Filipino citizen who makes a will in the Philippines follow the formalities prescribe in other countries? NO! If a will is executed in the Philippines, it should follow Philippine law because all the choices points to that only.

KINDS OF WILLS

KINDS

1. **Ordinary or Notarial Wills**- requires an attestation clause, an acknowledgment before a notary public.
2. **Holographic Will**- must be entirely written, dated, and signed in the handwriting of the testator.

COMMON REQUIREMENTS TO BOTH WILLS

1. In writing but no specific form is required. It could be in a marble glass or on a wall, so long as there was testamentary capacity.
2. Written in a language or dialect known to the testator.

Is it necessary for a will to state that the testator know the language? No! Extrinsic/ testimonial evidence may prove this.

Is direct evidence always necessary to prove that the testator knew the language? No, sometimes circumstantial evidence is sufficient. **E.g**., a person with a college degree does a will in English. Is it not enough that he studied 3 levels to prove that he understand English?

NOTARIAL WILL

Formal requisites of a notarial will

1. **It must be in writing.**
2. **It must be written in a language that the testator can understand.**

Principles:
Body of the will- language used must be the one understand by the testator.

Attestation clause: Understand the language-

Testator- NO
Witnesses- No. Only required to know the contents thereof.

Take note: the language used in the will must be known and understood by the testator. The fact that it was translated and interpreted to him does not make the will valid. This requirement of law is categorical and mandatory.

3. **Signed by the testator or his agent in his presence and by his express direction at the end thereof and in the presence of the witnesses.**
   - **Subscribe** literally means to write one's name. **Sign** means to put a distinctive mark.

Principles:
Who can sign the will? The testator or the testator's agent at his direct order provided that (1) the agent write the name of the testator by hand; (2) advisable if the agent write his name also. It is required that the agent write the testator's name in the presence of the latter and under his express direction.

Manner of signing by the testator
- By writing his name.
- Any other ways allowed by law.

Thumb mark- is a sufficient signature under all circumstances.

Cross as signature
Gen. Rule: A cross is unacceptable as a signature

Exception: That is his normal way of signing.

When must the testator sign the will?
- AT THE PRESENCE OF ALL THE WITNESSES.
- Actual seeing is not required. What is required by law is that the witness must have been able to see the signing, if he wanted to do so, by casting his eyes in the proper direction. His line of vision must not be impeded by a wall or curtain.
- What is required is **clarity of vision, position (vantage point), and mental appreciation**.

4. **Attested and subscribed by at least three credible witnesses in the testator's presence and of one another.**

CAN THE VALIDITY BE AFFECTED IF THE WITNESSES SIGNED AHEAD OF THE TESTATOR? NO! Provided it is made in one occasion or transaction. However, in strict theory, it cannot be done because before the testator signed there is no will at all which the witnesses can sign and attest to. If there is more than one transaction, then the testator must always sign ahead of the witnesses.

WHERE MUST the WITNESSES SIGN? This is not clear. Literal requirement- end/ last page; margin (Taboada v. Rosal). Now: under or margin, OK.

5. **The testator or agent must sign every page except the last page on the left margin.**

- Each page is signed and authenticated- MANDATORY.
- LEFT MARGIN- directory

6. **Witnesses must sign each and every page, except the last, on the left margin.**
   - Failure to sign any page is a fatal defect.
   - HOW MANY WITNESSES? At least 3.
   - Each page is signed and authenticated- MANDATORY.
   - LEFT MARGIN- directory

7. **All pages must be numbered in letters on the upper part of the page.**

   MANDATORY- there must be a method by which the sequence of the pages can be known.
   DIRECTORY- (1) manner it is numbered (2) upper part.

8. **It must be attested by all the witnesses**

   THREE THINGS THAT MUST BE STATED IN THE ATTESTATION CLAUSE
   1. The number of pages in the will.
   2. The fact that the testator or his agent signed the will and all the pages thereof in the presence of the instrumental witnesses.
   3. That the instrumental witnesses witnessed and signed the will and all the pages thereof in the presence of the testator and one another.

   Attestation clause is not part of the will proper because it contains no dispositions. It is merely essential for the formal requirements of a valid will. It is a statement of the witnesses.

   Must the language of the will be understood or known by the witnesses? No, after all, witnesses need not know the contents of the will.

   Is it required that the witnesses knew the language of the attestation clause? No, so long as it has been interpreted to them.

   Must the testator know the language of the attestation clause? NO. What is required of the testator is to know the language of the will (Art. 804).

   Must the testator sign the attestation clause? No! Since it is not part of the dispositions.

   Must an attested will be dated? No. Lack of date does not annul an attested will. But a holographic will must be dated.

9. **It must be notarized-** A will is a public instrument that is why it must be notarized.

   General Rule: The notary public cannot be a witness.
   Exception: When there are more than 3 witnesses. In such case, the requisite of 3 witnesses is achieved.

ADDITIONAL REQUIREMENTS FOR BLIND & DEAF-MUTE TESTATORS

Testator: DEAF or DEAF-MUTE

Article 807- If the testator be DEAF, or a DEAF-MUTE, he must personally read the will, if able to do so; otherwise, he shall designate two persons to read it and communicate to him, in some practicable manner, the contents thereof.

Testator: BLIND
Article 808- If the testator is blind, the will shall be read to him twice; once by the subscribing witnesses, and again, by the notary public before whom the will is acknowledged.

Are these requirements mandatory? YES!

Purpose: the reading is mandatory for the purpose of making known to the testator the provision of the will so that he may object if it is not in accordance with his wishes.

HOLOGRAPHIC WILL

A holographic will is a will which is entirely WRITTEN, DATED, and SIGNED by the HAND of the TESTATOR.

Elements:

1. It must be written
2. It must be dated
3. Signed by the hand of the testator himself.

REAL/MANDATORY REQUIREMENTS OF A HOLOGRAPHIC WILL

1. **Written entirely by the testator.**

   Illustrations:

   A. If partly by the testator and partly by another person- **VOID**, since the will must be entirely written by the hand of the testator.

   B. If another person wrote an additional part without the knowledge of the testator, the will is **VALID** but the addition is **VOID**. The part of the will written by the testator is valid since he wrote it, but the addition written by another person is VOID because it was not written by the hand of the testator.

   C. If another person wrote an additional part WITH the knowledge of the testator- **VOID**. Eventhough the testator has knowledge of the addition; the requirement remains that, a holographic will must be entirely written by the hands of the testator.

2. **It must be dated**

   General Rule: Day, month, and year must be indicated.

   Exception: When there is no appearance of FRAUD, BAD FAITH, UNDUE INFLUENCE, and PRESSURE and the authenticity of the will is established, and the only issue is whether or not FEB/61 is valid, then it should be allowed under the principle of SUBSTANTIAL COMPLIANCE.

   Note: if the date is proven wrong, then its validity depends on whether the error is deliberate or not. If deliberate, the will is considered not dated and the will is void. If not deliberate, the date will be considered as the true date. [This is an issue of fact which must be determined according to the attending circumstances].

3. **Signature-** Commentators have said that the signature must consist of the testator's writing his own name.

   Rationale: The reason for this is since he is able to write his will, then he is literate enough to write his name.

Requirements in the probate of a Holographic Will (Art. 811)

I. Documentary requirements

Rule: the will itself must be presented.

Note: lost holographic will cannot be probated even by the testimonies of the witnesses. The reason is that the will itself is the only proof of its authenticity.

II. Testimonial requirement

1. **Uncontested will**- only ONE WITNESS to identify the signature and handwriting of the testator.
2. **Contested will**- THREE WITNESSES to identify the signature and handwriting of the testator.

What if there was a witness in the making of holographic will, does it affect its validity? No! As long as the will was entirely written, dated and signed by the hands of the testator. The presence of the witness is only a surplusage not a fatal defect to the will.

Where will the testator sign a Holographic Will? Inferring from article 812, it is presumed that the last thing to be found in the will is the signature of the testator.

What if, after making the will and signing it, additional dispositions were made by the testator, what must the testator do? The dispositions written below his signature must be dated and signed by the testator inorder to make them valid as testamentary disposition (this is to comply with the requisite of a holographic will that it must be dated and signed by the testator).

What if the will has several additional dispositions? The testator has two options: (1)

sign each disposition and sign and date the last; OR (2) sign and date each one of the additions.

What is the rule on insertion/cancellation/ erasure? Article 814- In case any insertion, cancellation, erasure, or alteration in a holographic will, the testator, must authenticate the same by his **FULL SIGNATURE (not initial).**

CASE: KALAW vs. RELOVA

In the case, there were two alterations. In the first alteration, the name of Rosa as sole heir was crossed out and Gregorio's name was inserted. In the second alteration, the name of Rosa as executor was crossed out and Gregorio's name was inserted. The second alteration was initialed. Are the alterations valid? NO

ALTERATION 1: Not signed, thus void

ALTERATION 2: Initialed, thus not valid, it must be the full signature of the testator.

Gregorio cannot inherit as a sole heir because it was not authenticated. Rosa cannot inherit as sole heir because her name was crossed out. This indicated a change of mind on the part of the testator. [**RULE OF THUMB**: the intention of the testator must be respected].

WITNESSES TO WILLS

Not applicable to holographic wills because it does not require presence of witnesses when the will is made.

Requirements for one to be a witness

1. **Soundness of mind-** The witness has the ability to comprehend what he is doing. It is the same as soundness of mind for contracts.
2. **At least 18 years of age-** age is computed according to the calendar month.
3. **Not blind/deaf & mute/ dumb-** this is important because these are the senses you use for witnessing.
4. **Able to read and write**- Literate. Some commentators would say that thumb mark is not sufficient for witnesses; he has to affix his signature.
5. **He must be domiciled in the Philippines**

   Question: if a will is executed abroad in a place where there is no one domiciled in the Philippines, although there are Filipino citizens not domiciled in the Philippines, does domicile requirement still apply? **Answer:** Two theories-

   a. YES! Domicile requirement applies because the law does not distinguish.
   b. NO! There is an implied qualification in the law- the rule applies in will executed in the Philippines.
6. **He must not have been convicted of falsification of document, perjury or false testimony.**

   Why not rape? Because chastity has nothing to do with truthfulness. Truthfulness is the gauge in witnessing.

   How does credibility determined? Who will determine? Credibility is determined by the manner the witness testifies in court. It depends on how much the court appreciates and believes his testimony.

   A witness to a will is competent if he has all the qualification and none of the disqualifications to be a witness while credibility depends on the appreciation of the court of the testimony of the witness.

   However, for purposes of the law on succession competence and credibility to be a witness in a will has no distinction!

When must the capacity to be a witness present? At the time of signing the will. ERGO, their becoming subsequently incompetent shall not prevent the allowance of the will **[Article 822].**

Can a witness inherit from the testator? [Article 823]

General Rule: If a witness, or his spouse, or parent, or child, a devise or legacy is given by the testator, such legacy or devisee is void, BUT the witness is not prevented from becoming a competent witness.

Exception: Inheritance of a witness is valid if there are three other witnesses to the will.

Does a witness who is entitled to inherit from the testator disqualify him to be a witness? [Article 823]- NO!

Examples:

1. Testator A, witnesses B, C, D. It is presumed that they are all qualified to be witness. A in a will, makes legacy to B, giving him a car. Does it disqualify B to be a witness? NO! It disqualifies him to inherit. The legacy is void

   Rationale: To prevent collusion between the witness and testator. To prevent the witness from testifying falsely.

2. If there were 4 witnesses, each one given a devise or legacy-

   Are they competent to be witnesses? Yes!

   Are the bequests to them valid?

   TWO VIEWS

   a. YES! Because for each of them, there are 3 other witnesses. **[liberal view]**

   b. NO! Because this is an obvious circumvention of Article 823. Article 823 has for its purpose the prevention of collusion.

Are creditors of the testator prevented from being his instrumental witnesses? [Art. 824] No! "A mere charge on the estate of the testator for the payment of debts due at the time of the testator's death does not prevent his creditors from being competent witnesses to his will."

CODICILS AND INCORPORATION BY REFERENCE
Article 825 to 827

CODICILS

What is a codicil?

- It is a supplement or addition to a will, **[When?]** made after the execution of a will and annexed to be taken as part thereof, **[Purpose?]** by which any disposition made in the original will is explained, added to or altered.

Example: In a will, "I will give my car to A, July 2, 2010." Because I want to specify which of my cars, I make a will stating "In my will of July 2, 2010, I give a car to A. I want to clarify that I am giving him BMW with plate no…"

When is a subsequent document a codicil and when is it another will?

1. It is a codicil when it explains, adds to, or alters a provision in a prior will.
2. It is another will if it makes an independent disposition.

How must be a codicil be made to be effective?

- In order that a codicil may be effective, it shall be executed as is the case of a will (Art. 826).

Questions:

1. If original will is attested, can you make an attested codicil?
2. If original will is attested, con you make a holographic will?
3. If original will is holographic, can you make a holographic codicil?
4. If the original will is holographic, can you make an attested codicil?

Answer: Yes to all. The form of a codicil does not have to conform to the form of the will. A will does not impose its form on the codicil. As long as the codicil complies with the form of wills, it is valid (Article 826).

INCORPORATION BY REFERENCE

What do you incorporate? Documents that clarify provisions in the will to which it is attached.

E.g. inventories, sketches, books of accounts.

Requisites: for incorporation to be valid:

1. Documents must pre-exist the will. It must be in existence when the will was made.
2. The will must refer to the document, stating among other things the number of pages of the document.
3. The document must be identified during the probate of the will as the document referred to in the will.

4. It must be signed by the testator and the witnesses on each and every page, except in the case of voluminous books of accounts or inventories.

Can provisions of a will be incorporated by reference?

- NO! Because they do not conform to the requirements of wills.
- Can a document be incorporated in a holographic will considering that the attached document must be signed by witnesses and that the holographic will has no witnesses?

Two views:

1. Yes, witnesses referred to by law should be taken to mean only if there are witnesses to the will. There is no specification in the law.
2. No! The fourth requisite presupposes there were no witnesses. It seems to cover only attested wills.

REVOCATIONS OF WILLS & TESTAMENTARY DISPOSITIONS
Article 828 to 837

Who can revoke a valid will?

1. The testator himself OR
2. By some other **person in his presence, and by his express direction** (Art. 830).

When can a testator revoke his will? [Art. 828]- A will may be revoked by the testator at any time before his death.

Can this absolute power to revoke be restricted? No! Any waiver or restriction of this right is void.

Rationale: one characteristic of a will is ambulatory. It is not fixed, it is revocable. Revocability is an essential requisite of a will. Ergo, any waiver or restriction of this right is void. There are no exceptions.

Where and how to revoke a will? What law governs revocation? [Art. 829] It depends where the revocation is made:

I. If done outside the Philippines

1. **If the testator is not domiciled in the Philippines-**
   - The law of the place where the will was made.
   - The law of the place where the testator was domiciled at the time of revocation.
2. **If the testator is domiciled in the Philippines.**
   - Philippine law because his domicile is here.
   - Law of the place of revocation because of Article 17 of the NCC.

Article 17- the forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country in which they are executed. [The place of revocation is here].

II. If done inside the Philippines

- Follow Philippine law.

HOW IS A WILL REVOKE?

Three ways:

1. By operation of law
2. By subsequent instrument, such as codicils, wills, or testamentary writings.
3. By physical destruction- burning, tearing, cancelling, or obliterating.

Tearing- includes the use of scissors or paper shredder.
Obliterating- the act of erasing by crossing out so that the letters cannot be deciphered.

I. By implication of law (by operation of law)

A. **Art. 1032-** Unworthiness to succeed.

E.g. I instituted P as an heiress, after which she killed my parents. The will instituting her as heiress is revoked by operation of law.

B. **Art. 63- Legal separation-** The guilty spouse, who causes the ground for legal separation, will not inherit and anything given to her is impliedly taken away by

law. But the innocent spouse will inherit from the guilty spouse.

C. **Art. 854-** Preterition annuls the institution of the heirs.

- Pretirition is the intentional and complete omission of compulsory heirs in the direct line in the will.

- Does it make the institution of heirs becomes immediately invalid? No apply first Art. 855- The share of a child or descendant omitted in a will must first be taken from the part of the estate not disposed of by the will, if any.

D. **Art. 957-** Deals with a devise or legacy which was transformed in form and denomination by the testator.

E.g. If I converted to a subdivision the fishpond which I gave to T as a devise.

Rationale: The act of transforming the nature of the legacy implies revocation because it manifests the intention of the testator not to give the legacy as written in the will, the will is revoked by operation of law.

Do all of these happen without the intention of the testator, but purely by operation of law? No! Because in case of pretirition it is the intention of the testator not to include the omitted heir. Also in the case of transformation of a devise or legacy.

II. By subsequent instrument

Requisites:

1. Capacity to revoke- A *non-compus mentes* person cannot revoke.
2. Revoking instrument will or codicil must be valid.
3. Revoking instrument will or codicil must contain either a revoking clause (express) or be incompatible (implied).
4. Revoking will must be probated because without probating, it cannot have the effect of revocation.

How does a subsequent instrument revoke a prior will?

1. **Express-** there is a revoking clause in the will. The testator stated that his subsequent will revoked the prior will.

2. **Implied-** there is no revoking clause, but the provisions of the subsequent will are inconsistent with the provision of the prior will.

E.g. In my first will, "I gave A my only Toyota car." but in my subsequent will, I gave to B the same car which I gave to A.

Can a codicil entirely revoke a will? YES! Because it is one way of revoking a will.

III. By physical destruction through tearing, burning, cancelling, or obliterating.

- The enumeration is exclusive.

Requisites:

1. **Corpus** (act of destruction) - there must be completion of intent. All acts needed to revoke have been done.

Question: Must it be total destruction?
Answer: No! As long as evidence on the face of the will shows act to revoke.

2. **Animus-** Intent and capacity to revoke

NOTE: For a revocation to be valid, both elements must concur.

Illustrations:

1. A blind testator asked his nurse to give him his will. The NAUGHTY nurse gave him his old letters. The testator thinking it is his will, threw it into the fire. **In this case, there is animus but no corpus. Revocation is ineffective**.

2. I threw my civil law exams. But it turned out that it was my will. Revocation is not valid. **There is no animus or intent to revoke.**

NOTE:

1. **How much destruction of the corpus do you need?** You need the physical destruction of the will itself.

   Does it mean total destruction of the will, so that nothing will be left? NO! As long as there is evidence of physical destruction, like let us say edges were burned. However, if only the cover was burned, there is no revocation- no corpus. If the destruction was not total, there is still revocation, as long as there was evidence of the destruction of the will, the destruction need not be total.

2. A man cannot revoke his will effectively because of insanity.

3. In case of tearing, there must be intent to revoke. That is, the testator had completed what he intended to be done.

   If in the act of tearing the testator was dissuaded not to continue, is there revocation? None! Because the testator was not able to do what he intended to be done. The act of revocation was not subjectively completed.

   E.g. If the testator tore the will into two and when he was about to tear it into quarters, the heir asked for his forgiveness. The testator said: "just paste the will." Is there revocation?

   None! Because the act was not subjectively completed. It is not yet consummated, therefore no animus.

4. If the testator totally destroyed the will and after that he changed his mind, is there revocation? Yes! *Consumatum est*! The act was subjectively complete. The remedy is to make another will.

What is the effect of a revocation in a subsequent will? (Art. 832) The revocation will take effect even if the new will should become inoperative by reason of the incapacity of the heirs, devises or legatees designated therein, or by their renunciation.

General Rule: Doctrine of Absolute Revocation

- The revocation of a prior will by means of a subsequent will is absolute. Such revocation does not depend on (1) capacity of heirs, devisees, and legatees, in the second will; or (2) on their acceptance.

- The revocation will be operative even the heirs, devises, or legates named in the revoking will are disqualified or they renounce.

  ILLUSTRATION:

  Will 1- I give my house and lot to A (2010).

  Will 2- I give my house and lot to B and hereby revoke my fist will (2012)

  Question: Suppose, upon the testator's death, B renounces or is incapacitated, what is the effect? The institution of A is still revoked. House and lot will go by intestacy. The first will not be revived by the reason of the inoperation of the revoking will due to its renunciation or the incapacity of heirs, devisees or legatees to it. The rationale is that the second will was valid except that it was rendered inoperative.

Exceptions: Disputable Presumption of Revocation [evidence may be presented to dispute]

1. **Doctrine of Relative revocation-** the revocation of the first will is made by the testator to be dependent on the validity of the subsequent will.
   - For this to apply, it presupposes that the provisions of the first will are almost identical to the provisions of the second will.

   - **Question: Does the presence of revocation clause render this doctrine inapplicable?** No! An express

revocation may not be effected if it was shown that the testator made the revocation of the first will on the validity of the second.

2. **The will was not found at the time of the death of the testator.**
   - **Pre- conditions:** For this to apply the will must be in the **possession** OR **control** of the testator.

CASE: Gago vs. Mamuyac
Where the will cannot be located at the time of the death of the testator but was shown to have been in the possession or control of the testator when last seen, the presumption is that in the absence of competent evidence to the contrary, the will was cancelled or destroyed by the testator. The rationale is that it is hard to prove act of revocation of the testator. The presumption is rebuttable.

Revocation on the ground of false cause or an illegal cause

Article 833- "A revocation of a will based on a false cause or an illegal cause is null and void."

Elements to be operative:
1. Cause must be concrete and a factual one.
2. Cause must be false or illegal.
3. Testator knows its falsity.
4. It appears on the face of the will that the testator is revoking because of the false cause.

Primordial consideration for this article to apply:
- Before an heir invokes this article, the testator must have wrote in the revoking will the reason why he is revoking the said inheritance.
- **Rationale**: if the testator did not wrote the reasons of revocation, then he is revoking the inheritance at his own caprice, for a will is ambulatory. Ergo, such revocation cannot be contested by anyone.

Does this article limit or violate the revocation of one's will anytime?
- No! A testator can revoke his will capriciously or whimsically at pleasure.
- This provision applies when the revocation is due to mistake or is based on some cause and such cause was later proven to be false, then the revocation is void.
- **Rationale:** All transactions based no mistake are vitiated, that is you are on a false cause of facts.

Illustrations:

A. Based on fact *(kind of dependent relative revocation because he would revoke only if his information is true)*

I instituted C as my heir. Later, I heard that it was C that killed my brother in Davao. So I revoked my will. But it turned out that C did not do it. Revocation is void.

B. Based on impression
I give my car to B who is from Manila. I revoke my designation of B because I have just found out that she is from Quezon City and I hate people from Quezon City because they are arrogant and obnoxious.

Is the revocation valid? Yes! Because revocation is based on impression or is out of caprice, prejudice or unfounded opinion, and not on a false cause or illegal cause.

What is the effect of a revocation of a will wherein recognition of an illegitimate child was made therein? (Art. 834)
- Even if the will is revoked, recognition of an illegitimate child is valid.
- **Rationale:** Recognition of an illegitimate child is not a testamentary act but an act which under the law admits a relationship of paternity.

REPUBLICATION AND REVIVALS of WILLS Article 835 to 837

Republication
- It is effected by the testator. It presupposes that there is something wrong in the first will.

It also presupposes that the provision of the first will is similar to the provisions of the second will, but it was void due to non-compliance with the formalities of a will.

Revival

- It is effected by law – Article 836. "The execution of a codicil referring to a previous will has the effect of republishing the will as modified by the codicil"
- It is by operation of law that revives a prior will.

Art. 835 is derived from Argentine Code. If you want to revive a will which is void as to its form, you must republish the will and just cannot refer to it.

Example: attested will with just two witnesses. You discovered the mistake later on. You cannot just republish it. You have to write all over again.

Art. 836 is derived from the California Code. The mere reference to a previous will revive it.

Result of the two article: CHAOS! Because article 835 is inconsistent with article 836.

How to reconcile: see Tolentino

Art. 835- Explicitly refers to will void as to form, The cause of the nullity is the defect in the form. You must reproduce the dispositions in a subsequent will.

Art. 836- Applies if the reason of nullity is other than defective form. **E.g.** Underage testator, fraud, under duress. You may republish or refer to the will.

E.g. I hereby republish and revive my will of October 25, 2000." Said republication was made after the discovery of the reason of the nullity.

REPUBLICATION	REVIVAL
1. Effected by the testator. **2.** First will is void as to form. **3.** The provisions of the first will is similar to the provision of the second will. **4.** Purpose: to republish the same disposition. **5.** The second will or codicil cures the formality defect of the first will.	**1.** Effected by operation of law **2.** Void not in form but on other matters. **3.** Usually three documents are involved (Art. 837). These documents are the first, second, and third will.

ARTICLE 837- CONTEMPLATES THREE WILLS

"After making a will, the testator makes a second will expressly revoking the first, the revocation of the second will does not revive the first will, which can be revived only by another will or codicil."

Situations:

X makes a will in 2000 (will 1)
X makes a will in 2004 expressly revoking will 1 (will 2)
X makes a will in 2012 revoking will 2 (will 3)

Gen. Rule: *Revocation Instanter* (Instant revocation) - will one is not revived because its revocation was instant.

Exception:

1. Will 3 expressly revives will 1.
2. Will 3 reproduces provisions of will 1.

Comment: Balane- This article is crazy! Because it is contrary to established principles in succession.

Principles in Succession	Article 837
1. Will takes effect upon death. **2.** Revocability of wills	**1.** Gives the will 2 effects ante-mortem, even if the testator is still alive. It makes the will operative even if the testator is alive. **2.** Makes it irrevocable

Note: By contrary implication, if revocation of will 1 by will 2 is implied, then revocation of will 2 by will 3 revive will 1 except if will 3 is incompatible with will 1. Article 837 will not apply.

ALLOWANCE AND DISALLOWANCE OF WILLS [PROBATE]
Article 838- 839

General Principles:

1. No will shall pass either real or personal property unless it is **probated** (Art. 838).
2. Probate is mandatory
3. It is imprescriptible

   Rationale: Since probate it mandatory, it is stupidity to set for limitations on the duration of probate. It is against public policy.
4. Once a will was probated, it is conclusive as to its due execution and cannot be contested.
5. Probate is a special civil action

   Reason: It is an action in rem. It is an action against the whole world. There is no specific defendant. All are defendants and if a party who has interest on the will did not object during the proceedings, he loses his right.

What is the effect of probate? It is subject to appeal but once final, it becomes conclusive or *res judicata* as to its due execution and testamentary capacity of the testator.

ILLUSTRATION: Wife died. Husband presented will for probate. RTC allowed and probated the will. 16 months later, relatives of the wife instituted a criminal action against the husband for falsification of the will of the wife.

Can the case prosper? No! It's too late because the will has already been probated.

Probates are proceedings *in rem* and are mandatory. If the probate is allowed, it becomes conclusive as to its extrinsic validity which provides that:

1. The testator was of sound mind when he executed the will.
2. The testator was not acting under duress or fraud- his consent was not vitiated.
3. The will was executed in accordance with the formalities required by law.
4. The will is genuine and not a forgery.

Question: What if after the probate becomes final a person was charged with forgery of the will, can he be convicted?

Answer: No, the probate is conclusive as to the will's genuineness even against the state

KINDS of PROBATE

1. **Ante- mortem probate** (during the lifetime of testator) - at the instance of the testator.
2. **Post- mortem** (after death of testator) - at the instance of any interested party.

Advantages of Ante-mortem Probate	Disadvantages of Ante-mortem Probate
1. It eases the mind of the testator. 2. There is opportunity to change if there are defects in the testamentary dispositions. 3. You can prove the capacity of the testator.	1. Pre-mature disclosure of inheritance. 2. Futile because the testator can easily make a subsequent will revoking it.

What are the issues to be delved in ante-mortem probate? (Power of the court)

General Rule: The court can only delve into the extrinsic validity of the will, such as identity, testamentary capacity, and due execution.

Exception: the court delves into the intrinsic validity of the will when:

1. Will is void on its face.
2. Where the petitioners set aside the issue of probate and traveled further to delve into the issue of intrinsic validity.
3. If the sole issue in the probate was an issue of ownership of a property contained in the testamentary disposition (usually co-owned property disposed by the testator in its entirety).

CASE: Nepomocino vs. CA- The testator left his entire estate to his legal wife and children but devised the free portion to his common law wife.

HELD: The general rule is that only extrinsic validity could be at issue during the probate, this rule is not

absolute. Given exceptional circumstances, the probate court may do what the situation constrains it to do by passing upon certain provisions of the will.

Clearly the devise for the common-law wife was void.

Remedy: do not put in the provision of the will that she is your mistress, rather put in the will that you are giving her a property because you are repaying her kindness and generosity.

What if in the probate proceeding, an illegitimate child who was not given any inheritance, devise, legacy or donation surface, can the court cognize the same? Yes! Only for purposes of intervention in the case but will not decide whether he is an illegitimate or legitimate child. As such no need to present evidence of filiation in the probate proceeding.

Can the provisions of a will be subject to a compromise agreement? No! The provisions of a will cannot be subject for compromise agreements because the primordial consideration is to give respect and effect to the intention of the testator. A compromise agreement is contrary to the intention of the testator.

What are the grounds for disallowance of wills? (The enumeration is exclusive)

1. If the formalities required by law have not been complied with.
2. If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution.
3. If it was executed through force or under duress, or the influence of fear or threats.
4. If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person.
5. If the signature of the testator was procured by fraud.
6. If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto.

FORCE/ VIOLIENCE (Art. 1335 par. 1)	**DURESS/ INTIMIDATION (Art. 1335, par. 2)**
There is violence when inorder to wrest consent, serious or irresistible force is employed.	There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.
FRAUD (Art. 1338)	**UNDUE INFLUENCE (Art. 1337)**
There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. Note: Sale's talk is not covered, but opinions of experts are.	There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.

NOTE:

1. Mere inequality in the distribution of inheritance does not constitute undue influence.

   Rationale: human experience dictates that the reason of making a will is for the legal heirs not to inherit equally. If your intention in making a will is for your legal heirs to inherit equally, then you might as well die intestate.

2. Mere ascendancy does not constitute undue influence.

3. The **remedy** when the judgment of the probate court becomes final is **appeal** and not annulment of judgment due to falsity in the will. The judgment of the trial court is conclusive, and it binds the whole world

because probate is an action in rem. The remedy for final orders is appeal not *certiorari*.

INSTITUTION of HEIRS

General Principles:

1. In the institution of heirs, the legitime must be respected and should not be impaired.
2. Under the law, the testator may give to any person the free portion of his estate as long as the legitime is protected.
3. Even if there is no institution of an heir [all are devisees and legatees] the will is still valid.
4. You should know the distinctions between a voluntary heir, compulsory heir, devisee, and legatee for purposes of pretirition and representation. **A voluntary heir who predeceases the testator will transmit nothing but a compulsory heir may be represented [only in the legitime!].**

What is institution of heirs? Under the law, institution of heirs is the act by virtue of which a testator designates in his will the person or persons who are to succeed him in his property and transmissible rights and obligations.

To what extent may the testator dispose his property? Art. 842- One who has no compulsory heirs may dispose by will of all his estate or any part of it in favor of any person having capacity to succeed.

Note: Inorder to dispose your property to any person (compulsory heirs or voluntary heirs) having capacity to succeed, the testator should make a will. He can dispose all of his property only if he has no compulsory heirs.

Corollary Question: In intestate succession, does the decedent have control in the disposition of his property? No! The testator does not have full control to the disposition of his will. However the law made a presumption of what the decedent would have done to his property when he knows the date of his death.

What is the effect to the will if the instituted heir did not accept his share became incapacitated to succeed, or the institution does not cover the whole estate?

- Under the law, the will is still valid.
- If the instituted heir should repudiate or be incapacitated to inherit, then legal succession takes place.
- If the institution does not cover the entire estate the excess shall either go to the compulsory heirs or by intestacy (mixed succession).

Art. 851- If the testator has instituted only one heir, and the institution is limited to an aliquot part of the inheritance, legal succession takes place with respect to the remainder of the estate.

The same rules apply if the testator has instituted several heirs each being limited to an aliquot part, and all the parts do not cover the whole inheritance.

How is an heir instituted?

General Rule:

- An heir must be designated by name and surname. This applies to devisees and legatees.
- If there are two or more people having the same name and surname, the testator must indicate some identifying mark or circumstance to which he may be known, otherwise there may be a latent ambiguity.

Example: I institute my cousin A. But I have 3 cousins by the name of A. Unless I give and indentifying mark or circumstance as to which cousin I refer to, there will be a latent ambiguity.

Exception:

- Even if without giving the name, the identity of the heir can be ascertained with sufficient certainty or clarity, **e.g.** the present Dean of the SLU School of law, my oldest brother.

Take note: what is important is that the identity of the heir be known and not necessarily his name.

What is the status of instituted heirs?- They are as follows:

1. **Compulsory Heirs**
   - They succeed by law because the law provides a certain portion of the estate of the testator to be given to them. This portion is called legitime.
   - Compulsory heirs are not instituted with respect to the legitime because the law reserved it for them. They are instituted in the free portion.

   What is legitime? Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore called compulsory heirs (Art. 886).

   Who are compulsory heirs? The following are compulsory heirs (Art. 887):
   1. Legitimate children and descendants, with respect to their legitimate parents and ascendants.
   2. In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants.
   3. The widow or widower.
   4. Acknowledge natural children and natural children by legal fiction.
   5. Other illegitimate children.

2. **Voluntary heirs**
   - Their inheritance always comes from the free portion of the testator's estate.
   - They succeed by will, because the absence of a will makes them inherit nothing.
   - It includes compulsory heirs or strangers.

3. **Devisee**
   - One who succeeds by particular title to property.

4. **Legatee**
   - One who succeeds to a specific personal property.

What if there is an error in the names, surname or circumstance that refers to the heir? If there is an error in the name of the heir, the error is immaterial if his identity can be known in any other manner.

However, if the ambiguity is **both** in the names and circumstance referring to the instituted heir, these rules will apply:

1. Use extrinsic evidence except the oral declarations of the testator as to his intentions to cure the ambiguity.
2. If ambiguity still exists, none of them will inherit. [Do not apply the shotgun method- young bibigyan mo lahat para siguradong matatamaan yong tinutumbok ng testator na pamanahan]

What is the effect of a testamentary disposition in favor of unknown persons? (Art. 845)

General Rule: It is void.
Exceptions:

1. Disposition is valid if by some event or circumstance the identity of the unknown person becomes certain.
2. Dispositions in favor of a definite class or group shall be valid.

<u>Unknown person; meaning:</u>

- It refers to one who cannot be identified and not to one whom the testator does not personally know
- Ergo, the basis of nullity is the inability to determine the intention of the testator.

Example:

1. To someone who cares- void (who among the various persons who care?)
2. To someone with ten eyes- void, it refers to someone who does not exist.

<u>Take note:</u> the designation is valid if the identity is not known at the time of making the will but can be known in the future by circumstances. **How?** By establishing certain criteria at the proper time, **e.g.** First Filipino who wins a gold medal in the Olympics.

Class designation

- Valid, **e.g.** class in Civil law, SLU School of Law, 2012-2013.

How much would an heir inherit if there is no designation of shares? (Art. 846)

- Heirs instituted without designation of shares shall inherit in equal parts.

Rationale: Presumption of Equality, because if the testator wanted his heir to inherit unequally then he should have stated it in his will.

What if the testator instituted a specific person and a class as an heir, how much do they inherit? (Art. 847)

Problem: The testator provides "I give 1/3 of my estate to A, B, and C." C is a class of people. How do you divide the estate?

General Rule: Presumption of Equality. It is not to be interpreted as 1/3 to A, B, and C. Rather 1/3 of the estate should be divided equally among A, B, and the members of class C. **Why?** Because the presumption is that the members of C were individually instituted.

Exception: If the testator provides otherwise. If the testator say "I give 1/3 of my estate to A, B, and class C as a unit", then 1/3 will be divided equally among A, B and C.

Take note: when the testator calls to the succession of a person and his children, they are deemed to have been instituted simultaneously and not successively.

What if the instituted heirs are brothers and sisters of the testator and some are from the full blood and others of the half blood, how much would one inherit?

Full blood- same parents
Half blood- only one parent is the same.

- **General Rule:** Brothers and sisters whether full or half blood, inherit in equal shares.
- **Exceptions:**
  1. If the testator provides otherwise in the will.
  2. If they inherit by intestacy. Ratio is 2:1 in favor of full blood brothers and sisters (Art. 1006)

What is the effect if there was a statement of false cause in the institution of an heir? (Art. 850)

- **General Rule:** Even if the cause is false, institution is effective. Why? Because the cause of the institution is the liberality of the testator and not the cause stated.

- **Exception:** Unless it appears from the will that the testator would not have made such institution if he had known the falsity of such cause.

Question: "A is the tallest in the class. I give him 1/3 of my estate." If A is not the tallest, is the institution ineffective?

Answer: NO! It is valid. Follow the general rule because the real cause was not the height but the liberality of the testator.

Case: Austria vs. Reyes- In the case, the oppositor sought to nullify the institution of the adopted children as heirs because it was found out that the adoption did not comply with the law. The SC held that the institution was valid. For it to be invalid, and be an exception to the general rule, **3 requisites must concur:**

1. Cause for the institution must be stated in the will.
2. Cause must be shown to be false
3. It must appear on the face of the will that the testator would not have made such institution if he had known the falsity of the cause.

Rationale of the decision: The wishes of the testator must be respected. In this case, the third requisite was absent. As such, the exception was not applicable and the general rule would apply.

Take note: if there is doubt as to whether there is a valid institution because of the false cause, resolve it in favor of validity.

What is the effect if the testator intended to give the whole estate to the instituted heirs but he made a mistake in the computation thereof? (Art. 852)

- If it was the intention of the testator that the instituted heirs should become sole heirs to the whole estate, or the whole free portion as the case maybe, and each of them has been instituted to an aliquot part of the inheritance, or the whole free portion, each part shall be increased proportionally.

- **For proportional increase to apply these elements must be present:**
  1. There are several heirs.
  2. The testator indicates his intention to give his entire estate to his heirs.
     a. If no compulsory heirs- whole estate.
     b. If with compulsory heirs- whole free portion.
  3. The testator indicates portions he wants to give to each.
  4. Total of portions is less than whole estate or free portion, as the case may be.

What is the effect if the instituted heirs were given aliquot parts but the same exceeds the whole or the free portion as the case maybe?

- If each of the instituted heirs has been given an aliquot part of the inheritance, and the parts together exceed the whole inheritance, or the whole free portion, as the case may be, each part shall be reduced proportionally.

- **Proportional reduction happens if these elements are present:**
  1. There are several heirs.
  2. The testator indicates his intention to give his entire estate to his heirs.
     a. If no compulsory heirs- whole estate
     b. If with compulsory heirs- whole free portion
  3. Testator indicates the protons he wants to give each.
  4. Total of portion exceeds the whole estate, or whole free portion, as the case maybe.

PRETERITION

Art 854- "The preterition or omission of one, some, or all of the compulsory heirs in the direct line, whether living at the time of the execution of the will or born after the death of the testator, shall annul the institution of heir; but the devisees and legacies shall be valid insofar as they are not inofficious.

If the omitted compulsory heirs should die before the testator, the institution shall be effectual, without prejudice to the right of representation."

Clarifications:

- **"Whether living at the time of the execution of the will or born after the death of the testator."** – This does not cover all possibilities. What about those born after execution of the will but before the death of the testator? Art 854 also covers them, just an oversight.

- Extends only to **"compulsory heirs in the direct line"-** is this redundant? Aren't compulsory heirs, in the direct line? No! Spouses are compulsory heirs not in the direct line.

What is the remedy of a wife who has been omitted? Demand her legitime.

What is PRETERITION?

- Preterition occurs if the compulsory heir in the direct line receives nothing from the inheritance by way of testamentary disposition, devise, legacy, intestacy, or donation inter vivos.

- There is also a preterition if the heir even though mentioned in the will did not receive any inheritance by way of testamentary disposition, devise, legacy, intestacy, or donation inter vivos.

- **Question: is there preterition if the omission was intentional?** Yes.

Who can be preterited?

1. Legitimate children
2. Illegitimate children (the law makes no distinction)
3. Parent whether legitimate or illegitimate.
4. Grandparents
5. Legally adopted children (adopted child has the same right as a legitimate child- Art. 39 of P.D. 603).

What is the effect of preterition? If there is preterition it will annul **the institution of heirs [not the will]** but devisees and legacies shall be valid insofar as they are not inofficious.

When is a legacy or devise inofficious? It is inofficious if it exceeds the free portion.

What is the effect of preterition when there are no devisees or legacies? The whole will is considered in-existent.

What is the effect of preterition when there are devisees or legacies? The institution of heirs is set aside but not the institution of devises and legatees. If the devise and legacy exceed the free portion, decrease the devise and legacy.

What is the effect of the predeceased of the preterited/omitted compulsory heir in the direct line? The institution of heir is effectual without prejudice to the right of representation. (Art. 854, par. 2)

"Without prejudice to representation" – is interpreted in two views:

First View- There is **no** preterition! Heirs of the preterited heir will get the legitime.

Second View- There is still preterition- Why? **Answer:** When will you determine the compulsory heirs of the testator? At the time of the testator's death pursuant to Article 777.

E.g. T has two children A and B. B has a child C. In his will T preterited B. B predeceases T. After one year T died. Upon T's death, A and C [raised to the position of B] are his compulsory heirs. There is preterition because at the time of T's death, C is not mentioned in **the will.**

What are the situations where there is no preterition?

1. Preterited heir was not instituted in the will but there was an undisposed portion of the estate. The undisposed portion will go to him subject to completion if the same is less than his legitime. [Art. 855]
2. The preterited heir was given by the testator a donation inter vivos (must be gratuitous not onerous donation). [Art. 909]
3. The heir was instituted in the will but the portion given to him was less than his legitime. [Art. 906]
4. In cases of imperfect disinheritance because there will be a partial annulment of the preterited heir's legitime.
5. In cases of inofficious testamentary dispositions that impair the legitime. They can be reduced by petition of the preterited heir. [Art. 907] the excess which will be deducted from the inofficious devise or legacy will accrue to the preterited heir subject to the completion of his legitime if the same is insufficient. Ergo, no preterition.
6. If the one omitted was the spouse. Although a spouse is a compulsory heir but she does not belong to the direct line.

What is the remedy if an heir received less than his legitime? "The share of a child or descendant omitted in a will must first be taken from the part of the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken proportionally from the shares of other compulsory heirs." [Art. 854]

Take note: This rule also applies to other compulsory heirs such as spouse, parents or ascendant.

Procedure:

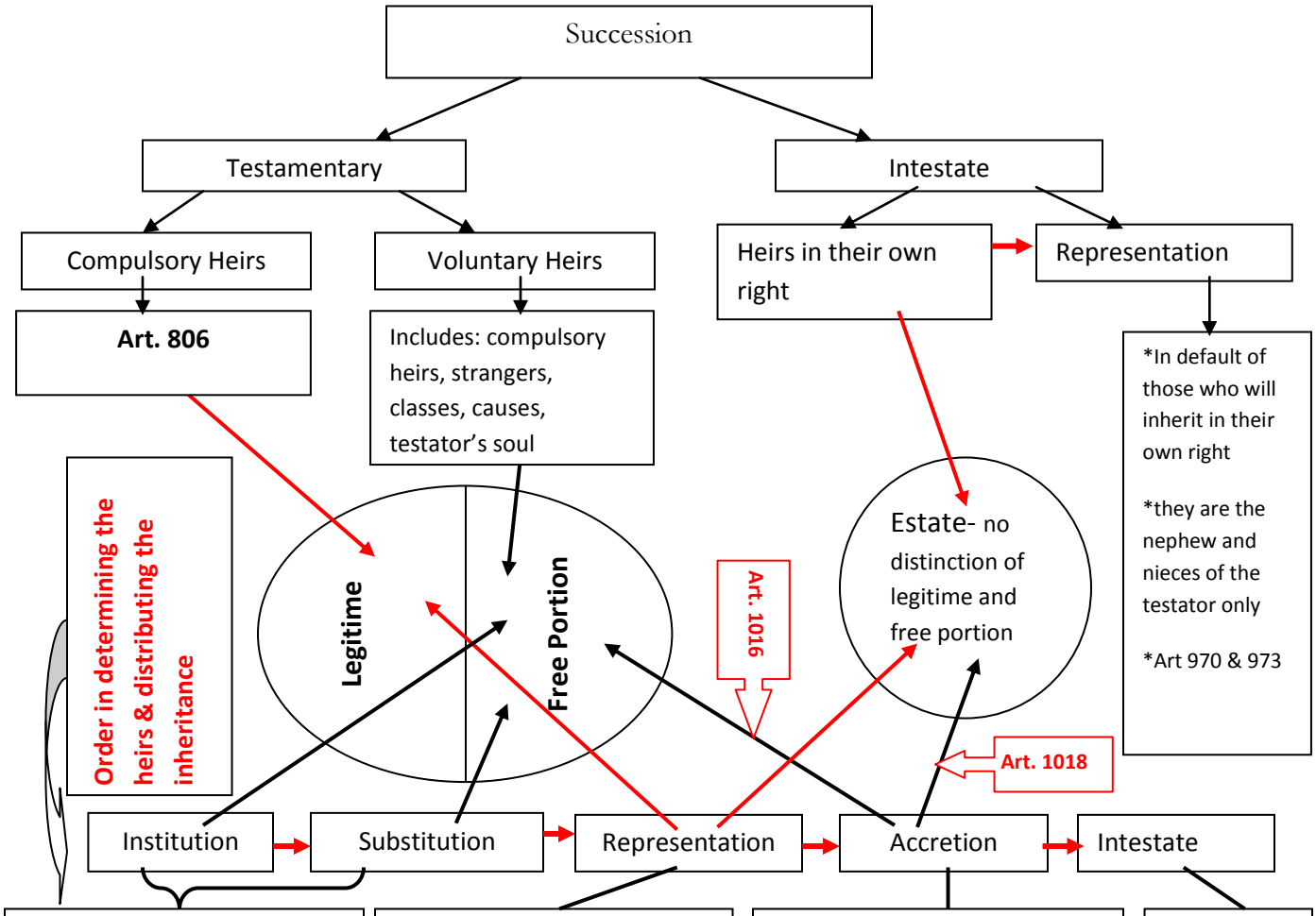
1. First, get from the undisposed portion.
2. If vacant portion is not enough- get from the shares of the other compulsory heirs.

What is the effect if an instituted voluntary heir predeceases the testator? A **voluntary heir who dies before the testator transmits nothing to his heirs**. There is no right of representation, but **there can be right of**

substitution, if a substitute was provided by the testator **or accretion if applicable**.

What is the effect if a compulsory heir predeceases the testator? A compulsory heir who dies before the testator, a person incapacitated, shall transmit no right to his own heirs except that he can be represented by his compulsory heirs.

The compulsory heirs of the testator in the direct line is raised to the position of the compulsory heir that predeceases the testator.



*Will of the testator
*Institution and substitution are applicable only in the free portion and not in the legitime.
*In apportioning the inheritance, institution comes first. In default of instituted heirs look in the will if there is a substitute.
*Institution is the act by virtue of which a testator designates in his will the person/s who are to succeed him in his property & transmissible rights & obligations.
*Substitution is the appointment of another heir so that he may enter into the inheritance either in default of the heir originally instituted or after.

*See Article 970.
*These happen only in the legitime and only for compulsory heirs in the direct ascending line, never voluntary heirs and ascending line.
*There is representation in cases of:
-Predecease
-Incapacity
-Disinheritance
-But not in repudiation (Art. 977)
Note: one who renounces his inheritance may represent the one whom he renounces.
E.g. A son may renounce his inheritance from his father, but he can represent his father with respect to the latter's inheritance.

Presumed will of the testator
*Accretion is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part assigned to the one who renounces or cannot receive his share or who died before the testator, is added or incorporated to that of his co-heirs, co-devisees, or co-legatees.
*Applicable only in the free portion not in the legitime. **Why?** Bec. Representation will apply in the legitime. It would be absurd to give to a co-heir the share of a compulsory heir in his default when he can be represented by his compulsory heirs.

Order of succession
*Legitimate children and descendants
*Legitimate parents and ascendants.
*Widow or widower
*Illegitimate children
*Collateral relatives (Brothers, Sisters, nieces, nephews)
*State

SUBSTITUTION OF HEIRS
Articles 857 to 870

General Principles:

1. The second heir or substitute heir directly inherits from the testator and not from the first heir.
2. A fidiecommissary substitution can never burden the legitime [Art. 864].
3. The testator cannot impose any charge, condition or substitution whatsoever upon the legitimes prescribed in this Code. Should he do so, the same shall be considered as not imposed [Art. 872].

What is substitution of heirs? Substitution of heirs is the appointment of another heir so that he may enter into the inheritance either in default of the heir originally instituted or after.

"In default"- means failure to inherit because of:

1. Predecease
2. Renunciation
3. Incapacity

Are the conditions and charges of the testator to the instituted heir passes to the substituting heir?

General Rule: Yes! The substitute heir is subject to the same charges and conditions as the first heir.

Exceptions:

1. Testator has expressly provided the contrary.
2. Charges and obligations are personally applicable to the first heir.

Simple Substitution contra Fidiecommissary Substitution

Simple Substitution	Fidiecommissary Substitution
1. Can be done expressly or impliedly. 2. The second/substitute heir receives the property only upon default of the first heir.	1. Every fidiecommissary substitution must be expressly made in order that it may be valid. [Art. 864] 2. For the substitution to operate, the first heir receives property, either upon death of the testator or upon fulfillment of any suspensive condition imposed by the will.

KINDS OF SUBSTITUTION

I. Simple Substitution

- One on one substitution.
- It can be implied or express.

Example: **implied**- "I institute ½ of my estate to A. If he cannot succeed then B and C." Is the phrase "if he cannot succeed then B and C" sufficient to conclude that there was a substitution of heirs?

Answer: Yes! There was substitution because the designated heirs are to succeed successively. The designation is in the alternative. Most importantly, simple substitution can be made impliedly as per article 859.

- **Two ways of making a simple substitution:**
  1. **Enumerate all causes of substitution [limited to predecease, renunciation, incapacity].**

     E.g. I institute A. in case A predeceases me or renounces, or is incapacitated to succeed, then B will substitute him.

  2. **By calling it as simple substitution.**
     E.g. I institute A, and by way of simple substitution, I institute B as substitute." In such case all the three causes of substitution will apply unless the testator provides otherwise.

What are the causes for the substitute heir to inherit in a simple substitution? They are the following:

1. Predecease of the first heir
2. Renunciation of the first heir
3. Incapacity of the first heir

Can the testator mention a specific cause/case for substitution?

- Yes! The testator may limit the operation of the 3 cases. He can just mention what he wants to apply.

- **E.g.** I institute A, and if he predeceases me, then B will substitute him. In such case, B will only substitute A if A dies before the testator.

What if the cause was not one of the 3 causes/ cases mentioned? If the causes is not covered by the causes given in Article 858, then the estate will pass to intestacy because the law is categorical that simple substitution will occur in case the instituted heir repudiates, incapacitated to inherit, or predecease the testator.

VARIATIONS OF SIMPLE SUBSTITUTION

1. **Brief Substitution**
   - Two or more substitutes for a single heir.
   - **E.g.** I designate A as an heir. In his default B and C may substitute him.
2. **Compendious Substitution**
   - One substitute for two or more heirs
3. **Reciprocal Substitution**
   - The heirs are substitute for each other based on either simple or fidiecommissary substitution. If both are disqualified, then no substitution will take place and the estate will pass by intestacy.
   - **Example:** "I institute to A 1/3, B to 1/6, and C to ½ of my estate and by way of simple substitution, I institute them as substitutes of one another." If C predeceases the testator, how will his share be divided among the reciprocal substitutes?
     Answer: the share of C will be divided by A and B according to their institution in the will. Such that 1/3 of the share of C will go to A and 1/6 to B.

Illustrations: Don Santiago Wakas instituted Guillermo Lawagan as a devisee. In case Guillermo repudiates his inheritance then Pedro. They are best friends in anything. One day they had a drinking spree. Don Santiago and Guillermo had an altercation, which prompted Guillermo to repudiate his inheritance from Don Santiago. Upset, Don Santiago invited Pedro to ride with him in going home. Don Santiago who is behind the wheel stepped on the gas pedal accelerating the care to 200 kph. Shortcut lingo, they landed in a ravine. They were rushed to the hospital. Don Santiago was proclaimed DOA. Pedro died after one hour in the ICU. Who will get the devise?

Answer: The heirs of Pedro! **Why?** Because this is a simple case of substitution. Under the law in default of the first heir, the inheritance will automatically go to the substitute heir. In this case when Guillermo repudiated the devise, the rights over the same devise were automatically vested to Pedro.

What about article 856, will it not operate in this case? Moreover, Article 856 will not apply because it was Don Santiago (testator) who died first and not Pedro (voluntary- substitute heir). Upon the death of Don Santiago, ownership of the property was vested to Pedro. As owner and in case of Pedro's death his right over the said property is transmitted to his compulsory heirs. Ergo, the heirs of Pedro are entitled to the devise!

Take note: Article 856 will apply if the voluntary heir (instituted or substitute) predeceases the testator!

II. Fidiecommissary Substitution

When is there a fidiecommissary substitution?

- There is fidiecommissary substitution when the fiduciary or first heir instituted is entrusted with the obligation to preserve and transmit to a second heir the whole or part of the inheritance, shall be valid and shall take effect, provided such substitution does not go beyond one degree from the heir originally instituted, and provide, further, that the fiduciary or first heir and the second heir are living at the time of the death of the testator.

Who are the parties in a fidiecommissary substitution?

1. Testator
2. Fiduciary- first heir
3. Fidiecommissary- second heir

What are the elements of a fidiecommissary substitution?

1. There must be a first heir or fiduciary.
2. An absolute obligation is imposed upon the fiduciary to preserve and to transmit to a second heir the property at a given time.
3. The second heir must be one degree from the first heir.
4. The first and second heir must both be **living and qualified** at the time of the death of the testator.
5. Every fidiecommissary substitution must be expressly made inorder that it may be valid.

There must be a first heir or fiduciary

- For fidiecommissary substitution to operate, the first heir receives the property, either upon the death of the testator or upon fulfillment of any suspensive condition imposed in the will. As distinguished from a simple substitution where the second heir receives property only upon default of the first heir.

- An absolute obligation is imposed upon the fiduciary to preserve and to transmit to a second heir the property at a given time.

- The very essence of fidiecommissary substitution is that the fiduciary has the absolute obligation to transmit to the second heir the property at a given time. As such, the fiduciary has only a right of a usufruct over the property. He cannot alienate or dispose it. The heirs of the fiduciary cannot claim it as their inheritance. Also the creditors of the fiduciary cannot go after or attached the said property.

"Given time"

- It is provided by the testator in the will, if none then it is understood that the period is the lifetime of the fiduciary. The fiduciary is a usufructuary of the property. As such if no period was given by the testator then the usufruct is in consideration of the life of the fiduciary.

Case: PCIB vs. Escolin

In the case, the spouses executed reciprocal wills. It provided that the share in the conjugal assets will pass to the surviving spouse and that the surviving spouse can do whatever he or she wants to the inheritance, even sell it, and if there is any residue from the inheritance from the other spouse upon the death of the surviving spouse, it shall pass to the brothers and sisters of the spouse who first died. The wife died first. The husband did not liquidate the conjugal assets because he was the sole heir of his wife. Upon the husband's death, it is now questioned whether there is any residue from the wife's estate that could pass to her brothers and sisters. PCIB and the administratix of the husband claims that: (1) there was no fidiecommissary substitution because there was no obligation upon the husband to preserve and transmit the property to the brothers and sisters of the wife as seen in his authority to sell the property and (2) since there was an invalid attempt to make a substitution, then the testamentary disposition is void and there can be no transmission of rights to the brothers and sisters. The SC agreed with contention no. 1 on the same ground. The second requisite was absent and there could be no fidiecommissary substitution. The institution of the husband was subject to a resolutory condition while the institution of the brothers and sisters was subject to a suspensive condition. Both conditions are one and the same. It is the existence in the husband's estate of assets he received from his wife at the time of his death. If there is, the husband's right to the residue is extinguished upon his death while the right of the brothers and sisters vests at the same time.

There is a second heir who must be one degree from the first heir

- **"One generation"-** It refers to the degree of relationship. However, fidiecommissary substitutions are **also limited to one transmission upon the lapse of time for the first heir;** he transmits the property to the second heir. They cannot be any more fidiecommissary substitution coming from the same testator. In other words, there can only be one fidiecommissary transmission such that after the first, there can be no second fidiecommissary substitution.

The first and second heir must both be living and qualified at the time of the death of the testator.

- From the moment of the death of the testator, the rights of the first and second heir are vested [Art. 866]. Thus the second heir directly inherits from the testator.

What if the second heir dies before the testator? The second heir **transmits nothing** to his heirs. However, "the nullity of the fidiecommissary substitution does not prejudice the validity of the institution of the heirs first designated; the fidiecommissary clause shall simply be considered as not written [Art. 868]. Thus the first heir may keep the property as his own.

What if the second heir dies before the first heir? [Testator died first] He transmits his right to his heirs. Since the second heir, inherits directly from the testator not from the first heir. The testator's death vests upon him the ownership over the property. As owner of the inheritance the second heir transmits his rights over the said property to his heirs [Art. 866].

What if the first heir died before the second heir? [Testator died] There is no more fidiecommissary substitution, the institution will be considered as simple substitution. Thus the second heir will get the property.

Corollary question: what if the testator put a period to the usufruct. After 15 years the fiduciary must transmit the property to the fidiecommissary. The fiduciary died in the 10th year. What will happen to the property for the remaining 5 years? The property will go the fidiecommissary because it is the ultimate purpose of the testator. The property will not go to the administration of other **persons unless the testator instituted the usufruct of the property simultaneously or successively. The next** usufructuary will hold the property for the remaining year.

Illustration: "By way of fidiecommissary substitution I institute H and W [husband and wife] as fiduciaries, X their child as the fidiecommissary substitute of my house in La Trinidad for 10 years." Testator dies. Subsequently after the lapse of 8 years, H died. Will the X get the property upon the death of H? No! Because W a usufructuary is still living. X will get the property after the lapse of the 10 year period provided by the testator.

How is fidiecommissary substitution made?

1. By expressly calling it as fidiecommissary substitution.
2. In the testamentary provisions, by imposing upon the first heir the absolute obligation to transmit to a second heir the property at a given time.

What should be transmitted to the fidiecommissary? The fiduciary shall be obliged to deliver the inheritance to the second heir, without other deductions than those which arise from legitime expenses, credits and improvements, save the case where the testator has provided otherwise.

Illustration: "I give all my properties to X, and whatever maybe left when X dies, it will go to his son W." is there a fidiecommissary substitution?

None! Because the testator did not impose upon X the duty to preserve the property and transmit the same to W within a period of time. X was given an unbridled power to dispose the property which is contrary to the very nature of fidiecommissary substitution, i.e. preservation and transmission of the property to the fidiecommissary in a given time.

TESTAMENTARY PROVISIONS THAT WILL NOT TAKE EFFECT

The following shall not take effect:

1. **Fidiecommissary substitutions which are not made in a express manner, either by giving them this name, or imposing upon the fiduciary the absolute obligation to deliver the property to a second heir.**
   - **Why?** Every fidiecommissary substitution must be expressly made in order that it may be valid [Art. 865].
   - It will not take effect as fidiecommissary substitution but may take effect as something else.
2. **Provisions which contain a perpetual prohibition to alienate, and even a**

temporary one, beyond the limit fixed in Art. 863.

- This is not a fidiecommissary substitution but a prohibited institution because:
  - **A.** Perpetual prohibition will freeze the property which is against public policy.
  - **B.** Temporary prohibition is allowed but cannot go beyond the limit in Article 863 [the limit id the death of the fiduciary]. Cannot prohibit alienation beyond the death of the fiduciary. Because upon the death of the fiduciary the property goes to the second heir, there is no more prohibition.
- Commentators say that this article refers to Article 870 rather than Article 863. They contend that the limit is 20 years. In such case, the contention is valid if you do not make it applicable to substitutions.

3. **Those which impose upon the heir the charge of paying to various persons successively, beyond the limit prescribed in Article 863, a certain income or pension.**
   - This is an attempt to circumvent "one degree" limitation of fidiecommissary substitution.

   Illustration: I give 1/3 of my estate to Santiago Wakas and impose upon him to obligation to give 10,000 pensions to Guillermo and in Guillermo's death to his son. This is allowed. But if this is extended to the son of the son of Guillermo, then it won't be allowed. The first and second recipient must be within one degree. But it must not extend beyond the second recipient.

4. **Those which leave to a person the whole or part of the hereditary property on order that he may apply or invest the same according to secret instructions communicated to him by the testator.**
   - This is contrary to the doctrinal pronouncement that "what a testator cannot do directly, he cannot do it indirectly."
   - **Dummy provision**. This is usually used as a means to circumvent some prohibition of law.

   Illustration: Prohibition of giving to paramour.

   Santiago has a paramour Kristin. He gets Guillermo as a dummy. Because of the prohibition of giving to a paramour, they agree between themselves that Santiago will leave Guillermo a devise and from its profits, Guillermo will give Kristin some allowance. So Santiago pretends to name Guillermo as heir. But in reality, such institution is for the benefit of Kristin.

   The institution of Guillermo will not benefit Kristin. Even if Kristin shows a written agreement between Santiago and Guillermo, it cannot be enforced because it is contrary to law. As regards Guillermo, he can keep the inheritance even if he double-crosses Santiago. Santiago instituted Guillermo at his own risk that he may be double-crossed.

   Remedy: Give the devise directly to Kristin and put in the testamentary provision that you are giving her the devise in consideration of her kindness to you when you were still in college. Basta walang ebidensya na nagsasabi na paramour mo siya, at hindi mo sinabi na paramour mo siya.

What if the testator leaves to a person the whole or part of the inheritance and the usufruct to various persons [successive usufruct]? "A provision whereby the testator leaves to a person the whole or part of the inheritance, and to another the usufruct, shall be valid. If he gives the usufruct to various persons, not simultaneously, but successively, the provisions of Article 863 shall apply. [Art. 869]"

Illustration:

- I gave to A naked ownership, and to B the usufruct and upon B's death, to his son C. This is valid, it is within the limit of Article 863. If it goes to the son of the son of B, then it is invalid.

- I give X the usufruct of my house in La Trinidad. After 5 years, to his son Y, and after 5 years to the son of Y, Z. Is the institution of Z valid? No! it violates the limitation provided by law. It is doctrinal that if a testator gives the usufruct of his property to several persons in a successive manner, it must not go beyond one degree of relationship from the first instituted usufruct. Z is beyond one degree of relationship from X, the first usufruct. Ergo, Z's institution as an heir is invalid.

Art. 870- "The dispositions of the testator declaring all or part of the estate inalienable for more than 20 years are void."

- This has nothing to do with substitution. It refers to simple institution of heir, devisee or legatee.

Question: If you prohibit for 30 years, what will happen?

Answer: there are two answers:

- The whole period is void.
- Only the first 20 years is valid.

TESTAMENTARY DISPOSITION WITH A TERM, CONDITION, OR MODE Articles 871-885

General Principles- Important questions to consider:

1. When does the instituted heir perform the condition?
2. When does the instituted heir acquires the right to demand the property?

- A mere request or expression of a sentiment is not considered as a condition.

Por ejemplo: I give to my husband 1/4 of my estate because I do not want any woman to experience what I experienced from him.

This chapter talks about testamentary dispositions with a:

1. **Condition-** Articles 873 to 877, 879 to 881, 883 par. 2, 884
2. **Term-** Articles 878, 885
3. **Mode-** Articles 882, 883 par. 1

What is the distinction between condition and a term?

- The both refer to a future event.
- However, a condition is uncertain, a term is certain.

What is the rationale of testamentary dispositions with a term, condition or mode? The right stems from the right of freedom to dispose of one's property mortis causa; thus one can certainly impose a condition, term, or mode.

General Provisions Governing Testamentary Dispositions with a Term/Condition/Mode

- **Article 871**- "the institution of an heir may be made conditionally or for a certain purpose or cause."

- **Article 872**- 'The testator cannot impose any charge, condition or substitution whatsoever upon the legitimes prescribe in this code. Should he do so, the same shall be considered as not imposed."

TESTAMENTARY DISPOSITIONS WITH A CONDITION

What is the requisite for a condition in the testamentary disposition to be valid?

- The condition must be indicated and incorporated in the provision of the will **OR**
- Put in a document which is to be incorporated by reference. The said document must follow the formalities of a will.

Kinds of Testamentary Conditions

I. Impossible Conditions

- **Article 873-** "Impossible conditions and those contrary to law or good customs shall be considered as not imposed and shall in no manner prejudice the heir, even if the testator should otherwise provide."

- **Article 875-** "Any disposition made upon the condition that the heir shall make some provision in his will in favor of the testator or of any other person shall be void." **[Disposition Captatoria]**

Illustration: I give 1/3 of my estate to Pauline provided she makes a will instituting me or Leigh as heir.

- **The disposition is void. Why?**
  1. It is against public policy because it impairs the voluntariness of wills.
  2. It is against revocability of wills: if you can alter the will after receiving, then it is a breach of good faith. But if the testator is not allowed to alter the will, the condition is against revocability. Either option is unacceptable.

Corollary provisions:

Article 727- "Illegal or impossible conditions in simple and renumenatory donations shall be considered as not imposed."

Article 1183- "Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, the part thereof which is not affected by the impossible or unlawful condition shall be valid."

Nullifies the Condition	Nullifies the Obligation
1. Testamentary dispositions 2. Donations	1. Onerous obligations

What is the rationale of the difference?

- Testamentary dispositions and donations are predicated on the liberality of the testator or donor. The moving factor is liberality. If you take away the impossible condition, the moving factor still exists, the liberality. While in onerous donations the condition is an element of cause. If the condition is impossible there is failure of cause. This results in a void obligation.

Illustrations of Impossible Conditions:

1. **In conflict of laws**, where an alien testator made a will following Philippine law as to the intrinsic validity and not his national law. The will is void because it is contrary to law.
2. In cases of **ambiguous conditions**, despite the employment of parole evidence. It is considered as not imposed.
3. **In cases of modal Institutions-** The executor was given the priority to pay all the testator's debts. It might violate Article 872 because legitimes cannot be burdened by a condition.

How: Rules on payment of debts:

1. Make an inventory of all the property of the testator.
2. **Make an inventory of all the debts: First Category of Debts:** Regardless of issue as to ownership of the property if it is under litigation, let all those who have claim against the estate present their claims in the probate court. All these claims will be deducted from the gross estate.

   Second category of debts: those present in the testamentary dispositions. These debts should not be included in the first category. Why?

   Because the debt maybe obtained after and it is part of the testamentary disposition.

   It may burden the legitime, because **second category debts are usually chargeable to those instituted heirs** [modal institution] **in the free portion**. Sa free portion manggagaling ang ibabayad sa mga second category debts! [kasi modal institution] Kaya pag isinali sa first category debts ang second category debts, dehado ang legitime kasi ang kumputasyon ay maibabase sa gross estate [legitime + free portion = gross estate]. Imbes na sa free portion lang maiaawas, naisama na ang legitime pag ganun.

Formula:

First: gross estate- all first category debts= net estate

Second: from the net estate: determine the legitime and free portion. From the free portion apply the debts in testamentary provisions.

Note: No contest or forfeiture clause- If an heir contests the manner of distribution of the free portion, then he loses his share. It is a valid condition. It is not illegal nor contrary to law for it reflects the wishes of the testator.

II. Condition Prohibiting Marriage

Article 874- "An absolute condition not to contract a first or subsequent marriage shall be considered as not written unless such condition has been imposed on the widow or widower by the decease spouse or by the latter's ascendants or descendants.

Nevertheless the rights of usufruct, or an allowance or some personal prestation may be devised or bequeathed to any person for the time during which he or she should remain unmarried or in widowhood."

Rule: Distinguish-

1. **If the condition is on first marriage**
   - The condition is considered as not imposed.
   - **E.g.** "I give 1/3 of my estate to A if she does not get married." The condition is considered as not imposed.

2. **If the condition is imposed on the second marriage**
   - **General rule:** the condition is deemed not imposed.
   - **Exception:** the condition is valid if imposed by:
     - **i.** Deceased spouse
     - **ii.** Ascendants of deceased spouse
     - **iii.** Descendants [either common children of such marriage or children in former marriage]

Note:

- **The second paragraph of Article 874 relaxes the rule to go around the prohibition of the first paragraph of the same article**.
  - **E.g**. "I give X a pension of 10,000 during the entire time she is single." This is a valid condition

- **What is prohibited is the absolute prohibition to marry. Relative prohibition to marry is valid.**

ILLUSTRATION: VALID CONDITIONS

1. I give the entire free portion of my estate to my wife Pauline on the condition that if I predecease her, she will not get marry, otherwise she will loss the same.
2. I will give 1/3 of my estate to X provided that after my death she will not marry until she reaches the age of 30, otherwise she will loss her share. Valid because the prohibition is relative and not absolute.
3. I give ¼ of my estate to Z provided that she will not marry a Bicolano, otherwise she will loss her share.

OTHER SITUATIONS

1. **What about a condition to contract marriage?**
   - Valid because it is not prohibited and by contrary implication. The condition being imposed by said article is the imposition of not marrying as a condition and not a condition to contract marriage before an instituted heir receives the property.
   - **E.g.** I will give 1/3 of my estate to X provided that he will marry.
2. **What about a condition to enter into religious life?** Valid
3. **What about a condition to renounce a religion?** Not valid. It is contrary to morals and public policy.

III. Suspensive conditions

- **Rights to the property are suspended. Thus the right is a mere hope or expectancy.** Thus the instituted heir need not post a cuacion muciana

[bond], **except in negative potestative condition,** because he does not possess the property. A caucion muciana is necessary only in cases where the instituted heir takes possession of the property. In a testamentary disposition with a suspensive condition the instituted heir does not possess the property until upon the happening of the condition.

Article 876- "Any purely potestative condition imposed upon an heir must be fulfilled by him as soon as he learns of the testator's death.

This rule shall not apply when the condition, already complied with, cannot be fulfilled again."

Article 877- "If the condition is causal or mixed it shall be sufficient if it happen or be fulfilled at any time before or after the death of the testator, unless he has provided otherwise.

Should it have existed or should it have been fulfilled at the time the will was executed and the testator was unaware therof, it shall be deemed as complied with.

If he has knowledge therof, the condition shall be considered fulfilled only when it is of such a nature that it can no longer exist or be complied with again."

Article 879- "If the potestative condition imposed upon the heir is negative, or consists in not doing or not giving something, he shall comply by giving a security that he will not do or give that which has been prohibited by the testator, and that in case of contravention he will return whatever he may have received, together with its fruits and interests."

Article 883- "XXXXXX
If the person interested in the condition should prevent its fulfillment, without the fault of the heir, the condition shall be deemed to have been complied with."

3 Kinds of Suspensive Conditions

1. **Potestative Conditions-** The happening of the condition is solely dependent on the part of the instituted heirs.
   a) **Negative Potestative Conditions-** There are things imposed by the testator upon the instituted heir which he must not do. [May inilagay ang testator na hindi dapat gawin ng instituted heir]

      The instituted heir is immediately entitled to the property upon the death of the testator because he does not have to do any act inorder to fulfill the condition of the testator. [Pag ginawa niya un sinabi ng testator na hindi niya gagawin, mawawalan siya ng mana!]

      The instituted heir must post a bond. If he does what the testator prohibits him to do, he should return what he received together with the fruits and interests.

   b) **Positive Potestative Conditions-** The fulfillment of the condition depends solely upon the will of the heir, devisee or legatee.

      - **General Rule:** the condition must be fulfilled as soon as the heir learns of the testator's death. **Why it must be after death?** Because wills are revocable anytime. Mantakin mo kung yong kundisyon para mabigyan ka ng mana ay dapat makapag-asawa ka. Nakita mo ang will ng testator na ganun ang kundisyon kaya nakipag-asawa ka kaagad. Hindi pa patay ang testator kaya after 1 year pinalitan ng testator ang kanyang will, binura ang pangalan mo sa mga instituted heirs. [It's horrible!]

      - **Exception:** If the condition has already been fulfilled at the time the heir learned of the testator's death

and it cannot be fulfilled again, the condition is deemed fulfilled.

Illustration: positive potestative condition: H should marry [anyone] before he will get the property.

Testator is alive- H is married.
Testator died- H is widowed

Does he have to marry again to comply with the condition?

First, look at the intention of the testator in the will. Though, H need not marry again because he had constructively complied with the condition.

- **Constructive compliance** is applicable in positive potestative conditions.

2. **Casual**
   - The fulfillment of the condition depends solely on chance or on the will of a third person.
   - **E.g.** "I gave X 1/3 of my estate should Mayon erupt one year from now."

3. **Mixed**
   - The fulfillment of the condition depends partly on chance and partly on the will of the heir, devisee, or legatee.
   - **E.g.** "I give one million to X provided he sets up a foundation for the victims of the next eruption of mayon."

RULES FOR CASUAL AND MIXED CONDITIONS

- **General rule:** the condition may be fulfilled anytime, either before or after the testator's death
- **Exception:** the testator provides otherwise.

Rationale: it is not within the heir, devisee, and legatee's control.

Qualification: if the condition is already fulfilled at the time of the testator's death:

a. **Testator is unaware-** the condition is deemed complied with or fulfilled.
b. **Testator is aware- [1]** if the condition can no longer be fulfilled again, it is deemed fulfilled; **[2]** if condition can still be fulfilled, fulfill it again.

RULES FOR CONSTRUCTIVE FULFILLMENT OF A CONDITION IN THE INSTITUTION OF HEIRS

- That when the heir, legatee or devisee has done everything to comply with the condition but the condition still does not happen.
- **Purely Potestative-** applicable
- **Casual-** not applicable
- **Mixed**
  1. **By will-** [**1**] person interested- applicable; **[2]** person not interested- not applicable.
  2. **By chance-** not applicable.

  General Rule: Instituted heir must fulfill the obligation.
  Exception: Constructive fulfillment.

  Requisites for applicability:
  1. The condition did not happen without the fault of the instituted heir.
  2. It must be the heir that is supposed to personally fulfill the conditions.

OTHER PROVISIONS CONCERNING SUSPENSIVE CONDITIONS

Article 880- "If the suspensive condition is not fulfilled, place the estate under administration until:

a. The condition us fulfilled in which case the estate should be given to the instituted heir;
b. It becomes obvious that it cannot be fulfilled in which case the estate should be given to the intestate heirs.

Illustration: "I give a car to Pauline when she places first in the bar." Testator dies while Pauline is still taking law. The car is put under administration until: [1] Pauline tops the bar, in which case the car should be given to him; or [2]

Pauline dies while reviewing in which case the car should be given to the intestate heirs because the condition become obviously impossible of being fulfilled.

Article 881- "The appointment of the administrator of the estate mentioned in the preceding article, as well as the manner of the administration and the rights and obligations of the administrator shall be governed by the Rules of Court.

Article 884- "Conditions imposed by the testator upon heirs shall be governed by the rules established for conditional obligations in all matters not provided for by this section."

4 Resolutory Conditions

- Resolutory condition is a condition where in the happening of the condition extinguishes the obligation.

- Upon the death of the testator the instituted heir is entitled to the possession of the property.

- Upon the happening of the condition mentioned in the will, the instituted heir must return the property to the testator's legal heirs [they are the intestate heirs or substitutes].

- The instituted heir need not file a bond.

TESTAMENTARY DISPOSITIONS WITH A TERM

What is a term? A term is certain to happen.

When will you start to count the term mentioned in the will? [Inter Regnum]- Start counting it from the death of the testator.

Article 878- "A disposition with a suspensive term does not prevent the instituted heir from acquiring his rights and transmitting them to his heirs even before the arrival of the term."

This is founded on the principle that the right of the heir instituted subject to a term is vested at the time of the testator's death- he will just wait for the term to expire.

The heir must survive the testator.

If the heir dies after the testator but before the term expires, he transmits his rights to his own heirs because of the vested right.

Illustration: "I give 1M to X, five years after my death."

Article 885- "The designation of the day or time when the effects of the institution of an heir shall commence or cease shall be valid.

In both cases, the legal heir shall be considered as called to the succession until the arrival of the period or its expiration. But in the first case he shall not enter into possession of the property until after having given sufficient security, with the intervention of the instituted heir."

What happen when the testator dies? Distinguish between:

1. **Suspensive [ex die] -** give it to the legal heirs [intestate heirs or substitutes] for them to enjoy but in order to protect the right of the instituted heirs, interstate heirs must put up a bond [**caucion muciana**].

    - **What if the legal heir does not post a bond?** If the instituted heir does not post a bond the property will be put to administration while waiting for the arrival of the term.

2. **Resolutory [in diem] -** give it to the instituted heirs but when the term arrives, the must give it to the legal heirs [intestate heirs or substitutes]. The instituted heir does not have to file a bond.

    Question: is this not a case of simple substitution? No! The three grounds for simple substitution are not present. In is not also a fidiecommissary substitution because there is no absolute obligation to preserve and transmit the property to a fidiecommissary in a given time.

Illustration: "I give X my house and lot in La Trinidad 1 year before I die. Is the term valid?

No! Although there is a term provided, it is not certain when will the testator die. The condition is considered as impossible, thus it is not written.

TESTAMENTARY DISPOSITION WITH A MODE [MODAL INSTITUTION/ INSTITUTION SUB-MODO]

Article 882- "The statement of the object of the institution or the application of the property left by the testator, or the charge imposed by him, shall not be considered as a condition unless it appears that such was his intention.

That which has been left in this manner my be claimed at once provided that the instituted heir or his heirs give security for compliance with the wishes of the testator and for the return of anything he or they may receive, together with its fruits and interests, if he or they should disregard this obligation."

When does Modal Institution Happens? It happens when the testator specifies the object [property], charge, and application of the property [OCA]. [Pag meron OCA automatic it is a modal institution.]

What is the effect of non-fulfillment of the OCA? The property is forfeited from the instituted heir. He shall return what he received together with the fruits and interest.

Note:

- A **mode** is an obligation imposed upon the heir to do or to give something.
- A **condition** suspends but does not obligate while a mode obligates but does not suspend.
- **E.g.** "I give 1/3 of my estate to X but impose upon him the obligation to pay for my son's education."

Rules in case of doubt:

1. In case of doubt between a mode and a condition, resolve in favor of mode.
2. In case of doubt whether a mode exists, resolve in favor of it being a request.

Article 883- "When without fault of the heir, an institution referred to in the preceding article cannot take effect in the exact manner stated by the testator, it shall be complied with in a manner most analogous to and in conformity with his wishes. XXXXX"

A ***caucion muciana*** is a security to be put up to protect the right of the heirs [who would succeed to the property] in case the condition, term or mode is violated.

Instances when *caucion muciana* is needed:

1. Suspensive condition with a term [Art. 885]
2. Negative Potestative condition [Art. 879]
3. Mode [Art. 882 par.2]

Testamentary Dispositions with a Condition, Term, or Mode

Testamentary Dispositions			Efficacy of Condition/ Term/ Mode	Demandability of the Property
Testamentary Disposition w/ a Condition	Potestative	**Negative**	Condition must be fulfilled as soon as the instituted heir learns the testator's death.	After the testator's death. Why? Because he need not do anything. Basta wag niya lang gagawin un sinabi nga testator na di niya gagawin, may mana na siya.
		Positive	Condition must be fulfilled as soon as the heir learns the testator's death.	After the positive potestative condition [that which the heir is obliged to perform] was fulfilled.
	Mixed OR **Casual**		**Gen. Rule:** Condition must be fulfilled at any time, either before or after testator's death unless the testator provides otherwise. **Exception:** when the testator provides otherwise.	**Qualifications** are to be made: The condition is already fulfilled at the time of the testator's death: o **If testator is unaware-** the condition is deemed fulfilled. Demand inheritance. o **If testator is aware**- [1] if the condition can no longer be fulfilled again, it is deemed fulfilled- demand inheritance. [2] If condition can still be fulfilled, fulfill it again. Only after fulfillment of such condition that one can demand inheritance. **Why?** Being aware that the condition was fulfilled, it is the intention of the testator that you fulfill it again.
	Resolutory		**Upon the death of the testator** the property will go to the instituted heir for his enjoyment [not disposal]. The instituted heir need not file a bond.	**Upon arrival of the term stated in the will,** the legal heirs have the right to demand the property from the instituted heir. The instituted heir is obligated to return the property to the legal heirs of the testator.
Dispositions w/ a Term	**Suspensive [ex die]**		**Testator dies:** while waiting for the term stated in the will, the property will be given to the legal heirs of the testator for them to enjoy [not to dispose], but in order to protect the right of the instituted heirs. Legal heirs must put up a bond **[caucion muciana]**	The property will go to the instituted heir upon arrival of the term stated in the will
	Resolutory [in diem]		**Upon the death of the testator** the property will go to the instituted heir for his enjoyment [not disposal]. The instituted heir need not file a bond.	**Upon arrival of the term stated in the will,** the legal heirs have the right to demand the property from the instituted heir. The instituted heir is obligated to return the property to the legal heirs of the testator.
Dispositions with a Mode			The **objects, charges** and **application of the property [OCA**] imposed by the testator in his will must be performed by the instituted heir upon the death of the testator.	The property will be received by the instituted heir upon the death of the testator.

LEGITIMES
Article 886- 914

General Principles:

1. There is no obligation on the compulsory heirs to accept his/ her legitime.
2. Collationable donations [gratuitous] made to compulsory heirs are considered as advances of their legitime [Article 1061].
3. Representation is applicable in the legitime as long as the representatives comes from the direct descending line.
4. The compulsory heir who renounces his legitime cannot be represented.
5. The law does not fix the value of a legitime; it only provides the principle in determining the legitime.
6. Legitimes of the spouse and illegitimate children are always taken from the free portion [Article 895].
7. The testator cannot deprive his compulsory heirs of their legitime, except only in cases of valid disinheritance. Neither can the testator impose upon the legitime any burden, encumbrance, condition, or substitution of any kind whatsoever [Article 904].

8. **Article 905-** "every renunciation or compromise as regards a future legitime between the person owing it and his compulsory heirs is void and the latter may claim the same upon the death of the former; but they must bring to collation whatever they may have received by virtue of the renunciation or compromise."

    - Money receive by the compulsory heir is considered as advance on his legitime. Article 905 prohibits any contract or agreement between the predecessor and the successor. Even if there is an agreement, the same is not binding and the heir can still get his legitime minus the advance.

    - If the agreement is between the heir and his brother that he will waive his legitime in favor of his brother, **can he later not claim his legitime after their father's death?** No, the agreement is void under Article 1347 that "no contract maybe entered into upon future inheritance except in cases expressly authorized by law."

Question: What will happen to the money given by the heir to his brother as consideration for the compromise? Two views:

1. Tolentino- The heir should return the money to his brother as a matter of equity. This is not a case of collation because the money was not received from the testator-decedent.

2. Do not return the money because they are in *pari delicto* [mutually guilty]. They should be left as they are. The reason is that the right of the compulsory heirs is only inchoate, the same principle applied in Article 777.

Because of the system of legitime, what do you call the system of succession in the Philippines? System of Force Succession, because 1/2 of the hereditary estate constitutes the legitime which cannot be freely dispose by the testator at will.

What is Legitime? Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

- There is compulsion on the part of the testator to reserve a part of his estate which corresponds to the legitime.
- The law sets a fractional portion of the estate set aside for the compulsory heirs.
- The law does not specify which property to reserve but only sets aside a fractional portion of the estate.

Illustration:

X married to W. They had a child Z. X owns a lot worth 5M, which is his only property.

X sold the lot for 15M. Is it valid? Yes! The prohibition does not cover onerous dispositions, because this involves an excahnage of values. The consideration of the sale will devolved to the estate of X. Mamanahin din ni Z at W ang 15M na bayad ng lote.

X donates to D the lot. Is it valid? No! This is not valid because it impairs the legitime.

However, it would be a different story if X has other properties, and the donation of the lot does not impair the legitimes of Z and W.

Note:

Fixed Legitime

- It is the aliquot part of the testator's estate to which a certain class of compulsory heirs is entitled is always the same whether they survive alone as a class or they concur with other classes of compulsory heirs.

- **Example:** the legitimes of legitimate children or descendants and legitimate parents or ascendants.

Variable Legitime

- There is a variable legitime if the aliquot part changes depending upon whether they survive alone as a class or they concur with other classes of compulsory heirs.

- **Example:** the legitimes of the surviving spouse and illegitimate children

Who are Compulsory Heirs? [Article 887]

1. Legitimate children and descendants.
2. In default of the legitimate children and descendants, legitimate parents and ascendants.
3. Widow or widower.
4. Acknowledge natural children and natural children by legal fiction.
5. Other illegitimate children.

Note:

- **Why this kind of order?** Because of the principle that love first goes down [children], then goes up [parents] then it spreads [collateral relatives].

- Under the family code, acknowledge natural children, natural children by legal fiction and illegitimate children- are considered as illegitimate children and subject to the same rights of an illegitimate child.

All compulsory heirs can be represented?

- False! A spouse although a compulsory heir cannot be represented. Representation happens only in the direct descending line. The spouse does not belong to the same lineage.

- Neither representation applies in the ascending line and in cases of legally adopted children.

When can there be a right of representation?

- When the compulsory heir:
  1. Dies
  2. Incapacitated
  3. Validly disinherited.

3 KINDS OF RELATIONSHIP AMONG COMPULSORY HEIRS

1. **Primary**
   - **Who?** Legitimate children, and in their absence, legitimate descendants.
   - They are primary because they are absolutely preferred, and they exclude the secondary.

2. **Secondary**
   - **Who?** Legitimate parents and in their default legitimate ascendants.
   - They inherit only in the absence of the primary compulsory heirs.
   - **Ergo,** primary and secondary heirs exclude each other.

3. **Concurring**
   - **Who?** Surviving spouse and illegitimate children.
   - They get their legitime together with the primary or secondary heirs. They neither exclude primary or secondary heirs nor each other.

Exception: illegitimate children exclude illegitimate parents.

Note:

- **In determining whether the children excludes the ascendants determine first if the testator is a legitimate person or an illegitimate person.**

	Legitimate Testator	Illegitimate Testator
Exclusion of ascendants	They are excluded in the presence of a **legitimate child only.** If there **are illegitimate children** they **concur with the ascendants**. **Why?** Because they are not primary heirs, illegitimate belong to the concurring heirs.	They **cannot inherit** from the illegitimate testator because succession with regards to the ascending line stops on the parents of the illegitimate testator [Art. 903]. ○ **Why? Article 992**- "An illegitimate child has no right to inherit *ab intetestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child **[Iron curtain rule]**. ○ Lugi ang illegitimate child kapag pwedeng mag-inheirt sa kanya ang mga lolo at lola niya at mga legitimate children ng parents niya, samantalang sinasabi ng Article 992 na hindi siya pwedeng mag-inheirt sa kanila.
Exclusion of Parents	They are excluded in the presence of a **legitimate child only.** **Illegitimate children** concur with parents.	They are excluded in the presence of **legitimate child <u>OR</u> Illegitimate child [Art. 903]**.

LEGITIMATE TESTATOR

Applicable provisions:

Article 887- the following are compulsory heirs:

1. Legitimate children and descendants.
2. In default of the legitimate children and descendants, legitimate parents and ascendants.
3. Widow or widower.
4. Acknowledge natural children and natural children by legal fiction.
5. Other illegitimate children.

Note: under the family code, acknowledge natural children, natural children by legal fiction and illegitimate children- are considered as illegitimate children and subject to the same rights of an illegitimate child.

Article 889- "The legitime of legitimate parents or ascendants consists of 1/2 of the hereditary estates of their children and descendants.

The children or descendants may freely dispose of the other half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided."

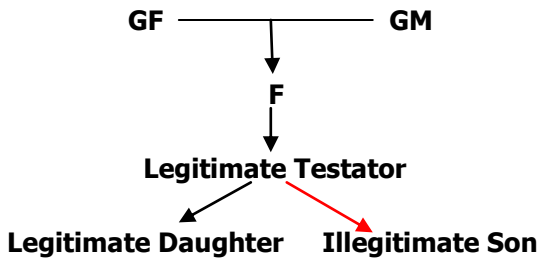
ILLEGITIMATE TESTATOR [CHILD]

Article 903- "The legitime of parents who have an illegitimate child, when such child leaves neither legitimate descendants, nor ascendants, nor a surviving spouse, nor illegitimate children, is one half of the hereditary estate of such illegitimate child**. If only legitimate OR illegitimate**

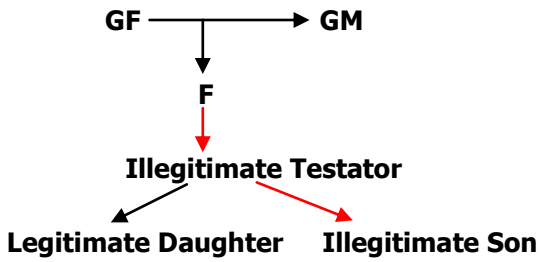
children are left, the parents are not entitled to any legitime whatsoever. If only the widow or widower survives with parents of the illegitimate child, the legitime of the parent is 1/4 of the hereditary estate of the child, and that of the surviving spouse also 1/4 of the estate."

Illustration:

Legitimate Testator



Illegitimate Testator



Legitimate testator

1. **If the surviving heirs are GF and GM, F, Legitimate Daughter and Illegitimate Son, who will inherit from the Testator?**
   - Only the **legitimate daughter** and the **illegitimate child**. As per **Art. 887**, the presence of **legitimate descendants** excludes the ascendants.

2. **What if the heirs are GF & GM, F, and Illegitimate Son, who will inherit from the testator?**
   - **F** and the Illegitimate Son will inherit. As to **F** he excludes **GF** and **GM**, because the nearer relative of the testator excludes the farther [Principle of Proximity]. As to the Illegitimate Son, he concurs with **F**.
3. **What if the heirs are GM and GF and Illegitimate Son, who will inherit?**
   - Both of them will inherit because they concur with each other, as per **Art. 887**.

Illegitimate Testator

1. **What if the heirs are GF & GM, F, Legitimate Daughter, and Illegitimate Son, who will inherit?**
   - Only the Legitimate Daughter and Illegitimate Son. As per **Art. 903**, the presence of either illegitimate or legitimate descendants excludes the parents.
   - **GF** and **GM** will not inherit from the illegitimate testator as per **Art. 992**.

How to determine the legitime? How to compute net assets?

1. Inventory all gross assets.
2. Deduct unpaid debts from gross assets since the debts of the decedent are to be paid by his estate.
   - **Gross assets-Debts= Available assets**
3. Add donations inter vivos made by the decedent to anyone. The values of the donated property are to be ascertained at the time the donation was made. Any change in the value is for the account of the done-owner.

Illustration

Available assets+ donations= hereditary estate [basis for computing the legitime.]

Gross assets---------- 2, 500,000
Outstanding debts---- 500,000
Available assets----- -- 2, 000, 000

Donation to eldest son + 300,000
1991 stock to brother + 500,000
Donation to daughter + 200,000
Net hereditary estate 3, 000, 000

Note:

- Debts in the testamentary provisions are not included [modal institution].
- If there are 3 children the legitime is 1,500,000 [1/2 of the net estate], it will be divided equally among them for 500,000 each.
- Spouse- 500,000. Entitled to the same share of each child.

DONATIONS MADE BY THE TESTATOR

1. **Donation to child, whether legitimate or illegitimate and donations to parents or ascendants.**
   - **General rule:** charge it to the legitime.
   - **Exception:** if the testator provides otherwise.
2. **Donation to spouse**
   - **General rule:** not allowed.
   - **Exception:** Gifts of moderate value; treat the same as a donation to a compulsory heir.
3. **Donation to a stranger.**
   - Charge it to the free portion.

COLLATION

Article 1061- "Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or by other gratuitous title, inorder that it may be computed in the determination of the legitime of each heir, and in the account of the partition."

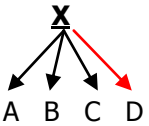
Computation- get together all assets, subtract the debts and add the donations to get the net hereditary estate.

Imputation- determine if the donation is chargeable/imputable to the legitime or the free portion.

- **General rule:** if compulsory heir, imputable to the legitime.
- **Exception:** if testator has provided otherwise.

Restoration/return- if donation to a stranger exceeds the free portion, he would have to give back to the estate as much as is needed to complete the legitimes. This will not happen if the legitimes are not impaired.

Illustration:



Computation:
Gross estate 70,000

Less: debts	35,000
Available Assets	**35, 000**
Add: Donations:	
1987 to A	15, 000
1989 to M	30, 000
1991 to D	40, 000
Net hereditary estate	**120, 000**

Compute legitime: half of the net hereditary estate [60, 000]

Heir	Legitimes	Donations Advance on Legitime	Lack
A	20, 000	15, 000	5, 000
B	20, 000	0	20, 000
C	20, 000	0	20, 000
D	10, 000	40, 000	excess of 30,000

Imputation:

- 45, 000 [60, 000 – 15, 000 (donation to A) = 45k] is needed to comply with the legitime but we only have 35, 000 available assets. So we need 10, 000. Reduce the donations.
- **Apply imputation**
  -Donation to D is considered as donation to a stranger as far as the 30, 000 is concerned.
  - Donation to M is a donation to a stranger.
  - Donation to A is not subject to reduction. [kulang pa nga un legitime eh!]

Reduction:

- The first to bear the reduction is the donation to D, so deduct 10,000 from him.
  A= 20, 000
  B= 20, 000
  C= 20,000
  D= 30, 000
  M= 30, 000

REDUCTION OF INOFFICIOUS DONATIONS [Article 911]

Who can ask for the reduction of donations?

- **Persons who are entitled to a legitime. Article 772, CC** provides that: "Only those who at the time of the donor's death have a right to the legitime and their heirs and successors in interest may ask for the reduction of inofficious donations.

  Those referred to in the preceding paragraph cannot renounce their right during the lifetime of the donor, either by express declaration, or by consenting to the donation.
  The donees, devisees, and legatees, who are not entitled to the legitime and the creditors of the deceased, can neither ask for the reduction no avail themselves thereof."

When is a donation inofficious?

- A donation is considered inofficious if it exceeds the free portion. **Article 752, CC** provides that:

  "**xxxx, no person may give or receive, by way of donation, more than he may give or receive by will.**

  The donation shall be inofficious in all that it may exceed this limitation."

Order of Reduction

1. **Legacies and devises**
   General rule: pro-rata
   Exception: Preferred ones as stated by the testator will be the last to be reduced among the devises and legacies if still needed.

   Can there be an instance when the preferred legacy or devisee cannot be reduced? Yes! Since they are the last to be

reduced, it may happen that the legitimes are already satisfied through the reduction of non-preferred legacies or devises.

2. **Reduce donations to strangers.**
   - **Strangers** are voluntary heirs who were not given a specific property as contradistinguished to legatee and devisee.

   - **Why are donations second in the order of reduction?** Because of the nature of donation. Upon the perfection of the donation [upon acceptance of the donee and the donor comes to know of the acceptance], ownership vest to the donee. As such the moment donation is perfected it is irrevocable except for grounds provided by law [B-R-A]. This is not the case in legacies and devises. The testator can never come to know of the acceptance of the devisee or legatee because he is already dead. One can only know that he is a legatee or devisee after the Testator's death.

   Rule: Most recent donation to be reduced first [earlier donations are preferred-see Article 773 of CC]

   Article 773- "If there being two or more donations, the disposable portion is not sufficient to cover all of them, those of the more recent dates shall be **suppressed [cancelled]** or **reduced** with regard to the excess."

   Article 950. Order of payment of Legacies or Devises.
   If the estate should not be sufficient to cover all the legacies or devisees, their payment shall be made in the following order:
   1. Renumeratory legacies or devises.
   2. Legacies and devises declared by the testator to be preferential.
   3. Legacies for support.
   4. Legacies for education
   5. Legacies or devises of a specific, determinate thing which forms part of the estate
   6. All others pro rata.

   Note: Devises, legacies and donations to strangers will be reduced even up to 0 as long as it is needed.

3. **Reduce the share of illegitimate children.**

   What rule should apply if the devise subject of reduction consists of a real property which cannot be divided? [Article 912]
   - If real property cannot be conveniently divided, it shall go to the devisee if the reduction does not absorb ½ of its value; and in a contrary case, to the compulsory heirs; but the former and the latter shall reimburse each other in cash what respectively belongs to them.

   - The devisee who is entitled to a legitime may retain the entire property, provided its value does not exceed that of the disposable portion and of the share pertaining to him as legitime.

   Note: Article 913- If the heirs or devises do not choose to avail themselves of the right mentioned above, any heir or devisee who did not have such right may exercise it; should the latter not make use of it, the property shall be sold at public auction at the instance of any one of the interested parties.

   Illustration:

   1st par of Art. 912- A house worth 2M was devised to X, but because it is excessive, it has to be reduce by 800K. Since the reduction does not absorb 1/2 of its value, the house goes to X but X has to pay the compulsory heirs the sum of 800K. If the reduction would be to the amount of say, 1.5M the compulsory heir get the house, but they have to give X the sum of 500K.

   If reduction absorbs exactly 1/2 of the value, the devisee should get the house just the same after proper reimbursement. The intent of the

testator must prevail over the literal statement of the law.

2nd par of Art. 912- X was a compulsory heir entitled to a legitime of 1M. The free portion of the estate was 5M. If X is given a devise of a house worth 1.5M, X can retain the house.

LEGITIME OF LEGITIMATE CHILDREN OR DESCENDANTS [Art. 888]

- If there are legitimate children, they will get collective legitime of 1/2 of the estate. The law does not say they will divide the legitime. Commentators agree that they will divide the 1/2 equally regardless of age, sex, marriage of origin [whether first, second, etc...]

Why favor the children of the testator? it is doctrinal that nearer relatives exclude more remote. If there are children, they will exclude the more remote descendants, e.g. grand children.

When can other descendants of the testator inherit from him?

- In cases where there is a right of representation.

- All the children renounce. Since all renounce, the next in line will inherit equally not by virtue of representation but because they are the nearest relative in the descending line.

Who are considered as legitimate children?

1. Children of valid marriage
2. Legitimated children
3. Legally adopted children
4. Children of annulled marriage where the ground is psychological incapacity [Article 36, FC].
5. Children of subsequent valid marriage where the first marriage was validly annulled [Art. 53, FC].

Article 52 of the Family code- "The judgment of annulment or of absolute nullity of the marriage, the partition and distribution of the properties of the spouses, and the delivery of the children's presumptive legitimes shall be recorded in the appropriate civil registry and registries of property; otherwise the same shall not affect third persons."

Article 53 of the Family Code- "Either of the former spouses may marry again after complying with the requirements of the immediately preceding article; otherwise, the subsequent marriage shall be null and void."

Article 54 of the Family Code- "Children conceived or born before the judgment of annulment or absolute nullity of the marriage under Article 36 has become final and executory shall be considered legitimate. Children conceived or born of the subsequent marriage under Article 53 shall likewise be legitimate.

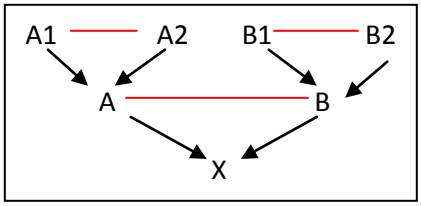
LEGITIME OF LEGITIMATE PARENTS OR ASCENDANTS

General rule: If the legitimate parents or ascendants are the sole survivor they get 1/2 of the estate.

Rules to be observed:

1. **Nearer excludes the more remote. No representation in the ascending line.**
   - Rule of Proximity and Rule of Exclusion

   Illustration:

   If **X** dies, the legitime will be shared by the parents **A** and **B** because the nearer excludes the more remote.

   If **A** predeceases **X**, **B** gets all. **A1** and **A2** will get nothing because there is no right of representation in the ascending line.

2. **Division by lines or between the lines. [Rule of Division]-** 1/2 of legitime each to maternal and paternal [**assuming that the nearest relatives in both sides are of the same place**.]

   Illustration: see illustration supra.

- If both parents predecease **X**, the nearest ascendants would be the grandparents. Division by line will apply. The estate will be divided equally between the maternal and paternal lines. 1/4 of estate each pair. Legitimes: **A1**= 1/8; **A2**= 1/8; **B1**= 1/8; **B2**= 1/8

- If **A1** predeceases **X**, there will still be equal division by lines. Both lines get 1/4 of the estate each. Legitimes**: A2**= 1/4; **B1**= 1/8; **B2**= 1/8.

Note: If one of the parents of **X**, either **A** or **B**, is alive division by line will not apply. Rules 1 would apply where the nearer would exclude the more remote. The parent would exclude the grandparent.

3. **Equal division within the line.**

LEGITIME OF A SURVIVING SPOUSE

- The legitime of the spouse will be taken in the free portion.
- The legitime of the spouse is based on the share and number of children.

- **Is a spouse automatically entitled to an inheritance?** No, make a **qualification** if-
  - **a.** There was a **valid** or **voidable** marriage: spouse may inherit.
  - **b.** There was a **legal separation**
    - If **innocent spouse**- not disqualified to inherit from the guilty spouse.
    - If **guilty spouse**- disqualified to inherit from the innocent spouse.

Ratio of Legitime:

1. **Spouse surviving alone**
   General rule: 1/2 of the estate
   Exception- 1/3 of the estate, if the marriage was solemnized in *articulo mortis* and the testator died within 3 months from the time of such marriage.

   Exception to the exception: 1/2 of the estate if the marriage was solemnized in *articulo mortis* and the testator died within 3 months from the time of such marriage, but they have been living as husband and wife for more than 5 years.

2. **Surviving with legitimate Descendants**
   - Spouse gets 1/4 of the estate if there is only one child.
   - Legitime of the spouse is the same as that of each child, if there are 2 or more children.

3. **Surviving with Ascendants.**
   - 1/4 of the estate.

4. **Surviving with Illegitimate Children of Testator**
   - 1/3 of the estate

5. **Surviving with Legitimate Descendants and Illegitimate Children**
   - 1/4 of the estate, if there is only one legitimate child.
   - The same that of each legitimate child, if there are two or more legitimate children.

6. **Surviving with Ascendants and Illegitimate Children**
   - 1/8 of estate, if testator is a legitimate person.
   - 1/3 of estate, if testator is an illegitimate person.

LEGITME OF ILLIGITIMATE CHILDREN

- The legitime of an illegitimate child will be taken from the free portion.
- Their legitime will be given after the legitime of the spouse is satisfied.

Ratio of Legitime:

1. **Surviving alone as a class-** 1/2 of the estate to be divided equally among the illegitimate children pursuant to Article 176, 2nd sentence of the Family Code.

2. **Surviving with legitimate descendants-** 1/2 of the legitime of a legitimate child.

3. **Surviving with parents or ascendants-** 1/4 of the estate if the testator is a

legitimate person and 1/2 of the estate if the testator is an illegitimate person.

4. **Surviving with spouse-** 1/3 of the estate

5. **Surviving with legitimate descendants and surviving spouse-** 1/2 of the legitime of a legitimate child.

6. **Surviving with parents or ascendants and surviving spouse-** 1/4 of estate if testator is a legitimate person and 1/3 of the estate if testator is an illegitimate person.

ILLEGITIMATE CHILD A TESTATOR [Article 903]

Rules on Legitime:

1. **Parents surviving alone-** 1/2 of the hereditary estate of the illegitimate child.

2. **Spouse concurring with the parents**
   - Spouse- 1/4 of the estate
   - Parents- 1/4 of the hereditary estate.

3. **If only legitimate or illegitimate children are left, the parents and ascendants are not entitled to any legitime whatsoever.**

ADOPTED CHILD

General rule: An adopted child cannot **represent and it cannot be represented.**

Rationale: As per the provisions of the **Domestic Adoption Law- Adoption** creates filiation between the adopted child and the adopter only.
Ergo, an adopted **cannot represent** because his relation to the adopter does not extend to the relatives of the latter. Simply, the adopted child has no blood relations to the relatives of the adopter.

He cannot be represented because his representatives have no relation to the adopter. The adoption creates only a relationship between the adopted and the adopter. Such relationship does not extend to the relatives or descendants of the adopted child. Moreover, the adopted child does not belong to the direct descending line of the adopter. Hence he cannot be represented.

Who can inherit from a testator who is an adopted child?

1. Children or descendants
2. Parents [natural]

Ratio: if they are the sole survivor - whole estate to natural parents.

RESERVA TRONCAL [Article 891]

General Principles:

- **Two laws of reserva troncal: (1) Law of legitimacy of relationship (2) source of property is immaterial [whether illegal or legal].**

- Reserva Troncal does not apply to **onerous donations**. There is onerous donation when the donor imposes burdens which the donee should perform.

- Reseva Troncal does not apply in an **illegitimate relationship** specifically between the praepositus and mediate source. **Why?** Because of Article 992.

Can there be Reserva Troncal in testamentary succession?

- None! Testamentary succession refers to the free portion which the testator can freely dispose. As such if an ascendant-reservista received the property by way of testamentary disposition then it does not comply with the requirement of Reserva Troncal that the ascendant -reservista should receive the property from the praepositus by operation of law.

- Note that if there was a will, it is only in the legitime where Reserva Troncal exists because it is not the testator who distributes the legitime but the law. As such when a person receives a property as his legitime, he received it by operation of law.

What is the purpose of Reserva Troncal? The purpose of reserva troncal is to return the property

to where it originated and from where it strayed due to the accident of marriage. 'Accident of marriage' means unforeseen development.

Who are the parties in a Reserva Troncal?

1. **Mediate Source-** either an ascendant or a brother or sister of the praepositus.
   - **If ascendant there is no problem.** You know what line the property came from.
   - **If brother or sister and full or half blood.**
     - **i.** If half blood, no problem. You know what line the property came from.
     - **ii.** If full blood, there is a problem. How will you know what line it came from?

       JBL Reyes- reserva troncal applies only to half blood brothers and sisters. You cannot determine the line if it is full blood.

       Manresa- it should apply regardless of whether it is full or half blood. The law does not distinguish. [Accepted view]

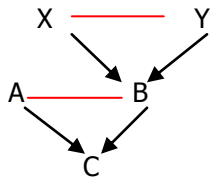
2. **Praepositus**- either a descendant, or brother or sister of the mediate source.
   - He is the central figure in reserva troncal because:
     - **i.** At the time he receives the property, he becomes the absolute owner. He can prevent reserva troncal from happening. How? By preventing if from going to an ascendant by opereation of law. **How?**
       - **By selling it.** Dispose of a potentially free portion property. There is no reserva troncal if the property was sold under pacto de retro.
     - Give it to an ascendant by donation, devise, legacy, or testamentary succession.
     - He will institute an heir and in his default he will put a **substitute**.
     - **Marry,** so that if he has descendants there would be a legitimate issue which would prevent reserva troncal from happening.

     - **ii.** He is the basis or point of reference for the third degree relationship.

     Note:
     - There is no reserva troncal yet while the property is in the hands of the praepositus.
     - The praepositus does not give anything in return. But if there is a thing to be done by the praepositus, that the thing to be **done must imposed by the origin or mediate source** and not any other person.

3. **Reservista-** called 'ascendant reservista.' He must be another ascendant other than the mediate source if the mediate source is an ascendant.
   - Reserva troncal begins once the reservista inherits the property. He is bound by the obligations.
   - **Question: must the ascendant-reservista belong to a line similar to the mediate source or should he be from a different line?** Either. There is no requirement in Article 891 that the mediate source and reservista must belong to different lines.

Illustration:



Mediate source- X
Praepositus- C
Reservista- A

X donates to C. C dies and it goes to A.

Is there reserva troncal? Yes! There is no requirement in Article 891 that the mediate

source and reservista must belong to different lines.

4. **Reservatorios- class or group**
   Requirements:
   1. Must be within the third degree from the praepositus.
   2. Must be from the line from which the property came.
   3. Must be related **by blood** to the mediate source.

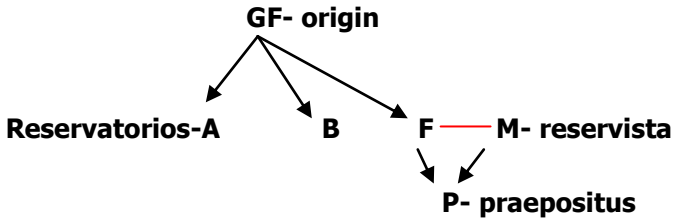
   Reservation- In favor of a class. It is not required that reservatorios be living at the time of the praepositus' death but required to be alive at the time of the death of the reservista. **Why?** Because reservation is in favor of a class. As long as you belong to the class when the reservista dies, then you are a reservatorio.

   How do they inherit within a class? Apply the rules on interstate succession.
   1. Nearer excludes the more remote.
   2. Representation in favor of nieces or predeceased brother.
   3. Proportion of 2:1 between full and half-blood nephews and brothers. However, there is no representation in the case because there are no other brothers. The ratio of 2:1 is maintained.

WHAT *IS RESERVA TRONCAL?*

- Maybe defined as the reservation by virtue of which an ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired be operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came.

Illustration:



Requisites: all must concur

1. The property should have been acquired by operation of law by an ascendant-reservista from his descendant upon the death of the latter.
   - **Note** that the **determination of the source [legal or illegal] of the property is not material** as long as the property came from an ascendant, or brother or sister.

2. The property should have been previously acquired by gratuitous title by the descendant from another ascendant or from a brother or sister;

3. The descendant should have died without any **legitimate issue** [legitimate descendants] in the direct descending line who could inherit from him.

4. That there must be relatives of the descendant who are within the third degree and who belong to the line from which the property came.

Coverage of the term "Gratuitous Title"

1. **Simple donation**. Donation is always gratuitous but it may be **simple** or **onerous**.

2. Property received through succession both testamentary and intestate.

- Before his death in 2011, GF donated a parcel of land to his grandson P, the only child of his deceased son F. P died intestate in 2012 without any heir in the direct descending line, as a consequence of which the land passed to his mother M, in accordance with the law of intestate succession. Is the property reservable? It is evident that the property in this case is reservable, because all of the requisites for reservation are present. In the first place, M who is the ascendant reservista, had acquired the property by operation of law from her descendant P; in the second place, P who is the descendant praepositus had previously acquired the property by gratuitous title from another ascendant, his grandfather, GF, who is the origin of the said property, and in the 3rd place, the descendant had died without any legitimate issue in the direct descending line who could inherit from him. Consequently, from the time of the death of the descendant praepositus, P in 2011 the ascendant M who acquired the property is obliged to reserve it for the benefit of relatives of the praepositus who are within the 3rd degree who belong to the line from which the said property came.

- The reservable character of the property will as a rule terminate upon the death of the ascendant reservista. Thus if we extend the example by presupposing that M died in the last month of 2012, A and B, uncles of the prepositus P in the paternal line can claim the property as their own right in accordance with the provision of Article 891 of the CC.

NATURE OF RIGHTS

1. **Right of the Reservista over the reserved property**
   - Reservista's right over the property is that of ownership.
   - Reservista's right is subject to a resolutory condition which is that the reservatorios exist at the time of the reservista's death. If there are, the reservista's right terminates and the property will pass to the reservatorios.
   - Reservista's ownership is alienable but subject to the same Resolutory condition. The buyer's ownership is subject to the same Resolutory condition. The ownership of the buyer over the property is revocable, even if the buyer bought the property in good faith and for value.
   - Reservista's right of ownership is registrable.

2. **Right of the Reservatorios over the reserved property.**
   - Reservatorios right over the property during the life of the reservista is a mere expectancy.
   - The expectancy is subject to a suspensive condition which is that the reservatorio is alive at the time the reservista dies.
   - The right of expectancy can be alienated but it will be subject to the same suspensive condition.
   - The right of expectancy is registrable. It must be annotated at the back of the title to protect the reservatorios from innocent purchasers for value.

Rights and Obligations of the Parties

Rights of Reservatorio	Obligations of Reservista
1. To demand inventory and appraisal. 2. To demand annotation of reservable character of the property. 3. To demand security/ bond	1. To inventory and appraise 2. To annotate reservable character of the property within 90 days. 3. To give security/ bond

RESERVED PROPERTY

General rule:

- Inorder for reserva troncal to exist, property from mediate source to the praepositus and from praepositus to reservista must be the same.

- **What kind of property?** Any kind of property, whether real or personal, as long as it is the same property. **What about money, can it be reserved?** Yes! In money, the property is the purchasing power and not the bills. As such, the value of the money can be reserved.

- You only apply the theories of ***reserva maxima*** and ***reserva minima*** if the property passes to the reservista by will and not intestacy. Because if it was pass though intestacy the whole property is reservable.

Special Problems

Problem: Mediate source donates a piece of land to Praepositus worth 100, 000. Praepositus then dies without legitimate issue. Reservista is the mother of Praepositus.

1. **If praepositus had no will and the land is the only property in his estate, what is reserved?**
   - The whole land.
   - 1/2 to reservistas' legitime; 1/2 to reservista by intestacy.

2. **If with a will that said 'I give the free portion to my mother,' what is reserved**?
   - 1/2 of the land.
   - What is reserved is what reservista received as legitime because it was transferred by operation of law.

3. **If praepositus acquired another piece of land worth 100, 000 before he died and he did not have a will, what is reserved?**
   - The land from the mediate source is reserved.
4. **Same as number 3, but this time Praepositus died with a will stating 'I give the free portion to my mother.' What is reserved?**
   - 1/2 to reservista as legitime = 100, 000
   - 1/2 to reservista by will = 100. 000
   - Land from mediate source can be reserved
   - Land subsequently acquired cannot be reserved.

Two theories:

1. **Reserva maxima** [maximum operation of reserva trocal] - fit as much of reservable property as you can in the 1/2 by legitime. In the example, the whole land from mediate source is reservable.

2. **Reserva minima** [followed by most commentator]- every item will pass according to ratios of the properties. In the example, 1/2 will pass as legitime and 1/2 by will for both pieces of land= 1/2 of land from mediate source is reservable.

5. **If the land from mediate source is 100, 000 and the land subsequently acquired is 60, 000, and praepositus died without a will, what is reserved?**
   - 1/2 as legitime = 80, 000
   - 1/2 by intestacy = 80, 000

   Reserva Maxima- 8/10 of land from mediate source is reservable.
   Reserva Minima- 1/2 of the land from mediate source is reservable.

6. **Same as number 6 but praepositus had a will stating 'I bequeath 1/4 of my estate to my mother.' What is reserved?**
   - 1/2 as legitime= 80, 000 } 3/4 by Operation of law
   - 1/4 by intestacy = 40, 000
   - 1/4 by will = 40, 000

   Reserva maxima- whole land from mediate source is reservable.

   Reserva minima- 3/4 of land from mediate source is reservable. Look at how much passes by operation of law because that is the property that is reservable.

   This arises if:
   1. Praepositus dies leaving property he got from mediate source by gratuitous title and other property from other sources.

   2. Praepositus made a will instituting the reservista to part of the estate.

REPRESENTATION IN RESERVA TRONCAL

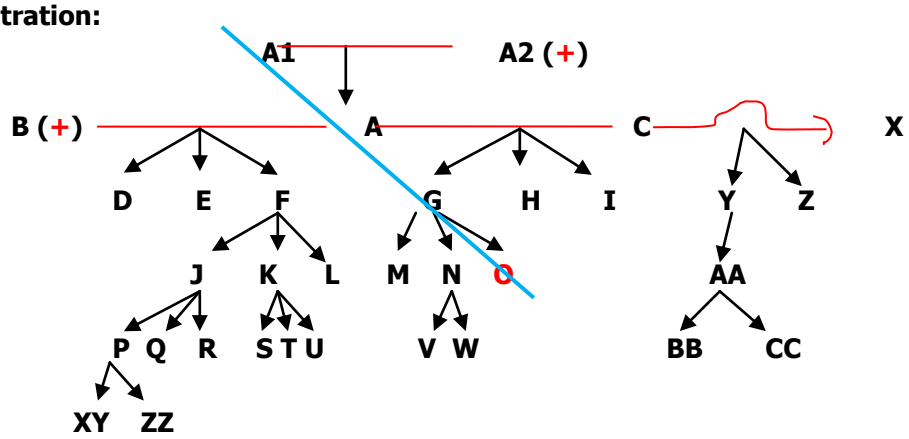
Can there be representation in the collateral line?

General rule: representation will not apply in the collateral line.

Exception: Representation in the collateral line will apply in-

1. Reserva troncal;
2. Provided that the representatives are within the third degree collateral relatives of the praepositus and they belong to the line where the property came.
3. Those who will represent concur with at least one of the reservatorios.

Illustration:



A married twice**;** After **B's** death**, A** married **C.**
After **A's** death, **C** married **X**.
A donated a parcel of land to **O**.

Situation 1:

O died intestate. **G** acquired the property. **Is there reserva troncal?** Yes, because there are two transfer of the property. First transfer is the gratuitous act of **A** giving the property to **O**. Second transfer is when the same property was transferred to **G** by operation of law.

- **Who is the reservatorio? A1** because he belongs within the third degree relative counting from the praepositus and he belongs to the line where the property came. The presence of **A1** [direct line] excludes the uncles and aunts of the praepositus [collateral line]. It is a rule that the direct ascending line excludes the collateral line.

Situation 2:

A1 and **A** were dead. **O** died intestate. The property passed to **G** by operation of law. Upon **G's** death, who are the reservatrios?

- **D**, **E**, **F**, **H**, **I** because all of them belong to the third degree relative counting from the praepositus and they belong to the line where the property came. However, they will not inherit in equal shares because the other law on succession will apply, i.e., the share of a full blood brother or sister is twice as the share of half-blood brothers or sisters.
  - **D, E, F-** 1/9 of the property because they are the half-blood sibling of **G**, the ascendant-reservista.
  - **H**, **I**- 2/9 of the property because they are the full-blood siblings of **G**, the ascendant-reservista.
- **P**, **Q**, **R**, **S**, **T**, **U**, **V** and **W**, although they belong within the third degree relative counting from the praepositus and they belong to the line where the property came will not inherit because of the rule of re-proximity. The presence of Aunts and uncles as reservatorios excludes the nephews and nieces.

- What about **X** and **Z**? Although they belong to the third degree relative counting from the praepositus, they will not inherit because they do not belong to the line where the property came. They have no blood relation to the mediate source..

Situation 3:

What if in the problem above **F** died, can **P**, **Q**, **R** represent him?

- Yes! **P**, **Q**, **R** can represent him because they belong within the third degree collateral relatives. However the representation is only up to the share of **F**.

- Note the **XY** and **ZZ** cannot represent **F** because representation in the collateral line ends with the third degree collateral relatives [nephews and nieces]. **XY** and **ZZ** are not the nieces/ nephews of **O** but they are his grandnephews and grandnieces.

Situation 4:

What if all the reservtorios **D**, **E**, **F**, **H**, and **I** are dead or renounced the inheritance. How will the property be inherited?

- **P**, **O**, **R**, **S**, **T**, **U**, **V**, and **W** will inherit in their own right because they belong to the third degree relative of the praepositus and where the property came. They will divide the property per capita [per person]. However, the ratio of 2:1 will apply. The full-blood nephews and nieces will be entitled to twice as the share of the half-blood nieces and nephews.
    - **P**, **Q**, **R**, **S**, **T**, and **U** are entitled to 1/10 of the property because they are the half-blood nephews and nieces of **G**, the ascendant reservista.
    - **V** and **W**- 2/10 of the property because they are the full-blood nephews and nieces of **G**, the ascendant-reservista.
- Note that **BB** and **CC** will not inherit. Although they belong within the third degree relative counting from the praepositus, they do not belong to the line where the property came.

EXTINGUISHMENT OF RESERVA TRONCAL

1. **Death of Reservista-** No more reserva troncal. The reservatorios get the property. If there are no reservatorios, the property shall form part of the estate of the reservista. It is a kind of delayed succession from the praepositus. The reserved property does not form part of the reservista's estate if there are reservatorios.

2. **Death of all the Reservatorios-** Reservista's title to the property becomes absolute and unconditional.

3. **Fortuitous loss of the reserved property-** If the loss was due to the fault of the reservista, the security will answer for the property.

4. **Waiver by all the reservatorios provided no reservatorio is subsequently born.-** This is a tentative extinguishment because those subsequently born cannot be bound by the waiver. A waiver is personal.

5. **Registration of the property under the Torrens system by an innocent purchaser for value wherein the reservable character of the property is not annotated on the title. -** This is not really an extinguishment but more of a freeing of the property. The reservista is however liable for the value of the property plus damages.

6. **Extinctive prescription-** Reservista adversely occupies the property or openly denies the reserva.

7. **Merger**
    - Reservista can alienate but must be to all the reservatorios or if only to one, then merger takes place only with regard to that share.

- In settlement proceedings of the estate of the reservista, reservatorios may enter a claim to exclude the property from the inventory. Reservatorios can also file an accion reinvindicatoria. However this is usually consolidated with settlement proceedings.

DISINHERITANCE
Articles 915- 923

General Principles:

- A compulsory heir, may in consequence of disinheritance, be deprived of his legitime, for causes expressly stated by law [Art. 915]. Note that for a compulsory heir to be deprive of his legitime the disinheritance must be valid and not imperfect.

- **Can the disinherited heir be represented? Yes!** The children and descendants of the person disinherited shall take his or her place and shall preserve the rights of compulsory heirs with respect to the legitime; but the disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime [Art. 923]. **The representation covers the legitime and intestate share of the disinherited heir in the free portion if the same was not dispose by the testator**.
- Disinheritance applies only to compulsory heirs and in the legitime because the testator can dispose the free portion at his own will.

- There can be **no partial disinheritance**. **Why?** Because disinheritance is based on the offense committed against the testator. It is either the testator is offended or not. There is no such thing as half-offended.

Question: A will was probated. The testator made a codicil disinheriting one of his compulsory heirs for a valid cause. Do the probate of the will bar the effectivity of the codicil? No! The probate of the will does not bar the effectivity of the codicil. The execution of the codicil disinheriting the compulsory heir revokes the provision of the will pertaining to Pedro. Besides a will is ambulatory or revocable at the caprice and whims of the testator. There are no prescribed grounds for the revocation of a will. Thus even if the will was probated, it does not bar the effectivity of the codicil. The focus of probate is on the extrinsic validity and not the intrinsic validity of the will.

WHAT IS REQUIRED FOR A DISINHERITANCE TO BE EFFECTIVE? [Art. 915] Disinheritance can be effected-

a. Only through a will [Of course! Logic dictates that one cannot disinherit someone if there is no will because if intestate succession applies, all compulsory heirs will be entitled to his/her inheritance].
b. In the will the legal cause of disinheritance shall be specified.
c. Identity of the heir is clearly established
d. It is clearly made
e. Disinheritance must be absolute or unconditional [if he doesn't apologize I am disinheriting him- wrong!]
f. Cause of disinheritance must be true and if challenge by the heir, it must be proved to be true.
g. The will must not have been revoked.

Can there be disinheritance after the death of the testator or even without a will containing a provision of disinheritance? Yes! In the case of legal separation. By operation of law the offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. You need not make a will to disinherit the offending spouse, because he is disinherited by operation of law [see Art. 43 of FC].

What is the effect if the causes of disinheritance were not specified in the will? Disinheritance without a specification of the cause, or for a cause the truth of which, if contradicted, shall annul the institution of heirs insofar as it may prejudice the person disinherited; but the devisees and legacies and other testamentary dispositions shall be valid to such extent as will not impair the legitime.

Who has the burden of proof of the causes of disinheritance? The burden of proving the truth of the cause for disinheritance shall rest upon the other

heirs of the testator, if the disinherited heir should deny it [Art. 917].

Sidecomment: It is the other heirs that should prove the cause for disinheritance. Of course! The disinherited heir will only be disinherited upon the testator's death because that is the time of the effectivity of the will. As such the testator cannot prove the cause for disinheritance because he is already 6 feet below the ground..

CAUSES FOR DISINHERITANCE OF CHILDREN AND DESCENDANTS [Article 919]

The following shall be sufficient causes for the disinheritance of children and descendants, **legitimate** as well as **illegitimate**:

1. **When the child or descendant has been found guilty of an attempt against the life of the testator, his or her spouse, descendants, or ascendants;**

   Requisites:
   1. **Final conviction of parricide or murder** is necessary.
   2. **Intent to kill** must be present for this ground to be operative. [Reckless imprudence is not covered because there is no intent to kill.]

      - **Attempt** is a generic term which includes **all kinds of commission**, whether attempted, frustrated or consummated.

      - **What if the offending heir was given absolute pardon by the President, can he inherit?** No! The pardon did not erase the ground for disinheritance, unless the testator and the offending heir subsequently reconciled.

3. **When a child or descendant has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found groundless;**

   Elements to be operative:

   1. Accusation is a generic term which includes:
      a. Filing an information;
      b. Presenting an incriminating evidence;
      c. Acting as a witness against the ascendant testator;
   2. The crime imputed has the penalty of imprisonment of 6 years or more;
   3. The accusation is groundless- Ascendant is acquitted on the finding that
      a. There is no crime; or
      b. That the ascendant did not commit it.

      If the ascendant was acquitted on **reasonable doubt**, **insufficiency of evidence**, **lack of criminal intent**, the ascendant cannot disinherit because the accusation is not groundless. Meron ground yong accusation kaya lang it was not proven with moral certainty so as to warrant the guilt of the ascendant. Kung sufficient sana yong evidence siguradong guilty ang ascendant. The law says that the testator can disinherit a descendant only if the accusation is groundless.

4. **When a child or descendant has been convicted of adultery or concubinage with the spouse of the testator;**
   - **Final conviction** is necessary.

   - The commission of adultery or concubinage must be with the spouse of the testator and not with the testator. **Why?** Because it is utmost stupidity if you allow the testator to benefit from his own malevolent act. He cannot have his cake and eat it too!

5. **When a child or descendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;**
   - This goes into the very essence of will-making. The freedom of the testator

was deprived by the child or descendant. There is a will but the execution of said will is made through the use of force, violence, intimidation or undue influence.

- It does not mention **PREVENT** because if he was prevented, how can he make a will of disinheritance? Prevention is a ground for unworthiness [Article 1032, par. 7] which has the same effect as disinheritance.

6. **A refusal without justifiable cause to support the parent or ascendant who disinherits such child or descendant.**
   - Refusal itself, is not a ground; it must be unjustified.
   - **E.g.,** in the Family Code there is an order of preference for support. The person may be willing to support but it is not economically feasible. A person must support his wife and children first. There is here a justified refusal.
   - **Sidecomment:** at first it seems that this is a useless ground, because yong ascendant nga ang humihingi ng support, which means to say that wala siyang papamana. Second thoughts, it is not a useless ground at all because there is a possibility that the ascendant may won the lottery. If you unjustifiably refused to support your parent, posibleng wala kang mamanahin sa napanalunan niya.
7. **Maltreatment of the testator by word or deed, by the child or descendants;**
   - **No conviction** is required as compared to number 1 wherein conviction is needed. This ground maybe proven by preponderance of evidence.
   - It is possible for an act not to fall in number 1 but in number 6.
   - **E.g.,** the son shoots his father. The father is wounded but he recovers. The father does not want a scandal so he does not file charges against his son. So he disinherits his son not under number 1 but under number 6.
   - The son always lambasts his father in public places. This is maltreatment by word.
8. **When a child or descendant leads a dishonorable or disgraceful life;**
   - "**Leads"** denotes habituality. This ground requires the element of habituality and not only based on a single act of the descendant.
   - Dishonorable and disgraceful are based on the sense of the community as perceived by the judge. It is not limited to sexual immorality. It may include, drug addiction or alcoholism.
   - **E.g.,** A father upon going home found her daughter being screwed by the family driver. **Can the father disinherit her daughter?** No the element of habituality is not present. Supposing that the daughter elopes with the family driver who is a married man. Can the father disinherit the daughter? Yes. There is an element of habituality. The daughter is leaving a disgraceful life because her relationship to the driver is contrary to law, morals and public policy. May asawa na yong driver!
9. **Conviction of a crime which carries with it the penalty of civil interdiction.**
   - **Final conviction** is required.
   - **Why this ground**? Because the penalty of civil interdiction is attached to an act which warrants an afflictive penalty. Ibig sabihin na malala ang ginawa ng descendant so as to warrant his disinheritance.

CAUSES FOR DISINHERITANCE OF PARENTS OR ASCENDANTS [Article 920]

The following shall be sufficient cause for the disinheritance of parents or ascendants, whether legitimate or illegitimate:

1. **When the parents have abandoned their children or induced their daughters to live a corrupt or immoral life, or attempted against their virtue;**
   - There are three grounds enumerated:
     a. **Abandonment by parent of his children**- in abandonment there are two views:
        i. **Strict**- leaving them alone while still children under circumstances that would endanger hem.
        ii. **Accepted-** any case where a parent, without justifiable cause, withholds his care and support. **E.g.**, leaving someone at the doorstep.
     b. **Induced their daughter to live a corrupt or immoral life**. Does it include grandparents to granddaughters? Yes. The provision covers ascendants vis-à-vis descendants.
     c. **Attempt against their virtues**. Mere attempt is enough as long as it can be proven.

   - **B** and **C** are applicable to male and female members of the family.
   - In all the forgoing instances **final conviction is necessary**.

2. **When the parent or ascendant has been convicted of an attempt against the life of the testator, his or her spouse, descendants or ascendants;**

   Requisites:
   1. **Final conviction of parricide or murder** is necessary.
   2. Intent to kill must be present for this ground to be operative [Reckless imprudence is not included because there is no intent to kill].

   - **Attempt** is a generic term which includes all kinds of commission, whether attempted, frustrated or consummated.

   - **What if the offending heir was given absolute pardon by the President, can he inherit?** No! The pardon did not erase the ground for disinheritance, unless the testator and the offending heir subsequently reconciled.

3. **When the parent or ascendant has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found to be false;**

   Elements to be operative:
   1. **Accusation** is a generic term which includes:
      a. Filing an information;
      b. Presenting an incriminating evidence;
      c. Acting as a witness against the descendant testator;
      d. The crime imputed has the penalty of imprisonment of 6 years or more;
      e. The **accusation is groundless**- descendant is acquitted on the finding that-
         i) There is no crime; or
         ii) That the descendant did not commit it.

   - If the descendant was acquitted on **reasonable doubt**, **insufficiency of evidence** and **lack of criminal intent,** the ascendant cannot disinherit because the accusation is not groundless. Meron ground yong accusation kaya lang the evidence was insufficient to prove with moral certainty so as to warrant

the guilt of the descendant. Kung sufficient sana yong evidence siguradong guilty ang descendant. The law says that the tstator can disinherit a descendant only if the accusation is groundless.

4. **When the parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator;**
   - Final conviction is necessary.
   - The commission of adultery or concubinage must be with the spouse of the testator and not with the testator. **Why?** Because it is utmost stupidity if you allow the testator to benefit from his own malevolent act. He cannot have his cake and eat it too!

5. **When the parent or ascendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;**
   - This goes into the very essence of will-making. The freedom of the testator was deprived by the parent or ascendant. There is a will but the execution of said will is made through the use of force, violence, intimidation or undue influence.
   - It does not mention **PREVENT** because if he was prevented, how can he make a will of disinheritance? Prevention is a ground for unworthiness [Article 1032, par. 7] which has the same effect as disinheritance.

6. **The loss of parental authority for causes specified in this Code;**

   General rule: parental authority was loss due to the culpable act of the parents.

   Exception: in cases of **Adoption**, **emancipation [marriage]** and **attaining the age of majority** because the **loss of parental authority was not due to the culpable act of the parents**.

INSTANCES WHERE THERE IS A LOSS OF PARENTAL AUTHORITY:

Article 229, Family Code:

1. Upon adoption of a child;
   - This is not included in the ground for disinheritance because the loss of parental authority was not due to the reprehensible act of the parents.
2. Upon appointment of a general guardian;
3. Upon judicial declaration of abandonment of the child in a case filed for the purpose.
4. Upon final judgment of a competent court divesting the party concerned of parental authority;

Article 230, Family Code: "Parental authority is suspended upon conviction of the parent or the person exercising the same of a crime which carries with it the penalty of civil interdiction. The authority is automatically reinstated upon service of the penalty or upon pardon or amnesty of the offender."

Article 231, Family Code- "The court in an action filed for the purpose or in a related case may also suspend parental authority if the parent or the person exercising the same:

1. Treats the child with excessive harshness or cruelty;
2. Gives the child corrupting orders, counsel or example
3. Compels the child to beg; or
4. Subjects the child or allows him to be subjected to acts of lasciviousness.

The grounds enumerated above are deemed to include cases which have resulted from culpable negligence of the parent or the person exercising parental authority.

If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall adopt such other measures as may be proper under the circumstances.

The suspension or deprivation may be revoked and the parental authority revived in a case filed for the purpose or in the same proceeding if the court finds that the cause therefor has ceased and will not be repeated."

Article 232, Family Code- "If the person exercising parental authority has subjected the child or allowed him to be subjected to sexual abuse, such person shall be permanently deprived by the court of such authority."

7. **The refusal to support the children or descendants without justifiable cause;**
   - Refusal itself, is not a ground. The refusal must be unjustified.

8. **An attempt by one of the parents against the life of the other, unless there has been reconciliation between them.**
   - Conviction is not necessary.
   - This presupposes that there is no disinheritance yet.
   - The testator losses the right to disinherit the offending parent or ascendant upon reconciliation between the offended parent or ascendant and offending parent or ascendant.
   - **But what if already disinherited before reconciliation?** This is not clear. But it should be considered revoked because in case of doubt resolve against disinheritance.

What is the effect of automatic restoration of parental authority to the disinheritance?

- **It has no effect on the disinheritance. Why?** Because the one punished is the cause of the loss of parental authority and not the loss of parental authority. The primordial consideration in disinheritance is the offense made against the testator. Thus, if the testator is still offended and no subsequent reconciliation between the heir and the testator, then there is still disinheritance.

CAUSES FOR DISINHERITING A SPOUSE [Article 921]

The following shall be sufficient causes for disinheriting a spouse: [*These grounds are the same with the grounds in Article 919 and 920.*]

1. **When the spouse has been convicted of an attempt against the life of the testator, his or her descendants, or ascendants;**

2. **When the spouse has accused the testator of a crime for which the law prescribes imprisonment for six years or more, and the accusation has been found to be false;**

3. **When the spouse by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;**

4. **When the spouse has given cause for legal separation;**
   - Legal separation is not a ground. If there is legal separation, you do not need to disinherit. Disinheritance takes place by operation of law.

   - **Article 63, Family Code-** The decree of legal separation shall have the following effects:
     xxx
     Par. 4- "the offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law."

     Note:
     - That the innocent spouse is allowed to inherit from the guilty spouse.

     - Is there a need for the decree of legal separation for this to apply? No, as long the spouse made an act which is a cause of legal separation the testator can disinherit him. It is up to the spouse to prove that he is

entitled to inherit and to the others heirs to prove her unworthiness.

- However, if there is already a decree of legal separation, the testator need not disinherit the guilty spouse because disinheritance takes place by operation of law as per Article 63 of the Family Code.

5. **When the spouse has given grounds for the loss of parental authority;**

6. **Unjustifiable refusal to support the children or the other spouse.**

What is the effect of valid disinheritance? The effect of valid disinheritance is:

1. The loss of legitime
2. Loss of the right to intestate share in the free portion if the same was not validly dispose in the will.
3. Loss of any right to a disposition in a prior will.
4. Loss of any right to any legacy or devise.

What are the things a compulsory heir is entitled if he is invalidly disinherited? If there is an **invalid disinheritance** the compulsory heir is entitled to his:

1. Legitime
2. Intestate share in the free portion if the same was not disposed in the will.

How can disinheritance be made ineffective? The testator validly revoked his will containing the disinheritance.

Can there be revocation of disinheritance, even without the testator mentioning that it was revoked?

- Yes! A subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit and renders ineffectual any disinheritance that may have been made [Art. 922].

- **Reconciliation**- two persons who are at odds decides to set aside their differences to resume their relations. They need not go back to their old relation. A handshake is not reconciliation. It has to be something more. It must be clear and deliberate.

What is the effect of reconciliation?

- **If there is no will**- it deprives the offended person of his right to disinherit the offending person.

- **If there is a will-** it set aside disinheritance already made.

Note: **if a problem deals with reconciliation, look at the ground why the compulsory heir was not given any inheritance.**

- **If the ground is disinheritance-** subsequent reconciliation between the offended party and the offender revokes the disinheritance.

- **If the ground is unworthiness** - reconciliation will not apply. The heir who was rendered unworthy, even if here was a subsequent reconciliation will not inherit.

Illustration:

1. Santiago Wakas, for the second time married a young and beautiful woman. However, his son Guillermo had an affair with his stepmother. Santiago after making his will learned of the affair. He did not change his will to disinherit Guillermo, pinagsabihan lang niya. Because of what happened Santiago's health suddenly deteriorate. Before his death a tearful reconciliation happen between them.

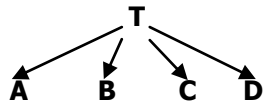
   Can Guillermo inherit from Santiago? No! In this case there was no disinheritance so that the subsequent reconciliation between Santiago and Guillermo. Guillermo is rendered unworthy to inherit because as per **Article 1032** it provides that- the following are incapable of succeeding by reason of unworthiness:
   XXXX
   (5) Any person convicted of adultery or concubinage with the spouse of the testator;

XXX

Corollarily, **Article 1033** provides that- "the causes of unworthiness shall be without effect if the testator had knowledge thereof at the time he made the will, or if, having known of them subsequently, he should condone them in writing." Santiago had no knowledge of the cause of unworthiness at the time he made the will.

2. **In the problem supra:** suppose that after learning the affair of Guillermo and his wife, Santiago bursting in anger made another will disinheriting Guillermo. After sometime, there was a tearful reconciliation between them. Can Guillermo inherit from Santiago?

   Yes! Because the law provides that reconciliation between the offender and the offended party renders ineffectual the disinheritance that may have been made. Further by availing of the grounds of disinheritance, Santiago waived the right to avail of the grounds for unworthiness.



A- Preterited
B- Given a legacy of 100, 000
C- Was imperfectly disinherited
D- Was instituted as the sole heir.

WHAT IS EFFECT OF-

1. **Preterition-** it will annul the institution of heirs but devises and legacies shall be respected as long as they are not inofficious.

2. **Invalid disinheritance-** the institution remains valid, but must be reduced insofar as the legitime has been impaired [Art. 918].

3. **Insufficient legitime-** demand for the completion of legitime.

Question 1: what is the effect of the foregoing institution of heirs? Annul the institution of heirs because there is pretirition. The institution of B and D are annulled. Ergo, the estate will go be intestacy because there are no instituted heirs.

LEGACIES and DEVISES
Articles 924 to 959

General Principles:

- Legacy and devise are always taken from the free portion.

- It must not be inofficious to the extent that it will impair the legitime.

- For purposes of collation it must not be included in the determination of the net hereditary estate because they are testamentary dispositions. Hindi pa naibigay, ibibigay pa lang.

- **What can be given as a devise or legacy? All things** and **rights** which are within the commerce of man may be bequeathed or devised [Art. 924].

- The thing bequeathed shall be delivered with all its **accession** and **accessories** and **in the condition** in which it may be upon the death of the testator [Art. 951].

- A **mistake as to the name of the thing bequeathed or devised** is of no consequence, if it is possible to identify the thing which the testator intended to bequeath or devise [Art. 958].
- A disposition **made in general terms in favor of the testator's relatives** shall be understood to be in favor of those nearest in degree [Art. 959].

What is a Legacy?

- A **legacy** is a gratuitous grant in a will of a specific personal property.
- A **legatee** is a person who succeeds by particular title to a specific personal property.

What is a Devise?

- A devise is a gratuitous grant in a will of a specific real property.
- A **devisee** is a person who succeeds by a particular title to a specific real property.

Who is an heir? Heir is a person who succeeds by universal title, to a fractional [aliquot] part of the estate or the whole estate.

Up to what extent a testator may give as a devise or legacy?

General rule:

- If the testator owns only a part, the devisee/legatee will only get that part.
- As per **Art. 929**- "If the testator, heir, or legatee owns only a part of, or an interest in the thing bequeathed, the legacy or devise shall be understood limited to such part or interest."

Exceptions:

1. **Testator gives more**- "Unless the testator expressly declares the he gives the thing in its entirety" [Art. 929].

   E.g., giving it in its entirety. How? The estate should buy out the rest of the property. If co-owners do not like to sell, then the estate gives him the testator's share plus the cash value of the rest of the property.

2. **Testator gives less**- **Art. 794** "Every devise or legacy shall convey all the interest of which the testator could devise or bequeath in the property disposed of, unless it clearly appears from the will that he intended to convey less interest."

Can legacies and devises be given during the lifetime of the testator?

General rule: No, because legacies or devises are always given in the will. Thus, it is given after the death of the testator.

Exception: ***Principle of Ademption***- it contemplates that the testator gives a donation and such donation becomes part of the legacy of devise. Also the donation is dependent upon the efficacy of the legatee.

Do legacies and devises need to be accepted by the devisee or legatee?

- Yes! Devises and legacies partake of the nature of a donation hence they should be accepted by the legatee or devisee.
- As per **Art. 725**- 'Donation is an act of liberality whereby a person disposes gratuitously of a thing or right **in favor of another who accept it**."
- In short, a legacy or devise may be accepted or not by the legatee or devisee and the testator cannot compel them to do the same.

Can there be partial acceptance of a legacy or devise?

If only one devise/ legacy

- No! The legatee or devisee may either accept the whole legacy/devise or not.
- **Art. 954**- "The legatee or devisee cannot accept a part of the legacy or devise and repudiate the other, if the latter be onerous."
- **What if the legatee/ devisee died before accepting the legacy/ devise?** If said legatee/ devisee leaves several heirs, some of them may accept and the others may repudiate the share respectively belonging to them in the legacy or devise.

If two or more legacies/ devises- one onerous and one gratuitous

- **General rule:** no partial acceptance.
- **Exception:** Unless the testator provides otherwise.

If two or more legacies/ devises- both onerous or both gratuitous

- **General rule:** Legatee or devisee is free to accept of renounce both **or** to renounce either.
- **Exception:** The testator provides otherwise.

Art. 955- "The legatee or devisee of two legacies or devisees, one of which is onerous cannot renounce the onerous one and accept the other. **If both are onerous or gratuitous, he shall be free to accept or renounce both, or to renounce either**. But if the testator intended that the two legacies or

devises should be inseparable from each other, the legatee or devisee must either accept or renounce both.

Relative to acceptance, what is the rule if a COMPULSORY HEIR was given a devise or legacy? Art. 955 par. 2- "Any compulsory heir who is at the same time a legatee or devisee may waive the inheritance and accept the legacy or devise, or renounce the inheritance and accept the legacy or devise, or renounce the latter and accept the former, or waive or accept both."

What is the effect if the legacy or devise was not accepted or the same became ineffective?

- **General rule: Art. 956**- "If the legatee or devisee cannot or is unwilling to accept the legacy or devise, or if the legacy or devise for any reason should become ineffective, it shall be merged into the mass of the estate of the testator."

- **Exception:** the same will not take effect if there was a **right of substitution** or **right of accretion**.

What if the legatee/ devisee accepted the bequeathed property, can he possess it in his own authority? No! Art. 953- "The legatee or devisee cannot take possession of the thing bequeathed upon his own authority, but shall request its delivery and possession of the heir charged with the legacy or devise, or of the executor or administrator of the estate should he be authorized by the court to deliver it."

Who must deliver the bequeathed property to the legatee or devisee? Art. 952- "The heir, charged with a legacy or devise or the executor or administrator of the estate."

What shall the heir or administrator deliver to the legatee or devisee?

General rule: The very thing bequeathed if he is able to do so and cannot discharge this obligation by paying its value [Art. 952] and the fruits [Art. 948].

Exception: If unable to do so, he shall pay for its value.

Who shall pay the expenses of delivery? [Art. 952]

General rule: The expenses necessary for the delivery of the thing bequeathed shall be for the account of the heir or the estate.

Exception: this will not apply if the legitime is prejudiced.

DEMANDABILITY OF LEGACY OR DEVISE

When can the legatee or devisee demand the THING bequeathed?

Demandability depends on whether the legacy/devise is:

1. **PURE LEGACY/ DEVISE-** upon the testator's death.
   - **Art. 947-** "The legatee or devisee acquires a right to the pure and simple legacies or devises **from the death of the testator, and transmits it to his heirs**."

   - **Art. 945-** "If a periodical pension, or a certain annual, monthly, or weekly amount is bequeathed, the legatee may petition the court for the first installment **upon the death of the testator** xxx."
   - **Art. 948-** "If the legacy or devise is of a specific and determinate thing pertaining to the testator, the legatee or devisee **acquires the ownership thereof upon the death of the testator** xxx."

2. **LEGACY/ DEVISE with a TERM-**
   - **Suspensive term:** Upon arrival of the term.

   - **Resolutory term:** Upon the death of the testator**. Why?** Because the arrival of the term, extinguishes the efficacy of devise or legacy. The legatee or devisee must return the property to the intestate heirs.

3. **LEGACY/ DEVISE with a CONDITION**
    - **Positive potestative**, **casual** or **mixed condition**- upon the happening of the condition.

    - **Negative potestative**- upon the death of the testator. **Why?** Because the legatee or devisee need not do anything. As long as he does not do what the testator prohibits, then he own the legacy or devise.

    - **Resolutory** [term or condition] - upon the testator's death. **Why?** Because upon the death of the testator the legatee or devisee owns the property and the arrival of the Resolutory condition will divest the legatee or devisee of ownership over the property bequeathed.

When can the legatee/ devisee demand the FRUITS of the thing bequeathed? Fruits which depends on whether:

1. **PURE and SPECIFIC DEVISE/LEGACY**
    - Demandable upon the testator's death.

    - **Art. 948**- "xxx the legatee or devisee acquires the ownership thereof upon the death of the testator, as well **as any growing fruits**, **or unborn offspring of animals**, **or uncollected income**; but not the income which was due and unpaid before the latter's death."

2. **PURE and GENERIC DEVISE/ LEGACY**
    - Fruit is demandable upon determination of what is to be delivered to the devisee or legatee unless the testator provides otherwise. **Why?** Because the legacy/ devise is generic. Upon the death of the testator you do not know what the specific devise of legacy is.

    - **Art. 949-** "If the bequest should not be of a specific and determinate thing, but is generic or of quantity, its fruits and interests from the time of the death of the testator shall pertain to the legatee or devisee if the testator has expressly so ordered."

3. **LEGACY/ DEVISE with a TERM**
    - **Suspensive term:** Upon arrival of the term.

    - **Resolutory term:** Upon the death of the testator**. Why?** Because the arrival of the term, extinguishes the efficacy of devise or legacy. The legatee or devisee must return the property to the intestate heirs.

4. **LEGACY/ DEVISE with a CONDITION**
    - **Positive potestative**, **casual** or **mixed condition**- upon the happening of the condition.

    - **Negative potestative**- upon the death of the testator. **Why?** Because the legacy or devisee need not do anything. As long as he does not do what the testator prohibits, then he owns the legacy or devise.

    - **Resolutory** [term or condition] - upon the testator's death. **Why?** Because upon the death of the testator the legatee or devisee owns the fruits and the arrival of the Resolutory condition will divest the legatee or devisee of ownership over the fruits of the property bequeathed.

When does OWNERSHIP vest to the legatee/ Devisee? It depends on whether the devise/ legacy are:

1. **PURE and SPECIFIC LEGACY/ DEVISE**
    - Upon the testator's death

    - Legal basis: **Art. 777**- "The rights to the succession [inheritance] are transmitted from the moment of the death of the decedent."

2. **PURE and GENERIC LEGACY/ DEVISE**- it depends
    i. **If the thing comes from the testator's estate**, then ownership vests upon the testator's death. **Why?** Because of Article 777.

ii. **If the thing has to be acquired from a third person**, then ownership vests upon the acquisition of the thing. **Why?** Because the testator is not yet the owner of the thing when he died. It must be acquired first from the third person.

3. LEGACY/ DEVISE with a TERM

- Upon the testator's death and not from the happening of the term. **Why?** Because of Article 777. Upon the death of the testator the devisee or legatee owns the property; however the ownership thereof is revocable because it is dependent on the happening of the condition or term. But when the condition or term arrives/ happens, ownership is fully vested to the legatee or devisee. The effect of the happening of the term or condition retroacts to the time of the testator's death.

4. LEGACY/ DEVISEE with a CONDITION

- Ownership vests upon the testator's death. **Why?** Same reason supra.

Note: Art. 948 par. 2- "From the moment of the testator's death, the thing bequeathed shall be at the risk of the legatee or devisee, who shall therefore bear its loss or deterioration, and shall be benefitted by its increase or improvement, without prejudice to the responsibility of the executor or administrator.'

What is the rule if the property bequeathed is money? Art. 952, par 2- "Legacies of money must be paid in cash, even though the heir or the estate may not have any."

Can a testator charge with legacies/ devisees his compulsory heirs, legatees or devisees? Yes! As per **Article 925** which allows sub-devisees.

Article 925: Sub-devise or Sub-legacy- "A testator may charge with legacies and devises not only his compulsory heirs but also legatees and devisees.

The latter shall be liable for the charge only to the extent of the value of the legacy of the devise received by them. The compulsory heirs shall not be liable for the charge beyond the amount of the free-portion given them."

General rule: legacy or devise is an **obligation of the estate** unless it impairs the legitime.

Exception: if the obligation **is imposed by the testator on testamentary heir, devisee, or legatee, the obligations become a sub-devise or sub-legacy.** It is a mode imposed on the heir, devise or legatee.

Illustration: "I give X 1/4 of my estate but I impose upon him the obligation to give B a car." If X wants to accept the 1/4, he will have to give a car to B.

P.S. It is noteworthy that the **charge must not exceed the value of the legacy or devise given**. In the case of a **compulsory heir** the charge **must not go beyond the value of the free portion given to him**.

Why? Because if the value of the charge go beyond the value of the free portion received by the compulsory heir, the excess is considered a burden on his legitime.

Who are bound to perform the charge of the testator? [Article 926]- It depends

One particular heir is charged- When the testator charges one of the heirs with a legacy or devise, he alone shall be bound.

No particular heir is charged- Should the testator not charge anyone in particular; all shall be liable in the same proportion in which they may inherit.

What is the rule if two or more heirs take possession of the estate and the thing bequeathed was destroyed? Art. 927- "If two or more heirs take possession of the estate, they shall be solidarily liable for the loss or destruction of a thing devised or bequeathed, even though only one of them should have been negligent."

Who is liable if there was a breach of warranty against eviction from the bequeathed property? [Article 928]

General rule: the estate of the testator is liable.
Exception: the heir, devisee or legatee is liable if the eviction happens in a property which is a sub-devise/ sub-legacy.

Illustration: "I give a fishpond to X." the fishpond was given to X. If a third person then puts a claim on the fishpond and succeeds in taking possession of the fishpond by winning the suit, then as a general rule, the estate is liable unless it is a sub-devise or sub-legatee, in which case the devisee or legatee is liable.

What is the effect if the testator orders the payment of what he believes he owes but he does not? Art. 939- "If the testator orders the payment of what he believes he owes but does not in fact owe, the disposition shall be considered as not written. If as regards a specified debt more than the amount thereof is ordered paid, the excess is not due, unless a contrary intention appears.

The foregoing provisions are without prejudice to the fulfillment of natural obligations."

What is the status of a legacy/ devise given by testator which he erroneously thought he owns?

General rule: **Art. 930**- "The legacy or devise of a **thing belonging to another person is void**, if the testator erroneously believed that the thing pertained to him."

Why? Because it is vitiated by mistake.

Exception: such legacy or devise is valid if the testator acquires the property after making his will.

Can the testator in his will, direct his estate to acquire a property to be given as a devise or legacy? Yes! **Art. 931**- "If the testator orders that a thing belonging to another be acquired in order that it be given to a legatee or devisee, the heir upon whom the obligation is imposed or the estate must acquire it and give the same to the legatee or devisee; but if the owner of the thing refuses to alienate the same, or demands an excessive price therefor, the heir or the estate shall only be obliged to give the just value of the thing."

Why? The testator knew that he did not own it. There is no mistake.

For this to apply the testator must direct the acquisition of the property.

Questions:
1. Supposing that the testator knew that he did not own it- article 930 will not apply.
2. Supposing that the testator does not order his estate to purchase it- Article 931 does not apply.

What then is the status of that legacy or devise?

- According to Tolentino, when the testator gave the legacy or devise knowing that it is not his, there is an implied order to the estate to acquire it. Apply Article 931 by analogy.

- At the very least, this particular situation creates a doubt. But it is elementary in testamentary succession that doubts are resolved in favor of the validity of the devise or legacy as long as the legitime is protected.

What is the rule if the bequeathed property already belongs to the devisee or legatee at the execution of the will?

- **Article 932**- "The legacy or devise of a thing which at the time of the execution of the will already belonged to the legatee or devisee **shall be ineffective** even though another person may have interest therein.

  If the testator expresses orders that the thing be freed from such interest or encumbrance, the legacy or devise shall be valid to that extent."

- **Article 933**- "If the thing bequeathed belonged to the legatee or devisee at the time of the execution of the will, the legacy or devise shall be without effect, even though it may have been subsequently alienated by him.

If the legatee or devisee acquires it gratuitously after such time, he can claim nothing by virtue of the legacy or devise; but if it has been acquired by onerous title he can demand reimbursement from the heir or the estate."

Par. 1- The legacy or devisee is ineffective even if the legatee or devisee alienates the thing after the will is made.

Par. 2- If at the time of the legacy or devise is made, the thing did not belong to the legatee or devisee but later on he acquires it, then:

i. If he **acquired it by gratuitous title**, then the legacy or devise is void because the purpose of the testator that the property goes to the devisee or legatee has already been accomplished with no expense to the legatee or devisee.

ii. If he **acquired it by onerous title**, then the legacy or devise is valid and the estate may be required to reimburse the amount.

What is the rule if the thing bequeathed was pledged or mortgage? Who shall pay the loan? The legacy is still valid. Why? Even if the property is mortgage the testator is the owner, thus he can dispose it by way of legacy or devise.

General rule: Art. 934- "Pledge and mortgage must be paid by the estate." **Why?** The purpose of the payment of the debt is so that the legatee or devisee will get it free from encumbrance.

Exception: If the testator provides otherwise.

What is the rule if the property bequeathed is burdened with encumbrance?

- **Art. 934, par. 3**- "Any charge, perpetual or temporary, with which the thing bequeathed is burdened, passes with it to the legatee or devisee.

- **Art. 946**- "If the thing bequeathed should be subject to a usufruct, the legatee or devisee shall respect such right until it is legally extinguished.

  Example of encumbrance: easements or usufruct.

Can the testator make a legacy or devise in the ALTERNATIVE? Yes! As per **Article 940**- "In alternative legacies or devisees, the choice is presumed to be left to the heir upon whom the obligation to give the legacy or devise may be imposed, or to the executor or administrator of the estate if no particular heir is so obliged.

If the heir, legatee, or devisee, who may have been given the choice, dies before making it, this right shall pass to the respective heirs.

Once made, the choice is irrevocable"

Note: In alternative legacies or devisees, the rules on alternative obligations apply. See Articles 1199 to 1206.

In alternative legacies or devises, who has the right of choice?

1. **No person specified by the testator- Article 940**
   - **General rule:** the administrator or executor of the estate.
   - **Exception:** if it is a sub-devise- the heir/ devisee/ legatee that is charged by the testator to give the sub-devise.

2. **The person who will make a choice is specified by the testator.**
   - **Art. 942-** "Whenever the testator expressly leaves the right of choice to the heir or to the legatee or devisee, the former may give or the latter may choose whichever he may prefer."

What if the heir/ legatee/ devisee cannot make a choice? Art. 943- "If the heir, legatee, devisee, cannot make the choice, in case it has been granted him, his right shall pass to his heirs; **but a choice once made shall be irrevocable**.

What is the rule on generic legacy and indeterminate devise? Art. 941- A **legacy of**

generic personal property shall be valid if there be no things of the same kind in the estate.

A **devise of indeterminate real property** shall be valid if there be immovable property of its kind in the estate.

The right of choice shall belong to the executor or administrator who shall comply with the legacy by the delivery of a thing which is neither of inferior nor of superior quality."

Generic Legacy	Indeterminate Devise
Even if no thing of the same kind exists in the estate, the legacy is valid. The estate will have to buy it.	There must exist immovables of the same kind in order to be valid

Why the difference? Historically in Roman law, personal property was treated with more liberality because they were easier to acquire and dispose.

What is legacy of credit? Takes place when the testator bequeaths to another a credit against a third person. In effect, it is a novation of the credit by the subrogation of the legatee in the place of the original creditor.

E.g., "I give to X all the debts B owes me."

What is legacy of remission? A testamentary disposition of a debt in favor of the debtor. The legacy is valid only to the extent of the amount of the credit existing at the time of the testator's death. In effect, the debt is extinguished.

E.g., "I will give to X as legacy his debt to me."

What is the rule on legacy of credit or legacy of remission?

1. **As per Art. 935-** "The legacy applies only to the amounts outstanding at the time of the testator's death."

   E.g. X owes B 1,000. B makes a will giving as legacy to X the debt of X. After the will is made, X pays B 500. How much is the legacy? 500. 00.

2. **As per Art. 937**- "A generic legacy of release or remission of debts comprises those existing at the time of the execution of the will, but not subsequent ones."

   Why? Because subsequent debts after the will was made was not covered by the condonation written in the will, unless the testator provides otherwise in the will.

   E.g. "I give to X all the credits I have against B." When the will was made, b had 3 debts. After the will was made, B incurs 2 more debts. Which one can X claim?

   General rule: Only the first 3 debts.
   Exception: when the testator provides that the 2 subsequent debts are covered by the remission.

What is the effect if after giving the legacy of remission the testator filed a case against the legatee/ devisee for collection? As per Art. 936- "The legacy is revoked if the testator files an action [judicial action] against the debtor.

Illustration: X bequeaths the credit he has against B to B. After making the will X sues B for collection. X dies while the suit is pending. Does B have a right to the credit? No. the filing of the action revoked the legacy.

What is the rule if a testator gives a legacy or devise to his creditor? [Article 938]

General rule: Legacy or devise is not considered payment of a debt. **Why?** Because if it is, then it would be a useless legacy or devise since it will really be paid. By nature a legacy or devise is gratuitous.
Exception: if the testator provides that the legacy or devise is the payment of his indebtedness.

What is the rule on periodical pension as legacy? Art. 945- "If periodical pension, or a certain annual, monthly, or weekly amount is bequeathed, the legatee may petition the court for the first installment upon the death of the testator, and for the following ones which shall be due at the

beginning of each period; such payment shall not be returned, even though the legatee should die before the expiration of the period which has commenced."

Illustration:

- Testator dies on March 1, 1996. He has a will giving X a monthly pension of 1,000.
- If we follow Art. 945 literally, X can compel the estate to give him his pension from March 1, 1996.
- **In reality,** X has to wait. The estate should be settled first [will probated, payment of debts, determine if legacy is effectual, ect.]. After settlement of the estate, X can demand his legacy and its effectivity will retroact to March 1, 1996.

What is the rule if the legacy is for education and support? Art. 944- "A legacy for education **lasts until the legatee is of age**, **or beyond the age of majority in order that the legatee may finish some professional, vocational, or general course**, provided he pursues his course diligently.

A legacy for **support lasts during the lifetime of the legatee**, if the testator has not otherwise provided.

If the testator **has not fixed the amount of such legacies**, it shall be fixed in accordance with the social standing and the circumstances of the legatee and the value of the estate.

If the testator during his lifetime used to give the legatee a certain sum of money or other things by way of support, the same amount shall be deemed bequeathed. Unless it be markedly disproportionate to the value of the estate."

Rules as to amount:

1. Amount prescribed by the testator.
2. What the testator used to give during his lifetime.
3. In accordance with the social standing and circumstance of the legatee. In other words, according to his needs.

What is the order of payment of legatees?
Article 950. - If the estate should not be sufficient to cover all the legacies or devisees, their payment shall be made in the following order:

1. Renumeratory legacies or devises.
2. Legacies and devises declared by the testator to be preferential.
3. Legacies for support.
4. Legacies for education
5. Legacies or devises of a specific, determinate thing which forms part of the estate
6. All others pro rata.

Art. 911- "If you reduce legacies, reduce all except those preferred by the testator."	**Art. 950**
When to apply it? If you reduce legacies or devises **because legitimes have been impaired**.	**When to apply it? If for any other reason, distribution and reduction of legacies or devises**, the provision of 950 will apply.

What are the devises or legacies that are without effect? Art. 957- The legacy or devise shall be without effect:

1. **If the testator transforms the thing bequeathed in such a manner that it does not retain either form or the denomination it had.**
   - **Why?** There is an implied revocation. If the testator wanted to give the property then he need not transform it because the description of the property in the will becomes inconsistent to the denomination or form of the newly transformed property.
   - **"I bequeath my ring to X."** after making the will, the ring is melted and turned into a pendant. After probate of the will and distribution there is no more ring to talked about. What is present is a pendant which is inconsistent with the ring that is denominated in the will as a legacy.
   - When a coconut plantation is transformed into a fishpond.

2. **The testator alienates the property bequeathed. This manifests the intent to revoke.**
    - **Exception**: If **pacto de retro** and the **property was reacquired during the testator's lifetime**.

      Why? It manifests the intention of the testator to really bequeath the property as a devise or legacy because why did he repurchase the same if he does not want to give it as a legacy or devise.

    - If the testator acquired the property by whatever title, except pacto de retro, the legacy is still invalid.

3. **The property bequeathed was totally lost. This is without prejudice to liability to breach of warranty against eviction.**

PROPERTY THAT CAN BE GIVEN AS A DEVISE OR LEGACY

Testator is a co-owner Art. 929	**Property belongs to 3rd person Art. 930 & 931**	**Property belongs to the legatee or devisee Art. 932 & 933**
General rule: • The testator can only give as a devise/ legacy his share. • This presupposes that the testator knows that he does not own the entire property. **Exception:** • **Art. 929-** He knows that he does not own the entire thing but he declares in his will that he is giving the entirety of the property. **Exception to exception:** • **Art. 930-** If the testator erroneously believed that he owns it entirely, the legacy or devise is void. • **Why?** It is vitiated by mistake.	**General rule:** • **Art 930-** *"Nemo qoud non habet"* **Exception:** • After making the will the testator acquired the property of the 3rd person by whatever title. • Art. 931- "If the testator orders that a thing belonging to another be acquired in order that it be given to a legatee or devisee, the heir upon whom the obligation is imposed or the estate must acquire it and give the same to the legatee or devisee; but if the owner of the thing refuses to alienate the same, or demands an excessive price therefor, the heir or the estate shall only be obliged to give the just value of the thing."	**Primordial question: *who is the owner of the property at the time of the making of the will?*** • **Art. 933**- If is owned by the legatee or devisee the devise of legacy is void, even if the devisee or legatee subsequently alienates it. • Kaya nang malaman ng legatee/ devisee na yong property niya ay ibibigay ng tetstator sa kanya as a devise or legacy kaya ipinagbili niya para kikita siya nga mas malaki, the bequeath is still void. **Exception:** after making the will, the legatee or devisee acquired the property. Determine if the acquisition is: • **Onerous-** the legacy or devise is valid and the estate may be required to reimburse the amount paid by the legatee or devise in acquiring the property. • **Gratuitous-** the legacy or devise is void because the purpose of the testator that the property goes to the devisee or legatee has already been accomplished with no expense to the legatee or devisee.

Problems:

1. **X,** designated as legatee by **W**, is the owner of the property at the time of the making of **W's** will. Subsequently, after the making of the will **W** bought the property from **X**. Is the legacy to **X** valid, since **W** became the owner of the property?

   No! The material consideration is: who is the owner of the property of at the time of making of the will? If it is owned by the legatee then

the legacy is void. The subsequent acquisition of the testator of the property is immaterial. As per **Article 933**- "If the thing bequeathed belonged to the legatee or devisee at the time of the execution of the will, the legacy or devise shall be without effect, even though it may have been subsequently alienated by him."

2. **X** and **Y** are co-owners of a car. **X** gives as a legacy his **share in the car** to **Z**. After making the will **X** asked **Y** to reimburse his share in the car. Can **Z** demand the legacy after **X**'s death?

   No! Because there was already an alienation made by **X**. **X'**s act of asking **Y** to reimburse the value of his share in the car constitutes alienation since he is relinquishing his right over the car. Once his share is reimbursed, **X** is not anymore a co-owner of the car. As per **Article 957, paragraph 2**- "If the testator by any title or for any cause alienates the thing bequeathed or any part thereof, it being understood that in the latter case the legacy or devise shall be without effect only with respect to the part thus alienated. If after the alienation the thing should again belong to the testator, even if it be by reason of nullity of the contract, the legacy or devise shall not thereafter be valid, unless the reacquisition shall have been effected by virtue of the exercise of the right to repurchase."

   The same is true even if **X** acquires again the property from **Y** from whatever title, except if the re-acquisition is by the exercise of a right to repurchase [*pacto de retro*]. **Why *pacto de retro* only?** Because the ownership of **Y** to the property if there is right to repurchase is subject to a Resolutory condition. The Resolutory condition is the right of **X** to repurchase the property. If **X** does not exercise this right within the specified time then full ownership vest to **Y**.

3. **X** and **Y** own a car. **X** gives the **entire car as a legacy** to **Z**. Subsequently, **X** asked **Y** to reimburse the value of his hare in the car. Is the legacy revoked?

   No! The legacy is not revoked because X is giving the entire car as a legacy. Thus, when he asked Y to reimburse the value of his share in the car it is only that portion which is revoked.

4. **X** owns a car. **X** gives the car to **Z** as a legacy. After making the will **X** sold the same care to **W**. **W** sold the car to **Z**. Can **Z** demand the legacy since he acquired the property onerously?

   No! The legacy is revoked. When **X** sold the property to **W**, the legacy to **Z** was revoked. Such act of **X** constitutes alienation; hence apply **Article 957, par. 2.**

Does ACCRETION apply to legacies and devises? Yes! As per **Article 1023**- "Accretion shall also take place among devisees, legatees and usufructuaries under the same conditions established for heirs."

RULES ON GENERIC DEVISE OR LEGACY

1. Once a choice is made it is not a generic legacy. It becomes specific.
2. Once choice is exercise it becomes irrevocable.
3. The legatee/devisee must communicate his choice to the executor or the heir charge by the testator.
4. The devisee/ legatee have the right of ownership when the choice is already made.

INTRODUCTION TO INTESTATE SUCCESSION

Who are intestate heirs?

1. Legitimate children or descendants.
2. Illegitimate children or descendants.
3. Illegitimate parents.
4. Surviving spouse
5. Brothers and sisters, nephews and nieces
6. Other collateral relatives up to the 5th degree
7. The state

Note:

- Number 1-5 are compulsory and intestate heirs.
- Numbers 6-8 are intestate heirs.

- This shows why the rules on legitime are similar to the rules of intestacy.

BASIC RULES OF INTESTACY

1. **Rule of relationship-** intestate heirs must be related to the deceased.

   There are four kinds:
   - **a.** Family- *jus familia,* ascendants and descendants in the direct line.
   - **b.** Blood- *jus sanguinis*, collaterals up to the 5th degree.
   - **c.** Spouse- **jus conjugis**
   - **d.** *Jus imperii*- the right of sovereignty.
2. **Rule of preference of lines**- this is also true in compulsory succession. The descending is preferred over the ascending.
3. **Rule on proximity of degree-** this rule excludes the further.
4. **Rule of equality among relatives of the same degree-** this is corollary to the preceding number.

   Exceptions:
   - **a.** Relatives of the full and half-blood- Art. 1026
   - **b.** Rule of division by line in the ascending line.
   - **c.** Rule on preference of lines if survived by a father and son, the father is excluded.
   - **d.** Distribution between legitimate and illegitimate children [2:1] even though in the same degree.
   - **e.** By representation- because of this, they inherit in different shares.

LEGAL OR INTESTATE SUCCESSION

General principles:

- **Art. 961-** "In default of testamentary heirs, the law vests the inheritance, in accordance with the rules hereinafter set forth, in the legitimate and illegitimate relatives of the deceased, in the surviving spouse, and in the state."

- **Art. 962**- "In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place.

  Relative in the same degree shall inherit in equal shares, subject to the provisions of Article 1006 with respect to relatives of the full and half blood, and of Article 987, paragraph 2, concerning division between the paternal and maternal lines."

- Testamentary succession is superior to intestate succession because the latter will only operate in the absence of the latter.

What is intestacy? Intestacy is that which takes place by operation of law in default of compulsory and testamentary succession. It is the least preferred among the 3 modes of succession but is the most common.

What are the kinds of Intestate Succession?

- **Tota**l- no testamentary disposition at all.
- **Partial**- A will that disposes a part of the free portion, but does not fully dispose it.

What are the causes of intestate succession? [Article 960]

1. There was no will – total intestacy.
2. There was a will but it is void- no will.
3. When the testator revoked his will and did not make another one- no will.
4. The testator did not institute an heir- useless will as far as succession is concerned.
5. Testator did not dispose all the free portion- partial succession.
6. The instituted heir is incapable of succeeding- only that specific provision of the will will give rise to intestacy.
7. The arrival of a Resolutory term- the disposition of the property that contain such term will go by intestacy upon arrival of the term.
8. Impossibility of ascertaining the will of the testator. This happens after the will is being enforced. If there is ambiguity in the will of the testator, the property will go by intestate succession.
9. Predecease, when representation does not apply.

10. Repudiation, when the repudiating heir has no compulsory heirs.
11. Donation mortis cause which did not follow the forms of wills. Donation is void; the property will go by intestacy.

RELATIONSHIP
Articles 963 to 969

How is proximity of relationship determined? Art. 963- "Proximity of relationship is determined by the number of generation. Each generation form a degree."

- **Concept of degree**- this is the method of computing the proximity of relationship. Every degree is one generation.

- The nearest degree to the decedent excludes the further degrees.

- **Art. 964-** "A series of degrees form a line, which may be either direct or collateral."

What is meant by relative in the direct line?

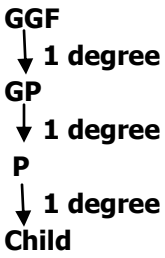
- **Art. 964**- "A direct line is that constituted by the series of degrees among ascendants and descendants."

- **Art. 965-** "The direct line is either descending or ascending.

  The former unites the head of the family with those who descend from him.

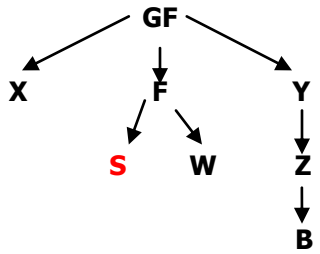
  The latter binds a person with those from whom he descends."

How is the computation of degree of relationship in the direct line? Art. 966- "In the direct line, ascent is made to the common ancestor. Thus, the child is one degree removed from the parent, two from the grandfather and three from the great-grandparent.



What is meant by relative in the collateral line? Art. 964, par. 2- "A collateral line is that constituted by the series of degrees among persons who are ascendants and descendants, but who come from a common ancestor."

How is the computation of degree of relationship in the collateral line? Art. 966, par. 2- "In the collateral line, ascent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, four from his first cousin and so forth."



Is there a limit of those who will inherit from the instestate decedent?

- **Direct line-** there is no limit.
- **Collateral line-** up to the 5th degree only.

Who will get the inheritance of an heir unwilling or incapacitated to succeed? Art. 968- "If there are several relatives of the same degree, and one or some of them are unwilling or incapacitated to succeed, his portion shall accrue to the others of the same degree, save the right of representation when it should take place.

What is the effect if the nearest relative repudiates the inheritance? Art. 966- "If the disinheritance should be repudiated by the nearest relatives, should there be one only, or by all the nearest relatives called by law to succeed, should there be several, those of the following degree shall inherit in their own right and cannot represent the person or persons repudiating the inheritance."

RIGHT OF REPRESENTATION
Articles 970 to 977

General rule:

- **Art. 971-** "The representative is called to the succession by the law and not by the person represented. The representative does not succeed the person represented but the one whom the person represented would have succeeded."

- It is an exception to the principle of proximity, because the farther heirs can inherit as long as representation is proper.

What is representation?

- **Art. 970-** "Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and degree of the person represented, and acquires the rights which the latter would have if he were living or he could have inherited."

  - It is also called **successional subrogation**- it is the process whereby one person takes another's place. The representative is subrogated [takes the place] of the person represented [JBL Reyes].

Under what situations does representation operate?

1. **Predecease**

   Art. 975- "When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions."

   Art. 982- "The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."

2. **Disinheritance**

   Art. 923- "The children and descendants of the person disinherited shall take his or her place and shall preserve the rights of compulsory heirs with respect to the legitime; but the disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime."

3. **Incapacity or unworthiness to succeed**.

   Art. 1035- "If the person excluded from the inheritance by reason of incapacity should be a child or descendant of the decedent and should have children or descendants, the latter shall acquire his right to the legitime.

   The person so excluded shall not enjoy the usufruct and administration of the property thus inherited by his children."

Is there a right of representation in RENUNCIATION/ REPUDIATION? None! Because if the repudiating heir has compulsory heirs, the latter will inherit in their own right and not by way of representation. As per the following provisions:

Art. 968-"If there are several relatives of the same degree, and one or some of them are unwilling or incapacitated to succeed, his portion shall accrue to the others of the same degree, save the right of representation when it should take place."

Art. 969- "If the inheritance should be repudiated by the nearest relative, should there be one only, or by all the nearest relatives called by law to succeed, should there be several, those of the following degree shall inherit in their own right and cannot represent the person or persons repudiating the inheritance."

Art. 977- "Heirs who repudiate their share may not be represented."

In what kind of succession does representation operates?

1. Legitime/ compulsory succession
2. Intestate succession

Note: It does not apply to testamentary succession. **Why?** Representation happens only in the legitime or in case of intestate succession and because of article 856.

Art. 856- "A voluntary heir who dies before the testator transmits nothing to his heirs.

A compulsory heir who dies before the testator, a person incapacitated to succeed, and one who renounces the inheritance, shall transmit no right to his own heirs except in cases [Art. 872] expressly provided for in this code."

Illustration: I institute my son, and if he predeceases me, he will be represented by his son. This is substitution and not representation.

In what line does representation operates?

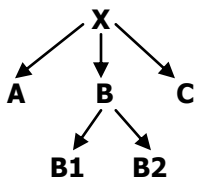
- It operates in the direct descending line and in the collateral line in favor of the children of brothers or sisters.

- **Art. 972**- "The right of representation takes place in the direct descending line but never in the ascending.
  In the collateral line, it takes place only in favor of the children of brothers or sisters, whether they be of the full or half blood."

  In the legitime- only in the direct descending line, never in the ascending line.

  In intestacy
  - **a.** In direct descending line- same as legitimes
  - **b.** Collateral line- nephews and nieces in representation of their parents who predeceased their decedent brother or sister.

  Illustration:



  B predeceases **X**. When **X** dies, **B1** and **B2** can represent **B**'s share in the estate of **X.**

  Note: Teotico vs. Del Val- An adopted child cannot represent his adoptive parents because the fiction is only between the adopter and the adopted.

Must the representative be capacitated to succeed? Yes! **Art. 973**- "In order that representation may take place, it is necessary that the representative himself be capable of succeeding the decedent."

In representation there are 3 parties:

1. The decedent
2. The person represented.
3. The representative

Questions:

1. Must the representative have the capacity to succeed from the decedent? Yes, because the representative is really succeeding from the decedent.

2. Must the representative have the capacity to succeed from the person represented? No, because the representative is not succeeding from the person represented.

3. Must the person represented have the capacity to succeed from the decedent? No, this is precisely why the representative succeeds from the decedent.

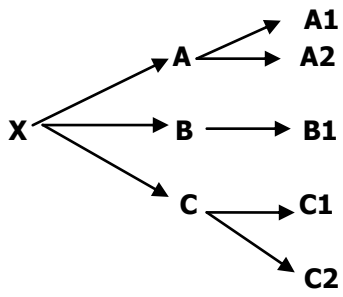
How shall the property be divided in case of representation?

- **Art. 974-** "Whenever there is succession by representation, the division of the estate shall be made per stripes, in such manner the representative or representatives shall not inherit more than what the person they represent would inherit, if he were living or could inherit."

- **Art. 975-** "When children of one of more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions [*per capita*]."

Illustration:

Collateral Line

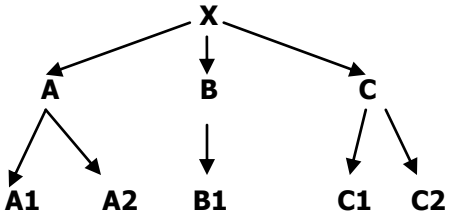


If **B** predeceases **X**, **B1** would represent him in his share. The sharing would be by stirpes.

If **A**, **B**, **C**, predecease **X**, all nephews and nieces inherit in their own right *per capita*. The property will be divided equally.

Note: for representation to operate, it is necessary that an uncle or aunt survives in the collateral line with the nephews and nieces. Otherwise the latter would inherit per capita.

Direct Line



- If **A, B,** and **C predecease X,** all grandchildren inherit by representation, *per stirpes*. They will get the share of the respective parent.

- If **A**, **B**, and **C** renounce, all grandchildren inherit by their own right, *per capita*. Thus each of them will inherit by dividing the property equally among themselves.

Can a person who renounces his inheritance represent? Yes! **Art. 976**- "A person may represent him whose inheritance he has renounced."

Can a person who renounces his inheritance be represented? No! **Art. 977**- "Heirs who repudiate their share may not be represented."

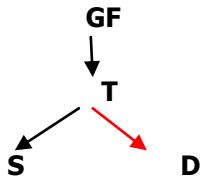
Why? Because if he has compulsory heirs then they inherit in their own right.

Illustration:

C renounces his inheritance from **B**. **B** then dies. Later on, **A** dies. What are the effects?

1. **D** cannot represent **C** in **B's** estate**.**
2. **Can C represent B in A's estate? Yes,** when **C** renounced, he has only renounced his right to inherit from **B.** He did not renounce his right to inherit from **A.**

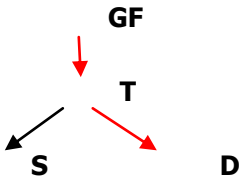
Situation 1



In situation 1: **T** predeceases **GF**. **T** has two children **S** and **D**. **D** is illegitimate. **GF** dies intestate. Who can inherit from **GF** by way of representation?

Only **S** because he is a compulsory heir of **T** in the direct descending line. **D** cannot inherit because of Article 1002, which provides that illegitimate children cannot inherit from the

Situation 2



In situation 2: **T** is an illegitimate child of **GF**. **T** predeceases **GF**. **T** has two children **S** and **D**. **D** is an illegitimate child of **T**. **GF** died intestate. Who can inherit from **GF** by way of representation?

- **S** and **D**. S because he is a compulsory heir of T in the direct descending line.
- **D** because of Articles 988, 989, and 990.

Article 988- "In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased."

Article 989- "If, together with illegitimate children, there should survive **descendants of another illegitimate child** who is dead, the former shall succeed in their own right and the latter by right of representation."

Article 990- "The hereditary rights granted by the two preceding articles to **illegitimate children** shall be transmitted upon their death to their **descendants**, who shall inherit by right of representation from their deceased grandparent.

Note: The word descendants was not qualified, thus it covers legitimate as well a illegitimate children of the represented illegitimate heir.

ORDER OF INTESTATE SUCCESSION
Articles 978 to 1014

DESCENDING DIRECT LINE

Article 978- "succession pertains, in the first place, to the descending direct line."

Article 979- "legitimate children and the descendants succeed the parents and other ascendants without distinction as to sex or age, and even if they should come from different marriages.

An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child."

Article 980- 'The children for the deceased shall always inherit from him in their own right dividing the inheritance in equal shares."

Article 981- "Should children of the deceased and descendants of other children who are dead, survive, the former shall inherit in their own right, and the latter by right of representation."

Article 982- "The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."

Article 983- "If illegitimate children survive with legitimate children, the shares of the former shall be in proportions prescribed by Article 895 [the share of illegitimate child is ½ of the share of a legitimate child]."

Article 984- "in case of the death of an adopted child, leaving no children or descendants, his parents and relatives by consanguinity and not by adoption, shall be his legal heirs."

ASCENDING DIRECT LINE

Article 985- In default of legitimate children and descendants of the deceased, his parents and ascendants shall inherit from him, to the exclusion of collateral relatives.

Article 986- The father and mother, if living, shall inherit in equal shares. Should one only of them survive, he or she shall succeed to the entire estate of the child.

Article 987- In default of the father and mother, the ascendants nearest in degree shall inherit.

Should there by more than one of equal degree belonging to the same line they shall divide the inheritance *per capita*; should they be of different lines but of equal degree, one half shall go to the paternal and the other half to the maternal ascendants. In each line the division shall be made *per capita*.

ILLEGITIMATE CHILDREN

Article 988- In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased.

Article 989- If, together with illegitimate children, there should survive descendants of another illegitimate child who is dead, the former shall succeed in their own right and the latter by right of representation.

Article 990- The hereditary rights granted by the two preceding articles to illegitimate children shall be transmitted upon their death to their descendants, who shall inherit by right of representation from their deceased grandparent.

Article 991- If legitimate ascendants are left, the illegitimate children shall divide the inheritance with them, taking one-half of the estate, whatever be the number of the ascendants or of the illegitimate children.

Article 992- An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

- *This applies only to child, not descendants. This is called the iron curtain rule*

Article 993- If an illegitimate child should die without issue, either legitimate or illegitimate, his father or mother shall succeed to his entire estate; and if the child's filiation is duly proved as to both parents, who are both living, they shall inherit from him share and share alike.

Article 994- In default of the father or mother, an illegitimate child shall be succeeded by his or her surviving spouse, who shall be entitled to the entire estate.

If the widow or widower should survive with brothers and sisters, nephews and nieces, she or he shall inherit one-half of the estate, and the latter the other half.

SURVIVING SPOUSE

Article 995- In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sister, nephews and nieces, should there be any under article 1001.

- **Article 1001-** *Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.*

Article 996- If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children.

Article 997- When the widow or widower survives with legitimate parents or ascendants, the surviving spouse shall be entitled to one-half of the estate, and the legitimate parents or ascendants to the other half.

Article 998- If a widow or widower survives with illegitimate children, such widow or widower shall be entitled to one-half of the inheritance, and the illegitimate children or their descendants, whether legitimate or illegitimate, to the other half.

Article 999- When the widow or widower survives with legitimate children or their descendants and illegitimate children or their descendants, whether legitimate or illegitimate, such widow or widower shall be entitled to the same share as that of a legitimate child.

Article 1000- If legitimate ascendants, the surviving spouse, and illegitimate children are left, the ascendants shall be entitled to one-half of the inheritance, and the other half shall be divided

between the surviving spouse and the illegitimate children so that such widow or widower shall have one-fourth of the estate, and the illegitimate children the other fourth.

Article 1001- Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

Article 1002- In case of a legal separation, if the surviving spouse gave cause for the separation, he or she shall not have any of the rights granted in the preceding article.

COLLATERAL RELATIVES

- It only covers brothers and sisters; nephews and nieces.

Article 1003- If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

Article 1004- Should the only survivors be brothers and sisters of the full blood, they shall inherit in equal shares.

Article 1005- Should brothers and sisters survive together with nephews and nieces, who are the children of the decedent's brothers and sisters of the full blood, the former shall inherit *per capita*, and the latter *per stirpes*.

Article 1006- Should brothers and sisters of the full blood survive together with brother and sisters of the half blood, the former shall be entitled to a share double that of the latter.

Article 1007- In case brothers and sisters of the half blood, some on the father's and some on the mother's side, are the only survivors, all shall inherit in equal shares without distinction as to the origin of the property.

Article 1008- Children of brothers and sisters of the half-blood shall succeed *per capita* or *per stirpes*, in accordance with the rules laid down for brothers and sisters of the full blood.

Article 1009- Should there be neither brothers nor sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood.

Article 1010- The right to inherit *ab intestato* shall not extend beyond the fifth degree of relationship in the collateral line.

THE STATE

- The property of the decedent will go to the state through escheat proceedings.

Article 1011- In default of persons entitled to succeed in accordance with the provisions of the preceding Sections, the State shall inherit the whole estate.

Article 1012- In order that the State may take possession of the property mentioned in the preceding article, the pertinent provisions of the Rules of Court must be observed.

Article 1013- After the payment of debts and charges, the personal property shall be assigned to the municipality or city where the deceased last resided in the Philippines, and the real estate to the municipalities or cities, respectively, in which the same is situated.

If the deceased never resided in the Philippines, the whole estate shall be assigned to the respective municipalities or cities where the same is located.

Such estate shall be for the benefit of public schools, and public charitable institutions and centers, in such municipalities or cities. The court shall distribute the estate as the respective needs of each beneficiary may warrant.

The court, at the instance of an interested party, or in its own motion, may order the establishment of a permanent trust, so that only the income from the property shall be used.

Article 1014- If a person legally entitled to the estate of the deceased appears and files a claim thereto with the court within five years from the date the property was delivered to the State, such person shall be entitled to the possession of the same, or if sold, the municipality or city shall be accountable to him for such part of the proceeds as may not have been lawfully spent.

RULES ON CONCURRENCE AND EXCLUSION OF INTESTATE HEIRS

1. **Legitimate children/ descendants**
   - **a.** excludes ascendants, all collaterals, the State

b. concurs with illegitimate children/ descendants, surviving spouse
c. Excluded by no one.

2. Illegitimate children/ descendants
a. excludes illegitimate parents, collaterals, the State
b. concurs with surviving spouse, legitimate children, legitimate ascendants
c. Excluded by no one.

3. Legitimate parents
a. excludes collaterals, the State
b. concurs with illegitimate children, surviving spouse
c. Excluded by legitimate children.

4. Illegitimate ascendants
a. excludes collaterals, the State
b. concurs with the surviving spouse
c. Excluded by legitimate descendants, illegitimate descendants.

5. Surviving spouse
a. excludes collaterals, other than brothers and sisters, nephews and nieces, the State
b. Concurs with legitimate child, illegitimate child, legitimate and illegitimate brothers and sisters, nephews and nieces.
c. Excluded by no one.

6. Brothers, sisters, nephews and nieces
a. excludes all other collaterals, the State
b. concurs with the surviving spouse
c. Excluded by legitimate children, illegitimate children, legitimate parents, illegitimate parents.

7. Other collaterals
a. excludes collaterals in remote degrees, the State
b. concurs with collaterals in equal degree
c. Excludes legitimate/ illegitimate children/ parents, surviving spouse, brothers and sisters, nephews and nieces.

8. The State
a. excludes no one
b. concurs with no one
c. Excluded by everybody else.

RIGHT OF ACCRETION
Article 1015 to 1023

General Principles:

- Accretion happens only if there is a vacancy.
- **Accretion is a right** and not a process or obligation.
- The **right of accretion** applies in:
  a. Testamentary succession
  b. Intestate succession

  But not with respect to **legitimes**- **Article 1021, par. 2**- "Should the part repudiated be the legitime, the other co-heirs shall succeed to in their own right, and not by the right of accretion."

- **Article 1018**- "In legal succession the share of the person who repudiates the inheritance shall always accrue to his co-heirs.

- **Article 1022-** "In testamentary succession, when the right of accretion does not take place, the vacant portion of the instituted heirs, if no substitute has been designated, shall pass to the legal heirs of the testator, who shall receive it with the same charges and obligations."

- **Article 1023-** "Accretion shall also take place among devisees, legatees and usufructuaries under the same conditions established for heirs."

Why is Testamentary Succession superior to Intestate Succession? Testamentary succession is the realization of the direct intention of testator. While Intestate succession takes place by operation of law. It is the presumed will of the testator. It is subordinate to Testamentary succession because the heirs are limited to their blood relations to the decedent while in testamentary succession even strangers can be designated as heirs as long as the legitime is protected.

What is ACCRETION? Article 1015- "Accretion is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy the part assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heir, co-devisees, or co-legatees."

What are the requisites for the operation of accretion? Article. 1016- "In order that the right of accretion may take place in a testamentary succession, it shall be necessary:
1. That two or more persons be called to the same inheritance, or to the same portion thereof pro indiviso; and
2. That one of the persons thus called due before the testator, or renounces the inheritance, or be incapacitated to receive it.

3. There is no mention of a substitute. **Why?** In testamentary succession, accretion applies only in the free portion.

Note:

- Pro-indiviso means without designation of parts or the portions are undivided.
- The causes for accretion are the same for causes for substitution.

Substitution	**Accretion**	**Representation**
1. Predecease 2. Incapacity 3. renunciation	1. predecease 2. incapacity 3. renunciation	1. predecease 2. incapacity 3. disinheritance

What are the instances where accretion does not apply?

1. When only one heir is designated in a particular property.
2. There is a substitute.
3. Testator provides that accretion will not apply.

ILLUSTRATION:

1. **"I give 5000 to A and B."** If A dies and does not have any children or descendants, accretion will take place. B will get 5, 000; 2,500 by his own right and 2, 500 by accretion.

2. **"I give 5000 to A and B in equal shares."** Accretion will still apply. Equal shares makes explicit what is implied because if nothing is said, it is presumed that it is in equal shares.

3. **"I give 1/2 to A, 1/4 to B and 1/8 to C".** This seems to imply accretion.

   a. Is it possible to have unequal pro-indiviso shares? Yes. As long as they are undivided, aliquot or abstract. It is not required that they be in equal shares. What is required is that it be pro-indiviso.

   b. Accretion will not apply according to commentators. Pro-indiviso is not a good phrase, it should be without any particular designation of shares.

   If equal shares- Article 1017, accretion applies.

   If unequal shares, can accretion apply?

   1. Yes, Article 1016
   2. No. according to commentators. If sharing is not the same, accretion cannot take place.

Article 1017- The words "one-half for each" or "in equal shares" or any others which, though designating an aliquot part, do not identify it by such description as shall make each heir the exclusive owner of determinate property, shall not exclude the right of accretion.

In case of money or fungible goods, if the share of each heir is not earmarked, there shall be a right of accretion."

Is there a right of accretion among compulsory heirs in testamentary succession?
Article 1021- Among the compulsory heirs the right of accretion shall take place only when the free portion is left to two or more of them, or to any of them and to a stranger.

Should the part repudiated be the legitime, the other co-heirs shall succeed to in their own right, and not by the right of accretion."

Up to what extent is the share of the heir whom the property goes by way of accretion?

- **Article 1019-** The heirs to whom the portion goes by the right of accretion take it in the same proportion that they inherit.

  This implies that the proportion is different. This applies in intestacy and not to testamentary succession. In testamentary succession, shares are always equal because of designation of shares. In intestacy, it is possible to have different shares.

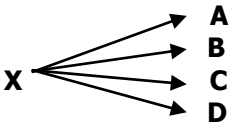
  E.g.: full blood and half blood.

- **Article 1020-** The heirs to whom the inheritance accrues shall succeed to all the rights and obligations which the heirs who renounced or could not receive it would have had."

  - Co-heirs get their share with the same obligations and conditions.
  - Can representatives get accretion? Yes! If person represented will get the accretion, then the representative should also get the accretion.

Illustration:

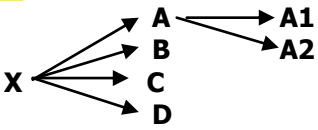
Article 1019



Estate= 600, 000. If **C** predecease **X**, then
B= 200, 000 + 40, 000= 240, 000
C= 200, 000 + 40, 000= 240, 000
D= 100, 000 + 20, 000+ 120, 000

The share of **C** is divided in the proportion they were to inherit.

Article 1020



Estate= 600, 000. A predecease X. B renounced.

If all are present, then 150, 000 each. However B renounced so his share will be divided by his co-heirs by way of accretion.

A1 and **A2**= 150, 000 + 50, 000= 200, 000
C= 150, 000 + 50, 000+ 200, 000
D= 150, 000 + 50, 000= 200, 000

- **A1** and **A2** get accretion because they represent **A** in **A**'s rights as if A is still around. They stand in the same position as a person represented.
- **A1** and **A2** get 75, 000 each by right of representation, and 25, 000 each by accretion.

Does accretion happens on ascendants?

- Yes, by analogy.

- **Article 987-** "In default of father and mother, the ascendants nearest in degrees shall inherit.

  Should there be more than one equal degree belonging to the same line they shall divide the inheritance per capita; should they be of different lines but of equal degree, one-half shall go to the paternal and the other half to the maternal ascendants. In each line the division shall be made per capita."

	Legitime	Free Portion	Intestate Succession
Predecease	1. Right of representation 2. Representation not applicable, heirs inherit in their own right. 3. No accretion	1. Substitution; 2. Substitution not applicable, then accretion	1. Inherit in their own right [Art. 981]. 2. No accretion
Incapacity	• Same proceeding as predecease.	1. Substitution; 2. Substitution not applicable, then accretion	1. Representation 2. Accretion [Art. 968].
Repudiation	1. Heirs inherit in their own right. 2. No accretion and representation.	1. Substitution; 2. Substitution not applicable, then accretion	1. Accretion [Art. 1018]. 2. Intestate succession
Disinheritance	1. Right of representation. 2. Representation not applicable, co-heirs inherit in their own right. 3. No accretion.	• Disinheritance does not apply in the free portion and intestate succession. It only operates in the legitime.	• Not applicable. Why? There is no will containing the disinheritance. Though unworthiness is applicable.

CAPACITY TO SUCCEED BY WILL OR BY INTESTACY
Article 1024 to 1040

General Principles:

- **Article 1031-** A testamentary provision in favor of a disqualified person, even though made under the guise of an onerous contract, or made through an intermediary, shall be void.

  - What you cannot do directly, you cannot do indirectly!

- **Article 1039-** Capacity to succeed is governed by the l**aw of the nation of the decedent**.

  Corollary to Article 16- "Real property as well as personal property is subject to the law of the country where it is situated.

  However, intestate and testamentary successions, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law of the person whose succession is under consideration, whatever may be the nature of the property and regardless of the country wherein said property may be found."

What are the requirements so that one has the capacity to succeed?

1. Heirs must not be incapacitated to succeed
   - **Article 1024-** "Persons not incapacitated by law may succeed by will or *ab intestato*.

     The provisions relating to incapacity by will are equally applicable to intestate succession."

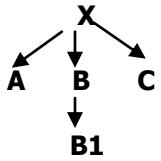
   Note:
   - **Par 1**- *ab intestato* refers both to legitime and intestacy.
   - **Par 2**- incapacity to succeed by will, Articles 1027, 1028 and 1032 are they applicable to intestacy? Not at all.
     a. **Applies to incapacity by will**- Article 1027, par 1 to 5, 1028 are applicable only to testamentary succession.
     b. **Applies to both**- Articles 1027, par 6 and Article 1032.

2. **General rule:** The heir, devisee, legatee must be living at the moment the succession opens.

   Exception: except in cases of representation but the representative must be alive at the time of the death of the decedent.
   - **Article 1025-** "Inorder to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens except in case of representation, when it is proper.

     A child already conceived at the time of the death of the decedent is capable of succeeding provided it be born later under the conditions prescribed in Article 41."

Illustration:



1. **B** died on January 2012. **B's** wife is pregnant. **X** dies in March 2012. **B1** is born in July 2012. Was **B1** alive when **X** died? **Yes!**

   Article 5, P.D. No. 603- The civil personality of the child shall commence from the time of his conception, for all purposes favorable to him, subject to the requirements of Article 41 of the Civil Code.

   Article 41- "For civil purposes, the fetus is considered born if it is alive at the time it is completely delivered from the mother's womb.

   However, if the fetus had an intra-uterine life of less than seven months, it is not deemed born if it dies within 24 hours after its complete delivery from the maternal womb."

2. **B** is disinherited in 2009. **X** dies in 2010. **B1** is born in 2012.
   a. Can **B1** represent **B**? No he was not living at the time **X** died.
   b. Can **B1** inherit from **X**? No because of Article 1025, par 1. **B1** is not alive at the time the moment the succession opens.

   Case: Parish Priest of Victoria vs. Rigor- In the case, the priest provided that his estate will go to any of the nephews who may enter the priesthood. The nephew claiming, however, was born after the priest had died. As such, the nephew cannot inherit.

Who are incapable of succeeding? INCAPCITY to SUCCEED because of RELATIONSHIP

Article 1027- The following are incapable of succeeding:

1. The priest who heard the confession of the testator during his last illness or the minister of the gospel who extended spiritual aid to him during the same period.

2. The relatives of such priest or minister of the gospel within the fourth degree, the church, order, chapter, community, organization, or institution to which such priest or minister may belong;

3. A guardian with respect to testamentary dispositions given by a ward in his favor before the final accounts of the guardianship have been approve, even if the testator should die after the approval thereof; nevertheless, any provision made by the ward in favor of the guardian when the latter is his ascendant, descendant, brother, sister, or spouse, shall be valid;

4. Any attesting witness to the execution of a will, the spouse, parents, or children, or any one claiming under such witness, spouse, parents, or children;

5. Any physician, surgeon, nurse, health officer or druggist who took care of the testator during his last illness;

6. Individuals, associations and corporations not permitted by law to inherit.

Note:

- 1 to 5 have no applications to legitimes.
- Pardon or reconciliation does not apply. Why? These grounds are against public policy.

Par. 1- Priest or Minister of the Gospel

Requisites: for the disqualification to be operative-

1. The will was made during the last illness.
2. The spiritual ministration must have been extended during the last illness.
3. The will was executed during or after the spiritual ministration

What does priest or minister of the gospel cover? Despite this apparent restriction to Christian ministers, this applies to all spiritual ministers, e.g., Buddhists and Monks.

Why the prohibition? Because it is conclusively presumed that the spiritual minister used his moral influence to induce or influence the sick person to make a testamentary disposition in his favor.

Illustrations:

1. **A**, a priest, is a friend of **B**. **B** regularly goes to confession to **A**. **B** then becomes seriously ill. He executes a will instituting **A** to 1/3 of his estate. Is this testamentary disposition valid or is **A** capacitated to inherit from **B**? Yes! A is capacitated to inherit because the spiritual ministration was not done during the last illness of the testator.

2. On his deathbed, **X** makes a will instituting **Y**, a priest. Thinking he will die, **X** calls **Y** for confession. Is **Y** capacitated to inherit from **X**? Yes! **Y** is capacitated to inherit because the making or the will was before the spiritual ministration.

3. When does paragraph 1, in other words, when is the priest incapacitated to succeed?
   a. When the confession is made prior to the making of a will- if simultaneous the priest is still disqualified. If the will is made first, the priest can inherit.
   b. **If the confession was made before the will was made and the priest is the son of the sick person, can the priest inherit upon the death of the sick person**? Yes, he can get his legitime, because he is a compulsory heir.

If the priest were a brother? Yes! He can inherit by intestacy the disqualification applies only to testamentary dispositions.

Par. 2- Relatives of the Priest or Minister of the Gospel

- Relatives- up to fourth degree.
- Omission was made of the spouse of the minister of the gospel. What is the remedy? Apply Article 1031. To disqualify the spouse, you have to show that the testamentary benefaction given to the wife was meant to benefit the minister.

Par. 3- Guardian

- **Who are contemplated as guardians?** Guardian of the property and the person because they have more opportunity to influence the ward.

- **General rule:** disqualification applies when the disposition is made: after the guardianship begun [beginning of the guardianship] and

before termination of guardianship [approval of final accounts or lifting of guardianship].

- **Exception:** disposition is valid when the guardian is an ascendant, descendant, brother, sister or spouse.

Par. 4- Attesting Witness

- **General rule:** any attesting witness to the execution of a will, the spouse, parents, or children, or any one claiming under such witness, spouse, parents, or children are disqualified.

- **Exception:** if there are 3 other witnesses to the will.

- Corollarily, **Article 823** provides that- "If a person attests the execution of a will, to whom or to whose spouse, or parent, or child, a devise or legacy is given by such will, such devise or legacy shall, so far only concerns such person, or spouse, or parent, or child of such person, or any one claiming under such person or spouse, or parent, or child, be void, unless there are three other competent witnesses to such will. However, such person so attesting shall be admitted as a witness as if such devise or legacy had not been made or given."

Par. 5- Physician, Surgeon, Nurse, Health Officer or Druggist

Requisites:

1. The will was made during the last illness
2. The sick person must have been taken care of during his last illness, medical attendance was made.
3. The will was executed during or after he was being taken care of.

INCAPACITY to SUCCEED by REASON of UNWORTHINESS

Article 1032- "The following are incapable of succeeding by reason of unworthiness:

1. Parents who have abandoned their children or included their daughters to lead a corrupt or immoral life, or attempted against their virtue;
2. Any person who has been convicted of an attempt against the life of the testator, his or her spouse, descendants, or ascendants;
3. Any person who has accused the testator of a crime for which the law prescribes imprisonment for 6 years or more, if the accusation has been found groundless;
4. Any heir of full age who, having knowledge of the violent death of the testator, should fail to report it to an officer of the law within a month, unless the authorities have already taken action; this prohibition shall apply to cases wherein, according to law, there is no obligation to make an accusation;
5. Any person convicted of adultery or concubinage with the spouse of the testator;
6. Any person who by fraud, violence, intimidation, or undue influence should cause the testator to make a will or to change one already made;
7. Any person who by the same means prevents another made, or who supplants, conceals, or alters the latter's will;
8. Any person who falsifies or forges a supposed will of that decedent.

Note:

- Grounds 1, 2, 3, 5 and 6 are the same as in disinheritance.

- Number 4 has no application because there is no obligation to accuse. There is no law that obligates to accuse. Only a civic or moral duty but not a legal duty.

- Numbers 6, 7, and 8 covers six cases of acts relating to a will:
    1. Causing the testator to make a will.
    2. Causing the testator to change an existing will.
    3. Preventing the decedent from making a will.
    4. Preventing the testator from revoking his will.
    5. Supplanting, concealing, or altering the testator's will.
    6. Falsifying or forging a supposed will of the decedent.

Does the ground for unworthiness conflicts with the ground for disinheritance? No! There is no conflict despite similar grounds.

Illustration: A son of B tries to kill B. B may disinherit him. If B disinherits him under Article 919, then A is disqualified to inherit. However, even if B did not disinherit A, A is incapacitated to inherit because of Article 1032. Thus, causes for disinheritance and causes for unworthiness to succeed exclude each other. Once decedent uses the grounds for disinheritance he cannot anymore use causes for unworthiness since they have the same effect.

What is the requirement so that an unworthy heir can inherit? Article 1033- "The causes of unworthiness shall be without effect if the testator had

knowledge thereof at the time he made the will, or if, having known of them subsequently, he should condone them in writing."

Note:

- "Had knowledge at the time he made the will"- in this case it is presumed that testator had pardoned the offender.
- Known subsequently- needs written pardon.
- In disinheritance, incapacity to disinherit is lifted by reconciliation but in Article 1033, there must be a pardon in writing.
- Problem arises if the testator made a will disinheriting. What rule will you apply if the reason for disinheriting was a common ground?
  - **a.** If you follow the rule of disinheritance- Yes
  - **b.** If you follow the rules of unworthiness- no. Why? To make the rules of unworthiness apply would be giving precedence to the presumed will over the express will.

When is the time to judge the capacity of an heir to succeed? Article 1034- "Inorder to judge the capacity of the heir, devisee or legatee, his qualification at the time of the death of the decedent shall be the criterion.

In cases falling under Nos. 2, 3, or 5 Article 1032, it shall be necessary to wait until final judgment is rendered, and in the case falling under No. 4, the expiration of the month allowed for the report.

If the institution, devise or legacy should be conditional, the time of the compliance with the condition shall also be considered."

Note:

- **Par. 1**- Time of death because of Article 777. The time succession opens, no exceptions.
- **Par. 2**- Grounds 2, 3, of Article 1032- wait or final judgment when conviction is needed.
- **Par. 3**- conditional heir must be capacitated to succeed at the time of compliance and time of death of the decedent.

What are the rights of the compulsory heirs of an excluded heir because of unworthiness? Article 1035- "If the person excluded from the inheritance by reason of incapacity should be a child or descendant of the decedent and should have children or descendant, the latter shall acquire his right to the legitime.

The person so excluded shall not enjoy the usufruct and administration of the property thus inherited by his children."

Note:

- This grants right of representation to children or ascendants of incapacitated children or descendants.
- The representation covers the legitime and intestacy.

Who are incapacitated to succeed in testamentary succession?

- **Article 1028-** 'The prohibitions mentioned in Article 739, concerning donations inter vivos shall apply to testamentary provisions.

- **Article 739-** "The following donations shall be void:
  1. Those made between persons who were guilty of adultery or concubinage at the time of the donation.
  2. Those made between persons found guilty of the same criminal offense, in consideration thereof.
  3. Those made to a public officer or his wife, descendants and ascendants by reason of his office.

  In the case referred to in no. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.

Can the testator dispose his properties for the benefit of his soul?

- Yes.
- **Article 1029**- "Should the testator dispose of the whole or part of his property or prayers and pious works for the benefit of his soul, in general terms and without specifying its application, the executor, with the court's approval shall deliver one-half thereof of its proceeds to the church or denomination to which the testator may belong, to be used for such prayers ad pious works, and the other half to the State, for the purposes mentioned in Article 1013."

What is the rule if there is a testamentary provision in favor of the poor in general, without designation of particular persons or any community?

Article 1030- "Testamentary provisions in favor of the poor in general, without designation of particular persons or of any community, shall be deemed limited to the poor living in the domicile of the testator at the time of his death, unless it should clearly appear that his intention was otherwise.

The designation of the persons who are to be considered as poor and the distribution of the property shall be made by the person appointed by the testator for the purpose; in default of such person, by the executor; and should there be no executor, by the justice of the peace, the mayor, and the municipal treasurer who shall decide by a majority of votes all questions that may arise. In all these cases, the approval of the Court of First Instance shall be necessary.

The preceding paragraph shall apply when the testator has disposed of his property in favor of the poor of a definite locality."

- This is limited to the poor living at the domicile of the testator upon his death.

- **Who is to designate?** [in order of preference]
  - **a.** Person appointed by the testator for that purpose.
  - **b.** Executor
  - **c.** MTC judge, mayor, municipal treasurer. This never happens because if there are no A and B, the court appoints an administrator.

Can you make a testamentary disposition in favor of juridical persons?

- Yes, provided it is allowed by their charter and they exist at the time of the death of the decedent.

- **Article 1026-** "A testamentary disposition may be made to the State, provinces, municipal corporations, private corporations, organizations, or associations for religious, scientific, cultural, educational, or charitable purposes.

  All other corporations or entities may succeed under a will, unless there is a provisions to the contrary in their charter or the laws of their creation, and always subject to the same."

Illustration: "I give 1/3 of my estate to Wakas Organization, a non-incorporated organization." Is this valid? No, it has no juridical personality.

Effects of Acts Performed b the Excluded Heir

1. **Article 1036-** Alienations of hereditary property, and acts of administration performed by the excluded heir, before the judicial order of exclusion, are valid as to third persons who acted in good faith; but the co-heirs shall have to recover damages from the disqualified heir.

2. **Article 1037-** The unworthy heir who is excluded from the succession has a right to demand indemnity for any expenses incurred in the preservation of the hereditary property, and to enforce such credits as he may have against the estate.

3. **Article 1038-** Any person incapable of succession, who disregarding the prohibition stated in the preceding articles, entered into possession of the hereditary property, shall be obliged to return it together with its accessions.

When is the period to file action to recover inheritance from an excluded heir? Article 1040- The action for a declaration of incapacity and for the recovery of the inheritance, devise or legacy shall be brought within 5 years from the time the disqualified person took possession thereof. It may be brought by anyone who may have an interest in the succession.

Acceptance and Repudiation of the Inheritance Article 1041 to 1057

General Principles:

- **Article 1041-** The acceptance or repudiation of the inheritance is an act which is purely voluntary and free.

  Basic Rules
  - **a.** Rules for acceptance are more liberal than the rules of repudiation because the former are beneficial to the heir while the latter is prejudicial to the heir.
  - **b.** In case an heir is incompetent/ insane or a minor, acceptance or repudiation must be made by a representative. In case of renunciation, court approval is necessary because of the preceding rule.

- **Article 1042-** The effects of the acceptance or repudiation shall always retroact to the moment of the death of the decedent.

  Why? Because of Article 777.

- **Article 1053-** If the heir should die without having accepted or repudiated the inheritance his right shall be transmitted to his heirs.

  Why? Because their right has vested in him at the time the decedent died.

When should one accept or repudiate an inheritance?

- **Article 1043-** No person may accept or repudiate an inheritance unless he is certain of

the death of the person from whom he is to inherit, and of his right to the inheritance.

- This requires: a) certainty of death; b) right to inherit is established.

Who can accept or repudiate an inheritance?

Article 1044- Any person having the free disposal of his property may accept or repudiate an inheritance.

Any inheritance left to minors or incapacitated persons may be accepted by their parents or guardians. Parents or guardians may repudiate the inheritance left to their wards only by judicial authorization.

The right to accept an inheritance left to the poor shall belong to the persons designated by the testator to determine the beneficiaries and distribute the property, or in their default to those mentioned in Article 1030.

Par. 1- must have capacity to dispose of the property.
- **a.** Of age
- **b.** Not restricted in his capacity to act.

Par. 2- Minors or incapacitated can inherit through their parents or legal guardians. But to renounce, judicial approval is necessary.

How should an acceptance be made? An acceptance may be made:

1. **Express**- In clear and explicit terms. In writing whether in a private or public document.]

   Article 1049- Acceptance may be express or tacit.

   An express acceptance must be made in public or private document.

   A tacit acceptance is one resulting from acts by which the intention to accept is necessarily implied, or which one would have no right to do except in the capacity of an heir.

   Acts of mere preservation or provisional administration do not imply an acceptance of the inheritance if, through such acts, the title or capacity of an heir has not been assumed.

2. **Tacit-** results from acts which intent to accept is implied.

   Article 1050- An inheritance is deemed accepted:

   a) If the heirs sells, donates, or assigns his right to a stranger, or to his co-heirs, or to any of them.
   b) If the heir renounces the same, even through gratuitously, for the benefit of one or more of his co-heirs'.
   c) If he renounces it for a price in favor of all his co-heirs indiscriminately; but if this renunciation should be gratuitous, and the co-heirs in whose favor it is made are those upon whom the portion renounced should devolve by virtue of accretion, the inheritance shall not be deemed as accepted.

   Par 1- Acts of ownership- to do these acts, the heir must have accepted the inheritance. The heir cannot do these acts without him accepting first the inheritance.

   Par. 2- Heirs is really giving it- to do this, the heir must have accepted it first.

   Par 3- sells it- must have acquired something before you can sell.

3. **Implied**- If the heir does not do anything within 30 days, then it is deemed accepted.

   Article 1057- Within 30 days after the court has issued an order for the distribution of the estate in accordance with the Rules of Court, the heirs, devisees and legatees shall signify to the court having jurisdiction whether they accept or repudiate the inheritance.

   If they do not do so within that time, they are deemed to have accepted the inheritance."

- The 30 day period is counted from the receipt of the order.

How should repudiation of an inheritance be made? Article 1051- The repudiation of an inheritance shall be made in a public instrument or authentic instrument or by petition presented to the court having jurisdiction over the testamentary or intestate proceedings."

Note:
- **a.** Forms of renunciation
  - **1.** Public instrument or authentic instrument
  - **2.** Petition presented to the court
- **b.** Strict form is required. One cannot renounce tacitly or impliedly.

What is the effect once acceptance or repudiation is made? Article 1056- The acceptance or repudiation if an inheritance, once made, is irrevocable, and cannot be impugned, except when it was made through any of the causes that vitiate consent, or when an unknown will appears.

Note:

- **General rule:** Irrevocability of acceptance or repudiation.
- **Exceptions:** (1) Vitiated consent; e.g. where there is fraud. (2)When an unknown will appears. You cannot renounce what you do not know.

To whom the heir communicates his acceptance or repudiation?

- To the court
- Why? Because the giver is already dead. See article 1057.

Who can accept an inheritance given to a corporation?

- **Article 1045-** The lawful representatives of corporations, associations, institutions and entities qualified to acquire property may accept any inheritance left to the latter, but in order to repudiate it, the approval of the court shall be necessary."

- Acceptance needs a lawful representative while renunciation needs court approval.

Can public official establishments accept or repudiate an inheritance?

- Yes subject to the approval of the government.
- **Article 1046-** "Public official establishments can neither accept nor repudiate an inheritance without the approval of the government."

Can a married woman accept or repudiate an inheritance even without the consent of the husband?

- Yes!
- **Article 1047**- "A married woman of age may repudiate an inheritance without the consent of her husband."

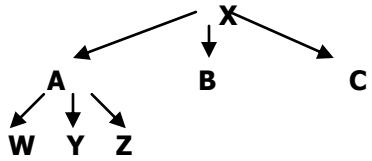
- **General rule**: A married woman may accept without the consent of her husband.
- **Exception:** if she is insane. In this case, however the marriage is not the reason for the incapacity. The husband's consent is needed.

What is the rule if deaf-mutes are subject of an inheritance? Article 1048- Deaf-mutes who can read and write may accept or repudiate the inheritance personally or through an agent. Should they not be able to read and write, the inheritance shall be accepted by their guardians. These guardians may repudiate the same with judicial approval."

What is the recourse of a creditor of a renouncing heir? Article 1052- If the heir repudiates the inheritance to the prejudice of his own creditors, the latter may petition the court to authorize them to accept it in the name of the heir."

What is the rule if several heirs were called to the inheritance? Article 1054- Should there be several heirs called to the inheritance his right shall be transmitted to his hiers.

Illustration



X died on January 1, 2011. A died on January 14, 2011 without having accepted or repudiated the inheritance. WYZ get the rights of A. Any of them may renounce. If W and Y renounce, then 2/3 of A's share is deemed renounce. No accretion takes place between WYZ.

What is the rule if an heir is both an intestate or testate heir and he renounces? Article 1055- If a person, who is called to the same inheritance as an heir by will and *ab intestato*, repudiates the inheritance in his capacity as a testamentary heir, he is understood to have repudiated it in both capacities.

Should he repudiate it as an intestate heir, without knowledge if his being a testamentary heir, he may still accept it in the latter capacity."

Note: If the heir is both a testate and intestate heir:

1. If he renounces in a testate capacity- he is deemed to have renounced in both capacities. Why? If the heir rejected an express will, then he is deemed to have rejected the implied will.
2. If he renounces in an intestate capacity, whether he had knowledge that he was a testate heir or not, only his capacity to inherit as an intestate heir is renounced. Even if he had knowledge, he may want to accept the testate, share to show respect for the will of the testator. Philosophy behind this is that testamentary succession is superior to intestate succession.

- Legitime is treated separately- this may be accepted or renounced separately. The heir may accept the testate share and reject the legitime and vice versa.