

SUCCESSION

I. GENERAL PROVISIONS

A. DEFINITION/WHAT IS TRANSMITTED

Q: What is succession?

A: Succession is a mode of acquisition by virtue of which the property, rights and obligations 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. (Art. 774)

Q: What is the basis of succession?

A:

1. *Negative Theories* – refer to those which deny to succession any rational basis and which have been formulated by the individualistic and socialistic schools.
 - a. There can be no testamentary succession because these rights are merely the creations of the will of a person who is devoid of any will, being already dead.
 - b. There can be no intestate succession because the community of property in the family can only be conceived of as long as the latter exists.
2. *Positive Theories* – Those which base succession on the right of property. According to this view, succession is based on individual ownership and the power of the owner to dispose of the same.
 - a. If an owner can freely dispose of his properties with such conditions as he may deem convenient, then it follows that he can distribute the same after his death since the will is nothing more than the instrument of alienation subject to the condition of death.
 - b. Those which base succession on the right of family

Note: According to this view, the properties of the deceased are converted into *res nullius* which, to the judgment of others, fall under the ownership of the first occupant who generally is the relative nearest in degree and, to the judgment of others, belong to the state.

Note: Under this theory the basis of succession is a sort of family co-ownership with the result that legal succession is the normal procedure and testamentary succession, the exception or one of the limitations.

3. *Eclectic Theory* – According to this view, the basis of testamentary succession is the right of ownership but the basis of legal or intestate succession is the ties of blood and the right of family co-ownership. (Caguioa, p. 2)

Q: What are the characteristics of succession?

A:

1. It is a mode of acquisition;
2. Only property, rights and obligations to the extent of the value of the inheritance are transmitted;
3. The transmission takes place only at the time of death;
4. The transmission takes place either by will or by operation of law.

Q: What are the requisites of succession?

A: DATE

1. Death of decedent;
2. Acceptance of the inheritance by the successor;
3. Transmissible estate;
4. Existence and capacity of successor, designated by decedent or law.

B. SUCCESSION OCCURS AT THE MOMENT OF DEATH

Q: When are rights to succession transmitted?

A: The rights to succession are transmitted from the moment of the death of the decedent. (Art. 777)

Note: Although, the provision states that the rights are transmitted upon the death of a person, it is rather vested upon death.

Q: What is transferred by death in succession?

A: Only the property, rights and obligations not extinguished by death are transmitted to the heirs.

Q: Are after-acquired properties of the decedent transmissible?

A:

GR: Property acquired during the period between the execution of the will and the death of the testator is not included.

XPN: When a contrary intention expressly appears in the will. (Art. 793)

Note: Applies only to legacies and devises and not to institution of heirs.

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

Q: What is the general rule as regards transmissibility of rights?

A: If the right or obligation is *intuitu personae*, it is intransmissible, otherwise it is transmissible.

Note: *Intuitu personae* means strictly personal.

Q: What rights are not transferred by the death of a person?

A:

1. Purely personal rights;
2. Rights which are made intransmissible by stipulation of the parties;
3. Rights which are intransmissible by provision of law.

Note: All other rights are transmissible to the heirs upon the death of a person.

Q: What are the rights that are extinguished by death?

A: PAPULP

1. Partnership rights
2. Agency
3. Personal easements
4. Usufruct
5. Legal support
6. Parental authority

Q: What obligations or contracts are not transmitted by death?

A: Those which are made intransmissible:

1. by their *nature*;
2. by *stipulation*; or
3. by provision of law (Art. 1311)

Note: This is an exception to the general rule that contracts or obligations are binding upon the parties, their heirs or successors-in-interest.

Q: What are the obligations that are extinguished by death?

A:

1. *Monetary* obligations are *not* transmitted to the heirs.
2. *Non-monetary* obligations are transmitted to the heirs.

Q: May heirs be held liable for the debts or obligations of the decedent?

A:

GR: No. It is the estate that pays for the debts left by the decedent.

XPN: It is true that the heirs assume liability for the debts of the decedent, although it is limited only to the extent of the value of the inheritance received. (*Estate of Hemady v. Luzon Surety Co., G.R. No. L-8437, Nov. 28, 1956*)

Note: The heirs are not personally liable with their own individual properties for the monetary obligations/debts left by the decedent.

Q: Is a contract of guaranty extinguished by death?

A: No, because a contract of guaranty does not fall in any of the exceptions under Art. 1311 (relativity of contracts). A guarantor's obligation is basically to pay the creditor if the principal debtor cannot pay. Payment does not require any personal qualifications. The personal qualifications become relevant only at the time the obligation is incurred but not so at the time of discharge or fulfillment of the obligation. (*Estate of Hemady v. Luzon Surety Co., Inc., G.R. No. L-8437, Nov. 28, 1956*)

Q: The wife died while the action for legal separation was pending. Her children, however, wanted to continue the action. They ask that they be allowed to substitute their deceased mother, arguing that the action should be allowed to continue. Decide.

A: The children cannot be substituted in an action for legal separation upon the death of their mother who filed the case. *An action for legal separation is purely personal* on the part of the innocent spouse because such an action affects



the marital status of the spouses. (*Bonilla v. Barcena, G.R. No. L-41715, June 18, 1976*)

Q: Fortunata died while her action for quieting of title of parcels of land was pending. Does her death result in the extinguishment of the action or may her heirs substitute her in the case?

A: Her heirs may substitute her because the action is not extinguished by her death. Since the rights to the succession are transmitted from the moment of the death of the decedent, from that moment, 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 right of the heirs to the property of the deceased vests in them upon such death, even before judicial declaration of their being heirs in the testate or intestate proceedings.*

When she 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. (*Bonilla v. Barcena, et al., G.R. No. L-41715, June 18, 1976*)

Q: Can the heir enter into a contract of sale, conveyance or any disposition pertaining to his interest in the inheritance even pending the settlement of the estate?

A: Yes, because his hereditary share/interest in the decedent's estate is transmitted or vested immediately from the moment of decedent's death. This is, however, subject to the outcome of the settlement proceedings.

Q: What is the nature of the transaction entered into by the heir pertaining to his hereditary share in the estate pending the settlement of the estate?

A: The effect of such transaction is to be deemed limited to what is ultimately adjudicated to the heir. However, this *aleatory* character of the contract does not affect the validity of the transaction.

Q: May an heir convey future inheritance?

A: No contract may be entered into upon a future inheritance except in cases expressly authorized by law (*Art. 1347*).

C. KINDS OF SUCCESSORS

Q: What are the kinds of heirs?

A:

1. *Voluntary* – called to succeed either by virtue of the will of the testator:
 - a. Devisee
 - b. Legatee

Note: An heir is one who succeeds to the whole (universal) or aliquot part of the estate. Devisee or legatee is one who succeeds to definite, specific, and individualized properties.

2. *Compulsory* – called by law to succeed to a portion of the testator's estate known as legitime.
3. *Legal or Intestate* – by operation of law through intestate succession.

Q: Who are devisees and legatees?

A: *Devisees* are persons to whom gifts of real property are given by virtue of a will. On the other hand, *Legatees* are persons to whom gifts of personal property are given by virtue of a will

Q: What are the distinctions between heirs and legatees/devisees?

A:

HEIRS	DEVISEES OR LEGATEES
<i>As to representation of deceased's juridical person</i>	
Represent the juridical personality of the deceased and acquire their rights, with certain exceptions to his obligations	Never represent the personality of the deceased no matter how big the legacy or the devise is
<i>Determinability of amount of inheritance</i>	
Inherit an undetermined quantity whose exact amount cannot be known <i>a priori</i> and which cannot be fixed until the inheritance is liquidated	Are always given a determinate thing or a fixed amount
<i>Extent of successional right</i>	
Succeed to the remainder of the properties after all the debts and all the legacies and devices have been paid or given	Only succeed to the determinate thing or quantity which is mentioned in the legacy or devise
<i>As to when they exist</i>	

Can exist whether the succession be testate or intestate	Only in testamentary succession
<i>Effect of preterition</i>	
The institution of an heir is entirely annulled	The legacies and devisees remain valid insofar as they are not inofficious.
<i>Effect of defective disinheritance</i>	
In case of imperfect or defective disinheritance, the institution of an heir is annulled to the extent that the legitimes are impaired.	The legacies and devisees remain valid insofar as they are not inofficious.

Q: Suppose a person is named to succeed to an entire estate. The estate, however, consists of only one parcel of land. Is he an heir or a devisee?

A: It depends on the manner of his designation in the will. Here, because he is called to inherit the entire estate, he is an heir.

Q: In what instances do the distinctions between heirs and devisees/legatees become significant?

A:

1. Preterition
2. Imperfect/defective disinheritance
3. After-acquired property
4. Acceptance or repudiation of successional rights

Q: What are the classifications of compulsory heirs?

A:

1. *Primary compulsory heirs* – They are not excluded by the presence of other compulsory heirs.
E.g. legitimate children, surviving spouse
2. *Secondary compulsory heirs* – Those who succeed only in default of the primary compulsory heirs.
E.g. legitimate ascendants
3. *Concurring compulsory heirs* – They get their legitimes together with the primary or secondary heirs. Neither excludes primary or secondary heirs, nor each other.
E.g. Surviving spouse and illegitimate children and descendants.

Q: Who are the compulsory heirs?

A:

1. Legitimate children and descendants (*LCD*)
2. Legitimate parents and ascendants (*LPA*)
3. Surviving spouse (*SS*)

Legitimate children and descendants (LCD)

Q: Is an adopted child a compulsory heir?

A: “Legitimate children” includes adopted children and legitimated children.

Under R.A. 8552 or the Domestic Adoption Law adopted children have the same rights granted to the legitimate children. Adopted children, for all intents and purposes are considered as legitimate children.

Hence, the adopted children can already exclude legitimate parents/ascendants.

Legitimate parents and ascendants (LPA)

Q: When do legitimate parents and ascendants inherit?

A: Legitimate parents and ascendants inherit in default of legitimate children and descendants. They are secondary compulsory heirs.

Q: Is the presence of illegitimate children of the decedent exclude the LPA?

A: No. Legitimate parents and ascendants concur with the illegitimate children of the decedent.

However, if the decedent is himself illegitimate, his illegitimate children exclude the illegitimate parents and ascendants.

Surviving spouse (SS)

Q: Can a common law spouse be a compulsory heir?

A: No. There must be valid marriage between the decedent and the surviving spouse. If the marriage is null and void, the surviving spouse cannot inherit.

Q: How can the heirs of the decedent use the nullity of marriage to prevent the surviving spouse from inheriting?

A: The heirs can raise the issue of nullity of the marriage in the same proceeding for the



settlement of the estate. This is allowed because a marriage that is null and void can be collaterally attacked.

However, in case of voidable marriages, if the marriage is not annulled before the decedent died, the surviving spouse can still inherit

Reason: Voidable marriages can only be attacked in a direct proceeding, i.e. annulment proceeding.

Note: The surviving spouse is not a compulsory heir of his/her parent-in-law.

Separation-in-fact will not disqualify the surviving spouse from getting his/her legitime, regardless of his/her guilt.

Illegitimate children

Note: Under the Family Code, there is no more distinction between acknowledged natural children and illegitimate children. They are all considered as illegitimate.

Compulsory heirs of a person who is illegitimate:

1. Legitimate children and descendants;
2. Illegitimate children and descendants;
3. In default of the foregoing, illegitimate parents only;
4. Surviving spouse.

Q: In what ways may compulsory heirs inherit?

A: Compulsory heirs inherit either:

1. in their own right; or
2. by right of representation

II. TESTAMENTARY SUCCESSION

WILLS

1. IN GENERAL

A. DEFINITION AND CHARACTERISTICS

Q: What is a will?

A: 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. (Art. 783)

Q: What are the characteristics of a will?

A: A will is:

1. *Statutory right* – The making of a will is only a statutory not a natural right. Hence, a will should be subordinated to both the law and public policy.

2. *Unilateral act* – No acceptance by the transferees is needed during the lifetime of the testator.
3. *Strictly personal act* – The disposition of property is solely dependent upon the testator.
4. *Ambulatory* – A will is essentially revocable during the lifetime of the testator.
5. *Free from vices of consent* – A will must have been executed freely, knowingly and voluntarily, otherwise, it will be disallowed.
6. *Individual act* – A will must be executed only by one person. A joint will is not allowed in the Philippines.

Note: Mutual wills – Separate wills although containing reciprocal provisions are not prohibited, subject to the rule on *disposicion captatoria*.

7. *Solemn or formal act* – A will is executed in accordance with formalities prescribed by law.

(1) PERSONAL ACT; NON-DELEGABILITY OF WILL-MAKING

Q: What is meant by “strictly personal act”?

A: Under Art. 784, it means that in the making of a will, preparation thereof cannot be wholly or partially entrusted to a third person or made through an agent or attorney. It refers to the disposition of property. This is so because the essence of making a will is the disposition of property, hence, it cannot be delegated to another.

Q: Can the testator delegate to a third person the power to determine whether or not a testamentary disposition is to be operative?

A: No. It is not only the delegation which is void; the testamentary disposition whose effectivity will depend upon the determination of the third person is the one that cannot be made. Hence, the disposition itself is void. (Art. 787; *Tolentino*, p. 33)

Q: What cannot be delegated to the discretion of a third person?

A: The following cannot be delegated to a third person because they comprise the disposing power of the testator:

1. Duration or efficacy of designation of heirs, legatees, or devisees.

2. Determination of the portions which the heirs are to receive when referred to by name.
3. Determination as to whether or not a disposition is to be operative. (Art. 785)

Q: What, on other hand, may be entrusted to third persons?

A:

1. Distribution of specific property or sums of money that the testator may leave in general to specified classes or causes
2. Designation of the persons, institutions or establishments to which such property or sums are to be given or applied. (Art. 786)

Reason: Here, there is really no delegation because the testator has already set the parameters required by law, namely:

- a. The specification of property or sums of money
- b. The specification of classes or causes.

In effect, the third person will only be carrying out the will of the testator as determined by these parameters.

(2) RULES OF CONSTRUCTION AND INTERPRETATION/LAW GOVERNING FORMAL VALIDITY

Q: How should the provisions of a will be construed?

A: As a general rule, the language of a will should be liberally construed and as much as possible, the intention of the testator should be given effect.

In case of doubt, that interpretation by which the disposition is to be operative shall be preferred.

Reason: Testacy is preferred over intestacy. (Art. 791)

Q: What are the rules in the construction of Wills?

A:

1. Words of the will are to be taken in their ordinary and grammatical sense unless there is a clear intention to use them in another sense can be gathered, and that can be ascertained. (Art. 790)
2. Technical words are to be taken in their technical sense, unless:
 - a. The context clearly indicates a contrary intention or

- b. It satisfactorily appears that he was unacquainted with such technical sense. (*Ibid.*)

3. 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. (Art. 792)

4. Every devise or legacy shall cover all the interest in the property disposed of unless it clearly appears from the will that he intended to convey a less interest. (Art. 794)

Q: What are the kinds of ambiguities in a will?

A:

1. *Latent ambiguities* – Ambiguities which are not apparent on the face of a will but to circumstances outside the will at the time the will was made.

E.g.

- a. If it contains an imperfect description of person or property;
- b. A description of which no person or property exactly answers

2. *Patent ambiguities* – Those which are apparent on the face of the will.

E.g. Uncertainty which arises upon the face of the will as to the application of any of its provisions. (Art. 789)

Q: What are the steps in resolving the ambiguities?

A:

1. Examine the will itself;
2. Refer to extrinsic evidence or the surrounding circumstances, *except* oral declarations of the testator as to his intention.

Reason: Because the testator can no longer refute whatever is attributed to him.

2. TESTAMENTARY CAPACITY AND INTENT

Q: Who can make a will?

A: All persons who are not expressly prohibited by law may make a will. (Art. 796)

The law presumes capacity to make a will; hence, in order that a person may be disqualified to



make one, he must be expressly prohibited by law.

Note: The ability as well as the power to make a will must be present at the time of the *execution* of the will.

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

Q: What are the requisites of testamentary capacity?

A:

1. At least 18 years of age; and
2. Of sound mind

Note: 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:

- a. nature of the estate to be disposed of;
- b. proper objects of his bounty; and
- c. character of the testamentary act.

Q: Who are those persons expressly prohibited by law to make a will?

A:

1. Persons of either sex under 18 years of age (Art. 797)
2. Persons who are not of sound mind (Art. 798)

Q: Is a person suffering from civil interdiction qualified to make a will?

A: Yes. He is deprived only of the power to dispose of his properties through acts *inter vivos* but not through acts *mortis causa*. (Art. 34, Revised Penal Code; Rabuya, Civil Law Reviewer, p. 527)

Q: Is a married woman required to obtain the consent of the husband and the authority of the court before she can make a will?

A: No. She can make a will even without the consent of her husband and the authority of the court. (Art. 802)

Note: A married woman may dispose of her separate property and her share in the conjugal or absolute community property.

A. AGE REQUIREMENT

Q: Can a person under eighteen years old make a will?

A: No. Persons of either sex under eighteen years old cannot make a will. (Art. 797)

Q: When is soundness of the mind required?

A: It is essential only at the time of the making (or execution) of the will. (Art. 798; *Alsua-Betts v. CA*, 92 SCRA 332; Rabuya, Civil Law Reviewer, p. 527)

Q: What is the status of the will if the testator is not of sound mind at the time of its execution?

A: The will is invalid regardless of his state of mind before or after such execution. In other words, the will of an incapable is not validated by the supervening of capacity. (Art. 801; *id.*)

Note: Conversely, if the testator was of sound mind at the time of the making of the will, the will is valid even if the testator should later on become insane and die in that condition. In other words, supervening incapacity does not invalidate an effective will. (*id.*, pp. 527-528)

Q: If there is no proof as to the soundness of the mind of the testator at the time he executed his will, what is the status of his will assuming that he complies with all other requisites for its validity?

A: The will is valid. This is so because generally, in absence of proof to the contrary, the law presumes that every person is of sound mind.

Such presumption of soundness of mind, however, does not arise if the testator was:

1. Publicly known to be insane, one month, or less, before making his will;
2. Under guardianship at the time of the making of the will.

Note: Mere weakness of mind or partial imbecility from disease of body or from age does not necessarily render a person incapable of making a will.

Q: Who has the burden of proving that the testator acted in lucid interval?

A: The person who maintains the validity of the will based on the said ground. (Rabuya, Civil Law Reviewer, p. 530)

Q: When Brenda was a baby, she was accidentally dropped by her mother when her mother saw a cockroach. As a result, she suffered from insanity. When she was in her thirties, she executed a will. After sometime, her brain damage was totally cured. What is the status of the will?

A: Still void. The will of an incapable cannot be validated by supervening capacity. What is important is that the ability, as well as the power to make a will must be present at the time of the execution of the will.

Q: Will your answer be the same if the situation was the reverse – Brenda developed insanity after she executed her will?

A: No. Supervening incapacity does not invalidate an effective will, hence the will is valid.

Q: May an illiterate execute a will?

A:

GR: Yes, an illiterate can make an ordinary or notarial will because a person who does not know how to read and write does not mean he does not understand the language.

XPN: The illiterate cannot make a holographic will.

3. FORM

A. FORMAL VALIDITY RULES

Q: What law governs the forms and solemnities of wills?

A: It is the law of the country where the will was executed that governs the form and solemnities of wills. (*Art. 17, 1st paragraph; Art. 815*)

Q: What are the effects of a will executed by an alien abroad?

A: The will of an 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 the Civil Code prescribes. (*Art. 816*)

Q: What are the effects of a will executed by an alien in the Philippines?

A: It shall produce the same effect as if it was executed in the Philippines if it is executed in

accordance with the law of the country where he is a citizen or subject, and which might be proved and allowed by the law of his own country. (*Art. 817*)

Q: Is a joint will executed by a Filipino in a foreign country valid?

A: No. The same holds true even if it is authorized by the law of the country where the joint will was executed. (*Art. 819*)

(1) LAW GOVERNING SUBSTANTIVE VALIDITY

Q: What are the matters mentioned in Article 15 of the New Civil Code which are governed by Philippine laws?

- A:** 1. family rights and duties
2. status;
3. condition; and
4. legal capacity of persons. (*Art. 15*)

Q: What are the matters pertaining to intestate and testamentary successions which are regulated by the national law of the deceased?

- A:** 1. Order of succession
2. amount of successional rights
3. intrinsic validity of testamentary provisions
4. capacity to succeed. (*Art. 16; Art. 1039*)

B. COMMON REQUIREMENTS

Q: What are the formal requirements common to both notarial and holographic wills?

A:

1. In writing;
2. In a language or dialect known to the testator.
- 3.

Note: 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.

(1) IN WRITING

Q: Is the rule that every will must be in writing mandatory?

A: Yes. If the will is not in writing, it is void and cannot be probated. (*Rabuya, Civil Law Reviewer*, p. 531)

Note: Philippine laws do not recognize the validity of "nuncupative wills," which are oral wills declared or



dictated by the testator and dependent merely on oral testimony. (*id.*)

Q: In case of a holographic will, what is the requirement for its validity?

A: It must be entirely handwritten by the testator himself. (*Art. 810*)

Q: What are the rules in relation to notarial or attested wills?

A: Notarial or attested will may be:

1. entirely handwritten by a person other than the testator;
2. partly handwritten by the testator himself and partly handwritten by another person;
3. entirely printed, engraved or lithographed; or
4. partly handwritten (whether by testator or another person) and partly printed, engraved or lithographed. (*Rabuya, Civil Law Reviewer, p. 531*)

(2) LANGUAGE/DIALECT REQUIREMENT

C. NOTARIAL WILLS

Q: Is the rule every will must be executed in a language known to the testator mandatory?

A: Yes, otherwise, the will is void. (*Suroza v. Honrado, 110 SCRA 388; id.*)

Q: Is the fact that the will was executed in a language known to the testator required to be stated in the attestation clause?

A: No. This fact can be established by extrinsic evidence or evidence *aliunde*. (*Lopez v. Liboro, 81 Phil. 429*)

Note: It will be presumed that the will was executed in a language or dialect known to the testator if the will was executed in a certain locality and that the testator was a resident of that locality. (*Rabuya, Civil Law Reviewer, p. 532*)

Q: Is it presumed that the testator knows the dialect of the locality where he resides?

A: If the testator resides in a certain locality, it can be presumed that he knows the dialect or the language in the said locality. (*Abangan v. Abangan, G.R. No. 13431, Nov. 12, 1919*)

Note: The fact that the testator knew the language need not appear on the face of the will. This fact may be proven by extrinsic evidence.

Q: Does this rule apply to witnesses in a notarial or attested will?

A: No. The rule only applies to the testator, whether in notarial or holographic will. Further, *Art. 805* is clear that the attestation clause need not be in the language known to the witnesses. (*See Rabuya, Civil Law Reviewer, supra*)

(1) ARTS. 805-806

Q: What are the formalities in the execution of a notarial will?

A: WESA-PNAN

1. In Writing;
2. Executed in a language or dialect known to the testator;
3. Subscribed by the testator himself or by the testator's name written by some other person in his presence and under his express direction at the end thereof, at the presence of witnesses;
4. Attested to and subscribed by at least 3 credible witnesses in the presence of the testator and of one another;
5. Each and every Page must be signed by the testator or by the person requested by him to write his name, and by instrumental witnesses in the presence of each other, on the left margin;
6. Each and every page of the will must be Numbered correlatively in letters placed on the upper part of each page;
7. Must contain an Attestation clause, stating the following:
 - a. The number of pages of the will,
 - b. Fact that the testator signed the will and every page in the presence of witnesses, or caused some other person to write his name under his express direction,
 - c. All witnesses signed the will and every page thereof in the presence of the testator and of one another;
8. Must be acknowledged before a Notary public.

Q: What is the effect if one or some of the requisites are lacking?

A: Lack of one of the requisites is a fatal defect which will render the will null and void

Q: What is the rule in cases of omissions in the will?

A: Omissions which can be supplied by an examination of the will itself, without the need of resorting to extrinsic evidence, will not be fatal and, correspondingly, would not obstruct the allowance to probate of the will being assailed.

However, evidence *aliunde* are not allowed to fill a void in any part of the document or supply missing details that should appear in the will itself. They only permit a probe into the will, an exploration into its confines, to ascertain its meaning or to determine the existence or absence of the requisite formalities of law. (*Cañeda v. CA, G.R. No. 103554, May 28, 1993*)

(2) SPECIAL RULES FOR HANDICAPPED TESTATORS

Q: What are the special requirements if the testator is deaf or mute?

A:

1. If the testator is able to read, he must personally read the will; or
2. If the testator is unable to read, he must designate two persons to read it and communicate to him, in some practicable manner, the contents thereof. (Art. 807; see *Rabuya, Civil Law Reviewer*, p. 559)

Note: The law does not require that the persons reading and communicating the contents of the will be the instrumental witnesses. (*id.*, p. 560)

Q: What are the special requirements if the testator is blind?

A: The will shall be read to him twice, once by one of the subscribing witnesses, and another time by the notary public before whom the will is acknowledged. (Art. 808; *id.*)

Note: Art. 808 applies not only to blind testators but also to those who, for one reason or another, are incapable of reading their wills, either because of poor or defective eye sight or because of illiteracy. (*id.*)

(3) SUBSTANTIAL COMPLIANCE

Q: When is a will not rendered invalid by reason of defects or imperfections in the form of attestation or in the language used therein?

A: If the will is executed in substantial compliance with all the requirements of Article 805, in the absence of bad faith, forgery, fraud, undue and improper pressure or influence. (*See Art. 809*)

(4) REQUISITES

WITNESSES

Q: What are the qualifications of witnesses?

A: Witnesses to a will must be: **S18-ABCD**

1. Of Sound mind.
2. At least 18 years of age.
3. Able to read and write
4. Not Blind, deaf or dumb
5. Not have been Convicted by final judgment of falsification of a document, perjury or false testimony.
6. Domiciled in the Philippines

Q: Will the beneficial interest of a witness in a will disqualify him as such?

A: Beneficial interest in a notarial will does not disqualify one as a subscribing witness, but it may, or may not nullify the devise or legacy given to the said witness.

A witness who attests the execution of a will, and to whom, or to whose spouse, parent or child, or anyone claiming the right of said witness, spouse, parent or child, a devise or legacy given, shall be void, unless there are 3 other competent witnesses to such will. (Art. 823 NCC)

Note: If the witness is instituted as heir, not as devisee or legatee, the rule would still apply, because undue influence or pressure on the part of the attesting witness would still be present.

Creditors of the testator are not disqualified to be a witness to the will.

Q: Stevie was born blind. He went to school for the blind, and learned to read in Braille language. He speaks English fluently. Can he:

1. Make a will?

A: Stevie may make a notarial will. A blind man is not expressly prohibited from executing a will. In fact, Art. 808 of NCC provides for additional formality when the testator is blind. Stevie however, may not make a holographic will in Braille because the writing in Braille is not a handwriting. A holographic will to be valid must be entirely written, signed and dated by the testator in his own handwriting.



2. Act as a witness to a will?

A: A blind man is disqualified by law to be a witness to a notarial will.

3. In either of the instances, must the will be read to him?

A: In case Stevie executes a notarial will, it has to be read to him twice. First by one of the instrumental witnesses, and second by the notary public before whom the will was acknowledged. (2008 Bar Question)

D. HOLOGRAPHIC WILLS

(1) REQUIREMENTS

Q: What is a holographic will?

A: A holographic will is one 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. (Art. 810)

Q: What are the formalities required in the execution of holographic will?

A: SEED

1. Signed by testator *himself*
2. Executed in a language or dialect known to him (Art. 804)
3. Entirely written
4. Dated;
5. **Note:** In case of any insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature. (Art. 814)

Q: What are the effects of insertions or interpolations made by a 3rd person?

A:

GR: When a number of erasures, corrections, cancellation, or insertions are made by the testator in the will but the same have not been noted or authenticated with his full signature, only the particular words erased, corrected, altered will be invalidated, not the entirety of the will.

XPN:

1. Where the change affects the essence of the will of the testator;

Note: When the holographic will had only one substantial provision, which was altered by substituting the original heir with another, and the same did not carry the requisite full signature of the testator, the entirety of the will is voided or revoked.

Reason: What was cancelled here was the very essence of the will; it amounted to the revocation of the will. Therefore, neither the altered text nor the original unaltered text can be given effect. (*Kalaw v. Relova*, G.R. No. L-40207, Sept. 28, 1984)

2. Where the alteration affects the date of the will or the signature of the testator.
3. If the words written by a 3rd person were contemporaneous with the execution of the will, even though authenticated by the testator, the entire will is void for violation of the requisite that the holographic will must be entirely in the testator's handwriting.

Q: Natividad's holographic will, which had only one substantial provision, as first written, named Rosa as her sole heir. However, when Gregorio presented it for probate, it already contained an alteration, naming Gregorio, instead of Rosa, as sole heir, but without authentication by Natividad's signature. Rosa opposes the probate alleging such lack of proper authentication. She claims that the unaltered form of the will should be given effect. Whose claim should be granted?

A: None. Both their claims should be denied. As to Gregorio's claim, the absence of proper authentication is fatal to his cause. As to Rosa's claim, to state that the will as first written should be given efficacy is to disregard the seeming change of mind of the testatrix. But that change of mind can neither be given effect because she failed to authenticate it in the manner required by law by affixing her full signature. (*Kalaw v. Hon. Relova, etc., et al.*, G.R. No. L40207, Sept. 28, 1984)

DATE

Q: Why is the date in a holographic will important?

A: To establish if there was testamentary capacity at the time the will was executed. Also, should

there be conflicting wills, it can establish which will was executed later.

Q: Is it required that the date of the will should include the day, month and year of its execution?

A:

GR: The "date" in a holographic will should include the day, month, and year of its execution.

XPN: When there is no appearance of fraud, bad faith, undue influence and pressure and the authenticity of the will is established and the only issue is whether or not the date appearing on the holographic will is a valid compliance with Art. 810, NCC, probate of the holographic will should be allowed under the principle of substantial compliance.

Note: In this case, the date was written as "FEB./61 " (*Roxas v. De Jesus G.R. No. L-38338 January 28, 1985*).

The exact date though indicated only by implication, must be with certainty.

(2) WITNESSES REQUIRED FOR PROBATE

Q: What are the rules governing the probate of holographic wills?

A: In the *post mortem* probate of holographic wills, the following rules are to be observed as to the number of witnesses to be presented:

1. If the will is not contested, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declares that the will and the signature are in the handwriting of the testator.
2. If the will is contested, at least three of such witnesses shall be required.
3. In the absence of any competent witness and if the court deems it necessary, expert testimony may be resorted to. (Art. 811; Rabuya, *Civil Law Reviewer*, p. 563)

Note: In an earlier case, it was held that even if the genuineness of the holographic will is contested, Article 811 of the NCC 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. (*Codoy v. Calugay*, 312 SCRA 333; *id.*, pp.563-564)

In a later case, however, the Court ruled that the requirement of at least three witnesses in case the will is contested is mandatory. The Court explained that the possibility of a false document being adjudged as the will of the testator cannot be eliminated, which is why if the holographic will is contested, the law requires three witnesses to declare that the will was in the handwriting of the deceased. (*id.*, p. 564)

The execution and contents of a lost or destroyed holographic will may not be proved by the bare testimony of witnesses who have seen or read such will. The will itself must be presented; otherwise, it shall produce no effect. (*Gan v. Yap*, 104 Phil. 509; *id.*) But a photostatic copy or Xerox copy of the holographic will may be allowed because comparison can be made with the standard writings of the testator. (*Rodelas v. Aranza*, 119 SCRA 16; *id.*)

ALTERATIONS, REQUIREMENTS

Q: What are the rules in case of insertion, cancellation, erasure or alteration?

A: In case of insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature. (Art. 814)

Note: Full signature refers to the testator's habitual, usual and customary signature. (Rabuya, *Civil Law Reviewer*, p. 565)

Q: What is the effect if the insertion, cancellation, erasure or alteration is not authenticated with the testator's full signature?

A: It is considered as not made, but the will is not invalidated. (*id.*)

Note: Where the testator himself crossed out the name of the heir named, and substituted the name of another, without authentication, it was held that this did not result in making the person whose name was crossed as heir. (*Kalaw v. Relova*, 132 SCRA 237; *id.*)

E. JOINT WILLS

Q: Are joint wills allowed in the Philippines?

A: 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. (Art. 818)

Wills, prohibited by Article 818, 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. (Art. 819)

Q: What are the kinds of joint wills?

A:

1. *Mutual Wills* – executed pursuant to an agreement between two or more persons to dispose of their property in a particular manner, each in consideration of the other separate wills of two persons, which are reciprocal in their provisions.
2. *Reciprocal Wills* – the testators name each other as beneficiaries under similar testamentary plans.

Q: Manuel, a Filipino, and his American wife Eleanor, executed a Joint Will in Boston, Massachusetts when they were residing in said city. The law of Massachusetts allows the execution of joint wills. Shortly thereafter, Eleanor died. Can the said will be probated in the Philippines for the settlement of her estate?

A: Yes, the will may be probated in the Philippines insofar as the estate of Eleanor is concerned. While the Civil Code prohibits the execution of joint wills here and abroad, such prohibition applies only to Filipinos. Hence, the joint will which is valid where executed is valid in the Philippines but only with respect to Eleanor. Under Article 819, it is void with respect to Manuel whose joint will remains void in the Philippines despite being valid where executed.

Alternative Answer: The will cannot be probated in the Philippines, even though valid where executed, because it is prohibited under Article 818 of the Civil Code and declared void under Article 819. The prohibition should apply even to the American wife because the Joint will is offensive to public policy. Moreover, it is a single juridical act which cannot be valid as to one testator and void as to the other. **(2000 Bar Question)**

John and Paula. 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. Paula bore John 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. John and Paula died tragically in the London Subway terrorist attack in 2005. Peter and Paul filed a petition for probate of their parents' will before a Makati Regional Trial Court.

Q: Should the will be admitted to probate?

A: No, the will cannot be admitted to probate. Joint wills are void under the New Civil Code. And even if the joint will executed by Filipinos abroad were valid where it was executed, the joint will is still not valid in the Philippines.

Q: Are the testamentary dispositions valid?

A: If a will is void, all testamentary dispositions contained in that will are also void. Hence, all testamentary provisions contained in the void joint will are also void.

Q: Is the testamentary prohibition against the division of the London estate valid?

A: The testamentary prohibition against the division by Peter and Paul of the London estate for as long as they live, is not valid. Art. 494 of NCC provides that a donor or testator may prohibit partition for a period which may not exceed twenty (20) years. **(2008 Bar Question)**

4. CODICILS, DEFINITION AND FORMAL REQUIREMENTS

Q: What is a codicil?

A: 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 is explained, added to, or altered. (Art. 825)

Note: A codicil is executed after the execution of a prior will. It must be executed in accordance with all the formalities required in executing a will.

Q: What are the distinctions between a codicil and a subsequent will?

A:

CODICIL	SUBSEQUENT WILL
Forms a part of the original will.	It is a new or a separate will.
Supplements the original will, explaining, adding to, or altering any of its dispositions.	Makes dispositions without reference to and independent of the original will.
Does not, as a rule, revoke entirely the prior will.	If it provides for a full disposition of the testator's estate, may revoke the whole prior will by substituting a new and last disposition for the same.
A will and a codicil, being regarded as a single instrument are to be construed together.	A prior will and a subsequent will, being two separate wills, may be construed independently of each other.

5. INCORPORATION BY REFERENCE

Q: What is incorporation by reference?

A: *Incorporation by reference* is the incorporation of an extrinsic document or paper into a will by reference so as to become a part thereof.

Note: The documents or papers incorporated will be considered part of the will even though the same are not executed in the form of a will. The doctrine of incorporation by reference is *not* applicable in a holographic will unless the documents or papers incorporated by reference are also in the handwriting of the testator.

Q: What are the requisites of incorporation by reference?

A: EDIS

1. Document 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;
3. It must be Identified by clear and satisfactory proof as the document or paper referred to therein;
4. It must be Signed by the testator and the witnesses on each and every page, except in case of voluminous books of account or inventories. (Art. 827)

6. REVOCATION; KINDS

Q: What is revocation?

A: An act of the mind terminating the potential capacity of the will to operate at the death of the testator, manifested by some outward and visible act or sign, symbolic thereof.

Q: When may the testator revoke a will?

A: A will may be revoked by the testator at any time before his death. Any waiver or restriction of this right is void. (Art. 828)

Q: May the right of the testator to revoke the will be waived or restricted?

A: No, the testator's right to revoke during his lifetime is absolute. It can neither be waived nor restricted.

Reason: Because a will is ambulatory. (Art. 828)

Q: What law governs in case of revocation?

A:

1. *If the revocation takes place in the Philippines*, whether the testator is domiciled in the Philippines or in some other country – Philippine laws
2. *If the revocation takes place outside the Philippines:*
 - a. by a testator who is domiciled in the Philippines – Philippine laws
 - b. by a testator who is not domiciled in this country –
 - i. Laws of the place where the will was made, or
 - ii. Laws of the place in which the testator had his domicile at the time of revocation. (Art. 829)

Q: What are the modes of revoking a will?

A:

1. By implication of law;
2. By the execution of a subsequent document;
3. By physical destruction through burning, cancelation or obliteration. (Art. 830)



REVOCATION BY IMPLICATION OF LAW

Q: Discuss revocation by implication of law.

A: Revocation is produced by implication of law when certain acts or events take place after a will has been made, rendering void or useless either the whole will or certain testamentary dispositions therein.

Rationale: The law presumes a change of mind on the part of the testator due to certain changed circumstance pertaining to the family relations or in the status of the property.

Q: How are wills revoked by operation of law?

A:

1. When after the testator has made a will, he sells or donates the legacy or devise;
2. Provisions in a will in favor of a spouse who has given cause for legal separation;

Note: The revocation shall take place the moment the decree of legal separation is granted.

3. When an heir, legatee or devisee commits an act of unworthiness;
4. When a credit that has been given as a legacy is judicially demanded by the testator;
5. When one, some or all the compulsory heirs have been preterited or omitted

Note: The institution of heirs is void.

REVOCATION BY EXECUTION OF A SUBSEQUENT INSTRUMENT

Q: What are the requisites of revocation by subsequent will or codicil?

A:

1. The subsequent instrument must comply with the formal requirements of a will
2. The testator must possess testamentary capacity
3. The subsequent instrument must either contain a revocatory clause or be incompatible with the prior will (totally or partially)
4. The revoking will must be admitted to probate.

Note: The testator must have the testamentary capacity at the time of the making of the subsequent will.

Q: In what ways may revocation by a subsequent will be done?

A: Revocation may be:

- a. *Express* – by providing for a revocatory clause;
- b. *Implied* – provisions are completely inconsistent with previous will.

Note: The will containing the revocatory clause must itself be valid, and admitted to probate, otherwise, there is no revocation.

Q: What is the Principle of Instanter?

A: The express revocation of the 1st will renders it void because the revocatory clause of the 2nd will, not being testamentary in character, operates to revoke the 1st will instantly upon the execution of the will containing it.

Q: Can there be an instance where a subsequent will, which is incompatible with the prior will, and such prior will subsist at the same time?

A: Yes. The fact that the subsequent will is posterior and incompatible with the first does not mean that the first is entirely revoked because the revocation may be total or partial.

Note: The execution of a subsequent will does not *ipso facto* revoke a prior will.

In case of inconsistent wills, the subsequent will prevails over the prior will because it is the latest expression of testamentary intent of the testator.

The subsequent will which do not revoke the previous will in an express manner, only annuls the dispositions in the previous will which are inconsistent with or contrary to those contained in the subsequent will. (Art. 831)

Q: What is the effect if the revoking will becomes inoperative by reason of incapacity or renunciation?

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

REVOCATION BY PHYSICAL DESTRUCTION

Q: What are the requisites of revocation by physical act of destruction?

A: OTAP

1. **O**vert act of physical destruction;
2. **T**estamentary capacity of the testator at the time of performing the act of revocation;
3. **A**nimus Revocandi - intention to revoke;
4. **P**erformed by testator himself or other person in the presence and express direction of the testator.

Note: The physical destruction may be done by the testator personally or by another person acting in his presence and by his express direction.

It is not necessary that the will be totally destroyed. It is sufficient if on the face of the will, there is shown some sign of the physical act of destruction. (*Maloto v. CA, G.R. No. 76464, Feb. 29, 1988*)

Q: How can a will be revoked by physical destruction?

A: The physical act of destruction of a will, like burning, does not *per se* constitute an effective revocation, unless the destruction is coupled with *animus revocandi* on the part of the testator. (*Maloto v. CA, G.R. No. 76464, Feb. 29, 1988*)

Q: What is required for a revocation done by a person, other than the testator, be valid?

A:

1. Under the *express direction* of the testator; and
2. Done in the *presence* of the testator.

Note: Elements for a valid revocation done by the testator himself must be present even if the revocation is done by another person.

It goes without saying that the document destroyed must be the will itself.

Q: What is the effect if the person directed by the testator to revoke his will is incapacitated to make a will such as when he is below 18 years of age?

A: None. In revocation of wills, what is essential is the capacity of the testator to revoke. The capacity of the person directed by the testator to revoke his will is immaterial.

Q: In 1919, Miguel executed a will. In the post mortem probate, there was a testimony to the effect that the will was in the testator's

possession in 1919, but it can no longer be found. Is the will revoked?

A: Yes, the *Doctrine of Presumed Revocation* applies, which provides that: 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. (*Gago v. Mamuyac G.R. No. 26317, Jan. 29, 1927*)

Note: The presumption is, however, not conclusive and anyone who has proof to the contrary may rebut the presumption.

Q: What is the Doctrine of Dependent Relative Revocation?

A: Where the testator's act of destruction is connected with the making of another will, so as fairly to raise the inference that the testator meant the revocation of the old to depend upon the efficacy of the new disposition intended to be substituted, the revocation will be conditional and dependent upon the efficacy of the new disposition; and if, for any reason, the new will intended to be made as a substitute is inoperative, the revocation fails and the original will remains in full force. (*Molo v. Molo, G.R. No. L-2538, Sept. 21, 1951*)

Simply put, for this doctrine to operate, the testator must have intended that the revocation of his first will be dependent on the validity of his second will. In this case the intention of the testator is clear: He does not want to die intestate.

Note: Failure of the new testamentary disposition upon whose validity the revocation depends is equivalent to the non-fulfillment of a suspensive condition and thus prevents the revocation of the original will.

Revocation of a will based on a false cause or an illegal cause is null and void.

Q: Mr. Reyes executed a will completely valid as to form. A week later, however, he executed another will which expressly revoked his first will, which he tore his first will to pieces. Upon the death of Mr. Reyes, his second will was presented for probate by his heirs, but it was denied due to formal defects. Assuming that a copy of the first will is available, may it now be admitted to probate and given effect? Why?



A: Yes, the first will may be admitted to probate and given effect. When the testator tore the first will, he was under the mistaken belief that the second will was perfectly valid and he would not have destroyed the first will had he known that the second will is not valid. The revocation by destruction therefore is dependent on the validity of the second will. Since it turned out that the second will was invalid, the tearing of the first will did not produce the effect of revocation. This is known as the doctrine of dependent relative revocation (*Molo v. Molo*, G.R. No. L-2538, Sept. 21, 1951) **(2003 Bar Question)**

Alternative Answer: No, the first will cannot be admitted to probate. While it is true that the first will was successfully revoked by the second will because the second will was later denied probate, the first will was, nevertheless, revoked when the testator destroyed it after executing the second invalid will. (*Diaz v. De Leon*, G.R. No. 17714, May 31, 1922).

Q: What is the rule in case of revocation based on false or illegal cause?

A: Revocation based on a false or illegal cause is null and void.

Requisites:

1. The cause must be concrete, factual and not purely subjective
2. It must be false
3. The testator must not know of its falsity
4. It must appear from the will that the testator is revoking because of the cause which is false.

Q: The will contains a statement whereby the testator recognizes his illegitimate child. This will was revoked. May the revoked will be used as basis for proving the said recognition?

A: Yes. Recognition in a will of an illegitimate child does not lose its legal effect even if the will is revoked.

7. ALLOWANCE AND DISALLOWANCE OF WILLS

A. PROBATE REQUIREMENT

Q: What is probate?

A: It is a special proceeding mandatorily required for the purpose of establishing the validity of a will.

No will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court. (*Art. 838*)

Note: Probate does not deal with the intrinsic validity of the testamentary provisions.

Even if only one heir has been instituted, there must still be a judicial order of adjudication.

Even if a will has already been probated, if later on a subsequent will is discovered, the latter may still be presented for probate, as long as two wills can be reconciled.

Q: Does prescription apply to probate of wills?

A: The statute of limitations is not applicable to probate of wills (Imprescriptibility of Probate)

Rationale: Probate proceedings are not established in the interest of the surviving heirs, but primarily for the protection of the expressed wishes of the testator.

Q: What are the characteristics of a probate proceeding?

A:

1. Special proceeding;
2. Proceeding *in rem*;
3. Not contentious litigation;
4. Mandatory;
5. Imprescriptible;

Q: What are the different kinds of probate?

A:

1. *Ante-mortem* – testator himself petitions the court for the probate of his own will.
2. *Post-mortem* – another person applies for probate of the will after the testator's death.

(1) ISSUES TO BE RESOLVED IN PROBATE PROCEEDINGS

(A) EXCEPTIONS – WHEN PRACTICAL CONSIDERATIONS DEMAND THE INTRINSIC VALIDITY OF THE WILL BE RESOLVED

Q: What are the questions that can be determined by a probate court?

A:

GR: Probate courts cannot inquire into the intrinsic validity of will
The only questions that can be determined by a probate court are the:

1. Due execution
2. Testamentary capacity
3. Identity of the will

XPN: Practical considerations (*E.g. when the will is void on its face*)

Q: The testator devised a part of his estate to his concubine, which fact of concubinage was stated in his will. On probate, the court ruled that the will was validly executed but the devise in favor of the concubine is null and void. Can the probate court pass upon the intrinsic validity of the testamentary provision stated in the will?

A: Yes. While as a general rule, in probate proceedings, the court's area of inquiry is limited to an examination and resolution of the extrinsic validity of the will, given exceptional circumstances, the probate court is not powerless to do what the situation constrains it to do and pass upon certain provisions of the will, as in this case. (*Nepomuceno v. CA, G.R. No. 62952, Oct. 9, 1985*)

Note: The SC held as basis its finding that in the event of probate of the will, or if the court rejects the will, probability exists that the case will come up once again on the same issue of the intrinsic validity or nullity of the will, the same will result in waste of time, effort, expense plus added anxiety.

Q: Can a probate court decide on questions of ownership?

A:

GR: A probate court has no jurisdiction to decide questions of ownership.

XPN:

1. When the parties voluntarily submit the issue of ownership to the court;
2. When *provisionally*, the ownership is passed upon to determine whether or not the property involved is part of the estate.
3. The question of ownership is an extraneous matter which the probate court cannot resolve with finality.

Q: When Vic died, he was survived by his legitimate son, Ernesto, and natural daughter, Rosario. Rosario, who had Vic's will in her custody, did not present the will for probate. She instituted an action against Ernesto to claim her legitimate on the theory that Vic died intestate because the absence of probate. To support her

claim, she presented Vic's will, not for its probate, but for proving that Vic acknowledged her. Is the procedure adopted by Rosario allowed?

A: No. It is in violation of procedural law and an attempt to circumvent and disregard the last will and testament of the decedent. The presentation of a will to the court for probate is mandatory and its allowance by the court is essential and indispensable to its efficacy.

Note: SC held that the case of *Leaño v. Leaño* (25 Phil., 180), which sanctioned the extrajudicial partition by the heirs of the properties left by a decedent, but not the non-presentation of a will for probate, cannot be relied upon as an authority for the unprecedented and unheard of procedure adopted by Rosario in this case, in the face of express mandatory provisions of the law requiring her to present the will to the court for probate. It does not affirmatively appear in the decision in that case that the partition made by the heirs was not in accordance with the will or that they in any way disregarded the will. No question of law was raised and decided in that case. (*Guevara v. Guevara G.R. No. 48840, Dec. 29, 1943*)

Q: To put an end to the numerous litigations involving decedent Francisco's estate, his heirs entered into a compromise agreement whereby they agreed to pay Tasiana, Francisco's surviving spouse, P800,000 as her full share in the hereditary estate.

When submitted to the court for approval, Tasiana attacked its validity on the ground that the heirs cannot enter into a compromise agreement without first probating Francisco's will. Tasiana relied on *Guevara v. Guevara* (74 Phil. 479) where the court held that the 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. Decide.

A: The Guevara ruling is not applicable in this case because here, there was *no attempt to settle or distribute the estate* among the heirs before the probate of the will. The clear object of the contract was merely Tasiana's conveyance of any and all her individual share and interest, actual or eventual in the estate. There is no stipulation as to any other claimant, creditor or legatee.

As a hereditary share in a decedent's estate is transmitted or vested immediately from the moment of the death of such *causante* or



predecessor in interest, *there is no legal bar to a successor (with requisite contracting capacity) 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.*

Also, as Francisco's surviving spouse, Tasiana was his compulsory heir. Wherefore, barring unworthiness or valid disinheritance, *her successional interest existed independent of Francisco's last will and testament and would exist even if such will were not probated at all.* Thus, the prerequisite of a previous probate of the will, as established in the Guevara and analogous cases, can not apply to the case.

Note: *Neither the aleatory character of the contract nor the coetaneous agreement that the numerous litigations between the parties are to be considered settled and should be dismissed, although such stipulation gives the contract the character of a compromise, affect the validity of the transaction. (De Borja, et al. v. Vda. de Borja, G.R. No. L-28040, Aug. 18, 1972)*

Q: When a person dies testate, may his heirs opt for an extrajudicial partition instead of having the will probated?

A: No. In the subsequent case of *Riosa v. Rocha* (1926), 48 Phil. 737, the Court held that *an extrajudicial partition is not proper in testate succession.*

(2) EFFECT OF FINAL DECREE OF PROBATE, RES JUDICATA ON FORMAL VALIDITY

Q: What is the scope of a final decree of probate?

A: A final decree of probate is conclusive as to the due execution of the will, *i.e.*, as to the extrinsic or formal validity only.

B. GROUNDS FOR DENYING PROBATE

Q: What are the grounds for disallowance of a will?

A: FIFUSM

1. The Formalities required by law have not been complied with;
2. The testator was Insane or mentally incapable of making will;
3. The will was executed through Force or under duress, or influence of fear or threats;
4. The will was procured by Undue and improper pressure and influence, on part of the beneficiary or some other person;

5. The Signature of testator was procured by fraud.
6. The testator acted by Mistake or did not intend that the instrument he signed should be his will (*Art. 839, NCC*)

Note: The list is exclusive.

A will is either valid or void. There is no such thing as a voidable will.

Q: When do the following constitute as grounds for disallowance?

1. Violence

A: when in order to compel the testator to execute a will, serious or irresistible force is employed

2. Intimidation

A: when the testator is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property of his spouse, descendants, or ascendants, to execute the will

3. Undue Influence

A: when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice.

4. Mistake

A: Pertains to the "mistake in execution" which may either be:

1. mistake as to the identity or character of the instrument which he signed, or
2. mistake as to the contents of the will itself.

Q: What other defects of the will, if any, can cause denial of probate?

A: There are no other defects of the will that can cause denial of probate. Art. 805 of the Civil Code provides that the will must be subscribed at the end thereof by the testator, and subscribed by three or more credible witnesses in the presence of the testator and of one another. The driver, the cook and the lawyer who prepared the will are credible witnesses. The testator and the instrumental witnesses of the will, shall also sign, each and every page of the will proper, except the last, on the left margin, and all the pages shall be numbered correlatively in letters placed of the upper part of each page.

It has been held, however, that the testator's signature is not necessary in the attestation clause, and that if a will consists of two sheets, the first of which contains the testamentary dispositions, and is signed at the bottom by the

testator and the three witnesses, and the second sheet contains the attestation clause, as in this case, signed by 3 witnesses, marginal signatures and paging are not necessary. After all, the object of the law is to avoid substitution of any of the sheets of the will. (*Abangan v. Abangan*, 40 Phil. 476 [1919]; *In Re: Will of Tan Diuco*, 45 Phil 807 [1924]).

B. INSTITUTION OF HEIRS

Q: How is institution of heir defined under Article 840?

A: 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 (*Art. 840, NCC*).

Note: Institution cannot be allowed to affect the legitime.

There can be an instituted heir only in testamentary succession.

Q: What are the requisites of a valid institution?

A

1. The will must be extrinsically valid;

Note: The testator must have the testamentary capacity to make the institution.

2. The institution must be intrinsically valid;

Note: The legitime must not be impaired, the person instituted must be identified or identifiable, and there is no preterition.

3. The institution must be effective.

Note: No repudiation by the heir; testator is not predeceased by the heir.

Q: What are the effects if a will does not contain an institution of heir?

A: The will shall be valid even though it does not contain an institution of 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. (*Art. 841*)

Note: Institution of heirs is not indispensable and its absence will not render the will void, provided there are other testamentary dispositions, like devises and

legacies or where the will merely disinherits a compulsory heir.

Q: What are the three principles in the institution of heirs?

A:

1. *Equality* – heirs who are instituted without a designation of shares inherit in equal parts.

Note: Applies only when the heirs are of the same class or same juridical condition and involves only the free portion.

As between a compulsory heir and a voluntary heir and they are instituted without any designation of shares, the legitime must first be respected and the free portion shall then be equally divided between them.

2. *Individuality* – heirs collectively instituted are deemed individually instituted unless contrary intent is proven.

3. *Simultaneity* – when several heirs are instituted, they are instituted simultaneously and not successively, unless the contrary is proved.

Q: What are the kinds of institution of heirs?

A: Institution of heir may be:

1. with a condition
2. with a term
3. for a certain purpose or cause (modal institution)

Q: May a conceived child be instituted as an heir?

A: A conceived child may be instituted, provided the conditions in Arts. 40 and 41 are present (*Conceptus pro nato habetur*).

Q: What is the effect if the institution of heir is based on a false cause?

A:

GR: The institution of heir is valid. The false cause shall be considered simply as not written.

XPN: If from the will itself, it appears that the testator would not have made the institution if he has known the falsity of the cause, the institution shall be void.



Note: In case of illegal cause, the cause shall be considered as not written, unless the illegal cause is the principal reason or motive for the disposition, in which case the institution shall be void.

Q: The testatrix devised a parcel of land to Dr. Rabadilla. It was provided that Dr. Rabadilla will acquire the property subject to the obligation, until he dies, to give Maria 100 piculs of sugar, and in the event of non-fulfillment, the property will pass to the nearest descendants of the testatrix.

When Dr. Rabadilla died, Maria filed a complaint to reconvey the land alleging that the heirs of Dr. Rabadilla violated the condition. Is the institution of Dr. Rabadilla, a modal institution?

A: Yes, because it imposes a charge upon the instituted heir without, however, affecting the efficacy of such institution.

In a modal institution, the testator states the object of the institution, the purpose or application of the property left by the testator, or 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. The condition suspends but does not obligate; and the mode obligates but does not suspend. (*Rabadilla v. CA, G.R. No. 113725, June 29, 2000*)

1. PRETERITION

Q: What is preterition?

A: *Preterition* is the omission in testator's will of one, some or all of the compulsory heirs in the direct line, whether living at the time of execution of the will or born after the death of the testator. (*Art. 854*)

Q: What does "born after the death of the testator" mean?

A: It simply means that the omitted heir must already be conceived at the time of death of the testator but was born only after the death of the testator.

Q: What are the requisites of preterition?

A:

1. There is a total omission in the inheritance;
2. The person omitted is a compulsory heir in the direct line;

3. The omitted compulsory heir must survive the testator, or in case the compulsory heir predeceased the testator, there is a right of representation;
4. Nothing must have been received by the heir by gratuitous title.

2. CONCEPT

Q: Who may be preterited?

A: Compulsory heirs in the direct line.

Q: May a spouse be preterited?

A: No. While a spouse is a compulsory heir, he/she is not in the direct line (ascending or descending).

Q: May the decedent's parents be preterited?

A: Yes, if there is an absence of legitimate compulsory heirs in the descending line. This is the effect of the application of the rule on preference of lines.

Q: When is there a total omission of a compulsory heir?

A: There is total omission when the heir:

1. Receives nothing under the will whether as heir, legatee, or devisee;

Note: If a compulsory heir is given a share in the inheritance, no matter how small, there is no preterition.

However, if a compulsory heir gets less than his legitime, while this is not a case of preterition. In this case, he is entitled to a completion of his legitime under Art. 906.

2. Has received nothing by way of donation *inter vivos* or *propter nuptias*; and

Note: If a compulsory heir has already received a donation from the testator, there is no preterition.

Reason: A donation to a compulsory heir is considered an advance of the inheritance.

3. Will receive nothing by way of intestate succession.

Q: What are the effects of preterition?

A:

1. Preterition annuls the institution of heirs;
2. Devices and legacies are valid insofar as they are not inofficious;
3. If the omitted compulsory heir dies before testator, institution shall be effectual, without prejudice to right of representation

3. COMPULSORY HEIRS IN THE DIRECT LINE

Q: Who are the compulsory heirs in the direct line?

A:

1. Legitimate children and descendants with respect to their legitimate parents or ascendants;
2. Legitimate parents or ascendants, with respect to their legitimate children and descendants;
3. Illegitimate children
4. The father or mother of illegitimate children

Note: The surviving spouse is not included.

According to Justice Jurado, an adopted child is by legal fiction considered a compulsory heir in the direct line.

4. PRETERITION VS. DISPOSITION LESS THAN LEGITIME

Q: What are the distinctions and similarities between imperfect disinheritance and preterition?

A:

IMPERFECT DISINHERITANCE	PRETERITION
<i>Distinctions</i>	
The institution remains valid, but must be reduced insofar as the legitime has been impaired.	The institution of heirs is <i>completely annulled</i> .
<i>Similarities</i>	
In both cases, the omitted heir and the imperfectly disinherited heir get at least their legitime	
Both legacies and devises remain valid insofar as the legitime has not been impaired.	
Both legacies and devises refer to compulsory heirs.	

5. EFFECTS OF PRETERITION, DEVISEES ONLY ENTITLED TO COMPLETION OF LEGITIME

Q: What is the effect of preterition on the will itself?

A:

GR: The effect of annulling the institution of heirs will be, necessarily, the *opening of a total intestacy* except that proper legacies and devises must be respected. Here, the will is not abrogated.

XPN: If the will contains a *universal institution of heirs to the entire inheritance* of the testator, the will is totally abrogated.

Reason: The nullification of such institution of the universal heirs without any other testamentary disposition in the will amounts to a declaration that nothing at all was written.

Q: What are the rights of the preterited heirs?

A: They are entitled not only to their shares of the legitime but also to those of the free portion which was not expressly disposed of by the testator by way of devises and legacies.

Q: What is the effect if the heir predeceases the testator?

A: If the heir who predeceases the testator is a voluntary heir, a devisee or a legatee, he shall transmit no right to his own heirs.

Note: The rule is absolute with respect to a voluntary heir and a devisee or legatee.

Right of representation only applies to compulsory heirs in the direct descending line, and in the collateral line, only in favor of children of brothers and sisters.

There is no right of representation in the ascending line.

The representative inherits directly not from the person represented, but from the one whom the person would have succeeded.

The rule also applies in case the heir becomes incapacitated to succeed, or was disinherited.

Q: What is the effect if the heir repudiated or renounced his inheritance?

A: An heir who renounced his inheritance, whether as compulsory or as voluntary heir, does not transmit any right to his own heirs.



Note: An heir who repudiated his inheritance, may represent the person whose inheritance he has renounced. (Art 976)

Q: What can the compulsory heir do if the testator left title less than the legitime belonging to the former?

A: 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. (Art. 906)

Note: 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. (Art. 907)

C. SUBSTITUTION OF HEIRS

1. DEFINITION

Q: What is substitution?

A: *Substitution* is the appointment of another heir so that he may enter into the inheritance in default of the original heir.

2. KINDS

Q: What are the different kinds of substitution?

A:

1. *Simple/common* – takes place when the heir instituted:
 - a. predeceases testator;
 - b. repudiates the inheritance; or
 - c. is incapacitated to succeed

Note: Simple substitution without a statement of the causes, to which it refers, shall comprise the 3 above mentioned situations.

2. *Brief/compendious* – when two or more persons are substituted for one or for two or more heirs.
3. *Reciprocal* – one heir designated as substitute for instituted heir while latter is simultaneously instituted as substitute for former.

Note: The substitute enters into the inheritance not as an heir succeeding the first heir, but as an heir of the testator.

3. FIDEICOMMISSARY SUBSTITUTION

Q: What is fideicommissary substitution?

A: Also known as *indirect substitution*, it is a substitution by virtue of which the fiduciary or first heir instituted is entrusted with the obligation to preserve and transmit to a second heir the whole or part of the inheritance.

Note: For its validity and effectivity, such substitution does not go beyond one degree from the heir originally substituted and provided further, that the fiduciary or first heir and the second heir are living at the time of death of the testator.

Q: Who are the parties to a fideicommissary substitution and what are their respective obligations?

A:

PARTIES	OBLIGATIONS
First heir or fiduciary	He has the obligation to preserve and transmit the inheritance.
Second heir or fideicommissary	He eventually receives the property from the fiduciary.
Testator	None

Q: What are the distinctions between direct substitution and indirect substitution?

A:

DIRECT SUBSTITUTION	INDIRECT SUBSTITUTION (Fideicommissary Substitution)
The substitute receives the property in default of the first heir instituted who does not or can not receive the same.	The substitute receives the property after the heir first instituted has enjoyed the same for some time.
There are various liberalities, one that is immediate and the other or others eventual, but with only one of them effective (because ultimately either the instituted heir succeeds or it is the substitute).	There are two liberalities which are both effective but successively enjoyed.
The testator so directs the transmission of his property that one or more heirs enjoy and may freely dispose of the same.	The first heir instituted is obliged to preserve the property for the benefit of one or more succeeding heirs and his power of alienation is curtailed or at least limited.

No other purpose than to prevent the succession of the intestate heirs.	Has a further social effect as it limits the free circulation of property and for such reason many laws prohibit the same or limit it.
There is only one transfer.	There are 2 transfers
Has the free and absolute disposition and control over the property.	No absolute disposition because it is subject to the condition that he will preserve and transmit the same to the fideicommissary. And also, there is control on the property but there is a limit to the circulation of the property.
The identity of the substitute does not matter.	The fideicommissary is limited to relatives within one degree from the first heir or fiduciary: parent-child.

Q: What are the conditions for a valid fideicommissary substitution?

A:

1. That the institution does not go beyond one degree from the heir originally instituted;
2. That the substitution be expressly made;
3. That both the fiduciary and beneficiary be living at the time of the testator's death;
4. That it should be imposed on the free portion and not on the legitime.

Q: What are the elements/requisites of fideicommissary substitution?

A:

1. There must be a first heir or fiduciary;
2. An absolute obligation is imposed upon the fiduciary to preserve and to transmit to a second heir the property at a given time;
3. There is a second heir who must be one degree from the first heir;
4. The first and second heir must both be living and qualified at the time of the death of the testator.

1. FIDUCIARY

There must be a first heir or fiduciary

Note: The first heir receives property, either upon the death of the testator or upon the fulfillment of any suspensive condition imposed by the will.

The first heir is almost like a usufructuary with right to enjoy the property. Thus, like a usufructuary, he cannot alienate the property. The first heir is obliged to make an inventory but he is not required to furnish a bond.

Q: What are the obligations of a fiduciary?

A:

1. To preserve the inheritance;
2. To deliver the inheritance;
3. To make an inventory of the inheritance.

Q: What is the effect of alienation of the property subject to the fideicommissary substitution by the first heir?

A: The transfer is not valid. The fiduciary cannot alienate the property either by an act *inter vivos* or *mortis causa*. He is bound to preserve the property and transmit it to the second heir or fideicommissary.

Q: What is the period of the fiduciary's tenure?

A:

1. *Primary rule* – the period indicated by the testator
2. *Secondary rule* – if the testator did not indicate a period, then the fiduciary's lifetime

Q: Is the fiduciary allowed to make deductions to the inheritance?

A:

GR: The fiduciary should deliver the property intact and undiminished to the fideicommissary heir upon arrival of the period

XPN: The only deductions allowed, in the absence of a contrary provision in the will are:

1. Legitimate expenses;
2. Credits;
3. Improvements

Note: The coverage of legitimate expenses and improvements are limited to *necessary* and *useful* expenses, but not to ornamental expenses.



2. ABSOLUTE OBLIGATION TO PRESERVE AND TRANSMIT PROPERTY

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

Q: How should an absolute obligation to preserve and to transmit be imposed upon the fiduciary?

A: The obligation to preserve and transmit must be given clearly and expressly by giving it a name "fideicommissary substitution" or by imposing upon the first heir the absolute obligation to preserve and deliver the property to the second heir.

Note: "Given time" means the time provided by the testator; if not provided, then it is understood that the period is the lifetime of the first heir.

Q: If the testator provided that the 1st heir shall enjoy the property during his life and that upon his death it shall pass to another expressly designated by the testator, but without imposing the obligation to preserve the property, is there fideicommissary substitution in this case?

A: None. There is no fideicommissary substitution but merely a legacy of the usufruct of the property.

3. FIDEICOMMISSARY

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

Q: What does "one degree" mean?

A: "One degree" refers to the degree of relationship; it means "one generation". As such, the fideicommissary can only be either a parent or child of the first heir.

Note: The relationship is always counted from the first heir. However, fideicommissary substitutions are also limited to one transmission. Upon the lapse of time for the first heir, he transmits the property to the second heir. In other words, there can only be one fideicommissary transmission such that after the first, there can be no second fideicommissary substitution.

CAPACITY TO SUCCEED OF FIDUCIARY AND FIDEICOMMISSARY

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

Q: Why must both the first and second heir be living and qualified at the time of the death of the testator?

A: The fideicommissary inherits not from the first heir but from the testator, thus, the requirement that the fideicommissary be alive or at least conceived at the time of the testator's death.

Note: The *fideicommissary* substitution must not be imposed on the legitime, only on the free portion.

Q: Do the heirs to a fideicommissary substitution inherit successively?

A: No. Both the first heir and the fideicommissary inherit the property simultaneously, although the enjoyment and possession are successive.

Note: From the moment of death of the testator, the rights of the first heir and the fiduciary are vested.

Q: What is the effect if the fideicommissary predeceases the fiduciary?

A: If the fideicommissary predeceases the fiduciary, but survives the testator, his rights pass to his own heirs.

Q: What is the remedy of the fideicommissary to protect himself against alienation to an innocent third person?

A: If the first heir was able to register the property in his name, *fideicommissary* should annotate his claim on the land on the title to protect himself against any alienation in favor of innocent third parties.

When the property passes to the fideicommissary, there is no more prohibition to alienate.

Q: What is the effect of the nullity of the fideicommissary substitution?

A: 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.

Q: If the testator gives the usufruct to different persons successively, what rules will apply?

A: The provisions on fideicommissary substitution also apply in a case where the testator gives the usufruct to various persons successively.

Q: 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. Is the condition imposed upon Ruffa to preserve the property and to transmit it upon her death to Scarlet, valid?

A: When an obligation to preserve and transmit the property to Scarlet was imposed on Ruffa, the testator Raymond intended to create a fideicommissary substitution where Ruffa is the fiduciary and Scarlet is the fideicommissary. Having complied with the requirements of Art. 863 and 869 (NCC), the fideicommissary substitution is valid.

Q: If Scarlet predeceases Ruffa, who inherits the property?

A: If Scarlet predeceases Ruffa, the fideicommissary substitution is rendered null or ineffective under Art. 863 (NCC). And applying Art. 868 (NCC), the fideicommissary clause is disregarded without prejudice to the validity of the institution of the fiduciary. In such case Ruffa shall inherit the device free from the condition.

If Ruffa predeceases Raymond, can Scarlet inherit the property directly from Raymond?

A: In a fideicommissary substitution, the intention of the testator is to make the second heir his ultimate heir. The right of the second heir is simply postponed by the delivery of the inheritance to the first heir for him to enjoy the usufruct over the inheritance. Hence, when the first heir predeceased the testator, the first heir did not qualify to inherit and the right of the second heir to receive the inheritance will no longer be delayed provided the second heir is qualified to inherit at the time of the testator's death. In fideicommissary substitution, the first and second heirs inherit from the testator, hence, both should be qualified to inherit from the testator at the time of his death.

In the problem, when Ruffa predeceased Raymund, she did not qualify to receive the inheritance to enjoy it usufruct, hence, the right of Scarlet to receive the inheritance upon the death of the testator will no longer be delayed. However, Scarlet is not qualified to inherit from Rayond because she is barred by Art. 992 of NCC being an illegitimate child of Raymond's illegitimate father. The devise will therefore be ineffective and the property will be disposed of by intestacy. **(2008 Bar Question)**

D. CONDITIONAL TESTAMENTARY DISPOSITIONS AND TESTAMENTARY DISPOSITIONS WITH A TERM

Q: What is a term?

A: It is any future and certain event upon the arrival of which the validity or efficacy of a testamentary disposition subject to it depends.

Note: 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.

Reason: The right of the heir instituted subject to a term is vested at the time of the testator's death - he will just wait for the term to expire.

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

Q: When the disposition is subject to a term, what should be done by the instituted heirs or legal heirs so that they can enjoy possession of the property?

A: If the disposition is subject to a:

1. *Suspensive term* – The legal heirs can enjoy possession of the property until the expiration of the period but they must put up a bond (*caucion muciana*) in order to protect the right of the instituted heir.
2. *Resolutive term* – The legal heirs can enjoy possession of the property but when the term arrives, he must give it to the legal heirs. The instituted heir does not have to file a bond.



E. LEGITIME

1. DEFINITION

Q: Define legitime.

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. (Art. 886)

Note: There is compulsion on the part of the testator to reserve that part of the estate which corresponds to the legitime.

Q: How is legitime determined?

A: 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. (Art. 908)

Q: Cite the rules governing the donations made by the testator in favor of his children, legitimate and illegitimate, and strangers and those which are inofficious.

A:

1. Donations given to children shall be charged to their legitime.
2. Donations made to strangers shall be charged to that part of the estate of which the testator could have disposed by his last will.
3. Insofar as they may be inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code. (Art. 909)
4. 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 by this Code. (Art. 910)

Q: In relation to Articles 908 to 910, how shall the reduction from the legitime be made?

A: 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 whatever.

If the testator has directed that 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 of a 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. (Art. 911)
4. If the devise subject to reduction should consist of real property, which cannot be conveniently divided, it shall go to 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. (Art. 912) 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. (*id.*)

Note: If the heirs or devisees do not choose to avail themselves of the right granted by 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. (Art. 913)

The testator may devise and bequeath the free portion as he may deem fit. (Art. 914)

RULES ON LEGITIME

Q: Can the testator deprive the compulsory heirs their legitimes?

A: No. The testator cannot deprive the compulsory heirs of their legitimes, except through disinheritance.

Note: Only the legitime is reserved. The free portion may be disposed of by will.

Q: Must compulsory heirs accept their legitimes?

A: No. There is no obligation on the compulsory heirs to accept.

Q: What are the kinds of legitime?

A:

1. *Fixed* – If the amount (fractional part) does not vary or change regardless of whether there are concurring compulsory heirs or not.
 - a. legitimate children and descendants (legitimate children's legitime is always $\frac{1}{2}$)
 - b. legitimate parents and ascendants
2. *Variable* – If the amount changes or varies in accordance with whom the compulsory heir concur.
 - a. surviving spouse
 - b. illegitimate children
 - c. parents of the illegitimate child

Note: Factors which affect the legitime:

1. Identity of the concurring compulsory heirs and;
2. Number of concurring compulsory heirs.

Q: What are the limitations imposed on the testator regarding his rights of ownership?

A: The testator cannot make donations *inter vivos* which impinge upon the legitime or which are inofficious.

Note: The prohibition does not cover an onerous disposition (sale) because this involves an exchange of values.

Q: What are the rules governing succession in the direct descending line?

A:

1. Rule of preference between lines – descending line is preferred over the ascending line;

2. Rule of proximity;
3. Right of representation, in case of predecease, incapacity and disinheritance;
4. If all the legitimate children repudiate their legitime, the next generation of legitimate descendants, succeed in their own right.

Q: What are the rules governing succession in the ascending line?

A:

1. Rule of proximity – nearer excludes the more remote;
2. Division by line;
3. Equal division within the line.

Q: What is/are the remedy(ies) available to a compulsory heir whose legitime has been impaired?

A:

1. In case of *preterition* – annulment of institution of heir and reduction of devises and legacies
2. In case of *partial impairment* – completion of legitime
3. In case of *inofficious donation* – collation

Q: Is the renunciation or compromise of future legitime allowed?

A: The renunciation or compromise is prohibited and considered null and void.

Q: What is the scope of the prohibition?

A:

1. Any renunciation of future legitimes, whether for a valuable consideration or not;
2. Any waiver of the right to ask for the reduction of an inofficious donation;
3. Compromise between the compulsory heirs themselves during the lifetime of the testator.

Note: The prohibition is not applicable in cases of:

1. Renunciations or compromises made after the death of the testator;
2. Donations or remissions made by the testator to the compulsory heirs as advances of their legitime.



Q: What is the order of preference in reducing testamentary dispositions and donations?

A:

1. Legitime of compulsory heirs
2. Donations *inter vivos*
3. Preferential legacies or devises
4. All other legacies or devises *pro rata*.

Note: The order of preference is applicable when:

1. The reduction is necessary to preserve the legitime of compulsory heirs from impairment whether there are donations *inter vivos* or not; or
2. Although, the legitime has been preserved by the testator himself there are donations *inter vivos*.

Q: What are the steps in the distribution of the estate of the testator?

A:

1. Determine the value of the property left at the death of the testator. (*Gross estate*)
2. Deduct all debt and charges, except those imposed in the will from the gross estate. (*Net asset*)
3. Add the value of all donations by the testator that are subject to collation.

(*Net hereditary estate = [Gross estate – Debts and Charges] + donations*)

4. Determine who are the compulsory heirs and their corresponding legitimes using the table of legitimes below.
5. Determine the free portion.

Free portion = net hereditary estate
Less: *legitimes (total amount)*

6. Imputation of donations
7. Distribution of the remaining portion to the legatees and devisees.

Q: What is the effect of donations to the inheritance of an heir?

A: Donations *inter vivos* given to children shall be charged to their legitime, unless otherwise provided by the testator.

Reason: Donations to the compulsory heirs are advances to the legitime.

Note: Donations *inter vivos* to strangers shall be charged to the free portion.

TABLES OF LEGITIMES

Legitimate children or Descendants

Share of legitimate children and descendants	½ of the net estate
Free portion	½ of the net estate

Legitimate Parents and Ascendants

Share of legitimate parents and ascendants	½ of the net estate
Free portion	½ of the net estate

One Legitimate child or descendant and Surviving Spouse

Share of a legitimate child	½ of the net estate
Share of the surviving spouse	¼ of the net estate
Free portion	¼ of the net estate

Illegitimate children and legitimate children

Share of legitimate children and descendants	½ of the net estate
Share of each illegitimate children	½ of the legitime of each legitimate children or ascendant
Free portion	Whatever remains

Two or more legitimate children or descendant and Surviving Spouse

Share of a legitimate child	½ of the net estate
Share of the surviving spouse	Portion equal to the legitime of each of the legitimate children or descendant
Free portion	Whatever remains

Legitimate Parents or Ascendants and Surviving Spouse	
Share of legitimate parents or ascendants	½ of the net estate
Share of the surviving spouse	¼ of the net estate
Free portion	¼ of the net estate

Illegitimate children and Surviving Spouse	
Share of illegitimate children	1/3 of the net estate
Share of the surviving spouse	1/3 of the net estate
Free portion	1/3 of the net estate

Legitimate Parents or Ascendants and Illegitimate Children	
Shares and of legitimate parents and ascendants	½ of the net estate
Illegitimate children	¼ of the net estate
Free portion	¼ of the net estate

Surviving Spouse; Legitimate Children or Ascendants; Illegitimate Children	
Share of legitimate children and descendants	½ of the net estate
Surviving spouse	Equal to the portion of the legitime of each legitimate child
Illegitimate children	½ of the share of each legitimate child
Free portion	Whatever remains

Legitimate Parents; Surviving Spouse; Illegitimate Children	
Shares and of legitimate parents and ascendants	½ of the net estate
Surviving spouse	1/8 of the net estate
Illegitimate children	¼ of the net estate
Free portion	1/8 of the net estate

Surviving Spouse Alone; Exception: Marriage in Articulo Mortis	
Surviving spouse only	½ of the net estate
Free portion	½ of the net estate
Surviving spouse only (marriage in articulo mortis, testator died w/in 3 months)	1/3 of the net estate
Free portion	2/3 of the net estate
Surviving spouse only (marriage in articulo mortis, testator died w/in 3mos. but have been living as H&W for not less than 5yrs)	½ of the net estate
Free portion	½ of the net estate



Illegitimate Children Alone	
Share of illegitimate children	½ of the net estate
Free portion	½ of the net estate

Illegitimate Parents Alone; or With illegitimate children or Legitimate Children or Descendants; or With Surviving Spouse	
Share of the illegitimate parents alone	½ of the net estate
Free portion	½ of the net estate
Share of illegitimate parents	¼ of the net estate
Share of the surviving spouse	¼ of the net estate
Free portion	½ of the net estate

TABLE OF INTESTATE SHARES

LEGEND:

Legit. Children or Descendants	LCD	Illegit. Children or Descendants	ILCD
Legit. Parents or Ascendants	LPA	Illegit. Parents or Ascendants I	LPA
Surviving Spouse	SS	Brothers and Sisters	BS
Nephews and Nieces	NN		

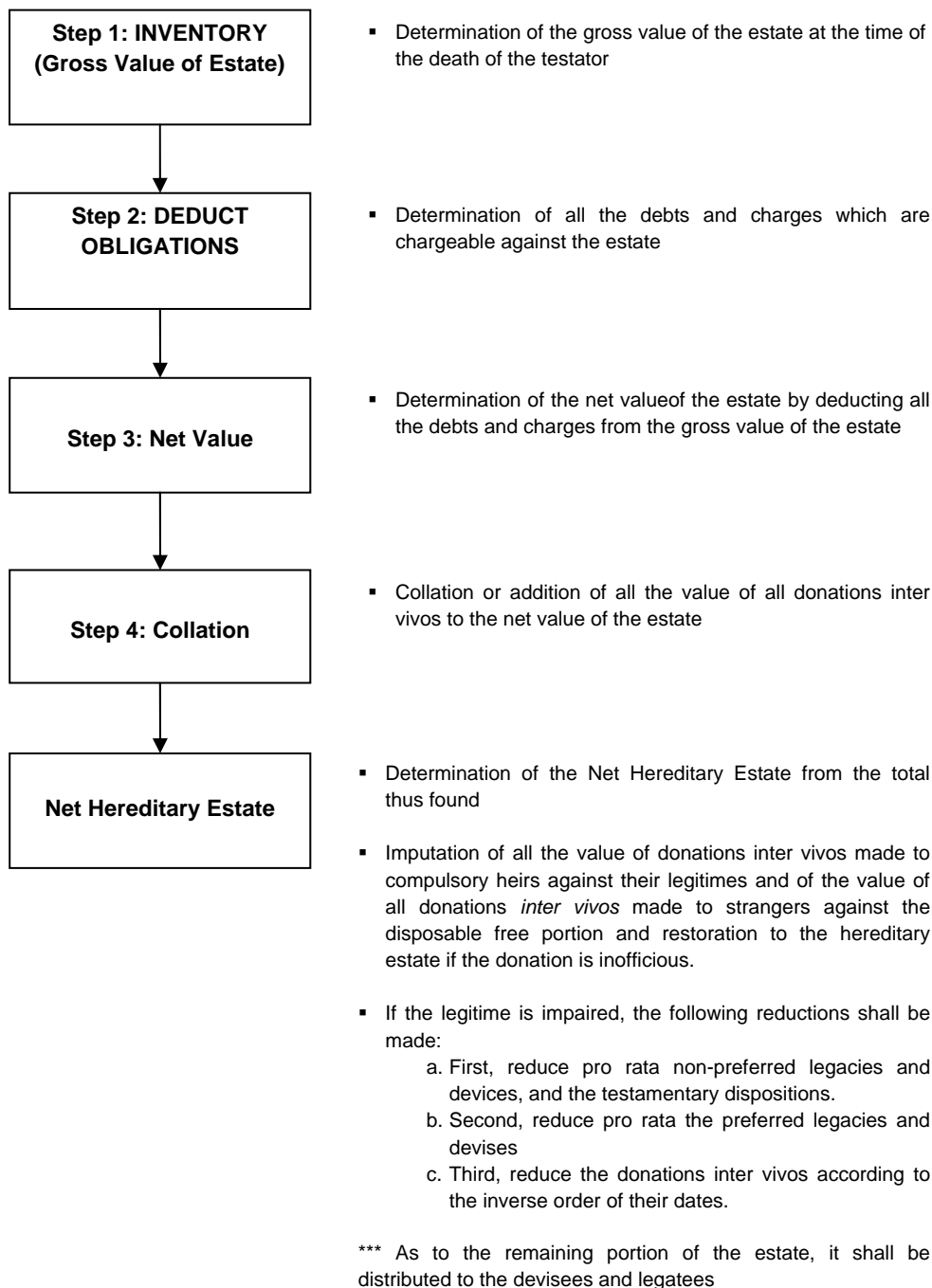
INTESTATE HEIRS	SHARE IN THE FREE PORTION
Any Class alone	½ of the free portion
LCD alone SS	¼ (SS)
LCD SS	Remaining portion of estate after paying legitimes Legitimes to be divided equally between total number of children plus the SS
LCD ILCD	Remaining portion of estate after paying legitimes Legitimes to be divided by the ratio of 2: 1
One LCD One ILCD SS	Remaining portion of estate after paying legitimes to be divided by the ratio of 2:1 One part goes to the ILCD Same share as a legitimate child
LCD ILCD SS	Remaining portion of estate after paying legitimes to be divided by the ratio of 2:1 One part goes to the ILCD Same share as a legitimate child, provided legitimes are not impaired
LPA ILCD	 ¼ (ILCD)

SUCCESSION

LPA	
SS	$\frac{1}{4}$ (SS)
LPA	
SS	$\frac{1}{8}$ (SS)
ILCD	
ILCD	$\frac{1}{6}$
SS	$\frac{1}{6}$
SS	$\frac{1}{2}$ or $\frac{1}{4}$
ILPA	$\frac{1}{4}$
SS	$\frac{1}{4}$
BS,NN	$\frac{1}{2}$
SS	
BS,NN	$\frac{1}{2}$ (BS,NN)



Steps in Determining the Legitime of Compulsory Heirs



2. COMPULSORY HEIRS AND VARIOUS COMBINATIONS

Q: Who are compulsory heirs?

A: 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.

NOTE: 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. (Art. 887)

Q: What are the classifications of compulsory heirs?

A:

1. *Primary compulsory heirs* – They are not excluded by the presence of other compulsory heirs.

E.g. legitimate children, surviving spouse

2. *Secondary compulsory heirs* – Those who succeed only in default of the primary compulsory heirs.

E.g. legitimate ascendants

3. *Concurring compulsory heirs* – They get their legitimes together with the primary or secondary heirs. Neither excludes primary or secondary heirs, nor each other.

E.g. Surviving spouse and illegitimate children and descendants.

Legitimate children and descendants (LCD)

Q: Is an adopted child a compulsory heir?

A: “Legitimate children” includes adopted children and legitimated children.

Under R.A. 8552 or the Domestic Adoption Law adopted children have the same rights granted to the legitimate children. Adopted children, for all intents and purposes are considered as legitimate children.

Hence, the adopted children can already exclude legitimate parents/ascendants.

Legitimate parents and ascendants (LPA)

Q: When do legitimate parents and ascendants inherit?

A: Legitimate parents and ascendants inherit in default of legitimate children and descendants. They are secondary compulsory heirs.

Q: Is the presence of illegitimate children of the decedent exclude the LPA?

A: No. Legitimate parents and ascendants concur with the illegitimate children of the decedent.

However, if the decedent is himself illegitimate, his illegitimate children exclude the illegitimate parents and ascendants.

Surviving spouse (SS)

Q: Can a common law spouse be a compulsory heir?

A: No. There must be valid marriage between the decedent and the surviving spouse. If the marriage is null and void, the surviving spouse cannot inherit.

Q: How can the heirs of the decedent use the nullity of marriage to prevent the surviving spouse from inheriting?

A: The heirs can raise the issue of nullity of the marriage in the same proceeding for the settlement of the estate. This is allowed because a marriage that is null and void can be collaterally attacked.

However, in case of voidable marriages, if the marriage is not annulled before the decedent died, the surviving spouse can still inherit



Reason: Voidable marriages can only be attacked in a direct proceeding, *i.e.* annulment proceeding.

Note: The surviving spouse is not a compulsory heir of his/her parent-in-law.

Separation-in-fact will not disqualify the surviving spouse from getting his/her legitime, regardless of his/her guilt.

Illegitimate children

Note: Under the Family Code, there is no more distinction between acknowledged natural children and illegitimate children. They are all considered as illegitimate.

Compulsory heirs of a person who is illegitimate:

1. Legitimate children and descendants;
2. Illegitimate children and descendants;
3. In default of the foregoing, illegitimate parents only;
4. Surviving spouse.

Q: In what ways may compulsory heirs inherit?

A: Compulsory heirs inherit either:

1. in their own right; or
2. by right of representation

3. RESERVA TRONCAL

Q: What is reserva troncal?

A: Reserva troncal – 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. (Art. 891)

Purpose: To prevent persons who are outsiders to the family from acquiring, by chance or accident, property which otherwise would have remained with the said family. In short, *to put back the property to the line from which it originally came.*

Note: Other terms used to refer to reserva troncal:

1. Lineal
2. Familiar
3. Extraordinaria
4. Semi-troncal
5. Pseudo-troncal

Q: What are the requisites that must exist in order that a property may be impressed with a reservable character?

A:

1. That the property was acquired by a descendant (called “*praepositus*” or *propositus*) from an ascendant or from a brother or sister by gratuitous title when the recipient does not give anything in return;
2. That said descendant (*praepositus*) died without an issue;
3. That the same property (called “*reserva*”) is inherited by another ascendant (called “*reservista*”) by operation of law (either through intestate or compulsory succession) from the *praepositus*; and
4. That there are living relatives within the third degree counted from the *praepositus* and belonging to the same line from where the property originally came (called “*reservatarios*”). (Art. 891; *Chua v. CFI of Negros Occidental, Branch V*, 78 SCRA 412; *Rabuya, Civil Law Reviewer*, pp. 634-635)

Q: Does reserva troncal exist in an illegitimate or adoptive relationship?

A: No. It only exists in the legitimate family. (*Centeno v. Centeno*, 52 Phil. 322; *id.*, p. 635)

Q: What are the causes for the extinguishment of the reserva?

A: DD LRR P

1. **D**eath of the **r**eservista
2. **D**eath of all the relatives within the third degree prior to the death of the reservista
3. Accidental **L**oss of all the reservable properties
4. **R**enunciation or waiver by the reserves or reservatarios
5. **R**egistration under Act 496 without the reservable character being annotated if it falls into the hands of a buyer in good faith for value
6. By **P**rescription – *reservista seeks to acquire (30 years – immovable; 8 years-movable)*

Q: Differentiate reserva minima and reserva maxima.

A:

RESERVA MINIMA	RESERVA MAXIMA
All of the properties which the descendant had previously acquired by gratuitous title from another ascendant or from a brother or sister must be considered as passing to the ascendant- reservista partly by operation of law and partly by force of the descendant's will.	All of the properties which the descendant had previously acquired by gratuitous title from another ascendant or from a brother or sister must be included in the ascendants legitime insofar as such legitime can contain.
Applies in testate succession.	Always followed in intestate succession

Q: Who are the parties in reserva troncal?

A:

1. Origin
2. Propositus
3. Reservista
4. Reservatarios/Reservees

ORIGIN

Q: Who must be the origin in reserva troncal?

A: The origin of the property must be an ascendant, brother or sister of the propositus.

Note: The origin must be a legitimate relative because reserva troncal exists only in the legitimate family.

Q: In order for reserva troncal to take place, how should the property be transmitted from the origin to the propositus?

A: The transmission from the origin to the propositus must be by gratuitous title.

Q: Can the origin alienate the property?

A: Yes. While the origin owns the property, there is no reserva yet, and therefore, he has the perfect right to dispose of it, in any way he wants, subject, however to the rule on inofficious donations.

PROPOSITUS

Q: Who must be the propositus?

A: The propositus must be a legitimate descendant or half-brother/sister of the origin of the property.

Note: To give rise to reserve troncal, the propositus must not have any *legitimate* children, otherwise, the reservable property will be inherited by the latter

The presence of illegitimate children of the propositus will not prevent his legitimate parents or ascendants from inheriting the reserved property. The propositus is the descendant whose death gives rise to the reserva troncal, and from whom therefore the third degree is counted.

Q: Can the propositus alienate the property?

A: Yes. While propositus is still alive, there is no reserva yet, therefore, he is the absolute owner of the property, with full freedom to alienate or dispose or encumber.

Inasmuch as the propositus is the full owner of the property, he may even defeat the existence of any possible reserve by simply not giving the property involved to his ascendant, by way of inheritance by operation of law.

Note: The propositus is referred to as the "arbiter of the reserva".

RESERVISTA

Q: Who is the reservista in reserva troncal?

A: The reservista is the ascendant who inherits from the propositus by operation of law. It is he who has the obligation to reserve.

Note: The relationship between the reservista and the propositus must be legitimate.

If he inherited the property from the propositus, not by legal succession or by virtue of legitime, there is no obligation to reserve.

Q: Does the reservista own the reservable property?

A: The reservista is an absolute or full owner, subject to a resolutive condition. If the resolutive condition is fulfilled, the reservista's ownership of the property is terminated.

Resolutive condition: If at the time of the reservista's death, there should still exist relatives within the third degree (reservatarios) of the propositus and belonging to the line from which the property came.

Note: The reservable property is not part of the estate of the reservista.



Q: Can the reservista alienate the property?

A: The reservista can alienate the property being the owner thereof but subject to the reservation.

Q: Is the reservista required to furnish a bond?

A:

GR: He is required to furnish a bond, security or mortgage to guarantee the safe delivery later on to the reservatarios of the properties concerned, in the proper cases.

XPN: The bond, security or mortgage is not needed when the property has been registered or annotated in the certificate of title as subject to reserva troncal.

Note: Upon the reservista's death the ownership of the reserved properties is automatically vested to the reservatarios who are existing. Hence, the reservista cannot dispose the reserved property by will if there are reservatarios existing at the time of his death.

Q: What are the obligations of the reservista?

A:

1. To make an inventory of the reservable property;
2. To annotate the reservable character of the real property in the Register of Deeds within 90 days from the time he receives the inheritance;
3. To furnish a bond, security, or mortgage to answer for the return of property or its value;
4. To preserve the property for the 3rd degree relatives.

RESERVATARIOS

Q: Who are the reservatarios?

A: The reservatarios are relatives within the third degree of the propositus, who belong to the same line from which the property originally came, who will become the full owners of the property the moment the reservista dies, because by such death, the reserva is extinguished.

Q: Who are the relatives within the third degree from the propositus?

A:

1. Parents;
2. Grandparents;

3. Full and half brothers and sisters;
4. Great grandparents,
5. Nephews and nieces.

Q: What are the requisites for passing of title to the reservatarios?

A:

1. death of the reservista; and
2. the fact that the reservatarios survived the reservista.

Note: The reservatarios inherit the property from the propositus, not from the reservista.

The reservatarios must be legitimate relatives of the origin and the propositus.

Reserva troncal is governed by the following rules on intestate succession: (*Applicable when there are concurring relatives within the third degree*)

1. Proximity - "The nearer excludes the farther"
2. "The direct line is preferred over the collateral line"
3. "The descending line is preferred over the ascending line"

Q: What are the rights of the reservatarios?

A:

1. To ask for the inventory of all reservable property
2. The appraisal of all reservable movable property
3. The annotation in the registry of deeds of the reservable character of all reservable immovable property
4. Constitution of the necessary mortgage.

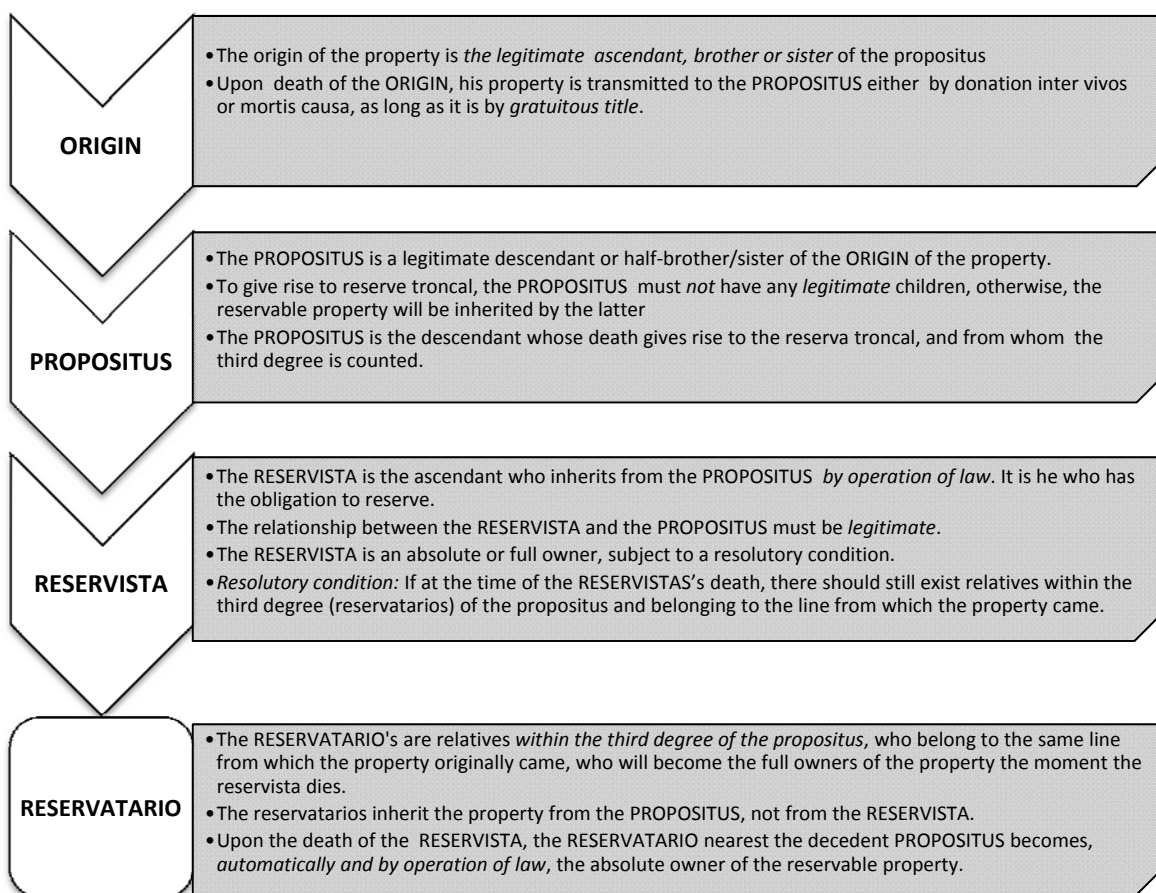
Q: When does the reservatario acquire the right over the reservable property?

A: Upon the death of the reservista, the reservatario nearest the decedent propositus becomes, automatically and by operation of law, the absolute owner of the reservable property. (*Cano v. Director of Lands*)

Q: Is there right of representation in reserva troncal?

A: There is representation in reserva troncal, but the representative must also be within the third degree from the propositus. (*Florentino v. Florentino*)

OPERATION OF RESERVA TRONCAL



4. DISINHERITANCE

A. DISINHERITANCE FOR CAUSE

Q: What is disinheritance?

A: *Disinheritance* is the process or act, thru a testamentary disposition of depriving in a will any compulsory heir of his legitime for true and lawful cause.

Note: The only way in which a compulsory heir can be deprived of his legitime is through valid disinheritance.

Disinheritance is not automatic. There must be evidence presented to substantiate the disinheritance and must be for a valid and sound cause.

Effect of disinheritance: Total exclusion to the inheritance, meaning, loss of legitime, right to intestate succession, and of any disposition in a prior will.

Disinheritance, however, is without prejudice to the right of representation of the children and descendants of the person disinherited.

But the disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime.

Q: What are the requisites of a valid disinheritance?

A: Disinheritance must be:

1. Made in a valid will;
2. Identity of the heir is clearly established;
3. For a legal cause;
4. Expressly made;
5. Cause stated in the will;
6. Absolute or unconditional;
7. Total;
8. Cause must be true and if challenged by the heir, it must be proved to be true.

Note: Proponent of disinheritance has the burden of proof.



(1) RECONCILIATION

Q: What is the effect of subsequent reconciliation between the offender and the offended party on the latter's right to disinherit?

A: A subsequent reconciliation between the offender and the offended person deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made. (Art. 922)

(2) RIGHTS OF DESCENDANTS OF PERSON DISINHERITED

Q: What is reconciliation?

A: There is reconciliation when two persons who are at odds decide to set aside their differences and to resume their relations. They need not go back to their old relation.

Note: A handshake is not reconciliation. It has to be something more. It must be clear and deliberate.

In order to be effective, the testator must pardon the disinherited heir. The pardon whether express or tacit, must refer specifically to the heir disinherited and to the acts he has committed, and must be accepted by such heir.

In disinheritance, reconciliation need not be in writing.

Q: What is the effect of reconciliation on a person's right to disinherit?

A:

1. If made before disinheritance – right to disinherit is extinguished.
2. If made after disinheritance – disinheritance is set aside.

B. DISINHERITANCE WITHOUT CAUSE

Q: What is the effect of disinheritance without cause?

A: 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 devises and legacies and other testamentary dispositions shall be valid to such extent as will not impair the legitime. (Art. 918)

Q: What are the grounds for disinheritance?

A:

1. *Common causes for disinheritance of children or descendants, parents or ascendants, and spouse:*
 - a. When the heir has been found guilty of an attempt against the life of the testator, his/her descendants or ascendants, and spouse, in case of children or parents.
 - b. When the heir by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made.
 - c. When the heir has accused the testator of a crime for which the law prescribes imprisonment of six years or more, if the accusation has been found groundless.
 - d. Refusal without justifiable cause to support the testator who disinherits such heir.
2. *Peculiar Causes for Disinheritance*
 - a. Children and Descendants:
 - i. Conviction of a crime which carries with it a penalty of civil interdiction
 - ii. Maltreatment of the testator by word or deed by the children or descendant
 - iii. When the children or descendant has been convicted of adultery or concubinage with the spouse of the testator
 - iv. When the children or descendant leads a dishonorable or disgraceful life
 - b. Parents or Ascendants:
 - i. When the parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator
 - ii. When the parents have abandoned their children or induced their daughters to live a corrupt or immoral life, or attempted against their virtue

- iii. Loss of parental authority for causes specified in the Code
- iv. Attempt by one of the parents against the life of the other, unless there has been reconciliation between them
- c. Spouse:
 - i. When the spouse has given cause for legal separation
 - ii. When the spouse has given grounds for the loss of parental authority

5. LEGACIES AND DEVISES

Q: What can be bequeathed or devised?

A: Anything within the commerce of man or which is alienable.

Q: Who may be charged with legacies and devices?

A:

1. Any compulsory heir
2. Any voluntary heir
3. Any legatee or devisee
4. The estate, represented by the executor or administrator (*Jurado, p. 345*)

Q: Can the testator bequeath or devise a thing or property belonging to someone else?

A: It depends on whether:

1. The testator thought that he owned it –

GR: A legacy or devise of a thing belonging to someone else *when the testator thought that he owned it* is a void legacy or devise because it is vitiated by mistake.

XPN: If the testator acquires it after making his will.

2. The testator knows that he does not own but ordered its acquisition –

If the thing given as devise or legacy is not owned by the testator at the time he made the will but *he orders his estate to acquire it*, it is a *valid* legacy or devise. The testator knew that he did not own it. There is no mistake.

Q: What is the effect if the thing or property bequeathed or devised belonged to the legatee or devisee at the time the will was executed?

A: The legacy or devise is ineffective even if the legatee or devisee alienates the thing after the will is made.

Q: Suppose the legatee or devisee acquired the property after the will has been executed? Suppose he acquired the thing by onerous title? What would be the effect?

A: If at the time the legacy or devise is made, the thing did not belong to the legatee or devisee but later on he acquires it, then:

1. If he acquired it *by gratuitous title*, then the legacy or devise is void.

Reason: The purpose of the testator that the property would go to the devisee or legatee has already been accomplished with no expense to the legatee or devisee.

2. If he acquired it *by onerous title*, the legacy or devise is valid and the estate may be required to reimburse the amount.

Q: Suppose the property bequeathed or devised has been pledged or mortgaged, who has the obligation to free the property from such encumbrance?

A:

GR: The pledge or mortgage must be paid by the estate.

XPN: If the testator provides otherwise. However, any other charge such as easements and usufruct, with which the thing bequeathed is burdened, shall be respected by the legatee or devisee.

Q: What is a legacy of credit?

A: It takes place when the testator bequeaths to another a credit against a third person. In effect, it is a *novation* of the credit by the subrogation of the legatee in the place of the original creditor.

Q: What is a legacy of remission?

A: It is a testamentary disposition of a debt in favor of the debtor. The legacy is valid only to the extent of the amount of the credit existing at the time of the testator's death. In effect, the debt is extinguished.



Note:

1. Legacy applies only to the amounts outstanding at the time of the testator's death.
2. The legacy is revoked if the testator files an action (judicial suit) against the debtor.
3. It applies only to credits existing at the time the will was made, and not to subsequent credits.

Q: Is a legacy or devise considered payment of a debt, if the testator has a standing indebtedness to the legatee or devisee?

A: No, legacy or devise is not considered payment of a debt because if it is, then it would be a useless legacy or devise since it will really be paid.

Q: What is the order of payment of legacies and devises?

A:

1. Remuneratory legacies or devises
2. Legacies or devises declared by testator to be preferential
3. Legacies for support
4. Legacies for education
5. Legacies or devises of a specific determinate thing which forms part of the estate
6. All others *pro rata*

Note: The order of preference is applicable when:

1. There are no compulsory heirs and the entire estate is distributed by the testator as legacy/devise; or
2. There are compulsory heirs but their legitime has already been provided for by the testator and there are no donations *inter vivos*.

Q: What is the distinction between Art. 911 and Art. 950?

A:

Order of preference under Art. 911	Order of preference under Art. 950
LDPO: 1. <u>L</u> egitime of compulsory heirs; 2. <u>D</u> onations inter vivos; 3. <u>P</u> referential legacies or devises; 4. All <u>O</u> ther legacies or devises <i>pro rata</i>	1. Remuneratory L/D; 2. Preferential L/D; 3. Legacy for support; 4. Legacy for education; 5. L/D of a specific, determinate thing which forms a part of the estate; 6. All others <i>pro rata</i>

Note: When the question of reduction is between and among legatees and devisees themselves, Art. 950 governs; but when there is a conflict between compulsory heirs and legatees/devisees, Art. 911 governs.

Q: What are the grounds for the revocation of legacy or devise?

A:

1. Transformation of the thing in such a manner that it does not retain either the form or the denomination it had.
2. Alienation of the thing bequeathed.

Note:

GR: The alienation of the property revokes the legacy or devise notwithstanding the nullity of the transaction.

However, whether or not the legacy or devise is revoked or not depends on the basis for the nullity of the contract:

If the nullity is based on vitiated consent, the legacy or devise is not revoked because there was no intention to revoke.

For all other grounds, the legacy or devise is revoked.

XPN: If the sale is *pacto de retro* and the testator reacquired it during his lifetime.

3. Total loss of the thing bequeathed.

Note: The loss of the thing bequeathed must not be attributed to the heirs. There should be no fault on the part of the heirs.

4. If the legacy is a credit against a third person or the remission of a debt, and the testator, subsequent to the making of the will, brings an action against the debtor for payment.

III. LEGAL OR INTESTATE SUCCESSION

A. GENERAL PROVISIONS

1. RELATIONSHIP

Q: What is legal or intestate succession?

A: Legal or intestate succession is that which is effected by operation of law in default of a will. It is legal because it takes place by operation of law; it is intestate because it takes place in the absence or in default of a last will of the decedent. (*Jurado, p. 377*)

Q: What is the formula for application of inheritance?

A: The following are applied successively: **ISRAI**

1. **I**nstitution of an heir (Bequest, in case of legacies or devises)
2. **S**ubstitution, if proper
3. **R**epresentation, if applicable
4. **A**ccretion, if applicable
5. **I**ntestacy, if all of The above are not applicable

Q: When can legal or intestate succession take place?

A: Intestate succession takes place when:

1. there is no will; the will is void, or the will is revoked;
2. the will does not dispose all the property of the testator. (partial intestacy);
3. the suspensive condition attached to the inheritance is not fulfilled;
4. The heir predeceased the testator or repudiates the inheritance and no substitution and no right of accretion take place.
5. The heir instituted is incapacitated to succeed.

Note: The enumeration is not exclusive; there are other causes for intestacy which are not included in the enumeration.

E.g.

1. Preterition;
2. Arrival of the resolutive term or period;
3. Fulfillment of a resolutive condition attached to the inheritance;
4. Non-compliance or impossibility of complying with the will of the testator.

Q: Can there be a valid will which does not institute an heir?

A: Yes, a will is valid even if it contains only a provision for disinheritance or if only legacies and devises are contained in the will.

Q: Who are intestate heirs?

A:

1. Legitimate children or descendants
2. Illegitimate children or descendants
3. Legitimate parents or ascendants
4. Illegitimate parents
5. Surviving spouse
6. Brothers and sisters, nephews and nieces
7. Other collateral relatives up to the 5th degree
8. The State.

2. RIGHT OF REPRESENTATION

Q: What is right of representation?

A: Right created by fiction of law where the representative is raised to the place and degree of the person represented, and acquires the rights which the latter would have if he were living or could have inherited.

Q: What is the effect of representation?

A: 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 they represent would inherit, if he were living or could inherit. (*Art. 974*)

Note: *Per stirpes* means inheritance by group, all those within the group inheriting in equal shares. Representation is superior to accretion.

Q: When does right of representation arise?

A: Representation may arise either because of:

1. death,
2. incapacity, or
3. disinheritance.

Q: When is right of representation not available?

A:

1. *As to compulsory heirs:* In case of repudiation, the one who repudiates his inheritance cannot be represented.



Their own heirs inherit in their own right.

2. *As to voluntary heirs:* Voluntary heirs, legatees and devisees who:
 - a. Predecease the testator; or
 - b. Renounce the inheritance cannot be represented by their own heirs, with respect to their supposed inheritance.

Q: Does the representative inherit from the person represented?

A: No. In representation, the representative does not inherit from the person represented but from the testator or decedent.

Q: Where does right of representation take place?

A: Representation takes place in the direct descending line, never in the ascending.

Note: The representative himself must be capable of succeeding the decedent.

An illegitimate child can represent his father, provided that the father was also illegitimate.

Q: Does right of representation apply in the collateral line?

A: Right of representation takes place only in favor of children of brothers or sisters, whether full or half blood and only if they concur with at least one uncle or aunt.

Note: This rule applies only when the decedent does not have descendants.

Q: What is the effect if there is no uncle or aunt upon whom the children, who seek to invoke the right of representation, can concur with?

A: There shall be no right of representation and ultimately they shall not inherit following Art. 975.

Q: May an illegitimate sibling of the decedent be represented?

A: Yes. An illegitimate brother or sister of the deceased can be represented by his children, without prejudice to the application of the Iron Curtain Rule. (*Tolentino, p. 451*)

Q: Does the right of representation apply to adopted children?

A: No. The right of representation cannot be invoked by adopted children because they cannot

represent their adopting parents to the inheritance of the latter's parents.

Reason: The law does not create any relationship between the adopted child and the relatives of the adopting parents, not even to the biological or legitimate children of the adopting parents.

Note: Under R.A. 8552 or the Domestic Adoption Law, the adopted child and the adopting parents have *reciprocal successional rights*.

Q: What is the rule on equal division of lines?

A:

GR: Intestate heirs equal in degree inherit in equal shares.

XPN:

1. In the ascending line, the rule of division by line is $\frac{1}{2}$ to the maternal line and $\frac{1}{2}$ to the paternal line, and within each line, the division is *per capita*.
2. In the collateral line, the full-blood brothers/sisters will get double that of the half-blood.
3. The division in representation, where division is *per stirpes* – the representative divide only the share pertaining to the person represented.

Note: The share of an illegitimate child is $\frac{1}{2}$ of the share of a legitimate one.

Full blood brother or sister is entitled to double the share of half brother or sister (*Art. 1006*).

Compulsory heirs shall, in no case, inherit *ab intestato* less than their legitime as provided in testamentary succession.

IRON CURTAIN RULE

Q: What is the iron-curtain rule?

A: Art. 992 of the Civil Code provides that illegitimate children cannot inherit *ab intestato* from the legitimate children and relatives of his mother or father. Legitimate children and relatives cannot inherit in the same way from the illegitimate child.

Note: The iron curtain rule only applies in intestate succession.

There is a *barrier* recognized by law between the legitimate relatives and the illegitimate child so that one cannot inherit from the other and vice-versa.

Rationale: The law presumes the existence of antagonism between the illegitimate child and the legitimate relatives of his parents.

Q: Distinguish the application of iron curtain rule and right of representation.

A:

IRON CURTAIN RULE	RIGHT OF REPRESENTATION
Prohibits absolutely a succession <i>ab intestato</i> between the illegitimate child and the legitimate children and relatives of the father or mother of said illegitimate child. Note: Iron curtain rule imposes a limitation on right of representation.	Right created by fiction of law where the representative is raised to the place and degree of the person represented, and acquires the rights which the latter would have if he were living or could have inherited.
Applies only in intestate succession	Applies to both intestate and testate succession
Determining factor: who died first? Is it the parent of the illegitimate child or is it the legitimate relative or child of his parent?	

Applies if the one who died first is the illegitimate's parent.

Reason: illegitimate will be representing his parent because of the predecease, the bar imposed by the iron curtain rule is rendered operative to prevent such.

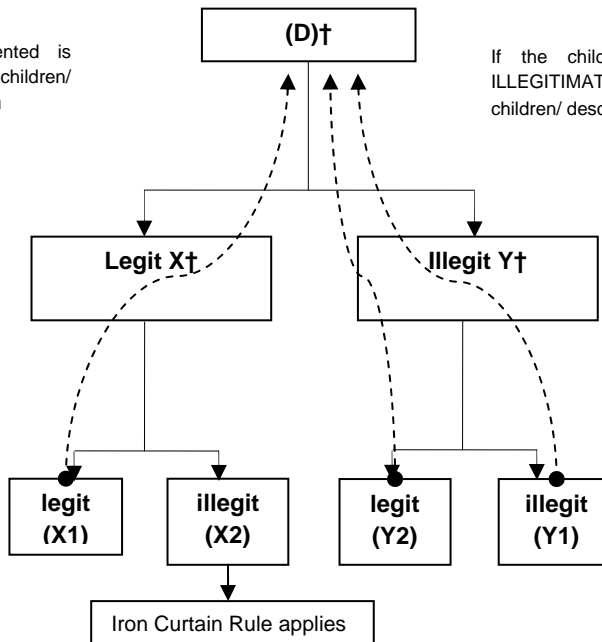
Applies if the one who died first is the legitimate parent or child of the illegitimate's parent.

Reason: illegitimate inherits from his parent's estate which includes his parent's inheritance from said legitimate relative or child who died.

Right of Representation and Iron Curtain Rule

If the child to be represented is LEGITIMATE – only legitimate children/ descendants can represent him

If the child to be represented is ILLEGITIMATE – both legit & illegit children/ descendants can represent him



Since X and Y both predeceased D, only X1 can represent X. X2 cannot by virtue of the iron curtain rule. Both Y1 and Y2 can represent Y



B. ORDER OF INTESTATE SUCCESSION

Q: What is the order of preference between lines in legal or intestate succession?

A: Succession takes place:

- First, in the *direct descending line*;
- Second, in the *direct ascending line*;
- Finally, in the *collateral line*.

Q: What is the order of intestate succession to a legitimate child?

A: In general, and without prejudice to the concurrent right of other heirs in proper cases, the order of intestate succession to a legitimate child is as follows:

1. legitimate children and descendants;
2. legitimate parents and ascendants;
3. illegitimate children;
4. the surviving spouse;
5. collaterals up to the fifth degree; and
6. the State. (Rabuya, *Civil Law Reviewer*, p. 678)

Q: What is the order of intestate succession to an illegitimate child?

A:

1. The legitimate children and descendants of a person who is an illegitimate child are preferred over other intestate heirs, without prejudice to the right of concurrence of illegitimate children and the surviving spouse.
2. In the absence of legitimate children and descendants, the illegitimate children (of the illegitimate child) and their descendants succeed to the entire estate, without prejudice to the concurrent right of the surviving spouse.
3. In the absence of children and descendants, whether legitimate or illegitimate, the third in the order of succession to the estate of the illegitimate child is his illegitimate parents. If both parents survive and are entitled to succeed, they divide the estate share and share alike. Although the law is silent, if the surviving spouse of the illegitimate child concurs with the illegitimate parents, the surviving spouse shall be entitled to one-half of

the estate while the illegitimate parents get the other half.

Note: In the ascending line, only the illegitimate parents are entitled to inherit from the illegitimate child; the other illegitimate descendants are not so entitled.

4. In default of children or descendants, legitimate or illegitimate, and illegitimate parents, the surviving spouse shall inherit the entire estate. But if the surviving spouse should survive with brothers and sisters, nephews and nieces, the surviving spouse shall inherit one-half of the estate, and the latter the other half. The brothers and sisters must be by illegitimate filiation, otherwise, the Iron Curtain Rule shall apply.
5. Although the law is silent, illegitimate brothers and sisters who survive alone shall get the entire inheritance. The legitimate children of the illegitimate parents are not entitled to inherit from the illegitimate child by virtue of Article 992 of the NCC.
6. The State. (*id.*, pp. 691-692)

IV. PROVISIONS COMMON TO TESTATE AND INTESTATE SUCCESSION

A. RIGHT OF ACCRETION

1. DEFINITION AND REQUISITES

Q: What is accretion?

A: *Accretion* is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heir, co-devisees, or co-legatees.

Basis: Accretion is a right based on the presumed will of the deceased that he prefers to give certain properties to certain individuals rather than to his legal heirs. Accretion is preferred over intestacy.

Q: What are the requisites of accretion?

A:

1. Two or more persons must have been called in the testator's will to the same inheritance, legacy or devise, or to the same portion thereof, *pro indiviso*
2. There must be a vacancy in the inheritance, legacy or devise as a result of predecease, incapacity or repudiation

Q: In testamentary succession, in what instances may accretion take place?

A:

1. Predecease
2. Incapacity
3. Renunciation
4. Non-fulfillment of suspensive condition imposed upon instituted heir
5. Ineffective testamentary disposition

Q: In intestate succession, in what instances may accretion take place?

A:

1. Predecease of legal heir
2. Incapacity of legal heir
3. Repudiation by legal heir

Note: Accretion takes place only if there is no representation.

In renunciation, there is always accretion.

Reason: No representation in renunciation.

In intestacy, apply representation first. If there is none, then accretion will apply.

In testacy, apply substitution first. If there is no substitution, then accretion will apply. However, in testamentary succession, the inheritance must not have been earmarked. Accretion cannot take place if the inheritance is earmarked.

B. CAPACITY TO SUCCEED BY WILL OR INTESTACY

1. PERSONS INCAPABLE OF SUCCEEDING

Q: What does absolute incapacity to succeed mean?

A: It means the person is incapacitated to succeed in any form, whether by testate or intestate succession.

Q: Who are absolutely incapacitated to succeed?

A:

1. Those not living at the time of death of the testator

2. Those who cannot be identified. (Art. 845)
3. Those who are not permitted by law to inherit. (Art. 1027)

Q: Who are incapacitated to succeed based on morality or public policy?

A: ACO

1. Persons guilty of **A**dultery or concubinage *with the testator* at the time of the making of the will;
2. Persons guilty of the same **C**riminal offense, in consideration thereof;
3. A public officer or his wife, descendants and ascendants, by reason of his **O**ffice. (Art. 739)

Q: Who are incapacitated to succeed by reason of unworthiness?

A: P-CAV-AFP-F

1. **P**arents who have abandoned their children or induced their daughters to lead a corrupt or immoral life, or attempted against their virtues;
2. Persons **C**onvicted of an attempt against the life of the testator, his or her spouse, descendants or ascendants;
3. Persons who **A**ccused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found to be groundless;
4. Heir of full age who, having knowledge of the **V**iolent 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.

Note: This prohibition shall not apply to cases wherein, according to law, there is no obligation to make an accusation.

5. Person convicted of **A**dultery or concubinage with the spouse of the testator;
6. Person who by **F**raud, violence, intimidation, or undue influence should cause the testator to make a will or to change one already made;
7. Person who by the same means **P**revents another from making a will, or from revoking one already made, or who supplants, conceals, or alters the latter's will;
8. Person who **F**alsifies or forges a supposed will of the decedent. (Art. 1032)



Note: Grounds 1, 2, 3, 5 and 6 are the same grounds as in disinheritance.

Numbers 6, 7 and 8 cover six (6) acts which relate to wills:

1. Causing the testator to make a will
2. Causing the testator to change an existing will
3. Preventing the decedent from making a will
4. Preventing the testator from revoking his will
5. Supplanting, concealing, or altering the testator's will.
6. Falsifying or forging a supposed will of the decedent.

RELATIVE INCAPACITY TO SUCCEED

Q: What is relative incapacity to succeed?

A: It means the person is incapacitated to succeed because of some special relation to the testator.

Q: What are the grounds for relative incapacity to succeed?

A: UMA

1. Undue influence or interest (*Art. 1027*)
2. Morality or public policy (*Art. 739*)
3. Acts of unworthiness (*Art. 1032*)

Q: Who are incapacitated to succeed based on undue influence or interest?

A: PRG-WPI

1. The **P**riest 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 **R**elatives 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 **G**uardian 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 ascendants, descendant, brother, sister, or spouse, shall be valid;

4. Any attesting **W**itness to the execution of a will, the spouse, parents, or children, or any one claiming under such witness, spouse, parents, or children;

Note: Numbers 1 to 4 do not apply to legitimes.

5. Any **P**hysician, surgeon, nurse, health officer or druggist who took care of the testator during his last illness;

Note: Number 5 is an absolute disqualification.

6. **I**ndividuals, associations and corporations not permitted by law to inherit.

PRIESTS

Q: Who are covered by this disqualification to inherit?

A: PMRC

1. **P**riest who heard the confession of the testator during his last illness;
2. **M**inister of the gospel who extended spiritual aid to him during the same period;
3. **R**elatives of such priest or minister of the gospel within the fourth degree; or
4. The **C**hurch, order, chapter, community, organization, or institution to which such priest or minister may belong;

Q: What are the requisites for this disqualification to apply?

A:

1. The will was made during the last illness of the testator;
2. The spiritual ministration must have been extended during the last illness;
3. The will was executed during or after the spiritual ministration.

Q: If the confession was made before the will was made, can the priest inherit upon the death of the sick person, if:

1. **The priest is the son of the sick person?**
2. **The priest was the sick person's brother?**

A:

1. Yes. He can get the legitime.

Note: A priest is incapacitated to succeed when the confession is made *prior to or simultaneously with the making of a will*.

The disqualification applies only to testamentary dispositions.

2. Yes. He can inherit by intestacy.

Note: Despite this apparent restriction to Christian ministers, this applies to all spiritual ministers, *e.g.*, Buddhist monks.

Reason: It is conclusively presumed that the spiritual minister used his moral influence to induce or influence the sick person to make a testamentary disposition in his favor.

GUARDIANS

Q: What is the coverage of this disqualification?

A: It applies to guardians, 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.

Q: When does the disqualification apply?

A:
GR: The disqualification applies when the disposition is made after the guardianship began or before guardianship is terminated – approval of final accounts or lifting of guardianship.

XPN: It does not apply even when the disposition is made after the guardianship began or before it is terminated when the guardian is an: **ADBSS**

1. **A**scendant;
2. **D**escendant;
3. **B**rother;
4. **S**ister; or
5. **S**pouse.

ATTESTING WITNESSES

Q: Who are covered by the disqualification?

- A:**
1. Attesting witness to the execution of a will;
 2. The attesting witness':
 - a. spouse,
 - b. parents, or
 - c. children, or

3. Any one claiming under such witness, spouse, parents, or children;

Q: Will the disqualification still apply if there are other witnesses to the will?

A: It depends upon compliance with the requisite number of witnesses. If, notwithstanding the disqualified witness, the number of witnesses is sufficient, the former is not disqualified.

PHYSICIANS

Q: Upon whom does the disqualification apply?

A: PSN-HD

1. **P**hysician;
2. **S**urgeon;
3. **N**urse;
4. **H**ealth officer; or
5. **D**ruggist

Note: For the disqualification to apply, the aforementioned must have taken care of the testator during his last illness.

Q: What must be present for this disqualification to apply?

A:

1. The will was made during the last illness
2. The sick person must have been taken cared of during his last illness. Medical attendance was made.
3. The will was executed during or after he was being taken cared of.

PROHIBITED BY LAW TO INHERIT

Individuals, associations and corporations not permitted by law to inherit.



2. UNWORTHINESS VS. DISINHERITANCE

Q: Distinguish Unworthiness from Disinheritance.

A:

DISINHERITANCE	UNWORTHINESS
Effects on the inheritance	
Deprivation of a compulsory heir of his legitime.	Exclusion from the entire inheritance. However, donations <i>inter vivos</i> are not affected.
Effects of pardon or reconciliation	
Reconciliation between the offender and the offended party deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made.	If the testator pardons the act of unworthiness, the cause of unworthiness shall be without effect.
Manner of reconciliation or pardon	
Express or implied	
Grounds	
There are grounds for disinheritance which are also causes for incapacity by reason of unworthiness.	
Effect of subsequent reconciliation if disinheritance has already been made on any of the grounds which are also causes for unworthiness	
The moment the testator uses one of the causes for unworthiness as a ground for disinheritance, he thereby submits it to the rule on disinheritance. (Rabuya, <i>Civil Law Reviewer</i> , pp. 644-649; 704-708)	

C. ACCEPTANCE AND REPUDIATION OF THE INHERITANCE

Q: What are the three principal characteristics of acceptance and repudiation?

A:

1. It is voluntary and free
2. It is retroactive
3. Once made, it is irrevocable

Q: What are the requisites of acceptance and repudiation?

A:

1. Certainty of the death of the decedent
2. Certainty of the right of inheritance

ACCEPTANCE

Q: How may inheritance be accepted?

A:

1. *Express acceptance* – through a public or private instrument
2. *Tacit acceptance* – through 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.

Q: When is inheritance deemed accepted?

A:

1. When the heir sells, donates, or assigns his rights
2. When the heir renounces it for the benefit of one or more heirs
3. When renunciation is in favor of all heirs indiscriminately for consideration
4. Other tacit acts of acceptance:
 - a. Heir demands partition of the inheritance
 - b. Heir alienates some objects of the inheritance
 - c. Acts of preservation or administration if, through such acts, the title or capacity of the heir has been assumed
 - d. Under Art. 1057, failure to signify acceptance or repudiation within 30 days after an order of distribution by the probate court.

REPUDIATION

Q: What are the ways by which the repudiation of the inheritance, legacy or devise may be made?

A:

1. By means of a public instrument
2. By means of an authentic instrument
3. By means of a petition presented to the court having jurisdiction over the testamentary or intestate proceedings.

Q: What is the effect of repudiation if an heir is both a testate and legal heir?

A: If an heir is both a testate and legal heir, the repudiation of the inheritance as a testate heir, he is understood to have repudiated in both capacities. However, should he repudiate as a legal heir, without knowledge of being a testate

heir, he may still accept the inheritance as a testate heir.

Q: What is the remedy if the heir repudiates the inheritance to the prejudice of his creditors?

A: 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.

Requisites:

1. The heir who repudiated his inheritance must have been indebted at the time when the repudiation is made
2. The heir-debtor must have repudiated his inheritance according to the formalities prescribed by law
3. Such act of repudiation must be prejudicial to the creditor or creditors.
4. There must be judicial authorization (Art. 1052)

D. COLLATION

Q: What is collation?

A: It is the process of adding the value of thing donated to the net value of hereditary estate.

To collate is to bring back or return to the hereditary mass, in fact or fiction, property which came from the estate of the decedent, during his lifetime, but which the law considers as an advance from the inheritance.

Collation is applicable to both donations to compulsory heirs and donations to strangers.

GR: Compulsory heirs are obliged to collate.

XPN:

1. When testator should have so expressly provided;
2. When compulsory heir repudiates his inheritance

Q: What are the properties that are to be collated?

A:

1. Any property/right received by gratuitous title *during* testator's lifetime
2. All that may have been received from decedent during his lifetime
3. All that their parents have brought to collation if alive

Q: What are the properties not subject to collation?

A:

1. Absolutely no collation – expenses for support, education (elementary and secondary only), medical attendance, even in extra-ordinary illness, apprenticeship, ordinary equipment or customary gifts.
2. Generally not imputed to legitime:
 - a. Expenses incurred by parents in giving their children professional, vocational, or other career *unless* the parents so provide, or *unless* they impair the legitime.
 - b. Wedding gifts by parents and ascendants consisting of jewelry, clothing and outfit *except* when they exceed 1/10 of the sum disposable by will.

Note: Only the value of the thing donated shall be brought to collation. This value must be the value of the thing at the time of the donation.

E. PARTITION AND DISTRIBUTION OF ESTATE

1. PARTITION

Q: What is partition and distribution?

A: It is the separation, division and assignment of a thing held in common among those to whom it may belong.

Q: Who may effect partition?

A: The partition may be effected either:

1. By the decedent himself during his lifetime by an act *inter vivos* or by will
2. By a third person designated by the decedent or by the heirs themselves
3. By a competent court in accordance with the New Rules of Court

Q: Who can demand partition?

A: Any:

1. Compulsory heir
2. Voluntary heir
3. Legatee or devisee
4. Person who has acquired an interest in the estate



Q: When partition *cannot* be demanded?

A: Partition cannot be demanded when: **PAPU**

1. Expressly Prohibited by testator for a period not more than 20 years
2. Co-heirs Agreed that estate not be divided for period not more than 10 years, renewable for another 10 yrs
3. Prohibited by law
4. To partition estate would render it Unserviceable for use for which it was intended

2. PARTITION INTER VIVOS

Q: Can an estate be partitioned inter vivos?

A: Yes. Such partition shall be respected, insofar as it does not prejudice the legitime of compulsory heirs. (*See Art. 1080*)

3. EFFECTS OF PARTITION

Q: What are the effects of partition?

A:

1. Confers upon each heir the exclusive ownership of property adjudicated.
2. After the partition, the co-heirs shall be reciprocally bound to warrant the title to (warranty against eviction) and the quality of (warranty against hidden defects) each property adjudicated.
3. The obligation of warranty shall cease in the following cases:
 - a. When the testator himself has made the partition unless his intention was otherwise, but the legitime shall always remain unimpaired.
 - b. When it has been expressly stipulated in the agreement of partition, unless there has been bad faith.
 - c. When the eviction was due to a cause subsequent to the partition, or has been caused by the fault of the distributee of the property.
4. An action to enforce warranty among co-heirs must be brought within 10 years from the date the right of cause of action accrues.

Q: What are the effects of the inclusion of an intruder in partition?

A:

1. Between a true heir and several mistaken heirs – partition is void.
2. Between several true heirs and a mistaken heir – transmission to mistaken heir is void.
3. Through the error or mistake; share of true heir is allotted to mistaken heir – partition shall not be rescinded unless there is bad faith or fraud on the part of the other persons interested, but the latter shall be proportionately obliged to pay the true heir of his share.

Q: When partition *cannot* be demanded?

A: Partition cannot be demanded when: **PAPU**

1. Expressly Prohibited by testator for a period not more than 20 years
2. Co-heirs Agreed that estate not be divided for period not more than 10 years, renewable for another 10 yrs
3. Prohibited by law
4. To partition estate would render it Unserviceable for use for which it was intended