# PRELIMINARY CHAPTER

My professor once said that there are only two things which are certain in life, death and taxes. They are similar as both death and taxes constitute a burden, emotional for the former, financial on the latter. At the same time, death and taxes have far reaching legal consequences.

A deceased person can no longer own property, enter into contracts, exercise rights and perform obligations. Upon a person's death, more often than not, there will be some properties left behind, rights still to be exercised, obligations left unfulfilled inasmuch as death comes at the most unexpected time and place. The law thus steps in to ensure that the vacuum created by death and its corresponding legal consequences are addressed.

The law on succession addresses one of the more important legal consequences of death which is the transfer of ownership of properties, rights, and obligations.

Under Philippine law, there are several modes of acquiring or transferring ownership; occupation, law, donation, *tradicion* (delivery), intellectual creation, prescription, and succession. Among the aforementioned modes of acquiring ownership, succession is unique since the transfer necessitates the fact of death. No property may be transferred to another by succession without the death of the transferor. As such, it is a derivative mode of acquiring ownership since the property transferred by the operation of succession presupposes a previous owner.

Succession and Persons and Family Relations: The filiation and legitimacy of the descendant as well as of the ascendant in relation to the decedent affects the share of the heirs. As a basic proposition, an illegitimate child gets only half the share of a legitimate child. The classification whether a decedent is legitimate

or illegitimate also affects the order of intestate succession. The Family Code, which amended most of the provisions of Book I of the Civil Code, also provides for a different order of intestate succession in the adopted line. There are many other provisions in the Family Code which involves principles of succession such as those regarding the nullity of marriage, annulment, and legal separation all of which require for the delivery of the presumptive legitime to compulsory heirs. Provisions regarding support come into play in the law on succession when a testator intends to disinherit any of his heirs.

Succession and Property: The concept of co-ownership is intertwined with the discussion of co-heirs especially with respect to the extent of their powers of administration and alienation. Further, in fideicommissary substitution and reserva troncal, the powers of a fiduciary heir and that of a reservista have been likened to that of a usufructuary.

Succession and Obligations and Contracts: The making of a will must be free of any vice of consent. These vices of consent such as violence, intimidation, undue influence, mistake, and fraud are discussed under the law on contracts. An entire chapter in the law on succession deals with conditions and terms which were already introduced in the law on obligations.

Succession and Conflicts of Law: The law on succession also provides for conflicts' rules for wills with a foreign element; e.g. those wills executed in this country by aliens or those executed by Filipinos abroad.

Basis for the Law on Succession: There are several theories advanced by certain jurists which explain the legal bases of succession. But in any capitalist economy, one basic premise remains true in any of these theories. Property owners are given the freedom to dispose of their property in accordance with their own desires – whims and caprices included.

Succession based on Family Relations: By virtue of strong family ties, persons are presumed to own property not only for themselves but also for their children, spouse, parents, and other relatives. Such being the case, the property owned by one is

owned by all, *i.e.*; family co-ownership. Thus, intestate succession finds support in this basis considering the rules of proximity and equal division and the order of intestate succession contemplate the relationship of the heirs to the decedent in determining the priority of heirs and the amount of their respective shares.

Succession as an Attribute of Ownership: Even at death, a person has the power to control the disposition of his property inasmuch as the power to dispose is an inherent attribute of ownership. Therefore, within the limits fixed by law, a person may distribute his property to anyone he wishes. Both testamentary and intestate succession find support in this theory since a testament is an instrument controlling the disposition of the estate while, in the absence of a testament, the law on intestate succession takes its place by calling on the heirs who would have received the estate had the decedent written a will.

Eclectic theory: Under this theory, the bases for succession include a combination of both the right of the family and the right on private ownership. Ultimately, there is the presence of both individual and social necessity to perpetuate man's patrimony beyond his human existence. It is an individual necessity to preserve the property generally within the family based on man's affection for his blood relatives. It is also a social necessity to preserve the property for a certain group of persons to ensure the continuity of ownership. In the absence of any system of succession, upon a person's death, property is left without a qualified owner even without abandonment. Under our system of property ownership, the properties left behind would necessarily revert to the status of *res nullius* and chaos would necessarily be forthcoming as people would kill each other trying to get said property. In order to avoid this situation, the law recognizes the need for a system whereby another person shall automatically take the place of this private owner so as to continue its private property characteristics.

Practical Significance of Succession: All persons would appreciate a basic understanding of our rules on succession considering that death is an inevitable event that will be experienced by all.

1. For Law students, passing Succession is crucial since this four-unit course may well decide whether they will be able to finish their law studies within the usual four years.

2. For Law graduates, understanding Succession is important since there has been at least one question involving Succession under Civil Law in all Bar examinations given by the Supreme Court. Most recently, during the 2008 Bar examinations, there were more than ten (10) questions that involved issues regarding succession.

3. For Law practitioners, a comprehensive knowledge of principles of Succession is necessary when handling probate and intestate cases as well as estate planning projects.

4. For laymen, an awareness of the fundamentals of succession is imperative considering that death(s) in the family is certain to come, and so too its adjunct which is the partition of the deceased person's estate.

Additional Readings:

1. John Langbein, The Twentieth Century Revolution in Family Wealth Transmission, 86 Mich L Rev, 722, 736-46 (1988)

2. Edward C. Halbach Jr., An Introduction to Chapters 1-4 in Death, Taxes, and Family Property 3. (Halbach ed.) West Publishing Co. 1977. pp 3, 4-6

3. Lawrence M Friedman, The Law of Succession in Social Perspective in Death, Taxes, Family Property 9 (Halbach ed.) West Publishing Co. 1977. pp. 9, 11-14

**Article 774. Succession is a mode of acquisition by virtue of which the property, rights and obligation to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.**

**Article 775. In this Title, "decedent" is the general term applied to the person whose property is transmitted through succession, whether or not he left a will. If he left a will, he is also called the testator.**

Elements of Succession: By the definition set forth in Article 774, the elements of succession are as follows:

1. It is a mode of acquiring ownership, one of those enumerated in Article 712 of the Civil Code.
2. It is a gratuitous transmission, sometimes referred to as a donation mortis causa.
3. It is a transmission of property, rights and obligations to another to the extent of the value of the inheritance.
4. The transmission of property, rights, and obligations is by virtue of death.
5. The transmission occurs either by will or by operation of law.

Succession as a mode of acquiring ownership: Under the law, persons with legal capacity may own properties, acquire rights, and incur obligations. Succession is one mode of transferring ownership of properties, acquiring certain rights, and assuming specific obligations. It is a derivative mode since the transfer presupposes a previous owner as compared to original modes where the property subject of the acquisition has no previous owner such as occupation and intellectual creation. Because of succession, upon a person's death, his heir becomes the owner of whatever property, rights, and obligations are left by the decedent either voluntarily (by will) or involuntarily (by operation of law). Other derivative modes of acquiring ownership include law, donation, tradition (delivery), and prescription.

*Art. 712. Ownership is acquired by occupation and by intellectual creation. Ownership and other real rights over*

*property are acquired and transmitted by law, by donation, by estate and intestate succession, and in consequence of certain contracts, by tradition. They may also be acquired by means of prescription.*

Gratuitous transmission: The transmission of property, rights, and obligations, is essentially gratuitous in nature. Transfer of ownership by way of succession is sometimes referred to as donation *mortis causa*. The transfer is solely dependent on the liberality of the decedent — clear and express by will in testamentary succession, and assumed and implied by law in intestate succession. When an heir succeeds, the obligations which he inherits may not be more than the value of the property and rights received by him. Otherwise, if he has to pay an amount greater than what he has received, the purpose of the inheritance, to bequeath a gift to the heir, is negated.

*Art. 725. Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.*

Gratuitous transmission inter vivos or mortis causa: A donation that purports to be inter vivos but withholds from the donee the right to dispose of the donated property during the lifetime of the donor is in truth a donation mortis causa.

**ESTATE OF HEMADY v. LUZON SURETY**
**100 PHIL. 388 (1956)**

*FACTS:* Luzon Surety filed a claim against the estate of K.H. Hemady based on indemnity agreements (counterbonds) subscribed by distinct principals and by the deceased K.H. Hemady as surety (solidary guarantor). As a contingent claim, Luzon Surety prayed for the allowance of the value of the indemnity agreements it had executed. The lower court dismissed the claim of Luzon Surety on the ground that "whatever losses may occur after Hemady's death, are not chargeable to his estate, because upon his death he ceased to be a guarantor."

*ISSUES:* What obligations are transmissible upon the death of the decedent? Are contingent claims chargeable against the estate?

*HELD:* Under the present Civil Code (Article 1311), the rule is that "Contracts take effect only as between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law." While in our successional system the responsibility of the heirs for the debts of their decedent cannot exceed the value of the inheritance they receive from him, the principle remains intact that these heirs succeed not only to the rights of the deceased but also to his obligations. Articles 774 and 776 of the New Civil Code expressly so provide, thereby confirming Article 1311.

In Mojica v. Fernandez, the Supreme Court ruled — "Under the Civil Code the heirs, by virtue of the rights of succession are subrogated to all the rights and obligations of the deceased (Article 661) and can not be regarded as third parties with respect to a contract to which the deceased was a party, touching the estate of the deceased x x x which comes in to their hands by right of inheritance; they take such property subject to all the obligations resting thereon in the hands of him from whom they derive their rights." The third exception to the transmissibility of obligations under Article 1311 exists when they are '*not transmissible by operation of law.'* The provision makes reference to those cases where the law expresses that the rights or obligations are extinguished by death, as is the case in legal support, parental authority, usufruct, contracts for a piece of work, partnership and agency. By contrast, the articles of the Civil Code that regulate guaranty or suretyship contain no provision that the guaranty is extinguished upon the death of the guarantor or the surety.

The contracts of suretyship in favor of Luzon Surety Co. not being rendered intransmissible due to the nature of the undertaking, nor by stipulations of the contracts themselves, nor by provision of law, his eventual liability therefrom necessarily passed upon his death to his heirs. The contracts, therefore, give rise to contingent claims provable against his estate. A contingent liability of a deceased person is part and parcel of the mass of obligations that must be paid if and when the contingent liability is converted into a real liability. Therefore, the settlement or final liquidation of the estate must be deferred until such time as the bonded indebtedness is paid.

**SICAD v. COURT OF APPEALS**
**(294 SCRA 183)**

*FACTS:* Aurora Vda. de Montinola (Donor) executed a Deed entitled "Deed of Donation Inter Vivos" whereby she gave her grandchildren the parcel of land covered by TCT No.T-16105. The Deed contained a provision that read "however, the donees shall not sell or encumber the properties herein donated within 10 years after the death of the donor". The Deed was recorded with the Registry of Property and a new TCT was issued in the name of the donees, which new Title the donor however kept in her possession. Vda. de Montinola also continued to possess the property, enjoy its fruits, pay the taxes thereon and exercised all rights of dominion over the same until she sold the same property, ten years after the execution of the Deed of Donation, to the spouses Sicad.

Prior to the sale to the Sicads, the donor drew up a deed of revocation of the donation and caused the same to be annotated on the new Title (in the names of the donee). After the sale to the Sicads, she filed a case for cancellation of the new TCT and reinstatement of the old TCT (in her name) on the theory that the donation to her grandchildren was one *mortis causa* which had to comply with the formalities of the will and since it had not, the donation was void. The trial court ruled that the donation was one *inter vivos* and dismissed the case filed by Vda. De Montinola. The latter died while her appeal from the decision of the trial court was pending.

*ISSUE:* Was the donation made by Vda.de Montinola *inter vivos* or *mortis causa?*

*HELD:* In the case of *Bonsato v. Court of Appeals,* this Court emphasized that the decisive characteristics of a donation *mortis causa* were that "the donor not only reserved for herself all the fruits of the property allegedly conveyed, but what is even more important, specially provided that "without the knowledge and consent of the donor, the donated properties could not be disposed of in any way; thereby denying to the transferees the most essential attribute of ownership, the power to dispose of the properties."

A donation which purports to be one *inter vivos* but withholds from the donee the right to dispose of the donated property during the donor's lifetime is in truth one *mortis causa.*

In a donation *mortis causa "the right of disposition is not transferred to the donee while the donor is still alive."*

The donation in question, though denominated *inter vivos,* is in truth one *mortis causa*; it is void because the essential requisites for its validity have not been complied with.

**SCHERER v. HYLAND**
**Supreme Court of New Jersey, 1977**
**75 N.J.127, 380 A.2d 698**

*FACTS:* Catherine Wagner and plaintiff Robert Scherer lived together for 15 years prior to the death of Wagner. In 1970, Wagner was involved in an automobile accident which substantially impaired her physical mobility, and subsequently caused her acute depression. In January 23, 1974, Wagner received a check for $17,400 representing settlement of her claim arising from the automobile accident. On that morning, Wagner endorsed the check in blank and wrote 2 notes to plaintiff - in one she expressed her love for the plaintiff and asked for his forgiveness 'for taking the easy way out', and in the other, she bequeathed to plaintiff all her possessions including the check for $ 17,400. Wagner then placed the endorsed check and the notes on the kitchen table of their apartment, walked out and committed suicide by jumping from the roof of their apartment building.

Defendant Hyland, who is the administrator ad litem of the estate of Wagner, argues that the donation causa mortis of the check to Scherer is invalid because one of the essential elements for such gift, which is delivery, was not established.

*ISSUE:* Whether Wagner's acts constituted delivery sufficient to sustain a gift *causa mortis* of the check?

*Held:* Yes, where there has been unequivocal proof of a deliberate and well-considered donative intent on the part of the donor, many courts have held that a 'constructive' or 'symbolic' delivery is sufficient to vest title in the donee.

In essence, this approach takes into account the purposes served by the requirement of delivery in determining whether that requirement has been met. It would find a constructive delivery adequate to support the gift when the evidence of donative intent is concrete and undisputed, when there is every indication that the donor intended to make a present transfer of the subject-

matter of the gift, and when the steps taken by the donor to effect such a transfer must have been deemed by the donor as sufficient to pass the donor's interest to the donee.

In this case, the evidence of decedent's intent to transfer the check to Robert Scherer is concrete, unequivocal, and undisputed. First, the act of endorsing a check represents, in common experience and understanding, the only act needed (short of actual delivery) to render a check negotiable. The significance of such an act is universally understood. Accordingly, we have no trouble in viewing Ms.Wagner's endorsement of the settlement check as a substantial step taken by her for the purpose of effecting a transfer to Scherer of her right to the check proceeds. Second, we note that the only person other than the decedent who had routine access to the apartment was Robert Scherer. It is clear that Ms.Wagner before leaving the apartment placed the check in a place where Scherer could not fail to see it and fully expected that he would take actual possession of the check when he entered. Upon these facts, the constructive delivery she made was adequate to support a gift causa mortis.

**NEWMAN v. DORE**
**Court of Appeals of New York, 1937**
**275 N.Y.371, 9 N.E.2d 966**

*FACTS:* Ferdinand Straus died in July 1934 leaving a last will and testament which contained a provision for a trust for his wife for her life of one-third of the decedent's real and personal property. However, 3 days before his death, Ferdinand executed trust agreements by which he transferred to the trustees all his real and personal property. Ferdinand's widow challenged the validity of the trust agreements, while the beneficiary thereof brought action to compel the trustees to carry out its terms. Under the Decedent Estate Law, the widow can not take her share of the estate as in intestacy but only receives income for life from a trust fund from the decedent's estate. Thus if the decedent left no estate then the widow takes nothing. The trial court ruled that the trust agreements were made by the decedent for the purpose of evading and circumventing the law as undoubtedly the purpose of the decedent was to provide that at this death his property should pass to the beneficiary named in the trust agreements to the exclusion of his wife. Thus the trust agreements were invalidated, because they were executed 'with the intention and

for the purpose of diminishing his estate and thereby to reduce in amount the share of his wife in his estate upon his death and a contrivance to deprive his widow of any rights in and to his property upon his death.'

*ISSUE:* Were the trust agreements executed by the decedent valid?

*HELD:* Motive or intent is an unsatisfactory test of the validity of a transfer of property. 'The great weight of authority is that the intent to defeat a claim which otherwise a wife might have is not enough to defeat the deed'. Since the law gives the wife only an expectant interest in the property of her husband which becomes part of his estate, and since the law does not restrict transfers of property by the husband during his life, it would seem that the only sound test of the validity of a challenged transfer is whether it is real or illusory. The test applied is essentially the test of whether the husband has in good faith divested himself of ownership of his property or has made an illusory transfer. The 'good faith' required of the donor in making a valid disposition of his property during life does not refer to the purpose to affect his wife but to the intent to divest himself of the ownership of the property. It is, therefore, apparent that the fraudulent intent which will defeat a gift inter vivos cannot be predicated of the husband's intent to deprive the wife of her distributive share as widow.

In this case, Ferdinand retained not only the income for life and power to revoke the trust, but also the right to control the trustees. Judged by the substance, not by the form, the testator's conveyance is illusory, intended only as a mask for the effective retention by the settler of the property which in form he had conveyed. It is clear that Ferdinand never intended to divest himself of his property.

Transmissible Properties: All properties of private ownership necessitate a transfer from one owner to another, either voluntary or involuntary. The law on succession does not govern property of public dominion since the legal personality of its owner, being the State or any of its subdivisions, is not capable of death as understood in civil law.

*Art. 419. Property is either of public dominion or of private ownership.*

*Art. 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.*

Transmissible rights: Certain rights are transmissible so long as they are not purely personal in nature. Since succession is a transfer of ownership, transmissible rights are generally those which are proprietary in nature. Thus, anything "owned" is technically transmissible subject to the exceptions provided by law.

*Art. 427. Ownership may be exercised over things or rights.*

Transmissible obligations: Obligations are generally transmissible except those which are not transmissible by law, those which are stipulated by the parties to be non-transmissible, and those which by their very nature are not transmissible.

*Art. 1156. An obligation is a juridical necessity to give, to do or not to do.*

To the extent of the value of the inheritance: By definition, if obligations are part of the estate of a person and the same are vested in the heirs, then clearly the heirs do not only acquire the properties and the rights, but also the liabilities of the estate. However, while heirs still inherit the obligations, they cannot be made to pay for debts that are in excess of what they will receive.

Transmission by virtue of death: Death extinguishes the civil personality of a natural person depriving him of his fitness to be a subject of legal relations. Death is the operative act which opens succession, hence, transmission as a consequence of succession takes place only by virtue of death.

*Art. 37. Juridical capacity, which is the fitness to be the subject of legal relations, is inherent in every natural person and is lost only through death. Capacity to act, which is the power to do acts with legal effect, is acquired and may be lost.*

Presumptive Death: Death in the legal sense may be actual death or presumed death. Presumptive death may be ordinary or extraordinary. Below are the Articles regarding presumptive death:

> *Art. 390. After an absence of seven years, it being unknown whether or not the absentee still lives, he shall be presumed dead for all purposes except for those of succession.*
>
> *The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of ten years. If he disappeared after the age of seventy-five years, an absence of five years shall be sufficient in order that his succession may be opened.*
>
> *Art. 391. The following shall be presumed dead for all purposes, including the division of the estate among the heirs:*
>
> *(1) A person on board a vessel lost during a sea voyage, or an aeroplane which is missing, who has not been heard of for four years since the loss of the vessel or aeroplane;*
>
> *(2) A person in the armed forces who has taken part in war, and has been missing for four years;*
>
> *(3) A person who has been in danger of death under other circumstances and his existence has not been known for four years.*

Transmission by will or by operation of law: A person may die testate or intestate. Succession triggers a transmission or transfer of title or ownership of properties, rights, and obligations from the decedent to another person, either by will or by law.

POINTS TO PONDER (PTP):

1. Does Article 774 also apply to juridical persons to the extent that successional rights of corporate entities are governed under the Civil Code?
2. Can there be a transfer of ownership without the fact of death? Is the transmission still gratuitous if the heir is

made to pay deficiency taxes before ownership can be transferred?

3. Are all obligations to give extinguished upon the death of the obligor? How about obligations to do or not to do?

**Article 776. The inheritance includes all the property, rights and obligations of a person which are not extinguished by his death.**

Definition of inheritance: It refers to the mass of property, rights and obligations left behind by the decedent.

Distinction between inheritance from succession: Inheritance is the universality or entirety of the property, rights and obligations of a person who has died; it is the objective element of succession which is the mass or totality of the patrimony of a deceased person. Succession, on the other hand, refers to the legal mode or manner by which this inheritance is transmitted to the persons entitled to it.

Transmissible Properties: In our system of property ownership, there are basically 3 types of property. The first type is the property that does not belong to anyone (*res nullius*), the second type is the property which belongs to the State, and the third type is property of private ownership. Regardless of the type and classification, whether immovable or movable, all properties are transmissible by virtue of their inherent character and as an attribute of ownership.

Transmissible Rights: Rights which are not purely personal are transmissible. As a general rule, rights which are patrimonial or related to property are not extinguished by death and the same constitute part of the inheritance except where, it is otherwise provided by law or by the will of the testator such as in the cases of usufruct or personal servitude. Examples of transmissible rights include the right to bring or continue an action for forcible entry or unlawful detainer, the right to compel the execution of a document necessary for conveyance, provided the contract is valid, the right to continue a lease contract either as lessor or

lessee, and the property right in an insurance policy with vested interest.

Non-transmissible Rights: Rights which are purely personal in their proper sense are, by their nature and purpose, non-transmissible because they are extinguished by death. These include rights to public office, family rights, rights and civil liberties, and those purely personal in the sense that the qualities or relationship of the person are involved. Other examples of non-transmissible rights include the rights arising from marriage either with respect to the persons or as regards the property of the spouses, rights appertaining to family rights, marital, and parental authority, rights arising from partnership and agency, rights of usufruct, rights of a guardian, and rights of suffrage and public office.

Transmissible obligations: Obligations are by nature transmissible and may constitute part of the inheritance both with respect to the rights of the creditor and likewise the obligation of the debtor. However, there are 3 exceptions:

1. Obligations of the debtor which are personal because they require the personal qualifications and circumstances of the debtor are extinguished by death;
2. Obligations which are made non-transmissible by the will of the testator or by express agreement of the parties;
3. Obligations which are made non-transmissible by express provision of law.

Examples of transmissible obligations: These include monetary obligations to the extent of the inherited property, the obligation as a surety or guarantor, and even contingent liabilities.

Examples of non-transmissible obligations: These include personal obligations such as criminal responsibility and the obligation to give legal support.

POINTS TO PONDER (PTP):

1. In an ejectment case, what is the legal effect of a death of a party during the pendency of the case?

2. What are the causes of action that are extinguished by death?

3. Are all criminal cases extinguished upon the death of the Complainant? Upon the death of the Accused?

4. TRANSMISSIBLE RIGHTS and OBLIGATIONS (Bar 2006): Alberto and Janine migrated to the United States of America, leaving behind their 4 children, one of whom is Manny. They own a duplex apartment and allowed Manny to live in one of the units. While in the United States, Alberto died. His widow and all his children executed an Extrajudicial Settlement of Alberto's estate wherein the 2-door apartment was assigned by all the children to their mother, Janine. Subsequently, she sold the property to George. The latter required Manny to sign a prepared Lease Contract so that he and his family could continue occupying the unit. Manny refused to sign the contract alleging that his parents allowed him and his family to continue occupying the premises. If you were George's counsel, what legal steps will you take?

**Article 777. The rights to the succession are transmitted from the moment of the death of the decedent.**

Death as the cause of succession: Since death triggers the opening of succession, it is important to determine the meaning of death because without death there can be no succession.

Two Kinds of Death: As mentioned earlier, death may be actual or presumed. Proof of actual death is provided by a Death Certificate. As regards presumed death, there are two classifications. The first one refers to ordinary presumption due to an absence for at least ten years. The second refers to extraordinary presumption due to an absence of four years under extraordinary circumstances as provided in Article 391.

Importance to determine the precise moment of death: The law uses the word "moment." In our system of property ownership, once the property falls within the exclusive patrimony of an individual, that property continues to be of private dominion

until such time that such ownership is lost by abandonment. The death of a person cannot be equated to abandonment since the same requires a positive and provable act of relinquishing ownership. Therefore, upon the moment of death, the properties left by the decedent must be transferred to another, otherwise, these properties shall be lost thru abandonment, thus reverting to *res nullius*. This is the reason why the transmission of the right of succession takes place precisely at the moment of a person's death, without which, there would be a time when a piece of property (of private ownership) will have no owner. Furthermore, since the right of succession takes place at the moment of death, rights and obligations arising from it must retroact to the precise moment of death.

**USON v. DEL ROSARIO**
**92 Phil. 531 (1953)**

> *FACTS:* Plaintiff Maria Uson, who was the legal wife of the deceased Faustino Nebrada, filed an action for recovery of ownership and possession of 5 parcels of land against defendants, who are the common law wife and illegitimate children of Faustino. Defendants set up the defense that plaintiff Maria and deceased Faustino had executed a public document whereby they agreed to separate as husband and wife, and in consideration of said separation, Maria was given a parcel of land by way of alimony and in return she renounced her right to inherit any property that may be left by Faustino upon his death. The trial court ruled in favor of plaintiff Maria Uson.
>
> *ISSUE:* Was Maria's renunciation of her right to inherit property left by her deceased husband effective?
>
> *HELD:* The claim of the defendants that Maria Uson had relinquished her right over the lands in question because she expressly renounced her right to inherit any future property that her husband may acquire and leave upon his death in the deed of separation they had entered into on February 21, 1931, cannot be entertained for the simple reason that future inheritance cannot be the subject of a contract nor can it be renounced.

Heirs as Interested Persons/Substitutes: Since the administrator is only a representative of the estate or the heirs, the heirs

can do what the administrator is authorized to do. Further, the Rules of Court specifically requires that the lawyer handling the case notifies the court of the demise of a party and submit to the court the names of the heirs or executor or the administrators. Once a case is filed and the cause of action survives the death of a party, that cause of action is part of the transmissible rights which immediately becomes vested in the heirs at the moment of death of the party. Substitution will not be prevented by the failure of the heir in the meantime to institute the proper settlement proceedings.

**DE BORJA v. VDA. DE BORJA**
**46 SCRA 577 (1972)**

*FACTS:* Francisco de Borja, upon the death of his wife Josefa, filed for the probate of her will. When the will was probated, Francisco was appointed as executor and administrator and herein appellee, Jose de Borja, their son was appointed as co-administrator. Subsequently, Francisco took upon himself, a second wife, Tasiana Ongsingco (Vda. De Borja). Even before the estate of Josefa was settled, Francisco died. Tasiana instituted testate proceedings wherein she was appointed special Administratrix.

The relationship between the children of the first marriage and the second wife, Tasiana had been plagued with numerous suits and counter-suits and in order to put an end to all these litigation, a compromise agreement was entered into between Jose, in his personal capacity and as administrator of the Testate Estate of Josefa, and by Tasiana, as the heir and surviving spouse of Francisco. Pursuant to the compromise agreement, Jose agreed and obligated himself to pay Tasiana the amount of P 800,000.00 as '"full and complete payment and settlement of her hereditary share in the estate of the late Francisco de Borja as well as the estate of Josefa, and to any properties bequeathed or devised in her favor by the late Francisco de Borja by Last Will and Testament or by Donation Inter Vivos or Mortis Causa or purportedly conveyed to her for consideration or otherwise."

When Jose submitted the compromise agreement for Court approval with the CFI of Rizal (probate of will of first wife) and the CFI of Nueva Ecija (probate of will of Francisco), Tasiana opposed in both instances. She claims among others, that the heirs

cannot enter into such kind of agreement without first probating the will of Francisco de Borja.

*ISSUE:* Whether the compromise agreement is valid?

*HELD:* In assailing the validity of the agreement, Tasiana relies on this Court's decision in Guevara v. Guevara wherein the Court held the view that presentation of a will for probate is mandatory and that the settlement and distribution of an estate on the basis of intestacy when the decedent left a will, is against the law and public policy. However, the doctrine in said case is not applicable to the case at bar. There was here no attempt to settle or to distribute the estate of Francisco among the heirs thereto before the probate of his will. The clear object of the contract was merely the conveyance by Tasiana of any and all her individual share and interest, actual or eventual, in the estate of Francisco and Josefa. Since a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such predecessor in interest, there is no legal bar to a successor disposing of her or his hereditary share immediately after such death, even if the actual extent of such share is not determined until the subsequent liquidation of the estate. Of course, the effect of such alienation is to be deemed limited to what is ultimately adjudicated to the vendor heir.

**BONILLA v. BARCENA**
**71 SCRA 490 (1976)**

*FACTS:* On March 31, 1975, Fortunato Barcena, mother of minors Rosalio and Salvacion Bonilla and wife of Ponciano Bonilla, instituted a civil action to quiet title over the certain parcels of land located in Abra. Fortunata died on July 9, 1975. On August 4, 1975, the defendants filed a motion to dismiss on the ground that Fortunata was dead and therefore has no legal capacity to sue. When the motion was heard, counsel for plaintiff asked for the substitution by her minor child and her husband, but the court dismissed the case on the ground that a dead person cannot be a real party in interest and has no legal personality to sue.

*ISSUE:* Whether the deceased Fortunata can be substituted by her heirs in the instant case?

*HELD:* While it is true that a person who is dead cannot sue in court, yet he can be substituted by his heirs in pursuing this case up to its completion. The records show that Fortunata died

on July 9, 1975 while the complaint was filed on March 31, 1975. This means that when the complaint was filed on March 31, 1975, Fortunata was still alive, and therefore, the court had acquired jurisdiction over her person.

Under Sec. 16, Rule 3 of the Rules of Court, whenever a party to a pending case dies, it shall be the duty of his counsel to inform the court promptly of such death and to give the name and residence of his executor, administrator, guardian or legal representatives. This duty was complied with by the plaintiff's counsel.

Article 777 of the Civil Code provides "that the rights to the succession are transmitted from the moment of death of the decedent." Hence, from the moment of death of the decedent, the heirs become the absolute owners of his property, subject to the rights and obligations of the decedent, and they cannot be deprived of their rights thereto except by the methods provided for by law. The moment of death is the determining factor when the heirs acquire a definite right to the inheritance whether such right is pure or contingent.

The right of the heirs to the property of the deceased vests in them even before any judicial declaration of heirship in the testate or intestate proceedings. When Fortunata died, her claim or right to the parcels of land in litigation was not extinguished by her death but was transmitted to her heirs upon her death. Her heirs have thus acquired interest in the properties in litigation and became parties in interest in the case.

Under Section 17, Rule 3 of the Rules of Court, "after a party dies and the claim is not thereby extinguished, the court shall order the legal representative of the deceased to appear and be substituted for the deceased. The question as to whether an action survives or not depends on the nature of the action and the damage sued for. The causes of action which survive affect primarily and principally property and property rights, the injuries to the person being merely incidental, while causes of action which do not survive are those where the injury complained of is to the person, the property and rights of property affected being incidental. This case being an action to quiet title affects property and property rights primarily and therefore is one that survives death. Hence, substitution is proper.

Extent of Attributes of Ownership of Heirs: Since the hereditary share in decedent's estate is transmitted or vested im-

mediately from the moment of the death of such predecessor in interest, there is no legal bar for a successor to dispose of his hereditary share immediately after such death, even if the actual extent of such share is not determined until the subsequent liquidation of the estate. However, the effect of such alienation to the transferee is limited to what is ultimately adjudicated to the transferor heir.

Changing the distribution as per will of the testator: In several cases, the Supreme Court has declared that the provisions of the will of the decedent must be followed and respected. However, an heir can ultimately (although indirectly) vary the disposition of the testator by disposing his share in the estate even prior to actual distribution. He can convey his eventual share for a greater or lesser value or exchange it for a different property, e.g. cash for property. Any agreement that merely conveys an individual's share in the estate is valid so long as such agreement was executed after the death of the decedent. Upon death, rights to the properties and rights to the estate are transferred to the heir. There is no legal bar for the heir to dispose of her hereditary share even if such disposition technically changes the distribution of the testator.

Heirs as owners of undivided share: Heirs acquire an interest in the undivided estate owned by the decedent from the moment of the death. By law, the rights to the succession of a deceased person are transmitted to his heirs from the moment of his death which includes all property, rights and obligations that survive the decedent. As a consequence, co-heirs become co-owners of all properties belonging to the decedent. Hence, any co-heir is entitled to exercise all rights of ownership regardless of the eventual size of the share of such co-heir.

**GO ONG v. COURT OF APPEALS**
**154 SCRA 270 (1987)**

*FACTS:* Two parcels of land (Lots 1 and 12) were in the name of "Alfredo Ong Bio Hong married to Julita Go Ong." When Alfredo died, Julita was appointed Administratrix. Julita sold Lot 12 to Lim Che Boon and mortgaged Lot 1 to Allied Bank to secure a loan of P900,000. When the Bank tried to collect the unpaid amount of P828,000 on the loan, Julita filed a complaint

alleging that the contract of mortgage she entered into with the Bank was a nullity because the necessary judicial approval was never obtained. Julita based her allegation on Sec. 7, Rule 89 of the Rules of Court whereby a judicial approval is mandatory before an administrator can validly enter into a mortgage over properties belonging to the estate.

*ISSUE:* Whether judicial approval is necessary to validate the mortgage entered into by the Administratrix.

*HELD:* Julita's assertion that the mortgage is void for want of judicial approval required under Section 7 of Rule 89 of the Rules of Court, may have merit insofar as the rest of the estate of her husband is concerned but the same is not true as regards her conjugal share and her hereditary rights in the estate. Section 7 of Rule 89 is not applicable since the mortgage was constituted in her personal capacity and not in her capacity as Administratrix of the estate of her husband. The fact that what had been mortgaged was in *custodial legis* is immaterial, insofar as her conjugal share and hereditary share in the property is concerned since she was the absolute owner thereof.

**BUTTE v. MANUEL UY & SONS, INC.**
**4 SCRA 526 (1962)**

*FACTS:* During his lifetime, Jose Ramirez co-owned a property in Manila, with 5 other persons. In his last will and testament, Jose bequeathed his estate, which included his 1/6 undivided portion in the said property, to his children and grandchildren, and 1/3 of the free portion to Mrs. Angela Butte. Eight years after the death of Jose and while the estate proceedings were still pending, one of the co-owners sold her 1/6 share in the property to Manuel Uy & Sons. After being informed of said sale, Mrs. Butte, offered to redeem said 1/6 share sold to Manuel Uy and Sons and filed the corresponding legal action for legal redemption.

*ISSUE:* Whether Butte can exercise the right of legal redemption despite the presence of the judicial administrator and pending the final distribution of her shares in the testate proceedings.

*HELD:* As testamentary heir of the estate of Jose Ramirez, Butte acquired an interest in the undivided 1/6 share owned by her predecessor in the subject property. This right was vested from the moment of the death of the aforesaid co-owner Jose

Ramirez. By law, the rights to the succession of a deceased person are transmitted to his heirs from the moment of his death, and the right of succession includes all property, rights and obligations that survive the decedent. As a consequence, the heirs of Jose Ramirez acquired his undivided share in the subject property from the moment of his death, and from that instant, they became co-owners in the aforesaid property, together with the original surviving co-owners of their decedent. A co-owner of an undivided share is necessarily a co-owner of the whole. Hence, anyone of Jose's heirs became entitled to exercise the right of legal redemption as soon as another co-owner has sold his undivided share to a stranger.

The presence of the judicial administrator is of no moment because the rights of the administrator of possession and administration of the real and personal estate of the deceased do not include the right of legal redemption of the undivided share sold to Manuel Uy and Sons because the right to redeem only came into existence when the sale was perfected 8 years from the death of Jose Ramirez. The administrator cannot exercise the right of legal redemption since the land was sold AFTER the death of Ramirez. The right to redeem therefore pertains to the heirs and not the estate. The administrator may exercise the right to redeem only if the right pertains to the estate, and this can only happen if the sale of said portion to Uy was done BEFORE the death of Ramirez.

<u>Sales and Mortgages over Property of the Decedent</u>: The Court can authorize the Administrator to sell, mortgage, or encumber properties of the decedent in certain cases as provided in Section 7, Rule 89 of the Rules of Court. However, such Rule cannot adversely affect the substantive rights of an heir to dispose of his/her hereditary rights that accrued from the moment of the death of the decedent.

*Section 7. Regulation for granting authority to sell, mortgage, or otherwise encumber estate. — The court having jurisdiction of the estate of the deceased may authorize the executor or administrator to sell personal estate, or to sell, mortgage, or otherwise encumber real estate, in cases provided by these rules and when it appears necessary or beneficial under the following regulations:*

*(a) The executor or administrator shall file a written petition setting forth the debts due from the deceased, the expenses of administration, the legacies, the value of the personal estate, the situation of the estate to be sold, mortgaged, or otherwise encumbered, and such other facts as show that the sale, mortgage, or other encumbrance is necessary or beneficial;*

*(b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reasons for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;*

*(c) If the court requires it, the executor or administrator shall give an additional bond, in such sum as the court directs, conditioned that such executor or administrator will account for the proceeds of the sale, mortgage, or other encumbrance;*

*(d) If the requirements in the preceding subdivisions of this section have been complied with, the court, by order stating such compliance, may authorize the executor or administrator to sell, mortgage, or otherwise encumber, in proper cases, such part of the estate as is deemed necessary, and in case of sale the court may authorize it to be public or private, as would be most beneficial to all parties concerned. The executor or administrator shall be furnished with a certified copy of such order;*

*(e) If the estate is to be sold at auction, the mode of giving notice of the time and place of the sale shall be governed by the provisions concerning notice of execution sale;*

*(f) There shall be recorded in the registry of deeds of the province in which the real estate thus sold, mortgage, or otherwise encumbered is situated, a certified copy of the order of the court, together with the deed of the executor or administrator for such real estate, which shall be as valid as if the deed had been executed by the deceased in his lifetime.*

Conjugal Share v. Share in the Estate: Death dissolves the conjugal partnership or absolute community. In the absence of any stipulation in any marriage settlement, one-half will go to the estate of the deceased while the other half goes to the surviving spouse. The half which goes to the surviving spouse is not transferred by succession. Such half represents the share of such surviving spouse in the property regime which was dissolved by death. Such spouse gets this share by virtue of being a co-owner or conjugal partner. However, the surviving spouse also gets a share in the other half that went to estate of the deceased spouse. The surviving spouse gets this share by virtue of being an heir under our compulsory system of succession.

Powers of the Administrator v. Powers of an Heir: According to Rule 84 of the Rules of Court, the administrator is given several powers and duties including the power to possess and manage the properties of the estate. By virtue of Article 777, properties are transmitted from the decedent to his/her heirs by succession from the moment of death of the decedent. Inasmuch as the heir is an owner of such properties, he may exercise all rights of ownership to include the right to possess and manage the same. This apparent conflict is necessitated by the possibility that the estate may have to answer for some debts and obligations of the decedent. Thus, before the heir can actually possess the properties inherited, an administrator is appointed to manage, protect, and preserve the estate while he liquidates the estate for the protection of creditors.

*RULE 84*

*General Powers and Duties of Executors and Administrators*

*Section 1. Executor or administrator to have access to partnership books and property. How right enforced. — The executor or administrator of the estate of a deceased partner shall at all times have access to, and may examine and take copies of, books and papers relating to the partnership business, and make examine and make invoices of the property belonging to such partnership; and the surviving*

*partner or partners, on request, shall exhibit to him all such books, papers, and property in their hands or control. On the written application of such executor or administrator, the court having jurisdiction of the estate may order any such surviving partner or partners to freely permit the exercise of the rights, and to exhibit the books, papers, and property, as in this section provided, and may punish any partner failing to do so for contempt.*

*Section 2. Executor or administrator to keep buildings in repair. — An executor or administrator shall maintain in tenantable repair the houses and other structures and fences belonging to the estate, and deliver the same in such repair to the heirs or devisees when directed so to do by the court.*

*Section 3. Executor or administrator to retain whole estate to pay debts, and to administer estate not willed. — An executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration.*

**REGANON v. IMPERIAL**
**22 SCRA 80 (1968)**

*FACTS:* The heirs of Pedro Reganon filed a complaint for recovery of ownership and possession of a parcel of land against Rufino Imperial. After trial, the court awarded the subject property to the plaintiffs and sentenced defendant Rufino to pay damages in the amount of P 1,929.20. Subsequently, plaintiffs discovered that the residuary estate of one Eulogio Imperial was deposited with the Philippine National Bank, and one of the heirs of Eulogio, herein defendant Rufino's share in said estate was in the amount of P 1,471.97. Plaintiffs then filed a motion for a writ of execution and of an order directing the manager of the Bank to hold the share of defendant Rufino in order that the same could be applied to the satisfaction of the earlier favorable decision plaintiffs obtained against Rufino. Defendant Rufino opposed the garnishment of his share in the residuary estate of Eulogio on the ground that the same was under *custodial legis* and therefore can not be attached.

*ISSUE:* Can the interest of an heir in the estate of a deceased person be attached for purposes of execution even if the estate in still in the process of settlement?

*HELD:* The new Rules of Court now specifically provides for the procedure to be followed in case what is attached in in *custodia legis.* The clear import of this new provision is that property under *custodia legis* is now attachable, subject to the mode set forth in said rule (Rule 57, Sec.7).

That the interest of an heir in the estate of a deceased person may be attached for purposes of execution, even if the estate is in the process of settlement before the courts, is already a settled matter in this jurisdiction.

**RAMIREZ v. BALTAZAR**
**24 SCRA 918 (1968)**

*FACTS:* Victoriana Eguaras executed a real estate mortgage over her land as security for a loan to the spouses Artemio Baltazar and Susana Flores. Upon Victoriana's death, the creditor-spouses filed a petition for intestate proceedings of her estate wherein it was alleged that Filemon Ramirez and Monica Ramirez are the heirs of Victoriana. The court appointed one Artemio Diawan, a deputy clerk of court, as administrator of Victoriana's estate. Subsequently, the creditor-spouses filed a complaint for foreclosure of the aforesaid mortgage against Artemio Diawan, in his capacity as administrator of the estate. Artemio Diawan, despite the service of summons, failed to file an Answer to the complaint and was declared in default. The complaint was referred to a commission for reception of evidence, and Artemio Diawan, as deputy clerk of court, acted as hearing commissioner. A judgment was issued allowing the foreclosure of the mortgage and the subject property was eventually sold at a public auction to creditor-spouses. The heirs of Victoriana filed an action for annulment of the foreclosure proceedings alleging that administrator Artemio Diawan acted in collusion with the creditor-spouses and in fraud of the heirs. Artemio Diawan moved for the dismissal of the complaint on the ground that the heirs had no legal capacity to sue and had no cause of action.

*ISSUE:* Did the heirs of Victoriana have legal capacity to institute the action for annulment of the foreclosure proceedings (1) despite the fact that they have not been declared to be heirs in

the intestate proceedings and (2) despite the appointment of an administrator for the estate of the deceased?

*HELD:* There is no question that the rights to succession are automatically transmitted to the heirs from the moment of the death of the decedent. While, as a rule, the formal declaration or recognition to such successional rights needs judicial confirmation, this Court has, under special circumstances, protected these rights from encroachments made or attempted before the judicial declaration. In *Pascual v. Pascual,* it was ruled that although heirs have no legal standing in court upon the commencement of testate or intestate proceedings, this rule admits of an exception as "when the administrator fails or refuses to act, in which event the heirs may act in his place."

A similar situation obtains in the case at bar. The administrator is being charged to have been in collusion and connivance with the mortgagees of a property of the deceased, allowing its foreclosure without notifying the heirs, to the prejudice of the latter. Since the ground for the present action to annul the aforesaid foreclosure proceedings is the fraud resulting from such insidious machinations and collusion in which the administrator has allegedly participated, it would be farfetched to expect the said administrator himself to file the action in behalf of the estate. And who else but the heirs, who have an interest to assert and to protect, would bring the action? Inevitably, this case should fall under the exception, rather than the general rule that pending proceedings for the settlement of the estate, the heirs have no right to commence an action arising out of the rights belonging to the deceased.

Rights of Heirs Before and After Partition: While death triggers the transfer of ownership, partition terminates the co-ownership that was created among the surviving heirs. Prior to partition, each co-heir acquired an undivided share in the mass of properties (and rights) belonging to the estate. After partition, which can be done by the court or by the heirs themselves, each co-heir is given a definite share in the estate. As a consequence, such heir loses ownership rights over the entire mass of properties left behind and can only exercise ownership rights over the property adjudicated to him after partition. A partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him.

**NOCEDA v. COURT OF APPEALS**
**313 SCRA 504 (1999)**

*FACTS:* In June 1981, the heirs of Celestino Arbizo, namely Aurora Directo (daughter), Rodolfo Noceda (grandson) and Maria Arbizo (widow), extrajudicially settled a parcel of land (Lot 1121). On the same date, Aurora donated 625 square meters of her share to Rodolfo who is her nephew. In August 1981, another extrajudicial settlement of Lot 1121 was executed by the said parties, whereby 3/5 of the land went to Maria while Aurora and Rodolfo each got 1/5. Thereafter, Rodolfo constructed his house on the lot donated to him by Aurora, while Aurora fenced the entire area allotted to her in the extrajudicial settlement and constructed 3 huts thereon. But in 1985, Rodolfo removed the fence constructed by Aurora, occupied the 3 huts and fenced the entire land of Aurora without her consent. Aurora filed a case for recovery of possession and ownership and rescission/annulment of donation against Rodolfo. The lower court ruled in favor of Aurora and this was affirmed by the Court of Appeals. One of the issues raised by Rodolfo in this appeal is that he could not have usurped the land of Aurora because there has been no final determination of the exact areas properly pertaining to each heir, and hence they are all considered as co-owners of the entire lot.

*ISSUE:* What was Aurora's right over the parcel of land assigned to her under the extrajudicial settlement executed by the parties?

*HELD:* In this case the source of co-ownership among the heirs was intestate succession. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs subject to the payment of debts of the deceased. Partition in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The purpose of partition is to put an end to co-ownership. It seeks a severance of the individual interest of each co-owner, vesting in each a sole estate in specific property, and giving to each one a right to enjoy his estate without supervision or interference from the other. And one way of effecting a partition of the decedent's estate is by the heirs themselves extrajudicially.

The heirs of the late Celestino entered into an extrajudicial settlement of his estate, and agreed to apportion Lot 1121 as follows: 3/5 to Maria and 1/5 each to Aurora and Rodolfo, and in the survey plan submitted by the designated Engineer, the

portions of each heir were indicated by red lines and numbered alphabetically based on the percentage proportion in the extrajudicial settlement.

Thus, the areas allotted to each heir are now specifically delineated in the survey plan. There is no co-ownership where portion owned is concretely determined and identifiable, though not technically described, or that said portions are still embraced in one and the same certificate of title does not make said portions less determinable or identifiable, or distinguishable, one from the other, nor that dominion over each portion less exclusive, in their respective owners.

**NUFABLE v. NUFABLE**
**309 SCRA 692 (1999)**

*FACTS:* Esdras Nufable died leaving a Last Will and Testament disposing of his properties in favor of his 4 legitimate children: Angel, Generosa, Vilfor and Marcelo. Upon petition for probate filed by the said heirs, the lower court admitted to probate said last will and testament. A few months thereafter, the same court approved the settlement of estate entered into by the heirs, whereby they agreed that the parcel of land owned by Esdras located in Negros Oriental would remain undivided for community ownership. However, 2 months earlier, Angel and his spouse mortgaged the entire parcel of land in Negros Oriental to the Development Bank of the Philippines, which foreclosed said mortgaged when Angel and spouse became delinquent in their payments. In 1980, Nelson, the son of Angel (who died in 1978) purchased said property from the Bank. The other children, Generosa, Vilfor and Marcelo filed a complaint to annul the sale of the property by the Bank to Nelson. The lower court dismissed the complaint but the Court of Appeals reversed the same, and declared Generosa, Vilfor and Marcelo as rightful co-owners of the subject property entitled to possession of 3/4 of the same, and Nelson to 1/4.

*ISSUE:* Did Angel have the right to mortgage the entire property to the Bank?

*HELD:* The late Esdras died in 1965. When the entire property located in Negros Oriental was mortgaged by his son Angel to the Bank, the other heirs of Esdras, namely Generosa, Vilfor and Marcelo, had already acquired successional rights over the said property. This is so because of the principle contained

in Article 777 of the Civil Code to the effect that the rights to the succession are transmitted from the moment of death of the decedent. Accordingly, for the purpose of transmission of rights, it does not matter whether the Last Will and Testament of the late Esdras was admitted in March 1966 or that the Settlement of Estate was approved in June 1966. The probated will of Esdras specifically stated that the subject property remain undivided and be owned in common by the heirs.

Thus, when Angel and his spouse mortgaged the subject property to the Bank, they had no right to mortgage the entire property. Angel's right over the subject property was limited only to 1/4 *pro indiviso* share. As co-owner of the subject property, Angel's right to sell, assign or mortgage is limited to that portion that may be allotted to him upon termination of the co-ownership. Well-entrenched is the rule that a co-owner can only alienate his *pro indiviso* share in the co-owned property.

Prohibition of Contracts Involving Future Inheritance:: Any property or right not in existence or incapable of determination at the time of the contract which a person may in the future acquire by succession is considered as future inheritance. Contracts involving future inheritance are essentially wagering contracts and are void as they are against public policy. These contracts are akin to insurance contracts where the insured has no insurable interest. What is prohibited is a contract wherein a person sells, or deals in any other manner, with something which he stands or hopes to inherit from someone when the latter dies. Thus, when we speak of "future inheritance" within the scope and concept of Obligations and Contracts, what is prohibited is a contract involving an inchoate right to inherit.

*Art. 1347. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.*

*No contract may be entered into upon future inheritance except in cases expressly authorized by law.*

*All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract. (1271a)*

**BLAS v. SANTOS**
**1 SCRA 899 (1961)**

*FACTS:* Simeon Blas contracted a first marriage with Marta Cruz sometime before 1898. They had 3 children only one of whom left children, Maria (one of the plaintiffs), Marta (one of the defendants) and Lazaro, who in turn had 3 children (plaintiffs). Marta died in 1898 and, shortly thereafter, Simeon married Maxima Santos. At the time of the second marriage, no liquidation of the properties acquired by Simeon and Marta was made. A week before Simeon's death on 9 January 1937, he executed his last will and testament. In the will Simeon declared that during his second marriage, he had acquired untold wealth and numerous pieces of property consisting of land, fishponds, et al, the total assessed value of which reached P678,880.00. He then stated that one-half (1/2) of his estate would constitute the share of his wife, Maxima Santos, all of the properties having been acquired during their marriage. In effect, Simeon declared that all of what he was leaving behind were conjugal assets of the second marriage.

At the same time as Simeon made his will, Maxima prepared a document stating that she had read Simeon's will and that she knew the contents thereof. In this instrument, she promised that in her will she would leave to Simeon's heirs and beneficiaries one-half (1/2) of what she had received from Simeon in his will, based on their respect, service, and treatment of Maxima.

Upon Maxima's death, the heirs of Marta filed this action against the Administratrix of the estate of Maxima to secure a judicial declaration that one-half of the properties left by Maxima had been promised by the deceased to be delivered upon her death and in her will to said plaintiffs-heirs of Marta based on the document executed by Maxima during her lifetime.

*ISSUES:* (1) Whether or not the plaintiffs (Simeon's heirs) had the right to claim 1/2 of the properties left by Maxima on the basis of the document (Exhibit A) executed by Maxima during her lifetime promising to give such properties to said heirs? (2) Whether or not the document executed and signed by Maxima involved future inheritance and thus void?

*HELD:* (1) Yes, the plaintiffs had the right to claim 1/2 of the properties left by Maxima. The preparation and execution of Exhibit A was ordered by Simeon evidently to prevent his heirs

by his first marriage from contesting his will and demanding liquidation of the conjugal properties acquired during the first marriage, and an accounting of the fruits and proceeds thereof from the time of the death of the first wife. Exhibit A therefore is a compromise, and, at the same time, a contract with a sufficient cause or consideration. The agreement or promise that Maxima made in Exhibit A was to hold one-half of her said share in the conjugal assets in trust for the heirs and legatees of her husband in his will, with the obligation of conveying the same to such of his heirs or legatees as she may choose in her last will and testament. Under Exhibit A, therefore, Maxima contracted the obligation and promised to give one-half of the subject properties to the heirs and legatees of Simeon.

(2) Exhibit A is not a contract on future inheritance. "Future inheritance" is any property or right not in existence or capable of determination at the time of the contract, that a person may in the future acquire by succession. The properties subject of the contract Exhibit A are well-defined properties existing at the time of the agreement, which Simeon declares in his testament as belonging to his wife as her share in the conjugal partnership. Certainly his wife's actual share in the conjugal properties may not be considered as future inheritance because they were actually in existence at the time Exhibit A was executed.

POINTS TO PONDER:

1. At what point does succession open for persons declared presumptively dead — after the lapse of 10 years? After the decree has been issued by a competent court? At the point when he was found to be absent, i.e. the decree retroacts to the first day of his absence?

2. What is the ultimate factor that determines whether a contract involves future inheritance?

3. PRESUMPTIVE DEATH (Bar 2008): At age 18, Marian found out that she was pregnant. She insured her own life and named her unborn child as her sole beneficiary. When she was already due to give birth, she and her boyfriend Pedro, the father of her unborn child, were kidnapped in a resort in Bataan where they were vacationing. The military gave chase and after one

week, they were found in an abandoned hut in Cavite. Marian and Pedro were hacked with bolos. Marian and the baby she delivered were both found dead, with the baby's umbilical cord already cut. Pedro survived.

i. Can Marian's baby be the beneficiary of the insurance taken on the life of the mother? (2%)

ii. Between Marian and the baby, who is presumed to have died ahead? (1%)

iii. Will Pedro, as surviving biological father of the baby, be entitled to claim the proceeds of the life insurance on the life of Marian? (2%)

**Article 778. Succession may be:**

**(1) Testamentary;**

**(2) Legal or intestate; or**

**(3) Mixed.**

Kinds of Succession: Testamentary succession occurs when a person dies with a valid will. Intestate succession occurs when (a) the decedent dies without leaving a will, (b) he dies and leaves a void will, or (c) he dies and leaves a totally valid but inoperative will. Other instances where intestate succession takes place are enumerated in Article 960. Mixed succession occurs when the estate is distributed partly by will and partly by operation of law.

*Art. 960. Legal or intestate succession takes place:*

*(1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;*

*(2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;*

*(3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, or if the heir dies before the testator, or repudiates the inheritance,*

*there being no substitution, and no right of accretion takes place;*

*(4) When the heir instituted is incapable of succeeding, except in cases provided in this Code.*

**Article 779. Testamentary succession is that which results from the designation of an heir, made in a will executed in the form prescribed by law.**

Testamentary Succession: Testamentary succession occurs when a person dies with a will that is executed in compliance with the formalities required by law. Thus, the presence of a will does not preclude the distribution of the estate through intestate succession since the will must comply with the form prescribed by law.

**Article 780. Mixed succession is that effected partly by will and partly by operation of law.**

Mixed Succession: Mixed succession occurs when a decedent leaves a will which only disposes of some of his properties, thus the remainder of his estate would have to be distributed in accordance with the law on intestate succession.

Other classifications of succession not provided by law: Aside from the classification set forth in Article 778, there are other classifications brought about by the innovations of the Family Code, the contractual succession and freak succession.

Contractual Succession: This is a misnomer in the sense that public policy precludes the existence of contractual succession because you are in effect putting a wager on the life of another person. However, the provision of the Family Code on ante-nuptial agreements may appear to be a form of contractual succession which is however considered not contrary to public policy.

*Art. 84. If the future spouses agree upon a regime other than the absolute community of property, they cannot donate to each other in their marriage settlements more than one-fifth of their present property. Any excess shall be considered void.*

> *Donations of future property shall be governed by the provisions on testamentary succession and the formalities of wills.*

The second paragraph of Article 84 of the Family Code provides that donations of future property between spouses shall be governed by the provisions on testamentary succession and the formalities of will. This implies that there are two kinds of donations you can put in the ante-nuptial contract. The donation may either be *inter vivos* or *mortis causa*. With regard to donations mortis causa, the formalities of a will must be complied with, thus in the nature of testamentary provisions.

Death-less Succession: The effects of nullity of marriages, annulment, and legal separation as provided in the Family Code provide for the delivery of presumptive legitimes by way of cash, properties, or sound securities to the common children.

> *Article 50. The effects provided for by paragraphs (2), (3), (4) and (5) of Article 43 and by Article 44 shall also apply in the proper cases to marriages which are declared ab initio or annulled by final judgment under Articles 40 and 45.*
>
> *The final judgment in such cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of their presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.*
>
> *All creditors of the spouses as well as of the absolute community or the conjugal partnership shall be notified of the proceedings for liquidation.*
>
> *In the partition, the conjugal dwelling and the lot on which it is situated shall be adjudicated in accordance with the provisions of Articles 102 and 129.*
>
> *Art. 51. In said partition, the value of the presumptive legitimes of all common children, computed as of the date of the final judgment of the trial court, shall be delivered in cash, property or sound securities, unless the parties, by*

*mutual agreement judicially approved, had already provided for such matters.*

*The children or their guardian or the trustee of their property may ask for the enforcement of the judgment.*

*The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime.*

Article 50 of the Family Code gives us two instances wherein the law requires the payment of legitimes prior to the death of the person who is supposed to pay such. These two occasions are: (1) annulment of marriage [Art 45(FC)]; and (2) petition for declaration of nullity [Art. 40 (FC)]. These provisions of law tell us that upon the declaration of nullity or the annulment of the marriage, the husband and the wife must immediately pay to their children their respective presumptive legitimes. In this sense, succession takes place without the element of death.

POINT TO PONDER:

Does the delivery of presumptive legitimes transfer ownership to the common children by virtue of *tradicion* or succession?

**Art 781. The inheritance of a person includes not only the property and the transmissible rights and obligations existing at the time of death, but also those which have accrued thereto since the opening of the succession.**

Accessory follows the principal: This provision appears to be redundant considering that Article 440 provides for the concept of accession. Hence, the inheritance also includes whatever property, rights, and obligations that accrued since the death of the decedent.

*Art. 440. The ownership of property gives the right by accession to everything which is produced thereby, or*

*which is incorporated or attached thereto, either naturally or artificially.*

Purpose of the provision: There is reason to believe that the purpose of Article 781 is for the creditor's protection since even after the point of death, the obligation still accrues interest. For instance, there might be cases where an estate might not be liquid to pay off the existing obligations if you are only looking at the assets at the point of death. But these assets may be generating income and therefore, it is only fair that the heirs should not claim bankruptcy and keep the income for themselves. If creditors cannot claim on the assets, they can claim on the income.

**Art 782. An heir is a person called to succession either by the provision of a will or by operation of law.**

**Devisees and legatees are persons to whom gifts of real and personal property are respectively given by virtue of a will.**

Heir v. Legatee/Devisee: The characterization is of critical importance with regard to Articles 854 and 918. In these two provisions, one is called to distinguish between an heir and a devisee or legatee. Articles 854 and 918 provide that institution of heirs is annulled but the personal gifts of personal and real property will be honored. The instituted heirs are at a dis-advantage whereas the devisees and legatees are protected.

Preterition: Article 854 talks of a violation of the rights of a compulsory heir who was excluded from the estate. When an heir is preterited, Article 854 provides that the institution of heirs will be annulled but the legacies and devises will remain valid insofar as they remain within the free portion of the estate. Thus, the instituted heirs will not receive anything by virtue of their institution or under the will but they may receive something by way of intestacy. However, the legatees and the devises are favored since they will still receive what was given to them despite the preterition.

Void Disinheritance: Article 918, on the other hand, speaks of a void disinheritance. If the disinheritance is void there is again a violation of the rights of an heir to receive his legitime. When an heir is deprived of his legitime by reason of a void

disinheritance, the institution of heirs will also be annulled but the devisees and/or legacies will remain valid.

Purpose of the distinction: The difference in treatment lies in the concept of preference which entitles a person to a superior right over all others with respect to a specific property. In the case of succession, when a testator gives 1/2 of his estate to an heir and a particular car to a legatee, the testator gave a specific preference to the legatee because he singled him out and specified what he is about to receive. Therefore, in the testator's mind, he intends to give this specific car to that particular person creating a preference in favor of the legatee over the car. Whereas in the case of the heir, though he may receive a larger amount, the testator did not create a specific preference for what the heir will receive and the amount the heir receives depends largely on the liquidation process. As to the heir, one has fulfilled the testamentary mandate if the total value of the properties he will receive will be equivalent to half of the testator's estate. The heir has no preference over any specific property. Thus, when a testator distributes an estate by way of legacies and devises, he grants particular properties to designated beneficiaries. On the other hand, when a testator merely designates heirs to his estate, the latter will only divide whatever is left behind after the distribution of the legacies and the devises.

**NERI v. AKUTIN**
**74 Phil 185 (1941)**

*FACTS:* Agripino Neri y Chavez, who died on December 12, 1931, had by his first marriage six children and by his second marriage with Ignacia Akutin, five children. In Agripino Neri's testament, which was admitted to probate on March 21, 1932, he willed that his children by the first marriage shall no longer have any participation in his estate, as they had already received their corresponding shares during his lifetime. At the hearing for the declaration of heirs, the trial court found that all his children by the first and second marriages intestate heirs of the deceased without prejudice to one-half of the improvements introduced in the properties during the existence of the last conjugal partnership, which should belong to Ignacia Akutin.

*ISSUE:* Whether the omission of the children of the first marriage annuls the institution of the children of the first marriage as sole heirs of the testator.

*HELD:* Yes, the institution is annulled. The appellate court thus seemed to have rested its judgment upon the impression that the testator had intended to disinherit, though ineffectively, the children of the first marriage. There is nothing in the will that supports this conclusion. True, the testator expressly denied them any share in his estate; but the denial was predicated, not upon the desire to disinherit, but upon the mistaken belief that the children by the first marriage had already received more than their corresponding shares in his lifetime in the form of advancement. Appellants, on the other hand, maintain that the case is one of voluntary preterition of four of the children by the first marriage, and of involuntary preterition of the children by the deceased Getulia, also of the first marriage, and is thus governed by the provisions of article 814 of the Civil Code.

Preterition consists in the omission in the testator's will of the forced heirs or anyone of them, either because they are not mentioned therein, or, though mentioned, they are neither instituted as heirs nor are expressly disinherited. In the instant case, while the children of the first marriage were mentioned in the will, they were not accorded any share in the hereditary property, without expressly being disinherited. It is, therefore, a clear case of preterition as contended by appellants. The omission of the forced heirs or anyone of them, whether voluntary or involuntary, is a preterition if the purpose to disinherit is not expressly made or is not at least manifest.

Except as to "legacies and betterments" which "shall be valid in so far as they are not inofficious", preterition avoids the institution of heirs and gives rise to intestate succession. In the instant case, no such legacies or betterments have been made by the testator. In the will here in question, no express betterment is made in favor of the children by the second marriage; neither is there any legacy expressly made in their behalf consisting of the third available for free disposal. The whole inheritance is accorded the heirs by the second marriage upon the mistaken belief that the heirs by the first marriage have already received their shares. Were it not for this mistake, the testator's intention, as may be clearly inferred from his will, would have been to divide his property equally among all his children.

POINT TO PONDER:

If you were given the opportunity to choose, would you rather be an heir or a legatee/devisee?

## WILLS

### Wills in General

**Art. 783. A will is an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death.**

Definition: A will is an act whereby a person controls to a certain degree the disposition of his estate after his death. It is an act by which a capacitated person disposes of his property and rights and declares or complies with the duties to take effect after his death.

Disposition of property: Under Article 783, the law specifically refers to the need to control to a certain degree the disposition of an estate. A person writes a will because he wants to control the disposition of his estate after his death. Therefore, the implication is that the person writes a will because he wants to make property disposition. A will which was executed for the sole purpose of recognizing an illegitimate child or for the sole purpose of requiring certain funeral rites is not a will.

Kinds of property disposition: A property disposition can either be direct or indirect. A direct property disposition is where there is an actual provision in the will wherein a person identifies a certain piece of property and gives it to a specific individual or where the will specifies a certain percentage of the property which is to be received by a certain individual. An indirect property disposition is when the will disposes of property by inference or implication, such as in cases of disinheritance. By his disinheritance, the portion of the property which would have gone to him if he were not disinherited would then inure to the benefit of all the other heirs.

**SEANGIO v. REYES**
**G.R. 140371-72, Nov 27, 2006**

*FACTS:* On September 21, 1988, private respondents filed a petition for the settlement of the intestate estate of the late Segundo Seangio. Petitioners Dy Yieng, Barbara and Virginia, all

surnamed Seangio, opposed the petition claiming among others that Segundo left a holographic will, dated September 20, 1995, disinheriting one of the private respondents, Alfredo Seangio, for cause. Petitioners averred that the intestate proceedings should be automatically suspended and replaced by the proceedings for the probate of the will. Sometime in 1999, a petition for the probate of the holographic will of Segundo was filed by petitioners before the RTC. Subsequently, the probate and the intestate cases were consolidated. Private respondents moved for the dismissal of the probate proceedings primarily on the ground that the document purporting to be the holographic will of Segundo does not contain any disposition of the estate of the deceased and thus does not meet the definition of a will under Article 783 of the Civil Code. According to private respondents, the will only shows an alleged act of disinheritance by the decedent of his eldest son, Alfredo, and nothing else; that all other compulsory heirs were not named nor instituted as heir, devisee or legatee, hence, there is preterition which would result to intestacy. Such being the case, private respondents maintained that while procedurally the court is called upon to rule only on the extrinsic validity of the will, it is not barred from delving into the intrinsic validity of the same, and ordering the dismissal of the petition for probate when on the face of the will it is clear that it contains no testamentary disposition of the property of the decedent.

On August 10, 1999, the RTC dismissed the petition for probate proceedings stating among others that there was preterition. Hence, a petition for *certiorari* was filed seeking the nullification of such order.

*ISSUE:* Whether the document was indeed a will. Whether there was preterition.

*RULING:*

Re the Will: The holographic will does not contain any institution of an heir but simply contains a disinheritance of a compulsory heir. Thus, there is no preterition in the decedent's will and the holographic will on its face is not intrinsically void. The purported holographic will of Segundo was dated, signed and written by him in his own handwriting. Except on the ground of preterition, private respondents did not raise any issue as regards the authenticity of the document. For disinheritance to be valid, Article 916 of the Civil Code requires that the same must be effected through a will with a valid cause specified in the will. The

Court believes that the incidents, taken as a whole, can be considered a form of maltreatment of Segundo by his son, Alfredo, and that the matter presents a sufficient cause for the disinheritance of a child or descendant under Article 919. The critical issue to be determined is whether the document executed by Segundo can be considered as a holographic will. Segundo's document, although it may initially come across as a mere disinheritance instrument, conforms to the formalities of a holographic will prescribed by Article 810. An intent to dispose mortis causa can be clearly deduced from the terms of the instrument, and while it does not make an affirmative disposition of the latter's property, the disinheritance of Alfredo, nonetheless, is an act of disposition in itself. In this regard, the Court is convinced that the document, even if captioned as *Kasulatan ng Pag-Aalis ng Mana,* was intended by Segundo to be his last testamentary act and was executed by him in accordance with law in the form of a holographic will. Unless the will is probated, the disinheritance cannot be given effect.

Re Preterition: The Court believes that the compulsory heirs in the direct line were not preterited in the will. Segundo did not institute an heir to the exclusion of his other compulsory heirs. The mere mention of the name of one of the petitioners, Virginia, in the document did not operate to institute her as the universal heir. Her name was included plainly as a witness to the altercation between Segundo and his son, Alfredo. Considering that the questioned document is Segundo's holographic will, and that the law favors testacy over intestacy, the probate of the will cannot be dispensed with in accordance with Article 838 of the Civil Code. The continuation of the proceedings in the intestate case will work injustice to petitioners, and will render nugatory the disinheritance of Alfredo.

The Supreme Court set aside the Orders of the RTC and directed Respondent judge to reinstate and continue the proceedings for the allowance of the holographic will of Segundo Seangio. The intestate case was suspended until the termination of the aforesaid testate proceedings.

**FISCHER v. JOHNSON**
**Court of Appeals of Kentucky, 1969**
**441 S.W.2d 132**

*FACTS:* Daniel and Nellie Peterson, a childless couple, each executed a will leaving their property to the survivor. Nellie died

in July 1966. On October 10, 1966, Daniel wrote to the lawyer who had prepared his and his wife's will, a handwritten letter containing instructions on how to dispose of his properties and leaving the balance after funeral expense to one L.Fischer. L.Fischer was also named by Daniel as executrix without bond or surety. In the letter, Daniel instructed his lawyer to "put these explanations in my Will if you think it advisable" and "In the event this doesn't reach you before my death, try to make this as legal and binding as possible." Daniel died February 1967. The letter was offered and denied probate by the court. Hence, this appeal by L.Fischer.

*ISSUE:* Did the handwritten letter of Daniel Peterson constitute his will?

*HELD:* No. Mr.Peterson and his wife had previously executed a formal will drawn by their attorney and it appears that he had considerable knowledge of the requirements of drafting and executing a will, which is verified by the letter to his attorney.

The letter in question shows that it was not regarded by Mr. Peterson as a will but was simply a direction to his attorney, Mr.Burt, to write a will. It said "Put these explanations in my will if you think advisable", and then he set out six items and to whom he wanted them bequeathed. The next sentence in the letter stated, "In the event this doesn't reach you before my death, try to make this as legal and binding as possible".

This letter was written three months and twenty days before Mr.Peterson's death. A will was prepared according to its instructions and given Mr.Peterson for execution and he visited the office of his lawyer who prepared it on four or five different occasions and made no effort to execute it or legalize it. In the case of Nelson v. Nelson, 235 Ky.189, 30 S.W.2d 893 (1930), it is stated: "We take it there will be no disputing the fact that the determination of whether an instrument is testamentary in character depends wholly upon the intention of the maker, and that, in the absence of a testamentary intent, there can never be a will."

Limitations to property dispositions: Under the system of compulsory succession, the freedom of a person to dispose of his property by virtue of a will shall be necessarily subject to the provisions of the law on legitimes. As defined in Article 886, a 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."

Characteristics of the making of a will: The making of a will is personal, free, revocable or ambulatory, formal, unilateral, effective mortis causa, individual, and purely statutory.

Personal: A person cannot delegate the writing or making of a will to third persons. If a person wants to control the disposition of his properties upon his death, he must personally write or make his own will.

Free or Voluntary: As in any act that effects a transfer of real rights, the making of a will must be done voluntarily. Any vice of consent such as fraud, undue influence, or mistake, invalidates the will.

Revocable or Ambulatory: Since the dispositions will only take effect upon the death of the testator, he is given the leeway to change his mind and revoke his will. No rights can be said to have been impaired since succession only opens at the moment of death. Since no rights are vested until death, the testator can revoke his will anytime during his lifetime.

Formal: The making of a will is surrounded by solemnities prescribed by law. While holographic wills are subject to no other form, notarial wills are required to comply with certain formalities as found in Articles 804-809.

Unilateral: Only one party is necessary to make a will. In contracts, the participation of the transferee is normally as essential as the participation of the transferor.

Effective Mortis Causa: Regardless of the tenor of the will, the effectivity of the property dispositions is effective only upon death of the testator. If the testator provides otherwise, then the law on donations should be applicable.

Individual: The making of a will is an individual act. While marriage necessitates the joint participation of a man and a woman to exchange marriage vows before a solemnizing officer, the making of a will can never be a joint undertaking between spouses.

Statutory: The right of making a will thus allowing the testator to control his property beyond his lifetime is a right provided by the legislature. Thus, Congress can prescribe forms, set restrictions, and regulate the testamentary powers of the testator.

POINTS TO PONDER:

1. Can a testator revoke a will that was already probated by him during his lifetime?
2. Can Congress pass a law that will prescribe additional qualifications for a person to write a will? What will be the effects of such law to a will already written? To a will already probated?

**Article 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 or attorney.**

Strictly Personal: The making of a will must be wholly done by the testator. While lawyers or agents can assist the testator in drafting the will, the testator still has to approve whatever is drafted. Thus a will drafted by a lawyer is still considered as made personally by the testator. The law provided certain safeguards if in case these lawyers or agents violate the "strictly personal" feature of making a will. For instance, when they dictate or influence the testator in making or changing certain dispositions, the law invalidates the will on the ground of undue influence.

Accomplished through an agent or attorney: Notarial wills (as opposed to holographic wills whereby the testator has to personally write the will) are usually prepared by attorneys who specialize in estate planning or settlement. In the United States, probate and estate planning is an entirely separate field of specialization. Having more knowledge on the formalities required by law for the preparation of wills, testators normally expect their lawyers to draft a will on their behalf. Nonetheless, the testator himself still has to personally participate in the

making of the will either by way of signing it in the presence of witnesses or by directing another person to sign his name in the will in his presence as provided in Article 805. Hence, despite being prepared or drafted by an attorney or signed by an agent, the making of the will remains "strictly personal."

**Article 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.**

Prohibited Delegation: The determination of the duration and/or efficacy of the institution and the apportionment of property cannot be delegated without violating the personal characteristic of a will. Article 785 thus prevents the delegation of the exercise of testamentary discretion as to effectivity of designation and as to who gets what.

Duration or Efficacy of the Designation: The discretionary powers of the testator to declare when or how long the designation of the heir is effective cannot be delegated to another. Any limit or term affecting the designation is as personal as the designation itself.

POINT TO PONDER:

What is/are the instance(s) contemplated in this article inasmuch the phrase "when referred to by name" appears to qualify the extent of the prohibited delegation as regards the portions to which the heirs can succeed?

**Article 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.**

Distribution of Property: Article 786 provides that the distribution of a specified sum to a specified class of people can be entrusted to a third person. Such delegation is allowed because

testamentary discretion had already been exercised and what is delegated is merely the implementation of such discretion.

Inherent Limitations: When the class institution is too broad, the law itself provides limits. For example, if the beneficiaries of the estate are "the poor," the law will interpret such provision as the poor people living in the locality where the testator lived. If the provision states "to charity," the law will divide the amount in half and give 1/2 to the local government for public schooling and charitable works and the other half will go to the coffers of the testator's church to be used for whatever the church wants.

Designation of the persons, institutions or establishments: What is delegated is the determination of recipients of the specified properties to persons, institutions, or establishments within the specified class or cause. There is no testamentary discretion delegated since the third person's selection of recipients are limited to those members within a class or cause that was already chosen by the testator.

Mere implementation: The third person merely implements the disposition as to who are to receive the estate of the testator. For the delegated power to be ministerial in nature, the testator has to provide for guidelines or criteria and has already earmarked specific property or sums of money for such third person to merely distribute in accordance with the criteria provided.

Premise of such allowable delegation: The law permits this type of delegation because of the basic premise that when a person makes a class designation, he is unfamiliar with such matter. Invariably, the testator feels that another person is in a better position to make an equitable allocation of the sum set aside. Perhaps he is not familiar with the determination of which of these causes would be the better beneficiary of his gift. The law does not want to disqualify a testator from giving to charity just because he is unfamiliar with the inner workings of charity work.

POINT TO PONDER:

How specific must the criteria be for the delegation of the ministerial power to be valid under Article 786?

**Article 787. 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.**

Prohibited delegation: Based on the preceding article, the determination as to the effectiveness of a particular testamentary disposition cannot be delegated without violating the personal characteristic of a will. Thus, when a testator makes a disposition, it becomes effective either immediately upon his death (unconditional) or upon the happening of a condition or arrival of a term (conditional) as imposed by the testator himself. The happening of the condition or the determination thereof cannot be made dependent on a third person.

**Article 788. If a testamentary disposition admits of different interpretations, in case of doubt, that interpretation by which the disposition is to be operative shall be preferred.**

Purpose of the rules of interpretation: The primary purpose is to ascertain the meaning and intent of the testator in the will. The cardinal rule in construing wills is the same as the rules as regards statutes, i.e. — when the law admits of no ambiguity, there is no need to resort to the rules of interpretation or construction. However, as stated in Article 788, in case of doubt, the interpretation towards the operativeness of the will is favored. The intent of the testator must prevail in cases of ambiguity.

**Article 789. When there is an imperfect description, or when no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence, excluding the oral declarations of the testator as to his intention; and when an 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, taking into consideration the circumstances under which it was made, excluding such oral declarations.**

Different types of Mistakes:

1. Apparent or extrinsic: Mistake of "imperfect description" that appears in the face of the instrument.

(Example: "to the most intelligent Senator in the history of the Philippine Senate")

2. Non-apparent or intrinsic: Mistake as "when no person or property exactly answers the description" that cannot be seen from a mere personal reading of the will, but appears only upon the consideration of extrinsic circumstances. (Example: "to my best friend in school" and the testator had best friends in high school, college, law school, etc.)

Remedies: Since the mistake came from the testator, the solution to resolve the mistake must also come from the testator by determining his intent when the disposition was made. According to this Article, the testator's intention shall be ascertained from the words of the will, taking into consideration the circumstances under which such will was made.

Steps to resolve ambiguous dispositions:

1. Inspect the instrument. Read the entire will in order to find the intent of the testator since there may be other provisions in the will that will help in the construction of the ambiguous dispositions.

2. Resort to extrinsic evidence, except testimonies of the testator himself or oral declarations, if the intention of the testator is not readily ascertainable from simply reading the whole will. The extrinsic evidence referred to in this Article is that circumstantial evidence that may help reveal testamentary intent. Below is a reproduction of the pertinent rule in Evidence which is in harmony with Article 789.

> *Sec. 13. Interpretation according to circumstances. — For the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those who language he is to interpret.*

Harmony with the provisions of the Rules of Court: There are two kinds of extrinsic evidence, namely documentary or

written evidence, and testimonial or oral evidence. The Parol Evidence Rule and the Dead Man's Statute basically preclude the admissibility of the oral testimonies and testimonies of the decedent in interpreting or resolving ambiguities contained in a will.

Parole Evidence Rule: The first paragraph of the Rule says that anything reduced into writing is supposed to contain all such terms and conditions of that agreement. Whatever is contained in the written document is the totality of the agreement between the parties. Therefore, as to parties to the contract and their successors in interest, there can be no evidence as to their agreement other than the written instrument itself subject to certain exceptions. Before any introduction of oral evidence that will supplement, contradict or subvert a written document, it is therefore important to present preliminary evidence to show that it falls under one of the aforementioned exceptions. If it falls under any of the exceptions, a witness may be called upon to provide testimony as to what the imperfection is, why it is an imperfection, what the true intent is, how it was subverted by the document and why the document is a total nullity. Below is a reproduction of such Parol Evidence Rule as found in Rule 130.

> *Sec. 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.*
>
> *However, a party may present evidence to modify, explain or add to the terms of written agreement if he puts in issue in his pleading:*
>
> *(a) An intrinsic ambiguity, mistake or imperfection in the written agreement;*
>
> *(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;*
>
> *(c) The validity of the written agreement; or*

*(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.*

*The term "agreement" includes wills.*

"Dead Man's Statute": Under this Rule, in an action where a claim is filed against the estate, where plaintiff is the claimant and defendant is the executor of the deceased person, both parties are prohibited to testify as to something which the deceased said in his lifetime. Below is a reproduction of the pertinent section as found in Rule 130.

*Sec. 23. Disqualification by reason of death or insanity of adverse party. — Parties or assignor of parties to a case, or persons in whose behalf a case is prosecuted, against an executor or administrator or other representative of a deceased person, or against a person of unsound mind, upon a claim or demand against the estate of such deceased person or against such person of unsound mind, cannot testify as to any matter of fact occurring before the death of such deceased person or before such person became of unsound mind.*

**Article 790. 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.**

**Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention, or unless it satisfactorily appears that he was unacquainted with such technical sense.**

Ordinary interpretation: Non-technical words are interpreted ordinarily unless testamentary intent provides otherwise AND that such peculiar or different interpretation can be ascertained.

Harmony with the provisions of the Rules of Court: The rules of evidence allow for cases where ordinary words are given a peculiar signification. Below are the pertinent sections under the rules of evidence.

*Sec. 14. Peculiar signification of terms. — The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is admissible to show that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.*

*Sec. 10. Interpretation of a writing according to its legal meaning. — The language of a writing is to be interpreted according to the legal meaning it bears in the place of its execution, unless the parties intended otherwise.*

Technical interpretation: Technical words are interpreted in their technical sense unless testamentary intent provides otherwise OR it can be proven that the testator was unfamiliar with such technical word and he made the will unassisted by any technical person.

POINT TO PONDER:

What could possibly be the "technical words" the law contemplated in providing for such rule of interpretation?

**Article 791. The words of a will are to receive an interpretation which give to every expression some effect, rather than one which will render any of the expressions inoperative; and of two modes of interpreting a will, that is to be preferred which will prevent intestacy.**

Preference of Testacy over Intestacy: The mere fact that a will was executed already gives preference to testamentary succession. In interpreting a will and its provisions, the cardinal principle to be followed is the testator's intent.

**DIZON-RIVERA v. DIZON**
**33 SCRA 554 (1970)**

*FACTS:* Agripina Valdez died and was survived by 7 compulsory heirs (6 legitimate children and 1 legitimate grandchild as heir of a pre-deceased legitimate child). She left a will. One

of the compulsory heirs Marina Dizon was appointed executrix. The real and personal properties of the testatrix had a total appraised value of P1,811,695.00 (formerly P1,801,960.00). The legitime of each of the 7 compulsory heirs amounted to P129,362.11. In her will, Agripina commanded that her property be divided in accordance with her testamentary disposition, whereby she devised and bequeathed specific real properties to her children and grandchildren. Marina and Tomas were given more than their respective legitimes, while the rest received less than their respective legitimes.

Marina submitted a project of partition, adjudicating the properties given them in the will, plus cash and/or properties to complete the respective legitimes to P129,254.96 of those given less while Tomas and Marina must pay in cash or property an amount necessary to complete the prejudiced legitimes. The oppositors, who were the other 6 compulsory heirs (including Tomas), submitted their counter-project of partition where they proposed the reduction of all testamentary dispositions proportionately to the value of ½ of the entire estate corresponding to the free portion, and the other half to be divided among the 7 compulsory heirs as constituting their legitimes.

*ISSUE:* Whether the testamentary dispositions in the will are in the nature of devises imputable to the free portion of the estate and therefore subject to reduction?

*HELD:* Articles 788 and 791 of the New Civil Code are applicable in this case. The testamentary disposition made by the testatrix was in the nature of a partition of her estate by will. The testatrix specified each real property in her estate and designated the particular heir among her seven compulsory heirs and seven other grandchildren to whom she bequeathed the same. This was a valid partition of her estate as contemplated in Article 1080 of the New Civil Code, providing that "should a person make a partition of his estate by an act inter vivos or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs." This right of a testator to partition his estate is subject only to the right of compulsory heirs to their legitime.

The testamentary dispositions of the testatrix, being dispositions in favor of compulsory heirs, do not have to be taken only from the free portion of the estate, for the second paragraph of Article 842 of the Civil Code precisely provides that "one who has compulsory heirs may dispose of his estate provided he does

not contravene the provisions of this Code with regard to the legitime of said heirs."

Determination of Testator's Intent: If a will is subject to different interpretations, the cardinal principle of determining the testator's intent must dictate which of these interpretations will be followed. The law does not prohibit a testator from favoring people in making the provisions of his will provided he respects the legitime of the compulsory heirs. Thus, when the will clearly indicates "favored" heirs, then the interpretation must be in such a way that such heirs remain "favored" than the others.

**PARISH PRIEST OF THE ROMAN CATHOLIC CHURCH OF VICTORIA, TARLAC v. BELINA RIGOR, et al.**
**89 SCRA 493 (1979)**

*FACTS:* Father Rigor died and left a will which was probated in 1935. In his will, he named as devisees his sisters and a cousin. A devise of ricelands was also made in favor of the testator's nearest male relative who shall take the priesthood, and in the meantime, the ricelands would be administered by the Catholic Priest of the Roman Catholic Church of Victoria, Tarlac. A project of partition providing for the delivery to the devisees of their respective shares of the estate was approved but the devise regarding the ricelands was not implemented as no male relative of the testator claimed the same. Several years after approval of the project of partition, the parish priest of Victoria filed a petition in the testate proceedings for delivery of the ricelands to the church as trustee thereof. The heirs of Father Rigor opposed said petition and prayed that the said bequest be declared inoperative as no 'nearest male relative' of the testator had ever studied for the priesthood. The lower court's order in favor of the Parish Priest of Victoria was reversed by the Court of Appeals on its ruling that the trust in favor of the 'nearest male relative' could only exist for 20 years because to enforce it beyond that period would violate the rule against perpetuities, and since no legatee claimed the ricelands within 20 years from the death of the testator, said properties should pass to his legal heirs.

*ISSUE:* What was the intention of the testator regarding the bequest of ricelands to his "nearest male relative who will take the priesthood" and how can this intention be ascertained?

*HELD:* The will of the testator is the first and principal law in the matter of testaments. When his intention is clearly and

precisely expressed, any interpretation must be in accord with the plain and literal meaning of his words, except when it may clearly appear that his intention was different from that literally expressed. The testator's intention is to be ascertained from the words of the will, taking into consideration the circumstances under which it was made.

From the testamentary provisions of Father Rigor's will, it may be deduced that the testator intended to devise the ricelands to his nearest male relative who would become a priest, and that the parish priest of Victoria would administer the ricelands during the interval of time that no nearest male relative of the testator was studying for the priesthood. What is not clear is how long after the testator's death would it be determined that he had a nephew who would pursue the ecclesiastical vocation. We hold that the said bequest refers to the testator's nearest male relative living at the time of his death and not to any indefinite time thereafter. In order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens. The said testamentary provisions should be sensibly or reasonably construed. To construe them as referring to the testator's nearest male relative at anytime after his death would render the provisions difficult to apply and create uncertainty as to the disposition of his estate.

Inasmuch as the testator was not survived by any nephew who became a priest, the unavoidable conclusion is that the bequest in question was ineffectual or inoperative. Therefore, the administration of the ricelands by the parish priest of Victoria, as envisaged in the will, was likewise inoperative.

**Article 792. The invalidity of one of several dispositions contained in a will does not result in the invalidity of the other dispositions, 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.**

Harmony with the provisions of the Rules of Court: The general rule is each disposition is independent from another such that if one is invalidated the other remains unaffected. If it can be shown that testator made the dispositions interrelated or interconnected, then the invalidity of one invalidates the other. Below is a rule of Evidence that supports Article 792.

*Sec. 11. Instrument construed so as to give effect to all provisions. — In the construction of an instrument, where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.*

**Article 793. Property acquired after the making of a will shall only pass thereby, as if the testator had possessed it at the time of making the will, should it expressly appear by the will that such was his intention.**

Purpose of the provision: The apparent purpose is to prevent at least partial intestacy since the assets a testator can dispose of are only those which are in existence at the time of the execution of the will. All assets subsequently acquired after the making of the will would have to pass by intestate succession. Without Article 793, most testators would have to die partly testate, partly intestate. In all probability, the wealth of a person at the time of the execution of the will shall significantly increase until the time of his death. If there were properties acquired after the execution of the will, these new properties could not have been disposed in the will since the testator did not know then that he would have such properties. With Article 793, the properties which were acquired in between the period of the execution of the will and the opening of the succession of the person may still be distributed in accordance with the will.

Comparison with Article 781: Article 793 pertains to properties acquired by the testator after the execution of the will whereas Article 781 pertains to properties which accrued after the death of the testator. Article 793 allows the complete distribution of the person's estate to include those properties not yet acquired during the execution of the will. However, the intent must be clearly expressed in the will; e.g. "All properties which I may acquire after the execution of this will shall be given to X." Without this provision, the will may only cover those properties owned by the testator at the time of the execution of the will.

**Article 794. Every devise or legacy shall cover all the interest 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.**

All proprietary interests included: In the absence of any stipulation, all the proprietary interests of the testator in a specific property disposed of shall be included in the devise or legacy.

**Article 795. The validity of a will as to its form depends upon the observance of the law in force at the time it is made.**

Significance of Validity: For a will to distribute and dispose the properties, rights and obligations to the heirs, the same must be completely valid satisfying all the requirements for extrinsic and intrinsic validity.

Intrinsic validity: This is concerned with substantive validity such as issues concerning legitimes, capacity of the heirs, those involving disqualification of certain heirs, preterition, collation, representation and validity of substitution. As regards time, the law operating at the time of the death shall be the governing law, because at the time of the execution of the will no right has yet accrued to those who were designated as beneficiaries in the will since the inheritance of a person is opened only at the time of his death. When a person was designated as beneficiary in the will, no vested right accrued to him which may be violated by the subsequent amendment of the law.

Extrinsic validity: This refers only to formal validity which the law requires that is, a will be in proper form and made by one with testamentary capacity. As regards formal validity and with respect to time, the law enforced at the time of the execution of the will is the governing law because this is a fundamental requirement of due process. One cannot be required to anticipate future law when making a will, otherwise, it would be very unreasonable and would not pass the test of due process.

Conflicts Rule: A Filipino can use Philippine law (because of our adherence to the Nationality Rule), the law of execution, the law of the place where he might be at that particular time (death), and the law of the place where the contract is celebrated (lex loci celebrationis). If one is an alien living abroad owning properties in the Philippines, the formal validity of the will can be determined based on Philippine laws, lex loci celebrationis, nationality law and the domiciliary law. Under our conflicts rule when the nationality laws cannot apply, the domiciliary law shall

apply. If one is an alien residing in the Philippines, the law of domiciliary and nationality law shall govern the formal validity of the will.

Stipulation by the Testator: A provision in the testator's will which mandates the application of the laws of another country instead of his national law is without effect. Article 16 of the Civil Code provides that with respect to intrinsic validity of testamentary and intestate succession, the national law of the decedent shall prevail.

**IN RE ESTATE OF RUSSELL**
**Supreme Court of California,1968**
**69 Cal.2d 200, 444 P.2d 353, 70 Cal.Rptr.561**

*FACTS:* Thelma Russell died testate leaving a validly executed holographic will which stated: "I leave everything I own Real & Personal to Chester H. Quinn & Roxy Russell. My ($10) Ten dollar Gold Piece & diamonds I leave to Georgia Nan Russell." Chester Quinn is a close friend of the testatrix, while Roxy Russell was her pet dog. Georgia Nan Russell, herein plaintiff is testatrix' niece and only heir-at-law. In her petition for determination of heirship, plaintiff Georgia alleged that Roxy Russell was a dog, who under the law can not inherit, and that the gift of one-half of the residue of testatrix' estate to Roxy Russell is invalid and void and thus plaintiff was entitled to such one-half as the testratrix' sole heir-at-law. The court ruled that the testatrix intended to and did make an absolute and outright gift to Mr.Quinn of all the residue of her estate, adding "there occurred no lapse as to any portion of the residuary gift to CHESTER H.QUINN by reason of the language contained in the Will concerning the dog, ROXY RUSSELL, such language not having the effect of being an attempted outright gift or gift in trust to the dog. The effect of such language is merely to indicate the intention of Testatrix that CHESTER H. QUINN was to take the entire residuary estate and to use whatever portion thereof as might be necessary to care for and maintain the dog, ROXY RUSSELL'. Thus, this appeal by Georgia Nan Russell.

*ISSUE:* Was the court correct in interpreting the words of Russell's Will to mean that Quinn would take the entire residuary estate and use a portion thereof for the care of Roxy Russell?

*HELD:* No. 'The paramount rule in the construction of wills, to which all other rules must yield, is that a will is to be construed

according to the intention of the testator as expressed therein, and this intention must be given effect as far as possible. '

Extrinsic evidence of the circumstances under which a will is made (except evidence expressly excluded by statute) may be considered by the court in ascertaining what the testator meant by the words used in the will. If in the light of such extrinsic evidence, the provisions of the will are reasonably susceptible of two or more meanings claimed to have been intended by the testator, ' an uncertainty arises upon the face of a will and extrinsic evidence relevant to prove any of such meaning is admissible. If, on the other hand, in the light of such extrinsic evidence , the provisions of the will are not reasonably susceptible of two or more meanings, there is no uncertainty arising upon the face of the will and any proffered evidence attempting to show an intention different from that expressed by the words therein, giving them the only meaning to which they are reasonably susceptible, is inadmissible.

Viewing the will in the light of the surrounding circumstances as are disclosed by the record, we conclude that the will cannot reasonably be construed as urged by Quinn and determined by the trial court as providing that testatrix intended to make an absolute and outright gift of the entire residue of her estate to Quinn who was 'to use whatever portion thereof as might be necessary to care for and maintain the dog'. No words of the will gave the entire residuum to Quinn, much less indicate that the provision for the dog is merely precatory in nature. Such an interpretation is not consistent with a disposition which by its language leaves the residuum in equal shares to Quinn and the dog. A disposition in equal shares to two beneficiaries cannot be equated with a disposition of the whole to one of them who may use 'whatever portion thereof as might be necessary' on behalf of the other. Neither can the bare language of a gift of one-half of the residue to the dog be so expanded as to mean a gift to Quinn in trust for the care of the dog.

The trial court's interpretation of the terms of the will was erroneous. Interpreting the provisions relating to testatrix' residuary estate in accordance with the only meaning to which they are reasonably susceptible, we conclude that testatrix intended to make a disposition of all of the residue of the estate to Quinn and the dog in equal shares, and as a dog cannot be the beneficiary under a will, the attempted gift to Roxy Russell is void. The residue of testatrix' estate should be distributed in equal shares to Chester H.Quinn and Georgia Nan Russell, testatrix' niece.

**BELLIS v. BELLIS**
**20 SCRA 358 (1967)**

*FACTS:* Amos G. Bellis, an American citizen and resident of San Antonio, Texas executed a will in the Philippines, in which he disposed of his estate to his relatives including his first wife, his 3 illegitimate children, and his surviving children by his first and second marriage. Upon the death of Amos G. Bellis, his will was admitted to probate in Manila. The executor of the will complied with the provisions of the will and filed with the court a Project of Partition. Herein plaintiffs, 2 of the 3 illegitimate children of Amos, opposed said Project of Partition on the ground that they were deprived of their legitimes as illegitimate children. The lower court dismissed the opposition filed by plaintiffs and admitted the Project of Partition relying on Article 16 of the Civil Code which states that the national law of the decedent, which in this case is Texas law shall be applied. Texas law did not provide for legitimes.

*ISSUE:* Which law should apply – Texas law or Philippine law?

*HELD:* Texas law should apply. Article 16, par.2 and Article 1039 of the Civil Code state that the national law of the decedent, in intestate or testamentary successions, shall govern with regard to four items: (a) the order of succession; (b) the amount of successional rights; (c) the intrinsic validity of the provisions of the will; and (4) the capacity to succeed. The parties admit that the decedent, Amos G. Bellis, was a citizen of the State of Texas, U.S.A., and that under the laws of Texas, there are no forced heirs or legitimes. Accordingly, since the intrinsic validity of the provision of the will and the amount of successional rights are to be determined under Texas law, the Philippine law on legitimes cannot be applied to the testacy of Amos G. Bellis.

## TESTAMENTARY CAPACITY AND INTENT

**Art. 796. All persons who are not expressly prohibited by law may make a will.**

**Art. 797. Persons of either sex under eighteen years of age cannot make a will.**

**Art. 798. In order to make a will it is essential that the testator be of sound mind at the time of its execution.**

Testamentary Capacity: The ability to execute a will has three components; age, soundness of mind, and express statutory prohibition.

POINTS TO PONDER:

1. Does a convict serving a penalty that carries with it the penalty of civil interdiction have testamentary capacity?
2. Can a person under guardianship write a will? Can a guardian write a will on behalf of his ward?

**Art. 799. To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause.**

**It shall be sufficient if the testator was able at the time of making the will to know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act.**

Soundness of Mind: Soundness of mind as a component of testamentary capacity does not mean complete possession of mental and physical faculties. While some diseases (Parkinson's disease) or advanced age (senile dementia) or injury may affect a person's reasoning faculties, he can still possess testamentary capacity as long as he has the ability to know the nature of his estate, the proper objects of his bounty, and the character of the testamentary act.

**BAGTAS v. PAGUIO**
**22 Phil 227 (1912)**

*FACTS:* Pioquinto Paguio died leaving a will. Fifteen (15) years prior to his death, Paguio suffered from a paralysis of the left side of his body, his hearing impaired and he lost the power of speech. Through the medium of signs, he was able to indicate his wishes to his family. The will was presented for probate by his widow but was opposed by his son and grandchildren on the ground that the testator was not in full enjoyment and use of his mental faculties and was without the mental capacity necessary to execute a valid will.

*ISSUE:* Did the testator have testamentary capacity?

*HELD:* The testator had been for a number of years prior to his death afflicted with paralysis, in consequence of which his physical and mental strength was greatly impaired. None of the witnesses attempted to state the mental condition of the testator at the time he executed the will in question. There can be no doubt that the testator's infirmities were of a very serious character, and it is quite evident that his mind was not as active as it had been in the earlier years of his life. However, it can not be concluded from this that he was wanting in the necessary mental capacity to dispose of his property by will.

The courts have been called upon frequently to nullify wills executed under such circumstances, but the weight of authority is in support of the principle that it is only when those seeking to overthrow the will have clearly established the charge of mental incapacity that the courts will intervene to set aside a testamentary document of this character. In this jurisdiction the presumption of law is in favor of the mental capacity of the testator and the burden is upon the contestants of the will to prove the lack of testamentary capacity.

The courts have repeatedly held that mere weakness of mind and body, induced by age and disease do not render a person incapable of making a will. The law does not require that a person shall continue in the full enjoyment and use of his pristine physical and mental powers in order to execute a valid will.

To constitute a sound and disposing mind, it is not necessary that the mind shall be wholly unbroken, unimpaired, or unshattered by disease or otherwise, or that the testator should be in full possession of his reasoning faculties. "The question is not so much, what was the degree of memory possessed by the testator, as, had he a disposing memory? Was he able to remember the property he was about to bequeath, the manner of distributing it, and the objects of his bounty? In a word, were his mind and memory sufficiently sound to enable him to know and understand the business in which he was engaged at the time when he executed his will."

<u>Nature of the estate</u>: The testator shall have the ability to know the nature of his estate if he knows what properties belong to him which he intends to bequeath in his will. At the same time,

he knows the extent of his liabilities, if any, which will affect his net estate.

Proper objects of his bounty: These proper objects naturally include those persons for whom the testator has a certain level of affection or endearment which might merit a disposition in their favor. Aside from blood relatives, examples of such persons include a faithful servant, a loyal driver, or a best friend.

Character of the testamentary act: Regardless of his mental state, the testator shall be considered to have testamentary capacity if he understands that the preparation and execution of the will involves dispositions affecting his properties. The individual dispositions may be questionable to others, however, if the same appears to be reasonable considering the factual circumstances surrounding the testator and the beneficiaries, then the testator may well have understood the character of his testamentary act.

**MATTER OF ESTATE OF BONJEAN**
**Appellate Court of Illinois, 1980**
**90 Ill. App.3d 582, 45 Ill.Dec.872, 413 N.E.2d 205**

*FACTS:* Armida L. Bonjean died at the age of 64 from ingestion of cyanide. She left a will which bequeathed the majority of her property to the relatives of her late husband. Ms.Bonjean's 2 sisters and a brother were specifically disinherited in said Will, which was admitted to probate. The siblings of Ms.Bonjean filed a petition in court alleging that the testatrix was subject to insane delusions at the time her will was executed and she was therefore lacking testamentary capacity. Said siblings contend that the testatrix could not rationally turn against her sisters and brother who did nothing to her but try to help her'. The lower court concluded that the testatrix suffered 'insane delusions which arose over her misunderstanding of her family's effort to assist her in her own mental condition'. Thus, the court voided the will of Ms.Bonjean.

*ISSUE:* Whether Ms.Bonjean suffered from insane delusions which affected her testamentary capacity?

*HELD:* The act of suicide, or attempted suicide, is not, per se, proof of insanity or insane delusions. Suicide may, however, be part of a pattern of behavior which eludes rational explanation.

The actions of the testatrix in the case at bar do not defy rational explanation. The petitioners concede that although their actions toward the decedent were prompted by altruistic concerns, those actions were not always received or interpreted in the same spirit. We believe Ms.Bonjean's resentment of her family's attempt to force her commitment provides a rational explanation for their disinheritance. The trial court found that the testatrix misunderstood her family's effort to assist her in her own mental condition. Yet, 'the mere misapprehension of the facts' does not establish the existence of such a delusion as will invalidate a will.

We find that the facts which fostered Ms.Bonjean's hostility toward her sisters and brother have a rational basis. The hostility is not the product of a 'perverted imagination'. Ms.Bonjean's hostility toward her family can be rationally explained as deriving from a threat to her personal liberty associated with those same family members. Because this rational explanation appears uncontradicted in the record, the burden of proof necessary to set aside the will has not been met

**BARNES v. MARSHALL**
**Supreme Court of Missouri, 1971**
**467 S.W.2d 70**

*FACTS:* Dr. A.H.Marshall executed a will shortly before his death, where he made specific bequests of his property to his relatives, and to religious, charitable and fraternal organizations. To his daughter, herein plaintiff, the testator gave $ 5.00 each year. His estate was appraised at $ 525,400. Plaintiff filed this case to contest the will on the ground that the testator was not of sound mind and did not have the mental capacity to make a will. Plaintiff presented several witnesses who testified that the testator told them that he could talk directly to the Lord, that he had been given by the Lord the power to punish people who had wronged him, that he would save the world should he become prime minister of the United States, and that sometimes the testator went out in public with nothing on but a bathrobe. Because of this behavior, all these witnesses opined that the testator was of unsound mind. Plaintiff also presented 2 medical doctors who testified that the testator was suffering from manic-depressive psychosis, and that at the time he executed his will, he was of unsound mind.

Defendants on the other hand contend that there is evidence that a person suffering from manic-depressive psychosis has

periods of normalcy between the abnormal periods of elation or depression and that the testator was in a normal period at the time the will was executed. They also contended that testator's peculiarities, eccentricities, neglect of person or clothing, peculiar or unusual political and religious views are not evidence of testamentary incapacity or of unsound mind.

*ISSUE:* Who can say a testator is not of sound mind?

*HELD:* The rule is well settled that, ordinarily, before a lay witness will be permitted to give his opinion that a person is of unsound mind, he must first detail the facts upon which he bases such opinion, but if he expresses an opinion that such person is of sound mind, he is not required to detail the facts upon which he founds his opinion. The reason for the rule is obvious. An opinion that a person is of unsound mind is based upon abnormal or unnatural acts and conduct of such person, while an opinion of soundness of mind is founded upon the absence of such acts and conduct.

Each witness detailed sufficient facts upon which to base the opinion stated. Those facts went far beyond a mere showing of peculiarities and eccentricities. They were clearly inconsistent with the conclusion that testator was of sound mind.

**IN RE HONIGMAN'S WILL**
**Court of Appeals of New York, 1960**
**8 N.Y.2d 244, 168 N.E.2d 676**

*FACTS:* In the testator's purported last will and testament, he gave $ 5,000 each to his grandnieces, half of his estate to his surviving brothers and sisters, but cut off his surviving wife with only $ 2,500 and life use of her minimum statutory share of his estate. When the will was presented for probate, the wife objected thereto. The trial court found that the testator at the time he made his will was suffering from an unwarranted and insane delusion that his wife was unfaithful to him, which condition affected the disposition made in the will. To offset and contradict this showing of irrational obsession the proponents adduced proof which, it is said, furnished a reasonable basis for the decedent's belief, and which, when taken with other factors, made his testamentary disposition understandable. The ruling denying probate was appealed by the proponents, and the appellate court reversed such ruling and directed probate.

*ISSUE:* Who has the burden of proving the presence of testamentary capacity?

*HELD:* It is true that the burden of proving testamentary capacity is a difficult one to carry but when an objectant has gone forward with evidence reflecting the operation of the testator's mind; it is the proponent's duty to provide a basis for the alleged delusion.

As to the testator's belief that his wife was unfaithful to him — "If a person persistently believes supposed facts, which have no real existence except in his perverted imagination, and against all evidence and probability, and conducts himself, however logically, upon the assumption of their existence, he is, so far as they are concerned, under a morbid delusion; and delusion in that sense is insanity. Such a person is essentially mad or insane on those subjects, though on other subjects he may reason, act and speak like a sensible man."

**Art. 800. The law presumes that every person is of sound mind, in the absence of proof to the contrary.**

**The burden of proof that the testator was not of sound mind at the time of making his dispositions is on the person who opposes the probate of the will; but if the testator, one month, or less, before making his will was publicly known to be insane, the person who maintains the validity of the will must prove that the testator made it during a lucid interval.**

Burden of Proof: It is the person who challenges the will or questions the presence of testamentary capacity of the testator who has to prove the insanity of the testator.

Exception to the Presumption of Sanity: It is the person who maintains the validity of the will who has to prove that the testator had soundness of mind if testator, one month or less, before making his will was publicly known to be insane.

**Art. 801. Supervening incapacity does not invalidate an effective will, nor is the will of an incapable validated by the supervening of capacity.**

Effect of Incapacity: Testamentary capacity is determined at the point of the execution of the will such that the supervening

incapacity of the testator does not invalidate a will which was executed at the time the testator had soundness of mind.

**Art. 802. A married woman may make a will without the consent of her husband, and without the authority of the court.**

**Art. 803. A married woman may dispose by will of all her separate property as well as her share of the conjugal partnership or absolute community property.**

Implications of the Family Code: With the advent of the absolute community regime under the Family Code, Articles 802 and 803 are of little application. A married woman is capacitated to make a will with no other legal requirements aside from the presence of testamentary capacity.

**Article 804. Every will must be in writing and executed in a language or dialect known to the testator.**

Purpose of Formalities: The primary purpose for the formal requirements of wills is to regulate the making of the will which involves the transfer of real rights effective upon the death of the transferor. As in donations which require certain formalities for its validity, wills must also comply with certain requirements which are, in essence, restrictions to prevent fraud. Inasmuch as the testator shall be already deceased by the time the will shall be contested, save for ante-mortem probate, there is a need to insure that his intent to distribute properties to certain persons is preserved, respected, and carried out.

Written requirement: Only two kinds of will are recognized in this jurisdiction; the notarial and the holographic will. Both wills are required to be written; however only the holographic will is required to be written in its entirety by the hand of the testator himself.

Presumption of execution in a language known to the testator: In the absence of contrary proof, there arises the presumption that the will was executed in a language or dialect known to the testator if the will was executed in a locality where the testator was residing. There is no statutory requirement that the will must expressly state the language used and that

such language was known by the testator. However, it must clearly be proven by evidence aliunde especially when there are inconsistencies in the will. The law does not require that knowledge and understanding by the testator of the language used in the will must be expressly stated in the instrument itself.

**LOPEZ v. LIBORO**
**81 Phil 429 (1948)**

*FACTS:* The will of Don Sixto Lopez, who died at the age of 83 in Batangas, is being opposed on the following grounds: (1) that the deceased never executed the alleged will; (2) that his signature appearing in said will was a forgery; (3) that at the time of the execution of the will, he was wanting in testamentary as well as mental capacity due to advanced age; (4) that, if he did ever execute said will, it was not executed and attested as required by law, and one of the alleged instrumental witnesses was incapacitated to act as such; and it was procured by duress, influence of fear and threats and undue and improper pressure and influence on the part of the beneficiaries instituted therein, principally the testator's sister, Clemencia Lopez, and the herein proponent, Jose S. Lopez; and (5) that the signature of the testator was procured by fraud or trick.

The will in question comprises two pages, each of which is written on one side of a separate sheet. The first sheet is not paged either in letters or in Arabic numerals. This, the appellant believes, is a fatal defect.

*ISSUE:* Did the will comply with Article 805?

*HELD:* The purpose of the law in prescribing the paging of wills is guard against fraud, and to afford means of preventing the substitution or of defecting the loss of any of its pages. (Abangan v. Abangan, 40 Phil., 476.) In the present case, the omission to put a page number on the first sheet, if that be necessary, is supplied by other forms of identification more trustworthy than the conventional numerical words or characters. The unnumbered page is clearly identified as the first page by the internal sense of its contents considered in relation to the contents of the second page. Abangan v. Abangan, supra, and Fernandez v. Vergel de Dios, 46 Phil., 922 are decisive of this issue.

Contradictions in the testimony of the instrumental witnesses which are not material cannot validate a will. Witnesses cannot

be supposed to have perceived, or to recall in the same order in which these incidents occurred. Everyday life and the result of investigations made in the field of experimental psychology show that the contradictions of witnesses generally occur in the details of a certain incident, after a long series of questioning, and far from being an evidence of falsehood constitute a demonstration of good faith.

The testator affixed his thumbmark to the instrument instead of signing his name. The reason for this was that the testator was suffering from "partial paralysis." While another in testator's place might have directed someone else to sign for him, as appellant contends should have been done, there is nothing curious or suspicious in the fact that the testator chose the use of mark as the means of authenticating his will. It was a matter of taste or preference.

The appellant impugns the will for its silence on the testator's understanding of the language used in the testament. There is no statutory requirement that such knowledge be expressly stated in the will itself. It is a matter that may be established by proof aliunde. This Court so impliedly ruled in Gonzales v. Laurel, 46 Phil., 781, in which the probate of a will written in Tagalog was ordered although it did not say that the testator knew that idiom. In fact, there was not even extraneous proof on the subject other than the fact that the testator resided in a Tagalog region, from which the court said "a presumption arises that said Maria Tapia knew the Tagalog dialect.

Hence, the will complied with Article 805.

Cross as a Signature: A cross cannot be likened to a thumb mark since it can be easily written by some other person whereas a thumb mark may only be placed by the testator himself. Unless it can be proven that the testator's customary signature is a cross, then the will cannot be considered to have been signed by the testator himself.

**SUROZA v. HONRADO**
**110 SCRA 381 (1981)**

*FACTS:* Marcelina Suroza supposedly executed a notarial will in July 1973 when she was 73 years old. The will, which was in English, was thumbmarked by Marcelina, who was illiterate.

Upon her death, the will which bequeathed all her estate to a supposed granddaughter was presented for probate. Opposition to the probate was made by Nenita Suroza, the wife of the alleged adopted son of Marcelina on the ground of preterition of said son, Agapito, and on the ground that the will was void because Marcelina did not appear before a notary public and because it is written in English which is not known to Marcelina. The presiding judge denied the opposition of Nenita Suroza and admitted the will to probate.

*ISSUE:* Was there sufficient evidence on record to show that the will on its face was void?

*HELD:* Upon perusing the will and noting that it was written in English and was thumbmarked by an obviously illiterate testatrix, respondent Judge could have readily perceived that the will is void.

In the opening paragraph of the will, it was stated that English was a language "understood and known" to the testatrix. But in its concluding paragraph, it was stated that the will was read to the testatrix "and translated into Filipino language." That could only mean that the will was written in a language not known to the illiterate testatrix and, therefore, it is void because of the mandatory provision of Article 804 of the Civil Code that every will must be executed in a language or dialect known to the testator. Thus, a will written in English, which was not known to the Igorot testator, is void (Acop v. Piraso, 52 Phil.660).

## FORMS OF WILLS

**Article 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.**

**The testator or the person requested by him to write his name and the instrumental witnesses of the will, shall also sign, as aforesaid, each and every page thereof, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed on the upper part of each page.**

**The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the**

**will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.**

**If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.**

<u>Requisites for Notarial Wills</u>: Based on Article 805, the requisites for the formal validity of a notarial will are the following:

1. It must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence, and by his express direction.
2. It must be attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.
3. All the pages of the will shall be numbered correlatively in letters placed on the upper part of each page.
4. Each and every page of the will, except the last, must be signed by the testator and by the instrumental witnesses on the left margin.
5. It must be acknowledged before a notary public by the testator and by the three witnesses. (Article 806)
6. The will must have an attestation clause which shall contain the following:
    a. The number of pages used upon which the will is written.
    b. The fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses.
    c. The fact that the witnesses witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

What constitutes a Signature: A complete signature is not essential to the validity of a will. Perhaps to provide for greater authenticity, what should be found at the end of the will is the testator's customary signature. However, since the law does not require his full signature, the initials or even a thumb mark by the testator may be deemed sufficient to comply with this requirement. A thumbmark at the end of the will may be considered as a valid signature especially when a testator cannot affix his signature due to some medical condition such as paralysis.

**BALONAN v. ABELLANA**
**109 SCRA 359 (1960)**

*FACTS:* The last Will and Testament of Anacleta Abellana which is sought to be probated consists of 2 pages written in Spanish. Both pages of the Will are signed by Juan Bello and under his name appears the typewritten words "Por la testadora Anacleta Abellana".

*ISSUE:* Does the signature of Juan Bello above the typewritten words "Por la testadora Anacleta Abellana comply with the requirements of law prescribing the manner in which a will shall be executed?

*HELD:* Article 805 requires, among others, that the testator himself must sign the will, or if he cannot do so, the testator's name must be written by some other person in his presence and by his express direction. In the case of *Ex Parte* Pedro Arcenas, et, al., 4 Phil., 700, it was stated that "Where a testator does not know how, or is unable for any reason, to sign the will himself, it shall be signed in the following manner: "John Doe by the testator, Richard Roe; or in this form: By the testator, John Doe, Richard Roe.' All this must be written by the witness signing at the request of the testator. In the case of *Barut v. Cabacungan*, 21 Phil., 461, we held that the important thing is that it clearly appears that the name of the testatrix was signed at her express direction; it is unimportant whether the person who writes the name of the testatrix signs his own or not.

In the case at bar the name of the testatrix, Anacleta Abellana, *does not appear written under the will by said Abellana herself, or by Dr. Juan Abello*. There is, therefore, a failure to comply with the express requirement in the law that the testator must himself sign

the will, or that his name be affixed thereto by some other person in his presence and by his express direction.

**GARCIA v. LACUESTA**
**90 Phil 189 (1951)**

*FACTS:* The will is written in the Ilocano dialect and contains the following attestation clause:

> "We, the undersigned, by these presents do declare that the foregoing testament of Antero Mercado was signed by himself and also by us below his name and of this attestation clause and that of the left margin of the three pages thereof. Page three the continuation of this attestation clause; this will is written in Ilocano dialect which is spoken and understood by the testator, and it bears the corresponding number in letter which compose of three pages and all them were signed in the presence of the testator and witnesses, and the witnesses in the presence of the testator and all and each and every one of us witnesses."

The will appears to have been signed by Atty. Florentino Javier who wrote the name of Antero Mercado, followed below by "A reugo del testator" and the name of Florentino Javier. Antero Mercado is alleged to have written a cross immediately after his name.

*ISSUE:* Was the will in compliance with Article 805?

*HELD:* No. The Supreme Court in affirming the ruling of the Court of Appeals held that the attestation clause is fatally defective for failing to state that Antero Mercado caused Atty. Florentino Javier to write the testator's name under his express direction, as required by section 618 of the Code of Civil Procedure. The herein petitioner argues, however, that there is no need for such recital because the cross written by the testator after his name is a sufficient signature and the signature of Atty. Florentino Javier is a surplusage. Petitioner's theory is that the cross is as much a signature as a thumbmark, the latter having been held sufficient by this Court in the cases of De Gala v. Gonzales and Ona, 53 Phil., 104; Dolar v. Diancin, 55 Phil., 479; Payad v. Tolentino, 62 Phil., 848; Neyra v. Neyra, 76 Phil., 296 and Lopez v. Liboro, 81 Phil., 429. It is not here pretended that the cross appearing on the will is the usual signature of Antero Mercado or even one of the ways by which he signed his name. After mature reflection, we are not prepared to liken the mere sign of the cross to a thumbmark, and

the reason is obvious. The cross cannot and does not have the trustworthiness of a thumbmark.

Placement of signatures: The signatures of both the testator and of the witnesses as required under the first paragraph of Article 805 must be found at the logical end of the will; that is, after all the significant property dispositions in the will. This requirement appears to ensure that there will be no insertions of other property dispositions not belonging to the testator. The signature at the end of the will signifies the completion of intent and confirmation to all the dispositions found above it.

Name of testator in lieu of signature: Instead of a signature, the testator's name must appear at the end of the will written by some person in the presence of the testator and by his express direction. The person writing the testator's name need not place his own signature, the law merely requires the name of the testator.

Meaning of "in the presence of": Presence of the witnesses depends upon the opportunity of the witnesses to see the execution of the will. "In the presence of each other" does not depend upon proof of the fact that the eyes of the witnesses were precisely cast upon the instrument at the moment of each and every subscription. "In the presence of each other" depends on existing conditions and positions of the witnesses in relation to each other such that by merely casting their eyes in the proper direction, they could have seen each other sign, without changing their relative positions or existing conditions.

**NERA v. RIMANDO**
**18 Phil 450 (1911)**

*ISSUE:* Whether one of the subscribing witnesses was present in the small room where it was executed at the time when the testator and the other subscribing witnesses attached their signatures; or whether at that time he was outside, some eight or ten feet away, in a large room connecting with the smaller room by a doorway, across which was hung a curtain which made it impossible for one in the outside room to see the testator and the other subscribing witnesses in the act of attaching their signatures to the instrument.

*HELD:* The particular subscribing witness was in the small room with the testator and the other subscribing witnesses at the time when they attached their signatures to the instrument. Hence, the will complied with the requirement of "in the presence."

Had this subscribing witness been proven to have been in the outer room at the time when the testator and the other subscribing witnesses attached their signatures to the instrument in the inner room, it would have been invalid as a will, the attaching of those signatures under circumstances not being done "in the presence" of the witness in the outer room. This is because the line of vision from this witness to the testator and the other subscribing witnesses would necessarily have been impeded by the curtain separating the inner from the outer one "at the moment of inscription of each signature."

The true test of presence of the testator and the witnesses in the execution of a will is not whether they actually saw each other sign, but whether they might have been seen each other sign, had they chosen to do so, considering their mental and physical condition and position with relation to each other at the moment of inscription of each signature. The position of the parties with relation to each other at the moment of the subscription of each signature must be such that they may see each other sign if they choose to do so.

The question whether the testator and the subscribing witnesses to an alleged will sign the instrument in the presence of each other does not depend upon proof of the fact that their eyes were actually cast upon the paper at the moment of its subscription by each of them, but that at that moment existing conditions and their position with relation to each other were such that by merely casting the eyes in the proper direction they could have seen each other sign. To extend the doctrine further would open the door to the possibility of all manner of fraud, substitution, and the like, and would defeat the purpose for which this particular condition is prescribed in the code as one of the requisites in the execution of a will.

**IN RE ESTATE OF WEBER**
**Supreme Court of Kansas, 1963**
**192 Kan.258, 387 p.2d 165**

*FACTS:* A few days before he died, Henry Weber together with his neighbor Ben Heer went to see Harold Holmes, President

of Riley State Bank, to get his help in the preparation of Weber's will. On that day, Weber drove to the Bank, remained in his car and asked Holmes to come out of the Bank and talk in Weber's car parked out in the street. With Heer at the back seat, Weber told Holmes he wanted to give half of his estate to his wife and the other half to his niece, Lillian. Holmes took notes of Weber's instructions and then went back into the Bank and prepared the purported will on a printed form captioned "Last Will and Testament". Then Holmes instructed 3 bank employees to stand in front of the window of the bank, which was 8 to 10 feet from Weber's parked car, so they could serve as witnesses to the signing of the will. Holmes then gave Weber a clipboard to which the Will was fastened, pointed out to him the bank employees standing by the window, to whom Weber waived his hand, and asked Weber to put the clipboard on the steering wheel of his car so it could be seen by said bank employees, while signing the same. Holmes then went back to the bank with the signed Will, stood beside the employees in front of the employees and then asked them to sign said document. In this position, Weber could see the witnesses as they signed the Will but could not see the pen or the purported will as it was signed. The signed Will was then taken by Holmes to Weber in his parked car, who looked it over and asked Holmes to retain the same at the Bank. The whole transaction took an hour and a half, at which no time was there any communication between Weber and the witnesses other than their waving to each other.

*ISSUE:* Was the will of Weber in accordance with statutory requirement that the will should be attested and subscribed by the witnesses in the presence of the testator, and that such witnesses must have seen the testator subscribe or heard him acknowledge the will?

*HELD:* The statute was designed to require the attestation be made in the presence of the testator so as to prevent the substitution of a surreptitious will. The testator must be able to see the witnesses attest the will, or their relative position to him at the time they are subscribing their names as witnesses must be such that he may see them, if he thinks it proper to do so, and satisfy himself by actual view that they are witnessing the very paper he signed to be his last will.

In the instant case, Holmes stationed 3 of his employees at the window and had them remain there while he took the instrument through the door and into the closed car where the

witnesses saw Weber sign a paper, or document, which Holmes advised the witnesses as Weber's will. A statement by the person who supervises the execution of the document that it is the testator's will does not amount to an acknowledgement by testator if he does not hear such statement. The witnesses testified that there was no communication whatsoever between Weber and themselves. There is nothing in the record to show that the witnesses read the provisions of the purported will but only knew Weber's signature appeared thereon. The facts of the instant case disclose the proximity between the witnesses and the testator was not sufficient to establish 'presence' and therefore, the will does not meet the necessary statutory requirements authorizing its admission to probate.

**YAP TUA V. YAP CA KUAN**
**G.R. No. 6845, September 1, 1914**

*FACTS:* Perfecto Gabriel, representing the petitioner, Yap Tua, presented a petition asking that the will of Tomasa Elizaga Yap Caong be admitted to probate, as the last will and testament of Tomasa Elizaga Yap Caong, deceased. It appears that the will was signed by the deceased, as well as Anselmo Zacarias, Severo Tabora, and Timoteo Paez. Severo Tabora testified that he was not sure that he had seen Tomasa Elizaga Yap Caong sign the will because there were many people and there was a screen at the door and he could not see; that the will was on a table, far from the patient, in the house but outside the room where the patient was; that he was not sure whether Tomasa Elizaga Yap Caong could see the table on which the will was written at the time it was signed or not; that the place where the table was located was in the same house, on the floor, about two steps down from the floor on which Tomasa was.

*ISSUE:* Did the testator sign the will in the presence of the witnesses in accordance with law?

*HELD:* Yes. During the trial of the case, protestants made a strong effort to show that the decedent did not sign her name in the presence of the witnesses and that they did not sign their names in her presence nor in the presence of each other. Upon that question there is considerable conflict of proof. An effort was made to show that the will was signed by the witnesses in one room and by Tomasa in another. A plan of the room or rooms in which the will was signed was presented as proof. It was shown that there

was but one room; that one part of the room was one or two steps below the floor or the other; that the table on which the witnesses signed the will was located upon the lower floor of the room. It was also shown that from the bed in which Tomasa was lying, it was possible for her to see the table on which the witnesses signed the will. While the rule is absolute that one who makes a will must sign the same in the presence of the witnesses and that the witnesses must sign in the presence of each other, as well as in the presence of the one making the will, yet, nevertheless, the actual seeing of the signatures made is not necessary. It is sufficient if the signatures are made where it is possible for each of the necessary parties, if they desire to see, may see the signature placed upon the will.

**BURNS v. ADAMSON**
**Supreme Court of Arkansas, 1993**
**313 Ark.281, 854 S.W.2d 723**

*FACTS:* The testator Nettie Frost asked a friend, Jewell Burns, to sign her will, which Burns did. At the time Burns signed the will, testator had not yet signed said will. A few hours later, the testator signed her will in the presence of Faye Burns and Ethel Pettus, and then asked Pettus to sign the will as a witness. Jewell Burns was not there at the time the testator signed the will. The testator died the following day. When the will was presented for probate, the oppositors argued that the will was not validly executed in the presence of 2 persons. The trial court sustained said argument.

*ISSUE:* Did the testator sign the will in the presence of the witnesses in accordance with law?

*HELD:* Substantial compliance has never extended to allow a witness to attest a will before the testator signs it and who in fact never sees the testator sign.

In a similar case, it has been opined that "But, we know of no case which holds the will is valid where one of the necessary witnesses attested the will before the testator signed it and the attestation of the witness and the signature of the testator were at different times and places, so that the witness did not see the testator sign or hear him acknowledge his signature after signing. There are a number of cases on the other hand, which expressly hold that under such circumstances the will cannot stand." In sum, where the witness did not see the testatrix sign

the will or acknowledge it, there was a failure to follow statutory requirements.

Subscribing v. Attesting Signature: The placement of the signature of the testator at the end of the will is crucial to its validity while the placement of the signature on each and every page on the left margin will not invalidate the will. The difference lies in the purpose of the signature, the signature as required in the first paragraph of Article 805 is to attest, declare, and confirm that all the dispositions above it are of and by the testator whereas the signature as required in the second paragraph of the same article is merely to identify each and every page of the will. As such, an attesting signature must be found below the dispositions in the will as a matter of necessity while an identifying or subscribing signature may be placed anywhere in the will, preferably on the left margin as a matter of style. "Attestation" and "subscription" differ in meaning. Attestation is that act of the senses, while subscription is the act of the hand. The former is mental, the latter mechanical, and to attest a will is to know that it was published as such, and to certify the facts required to constitute an actual and legal publication; but to subscribe a paper published as a will is only to write on the same paper the names of the witnesses, for the sole purpose of identification. (Caneda v. Court of Appeals, G.R. No. 103554, May 28, 1993)

**TABOADA v. ROSAL**
**118 SCRA 195 (1982)**

*FACTS:* Petitioner Taboada presented for probate the alleged last will and testament of the late Dorotea Perez. Written in Cebuano-Visayan dialect, the will consists of 2 pages. The first page contains the entire testamentary dispositions and is signed at the end or bottom of the page by the testatrix alone and at the left hand margin by the 3 instrumental witnesses. The second page which contains the attestation clause and the acknowledgment is signed at the end of the attestation clause by the 3 attesting witnesses and at the left hand margin by the testatrix. The respondent Judge denied probate of the will for want of formality in its execution, that is, that the 3 subscribing witnesses did not sign at the same place or at the end of the will as the testator did.

*ISSUE:* Does Article 805 of the Civil Code require that the testatrix and all the three instrumental and attesting witnesses sign at the end of the will and in the presence of the testatrix and of one another?

*HELD:* It must be noted that Article 805 uses the terms *attested* and *subscribed.* Attestation consists in witnessing the testator's execution of the will in order to see and take note mentally that those things are done which the statute requires for the execution of a will and that the signature of the testator exists as a fact. On the other hand, subscription is the signing of the witnesses' names upon the same paper for the purpose of identification of such paper as the will which was executed by the testator. Insofar as the requirement of subscription is concerned, it is our considered view that the will was subscribed in a manner which fully satisfies the purposes of identification.

The signatures of the instrumental witnesses on the left margin of the first page of the will attested not only to the genuineness of the signature of the testatrix but also the due execution of the will as embodied in the attestation clauses. While perfection in the drafting of a will may be desirable, unsubstantial departure from the usual forms should be ignored, especially where the authenticity of the will is not assailed. The objects of attestation and of subscription were fully met and satisfied in the present case when the instrumental witnesses signed at the left margin of the sole page which contains all the testamentary dispositions, especially so when the will was properly identified by the subscribing witness to be the same will executed by the testatrix.

Placement of Attesting Signatures: The attesting signature of the testator must be found at the logical end of the will, otherwise the will is void. The attesting signature of the witnesses must be found at the end of the attestation clause, otherwise the will is void.

**CAGRO vs. CAGRO**
**92 Phil 1032**

*RULING:* It is not disputed that what was found below the attestation clause is the signature of the testator and not the signatures of the three witnesses to the will. However, the page containing the attestation clause was signed by the witnesses on

the left margin. The Supreme Court held that the will was void since the signatures on the left margin cannot be considered as an attesting signature; their purpose was for subscription and not attestation. The attestation clause is a memorandum of facts required by law to be made and signed by the witnesses. The testator has no participation whatsoever in the attestation clause that his signature at the bottom may well be considered inconsequential, a mere surplusage.

### ABANGAN v. ABANGAN
### 40 Phil.477 (1919)

*FACTS:* The last will of Ana Abangan consisted of 2 sheets, the first of which contained the entire disposition of the testatrix, duly signed at the bottom by Martin Montalban (in the name and under the direction of the testatrix) and by 3 witnesses. The following sheet contained only the attestation clause duly signed at the bottom by the 3 instrumental witnesses. Neither of the sheets was signed on the left margin by the testatrix and the 3 witnesses, nor numbered by letters. According to the oppositors to the probate of the will, these defects dictate that the will not be admitted to probate.

*ISSUE:* Is it indispensable that the signatures of the testatrix and the 3 witnesses appear on the left margin, and that all pages of the will be numbered?

*HELD:* In requiring that each and every sheet of the will should also be signed on the left margin by the testator and 3 witnesses in the presence of each other, Act No. 2645 evidently has for its object (referring to the body of the will itself) to avoid the substitution of any of said sheets, thereby changing the testator's dispositions. But when these dispositions are wholly written on only one sheet signed at the bottom by the testator and 3 witnesses, their signatures on the left margin of said sheet would be completely purposeless. In requiring this signature on the margin, the statute took into consideration, undoubtedly, the case of a will written on several sheets and must have referred to the sheets which the testator and the witnesses do not have to sign at the bottom. A different interpretation would assume that the statute requires that this sheet, already signed at the bottom, be signed twice. We cannot attribute to the statute such an intention. We cannot assume that the statute regards of such importance the place where the testator and the witnesses must sign on the sheet

that it could consider that their signatures written on the bottom do not guaranty the authenticity of the sheet but, if repeated on the margin, give sufficient security.

In requiring that each and every page of a will must be numbered correlatively in letters placed on the upper part of the sheet, it is likewise clear that the object of the law is to know whether any sheet of the will has been removed. But when all the dispositive parts of a will are written on one sheet only, the object of the statute disappears because the removal of this single sheet, although unnumbered, cannot be hidden.

As to the attestation clause accompanying the will, the signatures of the testatrix and of the 3 witnesses on the margin and the numbering of the pages of the sheet are formalities not required by the statute. Moreover, referring specially to the signature of the testatrix, we can add that the same is not necessary in the attestation clause because this, as its name implies, appertains only to the witnesses and not to the testator since the latter does not attest, but executes the will.

**VDA. DE RAMOS v. COURT OF APPEALS**
**81 SCRA 393**

*FACTS:* The attestation clause of the will stated that the testatrix signed the will in the presence of the instrumental witnesses. However, during the probate proceedings, the two surviving witnesses claimed that the testatrix' signature was already on the document when they signed the will. The notary public, however, testified that he was present during the execution of the will and that the same was signed in the manner set forth in the attestation clause.

*ISSUE:* Whether the will complied with the provisions of Article 805 despite the negative testimony given by the attesting witnesses.

*RULING:* The Supreme Court held that the presumption of regularity cannot be defeated by negative testimony. The attestation clause, once signed, affirms the compliance with the rules and its execution contradicts the presence of undue influence. The negative testimony of the two witnesses does not enjoy equal status with the positive assertion and the convincing appearance of the will itself. In the attestation clause, the witnesses not only attest to the signature of the testatrix but also the proper execution

of the will. Their signature implicitly certifies the validity of the will and the truth of the facts stated therein.

Classes of Signature of Witnesses: Article 805 particularly segregates the requirement that the instrumental witnesses sign each page of the will, from the requisite that the will be attested and subscribed by them since their purpose(s) are distinct. The signatures of witnesses as required in the 2nd paragraph of Article 805 signify, among others, that the witnesses are aware that the page they are signing forms part of the will. On the other hand, the signatures of witnesses as required in the 3rd paragraph of Article 805 signify that the witnesses are referring to the statements contained in the attestation clause itself. Since the attestation clause is apart from the disposition of the will, an unsigned attestation clause results in an unattested will. Even if the instrumental witnesses signed the left-hand margin of the page containing the unsigned attestation clause, such signatures cannot demonstrate these witnesses' undertakings in the clause, The Supreme Court in the case of Cagro v. Cagro, 92 Phil 1032 held that the will was void since the signatures on the left margin cannot be considered as an attesting signature, their purpose was for subscription and not attestation. The attestation clause is a memorandum of facts required by law to be made and signed by the witnesses. The testator has no participation whatsoever in the attestation clause that his signature at the bottom may well be considered inconsequential, a mere surplusage.

**AZUELA v. COURT OF APPEALS and CASTILLO**
**G.R. No. 122880, April 12, 2006**

*FACTS:* On 10 April 1984, petitioner Felix Azuela (son of the cousin of the decedent) filed a petition to probate the notarial will of Eugenia E. Igsolo, with the Regional Trial Court (RTC) of Manila. The will, consisting of two (2) pages and written in the vernacular Pilipino, was witnessed by three witnesses who affixed their signatures on the left-hand margin of both pages of the will, but not at the bottom of the attestation clause. The petition was opposed by Geralda Castillo who represented herself as the attorney-in-fact of "the 12 legitimate heirs" of the decedent. Geralda Castillo claimed that the will is a forgery, and that the true purpose of its emergence was so it could be utilized as a defense

in the case filed by oppositor against petitioner for forcible entry and usurpation of real property, all centering on petitioner's right to occupy the properties of the decedent. Oppositor Geralda Castillo also argued that the will was not executed and attested to in accordance with law. She pointed out that decedent's signature did not appear on the second page of the will, and the will was not properly acknowledged.

*ISSUE:* Was the will fatally defective since the attestation clause did not state the number of pages of the will and that is was signed by the witnesses on the left margin?

*HELD:* Yes, the will is fatally defective.

Re Number of Pages: The attestation clause failed to state the number of pages of the will. As held in Uy Coque v. Navas L. Sioca (43 Phil., 405), the Court noted that among the defects of the will in question was the failure of the attestation clause to state the number of pages contained in the will. In ruling that the will could not be admitted to probate, the Court said: "The purpose of requiring the number of sheets to be stated in the attestation clause is obvious; the document might easily be so prepared that the removal of a sheet would completely change the testamentary dispositions of the will and in the absence of a statement of the total number of sheets, such removal might be effected by taking out the sheet and changing the numbers at the top of the following sheets or pages. If, on the other hand, the total number of sheets is stated in the attestation clause the falsification of the document will involve the inserting of new pages and the forging of the signatures of the testator and witnesses in the margin, a matter attended with much greater difficulty."

The case of Taboada v. Hon. Rosal wherein the Court allowed the will to probate despite the fact that the attestation clause did not state the number of pages of the will is not applicable. This is so because although the attestation in the subject Will did not state the number of pages used in the will, the same was found in the last part of the body of the Will. The attestation clause must contain a statement of the number of sheets or pages composing the will and that if this is missing or is omitted, it will have the effect of invalidating the will if the deficiency cannot be supplied, not by evidence aliunde, but by a consideration or examination of the will itself.

The purpose of the law in requiring the clause to state the number of pages on which the will is written is to safeguard

> against possible interpolation or omission of one or some of its pages and to prevent any increase or decrease in the pages. The failure to state the number of pages equates with the absence of an averment on the part of the instrumental witnesses as to how many pages consisted the will, the execution of which they had ostensibly just witnessed and subscribed to.
>
> Re Signature of Witnesses: While the signatures of the instrumental witnesses appear on the left-hand margin of the will, they do not appear at the bottom of the attestation clause. Cagro v. Cagro is applicable in this case. While three (3) Justices considered the signature requirement had been substantially complied with, a majority of six (6), speaking through Chief Justice Paras, ruled that the attestation clause had not been duly signed, rendering the will fatally defective. There is no question that the signatures of the three witnesses to the will do not appear at the bottom of the attestation clause, although the page containing the same is signed by the witnesses on the left-hand margin. The attestation clause is "a memorandum of the facts attending the execution of the will" required by law to be made by the attesting witnesses, and it must necessarily bear their signatures.
>
> The string of mortal defects which the will in question suffers from makes the probate denial inexorable.

<u>Role of Witnesses</u>: The law requires the presence of three witnesses in the execution of wills for the primary purpose of safeguarding the authenticity of the document being signed by the testator. Since the testator who would testify as to its genuineness and authenticity will be already dead by the time the will is presented for probate, there is a need for witnesses to testify with respect to the compliance with the requirements of law in the execution of the testator's will.

<u>Qualifications of Witnesses</u>: The proof of the genuineness and authenticity of a notarial will largely depends on the testimony given by the witnesses. That is why the law provides certain qualifications and disqualifications with respect to witnesses such as soundness of mind, eighteen years old or more, literate, not blind, deaf, or dumb, (Article 820); domiciled in the Philippines (Article 821) and not previously convicted of falsification of documents, perjury, or false testimony.

Purpose of qualifications of witnesses: If the witnesses possess all the qualifications and none of the disqualifications under the law, the law assumes that they would likely give credible testimony and the will would be admitted to probate. Therefore, the qualifications are meant to benefit the testator. If he willfully fails to comply with them, then the will may be denied probate. These provisions on qualifications of witnesses are not mandatory. They are meant to benefit the testator such that if he acted in good faith in selecting his witnesses and either the witnesses recant or they turn out to be unqualified during the probate proceedings, the testator should not be penalized. The will may still be admitted for probate, provided that it is flawless as to form and there exists independent testimony as to the due execution of the will.

Presumption of Regularity: The presumption of regularity cannot be defeated by negative testimony. The attestation clause, once signed, affirms the compliance with the rules and its execution contradicts the presence of undue influence. The negative testimony of the witnesses does not enjoy equal status with the positive assertion and the convincing appearance of the will itself. In the attestation clause, the witnesses not only attest to the signature of the testatrix but also the proper execution of the will. Their signature implicitly certifies the validity of the will and the truth of the facts stated therein.

POINT TO PONDER:

FORMALITIES (Bar 2007): Clara, thinking of her mortality, drafted a will and asked Roberta, Hannah, Luisa and Benjamin to be witnesses. During the day of the signing of her will, Clara fell down the stairs and broke both her arms. Coming from the hospital, Clara insisted on signing her will by thumb mark and said that she can sign her full name later. While the will was being signed, Roberta experienced a stomach ache and kept going to the restroom for long periods of time. Hannah, while waiting for her turn to sign the will, was reading the 7th Harry Potter book on the couch, beside the table on which everyone was signing. Benjamin,

aside from witnessing the will, also offered to notarize it. A week after, Clara was run over by a drunk driver while crossing the street in Greenbelt. May the will of Clara be admitted to probate? Give your reasons briefly.

**Article 806. Every will must be acknowledged before a notary public by the testator and the witnesses. The notary public shall not be required to retain a copy of the will, or file another with office of the clerk of court.**

Application to Notarial Wills: Despite the language used in the provision referring to "every will," the requirement of acknowledgment applies only to notarial wills. The acknowledgment before a notary public is required from the testator as well as from the witnesses. On the other hand, holographic wills need not be witnessed or notarized.

When to acknowledge the will before a Notary Public: Though the law does not provide a specific period, best time to have the will notarized is immediately after the execution of the will. Though the law does not require that both the testator and the witnesses acknowledge before the notary public at the same time, it is wise to have both of them together before the notary public.

Acknowledgment v. Jurat: A jurat is that part of a document where the notary certifies that before him/her, the Deed was subscribed and sworn to by the signatory. An acknowledgment ensures that the signatories to the Deed declare before an officer of the law that they had executed and subscribed to the Deed as their own free act or deed. Such declaration is under oath and under pain of perjury, thus allowing for the criminal prosecution of persons who participate in the execution of spurious Deeds.

**AZUELA v. COURT OF APPEALS and CASTILLO**
**G.R. No. 122880, April 12, 2006**

*FACTS:* On 10 April 1984, petitioner Felix Azuela filed a petition to probate the notarial will of Eugenia E. Igsolo, with the Regional Trial Court (RTC) of Manila. The following statement is made under the sub-title, "Patunay Ng Mga Saksi":

> *"Ang kasulatang ito, na binubuo ng _____ dahon pati ang huling dahong ito, na ipinahayag sa amin ni Eugenia N. Igsolo, tagapagmana na siya niyang Huling Habilin, ngayong ika-10 ng Hunyo 1981, ay nilagdaan ng nasabing tagapagmana sa ilalim ng kasulatang nabanggit at sa kaliwang panig ng lahat at bawa't dahon, sa harap ng lahat at bawa't sa amin, at kami namang mga saksi ay lumagda sa harap ng nasabing tagapagmana at sa harap ng lahat at bawa't isa sa amin, sa ilalim ng nasabing kasulatan at sa kaliwang panig ng lahat at bawa't dahon ng kasulatan ito."*

The aforequoted declaration comprises the attestation clause and the acknowledgement.

*ISSUE:* Did the will comply with Article 806 of the Civil Code?

*HELD:* No, the requirement under Article 806 that "every will must be acknowledged before a notary public by the testator and the witnesses" has also not been complied with. The importance of this requirement is highlighted by the fact that it had been segregated from the other requirements under Article 805 and entrusted into a separate provision, Article 806.

In lieu of an acknowledgment, the notary public, Petronio Y. Bautista, wrote "Nilagdaan ko at ninotario ko ngayong 10 ng Hunyo 10, 1981 dito sa Lungsod ng Maynila." By no manner of contemplation can those words be construed as an acknowledgment. An acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed. It involves an extra step undertaken whereby the signor actually declares to the notary that the executor of a document has attested to the notary that the same is his/her own free act and deed.

It might be possible to construe the averment as a jurat, even though it does not hew to the usual language thereof. Yet even if we consider what was affixed by the notary public as a jurat, the will would nonetheless remain invalid, as the express requirement of Article 806 is that the will be "acknowledged", and not merely subscribed and sworn to. The will does not present any textual proof, much less one under oath, that the decedent and the instrumental witnesses executed or signed the will as their own free act or deed.

When the will is considered complete: A will is complete after it is acknowledged before a notary public since its acknowledgment is essential for its formal validity.

Secrecy of the contents: The notary public is not legally required to neither retain a copy of the will nor file another with the office of the clerk of court to safeguard the secrecy of the contents of the will during the lifetime of the testator.

Purpose of Acknowledgement: The primary purpose of the acknowledgment is to minimize fraud and the exertion of undue pressure and influence upon the testator. The testator acknowledges before the notary in order to certify his voluntariness in executing the will. The witnesses acknowledge before the notary to certify that they signed the document without being coerced, threatened or hurt and that they signed because the document is authentic based on their attestation. This acknowledgement is done before an independent notary, a person who must have no interest in the will, to insure his impartiality in ascertaining the free execution of the will.

Acknowledgement before a Notary: The Supreme Court held that the notary cannot acknowledge his signing of the will before himself. He cannot be the witness and the notary public before whom the will is acknowledged at the same time. The function of the notary, to guard against illegal arrangements, would be defeated, if he becomes one of the witnesses as he would then be interested in validating his own acts. (Cruz v. Villasor, 54 SCRA 31) The will must be denied probate if it was acknowledged before the notary public only by the testator and not by the witnesses, thereby failing to comply with mandatory requirement of acknowledgment of the will before a notary public by the testator and the instrumental witnesses as provided in Art 806. (Garcia v. Gatchalian, 21 SCRA 1056)

**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.**

**Article 808. If the testator is blind, the will shall be read to him**

**twice; once by one of the subscribing witnesses, and again, by the notary public before whom the will is acknowledged.**

Special formal requirements: Articles 807 and 808 are meant to make sure that the provisions of the will are known to a testator who is blind, deaf, or deaf mute. Failure to comply with these provisions would invalidate the will of such persons.

Scope of the term "blindness": Article 808 applies not only to blind testators but also to those who, for one reason or another, are incapable of reading their will(s). A testator shall be deemed blind if he can only see at a distance. A person need not be clinically blind for the application of Article 808; mere inability to read is equivalent to blindness. The Supreme Court held that the will was not validly executed despite testimonies that the testatrix was capable of reading the will because she can arrange flowers, greet friends, perform kitchen tasks and write checks. The rationale behind the requirement of reading the will to the testator if he is blind or incapable of reading the will himself (as when he is illiterate) is to make the provisions thereof known to him so that he may be able to object if they are not in accordance with his wishes. (Garcia v. Vasquez, 32 SCRA 498)

Extent of Substantial Compliance: Substantial compliance is acceptable where the purpose of the law has been satisfied, the reason being that the solemnities surrounding the execution of wills are intended to protect the testator from all kinds of fraud and trickery but are never intended to be so rigid and inflexible as to destroy the testamentary privilege. Although there should be strict compliance with the substantial requirements of the law in order to insure the authenticity of the will, the formal imperfections should be brushed aside when they do not affect its purpose and which, when taken into account, may only defeat the testator's will.

**ALVARADO v. GAVIOLA, JR.**
**G.R. No. 74695. September 14, 1993**

*FACTS:* On 5 November 1977, the 79-year old Brigido Alvarado executed a notarial will entitled "Huling Habilin" wherein he disinherited an illegitimate son (petitioner) and

expressly revoked a previously executed holographic will. A codicil entitled "Kasulatan ng Pagbabago sa Ilang Pagpapasiya na Nasasaad sa Huling Habilin na May Petsa Nobiembre 5, 1977 ni Brigido Alvarado" was executed changing some dispositions in the notarial will to generate cash for the testator's eye operation. Brigido was then suffering from glaucoma. But the disinheritance and revocatory clauses were unchanged. As in the case of the notarial will, the testator did not personally read the final draft of the codicil. Instead, it was private respondent who read it aloud in his presence and in the presence of the three instrumental witnesses (same as those of the notarial will) and the notary public who followed the reading using their own copies. During the probate of the notarial will and codicil, an Opposition was filed on the several grounds. When the oppositor failed to substantiate the grounds relied upon in the Opposition, a Probate Order was issued on 27 June 1983 from which an appeal was made to respondent court. The main thrust of the appeal was that the deceased was blind within the meaning of the law at the time his "Huling Habilin" and the codicil attached thereto were executed; that since the reading required by Article 808 of the Civil Code was admittedly not complied with, probate of the deceased's last will and codicil should have been denied. The Court of Appeals found that Brigido Alvarado was not blind at the time his last will and codicil were executed; that assuming his blindness, the reading requirement of Article 808 was substantially complied with when both documents were read aloud to the testator with each of the three instrumental witnesses and the notary public following the reading with their respective copies of the instruments. The appellate court then concluded that although Article 808 was not followed to the letter, there was substantial compliance since its purpose of making known to the testator the contents of the drafted will was served.

*ISSUE:* Was Brigido Alvarado blind for purposes of Article 808 at the time his "Huling Habilin" and its codicil were executed? If so, was the double-reading requirement of said article complied with?

*HELD:*

Re Blindness: Regarding the first issue, there is no dispute that Alvarado was not totally blind at the time the will and codicil were executed and that his vision on both eyes was only of "counting fingers at three (3) feet" by reason of the glaucoma.

Petitioner contends that although the testator could visualize fingers at three (3) feet, he could no longer read either printed or handwritten matters. Article 808 applies not only to blind testators but also to those who, for one reason or another, are "incapable of reading the(ir) will(s)." Since Alvarado was incapable of reading the final drafts of his will and codicil on the separate occasions of their execution due to his "poor," "defective," or "blurred" vision, there can be no other course for us but to conclude that Brigido Alvarado comes within the scope of the term "blind" as it is used in Article 808.

Re double reading: Article 808 requires that in case of testators like Brigido Alvarado, the will shall be read twice; once, by one of the instrumental witnesses and, again, by the notary public before whom the will was acknowledged. The purpose is to make known to the incapacitated testator the contents of the document before signing and to give him an opportunity to object if anything is contrary to his instructions. That Article 808 was not followed strictly is beyond cavil. Instead of the notary public and an instrumental witness, it was the lawyer (private respondent) who drafted the eight-paged will and the five-paged codicil who read the same aloud to the testator, and read them only once, not twice as Article 808 requires. This Court has held in a number of occasions that substantial compliance is acceptable where the purpose of the law has been satisfied, the reason being that the solemnities surrounding the execution of wills are intended to protect the testator from all kinds of fraud and trickery but are never intended to be so rigid and inflexible as to destroy the testamentary privilege.

In the case at bar, private respondent read the testator's will and codicil aloud in the presence of the testator, his three instrumental witnesses, and the notary public. Prior and subsequent thereto, the testator affirmed, upon being asked, that the contents read corresponded with his instructions. Only then did the signing and acknowledgement take place. There is no evidence, and petitioner does not so allege, that the contents of the will and codicil were not sufficiently made known and communicated to the testator.

Moreover, it was not only the lawyer who drafted the will read the documents on 5 November and 29 December 1977. The notary public and the three instrumental witnesses likewise read the will and codicil, albeit silently. Afterwards, Atty. Nonia de la

Pena (the notary public) and Dr. Crescente O. Evidente (one of the three instrumental witnesses and the testator's physician) asked the testator whether the contents of the documents were of his own free will. Brigido answered in the affirmative. With four persons following the reading word for word with their own copies, it can be safely concluded that the testator was reasonably assured that what was read to him (those which he affirmed were in accordance with his instructions), were the terms actually appearing on the typewritten documents. This is especially true when we consider the fact that the three instrumental witnesses were persons known to the testator, one being his physician (Dr. Evidente) and another (Potenciano C. Ranieses) being known to him since childhood. We are unwilling to cast these aside for the mere reason that a legal requirement intended for his protection was not followed strictly when such compliance had been rendered unnecessary by the fact that the purpose of the law, i.e., to make known to the incapacitated testator the contents of the draft of his will, had already been accomplished. To reiterate, substantial compliance suffices where the purpose has been served.

POINTS TO PONDER:

1. Why did the law specifically prescribe that the notary and one of the witnesses communicate the contents of the will to the blind testator but did not prescribe the same persons to do the same for deaf and deaf-mute testators?

2. EFFECTS OF BLINDNESS (Bar 2008): Steve was born blind. He went to school for the blind and learned to read in Braille language. He speaks English fluently. Can he: a) Make a will? (1%) b) Act as a witness to a will? (1%) c) In either of the above instances, must the will be read to him?

**Article 809. In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.**

Substantial Compliance: This doctrine was first laid down in the case of Abangan v. Abangan, where it was held that the object of the solemnities surrounding the execution of wills is to close the door against bad faith and fraud, to avoid substitution of wills and testaments and to guarantee their truth and authenticity. Therefore, the laws on this subject should be interpreted in such a way as to attain these primordial ends. Nonetheless, it was also emphasized that one must not lose sight of the fact that it is not the object of the law to restrain and curtail the exercise of the right to make a will, hence when an interpretation already given assures such ends, any other interpretation whatsoever that adds nothing but demands more requisites entirely unnecessary must be disregarded. The subsequent cases of Avera v. Garcia, 42 Phil. 145 (1921); Aldaba v. Roque, 43 Phil. 378 (1922); Unson v. Abella, 43 Phil. 494 (1922); Pecson v. Coronel, 45 Phil. 216 (1923); Fernandez v. Vergel de Dios, et al., 46 Phil. 922 (1924); and Nayve v. Mojal, et al., 47 Phil. 152 (1924) all adhered to this position.

Mandatory Compliance: The view which advocated the rule that the formalities that should be observed in the execution of wills are mandatory in nature and are to be strictly construed was followed in the subsequent cases of In the Matter of the Estate of Saguinsin, 41 Phil. 875 (1920); In re Will of Andrada, 42 Phil. 180 (1921); Uy Coque v. Sioca, 43 Phil. 405 (1922); In re Estate of Neumark, 46 Phil. 841 (1923); and Sano v. Quintana, 48 Phil. 506 (1925). In one case, the Supreme Court decided that an attestation clause which does not recite that the witnesses signed the will and each and every page thereof on the left margin in the presence of the testator is defective and such a defect annuls the will.

Resolution of the Conflicting Views: The Code Commission, cognizant of such conflicting views and of the undeniable inclination towards a liberal construction, recommended the codification of the substantial compliance rule, as it believed this rule to be in accord with the modern tendency to give a liberal approach to the interpretation of wills. Said rule thus became what is now Article 809 of the Civil Code, with this explanation of the Code Commission:

> "The present law provides for only one form of executing a will, and that is, in accordance with the formalities prescribed by Section 618 of the Code of Civil Procedure as amended by Act No. 2645. The Supreme Court of the Philippines had previously upheld the strict compliance with the legal formalities and had even said that the provisions of Section 618 of the Code of Civil Procedure, as amended regarding the contents of the attestation clause were mandatory, and non-compliance therewith invalidated the will (Uy Coque v. Sioca, 43 Phil. 405). These decisions necessarily restrained the freedom of the testator in disposing of his property.
>
> However, in recent years the Supreme Court changed its attitude and has become more liberal in the interpretation of the formalities in the execution of wills. This liberal view is enunciated in the cases of Rodriguez v. Yap, G.R. No. 45924, May 18, 1939; Leynez v. Leynez, G.R. No. 46097, October 18, 1939; Martir v. Martir, G.R. No. 46995, June 21, 1940; and Alcala v. Villa, G.R. No. 47351, April 18, 1941."

Application of the Doctrine of Liberal Interpretation: It provides that when there are defects and imperfections in the attestation clause as to its form or language used therein, such defects and imperfections shall not invalidate the will, provided, there is no bad faith, forgery, fraud or undue and improper influence and pressure. This is a situation where an attestation clause is not made to perfection and if not for Article 809, the will is void. The attestation clause is essentially the act of the witnesses over whom the testator has no control. Therefore, if we say that the lapse of the witnesses is the lapse of the testator, it operates to work an injustice upon the testator.

Limits of the Doctrine of Liberal Interpretation Evidence *aliunde* is not allowed to fill a void in any part of the document or supply missing details that should appear in the will itself. The doctrine only permits an exploration within the confines of the will to ascertain its meaning or to determine the existence or absence of the requisite formalities of law.

<u>Imperfections in the Attestation Clause</u>: In the attempt to reconstruct the will, there was an omission in the attestation clause. It failed to state that the testator had signed the will in the presence of the witnesses. It was noted from the attestation clause that the last compound sentence was meaningless. The Supreme Court applied Article 809 and used the doctrine of liberal interpretation by holding that the will is not invalid due to the defect in the attestation clause. (Gil v. Murciano, 87 Phil 260)

<u>Contents of the attestation clause</u>: To support a valid will, the clause must contain the following items:

1) The number of pages upon which the will was written.

2) The fact that the testator signed the will and every page thereof or caused some other person to write his name under his expressed direction in the presence of the instrumental witnesses.

3) The witnesses witnessed and signed the will and all of the pages thereof in the presence of the testator and of one another.

**CANEDA v. COURT OF APPEALS**
**G.R. No. 103554. May 28, 1993**

*FACTS:* On December 5, 1978, Mateo Caballero, a widower and already in the twilight years of his life, executed a last will and testament at his residence in Cebu before three attesting witnesses. The said testator was duly assisted by his lawyer, Atty. Emilio Lumontad, and a notary public, Atty. Filoteo Manigos, in the preparation of that last will. The will left by way of legacies and devises his real and personal properties to certain persons, all of whom do not appear to be related to the testator.

On April 4, 1979, the testator himself filed a petition seeking the probate of his last will and testament. However, the testator passed away before his petition could finally be heard by the probate court. Herein petitioners, claiming to be nephews and nieces of the testator, instituted a petition for intestate proceedings which was however consolidated with testate proceeding. On April 5, 1988, the probate court rendered a decision declaring the

will in question as the last will and testament of the late Mateo Caballero, on the ratiocination that the self-serving testimony of the two witnesses of the oppositors cannot overcome the positive testimonies of Atty. Filoteo Manigos and Cipriano Labuca who clearly told the Court that indeed Mateo Caballero executed this Last Will and Testament. Moreover, the fact that it was Mateo Caballero who initiated the probate of his Will during his lifetime when he caused the filing of the original petition clearly underscores the fact that this was indeed his Last Will. Petitioners elevated the case to the Court of Appeals asserting that the will in question is void since its attestation clause is fatally defective since it fails to specifically state that the instrumental witnesses to the will witnessed the testator signing the will in their presence and that they also signed the will and all the pages thereof in the presence of the testator and of one another. The Appellate Court upheld the validity of the will by invoking the doctrine of liberal interpretation.

*ISSUE:* Whether the doctrine of liberal interpretation in Article 809 is applicable.

*HELD:* No, Article 809 is not applicable. Under the third paragraph of Article 805, such an attestation clause, the complete lack of which would result in the invalidity of the will, should state (1) the number of pages used upon which the will is written; (2) that the testator signed, or expressly caused another to sign, the will and every page thereof in the presence of the attesting witnesses; and (3) that the attesting witnesses witnessed the signing by the testator of the will and all its pages, and that said witnesses also signed the will and every page thereof in the presence of the testator and of one another. The purpose of the law in requiring the clause to state the number of pages on which the will is written is to safeguard against possible interpolation or omission of one or some of its pages and to prevent any increase or decrease in the pages; whereas the subscription of the signatures of the testator and the attesting witnesses is made for the purpose of authentication and identification, and thus indicates that the will is the very same instrument executed by the testator and attested to by the witnesses.

In the last will of Mateo Caballero, the testamentary dispositions are expressed in the Cebuano-Visayan dialect while the attestation clause in question, on the other hand, is recited in the English language.

> "We, the undersigned attesting Witnesses, whose Residences and postal addresses appear on the Opposite of our respective names, we do hereby certify that the Testament was read by him and the testator, MATEO CABALLERO, has published unto us the foregoing Will consisting of THREE PAGES, including the Acknowledgment, each page numbered correlatively in letters on the upper part of each page, as his Last Will and Testament and he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin, in the presence of the said testator and in the presence of each and all of us."

Such attestation clause fails to specifically state the fact that the attesting witnesses witnessed the testator sign the will and all its pages in their presence and that they, the witnesses, likewise signed the will and every page thereof in the presence of the testator and of each other. The phrase "and he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin," obviously refers to the testator and not the instrumental witnesses as it is immediately preceded by the words "as his Last Will and Testament." On the other hand, although the words "in the presence of the testator and in the presence of each and all of us" may, at first blush, appear to likewise signify and refer to the witnesses, it must however, be interpreted as referring only to the testator signing in the presence of the witnesses since said phrase immediately follows the words "he has signed the same and every page thereof, on the spaces provided for his signature and on the left hand margin." What is then clearly lacking, in the final logical analysis, is the statement that the witnesses signed the will and every page thereof in the presence of the testator and of one another.

Such defect in the attestation clause obviously cannot be characterized as merely involving the form of the will or the language used therein which would warrant the application of the substantial compliance rule, as contemplated in Article 809. We believe that the following comment of former Justice J.B.L. Reyes regarding Article 809, wherein he urged caution in the application of the substantial compliance rule therein, is correct and should be applied in the case under consideration, as well as to future cases with similar questions:

> *". . . The rule must be limited to disregarding those defects that can be supplied by an examination of the will*

> *itself: whether all the pages are consecutively numbered; whether the signatures appear in each and every page; whether the subscribing witnesses are three or the will was notarized. All these are facts that the will itself can reveal, and defects or even omissions concerning them in the attestation clause can be safely disregarded. But the total number of pages, and whether all persons required to sign did so in the presence of each other must substantially appear in the attestation clause, being the only check against perjury in the probate proceedings."*

We stress once more that under Article 809, the defects or imperfections must only be with respect to the form of the attestation or the language employed therein. Such defects or imperfections would not render a will invalid should it be proved that the will was really executed and attested in compliance with Article 805. In this regard, however, the manner of proving the due execution and attestation has been held to be limited to merely an examination of the will itself without resorting to evidence aliunde, whether oral or written. The foregoing considerations do not apply where there are omissions in the attestation clause as in this case where the will totally omits the fact that the attesting witnesses signed each and every page of the will in the presence of the testator and of each other. In such a situation, the defect is not only in the form or the language of the attestation clause but the total absence of a specific element required by Article 805 to be specifically stated in the attestation clause of a will.

Furthermore, the rule on substantial compliance in Article 809 cannot be invoked or relied on by respondents since it presupposes that the defects in the attestation clause can be cured or remedied by intrinsic evidence supplied by the will itself. Proof of the acts required to have been performed by the attesting witnesses can be supplied only by extrinsic evidence thereof, since an overall appreciation of the contents of the will yields no basis whatsoever from which such facts may be plausibly deduced. What private respondent insists on are the testimonies of his witnesses alleging that they saw the compliance with such requirements by the instrumental witnesses, oblivious of the fact that he is thereby resorting to extrinsic evidence to prove the same and would accordingly be doing by indirection what in law he cannot do directly.

## CAPONONG-NOBLE v. ABADA
**G.R. No. 147145 (January 31, 2005)**

*FACTS:* Abada died sometime in May 1940. His widow Toray died sometime in September 1943. Both died without legitimate children. On 13 September 1968, Alipio C. Abaja ("Alipio") filed a petition for the probate of the last will of Abada and another petition for the probate of the last will and testament of Toray. Abada allegedly named as his testamentary heirs his natural children Eulogio Abaja ("Eulogio") and Rosario Cordova. Alipio is the son of Eulogio. Caponong opposed both petitions on the ground that Abada and Toray left no will when they died in 1940 and in 1943 respectively. Caponong further alleged that the will, if Abada and Toray really executed it, should be disallowed for the following reasons: (1) it was not executed and attested as required by law; (2) it was not intended as the last will of the testator; and (3) it was procured by undue and improper pressure and influence on the part of the beneficiaries. On 20 September 1968, Caponong filed a petition praying for the issuance in his name of letters of administration of the intestate estate of Abada and Toray. In an Order dated 14 August 1981, the RTC-Kabankalan admitted to probate the will of Toray. Since the oppositors did not file any motion for reconsideration, the order allowing the probate of Toray's will became final and executory. Re Abada's will, the Court rendered a Resolution which stated, among others, that there is substantial compliance with the formalities of a Will as the law directs and that the petitioner was able to establish the regularity of the execution of the said Will and further, there being no evidence of bad faith and fraud, or substitution of the said Will, the Last Will and Testament of Alipio Abada is admitted and allowed probate.

*ISSUES:* The petition raises the following issues:

1. Whether the will must expressly state that it is written in a language or dialect known to the testator.

2. Whether the will of Abada has an attestation clause, and if so, whether the attestation clause complies with the requirements of the applicable laws.

*HELD:* The Court of Appeals did not err in sustaining the RTC-Kabankalan in admitting to probate the will of Abada.

Re knowledge of the language: Caponong-Noble points out that nowhere in the will can one discern that Abada knew

the Spanish language. She alleges that such defect is fatal and must result in the disallowance of the will. There is no statutory requirement to state in the will itself that the testator knew the language or dialect used in the will. This is a matter that a party may establish by proof *aliunde*. Caponong-Noble further argues that Alipio, in his testimony, has failed, among others, to show that Abada knew or understood the contents of the will and the Spanish language used in the will. However, Alipio testified that Abada used to gather Spanish-speaking people in their place. In these gatherings, Abada and his companions would talk in the Spanish language. This sufficiently proves that Abada speaks the Spanish language.

Re the Attestation Clause of Abada's Will: Caponong-Noble pointed out that the attestation clause fails to state the number of pages on which the will is written. The Court found that the phrase "*en el margen izquierdo de todas y cada una de las dos hojas de que esta compuesto el mismo*" which means "in the left margin of each and every one of the two pages consisting of the same" shows that the will consists of two pages. The pages are numbered correlatively with the letters "ONE" and "TWO" as can be gleaned from the phrase "*las cuales estan paginadas correlativamente con las letras "UNO" y "DOS*." Caponong-Noble further alleges that the attestation clause fails to state expressly that the testator signed the will and its every page in the presence of three witnesses. The first sentence of the attestation clause reads: "*Suscrito y declarado por el testador Alipio Abada como su ultima voluntad y testamento en presencia de nosotros, habiendo tambien el testador firmado en nuestra presencia en el margen izquierdo de todas y cada una de las hojas del mismo*." The English translation is: "Subscribed and professed by the testator Alipio Abada as his last will and testament in our presence, the testator having also signed it in our presence on the left margin of each and every one of the pages of the same." The attestation clause clearly states that Abada signed the will and its every page in the presence of the witnesses. However, Caponong-Noble is correct in saying that the attestation clause does not indicate the number of witnesses. On this point, the Court agrees with the appellate court in applying the rule on substantial compliance in determining the number of witnesses. While the attestation clause does not state the number of witnesses, a close inspection of the will shows that three witnesses signed it. An attestation clause is made for the purpose of preserving, in permanent form, a record of the facts attending the execution of the will, hence it therefore should not be rejected where its attestation clause serves the

purpose of the law. We rule to apply the liberal construction in the probate of Abada's will.

Abada's will clearly shows four signatures: that of Abada and of three other persons. It is reasonable to conclude that there are three witnesses to the will. The question on the number of the witnesses is answered by an examination of the will itself and without the need for presentation of evidence *aliunde*.

Doctrine of Liberal Interpretation: Compare the cases of Sebastian v. Panganiban, 59 Phil 653 with Gil v. Murciano, 87 Phil 260 and Caneda v. Court of Appeals, G.R. No. 103554. May 28, 1993.

**Article 810. A person may execute a holographic will which must be entirely written, dated and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed.**

**GAN v. YAP**
**104 Phil. 509 (1958)**

*FACTS:* After the death of Felicidad Yap, herein petitioner filed a petition for probate of a holographic will allegedly executed by the deceased. The petition was opposed by Felicidad's surviving spouse who stated that the deceased had not left any will, nor executed any testament during her lifetime. The will itself was not presented and petitioner tried to establish its contents and due execution through the testimonies of 4 witnesses, who testified that they saw Felicidad make the holographic will and/ or that they were allowed by Felicidad to read the same on different occasions. The presiding judge disregarded the testimonies of petitioner's witnesses and sustained the opposition of Felicidad's husband to the probate of the alleged holographic will which was never presented in court.

*ISSUE:* May a holographic will be probated upon the testimony of witnesses who have allegedly seen it and who declare that it was in the handwriting of the testator?

*HELD:* The execution and the contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses. It might be convenient to explain why, unlike holographic wills, ordinary wills may be proved by testimonial

evidence when lost or destroyed. The difference lies in the nature of the wills. In the first, the only guarantee of authenticity is the handwriting itself; in the second, the testimony of the subscribing or instrumental witnesses (and of the notary now). The loss of the holographic will entails the loss of the only medium of proof; if the ordinary will is lost, the subscribing witnesses are available to authenticate. In the case of ordinary wills, it is quite hard to convince 3 witnesses deliberately to lie. And then their lies could be checked and exposed, their whereabouts and acts on the particular day, the likelihood that they would be called by the testator, their intimacy with the testator, etc. And if they were intimates or trusted friends of the testator they are not likely to lend themselves to any fraudulent scheme to distort his wishes. Last but not least, they can not receive anything on account of the will.

Whereas in the case of holographic wills, if oral testimony were admissible only one man could engineer the whole fraud this way: after making a clever or passable imitation of the handwriting and signature of the deceased, he may contrive to let 3 honest and credible witnesses see and read the forgery; and the latter, having no interest, could easily fall for it, and in court they would in all good faith affirm its genuineness and authenticity. The will having been lost – the forger may have purposely destroyed it in an 'accident' – the oppositors have no way to expose the trick and the error, because the document itself is not at hand. One more fundamental difference: in the case of a lost will, the three subscribing witnesses would be testifying to a fact which they saw, namely *the act* of the testator of subscribing the will; whereas in the case of a lost holographic will, the witnesses would testify as to their opinion of the handwriting which they allegedly saw, an opinion which can not be tested in court, nor directly contradicted by the oppositors, because the handwriting itself is not at hand.

Requisites of a holographic will: It must be executed in a language or dialect known to the testator (Article 804) and it must be entirely written, dated and signed by the hand of testator (Article 810).

**RODELAS v. ARANZA**
**119 SCRA 16 (1982)**

*FACTS:* Marcela Rodelas filed a petition for probate of the will of Ricardo Bonilla and for the issuance of letters testamentary

in her favor. Opposition to said petition was registered on the main ground that the alleged holographic will was not presented but only a copy thereof. The lower court dismissed the petition for probate of Bonilla's will on its ruling that "once the original copy of the holographic will is lost, a copy thereof cannot stand in lieu of the original".

*ISSUE:* Whether a holographic will which was lost or cannot be found can be proved by means of a photostatic copy?

*HELD:* If the holographic will has been lost or destroyed and no other copy is available, the will can not be probated because the best and only evidence is the handwriting of the testator in said will. It is necessary that there be a comparison between sample handwritten statements of the testator and the handwritten will. But, a photostatic copy of the holographic will may be allowed because comparison can be made with the standard writings of the testator. In Footnote 8 of of Gan v. Yap, the Court said that "Perhaps it may be proved by a photographic or photostatic copy. Even a mimeographed or carbon copy; or by other similar means, if any, whereby the authenticity of the handwriting of the deceased may be exhibited and tested before the probate court." Evidently, the photostatic copy of the lost or destroyed holographic will may be admitted because then the authenticity of the handwriting of the deceased can be determined by the probate court.

**IN RE ESTATE OF MUDER**
**Supreme Court of Arizona, 1988**
**159 Ariz.173, 765 P.2d 997**

*FACTS:* After the death of her husband Edward Frank Muder, the surviving spouse submitted a purported will to the probate court. The purported will was on a preprinted will form. Probate was opposed on the ground that the purported will did not comply with the statutory requirement that in a holographic will the signature and the material provisions must be in the handwriting of the testator.

*ISSUE:* Did the will of the testator qualify as a holographic will despite the use of a preprinted form?

*HELD:* We hold that a testator who uses a preprinted form, and *in his own handwriting* fills in the blanks by designating his beneficiaries and apportioning his estate among them and signs it,

has created a valid holographic will. Such handwritten provisions may draw testamentary context from both the printed and the handwritten language on the form. We see no need to ignore the preprinted words when the testator clearly did not, and the statute does not require us to do so.

Purpose of the DATE in a holographic will: The date in the holographic will indicates the true date of execution of the will which determines the age of the testator and his soundness of mind at the time of the execution of the will, and whether the will was prepared after August 30, 1950. Since the holographic will was an innovation of the New Civil Code, if the will was dated on or before Aug. 29, 1950 then the will is invalid because the New Civil Code took effect only on Aug. 30, 1950.

Consequence of an incomplete date: An incomplete date will be sufficient if it does not create a controversy. Conversely, if it will create a controversy, then a complete date is necessary. Among the purposes for requiring a complete date is to determine which law will apply and also to determine testamentary capacity. Hence, if an incomplete date will not create a controversy as to the applicable law or age of the testator in determining testamentary capacity, then it would be deemed sufficient.

**ROXAS v. DE JESUS, JR.**
**134 SCRA 245 (1985)**

*FACTS:* After the death of spouses Andres de Jesus and Bibiana Roxas de Jesus, a special proceeding for the spouses intestate estate was filed by Simeon Roxas, the brother of Bibiana. Subsequently, he delivered to the lower court a document purporting to be the holographic will of the deceased Bibiana. At the hearing for the holographic will's probate, the brother testified that after being appointed administrator, he found a notebook of Bibiana which bore her will in the form of a letter to her children. It was entirely written and signed in the handwriting of Bibiana and dated "Feb./61." The brother's testimony was corroborated by Bibiana's two sons that the letter dated as such is the holographic will of their deceased mother. Both sons recognized the handwriting of their mother and positively identified her signature. They further testified that the language of the will

(English) was understood by their mother, and that the date was the said date when the will was executed by their mother. Luz Roxas de Jesus, another compulsory heir, filed her opposition to the will. She contends that the alleged will was not dated as required by Article 810. She says that the day, month, and year should be indicated. The respondent judge, on reconsideration, disallowed probate based on oppositor's contention that since Article 810 was patterned after the California and Louisiana Codes whose Supreme Courts have consistently held that the required date includes the day, month and year, and the day was lacking in this will, it is invalid.

*ISSUE:* Whether the date "Feb/61" is in compliance with Article 810.

*HELD:* YES! As a general rule, the date in a holographic will should include the day, month and year of its execution. However, when there is no appearance of bad faith, fraud, undue influence and pressure and the authenticity of the will is established and the only issue is whether or not the date "Feb./61" appearing on the will is a valid compliance with Article 810, probate of the will should be allowed under the principle of substantial compliance. The Supreme Court particularly noted that no contingencies – such as two competing wills executed on the same day/ month or if the testator had become insane on the day the will was executed – existed. Furthermore, no evidence of bad faith or fraud or substitution was found. All of the children of the testatrix agreed on the genuineness of the will, and that she had testamentary capacity at the time of the execution of said will. Thus, the Supreme Court considered the objection interposed as too technical to be entertained.

**LABRADOR v. COURT OF APPEALS**
**GR Nos. 83843-44, April 15, 1990**

*FACTS:* On June 10, 1972, Melecio Labrador died in the Municipality of Iba, Zambales, where he was residing, leaving behind a parcel of land and his heirs all surnamed Labrador and a holographic will. On July 28, 1975, Sagrado Labrador (now deceased but substituted by his heirs), filed in the court a quo a petition for the probate of the alleged holographic will of the late Melecio Labrador. Subsequently, Jesus Labrador (now deceased but substituted by his heirs) and Gaudencio Labrador filed an opposition to the holographic will on the ground that

the will has been extinguished or revoked by implication of law, alleging therein that before Melecio's death, for the consideration of Six Thousand (P6000) Pesos, testator Melecio executed a Deed of Absolute Sale, selling transferring and conveying in favor of oppositors Jesus and Gaudencio the said lot and that as a matter of fact, Original Certificate of Title had been cancelled by TCT No. T-21178. Sagrado filed against his brothers, Gaudencio and Jesus, for the annulment of said purported Deed of Absolute Sale over a parcel of land which Sagrado allegedly had already acquired by devise from their father Melecio Labrador under a holographic will executed on March 17, 1968, being premised on the fact that the Deed of Absolute Sale is fictitious. Respondents claim that the date March 17,1968 in the will was when the testator and his beneficiaries entered into an agreement among themselves about "partitioning and assigning the respective assignments of the said fishpond," and was not the date of execution of the holographic will; hence, the will is more of an "agreement" between the testator and the beneficiaries thereof to the prejudice of other compulsory heirs like the respondents. This was thus a failure to comply with Article 783 which defines a will as "an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of his estate, to take effect after his death."

*ISSUE:* Whether or not the will is dated, as provided for in Article 810 of the New Civil Code.

*HELD:* The Court ruled in the affirmative. The intention to show March 17 1968 as the date of the execution of the will is plain from the tenor of the succeeding words of the paragraph. As aptly put by petitioner, the will was not an agreement but a unilateral act of Melecio Labrador who plainly knew that what he was executing was a will. The act of partitioning and the declaration that such partitioning as the testator's instruction or decision to be followed reveal that Melecio Labrador was fully aware of the nature of the estate property to be disposed of and of the character of the testamentary act as a means to control the disposition of his estate.

**Article 811. In the probate of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. If the will is contested, at least three of such witnesses shall be required.**

**In the absence of any competent witness referred to in the preceding paragraph, and if the court deems it necessary, expert testimony may be resorted to.**

Sole Issue for probate of a holographic will: The only issue that can arise in the probate of a holographic will is the genuineness of the handwriting. The one witness rule shall be applied in case of uncontested wills and the three witness rule in case of contested wills. Expert testimony may be resorted to in either case upon the court's discretion.

Procedural difference in the probate of a notarial will as against the probate of a holographic will: Considering the differences in the structure of these two types of documents and considering the lesser formal requirements in a holographic will, the significant difference lies with respect to the kind of evidence that would have to be introduced. In the case of a notarial will, to address each and every requirement of Article 805, competent testimony over a number of things is required because some things do not take place during the execution of the will and others which take place during the execution of the will are not necessarily indicated in the writing therein. Each and every issue that may arise as a consequence thereof implies a different burden of proof. Consequently, testimonial evidence depends heavily on the subscribing witnesses and on the notary public. In the case of a holographic will, the only issue which can arise is the genuineness of the handwriting since the only requirement in such kind of a will is that it be entirely written, dated and signed by the testator himself.

| HOLOGRAPHIC WILL | NOTARIAL WILL |
|---|---|
| 1. The only guarantee of authenticity is the handwriting itself. | 1. The testimony of the subscribing winesses and the notary is a guarantee of authenticity. |
| 2. If lost, a photostatic copy may be used to prove the existence of the original. | 2. If lost, the subscribing witnesses are available to authenticate. |

| | |
|---|---|
| 3. If oral evidence were admissible, only one man could engineer the fraud. | 3. Difficult to convince 3 witnesses and the notary to deliberately lie. |
| 4. In case of loss, the witnesses would testify as to their opinion of the handwriting they allegedly saw, an opinion which cannot be tested in court by oppositors because the handwriting itself is not at hand. | 4. In case of loss, the 3 subscribing witnesses would be testifying to a fact which they saw, namely the act of the testator of subscribing the will. |

Article 811, Mandatory or Directory: The Supreme Court held that Article 811 is not mandatory in the sense that 3 witnesses are required should a holographic will be contested as no witnesses may be present at the execution of a holographic will. The existence of witnesses, with the requisite qualifications (that they know the handwriting and signature of the testator) is not a matter within the control of the proponent. There may be no witnesses familiar with the handwriting and signature of the testator or said persons may be unwilling to give a positive identification. As such the presence of witnesses is merely permissive but the courts are not denied the option of procuring an expert witness. And if there be 3 witnesses present who testify to the fact that the handwriting and signature in the will is that of the testator's, the court may consider it unnecessary to call an expert witness. And if no witnesses may be procured the court may resort to expert testimony. (Azoala v. Singson, 109 Phil 102)

**AZOALA v. SINGSON**
**109 Phil 102**

*FACTS:* On September 9, 1957, Fortunata S. Vda. de Yance died at 13 Luskot, Quezon City. Francisco Azoala, petitioner herein for probate of the holographic will submitted the said holographic will whereby Maria Milagros Azoala was made the sole heir as againt the nephew of the deceased Cesario Singson. Witness Francisco Azoala testified that he saw the holographic will before the death of the testatrix as the same was handed to

him and his wife. Francisco also testified that he recognized all the signatures in the holographic will as the handwriting of the testatrix. The opposition to the probate was on the ground that (1) the execution of the will was procured by undue and improper pressure and influence on the part of the petitioner and his wife, and (2) that the testatrix did not seriously intend the instrument to be her last will, and that the same was actually written on the 5th or 6th day of August 1957 and not on November 20,1956 as appears on the will.

The probate was denied on the ground that under Article 811 of the Civil Code, the proponent must present at least three witnesses who could declare that the will and the signature are in the writing of the testatrix, the probate being contested; and because the lone witness presented by the proponent "did not prove sufficiently that the body of the will was written in the handwriting of the testatrix." The proponent appealed, urging: first, that he was not bound to produce more than one witness because the will's authenticity was not questioned; and second, that Article 811 does not mandatorily require the production of three witnesses to identify the handwriting and signature of a holographic will, even if its authenticity should be denied by the adverse party.

*ISSUE:* Whether or not the appellant is required to produce more than one witness considering that the authenticity of the will was not contested?

*HELD:* The Court ruled in the negative. The Court agreed with the appellant that since the authenticity of the will was not contested, he was not required to produce more than one witness; but even if the genuineness of the holographic will were contested, the Court is of the opinion that Article 811 of our present Civil Code cannot be interpreted as to require the compulsory presentation of three witnesses to identify the handwriting of the testator, under penalty of having the probate denied. Since no witness may have been present at the execution of a holographic will, none being required by law, it becomes obvious that the existence of witnesses possessing the requisite qualifications is a matter beyond the control of the proponent. For it is not merely a question of finding and producing any three witnesses; they must be witnesses "who know the handwriting and signature of the testator" and who can declare (truthfully, of course, even, if the law does not so express) "that the will and the signature are in the handwriting of the

testator". There may be no available witness acquainted with the testator's hand; or even if so familiarized, the witnesses may be unwilling to give a positive opinion. Compliance with the rule of paragraph 1 Article 811 may be impossible. That is evidently the reason why the second paragraph of Article 811 prescribes that —*"in the absence of any competent witness referred to in the preceding paragraph, and if the court deems it necessary, expert testimony may be resorted to."*

**CODOY v. CALUGAY**
**312 SCRA 333**
**(G.R. No. 123486, August 12, 1999)**

*FACTS:* On April 6, 1990, Evangeline Calugay, Josephine Salcedo and Eufemia Patigas ("proponents"), devisees and legatees of the holographic will of the deceased Matilde Seño Vda. de Ramonal, filed a petition for probate of the holographic will of the deceased, who died on January 16, 1990. In the petition, respondents claimed that the deceased was of sound mind, that there was no fraud, undue influence, and duress employed in the person of the testator, and the will was written voluntarily. On June 28, 1990, Eugenia Ramonal Codoy and Manuel Ramonal ("opponents") filed an opposition to the petition for probate, alleging that the holographic will was a forgery and that the same is even illegible. The opponents argued that the repeated dates incorporated or appearing on the will after every disposition is out of the ordinary. If the deceased was the one who executed the will, and was not forced, the dates and the signature should appear at the bottom after the dispositions, as regularly done and not after every disposition. Proponents presented six (6) witnesses and documentary evidence while the opponents, instead of presenting their evidence, filed a demurrer to evidence, claiming that the proponents failed to establish sufficient factual and legal basis for the probate of the holographic will. The lower Court denied probate for insufficiency of evidence and lack of merits. On December 12, 1990, the proponents filed a notice of appeal, and in support of their appeal, the respondents once again reiterated the testimony of the following witnesses, namely: (1) Augusto Neri; (2) Generosa Senon; (3) Matilde Ramonal Binanay; (4) Teresita Vedad; (5) Fiscal Rodolfo Waga; and (6) Evangeline Calugay. In the decision, the Supreme Court uncharacteristically recited an account of the testimonies of such witnesses. On October 9, 1995, the Court of Appeals, upheld the validity of the

will citing the the decision in the case of Azaola v. Singson, 109 Phil. 102, penned by Mr. Justice J. B. L. Reyes. According to the Court of Appeals, Evangeline Calugay, Matilde Ramonal Binanay and other witnesses definitely and in no uncertain terms testified that the handwriting and signature in the holographic will were those of the testator herself. Thus, upon the unrebutted testimony of appellant Evangeline Calugay and witness Matilde Ramonal Binanay, the Court of Appeals sustained the authenticity of the holographic will and the handwriting and signature therein, and allowed the will to probate.

*ISSUE:* Is the presentation of three witnesses mandatory for the probate of a contested holographic will? Whether or not the ruling of the case of Azaola v. Singson relied upon by the respondent Court of Appeals, was applicable to the case?

*RULING:* Based on the language used, Article 811 of the Civil Code is mandatory. The word "shall" connotes a mandatory order. We have ruled that "shall" in a statute commonly denotes an imperative obligation and is inconsistent with the idea of discretion and that the presumption is that the word "shall," when used in a statute is mandatory." The paramount consideration in the present petition is to determine the true intent of the deceased. An exhaustive and objective consideration of the evidence is imperative to establish the true intent of the testator.

From the testimonies of the witnesses, the Court of Appeals allowed the will to probate and disregarded the requirement of three witnesses in case of contested holographic will, citing the decision in Azaola v. Singson, ruling that the requirement is merely directory and not mandatory.

We cannot eliminate the possibility of a false document being adjudged as the will of the testator, which is why if the holographic will is contested, that law requires three witnesses to declare that the will was in the handwriting of the deceased. The will was found not in the personal belongings of the deceased but with one of the respondents, who kept it even before the death of the deceased. In the testimony of Ms. Binanay, she revealed that the will was in her possession as early as 1985, or five years before the death of the deceased. There was no opportunity for an expert to compare the signature and the handwriting of the deceased with other documents signed and executed by her during her lifetime. The only chance at comparison was during the cross-examination of Ms. Binanay when the lawyer of petitioners asked

Ms. Binanay to compare the documents which contained the signature of the deceased with that of the holographic will and she is not a handwriting expert. Even the former lawyer of the deceased expressed doubts as to the authenticity of the signature in the holographic will.

A visual examination of the holographic will convince us that the strokes are different when compared with other documents written by the testator. The signature of the testator in some of the disposition is not readable. There were uneven strokes, retracing and erasures on the will. Comparing the signature in the holographic will dated August 30, 1978, and the signatures in several documents such as the application letter for pasture permit dated December 30, 1980, and a letter dated June 16, 1978, the strokes are different. In the letters, there are continuous flows of the strokes, evidencing that there is no hesitation in writing unlike that of the holographic will. We, therefore, cannot be certain that the holographic will was in the handwriting by the deceased.

**Article 812. In holographic wills, the dispositions of the testator written below his signature must be dated and signed by him in order to make them valid as testamentary dispositions.**

Purpose: In a holographic will, dispositions written below his signature should be dated and signed inasmuch as this article permits the addition of new dispositions through the execution of another will. These dispositions are independent of each other such that the nullity of the second does not cause the nullity of the first and the nullity of the first does not cause the nullity of the second. This is so despite the fact that the second is supposed to be an addendum because this addendum being dated and signed stands as a will on its own.

Additional dispositions in a notarial will: In a notarial will, additional dispositions found below the signature of the testator will make the whole will void because, according to Article 805, the signature of the testator must be found at the end of the will. Therefore, should there be new dispositions in a notarial will; the same can only be introduced through a codicil.

Additional dispositions in a holographic will: Should there be new dispositions in a holographic will, there are three ways to do this:

1) Add dispositions below the signature of the will provided that said dispositions are also dated and signed and everything is written in the hand of the testator himself.

2) Insert additional matters or cancel dispositions provided that the same are written and signed by the testator himself without need of a date.

3) Execute a valid codicil which may either be notarial or holographic.

**Article 813. When a number of dispositions appearing in a holographic will are signed without being dated, and the last disposition has a signature and a date, such date validates the dispositions preceding it, whatever be the time of prior dispositions.**

Application: The situation contemplated in this Article is one where there are various testamentary dispositions in a will, made by the testator presumably on different dates, which are signed but not dated. Should the last testamentary disposition be dated and signed, then all the dispositions above would be validated by this provision. Regardless of the number of dispositions, for so long as each has been signed and the last disposition is signed and dated, all the other dispositions are considered as one execution or amendment of a holographic will. Even if these dispositions were indeed written on different dates, the last disposition containing the signature and date validates all of these undated dispositions. While the law is silent on this requirement, its applicability still presupposes the existence of all these dispositions being contained in one instrument or document, not necessarily in one sheet or page.

**Article 814. In case of any insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature.**

Amendments: Amendments may be done in a holographic will by cancellation, addition, erasure or alteration provided they are authenticated by the full signature of the testator himself. The date is not required because it is presumed that the alteration

to the will was made at the time or date of its execution. Any cancellation, addition, erasure or alteration in a holographic will is precisely executed in consideration of secrecy.

Effect of the cancellation, addition, erasure or cancellation: The following are the possible permutations and their respective effects on the validity of a will:

1) If such were made by the hand of the testator himself and he has authenticated the same, it alters the will accordingly without affecting the will's validity.

2) If such were made by the hand of the testator himself but was not authenticated by him, then they would be deemed as if not written at all and the will remains valid as before.

3) If such were made by the testator but not handwritten (as when they are typewritten), whether or not authenticated by him, the entire will is nullified because it is no longer entirely in the hand of the testator himself.

4) If such were made by a stranger and the testator has authenticated the same, then the entire will is also nullified because it is no longer entirely written by the hand of the testator himself.

5) If such were made by a stranger but was not authenticated by the testator, then such changes would be deemed as if not written at all and the will remains valid as it was before. Any cancellation, insertion, erasure or alteration which was not authenticated by the testator does not affect his will simply because a mischievous person decided to put something to penalize the testator, on the other hand, even if done by a stranger, if the testator authenticated it, then it will affect the will because the testator meant that such be part of the will.

Effect of lack of authenticating signature: Any cancellation, addition, erasure or alteration must be authenticated by the testator. Failure to do so would result in the nullity of the

cancellation, addition, erasure of alteration as if it was not written at all. The will would stand as it were prior to the cancellation, addition, erasure or alteration. However, if the cancellation, although not authenticated, nevertheless results in the revocation of the will, then although not valid as a cancellation, it is valid as a revocation.

**KALAW v. RELOVA**
**132 SCRA 237 (1984)**

*FACTS:* Private respondent Gregorio Kalaw, filed a petition for the probate of the will of her sister. He claimed to be the sole heir. However, the will, as first written, named Rosa Kalaw as the sole heir. Rosa opposed the probate of the will because the alteration, according to her was not authenticated by the signature of the testator as required by the Article 814. Gregorio's motion for reconsideration was denied and Rosa filed a petition for certiorari on the sole legal issue of whether the original unaltered version of the will, instituting her as sole heir can be probated or not.

*ISSUE:* Whether or not the entire will was invalidated because of the defective provision which had been altered but not authenticated.

*HELD:* Yes, the entire will is invalidated. Although the general rule is that if there are insertions, cancellations etc. which are not authenticated with the testator's signature, such should be considered as not having been made and the remainder of the will stands valid. However, this particular disputed will only contains one substantial provision. Therefore, the effect must be the entire will is voided because nothing would remain in the will which could be considered valid since there was only one substantial provision. To state that the will as first written should be given effect is to disregard the change of mind of the testator. The institution of Gregorio as an heir is not valid because it was not authenticated by the testator with his signature. Rosa, on the other hand, cannot inherit because the cancellation of Rosa's name was an act of revocation. As such, she cannot inherit. Revocation does not need the authentication of the testator.

**Article 815. When a Filipino is in a foreign county, he is authorized to make a will in any of the forms established by the law of the county in which he may be. Such will may be probated in the Philippines.**

**Article 816. The will of the alien who is abroad produces effect in the Philippines if made with the formalities prescribed by the law of the place in which he resides, or according to the formalities observed in his country, or in conformity with those which this Code prescribes.**

**Article 817. A will made in the Philippines by a citizen or subject of another country, which is executed in accordance with the law of the country of which he is a citizen or subject, and which might be proved and allowed by the law of his own country, shall have the same effect as if executed according to the laws of the Philippines.**

Conflicts rule in Succession: These articles lay down the conflicts rules which govern the resolution of complications that may arise in the application of the laws of different jurisdictions. The rules enumerated by these articles seek to address the conflicts that arise from the place of the will's execution. These conflicts rules are important only if the probate proceeding shall be conducted in the Philippines. If the probate shall be conducted in a foreign jurisdiction, then the conflicts rules of that foreign nation must be observed.

Allowance of wills probated in a foreign country: Under Rule 77 of the Revised Rules of Court, wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed and recorded by the proper court in the Philippines. The probate of the will in the foreign country must however be proven in the same manner as any other foreign judgment. In the absence of such proof, the will cannot be allowed in the Philippines, without actually showing its execution was in accordance with any of the laws mentioned in this article.

*RULE 77*

*Allowance of Will Proved Outside of Philippines and Administration of Estate Thereunder*

*Section 1. Will proved outside Philippines may be allowed here. — Wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines.*

*Section 2. Notice of hearing for allowance. — When a copy of such will and of the order or decree of the allowance thereof, both duly authenticated, are filed with a petition for allowance in the Philippines, by the executor or other person interested, in the court having jurisdiction, such court shall fix a time and place for the hearing, and cause notice thereof to be given as in case of an original will presented for allowance.*

*Section 3. When will allowed, and effect thereof. — If it appears at the hearing that the will should be allowed in the Philippines, the court shall so allow it, and a certificate of its allowance, signed by the judge, and attested by the seal of the court, to which shall be attached a copy of the will, shall be filed and recorded by the clerk, and the will shall have the same effect as if originally proves and allowed in such court.*

*Section 4. Estate, how administered. — When a will is thus allowed, the court shall grant letters testamentary, or letters of administration with the will annexed, and such letters testamentary or of administration, shall extend to all the estate of the testator in the Philippines. Such estate, after the payment of just debts and expenses of administration, shall be disposed of according to such will, so far as such will may operate upon it; and the residue, if any shall be disposed of as is provided by law in cases of estates in the Philippines belonging to persons who are inhabitants of another state or country.*<u>*Table of formalities*</u>*: The following is a summary of laws which may be observed in the execution of a will by non-resident Filipinos, resident aliens and non-resident aliens.*

| | NON-RESIDENT FILIPINO | RESIDENT ALIEN | NON-RESIDENT ALIEN |
|---|---|---|---|
| Foreign element | Domicile | Citizenship | Domicile and citizenship |
| What law may be applicable: | Philippine Law (Article 17) | Philippine law (Article 816) | Philippine law (Article 17) |

| | Domiciliary Law | Testator's national law (Article 816) | Testator's national law (Article 817) |
|---|---|---|---|
| | Law of the state where he is domiciled | Domiciliary law | |
| | *Lex loci celebraciones* law of the place where the will is executed (Article 17) | | |

POINTS TO PONDER:

1. CONFLICTS RULES (Bar 2008): Juan and Anita, British citizens at birth, acquired Philippine citizenship by naturalization after their marriage. During their marriage the couple acquired substantial landholdings in London and in Makati. Anita bore Juan three children, Peter, Paul and Mary. In one of their trips to London, the couple executed a joint will appointing each other as their heirs and providing that upon the death of the survivor between them the entire estate would go to Peter and Paul only but the two could not dispose of nor divide the London estate as long as they live. Juan and Anita died tragically in the London Subway terrorist attack in 2005. Peter and Paul filed a petition for probate of their parent's will before a Makati Regional Trial Court. a) Should the will be admitted to probate? (2%) b) Are the testamentary dispositions valid? (2%) c) Is the testamentary prohibition against the division of the London estate valid? (2%)

2. CONFLICTS RULE (Bar 2009): On December 1, 2000, Dr. Juanito Fuentes executed a holographic will, wherein he gave nothing to his recognized illegitimate son, Jay. Dr. Fuentes left for the United States, passed the New York medical licensure examinations, resided therein, and became a naturalized American citizen. He died in New York in 2007. The laws of New York

do not recognize holographic wills or compulsory heirs. [a] Can the holographic will of Dr. Fuentes be admitted to probate in the Philippines? Why or why not? (3%) [b] Assuming that the will is probated in the Philippines, can Jay validly insist that he be given his legitime? Why or why not? (3%)

**Article 818. Two or more persons cannot make a will jointly, or in the same instrument, either for their reciprocal benefit or for the benefit of a third person.**

Rationale of the Prohibition: A joint will is a will authored by two or more persons and signed by them as co-makers. A joint will is also a will made by two or more persons in one instrument. A mutual will is a will authored by two or more persons for their reciprocal benefit. These wills contradict the characteristic of the execution of a will being a purely personal or individual act.

Purpose of the Prohibition: Joint wills present an opportunity for one party, who is more dominant than the other, to exercise undue influence over the other in the execution of a will resulting in a vitiation of consent. A will involves a gratuitous disposition of property and no one can validly determine the extent of one's generosity except the testator. A joint will, if mutual or reciprocal, may expose a testator to undue influence, and may even tempt one of the testators to kill the other. With this prohibition, no dominant person can compel the other to make a will. In terms of procedure, when the joint will is presented for probate, it may happen that the same becomes operative with respect to one but not with the other testator such as when one is incapacitated and lacks testamentary capacity.

**DELA CERNA v. REBECA-POTOT**
**12 SCRA 576**

*FACTS:* Spouses De la Cerna and Gervasia executed a joint will and testament whereby they willed their two parcels of land acquired during their marriage and all the improvements thereon to Rebecca, and that while each of the testator is living, he or she will continue to enjoy the fruits of the two lands mentioned. Three months later, De la Cerna died and the will was submitted

to probate by Gervasia and Manuela. Upon the death of Gervasia, the will was again submitted to probate. The CFI refused probate of the will for being a void will, because it was in the nature of a joint will. However, on appeal of Manuela, the Court of Appeals reversed the decision on the ground that the decree of probate after the death of Bernabe was issued by a court of proper jurisdiction and conclusive on the due execution of the statement.

ISSUE: Whether the joint will was valid.

*HELD:* The appealed decision correctly held that the probate entered by the CFI has conclusive effect as to the last will of De la Cerna. This joint will is thus valid despite the fact that the Civil Code decreed the invalidity of joint wills. The error that was committed by the probate court was an error of law, that should have been corrected by appeal, but which did not affect the jurisdiction of the probate court, nor conclusive upon its final decision however erroneous. However, the Court of Appeals should have taken into consideration that the probate of 1939 could only affect the share of the deceased husband. It could not include the properties of the wife because Gervasia was still alive at that time considering that the prevailing law at that time did not allow probate ante-mortem. It follows that the joint will insofar as the wife is concerned, must be on her death, re-examined and adjudicated de novo, since a joint will is considered to be the separate will of each of the testator. Thus, the decision of the CFI that the joint will is one probated by the law is correct as to the participation of the deceased Gervasia as to the properties in question. Therefore, the undivided interest of Gervasia should pass upon her death to her heirs intestate, and not exclusively to the testamentary heirs, unless some other valid will in her favor is shown to exist or unless she be the only intestate heir of Gervasia.

**Article 819. Wills, prohibited by the preceding article, executed by Filipinos in a foreign country shall not be valid in the Philippines, even though authorized by the laws of the country where they may have been executed.**

<u>Intrinsic validity of wills</u>: The intrinsic validity of wills is governed by the national law of the person whose succession is under consideration. Thus, even if a joint will is authorized in a foreign jurisdiction, the same cannot be valid in the Philippines. This is the precept or principle which is enshrined in the second paragraph of Article 16 which provides that "intestate

and testamentary succession, both with respect to the order of succession and to the amount of successional rights and to the intrinsic validity of testamentary provision 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."

> *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 succession, both with respect to the order 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.*

## WITNESSES TO WILLS

**Article 820. Any person of sound mind and of the age of eighteen years or more, and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will mentioned in Article 805 of this Code.**

<u>Basis for more stringent qualifications for witnesses:</u> When one makes a will, the law simply recognizes a person's right to dispose of his property subject to certain qualifications. However, when one is called to be a witness to a will, the law is more stringent because during probate proceedings, a witness will have to testify on matters material to the admission or denial of the will.

<u>Reason for the prohibition against blind, deaf or dumb witness</u>: Such persons cannot be a witness to the execution of a will since witnesses are generally required to identify the will, certify that certain formalities were complied with, attest to the execution of the will, and communicate what they saw or heard during the execution of the will, all for the purpose of preventing fraud.

<u>Reason for the literacy requirement</u>: A witness must possess a certain level of education, intelligence, and training so that

there is some level of assurance that the witness will be credible and reliable and that his account of what went on is both accurate and true. Although not a definite assurance, still literacy will help when it comes to understanding what went on during the execution of the will.

**Article 821. The following are disqualified from being witnesses to a will:**

**(a) Any person not domiciled in the Philippines;**

**(b) Those who have been convicted of falsification of a document, perjury or false testimony.**

Difference between a competent witness and a credible witness: Competence is determined by the Rules of Court. A person is competent if that person has organs of perception i.e. one has the sense of sight, hearing, taste, smell and touch. If a person possesses all these organs of perception and, at the same time, is not legally impaired then such person is competent for he can perceive and communicate that perception to another. One cannot say however, that all persons are credible witnesses. Credibility is the sum total of a person's character or traits and a person's general reputation as a member of the community which all lead and point to one fact: that a person can be believed. However, credibility is not quantifiable. Thus, credibility is always directed to the sound discretion of the person who is to receive the evidence. In the case of wills, the ultimate judge of a person's credibility is the probate judge.

**GONZALES v. CA**
**90 SCRA 187**

*FACTS:* Gabriel died a widow. Santos, a niece of the deceased who lived with her prior and up to the time of her death, filed for a petition for a probate of her will. The three instrumental witnesses of the will included a family driver, a housekeeper, and a piano teacher. The petition was opposed by Rizalina Gonzales, one of the nieces named in the will, who contends that the will was not executed and attested as required by law as there was absolutely no proof that the three instrumental witnesses were credible witnesses. She argues that to be a credible witness, there

must be evidence on record that the witness has a good standing in his community, or that he is honest and upright, and reputed to be trustworthy and reliable. She added that "credible" is not synonymous with "competent" and that "credible" should receive the same meaning it has under the Naturalization Law.

*ISSUE:* Whether or not the witnesses are credible witnesses as required in Article 805.

*HELD:* Yes! Article 820 provides the qualification of the witness to the execution of will while Article 821 sets forth the disqualification. Under the law, there is no mandatory requirement that the witness testify initially or at any time during the trial as to his good standing in the community, his reputation for trustworthiness and reliability, his honesty and uprightness in order that his testimony may be believed and accepted by the trail court. It is enough that the qualifications in Article 820 are complied with, such that soundness of his mind can be shown or deduced from his answers to the questions propounded to him that his age is shown from his appearance, testimony, as well as that he is not blind, deaf or dumb, that he is able to read or write, and that he has none of the disqualification in Article 821. The term "credible" as used in Article 805 should not be given the same meaning it has under the Naturalization Law in that the witnesses must prove their good standing and reputation. In probate proceedings, unlike in petitions for naturalization, the instrumental witnesses are not character witnesses for they merely attest to the execution of a will and affirm the formalities attendant to said execution. The relation of the beneficiary of the will to the testator does not disqualify one to be a witness. The main qualification of a witness in the attestation of wills, if other qualifications as to age, mental capacity and literacy are present, is that the said witnesses must be credible, that is to say, his testimony may be entitled to credence. In a strict sense, the competency of a person to be an instrumental witness to a will is determined by Articles 820 and 821, whereas his credibility depends on the appreciation of his testimony and arises from the belief and conclusion of the Court that said witness is telling the truth.

Permissive qualifications and mandatory disqualifications: Article 820 gives the qualifications to become witnesses i.e. "any person of sound mind and of the age of eighteen years or more,

and not blind, deaf or dumb, and able to read and write, may be a witness to the execution of a will mentioned in Article 805 of this Code." By using the word "may", one can infer that such qualifications are permissive. In Article 821, talking about the disqualification of witnesses, it provides that "the following are disqualified from being witnesses to a will…" As such, the disqualification, on the other hand, appears to be mandatory.

Disqualifications in Article 821: Article 821 (1) provides that any person not domiciled in the Philippines is not qualified to become a witness. The purpose of this requirement is for convenience so that such witness can be within the reach of the compulsory processes of the court, particularly the subpoena. If the witnesses to the will are non-residents of the Philippines, the court cannot issue subpoenas to compel them to attend a hearing and to testify in court because the subpoena is territorial in its effect. However, this does not preclude the fact that a person is permitted to execute his will overseas for one can execute a will in another country following the formalities of Philippine law. Consequently, this disqualification does not apply in case of a non-resident Filipino testator who wishes to execute his will in accordance with the formalities of Philippine law. If he executes his will in the United States, for example, it will be very expensive for him to bring three Filipino residents to the United States. However, even if he obtains witnesses domiciled in the Philippines, the probate court in the United States will not be able to issue a process or a writ to compel the attendance of such witnesses. On the other hand, Article 821 (2) provides that a person convicted of falsification of a document, perjury or false testimony is disqualified from being a witness to a will. The qualifications and disqualification are placed in the law in order to assist the testator in allowing the probate of his will. The law qualifies the witnesses so that the issue of competence and credibility do not arise. However, failure to comply with all the requirements does not mean that the will cannot be allowed for probate, it simply means that it will be more difficult for the will to be allowed for probate.

POINTS TO PONDER:

1. Why did the law limit the disqualification of prior conviction only to three specific offenses? Why not disqualify a convict guilty of an offense involving moral turpitude?
2. What is the effect if the prior conviction or any disqualification was concealed from the testator?

**Article 822. If the witnesses attesting the execution of a will are competent at the time of attesting, their becoming subsequently incompetent shall not prevent the allowance of the will.**

Competence determined at the time of the execution of the will: A person is supposed to possess all the qualifications and none of the disqualifications at the time he is to become a witness to the execution of a will. But there will be a lapse of time between the execution of the will and probate and if during this period of time, the witness becomes disqualified one way or another, his competence as a witness is not impaired because the law establishes his competence as a witness at the time of the execution of the will. Thus, subsequent incapacity of the witness will not invalidate the will for that particular reason. However, it may impair or prejudice a person's credibility as a witness particularly if the disqualification involved is that of the commission of certain offenses.

**Article 823. If a person attests to 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, as far only as 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 upon attesting shall be admitted as a witness as if such devise or legacy had not been made or given.**

Persons disqualified to inherit under Article 823:

1) Any person who is a witness to a will and at the same time is an heir, devisee, or legatee in the same will.

2) Also included are the spouse of the witness (if there is already legal separation between the spouses, the witness-spouse can be a witness even if the heir-spouse is to be a beneficiary as the property regime is already extinguished); parent of the witness; child of the witness; any person claiming against the witness, his spouse, parent or child.

Rationale for disqualification:

1) As to the witness, his spouse, parent or child: A witness proves or attests to the due execution of a will. Under the situation envisioned by Article 823, such witness or their above-mentioned relatives will consciously or unconsciously give a false testimony to protect his interest; otherwise, he will not be able to inherit. He is what we call a loaded witness for his testimony is not something one could rely on. To become a witness and a devisee/legatee is an open invitation to commit perjury.

2) As to persons claiming under the witness, his spouse, or child: A 3rd person, who is to receive a benefit from the witness-heir, the spouse, parent or child of such witness-heir is also disqualified for again such 3rd person will definitely give a favorable testimony as he will be indirectly benefited.

Exceptions to this disqualification: If the above mentioned persons are compulsory heirs but only as to extent of their legitimes. Also, if there is a substitute witness as when there is a fourth witness. So even if there is one witness coming within the prohibition provided in Article 823 as long as there are three other disinterested witnesses, even the witness disqualified by virtue of Article 823 will be able to receive that portion given to him by the will as the requirements of the law have been complied with.

**IN RE ESTATE OF WATTS**
**Appellate Court of Illinois, 1979**
**67 Ill. App. 3d 463, 384 N.E. 2d 589, 23 Ill. Dec. 795**

*FACTS:* In her will, Laura Viola Watts devised items of personalty and money to named beneficiaries, one of whom was

Virginia Warren, and devised the residuary estate to Carl Manhart. Virginia Warren and Frank Warren were named as contingent beneficiaries of the residuary estate. The will was signed by the testator, attested by Carl Manhart, Virginia Warren and Frank Warren, and notarized by Virginia Warren. Following the death of Laura, Carl Manhart, Virginia Warren and Frank Warren submitted the will for probate, and the probate was granted. Several months thereafter, the decedent's heirs at law filed a case to have all the interests of the attesting witnesses declared void relying on the statute which reads: "If any beneficial devise, legacy or interest is given in a will to a person attesting its execution or to his spouse, the devise, legacy, or interest is void as to that beneficiary and all persons claiming under him, unless the will is otherwise duly attested by a sufficient number of witnesses exclusive of that person."

*ISSUE:* Will the will be invalidated because it is attested by interested witnesses?

*HELD:* We conclude that the statute must be applied such that if the will is duly attested by two credible, disinterested witnesses, then the witnesses who have an interest under the will may take. In this case, the will not attested by two credible, disinterested witnesses, and as a result, the interests of Virginia Warren and Carl Manhart are void and the contingent interests of Virginia Warren and Frank Warren must likewise be declared void.

Since the attesting witnesses are declared to have no beneficial interests under the will, it is our conclusion that the attestation of the will is sufficient to uphold the validity of the remainder of the bequests. The specific bequests to Virginia Warren and the bequests of the residuary estate having been declared void that portion of the estate shall pass by intestacy to the decedent's heirs at law.

## POINTS TO PONDER:

1. Why do you think the prohibition extends to the spouse of the witness, parent of the witness; child of the witness; any person claiming against the witness, his spouse, parent or child?

2. Can the 4th witness (the one who is also a beneficiary in the will) still testify at the same time receive his/her bequest under the will?

**Article 824. A mere charge in 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.**

Rationale of Article 824: The charge referred to in Article 824 is a debt of the estate of the testator which will be paid even without a provision in the will during the liquidation of the estate. If the creditor receives part of the estate as an heir, legatee or devisee and, at the same time, he is a witness to such will, he is disqualified to inherit based on the prohibition in Article 823.

## CODICILS AND INCORPORATION BY REFERENCE

**Article 825. A codicil is a supplement or addition to a will, made after the execution of a will and annexed to be taken a part thereof, by which any disposition made in the original will may be explained, or added to, or altered.**

**Article 826. In order that a codicil may be effective, it shall be executed as in the case of a will.**

Definition of a codicil: A codicil is a supplement or addition to a will, made after the execution of a will and annexed to be taken as part thereof, by which any disposition made in the original will may be explained, or added to, or altered. It is always made after the original will.

Requirements for a valid codicil: The elements for a valid codicil are as follows:

1) It is a supplement or addition to a will.
2) It is made after the execution of the will.
3) It is to be annexed and taken as part thereof.
4) It explains, adds or alters the original will.
5) It must be executed following the formalities of a will.

Effects of the execution of a codicil: While treated as an independent document, a codicil also serves as a supplement or an annex to the will itself, thus, any codicil executed before a will is invalid.

**Article 827. If a will, executed as required by this Code, incorporates in to itself by reference any document or paper, such document or paper shall not be considered a part of the will unless the following requisites are present:**

**1) The document or paper referred to in the will must be in existence at the time of the execution of the will;**

**2) The will must clearly describe and identify the same, stating among other things the number of pages thereof;**

**3) It must be identified by clear and satisfactory proof as the document or paper referred to therein; and**

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

Requisites for Incorporation by Reference: Incorporation by reference is done merely by mentioning in the will that a certain document is referred thereto though not necessarily attached to the will itself. The requisites for incorporation by reference are as follows:

1) The document or paper referred to exists at the time of the execution of the will. A statement to this effect need not be stated in the will.

2) The will must clearly describe and identify the document, stating among other things the number of pages thereof. This requires a clear identification which must be stated in the will. Aside from the number of pages which has to be stated, it would be wise to state the description of the document itself by indicating its title and/or its nature.

3) The document referred to must be identified by clear and satisfactory proof as being the document referred to in the will. This second identification is necessary

during probate to substantiate the authenticity of the document referred to in the will.

4) The required signatures (testator and witnesses) on every page of the document except in the case of voluminous books of account or inventories. This requirement is for the purpose of identifying the number of pages of the incorporated document and to prevent any insertion or deletion of pages.

**CLARK v. GREENHALGE**
**Supreme Judicial Court of Massachusetts, 1991**
**411 Mass.410, 582 N.E.2d 949**

*FACTS:* Testatrix Helen Nesmith executed a will in which she named her cousin Frederic Greenhalge as executor of her estate. The will identified Greenhalge as the principal beneficiary of the estate, entitling him to receive all of Nesmith's personal property upon her death except those items 'designated by a memorandum left by her and known to Greenhalge or in accordance with her known wishes'. Among Nesmith's possessions was a large oil painting of a farm scene, which during her lifetime she told her private nurses was to be given to Virginia Clark, Nesmith's friend. Nesmith herself told Virginia Clark that this painting would be hers upon the former's death, and that she would record this gift in a notebook she kept for the purpose of memorializing her wishes with respect to the disposition of her possessions. After Nesmith's death, the notebook was delivered to Greenhalge, and as executor, Greenhalge distributed Nesmith's properties in accordance with her Will and the provisions of the notebook, except for the oil painting which he refused to give to Virginia Clark. Virginia Clark filed an action to compel Greenhalge to deliver the oil painting to her and the probate judge ruled that Nesmith's notebook qualified as a "memorandum" of her known wishes with respect to the distribution of her personal property, and that said notebook was incorporated by reference into the terms of the will. Greenhalge appealed on the argument that the bequest of the oil painting written in the notebook was not incorporated into the will and thus fails as a testamentary devise.

*ISSUE:* How is a writing or document incorporated into a will?

*HELD:* A properly executed will may incorporate by reference into its provisions any "document or paper not so executed and witnessed, whether the paper referred to be in the form of… a mere list or memorandum… if it was in existence at the time of the execution of the will, and is identified by clear and satisfactory proof as the paper referred to therein."

It appears clear that Helen Nesmith intended by the language used in Article Fifth of her will to retain the right to alter and amend the bequests of tangible personal property in her will, without having to amend formally the will. The text of Article Fifth provides a mechanism by which Helen Nesmith could accomplish the result she desired; i.e., by expressing her wishes 'in a memorandum'. The statements in the notebook unquestionably reflect Helen Nesmith's exercise of her retained right to restructure the distribution of her tangible personal property upon her death. That the notebook is not entitled 'memorandum' is of no consequence, since its apparent purpose is consistent with that of a memorandum under Article Fifth: It is a written instrument which is intended to guide Greenhalge in distributing such of Helen Nesmith's tangible personal property to and among… persons who are living at the time of her demise. In this connection, the distinction between the notebook and a 'memorandum' is illusory.

Practical significance of Article 827: In case there is a need to explain some provision in the will and in so doing reference to some voluminous records is necessary, this provision seeks to provide an efficient solution – incorporation by reference.

POINTS TO PONDER:

1. What is the significance of requiring the existence of the document at the time of the execution of the will?
2. Can the testator declare that he will still prepare such document at the same time have it incorporated by reference?

## REVOCATION OF WILLS AND TESTAMENTARY DISPOSITIONS

**Article 828. A will may be revoked by the testator at anytime before his death. Any waiver or restriction of this right is void.**

Revocable wills: Wills by their very nature are ambulatory and inoperative till the death of the testator. The instrument, therefore, does not pass a present interest or right in property and such right or interest does not take effect until the death of the testator. Prior to the death of the testator, it is entirely inoperative and is wholly ineffective for any purpose. Hence a will is essentially revocable and may be revoked at any time by the testator before he dies and with or without cause. Furthermore, the dispositions in a will are acts of liberality since there is no consideration given. Therefore, there is no contractual obligation on the part of the testator to be bound by his original testament.

POINT TO PONDER:

If the testator himself had his own will admitted to probate during his lifetime, can he still revoke the same?

**Article 829. A revocation done outside the Philippines, by a person who does not have his domicile in this country, is valid when it is done according to the law of the place where the will was made, or according to the law of the place in which the testator had his domicile at the time; and if the revocation takes place in this country, when it is in accordance with the provisions of this Code.**

Conflicts rules in revocation: Generally, the law which governs the revocation is the law of the Philippines. The only time when the testator may revoke his will either in accordance with the law of the place where the will was made or in accordance with the law of the place in which he had his domicile at the time, is when he is not domiciled in the Philippines. Consequently, the rules may be re-stated as follows:

1) If the act of revocation takes place in the Philippines, it is essential that it must be done in accordance with the laws of the Philippines. This applies whether the testator is domiciled in this country or in some other country.

2) If the revocation takes place outside the Philippines, by a testator who is domiciled in the Philippines, it is

essential that it must be done in accordance with the laws of the Philippines.

3) If the revocation takes place outside the Philippines, by a testator who is not domiciled in the Philippines. It is essential that it must be done either in accordance with the laws of the place where the testator had his domicile at the time of revocation or the law of the place where the will was made.

**Article 830. No will shall be revoked except in the following cases:**

**1) By implication of law; or**

**2) By some will, codicil, or other writing executed as provided in the case of wills;**

**3) By burning, tearing, canceling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn, canceled, or obliterated by some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court.**

<u>Revocation by operation of law</u>: No provision of law actually revokes an entire will. Only specific provisions in the will may be revoked by implication of law. The following provisions of law are some examples which revoke certain dispositions in the will by operation of law:

1) Article 957 regarding the nullity of legacies or devises by transformation, alienation, or loss of the subject matter of the legacy or devise.

2) Article 1032 regarding the incapacity of certain individuals to succeed by reason of unworthiness such as abandonment or corruption of children, conviction of an attempt against the life of the testator, false accusation of a crime for which the law prescribes imprisonment for six years or more, those persons who

should cause the testator to make a will or to change one already made through fraud, violence, intimidation, or undue influence, and those persons who shall forge a supposed will of the decedent.

3) Article 936 in relation to Article 935 concerning legacies of remission against third persons. The legacy of credit or remission of a debt shall lapse if the testator, after having made it should bring an action against the debtor for the payment of his debt, even if such payment should not have been effected at the time of his death.

4) Article 854 regarding preterition which shall annul the institution of an heir, but the devises and legacies shall be valid insofar as they are not inofficious.

5) Article 63 (4), Family Code where a decree of legal separation shall disqualify the offending spouse from inheriting from the innocent spouse by intestate or even by testamentary succession.

6) Article 43 (5), Family Code where the termination of the subsequent marriage shall disqualify the spouse who contracted the subsequent marriage in bad faith to inherit from the innocent spouse by testamentary and intestate succession.

7) Article 44, Family Code in cases where both spouses of the subsequent marriage acted in bad faith, all donations by reason of marriage and testamentary dispositions made by one in favor of the other are revoked by operation of law. Furthermore. Article 50, Family Code reiterates the disqualification to inherit in cases of marriages which are declared void ab initio or annulled by final judgment under Art 40 and 45.

Revocation by the execution of a subsequent document: In order that a former will may be revoked by a subsequent will, it is necessary that the latter will should be valid and executed with the formalities required for the making of a will. The subsequent will must either contain a clause expressly revoking the previous

one or some dispositions or provisions which are irreconcilably inconsistent with the previous will such that the dispositions cannot be effective if taken together.

Express revocation: There is express revocation when the revoking document or will or codicil has an express provision (the revocatory clause) which revokes the previous one. Express revocation may be made conditional upon a future event: as when one who has made two wills executed another instrument in which he provided that if he should live three months one should be his will, and if he died before that time, the other.

Implied revocation: There is an implied revocation when the revoking document or will contains dispositions or provisions which are inconsistent with those of a previous will such that the later provision is the one given effect. The changes in the later document indicate a change of mind of the testator which must be given effect.

**GILBERT v. GILBERT**
**Court of Appeals of Kentucky, 1983**
**652 S.W.2d 663**

*FACTS:* Frank Gilbert died testate. 2 writings were offered for probate: an 8-page typewritten instrument prepared by an attorney dated April 2, 1976, and the holographic instrument dated December 8, 1978. The 'codicil' was written on the back of a business card and on the back of one of Frank's pay stubs. The card and the stub are found folded together in a sealed envelope. Written on the envelope is the following: "this day 12/8/1978 I gave to Jim and Margaret this card which I stated what to do". The typewritten instrument and the holographic instrument were admitted to probate, the holographic instrument being admitted as a codicil. Appellants sought to have the holographic instrument interpreted as a second and superseding will but the court ruled the same only as a codicil. Hence, this appeal was filed.

*ISSUE:* When can a subsequent instrument written by the testator be considered a revocation or a mere modification?

*HELD:* It must first be determined which of the holographic writings are to be considered testamentary acts of Frank and then decide what he meant by what he wrote. While it is true that both

> holographic writings are signed and dated, giving credence to the argument that Frank intended them to be separate documents, the fact that they were found folded together in a sealed envelope and are coherent in sense is sufficient to support the trial court's conclusion that the two writings should be considered as one.
>
> The second instrument was probated as a codicil, but because it does not refer to the typewritten will, we prefer to characterize it as a second will. A testator can have more than one will effective at the same time, each distributing part of the estate. In such a case the subsequent wills 'perform the office of codicils'. We believe that to be the situation in this case: the second will serves as a codicil because it does not contain a revocation clause and only distributes part of the residuary estate.

Revocation by overt acts: The requirements to have a valid revocation by overt acts are:

a) testamentary capacity of the testator at the time of revocation

b) the burning, tearing, cancellation or obliteration of the will by the testator or by another in his presence and by his express direction

c) the completion of the subjective phase of the act

d) the intent to revoke or animus revocandi

Testamentary capacity at the time of revocation: Testamentary capacity is required at the time of the revocation of a will to insure the intelligence of the act considering that revocation partakes of the nature of a property disposition – preventing those persons stated in the will to receive properties from the testator.

Overt Acts: The overt acts of revocation are the burning, tearing, canceling and obliterating of a will. While several commentators say that the enumeration in the law is exclusive, some believe that since the end result of these four acts prescribed by the law is the destruction of the document for the purpose of revocation, then other ways of destroying the document (flushing it down the toilet) shall be considered as acts of revocation. As long as the physical proof of the will is destroyed by overt acts, then such ought to be considered as revoked.

Completion of the subjective phase of the act: The act of revocation must be complete in the mind of the testator by presenting proof of circumstances to show that the testator already believed that the will was already revoked by his overt acts even though his acts did not result to the intended revocation.

Intent to revoke: Intent alone is not enough. Any of the acts enumerated in the law must appear to have been done. There is no revocation in a situation where the testator, who was about to tear his will with the intent to revoke the same, was shot to death. The act of revocation not having been completed or not having been done, the will shall be taken as not having been revoked.

Presumption of revocation: When the will was last found to be in the possession of the testator and the same can no longer be found despite diligent search, then the will is considered revoked. (Gago v. Mamuyac, 49 Phil 902)

**GAGO v. MAMUYAC**
**49 Phil 902 (1927)**

*FACTS:* The testator Miguel Mamuyac died on 2 January 1922. Within the same month, Gago presented to court a will supposed to have been executed by the testator on 27 July 1918. The will was not admitted on the ground that the testator had, on 16 April 1919, executed a new will and testament. Gago then petitioned for the probate of the 2nd will which was denied again by the court on the ground that the same will had been revoked by the testator as testified by Fenoy, the person who typed the will and Bejar, to whom a house and lot in the 1919 Will was sold to. Another witness testified that the 1919 will was in the possession of the testator but could not be found after his death. It was also successfully established that another will was executed in 1920. The 1919 will presented was found by the lower court to be a mere carbon copy of the original.

*ISSUE:* Whether the 1919 will was cancelled.

*HELD:* The law does not require any evidence of the cancellation or revocation of the will to be preserved the fact that such cancellation or revocation has taken place must either remain unproved or be inferred from evidence showing that after due search the original will cannot be found. Where a will which

cannot be found is shown to have been in the possession of the testator, when last seen, the presumption is, in the absence of other competent evidence, that the same was cancelled or destroyed. The same presumption arises where it is shown that the testator had ready access to the will and it cannot be found after his death. It will not be presumed that such will has been destroyed by any other person without knowledge or authority of the testator. The force of presumption of the cancellation or revocation by the testator, while varying greatly, being weak or strong according to the circumstances, is never conclusive, but may be overcome by proof that the will was not destroyed by the testator with intent to revoke it.

**HARRISON v. BIRD**
**Supreme Court of Alabama, 1993**
**621 So.2d 972**

*FACTS:* Daisy Speer executed a will in 1989 in which she named Katherine Harrison as the main beneficiary of her estate. The original of the will was retained by Speer's lawyer and a duplicate original was given to Harrison. In 1991, Speer called her lawyer and told him she wanted to revoke her will. Thereafter, Speer's lawyer or his secretary, in the presence of each other, tore the will into 4 pieces. The lawyer then wrote Speer a letter informing her that he had 'revoked' her will as she had instructed and that he was enclosing the pieces of the will so that she could verify that he had torn up the original. In the letter, the lawyer specifically stated "as it now stands, you are without a will." On Speer's death, this letter of her lawyer was found but the 4 pieces of the torn will were not. Harrison filed for probate of a document purporting to be the last will and testament of Speer, which was opposed by a cousin of Speer. The court ruled that the presumption in favor of revocation of Speer's will had not been rebutted and therefore the duplicate original will offered by Harrison was not the last will and testament of Speer.

*ISSUE:* Was the will of Speer validly revoked in accordance with law?

*HELD:* If the evidence establishes that Ms. Speer had possession of the will before her death, but the will is not found among her personal effects after her death, a presumption arises that she destroyed the will. Furthermore, if she destroys the copy of the will in her possession, a presumption arises that she has

revoked her will and all duplicates, even though a duplicate exists that is not in her possession. However, this presumption of revocation is rebuttable and the burden of rebutting the presumption is on the proponent of the will. The evidence presented by Harrison was not sufficient to rebut the presumption that Speer destroyed her will with the intent to revoke it.

### THE TESTATE ESTATE OF ADRIANO MALOTO v. COURT OF APPEALS 158 SCRA 451 (1988)

*FACTS:* Adriana Maloto was initially believed to have died without a will so an intestate proceeding was commenced by her heirs, a niece and a nephew. During the pendency of this action, said heirs decided to extra-judicially settle the estate of Adriana Maloto by dividing it into 4 equal parts among themselves, which settlement was approved by the court. However, 3 years after said extrajudicial settlement among the heirs, a document purporting to be the last will and testament of Adriana was discovered. In said will, all 4 heirs were instituted as heirs but 2 of them were bequeathed bigger and more valuable shares than what they received in the extrajudicial settlement they earlier executed. The will also gave devises and legacies to other parties. In the petition for probate of the discovered will of Adriana, the trial court ruled that said will had already been revoked by the testratrix Adriana, based on the testimony of Adriana's househelp that she burned said will on the instructions of the testatrix. Thus, the trial court denied the petition for probate. On appeal, the appellate court although having found contradictions in the allegation of the revocation of the will by burning, found *animus revocandi* in the destruction of the will to be present.

*ISSUE:* Was there a proper revocation of the will?

*HELD:* It is clear that the physical act of destruction of a will, like burning in this case, does not per se constitute an effective revocation, unless the destruction is coupled with *animus revocandi* on the part of the testator. It is not imperative that the physical destruction be done by the testator himself. It may be performed by another person but under the *express direction* and in the *presence* of the testor. Of course, it goes without saying that the document destroyed must be the will itself.

In this case, while *animus revocandi,* or the intention to revoke, may be conceded, for that is a state of mind, yet that

requisite alone would not suffice. *Animus revocandi* is only one of the necessary elements for the effective revocation of a last will and testament. The intention to revoke must be accompanied by the overt physical act of burning, tearing, obliterating, or cancelling the will carried out by the testator or by another person in his presence and under his express direction. There is scarcity of evidence to show compliance with these requirements. For one, the document or papers burned by Adriana's maid, Gaudalupe, was not satisfactorily established to be a will at all, much less the will of Adriana Maloto. For another, the burning was not proven to have been done under the express direction of Adriana. And then, the burning was not in her presence. Hence, the will is not considered revoked.

**Article 831. Subsequent wills which do not revoke the previous one in an express manner, annul only such dispositions in the prior will as are inconsistent with or contrary to those contained in the latter wills.**

Irreconcilable Inconsistencies: There must be two documents because implied revocation is based on irreconcilable inconsistencies. If there are simple inconsistencies, it does not necessarily equate to an implied revocation, since the provisions may still be reconciled. In case there can be no effective reconciliation of the conflicting dispositions, the later expression will prevail on the basis of the presumption that there is a change of mind on the part of the testator.

**Article 832. A revocation made in a subsequent will shall take effect, even if the new will shall become inoperative by reason of the incapacity of heirs, devisees or legatees designated therein, or by their renunciation.**

Dependent Relative Revocation: The subsequent will shall only revoke the old will if it is admitted to probate. The validity of the later will is a condition for the revocation of an old one. There is such a relation between the revocatory clause and the will which contains it, that if the will does not produce legal effects, because it has not been executed in accordance with the provisions of law, neither would the revocatory clause therein produce legal effects (Samson v Naval, 41 Phil 838). Thus, the codicil must first be admitted to probate in order for the revocation to take effect.

Stated otherwise, the revocation of the first will is dependent on the validity and the admission to probate of the second will.

**SCHNEIDER v. HARRINGTON**
**Supreme Judicial Court of Massachusetts, 1947**
**320 Mass.723, 71 N.E.2d 242**

*FACTS:* Letitia Bliss made a will disposing of her real and personal properties as follows: "(1) To my niece Phyllis, one third (1/3); (2) one third (1/3) to my sister Margaret, (3) one third (1/3) to my sister Amy." There was no residuary clause. The testatrix at some time after the execution of the will cancelled clause 3 in her will and attempted and intended thereby to increase the shares in Clauses 1 and 2 from 1/3 to 1/2 each and to that end by pencil crossed out all of clause 3 and the figures '1/3' in clauses 1 and 2. She then inserted by pencil the figures 1/2 in clauses 1 and 2 leaving uncancelled in these clauses the words 'one third'. There was no codicil to the will nor was it ever republished or re-executed. The lower court ruled that the will was to be allowed except for clause 3 and the figures '1/3' in clauses 1 and 2, and that the figures '1/2' which had been substituted for the figures '1/3' in clauses 1 and 2 were not part of the will.

*ISSUE:* Was there an effective revocation?

*HELD:* The doctrine of conditional revocation or dependent relative revocation provides that "a revocation of a valid will, which is so intimately connected with the making of another will as to show a clear intent that the revocation of the old is made conditional upon the validity of the new, fails to become operative if the new will is void as a testamentary disposition for want of proper execution. Revocation in its last analysis is a question of intent. A revocation grounded on supposed facts, which turn out not to exist, falls when the foundation falls."

Where a testator cancels or obliterates portions of his will in order to substitute different provisions, and in such a way as to show a clear intent that the revocation is conditional on the validity of the substitution, and the substitution fails for want of proper authentication, the will stands as originally drawn.

It is clear that the cancellations and the substitutions were inextricably linked together as parts of one transaction; and it is evident that the testatrix intended the cancellations to be effective only if the substitutions were valid. But the substitutions,

inasmuch as they were not authenticated by a new attestation as required by statute, were invalid. Consequently the cancellations never became operative.

Rationale of Article: The revocation of a prior will is valid even if the revoking will is inoperative or cannot be carried out because of the incapacity of or renunciation of some of the beneficiaries therein because of the clear intent of the testator to revoke contained in a valid will. The validity of the new will prevents the operation of the old will, even if the new disposition cannot be carried out.

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

Effect of a revocation based on a false cause: The will is void because the testator's consent is vitiated by mistake. Had he known the truth, there would have been no revocation. However, this article merely refers to revocation by subsequent will or codicil and overt acts.

Not a case of false cause: If it appears that the testator only alleges the belief as a reason for revoking, intending to revoke absolutely, whether such belief were true or false, then the revocation even if based on a false cause will be operative. Also, if revocation is dependent merely upon information received by the testator, or upon his opinion, the revocation is valid, although the testator may have been misinformed, or formed his opinion based on a misapprehension. Finally, where facts alleged by the testator were peculiarly within his knowledge or the testator must have known the truth of the facts alleged by him, it does not matter whether they are true or not, the revocation is absolute.

**AUSTRIA v. REYES**
**31 SCRA 754 (1970)**

*FACTS:* Basilia Austria filed a petition for *ante mortem* probate of her last will and testament which gave the bulk of her properties to respondents (declared by her to be her adopted children). Such will was admitted for probate. Two years after probate, Basilia died and her nephews and nieces filed an intervention

to the partition alleging that the respondents were not Basilia's adopted children and were therefore strangers without any right of succession. The petitioners contend that the entire estate, and not just the properties disposed of by will, should pass to them by intestacy because of the intrinsic nullity of the institution of heirs.

*ISSUE:* Whether the institution of heirs is invalid because of false cause (nullity of the adoption).

*HELD:* NO! Even if Basilia had used the terms *"sapilitang mana"* and *"sapilitang tagapamana,"* there is no indication that had she known that the respondents were not her adopted children then she would have not instituted them as heirs. The disposition of the free portion was largely at Basilia's discretion and she had given a large part thereof to the respondents while giving a relatively small legacy in favor of the petitioners. Any other interpretation of Basilia's actions would prejudice her clear and manifest wishes. The fact that the testatrix referred to the compulsory heirs as *"sapilitang tagapamana"* does not invalidate the institution for the actions for the testatrix was to the contrary as she should just have given them the value of the legitimes but she in fact gave more than the value. Therefore, the thought that she was obligated to give is negated by the fact that she did give more than what was required by law

**Article 834. The recognition of an illegitimate child does not lose its legal effect, even though the will wherein it was made should be revoked.**

Rationale of the Article: The recognition does not lose its legal effect even if the will is revoked, because the recognition is not a testamentary disposition, it takes effect upon the execution of the will and not upon the death of the testator. Thus the recognized natural child can demand his rights even if the will is revoked.

## REPUBLICATION AND REVIVAL OF WILLS

**Article 835. The testator cannot republish, without reproducing in a subsequent will, the dispositions contained in a previous one which is void as to its form.**

**Article 836. The execution of a codicil referring to a previous will has the effect of republishing the will as modified by the codicil.**

Definition of republication: Republication is a method by which the testator restores to validity as his will an instrument formerly executed by him as his will which was originally invalid for want of proper execution.

Types of republication: Express republication or re-execution and implied republication or republication by reference. A will which is void as to form can only be republished through re-execution, which means that the whole document must be re-written. On the other hand, a will which is valid as to form, but void as to other aspects, may be republished by republication through reference, which means the execution of a codicil which contains a sufficient reference to the previous will.

Effect of republication: The republished will shall speak as of date of republication and shall be governed by the formalities required by law at the time of republication.

**Article 837. If after making a will, the testator makes a second will expressly revoking the first, the revocation of the second does not revive the first will, which can be revived only by another will or codicil.**

Distinction between revival and republication: Republication takes place by an act of the testator, while revival takes place by operation of law. Another distinction is that republication can apply to wills which were expressly and impliedly revoked, while revival can apply only to impliedly revoked wills.

Example of revival: X was named the universal heir in Will #1. Testator then changes his mind and makes Y the new universal heir in Will #2. If the testator revokes Will #2 by a new will or by an overt act then Will #1 will be revived. But, if Will #2 expressly revokes Will #1, then Will #1 will not be revived even if Will #2 is subsequently revoked because revival takes place only if there is implied revocation.

## ALLOWANCE AND DISALLOWANCE OF WILLS

**Article 838. No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.**

**The testator himself may, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's death shall govern.**

**The Supreme Court shall formulate such additional Rules of Court as may be necessary for the allowance of wills on petition of the testator.**

**Subject to the right of appeal, the allowance of a will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution.**

Definition of probate: Probate is a special proceeding for establishing the validity of a will. It seeks to prove that instrument submitted is the will of the testator, that it was executed according to the formalities required by law, and that the testator had the testamentary capacity at the time of execution. Since probate proceedings are in the nature of a proceeding in rem, the decree of probate is held binding on all persons in interest whether they appear to contest the probate or not. The admission of a will to probate has all the effects of a judgment and is entitled to full faith and credit in other courts.

**HEIRS OF GUIDO and YAPTINCHAY v. DEL ROSARIO**
**304 SCRA 18 (1999)**

*FACTS:* Petitioners, claiming to be the legal heirs of Guido and Isabel Yaptinchay, executed an Extra-Judicial Settlement of the estate of Guido and Isabel. Upon their discovery that some of the properties in the estate of Guido and Isabel were titled in the name of Golden Bay Realty and Development Co. and third parties (private respondents in this case), petitioners filed with the trial court a complaint for Annulment and/or Declaration of Nullity of TCTs. Acting on the Motion to Dismiss filed by private respondents, the trial court dismissed the Complaint filed by the petitioners holding that petitioners " who claimed to be the legal heirs of the said Guido and Isabel Yaptinchay have not shown any proof or even a semblance of it — except the allegations that they are the legal heirs of the aforementioned Yaptinchays — that they have been declared the legal heirs of the deceased couple Now, the determination of who are the legal heirs of the deceased

couple must be made in the proper special proceedings in court, and not in an ordinary suit for reconveyance of property."

*ISSUE:* How can a person be declared an "heir?"

*RULING:* In *Litam,etc., et al. v. Rivera,* this court opined that the declaration of heirship must be made in an administration proceeding, and not in an independent civil action. The trial court cannot make a declaration of heirship in the civil action for the reason that such a declaration can only be made in a special proceeding. Under Section 3, Rule 1 of the 1997 Revised Rules of Court, a civil action is defined as "one by which a party sues another for the enforcement or protection of a right, or the prevention or redress of a wrong" while a special proceeding is "a remedy by which a party seeks to establish a status, a right or a particular fact." It is then decisively clear that the declaration of heirship can be made only in a special proceeding inasmuch as the petitioners here are seeking the establishment of a status or right. Thus, the trial court was right in dismissing the complaint which stated no cause of action (not brought in the name of the real party in interest).

**MALOLES II v. PHILLIPS**
**G.R. No. 129505, (January 31, 2000)**

*FACTS:* In July 1995, Dr. Arturo de Santos filed a petition for probate of his will (SP. Proc. No. M-4223). In his will, the testator stated that he had no compulsory heirs, named the Arturo de Santos Foundation Inc. as the sole legatee and devisees of his properties, and designated Pacita de los Reyes Philips as executor. In February 1996, the probate court issued an order granting the petition and allowing the will. Shortly thereafter, the testator died. Two months later, petitioner Octavio S. Maloloes II filed a motion for intervention in SP No.4223 claiming that he as the only child of the testator's sister was the sole full-blooded nephew and nearest kin of the testator. Octavio who likewise claimed to be a creditor of the testator, thus prayed for reconsideration of the order allowing the will and for the issuance of letters of administration in his name. The trial court denied Octavio's motion for intervention and this denial was upheld by the Court of Appeals.

(Note: Pacita de los Reyes Phillips filed a petition for the issuance of letters testamentary in her name (SP No.4343), and an Order was issued appointing her as special administrator of the

de Santos' estate. Octavio sought to intervene in this case and to set aside the appointment of Phillips as special administrator. The trial court allowed the intervention of Octavio but this was set aside by the Court of Appeals.

*ISSUES:*

1. Did the probate court lose jurisdiction to proceed with probate proceedings upon the issuance of an order allowing the will?

2. Did Octavio, as creditor of the late testator, have a right to intervene and oppose the petition for issuance of letters testamentary filed by Phillips?

*HELD:*

1. In the probate of wills, it is well-settled that the authority of the court is limited to ascertaining the extrinsic validity of the will, i.e. whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law. Thus, after the allowance of the will of Dr. De Santos on February 16, 1996, there was nothing else for Branch 61 to do except to issue a certificate of allowance of the will pursuant to Rule 73 of the Rules of Court.

2. Rule 79, Section 1 provides that "any person interested in a will may state in writing the grounds why letters testamentary should not issue to the persons named therein as executors, or any of them, and the court, after hearing upon notice, shall pass upon the efficiency of such grounds.x x x." Under this provision, it has been held that an 'interested person' is one who would be benefited by the estate, such as an heir, or one who has a claim against the estate, such as a creditor, and whose interest is material and direct not merely incidental or contingent. Even if Octavio is the nearest next of kin of Dr. De Santos, he cannot be considered an 'heir' of the testator. It is a fundamental rule of testamentary succession that one who has no compulsory or forced heirs may dispose of his entire estate by will. Octavio, as nephew of the testator, is not a compulsory heir who may have been preterited in the testator's will. Nor does he have any right to intervene in the settlement proceedings based on his allegation that he is creditor of the deceased. Since the testator instituted or named an executor in his will, it is incumbent upon the Court to respect the desires of the testator. Only if the appointed executor is incompetent,

refuses the trust, or fails to give bond may the court appoint other persons to administer the estate.

**GALANOSA v. ARCHANGEL**
**83 SCRA 676 (1978)**

*FACTS:* Florentino Histosis executed a will covering 61 parcels of land in Sorsogon. His second wife Dollentas was also twice married and had a son, Pedro, by her first marriage. Florentino was childless and a widower whose only surviving relative was Leon, his brother. Florentino died in 1939. His will provided 1/2 share be bequeathed to Pedro and 3 other parcels were given to Fortajada, a minor and his protégé. When the will was submitted to probate, Leon opposed it. A project of partition was submitted by said testamentary heirs and was approved by the court in 1943. In 1952, Leon filed a case against Pedro for the recovery of the 61 parcels of land, alleging that they and their predecessors in interest have been in open and continuous possession of the property in the concept of an owner. Pedro moved to dismiss the action and the trial court dismissed the action on ground of res judicata for Leon never appealed the decree of probate. In 1967, Leon filed another case against Pedro for "annulment" of Florentino's will alleging that the will was procured through fraud and deceit. While in the 1952 case they alleged that they were in possession of the land, in this complaint they had not been in possession since Florentino's death in 1939. Leon contends that the decree for probate was done without jurisdiction and that the order for dismissal was done with great abuse of discretion. The lower court, applying Art 1410 reconsidered its dismissal order and ignored the 1943 decree of probate and the 1952 dismissal.

*ISSUE:* Does Leon have a cause of action?

*HELD:* He does not have any cause of action. Our procedural law does not sanction an action for annulment of a will. In order to take effect, a will has to be probated, legalized or allowed in a proper testamentary proceeding. The probate of a will is mandatory. The 1943 decree of probate was conclusive as to the formal validity and due execution of the will. This means that the testator was of sound mind at the time of execution and was not acting under fraud, duress or undue influence. Further, the 1943 decree was a proceeding in rem and binding on the whole world. Res judicata applies as there has been no appeal to the decree of probate, and the absence of an appeal confirmed the succession

of the testamentary heirs. Thus, the lack of an appeal resolved the issue of ownership and such cannot be questioned in another action for the recovery of ownership. The lower court's reliance on Art 1410 (the non-prescriptability of an action to declare the inexistence of a contract) is a mistake for it cannot apply to wills. The lower court also never verified the misrepresentation of the parties when the parties cited a CA ruling regarding the application of Art 1410.

**AGAPAY v. PALANG**
**276 SCRA 340 (1997)**

*FACTS:* Miguel Palang married Cornelia Vallesterol in 1949 and they had a child, Herminia. In 1973, Miguel contracted a second marriage with Erlinda Agapay, herein petitioner, and they had a son Kristopher. Before their marriage, Miguel and petitioner Erlinda jointly purchased a parcel of agricultural land in Pangasinan, for which TCT No.101736 was issued in their names. In 1975, a house and lot was allegedly purchased by petitioner Erlinda as sole vendee and TCT No.143120 was issued in her name. After the death of Miguel in 1981, Cornelia and her daughter Herminia filed an action for recovery of ownership and possession of the properties purchased by Miguel during his cohabitation with petitioner Erlinda. The trial court dismissed the complaint on the ground that there was little evidence to prove that the subject properties pertained to the conjugal property of Miguel and Cornelia. The trial court also provided for the intestate shares of the parties, particularly Kristopher, Miguel's illegitimate son. However, on appeal, the Court of Appeals reversed the trial court and declared Cornelia and Herminia as the owners of the subject properties.

*ISSUE:* Can an ordinary court declare a person as an heir?

*HELD:* The first and principal issue is the ownership of the two pieces of property subject of this action. The provision of law applicable here is Article 148 of the Family Code providing for cases of cohabitation when a man and a woman who are not capacitated to marry each other live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage. While Miguel and Erlinda contracted marriage on July 15, 1973, said union was patently void because the earlier marriage of Miguel and Carolina was still subsisting and unaffected by the latter's de facto separation. Under Article 148, only the properties

> acquired by both of the parties through their *actual joint contribution of money, property or industry* shall be owned by them in common in proportion to their respective contributions. It must be stressed that actual contribution is required by this provision, in contrast to Article 147 which states that efforts in the care and maintenance of the family and household, are regarded as contributions to the acquisition of common property by one who has no salary or income or work or industry. If the actual contribution of the party is not proved, there will be no co-ownership and no presumption of equal shares.
>
> The second issue concerning Kristopher Palang's status and claim as an illegitimate son and heir to Miguel's estate is here resolved in favor of respondent court's correct assessment that the trial court erred in making pronouncements regarding Kristopher's heirship and filiation "inasmuch as questions as to who are the heirs of the decedent, proof of filiation of illegitimate children and the determination of the estate of the latter and claims thereto should be ventilated in the proper probate court or in a special proceeding instituted for the purpose and cannot be adjudicated in the instant ordinary civil action which is for recovery of ownership and possession."

<u>Kinds of probate proceedings</u>: The most common is the post mortem probate, where the proceedings are held after death of the testator. An innovation of the New Civil Code is the ante mortem probate, where the testator tests the validity of his will before the probate court during his lifetime.

<u>Advantages of ante-mortem probate</u>: First, fraud, intimidation and undue influence are minimized because the courts will have an easier time determining the mental condition of a live testator than a dead one. Second, if the will does not comply with the requirements of law, it can be corrected immediately. Third, if probated during the lifetime of the testator, the only question left after the testator's death would be the intrinsic validity of the dispositions.

<u>Questions to be determined by the probate court</u>:

1) Whether the instrument offered for probate is the last will and testament of the decedent — a question of identity.

2) Whether the will was executed according to the formalities required by law — a question of due execution.

3) Whether the testator had testamentary capacity at the time of execution — a question of testamentary capacity.

**PASTOR v. COURT OF APPEALS**
**122 SCRA 883 (1983)**

*FACTS:* Alvaro Pastor, Sr. died on 5 June 1966 survived by his wife, their two legitimate children, Pastor and Sofia, and an illegitimate child, Quemada. Quemada filed a petition for the probate of an alleged will of Pastor, Sr. The will contained only one testamentary disposition: a legacy in favor of Quemada consisting of 30% of Pastor, Sr.'s 42% share in the operation of Atlas of some mining claims. Quemada was appointed special administrator. As the special administrator, Quemada filed an action for reconveyance against Pastor, Jr. (hereinafter Junior) and his wife regarding some properties allegedly forming part of Pastor, Sr's estate, including the property subject of the legacy.

Junior and his wife filed their opposition to the petition for probate and the order appointing Quemada as special administrator. However, the probate court admitted the will to probate in 1972. In 1980, the probate court set a hearing on the intrinsic validity of the will and required the parties to submit their position papers as to how the inheritance would be divided. On 20 August 1980, while the action for reconveyance was still pending, the probate court issued an order of execution and garnishment, resolving the issue of ownership of the royalties payable by Atlas and granting the legacy to Quemada. On 11 November 1980, the probate court issued an order declaring that the probate order of 1972 indeed resolved the issue of ownership and the intrinsic validity of the will and reiterating its previous orders.

*ISSUE:* Whether or not the probate order resolved with finality the questions of ownership and intrinsic validity as stated in the 11 November 1980 order.

*HELD:* No. In a special proceeding for the probate of a will, the issue is restricted to the extrinsic validity of the will, i.e. whether the testator, being of sound mind, freely executed the will in accordance with the formalities prescribed by law. As a

rule, the question of ownership is an extraneous matter which the probate court cannot resolve with finality. Thus, for the purpose of determining whether a certain property should or should not be included in the inventory of estate properties, the probate court may pass upon the title thereto, but such determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title. It was therefore error for the assailed orders to conclude that the probate order adjudged with finality the question of ownership of the mining properties and royalties, and that, premised on this conclusion, the dispositive portion of the said probate order directed the special administrator to pay the legacy in dispute. Pastor, Sr. was survived by his wife and their two legitimate children as well as by an illegitimate child. There is therefore a need to liquidate the conjugal property and set apart the share of Pastor Sr.'s wife in the conjugal partnership preparatory to the administration and liquidation of the estate of Pastor, Sr. When the disputed probate order of 1972 was issued, there was no liquidation of the conjugal properties of the spouses. So as of that date, there was no prior definitive determination of the assets of Senior's estate. There was no determination, much less payment of the debts of the decedent. Furthermore, there was neither assessment nor payment of the estate tax to the government. The net estate not having been determined, the legitime of the forced heirs in concrete figures could not be determined. Thus, it was not possible to determine whether the legacy to Quemada would produce an impairment of the legitime of the compulsory heirs. Without a final, authoritative adjudication of the issue as to what properties compose the estate of Senior in the face of conflicting claims involving properties not in the name of the testator, and in the absence of a resolution on the intrinsic validity of the will, there was no basis for the probate court to hold that the 1972 probate order that Quemada is entitled to payment of the questioned legacy. Therefore, the order of execution and the subsequent order for the payment of Quemada's legacy, in alleged implementation of the probate order of 1972 must fall for lack of basis.

Stages of a probate proceeding: The first stage is the Probate proper where the court determines the existence of testamentary capacity, due execution and the identity of the instrument with that of the testator's will. Testamentary capacity is proven if it is shown that at the time of the execution the testator was at least 18

years old and was of sound mind. Due execution is determined by showing compliance with Article 805-808 for notarial wills and Article 810 for holographic wills. If the court finds that there was testamentary capacity and due execution and establishes the identity of instrument, the court shall then issue an order allowing the will. In this sense, the court has the power to license the distribution of the properties according to the term of the will. The second stage is the Distribution where, for the purposes of judicial orderliness, the will must be enforced in accordance to the provisions of the will so long as the will does not violate the law, especially the provisions on legitime and the qualifications of the beneficiary to succeed. It is at this stage where the court shall examine the intrinsic validity of the will. Ideally however, the process of probating a will should end with the determination of the three basic questions mentioned above.

<u>Necessity for probate</u>: Because by executing a will, the decedent shall be giving away property gratuitously. Thus certain safeguards must be in place to prevent forgery and other acts of unscrupulous individuals and to insure that the testator understood and meant what he placed in the will.

<u>Differences between an ordinary action from a special proceeding</u>:

1) An action seeks to address a wrong or the violation of a right while a special proceeding seeks to establish a right, status, or fact.

2) An action is adversarial in nature, pitting the plaintiff against the defendant while a special proceeding is usually non-adversarial even if there is an oppositor.

3) In an action, the party who establishes a preponderance of evidence in his favor is considered the victor, while in a special proceeding, there is actually no true winner between the parties.

<u>Nature of probate orders</u>: When a probate order has been issued and no timely appeal was filed, it becomes final and binding upon the whole world. Upon such finality, the case can no longer be opened on a petition for annulment of the will.

Limited jurisdiction of probate courts: The main purpose of the probate proceedings is the determination of three things: (1) the identity of the will as that of the decedent's (2) the testamentary capacity of the decedent; and (3) the compliance of the will itself with the formalities and requirements prescribed by law. Once these three things have been established, the probate court will issue a probate order allowing the will into probate. After that, the probate court has limited jurisdiction to determine what may or may not be included in the inventory of the testator's estate. Thus, the issue of ownership of properties is determined provisionally by the probate court in order to give effect to the will. The parties may still file an action for reconveyance in order to settle the issue of ownership, unless of course acquisitive prescription has set in.

**JIMENEZ v. IAC**
**184 SCRA 367 (1990)**

*FACTS:* The marriage of Leonardo Jimenez and Consolacion Ungson produced four (4) children — Alberto, Leonardo, Jr., Alejandra, and Angeles. During the union, Leonardo acquired 5 parcels of land in Pangasinan. After Consolacion died, Leonardo married Genoveva Caolbay and had 7 children. Leonardo died in 1951 while Genoveva died in 1978. One of their children, Virginia, filed a petition with the CFI praying to be appointed administratrix of the properties of the deceased spouses. Enumerated in her petition were her six siblings and her four half-siblings from Leonardo's first marriage. Leonardo, Jr. filed a motion to exclude his name and the names of his siblings inasmuch as they are not children of Leonardo by Genoveva and because they had already received their inheritance consisting of above mentioned five parcels of land. Virginia was appointed administratrix and soon filed an inventory of the estate in which was included the 5 parcels of land. Leonardo Jr. moved for their exclusion on the ground that these had already been adjudicated to them. The probate court ordered their exclusion. The CA dismissed the petition for review filed by Virginia. Two years later, Virginia filed an action for reconveyance of the 5 parcels of land as part of the estate of the deceased spouses.

*ISSUE:* Whether or not the probate court has jurisdiction to settle issues of ownership.

*HELD:* The probate court has no jurisdiction over the question of ownership because as a general rule it can only pass upon such questions provisionally. The probate court cannot determine these issues with finality. Res judicata does not exist between an action for settlement of an intestate estate and an action for recovery of possession and ownership because of the different causes of action. Furthermore, the probate court only possesses limited jurisdiction.

**LIM v. COURT OF APPEALS**
**G.R. No. 124715, January 24, 2000**

*FACTS:* Pastor Lim died intestate and his surviving spouse, herein petitioner, filed a petition for administration of his estate. Included in the inventory of the estate of Pastor Lim were real properties owned and registered in the names of private corporations. These corporations filed a Motion for lifting of lis pendens and a Motion for exclusion of certain properties from the estate of the decedent, and said twin Motions were initially granted by the probate court. However, this order was subsequently reversed, and the properties of the private corporations were ordered included in the estate of Pastor. Private corporations elevated the matter to the Court of Appeals which reversed the probate court's order for inclusion of the properties of the private corporations in the estate of the decedent. Petitioner claims that the Court of Appeals erred in reversing the orders of the probate court which merely allowed the preliminary or provisional inclusion of the properties of private respondents in the estate of the decedent.

*ISSUE:* May properties of a corporation be included in the inventory of an estate?

*HELD:* The parameters by which the court may extend its probing arms in the determination of the question of title in probate proceedings has been stated in a long line of cases thus — "As a rule, the question of ownership is an extraneous matter which the probate court cannot resolve with finality. Thus, for the purpose of determining whether a certain property should or should not be included in the inventory of estate properties, the Probate Court may pass upon the title thereto, but such determination is provisional, not conclusive, and is subject to the final decision in a separate action to resolve title."

Yet, under the peculiar circumstances, where the parcels of land are registered in the name of private respondent corporations, the jurisprudence in Bolisay v. Alcid is of great essence and finds applicability, thus: "It does not matter that respondent administratrix has evidence purporting to support her claim of ownership, for, on the other hand, petitioners have a Torrens title in their favor, which under the law is endowed with incontestability until after it has been set aside in the manner indicated in the law itself, which, of course, does not include, bringing up the matter as a mere incident in special proceedings for the settlement of the estate of deceased persons. x x x. In regard to such incident of inclusion or exclusion, we hold that if a property covered by Torrens title is involved, the presumptive conclusiveness of such title should be given due weight, and in the absence of strong compelling evidence to the contrary, the holder thereof should be considered as the owner of the property in controversy until his title is nullified or modified in an appropriate ordinary action, particularly, when as in the case at bar, possession of the property itself is in the persons named in the title. Inasmuch as the real properties included in the inventory of the estate of the late Pastor Y. Lim are in the possession of and are registered in the name of private respondent corporations, which under the law possess a personality separate and distinct from their stockholders, and in the absence of any cogency to shred the veil of corporate fiction, the presumption of conclusiveness of said titles in favor of private respondents should stand undisturbed.

**Article 839. The will shall be disallowed in any the following cases:**

**(1) If the formalities required by law are not 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 fraud or under duress, or 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 through 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.**

Non-Compliance with Formalities: For notarial wills, Articles 804-809 are applicable while for holographic wills, Articles 804 and 810 are controlling. The law to be applied in the determination of compliance with formalities will be the law at the time of the execution of the will.

Testamentary Capacity: While the testator generally enjoys the presumption of soundness of mind, a testator, regardless of his physical and mental condition, must know the nature of his estate, the proper objects of his bounty, and the character of the testamentary act to possess testamentary capacity.

Duress and Influence of Fear or Threats: Since the making of a will is personal and voluntary, when consent is vitiated, the will must be denied probate. As compared with contracts, when there is a vice of consent, the contract merely becomes voidable.

> *Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.*

Duress from Violence and Intimidation: Duress is synonymous to coercion or compulsion. Being "under duress" can be a result of violence or intimidation. While violence necessarily requires the use of physical force, intimidation presupposes a psychological effect to coerce the testator to execute a will. The cause of duress does not necessarily have to come from a beneficiary to invalidate a will. As long as the testator executed the will out of fear thus affecting his willingness to act, the will should be denied probate.

> *Art. 1335. There is violence when in order 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.*
>
> *To determine the degree of intimidation, the age, sex and condition of the person shall be borne in mind.*

> *Art. 1336. Violence or intimidation shall annul the obligation, although it may have been employed by a third person who did not take part in the contract.*

Fraud: Fraud occurs when there is deception either through words or machinations employed by another person. To nullify a will, the fraudulent scheme must be the proximate cause for the testator to make a will. In contracts, fraud can occur prior to the creation of the contract (dolo causante) or in the performance of the obligation (dolo incidente) as provided in the contract. In wills, the fraud that will invalidate the will is the fraud that induced the testator to write a will.

> *Art. 1338. 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.*
>
> *Art. 1344. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties. Incidental fraud only obliges the person employing it to pay damages.*

Special Fraud: Other types of fraud are found in the Code. When a testator has confidential relations with another, say a personal physician or lawyer, such confidant is required to disclose facts that will affect the decision of the testator to make a will. For instance, based on reliable medical findings, the personal physician knew that an ailing testator is healed of a supposedly "incurable" ailment. However, he did not disclose the same to the testator. As a result, the testator wrote a hastily prepared will. Can such testament be invalidated? What if the physician merely expressed an opinion, saying the testator's ailment persisted inasmuch as the medical findings were inconclusive and subject to different interpretation? Such testament(s) can be invalidated since the consent given by the testator is attended with fraud under Article 1339 or 1341 of the Civil Code. If the information relayed to the testator is a mere opinion, he must have relied on such expert's opinion.

*Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud.*

*Art. 1341. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge.*

Misrepresentation as Fraud: While most misrepresentations are fraudulent, some are not sufficient to nullify a contract or invalidate a will. For instance, in his desire to be hired by the testator, a young lawyer told the testator to make a will since it will save on taxes by as much as 50%. However, in truth, the tax savings will not be more than 10%. Can the same be denied probate? Fraud under Article 1340 of the Civil Code is not fraudulent per se especially when the testator had the opportunity to verify such "exaggeration" by the lawyer. However, if the same lawyer, in good faith, told the testator that the savings will be as much as 50% who in turn wrote a will, can the same be denied probate? The answer depends on the existence of good faith which implies the lack of a conscious and intentional design to do a wrongful act for a dishonest purpose. Ultimately, the determination of good faith rests upon the discretion of the court.

*Art. 1340. The usual exaggerations in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent.*

*Art. 1343. Misrepresentation made in good faith is not fraudulent but may constitute error.*

Undue and Improper Pressure or Influence: The influence or pressure must be "undue" to nullify a will. According to Article 1337 of the Civil Code, undue and improper influence and pressure occurs when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. It is that which substitutes the wishes of another for that of the testator. There must be some form of moral ascendancy of one person over another. If there is no such moral ascendancy then it cannot be lawfully claimed that undue and improper influence and pressure existed. One

circumstance to consider is family relationship; you can be pressured by your own family. A spiritual adviser, a creditor can also influence the action of the testator. The ultimate effect of this influence or pressure is that the person loses his freedom of choice by the subjugation of the will of the person to such an extent that the person only acts as the robot of the person exercising the undue and improper influence and pressure. Undue influence or pressure also exists despite the absence of a special relationship when a testator is mentally weak, ignorant, or in financial distress.

> *Art. 1337. 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.*

**OZAETA v. CUARTERO**
**99 Phil. 1041 (1956)**

*FACTS:* Carlos Palanca Tanquinlay was married to Cesaria Gano with whom he begot 3 children. After Cesaria died, Palanca lived unmarried with Rosa Gonzales and came to have 8 children with her. While living with Rosa, Palanca also sustained relations with Maria Cuartero with whom he had 6 children. Subsequently, Palanca married Rosa and thereafter made his will. At the time the will was made, Palanca was living with Ramon Ozaeta, while his house was being repaired. The will named President Manuel Roxas as executor and Ozaeta as executor in default of Roxas. When Palanca died, the will was given to Ozaeta since by that time President Roxas was already dead. Ozaeta then filed a petition for probate, joined by Rosa and her children. Maria Cuartero and her children opposed on the ground that it was procured by fraud, undue pressure and influence on the part of the beneficiaries, and that the signature was procured by fraud and trickery. The lower court allowed probate. Hence the children of the first marriage appealed contending that direct evidence of undue influence is not essential and an opposition on the ground of fraud and undue influence may be waged successfully on circumstantial evidence and the oppositor is entitled to inferences from established facts.

They allege that Ozaeta had succeeded in convincing the decedent — a very old man suffering from several ailments and cataracts — to live with him, with the cooperation of Rosa and her children, and instilled fear in his mind and controlled his acts.

*ISSUE:* Whether or not the will should be disallowed on the ground of improper influence and pressure.

*HELD:* Though the appellants would want the Court to believe that the decedent was already blind at the time of the making of the will, the imputation of blindness has not been substantiated. While witnesses testified that Palanca had to request them to read reports and contracts to him due to failing eyesight, they could not assure the court that he was in fact blind. The deceased was still signing checks and could read papers by himself. The decedent's doctor also testified that the affliction in Palanca's eyes impaired only his distance vision and he could still read in close-up. The decedent also appeared to be in full possession of his mental faculties. It is obvious that the claim that the will was obtained through undue influence and improper pressure has no substantial basis but is more a matter of conjecture engendered by suspicion which the weight of authority regards as insufficient to sustain a verdict defeating a will on that ground. "It is not enough that there was opportunity to exercise undue influence or possibility that it might have been exercised. There must be substantial evidence that it was actually exercised."

**COSO v. FERNANDEZ-DEZA**
**42 Phil. 596 (1921)**

*FACTS:* Frederico Gimenez Zoboli, a married man and resident of the Philippines, met Rosario Lopez in Spain and had illicit relations with her for many years thereafter. After his return to the Philippines, she followed him and remained in close communication with him until his death.

The CFI set aside his will on the ground of undue influence alleged to have been exerted over the mind of the testator by Rosario Lopez. The will gives tercio de libre disposicion to the illegitimate son of the testator with Rosario and also provides the payment to her of 1,900 Spanish duros by the way of reimbursement for the expenses incurred by her in taking care of the testator when he is alleged to have suffered from a severe illness.

*ISSUE:* Whether the influence exercised by Rosario was of such a character as to vitiate the will.

*HELD:* "The mere or reasonable influence over a testator is not sufficient to invalidate a will. To have that effect, the influence must be "undue." The "undue influence" to be sufficient to avoid a will must be of a kind that so overpowers and subjugates the mind of the testator as to destroy his free agency and make him express the will of another, rather than his own."

"Such influence must be actually exerted on the mind of the testator in regard to the execution of the will in question, either at the time of the execution of the will, or so near thereto as to be still operative, with the object of procuring a will in favor of particular parties, and it must result in the making of testamentary dispositions which the testator would not otherwise have made. And while the same amount of influence may become "undue" when exercised by one occupying an improper and adulterous relation to the testator, the mere fact that some influence exercised by a person sustaining that relation does not invalidate a will, unless it is further shown that the influence destroys the testator's free agency." The burden is upon the parties challenging the will to show that undue influence existed at the time of its execution. While it is shown that the testator entertained strong affections for Rosario, it does not appear that her influence so overpowered and subjugated his mind as to destroy "his free agency and make him express the will of another rather than his own." He is an intelligent man, a lawyer by profession, appear to have known his mind, and may well have been actuated by a legitimate sense of duly and a proper feeling of gratitude. Mere affection, even if illegitimate, is not undue influence and does not invalidate a will. No imposition or fraud has been shown in this case.

Influence gained by kindness and affection will not be regarded as undue, if no imposition or fraud is practiced, even though it induces the testator to make an unequal and unjust disposition of his property in favor of those who have contributed to his comfort and ministered to his wants, if such disposition is voluntarily made.

**IN RE DILIOS' WILL**
**Supreme Judicial Court of Maine,**
**1960.156 Me. 508, 167 A.2d 571.**

*FACTS:* Christo Dilios died on June 27, 1958. In his purported will, he named the Casco Bank & Trust Company and Israel Bernstein as joint executors. The testator came from Greece

and became a naturalized American citizen. He went into the restaurant business and was conducting an apparently successful venture in the City of Portland, for a number of years prior to and at the time of his death. He made and executed at different times in the latter years of his life, three wills and a codicil to his first one. The record discloses that it was the hope and ambition of the testator that his entire family might someday be able to leave Albania and emigrate to the US, but his ambition insofar as his wife and daughter were never realized. However, after substantial expenditure of money and tireless effort on the part of the father, the two sons succeeded in escaping from Albania. After the boys had arrived, the older son became known as James and the younger son as William. Shortly after their arrival, trouble ensued between the boys and Bertha Tomuschat, who was then, and had been for many years, a cashier in the restaurant. The evidence discloses that there was a close relationship between Bertha and the testator, a relationship which had existed for a long period of years. The two sons resented this relationship. It must be noted that Dilios was in a condition enfeebled by a serious illness when he executed the will and he died a very short time after he executed the instrument.

*ISSUE:* Whether or not the instrument purporting to be a last will and testament was obtained by undue influence, thereby making it null and void.

*RULING:* Yes. Fraud and undue influence mean whatever destroys free agency and constrains the person whose act is under review to do that which is contrary to his own untrammelled desire. It may be caused by physical force, by duress, by threats, or by importunity. Any species of coercion, whether physical, mental or moral, which subverts the sound judgment and genuine desire of the individual, is enough to constitute undue influence. While there is no evidence to show that Bertha knew that the testator was executing new wills, it is difficult to believe, in the light of human experience, when her close relationship with the testator was so clearly shown, that she did not know that the testator was executing wills in which he was disinheriting his sons. There was a basis that Bertha had a motive for the disinheritance of the boys. Not only was she given some property in payment, the will said, for money loaned by her to the testator, a fact left in serious doubt by her own testimony, but she had an expectation of a long period of employment, which without the question would cease as soon as either of the boys acquired possession of the restaurant

for which possession and ownership previous wills had made provision. Furthermore, there were facts proven permitting a finding that Christos Dilios, because of his weakened physical condition and other factors, was a person whose mind could be influenced; and facts proven from which a logical conclusion could be reached that he submitted to the overmastering effect of unlawful influence, such as to invalidate the instrument now purporting to be his last will and testament.

**IN RE WILL OF MOSES**
**Supreme Court of Mississippi, 1969. 227 So. 2d 829.**

*FACTS:* Mrs. Fannie Traylor Moses died on February 6, 1967 at the age of 57 years leaving an estate valued at $125,000. An instrument, dated December 23, 1957 and purporting to be her last will and testament, was duly admitted to probate. On February 14, 1967, appellant, Clarence Holland, attorney at law, not related to Mrs. Moses, filed a petition tendering for probate on solemn form, as the true last will and testament of Mrs. Moses. Holland's petition prayed that the earlier probate of the 1957 will be set aside. The beneficiaries under the 1957 will responded to Holland's petition and denied that the document tendered by him was Mrs. Moses' will and asserted that it was the product of Holland's undue influence upon her and that at the time of its signing, Mrs. Moses lacked testamentary capacity.

*ISSUE:* Whether or not the will in question was a product of undue influence upon Mrs. Moses rendering it void and invalid.

*HELD:* The Court ruled in the affirmative. The factual finding of the existence of a subsisting and continuing relationship is supported by evidence and is not manifestly wrong. Such relationship gave rise to a presumption of undue could be overcome by evidence that, in making the 1964 will, Mrs. Moses had acted upon the independent advice and counsel of one entirely devoted to her interest. The intimate nature of the personal relationship is relevant to the present inquiry to the extent that its existence, under the circumstances, warranted an inference of undue influence, extending and augmenting that which flowed from the attorney-client relationship. Particularly is this true when viewed in the light of evidence indicating its employment for the personal aggrandizement of Holland.

Burden to prove undue influence: Not every kind of pressure is sufficient to invalidate a will. It must be "undue and improper.' If the influence does not serve to deprive a person of his free will to dispose of his property, then it is not "undue and improper." The burden of proof is upon the party who alleges that undue and improper influence was present to prove it. Bare allegations of undue and improper allegations without any proof will not invalidate a will. In this Coso case, the fact that some influence may have been exercised by the mistress, the mere fact that some influence is exercised by a person sustaining the adulterous relation does not invalidate a will, unless it is further shown that the influence destroyed the testator's free agency.

Signature Procured through Fraud: A scam artist can employ a fraudulent scheme to trick the testator to sign some paper not knowing that the same was a document that will dispose of his estate upon his death. In this particular ground to invalidate a will, it appears that the procurement of the signature and the not the execution of the will must be the result of the fraud.

**LATHAM v. FATHER DIVINE**
**Court of Appeals of New York, 1949. 299 N.Y. 22, 85 N.E. 2d 168.**

*FACTS:* Plaintiffs are first cousins, but not distributees, of Mary Sheldon Lyon, who died in October, 1946, leaving a will, executed in 1943, which gave her whole estate to defendant Father Divine, leader of a religious cult. According to the plaintiffs, after the making of said will, the decedent on several occasions expressed "a desire and a determination to revoke the said will, and to execute a new will by which the plaintiffs would receive a substantial portion of the estate," "that shortly prior to the death of the deceased she had certain attorneys draft the new will in which the plaintiffs were named as legatees for a very substantial amount, totaling approximately, $350,000.; "that by reason of the said false representations, the said undue influence and the said physical force" certain of the defendants, prevented deceased from executing the said new will; that, shortly before decedent's death, decedent again expressed her determination to execute the proposed will which favored plaintiffs, and that defendants thereupon conspired to kill, and did kill, the deceased by means of a surgical operation performed by a doctor engaged

by the defendants without the consent or knowledge of any of the relatives of the deceased.

*ISSUE:* Whether or not the defendants, by force and fraud, kept the testatrix from making a will in favor of plaintiffs.

*HELD:* The Court ruled in the affirmative. This is not a proceeding to probate or establish the will which plaintiffs say testatrix was prevented from signing, nor is it an attempt to accomplish a revocation of the earlier will. The will Mary Lyon did sign has been probated and plaintiffs are not contesting, but proceeding on, that probate, trying to reach property which has effectively passed thereunder. Nor is this a suit to enforce an agreement to make a will or create a trust or any other promise by decedent xxx. This complaint does not say that decedent or defendants promised plaintiffs anything or that defendants made any promise to decedent. The story is simply, that defendants, by force and fraud, kept the testatrix from making a will in favor of plaintiffs.

The trust does not act directly upon the will by modifying the gift, for the law requires wills to be wholly in writing; but it acts upon the gift itself as it reaches the possession of the legatee, or as soon as he is entitled to receive it. The theory is that the will has full effect by passing an absolute legacy to the legatee, and that then equity, in order to defeat fraud, raises a trust in favor of those intended to be benefited by the testator, and compels the legatee, as a trustee ex maleficio, to turn over the gift to them.

Mistake: When the testator did not intend that the instrument he signed should be his will at the time of affixing his signature, then there is a vice of consent.

*Art. 1331. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.*

*Mistake as to the identity or qualifications of one of the parties will vitiate consent only when such identity or qualifications have been the principal cause of the contract.*

*A simple mistake of account shall give rise to its correction.*

## INSTITUTION OF HEIR

**Article 840. Institution of heir is an 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.**

Definition of institution of an heir: It is the process whereby the testator, designates another person or persons who are to receive a fractional part of his estate. When a person is instituted to a fractional portion of an estate, he is called an heir; if a person is supposed to receive a specific property comprising the estate, he is called either a legatee or devisee.

Necessity for a will to contain an institution of heirs: It is not necessary that a will must contain an institution of heirs since the estate may be distributed through the process of giving legacies and devises.

Relation to Project of Partition: When a testator executes a will giving legacies and devises to specific persons, a project of partition is totally irrelevant because the testator has already provided for the partition of his estate in his will. A Project of Partition becomes important only if the testator gives a fractional part of the estate to two or more heirs. The question as to which part of the estate should belong to which heir shall be resolved in a document called the Project of Partition, which shall be subject to the approval of the court under the Rules of Procedure.

Requisites of a valid institution:

1. The will must be EXTRINSICALLY valid, which means that the testator must possess testamentary capacity, the formalities prescribed by law must have been observed, there must be no vice of consent in the making of the will, and the will must have been duly probated.
2. The will must be INTRINSICALLY valid, which means that no violation of any provision of substantive law; no impairment of legitimes; heirs must be qualified

to inherit from the testator; and, there should be no preterition.

3. The institution which refers to the naming of the person and the specification of the share must be made personally by the testator because the making of a will is a personal act.

4. The instituted heir must be identifiable.

Persons who can institute heirs: Only those persons entitled by law to control the disposition of their estate totally or partially and whose estate contains a free disposable portion can institute an heir.

**Article 841. A will shall be valid even though it should not contain an institution of an heir, or such institution should not comprise the entire estate, and even though the person so instituted should not accept the inheritance or should be incapacitated to succeed.**

**In such cases the testamentary dispositions made in accordance with law shall be complied with and the remainder of the estate shall pass to the legal heirs.**

Validity of wills: Institution of heirs is one of the means of disposing an estate. Even if the heir instituted becomes incapacitated or renounced his share in the estate, the will remains valid. The validity of the will does not depend on the heir (non-acceptance or incapacity) but depends on the compliance with the formalities required by law. In case the heir instituted does not accept the inheritance or is incapacitated to succeed, then the share of such heir shall be disposed of under certain rules, not necessarily under the rules of intestacy.

Means of distributing the estate:

1. Through the institution of heirs: In an institution, the heir is entitled to a fractional part, referring to a point of reference (e.g. 1/3 or 2/3 of the entire estate or the free disposal). In this type of distribution, the sum total of the fractional shares should not exceed one. If it is in excess of 1, there is over distribution and shall be

subject to reduction; if it is less than 1, there is under distribution and partial intestacy may result.

2. Through giving legacies and devises: In the case of devises and legacies, the named devisee or legatee and the specific property should be named. In this type of distribution, after going through all the items given by the testator to the beneficiaries, all the properties collectively should be the equivalent to the entire estate. If there are properties left undistributed, there is a possibility of partial intestacy; if there are properties sought to be distributed which do not form part of the estate, specific provisions under the chapter on legacies and devises shall be applicable.

**Article 842. One who has no compulsory heirs may dispose by will of all of his estate or any part of it in favor of any person having capacity to succeed.**

**One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of this Code with regard to the legitime of said heirs.**

Compulsory system of succession: The Philippine legal system adopts a compulsory system of succession where a portion of the estate is reserved by law for certain persons. Hence, when a testator has no compulsory heirs as defined in Article 887, he can dispose of his entire estate to any person. Legitime is defined under Article 866. Any portion that is not legitime is considered as free disposal. Hence, a testator can only really dispose of the portion of his estate that corresponds to free disposal. Nonetheless, Article 842 provides that a testator can still dispose of his entire estate (including legitime) as long as he respects the shares reserved by law for compulsory heirs.

When Estate is all Legitime: Generally, a testator has the freedom to control the disposition of his estate. One instance where a person shall have no freedom to control is when his entire estate is composed of legitime. This case arises when one is survived by the following relatives: spouse, legitimate child, and two illegitimate children. The legitime of a legitimate child is half the estate. The legitime of the spouse in these circumstances

is one quarter. Each illegitimate child receives one-half share of the legitimate child so that each one would receive one-fourth and collectively one-half. Insufficient as it is, the entire estate is legitime, expressly reserved by law to compulsory heirs. Therefore, with our system of compulsory succession, the spouse gets 1/4, the legitimate child gets 1/2, and each illegitimate child gets 1/8 of the estate, regardless of the existence of any will executed by the testator.

Free disposal and the number of children: The size of the free disposal is inversely proportional to the number of legitimate children and directly proportional to the number of the illegitimate children.

**Article 843. The testator shall designate the heir by his name and surname, and when there are two persons having the same names, he shall indicate some circumstance by which the instituted heir may be known.**

**Even though the testator may have omitted the name of the heir, should he designate him in such manner that there can be no doubt as to who has been instituted, the institution shall be valid.**

Necessity in designation of heirs: The heirs must be identified preferably by name and surname. If the name is not known, other circumstances may be used by the testator to allow for identification. Should the testator fail to provide the name of the heir, the institution shall still be valid if the testator provided some other designation that will identify the heir.

**Article 844. An error in the name, surname, or circumstances of the heir shall not vitiate the institution when it is possible, in any other manner, to know with certainty the person instituted.**

**If among persons having the same names and surnames, there is a similarity of circumstances in such a way that, even with the use of other proof, the person instituted cannot be identified, none of them shall be an heir.**

**Article 845. Every disposition in favor of an unknown person shall be void, unless by some event or circumstance his identity becomes certain. However, a disposition in favor of a definite class or group of persons shall be valid.**

Necessity in designation of heirs: The heirs must be identified preferably by name and surname. If the name is not known, other circumstances may be used by the testator to allow for identification.

Effect of the disposition if two or more persons fit the description: If two persons fit the description and, despite the use of extrinsic evidence, the similarity of circumstances cannot be resolved in favor of either, then none will be an heir. For instance, the testator says: "I bequeath 1/2 of my estate to my brother who is a lawyer. Upon his death, the testator had two lawyer brothers. If it cannot be ascertained which lawyer brother the testator was referring to, then the disposition cannot be given effect.

Effect of the disposition where heir is unknown: The disposition shall also be stricken out in case of an unknown heir, where his identity cannot be ascertained even with the use of extrinsic evidence. For instance, a testator designated as his sole heir "the first man who will walk on the planet Mars." Considering that man has yet to walk on the planet Mars, is the disposition valid for having an unknown heir? The same provision provides that if for some reason such identity becomes known, (as when some person indeed walks on the planet Mars) then the disposition can be carried out.

**Article 846. Heirs instituted without designation of shares shall inherit in equal parts.**

Explanation of this Article: In the absence of any fractional designation, the heirs instituted shall inherit equally based on the rationale that had the testator wanted an heir to inherit more than the other, the testator should have provided it in the will.

**Article 847. When the testator institutes some heirs individually and others collectively as when he says, "I designate as my heirs A and B and the children of C," those collectively designated shall be considered as individually instituted, unless it clearly appears that the intention of the testator was otherwise.**

Explanation of this Article: Those who are individually instituted and those collectively instituted are deemed individually instituted. Thus, in an institution which states "I institute

Toto and his children (7)" the estate shall be divided into 8 equal parts, applying this article. Collective institution is however permissible but the institution must be very specific; i.e., "I give 1/2 of my estate to Toto and 1/2 to the 7 children collectively."

**Article 848. If the testator should institute his brothers and sisters, and he has some of full blood and others of half blood, the inheritance shall be distributed equally unless a different intention appears.**

Counterpart provision in intestate succession: When there is no discrimination, there is a clear indication that, as far as the testator is concerned, he has equal affection for his brother and sister regardless of the full or half-blood relationship. Art. 848 has a counterpart provision in intestate succession which is Art. 1006. Under Article 1006, in intestate succession, if some of the sibling-heirs are of the full blood and some are of the half-blood, the latter shall only receive half of the share of the former.

**Article 849. When the testator calls to the succession a person and his children, they are all deemed to have been instituted simultaneously and not successively.**

Explanation of this Article: If a person and his children are instituted, they inherit at the same time from the testator. For example, in Mike's will, he provided that "I institute Gloria and her children as the universal heirs of my estate," Gloria and her children will inherit simultaneously from Mike. It should not be interpreted as Gloria inheriting first from Mike then the children of Gloria will inherit from her. Article 863 provides for successive institution which provides for more stringent requirements than Article 849.

**Article 850. The statement of a false cause for the institution of an heir shall be considered as not written, unless it appears from the will that the testator would not have made such institution if he had known of the falsity of such case.**

Definition of a false cause: A false cause is synonymous to a mistake, which vitiates the intelligence of the consent. Such vice of consent therefore renders an ordinary contract voidable.

However, in the law on succession, there are no voidable dispositions in a will, they are either valid or invalid dispositions. The falsity of a cause does not affect the validity of the disposition because the fact that the testator gave something in the will, is indicative of his intent to give something to the person such that the false cause is not deemed as the consideration of that institution but merely the motive of that institution. In Contract law, consideration is different from motive. The lack or illegality of the motive does not affect the validity of the obligation, while consideration annuls the obligation to which it attaches, if the consideration is illegal, fictitious or otherwise grossly inadequate. The false cause is merely an incident to the bequest because the consideration remains to be liberality. However, if the disposition is extremely explicit in stating that the testator would not have instituted the heir were it not for the false cause, then the institution becomes invalid. This results to invalidity because the cause or consideration of the disposition is no longer liberality but the false cause.

Requisites for False Cause: As laid down by the Supreme Court in the case of Austria v. Reyes, the following requisites must be present to invalidate the institution of the heir.

1. The cause must be written on the will. In the Austria case, the testatrix wrote in the will that she was giving her properties to these persons as they were her adopted children.

2. The cause must be false. In the Austria case, the testatrix believed that she had to give something to the adopted children since they were adopted when in reality they were actually not. She had an erroneous belief that the adopted children were her compulsory heirs. Hence, the cause was false.

3. The tenor of the disposition in the will must indicate that the testator would have not made the disposition had he known of the falsity of the cause. In the Austria case, if it was true that she was merely acting on the basis of the false cause and on the compulsion of law that she had to give something to her adopted children, she would have just given them the minimum which

was the required legitime. However, the testatrix gave more which thus indicates that she was acting on her own free will.

**Article 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 rule applies if the testator has instituted several heirs, each being limited to an aliquot part, and all the parts do not cover the whole inheritance.**

Vacant Portion in this Article: In the event the testator fails to distribute his entire estate to a designated heir, then the "vacant" portion of his estate will be distributed by intestacy. The same rule applies, if the testator has instituted several heirs each being limited to an aliquot part, and all the parts do not cover the whole inheritance. The portion which does not pertain to any instituted heir will be distributed by way of intestate succession. In some instances of vacancies however, substitution, representation, and accretion are resorted to prevent partial intestacy. Thus, not all vacant portions in the inheritance are distributed by intestacy.

**Article 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 may be, and each of them has been instituted to an aliquot part of the inheritance and their aliquot parts together do not cover the whole inheritance or the whole free portion, each part shall be increased proportionally.**

Vacant Portion in this Article: The proportional increase in Article 852 only applies when (1) it is clear that the testator wanted to distribute his entire estate to all of the instituted heirs AND (2) all of the aliquot portions given to the heirs do not cover the entire estate. If the intention of the testator was not to cover the entire estate, then Article 851 will operate to distribute the vacant portion by instestacy.

Solution to increase shares proportionally: Adjust the dispositions in such a way that the ratio at which the heirs would inherit shall be maintained. The suggested formula for

the ADJUSTMENT = Total estate divided by total distribution multiplied by the share received.

Illustration: A =1/2; B = 1/4; estate P100,000.00. A & B are the universal heirs of the testator. A gets P50,000 and B gets P25,000 with an undistributed portion of P25,000.00. Solution: A first received P50,000. By applying the formula (100,000/75,000) x 50,000, his share becomes 66,666.66. B first received P25,000. By applying the formula (100,000/75,000) x 25,000, his share becomes 33,333.33.

**Article 853. 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.**

Solution to decrease shares proportionally: Adjust the dispositions in such a way that the ratio at which the heirs would inherit shall be maintained. The suggested formula for the ADJUSTMENT = Total estate divided by total distribution multiplied by the share received.

Illustration: A = 1/2, B = 1/4, C = 1/2; estate: P100,000.00. A, B & C are the universal heirs of the testator. When all the fractions are added up, the testator obviously over distributed since there is an excess. Solution: Applying the same formula in Article 853, A must receive P40,000.00; C must receive P40,000.00; and B must receive P20,000.00.

**Article 854. The preterition or omission of one, some, or all 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 an heir; but the devises 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.**

Purpose of this article: The effects of preterition aim to preserve the legitime since this provision shall prevent the testator from denying the compulsory heir of his legitime by merely omitting his name in the will. While it is within the

power of the testator to disinherit an heir, he must state the cause for disinheritance and comply with the requirements of disinheritance.

Compulsory heirs: Article 887 enumerates who are the compulsory heirs:

1.) Legitimate children and descendants, with respect to their legitimate parents and descendants;
2.) In defaut of the following, legitimate parents and ascendants, with respect to their legitimate children and descendants;
3.) The widow or widower;
4.) Acknowledged natural children, and natural children by legal fiction;
5.) Other legitimate children referred to in Article 287;

However, pursuant to the Family Code, there are only four sets of compulsory heirs: parents/ascendants, legitimate children/descendants, spouse, and illegitimate children.

Compulsory heirs who can claim preterition: Compulsory heirs in the direct line, specifically ascendants and descendants *ad infinitum,* and the adopted children can claim the benefit of preterition. Relations in a direct line are those that are traceable between a descendant and an ascendant. Otherwise, the relations are in a collateral line.

Adopted child may claim preterition: An adopted child does not become a relative in the direct line by the legal fiction of adoption since this legal fiction is only for purpose of filiation. However, an adopted child becomes a compulsory heir in the direct line of his adoptive parent. The fiction of adoption is between the adopted and the adopter. Hence, in case the adopted child is omitted in the will of his adoptive parent, he can claim preterition under Article 854.

Spouse may not claim preterition: The spouse is not a relative in the direct line. The spouse merely becomes a relative by the fiction of the judge or the priest.

Total omission to result in preterition: Omission results in preterition only when:

1. The person is not an heir, not a devisee, not a legatee – meaning, he receives nothing by will.
2. No donation *inter vivos* was given to him, which might be taken or considered an advance of his legitime. If he is already given such, then he has already received part of his legitime such that if he were omitted, his remedy would be under Art. 906 that is, demand for the completion of legitime.
3. There must not have been anything which could be inherited by intestacy, which means that the whole estate was distributed by will.

Total omission: If any part of the legitime was paid to the compulsory heir in any form, either inter vivos or mortis causa, one cannot claim total omission and avail of the benefits of preterition. If there was payment of presumptive legitimes under Art 50 of the Family Code, one cannot avail of the benefit of preterition.

**AZNAR v. DUNCAN**
**17 SCRA 590 (1966)**

*FACTS:* Edward Christiansen was a citizen of California and was domiciled in the Philippines. When he died he left a will which alleged that he had only one child, Lucy Christiansen Duncan, and that he was giving a devise of P3,600 to Helen Christiansen Garcia (whom he alleged to be not related to him). In the probate proceedings, the court ruled that Helen was a natural child of the deceased and that the properties of Edward are to be divided equally among Helen and Lucy pursuant to the project of partition submitted by the administrator. Lucy appealed said order.

*ISSUE:* Whether the estate should be divided equally among the two children (Article 854) OR whether Lucy's share should just be reduced to meet the legitime of Helen (Article 906)

*HELD:* Helen should only be given her legitime since there was no preterition. For preterition to apply there must be

a total omission of the compulsory heir so as to deprive her of her legitime. As correctly pointed out by appellant, Article 906 is applicable. Manresa defines preterition as the omission of the heir of the will, either by not naming him at all or, while mentioning him as an heir, by not giving him properties from the estate.

Donation v. Support: It is important to determine whether what was received was a donation or part of support. Support is not a gift. Thus, if the compulsory heir received a certain sum during his lifetime, there is a need to determine whether such constitutes support or an advance of his legitime.

Preterition v. Disinheritance: Preterition is the omission in the testator's will of the forced heirs or anyone of them, either by not mentioning them, or although mentioned they are neither instituted as heirs nor are expressly disinherited. Disinheritance is a testamentary disposition depriving any compulsory heir of his share in the legitime for a cause authorized by law. If the will does not explicitly disinherit the heir(s), then it is an invalid disinheritance. If the will simply omits the name of the heir(s) altogether, then it is preterition.

**NUGUID v. NUGUID**
**17 SCRA 449 (1966)**

*FACTS:* Rosario Nuguid, died without descendants. Her surviving relatives are her parents and six brothers and sisters. On May 18, 1963, Remedios, sister of the deceased, filed a petition to probate a holographic will allegedly executed by Rosario 11 years prior to her death. Both parents opposed on the ground that the institution of Remedios as universal heir resulted to their preterition, they being compulsory heirs in the direct ascending line.

*ISSUE:* Whether the will is void due to preterition.

*HELD:* Yes. Petitioner contends that what we have is a case of disinheritance rather than preterition. This is not meritorious, as this argument fails to appreciate the distinction between preterition and disinheritance. Preterition is the omission in the testator's will of the forced heirs or anyone of them, either by not mentioning them, or although mentioned they are neither instituted as heirs nor are expressly disinherited. Disinheritance

is a testamentary disposition depriving any compulsory heir of his share in the legitime for a cause authorized by law. The will does not explicitly disinherit the parents. It simply omits their names altogether. Said will rather than being labeled ineffective disinheritance is clearly one in which the forced heir suffers from preterition.

The effects of preterition are totally different from disinheritance. Preterition annuls the institution of heirs, except devises and legacies insofar as the latter are not inofficious. In disinheritance the nullity is limited to that portion of the estate of which the disinherited heirs have been illegally deprived. Considering, however that the will before us solely provides for the institution of the petitioner as universal heir and nothing more, the result is the same. The entire will is void.

Legal Effects of preterition:

1. Annulment of the institution of heirs: The annulment of the institution is mandatory so that a portion of the estate may be freed to satisfy the remaining unpaid legitimes.

2. Legacies and devises cannot be cancelled but can be reduced only if the estate is still insufficient to pay the legitimes after the annulment of the institution. Instituted heirs do not enjoy any preference over specific properties unlike legatees and devisees who enjoy a priority because the testator has indicated the specific property to be given to them. Nevertheless, legatees and devisees can still lose their legacies and devises if the portion of the estate is insufficient to pay the legitime(s) of the preterited heir(s).

**ACAIN v. IAC**
**155 SCRA 100 (1997)**

*FACTS:* Acain instituted Constantino not relative of his brothers and sisters in his will. He provided that all of his share in the conjugal property shall given to his brother and that in the event the latter predeceased him the share shall go to the children of Segundo. The probate of the will was opposed by the widow of the testator and his legally adopted child on the ground that there

were preterited and that therefore the institution of heir shall be annulled.

*ISSUE:* Whether or not preterition occurred?

*HELD:* Preterition consists in the omission in the testator's will of the forced heirs or anyone of them either because they are not mentioned therein, or though mentioned, they are neither instituted as heirs not expressly disinherited. As regards the widow, Article 854 of the Civil Code may not apply since the spouse is a compulsory heir not in the direct line. However the same thing cannot be said of the adopted child. Under Article 39 of P.D. No. 603, known as the Child and Youth Welfare Code, adoption gives to the adopted person the same right and duties as if he were a legitimate child of the adopter and makes the adopted person a legal heir of the adopter. It cannot be denied that the adopted child was totally omitted and preterited in the will of testator. Hence, this is a clear case of preterition of the legally adopted child.

**GOFF v. GOFF**
**Supreme Court of Missouri, 1944. 352**
**Mo. 809, 179 S.W. 2d 707**

*FACTS:* Charles Granville Goff (Granville) was a farmer and spent most of his life in Worth County. At the age of about sixty-six years, he went to California and stayed with a nephew, Roy Goff. About five weeks before he died, he executed his will and appointed his brother Silas, executor and provided that his executor should sell all of his property "in a manner which may seem best to him and in his discretion" and that he should distribute the proceeds as follows: $5 to his brother George; $1000 to Silas, and the remainder between his nephews, Roy and Jay Goff, equally. The second clause of the will said: "I am not married and have no children". The fifth clause said: "I hereby give and bequeath to any person who might contest this will the sum of $1.00 only, in lieu of any other share or interest in my estate, either under this will or through intestate succession." It must be noted that Granville procured a marriage license with Cassie White and were married in a White home by a minister. When Cassie and Granville were married, Cassie was pregnant and on February 22, 1986, a son, Joe, was born. Eventually, Cassie filed for a divorce and was awarded the custody of Joe. Silas testified that the marriage of Granville and Cassie was a "shotgun wedding." He said they

quarreled violently over whether Granville was the father of Joe. These facts were reviewed because it furnishes a background for the plaintiffs' contention that Granville was not even aware of Joe's children and therefore, did not have them in mind and did not provide for or mention them in item five, and the defendants' contrasting contention that the testator did know of the children, had them in mind and provided for them in item five.

*ISSUE:* Whether the testator remembered his son at the time of the making of the will and intentionally disinherited his descendants.

*HELD:* The Court ruled in the affirmative. In item five of the will, Marjorie Anne's and Dean Joe's father, Joe Goff, is neither "named" nor "provided for" specifically and hence the children are not excluded by reason of their father's being named or provided for, which would clearly and on the face of the will show that the testator remembered his child and intentionally disinherited his descendants whether he knew of their existence or not. The word "child" or "grandchildren" does not appear in item five and so they were not all remembered collectively and excluded as a class or provided for as a class. Joe, having predeceased Granville, could not have been intended or included in the phrase "or through intestate succession." Furthermore, the first clause of the will says, "I am not married and have no children," and so, obviously, he could not have had children or their descendants in mind. Even if he knew of these plaintiffs he must have regarded their status as foreclosed by Cassie's divorce or Joe's death.

Under the assumed facts, neither the testator's child, Joe, nor Joe's descendants, Marjorie Anne and Dean Joe, were "named or provided for in" his will and he is "deemed" to have died intestate as to them.

**SOLANO v. COURT OF APPEALS**
**G.R. No. L-41971 November 29, 1983**

*FACTS:* On July 7, 1969, Bienvenido Garcia and Emeteria Garcia (GARCIAS), claiming to be illegitimate children of Dr. Meliton SOLANO, filed an action for recognition against him. In his Answer, SOLANO denied paternity. On February 3, 1970, during the pendency of the suit, SOLANO died. Petitioner ZONIA Ana Solano was ordered substituted for the DECEDENT as the only surviving heir mentioned in his Last Will and Testament

probated on March 10, 1969, or prior to his death. The GARCIAS impugned the recognition of ZONIA as an acknowledged natural child and that she be declared instead, like them, as an adulterous child of the DECEDENT. The Trial Court specified the legal issues as: 1) the question of recognition of the GARCIAS; 2) the correct status of ZONIA, and 3) the hereditary share of each of them in view of the probated Will. The Trial Court, while declaring that the plaintiffs GARCIAS and the defendant ZONIA as the illegitimate children of the late Dr. Solano under the class of ADULTEROUS CHILDREN, nullified the institution of Sonia Ana Solano as sole and universal heir and ordered that the three (3) children shall share equally the estate or one- third (1/3) each, without prejudice to the legacy given.

*ISSUE:* Whether, in an action for recognition, the lower Court has jurisdiction: 1) to declare ZONIA as an illegitimate child of SOLANO; 2) to order the division of the estate in the same action despite the pendency of Special Proceedings No. 842; and 3) to declare null and void the institution of heir in the Last Will and Testament of SOLANO, which was duly probated in the same Special Proceedings No. 842, and concluding that total intestacy resulted.

*HELD:*

Re Illegitimacy of ZONIA: The oral testimony and the documentary evidence of record inevitably point to that conclusion that Zonia was also an illegitimate child of the DECEDENT. Moreover, the Supreme Court is bound by the findings of fact of both the Trial Court and the Appellate Court, particularly, the finding that the GARCIAS and ZONIA are illegitimate children.

Re Division of estate in an action for recognition: While it is true that the action below was basically one for recognition, ZONIA defended the case not as a mere representative of the deceased but also asserted rights and defenses in her own personal capacity. During the trial, ZONIA failed to object to the presentation by the GARCIAS of their oral and documentary evidence to show that ZONIA was also illegitimate and even cross-examined the witnesses of GARCIAS. Thus, the litigation was converted into a contest between the GARCIAS and ZONIA precisely as to their correct status as heirs and their respective rights.

Re nullification of SOLANO's will: It should be recalled that SOLANO himself instituted the petition for probate of the Will

during his lifetime. With the Will allowed to probate, the case would have terminated except that it appears that the parties, after SOLANO's death, continued to file pleadings therein. The records further disclose that the action for recognition (Civil Case No. 3956) and Spec. Procs. No. 842 were pending before the same Branch of the Court and before the same presiding Judge. Further, it is settled that the allowance of a Will is conclusive only as to its due execution and that a probate decree is not concerned with the intrinsic validity or legality of the provisions of the Will.

Thus, the Trial Court had jurisdiction to conclude that as a result of preterition, the institution of ZONIA as sole heir by SOLANO is null and void pursuant to Article 854. However, the Trial Court was wrong when it held that the entire Will is void and intestacy ensues. It is plain that the intention of the testator was to favor ZONIA with certain portions of his property, which, under the law, he had a right to dispose of by Will, so that the disposition in her favor should be upheld as to the one-half (1/2) portion of the property that the testator could freely dispose of. Since the legitime of illegitimate children consists of one half (1/2) of the hereditary estate, the GARCIAS and ZONIA each have a right to participation therein in the proportion of one-third (1/3) each. ZONIA's hereditary share will, therefore, be 1/2 + (1/3 of 1/2) or 4/6 of the estate, while the GARCIAS will respectively be entitled to 1/3 of 1/2 or 1/6 of the value of the estate. The usufruct in favor of Trinidad Tuagnon over the properties indicated in the Will is valid and should be respected.

The case of Nuguid v. Nuguid and Neri, v. Akutin which held that where the institution of a universal heir is null and void due to preterition, the Will is a complete nullity and intestate succession ensues, is not applicable herein because in the Nuguid case, only a one-sentence Will was involved with no other provision except the institution of the sole and universal heir; there was no specification of individual property; there were no specific legacies or bequests. In the case at bar, there is a specific bequest or legacy so that Article 854 merely annulled the institution of heir.

**Article 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 will, if any; if that is not sufficient, so much as may be necessary must be taken proportionally from the shares of the other compulsory heirs.**

Difference with preterition: This article refers to a child or descendant "omitted in a will" and mere omission does not necessarily imply preterition, for a compulsory heir may have received or may still receive something in some other concept other than a will. Preterition applies when there is a complete omission of the heir from the inheritance and not only by will.

Illustration of the article: The testator instituted his only son, A, as heir to one-half of his estate, and designated B, a friend, as legatee of the sum of P5M. After the death of the testator, a posthumous child, Z, was born to him. Assuming that the entire estate is worth P40M how much will A, B and the posthumous child Z get from the testator?

1. Analysis: This is not a case of preterition, because out of the total estate of P40M the testator disposed of only P25M (P5M to B and P20M to A). Hence, there is still a balance of P15M not disposed of, which can pass to the posthumous child Z. There being no total omission of this child from the inheritance since Z can still get something by way of intestacy, there is no preterition, and the institution of the child A to one-half of the estate will not be annulled.

2. Solution: The estate being P40M, the legitime of the children is one half or P20M, and the other 20M, is the free portion. The legitime of each of the two children, A and Z, is P10M. Since A was instituted to one-half of the estate or P20M, and B has given a legacy of P5M, there is an undistributed portion of P15M. According to this article, the legitime of P10M of the posthumous child shall be taken from the undistributed free portion. However, there remains a balance of P 5M available to the legal or intestate heirs, and since the two children are the legal heirs of the deceased; each one would get P2.5M from this amount.

3. Distribution: The estate must be distributed as follows: B gets his legacy of P5M, A gets P22.5M (P20M in the institution and P2.5M in intestacy), and the posthu-

mous child Z gets P12.5M (P10M as his legitime and P2.5M in intestacy).

**Article 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 expressly provided for in this Code.**

General principle: No one can transmit to another more rights than what he himself has. Whether the heir is a legal, voluntary or compulsory heir, his death before the testator or decedent, or his incapacity to succeed, or his repudiation or renunciation of the inheritance, prevents him from acquiring any rights, therefore, he transmits nothing to his own heirs.

Exception to this Article: The last part of this article provides "except in cases expressly provided for in this Code," refers to cases where the right of representation exists. It should be noted, however, that in case of representation, the heir represented does not transmit his rights to the heir representing him for the representative acquires directly from the decedent or testator the rights which the person represented would have received if he had inherited.

## SUBSTITUTION OF HEIRS

**Article 857. Substitution is the appointment of another heir so that he may enter into the inheritance in default of the heir originally instituted.**

Substitution: In case there is a vacant portion in the estate, substitution is one remedy provided by law to distribute this vacant portion. However, the designation of the substitute must be expressly provided by the testator in the will.

Grounds for substitution: The general instances of default are repudiation (as when the heir renounces his share in the inheritance), incapacity (as when the heir becomes incapacitated to inherit under Articles 1024-1028), and predecease (as when

the heir designated dies before the testator). However, in default of these three grounds, substitution may still apply when the testator expressly stipulates another ground or contingency in the will for substitution to apply. Should the testator expressly stipulate a condition for the substitution, the substitution shall be limited to the stipulated contingency. Absent any stipulation, the law provides three grounds, renunciation, incapacity, and predecease, the occurrence of any of which would give rise to substitution.

Special Instance of Default: In his will, the testator can provide for such instance of default whereby the substitution clause will operate. For example, the testator can declare that "I give 1/2 to X if he passes the Bar exam, otherwise to Y". In this example, Y gets 1/2 of the estate ONLY when X fails to pass the Bar exam. Y does not get 1/2 even if X renounces his share, becomes incapacitated, or dies before the testator.

**Article 858. Substitution of heirs may be:**

1. **Simple or common;**
2. **Brief or compendious;**
3. **Reciprocal; or**
4. **Fideicommissary.**

**Article 859. The testator may designate one or more persons to substitute the heir or heirs instituted in case such heir or heirs should die before him, or should not wish, or should be incapacitated to accept the inheritance.**

**A simple substitution, without a statement of the cases to which it refers shall comprise the three mentioned in the preceding paragraph, unless the testator has otherwise provided.**

**Article 860. Two or more persons may be substituted for one; and one person for two or more heirs.**

Introduction to the rules in case of vacancy: T instituted A to 1/3, B to 1/3 and C to 1/3 of his estate. Suppose B dies before the testator, who will replace B in his inheritance? Such issue may be resolved by using certain tools provided by law to fill in vacancies that may occur.

INSTITUTION OF HEIRS

1. PRELIMINARY CHECKS:

   a. Check whether Article 852 which mandates the proportional increase of the shares of the instituted heirs is applicable.

   b. Check whether Article 854 applies in which case, the institution is annulled.

   c. Check whether Article 891 applies in which case, the share of the heir subject of the reserva troncal shall be given to the reservees.

2. REMEDIES: (SRAI)

   a. SUBSTITUTION under Articles 857-863

   b. REPRESENTATION under Articles 896-970

   c. ACCRETION under Articles 1015-1016

   d. INTESTACY under Article 960

Substitution given more preference than representation or accretion: Substitution is preferred because this right springs from the express will of the testator while that of the other two is derived by operation of law.

Types of substitutions: There are two general types of substitution, simple and fideicommissary.

1. Simple:

   a) Vulgar (Art. 859): A instituted B as heir, and stated in his will that in case B dies ahead of him, C, another person will substitute B.

   b) Brief (Art. 860): When two or more take the place of one as in case A is the instituted heir, B and C are the substitutes.

   c) Compendious (Art. 860): When one takes the place of two or more as in case A and B are instituted heirs and C is the substitute.

d) Reciprocal (Art. 861): The essence of reciprocal substitution is that the instituted heirs are also made the substitutes of each other. For example, T instituted A to 2/3, B to 1/3. If A predeceases, renounces or is incapacitated, his share goes to B. If B predeceases, renounces or is incapacitated, his share goes to A.

2. Fideicommissary (Art 863): This is more of a case of successive institution where the supposed substitutes/ principals inherit at the same time.

Difference between a simple substitution and a fideicommissary substitution: A simple substitution necessarily implies the appointment of a principal and a substitute. The substitute will only inherit in default of the principal. In a fideicommissary substitution, where it involves two principals, both of them inherit at the same time.

**Article 861. If heirs instituted in unequal shares should be reciprocally substituted, the substitute shall acquire the share of the heir who dies, renounces or is incapacitated, unless it clearly appears that the intention of the testator was otherwise. If there are more than one substitute, they shall have the same share in the substitution as in the institution.**

Illustration of Article: Supposing there are two substitutes, A and C are substitutes for B, to what extent will A and C inherit in case of default of B? We follow the rule on equal division because heirs who are instituted without specification as to shares are presumed to inherit equally. If there is an express stipulation as to the ratio or share that the substitute heirs are to receive, then we follow the stipulation.

**Article 862. The substitute shall be subject to the same charges and conditions imposed upon the instituted heir, unless the testator has expressly provided the contrary, or the charges or conditions are personally applicable to the heir instituted.**

**Article 863. A fideicommissary substitution by virtue of which the fiduciary or first heir instituted is entrusted with the obligation to preserve and to 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 provided further, that the fiduciary or first heir and the second heir are living at the time of the death of the testator.**

Definition of fideicommissary substitution: A substitution is a fideicommissary substitution if the testator institutes an heir with an obligation to deliver to another the property so inherited. The heir instituted to such a condition is called the first heir or fiduciary heir and the heir to receive the property is called a fideicommissary or second heir.

Requisites: The requisites for a fideicommissary substitution are:

1. There must be a first heir (fiduciary) instituted by the testator.
2. There must be a second heir (fideicommissary) instituted by the testator.
3. The fiduciary is given a duty to preserve and transmit the property or share to the fideicommissary.
4. The fiduciary and the fideicommissary are one degree apart.
5. The fiduciary and the fideicommissary must be living or at least conceived at the time of the testator's death.
6. The fideicommissary substitution must be clearly expressed in the will.
7. The fideicommissary substitution is imposed on the free portion of the estate and not on the legitime.

"One-degree" rule: The fiduciary and the fideicommissary must be related within one degree of consanguinity, which necessarily means that the fideicommissary substitution must be limited to the parents and their children. An adopting parent-adopted child relationship also satisfies this one degree requirement considering that an adopted child is deemed to be a legitimate child for all purposes beneficial to him, as provided in Art. 189(1) of the Family Code reproduced below.

*Art. 189. Adoption shall have the following effects:*

*(1) For civil purposes, the adopted shall be deemed to be a legitimate child of the adopters and both shall acquire the reciprocal rights and obligations arising from the relationship of parent and child, including the right of the adopted to use the surname of the adopters;*

*(2) The parental authority of the parents by nature over the adopted shall terminate and be vested in the adopters, except that if the adopter is the spouse of the parent by nature of the adopted, parental authority over the adopted shall be exercised jointly by both spouses; and*

*(3) The adopted shall remain an intestate heir of his parents and other blood relatives. (39(1)a, (3)a, PD 603)*

***ARTICLE V – Domestic Adoption Act***
***EFFECTS OF ADOPTION***

*Sec. 16. Parental Authority. — Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parent(s) and the adoptee shall be severed and the same shall then be vested on the adopter(s).*

*Sec. 17. Legitimacy. — The adoptee shall be considered the legitimate son/daughter of the adopter(s) for all intents and purposes and as such is entitled to all the rights and obligations provided by law to legitimate sons/daughters born to them without discrimination of any kind. To this end, the adoptee is entitled to love, guidance, and support in keeping with the means of the family.*

*Sec. 18. Succession. — In legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. However, if the adoptee and his/her biological parent(s) had left a will, the law on testamentary succession shall govern.*

"One-transfer" rule: The one degree rule also requires that there shall only be one transfer. While it is permissible to have a fideicommissary substitution to one's spouse and their children

as a whole, it is not permissible to have a fideicommissary substitution in favor of the spouse and the first child then to the second child and so on.

Qualifications for fiduciary and fideicommissary: The fitness of the fiduciary and the fideicommissary to inherit is determined at the time of the death of the testator.

1. They must not predecease the testator (if not alive, at least conceived during such time);
2. They must be willing to comply and must not be disqualified.

Operation of a fideicommissary substitution: Both the fiduciary and the fideicommissary inherit at the time of the death of the testator. However, the beneficial right of the fideicommissary is suspended until such time provided in the will or in the absence thereof, until such time that the fiduciary dies. The fideicommissary does not inherit from the fiduciary but from the testator. Both of them are the owners of the property, but not as co-owners. Thus, title to the property shall be made in the name of the fiduciary subject to a fideicommissary substitution in favor of the fideicommissary.

Registration of a fideicommissary substitution: The fideicommissary should have the property registered in the name of the fiduciary but subject to his right to the fideicommissary substitution. For real properties, the fideicommissary should have his right annotated at the back of the certificate of title to secure his right against the possible disposition by the fiduciary to third persons. For personal properties, the fideicommissary can require the fiduciary to put up a security/bond.

Fiduciary v. Usufructuary: The attributes of ownership are *Jus possidenti* (possession), *Jus utendi* (use), *Jus abutendi* (consume/ transform/abuse), *Jus fruendi* (fruits), Jus vindicandi (recover), *Jus disponendi* (dispose). A usufructuary has no right to consume, destroy or dispose the property, he only has the right to use and to the property's fruits. On the other hand, the fiduciary has such right. Although the fiduciary is prohibited to destroy and alienate the property given by the testator he can actually do so,

subject to his liability to the beneficiary based on an actionable wrong. A fiduciary is not a mere usufructuary despite the clear imposition of the obligation to preserve and transmit.

POINTS TO PONDER:

1. What is the difference between a fiduciary-fideicommissary relationship with a trustor-trustee relationship?
2. FIDEICOMMISSARY (Bar 2008): Raymond, single, named his sister Ruffa in his will as a devisee of a parcel of land which he owned. The will imposed upon Ruffa the obligation of preserving the land and transferring it, upon her death, to her illegitimate daughter Scarlet who was then only one year old. Raymond later died, leaving behind his widowed mother, Ruffa and Scarlet. a) Is the condition imposed upon Ruffa to preserve the property and to transmit it upon her death to Scarlet, valid? (1%) b) If Scarlet predeceases Ruffa, who inherits the property? (2%) c) If Ruffa predeceases Raymond, can Scarlet inherit the property directly from Raymond? (2%)

**Article 864. A fideicommissary substitution can never burden the legitime.**

Scope of the fideicommissary substitution: The fideicommissary substitution is limited only to the free portion. The testator cannot provide a fideicommissary substitution over the legitime since the same is reserved by law to certain compulsory heirs. Any fideicommissary substitution affecting the legitime of the compulsory heirs shall be considered as not imposed.

**Article 865. Every fideicommissary substitution must be expressly made in order that it may be valid.**

**The fiduciary shall be obliged to deliver the inheritance to the second heir, without other deductions than those which arise from the legitimate expenses, credits, and improvements, save in the case where the testator has provided otherwise.**

Necessity for "express" fideicommissary substitution: There is a need for the testator to indicate the substitution by its name, or expressly impose upon the first heir the absolute obligation to deliver the property to a second heir. If it is not made in this manner, the purported fideicommissary substitution shall be without effect. This is necessary since fideicommissary substitutions are not presumed nor favored inasmuch as they entail the locking up of property within a family and suspend or restrict its alienability.

**VDA. DE MAPA v. COURT OF APPEALS**
**154 SCRA 294**

*FACTS:* On 16 January, 1965 Paz Garcia vda. de Mapa et al instituted an action in the CFI of Manila to recover from the estate of Ludovico Hidrosollo the properties left Ludovico's late wife Concepcion. They claimed that Concepcion, in her will, instituted Ludovico's universal heir to the residue of her estate with the obligation as trustee to hold the same in trust for the petitioners, who were nephews and nieces of Concepcion, as well as for the nephews and nieces of Ludovico. Unfortunately, Ludovico died without fulfilling that obligation, so the estate of Concepcion ended up as part of Ludovico's estate. They prayed, in the alternative, that: (1) a trust be declared in favor of both them and the nephews and nieces of Ludovico named in Concepcion's will as beneficiaries of the trust, and ordering the administrators of Ludovico's estate to deliver 6/13 of these properties to them; or (2) that the fideicommissary substitution with Ludovico as first heir and the petitioners and their co-beneficiaries as fideicommisaries be declared null and void, and that Concepcion died intestate, declaring them to be Concepcion's only heirs to the residue of her estate and ordering the administrators of Ludovico's estate to turn over Concepcion's properties.

The lower court ruled that a trust had been created in favor of the petitioners and their co-beneficiaries and ordered the administrators of Ludovico's estate to reconvey the properties to them. When the respondents appealed to the CA, the decision was reversed. According to the Court of Appeals, neither a trust nor a fideicommissary substitution was created in Concepcion's will. And even if a trust had been created, the claim for reconveyance was barred by final judgment, i.e. the order denying their motion to intervene in the proceedings which settled Ludovico's estate.

*ISSUE:* Whether or not a trust was created in favor of the petitioners.

*HELD:* YES. In Concepcion's will, Ludovico was instituted as the sole and universal heir to the residue of Concepcion's estate. In addition, Ludovico was charged with the obligation to deliver the rest of the estate in equal parts to the nephews and nieces of both Concepcion and Ludovico. While the word "trust" never appeared in the will, it was the testarix's intent to create one, as clearly demonstrated by the stipulations in the will. In designating Ludovico as the sole and universal heir with the obligation to deliver the properties to the nephews and nieces, Concepcion intended that legal title should vest in Ludovico, and in significantly referring to the petitioners and their co-beneficiaries as "beneficarios", she intended that the beneficial or equitable interest in the properties should repose in them. According to the Supreme Court, these designations, coupled with the other provisions concerning co-ownership and joint administration of the properties, as well as the other conditions imposed by the testatrix, effectively created a trust in favor of the parties over the properties adverted to in the will. As Concepcion's surviving spouse, Ludovico is however entitled to 1/2 of her estate as his legitime. Thus, the trust created by Concepcion should be effective only on the free portion of her estate.

Allowable Deductions: While the law prohibits the disposition or alienation of the property and requires the first heir to deliver to the second heir all that is subject to the substitution, the law allows the fiduciary such deductions as may arise from legitimate expenses, credits, and improvements. Legitimate expenses do not refer to those which have been made for the acquisition and preservation of the inheritance. Improvements refer only to those which are necessary for the preservation of the property or useful expenses. However, the fiduciary is not liable for deterioration unless caused by his fault or neglect.

**Article 866. The second heir shall acquire the right to the succession from the time of the testator's death, even though he should die before the fiduciary. The right of the second heir shall pass to his heirs.**

Effectivity of the fideicommissary substitution: If the second heir should predecease the first heir, the fideicommissary

substitution shall still be valid and the right of the second heir is transmitted to his heirs, provided that the second heir survived the testator. As long as the first and second heir were living or at least conceived at the time of the testator's death, then the fideicommissary substitution shall be operative regardless of any other contingency that might befall the heirs.

1. If the fiduciary predeceases the testator, the disposition shall be considered merely as a vulgar substitution. In which case, the fideicommissary shall receive the property free from any encumbrance because the burden ceases from the time the beneficial rights of ownership are enjoyed by the fideicommissary.

2. If the fideicommissary predeceases the testator, the fiduciary shall receive the property free from encumbrance.

Preferred heir; fiduciary or fideicommissary: From the point of view of permanency, the fideicommissary appears to be the preferred heir. From the point of view of immediate benefit, the fiduciary may well be considered as the preferred heir.

**Article 867. The following shall not take effect:**

**1) Fideicommissary substitutions which are not made in an express manner, either by giving them this name, or imposing upon the fiduciary the absolute obligation to deliver the property to a second heir;**

**2) Provisions which contain a perpetual prohibition to alienate, and even a temporary one, beyond the limit fixed in article 863;**

**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;**

**4) Those which leave to a person the whole or part of the hereditary property in order that he may apply or invest the same according to secret instructions communicated to him by the testator.**

Purpose of this article: This provision is intended to prevent possible abuse that may be made in the use of fideicommissary

substitutions as well as of indirect means of violating the limitations imposed upon it.

Limitations:

1. The first paragraph requires the express use of the term "fideicommissary substitution" in the will or an absolute obligation to deliver the property to the fiduciary named in the will since fideicommissary substitutions restrict the distribution of property and are consequently frowned upon.
2. The second paragraph seeks to prevent the withdrawal of the property from circulation. If the testator prohibits the alienation for a definite period of time, it cannot exceed twenty years as provided in Article 870.
3. The third paragraph seeks to prevent the indirect circumvention of the prohibition of burdening the property beyond the period provided under Article 863.
4. The fourth paragraph is intended to avoid the possibility of the property being applied to purposes prohibited by the law, or going to incapacitated persons by means of secret instructions to the fiduciary. The will or intention of the testator, not being evident in his testament, cannot be given effect and hence the prohibition extends to all cases, whether there is a fideicommissary substitution or not.

Secret instructions: If the testator intends that the heir instituted should enjoy his property in the concept of heir, the mere reference to secret instructions does not invalidate the institution of the heir, only the secret instructions shall be void, and the beneficiaries under such secret instructions cannot compel the heir to comply therewith. The disposition itself is void if the sole purpose is that the person who has been named shall receive the property, not as an heir, but as a mere agent of the testator for carrying out his secret instructions.

**Article 868. The nullity of the fideicommissary substitution does not prejudice the validity of the institution of the heirs first designated; the fideicommissary clause shall simply be considered as not written.**

**Article 869. 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.**

Explanation of this Article: When the testator leaves his property in naked ownership to one person and in usufruct to another, upon the expiration of the latter's right the former acquires such usufruct, thereby consolidating the absolute ownership to him. This however shall not be true if the testator calls a third person to succeed the usufructuary. If more than one person are called successively to the usufruct, all of them must be living at the time of the testator's death and they must not be beyond one degree.

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

Purpose of this article: This article is intended to give more impetus to the socialization of the ownership of the property, and to prevent the perpetuation of large holdings that give rise to agrarian troubles.

Scope of this article: The testator cannot declare the legitime of any compulsory heir as inalienable. The right to impose the condition of inalienability is limited to the free portion of the estate, and even in this case, the period of inalienability cannot exceed 20 years, the property becomes free after 20 years.

Illustration of this article:

1. Condition of inalienability without a period: The property should become free after 20 years. It should be presumed that he did not intend to violate the law.
2. Condition of inalienability if the period fixed is the lifetime of the heir: In this case, there would be a dual

limitation. If the heir dies before the 20 years expire, the property passes to his heirs already free, but if he lives for more than 20 years after the death of the testator, the property becomes alienable after 20 years. The determination of the period by the lifetime of the heir should not be construed as an extension beyond the legal period, but as a limitation within that period.

Reconciliation of the prohibition in Article 870 with fideicommissary substitution: The provision of Article 870 must be deemed limited to inalienability of the property in the hands of the instituted heir where there is no fideicommissary substitution. If there is a fideicommissary substitution imposed, then the controlling provision must be Article 863 and 867 par. 2.

**RODRIGUEZ v. COURT OF APPEALS**
**27 SCRA 546 (1969)**

*FACTS:* Dona Margarita Rodriguez died on 19 July 1960 leaving a last will and testament under date of 30 September 1951. There was no issue as to its extrinsic validity. The executor then presented a project of partition which was approved without opposition. The testatrix did not leave any compulsory heirs or forced heirs but the testatrix created a trust in favor of herein petitioners which the herein private respondents who are allegedly the first cousins of the deceased objected to. The objection was overruled and upon appeal to the CA, the decision was affirmed. Upon reconsideration the Court of Appeals held that clause 10 of the will perpetually prohibits the alienation of the testatrix's property in contravention of Articles 867 and 870 of the Civil Code (which are against perpetuities and the limitation regarding the inalienability of the hereditary estate.) Thus, since the trust created is null and void and there being no institution of heirs, the rules of intestacy should be followed and the nearest relative of the deceased is entitled to inherit. The case was then remanded to the lower court.

*ISSUE:* Whether the trust created is nullified because of the perpetual prohibition to alienate provided in the will?

*HELD:* To cause partial intestacy in this case is uncalled for. For the first twenty years, the prohibition to alienate is valid, but

not for the period in excess of 20 years. Article 870 provides that the disposition of the testator declaring all or part of the estate inalienable for more than twenty years is void. Therefore, what is declared void is the testamentary disposition prohibiting alienation after the twenty-year period. In the interim, the provision is not invalid. The will should be interpreted liberally and in favor of making the disposition operative. The function of the courts in cases where the testatrix has no forcible heirs and is thus absolutely free to give her estate to whomsoever she choose (subject of course to the payment of her debts) is to carry out the intention of the deceased as manifested in the will.

## CONDITIONAL TESTAMENTARY DISPOSITIONS AND TESTAMENTARY DISPOSITIONS WITH A TERM

**Article 871. The institution of an heir may be made conditionally, or for a certain purpose or cause.**

Conditional institution: Conditional institutions are those in which the designation or institution is subject to certain contingencies, the three major categories of which are, condition, term, and mode.

Condition: A condition is an uncertain and future event upon which the demandability or resolution of a testamentary disposition depends. A condition may also be a past event unknown to parties. Such a condition may also constitute a contingency and the fulfillment of this contingency will determine one's entitlement to a disposition.

> *Art. 1179. Every obligation whose performance does not depend upon a future or uncertain event, or upon a past event unknown to the parties, is demandable at once.*
>
> *Every obligation which contains a resolutory condition shall also be demandable, without prejudice to the effects of the happening of the event.*

Characteristics of condition: These are futurity and uncertainty. A condition may or may not happen and it is something you look forward to. If the event were certain then it is not a

condition for it merely defines a period during which your entitlement may be suspended or limited. If it were a past event, generally, there is no contingency. Thus, you cannot posit against it the determination of a disposition. The second type of condition does not have these two characteristics, but it may also serve as a basis for a contingency because the past event is unknown to the parties.

Term: A term is a certain and future event upon which depends the demandability or termination of entitlement. Thus, a term may also be resolutory or suspensive.

Different types of conditions and terms: Below are pertinent Articles on the concept of conditions and terms in the Civil Code.

1) Potestative, casual, or mixed: Potestative conditions are those whose fulfillment depends upon the SOLE will of the heir. Chance conditions are those whose fulfillment or compliance depends upon third persons. Mixed conditions are those whose fulfillment or compliance depends upon the heir AND upon third persons.

    *Art. 1182. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code.*

2) Resolutory or suspensive: If the condition is suspensive, then the fulfillment of that condition will determine the demandability of the institution. If the condition is resolutory, then the fulfillment of the condition will terminate the entitlement to the disposition.

*Art. 1181. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition.*

*Art. 1184. The condition that some event happen at a determinate time shall extinguish the obligation as soon as*

*the time expires or if it has become indubitable that the event will not take place.*

*Art. 1185. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.*

*If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation.*

*Art. 1193. Obligations, for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.*

*Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.*

*A day certain is understood to be that which must necessarily come, although it may not be known when.*

*If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section.*

3) Impossible condition refers to conditions that are either legally impossible for being contrary to law or public policy or physically impossible due to forces of nature.

*Art. 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, that part thereof which is not affected by the impossible or unlawful condition shall be valid.*

*The condition not to do an impossible thing shall be considered as not having been agreed upon.*

Mode: A modal institution is an institution where the testator states the object of the institution; the charge imposed on the heir; or the application of the property. A modal disposition is contractual in nature in the sense that is becomes a covenant with the testator. When the testator puts a charge on the inheritance,

the heir receives the property immediately but subject to the performance of a prestation. In some instances, a security is required to ensure the compliance to the obligation or burden imposed by the testator. In this particular case, if the heir fails to comply, the security shall be confiscated but the institution shall not be revoked. In cases where the heir did not put up a security, and fails to comply with the prestation, the institution shall be revoked and the property shall be retrieved. In this sense, the modal institution is resolved, but the retrieval occurred not because the heir is not entitled to the property but because he violated his undertaking.

Mode v. Term/Condition: In general, a mode does not resolve or suspend but obligates while a term and a condition resolve or suspend but do not obligate. A mode will neither suspend nor resolve entitlement, but shall constitute a burden or an encumbrance. The moment you are instituted to a disposition subject to a mode, you are immediately entitled to the disposition and you will not lose it. A mode, however, states the object of the institution, imposes a charge, or states the application of the property.

**NATIVIDAD v. GABINO**
**36 PHIL 663**

*FACTS:* The controversy pertains to the interpretation as to whether the provisions quoted below granted full ownership or mere usufructuary rights:

> *"I bequeath to Dona Basilia Gabino, the ownership and dominion of the urban property, consisting of a house and lot ….. If the said legatee should die, Lorenza Salvador shall be obliged to deliver this house, together with the lot on which it stands, to my grandson Emilio Natividad upon payment of the latter to the former of P4000"*

*ISSUE:* What is the construction of the sixth clause of the will?

*RULING:* The Court ruled that the clause was a double legacy. In the first legacy, Basilia was given full ownership rights; however, upon her death, such property will revert to the estate for the purpose of satisfying the second legacy in favor of Lorenzo.

The first legacy was subject to a term, which was the death of Basilia. The second legacy was subject to a condition, which was the payment of such sum by Lorenzo.

**Article 872. 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.**

Principles governing conditional institutions: Conditions must be expressed and cannot be imposed on legitimes. This Article merely reinforces the concept of legitime – the part of the testator's estate that is expressly reserved by law for the compulsory heirs of the decedent. Hence, the testator cannot impose any condition or mode (or even a substitution clause) on the legitime of a compulsory heir.

**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.**

Effect of an impossible condition: The condition is deemed not written. The disposition becomes a simple institution, legacy or devise. A vague condition, if it cannot be interpreted shall be considered as an impossible condition. It may be absolute as when the condition cannot be fulfilled since it is contrary to science or forces of nature or it may be relative. Factors such as time, place, and persons determine the impossibility of a relative condition.

Article 1183 vis-à-vis Article 873: If an impossible condition is attached to a testamentary disposition it is deemed not written and the heir will inherit because the primary consideration is liberality. The condition is treated as a mere accessory and not a consideration. If the accessory is impossible, it is simply set aside because the intent of the testator was to give the property freely. The impossibility of the accessory will not affect the disposition. But if the impossible condition is attached to an onerous contract then the entire obligation is void. Where there is an exchange of value, the contract is considered void because

the consideration is no longer liberality. Since the condition is part of the consideration, the impossibility of the condition goes into the consideration of the contract. The defect of the condition affects the entire disposition.

When to determine impossibility of condition: There are two points of reference, the impossibility at the time of the execution of the will or at the time of death. Under the law on contracts, a condition which was impossible at the time of perfection makes the whole obligation void while a condition which was valid at perfection but became impossible sometime between perfection and execution is still valid but the obligation is extinguished due to the loss of the thing due. Under the law on succession, while there is no provision pertaining to such situation, the impossibility at the time of execution of the will may well be regarded to result in a simple institution. In the same vein, the impossibility of the condition at the time of death may be interpreted to result in the annulment of the disposition due to loss of the thing due.

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

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

Rationale of illegality of prohibition to marry: Such condition is considered illegal because it might result to immoral consequences where a person, who wants to marry but is prohibited from so doing, will end up having an adulterous relationship. However, a prohibition to marry for a limited time is valid.

**US NATIONAL BANK OF PORTLAND v. SNODGRASS**
**Supreme Court of Oregon, 1954. 202 Or. 530, 275 P2d 860.**

*FACTS:* On May 31, 1929, at a time when his daughter Merle was about 10 years old, Mr. Rinehart executed the instrument now before us for construction. Paragraph 7 of the will established a

fund to be held in trust for the benefit of the testator's daughter. The remaining funds held in trust were to be distributed to the daughter at age 32, "provided she shall have proved conclusively to my trustee and to its entire satisfaction that she has not embraced, nor become a member of, the Catholic faith nor ever married to a man of such faith." If before reaching age 32 the daughter died or became ineligible to receive the trust fund, the will named several other relatives of the testator as contingent beneficiaries. The testator died in 1932. It was stipulated that his daughter Merle became 32 years old on May 1951; that sometime in 1944 she married a man who was a member of the Catholic faith; and that at the time she knew of the provisions of the foregoing paragraph 7 of her father's will.

*ISSUE:* Whether or not the testamentary restraints imposed by the deceased in his will was valid and binding.

*HELD:* Yes. The power to give includes the right to withhold or to fix the terms of gift; no matter how whimsical or capricious they may be, only provided they do not in any way violate the law. The purpose of the constitutional provisions which petitioner invokes was to protect all denominations by prohibiting the establishment under state sanction of any single form of religion which would deprive nonadherents to a church thus established of the right to worship according to the dictates of their own conscience. These constitutional guarantees of religious freedom are limitations upon the power of the government, not upon the right of an individual to make such testamentary disposition of his property as he may desire provided always that positive law or public policy is not contravened. The Court cannot say that the terms of the will so far exceed the license which is allowed the citizen in the disposition of his own property, as to render it void as against public policy. The terms attached to the bequest may seem exacting, unkind and unnecessary, but we cannot say that they were unlawful or that they were complied with. The legacy must go to those to whom, in the event which has happened, it was given by the will.

**Article 875. Any disposition made upon the condition that the heir shall make provision in his will in the favor of the testator or of any other person shall be void.**

Disposicion captatoria: It is a 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. The two dispositions must each appear in a will. Such dispositions are void because they make succession and the rights appurtenant thereto, contractual. While modal institutions allow the imposition of a charge or burden, testamentary succession cannot be a purely contractual arrangement, otherwise such institution can no longer be an act of liberality and the personal act of the testator.

**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.**

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

Potestative condition: It is a condition whose fulfillment depends exclusively upon the will of the heir, devisee or legatee. By its very nature, this condition must be performed by him personally, it does not admit of performance by a third person.

When potestative condition is fulfilled: The heir is required to perform the purely potestative condition as soon as he learns of the testator's death before he can receive his share in the inheritance. If for reasons beyond his control, the condition cannot be complied with again, (as in passing a specific Licensure exam for instance) this Article provides that the condition will be deemed complied with.

**Article 877. If the condition is casual or mixed, it shall be sufficient if it happens 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 thereof, it shall be deemed as complied with.**

**If he had knowledge thereof, 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.**

Chance condition: It is a condition whose fulfillment depends upon chance and/or upon the will of a third person.

Mixed condition: It is a condition whose fulfillment depends jointly upon the will of the heir, devisee or legatee and upon chance and/or the will of a third person.

Manner of compliance or performance of condition:

1. Substantial compliance is all that is required in a potestative condition, since it may happen that the heir exerted his best efforts towards the realization of the condition, but failed to comply nevertheless for reasons not imputable to the fault or neglect of such heir. By imposing a potestative condition, the testator is delegating to the heir, devisee or legatee the manner in which they will fulfill the condition.

2. Actual or strict compliance is required in casual and mixed conditions because their performance does not depend on the will of the heir, devisee or legatee. In this case, it could be inferred that the testator did not have confidence in the heir, devisee or legatee because in imposing these types of conditions, he left its fulfillment or non-fulfillment to luck or chance or to a third person. When the testator imposed a casual or mixed condition, he may have well imposed it with full knowledge of the contingency and therefore, the bequest is considered to have been deliberately made subject to chance so that strict compliance is required.

Time for compliance or performance of condition:

1. As to potestative condition: As a general rule, the heir must fulfill the condition as soon as he learns of the testator's death. However, when the condition has already been complied with and can no longer be fulfilled again, the general rule is not applicable. The potestative condition must be fulfilled after the death of the testator because until then the will on which it depends may be modified or even revoked.

2. As to casual or mixed condition: As a general rule, it shall be sufficient that the condition happens or is fulfilled at any time before or after the death of the

testator except when the testator provides otherwise. Casual and mixed conditions may be fulfilled either before or after the death of the testator because in such conditions, it is immaterial to the testator when the condition happens unless he knew at the time he made his will that it had already happened. Every time the fulfillment of a condition will depend partly on chance, the fulfillment of said condition may be made before or after the death of the testator because it shall appear unreasonable to require a person to foresee the occurrence of chance or luck.

When casual or mixed condition is deemed fulfilled:

1. If at the time of the making of the will, the testator was unaware that the condition already existed or that it had been complied with, it shall be deemed as complied with.
2. If at the time of the making of the will the testator had knowledge of the same, the condition shall be considered fulfilled only if it is of such nature that it could no longer exist or be complied with again. Otherwise, such condition must be fulfilled again.

**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.**

Term or condition: A term or condition is suspensive when the inheritance can only be delivered to the heir upon the arrival of the term or condition. A suspensive institution is also called an *ex die* institution. A term or condition is resolutory when the inheritance is immediately delivered to the instituted heir, who holds it until the arrival of the period. A resolutory condition is also called an *in die* institution.

Effect of an institution with a suspensive term: In an institution with a suspensive term, the right is already transmitted to the heir upon the death of the testator. The term merely serves to determine the demandability of such right already acquired. The heir instituted under a suspensive term acquires his right

from the moment of the testator's death, pursuant to Article 777. It is the taking of possession that is deferred. The heir inherited from the moment the testator died but he cannot take possession of the inheritance unless the term arrives. Therefore, even if such heir should die before the term arrives, his right is no longer affected and his own heirs are entitled to succeed to his rights to the inheritance, which must be delivered to them before the term arrives.

Effect of an institution with a suspensive condition: An heir who dies before the suspensive condition is fulfilled, even if he survives the testator, transmits no rights whatsoever since such heir's civil personality disappears and his legal capacity to succeed terminates. At the moment the heir dies, he has not yet acquired any rights, and therefore, he cannot transmit any to his own heirs. Even if the condition should happen later, there can be no more acquisition of rights, because he would have had no capacity to succeed by that time. Thus, the death of the heir before the happening of the suspensive condition renders the testamentary disposition inoperative.

**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.**

When an heir acquires the right to the hereditary properties under a negative potestative condition: The heir acquires the right to the hereditary properties from the moment the succession opens, i.e., the death of the testator. However, the heir is required to give a bond or security, known as *caucion muciana*, which he will not do or not give that which the testator prohibits. If he does not put up a security, he can be prevented from acquiring is share from the estate and Article 880 shall be applicable.

Purpose of *caucion muciana*: The person instituted under a negative potestative condition has an immediate right to the hereditary properties from the moment the succession opens and as long as the condition has not been violated. Since there is

always a possibility that the heir will violate the said condition, the law secures the rights of those who would succeed to the properties upon the violation of the condition by requiring the conditional heir to furnish a bond or *caucion muciana.* In case the condition of the testator is violated, the heir, devisee or legatee shall return whatever he may have received, together with its fruits and interests. In case he cannot, the security shall have to answer for the deficiency.

Persons who can demand for *caucion muciana*: The bond may be demanded by those to whom the property will go upon the violation of the condition. These persons may be the substitute, if any, the co-heirs who may acquire the property by right of accretion, and the legal heirs who would get the property by intestacy.

**Article 880. If the heir be instituted under a suspensive condition or term, the estate shall be placed under administration until the condition is fulfilled, or until it becomes certain that it cannot be fulfilled, or until the arrival of the term.**

**The same shall be done if the heir does not give the security required in the preceding article.**

Rationale of the article: If the heir is instituted under a suspensive condition, the hereditary property is placed under administration because the condition being an uncertain event, the right of the heir does not exist until after the happening of the event. During the interim period between the death of the testator and the happening of the suspensive condition, neither the heir instituted under such condition nor the person who would get the property in the case the condition is not fulfilled, has a right to the hereditary property because it is uncertain whether or not the condition would be fulfilled or not. Hence, administration is proper as no one yet is entitled to the hereditary property during the interim period.

Consequences of fulfillment or non-fulfillment: Upon the happening of the condition, the property must be delivered by the administrator to the heir. If the condition is not fulfilled or it becomes certain that it cannot be fulfilled, the administrator must

deliver the property to the person entitled thereto, a substitute, a co-heir with the right of accretion, or a legal heir as the case may be.

Rules prior to fulfillment of condition: Prior to the fulfillment of the condition, the administrator is bound to preserve the property. In case the object is lost, deteriorates, or has improvements, and in the absence of any rules under this Section, the provisions in Article 1189 appear to be applicable.

*Art. 1189. When the conditions have been imposed with the intention of suspending the efficacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or deterioration of the thing during the pendency of the condition:*

*(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;*

*(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;*

*(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;*

*(4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;*

*(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;*

*(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary. (1122)*

*Art. 1190. When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.*

*In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.*

*As for the obligations to do and not to do, the provisions of the second paragraph of Article 1187 shall be observed as regards the effect of the extinguishment of the obligation.*

*Art. 1194. In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in Article 1189 shall be observed.*

**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.**

Administration of property: The appointment of the administrator as well as the manner of administration and the rights and obligations of the said administrator shall be governed by pertinent provisions of the New Rules of Court. The preference of the testator as to who will administer the estate is given weight. Hence, when there is an executor named in the will and he is qualified, all other interested persons who may qualify under the Rules can no longer file a petition for letters of administration.

*RULE 78, Section 1, New Rules of Court: Who are incompetent to serve as executors or administrators. — No person is competent to serve as executor or administrator who:*

*(a) Is a minor;*

*(b) Is not a resident of the Philippines; and*

*(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.*

*RULE 78, Section 5, New Rules of Court: Where some co-executors disqualified others may act. — When all of the executors named in a will can not act because of incompetency, refusal to accept the trust, or failure to give bond, on the part of one or more of them, letters testamentary may issue to such of them as are competent, accept and give bond, and they may perform the duties and discharge the trust required by the will.*

*RULE 79, Section 6. When letters of administration granted to any applicant — Letters of administration may be granted to any qualified applicant, though it appears that there are other competent persons having better right to the administration, if such persons fail to appear when notified and claim the issuance of letters to themselves.*

No executor named in the will: When the testator fails to designate an executor or when the executor named in the will is not qualified, refuses the trust, or fails to give a bond, or a person dies intestate, the Rules provide for a hierarchy as to the appointment of the administrator.

*RULE 78, Section 6, New Rules of Court: When and to whom letters of administration granted. — If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:*

*(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;*

*(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be*

*granted to one or more of the principal creditors, if competent and willing to serve;*

*(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.*

Petition for Letters of Administration: Any interested person can file a petition for administration, the contents of such petition are found in Rule 79 of the New Rules of Court.

*RULE 79, Section 2, New Rules of Court: Contents of petition for letters of administration — A petition for letters of administration must be filed by an interested person and must show, so far as known to the petitioner:*

*(a) The jurisdictional facts;*

*(b) The names, ages, and residences of the heirs, and the names and residences of the creditors, of the decedent;*

*(c) The probable value and character of the property of the estate;*

*(d) The name of the person for whom letters of administration are prayed.*

Opposition: Any interested person may oppose the issuance of the letters of administration on the grounds of incompetency of the person for whom letters are prayed therein or on the ground of the contestant's own right to the administration as provided in Rule 79.

*RULE 79, Section 1, New Rules of Court: Opposition to issuance of letters testamentary. Simultaneous petition for administration. — Any person interested in a will may state in writing the grounds why letters testamentary should not issue to the persons named therein as executors, or any of them, and the court, after hearing upon notice, shall pass upon the sufficiency of such grounds. A petition may, at the time, be filed for letters of administration with the will annexed.*

Special Administrator: In case of delay in the granting of the letters testamentary or of administration by any cause, a special administrator may be appointed and be given certain powers and duties under Rule 80 of the New Rules of Court.

> *RULE 80, Section 2, New Rules of Court. Powers and duties of special administrator. — Such special administrator shall take possession and charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the executors or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator. He may sell only such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased unless so ordered by the court.*

<u>Bond and its Conditions</u>: An executor and an administrator are both required to post a bond to ensure that he will perform certain duties and responsibilities as imposed by law and by the court.

> *RULE 81, Section 1, New Rules of Court. Bond to be given issuance of letters. Amount, Conditions — Before an executor or administrator enters upon the execution of his trust, and letters testamentary or administration issue, he shall give a bond, in such sum as the court directs, conditioned as follows:*
>
> *(a) To make and return to the court, within three (3) months, a true and complete inventory of all goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge or to the possession of any other person for him;*
>
> *(b) To administer according to these rules, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other person for him, and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court;*

*(c) To render a true and just account of his administration to the court within one (1) year, and at any other time when required by the court;*

*(d) To perform all orders of the court by him to be performed.*

**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 may be claimed at once provided that the instituted heir or his heirs gives 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.**

Modal institution: There is a modal institution if the testator attaches to an institution of an heir, or to a devise/a statement of the object of the institution or the purpose or application of the property left by the testator or a charge imposed by the testator upon the heir.

Examples of modal institution:

1. Object of the institution: X institutes Y as his heir to give him enough money to obtain a legal education.

2. Purpose or application of the property: X institutes Y. X directs Y to apply the properties of X's estate to the erection of a College of Law in Quezon Avenue.

3. Imposition of a charge: X institutes Y as his heir. X states that Y should devote 10% of the annual income from the buildings of X for the feeding program of the Mayor of Manila.

Comparison between mode and a condition:

1. Similarities: In both modes and condition (negative potestative conditions), there is a security requirement. In both modes and conditions, there is a forfeiture provision, a return of principal and fruits.

2. Differences: A mode does not suspend the efficacy of the rights to the succession while a condition suspends such efficacy. A mode is obligatory, except when it is for the exclusive benefit of the person concerned, while a condition is never obligatory. As a consequence, the demandability or extinction of a right depends on the fulfillment of the condition, whereas in a mode, the right given is immediately demandable although subordinate to the subsequent fulfillment of the obligation expressed in the testamentary disposition.

Rules of interpretation:

1. When there is a doubt as to whether it is a mode or a condition, the institution must be construed as modal and not conditional. Following the principle that testamentary dispositions are acts of liberality, an obligation imposed upon the heir should not be considered a condition unless it clearly appears from the will itself that such was the intention of the testator.

2. When there is a doubt as to the existence of a modal institution, the statement of the testator should not be considered as a mode, which imposes an obligation, but merely as a suggestion or discussion which the heir may or may not follow. It is not to be understood that every expression of the wish of the testator, not constituting a condition, should be considered as a mode, in consonance with the nature of testamentary dispositions as acts of liberality. For a statement made by the testator to be considered as a mode, it must have coercive or obligatory force.

**RABADILLA v. COURT OF APPEALS**
**G.R. No. 113725. June 29, 2000**

*FACTS:* In a Codicil appended to the Last Will and Testament of testatrix Aleja Belleza, Dr. Jorge Rabadilla, predecessor-in-interest of the herein petitioner, Johnny S. Rabadilla, was instituted as a devisee of 511,855 square meters of Lot No. 1392 in Bacolod. The said Codicil, which was duly probated and admitted contained the following provisions, among others,:

*"SIXTH*

*I command, in this my addition (Codicil) that the Lot No. 1392, in the event that the one to whom I have left and bequeathed, and his heir shall later sell, lease, mortgage this said Lot, the buyer, lessee, mortgagee, shall have also the obligation to respect and deliver yearly ONE HUNDRED (100) piculs of sugar to Maria Marlina Coscolluela y Belleza, on each month of December, SEVENTY FIVE (75) piculs of Export and TWENTY FIVE (25) piculs of Domestic, until Maria Marlina shall die, lastly should the buyer, lessee or the mortgagee of this lot, not have respected my command in this my addition (Codicil), Maria Marlina Coscolluela y Belleza, shall immediately seize this Lot No. 1392 from my heir and the latter's heirs, and shall turn it over to my near desendants, (sic) and the latter shall then have the obligation to give the ONE HUNDRED (100) piculs of sugar until Maria Marlina shall die. I further command in this my addition (Codicil) that my heir and his heirs of this Lot No. 1392, that they will obey and follow that should they decide to sell, lease, mortgage, they cannot negotiate with others than my near descendants and my sister."*

Pursuant to the same Codicil, Lot No. 1392 was transferred to the deceased, Dr. Jorge Rabadilla, and Transfer Certificate of Title No. 44498 thereto issued in his name. Dr. Jorge Rabadilla died in 1983 and was survived by his wife Rufina and children Johnny (petitioner), Aurora, Ofelia and Zenaida, all surnamed Rabadilla. On August 21, 1989, Maria Marlena Coscolluela y Belleza Villacarlos brought a complaint against the abovementioned heirs of Dr. Jorge Rabadilla, to enforce the provisions of subject Codicil. The Complaint alleged that the defendant-heirs violated the conditions of the Codicil, more specifically for having mortgaged Lot No. 1392 in disregard of the testatrix's specific instruction and for having failed to comply with their obligation to deliver certain piculs of sugar to Coscolluela. The Regional Trial Court came out with a decision and dismissed the complaint stating among others that "while there maybe the non-performance of the command as mandated exaction from them simply because they are the children of Jorge Rabadilla, the title holder/owner of the lot in question, does not warrant the filing of the present complaint." Further, the Trial Court "opined that plaintiff may initiate the intestate proceedings, if only to establish

the heirs of Jorge Rabadilla and in order to give full meaning and semblance to her claim under the Codicil."

On appeal by plaintiff, the Court of Appeals ordered the reconveyance of title over Lot No. 1392 from the estates of Jorge Rabadilla to the estate of Aleja Belleza. However, the Court of Appeals stated that "plaintiff-appellant must institute separate proceedings to re-open Aleja Belleza's estate, secure the appointment of an administrator, and distribute Lot No. 1392 to Aleja Belleza's legal heirs in order to enforce her right, reserved to her by the codicil, to receive her legacy of 100 piculs of sugar per year out of the produce of Lot No. 1392 until she dies." Dissatisfied, the petitioner contended that the Court of Appeals erred in ordering the reversion of Lot 1392 to the estate of the testatrix Aleja Belleza on the basis of paragraph 6 of the Codicil, and in ruling that the testamentary institution of Dr. Jorge Rabadilla is a modal institution within the purview of Article 882 of the New Civil Code.

*ISSUE:* Whether Paragraph 6 of the Codicil is a modal institution as provided in Article 882.

*HELD:* Paragraph 6 is a modal institution. Petitioner maintains that testatrix intended a mere simple substitution — *i.e.* the instituted heir, Dr. Jorge Rabadilla, was to be substituted by the testatrix's "near descendants" should the obligation to deliver the fruits to herein private respondent be not complied with. Substitution is the designation by the testator of a person or persons to take the place of the heir or heirs first instituted. Substitutions may be simple or fideicommissary. The Codicil contemplated neither of the two.

In simple substitutions, the second heir takes the inheritance in default of the first heir by reason of incapacity, predecease or renunciation. In the case at bar, the provisions of subject Codicil do not provide that should Dr. Jorge Rabadilla default due to predecease, incapacity or renunciation, the testatrix's near descendants would substitute him. What the Codicil provides is that, should Dr. Jorge Rabadilla or his heirs not fulfill the conditions imposed in the Codicil, the property referred to shall be seized and turned over to the testatrix's near descendants.

Neither is there a fideicommissary substitution here and on this point, petitioner is correct. In a fideicommissary substitution, the first heir is strictly mandated to preserve the property and to

transmit the same later to the second heir. In the case at bar, the instituted heir is in fact allowed under the Codicil to alienate the property provided the negotiation is with the near descendants or the sister of the testatrix. Thus, a very important element of a fideicommissary substitution is lacking; the obligation clearly imposing upon the first heir the preservation of the property and its transmission to the second heir.

The institution of Dr. Jorge Rabadilla under the subject Codicil is in the nature of a modal institution and therefore, Article 882 of the New Civil Code is the provision of law in point. In a modal institution, the testator states (1) the object of the institution, (2) the purpose or application of the property left by the testator, or (3) the charge imposed by the testator upon the heir. A "mode" imposes an obligation upon the heir or legatee but it does not affect the efficacy of his rights to the succession. On the other hand, in a conditional testamentary disposition, the condition must happen or be fulfilled in order for the heir to be entitled to succeed the testator. The condition suspends but does not obligate; and the mode obligates but does not suspend. To some extent, it is similar to a resolutory condition.

From the provisions of the Codicil, it can be gleaned that the testatrix intended that subject property be inherited by Dr. Jorge Rabadilla. It is likewise clearly worded that the testatrix imposed an obligation on the said instituted heir and his successors-in-interest to deliver one hundred piculs of sugar to the herein private respondent, Marlena Coscolluela Belleza, during the lifetime of the latter. The manner of institution of Dr. Jorge Rabadilla under subject Codicil is evidently modal in nature because it imposes a charge upon the instituted heir without, however, affecting the efficacy of such institution.

The obligation to deliver One Hundred (100) piculs of sugar yearly is imposed on the instituted heir, Dr. Jorge Rabadilla, his heirs, and their buyer, lessee, or mortgagee should they sell, lease, mortgage or otherwise negotiate the property involved. The Codicil further provides that in the event that the obligation to deliver the sugar is not respected, Marlena Belleza Coscuella shall seize the property and turn it over to the testatrix's near descendants. The non-performance of the said obligation is thus with the sanction of seizure of the property and reversion thereof to the testatrix's near descendants. Since the said obligation is clearly imposed by the testatrix, not only on the instituted heir

but also on his successors-in-interest, the sanction imposed by the testatrix in case of non-fulfillment of said obligation should equally apply to the instituted heir and his successors-in-interest.

**Article 883. When without the 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.**

**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.**

Compliance of Modes: This article provides for substantial compliance of the statement of the object of the institution, or the application of the property left by the testator, or the charge imposed by him, considering that these modes do not prevent the heir from receiving the property. Similar to casual conditions in obligations and contracts, modes can be complied with "liberally" and not strictly having in mind the wishes of the testator.

Heir prevented to fulfill condition: If the condition cannot be complied with because of the act of other co-heirs or interested persons in the estate, Article 1186 may also be applicable considering that the instituted heir cannot be faulted for the act of others.

*Art. 1186. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment.*

"Person interested in the condition": Such person may be an intestate heir who would legally take the property with its fruits and interests upon the non-compliance with the obligation imposed by the modal institution.

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

Suppletory provisions: Articles 1179-1198 will be applicable in conditional institutions not governed under the rules provided in this Section.

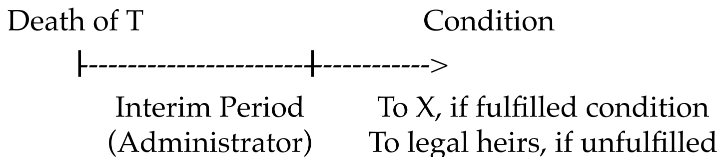
**Article 885. The designation of the day or time when the effects of the institution of an heir shall commence or cease shall be valid.**

**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.**

Illustration of Articles 880 and 885:

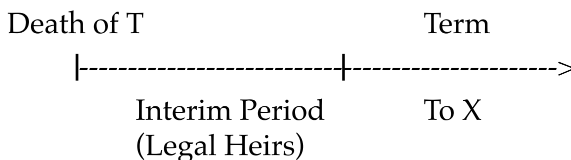
1. If institution is with a suspensive condition: T will give to X 1/2 of his estate if Y dies of malaria.

During the interim period between the death of T, the testator, and the fulfillment or non-fulfillment of the suspensive condition (death of Y by malaria), the 1/2 property will be put under administration until the fulfillment or non-fulfillment of the said condition in which case the administrator must then deliver the 1/2 property to either X upon the fulfillment of the condition or to the persons entitled to it, in case the condition is not fulfilled.



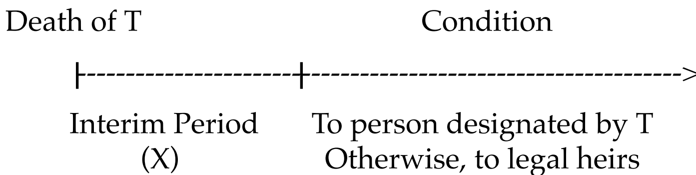

2. If institution is with a suspensive term: T will give to X 1/2 of his estate if Y dies.

During the interim period between the death of T, the testator, and the arrival of the period (death of Y), the 1/2 property will go to the legal or intestate heirs until the arrival of the period in which case such heirs must then deliver it to Y, the heir instituted under a suspensive term.



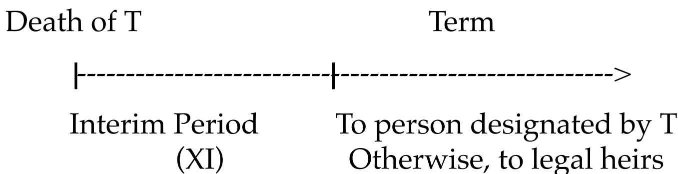
3. If institution is with a resolutory condition: T gives to X 1/2 of his estate now only until the day Y marries Z.

X will immediately enter into the hereditary property upon T's death but once the resolutory condition occurs (Y marries Z), X must return the hereditary property to either the persons designated by T or in default thereof, to T's intestate heirs.




4. If institution is with a resolutory term: T gives to X 1/2 of his estate now but only until the day Y dies.

X will immediately enter into the hereditary property upon T's death but once the resolutory term arrives (Y dies), X must return the hereditary property to either the persons designated by T or in default thereof, to T's intestate heirs.




## LEGITIME

**Article 886. 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.**

Purpose of Legitime: The system of legitimes is a limitation upon the freedom of the testator to dispose of his property. Its purpose is to protect those heirs, for whom the testator is presumed to have an obligation to reserve certain portions of his estate, from his unjust weakness or thoughtlessness. The law was constructed in such a way that this reservation made by law is properly protected so a parent and child may not deviate so and everyone will have to comply with some particular norm.

A parent is expected to leave something to the children and the children who have no descendant are to leave something for their parents. It is bilateral. It is a restriction to our right to make dispositions of our property effective mortis causa.

**NOBLE v. NOBLE**
**18 SCRA 1104**

*ISSUE:* What is necessary to establish before an illegitimate not natural child can be entitled to successional rights – the fact of his bare filiation or a filiation acknowledged by the putative parent?

*RULING:* There are cogent reasons to require that the acknowledgement of the putative parent is required to establish filiation. A mere claim of continuous possession of the status of a child is not sufficient inasmuch as the same is only a ground for an action for recognition.

Effect of the Family Code: Illegitimate children can now establish their filiation in the same way and on the same evidence as legitimate children.

*"Art. 172. The filiation of legitimate children is established by any of the following:*

*(1) The record of birth appearing in the civil register or a final judgment; or*

*(2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.*

*In the absence of the foregoing evidence, the legitimate filiation shall be proved by:*

*(1) The open and continuous possession of the status of a legitimate child; or*

*(2) Any other means allowed by the Rules of Court and special laws.*

*Art. 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children."*

**VAN DORN v. ROMILLO, JR.**
**139 SCRA 139**

*ISSUE:* Can an American husband inherit from his Filipina spouse after obtaining an absolute divorce in the United States?

*RULING:* Pursuant to the national law of the husband, he does not have any standing in court to pursue any conjugal assets of the marriage. By his own action, such American husband should not continue to be an heir with possible rights to the conjugal property. The Filipina should not be discriminated against in her own country if the ends of justice are to be served.

Ways of violating the legitime:

1. Shortchange: Give the compulsory heir less than what he is entitled to. In this case, Article 906 shall be applicable which orders the completion of the legitime by charging against the free portion of the estate.
2. Omission: Omit the compulsory heir in the will; preterition. In this case, Article 854 annuls the institution of the heir and results to partial intestacy where the legitime shall be paid to the compulsory heir.
3. Circumvention. The best way of circumvention is to dissipate the estate by an act inter vivos making the estate so little or insignificant at the time of death. In this case, Article 1061 shall be applicable where all donations inter vivos or dispositions made during the testator's lifetime shall be collated. The collation is done for the proper determination or computation of the legitime. In case there exists an impairment of the legitime and/or the estate becomes insufficient to pay all the shares of the compulsory heir, the donations shall be reduced to the extent that they impair the legitime of the compulsory heir.

Kinds of legitime: Legitime may be classified into fixed or variable.

1. Fixed: Legitime is fixed if the amount, that is the fractional part, does not vary or change regardless of whether there are concurring compulsory heirs or not.

2. Variable: Legitime is variable if the amount changes or varies in accordance with whether compulsory heirs concur.

**Article 887. The following are compulsory heirs:**

**(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) Acknowledged natural children, and natural children by legal fiction.**

**(5) Other illegitimate children referred to in Article 287.**

**Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.**

**In all cases of illegitimate children, their filiation must be duly proved.**

**The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.**

<u>Different classes of heirs</u>: There are in general three classes of heirs; voluntary, legal or intestate, and compulsory.

1. Voluntary heirs are those called upon to succeed by virtue of the will of a person expressed in his last will and testament.
2. Legal or intestate heirs are those called to succeed by operation of law.
3. Compulsory heirs are those enumerated under Article 887. However, due to the changes brought about by the Family Code, the following are considered as compulsory heirs:
    a. Legitimate children and legitimate descendants as to the legitimate parents and legitimate ascendants.

b. In default of the legitimate children, legitimate parents and ascendants as to the legitimate children and descendants

c. Surviving spouse

d. Illegitimate children

e. Illegitimate parents as to the illegitimate children without issue

f. Adopted children, for all civil purposes are considered as legitimate children under the Family Code.

**BARITUA v. CA**
**183 SCRA 565**

*FACTS:* In the evening of November 7, 1979, the tricycle then being driven by Bienvenido Nacario along the national highway at Camarines Sur, figured in an accident with JB Bus No. 80 driven by petitioner Jose Baritua. As a result of that accident Bienvenido and his passenger died, and the tricycle was damaged. No criminal case arising from the incident was ever instituted.

As a consequence of the extra-judicial settlement of the matter negotiated by the petitioner and the bus' insurer-Philippine First Insurance Company, Incorporated (PFICI for brevity) — Bienvenido Nacario's widow, Alicia received P 18, 500.00. In consideration of the amount she received, Alicia executed a "Release of Claim" in favor of the petitioners and PFICI, releasing and forever discharging them from all actions, claims, and demands arising from the accident which resulted in her husband's death and the damage to the tricycle which the deceased was then driving. Alicia likewise executed an affidavit of desistance in which she formally manifested her lack of interest in instituting any case, either civil or criminal, against the petitioners.

About one year and ten months from the date of the accident, the private respondents, who are the parents of Bienvenido Nacario, filed a complaint for damages against the petitioners. The trial court dismissed the complaint. The Court of Appeals reversed the judgment of the trial court. It ruled that the release executed by Alicia did not discharge the liability of the petitioners

because the case was instituted by the private respondents in their own capacity and not as "heirs, representatives, successors, and assigns" of Alicia.

*ISSUE:* As between the parents and the surviving spouse, who has the better rights to settle the estate of Nacario?

*RULING:* The spouse.

It is patently clear that the parents of the deceased succeed only when the latter dies without a legitimate descendant. On the other hand, the surviving spouse concurs with all classes of heirs. As it has been established that Bienvenido was married to Alicia and that they begot a child, the private respondents are not successors-in-interest of Bienvenido; they are not compulsory heirs. The petitioners therefore acted correctly in settling their obligation with Alicia as the widow of Bienvenido and as the natural guardian of their lone child. This is so even if Alicia had been estranged from Bienvenido. Mere estrangement is not a legal ground for the disqualification of a surviving spouse as an heir of the deceased spouse.

Necessity of being "legitimate": Article 992 provides a bar between the legitimate and illegitimate line of the family, thus preventing one from inheriting from the other by legal succession. The discrimination against an illegitimate child arises from his inability to inherit from the other relatives of his father and mother. Thus, an illegitimate child has successional rights only with respect to his own parents, beyond the parents, an illegitimate child has no successional rights in intestate succession. The law imposes a certain amount of discrimination with regard to illegitimate children; as if they are being condemned for something which was not of their own free volition. Even the fiction of adoption will not vest full legitimacy on the illegitimate child because the fiction of adoption produces its effect only between the adopter and the adopted.

Fractional combinations of legitime: When concurring with other compulsory heirs, the fractional shares are adjusted in accordance to pertinent provisions of intestate succession. The portion of the estate that does not pertain to legitime is properly termed as free disposal.

Summary of table of shares of legitimes: Succession, as a general rule, goes down the descending line. The only time when succession goes up the ascending line is when there are no children or descendants.

1. Descending line: This is the line of priority. Supposing a person has children and all of them predeceased him. Succession will go up the ascending line only upon the inapplicability of the right of representation inasmuch as the legitime of the descendant is subject to the right of representation. Each time a legitimate child or a descendant inherits, he gets half of the estate, known as the strict legitime.
2. Ascending line: Since the ascending line is not the preferred line, the right of representation does not apply to the ascending line. In cases where succession goes up, the rule is "the nearer excludes the farther". As in the case of a legitimate child or descendant, each time an ascendant inherits, he always inherits one half of the estate considering that ascendants are considered as mere substitutes, in case there are no descendants.

**Article 888. The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.**

**The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided.**

Strict Legitime: Whenever there are legitimate children or legitimate descendants, half of the estate known as strict legitime is reserved for such legitimate children or legitimate descendants. The other half is termed as the free portion from which the legitimes of other compulsory heirs, if any, are taken from.

**Article 889. The legitime of legitimate parents or ascendants consists of one-half 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.**

Strict Legitime: Whenever legitimate parents or ascendants are entitled to legitime, they receive the strict legitime – that same portion supposed to be given to legitimate children or legitimate descendants.

**Article 890. The legitime reserved for the legitimate parents shall be divided between them equally; if one of the parents should have died, the whole shall pass to the survivor.**

**If the testator leaves neither father nor mother, but is survived by ascendants of equal degree of the paternal and maternal lines, the legitime shall be divided equally between both lines. If the ascendants should be of different degrees, it shall pertain entirely to the ones nearest in degree of either line.**

Distribution of Strict Legitime in the Ascending Line: If only one of the parents survive the decedent, his share in the legitime goes to other surviving parent. If both parents do not survive the decedent, the ascendants (paternal and maternal grandparents) are entitled to the strict legitime dividing equally between both lines. If ascendants are of different degrees, the rule of proximity applies.

**Article 891. The 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 by 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.**

Reserva troncal: Reserva troncal is the process by which an ascendant who inherits by operation of law from his descendant property which the latter may have acquired by gratuitous title from another ascendant or a brother or sister, is obliged by law to reserve such property for the benefit of third degree relatives who belong to the line from which the property came from. It is a statutory reservation which directs the movement of certain

properties which otherwise will go to certain specific heirs but which the law reserves to certain predetermined heirs.

Purpose of reserva troncal: The purpose of reserva troncal is to prevent the ACCIDENTAL transfer of property/wealth from one line to another line. Its principal aim is to maintain as absolute as possible, with respect to the property to which it refers, the separation between the paternal and maternal lines so that property of one line may not pass to the other or through them to strangers by accident.

Other reservas: Under the old Civil Code, there were the Reserva Viudal, that arises from widowhood; the Reserva Adoncal that arises from adoption; and the Reserva Troncal that arises from lines. The New Civil Code however deleted the Reserva Viudal and Adoncal. Under the Child and Youth Welfare Code, there was also the Reserva Adoncal, but due to the express repeal by the Family Code, the only reserva existing under our laws is Reserva Troncal.

Elimination of other reservas: All forms of RESERVAS are generally abhorred by the society because it is a scheme that is intended primarily for the consolidation of wealth within one family; it is a feudal concept. A feudal economy is characterized by the concentration of wealth in the hands of the baron or the landlord and the complete economic deprivation of the vassals. As such, the vassals will look at the Baron not only for economic support but as well as for all the care, comfort and necessities of life. Thus, the law eliminated the other reservas which perpetuated the concentration of economic power in the hands of a few.

Requisites for reserva troncal to exist: In order that there be reserva troncal, the following four conditions or requisites must concur:

1. The transfer of property by gratuitous title to the descendant from an ascendant or brother or sister;
2. The existence in the inheritance of such property acquired by the descendant;
3. The existence of an ascendant who inherited property from the descendant by operation of law; and

4. The existence of relatives of the descendant with the 3rd degree and from the line from where the properties came from.

Parties in reserva troncal: The parties, whose relation must be of the legitimate line, are the origin, the prepositus, the reservor, and the reservees.

1) Origin: The person from whom the reservable property comes from. This person must either be an ascendant or a brother or sister of the prepositus.

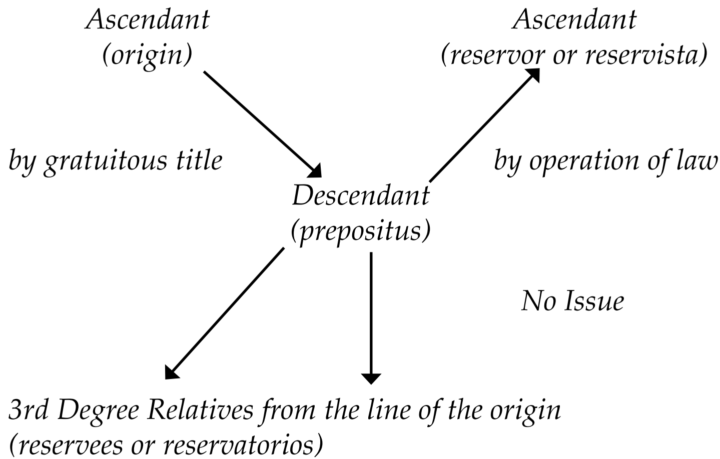
2) Prepositus: The prepositus is considered as the owner of the property transferred to him by gratuitous title from the origin. As of this transfer, no reserva still occurs since its occurrence is still dependent on other factors. Reserva is only triggered when the prepositus dies intestate and without issue and the same property acquired from the origin is transferred to another ascendant by operation of law.

3) Reservor: The reservor must be an ascendant of the prepositus. The transfer of the reservable property must be by operation of law, as legitime or by intestacy. There are conflicting opinions as to the nature of his possession of the property. He is the absolute owner, and not a mere usufructuary or trustee, of the property subject to the resolutory condition of existence of the third degree relatives upon the reservor's death.

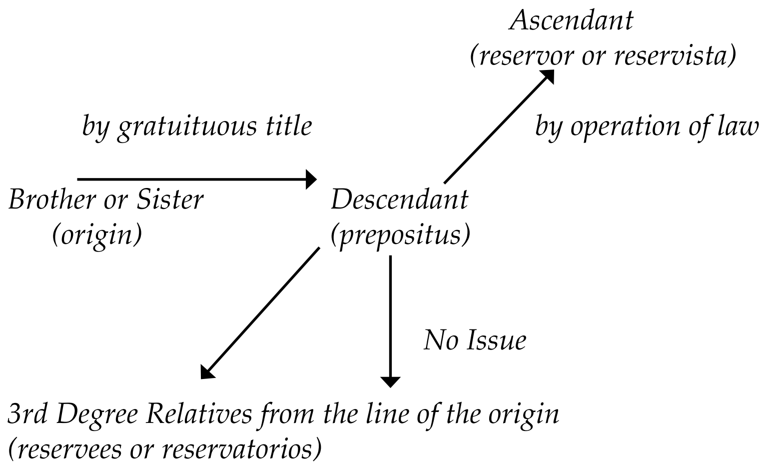
4) Reservees: Belonging to the same line of the family as that of the origin, they are the beneficiaries of the reservable property. These include those related to the prepositus in the first, second and third degree. They are the parents (first degree), brothers and sisters, and grandparents (second degree), great-grandparents, uncles and aunts, nephews and nieces (third degree).

Illustration of the operation of reserva troncal: There are two ways by which reserva troncal may take place:

1. When an ascendant acquires property by operation of law from a descendant, which the latter had acquired gratuitously from another ascendant.




2. When an ascendant acquires property by operation of law from a descendant, which the latter had acquired gratuitously from a brother or sister.




Accidental transfer of property from the prepositus to the reservor: There is an accidental transfer only when the prepositus die without an issue and without a will. If he dies with a will, there is a possibility of avoiding a reserva. If the prepositus dies intestate without issue, however, one will have a potentially

exclusive reserva situation. If the prepositus has an issue then the property will not go up because the legitimate descendant will exclude the legitimate ascendants. But if there is an illegitimate issue, legitimate ascendants will be excluded and thus property will go up except if the prepositus had executed a will whereby the property coming from the will is disposed in accordance with the provision of the will.

Properties subject to reserva troncal: The property subject to reserva is that very same property which the prepositus acquired from the ascendant or brother or sister by gratuitous title since the reserva troncal is an encumbrance on the property itself. The kind of property is immaterial because as long as such property came from the origin by gratuitous title, then there is a possibility of reserva. When a parcel of land is transferred to a descendant by donation inter vivos and the same is again transferred to an ascendant by intestacy, such parcel of land is considered as reservable. The reserva troncal is treated as an encumbrance upon the property and it follows the property whenever it goes up to the reservor. If the prepositus, during his lifetime, converts such parcel of land to cash then there is no more reserva troncal. The property is not preserved in its original state, thus destroying its potential reservable character. As a result, the existence of reserva is ultimately dependent upon the prepositus. Thus, if the prepositus does not convert, dispose, or alienate the potentially reservable property, then the reserva attaches to the property in the hands of the ascendant, upon the death of the prepositus.

Gratuitous title from an ascendant or brother or sister: This means that the transfer is either by donation and or by intestate or testate succession. What determines transfer by gratuitous title is the absence of any obligation on the part of the prepositus to pay consideration for such transfer. If the prepositus paid for some expenses such as taxes for the transfer of the title of the property, the transfer shall still be by gratuitous title. The gratuitous nature of the transfer is not destroyed by the fact that the transmission will require payment of certain out-of-pocket expenses as long as the consideration remains as pure liberality.

Rights and Obligations of the Reservor: By virtue of the nature of the reservor's possession over the property, he can

alienate the property still subject of its reservable nature. In one case, the Supreme Court upheld the validity of the simultaneous sales made by both the reservor and the reservees to two different buyers. The reservor may alienate the reservable property subject to a resolutory condition; his death, by virtue of which, the property shall be transferred to relatives of the prepositus within the third degree. In effect, there is a double resolutory condition – death of the reservor and the survival of the third degree relatives of the prepositus upon the death of the reservor. Upon the occurrence of these two conditions, the rights of the transferee of such reservable property from the reservor shall be resolved.

Rights and Obligations of the Reservee: In case of the alienation of the property by the reservor, the property has to be registered as subject to an existing reserva troncal to protect the rights of the reservees. An annotation at the back of the title may indicate the reservable character of the property. If not so registered, innocent purchasers for value and in good faith shall acquire the title of such reservable property, without any encumbrance or burden of being reservable to the detriment of the reservees. In case the properties are not capable of registration, the potential reservees may ask for securities to protect their rights.

**EDROSO v. SABLAN**
**25 Phil.295 (1913)**

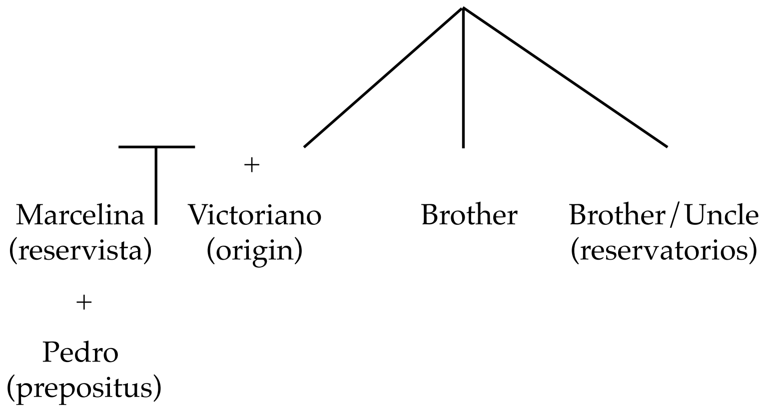
*FACTS:* Marcelina Edroso was married to Victoriano Sablan (origin) until his death on Sept. 22, 1982. They had a son, Pedro (prepositus) who at his father's death, inherited two parcels of land. Subsequently, Pedro also died, unmarried. Thus, the two parcels of land passed through inheritance to his mother, Marcelina (reservista). Marcelina now applied for registration and issuance of title over the said two parcels of land. However this application was opposed by the two legitimate brothers of her husband (uncles of her son-reservatorios). They asked that the court either deny the application or grant the same but have it recorded in the registration of the parcels of land, a right reserved in their favor. The lower court denied the application since it considered the parcels of land in question as partaking of the nature of property required by law to be reserved.

*ISSUES:* Whether or not the subject property is reservable? Whether or not the parcels of land may be registered in the name of the reservista?

*HELD:* Applicant is entitled to register in her own name the two parcels of land which are the subject matter of the application. However, a right should be reserved in favor of the two uncles of her deceased son.

Marcelina Edroso, ascendant of Pedro Sablan, inherited from him two parcels of land which he had acquired from another ascendant, his father Victoriano. Having acquired them by operation of law, she is obliged to reserve them intact for the claimants, who are uncles or relatives within the third degree and belong to the line of Mariano Sablan and Maria Rita (ascendants of Victoriano Sablan). The trial court's ruling that the lands in question partake of the nature of property required by law to be reserved is therefore in accordance with law.

There is no merit in the contention of the applicant that the land was not acquired by operation of law. If Pedro Sablan had instituted his mother in a will as universal heiress of his property, all he left at death would not have been required by law to be reserved, but only what he would have perforce left her as the legal portion of a legitimate ascendant. In such case, only the half constituting the legal portion would be required by law to be reserved, because it is what, by operation of law, would fall to the mother from her son's inheritance; the other half at free disposal would not have to be reserved. Applicant can register the said lands in her name. Legal title and dominion shall reside in her even though under a condition. After the right under the law to be reserved has been assured, she can do anything that a genuine owner can do. No act of disposal inter vivos of the person required by law to reserve the right can be impugned by him in whose favor it is reserved because such person has absolutely all the rights inherent in ownership, except that the legal title is burdened with a condition that the third party acquirer may ascertain from the registry in order to know that he is acquiring a title subject to a condition subsequent.




**SIENES, ET AL. v. ESPARCIA**
**1 SCRA 750 (1961)**

*FACTS:* Lot 3368 originally belonged to Saturnino Yaeso (origin). With his first wife Teresa Reales, he had four children named Agaton, Fernando, Paulina and Cipriana. With his second wife Andrea Gutang, he had an only son named Francisco (prepositus). Upon Yaeso's death, said lot was left to Francisco and title was issued in his name. Because Francisco was then a minor, his mother administered the property for him and declared it in her name for taxation purposes. When Francisco died, single and without any descendant, his mother, Andrea Gutang (reservista), as sole heir, executed an extrajudicial settlement and sale of the property in favor of spouses Constancio Sienes and Genoveva Silay. Thereafter, said vendees demanded from Paulina Yaeso and her husband Jose Esparcia, the surrender of the original certificate of title (which was in their possession). The latter refused. Cipriana and Paulina Yaeso (reservatorios), the surviving half-sisters of Francisco as such, declared the property in their name and subsequently executed a deed of sale in favor of the spouses Fidel Esparcia and Paulina Sienes who, in turn, declared it in their name for tax purposes and thereafter secured title in their name. Constancio Sienes then filed an action asking for the nullification of the sale executed by Paulina and Cipriana, the reconveyance of the lot and damages and cost of suit. Fidel Esparcia countered that they did not know any information regarding the sale by Andrea Gutang in favor of Constancio and Genoveva, and that if such sale was made, the same was void since Andrea had no right to dispose of the property. The trial court declared that

the sale of Andrea Gutang to Constancio Sienes and Genoveva Silay was void and that the sale by Paulina and Cipriana Yaeso to the Esparcia spouses was also void. The land in question was reservable property and therefore, the reservista Andrea Gutang, was under obligation to reserve it for the benefit of relatives within the third degree belonging to the line from which said property came, if any survived her. The records disclose that the lone reservee surviving was Cipriana Yaeso.

*ISSUE:* Whether or not the lot in question is reservable property and if so, whether the reservor or the reservee can alienate the same?

*HELD:* The lot is reservable property. On Francisco's death, unmarried and without descendants, the property was inherited by his mother, Andrea Gutang, who was under obligation to reserve it for the benefit of relatives within the third degree belonging to the line from which said property came, if any survived her.

Being reservable property, the reserva creates two resolutory conditions, namely, (1) the death of the ascendant obliged to reserve and (2) the survival, at the time of his death, of relatives within the third degree belonging to the line from which the property came. In connection with this, the court has held that the reservista (reservor) has the legal title and dominion to the reservable property but subject to a resolutory condition. Hence, he may alienate the same but subject to reservation, said alienation transmitting only the revocable and conditional ownership of the reservista, the right acquired by the transferee being revoked or resolved by the survival of reservatorios (reservees) at the time of the death of the reservista at the time of the death if the reservista (reservor). In the present case, inasmuch as when the reservista, Andrea Gutang, died Cipriana Yaeso was still alive, the conclusion becomes inescapable that the previous sale made by the former in favor of appellants became of no legal effect and the reservable property passed in exclusive ownership to Cipriana. On the other hand, the sale executed by the sisters Paulina and Cipriana Yaeso in favor of the spouses Fidel Esparcia and Paulina Sienes was subject to a similar resolutory condition. While it may be true that the sale was made by Cipriana and her sister prior to the death of Andrea, it became effective because of the occurrence of the resolutory condition.

**CHUA v. CFI**
**78 SCRA 414**

*FACTS:* During the intestate proceedings which settled Jose Frias' estate, the probate court issued an order imposing upon Juanito and Consolacion the obligation of paying Standard Oil the amount of P3,971.20. Hence, it was contended that the property in question was not acquired gratuitously by Juanito but for a consideration, thereby departing from the requisite that the property, in order to be reservable, must have been acquired by gratuitous title by the prepositus from an ascendant or a brother or sister.

*ISSUE:* Whether the transfer was gratuitous?

*HELD:* Yes. The transmission of property is gratuitous when the recipient does not give anything in return. It matters not whether the property transmitted be or be not subject to any prior charges, what is essential is that the transmission is made gratuitously, or by an act of mere liberality on the part of the person making it, without imposing any obligation on the part of the recipient; and that the person receiving the property gives or does nothing in return. The transmission of the property in question to Juanito was by means of hereditary succession and therefore gratuitous. The obligation to pay Standard Oil was not imposed by Jose but by order of the court. As long as the transmission of the property to the heirs is free from any condition imposed by the deceased himself and the property is given out of pure generosity, it is gratuitous.

**LACERNA v. VDA. DE CORCINO**
**1 SCRA 1226**

*FACTS:* Bonifacia Lacerna died in 1932 leaving 3 parcels of land to her only son, Juan Marbebe. Juan Marbebe died single and intestate in 1943. An action was instituted by the plaintiffs Juan Marbebe's cousins, for the recovery of these three parcels of land from the defendant, Agatona vda. de Corcino. In her answer, Agatona alleged that she held the lands under a power of attorney executed by Juan and that she is entitled to succeed him in the same manner as the plaintiffs, since she was Juan's aunt. With the court's permission, Jacoba Marbebe filed an answer in intervention alleging that she is a half sister of Juan, who died intestate, leaving neither ascendants or descendants, and that as

his half-sister, she is entitled, by succession, to the properties in question. It appears that Juan's mother, Bonifacia, had a sister, Agatona, the defendant herein, a brother named Catalino who died in 1950 and was survived by his three children, and another brother, Marcelo, who died in 1953 and was survived by his seven children. Upon the other hand, intervenor Jacoba Marbebe is a daughter by first marriage of Valentin Marbebe, husband of Bonifacia and father of Juan. The plaintiffs contend that pursuant to Art. 891 establishing reserva troncal, the properties in dispute should pass to the heirs of the deceased within the third degree who belong to the line from which the properties came, and since the same were inherited by Juan from his mother, they should go to his nearest relative within the third degree on the maternal line to which plaintiffs belong. The lower court awarded the parcels of land to Jacoba.

*ISSUE:* Whether the parcels of land were subject to reserva troncal.

*HELD:* NO. The flaw in plaintiff's theory is that it assumes that said properties were subject to reserva troncal which is not the case, for Article 891 applies only to properties inherited by a descendant from an ascendant. The transmission of the lands by inheritance was therefore in accordance with the order prescribed for intestate succession, pursuant to which, a sister, even if only a half-sister, in the absence of other sisters or brothers, or of children of sisters or brothers, excludes all other collateral relatives, regardless of whether or not the latter belong to the line from which the property of the deceased came. Reserva troncal contemplates three transfers: (1) from the ascendant or brother or sister to the prepositus by gratuitous title: (2) from the prepositus to another ascendant (the reservor) – by operation of law; (3) upon the reservor's death, from the prepositus to the reservees (if they're still alive) – by the theory of delayed intestacy. The first two are the most important with respect to this case. While admittedly, Juan received the property by gratuitous title from his mother, when he died without a will the property was not transferred to an ascendant of Juan. His nearest heir was his half-sister, Jacoba. Thus, the second transfer contemplated by the rules on the reserva never took place. No reserva troncal was created. Therefore, the property will pass to Jacoba under the rules of intestate succession.

**FLORENTINO v. FLORENTINO**
**40 Phil. 480**

*FACTS:* Apolonio Isabelo Florentino II married Antonia Faz with whom he had 9 children. When his wife died Apolonio married Severina with whom he had 2 children — Mercedes and Apolonio III. Apolonio II died and was survived by his second wife and the ten children, Apolonio III being born after Apolonio II died. He was able to execute a will instituting as universal heirs his 10 children, the posthumous Apolonio III and his widow Severina and declaring that all of his property should be divided among all of his children in both marriages. In the partition of his estate, Apolonio III was given six parcels of land and some personal property of Apolonio II. Apolonio III later died and his mother Severina succeeded to all these properties. She subsequently died, leaving a will instituting as her universal heiress her only living daughter, Mercedes. As such heir, Mercedes took possession of all the property left at the death of her mother, including the property inherited by severina from Apolonio III which is said to be reservable property. Accordingly, Mercedes had been gathering the fruits of the parcels of land.

Hence, the children of Apolonio II with first wife, as well as his grandchildren by the first marriage, instituted an action for recovery of their share of the reservable property. The defendants contend that no property can be reserved for the plaintiffs inasmuch as there is a forced heiress and the obligation to reserve is secondary to the duty to respect the legitime. Also, the danger that the property coming from the same line might fall into the hands of strangers has been avoided.

*ISSUE:* Whether the property is subject to reserva troncal or not.

*HELD:* YES. Even if Severina left in her will said property to her only daughter and forced heiress, nevertheless this property has not lost its reservable nature. The posthumous son, Apolonio III, acquired the property by lucrative title or by inheritance from his legitimate father. Although said property was inherited by Severina, nevertheless she was duty bound to reserve the property thus acquired for the benefit of the relatives within the third degree of the line from which such property came. Ascendants do not inherit the reservable property, but its enjoyment, use and trust merely for the reason that the law imposes the obligation to reserve and preserve the same for certain designated persons

who, on the death of the said ascendants-reservor, acquire the ownership of said property in fact and operation of law in the same manner as forced heirs.

There are then 7 reservees entitled to the reservable property left at the death of Apolonio III, to wit: Apolonio II's 3 children from his first marriage; the children of Apolonio II's deceased children, 12 in all; and Mercedes, Apolonio III's sister. All of the plaintiffs are relatives of the posthumous son within the third degree (four as half-siblings and 12 as his nephews and nieces). As the first four are his relatives within the third degree in their own right and the others by right of representation, all are entitled as reservees. The properties in question came from the common ancestor Apolonio II, and when, on the death of Apolonio III without issue, the same passed by operation of law into the hands of his legitimate mother Severina, it became reservable property with the object that the same should not fall into the possession of persons other than those comprehended within the order of succession traced by the law from Apolonio II, the origin of the property.

Severina could have disposed in her will all her own property in favor of her only living daughter Mercedes as forced heir. But the provision concerning the reservable property reducing the rights of the other reservees is null and void inasmuch as said property is not her own and she has only the right of usufruct or of fiduciary, with the right to deliver the same to the reservees. Reservable property neither comes nor falls under the absolute dominion of the ascendant who inherits and receives the same from his descendant, therefore it does not form part of his own property nor become the legitime of his forced heirs. It becomes his own property only in case all the relatives of his descendant died, in which case the said reservable property loses such character.

**GONZALES v. CFI**
**104 SCRA 481**

*FACTS:* Benito Legarda y de La Paz (Benito II), son of Benito Legarda y Tuazon (Benito I), died and was survived by his widow, Filomena, and their 7 children. The real properties left by his deceased father, Benito I, were partitioned in 3 equal parts by Benito II's two sisters and his heirs pro-indiviso. One of his daughters, Filomena, died without issue and her sole heiress was her mother, Filomena Roces vda. de Legarda. Mrs. Legarda

executed an affidavit adjudicating to herself the properties she inherited from her daughter as a result of which she succeeded her deceased daughter as co-owner of the properties held pro-indiviso by her other six children. Later Mrs. Legarda executed 2 handwritten documents disposing of the properties which she inherited from her daughter in favor of her 16 grandchildren (the children of her sons). Eventually, Mrs. Legarda and her six surviving children partitioned the co-owned property.

Mrs. Legarda died and in the testate proceeding of her estate, Beatriz Gonzalez, one of her daughters, filed a motion to exclude in the inventory of the properties inherited from Filomena, the deceased daughter, on the ground that said properties were reservable and should be inherited by Filomena's 3 sisters and 3 brothers, not by the 16 grandchildren of Mrs. Legarda, or Filomena's nephew and nieces. She also filed an action securing a declaration that the properties are reservable which Mrs. Legarda could not bequeath in her holographic will to her grandchildren to the exclusion of her 6 children.

It is contended here that the properties in question are not reservable properties because only relatives within the third degree form the paternal line have survived and that when Mrs. Legarda willed the properties to her grandchildren, who are third degree relatives of Filomena and who belong to belong paternal line, the reason for the reserva troncal has been satisfied: " to prevent persons outside a family from securing, by some special accident of life, property that should otherwise have remained therein."

*ISSUE:* Whether or not the properties could be conveyed by will to the 16 grandchildren (reservees within the third degree) to the exclusion of the 6 children (reservees within the second degree).

*HELD:* NO. Mrs. Legarda could not convey in her holographic will to her 16 grandchildren the reservable properties she inherited from her daughters because the reservable properties did not form part of her estate. The reservor cannot make a disposition mortis causa of the reservable properties as long as the reservees survived the reservor.

Art. 891 clearly indicates that the reservable properties should be inherited by all the nearest relatives within the third degree from the propositus who in this case are the six children

of Mrs. Legarda. She could not select the reservees to whom the reservable property should be given and deprive the other reservees of their shares therein. To allow the reservor to make a testamentary disposition of the reservable properties in favor of the reservees in the third degree and, consequestly, to ignore the reservees in the second degree would be a glaring violation of Art. 891. This cannot be allowed.

Mrs. Legarda could not dispose of the properties in question in her will even if the disposition is in favor of her relatives within the third degree from Filomena. The said properties, by operation of Art. 891, should go to Mrs. Legarda's 6 children as reservees within the second degree from Filomena. Reservees do not inherit from the reservor but from the prepositus, of whom the reservees are the heirs mortis causa subject to the condition that they must survive the reservor.

The reservation could be extinguished only by the absence of reservees at the time of Mrs. Legarda's death. Since at the time of her death, there were reservees belonging to the second and third degrees, the disputed properties did not lose their reservable character. The disposition of the properties should be made in accordance with Art. 891 and not in accordance with the reservor's holographic will.

Reserva Integral and Theory of Delayed Intestacy:

1) Reserva Integral: Under this theory, when the reservor dies and there are surviving reservees, all the relatives of the prepositus coming from the legitimate line and within the third degree from the line of origin shall inherit the reservable property. After the determination of these qualified relatives, then the reservable property is divided among all of them equally, without any discrimination. In effect, the reservation is actually in favor of all the third degree relatives, without due regard to the number of degrees.

2) Delayed Intestacy Theory: As enunciated in a long line of cases such as Padura v. Baldovino, Florentino v. Florentino, and Solivio v. Court of Appeals, this theory provides that when the resolutory condition of the reserva is fulfilled, the properties are distributed to the

reservees as if they are inheriting from the prepositus at the time of fulfillment of the condition. Since there is no will, then the reservees inherit by virtue of intestate succession, the decedent being the prepositus; thus, the name Delayed Intestacy. Accordingly, the qualifications of the reservees are reckoned from the time of the death of the reservor; and, following the rules of intestate succession, the reservable property shall be given to the qualified reservees applying the rules of proximity and equal division. First degree relatives will exclude second and third degree relatives and second degree relatives will exclude the third, except, of course, when there is the right of representation as in the case of nephews and nieces in representation of deceased brother or sister.

**PADURA v. BALDOVINO**
**104 Phil 1065**

*FACTS:* When Agustin died he gave by will 4 parcels of land to Fotunato, his son by his second marriage. Fortunato died single, without child and without a will. The 4 parcels of land received by him from his father necessarily transferred to his mother Benita under the rules on intestacy. When Benita died, the question on the distribution of the said parcels of the land become a dispute between the nephews and nieces of Fortunato by half-blood (Paduras) and the nephew and nieces by full-blood (Baldovinos). The lower court ordered the partition of the parcels of land in 11 equal shares to be divided among the nephews and, regardless of full or half blood. The Baldovinos not being contented with this distribution, appealed.

*ISSUE:* How should 4 parcels of land be divided among nephews and nieces of Fortunato?

*HELD:* The Supreme Court, speaking through Mr. Justice J.B.L. Reyes, declared the principles of intestacy to be controlling, and ruled that the nephews and nieces of whole blood were each entitled to a share double that of each of the nephews and nieces of half blood in accordance with Article 1006 of the Civil Code. The property was clearly reservable as when the reservor died, there survived relatives within the 3rd degree of consanguinity

of the prepositus coming from the line from where the property originated (Agustin).

**DE PAPA v. CAMACHO**
**G.R. No. L-28032. September 24, 1986**

*FACTS:* This case was submitted for judgment in the lower court by all the parties on a "Stipulation of Facts and Partial Compromise." Among others, the parties stipulated that:

- The defendant Dalisay D. Tongko-Camacho and the plaintiffs, Francisca Tioco de Papa, Manuel Tioco and Nicolas Tioco, are legitimate relatives, plaintiffs being said defendant's grand aunt and grand uncles.
- Plaintiffs and defendant have as a common ancestor the late Balbino Tioco (who had a sister by the name of Romana Tioco), father of plaintiffs and great grandfather of defendant.
- Romana Tioco during her lifetime gratuitously donated four (4) parcels of land to her niece Toribia Tioco (legitimate sister of plaintiffs).
- Toribia Tioco died intestate in 1915, survived by her husband, Eustacio Dizon, and their two legitimate children, Faustino Dizon and Trinidad Dizon (mother of defendant Dalisay D. Tongko-Camacho) and leaving the afore-mentioned four (4) parcels of land as the inheritance of her said two children in equal pro-indiviso shares.
- Balbino Tioco died intestate, survived by his legitimate children by his wife Marciana Felix (among them plaintiffs) and legitimate grandchildren Faustino Dizon and Trinidad Dizon. In the partition of his estate, three (3) parcels of land were adjudicated as the inheritance of the late Toribia Tioco, but as she had predeceased her father, Balbino Tioco, the said three (3) parcels of land devolved upon her two legitimate children Faustino Dizon and Trinidad Dizon in equal pro-indiviso shares.
- In 1937, Faustino Dizon died intestate, single and without issue, leaving his one-half (1/2) pro-indiviso share in the seven (7) parcels of land above-mentioned to his father, Eustacio Dizon, as his sole intestate heir, who received

the said property subject to a reserva troncal which was subsequently annotated on the Transfer Certificates of Title

- In 1939 Trinidad Dizon-Tongko died intestate, and her rights and interests in the parcels of land abovementioned were inherited by her only legitimate child, defendant Dalisay D. Tongko-Camacho.
- On June 14, 1965, Eustacio Dizon died intestate, survived his only legitimate descendant, defendant Dalisay D. Tongko-Camacho.
- Dalisay D. Tongko-Camacho now owns one-half (1/2) of all the seven (7) parcels of land abovementioned as her inheritance from her mother, Trinidad Dizon-Tongko.
- Defendant Dalisay D. Tongko-Camacho also claims, upon legal advice, the other half of the said seven (7) parcels of land abovementioned by virtue of the reserva troncal imposed thereon upon the death of Faustino Dizon and under the laws on intestate succession; but the plaintiffs, also upon legal advice, oppose her said claim because they claim three-fourths (3/4) of the one-half pro-indiviso interest in said parcel of land, which interest was inherited by Eustacio Dizon from Faustino Dizon, or three-eights (3/8) of the said parcels of land, by virtue of their being also third degree relatives of Faustino Dizon.

The lower Court declared the plaintiffs Francisco Tioco, Manuel Tioco and Nicolas Tioco, as well as the defendant Dalisay Tongko-Camacho, entitled, as reservatorios, to one-half of the seven parcels of land in dispute, in equal proportions. Not satisfied, the defendant appealed to this Court.

*ISSUE:* Whether defendant is entitled to the whole of the seven (7) parcels of land in question. In a case of reserva troncal where the only reservees surviving the reservor, and belonging to the line of origin, are nephews of the descendant (prepositus), but some are nephews of the half blood and the others are nephews of the whole blood, should the reserved properties be apportioned among them equally, or should the nephews of the whole blood take a share twice as large as that of the nephews of the half blood?

*HELD:* Defendant is entitled to the whole of the seven (7) parcels of land. Once the property has devolved to the specified

> relatives of the line of origin, there is no call for applying Article 891 any longer. The respective share of each in the reversionary property should be governed by the ordinary rules of intestacy. Following the order in legitimate succession when there are relatives of the descendant within the third degree, the right of the nearest relative excludes that of the one more remote. The right of representation cannot be alleged when the one claiming same as a reservatario of the reservable property is not among the relatives within the third degree belonging to the line from which such property came. Relatives of the fourth and the succeeding degrees can never be considered as reservatarios, since the law does not recognize them as such.
>
> In determining the rights of the reservatarios inter se, proximity of degree, the right of representation of nephews, and the rule of double share for immediate collaterals of the whole blood are all operative. Reversion of the reservable property being governed by the rules on intestate succession, the plaintiffs-appellees must be held without any right thereto because, as aunt and uncles, respectively, of Faustino Dizon (the prepositus), they are excluded from the succession by his niece, the defendant-appellant, although they are related to him within the same degree as the latter. Under our laws of succession, a decedent's uncles and aunts may not succeed ab intestato so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

Reserva minima and reserva maxima: The reserva minima and reserva maxima become applicable only when the prepositus executes a will instituting therein his ascendant as his heir. As a result, one-half of the estate passes to the latter by operation of law as legitime and the other half by will of the descendant. Reserva minima and reserva maxima are the two theories in determining what properties shall become reservable.

No reserva maxima and minima in case prepositus dies intestate: If the prepositus dies intestate, there is no problem as the whole estate transfers by operation of law and therefore all properties received by gratuitous title from an ascendant or brother or sister by the prepositus and are transferred to the ascendant-reservor become reservable properties so long as there lives a relative within the 3rd degree of consanguinity of the prepositus at the time the ascendant reservor dies.

<u>Question to be resolved by the theories of reserva maxima and minima</u>: In case the prepositus makes a will making the ascendant as his heir, there exists a question as to what capacity did the ascendant-reservor receive the property. If he receives the property as part of his legitime, then that transmission is by operation of law. But if the reservor receives the property not as a compulsory heir, not in payment of his legitime, but as a voluntary heir, then the transmission is not by operation of law. In the latter case, the nature of the reservable property is thus destroyed due to the characterization of the property going to the ascendant.

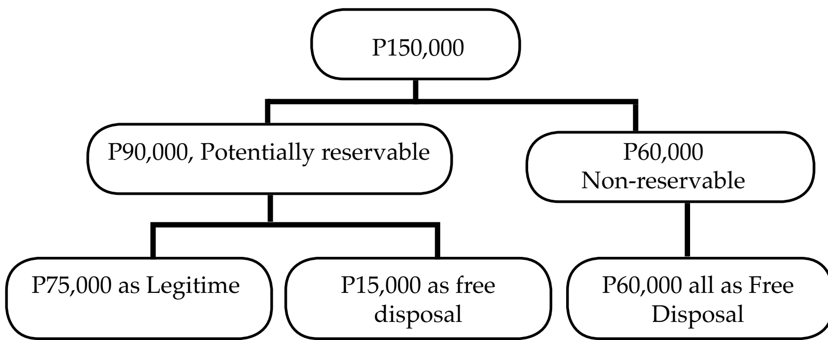
<u>The need for the theories of reserva maxima and reserva minima</u>: For instance, the prepositus executes a will, where he bequeaths the following properties to his only heir, the ascendant:

1. P90T worth of potentially reservable property (meaning it came from the origin by gratuitous title) and
2. P60T worth of non-reservable property

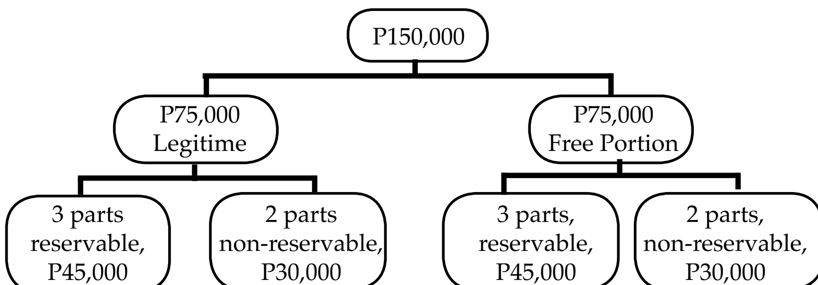
The ascendant being the only heir receives one-half (1/2) of the estate as his legitime and the other half as the share coming from the free portion. Question: "Which of these properties did the reservor receive as legitime (by operation of law) and which did he receive by will?" If the prepositus stated specifically where the legitime of the ascendant shall be paid out from, these theories will not apply. If the legitime is paid from the P90T worth of potentially reservable property, the whole P75T worth of legitime shall be reservable. If the legitime was to be paid out from P60T worth of non-reservable property, the P60T of the legitime shall be non-reservable and the balance of P15T which should be taken out from the potentially reservable property shall be reservable.

The theories of reserva minimal and reserva maxima operate when the prepositus does not specify the property from where the legitime or the free portion is to be paid out from. Thus, the question as to which portion shall be reservable and which shall be non-reservable is addressed by the theory of reserva minima and the theory of reserva maxima.

Theory of reserva maxima: This theory seeks to maximize the reservable character of the property. Therefore, in the above example, all of the legitime shall be taken up from the P90T worth of potentially reservable property under this theory. The balance of P15T will be distributed as free portion together with the P60T worth of non-reservable property. The objective is to put as much of the reservable property into the legitime to maximize the reservable character of the property.




Theory of reserva minima: Reserva minima is not the opposite of reserva maxima, it is a theory of pro-ration. The pro-ration required is the pro-ration between the amounts of the reservable property and the non-reservable property. It is the theory of allocation. In the above example, the legitime shall therefore come from both the P90T which is potentially reservable and the P60T which is non-reservable. Applying the ratio between the values of the reservable and non-reservable property of 3.2, three parts of the legitime shall come from the P90T worth of potentially reservable property and the two parts from the P60T worth of non-reservable property.



**Article 892. If only one legitimate child or descendant of the deceased survives, the widow or widower shall be entitled to one-fourth of the hereditary estate. In case of a legal separation, the surviving spouse may inherit if it was the deceased who had given cause for the same.**

**If there are two or more legitimate children or descendants, the surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children or descendants.**

**In both cases, the legitime of the surviving spouse shall be taken from the portion that can be freely disposed of by the testator.**

Adjustable Legitime: Whenever there are legitimate children or legitimate descendants, the legitime of the surviving spouse is taken from the free portion. The legitime of the spouse varies depending on the number of children except when there is only one legitimate child whereby the spouse will get ¼ of the estate as her legitime.

**Article 893. If the testator leaves no legitimate descendants, but leaves legitimate ascendants, the surviving spouse shall have a right to one-fourth of the hereditary estate.**

**This fourth shall be taken from the free portion of the estate.**

Constant Legitime: Whenever there are legitimate ascendants, the legitime of the surviving spouse is taken from the free portion. The legitime of the spouse does not depend on the number of ascendants. It will always be 1/4 whenever the spouse concurs with legitimate ascendants.

**Article 894. If the testator leaves illegitimate children, the surviving spouse shall be entitled to one third of the hereditary estate of the deceased and the illegitimate children to another third. The remaining third shall be at the free disposal of the testator.**

Summary of Legitime of the Surviving Spouse: Generally, the legitime of the surviving spouse varies depending on which compulsory heirs concur with the surviving spouse. Hence, the legitime of the surviving spouse is as follows:

1. If the surviving spouse concurs with only one legitimate

child, she will get 1/4 of the estate as legitime, even if there are illegitimate children. (Article 892)

2. If the surviving spouse concurs with two or more legitimate children then the surviving spouse is entitled to a share equal to the legitime of each of the legitimate children. (Article 892)

3. If the surviving spouse concurs with legitimate ascendants, the surviving spouse is entitled to 1/4 of the estate. (Article 893)

4. If the surviving spouse concurs only with illegitimate children, the surviving spouse is entitled to 1/3 of the estate (Article 893)

5. If the surviving spouse concurs with legitimate children or descendants and illegitimate children, the surviving spouse is entitled to a share equal to the legitime of each of the legitimate children. (Arts. 897 and 898)

6. If the surviving spouse concurs with legitimate ascendants and illegitimate children, the surviving spouse is entitled to 1/8 of the estate. (Article 899)

All the legitimate children or descendants of the deceased spouse are included whether they are of the marriage recently dissolved by death or of any previous marriage.

QUESTION AND ANSWERS ON LEGITIMES:

1. <u>Surviving spouse concurring with one legitimate child</u>: Supposing T dies leaving an estate worth P100,000.00 and the surviving relatives are A, a legitimate child, and S, the surviving spouse. What are their corresponding legitimes? A's legitime is 1/2 of the estate or P50,000.00 and S' legitime is 1/4 of the estate or P25,000.00. The remaining 1/4 or P25,000.00 is the free disposal.

2. <u>Surviving spouse concurring with legitimate children</u>: Supposing T had left four legitimate children, A, B, C and D, and one surviving spouse, the estate being worth P100,000.00. How much is the legitime of each?

Since the total legitime of the legitimate children is 1/2 of the estate, there being four of them, we divide said portion equally among the four. Thus, P50,000.00 divided by four equals P12,500.00. Hence, each legitimate child gets P12,500.00 (1/8 of the estate). The surviving spouse gets a share equal to the share of each legitimate child. Accordingly, she likewise gets P12,500.00. The remaining 3/8 portion or P37,500.00 is the free disposal.

3. Surviving spouse concurring with parents/ascendants: Supposing T died leaving his legitimate parents F and M, and his wife W, without, however, leaving any children or descendants. His estate was worth P100,000.00. Who are entitled to legitimes and how much are their respective legitimes? The legitime of the legitimate parents is 1/2 of the estate to be divided equally between them. Hence, F and M gets P25,000.00 each. W gets 1/4 of the estate to be taken from the free portion equivalent to P25,000.00. The remaining 1/4 or P25,000.00 is the free disposal.

4. Surviving spouse concurring with illegitimate children: Supposing T died leaving S, his spouse and 2 illegitimate children A and B. His estate was worth P90,000.00 who are entitled to legitimes and how much are their respective share? S the surviving spouse is entitled to 1/3 of the estate and the 2 illegitimate children are likewise entitled to another third divided equally among them. Hence, S will get P30,000.00 and A and B will each get P15,000.00 (P30,000.00 divided by 2). The remaining 1/3 or P30,000.00 is the free disposal.

**Article 895. The legitime of each of the acknowledged natural children and each of the natural children by legal fiction shall consist of one-half of the legitime of each of the legitimate children or descendants.**

**The legitime of an illegitimate child who is neither an acknowledged natural, nor a natural child by legal fiction, shall be equal in every case to four-fifths of the legitime of an acknowledged natural child.**

**The legitime of the illegitimate children shall be taken from the portion of the estate at the free disposal of the testator, provided that in no case shall the total legitime of such illegitimate children exceed that free portion, and that the legitime of the surviving spouse must first be fully satisfied.**

Effect of Family Code: Due to the advent of the Family Code which removed all other kinds of illegitimate children, Article 895 has been impliedly repealed.

**Article 896. Illegitimate children who may survive with legitimate parents or ascendants of the deceased shall be entitled to one-fourth of the hereditary estate to be taken from the portion at the free disposal of the testator.**

Legitime of Illegitimate Children: Whenever there are no legitimate children or descendants, the legitime of the illegitimate children will always be 1/4 whenever they concur with legitimate ascendants who in turn will receive 1/2 of the estate.

POINT TO PONDER:

DISTRIBUTION TO AN ILLEGITIMATE CHILD (BAR 2005): Emil, the testator, has three legitimate children, Tom, Henry and Carlito; a wife named Adette; parents named Pepe and Pilar; an illegitimate child, Ramon; brother, Mark; and a sister, Nanette. Since his wife Adette is well-off, he wants to leave to his illegitimate child as much of his estate as he can legally do. His estate has a net amount of P1,200,000.00, and all the above-named relatives are still living. Emil now comes to you for advice in making a will. How will you distribute his estate according to his wishes without violating the law on testamentary succession?

**Article 897. When the widow or the widower survives with legitimate children or descendants, and acknowledged natural children, or natural children by legal fiction, such surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children which must be taken from that part of the estate which the testator can freely dispose of.**

**Article 898. If the widow or widower survives with legitimate children or descendants, and with illegitimate children other than acknowledged natural, or natural children by legal fiction, the share of the surviving spouse shall be the same as that provided in the preceding article.**

**Article 899. When the widow or widower survives with legitimate parents or ascendants and with illegitimate children, such surviving spouse shall be entitled to one-eight of the hereditary estate of the deceased which must be taken from the free portion, and the illegitimate children shall be entitled to one-fourth of the estate which shall be taken also from the disposal portion. The testator may freely dispose of the remaining one-eight of the estate.**

Legitime of illegitimate children: The legitime of the illegitimate child is a variable legitime because the amount varies depending on which compulsory heirs concur with the illegitimate child. Hence, the legitime of the illegitimate child is as follows:

1. An illegitimate child is entitled to a legitime of 1/2 of the share of a legitimate child. (Article 176 – Family Code, Article 895 — Civil Code.)

2. If the illegitimate children concur with legitimate ascendants, the illegitimate children are entitled to 1/4 of the estate. (Article 896.)

3. If the illegitimate children concur with legitimate children and the surviving spouse, each illegitimate child is entitled to a legitime of 1/2 of the share of a legitimate child. (Article 176 – FC, Arts. 897 and 898 – CC.)

4. If the illegitimate children concur with legitimate ascendants and the surviving spouse, the illegitimate children shall be entitled to 1/4 of the estate. (Article 899.)

5. If the illegitimate children concur with the surviving spouse, the illegitimate children shall be entitled to 1/3 of the estate. (Article 894)

Under the Family Code, there are no more spurious children. Both the natural and the spurious children are simply called illegitimate children having exactly the same rights. Each of them gets half the share of each legitimate child, which will be taken from the free portion after the share of the surviving spouse has been satisfied.

QUESTIONS AND ANSWERS ON LEGITIME:

1. Illegitimate children concurring with legitimate children: Supposing T died leaving A, his legitimate child and B and C, his illegitimate children. His estate was worth P100,000.00. What are the respective legitimes of each? A, the legitimate child, is entitled to 1/2 of the estate. Hence, A gets P50,000.00 whereas B and C being illegitimate children, gets 1/2 of what A, the legitimate child got. Hence, B and C gets P25,000.00 each. Since the entire estate was used up to pay for the legitimes, then there is no more free disposal.

2. Illegitimate children concurring with parents: Supposing T died leaving F and M, his legitimate parents, and A and C, his illegitimate children. His estate was worth P100,000.00. What are the legitimes of each? There being no legitimate descendants, F and M, the legitimate ascendants gets 1/2 of the estate as legitime divided equally between them. Hence, F and M gets P25,000.00 each. A and C gets 1/4 of the estate or P25,000 as their legitime. (A gets P12,500 while C gets P12,500). The remaining 1/4 or P25,000.00 constitute the free disposal.

3. Illegitimate children concurring with legitimate parents and spouse: Supposing T died leaving F and M, his parents, S, his spouse, A and B his illegitimate children. His estate was worth P100,000.00. What are the respective legitimes of each? F and M, the legitimate ascendants, gets 1/2 of the estate divided equally between them. Hence, they each get P25,000.00. A and B, the illegitimate children, gets 1/4 of the estate

divided equally between them. Accordingly, they each get P12,500.00. S, the surviving spouse gets 1/8 of the estate of P12,500.00. The remaining 1/8 portion of the estate or P12,500.00 constitute the free disposal.

4. Illegitimate children concurring with legitimate children and spouse: Supposing T died leaving S, his spouse, A and B his legitimate children and C and D, his illegitimate children. His estate was worth P100,000.00. What are the respective legitimes of each? A and B, the legitimate children will get 1/2 of the estate divided equally between them. Hence, they each get P25,000.00. S, the surviving spouse gets the same share as that of one legitimate child, hence she will receive P25,000. C and D, the illegitimate children, will get 1/2 of the legitime of one legitimate child, hence C will receive P12,500 and D will receive P12,500 as legitime. With the concurrence of these heirs, there will be no free disposal.

5. Illegitimate children concurring with spouse: Supposing T died leaving S, his spouse, and A and B, his illegitimate children. His estate was worth P90,000.00. What are the respective legitimes of each? The legitime of S is 1/3 of the estate. Thus, S gets P30,000.00. A and B, the illegitimate children also gets 1/3 of the estate divided equally between them. Hence, they each get P15,000.00. The remaining 1/3 or P30,000.00 constitute free disposal.

**Article 900. If the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate of the deceased spouse, and the testator may freely dispose of the other half.**

**If the marriage between the surviving spouse and the testator was solemnized in articulo mortis, and the testator died within three months from the time of the marriage, the legitime of the surviving spouse as the sole heir shall be one-third of the hereditary estate, except when they have been living as husband and wife for more than five years. In the latter case, the legitime**

**of the surviving spouse shall be that specified in the preceding paragraph.**

Legitime when there is only one compulsory heir: When there are no other concurring compulsory heirs, the general rule is that the surviving spouse (or any compulsory heir) will be entitled to 1/2 of the estate as legitime. However, as an exception, if the deceased spouse died within three months after contracting marriage in articulo mortis with the surviving spouse, then legitime is reduced to 1/3 of the estate. But as an exception to the exception, even if the deceased spouse died within three months after contracting marriage in articulo mortis with the surviving spouse, if they have been living as husband and wife for more than five years prior to the marriage, then the surviving spouse is entitled to 1/2 of the estate as legitime.

**Article 901. When the testator dies leaving illegitimate children and no other compulsory heirs, such illegitimate children shall have a right to one-half of the hereditary estate of the deceased.**

**The other half shall be the free disposal of the testator.**

Legitime when there is only one compulsory heir: Illegitimate children are entitled to 1/2 of the estate as legitime when there are no other concurring compulsory heirs.

**Art. 902. The rights of illegitimate children set forth in the preceding articles are transmitted upon their death to their descendants, whether legitimate or illegitimate.**

Right of Representation: Rights of illegitimate children are transmitted to their descendants, regardless of filiation. In contrast, rights of legitimate children are transmitted only to their legitimate descendants.

**Art. 903. The legitime of the parents who have an illegitimate child, when such child leaves neither legitimate descendants, 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 parents is one-fourth of the hereditary estate of the child, and that of the surviving spouse also one-fourth of the estate.**

Order of Intestate Succession of Illegitimates: Parents of illegitimate children are entitled to 1/2 of the estate as legitime. Parents are not entitled to legitime whenever there are children. If parents concur with the widow or widower, parents are entitled to 1/4 of the estate while the widow or widower is entitled to 1/4.

**Art. 904. The testator cannot deprive his compulsory heirs of their legitime, except in cases expressly specified by law.**

**Neither can he impose upon the same any burden, encumbrance, condition, or substitution of any kind whatsoever.**

Reinforcement of the concept of Legitime: Since the legitime is that part of the estate that is reserved by law for compulsory heirs, the testator can only deprive compulsory heirs of their legitime in cases of disinheritance — the only instance provided for by law. The testator is also prohibited from imposing any condition or burden inasmuch as legitime is given to the compulsory heirs by law.

**Art. 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.**

Reinforcement of the concept of Future Inheritance: Any renunciation of future legitime is void. Hence, despite such compromise or renunciation, the compulsory heir can still claim legitime. However, such compulsory heir must bring to collation whatever he received by virtue of the compromise or renunciation. The heir is bound to collate whatever he received since the same is tantamount to a donation.

**Art. 906. Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied.**

Completion: Article 906 is the remedy when a compulsory heir is not preterited but was deprived of the full amount of his/her legitime. Article 906 is also the remedy whenever a surviving spouse was not given anything in the will or by intestacy since she cannot claim preterition under Article 854.

**Article 907. Testamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive.**

Reduction: Article 907 is the remedy whenever a legacy/devise or even an institution impairs the full amount of the legitime of a compulsory heir. The reduction of these dispositions will only be to the extent that the legitime is impaired.

Illustration: Supposing T died with a will with the sole disposition of giving a legacy in favor of his friend F in the amount of P40,000. His surviving relatives were A, his legitimate child and B, his illegitimate child. His estate was worth P100,000.00. The respective legitimes will be A = P50,000.00 while B = P25,000.00. Take note that the legitime of the illegitimate child is taken from the free portion. If we pay the legacy of F in the amount of P40,000 from the free disposal, the legitime of B will be impaired. Hence, this particular disposition, although expressly stated by the testator, will have to be reduced to P25,000 only.

1. Distribution without Article 907: A = 50,000 as legitime; B = 10,000 as legitime; F = 40,000 as legacy.
2. Distribution with Article 907: A = 50,000 as legitime; B = 25,000 as legitime; F = 25,000 as legacy.

Remedies in case of impairment of legitime: Only compulsory heirs may resort to these remedies precisely because these provisions are remedies in case of impairment of legitimes.

1. Impairment by testamentary dispositions: If the impairment is total, then there may be preterition if the compulsory heir preterited is either an ascendant or descendant. Article 854 annuls the institution and, if inofficious as when they impair legitime, legacies and devises are also reduced. If the impairment is partial,

then the compulsory heir is entitled to completion under Article 906 and reduction of testamentary dispositions under Article 907.

2. Impairment by donations. If the testator has dissipated the estate through the giving of donations inter vivos, then Article 1061 shall be applicable where all donations inter vivos or dispositions made during the testator's lifetime shall be collated back to the estate.

<u>Allowable "impairment" of the legitime</u>: Generally, legitime consists of a fraction of the entire mass of the hereditary estate expressly reserved by law for the compulsory heirs. However, changes in legitime may be allowed in the following cases:

1. *Article 1083; prohibition on partition:*

   *"Every co-heir has a right to demand the division of the estate unless the testator should have expressly forbidden its partition, in which case the period of indivision shall not exceed 20 years as provided in article 494. This power of the testator to prohibit division applies to legitime."*

2. *Article 1080; legitime in cash instead of partition:*

   *"Should a person make a partition of his estate by an act inter vivos, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.*

   *A parent who, in the interest of his or her family, desires to keep any agricultural, industrial or manufacturing enterprise intact, may avail himself of the right granted him in this article; by ordering that the legitime of the other children to whom the property is not assigned, be paid in cash."*

3. *Article 159, Family Code; prohibition of partition of family home:*

   *"The family home shall continue despite the death of one or both spouses or of the unmarried head of the*

*family for a period of 10 years or for as long as there is a minor beneficiary, and the heirs cannot partition the same unless the court finds compelling reasons therefor. This rule shall apply regardless of whoever owns the property or constituted the family home."*

**Article 908. To determine the legitime, the value of the property left at the death of the testator shall be considered, deducting all debts and charges, which shall not include those imposed in the will.**

**To the net value of the hereditary estate, shall be added the value of all donations by the testator that are subject to collation, at the time he made them.**

Steps in determining legitime:

1. Determine the gross value of the property which remains at the time of the testator's death.
2. Determine the obligations, debts and charges which have to be paid out or deducted from the value of the property left.
3. Determine the difference between the assets and the liabilities, giving rise to the net hereditary estate.
4. Add to the net value thus found the value of donations subject to collation. (The value of the collationable donation is the fair market value of the property at the time of the donation.)
5. Determine the amount of legitime by getting from the total thus found, the portion that the law provides as the legitime of each respective compulsory heir.

**MATEO v. LAGUA**
**29 SCRA 864**

*FACTS:* Cipriano and Alejandra Lagua donated lots to their son Alejandro Lagua in consideration for the latter's marriage to Bonifacia Mateo. When Alejandro died, Bonifacia undertook the farming of the donated lots while living with Cipriano. For a while, Cipriano was giving Bonifacia some harvest in the

land. When Cipriano stopped giving, Bonifacia filed suit, won, and was given possession of the two lots plus damages. After sometime, Cipriano executed a deed of sale over the same two parcels of land to another son, Gervasio. When she learned of the subsequent registration of such properties in the name of Gervasio, Bonifacia sought the annulment of the deed and the recovery of the properties. Bonifacia won again and were given possession of the lands once again. Not giving up, Cipriano filed suit against Bonifacia for reimbursement of expenses incurred for the improvements introduced in the land. Cipriano and Gervasio also filed another suit seeking for the annulment of the donation of the lots insofar as the 1/2 portion. On November 12, 1958, while the cases were pending, Cipriano died. Eventually, the two cases filed against Bonifacia were decided in her favor. Upon appeal of the case seeking the nullification of the donation, the appellate court declared that the same was inofficious since it exceeded the value that Cipriano could have given by will.

*ISSUE:* Whether such donations may be reduced by virtue of collation?

*RULING:* Yes, working on the assumption that the lots in question were the only properties composing the estate of Cipriano, the donations may suffer a reduction as they impair the legitimes of compulsory heirs. In this case, all donations, including propter nuptias may be reduced for being inofficious. As to whether they are inofficious, Article 908 is applicable.

**VDA. DE TUPAS v. BRANCH XLIII, RTC OF NEGROS OCCIDENTAL**
**No. L-65800, October 3, 1986**

*FACTS:* Tupas died childless in Bacolod City, leaving his widow as his sole compulsory heir. He left a will which was duly admitted to probate. Among his assets listed in his will were two parcels of land which were however no longer part of his estate upon his death since he donated them to the Tupas Foundation. Claiming that such donations left her destitute, the widow filed suit to have the donations declared inofficious. The trial court dismissed her complaint stating among others that since the donation was made to a stranger, the same is not subject to collation.

*ISSUE:* Is the donation subject to collation?

*RULING:* Yes. Donations are only subject to the limitation that the donor cannot give more than what he can give by will. The fact that the property no longer actually formed part of the estate of the donor at the time of death cannot be asserted to prevent its collation. The fact that the property donated is separate property is also not a defense against collation. Since the donation was made to a stranger, the same is imputable to the free portion and subject to reduction in case it impairs the legitime of compulsory heirs.

As set forth in Articles 908, 909, and 910, the step by step procedure to collate is outlined below:

1. Determination of the value of the property which remains at the time of the testator's death;
2. Determination of the obligations, debts, and charges which have to be paid out or deduced from the value of the property thus left;
3. The addition to the net value thus found, of the value, at the time they were made, of donations subject to collation; and
4. The determination of the amount of legitimes by getting the total thus found and the portion that the law provides as the legitime of each respective compulsory heir.

<u>Suggested formula in the determination of legitime</u>:

Value of Property existing at the time of death (FMV)
Less: Debts and Charges (Pre-existing Debts)

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Net Hereditary Estate

Add: Collationable Donations

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Theoretical Net Hereditary Estate

<u>Gross value of the estate</u>: In the case of administration proceedings, the executor or administrator, within 3 months

from his appointment, shall return to the court a true inventory or appraisal of all the real and personal estate of the deceased which have come into his possession or knowledge. If there are no administration proceedings, it is the fair market or actual value of the properties which is taken into consideration, and without regard to any sentimental value.

QUESTION AND ANSWERS ON COLLATION:

1. Situation: (straightforward collation)
   a. Estate = P20 M
   b. Legitimate Children = A, B, C, and D.
   c. Donations to X of P8M (1998), to A of P6M (2001), to M of P4M (2003), to N of P2M (2005)
2. Tasks:
   a. Determine the legitime.
   b. Determine whether the donations are inofficious.
   c. Distribute the estate.
3. Suggested Answer:
   a. Theoretical Estate = P20M + P20M (total donations) = P40M; Strict Legitime = 40/2 = P20M; hence legitime is P5M per legitimate child.
   b. The donations are not inofficious since all donations imputable to free portion (P14M + P1M) can be accommodated. (Free Disposal = P20M — P14M (donation to strangers) — P1M (excess donation to A) = P5M)
      i. Impute donations to compulsory heirs against respective legitimes.
      ii. Impute donations to strangers (P14M) to the free portion.
      iii. Impute donations to compulsory heirs in excess of their legitime. (P6M donation to A less P5M legitime of A= P1M)

c. Distribute the estate.

| Heir/Donee | Legitime | Free Disposal | Donation | Total |
|---|---|---|---|---|
| A | (0) | 1.25 | 6 | P1.25M + P6M |
| B | 5 | 1.25 | | P6.25M |
| C | 5 | 1.25 | | P6.25M |
| D | 5 | 1.25 | | P6.25M |
| X | | | 8 | +P8M |
| M | | | 4 | +P4M |
| N | | | 2 | +P2M |
| | 15 | 5 | 15 | P20M + P20M |

**Article 909. Donations given to children shall be charged to their legitime.**

**Donations made to strangers shall be charged to that part of the estate of which the testator could have disposed by his last will.**

**Insofar as they may have been inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code.**

Donations to collate: If the donation is made to compulsory heirs, it is chargeable to their legitimes and, if inofficious, then to the free disposal. If the donation is made to strangers, it is chargeable against the free disposal. In both cases, if they exceeded the disposable portion, then they are subject to reduction. All donations, even if expressly stated as non-collationable by the testator are subject to collation. If the donation is expressly declared as non-collationable, it shall simply mean that the same shall be chargeable to the free disposal.

**Article 910. Donations which an illegitimate child may have received during the lifetime of his father or mother shall be charged to his legitime.**

**Should they exceed the portion that can be freely disposed of, they shall be reduced in the manner prescribed in this Code.**

Duty to collate: Donees, whether a compulsory heir or a stranger, have the duty to collate. When the compulsory heir

collates the donation, the value shall be imputed against his legitime, because what may be received by way of donation during the lifetime of the testator shall be considered as an advance of legitime. Nevertheless, the spouse has no obligation to collate because she has nothing to collate; donations between spouses are void. If a husband gives his wife a donation, such gift still forms part of the husband's estate because the donation being void, ownership never transferred to the wife. When a non-compulsory heir collates the donation, the value of the donation shall be imputed against the free portion.

**Article 911. After the legitime has been determined in accordance with the three preceding articles, the reduction shall be made as follows:**

**1) Donations shall be respected as long as the legitime can be covered, reducing or annulling, if necessary, the devises or legacies made in the will;**

**2) The reduction of the devises or legacies shall be pro rata, without any distinction whatsoever.**

**If the testator has directed a certain devise or legacy be paid in preference to others, it shall not suffer any reduction until the latter have been applied in full to the payment of the legitime.**

**3) If the devise or legacy consists in usufruct or life annuity, whose value may be considered greater than that of the disposable portion, the compulsory heirs may choose between complying with the testamentary provision and delivering to the devisee or legatee the part of the inheritance of which the testator could freely dispose.**

Reduction: Since it is possible that because of certain dispositions, the estate might not be enough to pay the legitimes, the donations previously given shall suffer a reduction. There are two ways to reduce. One involves a situation where there are compulsory heirs inheriting (Article 911). Another involves a situation where no compulsory heirs inherit (Article 950). In both cases, priority shall be given to donations inter vivos over the preferred legacies and devises because priority in time is priority in right. Between all donations inter vivos, the rule is last in first out.

Reduction if there are compulsory heirs inheriting: The distribution of the estate should follow this procedure:

1) Pay the legitimes
2) Honor donations which are not inofficious
3) Pay the preferred legacies and devices
4) Pay other legacies and devises

Reduction if there are no compulsory heirs inheriting: The estate should pay the legacies in the following order:

1) Remuneratory legacies and devises
2) Preferred legacies and devises
3) Legacies for support
4) Legacies for education
5) Legacies for specific things
6) Other legacies and devises

**Article 912. If the devise subject to reduction should consist of real property, which cannot be conveniently divided, it shall go the devisee if the reduction does not absorb one-half of its value; and in a contrary case, to the compulsory heirs; but the former and the latter shall reimburse each other in cash for 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.**

Special Rule in Devises: This Article applies when the real property subject matter of the devise cannot be divided. The rule states that if the reduction does not absorb one-half of its value, it shall go the devisee. If the reduction absorbs half of the value, then it shall go to the compulsory heirs. Either way, the person who will receive the real property (devisee or the compulsory heir) will have to reimburse the other in cash.

**Article 913. If the heirs or devises do not choose to avail themselves of the right granted in the preceding article, 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.**

Special Rule in Devises: This Article applies when neither the devisee nor any of the compulsory heirs opted to exercise the right of keeping (or getting) the devise and reimbursing the other as provided in Article 912. However, if any heir fails to exercise this right, the rule states that the real property shall be sold at public auction, the proceeds of which will be used to pay the deficiency in the legitime of the compulsory heir.

**Article 914. The testator may devise and bequeath the free portion as he may deem fit.**

Free Portion v. Legitime: Legitime is the portion of the estate where the law withdraws from the testator the power to control its disposition whereas the free portion is where the testator has the absolute discretion to dispose.

## DISINHERITANCE

**Article 915. A compulsory heir may, in consequence of disinheritance, be deprived of his legitime, for causes expressly stated by law.**

**Articles 916. Disinheritance can be effected only through a will wherein the legal cause therefor shall be specified.**

Application and Nature of Disinheritance: Disinheritance applies only to testamentary succession since it requires the execution of a will. The counterpart of disinheritance in intestate succession is incapacity due to unworthiness. Disinheritance is the deprivation of legitime, thus it only pertains to compulsory heirs. Voluntary heirs cannot be disinherited because they have no legitime. Disinheritance shall also extinguish the legacies and devises which the disinherited heir could have received. If the legitime was deprived, with more reason, the shares in the free portion should be deprived as well. Disinheritance also prevents the heir from inheriting by intestacy. If the will contains only one provision which refers to the disinheritance of an heir and fails to specify the distribution of the estate, then the properties shall

be distributed according to the law on intestacy. The disinherited heir cannot participate in the intestate distribution.

Necessity to specify grounds for disinheritance: Since the law gives the testator this right, he must provide a ground considering that disinheritance is an indivisible penalty. As part of due process, before a compulsory heir is deprived of his legitime, the ground must be stated in the will AND proven. If the ground is not stated in the will or one which is not provided for under the law or if the ground is not proven, the disinheritance becomes ineffective despite the existence of a valid will.

**Articles 917. 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.**

Burden of proof: The person who wants to give effect to the disinheritance has the burden of proving the existence of the ground for disinheritance by showing clear, substantial and convincing evidence to show that the ground existed at the time the will was executed. The other compulsory heirs are therefore given the burden since it will be to their benefit if the disinheritance is given effect.

Requisites of a valid disinheritance:

1) The will disinheriting a compulsory heir must be formally valid. Disinheritance deprives one of his statutory rights, thus there is need to prove that the will is authentic and the testator had the capacity to execute the same.

2) The cause for the disinheritance must be stated in will. As part of due process, since disinheritance accuses the compulsory heir of a wrongdoing, he must be given a chance to refute the testator's belief or accusation.

3) The cause for the disinheritance is that provided by law. The reason for the punishment of disinheritance must not be capricious or whimsical.

4) There must be proof that such ground for disinheritance exists.

**Article 918. Disinheritance without a specification of the cause, or for a cause the truth of which, if contradicted, is not proved, or which is not one of those set forth in this Code, shall annul the institution of heirs insofar as it may prejudice the person disinherited; but the devices and legacies and other testamentary dispositions shall be valid to such extent as will not impair the legitime.**

Ineffective disinheritance: Article 918 sets forth the instances when disinheritance becomes ineffective.

1. Without a cause: (e.g. "I disinherit X")
2. Cause is not proven: (For instance, X was disinherited on the ground of false accusation and there was no proof given by any other heir)
3. Cause stated is not one of those provided by law: (e.g. "I disinherit X since he sold my house without my knowledge.")

Effects of ineffective disinheritance: The heir supposed to be disinherited shall be restored to his successional rights to a certain extent. Some jurists say that the heir supposed to be disinherited will be restored to his full successional rights as if the testator did not write a will. Some jurists say that the heir will only be given legitime.

Limited restoration of successional rights: The distribution of the legitime is a distribution by law and not by will. The distribution by intestacy is a distribution based on a set of presumptions made by law. These presumptions include the rules on intestate succession, the enumeration of intestate heirs, their concurrence and exclusions, as well as their respective share as intestate heirs. These shares however are presumably not the preference of the testator if he was given an opportunity to write a will. By making a will and depriving an heir of his legitime, it can be presumed that the testator also wanted to deprive such heir of his share in the free disposal. Thus the mere presence of a valid will, albeit with an ineffective disinheritance, presumed that the testator did not want the heir to participate both in the legitime and in the free disposal of the estate.

Illustration of restoration of successional rights: Supposing you have an estate of P120M and there are 3 legitimate children as the only heirs. In the will, the testator declared that he disinherits A, without specifying the cause. Since the disinheritance is void, the P120M shall be distributed through intestacy. However, the heir supposed to be disinherited shall only be given his legitime. Thus, in this case, the heirs shall receive their respective legitimes of P20M each and half of the estate shall be distributed through intestacy. Since A is excluded, the concurring intestate heirs would be B and C alone, each would get an additional P30M each. A is excluded in the balance of the estate after subtracting the legitime since the only portion of the estate under which A has a statutory right is the legitime.

**Article 919. The following shall be sufficient causes for the disinheritance of children and descendants, legitimate as well as illegitimate:**

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

**(2) 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;**

**(3) When a child or descendants has been convicted of adultery or concubinage with the spouse of the testator;**

**(4) 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;**

**(5) A refusal without a justifiable cause to support the parent or ascendant who disinherits such child or descendant;**

**(6) Maltreatment of the testator by word or deed, by the child or descendant;**

**(7) When a child or descendant leads a dishonorable or disgraceful life;**

**(8) Conviction of a crime which carries with it the penalty of civil interdiction.**

**Article 920. The following shall be sufficient causes 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;**

**(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;**

**(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;**

**(4) When the parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator;**

**(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;**

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

**(7) The refusal to support the children or descendants without justifiable cause;**

**(8) An attempt by one of the parents against the life of the other, unless there has been a reconciliation between them.**

**Article 921. The following shall be sufficient causes for disinheriting a spouse:**

**(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;**

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

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

Grounds for disinheritance: Article 919 prescribes the grounds for disinheriting a descendant, Article 920 enumerates the grounds for disinheriting an ascendant, and Article 921 provides the grounds for disinheriting a spouse. There are a number of grounds which apply to a descendant, an ascendant, and a spouse:

1. Attempt against the life of the testator.
2. Compelling the testator to make a will or to change one already made.
3. Accusing the testator of a crime where the imposable penalty is 6 years or more.

Due to such interlocking grounds, a single act by the heir may be a ground for his disinheritance by a number of different people. Further, some of these grounds for disinheritance are also concurrent grounds for incapacity due to unworthiness under Article 1032.

Attempt against the life of the testator: The requisite prescribed by law is conviction by final judgment and covers any attempt against the life of the testator's spouse, ascendants or descendants. All kinds of children whether legitimate, illegitimate, or adopted, and grandchildren provided that they inherit in their own right shall fall under this ground, as long as they are compulsory heirs with respect to the testator. This ground also includes all the different stages of commission of the crime, such as attempted, frustrated, and consummated. The principal factor to be considered is the intention of the heir. As such, in case there is no intention but only negligence or imprudence attendant to the commission of the crime, there can be no disinheritance under this ground. Further, it does not matter whether you are a principal, an accomplice, or an accessory. The presence of aggravating or mitigating circumstances shall not affect the use of this ground for disinheritance but the presence of justifying or exempting circumstances shall render the disinheritance ineffective. In exempting circumstances, although there is a crime

there is no criminal while in justifying circumstances, there is no crime and no criminal.

**IN RE TARLO'S ESTATE**
Supreme Court of Pennsylvania,
1934. 315 Pa. 321, 172 A 139.

*FACTS:* Albert Tarlo arose early on the morning of November 27, 1930, fired one shot into the brain of his wife, who was asleep in the same room, proceeded to the bedroom of his sleeping daughter, and shot her in the same way, and then turned the pistol on his own head. The wife and the daughter died instantly in their sleep. He survived for a few hours. The daughter left no will. The orphan's court awarded the property to the administrator of the father.

*ISSUE:* What does "finally adjudged" really mean?

*HELD:* Section 23 of the Intestate Act reads as follows: *"No person who shall be finally adjudged guilty, either as principal or accessory, of murder of the first or second degree, shall be entitled to inherit or take any part of the real or personal estate of the person killed, as surviving spouse, heir, or next of kin to such person under the provisions of this act."* Does the word "adjudged" connote final conviction in the court of oyer and terminer? If it does, then of course there can be no blocking of the usual course of descent, as the killer was not tried and convicted. His suicide prevented this. The Court is of the opinion that the language used in the section the expression "shall be finally adjudged guilty" means the judgment of a court of competent jurisdiction to pass on the question of guilt in murder. There must not only be a conviction, but judgment of the court and the judgment in criminal cases is the sentence. It means convicted and sentenced, and the sentence not appealed, or, of appealed, that the judgment of sentence has been affirmed.

<u>Vice in consent</u>: There exists a vice in consent in case the heir compels the testator to make a will or change one already made by fraud, violence, intimidation, or undue influence.

*Art. 1335. There is violence when in order 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.*

*To determine the degree of intimidation, the age, sex and condition of the person shall be borne in mind.*

*Art. 1338. 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.*

*Art. 1337. 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.*

False accusation: This ground entails the malicious accusation by the heir of the testator with a crime punishable by a penalty of 6 years or more and the accusation is found groundless. Thus, if the acquittal is based on failure to establish guilt beyond reasonable doubt or based on insufficiency of evidence or based on an exempting or justifying circumstance, there is no false or malicious accusation. Other ways where one can falsely accuse the testator include concocting a deliberate lie and filing the information in court, testifying against the testator, and refusal to give testimony which is favorable to the testator.

Adultery or concubinage with the spouse of the testator: The conviction need not occur at the time of the execution of the will. But, at the very least, the crime should have been committed at the time of the execution of the will. Should the case be dismissed or if the heir was acquitted, then the disinheritance becomes ineffective or inoperative.

Unjust refusal to give support to the ascendant: Before there can be unjust refusal, there must be an obligation to support. In the case of parents and children, two conditions must be

present for an obligation to support to arise; first, there must be a need for support on the part of the person to be supported and second, there must be sufficient resources on the part of the person obligated to support. Even if such conditions are present, support can still be denied for grounds such as excessive cruelty or abandonment during minority.

Maltreatment by the descendant of an ascendant: While there is no jurisprudence on this ground, it appears that such does not refer to an isolated incident of maltreatment. "By word" connotes instances of verbal abuse whereas "by deed" connotes instances of physical abuse.

Dishonorable or disgraceful life: Whether an act is dishonorable or disgraceful ultimately depends in the eyes of the testator. Factors that may affect the standards of the testator include family history, social and financial standing, and even personal eccentricities – no matter how whimsical or irrational.

Civil interdiction: It appears that this is the only ground which requires the finality of judgment because it is the only time when civil interdiction will be imposed. If the conviction is not yet final, there can be no civil interdiction. Civil interdiction is an accessory penalty of reclusion perpetua or higher.

Abandonment and corruption of children: This ground is not necessarily equated to criminal abandonment as specified in the Revised Penal Code. This ground only contemplates a complete neglect of parental obligations. The inducement of a daughter to be a prostitute also includes the inducement of sons to lead disgraceful or immoral lives.

Loss of parental authority: Since the grounds for the loss of parental authority have been repealed by the Family Code, Articles 228-232 of the Family Code thus provide the grounds for disinheritance under this provision.

*Article 228. Parental authority terminates permanently:*

*(1) Upon the death of the parents;*

*(2) Upon the death of the child; or*

*(3) Upon emancipation of the child.*

*Article 229. Unless subsequently revived by a final judgment, parental authority also terminates:*

*(1) Upon adoption of the child;*

*(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; or*

*(5) Upon judicial declaration of absence of incapacity of the person exercising parental authority.*

*Article 230. 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. 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 order, counsel or example;*

*(3) Compels the child to beg;*

*(4) Subjects the child or allows him to be subjected to acts of lasciviousness.*

*If the degree of seriousness so warrants, or the welfare of the child so demands, the court shall deprive the guilty party of parental authority or 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 therefore has ceased and will not be repeated.*

*Article 232. 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.*

Concepts of loss of parental authority under the Family Code: The Family Code talks of termination, suspension, and permanent deprivation. As a ground for disinheritance, the termination of parental authority must not arise from the death of the child, death of the parent, emancipation of the child at age 18, adoption of the child, appointment of the general guardian, judicial declaration of the abandonment of the child, final judgment in a case involving divestment of parental authority or judicial declaration of absence. Since disinheritance is a form of penalty, the loss of parental authority must arise due to the parent's fault.

Suspension of parental authority: Parental authority may be suspended due to the fault of the parents such as when there is excessive harshness; the giving of corrupt orders, counsels, and example; compelling the child to beg; and subjecting the child to acts of lasciviousness. However, the ground for disinheritance in Article 920 contemplates loss of parental authority and not mere suspension. In Article 231 of the Family Code, depending on the gravity of the offense, suspension can be permanent or temporary. As such, for these grounds of suspension of parental authority to be considered as sufficient grounds for disinheritance, it appears that the suspension must be permanent.

**Article 922. 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.**

Concept of Reconciliation: It is essentially the restitution of mutual feelings and the resumption of normal life as it was before the offense took place. The pardon must refer to the person disinherited and specifically to the acts causing the dis-

inheritance. However, reconciliation does not require any form, it can be express or tacit.

Effect of a subsequent reconciliation: 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.

**Article 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.**

Right of representation in disinheritance: This article allows the children and descendants of "the person disinherited" to take his place and retain the rights of compulsory heirs in respect to the legitime. It provides for representation, but under the law, specifically Article 972, representation is allowed only in the direct descending line, and never in the ascending line. As such, the "person disinherited" in this article only refers to children and descendants of the testator. The effect of disinheritance is to deprive the compulsory heir of all participation in the estate of the testator. But the causes of disinheritance are personal to the disinherited heir, therefore his children and descendants should not be penalized for the guilt or fault is not imputable to them.

## LEGACIES AND DEVISES

**Article 924. All things and all rights which are within the commerce of man may be bequeathed or devised.**

Legacy v. Devise: A legacy is one whose object is a movable property (Article 416) while a devise is one whose object is an immovable property *(Article 415).*

*Art. 415. The following are immovable property:*

*(1) Land, buildings, roads and constructions of all kinds adhered to the soil;*

*(2) Trees, plants, and growing fruits, while they are attached to the land or form an integral part of an immovable;*

*(3) Everything attached to an immovable in a fixed manner, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;*

*(4) Statues, reliefs, paintings or other objects for use or ornamentation, placed in buildings or on lands by the owner of the immovable in such a manner that it reveals the intention to attach them permanently to the tenements;*

*(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried on in a building or on a piece of land, and which tend directly to meet the needs of the said industry or works;*

*(6) Animal houses, pigeon-houses, beehives, fish ponds or breeding places of similar nature, in case their owner has placed them or preserves them with the intention to have them permanently attached to the land, and forming a permanent part of it; the animals in these places are included;*

*(7) Fertilizer actually used on a piece of land;*

*(8) Mines, quarries, and slag dumps, while the matter thereof forms part of the bed, and waters either running or stagnant;*

*(9) Docks and structures which, though floating, are intended by their nature and object to remain at a fixed place on a river, lake, or coast;*

*(10) Contracts for public works, and servitudes and other real rights over immovable property.*

*Art. 416. The following things are deemed to be personal property:*

*(1) Those movables susceptible of appropriation which are not included in the preceding article;*

*(2) Real property which by any special provision of law is considered as personal property;*

*(3) Forces of nature which are brought under control by science; and*

*(4) In general, all things which can be transported from place to place without impairment of the real property to which they are fixed.*

*Art. 417. The following are also considered as personal property:*

*(1) Obligations and actions which have for their object movables or demandable sums; and*

*(2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate.*

Purpose and object of legacy/devise: Legacies and devises allot certain properties of the estate to certain persons as compared to an institution where heirs instituted are given a fractional part without specifying what kind of properties to be given to them. To this extent, legatees and devisees are "preferred" heirs since the testator had allotted specific properties in their favor.

**Article 925. A testator may charge with legacies and devices not only his compulsory heirs but also the legatees and devisees.**

**The latter shall be liable for the charge only to the extent of the value of the legacy or devise received by them. The compulsory heirs shall not be liable for the charge beyond the amount of the free portion given them.**

Parties to a legacy or devise: (1) The testator who orders or charges the legacy; (2) The legatee or devisee who will receive the legacy or devise; (3) The person obliged to deliver the legacy or devise; (4) The administrator who may be appointed by the testator in the will or by the court shall be charged with the delivery of the legacies and devises.

Extent of liability of those persons required to pay the legacies and devisees: With respect to compulsory heirs, their liability is limited only to the portion of the free disposal since his legitime cannot be charged or burdened by the testator. As to voluntary heirs, their liability must not exceed the amount he shall receive; and as to another legatee or devisee, the liability must not exceed the amount of legacy or devise he shall receive.

**Article 926. When the testator charges one of the heirs with a legacy or devise, he alone shall be bound.**

**Should he not charge anyone in particular, all shall be liable in the same proportion in which they may inherit.**

Illustration: With an estate worth P300M, the testator instituted three children as follows: A to 1/2, B to 1/3 and C to 1/6. The testator also stated in the will that he is giving X a friend, a legacy of P60M. The legitime is half of the estate which is P150M with each of the three compulsory heir receiving P50M as their individual legitime. Following the institution, the estate shall therefore be divided as follows:

| | | Legitime: | Amount from the free portion: |
|---|---|---|---|
| A = | P150M | P50M | P150M – P50k = P100M; Subject to legacy |
| B = | P100M | P50M | P100k – P50M = P50M; Subject to legacy |
| C = | P50M | P50M | 0 |

Thus, only the amount received by A and B as voluntary heirs with respect to the free disposal is charged with the legacy of X which must be in the proportion of 2:1. Thus, from the P100M of A's share, the same is charged with P40M; and from the P50M of B's share, the same is charged with P20M. Therefore, the final distribution appears as follows:

A = P50M + (P100M – P40M) = P110M;

B = P50M + (P50M – P20M) = P80M;

C = P50M or legitime only

X = P60M

**Article 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.**

Rationale of the article: From the moment of death of the testator, the heirs become co-owners of the estate. However, the creditors must first be paid before the heirs receive any part of the

estate. Hence, if the heirs take possession of the estate and part of it is lost or damaged, the heirs may have deprived the creditors of a reasonable opportunity to satisfy their claims against that part of the estate lost or damaged.

Thus, the heirs who take possession of the estate, prior to the payment of debts, shall be solidarily liable for the loss or damage. While solidarity is never presumed, Article 927 is one provision wherein solidarity is imposed by law.

**Article 928. The heir who is bound to deliver the legacy or devise shall be liable in case of eviction, if the thing is indeterminate and is indicated only by its kind.**

Application of the article: This article applies only when the things subject of the legacy is generic and the warranty involved is one against eviction. The heir is held liable since in a generic legacy the heir is the one who chooses which property to give. Therefore, such heir should observe good faith in the selection, otherwise he shall be liable for the eviction of the devisees or legatees.

**Article 929. If the testator, heir or legatee owns only part of, or an interest in the thing bequeathed, the legacy or devise shall be understood limited to such part or interest, unless the testator expressly declares that he gives the thing in its entirety.**

Express Declaration: It is possible that the testator, at the time he made the will, did not own the property subject of a devise or legacy in its entirety, e.g. testator co-owns it with another or when the property is subject of a usufruct. In this case, the legacy or devise is limited to such interest, e.g. 50% of the property or mere naked title unless the testator expressly declares that he is giving such property in its entirety. Such express order thus directs the executor/administrator to acquire whatever interest the testator did not have so that the entire property can be delivered to the named legatee or devisee.

**Article 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. But if the thing bequeathed, though**

**not belonging to the testator when he made the will, afterwards becomes his, by whatever title, the disposition shall take effect.**

Void Disposition; Erroneous belief: The disposition is void if the thing subject of a legacy or devise was owned by a third person but the testator erroneously believed that the same was his. The law nullifies the disposition since the consent in giving such legacy or devise was attended by mistake.

No erroneous belief: By implication, the disposition is valid if the thing subject of a legacy or devise was owned by a third person and the testator knew fully well that the same was not his. Such disposition can be interpreted as an order for the administrator or executor to acquire such thing to be delivered to the named legatee or devisee.

**Article 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 excessive price therefore, the heir or the estate shall only be obliged to give the just value of the thing.**

Order to Acquire: Some jurists submit that if the thing subject of a specific legacy or devise was owned by a third person, the testator must expressly order its acquisition. In the will, the testator must expressly declare that such property be acquired. Other jurists submit that there is no need for such express order. The disposition itself can be interpreted as an order for the administrator or executor to acquire such thing to be delivered to the named legatee or devisee. If the thing subject of a legacy or devise was owned by a third person and the testator knew fully well that the same was not his, the mere bequest ought to be construed as an order. To hold otherwise will cast some doubts on the presence of soundness of mind on the part of such testator.

Just Value: In case the owner refuses to sell or demands an excessive price, the remedy provided by law is to just give the legatee or devisee a "just value" of the thing. Just value has been used under the law whenever the government exercises its power of eminent domain. In this case, it can be fixed by designated

commissioners or third party assessors. Just value can simply be the fair market value of the thing to be acquired or the price that a buyer is willing to buy and the price that a seller is willing to sell.

**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 an interest therein.**

**If the testator expressly orders that the thing be freed from such interest or encumbrance, the legacy or devise shall be valid to that extent.**

Void Disposition; Thing belonging to Beneficiary: The disposition is void if, at the time of the making of the will, the thing subject of a legacy or devise was already owned by the legatee or devisee himself. The law nullifies the "impossible" disposition which can no longer be carried out. Should there be an interest (e.g., usufruct or mortgage) by others in the thing, the testator must expressly state that the thing be freed of such encumbrance for the disposition to be valid.

**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 devisee, but if it has been acquired by onerous title he can demand reimbursement from the heir or the estate.**

Void Disposition; Subsequent Disposition: The disposition is still void if the thing subject of a legacy or devise was owned by the legatee/devisee even though the latter has alienated the thing subject of the legacy or devise. After the alienation, the legatee/devisee can demand reimbursement only if he acquired the thing by onerous title.

Summary of the Rules: In the making of the legacy or devise, there is a need to determine the ownership of the property at the time of the execution of the will.

1. Owned by Testator: Naturally, the legacy shall be valid if the testator is the owner at the time of the making of the legacy. It will be subject to reduction only when the same is inofficious applying the rules in Articles 911 or 950.
2. Owned by Legatee/Devisee: If the property belongs to the legatee; the legacy shall be void if ownership was vested upon writing of the will; however, if the property was alienated by the legatee/devisee and subsequently acquired by the beneficiary, the heir shall be reimbursed if the acquisition is via onerous title.
3. Owned by a Third Person: If a third person owns the property, then the legacy shall be valid if there is an order to acquire the same; otherwise, the legacy shall be void.

**Article 934. If the testator should bequeath or devise something pledged or mortgaged to secure a recoverable debt before the execution of the will, the estate is obliged to pay the debt, unless a contrary intention appears.**

**The same rule applies when the thing is pledged or mortgaged after the execution of the will.**

**Any other charge, perpetual or temporary, with which the thing bequeathed is burdened, passes with it to the legatee or devisee.**

Rule when property subject to an encumbrance: In the absence of a contrary intent by the testator, said encumbrance must be discharged for if the testator intended to give a gift, the devisee or legatee must not be required to pay anything in order to perfect his title. This article however only applies when the property given secures a monetary debt before the execution of the will. If the obligation secured is not monetary, as when the property secures the recognizance of a prisoner, the encumbrance cannot be discharged by payment by the estate. The property will be given to the beneficiary together with such encumbrance.

**Article 935. The legacy of a credit against a third person or of the remission or release of a debt of the legatee shall be effective**

**only as regards that part of the credit or debt existing at the time of the death of the testator.**

**In the first case, the estate shall comply with the legacy by assigning to the legatee all rights of action it may have against the debtor. In the second case, by giving the legatee an acquittance, should he request one.**

**In both cases, the legacy shall comprise all interests on the credit or debt which may be due the testator at the time of his death.**

Legacy of Credit v. Legacy of Remission: It is a legacy where the subject is an intangible movable property. In a legacy of credit, the right to collect the debt from another person is bequeathed to the legatee; whereas, in a legacy of remission, the right to collect the debt from the legatee himself is extinguished by condonation. The credits assigned or condoned are only those existing at the time of death of the testator.

| LEGACY OF CREDIT | LEGACY OF REMISSION |
|---|---|
| 1. It involves three parties: (a) the testator (who is a creditor); (b) a debtor; and a (c) legatee. | 1. It involves two parties: (a) the testator (who is a creditor); and (b) a legatee (who is a debtor) |
| 2. The testator executes a will and gives (assigns) the credit to the legatee. Should the testator die while the debt is outstanding, the debtor must pay the legatee. | 2. The testator executes a will saying that if at the time of his death, the debt is still outstanding; the legatee does not need to pay. He condones the debt by will. |
| 3. The legatee obtains a receivable from the testator. The legatee acquires the right to demand payment. | 3. The legatee-debtor's debt is extinguished by the legacy granted to him by the testator. The legatee is freed from his obligation to pay. |

Types of a Legacy of Credit: A legacy of credit may either be specific or generic.

| SPECIFIC LEGACY | GENERIC LEGACY |
|---|---|
| 1. A specific legacy of credit is one wherein the credit to be given is particularized in the will.<br>2. The amount of such credit is the amount still outstanding at the death of the testator. | 1. A generic legacy of credit is a universal assignment of credits covering those in existence at the time of the execution of the will.<br>2. It comprises those existing at the time of the execution of the will, but not subsequent ones. |

**Article 936. The legacy referred to in the preceding article shall lapse if the testator, after having made it, should bring an action against the debtor for the payment of his debt, even if such payment should not have been effected at the time of his death.**

**The legacy to the debtor of the thing pledged by him is understood to discharge only the right of pledge.**

Revocation of Legacy by Implication: A legacy of credit as well as a legacy of remission is deemed revoked if, after the making of the will that granted such legacy, the testator pursues such debt. Some jurists believe that the testator must file a collection case in court since the law uses the term "bring an action" against the debtor. Other jurists believe that the act of sending a demand letter will be sufficient to revoke such legacy. The more reasonable interpretation is the latter considering that (1) the law did not use the term "legal action" which would presuppose the filing of a case, (2) the filing of a demand letter can be construed as an "action against the debtor," and (3) the rationale for such revocation is triggered by any positive act on the part of the testator to enforce his debt. Hence, the moment the testator performs any act that seeks to enforce payment, Article 936 is applicable.

**Article 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.**

Coverage of Generic Legacy of Release: A generic legacy of credit which covers all debts at the time of the execution of the will. Subsequent ones are not covered unless the testator provides language that will contemplate all debts.

**Article 938. A legacy or devise made to a creditor shall not be applied to his credit, unless the testator so expressly declares.**

**In the latter case, the creditor shall have the right to collect the excess, if any, of the credit or of the legacy or devise.**

Necessity of the Consent: Though a legacy can be made to apply to a credit, the legacy to be effective needs the prior consent of the creditor. A legacy subject to the partial application on the testator's debt is not a pure legacy but is a partly onerous/partly gratuitous legacy which needs the prior consent of the legatee before it becomes effective. The legacy needs the creditor's consent because it changes the performance of the testator's obligation, consequently, the testator cannot compel the creditor to accept this arrangement inasmuch as the same is similar to a form of novation which requires the consent of the creditor.

**Article 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.**

Payment of Debts:

1. Erroneous Belief: The order of the testator to pay any amount which he be erroneously believed was payable to another will be considered as not written. The law nullifies the same since the consent of the testator was attended by mistake.

2. In Excess: If the testator orders payment in excess of a specified debt, payment will only cover the amount of the actual debt. If there is an error in an order of the payment of a debt, the excess will not be given but the debt must be paid. Any excess will be paid to the legatee only if the intention of the testator provides otherwise. For instance, the testator owes the creditor P5M. Thinking that his debt amounted to P50M and not P5M, he ordered that his debt of P50M be paid. Applying this article, this kind of disposition shall still be valid but only up to the extent of the true amount of the credit.

3. Natural Obligations: As defined in Article 1423, natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. The applicable natural obligations are set forth in the following articles.

*Art. 1425. When without the knowledge or against the will of the debtor, a third person pays a debt which the obligor is not legally bound to pay because the action thereon has prescribed, but the debtor later voluntarily reimburses the third person, the obligor cannot recover what he has paid.*

*Art. 1429. When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer.*

*Art. 1430. When a will is declared void because it has not been executed in accordance with the formalities required by law, but one of the intestate heirs, after the settlement of the debts of the deceased, pays a legacy in compliance with a clause in the defective will, the payment is effective and irrevocable.*

**Article 940. In alternative legacies or devises, the choice is presumed to be left to the heir upon whom the obligation to give the legacy or devise may be imposed, or 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.**

**In alternative legacies or devises, except as herein provided, the provisions of this Code regulating obligations of the same kind shall be observed, save such modifications as may appear from the intention expressed by the testator.**

Alternative legacies and devises: The rules to be applied in alternative legacies and devises are the following rules on alternative obligations:

1. The fulfillment of one or some of the prestations will be sufficient to discharge the obligation.
2. The choice may be given by the testator to the recipient, but should he not do so the right of choice will then fall on the executor or person charged to give the sub-legacy or sub-devisee.
3. It is necessary that the person given the right of choice must communicate such choice within a reasonable period of time.
4. Such right of choice must be exercised with reason.
5. If one of the choices is unavailable, the recipient must not choose it.
6. One must deliver something available.
7. If all the objects are lost, the legacy or devise will no longer be effective as the loss of all the alternatives extinguishes the obligation.

Right to choose: The executor of the estate has the right of choice because in alternative obligations, the right of choice is granted to the obligor, unless provided otherwise. In this

case, since no particular heir is charged, it will be the testator's executor or administrator who will choose.

Conversion to simple obligation: Upon the exercise of the right of choice, the legacy is converted from an alternative obligation to a simple one provided that the exercise of the right of choice is communicated to the other party. The operative act of conversion is notice to the other party that one has already exercised the right of choice.

**Article 941. A legacy of generic personal property shall be valid even if there be no things of the same kind in the estate.**

**A devise of indeterminate real property shall be valid only 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: Even if there are no things of the same kind in the estate upon the death of the testator, a generic legacy is still valid. The executor or administrator is given the obligation to deliver a thing which is neither inferior nor superior in quality. Article 941 is thus similar to the rule in specific legacies contained in Article 931. In the former, the generic legacy is valid and, by express provision of law, the estate is bound to deliver such thing to the legatee. In the latter, the disposition of giving a specific property as a legacy or devise, by implication, can be interpreted as an order for the administrator or executor to acquire such thing to be delivered to the named legatee or devisee.

Generic Devise: In contrast, if there are no things of the same kind in the estate upon the death of the testator, a generic devise is void. It may be surmised that the difference in the treatment of generic legacies and generic devises is due to the inherent difficulty in procuring real property which is neither inferior nor superior in quality (of the same kind) as opposed to personal property.

**Article 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.**

Application of the article: This article applies only when the right of choice is expressly given to one heir. As a result, such person given the right of choice may choose that of a superior or inferior quality as the prohibition in Article 940 with regard to an executor or administration does not apply.

**Article 943. If the heir, legatee or 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.**

Rationale of this Article: If one receives an alternative legacy, he is considered to have inherited such legacy at the point of death. Therefore if the heir survived the testator and is the beneficiary of an alternative legacy, he already inherited the legacy at the time of the testator's death though he still has not exercised the right of choice. However, he cannot receive both legacies. Thus, if the right of choice was given to him and he failed to exercise it during his lifetime; upon his death, his co-heirs will exercise this right of choice because effectively he already inherited the legacies. Should the executor or administrator who is given the right of choice be the one to die before the choice is made; the right to make the choice passes to his successor in office.

**Article 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.**

Harmony with the Family Code: Under the Family Code, support for education, can extend even beyond the age of majority. Under Article 944, a legacy for education may last even beyond the age of majority with a provision that the legatee pursues his/her course diligently.

> *Art. 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family. The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority.*

Under the Family Code, the amount of support depends on the resources of the giver and the needs of the recipient which must concur. Under Article 944, the amount of such legacies for support shall be fixed in accordance with the social standing and the circumstances of the legatee (recipient) and the value of the estate (giver).

**Article 945. If a periodical pension, or a certain annual, monthly, 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.**

Legacy by Installments: This article applies when the subject matter of a legacy is a pension payable by installments. The legatee may ask for the court (or administrator) to deliver the first installment upon the death of the testator. The legacy and/or the obligation to pay certain sums by installments is not extinguished by the death of the legatee since, upon the death of the testator, title to such pensions was transferred to such legatee.

POINT TO PONDER:

> Should the legatee die before the pension in Article 945 is fully paid, will the payments continue and pass to the heirs of the legatee?

**Article 946. If the thing bequeathed should be subject to a usufruct, the legatee or devisee shall respect such right until it is legally extinguished.**

Property subject to a Usufruct: The legatee or devisee acquires a right to the legacy or devise from the moment of the testator's death and after the will has been admitted to probate. However, the actual receipt of the property shall occur only after the court has issued an order of adjudication.

**Article 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.**

Acquisition of property subject of the legacy or devise: The legatee or devisee acquires a right to the legacy or devise from the moment of the testator's death and after the will has been admitted to probate. However, the actual receipt of the property shall occur only after the court has issued an order of adjudication. The order of adjudication shall give the legatee or devisee a right enforceable against the executor or administrator. Furthermore, the fruits and interests of the property pending the order of adjudication shall be delivered to the legatee or devisee following this article.

**Article 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, 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.**

**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 benefited by its increase or improvement, without prejudice to the responsibility of the executor or administrator.**

Entitlement to the Fruits: Article 948 provides the rules regarding fruits and interests of specific legacies and devises whereas Article 949 covers generic ones. Upon the death of the testator, the legatee or devisee acquires the rights to the growing fruits, unborn offspring of animals, and uncollected income but not the income which was due and unpaid before the latter's death. Income due and unpaid before the death of the testator

belongs to the estate and not to the legatee or devisee since the right to such income was transferred only upon death.

Risk of Loss: In case of specific legacies or devises, the legatee or devisee bears the risk of loss and deterioration from the moment of the testator's death. Since possession of such property is suspended until probate of the will and eventual distribution, the executor shall be liable to the legatee or devisee in case the former was at fault or negligent in causing such loss or deterioration.

Improvements: In case of specific legacies or devises, the legatee or devisee acquires the right to improvements from the moment of the testator's death considering that he is the owner of such property albeit possession is suspended.

**Article 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.**

Generic or "Quantity" Legacy or Devise: The legatee or devisee acquires a right to the fruits and interests of the generic legacy or generic devise from the moment of the testator's death only by express provision in the will.

**Article 950. If the estate should not be sufficient to cover all the legacies or devises, their payment shall be made in the following order:**

**(1) Remuneratory legacies or devises;**

**(2) Legacies or 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 a part of the estate;**

**(6) All others *pro rata*.**

Order of Preference: This order of preference is applicable only if there are no compulsory heirs and the estate cannot

accommodate all the legacies and devises given to the voluntary heirs.

(1) Remuneratory legacies or devises;

(2) Legacies or 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 a part of the estate;

(6) All others *pro rata*.

**Article 951. The thing bequeathed shall be delivered with all its accessions and accessories and in the condition in which it may be upon the death of the testator.**

Rationale of this article: This article is based on the right of accession. Article 440 states that: "The ownership of property gives the right by accession to everything which is produced thereby, or which is incorporated or attached thereto, either naturally or artificially."

**Article 952. The heir, charged with a legacy or devise, or the executor or administrator of the estate, must deliver the very thing bequeathed if he is able to do so and cannot discharge this obligation by paying its value.**

**Legacies of money must be paid in cash, even though the heir or the estate may not have any.**

**The expenses necessary for the delivery of the thing bequeathed shall be for the account of the heir or the estate, but without prejudice to the legitime.**

**Article 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.**

Reason for this article: A legatee or devisee cannot simply possess the property but must request for a delivery since there

is a need to determine who has a superior right over the legacy before it can actually be adjudicated to the legatee.

**Article 954. The legatee or devisee cannot accept a part of the legacy or devise and repudiate the other, if the latter be onerous.**

**Should he die before having accepted the legacy or devise, leaving several heirs, some of the latter may accept and the others may repudiate the share respectively belonging to them in the legacy or devise.**

**Article 955. The legatee or devisee of two legacies or devises, 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.**

**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 latter and accept the former, or waive or accept both.**

**Article 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, except in cases of substitution and of the right of accretion.**

**Article 957. The legacy or devise shall be without effect:**

**1) If the testator transform the thing bequeathed in such a manner that it does not retain either the form or the denomination it had;**

**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 of repurchase;**

**3) If the thing bequeathed is totally lost during the lifetime of the testator, or after his death without the heir's fault. Nevertheless, the person obliged to pay the legacy or devise shall be liable for eviction if the thing bequeathed should not have been determinate as to its kind, in accordance with the provisions of article 928.**

<u>Example of transformation without retaining either its form or denomination</u>: In his will, the testator gives to a devisee a farm land, subsequently, testator converts the farm land into a subdivision. The devise is thus revoked applying the first paragraph of this article.

**IN RE ESTATE OF NAKONECZNY**
Supreme Court of Pennsylvania,
1974. 456 Pa. 320, 319 A.2d 893.

*FACTS:* Michael Nakoneczny died testate on January 26, 1970, leaving a Will dated November 5, 1956 and two codicils dated May 4, 1966 and March 27, 1967 respectively. In November of 1956, testator owned the building situated at 3039 Preble Avenue, Pittsburgh. A portion of these premises was used in the operation of a restaurant and barroom by testator and the remainder served as dwelling for him and his family. Decedent eventually gave the business to his son, the appellant, Paul Nakoneczny. In May of 1968, the property was acquired by the Urban Redevelopment Authority and the bulk of the proceeds were used by decedent to purchase certain bonds which he retained and remained in his possession until his death. The auditing judge found that there had been an ademption and denied the appellants' claim to the bonds that had been purchased with the proceeds derived from the sale of the Preble Avenue property.

*ISSUE:* Whether or not the property in question was a demonstrative devise and thus not subject to ademption.

*HELD:* The Court ruled in the negative. It has long since been decided in this jurisdiction that a specific legacy or devise is extinguished if the property is not in existence or does not belong to the testator at the time of his death. This rule is applicable where the specifically devised or bequeathed property is removed from the testator during his lifetime by an involuntary act or by operation of law. In the case at hand, the language of the will itself leaves no question of the intent to create a specific devise.

Consistent with the decisions in a number of other jurisdictions, the court held in the latter instance, where the money can be traced, the gift is not adeemed and the legatee is entitled to the proceeds. Here, however, there was not a gift of the proceeds from the sale of the realty but rather a gift of the realty itself.

**Article 958. 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.**

**Article 959. A disposition made in general terms in favor of the testator's relative shall be understood to be in favor of those nearest in degree.**

## LEGAL OR INTESTATE SUCCESSION

### General Provisions

**Article 960. Legal or intestate succession takes place:**

**(1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;**

**(2) When the will does not institute an heir to, or dispose of all property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;**

**(3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, or if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes place;**

**(4) When the heir instituted is incapable of succeeding, except in cases provided in this Code.**

Cases of intestacy: Intestate succession shall arise in the following instances:

1. If a person dies without a will;
2. If a person dies with a void will;
3. If a person dies with a will that has subsequently lost its validity;
4. When the will does not institute an heir or when said institution is void;

5. When the will does not dispose of all the property belonging to the testator;
6. If the suspensive condition attached to the institution of the heir does not happen or is not fulfilled;
7. If the heir predeceases or repudiates the inheritance; and
8. If the heir is incapacitated.

Other causes of legal or intestate succession not enumerated in Article 960 are the expiration of the term or period if the institution is in diem or resolutory; the happening of a resolutory condition; the non-compliance or impossibility of complying with the will of the testator; and preterition.

**ROBERT v. LEONIDAS**
**129 SCRA 33 (1984)**

*FACTS:* Edward M. Grimm, an American resident of Manila died. He was survived by his second wife Maxine, their two common children, Edward and Linda, and his two children by a previous marriage, Juanita and Ethel. He executed two wills in San Francisco. In both wills, the second wife and two children were favored. The two children of the first marriage were given their legitimes in the will which disposed of his estate in the Philippines.

On Jan. 9, 1978, Ethel filed with the CFI of Manila an intestate proceeding for the settlement of the estate of Grimm. Maxine received notice of the intestate petition. On Mar. 7 1978, Maxine presented for probate the two wills and a codicil in the District Court of Utah. On Apr. 10,1978, the District Court of Utah admitted to probate the two wills and codicil. On Apr. 25, 1978, the parties of the second marriage and the parties to the first marriage entered into a compromise agreement in Utah regarding the estate. Pursuant to such agreement, Maxine withdrew the opposition to the intestate proceeding in Manila. In 1979, the Court approved the declaration of heirs and project of partition.

On Sep. 8, 1980, Maxine and her two children filed with the lower court (Manila) a petition for the probate of Grimm's two wills (those already probated in Utah). They also filed a petition to annul the petition approved by the intestate court in 1979 and

that Ethel and Juanita be ordered to account for the properties received by them and return them to Maxine. They alleged that they were defrauded by Ethel into entering the Utah compromise agreement. They contended that the intestate proceeding is void because Grimm died testate and that the partition is contrary to Grimm's will.

*ISSUE:* Whether the intestate proceeding was proper despite the existence of the wills.

*HELD:* NO, it was not proper. A testate proceeding is proper in this case because Grimm died with two wills and "no will shall pass either real or personal property unless it is proved and allowed". The probate of the will is mandatory. It is anomalous that the estate of a person who died testate should be settled in an intestate proceeding. Therefore, the intestate case should be consolidated with the testate proceeding and the judge assigned to the testate proceeding should continue hearing the two cases.

<u>Rationale of the rules of intestacy</u>: When you go through intestacy, you are distributing an estate of a deceased person who failed to effectively control the disposition of his estate. In intestacy, there are two ways by which the estate can be distributed; extra-judicially among the heirs or by judicial processes, if they cannot agree among themselves. While the law recognizes the right of a person to control the disposition of his estate, in cases he fails to exercise such right, the law makes the necessary dispositions in his behalf based on certain assumptions. The law therefore distributes the entire estate under the presumed will of the decedent.

<u>Fundamental rules of intestacy</u>: Intestacy is governed by the rules on proximity and equal division

**Article 961. In default of testamentary heirs, the law vests the inheritance, in accordance with rules hereinafter set forth, in the legitimate and illegitimate relatives of the deceased, in the surviving spouse, and in the State.**

<u>Preference of testacy over intestacy</u>: This article indicates the application of intestate rules only in the absence of testamentary heirs.

**RODRIGUEZ v. BORJA**
**17 SCRA 418 (1966)**

*FACTS:* Fr. Celestino Rodriguez died on 12 Feb 63. Pangilinan and Jaclan delivered to the CFI of Bulacan Fr. Rodriguez's alleged will on 4 March 63. On 8 March 63, Maria and Angela Rodriguez filed a petition to examine said will, but petition was later withdrawn. At 8:00 am on 12 March 63, Maria and Angela Rodriguez filed intestate proceeding in the CFI of Rizal claiming that Fr. Rodriguez was a resident of Rizal and at 11:00 am of the same day, probate proceedings were instituted by Pangilinan and Jaclan in the CFI of Bulacan.

Maria and Angela then filed a motion to dismiss contending that the CFI of Bulacan has no jurisdiction in the testate proceedings as their intestate petition filed was earlier than said testate proceedings. Pangilinan and Jaclan contend that upon delivery of the will on 4 March 63, the CFI of Bulacan acquired jurisdiction. The Motion to Dismiss was denied. Hence this petition.

*ISSUE:* Whether the CFI of Bulacan has jurisdiction over the testate proceedings.

*HELD:* YES. The jurisdiction of the CFI of Bulacan became vested on 4 March 63 when delivery of the will was made. At the time, the court could have motu propio taken steps to fix the time and place of the probate of the will. Via Sec. 3 of Rule 76 of the Rules of Court,"… when a will is delivered to, or a petition for the allowance of the will is filed…" there is an indication that upon mere deposit, the court has undertaken allowance/probate of a will. Also, Maria and Angela Rodriguez are in bad faith for they already learned of the existence of the will on 8 March 63 and their intestate proceedings were only instituted on 12 March 63.

Intestate succession is only subsidiary or subordinate to testate succession, since intestacy only takes place in the absence of a valid operative will. The institution of intestacy proceedings in the CFI of Rizal may not proceed while probate of the alleged will is pending.

**Article 962. In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it property takes place.**

**Relatives 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.**

Rule of Proximity: This rule is best explained by the phrase "the nearer excludes the farther." The nearer relatives will exclude the more distant ones on the basic theory that the testator will have more affection for those nearer to him than those farther from him.

1) The Rule cannot apply to affect the rights of compulsory heirs.
2) If all the relatives nearest in degree collectively repudiate, then the Rule of Proximity will move to the next generation.
3) This Rule is subordinate to the Right of Representation. If the children conspire to kill the father, they cannot inherit, but their children, the grandchildren, can inherit by right of representation, and will not be excluded. Once the right of representation is exercised, the representatives will not be excluded by closer relatives.
4) This rule does not apply in cases when the relatives within the same degree are found in different lines.

**DE LOS SANTOS v. DE LA CRUZ**
**37 SCRA 555 (1971)**

*FACTS:* Pelagia De la Cruz died intestate and without issue. Subsequently, Gertrudes De los Santos, who was the grandniece of Pelagia, and several co-heirs, including Maximo De la Cruz, who was the nephew of the deceased Pelagia, executed an extra judicial partition agreement over the deceased estate. The parties agreed to adjudicate 3 lots to Maximo in addition to his corresponding share, on condition that he would undertake the development and subdivision of the estate with all expenses in connection therewith to be defrayed from the proceeds of the sale of the said 3 lots. However, despite the demands of Gertrudes and the other co-heirs, as well as by residents of the subdivision, Maximo failed to perform his aforesaid obligation although he had already sold the lots. Thus, Gertrudes filed a complaint for specific performance. Maximo answered that while he admits the

due execution of the extra judicial partition. Gertrudes had no cause of action against him because the said agreement was void as to her, for she was not an heir of Pelagia, the deceased owner of the property. The lower court ruled that Maximo, being a party to the extra judicial partition agreement, was estopped from raising in issue the right of Gertrudes to inherit from Pelagia and hence he must abide by its terms.

*ISSUE:* Whether or not the extra judicial partition is valid with respect to Gertrudes as to give her a cause of action against Maximo.

*HELD:* No. In the stipulation of facts submitted, the parties admit that the owner of the estate was Pelagia who died intestate, that Maximo is a nephew of the said decedent and that Gertrudes is a grandniece of Pelagia, her mother Marciana de la Cruz being a niece of said Pelagia, that Gertrudes' mother predeceased Pelagia, and that the purpose of the extra judicial partition agreement was to divide and distribute the estate among the heirs of Pelagia. Gertrudes being a mere grandniece of Pelagia, she could not inherit from the latter by right of representation. Article 972 provides that "[t]he right of presentation takes place in the direct descending line, 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." Much less could she inherit in her own right. Article 962 states that "[i]n every inheritance, the relatives nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place."

In the intestate succession a grandniece of the deceased can not participate with a niece in the inheritance, because the latter being a nearer relative, the more distant grandniece is excluded. In the collateral line, the right of representation does not obtain beyond sons and daughters of the brothers and sisters. In the present case, the relatives 'nearest in degree' to Pelagia are her nephews and nieces, one of whom is Maximo. Necessarily, Gertrudes, a grandniece is excluded by law from the inheritance.

<u>Rule of Equal Division</u>: If two particular persons are of the same degree or rank, and they inherit from one and the same person, they will inherit in the same amounts, without any discrimination as to any other aspect. This rule is a feature of intestate succession which reflects the absence of any preference. The failure of the decedent to make a will to create preferences

among his relatives leads to the conclusion that he prefers to have his estate distributed equally.

Illustration of the rule of equal division: With an estate valued at P120,000, the testator gives a legacy of P 20,000 to driver. He is survived by his father and an illegitimate son. To determine validity of the legacy, the legitimes of the surviving heirs must not be impaired. (Legitime of father (1/2) = P 60,000; Legitime of child (1/4) = P 30,000) Since there is no impairment of legitimes, the legacy must be paid first because of the superiority of testamentary succession. After the payment of the legacy, how then do you divide the P100,000 between the father and the illegitimate children by intestacy? Following the rules of intestate succession, it has to be done in equal portions; however, there will be an impairment of the legitime of the father since he is supposed to receive P60,000 in legitime and not only P50,000. Therefore, the distribution of the P100,000 will be P60,000 to the father as legitime and P40,000 to the illegitimate son; P30,000 as legitime and the remaining P10,000 from the free disposal applying the rule of equal division.

Objective of the Rule of Equal Division: The objective is to prevent or remove any unnecessary discrimination or distinction among heirs of the same rank or degree due to the lack of any actual basis to show that the testator, had he written a will, would have given such amount to a particular person. In the absence of such proof, the law takes a very conservative position in stating that unless it can be proven that there is really a preference in favor of one heir in the same degree, it may well be safely inferred that the affection of the decedent for all the intestate heirs would have been equal in the same circumstances.

Exceptions to the Rule of Equal Division: As in the rule of proximity, the application of the rule of equal division has certain exceptions:

1. In the ascending line: Since succession flows by lines; 1/2 to the maternal and 1/2 to the paternal, in the event that parents do not survive and in their stead, grandparents inherit, 1/2 goes to the paternal and 1/2 to the maternal lines, regardless of the number of survivors. Thus, the share of the grandparents will

necessarily be equal although grandparents are within the second degree of relationship.

2. In the collateral line: Due to the application of Article 1006 where half-blood relatives are only entitled to half of what the full-blooded relatives will receive, these relatives will not enjoy the benefit of the rule of equal division despite falling under the same rank.

3. Right of representation: In the exercise of this right, what the representative will get is exactly what the represented person will get. Thus, descendants, even of the same degree, will not necessarily inherit in equal shares since what they receive will depend on the share of the represented person.

## RELATIONSHIP

**Article 963. Proximity of relationship is determined by the number of generations. Each generation forms a degree.**

**Article 964. A series of degrees forms a line, which may be either direct or collateral.**

**A direct line is that constituted by the series of degrees among ascendants and descendants.**

**A collateral line is that constituted by the series of degrees among persons who are not ascendants and descendants, but who come from a common ancestor.**

**Article 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.**

### URIARTE v. COURT OF APPEALS
### June 22, 1998

*FACTS:* At issue is the right of the parties to a piece of land in Surigao del Sur, which Justa Arnaldo-Sering left upon her death on March 31, 1989. The parties and their relationship to Justa Arnaldo-Sering are as follows:

Private respondent Benedicto Estrada is the son of Agatonica Arreza, whose parents were Pedro Arreza and Ursula Tubil. Upon

the death of Pedro Arreza, Ursula married Juan Arnaldo by whom she had another daughter, the decedent Justa. Private respondent Benedicto Estrada is thus the nephew of Justa by her half sister Agatonica.

Petitioners, referred to in this case as the heirs of Pascasio Uriarte, are the widow and daughters of Pascasio Uriarte. Pascasio was one of the sons of Primitiva Arnaldo and Conrado Uriarte. His mother, Primitiva Uriarte, was the daughter of Domingo Arnaldo and Catalina Azarcon. Domingo Arnaldo and Justa's father, Juan Arnaldo, were brothers. Petitioners are thus grandchildren, the relatives within the fifth degree of consanguinity, of Justa by her cousin Primitiva Arnaldo Uriarte. The other petitioners are grandchildren and relatives within the fifth degree of consanguinity of Justa by her cousins Gregorio Arnaldo and Primitiva Arnaldo.

Private respondent Benedicto Estrada claimed to be the sole surviving heir of Justa, on the ground that the latter died without issue. He complained that Pascasio Uriarte had no right to the entire land of Justa but could claim only one-half of the 0.5 hectare land which Justa had inherited from her parents Juan Arnaldo and Ursula Tubil. Pascasio died during the pendency of the case and was substituted by his heirs. In their answer, the heirs denied they were mere tenants of Justa but the latter's heirs entitled to her entire land.

The trial court ruled in favor of the petitioners. On appeal, the Court of Appeals reversed declaring that as the nephew of Justa by her half-sister Agatonica, private respondent was held to be entitled to share in the estate of Justa. Hence, the heirs of Pascasio Uriarte, the heirs of Primitiva Uriarte, and the heirs of Gregorio Arnaldo filed this petition.

*ISSUE:* Who is entitled to inherit to Justa's estate (petitioners or respondents) as her nearest relatives within the meaning of Article 962 of the Civil Code?

*RULING:* The respondents are entitled to inherit. Justa left a piece of land consisting 2.7 hectares. Half of this land (0.5 hectares) formerly was conjugal property of her parents, Juan Arnaldo and Ursula Tubil. The rest, consisting of 2.2 hectares, was acquired by Justa after the death of her parents. Accordingly, the division of Justa's property should be as follows as private respondent contends:

A — The first 1/2 hectare should be divided into two parts, the share of Juan Arnaldo which will accrue to petitioners and the second half which pertains to Ursula Tubil, which will accrue to private respondent.

B — As to the second portion of the area of the land in question which as already stated was consolidated with the 1/2 hectare originally belonging to the conjugal partnership of Juan Arnaldo and Ursula Tubil, the same shall accrue to private respondent, who is the son of Agatonica Arreza, and who is only three degrees from Justa Arnaldo, whereas petitioners who are the children of Primitiva Arnaldo and Gregorio Arnaldo, are five degrees removed from Justa Arnaldo.

Petitioners admitted that private respondent is Justa's nephew, his mother, Agatonica, being Justa's half-sister. Apparently they are now questioning private respondent's filiation because private respondent is the nearest relative of Justa and, therefore, the only one entitled to her estate. Indeed, given the fact that 0.5 hectares of the land in question belonged to the conjugal partnership of Justa's parents, Justa was entitled to 0.125 hectares of the half hectare land as her father's (Juan Arnaldo's) share in the conjugal property, while petitioners are entitled to the other 0.125 hectares. In addition, Justa inherited her mother's (Ursula Tubil's) share consisting of 0.25 hectares. Plus the 2.2 hectares which belonged to her in her own right, Justa owned a total of 2.575 or 2.58 hectares of the 2.7-hectare land. This 2.58-hectare land was inherited by private respondent Benedicto Estrada as Justa's nearest surviving relative.

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. In this case, plaintiff is the son of Agatonica, the half-sister of Justa. He is thus a third degree relative of Justa. On the other hand, defendants and intervenors are the sons and daughters of Justa's cousin. They are thus fifth degree relatives of Justa. Applying the principle that the nearest excludes the farthest, then plaintiff is the lawful heir of Justa. The fact that his mother is only a half-sister of Justa is of no moment.

**Article 966. In the line, as many degrees are counted as there are generations or persons, excluding the progenitor.**

**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.**

**In the collateral line, ascent is made to the common ancestor and then descent 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.**

**BAGUNU v. PIEDAD**
**G.R. No. 140975**

*FACTS:* On August 28, 1995, herein petitioner Ofelia Hernando Bagunu moved to intervene in Special Proceedings entitled "In the Matter of the Intestate Proceedings of the Estate of Augusto Piedad," pending before the RTC. Asserting entitlement to a share of the estate of the late Augusto Piedad, petitioner assailed the finality of the order of the trial court awarding the entire estate to respondent Pastora Piedad contending that the proceedings were tainted with procedural infirmities. The trial court denied the motion, prompting petitioner to raise her case to the Court of Appeals. The Court of Appeals dismissed the appeal. Admitted are the facts that intervenor-appellant is a collateral relative within the fifth degree of Augusto Piedad; that she is the daughter of the first cousin of Augusto Piedad; that as such, intervenor-appellant seek to inherit from the estate of Augusto Piedad; that the notice of hearing was published for three consecutive weeks in a newspaper of general circulation; that there was no order of closure proceedings that has been issued by the intestate court; and that the intestate court has already issued an order for the transfer of the remaining estate of Augusto Piedad to petitioner-appellee.

*ISSUE:* Does the rule of proximity in intestate succession find application among collateral relatives?

*HELD:* No, the rule on proximity is a concept that favors the relatives nearest in degree to the decedent and excludes the more distant ones, except when and to the extent that the right of representation can apply.

The right of representation does not apply to "other collateral relatives within the fifth civil degree" (to which group both petitioner and respondent belong) who are sixth in order of preference following, firstly, the legitimate children and descendants, secondly, the legitimate parents and ascendants, thirdly, the illegitimate children and descendants, fourthly, the surviving spouse, and fifthly, the brothers and sisters/nephews

and nieces of the decedent. Among collateral relatives, except only in the case of nephews and nieces of the decedent concurring with their uncles or aunts, the rule of proximity, expressed in Article 962, aforequoted, of the Code, is an absolute rule. In determining the degree of relationship of the collateral relatives to the decedent, Article 966 of the Civil Code gives direction.

In fine, a maternal aunt can inherit alongside a paternal uncle, and a first cousin of the full blood can inherit equally with a first cousin of the half-blood, but an uncle or an aunt, being a third-degree relative, excludes the cousins of the decedent, being in the fourth-degree of relationship; the latter, in turn, would have priority in succession to a fifth-degree relative.

**IN RE WENDELL'S WILL**
**Surrogate's Court, 1932.**

*FACTS:* This is a proceeding for the probate of the purported last will and testament of the decedent, Miss Wendel. Over sixteen hundred claimants through their attorneys or personally have appeared and contend that they are within the class of legal distributes. The proponents seek to obtain a verified statement of the degree of relationship claimed and the particulars of the ancestry of the claimants and of their collateral relationship to Miss Wendel. They seek the advice and direction of the court as to a method of simplifying the issues, of expediting the disposal of certain preliminary questions which have been raised, and of reaching an ultimate determination of the validity or invalidity of the propounded will.

*ISSUE:* Who are the legal heirs of Miss Wendel?

*HELD:* Representation is permitted only as far as brothers and sisters and their descendants. Beyond brothers and sisters and their descendants, only persons within the nearest degree of relationship with the decedent are entitled to inherit intestate real or personal property. The statutory method of computing the degree of relationship to Miss Wendel may be shown by example. The statutory rule of computation requires the exclusion of the decedent and the counting of each person in the chain of ascent to and including the common ancestor, and then the counting downward of each subsequent descendant from the common ancestor to the claimant. Similar procedure must be adopted as to each widened circle of kinship beyond the established status of the nearest group of legal next of kin. In order to simplify the

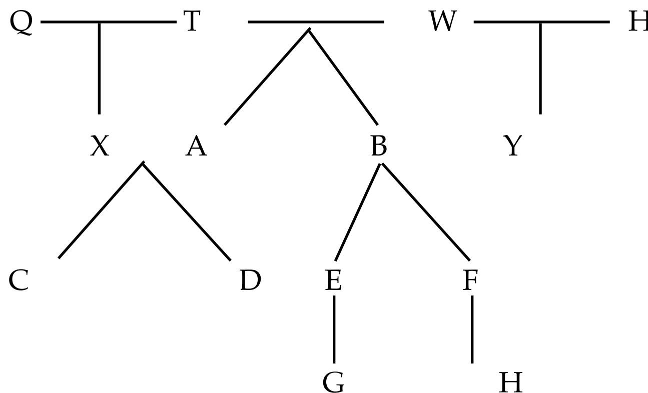
issues, the Court has provided in the order of procedure that the claims of those persons contending that they are of the nearest degree to Miss Wendel should be tried first.

**Article 967. Full blood relationship is that existing between persons who have the same father and the same mother.**

**Half blood relationship is that existing between persons who have the same father, but not the same mother, or the same mother, but not the same father.**

Definition of Relationship: It is a kinship or a legal tie uniting a person to other persons. When this tie, vinculum or connection is established by community of origin among persons related by blood, the relationship is called by consanguinity. When this tie, vinculum or connection is established from persons related by marriage, the relationship is called by affinity. Natural relationship or consanguinity may be legitimate or illegitimate depending on whether the progenitor forming the common trunk may have been legitimately united by marriage or only naturally by any illicit relationship. The relationship may be with a double tie or a single tie relationship depending as to whether they proceed from the same father and mother or from only the same father or only the same mother.

**Illustration of the rules of relationship: T is legally married to W. Q is the mistress of T. H is the 2nd husband of W.**

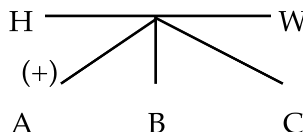


The following are the relationships established by the above situation:

1. Blood relationship: All the descendants from X to A to B to G and H are related by consanguinity, the same blood running through their veins.
2. Legitimate and illegitimate relationship: The relationship between A,B,C,D,E,F,G,H is legitimate relationship because they proceed from the legitimate marriage of T and W. The relationship of X to T and the descendants of T and Q is illegitimate because they do not proceed from valid marriage;
3. Direct descending line: The line from T to B to E to G is direct descending line. To determine the degree, count the generations then subtract one; hence B is 1 degree from T, E is 2 degrees, etc.
4. Direct ascending line: The line from H to F to B to W is the direct ascending line.
5. Collateral line: The line from C and D, E and F is the collateral line. To count degrees in the collateral line, ascend to the common ancestor and then descend to the person involved, each generation being 1 degree.
6. Full blood; half blood relationship: A and B are full blood brothers; B and Y are half-blood brothers.

**Article 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.**

Basis of this article: The basic proposition advanced by this provision is that the Right of Representation is superior to the Right of Accretion.



If A predeceased and therefore unable to accept the inheritance, as a general rule, there will be accrual with respect to the vacant share in favor of heirs of the same rank, in this example, B and C. However, this accrual shall only be applicable when the right of representation is not available. In this example, since A predeceased and left no legitimate descendants, accrual is applicable for representation cannot be used. If A left legitimate descendants, then accrual is inapplicable for representation is proper.

When the fact which prevents a person from succeeding is repudiation, he cannot be represented because the right of representation obtains only in cases of predecease, disinheritance, and incapacity. Therefore, if the vacancy results from repudiation, the right of accretion shall always take place.

**Article 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.**

Difference with previous article: This article simply provides that there can be no right of representation in cases of repudiation. Article 969 presupposes a case where the only nearest relative/relatives repudiate the inheritance, leaving none in the same degree to succeed while Article 968 contemplates a case where there are several relatives of the same degree and only one of them do not wish to succeed.

Reason for the article: The relatives of the degree following that of the repudiating heirs inherit by their own right for the simple reason that there is no representation in repudiation. This is in conformity with Article 977 which provides that heirs who repudiate may not be represented. With the only heir or all of the heirs called by law repudiating the inheritance so that accretion is not possible, and the right of representation not obtaining, it is but natural that the relatives of the next degree should be called by law to inherit in their own right.

## RIGHT OF REPRESENTATION

**Article 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if were living or if he could have inherited.**

Nature of the right: The Right of 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 was living or if could have inherited.

Rationale of the article: Under the rules of proximity, the relatives farther in degree are excluded from the inheritance of the decedent. The right of representation is granted by law to prevent the exclusion of the relatives farther in degree. If the father died, becomes incapacitated to inherit or is disinherited, he is excluded from the inheritance of the grandfather. Without the right of representation, the grandchild shall have been excluded by acts not imputable to him. Therefore, it is the intent of the law for the property of the descendant to go down his lineage. If there were no right of representation, the line going down to the descendants shall be completely severed. The relatives farther down the line cannot be made to suffer the misfortune or wrongdoing of their ancestor.

Purpose of the right of representation: The right of representation attempts to soften the impact of the rule of proximity and the rule of exclusion. It is a stop-gap provision that is intended to fill-in the vacancy where the heir is unable or disqualified to succeed. Under Article 777, when a person dies, successional rights are immediately transferred so that at the time of death, all the heirs become the immediate owners of the hereditary property. However, it is possible that one of the heirs is not qualified to inherit thus creating a vacant portion in the estate. The right of representation is precisely granted to supply an heir to this vacant portion.

Rules in Distributing Vacant Shares: To distribute the vacant share created by any contingencies in succession such as disinheritance, repudiation, incapacity, and predecease, the SRAI rule

states that the right of substitution is superior. In substitution, the testator makes a provision in his will in anticipation of certain contingencies. However, should the testator fail to make provision or fail to anticipate contingencies other than those stated in the law or provided by law, the SRAI rule states that the right of representation should be applied. If, however, the right of representation cannot be given effect, the SRAI rule provides yet another stop-gap method in the form of the right of accretion. If the vacant share still cannot be distributed by the use of the right of accretion, then what perhaps started from testamentary succession may end up eventually in intestacy where the vacant portion may have to be distributed according to the rules on intestacy.

Availability of the right of representation: In testate succession, the right of representation is available when the compulsory heir is disinherited, becomes incapacitated to inherit due to unworthiness, or predeceases the testator. In intestate succession, it is available only in case of incapacity to inherit and when the intestate heir predeceases the decedent.

Differences between the right of representation in case of testamentary succession and in case of intestate succession:

| Testamentary Succession | Intestate Succession |
|---|---|
| 1) it is available in case of disinheritance, incapacity, and when the compulsory heir predeceases the testator (D.I.P)<br>2) it covers only the legitime<br>3) it is available only to descendants | 1) it is available only when the intestate heir becomes incapacitated to succeed or when he predeceases the testator<br>2) it covers the full intestate share<br>3) it extends not only to descendants, but to the nephews and nieces, provided they should survive along with another uncle or aunt. |

Reason for the difference: What the right of representation seeks to give to the more remote-relatives is that which the person represented is entitled to as a matter of law. The representative

may only demand what the person represented could have received by law. Thus in testamentary succession, the right of representation is limited to the legitime. The excess which may have been given by the testator to the person represented shall be received by the other testamentary heirs by right of accretion, since anything beyond the legitime is an act of grace by the testator. In intestate succession, since the law distributes the entire estate, the full intestate share is subject to the right of representation, in the proper cases. Consequently, voluntary heirs can never be represented as they are not entitled to legitime or anything as a matter of law. In intestate succession, the full intestate share as an entitlement of the representative is not subject to reduction since it is a right as a matter of law.

Characteristics of the right of representation: The characteristics of the right of representation are:

1. Right of subrogation: The right of representation is a right of subrogation and not subrogation alone. While subrogation is a form of novation, the right of representation is not. This is a right of subrogation because the more remote relatives are by fiction of law elevated to the rank of the nearer relative. There is novation to the extent of the substitution of the heirs, the representative in lieu of the person represented.
2. Exception to the rule of proximity: As a fictional elevation to the rank of the nearer relative, the right of representation prevents the rule of exclusion from taking effect.
3. Statutory concession: The law, not the person represented, calls the representatives to the inheritance because the Right of Representation is a creation of the law. The representatives inherit from the person whose estate is under consideration.

Liability of the representative:

1. For the debts of the person represented: The inheritance received by right of representation is not property coming from the person represented; it is not part of his estate. It is inherited directly by the representatives

from the person from whom the one represented would have received it. Hence, it is not liable for the payment of the debts of the person represented.

2. For the debts of the person from whom the person represented would have inherited: Since the representative merely steps into the shoes of the person represented, he shall be liable for what the person represented should have been liable for as an heir. The representative receives all the rights and obligations which would have been received by the person represented had he been able to inherit. In addition, the donations inter vivos given by the decedent to the person represented shall be collated and imputed to his legitime. The representative therefore receives the legitime of the person represented net of the donations which the latter may have received from the decedent during his lifetime.

**Article 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. (n)**

**Article 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.**

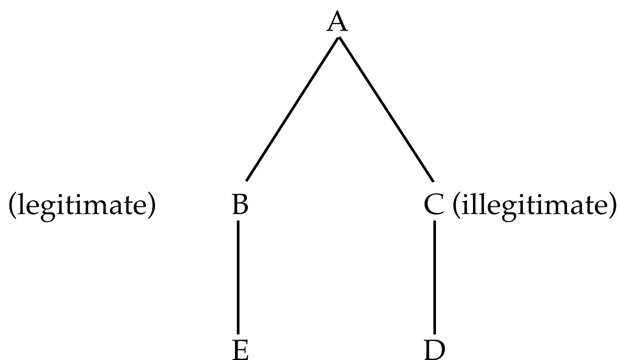
Limitation of the exercise of the Right of Representation:

1. By the heirs in the direct descending line: The right of representation exercised by the heirs is subject to the provision of Article 992 which provides that an illegitimate child cannot inherit ab intestato from the legitimate relatives of his father or mother nor shall such children or relatives inherit in the same manner from the illegitimate child. Since by right of representation, the person inheriting is in effect inheriting directly from the decedent and not from the person being represented, the illegitimate child cannot represent his father in the succession from his

grandfather, presuming the father is a legitimate child of the grandchildren.

2. By the heirs in the collateral line: The limitations to the exercise by the heirs in the collateral line of the Right of Representation are found in Articles 1006 and 992. First, the representatives must be nephews and nieces because the law requires that they be children of brother or sisters of the decedent. Second, nephews/nieces of the full-blood get double the share of nephews/nieces of the half-blood. Third, the illegitimate collaterals are excluded due to barrier of provided in Article 992. Finally, collateral relatives exercise the right of representation only in intestacy because brothers and sisters are not compulsory heirs and as voluntary heirs, they can never be represented.

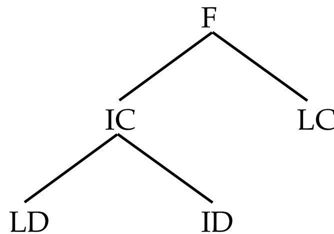
<u>Effect of illegitimate relationship on representation</u>: The illegitimate child cannot inherit ab intestato from the legitimate children and relatives of the father or mother and vice versa. In the illustration below, if both B & C predecease A, D shall be able to represent C with respect to A regardless of his filiation. D's legitimacy is inconsequential. On the other hand, E shall only be able to represent B if he is a legitimate or legitimated child. If E is illegitimate, Article 992 will apply to prevent him from being a representative.




<u>Entitlement of illegitimate descendants to exercise right of representation</u>: Article 902 provides that the right of illegitimate

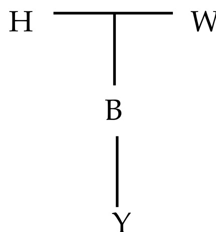
children to legitime can be transmitted to their descendants, whether legitimate or illegitimate.

Illustration of the exercise of the right of representation: Using the following illustration, with F = father, IC = illegitimate child; LC = legitimate child; ID = illegitimate descendant; LD = legitimate descendant, upon the death of F, IC is entitled to legitime (1/2) of the share of LC but his entitlement of the minimal share is transmissible to both LD and ID.




The barrier of Article 992 only holds with respect to the legitimate relatives of his father but because his father is himself an illegitimate child, the barrier is without effect. The result is that if one is an illegitimate child and his line is one of illegitimacy, his descendants, legitimate or illegitimate, shall inherit from his family.

Non-entitlement of adopted children to exercise the Right of Representation: An adopted child cannot exercise the Right of Representation since, according to the Family Code, an adopted child is related only to the adopters. Adoption only creates a relationship between the adopter and the adopted, the relationship does not go beyond that. Consider the following situation: H and W are husband and wife. They adopted a child, B, who subsequently had a descendant, Y. H died. If B predeceased his father, can Y exercise the right of representation in behalf of B?



In testamentary succession, there is representation only when relatives of a deceased person try to succeed in such rights which the deceased person would have had if still living. Since B as an adopted child is considered a legitimate child for all civil purposes then he is entitled to a share in his father's estate and consequently Y, as B's son, can exercise the right of representation to such right. However, the case of De la Puerta tells us that the filiation created by fiction of law is exclusively between the adopter and the adopted. Hence, Y as the son of the adopted child is barred from representing his father because the fiction of legitimacy exists only between H (adopter) and B (adopted) and cannot extend unto Y.

Conflict in status of adopted child: There is an apparent conflict since, according to the Family Code, the adopted child shall be considered as a legitimate child for all purposes favorable to him. The same Code even went further by stating that the adopted child, when he concurs with the father of the adopter, excludes the latter from the inheritance of the adopter. However, under the same Code, since the relation created by fiction of law is limited between the adopter and adopted, the adopted cannot inherit from the parents of the adopter or from any of his relatives by operation of law.

**Article 973. In order that representation may take place, it is necessary that the representative himself be capable of succeeding the decedent.**

Most important element of the capacity to succeed in representation: The representative must be alive or at least conceived at the time of the death of the person represented. The capacity of the person who would exercise the right of representation must be reckoned from the viewpoint of the person whose estate is under consideration and not of the person to be represented.

**Article 974. Whenever there is succession by representation, the division of the estate shall be made per stirpes, in such manner that the representative or representatives shall not inherit more than what the person represented would inherit, if he were living or could inherit.**

Division of the estate made per stirpes: Division per stirpes is made when one sole descendant or a group of descendants represent a person in intestate. The sole representative or group of representatives are counted as one.

Division of the estate made per capita: In division per capita, the estate is divided into as many equal parts as there are persons to succeed.

**Article 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.**

Explanation of this article: Nephews and nieces may inherit by representation, if they concur with their uncles or aunts and they will divide the estate per stirpes when concurring with uncles and aunts. If they alone survive, they shall inherit in their own right and they will they divide the estate per capita.

**ABELLENA-BACAYO v. FERRARIS-BORROMEO**
**14 SCRA 986 (1965)**

*FACTS:* Melodia Ferraris was presumed dead after not being heard from for more than 10 years. She left an estate valued at P6,000.00 more or less. The deceased Melodia left no surviving direct descendant, ascendant or spouse, but was survived only by collateral relatives, namely, Filomena Bellana de Bacayo, an aunt and half-sister or decedent's father, Anacleto Ferraris, and by Gaudencia, Catalina, Conchita and Juanito, all surnamed Ferraris, her nieces and nephew, who were the children of Melodia's only brother of full blood, Arturo Ferraris, who predeceased her. These two classes of heirs claim to be the nearest intestate heirs and seek to participate in the estate of the deceased Melodia Ferraris. The trial court ruled that the oppositors-appellees, as children of the only predeceased brother of the decedent, exclude the aunt (petitioner-appellant) of the same decedent, reasoning out that the former are nearer in degree (two degrees) than the latter since nieces and nephews succeed by right of respresentation, while petitioner-appellant is three degrees distant from the decedent, and that other collateral relatives are excluded by brother or sisters, or children of brothers or sisters of the decedent in

accordance with Article 1009 of the new Civil Code. Against the above ruling, the aunt contends that she is of the same or equal degree of relationship as the oppositors-appellants, three degrees removed from the decedent and that under Article 975 of the Civil Code, no right of representation could take place when the nieces and nephew of the descendant do not concur with an uncle or aunt, as in the case at bar, but rather the former succeed in their own right.

*ISSUE:* Who should inherit the intestate estate of a deceased person when he or she is survived only by collateral relatives, to wit: an aunt and the children of a brother who predeceased him or her?

*HELD:* An aunt is as far distant as the nephews from the decedent (three degrees). In the collateral line to which both kinds of relatives belong, degrees are counted by first ascending to the common ancestor and then descending to the heir (Article 966). Also, the nephews and nieces do not inherit by right of representation (i.e., per stirpes) unless concurring with brothers or sisters of the deceased, as provided expressly by Article 975.

Nevertheless, the trial court was correct when it held that, in case of intestacy, nephews and nieces of the de cujos exclude all other collaterals (aunts and uncles, first cousins, etc.) from the succession. This is readily apparent form Articles 1001, 1004, 1005 and 1009 of the Civil Code. Under Article 1009, the absence of brothers, sisters, nephews and nieces of the decedent is a precondition to succession. Under our laws of succession, a decedent's uncles and aunts may not succeed ab intestato so long as nephews and nieces of the decedent survive and are willing and qualified to succeed.

Special Rule of Proximity: The rule of proximity also cannot be applied between the nephews/nieces and the aunt, though they are three degrees remote from the decedent. But, the NCC expressly provides that in the absence of brothers, sisters, nephews and nieces, the other collateral relatives within the $5^{th}$ degree will inherit. Therefore, brothers, sisters, nephews and nieces take precedence over other collateral relatives including uncles and aunts.

**Article 976. A person may represent him whose inheritance he has renounced.**

Explanation of this article: A son who repudiated the share he was entitled to receive in the succession of his father when the latter died, can still represent the latter in the succession of the grandfather who dies subsequently.

Rationale of this Article: By nature of the Right of Representation, the representative does not succeed to the person represented but simply takes his place and succeeds to the inheritance of some of other relatives. Since the grandson succeeds his grandfather and not his father whom he merely represents, his repudiation of the inheritance from the latter cannot affect his right to succeed to the inheritance from the grandfather.

Scope of this article: Although this Article expressly mentions only the case of repudiation, the case of unworthiness, incapacity, and disinheritance should be deemed included. The representative may be unworthy, incapacitated, or disinherited with regard to the person represented, but so long as he is not so with regard to the decedent to whom he succeeds, he retains the Right of Representation and succeeds to the inheritance of the latter.

**Article 977. Heirs who repudiate their share may not be represented.**

No Right of Representation in repudiation: Representation is allowed in cases of predecease, unworthiness, and disinheritance, so that descendants, who were not at fault, shall not be punished for acts personal to their parents. However, repudiation is different since it is not the law but the father himself who has dispossessed the children of the inheritance, which should otherwise belong to them ultimately. The descendants are no longer entitled to the inheritance which their father voluntarily renounced.

## ORDER OF INTESTATE SUCCESSION

### Descending Direct Line

**Article 978. Succession pertains, in the first place, to the descending direct line.**

**Article 979. Legitimate children and their 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 of 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 the proportions prescribed by Article 895.**

**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 be 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.**

Order of intestate succession: It is a system by which heirs are called upon by law to inherit by preference, wherein some class excludes the other and at the same time concurs with another.

Exclusionary rule: The principles of compulsory succession as applied to intestate succession limit the application of the exclusionary rule, whereby primary compulsory heirs cannot, under any circumstance be excluded since they always concur with one another. The secondary compulsory heirs, on the other hand, are subject to the exclusionary rule.

Orders of intestate succession: There are three orders of intestate succession, that of a legitimate child; of an illegitimate child; and of an adopted child.

Observations on the order of intestate succession:

1. With regard to the intestate succession of a legitimate child, his illegitimate children and descendants will not exclude his legitimate parents since they concur. On the other hand, with regard to the intestate succession of an illegitimate child, his illegitimate children and descendants will exclude his illegitimate parent. But in all cases, when a legitimate child is present, the parents whether legitimate or illegitimate will always be excluded.

2. In the intestate succession of a legitimate child, collateral relatives up to the 5th degree are potential intestate heirs. In the intestate succession of an illegitimate child, collateral relatives who may be potential intestate heirs are limited to brothers, sisters, nephews and nieces.

3. In the intestate succession of a legitimate child, the potential intestate heirs must always be legitimate except in the case of his illegitimate child and descendants. In the intestate succession of an illegitimate child, potential heirs may be legitimate or illegitimate except the brothers, sisters, nephews and nieces who must always be illegitimate.

4. In the intestate succession of a legitimate child, legitimate parents and legitimate ascendants are potential intestate heirs. In the intestate succession of an illegitimate child, only illegitimate parents and no other ascendant are potential intestate heirs.

| ORDER OF INTESTATE SUCCESSION | | |
|---|---|---|
| LEGITIMATE CHILD | ILLEGITIMATE CHILD | ADOPTED CHILD |
| Legitimate children and legitimate descendants | Legitimate children and legitimate descendants | Legitimate children and legitimate descendants |
| Legitimate parents and legitimate ascendants | Illegitimate children and legitimate or illegitimate descendants | Illegitimate children and legitimate or illegitimate descendants |
| Illegitimate children and legitimate or illegitimate descendants | Illegitimate parents | Legitimate or illegitimate parents and legitimate ascendants adoptive parents |
| Surviving spouse | Surviving spouse | Surviving spouse |
| Legitimate brothers, sisters, nephews and nieces | Illegitimate brothers, sisters, nephews and nieces | Brothers, sisters, nephews and nieces |
| Legitimate collateral relatives within 5th degree | State | State |
| State | ---- | ---- |

| EXCLUSION and CONCURRENCE in INTESTATE SUCCESSION | | | |
|---|---|---|---|
| INTESTATE HEIR | EXCLUDES | EXCLUDED BY: | CONCURS WITH: |
| Legitimate children and legitimate descendants (LC/LD) | Ascendants, Collaterals and State | No one | SS<br>IC |
| Illegitimate children and descendants (IC/ID) | Illegitimate parents, Collaterals and State | No one | SS<br>LC<br>LP |

| | | | |
|---|---|---|---|
| Legitimate parents and legitimate ascendants (LP/LA) | Collaterals and State | LC | IC<br>SS |
| Illegitimate parents | Collaterals and State | LC<br>IC | SS |
| Surviving spouse (SS) | Collaterals other than brothers or sisters, nephews and nieces and State | No one | LC<br>IC<br>LP<br>IP |
| Brothers, sisters, nephews and nieces (BSNN) | All other collaterals and State | LC<br>IC<br>LP<br>IP | SS |
| Other collaterals w/in 5TH degree (COLLATERALS) | Collaterals remote in degree State | LC<br>IC<br>LP<br>IP<br>SS | Collaterals in the same degree |
| State | No one | Everyone | No one |

## ILLEGITIMATE CHILDREN

**Article 988. In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased.**

Illegitimate child as an intestate heir: Although illegitimate children are third in the order of intestate succession, they always inherit since they are not excluded by anyone. In the absence of legitimate descendants or ascendants, the successional rights of the illegitimate children to the "entire estate," presupposes that there are no other concurring intestate heirs. When the surviving spouse concurs in the succession with the illegitimate children, even though there are no legitimate descendants or ascendants, the illegitimate children get only one-half of the estate because the other half goes to the surviving spouse. However, when there

are no legitimate ascendants or descendants and no surviving spouse, then the illegitimate children inherit the entire estate since they exclude the other intestate heirs, i.e. brothers, sisters, nephews and nieces, collaterals within the fifth degree and the State.

**DEL PRADO v. SANTOS**
**18 SCRA 68 (1966)**

*FACTS:* Aurea Santos was legally married to Deogracias Demetria but later separated from him. Subsequently, Aurea Santos and Anastacio del Prado cohabited with each other without the benefit of marriage and as a result of which, they had one son, the minor Jesus Del Prado whom Anastacio admitted to be his son in his birth certificate. Later, Anastacio died intestate and at the time of his death, he remained single. He left a parcel of land which Aurea Santos adjudicated to his minor son Jesus. Eugenio Del Prado, a legitimate brother of the deceased Anastacio, filed a case for annulment of this deed of adjudication alleging that he was deprived of his rightful share to the estate of his brother. Aurea countered that her son Jesus, being an acknowledged natural child of the deceased, was entitled to the property left by the latter. The parties entered into a stipulation of facts which recited, among others that:

> "The deceased Anastacio C. Del Prado and defendant Aurea S. Santos cohabited with each other without the benefit of matrimony, as a result of that cohabitation, the late Anastacio C. Del Prado and defendant Aurea S. Santos had one son — the minor Jesus S. Del Prado - … whom Anastacio Del Prado admitted to be his son in the latter's birth certificate."

The lower court dismissed the complaint and ruled that since the deceased Anastacio left no legitimate descendants or ascendants, the minor Jesus shall succeed to the entire estate left by his supposed father to the exclusion of Eugenio who is only a collateral relative.

*ISSUE:* Who has a better right to the parcel of land left by the deceased?

*HELD:* The minor Jesus Del Prado has the better right. The facts stipulated by him and Aurea are clear. Since Anastacio C. Del Prado died in 1958 the new Civil Code applies (Article 2263).

Illegitimate children other than natural are entitled to successional rights. Where as in this case, the deceased died intestate, without legitimate descendants, then his illegitimate child shall succeed to his entire estate, to the exclusion of his brother who is only a collateral relative. It was held that between an illegitimate child and a legitimate brother of the decedent, the illegitimate child is preferred to inherit. An illegitimate child is 3rd in the order of intestate succession.

**CACHO v. UDAN**
**13 SCRA 693 (1965)**

*FACTS:* Silvina Udan, single, died leaving a purported will naming her illegitimate son, Francisco Udan, and one Wenceslao Cacho, as her sole heirs, share and share alike. Wencesla filed a petition for probate, but this was opposed by Rustico Udan, legitimate brother of the testatrix. But as Francisco himself filed his own opposition, Rustico withdrew his. During the probate proceedings, Francisco died. After Francisco's death, John Udan and Rustico Udan, both legitimate brothers of the testatrix, filed their respective oppositions to the probate of the will. The court dismissed these two oppositions for lack of interest in the estate, and directed the fiscal to study the advisability of filing escheat proceedings.

*ISSUE:* Whether or not the oppositor brothers may claim to be heirs of their legitimate sister.

*HELD:* No. They were not for at the time of her death, Silvina's illegitimate son, Francisco, was her intestate heir, to the exclusion of her brothers. This is clear from Article 988, which provides that "(i)n the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased," and Article 1003 which states that "(i) f there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased…" These legal provisions decree that collateral relatives of one who died intestate inherit only in the absence of descendants, ascendants, and illegitimate children. Albeit the brothers and sister can concur with the widow or widower, they do not concur, but are excluded by the surviving children, legitimate or illegitimate (Article 1003). To be able to have standing to intervene in a settlement proceeding, the person must have a pecuniary interest in the distribution of the hereditary

estate, either because he is a beneficiary by will or a beneficiary by law, or because he has a money claim which shall survive the death of the testator. In the case at bar, the son died after the mother. Therefore, between an illegitimate child who has passed away and the legitimate brothers or sisters of the deceased, the illegitimate child is preferred, provided, he dies after the death of the testatrix. Because having survived the testatrix, successional rights vested precisely upon the moment of death. Furthermore, the brothers and sisters cannot inherit from the deceased child because of the prohibition under Article 992.

**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.**

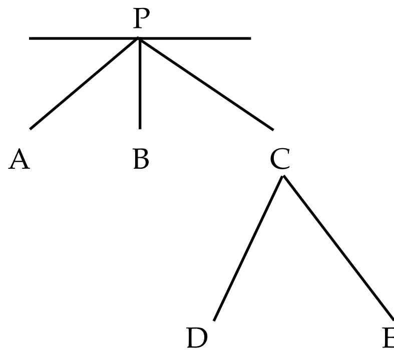
**Article 990. The hereditary rights granted by the two preceding articles to illegitimate children shall be transmitted upon their death to their descendants, who shall inherit by right of representation from their deceased grandparent.**

Rights of descendants of illegitimate children to inherit: The same rule governing descendants of legitimate children obtains in the case of descendants of illegitimate children. Generally, illegitimate children exclude their descendants, however, descendants of illegitimate children, when the latter predeceased the decedent or are incapacitated to inherit from the decedent, inherit together with the other illegitimate children as provided under Article 989. In case of repudiation by some illegitimate children, their descendants do not inherit. When all illegitimate children repudiate, their descendants will inherit in their own right.

Right of descendants available regardless of legitimacy: Although the law does not qualify the term descendants, it should be interpreted to mean legitimate or illegitimate descendants since it seems evident that the Code intended that the rights of illegitimate children should be transmitted to their descendants whether legitimate or illegitimate. Should therefore the deceased be survived by illegitimate children and the descendants of another illegitimate child whether legitimate or illegitimate, then all will inherit, the illegitimate children in their own right and

the legitimate and illegitimate descendants of the illegitimate child by right of representation from their deceased grandparent.

Illustration of the right of descendants of illegitimate children to inherit: Supposing P died intestate, leaving 3 illegitimate children A, B and C. D and E are the illegitimate children of C. C predeceases P. The estate was worth P90,000.00.




A, B and C will divide the entire estate between them. The share of C will pertain to D and E equally divided between them.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 15,000 | 15,000 | by own right | 30,000 |
| B | 15,000 | 15,000 | by own right | 30,000 |
| D | 7,500 | 7,500 | by representation | 15,000 |
| E | 7,500 | 7,500 | by representation | 15,000 |
| TOTAL | 45,000 | 45,000 | | 90,000 |

The outcome would be the same if D and E were the legitimate children of C because "descendants" refer to legitimate and illegitimate descendants.

**Article 991. If the 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 such children or relatives inherit in the same manner from the illegitimate child.**

Rationale of Article 992: Article 992 of the New Civil Code provides a barrier or iron curtain between the legitimate family and the illegitimate family. Article 992 absolutely prohibits a succession ab intestado between the illegitimate child and the legitimate children and relatives of the mother or father of said legitimate child. They may have natural tie in blood, but this is not recognized by law for the purposes of Art. 992.

Presumed Antagonism: There is a presumed antagonism and incompatibility between the legitimate family and the illegitimate family. The illegitimate child is disgracefully looked down upon by the legitimate family; the family is in turn, hated by the illegitimate child; the latter considers the privileged condition of the former, and the resources of which it is thereby deprived; the former, in turn, sees in the illegitimate child nothing but the product of sin, palpable evidence of a blemish in life.

**DE LA MERCED v. DE LA MERCED**
**Feb 25, 1999**

*FACTS:* On March 23, 1987, Evarista M. dela Merced died intestate, without issue. She left five (5) parcels of land situated in Orambo, Pasig City. At the time of her death, Evarista was survived by three sets of heirs, *viz*: (1) Francisco M. dela Merced, her legitimate brother; (2) Teresita P. Rupisan, her niece; and (3) the legitimate children of Eugenia dela Merced-Adriano (another sister of Evarista who died in 1965). Almost a year later, Francisco (Evarista's brother) died and was survived by his wife and three legitimate children. On April 20, 1989, the three sets of heirs of the decedent executed an extrajudicial settlement, entitled "Extrajudicial Settlement of the Estate of the Deceased Evarista M. dela Merced" adjudicating the properties of Evarista to them, each set with a share of one-third (1/3) pro-indiviso. On July 26, 1990, private respondent Joselito P. Dela Merced, illegitimate son

of the late Francisco de la Merced, filed a "Petition for Annulment of the Extrajudicial Settlement of the Estate of the Deceased Evarista M. Dela Merced with Prayer for a Temporary Restraining Order," alleging that he was fraudulently omitted from the said settlement made by petitioners, who were fully aware of his relation to the late Francisco.

After trial, the trial court dismissed the petition. The Court of Appeals reversed the decision of the trial court of origin and ordered the petitioners to execute an amendatory agreement to include private respondent Joselito as a co-heir to the estate of Francisco. In the petition under consideration, the petitioners insist that being an illegitimate child, private respondent Joselito is barred from inheriting from Evarista because of the provision of Article 992 of the New Civil Code, which lays down an impassable barrier between the legitimate and illegitimate families.

*ISSUE:* Whether or not the plaintiff may participate in the intestate estate of the late Evarista M. Dela Merced? (in his capacity as representative of his alleged father, Francisco Dela Merced, brother of the deceased)

*RULING:* Yes. Article 992 of the New Civil Code is not applicable because involved here is not a situation where an illegitimate child would inherit *ab intestato* from a legitimate sister of his father, which is prohibited by the aforesaid provision of law. Rather, it is a scenario where an illegitimate child inherits from his father, the latter's share in or portion of, what the latter already inherited from the deceased sister, Evarista. The law in point in the present case is Article 777 of the New Civil Code which provides that the rights to succession are transmitted from the moment of death of the decedent.

Since Evarista died ahead of her brother Francisco, the latter inherited a portion of the estate of the former as one of her heirs. Subsequently, when Francisco died, his heirs, namely: his spouse, legitimate children, and the private respondent, Joselito, an illegitimate child, inherited his (Francisco's) share in the estate of Evarista. It bears stressing that Joselito does not claim to be an heir of Evarista by right of representation but participates in his own right, as an heir of the late Francisco, in the latter's share (or portion thereof) in the estate of Evarista.

The present case, relates to the rightful and undisputed right of an heir to the share of his late father in the estate of the decedent

Evarista, ownership of which had been transmitted to his father upon the death of Evarista. There is no legal obstacle for private respondent Joselito, admittedly the son of the late Francisco, to inherit in his own right as an heir to his father's estate, which estate includes a one-third (1/3) undivided share in the estate of Evarista.

**CORPUS v. CORPUS**
**85 SCRA 567**

*FACTS:* Teodoro Yangco died in Manila at the age of seventy-seven years. Yangco had no forced heirs. At the time of his death, his nearest relatives were (1) his half brother, (2) his half sister, (3) the children of his half brother, and (4) the daughter of his half brother. Teodoro Yangco was the son of Luis Rafael Yangco and Ramona Arguelles, the widow of Tomas Corpus. Before her union with Luis Rafael Yangco, Ramona had begotten five children with Tomas Corpus, two of whom were the aforementioned Pablo Corpus and Jose Corpus. On September 20, 1049, the legatees executed an agreement for the settlement and physical partition of the Yangco estate. Consequently, Tomas Corpus, as the sole heir of Juanita Corpus, filed an action in the Court of First Instance of Manila to recover her supposed share in Yangco intestate estate. He alleged in his complaint that the dispositions in Yangco's will imposing perpetual prohibitions upon alienation rendered it void under Article 785 of the Old Civil Code and that the partition is invalid and, therefore, the decedent's estate should be distributed according to the rules on intestacy.

The trial court dismissed the action on the grounds of res judicata and laches. As a result, Tomas Corpus appealed to the Court of Appeals. Appellant Corpus contends in his appeal that the trial court erred in holding (1) that Teodoro Yangco was a natural child, (2) that his will had been duly legalized, and (3) that plaintiff's action is barred by res judicata and laches.

*ISSUE:* Whether Juanita Corpus, the mother of appellant Tomas Corpus, was a legal heir of Yangco. Does Tomas Corpus have a cause of action to recover his mother's supposed intestate share in Yangco's estate?

*RULING:* The Supreme Court ruled in the negative. Since Teodoro Yangco was an acknowledged natural child or was illegitimate and since Juanita Corpus was the legitimate child

of Jose Corpus, himself a legitimate child, the Court ruled that appellant Tomas Corpus has no cause of action for the recovery of the supposed hereditary share of his mother, Juanita Corpus, as a legal heir, in Yangco's estate. Juanita Corpus was not a legal heir of Yangco because there is no reciprocal succession between legitimate and illegitimate relatives. Teodoro Yangco's half brothers on the Corpus side, who were legitimate, had no right to succeed to his estate under the rules of intestacy. Following the rule in Article 992, formerly Article 943, it was held that the legitimate relatives of the mother cannot succeed her illegitimate child. By reason of that same rule, the natural child cannot represent his natural father in the succession to the estate of the legitimate grandparent. The natural daughter cannot succeed to the estate of her deceased uncle, a legitimate brother of her natural mother.

**DIAZ v. INTERMEDIATE APPELLATE COURT**
**150 SCRA 645**

*FACTS:* Felisa Pamuti Jardin is a niece of Simona Pamuti Vda. De Santero who together with Felisa's mother Juliana were the only legitimate children of the spouses Felipe Pamuti and Petronila Asuncion. Pablo Santero was the only legitimate son of his parents Pascual Santero and Simona Pamuti Vda. De Santero. Pablo Santero died in 1973 and at the time of his death was survived by his mother Simona Santero snd his six minor natural children.

Private respondent filed a petition praying among other things, that the corresponding letters of Administration be issued in her favor and that she be appointed as special administratrix of the properties of the deceased Simona Pamuti Vda. de Santero. Judge Jose Raval in his Order declared Felisa Pamuti Jardin as the sole legitimate heir of Simona Pamuti Vda. de Santero.

Petitioner Anselma Diaz, as guardian of her minor children, filed her "Opposition and Motion to Exclude Felisa Pamuti Jardin from further taking part or intervening in the settlement of the intestate estate of Simona Pamuti Vda. de Santero, as well as in the intestate estate of Pascual Santero and Pablo Santero.

*ISSUE:* Whether petitioners herein as illegitimate children of Pablo Santero could inherit from Simona Pamuti Vda. de Santero, by right of representation of their father Pablo Santero who is a legitimate child of Simona Pamuti Vda. de Santero

*RULING:* No. Since the hereditary conflict refers solely to the intestate estate of Simona Pamuti Vda. de Santero, who is the legitimate mother of Pablo Santero, the applicable law is the provision of Article 992 of the Civil Code.

Pablo Santero is not an illegitimate child. On the other hand, the petitioners are the illegitimate children of Pablo Santero. Thus, petitioners cannot represent their father Pablo Santero in the succession of the latter to the intestate estate of his legitimate mother Simona Pamuti Vda. de Santero, because of the barrier provided for under Article 992 of the New Civil Code.

**DIAZ v. INTERMEDIATE APPELLATE COURT**
**182 SCRA 427**

*FACTS:* The decision of the Second Division of the Court in a case of Anselma Diaz, et al. v. Intermediate Appellate Court, et al., and its Resolution denying the Motion for Reconsideration, are being challenged in this Second Motion for Reconsideration.

The present controversy is confined solely to the intestate estate of Simona Pamuti Vda. de Santero . Petitioners claim that the amendment of Articles 941 and 943 of the Old Civil Code by Articles 990 and 992 of the New Civil Code constitute a substantial and not merely a formal change, which grants illegitimate children certain successional rights. A careful evaluation of the New Civil Code provisions, especially Articles 902, 982, 989, and 990, claimed by petitioners to have conferred illegitimate children the right to represent their parents in the inheritance of their legitimate grandparents, would in point of fact reveal that such right to this time does not exist. The petitioners further argue that the consistent doctrine adopted by this Court which identically held that an illegitimate child has no right to succeed ab intestate the legitimate father of his natural parent is already abrogated by the amendments made by the New Civil Code and thus cannot be made to apply to the instant case.

*ISSUE:* Who are the legal heirs of Simona Pamuti Vda. de Santero — her niece Felisa Pamuti-Jardin or her grandchildren (the natural children of Pablo Santero)?

*RULING:* Felisa Pamuti Jardin is the sole legitimate heir to the intestate estate of the late Simona Pamuti Vda. de Santero. The word "relatives" should be construed in its general application. According to Prof. Balane, to interpret the term *relatives* in Article

992 in a more restrictive sense than it is used and intended is not warranted by any rule of interpretation. Thus, the word "relatives" is a general term and when used in a statute it embraces not only collateral relatives but also all the kindred of the person spoken of, unless the context indicates that it was used in a more restrictive or limited sense — which, as already discussed earlier , is not so in the case at bar. In the light of the foregoing, the Court concludes that until Article 992 is suppressed or at least amended to clarify the term "relatives," there is no other alternative but to apply the law literally.

**LEONARDO v. COURT OF APPEALS**
**120 Phil 890**

*FACTS:* Francisca Reyes who died intestate on July 12, 1942 was survived by two (2) daughters, Maria and Silvestra Cailles and a grandson, Sotero Leonardo, the son of her daughter, Pascuala Cailles who predeceased her. Sotero Leonardo died in 1944, while Silvestra Cailles died in 1949 without any issue. On October 29, 1964, petitioner Cresenciano Leonardo, claiming to be the son of the late Sotero Leonardo, filed a complaint seeking, among others, that he be declared as one of the lawful heirs of the deceased Francisca Reyes, entitled to one-half share in the estate of said deceased jointly with Maria Cailles. In her Answer, Maria Cailles asserted exclusive ownership over the subject properties and alleged that petitioner is an illegitimate child who cannot succeed by right of representation. For his part, the other defendant, private respondent James Bracewell, claimed that said properties are now his by virtue of a valid and legal deed of sale which Maria Cailles had subsequently executed in his favor. These properties were allegedly mortgaged to respondent Rural Bank of Paranaque, Inc. sometime in September 1963. After hearing on the merits, the trial court rendered judgment in favor of the petitioner. From said judgment, private respondents appealed to the Court of Appeals which reversed the decision of the trial court, thereby dismissing petitioner's complaint.

*ISSUE:* Can Leonardo, being a great grandson, inherit based on the evidence he presented in court?

*RULING:* Carefully going over the evidence, we believe that the trial judge misinterpreted the evidence as to the identification of the lands in question. These parcels of land now being sought by the plaintiff are the same parcels subject of these deeds. The

first property (Deposorio) was bought in 1908 by Maria Cailles under a deed of sale. After declaring it in her name, Maria Cailles paid the realty taxes starting from 1918 up to 1948. Thereafter as she and her son Narciso Bracewell, left for Nueva Ecija, Francisca Reyes managed the property and paid the realty tax of the land. However, for unexplained reasons, she paid and declared the same in her own name. Because of this, plaintiff decided to run after this property, erroneously thinking that as the great grandson of Francisca Reyes, he had some proprietary right over the same. The second parcel was purchased by Maria Cailles in 1917 under a deed of sale. After declaring it in her name, Maria Cailles likewise paid the realty tax in 1917 and continued paying the same up to 1948. Thereafter when she and her son, Narciso Bracewell, established their residence in Nueva Ecija, Francisco Reyes administered the property and like in the first case, declared in 1949 the property in her own name. Thinking that the property is the property of Francisca Reyes, plaintiff filed the instant complaint, claiming a portion thereof as the same allegedly represents the share of his father.

Going to the issue of filiation, plaintiff claims that he is the son of Sotero Leonardo, the son of one of the daughters (Pascuala) of Francisca Reyes. He further alleges that since Pascuala predeceased Francisca Reyes, and that his father, Sotero, who subsequently died in 1944, survived Francisca Reyes, plaintiff can consequently succeed to the estate of Francisca Reyes by right of representation. In support of his claim, plaintiff submitted in evidence his alleged birth certificate showing that his father is Sotero Leonardo, married to Socorro Timbol, his alleged mother. However, this piece of evidence does not in any way lend credence to his tale. This is because the name of the child described in the birth certificate is not that of the plaintiff but a certain 'Alfredo Leonardo' who was born on September 13, 1938 to Sotero Leonardo and Socorro Timbol. Other than his bare allegation, plaintiff did not submit any durable evidence showing that the 'Alfredo Leonardo' mentioned in the birth certificate is no other than he himself. Thus, plaintiff failed to prove his filiation which is a fundamental requisite in this action where he is claiming to be an heir in the inheritance in question. Even if it is true that petitioner is the child of Sotero Leonardo, still he cannot, by right of representation, claim a share of the estate left by the deceased Francisca Reyes considering that he was born outside wedlock as shown by the fact that when he was born on September 13,

1938, his alleged putative father and mother were not yet married, and what is more, his alleged father's first marriage was still subsisting.

**VDA. DE CRISOLOGO v. CA**
**137 SCRA 233 (1985)**

*FACTS:* Lutgarda Capiao executed 4 deeds of sale covering 17 parcels of land and a residential house in favor of Mallillin. The petitioners, who are relatives within the fifth civil degree of Lutgarda, filed an action againts Mallillin for ownership, annulment of sale, and delivery of possession of various properties, claiming to be legal heirs of the vendor, Lutgarda Capiao. The plaintiffs allege that Julia Capiao, who maintained extra-marital relations with one Victoriano Taccad, begot with him one child and/or forced heir, Lutgarda Capiao, who was married to Raymundo Zipagan both of whom died already, without any children or immediate forced heirs. Because she died without a will, intestate succession took place and herein plaintiffs claim that they, as relatives within the 5th civil degree to her, were consequently instituted as her legal heirs and were legally entitled to inherit all the properties which were hers by virtue of an extrajudicial partition. Mallillin filed a motion to dismiss and sought for summary judgment on the ground that Lutgarda was the illegitimate daughter of the late Julia Capiao and consequently, plaintiffs are complete strangers to her. Mallillin showed that their common ancestors was Pablo Capiao and the source of the properties in question, the deceased Lutgarda is undoubtedly illegitimate, even retaining the surname or family name of her mother Julia Capiao, not her father's name, Taccad.

*ISSUE:* Whether or not the plaintiffs can inherit from Lutgarda?

*HELD:* They cannot inherit the properties in question because of Article 992 of the Civil Code. Being relatives on the legitimate line of Julia Capiao, they cannot inherit from her illegitimate daughter. Their relative Julia Capiao predeceased the daughter, Lutgarda Capiao. Between the natural child and the legitimate relatives of the father or mother who acknowledged it, the Code denies any right of succession. They cannot be called relatives and they have no right to inherit. Of course, there is a blood tie, but the law does not recognize it. This is based upon the reality of the facts and upon the presumptive will of the interested parties: the natural child is disgracefully looked down upon by the legitimate

family; the legitimate family is in turn hated by the natural child; the latter considers the privileged condition of the former and the resources of which it is hereby deprived; the former, in turn, sees in the natural child nothing but the product of sin, a palpable evidence of a blemish upon the family. Every relation is ordinarily broken in life, the law does no more than recognize this truth, by avoiding further grounds of resentment.

POINTS TO PONDER:

1. In view of the advent of the Family Code which practically diminished the "disadvantages" of illegitimate children, should Article 992 be amended to allow successional rights to flow from the legitimate family to the illegitimate family and vice-versa.

2. RIGHT TO THE INHERITANCE (BAR 2007): For purposes of this question, assume all formalities and procedural requirements have been complied with. In 1970, Ramon and Dessa got married. Prior to their marriage, Ramon had a child, Anna. In 1971 and 1972, Ramon and Dessa legally adopted Cherry and Michelle, respectively. In 1973, Dessa died while giving birth to Larry. Anna had a child, Lia. Anna never married. Cherry, on the other hand, legally adopted Shelly. Larry had twins, Hans and Gretel, with his girlfriend, Fiona. In 2005, Anna, Larry, and Cherry died in a car accident. In 2007, Ramon died. Who may inherit from Ramon and who may not?

**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.**

<u>Right of illegitimate parents to inherit</u>: They inherit only in default of legitimate children and their legitimate descendants, and illegitimate children and their descendants whether legitimate or illegitimate. Hence, illegitimate parents are excluded by both legitimate children and their legitimate descendants, and illegitimate children and their descendants as distinguished from

legitimate parents who are excluded only by legitimate children and their legitimate descendants.

**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.**

Concurrence with other heirs: 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. Illegitimate parents also concur with the surviving spouse. The estate shall be divided one-half for the illegitimate parents and the other half for the surviving spouse. Note, however, that illegitimate parents exclude the brothers, sisters, nephews and nieces.

The law is silent as to the intestate shares of the surviving spouse concurring with illegitimate parents. It is believed that the same proportion provided for when surviving spouse concur with legitimate parents should be maintained. Hence, in spite of this omission, the surviving spouse should get one-half of the estate and the other half should go to the illegitimate parents. If that is the share of the surviving spouse concurring with legitimate parents, certainly such share cannot be less when he concurs with illegitimate parents. In other words, if the legitimate parents get only one-half of the estate when concurring with the surviving spouse of the decedent, the illegitimate parents get only one-half of the estate when concurring with the surviving spouse of the decedent. The illegitimate parents, who should have less rights, cannot be entitled to more than one-half in the same situation.

Illustration of the shares of the concurrence of heirs: Supposing P, an illegitimate child died leaving his father F, his wife W, and brother A. His father F had 2 sons B and C begotten from a lawful marriage. The estate was worth P100,000.00. Only F and W are entitled to inherit from the estate of P since illegitimate parents do not exclude the surviving spouse. On the

other hand, A, B, and C, who are brothers of P are excluded by F, the illegitimate father. Accordingly, the estate is to be divided into two and 1/2 is to be given to F and the other half is to be given to W.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| F | 25,000 | P25,000 | By own right | 50,000 |
| W | 25,000 | P25,000 | By own right | 50,000 |
| TOTAL | 75,000 | P50,000 | | 100,000 |

If F, the illegitimate father is already dead, then the brothers will not be excluded and they will concur with the surviving spouse. However, not all the brothers will inherit since B and C are legitimate children of F, P being an illegitimate child of F. However, A will inherit since he is also an illegitimate child of F (therefore, an illegitimate brother).

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| F | 50,000 | — | By own right | 50,000 |
| W | — | 50,000 | By own right | 50,000 |
| TOTAL | 75,000 | 50,000 | | 100,000 |

## 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 sisters, nephews and nieces, should there be any, under Article 1001.**

Right of the surviving spouse to inherit: The surviving spouse is fourth in the order of intestate succession. However, the

surviving spouse is not excluded by the first three in the order of intestate succession, *i.e.,* legitimate children, legitimate parents and illegitimate children. Although a primary compulsory heir, the surviving spouse does not exclude brothers and sisters, nephews and nieces who are not compulsory heirs since the law provides that when the surviving spouse concurs with brothers and sisters, nephews and nieces, they shall inherit together in such a way that the widow shall be entitled to one-half of the whole estate and the brothers and sisters, nephews and nieces to the other half. When the surviving spouse concurs with brothers and sisters, nephews and nieces of the deceased, whether the deceased is legitimate or illegitimate, the same rule applies.

POINT TO PONDER:

DISTRIBUTION OF ESTATE (BAR 2006): Don died after executing a Last Will and Testament leaving his estate valued at P12 Million to his common-law wife Roshelle. He is survived by his brother Ronie and his half-sister Michelle. (1) Was Don's testamentary disposition of his estate in accordance with the law on succession? Whether you agree or not, explain your answer. (2) If Don failed to execute a will during his lifetime, as his lawyer, how will you distribute his estate? Explain. (3) Assuming he died intestate survived by his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you distribute his estate? Explain. (4) Assuming further he died intestate, survived by his father Juan, his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you distribute his estate? Explain.

**Article 996. If a widow or a widower and legitimate children or descendants are left, the surviving spouse has in the succession the same as that of each of the children.**

<u>Intestate share of the surviving spouse in concurrence with legitimate children</u>: The law provides that the surviving spouse shall have the same share as each legitimate child. Hence, the entire estate is divided by the total number of legitimate children plus the surviving spouse. It should be noted that this division,

will not impair the legitimes because the legitime of the legitimate children is only 1/2 of the entire estate divided equally among them while that of the surviving spouse is equivalent only to the legitime of each legitimate child.

Illustration of the article: Supposing P died leaving his wife W and three legitimate children, A, B, C and D. The entire estate was worth P100,000.00.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 12,500 | 7,500 | By own right | P 20,000 |
| B | 12,500 | 7,500 | By own right | P 20,000 |
| C | 12,500 | 7,500 | By own right | P 20,000 |
| D | 12,500 | 7,500 | By own right | P 20,000 |
| TOTAL | P62,500 | P37,500 | | P100,000 |

Intestate share of the surviving spouse when concurring with only 1 legitimate child: When the surviving spouse concurs with only 1 legitimate child, they shall equally divide the entire estate, since the law in intestacy considers the surviving spouse as a child.

Illustration: Supposing P died leaving W, his wife and A, his legitimate son. The estate was worth P100,000.00. Divide the estate. The entire estate is to be divided into 2 and one-half goes to the surviving spouse W and the other half to A, the legitimate son.

**SANTILLON v. MIRANDA**
**14 SCRA 563 (1965)**

*FACTS:* Pedro Santillon died without testament, leaving one son, Claro and his wife, Perfecta. During his marriage, Pedro acquired several parcels of land. After 4 years, Claro filed a petition for letters of administration which was opposed by the widow. Subsequently, Perfecta was appointed.

Later, Claro filed a "Motion to Declare Share of Heirs" and to resolve the conflicting claims of the parties with respect to their respective rights in the estate. Invoking Article 892 of the New Civil Code, Claro insisted that after deducting 1/2 from the conjugal properties as the conjugal share of Perfecta, the remaining 1/2 must be divided as follows: 1/4 for her and 3/4 for him. Oppositor Perfecta, on the other hand, claimed that besides her conjugal half, she was entitled under Article 996 to another 1/2 of the remaining half. In other words, Claro claimed 3/4 of Pedro's inheritance while Perfecta claimed 1/2.The trial court ruled that Perfecta shall inherit 1/2 share and the remaining 1/2 share for the only son, Claro. This is after deducting the share of the widow as co-owner of the conjugal properties.

Claro appealed, resting his claim of 3/4 of the estate on Article 892 which reads: "If only the legitimate child or descendant of the deceased survives, the widow or widower shall be entitled to 1/4 of the hereditary estate." On the other hand, Perfecta cites Article 996 which provides: "If a widow or widower and the legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children." Claro says the article is unjust and inequitable to the extent that it grants the widow the same share as that of the children in intestate succession, whereas in testate, she is given 1/4 and the only child ½. Perfecta contends that 996 should control being as it is a provision on intestate succession involving a surviving spouse and a legitimate child, in as much as in statutory construction, the plural word "children" includes the singular "child."

*ISSUE:* How shall the estate of a person who died intestate be divided when the only survivors are the spouse and one legitimate child?

*HELD:* Article 892 of the New Civil Code falls under that chapter on Testamentary Succession; whereas Article 996 comes under the chapter on Legal or Intestate Succession. Such being the case, it is obvious that Claro cannot rely on Article 892 to support his claim 3/4 of his father's estate. Article 892 merely fixes the legitime of the surviving spouse and Article 888 thereof, the legitime of children in testate succession. While it may indicate the intent of law with respect to the ideal shares that a child and a spouse should get when they concur with each other, it does not fix the amount of share that such child and spouse are entitled to when intestacy occurs. It is a maxim of statutory construction that words in plural include the singular. So Article 996 could or

should be read (and so applied): "If the widow or widower and a legitimate child are left, the surviving spouse has the same shares as that of the child."

It is the belief of some that in testate succession, where there is only one child of the marriage, the child gets one-half and the widow or widower one-fourth. But in intestate, if Article 996 is applied now, the child gets one-half and the widow or widower one-half. Unfair and inequitable, they insist. On this point, it is not correct to assume that in testate succession the widow or widower "gets only one-fourth." She or he may get one-half if the testator so wishes. So the law leaves it virtually to each of the spouses to decide (by testament, whether his or her only child shall get more than his or her survivor).

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 50,000 | — | By own right | 50,000 |
| B | 25,000 | 25,000 | By own right | 50,000 |
| TOTAL | 75,000 | 25,000 | | 100,000 |

**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.**

Illustration of the article: Supposing P, a legitimate child died leaving his legitimate father F, his wife W. The estate was worth P100,000.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| F | 50,000 | — | By own right | 50,000 |
| W | 25,000 | 25,000 | By own right | 50,000 |
| TOTAL | 75,000 | 25,000 | | 100,000 |

Illustration of article in partial intestacy: Supposing a testator died leaving his legitimate father F and his wife MRS. He executed a will providing a legacy of P20,000.00 in favor of FR. The will contained no other provision. The estate was worth P100,000.00. This is a case of partial intestacy where we shall first determine the legitimes and pay the legacy, if not inofficious. After payment of the legacy and of the legitimes, the remainder shall be given to MRS, the surviving spouse since 1/2 of the estate should have gone to her in the first place. However, since her intestate share is in excess of her legitime, any reduction must be borne by her.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| F | 50,000 | --- | By own right | 50,000 |
| MRS | 25,000 | 5,000 | By own right | 30,000 |
| FR | --- | 20,000 | By legacy | 20,000 |
| TOTAL | 75,000 | 25,000 | | 100,000 |

**Article 998. If the 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.**

Intestate share of the surviving spouse in concurrence with illegitimate children: When the surviving spouse concurs with illegitimate children, they both divide the estate into two and each gets half. The half share of the illegitimate children shall be divided equally among them, in case there is more than one illegitimate child.

Illustration of article in partial intestacy: Supposing testator died leaving his wife MRS and his illegitimate son, X. He executed a will providing for a legacy of P20,000.00 in favor of FR. The will contained no other provision. The estate was worth P90,000.00. This is a case of partial intestacy where we shall first determine the legitimes and pay the legacy, if not inofficious. After payment

of the legacy and of the legitimes, the remainder shall be given to MRS and FR in equal shares. Since both of their intestate shares exceeded their legitimes, the legacy must be taken from both equally.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| **MRS** | **30,000** | **5,000** | **By own right** | **35,000** |
| **X** | **30,000** | **5,000** | **By own right** | **35,000** |
| **FR** | **---** | **20,000** | **By legacy** | **20,000** |
| **TOTAL** | **60,000** | **30,000** | | **90,000** |

**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.**

**ROSALES v. ROSALES**
**148 SCRA 69**

*FACTS:* Petra Rosales was survived by her husband and two children. Another child predeceased Petra leaving behind a Macikequerox Rosales and his widow, Irenea. The estate was valued at P30,000. In the course of the intestate proceedings, orders were issued declaring the husband, the two children, and Macikequerox as heirs as well as their respective shares in the estate. Irenea claimed that she is a compulsory heir of Petra.

*ISSUE:* Is a widow an intestate heir of the mother-in-law?

*RULING:* No, the pertinent provisions are Articles 980, 981, 982, and 999. The entire Code is devoid of any provision that entitles Irenea to inherit from her mother-in-law either by her own right or by right of representation.

<u>Intestate shares of the surviving spouse concurring with both legitimate children and their legitimate descendants, and</u>

illegitimate children and their descendants: This article provides that when the surviving spouse concurs with legitimate children and their legitimate descendants and illegitimate children and their descendants, the surviving spouse shall be entitled to a share equal to that of a legitimate child. But since illegitimate children do not get a specific portion when concurring with legitimate children but only a proportion namely 2:1, in order to avoid the impairment of the legitime of the legitimate children, we must follow the rule of compulsory succession, before applying the rule of intestate succession. Legitimes shall be paid first and the remainder should be distributed by the ratio of 2 for each legitimate child, 2 for the surviving spouse and 1 for each illegitimate child.

Illustration of the article: Supposing P died leaving his wife W, two legitimate sons, A and B and an illegitimate child C. The estate was worth P140,000.00. The legitime of the legitimate children is 1/2 of the estate to be divided between A and B. The spouse gets the same share as that of a legitimate child. The illegitimate child gets 1/2 of what each legitimate child gets. Since there is a remainder after payment of legitimes, then the remainder will be distributed in the same proportion of 2:2:2:1. Therefore, divide it by seven parts.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 35,000 | 5,000 | By own right | 40,000 |
| B | 35,000 | 5,000 | By own right | 40,000 |
| W | 35,000 | 5,000 | By own right | 40,000 |
| C | 17,500 | 2,500 | By own right | 20,000 |
| TOTAL | 122,500 | 17,500 | | 140,000 |

Since legitimes were not impaired, the whole estate may have been distributed outright in the proportion of 2:2:2:1. The estate divided by 7 times the number of parts allotted each heir shall yield the same distribution.

Illustration of the article: Supposing that P died leaving his wife W, 2 legitimate children A and B, and four illegitimate children, C, D, E, and F. The estate was worth P160,000. Since the entire estate is not enough to pay all the legitimes, the legitime of the legitimate children shall be first be paid, then from the free portion, the legitime of the surviving spouse. Whatever is left free shall be divided among the 10 illegitimate children.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 40,000 | --- | By own right | 40,000 |
| B | 40,000 | --- | By own right | 40,000 |
| W | 40,000 | --- | By own right | 40,000 |
| C | 10,000 | --- | By own right | 10,000 |
| D | 10,000 | --- | By own right | 10,000 |
| E | 10,000 | --- | By own right | 10,000 |
| F | 10,000 | --- | By own right | 10,000 |
| TOTAL | 160,000 | --- | | 160,000 |

**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.**

Intestate share of the surviving spouse concurring with legitimate ascendants and illegitimate children: When the surviving spouse concurs with legitimate ascendants and illegitimate children and their descendants, the legitimate ascendants get 1/2 of the estate, the surviving spouse gets 1/4 and the illegitimate children gets also 1/4 to be divided equally among them. The legitimate ascendants and the illegitimate children both receive only their legitime while the surviving spouse gets more since his legitime is only 1/8.

<u>Illustration in partial intestacy</u>: Supposing P died leaving his wife, W, his legitimate father F and an illegitimate child A. He executed a will giving a legacy of P10,000.00 to FR. The estate was worth P100,000.00. Since there is partial intestacy, the legacy shall be charged against the intestate heir who received more than his or her legitime without, however, impairing the legitime. Since only the surviving spouse received more than legitime, then the legacy shall be chargeable against her intestate share.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| P | 50,000 | --- | By own right | 50,000 |
| W | 12,500 | 2,500 | By own right | 15,000 |
| A | 25,000 | --- | By own right | 25,000 |
| L | --- | 10,000 | By legacy | 10,000 |
| TOTAL | 87,500 | 2,500 | | 100,000 |

**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.**

<u>Illustration of the article</u>: Supposing P died leaving W, his wife and A, his brother. The estate was worth P100,000.00. Applying this article, the entire estate shall be divided into two half of which goes to the surviving spouse and the other half goes to the brother A.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| W | 50,000.00 | --- | By own right | 50,000.00 |
| A | --- | 50,000.00 | By own right | 50,000.00 |
| TOTAL | 50,000.00 | 50,000.00 | | 100,000.00 |

Since brothers, sisters, nephews and nieces are not compulsory heirs and therefore not entitled to any legitime, their share shall come from the free portion.

**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 articles.**

Effect of legal separation: Only the innocent spouse shall inherit by intestacy in case of legal separation. As such, if the surviving spouse attempted against the life of the deceased spouse or committed adultery or concubinage, for which the deceased spouse obtained a legal separation, then such surviving spouse shall not inherit ab intestato. However, there must be an actual decree of legal separation. The mere giving cause for legal separation only serves as a ground for disinheritance under Article 921.

## COLLATERAL RELATIVES

**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.**

Successional rights of collateral relatives: If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased. Among the collateral relatives, the Rule of Proximity shall be applied except when the Right of Representation obtains. Hence, brothers and sisters, nephews and nieces inherit to the exclusion of other collateral relatives.

**Article 1004. Should the only survivors be brothers and sisters of the full blood, they shall inherit in equal shares.**

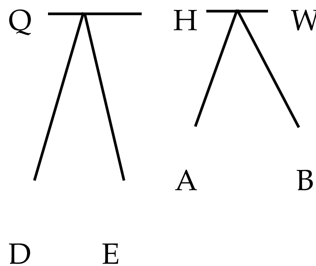
**Article 1005. Should brothers and sisters survive together with nephews and nieces, who are the children of the descendant's brothers and sisters of the full blood, the former shall inherit per capital, and the latter per stirpes.**

Rationale of the article: The brothers and sisters who survive with nephews and nieces inherit per capita and the latter

per stirpes since in this case where the Right of Representation is applicable, the representatives inherit per stirpes while the brothers who inherit in their own right inherit per capita.

**Article 1006. Should brothers and sisters of the full blood survive together with brothers and sister of the half blood, the former shall be entitled to a share double that of the latter.**

Illustration of the article: H and W were validly married with two children A & B. When W died, H married Q and had two more children D and E. H died. The estate was worth P120,000. In application of this article, the distribution shall be as follows:




| HEIR | INTESTATE SHARE | HOW ACQUIRED |
|---|---|---|
| A | 40,000 | INTESTACY |
| B | 40,000 | INTESTACY |
| D | 20,000 | INTESTACY |
| E | 20,000 | INTESTACY |
| TOTAL | 120,000 | |

**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.**

Extent of the relationship of collateral relatives to succeed intestate succession: The last of the relatives of the decedent to succeed in intestate succession are the collaterals relatives, other than brothers or sisters and nephews or nieces, within the 5th degree. These collateral relatives succeed without distinction of lines or preference among them by reason of blood relationship and succeed in accordance with the general rule that the nearer excludes the farther.

## THE STATE

**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 on 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.**

POINTS TO PONDER:

1. DISTRIBUTION BY INTESTACY (BAR 2008): Ernesto, an overseas Filipino worker, was coming home to the Philippines after working for so many years in the Middle East. He had saved P100,000 in his savings account in Manila which he intended to use to start a business in his home country. On his flight home, Ernesto had a fatal heart attack. He left behind his widowed mother, his common-law wife and their twin sons. He left no will, no debts, no other relatives and no other properties except the money in his savings account. Who are the heirs entitled to inherit from him and how much should each receive?
2. DISTRIBUTION BY INTESTACY: (BAR 2009) Ramon Mayaman died intestate, leaving a net estate of P10,000,000.00. Determine how much each heir will receive from the estate: [a] If Ramon is survived by his wife, three full-blood brothers, two half-brothers, and one nephew (the son of a deceased full-blood brother)? Explain. (3%) [b] If Ramon is survived by his wife, a half-sister, and three nephews (sons of a deceased full-blood brother)?

## RIGHT OF 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-heirs, co-devisees, or co-legatees.**

Basis for Accretion: Accretion works on the presumed will of the decedent. The moment any of the co-heirs cannot inherit

by repudiation, incapacity, or predecease, his or her share shall accrue to the others.

**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 die before the testator, or renounce the inheritance, or be incapacitated to receive it.**

**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.**

Elements of accretion in testamentary and intestate succession:

1. Unity of object
2. Plurality of persons
3. Repudiation, incapacity or predecease
4. Acceptance
5. No earmarking

Unity of object: The bequest must be one property or one specific portion of a property. It may even be the entire estate, the whole of which pertains to one mass of properties.

Plurality of Persons: There must be two or more heirs, legatees, devisees entitled to one object.

Vacancy: The cause of the vacancy must be either by repudiation, incapacity in cases of intestate succession while the cause of the vacancy must be repudiation, incapacity, or predecease in cases of testamentary succession.

Meaning of earmarking: The test of non-earmarking is that after distributing the estate, the other heirs must not be

holding the property in the concept of co-ownership. When they are not sharing the property in terms of ideal shares, then you have violated the non-earmarking rule and the consequence is that there will be no accretion and the vacant portion shall be distributed according to intestacy.

Illustration of accretion: Suppose the testator gives his house as a devise to X, Y, and Z. If Z predeceases and X and Y both accept, could there be accretion? All the requisites for accretion are present. There is unity of object in that there is only one specific house. There is plurality of heirs as there are actually 3 of them. A vacancy exists due to Z's predecease. Both X and Y have accepted the devise, and there has been no earmarking. The testator did not specify which particular portion pertains to the heirs. Consequently, had they all been qualified to accept, there would have been a co-ownership created involving 3 persons. The proprietary interest of each co-owner is represented by an undivided share in the totality of the object, which is their aliquot or imaginary share.

Illustration of Earmarking: The case would be different, however, if the testator says, "I am giving to X the 1st floor, Y the 2nd and Z the 3rd." Since there is earmarking to the extent that the shares of each co-heirs were specified, upon distribution of the property, the house will not be co-owned. The properties are "earmarked" which can be measured in heaps and bounds. Hence, accretion cannot take place.

Nature of Fungible Goods: In the case of money or fungible goods, unless the same are earmarked they are considered still pro-indiviso and consequently, there shall be a right of accretion.

**Article 1018. In legal succession the share of the person who repudiates the inheritance shall always accrue to his co-heirs.**

Effect of repudiation: Repudiation shall always give rise to accretion both in testamentary and intestate succession.

Availability of the right of accretion:

1. In testamentary succession: Accretion is only available when the right of representation is not available.

Therefore, there is no accretion in cases of incapacity or predecease of a child or descendant who has his own child or descendants, because representation will take place. However, since the right of representation is limited to the legitime, the share corresponding to the free portion of the estate shall be generally distributed by accretion, if the requirements are satisfied as discussed above.

2. In intestate succession: Accretion takes place in case of repudiation and incapacity of one of the heirs, just as in testamentary succession. However, in case of predecease of a co-heir in intestate succession, there is absolutely no accretion. The heir who predeceased does not participate in the distribution of the estate and therefore not considered in the partition of the intestate shares. The right of accretion is available only when the requirements are met; plurality of heirs and unity of the subject matter.

Non-availability of accretion in intestacy: In order for accretion to be available, there must be a vacant share. Since, in legal or intestate succession, there is strictly no vacant share, then the result of the distribution shall be the same whether there is accretion or not.

Non-availability of accretion in disinheritance: There is no right of accretion in case of the disinheritance of a compulsory heir because the testator deliberately did not call the disinherited heir to succeed. For accretion to be available, it requires that two or more persons are called to the same inheritance, devise or legacy. If such heir is not even named to succeed, there is nothing for the others to acquire by right 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.**

Illustration 1: Suppose the testator gives a devise (a house valued at P90M), without any earmarking, to X, Y, and Z. Z predeceases the testator. Upon distribution, X and Y shall obtain their share of 1/3, or the equivalent of P30,000.00 each. In the

absence of any substitution clause or any descendants of Z children which may be entitled to represent their father, then accretion shall take place. As a result of accretion, X and Y will get 1/2 each, because both X and Y acquired Z's share in proportion they inherit.

Illustration 2: Under the same example above, the distribution shall be different if Z is a compulsory heir and had a descendant who can exercise the right if representation. As such, the portion/value of the house corresponding to his legitime shall be then distributed by the right of representation. The portion/value of the house corresponding to the free portion shall be distributed by the right of accretion.

If Z is merely a voluntary heir, then no right of representation exists because in testamentary succession, representation is limited to the legitime and such may only be invoked by compulsory heirs.

Illustration 3: Suppose the testator instituted A, B and C as universal heirs to his estate valued at P65,000.00. He gives A P15,000.00 worth of properties, B P20,000.00 and C P30,000.00 worth of properties. In case A predeceases, B and C will immediately get their shares. As regards A's share, there is right of accretion in favor of B and C, they inherit at the ratio of 3:2.

| Heir | Devise | Accretion | Total |
|---|---|---|---|
| **B** | **P20,000.00** | **P6,000.00** | **P26,000.00** |
| **C** | **P30,000.00** | **P9,000.00** | **P39,000.00** |

Illustration 4: Q: Suppose the decedent died leaving 3 brothers, A, B & C and an estate of P120,000.00. Suppose A had predeceased but is survived by 1 legitimate child named X, B is incapacitated but left 2 legitimate children, Y and Z, and C repudiated. The distribution shall be as follows:

| Heir | Represen-tative | Share received by right of representation 2:1:1 | Amount received by right of accretion | Total |
|---|---|---|---|---|
| **A (prede-cease)** | **X** | **40,000** | **20,000** | **60,000** |
| **B** | **Y** | **20,000** | **10,000** | **30,000** |
| **(incapacity)** | **Z** | **20,000** | **10,000** | **30,000** |
| **C (repudiate)** | | | | |

Each of the 3 brothers had an intestate share of P40,000.00. Because A predeceased, his share will go to his legitimate child there being a right of representation. Similarly, B's share will go to his 2 legitimate children by right of representation. But because C repudiated, there is no right of representation in favor of his descendants, such vacant share shall be distributed by right of accretion. In the absence of their respective fathers, the whole amount now pertains to the children as voluntary heirs, not as representatives. They become the qualified heirs who will benefit from the accretion; since X got P40,000.00 while Y and Z each got P20,000.00, they received at a ratio of 2:1:1.

Illustration 5: Suppose the testator instituted 4 voluntary heirs to his estate of P210,000.00. He intended the distribution to be as follows: A will get 1/2, B 1/4, C 1/8, and D 1/8. In case D repudiates, there is no need to check the legitimes since the testator left no compulsory heirs. Assuming there is no provision for substitutes, the right of accretion exists. The estate could properly be distributed following the testator's intent, that is, A receives 1/2 or P105,000.00, B gets 1/4 which is equal to P52,500.00, and C receives his 1/8 share of P26,500.00. Since D has repudiated, there remains a balance of P26,500.00 to be distributed to the other voluntary heirs by right of accretion. The heirs will receive the balance proportionately according to

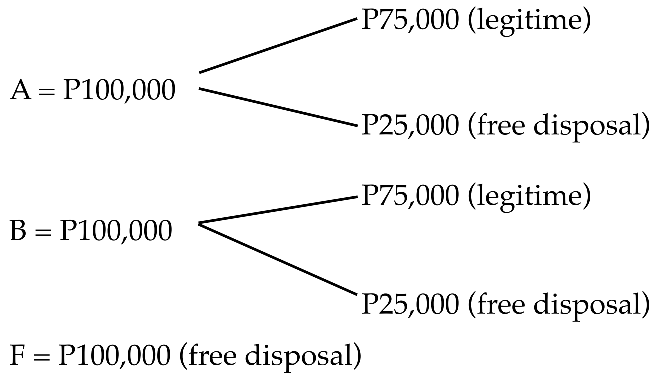
the ratio in which they inherit. Since they inherit at the ratio of 4:2:1, the balance shall be divided into 7 parts (4+2+1=7) and distributed accordingly.

| **Voluntary Heir** | **Share** | **Ratio** | **Amount received by accretion** | **Amount received by institution** | **Total amount received** |
|---|---|---|---|---|---|
| **A** | **1/2 or 4/8** | **4** | **15,000** | **105,000** | **120,000.00** |
| **B** | **1/4 or 2/8** | **2** | **7,500** | **52,000** | **60,000.00** |
| **C** | **1/8** | **1** | **3,750** | **26,250** | **30,000.00** |

Illustration 6: Suppose the testator provides in his will that A and B, who are his legitimate children, and FR, a friend, shall equally inherit from his estate worth P300,000.00. B predeceases and is survived by X and Y who are his legitimate children.

Assuming there are no substitutes, the right of representation exists but is nevertheless limited to the legitime. The testator clearly intended that A, B, and F will each receive P100,000.00. Before distribution, there is a necessity to a check whether there is impairment of legitime, there being 2 compulsory heirs who are both legitimate children. With an estate of P300,000.00, the legitime is P150,000.00 (A and B are entitled to a legitime of P75,000.00 each) and the free disposal is P150,000.00, thus there is no impairment. While A and F may both receive their share of P100,000.00 each, there remains a vacant portion of P100,000.00 corresponding to the share of B due to his predecease.

B is survived by 2 legitimate children, X and Y, who are entitled to the right of representation to B's legitime of P75,000.00. X and Y receive P37,500 each by right of representation. Of the P100,000.00 supposedly pertaining to B, there remains P25,000.00 which corresponds to the free disposal.




F = P100,000 (free disposal)

Accretion is available to two or more persons who are called upon by the testator to the same inheritance, devise, or legacy. Thus, there must be plurality of heirs and only one subject. Since the subject matter is the free disposal of the testator to be P150,000.00, the remaining P25,000.00 shall accrue to those people who were called upon by the testator to succeed to the free portion, to wit: A and F. The basis for the accretion is the share in the free disposal, the ratio being 4:1 since F got P100,000.00 of the free disposal and A got only P25,000.00,

| Heir | Testator's intended distribution | Right of Representation | Right of Accretion | Total amount received |
|---|---|---|---|---|
| A | 100,000 | | 5,000 | 105,000 |
| X<br>Y | | 37,500<br>37,500 | | 37,500<br>37,500 |
| F | | 37,500 | 20,000 | 120,000 |

**Article 1020. The heirs to whom the inheritance accrues shall succeed to all the rights and obligations which the heir who renounced or could not receive it would have had.**

**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 one of them and to a stranger.**

**Should the part repudiated be the legitime, the other co-heirs shall succeed to it in their own right, and not by the right of accretion.**

Availability of accretion in testamentary succession: Accretion is available among the compulsory heirs only when the free portion is left to two or more of them, or to any of them or to a stranger. With respect to the legitime repudiated, the other co-heirs shall succeed it in their own right, and not by right of accretion.

**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.**

No vacancy permitted: The means to distribute the vacant share are Institution, Substitution, Representation, Accretion and Intestacy. The vacant share created by any contingencies in succession such as disinheritance, repudiation, incapacity, and predecease shall be distributed in the order of preference.

1. According to the order of distribution, the initial task is to give effect to the intent of the testator as specified in his will, either give out the legacies and devises; or distribute the estate in accordance to institution of heirs. If the institution is valid, intestacy is avoided.

2. However, certain contingencies may arise after the attempt to give effect to the provisions of the testator's will. Despite the testator's diligence, the institution may be rendered inoperative by virtue of the disinheritance, repudiation, incapacity or predecease of the heir; all beyond the control of the testator. As a result of this contingency, a vacancy in succession is created.

3. According to this rule, if contingencies create a vacant share, then the estate shall be distributed by substitution, that is, if the testator had provided for an express provision for substitution of heirs. If the substitution was validly constituted, and it becomes

appropriate, the estate must be distributed according to the rules on substitution.

4. If the substitution is not applicable because the condition therein did not arise, or the substitution is void, or that the testator did not provide for substitutes at all, the estate shall be distributed by way of the right of representation, if available.

   a. The right of representation is only available in the direct descending line, never in the ascending.

   b. In the collateral line, it takes place only in favor of the children of brothers and sisters, whether they be full or half blood, if such children concur with their uncles and aunts.

   c. This right arises only if the person to be represented has been disinherited, or is incapacitated, or has predeceased. By clear command of the law, the heir who repudiates may not be represented.

   d. While the representative is entitled to the entire share of the person represented in the case of intestate succession, he is only entitled to the legitime in the case of testamentary succession, and not to what is voluntarily given by will.

   e. The right is subject to the barrier imposed by Article 992 in that while a legitimate child can always represent, whether succeeding to a legitimate or illegitimate ascendant or parent, the illegitimate child can represent only when the parent to be represented is himself an illegitimate child of the decedent.

5. If the right of representation does not exist, then the estate shall be distributed by way of accretion. This right is only available when two or more persons are called to the same inheritance, devise or legacy and one of the co-heirs repudiates, or is incapacitated, or predeceases. If all the requisites for accretion are present, the share of such heir will now accrue to the other co-heirs.

6. If the right of accretion is not applicable or there remains a vacant share, the rules on intestacy shall now govern the distribution. Thus, from testamentary succession which began at the institution of heirs, the distribution shall be governed by rules of intestacy due to the application of the ISRAI rule.

No accretion in case of predecease in intestate succession: If the vacancy is occasioned by predecease of an intestate heir, there can be no accretion, for the other intestate heirs inherit in their own right. If accretion is inapplicable, the rules on intestacy shall be applied to distribute the vacant share.

Illustration: A decedent was survived by his father and mother, a wife, and 2 illegitimate children. At the time of his death, his estate was valued at P480M but his father repudiates. The intestate share of the heirs shall be computed as follows: Father/Mother gets 1/2 or P240M at P120M each; Wife gets 1/4 or P120M; and the two illegitimate children get 1/4 or P120M at P60M each. As regards the legitimes, Father/Mother gets 1/2 or P240M (120M each); Wife gets 1/8 or P60M; and the two illegitimate children get 1/4 or P120M at P60M each child.

However, if the father repudiated, the vacant portion of P120M, according to Jurado, shall be distributed by giving the mother P40M, wife P40M, and each illegitimate child P20M since accretion cannot take place since the repudiation involves the legitime of the father. However, in the ascending line, succession is recognized per stirpes under the rule of equality subject to absorption. Thus, if one line defaults, everything is consolidated in the other. So when the father repudiated, the mother got the legitime of the father; she gets the entire 1/2 or P240M.

## CAPACITY TO SUCCEED BY WILL OR BY INTESTACY

**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.**

Definition of capacity to succeed: The law does not actually define incapacity although it enumerates certain incapacities. Simply put, "capacity to succeed" is the sum total of all the qualifications of a person that makes this person fit to inherit from a particular person.

Kinds of incapacity to succeed: The kinds of incapacity to succeed are absolute and relative.

Absolute incapacity pertains to those persons who can never inherit from anybody regardless of circumstances. Examples include the unborn person and associations and corporations not authorized by law.

Relative incapacity pertains to those persons who cannot inherit only from certain persons or certain properties because of possible undue influence (Article 1027), because of public policy and morality (Article 1028, Article 739), and because of unworthiness (Article 1032). Although incapacitated persons are incapacitated to enter into contracts or to make wills or to otherwise dispose of their properties, they are nevertheless entitled or capacitated to inherit.

**Article 1025. In order 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.**

First requisite for capacity to inherit: The heir, devisee or legatee must either be already living or at least conceived at the moment of death of the decedent. In the case of the conceived child, Article 41 of the Civil Code must be complied with, that is, 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 twenty-four hours after its complete delivery from the maternal womb.

**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 provision to the contrary in their charter or the laws of their creations, and always subject to the same.**

**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 approved, 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 the 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.**

Extent of Disqualification: The persons enumerated under this article are disqualified because of the possibility of undue influence exerted by them on the testator. The disqualification is only applicable to testamentary succession since the reason for the law is to prevent undue influence on the testator in his disposition of properties by will. The disqualification does not apply to dispositions which do not extend a testamentary benefit such as the appointment as an executor or payment of debts or obligation.

No proof necessary for undue influence: The disqualification exists without the necessity of proving actual undue influence since its exercise is conclusively presumed. Those persons who

are disqualified under 1-5 are persons who have the opportunity to exert undue influence on the testator and their disqualification is not premised on the actual exercise of undue influence but purely on having an opportunity to exert that particular influence subject of course to the problem in par. 4 in relation to Article 823. The presumption, therefore, is conclusive.

Disqualification not applicable to legitime: The legitime is given not by virtue of the will, but by operation of law. Therefore, it would be unfair to deprive the compulsory heirs their legitimes just because they fall under the persons disqualified under this article. Thus, if the priest, or attesting witness, or physician is also a child of the testator, he would still be entitled to the legitime.

Re: priests/ministers and their relatives: The will or the testamentary disposition must be made shortly after the "last illness", indicating its correlation with the possibility of the exercise of undue influence.

Meaning of "Last illness": It is the illness of which the testator died or the one immediately preceding it. It is not necessary that the testator actually died of such illness. It does not matter whether the illness was chronic or acute, long or short. What is important is the possibility of death.

Illustration of effect of disqualification: A testator during his last illness confessed to a priest who was his only son. In his will made shortly after the confession, the testator gave his son-priest P60 M out of an estate worth P100 M. The remaining P40 M was given to a stranger.

The son-priest inherits P50 M as his legitime and not the additional P10 M which is part of the free portion nullified by the disqualification. The P10 M shall accrue in favor of the stranger.

Re Guardians: The only time when a guardian may inherit is when the will was made after the approval of the "final accounts" or when the guardian is a relative of the testator as an ascendant, descendant, brother, sister, or spouse. But, when it can be shown that the guardian's relative has been instituted merely as an indirect means of enabling the guardian to benefit

from the inheritance, the institution is void by virtue of Article 1031.

Meaning of "final accounts": It is the accounting process that terminates the financial responsibility and authority of the guardian over the ward.

Rationale for the disqualification: Evidently, the guardian has a certain influence upon the ward. As long as the guardian has the power and authority of the administration of the property of the ward, the guardian will always be in a position to advance his own interests.

Possible (?) illustrations of disqualification: For instance, X is a minor and Y is her guardian.

1. X writes a will giving Y a legacy. Y is disqualified under Article 1027. However, the will is void because X is a minor. She cannot write a valid will.

2. If X writes her will when she turned 18 years old, the provision still does not apply since guardianship terminates upon reaching the age of majority.

3. X executes her will naming Y as a legatee. She subsequently becomes insane and Y becomes her guardian. The provision still does not apply because the guardian had no opportunity to exert undue influence over X because at the time she made the will Y was not yet the guardian.

Futility of the provision under the Family Code: While the age of majority under the Civil Code was 21 yrs old, a person can still write a will at 18 years of age. Thus, when you write your will at 18 years old, theoretically, you can be under legal guardianship under the Civil Code. Due to the Family Code, this particular disqualification has become futile since the age of majority was reduced from 21 to 18 years old.

Re: Attesting Witnesses: In determining the capacity of attesting witnesses to inherit, which provision should govern, Article 1027 or 823? There is no conflict between the two provisions, Article 823 renders the disposition void in favor of the attesting

witness while Article 1027 renders the witness incapacitated to inherit. However, if there at least three other witnesses other than heir instituted, such witness can still testify since the possibility of having a tainted testimony will no longer be present. Article 823 speaks of the qualifications/disqualifications of witnesses while Article 1027 speaks of capacity to succeed.

Re: Physicians, Surgeons, Etc: If the physician, surgeon, health officer is a relative of the deceased, the testamentary disposition is still valid since relatives are naturally expected and required to take care of the sick person. However, according to Justice Paras, since the law makes no distinction, unlike in the provision regarding guardians, these relatives are disqualified to inherit.

Meaning of "took care": This means that the physician, surgeon, nurse, etc had religiously and diligently attended to the medical needs of the deceased in a manner that undue influence may have been present.

Re Individuals, Associations and Corporations: This particular provision may well be futile since there is no law which disqualifies a person or any corporation or association to inherit.

**Article 1028. The prohibitions mentioned in Article 739 concerning donations *inter vivos* shall apply to testamentary provisions.**

*Scope of Disqualification: These testamentary provisions/donations mortis causa are considered as void for reasons of public policy.*

*Art. 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. (n)*

Adultery and concubinage cases: In these cases, 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. The disqualification does not apply to a person who institutes or gives a legacy or a devise to a live-in partner since the disqualifications enumerated presuppose an adulterous relationship or one that partakes of the nature of concubinage. It does not criminalize what laymen call "fornication". The common denominator of adultery and concubinage is that both can only be committed by a married person. In a live-in arrangement, there can be no adultery or concubinage.

**NEPOMUCENO v. COURT OF APPEALS**
**139 SCRA 206**

*FACTS:* Martin Jugo died on July 16, 1974 in Malabon, Rizal. He left a last Will and Testament where he named and appointed herein petitioner Sofia Nepomuceno as his sole and only executor of his estate. It is clearly stated in the will that the testator was legally married to a certain Rufina Gomez by whom he had two legitimate children, but since 1952, he had been estranged from his lawfully wedded wife and had been living with petitioner as husband and wife. In fact, on December 5, 1952, the testator Martin Jugo and the petitioner herein, Sofia, were married on Tarlac before the Justice of the Peace. The testator devised to his forced heirs, namely, his legal wife Rufina Gomez and his children his entire estate and the free portion thereof to herein petitioner.

Subsequently, the petitioner filed a petition for the probate of the last will and testament of the deceased, but the legal wife of the testator Rufina and her children filed an opposition alleging inter alia that the execution of the will was procured by undue and improper influence on the part of the petitioner; that at the time of the execution of the will, the testator was already very sick and that the petitioner having admitted her living in concubinage with

the testator, she is wanting integrity and thus letters testamentary should not be issued to her.

The lower court denied the probate of the will on the ground that as the testator admitted in his will to cohabiting with the petitioner, the will's admission to probate will be an idle exercise because on the face of the will, the invalidity of its intrinsic provisions is evident. The appellate court declared the will to be valid except that the devise in favor of the petitioner is null and void.

*ISSUE:* Whether or not the donation made by the testator in favor of herein petitioner was valid.

*HELD:* NO. There is no question from the records about the fact of a prior existing marriage when Martin Jugo lived together in an ostensible marital relationship for 22 years until his death. It is also a fact that Martin Jugo and Sofia Nepomuceno contracted a marriage before the Justice of the Peace of Tarlac. The man was then 51 years old while the woman was 48. Nepomuceno contends that she acted in good faith for 22 years in the belief that she was legally married to the testator. The records do not sustain that she acted in good faith for 22 years in the belief that she was legally married to the testator, since the last will and testament itself expressly admits indubitably on its face the meretricious relationship between the testator and petitioner, the devisee.

Moreover, the prohibition in Article 739 of the Civil Code is against the making of a donation between persons who are living in adultery or concubinage. It is the donation which becomes void. The giver cannot give even assuming that the recipient may receive. The very wordings of the will invalidate the legacy because the testator admitted he was disposing the properties to a person with whom he had been living in concubinage.

Criminal conspiracy: To fall within this disqualification, the heir must be given a bequest by the testator in consideration for the commission of an offense. It must be stated in the will either expressly or inferred from the circumstances surrounding the execution of the will.

**Article 1029. Should the testator dispose of the whole or part of his property for 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 or its proceeds to the church or denomination to which the testator may belong, to be used for such prayers and pious works, and the other half to the State for the purposes mentioned in Article 1013.**

Requisites for application: The provisions of this Article 1029 will only apply when the disposition is for prayers and pious works of the soul of the testator (not for prayers only or for pious works only), the disposition is in general terms, and the disposition does not specify any application.

Disposition under Article 1029: Half of the estate will be distributed to the church where the testator belongs presumably for prayers for the soul. The other half will be given to the State presumably for pious works such as for the benefit of public schools, and public charitable institutions and centers, in such municipalities or cities.

**Article 1030. Testamentary provision 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 the 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.**

Distribution to the Poor in General: The estate will be distributed to the "poor" persons living in the community where the testator was domiciled at the time of his death. The determination as to who is "poor" is delegated to the executor and, if there is none designated, by certain public officers who will decide by majority vote.

Necessity of Court Approval: The purpose of having court approval as regards the determination as to who will be the beneficiaries of such testamentary provision is to presumably ensure that proper parameters were used either by the executor or by certain public officers.

**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.**

Meaning of "disqualified person": A "disqualified person" is one who is incapacitated either absolutely or by reason of possible undue influence (Article 1027), or by reason of morality (Article 1028). This article does not include those who are incapacitated by reason of unworthiness. Thus, if a disposition is made in favor of X with instruction to give the property to Y whom the testator knew had attempted to kill him (testator), the disposition is valid. A direct disposition in favor of Y is valid, considering that this act of giving is an implied condonation of the unworthy act under Article 1033.

**Article 1032. The following are incapable of succeeding by reason of unworthiness:**

**(1) Parents who have abandoned their children or induced 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 six 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 not 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 from making a will, or from revoking one already made, or who supplants, conceals, or alters the latter's will;**

**(8) Any person who falsifies or forges a supposed will of the decedent.**

Common grounds for disinheritance as stated in Articles 919 to 921: The grounds for unworthiness concur with grounds for disinheritance, the only ground included in this Article and not stated in Articles 919 to 921, is the failure to report the violent death of the testator.

Vice of Consent: Paragraphs 6, 7 and 8 are the different vices of consent such that the person who caused the vice of consent in the execution, revocation or modification of a will, becomes disqualified under Article 1032, paragraphs 6, 7, or 8 and, at the same time, can also be disinherited under Articles 919, 920 and 921.

**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.**

Express condonation: It must be in a written deed of condonation if the testator found out about the grounds for unworthiness after the making of the will.

> *Article 1270. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.*
>
> *One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation.*

Implied condonation: If the testator had knowledge of the ground for unworthiness but nevertheless proceeded with the

making of a will in favor of such heir, it may well be considered as an implied condonation. There is no need for the execution of a written condonation.

**Article 1034. In order 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 of 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 be considered.**

Period to determine incapacity: As a general rule, the incapacity of an heir is determined at the time of death of the decedent since it is only upon death when rights accrue to the heir.

Final judgment: In certain cases as in Nos. 2, 3 or 5 of Article 1032 (attempt against the life of the testator, his or her spouse, descendants, or ascendants), (false accusation that prescribes imprisonment for six years or more, if the accusation has been found groundless), and (adultery or concubinage with the spouse of the testator), there is a need to wait for the final judgment in these cases. Pending final judgment, the properties supposed to be given to the incapacitated heir shall be placed under administration until such time the conviction becomes final.

**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 descendants, the latter shall acquire his rights to the legitime.**

**The person so excluded shall not enjoy the usufruct and administration of the property thus inherited by his children.**

Representation in cases of Incapacity: In cases of incapacity of a child or a descendant, the respective descendants will acquire the rights to the legitime of the incapacitated heir.

**Article 1036. Alienations of hereditary property, and acts of administration performed by the excluded heir, before 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.**

Powers of Incapacitated Heir: The incapacitated heir, having no ownership rights in the estate, will neither have the powers of administration nor usufructyary rights over the property to be inherited by his own descendants. However, if the incapacitated heir had no knowledge of his own incapacity due to the lack of any judicial order stating the same, any good faith alienations and acts of administration made by him in favor of third persons shall be valid. Third parties who had no knowledge of the incapacity of the disposing heir shall be protected. The proper recourse is for the co-heirs, whose share was adversely affected by the "improper" disposal of the incapacitated heir, to sue the latter for damages.

**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.**

Rights of Incapacitated Heir: The incapacitated heir, while excluded from succession in the estate, will nonetheless have rights to be indemnified for any expenses incurred in the preservation of the property. Such rights can be enforced against the estate under the assumption that such expenses were incurred by the heir prior to his knowledge or judical order of his incapacity.

**Article 1038. Any person incapable of succession, who, disregarding the prohibition stated in the preceding articles, entered into the possession of the hereditary property, shall be obliged to return it together with its accessions.**

**He shall be liable for all the fruits and rents he may have received, or could have received through the exercise of due diligence.**

Liabilities of Incapacitated Heir: The incapacitated heir, having no ownership rights in the estate, will be liable to return

whatever property he took into possession together with its accessions. Once the heir enters into possession of the hereditary property, he is liable for actual fruits and rents received as well as those he could have received. Being a de facto administrator, the heir will be accountable to his co-heirs for any income received by him.

**Article 1039. Capacity to succeed is governed by the law of the nation of the decedent.**

National law in Incapacity: The national law of the decedent shall be used to determine the validity of the order of succession, the amount of successional rights, and the capacity to succeed.

**Article 1040. The action for the declaration of incapacity and for the recovery of the inheritance, devise or legacy shall be brought within five years from the time the disqualified person took possession thereof. It may be brought by any one who may have an interest in the succession.**

Nature of the Action: The action must be for both declaration of incapacity and recovery of the property together with its accessions, rentals, fruits. The prescriptive period is five years from the time of possession of the disqualified heir. The proper party is any person who is interested in the estate such as co-heirs and creditors.

## ACCEPTANCE AND REPUDIATION OF INHERITANCE

**Article 1041. The acceptance or repudiation of the inheritance is an act which is purely voluntary and free.**

Nature of Acceptance or Repudiation: Acceptance and repudiation entail transmission of ownership rights. Acceptance formalizes the transmission of ownership from the decedent to the heir while repudiation triggers the transmission of ownership from the heir to his co-heirs. Hence, both acts should not be attended with any vice of consent.

**Article 1042. The effects of the acceptance or repudiation shall always retroact to the moment of the death of the decedent.**

**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.**

When to Accept/Repudiate: The proper time when to accept or repudiate is when a person interested in the estate is certain of the death of the decedent and certain of his rights to the estate of such decedent. Certainty of death is indicated in a death certificate while certainty of rights to inherit is indicated in a judicial order of heirship or any public document indicating the person's relationship with the decedent.

**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.**

**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.**

**Article 1046. Public official establishments can neither accept nor repudiate an inheritance without the approval of the government.**

**Article 1047. A married woman of age may repudiate an inheritance without the consent of her husband.**

**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.**

Persons who can accept or repudiate: In general, any person having the "free disposal" of his property can accept or

repudiate an inheritance. Since acceptance and repudiation have implications on ownership rights, if a person has restrictions with respect to property dispositions, then certain conditions have to be met.

| HEIR | BY WHOM: | CONDITIONS: |
|---|---|---|
| MINORS or INCAPACITATED PERSONS | Parents and Guardians | With Judicial Approval |
| POOR | Persons designated by the testator | In default of persons designated by the testator, by the justice of the peace, the mayor, and the municipal treasurer, who shall decide by majority. |
| CORPORATIONS, ASSOCIATIONS, and ENTITIES | Lawful representatives | To accept, no other condition except authority from the Board.<br>To repudiate, aside from authority there must be court approval. |
| GOVERNMENT | Concerned public officials | With government approval. |
| DEAF-MUTES | If they can read or write, personally or thru an agent. | If they cannot read or write, by their guardians. |

**Article 1049. Acceptance may be express or tacit.**

**An express acceptance must be made in a 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.**

Kinds of Acceptance: Acceptance may be express or implied. Express acceptance must be done in writing. Tacit or implied acceptance occurs when, by reason of the conduct of the heir, his intention to accept can be implied or his actions indicate his assertion of his rights as an heir.

**Article 1050. An inheritance is deemed accepted:**

**(1) If the heirs sells, donates, or assigns his right to a stranger, or to his co-heirs, or to any of them;**

**(2) If the heir renounces the same, even though gratuitously, for the benefit of one or more of his co-heirs;**

**(3) 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.**

**Article 1051. The repudiation of an inheritance shall be made in a public or authentic instrument, or by petition presented to the court having jurisdiction over the testamentary or intestate proceedings.**

Requirements for valid repudiation: Unlike in acceptance, repudiation can never be implied or presumed. The repudiation must be an express and formal act to relinquish whatever properties the heir is entitled to. Thus, it can only be done by way of a public document or by way of a formal petition in court.

**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.**

**The acceptance shall benefit the creditors only to an extent sufficient to cover the amount of their credits. The excess, should there be any, shall in no case pertain to the renouncer, but shall be adjudicated to the persons to whom, in accordance with the rules established in this Code, it may belong.**

Creditors' participation in repudiation: In case the repudiation will affect the rights of creditors, the latter may seek court

action in such a way repudiation will be partially nullified to the extent of their credits. Any excess will accrue to the co-heirs.

**Article 1053. If the heir should die without having accepted or repudiated the inheritance his right shall be transmitted to his heirs.**

Transmissiblity of rights: These rights are transmissible to the heirs in case the heir fails to exercise such rights during his lifetime. Such right shall form part of the estate of the person who failed to exercise the same.

**Article 1054. Should there be several heirs called to the inheritance, some of them may accept and the others may repudiate it.**

**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 of his being a testamentary heir, he may still accept it in the latter capacity.**

Partial repudiation: When a testamentary heir (who is an intestate heir at the same time) repudiates his inheritance, his repudiation covers his share both in the testate and intestate proceedings. When a testamentary heir (who had no knowledge that he was a testamentary heir) repudiates his inheritance as an intestate heir, his repudiation covers only his share in intestate proceedings. He is not precluded to accept his share as a testamentary heir considering that he was not aware of his rights at the time repudiation was made. Not only repudiation must be free and voluntary according to Article 1041, it must also be intelligent.

**Article 1056. The acceptance or repudiation of 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.**

Irrevocable acceptance or repudiation: As in any act that affect ownership rights, repudiation or acceptance can only be

impugned when there is a vice of consent. Repudiation and acceptance can also be impugned if a new will appears that revokes or modifies the earlier will. A new will may have affected the rights of such person accepting or repudiating; hence his act can be impugned.

**Article 1057. Within thirty 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.**

Acceptance by Default: If within thirty days from the court order decreeing the distribution of the estate (not the probate order) the heirs fail to accept or repudiate the inheritance, they are deemed to have accepted the inheritance. The rationale for this default rule is to minimize administrative complexities in the distribution of the estate.

## EXECUTORS AND ADMINISTRATORS

**Article 1058. All matters relating to the appointment, powers and duties of executors and administrators and concerning the administration of estates of deceased persons shall be governed by the Rules of Court.**

**Article 1059. If the assets of the estate of a decedent which can be applied to the payment of debts are not sufficient for that purpose, the provisions of Articles 2239 to 2251 on Preference of Credits shall be observed, provided that the expenses referred to in Article 2244, No. 8, shall be those involved in the administration of the decedent's estate.**

Preference of Credits: The Code provides for a preference of credits which can be made applicable to payments of debts by the estate in case the same is insufficient.

**Article 1060. A corporation or association authorized to conduct the business of a trust company in the Philippines may**

**be appointed as an executor, administrator, guardian of an estate, or trustee, in like manner as an individual; but it shall not be appointed guardian of the person of a ward.**

Rules on Administrators: An artificial person like corporations can serve as administrators of estates but not as guardians of ward. This provision must be read in conjunction with Rules 78-85 of the Rules of Court.

## COLLATION

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

Allowable debts and charges to be deducted: Deductible debts and charges refer to pre-existing obligations of the testator which he had incurred during his lifetime and not to the charges or burdens which are created by testamentary dispositions found in the will.

Concept of collation: Collation involves two concepts; mathematical process and actual reduction or abatement.

1. Mathematical process: The first concept is the imaginary addition or fictitious reunion of property donated by the testator inter vivos with the properties left at the time of his death. This fictitious process does not involve the actual or physical bringing back of the property donated to the hereditary estate. In determining the hereditary estate for purposes of computing legitime, collation is done in the first concept. Hence, it is an accounting procedure wherein you take the value of the properties donated into the computation of the estate.
2. Actual reduction or abatement: The second concept of collation is actual reduction or bringing back of that

property donated by the testator during his lifetime to the hereditary estate. If the donations are found to be inofficious, then they are subject to reduction or abatement.

Purpose of collation: The purpose of collation is to prevent the possibility of disposing or donating property inter vivos in excess of what one can dispose of by will, in order to protect the legitimes. The testator cannot prejudice his compulsory heirs by giving away all his properties before his death.

Sample Problem: (collation with reduction):

1. Net Estate = P120M
2. Surviving Heirs are as follows: LC = A, B, and C, SS = W
3. Donations to S of P80M (2001), to G of P30M (1998), and to A of P40M (1996)

Suggested Answer: A typical problem will involve the determination of the legitime, the determination whether the donations are inofficious, and the distribution of the estate.

1. Theoretical Estate = 120 + 150 (total donations) = P270M
2. Strict Legitime = 270/2 = P135M
3. Free Portion = P135M
    a. Deduct legitimes of other compulsory heirs (W)
    b. Impute donations to compulsory heirs against respective legitimes. (P40M to A)
    c. Impute donations to strangers (P110M) to the free portion.
4. Free Disposal = 135 – 45 = P90M
    a. Since not all donations can be paid out, the most recent donation has to suffer a reduction.
    b. The value of the donation to S will have to be reduced from P80 M to P60 M.

c. The deficit between the free disposal and the total amount of donations. (90 - 110 = - 20).

5. How much is legitime? P45M per legitimate child, P45M for surviving spouse.

6. Are the donations inofficious? Yes, since donations imputable to the free portion (P110M) cannot be accommodated by the amount left in the free disposal (P45M).

| Heir/ Donee | Legitime | Free Disposal | Donation | Total |
|---|---|---|---|---|
| A | 5 | | 40 | 5 + 40 |
| B | 45 | | | 45 |
| C | 45 | | | 45 |
| W | 45 | | | 45 |
| S | | | 60 (instead of 80) | 60 |
| G | | | 30 | 30 |
| | P140 M | 0 | P130 M | P270M |

**Article 1062. Collation shall not take place among compulsory heirs if the donor should have so expressly provided, or if the donee should repudiate the inheritance, unless the donation should be reduced as inofficious.**

**Article 1063. Property left by will is not deemed subject to collation, if the testator has not otherwise provided, but the legitime shall in any case remain unimpaired.**

**Article 1064. When the grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, they shall bring to collation all that their parents, if alive, would have been obliged to bring, even though such grandchildren have not inherited the property.**

**They shall also bring to collation all that they may have received from the decedent during his lifetime, unless the testator**

**has provided otherwise, in which case his wishes must be respected, if the legitime of the co-heirs is not prejudiced.**

**Article 1065. Parents are not obliged to bring to collation in the inheritance of their ascendants any property which may have been donated by the latter to their children.**

**Article 1066. Neither shall donations to the spouse of the child be brought to collation; but if they have been given by the parent to the spouses jointly, the child shall be obliged to bring to collation one-half of the thing donated.**

**Article 1067. Expenses for support, education, medical attendance, even in extraordinary illness, apprenticeship, ordinary equipment, or customary gifts are not subject to collation.**

**Article 1068. Expenses incurred by the parents in giving their children a professional, vocational or other career shall not be brought to collation unless the parents so provide, or unless they impair the legitime; but when their collation is required, the sum which the child would have spent if he had lived in the house and company of his parents shall be deducted therefrom.**

**Article 1069. Any sums paid by a parent in satisfaction of the debts of his children, election expenses, fines, and similar expenses shall be brought to collation.**

**Article 1070. Wedding gifts by parents and ascendants consisting of jewelry, clothing, and outfit, shall not be reduced as inofficious except insofar as they may exceed one-tenth of the sum which is disposable by will.**

**Article 1071. The same things donated are not to be brought to collation and partition, but only their value at the time of the donation, even though their just value may not then have been assessed.**

**Their subsequent increase or deterioration and even their total loss or destruction, be it accidental or culpable, shall be for the benefit or account and risk of the donee.**

**Article 1072. In the collation of a donation made by both parents, one-half shall be brought to the inheritance of the father, and the other half, to that of the mother. That given by one alone shall be brought to collation in his or her inheritance.**

**Article 1073. The donee's share of the estate shall be reduced by an amount equal to that already received by him; and his co-**

**heirs shall receive an equivalent, as much as possible, in property of the same nature, class and quality.**

**Article 1074. Should the provisions of the preceding article be impracticable, if the property donated was immovable, the co-heirs shall be entitled to receive its equivalent in cash or securities, at the rate of quotation; and should there be neither cash or marketable securities in the estate, so much of the other property as may be necessary shall be sold at public auction.**

**If the property donated was movable, the co-heirs shall only have a right to select an equivalent of other personal property of the inheritance at its just price.**

**Article 1075. The fruits and interest of the property subject to collation shall not pertain to the estate except from the day on which the succession is opened.**

**For the purpose of ascertaining their amount, the fruits and interest of the property of the estate of the same kind and quality as that subject to collation shall be made the standard of assessment.**

**Article 1076. The co-heirs are bound to reimburse to the donee the necessary expenses which he has incurred for the preservation of the property donated to him, though they may not have augmented its value.**

**The donee who collates in kind an immovable which has been given to him must be reimbursed by his co-heirs for the improvements which have increased the value of the property, and which exist at the time the partition if effected.**

**As to works made on the estate for the mere pleasure of the donee, no reimbursement is due him for them; he has, however, the right to remove them, if he can do so without injuring the estate.**

**Article 1077. Should any question arise among the co-heirs upon the obligation to bring to collation or as to the things which are subject to collation, the distribution of the estate shall not be interrupted for this reason, provided adequate security is given.**

Cardinal Rule of Collation: All donations are subject to collation, at least in the concept of the imaginary addition of property donated by the testator inter vivos with the properties left at the time of his death.

Definition and Purpose of Collation: It is the act by virtue of which descendants or other forced heirs who intervene in the division of the inheritance of an ascendant bring into the common mass, the property which they received from him, so that the division may be made according to law and the will of the testator. Collation is only required of compulsory heirs succeeding with other compulsory heirs and involves property or rights received by donation or gratuitous title during the lifetime of the decedent. The purpose is to attain equality among the compulsory heirs insofar as possible for it is presumed that the intention of the testator or predecessor in interest in making a donation or gratuitous transfer to a forced heir is to give him something in advance on account of his share in the estate, and that the predecessor's will is to treat all his heirs equally, in the absence of any expression to the contrary. Collation does not impose any lien on the property or the subject matter of collationable donation. What is brought to collation is not the property donated itself, but rather the value of such property at the time it was donated, the rationale being that the donation is a real alienation which conveys ownership upon its acceptance, hence any increase in value or any deterioration or loss thereof is for the account of the heir or donee.

Non-collationable donations: Articles 1061 up to 1077 prescribe the rules on collation. While some Articles mention some donations or expenses as "not collationable", as in expenses for support and education in Article 1067, the value of these expenses shall still be added to the net estate for the purpose of determining the legitime of the compulsory heirs. The term "not subject to collation" simply indicates that the expenses shall be imputed or chargeable against the free disposal instead of legitime.

**VIZCONDE v. COURT OF APPEALS**
**(G.R. No. 118449. February 11, 1998)**

*FACTS:* Petitioner Lauro G. Vizconde and his wife Estrellita Nicolas-Vizconde had two children, viz., Carmela and Jennifer. Petitioner's wife, Estrellita, is one of the five siblings of spouses Rafael Nicolas and Salud Gonzales-Nicolas. The other children of Rafael and Salud are Antonio Nicolas; Ramon Nicolas; Teresita

Nicolas de Leon, and Ricardo Nicolas, an incompetent. Antonio predeceased his parents and is now survived by his widow, Zenaida, and their four children.

In 1979, Estrellita purchased from Rafael a parcel of land (hereafter Valenzuela property) for One Hundred Thirty Five Thousand Pesos (P135,000.00). Sometime in 1990, Estrellita sold the Valenzuela property to Amelia Lim and Maria Natividad Balictar Chiu for Three Million, Four Hundred Five Thousand, Six Hundred Twelve Pesos (P3,405,612.00). In June of the same year, Estrellita bought from Premier Homes, Inc., a parcel of land with improvements situated at Vinzon St., BF Homes, Parañaque (hereafter Parañaque property) using a portion of the proceeds of sale of the Valenzuela property.

Estrellita and her two daughters, Carmela and Jennifer, were killed on June 30, 1991, an incident popularly known as the "Vizconde Massacre". The findings of the investigation conducted by the NBI reveal that Estrellita died ahead of her daughters. Accordingly, Carmela, Jennifer and herein petitioner succeeded Estrellita and, with the subsequent death of Carmela and Jennifer, petitioner was left as the sole heir of his daughters. Nevertheless, petitioner entered into an "Extra-Judicial Settlement of the Estate of Deceased Estrellita Nicolas-Vizconde With Waiver of Shares", with Rafael and Salud, Estrellita's parents. The extra-judicial settlement provided for the division of the properties of Estrellita and her two daughters between petitioner and spouses Rafael and Salud. The Parañaque property and the car were also given to petitioner with Rafael and Salud waiving all their "claims, rights, ownership and participation as heirs" in the said properties.

In 1992, Rafael died. To settle Rafael's estate, Teresita instituted an intestate estate proceeding listing as heirs Salud, Ramon, Ricardo, and the wife (Zenaida) and children of Antonio. Teresita sought to be appointed as guardian ad litem of Salud, now senile, and Ricardo, her incompetent brother. Herein private respondent Ramon filed an opposition praying to be appointed instead as Salud and Ricardo's guardian. Barely three weeks passed, Ramon filed another opposition alleging, among others, that Estrellita was given the Valenzuela property by Rafael which she sold for not less than Six Million Pesos (P6,000,000.00) before her gruesome murder. Ramon pleaded for the court's intervention "to determine the legality and validity of the intervivos distribution made by deceased Rafael to his children," Estrellita included.

On May 12, 1993, Ramon filed his own petition entitled "In The Matter Of The Guardianship Of Salud G. Nicolas and Ricardo G. Nicolas" and averred that their legitime should come from the collation of all the properties distributed to his children by Rafael during his lifetime. Ramon stated that herein petitioner is one of Rafael's children "by right of representation as the widower of deceased legitimate daughter of Estrellita."

Ramon moved to include petitioner in the intestate estate proceeding and asked that the Parañaque property, as well as the car and the balance of the proceeds of the sale of the Valenzuela property, be collated. Such motion was granted on the basis that spouses Vizconde were then financially incapable of having purchased or acquired for a valuable consideration the property at Valenzuela from the deceased Rafael Nicolas.

To dispute the contention that the spouses Vizconde were financially incapable to buy the property from the late Rafael Nicolas, Lauro Vizconde claims that they have been engaged in business venture such as taxi business, canteen concessions and garment manufacturing.

Since no competent evidence was submitted to support such business undertakings, the court declared that the transfer of the property at Valenzuela in favor of Estrellita by her father was gratuitous and the Parañaque property is subject to collation.

The Court of Appeals also ruled against Vizconde stressing that the RTC correctly adjudicated the question on the title of the Valenzuela property as "the jurisdiction of the probate court extends to matters incidental and collateral to the exercise of its recognized powers in handling the settlement of the estate of the deceased."

*ISSUE:* Whether the Valenzuela property is subject to collation inasmuch as the Court nullified the transfer of the Valenzuela property from Rafael to Estrellita.

*RULING:* No. The attendant facts herein do not make a case of collation. We find that the probate court, as well as respondent Court of Appeals, committed reversible errors.

First: The probate court erred in ordering the inclusion of petitioner in the intestate estate proceeding. Petitioner, a son-in-law of Rafael, is not one of Rafael's compulsory heirs as provided

in Article 887 of the Civil Code. With respect to Rafael's estate, Vizconde who was not even shown to be a creditor of Rafael is considered a third person or a stranger.

Second: The probate court went beyond the scope of its jurisdiction when it proceeded to determine the validity of the sale of the Valenzuela property and ruled that the transfer of the subject property was gratuitous. The interpretation of the deed and the true intent of the contracting parties are matters outside the probate court's jurisdiction.

Third: The order of the probate court subjecting the Parañaque property to collation is premature since there was no indication that the legitime of any of Rafael's heirs has been impaired to warrant collation.

Fourth: Even on the assumption that collation is appropriate in this case the probate court, nonetheless, made a reversible error in ordering collation of the Parañaque property. We note that what was transferred to Estrellita, by way of deed of sale, is the Valenzuela property. The obligation to collate is lodged with Estrellita, the heir, and not to herein petitioner who does not have any interest in Rafael's estate. As it stands, collation of the Parañaque property is improper for, to repeat, collation covers only properties gratuitously given by the decedent during his lifetime to his compulsory heirs.

Fifth: Finally, it is futile for the probate court to ascertain whether or not the Valenzuela property may be brought to collation. Estrellita, it should be stressed, died ahead of Rafael. In fact, it was Rafael who inherited from Estrellita an amount more than the value of the Valenzuela property. Hence, even assuming that the Valenzuela property may be collated, collation may not be allowed as the value of the Valenzuela property has long been returned to the estate of Rafael. Therefore, any determination by the probate court on the matter serves no valid and binding purpose.

## PARTITION AND DISTRIBUTION OF THE ESTATE

### Partition

**Article 1078. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.**

Co-ownership prior to partition: The whole estate, prior to any partition or distribution of specific properties to the heirs, is co-owned by the heirs.

**Article 1079. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value.**

**SANCHEZ v. COURT OF APPEALS**

**GR No. 108947**

*FACTS:* Rosalia S. Lugod is the only child of spouses Juan Sanchez and Maria Villafranca while herein private respondents are the legitimate children of herein private respondent Rosalia. Herein petitioners are the illegitimate children of Juan Sanchez. Following the death of her mother, Maria Villafranca, [herein private respondent] Rosalia filed, thru counsel, a petition for letters of administration over the estate of her mother and the estate of her father, Juan Sanchez, who was at the time in state of senility. On January 14, 1969, [herein petitioners] as heirs of Juan Sanchez, filed a petition for letters of administration over the intestate estate of Juan Sanchez, which petition was opposed by [herein private respondent] Rosalia. However, on October 30, 1969, private respondent Rosalia and petitioners assisted by their respective counsels executed a compromise agreement wherein they agreed to divide the properties enumerated therein of the late Juan Sanchez.

In this appeal, petitioners invite the Court's attention to its ruling for annulling the decision of the lower court for the reason that a compromise agreement (or partition as the court construed the same to be) executed by the parties was void and unenforceable for lack of judicial approval by the intestate court and that the same having been seasonably repudiated by the petitioners on the ground of fraud.

*ISSUE:* Is a compromise agreement partitioning inherited properties valid even without the approval of the trial court hearing the intestate estate of the deceased owner?

*RULING:* YES. Article 2028 of the Civil Code defines a compromise agreement as "a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced." Being a consensual contract, it is

perfected upon the meeting of the minds of the parties. Judicial approval is not required for its perfection. Petitioners' argument that the compromise was not valid for lack of judicial approval is not novel. In the case before us, it is ineludible that the parties knowingly and freely entered into a valid compromise agreement. Adequately assisted by their respective counsels, they each negotiated in terms and provisions for four months; in fact, said agreement was executed only after the fourth draft. Accordingly, they should be bound thereby. To be valid, it is merely required under the law to be based on real claims and actually agreed upon in good faith by the parties thereto.

**Article 1080. Should a person make partition of his estate by an act inter vivos, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.**

**A parent who, in the interest of his or her family, desires to keep any agricultural, industrial, or manufacturing enterprise intact, may avail himself of the right granted him in this article, by ordering that the legitime of the other children to whom the property is not assigned, be paid in cash.**

Partition inter vivos: Any partition must respect the legitimes of compulsory heirs. Any person who wishes to keep a family business intact can order payment of legitimes in cash to those heirs who will not receive the family business by way of a partition inter vivos.

**Article 1081. A person may, by an act inter vivos or mortis causa, intrust the mere power to make the partition after his death to any person who is not one of the co-heirs.**

**The provisions of this and of the preceding article shall be observed even should there be among the co-heirs a minor or a person subject to guardianship; but the mandatary, in such case, shall make an inventory of the property of the estate, after notifying the co-heirs, the creditors, and the legatees or devisees.**

Delegated partition: The mandatary may be given the power to partition the estate with proper notice to the co-heirs, legatees, and devisees.

**Article 1082. Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, and exchange, a compromise, or any other transaction.**

**HEIRS OF CONTI v. COURT OF APPEALS**
**GR No. 118464**

*FACTS:* The late spouses Jacinto Alejandrino and Enrica Labunos left their six children a 219-square-meter lot in Mambaling, Cebu City. Petitioner Mauricia (one of the children) alleged his purchased a part of the property. It turned out, however, that a third party named Licerio Nique, the private respondent in this case, also purchased portions of the property also "through Laurencia". However, Laurencia (the alleged seller of the property) later questioned the sale in action for quieting of title and damages against private respondent Nique. Mauricia filed an amended complaint wherein she alleged that private respondent Nique never notified her of the purchase of the portions of the property nor did he give petitioner Mauricia the preemptive right to but the area as a co-owner of the same lot. The amended complaint further prayed for the return to petitioner Mauricia of the portions of the property and for damages and attorney's fees.

*ISSUE:* Whether or not as an heir of the Alejandrino property, Laurencia may validly sell specific portions thereof to a third party.

*HELD:* YES. Although the right of an heir over the property of the decedent is inchoate as long as the estate has not been fully settled and partitioned, the law allows a co-owner to exercise rights of ownership over such inchoate right. In the instant case, Laurencia was within her hereditary rights in selling her pro indiviso share it the property. However, because the property had not yet been partitioned in accordance with the Rules of Court, no particular portion of the property could be identified as yet and delineated as the object of the sale, but the deed of extrajudicial settlement executed by Mauricia and Laurencia evidence their intention to partition the property It delineates what portion of the property belongs to each other. On the part of Laurencia, the court found that she had transmitted her rights over portions she had acquired from her brothers to private respondent Nique. The sale was made after the execution of the deed of extrajudicial settlement of the estate that private respondent himself witnessed.

The extrajudicial settlement of estate having constituted a partition of the property, Laurencia validly transferred ownership over the front portion of the property with an area of 146 square meters.

**Article 1083. Every co-heir has a right to demand the division of the estate unless the testator should have expressly forbidden its partition, in which case the period of indivision shall not exceed twenty years as provided in article 494. This power of the testator to prohibit division applies to the legitime.**

**Even though forbidden by the testator, the co-ownership terminates when any of the causes for which partnership is dissolved takes place, or when the court finds for compelling reasons that division should be ordered, upon petition of one of the co-heirs.**

<u>Demand for partition</u>: As co-owners, the heirs have the right to demand the division of the estate unless the testator restricted its partition, the duration of which cannot be more than 20 years. Considering that legitime is that part of the estate reserved for by law in favor of compulsory heirs, the testator cannot impose such restriction on legitimes. By way of exception however, the court can still order partition of the estate despite such express restriction from the testator for compelling reasons.

**Article 1084. Voluntary heirs upon whom some condition has been imposed cannot demand a partition until the condition has been fulfilled; but the other co-heirs may demand it by giving sufficient security for the rights which the former may have in case the condition should be complied with, and until it is known that the condition has not been fulfilled or can never be complied with, the partition shall be understood to be provisional.**

**Article 1085. In the partition of the estate, equality shall be observed as far as possible, dividing the property into lots, or assigning to each of the co-heirs things of the same nature, quality and kind.**

<u>Guidelines for Partition</u>: Any partition shall be dictated by the principles of equality and fairness considering that co-heirs own the estate equally in the absence of any division made by the decedent during his lifetime.

**Article 1086. Should a thing be indivisible, or would be much impaired by its being divided, it may be adjudicated to one of the heirs, provided he shall pay the others the excess in cash.**

**Nevertheless, if any of the heirs should demand that the thing be sold at public auction and that strangers be allowed to bid, this must be done.**

Indivisibility of the Estate: If the estate or any of its properties is indivisible, such can be given to any of the co-heirs with the condition that such person shall pay his other co-heirs their corresponding share in cash. Any of the heirs can also demand a sale of such indivisible property by public auction.

**Article 1087. In the partition the co-heirs shall reimburse one another for the income and fruits which each one of them may have received from any property of the estate, for any useful and necessary expenses made upon such property, and for any damage thereto through malice or neglect.**

**Article 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.**

**Article 1089. The titles of acquisition or ownership of each property shall be delivered to the co-heir to whom said property has been adjudicated.**

**Article 1090. When the title comprises two or more pieces of land which have been assigned to two or more co-heirs, or when it covers one piece of land which has been divided between two or more co-heirs, the title shall be delivered to the one having the largest interest, and authentic copies of the title shall be furnished to the other co-heirs at the expense of the estate. If the interest of each co-heir should be the same, the oldest shall have the title.**

## EFFECTS OF PARTITION

**Article 1091. A partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him.**

Partition terminates Co-ownership: After partition, the heir becomes the exclusive owner of whatever property is due him by virtue of partition. As a consequence, he can have a separate title in his name.

**Article 1092. After the partition has been made, the co-heirs shall be reciprocally bound to warrant the title to, and the quality of, each property adjudicated.**

Warranty after Partition: Since any partition by the heirs is dictated by the principles of equality and fairness, co-heirs have reciprocal warranties as to the title and quality of the property adjuciated to each other.

**Article 1093. The reciprocal obligation of warranty referred to in the preceding article shall be proportionate to the respective hereditary shares of the co-heirs, but if any one of them should be insolvent, the other co-heirs shall be liable for his part in the same proportion, deducting the part corresponding to the one who should be indemnified.**

**Those who pay for the insolvent heir shall have a right of action against him for reimbursement, should his financial condition improve.**

**Article 1094. An action to enforce the warranty among heirs must be brought within ten years from the date the right of action accrues.**

**Article 1095. If a credit should be assigned as collectible, the co-heirs shall not be liable for the subsequent insolvency of the debtor of the estate, but only for his insolvency at the time the partition is made.**

**The warranty of the solvency of the debtor can only be enforced during the five years following the partition.**

**Co-heirs do not warrant bad debts, if so known to, and accepted by, the distributee. But if such debts are not assigned to a co-heir, and should be collected, in whole or in part, the amount collected shall be distributed proportionately among the heirs.**

**Article 1096. The obligation of warranty among co-heirs shall cease in the following cases:**

**(1) When the testator himself has made the partition, unless it appears, or it may be reasonably presumed, that his intention was otherwise, but the legitime shall always remain unimpaired;**

**(2) When it has been so expressly stipulated in the agreement of partition, unless there has been bad faith;**

**(3) When the eviction is due to a cause subsequent to the partition, or has been caused by the fault of the distributee of the property.**

## RESCISSION AND NULLITY OF PARTITION

**Article 1097. A partition may be rescinded or annulled for the same causes as contracts.**

Annulment of partition: Any partition can be annulled on the following grounds:

> *Art. 1381. The following contracts are rescissible:*
>
> *(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;*
>
> *(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;*
>
> *(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;*
>
> *(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;*
>
> *(5) All other contracts specially declared by law to be subject to rescission.*

**Article 1098. A partition, judicial or extra-judicial, may also be rescinded on account of lesion, when any one of the co-heirs received things whose value is less, by at least one-fourth, than**

**the share to which he is entitled, considering the value of the things at the time they were adjudicated.**

Lesion: When an heir receives his share in the estate by way of partition made by a person other than the testator, he can impugn such partition if the value of his share is less by at least 25% of the value to which he is legally entitled. For instance, if the net estate is valued at P180 M and there are only three legitimate children as compulsory heirs, then the share of each child should be valued at P60 M at the time of partition. If the value of the share of any heir is P45 M or less, then such heir can rescind the partition on the grounds of lesion.

**Article 1099. The partition made by the testator cannot be impugned on the ground of lesion, except when the legitime of the compulsory heirs is thereby prejudiced, or when it appears or may reasonably be presumed, that the intention of the testator was otherwise.**

Partition made by testator: If the testator himself makes the partition and the share of an heir is less by at least 25% of the value to which he is legally entitled, then the heir prejudiced can rescind such partition only if his legitime is impaired. For instance, in the earlier example, if the net estate is valued at P180 M and there are only three legitimate children as compulsory heirs, then the share of each child is P60 M (composed of P30 M as legitime and P30 M from the free portion). If the value of the share given to an heir less than P30 M, then such compulsory heir can rescind the partition on the grounds of lesion.

**Article 1100. The action for rescission on account of lesion shall prescribe after four years from the time the partition was made.**

Prescriptive period: In contracts, the action for rescission also prescribes within four years.

**Article 1101. The heir who is sued shall have the option of indemnifying the plaintiff for the loss, or consenting to a new partition.**

**Indemnity may be made by payment in cash or by the delivery of a thing of the same kind and quality as that awarded to the plaintiff.**

**If a new partition is made, it shall affect neither those who have not been prejudiced nor those have not received more than their just share.**

**Article 1102. An heir who has alienated the whole or a considerable part of the real property adjudicated to him cannot maintain an action for rescission on the ground of lesion, but he shall have a right to be indemnified in cash.**

Alienation after Lesion: An heir loses his right to rescind if he alientates the property (despite being valued less than 25% of his legal share). Instead, the heir can demand for a cash indemnity against his co-heirs for the deficiency.

**Article 1103. The omission of one or more objects or securities of the inheritance shall not cause the rescission of the partition on the ground of lesion, but the partition shall be completed by the distribution of the objects or securities which have been omitted.**

**Article 1104. A partition made with preterition of any of the compulsory heirs shall not be rescinded, unless it be proved that there was bad faith or fraud on the part of the other persons interested; but the latter shall be proportionately obliged to pay to the person omitted the share which belongs to him.**

**VIADO v. COURT OF APPEALS**
**G.R. No. 137287. February 15, 2000**

*FACTS:* During their lifetime, the spouses Julian C. Viado and Virginia P. Viado owned several pieces of property, among them a house and lot located at La Loma, Quezon City. Virginia P. Viado died on 20 October 1982. Julian C. Viado died three years later. Surviving them were their children — Nilo Viado, Leah Viado Jacobs, and herein petitioner Rebecca Viado. Nilo Viado and Leah Viado Jacobs both died on 22 April 1987. Nilo Viado left behind as his own sole heirs herein respondents — his wife Alicia Viado and their two children Cherri Viado and Fe Fides Viado.

Petitioners and respondents shared a common residence at the Isarog property. Soon, however, tension would appear to have escalated between petitioner Rebecca Viado and respondent

Alicia Viado after the former had asked that the property be equally divided between the two families. Respondents, claimed absolute ownership over the entire property and demanded that petitioners vacate the portion occupied by the latter. Petitioners, asserting co-ownership over the property in question, filed a case for partition before the Quezon City.

Respondents predicated their claim of absolute ownership over the subject property on two documents — a deed of donation executed by the late Julian Viado and a deed of extrajudicial settlement in which Julian Viado, Leah Viado Jacobs (through a power of attorney in favor of Nilo Viado).

Petitioners, in their action for partition, attacked the validity of the foregoing instruments, contending that the late Nilo Viado employed forgery and undue influence to coerce Julian Viado to execute the deed of donation. Petitioner Rebecca Viado, in her particular case, averred that her brother Nilo Viado employed fraud to procure her signature to the deed of extrajudicial settlement. She added that the exclusion of her retardate sister, Delia Viado, in the extrajudicial settlement, resulted in the latter's preterition that should warrant its annulment. The trial court and the Court of Appeals adjudged Alicia Viado and her children as being the true owners of the disputed property.

*ISSUE:* Who are the true owners of the disputed property belonging to spouses Julian Viado and Virginia Viado?

*RULING:* The Supreme Court ruled in favor of the respondents.

When Virginia P. Viado died intestate in 1982, her part of the conjugal property, the Isarog property in question included, was transmitted to her heirs — her husband Julian and their children Nilo Viado, Rebecca Viado, Leah Viado and Delia Viado. The inheritance, which vested from the moment of death of the decedent, remained under a co-ownership regime among the heirs until partition.

Every act intended to put an end to indivision among co-heirs and legatees or devisees would be a partition although it would purport to be a sale, an exchange, a compromise, a donation or an extrajudicial settlement. In debunking the continued existence of a co-ownership among the parties hereto, respondents rely on the deed of donation and deed of extrajudicial settlement which consolidated the title solely to Nilo Viado. Petitioners assail

the due execution of the documents on the grounds heretofore expressed.

The evidence submitted by petitioners were utterly wanting and mainly consisted of self-serving testimonies. While asserting that Nilo Viado employed fraud, forgery and undue influence in procuring the signatures of the parties to the deeds of donation and of extrajudicial settlement, petitioners are vague on how and in what manner those supposed vices occurred. The asseveration of petitioner Rebecca Viado that she has signed the deed of extrajudicial settlement on the mistaken belief that the instrument merely pertained to the administration of the property is too tenuous to accept. It is also quite difficult to believe that Rebecca Viado, a teacher by profession, could have misunderstood the tenor of the assailed document.

The exclusion of petitioner Delia Viado, alleged to be a retardate, from the deed of extrajudicial settlement verily has had the effect of preterition. This kind of preterition, however, in the absence of proof of fraud and bad faith, does not justify a collateral attack on Transfer Certificate of Title No. 373646. The relief, as so correctly pointed out by the Court of Appeals, instead rests on Article 1104 of the Civil Code to the effect that where the preterition is not attended by bad faith and fraud, the partition shall not be rescinded but the preterited heir shall be paid the value of the share pertaining to her. Again, the appellate court has thus acted properly in ordering the remand of the case for further proceedings to make the proper valuation of the Isarog property and ascertainment of the amount due petitioner Delia Viado.

**Article 1105. A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person.**

Partition by Mistake: In case a person is included in a partition under a mistaken belief that such person is an heir, the partition shall remain valid but void with respect to the provisions in favor of such person.

**DE LOS SANTOS v. DE LA CRUZ**
**37 SCRA 555 (1971)**

*FACTS:* Pelagia De la Cruz died intestate and without issue. Subsequently, Gertrudes De los Santos, who was the grandniece

of Pelagia, and several co-heirs, including Maximo De la Cruz, who was the nephew of the deceased Pelagia, executed an extra judicial partition agreement over the deceased estate. The parties agreed to adjudicate 3 lots to Maximo in addition to his corresponding share, on condition that he would undertake the development and subdivision of the estate with all expenses in connection therewith to be defrayed from the proceeds of the sale of the said 3 lots.

However, despite demands of Gertrudes, other co-heirs, and residents of the subdivision, Maximo failed to perform his aforesaid obligation although he had already sold the lots. Thus, Gertrudes filed a complaint for specific performance. Maximo answered that while he admits the due execution of the extra judicial partition, Gertrudes had no cause of action against him because the said agreement was void as to her, for she was not an heir of Pelagia, the deceased owner of the property. The lower court ruled that Maximo, being a party to the extra judicial partition agreement, was estopped from raising in issue the right of Gertrudes to inherit from Pelagia and hence he must abide by its terms.

*ISSUE:* Whether or not the extra judicial partition is valid with respect to Gertrudes as to give her a cause of action against Maximo.

*HELD:* No. In the stipulation of facts submitted, the parties admit that the owner of the estate was Pelagia who died intestate; that Maximo is a nephew of the said decedent; and that Gertrudes is a grandniece of Pelagia; (her mother Marciana de la Cruz being a niece of said Pelagia); that Gertrudes' mother predeceased Pelagia; and that the purpose of the extra judicial partition agreement was to divide and distribute the estate among the heirs of Pelagia.

Gertrudes, being a mere grandniece of Pelagia could not inherit from the latter by right of representation. Article 972 provides that "[t]he right of presentation takes place in the direct descending line, 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." Much less could she inherit in her own right. Article 962 states that "[i]n every inheritance, the relatives nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place."

In intestate succession a grandniece of the deceased cannot participate with a niece in the inheritance, because the latter being a nearer relative, the more distant grandniece is excluded. In the collateral line, the right of representation does not obtain beyond sons and daughters of the brothers and sisters.

In the present case, the relatives 'nearest in degree' to Pelagia are her nephews and nieces, one of whom is Maximo. Necessarily, Gertrudes, a grandniece is excluded by law from the inheritance. Gertrudes' inclusion and participation in the extra judicial partition agreement did not confer upon her the right to institute this action. The express purpose of the agreement was to divide the estate among the heirs of Pegalia. The agreement itself states that Gertrudes was participating therein in representation of her deceased mother. It is apparent that in executing the partition, the parties were laboring under the erroneous belief that Gertrudes was one the legal heirs of Pelagia. But Gertrudes not being such heir, the partition is void with respect to her, pursuant to Article 1105 which states that "(a) partition which includes a person believed to be an heir, but who is not, shall be void only with respect to that person."

## SAMPLE EXERCISES IN DISTRIBUTION OF ESTATES:

GENERAL SITUATION (TESTAMENTARY SUCCESSION):

1. Will states 1/2 to A, 1/4 to B, 1/4 to C.
2. The surviving relatives are as follows:
   a. LC = A, B, C
   b. LD = X, Y, and Z are the legitimate children of A, Q and R are the illegitimate children of B, S is the legitimate child of C
   c. LP = F and M
   d. Brother = K
3. Net Estate = 120M

DISTRIBUTION OF THE ESTATE BY WILL:

| HEIR | SHARE | BASIS | TOTAL |
|---|---|---|---|
| A | 60 | By will | P 60M |
| B | 30 | By will | P 30M |
| C | 30 | By will | P 30M |
| TOTAL | 90 | | P120M |

| HEIR | INTESTATE SHARE | | BASIC | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 20 | 40 | By will | 60 |
| B | 20 | 10 | By will | 30 |
| C | 20 | 10 | By will | 30 |
| TOTAL | 60 | 60 | | P120 M |

1. If the will is void, distribute the estate.

| HEIR | SHARE | BASIS | TOTAL |
|---|---|---|---|
| A | 40 | By will | P 40M |
| B | 40 | By will | P 40M |
| C | 40 | By will | P 40M |
| TOTAL | 120 | | P120M |

2. If the will is valid and the spouse of testator is included as one of the surviving heirs, distribute the estate.

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 20 | 30 | By will | 50 |
| B | 20 | 5 | By will | 25 |
| C | 20 | 5 | By will | 25 |
| W | 20 | | Art 906 | 20 |
| TOTAL | 80 | 40 | | P120 M |

3. What if A becomes incapacitated to inherit? (Articles 968 and 974)

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| X | 6.667 | | Representation | 6.667 |
| Y | 6.667 | | Representation | 6.667 |
| Z | 6.667 | | Representation | 6.667 |
| B | 20 | 10 + 20 | By will and by Art 1015 | 50 |
| C | 20 | 10 + 20 | By will and by Art 1015 | 50 |
| TOTAL | 80 | 40 | | P120 M |

4. What if B renounces his share? (Article 1015)

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 20 + 10 | 40 + 8 | Own right and accretion | 78 |
| C | 20 + 10 | 10 + 2 | Own right and accretion | 42 |
| TOTAL | 60 | 60 | | P120 M |

5. What if a posthumous child D was born? (Article 854)

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 15 | 15 | | 30 |
| B | 15 | 15 | | 30 |
| C | 15 | 15 | | 30 |
| D | 15 | 15 | | 30 |
| TOTAL | 60 | 60 | | P120 M |

6. What if the will stated Will states P60M as legacy to A, 1/4 to B, 1/4 to C and a posthumous child D was born? (Article 854)

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 15 | 60 | By will | 60 |
| B | 15 | 0 | Intestacy | 15 |
| C | 15 | 0 | Intestacy | 15 |
| D | 15 | 0 | Intestacy | 15 |
| TOTAL | 60 | 60 | | P120 M |

7. What if C was disinherited? Article 923

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| A | 20 | 40 + 8<br>10 + 2 | By will | 68 |
| B | 20 | | | 32 |
| S | 20 | | By will | 20 |
| TOTAL | 80 | 40 | By representation | P120 M |

GENERAL SITUATION (INTESTATE SUCCESSION):

1. Net Estate = P150M
2. The surviving relatives are as follows:
   - LC = A, B, C
   - LD = X, Y, and Z are the legitimate children of A, Q and R are the illegitimate children of B, S is the legitimate child of C
   - LP = F and M
   - Illegitimate Children = G and H
   - Illegitimate Child of G = G1
   - Legitimate Child of H = H1
   - Surviving spouse = W
   - Brother = K
   - Nephews from a predeceased sister = L and M
1. Distribute the estate.

| HEIR | INTESTATE SHARE | | TOTAL SHARE |
|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | |
| A | 25 | 5 | 30 |
| B | 25 | 5 | 30 |
| C | 25 | 5 | 30 |

| W | 25 | 5 | 30 |
|---|---|---|---|
| G | 12.5 | 2.5 | 15 |
| H | 12.5 | 2.5 | 15 |
| TOTAL | 125 | 25 | 150 |

2. What if the surviving relatives are just F, M, and brother K?

   F gets 75, M gets the other 75.

3. What if G is incapacitated to inherit?

| HEIR | INTESTATE SHARE | TOTAL SHARE |
|---|---|---|
| A | 30 | 30 |
| B | 30 | 30 |
| C | 30 | 30 |
| W | 30 | 30 |
| G1 | 15 | 15 |
| H | 15 | 15 |
| TOTAL | | 150 |

5. What if A renounced his share in the estate?

| HEIR | INTESTATE SHARE | Share By Accretion | TOTAL SHARE |
|---|---|---|---|
| B | 30 | 7.5 | 37.5 |
| C | 30 | 7.5 | 37.5 |
| W | 30 | 7.5 | 37.5 |
| G | 15 | 3.75 | 18.75 |
| H | 15 | 3.75 | 18.75 |
| TOTAL | | | 150 |

6. What if the surviving relatives are just the illegitimate children and W?

| HEIR | INTESTATE SHARE | TOTAL SHARE |
|---|---|---|
| W | 75 | 75 |
| G | 37.5 | 37.5 |
| H | 37.5 | 37.5 |
| TOTAL | | 150 |

7. What if the surviving relatives were just the illegitimate children and W and decedent wrote a valid will saying "I give a P40M legacy to my friend F?

| HEIR | INTESTATE SHARE | | HOW ACQUIRED | TOTAL SHARE |
|---|---|---|---|---|
| | LEGITIME | FREE DISPOSAL | | |
| W | 50 | 5 | Intestacy | 50 |
| G | 25 | 2.5 | Intestacy | 25 |
| H | 25 | 2.5 | Intestacy | 25 |
| F | 0 | 40 | By will | |
| TOTAL | 100 | 50 | | 150 |

8. What if the surviving relatives were just the Surviving spouse W, Brother K, and nephews from a predeceased sister, L and M?

| HEIR | INTESTATE SHARE | TOTAL SHARE |
|---|---|---|
| W | 75 | 75 |
| K | 37.5 | 37.5 |
| L | 18.75 | 18.75 |
| M | 18.75 | 18.75 |
| TOTAL | | 150 |

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With more Cases and Comments

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## ABOUT THE AUTHOR

Siegfred has been a Professor of the University of the East College of Law since 1998 and of the Ateneo Law School since 2000. He also taught at the College of Law of Pamantasan ng Lungsod ng Maynila and San Sebastian College of Law. His teaching expertise is in Civil Law including Obligations and Contracts, Wills and Succession, Persons and Family Relations, Land Titles and Deeds, Sales, Partnership and Agency.

As a partner of Malcolm Law, his areas of practice include estate planning and settlements, real estate transactions, contract negotiations, and corporate law.

Siegfred had served the Philippine Army for 12 years before joining the legal profession. He was a Deputy Director for Legal Aid, Integrated Bar of the Philippines for five (5) years conducting free legal counseling to indigent clients. He was also the first Executive Director of the UE Legal Aid Clinic in 2003.

He has worked in the United States as an in-house counsel for a software development company handling licensing agreements and contract negotiations with Fortune 500 companies.

He also authored another book entitled "Eight Performance Boosters to Conquer Any Law Exam."

He is blessed with three wonderful children, Regina Victoria (Nica), J. Siegfred Salvador Mison (Jason), and Regina Elena (Elena).

# DEDICATION

This second edition is dedicated to everyone who has given me inspiration to teach law.

My professors in the University of Southern California (USC) Law School particularly the late Mr. Charles Whitebread, my mentor in "Gifts, Wills and Trusts," who expanded my understanding of fundamental principles in succession. His teaching style is simply beyond any science.

My students in Ateneo and in UE who I had the privilege to share whatever knowledge I have in the subject. May they remember what skills law school has taught them and use them wisely in practice.

My siblings Irene, Salvador Jr., Melinda, Ione Marie, and Michael whose academic and professional achievements are worth emulating.

My loved ones especially my father Salvador, my mother Ione, and my children Nica, Jason, and Elena whose love and support knows no boundaries.

My staff in the office – Norbie, Lisa, Aika, and Renny who have given me tremendous support in completing this 2nd edition.

And to that special person whose patience is priceless — I will forever be grateful.

## LIST OF CASES

| | Case | Question |
|---|---|---|
| 1. | Estate of Hemady v. Luzon Surety, 100 Phil 388 | What kind(s) of obligations are transmissible upon the death of the decedent? Are contingent claims chargeable against the estate? |
| 2. | Sicad v. Court of Appeals, 294 SCRA 183 | What are some of the circumstances used to determine whether a donation is *inter vivos* or *mortis causa*? |
| 3. | Scherer v. Hyland, Supreme Court of New Jersey, 1977. 75 N.J. 127, 380 A.2d 698. | What constitutes sufficient delivery? |
| 4. | Newman v. Dore, Court of Appeals of New York, 1937. 275 NY 371, 9 N.E. 2d 966. | How can you "really" dispose of your properties during your lifetime? |
| 5. | Uson v s. Del Rosario, 92 Phil 531 | When and how can a person renounce his inheritance? |
| 6. | De Borja v. Vda. De Borja, 46 SCRA 577 | Can an heir sell or enter into a compromise involving his hereditary rights? |
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| 8. | Go Ong v. Court of Appeals, 154 SCRA 270 | What are the rights of an heir and the powers of an administrator pending the settlement of an estate? |
| 9. | Butte v. Manuel Uy & Sons, 4 SCRA 526 | When can an heir exercise rights of ownership over properties belonging to the estate? |

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| 10. | Reganon v. Imperial, 22 SCRA 80 | Can one attach the interest of an heir during the settlement process? |
| 11. | Ramirez v. Baltazar, 24 SCRA 918 | What are the remedies against an erring administrator? |
| 12. | Noceda v. Court of Appeals, 313 SCRA 504 | What are the rights of an heir prior to actual partition and distribution of the estate? |
| 13. | Nufable v. Nufable, 309 SCRA 692 | What are the rights of an heir prior to actual partition and distribution of the estate? |
| 14. | Blas v. Santos, 1 SCRA 899 | What is "really" a contract of future inheritance? |
| 15. | Neri v. Akutin, 74 Phil 185 | Would you rather be a legatee or devisee than an heir or does it really matter? |
| 16. | Seangio v. Reyes, G.R. 140371-72, Nov 27, 2006 | Can a document with only disinheritance clause be considered a will? |
| 17. | Fischer v. Johnson, Court of Appeals of Kentucky, 1969. 441 S.W. 2d 132; | How do you determine the intent of the testator? |
| 18. | Dizon-Rivera v. Dizon, 33 SCRA 554 | How can one distribute an estate when there is something "wrong" with the will? |
| 19. | Parish Priest of Victoria, Tarlac v. Rigor, 89 SCRA 493 | How do you determine the intent of the testator? |
| 20. | In Re Estate of Russell, Supreme Court of California, 1968. 69 Cal. 2d 200, 444 P.2d 353, 70 Cal. Rptr. 561. | How do you determine the intent of the testator? |
| 21. | Bellis v. Bellis, 20 SCRA 358 | Do you remember the renvoi doctrine? |
| 22. | Bagtas v. Paguio, 22 Phil 227 | Does a paralytic have testamentary capacity? |

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| 23. | Matter of Estate of Bonjean, Appellate Court of Illinois, 1980. 90 Ill. App. 3d 582, 45 Ill. Dec. 872, 413 N.E. 2d 205. | What does it take for a testator to be considered as "insane?" |
| 24. | Barnes v. Marshall, Supreme Court of Missouri, 1971. 467 S.W. 2d 70. | Who can say a testator is insane? |
| 25. | In Re Honigman's Will, Court of Appeals of New York, 1960. 8 N.Y. 2d 244, 168 N.E. 2d 676. | Who has the burden of proving the presence of testamentary capacity? |
| 26. | Lopez v. Liboro, 81 Phil 429 | What language should a testator use in making a will? |
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| 28. | Balonan v. Abellana, 109 Phil 359 | How can one "sign for or in behalf" of the testator? |
| 29. | Garcia v. Lacuesta, 90 Phil 189 | What does it mean to have a "customary signature" of the testator? |
| 30. | Nera v. Rimando, 18 Phil 450 | What do you mean by "in the presence of?" |
| 31. | In Re Estate of Weber, Supreme Court of Kansas, 1963. 192 Kan. 258, 387 P 2d 165. | What do you mean by "in the presence of?" |
| 32. | Yap Tua v. Yap Ca Kuan, GR No. 6845, September 1, 1914 | What do you mean by "in the presence of"? |
| 33. | Burns v. Adamson, Supreme Court of Arkansas, 1993. 313 Ark. 281, 854 S.W. 2d 723. | What is the purpose of the requirement of presence of witnesses? |

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| 34. Cagro v. Cagro, 92 Phil 1032 | What are the "excusable" defects in a will? |
| 35. Abangan v. Abangan, 40 Phil 476 | What is the essence of the signing on the left margin and the pagination requirement? |
| 36. Vda. De Ramos v. Court of Appeals, 81 SCRA 393 | What is the effect of negative testimony? |
| 37. Azuela v. Court of Appeals and Castillo, GR No. 122880, April 12, 2006 | What are the contents of the attestation clause? |
| 38. Azuela v. Court of Appeals and Castillo, GR No. 122880, April 12, 2006 | What is the difference between a jurat and an acknowledgment? |
| 39. Cruz v. Villasor, 54 SCRA 31; | What are non-excusable lapses? |
| 40. Garcia v. Gatchalian, 21 SCRA 1056; | What are non-excusable lapses? |
| 41. Garcia v. Vasquez, 32 SCRA 498 | Who is a blind testator? |
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| 43. Caneda v. Court of Appeals, G.R. No. 103554. May 28, 1993 | What are the defects and imperfections of the attestation clause as defined in Article 809? |
| 44. Caponong-Noble v. Abada G.R. No. 147145 (January 31, 2005) | When do you apply the doctrine of liberal interpretation as per Article 809? |
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| 46. Rodelas v. Aranza, 119 SCRA 16 | Can a mere photocopy be admitted to probate? |

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| 47. | In Re Estate of Muder, Supreme Court of Arizona, 1988. 159 Ariz. 173, 765 P. 2d 997. | Can there be a pro forma holographic will? |
| 48. | Roxas v. De Jesus Jr., 134 SCRA 245 | What kind of date is sufficient? |
| 49. | Labrador v. Court of Appeals, 187 SCRA 170 | Where in the will must the date appear? |
| 50. | Azoala v. Singson, 109 Phil 102; | How many witnesses do you "really" need? |
| 51. | Codoy v. Calugay, 312 SCRA 333 | How many witnesses do you "really" need? |
| 52. | Kalaw v. Relova, 132 SCRA 327 | When is it a cancellation or revocation? |
| 53. | Dela Cerna v. Rebeca-Potot, 12 SCRA 576 | When can a joint will be admitted to probate? |
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| 55. | In Re Estate of Watts, Appellate Court of Illinois, 1979. 67 Ill. App.3d 463, N.E. 2d 589, 23 Ill Dec. 795. | Is the will invalidated because of the presence of an interested witness? |
| 56. | Clark v. Greenhalge, Supreme Court of Massachusetts, 1991. 411 Mass 410, 582 N.E. 2d 949. | How do you incorporate documents by reference in a will? |
| 57. | Gilbert v. Gilbert, Court of Appeals of Kentucky, 1983 652 S.W.2d 663 | What are the requirements for a valid revocation by way of a subsequent document? |
| 58. | Gago v. Mamuyac, 49 Phil 902 | Are there other ways of revoking a will? |
| 59. | Harrison v. Bird, Supreme Court of Alabama, 1993. 621 So. 2d 972. | Are there "really" other ways of revoking a will? |

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| 60. | Estate of Maloto v. Court of Appeals, 158 SCRA 451 | What does it take to revoke a will? |
| 61. | Gilbert v. Gilbert, Court of Appeals of Kentucky, 1983, 652 S.W. 2d 663. | Is it revocation or modification? |
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| 68. | Pastor v. Court of Appeals, 122 SCRA 883 | Can a probate court rule on issues involving ownership? |
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| 73. | In Re Dilios' Will, Supreme Judicial Court of Maine, 1960. 156 Me. 508, 167 A.2d 571. | How do you determine when the influence is really "undue?" |

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| 74. | In Re Will of Moses, Supreme Court of Mississippi, 1969. 227 So. 2d 829. | Is personal intimacy considered undue influence? |
| 75. | Latham v. Father Divine, Court of Appeals of New York, 1949. 299 N.Y. 22, 85 N.E. 2d 168. | What kind of fraud must be present to nullify a will? |
| 76. | Aznar v. Duncan, 17 SCRA 590 | When is there total omission to warrant preterition? |
| 77. | Nuguid v. Nuguid, 17 SCRA 44 | What is the difference between disinheritance and preterition? |
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| 79. | Goff v. Goff, Supreme Court of Missouri, 1944. 352 Mo. 809, 179 S.W. 2d 707 | What are the effects of preterition? |
| 80. | Solano v. Court Of Appeals, G.R. No. L-41971 November 29, 1983 | What are the effects of preterition? |
| 81. | Vda. De Mapa v. Court of Appeals, 154 SCRA 294 | What is the difference between a trust and a fideicommissary? |
| 82. | Rodriguez v. Court of Appeals, 27 SCRA 546 | Up to how long can a testator control his property after his death? |
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| 84. | U.S. National Bank of Portland v. Snodgrass, Supreme Court of Oregon, 1954. 202 Or. 530, 275 P2d 860. | What is the extent of the powers of the testator to impose conditions in a will? |
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| 86. | Noble v. Noble, 18 SCRA 1104 | How do you establish the filiation of illegitimate children? |
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| 90. | Sienes v. Esparcia, 1 SCRA 750 | Can a reservor dispose reservable property by an act inter vivos? |
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| 93. | Florentino v. Florentino, 40 Phil 480 | Can a reservor dispose reservable property by an act mortis causa? |
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| 99. | In Re Tarlo's Estate, Supreme Court of Pennsylvania, 1934. 315 Pa. 321, 172 A 139. | What do you mean by "convicted of an attempt against the life, etc.?" |

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| 100. In Re Estate of Nakoneczny, Supreme Court of Pennsylvania, 1974. 456 Pa. 320, 319 A.2d 893. | How are legacies/devises considered revoked by operation of law? |
| 101. Roberts v. Leonidas, 129 SCRA 33 (1984) | Which is the preferred mode of settling an estate? |
| 102. Rodriguez v. Borja, 17 SCRA 418 | Which is the preferred mode of settling an estate? |
| 103. De los Santos v. De La Cruz, 37 SCRA 555 | How do you apply the rules of proximity? |
| 104. Uriarte v. Court of Appeals, June 22, 1998 | How do you apply the rules of proximity? |
| 105. Bagunu v. Piedad, Dec. 8, 2000 | How do you apply the rules of proximity among collateral relatives? |
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| 107. Abellana-Bacayo v. Ferraris-Borromeo, 14 SCRA 986 | Who inherits as between an aunt/uncle and nephew/niece? |
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## PREFACE TO THE FIRST EDITION

This book does not intend to supplant the more recognized works of established commentators in civil law such as Tolentino, Jurado, and Paras. Neither does it attempt to subvert the views and opinions of legal luminaries such as Castan, Manresa and Sanchez Roman.

This book is a simple compilation of my old notes as a student of the Ateneo Law School and as a professor of law both in the University of the East and in the Ateneo Law School. It has incorporated some of the more important Supreme Court cases, either by way of a comprehensive digest or by way of quoting the entire case together with the provisions of law both in the Civil Code and in the Family Code.

This work is a product of many reasons.

First, my Civil Law professor Atty. Avelino M. Sebastian Jr. had inspired me so much to learn about the intricacies of many interesting topics in succession to include reserva troncal, preterition, and collation through the use of the challenging recitation methods. To that extent, I learned to love the subject of "Wills and Succession" very much as I had a very gifted mentor twice.

Second, my first batch of students under Wills and Succession in the Ateneo School of Law had encouraged me to bring together all the relevant points we discussed during our classroom discussions for the benefit of future students. My students jokingly conceptualized the compilation and dubbed it as "Mison Notes" to hopefully equip their underclassmen with the "right" answers during my recitation.

Third, my Dean in the University of the East College of Law, Dean Antonio R. Tupaz had motivated me to finally come up with a book which could be used not only by law students, but by practitioners and laymen alike inasmuch as an awareness of

the fundamentals of succession is imperative considering that death(s) in the family is certain to come, and so too its adjunct which is the partition of the deceased person's estate.

Fourth, my family and friends had moved me to produce a work that will hopefully enrich the students' knowledge of the law even beyond my lifetime.

To our Almighty God, I am eternally beholden for giving me the strength and guidance all throughout the preparation of this book; to the many people who have helped me in making this book possible, I am forever and genuinely indebted; to the readers and students of the law, I am deeply and sincerely honored for your continued use of this humble contribution to our legal bibliography.

**SIEGFRED B. MISON**

## PREFACE TO THE SECOND EDITION

This book is another attempt to simplify my favorite subject with some innovations and modifications to help the reader understand the seemingly complex world of Wills and Succession.

The first innovation is the inclusion of some U.S. cases that I encountered during my advanced studies at the University of Southern California (USC). While arguably these cases will merely have a persuasive effect at best under Philippine law, I found these cases interesting in illustrating some key concepts that we share with the United States especially as regards testamentary capacity, fraud, undue influence, and revocation. Professor Charles Whitebread of USC, whose extraordinary wealth of knowledge and experience in the subject inspired me to harmonize American doctrines with their Philippine counterparts, was without a doubt my best professor during my masteral studies.

Of course, I also included the more recent Philippine cases that reinforced and modified the doctrines in this field of the law. Our jurisprudence in Wills and Succession is not as dynamic as other fields of the law. Nonetheless, I found it important to include whatever significant cases involving Wills and Succession I encountered since I graduated from law school to the present.

I also added some laws that are germane to the study of succession. These include key provisions of the Civil Code (Absence, Conditional Obligations, Property, etc.), Family Code (Support, Parental Authority, etc), the Domestic Adoption Act, and the Revised Rules of Civil Procedure (Special Proceedings).

Further, for the convenience of the student and practitioner, I included some points to ponder and questions based on actual bar examinations for reflection at the end of some of the more complicated provisions of Wills and Succession. I believe they

highlight some of the gray areas of the law that will ultimately challenge the reader to be more insightful and analytical.

Finally, I rearranged the articles chronologically instead of by topics. As suggested by some students, studying each Article chronologically gives them a comfortable confidence that they did not miss out on any Article.

I am again eternally grateful to our Lord above for giving me the time and the patience to come up with a second edition of this book. I remain genuinely indebted to the readers, professors, and students of the law for using this book.

**SIEGFRED B. MISON**

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