

PART III

WILLS AND SUCCESSION

A. GENERAL PRINCIPLES

1. **SUCCESSION.** 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.¹

a) If there is no law on succession, the properties of the deceased becomes *RES NULLIUS*.

2. **ELEMENTS:** Succession as a DERIVATIVE mode of acquiring ownership requires: (1) Death of the decedent; (2) Inheritance (objective element); and (3) Successors (subjective element).

(1) Decedent — the person whose property is transmitted through succession.²

(2) Testator — the decedent who left a will.

(3) Inheritance — includes all properties, rights and obligations of a person which are not extinguished by the death of the decedent and are transmissible.³

(4) Successors — they must survive the testator/decedent or must be living at the time of the death of the testator/decedent), not otherwise incapacitated to inherit and must not repudiate the inheritance.

¹Art. 774, NCC.

²Art. 775, *ibid.*

³Art. 776, *ibid.*

- a) **Presumption of Death.** Whenever death is presumed under Article 390 of the New Civil Code (*See Part I, page 143 of this book*), succession opens at the end of the (10) TEN year period from the disappearance of an absentee or (2) FIVE year period if the absentee was 75 when he disappeared. However, the succession is deemed to have opened AT THE TIME of disappearance in the cases enumerated in Article 391 (*Example: sea voyage, war, etc.*) (1991 and 2009 Bar).

3. KINDS OF SUCCESSION:

- (1) Testamentary Succession — the decedent left a will;
 - (2) Legal or Intestate Succession — the decedent did not leave a valid will and succession is by operation of law;
 - (3) Mixed Succession — the decedent left a will but it covers only part of the inheritance.
- a) **Donation of Future Properties.** — under Article 82[2] of the Family Code, donations of future property shall be governed by the provisions on testamentary succession and the formalities of wills.
- b) **Transfer of Future Legitime.** — Articles 50, 51, 52, 40, 43 (2, 3, 4, and 5), 44, and 45 of the Family Code provide that in case of annulment or declaration of nullity of marriage under Articles 40 and 45 thereof, the presumptive legitimes of all common children shall be delivered to them. While there is an opinion to the effect that these transfers are special types of succession *inter vivos*, it is believed that the mode of acquiring ownership under these statutes is not succession but law. In succession, death is always an element of the transfer of ownership.

- c) **No Contractual Succession.** There was previously Contractual Succession under Article 130 of the NCC as part of the antenuptial contract which DOES not require the formalities of will. However, with the passage of Article 84 of the Family Code, donation *mortis causa* must now comply with the formalities of a will hence the opinion that there is no longer any contractual succession (1991 Bar).

4. SUCCESSORS. The successors can either be Heirs or Devisees or Legatees.

4.01. HEIRS - they acquire property by UNIVERSAL TITLE.

- a) **Voluntary Heirs** — Heirs instituted by the testator in his will, to succeed to the free portion of the inheritance or the portion thereof of which the testator can freely dispose.
- b) **Compulsory or Forced Heirs** — Heirs who are to succeed by force of law to some portion of the inheritance, in an amount predetermined by law, known as the legitime. Generally, even the testator cannot remove their share in the inheritance (1950 and 1988 Bar).
- (1) A compulsory heir may also be a voluntary heir if the testator gave the heir part of the free portion or more than his or her legitime. *Example:* An illegitimate child who is a compulsory heir may be given the entire free portion (2005 Bar).
- c) **Legal or Intestate Heirs** — Heirs who succeed to the estate of the decedent who dies without a valid will, or to the portion of such estate not disposed of by will.

4.02. DEVISEES OR LEGATEES – they acquire specific property or properties by PARTICULAR TITLE.

- a) Devisees — persons to whom gifts of real properties are given by will.
- b) Legatees — persons to whom gifts of personal properties are given by will.

HEIRS	DEVISEES AND LEGATEES
1. In case of preterition – the institution of heir is annulled. (<i>Art. 854</i>)	In case of preterition – the devices and legacies remain valid UNLESS they are inofficious.
2. In case of invalid disinheritance – this annuls the institution of voluntary heirs insofar as the right of the invalidly disinherited compulsory heir is affected. (<i>Art. 918</i>)	In case of invalid disinheritance – devices and legacies are valid so long as they do not impair the legitime.

5. INHERITANCE. — This includes property, rights and obligations not extinguished by the decedent's death. Inheritance also includes property, rights and obligations ACCRUING since the opening of the succession (meaning after the death of the decedent).⁴

- a) The remains or corpse of the decedent is not included in the inheritance because it is not property.

5.01. GENERAL RULES ON RIGHTS AND OBLIGATIONS EXTINGUISHED BY DECEDENT'S DEATH.

- a) Only **Transmissible Rights** are acquired by the heirs. There are intransmissible rights:
 - (1) By nature — *Example: Purely personal rights like rights relating to civil personality and family rights;*

⁴Art. 781, NCC.

- (2) By stipulation;
 - (3) By provision of law – *Example*: Usufructuary rights unless there is a stipulation.
- b) **Patrimonial rights** — those relating to property are generally part of inheritance as they are not extinguished by death.
- c) **Obligations** are by nature *transmissible* and may constitute part of inheritance both with respect to the rights of the creditor and as regards the obligations of the debtor. *Contracts* take effect only between the parties, their assigns and HEIRS, except if they involve intransmissible rights and obligations. HOWEVER, the HEIRS are not liable beyond the value of the property received from the decedent (1956 Bar).⁵
- (1) The monetary obligations of the decedent shall first be deducted from the estate and the heirs will receive the net estate only.⁶ Nevertheless, “whatever payment is thus made from the estate is ultimately a payment by the heirs and distributes, since the amount of the paid claim in fact diminishes or reduces the shares that the heirs would have been entitled to receive.”⁷ Before distribution, the right of an heir to SPECIFIC PROPERTIES is INCHOATE.
 - (2) For example, while the contract of suretyship is transmissible, the effect of this is that the same is provable against the estate of the decedent and not personal liabilities of the heirs.
 - (3) Obligations under existing contracts are transmissible. *Example*: Obligation to sell

⁵Art. 1311, NCC; Heirs of Leandro Natividad v. Mauricio-Natividad, G.R. No. 198434, February 29, 2016.

⁶*Ibid.*

⁷Estate of Hemady v. Luzon Surety Co., Inc., G.R. No. L-8437, November 28, 1956.

and transfer ownership of the property in a contract to sell (conditioned upon full payment of the price) is transmissible to the heirs if the seller dies before full payment of the price.

5.02. WHEN VESTED TO THE HEIRS. The rights to succession are transmitted to the heirs from the moment of the death of the decedent.⁸

a) **Possession.** Actual transfer of possession or delivery is not essential for the transmission of rights to the heirs. However, legally (as for example for purposes of acquisitive prescription), possession of the inherited properties are said to be uninterrupted although it is the administrator who is in actual possession thereof in the meantime. Thus, Article 533 of the New Civil Code provides that "the possession of hereditary property is deemed transmitted to the heir without interruption from the moment of the death of the decedent, in case the inheritance is accepted."

(1) The executor or administration shall have the right of possession of the properties so long as necessary for the payment of debts and expenses of administration. (Sec. 3, Rule 84) If they are not necessary for such payment, the heirs may retain possession but without depriving the other heirs (co-owners) of their enjoyment.

b) **Ownership.** The right of ownership over the undivided HEREDITARY SHARE is vested from the time of the death of the decedent. The heir becomes a co-owner of the whole estate subject to the payment of the obligations or

⁸Art. 777, *supra*; Antipolo Ining v. Vega, G.R. No. 174727, August 12, 2013.

debts of the deceased⁹ (2008 Bar). The co-heirs as co-owners can exercise their ownership over the inchoate undivided interest including the right to dispose.¹⁰

- (1) The heir can convey his right to third persons even before the settlement of the estate of the deceased. For example, a spouse can donate her share in the properties of the other spouse after the latter died (1983 Bar). However, the effect of alienation is limited to what is ultimately adjudicated to the heir who made the alienation.¹¹ The right to SPECIFIC "distributive shares of inheritance does not become finally determinable until all the debts of the estate are paid."¹²
- c) **Right of Legal Redemption as Co-Owner.** If one heir, before partition, sells his or her share to third persons, the other heirs has the right of redemption as co-owner within 30 days from notice by the vendor.¹³ If the right to redeem is exercised, the heir is NOT DEEMED to have acquired the property directly from the decedent. ✕ "Whether or not the redemptioner will continue being a co-owner after exercising the legal redemption is irrelevant for the purposes of the law"¹⁴ (2011 Bar). ✕
- d) **Redemption in Sale of Hereditary Rights.** Similarly, Article 1088 of the New Civil Code provides for legal redemption, that is, any or all of the co-heirs may be subrogated to the rights of the purchaser by reimbursing him

⁹Art. 1078, NCC.

¹⁰Tabansora v. Spouses Constantino, G.R.No. 196403, December 7, 2016.

¹¹De Borja v. Vda. de Borja, G.R. No. L-28040, August 18, 1972.

¹²Salvador v. Sta. Maria, G.R. No. L-25952, June 30, 1967.

¹³Arts. 1620 and 1623, NCC.

¹⁴Butte v. Manuel Uy & Sons, Inc., G.R. No. L-15499, February 28, 1962.

for the price of the sale. The requisites are as follows: (i) One of the heirs sell his hereditary rights; (ii) he or she sells it to a stranger; (iii) the sale is before the partition; (iv) the redeeming heir/heirs must do so within the period of one month from the time they were notified in writing of the sale by the vendor (1953 Bar).

5.03. FUTURE INHERITANCE. Prior to the death of the decedent, the heirs do not have any right over the estate of the decedent. In fact, under Article 1347 of the New Civil Code, any contract upon a future inheritance is void. The requisites for Article 1347 to apply are as follows:

- (1) The succession has not yet been opened;
- (2) The object of the contract forms part of the inheritance; and
- (3) The promissor has, with respect to the object, an expectancy of a right which is purely hereditary in nature.¹⁵

5.04. FUTURE PROPERTIES.

5.04.01. Properties Acquired After Making of Will. *General Rule:* The will covers only properties of the testator at the time of the making of the will. (NOTE: There is a view that this rule applies only to legatees and devisees and not to an instituted heir; the opposite view is that this applies even to institution of voluntary heir because the provision itself does not distinguish.) *Exceptions:* Properties acquired after the making of the will shall pass to the heirs in the following cases:

- (1) If the intention to include properties acquired the making of the will expressly appear by the will that such was his intention.¹⁶

¹⁵*Vda. de Cabalu v. Tabu*, G.R. No. 188417, September 24, 2015.

¹⁶Art. 793, NCC.

- (2) The properties acquired may also be covered by the will through republication; if the will is republished, the properties at the time of republication are covered or deemed disposed in the will.¹⁷
- (3) Property not owned by the testator but disposed in the will: (i) where the testator thought that the property belongs to him or her; and (ii) the testator acquires ownership of the same property subsequently.¹⁸

EXAMPLES:

(1) Properties acquired after the execution of the will are deemed included if the testator bequeaths to the heirs Mr. A and Mr. B all other properties that he did not dispose and all other properties that the testator "may acquire in the future by any title" (1996 Bar); (2) The testator gave all his dogs to heir Mr. A in his will. At the time of execution of the will, the testator only had three dogs and at time of his death he already had 20 dogs. In this case, Mr. A will only get two dogs except if the will states that Mr. A will get all his dogs at the time of the execution of the will and all others that he may acquire in the future.

5.04.02. **Accretion: Properties that Accrues After Death.** Properties acquired after the opening of succession (after death) are part of the inheritance.¹⁹

B. TESTAMENTARY SUCCESSION

1. **WILL.** — 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.²⁰

- a) A document that contains provisions on disinheritance only is also considered a will.²¹

¹⁷Art. 836, NCC.

¹⁸Art. 930, *ibid.*

¹⁹Art. 781, *ibid.*

²⁰Art. 783, *ibid.*

²¹*Seangio v. Reyes*, 508 SCRA 177 (2006).

This is in the nature of indirect disposition of the entire estate to the heirs who are not disinherited; their shares increase.²²

- b) A survivorship agreement between joint-depositors of a bank account is not a will; it is an aleatory contract.²³
- c) A document that is entitled as "Last Will and Testament" is not a real will if it only contains recognition of a child.

1.01. **KINDS OF WILLS:** (1) Notarial or Ordinary wills; and (2) Holographic will.

2. CHARACTERISTICS OF WILL.

2.01. **UNILATERAL.** — It is an act of the testator only.

2.02. **STRICTLY PERSONAL ACT.** It cannot be left in whole or in part to the discretion of a third person, or accomplished through the instrumentality of an agent or attorney.²⁴

2.02.01. **Matters that CANNOT be left to the Discretion of Third Persons.**²⁵ The third person cannot determine (i) who will inherit; or (ii) who is the devisee or legatee; or (iii) how much will the heir inherit; or (iv) what will the devisee or legatee inherit; or (v) whether the institution will be effective. Thus, the following CANNOT be left to the discretion of third persons:

- (1) Determination of duration or efficacy of the designation of heirs, devisees or legatees — this includes the determination of the specific persons or specified class or causes who will inherit;
- (2) Determination of the portions that the heirs are to take, when referred to by name;

²²Geargio v. Reyes, G.R. No. 140372, November 27, 2006.

²³Vitug v. Court of Appeals, 183 SCRA 755 (1990).

²⁴Art. 784, NCC.

²⁵Arts. 785, 786, and 787, *ibid.*

- (3) Determination of whether or not the testamentary disposition is to be operative;
- (4) Determination of the property or amount to be given;
- (5) Determination of the class or cause that will benefit from the disposition.

EXAMPLES:

The following are not valid: (1) The testator bequeaths "a portion of his estate to the orphanages in the City of Manila" – this is not valid because the amount bequeath was not specified; (2) The testator bequeaths P50 Million to orphanages A, B and C and the amount to be received is to be determined by Mr. X – this is not valid because it is not a mere class or cause that was designated but there was institution of specific heirs (the orphanages) but the amount that they are supposed to receive was left to the discretion of Mr. X; (3) The testator bequeaths P1 Million to Mr. A if his parents approve – this is not valid because the parents will determine if the disposition is operative.

2.02.02. Matters that CAN BE ENTRUSTED to Third Persons:²⁶ After the testator has exercised his testamentary discretion, he may entrust to third persons the:

- a) Manner of distribution of specific property or sums of money that he may leave in general to specified classes or causes;
- b) Designation of the persons, institutions or establishments to which such property or sums are to be given or applied.

EXAMPLES:

The following are valid: (1) The testator sets aside P3 Million for orphanages in the City of Manila – a specified amount was bequeath to a class; (1) The testator sets aside P3 Million for the AIDs preventions campaign in the City of Manila – a specified amount was bequeath to a cause; (3) The testator sets aside P1 Million for the poor is valid under Article 1030 of the New Civil Code.

²⁶Art. 786, NCC.

2.03. OTHER CHARACTERISTICS

- a) **Formal and Solemn.** The law prescribes formalities that are essential for the validity of the will.
- b) **Ambulatory or Revocable.** A will can be revoked or modified at any time during the lifetime of the testator.
- c) **Free and intelligent act. EXCEPTIONS:** There are limitations imposed on the testator like the reservation of legitime and disqualification of certain persons as heirs.
- d) **Mortis Causa.** — The disposition is effective upon the death of the testator.
- e) **Individual Act.** — The will must be an act of an individual testator and cannot be a joint or collective act of two or more persons.

(1) **Joint wills** executed by Filipinos are not allowed or void even if executed abroad; 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 person²⁷ (2000, 2008, 2011, and 2012 Bar). For example, a joint will executed by spouses who are naturalized American Citizens is valid although were married in the Philippines at the time that they were Filipinos; United States law applies because they are citizens of the said country at the time of execution of the will²⁸ (2015 Bar).

(2) In case of marriage between a foreigner and a Filipino Spouse, the joint will executed in the country of the foreigner and valid therein is valid with respect to

²⁷Art. 818, NCC.

²⁸Art. 816, *ibid.*

the foreigner but void as to the Filipino spouse (2000 Bar).

(3) **Mutual Wills.** Separate or individually executed wills, although containing reciprocal provisions (*mutual wills*), are not prohibited, subject to the rule on *disposicion captatoria*.

f) **Disposition of property.** — It involves disposition of estate.

g) **Purely Statutory Right** — the right to make a will is available only because the law gives such right; it is not a natural right.

PROBLEM:

Manuel, a Filipino, and his American wife Eleanor executed a joint will in Boston, Massachusetts when they were residing in said city. The law of Massachusetts allows the execution of joint wills. Shortly thereafter, Eleanor died. Can the said will be probated in the Philippines for the settlement of her estate? (2000 Bar)

A: Yes, the will may be probated in the Philippines with respect to Eleanor but not with respect to Manuel. Joint wills are void under Article 818 of the New Civil Code which provides that two or more persons cannot make a will jointly or in the same instrument. Article 819 provides that the joint will executed by Filipinos in a foreign country shall not be valid even if authorized by the laws of the country where they may be executed. In the present case, the will is the joint will of Manuel and Eleanor, hence the same is void under Philippine laws even if the same was executed in Boston. Consequently, the will is void with respect to the estate of Manuel who was a Filipino.

However, under Articles 816 and 817 of the New Civil Code, the will is valid if executed in accordance with the formalities the laws of the testator. Hence, with respect to the estate of Eleanor who was an American, the will is valid in the Philippines because the joint will is valid under American laws.

3. INTERPRETATION OF WILLS. The intent of the testator is the primordial consideration in the interpretation of wills. In addition, an interpretation that makes the disposition operative shall be preferred.²⁹

²⁹ Art. 788, *ibid.*

3.01. KINDS OF AMBIGUITIES.³⁰

- (1) Latent or intrinsic ambiguities — The uncertainty does not appear on the face of the will. This occurs for example when there is imperfect description or when no person or property exactly answers the description. In both these cases, there are matters outside the written words need to be considered to determine what is really being referred to in the will.
- (2) Patent or Extrinsic ambiguities — uncertainty arises upon the face of the will. *Example:* The will contains a legacy in favor of a person but the property was not identified. Ambiguity is apparent by merely looking at the face of the will.
 - a) In resolving the ambiguity, the context of the will (intrinsic evidence) or extrinsic evidence can be resorted to. However, extrinsic evidence **CANNOT INCLUDE** oral declarations of the testator — a witness cannot testify on the oral declarations of the testator.

3.02. LIBERAL INTERPRETATION REGARDING FORMALITIES. In the absence of bad faith, forgery, 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 the requirement on formalities under Article 805.³¹

- a) Note however that with respect to formalities, those omissions that cannot be supplied except by evidence *aliunde* would result in the invalidation of the attestation clause, and consequently of the will itself.³²

³⁰Art. 789, *ibid.*

³¹Art. 809, NCC.

³²Caneda, *et al.* v. Hon. Court of Appeals, G.R. No. 103554, May 28, 1993.

4. GOVERNING LAW.

4.01. GOVERNING LAW WITH RESPECT TO FORMALITIES OF WILLS (1964, 1969, 1990, 1991, 1993, and 1998 Bar).³³

PERSON INVOLVED	GOVERNING LAW ON FORMALITIES AS TO TIME	GOVERNING LAW AS TO FORMALITIES
Filipino	The law in force at the time of execution. NOTE: The fact that the Filipino changed his citizenship after execution of the will does not affect its validity (2009 Bar).	(1) Philippine Law (Art. 15, Arts. 816 and 817, NCC); or (2) Law of Domicile/ Actual Residence if abroad (Art. 816, NCC by analogy); (3) Law of place of execution (Arts. 17 and 815, NCC).
FOREIGN NATIONAL	The law in force at the time of execution.	(1) Law of the foreigner's country (Arts. 15 and 816, 817, NCC); (2) Philippine Law (Arts. 15 and 816-817); or (3) Law of Domicile/ Actual Residence if abroad (Art. 816); (4) Law of place of execution (Art. 17, NCC).

³³Arts. 15, 17, 815 to 817, *supra*.

4.02. GOVERNING LAW WITH RESPECT TO INTRINSIC VALIDITY.

PERSON INVOLVED	GOVERNING LAW ON INTRINSIC VALIDITY AS TO TIME: CAPACITY TO SUCCEED	GOVERNING LAW AS TO ORDER OF SUCCESSION, AMOUNT OF SUCCESSIONAL RIGHTS AND INTRINSIC VALIDITY (Arts. 15, 17, 815, to 817, NCC.)
FILIPINO	The law in force at the time of death (1983 and 1998 Bar).	Philippine Law
FOREIGN NATIONAL	It depends on the National Law of the Foreign National (1969 Bar).	Foreigner's National Law: Law of the Foreign National's Country (1984, 1985, 1986, and 1991 Bar). <i>Examples:</i> (1) An illegitimate child cannot inherit if the law of the foreigner does not allow illegitimate children to inherit (1991 Bar); (2) Omission of the wife in a will is valid if the law of the foreigner allows him to dispose all his properties without any restriction (1984 Bar)

5. TESTAMENTARY CAPACITY. — This means the capacity to make a will; this capacity must be present at the time of the execution of the will. Only Natural Persons can make a will (1956 and 1965 Bar).

- a) Testamentary power is different from capacity. Testamentary power is the right of a person with

testamentary capacity to dispose properties
(1956 Bar).

5.01. REQUISITES OF TESTAMENTARY CAPACITY.

- a) The testator must be at least 18 years of age;³⁴
- b) The testator must be of sound mind;³⁵
 - (1) Soundness of mind **means** the ability to know at the time of making of a will:
 - (i) the nature of the estate to be disposed of;
 - (ii) the proper objects of his bounty; and
 - (iii) the character of the testamentary act.
 - (2) NOT REQUIRED. Soundness of mind DOES NOT mean that:
 - (i) the testator is in full possession of all his reasoning faculties;
 - (ii) the testator's mind is wholly unbroken, unimpaired, or unshattered by disease, injury or other cause. *Example:* The state of being forgetful does not necessarily make one of unsound mind.³⁶
 - (iii) the testator does not suffer from a limitation or modification of capacity to act because being deaf-mute, prodigality or civil interdiction, insolvency, trusteeship; these persons can still make a will. **NOTE:** However, minority, insanity and imbecility will disqualify a person from making a will.

³⁴Art. 797, *supra*.

³⁵Art. 798, *ibid*.

³⁶*Baltazar v. Laxa*, 669 SCRA 249 (2012).

(3) **PRESUMPTION.** It is presumed that the testator is of sound mind, unless:

(i) One month or less, before making his will, the testator was publicly known to be insane;

(ii) The testator is under guardianship.³⁷

5.01.01. **Married Persons.** Either spouse may execute a will without the consent of the other spouse and without judicial authority.³⁸ Either spouse may dispose by will his or her own interest in the community property.³⁹

5.01.02. **Disabled Person.** Physical disability does not affect testamentary capacity. A blind person can make a will. However, a blind person cannot be a witness (*1968 and 2008 Bar*).

6. FORMALITIES OF WILLS (EXTRINSIC VALIDITY OF WILLS). The will is VOID if the formalities of wills are not complied with.

a) **Purpose:** To close the door or bad faith and fraud, to avoid substitution of wills and to guarantee their truth and authenticity.⁴⁰

6.01. Formalities COMMON TO BOTH NOTARIAL AND HOLOGRAPHIC WILL.

(1) It must be in writing; and

(2) It must be executed in a language or dialect known to the testator.

6.02. ADDITIONAL Special Formalities FOR NOTARIAL WILLS.⁴¹

(1) **Subscribed.** The notarial will must be subscribed at the end thereof by the testator

³⁷Torres v. Lopez, 48 Phil. 774.

³⁸Art. 802, NCC.

³⁹Art. 97, FC.

⁴⁰Lee v. Tambago, 544 SCRA 393 (2008).

⁴¹Arts. 805 and 806, NCC.

himself or by the testator's name written by some other person in his presence, and by his express direction, in the presence of witnesses;

(2) **Attested and Subscribed by Witnesses.** It must be attested and subscribed by THREE or more credible witnesses in the presence of the testator and of one another (1986 Bar).

(i) **Attestation** — "consists in witnessing the testator's execution of the will in order to see and take note mentally that those things are done which the statute requires for the execution of a will and that the signature of the testator exists as a fact."⁴²

(ii) **Subscription** — it is the signing of the witnesses' names for the purpose of identifying the paper as the will of the testator.⁴³

(3) **Testator Must Sign Each Page.** The testator or the person requested by him to write his name shall sign the will on each and every page thereof, except the last, on the left margin, in the presence of witnesses.

(4) **Signature of the Witnesses.** The instrumental witnesses of the will shall sign it on each and every page thereof, except the last, on the left margin, in the presence of the other witnesses and of the testator.

(i) There is NO requirement that the witness must sign at the end or the bottom of the will like the testator.⁴⁴

⁴²Taboada v. Rosal, G.R. No. L-36033, November 5, 1982.

⁴³*Ibid.*

⁴⁴*Ibid.*

(5) **Numbering of Pages.** All the pages shall be numbered correlatively in letters placed on the upper part of each page.

(6) **It must contain an Attestation Clause.**

(7) **Notarization** — It must be acknowledged before a Notary Public by the testator and the witnesses. **NOTE:** The notary public cannot be one of the witnesses (1989 Bar).⁴⁵

a) **Signature.** Thumb mark is an acceptable signature of the testator.⁴⁶ A cross is not acceptable UNLESS it is the usual signature of the testator.⁴⁷

6.02.01. Attestation Clause: An attestation clause refers to that part of an ordinary will whereby the attesting witnesses certify that the instrument has been executed before them and in the manner required for the execution thereof.⁴⁸ It is indispensable that the attestation clause must:

(1) State the number of pages used upon which the will is written — The purpose of the law is to safeguard against possible interpolation or omission of one or some of its pages and prevent any increase or decrease in the pages;⁴⁹

(2) State 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;

⁴⁵Cruz v. Villazor, 54 SCRA 31 (1973).

⁴⁶Balona v. Abellana, 109 Phil. 358 (1960).

⁴⁷Garcia v. Lacuesta, 90 Phil. 489 (1951).

⁴⁸Caneda, *et al.* v. Hon. Court of Appeals, G.R. No. 103554, May 28, 1993.

⁴⁹In the Matter of the Petition for the Probate of the Last Will and Testament of Enrique S. Lopez, Richard B. Lopez, G.R. No. 189984, November 12, 2012.

- (3) State that the instrumental witnesses witnessed and signed the will and all the pages thereof in the presence of the testator and of one another; and
 - (4) Be signed by the witnesses at the bottom thereof — the testator need not sign the attestation clause because it is not his or her act but that of the witnesses.
- a) **Attestation** consists in witnessing the testator's execution of the will in order to see and take note mentally that those things that the statute requires are done for the execution of the will and that the signature of the testator exists as a fact. It is an act of the senses.⁵⁰
 - b) **Language.** The clause need not be in the language known to the witnesses. If the attestation clause is in a language not known to the witnesses, it shall be interpreted to them.⁵¹
 - c) **Presence — Test of Position.** "The true test of presence of the testator and the witnesses in the execution of a will is not whether they actually saw each other sign, but whether they might have seen each other sign, had they chosen to do so, considering their mental and physical condition and position with relation to each other at the moment of inscription of each signature"⁵² (1994 and 2007 Bar).
 - d) **Number of Pages.** A will should be disallowed if the attestation does not indicate the number of pages of the will. Thus, in one case, it was held that disallowance of the will was proper because "the statement in the Acknowledgment portion of the subject last will and testament that it 'consists of seven pages including the page on

⁵⁰Caneda, *et al.* v. Hon. Court of Appeals, *supra*.

⁵¹Art. 806, NCC.

⁵²Nera v. Rimando, 18 Phil. 451 (1911).

which the ratification and acknowledgment are written' cannot be deemed substantial compliance. The will actually consists of eight pages including its acknowledgment which discrepancy cannot be explained by mere examination of the will itself but through the presentation of evidence *aliunde*."⁵³

6.02.02. **Signature by Testator's Agent.** A will may be signed by another person for the testator. In which case, to be valid, the following are required:

- (1) The agent must sign in the presence of the testator;
- (2) The agent must sign under the express direction of the testator;
- (3) The agent must write the name of the testator.

a) **Name of Third Person Not Necessary.** While, the third person must write the name of the testator, the third persons **NEED NOT** write his own name.⁵⁴

6.02.03. **Cases When the Court Was Liberal.** The Supreme Court **ALLOWED** the following will despite their defects:

- (1) One of the pages was not signed by one witness through oversight as established by (a) the testimony of the same witness, and (b) a duplicate copy which bears complete signatures.⁵⁵
- (2) A one-page will was signed at its foot by the testator and the witness without signatures at the left margin.⁵⁶

⁵³In the Matter of the Petition for the Probate of the Last Will and Testament of Enrique S. Lopez, Richard B. Lopez, petitioner, *supra*.

⁵⁴Balonan v. Abellana, *et al.*, G.R. No. L-15153, August 31, 1960.

⁵⁵Icasiano v. Icasiano, G.R. No. L-18979, June 30, 1964.

⁵⁶Abangan v. Abangan, 41 Phil. 476.

- (3) Failure to mark the first page by letters or using numbers instead of letters.⁵⁷
- (4) The attestation clause does not state the number of pages but the number of pages is indicated or reflected in the will itself.⁵⁸
- (5) The attestation clause failed to state the number of witnesses.⁵⁹

6.02.04. Cases When Defect is Fatal. The following wills were NOT ALLOWED or the WILL IS VOID:

- (1) Affixing a cross which is not the usual signature of the testator.
- (2) The third person who signed for the testator did not write the name of the testator.⁶⁰
- (3) The witnesses did not sign the attestation clause at the time of execution of the will.⁶¹
- (4) The attestation clause does not state that the witnesses signed in the presence of the testator.⁶²
- (5) The attestation clause does not state that the signature of the testator was written by a third person.⁶³
- (6) The witnesses did not sign at the bottom of the attestation clause although they signed at the left hand margin of the page.⁶⁴

6.02.05. Testators with Disability.

- a. If the testator is DEAF or DEAF-MUTE — he must personally read if he can; if he cannot read

⁵⁷Lopez v. Liboro, 81 Phil. 429.

⁵⁸Taboada v. Rosal, G.R. No. L-36033, November 5, 1982.

⁵⁹Testate of Alipio Abada v. Abaja, G.R. No. 147145, January 31, 2005.

⁶⁰Balonan v. Abellana, G.R. No. L-15153, August 31, 1960.

⁶¹Caneda v. Court of Appeals, 222 SCRA 781 (1988).

⁶²*Ibid.*

⁶³Garcia v. Lacuesta, 90 Phil. 489 (1951).

⁶⁴Azuela v. Court of Appeals, G.R. No. 122880, April 12, 2006.

he shall designate TWO PERSONS to read it and communicate to him the contents of the will;⁶⁵

- b. if the testator is BLIND — the will must be read to him twice (by a witness and the notary);⁶⁶ this rule applies if the testator's vision is impaired such that although he can see distant objects, he cannot read.⁶⁷

PROBLEMS:

1. The Attestation Clause signed by the three witnesses in the will of Mr. MC states as follows: "We, the undersigned attesting Witnesses, whose Residences and postal addresses appear on the Opposite of our respective names, we do hereby certify that the Testament was read by him and the testator, MC; has published unto us the foregoing Will consisting of THREE PAGES, including the Acknowledgment, each page numbered correlatively in the letters on the upper part of each page, as his Last Will and Testament and he has the same and every page thereof, on the spaces provided for his signature and on the left hand margin, in the presence of the said testator and in the presence of each and all of us." Does the Attestation Clause comply with the requirements of the New Civil Code?

A: No. The attestation clause does not comply with the requirements of the New Civil Code. The quoted Attestation Clause contravenes the express requirements of the third paragraph of Article 805 of the Civil Code for attestation clauses because it fails to specifically state the fact that the testator signed the will and all its pages in the presence of the instrumental witnesses and the said witnesses likewise signed the will and every page thereof in the presence of the testator and of each other. Specifically, it suffers from a fatal defect that it lacks "the statement that the witnesses signed the will and every page thereof in the presence of the testator and of one another." (*Caneda, et al. v. Hon. Court of Appeals, G.R. No. 103554, May 28, 1993*)
2. Clara, thinking of her mortality, drafted a will and asked Roberta, Hannah, Luisa, and Benjamin to be her witnesses. During the day of the signing of her will, Clara fell down the stairs and broke both her arms. Coming from the hospital, Clara insisted on signing her will by thumb mark and said that she can sign her full name later. While the will was being signed, Roberta experienced a

⁶⁵Art. 807, NCC.

⁶⁶Art. 808, *ibid.*

⁶⁷*Garcia v. Vasquez, G.R. No. L-26884, April 30, 1970.*

stomachache and kept going to the restroom for long periods of time. Hannah, while waiting for her turn to sign the will, was reading the 7th Harry Potter book on the couch, beside the table on which everyone was signing. Benjamin, aside from witnessing the will, also offered to notarize it. A week after, Clara was run over by a drunk driver while crossing the street in Greenbelt. May the will of Clara be admitted to probate? Give your reasons briefly (2007 Bar).

- A: No. The will should not be admitted for probate. It is an indispensable requirement that the testator and at least three witnesses must all sign in each other's presence. In this case, Clara and the other witnesses did not sign in the presence of Roberta because the latter was always in the restroom. Roberta could not have seen the signing while inside the restroom. Hence, only two witnesses signed the will in the presence of Clara.

Secondly, a notary public before whom the will was acknowledged cannot be considered as an instrumental witness because he cannot acknowledge before himself his having signed the will. Hence, Benjamin, he notary public could not have been counted as a witness.

In addition, it appears that Clara did not intend her thumbmark as her signature because she said that she "can sign her full name later." In other words, the intent is to affix her signature later. Hence, the signature of Clara is also absent.

3. On his deathbed, Vicente was executing a will in the room where Carissa, Carmelo, Cornelio and Atty. Cimpo, a notary public were present. Suddenly, there was a street brawl which caught Carmelo's attention prompting him to look out the window. Cornelio did not see Vicente sign a will. Is the will valid? (1994 Bar)
- A: Yes, the will is valid. Article 805 of the New Civil Code provides that the testator must sign in the presence of the witnesses. Under existing jurisprudence the true test of presence of the testator and the witnesses in the execution of a will is not whether they actually saw each other sign, but whether they might have seen each other sign, had they chosen to do so, considering their mental and physical condition and position with relation to each other at the moment of inscription of each signature does not require a witness to actually see the testator sign the will. It is sufficient if the witness could have seen the act of signing had he chosen to do so by casting his eyes to the proper direction. In the present case, while Carmelo and Cornelio were not actually looking at the signing of the will by Vicente, they might have seen the will had they wanted to do so. Hence, the requirement of presence of the witnesses is complied with in the given problem.

6.03. Witness to NOTARIAL Wills.⁶⁸

6.03.01. **Qualifications.** For a witness to be considered qualified to be a witness to a notarial will, the witness (1962 Bar):

- (1) Must be at least 18 years of age;
 - (2) Must be of sound mind;
 - (3) Must be able to read and write;
 - (4) Must not be blind, deaf or dumb;
 - (5) Must be domiciled in the Philippines;
 - (6) Must not have not been convicted of falsification of a document, perjury, or false testimony.
- a) It is NOT NECESSARY to establish in the probate court that the witnesses are of good standing in the community, or possess reputation for trustworthiness or honesty because such ATTRIBUTES ARE PRESUMED.⁶⁹
 - b) The above-stated requirements for the witnesses are not continuing requirements. They must only be competent at the time of attesting and need not be so thereafter.⁷⁰
 - c) The relation of employer-employee, or being a relative to the beneficiary in a will does not disqualify one to be a witness.⁷¹
 - d) A person who is qualified to execute a will is not necessarily qualified to be a witness (1968 and 2008 Bar). For instance, even a blind or deaf-mute person can be a testator but he cannot be a witness.
 - e) The notary public before whom the will was acknowledged cannot be counted as one of the

⁶⁸ Arts. 820 to 820, NCC.

⁶⁹ Gonzales v. Court of Appeals, 90 SCRA 183 (1979).

⁷⁰ Art. 822, NCC.

⁷¹ Molo-Pekson v. Tanchuco, 100 Phil. 344.

witness; he is disqualified. The notary public cannot acknowledge before himself his having signed the will⁷² (1989 and 2007 Bar). However, the lawyer who prepared the will (who is not the notary) can be a witness (2008 Bar).

6.03.02. **Prohibition from Obtaining Benefits.** Unless there are other sufficient number of competent witnesses, any legacy or device shall be VOID if given to: (1) the witness, or (2) the spouse of a witness, (3) the parent of a witness, or (4) the child of a witness, or (5) any person claiming from the same persons. The witness is qualified but the gift is void⁷³ (2010 Bar).

6.04. **ADDITIONAL SPECIAL FORMAL REQUIREMENTS FOR HOLOGRAPHIC WILLS⁷⁴** (1954 and 1959 Bar):

- (1) It must be entirely written by the hand of the testator;
 - (2) It must be entirely dated by the hand of the testator; and
 - (3) It must be entirely signed by the hand of the testator.
- a) **Location of Signature.** The law does not specify a particular location where the date should be placed in the holographic will. Thus, it can even be in the body of the will.⁷⁵
 - b) **Dispositions.** 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.⁷⁶
 - c) **Two or More Dispositions.** When a number of dispositions appearing in a holographic will

⁷²Cruz v. Villazor, 54 SCRA 31 (1973).

⁷³Art. 823, NCC.

⁷⁴Art. 810, NCC.

⁷⁵Labrador v. Court of Appeals, 184 SCRA 170 (1990).

⁷⁶Art. 812, NCC.

are signed without being dated, and the last disposition has a signature and a date, such date validates the dispositions preceding it, whatever be the time of prior dispositions.⁷⁷

- d) **Date.** A holographic will that is not dated is void (1986 Bar). The date "FEB/61" substantially complies with the requirement.⁷⁸ Similarly, there is also substantial compliance if the date is in the body of the will.⁷⁹

6.04.01. **Alterations.** In case of any insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature.⁸⁰ If this is not complied with, the corrections, insertions and alterations — not the will itself — are invalid.⁸¹ The original will (without insertion) is however valid (1996 Bar).

6.04.02. **Witnesses in Case of Probate**

a) **Probate of Holographic Will (1963 Bar).**⁸²

- (1) *If the probate of the holographic will is UNCONTESTED* — at least one witness who knows the handwriting and signature of the testator explicitly declares that the will and signature are in the handwriting of the testator.
- (2) *If the probate of the holographic will is CONTESTED* — at least three of such credible witnesses.
- (3) *In both cases, CONTESTED and UNCONTESTED PROBATES* — an expert witness may be called if no witness or witnesses as the case may be is or are available.

⁷⁷Art. 813, *ibid.*

⁷⁸Roxas v. De Jesus, Jr., G.R. No. L-38338, January 28, 1985.

⁷⁹Labrador v. Court of Appeals, G.R. Nos. L-83843-44, April 5, 1990.

⁸⁰Art. 814, *ibid.*

⁸¹Kalaw v. Relova, 132 SCRA 237 (1984).

⁸²Art. 811, NCC.

b) **Probate of Notarial Will.**

- (1) *If the probate of the holographic will is UNCONTESTED* – the Court may grant the allowance of the will on the testimony of one of the subscribing witness only;⁸³ one witness who knows the handwriting and signature of the testator explicitly declares that the will and signature are in the handwriting of the testator.
- (2) *If the probate of the holographic will is CONTESTED* – all the subscribing witnesses and the notary if present in the Philippines and not insane, must be produced but the petitioner is not bound by the testimony because the Court may still allow the probate despite an adverse testimony of a subscribing witness on the basis of other evidence.⁸⁴

PROBLEM:

Vanessa died on April 14, 1980, leaving behind a holographic will which is entirely written, dated and signed in her own handwriting. However, it contains insertions and cancellations which are not authenticated by her signature. For this reason, the probate of Vanessa's will was opposed by her relatives who stood to inherit by her intestacy. May Vanessa's holographic will be probated? Explain (1996 Bar; See also 2012 Bar).

A: Yes, the will may be probated but only with respect to the original contents of the will. Article 814 of the New Civil Code provides that in case if any insertion, cancellation, erasure or alteration in a holographic will, the testator must authenticate the same by his full signature. In the present case, the insertions and cancellations were not authenticated, hence, the same insertions are deemed invalid. Nevertheless, the original will itself remains valid.

However, it may also be reasonably argued that the answer would be different if the insertions and cancellations amount to revocation. There is an opinion to the effect that insertions

⁸³Sec. 5, Rule, 76, Revised Rules of Court.

⁸⁴Sec. 11, Rule 76, Revised Rules of Court.

and cancellations that amount to revocation do not need any authenticating signature under Article 830[3] of the New Civil Code. (*See Kalaw v. Relova, GR No. L-40207, September 28, 1984*)

7. CODICIL AND INCORPORATION BY REFERENCE.

7.01. CODICIL. — It 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.⁸⁵

a) **Formalities.** To be effective, it must be executed as in the case of a will. Its execution has the effect of republishing the will as modified.⁸⁶

7.02. INCORPORATION BY REFERENCE.⁸⁷ This **MUST NOT** include testamentary dispositions and the documents or papers that may be incorporated by reference are only those documents such as inventories, books of accounts, and other similar documents. This applies only to notarial wills.

7.02.01. Requisites for a valid incorporation by reference:

- (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 document, 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 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 account or inventories.

⁸⁵Art. 825, NCC.

⁸⁶Art. 826, *ibid.*

⁸⁷Art. 827, *ibid.*

8. REVOCATION OF WILLS AND TESTAMENTARY DISPOSITIONS.

8.01. **REVOCATION.** A will may be revoked by the testator at any time before his death. Any waiver or restriction of this right is void.⁸⁸

8.02. **GOVERNING LAW ON REVOCATION.**⁸⁹

- (1) If the revocation takes place in the Philippines, whether the testator is domiciled in the Philippines or in some other country — valid if in accordance with Philippine laws (New Civil Code);
- (2) If the revocation takes place outside the Philippines, by a testator who is domiciled in the Philippines — valid if in accordance with Philippine laws (New Civil Code);
- (3) Revocation done outside the Philippines, by a testator who does not have his domicile in this country, is valid when it is done according to the:
 - (a) Law of the place of revocation; or
 - (b) Law of the place in which the testator had his domicile at the time of revocation.

8.03. **MODES OF REVOCATION.**⁹⁰ (1) By operation of law; (2) By some will, codicil, or other writing, executed as provided in case of wills; and (3) By physical destruction of the will by burning, tearing, canceling, or obliterating the same.

8.03.01. **Examples of Revocation by Operation of Law:**

- (1) **Preterition** — revokes the institution of heir;⁹¹

⁸⁸Art. 828, NCC.

⁸⁹Art. 829, *ibid.*

⁹⁰Art. 830, *ibid.*

⁹¹Art. 854, *ibid.*

- (2) Legal separation — this revokes testamentary provisions in favor of the offending spouse;⁹²
- (3) Judicial action for recovery of debt revokes a legacy of credit/remission of debt;
- (4) Act of unworthiness by an heir, devisee/legatee;⁹³
- (5) Where the first spouse reappeared after being presumed dead and both spouses of the subsequent marriage acted in bad faith, said marriage shall be void *ab initio* and testamentary dispositions made by one in favor of the other are revoked by operation of law;⁹⁴
- (6) Nullification of a void *ab initio* marriage or annulment of a voidable marriage revokes testamentary dispositions made by one spouse in favor of the other. If both spouses acted in bad faith.⁹⁵

8.03.02. Revocation by Will or Codicil:

- a) Revocation may either be (1) Express, or (2) Implied.
- b) To be a valid revocation, the testator, who has testamentary capacity, must comply with the formal requirements of a will.
- c) There is implied revocation if a subsequent will does not revoke the will in an express manner but there are inconsistent provisions.⁹⁶ There should be complete incompatibility of the provisions of the two wills (*1981 Bar*).

8.03.03. Physical Destruction.

- a) The will is revoked if it is burned, torn, cancelled, obliterated or otherwise physically destroyed.

⁹²Art. 63(4), FCP.

⁹³Art. 1032, NCC.

⁹⁴Art. 44, FCP.

⁹⁵Art. 50, *ibid.*, in relation to Art. 44, FCP.

⁹⁶Art. 831, NCC.

- b) **Corpus and Animus Revocandi** are required. There must be an overt act of destruction (*corpus*). The physical act of destruction of a will does not *per se* constitute an effective revocation unless the destruction is coupled with *animus revocandi* on the part of the testator — intent to revoke.⁹⁷

(1) **Subjective Phase.** Note however that the *corpus* is not deemed accomplished if the testator has not yet reached the subjective phase. **Examples:** (1) The testator, angered that his child was misbehaving, wants to revoke his will by ripping all the pages into shreds but when he started the act by ripping a small of the first page in front of his child, he stopped because he was prevailed upon by his child not to continue with the revocation. In this case, the testator has not yet completed the subjective phase of the overt act, hence, the will is not deemed revoked; (2) If, however, the overt act intended by the testator is to rip a portion of the will and the testator was able to do so, the revocation is effective even if the portion that was ripped is small as in case where only a name of an heir was removed.

- c) **Who will Destroy.** (1) The Testator, or (2) Another person (i) under the *express direction*, and (ii) in the *presence* of the Testator. **Example:** The cancellation (deletion) of the name of an instituted heir in the holographic will by the testator himself is valid and does not require destruction of the entire will. If the cancellation of the name is done by a third person, the same must be done in the testator's presence and under his express direction. However, the insertion of a new name (for instance, deletion of Rosa's and insertion of the name Gregorio) in the holographic will is not valid despite the

⁹⁷Testate Estate of Adriana Maloto v. Court of Appeals, 158 SCRA 451 (1988).

validity of the revocation or cancellation of the name of Rosa if the insertion of the new name is not authenticated by the testator⁹⁸ (2012 Bar). Cancellation need not be authenticated but alteration of a holographic will must be authenticated.

8.03.04. **Effect if Disposition in the New Will is Inoperative.**⁹⁹ If the subsequent or new will (that is supposed to revoke the previously executed will) becomes **INOPERATIVE** by reason of (1) incapacity of the heirs, devisees, legatees or (2) by reason of renunciation, **THE REVOCATION REMAINS EFFECTIVE** (also referred to as Doctrine of Absolute Revocation).

- a) Note that the new will must be valid and admitted to probate. If the new will is void for failure to comply with the formalities of notarial will, then the revocation is not effective.
- b) **EXCEPTION: When the DOCTRINE OF DEPENDENT RELATIVE REVOCATION is provided for by the Testator.** Under this doctrine, the revocation itself is subject to the condition that the new will remain operative. The intention of the testator is to make the revocation effective only if the new revoking will is valid. Hence, it can be provided for by the testator that if new will becomes inoperative by reason of incapacity or renunciation, the previous will remains effective and the revocation is also inoperative¹⁰⁰ (1951, 1962 and 2003 Bar).

PROBLEM:

1. Mr. Reyes executed a will completely valid as to form. A week later, however, he executed another will which expressly revoked his first will, following which he tore his first will to pieces. Upon the death of Mr. Reyes, his second will was presented for probate by his

⁹⁸See *Kalaw v. Relova*, G.R. No. L-40207, September 28, 1984.

⁹⁹Art. 832, NCC.

¹⁰⁰*Molo v. Molo*, 90 Phil. 37 (1952).

heirs, but it was denied probate due to formal defects. Assuming that a copy of the first will is available, may it now be admitted to probate and given effect? Why? (2003 Bar)

- A: Yes, the first will may be admitted to probate and given effect under the doctrine of dependent relative revocation. Mr. Reyes appears to erroneously believe that second will was valid when he revoked the first will. The revocation was invalid since the second will is invalid.

8.03.05. **Recognition.** The recognition of an illegitimate child in the will remains effective despite the revocation of the will (2014 Bar).¹⁰¹ The recognition is an accomplished fact.

9. REPUBLICATION AND REVIVAL OF WILLS.

9.01. **REPUBLICATION.** This happens if there is a previous void will as to its form or the will has been previously revoked. A testator who wants to make the previous void will operative has the option to:

- (1) With respect to a will void as to its form — REPRODUCE the dispositions in the void will in a subsequent will;¹⁰²
- (2) With respect to revoked will — Execute a Codicil REFERRING to the previous will;¹⁰³
- (3) With respect to a will that is void but not as to form like when the testator is a minor or insane or the testator executed the will due to fraud, force, or undue influence — Execute a Codicil REFERRING to the previous will.¹⁰⁴

9.02. **REVIVAL.** If a will (first) is revoked by a second will, the EXPRESS revocation of the second will does NOT revive the first will. Revival through a will or codicil is necessary for such purpose.¹⁰⁵

¹⁰¹Art. 834, NCC.

¹⁰²Art. 835, *ibid.*

¹⁰³Art. 836, *ibid.*

¹⁰⁴Art. 836, *ibid.*; Paras, *Civil Code of the Philippine Annotated*, Vol. III, 2016 Ed., p. 512.

¹⁰⁵Art. 837, *ibid.*

- a) The will is revived if: (1) the revocation of the first will is implied not express or (2) a new (third) will or codicil revives the first will.

10. ALLOWANCE AND DISALLOWANCE OF WILLS.

10.01. PROBATE PROCEEDING. It is a special proceeding that is required for proving and allowance of a will. The will cannot pass property unless it has undergone probate proceedings.

- a) Wills executed by foreigners abroad can be probated in the Philippines although the will has not yet been probated and allowed in the country where it was executed.¹⁰⁶

10.02. KINDS OF PROBATE. (1) Probate AFTER the death of the testator (Post-mortem); and (2) Probate during the lifetime of the testator (Ante-mortem).

- a) Ante-mortem probate lessens the number of contests upon wills and usually the question that remains is with respect to intrinsic validity of the will.¹⁰⁷

10.03. PURPOSE AND SCOPE OF PROBATE: To secure a final decree on the extrinsic validity of the will or its DUE EXECUTION. It will be established with finality in probate that: (1) the will is indeed the will of the testator (**identity**); (2) the testator was of sound and disposing mind at the time he executed the will (**testamentary capacity**); (3) the testator was not acting under duress, menace, fraud, or undue influence (**voluntariness**); (4) the will was signed by him in the presence of the required number of witnesses and all other **formal requisites** are present; and (5) that the will is **genuine** and not a forgery¹⁰⁸ (1988 and 1990 Bar).

¹⁰⁶Palaganas v. Palaganas, 640 SCRA 538 (2011).

¹⁰⁷Report of the Code Commission, p. 53.

¹⁰⁸Gallanosa v. Arcangel, 83 SCRA 676 (1978); Baltazar v. Laxa, 669 SCRA 249 (2012); Dorotheo v. Court of Appeals, G.R. No. 108581, December 8, 1999.

- a) By way of exception, the probate court is allowed to look into the intrinsic validity of a will if it is patently void. This applies where the will "no matter how valid it may appear intrinsically, would be null and void and a separate proceeding to determine the intrinsic validity of the will is superfluous¹⁰⁹ (1990 Bar). *Example:* Intrinsic validity may be inquired into if there is only one testamentary disposition and the only issue is the validity of bequeathing the free portion to the common law spouse¹¹⁰ (1990 Bar).
- b) The probate court can approve any disposition of property that is part of the estate and to annul an unauthorized sale.¹¹¹

10.04. GROUND FOR DISALLOWANCE OF A WILL.¹¹²

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.

¹⁰⁹Nuguid v, Nuguid, G.R. No. L-62952, October 9, 1985.

¹¹⁰*Ibid.*

¹¹¹Silverio, Sr. v. Silverio, Jr., G.R. Nos. 208828-29, August 13, 2014.

¹¹²Art. 839, NCC.

PROBLEMS:

1. Mr. A presented for probate a will purporting to be the last will and testament of his deceased wife. The will was admitted to probate without any opposition. Sixteen months later, the brothers and sisters of the deceased discovered that the will was a forgery. Can A now be prosecuted for the criminal offense of forgery? Give your reasons (1988 Bar).
 - A: No, Mr. A can no longer be prosecuted for the criminal offense of forgery. Article 838 of the Civil Code provides that subject to the right to 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. The probate of a will is therefore conclusive as to the fact that the testator signed the will. Allegation of forgery can no longer be entertained after the probate of the will, hence, a criminal case for forgery is no longer proper. It should be noted that appeal is no longer available in this case because 16 months has passed since the will was probated. Thus, the decision of the probate court is already final and executory.
2. One day, he had serious altercation with his sweetheart. A few days later, he was introduced to a charming lady who later became a dear friend. Soon after, he executed a holographic will expressly revoking the notarial will and so designating his new friend as sole heir. One day when he was clearing up his desk, Johnny mistakenly burned, along with other papers, the only copy of his holographic will. His business associate, Eduardo, knew well the contents of the will which was shown to him by Johnny the day it was executed. A few days after the burning incident, Johnny died. Both wills were sought to be probated in two separate petitions. Will either or both petitions prosper? (1997 Bar)
 - A: The probate of the Notarial Will will prosper while the probate of the holographic will not prosper. Probate of a holographic will prosper only if the holographic will itself can be produced. In the present case, the holographic was burned, hence, it can no longer be probated. The fact that the holographic will was just mistakenly burned is of no moment because will of such nature can only be probated upon evidence of the will itself. The situation would be different if there is a photocopy of the lost holographic will because of the rule that photocopies of a holographic will may serve as secondary evidence of the genuineness and existence thereof. (*Rodelas v. Aranza, G.R. No. L-58509, December 7, 1982*) However, the problem in the present case states that what was burned was the only copy of the holographic will, hence, there was no photocopy thereof.

If the holographic will cannot be probated, then there can be no proof of the alleged revocation of the notarial will. The notarial will cannot therefore be considered revoked and can therefore be probated.

11. INSTITUTION OF HEIRS.¹¹³

11.01. INSTITUTION. 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.

- a) **Requirements:** (1) Extrinsic validity of the will; (2) Intrinsic validity of the will – it must comply with substantive law; *Examples:* (i) there must be no preterition and (ii) the legitime should not be affected; (3) The heir must be Capacitated – he or she must not suffer from any incapacity; (4) The institution must be personal and voluntary – no vices of consent; (5) The instituted heir must be identified or identifiable.
- b) **Not indispensable.** The institution of an heir is not necessary for the validity of the will. The will is valid even without such institution or even if it includes only part of the estate of the testator.¹¹⁴
- c) **How Heirs are Identified.** It is enough that the identity of the specific heirs are indicated in such a way that there is no doubt as to who is being instituted.
- d) **Suspensive Condition or Term.** The heir can be instituted under (1) a suspensive condition, or (2) a suspensive term, in which case, the estate shall be placed under administration until the happening of the condition or until it becomes certain that it cannot be fulfilled, or until the arrival of the term.¹¹⁵

¹¹³Arts. 840 to 856, NCC.

¹¹⁴Art. 841, *ibid.*

¹¹⁵Art. 880, *ibid.*

- (1) In a disposition with a suspensive term, the heir acquires rights that can be transmitted even before the arrival of the term.¹¹⁶

11.01.01. What Part of the Estate can the Testator Dispose by Will:¹¹⁷

- a) If the testator has NO COMPULSORY HEIR — the entire net estate.
- b) If the testator HAS COMPULSORY HEIRS — free portion, meaning, the entire net estate (subject to collation) LESS the legitimes.
- c) If the intention is to give the entire estate to two or more heirs but the will has designated a definite portion, the total of which is less than the estate, there should be a proportionate INCREASE in the share of each heir. If the total is more than the estate, then there will be proportional REDUCTION.¹¹⁸

1) FORMULA: Net Estate Multiplied by (X) the Amount of Share of Heir actually Instituted Divided by (/) the Total Amount of the Shares actually Instituted equals the actual share of the Heir.

11.01.02. Presumption of Equality of Shares. — Heirs instituted without designation of shares shall inherit in equal parts.¹¹⁹ However, this is subject to the right of the compulsory heirs to their legitime.

11.01.03. Presumption of Equality and Individuality of Designation. When the testator institutes some heirs INDIVIDUALLY and others COLLECTIVELY (Example: 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

¹¹⁶Art. 878, NCC.

¹¹⁷Art. 842, *ibid.*

¹¹⁸Arts. 852 and 853, *ibid.*

¹¹⁹Art. 846, *ibid.*

it clearly appears that the intention of the testator was otherwise.¹²⁰

11.01.04. Presumption that Institution is Simultaneous. When the testator calls to the succession a person and his children, they are all deemed to have been instituted simultaneously and not successively.

11.02. INSTITUTION BASED ON A FALSE CAUSE. The statement of a false cause for the institution of an heir shall be deemed not written. In other words, the false cause should be ignored. However, the institution may be ANNULLED if the following requisites are present:

- (1) The cause for the institution of heirs must be stated in the will;
- (2) The cause must be false;
- (3) It must appear from the face of the will that the testator would not have made such institution if he had known the falsity of the cause.¹²¹

12. PRETERITION. The 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 heir¹²² (1988, 1999 and 2001 Bar).

- a) The institution shall be abrogated *in toto* and intestate succession ensues,¹²³ unless there are devises and legacies which shall be valid insofar as they are not inofficious (1953, 1967, 1988, 1993, 1999, 2001, 2008, 2012, and 2014 Bar).

12.01. REQUISITES OF PRETERITION.

- (1) The heir omitted must be a compulsory heir in the direct line — legitimate or

¹²⁰Art. 846, *ibid.*

¹²¹Austria v. Reyes, 31 SCRA 754 (1970).

¹²²Art. 854, NCC.

¹²³Nuguid v. Nuguid, 17 SCRA 449 (1966); Art. 855, NCC.

illegitimate children, adopted child, descendants, parents or ascendants;

(2) The omission must be complete and total in character without express disinheritance;¹²⁴ and

(3) The compulsory heir omitted must survive the testator — If the omitted compulsory heir should die before the testator, the institution shall be effectual, without prejudice to the right of representation.

a) **The Omission Must be Complete and Total.**

(1) There is no preterition if the compulsory heir was instituted but he was given less than his legitime.¹²⁵ The remedy of the heir is **completion of legitime** under Article 906.

(2) There is no preterition if only part of the estate is disposed by will even if the compulsory heir is omitted, that is, there is a vacant portion that can be given to the compulsory heir.

(3) There is also no preterition if the omitted heir received a collationable donation (advances to the legitime) during the lifetime of the testator.

(4) There is no preterition if the omitted heir received a legacy or devise (*2001 Bar*).

b) **Direct line.** Compulsory heir must be in the direct line. This includes the adopted child.¹²⁶ There is no preterition if the spouse is omitted (*1993, 1999, and 2008 Bar*).

¹²⁴Morales v. Olondriz, G.R. No. 198994, February 3, 2016.

¹²⁵Reyes v. Barreto-Datu, 19 SCRA 85 (1967); Aznar v. Duncan 17 SCRA 590 (1966).

¹²⁶Acain v. IAC, 155 SCRA 100 (1987).

c) **Preterition Distinguished from Disinheritance.**

PRETERITION	DISINHERITANCE
1. The annulment is effective so long as the requisites are present; there is no need to expressly provide in the will such annulment.	1. Expressly made.
2. Inadvertent Omission.	2. Voluntarily made.
3. The will is rendered abrogated (the institution is annulled) and intestacy will result.	3. Only particular heir shall not get any share. If disinheritance is not valid, compulsory heir is merely restored to his legitime.

13. SUBSTITUTION OF HEIRS.

13.01. SUBSTITUTION. Substitution is the appointment of another heir so that he may enter into the inheritance in default of the heir originally instituted.¹²⁷ Substitution applies to the share of a voluntary heir and not to the legitime of a compulsory heir.

13.02. KINDS. Substitution of heirs may be:¹²⁸ (1) Simple, (2) Brief or Compendious, (3) Reciprocal, and (4) Fideicommissary.

13.02.01. Simple or common (vulgar)¹²⁹ *Example:* A and B were instituted and A is appointed as the substitute of B if B predeceases the testator, or B repudiates or in case of B's incapacity (2002 Bar).

a) **Conditions for Vulgar Substitution.** Substitution will take place in any of the following:

¹²⁷ Art. 857, NCC.

¹²⁸ Art. 858, *ibid.*

¹²⁹ Art. 859, *ibid.*

- (1) The instituted heir dies before (predeceases) the testator;
- (2) Incapacity of the instituted heir to succeed from the testator; or
- (3) Refusal or repudiation of the inheritance by the heir.

NOTE: There is no substitution if the three alternative conditions are absent — predecease, refusal, or incapacity.¹³⁰

13.02.02. Brief or compendious:¹³¹

- a) **Brief** — two or more persons were appointed to substitute one heir. *Example:* X was instituted to 1/2 of the estate of the testator while A and B are appointed as the substitutes. If X predeceases the testator, A and B will get the 1/2 of the estate.
- b) **Compendious** — one heir is appointed to substitute two or more heirs. *Example:* (1) X and Y were instituted to 1/2 of the estate of the testator while A is appointed as the substitute. If X and Y predecease the testator, A will get the 1/2 of the estate; (2) In the first example, if only X predeceases the testator, there will be no substitution unless otherwise expressly provided for; Y will get the 1/2 estate.

13.02.03. Reciprocal. — heirs instituted in unequal shares should be reciprocally substituted, the substitute shall acquire the share of the heir.¹³²

13.02.04. Fideicommissary Substitution. The elements are as follows (1988 Bar):

- (1) It must be expressly made;¹³³

¹³⁰PCIB v. Escolin, 56 SCRA 266 (1974).

¹³¹Art. 860, NCC.

¹³²Art. 861, *ibid.*

¹³³Art. 865, *ibid.*

- (2) There must be a First heir (known as the *fiduciary*) who is to take the property upon the death of the testator;
 - (3) There must be a Second heir (known as the *fideicommissary*) who is one degree from the First heir who will take the property after the specified period or upon the death of the fiduciary;
 - (4) The fiduciary must (i) preserve the property, and (ii) transmit it after the lapse of the period to the fideicommissary;
 - (5) Both the fiduciary and the fideicommissary must be living and must be qualified to be an heir at the time of the death of the testator (2008 Bar).
- a) **Meaning of One degree.** Substitution must not go beyond one degree from the heir originally instituted.¹³⁴ Hence, the fideicommissary must either be the PARENT or CHILD of the fiduciary.¹³⁵ (Note: There is a contrary view to the effect that "one degree" means one transfer.)
 - b) **Legitime.** Substitution must not burden the legitime of compulsory heirs.¹³⁶
 - c) **Death of Fideicommissary.** The fideicommissary acquires a right to the succession upon the expiration of the period fixed by the testator or in the absence of the period, from the time of the testator's death even if he dies before the Fiduciary. The heirs of the fideicommissary will get the right of the latter.¹³⁷

¹³⁴Art. 863, *ibid.*

¹³⁵Palacios v. Ramirez, 111 SCRA 704 (1982). Note the contrary view of Justice Jose Vitug. See: 2 Vitug 224.

¹³⁶Art. 864, NCC.

¹³⁷Art. 866, *ibid.*

14. CONDITIONAL, MODAL DISPOSITIONS AND DISPOSITIONS WITH A TERM (Arts. 871-885).

14.01. PROHIBITED OR VOID CONDITIONS OF WILLS.

- (1) **Legitimate.** Conditions cannot be imposed on LEGITIMES — legitimes pass by operation of law to compulsory heirs;
- (2) **Impossible conditions** and those contrary to law or good customs are considered as NOT IMPOSED:¹³⁸
 - (i) The rule is similar to the rule on donations but is different from the rule in obligations and contracts where the impossible condition annuls the obligation itself.¹³⁹
- (3) **First Marriage.** An absolute condition not to contract a first marriage is always void and will be considered as not written.
- (4) **Subsequent Marriage.** An absolute condition not to contract a subsequent marriage is generally void. **Exceptions:** The condition is VALID if imposed upon a widow or widower by the deceased spouse, his or her ascendants or descendants.
- (5) **Disposition Captatoria** — 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 (1962 Bar).

14.01.01. Conditions that are Valid.

- (1) A condition that the heir will contract marriage;
- (2) Condition to contract marriage with a specific person; and

¹³⁸Art. 873, NCC.

¹³⁹Arts. 727 and 1183, *ibid.*

- (3) Relative prohibition to contract a first or subsequent marriage with a specific person.

EXAMPLES:

- (1) A devise that is bequeath to a nephew provided that the nephew would study for the priesthood (1980 Bar); (2) A condition that the instituted heir must be alive within ten years after the testator death (1985 Bar).

14.02. KINDS OF CONDITIONS.

- (1) Potestative Condition — depends exclusively upon the will of the heir, devisee, or legatee;
 - (2) Causal Condition — depends upon the will of a third person.
 - (3) Mixed — depends upon the will of the heir, devisee, or legatee and partly upon chance and/or will of a third person.
- a) **Fulfillment of Potestative Conditions:** The heir must fulfill it as soon as he learns of the testator's death.
- (1) If already fulfilled at the time of testator's death — it must be fulfilled again EXCEPT if the condition is of such nature that it cannot be fulfilled again.
- b) **Fulfillment of Causal or Mixed Condition:** It may be fulfilled either before or after the testator's death, unless the testator has provided otherwise.
- (1) If already fulfilled at the time the will was executed:
 - (i) If the testator was NOT aware of the prior fulfillment — the condition is deemed fulfilled;
 - (ii) If the testator WAS AWARE of the prior fulfillment — it must be fulfilled again EXCEPT if the condition is of

such nature that it cannot be fulfilled again.

- c) **Constructive Compliance for Potestative and Mixed Condition:**¹⁴⁰ The condition is deemed to have been complied with if the person interested in the condition should PREVENT its fulfillment, without the fault of the heir.

14.03. MODAL INSTITUTION (*INSTITUCION SUB MODO*). The testator states the following (*2002 Bar*):¹⁴¹

- (1) The object of the institution;
 - (2) The application of the property left by the testator; or
 - (3) The charge imposed by him.
- a) A "Mode" imposes an obligation upon an heir or devisee or legatee but it does not affect the efficacy of his rights to the succession. It is similar to a resolutive condition.¹⁴²
- b) *Caucion Mauciana* — This is a security given by the heir to secure compliance with a Mode under Article 882 of the New Civil Code. This is also provided for under Article 879 to secure the performance of a negative potestative condition (not doing or not giving) as well as under Article 874.

EXAMPLE:

A devise of a parcel of sugar land with the obligation imposed on the devisee to deliver a specified volume of sugar to an a compulsory heirs with the right to compel the return in case of failure to make such delivery is a modal institution (*2002 Bar*).

14.04. CONDITION NOT TO TRANSFER. The testator may provide in the will that all or part of the estate that he disposed to the heirs CANNOT BE

¹⁴⁰Art. 883 par. 2, NCC.

¹⁴¹Art. 882, NCC; *Rabadilla v. Court of Appeals*, 334 SCRA 522 (2000).

¹⁴²*Ibid.*, citing Balane, *Jottings and Jurisprudence in Civil Law*.

ALIENATED for 20 years. A provision prohibiting alienation or transfer for more than 20 years is void (2014 Bar).¹⁴³

14.04.01. **Exception.** A case involving fideicommissary substitution is, in a sense, an exception because it can be provided for in the will that the Fiduciary cannot dispose or alienate what he received even beyond 20 years or during the lifetime of the Fiduciary. However, it should be noted that the Fiduciary cannot really alienate the property because, in effect, all that was given to him is the usufruct.

PROBLEM:

By virtue of a codicil appended to his will, Theodore devised to Divino a tract of sugar land, with the obligation on the part of Divino or his heirs to deliver to Betina a specified volume of sugar per harvest during Betina's lifetime. It is also stated in the codicil that in the event the obligation is not fulfilled, Betina should immediately seize the property from Divino or the latter's heirs and turn it over to Theodore's compulsory heirs. Divino failed to fulfill the obligation under the codicil. Betina brings suit against Divino for the reversion of the tract of land. Does Betina have a cause of action against Divino? Explain (2002 Bar).

A. Yes, Betina has a cause of action against Divino. What is involved is a modal institution of Divino as an heir. The testator imposed an obligation on the part of Divino or his heirs when he made the testamentary disposition. The will expressly provides for a right in favor of Betina to recover the property if the obligation is not fulfilled. Hence, Betina has a right to enforce the express provision in the will.

5. **LEGITIMES.** It 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, compulsory heirs.¹⁴⁴ In other words, it is part of the estate that is reserved to compulsory heirs (1969 Bar).

a) The testator cannot deprive the heir of their legitime except through disinheritance.¹⁴⁵

¹⁴³Art. 870, NCC.

¹⁴⁴Art. 886, NCC.

¹⁴⁵Art. 904, *ibid.*

- b) The testator cannot dispose of the legitime in a will or even in a donation *inter vivos*. However, the testator can sell or transfer the properties that are part of his estate for value, because this merely involves replacement of values.
- c) The testator cannot impose a burden, encumbrance, condition or substitution on the legitime.¹⁴⁶ **Exceptions:** (1) The testator may prohibit the transfer of the legitime for a period not exceeding 20 years;¹⁴⁷ (2) If a testator parent partitions his estate by an act *inter vivos*, or by will, who, in the interest of his or her family, desires to keep any agricultural, industrial, or manufacturing enterprise intact, may order that the legitime of the other children to whom the property is not assigned, be paid in cash.¹⁴⁸
- d) **Net Estate.** The legitime will be determined on the basis of the Net Estate which is computed as follows: GROSS ESTATE LESS (-) Debts and Charges PLUS (+) Donation *Inter Vivos* to Heirs and strangers (Collation). Previously delivered presumptive legitime in case of legal separation, or annulment or declaratory of nullity of marriage are considered advances. Thus, the legitime is determined AFTER collation.¹⁴⁹
- e) **Non-Partition.** The testator may forbid the Partition of the properties included in the legitime for a period not exceeding 20 years.¹⁵⁰
- f) **Remedy if Testator Left Less.** Any compulsory heir to whom the testator left any title less than the legitime belonging to him may demand that the same be fully satisfied.¹⁵¹ A petition to reduce

¹⁴⁶*Supra.*

¹⁴⁷Art. 1083, NCC.

¹⁴⁸Art. 1080, NCC.

¹⁴⁹Arts. 51 and 102, Family Code. Art. 908, NCC.

¹⁵⁰Art. 1083, par. 1, NCC.

¹⁵¹Art. 906, NCC.

the testamentary dispositions that are inofficious or excessive may be filed to satisfy the legitime of those who received less.¹⁵²

- g) The testator can even bequeath to non-relatives the portion that is in excess of the legitimes (1957 Bar).
- h) **Compromise or Renunciation on Future Legitime is Void.** 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 compromise¹⁵³ (1979 Bar).

15.01. GENERAL RULE: The legitime of the primary or secondary compulsory heirs (in case they inherit) is ONE-HALF (1/2) of the net estate.

	EXTENT OF LEGITIME
General Rule	One-Half (1/2) of Net Estate
EXCEPTIONS: When the Sole Surviving Compulsory Heirs are:	
1. Surviving Spouse and Illegitimate Children (<i>Art. 894, NCC</i>).	Total — 2/3 of Net Estate Surviving Spouse — 1/3 Illegitimate Children — 1/3
2. Surviving Spouse in a marriage solemnized in <i>articulo mortis</i> under the conditions prescribed in the second paragraph of Article 900.	One-third (1/3) of Net Estate

Note: The total legitimes of the surviving spouse and illegitimate parents is 1/2 (1/4 each) under Article 903.

¹⁵²Art. 907, NCC.

¹⁵³Art. 905, NCC.

15.02. COMPULSORY HEIRS. — The persons for whom the legitime is reserved. It is only through disinheritance that they can be deprived of their legitime.

15.02.01. Kinds of Compulsory Heirs: (1) Primary, (2) Secondary, and (3) Concurring.¹⁵⁴

KINDS OF COMPULSORY HEIR	PERSONS INCLUDED	NATURE OF THEIR RIGHT
Primary Compulsory Heirs	Legitimate Children and/or Descendants	They have precedence over and exclude secondary heirs.
	NOTE: Legitimated children and Adopted Children are considered and have the rights of a Legitimate Child (Arts. 17 and 18, R.A. No. 8552)	
Secondary Compulsory Heirs	(1) Legitimate Parents and/or Ascendants; (2) Illegitimate Parents (parents of illegitimate children)	They have legitime only in the absence of primary heirs. Thus: (i) Legitimate Parents and/or Ascendants succeed only in default of legitimate children/descendants (Art. 889, NCC); (ii) Illegitimate Parents succeed only in the absence of any legitimate OR illegitimate descendants (Art. 903, NCC).

¹⁵⁴ Arellano v. Pascual, G.R. No. 189776, December 15, 2010.

<p>Concurring Compulsory Heirs</p>	<p>(1) Surviving Spouse; (2) Illegitimate children and/or Decendants (i) Art. 176 of the Family Code provides that the legitime of each illegitimate child consists of one-half (1/2) of the legitime of a legitimate child.</p>	<p>They succeed together with the Primary or Secondary Compulsory Heirs. (i) The surviving spouse concurs with all classes.</p>
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15.02.02. **Illegitimate Children** — It is no longer necessary to distinguish natural child by legal fiction from other illegitimate children.

15.02.03. **ADOPTED CHILD.** Section 18 of Domestic Adoption Act of 1988 (R.A. No. 8552) provides that in legal and intestate succession, the adopter(s) and the adoptee shall have reciprocal rights of succession without distinction from legitimate filiation. Thus, the adopted has the same rights as a legitimate child; the adopted inherits from the adopter and the adopter inherits from the adopted.

- a. With respect to the biological parents of the adopted, the Supreme Court ruled in one case that the biological parents retain their rights of succession to the estate of their child who was the subject of adoption.¹⁵⁵ Despite opinion to the contrary, it is believed that the provision of

¹⁵⁵Bartolome v. Social Security System, G.R. No. 192531, November 12, 2014.

Articles 189 and 190 of the Family Code are still in force and were not repealed by the Domestic Adoption Act of 1988.

- b. Article 189 of the Family Code provides that the adopted shall be deemed a legitimate child for civil purposes but the adopter shall remain an intestate heir of his parents and other blood relatives.
- c. Article 190 provides that legal or intestate succession to the estate of the adopted shall be governed by the following rules:
 - (1) Legitimate and illegitimate children and descendants and the surviving spouse of the adopted shall inherit from the adopted, in accordance with the ordinary rules of legal or intestate succession;
 - (2) When the parents, legitimate or illegitimate, or the legitimate ascendants of the adopted concur with the adopter, they shall divide the entire estate, one-half to be inherited by the parents or ascendants and the other half, by the adopters;
 - (3) When the surviving spouse or the illegitimate children of the adopted concur with the adopters, they shall divide the entire estate in equal shares, one-half to be inherited by the spouse or the illegitimate children of the adopted and the other half, by the adopters;
 - (4) When the adopters concur with the illegitimate children and the surviving spouse of the adopted, they shall divide the entire estate in equal shares, one-third to be inherited by the illegitimate children, one-third by the surviving spouse, and one-third by the adopters;

- (5) When only the adopters survive, they shall inherit the entire estate; and
- (6) When only collateral blood relatives of the adopted survive, then the ordinary rules of legal or intestate succession shall apply.

15.03. RULES OF PREFERENCE, PROXIMITY AND DIVISION:

15.03.01. Direct descending line:

- (1) Preferred: Children are given preference;
- (2) Theory of Exclusion and Proximity — the heir who is nearer excludes more remote heirs (*Example*: children exclude grandchildren).
- (3) Right of representation applies.

15.03.02. Direct ascending line:

- (1) Proximity — the heir who is nearer excludes more remote heirs. *Examples*: (1) Parents shall exclude the other descendants. If there are no parents, nearer ascendant excludes the more remote ascendants;¹⁵⁶ (2) Children exclude all other descendants (subject to the right of representation).
- (2) Rule of division by line — if there is more than one ascendant of equal degree of the paternal and maternal lines, then the legitime shall be divided in equal parts between the paternal line and the maternal line.¹⁵⁷
- (3) Rule of equal division within the line (theory of concurrence) — after dividing the legitime between the lines, the respective legitimes shall be divided equally.

¹⁵⁶Arts. 889 and 890, NCC.

¹⁵⁷Art. 890, NCC.

15.04. TABLE OF LEGITIMES.

SURVIVING HEIR/S	LEGITIME	SHARING
1. Legitimate Child or Children only	One-Half (1/2) of the Net Estate (<i>Art. 888, NCC</i>).	If there are two or more children, legitime shall be divided equally (<i>Art. 980, NCC</i>).
2. Legitimated and Adopted Child	One-Half (1/2) of the Net Estate	In relation to the adopter, Adopted Child has same rights as Legitimate Child (<i>Secs. 17 and 18, R.A. No. 8552, Domestic Adoption Act of 1998</i>). Legitimated likewise has the same rights as Legitimate Child (<i>Art. 179, FCP</i>).
3. Legitimate Children and Surviving Spouse	One-Half (1/2) — Legitimate Children Equal to the Legitime of Each Child — Surviving Spouse (<i>1950 Bar</i>)	Divided equally among the legitimate children. The spouse will have same share as a child (<i>Art. 892, NCC</i>). The share of the surviving spouse will be given after giving the children 1/2 – taken therefore from the free portion.
4. One Legitimate Child and Surviving Spouse	One-Half (1/2) — Legitimate Child One-Fourth (1/4) — Surviving Spouse.	The surviving spouse may inherit even if there is legal separation IF he or she is the INNOCENT SPOUSE (<i>Art. 982, NCC</i>).
5. Legitimate Children and Illegitimate Children	One-Half (1/2) — Legitimate Children divided equally (<i>Art. 888, NCC</i>).	2:1 for Legitimate-Illegitimate; thus, one Illegitimate child will get 1/2 of the share of

	An Illegitimate child will get 1/2 of the share of one legitimate.	one legitimate child (<i>Art. 176, FCP</i>). (1966, 1982, 1987, and 2003 Bar).
6. Legitimate Parents and Surviving Spouse	One-Half (1/2) — Legitimate Parents; and One-Fourth (1/4) — Surviving Spouse (<i>Art. 893, NCC</i>).	
7. Surviving Spouse and Illegitimate Children	One-Third (1/3) — Surviving Spouse; and One-Third (1/3) — Illegitimate Children (<i>Art. 894, NCC</i>).	
8. One Legitimate Child, Illegitimate Children and Surviving Spouse	One-Half (1/2) — Legitimate Child One-Fourth (1/4) — Surviving Spouse (<i>Art. 892, NCC</i>) One-Fourth (1/4) — Illegitimate Child (<i>Art. 176, FCP</i>). (1969 and 1997 Bar)	2:1 for Legitimate-Illegitimate; thus, one illegitimate child will get 1/2 of the share of one legitimate child and will be taken from the Free Portion (<i>Art. 895, NCC and Art. 176, FCP</i>).
9. Legitimate Children, Illegitimate Children and Surviving Spouse	One-Half (1/2) — Legitimate Children The share of the spouse is equal to 1 share of a Legitimate Child and should be taken from the free portion (<i>Art. 892, NCC</i>). The legitime of the Illegitimate	The surviving spouses share is preferred over the share of illegitimate children (<i>Art. 895, NCC</i>). If the remaining portion is not enough after giving the share of the legitimate children and the spouse, the illegitimate shall divide the balance <i>Pro rata</i> (<i>Art. 895, NCC</i>).

	Children is 1/2 of the Legitimate Children (Art. 176, FCP).	
10. Legitimate parents alone	One-half (1/2) (Art. 889, NCC).	
11. Legitimate Parents and Illegitimate Children	One-half (1/2) — Legitimate Parents, and One-fourth (1/4) — Illegitimate Children (Art. 896, NCC).	
12. Legitimate Parents, Illegitimate Children and Surviving Spouse (2012 Bar)	One-Half (1/2) — Legitimate Parents; One-Fourth — Illegitimate Children; and One-Eight (1/8) — Surviving Spouse (Art. 899, NCC).	
13. Surviving Spouse Alone	One-Half (1/2) (Art. 900, NCC).	(1) The spouse inherits even if the marriage is voidable so long as the marriage is not annulled before the death of the other spouse; (2) If there is final judgment of legal separation, the offending spouse is disqualified. There is no disqualification if there is still no decision.

14. Illegitimate Children Alone	One-Half (1/2) (Art. 901, NCC).	Divided Equally.
15. Surviving Spouse and Illegitimate Parents	One-Fourth (1/4) — Surviving Spouse; and one-fourth (1/4) — Illegitimate Parents (Art. 903, NCC).	
16. Illegitimate Parents Alone	One-Half (1/2) (Art. 903, NCC).	The ascending line as compulsory heirs stops at the illegitimate parents, the other illegitimate ascendants are not given legitimes.

PROBLEMS:

1. Emil, the testator, has three legitimate children: Tom, Henry, and Warlito; a wife named Adette; parents named Pepe and Pilar; an illegitimate child, Ramon; brother, Mark; and a sister, Nanette. Since his wife Adette is well-off, he wants to leave to his illegitimate child as much of his estate as he can legally do. His estate has an aggregate net amount of P1,200,000, and all the above-named relatives are still living. Emil now comes to you for advice in making a will. How will you distribute his estate according to his wishes without violating the law on testamentary succession?

A: I will advise Emil to give the compulsory heirs their legitime and give the free portion to his illegitimate child. Emil's compulsory heirs are his legitimate children Tom, Henry, and Warlito and their legitime consists of half of the estate, P600,000 at P200,000 each. The legitime of Adette, the surviving spouse is P200,000 or equal that of the share of a legitimate child. On the other hand, the illegitimate child's legitime is one-half of the share of each legitimate child, hence, the legitime of Ramon is P100,000. Consequently, the total free portion of estate of Emil is P300,000 — P1,200,000 less the total legitime of P900,000. The entire free portion can be given to Ramon. Hence, Ramon can be given P400,000 and the rest of the heirs P200,000 each.

2. Don died after executing a Last Will and Testament leaving his estate valued at P12 Million to his common-law wife Roshelle. He is survived by his brother Ronie and his half-sister Michelle. Was Don's testamentary disposition of his estate in accordance with the law on succession? Whether you agree or not, explain your answer (2006 Bar).

A: Yes, Don's testamentary disposition is in accordance with the law on succession. Ronie and Michelle, Don's brother and half-sister, respectively, are not compulsory heirs; they are not identified in Art. 887 of the New Civil Code as compulsory heirs. Therefore, Ronie and Michelle do not have any legitime that is protected under the law. Don can thus make a testamentary disposition in favor of any person who is not disqualified under the law. Roshelle can be instituted as an heir because a common law wife does not suffer from any disqualification as such common law wife if they do not suffer from any impediment. (See *Arellano v. Pascual*, 638 SCRA 826 [2010])

3. Because her eldest son Juan had been pestering her for capital to start a business, Josefa gave him P100,000. Five years later, Josefa died, leaving a last will and testament in which she instituted only her four younger children as her sole heirs. At the time of her death, her only property left was P900,000 in a bank. Juan opposed the will on the ground of preterition. How should Josefa's estate be divided among her heirs? State briefly the reason(s) for your answer.

A: The estate of Josefa shall be divided by giving each of the four younger children the remaining P900,000 or P225,000 per child. The estate of Josefa at the time of her death is P1,000,000 after collating the donation to Juan of P100,000 to the remaining property of P900,000. Hence, the legitime of the children is one-half (1/2) or P500,000 and each of the children has a legitime of P100,000. Considering that Juan already received his legitime by way of donation, his legitime was not impaired; hence, the remaining properties of Josefa can be given to the remaining heirs consistent with the testamentary disposition.

Juan is not correct in arguing that there was preterition. There is no preterition if a compulsory heir already received his legitime even through donation. Donations are advances on the legitime and the heir is given the remedy to demand the completion of his legitime if he received less. (Arts. 906 and 909, NCC) In the present case, the amount that Juan received by way of donation is equal to the amount of his legitime, P100,000.

4. The compulsory heirs of the decedent X are A, his surviving spouse, his legitimate children B, C and D and his illegitimate children E, F, G, H and I. The estate of X at the time of his death is P1,000,000 but he left debts worth P700,000. How much are the respective legitimes of the heirs?

A: The legitime of the legitimate children of X is 1/2 of his net estate, the legitime of A, the surviving spouse, is equal to the share of a legitimate child while the legitime of each illegitimate child is 1/2

of the share of a legitimate child. However, the legitime of the surviving spouse is preferred over the legitime of the illegitimate children under Article 895 of the New Civil Code. In the given problem, the net estate of the decedent at the time of his death is P300,000 (P1,000,000 - P700,000). Hence, the legitime of the legitimate children is P150,000 and consequently, the share of B, C and D is P50,000 for each of them. Under the circumstances, the legitime of A, the spouse is therefore also P50,000 which is equal to the share of a legitimate child and is chargeable to the free portion. Hence, the remaining free is P100,000 after deducting the legitime of the spouse. Since the legitime of an illegitimate child is 1/2 of the share of a legitimate child, the illegitimate children are supposed to get P25,000 each. However, the total legitime of the illegitimate children is P125,000 (P25,000 x 5) hence the remaining free portion of P100,000 is not enough after deducting the share of the spouse which is preferred. Hence, the illegitimate children shall share in the balance of free portion *pro rata*, hence, each of E, F, G, H and I shall get P20,000.

16. COLLATION. It is the act by virtue of which descendants or other compulsory heirs bring into the common mass, the property which they received from the decedent during the latter's lifetime — through donation or gratuitous title.¹⁵⁸

a) "The term collation has two distinct concepts: *first*, it is a mere mathematical operation by the addition of the value of donations made by the testator to the value of the hereditary estate; and *second*, it is the return to the hereditary estate of property disposed of not by lucrative title by the testator during his lifetime."¹⁵⁹

b) **Value at the Time Donated.** What is brought to collations is not the property donated itself, but rather the value of such property AT THE TIME it was donated, the rationale being that the donation is a real alienation which conveys ownership upon its acceptance, hence any increase in value or any deterioration or loss thereof is for the account of the heir or donee.¹⁶⁰

¹⁵⁸Vizconde v. Court of Appeals, 286 SCRA 217 (1998).

¹⁵⁹Arellano v. Pascual, G.R. No. 189776, December 15, 2010.

¹⁶⁰Vizconde v. Court of Appeals, *supra*.

- 16.01. PURPOSES.** — to secure equality among the compulsory heirs in so far as is possible, and to determine the free portion, after finding the legitime, so that inofficious donations may be reduced.¹⁶¹
- 16.02. COMPULSORY HEIRS NECESSARY.** Collation takes place when there are *compulsory* heirs, one of its purposes being to determine the legitime and the free portion. If there is no compulsory heir, there is no legitime to be safeguarded.¹⁶²
- 16.03. IMPUTATION.** Imputation means the donations to compulsory heirs will be charged against the LEGITIME. The value of all donations *inter vivos* or any transfer through gratuitous title in favor of compulsory heirs are collated but shall be imputed against their legitimes. **NOTE:** The testator may expressly provide that the donation will not be subject to imputation.¹⁶³
- a) **Donations to Strangers.** Donations to strangers are also collated but they will be charged to the FREE PORTION of the NET ESTATE.
 - b) **Inofficious Donation and Other Gratuitous Dispositions.** If the donations and other gratuitous dispositions EXCEED the disposable portion, they shall be reduced. The order of priority is as follows:

DISPOSITION	ORDER OF PRIORITY OF REDUCTION — WHICH SHOULD BE REDUCED FIRST	HOW REDUCTION IS MADE
Non-Preferred Legacies and Devices and	They should be reduced FIRST.	<i>Pro rata</i>

¹⁶¹ Arellano v. Pascual, G.R. No. 189776, December 15, 2010.

¹⁶² *Ibid.*

¹⁶³ Art. 1062, NCC.

<p>Testamentary Disposition (<i>Arts. 911 and 907, NCC</i>).</p>		
<p>Preferred Legacies and devises (<i>Art. 911, NCC</i>).</p>	<p>They are SECOND in the priority. (This means that the Testator stated in the will that they shall not suffer any reduction until the non-preferred legacies and devises have been applied in full.)</p>	<p><i>Pro rata</i></p>
<p>Donations <i>Inter Vivos</i>.</p>	<p>They are the LAST in the order of priority.</p>	<p>If the remaining free portion is not enough to cover all the donations, they shall be satisfied in this order:</p> <ol style="list-style-type: none"> (1) Preference Among Donations <i>Inter Vivos</i>: From Oldest to newest. Oldest should be reduced first before newer ones (<i>Art. 773, NCC</i>). (2) If the Donations are of the same date, then the same shall be reduced <i>pro rata</i>.

16.03.01. How to Collate, Impute and Reduce. As noted earlier, the legitime will be determined on the basis of the Net Estate which is computed as follows: GROSS ESTATE LESS (-) Debts and Charges PLUS (+) Donation *Inter Vivos* to Heirs and Strangers (or Non-heirs).

- a) The donations to the compulsory heirs shall then be imputed to their legitime while the donations to strangers shall be charged to the free portion. If the value of the donations to compulsory heirs is more than the legitime, the excess shall likewise be charged to the free portion.
- b) The value of the shares of voluntary heirs and the legacies and devises are part of the net estate and shall be charged to the free portion.
- c) If the free portion is not enough to accommodate all the donations, share of voluntary heirs, legacies and devises, the same shall be reduced in the order stated above (see table in 6.04). Thus, donations *inter vivos* are preferred over legacies and devises; legacies and devises shall be reduced first.

EXAMPLES:

1. The compulsory heirs are A, B, and C who are all legitimate children of the decedent X. The estate of X at the time of his death is P1,000,000.00 but he left debts worth P800,000.00. During his lifetime, the decedent donated a parcel of land worth P1 Million to A. The net estate of the decedent at the time of his death without adding the previous donation is P200,000.00 (P1,000,000.00 – P800,000.00). The actual Net Estate for purposes of determining the legitime is P1.2 Million (1 Million plus P200,000.00). Thus, the actual legitime of the children is supposed to be P600,000.00 or 1/2 of the Net Estate divided equally or P200,000.00. In this example, the donation will be reduced by P200,000.00 on the ground of inofficiousness up to such extent because the remaining portion is only P200,000.00 which is not enough to cover the legitimes of B and C. Hence, B will get P200,000.00, C will get P200,000.00. A will get a total P800,000.00 because he will get his legitime of P200,000.00 plus P600,000.00 which is the reduced value of the donation that was given to him. The donation should be reduced because it impaired the legitime.
2. The compulsory heirs are A, B, and C who are all legitimate children of the decedent X. The estate of X at the time of his death is P1,000,000.00 but he left debts worth P700,000.00. During his lifetime, the decedent gave a donation to A in the amount of P100,000.00, a donation to B in the amount of P100,000.00 and a

donation to a non-relative Mr. D, P100,000.00. X likewise bequeath the amount of P200,000.00 each to Mr. Y and Mr. Z, both friends of X. The net estate of the decedent at the time of his death without adding the previous donation is therefore P300,000.00 (P1,000,000.00 - P700,000.00). To determine the legitime, the donations shall be added to the net estate or P600,000.00 (P300,000.00 plus P100,000.00 donation to A plus P100,000.00 donation to B plus donation to D of P100,000.00). The legitime of A, B and C is therefore P300,000.00 (1/2 of the estate).

The donations to A and B shall be imputed to their legitime while the donation to D shall be charged to the free portion. Since there are legacies totaling P400,000.00 which are also supposed to be charged to the free portion, then the free portion of P300,000.00 is not enough to cover both the donation to D and legacies because the total amount of the donations and legacies is P500,000.00 (P100,000.00 plus P200,000.00 plus P200,000.00). The rule is that donations *inter vivos* are preferred over legacies. Hence, Mr. D will get the amount donated to him of P100,000.00 while the legacies shall be reduced *pro rata*, hence, Mr. Y and Mr. Z will each get P100,000.00.

17. RESERVA TRONCAL.¹⁶⁴ 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 (1963, 1985, 1995, 2014, and 2016 Bar).

- a) It gives assurance that the property will return to the third degree relatives belonging to the line from which the property originally came, and avoid its being dissipated into and by the relatives of the inheriting ascendant.¹⁶⁵

17.01. REQUISITES:¹⁶⁶

- (1) The property was acquired by a descendant from an ascendant or from a brother or sister

¹⁶⁴Art. 891, NCC.

¹⁶⁵Mendoza, *et al.* v. Delos Santos, *et al.*, G.R. No. 176422, March 20, 2013; De Papa v. Camacho, 228 Phil. 269 (1986).

¹⁶⁶Chua v. Court of First Instance, 78 SCRA 412 (1977).

by gratuitous title (the recipient does not give anything in return¹⁶⁷);

- (2) The descendant died without issue;
- (3) The property is inherited by another ascendant by operation of law; and
- (4) There are relatives within the third degree belonging to the line from which said property came.

17.02. PERSONS INVOLVED IN RESERVA TRONCAL:¹⁶⁸

- (1) *Reservista* or Reserver — the person obliged to reserve; the legitimate ascendant who inherits by operation of law a property from his descendant-*propositus* (2014 Bar);

Note: Since he or she is the owner, the *reservista* may dispose of the properties *inter vivos* but subject to a resolatory condition. The *reservista* cannot dispose of the properties *mortis causa* (1979 and 1982 Bar).

- (2) *Reservatarios* or Reservees — the person for whom the property is reserved; relative within the third degree counted from the descendant-*propositus*, and belonging to the line from which the property came;
- (3) *Propositus* (or *Prepositus*) — the descendant who previously received the reserved property by gratuitous title and died without issue (legitimate descendants), making his other ascendant (*reservista*) inherit by operation of law;
- (4) *Origin* — the ascendant, or brother or sister from whom the *propositus* acquired the property by gratuitous title — donation, remission, testate or intestate succession;

¹⁶⁷Mendoza, *et al.* v. Delos Santos, *et al.*, *supra*.

¹⁶⁸*Ibid.*

- a) **Right within Reservatarios or Reservees.** The *reserva troncal* merely determines the group of relatives (*reservatarios*) for whom the property should be reserved; but within that group the individual right to the property should be decided by the applicable rules of ordinary intestate succession.¹⁶⁹ These include rules of preference, right of representation and other rules on intestacy.
- b) The alleged *Reservista* must be an ascendant of the descendant-*prepositus*.¹⁷⁰ If the alleged *Reservista*, the person who obtained the property from the alleged *prepositus*, is a collateral relative of the alleged *prepositus*, then there is no *Reserva Troncal*.¹⁷¹
- c) The first cousins of the alleged descendant-*prepositus* who are fourth degree relatives under the law cannot be considered reservees-*reservatarios*. The reservees must be relatives within the third degree. The person from whom the degree should be reckoned is the descendant-*prepositus* — the one at the end of the line from which the property came and upon whom the property last revolved by descent (2014 Bar).¹⁷²
- (1) First cousins of the *prepositus* cannot even claim representation of their predecessor as Article 891 grants a personal right of reservation only to the relatives up to the third degree from whom the reservable properties came. The only recognized exception is in the case of nephews and nieces of the *prepositus*, who have the right to represent their ascendants (fathers and

¹⁶⁹Padura v. Baldovino, G.R. No. 11960, December 17, 1958.

¹⁷⁰Mendoza, et al. v. Delos Santos, et al., *supra*.

¹⁷¹*Ibid*.

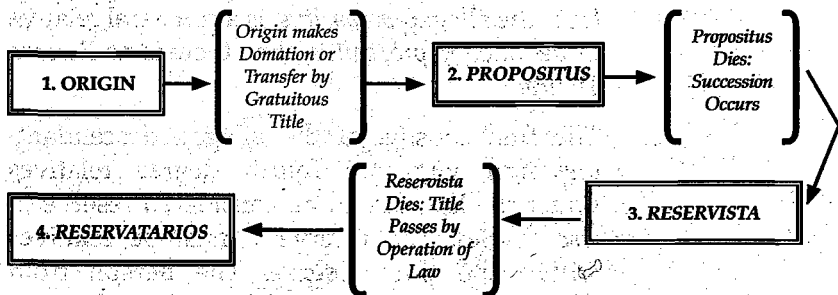
¹⁷²Mendoza, et al. v. Delos Santos, et al., *supra*.

mothers) who are the brothers/sisters of the *prepositus* and relatives within the third degree.¹⁷³

(2) The reserves-*reservatarios* must be legitimate relatives of the *prepositus*.¹⁷⁴ Illegitimate relationships and relationship by affinity are excluded.¹⁷⁵

d) *Reserva Troncal* applies even if the property did not cross to a separate line.¹⁷⁶

17.03. RESERVA TRONCAL FLOW CHART.



a) **Three Lines of Transmission.** The flow chart indicates that there are three lines of transmission in *reserva troncal*. "The first transmission is by gratuitous title, whether by inheritance or donation, from an ascendant/brother/sister to a descendant called the *prepositus*. The second transmission is by operation of law from the *prepositus* to the other ascendant or reservor, also called the *reservista*. The third and last transmission is from the *reservista* to the reservees or *reservatarios* who must be relatives within the third degree from which the property came."¹⁷⁷

¹⁷³*Supra*.

¹⁷⁴*Nieva v. Alcalá*, G.R. No. 13386, October 27, 1920.

¹⁷⁵*Ibid*.

¹⁷⁶*Gonzales v. CFI*, G.R. No. L-34395, May 19, 1981.

¹⁷⁷*Mendoza, et al. v. Delos Santos, et al., supra*.

- b) It is in the hands of the *Reservista* (No. 3 in the flow chart) that there is *reserva* — the *reservista* is obliged to reserve the property for the *Reservatarios*.
- c) **Existence of the Reservatarios.** The *Reservista* acquired ownership from the *Propositus* subject to a resolutive condition — the legal title is burdened with a condition that there is a *reservatario* at the time of the *reservista's* death. If there is no *reservatario*, then the property passes to the heirs of the *reservista*.¹⁷⁸
- d) The *reservatario* has inchoate, expectant or contingent right which would disappear if he predeceased the reserver.¹⁷⁹
- e) The reservees cannot impugn any conveyance made by the reserver but can require that the reservable character of the property be recognized.¹⁸⁰

17.04. EXTINGUISHMENT OF RESERVA TRONCAL.

- (1) Death of all *reservatarios*. — this is the resolutive condition to the title of the *reservista* and his heirs, hence if there is no *reservatario*, the property stays with the *reservista* and his or her heirs;
- (2) Death of the *reservista*. — this is the suspensive condition for the acquisition of title by the *reservatario* by operation of law; there is no more *reserva* because it is already in the hands of the reservee;
- (3) Waiver, refusal, or renunciation by the *reservatarios*;

¹⁷⁸Gonzales v. CFI, *supra*.

¹⁷⁹*Ibid.*

¹⁸⁰*Ibid.*

- (4) Total loss of the property without the *reservistas* fault;
- (5) Acquisitive prescription.

PROBLEMS:

1. The petitioners U, V, X, Y, Z, E, F, G, H and I are grandchildren of PM and DM. PM and DM had four children: Mr. A, Mr. B, married to Mrs. L, Mr. C and Mr. D. Petitioners U, V, X, Y and Z, are the children of Mr. C. Petitioners E, F, G, H, and I are Mr. D's children. Petitioners alleged that the properties were part of PM and DM's properties that were subject of an oral partition and subsequently adjudicated to Mr. B. After Mr. B's death, it passed on to his spouse Mrs. L and only daughter, Ms. J. After Mrs. L's death, her share went to Ms. J. In 2012, Ms. J died intestate and without issue. They claimed that after Ms. J's death, respondent Ms. K, who is Mrs. L's sister, adjudicated unto herself all these properties as the sole surviving heir of Mrs. L and Ms. J. Hence, petitioners claim that the properties should have been reserved by respondent Ms. K in their behalf and must now revert back to them, applying Article 891 of the Civil Code on *reserva troncal*. Can the petitioners be considered *reservatarios* and Ms. K as the *reservista* in a *reserva troncal*?
 - A: No, the petitioners cannot be *reservatarios* and Ms. K cannot be considered the *reservista* in a *reserva troncal*. There is no *reserva* while the property is in the hands of Ms. K. It is required that the *reservista* of the *prepositus* should be an ascendant of the descendant *prepositus*. In the present case, Ms. K is not Ms. J's ascendant; rather Ms. K is a collateral relative of Mr. J. Ms. J's ascendant are her parents, Mr. B and Mrs. L, grandparents, great-grandparents and so on. On the other hand, the petitioners cannot likewise be considered *reservatarios* because they are not relatives within the third degree of Ms. J, the alleged *prepositus*. They are the first cousins of Ms. J, hence, they are relatives within the fourth degree of Ms. J and cannot therefore be *reservatarios*. (*Mendoza v. Delos Santos, et al., G.R. No. 176422, March 20, 2013*)
2. Lilia and Nelia are relatives, Ulia being the grand niece of Nelia. They had a common ancestor, Bonong, father of Nelia and great-grandfather of Lilia. Bonong had a sister, Rosa, who donated gratuitously a parcel of land to her niece Mely, sister of Nelia and grandmother of Lilia. Mely died intestate, leaving aforementioned parcel of land, survived by her husband Jose and their two children, Rico and Nina. Bonong died intestate survived by his legitimate grandchildren, Rico and Nina. In the adjudication of his estate, the portion pertaining to Mely, who

had predeceased her father, went to her two legitimate children, Rico and Nina. Rico died intestate, single, and without any issue, leaving his share in the inheritance to his father, Jose, subject to a *reserva troncal* duly annotated on the title. Thereafter Nina died intestate and her rights and interests were inherited by her only legitimate child, Lilia. Thereafter, Jose died intestate survived by his only descendant, Lilia. Nelia, aunt of Rico, would like to lay claim as *reservatario* to a portion of the one-half *pro indiviso* share of the property inherited by Jose from his son Rico. Is there *reserva troncal*? (1987 Bar)

- A: Yes, there is *reserva troncal*. For *reserva troncal* to exist, the property must have been acquired by a descendant from an ascendant or from a brother or sister by gratuitous title, the descendant died without issue, the property is inherited by another ascendant by operation of law and there are relatives within the third degree belonging to the line from which said property came. The *propositus* is Rico because he acquired the property from the origin, Mely. The *reservista* is Jose while that the *reservatarios* are Lilia and Nelia. Lilia and Nelia are *reservatarios* because being the niece and the aunt, they relatives within the 3rd degree of the *propositus* Rico belonging to the maternal line, or Mely's line.

18. DISINHERITANCE. The compulsory heir is excluded from the inheritance and the rights of the compulsory heir to the legitime, any testamentary disposition and anything that he is supposed to receive in intestacy are forfeited (1953 Bar).

18.01. REQUISITES:

- (1) It must be effected only through a valid will — not applicable to intestate succession;¹⁸¹
- (2) It must be for a cause expressly provided by law, particularly Article 916 in relation to Articles 919 to 921 of the New Civil Code;
- (3) The cause must be specified — disinheritance without specification of the cause is void;¹⁸²

¹⁸¹Art. 916, NCC.

¹⁸²Arts. 916 and 918, *ibid.*

- (4) The cause must be certain and true — the BURDEN of proving the truth of the cause for disinheritance shall rest upon the other heirs of the testator, if the disinherited should deny it; disinheritance for an untruthful cause is void;¹⁸³
 - (5) It must be total; and
 - (6) The heir who is being disinherited must be specified or identifiable.
- a) The disinheritance applies only to a compulsory heir and not to a voluntary heir or a legatee or devisee (1982 Bar).

18.02. GROUND FOR DISINHERITANCE (1969, 1999, and 2000 Bar).

18.02.01. Disinheritance of children and descendants, legitimate as well as illegitimate:¹⁸⁴

- (1) When a child or descendant has been found guilty of an attempt against the life of the testator, testator's 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;

¹⁸³Art. 918, NCC.

¹⁸⁴Art. 919, *ibid.*

- (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 descendant;
- (7) When a child or descendant leads a dishonorable or disgraceful life;
- (8) Conviction of a crime which carries with it the penalty of civil interdiction.

EXAMPLES:

(1) Disinheritance for disrespectful towards the testator and raising one's voice when talking to the testator does not amount to maltreatment and is therefore invalid (2000 Bar); (2) If a daughter ran off with a married man is a valid ground for disinheritance for leading a dishonorable or disgraceful wife (2008 Bar); (3) Marrying a man the father does not like is NOT a valid ground (1999 Bar); (4) Disinheritance without stating any ground is invalid (1984 Bar).

18.02.02. Sufficient causes for the disinheritance of parents or ascendants, whether legitimate or illegitimate:¹⁸⁵

- (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, the testator's 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;

¹⁸⁵Art. 920, NCC.

- (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; or
- (8) An attempt by one of the parents against the life of the other, unless there has been a reconciliation between them.

18.02.03. Disinheriting a spouse:¹⁸⁶

- (1) When the spouse has been convicted of an attempt against the life of the testator, the testator's descendants, or ascendants;
- (2) When the spouse has accused the testator of a crime for which the law prescribes imprisonment of 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 (*2011 Bar*);
- (5) When the spouse has given grounds for the loss of parental authority; and
- (6) Unjustifiable refusal to support the children or the other spouse.

EXAMPLES:

(1) There is a ground to disinherit if the spouse had an illicit relation and in this case, a filing of a case for legal separation is not even necessary (*1989 Bar*); (2) If there is a legal separation, the offending spouse can no

¹⁸⁶Art. 921, NCC.

longer inherit from the intestate and testate succession where the will was executed before legal separation (1982 Bar); (3) If the will was executed by the innocent spouse after the legal separation and the offending spouse was made a voluntary heir, this may be construed as tacit or implied pardon under Article 1033 of the New Civil Code (1982 Bar).

18.02.04. What are the causes that are COMMON to the children and descendants, parents and ascendants and spouse?

- (1) When the heir has been found guilty of an attempt against the life of the testator, the testator's descendants or ascendants, and spouse in case of children and parents;
- (2) When the heir 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 the heir by fraud, violence, intimidation, or undue influence causes the testator to make a will or to change one already made; and
- (4) Refusal without justifiable cause to support the testator who disinherits such heir.

18.03. EFFECT OF INVALID DISINHERITANCE. If the disinheritance is invalid (one 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):

- (1) The institution of heirs insofar as it may prejudice the person disinherited is annulled – the institution is annulled in so far as it affects the legitime of the invalidly disinherited heir; and
- (2) The devises and legacies and other testamentary dispositions shall be valid to such extent as will not impair the legitime (1984 Bar).¹⁸⁷

¹⁸⁷Art. 918, NCC.

18.04. DISTINGUISHED FROM INCAPACITY TO SUCCEED (1969 Bar).

DISINHERITANCE	INCAPACITY TO SUCCEED
Disinheritance is by the will / act of the testator	Incapacity exists by operation of law
There should be a will	Incapacity applies for both testate and intestate
The grounds should be expressly provided	The grounds need not even be written

18.05. RECONCILIATION AND REVOCATION.

18.05.01. Effect of RECONCILIATION between the offender and the offended with respect to inheritance? The offended party-testator is deprived of the right to disinherit if reconciliation occurs BEFORE the disinheritance is made. If the reconciliation occurs after the disinheritance is made, the disinheritance is rendered ineffectual.¹⁸⁸

18.05.02. When is Disinheritance deemed revoked?

- (1) Reconciliation after disinheritance;
- (2) Subsequent institution of the disinherited heir; and
- (3) The will that contains the disinheritance is void.

18.06. RIGHT OF REPRESENTATION. The children and descendants of the disinherited heir takes the latter's place.¹⁸⁹

PROBLEM:

Mr. Palma, widower, has three daughters D, D-1 and D-2. He executes a Will disinheriting D because she married a man he did not like, and instituting daughters D-1 and D-2 as his heirs to his entire estate of P1,000,000. Upon Mr. Palma's death, how should his estate be divided? Explain (1999 Bar).

¹⁸⁸ Art. 922, NCC.

¹⁸⁹ Art. 923, *ibid.*

A: Initially, it should pointed out that the present case involves an invalid disinheritance. Marrying a man that the father did not approve of is not one of the grounds provided for under the New Civil Code for a valid disinheritance. Since the disinheritance in this case is invalid, the institute of D-1 and D-2 to the entire estate is invalid with respect to the portion of the legitime of D that was affected or prejudiced by the disinheritance. Hence, D, D-1 and D-2 will get equal shares to one-half of the estate or 1/3 each of P500,000 which is equivalent to around P166,666.66 each. The institution of D-1 and D-2 with respect to the free portion is valid, hence, they will get P250,000 each out of the free portion.

19. LEGACIES AND DEVISES. These are bequeaths of personal or real property to the legatee or devisee. All things within the commerce of man may be bequeathed or devised¹⁹⁰ (1957 Bar).

- a) **From Free Portion.** Legacies and devises are to be taken from the disposable free portion of the estate. Generally, the legatee and devisee acquires the right to the thing from the death of the testator which can be transmitted to their heirs¹⁹¹ (1952 and 1954 Bar).
- b) **Person Charged.** The legacies and devises are generally taken from the net estate directly to the legatee or devisee. However, an heir, legatee or devisee may be designated in the will to deliver the property to another legatee or devisee. *Example:* A is given a devise of a parcel of land. This land should be part of the free portion. However, it may be provided that A will deliver another legacy in favor of B.
 - (1) The limit of the liability of the compulsory heir is up to the value of the free portion given to him or her.¹⁹²
 - (2) The limit of the liability of the legatee or devisee is the value of the legacy or device that they received.¹⁹³

¹⁹⁰ Art. 924, *ibid.*

¹⁹¹ Art. 947, *ibid.*

¹⁹² Art. 925, NCC.

¹⁹³ *Ibid.*

- c) **Acceptance.** The legatee or devisee may totally or partially accept the legacy or devise. However, if the legacy or device is partly onerous, the legatee cannot accept only the part which is not onerous.¹⁹⁴
- d) **Pre-Decease.** A legatee who dies before the testator acquires nothing, hence, the legatee's heirs cannot claim the legacy upon the testator's death even if the will remains unchanged despite the testator's knowledge of the death of the legatee (*1952 Bar*).

19.01. EFFECTS OF CERTAIN LEGACIES AND DEVICES:

WHO OWNS THE THING GIVEN AS LEGACY OR DEVISE?	EFFECT
1. The thing PARTLY belongs to the testator.	(i) It is understood that the legacy or device is on the part owned; (ii) It may be expressly provided that the whole thing is included in which case the estate must acquire the part not belonging to the Testator (<i>Art. 929, NCC</i>).
2. The thing belonged to the testator at the time of the execution of the will but later alienated in whole or in part to a third person.	(i) The device or legacy is without effect or inoperative (<i>Art. 957[2], NCC</i>). (ii) If the alienation is partial, it is valid with respect to the part not alienated. NOTE: The device or legacy is not revived despite the nullity of the alienation and even if the testator reacquires the property UNLESS the reacquisition is by right of repurchase (<i>Art. 957[2], NCC</i>).

¹⁹⁴Arts. 954 and 955, *ibid*.

	<p>(i) Void — if the testator erroneously believed that he owned the thing (<i>Art. 930, NCC</i>).</p> <p>(ii) Effective — if the testator ordered its acquisition. (The monetary equivalent will be given if the Third Person does not want to sell.) (<i>Art. 931, NCC</i>).</p> <p>(iii) Effective — if the testator knew that the thing does not belong to him; the intent is for the estate to acquire the thing.</p>
<p>4. The thing did not belong to the testator at the time the will is executed but afterwards becomes his by whatever title.</p>	<p>Effective (<i>Art. 930, NCC</i>).</p>
<p>5. The legatee or devisee already owned the thing at the time of execution [even though: (i) another person may have interest therein like an encumbrance, or (ii) it was subsequently alienated by the legatee or devisee.</p>	<p>GENERAL RULE: Ineffective (<i>Art. 932, NCC</i>).</p> <p>EXCEPTION: If the testator orders the thing to be freed from the interest or encumbrance of third persons then it is EFFECTIVE up to such extent.</p>
<p>6. The thing did not belong to both the Testator and the Legatee or Devisee at the time of execution of the will but the Legatee or Devisee acquired it thereafter.</p>	<p>(i) If the Legatee or Devisee acquired it gratuitously — nothing can be acquired by virtue of the legacy or devise;</p> <p>(ii) If the Legatee or Devisee acquired it ONEROUSLY, he can demand reimbursement from the heir or the estate.</p>

7. The thing belongs to the testator but it was mortgaged or pledged to secure a recoverable debt before or after the execution of the will.	The estate must pay the debt unless the contrary intention appears (<i>Art. 932, NCC</i>).
8. The thing belongs to the testator but it is burdened by a temporary or perpetual charge (other than mortgage or pledge; example: usufruct and easement).	The thing passes to the legatee or devisee with the burden (<i>Art. 934, NCC</i>). The legatee or devisee shall respect the usufruct until it is legally extinguished (<i>Art. 935, NCC</i>).

19.02. EFFECTS OF CERTAIN LEGACY.

19.02.01. **Legacy of Credit.** The legacy of (1) credit against a third person, or (2) of the remission or release of a debt — effective only as regards that part of the credit or debt EXISTING at the time of DEATH of the testator.¹⁹⁵

- a) The legacy of credit shall LAPSE if the testator, after the execution of the will, files an action against the debtor.¹⁹⁶
- b) The release of debt may refer to a specific debt or it may be generic (*Example: All obligations of the legatee to the testator*). A generic legacy of release of debt comprises of debts existing at the time of the execution of the will only.¹⁹⁷

19.02.02. **Legacy for Education.** The amount fixed by the testator should be given until the legatee is of legal age or even beyond the age of majority in order that the legatee may finish some professional, vocational, or general course provided he pursues this diligently.¹⁹⁸

¹⁹⁵ Art. 935, *ibid.*

¹⁹⁶ Art. 936, *ibid.*

¹⁹⁷ Art. 937, NCC.

¹⁹⁸ Art. 944, *ibid.*

19.02.03. **Legacy for Support.** — Unless the testator provided otherwise, the support should be given during the lifetime of the legatee.¹⁹⁹

19.02.04. **Legacy of Periodic Pension.** The legatee may petition the court for the first pension upon the death of the testator. The subsequent installments shall be paid at the beginning of every period (monthly, weekly, annually, etc.) provided in the will. Payments received at the beginning of the period is non-refundable even if the legatee died before the expiration of the period which has commenced.²⁰⁰

19.03. **ORDER OF PREFERENCE IF ESTATE INSUFFICIENT.**²⁰¹ If the estate should not be sufficient to cover all the legacies or devises, their payment shall be made in the following order (1963 Bar):

- (1) Remuneratory legacies or devises;
 - (2) Legacies or devises declared by the testator to be preferential;
 - (3) Legacies for support;
 - (4) Legacies for education; and
 - (5) Legacies or devises of a specific, determinate thing which forms a part of the estate;
 - (6) All others *pro rata*.
- a) The Order provided for above (*Art. 950*) is said to apply where the question is exclusively among the legatees and devisees themselves as in the case where there are no donations and the legitimes are well provided for.²⁰² On the other hand, Article 911 applies where it is necessary to preserve the legitime or in case there are also

¹⁹⁹*Ibid.*

²⁰⁰Art. 945, *ibid.*

²⁰¹Art. 950, *ibid.*

²⁰²III Tolentino 348.

donations that concurs with legacies and/or devises that are not covered by the free portion.²⁰³

19.04. GROUNDS FOR REVOCATION OF LEGACIES AND DEVICES.²⁰⁴

- (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.
 - (i) **Exception: Reacquisition.** If after the alienation the thing should again belong to the testator, even if it be by reason of nullity of the contract, the legacy or devise shall not thereafter be valid, unless the reacquisition shall have been effected by virtue of the exercise of the right of repurchase;
- (3) If the thing bequeathed is totally LOST during the lifetime of the testator, or after his death without the heir's fault.

19.05. VOID AND INOPERATIVE LEGACIES AND DEVICES.

- a) **Void Legacies and Devises.** (1) The property is outside the commerce of man;²⁰⁵ (2) The testator erroneously believes that he owns the thing unless the testator subsequently acquires the thing;²⁰⁶ (3) Legacy of a debt that the testator believed he owes;²⁰⁷ (4) Legacy of an

²⁰³III Tolentino 347; See pp. 358 to 359.

²⁰⁴Art. 957, NCC.

²⁰⁵Art. 924, *ibid.*

²⁰⁶Art. 930, *ibid.*

²⁰⁷Art. 939, *ibid.*

indeterminate real property if there is no such kind in the estate.²⁰⁸

- b) **Inoperative Legacies and Devises.** (1) The thing is transformed and it does not retain its form or denomination;²⁰⁹ (2) Voluntary alienation of the property without recovering the same; (3) Loss or destruction of the property, whether actual loss or juridical loss (*Example*: Judicial sale); (4) predecease, repudiation of a legatee; (5) legacy or devise in favor of the offender spouse in legal separation and annulment of marriage.

C. LEGAL OR INTESTATE SUCCESSION

1. **INTESTATE SUCCESSION.** — succession in the absence of a will. Article 961 provides that 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.²¹⁰

- a) **Intestate or Legal Heirs.** Those who are called by law to the succession either in the absence of a will or of qualified heirs, and who are deemed called based on the presumed will of the decedent.

2. **CAUSES OF INTESTACY.**²¹¹ Legal or intestate succession takes place (*1969 Bar*):

- (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

²⁰⁸ Art. 941, NCC.

²⁰⁹ Art. 957, *ibid.*

²¹⁰ Art. 961, *ibid.*

²¹¹ Art. 960, *ibid.*

place only with respect to the property of which the testator has not disposed;

- (3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, or if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes place;
- (4) When the heir instituted is incapable of succeeding, except in cases provided in the New Civil Code;
- (5) Upon the happening of the resolutive condition imposed in the will;
- (6) Upon the expiration of a resolutive term stated in the will; and
- (7) In case of preterition.

3. RULES IN INTESTATE SUCCESSION.

3.01. DEFINITIONS AND BASIC RULES.

- a) **Degree.** Proximity of relationship is determined by the number of generations. Each generation forms a degree.²¹²
- b) **Line.** A series of degrees forms a line, which may be either direct or collateral.²¹³ In the line, as many degrees are counted as there are generations or persons, excluding the progenitor.²¹⁴
 - (1) Direct line — that constituted by the series of degrees among ascendants and descendants.²¹⁵

²¹²Art. 963, NCC.

²¹³Art. 964, *ibid.*

²¹⁴Art. 966, *ibid.*

²¹⁵Art. 964, *ibid.*

- (i) Descending Direct Line — unites the head of the family with those who descend from him.²¹⁶
- (ii) Ascending Direct Line — binds a person with those from whom he descends.²¹⁷

NOTE: In the direct line, ascent is made to the common ancestor. *Examples:* The child is ONE degree removed from the parent, TWO from the grandfather, and THREE from the great-grandparent.²¹⁸

- (2) Collateral line — that constituted by the series of degrees among persons who are not ascendants and descendants, but who come from a common ancestor.²¹⁹

NOTE: 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. *Examples:* 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.²²⁰

- c) **Full-Blood and Half-Blood.** Full-blood relationship is that existing between persons who have the same father and the same mother.²²¹ 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.²²²

²¹⁶Art. 965, NCC.

²¹⁷Art. 965, *ibid.*

²¹⁸Art. 966, *ibid.*

²¹⁹Art. 964, *ibid.*

²²⁰Art. 966, *ibid.*

²²¹Art. 967, *ibid.*

²²²*ibid.*

- 3.02. RULE OF PREFERENCE BETWEEN LINES/ EXCLUSION THEORY** (1997 Bar).
- (1) Persons in the direct descending line exclude those in the direct ascending and collateral lines;
 - (2) Persons in the direct ascending line exclude those in the collateral line.
- 3.03. RULE OF PROXIMITY.** The relative NEAREST in degree excludes the more distant ones. **Exception:** When the right of representation properly takes place (1950 Bar).
- 3.04. RULE OF EQUAL DIVISION/CONCURRENCE THEORY.** Relatives in the SAME degree shall inherit in equal shares (1997 Bar).
- 3.04.01. Exceptions:** There is no equality:
- (1) between legitimate and illegitimate children;²²³
 - (2) if the rule of preference between the lines applies;
 - (3) under the rule of division by line in the ascending line (between paternal and maternal grandparents);²²⁴
 - (4) between relatives of the full- and half-blood — brothers and sisters and nephews and nieces;²²⁵ and
 - (5) when right of representation takes place.
- 3.05. CURTAIN BAR RULE.** This means that there is a separation between the legitimate family and the illegitimate family. The illegitimate family cannot inherit *by intestate succession* from the legitimate family and *vice versa* (1950, 1984, 1996, 2000, 2007, and 2016 Bar).²²⁶

²²³Art. 176, FCP.

²²⁴Art. 987, NCC.

²²⁵Arts. 1006 and 1008, *ibid.*

²²⁶Art. 992, NCC; *Arado v. Alcoran*, 762 SCRA 37 (2015).

- a) **Not Applicable to Appointment of Administrator.** The curtain bar rule is inapplicable if the issue to be resolved is who is better qualified to administer the estate of the decedent.²²⁷ "The paramount consideration in the appointment of an administrator over the estate of a decedent is the prospective administrator's interest in the estate."²²⁸

EXAMPLES:

(1) A legitimate granddaughter of the mother cannot inherit from an illegitimate child of the same mother (1983 Bar); (2) Mr. A had two sons, one legitimate (B) and the other illegitimate (C), who died in a car accident. At the time of the accident, B was not married but had an illegitimate son, D. C also had an illegitimate son, E. Upon learning of the death of his sons, A suffered a heart attack and died. In this case, D cannot inherit from A because of the curtain bar rule (1984 Bar); (3) Cristina, the illegitimate daughter of Jose and Maria, died intestate without any descendant or ascendant. Her valuable estate is being claimed by Ana, the legitimate daughter of Jose, and Eduardo, the legitimate son of Maria. In this case, Ana and Eduardo are not entitled to inherit from Cristina because of the curtain bar rule (1996 Bar).

- 3.06. SEPARATION OF THE ADOPTED AND THE RELATIVES OF THE ADOPTER.** Although the adopted child shall be treated as a legitimate child, the relationship extends only up to the adopter/s. There is no legal relationship with the relatives of the adopter/s, hence: (1) the adopted cannot inherit from the relatives of the adopter, (2) The right of representation DOES NOT APPLY — the adopted child cannot represent and cannot be represented. **Exception:** If the adopted is a blood relative in proper cases.
- 3.07. DOUBLE SHARE OF COLLATERAL RELATIVES OF FULL-BLOOD.** When full- and half-blood brothers or sisters, nephews or nieces, survive, the full-blood shall take a portion in the inheritance double that of the half-blood.

²²⁷Suntay III v. Cojuangco-Suntay, 683 SCRA 439 (2012); 621 SCRA 142 (2010).

²²⁸*Ibid.*

- 4. REPUDIATION BY ALL IN THE SAME DEGREE.** If the inheritance should be repudiated by the nearest relative, should there be one only, or by all the nearest relatives called by law to succeed, should there be several, those of the following degree shall inherit in their own right and cannot represent the person or persons repudiating the inheritance.²²⁹ This is subject to the rule of preference between lines.
- 5. RIGHT OF REPRESENTATION.**²³⁰ A right created by fiction of law, by virtue of which the representative is raised to the place and degree of the person represented, and acquires the rights which the latter would have if he were living or if he could have inherited (*1953 Bar*).²³¹
- a) **Law.** The representative is called to the succession by the law not by the person represented.
 - b) **Capacity.** He does not succeed from the person represented but from the decedent — one whom the person represented would have succeeded.²³² Hence, the representative must be capable of succeeding the decedent.²³³ Nevertheless, the representative is not disqualified to represent the heir whose inheritance he has renounced.²³⁴
 - c) **Representation in the Direct and Collateral Lines.**
 - (1) Direct Line — representation takes place *ad infinitum* in the direct descending line, NEVER in the ascending line.²³⁵
 - (i) Only legitimate children can represent a legitimate child of the decedent.²³⁶ *Examples:* (1) If Mr. X,

²²⁹Art. 969, NCC.

²³⁰Arts. 970 to 977, *ibid.*

²³¹Art. 970, *ibid.*; *Tumbokon v. Legaspi*, 626 SCRA 736 (2010).

²³²Art. 971, NCC.

²³³Art. 973, *ibid.*

²³⁴Art. 976, *ibid.*

²³⁵Art. 972, *ibid.*; *Divinagracia v. Parilla*, G.R. No. 196750, March 11, 2015.

²³⁶Art. 992, *ibid.*

the decedent, has a child Y who in turn has a child Z, Z may represent B in the inheritance;²³⁷ (2) If Mr. X, the decedent, has a legitimate child Y who in turn has an illegitimate child Z, Z may NOT represent Y in the inheritance.²³⁸

- (ii) Both legitimate and illegitimate children can represent an illegitimate child of the decedent.²³⁹ *Example:* If Mr. X, the decedent, has an illegitimate child Y who in turn has an illegitimate child Z, Z may represent Y in the inheritance if Y will predecease.²⁴⁰ The rule is the same if Z is the legitimate child of Y.
- (2) Collateral line — representation takes place only in favor of the children of brothers or sisters (nephews and nieces), whether of the full- or half-blood, and only if they concur with one or more uncle/s or aunt/s.²⁴¹ *Examples:* (1) If Mr. X, the decedent, has a brother Y who in turn has a legitimate child Z, Z may represent Y if Y will predecease in the inheritance if other brothers or sisters of X survive if it is intestate succession;²⁴² (2) In the previous problem, if Z is an illegitimate child, Z cannot represent Y;²⁴³ (3) If Mr. X, the decedent, has an illegitimate brother Y who in turn has a legitimate child Z, Z may represent Y in the inheritance if Y will

²³⁷ Art. 992, NCC.

²³⁸ Arts. 902, 992, 996, and 998, *ibid.*

²³⁹ Arts. 902, 989, 990, *ibid.*

²⁴⁰ Arts. 902, 995, 998, and 999, *ibid.*

²⁴¹ Art. 972, NCC.

²⁴² Arts. 972, 975, 1005, NCC.

²⁴³ Art. 992, NCC.

predecease if other brothers or sisters of X survive if it is intestate succession;²⁴⁴ (4) If Mr. X, the decedent, has an illegitimate brother Y who in turn has an illegitimate child Z, Z may not represent Y in the inheritance.

- d) **No Representation in Repudiation.** — Heirs who repudiate their share may NOT be represented.²⁴⁵ The nearest descendant/s shall inherit in his or her /their own right (1997 and 2011 Bar).
- e) **Cases when there is Representation (1982, 1984, 1985, 1988, and 1998 Bar):**
 - (1) Predecease — a compulsory heir in the direct descending line or a brother or sister who is not excluded dies before the testator, the children to the descendant shall be represented by his children;²⁴⁶
 - (2) Incapacity or Unworthiness — if the descendant who is a compulsory heir or a brother or sister who is not excluded is incapacitated, the said descendant shall be represented by his or her children;²⁴⁷ and
 - (3) Disinheritance — a compulsory heir in the direct descending line is disinherited, the children to the descendant shall be represented by his children.²⁴⁸

5.01. **PER STIRPES SHARING.** 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

²⁴⁴Art. 972, 975, and 1005, NCC.

²⁴⁵Art. 977, *ibid.*

²⁴⁶Arts. 856, 972, 975, 981, and 982 NCC.

²⁴⁷Arts. 856, 972, 975, and 1035, NCC.

²⁴⁸Arts. 923, NCC.

would inherit, if he were living or could inherit.²⁴⁹
Example: The children of a brother may inherit by representation. Each of these children DO NOT have equal shares with the other brothers and sisters; they will get ONLY the original share of the brother (their father).

6. ORDER OF INTESTATE SUCCESSION:

- (1) Legitimate children or descendants;
- (2) Legitimate parents or ascendants;
- (3) Illegitimate children or descendants;
- (4) Surviving spouse;
- (5) Brothers and sisters, nephews and nieces;
- (6) Other collateral relatives within the 5th degree;
and
- (7) The State (1950 Bar).

7. TABLE OF INTESTACY FOR LEGITIMATE CHILDREN. The rule is that the legitimate children cannot be excluded by other relatives. However, legitimate children can concur with the surviving spouse and the illegitimate children. These rules apply to the adopted who will be treated as a legitimate child.

	WITH WHOM THE LEGITIMATE CHILDREN CONCUR AND SHARE	EXTENT
Legitimate Children (LC)	None / Alone	They (LC) get the Whole Estate divided equally among them (Arts. 979 and 980, NCC).

²⁴⁹Art. 974, *ibid.*

Legitimate Children	With Illegitimate Children (IC) (1968 Bar)	They (LC and IC) get the Whole Estate but each Illegitimate Child gets 1/2 of the share of each Legitimate Child (2:1) (Art. 983, NCC and Art. 176, FCP).
Legitimate Children	With Surviving Spouse (SS) and Illegitimate Children (1983 Bar)	The LC, SS and IC get the Whole Estate — each Illegitimate Child gets 1/2 of the share of each Legitimate Child (2:1). The spouse has the same share as one legitimate child (Art. 999, NCC and 176, FCP).
Legitimate Children	With Surviving Spouse (1967 and 2011 Bar)	The LC and SS get the Whole Estate — divided equally with the spouse having the same share as one legitimate child (Art. 996, NCC).

- a) **Legitimate Children** exclude other ascendants and collateral relatives, including parents, brothers, sisters, nephews, and nieces.

7.01. TABLE OF INTESTACY FOR ILLEGITIMATE CHILDREN. Illegitimate children cannot likewise be excluded by relatives. However, they concur with legitimate children, surviving spouse, and legitimate parents.

	WITH WHOM THE ILLEGITIMATE CHILDREN CONCUR AND SHARE	EXTENT
Illegitimate Children	None/ Alone	They (IC) get the Whole Estate divided equally among them (<i>Art. 998, NCC</i>).
Illegitimate Children	Legitimate Children (<i>2005 Bar</i>)	They (IC and LC) get the Whole Estate but each Illegitimate Child gets 1/2 of the share of each Legitimate Child (2:1) (<i>Art. 983, NCC and Art. 176, FCP</i>).
Illegitimate Children	With Surviving Spouse and Legitimate Children (<i>1979 and 1998 Bar</i>).	The IC, SS and LC get the whole Estate — each Illegitimate Child gets 1/2 of the share of each Legitimate Child (2:1). The spouse has the same share as one Legitimate child (<i>Art. 999, NCC and Art. 176, FCP</i>).
Illegitimate Children	With Surviving Spouse	One-Half (1/2) of Estate — Illegitimate Children; One-Half (1/2) of Estate — Surviving Spouse (<i>Art. 996, NCC</i>).
Illegitimate Children	With Legitimate Parents and Surviving Spouse (<i>1962 Bar</i>)	One-Half (1/2) of Estate — Legitimate Parents One-Fourth (1/4) of Estate — SS One-Fourth (1/4) of Estate — IC (<i>Art. 1000, NCC</i>)

- a) **Theory of Exclusion:** The illegitimate children exclude illegitimate parents, brothers, sisters, nephews and nieces.

7.02. TABLE OF INTESTACY FOR SURVIVING SPOUSE. The surviving spouses cannot likewise be excluded by any relative. However, the surviving spouse concurs with legitimate children, illegitimate children, legitimate parents, illegitimate parents, brothers and sisters and nephews and nieces.

	WITH WHOM THE SURVIVING SPOUSE CONCURS AND SHARES	EXTENT
Surviving Spouse	None Alone	The Whole Estate (<i>Art. 994, and 995, NCC</i>).
Surviving Spouse	With Legitimate Children	The LC and SS get the Whole Estate — divided equally with the spouse having the same share as one child (<i>Art. 996, NCC</i>).
Surviving Spouse	With Illegitimate Children and Legitimate Children	The IC, SS and LC get the Whole Estate — each Illegitimate Child gets 1/2 of the share of each Legitimate Child (2:1). The spouse has the same share as one legitimate child (<i>Art. 999, NCC and Art. 176, FCP</i>).
Surviving Spouse	With Illegitimate Children	One-Half (1/2) of Estate — Illegitimate Children; One-Half (1/2) of Estate — Surviving Spouse (<i>Art. 996, NCC</i>).
Surviving Spouse	With Illegitimate Children and Legitimate Parents (LP)	One-Half (1/2) of Estate — Legitimate Parents One-Fourth (1/4) of Estate — SS One-Fourth (1/4) of Estate — IC (<i>Art. 1000, NCC</i>)

Surviving Spouse	With Legitimate Parents (LP) or Illegitimate Parents (IP)	One-Half (1/2) of Estate — Legitimate or Illegitimate Parents. One-Half (1/2) of Estate — Surviving Spouse (<i>Arts. 993 and 997, NCC</i>).
Surviving Spouse	With Legitimate Brothers (LB) and Sisters (LS), Nephews and Nieces (<i>1998 Bar</i>)	One-Half (1/2) of Estate — Surviving Spouse. One-Half (1/2) of Estate — LB, LS, Nephews and Nieces (<i>Art. 1001, NCC</i>). (<i>1995 and 1998 Bar</i>)
Surviving Spouse	With Illegitimate Brothers (IB) and Sisters (IS), Nephews and Nieces	One-Half (1/2) of Estate — Surviving Spouse. One-Half (1/2) of Estate — IB, IS, Nephews and Nieces.

7.03. TABLE OF INTESTACY FOR PARENTS AND ASCENDANTS. They are excluded by legitimate children.

	WITH WHOM THE PARENTS AND ASCENDANTS CONCUR AND SHARE	EXTENT
Legitimate Parents (LP)	Alone (no concurring heir)	They (LP) get the Whole Estate divided equally between them (<i>Art. 785, NCC</i>).
Illegitimate Parents	Alone (no concurring heir)	The Whole Estate divided equally between them (<i>Art. 993, NCC</i>).
Other Legitimate Ascendants	Alone (no concurring heir)	They get the Whole Estate divided equally among them (<i>Art. 987, NCC</i>). However, the Rule of Division by Lines applies.

Legitimate Parents	With Illegitimate Children	One-Half (1/2) of Estate — Illegitimate Children; One-Half (1/2) of Estate — Legitimate Parents (<i>Art. 991, NCC</i>).
Legitimate Parents	With Surviving Spouse	One-Half (1/2) of Estate — Legitimate Parents; One-Half (1/2) of Estate — Surviving Spouse (<i>Art. 997, NCC</i>).
Legitimate Parents	With Surviving Spouse and Illegitimate Children	One-Half (1/2) of Estate — Legitimate Parents One-Fourth (1/4) of Estate — SS One-Fourth (1/4) of Estate — IC (<i>Art. 1000, NCC</i>).

7.04. TABLE OF INTESTACY FOR COLLATERAL RELATIVES. The right to inherit *ab intestate* shall NOT EXTEND beyond the fifth degree of relationship in the collateral line (*1955 Bar*).²⁵⁰

	WITH WHOM THE COLLATERAL RELATIVES CONCUR AND SHARE	EXTENT
Brothers and Sisters of Full-Blood	Alone	They get the Whole Estate in equal shares (<i>Art. 1004</i>).
Brothers and Sisters	With Nephews and Nieces who are Children of a Brother or Sister of Full Blood	The Whole Estate: (i) <i>Per Capita</i> — Brothers and Sisters;

²⁵⁰Art. 1010, NCC.

		(ii) <i>Per Stirpes</i> — Nephews and Nieces (They will get the one share of their parent — brother or sister of full blood (<i>Art. 1005, NCC</i>)).
Brothers and Sisters of Full-Blood	Brothers and Sisters of Half-Blood	The Whole Estate; 2:1 sharing — the brothers and sisters of half blood will each inherit 1/2 of the share of each brother or sister of full-blood (<i>Arts. 1004 and 1006, NCC</i>).
Brothers and Sisters of Half-Blood — Father's Side	Brothers and Sisters of Half-Blood — Mother's Side	The Whole Estate: Each with equal share (<i>Art. 1007, NCC</i>).
Nephews and Nieces	Alone	The whole estate in equal shares (<i>Art. 975, NCC</i>). (i) Nephews and Nieces of the half-blood shall succeed <i>per capita</i> or <i>per stirpes</i> in accordance with the rules laid down re: brothers and sisters of full-blood (<i>Art. 1008, NCC</i>).

Nephews and Nieces	With Uncles and Aunts and other collateral relatives (other than or where there is no brother and sister)	Nephews and nieces get the whole estate. They exclude the uncles and aunts and other collateral relatives (<i>Art. 1009, NCC</i>).
Brothers and Sisters	With Uncles and Aunts and other collateral relatives (other than or where there is no nephew and niece)	Brothers and sisters get the entire estate. The uncles and aunts and other collateral relatives are excluded. (<i>Art. 1009, NCC</i>).
Other Collateral Relatives	Alone	The Entire Estate — without distinction of lines or preference among them by reason of relationship by whole blood (<i>Arts. 1003 and 1009, NCC</i>).

7.05. THE STATE. In default of persons entitled to succeed, the State shall inherit the whole estate.²⁵¹

PROBLEMS:

1. For purposes of this question, assume all formalities and procedural requirements have been complied with. In 1970, Ramon and Dessa got married. Prior to their marriage, Ramon had a child, Anna. In 1971 and 1972, Ramon and Dessa legally adopted Cherry and Michelle, respectively. In 1973, Dessa died while giving birth to Larry. Anna had a child, Lia. Anna never married. Cherry, on the other hand, legally adopted Shelly. Larry had twins, Hans and Gretel, with his girlfriend, Fiona. In 2005, Anna, Larry, and Cherry died in a car accident. In 2007, Ramon died. Who may inherit from Ramon and who may not? Give your reasons briefly (2007 Bar).

A: Michelle and Lia may inherit from Ramon while Shelly, Hans and Gretel cannot inherit from Ramon.

Michelle can inherit from Ramon because Michelle acquired all the rights of a legitimate child when she was adopted by Ramon.

²⁵¹Art. 1011, NCC.

A legitimate child is a compulsory heir of his or her father. (*Sec. 18, R.A. No. 8552*)

Lia shall inherit from Ramon by right of representation of Anna. Anna was an heir of his father Ramon. Since, Anna predeceased or died before Ramon, Lia may represent Anna. (*Arts. 972 and 975, NCC*) The fact that Lia is an illegitimate child is of no moment. The state of being illegitimate is not a bar against the right of representation. In fact, the right of representation of an illegitimate is recognized under the New Civil Code. (*Arts. 902 and 990, NCC*)

Shelly cannot inherit from Ramon even by right of representation. The relationship created by adoption is only with the adopter and not with the relatives of the adopter. Hence, the adoption of Shelly by Cherry conferred Shelly the right of a legitimate child of Cherry but did not give her (Shelly) the right of a descendant or grandchild of Ramon.

Hans and Gretel cannot inherit from Ramon. Article 992 of the New Civil Code provides that an illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother. Hans and Gretel, who are the illegitimate children of Larry, cannot inherit from Ramon who is a legitimate ascendant of Larry.

2. Don died survived by his brother Ronie and his half-sister Michelle. If Don failed to execute a will during his lifetime, as his lawyer, how will you distribute his estate? Explain.
A: Ronie and Michelle will inherit if Don failed to execute a will during his lifetime. Article 1006 of the New Civil Code provides that should brothers and sisters of the full-blood survive together with brothers and sisters of the half-blood, the former shall be entitled to a share double that of the latter. Since the estate is P12 Million, Ronie will receive P8 Million, while Michelle will receive P4 Million.
3. Don died intestate by his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you distribute his estate? (*2006 Bar*)
A: The entire estate will be inherited by Jayson. Succession pertains, in the first place to the descending direct line. (*Art. 978, NCC*) A legitimate child, like Jayson, excludes all relatives in the collateral line. Hence, Ronie and Michelle are excluded by Jayson.
4. Assuming that Don died intestate, survived by his father Juan, his brother Ronie, his half-sister Michelle, and his legitimate son Jayson, how will you distribute his estate? Explain (*2006 Bar*).

- A: The entire estate will be inherited by Jayson. Succession pertains, in the first place to the descending direct line. (*Art. 978, NCC*) In intestate succession the preference is on the descending line and the descendants exclude the ascendants. In addition, the heirs in the direct descending line exclude all collateral relatives. Thus, a legitimate child, like Jayson, excludes all relatives in the collateral line as well as all ascendants. Hence, Juan, Ronie and Michelle are excluded by Jayson.
5. Mr. XT and Mrs. YT have been married for 20 years. Suppose the wife, YT, died childless, survived only by her husband, XT. What would be the share of XT from her estate as inheritance? Why? Explain (*2004 Bar*).
- A: YT will get the entire estate as inheritance. If the only heir is the surviving spouse, the surviving spouse will get the entire estate of the decedent. Article 995 of the New Civil Code provides that in the absence of legitimate descendants and their descendants, the surviving spouse shall inherit the entire estate.
6. Luis was survived by two legitimate children, two illegitimate children, his parents, and two brothers. He left an estate of P1 Million. Luis died intestate. Who are his intestate heirs, and how much is the share of each in his estate? (*2003 Bar*)
- A: The intestate heirs of Luis are his two legitimate children and the two illegitimate children. Article 176 of the Family Code provides that the legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child. In addition, legitimate children concurs with illegitimate children in intestate succession under Article 983 of the New Civil Code, that is, all children will get a share in the estate and one group does not exclude the other. Under the circumstances therefore, each legitimate child shall get P333,333.33 while each illegitimate child will get one-half or P166,666.66.
7. The spouses Peter and Paula had three children. Paula later obtained a judgment of nullity of marriage. Their absolute community of property having been dissolved, they delivered P1 Million each of their three children as their presumptive legitimes. Peter later re-married and had two children by his second wife Marie. Peter and Marie, having successfully engaged in business, acquired real properties. Peter later died intestate. Who are Peter's legal heirs and how will his estate be divided among them? (*2010 Bar*)
- A: Peter's legal heirs are his children by the first and second marriages and his surviving second wife. Descendants of the deceased are legal heirs of the deceased while his wife at the time of his death is a concurring heir.

The respective shares of the heirs are dependent on the ground for the nullity of the first marriage. If the first marriage is void for psychological incapacity of one or both spouses, the children of the first marriage are legitimate heirs and shall have shares that are equal to the shares of the other legitimate children of the second marriage. Thus, the shares are as follows: three children by first marriage and the two children of the first marriage shall get $1/6$ each while the surviving spouse shall have the same share or $1/6$.

If the first marriage was declared void not for psychological incapacity, then the children of the first marriage are illegitimate and shall therefore receive only one-half of the share of a legitimate child of the second marriage. The surviving spouse who is the second wife will get a share equal to that of a legitimate child. In addition, the legitime of the legitimate children which is one-half of the estate should also be respected.

- 8. MIXED SUCCESSION OR PARTIAL INTESTACY.** There is partial intestacy if the decedent left a will but the will does not cover all the disposable portion of the estate. In case of such partial intestacy (or mixed succession), the testamentary disposition shall be given effect first. The balance of the free portion (after deducting the testamentary disposition) shall be given to the intestate heir.²⁵² The intestate heir who should have received the free portion under intestacy shall bear any reduction due to the testamentary disposition.²⁵³

EXAMPLE:

Mr. X died leaving as his heirs Mrs. Y, his spouse and Mr. A, his son. The net estate is P1.5 Million. Mr. X left a will giving $1/4$ of his estate to ABC Orphanage. In this example, the legitime of Mr. A is $1/2$ of the estate or P750,000 while the legitime of Mrs. Y is $1/4$ or P375,000 pursuant to Article 892 of the New Civil Code. On the other hand, if there is complete intestacy, the share of Mrs. Y and Mr. A are both $1/2$ or P750,000 each in accordance with Article 996 of the New Civil Code. However, since only $1/4$ was given to ABC Orphanage or P375,000, the same disposition is not inofficious because it did not affect the legitimes of Mrs. Y and Mr. A. The disposition to ABC Orphanage will be deducted from the portion that Mrs. Y is supposed to receive if there is complete intestacy. P750,000 (or the amount that the spouse is supposed to receive

²⁵²III Tolentino 472.

²⁵³*Ibid.*

in complete intestacy) will be reduced by P375,000, the amount of the disposition to ABC orphanage leaving an amount of P375,000 which is still equal to the spouse's legitime.

9. PROVISIONS COMMON TO TESTAMENTARY AND INTESTATE SUCCESSIONS.

9.01. **RIGHT OF ACCRETION.** 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 (1) renounces or (2) cannot receive his share, or (3) predeceased or who died before the testator, is added or incorporated to that of his co-heirs, co-devisees, or co-legatees (1950 Bar).²⁵⁴

- a) The right of accretion is subordinate to the right of representation.²⁵⁵ In testamentary succession, the right of accretion is also subordinate to the right of substitution if the same is provided for by the testator.²⁵⁶
- b) 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.²⁵⁷
- c) The right of accretion does not apply to a vacant portion of the legitime. Among the compulsory heirs the right of accretion shall take place only when the free portion is left to two or more of them, or to any one of them and to a stranger. Should the part repudiated be the legitime, the other co-heirs shall succeed to it in their own right, and not by the right of accretion.²⁵⁸

Example: If the legitime is P600,000 and the compulsory heirs are three legitimate children, A, B and C. There is no accretion if B repudiates

²⁵⁴Art. 1015, NCC; Heirs of Antero Soliva v. Soliva, G.R. No. 159611, April 22, 2015.

²⁵⁵Arts. 968 and 1022.

²⁵⁶Art. 1022, NCC.

²⁵⁷Art. 1020, *ibid.*

²⁵⁸Art. 1021, *ibid.*

his P200, share. A and C will each get P300,000 of the legitime in their own right.

9.01.01. Requisites of Accretion in Testamentary Succession.

In order that the right of accretion may take place in a testamentary succession, it shall be necessary (1950 Bar):²⁵⁹

- (1) That there is plurality of subject – there are two or more persons to the inheritance;
- (2) That there is unity of object – these persons are called to the same inheritance, or to the same portion thereof, *pro indiviso* (meaning undivided); and
- (3) That (i) one of the persons thus called dies before the testator, or (ii) renounce the inheritance, or (iii) is incapacitated to receive the inheritance, or (iv) suspensive condition is not fulfilled, or (v) the voluntary heir cannot be identified.

9.01.02. Accretion in Intestate Succession. If there are several relatives of the same degree, and one or some of them are unwilling (repudiates) or incapacitated to succeed, his portion shall accrue to the others of the same degree.²⁶⁰ The rule is consistent with the rule of preference of lines.

- a) **Exception:** In case of Predecease or Incapacity or Unworthiness, the right of representation prevails over the right of accretion. It should be noted however that in repudiation, the right of accretion is the only one applicable because there is no right of representation if the cause is repudiation.

9.02. SUMMARY OF RULES ON VACANCIES. Vacancies can occur with respect to the free portion (for instituted voluntary heir), to the legitime (for compulsory heir)

²⁵⁹Art. 1016, NCC.

²⁶⁰Art. 968, *ibid.*

and in case of intestate succession because something happened to the heir who should have inherited. These include: (1) Predecease – the heir predeceased the testator or decedent, (2) incapacity of the heir, (3) Disinheritance, (4) Repudiation. The vacancies shall be filled as follows:

Part of the Estate where there is vacancy	RULES TO BE FOLLOWED (in the order stated below)
1. FREE PORTION – Voluntary Heir	<p>A. In case of Vacancy is caused by PREDECEASE, INCAPACITY and REPUDIATION:</p> <p>(1) Substitution – this is the first rule that should be applied; if there is a substitute, then the substitute takes over;</p> <p>(2) Accretion – if there is no substitute, the rules on accretion shall be applied.</p> <p>(3) Apply the rules on Intestate Succession.</p> <p>B. DISINHERITANCE does not apply to voluntary heirs</p>
2. LEGITIME – Compulsory Heir	<p>A. In case of PREDECEASE, INCAPACITY and REPUDIATION:</p> <p>(1) Right of Representation – the first rule that should be applied;</p> <p>(2) Primary Co-heirs – if there is no person who can represent, the primary co-heirs will get the legitime in their own right. <i>Example:</i> If there are three legitimate children (LC) but 1 of such LC predeceased, the other two</p>

will get entire the legitime for LCs in their own right.

- (3) Next level/degree of Compulsory Heir – if there is no primary co-heir in the same level then the next degree primary heir or secondary compulsory heir as the case may will get the share. *Example:* If there are no other LC or descendants, then ascendants will inherit.
- (4) Rules on Intestacy applies if the above rules cannot be applied.

B. In case of REPUDIATION:

- (1) Co-heirs – The co-heirs will get the legitime in their own right. *Example:* The heirs are three legitimate children (LC) but one predeceased, the other two will get entire the legitime of LC in their own right.
- (2) Next Degree – the heirs next in degree shall get the legitime in their own right (*Example:* If an LC, who is the only heir repudiates, the grandchildren will get the legitime);
- (3) Next Level Secondary Compulsory Heir – if there is no co-heir in the same level then the secondary compulsory heirs will get the share;
- (4) Intestacy rule – these rules apply in the absence of the above specified heirs (1 to 3)

	<p>Note: There is NO right of representation in repudiation.</p>
<p>3. INTESTACY – Legal Heir</p>	<p>A. In case of PREDECEASE and INCAPACITY:</p> <ul style="list-style-type: none"> (1) Right of Representation – the first rule that should be applied; (2) Primary Co-heirs – if there is no person who can represent, the concurring primary co-heirs will get the legitime in their own right. <i>Example:</i> three legitimate children (LC) but one predeceased, the other two will get entire the legitime for LCs in their own right. (3) Next level of Legal Heirs – if there is no co-heir in the same level then the next level/degree primary or secondary legal heirs as the case may be will get the share. <i>Example:</i> If there are no other LC or descendants, then ascendants will inherit. <p>B. In case of REPUDIATION:</p> <ul style="list-style-type: none"> (1) Accretion (2) Next Legal Heirs – apply the order of intestacy or the legal heir who is next degree or next in line. <p>C. Disinheritance – Not applicable.</p>

10. CAPACITY TO SUCCEED BY WILL OR BY INTESTACY. The general rule is that provisions relating to incapacity by will are equally applicable to intestate succession.

- a) **Exceptions:** There are however grounds for incapacity that cannot apply to intestate

succession because the nature of the incapacity applies only to testamentary succession. For example, the incapacity of a priest under Article 1027 applies only to testamentary succession. Paragraphs 1 to 5 of Article 1027 and Article 1028 apply only to testamentary succession (See Notes 10.02 and 10.03 below).

- b) **Kinds.** Incapacity may be absolute or relative: (1) Absolute – a person cannot succeed from any person and under any circumstance (*Example:* If a law prohibits a corporation to be an heir); (2) Relative – the incapacity is specific to a certain person or circumstance.
- c) **Prescriptive Period** – A judicial action is necessary and the same must be filed within 5 years from the time the disqualified heir took possession of the inheritance, legacy or devise.²⁶¹

10.01. REQUISITES OF CAPACITY TO SUCCEED FOR NATURAL PERSONS.²⁶² In order to be capacitated to inherit:

- (1) The heir, devisee or legatee must be living at the moment the succession opens (the time of decedent's death);
 - (i) 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 of the New Civil Code.
- (2) The heir must not suffer from any incapacity or disqualification under the law at the time of the death of the decedent.²⁶³
 - (i) If the institution, devise or legacy is conditional, the time of compliance with

²⁶¹ Art. 1040, NCC.

²⁶² Art. 1025, *ibid.*

²⁶³ Art. 1034, *ibid.*

the condition shall ALSO be considered.²⁶⁴ Hence, the heir must not suffer from any incapacity or disqualification both the time of death of the decedent and at the time of fulfillment of the condition.

10.02. DUE TO UNDUE INFLUENCE: The following are incapable of succeeding (1951 Bar):²⁶⁵

- (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. **NOTE:** the wife of the minister is not excluded because it only speaks of relatives (1988 Bar);
- (3) A guardian with respect to testamentary dispositions given by a ward in his favor before the final accounts of the guardianship have been approved, even if the testator should die after the approval thereof; nevertheless, any provision made by the ward in favor of the guardian when the latter is his ascendant, descendant, brother, sister, or spouse, shall be valid;
- (4) Any attesting witness to the execution of 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;

²⁶⁴*Ibid.*

²⁶⁵Art. 1027, *ibid.*

- (6) Individuals, associations and corporations not permitted by law to inherit. (Note this last disqualification, No. 6, applies to intestate and testate succession)

10.03. DUE TO PUBLIC POLICY AND MORALS.²⁶⁶ The following testamentary dispositions are void (1990 and 2000 Bar):

- (1) Testamentary dispositions made between persons who were guilty of adultery or concubinage at the time of the donation;
- (2) Testamentary dispositions made between persons found guilty of the same criminal offense, in consideration thereof;
- (3) Testamentary dispositions made to a public officer or his wife, descendants and ascendants, by reason of his office.

10.04. DUE TO ACTS OF UNWORTHINESS. The following are incapable of succeeding by reason of unworthiness (1963 Bar):²⁶⁷

- (1) Parents who have abandoned their children or induced their daughters to lead a corrupt or immoral life, or attempted against their virtue;
- (2) Any person who has been convicted of an attempt against the life of the testator, his or her spouse, descendants, or ascendants;
- (3) Any person who has accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found groundless;
- (4) Any heir of full age who, having knowledge of the violent death of the testator,

²⁶⁶Art. 1028 in relation to Art. 739; same rules in donation.

²⁶⁷Art. 1032, NCC.

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.
- a) **Final Judgment Necessary.** In cases falling under Nos. 2, 3, or 5 above, it shall be necessary to wait until final judgment is rendered, and in the case falling under No. 4, the expiration of the month allowed for the report.²⁶⁸

10.04.01. Implied and Express Pardon. The cause of unworthiness shall be without effect if (1) the testator had knowledge thereof at the time he made the will, or (2) if, having known of them subsequently, he should condone them in writing.²⁶⁹

- a) This rule does not apply to incapacity due to undue influence, public policy or morals under Articles.

10.05. DISQUALIFICATION OF SPOUSE. The Family Code provides for the following disqualifications:

²⁶⁸Art. 1034, NCC.

²⁶⁹Art. 1033, NCC.

- a) **Legal Separation** — the offending spouse shall be disqualified from inheriting from the innocent spouse by intestate succession. Moreover, provisions in favor of the offending spouse made in the will of the innocent spouse shall be revoked by operation of law.²⁷⁰
 - (1) Reconciliation however revives the right of the spouses
- b) **Reappearance of an Absent Spouse** — in case of termination of subsequent marriage, the spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.²⁷¹
- c) **Void *Ab Initio* or Annulled** — for marriages which are declared *ab initio* or annulled by final judgment under Articles 40 and 45, the spouse who contracted the subsequent marriage in bad faith shall be disqualified to inherit from the innocent spouse by testate and intestate succession.²⁷²
 - (1) The final judgment in these cases shall provide for the liquidation, partition and distribution of the properties of the spouses, the custody and support of the common children, and the delivery of third presumptive legitimes, unless such matters had been adjudicated in previous judicial proceedings.²⁷³

11. ACCEPTANCE AND REPUDIATION OF INHERITANCE. The acceptance or repudiation of the inheritance is an act which is purely voluntary and free.²⁷⁴

²⁷⁰Art. 63(4), FC.

²⁷¹Art. 43(5), FC.

²⁷²Arts. 50 and 43(5), FC.

²⁷³Art. 50, FC.

²⁷⁴Art. 1041, NCC.

- a) **Retroactivity.** The effects of the acceptance or repudiation shall always retroact to the moment of the death of the decedent.²⁷⁵
- b) **Knowledge of Death.** No person may accept or repudiate an inheritance unless he is certain: (1) of the death of the person from whom he is to inherit, and (2) of his right to the inheritance.²⁷⁶
- c) If a voluntary heir should die after the death of the deceased without having accepted or repudiated the inheritance his right shall be transmitted to his heirs.²⁷⁷ If the voluntary heir predeceased the testator, no right is acquired by the former's heirs.

11.01. WHO CAN ACCEPT AND REPUDIATE. — Persons with capacity to act — any person having free disposal of his property.²⁷⁸

- a) **Minors and Incapacitated.** Any inheritance left to (1) minors or (2) incapacitated persons or (3) deaf-mutes who cannot read and write:
 - (1) Acceptance can be made by their parents or guardians without need of judicial approval.
 - (2) Parents or guardians may REPUDIATE the inheritance left to their wards only with **judicial authorization**.²⁷⁹
 - (3) Deaf-mutes **who can read and write** may accept personally or through his agent.
- b) **Poor.** The right to accept an inheritance left to the poor shall belong to the persons designated by the testator to determine the beneficiaries

²⁷⁵Art. 1042, *ibid.*

²⁷⁶Art. 1043, *ibid.*

²⁷⁷Art. 1053, *ibid.*

²⁷⁸Art. 1044, *ibid.*

²⁷⁹Arts. 1044 and 1048, *ibid.*

and distribute the property, or in their default, to those mentioned in Article 1030.²⁸⁰

- c) **Creditors.** 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 (*2011 Bar*).²⁸¹
- d) Corporations can accept through its Board (authorized representative) but repudiation must be with court approval.

11.02. KINDS OF ACCEPTANCE. Acceptance may be express or tacit.²⁸²

- (1) An express acceptance must be made in a public or private document.
- (2) A tacit acceptance is one resulting from acts by which the intention to accept is necessarily implied, or which one would have no right to do except in the capacity of an heir.
- (3) **Presumed Acceptance.**
 - a) **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.

11.02.01. Examples of Implied Acceptance. An inheritance is deemed accepted:²⁸³

- (1) If the heir sells, donates, or assigns his right to a stranger, or to his co-heirs, or to any of them;

²⁸⁰Art. 1044, *ibid.*

²⁸¹Art. 1052, NCC in relation to Art. 1177.

²⁸²Art. 1049, *ibid.*

²⁸³Arts. 1050 and 1057, NCC.

- (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.

11.02.02. **Presumed Acceptance.** Failure of the heir, devisee and legatee to signify acceptance or repudiation within 30 days after the court has issued an order of distribution of the estate.

11.03. REPUDIATION. The one who repudiates is deemed never to have owned or possessed the inheritance without prejudice to the rights of creditors.²⁸⁴

11.03.01. **Formality.** The repudiation of an inheritance shall be made through:²⁸⁵

- (1) Public instrument; or
- (2) Authentic instrument; or
- (3) Petition presented to the court having jurisdiction over the testamentary or intestate proceedings.

11.03.02. **If both Testamentary and Intestate Heir.** 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.²⁸⁶

- a) 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.

²⁸⁴Arts. 553 and 1051, NCC.

²⁸⁵Art. 1051, *ibid.*

²⁸⁶Art. 1055, *ibid.*

11.04. IRREVOCABILITY OF ACCEPTANCE AND REPUDIATION. Acceptance and repudiation are irrevocable and cannot be impugned.²⁸⁷

- a) **EXCEPTIONS:** (1) When it was made through any of the causes that vitiate consent, or (2) when an unknown will appears.

12. COLLATION.

12.01. PROCESSES INVOLVED IN COLLATION. Collation may mean (1) Computation, (2) Imputation, or (3) Reduction and Return of Excessive and Inofficious donations or transfer by gratuitous title.

- a) **Concepts.** The Supreme Court explained that collation has two distinct concepts:²⁸⁸

- (1) It is a mere mathematical operation by the addition of the value of donations made by the testator to the value of the hereditary estate; and
- (2) It is the return to the hereditary of the property disposed of not by lucrative title by the testator during his lifetime.

12.02. COMPUTATION OF LEGITIME. 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.²⁸⁹

- a) Expenses for support, education, medical attendance, even in extraordinary illness, apprenticeship, ordinary equipment, or customary gifts are not subject to collation.²⁹⁰

²⁸⁷ Art. 1056, NCC.

²⁸⁸ Arellano v. Pascual, 638 SCRA 826 (2010).

²⁸⁹ Art. 1061, NCC.

²⁹⁰ Art. 1067, *ibid.*

- b) Donations to Compulsory Heirs need not be charged to the LEGITIME if:
 - (1) The testator should have expressly provided; and
 - (2) The compulsory heir renounces his inheritance.
- c) Expenses incurred by parents for the professional or vocational career of their children need not be collated EXCEPT if said expenses affect the legitime.²⁹¹

12.02.01. Who will Collate. Compulsory heir who succeeds with other compulsory heirs. Thus, there must be two or more compulsory heirs.

- a) **Grandchildren.** When the grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, they shall bring to collation all that their parents, if alive, would have been obliged to bring, even though such grandchildren have not inherited the property.²⁹²
 - (1) When the grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, 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 (1952 Bar).²⁹³
- b) **Parents** are not obliged to bring to collation in the inheritance of their ascendants any property

²⁹¹Art. 1068, NCC.

²⁹²Art. 1064, NCC.

²⁹³*Ibid.*

which may have been donated by the latter to their children.²⁹⁴

- c) A **Spouse of a Child** need not bring to collation donations to him or her; 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.

13. PARTITION AND DISTRIBUTION OF ESTATE. 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 (2008 Bar).²⁹⁵

- a) **Meaning of Partition.** 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.²⁹⁶
- b) **Constructive Partition.** Every act which is intended to put an end to indivision among co-heirs and legatees or devisees is deemed to be a partition, although it should purport to be a sale, and exchange, a compromise, or any other transaction.²⁹⁷
- c) **When can it be Demanded.** The general rule is that partition can be demanded anytime by the co-owners.
 - (1) **EXCEPTION:** If the testator had forbidden the partition in which case the **period of indivision** should NOT EXCEED 20 years. *Example:* A provision that requires indivision "*habang panahon*" is invalid²⁹⁸ (2014 Bar).

²⁹⁴Art. 1065, *ibid.*

²⁹⁵Art. 1078, NCC.

²⁹⁶Art. 1079, *ibid.*

²⁹⁷Art. 1082, *ibid.*

²⁹⁸*Santiago v. Santiago*, G.R. No. 179859, August 9, 2010.

- (2) Despite such prohibition, the co-ownership terminates when any of the causes for which partnership is dissolved takes place (*See Arts. 1830 and 1831, NCC*).

13.01. WHO MAY PARTITION.

- (1) The decedent himself during his lifetime by an act *inter vivos* or by will (*1985 Bar*);²⁹⁹
 - (2) The heirs themselves;
 - (3) Court of competent jurisdiction;
 - (4) A third person to whom the power is entrusted by the decedent — not a co-heir.³⁰⁰
- a) **Formalities.** With respect to partition by an act *inter vivos* by the decedent, the Supreme Court explained that: "In interpreting this provision, Justice Edgardo Paras advanced the opinion that if the partition is made by an act *inter vivos*, no formalities are prescribed by the Article. *The partition will of course be effective only after death.* It does not necessarily require the formalities of a will for after all it is not the partition that is the mode of acquiring ownership. Neither will the formalities of a donation be required since donation will not be the mode of acquiring the ownership here after death; since no will has been made it follows that the mode will be succession (intestate succession). Besides, the partition here is merely the physical determination of the part to be given to each heir."³⁰¹ Thus, a verbal partition is valid.³⁰²

13.02. WHEN PARTITION CANNOT BE DEMANDED.

- (1) Period of Indivision not exceeding 20 years is expressly provided for by the testator;

²⁹⁹Art. 1080, *ibid.*; J.L.T. Agro v. Balansag, G.R. No. 141882, March 11, 2005.

³⁰⁰Art. 1081, *ibid.*

³⁰¹J.L.T. Agro v. Balansag, G.R. No. 141882, March 11, 2005.

³⁰²Marcos v. Heirs of Isidro Bangi, G.R. No. 185745, October 15, 2014.

- (2) With respect to the voluntary heir upon whom a suspensive condition has been imposed, he or she cannot demand partition until the condition is fulfilled (the other co-heirs may ask for provisional partition by giving a security);³⁰³
- (3) When the co-heirs agreed that the estate shall not be divided for a period not exceeding 10 years, renewable for another 10 years;³⁰⁴
- (4) In the case of a family home which cannot be partitioned within 10 years from the death of one or both spouses or for so long as there is a minor beneficiary.³⁰⁵

13.03. EFFECTS OF PARTITION. A partition legally made confers upon each heir the exclusive ownership of the property adjudicated to him.³⁰⁶

13.03.01. Reciprocal Warranties. 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.³⁰⁷ The action to enforce the warranty prescribes in 10 years.³⁰⁸

13.03.02. Cases When there is no Warranty.³⁰⁹

- (1) When the testator himself has made the partition, unless it appears, or it may be reasonably presumed, that his intention was otherwise, but the legitime shall always remain unimpaired;
- (2) When it has been so expressly stipulated in the agreement of partition, unless there has been bad faith;

³⁰³Art. 1084, NCC.

³⁰⁴Art. 494, *ibid.*

³⁰⁵Art. 159, *ibid.*

³⁰⁶Art. 1091, NCC.

³⁰⁷Art. 1092, *ibid.*

³⁰⁸Art. 1095, *ibid.*

³⁰⁹Art. 1096, *ibid.*

(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.

13.04. RESCISSION AND NULLITY. A partition may be rescinded or annulled for the same causes as contracts.³¹⁰

13.04.01. Lesion. A partition, judicial or extrajudicial, 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 (1/4), than the share to which he is entitled, considering the value of the things at the time they were adjudicated.³¹¹

a) **Exception.** The partition made by the testator cannot be impugned on the ground of lesion, *except*: (1) when the legitime of the compulsory heirs is thereby prejudiced, or (2) when it appears or may reasonably be presumed, that the intention of the testator was otherwise.³¹²

b) **Prescriptive Period.** The action for rescission on account of lesion shall prescribe after four years from the time the partition was made.³¹³

13.04.02. Partition made with preterition of any of the compulsory heirs. — This 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 (the person omitted).³¹⁴

13.04.03. Inclusion of a Person Not an Heir. A partition which includes a person believed to be an heir, but who is not, shall be void only with respect to such person.³¹⁵

³¹⁰Art. 1097, *ibid.*

³¹¹Art. 1098, *ibid.*

³¹²Art. 1099, NCC.

³¹³Art. 1100, *ibid.*

³¹⁴Art. 1104, *ibid.*

³¹⁵Art. 1105, *ibid.*