

# **An Expert Mindmap on Philippine Wills and Succession**

## **Main Branch I: General Provisions**

This foundational branch of succession law establishes the core principles governing the transfer of a person's assets and liabilities upon death. It defines the legal framework, identifies the essential components, and delineates the rights and responsibilities of the parties involved.

### **Node 1.1: Concept of Succession (Art. 774, Civil Code)**

Succession is a mode of acquiring ownership, defined under Article 774 of the Civil Code of the Philippines as the legal process by virtue of which the property, rights, and obligations of a person, to the extent of the value of the inheritance, are transmitted through their death to another or others, either by their will or by operation of law.<sup>1</sup> This mechanism ensures an orderly and predictable transfer of a person's patrimony, preventing a vacuum in ownership and providing for the continuity of familial wealth and obligations.<sup>1</sup>

The primary causal element of succession is the will of the decedent. When a person executes a last will and testament, the law endeavors to honor their expressed wishes. In the absence of a will, the law itself steps in to supply a presumed will, distributing the estate according to a hierarchy based on proximity of relationship.<sup>5</sup> This dual system reflects a fundamental state policy: to balance the principle of testamentary freedom with the imperative to protect the family. Philippine law, therefore, carves out a significant portion of the estate—the legitime—for compulsory heirs, which cannot be compromised by the testator's dispositions.<sup>4</sup>

## Node 1.2: Elements of Succession

For succession to operate, several essential elements must concur. These components form the structure of any successional event, defining its trigger, its subject matter, and its participants.

### Sub-Node 1.2.1: Death (The Triggering Event)

Death is the indispensable condition precedent that opens succession. According to Article 777 of the Civil Code, the rights to the succession are transmitted from the very moment of the death of the decedent.<sup>5</sup> This transmission is not a gradual process but an immediate transfer that occurs by operation of law, without the need for any prior judicial declaration of heirship.<sup>7</sup> At the instant of death, the heirs step into the shoes of the decedent, effectively becoming a continuation of the decedent's juridical personality with respect to the inherited patrimony.<sup>5</sup>

The law recognizes two forms of death that can trigger succession:

- **Actual Death:** This refers to the physical, biological cessation of a person's life, which is the most common trigger for succession.<sup>8</sup>
- **Presumptive Death:** In cases where a person disappears and their whereabouts are unknown, the law establishes a presumption of death to allow for the settlement of their affairs. The Civil Code provides for two scenarios:
  1. **Ordinary Absence (Art. 390):** An absentee is presumed dead for the purpose of opening their succession after an absence of ten years. If the person disappeared after the age of 75, an absence of five years is sufficient.<sup>5</sup>
  2. **Extraordinary or Qualified Absence (Art. 391):** The waiting period is reduced to four years if the absentee disappeared under circumstances involving a high probability of death, such as being on board a vessel lost at sea, an airplane that is missing, or being a member of the armed forces who has taken part in war.<sup>3</sup>

A related concept is **Simultaneous Death**, governed by Article 43 of the Civil Code. If two or more persons who are called to succeed each other perish in the same calamity (e.g., a shipwreck or plane crash) and there is no proof as to who died first, they are presumed to have died at the same time. Consequently, there is no

transmission of successional rights from one to the other.<sup>4</sup>

### Sub-Node 1.2.2: Inheritance (Herencia) (The Subject Matter)

The inheritance, or *herencia*, constitutes the entire patrimony of the decedent that is subject to transmission. As defined in Articles 776 and 781 of the Civil Code, it is a universal concept encompassing not only assets but also transmissible rights and obligations that were not extinguished by death.<sup>1</sup>

- **Property:** This includes all forms of property, whether real (immovable) or personal (movable), that the decedent owned at the time of death. It also includes properties acquired after the making of a will, unless the testator expresses a contrary intention.<sup>9</sup> For immovable properties located outside the Philippines, their disposition is generally governed by the law of the country where they are situated, a principle known as *lex rei sitae* or *lex situs*.<sup>9</sup>
- **Rights:** The inheritance includes all patrimonial rights that are transmissible by nature. These are rights with pecuniary value, such as contractual rights (e.g., the right to continue a lease as lessor or lessee) or the right to compel the execution of a document for a valid contract.<sup>10</sup> Rights that are purely personal in nature, such as those arising from marriage or public office, are extinguished by death and do not form part of the inheritance.<sup>3</sup>
- **Obligations:** The inheritance also includes the decedent's debts and liabilities. This is a crucial aspect that underscores the principle of juridical continuity.

### Sub-Node 1.2.3: Extent of a Person's Liability for an Inherited Obligation

A cornerstone of Philippine succession law is the principle of limited liability for inherited obligations. While heirs succeed to the decedent's debts, their liability is strictly confined to the value of the property they receive from the estate. Heirs are **not** personally liable for the decedent's debts with their own separate property.<sup>1</sup>

The legal mechanism for this is straightforward: upon death, the decedent's estate becomes a distinct juridical mass. This estate must first be used to settle all outstanding debts, taxes, and other charges.<sup>11</sup> Only the remaining net estate, known

as the

*caudal relicto*, is distributed to the heirs.<sup>16</sup>

If the estate is insolvent—meaning its liabilities exceed its assets—the creditors' claims are satisfied only up to the total value of the estate's assets. The heirs, in this scenario, will receive nothing, but they are also shielded from any liability for the deficit. The unpaid portion of the debt is effectively extinguished.<sup>12</sup> Furthermore, when there are multiple heirs, their liability for the estate's debts is proportional to the share they are set to receive, as provided under Article 1078 of the Civil Code.<sup>12</sup> This system protects heirs from being impoverished by the debts of their predecessors while ensuring that creditors have a recourse against the decedent's property.

#### **Sub-Node 1.2.4: Successors (The Subjects)**

Successors are the persons or entities called by law or by will to receive the inheritance.<sup>1</sup> To qualify as a successor, an individual must be living and possess the capacity to inherit at the precise moment of the decedent's death.<sup>3</sup> Successors are classified in several ways:

- **Classification by Extent of Inheritance:**
  - **Heir (*Heredero*):** A person called to succeed to the whole or to an aliquot (undivided fractional) part of the inheritance. They receive property by universal title.<sup>3</sup>
  - **Legatee and Devisee:** Persons called to succeed to specific, individualized items of property. They receive property by particular title. A **legatee** is gifted with personal property (a legacy), while a **devisee** is gifted with real property (a devise).<sup>3</sup>
- **Classification by Mode of Succession:**
  - **Compulsory Heirs:** Those for whom the law has reserved a portion of the estate called the legitime. The testator cannot deprive them of this share except through a valid disinheritance. They succeed by force of law.<sup>1</sup>
  - **Voluntary (or Testamentary) Heirs:** Those who are instituted by the testator in a will to succeed to the "free portion" of the estate—the part remaining after the legitimes of compulsory heirs have been satisfied.<sup>1</sup>
  - **Legal or Intestate Heirs:** Those who succeed by operation of law in the absence of a valid will or when the will's provisions are ineffective.<sup>1</sup>

The law carefully polices the boundary between transfers that take effect during life (*inter vivos*) and those that take effect upon death (*mortis causa*). For instance, Article 728 of the Civil Code provides that donations structured to take effect upon the donor's death are, in reality, testamentary provisions and must adhere to the strict formalities required for making a will.<sup>20</sup> This prevents individuals from circumventing the protective rules of succession, such as the mandate for legitimes and the formal requirements for wills. Similarly, the doctrine of collation (discussed later) requires that certain lifetime donations to compulsory heirs be brought back into the estate's computation to ensure that no heir is unfairly prejudiced.<sup>21</sup> This demonstrates the law's consistent policy of prioritizing the mandatory rules of succession over a person's absolute freedom to dispose of property.

## **Main Branch II: Kinds of Succession**

Philippine law provides for three distinct modes by which succession can take place, each governed by a different set of rules. The primary mode is testamentary succession, which gives primacy to the decedent's last will. In its absence or failure, the law provides a default system known as intestate succession.

### **Node 2.1: Testamentary Succession**

Testamentary succession occurs when the distribution of an estate is governed by a validly executed last will and testament.<sup>1</sup> This mode is founded on the principle of testamentary freedom, which allows an individual to control the disposition of their property after death. While the law prioritizes the testator's expressed wishes, this freedom is not absolute. It is fundamentally circumscribed by the system of compulsory succession, which reserves the legitime for forced heirs.

#### **Sub-Node 2.1.1: Wills**

A will is the primary instrument of testamentary succession. Article 783 of the Civil Code defines a will as an act whereby a person is permitted, with the formalities prescribed by law, to control to a certain degree the disposition of their estate, to take effect after their death.<sup>3</sup>

- **Characteristics of a Will:** A will is defined by several key characteristics that ensure its validity and enforceability:
  - **Strictly Personal Act:** The making of a will is a non-delegable act. The testator cannot leave the designation of heirs or the determination of their shares to the discretion of a third person (Art. 784).<sup>3</sup>
  - **Revocable:** A will is ambulatory, meaning it is not effective until the testator's death. As such, the testator retains the absolute right to revoke or change it at any time before death (Art. 828).<sup>23</sup> Any provision in a will stating that it is irrevocable is considered void.
  - **Free and Voluntary:** The will must be an expression of the testator's own volition, free from vitiating factors like fraud, undue influence, duress, or threats.<sup>25</sup>
  - **Formal/Solemn Act:** The law prescribes strict and mandatory formalities for the execution of a will. Failure to comply with these formalities renders the will void.<sup>22</sup>
  - **Mortis Causa Disposition:** A will is intended to take effect only upon the death of the testator.
- **Effect of Simply Providing for Disinheritance:** A will remains valid even if its only provision is a clause for the disinheritance of a compulsory heir. It does not need to institute an heir to be considered a valid testamentary act.
- **Testamentary Capacity (Arts. 796-803):** For a will to be valid, the testator must possess testamentary capacity at the moment of its execution. This capacity has two components:
  1. **Age:** The testator must be at least 18 years old.<sup>3</sup>
  2. **Soundness of Mind:** The testator is considered of sound mind if, at the time of making the will, they have the ability to know (1) the nature of the estate to be disposed of, (2) the proper objects of their bounty (i.e., their heirs), and (3) the character of the testamentary act (that they are making a will). The law presumes that every person is of sound mind, and the burden of proving otherwise rests on the person opposing the will.<sup>3</sup>

### Sub-Node 2.1.2: Kinds and Formalities of Wills

All wills must be in writing and executed in a language or dialect known to the testator.<sup>22</sup> Philippine law recognizes two principal forms of wills, each with its own set of stringent formalities.

- **Notarial (or Ordinary/Attested) Will (Arts. 804-808):** This is the more common type of will and requires the participation of witnesses and a notary public. Its formalities are designed to safeguard against fraud and undue pressure.
  - **Subscription:** It must be signed at the end by the testator. If the testator is unable to sign, their name may be written by another person in their presence and by their express direction.<sup>3</sup>
  - **Attestation and Subscription by Witnesses:** It must be attested and subscribed by at least three credible witnesses in the presence of the testator and of one another.<sup>3</sup> This "presence" requirement is crucial and means that the testator and witnesses must be able to see each other sign, if they choose to look.
  - **Marginal Signatures:** The testator (or the person signing on their behalf) and the instrumental witnesses must also sign each and every page of the will, except the last, on the left margin.
  - **Page Numbering:** All pages must be numbered correlatively in letters (e.g., "One," "Two," "Three") placed on the upper part of each page.
  - **Attestation Clause:** This is a separate paragraph that must state (a) the total number of pages used, (b) that the testator signed the will and every page thereof (or caused another to sign for them) in the presence of the witnesses, and (c) that the witnesses signed the will and every page thereof in the presence of the testator and of each other.
  - **Notarial Acknowledgment:** The will must be acknowledged before a notary public by the testator and the witnesses. This is not part of the will itself but is a separate act that makes the will a public document and authenticates the signatures.<sup>28</sup>
- **Holographic Will (Arts. 810-814):** This type of will is favored for its simplicity and privacy, as it does not require witnesses. However, its validity hinges on strict compliance with its unique requirements.
  - **Form:** It must be **entirely written, dated, and signed by the hand of the testator.**<sup>1</sup> Any insertion, cancellation, or alteration must also be authenticated by the testator's full signature.
  - **No Witnesses or Notarization:** A holographic will is valid even without witnesses or notarization.<sup>28</sup>
  - **Probate:** To be admitted to probate, its authenticity must be proven. This is

typically done through the testimony of at least one witness who is familiar with the testator's handwriting and signature. In the absence of a suitable witness, expert testimony may be resorted to.<sup>30</sup>

- **Special Requirements:** The law provides additional safeguards for testators who are deaf, deaf-mute, or blind to ensure they fully understand the contents of the notarial will they are executing.

### Sub-Node 2.1.3: Codicils and Doctrine of Incorporation by Reference

- **Codicil (Art. 825):** A codicil is a supplement or an addition to a will, executed after the original will, which is annexed to it and considered a part thereof. It is used to explain, modify, add to, or revoke provisions in the original will. A codicil must be executed with the same legal formalities as a will.<sup>29</sup>
- **Incorporation by Reference (Art. 827):** A testator can incorporate an extrinsic document or paper into their will without re-writing its contents, provided four conditions are met: (1) the document must already be in existence at the time the will is executed; (2) the will must clearly refer to said document; (3) the document must be clearly identified by the proofs; and (4) the document must be signed by the testator and the witnesses on each page (unless it's a holographic will and holographic provisions are incorporated).

### Sub-Node 2.1.4: Revocation of Wills and Testamentary Dispositions (Arts. 828-834)

Revocation is the act by which a testator nullifies a will or a part of it, rendering it void.<sup>17</sup> As a strictly personal right, the ability to revoke a will cannot be waived or restricted.

- **Modes of Revocation (Art. 830):** The Civil Code provides for specific and exclusive ways to revoke a will:
  1. **By Operation of Law:** Certain events, by legal mandate, result in the revocation of testamentary provisions. Examples include a decree of legal separation, which revokes provisions made in favor of the guilty spouse, or the testator's sale or donation of the specific property bequeathed.<sup>24</sup>
  2. **By a Subsequent Instrument:** A will can be revoked by a subsequent will or



codicil.

- **Express Revocation:** The new instrument contains a clause explicitly stating the revocation of a prior will (e.g., "I hereby revoke all prior wills and codicils made by me.").<sup>31</sup>
  - **Implied Revocation:** The provisions in the new will are completely and irreconcilably inconsistent with those in the prior will. If the inconsistency is only partial, then only the inconsistent provisions of the earlier will are considered revoked.<sup>23</sup>
3. **By an Overt Physical Act:** The will is revoked by burning, tearing, cancelling, or obliterating it with the intention to revoke (*animus revocandi*). The physical act of destruction must be coupled with the intent to revoke. The act must be performed by the testator personally, or by another person in their presence and under their express direction.<sup>29</sup>
- **Presumption of Revocation:** If a will was last known to be in the testator's custody but cannot be located after their death, a legal presumption arises that the testator destroyed it with the intent to revoke it. This presumption is disputable and can be overcome by evidence to the contrary, such as proof of accidental loss or destruction by another person without the testator's authority.<sup>24</sup>
  - **Doctrine of Dependent Relative Revocation (DRR):** This equitable doctrine applies when a testator revokes a will under a mistaken belief of fact or law. The core idea is that the revocation is conditional upon the validity of a new disposition. If the new disposition fails (e.g., a new will is invalidly executed), the law presumes that the testator would have preferred the old will to take effect rather than die intestate. Therefore, the revocation of the first will is held to be ineffective.<sup>34</sup> The doctrine is a rule of presumed intent, designed to prevent an unintended intestacy when the testator's clear purpose was to substitute one testamentary plan for another.<sup>39</sup>

### Sub-Node 2.1.5: Republication and Revival of Wills (Arts. 835-837)

- **Republication (Arts. 835-836):** This is the process of re-establishing a will that was either void as to its form or had been previously revoked.<sup>41</sup>
  - **If Void as to Form:** A will that is null due to non-compliance with formalities (e.g., having only two witnesses) cannot be republished by a mere codicil. It must be re-executed by reproducing all of its original provisions in a new, validly executed will.<sup>41</sup>

- **If Previously Revoked:** A valid will that was subsequently revoked can be republished by the execution of a codicil that makes specific reference to it.<sup>41</sup>
- **Revival (Art. 837):** This refers to the restoration of a will that has been revoked.<sup>42</sup> The revocation of a second will, which had itself revoked a first will, does **not** automatically revive the first will. For the first will to be revived, the testator must manifest a clear intention to do so, which is typically accomplished through an act of republication.<sup>23</sup>

### Sub-Node 2.1.6: Allowance and Disallowance of Wills (Probate)

Probate is the mandatory judicial proceeding required to establish the authenticity and due execution of a will.<sup>30</sup> Article 838 of the Civil Code is unequivocal: no will shall pass either real or personal property unless it is proved and allowed in accordance with the Rules of Court.<sup>26</sup>

- **Scope of Probate:** The probate court's inquiry is generally confined to the *extrinsic* validity of the will. This involves examining:
  1. Whether the will complies with the prescribed legal formalities.
  2. Whether the testator possessed testamentary capacity at the time of execution.
  3. Whether the execution was a free and voluntary act.

The intrinsic validity—the legality of the will's provisions—is typically addressed after probate, during the estate distribution phase. However, there is a recognized exception: if the will is patently void on its face or its provisions are clearly illegal (e.g., where a compulsory heir is obviously preterited), the court may rule on its intrinsic invalidity to avoid the futility of a useless probate proceeding.<sup>45</sup>
- **Grounds for Disallowance (Art. 839):** A will shall be disallowed if any of the following defects are proven:
  1. The formalities required by law have not been complied with.
  2. The testator was insane or otherwise mentally incapable of making a will at the time of its execution.
  3. The will was executed through force or under duress, or the influence of fear, or threats.
  4. The will was procured by undue and improper pressure and influence on the part of the beneficiary or some other person.
  5. The signature of the testator was procured by fraud.

6. The testator acted by mistake or did not intend that the instrument they signed should be their will at the time of affixing their signature thereto.<sup>26</sup>

### Sub-Node 2.1.7: Institution and Substitution of Heirs

- **Institution of an Heir (Art. 840):** This is the act by which a testator designates in their will the person or persons who are to succeed them in their property and transmissible rights and obligations.<sup>46</sup> If there are compulsory heirs, this institution is effective only with respect to the free portion of the estate.
- **Substitution of Heirs (Arts. 857-870):** This is the appointment of another heir to take the place of the one originally instituted in the event the latter predeceases the testator, repudiates the inheritance, or is incapacitated to succeed.<sup>19</sup>
  - **Simple or Common Substitution:** The testator names a substitute to inherit if the original heir cannot or will not.<sup>46</sup>
  - **Fideicommissary Substitution:** This is a more complex form where the testator institutes a first heir (the fiduciary) and charges them with the obligation to preserve and transmit the property to a second heir (the fideicommissary). This type of substitution is subject to very strict limitations to prevent the perpetual entailment of property: it must not go beyond one degree of relationship from the fiduciary, and both the fiduciary and the fideicommissary must be living at the time of the testator's death.<sup>46</sup>

### Sub-Node 2.1.8: Dispositions with a Condition or Term

A testator has the freedom to attach conditions or terms to the institution of heirs, legacies, and devises, as long as these are not contrary to law, morals, or public policy.<sup>50</sup>

- **Condition:** A future and uncertain event.
  - **Suspensive (Precedent):** The right to the inheritance is acquired only upon the fulfillment of the condition (e.g., "I institute my son as heir provided he passes the Bar exams.").<sup>50</sup>
  - **Resolutory (Subsequent):** The right is acquired immediately but is extinguished if the condition occurs (e.g., "I give my daughter a monthly pension until she marries.").<sup>50</sup>

- **Term:** A future and certain event, which will surely happen, although the exact time may be unknown.
  - **Suspensive (Ex Die):** The right becomes demandable only upon the arrival of the term (e.g., "I give my nephew P1 million upon my fifth death anniversary.").<sup>50</sup>
  - **Resolutory (In Diem):** The right exists immediately but terminates upon the arrival of the term (e.g., "I give my niece the use of my beach house for ten years.").<sup>50</sup>
- **Void Conditions:** Impossible or illegal conditions are generally considered as not written or imposed, and the testamentary disposition itself remains valid, unless the condition was the very motive for the disposition.<sup>50</sup>

### Sub-Node 2.1.9: Legacies and Devises

These are testamentary gifts of specific property.<sup>18</sup> A

**legacy** refers to a gift of personal property, while a **devise** refers to a gift of real property.<sup>17</sup> These gifts are taken from the free portion of the estate and are subordinate to the payment of debts and the satisfaction of legitimes. They are generally charged against the estate as a whole, unless the testator expressly burdens a specific heir with their payment.<sup>54</sup>

A legacy or devise may be deemed revoked by operation of law in several instances, including:

1. **Transformation:** If the testator transforms the thing bequeathed in such a way that it loses its original form and denomination.
2. **Alienation:** If the testator, during their lifetime, sells, donates, or otherwise alienates the specific thing bequeathed.
3. **Loss or Destruction:** If the thing is completely lost or destroyed during the testator's lifetime, without any fault on the part of the heirs.
4. **Judicial Demand:** In the case of a legacy of a credit against a third person, if the testator, after making the will, brings a legal action against the debtor for payment of the debt.<sup>56</sup>

### Node 2.2: Compulsory Succession

Compulsory succession is not a separate kind of succession but a fundamental system that operates within and limits both testate and intestate succession. It is a cornerstone of Philippine civil law, reflecting a strong state policy of protecting the family by ensuring that certain close relatives, known as **compulsory heirs**, receive a legally mandated share of the decedent's estate.<sup>4</sup> This reserved portion is called the **legitime**. This system places family welfare above the absolute testamentary freedom of the individual.<sup>60</sup>

### Sub-Node 2.2.1: Legitime (Arts. 886-914)

- **Definition (Art. 886):** Legitime is that part of a testator's property which they cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.<sup>2</sup>
- **Compulsory Heirs (Art. 887):** The law establishes a hierarchy of compulsory heirs:
  - **Primary Compulsory Heirs:** Legitimate children and their descendants.
  - **Secondary Compulsory Heirs:** Legitimate parents and ascendants (who inherit only in the absence of legitimate children and their descendants).
  - **Concurring Compulsory Heirs:** The surviving spouse and illegitimate children, who inherit alongside the primary or secondary heirs.<sup>4</sup>
- **Computation of the Net Hereditary Estate:** The legitime is computed based on the net value of the hereditary estate. This is determined by taking the value of all property left by the decedent at the time of death, subtracting all debts and charges, and then adding the value of all donations made by the decedent during their lifetime that are subject to collation.<sup>19</sup> This process ensures that a testator cannot defeat the legitime system by giving away all their property before death.
- **Table of Legitimes:** The fractional shares of the legitime vary depending on the combination of surviving compulsory heirs. The following table summarizes these complex rules, which are essential for the proper division of any estate.

Surviving Heirs	Share of Legitimate Children (LC)	Share of Surviving Spouse (SS)	Share of Illegitimate Children (IC)	Share of Legitimate Parents (LP)	Free Portion

1 LC only	1/2	-	-	-	1/2
2 or more LC	1/2 (divided among them)	-	-	-	1/2
1 LC, SS	1/2	1/4	-	Excluded	1/4
2 or more LC, SS	1/2 (divided among them)	Share equal to 1 LC	-	Excluded	Varies
2 or more LC, SS, IC	1/2 (divided among them)	Share equal to 1 LC	1/2 share of 1 LC each	Excluded	Varies
LP only	-	-	-	1/2	1/2
LP, SS	-	1/4	-	1/2	1/4
LP, IC	-	-	1/4	1/2	1/4
LP, SS, IC	-	1/8	1/4	1/2	1/8
SS only	-	1/2 (or 1/3 if marriage in <i>articulo mortis</i> and testator dies within 3 months)	-	-	1/2 (or 2/3)
SS, IC	-	1/3	1/3	-	1/3
IC only	-	-	1/2	-	1/2

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### Sub-Node 2.2.2: Preterition (Art. 854)

Preterition is a legal concept with severe consequences, designed to protect compulsory heirs from being forgotten.

- **Definition:** It is the total omission of a compulsory heir **in the direct line** (i.e., a

child, grandchild, parent, or grandparent) from a will. The heir is not instituted, not given any legacy or devise, and not expressly disinherited. They are simply ignored.<sup>45</sup>

- **Requisites:** For preterition to occur, three elements must be present: (1) there must be a complete and total omission from the inheritance; (2) the omitted heir must be a compulsory heir in the direct line; and (3) the omitted heir must survive the testator.<sup>63</sup>
- **Effect:** The effect of preterition is drastic: the **institution of the heir is completely annulled**. The will is not entirely voided; any devises and legacies remain valid, but only to the extent that they do not impair the legitimes of the compulsory heirs (including the preterited one). The annulment of the institution of heirs results in the opening of total or partial intestate succession, through which the preterited heir will receive their full share.<sup>45</sup>

The harshness of this penalty underscores the law's assumption that such a total omission is an unintentional oversight. If the testator had remembered the heir, even by giving them a token amount (a legacy of one peso, for instance), it is not preterition. In that case, the heir's remedy is not to annul the institution but simply to demand the completion of their legitime.

### Sub-Node 2.2.3: Disinheritance (Arts. 915-923)

In contrast to preterition, disinheritance is a deliberate act.

- **Definition:** It is the means by which a testator may, for a just cause expressly stated in the will, deprive a compulsory heir of their legitime.<sup>65</sup>
- **Requisites for Validity:** Disinheritance is strictly regulated and is valid only if all the following conditions are met: (1) it must be made in a valid will; (2) it must be for a cause expressly specified by law; (3) the cause must be stated in the will itself; (4) the cause must be certain and true (and the burden of proving it falls on the other heirs if the disinherited heir denies it); and (5) the disinheritance must be total and unconditional.<sup>65</sup>
- **Grounds:** The Civil Code provides an exclusive and exhaustive list of grounds for disinheritance, which vary depending on the heir. Common grounds include attempts against the life of the testator, grave maltreatment by word or deed, and leading a dishonorable life (for descendants).<sup>65</sup>
- **Effects of Valid Disinheritance:** A validly disinherited heir loses all rights to the

inheritance, including their legitime and any share they might have received in the intestate portion. However, the children or descendants of the disinherited heir acquire the right to represent them and receive the legitime their parent would have been entitled to.<sup>65</sup>

- **Effect of Reconciliation:** If the testator and the disinherited heir subsequently reconcile, the disinheritance is rendered ineffective. The reconciliation removes the legal basis for the disinheritance.<sup>66</sup>

#### Sub-Node 2.2.4: Preterition vs. Defective Disinheritance

It is crucial to distinguish between preterition and a disinheritance that is defective (e.g., the cause is not true or not one of those provided by law). While both result in a compulsory heir receiving their share, the legal mechanisms and effects on the will are vastly different. This distinction is a classic area of complexity in succession law.

Basis	Preterition (Art. 854)	Defective Disinheritance (Art. 918)
<b>Nature</b>	Implied deprivation through total omission. The heir is not mentioned at all. <sup>64</sup>	Express but legally ineffective deprivation. The heir is named for disinheritance, but the attempt fails. <sup>64</sup>
<b>Testator's Intent</b>	The testator's intent is presumed to be a result of an oversight or mistake.	There is a clear intent to disinherit, but it is not executed in accordance with law.
<b>Effect on Institution of Heir</b>	<b>Annuls</b> the entire institution of heirs.	<b>Does not annul</b> the institution of heirs.
<b>Effect on the Heir</b>	The omitted heir is restored to their full intestate share.	The improperly disinherited heir is restored only to their legitime.
<b>Effect on the Will</b>	Legacies and devises remain valid as long as they do not impair the legitimes. The rest of the estate is distributed by intestacy. <sup>45</sup>	The will remains valid in all other respects. Only the disinheritance clause is considered void. <sup>64</sup>



## Node 2.3: Intestate Succession

Intestate or legal succession takes place by operation of law in the absence of a valid will. It is a default system that reflects the presumed will of the decedent based on ties of blood and marriage.<sup>1</sup>

- **Causes of Intestacy (Art. 960):** Intestacy occurs if a person dies:
  1. Without a will, or with a void will, or one which has subsequently lost its validity.
  2. When the will does not institute an heir to, or dispose of, all the property belonging to the testator (resulting in partial intestacy).
  3. If the suspensive condition attached to the institution of an heir does not happen.
  4. If the heir instituted is incapable of succeeding, or repudiates the inheritance, and there is no substitution and no right of accretion takes place.
- **Order of Intestate Succession:** The law establishes a strict hierarchy of relatives who are called to succeed. The distribution of the estate depends entirely on the combination of heirs who survive the decedent.
- **Table of Intestate Shares:** This table provides a guide to the division of the entire estate in intestacy, which often differs from the division of legitimes in testate succession.

Surviving Heirs	Distribution of Entire Estate	Legal Basis
<b>Legitimate Children (LC) only</b>	Divided equally among them.	Art. 979
<b>LC and Surviving Spouse (SS)</b>	Divided equally among all LC and the SS (SS is treated as one LC).	Art. 996
<b>LC, SS, and Illegitimate Children (IC)</b>	Each LC gets a full share; SS gets a share equal to one LC; each IC gets 1/2 the share of one LC.	Art. 999
<b>Legitimate Parents (LP) only</b>	Divided equally between	Art. 985

	them.	
<b>LP and SS</b>	LP get 1/2; SS gets 1/2.	Art. 997
<b>LP, SS, and IC</b>	LP get 1/2; IC get 1/4; SS gets 1/4.	Art. 991, 1000
<b>SS only</b>	Entire estate.	Art. 995
<b>SS and IC</b>	SS gets 1/2; IC get 1/2.	Art. 998
<b>SS and Legitimate Siblings</b>	SS gets 1/2; Siblings get 1/2.	Art. 1001
<b>IC only</b>	Entire estate, divided equally.	Art. 988
<b>Collateral Relatives only (up to 5th degree)</b>	Entire estate, following proximity and equality rules.	Arts. 1003-1010
<b>The State</b>	Entire estate by escheat.	Arts. 1011-1014

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- **Fundamental Rules of Intestacy:**

- **Rule of Proximity (Art. 962):** The relative nearest in degree to the decedent excludes more distant relatives from inheriting. The primary exception to this rule is the right of representation.<sup>69</sup>
- **Rule of Equality (Art. 962):** Relatives who are in the same degree inherit in equal shares (*per capita*). The main exceptions are (1) the right of representation, where division is *per stirpes* (by branch or line), and (2) the distinction between full-blood and half-blood siblings under Article 1006, where full-blood siblings receive a share double that of half-blood siblings.<sup>69</sup>
- **Iron Curtain Rule (Art. 992):** This controversial provision establishes a complete barrier to intestate succession between an illegitimate child and the legitimate children and relatives of their mother or father. Likewise, such legitimate relatives cannot inherit from the illegitimate child.<sup>71</sup> The rule is based on a historical presumption of animosity between the legitimate and illegitimate families. While this rule remains in the Civil Code, its application has been significantly modified by the Supreme Court in the context of representation in the direct line, as will be discussed next.

## Main Branch III: Provisions Common to Testate & Intestate

## Succession

This branch addresses legal doctrines and rights that are applicable across both testamentary and intestate succession, governing the mechanics of how shares are determined, transferred, and accepted or rejected.

### Node 3.1: Right of Representation (Arts. 970-977)

The right of representation is a legal fiction created by law that allows a more distant relative to step into the place of a closer relative and inherit the share the latter would have received.<sup>73</sup> It is a key exception to the rule of proximity.

- **When it Applies:** Representation is available only in cases of **predecease** (the heir dies before the decedent), **incapacity** (the heir is legally unworthy to inherit), or **disinheritance**. It is **never** available if the heir **repudiates** (renounces) the inheritance. An heir who repudiates their share severs the line of succession for their own descendants.<sup>73</sup>
- **Where it Applies:** The right of representation is strictly limited to two lines:
  1. **Direct Descending Line:** It applies to an unlimited degree. A grandchild can represent their predeceased parent to inherit from a grandparent; a great-grandchild can represent their predeceased parent and grandparent to inherit from a great-grandparent, and so on.<sup>73</sup>
  2. **Collateral Line:** It applies only in favor of the children of brothers or sisters of the decedent (i.e., nephews and nieces). Furthermore, it can only be invoked when they survive and are called to the succession along with at least one of their uncles or aunts.<sup>70</sup>
- **Mode of Division:** When representation occurs, the division of the estate is *per stirpes* (by branch), not *per capita* (by head). This means the representatives, as a group, inherit only the share that the person they are representing would have received. They then divide that share equally among themselves.<sup>73</sup>

**Sub-Node 3.1.1: Effect of Illegitimate Filiation: The Aquino v. Aquino Doctrine (G.R. 208912 & 209018, Dec. 7, 2021)**

The 2021 Supreme Court decision in *Aquino v. Aquino* is a landmark ruling that fundamentally altered the landscape of successional rights for illegitimate children in the Philippines.

- **Background (The "Iron Curtain"):** For decades, Article 992 of the Civil Code was interpreted as an absolute barrier—the "Iron Curtain"—that prevented any intestate succession between the legitimate and illegitimate families. Under this strict interpretation, an illegitimate grandchild could not represent their predeceased legitimate parent to inherit from their legitimate grandparent, because this would allow an "illegitimate" line to inherit from a "legitimate" one.<sup>72</sup>
- **The Landmark Ruling:** In a historic and progressive decision, the Supreme Court revisited and reinterpreted Article 992. The Court ruled that a child, regardless of their parents' marital status, **can inherit** from their grandparent by right of representation.<sup>77</sup>
- **Rationale of the Court:** The decision was anchored on several key principles:
  1. **The Best Interest of the Child:** The Court explicitly abandoned the archaic and discriminatory presumption that illegitimate children are the product of illicit relationships and that there is inherent antagonism between the legitimate and illegitimate families. It prioritized the constitutional mandate to protect the best interests of every child.<sup>80</sup>
  2. **Harmonization of Laws:** The Court sought to harmonize the Civil Code's succession rules with the Family Code's provisions on support. The Family Code mandates reciprocal support between grandparents and grandchildren, regardless of the latter's legitimacy. The Court reasoned that if a grandchild has a legal duty to support a grandparent, it is only just that they also have the right to succeed from them.<sup>77</sup>
  3. **Plain Language of Article 982:** The Court highlighted that Article 982, the provision that grants the right of representation to "grandchildren and other descendants," does not make any distinction based on their birth status. It is a general rule that should not be unduly limited by the exception in Article 992.<sup>77</sup>
- **Effect on the Iron Curtain Rule:** The *Aquino* ruling did not abolish Article 992. The Iron Curtain still stands to prevent an illegitimate child from inheriting in their **own right** from legitimate relatives (e.g., an illegitimate child cannot inherit from their legitimate uncle). However, the decision effectively pierces the curtain when inheritance is **by right of representation** in the direct descending line.<sup>82</sup> This represents a significant judicial evolution of a statutory provision to align it with modern constitutional principles of equality and justice.
- **Condition Precedent:** It must be emphasized that the right to represent is still

contingent on the representative first proving their filiation to the person they seek to represent. In the *Aquino* case itself, the matter was remanded to the trial court for the reception of evidence, including DNA testing, to establish this factual basis.<sup>77</sup>

### Node 3.2: Right of Accretion (Arts. 1015-1023)

Accretion is another mechanism for distributing a vacant share of an inheritance.

- **Concept:** It is a right by which, when two or more persons are called to the same inheritance (or the same portion thereof) *pro indiviso* (without a special designation of parts), the share of one who predeceases, repudiates, or is incapacitated to succeed is added or incorporated into the shares of their co-heirs.<sup>85</sup>
- **Requisites:** For accretion to take place, the following must be present: (1) a plurality of heirs called to the same inheritance; (2) a vacancy in one of the shares due to predecease, repudiation, or incapacity; (3) the institution of heirs must be joint, without individual designation of shares; and (4) there is no substitute designated for the vacant share.<sup>85</sup>
- **Limitations:** In intestate succession, the right of representation is preferred over the right of accretion. If an heir who predeceases or is incapacitated has descendants who can represent them, the share goes to these representatives, not to the co-heirs by accretion.<sup>87</sup>

### Node 3.3: Collation (Arts. 1061-1077)

Collation is a crucial process in the partition of an estate, aimed at ensuring equality and protecting legitimes.

- **Concept:** It is the act of returning to the common mass of the estate any property or value which a compulsory heir may have received from the decedent during the latter's lifetime by way of donation or other gratuitous title. These lifetime gifts are considered advancements on the heir's inheritance.<sup>21</sup>
- **Purpose:** The primary goals of collation are to equalize the shares of compulsory heirs and to ensure that no *inter vivos* donations made by the decedent impair the

legitimes reserved by law for these heirs.<sup>21</sup>

### Node 3.4: Acceptance and Repudiation of Inheritance (Arts. 1041-1057)

Upon the opening of succession, every heir has a choice: to accept or to reject the inheritance.

- **Concept:** Acceptance and repudiation are purely voluntary and free acts by which an heir either confirms or renounces their successional rights.<sup>75</sup>
- **Acceptance:** This can be **express**, made in a public or private document, or **tacit**, inferred from acts that necessarily imply an intention to accept (e.g., selling inherited property).<sup>75</sup> The effect of acceptance retroacts to the moment of the decedent's death.
- **Repudiation (or Renunciation):** This must be done expressly and formally, either in a public or authentic instrument or through a petition filed in court. It cannot be implied.<sup>75</sup>
- **Effects:** Acceptance makes the heir the owner of the share and liable for estate debts up to its value. Repudiation has the effect of removing the heir from the line of succession, as if they were never called to it.<sup>75</sup>
- **No Right of Representation in Repudiation:** As previously noted, an heir who repudiates their share cannot be represented by their own descendants. The share they would have received is instead distributed among the other heirs by accretion or, if accretion does not apply, by the rules of intestacy.<sup>74</sup>

### Node 3.5: Capacity to Inherit (Arts. 1024-1040)

For a person to succeed, they must possess the capacity to inherit.

- **General Rule:** The law presumes that every person is capacitated to succeed by will or by intestacy, unless they are expressly disqualified.<sup>3</sup>
- **Requirements:** To be capacitated, the heir, legatee, or devisee must be living (or at least conceived) at the moment the succession opens (i.e., at the time of the decedent's death).
- **Incapacity:** Incapacity to succeed can be **absolute** (a person is disqualified from inheriting from anyone, e.g., an abortive infant) or **relative** (a person is

disqualified from inheriting from a specific decedent). The grounds for unworthiness under Article 1032 (e.g., having been convicted of an attempt against the life of the testator) are a primary form of relative incapacity.

## Conclusion

The Philippine law on Wills and Succession, rooted in the Civil Code tradition, presents a highly structured and family-centric framework. It meticulously balances the decedent's right to dispose of their property (*testamentary freedom*) against the State's policy of protecting the family unit through the indefeasible rights of compulsory heirs (*compulsory succession*). The system gives primacy to a valid will but provides a comprehensive default mechanism—intestate succession—when one is absent or ineffective.

Key doctrines such as preterition and the strict grounds for disinheritance serve as powerful safeguards for compulsory heirs. At the same time, mechanisms like revocation, republication, and revival provide testators with the flexibility to adapt their testamentary plans to changing life circumstances. Common provisions like representation, accretion, and collation ensure that the distribution of the estate, whether testate or intestate, is handled equitably and logically, preventing gaps in ownership and resolving potential conflicts among heirs.

The recent landmark ruling in *Aquino v. Aquino* exemplifies the dynamic nature of this field of law. By reinterpreting the "Iron Curtain Rule" in light of constitutional principles and evolving social norms, the Supreme Court has demonstrated that succession law, while bound by statutory text, is not static. It is capable of evolving to achieve greater justice and equality, particularly for the most vulnerable, thereby ensuring that the law remains a living instrument that reflects the values of contemporary society. A thorough understanding of these interconnected principles is therefore indispensable for any student or practitioner navigating the complexities of estate settlement in the Philippines.

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