Notes And Cases On SUCCESSION

Based on Lectures given by:
Prof. Ruben Balane and Prof. Araceli Baviera

Compiled and Edited by Rodell A. Molina
UP Law Batch 1996

This work is a compilation of Prof. Ruben Balane's lectures in succession, by his students both in the UP College of Law and in the Ateneo Law School. Lectures of Prof. Baviera in Civil Law Review (Succession) have also been included in this work.

Special thanks to Louella Ira for lending me her magic notes on Succession as compiled by students of the Ateneo Law School, to Lianne Tan for lending me her diskette in Succession containing the lectures of Prof. Baviera and to the late Eduardo Balangue for lending me his magic notes on Succession as compiled by students of the UP College of Law.

This work is dedicated to Class A, UP Law Batch 1996, to which I belong.

-- RAM

INTRODUCTION

Concept.-- Succession is the last mode of acquiring ownership. It is an independent mode of acquiring ownership.

Requisites of Succession:
(1) Death of the predecessor;
(2) Existence and capacity of the successor;
(3) Provision of the law or provision of a will granting the right of succession;
(4) Acceptance by the successor.

Q: Is tradition (delivery) required for ownership to transfer?
A: No. Ownership is transferred by succession, not by any other mode.

Etymology.-- Succession is derived from 2 Latin words: *sub*, meaning under (e.g., an underling, a subordinate, if a plane travels at a subsonic speed or fly below opposite-- subsonic) and *cedere*, meaning to give, to pass.

Succession, therefore, is a passing under. It gives the idea of the nature of succession as originated from Roman Law. Why do the Romans call it a passing under? Bec. of the fiction in Roman Law that a personality occupies a space, that is, a legal personality is permanent. A permanent fixture but the occupant will go away. And it is the successor who will occupy the

space you left vacant. There is always what you call *personalitas*. "Sound through" like a play, where you wear a mask, and the one behind the curtain is sounding through. that is, somebody is really talking behind you. This, by analogy is, succession.

Persona means "you," the character. *Personalita* or personality w/c is always there, and there is or there will always be an occupant, who comes and goes; it may change the character, the person passes under. What is behind all this? Personality never dies. We are but dust and shadows based on the reality of death.

Why do we have to devise this fiction? Why the law on succession? The Law on succession has various underpinnings in Roman Law, that is, *first*, the vague idea of after life, like the ideas of Horace -- state of good in the Elipian fields; *second*, that the law develops based on conditions of society. One of the most basic desire of man is the desire for immortality.

How, When, To Whom, In What proportion are they transmitted -- Succession.

BASIS OF THE LAW ON SUCCESSION:

1. Succession provides the vehicle for satisfying your yearning and longing for immortality. It satisfies or consoles yourself that something in you lives forever and this is your personality. Others usually leave something like paintings, book of poems, statue so that they will be remembered forever, e.g., Horace by Shakespeare.

2. Concept of *pater familias*. Diligence of *pater familias*. *Pater familias* means head of the family. The basic unit of Roman society. It is he who managed and exercised authority over his children, absolute control over his wife. In Roman law, a man's wife is his child. It is he who is the guardian of the family gods. It is a position that must be occupied every time. It is unthinkable to be otherwise. Once he dies, it is absolutely necessary not only in religion that he is to be replaced immediately. This is indispensable.

These underpinnings are gone now. Today, succession is nothing but a mode of acquiring ownership. Why? Because you do not have the fiction to have succession, bec. of the spread of Christianity w/c took the place of those yearnings that it is believing in God and life after death. No more yearnings for immortality, unless you do not believe in the teachings of Christianity.

Also, the concept of *pater familias* is no longer applicable bec. of parental authority w/c restricted the authority of the head of the family. We no longer have slaves, absolute control over children, etc.

But old beliefs do not die easily. Some provisions of the law on succession are influenced by these underpinnings. Like, "heirs are the continuation of the personality of the decedent." Another is: when a condition is imposed upon the substitute, does the substitute have to fulfill the condition? All of these are residual elements of Roman Law.

Definition of Succession.-- Succession in a juridical sense is the substitution of one person for another in a determinable relationship or a subrogation of one person by another in a juridical situation. (Manresa.)

Succession is the substitution of a person to the determinable legal relationship of another. (Castan.)

Castan's definition is better. (Balane.)

PHILIPPINE LAW ON SUCCESSION (Based on the lecture given by JBL Reyes.)

Every person during his lifetime is at the center of a number of juridical relation flowing

from personality. Some of these legal relations are permanent, some are transitory. Some of these relations are: paternity and filiation, marriage and maternity, membership of the bar, student of UP, etc., w/c other persons do not have. There are transitory relations, and examples of these are one when bought a bottle of Coke; lease of an apartment unit; a mortgage; a contract of partnership; when one rides a bus, etc.

When a person dies, personality is extinguished. Some of these juridical relations will die w/ you-- *intuitu personae*-- SSS, GSIS-- if they die w/ you, no problem. but some of them survive, e.g., land, say a thousand hectares. If it is only a ball pen left by the decedent, it is not a big problem. But what if the decedent left a big tract of land, or there is a contract of sale w/c transfers ownership bet. the decedent and third parties. You have to set a devise. You can not leave them hanging in the air. You have to devise a set of rules to determine the how, when, to whom, to what extent these rights will be transmitted. The law w/c governs them is succession. And that is all on succession, everything is footnotes.

DIFFERENT KINDS OF SUCCESSION

A. By the moment of transmission:
1. *mortis causa*-- takes place by virtue of death
2. *inter vivos*-- takes place independently of death during the lifetime of the parties (now called Donation *inter vivos*.)

B. Extent of rights involved:
1. *Universal*-- this is very catchy- it involves the entire estate or fractional or aliquot or undivided part of the estate, e.g., I give you 1/2 of my estate.
2. *Particular/ partial*.-- succession to specific items
    a. legacy-- specific personal prop., e.g., I give you my car
    b. devise-- specific real prop., e.g., I give to G my fishpond in Laguna.

C. As to cause:
1. *Compulsory.*-- that effected by operation of law to forced heirs even if not in a will; succession to the reserved portion/ legitime
2. *Testamentary.*-- by will
3. *Intestate or legal.*-- succession in default of a will; subordinate to testamentary succession
4. *Mixed*.-- combination of the above.
5. *Contractual*.-- E.g., donation *propter nuptias* by one to another of future prop. w/c takes effect after death. Why contractual? Bec. of the transfer of prop. is not by virtue of a will but by contract. So it is governed by the law on contracts. Hence, it must be governed by the Statute of Frauds. It must be in writing to be enforceable.

D. As to parties to succession:
1. Decedent, transferor, *causante, acutor, de cuius*
2. Successor, transferee, *causa habiente*

E. As to terms:
1. Testator.-- decedent left a will
2. Intestate.-- decedent did not leave a will
3. Heir.-- one who succeeds by universal title or to a share of the estate
4. Devisee.-- one who succeeds by particular title to real prop.

5. Legatee.-- one who succeeds to a specific personal prop.

Elements of Succession (Manresa.):

1. Change of subject (*cambio de suheto.*)-- ownership is transferred from deceased to heir (subjective change.)

2. Identity of Object (*identidad de objecto*)-- same prop. is involved, only the owner is changed. The right is the same (objective identity.)

Important Principles of Succession (which permeates the entirety of Succession):

1. *Mortis Causa.*--Succession can not take place while the owner is alive. The heir/ successor has a mere expectancy right to the prop. of the decedent, during the lifetime of the latter.
2. Interest of the family may override the will of the decedent bec. of compulsory heirs. There is a legitime reserved for the family. A will cannot impair the legitime.
3. The estate passes or devolves to the family unless the decedent expressly orders otherwise in a will. Family covers spouse, ascendants, descendants, and collateral relatives.
4. The family can not be entirely deprived of the estate bec. of the system of legitime.
5. Within the family, heirs of equal degree/ proximity inherit in equal shares. Presumption of equality. This is only the general rule. There are exceptions.
6. The State has a share in the inheritance through taxes.
7. The heirs are not liable for the debts of the estate beyond their share in the inheritance. Estate is liable for the debts left by the decedent. Debts are to be deducted before the heirs can get their shares. Procedure: Collect all assets, deduct debts, then partition the shares. Up to what extent? Up to all its assets. If the estate is zero balance, the heirs get nothing.

Under the modern civil law, if the decedent left more debts than assets, it will not change or affect your status anyway, but not w/ the decedent's creditors-- they have to beware-- *caveat creditor*.

Basis of the Law on Succession.-- Some say it is the law on property w/c seems to be the basic attitude of the Code. Others say succession is a law on persons bec. of the compulsory heirs. How can you explain that? Is there some link bet. the law on succession and property? There is. Castan said that law on succession is both law on persons and property. However, in a pure testamentary succession, the law on persons do not come to play. Say, a will giving UP a property. This is more on the law of property. This is the ecclectic theory of Castan.

Major Changes in the New Civil Code on Succession:

1. Allowance of holographic wills (Art. 810.) It gives greater freedom to the decedent to choose in what form he can dispose by will his estate. Holographic will is not a novelty but a revival. This was allowed in the Spanish times but was abrogated during the American regime. It was only restored under the NCC.
2. Improvement in the successional position of the surviving spouse. Under the OCC, the surviving spouse had a right of usufruct only. Under the NCC, the surviving spouse is given full ownership and is a compulsory heir. The share is variable that it is so bewildering.
3. Abolition of the right of *mejora* or betterment (the right of the parent to give a child more than the other.) This is basically a portion of the legitime, 1/3. Freedom is given to the testator as to who among his children he will give the 1/3. This system was never utilized bec. it was never understood by the people.

4. Abolition of the *reservas* and *reversiones*. The NCC restored *reserva troncal, reversion adoptiva* (under PD 603.)

5. Granting successional rights to/ for spurious children-- illegitimate other than natural. This is one of the revolutionary changes in the NCC. Under the OCC only legitimate children have successional rights. NCC liberalized it by granting successional rights to spurious children.

6. Greater facility in the probate of wills. Why? Bec. of the allowance of *ante mortem* probate, that is, during the lifetime of the testator. Now, probate may be *post-mortem* or *ante mortem*.

7. The application of the prohibition outlined in Art. 739 to succession. this is by virtue of Art. 1038. Art. 739 provides that:

> **Article 739. The following donations shall be void:**
>
> **(1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;**
>
> **(2) Those made between persons found guilty of the same criminal offense, in consideration thereof;**
>
> **(3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.**
>
> **In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.**

8. Increase of the free portion-- corollary to the abolition of the *mejora*
9. Limitation of the fideicommisary substitution to one degree (before, two degrees)
10. Intestate succession is narrowed from sixth degree to fifth degree.
11. Abolition of the institution under *pupilar* and *ejemplar* (substitution.)
12. Allowance of lifetime probate.

Areas in Succession Affected by the American Code:

1. Rules in interpretation.-- Arts. 788-792
2. Rules on formal requirements of a will.-- Arts. 804-809
3. Rules governing witnesses to wills.-- Arts. 820-824
4. Rules on republication and revival of wills.-- Arts. 835-836
5. Rules on revocation.-- Arts. 829-831
6. Rules on allowance and disallowance of wills.-- Arts. 838-839
7. Rules on Testamentary capacity.

Chapter 1

GENERAL PROVISIONS

Art. 774. 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.

Balane: **1. Succession is a mode of acquisition.--** Property, rights, and obligations are transmitted; those w/c are not extinguished by death of the decedent is inheritance. Succession is but a process of transmission.

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

2. Two elements of Succession.-- (1) identity of objects; (2) change of subjects.

3. Rule.-- The estate of the decedent pays for the obligations of the decedent. What is left is given to the heirs.

4. Connect Art. 774 w/ Art. 776, supra.

For money debts: If not paid in settlement proceedings, heirs could be liable to the extent of what they received

For obligations: E.g., lessee-lessor-- obligation to keep the lessee in the peaceful possession is transmitted to the heirs.

5. Property and Rights- Passed on to the decedent's successors

6. Obligations:

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

Exception: Alvarez case. Predecessor fraudulently disposed of the prop. during litigation. SC held that heirs cannot escape liability for their father's transactions w/c gave way to this claim for damages. Even though they did not inherit the prop., the monetary equivalent thereof was devolved into the mass of the estate w/c the heirs inherited. Hereditary estates are always liable in their totality for the payments of the debts of the estate. Whatever payment made by the estate is ultimately a payment by the heirs bec. these payments decrease their inheritance.

b. Non-monetary.-- Transmitted to the heirs.

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

Balane: Every testator is a decedent but not all decedents are testators. Under the American system, a decedent who did not leave a will is called "intestate." But this is not true in the Phils.

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

Balane: Transmissible property, rights and obligations constitute inheritance.

Guidelines on whether rights/ obligations are extinguished by death:

1. Property, rights and obligations which are purely personal are extinguished by the death of the decedent. They are not part of the inheritance, e.g., membership in the bar or right of consortium w/ your wife.

2. Those w/c are purely patrimonial. General rule: They form part of the inheritance, e.g., credits.

Exception: Money debts.-- obligation to pay is not transmissible, although purely patrimonial bec. the estate pays for it.

3. Those obligations transmitted to the heirs w/c are not monetary, e.g., obligation of a lessor-- patrimonial. B leased to C a parcel of land for a term of 3 years. After 2 years, B died. The heirs of B are bound by the lease contract.

Obligation as lessee and bailee are transmissible.

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

Balane: 1. This article literally means that the "decedent has the right to the succession which is transmitted upon his death." This is illogical bec. the decedent does not have rights to the succession. To improve the provision, change the words "succession" to "inheritance" (the right to succeed is an inchoate right) and the verb "transmitted" to "become vested."

2. Four Elements of Succession:

1. Death
2. Will or Operation of law
3. Existence and capacity of the successor
4. Acceptance.

3. This provision is the heart and soul of succession. The most essential provision of the law on succession.

4. Rights to succession vest at the moment of death, not transmitted. The right should be made effective from the moment of death. This is so bec. the rights to succession before death are mere inchoate. But from the moment of death, those inchoate rights become absolute.

Rights to succession are vested from the moment of death, not upon the filing of petition for testate/ intestate proceedings, not upon the declaration of heirship or upon settlement of the estate.

The rights to succession are automatic. Tradition or delivery is not needed. Fiction of the law is that from the moment of the death of the decedent, the right passes to the heirs.

During the lifetime of the predecessor, rights to succession are a mere expectancy. Hence, no contract can be legally entered into regarding the expected inheritance. When a heir receives his inheritance, he is deemed to have received it at the point of death. this is so by legal fiction to avoid confusion.

5. CASES:

Uson v. Del Rosario.-- Upon the death of the husband before the NCC, the rights of the wife to the inheritance were vested. So the rights of the illegitimate children under the NCC to inherit can not prejudice the vested rights of the wife. We have to apply the OCC bec. at the time of his death, it is the OCC w/c governed the law on succession. For the determination of successional rights, the law at the point of death should be the one applied.

Borja v. Borja.-- The right to inherit is vested at the moment of death. Even if she did not know how much she was going to inherit, she could still dispose of her share in the inheritance. Said right to the share was hers from the moment of death and she could do whatever she wanted w/ her share, even sell it.

Bonilla v. Barcena.-- You do not need a declaration of heirship whether testate or intestate, voluntary, etc. The rights of the heirs to the prop. vest in them even before judicial declaration of their being heirs in the testate proceedings.

An action to quiet title is not extinguished by the death of the decedent, it being a patrimonial right. Hence, the heirs have the right to be substituted to the action even before their having declared as heirs.

Jimenez v. Fernandez.-- Carlos died in 1936, before the effectivity of the NCC. As such, his illegitimate child cannot inherit from him. As such, title to the land belongs to the cousin who inherited the land w/ Carlos.

.

Art. 778. Succession may be:
(1) Testamentary;
(2) Legal or Intestate; or
(3) Mixed.

Balane:
1. Testamentary (Art. 779.)-- designation of an heir in a will
2. Legal or Intestate .-- w/o a will or the will is invalid
3. Mixed (Art. 780.)-- partly by will and partly by operation of law
4. Compulsory.-- Succession to the legitime by a forced heir.

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

Balane: Heir includes devisees and legatees.

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

Art. 781. 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.

Balane: It is better to scrap Art. 781. It has no significance. Even w/o it, those w/c accrue after death will still belong to the heirs.

E.g., A has a son, X. A dies in 1988. Inheritance is a mango plantation. In 1990, there is a crop. Is it part of the inheritance?

1. According to Art. 781, yes. This is inconsistent w/ Art 777 bec. succession occurs at the moment of death. Art. 781 implies a second succession.

2. Legal concept.-- No. X owns it through accession and not succession. Fruits are no longer part of the inheritance. It belongs to the heir bec. of ownership of the land he received at the moment of death. (Art. 777.)

Those w/c have accrued thereto after death do not comprise the inheritance but they accrue by virtue of ownership (accretion.)

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

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

Balane: The definitions given in this article are not good. The definitions contained in the Spanish Civil Code were better. An heir succeeds by universal title. Devisee or legatee succeeds by particular title.

According to Castan, 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.

E.g., I bequeathed 1/2 of my fishpond in Pampanga to A. Is the successor an heir, legatee or devisee? A devisee, the prop. being a specific real prop.

Q: Is it important to distinguish bet. heir devisee and legatee?
A: Before, yes. The heir inherited even debts of the decedent, even if it exceed the value of the property. Devisees or legatees were liable for debts of the decedent only up to the extent of the value of the prop.

Now, No. Except in one instance, in case of preterition in Art. 854. If read carefully, institution of heir is annulled while devise and legacy are not, so long as there is no impairment of the legitime.

Art. 782 is not a working definition.-- Someone who is a devisee (succeeded by a particular title) can fit into the definition of an heir (succeeds to a fractional/ aliquot/ undivided part of the estate.) and vice versa.

Chapter 2

TESTAMENTARY SUCCESSION

Section 1

WILLS

Subsection 1

WILLS IN GENERAL

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

Balane: **Definition of will:**

1. "Person."-- refers only to natural persons.

2. "Permitted to control to a certain degree."-- why certain degree? Bec. compulsory heirs cannot be deprived of their legitimes. If there are no compulsory heirs, the power of the decedent to dispose of his estate is absolute. If there are compulsory heirs, he only has a limited degree to dispose. That is why the will can only cover the disposable portion of the estate (free portion.)

3. Comment: .
   a. An "act."-- is too general; better "document" bec. a will must be in writing
   b. "After"-- better "upon."

Characteristics of Wills:

1. Purely personal act. (Arts. 784-787.)-- non-delegable; personal participation of the testator is required.

2. Free act.-- it means w/o fraud, violence, deceit, duress, or intimidation. It is voluntary. No vitiated consent.

3. Dispositive of property.-- If it does not, it will be useless. But as far as the law is concerned, it can be probated but a useless expense. It is only valid as to form and nothing else.

   Exceptions:
   a. when a will recognizes an illegitimate child
   b. when a will disinherits a compulsory heir
   c. when it appoints an executor

4. Essentially revocable.-- *ambulatory,* it is not fixed, can be taken back (while the testator is alive.) There is no such thing as an irrevocable will. It only becomes irrevocable upon death of the testator.

5. Formally executed.-- If the form is defective, it is void. It can not be cured.

6. Testamentary capacity of the testator.

7. Unilateral act.-- does not involve an exchange of values or depend on simultaneous offer and acceptance.

8. *Mortis causa*.-- takes effect upon the person's death (Art. 777.)

9. Statutory grant.-- granted only by civil law. The law can also take it away. It is not a constitutional right but merely statutory. In Russia, there are no wills, all intestacy

10. *Animus Testandi.*-- There must be an intent to dispose mortis causa the property of the testator. There must be a real intent to make a will or a disposition to take effect upon death. Said intent must appear from the words of the will.

Montinola v. CA, 3 CA Reports 377.-- The Republic contended that the phrase "I hereby leave you (motherland), parents, loved ones... " is a testamentary disposition in favor of the Republic as an heir. CA ruled that it was not. The phrase is a mere piece of poetry, there being no *animus testandi*. The lack of such intent might be seen from the face of the document itself.

11. Individual.-- One person alone. Joint wills are prohibited under Art. 818.

Vitug v. CA.-- A couple executed a survivorship agreement wherein their joint bank account would become the sole property of the surviving spouse should one of them die. The SC held that such agreement is valid. The conveyance is not a will bec. in a will, a person disposes of his prop. In this case, the bank account is part of the conjugal funds. Neither is the agreement a donation *inter vivos* bec. it takes effect after death.

Art. 784. The making of a will is a strictly personal act; it cannot be left in whole or in part to the discretion of a third person, or accomplished through the instrumentality of an agent of an attorney.

Balane: The making of a will is a purely personal act. It is an exercise of the disposing power w/c can not be delegated. But the physical act of making a notarial will can be delegated to the secretary but not the execution or making of holographic wills.

E.g., A dictated The Secretary wrote it down and typed. Is the will valid? Yes. What cannot be left in whole or in part to a third person is the exercise of the will making power, the exercise of the disposing or testamentary power. The mechanical act can be delegated.

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

Balane: This provision clarifies Art. 784 on will-making power.

Things Which Cannot be Delegated to a Third Person by the Testator:

1. Designation of heir, legatee or devisee, e.g., I hereby appoint X as my executor and it is in his discretion to distribute my estate to whomever he wants to give it. This can not be done.
2. Duration or efficacy of such disposition like, "Bahala ka na, Ruben."
3. Determination of the portion to w/c they are to succeed, when referred to by name.

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

Balane: Art. 786 is an exception to Arts 784 and 785. It covers things that are part of the essence of will making but allowed to be delegated.

Examples of Prohibited Delegation:

1. Can not delegate the designation of the amount of prop., e.g., I hereby set aside the sum _____ w/c my executor may determine for the cause of mental health. The amount is not specified.

2. Can not delegate the determination of causes or classes to w/c a certain amount is to be given, e.g., I hereby set aside P1M for such worthy causes as you may determine. This is not valid bec. the cause is not specific.

By way of exception, there are 2 things w/c can be delegated. The testator must specify-- (a) the amount of property; (2) the cause of classes of property-- before the delegation can take effect.

1. The designation of person or institution falling under the class specified by the testator. Choosing the members of the class but is restricted by the class designation, e.g., I hereby set aside the sum of P1M for the development of AIDS research. M will choose w/c institution. This is allowed bec. you have guided already M's decision. However, M cannot designate Manila Hotel.

2. The manner of distribution or power of apportioning the amount of money previously set aside or prop. specified by the testator, e.g., I designate the following hospitals to get the share in my estate and appoint M to apportion the amount of P10M. I set aside P250,000 for the following institutions: UP, PGH, SR, in an amount as my executor may determine.

The above mentioned are exceptions to the rule that the making of a will are non-delegable.

Art. 787. The testator may not make a testamentary disposition in such manner that another person has to determine whether or not it is to be operative.

Balane: This provision clarifies what is meant that "a will is personal." This is in effect delegating the discretion to the disposition of the will.

Articles 788- 792. Interpretation of Wills/ Rules of Construction.

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

Balane: Art. 789 is the rule on interpretation in order that the will may be valid and not perish.

Rationale: The State prefers testate to intestate. Why? Bec. testamentary disposition is the express will of the decedent. Intestamentary is the presumed will of the decedent. This is mere speculation on what the decedent wanted.

Ut res mages valet quam pereat.-- that the thing be valid than perish.

E.g., The word "chick" can have 2 interpretations: (1) a girl in w/c case inoperative bec. not w/in the commerce of man and (2) sisiw.-- operative. Interpret according to the second.

Art. 789. When there is an imperfect description, or when no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence, excluding the oral declarations of the testator as to his intention; and when an uncertainty arises upon the face of the will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into consideration the circumstances under which it was made, excluding such oral declarations.

Balane:

1. Kinds of Ambiguity:

a. Patent, apparent.-- that w/c appears in the face of the will, e.g., "I give 1/2 of my estate to one of my brothers." Who among the brothers? This is patently ambiguous.

b. Latent, hidden.-- perfectly unclear on its face. The ambiguity does not appear until you apply the provisions of the will, e.g., "I give to M the prop. intersecting Buendia and P. de Roxas. The ambiguity is determined only when the will is probated. That is, when it appears that I am the owner of all the 4 corners of the lot. Now, w/c of those lots?

2. Rule: Clarify ambiguity and be guided by these: Testacy should be preferred or upheld as far as practicable. Any doubt shall be resolved in favor of testacy.

Q: How will you resolve the ambiguity? What evidence do you admit?

A: You can admit any kind of evidence as long as relevant and admissible according to the Rules of Court. This includes written declarations.

Except: Oral declarations of the testator. Why? Bec. they cannot be questioned by the deceased. Also, bec. they are easy to fabricate.

If inspite of evidence you still cannot cure ambiguity, then annul the will.

If the ambiguity is patent, disregard the will. If latent, look into the evidences allowed by law.

Art. 790. The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be gathered, and that other can be ascertained.

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

Art. 792. The invalidity of one of several dispositions contained in a will does not result in the invalidity of the other dispositions, unless it is to be presumed that the testator would not have made such other dispositions if the first invalid disposition had not been made.

Balane: General rule: Severability. A flaw does not affect the other provisions. Exception: If it was meant that they were to be operative together as seen in the will.

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

Balane: This is a new provision. It is better if this was not placed here. Why? Bec. prop. acquired after the making of the will will not pass unless there is a clear intention or express provisions that the prop. will be passed by the testator. E.g., I give as legacy to M my cars. I only had 2 cars when I executed the will. After w/c I acquired 15 more cars. When I die, how many cars will she get? Following Art. 793, she will get only 2 cars. The additional cars are not included.

General rule: After acquired property shall not pass.

Exception: If the will provides otherwise. If he said "all my cars when I die, " then M gets all 17 cars.

COMMENT: This is crazy. Art. 793 is inconsistent w/ Art. 777. At the time of the death, the succession will open. As such, all cars should be given.

But the law should be applied as it is. No matter how inconsistent it is as pointed out by Tolentino. For as lawyers, you should advise your clients to be clear or clarify everything to avoid this ambiguity. Tell your clients to specify "as of the time of my death."

The solution to this inconsistency bet. the 2 articles is to repeal Art. 793.

Art. 794. Every devise or legacy shall convey all the interest which the testator could devise or bequeath in the property disposed of, unless it clearly appears from the will that he intended to convey a less interest.

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

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

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

Can you give bigger? Yes. Art. 929 says so. Only good if the other co-owner is willing to sell.

Q: B, G and J are co-owners. B gave to A the land they owned in common, that is the entire land and full ownership over it giving more than what he owns. Is this allowed?
A: Yes. The remedy is to buy the shares of J and G but he can not compel them to buy his share, there being no redemption of the whole land or give to A the value of B's share, if G and J are not willing to sell their shares.

The testator may give a lesser interest, e.g., I give the usufruct of my land to X. What results? Usufruct to X, ownership of the land goes by intestacy.

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

Balane:

1. Formal Validity

a. Time criterion.-- law at the time of execution; subsequent laws cannot apply retroactively.

b. Place criterion.-- Under Art 815-817, five (5) choices are available to the testator:

1. Citizenship
2. Residence
3. Domicile
4. Execution
5. Philippines

2. Intrinsic Validity

a. Time.-- time of death bec. of Art. 777

b. Place.-- Law of citizenship of decedent.

Subsection 2.-- *Testamentary Capacity and Intent*

Balane: *Testamentification activa* is the capacity to make a will. *Testamentification pasiva* is the capacity to inherit based on a will.

Who has testamentary capacity? All natural persons.

Corporations can not make wills. Only natural human beings can make a will.

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

Balane: General rule: All persons have the testamentary capacity to make a will. Exception: Incapacity, when expressly prohibited by law: (1) disqualified by reason of age (Art. 797); (2) disqualified by reason of mental incompetence. (Art. 798.)

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

Balane:
Q: How do you compute the age?
A: According to the Admin. Code, age is reckoned according to the calendar month.

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

Balane: *Soundness of mind* is determined at the time of the execution of the will.

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

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

Balane:
1. Soundness of mind.-- does not require that the testator be in full possession of reasoning capacity or that it be wholly unbroken, unimpaired or unshattered.

2. It means realization of or knowing:

a. The nature of his estate.-- Know what you own. This does not mean that the testator has to know the description of his property in detail. It is enough that he has more or less a fairly accurate idea what his properties are. This depends upon the circumstances. Say Rockefeller. The idea is less if you owned more. the more a person owns, the more he is apt to forget what he has in detail. If you think you own Ayala bridge and gives it as a devise, something is wrong w/ you.

b. Proper objects of his bounty.-- Know his immediate relatives. Experience of mankind is that you give to people who are attached to you by blood. Immediate relatives referred to are spouses, parents, children , brothers, sisters, but not first cousins. First cousins usually are not known especially if they live abroad. The nearer the relation, the more you should know. The farther, the less the law expects of you. If the testator can not recognize his immediate relatives, then there is something wrong.

c. Character of the testamentary act.-- Know the essence of making a will. Know that you are: (1) making a document that disposes (freely, gratuitously) of your property; (2) to take effect upon your death.

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

3. Insanity is relative. It is different in marriage and in contracts. But in wills, not knowing one or more of the 3 mentioned above, you are considered insane.

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

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

interval.

Balane: This is the law on presumption of soundness of mind as of the time of the execution of the will.

General rule: Presumption is for soundness of mind.-- proponent of will does not have to prove the soundness of mind of the testator. Why? The law on evidence says that you don't have to prove: (1) that w/c is admitted; (2) that w/c is presumed; and (3) that w/c is taken judicial notice of. Disputable presumptions may be overcome by proof to the contrary. There are 3 presumptions of law: (1) conclusive; (2) quasi-conclusive w/c can be overcome only by specific proof; (3) disputable

Exception: Insanity is rebuttable presumed when:

1. Art. 800 par. 2.-- One month or less before the making of the will, the testator was publicly known to be insane. E.g., A, one month before making of the will was running in the Plaza Miranda naked and shouting "Ibagsak!" This is what you mean by publicly known.
2. If there had been a judicial declaration of insanity and before such order has been revoked. (Torres v. Lopez, 48 P 772.)

In these 2 cases, it is the proponent's duty to offer evidence to the contrary, i.e., prove that the making of the said will was made by the testator during a lucid interval.

Judicial Declaration of Insanity Consists of:

1. A guardian appointed by reason of insanity. (Rule 93, ROC.)
2. If the insane was hospitalized by order of the court

In either of these cases, there is a presumption of insanity. But once the order is lifted, the presumption ceases.

Effect: 1. Rebuttable presumption of sanity is nullified or swept away.
2. There is a rebuttable presumption of unsoundness of mind.

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

Balane: This article makes explicit what was mentioned in Art. 800. The requirement is that sanity should exist only at the time of execution. Subsequent insanity does not affect the validity of the will nor an invalid will be validated by the recovery of the senses of the testator.

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

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

Subsection 3.-- *Forms of Wills*

Balane: **Kinds of Wills allowed under the NCC.--** (1) *ordinary or notarial will* w/c requires an attestation clause, an acknowledgement before a notary public; (2) *holographic will* w/c must be entirely written, dated and signed in the handwriting of the testator.

Q: How about *Non-cupative* Wills?
A: They are not allowed by the NCC. This kind of will is an oral will made by the testator in contemplation of death. This is allowed among Muslims only.

Common Requirements for both kinds of wills:
1. It must be in writing
2. Executed in the language or dialect known to the testator.

Q: What kind of language?
A: It must be a language (a) spoken by a substantial number of persons; (b) must have been reduced to writing and (c) fairly substantive body of literature

Q: What is a dialect
A: A dialect is a variation of tongue.

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

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

Suroza v. Honrado.-- The issue here is whether the will, w/c was written in English is valid. The SC ruled that it is not. The testatrix does not know English, being an Igorot and an illiterate. Obviously, the will is void, bec. of non-compliance w/ Art. 804. In a will, can you conclude that it is void where in the attestation clause, it was stated that the will was read and translated to Filipino? The law does not require translation nor interpretation of the language to the testator but that he himself personally understands the said language.

Q: Is it necessary for a will to state that the testator knew the language?
A: No. Extrinsic/ testimonial evidence may prove this.

Q: Is direct evidence always necessary to prove that the testator knew the language?
A: No. Sometimes, circumstantial evidence is sufficient. E.g., a person w/ a college degree does a will in English. Is it not enough that he studied 3 levels to prove that he understands English.

Articles 805 to 809.-- Special Requirements for Attested Wills.

Art. 805. Every will, other than a holographic will, must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his

presence, and by his express direction, and attested and subscribed by three or more credible witnesses in the presence of the testator and of one another.

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

The attestation shall state the number of pages used upon which the will is written, and the fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses, and that the latter witnessed and signed the will and all the pages thereof in the presence of the testator and of one another.

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

Balane:
A. Fourth Paragraph.-- Know the language
1. Body of the will.-- testator
2. Attestation clause
a. Testator.-- No.
b. witnesses.-- No. Only required to know the contents thereof.

B. Discrepancies
1. Par. 1.-- No mention that the testator signs in the presence of witnesses and yet par. 3 states this.
2. Par. 2.-- No statement that the testator and the witnesses must sign every page in one another's presence and yet that is required to be stated in the attestation clause.
3. Par. 3.-- In case of agent, all it requires is that the agent signed by his direction and not in his presence, but that is required in par. 1.

C. Requisites for an ordinary attested will (notarized will.).-- Purpose of requisites: judgment call of Code Commission; balancing of 2 policies.-- (1) to encourage a person to make a will; (2) to make sure that the will is testament of the testator to minimize fraud.

1. Signed by the testator or his agent in his presence and by his express direction at the end thereof and in the presence of the witnesses.

a. Subscribe.-- literally means "to write one's name." Sign means "to put a distinctive mark" (this is the better term to use.)

b. Signing.-- by writing his own name; a person may sign in other ways

(i) Matias v. Salud.-- The testator signed affixing her thumb mark on the will, this is because he can no longer write due to sickness/ disease called *herpes zoste*r, cold, physical infirmity. Is this a sufficient signature? Yes. A thumb mark is a sufficient signature of the testator. In fact, it is always and under any and all circumstances a valid way to sign a will. Reason: It is less posssible to forge. A thumb mark is always a valid way of signing whether literate or illiterate. However, there is also the danger of falsifying it by affixing the thumb of a newly dead person.

Q: What if the testator has no disease but signed in his thumb mark?
A: This will do bec. thumb mark is a sufficient signature under all circumstances.

The controversy is that what if after the testator affixed his thumb mark, another person signed on her behalf. Attestation clause does not state this. I mean, it would not appear in the attestation clause. The SC said that the person signing on his behalf is not an agent and besides it was already signed by the testator affixing his thumb mark and to state this (the affixing of the thumb mark) in the attestation is a mere surplusage.

(ii) Garcia v. de la Cuesta.-- Testator signed w/ a cross. Is this valid? No. This is so bec. such cross is easy to falsify. A cross can not be considered a signature.

General rule: A cross is unacceptable as a signature.

Exception: That is his normal way of signing.

c. Purpose.-- to authenticate the will

d. Where should the testator sign? At the end of the will. There are 2 kinds of ends:

(i) Physical end.-- where the writing ends

(ii) Logical end.-- that where testamentary disposition ends.

Usually, they are the same. But if different, t hen either will do. What if after the signature, some clauses follow? What is the effect of the said clauses to the will? If annuls or makes the whole void bec. of the non-compliance w/ Art. 805.

e. Testator directs another to sign his name.

(i) Four cases: Testator- A; Agent- B

a. "B" is not valid

b. "A" handwritten "by B" typewritten is valid

c. "A" typewritten "by B" handwritten is not valid.

d. "A" is valid

(ii) Cases:

a. Barut v. Cabacungan.-- Requirements: (1) agent must write the name of the testator by hand; (2) advisable if the agent write his name also.

b. Balonan v. Abellana.-- The witness signed his name above the typewritten words "por la testadora Anacleta Abellana." The SC held that the testator's name be written by the agent signing in his stead in the place where he would have signed if he were able to do so. It is required that the witness write the testator's name in the testator's presence and under her express direction.

(iii) The agent must sign where the testator's signature should be.

(iv) Purpose of the rules: to test the authenticity of the agency. It is an added safeguard to minimize fraud.

f. Testator must sign in the presence of witnesses

(i) Four cases: Testator.-- A; Witnesses.-- B, C, D

a. A signs w/ B breathing on her face. Is it signing in the presence of the testator? YES.

b. A signs while B is talking to C. B can see A through peripheral vision. Is A signing in B' s presence? YES

c. A signs while B is talking to C w/ B's back to A. Is it signing in B's presence? YES.

d. B goes out and stands behind the wall. He cannot see A. B is also talking to F. Is a signing in B's presence? NO.

(ii) Nera v. Rimando.-- Actual seeing is not required. What is required is that the person required to be present must have been able to see the signing, if he wanted to do so, by casting his eyes in the proper direction. His line of vision must not be impeded by a wall or curtain. This is a question of fact for the lower court to determine. Blind witnesses are therefore disqualified.

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

a. Q: Can the testator sign first not in the witness' presence, then let the witnesses sign? No. Art. 805 requires that the testator should sign at their presence (Vda. de Ramos case.) There is some inconsistency here but we have to follow Art. 805.

Q: Can the validity be affected if the witness signed ahead of the testator?
A: No. Provided it is made in one occasion or transaction. However, in strict theory, it can not be done bec. before the testator signed there is no will at all w/c the witnesses can sign and attest to. If there is more than one transaction, then the testator must always sign ahead of the witnesses.

b.	Attestation	Subscribing
	--visual act	-- manual act
	--witness	-- sign

The three witnesses must do both attesting and subscribing.

c. Where must witnesses sign? This is not clear.

Taboada v. Rosal.-- In this case, the witnesses signed at the left hand margin. Petitioner contended that they should have singed at the same place where the testator signed, that is, at the bottom of the end of the will. The SC was liberal. The purpose of signing at the end is to prevent interpolation. The object of attestation and subscription which is for identification, was met when the witnesses signed at the left hand margin of the sole page w/c contained all the testamentary dispositions. (This concerned a 2-page will w/ the first page containing all the dispositions and the second page the attestation and acknowledgement.) The will was signed by the witnesses at each and every page thereof.

Literal requirement.-- witnesses must also sign at the end/ last page
In the case.-- as long as signed in the margin, OK
Now.-- under or on margin, OK.

d. Can witnesses sign w/ thumb mark? (1) Some say Yes bec. it is only an act of authentication; (2) some say no bec. one requirement is that witnesses must know how to read and write w/c implies that the witness write his name.

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

a. Purpose.-- to prevent the disappearance of the pages.
b. "Every page except the last." Why not the last? Bec. it will already be signed at the bottom.
c. Left hand margin.-- requirement was made when right hand was not justified when

typed.

d. Now, testator can sign anywhere in the page.

(i) each page is signed and authenticated.-- mandatory

(ii) left margin.-- directory.

4. Witnesses must sign each and every page, except the last, on the left margin.

This is the same as number 3.

Witnesses may sign anywhere as long as they sign

Icasiano v. Icasiano.-- In the will submitted for probate, one page was not signed by one of the witnesses. Such failure to sign was due to inadvertence since in the copy, all pages were signed. The SC held that this was not a fatal defect. Considering the circumstances, the fact that the other requirement was complied with, and the notarial seal coincided w/ the third page during the sealing, then the will could be probated. Unusual circumstances w/c existed in the case:

(1) there was another copy

(2) inadvertence/ oversight

(3) because of the notarial seal.

The presence of these facts led the SC to allow the will.

The general rule, however, is that, the failure to sign any page is a fatal defect.

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

a. Mandatory.-- there must be a method by w/c the sequence of the pages can be known; to prevent an insertion or taking out of a page.

b. Directory

(i) Manner it is numbered- letters, numbers, Arabic, roman numerals, etc.; any conventional sequence of symbols is allowed

(ii) Upper part

6. Attestation Clause.

a. Three things that must be stated:

(i) the number of pages in the will

(ii) the fact that the testator or his agent signed the will in every page thereof in the presence of the instrumental witnesses

(iii) that the instrumental witnesses witnessed and signed the will and all the pages thereof in the presence of the testator and one another.

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

c. Where must witnesses sign? At the bottom in order to prevent additions.

Cagro v. Cagro.-- In the case, the page where the attestation clause appears was signed by the witnesses on the side and not after the attestation clause. The SC held that this was a fatal defect. The logic is that if there had been no signature at the bottom but on the sides, there will be ample room for fraud, that is, to add in the attestation clause upon the death of the decedent an essential matter w/c was not there in the first place to validate it.;

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

Q: Is it required that the witnesses knew the language of the attestation clause:
A: No. So long as it has been interpreted to them.

Q: Must the testator know the language of the attestation clause?
A: No. What is required of the testator is to know the language of the will. An express requirement of Art. 804.

Reason for the above rules: In order to minimize fraud. The very purpose of Art. 804 and 805. The law encourages not discourages will making. Precisely bec. it wanted to encourage wills. It sets up safeguards to protect the will.

e. Must the testator sign the attestation clause? No.

Abangan v. Abangan.-- This case concerns a will that has only 2 pages. The first page contained the dispositions and was signed by the testator and the witnesses at the bottom. The second page contained the attestation clause only and was signed by the witnesses at the bottom. From the case, we can learn 2 things: The first concerns the first page. Since it was signed by the testator and the witnesses at the bottom, then there is no need for them to sign at the left margin. The second concerns the second page. Since it was already signed by the witnesses at the bottom of the attestation clause, then there is no need for them to sign on the margin.

Q: Must an attested will be dated?
A: No. Lack of date does not annul an attested will. But a holographic will must be dated. (Art. 810.)

7. Notarization.-- A will is a public instrument that is why it must notarized.

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

Balane:
1. Cruz v. Villasor.-- This case involves a will wherein the notary public was also one of the three instrumental witnesses. Did the will comply w/ the requirement of 3 witnesses? No. The SC gave 2 reasons: (1) The notary public can not be an oath witness and at the same time an oath taker. It is impossible for him to acknowledge before himself; (2) the aim of the notary public to insure the trustworthiness of the instrument would be lost bec. he will try to insure the validity of his own act.

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

2. Gabucan v. Manta.-- In the case, the notarial acknowledgement of the will lacked a documentary stamp. As such the judge in the lower court denied probate. Does the absence of the documentary stamp invalidate the will? No. The absence of the documentary stamp does not affect the validity of the will. Its only effect is to prevent it from being presented as evidence. The solution is to buy a documentary stamp and attach it to the will.

3. Javellana v. Ledesma.-- The case deals w/ the question of whether or not the acknowledgement of the will should be done on the same occasion as the execution of the will. The SC said no. The law does not require that execution and acknowledgement be done on the same occasion. Acknowledgement may be validly done after execution. In fact, the testator and the witnesses do not have to acknowledge together. You can acknowledge one by one. The law does not require it to be made simultaneously. As long as the testator maintains his testamentary capacity and the witnesses maintain their witnessing capacity until the last person acknowledges, then the will is valid. However, if the testator dies before the last person acknowledges, then the will is not valid. The will is considered as being unacknowledged.

4. Questions.

Q1: Can a witness be an agent who will sign for the testator?

A1: (a) Yes. There is no prohibition.

(b) No. The testator must sign before 3 witnesses. He cannot sign before himself.

To be safe, do not let this happen. As the lawyer, be sure you have at least 3 witnesses.

Q2: Is there any particular order of signing?

A2: (a) No. As long as the signing is done on one occasion or one continuing transaction.

(b) Yes. If the signing is not done on one occasion or transaction. In such a case, there is nothing that the witness is attesting to.

Articles 807 and 808 are special additional requirements which are mandatory.

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

Balane: This provision lists down a special requirement if a notarial will is executed by a deaf-mute testator.

1. There are two cases contemplated: (1) If the testator can read, then he must read the will personally; (2) If illiterate, then 2 persons must read the will and communicate to him the meaning of the will in some practicable manner.

2. The law is not clear if the 2 persons reading it to him would do it separately or in consonance.

3. These additional requirements are mandatory by perfect analogy to the case of Garcia v. Vasquez..

Art. 808. If the testator is blind, the will shall be read to him twice; once, by one of the subscribing witnesses, and again, by the notary public before whom the will is acknowledged.

Balane:

1. If the testator is blind, the will must be read to him twice: (1) by one of the subscribing witnesses; and (2) by the notary public, not necessarily in that order.

2. a. Is the provision mandatory? Yes. If this is not followed, the will is void. (Garcia v. Vasquez.)

In the case, the will was read to the testator only once. The SC denied probate of the will for failing to comply w/ the requirements of Art. 808. Such failure is a formal defect.

b. Can this be presumed? No.

c. Can this be proven to have been complied w/ by competent evidence? Yes. In the absence of w/c the will is void. Such fact or reading must be proven by evidence during the probate proceedings.

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

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

Balane: This is a liberalization rule, an attempt to liberalize Articles 804 to 808. Substantial compliance w/ Articles 805 and 806 will validate the will despite some defects in the attestation clause.

Looking at Art. 809, you get the impression of utmost liberalization. We can not determine how liberal we can be or can we go. This article does not give a clear rule. JBL Reyes and Tolentino suggest that you make a distinction.

Guide: If the defect is something that can be remedied by the visual examination of the will itself, liberalize. If not, then you have to be strict.

Illustration: If in an attestation clause, the number of pages used was not stated, then you can liberalize bec. by examining the will itself, you can detect the defect. This is bec. the pagination of statement in the attestation clause is merely a double check.

If the attestation clause failed to state that "the testator signed in the presence of witnesses," and this can not be remedied by visual examination of the will, then you need to be strict.

Suggested amendment of the law: "If such defect and imperfections can be supplied by examination of the will itself and it is proved."

Articles 810 to 814.-- *Provisions on Holographic Wills.*

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

Balane:

A. Advantages:

1. Cheaper, simple, easier to revise, no notary public needed
2. Absolute secrecy is guaranteed- only you, the father and the members of the family

will know its contents.

Disadvantages:

1. Precisely bec. it guarantees secrecy and is simpler, it is also easier to falsify-- less people you need to collude w/-- only yourself, but in attested will, you need at least four (4) other people.
2. It may not express testator's wishes due to faulty expression
3. No protection against causes vitiating consent bec. there are no witnesses-- danger is higher.
4. Does not reveal testamentary capacity of testator due to lack of witnesses
5. Easier to conceal than an attested will.-- you can allege that no will was made
6. Generally, danger of ambiguity is greater than in attested wills.-- bec. testator is not a lawyer, he may not understand technical and legal words. In attested will, the testator is assisted by a lawyer.

JBL Reyes opines that the disadvantages outweigh the advantages. He suggested a middle ground, a mystic will (*testamento cerrado*.) It is not as strict as a notarial will, but not as fraught w/ risks as a holographic will. This kind of will is sealed in an envelope and brought to the notary who puts his seal and signs to authenticate, and it will be opened only upon the death of the testator. This kind of will minimizes the risk of fraud and protects the privacy of the testator.

B. Real Requirements.-- MANDATORY.-- must be by the hand of the testator himself.

1. Written entirely by the testator

E.g., (a) If partly by the testator and partly by another person, VOID

(b) If another person wrote an additional part w/o knowledge of the testator, the will is VALID but the addition is VOID.

(c) If another person wrote an additional part w/ the knowledge of the testator, VOID.

2. Dated

a. (1) Roxas v. de Jesus.-- On the will, the date was written as "Feb./ 61." Is it valid? Yes.

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

Exception: When there is no appearance of fraud, bad faith, undue influence, and pressure and the authenticity of the will is established, and the only issue is whether or not "Feb./61" is valid, then it should be allowed under the principle of substantial compliance.

COMMENT: I am not happy w/ the decision bec. the period covers one whole month. One of the purposes is to know when it was executed, specially in the cases where there are other wills. Example, another will dated Feb. 17/ 61. As such, it is dangerous to say that "Feb./61" is sufficient.

(2) Labrador v. Ca.-- In this case , the date was indicated in the body of the will as part of the narration. Is this valid? Yes. It is not necessary that the will be separate from the body. In fact, it can be anywhere in the will as long as the date appears in the will.

b. If the date is proven wrong, then its validity depends on whether the error is deliberate

or not. If deliberate, the will is considered not dated and the will is void. If not deliberate, the date will be considered as the true date.

c. Date is usually written by putting the day, month, and year. However, other ways may be adopted such as "Christmas day of 1995."

3. Signature.-- Commentators have said that the signature must consist of the testator's writing his name down. The reason for this is since he is able to write his will, then he is literate enough to write his name.

C. 1. Are holographic wills in letters allowed? Yes, provided there is an intent on the part of the testator to dispose of the property in the letters and the 3 requisites are present.

E.g., "I give you 1/2 of my estate as provided for in the document I kept in the safe." This is a holographic will bec. the letter does not in itself dispose of the property.

2. Can a blind testator make a holographic will? Yes. There is no form required. What is important is the presence of the 3 requisites.

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

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

Balane:
Requirements in the Probate of Holographic Wills:

1. Documentary Requirement

a. General rule: The will itself must be presented

Gan v. Yap.-- In the case, the proponent of the supposed will sought to establish its contents through extrinsic evidence. The SC denied such attempt to probate a holographic will that was not presented before the court. The SC said that the actual will should be presented to the court. The reason is that the will itself is the only material proof of authenticity. How can they oppose the will if the will is not there?

E.g., You are presented in the probate court the bloody test papers of A in Civil Law, just to show the handwriting of A, but you do not have the will. How will you compare when you do not have any will to be compared. But if the will is there, I would be the first one to prove your handwriting by showing your bloody test papers. (Balane.)

Exception: If there is an existing copy or duplicate photostatic xerox.

Rodelas v. Aranza.-- In the case, the proponent of the will sought to present a copy of the holographic will to the court. The court allowed the production of the copy. The basis of this acceptance is the footnote no. 8 in the case of Gan v. Yan where the court said that "perhaps if a photostatic copy is presented..."

The merit of the Rodelas case is doubtful.. Authenticity of the will is based on the handwriting and the signature. Handwriting experts use as a bases the penlifts of the writer. In photocopies, penlifts are not discernible and so the experts are deprived of their basis in

determining the authenticity of the will.

b. Lost holographic wills can not be probated even by the testimonies of the witnesses. The reason is that the will itself is the only proof of its authenticity.

2. Testimonial Requirement

a. Uncontested will.-- only one witness to identify the signature and handwriting of the testator.

b. Contested will.-- three witnesses to identify the signature and handwriting of the testator.

Azaola v. Singson.-- In the case, the oppositors of the will contested the will on the ground that it was executed through fraud. They, however, admitted its due execution. During the case, the proponent presented only one witness to identify the signature and handwriting of the testator. Is one witness sufficient considering there is an oppositor to the will?

Yes. The SC held that one witness is sufficient. What the law envisions is that the genuineness of the handwriting and signature be contested. Contested holographic will refers to the challenge by the oppositors that the will is not in the handwriting of the deceased. The oppositors in this case did not challenge the handwriting of the deceased. Their ground for opposing probate is that the will was executed through fraud and improper and undue influence. Hence, the probate required only one witness.

The authenticity of the will is not contested. Therefore, the will itself, not being contested was that of the testator. The oppositors here precisely admit that authenticity of the will but oppose on the ground that there is fraud or undue influence initiated upon her in the execution of the will. Hence, it is uncontested.

Obiter dictum: The three witness provision for contested holographic will is merely directory. The court upon satisfying itself of the authenticity of the will can require one or ten witnesses. The judge knows best. The second paragraph of Art. 811 gives the court discretion, hence the directory effect of the Art.-- (a) it is a matter of quality and not quantity; (b) to require 3 witnesses, makes it worse than treason, w/c requires only 2 witnesses.

Which is better? One who testify but w/ unquestioned credibility or 20 AVSECOM witnesses? So do not rely on the quantity. The case of Azaola is merely a guide and interprets Art. 811 for us. It is not mandatory. It always depends on the judge.

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

Balane: To authenticate additional dispositions, the same must be signed and dated by the testator.

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

Balane: If a will has several additions, the testator has two options:

(1) Sign each disposition and sign and date the last; or
(2) Sign and date each one of the additions.

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

Balane: **Insertion, Cancellation, Erasure, or Alteration.--** Authenticate by "full signature," that is, in the manner the testator usually signs his name.

Kalaw v. Relova.-- In the case, there were 2 alterations. In the first alteration, the name of Rosa as sole heir was crossed out and Gregorio's name was inserted. In the second alteration, the name of Rosa as executor was crossed out and Gregorio's name was inserted. The second alteration was initialed. Are the alterations valid? No.

Alteration 1: Not signed, thus, not valid.

Alteration 2: Initialed, thus, not valid; it must be full signature.

Gregorio cannot inherit as a sole heir bec. it was not authenticated. Rosa cannot inherit as sole heir bec. her name was crossed out. This indicated a change of mind on the part of the testator. The SC held that a change done by cancellation and putting in a new name, w/o the full signature, is not valid. As such, the probate is denied and they both inherit by intestacy.

Balane: Rosa should inherit as sole heir. The cancellation was not done properly since it was not signed. The effect is as if the cancellation was not done. If the testator wants to change his mind, he should reflect it in the proper way.

Q: How do we make a change in a notarial will?
A: There is no provision of law dealing on this. The ordinary rules of evidence will apply. To prove change, the testator should affix either his signature or initials. The best way, however, is to have the testator and notary public sign.

Articles 815 to 817.-- ***Laws which govern formal execution according to the place of execution.***

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

Art. 816. 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 this Code prescribes.

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

Balane:
1. Four combinations as to situation:
    a. Filipino makes a will here
    b. Filipino makes a will abroad.

c. Foreigner makes a will here.
d. Foreigner makes a will abroad.

2. What law governs the validity of will?
a. Intrinsic.-- the national law of the testator
b. Time.-- At the time of death.
c. Place.-- the same for Filipinos and aliens. The same rule wherever you make your will. You have five (5) choices-- the law of
1. The testator's citizenship
2. Testator's domicile
3. Place of execution
4. Testator's residence
5. Philippines.

Example, an Argentine citizen, domiciled in France, residing in Belgium visiting the Phils. In Japan, he executed a will. He may choose among the five (5) places as to what law shall govern the formal requirements of his will.

If Ruben executed a will in Makati, he will have to follow Philippine law bec. all the choices points to that only.

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

Balane: **1. Definitions.--** (a) A joint will is one document w/c serves as the will of 2 persons; this is prohibited; (b) A reciprocal will involves 2 instruments reciprocally making each other heir; this is not prohibited.

2. Elements of a Joint Will: (a) one single instrument; (b) it is the will of 2 or more persons.

3. Q: Why are Joint Wills Prohibited?
A: (a) It encourages undue influence, murder, or attempt to kill the other bec. generally, joint wills benefit each other.
(b) It runs counter to the idea that wills are revocable. It makes revocation more difficult. E.g., tearing it up-- destroys the will of another.
(c) It undermines the personal element of a will.-- It becomes a multiple will.

4. Examples:
a. One sheet of paper. On each side is a will of one person. Is it valid? Yes, bec. there are 2 documents.
b. One sheet of paper. On the front page, on the upper half is a will of A. On the bottom half is the will of B. Is it valid? Yes. This is not a joint will bec. there are still 2 documents.

4. In Germany, joint wills are allowed only if executed by the spouses.

5. The presumption is that wills are valid. The fault probably is in the wording of the law. Joint will-- one instrument. What the law prohibits is not 2 wills on the same sheet of paper but joint wills.

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

Balane:
1. This provision is an exception to the rule enunciated in Articles 815 to 817 that for Filipinos, as long as the will is valid in the place of execution, then it is valid in the Phils.

2. Filipinos, whether here or abroad, cannot execute joint wills. It is against public policy.

3. Can aliens execute joint wills?
   a. If executed in the country where it is allowed, YES, it may be probated here.
   b. If made here and their country allows them to do this? There are 2 views on this:
      (i) Yes, follow the personal law.
      (ii) No bec. it is against public policy.

Subsection 4.-- *Witnesses to Wills.*

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

Art. 821. The following are disqualified from being witnesses to a will:
(1) Any person not domiciled in the Philippines;
(2) Those who have been convicted of falsification of a document, perjury or false testimony.

Balane: Articles 820 and 821 may be taken together. These provisions are applicable only to attested wills and not to holographic wills.

Six Qualifications of Witnesses to Wills or Requisites for Competence to be a Witness:

a. *Sound Mind.*-- Ability to comprehend what he is doing, same as soundness of mind for contracts.
b. *At least 18 yrs or over.*-- Computed according to the calendar year.
c. *Not Blind, deaf and mute/ dumb.*-- This is important bec. these are the three senses you use for witnessing.
d. *Able to read and write*.-- Literate. Some commentators say thumb mark is not sufficient for witnesses; he has to affix his signature.
e. *He must be domiciled in the Philippines.*

Q: If a will is executed abroad in a place where there is no one domiciled in the Phils. although there are Filipino citizens not domiciled in the Phils., does domicile requirement still apply?
A: There are two answers for all theory
   1. Yes bec. the law does not distinguish
   2. No, there is an implied qualification.-- The rule applies in wills executed in the Phils.

To be practical, there are two solutions:
1. You have 5 choices as to w/c law governs. Choose any.
2. Just execute a holographic will.

f. *He must not have been convicted of falsification of document, perjury or false testimony.*

Q: Why not rape?
A: Bec. chastity has nothing to do w/ truthfulness. Truthfulness is the gauge.

Gonzales v. CA.-- In the case, the oppositor of the probate alleged that the will cannot be probated bec. the proponent was not able to prove that the 3 witnesses were credible. She claims that Art. 805 requires that witnesses must be credible as shown in the evidence of record. Is the oppositor correct? No. Under the law, there is no mandatory requirement that the proponent of the will prove the credibility of the witnesses to the will. Such credibility is presumed. However, the oppositor may prove otherwise by presenting evidence. The SC also said that credibility is determined by the manner the witness testifies in court. In other words, credibility depends on how much the court appreciates and believes his testimony. Social standing or financial position has nothing to do w/ a witness' credibility. Lastly, the SC said that competency and credibility are different. A witness to a will is competent if he has all the qualifications and none of the disqualifications to be a witness while credibility depends on the appreciation of the court of the testimony of the witness.

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

Balane: Competency or capacity to be a witness: (1) is determined at the time of witnessing; (2) must have the six qualifications. In effect, this is the same rule in testamentary capacity.

Art. 823. If a person attests the execution of a will, to whom or to whose spouse, or parent, or child, a devise or legacy is given by such will, such devise or legacy shall, so far only as concerns such person, or spouse, or parent, or child of such person, or any one claiming under such person or spouse, or parent, or child, be void, unless there are three other competent witnesses to such will. However, such person so attesting shall be admitted as a witness as if such devise or legacy had not been made or given.

Balane: This is a misplaced provision. It should not be put here but on the section on the disqualification to inherit. It does not tell us that it incapacitates a witness. It tells us of the incapacity of a witness to succeed.

General rule: Witness, his spouse, parent, child, or person claiming under any of them cannot inherit.
Exception: There are three other witnesses to the will.

E.g.: (a) Testator A, Witnesses B, C, D. It is presumed that they are all qualified to be witnesses. A, in a will, makes legacy to B, giving him a car. Does it disqualify B to be a witness?

No, it disqualifies B to inherit. The legacy is void.

(b) If there were 4 witnesses. The legacy is given to B. Is the legacy valid? Yes, bec. there are 3 other witnesses.

(c) If there are four witnesses, each one is given a devise or legacy.

(i) Are they competent to be witnesses? Yes.

(ii) Are bequests to them valid? There are 2 views:

1. Yes. Bec. for each of them, there are three other witnesses. (Liberal view.)

2. No. Bec. this is an obvious circumvention of Art. 823. Art. 823 has for its purpose the prevention of collusion. (Strict view.)

Art. 824. A mere charge on the estate of the testator for the payment of debts due at the time of the testator's death does not prevent his creditors from being competent witnesses to his will.

Subsection 5.-- *Codicils and Incorporation by Reference.*

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

Balane:
E.g., In a will, "I give my car to A, July 2, 1995." Bec. I want to specify w/c of my cars, I make a will stating "In my will of July 2, 1995, I gave a car to A. I want to clarify that I am giving him my BMW w/ plate number ....."

Q: When is a subsequent document a codicil and when is it another will?
A: 1. It is a codicil when it explains, adds to, or alters a provision in a prior will.
2. It is another will if it makes an independent disposition.
E.g., June 1, 1995, "I give my car to A."
July 1, 1995, "I give my house to B." This is a second will.

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

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

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

Balane: Whether you call the second document a will or a codicil does not really matter. It is all theoretical. It is only a matter of terminologies. They both require the formal requisites of a will.

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

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

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

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

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

Balane:
Q: What do you incorporate?
A: Generally, the documents that clarify provisions in the will to w/c it is attached. E.g., inventories, sketches, books of account

Q: Can a document contain any testamentary disposition? Why?
A: No. Bec. they do not conform to the requirements of wills.

Requisites for Incorporation by Reference:

1. Document must pre-exist the will. It must be in existence when the will is made.
2. The will must refer to the document, stating among other things the number of pages of the document.
3. The document must be identified during the probate of the will as the document referred to in the will
4. It must be signed by the testator and the witnesses on each and every page, except in case of voluminous books of accounts or inventories.

Q: Can a document be incorporated in a holographic will considering that the attached document must be signed by witnesses and that the holographic will has no witnesses?

A: There are 2 views. (a) Yes, witnesses referred to by law should be taken to mean only if there are witnesses to the will. There is no specification in the law.

(b) No. The fourth requisite presupposes there were witnesses. It seems to cover only attested wills.

Subsection 6. *Revocation of Wills and Testamentary Dispositions.*

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

Balane: One of the characteristics of a will is that it is ambulatory. It is not fixed, it is revocable. Revocability is an essential requisite of a will. So any waiver or restriction of this right is void. There are no exceptions to this rule.

Q: Can the testator make a will irrevocable?
A: No. As long as he is alive, he can revoke will at pleasure. Distinguish this from a donation *inter vivos* w/c cannot be revoked at pleasure by the donor.

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

Balane: This article is incomplete. It does not cover all situations.

Q: How do you revoke? What law governs revocation?
A: It depends where the revocation is made:

1. If done outside the Phils:
    a. If the testator is not domiciled in the Phils:
        (i) the law of the place where the will was made
        (ii) the law of the place where the testator was domiciled at the time of the revocation

    b. If the testator is domiciled in the Phils:
        (i) Phil. law bec. his domicile is here.
        (ii) Law of the place of revocation bec. of Art. 17, NCC

2. If done inside the Phils., follow Phil. law.

Art. 830. No will shall be revoked except in the following cases:
(1) By implication of law; or
(2) By some will, codicil, or other writing executed as provided in case of wills; or
(3) By burning, tearing, cancelling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn, cancelled, or obliterated by some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court.

Balane:
Three Ways of Revoking a Will:

1. By Implication of Law.

a. Art. 1032.-- Unworthiness to succeed, e.g., I instituted P as heiress, after which she killed my parents. The will instituting her as heiress is revoked by implication of law.

b. Art. 957.-- Deals w/ the devise or legacy.-- transformation of the property by the testator, e.g., If I converted to a subdivision the fishpond w/c I gave to T as devise.

c. Art. 106.-- Legal separation. The guilty spouse, who gave the ground for legal separation, will not inherit and anything given to her is impliedly taken away by law.

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

2. By Subsequent Instrument, Will or Codicil:

a. Requisites:

1. Capacity to revoke.-- Insane persons can not revoke
2. Revoking instrument, will or codicil must be valid
3. Revoking instrument, will or codicil must contain either a revoking clause (express) or be incompatible (implied)
4. Revoking will must be probated bec. w/o probating, it can not have the effect of revocation.

b. Such revocation may either be:

1. Express.-- Contains an express revocatory clause
2. Implied.-- Provisions of subsequent will are incompatible with the provisions of the prior will. It may either be: (i) total when all the provisions are incompatible; (ii) partial when only some provisions are incompatible.

3. By physical Destruction.-- This is the most unlimited way of revocation bec. it covers any act of physical destruction. It is not an exclusive list but more or less covers everything

Elements:

a. *Corpus*.-- Act of destruction-- completion of intent-- all acts needed to revoke have been done

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

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

Both elements must concur.

Examples:

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

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

Notes:

1. How much destruction of the *corpus* do you need? You need the physical destruction of the will itself. Does it mean total destruction of the will, so that nothing will be left? No. As long as there is evidence of physical destruction, like let us say, edges were burned. If only the cover was burned, there is no revocation-- no *corpus*. If the destruction was not total, there is still revocation, as long as there is/ was evidence of the destruction of the will, the destruction need not be total.

2. A man can not revoke the will effectively bec. of insanity.

3. In case of tearing, there must be intent to revoke. That is, the testator had completed what he intended to be done. If in the act of tearing, the testator was dissuaded not to continue, is there revocation? No, bec. the testator was not able to do what he intended to be done.

E.g., If the testator tore the will into 2, and when he was about to tear it into quarters, the heir asked for his forgiveness. The testator said: "Just paste the will." Is there revocation? None. There is no *animus* bec. he was not able to complete what he intended to do.

4. If the testator totally destroyed the will and he changed his mind, is there revocation? Yes. The act was already consummated. His remedy is to execute another will.

Maloto v. CA.-- In the case, the estate was distributed equally by intestacy bet. the 4 heirs. Subsequently, a will was found. In the will, more was given to 2 of the heirs. As such, the 2 who got more sought the probate of the will. The other 2 objected claiming that the will had been revoked. The issue is whether or not there had been a valid revocation. The SC held no. While there may have been intent to revoke, there was no *corpus*. There is no evidence to show that what was revoked was the will of the testator. Also, the destruction was not proven to have been done in the presence and under the expression of the testator.

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

Q: In the case, what if the will was not seen in the possession of the testator? Will there be the same presumption of revocation?

A: The case does not say so. But by analogy, yes. The SC, however, had not gone this far.

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

Balane: This is included as an element in revocation by subsequent instrument.

Art. 832. 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.

Balane: General Rule: Doctrine of Absolute Revocation.-- The revocation of a prior will by means of a subsequent will is absolute. Such revocation does not depend on:

1. Capacity of heirs, devisees, and legatees in the 2nd will; or
2. On their acceptance.

The revocation will be operative even the heirs, devisees, or legatees named in the revoking will are disqualified or they renounce.

E.g., Will 1.-- "I give my house and lot to A." (1995)
Will 2.-- "I give my house to B and hereby revoke my first will." (1997)

Suppose, upon the testators's death, B renounces or is incapacitated, what is the effect?

The institution of A is still revoked. House and lot will go by intestacy. The first will not be revived by the reason of the inoperation of the revoking will due to its renunciation or the incapacity of heirs, devisees, or legatees in it. The rationale is that the second will was valid except that it was rendered inoperative.

Exception: Doctrine of Dependent Relative Revocation.-- Revocation of the first will is made by the testator to be dependent on the capacity and acceptance of the heirs, devisees, and legatees of the subsequent will. How do you know? The testator said so in the will.

E.g., Will 1.-- "I give my car to A." (1995)

Will 2.-- "I give my car to B. Such legacy is dependent upon the capacity and acceptance of B." (1997)

The institution of B is conditional.

Primary institution-- B; Secondary institution-- A.

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

Balane: Is this article violative of the right to revoke, even without reason? No. The testator need not have a reason to revoke his will. He may revoke it capriciously or whimsically at pleasure. But if the revocation is due to mistake or is based on some cause and such cause was later proven to be false, then the revocation is void bec. all transactions based on mistake are vitiated, that is, you are acting on a false cause of facts. The cause, however, must be stated in the will. This shows respect for the freedom of the testator to revoke, that his real intent be followed.

E.g., a. Based on fact (kind of dependent relative revocation bec. he would revoke only if his information is true.)-- I instituted C as my heir. Later, I heard that it was C who killed my brother in Davao. So, I revoked my will. But it turned out that C did not do it. Revocation therefore is void.

b. Based on impression.-- I give my car to B who is from Manila. I revoke my designation of B bec. I have just found out that she is from Quezon and I hate people from Quezon bec. they are arrogant and obnoxious. Is the revocation valid? Yes. Bec. the revocation is based on impression or is out of caprice, prejudice, or unfounded ethnic opinion.

Elements for Revocation to be Inoperative:

a. Cause must be a concrete and a factual one;
b. Cause must be false;
c. Testator must not know of its falsity;
d. It appears on the face of the will that the testator is revoking bec. of the false cause.

Art. 834. The recognition of an illegitimate child does not lose its legal effect, even though the will wherein it was made should be revoked.

Balane: This provision is particularly true under the NCC before the enactment of the FC. One of the modes of recognition was by a will.

Even if the will is revoked, recognition is valid.

Recognition is irrevocable. Why? Bec. it is not a testamentary act but an act w/c under the law admits a relationship of paternity.

The same rule is still applicable under the FC.

Subsection 7.-- *Republication and Revival of Wills*..

Art. 835. The testator cannot republish, without reproducing in a subsequent will, the dispositions contained in a previous one which is void as to its form.

.

Art. 836. The execution of a codicil referring to a previous will has the effect of republishing the will as modified by the codicil.

Balane: Art. 835 is derived from Argentine Code. If you want to revive a will w/c is void as to its form, you must republish the will and just cannot refer to it. Example, Attested will w/ just 2 witnesses. You discovered the mistake later on. You cannot just republish it. You have to write it all over again.

On the other hand, Art. 836 is derived from the California code. The mere reference to a previous will will revive it

Result of the two articles: Chaos!

How to reconcile? Look at Tolentino.

Art. 835 explicitly refers to wills void as to form. Cause of the nullity is the defect in the form. You must reproduce the dispositions in a subsequent will.

Art. 836 applies if the reason of nullity is other than defective form, e.g., Underage testator, fraud, under duress. You may republish or refer to the will. E.g., "I hereby republish and revive my will of Oct. 15, 1995..." Said republication was made after the discovery of the reason of the nullity.

Art. 837. If after making a will, the testator makes a second will expressly revoking the first, the revocation of the second will does not revive the first will, which can be revived only by another will or codicil.

Balane:
A. This provision is crazy!!!

Situation: X makes a will in 1993 (Will 1)
X makes a will in 1994 expressly revoking will 1. (Will 2.)
X makes a will in 1995 revoking will 2. (Will 3.)

Revocation *Instanter*-- instantly
Will 1 is not revived bec. its revocation was instant

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

Why crazy? Bec. this is contrary to established principles in succession.

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

B. Applies only when revocation of will 1 by will 2 is express.

By contrary implication, if revocation of will 1 by will 2 is implied, then revocation of will 2 by will 3 will revive will 1 except if will 3 is incompatible w/ will 1. In such cases, Art. 837 does not apply.

Subsection 8.-- *Allowance and Disallowance of Wills.*

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

The testator himself ma, during his lifetime, petition the court having jurisdiction for the allowance of his will. In such case, the pertinent provisions of the Rules of Court for the allowance of wills after the testator's death shall govern.

The Supreme Court shall formulate such additional Rules of Court as may be necessary for the allowance of wills on petition of the testator.

Subject to the right of appeal, the allowance of the will, either during the lifetime of the testator or after his death, shall be conclusive as to its due execution.

Balane: Probate is mandatory.

There are 2 kinds of probate: (a) *ante-mortem* at the instance of the testator; (b) post-mortem at the instance of any interested party.

Effect: It is subject to appeal but once final, it becomes conclusive or *res judicata* as to its due execution and testamentary capacity of the testator (extrinsic validity.)

Advantages of *Ante-mortem* Probate:

1. It eases the mind of the testator
2. There is opportunity to change
3. You can prove the capacity of the testator

Disadvantage of *Ante-mortem* Probate.-- otios-- superfluous, futile. Why? Bec. the testator can easily make a subsequent will revoking it. So unless the testator is very sure, it might be useless to have an *ante-mortem* probate.

The issue in probate is the extrinsic or formal validity of the will.

General rule: Intrinsic or substantive validity is not in issue.

Exception: There is an intrinsic defect on the face of the will.

Nepomoceno v. CA.-- In the case, the testator left his entire estate to his legal wife and children but devised the free portion to his common-law wife. When the common-law wife sought the probate of the will, the CA declared the will valid, but held the devise to the common-law wife null and void for being contrary to Art. 739 of the NCC. In effect, the court ruled on the intrinsic validity of the will in the probate proceedings. Was the holding of the CA correct? The SC held that it was correct. Although the general rule is that only extrinsic validity could be at issue during the probate, this rule is not absolute. Given exceptional circumstances, the probate court may do what the situation constrains it to do by passing upon certain provisions of the will. Clearly, the devise for the common-law wife was void. The CA had the authority to rule on such nullity. It would be practical for the court to rule on such an obvious matter. Otherwise, the probate might become an idle ceremony if on its face it appears to be intrinsically void.

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

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

Q: What if after the probate court becomes final a person was charged w/ forgery of the will, can he can he be convicted?
A: No, the probate is conclusive as to the will's genuineness even against the state.

De la Cerna v. Rebeca-Potot.-- This case involves a joint will executed by a husband and a wife. The husband died before the wife and the will was probated. Now, the wife died and the testamentary heirs sought the probate of the will. Will the will be probated? No. The SC held that the first probate was valid only as to the share of the husband. However, such earlier probate cannot be applied for the share of the wife bec. she was still living at the time the first probate was made. As such, there is no *res judicata* as to the share of the wife. As to the wife, since it is against a joint will, then it is void and her property will pass by intestacy.

Art. 839. The will shall be disallowed in any of the following cases:
(1) If the formalities required by law have not been complied with;
(2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;
(3) If it was executed through force or under duress, or the influence of fear, or threats;
(4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person;
(5) If the signature of the testator was procured by fraud;
(6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto.

Balane: This enumeration is exclusive. They either make the will void or valid. There is no such thing as a voidable will.

1. Formalities.-- Art. 805 et seq.
2. Insanity.-- Art. 799
3. Force.-- violence-- Art. 1335 par. 1
   Duress-- intimidation-- Art. 1335 par. 2
4. Undue and Improper pressure and influence.-- Art. 1337
5. Fraud.-- Art. 1338
6. Mistake.-- Art. 1331.

Section 2.-- *Institution of Heir.*

Art. 840. Institution of heir is an act by virtue of which a testator designates in his will the person or persons who are to succeed him in his property and transmissible rights and obligations.

Balane: The rules on institution of heir also apply to devisees and legatees.

Art. 841. A will shall be valid even though it should contain an institution of an heir, or such institution should not comprise the entire estate, and even though the person so instituted should not accept the inheritance or should be inacapacitated to succeed.

In such cases the testamentary dispositions made in accordance with law shall be complied with and the remainder of the estate shall pass to the legal heirs.

Balane: 1. Even if there is no institution of an heir, the will is valid, but it is useless unless it acknowledges an illegitimate child or disinherits a compulsory heir.

2. If the institution does not cover the entire estate, the excess shall either go to the compulsory heirs or by intestacy. (Mixed succession.)

3. How much can the testator dispose of from his estate? He can dispose all, except when there are compulsory heirs. In such a case, he can only dispose of the free portion.

4. General rule: If the will does not institute an heir, it need not be probated.
   Exception: Even if it does not institute an heir, if any of the following are present:
   a. When the will recognizes an illegitimate child;
   b. When it disinherits a compulsory heir;
   c. When it instituted an executor.

5. If the instituted heir should repudiate or be incapacitated to inherit, then legal succession takes place.

Art. 842. One who has no compulsory heirs may dispose by will of all his estate or any part of it in favor of any person having capacity to succeed.

One who has compulsory heirs may dispose of his estate provided he does not contravene the provisions of this Code with regard to the legitime of said heirs.

Balane:

X -------- spouse
/ | \
A B C

X has a spouse and 3 children.
Children get 1/2 of the estate\
------- Legitimes
Spouse gets 1/6 of the estate/

Art. 843. The testator shall designate the heir by his name and surname, and when there are two persons having the same names, he shall indicate some circumstance by which the instituted heir may be known.

Even though the testator may have omitted the name of the heir, should he designate him in such manner that there can be no doubt as to who has been instituted, the institution shall be valid.

Balane: General rule: An heir must be designated by name and surname. This also applies to devisees and legatees.

If there are 2 or more people having the same name and surname, the testator must indicate some identifying mark or circumstance to which he may be known, otherwise there may be a latent ambiguity.

E.g., I institute my cousin A. But I have 3 cousins by the name of A. Unless I give an identifying mark or circumstance as to w/c cousin A I refer to, there will be a latent ambiguity.

Exception: Even w/o giving the name, the identity of the heir can be ascertained w/ sufficient certainty or clarity, e.g. the present Dean of the UP College of Law, my oldest brother.

What is important is that the identity of the heir be known and not necessarily his name.

Art. 844. An error in the name, surname, or circumstances o f the heir shall not vitiate the institution when it is possible, in any other manner, to know with certainty the person instituted.

If among persons having the same names and surnames, there is a similarity of circumstances in such a way that, even with the use of other proof, the person instituted cannot be identified, none of them shall be an heir.

Balane: 1. Paragraph 1.-- Even though there may be an error in the name of the heir, the error is immaterial if his identity can be known in any other manner.

2. Paragraph 2.-- See the rules on latent ambiguity.

First: Use extrinsic evidence except the oral declarations of the testator as to his intentions to cure the ambiguity.

Second: If ambiguity still exists, none of them will inherit.

Art. 845. Every disposition in favor of an unknown person shall be void, unless by

some event or circumstance his identity becomes certain. However, a disposition in favor of a definite class or group of persons shall be valid.

Balane: 1. Can the testator give his entire free portion to a person he does not personally know? Yes.

The "unknown person" referred to in this article refers to one who cannot be identified and not to one whom the testator does not personally know. The basis of the nullity is the inability to determine the intention of the testator.

E.g., "To someone who cares." -- Void.
"To someone w/ ten eyes." -- Void, this refers to someone who does not exist.

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

2. Class designation is valid, class in Civil Law Review, UP College of Law, 1995-1996.

Mass institution: see Articles 786, 848 (brothers and sisters), 849 (designation of a person and his children) 959 (relatives), 1029 (prayers and pious works for the benefit of his soul), and 1030 (poor.)

Art. 846. Heirs instituted without designation of shares shall inherit in equal parts.

Balane: This is a presumption of equality. This supports the underlying principle of this chapter w/c is respect for the wishes of the testator.

Art. 847. When the testator institutes some heirs individually and others collectively as when he says, "I designate as my heirs A and B, and the children of C," those collectively designated shall be considered as individually instituted, unless it clearly appears that the intention of the testator was otherwise.

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

A: It is not to be interpreted as 1/3 to A, B and class C. Rather, the 1/3 of the estate should be divided equally among A, B and the members of class C. Why? Bec. the presumption is that the members of C were individually designated.

But if the testator says "I give 1/3 of my estate to A, B and class C as a unit, then 1/3 will be divided equally among A, B and class C.

Art. 848. If the testator should institute his brothers and sisters, and he has some of full blood and others of half blood, the inheritance shall be distributed equally, unless a different intention appears.

Balane: Full blood means same parents; half blood means only one parent is the same.

General rule: Brothers and sisters, whether full or half blood, inherit in equal shares.
Exceptions: (a) If the testator provides otherwise in the will

(b) If they inherit by intestacy. Ratio is 2:1 in favor of full blood brothers and sisters. (Art. 1006.)

Art. 849. When the testator calls to the succession a person and his children, they are all deemed to have been instituted simultaneously and not successively.

Balane: This article is a species of Art. 847.
Successively refers to *fideicommisary*.

Art. 850. The statement of a false cause for the institution of an heir shall be considered as not written, unless it appears from the will that the testator would not have made such institution if he had known the falsity of such cause.

Balane: General rule: Even if the cause if false, institution is effective. Why? Bec. cause of the institution is the liberality of the testator and not the cause stated.
Q: "A is the tallest in the class. I give him 1/2 of my estate." If A is not the tallest, is the institution ineffective?
A: No. Follow the general rule bec. the real cause was not the height but the liberality of the testator.

Austria v. Reyes.-- In the case, the oppositor sought to nullify the institution of the adopted children as heirs bec. it was found out that the adoption did not comply w/ the law. The SC held that the institution was valid. For it to be invalid, and be an exception to the general rule, 3 requisites must concur:
1. Cause for the institution must be stated in the will;
2. Cause must be shown to be false;
3. It must appear on the face of the will that the testator would not have made such institution if he had known the falsity of the cause.

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

If there is doubt as to whether there is a valid institution bec. of the false cause, resolve it in favor of validity.

Art. 851. If the testator has instituted only one heir, and the institution is limited to an aliquot part of the inheritance, legal succession takes place with respect to the remainder of the estate.
The same rule applies, if the testator has instituted several heirs each being limited to an aliquot part, and all the parts do not cover the whole inheritance.

Balane: The principle enunciated here has already been provided in Art. 841.

Assuming in par. 1
a. The testator has no compulsory heirs -- part of the whole estate not disposed of by will goes by intestacy.
E.g., No compulsory heirs and the testator says "I give 1/3 of my estate to X." 1/3 will go

to X and the 2/3 will go by intestacy.

b. Testator has compulsory heirs-- part of the free portion not disposed of by will goes by intestacy.

E.g., Two legitimate children and testator says "I give 1/4 of my estate to X." 1/2 will go to the 2 children, 1/4 will go to X, and 1/4 will go by intestacy.

The same applies when a vacancy occurs.

Art. 852. If it was the intention of the testator that the instituted heirs should become sole heirs to the whole estate, or the whole free portion, as the case may be, and each of them has been instituted to an aliquot part of the inheritance and their aliquot parts together do not cover the whole inheritance, or the whole free portion, each part shall be increased proportionally.

Balane: This article speaks of the testator's intention to give the entire free portion, or the entire inheritance, as the case may be, but he made a mistake in the addition of the different proportions.

Elements:

1. Several heirs;
2. Indicates his intention to give his entire estate to this heirs
    a. If no compulsory heirs, whole estate
    b. If w/ compulsory heirs, whole free portion
3. Indicates portions he wants to give to each
4. Total of portions is less than whole estate or free portion, as the case may be.

E.g., Testator has no compulsory heirs. He indicates in the will that his intention to give his entire estate to his heirs. He gives 1/4 to A, 1/6 to B, 1/3 to C. The estate is worth P120,000.

A	P30,000
B	20,000
C	40,000
	P90,000

What do you do with the remaining P30,000?

1. Get the least common denominator-- 12
A= 3/12, B= 2/12, C= 4/12

2. Get the ratio of the shares w/ each other.
A (3) : B (2) : C (4) - 3 + 2 + 4 = 9

3. Multiply the remainder by the share of each heir w/ respect to the ratio in number 2.
For A, 3/9 x 30,000 = 10,000
For B, 2/9 x 30,000 = 6,666.67
For C, 4/9 x 30,000 = 13,333.33

4. Add the result to what they originally received and the sum will be their complete

inheritance.

For A, 30,000 + 10,000 = 40,000
For B, 20,000 + 6,666.67 = 26,666.67
For C, 40,000 + 13,333.33 = 53,333.33

5. Add your figures in number 4 to make sure that it equals to the value of the entire estate. (To make sure that you did not make a mistake.)

40,000 + 26,666,67 + 53,333.33 = 120,000

Note: 6. If you want to get the inheritance of each right away, multiply the ratio in number 3 with the value of the whole estate.

For A, 3/9 x 120,000 = 40,000
For B, 2/9 x 120,000 = 26,666.67
For C, 4/9 x 120,000 = 53,333.33

You get the same results but faster.

Art. 853. If each of the instituted heirs has been given an aliquot part of the inheritance, and the parts together exceed the whole inheritance, or the whole free portion, as the case may be, each part shall be reduced proportionally.

Balane: The same principle as in Art. 852, only this time you decrease.

Elements:
1 to 3 -- same as those in Art. 852
4. Total of portion exceeds the whole estate, or whole free portion, as the case may be
E.g., same as above except that A gets 1/2, B gets 1/3, and C gets 1/4.

The value of the estate is P30,000.

A	15,000
B	10,000
C	7,500
	32,500

What do you do w/ the excess of P2,500?

1. Get the LCD, 12
A = 6/12, B = 4/12, C = 3/12

2. Get the ratio of the shares with each other
A (6) : B (4) : C (3) - 6 + 4 + 3 = 13

3. Multiply the excess by the share of each heir in the ratio in number 2.
For A, 6/13 x 2,500 = 1,153.84
For B, 4/13 x 2,500 = 769.23

For C, 3/13 x 2,500 = 576.93

4. Subtract the results in number 3 from what each heir was to receive initially.
For A, 15,000 - 1,153.84 = 13,846.16
For B, 10,000 - 769.23 = 9,230.77
For C, 7,500 - 576.93 = 6,923.07

5. Add the figures in number 4 to make sure it equals to the value of the whole estate.

13,846.16 + 9,230.77 + 6,923.07 = 30,000

Note: 6. If you want to get the inheritance of each right away, multiply the ration in number 3 by the value of the estate.

For A, 6/13 x 30,000 = 13,846.16
For B, 4/13 x 30,000 = 9,230.77
For C, 3/13 x 30,000 = 6,923.07

Q: If the testator makes 3 wills.
Will 1-- "I give 40% of my estate to A."
Will 2-- "I give 40% of my estate to B."
Will 3-- "I give 40% of my estate to C."

How will the estate by divided? There are two answers.

1. 1/3 will go to each. Apply Art. 853.
2. C gets 40%, B gets 30%, and A gets 30%. Assume the third will is incompatible to the first 2.

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

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

Balane:
A. Clarification:

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

2. Extends protection only to "compulsory heirs in the direct line." Is this redundant? Aren't compulsory heirs in the direct line? No. Spouses are compulsory heirs not in the direct line.

So what is the remedy of the wife who has been omitted? Demand her legitime.

Compulsory heirs in the direct line cover only ascendants and descendants.

B. *Preterition.*-- "*praeter*" means "to go beyond" -- not enough to know the meaning.

1. Who is a person preterited?

Manresa.-- "Complete omission from the will" -- Wrong! Why? It presupposes that if mentioned in the will, then the heir is not preterited. However, whether you are mentioned in the will or not has no effect on the *preterition*.

Illustrations:

(1) I have a son, A. The will states "I give 1/2 to B." A is not preterited bec. he gets the other half.

(2) I have a son, A. The will states "I give 1/3 to B and 1/3 to C." A is not preterited bec. he gets the other 1/3. His legitime, however, is impaired.

(3) I have a son, A. The will states "I give 1/2 to B, 1/2 to B, and to A, all my love." A, even if mentioned in the will, was preterited.

Preterition occurs if the heir receives nothing from the inheritance by way of testamentary disposition, devise, legacy, intestacy, or donation *inter vivos*.

2. Situations

a. Heir is mentioned but nothing is left to him-- Heir is preterited if he receives nothing by intestacy.

b. Heir is instituted in the will but the part she is instituted in is less than her legitime.-- There is no *preterition*.

Reyes v. Barreto-Datu.-- In the case, Lucia received a part of the estate through a judicially approved project of partition w/c was based on the will of her father. However, it was found out later on that he Salud was not really the child of her parents. As such, Lucia sought to annul the institution of Salud as heir claiming that she was preterited. The SC held that she was not preterited be. she had received a part of the estate. There is no *preterition* if the heir is given testamentary disposition, even if it be less than her legitime. The remedy of the heir is for the completion of her legitime pursuant to Art. 906.

3. Definition of *preterition*.-- *Preterition* happens when the compulsory heirs in the direct line are totally omitted from the inheritance, that is the heir got nothing by way of testamentarry disposition, donation, legacy, devise or intestacy.

C. Who can be preterited?

1. Legitimate children-- Yes.
2. Illegitimate children-- Yes. The law makes no distinction.
3. Parents, whether legitimate or illegitimate.-- Yes.

Nuguid v. Nuguid.-- In the case, Rosa died having 6 brothers and sisters and her parents. However, she instituted one of her sisters as her universal heir. The parents opposed the probate claiming they were preterited. The SC held that the parents were preterited. As such, the institution of the sister as universal heir is void. The estate will be distributed by intestacy. The SC further stated that just bec. you are an heir, but not a compulsory heir, it does not mean that you will receive anything. If compulsory heirs in the direct line are preterited, and the free portion had already been devised to other people, the annulment of the institution of heir will in effect anull your institution. Also, when the law says devise or legacy, this is used in its ordinary sense. The claim of the sister that her institution as a universal heir is equivalent to a devise is untenable. If such were accepted, it would render Art. 854 useless.

4. Grandparents.-- Yes.

5. Spouse.-- No.
6. Adopted child.-- Yes.

Acain v. Acain.-- In the case, Acain left his estate to his brothers, completely omitting his wife and legally adopted daughter. As such, the two opposed the probate of the will claiming they were preterited. The SC held that the adopted child was preterited but not the wife. A wife is not a compulsory heir in the direct line so she cannot be preterited. With respect to the adopted child, it is different. Under Art. 39 of PD 603, adoption gives to the adopted person the same rights and duties as if he were a legitimate child of the adopter and makes the adopted person a legal heir of the adopter. The SC further stated that since there were no devises or legacies, and a compulsory heir was preterited, the effect is, as if nothing was written in the will. The whole estate will be distributed by intestacy.

D. Effect of *preterition*.-- "Annul the institution of heir but devises and legacies shall be valid insofar as they are not inofficious." -- Abrogate, set aside, eliminate, cancel.

1. Effect of *preterition* (of parents) when there are no devises or legacies (Nuguid case)-- whole will is considered inexistent.

2. If there are devises or legacies.-- Set aside only the institution of heirs but not the institution of devisees and legatees. If the devise and legacy exceed the free portion, decrease the devise and legacy.

Solano v. CA.-- This case made a wrong decision. It made the effect of *preterition* the reduction of the share of the instituted heir rather than annulling the whole institution of heir.

Acain v. IAC.-- This case restored the correct interpretation laid down in Nuguid that *preterition* annuls the institution of heirs.

E.g., Testator has son, A. His will states "I give 1/2 of my estate to A and P300,000 to N." The estate is worth P600,000. How much will each get? N gets 300,000. A gets the other 300,000. M gets nothing.

E. Criticism
1. Why not extend the application to the wife?
2. Why distinguish between heir and devisee and legatee?

NOTE: This is the only case where it is important to know the distinction between heir, on the one hand, and devisee and legatee on the other.

Art. 855. The share of a child or descendant omitted in a will must first be taken from the part of the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken proportionally from the shares of the other compulsory heirs.

Balane: This is not a case of *preterition*. This is a case of completion of legitime.

1. Is this right limited or restricted to a child or descendant? No. It also applies to heirs similarly situated.
a. spouse

b. parents
c. ascendants.

2. Does this apply to *preterition*?

a. Yes.-- According to the Code Commission. Their intent was to make Art. 855 apply to *preterition*.

b. No.-- If you analyze the provision, it does not refer to *preterition*. It applies when something is left to an heir but is less than his legitime.

(i) Incomplete legitime.-- "taken from part not disposed of by will" -- heir will receive something by intestacy -- no *preterition*.

(ii) *Preterition.*-- If the whole estate is disposed of.-- Go to Art. 854.

3. Two errors

a. Why is it limited only to child or descendant? This (article) should be applicable to any compulsory heir whose legitime is impaired or who receives less than his legitime. (The latter) may institute an action to complete his legitime.

b. Where do you get the share to complete?

1. Vacant portion (undisposed)

2. If vacant portion is not enough-- "compulsory heirs." -- WRONG. You do not reduce the shares of compulsory heirs but the shares of testamentary heirs. If the compulsory heir gets more than his legitime, the excess can be reduced. Why? As to the excess, he is considered a testamentary heir.

Illustration: A has 3 children, X, Y and Z. His will states "I give X, 1/3 of my estate, A, 1/12 of my estate, and B, 1/2. The estate is worth 600,000.

X = 1/3 = 200,000 - excess 100,000
Z = 1/12 = 50,000 - lacks 50,000
B = 1/2 = 300,000
Y = 0 = 0 - lacks 100,000

Legitime - 300,000/ 3 = 100,000 each.
Lacks 150,000 (Z + Y)

1. Is Y preterited? No. There is 50,000 that he will get by intestacy. Y can demand completion of his legitime under Art. 855. He can get 50,000 from the undisposed portion. He just lacks 50,000. Where do you get the deficiency?

a. If we follow Art. 855, get from the compulsory heirs. In other words, get from X and Z proportionately. The result is that Z will complain bec. now his legitime would be incomplete.

b. Get the deficiency proportionally from testamentary heirs. Why? They are not entitled to any share if it impairs the legitime of the compulsory heirs.

Total lack of legitimes -- 150,000.
1. Get the 50,000 undisposed of -- Lacking only 100,000.
2. Get proportionally from the shares of testamentary heirs.

Testamentary heirs:	X = 100,000 -	25,000
	B = 300,000 -	75,000
		100,000

Art. 856. A voluntary heir who dies before the testator transmits nothing to his heirs.

A compulsory heir who dies before the testator, a person incapacitated to succeed, and one who renounces the inheritance, shall transmit no right to his own heirs except in cases expressly provided for in this Code.

Balane:

Kind of Heir	Predecease	Incapacity	Renunciation
Compulsory	TN Rep.	TN Rep.	TN No Rep.
Voluntary	TN Rep.	TN No Rep.	TN No Rep.
Intestate	TN Rep.	TN Rep.	TN No Rep.

Legend: TN-- Transmits Nothing
Rep.-- There is Representation
No rep.-- There is no representation.

Observations:
1. There is no transmission of any right from an heir to his own heirs for any of the three cases (P, I and R.) There is no exception.

2. For voluntary, there is no representation, no matter what the reason for disqualification is

3. For renunciation, there is no representation, no matter what kind of heir.

Section 3.-- *Substitution of Heirs.*

Art. 857. Substitution is the appointment of another heir so that he may enter into the inheritance in default of the heir originally instituted.

Balane:
1. "In default." -- failure to inherit because of: (a) predecease, (b) renunciation or (c) incapacity.

a. Is it a complete definition? No. It is incomplete bec. default covers or defines only simple substitution and not *fideicommissary* substitution.

b. Complete definition.-- Substitution is the appointment of another heir so that he may enter into the inheritance either in default of the heir originally instituted or after.

Simple.-- Second heir enters after the default of the first
Fideicommissary.-- Second heir enters after the first.

2. Basis for substitution.-- It covers the free portion only.

Bec. it is possible that the testator may have a second preference. In relation to the first heir instituted, the first is preferred over the substitute. But in default or after the first, the testator would rather that the inheritance go to the substitute than by intestacy.

Allowing substitution is giving respect to the first and second preference of the testator.

The power to make substitution is based on the power to make testamentary dispositions. This is really a condition imposed on the institution of heirs.

E.g., A has sons whom he does not want to get the free portion. He wants to give it to B. But B may die before A. After B, A prefers C to get it. As bet. C and his children, A would rather that C get it. As such, C is appointed by the testator as B's substitute.

Art. 858. Substitution of heirs may be:
(1) Simple or common;
(2) Brief or compendious;
(3) Reciprocal; or
(4) *Fideicommissary*.

Balane:
A. Kinds of Substitution:
1. Simple or common (Art. 859.)
2. *Fideicommissary*. (Art. 863.)

B. Why did we earlier define substitution w/ only 2 kinds? Bec. there are only 2 kinds. Brief and reciprocal are just variations and not kinds of substitutions. You cannot have a purely reciprocal substitution. All substitutions are either simple or *fideicommissary*.

C. In the OCC, there were two others:

1. *Ejemplar*.-- A substitution a father was allowed to make bec. his son was insane. This was a kind of *fideicommissary*.

2. *Popular*.-- A substitution a father made in behalf of a child who died before he reaches 18.

Art. 859. The testator may designate one or more persons to substitute the heir or heirs instituted in case such heir or heirs should die before him, or should not wish, or should be incapacitated to accept the inheritance.

A simple substitution, without a statement of the cases to which it refers, shall comprise the three mentioned in the preceding paragraph, unless the testator has otherwise provided.

Balane: Simple Substitution.

1. Causes/ grounds for the second heir to inherit in place of the first.
    a. Predecease of the first heir
    b. Renunciation of the first heir
    c. Incapacity of the first heir

2. Two ways of making a simple substitution:
    a. Enumerate all the cases.
    E.g., "I institute A, in case A predeceases me, or renounces, or is incapacitated to succeed, then B will substitute him."

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

Note: The testator may limit the operation of the 3 causes. He can just mention what he wants to apply, e.g., "I institute A, and if he predeceases me, then B will substitute him." In such a case, B will only substitute A if A dies before the testator.

However, if the cause is not covered by the causes given in this article, then the estate will pass by intestacy.

Art. 860. Two or more persons may be substituted for one; and one person for two or more heirs.

Balane:
1. Brief or Compendious.-- One substitutes for two or more heirs or two or more substitutes for one heir, e.g., "I institute A to 1/8 of my estate and as his substitute by way of simple substitution, I designate X and Y."

2. This is just a variation of either simple or *fideicommissary*.
    E.g., simple-- look at the example above.
    Fideicommissary-- "I institute A to 1/2 of my estate and impose upon him the obligation to preserve and transmit the property upon his death to X and Y."

3. Strictly or technically speaking, brief and compendious are not the same. Brief-- 2 or more for one heir; compendious -- one for two or more heirs.
    Note, however, they are synonymous and may be used interchangeably.

4. Problem: "I institute A, B and C to 1/3 each of my estate and in case they all die before me, I institute D as substitute by way of simple substitution." If A and B predecease the testator, will D get their shares? No. The substitution will take effect only upon the death of all the three. However, if what the will stated was "any or... all die before me," then D will get A and B's shares.

Art. 861. If heirs instituted in unequal shares should be reciprocally substituted, the substitute shall acquire the share of the heir who dies, renounces, or is incapacitated, unless it clearly appears that the intention of the testator was otherwise. If there are more than

one substitute, they shall have the same share in the substitution as in the institution.

Balane: Reciprocal substitution. The heirs are substituted for each other based on either simple or *fideicommissary* substitution. If both are disqualified, then no substitution will take place and the estate will pass by intestacy.

Example of second sentence: "I institute A to 1/3, B to 1/6, and C to 1/2 of my estate and by way of simple substitution, I institute them as substitutes of one another." If C predeceases the testator, how will his share be divided if the estate is worth P60,000?

A = 1/3 = P20,000
B = 1/6 = 10,000
C = 1/2 = 30,000

How will the 30,000 be divided between A and B?

1. Get the LCD of the remaining heirs. In the example, it is 6.
2. Get the ratio bet. the remaining heirs and the sum of the ratios.

A = 2/6, B = 1/6. The ratio between A and B is 2 : 1. The sum of the ratios is 3.

3. Two ways:

a. Divide the 30,000 by the sum of the ratios (3) and multiply the result by the ratio bet. them of each heir.

30,000/ 3 = 10,000. A = 2 x 10,000 = 20,000
B = 1 x 10,000 = 10,000

b. Multiply 30,000 by the ratio of each heir with respect to the total ratio.

A = 2/3 x 30,000 = 20,000; B = 1/3 x 30,000 = 10,000

4. Add the result in number 3 to what they initially received.

A = 20,000 + 20,000 = 40,000; B = 10,000 + 10,000 = 20,000.

Note: If you want another way to compute:

1. Get the LCD between A and B. In this case 6.

A = 2/6, B = 1/6

2. Get the ratio between A and B. In this case, 2 : 1, A = 2/3, B = 1/3

3. Multiply the original share of C by the ratio in 2.

A = 2/3 x 1/2 = 2/6, B = 1/3 x 1/2 = 1/6

4. Add the result in number 3 to their original shares.

A = 2/6 + 2/6 = 4/6, B = 1/6 + 1/6 = 2/6

5. Multiply the result in number 4 by the value of the estate.

A = 4/6 x 60,000 = 40,000; B = 2/6 x 60,000 = 20,000.

Art. 862. The substitute shall be subject to the same charges and conditions imposed upon the instituted heir, unless the testator has expressly provided the contrary, or the charges or conditions are personally applicable to the heir instituted.

Balane: In substitution, the 2nd heir takes the place of the first heir. A kind of subrogation.
As such, the general rule is: The second is subject to the same charges and conditions as the first heir.

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

The article does not only cover charges and conditions but also the rights of the first heir, subject to the same exceptions.

Art. 863. A *fideicommissary* substitution by virtue of which the fiduciary or first heir instituted is entrusted with the obligation to preserve and to transmit to a second heir the whole or part of the inheritance, shall be valid and shall take effect, provided such substitution does not go beyond one degree from the heir originally instituted, and provided, further, that the fiduciary or first heir and the second heir are living at the time of the death of the testator.

Balane: **Four Elements of a *Fideicommissary* Substitution:**

1. There must be a first heir or fiduciary.

For the substitution to operate, the first heir receives property, either upon the death of the testator or upon the fulfillment of any suspensive condition imposed by the will. As distinguished from a simple substitution where the second heir receives property only upon default of the first heir. First heir does not receive the property.

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

a. Essence of a *fideicommissary* substitution-- dual obligation.
b. "Given time."-- Provided by the testator; if not, then it is understood that the period is the lifetime of the fudiciary.

PCIB v. Escolin.-- In the case, the spouses executed reciprocal wills. It provided that the share in the conjugal assets will pass to the surviving spouse and that the surviving spouse can do whatever he or she wants with the inheritance, even sell it, and if there is any residue from the inheritance from the other spouse upon the death of the surviving spouse, it shall pass to the brothers and sisters of the spouse who first died. The wife died first. The husband did not liquidate the conjugal assets bec. he was the sole heir of his wife. Upon the husband's death, it is now questioned whether there is any residue from the wife's estate that could pass to her brothers and sisters. PCIB, (and the) administratrix of the husband claims that: (1) There was no *fideicommissary* substitution bec. there was no obligation upon the husband to preserve and transmit the prop. to the brothers and sisters of the wife as seen in his authority to sell the property, and (2) since there was an invalid attempt to make a substitution, then the testamentary disposition is void and there can be no transmission of rights to the brothers and sisters. The SC agreed w/ contention no. 1 on the same ground. The second requisite was absent and there could be no *ficeicommissary* substitution. With regard to the second contention, the SC disagreed. The SC said there was a simultaneous substitution. The institution of the husband was subject to a resolutory condition while the institution of the brothers and sisters was subject to a suspensive

condition. Both conditions are one and the same. It is the existence in the husband's estate of assets he received from his wife at the time of his death. If there is, the husband's right to the residue is extinguished upon his death while the right of the brothers and sisters vests at the same time.

d. Scaevola.-- Characterized the situation as a legacy or devise of the residue.

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

a. "One generation." Does it refer to the degree of relationship or number of substitution? It refers to the degree of relationship. See Palacios v. Ramirez.

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. They cannot be any more *fideicommissary* substitution coming from the same testator. In other words, there can only be one *fideicommissary* transmission such that after the first, there can be no second *fideicommissary* substitution.

Palacios v. Ramirez.-- In the case, 2/3 of the usufruct of the free portion was given to Wanda, w/ 2 other persons not related to her as her substitutes by way of simple and *fideicommissary* substitution. Her grandnephews object on the ground that there could be no *fideicommissary* substitution bec. the substitutes were not w/in one degree of each other. The SC agreed w/ the nephews. It said, quoting Tolentino, that one degree refers to one generation. As such, the *fideicommissary* can only be either a parent or child of the fiduciary.

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

a. From the moment of the death of the testator, the rights of the first and second heir are vested. (look at Art. 866.)

b. Nature of right of first heir.-- Similar to usufruct.-- Possessory and enjoyment rights w/o right to alienate.

If fiduciary is able to register the property in his name, *fideicommissary* should annotate his claim on the land on the title to protect himself against any alienations in favor of innocent third parties.

Balane disagrees w/ Tolentino that there can be no successive *fideicommissaries* or several transmissions. If this is allowed, chaos will result if the *fideicommissaries* die. You will not know who will get the property and that the property may be tied up for centuries..

Art. 864. A *fideicommissary* substitution can never burden the legitime.

Balane: In fact, no testamentary disposition can burden the legitime bec. legitime is transmitted by operation of law upon the death of the testator.

Art. 865. Every *fideicommissary* substitution must be expressly made in order that it may be valid.

The fiduciary shall be obliged to deliver the inheritance to the second heir, without other deductions than those which arise from legitimate expenses, credits and

improvements, save in the case where the testator has provided otherwise.

Balane: There are 2 ways of making a *fideicommissary* substitution:

1. By naming it.-- "I institute A to 1/2 of my estate, and by way of *fideicommissary* substitution, I institute B as his substitute."

2. By imposing upon the fiduciary the obligation to preserve and transmit.-- "I institute A to 1/2 of my estate and impose upon him the obligation to preserve and to transmit the same to B upon his return."

Art. 866. The second heir shall acquire a right to the succession from the time of the testator's death, even though he should die before the fiduciary. The right of the second heir shall pass to his heirs.

Balane: This relates to the fourth requisite of *fideicommissary*.

At the time of the testator's death, right of the first and second heir become vested.

Art. 867. The following shall not take effect:

(1) *Fideicommissary* substitutions which are not made in an express manner, either by giving them this name, or imposing upon the fiduciary the absolute obligation to deliver the property to a second heir;

(2) Provisions which contain a perpetual prohibition to alienate, and even a temporary one, beyond the limit fixed in article 863;

(3) Those which impose upon the heir the charge of paying to various persons successively, beyond the limit prescribed in article 863, a certain income or pension;

(4) Those which leave to a person the whole or part of the hereditary property in order that he may apply or invest the same according to secret instructions communicated to him by the testator.

Balane: **Reasons why they will not take effect:**

1. Relate to Art. 865, par. 1. It will not take effect as a *fideicommissary* substitution but may take effect as something else.

2. This is not a *fideicommissary* but a prohibited institution.

a. Perpetual prohibition will freeze the property w/c is against public policy.

b. Temporary prohibition is allowed but cannot go beyond the limit in Art. 863-- limit is the death of the fiduciary. Cannot prohibit alienation beyond the death of the fiduciary. When the property goes to the second heir, there is no more prohibition.

Commentators say that it refers to Art. 870 rather than Art. 863. They contend that the limit is 20 yrs. In such a case, the contention is valid if you do not make it applicable to substitutions.

Q: If you prohibit for 30 yrs., what will happen?
A: There are 2 answers.

1. The whole period is void.
2. Only the first 20 years is valid. (Balane agrees w/ this.)

3. Attempt to circumvent one degree limitation of *fideicommissary* substitution.

E.g., "I give 1/3 of my estate to X and impose upon him the obligation to give a P5,000 pension to A and in A's death, to A's son." This is allowed. But if this is extended to the son of the son of A, then it won't be allowed. The first and second recipient must be w/in one degree. But it cannot extend beyond the second recipient.

4. Dummy provision. This is usually used as a means to circumvent some prohibition of law.

Example, Prohibition of giving to paramour

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

a. In such a case, the institution will not benefit X. Even if X shows a written agreement bet. A and B, it cannot be enforced bec. it is contrary to law.

b. As regards B, he can keep the inheritance even if he double-crosses A. A instituted B at his own risk that he may be double-crossed by B. Too bad for X.

Art. 868. The nullity of the *fideicommissary* substitution does not prejudice the validity of the institutions of the heirs first designated; the *fideicommissary* clause shall simply be considered as not written.

Balane: The nullity of the *fideicommissary* substitution will not affect validity of institution of the first heir.

E.g., "I hereby institute A to 1/3 of my estate under obligation to preserve and to transmit the same to B upon his death."

a. If institution of B is invalid, what will happen to the institution of A? Valid. Institution of A is valid w/o substitution.

b. If the institution of A is invalid, what will happen to the institution of B? The law does not provide. Think about it.

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

Balane: This is similar to Art. 867, par. 3

Example, "I give to A naked ownership, and to B the usufruct and upon B's death, to his son C." This is valid. W/in the limit of Art. 863. If it goes to the son of the son of B, then it is invalid.

Note: Just as there can be a substitution w/ regard to the usufruct, there can also be a substitution w/ regard to the naked ownership.

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

Balane: This has nothing to do w/ substitution. It refers to simple institution of heir, devisee or legatee.

Q: Can it go beyond 20 yrs?
A: There are 2 answers.
1. No. The whole period is void.
2. No. But valid only for the first 20 years.

Section 4.-- *Conditional Testamentary Dispositions and Testamentary Dispositions With a Term*

Articles 871-875 talk of three things: Testamentary dispositions with a--
1. Condition
2. Term-- certain as to time or certain as to occurrence
3. Mode

a. Similarity between condition and term.-- Both refer to a future event.
Difference between condition and term.-- A condition is uncertain; a term is certain.

b. Mode is not included in the title of the section .-- An oversight.

c. Rationale for right to make either of the three:
1. Right stems from the right of freedom to dispose of his property *mortis causa*. If he can dispose of his property *mortis causa*, then he can certainly impose either a condition, term or mode.

2. Same principle as substitution
Simple substitution-- special kind of condition
Fideicommissary-- Institution subject to some encumbrance

d. The arrangement of this Section is disorganized. To rearrange:
1. General Provisions-- applies to all three-- Articles 871 and 872.
2. Condition.-- Articles 873 to 877, 879 to 881, 883, par. 2, 884
3. Term.-- Articles 878, 885
4. Mode.-- Articles 882, 883 par. 1

1. General Provisions.

Art. 871. The institution of an heir may be made conditionally, or for a certain purpose or cause.

Balane: This gives the testator the right to make these dispositions. The article did not include an institution with a term. This is an oversight.

Art. 872. The testator cannot impose any charge, condition or substitution whatsoever upon the legitimes prescribed in this Code. Should he do so, the same shall be considered as not imposed.

Balane: General limitation: The testator cannot impair the legitime. Why? Bec. the

testamentary disposition is based on the power to dispose *mortis causa.* Legitimes, on the other hand, are passed by operation of law.

This is repeated in Art. 904.

2. Conditions.

Balane: A suspensive condition gives rise to the right if it happens. A resolutory condition extinguishes the right if it happens.

Kinds of Conditions:

1. Impossible Conditions.

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

Balane: Impossible conditions include those w/c are illegal, against public order and public policy.

Effect: It nullifies the condition. The condition is deemed as not imposed. The testamentary disposition becomes pure, absolute and unconditional.

Compare with donations (Art. 727.) and onerous obligations (Art. 1183.)

> **Art. 727. Illegal or impossible conditions in simple and remuneratory donations shall be considered as not imposed.**
>
> **Art. 1183. Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.**

Nullifies the Condition	Nullifies the Obligation
a. Testamentary dispositions	a. Onerous obligations
b. Donations.	

Why the difference? Testamentary dispositions and donations are acts of liberality. The moving factor is liberality. If you take away the impossible condition, the moving factor still exists, the liberality. While in onerous donations, the condition is an element of cause. If the condition is impossible, there is a failure of cause. This results in a void obligation. E.g., "I sell you my car if you impregnate the great blue bear of Antartica and if you pay me P10,000." Since there is an impossible condition, there is a failure of cause. Since there is no cause, then the obligation is void.

2. Condition Prohibiting Marriage.

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

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

Balane: Distinguish.--

1. If the condition is on the first marriage.-- The condition is considered as not imposed.

E.g., "I give 1/3 of my estate to A if she does not get married." The condition is considered as not imposed.

2. If the condition is imposed on the second marriage.-- General rule: The condition is deemed as not imposed.

Exception: Valid if imposed by: (a) spouse; (b) ascendants of spouse; (c) descendants of spouse.

Example: General rule: "I give 1/3 of my estate to Mr. A on the condition that if he should be widowed, he will not get married." The condition is deemed as not imposed here.

Exception: "I give the entire free portion of my estate to my husband A on the condition that if I predecease him, he will not get married." The condition is valid in this case.

Other Situations:
1. What about a condition to contract marriage? Valid bec. it is not prohibited and by contrary implication.
2. What about a condition to enter into religious life? Valid.
3. What about a condition to renounce a religion? Not valid.

The second paragraph relaxes the rule to go around the prohibition of the first par. E.g., "I give A a pension of P10,000 during the entire time she is single." This is a valid condition.

Art. 875. Any disposition made upon the condition that the heir shall make some provision in his will in favor of the testator or of any other person shall be void.

Balane: E.g., "I give 1/3 of my estate to A provided he makes a will instituting me (or B) as heir." The disposition is void. Why?

a. It is against public policy bec. it impairs the voluntariness of wills;

b. It is against revocability: If you can alter your will after receiving, then it is a breach of good faith. But if the testator is not allowed to alter the will, the condition is against revocability. Either option is unacceptable.

Consider (the article) restrictively.-- Limit it to cases where the beneficiary is to make a will instituting the testator or a third person.

4. Suspensive Conditions.

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

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

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

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

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

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

Art. 883. xxx

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

Balane: **There are Three Kinds of Suspensive Conditions:**

1. Purely Potestative.-- The fulfillment of the condition depends solely upon the will of the heir, devisee or legatee.

E.g., "I give my entire free portion to Erap should he shave his moustache."

General rule: The condition must be fulfilled as soon as the heir learns of the testator's death.

Exception: If the condition has already been fulfilled and it cannot be fulfilled again, the condition is deemed fulfilled.

Constructive compliance is applicable.

2. Casual.-- The fulfillment of the condition depends solely on chance or on the will of a third person.

E.g., "I give X, 1/3 of my estate should Mayon erupt one year from now."

3. Mixed.-- The fulfillment of the condition depends partly on chance and partly on the will of the heir, devisee, or legatee.

E.g., "I give one million to A provided he sets up a foundation for the victims of the next eruption of Mayon."

Rules for casual and mixed conditions:

General rule: The condition may be fulfilled any time, either before or after the testator's death unless the testator provides otherwise.

Why? It is not w/in the heir, devisee or legatee's control.

Qualification: If condition is already fulfilled at the time of the execution.

a. Testator is unaware-- The condition is deemed complied w/ or fulfilled.

b. Testator is aware.-- (1) If the condition can no longer be fulfilled again, it is deemed fulfilled; (2) If the condition can still be fulfilled, fulfill it again.

Rules for Constructive compliance.-- That when the heir, devisee or legatee has done everything to comply w/ the condition but the condition still does not happen.

1. Purely potestative.-- Applicable.
2. Casual.-- Not applicable.
3. Mixed.-- a. By will - (1) Person interested - applicable
(2) Person not interested - not applicable
b. By chance.-- Not applicable.

5. Other Provisions.

Art. 880. If the heir be instituted under a suspensive condition or term, the estate shall be placed under administration until the condition is fulfilled, or until it becomes certain that it cannot be fulfilled, or until the arrival of the term.

The same shall be done if the heir does not give the security required in the preceding article.

Balane: If the suspensive condition is not fulfilled, place the estate under administration until:

1. The condition is fulfilled, in w/c case the estate should be given to the instituted heir;
2. It becomes obvious that it cannot be fulfilled, in w/c case, the estate should be given to the intestate heirs.

E.g., "I give a car to A when he places first in the bar." Testator dies while A is still taking law. The car is put under administration until: (1) A tops the bar, in w/c case the car should be given to him; or (b) A dies while reviewing in w/c case, the car should be given to the intestate heirs bec. the condition has become obviously impossible of being fulfilled.

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

Art. 884. Conditions imposed by the testator upon the heirs shall be governed by the rules established for conditional obligations in all matters not provided for by this Section.

Balane: Rules on conditional obligations will apply suppletorily. Articles 1179 to 1192.

3. Term.

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

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

The heir must survive the testator.

If the heir dies after the testator but before the term expires, he transmits his rights to his

own heirs bec. of the vested right.

E.g., "I give P1M to X, five years after my death."

Compare this w/ conditional.-- Art. 1034, par. 3-- Qualification of heir-- The heir must be alive and qualified at the time of the testator's death and when the condition happens.

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

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

Balane: What happens when the testator dies? Distinguish between:

1. Suspensive (*ex die*)-- give it to the intestate heirs for them to enjoy but in order to protect the right of the instituted heir, intestate heirs must put up a bond (*caucion muciana.*)

2. Resolutory (*in diem*.)-- Give it to the instituted heirs but when the term arrives, he must give it to the intestate heirs. The instituted heir does not have to file a bond.

4. Mode.

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

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

Balane: A *mode* is an obligation imposed upon the heir to do or to give something.

E.g., "I give 1/3 of me estate to A but impose upon him the obligation to pay for my son's education."

A condition suspends but does not obligate while a mode obligates but does not suspend.

Rules:

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

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

xxx

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

Instances when it is needed:

1. Suspensive condition.-- Art. 885.

2. Negative potestative condition.-- Art. 879.
3. Mode.-- Art. 882, par. 2.

Section 5.-- *Legitime.*

Balane: Legitime comes a French word w/c means "legitimate share.." This was derived from the Spanish Civil Code but was simplified.

There are 3 kinds of Systems:

1. Partial Reservation.-- set aside for compulsory heirs
2. Common law-- no reservation except for support
3. Total reservation-- everything is set aside.

For the Phils., we have partial reservation.

New Civil Code	Spanish Civil Code		
Legitimes/ Free portion	Short Legitime	Mejora Betterment	Free Portion
Abolished *mejora* bec.: 1. It opened abuses and gave parents power to influence/ blackmail their children;	goes to the children in equal shares	goes to the children but the testator has freedom as to how the children will share it.	
2. It was a system our people never applied nor understood.	Long Legitime		

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

Balane: 1. There is compulsion on the part of the testator to reserve that part of the estate w/c corresponds to the legitime.

The law sets a fractional portion of the estate aside for the compulsory heirs.

The law does not specify w/c prop. to reserve but only sets aside a fractional portion of the estate.

There is no obligation on the compulsory heirs to accept.

2. The prohibition imposed on the testator is that he is prohibited from making gratuitous disposition: (a) testamentary disposition *mortis causa;* (b) donation *inter vivos*

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

E.g., A is married to B. They had a child C. A owns lot worth P5M.

a. A sells the lot to D for P5M. This is valid. The prohibition does not cover an onerous disposition bec. this involves an exchange of values.

b. A donates to D. This is not valid if it impairs the legitime of B and C.

Art. 887. The following are compulsory heirs:

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;

(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

(3) The widow or widower;

(4) Acknowledged natural children, and natural children by legal fiction;

(5) Other illegitimate children referred to in article 287.

Compulsory heirs mentioned in Nos. 3, 4 and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

Balane: There are Five (5) kinds of Compulsory heirs:

1. Legitimate children and descendants
2. Legitimate parents and ascendants
3. Widow or widower
4. Acknowledged natural children, and natural children by legal fiction
5. Other illegitimate children

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

Rosales v. Rosales.-- In this case, the deceased was the mother-in-law of the plaintiff. The plaintiff's husband had predeceased his mother. The plaintiff widow seeks a share in her mother-in-law's estate claiming she is a compulsory heir being a widow. The SC denied her claim bec. the widow in the law refers to the widow of the deceased and not of a relative of t he deceased.

Three Kinds of Relationship Among Compulsory Heirs:

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

2. Secondary.-- Legitimate parents, and in their absence, legitimate ascendants
They inherit only in the absence of default of the primary.

3. Concurring.-- Surviving spouse and illegitimate children. They get their legitime together w/ the primary or secondary heirs.

Neither exclude primary or secondary heirs nor each other.

Except: Illegitimate children exclude illegitimate parents.

Articles 888 to 903. Different Combinations

I. According to Tolentino (all shares are w/ respect to the whole estate unless otherwise provided.)

1. Legitimate children 1/2, in equal portions, whether they survive alone or with concurring compulsory heirs. (Art. 888.)

2. One legitimate child -- 1/2 (Art. 888.)
Surviving spouse -- 1/4 (Art. 892, par. 1.)

3. Legitimate children -- 1/2, in equal portions (Art. 888.)
Surviving spouse -- share equal to that of each child (Art. 892, par. 2.)

4. Legitimate children -- 1/2, in equal portions. (Art. 888.)
Natural children -- 1/2 the share of each legitimate child (Art. 895, par. 1.)

* 5. Legitimate children -- 1/2, in equal portions. (Art. 888.)
Illegitimate children -- 2/5 the share of each legitimate child (Art. 895, par. 2.)

* 6. Legitimate children -- 1/2, in equal portions.
Natural children -- 1/2 of the share of a legitimate child. (Art. 895, par. 1.)
Illegitimate children -- 4/5 of the share of each natural child. (Art. 895, par. 2.)

* 7. One legitimate child -- 1/2 (Art. 888.)
Natural children -- 1/2 of the share of a legitimate child. (Art. 895, par. 1.)
Illegitimate children -- 4/5 of the share of a natural child. (Art. 895, par. 2.)
Surviving spouse -- 1/4 (Art. 892, par. 1.)

NOTE: All concurring heirs get their share from the free portion. The surviving spouse will be preferred over the natural and illegitimate children, whose share may suffer reduction pro rata. (Art. 895, last par.)

8. Legitimate children -- 1/2, in equal portions. (Art. 888.)
Natural children -- 1/2 of the share of a legitimate child. (Art. 895, par. 1.)
Illegitimate children -- 4/5 of the share of a natural child. (Art. 895, par. 2.)
Surviving spouse -- share equal to that of a legitimate child. (Art. 892, par. 2, 897, 898.)

9. Legitimate parents -- 1/2, whether they survive alone or w/ concurring compulsory heirs. (Art. 889.)

10. Legitimate parents -- 1/2 (Art. 889.)
Natural children -- 1/4, in equal shares. (Art. 896.)

11. Legitimate parents -- 1/2 (Art. 889.)
Illegitimate children -- 1/4, in equal shares (Art. 896.)

* 12. Legitimate parents -- 1/2 (Art. 889.)

Natural children ------- \ 1/4 (Art. 896) but each illegitimate child gets 4/5 of the share of each natural child (Art. 895
Illegitimate children --- / par. 2.)

13. Legitimate parents -- 1/2 (Art 889.)
Surviving spouse -- 1/4 (Art. 893.)

* 14. Legitimate parents -- 1/2 (Art. 889.)
Natural children ------ \ 1/4 (Art. 896) but each illegitimate child gets 4/5 of the share of each natural child. (Art. 895,
Illegitimate children -- / par. 2.)
Surviving spouse -- 1/8 (Art. 899.)

15. Natural and/ or illegitimate children -- all together get 1/2 (Art. 901.) If all natural or all illegitimate, dive the portion equally.

If some are natural and others illegitimate, each of the illegitimate child gets only 4/5 of the share of each natural child. (Art. 895, par. 2.)

* 16. Natural and/ or illegitimate children -- 1/3 (Art. 894.), dividing it as in number 15.
Surviving spouse -- 1/3 (Art. 894.)

17. Surviving spouse alone -- 1/2 or 1/3 if the marriage is in *articulo mortis* and the deceased dies w/in 3 months after the marriage. (Art. 900.)

18. Illegitimate parents (natural or otherwise) alone -- 1/2 (Art. 903.)

19. Illegitimate parents -- none. (Art. 903.)
Children or any class -- same as in nos. 1, 4, 6 and 15, as the case may be.

20. Illegitimate parents -- 1/4
Surviving spouse -- 1/4 (Art. 903.)

II. According to Balane (all shares are w/ respect to the whole estate unless otherwise provided.)

1. 2 legitimate children -- 1/2 shared equally = 1/4 each
Surviving spouse (hereinafter SS) -- 1/4

2. 5 Legitimate children -- 1/2 shared equally = 1/10
SS -- same share as in legitimate child = 1/10

OBSERVE: There is an inverse proportion between number of children and the share of the SS.

3. 1 leg. child -- 1/2
SS -- 1/4

General rule: SS gets share equal to 1 leg. child.
Exception: If only 1 leg. child, SS gets 1/4

4. 2 leg. parents -- 1/2 shared equally
   SS -- 1/4

5. 2 leg. parents -- 1/2 shared equally
   SS -- 1/8
   1 illeg. child -- 1/4

6. 2 leg. parents -- 1/2 shared equally
   3 illeg. children -- 1/4 shared equally

7. 2 illeg. parents -- none
   3 illeg. children -- 1/2 shared equally

8. 1 adopted child -- 1/2
   2 leg. parents -- none.

9. SS -- 1/3
   4 illeg. children -- 1/3 shared equally

10. SS -- 1/4
    4 illeg. children -- 1/2 of the share of a leg. child = 1/8 each
    2 leg. children -- 1/2 shared equally = 1/4 each
    If it exceeds the estate, ratably diminish the legitime of the illeg. children = 1/16

11. 2 illeg. parents -- 1/4 shared equally
    SS -- 1/4

12. 2 leg. children -- 1/2 shared equally
    SS -- share equal to 1 leg. child = 1/4
    __ leg. parents -- none

13. 1 adopted child -- \ 1/2 shared
    1 leg. child ------- / equally
    SS -- 1/4

14. SS -- 1/4
    Illeg. parents -- none
    1 adopted child -- 1/2

15. SS alone -- 1/2 except if the marriage is in *articulo mortis*, in w/c case the share is 1/3

    a. Marriage is in articulo mortis
    b. Dies w/in 3 months
    c. Not lived together for 5 years
    d. Person who dies is the sick spouse

16. 1 adopted child -- 1/2
    1 illeg. child -- 1/2 of the share of an adopted child = 1/4

17. 8 leg. children -- 1/2 shared equally = 1/16

1 illeg. child -- 1/2 of the share of a leg. child = 1/32
SS -- same as the share of 1 leg. child = 1/16

18. 8 leg. children -- \ 1/2 shared equally
1 adopted child - / = 1/18 each
1 illeg. child -- 1/2 of the share of a leg. child = 1/36
SS -- same share as 1 leg. child = 1/18

19. 1 leg. parent -- 1/2
SS -- 1/8
1 illeg. child -- 1/4

20. 1 leg. parent -- 1/2
SS -- 1/4

21. 1 leg. parent -- 1/2
1 illeg. child -- 1/4

22. 1 adopted child -- \ 1/2 shared equally
1 leg. child ------- / = 1/4
SS -- same share as a leg. child = 1/4
1 illeg. child -- 1/2 share of leg. child = 1/8
2 leg. or illeg. parents -- none

23. 1 adopted child -- 1/2
SS -- 1/4
1 illeg. child -- 1/4
2 leg. or illeg. parents -- none

Under the Family Code:
1. If the decedent died before the Family Code took effect -- leg. : natural : illeg. = 10 : 5 : 4

2. If the decedent died after the FC took effect -- leg. : illeg. = 2 : 1. Do not distinguish between natural and spurious.

(conc)urring fraction -- 1/2 -- called basic legitime
In most cases, there will be a group or single heir who will get 1/2 of the estate.

Exceptions: (1) Art. 894. -- Illeg. children (1/3) and SS (1/3)
(2) Art. 903. -- Illeg. parents (1/4) and SS (1/4)
(3) Articles 900 -- SS alone in case of marriage in *articulo mortis* with the following requisites:

a. Marriage in *articulo mortis*
b. The spouse dies w/in 3 months
c. They have not lived together for 5 years
d. Spouse who dies is the sick spouse

Example, A, in the ICU, is rich and dying of AIDS. B, who has not lived w/ A, accepts A's proposal of marriage. They get married in the hospital. After getting married, A lapses into a

coma. The doctor sends B to buy the medicine. As B is crossing the street, she is run over by a bus and dies. A is the only compulsory heir of B. Is this the marriage in *articulo mortis* contemplated by the 3rd exception? No. The one who should die w/in 3 months should be A for the exception to apply.

Rationale for the exception in number 3 -- It is the law's way of showing its distaste to marriages for convenience or for interest or gain.

Exception to exception: If they have lived together for at least 5 years before the marriage. This shows that it was not only for interest. Now that one is dying, to reward the other spouse.

Exception to number 3 -- Applies only if the wife is (the) only compulsory heir. Why? Bec. in other cases, she will always get less than 1/2. Does not also apply to intestacy if the wife is the only intestate heir. She will get the whole estate. In such a case, the testator was not given a change to make a will. If given a chance, he could have named other people.

Art. 888. The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided.

Balane: 1. If there are legitimate children, they will get collective legitime of 1/2 of the estate. It does not say how they will divide the legitime. Commentators agree that they will divide the 1/2 equally regardless of age, sex, marriage of origin (whether 1st, 2nd, etc.)

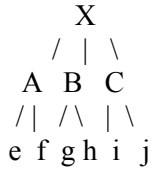
2. Why descendants? Rule: Nearer excludes more remote.

If there are children, they will exclude the more remote descendants, e.g., grandchildren

When descendants?

a. Right of representation exists

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



a. If A, B and C renounce, grandchildren will inherit

b. If only B renounces, legitime will be divided into 2 only, B's children cannot represent him.

3. Other half of the estate -- free portion. Subject to the free disposal of the testator. If not

disposed of by the testator, then it will go by intestacy.

Art. 889. The legitime of legitimate parents or ascendants consists of one-half of the hereditary estates of their children and descendants.

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

Art. 890. The legitime reserved for the legitimate parents shall be divided between them equally; if one of the parents should have died, the whole shall pass to the survivor.

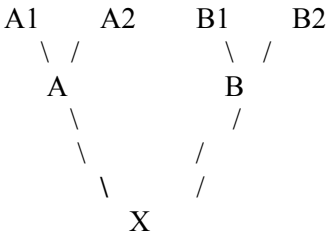
If the testator leaves neither father nor mother, but is survived by ascendants of equal degree of the paternal and maternal lines, the legitime shall be divided equally between both lines. If the ascendants should be of different degrees, it shall pertain entirely to the ones nearest in degree of either line.

Balane: Articles 889 and 890 -- Legitimate parents or ascendants alone -- 1/2 of the estate.

A. Three rules:

1. Nearer excludes the more remote. No representation in the ascending line.

Illustration:



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

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

2. Division by (between the) lines -- 1/2 of legitime each to maternal and paternal (assuming that the nearest relatives in both sides are of the same degree.)

Illustration (see illustration above.)

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

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

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

3. Equal division w/in the line.

B. How far up do you go? As far as possible as long as all lower ascendants are dead. The law does not limit but nature does.

Art. 892. If only one legitimate child or descendant of the deceased survives, the widow or widower shall be entitled to one- fourth of the hereditary estate. In case of a legal separation, the surviving spouse may inherit if it was the deceased who had given cause for the same.

If there are two or more legitimate children or descendants, the surviving spouse shall be entitled to a portion equal to the legitime of each of the legitimate children or descendants.

In both cases, the legitime of the surviving spouse shall be taken from the portion that can be freely disposed of by the testator.

Balane: A. Legitime of Surviving spouse:

1. If valid or voidable marriage -- Qualified. Spouse may inherit.

2. If legally separated, it depends:
   a. If innocent spouse -- not disqualified to inherit from the guilty spouse
   b. If guilty spouse -- disqualified to inherit from the innocent spouse.

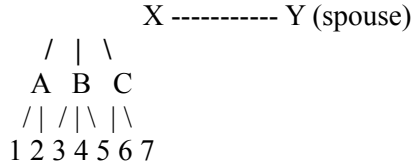
B. Rules as to legitime of the surviving spouse if concurring w/ legitimate children.

1. 1 leg. child -- 1/2 of estate
   SS -- 1/4 of estate

2. 2 or more leg. children -- 1/2 of estate shared equally
   SS -- share equal to that of a leg. child.

C. "Or descendant" (all portions are in relation to the whole estate unless otherwise provided.)

Illustration:



1. If B predeceases X
   A = 1/6
   B's children = 1/18 per child
   C = 1/6
   Y = 1/6

2. If B renounces
   A = 1/4
   C = 1/4
   Y = 1/4

3. If A, B and C predecease	1 and 2 = 1/12 each
--- representation	3, 4 and 5 = 1/18 each
	6 and 7 = 1/12 each
	Y = 1/6

According to commentaries: Y's share is based on what the children would have received if they were alive.

4. If A, B and C renounce	legitime of 1/2 is divided equally
--- no representation	between the 9 grandchildren
	Y = ?

According to Tolentino, Y gets 1/6. Y's share is based on the number of children. To allow Y's share to be equal to a grandchild would give the children the opportunity to reduce the legitime of Y, especially if Y is only a stepmother. The problem in this case is when "or descendants" will apply. This issue is undecided.

Art. 893. If the testator leaves no legitimate descendants, but leaves legitimate ascendants, the surviving spouse shall have a right to one-fourth of the hereditary estate.

This fourth shall be taken from the free portion of the estate.

Balane: Combination: Legitimate parents or ascendants -- 1/2 (divide according to Art. 889 and 890.)

Spouse -- 1/4
Free portion -- 1/4

Art. 894. If the testator leaves illegitimate children, the surviving spouse shall be entitled to one-third of the hereditary estate of the deceased and the illegitimate children to another third. The remaining third shall be at the free disposal of the testator.

Balane: This is one of the exceptions to the basic rule of 1/2.

Illeg. children -- 1/3 collectively = divided depending if the decedent died before (5 : 4) or after (equal) the Family Code.

Surviving spouse -- 1/3
Free portion -- 1/3

Art. 895. The legitime of each of the acknowledged natural children and each of the natural children by legal fiction shall consist of one-half of the legitime of each of the legitimate children or descendants.

The legitime of an illegitimate child who is neither an acknowledged natural child , nor a natural child by legal fiction, shall be equal in every case to four-fifths of the legitime of an acknowledged natural child.

The legitime of the illegitimate children shall be taken from the portion of the estate at the free disposal of the testator, provided that in no case shall the total legitime of such illegitimate children exceed that free portion, and that the legitime of the surviving spouse

must first be fully satisfied.

> **Art. 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this code. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. (Family Code.)**

Balane: 1. Legitime of illeg. children affected by the Family Code.

a. If before -- 10 : 5 : 4
b. If after -- 2 : 1

2. Combination:

Leg. children -- 1/2 collectively
Illeg. children -- 1/2 of the share of a leg. child each
SS -- share is equal to that of 1 leg. child.

3. Illustration:

X---------Y
/ |
A B C D

After the Family Code.

a. A = 1/4
B = 1/4
Y = 1/4
C = 1/8
D = 1/8

b. If there is a third illeg. child, E
A = 1/4
B = 1/4 Legitime exceeds estate
Y = 1/4
C = 1/8 \
D = 1/8 - Reduce proportionally
E = 1/8 /

C = 1/12
D = 1/12
E = 1/12

Art. 896. Illegitimate children who may survive with legitimate parents or ascendants of the deceased shall be entitled to one-fourth of the hereditary estate to be taken from the portion at the free disposal of the testator.

Balane:
Leg. parents -- 1/2 divided according to Art. 889 and 890
Illeg. children -- 1/4 collectively divided according to whether decedent died before or after the Family Code.

Art. 897. When the widow or widower survives with legitimate children or descendants, and acknowledged natural children, or natural children by legal fiction, such surviving spouse shall be entitled a portion equal to the legitime of each of the legitimate children which must be taken from that part of the estate which the testator can freely dispose of.

Balane: This is a repetition of Art. 895.

Art. 898. If the widow or widower survives with legitimate children or descendants, and with illegitimate children other than acknowledged natural, or natural children by legal fiction, the share of the surviving spouse shall be the same as that provided in the preceding article.

Balane: This is the same as Art. 895. The FC has simplified this.

Art. 899. When the widow or widower survives with legitimate parents or ascendants and with illegitimate children, such surviving spouse shall be entitled to one-eighth of the hereditary estate of the deceased which must be taken from the free portion, and the illegitimate children shall be entitled to one-fourth of the estate which shall be taken also from the disposable portion. The testator may freely dispose of the remaining one-eighth of the estate.

Balane: This shows how arbitrary legitime scheme is with regard to the surviving spouse.

Leg. parents -- 1/2 divided according to Articles 889 and 890
Illeg. children -- 1/4 divided depending on when the decedent died
SS -- 1/8
Free portion -- 1/8

Art. 900. If the only survivor is the widow or widower, she or he shall be entitled to one-half of the hereditary estate of the deceased spouse, and the testator may freely dispose of the other half.

If the marriage between the surviving spouse and the testator was solemnized in *articulo mortis*, and the testator died within three months from the time of the marriage, the legitime of the surviving spouse as the sole heir shall be one-third of the hereditary estate, except when they have been living as husband and wife for more than five years. In the latter case, the legitime of the surviving spouse shall be that specified in the preceding paragraph.

Balane: Legitime of surviving spouse when he/ she survives alone:
General rule -- 1/2; Free portion -- 1/2
Exception -- Marriage in articulo mortis -- 1/3; Free portion -- 2/3

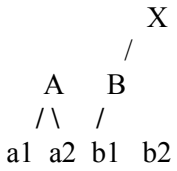
Art. 901. When the testator dies leaving illegitimate children and no other compulsory heirs, such illegitimate children shall have a right to one-half of the hereditary estate of the deceased.

The other half shall be at the free disposal of the testator.

Balane: Illeg. children -- 1/2 divided either equally (decedent died after the FC) or 5 : 4 (decedent died before the FC.)

Art. 902. The rights of illegitimate children set forth in the preceding articles are transmitted upon their death to their descendants, whether legitimate or illegitimate.

Balane:
Illustration:



1. A is legitimate while B is illeg. Both A and B predeceased X. A left a1, a leg. child and a2, an illeg. child. B left b1, a leg. child and b2, an illeg. child. Who will inherit and not inherit when X dies?

A1 can inherit from X by representation.
A2 cannot inherit from X in either intestate or compulsory succession because of Art. 992 w/c provides that an illegitimate cannot inherit *ab intestado* from the legitimate relatives of the father or mother and vice-versa

This results in inconsistency and unfairness. (Art. 902) read with Art. 992 puts a premium on bastardness. Preference is given to bastard children of bastard children as compared to bastard children of legitimate children.

2. If both A and B are dead. Who can X inherit from?
a1 dies -- X can inherit.
a2 dies -- X cannot inherit because of Art. 992
b2 dies -- X cannot inherit. In illegitimacy, you cannot go beyond the parent in representation.
b1 dies -- Unknown. The law is silent on this.

Art. 903. The legitime of the parents who have an illegitimate child, when such child leaves neither legitimate descendants, nor a surviving spouse, nor illegitimate children, is one- half of the hereditary estate of such illegitimate child. If only legitimate or illegitimate children are left, the parents are not entitled to any legitime whatsoever. If only the widow or widower survives with parents of the illegitimate child, the legitime of the parents is one-fourth of the hereditary estate of the child, and that of the surviving spouse also one-fourth of the estate.

Balane: There are 2 combinations:

1. Illeg. parents -- 1/2
does not go beyond illeg. parents unlike Articles 899 and 890.

2. Illeg. parents -- none
Leg. or illeg. children -- depending on who is left

Rules: a. Only leg. children exclude leg. parents
b. Any kind of children exclude illeg. children.

Reserva Troncal.

Art. 891. The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came.

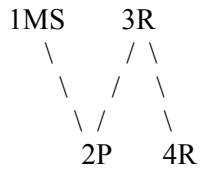
Balane: History of *Reserva Troncal*:
In the old law, there were 2 reservations:
1. *Viudal* -- "ordinaria", Art. 968, OCC
2. *Troncal* -- "lineal," "familial," "extraordinaria," Art. 811 of the OCC

In addition: *Reversiones*
1. Legal -- Art. 812
2. Adoption -- Rules of Court

Reservations.-- Property set aside for a group of people who are limited to persons related from whom it came

Reversiones.-- Property goes back to the person from whom it came.

The Code Commission abolished all 4. In the floor of Congress, there was a last minute amendment to include *reserva troncal*. In 1963, PD 613 revived *reversion adoptiva*. But this was eliminated by the Family Code. Now, only *reserva troncal* remains.



1MS (Mediate Source) ---- gratuitous title ---- 2P (*Prepositus*) --- by operation of law --- 3R (*Reservista/ reserver*) --- 4R *(Reservatorios/ reservees*)

I. Purpose of *Reserva Troncal*

Gonzales v. CFI.-- The purpose of *reserva troncal* is to return the property to where it originated and from where it strayed due to the accident of marriage. "Accident" here means unforeseen development.

1. Feudal

a. Underlying concept.-- Property should stay w/ the family because it has stayed w/ them for so long and marriage should not be allowed to cause that property to leave that family.

b. To prevent the property from leaving the family through the accident of marriage.

E.g., X ---------- Y
|
A

Property from X's family. X dies, property goes to A. A dies, property goes to Y. The property may end up w/ Y's family.

2. This is not good
   a. It impairs the free circulation of property
   b. Underlying philosophy is bad-- outdated, aristocratic.

II. Requisites

Chua v. CFI.-- 1. The property was acquired by a person from an ascendant of from a brother or sister by gratuitous title.
2. Said person died without legitimate issue.
3. The property is inherited by another ascendant by operation of law.
4. There are relatives w/in the third degree belonging to the line from w/c said property came.

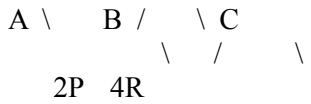
Comments:
1. "descendant" -- applies only if one got it from an ascendant; but what if one got it from a brother; it should have been "by a person or individual"

2. Individual died without <u>legitimate issue</u>.
"Issue" here means children or descendants.
If w/ legitimate issue, this will not apply but will go to legitimate descendants.
If w/ legitimate issue but they all renounce, the individual dies as if there was no legitimate issue

3. "Operation of law" means legal or compulsory succession.

III. PROCESS.

1MS 3R
\ / \



1. A = 1MS -- 2P

   a. MS -- either only an: (1) ascendant \
   -- of 2P
   (2) brother or sister /

   b. MS to P -- by gratuitous title -- either: (1) donation
   (2) succession

Chua v.s CFI.-- As long as the transmission to the heir is free from any condition imposed by the deceased himself and the property is given out of pure generosity, it is gratuitous. Even if the Court ordered the heirs to pay Standard Oil, it is still gratuitous. If the expense or charge is just incidental, it is still considered gratuitous.

E.g., "I give you my house provided you pay the mortgage." This is still gratuitous but you subtract the value of what you paid.

2. B = 2P -- 3R
   Operation of law: (a) compulsory succession
   (b) intestate succession

   Cannot be by: (a) testate succession
   (b) donation

Reserva troncal commences at this point.

3. C = 3R -- 4R
   This is a consequence of *reserva troncal*
   This occurs when the *reservista* dies
   Reserva troncal ends here.

IV. NATURE

1. Of right of the *reservista* over the reserved property.

Edroso v. Sablan.-- a. Reservista's right over the property is that of ownership

b. Reservista's right is subject to a resolutory condition which is that the *reservatorios* exist at the time of the reservista's death. If there are, the reservista's right terminates and the property will pass to the *reservatorios*.

c. Reservista's ownership is alienable but subject to the same resolutory condition. The buyer's ownership is subject to the same resolutory condition.

d. Reservista's right of ownership is registrable.

["Uncle German: -- "germanus" -- coming from the same seed; later came to mean "brother."]

Error in the case: The case said "*reservatorios* cannot dispose of the expectancy." According to the Sienes case, supra., which is correct, the expectancy can be alienated.

2. Of right of the *reservatorios* over the reserved property.

Sienes v. Esparcia.-- a. Reservatorious right over the property during the life of the reservista is a mere expectancy.

b. The expectancy is subject to a suspensive condition which is that the reservatorio is alive at the time the *reservista* dies

c. The right of expectancy can be alienated but it will be subject to the same suspensive condition

d. The right of expectancy is registrable. It must be annotated at the back of the title to protect the *reservatorios* from innocent purchasers for value.

Errors in the case:

1. The case said the "right of *reservista* is subject to a double resolutory condition." -- (a) death of the *reservista*; and (b) survival or *reservatorio*

However, the death of the *reservista* is a term. It should be the "right of (the) *reservatorio* is subject to a suspensive condition."

2. The case said that "alienation by (the) *reservatorios* is subject to a resolutory condition." It should read "suspensive condition."

V. PARTIES.

A. Four Parties.

1. Mediate Source.-- Either an ascendant or a brother or sister of the *prepositus*.

a. If ascendant, there is no problem. You know from what line the property came from.

b. If brother or sister and full or half blood.

(i) If half blood, no problem. You know what line the property came from.

(ii) If full blood, there is a problem. How will you what line it came from?

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

Manresa.-- It should apply regardless of whether it is of full or half blood. The law does not distinguish.

What line do you apply it to? You cannot apply it to either line as long as it is within the third degree. Why? The purpose of the law is not only to bring back the property to the line (curative) but also to prevent it from leaving the family.

E.g. A----------B
/ \
X Y

Y to X. A is dead. X dies, so the property goes to B. B remarries. The property is lost.

Manresa's view is the accepted view.

2. *Prepositus*.-- Either a descendant, or brother or sister of the mediate source.

He is the central figure in the *reserva troncal* because:

a. At the time he receives the property, he becomes the absolute owner. He can prevent reserva troncal from happening. How? By preventing it from going to an ascendant by operation of law. How?

1. By selling it. Dispose of a potentially free portion property (even by pacto de retro.)
2. Give it to an ascendant by donation, devise, legacy or testamentary succession.

b. He is the basis or point of reference for the third degree relationship.

Note: There is no *reserva troncal* yet while the property is in the hands of the prepositus.

3. *Reservista*-- called "ascendant reservista." He must be another ascendant other than the mediate source if the mediate source is an ascendant.

Reserva troncal begins once the *reservista* inherits the property. He is bound by the obligations.

Q: Must the ascendant-*reservista* belong to a line similar to the mediate source or should he be from a different line?

E.g., X----------Y
|
A----------B
|
C

X donates to C. C dies and it goes to A.
1MS -- X
2P -- C
3R -- A ?

Is there *reserva troncal*?
1. No. The property never left the line.
2. Yes. There is no requirement in Art 891 that the 1MS and 3R must belong to different lines. This is the view accepted by the majority of commentators.

4. *Reservatorios* -- class or group

a. Requirements:

1. Must be w/in the third degree from the *prepositus*.
2. Must be from the line from w/c the property came
3. Must be related by blood to the mediate source.

(According to commentators.)

E.g., A----------A1
|
B----------B1 (*Reservista*)
|
C (*Prepositus*)

B died. Upon A's death, C inherits from A. Upon C's death, the property is transmitted to B1. Is A1 a *reservatorio*?

Following the 3 requisites:
1. Yes.
2. Yes.
3. No. A1 is not related by blood to the mediate source.

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

c. How do they inherit w/in the class?

Padura v. Baldovina.-- Apply the rules in intestate succession:
a. Nearer excludes the more remote.
b. Representation in favor or nieces for predeceased brother
c. Proportion of 2 : 1 between full and half blood nephews and brothers. However, there is no representation in the case bec. there are no other brothers. However, the ratio of 2 : 1 is maintained.

Florentino v. Florentino.-- Representation only in favor of nephews and nieces of deceased brothers and sisters of the *prepositus.* The case is wrong, however, when it did not distinguish between full and half blood nephews and nieces.

B. Three relationships

1. Mediate Source.-- *Prepositu*s-- ascendant or brother or sister

2. *Prepositus.*-- *Reservista* -- descendant - ascendant relationship

3. *Reservatorio* -- *Reservista*
Mediate Source -- blood relation
Prepositus -- within the 3rd degree

All relationship must be legitimate.

In effect, this requirement punishes legitimate relations bec. if the relation is illegitimate, there is no obligation to reserve.

IV. PROPERTY.

A. In order for *reserva troncal* to exist, property from 1MS --- 2P and from P -- R must be the same.

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

B. Special Problems

MS R
\ /
P

MS dontes a piece of land to P worth P100,000. P then dies w/o legitimate issue. R is the morther of P.

1. If P had no will and the land is the only property in his estate, what is reserved? The whole land.

Note: 1/2 to R as legitime
1/2 to R by intestacy.

2. If with a will that said "I give the free portion to my mother," what is reserved? One-half (1/2) of the land.

Note: 1/2 to R as legitime
1/2 to R by will

What is reserved is what R received as legitime (transferred by operation of law.)

3. If P acquired another piece of land worth P100,000 before he died and he did not have a will, what is reserved? The land from MS is reserved.

4. Same as number 3, but this time P died w/ a will stating "I give the free portion to my mother." What is reserved?

Note: 1/2 to R as legitime = P100,000
1/2 to R by will = P100,000
Land from MS -- can be reserved
Land subsequently acquired -- cannot be reserved.

Two theories:

a. *Reserva maxima* (maximum operation of *reserva troncal*) -- fit as much of reservable property as you can in the 1/2 by legitime. In the example, the whole land from MS is reservable.

b. *Reserva minima* (followed by most commentators) -- Every item will

pass according to ratios of the properties. In the example, 1/2 will pass as legitime and 1/2 by will for both pieces of land = 1/2 of land from MS is reservable.

5. If the land from MS is 100,000 and the land subsequently acquired is 60,000, and P died w/o a will, what is reserved?

Note: 1/2 as legitime = 80,000
1/2 by intestacy = 80,000

a. *Reserva Maxima* - 8/10 of land from MS is reservable
b. *Reserva Minima* - 1/2 of the land from MS is reservable

6. Same as number 6 but P had a will stating "I bequeath 1/4 of my estate to my mother." What is reserved?

Note: 1/2 as legitime = 80,000\ 3/4 by ope-
1/4 by intestacy = 40,000 / ration of law
1/4 by will = 40,000

a. *Reserva maxima* -- Whole land from MS is reservable
b. *Reserva minima* -- 3/4 of land from MS is reservable
Look at how much passes by operation of law.

This arises only if:

1. P dies leaving property he got from MS by gratuitous title and other property from other sources.
2. P made a will instituting the *reservista* to part of the estate.

VI. RIGHTS AND OBLIGATIONS OF THE PARTIES.

Rights of *Reservatorio*	Obligations of *Reservista*
1. To demand inventory and appraisal	1. To inventory and appraise
2. To demand annotation of reservable character of the prop.	2. To annotate reservable character of proper. w/in 90 days
3. To demand security/ bond	3. To give scurity/ bond

Sumaya v. IAC -- It is jurisprudence only that states that there is an obligation to annotate. The other rights exist by analogy from the Old Code wherein similar rights existed for *reserva viudal*.

VIII. Extinguishment

1. Death of *reservista* -- No more *reserva troncal*. The *reservatorios* get the property. If there are no *reservatorios*, the prop. shall form part of the estate of the *reservista*. It is a kind of delayed succession (JBL Reyes) from the *prepositus*.

Cano v. Director -- The reserved prop. does not form part of the *reservista's* estate if there are *reservatorios*

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

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

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

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

6. Extinctive prescription -- *reservista* adversely occupies the prop. or openly denies the *reserva*.

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

In settlement proceedings of the estate of the *reservista, reservatorios* may enter a claim to exclude the prop. from the inventory. *Reservatorios* can also file an *accion reivindicatoria*. However, this is usually consolidated w/ the settlement proceedings.

Art. 904. The testator cannot deprive his compulsory heirs of their legitime, except in cases expressly specified by law.

Neither can he impose upon the same any burden, encumbrance, condition, or substitution of any kind whatsoever.

Balane:

Par. 1.-- The testator cannot deprive his compulsory heirs of their legitime. Otherwise, he will preterit them or disinherit them ineffectively.

Par. 2.-- See Art. 864 and 872. The principle is that the testator has no power over the legitime

Exceptions:

a. Art. 238.-- Family home-- Ten (10) years.
b. Art. 1080.-- Partition *inter vivos* of will
c. Art. 1083.-- Indivision for 20 years
d. Art. 891.-- *Reserva troncal.*

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

Balane: This is the prodigal son provision.

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

2. If the agreement is between the heir and his brother that he will waive his legitime in favor of his brother, can he later claim his legitime after their father's death? No. The agreement is void under Art. 1347 that "No contract may be entered into upon future inheritance except in cases expressly authorized by law."

Two views:

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

b. Do not return the money bec. they are in *pari delicto*. They should be left as they are. The reason is that the right of the compulsory heirs is only inchoate, the same principle applied in Art. 777.

Art. 906. Any compulsory heir to whom the testator has left any title less than the legitime belonging to him may demand that the same be fully satisfied.

Balane: "By any title" means by gratuitous title. (It also covers) donation *inter vivos* which are considered advances on the legitime.

Relate this provision to Articles 909 and 910.

Relate his also to Art. 1062 where the testator expresses otherwise for purposes of collation only and not *preterition*.

Art. 907. Testamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive.

Balane: Relate this provision to Art. 1011.

Art. 908. To determine the legitime, the value of the property left at the death of the testator shall be considered, deducting all debts and charges, which shall not include those imposed in the will.

To the net value of the hereditary estate, shall be added the value of all donations by the testator that are subject to collation, at the time he made them.

Balane: How to compute the net estate:

1. Inventory all gross assets.
2. Deduct unpaid debts from the gross assets since the debts of the decedent are to be

paid by his estate.

Gross assets - Debts = Available assets.

3. Add donations *inter vivos* made by the decedent to anyone. The value of the donated property is to be ascertained at the time the donation was made. Any change in the value is for the account of the donee-owner.

Available assets + Donations = Net Hereditary Estate.
|
The basis for computing the legitime

Gross Assets	P2,500,000
Outstanding debts	500,000
Available assets	2,000,000
Donation to eldest son	+ 300,000
!991 stock to brother	+ 500,000
Donation to daughter	+ 200,000
Net Estate	P3,000,000

If there are 3 children - legitime = 1,500,000
500,000 each.

Spouse - legitime = 500,000.

Art. 909. Donations given to children shall be charged to their legitime.

Donations made to strangers shall be charged to that part of the estate of which the testator could have disposed by his last will.

Insofar as they may be inofficious or may exceed the disposable portion, they shall be reduced according to the rules established by this Code.

Art. 910. Donations which an illegitimate child* may have received during the lifetime of his father or mother, shall be charged to his legitime.

Should they exceed the portion that can be freely disposed of, they shall be reduced in the manner prescribed by this Code.

Balane: Articles 909 and 910 are taken together.

A. 1. Donation to child, whether legitimate or illegitimate
Donation to parents or ascendants (Art. 1062.)

General rule: Charged to the legitime
Exception: If the testator provides otherwise. (Art. 1062.)

2. Donation to spouse

General rule: Not allowed.
Exception: Gifts of moderate value; treat the same as a donation to a compulsory heir.

3. Donation to a stranger -- charged to the free portion.

B. Collation (Art. 1061.)

1. Three senses
   a. Computation.-- Art. 908, par. 2
   b. Imputation.-- Articles 909 and 910.
   c. Reduction/ return.-- Articles 911 to 913.

2. Example,

X

| | | :
A B C D

Gross Estate	70,000
Less: Debts	35,000
Available assets	35,000
Add: Donations:	
1987 to A	15,000
1989 to M	30,000
1991 to D	40,000
Net Hereditary Estate	120,000

	Legtimes	: Donation Advance on Legitime	: Lack _____
A	20,000	15,000	5,000
B	20,000	0	20,000
C	20,000	0	20,000
D	10,000	40,000	(30,000)

P45,000 is needed to comply w/ the legitime but (we) only have 35,000 available assets. So we need 10,000. Reduce the donations.

a. Donation to B is considered as donation to a stranger as far as the 30,000 is concerned
b. Donation to M is a donation to a stranger
c. Donation to A is not subject to reduction

The first to bear the reduction is the donation to D, so deduct 10,000 from him

A = 20,000
B = 20,000
C = 20,000
D = 30,000
M = 30,000

Art. 911. After the legitime has been determined in accordance with the three preceding articles, the reduction shall be made as follows:

(1) Donations shall be respected as long as the legitime can be covered, reducing or annulling, if necessary, the devise 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.

Balane: Order of reduction

1. Legacies and devises. (Art. 907.)

General rule: Pro-rata.

Exception: Preferred ones as stated by the testator will be the last to be reduced among the devises and legacies if still needed.

2. Reduce donations to strangers.

Rule: Most recent donation to be reduced first (earlier donations are preferred.) See Art. 773, NCC.

Note: 1 and 2 will be reduced even up to 0 as long as needed.

3. Reduce the share of illegitimate children.

Art. 950. If the estate should not be sufficient to cover all the legacies or devises, their payment shall be made in the following order:

(1) Remuneratory legacies or devises;

(2) Legacies or devises declared by the testator to be preferential;

(3) Legacies for support;

(4) Legacies for education;

(5) Legacies or devises of a specific, determinate thing which forms part of the estate;

(6) All others pro rata.

Art. 912. 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.

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.

Art. 913. 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. 914. The testator may devise and bequeath the free portion as he may deem fit.

Section 6.-- *Disinheritance.*

Balane: A compulsory heir cannot deprive his compulsory heir of his legitime unless expressly provided by law. The law expressly provides only one way, valid disinheritance.

Requisites:
1. Made in a valid will. (Art. 916.)
2. Identity of the heir is clearly established
3. For a legal cause. (Articles 919 to 921.)
4. Expressly made
5. Cause stated in the will.
6. Absolute or unconditional (not "if he doesn't apologize.")
7. Total
8. Cause must be true and if challenged by the heir, it must be proved to be true (proponent of disinheritance has the burden of proof.)

Art. 915. A compulsory heir may, in consequence of disinheritance, be deprived of his legitime, for causes expressly stated by law.

Art. 916. Disinheritance can be effected only through a will wherein the legal cause therefor shall be specified.

Art. 917. The burden of proving the truth of the cause for disinheritance shall rest upon the other heirs of the testator, if the disinherited heir should deny it.

Art. 918. Disinheritance without a specification of the cause, or for a cause the truth of which, if contradicted, is not proved, or which is not one of those set forth in this Code, shall annul the institution of heirs insofar as it may prejudice the person disinherited; but the devises and legacies and other testamentary dispositions shall be valid to such extent as

will not impair the legitime.

Art. 919. The following shall be sufficient causes for the disinheritance of children and descendants, legitimate as well as illegitimate:

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

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

(3) When a child or descendant has been convicted of adultery or concubinage with the spouse of the testator;

(4) When a child or descendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;

(5) A refusal without justifiable cause to support the parent or ascendant who disinherits such child or descendant;

(6) Maltreatment of the testator by word or deed, by the child or descendants;

(7) When a child or descendant leads a dishonorable or disgraceful life;

(8) Conviction of a crime which carries with it the penalty of civil interdiction.

Balane: This is an exclusive list and not illustrative.

Grounds:

1. Attempt against the life, etc.-- Final conviction is necessary.

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

Intent to kill must be present.

2. Accusation.

Elements:

a. Accusation is a generic term which includes: (i) filing of an information; (ii) presenting incriminating evidence; (iii) acting as a witness against the ascendant.

b. Imprisonment of more than six (6) years

c. Accusation is groundless.-- Ascendant is acquitted on the finding that: (i) there is no crime; or (ii) that the ascendant did not commit it.

If the ascendant was acquitted on reasonable doubt, the ascendant cannot disinherit because the accusation is not groundless.

3. Adultery and concubinage.-- This needs conviction. E.g., When your parent remarries someone young and you have an affair with that person.

4. Fraud, violence, intimidation or undue influence as regards the will.-- This goes into the very essence of will-making-- the freedom deprived by the child or descendant.

It does not mention prevent because if he was prevented, how can he make a will of disinheritance? Prevention is a ground for unworthiness (Art. 1032, par. 7) which has the same effect as disinheritance.

5. Refusal to support without justifiable cause.-- Refusal, itself, is not a ground; it must be unjustified. E.g., In the FC, there is an order of preference for support. The person may be willing to support but it is not economically feasible. A person must support his wife and children first. There is here a justified refusal.

6. Maltreatment.-- No conviction is required as compared to number 1 wherein conviction is needed. This may be proven by preponderance of evidence. It is possible for an act not to fall in number 1 but to fall in number 6.

E.g., The son shoots his father. The father is wounded but he recovers. The father does not want a scandal so he does not file charges against his son. So, he disinherits his son not under number 1 but under no. 6.

7. Leads a dishonorable life.-- This is a catch-all provision. "Leads" denotes habituality. Dishonorable and disgraceful are based on the sense of the community as perceived by the judge. It is not limited to sexual immorality. E.g., drug addict, alcoholic.

9. Civil Interdiction.-- Conviction is required.
Accessory penalty that goes w/ the principal penalty of *reclusion temporal* and up.

Notes: Conviction is required in numbers 1, 3 and 9.

Art. 920. The following shall be sufficient causes for the disinheritance of parents or ascendants, whether legitimate or illegitimate:

(1) When the parents have abandoned their children or induced their daughters to live a corrupt or immoral life, or attempted against their virtue;

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

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

(4) When the parent or ascendant has been convicted of adultery or concubinage with the spouse of the testator;

(5) When the parent or ascendant by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made;

(6) The loss of parental authority for causes specified in this Code;

(7) The refusal to support the children or descendants without justifiable cause;

(8) An attempt by one of the parents against the life of the other, unless there has been a reconciliation between them.

Balane: Numbers 2, 5 and 7 are the same as the grounds in Art. 919.

Grounds:
1. Enumerates 3 grounds:
   a. Abandonment by parent of his children.-- In abandonment, there are two (2) views:
      1. Strict.-- Leaving them alone while still children under circumstances that would endanger them.
      2. Accepted.-- Any case where a parent, without justifiable cause, withholds his care. E.g., Leaving someone at the doorstep.

   b. Induced their daughter to live a corrupt or immoral life.-- Does it include grandparents to granddaughters? Yes. The provision covers ascendant's vis-à-vis descendants.

   c. Attempt against their virtues.-- Mere attempt is enough as long as it can be proven.

Note: In all 3 cases, conviction is not required.

6. Loss of parental authority.-- FC does not include all causes of loss of parental authority. Exception: Adoption, age of majority.

The grounds refer to those which involve the same moral culpability. Exception: Articles 229, par. 4, 230 and 231 of FC.

8. Attempt by a parent against the other.-- This does not need conviction. Exception: When they reconcile.

This presupposes that there is no disinheritance yet.

Losses right to disinherit upon reconciliation.

But what if already disinherited before reconciliation? This is not clear. But it should be considered revoked bec. in case of doubt, resolve against disinheritance.

Art. 921. The following shall be sufficient causes for disinheriting a spouse:

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

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

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

(4) When the spouse has given cause for legal separation;

(5) When the spouse has given grounds for the loss of parental authority;

(6) Unjustifiable refusal to support the children or the other spouse.

Balane: Similar grounds found in Articles 919 and 920.

1. Both.
2. Both.
3. Both.
5. Art. 920 only.
6. Both.

The only new ground is number 4:

Legal separation is not a ground. If there is legal separation, you do not need to disinherit. Disinheritance takes place by operation of law.

As long as there is cause for legal separation, you can disinherit provided you are the offended spouse.

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

Balane: 1. Reconciliation.-- 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. A handshake is not reconciliation. It has to be something more. It must be clear and deliberate.

2. What is the effect of reconciliation?
    a. If there is no will.-- It deprives the offended person of his right to disinherit

the offending person.

b. If already disinherited.-- It sets aside disinheritance already made.

3. This is inconsistent with Art. 1033. In disinheritance, reconciliation is sufficient. It need not be in writing. In unworthiness, however, it needs to be in writing. This is inconsistent bec. when you are dealing w/ the express will to disinherit, reconciliation is enough when you are dealing w/ the presumed will, it must be in writing.

Art. 923. The children and descendants of the person disinherited shall take his or her place and shall preserve the rights of compulsory heirs with respect to the legitime; but the disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime.

Balane: Representation in case of disinheritance:

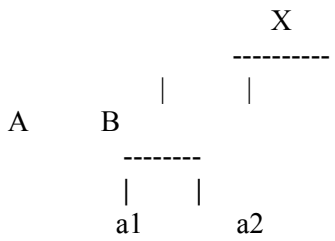
1. Effect of disinheritance is not explicitly provided for.

The total exclusion = loss of legitime, right to intestate succession, and of any disposition in a prior will.

2. "Takes place only in legitime."-- The law assumes that free portion has been given away. If not, include the intestate portion.

3. Representation.-- (This is applicable only) if (the) person disinherited is a child or descendant.

Includes both legitime and intestate share of the disinherited heir.



a. X made a will giving Y, a friend, 1/2 of his estate. This covered the free portion. X validly disinherited A. Can a1 and a2 represent A? Yes. Children of A can represent him as to the legitime only bec. the free portion has been given to B.

b. X validly disinherits A. X did not dispose of his free portion. How much will the children of A inherit from X? They will inherit A's share in the legitime and in the free portion,

1/4 -- legitime

1/4 -- free portion.

The representative of the disinherited person will receive both the legitime and the free portion which might have accrued to the person disinherited if he had not been disinherited.

Section 7.-- *Legacies and Devises*.

Balane: Definition in Art. 782 is not a good definition.

1. Castan.-- "A legacy or a devise is a gratuitous grant in a will of a specific personal or real property."

2. a. In a devise or legacy, "a person succeeds by particular title," to a specific property.

b. Heir is "a person who succeeds by universal title," to a fractional part of the estate.

Art. 924. All things and rights which are within the commerce of man may be bequeathed or devised.

Balane: What can be bequeathed or devised? Anything w/in the commerce of man or w/c is alienable.

Art. 925. A testator may charge with legacies and devises not only his compulsory heirs but also legatees and devisees.

The latter shall be liable for the charge only to the extent of the value of the legacy of the devise received by them. The compulsory heirs shall not be liable for the charge beyond the amount of the free portion given them.

Balane: This provision gives a misimpression.

General rule: Legacy or devise is an obligation of the estate unless it impairs the legitimes.

Exception: If the obligation is imposed by the testator on a testamentary heir, devisee or legatee. The obligation becomes a sub-devise or sub-legacy = mode imposed on the heir, devisee or legatee.

E.g., "I give A 1/4 of my estate but I impose upon him the obligation to give B a car."
If A wants to accept the 1/4, he will have to give a car to B.

Art. 926. When the testator charges one of the heirs with a legacy or devise, he alone shall be bound.

Should he not charge anyone in particular, all shall be liable in the same proportion in which they may inherit.

Art. 927. If two or more heirs take possession of the estate, they shall be solidarily liable for the loss or destruction of a thing devised or bequeathed, even though only one of them should have been negligent.

Art. 928. The heir who is bound to deliver the legacy or devise shall be liable in case of eviction, if the thing is indeterminate and is indicated only by its kind.

Balane: (This is a) bad way to put it. As in Art. 925, it is not the heir, devisee or legatee who is liable but the estate unless sub-legacy is imposed.

E.g., "I give a fishpond to X." The fishpond was given to X. If a third person then puts a

claim on the fishpond and succeeds in taking possession of the fishpond by winning the suit, then as a general rule, the estate is liable unless it is a sub-devise or sub-legatee, in w/c case the devisee or legatee is liable.

Art. 929. If the testator, heir, or legatee owns only a part of, or an interest in the thing bequeathed, the legacy or devise shall be understood limited to such part or interest, unless the testator expressly declares that he gives the thing in its entirety.

Balane: The property given is owned only in part by the testator.

General rule: If the testator owns only a part, the devisee or legatee will only get that part.

Exceptions:

(1) Testator gives more.-- E.g., Giving it in it's entirety. How? The estate should buy out the rest of the property. If co-owners don't like to sell, then the estate gives him the testator's share plus the cash value of the rest of the property.

(2) Testator gives less.-- Art. 794.

Art. 930. The legacy or devise of a thing belonging to another person is void, if the testator erroneously believed that the thing pertained to him. But if the thing bequeathed, though not belonging to the testator when he made the will, afterwards becomes his, by whatever title, the disposition shall take effect.

Art. 931. If the testator orders that a thing belonging to another be acquired in order that it be given to a legatee or devisee, the heir upon whom the obligation is imposed or the estate must acquire it and give the same to the legatee or devisee; but if the owner of the thing refuses to alienate the same, or demands an excessive price therefor, the heir or the estate shall only be obliged to give the just value of the thing.

Balane: Articles 930 and 931.

Art. 930.-- General rule: 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 bec. it is vitiated by mistake.

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

Art. 931.-- 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.

Middle ground.-- Supposing:

a. The testator knew that he did not own it.-- Art. 930 does not apply.

b. Testator does not order his estate to purchase it.-- Art. 931 does not apply.

What is the status of that legacy or devise? According to Tolentino, when the testator gave the legacy or devise knowing that it is not his, there is an implied order to the estate to acquire it. Apply Art. 931 by analogy. At the very least, there is a doubt and doubts are resolved in favor of validity.

Art. 932. The legacy or devise of a thing which at the time of the execution of the

will already belonged to the legatee or devisee shall be ineffective, even though another person may have interest therein.

If the testator expressly orders that the thing be freed from such interest or encumbrance, the legacy or devise shall be valid to that extent.

Balane: Legacy of a thing already belonging to the legatee or devisee.

Art. 933. If the thing bequeathed belonged to the legatee or devisee at the time of the execution of the will, the legacy or devise shall be without effect, even though it may have been subsequently alienated by him.

If the legatee or devisee acquires it gratuitously after such time, he can claim nothing by virtue of the legacy or devise; but if it has been acquired by onerous title he can demand reimbursement from the heir or the estate.

Balane: This is the same situation as in Art. 932.

Par. 1.-- The legacy or devise is ineffective even if the legatee or devisee alienates the thing after the will is made.

Par. 2.-- 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:

a. If he acquired it by gratuitous title, then the legacy or devise is void bec. the purpose of the testator that the property go to the devisee or legatee has already been accomplished with no expense to the legatee or devisee.

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

Art. 934. If the testator should bequeath or devise something pledged or mortgaged to secure a recoverable debt before the execution of the will, the estate is obliged to pay the debt, unless the contrary intention appears.

The same rule applies when the thing is pledge or mortgaged after the execution of the will.

Any other charge, perpetual or temporary, with which the thing bequeathed is burdened, passes with it to the legatee or devisee.

Balane: Par. 1.-- The purpose of the payment of debt is so that the legatee or devisee will get it free from encumbrance.

General rule: Pledge/ mortgage must be paid by the estate.

Exception: If the testator provides otherwise.

Par. 3.-- E.g., Easement, usufruct.

Art. 935. The legacy of a credit against a third person or of the remission or release of a debt of the legatee shall be effective only as regards that part of the credit or debt existing at the time of the death of the testator.

In the first case, the estate shall comply with the legacy by assigning to the legatee all rights of action it may have against the debtor. In the second case, by giving the legatee an acquittance, should he request one.

In both cases, the legacy shall comprise all interests on the credit or debt which may be due the testator at the time of his death.

Art. 936. The legacy referred to in the preceding article shall lapse if the testator, after having made it, should bring an action against the debtor for the payment of his debt, even if such payment should not have been effected at the time of his death.

The legacy to the debtor of the thing pledged by him is understood to discharge only the right of pledge.

Balane: The legacy to the debtor of the thing pledged by him is understood to discharge only the right of pledge.

Art. 937. A generic legacy of release or remission of debts comprises those existing at the time of the execution of the will, but not subsequent ones.

Balane: Legacy of credit or remission. Articles 935 to 937.

A. Definitions.

1. Legacy of credit.-- takes place when the testator bequeaths to another a credit against a third person. In effect, it is a *novation* of the credit by the subrogation of the legatee in the place of the original creditor. E.g., "I give to A all the debts B owes me."

2. Legacy of remission.-- a testamentary disposition of a debt in favor of the debtor. The legacy is valid only to the extent of the amount of the credit existing at the time of the testator's death. In effect, the debt is extinguished. E.g., "I give to A as legacy his debt to me."

B. Rules applicable.

1. Art. 935.-- Legacy applies only to the amounts outstanding at the time of the testator's death. E.g., A owes B P1,000. B makes a will giving as legacy to A the debt of A. After the will is made, A pays B 500. How much is the legacy? P500.

2. Art. 936.-- The legacy is revoked if the testator files an action (judicial suit) against the debtor. E.g., A bequeaths the credit he has against B to B. After making the will, A sues B for collection. A dies while the suit is pending. Does B have a right to the credit? No. The filing of the action revoked the legacy.

3. Art. 937.-- It applies only to credits existing at the time the will was made, and not to subsequent credits. E.g., "I give to A all the credits I have against B." When the will was made, B had 3 debts. After the will was made, B incurs 2 more debts. Which ones can A claim?

General rule: Only the first 3.

Exception: When the testator provides otherwise.

Art. 938. A legacy or devise made to a creditor shall not be applied to his credit, unless the testator so expressly declares.

In the latter case, the creditor shall have the right to collect the excess, if any, of the credit or of the legacy or devise.

Balane: General rule: Legacy or devise is not considered payment of a debt. Why? Bec. if it is, then it would be a useless legacy or devise since it will really be paid.

Exception: If the testator provides otherwise.

Art. 939. If the testator orders the payment of what he believes he owes but does not in fact owe, the disposition shall be considered as not written. If as regards a specified debt more than the amount thereof is ordered paid, the excess is not due, unless a contrary intention appears.

The foregoing provisions are without prejudice to the fulfillment of natural obligations.

Art. 940. In alternative legacies or devises, the choice is presumed to be left to the heir upon whom the obligation to give the legacy or devise may be imposed, or the executor or administrator of the estate if no particular heir is so obliged.

If the heir, legatee or devisee, who may have been given the choice, dies before making it, this right shall pass to the respective heirs.

Once made, the choice is irrevocable.

In alternative legacies or devises, except as herein provided, the provisions of this Code regulating obligations of the same kind shall be observed, save such modifications as may appear from the intention expressed by the testator.

Balane: "heir upon whom the obligation to give the legacy or devise may be imposed." (This is) not necessary. Look at the general rule and the exception in Art. 925.

The same rules as in alternative obligations apply. See Articles 1199 to 1206.

Art. 941. A legacy of generic personal property shall be valid if there be no things of the same kind in the estate.

A devise of indeterminate real property shall be valid only if there be immovable property of its kind in the estate.

The right of choice shall belong to the executor or administrator who shall comply with the legacy by the delivery of a thing which is neither of inferior nor of superior quality.

Balane:

Generic Legacy	vs.	Indeterminate Devise
Even if no thing of the same kind exist in the estate, the legacy is valid. The estate will have to buy it.		There must exist immovables of the same kind in order to be valid.

Why the difference in the rules? Historically, in Roman Law, personal property was treated with more liberality bec. they were easier to acquire and dispose.

If given a choice, I would amend the law and make the same rule applicable to both, namely, the rule on devises. This would be more in conformity with the intent of the testator. (Balane.)

Right of choice.-- Executor/ administrator. Must give neither inferior nor superior quality.

Art. 942. Whenever the testator expressly leaves the right of choice to the heir, or to the legatee or devisee, the former may give or the latter may choose whichever he may prefer.

Art. 943. If the heir, legatee or devisee cannot make the choice, in case it has been granted him, his right shall pass to his heirs; but a choice once made shall be irrevocable.

Art. 944. A legacy for education lasts until the legatee is of age, or beyond the age of majority in order that the legatee may finish some professional, vocational or general course, provided he pursues his course diligently.

A legacy for support lasts during the lifetime of the legatee, if the testator has not otherwise provided.

If the testator has not fixed the amount of such legacies, it shall be fixed in accordance with the social standing and the circumstances of the legatee and the value of the estate.

If the testator during his lifetime used to give the legatee a certain sum of money or other things by way of support, the same amount shall be deemed bequeathed, unless it be markedly disproportionate to the value of the estate.

Balane: Duration and Amount of the different legacies.

Rules as to amount:

1. Amount prescribed by the testator
2. What the testator used to give during his lifetime
3. In accordance with the social standing and circumstances of the legatee. In other words, according to his needs.

Art. 945. If a periodical pension, or a certain annual, monthly, or weekly amount is bequeathed, the legatee may petition the court for the first installment upon the death of the testator, and for the following ones which shall be due at the beginning of each period; such payment shall not be returned, even though the legatee should die before the expiration of the period which has commenced.

Balane: E.g., Testator dies on March 1, 1996. He has a will giving A a monthly pension of P1,000.

1. If we follow Art. 945 literally, A can compel the estate to give him his pension from March 1, 1996.
2. In reality, A has to wait. The estate should be settled first (will probated, payment of debts, determine if legacy is effectual, etc.) After settlement of the estate, A can demand his legacy and its effectivity will retroact to March 1, 1996.

Art. 946. If the thing bequeathed should be subject to a usufruct, the legatee or devisee shall respect such right until it is legally extinguished.

Balane: This is the same as in Art. 934, par. 3.

Art. 947. the legatee or devisee acquires a right to the pure and simple legacies or devises from the death of the testator, and transmits it to his heirs.

Art. 948. If the legacy or devise is of a specific and determinate thing pertaining to the testator, the legatee or devisee acquires the ownership thereof upon the death of the testator, as well as any growing fruits, or unborn offspring of animals, or uncollected income; but not the income which was due and unpaid before the latter's death.

From the moment of the testator's death, the thing bequeathed shall be at the risk of the legatee or devisee, who shall, therefore, bear its loss or deterioration, and shall be benefitted by its increase or improvement, without prejudice to the responsibility of the executor or administrator.

Art. 949. If the bequest should not be of a specific and determinate thing, but is generic or of quantity, its fruits and interests from the time of the death of the testator shall pertain to the legatee or devisee if the testator has expressly so ordered.

Balane: Articles 947 to 949.-- Rules on Demandability, Fruits and Ownership.

1. Demandability depends on whether:
    a. Pure.-- Upon the testator's death. (Articles 947, 945.)
    b. With a term.-- Upon arrival of the term
    c. Conditional.-- Upon the happening of the suspensive condition.

2. Fruits w/c depends on whether:
    a. Pure and specific.-- Upon the testator's death. (Art. 948.)
    b. Pure and generic.-- Upon determination of what is to be delivered to the devisee or legatee unless the testator provides otherwise. (Art. 949.)
    c. With a term.-- Upon arrival of the term.
    d. Conditional.-- Upon the happening of the suspensive condition.

3. Ownership
    a. Pure and specific.-- Upon the death of the testator. (Art. 777.)

    b. Pure and generic.-- It depends:
        (i) if the thing comes from the testator's estate, upon the testator's death
        (ii) if the thing has to be acquired from a third person, upon the acquisition of the thing.

    c. With a term.-- Upon the testator's death (effect retroacts.)

    d. Conditional.-- Upon the testator's death (effect retroacts.)

Art. 950. If the estate should not be sufficient to cover all the legacies or devises, their payment shall be made in the following order:
(1) Remuneratory legacies or devises;
(2) Legacies or devises declared by the testator to be preferential;
(3) Legacies for support;

(4) Legacies for education;

(5) Legacies or devises of a specific, determinate thing which forms part of the estate;

(6) All others *pro rata*.

Balane: Order of preference.

This conflicts w/ Art. 911.-- "If you reduce legacies, reduce all except those preferred according to the testator."-- Inconsistent.

Solution according to commentators.-- Give each its own sphere of operation:

1. If you have to reduce bec. legitimes have been impaired, follow Art. 911.
2. If for any other reason, follow Art. 950.

Art. 951. The thing bequeathed shall be delivered with all its accessions and accessories and in the condition in which it may be upon the death of the testator.

Art. 952. The heir, charged with a legacy or devise, or the executor or administrator of the estate, must deliver the very thing bequeathed if he is able to do so and cannot discharge this obligation by paying its value.

Legacies of money must be paid in cash, even though the heir or the estate may not have any.

The expenses necessary for the delivery of the thing bequeathed shall be for the account of the heir or the estate, but without prejudice to the legitime.

Art. 953. The legatee or devisee cannot take possession of the thing bequeathed upon his own authority, but shall request its delivery and possession of the heir charged with the legacy or devise, or of the executor or administrator of the estate should he be authorized by the court to deliver it.

Art. 954. The legatee or devisee cannot accept a part of the legacy or devise and repudiate the other, if the latter be onerous.

Should he die before having accepted the legacy or devise, leaving several heirs, some of the latter may accept and the others may repudiate the share respectively belonging to them in the legacy or devise.

Balane: This applies to a situation where there is only one legacy or devise.

Par. 2.-- The same rule as in accretion, acceptance and renunciation.

Art. 955. The legatee or devisee of two legacies or devises, one of which is onerous cannot renounce the onerous one and accept the other. If both are onerous or gratuitous, he shall be free to accept or renounce both, or to renounce either. But if the testator intended that the two legacies or devises should be inseparable from each other, the legatee or devisee must either accept or renounce both.

Any compulsory heir who is at the same time a legatee or devisee may waive the inheritance and accept the legacy or devise, or renounce the latter and accept the former, or waive or accept both.

Balane: This applies to a situation where there are two or more legacies or devises.
General rule: The same rule as in Art. 954.
Exception: Testator provides otherwise.

Art. 956. If the legatee or devisee cannot or is unwilling to accept the legacy or devise, or if the legacy or devise for any reason should become ineffective, it shall be merged into the mass of the estate, except in cases of substitution and of the right of accretion.

Art. 957. The legacy or devise shall be without effect:
(1) If the testator transforms the thing bequeathed in such a manner that it does not retain either the form or the denomination it had;
(2) If the testator by any title or for any cause alienates the thing bequeathed or any part thereof, it being understood that in the latter case the legacy or devise shall be without effect only with respect to the part thus alienated. If after the alienation the thing should again belong to the testator, even if it be by reason of the nullity of the contract, the legacy or devise shall not thereafter be valid, unless the reacquisition shall have been effected by virtue of the exercise of the right of repurchase;
(3) If the thing bequeathed is totally lost during the lifetime of the testator, or after his death without the heir's fault. Nevertheless, the person obliged to pay the legacy or devise shall be liable for eviction if the thing bequeathed should not have been determinate as to its kind, in accordance with the provisions of article 928.

Balane: Grounds for the revocation of legacy or devise (takes effect by operation of law.)

1. Transformation of the thing.
E.g. a. "I bequeath my ring to B." After making the will, the ring is melted and turned into a pendant.
b. When a coconut plantation is transformed into a fishpond.

2. This manifests the intent to revoke.
Exception: If *pacto de retro* and reacquired during the testator's lifetime.

Annulment depends on the basis:
a. Vitiated consent.-- Not revoked bec. there was no intention to revoke
b. All other reasons.-- Revoked.

3. Totally lost.

Art. 958. A mistake as to the name of the thing bequeathed or devised, is of no consequence, if it is possible to identify the thing which the testator intended to bequeath or devise.

Balane: This is similar to Art. 789.

Art. 959. A disposition made in general terms in favor of the testator's relatives shall be understood to be in favor of those nearest in degree.

Balane: This does not refer to legacies and devises
This article is misplaced. This should be in the Chapter on Institution of Heirs
This applies only in favor of the testator's own relatives.

Chapter 3

LEGAL OR INTESTATE SUCCESSION

Section 1.-- *General Provisions*.

INTRODUCTION

I. Intestacy.-- That which takes place by operation of law in default of compulsory and testamentary succession. It is the least preferred among the three modes of succession, but is the most common. It takes place only: (a) insofar as it does not impair legitimes; (b) only if there is no will disposing of the property.

It applies the principle of exclusion and concurrence (the same principles as in compulsory succession.)

II. WHO ARE INTESTATE HEIRS?

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 fifth degree
8. The State.

Notes: Numbers 1 to 5 are both compulsory and intestate heirs.
Numbers 6 to 8 are intestate heirs.
This shows why the rules on legitime are similar to the rules of intestacy.

III. BASIC RULES OF INTESTACY

1. Rule of Relationship.-- Intestate heir must be related to the deceased.
There are four kinds:
a. Family.-- *Js familial,* ascendants and descendants in the direct line.
b. Blood.-- *Jus sanguinis*, collaterals up to the fifth degree.
c. Spouse.-- *Jus conjugis*.
d. State.-- *Jus imperii*, the right of sovereignty.

2. Rule of Preference of lines.-- This is also true in compulsory succession. The descending is preferred over the ascending.

3. Rule on proximity of degree.-- This rule excludes the further. (This qualifies) representation.

4. Rule of equality among relatives of the same degree.-- This is corollary to the third.

Five exceptions:

a. Relatives of the full and half blood.-- Art. 1026 (does not refer to blood cousins, bec. they inherit equally.)
b. Rule of division by line in the ascending line.-- Maternal/ paternal
c. Rule on preference of lines.-- Art. 928 if decedent is survived by a father and son, the father is excluded.
d. Distribution between legitimate and illegitimate children.-- 2 : 1, although in the same degree.
e. By representation.-- Because of this, they inherit in different shares.

Art. 960. Legal or intestate succession takes place:
(1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;
(2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;
(3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, of if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes place;
(4) When the heir instituted is incapable of succeeding, except in cases provided in this Code.

Balane: This enumeration is not exclusive. There are other causes.

A. Kinds

1. Total - No testamentary disposition at all.
2. Partial - A will that disposes of part of the free portion

B. Causes

1. a. No will.-- Total intestacy
b. Void will = no will.-- Total intestacy
c. Erroneous.-- will, once valid, always valid but may lose its efficacy, e.g., when revoked.

2. a. "does not institute an heir."-- Useless will as far as succession is concerned.
b. "Does not dispose all."-- Partial intestacy

3. "Suspensive condition does not happen."-- Intestacy as to that specific institution.

4. "Incapable of succeeding-- Only specific provision will give rise to intestacy.

5. Others not in Art. 960.
a. The arrival of the resolutory term.
b. Impossibility of ascertaining the will of the testator.

Art. 961. In default of testamentary heirs, the law vests the inheritance, in accordance with the rules hereinafter set forth, in the legitimate and illegitimate relatives of the deceased, in the surviving spouse, and in the State.

Art. 962. In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it property takes place.
Relatives in the same degree shall inherit in equal shares, subject to the provisions of article 1006 with respect to relatives of the full and half blood, and of article 987, paragraph 2, concerning division between the paternal and maternal lines.

Subsection 1.-- *Relationship*.

Art. 963. Proximity of relationship is determined by the number of generations. Each generation forms a degree.

Art. 964. A series of degrees forms a line, which may be either direct or collateral.
A direct line is that constituted by the series of degrees among ascendants and descendants.
A collateral line is that constituted by the series of degrees among persons who are ascendants and descendants, but who come from a common ancestor.

Art. 965. The direct line is either descending or ascending.
The former unites the head of the family with those who descend from him.
The latter binds a person with those from whom he descends.

Art. 966. In the line, as many degrees are counted as there are generations or

persons, excluding the progenitor.

In the direct line, ascent is made to the common ancestor. Thus, the child is one degree removed from the parent, two from the grandfather, and three from the great-grandparent.

In the collateral line, ascent is made to the common ancestor and then descent is made to the person with whom the computation is to be made. Thus, a person is two degrees removed from his brother, three from his uncle, who is the brother of his father, four from his first cousin, and so forth.

Art. 967. Full blood relationship is that existing between persons who have the same father and the same mother.

Half blood relationship is that existing between persons who have the same father, but not the same mother, or the same mother, but not the same father.

Balane: Articles 963 to 967 on relationships.

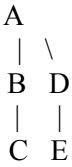
1. (These rules on relationship are) important because of certain principles which ordain in intestacy, namely:
   a. Nearer excludes the more remote;
   b. Direct line is preferred over the collateral;
   c. Descending line is preferred over the ascending.

2. Two basic concepts in relationship:
   a. Concept of degree.-- This is the method of computing the proximity of relationship. Every degree is one generation.
   b. Concept of lines.-- (These are) relative positions in the family between 2 persons (genealogical chart.)

   In intestacy:
   a. There is no limit.-- Direct line-- (i) ascending
      (ii) descending

   b. Limit of five degrees.-- Collateral line-- 2 persons having a common ascendant

   Illustration:



   For B, A is in the direct line. D is in the collateral line.

3. Full and half-blood relations in intestacy.

   a. Brothers and sisters. (Art. 1006.)-- 2 : 1-- This is applicable only in intestate succession.
   b. Nephews and nieces. (Art. 1008.)-- 2 : 1-- Nephews or nieces of the half blood-- child of a brother or sister of the half blood.

Art. 968. If there are several relatives of the same degree, and one or some of them are unwilling or incapacitated to succeed, his portion shall accrue to the others of the same degree, save the right of representation when it should take place.

Art. 969. If the inheritance should be repudiated by the nearest relatives, should there be one only, or by all the nearest relatives called by law to succeed, should there be several, those of the following degree shall inherit in their own right and cannot represent the person or persons repudiating the inheritance.

Subsection 2.-- *Right of Representation.*

Art. 970. Representation is a right created by fiction of law, by virtue of which the representative is raised to the place and the degree of the person represented, and acquires the rights which the latter would have if he were living or he could have inherited.

Balane: 1. This article contains the definition of representation. Representation is not a very accurate term because it does not convey the full meaning of the process.

Illustration:

B predeceases X. When X dies, b1 and b2 are excluded bec. of the rule that the nearer excludes the more remote. Only A and C should inherit. But because of the right of representation, b1 and b2 will inherit in the place of B. They are raised to the level of B. They will only get what B would have gotten.

The better term is *successional subrogation*, as JBL Reyes calls it.

It is a process whereby one person takes another's place. The representative is subrogated (takes the place) of the person represented.

2. Under what situations does it operate?
   a. Predecease.-- Articles 982, 975.
   b. Disinheritance.-- Art. 923.
   c. Incapacity or unworthiness to succeed.-- Art. 1035.

(This) does not apply to renunciation. (See Articles 968, 969, 977.)

3. In what kinds of succession does it operate?

   a. Compulsory
   b. Intestate

It does not apply to testamentary succession.

E.g., "I institute my son, and if he predeceases me, he will be represented by his son." This is substitution and not representation.

Art. 971. The representative is called to the succession by the law and not by the person represented. The representative does not succeed the person represented but the one whom the person represented would have succeeded.

Art. 972. The right of representation takes place in the direct descending line, but never in the ascending.

In the collateral line, it takes place only in favor of the children of brothers or sisters, whether they be of the full or half blood.

Balane: 1. In legitime, in what direction does it operate? Only in the descending, never in the ascending.

2. In intestacy, in what direction does it operate?

a. In descending line.-- Same as in legitimes.

b. Only one instance in the collateral line.-- Nephews and nieces in representation of their parents who predeceased their decedent brother or sister.

B predeceases A. When A dies, b1 and b2 can represent B in B's share in the estate of A.

Teotico v. Del Val.-- An adopted child cannot represent his adoptive parent bec. the fiction is only between the adopter and the adopted.

Art. 973. In order that representation may take place, it is necessary that the representative himself be capable of succeeding the decedent.

Balane: Capacity to succeed.-- In representation, there are three parties:

1. The decedent;
2. The person represented;
3. The representative.

Questions:

a. Must 3 have capacity to succeed from 1? Yes, bec. he is really succeeding from 1.

b. Must 3 have capacity to succeed from 2? No, bec. 3 is not succeeding from 2.

c. Must 2 have capacity to succeed from 1? No. This is precisely why 3 succeeds 1.

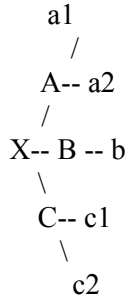
Art. 974. Whenever there is succession by representation, the division of the estate shall be made *per stirpes*, in such manner that the representative or representatives shall not inherit more than what the person they represent would inherit, if he were living or could

inherit.

Art. 975. When children of one of more brothers or sisters of the deceased survive, they shall inherit from the latter by representation, if they survive with their uncles or aunts. But if they alone survive, they shall inherit in equal portions.

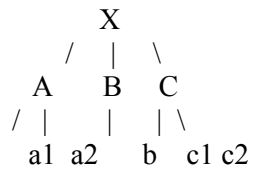
Balane: Representation:

1. In collateral line.



a. If A, B and C predecease X, all nephews inherit in their son right, *per capita*.

2. In the direct line. (Art. 982.)



a. In A, B and C predecease X, all grandchildren inherit by representation, *per stirpes*.

b. If A, B and C renounce, all grandchildren inherit by their own right, *per capita*.

Art. 976. A person may represent him whose inheritance he has renounced.

Art. 977. Heirs who repudiate their share may not be represented.

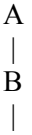
Balane: Articles 976 and 977.

In renunciation:

a. Person who renounces cannot be represented. (Art. 977.)

b. Person who renounces can represent. (Art. 976.)

Illustration:



C
|
D

C renounces his inheritance from B. B then dies. Later on, A dies.
Effect:
1. D cannot represent C in B's estate.
2. Can C represent B in A's estate? Yes. When C renounced, he only renounced his right to inherit from B. He did not renounce his right to inherit from A.

Section. 2.-- *Order of Intestate Succession.*

Subsection 1.-- *Descending Direct Line.*

Art. 978. Succession pertains, in the first place, to the descending direct line.

Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages.

An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child.

Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

Art. 981. Should children of the deceased and descendants of other children who are dead, survive, the former shall inherit in their own right, and the latter by right of representation.

Art. 982. The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions.

Baviera: Only legitimate descendants
General rule: Art. 982
Exception: Art. 992.-- An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

This applies only to child, not descendant
This is called the "iron curtain rule."

Art. 983. If illegitimate children survive with legitimate children, the shares of the former shall be in the proportions prescribed by article 895.

Baviera: Article 895 - note article 176 FC - Illegitimate child is entitled to 1/2 of share of a legitimate child. The legitime of the illegitimate child shall be taken from the free portion, provided in no case shall the total legitime of illegitimate child exceed the free portion, and the legitime of surviving spouse must first be fully satisfied.

Art. 984. In case of death of an adopted child, leaving no children or descendants, his parents and relatives by consanguinity and not by adoption, shall be his legal heirs.

Subsection2.-- ***Ascending Direct Line.***

Art. 985. In default of legitimate children and descendants of the deceased, his parents and ascendants shall inherit from him, to the exclusion of collateral relatives.

Art. 986. The father and mother, if living, shall inherit in equal shares.

Should one only of the survive, he or she shall succeed to the entire estate of the child.

Art. 987. In default of the father and mother, the ascendants nearest in degree shall inherit.

Should there by more than one of equal degree belonging to the same line they shall divide the inheritance *per capita*; should they be of different lines but of equal degree, one-half shall go to the paternal and the other half to the maternal ascendants. In each line the division shall be made *per capita*.

Baviera: *Per capita* means equally

Subsection 3.-- ***Illegitimate Children.***

Art. 988. In the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased.

Art. 989. If, together with illegitimate children, there should survive descendants of another illegitimate child who is dead, the former shall succeed in their own right and the latter by right of representation.

Art. 990. The hereditary rights granted by the two preceding articles to illegitimate children shall be transmitted upon their death to their descendants, who shall inherit by right of representation from their deceased grandparent.

Art. 991. If legitimate ascendants are left, the illegitimate children shall divide the

inheritance with them, taking one-half of the estate, whatever be the number of the ascendants or of the illegitimate children.

Art. 992. An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

Baviera: This applies only to child, not descendants
This is called the iron curtain rule

Art. 993. If an illegitimate child should die without issue, either legitimate or illegitimate, his father or mother shall succeed to his entire estate; and if the child's filiation is duly proved as to both parents, who are both living, they shall inherit from him share and share alike.

Art. 994. In default of the father or mother, an illegitimate child shall be succeeded by his or her surviving spouse, who shall be entitled to the entire estate.

If the widow or widower should survive with brothers and sisters, nephews and nieces, she or he shall inherit one-half of the estate, and the latter the other half.

Subsection 4.-- *Surviving Spouse.*

Art. 995. In the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sister, nephews and nieces, should there by any under article 1001.

> **Art. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.**

Art. 996. If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children.

Art. 997. When the widow or widower survives with legitimate parents or ascendants, the surviving spouse shall be entitled to one-half of the estate, and the legitimate parents or ascendants to the other half.

Art. 998. If a widow or widower survives with illegitimate children, such widow or widower shall be entitled to one-half of the inheritance, and the illegitimate children or their descendants, whether legitimate or illegitimate, to the other half.

Art. 999. When the widow or widower survives with legitimate children or their descendants and illegitimate children or their descendants, whether legitimate or illegitimate, such widow or widower shall be entitled to the same share as that of a legitimate child.

Art. 1000. If legitimate ascendants, the surviving spouse, and illegitimate children are left, the ascendants shall be entitled to one-half of the inheritance, and the other half shall be divided between the surviving spouse and the illegitimate children so that such widow or widower shall have one-fourth of the estate, and the illegitimate children the other fourth.

Art. 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one-half of the inheritance and the brothers and sisters or their children to the other half.

Art. 1002. In case of a legal separation, if the surviving spouse gave cause for the separation, he or she shall not have any of the rights granted in the preceding article.

Subsection 5.-- ***Collateral Relatives***

Art. 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

Art. 1004. Should the only survivors be brothers and sisters of the full blood, they shall inherit in equal shares.

Art. 1005. Should brothers and sisters survive together with nephews and nieces, who are the children of the decedent's brothers and sisters of the full blood, the former shall inherit *per capita*, and the latter *per stirpes*.

Baviera: *Per capita* means equally
per stirpes means by representation

Art. 1006. Should brothers and sisters of the full blood survive together with brother and sisters of the half blood, the former shall be entitled to a share double that of the latter.

Art. 1007. In case brothers and sisters of the half blood, some on the father's and some on the mother's side, are the only survivors, all shall inherit in equal shares without

distinction as to the origin of the property.

Art. 1008. Children of brothers and sisters of the half blood shall succeed *per capita* or *per stirpes*, in accordance with the rules laid down for brothers and sisters of the full blood.

Art. 1009. Should there be neither brothers nor sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate.

The latter shall succeed without distinction of lines or preference among them by reason of relationship by the whole blood.

Art. 1010. The right to inherit *ab intestato* shall not extend beyond the fifth degree of relationship in the collateral line.

Subsection 6.-- *The State*.

Art. 1011. In default of persons entitled to succeed in accordance with the provisions of the preceding Sections, the State shall inherit the whole estate.

Art. 1012. In order that the State may take possession of the property mentioned in the preceding article, the pertinent provisions of the Rules of Court must be observed.

Art. 1013. After the payment of debts and charges, the personal property shall be assigned to the municipality or city where the deceased last resided in the Philippines, and the real estate to the municipalities or cities, respectively, in which the same is situated.

If the deceased never resided in the Philippines, the whole estate shall be assigned to the respective municipalities or cities where the same is located.

Such estate shall be for the benefit of public schools, and public charitable institutions and centers, in such municipalities or cities. The court shall distribute the estate as the respective needs of each beneficiary may warrant.

The court, at the instance of an interested party, or in its own motion, may order the establishment of a permanent trust, so that only the income from the property shall be used.

Art. 1014. If a person legally entitled to the estate of the deceased appears and files a claim thereto with the court within five years from the date the property was delivered to the State, such person shall be entitled to the possession of the same, or if sold, the municipality or city shall be accountable to him for such part of the proceeds as may not have been lawfully spent.

Balane:
Intestate heirs:
1. Legitimate children/ descendants
    a. excludes ascendants, all collaterals, the State

b. concurs with illegitimate children/ descendants, surviving spouse
c. excluded by no one.

2. Illegitimate children/ descendants
   a. excludes illegitimate parents, collaterals, the State
   b. concurs with surviving spouse, legitimate children, legitimate ascendants
   c. excluded by no one.

3. Legitimate parents
   a. excludes collaterals, the State
   b. concurs with illegitimate children, surviving spouse
   c. excluded by legitimate children.

4. Illegitimate ascendants
   a. excludes collaterals, the State
   b. concurs with the surviving spouse
   c. excluded by legitimate descendants, illegitimate descendants.

5. Surviving spouse
   a. excludes collaterals, other than brothers and sisters, nephews and nieces, the State
   b. concurs with legitimate child, illegitimate child, legitimate and illegitimate brothers and sisters, nephews and nieces.
   c. excluded by no one.

6. Brothers, sisters, nephews and nieces
   a. excludes all other collaterals, the State
   b. concurs with the surviving spouse
   c. excluded by legitimate children, illegitimate children, legitimate parents, illegitimate parents.

7. Other collaterals
   a. exludes collaterals in remote degrees, the State
   b. concurs with collaterals in equal degree
   c. excludes legitimate/ illegitimate children/ parents, surviving spouse, brothers and sisters, nephews and nieces.

8. The State
   a. excludes no one
   b. concurs with no one
   c. excluded by everybody else.

Articles 978 to 1014.-- Various Combinations-- Total Intestacy

Note: The rules on exclusion and concurrence in legitimes will also apply to intestacy.

1. Legitimate children and/ or descendants alone.-- Entire estate divided equally among them. (Art. 979.)

2. Legitimate children and illegitimate children.-- Entire estate in proportion of 2 : 1 or 10 : 5 : 4 as the case may be. This is without prejudice to the impairment of legitimes. (Art. 983.)

3. Legitimate children and surviving spouse.-- Surviving spouse share equal to that of one legitimate child. If only 1 legitimate child, 1/2 each. (Art. 996.)

Formula: $\frac{\text{no. of legitimate children + 1 (surviving spouse)}}{\text{Estate}}$ = share of each

4. Legitimate children
Surviving spouse.-- Same share as a legitimate child
Illegitimate children.-- 1/2 or 4 : 5 : 10 ratio w/ share of a legitimate child. (Art. 999.)

5. Legitimate parents alone.-- Entire estate shared equally.

6. Legitimate ascendants alone.-- Apply Articles 889 and 890 which are the rules on legitime.

7. Legitimate parents (or ascendants).-- 1 : 2
Illegitimate children.-- 1/2
Free portion = 1/4 to illegitimate children. (Art. 991.)

Partial Intestacy

8. Legitimate parents (or ascendants).-- 1/2
Surviving spouse.-- 1/2
Free portion.-- 1/4 to the surviving spouse. (Art. 997.)

Partial Intestacy

9. Legitimate parents (or ascendants.)-- 1/2
Surviving spouse.-- 1/4
Illegitimate children.-- 1/4
Free portion.-- 1/8 to surviving spouse. (Art. 1000.)

10. Illegitimate children alone.-- Entire estate divided equally or 5 : 4 as the case may be.
Free portion = 1/2 to illegitimate children. (Art. 988.)

11. Illegitimate children.-- 1/2 divided as in number 10
Surviving spouse.-- 1/2
Free portion.-- 1/6 to both. (Art. 998.)

Partial intestacy

12. Surviving spouse alone.-- Entire estate.
Free portion.-- 1/2 to surviving spouse. (Articles 994 and 995.)

13. Surviving spouse.-- 1/2
Illegitimate children.-- 1/2
Free portion = 1/4 to both (no article.)

14. Surviving spouse.-- 1/2
Legitimate brothers and sisters and nephews and nieces.-- 1/2
full : half = 2 : 1

Free portion = 1/2 to brothers and sisters and nephews and nieces

If marriage is in *articulo mortis*, add 1/6 to free portion once the legitime of the wife is reduced to 1/3 (Art. 1001.)

15. Surviving spouse.-- 1/2
Illegitimate brothers and sisters, nephews and nieces (if decedent is illegitimate).-- 1/2
Full : Half = 2 : 1
Free portion = 1/2 to illegitimate brothers and sisters and nephews and nieces (Art. 994.)

16. Illegitimate parents alone.-- entire estate
Free portion.-- 1/2 to illegitimate parents. (Art. 993.)

17. Illegitimate parents.-- none.
Children of any kind.-- Entire estate divided according to earlier rules. (Art. 993.)

18. Legitimate brothers and sisters alone.-- Whole estate divided in the ratio of 2 : 1 between full and half blood. (Articles 1004 and 1006.)

19. Legitimate brothers and sisters and nephews and nieces.-- Entire estate with the ratio of 2 : 1 between full and half blood
a. Nephews and nieces inherit by representation.-- *per stirpes*.
b. Nephews and nieces inherit bec. all brothers and sisters predecease.-- *per capita.* (Articles 1005 and 1008.)

20. Nephews and nieces.-- Entire estate.
Uncles and aunts.-- None.
Bacayo v. Borromeo.-- Nephews and nieces exclude uncles and aunts even if they may be both only three (3) degrees away from the decedent. (Art. 1009 by inference.)

21. Illegitimate brothers and sisters and nephews and nieces.-- Entire estate with the ratio of 2 : 1 between full and half blood.
This applies only if the decedent is also illegitimate.
Apply the rules for nephews and nieces stated in number 19 (none.)

22. Nephews and nieces alone.-- Entire estate with the ratio of 2 : 1 between full and half blood.
Per capita. (Articles 975 and 1008.)
Right of representation.

23. Other collaterals.-- Entire estate in equal shares
Rules: a. No distinction between full and half blood
b. No representation
c. Nearer excludes the more remote
d. Up to the fifth degree only. (Articles 1009 and 1010.)

In case of an illegitimate decedent, collaterals are only up to nephews and nieces.

24. The State.-- the entire estate. (Art. 1011.)

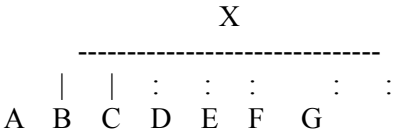
NOTE: Follow the rules except numbers 2 and 4 which requires two (2) steps. Numbers 2 and 4 are tricky because you may end up impairing the legitime.

REMEMBER: Legitimes cannot be impaired.

Good News: Just follow the rules, the legitimes will never be impaired. They are automatically covered by the rules.

Bad News: Art. 983, which covers the combination of legitimate and illegitimate children, might impair the legitime.

Illustration: X's estate is worth P180,000.



1. If you follow Art. 983 literally, 2 : 2 : 1 : 1 : 1 : 1 : 1 assuming the decedent died after the Family Code took effect.

A = 40,000
B = 40,000
C = 20,000
D = 20,000
E = 20,000
F = 20,000
F = 20,000
G = 20,000

But the legitime of A and B is impaired.

Legitime of A and B =	90,000
Share of A and B	80,000
Legitime lacks	10,000

2. Since Art. 983 impairs the legitime, follow this two- step process:

a. Give the legitime first. (Give to the legitimate first before the illegitimate.)

b. (i) If there is an excess, divide it according to the ratio of 2 : 1 or 10 : 5 : 4 depending on the circumstances.

(ii) If lacking, reduce the share of illegitimate children *pro-rata*.

In the illustration:

A = 45,000
B = 45,000
C = 22,500
D = 22,500
E = 22,500
F = 22,500

G = 22,500
TOTAL 202,500

The estate lacks 22,500

Reduce the shares of illegitimate children *pro-rata* = 22,500/ 5 = 4,500 each. The share of each illegitimate child will equal 18,000.

Note: 1. An adopted child is treated as a legitimate child.
2. Spouse receives shares if:
   a. The valid is marriage
   b. Violable but not annulled

   If legally separated, apply the same rules as in legitimes.

Chapter 4

PROVISIONS COMMON TO TESTATE AND INTESTATE SUCCESSIONS

Section 1.-- *Right of Accretion*.

Balane: (The right of accretion) takes place in: (1) testamentary succession
(2) intestate succession

But not with respect to legitimes.-- Art. 1021 par. 2. This provision was copied from the OCC and is inapplicable now because it was used for the *mejora*. However, it must still be applied.

Art. 1015. Accretion is a right by virtue of which, when two or more persons are called to the same inheritance, devise or legacy, the part assigned to the one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heir, co-devisees, or co-legatees.

Art. 1016. In order that the right of accretion may take place in a testamentary succession, it shall be necessary:

(1) That two or more persons be called to the same inheritance, or to the same portion thereof, *pro indiviso*, and

(2) That one of the persons thus called die before the testator, or renounce the inheritance, or be incapacitated to receive it.

Balane: Articles 1015 and 1016.

Requisites:

1. Two or more heirs, devisees and legatees are called to the same inheritance, devise or legacy *pro-indiviso*. *Pro indiviso* means without designation of parts or the portions are undivided.

2. One of the persons called:
   a. Die before the testator
   b. Renounce the inheritance
   c. Be incapacitated to receive it.

Note: These are the same causes for substitution.

Substitution	Accretion	Representation
1. predecease	1. predecease	1. predecease
2. incapacity	2. incapacity	2. incapacity
3. renunciation	3. renunciation	3. disinheritance

Examples:

1. "I give 5000 to A and B." If A dies and does not have any children or descendants, accretion will take place. B will get 5,000, 2500 by his own right and 2,500 by accretion.

2. "I give 5000 to A and B in equal shares." Accretion will still apply. "Equal shares" makes explicit what is implied because if nothing is said, it is presumed that it is in equal shares.

3. "I give 1/2 to A, 1/4 B and 1/8 to C." This seems to imply accretion.

a. Is it possible to have unequal *pro indiviso* shares? Yes. As long as they are "undivided," "aliquot" or "abstract." It is not required that they be in equal shares. What is required is that it be *pro indiviso*.

b. Accretion will not apply according to commentators. *Pro indiviso* is not a good phrase, it should be "without any particular designation of shares."

If equal shares.-- Art. 1017, accretion applies.
If unequal shares, can accretion apply?
(i) Yes.-- Art. 1016
(ii) No.-- Commentators. If sharing is not the same, accretion cannot take place.

Art. 1017. The words "one-half for each" or "in equal shares" or any others which, though designating an aliquot part, do not identify it by such description as shall make each heir the exclusive owner of determinate property, shall not exclude the right of accretion.

In case of money or fungible goods, if the share of each heir is not earmarked, there shall be a right of accretion.

Art. 1018. In legal succession the share of the person who repudiates the inheritance shall always accrue to his co-heirs.

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

Some rules from Art. 1018 by implication:

1. In renunciation, there is always accretion. Why? Because there is no representation in renunciation. This applies only to intestacy and testamentary succession.

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

3. In testamentary succession, apply substitution first. If there is no substitution, then accretion will apply.

Art. 1019. The heirs to whom the portion goes by the right of accretion take it in the same proportion that they inherit.

Balane: This implies proportion is different. This applies in intestacy and not to testamentary (succession.) In testamentary (succession), shares are always equal bec. of designation of shares. In intestacy, it is possible to have different shares. E.g., full and half blood.

Example,

A
X B
C
D

Estate = 600,000. If C predecease X, then
B = 200,000 + 40,000 = 240,000
C = 200,000 + 40,000 = 240,000
D = 100,000 + 20,000 = 120,000

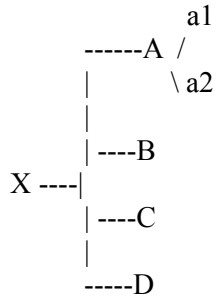
Share of C divided in the proportion they were to inherit.

Art. 1020. The heirs to whom the inheritance accrues shall succeed to all the rights and obligations which the heir who renounced or could not receive it would have had.

Balane: 1. Co-heirs get (their) share with the same obligations and conditions.

2. Can representatives get accretion? Yes. If person represented will get the accretion, then the representative should (also) get the accretion.

Illustration:



Estate is worth 600. A predeceased X. B renounced.

If all present, then 150 each.
a1 and a2 = 150 + 50 = 200
C = 150 + 50 = 200
D = 150 + 50 = 200
B's share acquired by the others by accretion 150

a1 and a2 get accretion bec. they represent A in A's rights as if A is still around. They stand in the same position as a person represented.
a1 and a2 get 75 each by right of representation, and 25 each by accretion.

Art. 1021. Among the compulsory heirs the right of accretion shall take place only when the free portion is left to two or more of them, or to any of them and to a stranger.
Should the part repudiated be the legitime, the other co-heirs shall succeed to in their own right, and not by the right of accretion.

Art. 1022. In testamentary succession, when the right of accretion does not take place, the vacant portion of the instituted heirs, if no substitute has been designated, shall pass to the legal heirs of the testator, who shall receive it with the same charges and obligations.

Art. 1023. Accretion shall also take place among devisees, legatees and usufructuaries under the same conditions established for heirs.

Section 2.-- *Capacity to Succeed by Will or by Intestacy.*

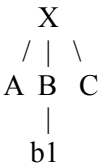
Art. 1024. Persons not incapacitated by law may succeed by will or *ab intestato*.
The provisions relating to incapacity by will are equally applicable to intestate succession.

Balane: Par. 1.-- *Ab intestato* refers both to legitime and intestacy.
Par. 2.-- Mistake - not true. Incapacity to succeed by will, 1027, 1028 and 1032, are they applicable to intestacy? Not all.
a. Applies only to incapacity by will.-- Articles 1027, paragraphs 1 to 5, 1028 (applicable only in testamentary succession.)
b. Applies to both.-- Articles 1027, par. 6, 1032.)

Art. 1025. In order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens, except in case of representation, when it is proper.
A child already conceived at the time of the death of the decedent is capable of succeeding provided it be born later under the conditions prescribed in article 41.

Balane: General rule: Succession opens at the death of the decedent. (Art. 777.) The heir must be alive when succession opens. The same as Art. 1034.
Exception: "In case of representation, when proper." This is wrong. The representative must be alive when the decedent dies.

Illustration:



1. B dies on Jan. 1996. B's wife is pregnant. X dies in March 1996. b1 is born in July 1996. Was b1 alive when X died? Yes. Art. 41, the foetus is considered alive from the moment of conception. This is not an exception bec. b1 is alive.

2. B is disinherited in 1996. X dies in 1997. b1 is born in 1999.
a. Can b1 represent B? No. He was not living at the time X died.
b. Can b1 inherit from X? No. Art. 1025, par. 1.

Parish Priest of Victoria v. Rigor -- In the case, the priest provided that his estate will go to any of the nephews who may enter the priesthood. The nephew claiming, however, was born after the priest had died. As such , the nephew cannot inherit.

Art. 1026. A testamentary disposition may be made to the State, provinces, municipal corporations, private corporations, organizations, or associations for religious, scientific, cultural, educational, or charitable purposes.

All other corporations or entities may succeed under a will, unless there is a provision to the contrary in their charter or the laws of their creation, and always subject to the same.

Balane: Q: Can you make a testamentary disposition in favor of juridical persons?

A: Yes, if allowed by their charter. They must exist, however, at the time of the death of the decedent.

E.g., "I give 1/3 of my estate to David-Navato Organization, a non-incorporated org." Is this valid? No. It has no juridical personality

Article 1027. The following are incapable of succeeding:

(1) The priest who heard the confession of the testator during his last illness, or the minister of the gospel who extended spiritual aid to him during the same period;

(2) The relatives of such priest or minister of the gospel within the fourth degree, the church, order, chapter, community, organization, or institution to which such priest or minister may belong;

(3) A guardian with respect to testamentary dispositions given by a ward in his favor before the final accounts of the guardianship have been approved, even if the testator should die after the approval thereof; nevertheless, any provision made by the ward in favor of the guardian when the latter is his ascendants, descendant, brother, sister, or spouse, shall be valid;

(4) Any attesting witness to the execution of a will, the spouse, parents, or children, or any one claiming under such witness, spouse, parents, or children;

(5) Any physician, surgeon, nurse, health officer or druggist who took care of the testator during his last illness;

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

Balane: Numbers 1 to 5 have no application to legitimes.

A. Example number 1. A, a priest, is a friend of B. B regularly goes to confession to A. B then becomes seriously ill. He executes a will instituting A to 1/3 to his estate. Is this testamentary disposition valid or is A capacitated to inherit from B? Yes.

Example number 2. On his deathbed, X makes a will instituting Y, a priest. Thinking he will die, X calls Y to confess. Is Y capacitated to inherit from X? Yes.

1. When does par. 1 apply, in other words, when is the priest incapacitated to succeed?

    a. When the confession is made prior to the making of a will. If simultaneous,

the priest is still disqualified. If the will is made first, the priest can inherit.

b. If the confession was made before the will was made and the priest is the son of the sick person, can the priest inherit upon the death of the sick person? Yes. He can get the legitime.

If the priest were a brother? Yes. He can inherit by intestacy.

Disqualification applies only to testamentary dispositions.

2. "Priest or minister of the gospel."-- Despite this apparent restriction to Christian ministers, this applies to all spiritual ministers, e.g., Buddhist monks.

Why? Because it is conclusively presumed that the spiritual minister used his moral influence to induce or influence the sick person to make a testamentary disposition in his favor.

3. Requisites:

a. The will was made during the last illness
b. The spiritual ministration must have been extended during the last illness
c. The will was executed during or after the spiritual ministration.

B. Relatives of the priest of minister of the gospel

This widens the disqualification in A.

Omission was made of the spouse of the minister of the gospel. What do you do? Apply Art. 1031. To disqualify the spouse, you have to show that the testamentary benefaction given to the wife was meant to benefit the minister. This is harder to prove.

C. Guardian

General rule: Disqualification applies when the disposition is made:

After the guardianship began (beginning of the guardianship) --- Before termination of guardianship (approval of final accounts or lifting of guardianship.)

Exception: Disposition is valid when the guardian is an ascendant, descendant, brother, sister or spouse.

1. This exception is not present in the case of a priest. Why? They were derived different laws. The omission in the case of the priest was stupid.

2. Seems to refer only to guardian of the property. Commentators agree that this also covers guardians over the person bec. the latter have more opportunity to influence the ward.

D. Attesting witness.

Correlate this w/ Art. 923.

General rule: Witness, spouse.... are disqualified.

Exception: If there are three (3) other witnesses to the will.

E. Physician, surgeon, nurse, health officer or druggist.

The latter must have taken care of the sick person.

Requisites:

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.

Art. 1028. The prohibitions mentioned in article 739, concerning donations *inter vivos* shall apply to testamentary provisions.

> **Article 739. The following donations shall be void:**
> **(1) Those made between persons who were guilty of adultery or concubinage at the time of the donation;**
> **(2) Those made between persons found guilty of the same criminal offense, in consideration thereof;**
> **(3) Those made to a public officer or his wife, descendants and ascendants, by reason of his office.**
> **In the case referred to in No. 1, the action for declaration of nullity may be brought by the spouse of the donor or donee; and the guilt of the donor and donee may be proved by preponderance of evidence in the same action.**

Balane: This applies only to testamentary succession.

Art. 1029. Should the testator dispose of the whole or part of his property for prayers and pious works for the benefit of his soul, in general terms and without specifying it application, the executor, with the court's approval shall deliver one-half thereof or its proceeds to the church or denomination to which the testator may belong, to be used for such prayers and pious works, and the other half to the State, for the purposes mentioned in article 1013.

Balane: Disposition in favor of: (a) prayers; (b) pious works-- for the soul of the testator.
1/2 to the Church which the testator belongs and 1/2 to the State.
This is because of Art. 1029, this is not a disposition in favor of an unknown person.

Art. 1030. Testamentary provisions in favor of the poor in general, without designation of particular persons or of any community, shall be deemed limited to the poor living in the domicile of the testator at the time of his death, unless it should clearly appear that his intention was otherwise.

The designation of the persons who are to be considered as poor and the distribution of the property shall be made by the person appointed by the testator for the purpose; in default of such person, by the executor; and should there be no executor, by the justice of the peace, the mayor, and the municipal treasurer, who shall decide by a majority of votes all questions that may arise. In all these cases, the approval of the Court of First Instance shall be necessary.

The preceding paragraph shall apply when the testator has disposed of his property in favor of the poor of a definite locality.

Balane: 1. This is limited to the poor living at the domicile of the testator upon his death. This is not clear. What is the scope of domicile? Does it refer to country, province, city or barangay?

2. Who is to designate? (In the order of preference)
   a. Person appointed by the testator for that purpose

b. Executor

c. MTC judge, mayor, municipal treasurer. This never happens bec. if there are no a and b, the court appoints an administrator.

Art. 1031. A testamentary provision in favor of a disqualified person, even though made under the guise of an onerous contract, or made through an intermediary, shall be void.

Balane: What you cannot do directly, you cannot do indirectly. This is the same as Art. 867, par. 4.-- Use of a (a) dummy; (b) contract

Article 1032. The following are incapable of succeeding by reason of unworthiness:

(1) Parents who have abandoned their children or induced their daughters to lead a corrupt or immoral life, or attempted against their virtues;

(2) Any person who has been convicted of an attempt against the life of the testator, his or her spouse, descendants or ascendants;

(3) Any person who has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found to be groundless;

(4) Any heir of full age who, having knowledge of the violent death of the testator, should fail to report it to an officer of the law within a month, unless the authorities have already taken action; this prohibition shall not apply to cases wherein, according to law, there is no obligation to make an accusation;

(5) Any person convicted of adultery or concubinage with the spouse of the testator;

(6) Any person who by fraud, violence, intimidation, or undue influence should cause the testator to make a will or to change one already made;

(7) Any person who by the same means prevents another from making a will, or from revoking one already made, or who supplants, conceals, or alters the latter's will;

(8) Any person who falsifies or forges a supposed will of the decedent.

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

Number 4 has no application because there is no obligation to accuse. There is no law that obligates to accuse. Only a civic or moral duty but not a legal duty.

Numbers 6, 7 and 8 cover six (6) cases of acts relating to a will:

a. Causing the testator to make a will
b. Causing the testator to change an existing will
c. Preventing the decedent from making a will
d. Preventing the testator from revoking his will
e. Supplanting, concealing, or altering the testator's will.
f. Falsifying or forging a supposed will of the decedent.

There is no conflict with disinheritance despite similar grounds.

Illustration: A, son of B, tries to kill B. B may disinherit him or not. If B disinherits him under Art. 919, then A is disqualified to inherit. However, even if B did not disinherit A, A is incapacitated to inherit bec. of Art. 1032. If disinherited under Art. 919, there is double disinheritance. Disinheritance in the will is redundant. In the common grounds, you do not have to disinherit in Art. 919 since the effect of Articles 919 and 1032 are the same.

Art. 1033. The causes of unworthiness shall be without effect if the testator had knowledge thereof at the time he made the will, or if, having known of them subsequently, he should condone them in writing.

Balane: 1. a. "Had knowledge at the time he made the will."-- In this case, it is presumed that the testator had pardoned the offender.

b. "Known subsequently."-- Needs written pardon.

2. Problem: In disinheritance, incapacity to disinherit is lifted by reconciliation. But in Art. 1033, there must be a pardon in writing. This is strange.

In Art. 919 - express will -- reconciliation is enough
In Art. 1033 - presumed will -- needs written pardon.

Problem arises if the testator made a will disinheriting. What rule do you apply if the reason for disinheriting was a common ground?

a. If you follow the rules of disinheritance.-- Yes.
b. If you follow the rules of unworthiness.-- No.

Commentators.-- Rules of disinheritance should apply. To make the rules of unworthiness apply would be giving precedence to the presumed will over the express will.

Art. 1034. In order to judge the capacity of the heir, devisee or legatee, his qualification at the time of the death of the decedent shall be the criterion.

In cases falling under Nos. 2, 3 or 5 of article 1032, it shall be necessary to wait until final judgment is rendered, and in the case falling under No. 4, the expirattion of the month allowed for the report.

If the institution, devise or legacy should be conditional, the time of the compliance with the condition shall also be considered.

Balane: Time to judge the capacity of the heir.

Par. 1.-- Time of death. correlate with par. 1 of Art. 1025. The time succession opens, no exceptions.

Par. 2.-- Grounds 2, 3 and 5.-- Wait for final judgment when conviction is needed.

Par. 3.-- Conditional.-- Consider both time of compliance and time of death of the decedent.

Art. 1035. If the person excluded from the inheritance by reason of incapacity should be a child or descendant of the decedent and should have children or descendant, the latter shall acquire his right to the legitime.

The person so excluded shall not enjoy the usufruct and administration of the property thus inherited by his children.

Balane: This grants right of representation to children or descendants of incapacitated children or descendants.

This covers the legitime and intestacy.

It does not mention intestate share only legitime. Why? Because Art. 1035 assumes that

the free portion has been disposed of completely. But if not, then intestate share is included.

Art. 1036. Alienations of hereditary property, and acts of administration performed by the excluded heir, before the judicial order of exclusion, are valid as to third persons who acted in good faith; but the co-heirs shall have a right to recover damages from the disqualified heir.

Balane: This applies the doctrine of innocent purchaser for value without prejudice to the right to damages of the prejudiced heirs against the incapacitated heir.

Art. 1037. The unworthy heir who is excluded from the succession has a right to demand indemnity for any expenses incurred in the preservation of the hereditary property, and to enforce such credits as he may have against the estate.

Balane: This is the right given to every possessor, whether he be in good or bad faith in Art. 443.
Necessary expenses for preservation.

Art. 1038. Any person incapable of succession, who, disregarding the prohibition stated in the preceding articles, entered into possession of the hereditary property, shall be obliged to return it together with its accessions.
He shall be liable for all the fruits and rents he may have received, or could have received through the exercise of due diligence.

Balane: Possessor in bad faith means he knows that he is incapacitated. He must return the property, fruits and rents.

Art. 1039. Capacity to succeed is governed by the law of the nation of the decedent.

Art. 1040. The action for a declaration of incapacity and for the recovery of the inheritance, devise or legacy shall be brought within five years from the time the disqualified person took possession thereof. It may be brought by any one who may have an interest in the succession.

Balane: Right of heir to recover the inheritance must be exercised within five years.

Section 3.-- *Acceptance and Repudiation of the Inheritance.*

Art. 1041. The acceptance or repudiation of the inheritance is an act which is purely voluntary and free.

Balane: 1. Acceptance.-- (a) voluntary; (b) free

2. Basic Rules

a. Rules for acceptance are more liberal than the rules of renunciation because the former are beneficial to the heir while the latter is prejudicial to the heir.

b. In case an heir is incompetent/ insane or a minor, acceptance or repudiation must be made by a representative. In case of renunciation, court approval is necessary bec. of a.

Art. 1042. The effects of the acceptance or repudiation shall always retroact to the moment of the death of the decedent.

Balane: This is because of Art. 777 which states that "the right to the succession are transmitted from the moment of the death of the decedent."

Art. 1043. No person may accept or repudiate an inheritance unless he is certain of the death of the person from whom he is to inherit, and of his right to the inheritance.

Balane: This article requires: (a) certainty of death; (b) right to inherit (is established.)

Art. 1044. Any person having the free disposal of his property may accept or repudiate an inheritance.

Any inheritance left to minors or incapacitated persons may be accepted by their parents or guardians. Parents or guardians may repudiate the inheritance left to their wards only by judicial authorization.

The right to accept an inheritance left to the poor shall belong to the persons designated by the testator to determine the beneficiaries and distribute the property, or in their default to those mentioned in article 1030.

Balane:

Par. 1.-- Must have capacity to dispose of the property.

a. Of age
b. Not restricted in his capacity to act.

Par. 2.-- Minors or incapacitated can inherit through their parents or legal guardians. But to renounce, judicial approval is necessary.

Art. 1045. The lawful representatives of corporations, associations, institutions and entities qualified to acquire property may accept any inheritance left to the latter, but in order to repudiate it, the approval of the court shall be necessary.

Balane: Acceptance needs a lawful representative while renunciation needs court approval.

Art. 1046. Public official establishments can neither accept nor repudiate an inheritance without the approval of the government.

Art. 1047. A married woman of age may repudiate an inheritance without the consent of her husband.

Balane: General rule: A married woman may accept without the consent of her husband.

Exception: If she is insane. In this case, however, the marriage is not the reason for the incapacity.

Art. 1048. Deaf-mutes who can read and write may accept or repudiate the inheritance personally or through an agent. Should they not be able to read and write, the inheritance shall be accepted by their guardians. These guardians may repudiate the same with judicial approval.

Balane: General rule: Being a deaf-mute is not a restriction on the ability to accept or renounce as long as he can read and write. He may accept or renounce personally or through an agent.

Exception: If he cannot read or write, he can only accept through a guardian. If he renounces, the renunciation needs court approval.

Art. 1049. Acceptance may be express or tacit.

An express acceptance must be made in a public or private document.

A tacit acceptance is one resulting from the acts by which the intention to accept is necessarily implied, or which one would have no right to do except in the capacity of an heir.

Acts of mere preservation or provisional administration do not imply an acceptance of the inheritance if, through such acts, the title or capacity of an heir has not been assumed.

Balane: Forms of acceptance:

1. Express.-- In clear and explicit terms. In writing, whether in a private or public document.

2. Tacit.-- Art. 1050.-- Results from acts from which intent to accept is implied.

3. Implied.-- Art. 1057.-- If does not do anything w/in thirty (30) days, then it is deemed accepted.

Art. 1050. An inheritance is deemed accepted:

(1) If the heirs sells, donates, or assigns his right to a stranger, or to his co-heirs, or to any of them;

(2) If the heir renounces the same, even though gratuitously, for the benefit of one or more of his co-heirs;

(3) If he renounces it for a price in favor of all his co-heirs indiscriminately; but if this renunciation should be gratuitous, and the co-heirs in whose favor it is made are those upon whom the portion renounced should devolve by virtue of accretion, the inheritance shall not be deemed as accepted.

Balane: Par. 1.-- Acts of ownership-- to do these acts, the heir must have accepted the inheritance.

Par. 2.-- Heir is really giving it-- to do this, the heir must have accepted it first

Par. 3.-- Sells it-- must have acquired something before you can sell. However, if gratuitous in favor of co-heirs indiscriminately, to whom it would have devolved by accretion, then true renunciation.

Art. 1051. The repudiation of an inheritance shall be made in a public or authentic

instrument, or by petition presented to the court having jurisdiction over the testamentary or intestate proceedings.

Balane: Forms of renunciation:

1. Public or authentic document
2. Petition presented to the court.

Strict form is required. One cannot renounce tacitly or impliedly.

Art. 1052. If the heir repudiates the inheritance to the prejudice of his own creditors, the latter may petition the court to authorize them to accept it in the name of the heir.

The acceptance shall benefit the creditors only to an extent sufficient to cover the amount of their credits. The excess, should there be any, shall in no case pertain to the renouncer, but shall be adjudicated to the persons to whom, in accordance with the rules established in this Code, it may belong.

Balane: *Accion Pauliana*.-- The right of the creditor to set aside dispositions or renunciations prejudicial to them.

How much? To the extent to cover the debt only. The excess is given to whom it would properly belong.

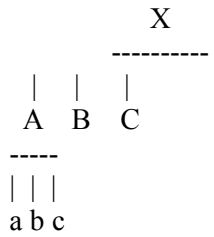
This assumes that you do not have enough money to pay your creditors.

Art. 1053. If the heir should die without having accepted or repudiated the inheritance his right shall be transmitted to his heirs.

Balane: Why? Because the right has vested in him at the time the decedent died.

Art. 1054. Should there be several heirs called to the inheritance, some of them may accept and the others may repudiate it.

Balane: Illustration:



X died on Jan. 1, 1996. A died on Jan. 14, 1996 without having accepted or repudiated the inheritance. a, b and c get the rights of A. Any of them may renounce. If a and b renounce, then 2/3 of A's share is deemed renounced. No accretion takes place between a, b and c.

Partial acceptance is allowed. E.g., B renounces 2/3 of what he will get.

Art. 1055. If a person, who is called to the same inheritance as an heir by will and *ab intestato*, repudiates the inheritance in his capacity as a testamentary heir, he is understood to have repudiated it in both capacities.

Should he repudiate it as an intestate heir, without knowledge of his being a testamentary heir, he may still accept it in the latter capacity.

Balane: If the heir is both a testate and intestate heir:

1. If he renounces in a testate capacity.-- He is deemed to have renounced in both capacities. Why? If the heir rejected an express will, then he is deemed to have rejected the implied will.
2. If he renounces in an intestate capacity, whether he had knowledge that he was a testate heir or not, only his capacity to inherit as an intestate heir is renounced. Even if he had knowledge, he may want to accept the testate share to show respect for the will of the testator. Philosophy behind this is that testamentary succession is superior to intestate succession.

Note: Legitime is treated separately.-- This may be accepted or renounced separately. The heir may accept the testate share and reject the legitime and vice versa.

Art. 1056. The acceptance or repudiation of an inheritance, once made, is irrevocable, and cannot be impugned, except when it was made through any of the causes that vitiate consent, or when an unknown will appears.

Balane: General rule: Irrevocability of acceptance or repudiation.

Exceptions:
1. Vitiated consent, e.g., when there is fraud
2. When an unknown will appears.-- You cannot renounce what you do not know.

Art. 1057. Within thirty days after the court has issued an order for the distribution of the estate in accordance with the Rules of Court, the heirs, devisees and legatees shall signify to the court having jurisdiction whether they accept or repudiate the inheritance.

If they do not do so within that time, they are deemed to have accepted the inheritance.

Balane: Implied acceptance.-- The thirty day period is counted from the receipt of the order.

Section 4.-- *Executors and Administrators*.

Art. 1058. All matters relating to the appointment, powers and duties of executors and administrators and concerning the administration of estates of deceased persons shall be governed by the Rules of Court.

Art. 1059. If the assets of the estate of a decedent which can be applied to the payment of debts are not sufficient for that purpose, the provisions of articles 2239 to 2251 on Preference of Credits shall be observed, provided that the expenses referred to in article 2244, No. 8, shall be those involved in the administration of the decedent's estate.

Art. 1060. A corporation or association authorized to conduct the business of a trust company in the Philippines may be appointed as an executor, administrator, guardian of an estate, or trustee, in like manner as an individual; but it shall not be appointed guardian of the person of a ward.

Balane: Articles 1058 to 1060.-- For the procedural aspects, see Rules 73 to 91 of the Rules of Court.

Section 5.-- *Collation*.

Balane: Definition: Steps taken to settle the estate to be able to give it to the heirs.

Three (3) senses:

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

2. *Imputation.*-- Determine if the donation is chargeable/ imputable to the legitime or the free portion.

General rule: If compulsory heir, imputable to the legitime.

Exception: If testator has provided otherwise.

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

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

Balane: First sense, computation.

This is the same as the third step in Art. 908.

Inaccuracy in the provision.-- "collation done by compulsory heirs."-- All donations are collated provided there is at least one compulsory heir bec. there will be a legitime.

Art. 1062. Collation shall not take place among compulsory heirs if the donor should have so expressly provided, or if the donee should repudiate the inheritance, unless the donation should be reduced as inofficious.

Balane: Second sense, imputation. (Articles 909, 910.)

General rule: Donation to a compulsory heir shall be collated (imputed) to his legitime.

Exceptions: (1) Donor provides otherwise. In such a case, it will be imputed to the free portion.

(2) Donee repudiates the inheritance.

Art. 1063. Property left by will is not deemed subject to collation, if the testator has not otherwise provided, but the legitime shall in any case remain unimpaired.

Balane: Second sense, imputation.

Testamentary Disposition. This is imputed against the free portion and not against the legitime. The heir gets legitime + testamentary disposition. Why? If not, what is the use? He will get it anyway. Unless, of course, if it impairs the legitime of others.

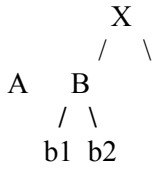
Art. 1064. When grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, they shall bring to collation all that their parents, if alive, would have been obliged to bring, even though such grandchildren have not inherited the property.

They shall also bring to collation all that they may have received from the decedent during his lifetime, unless the testator has provided otherwise, in which case his wishes must be respected, if the legitime of the co-heirs is not prejudiced.

Balane: Second sense, imputation.

"Grandchildren" refer to all descendants who inherit by representation.

Illustration:



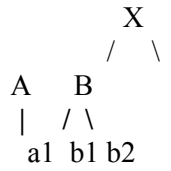
B predeceased X.
1. In 1988, X donated to B P70,000.
2. In 2001, X donated to b1 and b2 P50,000

What will b1 and b2 impute when X dies?

Par. 1.-- 1988 donation.-- Yes bec. B would have imputed it (if he) were he alive.
Par. 2.-- 2001 donation.-- Yes. This is not logical bec. b1 and b2 inherit by representation. The general rule is that only persons who receive the donation are bound to impute it.

Art. 1065. Parents are not obliged to bring to collation in the inheritance of the ascendants any property which may have been donated by the latter to their children.

Balane: Second sense, imputation.
Illustration:



In 1995, X donated to a1. In 2001, X dies while A is still alive. Will A impute the donation to a1? No. a1 is considered a stranger bec. he is not a compulsory heir. Impute vs. the free portion.

Art. 1066. Neither shall donations to the spouse of the child be brought to collation; but if they have been given by the parent to the spouses jointly, the child shall be obliged to bring to collation one-half of the thing donated.

Balane: Second sense, imputation.

Illustration:

Two cases:

1. X donates to A' only, imputed to the free portion.
2. X donates to both A and A', impute 1/2 to legitime of A and 1/2 to the free portion.

Rule: Donation given to the spouse will not be imputed to the legitime of the descendant spouse bec. the spouse is considered a stranger.

Art. 1067. Expenses for support, education, medical, attendance, even in extraordinary illness, apprenticeship, ordinary equipment, or customary gifts are not subject to collation.

Balane: First sense, computation.

1. Overlap between support in the NCC and in the FC.-- Support in the FC already includes medical attendance.
2. All expenses in Art. 1067 are not imputed to the legitime.-- Including 6 things in support in the FC.

Art. 1068. Expenses incurred by the parents in giving their children a professional, vocational or other career shall not be brought into collation unless the parents so provide, or unless they impair the legitime; but when their collation is required, the sum which the child would have spent if he had lived in the house and company of his parents shall be deducted therefrom.

Balane: Second sense, imputation.

This qualifies Art. 1067.

General rule: Imputed versus the free portion.

Exceptions: (1) When parents provide otherwise
(2) When it impairs the legitimes of other compulsory heirs.

But if you lived away from home, deduct the living expenses from what would be imputed against your legitime.

This is inconsistent bec. this is included in support under the Family Code.

Art. 1069. Any sums paid by a parent in satisfaction of the debts of his children, election expenses, fines, and similar expenses shall be brought to collation.

Balane: Second sense, imputation.

Art. 1070. Wedding gifts by parents and ascendants consisting of jewelry, clothing, and outfit, shall not be reduced as inofficious except insofar as they may exceed one-tenth of the sum which is disposable by will.

Balane: Second sense, imputation.
Wedding gifts.-- Two views:
1. Literal.-- Cannot be beyond 1/10 of the free portion. If it exceeds, return the excess.

2. Liberal.-- a. below 1/10 of the free portion, impute to the free portion
b. above 1/10 of the free portion, impute to the legitime.

E.g., Estate is worth 600. There are 3 children. Legitimes = 300. When A got married, he was given a gift of 40. This is more than 1/10 of the free portion.

1. Literal = 30, impute to the legitime
10, return

2. Liberal = 30, impute to the free portion
10, impute to the legitime.

Art. 1071. The same things donated are not to be brought to collation and partition, but only their value at the time of the donation, even though their just value may not then have been assessed.

Their subsequent increase or deterioration and even their total loss or destruction, be it accidental or culpable, shall be for the benefit or account and risk of the donee.

Balane: Par. 1.-- First and second senses, computation and imputation.
What do you compute? The value at the time of the donation.

Par. 2.-- Any change in the value is for the account of the donee. Why? Bec. the donee is the owner of the thing donated. (*Res perit domino*.)

Art. 1072. In the collation of a donation made by both parents, one-half shall be brought to the inheritance of the father, and the other half, to that of the mother. That given by one alone shall be brought to collation in his or her inheritance.

Balane: First and second senses, computation and imputation.
This provision contemplates joint donation by parents from their common property.
a. 1/2 computed for determination of the estate of the husband.

b. 1/2 computed for determination of the estate of the wife.

Same rule for imputation w/ respect to the donee. Impute 1/2 to father and 1/2 to mother.

Art. 1073. The donee's share of the estate shall be reduced by an amount equal to that already received by him; and his co- heirs shall receive and equivalent, as much as possible, in property of the same nature, class and quality.

Balane: Second sense, imputation.

In partition, there should be among heirs of the same class, as much as possible, equality not only as to value but also as to kind and nature. This is subject, of course, to a contrary agreement of the heirs concerned.

Art. 1074. Should the provisions of the preceding article be impracticable, if the property donated was immovable, the co-heirs shall be entitled to receive its equivalent in cash or securities, at the rate of quotation; and should there be neither cash nor marketable securities in the estate, so much of the other property as may be necessary shall be sold at public auction.

If the property donated was movable, the co-heirs shall only have a right to select an equivalent of other personal property of the inheritance at its just price.

Balane: Second sense, imputation.

Applies if Art. 1073 is not possible.

1. Immovables-- cash or securities
2. Movables-- similarly valued movable

Art. 1075. The fruits and interest of the property subject to collation shall not pertain to the estate except from the day on which the succession is opened.

For the purpose of ascertaining their amount, the fruits and interest of the property of the estate of the same kind and quality as that subject to collation shall be made the standard of assessment.

Balane: Third sense, return.

1. Assume that the property donated has to be returned bec. the legitime has been impaired. The return may be total or partial.

2. Donee may return: (a) property; (b) cash value

3. Obligation to return arises at the time of death. The fruits are also returned from that time. The amount depends on how much of the property has to be returned.

E.g., A donated to X a mango plantation.

1. If X has to return all, return all the fruits from the time of the death of A.
2. If X has to return 1/2, return 1/2 of the fruits from the time of the death of A.

Baviera: At the moment of death of donor, donee's right over the property is modified

Art. 1076. The co-heirs are bound to reimburse to the donee the necessary expenses which he has incurred for the preservation of the property donated to him, though they may not have augmented its value.

The donee who collates in kind an immovable, which has been given to him, must be reimbursed by his co-heirs for the improvements which have increased the value of the property, and which exists at the time the partition is effected.

As to works made on the estate for the mere pleasure of the donee, no reimbursement is due him for them; he has, however, the right to remove them, if he can do so without injuring the estate.

Balane: Third sense, return, on the assumption that the donation is totally inofficious.

Par. 1.-- The donee, being the rightful owner, has to be reimbursed the necessary expenses. How much? It depends on how much is collated. (same as Art. 1075.)

Par. 2.-- Useful expenses.-- Apply the same rules as in necessary expenses.

Par. 3.-- Ornamental expenses.-- No right to reimbursement but has the right to remove.

These are incidental obligations arising from collation in the third sense.

Art. 1077. Should any question arise among the co-heirs upon the obligation to bring to collation or as to the things which are subject to collation, the distribution of the estate shall not be interrupted for this reason, provided adequate security is given.

> **Art. 51. xxx**
>
> **The delivery of the presumptive legitimes herein prescribed shall in no way prejudice the ultimate successional rights of the children accruing upon the death of either or both of the parents; but the value of the properties already received under the decree of annulment or absolute nullity shall be considered as advances on their legitime. (Family Code, par. 3 thereof.)**
>
> **Art. 227. If the parents entrust the management or administration of any of their properties to an unemancipated child, the net proceeds of such property shall belong to the owner. The child shall be given a reasonable monthly allowance in an amount not less than that which the owner would have paid if the administrator were a stranger, unless the owner, grants the entire proceeds to the child. In any case, the proceeds thus given in whole or in part shall not be charged to the child's legitime. (Family Code.)**

Balane: All three (3) senses.

Section 6.-- *Partition and Distribution of the Estate*.

Subsection 1.-- *Partition*.

Balane: Partition.-- Procedural, a special proceeding.

This is relevant if there are two or more heirs.

Decedent dies---> Successional rights ---> But property---> Co-ownership---> Eventually, get---> Divide
vest in the heirs is still there among heirs things together
Estate
(first immediate effect (second imme- and compute Among
of death) diate effect of Heirs
death)

Art. 1078. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

Art. 1079. Partition, in general, is the separation, division and assignment of a thing held in common among those to whom it may belong. The thing itself may be divided, or its value.

Balane: Definition.-- "Separate, divide and assign."
1. Ways to go about partition.
a. Extrajudicially.-- Decedent dies intestate and there are no debts.
(i) All the heirs agree among themselves.-- Upon agreement, partition is already valid.
(ii) If registered property is included, publish the partition in a public document
(iii) Go to the Register of Deeds to have titles transferred

b. Judicial
(i) Settlement proceeding
(ii) Ordinary action on co-ownership

2. General Procedure
a. If with a will, it must first be probated. After probate, the heirs can choose between:
(i) Extrajudicial
(ii) Judicial.-- Judge will divide but will first give the heirs a chance to submit their own partition.

b. If the heirs do not agree on the partition , the judge will appoint a commissioner.
c. Commissioner will submit a project of partition to the judge. This project of partition, however, is not binding on the judge.
d. The judge will issue an order of partition. Property will be adjudicated among the heirs accordingly.

Art. 1080. Should a person make a partition of his estate by an act *inter vivos*, or by will, such partition shall be respected, insofar as it does not prejudice the legitime of the compulsory heirs.
A parent who, in the interest of his or her family, desires to keep any agricultural, industrial, or manufacturing enterprise intact, may avail himself of the right granted him in

this article, by ordering that the legitime of the other children to whom the property is not assigned, be paid in cash.

Balane: Par. 1.-- Person can make partition. How?

1. By will-- making two things:

a. Testamentary disposition.-- State what value the person will get.

b. Partition.-- State specific property the heir will get or what comprises the value.

E.g., X has no compulsory heirs. He states in his will "I give to A 1/3 of my estate. To comprise A's share, I would like her to get my house in Alabang."

The testator is allowed to do so even if he has compulsory heirs. The partition is valid as long as the items given do not impair the legitime.

2. Act *inter vivos*, e.g., private writing not a will.

a. Rule under the OCC -- to do this, there has to be a prior existing will. Why? If no prior existing will, you are giving the person power to make dispositions not in the form of a will. This is seen in the use of the word "testator" in the article.

b. Rules under the NCC, is it valid?

(i) Yes, as long as (it is) strictly confine(d) to rules of intestate succession since there is no will. (You) can only state what properties they are to receive and not make testamentary dispositions.

(ii) Otherwise, he will have to make a supporting will. This is seen in the use of the word "person" in the article.

Note: (This) can still be done in (the) manner done in the OCC.

Example: Estate of A consists of RTW factory and cash. A has 3 compulsory heirs X, Y and Z. A wants the factory to go to X. A makes a partition "Factory to X. Y and Z are to get their legitime in cash."

This is valid. Bec. legitimes are only values and not specific properties. Also, the legitimes are not impaired.

Chavez v. IAC.-- In the case, Manuela assigned or distributed her estate equally among her six (6) children. Three of those sold their share to a sister, Concepcion, with the consent of Manuela. Manuela then sold the entire property to Ferrer. Was the partition by an act i*nter vivos* valid? Yes. Art. 1080 allows the person to make a partition. If the partition is by will, it must be with the formalities on wills. If the partition is by an act *inter vivos*, the partition may be oral or written, and need not be in the form of a will, provided the partition does not prejudice the legitime of the compulsory heirs. The deeds of sale between Concepcion and her sisters are valid bec. they are not contracts with respect to future inheritance but rather a contract perfected and consummated during the lifetime of Manuela, who signed and gave her consent.

Art. 1081. A person may, by an act *inter vivos* or *mortis causa*, intrust the mere power to make the partition after his death to any person who is not one of the co-heirs.

The provisions of this and of the preceding article shall be observed even should there be among the co-heirs a minor or a person subject to guardianship; but the mandatary, in such case, shall make an inventory of the property of the estate, after notifying the co-heirs, the creditors, and the legatees or devisees.

Balane: 1. Under this article, partition may be made by: (a) the testator himself; (b) Third person who is not an heir.

2. Does this article also prohibit a devisee or legatee from being appointed? It is not certain. If he is given a specific portion, then there is no temptation to favor himself. But if his share be a generic portion, then the temptation exists.

3. *Mandatary* refers to a person entrusted to make the partition.

Art. 1082. Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, an exchange, a compromise, or any other transaction.

Balane: Any act or any mode of distribution that ends the co-ownership is a partition. The rules on co-ownership apply.

1. Physical partition, e.g., actually dividing the land.
2. Constructive partition- Art. 1086

If indivisible (e.g., a house) or if it will be greatly impaired if partitioned. How do you partition? by constructive partition.

a. Assign the property to the one who will give the other share in cash.

b. If any object, the property is sold at public auction. Why will any object? Public auction will usually bring a higher selling price.

Q: How do you determine if the property is indivisible or not?
A: By agreement between the co-owners. If none, the courts will decide.

Art. 1083. Every co-heir has a right to demand the division of the estate unless the testator should have expressly forbidden its partition, in which case the period of indivision shall not exceed twenty years as provided in article 494. This power of the testator to prohibit division applies to the legitime.

Even though forbidden by the testator, the co-ownership terminates when one of the causes for which partnership is dissolved takes place, or when the court finds for compelling reasons that division should be ordered, upon petition of one of the co-heirs.

Balane: General rule: Any of the co-heirs can demand a partition at any time.

Exception: Partition is forbidden by the testator in his will. This applies even to the legitime. But it cannot exceed twenty (20) years.

Par. 2.-- Despite the prohibition, if any ground in Articles 1830 or 1831 (grounds for dissolution of a partnership exists), partition will happen.

Art. 1084. Voluntary heirs upon whom some condition has been imposed cannot demand a partition until the condition has been fulfilled; but the other co-heirs may demand it by giving sufficient security for the rights which the former may have in case the condition should be complied with, and until it is known that the condition has not been fulfilled or can never be complied with, the partition shall be understood to be provisional.

Balane: Why? Right as heir vests only when the suspensive condition happens.

What about the other heirs? They can ask that the property be partitioned but they must give security.

Art. 1085. In the partition of the estate, equality shall be observed as far as possible, dividing the property into lots, or assigning to each of the co-heirs things of the same nature, quality and kind.

Balane: We already saw this in Articles 1073 and 1074.
It applies to heirs similarly situated.
It is subject to agreement between the parties.

Art. 1086. Should a thing be divisible, or would be much impaired by its being divided, it may be adjudicated to one of the heirs, provided he shall pay the others the excess in cash.

Nevertheless, if any of the heirs should demand that the things be sold at public auction and that strangers be allowed to bid, this must be done.

Balane: If one or more of the heirs demand that the property be sold publicly, then this prevails over the offer of one to give the others their share in cash because he will buy it.

Art. 1087. In the partition the co-heirs shall reimburse one another for the income and fruits which each one of them may have received from any property of the estate, for any useful and necessary expenses made upon such property, and for any damage thereto through malice or neglect.

Illustration: A, B and C are heirs. A, B and C take possession and manage a fishpond, citrus plantation and apartment house respectively. Later, they decide to partition the property. Assuming they have equal shares, they must each account for the fruits actually received and these fruits will be divided equally among them.

A received 30 as fruits
B received 50 as fruits
C received 20 as fruits

Add this and divide equally among them.

Art. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so within the period of one month from the time they were notified in writing of the sale by the vendor.

> **Art. 1620. A co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or of any of them, are sold to a third person. If the price of the alienation is grossly excessive, the redemptioner shall pay only a reasonable one.**
>
> **Should two or more co-owners desire to exercise the right of redemption,**

they may only do so in proportion to the share they may respectively have in the thing owned in common.

Art. 1619. Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by purchase or *dation in payment*, or by any other transaction whereby ownership is transmitted by onerous title.

Balane: A. The right of redemption given to the co-heir provided the co-heir/ vendor sold his undivided share or a portion thereof in the estate.

Article 1620 on legal redemption and Art. 1088 are the same. The only difference is in the application.

1. Art. 1620 applies to specific property
2. Art. 1088 applies to hereditary mass

B. How will the right of redemption be exercised?

1. If only one will redeem, he will pay the purchase price.
2. If more than one will redeem, they will pay purchase price proportionally to their share in the property.

Note: Share must have been sold to a stranger. If sold to a co-heir, the right of redemption does not exist. Why? The purpose is to keep the proprietary mass w/in the co-owners.

Art. 1089. The titles of acquisition or ownership of each property shall be delivered to the co-heir to whom said property has been adjudicated.

Balane: Once partition is made, respective titles are given to the respective heirs. Why? So that they can transfer the titles in their names.

Art. 1090. When the title comprises two or more pieces of land which have been assigned to two or more co-heirs, or when it covers one piece of land which has been divided between two or more co-heirs, the title shall be delivered to the one having the largest interest, and authentic copies of the title shall be furnished to the other co-heirs at the expense of the estate. If the interest of each co-heir should be the same, the oldest shall have the title.

Balane: (This is) to enable everybody to get their respective properties

Usually you must have the land resurveyed.

Subsection 2.-- *Effects of Partition.*

Art. 1091. A partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him.

Balane: Effect of partition.-- Art. 1091 or to terminate co-ownership.

Art. 1092. After the partition has been made, the co-heirs shall be reciprocally bound to warrant the title to, and the quality of, each property adjudicated.

Balane: Warranties are the same as in sales:

1. Eviction (title.)
2. Hidden defects (quality.)

E.g., Three co-heirs A, B and C divided the land they inherited equally. But part of the land given to A did not really belong to the predecessor so A losses part of his share. What happens?

B and C will be liable for the warranty for the part lost. They will either: (a) give cash; or (b) give land.

Art. 1093. The reciprocal obligation of warranty referred to in the preceding article shall be proportionate to the respective hereditary shares of the co-heirs; but if any of one of them should be insolvent, the other co-heirs shall be liable for his part in the same proportion, deducting the part corresponding to the one who should be indemnified.

Those who pay for the insolvent heir shall have a right of action against him for reimbursement, should his financial condition improve.

Balane: Illustration: A, B, C and D. A lost part (as in Art. 1092) worth 90.

1. B, C and D will share equally in the 90, 30 each
2. If D is insolvent, A, B and C will shoulder his 30 share, 10 each
3. General rule: A, B and C have a right of reimbursement against D should his financial situation improve.

Exception: If D gets a judicial declaration of insolvency. This wipes out all his debts.

Art. 1094. An action to enforce the warranty among co-heirs must be brought within ten years from the date the right of action accrues.

Balane: The ten (10) years is counted from the time the portion was lost or the hidden defect was discovered.

Art. 1095. If a credit should be assigned as collectible, the co-heirs shall not be liable for the subsequent insolvency of the debtor of the estate, but only for his insolvency at the time the partition is made.

The warranty of the solvency of the debtor can only be enforced during the five years following the partition.

Co-heirs do not warrant bad debts, if so known to, and accepted by the distributee. But if such debts are not assigned to a co-heir, and should be collected, in whole or in part, the amount collected shall be distributed proportionately among the heirs.

Balane: 1. Can you assign a credit? Yes. A credit is a property.

2. Time of insolvency of the debtor is important.

a. If the debtor was originally solvent (solvent before the assignment), then later on becomes insolvent, the co-heirs are not liable.

b. If the debtor was insolvent before the partition.

General rule: Warranty holds and co-heirs are liable.

Exception: If co-heir/ distributee knew of the insolvency and still accepted the bad debt, then the co-heirs are not liable.

Art. 1096. The obligation of warranty among co-heirs shall cease in the following cases:

(1) When the testator himself has made the partition, unless it appears, or it may be reasonably presumed, that his intention was otherwise, but the legitime shall always remain unimpaired;

(2) When it haws been so expressly stipulated in the agreement of partition, unless there has been bad faith;

(3) When the eviction is due to a cause subsequent to the partition, or has been caused by the fault of the distributee of the property.

Balane: The warranty does not exist in the situations given.

For par. 1.-- General rule: Warranty does not apply.

Exception: If legitimes are impaired.

Subsection 3.-- *Rescission and Nullity of Partition*.

Art. 1097. A partition may be rescinded or annulled for the same causes as contracts.

Balane:

A. Rescission.-- Articles 1381 to 1382.

B. Annulment.-- Art. 1390.

1. Party incapable of giving consent
2. Vitiated consent
    a. Mistake
    b. Violence
    c. Intimidation
    d. Undue Influence
    e. Fraud.

Art. 1098. A partition, judicial or extra-judicial, may also be rescinded on account of lesion, when any one of the co-heirs received things whose value is less, by at least one-fourth, than the share to which he is entitled, considering the value of the things at the time they were adjudicated.

Balane: Lesion is the same as that in Art. 1381, paragraphs 1 and 2. This applies whether the partition was judicial or extrajudicial.

E.g., A is a co-heir of B and C. A is entitled to receive 100. In partition, he receives:

1. Property worth 80. No rescission of partition bec. the lesion is less then 1/4. But A has rights under the warranties. So he can ask for completion.

2. Property is worth 75. There is lesion so A can demand for the rescission of the partition.

In actuality, (this is) hard to do-- how do you prove values, they are very subjective. This is not looked upon w/ favor by Civil Law commentators.

Art. 1099. The partition made by the testator cannot be impugned on the ground of

lesion, except when the legitime of the compulsory heirs is thereby prejudiced, or when it appears or may reasonably be presumed, that the intention of the testator was otherwise.

Balane: If partition was done by the testator.-- General rule: The heirs cannot demand rescission on the ground of lesion.

Exceptions: (1) when the legitime of any compulsory heir was impaired.
(2) when the testator's intent was not carried out.

Art. 1100. The action for rescission on account of lesion shall prescribe after four years from the time the partition was made.

Balane: Prescriptive period.-- Four (4) years from the time the partition was made.

Art. 1101. The heir who is sued shall have the option of indemnifying the plaintiff for the loss, or consenting to a new partition.

Indemnity may be made by payment in cash or by the delivery of a thing of the same kind and quality as that awarded to the plaintiff.

If a new partition is made, it shall affect neither those who have not been prejudiced nor those who have not received more than their just share.

Balane: If there is lesion, there are two (2) options:
1. Make a new partition
2. Give the prejudiced heir the monetary equivalent of the damage.

Who can choose? The heir sued.

E.g. A, B and C. A is supposed to receive 100,000. He receives only 70,000. A sues B and C. B and C has the choice of which option to follow.

Art. 1102. An heir who has alienated the whole or a considerable part of the real property adjudicated to him cannot maintain an action for rescission on the ground of lesion, but he shall have a right to be indemnified in cash.

Balane: This provision does not mean much.

Art. 1103. The omission of one or more objects or securities of the inheritance shall not cause the rescission of the partition on the ground of lesion, but the partition shall be completed by the distribution of the objects or securities which have been omitted.

Balane: This contemplates a case where there is an incomplete partition. Why? E.g., It was not known that they existed. The solution is to partition the newly discovered objects.

Art. 1104. A partition made with *preterition* of any of the compulsory heirs shall not be rescinded, unless it be proved that there was bad faith or fraud on the part of the other persons interested; but the latter shall be proportionately obliged to pay to the person omitted the share which belongs to him.

Balane: This refers to omission of heir in partition and not to *preterition*. The heir omitted has the right to demand his share.

Art. 1105. A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person.

Balane: This is the opposite of Art. 1104. It does not nullify the partition. It makes the recipient return what was mistakenly given to him.

RAM
12/30/95