Harvard Study Guide: Usufructs

Contents

Introduction

This work derives in part from and refers to:

Civil Law Volume II, Property, Ownership, and Its Modifications, Jose C. Vitug, First Edition

The Second Edition of this book is available at:

https://www.google.com/books/edition/Property_ownership_and_its_modifications/iC-KfF1slkAC?hl=en&gbpv=0&kptab=overview

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https://sophialegis.weebly.com/uploads/1/1/8/1/11817546/civil_code_volume_ii_property.pdf

Article 562 - 578

1. Define usufruct.

Usufruct is a real right by virtue of which a person is given the right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law provides otherwise.

2. What are the three fundamental Rights Appertaining to Ownership?

Ownership consists of three fundamental rights, to wit:

jus disponende (right to dispose)
jus utendi (right to use)
jus fruendi (right to the fruits)

3. Of the above-mentioned fundamental rights, what consists usufruct and naked ownership?

The combination of the jus utendi and jus fruendi is called usufruct. The remaining right jus disponendi is really the essence of what is termed "naked ownership".

4. What right is transferred to the usufructuary and what right is remained with the owner?

In a usufruct, only the jus utendi and jus fruendi over the property is transferred to the usufructuary. The owner of the property maintains the jus disponendi or the power to alienate, encumber, transform, and even destroy the same. (Hemedes vs. CA, 316 SCRA 347 1999).

5. What are the formulae with respect to full ownership, usufruct, and naked ownership?

The following are the formulae:

Full Ownership equals Naked Ownership plus Usufruct
Naked Ownership equals Full Ownership minus Usufruct
Usufruct equals Full Ownership minus Naked Ownership

6. What are the characteristics or elements of usufruct?

The following are the characteristics or elements of usufruct:

ESSENTIAL CHARACTERISTICS: those without which it can not be termed usufruct:

(a) It is REAL RIGHT (whether registered in the Registry of Property or not).

(b) It is of a TEMPORARY NATURE OR DURATION (not perpetual, otherwise it becomes emphyteusis). Its purpose is to enjoy the benefits and derive all advantages from the object as a consequence of normal use or Exploitation.

NATURAL CHARACTERISTIC OR ELEMENT: that which ordinarily is present, but a contrary stipulation can eliminate it because it is not essential. The obligation of CONSERVING or PRESERVING the FORM AND SUBSTANCE (value) of the thing. Example- a swimming pool must be conserved as a swimming pool.

ACCIDENTAL CHARACTERISTIC or ELEMENTS: those which may be present or absent depending upon the stipulation of the parties.

Examples:

whether it be a pure or a conditional usufruct;

the number of years it will exist;
whether it is in favor of one person or several, etc.

7. What are the requisites of usufruct?

There are two requisites of usufruct- the essential and the accidental. The essential requisite is the right to enjoy the property of another, while the accidental requisite is the obligation of preserving the form and substance of such property. The latter is accidental because the title constituting the usufruct or the law may otherwise provide, as in the case of abnormal usufructs.

8. What are the REASONS for conserving form and substance?

The following are the reasons for conserving form and substance:
to prevent extraordinary exploitation;
to prevent abuse, which is frequent;
to prevent impairment.

9. What may be the object of usufruct?

The following may be the object of usufruct:
(a) May be real or personal property. Thus, there can be a usufruct over an automobile or over money.

(b) May be sterile or productive (fruitful things). Thus, there can be a usufruct over sterile animals.

(c) May be created over a right (as long as it is not strictly personal or intransmissible, and as long as it has an independent existence. Thus, there can be no usufruct over an easement, for the latter has no independent existence.

10. Does a usufructuary have available right of action?

Yes. The following are the rights of action available to usufructuary:
action to protect the usufruct itself;
action to protect the exercise of the usufruct.

11. Distinguish usufruct from ownership.

While ownership has for its attributes: (1) the right to enjoy (jus utendi, jus fruendi, jus abutendi), (2) the right to dispose (jus disponendi), and (3) the right to vindicate or recover the property (jus vindicandi), usufruct is limited merely to the enjoyment of the property (jus utendi and jus fruendi).

12. Enumerate the similarities between a usufruct and an easement.

The following are the similarities between a usufruct and an easement:
- Both are real rights whether registered or not.
- Both rights may be registered provided that the usufruct involves real property. All easements of course concern real property. (Thus, a usufruct over personal property though a real right, cannot be registered because it is a real right over personal property.)
- Both may be ordinarily be alienated or transmitted in accordance with the formalities set by law.

13. Distinguish Usufruct from Easements (Servitudes).

The following are the distinction between usufruct and easement:

In usufruct, the object may be real or personal property; whereas in easement, it involves only real property.
In usufruct, what can be enjoyed are ALL uses and fruits of the property;
whereas in easement, it is limited to a particular use.
A usufruct can not be constituted on an easement, but it may be constituted on the land burdened

by an easement; whereas, an easement may be constituted in favor of, or burdening, a piece of land held in usufruct.

In usufruct, usually extinguished by death of usufructuary; whereas, in easement, it is not extinguished by the death of the owner of the dominant estate.

14. Distinguish usufruct from lease.

Usufruct is distinguished from lease as follows:

AS TO NATURE OF RIGHT: Usufruct is always a real right, whereas lease becomes a real right only when registered;

AS TO CONSTITUTION: Usufruct is constituted by law, by the will of private persons expressed in acts inter vivos or in a last will and testament, and by prescription, whereas lease is as a rule constituted by contract;

AS TO THE PERSON CONSTITUTING IT: In usufruct, the person constituting it is the owner, whereas in lease, the person constituting need not be the owner;

AS TO EXTENT: Usufruct includes the right to use and to enjoy the fruits (jus utendi and jus fruendi) of the thing, whereas lease is more limited;

AS TO REPAIRS: The usufructuary is responsible for ordinary repairs, whereas the lessee is not; and

AS TO TAXES: The usufructuary is responsible for taxes on the fruits, whereas in lease is not.

15. How may usufruct be constituted?

A usufruct may be constituted:

by law;

by the will of private persons expressed in acts inter vivos;

by the will of the private persons expressed in a last will and testament; and

by prescription.

16. How may a usufruct be classified as to origin?

Usufruct may be classified into the following manner as to origin: LEGAL (created by law)

Example: Usufruct of parents over the property of their unemencipated children. Such usufruct cannot, because of family reasons, be mortgaged or alienated by the parents.

VOLUNTARY OR CONVENTIONAL

Created by will of the parties INTER VIVOS. (as by contract or donation) Example: when an owner sells or alienates the usufruct. Or created MORTIS CAUSA (as in last will and testament).

MIXED OR PRESCRIPTIVE

Created by both law and act of a person.

Example: I possessed in good faith a parcel of land which really belonged to another. Still in good faith, I gave in my will to X, the naked ownership of the land and to Y, the usufruct. In due time, Y may acquire the ownership of the usufruct by acquisitive prescription.

17. Is it a must that the usufruct over real property be registered?

Yes. A usufruct over real property, being a real right, must be duly registered in order to bind innocent third parties.

18. What are the classifications of usufruct according to quantity or extent (of fruits or object)?

The following are the classifications of usufruct according to quantity or extent (of fruits or object):

As to fruits: TOTAL or PARTIAL (depending on whether all the fruits are given or not).

As to object: UNIVERSAL (if over the entire patrimony) or SINGULAR or PARTICULAR (if only individual things are included).

19. What are the classifications of Usufruct as to the number of persons enjoying the right?

The following are the classifications of usufruct as to the number of persons enjoying the right:

SIMPLE: if only one usufructuary enjoys. MULTIPLE: if several usufructuaries enjoy Simultaneous (at the same time) Successive (one after the other)

BUT in this case, if the usufruct is created by donation, all the donees must be alive, or at least already conceived, at the time of the perfection of the donation. (Art. 756); and in the case of testamentary succession, there must only be two successive usufructuaries; moreover, both must be alive or at least conceived at the time of the testator's death. (Arts 863 and 869).

20. What are the classifications of Usufruct as to the Quality or Kind of objects involved?

The following are the classifications of usufruct as to the quality or kind of objects involved:

Usufruct over RIGHTS: The right must not be strictly personal or intransmissible in character; hence, the right to receive present or future support cannot be the object of a usufruct. A usufruct over a real right is also by itself a real right.

Usufruct over THINGS

NORMAL (or perfect or regular) USUFRUCT: This involves non-consumable things where the form and substance are preserved.

ABNORMAL (or imperfect or irregular) USUFRUCT: Usufruct over consumable property. This is also called quasi-usufruct; usufruct over non- consumable things that gradually deteriorate by use.

21. What are the classifications of usufruct according to terms or conditions?

The following are the classifications of usufruct according to terms or conditions: PURE USUFRUCT: no term or condition.

With a term or period ("a termino")

EX DIE: from a day certain

IN DIEM: up to a certain day

EX DIE IN DIEM: from a certain day to a certain day

With a condition (condition)

22. What are the rules governing a usufruct?

The following are the rules governing a usufruct:

FIRST, the agreement of the parties or the title giving the usufruct (thus, by agreement, the usufructuary may be allowed to alienate the very thing held in usufruct although generally, this alienation is not allowed by the codal provisions).

SECOND, in case of deficiency, apply the Civil Code.

23. In case of conflict, what rule is applicable?

In case of conflict between the rights granted a usufructuary by virtue of a will, and codal provisions, the former, unless repugnant to the mandatory provisions of the Civil Code, should prevail.

24. Who owned the naked ownership of properties endowed to a chaplaincy?

The naked ownership of properties endowed to a chaplaincy belongs to the proper ecclesiastical authority within whose jurisdiction such properties are found.

25. What fruits does a usufructuary entitle with?

The usufructuary is entitled to the natural, industrial, and civil fruits that will accrue during the existence of the usufruct.

26. Are dividends of corporations considered as fruits? What kind of fruits then?

A dividend (whether in the form of cash or stock) is income or civil fruits and should belong to the usufructuary and not to the remainderman (naked ownership). This is because dividends are declared out of corporate profits, not corporate capital (the corpus). Dividends declared out of the capital are seriously prohibited by the law. Incidentally, stock dividends may be sold independently of the original shares just as the offspring of an animal may be alienated independently of the parent animal.

27. E.M. Bachrach gave to Mary MacDonald Bachrach the usufruct of his estate, among the properties of which were 108,000 shares of stock of the Atok Big Wedge Mining Co., Inc. When the company declared a 50 % stock dividend (54,000) shares, Mary wanted said dividend-shares transferred in her name, alleging that although they were in the form of stocks, they were nevertheless still fruits and income, and as usufructuary, she was entitled to them. The other heirs of E.M. Bachrach, on the other hand claimed that the stock dividends were not income or fruits, and that they instead form part of the capital; hence, that Mary was not entitled to them. Are they considered fruits?

They are fruits or income and therefore, they belong to Mary, the usufructuary. Moreover, dividends cannot be declared out of the capital. (Bachrach vs. Seifert and Elianoff 87 Phil. 483)

28. Who shall be entitled to the natural, industrial and civil fruits of the property in usufruct?

General Rule The usufructuary shall be entitled to all the natural, industrial and civil fruits of the property in usufruct. (Art. 566, NCC) With respect to hidden treasure, which may be found on the property, shall be considered a stranger.

29. The law says that "as to hidden treasure which may be found on the wall or tenement, he (usufructuary) shall be considered a stranger". What does this mean?

This means that the usufructuary, not being the landowner, is not entitled as owner, but is entitled as finder (to one-half of the treasure, as a rule, unless there is a contrary agreement) if he really is the finder. If somebody else is the finder, the usufructuary gets nothing.

30. What are the special rules with respect to natural and industrial fruits?

The following are the special rules with respect to natural and industrial fruits:

Natural or industrial fruits growing at the time the usufruct begins belong to the usufructuary. In this case, such usufructuary has no obligation to refund to the owner any expenses incurred. But without prejudice to the right of third persons.

Those growing at the time the usufruct terminates, belong to the owner. In this case, such owner shall be obliged to reimburse at the termination of the usufruct, from the proceeds of the growing fruits, the ordinary expenses of cultivation, for seed, and other similar expenses incurred by the usufructuary. (Art. 567, NCC). Also, rights of innocent third parties should not be prejudiced.

31. What is the rule when usufructuary leases property to another?

As a rule, the lease executed by the usufructuary should terminate at the end of the usufruct or earlier, except in the case of leases of rural lands, because in said case, if the usufruct ends earlier than the lease, the lease continues for the remainder of the agricultural year.

Example: In 2002, A gave his land in usufruct to B for 4 years. B leased the land in favor of C for 8 years. Ordinarily, the lease should end in 2006, because at that time, the usufruct ends. But if the naked owner so desires, he may allow the lease to continue for 4 more years. The rents of the first four years belong to the usufructuary; that for the remaining four belongs to the naked owner. Whenever the rents consist of money or goods are immaterial, the important thing is that the rents constitute civil fruits.

32. Juan Grey was the administrator of certain premises, and Fabie was the usufructuary. Fabie leased the property to David, but when David violated certain condition of the lease, Fabie brought an action of unlawful detainer against him. Grey intervened in this action, and alleged that he, and not the usufructuary, had the right to select the tenants; and that therefore, Fabie had no right to institute the suit. ISSUE: Who can select the tenents - Grey, the administrator or Fabie, the usufructuary?

Fabie, the usufructuary, has the right because a usufructuary is allowed to administer and manage the property, to collect rents and to make the necessary repairs. Included in this right to administer is the right to select the tenant over the premises, presently held by Fabie in usufruct. (Fabie vs. David 75 Phil. 536)

33. A leased his land to B, and before the expiration of the lease, A gave the usufruct of his land to C. Can C oust tenant B?

No, because Art. 1676 (applicable to a purchaser of the whole property) cannot apply, the usufructuary not having the jus disponendi over the property. A contrary agreement among the three of them will of course be allowed. Nevertheless, the usufructuary, instead of the naked owner, would be entitled to the rents for the duration of the usufruct.

Article 569 - 595

34. What are the special rules with respect to civil fruits?

Civil fruits are deemed to accrue daily, and belong to the usufructuary in proportion to the time the usufruct may last. (Art. 569, NCC.) Thus-

> If the usufructary has leased the property, and the usufruct should expire before the termination of the lease, he or his heirs or successors shall receive only a proportionate share of the rent. (Art. 568, NCC.)
>
> If the usufruct consists either in the right to receive (a) rents, or (b) periodical pensions, or (c) interests on bonds or securities payable to bearer or in the (d) enjoyment of benefits accruing from a participation in ay industrial or commercial enterprise, the date of distribution of which is not fixed, such as rents or pensions, or interests, or benefits, which are all considered civil fruits belong to the usufructuary in proportion to the time the usufruct may last. (Art. 570, NCC.)

35. A gave to B in usufruct the profits of a certain factory for 10 years. If the usufruct lasts really for 10 years, all profits during that time must go to B. Supposed, however, B died at the end of 5 years, and the following were the profits of the factory: 2nd year-P30 Million, 3rd year-P50 Million,
8th year-P10 Million, 10th year-P20 Million. How should the profits be divided?

It is UNFAIR to give the heir of the usufructuary P80 Million (2nd and 3rd year's profits) and only 30 Million (8th and 10th year's profits) to the naked owner. If this were so, we would be applying the rule for industrial or natural fruits, and not civil fruits. It is indeed unfair because a business is expected to have its ups and downs. Therefore, considering that the usufruct was supposed to last for 10 years (though it actually lasted for only 5 years), it is fairer to give half of the total profits to the heirs of the usufructuary, and half to the naked owner.

Similarly, if during the first five years, no profits were realized because the company came out even, and the profits came only after the last five years, the rule set forth above should be followed, otherwise gross injustice would result since it is well-known that it takes a company sometime before it becomes a gaining proposition. Of course, the parties can stipulate otherwise in their contract, but in the absence of stipulation, Art. 570 should apply.

36. In speaking of benefits from industrial or commercial enterprises, the law says, "the date of distribution of which is not fixed." Does this mean that if the date is fixed, Article 570 does not apply?

No, Art. 570 apply whether or not the date of distribution is fixed. The law does not mention anymore the case when the date is fixed because this after all is the usual state of things, and the rule enunciated in Art. 570 clearly apply. Whether or not, however, Art. 570 applies to a case where the date is not fixed was doubtful before, hence, the necessity of an express provision on the subject.

37. Aside from the right to the fruits, what else does a usufructuary have as a right to the enjoyment?

Aside from the right to the fruits, the usufructuary has the right to the enjoyment (use, not ownership) of:

> accessions (whether artificial or natural)
>
> servitudes and easements
>
> all benefits inherent in the property (like the right to hunt and fish therein, the right to construct rain water receptacles, etc.)

38. What are the reasons underlying the above-mentioned rights?

The usufructuary, as a rule, is entitled to the:

> ENTIRE jus fruendi (including the fruits of accessions)
>
> ENTIRE jus utendi (so he can make use for example of an easement).

39. May a right of usufruct be alienated?

We must distinguish. As far as voluntary usufructs are concerned, undoubtedly, they can be alienated. This is clear from the provisions of Art. 572 of the NCC. Excepted from the rule are purely personal usufructs and those which

are subject to caucion juratoria under Art. 587 of the Code. As far as legal usufructs are concerned, such as the usufruct which parents have over the property of their unemancipated children, because of their nature, it is evident that they cannot be alienated.

40. Are there rights with reference to the thing itself in addition to the Usufruct?

Yes. There are rights with reference to the thing itself in addition to the Usufruct:

He may personally enjoy the thing (that is, entitled to possession and fruits). The enjoyment may also be thru another unless the contrary has been provided or stipulated.

He may lease the thing to another. This can be done even without the owner's consent; moreover, ordinarily the lease must not extend to a period longer than that of the usufruct, unless the owner consents. Thus, the lease ends at the time the usufruct ends, except in the case of rural lease.

41. What are the rights with reference to the usufructuary right itself?

The rights with reference to the usufructuary right itself are:

He may alienate (sell, donate, bequeath, or devise) the usufructuary right.

EXCEPTIONS:

a legal usufruct

a usufruct granted a usufructuary in consideration of his person a usufruct acquired thru a caucion juratoria

He may pledge or mortgage the usufructuary right because he owns said right. But he cannot pledge or mortgage the thing itself because he does not own the thing. Neither can he sell or in any way alienate the thing itself, nor do future crops, for crops pending at the termination of the usufruct belong to the naked owner.

42. In his will, A made B administrator of his estate, but gave to C the usufruct of a particular house. D was occupying the house as tenant. For violation of the lease contract, D was being ejected by C, the usufructuary. D said that C was merely the usufructuary, and was entitled only to collect rent but has no right to select and oust tenants, this being the right of B, the general administration of A's estate. ISSUE: Has C the right to bring the action?

Yes. While it is true that there was a general administrator (B), still insofar as that particular house is concerned, C should be considered the administrator. This is because as usufructuary, he is entitled not only to collect the rent or income but also to lease the property in favor of another. And this right to lease carries with it the right to select and oust tenants for contractual violations. To permit B to arrogate unto himself the right to select tenants dictate the conditions of the lease, and to sue when the lessee fails to comply therewith would be to place the usufructuary C at his mercy. This should not be allowed. (Fabie vs. David 75 Phil 536)

43. A donated her usufructuary right over certain properties. Later, she brought an action to get her right back on the ground, that she did not own the properties. Will the action prosper?

No, for after all, she donated the usufruct (which belonged to her) and not the properties themselves. And under the law, the usufructuary has the right to alienate even by gratuitous title as in this case, the right of usufruct. It has been proved that the donation was made knowingly and freely. She deserves commendation for the beauty of her act in donating. Charity is the choicest flower of the human spirit. We are not willing to help her withdraw now what she had given voluntarily, and in a noble spirit of liberality. (Seifert vs. Bachrach 79 Phil. 748).

44. What are abnormal usufructs?

Abnormal usufructs are those where the usufructuary does not have the obligation of preserving the form and substance of the property which is the object of the usufruct.

45. What are the provisions applicable in abnormal usufruct?

The following are the provisions applicable in abnormal usufruct:

Whenever the usufruct includes things which, without being consumed, gradually deteriorate through wear and tear, the usufructuary shall have the right to make use thereof in accordance with the purpose for which they are intended and shall not be obliged to return them at the termination of the usufruct except in their condition at that time; but he shall be obliged to indemnify the owner for any deterioration they may have suffered by reason of his fraud or negligence. (Art. 573, NCC.)

Whenever the usufruct includes things which can not be used with out being consumed, the usufructuary shall have the right to make use of them under the obligation of paying their appraised value at the termination of the usufruct if they were appraised when delivered. In case they were not appraised, he shall have the right to return the same quantity and quality, or their current price at the time the usufruct ceases. (Art. 574, NCC.)

46. What are the liabilities of the usufructuary on the effect of the deterioration?

If these fast deteriorating things:

DETERIORATES BECAUSE OF NORMAL USE, the usufructuary is not responsible. Therefore, he can return them in the condition they might be in at the termination of the usufruct. There is no necessity for him to make any repairs to restore them to their former condition, for after all, they can be PRESERVED without the necessity of repairs (as when the varnish of a chair disappeared). Failure to return the thing will result in indemnification for the value of the object may have at the end of the usufruct.

DETERIORATE BECAUSE OF AN EVENT OR ACT THAT ENDANGERS THEIR PRESERVATION (as when by fortuitous event, lightning splits a table into three pieces), then even though there was no fault or negligence or fraud on the part of the usufructuary, he is still required under Art. 592 to make the necessary or ordinary repairs. Thus, mere deterioration thru normal use does not require the ordinary repairs referred to in Art. 592.

DETERIORATE BECAUSE OF FRAUD (dolo incidente or fraud amounting to an evasion of the obligation to preserve) or NEGLIGENCE (culpa); the usufructuary is responsible (art. 573).

47. What are the rules for QUASI-USUFRUCT?

The following are the rules for Quasi-Usufruct:

The usufructuary (debtor-borrower) can use them (as if he is the owner, with complete right of pledge or alienation). But at the end of the usufruct, he must pay the APPRAISED value (if appraised when first delivered) Or, if there was no appraisal, return same kind, quality, and quantity OR pay the price current at the termination of the usufruct (therefore not at the original price or value).

48. What else does a usufructuary of fruit-bearing trees and shrubs may make use of?

The usufructuary can use (even for firewood, though he is not the naked owner) the following:
dead trunks
those cut off or uprooted by accident. BUT he must
REPLACE them with new plants.

49. Enumerate other SPECIAL USUFRUCTS.

The following are considered other special usufruct: periodical pension, income,
dividends. (Art. 570) woodland (Art. 577)
right of action to recover real property, real right, or movable property (Art.
578)
part of property owned in common (Art. 582) entire patrimony
of a person. (Art. 598) mortgaged immovable (Art. 600)
flock or herd of livestock (Art. 591)

50. A is usufructuary of trees and shrubs belonging to B. as a result of an earthquake, many of the trees and shrubs disappeared or were destroyed. What are A's rights and obligations?

The following are the rights and obligations of A:

If it is impossible or too burdensome to replace them, the usufructuary has an OPTION. He-

may use the trunks but should replace them;
or may leave the dead, fallen, or uprooted trunks at the owner's disposal, and demand that the latter remove them and clear the land.

If it is slightly burdensome to replace them, the usufructuary MUST replace them (whether he uses the dead trunks or not), and he can not demand clearance of the land by the owner.

51. Why is a special usufruct over woodland is not common and frequent usufruct?

It is not a common or frequent usufruct because:

natural resources including forest or timber lands belong to the State
a license is generally essential if one desires to gather forest products.

52. What are the obligations of the usufructuary on special usufruct over woodland?

In the enjoyment of the usufruct, the usufructuary:

must bear in mind that he is not the owner, and therefore, in the exercise of the diligence in caring for the property (required under Art 589 he must see to it that the woodland is preserved, either by development or by replanting thus he cannot consume all, otherwise nothing would be left for the owner.

In the cutting or felling of trees, he must-

->follow the owner's habit or practices;
->in default thereof, follow the customs of the place as to the MANNER, AMOUNT and SEASON (Art 577)-all without prejudice to the owner, for while he can USE, he cannot ABUSE.

[NOTE: The rule above is applicable if the woodland: is a CORPSE (thicket of small trees) or consists of timber for BUILDING.]

If there be no customs, the only time the usufructuary can CUT DOWN trees will be for repair or improvement, but here the owner must first be informed (the owner, thus, does not need to consent).

He cannot alienate the trees (for the trees are not considered fruits) unless he is permitted, expressly or impliedly by the owner (as when the purpose of the usufruct was really to sell the timber) or unless he needs the money to do some repairs (but in the last case, the owner must be informed).

53. A is the usufructuary of a parcel of land belonging to B. He (A) transferred his usufructuary right to C who took possession of the land. While possessing it, C, without the knowledge of A, cut 100 coconut trees on the land. Is A liable to B, for the damages caused by C, on the land under usufruct? Give your reasons.

Yes, A is liable to B, for the usufructuary (A) who alienates his usufructuary right, is liable for the negligence of his substitute (C). (Art. 590). It is clear that C had no right to cut down the trees, for the article on woodland (Art 577) cannot apply. There is a vast difference between a woodland and coconut land. In the former, the usufructuary can in certain cases cut down the trees precisely because the way to enjoy the usufruct would be to convert the timber into lumber; in this case of coconut land, the usufruct extends merely to the fruits produced. At any rate, it would have been different had the naked owner's approval been obtained.

54. What the usufructuary can demand?

To bring the action, the usufructuary can DEMAND from the owner:

Authority to bring the action (usually a special power of attorney). Proofs needed for a recovery.

55. How may an action be instituted?

The action may be instituted in the usufructuary's name, for being the owner of the usufruct; he is properly deemed a real party in interest.

If the purpose is the recovery of the property or right, he is still required under Art. 578 to obtain the naked owner's authority.

If the purpose is to object to or prevent disturbance over the property (once the property is given him), no special authority from the naked owner is needed.

56. What is the effect of Judgment?

When judgment is awarded him and he gets the property:

its naked ownership belongs to the OWNER;
its usufruct belongs to him (the USUFRUCTUARY).

57. Can a usufructuary make improvements to the property held in usufruct? What are the limitations?

Yes. The usufructuary may make on the property held in usufruct such useful improvements or expenses for mere pleasure as he may deem proper; provided he does not alter its form or substance; but he shall have no right to be indemnified therefor. He may however remove such improvements, should it be possible to do so without damage to the property. (Art 579)

58. If the improvement cannot be removed without substantial injury to the property, is the usufructuary entitled to a refund?

No. Art 579 of the NCC provides that the usufructuary shall have no right to be reimbursed for the useful and/or luxurious improvements made to the property held in usufruct.

However, he may still set-off the improvements he may have made on the property against any damage to the same (Art 580)

59. May the usufructuary set-off necessary expenses on the property?

No, only improvements may set off.

60. What are the rules regarding the right to set-off improvements?

The following are the rules regarding the right to set-ff improvements:

if the damage exceeds, the value of the improvements, usufructuary is still liable for the difference

If the value of the improvements exceeds the damage, the difference goes to the usufructuary, but accrues instead in the absence of a contrary stipulation in favor of the naked owner; otherwise, it is as if the usufructuary would be entitled to a partial refund in cash.

61. What are the requisites before set-off can be made?

The following are the requisites before set-ff can be made:

The damage must have been caused by the usufructuary.
The improvements must have augmented the value of the property.

62. Can the naked owner alienate the property held in usufruct? If so, what are the limitations if any?

Since the jus disponendi and the title (dominiu directum) reside with the naked owner, he retains the right to alienate the property the usufruct of which is held by another, but:

He cannot alter its form or substance;
Or do anything prejudicial to the usufrucrtuary. (Art 581)

63. Can an assignor of the owner alter the form of the property?

Yes, as long as it is not prejudicial to the usufructuary.

64. What are the other rights of the naked owner of property the usufruct of which is held by another?

Aside from the right of the naked owner to alienate the property, he may also: Construct any works and make any improvements
or make new plantings thereon if it be rural, but always, such accts must not cause:
decrease in the value of the usufruct;
or prejudice the right of the usufructuary. (Art 595)

65. May a co-owner give the usufruct of his share in the common property? What are the rights of the usufructuary in such case? What is the effect of the partition of the said property?

Yes. A co-owner may give the usufruct of his share to another, without the consent of the other, unless personal considerations are present (Art 493)
The usufructuary in such a case takes the owner's place as to the administration and the collection of fruits or interest. (Art 582)

If there be a partition, the usufructuary continues to have the usufruct of the part allotted to the co-owner concern. (Art 582) and/or if the co-owners make a partition without the intervention of the usufructuary, the partition binds the usufructuary, but the naked owner must respect the usufruct. (Pichay v. Querol, 11 Phil, 386)

66. What are the obligations of the usufructuary at the commencement of the usufruct?

The usufructuary, before entering upon the enjoyment of the property is obliged: To make the inventory of the property
To give the necessary security (Art 583)

67. What are the obligations of the usufructuary during the pendency of the usufruct?

The following are the obligations of the usufructuary during the pendency of the usufruct: To make ordinary repairs on the property
To take care of the property as a good father of the family
To notify the owner incase of need for extraordinary repairs on the property is urgent.
To pay the annual charges and taxes and those considered as a lien on the fruits.
To notify the owner of any act of a third person that may be prejudicial to the right of ownership.
To pay the expenses, costs and liabilities in suits with regard to the usufruct.

68. When is the usufructuary excused from the obligation of giving a bond or security?

The usufructuary is excused from the obligation of giving bond or security in the following cases:

When no one will be injured by the lack of bond or security. (Art 585)
When the donor has reserved the usufruct of the property donated (Art 584)
In case of parents who are usufructuaries of their emancipated children's property, except when the parents contract a second marriage. (Art 584)
In case of usufructs subject to caucion juratoria (Art 587) When the naked owner waived his right

69. What is the remedy available to the naked owner when the usufructuary is required to give a bond but fails to give such bond?

Should the usufructuary fail to give security in the cases in which he is bound to give it, the owner may demand:

That the immovables be placed under administration; That the movables be sold;
That the public bonds, instruments of credit payable to order or to bearer be converted into registered certificates or deposited in a bank or public institution;
That the capital or sums in cash and the proceeds of the sale of the movable property be invested in safe securities; and

The owner may retain in his possession the property in usufruct as administrator, until the usufructuary gives security or is excused from doing so. (Art 586)

70. In case there is an interest from the proceeds of the sale of the movable, referred to above, to whom it will be belong?

The interest on the proceeds of the sale and that on public securities and bonds, and the proceeds of the property placed under administration, shall belong to the usufructuary. (Art 586 par 2)

71. May the owner deny the sale of articles in the usufruct?

Yes, as long as they are artistic and they have sentimental value to the owner. In such case, the owner may demand their delivery to him provided he gives security for the payment of legal interest on their appraised value.
What is the condition if the owner of the property retains the possession of the property in usufruct due to non-payment of security/bond?

The owner is obliged to deliver to the usufructuary the net proceeds, minus administration expenses agreed upon by the parties or judicially allowed for such administration.

72. What is meant by caucion juratoria?

The "promise under oath" is called a "caucion juratoria". It is a sworn duty to take good care of the property and return the same at the end of the usufruct. It takes the place of the bond or security and is based on necessity and humanity

Whereby the usufructuary, being unable to file the required bond or security. Files a petition in the proper court asking the delivery of the house and furniture necessary for himself and his family without any bond or security.

73. What are the requisites before the caucion juratoria may be allowed?

The following are the requisites before caucion juratoria is allowed:

- proper court petition
- necessity for delivery of furniture, implements, or house included in the usufruct
- approval of the court sworn promise.

74. Can the usufructuary make a promise instead of giving security?

Yes, as long as it is under oath.

75. When will the usufructuary have a right to the usufruct?

After the security has been given by the usufructuary, he shall have a right to all proceeds and benefits from the day on which, in accordance with the title constituting the usufruct, he should have commenced to receive them. (Art 588)

76. Supposed the usufruct commences on May 26, 2010, but the security is given on July 30, 2010, when will the usufructuary have a right over the usufruct?

The usufructuary is entitled to all the proceeds and benefits of the usufruct from May 26, 2010. But such entitlement will accrue only on July 30, 2010, after the payment of the security.

77. What is the right of the usufructuary?

The usufructuary has a right to the proceeds and benefits of the property.

78. What kind of diligence is required to the usufructuary in taking care of the property held in usufruct?

The usufructuary shall take care of the things given in usufruct as a good father of a family. (Art 589)

79. Can a usufructuary alienate his right of usufruct to another person? If so, what are the liabilities of the

usufructuary to the naked owner for the acts of the sub-usufructuary?

A usufructuary can alienate or lease his right of usufruct to another person. However, the usufructuary shall answer for any damage which the things in usufruct may suffer through the fault or negligence of the person who substitute him (Art 590). Furthermore, even if there is a sub- usufructuary, it is still the usufructuary who answers to naked owner for the ordinary repairs, taxes on the fruits, etc. (4 Manresa 478)

80. If the usufruct be constituted on a flock or herd of livestock, what is the obligation of the usufructuary?

It is the obligation of the usufructuary to take good care of the young of the animals and the livestock itself.
It is also the obligation of the usufructuary to replace the animals that die each year from natural causes or are lost due to the rapacity of beasts of prey from the young produced. (Art 591 par 1)

81. When is there no obligation to replace the lost/died animals?

There is no obligation to replace, if there is total or partial loss of animals on account of some contagious disease or any other uncommon event, without the fault of the usufructuary. (Art 591 par 1 and 2)

82. How can the usufructuary fulfill his obligation when the animals should all perish without his fault and on account of some contagious disease or any other uncommon event?
The usufructuary shall fulfill his obligation by delivering to the owner the remains which may have been saved from the misfortune. (Art 591)

83. What is the rule in cases where the usufruct is constituted on sterile animals?

Should the usufruct be on sterile animals, it shall be considered, with respect to its effects, as though constituted on fungible things. (Art 591 par 4)

84. In usufruct, who is responsible for repairs and taxes?

In case of repairs, we must distinguish, as far as ordinary repairs, or those required by the wear and tear due to the natural use of the thing and are indispensable for its preservation, are concerned, the usufructuary is responsible (Art 592); however as far as extraordinary repairs, or those which are neither required by the wear and tear due to the natural use of the thing nr are indispensible for its preservation, are concerned, the naked owner is responsible. (Art 593 and Art 594)

In case of taxes, we must also distinguish. As far as those imposed upon or constitute a lien on the fruits are concerned, the usufructuary is responsible; however, as far as those imposed directly upon the thing or capital itself are concerned, the naked owner is responsible.

85. Does the usufruct reserved by the vendor in the deed of sale over lots then vacant give the usufructuary the right to receive the rentals of building thereafter, constructed thereon by the vendees with their own funds? Why?

Assuming that the construction of the commercial building was made by the naked owners (the vendees in this case) with the express or implied consent of the usufructuary (the vendor in this case), it is submitted that the latter is not entitled to the rentals of each commercial building. Under article 595 of the new civil code, the naked owner is allowed to make any construction or improvements of which the immovable usufruct is susceptible, provided that such construction does not cause a diminution in the usufruct or prejudice the right of the usufructuary. Here, it is evident that the construction of the commercial building has reduced the area of the land. To that extent has the value of the usufruct been diminished. Hence, indemnified by the naked owners. Thus in Gabaya vs. Cui (27 SCRA 85) where this question was resolved for the first time by our Supreme Court, it was held that naked owners should pay to the usufructuary a monthly rental for the area of the land occupied by their building, the amount of which shall be determined considering the rental value of the lands in the neighborhood.

Articles 596 - 612

86. What are the charges or taxes that must be paid by the usufructuary?

The usufructuary should pay the following: Annual charges on the fruits; Annual taxes on the fruits; and Those considered as lien on the fruits. (Art 596 NCC)

87. Until when should the usufructuary pay the abovementioned obligations?

These obligations must be paid at the expense of the usufructuary for all that the usufruct lasts. (Art 596 NCC)

88. Who is responsible for taxes?

We must distinguish:

As far as those imposed upon or which constitute a lien on the fruits is concerned, the usufructuary is responsible (Art 596, NCC); however, as far as those imposed as far as imposed directly upon the thing or capital itself is concerned, the naked owner is responsible. (Art 597, 1ST Par).

89. Assuming now that the naked owner has paid those amounts imposed directly upon the capital, what is the obligation of the usufructuary?

The usufructuary shall pay him (the naked owner) the proper interest on the sums which may have been paid in that character. (Art 597 2nd par)

90. What if the usufructuary had advanced said amount to the naked owner?

The usufructuary shall recover the amount thereof at the time of the termination of the usufructuary (Art 597 2nd par).

91. What is the remedy available to the usufructuary when at the termination of the usufruct the naked owner has not paid the reimbursement due to him (usufructuary)?

The usufructuary shall have the right to retention until he is paid. (See Art. 612)

92: When does article 598 of the NCC apply?

Article 598 particularly applies if a person donates everything but reserves to him the usufruct thereof.

93. When will the usufructuary have to pay for the debts of the naked owner?

The provisions of articles 758 and 759 relating to donations shall be applied, both with respect to the maintenance of the usufruct and to the obligation of the usufructuary to pay such debts. (Art 598)

Under Article 758, "When the donation imposes upon the donee the obligation to pay the debts of the donor, if the clause does not contain any declaration to the contrary, the former is understood to be liable to pay only the debts which appear to have been previously contracted. In no case shall the donee be responsible for debts exceeding in the value of the property donated, unless a contrary intention clearly appears." However, under Article 759 "There being no stipulation regarding the payments of debts, the donee shall be responsible therefore only when the donation has been made in fraud of creditors. The donation is always presumed to be fraud of creditors, when at the time thereof the donor did not reserve sufficient property to pay his debts prior to the donation. The same rule shall be applied in case the owner is obliged, at the time the usufruct is constituted, to make periodical payments, even if there should be no known capital."

94. What are the rules on usufruct of a matured credit?

If usufructuary has given security, collection and investment can be done without the approval of the court or of the naked owner. If usufructuary has not given security, or when he is exempted or when there was, only a CAUTION JURATORIA, collection and investment can be done only with the approval of the court or of the naked owner. (Art 599, NCC)

95. Who owns the credit collected?

If the credit is collected, the same belongs to the naked owner, but the usufructuary gets its usufruct.

96. NO mortgaged his land to MR and gave its usufruct to UY. Since NO did not pay his debt, MR foreclosed the mortgage, and at the foreclosure sale, BR bought the property. Can UY demand anything from NO?

Yes, because when a mortgage has been sold judicially for the payment of debt, the owner shall be liable to the usufructuary for whatever the latter may lose by reason thereof. (Art 600, NCC)

97. How may the liability of the naked owner be extinguished?

Liability of the naked owner may be extinguished:

by constituting a usufruct over an equivalent estate;
by a payment of a periodical pensions equivalent to the less; or in any other similar way. (4 Manresa 508-509)

98. May the usufruct itself (as distinguished from the property) be mortgaged?

Yes, since a usufruct is a real right, it can be mortgaged, not by the naked owner, but by the usufructuary. In such a case, it is the usufructuary that should pay his own debt.

99. When is notification by the usufructuary required?

Notification by the usufructuary is required:

if a third party commits acts prejudicial to "the rights of ownership" (both rights of the naked owner and rights of the usufructuary, in the latter case, insofar as the naked owner is also affected – as in the case of the disturbance to the possession) (See 4 Manresa 516-519);
if urgent repairs are needed (Art. 593);
if an inventory (at the beginning of the usufruct) is to be made. (Art. 583).

100. What are the effects of non-notification?

The following are the effects of non-notification:

In the case stated in (a) in the preceding paragraph, the usufructuary is liable for damages, as if they had been caused thru his own fault. (Art. 601, last part).
In (b), the usufructuary cannot even make extraordinary repairs needed. (See Art. 594).
In (c), the inventory can go on, but the naked owner may later point out discrepancies and omissions in the inventory. (See 4 Manresa 450-452).

101. When is the usufructuary liable for expenses and costs in suits brought with regard to the usufruct?

Only when the usufructuary has lost the case. Article 603.

102. How is usufruct extinguished? (1924, 1930, 1977, 1988, 1989) Usufruct is

extinguished by:

Death of usufructuary – unless contrary intention clearly appears;
Expiration of period for which it was constituted or by the fulfillment of any resolutory condition provided in the title creating the usufruct; Merger of usufruct and ownership in the same person; Renunciation of usufructuary – express

Total lost of thing;
Termination of right of person constituting usufruct; Prescription – use by 3rd person

103. The general rule is that death extinguishes the usufruct. What are the exceptions?

The following are the exceptions:

In the case of multiple usufructs [here its ends on the death of the last survivor. (Art. 611.)]
In case there is a period fixed based on the number of years that would elapse before a person would reached a certain age, UNLESS the period was expressly granted only in consideration of the existence of such person, in which case it ends at the death of said person (Art. 606);
In case the contrary intention CLEARLY (expressly or impliedly) appears. (TS, Oct.1, 1919).

104. Suppose the usufruct is for a period of 5 years. Prior to the expiration of such period, the usufructuary dies. Is the usufruct extinguished?

Yes, because "the utmost period for which a usufruct can endure, if constituted in favor of a natural person is the lifetime of the usufructuary." (Eleizegue vs. Lawn Tennis Club, 2 Phil. 390.)

105. Why is the death of the naked owner does not extinguish the usufruct?

The death of the naked owner does not extinguish the usufruct because the rights of the naked owners are transmitted to his own heirs.

106. Does the non-use by the usufructuary of the usufruct terminate the usufruct?

No, unless non-user also constitutes a renunciation.

107. Does abuse or misuse of the usufruct extinguish the usufruct?

No, unless the thing has been totally lost.

108. If the thing given in usufruct should be lost only in part, does the usufruct cease in whole?

No, because the right to the usufruct shall continue on the remaining part. (Art 604, NCC)

109. For how long can a usufruct be established in favor of a town, corporation, or association?

Usufruct cannot be established in favor of a town, corporation or association for more than fifty years. (Art 605, NCC)

110. How may the usufruct constituted in favor of a town, corporation or association be extinguished?

The usufruct constituted in favor of a town, corporation or association is extinguished:

before expiry of the 50-year period by abandonment of the town
by dissolution of the corporation or association
by expiration of the period of usufruct. (Art 605, NCC)

111. What is the rule when a usufruct is constituted for the time that may elapse before a person reaches a certain age?

The rule states that such usufruct shall subsist for the number of years specified, even if the third person should die before the period expires. (Art 606, NCC)

112. Provide an example.

A gave B his land in usufruct until C becomes 40 years old. A constituted the usufruct when C was only 20 years old. This means that the usufruct should last for 20 years, even if C dies before attaining the age of 40. If therefore C dies at the age of 30, the usufruct in B's favor generally continues.

113. What is the exception to the rule?

The exception provides that "unless such usufruct has been expressly granted only in consideration of the existence of such person." (Art 606, NCC)

114. Give also an example to the exception.

If in the example given, B was made the usufructuary only because he had to support C, it follows that the usufruct was expressly constituted only in consideration of the existence of C. Thus, on C's death, the usufruct ends.

115. X was granted a usufruct over a parcel of land with a building constructed thereon. The building was totally destroyed. State the rights of the usufructuary.

The rights of the usufructuary are:

> He has the right to make use of the land and the materials;
>
> If the owner of the land should wish to construct another building, he shall have the right to occupy the land and make use of the materials, but is obliged to pay the usufructuary, during the continuance of the usufruct, the interest upon the sum equivalent to the value of the land of the materials.

PROBLEM: The subject matter of a certain litigation is a certain property located in Calle Ongpin, Manila, which was devised to A in naked ownership and to B in usufruct for life by the deceased owner. The building was destroyed during the battle for the liberation of Manila in1945. C, a Chinaman, then offered to lease the property of a monthly rental of P500 and to construct a building thereon. The lease was finally perfected and the building constructed, but subject to a temporary compromise agreement between naked owner and usufructuary by which the former shall receive P100 of the rentals and the latter P400. Subsequently, the naked owner received from the War Damage Commission more than P8,000 as compensation for the building destroyed in 1945. Meanwhile, the usufructuary paid the real estate taxes due on the property. Because of disagreements with regard to the division of the rentals and the war damage claims, A finally brought an action against B praying that judgment be rendered declaring the usufruct to have been terminated. If you are the judge, how will you decide the following questions:

116. Is the usufruct extinguished by destruction of the building?

The usufruct was not extinguished by destruction of the building. When B was given the life usufruct over the subject property by mandate of the will of the original owner, his usufructuary right included not only the enjoyment of the building but also the enjoyment of the land on which the building is constructed. Hence, the monthly rentals belong to the usufructuary alone because it is a well-settled rule that rents constitute earnings of the capital invested in the acquisition of both land and building. There can be land without building, but there can be no building without land. It is clear, therefore, that when the original owner gave the life usufruct over the subject property to B, she meant to impose the encumbrance not only on the building but also on the land itself for indeed there can be no building without land.

Therefore, in the case at bar, the things in usufruct are the building and the land on which the building is constructed. Under the Civil Code, in order that there will be an extinguishment of the usufruct, it is essential that the things in usufruct must be totally lost or destroyed. (Art.603, No.151, CC.) Here, there was no total loss. The lands remain intact. Therefore, pursuant, to have the law on usufructs (Art. 607, CC), B, the usufructuary, shall now shall have the right to make use of the land the materials. This is the temporary measure calculated to maintain the usufruct until the building is reconstructed or replaced. (Vda. De Albar vs. Fabie 106 Phil. 855.)

117. Who shall be entitled to the war damage claim?

As far as the amount paid by the War Damage Commission is concerned, the same should also be subject to the usufruct because it has not been used in the construction of the new building. Hence, the naked owner shall pay to the usufructuary the legal interest per annum during the whole period of the usufruct. There is, however, an alternative to this obligation. The naked owner, if she desires to be relieved of this encumbrance, may turn over the

money to the usufructuary so that she may use it during her lifetime subject to the obligation to return it to the naked owner after her death. (Art. 612, CC; Vda.de Albar vs. Fabie, supra.)

118. Can the usufructuary demand reimbursement from the naked owner of real estate taxes paid by her on the property?

As far as the real estate taxes are concerned, we must distinguish between the taxes on the fruits and the taxes which are imposed directly on the capital. Under the Civil Code, while the first shall be at the expense of the naked owner. (Arts. 596, 597.) Consequently, as far as the second is concerned, the usufructuary can demand reimbursement.

119. What does the phrase "destroyed in any manner whatsoever" means?

It means that the destruction may be due thru fault, deceit or fortuitous event. Should the destruction be due to the fault of the naked owner, usufructuary, or a third person, the person at fault must indemnify.

120. A sold a parcel of land with two buildings thereon to B for P50,000 subject to the condition that A shall receive from B by way of life pension one-third of the rents of the two buildings. Without B's fault, the two buildings were totally destroyed by fire. B now alleges that the right to receive a life pension was extinguished upon the loss of the buildings. Is such contention valid? Give reasons to your answer. (1978)

Such contention is not valid. In other words, A's right to receive a life pension was not extinguished by the loss of the two buildings. Under the conditions agreed upon by and between A and B that A shall receive from B by way of life pension one-third of the rents of the two buildings, in reality, what was created or constituted was a life usufruct, with A as usufructuary, whereby A shall always be entitled during his lifetime to one-third of the rents of the two buildings. It is well settled that rents constitute earnings of the capital invested in the acquisition of both land and building. There can be land without building, but there can be no building without land. Therefore, in the case before us, the things in usufruct are the two buildings and the land itself. Under the Civil Code, in order that there will be an extinguishment of the usufruct, it is essential that the things in usufruct may be totally lost or destroyed (Art. 603). Here, there was no total loss. The land remains intact. Therefore, pursuant to the law on usufructs, A, the usufructuary, shall now have the right to make use of one-third of the land and the materials thereon. This is a temporary measure to keep the usufruct alive until the very things destroyed are reconstructed or replaced. (Vda. De Albar vs. Fabie, 106 Phil. 855).

121. A was given a usufruct over a building. He shares in the payment of the insurance over the building with the owner. In case of loss of the building, what are his rights?

ANSWER: His rights are:
He shall continue to enjoy the new building if the owner should construct one; or
He shall receive the interest on the insurance indemnity if the owner does not wish to rebuild.

122. Suppose the usufructuary refused to contribute to the insurance over the building, state the rules.

The owner shall received the full amount on the insurance indemnity in case of loss, should the usufructuary have refused to contribute to the insurance, the owner insuring the tenement alone, the latter shall receive the full amount of the insurance indemnity in case of loss, saving always the right granted to the usufructuary in the preceding article.

123. What is the rule when the property subject of usufruct is expropriated?

either:
Should the thing in usufruct be expropriated for public use, the owner shall be obliged

To replace it with another thing of the same value and of similar conditions;
or
To pay the usufructuary the legal interest on the amount of the indemnity for the whole period of the usufruct. If the owner chooses the latter alternative, he shall give security for the payment of interest.

124. If both the usufructuary and the naked owner were separately given the indemnity, what is the rule?

Each owns the indemnity given to him, the usufruct being totally extinguished. (Art 609, NCC)

125. What is the rule if the usufructuary alone was given the indemnity?

He must give it to the naked owner and compel the latter to return either the interest or to replace the property. He may even deduct the interest himself, if the naked owner fails to object. (Art 609, NCC)

126. Is the bad use of the thing in usufruct a ground to extinguish the right? Why?

No. Art. 610, NCC, provide that a usufruct is not extinguished by the bad use of the thing in usufruct.

127. What is the right of the owner if there is bad use of the thing by the usufructuary? Explain.

If the abuse should cause considerably injury to the owner, the latter may demand that the thing be delivered to him, binding himself to pay annually to the usufructuary the net proceeds of the same, after deducting the expenses and the compensation which may be allowed him for its administration. [Note: The bad use must cause considerable injury to the naked owner before the latter can exercise the right given to him by the law under this Article. The court shall determine if there is considerable injury to the naked owner.] (Art 610, NCC)

128. A, B, and C were given the usufruct of a parcel of land by X. A and B died, leaving C alone. What is the effect of A and B's death to the usufruct? Explain.

Nothing. Under the law, the usufruct constituted in favor of several persons living at the time of its constitution shall not be extinguished until the death of the last survivor. [This is the rule on simultaneous constitution of a usufruct.] (Art 611)

129. Now, what are the requisites before a usufruct may be constituted successively?

If the successive usufructs were constituted by virtue of a DONATION, all the donees - usufructuaries must be living at the time of the constitution-donation of the usufruct (Art. 756).

If the successive usufructs were constituted by virtue of a WILL, there should only be two successive usufructuaries; and both must have been alive or at least conceived at the time of testator's death (Arts. 863 and 869)

130. What are the rights and obligations of the usufructuary at the termination of the usufruct?

The following are the rights and obligations of the usufructuary at the termination of the usufruct:

He must RETURN the property to the naked owner, but he has the rights –

To RETAIN the property till he is reimbursed for TAXES ON THE CAPITAL which had been advanced by him (Art. 597, par. 2) and indispensable EXTRAORDINARY REPAIRS or EXPENSES insofar as there has been increase in the value (Art.594, par. 2).

To REMOVE removable improvements (Art. 579) or set them off against damages he has caused (Art. 580).

131. On the part of the naked owner, what are his rights and obligations at the termination of the usufruct?

The following are the rights and obligations of the naked owner at the termination of the usufruct:

He must CANCEL the security or mortgage provided that the usufructuary has complied with all of his obligations (Art. 612).

Must in case of rural leases, RESPECT LEASES made by the usufructuary, till the end of the agricultural year (Art. 572).

Make REIMBURSEMENTS to the usufructuary in the proper cases.

Article 613 - 629

132. Define easement or servitude.

An easement or servitude is "a real right constituted on another's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something on his property for the benefit of another thing or person." The statutory basis of this right is Article 613 of the Civil Code, which reads:

Art. 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate. (Valdez vs. Tabisula, GR No. 175510, July 28, 2008; Art 613, NCC)

Servitudes may also be established for the benefit of a community or of one or more persons to whom the encumbered estate does not belong (Art 614, NCC)

133. Is there any difference between easement and servitude?

In this jurisdiction, the terms "easement" and "servitude" are used interchangeably, strictly speaking, however, the first refers to the right while the second refers to the encumbrance.

134. What are the general rules relating to servitude?

The following are the general rules relating to servitude:

No one can have a servitude over his own property (Nulli res sua servit)
A servitude cannot consist in doing (Servitus in faciendo consistere nequit) There cannot be a servitude over another servitude (Servitus servitudes esse non potest)
A servitude must be exercised civiliter, i.e. in a way less burdensome to the owner of the land
A servitude must have a perpetual cause.

135. Distinguish easement from lease.

The following are the distinctions between easement and lease: In Lease –

It is a real right only when it is registered or when the lease (of real property) exceeds one year.
There is a rightful and limited use and possession without ownership
It may involve real or personal property.

In Easement –

It is always a real right (whether the easement be a real or personal easement)
There is rightful limited use without ownership or possession
It can refer only to immovables.

136. What are the different classes of easement?

The following are the different classes of easement: A) According to

the recipient of benefit:
- Real or predial
- Personal

B) According to manner of exercise:
- Continuous
- Discontinuous

C) According whether or not existence is indicated:

- Apparent
- Non-apparent

D) According to the purpose of the easement and the nature of limitation:
- Positive (Sufferance or Intrusion)
- Negative (Abstention or Restriction)

E) According to right given:
- Voluntary
- Legal
- Mixed

137. Distinguish real or predial easement from personal easement.

Real or predial easement is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. (Art 613) Personal easements, on the other hand, are those established for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong. (Art 614)

138. Distinguish personal easement from usufruct.

Personal easement cannot be alienated and the use is specifically designated. While a usufruct can be generally alienated and the use has a broader scope, and in general comprehends all possible uses of the thing.

139. Distinguish continuous easement from discontinuous easement.

Continuous easements are those the use of which are or may be incessant, without the intervention of any act of man. Discontinuous easements are those, which are used at intervals and depend upon the acts of man. (Heirs of the late Joaquin Limense vs. Rita vda. De Ramos, et al., G.R. No. 152319, October 28, 2009, Art 615)

140. Distinguish apparent easement from non-apparent easement.

Apparent easements are those, which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same. Non-apparent easements are those, which show no external indication of their existence. (Heirs of the late Joaquin Limense vs. Rita vda. De Ramos, et al., G.R. No. 152319, October 28, 2009, Art 615)

141. Distinguish positive easement from negative easement

Positive easements are those, which impose upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself. Negative easements are those, which prohibit the owner of the servient estate from doing something, which he could lawfully do if the easement did not exist. (Art 616, NCC)

142. Define voluntary easement, legal easement and mixed easement. Voluntary easements are those

constituted or established by will of the owners.
Legal easements are those established by law. (Art 619).
Mixed easements are those established partly by agreement of the parties and by law.

143. What are the characteristics of easements?

The characteristics of easements are: It is a real right
(jus in re)
It is a right imposed over another property (Jus in re aliena)
It is a limitation upon the servient owner's right of ownership. It is a right
constituted over an immovable.
It is inseparable from the estate to which it actively or passively belongs. It is indivisible.
It is intransmissible
It is perpetual, or has permanence.

144. What are the essential qualities of easement?

The following are the essential qualities of easements: Incorporeal
Imposed upon corporeal property
Confer no right to a participation in the profits arising from it
Imposed for the benefit of corporeal
Has 2 distinct tenements – dominant estate servient estate
The cause for its establishment must be perpetual

145. Can there be an easement on personal property?

There can be no easement imposed on personal property; only immovables, not as defined by the Code, but those, which really cannot be moved, may be burdened with easements. Such immovables include lands, buildings, roads, etc.

146. What does inseparability of easement mean?

Article 617 of the Civil Code provides that easements are inseparable from the estate to which they actively or passively belong.

The word inseparable indicates that independently of the immovable to which they are attached, easements do not exist.

147. What are the consequences of "inseparability of easements"?

The following are the consequences:

Easements cannot be sold or donated or mortgaged independently of the real property to which they may be attached.

Registration of the dominant estate under the Torrens system without the registration of the voluntary easements in its favor, does not extinguish the easements.

148. What is the effect of registration of the servient estate without the registration or annotation of the easement?

Easements shall continue to subsist and shall be held to pass with the title of ownership until rescinded or extinguished by virtue of the registration of the servient estate, (without the registration or annotation of the easements), or in any other manner. (Sec 39, Land Registration Act – Act 496 regarding the Torrens System, Cid vs. Javier, et al. L-14116, June 30, 1961)

149. When can a voluntary easement be considered as still existing despite the registration of the servient estate?

Although as a rule registration of the servient estate without the registration of the voluntary easement presumably extinguishes the easement, there is no extinguishment of said easement if:

The grantee or transferee of the servient estate actually knew of the existence of the unrecorded easement. (Mendoza v. Rosel, 74 Phil 87) In the case of a right of way, for example, the purchaser of the servient estate has no right to claim indemnity if he knew at the time of purchase that the easement existed, even if not registered.
There is an understanding or stipulation that the easement would continue to exist.

150. Emma bought a parcel of land from the Equitable-PCI Bank, which acquired the same from Felisa, the original owner. Thereafter, Emma discovered that Felisa had granted a right of way over the land in favor of the land of Georgina, which had no outlet to a public highway, but the easement was not annotated when the servient estate was registered under the Torrens System. Emma then filed a complaint for cancellation of the right of way on the ground that it had been extinguished by such failure to annotate. How would you decide the controversy (2001)?

The complaint for cancellation of right of way must fail. The failure to annotate the easement upon the title of the servient estate is not among the grounds for extinguishing an easement under Art. 631 of the NCC. Under Article 617, easements are inseparable from the estate to which they actively or passively belong. Once it attaches, it can

only be extinguished under Art. 631 and they exist even if they are not stated or annotated as an encumbrance on the Torrens Title of the servient estate. (II Tolentino 326, 1987 ed.)

Alternative answer:

The complaint for the cancellation of the right of way must be granted. The registration of the servient estate without the annotation of the said easement presumably extinguished the easement (Sec 39 Land Registration Act, Purugganan vs. Paredes L-23818, Jan 21, 1976)

151. What is meant by indivisibility of easement? (Art 618)

Easements are indivisible. If the servient estate is divided between two or more persons, the easement is not modified, and each of them must beat it on the part, which corresponds to him.

If it is the dominant estate that is divided between two or more person, each of them may use the easement in its entirety, without changing the place of its use, or making it more burdensome in any other way. (Art 618, NCC)

152. Can courts establish an easement through judicial order or decision?

No. Article 619 of the NCC provides that easements are established either by law or by the will of the owners. Thus, when the court says that an easement exists, it is not creating one (hence, there are no judicial easements); it merely declares the existence of an easement created either by law or by the parties or testator.

153. How are easements acquired?

Continuous and apparent easements are acquired either by virtue of a title or by prescription of ten years (Art. 620, NCC), while continuous non-apparent easements and discontinuous easement, whether apparent or non-apparent, can only be acquired by title. (Art 622, NCC)

154. What is meant by acquisition of easement by title?

Title here does not necessarily mean document. It means a juridical act or law sufficient to create the encumbrance. Examples of such title are law, donation, testamentary succession and contract.

155. Does intestate succession create an easement by title?

Intestate succession does not create an easement, for no act is involved. Hence, instead of creating an easement it transmits merely an easement already existing.

156. What are the easements that can be acquired only by title? Why?

Art 622 of the NCC provides the following easements that can be acquired only by title: Continuous non-apparent easements (because they are NOT PUBLIC). (See Art. 1118)
Discontinuous apparent easements (because the possession is INTERRUPTED). (See Art. 1118)
Discontinuous non-apparent easements (because the possession is neither public nor uninterrupted. (See Art. 1118)

157. How can the existence of an easement that can only be acquired by title be proved?

The existence of the said easement may be proved by showing of certain documents or proof of its origin.

In the absence of a document or proof showing the origin of an easement, which cannot be acquired by prescription, may be cured by a deed of recognition by the owner of the servient estate or by final judgment. (Art 623 NCC)

158. What is meant by "final judgment" in proving the existence of easement that can only be acquired by title?

In final judgment, the court does not create the easement, but merely declares its existence. Before said final judgment is made, it is essential of course that evidence of the existence of the easement, as by oral contract, be shown to the court.

159. Can the existence of a voluntary easement still be proved despite the absence of documents evidencing such existence?

Yes. As long as the existence of a voluntary easement can be proved in court, it is immaterial that there is no document evidencing the existence of the easement. (Duran, et Al v. Ramirez, et al., CA-CR No. 1824-R, June 27, 1949)

160. Is good faith or bad faith material in the acquisition of easement by prescription?

No. Article 620 only requires prescription of ten years, irrespective of the good faith or bad faith, the presence or absence of just title on the part of the possessor. The general rule on prescription are not applicable in cases of prescription provided for by special or particular provisions.

161. Are easements of right of way acquirable by prescription?

Easements for right of way are not acquirable by prescription.

An easement for right of way is not acquirable by prescription because, although it may be apparent, it is discontinuous in character. Under the NCC, only continuous and apparent easements can be acquired by prescription after ten years. (Ronquillo vs. Roco, 103 Phil 84; Art
620 NCC.)

162. Sometime in 1972, the Bicol Sugar Development Corporation (BISUDECO) constructed the disputed road. The said road was used by BISUDECO in hauling and transporting sugarcane to and from its mill site (Pensumil) and has thus become indispensable to its sugar milling operations. On October 30, 1992, Bicol Agro-Industrial Producers Cooperative, Inc. (BAPCI) acquired the assets of BISUDECO. Sometime in 1993, the owners of the land of the disputed road barricaded the said road, thereby causing serious damage and prejudiced to BAPCI. BAPCI contends that through prolonged and continuous use of the disputed road, BISUDECO acquired a right of way over the properties of the landowners, which right of way in turn was acquired by it when it bought BISUDECO's assets. Petitioner prayed that respondents be permanently ordered to restrain from barricading the disputed road and from obstructing its free passage. Decide the case.

It is already well established that a right of way is discontinuous and, as such, cannot be acquired by prescription. The conclusion is inevitable that the road in dispute is a discontinuous easement notwithstanding that the same may be apparent. To reiterate, easements are either continuous or discontinuous according to the manner they are exercised, not according to the presence of apparent signs or physical indications of the existence of such easements. Hence, even if the road in dispute has been improved and maintained over a number of years, it will not change its discontinuous nature but simply make the same apparent. To stress, Article 622 of the New Civil Code states that discontinuous easements, whether apparent or not, may be acquired only by virtue of a title. (Bicol Agro-Industrial Producers Cooperative, inc. (BAPCI) vs. Edmundo O. Obias, et al. G.R. No. 172077. October 9, 2009)

163. Supposed in the above problem, BAPCI contends that BISUDECO constructed the disputed road pursuant to an agreement with the owners of the rice fields the road traversed. The agreement provides that BISUDECO shall employ the children and relatives of the landowners in exchange for the construction of the road on their properties. How will you decide the case this time?

It depends.

Article 622 of the New Civil Code provides: "Art. 622. Continuous non-apparent easements, and discontinuous ones, whether apparent or not, may be acquired only by virtue of a title." Based on the foregoing, in order for petitioner to acquire the disputed road as an easement of right-of-way, it was incumbent upon petitioner to show its right by title or by an agreement with the owners of the lands that said road traversed. (Bicol Agro-Industrial Producers Cooperative, inc. (BAPCI) vs. Edmundo O. Obias, et al. G.R. No. 172077. October 9, 2009)
If BAPCI can prove the existence of such agreement, then such an easement can be declared in its favor. Otherwise, no such easement exists in its favor.

164. Is the easement of aqueduct acquirable by prescription?

An easement of aqueduct is not acquirable by prescription after 10 years because although it is continuous and apparent in character (Art 646 of the NCC.), under the Water Code of the Philippines (PD No. 1067.), all waters belong to the State; therefore they cannot be the subject of acquisitive prescription. Besides, a water right evidenced by a water permit is now mandatorily required by the law for water appropriator. (Jurado, 2008 Ed, page 417)

(Note: The easement of aqueduct is considered continuous and apparent easement, and may therefore be acquired by prescription. (Art 646). The reason is that the best interest of agriculture demands that this easement be available thru acquisitive prescription.) (Paras, 2002 Ed, page 661)

165. How shall the period of possession be computed in order that an easement may be acquired by prescription?

In order that an easement may be acquired by prescription, the time of possession shall be computed thus: In positive easements, from the day on which the owner of the dominant estate, or the person who may have made use of the easement, commenced to exercise it upon the servient estate; and in negative easements, from the day on which the owner of the dominant estate forbade, by an instrument acknowledged before the notary public, the owner of the servient estate, from executing an act which would be lawful without the easement. (Art 621, NCC.)

166. What is the so-called notarial prohibition? Why such prohibition is important?

Notarial prohibition is the prohibition imposed by the owner of the dominant estate, evidenced by an instrument acknowledged before the notary public, to the owner of the servient estate from executing an act which would be lawful without the negative easement (Art 621, NCC).

The law requires solemn formalities because easements are in the nature of encumbrance on the servient estate, constituting as they do, a limitation on the dominical right of the owner of the subjected property. As such, an oral prohibition was not sufficient, neither was a mere private writing. (Laureana A. Cid vs. Irene P. Javier, et al., L-14116, June 30, 1960).

167. Is the easement of light and view positive or negative?

It depends.

If the easement of light and vies is made on one's own wall and the wall does not extend over the neighbor's land, the easement is NEGATIVE, because he only creates an act of ownership, and to create an easement, a notarial prohibition is required.

If it is made on one's own wall which extends over the neighboring land, (invading its atmospheric are); or if made on a party wall, the easement is created because of an act of sufferance or allowance, thus the easement is POSITIVE. (Cortez vs. Yu Tibo, 2 Phil 24)

168. Can negative easements be acquired by prescription despite the fact that they are non- apparent?

While in general, negative easements cannot be acquired by prescription since they are non-apparent, still the very existence of Art. 621 (insofar as it relates to negative easements) prove that in certain cases, and for purposes of prescription, there are negative easements that may indeed be considered "apparent" not because there are visible signs of their existence but because of the making of the notarial prohibition. The notarial prohibition makes apparent what really is non-apparent.

169. When can the so-called apparent signs of an easement that apparently exist between two estates be considered?

The existence of an apparent sign of easement between two estates, established or maintained by the owner of both, shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless at the time the ownership of the two estates is divided, the contrary should be provided in the title of conveyance of either of them, or the sign aforesaid should be removed before the execution of the deed. (Art 624)

170. What is meant by "apparent signs" of easement provided in Art 624 NCC?

Sign of the easement does not mean a placard or sign post, but an outward indication that the easement exist. (Example: a road, showing a right of way or the existence of windows showing a right to light and view, and a right not to have others construct taller structures that would obstruct said light and view.) [Amor vs. Florentino, 74 Phil 404.)

It is not essential that there be an apparent sign between the two estates; it is important that there is an apparent sign that the easement exists between the two estates.

171. State the rules in apparent signs of easement between two estates.

The following are the rules in apparent sign of an easement between two estates:

Before the alienation, THERE IS NO TRUE EASEMENT, because there is only one owner.
After Alienation, There arises an easement IF the sign continues to remain there unless there is a contrary agreement.
There is NO easement if the sign is REMOVED or if there is an agreement to this effect.

172. X was the original owner of two (2) adjoining lots. He had constructed on one of the lots a house with windows overlooking the adjoining lot. In 1940, he sold the first lot including the house to A and the second lot to B. In 1995, B applied for a permit to construct a house on his lot. A opposed the approval of the application. The application, however, was approved. Subsequently, A brought an action to restrain B from constructing the house, unless it is erected at a distance of not less than three (3) meters from the boundary line. A contends that he has acquired an easement of light and view in accordance with Art 624 of the NCC, while B maintains that since he has never been formally prohibited by A from obstructing the light and view as required by Arts
621 and 668 of the NCC, consequently, there can be no basis for the existence of an easement of light and view. Decide the case stating your reasons.

A is correct. The case at bar falls squarely within the purview of Article 624 of the NCC which declares that the "existence of an apparent sign of easement between two (2) estates, established or maintained by the owner of both shall be considered, should either of them be alienated, as a title in order that the easement may continue actively and passively, unless, at the time of the ownership of the two (2) estates is divided, the contrary should be provided in the title of conveyance of either of them or the sign aforesaid should be removed before the execution of them or the sign aforesaid should be removed before the execution of the deed". All of the requisites for the application of this rule are present in this case. In the first place, there is an apparent sign of an easement between two (2) estates originally owned by one and the same person; in the second place, the sign was established by the original owner; in the third place, one or both estates were subsequently alienated; and in the fourth place, the contrary was not provided in the title of conveyance; neither was the sign removed. (Gargantos vs. Tan Yanon,
108 Phil 888)

173. FS was the owner of a big lot in Dagupan Street, Tondo, Manila. On the southern portion of the lot was a house with doors and windows overlooking the northern portion of the lot on which a small house was standing. FS subdivided the lot into two (2), and sold the southern portion to JB and the northern portion to TY. TY demolished the small house and obtained a permit to construct a 4-storey building on his portion, which would. Thus, obstruct the view from the doors and windows of JB's house. JB, therefore, filed an action to enjoin TY from constructing his building unless it is at a distance of not less than three (3) meters from the boundary line of two (2) portions. Will the action prosper? Why?

The action will prosper. According to Article 624 of the NCC, the existence of an apparent sign of an easement between two (2) estates established or maintained by the owner of both shall be considered, should either of them be alienated, as a title in order that the easement may continue actively or passively, unless at the time the ownership of the two (2) estates is divided, the contrary should be provided in the title of conveyance of either of them or the sign should be removed before the execution of the deed. All of the requisites prescribed by the law are present in the instant case. There is an apparent sign of the existence of an easement of light and view involving two (2) estates originally owned by one and the same person. This is indicated by the doors and windows of the house in the southern portion overlooking the northern portion. The sign was established by the original owner. The southern portion was subsequently alienated to JB and the northern portion was also alienated to TY. Furthermore, nothing contrary to the easement was stated in the deed of conveyance; neither was the sign removed. Therefore, the easement of light and view shall now be protected by the law. TY cannot construct his building unless he complies with the 3-meter rule as provided by law. (Gargantos vs. Tan Yanon, 108 Phil
888)

174. When can parties exercise the rights necessary for the use of easement?

Upon the establishment of an easement, all the rights necessary for its use are considered granted. (Art 625)

Necessary rights include repair, maintenance accessory easements such as the right of way if the easement is for the drawing of water.

175. Is there a need for the recording of voluntary easement? How about legal easement?

A document stipulating a voluntary easement must be recorded in the Registry of Property in order not to prejudice third parties. (Valdez vs. Tabisula, GR. 175510, July 28, 2008)

Registration is of course not generally essential for the legal easements since this exists as a matter of law and necessity.

176. What are the limitations upon the right of the owner of the dominant estate to exercise the easement once it is acquired either by title or by prescription?

The limitations are as follows: first, that the owner of the dominant estate cannot use the easement except for the benefit of the immovable originally contemplated; second, he cannot exercise it in another manner other than that previously established. (Art 626, NCC)

177. A, owner of a sugar central, entered into a contract with several sugar planters whereby he was given a right to construct a railroad passing through the estate of the latter. It was agreed that such railroad shall be used for transporting sugar canes to be milled in A's sugar central. Although only sugar canes belonging to the owners of the servient estates were transported when the railroad commenced operating, subsequently, even sugar canes belonging to other planters were transported. Is there now a change in the exercise of the easement?

It is submitted that there is no change in the exercise of the easement. This is so because in the title constituting it, there is no limitation with respect to the quantity or ownership of the sugar canes to be transported. (Valderama vs. North Negros Sugar Co., 48 Phil 492) It would be a different if there is an agreement that only sugar canes belonging to the owners of the servient estate shall be transported. In such case, there would be a change in the sense that the easement is now being used for the benefit of persons other than those originally contemplated.

178. X is granted an easement of right of way by Y to transport A's sugarcane over his (X) railway in 10 railroad cars a day. The railway was constructed by X over the land of Y. Due to the failure of A to supply sufficient sugarcane, and because of the need of increasing his sugar milling production, X takes the sugar cane of B, C, and D, and using the 20 railroad cars a day, transport them through the land of Y, to his sugar central. Has X violated the restrictions imposed by Y for the use of the easement? If not, why not? Give your reasons.

Yes, X has violated the restrictions imposed by Y for the use of the easement. According to the title constituting the easement, only A's sugar cane shall be transported over the X's railway at the rate of 10 railroad cars a day. Subsequently, X began transporting sugar cane belonging to B, C, and D. Not only that. He also began using 20 railroad cars a day. Clearly, there is now a violation of the two (2) limitations which the law, in Art 626 of the NCC, imposes upon an easement once it is acquired – first, that the owner of the dominant estate cannot use the easement except for the benefit of the immovable originally contemplated, and second, that he cannot exercise the easement in any other manner than that previously established.

179. Define Easement Appurtenant and Easements in Gross.

Easements with a dominant estate are called easement appurtenant, without the dominant estate, they are purely personal and may thus be referred to as easements in gross. In easements in gross, there is merely a personal interest in another's land. Note however, that a personal easement or an easement in gross is still a real property, not a personal property.

180. Define servient estate and dominant estate.

The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate. (Art 613, NCC)

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Article 630 - 646

181. What are the rights and obligations of the owners of dominate estate?

The following are the rights of owner of dominant estate: To use the easement (Art 626)

To exercise all rights necessary for the use of the easement. (Art 625)

To do, at his expense, all necessary works for the use and preservation of the easement (Art 627)

In a right of way, to ask for change in width of easement sufficient for needs of dominant estate (Art 651)

To ask for a mandatory injunction to prevent impairment or obstruction in the exercise of the easement as when the owner of the servient estate obstructs the right of way by building a wall or fence. (Resolme v Lazo, 27 Phil 416)

To renounce totally the easement if he desires exemption from contribution to expenses. (Art 628)

The following are the obligations of the owner of dominant estate:

To use the easements for the benefit of an immovable and in the manner originally established (Art 626)

To notify the owner of the servient estate before making repairs and to make repairs in a manner least convenient to servient estate. (Art627)

Not to alter the easement or render it more burdensome (Art 627)

To contribute to expenses of works necessary for use and preservation of servitude, if there are several dominant estates, unless he renounces his interest. (Art 628)

182. What are the rights and obligations of the owner of servient estate?

The following are the rights of the owner of servient estate:

To retain ownership and possession of the portion of his property not affected by the easement (Art 630)

To make use of the easement, unless deprived by stipulation provided that the exercise of the easement is not adversely affected (Art 628, par 2)

To change the location of a very inconvenient easement provided that an equally convenient substitute is made without injury to the dominant estate. (Art 629 2nd par)

The following are the obligations of the owner of servient estate:

Not to impair the use of the easement (Art 628, 1st Par)

To contribute proportionately to expenses if he uses the easement (Art 628 2nd Par)

In proper cases, to pay for the expenses incurred for the change of location or form of the easement (Art 629, par 2)

183. What are the modes of extinguishments of easements?

Easements are extinguished by: (a) merger; (b) non-user for 10 years; (c) the bad condition of the tenement or the impossibility of use; (d) the expiration of the term or fulfillment of the condition; (e) renunciation or waiver by the owner of the dominant estate; and (f) redemption agreed upon.

184. What are the other causes for extinguishment of easement?

Though not expressly mentioned in the Code, other causes are the following: (a) expropriation of the servient estate; (b) permanent impossibility to make use of the easement; (c) annulment, rescission, or cancellation of the title that constituted the easement; (d) abandonment of the servient estate; (e) resolution of the right of the grantor to create the easement; (f) registration of the servient estate as free, unless there is a stipulation or actual knowledge of the existence of the easement on the part of the transferee; and (g) in case of the legal easement of right of way, the opening of an adequate outlet to the highway extinguishes the easement, if the servient owner makes a demand for such extinguishment.

185. How do voluntary easements prescribe?

(a) The easement may itself prescribe; and

itself.

(b) The form or manner of using may also prescribe in the same manner as the easement

186. How do legal easements prescribe?

(a) Some legal easements do not prescribe, moreover, the right to exercise them cannot also prescribe but the manner and form of using them may prescribe, as in the case of the easement of right of way; and

(b). But some legal easements do prescribe, as in the case of the servitude of natural drainage.

187. What is the effect on prescription of use by one co-owner of the dominant estate?

The use benefits the other co-owners; hence, there will be no prescription even with respect to their own shares.

188. What is the reason for this Article?

The easement is indivisible so it applies so long as the co-ownership exists, unless in the meantime, the easement has been extinguished by other means.

189. What are legal easements?

They are the easement imposed by law, and which have for their object either public use or the interest of private persons.

190. What are the kinds of legal easement according to use or purpose?

(a) Those for public purpose; and

(b) Those for public interests.

191. What are the different legal easements?

The different legal easements are the following: (a) the easements relating to waters; (b) right of way; (c) party wall; (d) light and view; (e) drainage; (f) intermediate distances; (g) easement against nuisance; and (h) lateral and subjacent support.

192. In Tanedo vs. Bernad (165 SCRA 86), Cardenas was the owner of two lots. One lot was sold to Tanedo and the other was mortgaged. The mortgaged lot had a four-storey apartment and house constructed thereon with a septic tank. The other lot had on it a house. Thereafter, the second lot was sold to spouses Sim who blocked the sewage pipe.

It was held that absent of any statement abolishing the easement of drainage the use of the septic tank is continued by operation of law. The new owners of the servient estate cannot impair the use of the easement.

193. In Javellana vs. IAC (172 SCRA 280), Marsall owned a parcel of land adjoining a river and elementary school. Before owning the land, there existed already a main canal, transversing the property from the river up to the area of the school. Javellana together with others closed the canal and destroyed the dam, leading to damages caused to those benefiting from the canal.

It was held that such is violative against the owner of a dominant estate to have closed the canals and destroyed the dam which supplies water to the dominant estate.

194. How are public or communal easements governed?

(a) Special laws and regulations; and

(b) The Civil Code

195. How are legal easements for private interests governed?

(a) Agreement of interested parties provided not prohibited by law nor prejudicial to a third person;

(b) In default of (a), general or local law and ordinance for the general welfare; and

(c) In default of (b), the Civil Code.

196. What are the legal easements relating to waters?

The following are the legal easements relating to waters: (a) natural drainage of lands; (b) natural drainage of building; (c) easement on riparian banks and navigation, floatage, fishing, salvage; (d) easement of a dam; (e) easement for drawing water or for watering animals; (f) easement of aqueduct; and (g) easement for the construction of a stop lock or sluice gate.

197. When does the legal easement of natural drainage of lands prescribe?

It prescribes by non-user of 10 years.

198. What are obliged to be received by lower estates?

(a) Water which naturally and without the intervention of man depends from the higher estates, but not those collected artificially in reservoirs; and

(b) The stones and earth carried by the waters.

199. What are the duties of the servient estate?

The owner cannot construct works that would impede the easement such as a blocking dam, which would divert the flow, and burden another tenement, nor can he enclose his land by ditches or fences which would impede the flow but he may regulate or control the descent of the water. However, should he really cause an obstruction, as when he builds a dike, the easement may be extinguished, by non-user and barred by prescription if the action to destroy the dike is brought only after more than 10 years.

200. What are the duties of the dominant estate?

The duties of the dominant estate are the following: (a) he cannot make works which will increase the burden; (b) but he may construct works preventing erosion; and (c) if the descending waters are the result of artificial development or proceed from industrial establishments recently set up, or are the overflow from irrigation dams, the owner of the lower estate shall be entitled to compensation for his loss or damage.

201. May a contract extinguish a legal easement?

Thru a contract, onerous or otherwise, a legal easement may be extinguished provided no injury is suffered by a third person.

202. Is there a need of indemnity?

This article does not speak of any indemnity. It follows that no indemnity is required as long as the conditions laid down in the article are complied with.

203. Laurence owns an agricultural land planted mostly with fruit trees. Henry owns an adjacent land devoted to his piggery business which is two (2) meters higher in elevation. Although Henry has constructed a waste disposal lagoon

for his piggery, it is inadequate to contain the waste water containing pig manure, and it often overflow and inundates Laurence's plantation. This has increased the acidity of the oil in the plantation, causing the trees to wither and die. Laurence sues for damages caused to his plantation. Henry invokes his right to the benefit of a natural easement in favor of his higher estate, which imposes upon the lower estate of Laurence the obligation to receive the waters descending from the higher estate. Is Henry correct?

Henry is not correct. Article 637 of the New Civil Code provides that the owner of the higher estate cannot make works which will increase the burden on the servient estate. The owner of the higher state may be compelled to pay damages to the owner of the lower estate.

204. What is a river bank?

A bank is a lateral strip of shore washed by the water during high tides but which cannot be said to be flooded or inundated.

205. What are the easements that are allowed?

(a) On banks of rivers, a public easement for: i. navigation; ii. floatage; iii. fishing; iv. salvage; and

(b) On banks of navigable or floatable rivers; also the easement of tow path, for the exclusive service of river navigation and floatage.

206. When is there payment of indemnity?

(a) If the land be of public ownership – no indemnity; and

(b) If the land be of private ownership – indemnity

207. What is the burdened width of zone?

(a) 3 meters along the river margin, for navigation, floatage, fishing, salvage; and

(b) For tow path – i. 2 meters for animals; and ii. 1 meter for pedestrians.

208. What is the article about?

This article speaks of the easement for the construction, abutment, or buttress of a dam.

209. Is indemnity required?

Payment of indemnity is required.

210. When can easements for drawing water or for watering animals be compulsory? (a) They can be

imposed only for reasons of public use;

(b) They must be in favor of a town or village; and

(c) Proper indemnity must be paid.

211. What are the easements covered in this article?

The principal easements covered by Art. 641 and including Art. 640 are the easements for drawing water and watering animals, but there is also an accessory easement here combined with the first, namely, the easement of right of way.

212. What are the requirements for such an easement to exist? (a) It must be for public use;

(b) It must be in favor of a town or village;

(c) The right must be sought not by one individual, but by the town or village, thru its legal representation;

(d) There must be payment of the proper indemnity; and

(e) The right of way should have a maximum width of 10 meters, which cannot be altered by the owners of the servient estates although the direction of the path may indeed be changed, provided that the use of the easement is not prejudiced.

213. What is the easement of aqueduct?

The legal or compulsory easement of aqueduct is the right to make water flow thru intervening estates in order that one may make use of aid waters.

214. Does the existence of easement of right of way necessarily include the easement of aqueduct?

No.

215. Is the right to dig trenches and to lay pipelines for the conducting of water included in a contract granting a right of way?

No. The rights given are merely those of ingress or egress to and from the lot involved.

216. What is the right to acquire the easement of aqueduct?

Any person has the said right but indemnity must be paid to the owners of the intervening estates and to the owners of lower estates upon which the waters may filter or descend. The amount usually depends on duration and inconvenienced caused.

217. What are the four requisites for the legal easement of aqueduct?

There must be proof:

(a) That he can dispose of the water. Whoever believe that he ha the right to object, may set up an objection based on the fact that the person seeking the easement has no right to the legal use of the waters.

(b) That the water is sufficient for the use for which it is intended. But the use may be any kind as long as it is lawful. The use must be indicated, otherwise, it is hard to determine sufficiency.

(c) That the proposed course is the most convenient and the least onerous to third person s and the servient estate. The shortest distance is not necessarily the one.

(d) That proper administrative permission be obtained.

218. On what properties the easement of aqueduct cannot be imposed?

If for private interest, the easement cannot be imposed on existing buildings, courtyards, annexes, out-houses, orchards, or gardens bit can be for other things, like road, provided no injury is caused to said properties.

219. What is the right of the owner of the servient estate?

The servient owner may still enclose or fence the servient estate or even build over the aqueduct, so long as:

(a) No damage is caused; or

(b) Repairs and cleanings become impossible.

220. What are the possible ways of making effective the easement?

(a) Construction of an open canal but should neither be dangerous nor deep.

(b) Construction of a covered or closed canal if required by the legal authorities to minimize danger.

(c) Construction of tubes or pipes.

221. What are the obligations of the dominant owner?

The obligations of the dominant owner are the following:

(a) To keep the aqueduct in proper use or care; and

(b) To keep on hand necessary materials for its use.

222. What are the particular characteristics of the easement?

For legal purposed and to make the easement susceptible of acquisitive prescription for the benefit of agriculture, the easement is considered continuous and apparent though in reality, it may not be so.

223. A is the owner of a 70,000 sqm. lot. XYZ Co., an electric company without the knowledge and consent of A, took possession of the subterranean area of the land and constructed therein underground tunnels used for siphoning water from a nearby lake and in the operation of their projects. When A discovered the existence of the tunnels, it demanded that XYZ Co. pay damages for the deprivation of the use of his land and vacate the subterranean portion of the land. The court then ordered XYZ Co. to pay A the fair market value of said 70,000 sq. m of land however denying to dismantle the underground tunnels constructed beneath the lands. XYZ Co. prayed that the title of the land be transferred to their name since they will be paying for the entire land area instead of just the right of way for the tunnels they have built and a denial of this would be a clear case of unjust enrichment. A asserted that he would never have agreed to the alienation of his property in favor of anybody considering the fact that it was a valuable property that he has inherited from his father.
Is XYZ Co. correct on its averments?

It had been consistently ruled that an easement is compensable by the full value of the property despite the fact that XYZ Co. was only after a right-of-way easement, if by such easement it perpetually or indefinitely deprives the land owner of his proprietary rights by imposing restrictions on the use of the property.
In a similar case, it has been decided that considering the nature and effect of the installation power lines, the limitations on the use of the land for an indefinite period deprives private respondents of its ordinary use. For these reasons, Vines Realty is entitled to payment of just compensation, which must be neither more nor less than the money equivalent of the property.

Indeed, expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession. The right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term expropriation.
It is, therefore, clear that XYZ's acquisition of an easement of right-of way on the land of A amounted to expropriation of the portions or the latter's property for which he is entitled to a reasonable and just compensation. (NPC vs. OMAR G. MARUHOM, ET.AL December 23, 2009
GR NO. 183297)

224. Clark, Carlos, Conrad, Clifford and Kevin extrajudicially partitioned the parcel of land they have inherited adjudicating and dividing the land among themselves. Lots A, B, and C were adjacent to a city street. But Lots D and E were not, they being the interior lots. The heirs established in their extrajudicial partition an easement of right of way consisting of a 3-meter wide alley between Lots D and E that continued on between Lots A and B on to the street. But, realizing that the partition resulted in an unequal division of the property, the heirs modified their agreement by eliminating the easement of right of way along Lots A, D, and E, and in its place, imposed a 3-meter wide alley, an easement of right of way, that ran exclusively along the southwest boundary of Lot B. Clark, the owner of Lot A built his residential house and improved the easement of right of way. Soon, Lots B, C, D, and E were all sold to Roksan and closed the easement right of way. Clark lodged a complaint with the court which have decided on his favor upholding Clark's easement of right of way over the alley on Lot B and pointed out that the easement in this case was established by agreement of the parties for the benefit of Lots A, D, and E. consequently, only by mutual agreement of the parties could such easement be extinguished. Is the court correct in its decision?

No, in Sps. Manuel and Victoria Salimbangon vs. Sps. Santos and Erlinda Tan (January 20, 2009 GR NO. 185240) case, the court ruled that based on the testimony of one of the previous owners, the true intent of the parties was to establish that easement right of way for the benefit of the interior lots. Consequently, when ownership of Lots B, D, and E was consolidated into one owner, the easement ceased to have any purpose and became extinct.

The point is that, obviously, in establishing the new easement of right of way, the heirs intended to abandon the old one. Since this 3-meter alley on Lot B directly connected Lots D and E to the street, it is also obvious that only the latter lots were intended beneficiary. And, with the ownership of Lots B, D and E now consolidated in a common owner then the easement of right of way on Lot B may be said to have been extinguished by operation of law. The existence of a dominant estate and a servient estate is incompatible with the idea that both estates belong to the same person.

Article 647 - 663

225. What is easement? Distinguish easement from usufruct.

An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. (Art. 613, NCC)

Usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. (Art. 562, NCC). An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner (Art. 613, NCC).

Alternative Answer:

Easement is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner in which case it is called real or predial easement, or for the benefit of a community or group of persons in which case it is known as a personal easement.

The distinctions between usufruct and easement are:

a. Usufruct includes all uses of the property and for all purposes, including jus fruendi. Easement is limited to a specific use.

b. Usufruct may be constituted on immovable or movable property. Easement may be constituted only on an immovable property.

c. Easement is not extinguished by the death of the owner of the dominant estate while usufruct is extinguished by the death of the usufructuary unless a contrary intention appears.

d. An easement contemplates two (2) estates belonging to two (2) different owners; a usufruct contemplates only one property (real or personal) hereby the usufructuary uses and enjoys the property as well as its fruits, while another owns the naked title during the period of the usufruct.

e. A usufruct may be alienated separately from the property to which it attaches, while an easement cannot be alienated separately from which it attaches.

226. Can there be (A) an easement over a usufruct? (B) a usufruct over an easement? (C) an easement over another easement?

(A) There can be no easement over a usufruct. Since an easement may be constituted only on a corporeal immovable property, no easement may be constituted on a usufruct which is not a corporeal right.

(B) There can be no usufruct over an easement. While a usufruct may be created over a right, such right must have an existence of its own independent of the property. A servitude cannot be the object of a usufruct because it has no existence independent of the property to which it attaches.

Alternative Answers:

There cannot be a usufruct over an easement since an easement presupposes two (2) tenements belonging to different persons and the right attaches to the tenement and not to the owner. While a usufruct gives the usufructuary a right to use, right to enjoy, right to the fruits, and right to posses, an easement gives only a limited use of the servient estate.

However, a usufruct can be constituted over a property that has in its favor an easement or one burdened with a servitude. The usufructuary will exercise the easement during the period of usufruct.

(C) There can be no easement over another easement for the same reason as in (a). An easement, although it is a real right over an immovable, is not a corporeal right. There is a Roman maxim which says that: There can be no

servitude over another servitude.

227. What law shall govern the establishment, extent, form and conditions of the servitudes of waters?

They shall be governed by the special laws relating thereto insofar as no provisions therefor are made in the Civil Code.

228. Distinguish between: (A) Continuous and discontinuous easements; (B) Apparent and non – apparent easements; and (C) Positive and negative easements.

A. Continuous easements are those the use of which are or may be incessant, without the intervention of any act of man, while discontinuous easements are those which are used at intervals and depend upon the acts of man.

B. Apparent easements are those which are made known and are continually kept in view by external signs that reveal the use and enjoyment of the same, while non – apparent easements are those which show no external indication of their existence.

C. Positive easements are those which impose upon the owner of the servient estate the obligation of allowing something to be done or of doing it himself, while negative easements are those which prohibit the owner of the servient estate from doing something which he could lawfully do if the easement did not exist.

229. David is the owner of the subdivision in Sta. Rosa, Laguna, without an access to the highway. When he applied for a license to establish the subdivision. David represented that he will purchase a rice field located between his land and the highway, and develops it into an access road. But, when the license was already granted, he did not bother to buy the rice field, which remains unutilized until the present. Instead, he chose to connect his subdivision with the neighboring subdivision of Nestor, which has an access to the highway. Nestor allowed him to do this, pending negotiations on the compensation to be paid. When they failed to arrive at an agreement, Nestor built a wall across the road connecting with David's subdivision. David filed a complaint in court, for the establishment of an easement of right of way through the subdivision of Nestor which he claims to be the most adequate and practical outlet to the highway.

Art. 649,NCC.The owner, or any person who by virtue of a real right may cultivate or use any immovable which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the property indemnity.

Should this easement be established in such a manner that its use may be continuous for all the needs of the dominant estate, establishing a permanent passage, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate.

In case the right of way is limited to the necessary passage for the cultivation of the estate surrounded by others and for the gathering of its crops through the servient estate without the permanent way, the indemnity shall consist in the payment of the damage cause by such encumbrance.

This easement is not compulsory if the isolation of the immovable is due to the proprietor's own acts. (564a).

The easement of right of way shall be established at the point least prejudicial to the serviant estate, and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest (Art. 650, NCC; Vda. De Baltazar v. CA, 245
SCRA 333)

Alternative Answer:

The requisites for a compulsory easement of right of way are: (a) the dominant estate is surrounded by other immovables and is without an adequate outlet to a public street or highway; (b) proper indemnity must be paid; (c) the isolation must not be due to the acts of the owner of the dominant estate; and (d) the right of way claimed is at a point least prejudicial to the servient estate and, insofar as is consistent with this rule, where the distance to the street or highway is shortest.

230. Is David entitled to a right of way in this case? Why or why not?

No, David is not entitled to the right of way being claimed. The isolation of his subdivision was due to his own act or omission because he did not develop into an access road the rice field which he was supposed to purchase according to his own representation when he applied for a license to establish the subdivision (Floro vs. Llenado, 244 SCRA 713).

231. Don was the owner of an agricultural land with no access to a public road. He had been passing through the land of Ernie with the latter's acquiescence for over 20 years. Subsequently, Don subdivided his property into 20 residential lots and sold them to different persons. Ernie blocked the pathway and refused to let the buyers pass through his land.

A. Did Don acquire an easement of right of way?

Don did not acquire an easement of right of way. His passage through Ernie's land was by mere acquiescence or tolerance. He cannot claim to have acquired the easement of right of way by prescription, because this easement is discontinuous although apparent. Only continuous and apparent easements can be acquired by prescription of 10 years of uninterrupted use and enjoyment.

B. Could Ernie close the pathway and refuse to let the buyers pass?

As there is not right of way existing in favor of Don's land, Ernie could close the pathway. The lot buyers may request Don to establish a right of way as voluntary easement by entering into a contract with Ernie, or file action to constitute a legal easement by proving compliance with the four requisites for creating a legal easement of right of way under Articles 649 and 650 of the new Civil code.

C. What are the rights of the lot buyers, if any?

The lot buyers have the right to:
- Ask for a constitution of legal easement of right of way;

- Require Don to provide for a right of way. Under Sec. 29 of PD 957, the owner or developer of a subdivision without access to any existing road must secure a right of way;
- Formally complain to the Housing and land Use of Regulatory Board regarding Don's failure to comply with PD 957 specifically, 1. failure to provide for a right of way; 2. failure to convert the land from agricultural to residential under agrarian law; and failure to secure a license to sell.
- Commence criminal prosecution for violation of the penal provisions of PD 957, Sec. 39.

232. The coconut farm of Federico is surrounded by the lands of Romulo. Federico seeks a right of way through a portion of the land of Romulo to bring his coconut products to the market. He has chosen a point where he will pass through a housing project of Romulo. The latter wants him to pass another way which is one kilometer longer. Who should prevail?

Romulo will prevail. Under Article 650 of the New Civil Code, the easement of right of way shall be established at the point least prejudicial to the servient estate and where the distance from the dominant estate to a public highway is the shortest. In case of conflict, the criterion of least prejudice prevails over the criterion of shortest distance. Since the route chosen by Federico will prejudice the housing project of Romulo, Romulo has the right to demand that Federico pass another way even though it will be longer.

233. Where should an easement right of way be established?

The easement right of way shall be established at:
- The point least prejudicial to the servient estate; or
- Where the distance from a dominant estate to a public highway be the shortest.

234. Tomas Encarnacion's 3,000 square meter parcel of land, where he has a plant nursery, is located just behind Aniceta Magsino's two hectare parcel land. To enable Tomas to have access to the highway, Aniceta agreed to grant him a road right of way a meter wide through which he could pass. Through the years Tomas' business flourished which enable him to buy another portion which enlarged the area of his plant nursery. But he was still landlocked. He could not

bring in and out of his plant nursery a jeep or delivery panel much less a truck that he needed to transport his seedlings. He now asked Aniceta to grant him a wider portion of her property, the price of which he was willing to pay, to enable him to construct a road to have access to his plant nursery. Aniceta refused claiming that she had already allowed him a previous road right of way. Is Tomas entitled to the easement he now demands from Aniceta?

Article 651 of the Civil Code provides that the width of the easement must be sufficient to meet the needs of the dominant estate, and may accordingly change from time to time. It is the need of the dominant estate which determines the width of the passage. These needs may vary from time to time. As Tomas' business grows, the need for use of modern conveyances requires widening of the easement.

Alternative Answer:

The facts show that the need for a wider right of way arose from the increased production owing to the acquisition by Tomas of an additional area. Under Art.626 of the Civil Code, the easement can be used only for the immovable originally contemplated. Hence, the increase in width is justified and should have been granted.

235. How should the width of the easement or right of way be measured?

It shall be that which is sufficient for the needs of the dominant estate.

236. Can the dominant estate change the width of the right of way?

Yes, the width of the easement of right of way may accordingly be changed from time to time as to be sufficient for the needs of the dominant estate.

237. What are the instances where the servient estate shall be obliged to grant a right of way without indemnity?

When a piece of land acquired by sale, exchange or partition, is surrounded by other estates of the vendor, exchanger, or co-owner.

238. Is the donor in a simple donation obliged to grant a right of way without indemnity to the done?

No, in a case of simple donation, the donor shall be indemnified by the done for the establishment of the right of way.

239. What are the different instances where such indemnity is not required?

There are two instances where such indemnity is not required. They are:

(1) When a piece of land acquired by sale, exchange or partition, is surrounded by other estates of the vendor, exchanger, or co – owner. In such case he shall be obliged to grant a right of way without indemnity. (Art. 652, CC)

(2) When a piece of land required by donation surrounds the estate of the donor or grantor. In such case, the done or grantee shall be obliged to grant or right of way without indemnity. (Art. 653, CC.) However, if it is the land donated that is surrounded by the estate of the donor or grantor, although the latter is obliged to grant a right of way, he can demand the required indemnity. (Art. 652, CC.)

240. RR owns a lot which he bought from Sobrina Rodriguez Lombos Subdivision. The subdivision provided a right of way units subdivision plan for the buyers of its lots. The road lot, however, is still undeveloped and causes inconvenience to RR when he uses it to reach the public highway. RR filed a complaint for an easement of a right of way Gatchalian Realty. Is RR entitled to an easement of a right of way through the Gatchalian Avenue, which is owned by Gatchalian Realty?

The facts stated in the above problem are those in the case of REMIGIO O. RAMOS, SR. v. GATCHALIAN REALTY,INC, ASPREC, et al., G.R No. 75905, October 12, 1987, where the supreme court dismissed the case for lack of merit and held that RR should have, first and foremost, demanded from the Sobrina Rodriguez Lombos Subdivision the improvement and maintenance of lot 4133-G112 (the road) as his road right of way because it was from said subdivision that he acquired his lot and not from the Gatchalian realty or the ASPREC. To allow RR access to Sucat Road (the main road) through Gatchalian Avenue inspite of a road right of way provided by Sobrina Rodriguez Lombos Subdivision for its buyer is to ignore what jurisprudence has consistently maintained through the years regarding

an easement of a right of way, that "mere convenience for the dominant estate is not enough to serve as its basis. To justify the imposition of this servitude, there must be a real, not a fictitious or artificial, necessity for it." (See Tolentino, Civil Code of the Philippines, Vol. II, 2nd Ed., 1972, p. 371).

241. A was allowed by B to a permanent right of way on his estate. The right of way then needed some repairs so A is compelling B to make the necessary repairs because he claims that the right of way forms part of B's property. Is A correct?

No, A is not correct. Under the law, if the right of way is permanent, the necessary repairs shall be made by the owners of the dominant estate.

242. Who shall bear the taxes on the right of way?

A proportionate share of the taxes shall be reimbursed by the owner of the dominant estate to the proprietor of the servient estate.

243. What is the effect upon the right of way if the owner of the dominant state had joined his estate to another abutting on a public road if a new road is opened giving it access?

So long as the public highway substantially meets the needs of the dominant estate, the owner of the servient estate, if provided that he must return what he may have received by way of indemnity. In such case, the interest on the indemnity shall be deemed to be in payment of rent for the use of the easement. (Art. 655, CC.)

244. "A", owner of an agricultural land, which had no connection with a public road, has been passing through a pathway across the land of "B" with the latte's tolerance for over twenty years. "A" subdivided his property into 20 residential lots and sold them to different persons. "B" blocked the pathway and refused to let the buyers pass.

A. Did "A" acquire an easement of right of way? Why?

"A" did not acquire an easement of right of way. According to the Civil Code, continuous and apparent easements are acquired either by virtue of a title or by prescription after ten years. Continuous non – apparent easements and discontinuous easements, whether apparent or not, may be acquired only by virtue of a title. It is obvious that an easement of right of way is discontinuous in character because it is used only at intervals and its use requires the acts or intervention of man. It is also obvious that use by tolerance is not equivalent to a title. Consequently, since "A" never acquired any title from "B" and since the easement cannot be acquired by prescription because of its discontinuous character, "A" did not acquire any easement of right of way.

"A" did not acquire an easement of right of way. Obviously, he does not possess any title to pass through the property of "B". So, the only possible basis for the acquisition of the easement would be prescription after ten years. In order that the easement can be acquired by prescription after ten years, it is essential that it may be both continuous and apparent at the same time. An easement of right of way is discontinuous. Therefore, it cannot be acquired by prescription after ten years.

(Note: The above answers are based on Arts.620 and 622 of the Civil Code and on Cuayang vs. Benedicto vs. Benedicto, 37 Phil.781, and Ronquillo vs. Roco, 103 Phil.84. The Committee, however, respectfully recommends that if the bar candidate answers the problem by invoking Tolentino's opinion that if the right of way is permanent and has an apparent sign, there is no reason why it cannot be acquired by prescription, it should be properly credited.)

B. Could "B" close the pathway and refuse to let the lot buyers pass? Reason.

Yes, "B" could close the pathway and refuse to let the buyers pass. The pathway belongs to him. Under the Civil Code, every owner may enclose or fence his land or tenement by means of walls, ditches, live or dead hedges, or by other means without detriment to servitudes constituted thereon.

(Note: The above answer is based on Art.430 of the Civil Code. The committee again recommends that if the bar candidate comes out with an answer in accordance with Tolentino's opinion (supra), it should be properly credited.)

C. What are the rights of the lot buyers, if any? Explain.

The lot buyers can now demand for the establishment of a legal or compulsory easement of right of way. Since their lots are surrounded by other immovables without adequate outlet to the public highway and this is not imputable to their own acts, they now have a perfect right to do so. However they must comply with two other requisites. They must pay to "B" the proper indemnity. The right of way must be at a point least prejudicial to the servient estate, and, insofar as consistent with the rule, where the distance to the public highway may be the shortest.

(Note: The above answer is based on Arts.649 and 650 of the Civil Code and on Locsin vs. Climaco, 26 SCRA 816).

245. How shall the indemnity to be paid by the owner of the dominant estate to the owner of the servient estate in easements of right of way be assessed?

We must distinguish. If the easement is permanent and general in the sense that its use may be continuous for all the needs of the dominant estate, the indemnity shall consist of the value of the land occupied and the amount of the damage caused to the servient estate, however, if the easement is permanent but limited to the necessary passage for the cultivation of the dominant estate, or if the easement is merely temporary, such as for the purpose of carrying materials for the construction, repair, improvement, alteration or beautification of a building, the indemnity shall consist only in the payment of the damage caused by such encumbrance.(Arts, 649, 656,CC)

246. Emma bought parcel of land from Equitable – PCI Bank, which acquired the same from Felisa, the original owner. Thereafter, Emma discovered that Felisa had granted a right of way over land in favor of the land of Georgina, which had no outlet to a public highway, but the easement was not annotated when the servient estate was registered under the Torrens system. Emma then filed a complaint for cancellation of the right of way, on the ground that it had been extinguished by such failure to annotate. How would you decide the controversy?

The complaint for cancellation of easement of right of way must fall. The failure to annotate the easement upon the title of the servient estate is not among the grounds for extinguishing an easement under Art.631 of the Civil Code. Under Article 617, easements are inseparable from the estate to which they actively or passively belong. Once it attaches, it can only be extinguished under Art. 631 and they exist even if they are not stated or annotated as an encumbrance on the Torrens title of the servient estate. (II Tolentino 326, 1987 ed.)

Alternative Answer:

Under section 44, PD No. 1529, every registered owner receiving a certificate of title pursuant to a decree of registration, and every subsequent innocent purchaser for value, shall hold the same free from all encumbrances except those noted on said certificate. This rule, however, admits of exceptions.

Under Act 496, as amended by Act No. 2011, and Section 4, Act 3621, an easement if not registered shall remain and shall be held to pass with the land until cut-off or extinguished by the registration of the servient estate. However, this provision has been suppressed in Section 44, PD No. 1529. In other words, the registration of the servient estate did not operate to cut –off or extinguish the right of way. Therefore, the complaint for the cancellation of the right of way should be dismissed.

247. How are easements acquired?

Continuous and apparent easements are acquired either by virtue of title or by prescription of ten years (Art.620, CC), while continuous nonapparent easements and discontinuous easements whether apparent or nonapparent; can only be acquired by virtue of a title (Art.622, CC).

248. In acquiring easement by prescription, how shall the period of possession be computed?

In order that an easement may be acquired by prescription, the time of possession shall be computed thus: In positive easements, from the day on which the owner of the dominant estate, or the person who may have made use of the easement, commenced to exercise it upon the servient estate; and in negative easements, from the day on which the owner of the dominant estate forbade, by an instrument acknowledge before a notary public, the owner of the servient estate, from executing an act which would be lawful without the easement.

249. About fifteen years ago, Adelaida constructed a house on her lot at Quezon City adjoining a lot owned by Bernie.

She provided it with several windows overlooking Bernie's lot half a meter away from the boundary line. A month ago, Bernie brought an action against Adelaida for the closure of the windows alleging that they violate the law on distances.

A. Has Adelaida acquired an easement of light and view by prescription? B. Will the action of Bernie prosper?

C. If the action will not prosper, will that not be tantamount to saying that Adelaida has already acquired an easement of light and view?

A. Adelaida has not acquired an easement of light and view by prescription after ten years. There are two reasons for this. In the first place, there was no formal prohibition as required by law. This should have been done by means of an instrument acknowledge before a notary public wherein she should have prohibited Bernie from obstructing his light and view. She did not. In the second place, she did not observe the legal requirement that there should be a distance of at least two meters between the windows and Bernie's lot, since the view is direct. According to the Civil Code, non – observance of this distance does not rise to prescription.

B. The action will not prosper because more than ten years has already elapsed from the time the opening of the windows. Bernie's right of action has already prescribed.

C. This is not tantamount to saying that Adelaida has already acquired an easement of light and view. Under the Civil Code, nobody can prevent Bernie from obstructing Adelaida's light and view by constructing a building on his lot or by raising a wall thereon contiguous to the windows of Adelaida.

250. Why is the subject of party walls placed under the law on easement instead of under the law on co-ownership?

Strictly speaking, a party wall is a kind of co-ownership, as a consequence of which the laws on co-ownership are applicable. However, it has a special characteristic which distinguishes it from all other kinds of co-ownership. In ordinary co – ownership, a co – owner cannot do anything on the property for his exclusive benefit, because it would impair the rights of the other co-owner, whereas in party wall there is no such limitation.

Thus, in the latter, the law grants to the co – owners the right to make works on the wall for their exclusive benefit. Such a grant can have only one possible basis and that would be a right of easement. (4 Manresa 762 – 763.) Consequently, the subject of party walls has been placed under the law on easements instead of under the law on co – ownership.

251. When is an easement of a party wall presumed to exist? (1946)

The existence of an easement of party wall is presumed, unless there is a title, or exterior sign, or proof to the contrary:

(a) In dividing walls of adjoining buildings up to the point of common elevation;
(b) In dividing walls of gardens or yards situated in cities, towns, or rural communities; and
(c) In fences, walls and live hedges dividing rural lands. (Art. 659, CC.)

252. What is the exemption on the presumption that an easement of party wall is in existence?

It is understood that there is an exterior sign, contrary to the easement of party wall: (a) Whenever in the dividing wall of buildings there is a window or opening;

(b) Whenever the dividing walls, on one side, straight and plumb on all its facement, and on the other, it has similar conditions on the upper part, but the lower part slants or projects outward;

(c) Whenever the entire wall is built within the boundaries of one of the estates;

(d) Whenever the dividing wall bears the burden of the binding beams, floors and roof frame of one of the buildings, but not those of the others;

(e) Whenever the dividing wall between courtyards, gardens, and tenements is constructed in such a way that the coping sheds the water upon only one of the estates;

(f) Whenever the dividing wall, being built of masonry, has stepping stones, which at certain intervals project from the surface on one side only, but not on the other;

(g) Whenever lands enclosed by fences or live hedges adjoin others which are not enclosed.

In all these cases, the ownership of the walls, fences or hedges shall be deemed to belong exclusively to the owner of the property or tenement which has in its favor the presumption based on any one of these signs.

253. What is the presumption on ditches or drains opened between two estates?

It is presumed to be common to both estates provided there is no title or sign showing ownership to such ditches or drains.

254. What is the sign contrary to part-ownership on ditches and drains opened between two estates?

Whenever the earth or dirt removed to open the ditch or to clean it is only on one side thereof, the ownership of the ditch shall belong exclusively to the owner of the land having this exterior sign.

255. Who shall bear the costs of repairs and construction of party walls and the maintenance of fences, live hedges, ditches, and drains owned in common?

They shall be borne by all the owners of the lands or tenements having the party wall in their favor, in proportion to the right of each.

256. Can an owner benefited by the party wall be exempted from the charge?

Yes, any owner may exempt himself from contributing to this charge by renouncing his part-ownership of the party wall.

257. Is there an exception to this exemption from charge?

Yes, any owner may exempt himself from contributing to this charge by renouncing his part-ownership, except when the party wall supports a building belonging to him.

258. A is the owner of a building supported which was supported by a party wall owned in common by him and B. A now desires to demolish his building and so he renounced his part- ownership of the wall. A now tells B that he is exempted from any charges invoking the provisions of Art. 662 of the Civil Code. Is A correct?

No, on this occasion only, the cost of all repairs and work necessary to prevent any damage which the demolition may cause the party wall shall be borne by A thus, he cannot exempt himself from this charge using Art. 662 of the Civil Code.

Article 664 - 680

259. A and B are the common owners of a party wall. A increased the height of the party wall and afterwards was charging B of the expenses. Can A validly charge B for the expenses?

No, Art. 664 states that every owner may increase the height of the party wall, doing so at his own expense and paying for any damage which may be caused by the work, even though such damage be temporary.

260. What are the other obligations of the owner desiring to raise a party wall?

The owner increasing the height of the party wall shall be obliged:

A. To pay the expenses of maintaining the wall in the part newly raised or deepened at its foundation;

B. For indemnity for the increased expenses which may be necessary for the preservation of the party wall by reason greater height or depth which has been given it;

C. To reconstruct the party wall if it cannot bear the increased height at his own expense; and

D. To give the space from his own land if for the purpose of the reconstruction it be necessary to make the party wall thicker.

261. How shall the period of prescription for the acquisition of an easement of light and view be counted?

The period of prescription for the acquisition of an easement of light and view shall be counted:

(a) From the time of the opening of the window, if it is through a party wall; or

(b) From the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate (Art. 668 CC).

262. FS was the owner of a big lot in Dagupan Street, Tondo, Manila. On the southern portion of the lot was a house with doors and windows overlooking the northern portion of the lot on which a small house was standing. FS subdivided the lot into two, and sold the southern portion to JB and the northern portion to TY. TY demolished the small house and obtained a permit to construct a four storey building on his portion which would thus obstruct the view from the doors and windows of JB's house. JB therefore filed an action to enjoin TY from constructing his building unless it is at a distance of not less than 3 meters from the boundary lines of the two portions. Will the action prosper? Why?

The action will prosper. According to the Civil Code, the existence of an apparent sign of easement between two estates established or maintained by the owner of both shall be considered, should either of them be alienated, as a title in order that the easement shall continue actively and passively, unless at the time the ownership of the two estates is divided, the contrary should provided in the title of conveyance of either of them or the sign should removed before the execution of the deed. All of the requisites prescribed by the law are present in the instant case. There is an apparent sign of the existence of an easement of light and view involving two estates originally owned by one and the same person. This is indicated by the doors and windows of the house in the southern portion overlooking the northern portion. The sign was established by the original owner. The southern portion was subsequently alienated to JB and the northern portion was alienated to TY. Furthermore, nothing contrary to the easement was stated in the deed of conveyance; neither was the sign removed. Therefore, the easement of light and view shall now be protected by the law. TY cannot construct his building unless he complies with the three – meter rule as provided by law. (Gargantos vs. Tan Yanon, 108 Phil. 888).

263. Lauro owns an agricultural land planted mostly with fruit trees. Hernando owns an adjacent land devoted to his piggery business, which is two (2) meters higher in elevation. Although Hernando has constructed a waste disposal lagoon for his piggery, it is inadequate to contain the waste water containing pig manure, and it often overflows and inundates Lauro's plantation. This has increased the acidity of the soil in the plantation, causing the trees to wither and die. Lauro sues for damages caused to his plantation. Hernando invokes his right to the benefit of a natural easement in favor of his higher estate, which imposes upon the lower estate of Lauro the obligation to receive the water descending from the higher estate. Is Hernando correct?

Hernando is wrong. It is true that Lauro's land is burdened with the natural easement to accept or receive the water which naturally and without interruption of man descends from a higher estate to a lower estate to a lower

estate. However, Hernando has constructed a waste disposal lagoon for his piggery and it is this waste water that flows downward to Lauro's land. Hernando has, thus, interrupted the flow of water and has created and is maintaining a nuisance. Under Art.697 NCC, abatement of a nuisance does not preclude recovery of damages by Lauro even for the past existence of a nuisance. The claim for damages may also be premised on Art. 2191(4) NCC.

Alternative Answer:

Hernando is not correct. Article 637 of the New Civil Code provides that the owner of the higher estate cannot make works which will increase the burden on the servient estate. (Remman Enterprises, Inc. v. CA, 330 SCRA 145 (2000)). The owner of the higher estate may be compelled to pay damages to the owner of the lower estate.

264. A is the owner of a four – story building which adjoins a three – story house owned by B. A story of the two buildings has a height of 3 meters. In 1950, A opened in the dividing wall of the edifices two windows each measuring one meter square, the first in the fourth story of his building close to the ceiling, and the second in the third story, the window directly overlooking a small open terrace in the third floor of B's house, In 1981, B demanded the closure of the two (2) windows. As A's counsel, what legal advice will you extend to him and the reasons in support thereof?

(a) We have to qualify as to which window, the first window or the second window. With regard to the first window on the fourth floor, the action will prosper because A has not acquired any legal easement of light and view. He did not make any notarial demand and the window opens through a wall belonging exclusively to A, not a party wall. On the other hand, with respect to the second window, the wall is a party wall and it has been existing there for 30 year, therefore A has already acquired a legal easement.

(b) As regards the easements of light and view, opening of windows which violate the provisions of the Civil Code with respect to distance to the boundary line does not give rise to prescription by express provision of law.

(c) The dividing wall appears to be owned by A exclusively. Accordingly, Art.670 will apply. If it were not a party wall, Art.669 would apply. If it is a party wall, since the dividing wall is evidently the common party wall of these two edifies, the easement of light and view has been acquired by prescription after the lapse of 31 years from the opening through the party wall.

(d) As counsel for A, I would advised him to resist the demand of B on the ground that A has an easement in regard to these openings, it appearing that A had continuous use thereof that lasted for over 30 years.

(e) The dividing wall appears to be owned by A. Art.670 provides that "No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property. Neither can side or oblique views upon or towards such conterminous property be had, unless there be a distance of sixty centimeters. The nonobservance of these distances does not give rise to prescription".

Art.669 states that "when the distances in Article 670 are not observed, the owner of a wall which is not a party wall, adjoining a tenement or piece of land belonging to another, can make in it openings to admit light at the height of the ceiling joints or immediately under the ceiling, and of the size of thirty centimeters square, and, in every case, with an iron grating imbedded in the wall and with a wire screen."

(f) Since the dividing wall is evidently the common wall (party wall) of the two adjoining edifices, the easement of fight and view has been acquired by prescription after the lapse of 31 years from the opening through the party wall (Art.668, Civil Code). Nevertheless, the owner of the tenement or property adjoining the wall in which the openings are made can close them should he acquire part – ownership thereof, if there is no stipulation to the contrary.

(g) As A's legal counsel, I would advise him to resist B's demand as the action to close the openings has already prescribed although the easement itself of light and view has not been acquired by prescription.

265. Goldcrest Realty Corporation (Goldcrest) is the developer of Cypress Gardens, a ten-storey building located at Herrera Street, Legaspi Village, Makati City. On April 26, 1977, Goldcrest executed a Master Deed and Declaration of Restrictions3 which constituted Cypress Gardens into a condominium project and incorporated respondent Cypress Gardens Condominium Corporation (Cypress) to manage the condominium project and to hold title to all the common areas. Title to the land on which the condominium stands was transferred to Cypress under Transfer Certificate of Title No. S-67513. But Goldcrest retained ownership of the two-level penthouse unit on the ninth and tenth floors of the condominium registered under Condominium Certificate of Title (CCT) No. S-1079 of the Register of Deeds of

Makati City. Goldcrest and its directors, officers, and assigns likewise controlled the management and administration of the Condominium until 1995.

Following the turnover of the administration and management of the Condominium to the board of directors of Cypress in 1995, it was discovered that certain common areas pertaining to Cypress were being occupied and encroached upon by Goldcrest. Thus, in 1998, Cypress filed a complaint with damages against Goldcrest before the Housing and Land Use Regulatory Board (HLURB), seeking to compel the latter to vacate the common areas it allegedly encroached on and to remove the structures it built thereon. Cypress sought to remove the door erected by Goldcrest along the stairway between the 8th and 9th floors, as well as the door built in front of the 9th floor elevator lobby, and the removal of the cyclone wire fence on the roof deck. Cypress likewise prayed that Goldcrest pay damages for its occupation of the said areas and for its refusal to remove the questioned structures.

By erecting an officer structure on the limited common area of a condominium despite its exclusive right to use the same, it impaired the easement and illegally altered the condominium plan. It likewise breached the right when it leased and the structures are not necessary for the use and preservation of the easement.

The owner of the dominant estate cannot violate any of the following prescribed restrictions on its rights on the servient estate, to wit: (1) it can only exercise rights necessary for the use of the easement;20 (2) it cannot use the easement except for the benefit of the immovable originally contemplated;21 (3) it cannot exercise the easement in any other manner than that previously established;22 (4) it cannot construct anything on it which is not necessary for the use and preservation of the easement;23 (5) it cannot alter or make the easement more burdensome;24 (6) it must notify the servient estate owner of its intention to make necessary works on the servient estate;25 and (7) it should choose the most convenient time and manner to build said works so as to cause the least convenience to the owner of the servient estate.26 Any violation of the above constitutes impairment of the easement.

266. What is a foreshore land?

Foreshore land is defined as that strip of land that lays between high and low water marks and it is alternatively wet and dry according to the flow of the tides. It is that part of the land adjacent to the sea, which is alternately covered and left dry by the ordinary flow of tides. It is part of the alienable land of the public domain and may be disposed of only by lease and not otherwise. It remains part of the public domain and it is outside the commerce of man and not capable of private appropriation. (Manase et.al v. Sps. VelaSCO ET AL. January 29, 2009)

267. In increasing the height of the party wall, what are the rules to be observed?

a) The owner must do it at his own expense.
b) The owner must pay the necessary damages caused, even if the damage be temporary.
c) He must bear the costs of maintenance of the portion added. d) He must pay the increased cost of preservation.
e) He must reconstruct if original wall cannot bear the increased height.
f) He must give the additional space (land necessary if the wall is to be thickened).

268. Who is the exclusive owner of the additions?

He will however be the exclusive owner of the additions unless Article 665 is availed of.

269. How the other owners may acquire past ownership in the additions?

The value of the additions at the time of acquisition by the others not at the time of construction should be paid.

270. What rule shall govern by the use of the wall by the co-owner?

Every part-owner of the party wall may use it in proportion to the right he may have in the co-ownership, without interfering with the common and respective uses by the other co-owners.

271. What are the 2 kinds of easements?

a) the easement of light - jus luminum (as in the case of small widows, not more than 30 cm square, at the height of the ceiling joint, the purpose of which is to admit light and a little air but not view).

b) The easement of view (servidumbre prospectus) as in the case of full or regular windows overlooking the adjoining state [incidentally although the purpose here is view, the easement of light is necessarily included, as well as the easement of altius non tollendi (not to build higher for the purpose of destruction].

272. A and B are co-owners of the party wall. A makes the opening without B's consent, what will B's right?

B can order that the opening be closed unless of course a sufficient time for prescription has elapsed-10 years from the opening of the window.

273. Suppose in the preceding example, A was allowed to make an opening without B's consent, what is the consequence of opening on the wall?

There is a distinct possibility that a will later claim the whole wall as his in view of the exterior sign (Art.660 par. 1). Moreover, it is as if A was allowed to use the whole thickness of the wall.

274. How shall the period of prescription for the acquisition of an easement of light and view be counted?

(a) From the time of opening of the window if it is through a party wall or;

(b) From the time of the formal prohibition upon the proprietor of the adjoining land or tenement if the window is through a wall on the dominate estate.

275. When an easement of light and view is positive and when it is negative?

When the window or opening is made through a party wall or a wall belonging to the owner of the adjoining tenement, the easement of light and view is positive, but when the window or opening is made through a wall of the dominant estate the easement of light and view is negative.

276. A and B owns a party wall. A without B's consent made an opening on December 9, 2002. In 2003, may B still close the opening?

Yes, for no easement has not yet been acquired by A (Art.668 par.1).

277. In the preceding example, can B close the window on December 10, 2012?

No more, for more than 10 years has elapsed; and A has already acquired he easement.

278. A constructed a building on a residential lot belonging to him 1 meter distant from the boundary line with B's lot. On the wall directly facing B's lot, A opened non-regulation window to admit light into his building with the knowledge of B. 15 years after, B constructed a high wall 1 meter distant from the boundary with A's lot, thus, obstructing the light entering into A building. A sued for the demolition of B's wall asserting a servitude not to build beyond a certain height in his favor acquired by prescription by reason of which B cannot build the wall. Will A's action prosper? Reasons (1971)

A's action will not prosper for the following reasons:

Since the windows were made through a wall on the dominant state, in order that A can acquire the easement or servitude of light and view, including the corollary right of altius non tollendi, by prescription, he should have formally prohibited B from obstruction from his light and view. The prohibition must be made in a public instrument acknowledge before a notary public pursuant to Art. 621.

The windows are non-regulation windows, they are 1 meter distant from the boundary line separating the 2 estates, thus violating the rule prescribed by Art.670 of the NCC that no windows which afford a direct view towards an adjoining tenement can be made without leaving a distance of 2 meters between the wall on which they are made and such contagious property. According to the said article, non observance of this distance does not give rise to the prescription.

279. Suppose that a building is constructed up to the boundary line, or suppose that a distances require in Art.670 are not

observed, what are the rights of the owner of the building and of the owner of the adjoining tenement with regard to the making of any window or opening?

When the distances in Art. 670 are not observed, the owner of a wall which is not a party wall, adjoining a tenement or piece of land belonging to another, can make in it opening to admit light at the height of the ceiling •••••• or immediately under the ceiling, and of the site of 30 cm square, and in every case with an iron granting imbedded in the wall and with a wire screen. Nevertheless, the owner of the tenement or property adjoining the wall in which the openings are made can close them should he acquired part-ownership thereof, if there be no stipulation of the contrary. He can also obstruct them by constructing a building on his land or by raising a wall thereon contiguous to that having such opening, unless an easement of light has been acquired.

280. A has made restricted windows on his own wall for light. What can the adjoining or owner do?

a) he can obstruct the light:
1) by constructing a higher building on his own land.
2) or by raising a blocking wall (in both cases he cannot make the obstruction if the easement of the light has been acquired 10 yrs after the notarial prohibitation.

b) if the wall becomes party wall he can close the window, unless there is a stipulation to the contrary.

281. If the owner of a building would like to have a window on balcony which will give him either a direct or oblique view over an adjoining tenement, what distances must be observed?

No windows, apertures, balconies or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of 2 meters between the wall in which they are made and such contiguous property.

Neither can side or oblique views upon or towards such property be had, unless there be a distance of 60 cm. The non-observance of these distances not give rise to prescription.

282. A built a house on his residential lot up to the boundary line. In the presence of B, the adjoining owner A opened windows with a direct view over the lot of B. 12 yrs later, B built a house on his own lot also right up to the boundary line. A brought an action against B to enjoin the latter from building up to the boundary line, alleging that B cannot build less than 3 meters from the boundary line a) as he had acquired an easement of light and view by prescription, and b) the action of B, if any, had already prescribed. Decide with reasons.

I shall decide against the contention of A that he has already acquired an easement of light and view by prescription after 10 years there are two reasons for this. In the first place, there was no formal before a notary public wherein he should have prohibited "B" from obstructing his light and view. He did not. In the second place, he did not observe the legal requirement that there should be a distance of at does not give to prescription. (Cortes vs. Yutivo, 2 phil. 24; Fabie vs. Lichauco, 11 phil. 14)

However, I agree with the contention of "A" that "B's" right of action to compel "A" to close the windows had already prescribed. The period of prescription for such action of 10 years to be counted since he has not acquired an easement of light and view, nobody can prevent "B" from obstructing "A's" light and view either by constructing his own house up to the boundary line or by constructing a wall at the boundary line contiguous. To the window of "A". (Sternberg vs. Soriano,
41 phil. 210)

283. On his wall, one meter away from the boundary line, A opened regular windows with direct views. May A be ordered to close them, at any time?

A may be ordered to close them, provided that the adjoining owner makes the demand for the closure with in the period of 10 years from the opening of the window otherwise his right of closure will be deemed prescribed.

284. What is meant by the non-observance of these distances does not give rise to prescription?

This merely means that the MERE non-observance of these distances does not give rise to prescription because this being a NEGATIVE easement, a notarial (formal) prohibition is still required before the period of prescription will

commence to run.

285. When is article 672 applicable?

It applies to buildings separated by a public way on alley, which is not less than three meters wide subject to special regulations and local ordinances.

286. Suppose that an easement of light and view has been acquired, what is the distance which must be observed by the owner of the servient estate if he desires to construct a house on his own property?

The construction must at least three meters away from the boundary line between the two estates.

287. When will Article 673 apply as to easement obtained under Article 624?

It applies even when the easement has been acquired under article 624. Thus, if an estate has easement of light and view under article 624, the neighbor cannot construct on his lot unless he observes the three meter rule.

288. Does the law allow the construction of a building having a roof which sheds rainwater on adjoining property?

No, it does not. This is clear from article 674 of the NCC which declares that the owner of a building shall be obliged to construct its roof in such a manner that the rainwater shall fall on his own land or on a street or public place, and not on the land of his neighbor. As a matter of fact, the law even goes further by declaring that even if it should fall on his own land, the owner shall be obliged to collect water in such a way as not to cause damage to the adjacent land or easement.

289. Does Article 674 refer to an easement?

Article 674 does not really create an easement for it merely regulates the use of a person's property insofar as rainwater is concerned.

290. State the rule when a tenement or land is subject to the easement of receiving water falling from roots.

The owner of a tenement of a piece of land, subject to the easement of receiving water falling from roots, may build in such manner as to receive the water upon his own roof or give it another outlet in accordance with local ordinance or customs, and in such a way as not to cause any nuisance or damage whatever to the dominant estate.

291. What is meant by legal easement of drainage?

The easement of drainage of buildings refers to the legal easement regulated by art. 676 of the NCC which declares that whenever the yard or court of a house is surrounded by other houses, and it is not possible to give an outlet through the house itself to the rainwater collected thereon, the establishment of an easement of drainage can be demanded, giving an outlet to the water at the point of the contiguous lands of tenements where it egress maybe easiest, and establishing a conduit for the drainage in such manner as to cause the least damage to the servient estate, after the payment of the proper indemnity.

292. State the rules regarding constructions and plantings near fortified places.

Public security and safety demand that no constructions can be built or plantings made near fortified places or fortresses without compliance with the conditions required in special laws, ordinances and regulations relating thereto.

293. State the rules regarding construction of aqueduct, walls, sewers etc.

Follow the distances prescribed by the regulations (ordinances) and customs, if there be any, otherwise take precautions.

294. Is waiver allowed?

No waiver or alteration by stipulation is allowed for reason of public safety.

295. What are the distances to be observed in planting of trees?

In the absence of ordinances or customs of the place, if tall trees are planted, the distance to be observed is two meters from the boundary line of the two properties, and if shrubs or small trees are planted, the distance is 50 centimeters.

296. In case of violation, what is the remedy?

Demand uprooting of the tree or shrub.

297. A is the owner of grove mango trees, some of the branches of which extend over the land of B. Does B have the right to gather the mango fruits on the branches of which extend into his land? Give reasons.

B does not have the right to gather the mango fruits on the branches that extend into his land. The reason for this is that A is still the owner of such fruits. The only right that B has acquired is the right to demand that the branches extending over his land be cut off. In case of fruits, it is only when they have naturally fallen upon his land that they become his by operation of law.

298. In same case, because of a quarrel between A had B unrelated to the trees, B cut off the branches insofar as they extended into his land, with the result that A's trees stopped bearing fruits for a season. Does A have a right of action against B?

When B cut off the branches insofar as they extend into his land, A acquired a right to proceed against him. Art. 680 clearly states that he has the right to demand that they be cut off insofar as they may spread over his land, it does not say that he himself has the right to cut them off.

299. Would your answer be different if instead of cutting off the protruding branches, B had cut off the roots of the trees which penetrated into his land with the same result that the trees stopped bearing fruit? Explain.

It is different in the case of the roots. If such roots have penetrated into his land, then B would have a perfect right to cut them off, the law states expressly that he may do so.

300. Who owns the fruits of a tree naturally falling upon an adjacent estate?

The owner of such adjacent estate.

301. X is the owner of grove mango trees, some of the branches of which extend over the land of B. Does B have the right to gather the mango fruits on the branches that extend into his lands? Give reasons.

No, B has no right for the fruits have NOT yet naturally fallen on his land.

302. In the same case, because of the quarrel between A and B, unrelated to the trees, B cuts off the branches insofar as they extend into his land, with the result that A's trees stopped bearing fruits for a season. Does A have a right of action against B? Explain.

B is liable for cutting off the branches. What he should have done was to make a demand and not just take the law into his own hands.

303. Who is servient in an easement and against nuisance?

The proprietor or possessor of the building or piece of land, who commits the nuisance thru noise, jarring, offensive, odor etc., is servient in an easement against nuisance: in another sense, the building or the land itself is the servient estate, since the easement is inherent in every building or land.

304. Who is dominant in an easement against nuisance?

The general public or anybody injured by the nuisance.

305. What are the rights of the dominant estate?

If the nuisance is a public nuisance, the remedies are:

A prosecution under the penal code or any local ordinance : A civil action
Abatement, without judicial proceedings.

If the nuisance is a private nuisance, the remedies are: (a) A civil action
(b) Abatement without judicial proceedings.

306. What is the rule regarding maintenance of factories and shops?

Subject to zoning, health, police and other laws and regulations, factories and shops may be maintained provided the least possible annoyance is caused to the neighborhood.

307. What is meant by easement of lateral and subjacent support?

These easements refer to those regulated by articles 684 and 686 of the NCC. Article 684 provides that no proprietor shall make such excavations upon his land as to deprive any adjacent land or building of sufficient lateral or subjacent support. According to the restatement of the law on tort's support is lateral when supported and the supporting lands are divided by the vertical plane, and it is subjacent when the supporting land is beneath it.

308. Distinguish between lateral and subjacent support.

The support is lateral when the both land being supported and the supporting land are on the same plane; when the supported land is above the supporting land, the support is sub adjacent.

Article 681 - 697

309. What are the rules as to fruits?

1. If the fruits still hang on to the tree, they are still owned by the tree owner.
2. It is only after they have NATURALLY fallen (Not taken by poles or shaken) that they belong to the owner of the invaded land.

310. Why does accession do not apply? How about occupation?

It is not accession for they were not grown or produced by the land nor added to it or occupation for they are not res nullius.

311. Suppose X is the owner of a grove of mango trees, some of the branches of which extended over the land of B. Does B have the right to gather the mango fruits on the branches that extend into his land?

No, B has no right for the fruits have not yet naturally fallen on his land.

312. What is the reason for prohibiting a nuisance?

A nuisance is that which, among others, annoys or offends the senses and it should therefore be prohibited.

313. Who is a servient in an easement against nuisance?

The proprietor of the building or piece of land, who commits the nuisance thru noise, jarring, offensive odor, etc.

314. What is a servient estate?

The building or the land itself since the easement is inherent in every building or land.

315. Who is dominant in an easement against nuisance?

The general public, or anybody injured by the nuisance.

316. What are the remedies of the dominant estate if the nuisance is a public one? (a) Prosecution under the RPC or Local Ordinance;
(b) Civil Action; or
(c) Abatement, without judicial proceedings.

317. What are the remedies of the dominant estate if the nuisance is a private one? (a) Civil action; or
(b) Abatement, without judicial proceedings.

318. Where does Article 683 apply?

It applies to the maintenance of Factories and Shops.

319. What is a lateral support?

It is when both the land being supported and the supporting land are on the SAME PLANE.

320. What is a subjacent support?

It is when the supported land is ABOVE the supporting land.

321. What is an example of prohibition of excavation in lateral support?

While a person may excavate on his own land, he cannot do so if by such action, adjacent buildings would collapse or adjacent lands would crumble.

322. What is an example of prohibition of excavation in subjacent support?

A person must not undermine the support of the house of another by building a tunnel very close underneath the house.

323. What are the remedies for infraction of Article 684?

Injunction, damages. (Prete vs. Gray, April 25, 1918, 141 Atl. 609.)

324. What is the effect of any stipulation or testamentary provision allowing excavation that can cause danger to an adjacent land or building?

Such stipulation or testamentary provision shall be VOID.

325. What is the period of the legal easement of lateral and subjacent support?

It is not only for buildings standing at the time the excavations are made but also for construction that may be erected.

326. What must be made by the proprietor before making any excavation?

The proprietor shall notify all the owners of adjacent lands.

327. What is the exception to this rule?

Notice is not required, if there is actual knowledge of the excavation.

328. What is the purpose why notice is mandatory?

Notice is required to enable adjoining owners to take proper precautions.

329. What kinds of voluntary easements that may be established?

It may be predial (for the benefit of an estate) or personal.

330. To who does the right appertains to?

Only the owner or someone else, in the name of and with the authority of the owner, may establish a voluntary predial servitude on his estate, for this is an act of ownership.

331. Who acts for the dominant estate?

The person to act for the dominant estate must be the owner or somebody else, in the name and with authority of the owner.

332. What is the effect of a resolutory or annullable title?

If a person is an owner with a resolutory or annullable one, he can create an easement over the property, BUT it is deemed extinguished upon resolution or annulment of the right.

333. What is the concept of a voluntary easement?

A voluntary easement is not contractual in nature because it may be imposed unilaterally, but if a fee is imposed, in this sense, and only in this, may easement be said to partake of the nature of a contract.

334. Is a restriction imposed properly by a subdivision considered an easement?

Yes, an owner of a subdivision can properly impose on its contracts selling the lots to private owners that the buyers cannot build factories thereon in a sense is an easement, and makes evident the intent to make the subdivision a residential zone.

335. What is the limit of the right of a naked owner to impose easements?

The naked owner must respect the rights of the usufructuary. Hence, while he may impose the easement 'f "altius non tollendi" (obligation not to build higher) without the consent of

the usufructuary still, in so far as the easement of right of way is concerned, he should try to obtain the usufructuary's consent.

336. What are the rules when a usufruct exists?

(a) The beneficial owner (as distinguished from the naked owner) may by himself create a temporary easement compatible with the extent of his beneficial dominion.
(b) If the easement is perpetual both the naked and the beneficiary owners must consent.

337. What is the reason for requiring unanimous consent on the part of all the co-owners for the creation of an easement?

The creation of the voluntary easement is an act of ownership.

338. When consent should be given?

The consent of the co-owners need not be given simultaneously rather can be given successively.

339. Can there be revocation of consent?

No. Once a co-owner gives his consent, he cannot later on revoke his consent.

340. Is there any exception to this rule?

Yes. When the consent had been vitiated.

341. How about his successors-in-interest?

They cannot ordinarily revoke the consent he had given.

342. What governing rules for voluntary easement apply if created by title?

If created by title (contract, will, etc.), the title governs. The NCC is suppletory.

342. What governing rules for voluntary easement apply if created by prescription?

The form and manner in which it had been acquired. The NCC is suppletory.

343. What governing rules for voluntary easement apply if created by prescription in a proper case?

The manner and form of possession. The NCC is suppletory.

344. When does Art. 693 apply?

In the contract or title, the servient owner may have or may have not bound himself to pay for the maintenance of the easement. The article applies only when he ha so bound himself.

345. If renunciation or abandonment is made should it be on the whole property?

It depends:

- If the servitude is upon the whole estate, the whole property must be renounced.
- If the servitude affects only a part of the estate, then only that part affected by the easement.

346. How renunciation should be made?

The abandoner must comply with the proper juridical form for the transmission of the ownership of real property. Hence implied or tacit abandonment cannot be allowed.

347. What is a nuisance?

Any act, omission, establishment, business, condition of property, or anything else which: Injures or endangers
the health or safety of others; or
Annoys or offends the senses; or
Shocks, defies or disregards decency or morality; or
Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
Hinders or impairs the use of property.

348. Why a nuisance can be abated?

A nuisance is one of the most serious hindrances to the enjoyment of life and property.

349. What are the aspects of a nuisance?

Nuisance may be used to refer either to the harm caused or that which causes the harm or both.

350. Distinguish nuisance from negligence.

Negligence is penalized because of lack of proper care; but nuisance is wrong, not because of the presence or absence of proper care, but because of the injury caused.

351. Distinguish nuisance from trespass.

In trespass, there is entry to another's property; none in nuisance. In trespass, the injury is direct and immediate; in nuisance, it is only consequential.

352. What is the old classification of nuisance?

They are:

- Nuisance per se – always a nuisance.
- Nuisance per accidens – only because of the location or other circumstances.

353. What are the new classifications of nuisance?

They are:

As to relief.
Actionable

Non-actionable

According to manner of relief.

Abatable by criminal or civil actions
Abatable by civil actions Abatable
judicially Abatable extrajudicially

According to the Civil Code.

Public (Common) Private

354. What is the attractive nuisance doctrine?

It is a dangerous instrumentality or appliance which is likely to attract children at play.

355. When successor to the property may be held liable?

The successor, to be held liable, must knowingly fail or refuse to abate the nuisance.

356. What is the liability of two or more persons responsible for a nuisance?

If there was common design or interest, the liability is solidary.

357. Can a lessor escape his liability?

No. If a person sets up a nuisance on his land, then leases the property to another, he cannot escape liability. The lessee will be liable only when he knowingly allows its existence.

358. Does abatement of a nuisance preclude the recovery of damages?

No. The remedies of abatement and damages are cumulative, that is, both may be demanded.

Article 698 - 718

359. May an action to abate a public or private nuisance extinguished by prescription?

No. Article 1143 of the New Civil Code states that: "The following rights, among others specified elsewhere in this Code, are not extinguished by prescription:

Xxx

(2) To bring an action to abate a public or private nuisance

360. If the abatement of public or private nuisance is not extinguished by prescription, are there exceptions to this rule?

Yes. Article 698 and 1143 (2) of the New Civil Code do not apply to easements which are extinguished by obstruction and non-user for ten (10) years as held in UNISOURCE COMMERCIAL AND DEVELOPMENT CORPORATION, Petitioner vs. JOSEPH CHUNG, KIAT CHUNG and KLETO CHUNG, Respondents (G.R. No. 173252 July 17, 2009)

361. What are the remedies against a public nuisance?

Art. 699 states that "The remedies against a public nuisance are:

A prosecution under the Penal Code or any local ordinance; or
A civil action; or
Abatement without judicial proceedings.

362. May abatement prosper without judicial proceedings?

Yes if it is nuisance per se not nuisance per accidens as in the case of LUCENA GRAND CENTRAL TERMINAL, INC., petitioner, vs.JAC LINER, INC., Respondent. (G.R. No. 148339, February 23, 2005)

363. What is the effect if the District Health Officer is not consulted prior to abatement?

If the District Health Officer (or the City Engineer as the case may be) is not consulted beforehand in the case of the extrajudicial abatement of nuisance, the person doing the abating is not necessarily liable. They would be liable for damages only if as stated under Art. 707 the abatement is carried out with unnecessary injury, or if the alleged nuisance is later declared by the courts to be not a real nuisance (CONCEPCION PARAYNO, petitioner, vs. JOSE JOVELLANOS and the MUNICIPALITY OF CALASIAO, PANGASINAN,• respondents. (G.R. No. 148408 July 14, 2006)

364. What is the District Health Officer's Responsibility in case the remedies against a public nuisance are availed of?

The District Health Officer shall take care that one or all of the remedies against a public nuisance are availed of (or the City engineer as the case may be) (GUILLERMO M. TELMO, Petitioner, vs. LUCIANO M. BUSTAMANTE, Respondent.(G.R. No. 182567 July 13, 2009)

364. Who will commence if a civil action is brought by reason of the maintenance of a public nuisance?

The Mayor. (ROBERT TAYABAN y CALIPLIP, FRANCISCO MADDAWAT y TAYOBAN, ARTEMIO BALANGUE• y LANGA, FRANCISCO MAYUMIS y BAHEL and QUIRINO PANA y CUYAHEN, Petitioners, vs. PEOPLE OF THE PHILIPPINES and THE HONORABLE SANDIGANBAYAN, Respondents.(G .R. No. 150194, March 6, 2007)

365. Who shall determine whether or not abatement, without judicial proceedings is the best remedy against a public nuisance?

The District Health Officer shall take care that one or all of the remedies against a public nuisance are availed of (or the City engineer as the case may be) (GUILLERMO M. TELMO, Petitioner, vs. LUCIANO M. BUSTAMANTE, Respondent.(G.R. No. 182567 July 13, 2009)

366. Who determines which remedy is best?

The District Health Officer in Manila and the District (City) Health Officer in other places. (GUILLERMO M. TELMO, Petitioner, vs. LUCIANO M. BUSTAMANTE, Respondent.) (G.R. No. 182567 July 13, 2009)

367. When may a private person sue on account of a public nuisance?

(a) Ordinarily, it is the Mayor who must bring the civil action to abate a public nuisance.

(b) But a private individual can also do so, if the public nuisance is especially injurious to himself. (MARTIN PENOSO and ELIZABETH PENOSO, Petitioners, vs. MACROSMAN DONA, Respondent. (G.R. No. 154018 April 3, 2007)

368. What is the nature of the action that a private person may file on account of a public nuisance?

The action may be for injunction, abatement or for damages (all of which must show special damage to the private person)

369. What are the requisites for Extrajudicial Abatement of a public nuisance?

There are four requisites, to wit:

That the demand be first made upon the owner or possessor of the property to abate the nuisance;
That such demand has been rejected;
That the abatement be approved by the district health officer and executed with the assistance of the local police; and
That the value of the destruction does not exceed three thousand pesos.

370. What are the remedies against a private nuisance?

They are:

- A civil action; or
- Abatement, without judicial proceedings.

371. What are the defenses against a private nuisance?

- Estoppels, public necessity,
- The non-existence of the nuisance,
- Impossibility of abatement.

372. When may a private person or a public official extrajudicially abating a nuisance liable for damages?

If he causes unnecessary injury; or
If an alleged nuisance is later declared by the courts to be not a real nuisance.

373. Who are liable to damages in case of extrajudicial abatement?

A private person, or
A public official.

374. May a compromise agreement and contract of sale serve as sufficient ground to conclude that respondents had been possessors in good faith and could acquire a property through acquisitive prescription?

No. In ROSARIO P. TAN, Petitioner, vs. ARTEMIO G. RAMIREZ, MOISES G. RAMIREZ, RODRIGO G.

RAMIREZ, DOMINGO G. RAMIREZ, and MODESTA RAMIREZ ANDRADE, Respondents (G.R. No. 158929 August 3, 2010)

FACTS:

On August 11, 1998, the petitioner, representing her parents (spouses Crispo and Nicomedesa P. Alumbro), filed with the Municipal Circuit Trial Court (MCTC) of Hindang- Inopacan, Leyte a complaint for the recovery of ownership and possession and/or quieting of title of a one-half portion of the subject property against the respondents. The petitioner alleged that her great-grandfather Catalino Jaca Valenzona was the owner of the subject property under a 1915 Tax Declaration (TD) No. 2724. Catalino had four children: Gliceria, Valentina, Tomasa, and Julian; Gliceria inherited the subject property when Catalino died; Gliceria married Gavino Oyao, but their union bore no children; when Gliceria died on April 25, 1952, Gavino inherited a one-half portion of the subject property, while Nicomedesa acquired the other half through inheritance, in representation of her mother, Valentina, who had predeceased Gliceria, and through her purchase of the shares of her brothers and sisters. In 1961, Nicomedesa constituted Roberto as tenant of her half of the subject property; on June 30, 1965, Nicomedesa bought Gavino's one-half portion of the subject property from the latter's heirs, Ronito and Wilfredo Oyao,6 evidenced by a Deed of Absolute Sale of Agricultural Land; on August 3, 1965, Nicomedesa sold to Roberto this one-half portion in a Deed of Absolute Sale of Agricultural Land;8 and in 1997, Nicomedesa discovered that since 1974, Roberto had been reflecting the subject property solely in his name under TD No. 4193. The respondents, on the other hand, traced ownership of the subject property to Gavino who cultivated it since 1956; Roberto bought half of the subject property from Nicomedesa on August 3, 1965,9 and the remaining half from Gavino's heirs, Ronito and Wilfredo Oyao, on October 16, 1972.10 On January 9, 1975, a certain Santa Belacho, claiming to be Gavino's natural child, filed a complaint with the Court of First Instance of Baybay, Leyte against Roberto, Nicomedesa, Ronito and Wilfredo Oyao, docketed as Civil Case No. B-565, for recovery of possession and ownership of two (2) parcels of land, including the subject property;11 on September 16, 1977, Roberto bought the subject property from Belacho through a Deed of Absolute Sale of Land; and on October 5, 1977, Roberto and Nicomedesa entered into a Compromise Agreement with Belacho to settle Civil Case No. B-565. Belacho agreed in this settlement to dismiss the case and to waive her interest over the subject property in favor of Roberto, and the other parcel of land in favor of Nicomedesa in consideration of P1,800.00.12

HELD:

The petition is meritorious.
Prescription, as a mode of acquiring ownership and other real rights over immovable property, is concerned with lapse of time in the manner and under conditions laid down by law, namely, that the possession should be in the concept of an owner, public, peaceful, uninterrupted, and adverse. The party who asserts ownership by adverse possession must prove the presence of the essential elements of acquisitive prescription. Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for ten years in extraordinary prescription, ownership and other real rights over immovable property are acquired through uninterrupted adverse possession for thirty years without need of title or of good faith. Possession "in good faith" consists in the reasonable belief that the person from whom the thing is received has been the owner thereof, and could transmit his ownership.27 There is "just title" when the adverse claimant came into possession of the property through one of the modes recognized by law for the acquisition of ownership or other real rights, but the grantor was not the owner or could not transmit any right.

Compromise agreement not a valid basis of possession in good faith and just title. The Court find that the CA mistakenly relied upon the compromise agreement, executed by Belacho to conclude that the respondents were possessors in good faith and with just title who acquired the property through ordinary acquisitive prescription. To avoid any conflict with Belacho, Roberto and Nicomedesa paid P1,800.00 in consideration of Belacho's desistance from further pursuing her claim over two (2) parcels of land, including the subject property. Thus, no right can arise from the compromise agreement because the parties executed the same only to buy peace and to write finis to the controversy; it did not create or transmit ownership rights over the subject property. In executing the compromise agreement, the parties, in effect, merely reverted to their situation before Civil Case No. B-565 was filed.

375. Is the failure to comply with the required period of possession of the subject lots sufficient for the judicial confirmation or legalization of imperfect or incomplete title?

No. As held in REPUBLIC OF THE PHILIPPINES, petitioner, vs. JEREMIAS AND DAVID HERBIETO,

respondents. (G.R. No. 156117 May 26, 2005) The Respondents only alleged therein that they obtained title to the Subject Lots by purchase from their parents, spouses Gregorio Herbieto and Isabel Owatan, on 25 June 1976. Respondent Jeremias, in his testimony, claimed that his parents had been in possession of the Subject Lots in the concept of an owner since 1950.Yet, according to the DENR-CENRO Certification, submitted by respondents themselves, the Subject Lots are "within Alienable and Disposable, Block I, Project No. 28 per LC Map No. 2545 of Consolacion, Cebu certified under Forestry Administrative Order No. 4-1063, dated June 25, 1963. Likewise, it is outside Kotkot-Lusaran Mananga Watershed Forest Reservation per Presidential Proclamation No. 932 dated June 29, 1992."33 The Subject Lots are thus clearly part of the public domain, classified as alienable and disposable as of 25 June 1963. As already well-settled in jurisprudence, no public land can be acquired by private

persons without any grant, express or implied, from the government; 34 and it is indispensable that the person claiming title to public land should show that his title was acquired from the State or any other mode of acquisition recognized by law. Moreover, provisions of the Civil Code on prescription of ownership and other real rights apply in general to all types of land, while the Public Land Act specifically governs lands of the public domain. Relative to one another, the Public Land Act may be considered a special law45 that must take precedence over the Civil Code, a general law. It is an established rule of statutory construction that between a general law and a special law, the special law prevails – Generalia specialibus non derogant.

376. May the Respondent validly claim a land which he allegedly occupied since June 12 1945 without presenting any incontrovertible evidence indicating the nature and duration of occupation?

No. As held in REPUBLIC OF THE PHILIPPINES, Petitioner, vs. HANOVER WORLWIDE TRADING CORPORATION, Respondent. (G.R. No. 172102, July 2, 2010), the Court agrees with petitioner on the more important issue that respondent failed to present sufficient evidence to prove that it or its predecessors-in-interest possessed and occupied the subject property for the period required by law. No testimonial evidence was presented to prove that respondent or its predecessors-in-interest had been possessing and occupying the subject property since June 12, 1945 or earlier. Hanover's President and General Manager testified only with respect to his claim that he was the former owner of the subject property and that he acquired the same from the heirs of a certain Damiano Bontoyan; that he caused the payment of realty taxes due on the property; that a tax declaration was issued in favor of Hanover; that Hanover caused a survey of the subject lot, duly approved by the Bureau of Lands; and that his and Hanover's possession of the property started in 1990. Settled is the rule that the burden of proof in land registration cases rests on the applicant who must show by clear, positive and convincing evidence that his alleged possession and occupation of the land is of the nature and duration required by law.14 Unfortunately, as petitioner contends, the pieces of evidence presented by respondent do not constitute the "well-nigh incontrovertible" proof necessary in cases of this nature.

377. May an occupation to a public land by a private person which is not reclassified or alienated can be ripened into ownership and eventually be registered as a title?

No. as held in NESTOR PAGKATIPUNAN and ROSALINA MANAGAS- PAGKATIPUNAN, petitioners, (G.R. No. 129682, March 21, 2002), unless public land is shown to have been reclassified or alienated to a private person by the State, it remains part of the inalienable public domain. Occupation thereof in the concept of owner, no matter how long, cannot ripen into ownership and be registered as a title. Evidence extant on record showed that at the time of filing of the application for land registration and issuance of the certificate of title over the disputed land in the name of petitioners, the same was timberland and formed part of the public domain

378. May the ownership of a piece of land be acquired by occupation?

No. As held in FLORENCIA G. DIAZ, Petitioner, vs. REPUBLIC of the PHILIPPINES, Respondent. (G.R. No. 181502, February 2, 2010) A mere casual cultivation of portions of the land by the claimant, and the raising thereon of cattle, do not constitute possession under claim of ownership. In that sense, possession is not exclusive and notorious as to give rise to a presumptive grant from the State. While grazing livestock over land is of course to be considered with other acts of dominion to show possession, the mere occupancy of land by grazing livestock upon it, without substantial enclosures, or other permanent improvements, is not sufficient to support a claim of title thru acquisitive prescription. The possession of public land, however long the period may have extended, never confers title thereto upon the possessor because the statute of limitations with regard to public land does not operate against the State unless the occupant can prove possession and occupation of the same under claim of ownership for the required number of years to constitute a grant from the State.

379. If a land cannot be acquired by occupation, may it be acquired by prescription?

Yes. Acquisitive prescription is a mode of acquiring ownership by a possessor thru the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful, and uninterrupted. (ROSARIO P. TAN, Petitioner, vs. ARTEMIO G. RAMIREZ, MOISES G. RAMIREZ, RODRIGO G. RAMIREZ, DOMINGO G. RAMIREZ, and MODESTA RAMIREZ ANDRADE, Respondents (G.R. No. 158929 August 3, 2010)

380. What are the rules in the acquisition of domesticated and domestic animals?

Domesticated (tamed) animals may be acquired by occupation (20 days) unless a claim has been made for them.

Domestic (tame) animals cannot be acquired by occupation unless there is an abandonment

381. May a person entrusted with the custody of a carabao acquire by occupation what was entrusted to him?

No. A carabao (even if considered a domesticated instead of a domestic animal) cannot be acquired by occupation when the person claiming was entrusted with its custody.

Reason: There was a contract, not a straying away from the lawful possessor and owner.

382. To whom do pigeons and fish belong when they pass to another pertaining to a different owner?

To the holder or possessor provided they have not been enticed by some artifice or fraud.

383. Who owns the hidden treasure discovered in another's property?

When the discovery is made on the property of another, or of the state or any of its subdivisions, and by chance, one half thereof shall be allowed to the finder. If the finder is a trespasser, he shall not be entitled to any share of the treasure. (Article 438, (p.2) Civil Code).

Article 719 - 735

384. What are the steps or guidelines to be followed in case someone finds a movable property?

Whenever finds a movable which is not treasured, must return it to its previous possessor. It the later is unknown, the finder shall immediately deposit it with the mayor of the city or municipality where the finding has taken place.

The finding shall be publicly announced by the mayor for the consecutive weeks in the way he deems best.

If the movable cannot be kept without determination, or without expenses which considerably diminish its value, it shall be sold at public auction eight days after the publication.

Six month from the publication having elapsed without the owner having appeared, the thing ---, on its value, shall be awarded to the finder. The finder and the owner shall be obliged, as the case may be, to reimburse the expenses.

385. "A" captured a certain animal. When does he become the owner of the animal? Define "Letter" within the scope of intellectual creation.

We must distinguish.

(a) If the animal is domesticated in the sense that it was born on reared under the power of man, lacking the instinct to roam freely. A cannot become the owner thereof unless he will comply with the formalities prescribed by law for the acquisition of ownership of ordinary personal property. (See Article 719, NCC)

(b) If the animal is wild in the sense that it is in its state of natural freedom. A becomes the owner from the moment that he has captured it. This rule is applicable even to a wild animal which had been captured but which has regained its natural freedom by escaping from its captor. (Article 713, NCC)

(c) If the animal is domesticated in the sense that it was originally – but it has been captured. Subdued and made use of by man so that it has formed the habit of – to the premises of the possessor (Article 560, NCC), so long as it retains the habit of returning to such premises, he becomes the owner thereof only if the original owner does not claim it within twenty (20) days to be counted from the time that it was captured (Article 716, NCC)

386. While walking along session road, Vhince finds a purse containing Php 1,000. How can he become the owner of the Php 1,000? Explain.

If, Vhince knows the owner of the purse, there is no way by which he can become the owner of the Php 1,000 because, according to the law, he must return the purse including its contents to such owner. If the latter is unknown, A shall immediately deposit the movable with the mayor of the place where the finding took place. There shall then be a public announcement of the finding for two consecutive weeks. Six months from the publication having elapsed without the owner having appeared, the thing found shall be awarded to A, after reimbursement of the expense. (See Article 719, NCC)

387. X and Y staged a – band robbery in Manila at 10:30 AM in the morning of a regular business day, and escaped with their – of two (2) bags, each bag containing Php 50,000.00. During their flight to elude the police, X and Y entered the nearby locked housing A, then working in his Quezon City office. From A's house, X and Y stole a bag containing cash totaling Php 50,000 which box A had been keeping in deposit for his friend B. In their hurry X and Y left in A's bedroom one (1) of the bags which they had taken from the bank.

With X and Y now at large and nowhere to be found, the bag containing Php 50,00 is now claimed by B, by the mayor of Manila, and by the bank. B claims that the depository, A by force majeure had obtained the bag of money in peace of the box of money deposited by B. The mayor of Manila, on the other hand, claims that the bag of money should be deposited with the office of the Mayor as required of the finder by the provision of the civil code. The bank resists the claim of B and the mayor of Manila. To whom should A deliver the bag of money? Decide with reasons.

B would have no right to claim the money. Article 1990 of the civil code is not applicable. The law refers to another thing received in substitution of the object deposited and is predicated upon something exchanged.

The mayor of Manila cannot invoke Article 719 of the civil code which requires the finder to deposit the thing with the mayor only when the previous possessor is unknown

In this case A must return the bag of money to the bank as the previous possessor and known owner (Arts. 719 and 199, NCC).

388. Define intellectual creation and intellectual property.

Intellectual creation is a mode of acquisition by virtue of which the author acquires intellectual property or ownership over the products of his intellect, with the consequent power to authorize or refuse publication or production of such products.

Intellectual property, on the other hand, may be defined as the university of all rights which recognize the author over the creations or products of his intellect and consists, fundamentally, in the power to authorize or refuse the publication or production of such creations or products.

389. Who are the persons who may acquire ownership by intellectual creation?

By intellectual creation, the following persons acquire ownership.

- The author, with regard to his literary, dramatic, historical, legal, philosophical, scientific or other work;
- The composer, as to his musical composition;
- The painter, sculptor, or other artist, with respect to the product of his art;
- The scientist or technologist or any other person with regard to his discovery or invention. (Article 721, NCC)

390. Suppose that the creation or product has not yet been copyrighted or patented, can the author, composer, artists or scientist be considered as the owner of such creation or product?

Yes, the author, composer, artist or scientist can be considered as the owner of his creation or product even before it has been copyrighted or patented. This is explicitly stated in Article 722 of Civil Code. This is also confirmed by the Decree on Intellectual Property. (Presidential Decree No. 49)

391. A, a famous short story writer, wrote a short story and kept the manuscript in his drawer. X stole the manuscript and published the short story without the knowledge and permission of A. A sued X for damages alleging complete publication of the story without his permission. X admits the originality and literary value of the story, its authorship by A and the fact that it was published without A;'s permission, but counters with the defense that A has not secured a copyright of the short story under our Copyright Law (Article No. 3134). Will A's action prosper? Reason.

A's action will prosper. While it is very true that A has not yet secured a copyright of the short story under our Copyright Law, nevertheless, under our Civil Code (Articles 721 and 722), the author with regard to his literary, dramatic, historical, legal, philosophical, scientific or other work shall have the ownership of his creation even before the publication of the same. This right of ownership is protected by the law and this can be implemented by means of a proper action for damages. Of course, Article 722 of the civil Code expressly provides that once the work is published, the right of the author is governed by the Copyright Law but then this presupposes that the publication should have been made by the author himself and not by another without any authority whatsoever.

392. Define "Letter"

Distinction should be made between the letter (ideas, thoughts) and the letter (paper, with words). The first in a way belongs to the sender; the second to the recipient. Thus, the recipient may burn letter, and cannot be compelled to return them to the sender. The sender may publish the letter (when he has memorized its contents or kept a copy) even without the recipients consent.

393. Who owns a letter or any other private communication?

According to Article 723 of the Civil Code, "Letters and other private communications in writing are owned by the persons to whom they are addressed and delivered, but they cannot be published or disseminated without the consent of the writer or his heirs. However, the court may authorize their publication or dissemination if the public good or the interest of justice so requires". From this provision, there is a clear implication that as far as the intellectual property is concerned, a dual ownership is recognized by our law; in other words, although the letter itself is owned by the addressee, the writer retains a right of ownership over its contents.

394. Independently of the rights conferred by the Decree on Intellectual property (Chapters II and III of Presidential Decree No. 49) or the grant of an assignment or license with respect to any of such rights, what are the fur moral rights of a creator?

The four moral rights of a creator are:

- To make alterations of his work prior to, or to withhold it from, publication;
- To require that the authorship of the work be attributed to him;
- To object to any alteration of his work which is prejudicial to his reputation; and
- To restrain the use of his name, with respect to ant work not of his own creation or in a distorted version of his work (Chap. IV, Sec. 34, Pres. Decree No. 49)

395. Are the above rights assignable or waivable?

Yes, but no assignment shall be valid where its effect is to permit another:

- To sue the name of the creator, or the title of his work, or otherwise to make use of his reputation with respect to any version or adaptation of his work which, because of alterations therein, would substantially tend to injure the literary or artistic reputation of the author; or

- To sue the name of the creator with respect to a work he did not create. (Chap. IV, Sec. 36, Pres. Decree No. 49, In relation to Art. 724, NCC)

396. A, a famous author, entered into a contract with X Publishing Co. for the publication of a book which he had just written, subsequently, he changed his mind. He does not want the book to be published. Can the publishing company compel him to comply with his contract? Explain.

The publishing company cannot compel A to comply with his contract. This is clear from Section 35 of Chapter IV of the Law on Intellectual property (Pres. Decree No. 49) which declares that a creator cannot be compelled to perform his contract to create a work or for the publication of his work already in existence, however, he may be held liable for damages for breach of such a contract.

397. When a creator contributes to a collective work, like a newspaper or an encyclopedia, has he the right to have his contribution attributed to him?

No, he does not have the right to have his contribution attributed to him unless he expressly reserves it. Section 37 of Chapter IV of Presidential decree No. 49 expressly states that he is deemed to have waived his right unless he expressly reserves it.

398. Are the moral rights of a creator which are protected by the Law on Intellectual Property prescriptible?

According to the law itself, such rights are perpetual and imprescriptible. (Chap. IV, Sec. 39, Pres. Decree No. 49 In relation to Art. 724, NCC).

399. Define donation as a mode of acquiring ownership and give its requisites.

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

When a person gives to another a thing or right on account of the latter's merits or of the services rendered by him to the donor, provided they do not constitute a demandable debt, or when the gift imposes upon the done a burden which is less than the value of the thing given, there is also a donation. (Art. 726, NCC).

Its Requisites are:

- Decrease or reduction of the patrimony of the donor;
- Increase of the patrimony of the done; and
- Animus donandi or the intent to make a donation.

400. Give and define the different kinds of donations.

Donations may be classified in the following ways: As to their

effectivity:

(A) Donations inter vivos, or those which take effect independently of the donor's death. This class of donations may, in turn, be subdivided into the following:

- Simple donations, or acts of pure liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it. (Art. 725, NCC)
- Remunerative donations, or those which a person gives to another on account of the services rendered by the latter to the former, provided that they do not constitute a demandable debt. (Art. 726, CC)
- Conditional donations, or those where the donor imposes upon the done a burden or charge which is less than the value of the thing given. (Art. 726, CC)
- Onerous donations, or those which a person gives to another n consideration of demandable debts. (Art. 733, CC)

(B) Donations mortis causa, or those which are effective upon the donor's death and must therefore be governed by the rules of testamentary succession. (Art. 728, CC)

As to their perfection or extinguishment:

- Pure donations, or those which are immediately demandable.
- Donations with a condition, or those whose effectivity are subordinated to the fulfillment or nonfulfillment of a future and uncertain fact or event.
- Donations with a term, or those whose effectivity or extinguishment is subject to the expiration of a term or period.

401. Classify the following donations, stating your reasons for the classification:

(a) "I hereby donate to "A" mortis causa a parcel of land (here follows the description) on the condition that this donation shall be deemed revoked if he fails to build a house on the land worth at least Php 50,000.00 within two(2) years from date hereof.

This donation is a conditional donation inter vivos. It is clear that the donor in the instant case has imposed upon the done a burden or charge whose value is less than the value of the thing given. According to the Civil Code, such a donation inter vivos is conditional. True, the donor designated the donation as a donation mortis causa, but this is not controlling. It merely indicates when the delivery to the done shall be effected. The condition imposed by the donor, on the other hand, indicates that the donation is immediately operative. Hence, it is inter vivos in character. The same is also true with the specification that the donation will be deemed revoked if the done does not comply with the condition. This indicates that the donation is inter vivos in character.

(b) "In consideration of the services rendered to me for which refused to accept my remuneration, I hereby donate to "A" the following parcel of land (description follows).

This donation is clearly a remuneratory donation inter vivos because it is given by a person to another on account of the services rendered by the latter to the former which do not constitute demandable debts. According to the Civil Code, such a donation is a remuneratory donation inter vivos.

(c) "I hereby donate to "A" the following parcels of land (description follows) with the obligation on his

part to defray the expenses for my subsistence during my lifetime, and the burial expenses after my death.

This donation is an onerous donation inter vivos. The obligation of the done to defray the expenses for the donor's subsistence during his entire lifetime and the burial expenses indicates that such obligation is the consideration for the donation and vice versa. The properties donated are the consideration for the obligation.

Alternative Answer:

This donation is a conditional donation inter vivos. It is clear that the obligation imposed upon the done is merely a charge or burden whose value is less than the value of the thing given. According to the Civil Code, such a donation is a conditional donation inter vivos.

(Note: The above answers are based on Arts. 726 and 733 of the Civil Code and on decided cases).

402. As a token of affection and esteem for his friend, B, A donated to him by means of a public document his lot at No. 2 Dart, Paco, Manila. In the same instrument, he also donated to B an apartment of the Towers Condominium, Makati, in consideration of his services as manager of Aps business during his long illness. B accepted the two donations in a separate public instrument executed on the same day A died but sent to him a day later. B thereafter demanded the delivery of the lot and apartment donated to him but A's heirs objected on the ground that the donations were void because the donor did not come to know of the acceptance prior to his death. Discuss the validity of the question donation.

A. The donation of the lot is out of pure liberality and therefore governed by the provisions of donation wherein it is required that the donor must be notified of the acceptance during his lifetime. There is, here, no valid acceptance; hence the donation of the lot is not valid.

The donation of the apartment to B is one that rose or remuneratory donation governed by general provision on contract. There is no need of knowledge of the acceptance by the other party because the services have already been rendered. The donation of the apartment being in consideration of services is an onerous donation governed by the rules of Contract which requires knowledge of the acceptance.

B. The donation of the lot is not valid because not properly accepted since the donor died before knowing of the acceptance.

C. The donation of the lot (Art, 726) cannot be said to have validly perfected from the moment the donor knows of the acceptance (Art. 734) which the law requires must be made during the life time of the donor and of the done (Art. 746). Since the donor never came to know the acceptance, the contention of the heirs of A that the donation did not become operative is well-taken.

The same is true as regards the apartment unit.

D. The donation of the lot (Art. 726) cannot be said to have validly perfected. The donation is perfected from the moment the donor knows of the acceptance (art. 734) which the law requires must be made during the lifetime of the donor and the done (Art. 746). Since the donor never came to know the acceptance, the contention of the heirs of A that the donation did not become operative is well-taken.

As regards the apartment unit, the "donation" therefore may be interpreted as dacion en pago (Art. 1245) on the "donor" constituted a demandable debt (Art. 726). Hence, the donor is valid.

5. Considering the management of A's business during his long illness, the donations are in contemplation of \death, and therefore void.

403. What is the effect of illegal or impossible condition in simple and remuneratory donations?

Like in testamentary disposition (Art. 873), only the illegal impossible conditions are disregarded. The donation itself remains valid.

Illegal or impossible conditions in simple and remuneratory donations shall be considered as not imposed.

404. Distinguish one rule on illegal or impossible conditions in simple and remuneratory donation from one rule in contracts.

In simple and remuneratory donations, only one illegal or impossible condition is disregarded. The donation itself remains valid. It is different from the rule in contracts where the presence of impossible on illegal condition renders

the obligation itself void.

405. A donated to X a parcel of land in 1975. The donation was made in a public instrument, which the acceptance by X was embodied in the same public investment. The deed of donation was entitled "Donation Interview" thus is however a provision in the deed to the effect that, although the land donated shall be delivered immediately to X upon the perfection of the donation with full right to enjoy. All of the fruits thereof, "title shall pass to the done only upon the donor's death. "Upon the death A, his widow and only heir, B, brought an action for the recovery of the property on the ground that the donation is a donation mortis causa and not a donation inter vivos. Will the action prosper? Give your reason.

Yes, the action will prosper. In Bansato vs. court of appeals, and Howard vs. Court of appeals, the supreme court declared that in order that a donation will be considered a disposition post mortem, its should reveal any on all of the following characteristics:

(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amount to the same thing, that the transferor should the ownership, full or naked, and control the property while alive;

(2) That before his death, the transfer should be revocable by the transferor at will, ad nutum; but revocability may be provide by for indirectly by means of a reserved power in the donor to dispose of the property conveyed;

(3) That the transfer should be void if the transferor should survive the transferee.

It is clear from the facts stated in the problem that the donation reveals the first characteristic. Hence, it is a disposition post mortem. Therefore, in order that the donation can take effect it is essential that it must be made in a will executed in accordance with all of the formalities prescribed by law (Arts.728, NCC). Since that requisite has not been complied with the donation in the instant case is void or inexistent.

406. What are the characteristics of donation mortis causa (deposition post mortem)?

According to the Supreme Court in the case of Bonsato vs. Court of Appeals, 95 Phil.981, and Howard vs. Court of Appeals, characteristics in order that it will be considered a disposition post mortem:

(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amount to the same thing, that the transferor should the ownership, full or naked, and control the property while alive;

(2) That before his death, the transfer should be revocable by the transferor at will, ad nutum; but revocability may be provide by for indirectly by means of a reserved power in the donor to dispose of the property conveyed;

(3) That the transfer should be void if the transferor should survive the transferee.

407. Is there any difference between donation mortis causa and testamentary dispositions, such as institution of heirs, legacies and devises?

There is none. There used to be a prevailing notion, spawned by a study of Roman Law, that the civil code recognizes a donation mortis causa as a juridical act in contraposition to a donation inter vivos. That impression persisted because that implication of what is now Article
728 of the New Civil Code was not fully expounded in the law schools. Notaries assumed that the donation mortis causa of Roman Law was incorporated into the Civil Code. As explained by Justice J.B.L Reyes in Bonsato, Article 620 of the Spanish Civil Code and Article 728 of the New Civil Code broke away from the Roman law tradition and followed the French doctrine that no one may both donate and retain. As it has turned out, these articles in the Spanish Civil Code and in the Civil Code of the Philippines merged donations mortis causa with testamentary dispositions and thus suppressed the said donation as an independent legal concept.

408. Sometimes it sis determine whether a donation is inter vivos or mortis causa. In trying to determine whether a donation is inter vivos or mortis causa, what are the rules that we must always consider?

In trying to determine whether a donation is inter vivos or mortis causa, the rules that we must always consider are as the follows:

1. That the Civil Code recognizes only gratuitous transfer of property which are affected by means of donation inter vivos or by last will and testament executed with the requisite legal formalities.

2. That in inter vivos donations, the acts is immediately operative even if the material or physical delivery (execution) of the property may be deferred until the donor's death, whereas in a testamentary disposition, nothing is conveyed to the grantee and nothing is acquired by him until the death of the grantor-testator. The disposition is ambulatory and not final.

3. That in a mortis causa disposition the conveyance or alienation should be (expressly or necessary implication) revocable ad nutum or at the discretion of the grater or so-called donor if he changes his mind. (Bautista vs. Sabino, 92 Phil. 244).

4. That, consequently, the specification in the deed of the causes whereby the act may be revoked by the donor indicates that the disposition in inter vivos and not mortis causa. (Zapanta vs. Pasadas, 52 Phil. 557.)

5. That the designation of the donation as mortis causa, or a provision in the deed to the effect that the donation "is to take effect at the death of the donor," is not a controlling criterion because these statement are to be construed together with the rest of

the instrument in order to give effect to the real intent of the transferor. (Laureta vs. Mata, 446 Phil. 668; Concepcion, 91 Phil. 826; Cuevas vs. Cuevas, 98 Phil. 68).

6. That a conveyance for an onerous consideration is governed by the rules of contracts and not by those of donations or testaments. (Carlos vs. Ramil, 20 Phil, 183; Manalo vs. De Mesa, 29 Phil. 495.)

7. That in case of doubt the conveyance should be deemed a donation inter vivos, rather that mortis causa, in order to avoid uncertainly as to be ownership of the property subject of the deed.

8. That the facts that the donation is given in consideration of love and affection or past or future services in not an exclusive characteristics of donation inter vivos because transfer mortis causa, may be made also for these reasons.

The first seven rules were spelled out by Justice J.B.L Reyes in Puig vs. Pefiaflorida, 15 SCRA 276. The last was added by Justice Aquino in Alejandro vs. Geraldez, 78 SCRA 245.

409. A donated to X a parcel of land in 1980. The donation was made in a public instrument embodied in the same public instrument. The deed of donation was entitled "Donation Inter Vivos." There is, however, a provision in the deed to the effect that, although the land shall be delivered immediately to X upon the perfection of the donation with full right to enjoy all of the fruits thereof, "title thereto shall pass to the donee only upon the donor's death of A, his widow and only heir, B, brought an action for the recovery of the property on the ground that the donation is a donation mortis causa and not a donation inter vivos. Will the action prosper? (1990).

Yes, the action will prosper. In Bansato vs. court of appeals, and Howard vs. Court of appeals, the supreme court declared that in order that a donation will be considered a disposition post mortem, its should reveal any on all of the following characteristics:

(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amount to the same thing, that the transferor should the ownership, full or naked, and control the property while alive;

(2) That before his death, the transfer should be revocable by the transferor at will, ad nutum; but revocability may be provide by for indirectly by means of a reserved power in the donor to dispose of the property conveyed;

(3) That the transfer should be void if the transferor should survive the transferee.

410. Distinctions between Donation Inter Vivos and Mortis Causa as to Form and Effect

(a) Inter Vivos:

1) Takes effect during the lifetime of the donor
2) Must follow the formalities of donations (if ordinary and simple)
3) Cannot be revoked except for grounds provided for by law
4) In case of impairment of the legitime, donations inter vivos are preferred to donations mortis causa (priority in time is priority in right)
5) The right of disposition is completely transferred to the donee (although certain reservations as to usufruct, for example, may be made)
6) Acceptance by done must be during lifetime of donor.

(b) Mortis Causa

1) Takes effect after the death of the donor
2) Must follow the formalities of wills or codicils (holographic or notarial)
3) Can be revoked at any time and for any reason while the donor is still alive (just as a will is essentially revocable). In other words, this donation is revocable ad nutum, i.e., at the discretion of the grantor or the so-called "donor" simply because he has changed his mind.
4) Incase the legitime is impaired; donations mortis causa (since they partake of the nature of, or are really, legacies or devises) are reduced ahead of donations inter vivos, the latter being preferred.
5) The right of disposition is not transferred to the done while the donor is still alive.
6) Acceptance by done mortis causa can only be done after the donor's death; any prior acceptable is immaterial or void. (There can as a rule be no contract relatively to future inheritances). (Art. 729, NCC)

411. A donated a parcel of land on B on December 18, 2003, accepted on the same date of B. the donation provided in post: "I hereby donate to you now my land. But while I am still alive, I will remain in its possession. The property will be delivered to you only upon my death." Is the donation inter vivos or mortis causa?

This is a donation "in praesenti to be delivered in future," therefore it is really a donation inter vivos. Consequences: beginning December 18, 2003, B is the owner of the property, and therefore entitled to the fruits starting said date, unless the contrary has been provided in the dead of donation. Moreover, A cannot without a valid legal reason ask for a successful revocation of the donation. B can, because he is now the owner, dispose of, or alienate, the property (Art.
729, NCC).

412. Alberto Bautista executed a public instrument donating certain properties to Marcelina and Candida Sabiniaro. The deed among other things stated: "Meantime I and still living, these properties donated are all yet at my disposal as well as the products therein derived, and whatever properties or property left undisposed by me during my lifetime will be the ones to be received by the donees if any. Was the donation valid?

The evident intent of the donor was to give a donation only after death. This is so because the donor reserved during his lifetime the right to dispose of the properties allegedly donated. In a true donation inter vivos, no such reservation or power to revoke can be made, except in the instances provided for by law. The donation is therefore not inter vivos. On the other hand, it cannot even be valid as a donation mortis causa, for this kind of donation requires the formalities of a will. Since a will was not made, it follows that even as a donation mortis causa, it is void. Therefore, the donees are not entitled to the properties. Instead, they should go to the legal heirs of Bautista (Bautista vs. Sabiniaro, Nov.18, 1952, Art. 729).

413. Margarita David donated to two adopted children, Narcisa and Priscilla de la Fuente, certain properties, but reserved to herself the complete usufruct over the properties. Moreover, she prohibited them to alienate or encumber said properties without her consent. Is the donation inter vivos or mortis causa?

Clearly the donation is mortis causa for under its terms, the donees would in the meantime be merely "paper owners" of the properties. For all practical purpose, the properties remained the properties of Margarita David. (David vs. Sison, 76 Phil. 418, Art. 729).

414. A donated to B a piece of land, on condition that X, A's son, would become a lawyer. Is this donation inter vivos or mortis causa?

The donation is inter vivos. The condition may take place beyond the lifetime of A, although A may have

desired to see the condition fulfilled while he is still alive. But the donation is nevertheless a donation inter vivos. Unless a contrary intention appears. Hence, a public instrument, not a will, would be needed. (Art. 730, NCC)

415. Donation subject to Resolutory Condition of the Donor's Survival (Art. 731, NCC)

A was about to undergo an operation. He donated to B a parcel of land subject to the condition that if A survives to operation. B's ownership over the land would terminate, and the same would revert to A. this is a donation inter vivos, not Mortis causa.

Conditions to Last During the Lifetime:

If A donates to B a piece of land with the condition that B will pay him as certain amount of rice and money each year during A's lifetime; the donation to become effective upon acceptance, such a donation is not mortis causa, but inter vivos.

416. Ildefonso Santiago sued the Republic for revocation of donation executed y him and his wife for failure of the latter to follow certain terms of the donation (e.g., installation of legating and water facilities, and the constitution of an office building and parking lot). Defendant moved to dismiss on the ground that the Republic cannot be sued without its consent.

The case should not be dismissed, for in taking the land, the state implicitly consented to be sued. If the rule were otherwise, unfairness would result. The government should set the example. If it is susceptible to the charge of having acted dishonorably, it forfeit public trust and rightly so. A donor, with the Republic on any of its agencies being the done, is entitled to go to court in case of an alleged breach of the conditions of such donation. (Santiago vs. Republic, Dec. 1978, Art. 732)

Donations with an aurous cause shall be governed by the rules on contracts, and remuneratory donations by the provisions of the present title as regards that portion which exceeds the value of the burden imposed.

417. When is donation inter vivos perfected?

The donation is perfected, not from the time of acceptance but from the time of knowledge by the donor that the done has accepted. (Art. 734, NCC)

418. Who are the persons who have the capacity to make and to accept donations?

In order that a person can make a donation three requisites are necessary. They are: (1) He must have the capacity to enter into contracts;

(2) He must be able to dispose of his property; and

(3) He must not be prohibited or disqualified by law from making the donation.

In order that a person can accept a donation only one requisite is necessary. He must not be prohibited or disqualified by law from accepting the donation.

419. On June 15, 1962, A offered in writing to donate an automobile valued at Php 10,000 to B. On July 15, 1962, the latter accepted the donation in writing. Two days afterwards, the letter of acceptance reached A. Unfortunately, he was no longer in condition to read the letter because the day before he had been rushed to the psychopathic hospital for confinement. Is the donation binding? Reasons.

There are two views:

According to one view, the donation is binding. The exponents of this view maintain that there is only one moment which must be considered in order to determine the donor's capacity to make the donation and that is "the time of the making of the donation" in accordance with the literal tenor of Art. 737 of the Civil Code. According to them, when the law speaks of the making of the donation, it can only refer to that precise moment when the donor manifests his offer to

make the donation to the done. And besides, even if the donor becomes insane subsequently, the acceptance can always be conveyed to his legal representative.

According to another view, the donation is not binding for the following reasons:

(1) Article 737 of the Civil Code declares that the donor's capacity shall be determined as of the time of the making of the donation. Correlating this with Article 734 which declares that a donation is perfected from the moment the donor knows of the acceptance by the done, it is clear that when the law speaks of the making of a donation, it refers not only to that moment when the donor manifest to the done his offer to make the donation but also to that more decisive moment – the moment of perfection of the contract- the moment the donor knows of the acceptance by the done.

(2) Besides, under the original Project of the Civil Code of the Philippines as submitted to Congress, the donor's capacity is to be determined at the time of the "acceptance" of the donation. This was changed by Congress when it substituted the word "making" for the word "acceptance". This change was necessary, according to Dr. Tolentino, because, juridically, it is not the acceptance by the done but the knowledge of the donor of such acceptance which results in the perfection of the contract of donation. (Sec 2 Tolentino, Civil Code, pp. 472-473)

420. On July 27, 1997, Pedro mailed in Manila a letter to his brother, Jose, a resident of Iloilo City, offering to donate a vintage sports car with the latter had long been wanting to buy from the former. On August 5, 1997, Jose called Pedro by cellular phone to thank him for his generosity and to inform him that he was sending by mail his letter of acceptance. Pedro never received that letter because it was never mailed. On august 14, 1997, Pedro received a telegram from Iloilo informing him that Jose had been killed in a road accident the day before (August 13, 1997).

(1) Is there a perfected donation?

None. There is no perfected donation. Under Article 748 of the Civil Code, the donation of a movable may be made orally or in writing. If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Assuming that the value of the thing donated, a vintage sports car exceeds Php 5,000, and then the donation and the acceptance must be in writing. In this instance, the acceptance of Jose was not in writing; therefore, the donation is void. Upon the other hand, assuming that the sports car costs less than Php 5,000, then the donation maybe oral, but still, the simultaneous delivery of the car is needed and there being none, the donation was never perfected.

(2) Will your answer be the same if Jose did mail his acceptance letter but it was received by Pedro in Manila days after Jose's death?

Yes, the answer is the same. If Jose's mail containing his acceptance of the donation was received by Pedro after the former's death, then the donation is still void because under Article 734 of the Civil Code, the donation is perfected the moment the donor knows or the acceptance by the done. The death of Jose before Pedro could receive the acceptance indicates that the donation was never perfected.

421. A, minor, 17 years of age, who has been emancipated by parental concession, and who therefore can make a contract involving personal property, is now allowed by himself or hereof to make a donation of real property because such a donation need not be effected thru a guardian, although necessitating its embodiment in a public instrument. He is nonetheless allowed to donate personal property without parental consent or without intervention of guardian. May or emancipated minor by himself makes donation mortis causa?

Yes, because at the age of 17, a person of sound mind can already make a valid will.

•A case illustrating the limitations on copyright in relation with broadcasting organizations. Facts:

(1) The petitioner is a duly registered corporation engaged in the business of television and radio broadcasting in the Philippines. While the respondent is a legislative franchise authorized to operate Direct-to-home (DTH) satellite services in the provinces.

(2) Sometime 1998, the NTC, authorized the respondent, through a Memorandum, to install, maintain and operate nationwide DTH satellite service and the petitioner's program was included in its line-up.

(3) After sometime, the petitioner ordered the respondent to cease and desist from airing its program but the latter refused by virtue of their legislative franchise and agreement with the NTC.

(4) Thus, an administrative complaint was filed by the petitioner against the respondent for violation of laws involving property rights with prayer of TRO or Preliminary injunction.

(5) The Director General initially ruled in favor of the respondent, affirmed by the CA hence this case.

While it may be true that the IPC vests exclusive right to broadcasting organization to prevent rebroadcasting of their broadcasts, the court however ruled that the respondents is not engaged in broadcasting of the petitioner's broadcast and therefore does not --- the petitioner's copyright and broadcasting right.

ABS-CBN creates and transmits its own signals; PMSI merely carries such signals which the viewers receive in its unaltered form. PMSI does not produce, select, or determine the programs to be shown in Channels 2 and 23. Likewise, it does not pass itself off as the origin or author of such programs. Insofar as Channels 2 and 23 are concerned, PMSI merely retransmits the same in accordance with Memorandum Circular 04-08-88. With regard to its premium channels, it buys the channels from content providers and transmits on an as-is basis to its viewers. Clearly, PMSI does not perform the functions of a broadcasting organization; thus, it cannot be said that it is engaged in rebroadcasting Channels 2 and 23.

Moreover, the court also ruled that the respondent, being cable television provider, is engaged in retransmission and the prohibition of rebroadcasting doers not extend to the business of retransmission.

•The landmark case that lays down the implied repeal of RA 9502 of the Special Law on Counterfeit Drugs and several provisions of the Intellectual Property Code

Facts:

(1) Roma Drug, a drug store owned by the petitioner Rodriguez was raided by the NBI by virtue of a search warrant upon request of the respondent Glaxo Smithkline, a duly registered corporation who manufactures and imports drugs from its parent London based company, Smithkline.

(2) During the raid, several pharmaceutical products were seized such as, Ampiclox, Augmentin, Orbenin and Amoxil, all of which were exclusively manufactured and distributed by the respondent corporation.

(3) Because the seized drugs were directly imported by the petitioner abroad and not through the authorized Philippine distributor of Smithkline, a complaint was filed against the petitioner for violation of Special Law on Counterfeit Drugs (SLCD), which prohibits the sale of counterfeit drugs which includes "unregistered imported drug product".

(4) Under the said law, the term "unregistered" signifies:
The lack of registration with the Bureau of Patent, Trademark and Technology
Transfer of a trademark, tradename or other identification mark of a drug in the name of a natural or juridical person in accordance with the intellectual property Code of the Philippines.

Issue:

Whether the prosecution be held in abeyance in lieu of the passing of the Universally Accessible Cheaper and Quality Medicines Act of 2008 (RA 9502).

Held:

The case should be mooted by virtue of the passing of the Universally Accessible Cheaper and Quality medicines Act of 2008, for it repeals the SLCD and impliedly repeal parts of the intellectual property Code that governs that definitions and procedure for a drug to be considered as "Unregistered imported drug product".

Section 7 of Rep. Act No. 9502 amends Section 72 of the intellectual Property Code in that the later law unequivocally grants third persons the right to import drugs or medicines whose patent were registered in the Philippines by the owner of the product.

Thus, the owner of the patent (Smithkline) has no right to prevent third person like the petitioner to possess or import the former's patented drugs provided that the owner of the patent introduced such drugs in the market or by any other person with his express consent. The drugs and medicines are deemed introduced when they have been sold or offered for sale anywhere else in the world.

Thus since RA 9502 and SLCD and several provisions of the intellectuality property Code manifests some

inconsistencies, the former deemed impliedly repealed the last two laws as far as their inconsistent provisions are concerned.

Note:

Their classification as "counterfeit" is based solely on the fact that they were imported from abroad and not purchased from the Philippine registered owner of the patent or trademark of the drugs.

422. A donor donates on January 1. The donee accepts it on January 5. The donor dies on January 8. Acceptance of the donation is received in donor's house on January 10. Was the donation ever perfected?

a. The donation was perfected, and became effective because acceptance must was made on January 5. Article 746 of the Civil Code provides that acceptance must be made during the lifetime of the donor and of the donee.

b. The donation was perfected, and became effective because a contract of donation is perfected upon the acceptance of the donee of the donation. Article 725 provides that donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.

c. The donation was perfected because a contract of donation is perfected upon the acceptance of the donee of the donation. However, the donation never became effective because the donor died before the acceptance was received by the donor.

d. The donation was never perfected, and never became effective because the donor never knew of the donee's acceptance. The law provides that donation is perfected from the moment the donor knows of the acceptance by the donee.

423. An insane donor donates on January 1. The Donee accepts on January 5. The donor receives acceptance on January 8, at the time when he was sane. Is the donation valid?

a. Yes, the donation is valid, because although the donor was insane, the donation was accepted during the lifetime of the donor and of the donee.
b. Yes, the donation is valid, because at the time of the perfection of the contract, both parties had capacity.
c. No, the donation is void, because the donor did not know what he was doing when he offered the donation. The donor's capacity shall be determined as of the time of the making of the donation.
d. No, the donation is void, because although there was a valid acceptance, it does not cure the fact that there was a void donation.

424. H and W were husband and wife. Same with H2 and W2. H2 caught H having carnal knowledge with W2 in a hotel. H2 filed an action for adultery. The two defendants are subsequently convicted. If H had previously given a gift to W2, may W now bring an action to have such donation declared void?

a. Yes, because the donation between H and W2 is a prohibited donation. H and W2 were guilty of adultery.
b. Yes, because the object of donation is part of the conjugal property of H and W.
c. No, because the object of donation is already formed part of the conjugal property of H1 and W2.
d. No, because the donation between H and W2 is not among those prohibited by law.

425. H and W were husband and wife. W has a sweetheart S, who however has never had any sexual intercourse with her. If S gives W a donation, is the donation valid?

a. No, because the wife as a general rule cannot receive property by gratuitous title from a stranger without the husband's consent. The precise reason for the law is to avoid alienation of affection.

b. No, because the donation between S and W is a prohibited donation under the law. Adultery or concubinage need not be proven.

c. Yes, because although S and W are sweethearts, they are not guilty either of adultery or concubinage.

d. Yes, because all persons who may contract and dispose of their property may make a donation. S is not one of those incapacitated to make a donation.

426. A donation made to prevent the commission of a crime is:

a. Void
b. Voidable
c. Valid

427. X and P, a priest, are the best of friends. X made a donation to P who accepted it. X developed an illness and before he died, he confessed before P. Is the donation valid?

a. No. P was the Priest who heard the confession of the testator during his last illness. b. No. A priest is incapacitated to receive donations.
c. Yes. The possibility of undue influence does not exist.
d. Yes. A priest is not one of those persons specially disqualified by law to accept donations.

428. A tried to kill B. Later, B forgave A, and as a matter of fact gave him a donation. Is A capacitated to receive the donation?

a. Yes, because there has been condonation of the offense.

b. Yes, B is not one of those persons specially disqualified by law to accept donations.

c. No, because B would be considered unworthy to inherit thus incapacitated to receive donation.

d. No, because the law does not reward the act of A in trying to kill B which is illegal.

429. X made an onerous donation to Y, a minor. The value of the burden exceeds P50,000. Z, the father of Y, accepted the donation in writing in favor of Y. Is the donation valid?

a. Yes. The law provides that minors and others who cannot enter into a contract may become donees but acceptance shall be done through their parents or legal representatives.

b. Yes. The acceptance was a mere formality required by law for the performance of the contract.

c. No. The donee must accept the donation personally. It was not Y but Z who accepted the donation.

d. No, He should ask court approval first in accordance with the law on Guardianship.

430. A and B were paramours convicted of adultery. A donated to X, a mutual friend. Thru a previous understanding, X donated the same thing to B. Are the donations valid?

a. Yes. B is not one of those who are specially disqualified by law to accept donations. Donation between X and B is not prohibited by law.

b. Yes. The object of donation already passed from one person to another.

c. No. The purpose of the law is frustrated. What cannot be done directly cannot be done indirectly.

d. No. X is not a stranger to A and B. To be valid, the donation must come from a person not connected to persons who are prohibited to give donations to each other.

431. A donated his land to X, who accepted. The next day, A donated the same land to Y, who not knowing that it had already been donated to X accepted the same and possessed it. On later date, A again donated the same land to Z, who not knowing that it had already been donated to Y accepted and registered the donation in the Registry of property. All the donations were made and accepted in public instruments. Who should be considered the lawful owner?

a. The first donee in good faith.

b. The first registrant in good faith.

c. The first possessor in good faith.

d. The person who has the oldest title in good faith.

432. Who are the persons who have the capacity to make donations?

In order that a person can make a donation, the following three requisites are necessary: (1) He must have the capacity to enter into contracts;
(2) He must be able to dispose of his property; and
(3) He must not be prohibited or disqualified by law from making the donation.

433. Who may accept donations?

(1) Natural and juridical persons who are not specially disqualified by law. [738] (2) Minors & other incapacitated
a. by themselves
b. if pure and simple donation
c. if it does not require written acceptance
d. by guardian, legal representatives if needs written acceptance
e. natural guardian–not more than 50K
f. court appointed—more than 50K

(3) Conceived and unborn child represented by person who would have been guardian if already born. [742]

434. What are the donations prohibited by law?

The following are prohibited donations under the law:

1. Those made between persons who are guilty of adultery and concubinage at the time of donation;

2. Those made between persons found guilty of the same criminal offense in consideration thereof;

3. Those made to public officers or his/her spouse, descendants and ascendants by reason of his office;

4. Those made to the Priest who heard confession of donor during his last illness or the minister of the gospel who extended spiritual aid to him during the same period

5. Those made to Relatives of priest w/in the 4th civil degree, church, order of community where the priest belongs

6. Those made to a Physician, nurse etc. who took care of the donor during his last illness

7. Those made by a ward to the guardian before the approval of accounts

8. Those made to an attesting witness to the execution of donation, if there is any, or to the spouse, parents, or children or anyone claiming under them

9. Those made by individuals, associations or corporations not permitted by law to make donations

10. Those made by spouses to each other during the marriage or to persons of whom the other spouse is a presumptive heir. (Arts. 739, 740, 1027 CC, and Art. 87 FC)

435. Give and define the different kinds of donations.

Donations may be classified in the following ways: A. As to their

effectivity:

(1) Donations inter vivos, or those which take effect independently of the donor's death.

This class of donations may, in turn, be subdivided into the following:

(a) Simple donations or acts of pure liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it. (Art. 725, NCC)

(b) Remunerative donations, or those which a person gives to another on account of the services rendered by the latter to the former, provided that they do not constitute a demandable debt. (Art. 726, CC)

(c) Conditional donations, or those where the donor imposes upon the done a burden or charge which is less than the value of the thing given. (Art. 726, CC)

(d) Onerous donations, or those which a person gives to another n consideration of demandable debts. (Art. 733, CC)

(2) Donations mortis causa, or those which are effective upon the donor's death and must therefore be governed by the rules of testamentary succession. (Art. 728, CC)

B. As to their perfection or extinguishment:

(1) Pure donations or those which are immediately demandable.

(2) Donations with a condition, or those whose effectivity are subordinated to the fulfillment or nonfulfillment of a future and uncertain fact or event.

(3) Donations with a term, or those whose effectivity or extinguishment is subject to the expiration of a term or period.

436. Distinguish between a donation inter vivos and a donation mortis causa.

Donations inter vivos and donations mortis causa may be distinguished from each other in the following ways:

(1) The first takes effect independently of the donor's death, whereas the second takes effect upon the death of the donor;

(2) In the first title or ownership is conveyed to the transferee before the death of the transferor, whereas in the second such title or ownership is conveyed only upon the death of the transferor;

(3) The first is valid if the transferor should survive the transferee, whereas the second is void;

(4) The first is a general rule irrevocable during the transferor's lifetime, whereas the second is always revocable; and

(5) The first must as a general rule comply with the formalities prescribed by Arts. 748 and 749 of the Civil Code, whereas the second must always comply with the formalities prescribed by law for the execution of wills.

437. Why is there a need of distinguishing a donation inter vivos from a donation mortis causa?

There is a need of distinguishing a donation intervivos from a donation mortis causa for the following reasons:

(1) In order to determine when the donation shall take effect. This is so, because the former takes effect independently of the donor's death, whereas the second takes effect upon the death of the donor;

(2) In order to determine whether or not there is a transfer of title or ownership during the lifetime of the donor. This is so, because in the former, there is a transfer of title or ownership (full or naked), whereas in the latter, there is none.

(3) In order to determine whether or not the donation is revocable. This is so, because the former

is, as a general rule, irrevocable during the lifetime of the donor, whereas the second is always revocable at will during the lifetime of the donor.

(4) In order to determine the effect if the donor survives the done. This is so, because the former is valid even if the donor survives the donee, whereas the latter is void if the donor survives the donee.

(5) In order to determine the formalities which must be complied with in their execution. This is so, because the former must comply with the formalities prescribed by Arts. 748 and 749 of the Civil Code, whereas the latter must be contained in a last will and testament.

438. Are the effects of illegal and immoral conditions on simple donations the same as those effects that would follow when such conditions are imposed on donations con causa onerosa?

No, they don't have the same effect. Illegal or impossible conditions in simple and remuneratory donations shall be considered as not imposed. Hence the donation is valid. The donation will be considered as simple or pure. The condition or mode is merely an accessory disposition, and its nullity does not affect the donation, unless it clearly appears that the donor would not have made the donation without the mode or condition.

Donations con causa onerosa is governed by law on obligations and contracts, under which an impossible or illicit condition annuls the obligation where the condition is positive and suspensive. If the impossible or illicit condition is negative, it is simply considered as not written and the obligation is converted into pure and simple one. However, in order that an illegal condition may annul the contract, the impossibility must exist at the time of creation of the obligation; a supervening impossibility does not affect the existence of the obligation.

439. A and B, spouses, executed a deed of donation contained in a public instrument donating 5 out of their 8 lots to their children, C,D and E, and o their daughter-in-law, F, as a token of their affection and esteem. The donees duly accepted the donation in the same public instrument. In the reddendum or reservation clause, it is stipulated that the donees shall shoulder the expenses for the illness and the funeral of the donors and that the donees cannot sell the donated properties to a third person during the donors' lifetime, but if the sale is necessary to defray the expenses and support of the donors, then the sale is valid.

(1) Is the donation valid? Why?

The above donation is valid. An examination of the habendum (granting) clause, the reddendum (reservation) clause and the acceptance clause show that it is a donation inter vivos. Since it complies with all the requisite legal formalities. (Art. 749, CC), it is valid.

That it is a donation intervivos is shown by the habendum (granting) and warranty clause. From this clause it is clear that it took effect immediately after the execution of the deed of donation.

The acceptance clause is another indication that the donation is inter vivos. Donations mortis causa or testamentary dispositions, being in the form of a will, are never accepted by the donees during the lifetime of the donors. Acceptance is a requirement for donations intervivos.

Finally, the reddendum or reservation clause itself is another indication that the donation is inter vivos. The limited right to dispose of the donated lots, which the deed gives to the donees, implies that ownership had passed to them by means of the donation and that, therefore, the donation was already effective during the donor's lifetime. That is a characteristic of a donation inter vivos.

In reality, the reddendum clause refers to the beneficial ownership and not to the naked title. What the donors reserved was the management of the donated lots and the fruits thereof. The donation, as shown in the habendum clause, was already effective during their lifetime and was not made in contemplation of death because the deed transferred to the donees the naked ownership of the donated properties. (Alejandro v. Geraldez, 78 SCRA 245)

(2) If the above donation is mortis causa, and therefore, void because it is not contained in a last will and testament, can we not say that it is still valid as a partition inter vivos under Article 1080 of the Civil Code?

Art. 1080 of the Civil Code cannot be applied to the case at bar. The article declares that "should a person make a partition of his estate by an act inter vivos or by will, such partition shall be respected insofar as it does not prejudice the legitimate compulsory heirs." The partition here was not of the entire estate of the spouses A and B. Only five of their eight lots were partitioned. Hence, the partition is not the one contemplated in Article 1080. (Ibid)

440. As a token of affection and esteem for his friend, B, A donated to him by means of a public document his lot at No. 2 Dart, Paco, Manila. In the same instrument, he also donated to B an apartment of the Towers Condominium, Makati, in consideration of his services as manager of Aps business during his long illness. B accepted the two donations in a separate public instrument executed on the same day A died but sent to him a day later. B thereafter demanded the delivery of the lot and apartment donated to him but A's heirs objected on the ground that the donations were void because the donor did not come to know of the acceptance prior to his death. Discuss the validity of the questioned donation.

(1) The donation of the lot is out of pure liberality and therefore governed by the provisions of donation wherein it is required that the donor must be notified of the acceptance during his lifetime. There is, here, no valid acceptance; hence the donation of the lot is not valid.

(2) The donation of the apartment to B is an onerous or remuneratory donation governed by general provision on contract. There is no need of knowledge of the acceptance by the other party because the services have already been rendered. The donation of the apartment being in consideration of services is an onerous donation governed by the rules of Contract which requires knowledge of the acceptance.

i. The donation of the lot is not valid because not properly accepted since the donor died before knowing of the acceptance.

ii. The donation of the lot (Art, 726) cannot be said to have validly perfected from the moment the donor knows of the acceptance (Art. 734) which the law requires must be made during the life time of the donor and of the done (Art. 746). Since the donor never came to know the acceptance, the contention of the heirs of A that the donation did not become operative is well-taken.

(3) The same is true as regards the apartment unit.

The donation of the lot (Art. 726) cannot be said to have validly perfected. The donation is perfected from the moment the donor knows of the acceptance (art. 734) which the law requires must be made during the lifetime of the donor and the done (Art. 746). Since the donor never came to know the acceptance, the contention of the heirs of A that the donation did not become operative is well-taken.

(4) As regards the apartment unit, the "donation" therefore may be interpreted as dacion en pago (Art. 1245) on the "donor" constituted a demandable debt (Art. 726). Hence, the donor is valid.

(5) Considering the management of A's business during his long illness, the donations are in contemplation of death, and therefore void.

441. A donated to X a parcel of land in 1980. The donation was made in a public instrument, which the acceptance by X was embodied in the same public investment. The deed of donation was entitled "Donation Inter vivos". There is however a provision in the deed to the effect that, although the land donated shall be delivered immediately to X upon the perfection of the donation with full right to enjoy all of the fruits thereof, "title thereto shall pass to the done only upon the donor's death." Upon the death A, his widow and only heir, B, brought an action for the recovery of the property on the ground that the donation is a donation mortis causa and not a donation inter vivos. Will the action prosper? Give your reason.

Yes, the action will prosper. In Bonsato vs Court of Appeals, and Howard vs Court of appeals, the Supreme Court declared that in order that a donation will be considered a disposition post mortem, it should reveal any on all of the following characteristics:

(1) Convey no title or ownership to the transferee before the death of the transferor; or, what amount to the same thing, that the transferor should the ownership, full or naked, and control the property while alive;

(2) That before his death, the transfer should be revocable by the transferor at will, ad nutum; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the property conveyed;

(3) That the transfer should be void if the transferor should survive the transferee. It is clear from the

facts stated in the problem that the donation reveals the first characteristic. Hence, it is a disposition post mortem.

Therefore, in order that the donation can take effect it is essential that it must be made in a will executed in accordance with all of the formalities prescribed by law (Arts.728, NCC). Since that requisite has not been complied with the donation in the instant case is void or inexistent.

442. Suppose that in the above problem, the donor stated instead in the deed of donation that he is reserving his right to dispose of the property donated at anytime while he lives and that the done shall not register the deed until after the death of the former, will that make a difference in your answer?

My answer will still be the same. As a matter of fact, the issue here is identical to the issue resolved by the Supreme Court in Puig vs. Penaflorida (15 SCRA 276, 16 SCRA 136). In this case, the court held that these features concordantly indicate that the conveyance was not intended to produce any definitive effects, or to finally pass any interest to the grantee, except from and after the death of the grantor. Hence, the reservation in the deed of donation by the donor of the right to dispose of the property during his lifetime does not indicate that title had passed to the done in his lifetime but the donor merely reserves the power to destroy the donation at any time and that the transfer is not binding on the grantor until his death made it impossible to channel the property elsewhere. In the last analysis, this signifies that the liberality herein expressed is testamentary in nature, and, therefore, must appear with the solemnities of last wills and testaments in order to be valid.

443. Distinctions between Donation Inter Vivos and Mortis Causa as to Form and Effect

(a) Inter Vivos:

1) Takes effect during the lifetime of the donor
2) Must follow the formalities of donations (if ordinary and simple)
3) Cannot be revoked except for grounds provided for by law
4) In case of impairment of the legitime, donations inter vivos are preferred to donations mortis causa (priority in time is priority in right)
5) The right of disposition is completely transferred to the donee (although certain reservations as to usufruct, for example, may be made)
6) Acceptance by donee must be during lifetime of donor.

(b) Mortis Causa:

1) Takes effect after the death of the donor
2) Must follow the formalities of wills or codicils (holographic or notarial)
3) Can be revoked at any time and for any reason while the donor is still alive (just as a will is essentially revocable). In other words, this donation is revocable ad nutum, i.e, at the discretion of the grantor or the so-called "donor" simply because he has changed his mind.
4) In case the legitime is impaired, donations mortis causa (since they partake of the nature of, or are really, legacies or devices) are reduced or suppressed ahead of donations inter vivos, the latter being preferred.
5) The right of disposition is not transferred to the donee while the donor is still alive.
6) Acceptance by donee mortis causa can only be done after the donor's death; any prior acceptable is immaterial or void. (There can as a rule be no contract relatively to future inheritances). (Art. 729, NCC)

444. Ernesto donated in a public instrument a parcel of land to Demetrio, who accepted it in the same document. It is there declared that the donation shall take effect immediately, with the done having the right to take possession of the land and receive its fruits but not to dispose of it at any time – a right which he did not exercise at all. After his death, Ernesto's heirs seasonably brought an action to recover the property, alleging that the donation was void as it did not comply with the formalities of a will. Will the suit prosper?

Yes, the suit will prosper as the donation did not comply with the formalities of a will. In this instance, the fact that the donor did not intend to transfer ownership or possession of the donated property to the done until the donor's death, would result in a donation mortis causa and in this kind of disposition, the formalities of a will should be complied with, otherwise, the donation is void. In this instance, donation mortis causa embodied only in a public instrument without the formalities of a will could not have transferred ownership of disputed property to another.

445. A donated a parcel of land on B on December 18, 2003, accepted on the same date of B. the donation provided in post: "I hereby donate to you now my land. But while I am still alive, I will remain in its possession. The property will be delivered to you only upon my death." Is the donation inter vivos or mortis causa?

This is a donation "in praesenti to be delivered in future," therefore it is really a donation inter vivos. Consequences: beginning December 18, 2003, B is the owner of the property, and therefore entitled to the fruits starting said date, unless the contrary has been provided in the dead of donation. Moreover, A cannot without a valid legal reason ask for a successful revocation of the donation. B can, because he is now the owner, dispose of, or alienate, the property (Art.
729, NCC).

446. On January 21, 1986, a executed a deed of donation inter vivos of a parcel of land to Dr. B who had earlier constructed theron a building in which researches on the dreaded disease AIDS were being conducted. The deed, acknowledged before a notary public, was handed over by A to Dr. B who received it. A few days after, A flew to Davao City. Unfortunately, the airplane he was riding crashed on landing killing him. Two days after the unfortunate accident, Dr. B upon advice of a lawyer, executed a deed acknowledged before a notary public accepting the donation. Is the donation effective? Explain.

No, the donation is not effective. The law requires that the separate acceptance of the donee of an immovable must be done in a public instrument during the lifetime of the donor. (Art. 746 and 749) In this case, B executed the deed of acceptance before a notary public after the donor had already died.

447. On June 15, 1962, A offered in writing to donate an automobile valued at P10,000 to B. On July 15, 1962, the latter accepted the donation in writing. Two days afterwards, the letter of acceptance reached A. Unfortunately, he was no longer in condition to read the letter because the day before he had been rushed to the psychopathic hospital for confinement. Is the donation binding? Reasons.

There are two views

According to one view, the donation is binding. The exponents of this view maintain that there is only one moment which must be considered in order to determine the donor's capacity to make the donation and that is "the time of the making of the donation" in accordance with the literal tenor of Art. 737 of the Civil Code. According to them, when the law speaks of the making of the donation, it can only refer to that precise moment when the donor manifests his offer to make the donation to the done. And besides, even if the donor becomes insane subsequently, the acceptance can always be conveyed to his legal representative.

According to another view, the donation is not binding for the following reasons:

(1) Article 737 of the Civil Code declares that the donor's capacity shall be determined as of the time of the making of the donation. Correlating this with Art. 734 which declares that a donation is perfected from the moment the donor knows of the acceptance by the done, it is clear that when the law speaks of the making of a donation, it refers not only to that moment when the donor manifest to the done his offer to make the donation but also to that more decisive moment – the moment of perfection of the contract- the moment the donor knows of the acceptance by the done.

(2) Besides, under the original Project of the Civil Code of the Philippines as submitted to Congress, the donor's capacity is to be determined at the time of the "acceptance" of the donation. This was changed by Congress when it substituted the word "making" for the word "acceptance". This change was necessary, according to Dr. Tolentino, because, juridically, it is not the acceptance by the done but the knowledge of the donor of such acceptance which results in the perfection of the contract of donation. (Sec. 2 Tolentino, Civil Code, pp. 472-473)

448. What formalities are prescribed by law for donations?

It depends.

If the donation is simple or remuneratory, the formalities prescribed by the following articles of the Civil Code shall be complied with:

"The donation of a movable may be made orally or in writing."

"An oral donation requires the simultaneous delivery of the thing or of the document representing the

right donated."

"If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise, the donation shall be void." (Art. 748. CC)

"In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy."

"The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor."

"If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments." (Art. 749, CC)

"If the donation is with an onerous cause, it shall be governed by the rules on contracts and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed." (Art. 733)

And if the donation is mortis causa, the formalities prescribed by the Civil Code (Arts. 804-814 for the execution of wills shall be complied with. (Art. 728, CC)

449. On July 27, 1997, Pedro mailed in Manila a letter to his brother, Jose, a resident of Iloilo City, offering to donate a vintage sports car which the latter had long been wanting to buy from the former. On August 5, 1997, Jose called Pedro by cellular phone to thank him for his generosity and to inform him that he was sending by mail his letter of acceptance. Pedro never received that letter because it was never mailed. On August 14, 1997, Pedro received a telegram from Iloilo informing him that Jose had been killed in a road accident the day before (August 13, 1997).

A. Is there a perfected donation?

None. There is no perfected donation. Under Art. 748 of the CC, the donation of a movable may be made orally or in writing. If the value of the personal property donated exceeds P5,000, the donation and the acceptance shall be made in writing. Assuming that the value of the thing donated, a vintage sports car exceeds P5,000, and then the donation and the acceptance must be in writing. In this instance, the acceptance of Jose was not in writing; therefore, the donation is void. Upon the other hand, assuming that the sports car costs less than P5,000, then the donation may be oral, but still, the simultaneous delivery of the car is needed and there being none, the donation was never perfected.

B. Will your answer be the same if Jose did mail his acceptance letter but it was received by Pedro in Manila days after Jose's death? (1998)

Yes, the answer is the same. If Jose's mail containing his acceptance of the donation was received by Pedro after the former's death, then the donation is still void because under Article 734 of the CC, the donation is perfected the moment the donor knows of the acceptance by the donee. The death of Jose before Pedro could receive the acceptance indicates that the donation was never perfected. Under Article 746 acceptance must be made during the lifetime of both the donor and the donee.

450. Elated that her sister who had been married for five years was pregnant for the first time, Alma donated P100,000 to the unborn child. Unfortunately, the baby died one hour after delivery. May Alma recover the P100,000 that she had donated to said baby before it was born considering that the baby died? Stated otherwise, is the donation valid and binding?

No. The donation was not valid and binding. The donation is void because it exceeds P5000 and there is no showing in the problem that both the donation and acceptance was made in writing.

The donation of a movable maybe made orally or in writing. An oral donation requires the simultaneous delivery of the thing or of a document representing the right donated. If the value of the personal property exceeds five thousand pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void. (Art. 748 CC)

451. A gave his diamond ring worth P10,000 to his friend B as a birthday gift, which the latter accepted with thanks. Two weeks later, upon learning that B was courting his (A's) girlfriend, a asked B to return the ring. May B legally refuse to return the ring?

If A gave the diamond ring to B in writing and the latter accepted it in writing, then the donation is perfectly valid. B therefore can legally refuse to return the ring to A. However, if the donation and/ or the acceptance are not in writing, then the donation is void. B therefore cannot refuse to return the ring to A. Formalities prescribed by law for making of donations, whether of personal or real property, the last paragraph of Art. 748 of the Civil Code states that if the value of personal property donated exceed five thousand pesos, the donation and the acceptance shall be made in writing. Otherwise, the donation shall be void.

452. A donated a piece of land to B in a donation inter vivos. B accepted the donation in a public instrument but A suddenly died in an accident before the acceptance could be communicated to him. Is the donation valid?

Under Art. 749 of the Civil Code which enunciates the different formalities required in the execution of donations inter vivos, the law declares that if the acceptance is made in a separate public instrument, the donor shall be notified thereof in authentic form, and this step shall be noted in both instruments. It is obvious that in the instant case, the requirement of notification of the donor in authentic form (constancia autentica) has not been complied with. It is of course axiomatic under the law on donations that all formalities prescribed in Art. 749 of the code are essential for validity.

453. A wrote a letter to B on June 1, 1955, in which the former stated that he is giving the latter a gift of a certain sum of money which he may collect from X on June 30, 1962. B received the letter but did not answer. On June 30, 1962, B went to X who handed him the sum donated as he had orders from A to that effect. Does this donation produce legal effects? Reasons.

We must distinguish.

If the amount donated does not exceed P5,000, the donation produces legal effects. In such case, the law does not require that the acceptance by the done shall be in writing; neither does it require that it shall be express. Consequently, it may be implied acceptance of the amount donated.

If the amount donated, however, exceeds P5,000, then the donation does not produce legal effects. It is void or non-existent. This is so because the law expressly declares that in such a case the donation as well as the acceptance must be in writing. (Art. 748, CC)

454. A, who resides in Manila, wrote to his friend B, who is residing in Cotabato City, stating in the letter, B, called A by long distance telephone telling A that he is accepting the donation. The same day B wrote and mailed a letter to A accepting the donation. Immediately after mailing the letter, B died of a heart failure. Who is entitled to the car now, A or the heirs of B? Reasons.

A is entitled to the car. The reason is that the donation in the instant case cannot produce any legal effect whatsoever. According to Art. 748 of the Civil Code, if the value of the personal property exceeds P5,000, the donation is void. True, the acceptance by B was actually written and mailed. But immediately after mailing the letter of acceptance, b died. The effect is to bring into play the provision of Art.1323 of the Civil Code which is certainly applicable here, considering the provision of Art. 732. According to 1323, an offer becomes ineffective upon the death, civil interdiction, insanity or insolvency of either party before acceptance is conveyed. Analyzing the provision, it is clear that the offer of A has become ineffective and that the contract of donation, as a consequence, has never been perfected.

455. Anastacia purchased a house and lot on installments at a housing project in Quezon City. Subsequently, she was employed in California and a year later, she executed a deed of donation, duly authenticated by the Philippine Consulate in Los Angeles, California, donating the house and lot to her friend Amanda. The latter brought the deed of donation to the owner of the project and discovered that Anastacia left unpaid installments and real estate taxes/ Amanda paid these so that the donation in her favor can be registered in the project owner's office. Two months later, Anastacia died, leaving her mother Rosa as her sole heir. Rosa filed an action to annul the donation on the ground that Amanda did not give her consent in the deed of donation or in a separate public instrument. Amanda replied that the donation was an onerous one because she had to pay unpaid installments and taxes; hence her acceptance may be implied. Who is correct?

Rosa is correct because the donation is void. The property donated was an immovable. For such donation to be valid, Article 749 of the New Civil Code requires both the donation and the acceptance to be in a public instrument. There being no showing that Amanda's acceptance was made in a public instrument, the donation is void. The

contention that the donation is onerous and therefore need not comply with Article 749 for validity is without merit.

The donation is not onerous because it did not impose on Amanda the obligation to pay the balance on the purchase price or the arrears in real estate taxes. Amanda took it upon herself to pay those amounts voluntarily. For a donation to be onerous, the burden must be imposed by the donor on the donee. In the problem, there is no such burden imposed by the donor on the donee. The donation not being onerous, it must comply with the formalities of Article 749.

456. Ernesto donated in a public instrument a parcel of land to Demetrio, who accepted it in the same document. It is there declared that the donation shall take effect immediately, with the donee having the right to take possession of the land and receive its fruits but not to dispose of

the land while Ernesto is alive as well as for ten years following his death. Moreover, Ernesto also reserved in his deed his right to sell the property should he decide to dispose of it at anytime – a right which he did not exercise at all. After his death, Ernesto's heirs seasonably brought an action to recover the property, alleging that the donation was void as it did not comply with the formalities of a will. Will the suit prosper?

Yes, the suit will prosper as the donation did not comply with the formalities of a will. In this instance, the fact that the donor did not intend to transfer ownership or possession of the donated property to the donee until the donor's death, would result in a donation mortis causa and in this kind of disposition, the formalities of a will should be complied with, otherwise, the donation is void. In this instance, donation mortis causa embodied only in a public instrument without the formalities of a will could not have transferred ownership of disputed property to another.

457. What are the effects of Donation?

The following are the effects of Donation:

(1) Donee may demand the delivery of the thing donated

(2) Donee is subrogated to the rights of the donor in the property

(3) In donations propter nuptias, the donor must release the property from encumbrances, except servitudes

(4) Donor's warranty exists if: (a) expressed (b) donation is propter nuptias (c) donation is onerous (d) donor is in bad faith

(5) When the donation is made to several donees jointly they are entitled to equal portions, w/o accretion, unless the contrary is stipulated

458. What are the most fundamental limitations which are imposed by law upon the extent of property which may be donated inter vivos?

The most fundamental limitations which are imposed by law upon the extent of property which may be donated are:

1. The donor must reserve sufficient means for his support of all relatives who, at the time of the acceptance of the donation, are by law entitled to be supported by such donor. (Art. 750, CC)

2. Donations cannot comprehend future property. (Art. 751, CC)

3. No person may give or receive, by way of donation, more than he may give or receive by will. The donation shall be inofficious in all that it may exceed this limitation. (Art. 751, CC)

459. When is Donation considered innoficious?

A donation is inofficious if it impairs the legitime.

460. What is the effect of an inofficious donation?

An inofficious donation will be reduced in so far as it exceeds what the donor could have given by will to the donee – the free portion. Whether a donation is inofficious or not can only be determined at the time of the death of the donor. The action to reduce to be filed by heirs who have right to legitimate at time of donation. The donees/creditors of deceased donor cannot ask for reduction of donation. If there are 2 or more donation, recent ones shall be suppressed. If there are 2 or more donation at same time, they shall be treated equally & reduction is pro rata but donor

may impose preference which must be expressly stated in the donation.

The heirs of the donor have 10 years from the death of the donor to revoke or reduce the donation (Imperial vs. CA).

If there is a subsequent appearance or birth of a child and his legitime is impaired because of a donation, the donation may be revoked or reduced to the extent that his legitime is prejudiced (Articles 760 and 761).

461. What are the different special modes by which donations inter vivos may be reduced?

There are three special modes. They are:

(1) That the donor did not reserve sufficient means for his support of all relatives who, at the time of the donation, are by law entitled to be supported by such donor. (Art. 750, CC)

(2) Supervening birth, survival or adoption of a child. (Art. 760, CC) (3) Inofficious donations (Art. 771, CC)

462. What are the Badges of mortis causa?

a. Title remains with donor (full or naked ownership) & conveyed only upon death b. Donor can revoked ad mutuum

c. Transfer is void if transferor survives transfer

463. What is the rule in a case of Double Donation?

Rule: Priority in time, priority in right

1. If movable – one who first take possession in good faith

2. If immovable – one who recorded in registry of property in good faith
   - no inscription, one who first took possession in good faith
   - in absence thereof, one who can present oldest title

464. "H" and "W" are husband and wife. They have neither descendants nor ascendants. "H" died and while the conjugal partnership was under judicial administration and pending liquidation, "W" donated all her share in her husband's estate to a friend "F." "W" died while the proceeding for the settlement of the conjugal partnership was pending. The collateral heirs of "W" and the administrator of the estate brought an action against the done, "F," to set aside the donation of future property. Decide with reasons.

The contention of the collateral heirs of "W" and the administrator of the estate that the donation made by "W" to her friend "F" is void because the donation is a donation of a future property is untenable. THE REASON IS CRYSTAL CLEAR. According to the Civil Code, by future property is understood anything which the donor cannot dispose of at the time of the donation. Obviously, "W's" share in her husband's estate does not fall within the purview of the definition. Because of the principle that successional rights are transmitted at the very moment of the death of the decedent, it is evident that "W" had a perfect right to donate her share in her husband's estate to her friend "F."(Note: The above answer is based on Arts. 777 and 751 of the Civil Code.)

465. "A" donates to "B" mortis causa all his present property without reservation in fee simple or in usufruct. Is the donation void ab initio? Explain your answer.

Assuming that the donation mortis causa is contained in a last will and testament which is indispensable for the validity of donations of this type (Art. 728, CC), the donation is not void ab initio. However, after the death of the donor "A," two possible situations may arise. If he dies

without any compulsory heirs, the donation is inofficious in the sense that it is in excess of that which is disposable by will thus resulting in the impairment of the legitime of compulsory heirs. (Art. 752, CC). Consequently, Art. 771 of the Civil Code is applicable. According to this article, donations which in accordance with the provisions of Art. 752, are inofficious, bearing in mind the estimated net value of the donor's property at the time of his reduction shall not

prevent the donations from taking effect during the life of the donor, nor shall it bar the done from appropriating the fruits.

466. When is a donation inter vivos inofficious?

One of the limitations imposed upon donations inter vivos is the principle that no person may give or receive, by way of donation, more than he can give or receive by will. The donation shall be inofficious in all that it may exceed this limitation. (Art. 752, CC)

Cases:

467. CORAZON CATALAN, et al. vs. JOSE BASA, et al. G.R. No. 159567, July 31, 2007

FACTS:

On October 20, 1948, FELICIANO CATALAN (Feliciano) was discharged from active military service because he was found to be unfit to render military service due to his "schizophrenic reaction, catatonic type, which incapacitates him because of flattening of mood and affect, preoccupation with worries, withdrawal, and space (sic) and pointless speech." On June 16, 1951, Feliciano donated to his sister MERCEDES CATALAN a real property. The donation was registered with the Register of Deeds. On December 22, 1953, the trial court issued its Order for Adjudication of Incompetency for Appointing Guardian for the Estate and Fixing Allowance of Feliciano. The trial court appointed People's Bank and Trust Company as Feliciano's guardian. People's Bank and Trust Company has been subsequently renamed, and is presently known as the Bank of the Philippine Islands (BPI).

ISSUE: Is the donation valid?

HELD:

A person suffering from schizophrenia does not necessarily lose his competence to intelligently dispose his property. By merely alleging the existence of schizophrenia, petitioners failed to show substantial proof that at the date of the donation, June 16, 1951, Feliciano Catalan had lost total control of his mental faculties. Thus, the lower courts correctly held that Feliciano was of sound mind at that time and that this condition continued to exist until proof to the contrary was adduced. Sufficient proof of his infirmity to give consent to contracts was only established when the Court of First Instance of Pangasinan declared him an incompetent on December 22,
1953.

468. Republic vs. Silim, G.R. No. 140487, April 2, 2001

FACTS:

On 17 December 1971, respondents, the Spouses Leon Silim and Ildefonsa Mangubat, donated a parcel of land in favor of the Bureau of Public Schools, Municipality of Malangas, Zamboanga del Sur (BPS). In the Deed of Donation, respondents imposed the condition that the said property should "be used exclusively and forever for school purposes only." This donation was accepted by the District Supervisor of BPS, through an Affidavit of Acceptance and/or Confirmation of Donation.

A school building was constructed on the donated land. However, the Bagong Lipunan school building that was supposed to be allocated for the donated parcel of land in Barangay Kauswagan could not be released since the government required that it be built upon a one (1) hectare parcel of land. To remedy this predicament, Assistant School Division Superintendent of the Province of Zamboanga del Sur, Sabdani Hadjirol, authorized District Supervisor Buendia to officially transact for the exchange of the one-half (1/2) hectare old school site of Kauswagan Elementary School to a new and suitable location which would fit the specifications of the government. Pursuant to this, District Supervisor Buendia and Teresita Palma entered into a Deed of Exchange whereby the donated lot was exchanged with the bigger lot owned by the latter. Consequently, the Bagong Lipunan school buildings were constructed on the new school site and the school building previously erected on the donated lot was dismantled and transferred to the new location.

What are the kinds of donation according to its purpose or cause?

Donations, according to its purpose or cause, may be categorized as: (1) pure or simple; (2) remuneratory or

compensatory; (3) conditional or modal; and (4) onerous. A pure or simple donation is one where the underlying cause is plain gratuity. This is donation in its truest form. On the other hand, a remuneratory or compensatory donation is one made for the purpose of rewarding the donee for past services, which services do not amount to a demandable debt. A conditional or modal donation is one where the donation is made in consideration of future services or where the donor imposes certain conditions, limitations or charges upon the donee, the value of which is inferior than that of the donation given. Finally, an onerous donation is that which imposes upon the donee a reciprocal obligation or, to be more precise, this is the kind of donation made for a valuable consideration, the cost of which is equal to or more than the thing donated.

What is the purpose of the formal requirement for acceptance of a donation?

The purpose of the formal requirement for acceptance of a donation is to ensure that such acceptance is duly communicated to the donor.

The actual knowledge by respondents of the construction and existence of the school building fulfilled the legal requirement that the acceptance of the donation by the donee be communicated to the donor.

Did the donee, in exchanging the donated lot with a bigger lot, violated the condition in the donation that the lot be exclusively used for school purposes only?

What does the phrase "exclusively used for school purposes" convey? "School" is simply an institution or place of education. "Purpose" is defined as "that which one sets before him to accomplish or attain; an end, intention, or aim, object, plan, project. Term is synonymous with the ends sought, an object to be attained, an intention, etc. "Exclusive" means "excluding or having power to exclude (as by preventing entrance or debarring from possession, participation, or use); limiting or limited to possession, control or use.

Without the slightest doubt, the condition for the donation was not in any way violated when the lot donated was exchanged with another one. The purpose for the donation remains the same, which is for the establishment of a school. The exclusivity of the purpose was not altered or affected. In fact, the exchange of the lot for a much bigger one was in furtherance and enhancement of the purpose of the donation. The acquisition of the bigger lot paved the way for
the release of funds for the construction of Bagong Lipunan school building which could not be accommodated by the limited area of the donated lot.

469. LYDIA SUMIPAT, et al. vs. BRIGIDO BANGA, et al. G.R. No. 155810. August 13, 2004

What are the formalities for the validity of a donation of an immovable?

Art. 749. In order that the donation of the immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy.

The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor.

If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

Title to immovable property does not pass from the donor to the donee by virtue of a deed of donation until and unless it has been accepted in a public instrument and the donor duly

notified thereof. The acceptance may be made in the very same instrument of donation. If the acceptance does not appear in the same document, it must be made in another. Where the deed of donation fails to show the acceptance, or where the formal notice of the acceptance, made in a separate instrument, is either not given to the donor or else not noted in the deed of donation and in the separate acceptance, the donation is null and void.

In this case, the donees' acceptance of the donation is not manifested either in the deed itself or in a separate document. Hence, the deed as an instrument of donation is patently void.

470. J.L.T. AGRO, INC., represented by its Manager, JULIAN L. TEVES vs. ANTONIO BALANSAG and HILARIA CADAYDAY G.R. No. 141882. March 11, 2005

If a Supplemental Deed appears in a public document, is the absence of acceptance by the donee in the same deed or even in a separate document a glaring violation of the requirement?

Yes. This Court declared that title to immovable property does not pass from the donor to the donee by virtue of a deed of donation until and unless it has been accepted in a public instrument and the donor duly notified thereof. The acceptance may be made in the very same instrument of donation. If the acceptance does not appear in the same document, it must be made in another. Where the deed of donation fails to show the acceptance, or where the formal notice of the acceptance, made in a separate instrument, is either not given to the donor or else not noted in the deed of donation and in the separate acceptance, the donation is null and void.

471. SPS. AGRIPINO GESTOPA and ISABEL SILARIO GESTOPA vs. COURT OF APPEALS and MERCEDES DANLAG y PILAPIL G.R. No. 111904. October 5, 2000

Is a donation revocable?

A valid donation, once accepted, becomes irrevocable, except on account of officiousness, failure by the donee to comply with the charges imposed in the donation, or ingratitude. The donor-spouses did not invoke any of these reasons in the deed of revocation. Thus, the revocation has no effect.

472. DECS vs. JULIA DEL ROSARIO, et al G.R. No. 146586. January 26, 2005

What are the Formal Requisites of Donations of Real Property?

Article 749 of the Civil Code requires that the donation of real property must be made in a public instrument. Otherwise, the donation is void. A deed of donation acknowledged before a notary public is a public document. The notary public shall certify that he knows the person acknowledging the instrument and that such person is the same person who executed the instrument, acknowledging that the instrument is his free act and deed. The acceptance may be made in the same deed of donation or in a separate instrument. An acceptance made in a separate instrument must also be in a public document. If the acceptance is in a separate public instrument, the donor shall be notified in writing of such fact. Both instruments must state the fact of such notification

473. URSULINA GANUELAS, ET AL vs. HON. ROBERT T. CAWED, ET AL G.R. No. 123968 April 24, 2003

Differentiate Donation Inter Vivos from Donation Mortis Causa.

Donation inter vivos differs from donation mortis causa in that in the former, the act is immediately operative even if the actual execution may be deferred until the death of the donor, while in the latter; nothing is conveyed to or acquired by the donee until the death of the donor- testator.

What are the distinguishing characteristics of a donation mortis causa?

The distinguishing characteristics of a donation mortis causa are the following:

1. It conveys no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;

2. That before his death, the transfer should be revocable by the transferor at will, ad nutum; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;

3. That the transfer should be void if the transferor should survive the transferee.

474. HEIRS OF ROSENDO SEVILLA FLORENCIO vs. HEIRS OF TERESA SEVILLA DE LEON G.R. No. 149570. March 12, 2004

The threshold issue in this case is whether or not the petitioners, as heirs of Rosendo Florencio, who appears to be the donee under the unregistered Deed of Donation, have a better right to the physical or material possession of the property over the respondents, the heirs of Teresa de Leon, the registered owner of the property.

Donation is one of the modes of acquiring ownership. Among the attributes of ownership is the right to possess the property. As a mode of acquiring ownership, donation results in an effective transfer of title over the property from the donor to the donee, and is perfected from the moment the donor is made aware of the acceptance by the donee, provided that the donee is not disqualified or prohibited by law from accepting the donation. Once the donation is accepted, it is generally considered irrevocable, and the donee becomes the absolute owner of the property, except on account of officiousness, failure by the donee to comply with the charge imposed in the donation, or ingratitude. The acceptance, to be valid, must be made during the lifetime of both the donor and the donee. It must be made in the same deed or in a separate public document, and the donee's acceptance must come to the knowledge of the donor.

In order that the donation of an immovable property may be valid, it must be made in a public document. Registration of the deed in the Office of the Register of Deeds or in the Assessor's Office is not necessary for it to be considered valid and official. Registration does not vest title; it is merely evidence of such title over a particular parcel of land. The necessity of registration comes into play only when the rights of third persons are affected. Furthermore, the heirs are bound by the deed of contracts executed by their predecessors-in-interest.

On the other hand, the fundamental principle is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein as the registered owner. The registered owner has the right to possess, enjoy and dispose of the property without any limitations other than those imposed by law.

In this case, the deed of donation, on its face, appears to bear all the essential requisites of a valid donation inter vivos. With Teresa de Leon as the donor and Rosendo Florencio as the donee, the deed of donation appears to have been notarized by Notary Public Tirso Manguiat. On this premise, Florencio, and after his death, his heirs, acquired ownership over the property although Certificate of Title No. T-44349 under the name of Teresa de Leon had not yet been cancelled.

However, as pointed out by the RTC and the Court of Appeals, there are cogent facts and circumstances of substance which engender veritable doubts as to whether the petitioners have a better right of possession over the property other than the respondents, the lawful heirs of the deceased registered owner of the property, Teresa de Leon, based on the Deed of Donation.

First. Teresa de Leon purportedly executed the Deed of Donation on October 1, 1976 in favor of Rosendo S. Florencio. If she, indeed, donated the property, she would surely have turned over the owner's duplicate of TCT No. T-44349 to Florencio, to facilitate the issuance of a new title over the property in his favor.

At the very least, Florencio should have caused the annotation of the deed immediately after October 1, 1976 or shortly thereafter, at the dorsal portion of TCT No. T-44349. The claim that Florencio and his heirs sought the registration of the deed and the transfer of the title to and under Florencio's name from 1978 to 1991, in coordination with Jose de Leon is incredible. There

is no evidence on record that the deed of donation was ever filed with and registered in the Office of the Register of Deeds at any time during the period from 1978 to 1991.

Second. Florencio failed to inform the heirs of De Leon that the latter, before her death, had executed a deed of donation on October 1, 1976 over the property in his favor. It was only in 1996, or eighteen years after the death of De Leon when the respondents sued the petitioners for ejectment that the latter claimed, for the first time, that De Leon had executed a deed of donation over the property in favor of their predecessor, Florencio.

Third. In the meantime, the respondents consistently paid the realty taxes for the property from 1978 up to 1996, completely oblivious to the existence of the deed of donation. On the other hand, Florencio, and, after his death, the petitioners never paid a single centavo for the realty taxes due on the property, even as they continued staying in the property without paying a single centavo therefor. The petitioners should have declared the property under their names and paid the realty taxes therefor, if they truly believed that they were its owners.

Fourth. The petitioners never adduced in evidence the owner's duplicate of TCT No. T-44349 under the name of De Leon. Their possession of the owner's duplicate of the title would have fortified their claim that indeed, De Leon had intended to convey the property by donation to Florencio.

Fifth. The respondents adduced in evidence the affidavit-complaint of Valeriana Morente dated May 8, 1996, one of the witnesses to the deed, for falsification and perjury against Florencio and Atty. Tirso Manguiat. They also adduced the Certification dated April 23, 1996 issued by Teresita R. Ignacio, Chief, Archives Division of the Records Management and Archives Division of Manila, to the effect that nothing in the notarial register of Atty. Tirso L. Manguiat, a notary public of Manila, showed that the latter notarized a Deed of Donation executed by De Leon and Florencio in San Miguel, Bulacan dated October 1, 1976.

Sixth. A reading of the deed will show that at the bottom of page one thereof, Florencio was to subscribe and swear to the truth of his acceptance of the donation before Municipal Mayor Marcelo G. Aure of San Miguel, Bulacan. However, the mayor did not affix his signature above his typewritten name.

It appears that a second page was added, with the name of Atty. Manguiat typewritten therein as notary public, obviously, with the use of a different typewriter.

In sum then, we agree with the RTC and the Court of Appeals that the deed of donation relied upon by the petitioners is unreliable as evidence on which to anchor a finding that the latter have a better right over the property than the respondents, who, admittedly, are the heirs of Teresa de Leon, the registered owner of the property under TCT No. T-44349 of the Registry of Deeds of Bulacan.

475. Elvira T. Arangote vs. Sps. Martin and Lourdes S. Maglunob, Romeo Salido G.R. No. 178906, February 18, 2009.

What is the Peril of Not Accepting a Donation Promptly?

The donee's non-acceptance (or belated acceptance) of a donation will make the donation invalid.

476. Heirs of Sevilla vs. Sevilla G.R. No. 150179. April 30, 2003

What is the effect of a vice of consent in a contract of donation?

Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another who accepts it. Under Article 737 of the Civil Code, the donor's capacity shall be determined as of the time of the making of the donation. Like any other contract, an agreement of the parties is essential, and the attendance of a vice of consent renders the donation voidable.

There is fraud when, through the insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress.

477. Quilala vs. Alcantara G.R. No. 132681. December 3, 2001

A stipulation in the donation that it was made for and in consideration of the "love and affection which the DONEE inspires in the DONOR, and as an act of liberality and generosity" was sufficient cause for a donation. Indeed, donation is legally defined as "an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it."

What are the formalities of a valid donation of an immovable?

Under Article 749 of the Civil Code, the donation of an immovable must be made in a public instrument in order to be valid, specifying therein the property donated and the value of the charges which the donee must satisfy. As a mode of acquiring ownership, donation results in an effective transfer of title over the property from the donor to the donee, and is perfected from the moment the donor knows of the acceptance by the donee, provided the donee is not disqualified or prohibited by law from accepting the donation. Once the donation is accepted, it is generally considered irrevocable, and the donee becomes the absolute owner of the property. The acceptance, to be valid, must be made during the lifetime of both the donor and the donee. It may be made in the same deed or in a separate public document, and the donor must know the acceptance by the donee.

In the case at bar, the deed of donation contained the number of the certificate of title as well as the technical description as the real property donated. It stipulated that the donation was made for and in consideration of the "love and affection which the Donee inspires in the Donor, and as an act of liberality and generosity. This was sufficient cause for a donation. Indeed, donation is legally defined as "an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.

Is the requirement that the contracting parties and their witnesses should sign on the left-hand margin of the instrument is not absolute?

No. The intendment of the law merely is to ensure that each and every page of the instrument is authenticated by the parties. The requirement is designed to avoid the falsification of the contract after the same has already been duly executed by the parties. Hence, a contracting party affixes his signature on each page of the instrument to certify that he is agreeing to everything that is written thereon at the time of signing.

Simply put, the specification of the location of the signature is merely directory. The fact that one of the parties signs on the wrong side of the page that does not invalidate the document. The purpose of authenticating the page is served, and the requirement in the above-quoted provision is deemed substantially complied with.

Will the lack of an acknowledgment by the donee before the notary public render the donation null and void?

No. The instrument should be treated in its entirety. It cannot be considered a private document in part and a public document in another part. The fact that it was acknowledged before a notary public converts the deed of donation in its entirety a public instrument. The fact that the donee was not mentioned by the notary public in the acknowledgment is of no moment. To be sure, it is the conveyance that should be acknowledged as a free and voluntary act. In any event, the donee signed on the second page, which contains the Acknowledgment only. Her acceptance, which is explicitly set forth on the first page of the notarized deed of donation, was made in a public instrument.

Article 753 - 769: Donations

478. When donation is made to several persons jointly, shall there be a right of accretion among them? Is there any exception?

As a rule, there shall be no right of accretion among the donees. According to the first paragraph of Art. 753 of the NCC, when a donation is made to several persons jointly, it is understood to be in equal shares, and there shall be no right of accretion among them, unless the donor has otherwise provided. However, there is an exception. According to the second paragraph of the same article, the preceding paragraph shall not be applicable to donations made to the husband and wife jointly.

479. Give an example to the general rule that there be no right of accretion among donations made to several persons jointly.

A donation was given to A and B. If a refuses to accept, B will not get A's share unless the donor has provided otherwise.

480. Give also an example of the exception to the aforestated rule.

A donation was given to H and W, who are husband and wife. If both accept, H gets half as his capital, and W, the other half, as paraphernal property. If W refuses, H gets also W's share, unless the donor has provided otherwise.

481. What are the instances when accretion is proper?

Accretion takes place in the following instances:

a. In case of predecease. b. In case of incapacity.
c. In case of refusal or repudiation.

482. A donor gave X and Y a piece of land in Forbes Park. Both were incapacitated, and they accepted the donation. In the deed of donation, the donor had provided for accretion. If subsequently the donor dies, and a day later x dies. Will X'S share go to Y?

No. X's share will not go to Y. for accretion will not apply her. There being no predeceased, incapacity or repudiation. X's share will go to his own heirs.

483. A donated to B a piece of land, which A thought belonged to him (A). If the real owner should oust or evict B, will A be responsible to B?

No, because the donation was made in good faith, A, thinking he owned the land.

484. A donated to B a piece of land worth 1 million with the condition that B would pay him only P200,000. If the land really belongs to another (R) and A really thought he (A) was the owner, and B is evicted, would A be held responsible?

Yes, even though he was in good faith, but only up to P200,000 which was the amount of the burden, the donation being in part onerous.

485. The general rule is that the donor is not obliged to warrant the things donated, what are the exceptions to this rule.

(a) if the donor is in bad faith;
(b) if donation is onerous (up to the amount of burden) (c) if warranty is expressly made;
(d) if donation is propter nuptias unless the contrary is provided. (See Art.85, FC)

486. May the donor still have the right to dispose some of the things donated, or of some amount which shall be charge thereon?

Yes, provided that the donor has reserved this right.

487. The donor reserves the right to dispose some of the things donated, or of some amount, what happens now to the reservation of the right to dispose if the donor dies without exercising this right?

If the donor should die without having made use of this right, the property or amount reserved shall belong to the done.

488. The ownership of property may also be donated to one person and the usufruct to another or others, but what is the condition before this can be achieved?

The donees must be living at the time of donation.

489. What is meant by "living"?

The term living includes conceived children provided that they are later born with the requisites mentioned in Arts. 40 and 41, respectively of the Civil Code.

490. If a piece of land is given in naked ownership to A and the usufruct to his unborn (and still unconceived) child, would both donations be void?

It is submitted that only the donation of the usufruct would be void.

491. What is reversion of donation?

It means "going back" or, as provided in this Article, "going to" a third person.

492. May a donee be obliged to pay for the debts of the donor?

Yes, provided that this obligation to pay has been imposed upon him upon agreement. Only debts that have been previously contracted shall be paid. In no case shall the done be responsible for the debts exceeding the value of the property donated, unless a contrary intention clearly appears.

493. A owes B P10 million. Later A donated his land to X in a simple donation inter vivos. The value of the land is P6,000,000. There was a stipulation in the deed of donation that X should pay A's debts. After the perfection of the donation. A borrowed P4,000.000 from C. how much all in all must X pay?

X must pay only P6,000.000, in the first place, he is not liable for the new debt of P4,000.000. In the second place, while he is responsible only for prior debts, his liability is limited by the value of the property which is P6,000.000 only.

494. What if the obligation to pay the debts of the donor has not been stipulated, should the done be made responsible therefor?

Yes, the done shall be responsible therefor only when the donation has been made in fraud of creditors.

495. When is there fraud of creditors?

The donation is always presumed to be in fraud of creditors when at the time of donation the donor did not reserve sufficient property to pay his debts prior to the donation.

496. What events will justify the donor or his heir in asking for the revocation or reduction of a donation inter vivos if, at the time the donation was made, the donor was childless?

Every donation inter vivos, made by a person having no children or descendants, legitimated by subsequent

marriage, or illegitimate, may be revoked or reduced by the happening of any of these events:

a) If the donor, after the donation, should have legitimate or illegitimate children, even though they are posthumous; (B)

b) If the child of the donor, whom the latter believed to be dead when he made the donation, should turn out to be living; (R)

c) If the donor should subsequently adopt a minor child. (A)

497. What are the different modes of which donation inter vivos may be revoked?

A: They are:

a) Supervening birth, survival, or adoption of a child.
b) Inofficious donations.
c) Non-fulfillment of the condition or charged imposed. d) Acts of ingratitude of the donee.

498. What are the different special modes by which donations inter vivos may be reduced?

A: They are:

a) Supervening birth, survival or adoption of a child. b) Inofficious donations.

c) That the donor did not reserve sufficient means for his support of all relatives who, at the time of the donation, are by law entitled to be supported by such donor.

499. Why reduction or revocation of donation allowed?

The law presumes that had the donor known he would have a child or that the child he thought was dead was really alive, he wouldn't have made the donations, because then his only child would have been the object of his affection and generosity.

500. Distinguish Revocation from Reduction.

Revocation is total regardless whether the legitime has been impaired or not while in reduction only partial and applies only when the legitime has been impaired. Thus, the legitime must always be preserved. As a rule in revocation it is for the benefit of the donor while in reduction, it is for the benefit of the heirs of the donor.

501. In cases of B-A-R, how should the donation be revoked or reduced?

The donation shall only be revoked or reduced insofar as it exceeds the portion that may be freely disposed of by will, taking into account the whole estate of the donor at the time of the birth, appearance, or adoption of a child.

502. What must the done do if the donation is reduced?

1. If the property is still with him, return the property;
2. If the property has been sold, give the value to the donor;
3. If the property has been mortgaged, the donor may pay off the debt, but he can recover reimbursement from the done;
4. If the property cannot be returned, return its value.

503. Within what period should the action for revocation or reduction be filed?

The action for revocation of a donation must be filed within four (4) years from his legitimatiom, recognition or adoption, or from the judicial declaration of filiation, or from receipt of information regarding the appearance of the child believed dead. (Art. 763)

504. Who may ask for reduction of a donation?

It was said that only those who at the time of the donor's death have a right to the legitime and their heirs and successors in interest may ask for the reduction of inofficious donations.

505. After the donation was made, the donor sold the property to another for failure to comply with the condition imposed. Is the sale an act of revocation? Explain.

No, the act of selling the subject property to the other person cannot be considered as a valid act of revocation of the deed of donation for the reason that a formal case to revoke the donation must be filed pursuant to Article 764 of the Civil Code which speaks of an action that has prescriptive period of four (4) years from non-compliance with the condition stated in the deed of donation. The rule that there can be automatic revocation without the benefit of the court action does not apply in this case for the reason that the subject deed of donation is devoid of any provision providing for automatic revocation in the event of non-compliance with the conditions set for the therein. Thus, a court action is necessary to be filed within four (4) years from the non- compliance with the condition violated.

506. The deed of donation prohibited the sale of the property. It was sold. Can a person who is not an heir question the same. Why?

No, because they are not heir s of the donor. When the donee fails to comply with any of the conditions imposed by the donor, it is the donor who has the right to impugn the validity of the transaction affecting the donated property, conformably to Art. 764, NCC, which provides that the right to revoke may be transmitted to the heirs of the donor and may be exercised against the heirs of the donee, and the action prescribes after four years from the violation of the condition.

507. May revocation be done at the instance of the donor's heirs?

Yes, because one right of a creditor is to exercise the rights that could've been exercised by the debtor.

508. What are the grounds for revocation of donation by reason of ingratitude?

They are:

a. When the donee committed an offense against the person, honor or property of the donor, or of his wife or children under his parental authority;

b. When the donee imputes to the donor any criminal offense, or any act involving moral turpitude, even if he should prove it, unless the crime itself is committed against him, his wife or children under his authority;

c. When the donee has refused to support the donor when needed. (Art. 765)

509. What is the reason for the law on grounds of ingratitude?

1. One who has been the object of generosity must not turn ungrateful
2. Gratitude is both a moral and legal duty.

510. What is the effect upon the donation of the alienations and mortgages effected before the notation of the complaint for revocation in the Registry of Property

These alienations and mortgages shall subsist. But, later ones shall be void.

511. What is the rule when third persons have the property donated, or when it has been mortgaged?

The donor shall have the right to demand from the value of the property alienated which he cannot recover from third persons, or the sum for which the same has been mortgaged.

512. In case of donations inter vivos which are revoked or reduced either under Article 760 or 764 of the NCC, may the done be compelled to return the fruits which he had received or harvested from the property donated?

Under Art. 760 the donee shall not return the fruits except from the filing of the complaint, and under Art. 764 the donee shall return not only the property but also the fruits thereof which he may have received after having failed to fulfill the condition.

513. What is the prescriptive period of an action to revoke because of ingratitude?

Such action prescribes within one year counted from the time the donor knew of the fact or cause of ingratitude.

514. In case of acts of acts of ingratitude of the donee, is the action for revocation of the donation transmissible?

Being purely personal in character, as a rule the action is intransmissible. Thus, Art. 770 of the Civil Code declares that the action shall not be transmitted to the heirs of the donor; neither can it be brought against the heirs of the donee. There is only one instance where the action may be brought against the heirs of the donee, and that is if the complaint has already been filed upon the latter's death (Art. 770, NCC.)

515. As a general rule the action to revoke a donation by reason of ingratitude is purely personal to the donor and cannot, as a rule, be transmitted to the heirs. Does the law prohibit absolutely the transmission of the action? Reasons.

The particular circumstances of the case should be taken into account to determine whether it was possible for the donor to bring the action. (Art. 769). For the law does not prohibit absolutely the transmission of the action. Thus:

(a) If the donee killed the donor, the latter's heirs can ask for revocation.
(b) The heirs may also do so if the donor dies without having known of the act of ingratitude.
(c) If a criminal case against the donee was instituted by the donor, but the donor dies before he could bring the civil action for revocation, his heirs may likewise bring action because in such case, the intent of the donor not to pardon the donee is quite clear.
(d) If the action for revocation has already been filed by the donor before his death, his heirs are allowed to continue the same.

516. Are the heirs of the donee responsible for the acts of their predecessor-donee?

The heirs of the donee are not held responsible for the acts of their predessor-donee. The act of ingratitude of the donee is personal. But if the donor has already filed the complaint before the donee's death, the suit may be continued against his heirs.

517. In cases of donations inter vivos which are revoked or reduced under Art. 771 of the New Civil Code, may the donee be compelled to return the fruits which he had received or harvested from the property donated?

Under Art. 771, NCC, while the donor live, the donation shall take effect, and therefore, the donee shall be entitled to the fruits.

518. What is the rule in case a donation inter vivos made by the testator is inofficious?

A donation made by the testator during his lifetime to a compulsory heir is inofficious if it exceeds not only the latter's legitime but also the portion at the testator's free disposal thus impairing the legitime of other compulsory heirs. If the beneficiary or donee is a stranger, the donation is considered inofficious if it exceeds the portion at the testator's free disposal thus impairing the legitime of compulsory heirs. (See Art. 752, NCC.) Whether the beneficiary or donee is a compulsory heir or a stranger, the rule with respect to inofficious donations to reduce said donations insofar as they may exceed the disposable portion in accordance with the rules established in Art. 911 and 912 of the New Civil Code shall govern.

519. May Donation propter nuptias (by reason of marriage) be reduced for being inofficious?

Donation propter nuptias (by reason of marriage) may be reduced for being inofficious. They are without onerous consideration, the marriage being merely the occasion or motive for the donation, not its causa. Being liberalities, they remain subject to reduction for inofficiousness upon the donor's death, if they should infringe the legitime of a forced heir (Mateo v. Lagua, 29
SCRA 864 [1969].)

CASE PROBLEM 1 -- Leoncio Imperial filed Civil Case No. 1177 to annul the donation (evidenced by a deed of absolute sale in the amount of P1.00) of a parcel of land to petitioner Eloy Imperial, his acknowledged natural child. A compromise judgment was approved by the trial court whereby Leoncio recognized the rights of petitioner over

the land while petitioner agreed to sell a portion of the lot for the benefit of Leoncio.

Leoncio, upon his death, was substituted by his adopted son, Atty. Victor Imperial, who moved for the execution of the compromise judgment. Victor died single, and survived by his natural father, Ricardo Villalon, who became a lessee of a portion of the disputed land.

Five years after Ricardo's death, his 2 children, Cesar and Teresa, filed Civil Case No. 7646 for the annulment of the donation on the ground of fraud, deceit, and inofficiousness as Leoncio had no other property at the time of his death. Petitioner moved to dismiss the complaint on the ground of res judicata. The complaint was amended in 1989 to allege that the conveyance impaired the legitime of Victor, their natural brother and predecessor-in-interest.

The trial court rendered judgment finding the donation inofficious which impaired Victor's legitime and ruled that the action has not yet prescribed. It computed Victors legitime based on the area donated. The assailed decision was affirmed on appeal by the Court of Appeals, hence, this petition.

520. If a donation is inofficious and there is an action to reduce it, is it governed by any prescriptive period?

Donations, the reduction of which hinges upon the allegation of impairment of legitime are not controlled by a particular prescriptive period, for which reason, resort must be made to the ordinary rules of prescription. Under Article 1144 of the Civil Code, actions upon an obligation created by law must be brought within ten years from the time the right of action accrues. Thus, the ten year prescriptive period applies to the obligation to reduce inofficious donations, required under Article 771 of the Civil Code, to the extent that they impair the legitime of compulsory heirs. (Eloy Imperial vs. CA, G.R. No. 112483, October 8, 1999).

521. If the actions upon an obligation created by law must be brought within the ten year from the time the right of action accrues, when shall the ten-year prescriptive period for the cause of action be reckoned?

The case of Mateo vs. Lagua, 29 SCRA 864, which involved the reduction for inofficiousness of a donation propter nuptias, recognized that the cause of action to enforce a legitime accrues upon the death of the donor-decedent. Clearly so, since it is only then that the net estate may be ascertained and on which basis, the legitimes may be determined. It took private respondents 24 years since the death of Leoncio to initiate this case. The action, therefore, has long prescribed. (Eloy Imperial vs. CA, G.R. No. 112483, October 8, 1999).

522. If a donation inter vivos is intervivos, who may bring the action for revocation or reduction? Do creditors have any right to impugn the validity of the donation?

Only compulsory heirs and their heirs and successors in interest may bring the action. Creditors of the donor can neither ask for the reduction nor avail themselves thereof (Art. 772, CC). This does not mean that such creditors have no right at all to impugn the validity of the donation. They may do so if it was entered into in fraud of them and the action for rescission is brought within the period prescribed by law (See Arts. 1381, 1387, 1389, CC)

523. Who are persons entitled to ask for reduction of a donation on the ground of inofficiousness?

Under the first paragraph of Art. 772, "only those who at the time of the donor's death have a right to the legitime and their heirs and successors in interest may ask for the reduction of inofficious donations". Note that the donor is not included because the inofficiousness can only be determined after his death. (Art. 771, par. 1)

524. Who are persons not entitled to demand for reduction of a donation on the ground of inofficiousness?

Under the third paragraph of Art 772, "The donees, devisees and legatees, who are not entitled to the legitime and the creditors of the deceased can neither ask for the reduction nor avail themselves thereof." If the creditors of the deceased donor believed that certain donations made by him are inofficious, their remedy is to file a claim against the estate of the deased but not against the owners of the donated property, the donees. (Catibog v. Razon, [c.a.] 50 O.G. 5433.)

525. Can the renunciation of the right to ask for the reduction of inofficious donation be made during the lifetime of the donor?

The right to ask for the reduction of inofficious donations cannot be renounced during the lifetime of the donor (see Art. 763 [par. 2.], 769.), either by express declaration or by consenting to the donation. (par. 2). Future legitime is not subject to renunciation (Art. 905).

526. A died in 1984 heavily indebted. After settlement of his estate in 1986, there was still an aggregate balance of P400,000 in favor of his creditors. As a consequence, his widow, B, and his two (2) legitimate children, C and D, did not inherit anything from him. The records, however, show that in 1960, A had donated P800,000 worth of property to X, who in 1986 was already very well off. Would it still be possible for the heirs of A or the creditors to proceed against X for the reduction of the donation? Reasons

Yes it would still be possible for the compulsory heirs of A to proceed against X for the reduction of the donation on the ground that it is inofficious in accordance with the provision of Art. 771 of the Civil Code. This remedy, not available to the creditors (Art. 772, CC). The defense of prescription will not lie because the period of prescription shall be counted from the time of the death of the donor.

527. Suppose that there are two or more donations and the disposable portion is not sufficient to cover all of them, which of them shall be suppressed or reduced with regard to the excess?

If, there being two or more donations, the disposable portion is not sufficient to cover all of them, those of the more recent date shall be suppressed or reduced with regard to the excess (Art. 773).

528. The estate of the testator, A, worth P20,000 after deducting all debts and charges. He is survived by four legitimate children, B, C, D, and E. Before his death, A had made two donations. One, valued at P20,000, was made in 1998 to his eldest child, B, while the other, valued at P40,000, was made in 2000 to a friend, F. Are these donations inofficious?

follows:

The procedure for determining whether these donations are inofficious or not is as

Collate or add the value of the two donations to the net value of the estate (Art. 908, NCC). The sum is P80,000. The legitime of the children is therefore, P40,000, or P10,000 each, while the free or disposable portion is also P40,000 (Art. 888, NCC). The donation of P20,000 to B is then charged to his legitime of P10,000 (Art. 909 par. 1, NCC). There is an excess of P10,000. This excess will be placed in the same category as a donation made to a stranger. Consequently, such excess plus the donation of P40,000 given to F shall be charged to the free or disposable portion of P40,000 (Art. 909, par. 2, NCC). It is evident that such portion is not sufficient to cover both. Hence, the rule stated in Art. 773 of the New Civil Code shall be applied. "Those of the more recent date shall be suppressed or reduced with regard to the excess." Since the donation given to B was executed in 1998, while that given to F was executed in 1960, the excess of P10,000 given to the former shall be the first to be charged to the free or disposable portion of P40,000. There is a balance of P30,000. This balance is not sufficient to cover the donation of P40,000 given to F. Therefore, it must be reduced by P10,000.

529. Suppose that in the above problem, the donation given to B was executed in 1998, would that make a difference in your answer?

That would make a great difference in my answer. In such case, applying the rule stated in Art. 773 of the New Civil Code, the donation given to F shall be the first to be charged to the free or disposable portion of P40,000. There is no balance. Neither is there an excess. Therefore, it is not inofficious. However, the excess of P10,000 of the donation given to B is absolutely inofficious. Hence, it must be reduced to that extent. In other words, B can now be compelled by the other compulsory heirs to restore actually to the estate of the testator P10,000 in order that there will be no impairment of their legitime.

530. Define succession.

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

531. Up to what extent may an heir inherit obligations of his predecessor-in-interest?

The heir may inherit obligations but only to the extent of the value of the inheritance. The heir cannot be required to pay more than what he gets (Nacar vs. Nistal, 119 SCRA 29).

532. What Is Succession Mortis Causa?

Art 774 speaks of succession mortis causa; it defines the term as "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."

533. Who is a decedent?

The decedent is the person whose estate is to be distributed. He is called testator if he left a will and intestate if he left no will.

534. Distinguish Inheritance from Succession.

Inheritance is the property or right acquired; succession is the manner by virtue of which the property or right is acquired.

535. What does inheritance include?

Inheritance includes: (a) property
(b) rights not extinguished by death
(c) obligations not extinguished by death (to the extent of the value of the inheritance)

536. A father sold a parcel of land to a buyer, but had not yet delivered the parcel by the time he died. Are his heirs required to make the delivery?

Yes, for under Art. 776 the heirs inherit also the obligation of the deceased which are not extinguished by his death. (Pamplona v. Moreto et al., March 31, 1980).

537. A has a child B who has a child C. B is indebted to a stranger, but dies before he pays the same. A then died, leaving C as heir. In A's intestate proceedings, the stranger presents his claim for the credit. Is C bound to pay for the debt, or will A's estate answer, or will no one be held responsible?

Neither A's estate nor C is liable, for neither contracted the debt, nor may it be said that C is inheriting from B – for the truth is, C in the case presented, is inheriting only from A .Therefore, the creditor-stranger must shoulder the loss himself (Ledesma vs. McLachlin, 66 Phil. 547).

538. When and how is the right to succeed a deceased person acquired?

The right to the succession is transmitted from the moment of the death of the decedent (Art. 777; Quizon v. Villanueva, L-3932, Feb. 29, 1962) thru testamentary, intestate, or mixed succession (Art. 778)

539. When are rights to succession transmitted? Why?

Rights to succession are transmissible from the moment of death of the decedent (Art. 777, NCC.) The reason for the rule is that while a person is still alive, the right over his properties by an heir is merely inchoate. (Tordilla, vs. Tordilla, 60 Phil. 162)

540. What are the requisites before rights may be transmitted?

In order that there may be transmission of rights, the following must be present: (a) death, whether actual or presumptive; (Art. 391, NCC)
(b) rights or properties are transmissible; and
(c) transferee must be alive, willing and capacitated to inherit

541. H and W are husband and wife. They have neither descendants nor ascendants. H died and while the conjugal

partnership was under judicial administration and pending liquidation, W donated all her share in her husband's estate to a friend F. W died while the proceeding for the settlement of the conjugal partnership was pending. The collateral heirs of W and the administrator of the estate brought an action against the donee, F, to set aside the donation of future property. Decide with reasons.

The contention of the collateral heirs of W and the administrator of the estate that the donation made by W to her friend F is void because the donation is a donation of future property, is untenable. The reason is crystal clear. According to the Civil Code, by future property is understood anything which the donor cannot dispose of at the time of the donation. Obviously, W's share in her husband's estate does not fall within the purview of the definition. Because of the principle that successional rights are transmitted at the very moment of the death of the decedent, it is evident that W had a perfect right to donate her share in her husband's estate to her friend F. (Answer is based on arts. 777 and 751 of the Civil Code)

542. X, Y and Z are the heirs of A who died, leaving an estate of ten hectares. Before partition, can X sell his share without the consent of Y and Z? Why?

Yes, because the hereditary share was transmitted from the moment of the death of A. There is no legal bar therefore, for X to sell his share immediately even if the actual extent of his share has not yet been determined. (Testate Estate of Tangco; Jose de Borja vs. Tasiana Vda. De Borja, 46 SCRA 577)

543. X, Y and Z are the heirs of A who died on June 12, 1991. On June 13, 1991, and before the partition of A's estate X sold his share of the estate of his father. Is the sale valid? Why?

Yes, because his hereditary share has already been transmitted to him from the moment of the death of his father. This is true even if no partition has been made yet (Art. 777, NCC; Jose de Borja, 46 SCRA 577; Yap vs. CA, L-40003, Oct. 28, 1986).

544. A died without a will survived by three legitimate children, B, C and D. Immediately, upon the death of A, the eldest son, B, sold his entire right to the inheritance to X, a third person, for P20,000. Is the sale valid?

The sale is valid. B had a perfect right to sell his right to the inheritance to X after the death of the decedent. This is so because of the principle announced in Art. 777 of the New Civil Code to the effect that the rights to the succession are transmitted immediately from the moment of the death of the decedent.

545. A and B are married. During the lifetime of a, sold a real property belonging to them. A week thereafter, A died. Can X, Y, and Z, the heirs of A, question the sale?

Yes, but only to the extent of their share over the real property sold by B. (Felipe vs. Heirs of Aldon, 120 SCRA 628)

546. A died in 1992 with a will. In the will, he left all of his real properties to his nephew, B. There is, however, an order of the testator that B shall not enter in to the possession of such properties

until after the expiration of ten years to be counted from the time of the death of the testator. Hence, B was able to obtain possession of the properties devised to him only in 2002. In computing the inheritance tax, which value shall be considered – shall it be the value of the properties in 1992, when the testator died, or shall it be the value in 2002, when B took possession thereof? Reasons.

The value which shall be considered is the value of the real properties in 1992, when the testator died. This conclusion necessarily follows from Art. 777 of the New Civil Code which declares that successional rights are transmitted from the moment of the death of the decedent. If upon the death of the decedent succession takes place and the right of the state to tax vests instantly, the tax should be measured by the value of the estate as it stood at the time of the decedent's death, regardless of any subsequent appreciation or depreciation.

547. Can a person waive his rights? Explain.

Rights may be waived, unless the waiver is contrary to law, public policy or morals. (Art. 6, NCC). Furthermore, the contract waiving future inheritance is void (Art. 1410, NCC) since one cannot waive what he does not own. Under Art. 777, NCC, it is only from the moment of death that rights to the succession are acquired and

vested. Before the death of the decedent, the right is only a mere inchoate title.

548. What are the kinds of succession?

They are:

(1) Testamentary, which results from the designation of an heir made by the testator in a will (Art. 779, NCC)

(2) Legal or intestate, where the decedent did not execute a will; or if there was a will, it is void; or there may be succession by operation of law;

(3) Mixed, which is the result if the testator executed a will disposing of his estate partly and leaving a part undisposed. (Art. 780, NCC)

549. Give and define the different kinds of succession.

The different kinds of succession are:

(1) Testamentary, or that which results from the designation of an heir, made in a will executed in the form prescribed by law (Art. 778, 779, NCC).

(2) Legal or intestate, or that which is effected by operation of law in default of a will (Art. 778, NCC)

(3) Mixed, or that which is effected by partly by will and partly by operation of law (Art. 778, NCC).

(4) Contractual, or that which is effected when the future spouses donate to each other in their marriage settlements their future property to take effect upon the death of the donor and to the extent laid down by the provisions of the Civil Code relating to the testamentary succession (Art. 130, NCC).

(5) Compulsory (or necessary or forced), or succession to the legitime

550. May a decedent die partly testate and partly intestate?

The decedent may have died partly testate and partly intestate. Insofar as the will disposes of certain properties, this is generally the law that should govern (Parish Priest of Roman Catholic Church of Victoria, Tarlac v. Rigor, L-22036, April 30, 1979).

551. What does Inheritance include?

Inheritance includes:

(a) the property, transmissible rights, and obligations (to the extent of the value of the inheritance)

(b) as well as those which have accrued thereto since the opening of the succession (such as alluvium)

552. Before his death A borrowed from X P1,000 evidenced by a promissory note. A died without paying the debt. He left no property, but is survived by his son, B, who is making good in the buy and sell business. Subsequently, X, brought an action against B for the collection of the P1,000 plus legal interest thereon on the ground that, since B is the only heir of A, he has inherited from the latter not only the latter's property, but also all of his rights and obligations. Will the action prosper? Reasons.

The action will not prosper. While it is true that Art. 776 of the New Civil Code expressly provides that the inheritance includes not only the property, but also the rights and obligations of the decedent which are not extinguished by his death, yet it is essential that such rights and obligations must be transmissible in character. This is confirmed by Art. 781 of the same Code. The question now is – are monetary obligations which the decedent might have incurred

during the lifetime transmissible so that the heirs can be charged directly with the payment or not? This question has been answered may times by the Supreme Court. Such obligations are intransmissible; they do not constitute a part of the inheritance. This is so because, according to the Rules of court, they must be liquidated in the testate or intestate proceedings for the settlement of the estate of the decedent (Sec. 5, Rule 87, Rules of Court). As held in a long line of decisions, it is the estate of the decedent, instead of the heirs, who is vested and charged with his rights and obligations which survive after his death. For this purpose, it has been held that it is the estate, rather than the heir, which must be considered as the continuation of the decedent's personality. Consequently, the decedent's estate is a juridical personality. Consequently, the decedent's estate is a juridical person. From this, it is clear that X cannot hold B liable for the payment of the obligation.

553. What is meant by heirs, legatees and devisees?

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

Devisees and legatees are persons to whom gifts of real and personal property are respectively given by virtue of a will (Art. 782, NCC).

554. Distinguish between heirs and legatees or devisees.

(1) Devisees or legatees are always called to succeed to individual items of property, whereas heirs are always called to succeed to an indeterminate or aliquot portion of the decedent's hereditary estate. In other words, the first succeed by particular title (titulo particular), whereas the second succeed by universal title (titulo universal).

(2) Devisees or legatees are always called to succeed by means of a will, whereas heirs are called to succeed by means of a will (voluntary) or by operation of law (compulsory and legal).

555. Is there a possibility of a dual status in a will?

status:

Yes. If in a will, a compulsory heir is given more than his legitime, he assumes a dual

(a) insofar as his legitime is concerned, he is a compulsory heir. (b) insofar as the excess is concerned, he is a voluntary heir.

556. What is meant by a will?

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

557. What are the kinds of wills?

The kinds of wills are:

(1) Notarial or Ordinary; and
(2) Holographic

558. What is the difference between a Last "Will" and a "Testament"?

While today, common usage notes no difference between the two, still under Anglo- American law, a "testament" disposes of personal property; while a "will" disposes of real property.

559. What are the characteristics of a will? Explain each briefly.

The following are the Characteristics of a Will:

(1) Unilateral – it does not need the approval of any other person;

(2) Strictly personal act – the disposition of property is solely dependent upon the testator;

(3) Free and voluntary act – any vice affecting the testamentary freedom can cause the disallowance of the will;

(4) Formal and solemn act – the formalities are essential for the validity of the will;

(5) Act mortis causa – takes effect only after the death of the testator; (6) Ambulatory and revocable during the testators lifetime; and

(7) Individual act – Two or more persons cannot make a single joint will, either for their reciprocal benefit or for another person. However, separate or individually executed wills, although containing reciprocal provisions (mutual wills), are not prohibited, subject to the rule on disposicion captoria.

560. In T's will, A was given a house, effective immediately. a) Is this a disposition by virtue of a will

No, since it is supposed to take effect immediately. There was, therefore, no animus testandi insofar as this provision is concerned.

b) Is A entitled to get the house now?

No, unless he signifies his acceptance, in the form prescribed by law for donations, and unless the instrument be notarized as a public instrument (See Art. 749).

c) How will the house be disposed of?

In accordance with the rules on legal succession, in case the donation is not effective (see Art. 960)

CASE PROBLEM 2: There was a petition for the probate of an alleged holographic will which was denominated as "Kasulatan sa pag-aalis ng mana." The private respondents moved for the dismissal of the probate proceedings primarily on the ground that the document purporting to be the holographic will of Segundo did not contain any disposition of the estate of the deceased and thus did not meet the definition of a will under Article 783 of the Civil Code. According to private respondents, the will only showed an alleged act of disinheritance by the decedent of his eldest son, Alfredo, and nothing else; that all other compulsory heirs were not named nor instituted as heir, devisee or legatee; hence there was preterition which would result to intestacy. Such being the case, private respondents maintained that while procedurally the court is called upon to rule only on the extrinsic validity of the will, it is not barred from delving into the intrinsic validity of the same, and ordering the dismissal of the petition for probate when on the face of the will it is clear that it contains no testamentary disposition of the property of the decedent.

Petitioners filed their opposition to the motion to dismiss contending that: (1) generally, the authority of the probate court is limited only to a determination of the extrinsic validity of the will; (2) private respondents question the intrinsic and not the extrinsic validity of the will; (3) disinheritance constitutes a disposition of the estate of a decedent; and (4) the rule on preterition did not apply because Segundo's will did not constitute a universal heir or heirs to the exclusion of one or more compulsory heirs.

The RTC issued an order dismissing the petition for probate proceedings; hence, a petition for certiorari was filed where petitioners argued as follows:

First, respondent judge did not comply with Sections 3 and 4 of the Rule 76 of the Rules of Court which respectively mandate the court to: (a) fix the time and place for proving the will when all concerned may appear to contest the allowance thereof, and cause notice of such time and place to be published three weeks successively previous to the appointed time in a newspaper of general circulation; and (b) cause the mailing of said notice to the heirs, legatee and devisees of the testator Segundo;

Second, the holographic will does not contain any institution of an heir, but rather, as its title clearly states, Kasulatan ng Pag-alis ng Mana, simply contains a disinheritance of a compulsory heir. Thus, there is no preterition in the decedent's will and the holographic will on its face is not intrinsically void;

Third, the testator intended all his compulsory heirs, petitioners and private respondents alike, with the sole exception of Alfredo, to inherit his estate. None of the compulsory heirs in the direct line of Segundo were preterited in the holographic will since there was no institution of an heir;

Fourth, as it clearly appears from the face of the holographic will that it is both intrinsically and extrinsically valid, respondent judge was mandated to proceed with the hearing of the testate case; and,

Lastly, the continuation of the proceedings in the intestate case will work injustice to petitioners, and will render nugatory the disinheritance of Alfredo.

561. Can the document executed by Segundo be considered as a holographic will?

A holographic will, as provided under Article 810 of the Civil Code, must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Philippines, and need not be witnessed.

The document, although it may initially come across as a mere disinheritance instrument, conforms to the formalities of a holographic will prescribed by law. It is written, dated and signed by the hand of the testator himself. An intent to dispose mortis causa (Article 783) can be clearly deduced from the terms of the instrument, and while it does not make an affirmative disposition of the latter's property, the disinheritance of the son nonetheless, is an act of disposition in itself. In other words, the disinheritance results in the disposition of the property of the testator in favor of those who would succeed in the absence of the eldest son.

Moreover, it is a fundamental principle that the intent or the will of the testator, expressed in the form and within the limits prescribed by law, must be recognized as the supreme law in succession. All rules of construction are designed to ascertain and give effect to that intention. It is only when the intention of the testator is contrary to law, morals, or public policy that it cannot be given effect.

Holographic wills, therefore, being usually prepared by one who is not learned in the law should be construed more liberally than the ones drawn by an expert, taking into account the circumstances surrounding the execution of the instrument and the intention of the testator. In this regard, the document, even if captioned as Kasulatan ng Pag-alis ng Mana, was intended by the testator to be his last testamentary act and was executed by him in accordance with law in the form of a holographic will. Unless the will is probated, the disinheritance cannot be given effect. (Dy Yieng Seangio, et al. v. Hon. Amor Reyes, et al., G.R. No. 140371-72, November 27, 2006)

562. What does the law refer to in Art 284, NCC when it states that the making of a will is a strictly personal act? What is the meaning of purely personal?

When the law states that the will is strictly personal act and cannot be left in whole or in part to the discretion of a third person or through the instrumentality of an agent or attorney, what the law refers to is the disposition of the property and not the mere mechanical act of drafting the document. Thus, in the case of Castaneda vs. Alemany, (3 Phil 426), our Supreme Court has declared that who does the mechanical work of writing the will is a matter of indifference. The fact therefore, that the will was typewritten in the office of the lawyer for the testratrix is of no consequence. This decision should be limited to an ordinary will which was then the only kind recognized. Under our present Code, however, another kind, the Holographic Will is recognized and this requires that it be in the handwriting of the testator (Art. 810, NCC). Obviously the mechanical act of writing a holographic will cannot be left to a third person but must be done by the testator himself personally.

563. What are the acts which may NOT be left to the discretion of a third person?

In accordance with Art. 785, NCC which is complementary to Art. 784, the following cannot be left to the discretion of a third person:

name.

(1) the duration of the designation of heirs, devisees or legatees; (2) the efficacy of the designation; (3) the determination of the portion which they are to take when referred to by

In these three acts is the substance of the making of a will as distinguished from the mechanical part. Consequently the testator cannot substitute the mind or will of another for his own. He should make use of his own will and this power is not subject to delegation.

564. Can the testator provide in his will the following disposition: "I give my land to X for as long as my friend Y allows".

No. This would be a clear case of illegal delegation of testamentary power. Under Article 785, of the New Civil Code "the duration of efficacy of the designation of heirs, devisees or legatees, or the determination of the portions which they are to take, when referred to by name, cannot be left to the discretion of a third person." This Article reinforces the rule that the making of a will is strictly a personal act.

564. What are the acts which MAY be entrusted to a third person?

Under Art. 786, NCC the acts which may be entrusted to a third person are:

(1) Distribution of specific property or sums of money that he may leave in general to specified classes or causes

(2) Designation of the persons, institutions or establishments to which such property or sums are to be given or applied

565. What is the difference between Article 785 and Article 786 of the New Civil Code. In entrusting a third person, does Article 786 contradict Article 785?

Article 786 does not really contradict Article 785, for in Article 786 the particular names are not designated whereas in Article 785, the names of particular persons are given. Moreover, in Article 786, a class or a cause is what is specified.

566. Under Art. 786 of the New Civil Code, the testator may entrust to a third person the distribution of specific property or sums of money that he may leave in general to specified classes or causes..." Give an example of

(a) Specified classes

Examples of Specified Classes are: The fourth year class in the Assumption College San Lorenzo; the first ten topnotchers in the bar examinations.

(b) Specified Causes

Examples of Specified Causes are: for charity; for labor

567. In designating a third person under Art. 786, is there really a delegation of the will of the testator?

No. Article 786 is a consequence of Article 785 and constitutes an exception to its precept in order to make the disposition by the testator more useful and productive of good results and serve the purpose for which the testator has made them. Strictly speaking, however in this case, there is really no delegation of the will of the testator. The testator has already expressed his will and has entrusted merely to the third person the execution of the same so as to carry out his purpose or purposes. Thus, after the testator has left a specified sum or property for specified classes, such as the poor or causes such as for example the cause of labor or democracy, he may appoint a third person who will be in a better position to designate and to choose who shall be given the amount, or the institution or establishment to which such property should be given. This will make the disposition much more effective and serve the purpose of the testator better.

568. May a testator make a testamentary disposition in such manner that another person has to determine whether or not it is to be operative?

No. A testator cannot make a testamentary disposition in such manner that there's a determination by a third person as to whether or not it is to be operative because the rule is the making of a will is strictly a personal act.

569. What is the rule if a testamentary disposition admits of different interpretations?

That interpretation by which the disposition is to be operative shall be preferred. The reason is that testate succession, provided, the will is valid, is preferred to intestacy.

570. When does this rule apply?

It applies only in case of DOUBT; hence, if no doubt exists, and the disposition is clearly illegal, the same should not be given effect.

571. What is the so- called "fixed law of interpretation?"

The intention and desires of the testator if clearly expressed in the will constitute the fixed law of its interpretation.

572. What is the parole evidence rule with respect to the interpretation of wills?

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

573. What is the rule respecting the interpretation of wills?

All rules of construction are designed to ascertain and give effect to the intention of the testator. It is only when the intention of the testator is contrary to law, morals, or public policy that it cannot be given effect. In case of doubt, that interpretation by which the disposition is to be operative or will sustain and uphold the will in all its parts shall be adopted, provided that it can be done consistently with the established rules of law.

574. To what kind of ambiguity does the clause "imperfect description or when no person or property exactly answers the description refers to?

This clause refers to a latent or intrinsic ambiguity.

575. How may a latent or intrinsic ambiguity be cured?

By examining:

(a) the will itself;
(b) extrinsic evidence such as written declarations of the testator.

576. May extrinsic evidence taken from the alleged oral declarations of the testator be allowed?

No, because it may result in fraud, confusion, and unfairness to the dead man whose words may be distorted or perjured.

577. To what ambiguity does the clause "when an uncertainty arises upon the face of the will" pertain to?

It refers to a patent or extrinsic ambiguity.

578. How may a patent or extrinsic ambiguity be cured?

By examining:

(a) the will itself;

(b) extrinsic evidence such as written declarations of the testator

579. Taben in his will gave his house to Gemma Guanzo. Among Taben's friends are three Guanzo's in the making of the will, Taben orally stated that he was referring to Gemma Guanzo of Legazpi City; but among Taben's files was found a memorandum to the effect that he wanted to give the house to Gemma of Oas, Albay.

(A) What kind of ambiguity is this?

This is latent or intrinsic ambiguity, because the provision is by itself clear, the doubt arising only because of circumstances outside the will.

(B) Is Taben's oral declaration evidence aliunde?

Taben's oral declaration is evidence aliunde but should not be admitted, by express provision of the law, in order to discourage perjury.

(C) To whom should the house be given upon Taben's death?

The house should be given to Gemma Guanzo of Oas, Albay in view of the written memorandum, which is indeed admissible evidence aliunde.

580. What is the exception to the rule that ordinary words have their ordinary meanings?

The rule that ordinary words have their ordinary meanings will not apply if there is a clear intention that another meaning was used, provided that the other meaning can be determined.

581. What is the reason for such exception?

The rationale is that the supreme law for interpretation is intention.

582. What are the exceptions to the rule that technical words have technical meanings?

The following are the exceptions, namely:

(a) If there's a contrary intention; and

(b) If it appears that the will was drafted by the testator alone, who did not know the technical meaning. The reason is that wills drafted by experts like lawyers are construed more strictly than those made by ordinary laymen.

583. Is an idiomatic translation preferred to a literal translation?

Yes, because idiomatic translation expresses more clearly the testator's desires.

584. If the testator's intention is manifest from the context of the will and the surrounding circumstances, but is obscured by inapt and inaccurate modes of expression, will the language be subordinated to the intention?

Yes. In order to give effect to such intent, the court may depart from the strict wording, and read a word or phrase in a sense different from that which is ordinarily attributed to it and for such purpose may mould or change the language of the will, such as by restricting its application or supplying omitted words or phrases.

585. How must a will be interpreted?

A will must be interpreted as a whole such that the words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

586. Of two modes of interpreting a will, which shall be preferred?

It is the mode, which will prevent intestacy that shall be preferred, provided the will has been validly made.

587. What is the effect if in the course of intestate proceedings pending before the RTC it is found that the decedent left a will?

If in the course of intestate proceedings pending before the RTC it is found that the decedent left a will, proceedings for the probate of the will should replace the intestate proceedings (in the same court), even if at that stage, an administrator had already been appointed, the latter being required to render his final accounts and to turn over the estate to the executor subsequently named. This is without prejudice to the fact that if, the will be disallowed, the intestate proceedings should be resumed.

588. What is the effect of invalid dispositions contained in a will?

Even if one disposition or provision is invalid, it does not necessarily follow that all the others are also invalid.

589. What is the exception to the rule that the invalidity of one of several dispositions contained in a will does not result in the invalidity of the other dispositions?

The exception is that when it is to be presumed that the testator would not have made such other dispositions if the first invalid disposition had not been made.

590. When does such exception occur?

The exception occurs when the various dispositions are indivisible in intent or nature.

591. What are after- acquired properties?

After- acquired properties are those properties already possessed and owned by the testator at the time the will was made, not those acquired after.

592. What is the general rule respecting after- acquired properties?

Property acquired during the period between the execution of the will and the death of the testator is not included among the property disposed of.

593. In 2005, Taben made a will "giving Gemma all my automobiles." In 2005, Taben had 5 automobiles; but in 2007, when Taben died, he had at the time of his death 8 automobiles. How many will Taben get?

Taben will get only 5 automobiles, because the rest were acquired after the making of the will.

594. What are the exceptions respecting after- acquired properties?

The following are the exceptions, namely:

(a) If it expressly appears in the will that it was the intention to give such after- acquired properties.

(b) If the will is republished or modified by a subsequent will or codicil in which case, the properties owned at the time of such republication or modification shall be given.

(c) If at the time the testator made the will he erroneously thought that he owned certain properties, the gift of said properties will not be valid, unless after making the will, said properties will belong to him.

(d) Legacies of credit or remission are effective only as regards that part of the credit or debt existing at the time of the death of the testator.

595. What is the scope of the application of the rules on after- acquired properties?

This rule applies only to legacies and devises and not to institution of heirs.

596. Does the rules on after acquired- properties apply if an heir is instituted as when in 2005, Taben makes a will

instituting Gemma as my heir and Taben dies in 2007, will Gemma get only the properties owned in 2005 or should the inheritance include those properties acquired between
2005 and 2007?

Strictly speaking since the law makes no distinction, Art. 793 should also apply to this case. Therefore, Gemma will get only the properties owned in 2005. The after- acquired properties will have to go to the legal heirs by intestate succession. Yet, this would seem to destroy the testator's intent, and if thus applied, the rule would apply not only to properties and rights, but also to transmissible obligations, thus rending as under the basic philosophy behind the institution of heirs.

597. What is the general rule as to what interest may be disposed of?

Every devise or legacy shall convey all the interest, which the testator could devise or bequeath in the property, disposed of. Hence, the entire interest of the testator in the property is given- not more, not less.

598. What are the exceptions to the said rule?

The following are the exceptions, namely:

(a) He can convey a lesser interest if such intent clearly appears in the will; (b) He can convey a greater interest;

(c) He can even convey property which he very well knows does not belong to him, provided that it also does not belong to the legatee or devisee.

599. What is the basis for the validity of a will as to its form?

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

600. If the law governing the formal validity of wills is amended subsequent to the execution of the will of a certain testator and said testator dies, what law shall govern if the will is presented for probate- the old law or the new law?

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

601. Distinguish the two kinds of validity with respect to wills

The first kind is extrinsic validity, which refers to the forms and solemnities needed. An example is the number of witnesses to a will. The second kind is the intrinsic validity, which refers to the legality of the provisions in an instrument, contract or will. An example is whether or not the omission of a child in the will renders the whole will void. Extrinsic validity may be seen also from two viewpoints, the viewpoint of time and the viewpoint of place or country. Intrinsic validity may also be viewed from the viewpoint of time and the viewpoint of place.

602. What does it mean by extrinsic validity being seen from the viewpoint of time?

It means that what must be observed is the law in force at the time the will is made or executed.

603. What does it mean by extrinsic validity being seen from the viewpoint of place or country?

It means that what law must be observed depends:

(a) If the testator is a Filipino, he can observe Philippine Laws; or those in the country where he may be; or those in the country where he executes the will.

(b) If the testator is an alien who is abroad, he can follow the law of his domicile, or his nationality or Philippine Laws or where he executes the will.

(c) If the testator is an alien in the Philippines, he can follow the law of his nationality or the laws of the Philippines, since he executes the will here.

604. What does it mean by intrinsic validity being seen from the viewpoint of time?

It means successional rights are governed by the law in force at the time of the decedent's death.

605. What does it mean by intrinsic validity being seen from the viewpoint of place or country?

It means the national law of the decedent, that is, the law of his country or nationality- regardless of the place of the execution or the place of death.

606. A proviso in the will of an alien provides that his properties should be distributed in accordance with internal Philippine law, and not in accordance with his own national law. Is the proviso valid?

The proviso is void because the proviso contravenes Art. 16 (2) of the civil code. However, if the conflict rules under the national law of the deceased refer the matter to the law of the domicile and the foreigner was domiciled in the Philippines at the moment of death; our courts will have to apply the Philippine internal law on succession.

607. Is the provision pertaining to extrinsic validity from the viewpoint of time the same with the principle that the Legislature cannot validate a will void at the time it was made by changing the formalities required?

Yes. This was enunciated by our Supreme Court in the cases of Bona vs. Briones and In re Will of Riosa. This is for the reason that if it were otherwise, the testator would be deprived of property without due process of law. Such rule applies, however, to formal or extrinsic validity only.

608. May a change in successional rights or intrinsic validity be done even after the will is made?

Yes, as long as the testator is still alive. This is because until death comes, no right has become vested as yet, the right to the property accruing only at the moment of death.

609. What is meant by testamentary capacity?

Testamentary capacity refers to the ability as well as the power to make a will. This must be present at the time of the execution of the will.

610. Is there any difference between testamentary capacity and testamentary power?

In American law, there is a well- recognized distinction between testamentary capacity and testamentary power. The first concerns the ability of the testator, while the second involves a privilege under the law. Hence, although a person may have testamentary capacity, it does not necessarily follow that he has testamentary power. In the Philippines, however, this distinction has been lost altogether. As a matter of fact, the term testamentary power is sometimes understood to refer to the power of the testator to designate the person or persons who are to succeed him in his property and transmissible rights and obligations.

611. Who can make wills?

All persons who are not expressly prohibited by law may make a will. Hence, the general rule is capacity. It is incapacity that is the exception.

612. What are the two general qualifications for a person to be capacitated to make a will?

They are the following, namely: (a) 18 years old
or over;
(b) Soundness of mind at the time the will is made.

613. Is a convict under civil interdiction allowed to make a will?

Yes. This is because civil interdiction prohibits a disposition of property inter vivos, not mortis causa.

614. Are spendthrifts or prodigals allowed to make a will even if under guardianship?

Yes, because the law does not disqualify them, provided they are at least 18 years old and are of sound mind.

615. Is a corporation allowed to make a will?

No. Art. 796 refers to all persons, but this should be understood to refer only to natural persons, not juridical ones, like corporations. This is evident from the requirement of soundness of mind.

616. Distinguish testamentifaccion active from testamentifaccion passive.

The first pertains to the capacity to make a will, while the second refers to the capacity to inherit or to receive by will.

617. Who are expressly prohibited by law from making a will?

All persons of either sex under eighteen years of age cannot make a will.

618. What are included in the due execution of the will?

The due execution of a will includes the determination of whether the testator was of sound and disposing mind at the time of its execution, that he had freely executed the will and was not acting under duress, fraud, menace or undue influence and that the will is genuine and not a forgery, that he was of the proper testamentary age and that he is a person not expressly prohibited by law from making a will.

619. What does soundness of mind mean?

To be of sound mind, it is not necessary that the testator be in full possession of all his reasoning faculties, or that his mind be wholly unbroken, unimpaired, or unshattered by disease, injury or other cause.
It shall be sufficient if the testator was able at the time of making the will know the nature of the estate to be disposed of, the proper objects of his bounty, and the character of the testamentary act.

620. What does soundness of mind requires?

Soundness of mind requires the following, namely:

(a) The testator knows the nature of the estate to be disposed of (character, ownership of what he is giving)

(b) That testator knows the proper objects of his bounty (by persons who for some reason expect to inherit something from him- like his children).

(c) That testator knows the character of the testamentary act (that it is really a will, that it is a disposition mortis causa, that it is essentially revocable).

621. What is senility and how does it affect one's capacity to make a will?

Senility pertaining to infirmity of old age should be distinguished from senile dementia or decay of mental faculties. The latter, when advanced or absolute, may produce unsoundness of mind resulting in testamentary incapacity.

622. How is unsoundness of mind manifested?

The following manifests Unsoundness of mind, namely:

(a) Religious delusion resulting in the unsettling of judgment. (b) Blind extraordinary belief in spirits while executing a will.

(c) Manomania (insanity on a single subject) - if this happens to be on the subject of wills or succession.

(d) Insane delusions- belief in things, which no rational mind would believe to exist. act.

(e) Drunkenness if this results in failure to know the nature of the testamentary

(f) Idiocy- congenital intellectual deficiency.

(g) A comatose stage, resulting from hypertension and cerebral thrombosis, and preventing the testator from talking or understanding. (h) State of

delirium.

623. What is the presumption respecting the soundness of mind?

The law presumes that every person is of sound mind, in the absence of proof to the contrary. Hence, sanity is the general rule; insanity is the exception. As a rule, he who alleges the testator's insanity must prove the same.

624. What are the two instances when the testator is presumed insane?

These two instances are the following, namely:

(a) If the testator, one month or less before making the will was publicly known to be insane (here, the person- proponent- who maintains the will's validity must prove that the will was made during a lucid interval)

(b) If the testator made the will after he had been judicially declared insane, and before such judicial order had been set aside.

625. Should presumption of insanity arise from the presence of a mere delirium or the insanity of the parents and children of the testator?

No presumption of insanity arises from the foregoing instances.

626. With respect to the evidence of soundness of mind, should the attesting or subscribing witnesses' testimonies as to the mental condition of the testator be given great weight and should it prevail over that given by a non- attending physician who merely speculates?

Yes, however, the physician should be believed if he was constantly near the testator, and if he actually saw the latter on the date of the execution.

627. What is the rule on supervening incapacity?

Supervening Incapacity does not invalidate an effective will, nor does the supervening of capacity validate the will of an incapable.

628. When insane, Taben made a will. Later, he became well, but he did not change the will. Is the will valid?

No, because his becoming capacitated later on is not important. What is important is that his mind was not sound at the time he executed the will.

629. May a married woman make a will without the consent of her husband and authority of the court?

Yes, provided the married woman is at least 18 years old, and is of sound mind at the time of execution. Thus, if a 17- year old wife makes a will, the same will be void, even if the husband consents. This is without prejudice to contractual succession in a marriage settlement between the future spouses.

630. What may a wife dispose of in her will?

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

631. Can the wife dispose of her husband's capital in her will?

No, unless she knows that the same is not hers, and intends that her administrator or executor will purchase the same from her husband, for distribution to the heirs.

632. The law says that the wife can dispose of her share of the conjugal property. Suppose she disposes of the conjugal home, how will this affect the inheritance?

It depends. Ordinarily, the heir gets only half of the house, but if in the liquidation proceedings the house is awarded entirely to the wife's estate (the husband receiving some other property, like cash), the heir gets the whole house.

ON RELATED RECENT CASES:

633. DY YIENG SEANGIO, et. al vs. REYES, RTC Judge of NCR and ALFREDO D. SEANGIO, et. Al, November 27, 2006

On September 21, 1988, private respondents filed a petition for the settlement of the intestate estate of the late Segundo Seangio, and prayed for the appointment of private respondent Elisa D. Seangio–Santos as special administrator and guardian ad litem of petitioner Dy Yieng Seangio. Petitioners Dy Yieng, Barbara and Virginia, all surnamed Seangio, opposed the petition.

On April 7, 1999, a petition for the probate of the holographic will of Segundo was filed by petitioners before the RTC. The document that petitioners refer to as Segundo's holographic will was entitled "Kasulatan sa pag-aalis ng mana".

Upon petitioners' motion, the two proceedings were consolidated. On July 1, 1999, private respondents moved for the dismissal of the probate proceedings.

On one hand, Private Respondents contend that the document purporting to be the holographic will of Segundo does not contain any disposition of the estate of the deceased because it simply shows an alleged act of disinheritance and thus does not meet the definition of a will under Article 783 of the Civil Code. Such being the case, they maintained that while procedurally the court is called upon to rule only on the extrinsic validity of the will, it is not barred from delving into the intrinsic validity of the same, and ordering the dismissal of the petition for probate when on the face of the will it is clear that it contains no testamentary disposition of the property of the decedent.

On the other hand, petitioners contend that the holographic will does not contain any institution of an heir, but rather, as its title clearly states, Kasulatan ng Pag-Aalis ng Mana, simply contains a disinheritance of a compulsory heir. Thus, there is no preterition in the decedent's will and the holographic will on its face is not intrinsically void; the testator intended all his compulsory heirs, petitioners and private respondents alike, with the sole exception of Alfredo, to inherit his estate. None of the compulsory heirs in the direct line of Segundo were preterited in the holographic will since there was no institution of an heir; they also reiterated that the probate proceedings should take precedence over the settlement of the intestate estate of the late Segundo Seangio because testate proceedings take precedence and enjoy priority over intestate proceedings.

Should the document executed by Segundo be considered as a holographic will and be admitted to probate?

Yes, the subject document should be considered as a holographic will and, thus, must be admitted to probate.

It is a fundamental principle that the intent or the will of the testator, expressed in the form and within the limits prescribed by law, must be recognized as the supreme law in succession. All rules of construction are designed to ascertain and give effect to that intention. It is only when the intention of the testator is contrary to law, morals, or public policy that it cannot be given effect. Segundo's document, although it may initially come across as a mere disinheritance instrument, conforms to the formalities of a holographic will prescribed by law. It is written, dated and signed by the hand of Segundo himself. Intent to dispose mortis causa can be clearly deduced from the terms of the instrument, and while it does not make an affirmative disposition of the latter's property, the disinheritance of Alfredo, nonetheless, is an act of disposition in itself. In other words, the disinheritance results in the disposition of the property of the testator Segundo in favor of those who would succeed in the absence of Alfredo.

In this regard, the document, even if captioned as Kasulatan ng Pag-Aalis ng Mana, was intended by Segundo to be his last testamentary act and was executed by him in accordance with law in the form of a holographic will. Considering that the questioned document is Segundo's holographic will, and that the law favors testacy over intestacy, the probate of the will cannot be dispensed with. Thus, unless the will is probated, the right of a person to dispose of his property may be rendered nugatory. It is settled that testate proceedings for the settlement of the estate of the decedent take precedence over intestate proceedings for the same purpose.

634. LETICIA VALMONTE ORTEGA vs. JOSEFINA C. VALMONTE December 16, 2005

Placido Valmonte toiled and lived for a long time in the United States until he finally reached retirement. In 1980, Placido finally came home to stay in the Philippines, and he lived in the house at Makati, which he owned in common with his sister Ciriaca. Two years after his arrival from the US and at the age of 80 he wed Josefina who was then 28 years old, but Placido died on October 8, 1984.

Placido executed a notarial last will and testament written in English. The allowance to probate of this will and the appointment as Executrix of Josefina were opposed by Leticia.

Leticia contended that among others the testator was mentally incapable to make a will at the time of the alleged execution he being in an advance state of senility. She attacked the mental capacity of the testator, declaring that at the time of the execution of the notarial will the testator was already 83 years old and was no longer of sound mind. She knew whereof she spoke because in 1983 Placido lived in the Makati residence and asked Leticia's family to live with him and they took care of him. During that time, the testator's physical and mental condition showed

deterioration, aberrations and senility. This was corroborated by her daughter Mary Jane Ortega for whom Placido took a fancy and wanted to marry.

Josefina's claimed that the testator never suffered mental infirmity because despite his old age he went alone to the market which is two to three kilometers from their home cooked and cleaned the kitchen and sometimes if she could not accompany him, even traveled to Manila
alone to claim his monthly pension. Josefina also asserts that her husband was in good health
and that he was hospitalized only because of a cold but which eventually resulted in his death. Was Placido capacitated at the time he executed the subject will?

Yes. According to Article 799, the three things that the testator must have the ability to know to be considered of sound mind are as follows: (1) the nature of the estate to be disposed of, (2) the proper objects of the testator's bounty, and (3) the character of the testamentary act. Applying this test to the present case, Placido had testamentary capacity at the time of the execution of his will. It must be noted that despite his advanced or old age, he was still able to identify accurately the kinds of property he owned, the extent of his shares in them and even their locations. As regards the proper objects of his bounty, it was sufficient that he identified his wife as sole beneficiary.

It must be noted that mere weakness of mind, or partial imbecility from disease of body, or from age, will not render a person incapable of making a will. A weak or feebleminded person may make a valid will, provided he has understanding and memory sufficient to enable him to know what he is about to do and how or to whom he is disposing of his property. To constitute a sound and disposing mind, it is not necessary that the mind be unbroken or unimpaired or unshattered by disease or otherwise. It has been held that testamentary incapacity does not necessarily require that a person shall actually be insane or of unsound mind. (Alsua-Betts v. CA, July 30, 1979)

Article 804 - 820

635. How do you classify wills according to their form?

Under the CC, a will may either be ordinary or holographic, depending upon the formalities or solemnities which are observed by the testator in its execution.

636. What is an ordinary will or notarial will?

An ordinary or notarial will is one which is executed in accordance with the formalities prescribed by Arts. 804 to 808 of the CC. In other words, it is a (1) written will, (2) executed in a language or dialect known to the testator, (3) subscribed at the end thereof by t he testator himself or by the testator's name written by some other person in his presence and by his express direction, (4) attested and subscribed by 3 or more credible witnesses in the presence of the testator and of one another, (5) all of the pages of which are signed, except the last, on the left margin by the testator or the person requested by him to write his name and by the instrumental witnesses, and (6) numbered correlatively in letters placed on the upper part of each page, (7) containing an attestation clause executed by the witnesses, and (8) properly acknowledged before a notary public by the testator and the said witnesses. (Arts. 804, 805, 806 CC)

637. What are the formalities which are required for the execution of an ordinary or notarial will?

1) The will must be in writing;
2) The will must be written in a language or dialect known to the testator;
3) The will must be subscribed at the end thereof by the testator himself or by the testator's name written by some other person in his presence and by his express direction;
4) The will must be attested and subscribed by 3 or more credible witnesses in the presence of the testator and of one another;
5) The testator or the person requested by him to write his name and by the instrumental witnesses of the will shall also sign each and every page thereof, except the last, on the left margin;
6) All the pages of the will must be numbered correlatively in letters placed on the upper part of each page;
7) The will must contain an attestation clause and, and
8) Must be properly acknowledged before a notary public by the testator and the said witnesses. (Arts. 804, 805, 806 CC)

In addition to the above requirements, there are also special safeguards or solemnities which are prescribed by the code in case the testator is deaf, or a deaf-mute, or in case he is blind. (Arts. 807, 808, CC)

638. What is an attestation clause and what is its purpose?

That clause at the end of the will, wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of the same. (Black's law dictionary) The purpose of which is to preserve in a permanent form, a record of the facts that attend the execution of a particular will, so that in case of failure of the memory of the attesting witnesses, or other casualty , such facts may still be proved. (Cafieda v. CA 41 SCAD 968 1993)

639. What is meant by attestation and subscription?

Attestation of the will by the instrumental witnesses consists in the act of witnessing the execution of the will by the testator 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. Strictly speaking, it is the act of the witnesses, not that of the testator, in executing the will and requesting the witnesses to sign as such. Its purpose is to render available proof that there has been a compliance with the statutory requirements for the execution of a will.

Subscription, on the other hand, consists in the manual act of the instrumental witnesses in affixing their signatures to the instrument. Its only purpose is for identification.

640. What are the essential facts which must be stated in the attestation clause?

According to the 3rd paragraph of Art. 805 of the CC, there are 3 essential facts which must necessarily appear in the attestation clause in order that it will constitute a real certification by the instrumental witnesses that the formalities which are required by law in the execution of an ordinary will have been complied with. These facts, all of which are essential in character, are as follows:

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

641. What is the doctrine of liberal interpretation as applied to defects and imperfections in the attestation clause?

The doctrine of liberal interpretation as applied to defects and imperfections in his attestation clause is now embodied in Art. 809 of the CC. According to this article, "In the absence of bad faith, forgery, or fraud, or undue and improper pressure or influence, defects and imperfections in the form of the attestation or in the language used therein shall not render the will invalid if It is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Article 805.

642. The attestation clause of the will omits to state that the testator signed in the presence of the witnesses and that the latter signed in the presence of the testator and of one another. May evidence aliunde be admitted to prove these facts to allow the probate of the will?

No, evidence aliunde cannot be admitted to prove these facts to allow the probate of the will. This has been held in some cases decided by the Supreme Court, notably Uy Coque vs. Sioca and Gil vs. Toledo. This is also the opinion of practically all commentators on the New Civil Code. There are 3 essential facts which, according to the law, should be stated in the attestation clause. They are:

1) The number of pages upon which the will is written;
2) The fact that the testator signed the will and every page thereof, or caused some other person to write his name, under his express direction, in the presence of the instrumental witnesses; and
3) The fact that the instrumental witnesses witnessed and signed the will and all pages thereof in the presence of the testator and of one another. (Art. 805 par. 3 CC) The omission in the instant case goes into the very essence of the attestation clause itself. The defects, therefore, are not with respect to form or language; they are essential or substantial. Not having the reliability of a statement in the attestation clause, oral evidence or evidence aliunde should not, therefore, be allowed to cure such defect; otherwise, the attestation clause will become meaningless.

643. Is the notary public required to be present at the execution of the will?

No, the notary public is not required to be present. Art. 805 of the New Civil Code does not provide for his presence. He cannot be one of the 3 instrumental witnesses referred to in the law as well. However, his presence is required for the acknowledgment.

644. Is the notary public REQURIED to read the will?

Ordinarily, the notary public is not required, not even allowed to read the will, or to know the contents of the will, unless the testator permits him to do so. It should be remembered that the notary public is not the person acknowledging the will; it is before whom it is acknowledged.

645. Is there an instance when the notary public allowed reading the notarial will?

Yes, according to Article 808 of the new Civil Code, if the testator is blind, the will shall be read to him twice; once, by one of the subscribing witnesses, and again, by the NOTARY PUBLIC before whom the will is acknowledged.

646. The probate of the will of X is now being contested on the ground that the notary public before whom the will was acknowledged is also one of the three instrumental witnesses, if you were the probate judge, will you allow or disallow the will?

If I were the probate judge, I will disallow the will on the ground that it has not been executed in accordance with the law. The reasons are clearly set forth in Cruz v. Villasor (54 SCRA 31)

1) The notary public before whom the will was acknowledged cannot be considered as the third instrumental witness since he cannot acknowledge before himself his having witnessed and signed the will. To "acknowledge" means to avow, to own as genuine, to assent, to admit; and "before" means in front of. Consequently, if the third witness were the notary public himself, he would have to acknowledge his having signed the will in front of himself. This cannot be done because he cannot split his personality into 2 so that one will appear before the other to acknowledge his participation in making the will.

2) Furthermore, the function of a notary public is, among others, to guard against illegal or immoral arrangements. This function would be defeated if the notary public is one of the instrumental witnesses.

3) True, in American Jurisprudence, there are authorities who allow the notary public to be an attesting witness at the same time, but it must be observed that they are merely attesting or subscribing witnesses, not acknowledging witnesses. What is envisaged in Art. 806 of the Civil Code is an acknowledging witness.

Therefore, in effect, there are only 2 acknowledging witnesses in the instant case. Consequently, the execution of the will is not in accordance with law.

647. If the testator be deaf, or deaf-mute, what are the additional formalities imposed by law in the execution of an ordinary will?

If the testator be deaf, or deaf-mute, he must personally read the will, if able to do so; otherwise, he shall designate 2 persons to read it and communicate to him, in some practicable manner, the contents thereof (Art 807).

648. If the testator be deaf or deaf-mute-mute and illiterate, is it necessary that the fact it was read to him be stated in the attestation clause?

As held in Mascarin v. Angeles, et al., L-1323 June 30, 1948, In a case involving an illiterate testator, the fact that the will had been read to him need not be stated in the attestation, and that it is sufficient if this fact is proved during the probate proceeding.

649. What is the rule for substantial compliance?

Art. 809 of the NCC provides that, In the absence of bad faith, forgery, or fraud, or undue and improper pressure and influence, defects and imperfections in the form of attestation or in the language used therein shall not render the will invalid if it is proved that the will was in fact executed and attested in substantial compliance with all the requirements of Art. 805. (Same with no. 7 hereof)

650. What is the effect of Substantial Compliance?

Article 809 provides the rule for substantial compliance that is, as long as the purpose sought by the attestation clause is obtained, the same should be considered valid.

651. When is Substantial Compliance acceptable?

As held in the case of Alvarado v. Gaviola Jr. 44 SCAD 731 (1993), Substantial compliance is acceptable where the purpose of the law has been satisfied, the reason being that the solemnities surrounding the execution of a will are intended to protect the testator from all kinds of fraud and trickery but are never intended to be so rigid and inflexible as to destroy the testamentary privilege. Although there should be strict compliance with the substantial requirements of the law in order to ensure the authenticity of the will, the formal imperfections should be brushed aside when they do not affect its purpose and which, when taken into account, may only defeat the testator's will.

652. What are covered for by the substantial compliance rule?

The law speaks not of defects of substance by defects and imperfections: 1) in the FORM of attestation or 2) in the LANGUAGE used therein.

653. What is a Holographic will?

A holographic will is a written will which must be entirely written, dated, and signed by the hand of the testator himself, without the necessity of any witness. (Art. 810 CC)

654. What are the formalities which are required in the execution of a holographic will?

From the provision of Arts. 804 and 810 of the Civil Code, It is clear that the testator, in the execution of a holographic will, must comply with the following formalities:

1) The will must be entirely written by the hand of the testator himself;
2) The will must be dated by the hand of the testator himself;
3) The will must be signed by the hand of the testator himself; and
4) The will must be executed in a language or dialect known to the testator.

655. X executed a holographic will with the date Feb./61, is the will valid?

As held in Roxas v. De Jesus, Jr. GR 38338, Jan. 28, 1985, as a general rule, the "date" in a holographic will should include the day, month and year of its execution. However, when as in the case at bar, there is no appearance of fraud, bad faith, undue influence and pressure and the authenticity of the will is established and the only issue is whether or not the date "Feb./61" appearing on the holographic will is a valid compliance with Art. 810 of the Civil Code., probate of the holographic will should be allowed under the principle of substantial compliance.

656. What are the issues to be resolved to admit a holographic to probate?

The only issues to be resolved are:

- Whether the instrument submitted is, indeed, the decedent's last will and testament;
- Whether said will was executed in accordance with the formalities prescribed by law;
- Whether the decedent had the testamentary capacity at the time the will was executed; and
- Whether its signing was the voluntary act of the decedent.

657. A executed a will in 1972. After his death in 1974, the will was presented for probate in the CFI of Manila. Its validity, however, is assailed on the ground that the testator had signed the will at the end thereof with a mere cross. Can it be admitted to probate?

In a similar case decided by the Supreme Court (Garcia v. Lacuesta, 90 Phil. 489), it was held that since a mere cross cannot and does not have the trustworthiness of a thumbmark, the will cannot be admitted to probate. From a perusal of the case, however, had the proponent of the will been able to prove that the testator intended the cross to be his signature or that he had always signed in that way before, then the result would have been different. Consequently, in the problem given, our answer must be qualified. If the proponent of the will of A is unable to prove that A intended the cross to be his signature or that he had always signed in that way before, then the will cannot be admitted to probate; however, if he is able to do so, then the will can be admittedly to probate. After all, signing in its derivative sense means the placing of any mark, or symbol, or emblem by the testator upon the instrument for the purpose of authenticating it. Hence, what matters are the intention and the habits of the testator.

658. What are the features of the holographic will?

No witnesses are required. (If there be any or an attestation clause, the witnesses and the clause will be disregarded and considered as surplusage, the will itself remains valid.

1) No marginal signatures on the pages are required.
2) No acknowledgment is required.
3) In case of any insertion, cancellation, erasure or alteration, the testator must authenticate the same by his full signature. (Art. 814)
4) May be made in or out of the Philippines, even by Filipinos. (Art. 810 and Art 815 is only permissive)
5) May be made by a blind testator, as long as he is literate, at least 18, and possessed of a sound

mind.

6) Event the mechanical act of drafting a holographic will may be left to someone other than the testator, as long as the testator himself copies the draft in his own handwriting, date it, and signs it. (Art. 810)

659. How many witnesses are necessary for the probate of a holographic will?

Art. 811 of the Civil Code provides that, In the probate of a holographic will, it shall be necessary that at least one witness who knows the handwriting and signature of the testator explicitly declare that the will and the signature are in the handwriting of the testator. If the will is contested, at least three of such witnesses shall be required. In the absence of any competent witness referred to in the preceding paragraph, and if the court deems it necessary, expert testimony may be resorted to.

660. May a holographic will be made in or out of the Philippines?

A holographic will must be entirely written, dated, and signed by the land of the testator himself. It is subject to no other form, and may be made in our out of the Philippines, and need not be witnessed.

661. Are the provisions of Art. 811 as regards the necessity of 3 witnesses in a contested holographic will permissive or mandatory?

As held in Eugenia Ramonal Codoy and Manuel Ramonal v. Evangeline R. Calugay, et al. GR 123486 Aug. 12, 1999, The Supreme Court held said that, based on the language used, That Art. 811 is mandatory. The word "shall" connotes a mandatory order. We have ruled that "shall" in a statute commonly denotes an imperative obligation and is inconsistent with the idea of discretion and that the presumption is that the word "shall," when used in a statute, is mandatory.

662. Are there exceptions to the rule that the original of the holographic will should be presented to the probate court for the visual examination before it can be admitted to probate?

As suggested by the Supreme Court in Gan vs. Yap (104 Phil 509), it is possible that a photostatic copy, or even a mimeographed or carbon copy may be substituted for the original document. This is so because in these cases compliance with the requirements stated in Art. 811 of the Civil Code would still be possible.

663. Suppose that after the death of the testator, the only copy of his holographic will which can be found is a photostatic or Xerox copy, or a mimeographic or carbon copy, may the will be admitted to probate?

Yes, the will may still be admitted to probate. In the case of Rodela vs. Aranza, 119 SCRA 16 the Supreme Court ruled the will may be allowed because comparison can still be made with the standard writings of the testator. Thus, in Gan v. Yap 104 Phil 509, it says that "Perhaps it may be proved by a photostatic or photographic copy, or even a mimeographed or carbon copy; or by other similar means, if any, whereby the authenticity of the handwriting of the deceased may be exhibited and tested before the probate court." Evidently, the photostatic or Xerox copy of the lost or destroyed holographic will may be admitted because then the authenticity of the handwriting of the deceased can be determined by the probate court.

664. What is the rule that the subsequent dispositions after the signature of the testator in a holographic will?

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

665. What are the rules for curing defects?

Art. 813 provides that:

If the last disposition is SIGNED and DATED

a) Preceding dispositions which are SIGNED but NOT DATED are VALIDATED

b) Preceding dispositions which are NOT SIGNED but DATED are VOID. c) Preceding dispositions which are NOT SIGNED and NOT DATED are VOID, unless written on the SAME date and occasion as the latter dispositions.

666. What is the rule of Authentication of Correction by Full Signature?

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

667. Suppose there is an alteration without the full signature, is the whole will void?

No, only the alteration is VOID. However, if what was altered was the DATE or the SIGNATURE, the alteration without the full signature make the WHOLE will VOID.

668. A executed a holographic will. He authenticated or signed the will with his initials. In addition, there is an inserted testamentary disposition found on page 2 of the will, also authenticated with his initials. Are such authentications valid?

We must distinguish. The act of A in signing the will with his initials is a valid authentication. This is clear from Art. 810 of the Civil Code. The law merely requires that the will must be entirely written, date and signed by the hand of the testator himself. However, the act of A in authenticating the inserted testamentary disposition with his initials is not a valid authentication. This is clear from Art. 814 which declares that in case of any insertion, cancellation erasure or alteration in a holographic will, the testator must authenticate the same by his full signature.

669. RTC Quezon City allowed the probate of the holographic will of the will the late Annie Sand, with the petitioners as devisees. However, the Court of Appeals reversed the same and dismissed the petition for probate holding that there were some dispositions on the will which were either unsigned and undated, or signed but not dated or some erasures, alterations and cancellations which were not authenticated, all in violation of the requirement set forth n Arts. 813 and 814 of the Civil Code. Thus, the will did not comply with the formalities required by law. Is the ruling of the CA that the will failed to comply with the formalities required by law, hence, its probate should be denied, correct?

No, reading of Arts. 813 and 814 shows that their requirements affect the validity of the dispositions contained in the holographic will, but not its probate. If the testator fails to sign and date some of the dispositions, or to authenticate alterations, erasures and cancellations, the result is that these dispositions cannot be effectuated. Such failure, however, does not render the whole testament void.

670. If a will is made either in the Philippines or in a foreign country, what law shall govern its formal validity?

We can very well divide the rules applicable into 4. They are as follows:

1) If the testator is a Filipino and the will is executed in the Philippines, then its formal validity is governed by the Civil Code of the Philippines (Art. 17 Civil Code)

2) If the testator is a Filipino and the will is executed in a foreign country, then its formal validity is governed by either a) by the law of the place where the will is made, or (b) by the Civil Code of the Philippines. It must be observed that Art. 815 of the Civil Code does not state that a will made by a Filipino in a foreign country may be executed in accordance with the formalities prescribed by the Civil Code of the Philippines. In spite of the omission, however, it is submitted that such a will may still be admitted to probate in the Philippines. Not to grant this concession to Filipino Citizens would be illogical and unfair, considering the fact that is even granted to foreigners; (Art. 816 CC)

3) If the testator is a foreigner and the will is executed in the Philippines, then its formal validity is governed either (a) by The Civil Code of the Philippines (Art. 17 CC) or (b) by the law of his own country. (Art. 817 CC)

4) If the testator is a foreigner and the will is executed in a foreign country, then its formal validity is governed either (a) by the law of the place where the will is made (Art. 17 CC), or (b) by the law of his own country (Art. 816, CC), or (c) by the law of the country where he resides, or (d) by the Civil Code of the Philippines.

671. Carlos Reyes, a Filipino citizen residing temporarily in Oregon, State of Washington U.S., executed a will in accordance with the laws of said state. Assuming the testator returns to the Philippines and dies without modifying or executing a new will in accordance with the Philippine laws, how shall his estate be dealt with, testate or intestate?

The succession will be testamentary, since under Art. 815 he is allowed to make a will in any of the forms

allowed in the foreign state where he may be. The will he executed in Washington may indeed be probated in the Philippines. But, accordingly, the intrinsic validity of the provision of his will, the amount of successional rights, and order of succession will be governed by his national law, that is, the Philippine law on succession. (Art.16)

672. X, Spanish citizen but a resident in San Francisco, California, U.S.A., executed a will in Tokyo, Japan. May such will be probated in the Philippines and his estate in this country distributed in conformity with the provision of the will?

Yes, the will of X may be probated in the Philippines and his estate in this country may be distributed in conformity with the provisions of the will, provided that said will was executed in accordance with the formalities prescribed by any of the following laws according to Art. 816 of the Civil Code:

1) The law of the place in which X resides (San Francisco, California, U.S.A.); or
2) The of his own country (Spain); or
3) The civil code of the Philippines; or
4) The law of the place where the will was made (Tokyo, Japan) (Art., 17, Civil Code)

673. What is a joint will?

A "joint" will is defined as a single testamentary instrument which contains the wills of two or more persons jointly executed by them, either for their reciprocal benefit or for the benefit of a third person.

674. What is a mutual will?

"Mutual" wills are wills executed pursuant to an agreement between two or more persons to dispose of their property in a particular manner, each in consideration of the other.

675. What is a reciprocal will?

"Reciprocal" wills are wills in which the testator name each other as beneficiaries under similar testamentary plans.

676. May Filipino citizens execute joints will?

Whether in the Philippines or in foreign country, Filipino citizens are prohibited from executing joint wills. (Arts. 818, 819 Civil Code) This prohibition is a matter of public policy. Joint wills may lead to the commission of parricide. (In re Will of Bilbao, 87 Phil. 114; Dacanay vs. Florendo, 87 Phil. 114)

677. A and B, a married couple of French Citizenship but residents in the Philippines, went to Argentina and there executed a joint will mutually instituting each other as sole heir, which will is valid according to the law of the state. Subsequently, they returned to the Philippines where A died. May the joint and mutual will executed in Argentina be probated as valid in the Philippines?

The joint and mutual will executed in Argentina by A and B may be probated as valid in the Philippines. True, Art. 818 of the Civil code prohibits 2 or more persons from making a will jointly, or in the same instrument, either for their reciprocal benefit or for the benefit of a third person, and Art. 819 of the same Code extends this prohibition to joint wills executed by Filipinos in a foreign country, even though authorized by the laws of the country where they may have been executed. But then, from the phraseology of Art. 819 itself, there is a clear implication that the prohibition does not apply to foreigners, and certainly, A and B are foreigners. Therefore, the provision of the third paragraph of Art. 17 of the Civil Code which declares that prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated or by determination or conventions agreed upon in a foreign country, cannot be applied in the instant case. What is applicable is the first paragraph of the same article, which declares that forms and solemnities of contracts, wills, and other public instruments shall be governed by the laws of the country which they are executed.

678. A joint will executed by a husband and his wife was erroneously probated by the RTC. There being no appeal, the judgment became final. Can the joint will be given effect?

Yes, for while joint will are prohibited and should have been disallowed, still in this case, the judgment had already become final. This is NOT a case of lack of jurisdiction; it is simply an instance of an erroneous but valid judgment. Otherwise stated, this is merely an error in law, not an error in jurisdiction.

679. Who are qualified to act as instrumental witnesses to the execution of a will?

According to Art. 820 of the Civil Code, a witness to the execution of an ordinary will must have the following qualifications:

1) He must be of sound mind;
2) He must be 18 years of age or more;
3) He must not be blind, deaf, or dumb; and
4) He must be able to read and write.

680. Who are disqualified to act as instrumental witnesses to the execution of a will?

According to Arts. 820 and 821 of the Civil Code, the following are disqualified from being witnesses to a will:

1) Any person not domiciled in the Philippines;
2) Those who have been convicted of falsification of a document, perjury or false testimony;
3) Any person who is not of sound mind;
4) Any person who is less than 18 years of age;
5) Any person who is blind, deaf, or dumb; and
6) Any person who cannot read and write.

681. Is it essential for the witness to be able to speak and write the very language in which the will was written?

No, since after all, the witness does not even have to know the contents of the will. Therefore, he does not have to understand the language concerned. It not even essential for the witness to know the language in which the attestation has been written. It is sufficient that the same be interpreted to him. (See. Art. 805)

RELEVANT RECENT CASES

682. What is an acknowledgment?

Acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed. It involves an extra-step undertaken whereby the signor actually declares to the notary that the executor of the document has attested to the notary that the same is his own free act and deed. (Azuela v. CA 487 SCRA
119 [2006]).

683. What is the importance of an acknowledgment in an ordinary or notarial will?

The express requirement of Art. 806 of CC is that the will is to be "acknowledged," and not merely subscribed and sworn to. The acknowledgment coerces the testator and the instrumental witnesses to declare before an officer of the law that they had executed and subscribed to the will as their own free act or deed. (Azuela v. CA 487 SCRA 119 [2006]).

684. Why should a holographic will be construed more liberally than the ones drawn by an expert?

Taking into account the circumstances surrounding the execution of the instrument and the intention of the parties, holographic will are "usually prepared by one who is not learned in the law". (Seangio v. Reyes, 508 SCRA 177 [2006]). It is a fundamental principle that the intent or the will of the testator, expressed in the form and within the limits prescribed by law, must be recognized as the supreme law in succession. Note that a Holographic will must be entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, need not be witnessed, and may be made in or out of the Philippines.

685. Norman was convicted for the crime of arson. Is he disqualified from being a witness to the execution of a will?

No. Only those convicted of falsification of a document, perjury or false testimony are disqualified from being a witness to a will.

686. Can a notary public before whom a notarial will is acknowledged be a witness to the said will?

The notary public before whom the notarial will is acknowledged is disqualified to be a witness to the said will. It would be absurd for him (as witness) to be acknowledging something before him (as notary public). (Cruz v. Villasor, et al., L32213, Nov. 26, 1973)

687. Is it essential that the witness to the will be a citizen of the Philippines?

It is not essential that the witness be a citizen of the Philippines, for domicile is what the law merely requires. Domicile is defined in Article 6 of the new civil code as the place of habitual residence.

688. On January 25, 2009, Guillermo Dulay was one of the three witnesses who witness the execution of the notarial will of Jayson Costina. On January 30, 2010, Guillermo Dulay became insane. On March 3, 2010 Raymund the son of Jayson Costina petition the court for the probate of the will. May the will be allowed to probate?

Yes it can be allowed. If the witnesses attesting the execution of a will are competent at the time of the attesting, their becoming subsequently incompetent shall not prevent the allowance of the will.

689. What is the difference between a witness to a will and a witness in court?

A witness to a will must have the qualification required by Articles 820 and 821 such that a witness must be: of sound mind, at least 18 years old, able to read and write, not blind, deaf or dumb, domiciled in the Philippines, and not convicted of perjury, falsification of document or false testimony. A witness in court must possess organs of perception and in perceiving can make known what he has perceived.

690. A witness to a will was sane during the execution of the will. Later he became insane. Is the will valid? If so, can he testify in court as to the due execution of the will?

Yes the will is valid because the subsequent incapacity does not impair the validity of the will. He is, however, disqualified to testify as a witness in court while he is insane except when during the testimony he is in a lucid interval.

691. Marcos made a notarial will with Marlon, Waylon, and Clayton as witnesses. In the will, Marlon was given a piece of land as a devise. There were of course other testamentary provisions. Is the will valid?

The will is valid, since there were three credible witnesses, Marlon being one of them. However, while Marlon is capacitated as a witness, he is incapacitated to receive the devise, hence, the provision regarding the devise should be disregarded, the rest of the will being valid.

692. Marvin made a notarial will with Marlon, Waylon, Anton and Clayton as witnesses. In the will, Marlon was given a piece of land as a devise. There were other testamentary provisions. Is the devise given to Marlon void?

No, Marlon can get the land because even if Marlon is a witness to the execution of the will, there were three competent witnesses other than Marlon.

693. Witnesses can not inherit, to what does this disqualification extend?

The disqualification extends to the following:

1. the spouse of the witness;
2. the parent of the witness;
3. the child of the witness; and
4. anyone claiming the right of said witness, spouse, parent or child.

694. Myrtle was indebted to Dino for a sum of one million pesos. Myrtle made a notarial will. Is Dino disqualified to be a witness to the execution of the will?

No. Article 824 states that a mere charge on the estate of the testator for the payment of debts due at the time of the testator's death does not prevent his creditor from being a competent witness to his will.

695. What is a codicil?

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

696. What is the rule in case of conflict between a will and a codicil?

In case of conflict between a will and a codicil, it is understood that the latter should prevail, it being the latter expression of the testator's wishes.

697. What are the formalities in the execution of a codicil?

A codicil must be executed as in the case of wills. Note that there can be a notarial or holographic codicil.

698. May a will incorporate into itself by reference a paper or document? If so, what requisites must be present?

Yes, but the following requisites must be present:

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

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

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

(4) It must be signed by the testator and the witnesses on each and every page.

699. When a will incorporates into itself by reference any document or paper, such document or paper must be signed by the testator and the witnesses on each page. What is the exception to this rule?

Each and every page of such document or paper must be signed by the testator and the witnesses except in case of voluminous books of account or inventories.

700. If a notarial will refers to a document or inventory, is there a need for such document or inventory to have an attestation clause?

No, said document or inventory, when referred to in a notarial will does not need any attestation clause, because the attestation clause of the will itself is sufficient.

701. When can a testator revoke his will?

A will may be revoked by a testator at any time before his death.

702. Can a testator waive his right to revoke his will?

No, because Article 828 provides that any waiver or restriction of his right to revoke is void.

703. Suppose that a will has already been admitted to probate during the testator's lifetime, may it still be revoked?

Yes, even if the will has already been admitted to probate during the testator's lifetime. This necessarily follows from the principle that "a testament is of force after men are dead; otherwise it is of no strength at all while the testator liveth.

704. What law shall apply in the revocation of a will if the testator is not domiciled in the Philippines?

The following rules shall apply if the testator is not domiciled in the Philippines:

a. follow the law of the place where the will is made; or
b. follow the law of the place where the testator is domiciled at the time.

705. What law shall apply in the revocation of a will if the testator is domiciled in the Philippines?

The following rules shall apply if the testator is domiciled in the Philippines:

a. follow the law of the Philippines(since his domicile is here); or
b. follow the general rule of lex loci celebrationis of the revocation (Art. 17).

706. What is the rule if the revocation is made in the Philippines?

The rule is to follow the Philippine law. This is true whether or not the testator's domicile is in the Philippines.

707. What are the different modes of revocation?

No will shall be revoked except in the following cases:

a. By implication of law; or
b. By some will, codicil, or other writing executed as provided in case of wills; or
c. By burning, tearing, cancelling, or obliterating the will with the intention of revoking it, by the testator himself, or by some other person in his presence, and by his express direction. If burned, torn, cancelled, or obliterated by some other person, without the express direction of the testator, the will may still be established, and the estate distributed in accordance therewith, if its contents, and due execution, and the fact of its unauthorized destruction, cancellation, or obliteration are established according to the Rules of Court.

708. What are the requisites which must concur in order that a will may be revoked by burning, tearing, canceling, or obliterating?

There are four requisites which must concur. They are: (1) the testator should have testamentary capacity at the time of performing the act of physical destruction; (2) there should be an actual physical act of destruction; (3) the destruction should be performed with the intention of revoking the will (animus revocandi); and (4) the act of destruction should be performed by the testator himself or by some other person in his presence, and by his express direction.

709. A executed a will with his nephew B, who was living with him, as principal beneficiary. With intent to revoke the will, he sent B to get it from his safe so that he could destroy it. B however, knowing of the intent of his uncle, substituted another paper inside the envelope and hid the real will. It was this envelope that he gave to the testator. The latter without investigating the contents, subsequently destroyed it by burning. After A's death, B presented the will, which he had hidden, for probate. Is there a revocation in this case? Decide, stating you reasons.

There is no revocation by burning, because although there was intent to revoke, yet there was no actual act of physical destruction. Not all the intention in the world without the destruction can revoke a will; not all the destruction in the world without the intention can revoke a will. The two must always go together.
Note that the act of B is classified as an act of unworthiness under no.7 of Art. 1032 of the NCC. Consequently, B cannot inherit from A. Therefore, although there is no revocation under no. 3 of Art 830 of the NCC, there is revocation of the testamentary disposition in favor of B by implication of law.

710. In a fit of anger, the testator tore his will twice and was continuing to so tear when somebody held his arms and persuaded him to refrain from tearing the will. He was prevailed upon. He then placed the torn pieces in his pocket and said, "Nothing significant has after all been torn." Later, the testator died, and the torn will was found. Was there a revocation here?

The will was not revoke for the act of tearing was subjectively not complete, inasmuch as he had intended to tear up the will some more.

711. May a lost or destroyed holographic will be proved by means of a photostatic or xerox copy thereof?

Yes, in Bodellar v. Aranza, et al. Dec. 7, 1982, the Supreme Court decided in the affirmative. The reason is that the authenticity of the handwriting of the deceased can be determined by the probate court.

712. T in his will gave B his Ferrari car as a legacy. A year later, T sold the car to Q for 3, 000, 000 pesos. On T's death, will B get the car, the P3 million or nothing?

B gets nothing, because by provision of law (Art 957 NCC), T's alienation of the car revoked the legacy automatically by operation of law.

713. What is the effect of the implied revocation of a will?

The effect is that subsequent wills which do not revoke the previous ones in an express manner, annul only such dispositions in the prior wills as are inconsistent with or contrary to those contained in the latter wills.

714. When is a will expressly or impliedly revoked?

A will is expressly revoked when in a subsequent will, or codicil, or other writing executed as provided in case of wills, there is a revocatory clause expressly revoking the will or a part thereof. It is impliedly revoked when the provisions of the subsequent will or codicil are partially or absolutely inconsistent with those of the previous will.

715. Dino made a will making Vida his heir. Later, Dino expressly revoked his first will by executing a second will containing revocatory clause. Dino made Mayo his heir. The second will was validly made, but on Dino's death, Mayo refused to accept the inheritance. Is the first will revoked?

Yes, the first will is revoked. In this case, Dino will be considered to have died intestate, and Vida cannot inherit, except only when Vida is also one of the intestate heirs.

716. Is there a revocation when the revoking will is invalid and ineffective?

There is no revocation when the revoking will is invalid and ineffective.

717. Rolando made a will making Anna his heir. Rolando then learned that Anna was dead, so he made another will instituting Hanna as heir. If Anna turns out to be still alive, who shall inherit?

Anna inherits, because the revocation was based on a false cause. Article 833 provides that a revocation of a will based on a false cause or an illegal cause is null and void.

718. If the testator states in his second will: "I am not sure whether A is dead or still alive, however, I hereby revoke the legacy to him which I made in my first will." Is there a revocation of the legacy?

Yes. For here, he cannot be said to be proceeding upon an error.

719. Will recognition of an illegitimate child in a will lose its legal effect if said will is revoked?

No, because article 834 expressly provides that the recognition of an illegitimate child does not lose its legal effect, even though the will wherein it was made should be revoked.

720. Can a testator republish, without reproducing in a subsequent will the dispositions contained in a previous one which is void as to its form?

No, article 835 expressly provides that the testator cannot republish, without reproducing in a subsequent will, the dispositions contained in a previous one which is void as to its form.

721. How is republication made?

Republication is made by:

a. the re-execution of the original will (the original provisions are copied); or b. the execution of a codicil (known as implied republication).

722. What is meant by republication and revival of wills? Distinguish the two.

Republication of wills refers to the act of the testator either in reproducing in a subsequent will the dispositions contained in a previous one which is void as to its form or which has been revoked on in executing a codicil referring to a previous will; while revival of wills pertains to the restoration of validity of a previously revoked will by operation of law. From these definitions it is evident that while republication is effected by act of the testator, revival is effected by operation of law. Note also that aside from republication and revival, there is no other way of restoring effectiveness. Thus, it has been held that piercing together a torn and revoked will cannot restore its effectiveness (Brock's Estate, 247 Pa. 365).

723. What is the effect of the execution of a codicil referring to a previous will?

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

724. In 2007, T made a notarial will giving all his 5 automobiles to X. In 2008, he republishes the will, and by that time he has eight automobiles, how many should X get?

X gets all the automobiles. The effect is as if he made the will not in 2007 but in 2008. In other words the will is a reestablished act, and therefore the will govern the property he had acquired up to 2008.

725. At the time a notarial will was executed with two witnesses, the law required three. Suppose later on, the law changed the required witnesses to two, and suppose this time a codicil referring to a will is made with two witnesses, is the old will republished?

While it is true that generally a void will (as to its form) cannot be republished merely by reference in a later valid codicil, and while it true that according to article 795 , the validity of a will as to its form depends upon the observance of the law in force at the time it is made, still it is submitted that in this particular case, there was a valid republication because of the fact that here, the defect has been cured (see Am. Jur., Wills, sec 626). Moreover, from one view point, it may be said that republication is still part of the process of making, referred to in article 795.

726. Can a will, invalid because of fraud of force or undue influence or because the testator was under 18 or was insane, be republished by mere reference in a codicil?

Yes, because it is not a case when the will is void as to its form. Form in article 836, is believed, refers to such things as those covered by article 805, like defect in the number of witnesses, lack of or fatal defect in the attestation, lack of acknowledgment . But not to vitiated consent or to lack of testamentary capacity, although of course these are included in the phrase extrinsic validity as distinguished from intrinsic validity.

727. A testator revoked his will by cutting out his signature in the will, with animo revocandi. Later, he changed his mind and pasted back his signature in its previous position. Does the revocation remain or has there been a republication?

The will remains revoked, the attempted republication not having complied with the legal requirements for republication.

728. In 2006, T made a notarial will, without attestation clause. Later on, he made a private instrument to the effect that he was ratifying said will. Is there republication?

No. since there would be a reproduction of all the provisions. Of course even a holographic will would be sufficient, but even here reproduction is required. The answer would be the same even if the ratification had been made in a public instrument.

729. Raymond in 2004 made a will. In 2005 he made a second will expressly revoking the first will. In 2006 he made a third will that revoked the second will. Is the first will made on 2004 revived?

No, by express provision of article 837, it provides that if after making a will, the testator makes a second will expressly revoking the first, the revocation of the second will does not revive the first will, which can be revived only by another will or codicil.

730. Raymond made 3 wills. Will no.2 is completely inconsistent with, and therefore, impliedly repeals will no. 1. Later will no. 3 revokes will no. 2. Is will no.1 revived?

Yes. This is a clear inference from Art. 837. Since the article uses the word "expressly", it follows that in case of an implied revocation by the second will, an automatic revival of the first occurs. Apparently, the reason is the fact that an implied revocation is ambulatory, the inconsistency being truly and actually apparent only mortis causa, when the properties are distributed.

731. Raymond made a first will, and then a second will expressly revoking the first. He destroyed the second will, and orally expressed his desire that his first will be followed. Should this be allowed?

No, the oral expression of desire to revive cannot be given effect. He should have made a new will or codicil as required by law.

ON RELATED RECENT CASES:

732. CUA versus VARGAS (506 SCRA 374)

A notice via publication of settlement was made. However, the heirs had no knowledge that a publication had been made. Did the publication of the settlement constitute constructive notice to the heirs who had no knowledge of it?

It did not constitute constructive notice to the heirs who had no knowledge or did not take part in it "because the same in the words of the Supreme Court", is a notice after the fact of execution. Note that in this case, "the heirs who actually participated in the execution of the extrajudicial settlement, which included the sale to a third person of their pro indiviso shares in the property, are bound by the same while the co-heirs who did not participate are given the right to redeem their shares pursuant to Article 1088 of the new civil code. The procedure outlined in sec. 1 of rule 74 of the Rules of Court is ex parte proceeding- people who do not participate nor had no notice of an extrajudicial settlement will not be bound thereby.

733. URSULINA GANUELAS et al vs. HON. ROBERT T. CAWED et al April 24, 2003

On April 11, 1958, Celestina Ganuelas Vda. de Valin executed a Deed of Donation of Real Property covering seven parcels of land in favor of her niece Ursulina Ganuelas (Ursulina). The provisions quoted as follows: That, for and in consideration of the love and affection which the DONOR has for the DONEE, and of the faithful services the latter has rendered in the past to the former, the said DONOR does by these presents transfer and convey, by way of DONATION, unto the DONEE the property above, described, to become effective upon the death of the DONOR; but in the event that the DONEE should die before the DONOR, the present donation shall be deemed rescinded and of no further force and effect.

On June 10, 1967, Celestina executed a document denominated as Revocation of Donation purporting to set aside the deed of donation. More than a month later or on August 18, 1967, Celestina died without issue and any surviving ascendants and siblings.

Ursulina acquired the parcels of lands. Private respondents were thus prompted to file on May 26, 1986 with the RTC of San Fernando, La Union a complaint against Ursulina. The complaint alleged that the Deed of Donation executed by Celestina in favor of Ursulina was void for lack of acknowledgment by the attesting witnesses thereto before notary public Atty. Henry Valmonte, and the donation was a disposition mortis causa which failed to comply with the provisions of the Civil Code regarding formalities of wills and testaments, hence, it was void.

Is the donation a donation inter vivos or mortis causa?

The donation is a donation Mortis Causa. The donation must be in the form of a will, with all the formalities for the validity of wills, otherwise it is void and cannot transfer ownership. If the donation is made in contemplation of the donor's death, meaning that the full or naked ownership of the donated properties will pass to the donee only because of the donor's death, then it is at that time that the donation takes effect, and it is a donation mortis causa which should be

embodied in a last will and testament. The distinguishing characteristics of a donation mortis causa are the following:

1. It conveys no title or ownership to the transferee before the death of the transferor; or, what amounts to the same thing, that the transferor should retain the ownership (full or naked) and control of the property while alive;

2. That before his death, the transfer should be revocable by the transferor at will, ad nutum; but revocability may be provided for indirectly by means of a reserved power in the donor to dispose of the properties conveyed;

3. That the transfer should be void if the transferor should survive the transferee

734. SPOUSES ERNESTO and EVELYN SICAD vs. COURT OF APPEALS, CATALINO VALDERRAMA, JUDY CRISTINA M. VALDERRAMA and JESUS ANTONIO VALDERRAMA (August 13, 1998)

That deed, entitled "DEED OF DONATION INTER VIVOS," was executed by Montinola on December 11, 1979. It named as donees her grandchildren: Catalino Valderrama, Judy Cristina Valderrama and Jesus Antonio Valderrama, and treated of a parcel of land, located at Brgy. Pawa, Panay, Capiz, covered by TCT No. T-16105 in the name of Montinola. The deed also contained the signatures of the donees in acknowledgment of their acceptance of the donation.

Montinola's Secretary, Gloria, afterwards presented the deed for recording in the Property Registry, and the Register of Deeds cancelled TCT No. T-16105 (the donor's title) and, in its place, issued TCT No. T-16622 on February 7, 1980, in the names of the donees. Montinola however retained the owner's duplicate copy of the new title (No. T-16622), as well as the property itself, until she transferred the same 10 years later, on July 10, 1990, to the spouses, Ernesto and Evelyn Sicad.

On March 12, 1987, Aurora Montinola drew up a deed of revocation of the donation, and caused it to be annotated as an adverse claim on TCT No. T-16622. Then, on August 24, 1990, she filed a petition with the Regional Trial Court in Roxas City for the cancellation of said TCT No. T-16622 and the reinstatement of TCT No. T- 16105 (in her name). Her petition was founded on the theory that the donation to her 3 grandchildren was one mortis causa which thus had to comply with the formalities of a will; and since it had not, the donation was void and could not effectively serve as basis for the cancellation of TCT No. T-16105 and the issuance in its place of TCT No. T-16622.

The donees (Montinola's grandchildren) opposed the petition

What is the character of the deed of donation executed by the late Aurora Virto vda. de Motinola?

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

In the instant case, nothing of any consequence was transferred by the deed of donation in question to Montinola's grandchildren, the ostensible donees. They did not get possession of the property donated. They did not acquire the right to the fruits thereof, or any other right of dominion over the property. More importantly, they did not acquire the right to dispose of the property — this would accrue to them only after ten (10) years from Montinola's death. Indeed, they never even laid hands on the certificate of title to the same. They were therefore simply "paper owners" of the donated property. All these circumstances, including, to repeat, the explicit provisions of the deed of donation — reserving the exercise of rights of ownership to the donee and prohibiting the sale or encumbrance of the property until ten (10) years after her death — ineluctably lead to the conclusion that the donation in question was a donation mortis causa, contemplating a transfer of ownership to the donees only after the donor's demise.

Article 838 - 854

735. What law governs the passing of real or personal property through wills?

a. The New Civil Code
b. The 1987 Constitution
c. The Rules of Court
d. The law applicable based on the provisions of the will

736. At what point in time can the testator petition the court having jurisdiction for the allowance of his/her will?

a. Anytime after the successors in interest reach the age of majority. b. Anytime after the legal heirs attains full civil personality
c. Anytime after the death of the testator by the heirs of the testator or administrator of his property
d. Anytime during the lifetime of the testator

737. Probate of wills means .

a. A special proceeding purposely to prove before a competent court or tribunal that the instrument offered for probate is in fact the last will and testament of the testator.
b. A summary proceeding to prove before the competent court or tribunal that the instrument offered for probate is the last will and testament of the testator
c. A special and a summary proceeding for the purpose of proving before a competent court or tribunal vested with authority for the purpose that the instrument is the last will and testament of the testator
d. In proceeding in personam for the purpose of proving that the instrument offered for probate is the last will and testament of the testator; that it has been executed in accordance with the formalities of the law.

738. What is the nature of probate proceeding?

a. In personam
b. In rem
c. In personam and at the same time proceeding in rem
d. The courts shall determine whether it would be a proceeding in personam or a proceeding in rem depending on the provisions of the last will and testament.

739. Which of the following is not a characteristic of a probate proceeding?

a. It is not a contentious litigation b. It is mandatory
c. It is a proceeding in personam
d. It is imprescriptible

740. Which of the following is a ground for disallowance of the probate of a will of a testator?

a. That the testator was not insane at the time of the execution of the will
b. That the will was not executed through the use of force, intimidation, duress, undue influence or threats
c. If the testator did not act my mistake
d. If it was procured by undue or improper pressure and influence on the part of other persons

741. Erap died in 1933 with a will, survived by Pnoy, a legitimate son and Kris, a natural daughter, whom he had acknowledged in a will. In the will, he divided his properties between the two. Subsequently, without presenting the will for probate, Kris brought an action against Pnoy for the partition of the estate. In order to prove her status as an acknowledged natural daughter of Erap, she presented the will as evidence. What is the effect of the act of Kris?

a. It is perfectly legal; wills can be used to prove filiations of illegitimate children in order to claim their legitimes from the decedent.

b. It is in accordance with law. The action for partition should be allowed.
c. It is contrary to law; before there can be partition of the estate of Erap, both Kris and Pnoy should will an action for partition jointly.
d. It is contrary to law; before there can be partition of the estate of Erap, the will must first be presented for probate.

742. Which of the following is not a question to be determined in a probate proceeding?

a. Whether or not the heirs, legatees and devisees are rightful recipients of the decedent's estate
b. Whether or not the instrument which is offered for probate is the last will and testament of the decedent.
c. Whether or not the will has been executed in accordance with the formalities prescribed by law.
d. Whether or not the testator had the testamentary capacity at the time of the execution of the will.

743. Does the probate court have jurisdiction to adjudicate or determine title to properties claimed to be a part of the estate and which are equally claimed to belong to outside parties?

a. Yes. Determination of title to properties is incorporated in the probate proceeding
b. No. Determination of title to property should be filed in the Regional Trial Court of the place where the decedent's property is situated.
c. Yes. The court's determination as to whether or not the property should be included in the inventory of property of the decedent is also determination and adjudication of title.
d. No. The court or one in charge of the proceedings, whether testate or intestate, cannot adjudicate or determine title to properties.

744. During the proceedings for the probate of the will of Gloria, Mikey, a natural child of Gloria filed a motion to intervene in the proceedings. Can the probate court require him to present evidence to prove his due filiation?

a. No, as long as Mikey knows and of public knowledge that he is relative of the decedent
b. No, as long as Mikey shows the court that his interest can be affected by the proceeding
c. Yes, a person intervening in the probate proceeding should be required to show interest in the will or in the property affected whether or not he is related to the decedent.
d. Yes, a person intervening in the probate proceeding should be required to show interest in the will or in the property affected. It is sufficient that he shows a prima facie evidence of his or her relationship with the testator.

745. What is the effect of the allowance of the will?

a. Subject to the right of appeal, the allowance of the will is not conclusive as to its due execution during the lifetime of the testator.
b. Subject to the right of appeal, the allowance of the will is conclusive as to its due execution either during the lifetime or after the death of the testator.
c. Subject to the right of appeal, the allowance of the will is conclusive as to its due execution only after the death of the testator.
d. The allowance of the will is not subject to appeal and is conclusive as to its due execution either during the lifetime or death of the testator.

746. "A" presented a will purporting to be the last will and testament of his deceased wife for probate. The will was admitted to probate without any opposition. Sixteen (16) months later, the brothers and sisters of the deceased discovered that the will was a forgery. Can "A" now be prosecuted for criminal offense of forgery? Reasons.

a. Yes, the crime has not yet prescribed. The reckoning of the period of prescription is the day of the discovery of the forgery.
b. No. According to the law, the allowance of the will shall be conclusive as to its due execution subject to the right of appeal.
c. Yes, perjury is a criminal offense separate and distinct from the proceeding on allowance of wills.
d. No. Estoppel has set in against the brothers and sisters after the lapse of sixteen (16) without any action on their part.

747. X died in 1990 survived by his two (2) legitimate children A and B and by his three (30 grandchildren D, E and F, legitimate children of C, a legitimate child of X who pre-deceased him. In his will, he instituted A, B, "the children of C", and a friend M as heirs without designating their shares. The residue of his estate is P180,000. How shall the distribution be made?

a. Since the testator did not designate their share, the estate should be divided equally amongst them.
b. The compulsory heirs should first get their legitimes and then the free portion shall be distributed among the instituted heirs, including the compulsory heirs, in equal portions.
c. The compulsory heirs should get their legitimes only; the free portion shall be distributed equally among the other instituted heirs.
d. The will is not valid because there is no designation of the shares of instituted heirs, thus, it creates confusion.

748. Suppose that an institution of heirs is based on a false cause, what is the effect of the falsity of such cause?

a. It makes the will unenforceable b. It makes the will void
c. It makes the will voidable
d. No effect

749. In preterition, which of the following is not a requisite?

a. The heir omitted must be compulsory heir in the direct line;
b. The omission of a compulsory heir must be in writing or expressly stated by the testator during the probate proceeding;
c. The omitted heir must survive the testator;
d. The omission must be total and complete in character

750. "A" died with a will in 1990. In the will, he instituted his legitimate son, "B", as a sole heir, omitting "N", an acknowledged natural son, completely. In 1987 however, "A" had donated to the latter a parcel of land worth P200, 000. The residue of "A's" estate is P1, 000,000. Is there preterition which will result in the total annulment of the institution of heir?

a. Yes, there was a valid preterition because "N" was a compulsory heir.
b. Yes, there was a valid preterition because "N" was completely omitted in the will.
c. Yes, there was a valid preterition. The donation inter vivos does not matter because the property is no longer included in the inventory of property.
d. There is preterition.

751. Institution of heir is .

a. The act of transferring ownership by the testator to the successors in interest
b. The act of the testator in naming the person who shall manage his properties after his death
c. The act of the testator in designating persons to succeed him in his property and transmissible rights and obligations
d. The act of the testator in making a will in accordance with law for the benefit of third persons who are not compulsory heirs

752. May a will be valid even if it does not institute heirs?

a. Yes. A will shall be valid even though it should not contain an institution of an heir as long as it does not compromise the whole estate.
b. No. The testator must designate the heir by his name and surname.
c. No. The testator must designate by name his heir and if there are two persons having the same names, he should indicate some circumstances by which the heir should be known.
d. Yes, provided the heir accepts the inheritance.

753. X without any compulsory heirs executed a will and gave all his properties to Y, a friend. Is the will valid?

a. No, the will is not valid because other relatives are prejudiced. b. No, the will is not valid because it is in favor of a third person. c. Yes, the will is valid provided Y accepts it.
d. Yes, the will is valid provided Y has the capacity to succeed.

754. Which of the following is not a rule in the designation of the heirs?

a. The testator shall designate the heir by his name and surname;
b. When there are two or more persons having the same names, he shall indicate some circumstances by which the instituted heir may be known;
c. An error in the name or other circumstances of the heir shall vitiate the institution even when it is possible, in any other manner, to know the certainty of the person instituted;
d. Even though the testator may have omitted the name of the heir, should he designate him in such a manner that there can be no doubt as to who has been instituted, the institution shall be valid.

755. Which of the following is not a rule on institution of heirs/

a. Being a voluntary heir of the testator, it cannot affect the legitime, otherwise, the compulsory heirs would be unduly prejudiced;
b. It is applicable to testate and intestate succession;
c. It affects only the free portion;
d. The legitimes of compulsory heirs should first be satisfied.

756. If there are several heirs who were instituted but there is no designation of their respective shares, what rule shall apply?

a. It will automatically cause the distribution in equal shares. b. The probate court shall designate the shares.
c. The compulsory heirs and voluntary heirs shall be treated equally because it is presumed that is the intention of the testator.
d. All the heirs shall inherit equal parts provided the compulsory heirs should not be prejudiced.

757. X instituted A, B and C without designation of their shares. State the effect of such institution.

a. A,B and C's respective shares shall first be determined by the court having jurisdiction.
b. A, B and C shall not divide the estate, they are co-owners. c. A, B and C should first agree on the sharing.
d. A, 8 and C shall inherit in equal shares.

758. If the testator instituted his brothers and sisters of the full and have blood, how will the estate be distributed?

a. The brothers and sisters of full blood shall be preferred.
b. The inheritance shall be distributed equally, unless a different intention appears.
c. The half blood brothers and sisters have no shares.
d. The court shall ascertain the intention of the testator before distribution.

759. X objected to the will of Y, his son, on the ground that: 1. He has not been instituted, he being the only heir of the son; 2. That even if he is instituted, his share is less than Z, his wife, as the free portion was left to Z. Rule on X's objection. Reasons.

a. X's objection is proper if the parents of Y are the only nearest relatives.
b. The objection is not proper; there is no preterition because the parents are relatives in the ascending line.
c. The objection is proper because the law does not distinguish direct line, in fact, even those in the collateral line can be subject of preterition.
d. The objection is not proper, parents have no personality to object the will of their children.

760. In case of adoption, can there be preterition of an adopted child?

a. No. Adopted children are not related to the adopter by blood.
b. Yes, because the adopted child has the same rights as a legitimate child but not illegitimate children.
c. No. Adopted children have equal rights with illegitimate children on their status in succession.
d. Yes, because adopted children are in equal footing with the legitimate and illegitimate children of the adopter.

761. During the lifetime of A, he executed a Last Will and Testament instituting his parents, X and Y. At the probate of the will, B, an illegitimate son of A, opposed on the ground of preterition. Will the contention of B prosper? Why?

a. Yes, because there was preterition of a compulsory heir in the direct descending line.

b. No, there was no preterition because although he is an heir in the descending line, he is still an illegitimate child of X.
c. It depends, B should first prove his filiation with A. After he had proven his filiation, that is the only time he can question the probate of the will on the ground of preterition.
d. No, the preterition of one or some 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 not annul the institution of heirs.

762. If an heir was omitted, from where will his share be taken?

a. The estate not disposed by will only.
b. Proportionately from the shares of other compulsory heirs, the remaining shall be taken from the free portion.
c. The heir omitted cannot share.
d. Proportionately from the shares of other compulsory heirs if the free portion is not enough.

763. What is the effect if an heir who was totally omitted was given a donation or given a very small share?

a. There is partial preterition because he received incomplete share.
b. There is no preterition because he was given a share, even if very small or minimal.
c. There is no preterition, hence, he can claim completion of his share.
d. If the heir has been given a donation, there is no preterition and the donation is not considered an advance of inheritance.

764. May property pass the heirs without the will being probated?

a. Yes, the heirs can always distribute the estate of the decedent extra-judicially. b. Yes, the law on probate of wills is not mandatory.
c. No. No will shall pass either real or personal property unless proved and allowed in accordance with the Rules.
d. No. Personal property can pass even without probate of wills.

765. The intention of the testator that the instituted heirs should become sole heirs of the whole estate, or the whole free portion and each of them has been instituted to an aliquot part of the inheritance and their aliquot parts together does not cover the whole inheritance or the whole free portion. What will happen to the undistributed portion?

a. It will revert back to the State.
b. It becomes disposable property which can be sold through public auction. c. It will be disposed of by the heirs in accordance with their agreement.
d. Each part shall be increased proportionately.

766. What if the instituted heirs have been given an aliquot part of the inheritance and the parts together exceed the

whole inheritance, or the whole free portion. What will happen to the shares?

a. Each part shall be reduced proportionately.
b. The heirs should execute a public document as to their agreements on the reduction of their respective shares.
c. The decedent shall become a debtor of the shortage in their shares, shall be paid from the income of the property.
d. The reduction must be determined by the court having jurisdiction during the probate proceeding.

767. What happens when a voluntary heir dies before the testator?

a. The voluntary heir shall be substituted by his heirs.
b. The institution shall be effectual without prejudice to the right of representation.
c. The voluntary heir transmits no rights.
d. The voluntary heir shall be treated as if he is still living.

768. What is the effect of preterition as to the instituted heirs, legacies and devises?

a. It will not affect the will. The testator's wishes should always be allowed.
b. The effect is to annul entirely the institution of heirs, but legacies and devises shall be revoked.
c. The effect is to annul entirely the institution of heirs, but the legacies and devises shall still be valid.
d. The shares of instituted heirs shall be reduced proportionately to accommodate the preterited heir.

769. A executed a holographic will prior to her death. The will contains only the testamentary disposition whereby she instituted her sister B as universal heir. When the will was presented for probate, her parents, F and M, who were her only surviving compulsory heirs, opposed the probate on the ground of preterition. B, however, contended that the question of preterition is outside of the jurisdiction of the probate court. The court held that the will is a complete nullity resulting in total intestacy. Is this decision correct?

a. Yes, the decision is correct. If there is preterition, the effect would be the total annulment of the institution of 8 resulting in total intestacy.
b. No, the decision is not correct. The question on preterition is outside of the jurisdiction of the court.
c. Yes, the decision is correct. The question on preterition was within the court's jurisdiction because it is incorporated under probate proceeding.
d. No, the decision is not correct. The court's area of inquiry is limited to an examination of, and resolution on the extrinsic validity of the will.

770. Jordan is twice a widower. He has three (30 children by his first marriage, and two (2) children by his second marriage. In his will, Jordan institutes as his exclusive heirs the children of the second marriage. What is the effect on the will of the preterition of Jordan's children by the first marriage?

will.
a. The preterition of the children by the first marriage does not affect the validity of the

b. The preterition of the children by the first marriage shall render the will void ab initio.
c. The preterition of the children by the first marriage shall not affect the will; the wishes of the testator should be given utmost respect.
d. The preterition of the children by the first marriage shall annul entirely the institution of heirs.

771. Suppose that the instituted heir dies before the testator, or is incapable of succeeding from the testator, or repudiates the inheritance, would he be able to transmit his right to his own heirs?

a. Yes. The rules on substitution of heirs shall automatically apply.
b. No. The incapacity, repudiation or incapacity of the instituted heir shall be transmitted to the heirs.
c. It depends if the instituted heir is a compulsory heir or a voluntary heir.
d. The death, incapacity or repudiation tantamount to renunciation of inheritance.

772. In his will, widower Amir instituted his only child Julio and a friend Mario as his heirs. Mario died ahead of Amir. If Amir dies without changing his will, would the children of Mario step into the shoes of the father and inherit from Amir? Reason.

a. Yes, since Mario is an instituted heir of Amir, the children of the former step into the shoes of their father.
b. No, because Mario died ahead of Amir.
c. Yes. It is the intention of Amir to institute the heirs of Mario as representative because he did not change his will before his death.
d. No, because Mario is not a compulsory heir.

773. Does the probate court have the jurisdiction to adjudicate or determine title to properties claimed to be part of the estate and which are equally claimed to belong to outside parties? Reason.

a. Yes, probate proceeding is also a venue for determination of title as to properties included in the inventory of properties of the testator.
b. No. The determination of title should be filed in the Municipal Trial Court or Regional Trial Court of the place of residence of the testator.
c. Yes, probate proceeding should determine title to property in order to make sure that the property distributed to the heirs really belongs to the testator.
d. No. The probate court in charge of the proceeding cannot adjudicate or determine title to properties claimed to be part of the estate. The parties should resort to an ordinary action.

774. What is the rule in the disposition is favor of an unknown person and disposition in favor of a definite class or group of persons? Reason.

a. The disposition in favor of unknown persons and definite class or group of persons is always valid because the court can always inquire as to the identity of these persons.
b. The disposition in favor of unknown persons and definite class or group of persons is not valid. The testator shall designate the heir by name and surname.
c. The disposition of unknown persons shall be void but disposition in favor of a definite class or group of persons is valid.
d. The disposition of unknown persons shall be valid because the court can find a way to ascertain the identity of that person. On the other hand, disposition in favor of a definite class or group of persons is void because a group of individuals cannot be an heir to a single property.

775. What is the effect if there is an error in the name or surname of the instituted heir?

a. It vitiates the institution of an heir b. The institution becomes void.
c. The institution becomes voidable
d. Does affect the institution of an heir as long there are other ways of ascertaining identity of the person.

776. What happens if the testator institutes some heirs individually and other collectively as when he says "I designate as my heirs A and B and the Children of C,"?

a. Those collectively designated shall be considered as one.
b. Those collectively designated shall always be considered individually. c. Those collectively designated be invalidated.
d. Those collectively designated shall be considered individually instituted unless the testator's intention proves otherwise.

777. What happens when the testator calls to the succession a person and his children?

a. They are deemed constituted successively.
b. They are deemed constituted simultaneously.
c. They are deemed constituted successively or simultaneously depending on the intention of the testator.

d. The courts shall determine.

778. If the testator has instituted only one heir and the institution is limited to an aliquot part of the inheritance, what happens to the remainder of the estate?

a. Legal succession shall take place.
b. It will revert back to the State.
c. It will be distributed automatically to the closest relatives.
d. It will be used for some public purpose like educational use.

779. Which of the following is a ground for disallowance of a will?

a. The death of a compulsory heir
b. If the instated heir becomes insane or otherwise mentally incapable.
c. If the signature of the testator was fraudulently procured.
d. If the formalities required by law have been complied with.

780. Availing of the provisions of the NCC (Art.838) which permits a testator to petition the proper court during his lifetime for the allowance of his will, the testator filed a petition for its approval. Oppositor however contested the petition alleging that she is the acknowledged natural daughter of petitioner but that she was completely ignored in the said will, thus, impairing her legitime. Subsequently, the court issued an order allowing the will, but it set a date for the hearing of the opposition relative to the intrinsic validity of the will. After the hearing, it issued an order annulling the portion of the which was allegedly impairs the legitime of the oppositor. Has the probate court the power the issue in such order? Decide.

a. No. The court has no jurisdiction to determine the validity of the provisions of the will.
b. Yes. The court has the power to issue such order in order to determine the veracity of the opposition.
c. No. The court has no power to issue such order. The testator's wishes to probate his will should always prevail.
d. Yes, the court has the power to issue the order. It is part of the court procedures in the probate of wills when there are oppositions.

781. Which of the following is a requisite in preterition?

a. The heir omitted must a compulsory or a voluntary heir.
b. The omission must be complete in character in such a way that the omitted heir does not receive anything from the testator after his death.
c. The heir must be named in the will.
d. The omitted heir must survive the testator.

782. X, the daughter-in-law of A, opposed the will of the latter contending that X was not instituted as an heir, hence, there is preterition. Is X's contention correct? Why?

a. The contention is correct. A daughter-in-law, because of affinity, she becomes a compulsory heir.
b. The contention is not correct. A daughter-in-law is not a compulsory heir.
c. The contention is correct. A daughter-in-law can be affected by the proceeding of the testator's properties.
d. The contention is not correct. A daughter-in-law is still a stranger to the testator.

783. A sister or the decedent is not instituted, can she oppose the probate of the will on the ground of preterition? Why?

a. Yes, a sister is a relative of the testator, thus, she can oppose the probate of the will of her brother.
b. No. The testator's intention as provided in the will cannot be questioned.
c. Yes, a sister who is a collateral relative, can be affected by the properties of her brother.

d. No, because a sister is not a compulsory heir.

784. Maria, to spite her husband Delfin, whom she suspecting of having an affair with another woman, executed a

will, unknown to him, bequeathing all the properties she inherited from her parents to her sister Brigida. Upon her death,t he will was presented for probate, Delfin opposed the probate of the will on the ground that the will was executed by his wife, without his knowledge,

much less consent, and that it deprived him of his legitime. After all, he had given her no cause for disinheritance, added Delfin in his opposition.

How will you rule on Delfin's opposition to the probate of Maria's will, if you were the judge? Reason.

a. Delfin's opposition is valid, he is entitled to receive his legitime.

b. Delfin's opposition is not valid, he is not entitled to receive anything because he has given cause for disinheritance.

c. Delfin's opposition is valid, he is entitled to the free portion of the Maria's properties.

d. Delfin's opposition is not valid, he is not a compulsory heir in the direct line, thus, he is only entitled to the free portion.

Article 855 - 871

785. Where must the share of an omitted heir be taken?

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

786. Does this apply to preterition?

There may be two (2) answers:

a. Yes: According to the Code Commission. Their intent was to make Art. 855 apply to preterit ion.

b. No: If you analyze the provision, it does not refer to preterition.It applies when something is left to an heir but is less than his legitime. (i) Incomplete legitime: "taken from part not disposed of by will" - heir will receive something by intestacy
– no preterition. (ii) Preterition: If the whole estate is disposed of: Go to Art. 85

787. Is this right limited or restricted to a child or descendant?

No. It also applies to heirs similarly situated. a. spouse
b. parents
c. ascendants

788. T has 3 legitimate children, two of whom he instituted as heirs, and one of whom he preterited. A legacy of P100, 000 from an estate of P1, 000,000 was given to a friend. How much should the children receive?

After deducting the legacy of P100, 000 (this is not inofficious), the balance of P900,000 is divided equally among the three heirs, each of whom should get P300, 000. Thus, the 2 instituted children will not get the intended P450, 000 each in view of the preterition.

789. What is the effect if an heir who was totally omitted was given a donation or given a very small share?

If the heir was given a share, even if very small or minimal, there is no preterition. All he has to do is to ask for completion of his share. (Art. 855, NCC; Reyes vs. Barreto-Datu, 19 SCRA 85.)

790. Can a voluntary heir, who predeceased the testator, transmit his right to his own heirs?

No. A voluntary heir who dies before the testator transmits nothing to his heirs. (Art. 856, CC.) This would mean then that a voluntary heir cannot be represented.

791. Suppose the instituted heir dies before the testator, or is incapable of succeeding from the testator, or repudiates the inheritance, would he be able to transmit his right to his own heirs?

I distinguish. If he is a compulsory heir, he would be able to transmit his right to his legitime to his own heirs in the direct line who can represent him, but only in case of predecease or incapacity, and not in case of repudiation. (Art. 856, 970, 977, NCC.) If he is a voluntary heir, he cannot transmit any right to his own heirs. (Art. 856, NCC.)

792. T has a friend A whom she instituted as heir to an estate of P500, 000. A dies before T but leaves a daughter B. Upon T's death, will B get anything?

No, because A, the mother of B, was a voluntary heir who predeceased the testator. The estate should therefore go to the intestate heirs of T.

793. In his will, widower Kano instituted his only child Luis and a friend Mario as his heirs. Mario died ahead of Kano. If Kano dies without changing his will, would the children of Mario step into the shoes of their father and inherit from

Kano? (1974 Bar question)

The children of Mario cannot step into the shoes of their father and inherit from Kano. In other words, they cannot inherit from Kano by right of representation. In testamentary succession, only compulsory heir may be represented. Mario is not a compulsory heir; he is merely a voluntary heir whose share is chargeable against the free portion. Under the law, a voluntary heir transmits nothing to his heirs. (Art. 856, NCC.)

794. In the above case, if the provisions on representation will not apply, what provisions of the Civil Code would then apply?

The above case is one involving accretion and not representation. It must be observed that had Mario survived the testator, Luis would have been entitled to his legitime of Y, of the hereditary estate in his capacity as a compulsory heir and Y, of the disposable free portion in his capacity as a voluntary heir; Mario, on the other hand, would have been entitled also to Y, of the Y, disposable free portion as voluntary heir. But then, the latter died before the testator. Therefore, the provisions of the NCC on accretion (Arts. 1015, et. seq.) are applicable and not the provisions on representation. (Arts. 970, et. saq.) Since the requisites of accretion in testamentary succession are present, Mario's share shall now accrue to Luis.

795. What is meant by substitution of heirs?

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

Substitution is the designation by the testator of a person or persons to take the place of the heir or heirs first instituted. (Rabadilla vs. CA, GR 113725, June 29, 2000.)

Substitution is a disposition by virtue of which a third person is called to receive hereditary property in lieu of or after another person. (Traite de Droit Civil Compare, Le Successiones, Vol. IV [1912], p. 59)

796. What is the purpose of substitution?

Substitution was devised in order:

(a) to prevent the property from falling into the ownership of people not desired by the testator. (6 Manresa 116).

(b) to prevent the effects of intestate succession. (6 Manresa 116).

(c) to allow the testator greater freedom to help or reward those who by reason of services rendered to the testator, are more worthy of his affection and deserving of his bounty than intestate heirs. (II Capistrano, Civil Code of the Philippines, p. 342).

797. What are the instances when substitution takes place?

The following are the instances when substitution takes place:

1. Instituted heir predeceases the testator;
2. Incapacity of the instituted heir to succeed from the testator; and
3. Repudiation of the inheritance.

798. May the heirs be allowed to be substituted for the deceased?

Yes, without requiring the appointment of an administrator or executor. The pronouncement of the Supreme Court in Lawas v. CA, 146 SCRA 173 (1968), is no longer true. (San Juan, Inc. v. Cruz, 497 SCRA 410 {2006}).

799. a. What are the kinds of substitution under the New Civil Code?
b. What are the other kinds under the Old Civil Code?

A. They are:

a. Simple or common substitution, also known as sustitucion vulgar. (Art. 859).
b. Brief or compendious substitution, also known as sustitucion brevilocua o compendiosa. (Art. 860).
c. Reciprocal substitution, also called sustitucion reciproca. (Art. 861).
d. Fideicommissary substitution, also known as sustitucion fideicomisoria. (Art. 863).(Jurado, Civil Law Reviwer)

However, other authorities are saying that there are only two (2) kinds of substitution: 1.Simple or common (Art.859.) 2. Fideicommissary (Art. 863.), because there are only 2 kinds. Brief and reciprocal are just variations and not kinds of substitutions. You cannot have a purely reciprocal substitution. All substitutions are either simple or fideicommissary.

B. In the OCC, there were two others:

1. Ejemplar: A substitution a father was allowed to make because his son was insane. This was a kind of fideicommissary.
2. Popular: A substitution a father made in behalf of a child who died before he reaches 18.

800. What is meant by simple or common substitution?

Simple or common substitution is that which takes place when the testator designates one or more persons to substitute the heir or heirs instituted in case such heir or heirs should die before him,or should not wish, or should be incapacitated, to accept the inheritance.

801. What is meant by brief or compendious substitution?

Where there are two or more persons designated by the testator to substitute for only one heir, the substitution is called brief, but when there is only one person designated to substitute for two or more heirs, it is called compendious.

802. What is meant by reciprocal substitution?

When two (2) or more persons are not only instituted as heirs, but are also mutually or reciprocally substituted, the substitution is called reciprocal.

803. What is meant by fideicommissary substitution?

Fideicommissary substitution, or indirect substitution as it is sometimes called, is that which takes place when the fiduciary or the first heir instituted is entrusted with the obligation to preserve and to transmit to a second heir the whole or part of the inheritance, provided such substitution does not go beyond one degree from the heir originally instituted, and provided further, that the fiduciary or first heir and the second heir are living at the time of the death of the testator.
Art. 859

804. Maria instituted Pedro and appointed Juan as substitute. Maria did not state the causes for which the substitution may be made. What should these causes be?

All or any of the three cases, UNLESS Maria has provided otherwise. In other words, if Pedro predeceases Maria, or renounces the inheritance, or is incapacitated to receive the inheritance, Juan will be the substitute heir. (Art. 859, 2nd paragraph.)

805. In question (20), if Juan enters into the inheritance, does he do so because he succeeds or inherits from Pedro or Maria?

From Maria. The substitute enters the inheritance, not as an heir succeeding the first heir, but as an heir of the testator. (Perez v. Gachitorena, 54 Phil. 431).

806. A made a will stating that should he die before B, his relatives c and would inherit certain properties and that should C or D die before A, the survivor (between C and D) would inherit all of said specified properties. However, B died

before A. Would C and D get anything?

No, C and D would not get anything, because their designation was conditional, namely, that A should die before B, but such was not the case. Had the condition been followed, and had either C or D died before A, there would have been substitution. (Machrohon Ong Ham v. Saavedra, 51 Phil. 267).

807. The testatrix instituted an heiress and ordered that the children of the heiress would substitute the heiress should said heiress die after the testatrix. Is this a case of simple substitution?

No, this is not a case of simple substitution. In simple substitution of this nature, the heir or heiress dies before, and not after the testator or testatrix. (G. de Perez v. Gachitorena and Casimiro, 54 Phil. 431; Art. 859, 1st par., Civil Code).

808. What are the distinctions between modal substitution and conditional testamentary disposition?

A. The distinctions are:

1. A mode imposes an obligation upon the heir or legatee but it does not affect the efficacy of his rights to the succession; while in the conditional testamentary disposition, the condition must happen or be fulfilled in order for the heir to be entitled to succeed the testator;

2. The condition suspends but does not obligate; while the mode obligates but does not suspend. To some extent, it is similar to a resolutory condition. (Johnny Rabadilla v. CA, GR No. 113725, June 29, 2000).

809. Problem:"I institute A, B and C to 1/3 each of my estate and in case they all die before me, I institute D as substitute by way of simple substitution."If A and B predecease the testator, will D get their shares?

No. The substitution will take effect only upon the death of all the three. However, if what the will stated was "any or... all die before me," then D will get A and B's shares.

810. What does the second sentence of Art. 861 mean?

The second sentence says that "if there are more than one substitute, they shall have the same share in the substitution as in the institution." This may, if interpreted literally, result in certain cases either in: partial intestacy or absurdity.

Hence, the words "same share" should be interpreted to mean the "same proportionate share."

811. T institutes A to P120,000; B to P20,000; C to P40,000. B and C are made substitutes of A. The estate is P180,000. If A predeceases, is incapacitated, or renounces his share, how much will each B and C get?

The share of A will be given proportionately to B and C. B and C will get A's P120,000 in the proportion of P20,000 is to P40,000 (or in the proportion of 1 is to 2). Hence, in the substitution, B gets P40,000 and C gets P80,000.

Summing up:

B gets a total of P60,000: P20,000 by institution and P40,000 by substitution. C gets a total of P120,000: P40,000 by institution and P80,000 by substitution.

TOTAL INHERITANCE= P180,000.

812. What is the effect on the substitution of the charges and conditions imposed in the institutions?

A. The following rules shall govern:

a. General rule- if the substitute inherits, he must fulfill the conditions imposed on the original heir.

b. Exceptions- 1. If the testator has expressly provided the contrary, which must appear in the will; 2. If the charges or conditions are personally applicable, only to the heir instituted. (This occurs when the personal qualifications of the original heir had been considered by

the testator in designating said original heir.)

813. What are the requisites of fideicommissary substitution?

In the case of Perez v. Gachitorena, 54 Phil. 431, the Supreme Court gives the following as the essential requisites of a fideicommissary substitution:

1. A first heir called primarily to the enjoyment of the estate;
2. A second heir;
3. An obligation clearly imposed upon the first heir to preserve and transmit to the second heir the whole or part of the estate. In sum the requisites are:

1. There must be a first heir instituted by the testator
2. There must be a second heir instituted by the testator
3. The first heir has the duty to preserve and transmit the property or share to the 2nd heir
4. There shall be only one transfer
5. Heir 1 and heir 2 are one degree apart
6. Heir 1 and heir 2 must be living or at least conceived at the time of the testator's death
7. The fideicommissary substitution must be clearly expressed in the will
8. The fideicommissary substitution is imposed on the free portion of the estate and not on the legitime

814. The testator instituted his nephew Y as his sole heir "so that upon my death and after the probate of this will x x x he will receive the properties composing my hereditary estate, that he may enjoy them with God's blessing and my own." It was further provided in the will that should Y die, "I order that my whole estate shall pass unimpaired to his surviving children in so far as it is legally possible." Further on it was provided that should "Y die after me while his children are still in their minority," the estate shall be administered by the persons named in the will. Is this a simple substitution or a fideicommissary substitution?

The substitution is a fideicommissary substitution. The will contemplates the enjoyment of the estate by the heir instituted during his lifetime, with the only proviso that he should not dispose of it because its transmission is limited to his children, and it is provided that the whole of it should pass to them unimpaired. It also contemplates the survivorship of the heir. All the requisites of a fideicommissary substitution are present.

815. What are the different limitations imposed by law upon fideicommissary substitution?

A. There are four (4) limitations. They are:

1. The substitution must not go beyond one degree from the heir originally instituted. (Art. 863, NCC).
2. The fiduciary and the fideicommissary must be living at the time of the death of the testator. (Ibid.).
3. The substitution must no burden the legitime of compulsory heirs. (Art. 864, NCC).

4. The substitution must be made expressly. (Art. 865, par. 1, NCC.)

816. What is the purpose of fedeicommissary substitution?

"This is necessary for the prosperity and prestige of the family, bearing in mind the lack of intelligence, weakness of character, and vanity and prodigality of the descendants to whom the property may go. It has been contended that the power to appoint a fideicommissary substitute is a complement of the freedom of disposition which gives a powerful stimulus to the accumulation of wealth, and thus maintains the tradition and social standing of the family." (Report of the Code Commission, p. 10).

817. What is meant by the limitation that the substitution must not go beyond one degree from the heir originally instituted?

A. There are two (2) views.

1. According to one view. "degree" means generation or relationship. Under this view, when the law says that the substitution must not go beyond one degree from the heir originally instituted, what is meant is that the fideicommissary substitute must not go beyond one degree of relationship from the fiduciary heir. Consequently, only the parent or child of the latter can be appointed as fideicommissary heir. This view is advocated by

Manresa. In the Philippines, it is advocated by Dr. Tolentino, Dr. Padilla, Paras and the members of the Code Commission.

2. According to a second view, "degree" is the equivalent of designation or transfer. Under this view, when the law says that the substitute must not go beyond one degree from the heirs originally instituted, what is meant is that the substitution must not extend beyond one degree of designation or transfer from the heir originally instituted. Consequently, any person, whether natural or juridical, may be appointed as fideicommissary heir. This view was upheld by the Supreme Tribunal in decisions promulgated in 1944 and 1949. In the Philippines, it is advocated by Justice J.B.L. Reyes, Jurado, and some commentators on the NCC.

It is then submitted that the first is the better view considering among other things the fact the one purpose of the fideicommissary substitution is to maintain the prosperity and prestige of ONE FAMILY.

In a comparatively recent case, however, the Supreme Court ruled that the word "degree" means generation. (Testate Estate of Jose Ramirez vs. Vda.de Ramirez, 111 SCRA 704.) From this, it follows that the fideicommissary can only be either a child or a parent of the first heir. These are the only relatives who are one generation or degree from the fiduciary.

818. (a) T instituted A as first heir, and B (A's brother), as second heir in what he desired to be a fideicommissary substitution. When T died, A got the property. Later, A died. Who will get the said property, A's heir or B?

A's heir, because the fideicommissary substitution was not valid, B being a relative of the 2nd degree of A. It does not matter that there was only one transfer here.

(b) T instituted A as first heir; B (A's son) as 2nd heir; and C (B's mother) as 3rd heir in a fieicommissary substitution. Is this valid?

It is valid insofar as A will get and then B. But on B's death, C does not get the property as a result of the fideicommissary substitution because C is not one degree apart from A; C may not even be related by blood to A. (However, there is a chance C can get the property, not as a result of T's will, but as a result of B's will or B's intestate succession, for she is after all an heir of B.)

819. (a) What is the reason for the requirement that "both the first and the second heirs must be alive or at least conceived at the time of the testator's death"?

To reduce as much as possible the number of years the property will have to be entailed. For if the second heir were still not even conceived at the time the testator dies, a long time may elapse. Furthermore, the second heir himself inherits from the testator, and one cannot inherit unless he be alive or at least conceived. Thirdly, a non-conceived child has no juridical capacity, and cannot therefore be given any legal right. (Art. 37).

(b) T instituted A as first heir, and A's third child as second heir. If A does not even have any child yet at the time the testator dies, can the fideicommissary substitution be given any effect?

No, for the 2nd heir was not yet living or conceived at the testator's death. This is so even if at the time A dies, the third child already exists.

820. Why can't the fideicommissary substitution burden the legitime?

A fideicommissary substitution cannot burden the legitime. (Art. 864). This is because the legitime is expressly reserved for the compulsory heirs. (Art. 886.). As a matter of fact, no substitution of any kind can be imposed on the legitime because legititme is transmitted by operation of law upon the death of the testator.

821. How must fideicommissary substitution be made?

Every fideicommissary substitution must be made expressly. (Art.865). To be express, the words "fideicommissary substitution" need not be given; it is sufficient that there be the absolute obligation of delivering (and therefore of preserving) the property to the second heir. (Art. 867. No. 1). Moreover, if the intention is clear from the clauses of the will, same would be sufficient to effect this kind of substitution. (G. de Perez v. Gachitorena, 54 Phil. 431). Upon the other hand, just because the words "fideicommissary substitution" were used, it does not necessarily mean that it takes effect for after all, the other essential requisites may be absent.

822. When is the inheritance supposed to be delivered to the second heir?

In the absence of a period fixed by the testator, the inheritance must be delivered to the second heir at death of the first heir. (6 Manresa 138).

823. What are the deductions to be made in case of transmittal to the second heir?

A. The following are the deductions:

1. Legitimate expenses- like necessary repairs for the preservation of the property; and the increase in value occasioned by the useful improvements. Other legitimate expenses include those spent to defend the property from usurpation by others. Expenses for luxury are of course not to be reimbursed;
2. Legitimate credits;
3. Legitimate improvements.

824. What is the nature of the rights of the fiduciary heir and the fideicommissary substitute with respect to the property which is the subject matter of the substitution?

Upon the death of the testator or fideicometente, the fiduciary heir acquires all the rights of a usufructuary until the moment of delivery to the fideicommissary substitute. In other words, pending the transmission or delivery, he possesses the beneficial ownership of the property, although the naked ownership is vested in the fideicommissary substitute. (6 Manresa, 174, 178-179).

825. What are the obligations of the fiduciary heir?

A. They are as follows:

1. Preservation of the property. Corollary to this obligation is the obligation to make an inventory of the property. Because of this obligation to preserve, he cannot alienate the property itself, although he may alienate his usufructuary right over the property.
2. Transmission of the property to the fideicommissary substitute which shall take place depending upon the will of the testator, in the absence of such stipulation, upon the death of the fiduciary heir.

826. Q. X died in 1955. In her will, she devised Y, of a big parcel of land to her brothers, Y and Z, and the other Y, to a grandniece, A, subject to the condition that upon A's death, whether before or after that of the testatrix, said Y, of the property devised to her shall be delivered to Y abd z, or their heirs should anyone of them die before X. After the will was admitted to probate, A demanded for the partition of the property. Y and Z, however, contended that since she is only a fiduciary heir or a usufructuary she cannot demand for the partition of the property. Is this contention tenable?

This contention is untenable. Art. 865 of the NCC provides that a fideicommissary substitution shall have no effect unless it is made expressly either by giving it such name or by imposing upon the first heir the absolute obligation to deliver the inheritance to the second heir. The testamentary clause under consideration does not call the institution a fideicommisaary substitution nor does it contain a clear statement that A enjoys only usufructuary right, the naked ownership being vested in the brothers of the testatrix. The will, therefore, establishes only a simple or common substitution, the necessary result of which is that A, upon the death of the testatrix, became the owner of an undivided half of the property. Being a co-owner, she can therefore demand for a partition of the property. (Crisologo vs. Sison, 4 SCRA 491.)

827. What happens when the second heir predeceased the fiduciary or first heir?

The second heir shall acquire a right to the succession from the time of the testator's death, even though he

should die before the fiduciary. The right of the second heir shall pass to his heirs. (Art. 866). This article applies only when all the requisites for a fideicommissary substitution are present.

828. Distinguish a fiduciary in fideicommissary substitution from a trustee in a trust.

1. As to constitution or designation: A fiduciary can only be designated expressly by means of will, while a trustee may be designated either expressly through acts which may be either intervivos or mortis causa or impliedly by operation of law.

2. As to right of enjoyment: A fiduciary is entitled to all of the rights of a usufructuary, while a trustee has no usufructuary right over the property which he holds in trust.

3. As to right of disposition: A fiduciary may alienate his right of usufruct over the property but always subject to his obligation of preserving and transmitting it to a second heir, while a trustee cannot alienate anything whatsoever.

4. As to obligations: While essentially both have the same obligations of preservation and transmission, the obligation of the latter is broader because it extends not only to the property itself but also to the fruits.

829. X died in 1965 with a will. In his will, he devised a house and lot to his friend, A, as fiduciary heir and to A's son, B, as fidecommissary substitute without specifying the time and period when A shall deliver the property to B. B died intestate in 1970 survived by his two (2) children, E and F. A also died intestate in 1980 survived by his two (2) sons, C and D, and his two (2) grandsons, E and F. In the intestate proceedings for the settlement of the estate of A, E and F filed a motion for the exclusion of the house and lot originating from X on the ground that they are the exclusive owners of the property. C and D filed an opposition on the ground that B predeceased A; therefore, the fideicommissary substitution did not produce any effect as far as B and his two (2) sons are concerned. Should the opposition be sustained? Why?

The opposition should not be sustained. The governing law is found in Art. 866 of the NCC which declares that "the second heir (B in the instant case) shall acquire a right to the succession from the time of the testator's (X's) death, even though he (B) should die before the fiduciary (A). The right of the 2nd heir (B) shall pass to his heirs (E and F)." It must be observed that B inherited from X as fideicommissary substitute when the latter died in 1965. Therefore, when he died in 1970, he was able to transmit his right to his own heirs, E and F. Consequently, when A also died in 1980, the right of E and F over the subject property became absolute.

830. What are the different dispositions related or analogous to fideicommissary substitutions which the law considers void?

The following shall not take effect:

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

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

3. Those which impose upon the heir the charge of payingthe various persons successively, beyond the limit prescribed in Art. 863, a certain income or pension;

4. Those which leave to a person the whole or part of the hereditary property in order that he may apply or invest the same or according to secret instructions communicated to him by the testator. (Art. 867, NCC.)

831. What is the effect of nullity of the fideicommissary substitution?

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

832. A disposed of his house in a will giving the naked ownership of the same to ; and to C and D, successively, the usufruct. This means that C first gets the usufruct, and after C dies, the usufruct goes to D. Is this disposition of the usufruct valid?

Yes, provided that:

1. D is a first degree relative of C;

2. and both C and D are alive at the time A, the testator, dies.

This is what the law states that when usufruct is given to various persons successively, the provisions of Art. 863 (or fideicommissary substitutions and their limitations) should be applied. (Art. 867, NCC.)

833. What is the effect if the testator declares his estate to be inalienable for more than twenty (20) years?

The dispositions of the testator declaring all or part of the estate inalienable for more than twenty (20) years are void. (Art. 870, NCC.)

834. T instituted A as first heir, and B as second heir in a fideicommissary substitution. T died and A got the property. If A lives for fifty (50) years more, can A sell the property?

No, he must preserve the property till his death, then B takes the property. In case there is fideicommissary substitution, the prohibition to alienate imposed on the fiduciary is allowed even if more than 20 years have elapsed, otherwise, there may be nothing to deliver, and the purpose of substitution is frustrated. Art. 870 of NCC does not apply if there is a fideicommissary substitution, for this must be governed by Art. 867 (2).

835. What is the rule if a recipient of a devise or legacy is prohibited to alienate and no period is fixed?

If a devise or legacy is given and the recipient is prohibited to alienate, but no period is fixed regarding the length of the prohibition, it is understood that the prohibition is good for twenty (20) years. The same is true if the prohibition is for "forever."

If the devisee or legatee is prohibited to alienate "as long as he lives," then the prohibition is good for twenty (20) years if he lives for said period or longer; if he dies sooner, it is clear that the prohibition is ended, and therefore his own heirs will not be burdened by the prohibition.

836. How may an institution of an heir be made?

The institution of an heir may be made:

1. with a condition. (Arts. 871-877, 883-884).
2. with a term. (Arts. 878, 880, 885).
3. for a certain purpose or cause (modal institution). (Arts. 871, 882, 883).

837. What are the different kinds of institutions?

Institution of an heir may be made:

1. Pure or simple
2. Conditionally
3. For a term
4. For a certain purpose or cause (modal).

838. What is a condition? What are its kinds?

A condition is any future or uncertain event, or a past event unknown to the parties, upon which the performance of an obligation depends.

Kinds:

1. As to the manner of imposition
   a. Express- when imposed clearly in the will
   b. Tacit- merely inferred from the will

2. As to the effectivity of dispositions
   a. Suspensive- a condition upon the fulfillment of which successional rights are acquired
   b.Resolutory- a condition upon the fulfillment of which rights already acquired are extinguished

3. As to the fulfillment of the conditions
    a. Potestative- depends exclusively upon the will of the heir, devisee, or legatee, and must be performed by him perosonally. It may either be:
        i. positive- when it consists of the doing or giving of something ii. negative- when it consists of not doing or giving anything
    b. Casual- depends upon the chance and/or upon the will of a third person
    c. Mixed- depends jointly upon the will of the heir, devisee, or legatee and upon chance and/or will of a third person

4. As to the effectiveness of the conditions
    a. Propeer- when they may take effect
    b. Improper- when the law does not allow these conditions to take effect

5. As to mode
    a. Positive- consists of the performance of an act or happening of an event
    b. Negative- consists of the non-performance of an act or non-happening of an event

6. As to possibility of fulfillment
    a. Possible- capable of fulfillment, physically and legally
    b. Impossible- not capable of fulfillment, physically and legally

839. Is there any formality required as to the imposition of conditions and terms in the institution of heir?

Conditions, terms and modes are not presumed; they must be clearly expressed in the will. The condition must fairly appear from the language of the will. Otherwise, it shall be considered pure.

840. What is Sabinean doctrine?

Sabinen doctrine refers to one of the limitations on the institution of heirs which states that "impossible conditions and those contrary to law or good customs are presumed to have been imposed erroneously or through oversight, thus, are considered as not imposed."

841. EPIFANIO SAN JUAN, JR., petitioner, vs. JUDGE RAMON A. CRUZ, REGIONAL TRIAL COURT, BRANCH 224, QUEZON CITY and ATTY. TEODORICO A. AQUINO, respondents. [G.R. No. 167321, July 31, 2006]

The testator, Loreto San Juan, named in his Last Will and Testament Oscar Casa as one of the devisees therein. Upon the death of the testator, a petition for the probate of his will was filed. While the petition was pending, Oscar Casa died intestate. A law firm entered their appearance as counsel of Federico Casa, Jr., who claimed to be one of the heirs of the devisee Oscar Casa and their representative. The probate court issued an Order denying the entry of appearance of said law firm, considering that Federico Casa, Jr. was not the executor or administrator of the estate of the devisee, hence, cannot be substituted for the deceased as his representative.

MAY A PERSON NOMINATED AS "ADMINISTRATOR" BY PURPORTED HEIRS OF A DEVISEE OR LEGATEE IN A WILL UNDER PROBATE MAY VALIDLY SUBSTITUTE FOR THAT DEVISEE OR LEGATEE IN THE PROBATE PROCEEDINGS DESPITE THE FACT THAT SUCH "ADMINISTRATOR" IS NOT THE COURT-APPOINTED ADMINISTRATOR OF THE ESTATE OF THE DECEASED DEVISEE OR LEGATEE?

Yes. The heirs of the estate of Oscar Casa do not need to first secure the appointment of an administrator of his estate, because from the very moment of his death, they stepped into his shoes and acquired his rights as devisee/legatee of the deceased Loreto San Juan. Thus, a prior appointment of an administrator or executor of the estate of Oscar Casa is not necessary for his heirs to acquire legal capacity to be substituted as representatives of the estate. Said heirs may designate one or some of them as their representative before the trial court.

842. JOHNNY S. RABADILLA, Petitioner, vs. COURT OF APPEALS AND MARIA MARLENA COSCOLUELLA Y BELLEZA VILLACARLOS, Respondents. [G.R. No. 113725. June 29, 2000]

In a Codicil appended to the Last Will and Testament of testatrix Aleja Belleza, Dr. Jorge Rabadilla, predecessor-in-interest of the herein petitioner, Johnny S. Rabadilla, was instituted as a devisee of a parcel of land. The

said Codicil contained the following provisions:

"FIRST I give, leave and bequeath the following property owned by me to Dr. Jorge Rabadilla resident of 141 P. Villanueva, Pasay City:

(a) Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10942), which is registered in my name according to the records of the Register of Deeds of Negros Occidental.

(b) That should Jorge Rabadilla die ahead of me, the aforementioned property and the rights which I shall set forth hereinbelow, shall be inherited and acknowledged by the children and spouse of Jorge Rabadilla.

xxx

FOURTH

(a)....x Itxxxxx is also my command, in this my addition (Codicil), that should I die and

FIFTH

(a) Should Jorge Rabadilla die, his heir to whom he shall give Lot No. 1392 of the Bacolod Cadastre, covered by Transfer Certificate of Title No. RT-4002 (10492), shall have the obligation to still give yearly, the sugar as specified in the Fourth paragraph of his testament, to Maria Marlina Coscolluela y Belleza on the month of December of each year.

SIXTH

I command, in this my addition (Codicil) that the Lot No. 1392, in the event that the one to whom I have left and bequeathed, and his heir shall later sell, lease, mortgage this said Lot, the buyer, lessee, mortgagee, shall have also the obligation to respect and deliver yearly ONE HUNDRED (100) piculs of sugar to Maria Marlina Coscolluela y Belleza, on each month of December, SEVENTY FIVE (75) piculs of Export and TWENTY FIVE (25) piculs of Domestic, until Maria Marlina shall die, lastly should the buyer, lessee or the mortgagee of this lot, not have respected my command in this my addition (Codicil), Maria Marlina Coscolluela y Belleza, shall immediately seize this Lot No. 1392 from my heir and the latter's heirs, and shall turn it over to my near desendants, (sic) and the latter shall then have the obligation to give the ONE HUNDRED (100) piculs of sugar until Maria Marlina shall die. I further command in this my addition (Codicil) that my heir and his heirs of this Lot No. 1392, that they will obey and follow that should they decide to sell, lease, mortgage, they cannot negotiate with others than my near descendants and my sister."

Was there a substitution or a modal institution in the instant case?

There was no substitution in the instant case. The institution was in the nature of a modal institution.

Substitution is the designation by the testator of a person or persons to take the place of the heir or heirs first instituted. Under substitutions in general, the testator may either (1) provide for the designation of another heir to whom the property shall pass in case the original heir should die before him/her, renounce the inheritance or be incapacitated to inherit, as in a simple substitution, or (2) leave his/her property to one person with the express charge that it be transmitted subsequently to another or others, as in a fideicommissary substitution. The Codicil sued upon contemplates neither of the two.

In simple substitutions, the second heir takes the inheritance in default of the first heir by reason of incapacity, predecease or renunciation. In the case under consideration, the provisions of subject Codicil do not provide that should Dr. Jorge Rabadilla default due to predecease, incapacity or renunciation, the testatrix's near descendants would substitute him. What the Codicil provides is that, should Dr. Jorge Rabadilla or his heirs not fulfill the conditions imposed in the Codicil, the property referred to shall be seized and turned over to the testatrix's near descendants.

Neither is there a fideicommissary substitution here and on this point. In a fideicommissary substitution, the first heir is strictly mandated to preserve the property and to transmit the same later to the second heir. In the case under consideration, the instituted heir is in fact allowed under the Codicil to alienate the property provided the negotiation is with the near descendants or the sister of the testatrix. Thus, a very important element of a fideicommissary substitution is lacking; the obligation clearly imposing upon the first heir the preservation of the property and its transmission to the second heir. "Without this obligation to preserve clearly imposed by the testator in his will, there is no fideicommissary substitution." Also, the near descendants' right to inherit from the testatrix is not definite. The property will only pass to them should Dr. Jorge Rabadilla or his heirs not fulfill the obligation to deliver part of the usufruct to private respondent.

Another important element of a fideicommissary substitution is also missing here. Under Article 863, the second heir or the fideicommissary to whom the property is transmitted must not be beyond one degree from the first heir or the fiduciary. A fideicommissary substitution is therefore, void if the first heir is not related by first degree to the second heir. In the case under scrutiny, the near descendants are not at all related to the instituted heir, Dr. Jorge Rabadilla.

The institution of Dr. Jorge Rabadilla is in the nature of a modal institution and therefore, Article 882 of the

New Civil Code is the provision of law in point.

The institution of an heir in the manner prescribed in Article 882 is what is known in the law of succession as an institucion sub modo or a modal institution. In a modal institution, the testator states (1) the object of the institution, (2) the purpose or application of the property left by the testator, or (3) the charge imposed by the testator upon the heir. A "mode" imposes an obligation upon the heir or legatee but it does not affect the efficacy of his rights to the succession. On the other hand, in a conditional testamentary disposition, the condition must happen or be fulfilled in order for the heir to be entitled to succeed the testator. The condition suspends but does not obligate; and the mode obligates but does not suspend. To some extent, it is similar to a resolutory condition.

From the Codicil, it can be gleaned unerringly that the testatrix intended that subject property be inherited by Dr. Jorge Rabadilla. It is likewise clearly worded that the testatrix imposed an obligation on the said instituted heir and his successors-in-interest to deliver one hundred piculs of sugar to the herein private respondent, Marlena Coscolluela Belleza, during the lifetime of the latter. However, the testatrix did not make Dr. Jorge Rabadilla's inheritance and the effectivity of his institution as a devisee, dependent on the performance of the said obligation. It is clear, though, that should the obligation be not complied with, the property shall be turned over to the testatrix's near descendants. The manner of institution of Dr. Jorge Rabadilla under subject Codicil is evidently modal in nature because it imposes a charge upon the instituted heir without, however, affecting the efficacy of such institution.

Then too, since testamentary dispositions are generally acts of liberality, an obligation imposed upon the heir should not be considered a condition unless it clearly appears from the Will itself that such was the intention of the testator. In case of doubt, the institution should be considered as modal and not conditional.

843. Dowel was informed by his father that he would get his legitme only should he pass the bar in 1988. The son failed in said bar examination. Is he entitlted to his legitime?

Yes, because his father had no right to impose any condition on his legitime. The condition here is considered as not imposed.

844. What is the only prohibition or condition that can affect or burden the legitime?

The testator can validly impose a prohibition against the partition of the legitime, for a period not exceeding twenty (20) years. Art. 1083 provides: "Every co-heir has a right to demand the division of the estate, unless the testator has expressly forbidden its partition, in which case the period of indivision shall not exceed twenty years as provided in Art. 494." However even though forbidden by the testator, the co-ownership terminates when any of the causes for which partnership is dissolved takes place, or when the court finds for compelling reasons that division should be ordered, upon petition of one of the co-heirs.

845. What is the effect of Impossible or illegal condition? How does this differ from the effect of an impossible condition which is attached to a civil obligation?

Impossible or illegal conditions and those contrary to law or good customs shall be considered as not imposed and shall in no manner prejudice the heir, even if the testator should otherwise provide. (Art. 873.) They will be considered void and unwritten but the institution and testamentary disposition will be considered as valid. A whimsical error on the part of the testator is presumed to have been made.

However, when it is attached to a civil obligation in such a manner that such obligation shall depend upon the fulfillment of such condition for its perfection, the very existence of said obligation is affected; according to the law, it is annulled.

846. Jose Bitangcol's will provided that even if he was a Turk, still he wanted his estate disposed of in accordance with Philippine laws; and that should any of his legatees oppose this intention of his, his or her legacy would be cancelled. Primo Soku, one of the brothers of the deceased, did

not want this disposition in accordance with Philippine laws, and so he opposed practically every move that would divide the estate in accordance with Philippine laws. Does Primo Soku lose his legacy?

No, Primo Soku does not lose his legacy, because the condition, namely, the disposal of the testator's estate in accordance with Philippine laws, is against our laws, which provide that "intestate and testamentary succession and to the amount of successional rights and to the intrinsic validity of testamentary provisions, shall be regulated by the national law (Turkish law) of the person whose succession is under consideration whatever may be the nature of the property and regardless of the country wherein said property may be found." (2nd par. of Art. 16.) The condition being disregarded, the legacy becomes unconditional, and therefore Primo Soku is entitled to his legacy.

847. What is the effect of an absolute condition not to contract a first or subsequent marriage? If the condition is not absolute but relative, will that make any difference in your answer?

Whether the condition attached to a testamentary disposition is an absolute condition not to contract a first marriage or an absolute condition not to contract a subsequent marriage, according to the law such a condition shall be considered as not written. The rule with respect to absolute prohibitions to contract a first marriage is absolute in character; there are no exceptions whatsoever.

However, the rule with absolute prohibitions to contract a subsequent marriage is subject to the following exceptions: first, when it is imposed by the deceased spouse; second, when it is imposed by an ascendant of the deceased spouse; third, when it is imposed by a descendant of the deceased spouse. Nevertheless, whether the beneficiary is unmarried or already married, personal prestations, such as the right of the usufruct or an allowance may be devised or bequeathed to such person for the time during which he or she should remain unmarried or in widowhood.

If the condition not to contract a first or subsequent marriage is merely relative with respect to persons, time and place, the rule stated in Art. 874 of the CC does not apply; in other words, the condition is perfectly valid. Thus, if the testator institutes a certain person as heir subject to the condition that she will not get married to anybody belonging to a certain party or sect, or that she will not get married until she reaches the age of 25, or that she will not get married in Manila, the condition, being merely relative, is perfectly valid.

848. What is meant by disposicion captatoria?

The condition that the heir shall make some provision in his will in favor of the testator or of any other person is what is known as a condition captatoria. Consequently, if the testator makes a testamentary disposition in his will subject to such a condition, it is known as a disposicion captatoria. Under our law, not only the condition but the entire testamentary disposition shall be void. The reason for this is that succession is an act of liberality and not contractual agreement. Besides, to permit it would impair the heir's freedom of disposition with respect to his own property. Furthermore, it would be equivalent to allowing the testator to dispose of the property of another after the latter's death.

849. When must potestative conditions be fulfilled?

Any purely potestative condition imposed upon an heir must be fulfilled by him as soon as he learns of the testator's death. This rule shall not apply when the condition, already complied with, cannot be fulfilled again.

850. Is the condition to marry potestative or not?

If it is to marry any girl, then it is potestative; but if it is to marry a particular girl, it does not depend upon the will of the heir, for the girl may refuse.

851. When must a causal or mixed condition be fulfilled?

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

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

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

852. What is the effect of a disposition with a suspensive term?

A suspensive term is one that merely suspends the demandability of a right. It is sure to happen. A disposition with a suspensive term does not prevent the instituted heir from acquiring his rights and transmitting them to his heirs even before the arrival of the term.

853. Suppose an heir instituted under a suspensive condition (note that Art. 878 speaks only of a suspensive term) dies after the testator but before the condition is fulfilled, does he transmit any right to his own heirs insofar as the testator is concerned?

No, for he never inherited, being already dead at the time the condition is fulfilled, granting that it is indeed fulfilled.

854. What is caucion muciana?

It is the bond or security that an heir gives that he will not do or give that which has been prohibited by the testator, and that in case of contravention he will return whatever he may have received, together with its fruits and interests. This security is given if the potestative condition imposed upon the heir is negative, or consists in not doing or not giving something. (Art. 879.)

855. What is the effect if an heir, legatee or devisee is instituted subject to a suspensieve or a resolutory condition?

If an heir, legatee, or devisee is instituted subject to a suspensive condition, what is acquired is only a mere hope or expectancy. It is, however, a hope or expectancy that is protected by the law. The inheritance, legacy, or devisee shall be placed under administration until the condition is fulfilled, or it becomes certain that it cannot be fulfilled. Thus, if A devised a house and lot to his nephew, B, subject to the condition that he must pass the bar examination in his first attempt, such condition is suspensive. The property, therefore, shall be placed under administration after A's death pending the fulfillment or non-fulfillment of the condition. If B finally passes the examinations in his first attempt, he can demand immediately for the conveyance of the property to him.

If an heir, legatee, or devisee is instituted subject to a resolutory condition, he acquires a right to the inheritance, legatee, or devise immediately upon the testator's death. This right, however, is subjected to the threat of extinction. If the condition is fulfilled or violated, such right is extinguished. Thus, if A, prior to his death, had executed a will leaving the entire free portion of his estate to his wife, B, subject to the condition that she must not remarry, such condition is resolutory. Upon A's death, B can be demand immediately for the conveyance of the entire free portion of the estate to her. However, since the condition is both potestative and negative in character, she must have to file a bond or security known as caucion muciana. If she violates the condition, she may have received, together with its fruits and interests.

856. When shall an estate in the meantime be placed under administration?

If the heir be instituted under a suspensive condition, the estate shall be placed under administration until the condition is fulfilled, or until it becomes certain that if it cannot be fulfilled. The same shall be done if caucion muciana is not given by the heir as required under Art. 879.

857. A devised a house and lot to his nephew, B, subject to the condition that he must pass the bar examination in his first attempt. Is the foregoing condition a suspensive one?

Yes, the property, therefore, shall be placed under administration after A's death pending the fulfillment or non-fulfillment of the condition. If B finally passes the examinations in his first attempt, he can demand immediately for the conveyance of the property to him.

858. What is the effect if there's a suspensive condition, and it becomes certain later that it cannot be fulfilled?

The administration of the estate will also cease, but this time, instead of being given to the instituted heir, it will be given to the legal heirs.

859. Suppose the division or partition is made orally in an extrajudicial settlement, will partition or division be valid as among the co- heirs and co-legatees?

Yes. The purpose of the requirement that it be in a public document and registered is to prejudice creditors and third parties. If as between strangers, even the transmission of ownership through sales can be effected by oral contract or parol agreement, notwithstanding the requirement that it be put in writing; there is no reason why a simple partition or division among co-heirs, an act where there is no change of ownership but simply a designation and segregation of that part of the estate which belongs to each heir, cannot be allowed. It is binding among the heirs, but will not prejudice third persons.

860. If in the course of intestate proceedings, it is alleged that some of the assets of the deceased had been fraudulently conveyed to third persons, what should the probate court do?

The third persons may be cited to appear in court, and may be examined under oath as to how they came into possession of the assets, but a separate action is necessary to recover said assets.

861. What is the effect if an heir, legatee, or devisee is instituted subject to the fulfillment of a mode or obligation?

If the testator attaches to an institution of heir, legacy or devise a statement of the object of the institution, legacy or devise, or the application of the property left by him, or the charge imposed by him, the institution is modal, not conditional, in character. This kind of institution is what is sometimes known as institucion modal or sub modo. That which has been left in this manner may be claimed at once upon the death of the testator. The beneficiary, however, must have to file a bond or security (caucion muciana). If he fails to comply with the obligation, he must return whatever he may have received, together with its fruits and interest.

862. Can an institution apparently modal be considered conditional?

Yes. However, a mere direction in a will in connection with the enjoyment of the legacy will not be considered a condition, unless the intention of the testator to that effect is clearly shown. The mode shall not be considered as a condition unless it appears that such was his intention.

863. Distinguish between modal substitution and conditional testamentary disposition

1. A mode imposes an obligation upon the heir or legatee buts it does not affect the efficacy of his rights to the succession; while in a conditional testamentary disposition, the condition must happen or be fulfilled in order for the heir to be entitled to succeed the testator;
2. The condition suspends but does not obligate; while the mode obligates but does not suspend. To some extent, it is similar to a resolutory condition.

865. What principle shall apply when in doubt as to whether there is a condition or merely a mode?

One should consider the same as a mode.

866. What principle shall apply when in doubt as to whether there is a mode or merely a suggestion?

One should consider the same only as a suggestion.

867. True or False- The 'condition' suspends but does not obligate; the 'mode' obligates but does not suspend for he who inherits with a mode is already an heir; one who inherits conditionally is not yet an heir.

True.

868. How shall a modal institution be complied with when without the fault of the heir, said institution cannot take effect in the exact manner stated by the testator?

It shall be complied with in a manner most analogous to and in conformity with his wishes.

869. What is the effect if a person interested in the condition should prevent its fulfillment?

If it is without the fault of the heir, the condition shall be deemed to have been complied with.

870. As to conditions imposed by the testator, what other rules shall govern?

Conditions imposed by the testator upon the heirs shall be governed by the rules established for conditional obligations under Arts.1179-1190, in all matters not provided for in the Section providing for Conditional Testamentary Dispositions and Testamentary Dispositions With a Term (Arts. 871-885). In case of conflict, the latter section will prevail.

871. What are the kinds of Institutions with a Term?

The following are the kinds of institutions with a term:

1. Suspensive term or ex die- effects begin from a certain day (Ex. "Beginning 2008")
2. Resolutory term or in diem-effects cease on a certain day (Ex. "up to 2008")
3. Ex die in diem-from a certain day to a certain day (Ex. "beginning 2008 until 2009")

872. Julie has a sister Karen who is the former's only relative. She instituted Cora as heir beginning 5 years from the testator's death. During the five-year interval, Karen is considered called to the succession until the period expires. Can Karen enter into possession of the property?

No, she cannot enter into possession of the property until after he has given sufficient security. The security

must be approved and considered suitable by Cora, the instituted heir. While Karen is entitled to inherit in the meantime, this is only so if the testator had not designated any other interim heir for this article may be considered suppletory, there being no prohibition to institution such interim heir.

873. In the preceding question, what is the nature of ownership of Cora?

Cora is considered to be a mere usufructuary, with the right to enjoy but not to alienate, unless the alienation be subject to the right of Cora to eventually get the property. If Karen does not offer security, it is as if he renounced the inheritance the inheritance and the property should really go to the next legal heir, instead of being put under administration, as apparently required by Art. 880.

874. If the institution be in diem, and the first heir takes possession in the meantime, does he have to give security for the protection of the legal heirs who will get the property later?

No, since this is not required by the law.

875. What is Legitime?

Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

876. What is the purpose of the law in establishing the legitime?

The basic purpose is to protect the children and the widow or widower from the unjustified anger or thoughtlessness of the other spouse.

877. What are the three systems affecting legitime?

The following are the three system affecting legitime:

1. SYSTEM OF THE LEGITIME(PARTIAL RESERVATION)- a part is for the legitime, a part is for free portion.
2. SYSTEM OF TOTAL RESERVATION-everything goes to the compulsory heirs, as long as there is at least one. Only when there is none is there freedom to dispose.
3. SYSTEM OF TOTAL FREEDOM OF DISPOSITION- in this system, there is no legitime. Everything is free.

878. From when does the right of the legitime vested?

It is true that the right to enter into possession of any inheritance commences only from the moment of the death of the predecessor-in-interest. But it is undeniable that a necessary or forced heir (compulsory heir), according to the system of the legitimes, has by provision of law, from the time of his birth, a vested right to eventually acquire the inheritance from his ascendants, the right actually vested, from the moment of death.

879. Can a compulsory heir insist on a specific property as his legitime?

While compulsory heirs have a right to the legitime, they CANNOT insist that they be paid in the form of property, whether real or personal property, when they are NOT AVAILABLE, as when the will itself contains a partition of the estate, specifically assigning the property to various heirs. In the case like this, the legitimes may be satisfied by paying CASH.

879. Who are the compulsory heirs?

In general, compulsory heirs are those for whom the law has reserved a portion of the testator's estate which is known as the legitime. In particular, the following are compulsory heirs:

(1) Legitimate children and descendants, with respect to their legitimate parents ascendants;
(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants; (3) The widow or the widower;

(4) Illegitimate children.

Compulsory heirs mentioned in Nos. 3 and 4 are not excluded by those in Nos. 1 and 2; neither do they exclude one another. In all cases of illegitimate children, their filiation must be duly proved. The father or mother of illegitimate children of the classes mentioned shall inherit from them in the manner and to the extent established by the CC.

880. If the testator is a legitimate person, who are his compulsory heirs?

The compulsory heirs of the legitimate person are the following:

a. Legitimate children and descendants;
b. In default of legitimate children and descendants, legitimate parents and ascendants;
c. The widow or the widower;
d. Illegitimate children.

881. If the testator is an illegitimate person, who are his compulsory heirs?

The compulsory heirs of the illegitimate person are the following:

a. Legitimate children and descendants;
b. In default of children and descendants, whether legitimate or illegitimate, the natural father and mother;
c. The widow or the widower;
e. Illegitimate children.

882. What is meant by primary and secondary compulsory heirs?

Primary compulsory heirs are those who are always entitled to their legitime as provided by law regardless of the class of compulsory heirs with which they may concur. Legitimate children or descendants, the surviving spouse and illegitimate children are primary compulsory heirs.

Secondary compulsory heirs, on the other hand, are those who may be excluded by other classes of compulsory heirs. Thus, if the testator is a legitimate person, his legitimate parents and ascendants are excluded by the presence of a legitimate child or descendant. If he is an illegitimate person, his parents by nature are excluded by the presence of any child or descendant, whether legitimate or illegitimate.

883. What is meant by fixed and variable legitimes?

The legitime of compulsory heirs may be either fixed or variable. It is fixed if the aliquot part of the testator's estate to which a certain class of compulsory heirs is entitled is always the same whether they survive alone as a class or they concur with other classes of compulsory heirs. It is variable if the aliquot part changes depending upon whether they survive alone as a class or they concur with other classes of compulsory heirs.

Examples of the first are the legitimes of legitimate children or descendants and legitimate parents or ascendants. Examples of the second are the legitimes of the surviving spouse and illegitimate children.

884. In order that illegitimate children can inherit as compulsory heirs, is voluntary or compulsory recognition by the decedent necessary?

The Family Code has limited the classification of children to legitimate and illegitimate, thereby eliminating the classes of the acknowledged natural children and natural children and natural children by legal fiction. Illegitimate children, like legitimate children, are given under the FC their status as such from the moment of birth. Hence, there is no need for an illegitimate child to file an action for recognition if he has already been recognized by his parent by any of the evidences provided for in Art. 172 of the FC.

885. Don died after executing a Last Will and Testament leaving his estate valued at P12Million 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?

Yes. Don's testamentary disposition of his estate is in accordance with law on succession. Don has no

compulsory heirs not having ascendants, descendants nor a spouse. (Art 887)

Brothers and sisters are not compulsory heirs. Thus, he can bequeath his entire estate to anyone who is not otherwise incapacitated to inherit from him. A common-law wife is not capacitated under the law as Don is not married to anyone.

886. What consists of the legitime of legitimate children and descendants?

The legitime of legitimate parents or ascendants consists of one-half of the hereditary estates of their children and descendants.

The children or descendants may freely dispose of the other half, subject to the rights of illegitimate children and of the surviving spouse as provided by law. (Art. 888.)

887. A and B are married. They have three (3) children, X, Y, and Z. They adopted C. During A's bachelorhood, he had a recognized illegitimate child, D. In case A dies, how will his estate be divided? Why?

The estate will be divided in this manner –

(1) One half shall go to the children X, Y, Z, and C. C has the same rights or share as a legitimate child.
(2) B shall have the share as one of the legitimate children;
(3) D shall be entitled to one-half(1/2) of the share of a legitimate child.

888. X and Y are married. They have a son A who married B. B gave birth to C, D, E, and F. At the time of his death, A left an estate of P1.2M. Before A got married to B, however, he had an amorous relationship with Z where they begot G. During the relationship between A and B, they likewise adopted H. Distribute the estate of A, with X, Y, C, D, E, F, G, H, and B as survivors.

The estate of A should be distributed this way:

a) Y, shall go to C, D, E, F. The adopted child, H should inherit the same share as the legitimate children.
b) B shall get the same share as that of a legitimate child.
c) The illegitimate child, G, shall inherit only one-half (1/2) of the share of a legitimate child.
d) X and Y shall be excluded from the inheritance because of the presence of the legitimate children.

889. F had three legitimate children: A, B, and C. B has one legitimate child, X. C has two legitimate children: Y and Z. F and A rode together in a car and perished together at the same time in a vehicular accident. F and A died, each of them leaving substantial estates in intestacy.

a) Who are the intestate heirs of F? What are their respective fractional shares?

B and C are the intestate heirs of F and they shall divide the estate, Y,, Y,, the children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares. (Art. 980, NCC).

b) Who are the intestate heirs of A? What are their respective fractional shares?

The intestate heirs of A are B and C and they shall also share the estate, Y,, Y,, or equal shares. (Arts. 1003, 1004, NCC).

c) If B and C both predeceased F, who are F's intestate heirs? What are their respective fractional shares? Do they inherit in their own right or by representation? Explain your answer.

X, Y, Z are the intestate heirs of F. By right of representation, they shall inherit the estate at the ratio of Y,, X,1/4.

d) If B and C both repudiated their shares in the estate of F, who are F's intestate heirs? What are their respective fractional shares? Do they inherit their own right or by representation?

X, Y, Z are the intestate heirs if F, sharing the estate, 1/3, 1/3, 1/3. They shall inherit in their own right.

890. X and Y are married. X died, survived by his parents and his estranged wife. Is the wife entitled to inherit ab

intestato? Why?

Yes. The legitimate parents of X are compulsory heirs who shall succeed intestacy only in the absence of the legitimate children or descendants. The surviving spouse concurs with such children and descendants and mere estrangement is not a legal ground for her disqualification as an heir.

891. An adopted child inherits like a legitimate child. Is the said child entitled to represent his father in the inheritance of his father's ascendants? Why?

No. While it is true that the adopted child shall be deemed to be a legitimate child and has the same rights as the latter; these rights do not include the right of representation. The relationship created by the adoption is between the adopting parents and the only and does not extend to the blood relatives of either party.

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892. How much is the share of legitimate parents or ascendants in the hereditary estate of their children or descendant?

a. one-fourth of the hereditary estate b. one-half of the hereditary estate c. three-fourth of the hereditary estate
d. no share

893. C is the child of M and F. During his lifetime, he accumulated wealth totaling to 1 million pesos then he suddenly died. Which among the following is the best way to dispose his estate:

a. the whole estate shall proceed to M and F
b. M and F shall get 500 million pesos each
c. M and F shall get 250 million pesos each and the remaining shall pass to C's children.
d. M and F shall get 250 million pesos each, the remaining shall be subject to the legitimes of illegitimate children and the surviving spouse if present

894. C is the child of M and F. When he was 24 years old he married W. They begot a child and named him X. A year after, C suddenly died. His estate amounted to 1 million pesos. Which is the best way to distribute his estate:

a. 500 thousand shall go to X. W shall get 250 thousand, the remaining shall be disposed off in accordance with law subject to rights of illegitimate children
b. 500 thousand shall go to X. W shall bet 250 thousand, while the remaining shall be equally divided between M and F.
c. 500 thousand shall go to M and F, they shall have 250 thousand each. X shall get the remaining 500 thousand.
d. 500 thousand shall proceed to W. The remaining shall be divided equally between X and other illegitimate children if present as long as the share of X shall be twice as much as the share of any illegitimate children.

895. If one of the parents should have died, the whole legitime reserved for the legitimate parents shall pass to the survivor. This statement is true because:

a. other ascendants should represent the parent who have died. b. the whole shall pass only to one parent
c. there is no right of representation in the ascending line
d. one parent excludes the other parent and other ascendants

896. If the testator leaves neither a father nor mother, but is survived by ascendants of equal degree of the paternal and maternal lines, the legitime shall be divided equally between both lines. If the ascendants should be of different degrees, it shall be distributed equally between them. This statement is:

a. True, because the property should be distributed between the line of the father and the mother
b. False, because the property should only pertain entirely to the ones nearest in degree of either line.
c. True, because the property should only pertain to one line who has a survivor nearest in degree
d. False because the ascendants should represent each other

897. M and F predeceased their child T who left a hereditary estate amounting to 1,000,000. T's grandparents survived him. How will you distribute the estate?

a. the maternal grandparents get 500,000 and the paternal grandparents also get 500,000
b. the maternal grandparents get 250,000 and the paternal grandparents also get 250,000
c. nothing will pass upon the grandparents
d. the paternal grandparents should get more.

898. 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. This provision of law is called:

a. Fiduciary substitution b. Proposition
Troncal
c. Reserva Troncal
d. Return to Origin

899. M and F are the parents of C. M died leaving a will, one provision of which gave a parcel of land to C. Thereafter, C died without any descendant. F then inherited the land. If F dies, can he dispose it by will?

a. Yes, because ownership includes the right to dispose. Hence, F can dispose it in anyway he likes.
b. No, because the property is reserved by law for the relatives of M.
c. No, because the property is reserved by law for the relatives of M which must be within the third degree from C.
d. No, because F is only possessing the property in the concept of a holder while he lives, thus he cannot dispose it in any manner as he wishes.

890. In reserva troncal from whom shall we count the third degree limit?

a. Origin
b. Reservatarios c. Troncal
d. Propositus
(Aglibot, et al. v. Andres Acay Manalac, et al, L-14530, April 25, 1962)

891. M and F are the parents of C. M died leaving a will, one provision of which gave a parcel of land to C. Thereafter, C died without any descendant. F then inherited the land however, he also died. The land is now being claimed by the brother of M and the brother of F. Which of the two is entitled to succeed the land?

a. the brother of M shall succeed the land because F's possession is only in the concept of a holder.
b. The brother of M shall succeed the land because the brother of F is excluded by the third degree limit counted from C
c. The brother of M shall succeed the land by operation of law following the principle of reserva troncal
d. The brother of F shall succeed the land applying the principle of proximity since he is the nearest to inherit from F

892. In reserva troncal, how many degrees will you count from the propositus so that the reservatarios will inherit the reserved property?

a. one degree b. two degrees
c. three degrees
d. four degrees

893. In reserva troncal, how do we call the party who is required by law to reserve the property?

a. reservatario b. fiduciary
c. reservista
d. reservador
(Frias Chua v. CFI of Negros Occidental L-29901, Aug. 31 1977)

894. During his marriage to his first wife, Pong had a son and two grandchildren. His wife died. Since he is still strong and active, he married again, and with the second wife, he had a son. When he died, a parcel of land owned by him was inherited by his son, in the second marriage and the second wife thru intestate succession. After a while, the son of the second marriage died and his half share in the land was inherited by his mother by operation of law. After the mother's death can the son and the grandchildren of the first marriage get the land?

a. Yes because they are the rightful relative of Pong, they being the first children of the latter from the first marriage.
b. Yes because the property must pass to the same line where it came from

c. Yes, they can get the half share of the land that was held by the second wife, which is the half share of the second son
d. Yes they can get the whole of the land that was held by the second wife.

895. In reserva troncal, the transfer of a property from the propositus to the reservista must be:

a. by gratuitous title
b. by operation of law
c. by onerous title
d. by sale, donation or by mortgage

896. Pong inherited a parcel of land from his mother Pang. Is the land already reserved within the third degree from Pong in the sense that he cannot dispose the property?

a. Yes, the property is reserved by operation of law.
b. Yes, the property should proceed within the third degree from Pong. c. No, the property belongs to Pong exclusively
d. Not yet, the requisites in reserva troncal are not yet present

897. Pang sold her luxurious sedan to her son Pong for only 500,000. Later Pong died intestate. All his properties were inherited by his father Pongchach by operation of law including the sedan. Is the car subject to reserva troncal?

a. Yes, because Pongchach, as the reservista is mandated by law to return the property to the relatives of Pang
b. Yes, because the property came from an ascendant of Pong and therefore it must pass to the line where it came from.
c. No, because the car was acquired by Pong onerously by paying it to his mother
d. No, because the car passed to Pongchach by operation of law and not gratuitously

898. Pang donated her luxurious sedan to her son Pong for only 500,000. Later Pong died intestate. All his properties were inherited by his father Pongchach by operation of law including the sedan. Is the car subject to reserva troncal?

a. Yes, because Pongchach, as the reservista is mandated by law to reserve the property to the relatives of Pang
b. Yes, because the property came from descendant of Pong and therefore it must pass to the line where it came from.
c. No, because the car was acquired by Pong onerously by paying it from his mother d. No, because the car passed to Pongchach by operation of law and not gratuitously

899. Pang donated her luxurious sedan to her son Pong for only 500,000. Later Pong died intestate. However, before he died the car was bought by his father Pongchach from him. Is the car subject to reserva troncal?

a. Yes, because Pongchach, as the reservista is mandated by law to reserve the property to the relatives of Pang
b. Yes, because the property came from descendant of Pong and therefore it must pass to the line where it came from.
c. No, because the car was acquired by Pongchach onerously by purchasing it from his son
d. No, because the car passed to Pongchach by operation of law and not gratuitously

900. Johnny cohabited with Susan without the benefit of marriage. They begot a daughter named Rose. During his lifetime, Johnny worked hard to save a house for his lovely daughter. Before he died, he gave the house to his daughter. Three weeks later, Rose also died due to severe depression so that Susan entered the house by operation of law. However, not long after occupying the house, Susan got killed in a hostage taking situation. The beautiful house now is being claimed by Laura, her sister and John the father of Johnny or Rose's paternal grandfather. To whom will the house pass?

a. The house shall pass upon the state because of the bizarre events that transpired. Therefore, the local government to where the house is located shall take the property as its patrimonial property.
b. The house shall pass upon John by virtue of reserva troncal since Rose acquired the property gratuitously from her father before the house was transferred

c. Since Rose is an illegitimate child, the house cannot be passed to John, thus, it shall go to Laura
d. Since Rose has a grandfather, the house shall pass upon the latter applying the principle of proximity, Laura is excluded.

901. Bob donated his house and lot to his poor brother Mike upon the objection of their sister Janet. When the deed of donation was perfected, Mike suffered a horrifying heart attack which led to his untimely demise leaving no descendant behind. Their father Buck held the property until his death. The property is now being claimed between Janet and Dina, their mother, who just arrived from Egypt upon knowledge of the death of his estranged husband. Who is entitled for the property?

a. Janet shall get the property since she is a common sister of Bob and Mike. b. Dina shall get the property since she is their mother.
c. Janet shall get the property because she will exclude their mother.
d. Dina shall get the property because she will exclude Janet

902. What is the effect of legal separation to the legitime of the surviving spouse?

a. The spouse shall not have any legitime
b. The share of the spouse shall accrue to their common children
c. The surviving spouse shall lose his share if the deceased spouse disinherited her
d. The surviving spouse may inherit if it was the deceased who had given cause for the legal separation.

903. If only one legitimate child or descendant of the deceased survives, the widow or widower shall be entitled to how many shares?

a. One-half of the hereditary estate
b. One-fourth of the hereditary estate
c. The whole of the free portion
d. Equal with the share of the child

904. A dies leaving an estate worth 1 million, and the surviving relatives are B, a legitimate child, and C, the surviving spouse. How will the estate be divided?

a. B's legitime is 500,000; C's legitime is also 500,000
b. 8's legitime is 500,000; C's legitime is 250,000
c. B's legitime is 750,000; C's legitime is 250,000 d. B's legitime is 250,000; C's legitime is 750,000

905. Johnny leaves his parents George and Shirley and his beloved wife Katrina. The estate is 400,000. How much is Katrina's legitime?

a. 50,000 b. 75,000 c. 100,000 d. 200,000

906. Johnny leaves his parents George and Shirley and his beloved wife Katrina and their cute son Pong. The estate is 400,000. How much is Katrina's legitime?

a. 50,000 b. 75,000 c. 100,000 d. 200,000

907. In the preceding problem, how much is the legitime of George and Shirley?

a. 25,000 b. 100,000 c. Nothing d. 75,000

908. If the testator leaves illegitimate children, how much is the legitime of the surviving spouse?

a. one-half of the hereditary estate
b. one-third of the hereditary estate
c. one-fourth of the hereditary estate d. nothing

909. Because of being a natural gigolo, Pong begot two illegitimate children. His wife Pongy became depressed as a result. The estate is 900,000. Which is the correct division of the estate?

a. 600,000 for the two illegitimate children, 300,000 for Pongy b. 300,000 each for the illegitimate children, 300,000 for Pongy c. 450,000 for the illegitimate children, the remaining to Ponge
d. 300,000 for the two illegitimate children, 300,000 for Pongy

910. In the preceding problem, how much can Pong dispose off freely by will?

a. 450,000 b. 600,000 c. 150,000 d. 300,000

911. If a legitimate child and illegitimate child concur, how much is the share of the latter compared to the former?

a. They shall have equal share
b. It shall be one-half of the legitime of the former
c. It shall be one-third of the legitime of the former d. It shall be four-fifths of the legitime of the former

912. Peter is a legitimate child. Paul is illegitimate. If the estate is 400,000, how will you divide the property?

a. Peter and Paul get 100,000 each
b. Peter gets 200,000 while Paul 100,000, the remaining is free portion
c. Peter gets 200,000 while Paul gets nothing because he is illegitimate, the remaining is free portion
d. Peter and Paul get 200,000 each

913. Pong, a handsome gigolo married Petra and they begot a son and named him Chuck. However, since Pong is really cunning he was able to begot 10 illegitimate children. If Pong's estate is 400,000, which of the following is the correct way to divide it?

a. Chuck gets 50,000; Petra gets 50,000; 25,000 each for the 10 illegitimate children; the remaining is free disposable portion
b. Chuck gets 100,000; Petra gets 50,000; the remaining shall be divided equally by the 10 illegitimate children
c. Chuck gets 200,000; Petra gets 100,000; the remaining shall be divided equally between the 10 illegitimate children
d. Chuck gets 200,000' Petra gets nothing; the remaining shall be divided equally between the 10 illegitimate children

914. Illegitimate children who may survive with legitimate parents or ascendants of the deceased shall be entitled to :

a. one-half of the hereditary estate
b. one-fourth of the hereditary estate from the free portion
c. one-fourth of the hereditary estate from the disposable portion d. nothing, because of their illegitimacy

915. A dies, leaving B, his father, and C (A's illegitimate child). The hereditary estate is 1 million. How much is C's legitime?

a. 250, 000 b. 300,000 c. 500,000 d. Nothing

916. How much is the share of the widow or widower if he/she concurs with legitimate and illegitimate children of the testator?

a. One-half of the share of the legitimate children b. One-half of the share of the illegitimate children
c. Same amount with the share of the legitimate children
d. Same amount with the share of the illegitimate children

917. If there are 2 legitimate children, and 1 illegitimate child, how much will the surviving spouse get, if the estate is 1 million.

a. 100,000 b. 200,000
c. 250,000
d. 300,000

918. In the preceding problem, what if there are 5 legitimate children, how much will the surviving spouse get?

a. 100,000 b. 200,000 c. 250,000 d. 300,000

919. If illegitimate children, legitimate children, and the surviving spouse concur to together, what is the order of preference?

a. the legitimes of the legitimate children first, then the spouse, then the illegitimate children
b. the legitimes of the legitimate and illegitimate children, then the surviving spouse
c. the legitime of the surviving spouse and then the legitimate children, then the illegitimate children
d. the legitimes of the illegitimate children and then the surviving spouse

920. If the estate is 1.2 million, how will distribute it if there are 3 legitimate children, widow, and 2 illegitimate children?

a. 300,000 each of the legitimate children; 300,000 for the widow
b. 200,000 each of the legitimate children; 200,000 for the widow; 100,000 each of the illegitimate children
c. 200,000 each of the legitimate children; 200,000 for the widow; 200,000 each of the illegitimate children
d. 200,000 each of the legitimate children; 100,000 for the widow; 100,000 each for the illegitimate children

921. How much share will the widow or widower get if he/she concurs with legitimate parents and illegitimate children of the decedent?

a. one-half of the hereditary estate
b. one-fourth of the hereditary estate
c. one-sixth of the hereditary estate
d. one-eighth of the hereditary estate

922. A and B are the legitimate parents of C, the testator. D is C's surviving spouse. E and F are the illegitimate children of C. Which of the following is the correct way of distribution if the estate is 800,000:

a. 400,000 for A and 8; 100,000 for D; and 200,000 for E and F
b. 400,000 for A and B; 200,000 for D; and 200,000 for E and F c. 400,000 for A and B; 200,000 for D; and 50,000 for E and F d. 400,000 for E and F; 200,000 for D

923. If the only survivor is the spouse, she or he shall be entitled to how much of the hereditary estate?

a. one-half
b. one-third
c. the whole of the estate d. one-eighth

924. Abe an old man instantly fell in love with a flight stewardess while on board a plane to the US . Since Abe is also rich, the flight stewardess responded mutually to the intentions manifested by him to her. On the third hour of the flight they decided to get married on the plane since Abe's health reached its limit to the point that he is nearly dying. So the captain solemnized their marriage immediately. As expected, just one month after their marriage, Abe died. How much will his widow get from his estate?

a. one-half of the hereditary estate
b. one-third of the hereditary estate
c. one-fourth of the hereditary estate d. one-eighth of the hereditary estate

925. In the preceding problem, what will be your answer if before they got married, Abe and the flight stewardess had been cohabiting for 6 years together?

a. one-half of the hereditary estate
b. one-third of the hereditary estate c. one-fourth of the hereditary estate d. one-eighth of the hereditary estate

926. Lucky is the illegitimate son of Jason. How much of the hereditary estate if Lucky is the only compulsory heir?

a. one-half
b. one-fourth c. one-third
d. the whole estate

927. Shall the rights of Jeffrey, an illegitimate child over his inheritance from his father Nick, pass upon his (Jeffrey's) illegitimate child in case he should die?

a. No, because he cannot be represented since he is illegitimate
b. Yes, because his predecease should not impair the rights of his legitimate or illegitimate descendants
c. Yes, because a legitimate or illegitimate descendant of an illegitimate child has the right to represent the latter
d. Yes, as long as he particularly bequeaths it in his will

928. Berto died leaving an estate worth 1 million. In his will, he gave Jack, a stranger, 500,000, and gave his illegitimate son Boyet his legitime of 500,000. But Boyet predeceased Berto, leaving his illegitimate (Boyet's) son Badong. How much, if any, can Badong get?

a. nothing since he cannot represent his illegitimate father
b. he will get 500,000 by right or representation c. he will get 500,000 by proximity of line
d. he will get 500,000 by excluding other heirs

929. A died leaving an estate worth 2 Million pesos. In his will, A gave D, a stranger 1 Million and gave B (illegitimate child of A) his legitime of 1Million. But B predeceased A. How much if any can D, illegitimate child of B get?

D inherits B's share of 1 Million pesos in A's estate, by the right of representation.

930. Can the illegitimate descendant of legitimate children inherit by the right of representation?

No, because of the barrier between the legitimate and illegitimate family.

931. A has an illegitimate child B, who has an illegitimate child C. If the estate of B is 1 million, how much will be the legitime of A and C?

a. A and C gets 250,000 each
b. A gets 500,000; C gets 250,000
c. A gets nothing; C gets 250,000

d. A gets nothing; C gets 500,000

932. B died leaving an estate worth 1 Million pesos. He is survived by his mother A and an illegitimate child, C. How much, if any, is A's legitime?

A is not entitled to any legitime because of the presence of C.

933. A has an illegitimate child B, who has a wife C. If the estate of B is 1 Million, how much will be the legitime of A and c, and how much can B give to a friend?

a) A's legitime is P 250, 000 (1/4 of the estate)
b) C's legitime is P 250, 000 (1/4 of the estate)
c) Free portion id P 500, 000 (the remaining 1/3 of the estate) This P 500,000 can

be given to a friend.

934. In a provision of Pong's will, it reads that before Pepito can receive his 500,000 legitime, he should become a lawyer first by passing the 2011 MCQ bar exams. Is the provision valid?

a. Yes, because such proviso is for the advantage of Pepito
b. No, because such condition shall be considered as not imposed
c. No, because it violates the right of Pepito against unreasonable conditions d. No, because the condition is ubiquitous

935. When can the testator deprive the compulsory heirs to their legitimes?

The only way to deprive the compulsory heirs of their legitimes is by expressly disinheriting them in a will, wherein the legal cause therefore shall be specified.

936. Petra the wife of Pong, wrote in a letter that she is renouncing all hereditary rights from him. Thereafter, she went to her homeland in Banaue, Ifugao with a noble desire to restore the rice terraces which she inherited from her parents. After seven years, Pong died peacefully. Is Petra still entitled to her legitime?

a. No more since she validly renounced her right by writing and giving it to Pong b. No since Pong cannot force Petra to receive what is due her
c. No since no one can be forced to receive something gratuitously
d. Yes because the waiver is null and void

937. A wife, during the lifetime of her husband, wrote in a statement that she was renouncing all hereditary rights from him. When the husband dies, is the wife still entitled to her legitime and other successional rights?

Yes, because the waiver is null and void.

938. A wanted his legitime during his father's lifetime, the father gave him a car worth P 800, 000 and both agreed that A would no longer be entitled to any legitime. The father died, leaving an estate worth 6 Million pesos. His two children, A and B, survived him. If A insists on claiming his legitime, will he be allowed to do so?

Yes, but he should collate the P 800,000 the value of the car. In other words, if he is really entitled to a legitime of 1.5 Million pesos, he will be given only P 700,000 more.

939. A died leaving a will and an estate worth 2 Million pesos. His two children, B and C, survive him. In his will, he gave B P500, 000 as his legitime while C, P300, 000 as his legitime. The rest of the estate was given to B. May C demand that he be given the balance of P200,000?

Yes, C may demand that he be given the balance of P 200,000. Any compulsory heir to whom the testator has left by any title less than the legitime belonging to him may demand that the same be fully satisfied.

940. A father instituted his illegitimate daughter to a share less than her legitime and a stranger. Is the institution of the stranger valid?

Yes, for there was no preterition of the compulsory heir, the illegitimate daughter. Her being instituted to a share less than her legitime is not preterition.

941. When may a legitime be reduced?

In testamentary dispositions that impair or diminish the legitime of the compulsory heirs shall be reduced on petition of the same, insofar as they may be inofficious or excessive.

942. Who can avail such right?

It can be availed of only by the compulsory heirs.

943. What is the procedure to be followed in the distribution of the hereditary estate in testamentary succession if there are donations inter vivos?

There are seven (7) distinct steps in the distribution of the hereditary estate if there are donations inter vivos. They are:

(1) The determination of the value of the estate at the time of the testator's death; (2) The determination of all deductible debts and charges which are chargeable to the testator's estate;
(3) The determination of the net hereditary estate by deducting all of the debts and charges from the value of the estate;
(4) The collation or addition of the value of all donations inter vivos to the net value of the estates;
(5) The determination of the amount of the legitime from the total thus found in accordance with the rules established in Arts. 888-903 of the NCC;
(6) The imputation of the value of the donation inter vivos against the legitime of the donee, if made to a compulsory heir, or against the free portion, if made to a stranger; and finally
(7) Distribution of the net estate in accordance with the will of the testaor.

944. Shall the proceeds of a life insurance policy be brought to collation for the purpose of determining the legitime of compulsory heirs?

In Del Val vs. Del Val (29 Phil. 534), where the beneficiary was a third person, it was held that the proceeds of an insurance policy belong exclusively to such beneficiary and not to the estate of the insured; consequently, the provisions of the NCC with regard to collation cannot apply. It is believed that the same principle can be applied where the beneficiary is a compulsory heir. As far as the premiums are concerned, although they partake of the nature of donations, commentators sustain the view that so long as they are paid from the income of the insured and are not excessive, they are not subject to collation.

945. A died leaving an estate worth 1 Million pesos and debts amounting to P 300,000. During his lifetime, A had given donation of P 500,000 to B, his legitimate son. When A died, two legitimate sons, B and C, survive him. How much is the legitime of each legitimate child?

1 mllion -P 300,000 + P 500,000 = 1.2 million (net hereditary estate). The legitime is therefore P 600,000. But there are two children, hence, each gets P 300,000 as his legitime.

The legitime of B is only P 300,000. But since he has been given P 500,000 as a donation inter vivos, this should be first charged to the legitime. But there is an excess of P 200,000. This should be taken from the free portion of only P 400,000, which can be given to anybody. Hence, out of the actual net assets of P 700,000 (because the debts have been deducted)-
C gets P 300,000 (as legitime)
B gets 0 (as legitime, since he has already received it in the form of donation) Free Portion = P 400,000.

946. If the remaining estate is 1 Million pesos, the debts are 1.2 Million pesos, and the collationable donations are P 500,000, how much is the net hereditary estate?

Debts should be taken only from the estate remaining (without touching the donation). The correct solution is:
1 Million – 1.2 Million = 0
0 + P 500,000 = P 500,000

947. How is the value of the estate at the time of the decedent's death determined?

(a) If there are judicial proceedings where the estate is settled, the administrator must determine the value of the estate. For this purpose, he will be helped by the tax appraiser.

(b) If there are no judicial proceedings for the settlement of the estate, the heirs must also determine the value of the estate, subject to the provisions of the Internal Revenue Code. Here also, it is the market value that must be considered. It is however presumed that the assessed value is the true market value. This presumption may naturally be rebutted.

948. The value of the testator's estate at the time of his death is P 40,000. However, the claims against his estate based on obligations incurred by him during his lifetime amounted to P 10,000. During his lifetime, he had also made two (2) donations-P 15,000 to a legitimate child, "A," and another P 15,000 to a friend "F." In his will, he instituted his two legitimate children, A and B, as his heirs. How shall his estate be distributed?

First, deduct the debts amounting to P 10,000 from the value of the testator's estate, thus leaving a net remainder of P 30,000. To this remainder collate the two (2) donations, thus making a total of P 60,000, or P 30,000, or P 15,000 each. The disposable free portion is also P 30,000. Since the donation of P 15,000 to A is a donation to a compulsory heir, it shall be imputed or charged to the legitime of the heir donee. There is neither a balance nor an excess. Hence, it is presumed that the testator in making the donation had merely advanced the legitime of A. The P
15,000 donation to F, on the other hand, shall be imputed or charged to the disposable portion.
There is a balance of P 15,000. This balance shall be distributed equally between A and B. Thus, A shall retain the P 15,000 donation and, at the same time, shall receive Y, of P 15,000, or P
7,500; B shall receive P 16,000 as legitime plus Y, P 15,000, or a total of P 22,500.

949. May donations to strangers be reduced?
Yes, if found to be inofficious, that is, if they exceed the amount set for free disposal.

950. What is the rule in case a donation inter vivos made by the testator is inofficious?

A donation made by the testator during his lifetime to a compulsory heir is inofficious if it exceeds not only the latter's legitime but also the portion at the testator's free disposal, thus impairing the legitime of other compulsory heirs. If the beneficiary or donee is a stranger, the donation is considered inofficious if it exceeds the portion at the testator's free disposal, thus impairing the legitime of compulsory heirs. Whether the beneficiary or donee is a compulsory heir or a stranger, the rule with respect to inofficious donations is to reduced said donations is to reduced said donations insofar as they may exceed the disposable portion in accordance with the rules established in Arts. 911 to 913 of the NCC.

951. Supposed that the legitime of compulsory heirs is impaired by inofficious testamentary dispositions (legacies and devises) and inofficious donations inter vivos, which must be the first to be reduced or suppressed- the former or the latter?

As between donations or dispositions mortis causa and donation inter vivos, preference is always given to the latter. Therefore, in case of concurrence of the two and the disposable portion is not sufficient to cover both of them,

the testamentary dispositions, such as legacies and devises, are the first to be reduced or even suppressed if necessary. If after such suppression, the value of the donation inter vivos cannot still be recovered by the disposable portion, then such donation shall be reduced in order to preserve the legitime of the compulsory heirs.

952. Where can you charge any donation in excess of the legitime?

Any donation in excess of the legitime shall be charged to the free disposal and shall be considered in the same category as donations to strangers.

953. What is the procedure for the reduction of inofficious legacies or devises?

Under Article 911 of the NCC, the order of preference is as follows:

(1) Legitime of compulsory heirs;
(2) Donations inter vivos;
(3) Preferential legacies or devises; and
(4) All other legacies or devises.

If after saying the legitime of compulsory heirs the disposable portion is sufficient to cover donations inter vivos, but not sufficient to cover legacies or devises, the rule is that such legacies or devises shall be reduced pro rata, after first satisfying all of those which the testator has declared to be preferential.

954. A dies without any compulsory heir, and leaves an estate of P 500,000. He gives C a preferred legacy of P 300,000; D a legacy of P 150,000 for support; and E, a legacy of P 100,000 for education. All in all, the legacies amount to P 550,000 giving an excess of P 50,000. What legacies, if any, must be reduced and by how much?

We should apply Art. 950 because in this problem there are no compulsory heirs. Hence:

C - P 300,000 (preferred)
D - 150,000 (for support)
E - 50,000 (for education)

Therefore, only the legacy to E must be reduced. This is reduced by P 50,000. The others are not reduced because they are ranked higher in the order of preference given under art. 950 of the Civil Code.

955. What is annuity?

An annuity refers to a series of equal payments at fixed intervals deriving from an original lump-sum investment.

956. What is the rule in reducing inofficious devises if the subject involved is a real property?

If the devise subject to reduction should consist of real property, which cannot be conveniently divided, it shall go to the devise if the reduction does not absorb one-half of its value; and in a contrary case, to the compulsory heirs; but the former and the latter shall reimburse each other in cash for what respectively belongs to them.

957. A house worth 2 Million pesos was devised to X but because it is excessive, it was reduced by P 800,000. Since the house is a real property, how shall it be divided?

The house should therefore go to X, bit if X does not want the house, the compulsory heirs can get the house and just pay X the sum of 1.2 Milllion. If still the compulsory heirs do not make use of this privilege, the property should be sold at auction at the instance of any of the interested parties; the proceeds will be divided accordingly.

958. What is meant by free portion?

The free portion may be the object of a charge, a substitution, or a condition. The so- called "free portion" is not exactly free for if the surviving spouse and/or illegitimate children are present, the "free portion" is burdened by their legitimes. If anything is still left, this would really be "free" and the more proper term for this would be the "free disposal."

959. Define disinheritance.

Disinheritance is the act of the testator in depriving a compulsory heir of his inheritance for causes expressly

stated by law.

960. What are the requisites of a valid act of disinheritance?

The essential requisites of a valid act of disinheritance are as follows:

(1) The disinheritance must be for a cause expressly stated by law; (2) It must be effected only through a will;
(3) The legal cause for the disinheritance must be specified in the will itself; (4) The cause must be certain and true;
(5) The disinheritance must be total; and
(6) The disinheritance must be unconditional.

961. T validly disinherited a child in his will, but he later revoked the will. Does the disinheritance continue?

No, the will has already been revoked.

962. In his will, T disinherited his child and the said child should get only 2/3 of his legitime. Will the child inherit?

The disinheritance being partial, it is not valid. Therefore, it is as if there is no disinheritance, and the child can still get at least his legitime.

963. What are the requisites for disinheritance to be valid?

For disinheritance to be valid, Article 916 of the Civil Code requires the same must be effected through a will wherein the legal cause therefore shall be specified.

In the case of Seangio vs. Reyes (Nov.27,2006), the document entitled "Kasulatan ng Pag-alis ng Mana," unmistakably showed Segundo's intention of excluding his eldest son, Alfredo, as an heir to his estate for the reasons that he cited therein. In effect, Alfredo was disinherited by Segundo.

With regard to the reasons for the disinheritance that were stated by Segundo in his document, the Court believes that the incidents, taken as a whole, can be considered a form of maltreatment of Segundo by his son, Alfredo, and that the matter presents a sufficient cause for the disinheritance of a child or descendant under Art. 919 of the Civil Code.

964. Distinguish imperfect disinheritance with preterition.

(a) In the first, the disinherited heir may be any compulsory heir, whereas in the second the omitted heir must be a compulsory heir in the direct line;

(b) In the first, the attempt to deprive a compulsory heir of any participation in the inheritance is always expressed, whereas in the second, it is always implied;

(c) In the first, the disinheritance is always intentional, whereas in the second the omission may or may not be intentional;

(d) The first always results in the partial annulment of the institution of heirs to the extent that the legitime of the disinherited heir is prejudiced, whereas the second always in the total annulment of the institution of heirs.

965. Who has the burden of proving for the cause of disinheritance?

The burden of proving the truth of the cause for disinheritance shall rest upon the other heirs of the testator, if the disinherited heir should deny it.

966. What are the 3 instances when the disinheritance is considered invalid or ineffective or illegal?

The following are the 3 instances when the disinheritance is considered invalid or ineffective or illegal:

(1) without giving the cause (NO CAUSE STATED)
(2) a cause denied by the heir concurred and not proved by the instituted heir (NOT TRUE CAUSE)
(3) a cause not given in the law (NOT LEGAL CAUSE)

967. What is meant by imperfect disinheritance?

Imperfect disinheritance refers to disinheritance without specification of the cause, or for a cause the truth of

which, if contradicted, is not proved, or which is not one of those recognized by law.

968. What are the effects of ineffective disinheritance?

The following are the effects of ineffective disinheritance:

(1) The institution of heirs is annulled but only insofar as it may prejudice the person disinherited, that is, insofar as the legitime of said heir is impaired.

(2) The devises, legacies, and other testamentary dispositions shall be valed to such extent as will not impair the legitime.

969. Estate is 1Million. A legacy of P700, 000 was given to X, a friend of Y, a legitimate child of the testator, was ineffectively disinherited. How much should X and Y get?

X gets only P 500, 000.The legacy to him is reduced by P 200, 000 so as not to impair Y's legitime. Y gets P 500, 000 as his legitime.

970. T has two legitimate children A and B. His estate is P 1 Million. In his will, T gave A his legitime of X , and ineffectively disinherited B. How much will B get?

B gets P 250, 000 as legitime, and a half-share ass intestate heir in the free portion of P 500, 000. Thus he gets a total of P 500, 000.

971. Which of the following is a legal cause for the disinheritance of children and descendants, legitimate as well as illegitimate.

(a) when the child abandoned the family home
(b) when the child is a minor
(c) when the child lives abroad
(d) when the child leads a disgraceful life

972. If the testator has been acquitted on the ground of "lack of proof beyond reasonable doubt" or "lack of criminal intent," does this necessarily mean that the accusation was groundless?

No, this does not necessarily mean that the accusation was groundless. In other words, the testator would not, in such a case, have the right to disinherit the accusing heir.

973. What are the three requisites under paragraph 2 of Article 919? (1) the act of

accusing
(2) the fact that the accusation has been found groundless
(3) the offense or crime charged carries a penalty of imprisonment for at least 6 years

974. Is it essential that there must be a final judgment of conviction in adultery or concubinage case before Article 919 can be applied?

Yes, a final judgment of conviction in adultery or concubinage case is needed before Article 919 can be applied.

975. Which of the following is a sufficient cause for disinheritance of parents or ascendants, whether legitimate or illegitimate?

(a) when the parent leads a dishonorable life
(b) when one parent is legally separated from the other
(c) when the parent has not yet retired from work
(d) loss of parental authority

976. What includes abandonment?

Abandonment includes not merely the exposure of the child or descendant to danger but also the failure to give it due care or attention. Abandonment is indeed physical, moral, social or educational.

977. Parental authority terminates:

(a) when the child gets married
(b) when the child reaches the age of majority
(c) when the child move out from the family home and works abroad
(d) when the parents died

978. Which of the following is a sufficient cause for disinheriting a spouse? (a) when the spouse has given cause for legal separation
(b) when the spouse refuses to support the children
(c) all of the above
(d) none of the above

979. What is meant by reconciliation?

Reconciliation is the mutual restoration of feelings to the status quo. It is indeed the resumption of friendly relations

980. What are the characteristics of reconciliation?

Reconciliation needs no special form; therefore it may be express or implied.

981. What are the effects of reconciliation?

(1) If no disinheritance has been made yet, no disinheritance can now be done. (2) Disinheritance already made is rendered ineffectual.

982. Does the right of representation under article 923 apply to all the heirs of the person disinherited?

No. The right of representation applies only the children and descendant of the person disinherited.

983. X is the father of A. A has two children A1 and A2. X made a will giving Y, a friend, 1/2 of his estate. This covered the free portion. X validly disinherited A. Can A1 and A2 represent A?

Yes. The children of A can represent him as to the legitime only because the free portion has been given to Y.

984. X validly disinherited his son A. X did not dispose of his free portion. Will the children of A inherit from X?

They will inherit A's share in the legitime and in the free portion. The representative of the disinherited person will receive both the legitime and the free portion which might have accrued to the person disinherited if he had not been disinherited.

985. A dies leaving P1 million and two legitimate children, B and C. B, has legitimate child D. B was however disinherited validly in A's will and C was given P1 million. What is the effect of the disinheritance?

The disinheritance would result to the representation of the disinherited heir. The heirs of the disinherited heir can represent the latter, but only insofar as the legitime of said disinherited heir is concerned. D represents B in getting B's legitime.

986. Refer to the preceding number, how shall such estate be distributed?

The estate shall be distributed as follows: C, the instituted heir, gets onlyP750, 000.00 and D gets P250, 000.00. D represents B in getting B's legitime. The heirs of the disinherited can represent the latter, but only insofar as the legitime of said disinherited heir is concerned. (Art.923)

987. Suppose D is under the parental authority of B. What is the effect of the disinheritance his parental authority?

The general rule is that a parent has the administration and usufruct of the property of a child who is under parental authority.

However, in this present problem, B does not have the usufruct or administration of said P250, 000.00. This is an exception to the general rule, the law provides that a disinherited parent shall not have the usufruct or administration of the property which constitutes the legitime.

988. The law (Art. 923) says "the children and descendants of the person disinherited." Who is this "person disinherited" who can be represented?

The phrase refers only to a disinherited child or disinherited descendant. Thus, neither a disinherited spouse nor a disinherited parent may be represented.

989. If the disinherited person had been given a legacy, devise or part of the free disposal, will such legacy, devise or that part of the free disposal be given to the disinherited heir?

No, the disinherited heir should not even receive any part of the free disposal. The same will go the substitutes, if any. If none, to the other heirs, legatees, or devisees by accretion if proper; if accretion is not proper, same should go to the legal heirs by intestacy.

990. What can be bequeathed or devised?

All things and rights which are within the commerce of man or which is alienable may be bequeathed or devised.

991. What is meant by a legacy and devisee?

A legacy may be defined as a testamentary disposition by virtue of which a person is called by the testator to inherit an individual item of personal property, while a devise may be defined as a testamentary disposition by virtue of which a person is called by the testator to inherit and individual item of real property.

992. What are the purposes for the legacies and devises?

The legacies and devises have for their purposes the following:

a. The compliance by the testator of social duties;
b. His rewarding of the love and devotion of friends and relatives;
c. His show of gratefulness for acts done to him;
d. His giving of funds to beneficent and charitable institutions.

993. Who may be charged by the testator with the payment or delivery of a legacy or devise?

The following may be charged by the testator with the payment or delivery of a legacy or devise:

a. Any compulsory heir;
b. Any voluntary heir;
c. Any legatee or devisee ; and
d. The estate represented by the executor or administrator. (Art.925)

994. A testator provided in his will that " all other property, rights and remedies that do not appear in this my last will and testament, or that I acquire in the future, the trustee will be responsible for my orders and I can keep the fruits for the benefit of the legatees mentioned by me in this will, in equal parts, or their heirs in stirpes, after deducting the charges conservation expenses and expenses of administration." Can the testator validly impose such condition?

Yes. The testator can impose upon the legatees (or devisees) the payment of real estate taxes and expenses for the preservation of a specified property of the estate. (Robles vs. De Santiago, 109 Phil 218)

995. A and B, legitimate children, were instituted in this way: A to 3/5 and B 2/5. A was given P600, 000 (P250, 000 as legitime and P350, 000 as free potion); B was given P400, 000 (P250, 000 as legitime and P150, 000 as free potion). However, they were required to give F a legacy of P50,000.00. How much should each contribute to F for his legacy? Why?

A must give P35, 000 and B must give P15, 000 because compulsory heirs charged with a sub-legacy are liable in proportion to their institution to the free disposal.

996. A and B, heirs, took possession of the estate of their deceased father and used the family car, which had been given as legacy to C. The car was destroyed due to A's negligence. Can c ask for reimbursement of the whole value of the car from B?

YES, the liability of A and B is solidary. B can however later on demand reimbursement from A. The law provides that if two or more heirs take possession of the estate, the shall be solidary liable for the loss or destruction of a thing devised or bequeathed, even though only one of them should have been negligent. (Art.927)

997. Does the solidary liability in article 927 pertain only to losses or destruction due to negligence?

No. The solidary liability of the concerned heirs under article 927 also covers cases of fraud (dolo) and delay (mora). (Debuque v. Hon. Climaco, 99 SCRA 353)

998. An heir was ordered to give to A a legacy of a car. If the car given to A is lost by A through eviction, as when its real owner defeats A in a court action. Is the heir liable to A?

YES. The heir is liable. Under the law, the heir who is bound to deliver the legacy or devise shall be liable in case of eviction, if the thing is indeterminate and is indicated only by its kind. Since the legacy was generic, the heir

should have selected a car he could validly dispose of, and a car belonging to another. (Art.928)

999. Refer to the preceding number. Suppose the legacy lost through eviction is an Innova car with plate number AYX234, is the heir liable to A?

NO. The heir cannot be held liable for eviction since he has no choice. The law expressly makes the heir liable if the thing is generic and not a specific thing. (Art.928)

1000. The testator owned one-third of a house. If the testator gives the house as a devise to A on the testator's death, will A get the entire house?

NO. The devise is understood to cover only one-third of the house. An exception occurs when the testator expressly declares that he gives the thing in its entirety despite the fact that he is only a part owner. (Art.929)

1001. Is the legacy or devise of a thing belonging partly to the testator and partly to a third person valid or void?

The legacy or devise of a thing belonging partly to the testator and partly to a third person is valid. In such case, the legacy or devise shall be limited only to the interest of the testator in the thing. There is, however, an exception to this and that he is bequeathing or devising the entirety. This is, of course, predicated on the fact that he is aware that the thing belongs partly to himself and partly to a third person. (Art. 929)

1002. Refer to the preceding number, if it is valid, how shall it be complied with?

As far as the general rule is concerned, the legacy or devise can easily be complied with by the delivery of the interest of the testator in the thing to the legatee or devisee. This obligation shall be performed by the estate or the person charged by the testator. The exception, however, is different. After the testator has executed the will, he may acquire the interest of the third person in the thing. If he does not, then such obligation shall be performed by the estate or by the person charged. If the third person refuses to alienate his interest or demands an excessive price, then the estate or the person charged shall merely deiiver to the legatee or devisee the interest of the testator plus the just value of the interest of the third person. (Arts. 930, 931)

1003. Is the legacy or devise of a thing belonging entirely to a third person valid or void?

The validity of a legacy or devise of a thing belonging entirely to a third person shall depend upon whether the testator erroneously believed that the thing pertained to him or knew that the thing belonged to another.

If the testator erroneously believed that the thing pertained to him, the legacy or devise is void. There is, however, and exception to this rule. If afterwards, the thing becomes his, by whatever title, the legacy or devise would be valid. In such case, there would then be no question at all with regard to how it can be complied with. (Art.930)

1004. Refer to the preceding number, if it is valid, how shall it be complied with?

If the testator knew that the thing belonged to another, the legacy or devise is valid. In such case, he may acquire the thing from the third person before he dies. If he does not, then such obligation shall be performed by his estate or by the person charged by him. If the 3rd person refused to alienate the thing or if he demands an excessive price, then the estate or the person charged shall merely pay to the legatee or devisee the just value of the thing. (Arts.930,
931)

1005. Is the legacy or devise of a thing belonging entirely to the legatee or devisee valid or void?

The legacy or devise of a thing belonging entirely to the legatee or devisee is void. This is clear from the provisions of Arts. 932 and 933 of the NCC. Manresa , however, mentions one exception to this rule and that is when the testator himself before his death acquires the thing by whatever title. In this exceptional case, the legacy or devise would be valid, applying the provisions of Art. 930 of the NCC.

1006. The testator in his will bequeathed a fish pond to A. However, he does not own the fishpond. Suppose the testator does not order his estate to purchase it, does article 931 apply?

According to Tolentino, when the testator gave the legacy or devise knowing that it is not his, there is an implied order to the estate to acquire it. Apply Art. 931 by analogy. At the very least, there is a doubt and doubts are resolved in favor of validity

1007. T gave L a particular car in his will. It turned out that at the time T made the will, L was already the owner of the car referred to. On T's death, L claimed the monetary value of the car. Is L correct?

No, because the legacy is void, since the car already belonged to him at the time of the execution of the will. The law provides that the legacy or devise of a thing which at the time of the execution of the will already belonged to the legatee or devisee shall be ineffective, even though the person may have some interest therein.

1008. T gave D a parcel of land in his will. At the time T made his will, he and D were co-owners of the land concerned. When T dies, does D get anything?

D will inherit only the part appertaining to T. the part originally his continues to remain his, but not by inheritance, for he was already the owner thereof. Neither can he claim the monetary value of said part, for concerning said part, the legacy is void.

1009. T in his will gave L the car of L. Later, L sold the car to X, and at T's death, the car was still owned by X. Does L get anything from T's estate?

No, the legacy being ineffective and void, since the car belonged to L at the time of the execution of the will. Its subsequent alienation is immaterial.

1010. Suppose in the above problem, L had bought back the car from X for P300, 000.00, and at the time of T's death, the car was again owned by L, is L entitled to get anything from the estate of T?

No, the legacy belonged to L at the time of the execution of the will, and the legacy is therefore void. The subsequent alienation and re-acquisition are immaterial.

1011. T in his will gave L the car of B. Later, B sold the car to L who remained owner thereof till T's death. Can L get anything by virtue of the will?

Yes, he can be entitled to reimbursement for what he had paid to B. Under the law, if the legatee or devisee acquires it gratuitously after such time, he can claim nothing by virtue of the legacy or devise; but it has been acquired by onerous title he can demand reimbursement from the heir or the estate. In this problem, L acquired the car by onerous title, hence he is entitled reimbursement.

1012. T in his will gave L the car of B. Later, B donated the car to L who remained owner thereof till T's death. Can L get anything by virtue of the will?

No, L would not get anything because the law provides that if the legatee or devisee acquires it gratuitously after such time, he can claim nothing by virtue of the legacy or devise. In the problem, the acquisition was gratuitous, therefore no reimbursement.

1013. If the acquisition by the legatee after the execution of the will had been from the testator himself, as when T in his will gave L a car. Later, T sold the car to L, would the legacy be void?

No, while it is true that ordinarily alienation by the testator revokes the legacy, the exception is when the alienation is in favor of the legatee himself. Since the law does not distinguish, the legatee would still be entitled to reimbursement from the testator himself, if the acquisition was by onerous title.

1014. T in his will gave A a Cartier watch which he(T) had pledged in a pawnshop; B, a parcel of land that was mortgaged to X for P500,000.00; and C, another parcel of land the usufruct of which was being enjoyed by Y. On T's death, will A, B, and C get their gifts free from the abovementioned encumbrances?

The estate should pay for the pawnshop and mortgage debts, hence, A and B should get their gifts

unencumbered because the law says if the testator should bequeath or devise something pledged or mortgaged to secure a recoverable debt before or after the execution of the will, the estate is obliged to pay the debt, unless the contrary intention appears.

However, C must bear the burden of the usufruct until the usufruct is legally extinguished because the law provides that any other charge, perpetual or temporary, with which the thing bequeathed is burdened, passes with if to the legatee or devisee.

1015. What are the remedies of a mortgagee (creditor) if the mortgaged property is given as a devise to somebody by the testator?

The mortgagee has three alternative remedies:

a. He can abandon his security (disregard the mortgage) and prosecute his claim for his now unsecured credit before the probate court.

b. He can foreclose the mortgage or realize upon the security by an ordinary action in court making the executor or administrator the party defendant. In case of deficiency judgment, he can prove such deficiency judgment later in the probate court against the estate of the deceased.

c. He can rely on the mortgage alone and foreclose at anytime within the statute of limitations (10 years from maturity). In the meantime, he will not receive any share in the distribution of the other assets of the estate.

1016. What legacy does Article 935 speak of? Give examples.

Article 935 speaks of two legacies:

a. The legacy of credit (against a third person). An example of this is when T is D's creditor to the amount of P1million. In his will, T gave this credit to L.

b. The legacy of remission or release of a debt of the legatee. An example of this is when T is L's creditor to the amount of P1 million. In his will, T remitted (waived or condoned) the debt of L.

1017. What is the nature of a legacy of credit and a legacy of remission?

The legacy of credit is really a novation of credit, the legatee is subrogated in favor of the testator who is the original creditor. On the other hand, the legacy of remission amounts to a sort of donation mortis causa and is therefore subject to the rule of inofficious testamentary dispositions, this may be reduced if the legitime is impaired.

1018. T assigned his credit of P1 million (over D) to L in his will. Later, P600, 000.00 was paid to T. when T died, the credit consisted of only P400, 000.00 plus interest. How much should go to L?

It is only the amount of P400,000.00 plus interest should go to L because the legacy of a credit is effective only as regards that part still existing at the testator's death, with all the interests still due.

1019. In the legacy of remission, is it mandatory for the estate to issue an acquittance (receipt or acknowledgement of payment)?

No, the law requires the estate to give the legatee favored an acquittance should he request one.

1020. T give his credit of P1 million over D to L. After the execution of the will, T brought an action against D for the recovery of the debt. What is the effect of T's bringing an action against D?

The bringing of the action revokes T's legacy. This true, whether or not the time T dies, D shall have paid the debt because it is the bringing of the action that revokes, not the payment itself.

1021. What "action" is referred to in Article 936 that would revoke the legacy?

The action must be a judicial action. A mere extrajudicial demand is not sufficient.

1022. Can the testator provide that the bringing of an action will not revoke the legacy?

It is permissible for the testator to provide that the mere bringing of an action will not revoke the legacy insofar as the uncollected balance is concerned.

1023. Does the rule on revocation through bringing an action apply only to legacy of credit?

No, it applies whether the legacy is of a credit or a remission. The first paragraph of Article 936 applies to both.

1024. L owed T P1 million, as a security L pledged a ring to T. T gave to L a legacy of the ring. Is the debt extinguished?

No, only the pledge has been extinguished. The debt itself still remains, for the same is not remitted.

1025. Suppose in the preceding number, the principal debt of P1 million is remitted, what is the effect of such remission?

The principal debt as well as the pledged is extinguished. The law states that if the principal obligation is remitted, the accessory obligation (pledge) is automatically remitted for its basis has disappeared.

1026. The law (2nd paragraph of Art 936) mentions only of "pledge", does the rule apply exclusively to pledges?

It is believed that the rule can also refer to a mortgage, an antichresis or any other security.

1027. Does the legacy of remission include future debts?

The legacy of release or remission is either generic or specific. It is generic when no particular debt is mentioned and it is specific when a particular debt is mentioned. The law states that in case of generic legacy or release or remission, only those existing at the time the will was made should be included. Subsequent ones are excluded.

1028. Suppose several debts are remitted, should they all be given effect?

Yes, unless the free portion is not enough, in which case, the rules on application of payments, should by analogy be applied.

1029. A owes B P1 million. In his will, A gave B a legacy of P1 million. How much will B get in all?

B will get P2 million unless the estate is exhausted after the payment of debts. It ust be noted that a legacy or a devise is supposed to be a gift, not a payment. It is the act of liberality on the part of the testator, and not an obligation.

1030. A owes B P1 million, but C owes A P1.2 million. If A gives his credit of P200, 000.00 as a legacy to B, and expressly declares that the legacy should be applied to B's credit. What is the effect?

There will be a payment of P1 million and a true legacy of P 200,000.00 for the balance.

1031. T owes C P100,000. In his will, T gave his Fender electric guitar to C "in payment of his debt." Suppose, C accepts the guitar, what effect would this have on his credit?

The credit is deemed completely extinguished, for in effect an adjudicacion en pago has been made, unless C had made his acceptance conditional or with reservations.

1032. A thinks he owes B P100,000, but the debt is really P880,000. The P100,000 is ordered paid in the will. Will B get the extra P20,000?

B will not get the extra P20,000 unless a contrary intention appears, because the intent is really a to grant a legacy.

1033. Is a legacy or devise considered payment of a debt? Why?

Generally, a legacy or devise is not considered payment of a debt because if it is, then it would be a useless legacy or devise since it will really be paid. An exception would be if the testator provide otherwise.

Article 940 - 956

1034. Who is presumed to be given the choice in alternative legacies or devises?

In alternative legacies or devises, the choice is presumed to be left to the heir upon whom the obligation to give the legacy may be imposed, or the executor or administrator of the estate if no particular heir is so obliged (Art. 940, 1st par.).

1035. If the heir, legatee, or devisee, who may have given the choice, dies before making it, who will then make the choice?

If the heir, legatee, or devisee, who may have given the choice, dies before making it, this right shall pass to the respective heirs (Art. 940, 2nd par.).

1036. In alternative legacies or devises, what provisions of the Civil Code shall be observed?

In alternative legacies or devises, except as herein provided, the provisions of this Code regulating obligations of the same kind shall be observed, save such modifications as may appear from the intention expressed by the testator (Art. 940, 4th par.)

1037. A orders B, a devisee, to give C a ring or a car. Who has the right to choose in alternative legacies or devises?

B is given the right to choose. In alternative legacies or devises, the choice is presumed to be left to the heir upon whom the obligation to give the legacy or devise may be imposed, or the executor or administrator of the estate if no particular heir is so obliged (Art. 940).

1038. What are the rules in a legacy or devise of generic personal and generic real property?

A legacy of generic personal property shall be valid even if there be no things of the same kind in the estate. On the other hand, a devise of indeterminate real property shall be valid only if there be immovable property of its kind in the estate (Art 941).

1039. Who has the right of choice in a legacy of generic personal property?

The right of choice shall belong to the executor or administrator who shall comply with the legacy by the delivery of a thing which is neither of inferior nor of superior quality (Art. 941, 3rd par.).

1040. What period of time must be considered in determining whether or not the property exists in the estate? (This is important in generic real properties).

The time of the testator's death, for it is "his estate" to which the law refers. The time of the execution of the will is therefore not important.

1041. Whenever the testator expressly leaves the right of choice to the heir, or to the legatee or devisee, may the former give whichever he may give or may the latter choose whichever he may prefer?

Yes, they may. Whenever the testator expressly leaves the right of choice to the heir, or to the legatee or devisee, the former may give or the latter may choose whichever he may prefer (Art. 942).

1042. In alternative legacy or devise, is the right of choice revocable?

No. A choice once made shall be irrevocable (Art. 943).

1043. How long does a legacy for education last?

A legacy for education lasts until the legatee is of age, or beyond the age of majority in order that the legatee

may finish some professional, vocational or general course, provided he pursues his course diligently (Art. 944, 1st par.).

1044. How long does a legacy for support last?

A legacy for support lasts during the lifetime of the legatee, if the testator has not otherwise provided.

1045. If the testator has not fixed the amount of a legacy for education or support, how shall it be fixed?

If the testator has not fixed the amount of such legacies, it shall be fixed in accordance with the social standing and the circumstances of the legatee and the value of the estate (Art. 944, 3rd par.).

1046. If the testator during his lifetime used to give the legatee a certain sum of money or other things by way of support, should the same amount be deemed bequeathed if there is no fix amount of support?

Yes. If the testator during his lifetime used to give the legatee a certain sum of money or other things by way of support, the same amount should be deemed bequeathed, unless it be markedly disproportionate to the value of the estate.

1047. If a periodical pension, or a certain annual, monthly, or weekly amount is bequeathed, what may the legatee petition the court in order to implement the legacy?

If a periodical pension, or a certain annual, monthly, or weekly amount is bequeathed, the legatee may petition the court for the first installment upon the death of the testator, and for the following ones which shall be due at the beginning of each period; such payment shall not be returned, even though the legatee should die before the expiration of the period which has commenced (Art. 945).

1048. If the thing bequeathed should be subject to a usufruct, is the legatee or devisee obliged to respect such right?

Yes. If the thing bequeathed should be subject to a usufruct, the legatee or devisee shall respect such right until it is legally extinguished (Art. 946).

1049. When is right to the legacy or devise transmitted? When is the right to the property itself vested?

Art. 947 states that the legatee or devisee acquires a right to the pure and simple legacies or devises from the death of the testator; and transmits it to his heirs. The right to the property itself is vested as follows:

1. If specific, it is from the testator's death;
2. If generic, it is from the time a selection has been made, so as to make the property specific;
3. If alternative, it is from the time the choice has been made; and
4. If acquired from a stranger by virtue of an order by the testator, it is from the moment of such acquisition.

1050. In a conditional legacy or devise, when does the right to the legacy or devise vest (as distinguished from the right to the property itself)?

From the moment of death also, provided that the condition is fulfilled.

1051. What are the rules in case of legacies or devises with a term?

If the legacy or devise is with a suspensive term, the right vests from the moment of the testator's death, although it does not become effective until after the arrival of the suspensive term.
If the legacy or devise is with a resolutory term, the right also vests from the moment of the testator's death, but will end when the resolutory term arrives.

1052. If the legacy or devise is of specific or determinate thing pertaining to the testator, may the legatee or devisee acquire ownership over the income which was due and unpaid before the testator's death?

No. If the legacy or devise is of specific or determinate thing pertaining to the testator, the legatee or devisee acquires the ownership thereof upon the death of the testator, as well as any growing fruits, or unborn offspring of animals, or uncollected income; but not the income which was due and unpaid before the latter's death (Art. 948, 1st par.).

1053. Who has the burden of risk or of losing the thing bequeathed from the moment the testator dies?

From the moment of the testator's death, the thing bequeathed shall be at the risk of the legatee or devisee, who shall, therefore, bear its loss or deterioration, and shall be benefited by its increase or improvement, without prejudice to the responsibility of the executor or administrator (Art. 948, 2nd par.).

1054. If the testator orders property to be sold at a certain price, and charges the proceeds therefrom with the payment of certain legacies – should the legacies be reduced if the property should be sold for a smaller amount?

No, the legacies should not be reduced even if the property be sold for a smaller amount, as long as the legitimes are not impaired, and as long as there is no such intention to reduce. The fixing of the price is merely a statement of the desire of the testator to have the property sold at such price in the hope of obtaining greater profit for the compulsory heirs. We cannot presume that the testator wanted to have that selling price serve as the basis for the amount of the legacies, considering the fact that he is presumed to know that material values always fluctuate in the world of nature. (In the Testate of Isidro Aragon, January 23, 1951)

1055. T made a first will giving L as legatee a monthly sum of $100 for 10 years. T also provided in the will that it was intention to give a donation inter vivos of $100 monthly for 10 years to L, and that the legacy in the will was to be effective "If, and only if I have not done this during my lifetime." After a few days, T, making reference to the will, made a donation inter vivos of "$100 monthly for 10 years" to L. Payment was then made monthly for 2 years. Then T made a second will which repeated the original legacy with the same proviso, made changes in other legacies, and revoked all other portions in the first will. Shortly after his execution of the new will, T discontinued the monthly payment. T is still alive, but L now brings an action for ADEMPTION (or satisfaction) of the monthly payments stipulated in the legacy. T claims that L must wait for the testator's death, since it is only at that time that right to legacy vests. Is T correct?

Yes. Had a new will not been executed, the ademption of the legacy could have prospered, in view of the deed of donation inter vivos. But because a new will was made (although the original legacy was repeated), it is clear that T's intention now is really to give the rest as a legacy and (no longer as a donation) to L. The new will is not exactly the same as the first will, and therefore cannot be said to be merely a republication of the first. The operation of a gift as an ademption is primarily a matter of the testator's intent, and it is clear that T want to continue with the giving, not as a donation inter vivos but as a legacy. L will therefore have to wait for T's death, inasmuch as ademption in this case, would not prosper. (Lake v. Harrington 120
Miss. 74 [1953])
(Note: Ademption is the process of satisfying or making effective inter vivos a disposition mortis causa.)

1056. Who shall get the fruits or interests of a bequest which is not a specific and determinate thing from the time of the testator's death?

If the bequest should not be of a specific and determinate thing, but is generic or of quantity, its fruits and interest from the time of the death of the testator shall pertain to the legatee or devisee if the testator has expressly so ordered (Art. 949).

1057. If the bequest should not be of a specific and determinate thing, but is generic or of quantity, when is the legatee entitled to its fruits and interests?

Since the recipient will not know definitely what he will receive until after a selection or choice has been made, it follows that he is entitled to the fruits only from the time such choice has been made, for it is only after such choice that the obligation to deliver the gift to him arises.

1058. T in his will gave D a parcel of land 100 sq. meters in area. At his death, T left three parcels of land, each of which was 100 sq. meters. Two weeks after T's death, the executor made his choice. Aside from delivering the land to the devisee, what fruits must also be given?

The fruits accruing to the land from the time the choice was made. All fruits already gathered previous to the choice belong to the devisee. (Art. 949). If the testator has expressly ordered so, then all those accruing from his death must be given.

1059. If the estate of the testator should not be sufficient to satisfy all the legacies and devises, what is the order of payment that must be followed?

If the estate should not be sufficient to cover all the legacies or devises, their payment shall be made in the following order:

1. Remuneratory legacies or devises;
2. Legacies or devises declared by the testator to be preferential;
3. Legacies for support;
4. Legacies for education;
5. Legacies or devises of a specific determinate thing which forms a part of the estate;
6. All others pro rata. (Art. 950, NCC)

1060. If there are several legacies and devises and the estate of the testator is not sufficient to satisfy them, according to Art. 911 of the NCC, they shall be reduced pro rata, while according to Art. 950 of the same Code, a specified order of payment shall be followed. How can you reconcile the apparent conflict between the two provisions?

Art. 911 applies in the following cases: (a) when the reduction is necessary to preserve the legitime of compulsory heirs from impairment whether there are donations inter vivos or not; and (b) when, although the legitime has been preserved by the testator himself by leaving to the compulsory heirs sufficient property to cover their legitime, there are donations inter vivos concurring with the legacies and devises within the free portion.

In all other cases not included within the scope of Art. 911, Art. 950 applies. More specifically, the latter applies to all cases where the conflict is exclusively among the legatees or devises themselves. This is possible in either of two cases, to wit:

1. When there are no compulsory heirs and the entire estate is distributed by the testator as legacies or devises; or
2. When there are compulsory heirs, but their legitime has already been provided by the testator and there are no donations inter vivos.

1061. Distinguish Art. 911 from Art. 950 of the New Civil Code.

As to order of preference, the order of preference in Art. 911 is as follows: legitime of compulsory heirs, donations inter vivos, preferential legacies or devises, and all other legacies or devises pro rata; whereas, the order of preference in Art. 950 is the following: remuneratory legacies or devises, preferential legacies or devises, legacies for support, legacies for education, legacies or devises of a specific determinate thing which forms part of the estate, and all other pro rata.

As to application, Art. 911 applies when the reduction is necessary to preserve the legitime of compulsory heirs from impairment whether there are donations inter vivos or not, or when, although the legitime has been preserved by the testator himself, there are donations inter vivos; whereas, Art. 950 applies when there are no compulsory heirs and the entire estate is distributed by the testator as legacies or devises, or when there are compulsory heirs but their legitime has already been provided for by the testator and there are no donations inter vivos.

When the question of reduction is exclusively among legatees or devisees themselves, Art. 950 governs; but when there is a conflict between heirs and devisees and legatees, Art. 911 applies.

1062. T left a gross estate worth P410,000 but he also had debts amounting to P50,000. In his will, the following legacies were given:

a. support – P200,000
b. education – P200,000
c. legacy of specific piano – P100,000

There was no other property. Divide the estate.

Applying the Code of Civil Procedure (Sec. 729) should make the legacies proportionately liable for the P50,000 debt. Hence, since the proportion of support, education, and piano is P200,000 to P200,000 to P100,000 (2:2:1), the P50,000 debt must also borne in the proportion of 2:2:1. Hence:

1. support is reduced by P20,000 making it P180,000
2. education is reduced by P20,000 making it P180, 000

3. piano is reduced by P10,000 making it P90, 000.

Thus, the P50,000 debts is taken cared of. Now there are no more debts, but adding all the legacies, there still a total of (P180,000 + 180,000 + 90,000) or P450,000. Applying Art. 950 of the NCC, since support and education are preferred over the piano, the P360,000 will be given in this manner:

a. support – P180,000 b. education – P180,000 c. piano – no more

P360,000

1063. Define remuneratory legacies or devises.

Remuneratory legacies or devises are those which the testator gives because he feels morally obliged to compensate certain persons, for services which do not however constitute recoverable debts.

1064. Why are remuneratory gifts first in the order of preference?

Because they are considered moral (not natural) obligations by the testator.

1065. To make the bequest "remuneratory," does said fact have to be stated in the will?

Not necessarily. It is better to so state them in the will, but evidence of this point may be given extrinsically.

1066. As between a legacy for a specific car as a remuneratory legacy, and a legacy for support, which must be preferred?

The legacy of the specific car being given as remuneratory legacy, for it is the purpose that controls.

1067. As between a legacy of P50,000 cash and P80,000 cash, which is preferred?

Neither is preferred. If necessary, both may be reduced proportionately for both come under Art. 950 (6).

1068. X, prior to his death, executed a will wherein he gives to his legitimate children, A and B, only their legitime. He bequeaths P5,000 to a friend R as remuneration for past services, P10,000 to S for support, P15,000 to E for education, and P10,000 to F as ordinary legacy. The net value of his estate is only P40,000. How shall the estate be distributed?

Since the legitime of the two (2) children has already been provided for by the testator, it is evident that the conflict with regard to the disposable free portion is exclusively among the legatees. Hence, Art. 950 of the NCC shall apply. The legacy to R shall be satisfied ahead of the others. That leaves only P15,000 out of the free portion. The legacy to S shall then be satisfied. That leaves only P5,000 out of the free portion, all of which shall go to E. Hence, nothing remains for F.

1069. Fr. R, a Roman Catholic priest and a native of Victoria, Tarlac, died in 1935, leaving a will wherein, among others, he devised 40 hectares of rice lands to his nearest male relative who shall study for the priesthood and shall become a priest. Pending fulfillment of the condition, the parish priest of Victoria shall administer the property. At the time of his death, his nearest relatives were three (3) sisters, a nephew and several grandnephews and grandnieces, not one of the male relatives became a priest. Now, more than 40 years after the death of the testator, the parish priest of Victoria, Fr. X, contends that Fr. R. intended to create a public charitable trust with the parish priest of Victoria as trustee or substitute devisee. Besides, the condition may yet to be fulfilled. Should these contentions be sustained? Why?

These contentions should not be sustained. The will of the testator is the first and principal law in the matter of testaments. A reading of the testamentary provisions regarding the disputed bequest does not support the view that the parish priest of Victoria is a trustee or substitute devisee in the event that the testator is not survived by a male relative who become a priest. That such was the intention of the testator cannot even be deduced or inferred. As far as the view that the condition may yet be fulfilled is concerned, it must be observed that the NCC provides: "In order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens, except in case of representation, when it is proper." (Art. 1025.) To construe the testamentary provisions so that the condition may be

complied with even long after the testator's death would render the provisions difficult to apply and create uncertainty with regard to the disposition of the estate. That could not have been the intention of the testator.

In reality, since the bequest has become inoperative because no male relative of the testator became a priest, the provisions of Art. 956 and 960 of the NCC are now applicable. The subject property shall nor be merged into the estate and shall be given to the legal heirs of the testator in accordance with the rules of instestate succession. (Parish Priest of Victoria vs. Rigor,
89 SCRA 493.)

1070. In his will, Reverend Father "R" devised a parcel of riceland in favor of "his nearest male relative who would study for the priesthood." The will was duly probated. No nephew of the testator claimed the devise and the testate proceeding remained pending. In the interim, the riceland was to be administered by the Parish of the locality pursuant to a project of partition approved by the Probate Court.

Twenty-one years after the testator's death, the Parish Priest filed a petition before the Court for delivery of the riceland to the Church as trustee. The legal heirs of Father "R" objected and prayed instead that the bequest be declared inoperative and that they be adjudged entitled to the riceland. It also turned out that the testator had a grandnephew (a grandson of his first cousin) who was taking the holy order in a seminary.

Would you construe the testamentary provision liberally so as to render the trust operative and to prevent intestacy, or would you declare the bequest inoperative and the legal heirs entitled to the riceland? (1980 Bar Exam)

It depends.

If the seminarian, who is presently studying for the priesthood was born or conceived before the death of Father "R," it is submitted that the testamentary provision should be liberally construed so as to prevent intestacy. Therefore, the land should be delivered to the Parish Priest as trustee or administrator pending fulfillment of the condition. The reason is obvious. There is the possibility that the seminarian might not become a priest. True, Father "R" devised the land to his nearest male relative who would study for the priesthood. Apparently, the condition has already been fulfilled. It is, however, submitted that the testatorial intention is crystal clear. The devisee must not only study for the priesthood, he must become a priest. Once he becomes a priest, the land should then be delivered to him.

If the seminarian was conceived after the death of Father "R," the bequest is certainly inoperative because of non-fulfillment of the condition imposed by the testator. Therefore, pursuant to the NCC, the legal heirs of the testator shall be entitled to the land. In other words, the land shall be merged in the mass of the hereditary estate, and from there, it shall pass to the legal heirs in accordance with the rules of intestacy. The reason is crystal clear. The seminarian cannot inherit from Father "R." Under our law, in order to be capacitated to inherit, the heir, legatee or devisee must be living at the moment the succession opens, except in case of representation when it is proper.

1071. In what condition should the thing bequeathed be when it is delivered?

The thing bequeathed shall be delivered with all its accessions and accessories and in the condition in which it may be upon the death of the testator (Art. 951).

1072. May a person discharge his obligation to deliver to the thing bequeathed by paying its value instead of delivering the very thing itself?

No. The heir, charged with a legacy or devise, or the executor or administrator of the estate, must deliver the very thing bequeathed if he is able to do so and cannot discharge this obligation by paying its value Art 952, 1st par.).

1073. May legacies of money be paid in kind instead of cash?

No. Legacies of money must be paid in cash, even though the heir or the estate may not have any (Art. 952, 2nd par.).

1074. Who will account for the expenses necessary for the delivery of the thing bequeathed?

The expenses necessary for the delivery of the thing bequeathed shall be for the account of the heir or the estate, but without prejudice to the legitime (Art. 952, 3rd par.).

1075. Can the legatee or devisee take possession of the thing bequeathed upon his own authority?

No. The legatee or devisee cannot take possession of the thing bequeathed upon jis own authority, but shall

request its delivery and possession of the heir charged with the legacy or devise, or of the executor or administrator of the estate should he be authorized by the court to deliver it (Art. 953).

1076. Can the legatee or devisee accept a part of the legacy or devise and repudiate the other, if the latter be onerous?

No. The legatee or devisee cannot accept a part of the legacy or devise and repudiate the other, if the latter be onerous (Art. 954, 1st par.).

1077. X was given a devise of a house with the stipulation that the lower story was being given gratuitously, but the upper story would be given on condition that X would not marry Y. Is X allowed to accept the lower story and renounce the upper one since the latter is onerous?

No. X is not allowed to accept the lower story and renounce the upper one since the latter is onerous (Art. 954). The reason for the law is the presumption that the testator would not have given the devise of the gratuitous lower story without the onerous upper story.

1078. Should a legatee or devisee die before having accepted the legacy or devise, how should his heirs accept or repudiate the same?

Should the legatee or devisee die before having accepted the legacy or devise, leavings several heirs, some of the latter may accept and the others may repudiate the share respectively belonging to them in the legacy or devise (Art. 954, 2nd par.).

1079. If one of the two legacies or devises is onerous, can the legatee or devisee renounce the onerous one and accept the other? How about if both are onerous or gratuitous?

No. The legatee or devisee of two legacies or devises, one of which is onerous cannot renounce the onerous one and accept the other. If both are onerous or gratuitous, he shall be free to accept or renounce both, or to renounce either. But if the testator intended that the two legacies or devises should be inseparable from each other, the legatee or devisee must either accept or renounce both (Art. 955, 1st par.).

1080. May a compulsory heir who is at the same time a legatee or devisee waive the inheritance and accept the legacy or devise?

Yes. Any compulsory heir who is at the same time a legatee or devisee may waive the inheritance and accept the legacy or devise, or renounce the latter and accept the former, or waive or accept both (Art. 955, 2nd par.).

1081. Where shall the legacy or devise go if the legatee or devisee cannot or is unwilling to accept it?

If the legatee or devisee cannot or is unwilling to accept the legacy or devise, or if the legacy or devise for any reason should become ineffective, it shall be merged into the mass of the estate, except in cases of substitution and of the right of accretion (Art. 956).

Article 957 - 973

1082. When is a legacy or devise deemed without effect?

When the subject is transformed, alienated or lost.

1083. When may a legacy or devise be considered transformed?

In form, when the external or outward appearance of the thing is changed (plain cloth made into a suit). in denomination when the name given according to is essential element, specie or genus is changed (school converted into an apartment house).

1084. Loss of the legacy or devise may be in the form of?

Physical loss and legal or juridical loss, as in expropriation proceedings.

1085. What is the effect if there is a mistake in the name of the thing bequeathed or devised?

A mistake as to the name of the thing bequeathed or devised is of no consequence, if it is possible to identify the thing which the testator intended to bequeath or devise.

1086. What does the phrase "testators relatives" include?

Relatives within the fifth degree, since the persons farther than this are no longer considered relatives, relatives by affinity are excluded.

1087. What is legal succession?

Legal succession is that kind of succession prescribed by the law and presumed to be the desire of the deceased which takes place when the expressed will of the decedent has not been set down in a will.

1088. When may legal or intestate succession take place?

1. If the 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 a case, legal succession shall take place only with respect to the property which the testator has no 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 code.

1089. May a probate court determine ownership of the subject?

The jurisdiction of the regional trial court as a probate court or intestate court relates only to matters having to do with the settlement of the estate and probate of the will of the deceased persons and does not extend to the determination of questions of ownership that arise during the proceedings.

1090. May an intestate heir be declared the owner by filing a petition in court to declare them as such?

No. Before intestate heirs can inherit on the ground that the will is void, there must first be a declaration of the nullity of the will or a positive disallowance of a will.

1091. May intestate heirs be disinherited?

Yes, if the intestate heirs are also compulsory heirs but not if they are not compulsory heirs.

1092. May the state be excluded as a legal heir?

The state as a legal heir must never be excluded expressly because if there will be no relative left, a case might arise when no one will succeed to the property.

1093. What is the implication if a person is excluded?

When a person is excluded, it is he alone who is excluded and not his own descendants or other heirs.

1094. What is the effect of the principle the nearest excludes the farthest to the right of representation?

It is without prejudice to the right of representation because by virtue of representation the farther becomes just as near.

1095. Between a grandfather and a brother, who will inherit intestate from the decedent?

Although it is true that both as just as near in degree, still it is the grandfather alone who should inherit because the direct line is preferred over the collateral line.

16)Q. How must shares be divided between relatives in the same degree?

A. Relatives in the same degree shall inherit in equal shares, subject to the provisions of art 1006 with respect to relatives of full and half blood, and of art 987 par 2, concerning division between the paternal and maternal lines.

1096. How is proximity of relationship determined?

Proximity of relationship is determined by the number of generations, each forming a degree.

1097. What constitutes a direct line of relationships?

A direct line is that constituted by the series of degrees among ascendants and descendants.

1098. What constitutes a collateral line of relationships?

A collateral line is that constituted by the series of degrees among persons who are not ascendants and descendants, but who come from a common ancestor.

1099. Define what is a descending line of relationship?

The descending line of relationship unites the head of the family with those who descend from him.

1100. Define what is an ascending line of relationship?

The ascending line binds a person with those from whom he descends.

1101. How many degrees is a person removed from his uncle?

A person is three degrees removed from his uncle

1102. How many degrees is a child removed from his great-grandparent?

A child is three degrees removed from his great-grandparent.

1103. How many degrees is a person removed from his first cousin?

A person is four degrees removed from his first cousin.

1104. When is there a full blood relationship?

There is full blood relationship between persons who have the same mother and the same father.

1105. When is there a half blood relationship?

There is half blood relationship when the person have the same father but not the same mother of the same mother but not the same father.

1106. Granting that there are several relatives on the same degree and some are unwilling or incapacitated to succeed, what happens to their share?

Without prejudice to the right of representation when it is proper, the share of those unwilling or incapacitated shall accrue to the others of the same degree.

1107. One of the three first cousins left with a Php 300,000 estate repudiates of is incapacitated to succeed, what happens to his share?

Each of the two remaining cousins will get Php 100,000 in their own right and Php 50,000 by virtue of accretion.

1108. May a person who repudiates be represented?

No, and heir repudiating cannot be represented.

1109. Who may repudiate an inheritance?

A person entitled to receive an inheritance may repudiate such inheritance.

1110. How may one inherit if the heir or all heirs repudiate the inheritance?

The person next in line will inherit in his own right.

1111. In a situation where is the sole heir or all heirs repudiate the inheritance, who may be called to succeed?

The relatives of the following degree, in their own right and not by right of representation.

1112. Suppose one of the two heirs is incapacitated and the other repudiated,how may their children inherit?

The children of the incapacitated my inherit by right of representation and the children of the one who repudiated are excluded for he cannot be represented.

1113. Define right of representation.

A right created by fiction of law where in a 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 able to inherit.

1114. When may right of representation exist?

Right of representation exists when there is predecease, incapacity and disinheritance.

1115. From whom does the representative inherit?

The representative does not inherit from the person represented but rather from the person whom the person represented could have inherited from.

1116. In intestate succession, right of representation will cover what properties?

The right of representation when proper in intestate succession covers all the person being represented would have inherited.

1117. In testate succession, the right of representation will cover what properties?

The right of representation when proper in testate succession only covers the legitime.

1118. May an adopted child represent?

No, because there is no filiation whether by blood or by law between the adopted child and the parent of the adopter. While a person thru his legal actuation can give himself an heir, he cannot by the same action gives his relatives an heir.

1119. May an adopted child be represented?

No,because there is no filiation whether by blood or by law between the adopted child and the parent of the adopter. While a person thru his legal actuation can give himself an heir, he cannot by the same action gives his relatives an heir.

1120. Does right of representation cover rights and obligations?

Yes. The representative succeeds not only to the properties and rights of the decedent, but also to all the latter's transmissible obligation.

1121. If the child represents his predeceased father in succession to the grandfather's estate, the child inherits from?

The child inherits from the grandfather and not his own father since the law elevated him to his fathers position.

1122. Who calls the representative to succession?

The law calls the representative to the succession and not by the person represented.

1123. To whom will the representative succeed?

The representative does not succeed the person represented but the one whom the person represented would have succeeded.

1124. May the property received by right of representation be used to cover debts of the person represented?

No since this is not a part of the estate of the person represented but rather part of the decedents estate, where the representative got the property from.

1125. Where may the right of representation take place?

The right of representation takes place only in the direct descending line but never in the ascending.

1126. May the right of representation occur in the collateral line?

Yes, in the collateral line, it takes place only in favor of the children of the brothers or sisters, whether they be of the full or half blood.

1127. Between the nephew and grand nephew of the decedent, who will inherit?

Only the nephew will inherit, the right of representation in the collateral line takes place in favor only of the children of the brothers or sisters.

1128. If the child died and was followed a day after by his father, may the grandfather inherit by right of representation?

No, right of representation never occurs in the ascending line.

1129. What is required before representation may take place?

In order that representation may take place, it is necessary that the representative himself is capable of succeeding the decedent.

Cases:

INTESTATE ESTATE OF MANOLITA GONZALES VDA. DE CARUNGCONG, represented by MEDIATRIX CARUNGCONG, as Administratrix, vs PEOPLE OF THE PHILIPPINES and WILLIAM SATO (G.R. No. 181409 February 11, 2010)

Facts:

Zenaida Carungcong, married to William Sati is the sister of the administratrix and daughter of Manolita Gonzales vda. de Carungcong. Zenaida predeceased her mother. Her husband William Sato willfully, unlawfully and feloniously defraud MANOLITA GONZALES VDA. DE CARUNGCONG in the following manner, to wit: the said accused induced said Manolita Gonzales Vda. De Carungcong, who was already then blind and 79 years old, to sign and thumbmark a special power of attorney dated November 24, 1992 in favor of Wendy Mitsuko C. Sato, daughter of said accused, making her believe that said document involved only her taxes, accused knowing fully well that said document authorizes Wendy Mitsuko C. Sato, then a minor, to sell, assign, transfer or otherwise dispose of to any person or entity of her properties all located at Tagaytay City.

1130. May Willian Sato Validly dispose the property on the ground that he is the co-owner of said property, he being the husband of the daughter of the decent?

Zenaida never became a co-owner because, under the law, her right to the three parcels of land could have arisen only after her mother's death. Since Zenaida predeceased her mother, Manolita, no such right came about and the mantle of protection provided to Sato by the relationship no longer existed.

1131. May William Sato validly invoke ART. 332. Persons exempt from criminal liability. – No criminal, but only civil liability shall result from the commission of the crime of theft, swindling, or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime

Art 332 of the revised penal code maybe be invoked by William Sato since his affinity with his mother in-law did not terminate despite the death of his wife, the provision however of this article only covers the crime theft, swindling, or malicious mischief and his crime is not a simple estafa nor simple fraud but a complex crime of estafa thru falsification of public document, thus, the invocation is not proper.

INTESTATE ESTATE OF PETRA V. ROSALES, IRENEA C. ROSALES vs FORTUNATO ROSALES, MAGNA ROSALES ACEBES, MACIKEQUEROX ROSALES and ANTONIO ROSALES (G.R. No. L-40789 February 27, 1987)

In this Petition for Review of two (2) Orders of the Court of First Instance of Cebu the question raised is whether the widow whose husband predeceased his mother can inherit from the latter, her mother-in-law.

It appears from the record of the case that on February 26, 1971, Mrs. Petra V. Rosales, a resident of Cebu City, died intestate. She was survived by her husband Fortunate T. Rosales and their two (2) children Magna Rosales Acebes and Antonio Rosales. Another child, Carterio Rosales, predeceased her, leaving behind a child, Macikequerox Rosales, and his widow Irenea C. Rosales, the herein petitioner. The estate of the dismissed has an estimated gross value of about Thirty Thousand Pesos (P30,000.00).

On July 10, 1971, Magna Rosales Acebes instituted the proceedings for the settlement of the estate of the deceased in the Court of First Instance of Cebu. The case was docketed as Special Proceedings No. 3204-R. Thereafter, the trial court appointed Magna Rosales Acebes administratrix of the said estate.

In the course of the intestate proceedings, the trial court issued an Order dated June 16, 1972 declaring the following in individuals the legal heirs of the deceased and prescribing their respective share of the estate —

Fortunata T. Rosales (husband), 1/4; Magna R. Acebes (daughter), 1/4; Macikequerox Rosales, 1/4; and Antonio Rosales son, 1/4.

This declaration was reiterated by the trial court in its Order I dated February 4, 1975. These Orders notwithstanding, Irenea Rosales insisted in getting a share of the estate in her capacity as the surviving spouse of the late Carterio Rosales, son of the deceased, claiming that she is a compulsory heir of her mother-in-law together with her son, Macikequerox Rosales.

1132. Irenea Rosales may be classified as what type of heir? is a widow (surviving spouse) an intestate heir of her mother-in-law?

Intestate or legal heirs are classified into two (2) groups, namely, those who inherit by their own right, and those who inherit by the right of representation. Restated, an intestate heir can only inherit either by his own right, as in the order of intestate succession provided for in the Civil Code, or by the right of representation provided for in Article 981 of the same law.

Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

Art. 981. Should children of the deceased and descendants of other children who are dead, survive, the former shall inherit in their own right, and the latter by right of representation.

Art. 982. The grandchildren and other descendants shag inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions.

Art. 999. When the widow or widower survives with legitimate children or their descendants and illegitimate children or their descendants, whether legitimate or illegitimate, such widow or widower shall be entitled to the same share as that of a legitimate child.

There is no provision in the Civil Code which states that a widow (surviving spouse) is an intestate heir of her mother-in-law. The entire Code is devoid of any provision which entitles her to inherit from her mother-in- law either by her own right or by the right of representation. The provisions of the Code which relate to the order of intestate succession (Articles 978 to 1014) enumerate with meticulous exactitude the intestate heirs of a decedent, with the State as the final intestate heir. The conspicuous absence of a provision which makes a daughter-in-law an intestate heir of the deceased all the more confirms Our observation. If the legislature intended to make the surviving spouse an intestate heir of the parent-in-law, it would have so provided in the Code.

Petitioner argues that she is a compulsory heir in accordance with the provisions of Article 887 of the Civil Code which provides that:

Art. 887. The following are compulsory heirs:

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;
(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;
(3) The widow or widower;
(4) Acknowledged natural children, and natural children by legal fiction; (5) Other illegitimate children referred to in article 287;

Compulsory heirs mentioned in Nos. 3, 4 and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

The aforesaid provision of law refers to the estate of the deceased spouse in which case the surviving spouse (widow or widower) is a compulsory heir. It does not apply to the estate of a parent-in-law. Indeed, the surviving spouse is considered a third person as regards the estate of the parent-in-law.

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1133. A repudiated his inheritance from his father. Can he be represented by his son, B? Why?

a. No. 8ecause heirs who repudiate their share may not be represented (Art. 977).
b. Yes. Because heirs who repudiate their share may be represented. c. No. Because repudiation is not allowed by law.
d. Yes. Because B is entitled by right of representation.

1134. A and B are married. They have legitimate children, C and D. C is married to E and they have children, F and G. F and G renounced their inheritance from C. Can F and G represent their father, C, in A's inheritance in case C would predecease his father. Why?

a. Yes. 8ecause a person may represent him whose inheritance he has renounced. (Art. 976)
b. No. Because a person cannot represent him whose inheritance he has renounced. c. Yes. Because F and B is entitled by right of representation.
d. No. Because renunciation is not allowed.

1135. B and C are A's brothers. X is the child of B; Y and Z, the children of C. Estate is P900,000. A is the decedent. If C predeceases A, divide the estate. (Art 975)

a. 8 gets P450,000; and Y and Z each gets P225,000.
b. B, X, Y and Z gets P225,000 each. c. B, Y and Z gets P300,000 each.
d. B and X gets P225,000 each; and Y and Z gets P225,000 each.

1136. B and C are A's brothers. X is the child of B; Y and Z, the children of C. Estate is P900,000. A is the decedent. If B and C predeceases A, divide the estate. (Art 975)

a. X gets P450,000; and Y and Z each gets P225,000.
b. X, Y and Z gets P225,000 each. c. X, Y and Z gets P300,000 each. d. X, Y and Z will not get anything.

1137. A has 2 children B and C. B has 2 children, D and E. D has a child F. B dies in 2002 but D repudiates his share. Later, A dies in 2004. Can D inherit from A? (Art. 976)

a. D can still inherit from A by representing 8.
b. D cannot inherit from A because he repudiated his share. c. D can inherit from A in his own right.
d. D cannot inherit from A because B died first.

1138. A has 2 children B and C. B has 2 children, D and E. D has a child F. B dies in 2002 but D repudiates his share. Later, A dies in 2004. Can F inherit from B by representation? (Art. 977)

a. No. F cannot represent D in the inheritance from 8 because heirs who repudiate their share may not be represented.
b. Yes. F can represent D in the inheritance from B because heirs who repudiate their share may be represented.
c. No. F cannot represent D in the inheritance from B because heirs who repudiate their share may inherit only in his own right.
d. Yes. F can inherit from B but in his own right.

1139. Estate is P1 million. There are 5 legitimate children, A,B,C, D and E. Divide the estate. (Art. 980)

a. Each gets P200,000.

b. Each gets P100,000; P500,000 is the free portion.
c. Since A is the eldest, he gets P300,000. The other 4 gets P175,000 each.
d. Each gets P100,000; A, being the eldest, can apportion the free portion (P500,000) to himself.

1140. Estate is P1 million. Surviving relatives are A, a legitimate child; B and C, legitimate children of X, a deceased legitimate child of the decedent. Divide the estate. (Art. 981)

a. A gets P500,000. 8 and C each gets P250,000.
b. Each gets 1/3 of P1 million.
c. A gets P250,000. B and C each gets P125,000. d. A gets P1 million. B and C nothing.

1141. A is the decedent. B ,C and D are his children. E, F and G are the children of B. H is the child of C. D has a child J. K and L are J's children. Estate is P900,000. B, C, D and J predeceased A. Divide the property. (Art. 982)

a. E, F and G will each get P100,000; H gets P300,000; and K and L will each get P150,000.
b. E, F and G will each get P100,000; H gets P300,000; and K and L will get nothing. c. E, F, G, and H will each get P225,000.
d. E, F, G, H, K and L will each get P150,000.

1142. A has a child B who was adopted by C. If B dies intestate without issue, who is the legal heir of B? (Art. 984)

a. A will be the legal heir
b. C will be the legal heir.
c. A and C will be the legal heirs.
d. There is no legal heir.

1143. A died intestate leaving P1 million. Surviving relatives are B, his father, and C (A's) brother. Divide the property. (Art. 985)

a. The whole estate goes to 8 to the exclusion of C.
b. The whole estate goes to C to the exclusion of B. c. Each gets P500,000.
d. B gets P750,000; C gets P250,000.

1144. A died intestate leaving P1 million. Surviving him are his father, B; his grandfather C (father of B); and his grandfather D (father of A's mother). Divide the estate. (Art. 986)

a. 8 gets the whole P1 million.
b. Each gets 1/3 of P1 million.
c. B gets P500,000; D gets P500,000.
d. B gets P250,000; C gets P250,000; and D gets P500,000.

1145. A and B are the parents of E. C and D are the parents of F. E and F are married to each other, and G is their child. Estate of G who dies without a will is P1 million. If A, B, C, D, E, and F survive, how will the estate be divided? (Art. 986)

a. E and F gets P500,000 each.
b. Each gets 1/6 of P1 million. c. E gets P1 million
d. A, B, C, and D gets P250,000 each; E and F gets nothing.

1146. A and B are the parents of E. C and D are the parents of F. E and F are married to each other, and G is their child. Estate of G who dies without a will is P1 million. If A, C, D and F survive, how will the estate be divided? (Art. 986)

a. F gets P1 million.
b. A gets P500,000; F gets P500,000. c. Each gets P250,000.
d. A gets P1 million

1147. A and B are the parents of E. C and D are the parents of F. E and F are married to each other, and G is their child. Estate of G who dies without a will is P1 million. If A and B survive, how will the estate be divided? (Art. 987)

a. Each gets P500,000.
b. A gets P1 million. c. B gets P1 million.
d. A gets P750,000; B gets P250,000.

1148. A and B are the parents of E. C and D are the parents of F. E and F are married to each other, and G is their child. Estate of G who dies without a will is P1 million. If A, B and C survive, how will the estate be divided? (Art. 987)

a. C gets P500,000. A and 8 gets P250,000 each.
b. Each gets 1/3 of P1 million. c. Each gets P250,000.
d. A and B gets the P1 million.

1149. A has 3 illegitimate children, B, C, and D. E and F are the illegitimate children of D. Estate is P900,000. D predeceases A. Divide the estate. (Art. 989)

a. 8 and C each gets P300,000. E and F each gets P150,000.
b. B, C, E and F each gets P225,000. c. B and C each gets P450,000.
d. B and C each gets P250,000. E and F each gets P200,000.

1150. B and C are A's illegitimate children. D and E are the legitimate children of B. F is the legitimate child of C. B and C predeceased A, who later died leaving an estate of P1 million. Divide the property. (Art. 990)

a. F gets P500,000 in representation of C. D and E each gets P250,000 because together they represent 8.
b. Each gets 1/3 of P1 million. c. F gets the P1 million
d. D and E gets P500,000 each.

1151. A died intestate leaving an estate worth P24,000. He is survived by his wife W, his brother B and nephews C-1 and C-2, sons of his deceased brother C. Divide A's estate. (Art. 975)

a. W gets P12,000; 8 gets P6,000; C-1 and C-2 get P3,000 each
b. Each gets P6,000 each.
c. W gets P12,000; B gets P12,000. d. W gets P24,000.

1152. A died intestate leaving an estate worth P24,000. He is survived by his wife W, nephew B-1, son of his deceased brother B and nephews C-1 and C-2, sons of his deceased brother C. Divide A's estate. (Art. 975)

a. W gets P12,000; 8-1, C-1 and C-2 divide the other P12,000.
b. Each gets P6,000 each.
c. W gets P18,000; B-1, C-1 and C-2 get P2,000 each. d. W gets P24,000.

1153. The legal heirs of an adopted child who has no descendants, in case of death:

a. biological parents
b. adopting parents

c. relatives by adoption d. foster parents

1154. Choose the statement which appropriately completes the opening phrase: (Art. 974) "Whenever there is succession by representation, the division of the estate shall be made

a. per stirpes"
b. per capita" c. equally"
d. immediately"

1155. Choose the statement which appropriately completes the opening phrase: (Art. 975) "When children of one or more brothers or sisters of the deceased survive, they shall inherit from the latter

a. by representation, if they survive with their uncles or aunts"
b. in their own right, if they survive with their uncles or aunts" c. in equal shares, if they survive with their uncles or aunts" d. per stirpes, if they survive with their uncles or aunts"

1156. Choose the statement which appropriately completes the opening phrase: (Art. 976) "A person may represent him whose inheritance he has

a. renounced" b. denounced"
c. repudiated" d. represented"

1157. Choose the statement which appropriately completes the opening phrase: (Art. 977) "Heirs who repudiate their share may

a. not be represented"
b. be represented"
c. not inherit anything" d. inherit anything"

1158. Choose the statement which appropriately completes the opening phrase: (Art. 980) "The children of the deceased shall always inherit from him

a. in their own right" b. by representation" c. per capita"
d. per stirpes"

1159. Choose the statement which appropriately completes the opening phrase: (Art. 985) "In default of legitimate children and descendants of the deceased, his parents and ascendants shall inherit from him, to the exclusion of

a. collateral relatives"
b. surviving spouse"
c. illegitimate children" d. all other relatives"

1160. Choose the statement which appropriately completes the opening phrase: (Art. 988) "In the absence of legitimate descendants or ascendants, the

a. illegitimate children shall succeed to the entire estate of the deceased"
b. surviving spouse shall succeed to the entire estate of the deceased" c. adopted children shall succeed to the entire estate of the deceased"
d. collateral relatives shall succeed to the entire estate of the deceased"

1161. Choose the statement which appropriately completes the opening phrase: (Art. 990) "The hereditary rights granted by the two preceding articles to illegitimate children shall be transmitted upon their death to their descendants, who shall inherit

a. by right of representation from their deceased grandparent."
b. in their own right from their deceased grandparent." c. per stirpes from their deceased grandparent."
d. per capita from their deceased grandparent."

1162. May the brothers and sisters of the decedent inherit from their brother if the decedent has illegitimate children? (Art. 988)

a. No. If the decedent left illegitimate children, the brothers and sisters are precluded from inheriting the estate of their brother.
b. Yes. If the decedent left illegitimate children, the brothers and sisters may inherit from the estate of their brother.
c. No. Brothers and sisters are always precluded from inheriting the estate of their brother.

d. Yes. Because brothers and sisters concur with all other heirs.

1163. Bong and Carlos are Alvin's brothers. Xavier is the child of Bong; Yolly and Zelly, the children of Carlo. Estate is P90,000. Alvin is the decedent. If Carlos predeceases Alvin, divide the estate. (Art 975)

a. 8ong gets P45,000; and Y and Z each gets P22,500.
b. Bong, Xavier, Yolly and Zelly gets P22,500 each. c. Bong, Yolly and Zelly gets P30,000 each.
d. Bong and Xavier gets P22,500 each; and Yolly and Zelly gets P22,500 each.

1164. In the same problem above, what if Bong and Carlos predecease Alvin. How should the estate be divided? (Art. 975)

a. Bong gets P45,000; and Y and Z each gets P22,500. b. Bong, Xavier, Yolly and Zelly gets P22,500 each.
c. 8ong, Yolly and Zelly gets P30,000 each.
d. Bong and Xavier gets P22,500 each; and Yolly and Zelly gets P22,500 each.

1165. Estate is P100,000. There are 5 legitimate children, Alejandro, Benigno, Cipriano, Domingo and Engelbert. Divide the estate. (Art. 980)

a. Each gets P20,000.
b. Each gets P10,000; P50,000 is the free portion.
c. Since Alejandro is the eldest, he gets P30,000. The other 4 gets P17,500 each.
d. Each gets P10,000; Alejandro, being the eldest, can apportion the free portion (P50,000) to himself.

1166. Estate is P100,000. Surviving relatives are Arnold, a legitimate child; Bruce and Clive, legitimate children of Sylvester, a deceased legitimate child of the decedent. Divide the estate. (Art. 981)

a. Arnold gets P50,000. 8ruce and Clive each gets P25,000.
b. Each gets 1/3 of P100,000.
c. Arnold gets P25,000. Bruce and Clive each gets P12,500. d. Arnold gets P100,000. Bruce and Clive nothing.

1167. Anita is the decedent. Beatriz, Christine and Diana are his children. Eric, Fe and Gilbert are the children of Beatriz. Herbert is the child of Christine. Diana has a child Jojo. Karen and Lea are Jojo's children. Estate is P90,000. Beatriz, Christine, Diana and Jojo predeceased Anita. Divide the property. (Art. 982)

a. Eric, Fe and Gilbert will each get P10,000; Herbert gets P30,000; and Karen and Lea will each get P15,000.
b. Eric, Fe and Gilbert will each get P10,000; Herbert gets P30,000; and Karen and Lea will get nothing.

c. Eric, Fe, Gilbert, and Herbert will each get P22,500.
d. Eric, Fe, Gilbert, Herbert, Karen and Lea will each get P15,000.

1168. Arnulfo died intestate leaving P100,000. Surviving relatives are Brando, his father, and Chester (Arnulfo's) brother. Divide the property. (Art. 985)

a. The whole estate goes to 8rando to the exclusion of Chester.
b. The whole estate goes to Chester to the exclusion of Brando. c. Each gets P50,000.
d. Brando gets P75,000; Chester gets P25,000.

1169. Albert died intestate leaving P100,000. Surviving him are his father, Badong; his grandfather Carding (father of Badong); and his grandfather Doming (father of Albert's mother). Divide the estate. (Art. 986)

a. Badong gets the whole P100,000.
b. Each gets 1/3 of P100,00.
c. Badong gets P50,000; Doming gets P50,000.
d. Badong gets P25,000; Carding gets P25,000; and Doming gets P50,000.

1170. Allan and Brenda are the parents of Edward. Christian and Debbie are the parents of Faith. Edward and Faith are married to each other, and Gibo is their child. Estate of Gibo who dies without a will is P100,000. If Allan, Brenda, Christian, Debbie, Edward, and Faith survive, how will the estate be divided? (Art. 986)

a. Edward and Faith gets P50,000 each.
b. Each gets 1/6 of P100,000. c. Edward gets P100,000.
d. Allan, Brenda, Christian, and Debbie gets P25,000 each; Edward and Faith gets nothing.

1171. Anthony and Bea are the parents of Eric. Clyde and Dora are the parents of Fiona. Eric and Fiona are married to each other, and Gerry is their child. Estate of Gerry who dies without a will is P100.000. If Anthony, Clyde, Dora and Fiona survive, how will the estate be divided? (Art. 986)

a. Fiona gets P100,000.
b. Anthony gets P50,000; Fiona gets P50,000. c. Each gets P25,000.
d. Anthony gets P100,000.

1172. Al and Barbie are the parents of Enchong. Caloy and Dorothy are the parents of Fe. Enchong and Fe are married to each other, and Gab is their child. Estate of Gab who dies without a will is P100,000. If Al and Barbie survive, how will the estate be divided? (Art. 987)

a. Each gets P50,000.
b. Al gets P100,000.
c. Barbie gets P100,000.
d. Al gets P75,000; Barbie gets P25,000.

1173. Al and Barbie are the parents of Enchong. Caloy and Dorothy are the parents of Fe. Enchong and Fe are married to each other, and Gab is their child. Estate of Gab who dies without a will is P100,000. If Al, Barbie and Caloy survive, how will the estate be divided? (Art. 987)

a. Caloy gets P50,000. Al and 8arbie gets P25,000 each.
b. Each gets 1/3 of P100,000. c. Each gets P25,000.
d. Al and Barbie gets the P100,000.

1174. Agaton has 3 illegitimate children, Bart, Cesar, and Dina. Eli and Fred are the illegitimate children of Dina. Estate is P90,000. Dina predeceases Agaton. Divide the estate. (Art. 989)

a. Bart and Cesar each gets P30,000. Eli and Fred each gets P15,000. b. Bart, Cesar, Eli and

Fred each gets P22,500.
c. Bart and Cesar each gets P45,000.
d. Bart and Cesar each gets P25,000. Eli and Fred each gets P20,000.

1175. Ben and Clara are Avelino's illegitimate children. Dan and Eva are the legitimate children of Ben. Ferdinand is the legitimate child of Clara. Ben and Clara predeceased Avelino, who later died leaving an estate of P100,000. Divide the property. (Art. 990)

a. Ferdinand gets P50,000 in representation of Clara. Dan and Eva each gets P25,000 because together they represent Ben.
b. Each gets 1/3 of P100,000.
c. Ferdinand gets the P100,000.
d. Dan and Eva gets P50,000 each.

1176. Abet died intestate leaving an estate worth P240,000. He is survived by his wife Wilma, his brother Berto and nephews Chester and Chris, sons of his deceased brother Crispulo. Divide Abet's estate. (Art. 975)

a. Wilma gets P120,000; 8erto gets P60,000; Chester and Chris get P30,000 each
b. Each gets P60,000 each.
c. Wilma gets P120,000; Berto gets P120,000.
d. Wilma gets P240,000.

1177. Abet died intestate leaving an estate worth P240,000. He is survived by his wife Wilma, nephew Benson, son of his deceased brother Berto and nephews Chester and Chris, sons of his deceased brother Crispulo. Divide Abet's estate. (Art. 975)

a. Wilma gets P120,000; 8enson, Chester and Chris divide the other P120,000.
b. Each gets P60,000 each.
c. Wilma gets P180,000; Benson, Chester and Chris get P20,000 each. d. Wilma gets P240,000.

1178. Estate is P800,000. There are 4 legitimate children, A,B,C, and D. Divide the estate. (Art. 980)

a. Each gets P200,000.
b. Each gets P100,000; P400,000 is the free portion.
c. Since A is the eldest, he gets P275,000. The other 3 gets P175,000 each.
d. Each gets P100,000; A, being the eldest, can apportion the free portion (P400,000) to himself.

1179. Estate is P10 million. Surviving relatives are A, a legitimate child; B and C, legitimate children of X, a deceased legitimate child of the decedent. Divide the estate. (Art. 981)

a. A gets P5 million.8 and C each gets P2.5 million.
b. Each gets 1/3 of P10 million.
c. A gets P2.5 million. B and C each gets P1.25 million. d. A gets P10 million. B and C nothing.

1180. Alma has a child Bruno who was adopted by Carla. If Bruno dies intestate without issue, who is the legal heir of Bruno? (Art. 984)

a. Alma will be the legal heir
b. Carla will be the legal heir.
c. Alma and Carla will be the legal heirs. d. There is no legal heir.

1181. Antonio died intestate leaving P10 million. Surviving relatives are Bernard, his father, and Cheska (Antonio's) sister. Divide the property. (Art. 985)

a. The whole estate goes to 8ernard to the exclusion of Cheska.
b. The whole estate goes to Cheska to the exclusion of Bernard. c. Each gets P5 million.
d. Bernard gets P7.5 million; Cheska gets P2.5 million.

1182. A and B are the parents of E. C and D are the parents of F. E and F are married to each other, and G is their child. Estate of G who dies without a will is P10 million. If A and B survive, how will the estate be divided? (Art. 987)

a. Each gets P5 million.
b. A gets P10 million. c. B gets P10 million.
d. A gets P7.5 million; B gets P2.5 million.

1183. A dies leaving B, his legitimate father and C and D, his illegitimate children. What would be the share of each heir if A left an estate worth P1 M?

C and D, the illegitimate children, do not exclude the legitimate father B from inheriting. Thus under Article 991, C and D will each get P250,000 dividing their share of half of the entire estate amounting to P500,000. While B, the legitimate father gets the other half amounting to P500,000 under Article 889.

1184. Timothy had an estate of P1 Million. He made a will giving a legacy of P200,000 to his friend Janine. There are no provisions about the rest of the estate. Surviving are one legitimate father and one illegitimate child. How will the estate be divided?

The legitimate father concurs with the illegitimate child to inherit. Thus, the father is intitled to his legitime of P500,000. The legacy of P200,000, being not inofficious, shall be fully given to Janine, which will be charged to the P500,000 share of the illegitimate child who will now receive P300,000.

1185. A has a legitimate child B, and an illegitimate child C. B has a legitimate child D and an illegitimate child E. C has a legitimate child F and an illegitimate child G. If B and C predecease A, and surviving are the four grandchildren, will they inherit from A?

D can represent his father B, because a legitimate child B can be represented by his own legitimate child D.

E cannot represent B in the succession because of the Barrier stated in Art 992CC, where an illegitimate child has no right to inherit from the legitimate children and relatives of his father or mother. Since A is a legitimate relative of E's father B, then E is disqualified by law to inherit from A.

Both F and G are entitled to represent their father C in the succession from A, because the rights granted an illegitimate child C are transmitted upon his death to his descendants, whether legitimate or illegitimate.

1186. Is an illegitimate child allowed to represent his parent?

It depends. If the illegitimate child is going to represent a person who is a legitimate child of the decedent, the answer is no because of Art 992 – the Barrier Rule. But if he is going to represent a person who is an illegitimate child, then he is not barred by law to represent.

1187. B died intestate without any issues leaving only his illegitimate brother C. C claims the entire estate of B. Is C right?

No, C is disqualified by law to inherit from the legitimate children or relatives of his father under Art. 992.

1188. A and B are brothers. W is A's wife. B has an illegitimate child C. A dies intestate leaving as claimants W and C. Who will inherit from A?

W inherits the entire estate of her husband A. C is excluded to inherit since he is barred by law Art.992CC to inherit from the legitimate relatives of his father or mother.

1189. A has a legitimate child B who has an illegitimate child C. A dies leaving as only survivor his grandson C. May C inherit intestate from A?

No, because of the Barrier in Art. 992. An illegitimate grandson cannot represent his deceased father who is a legitimate child of the testator.

1190. A an illegitimate son of B, dies intestate without any descendants, but leaves a widow C. He also leaves several brothers, legitimate children of his deceased father B. Who should receive the inheritance left by A?

The surviving spouse inherits the entire estate to the exclusion of the brothers who cannot inherit because of the Art 992 Barrier.

1191. If a person dies intestate, leaving no relatives except a nephew, the son of a deceased legitimate brother, and a half-brother on his father's side, who is an illegitimate child of the latter, who is entitled to inherit?

Only the nephew is entitled to inherit. The half-brother is excluded by the barrier Art 992 to inherit from the legitimate relatives of his father.

1192. Nieves Vidal, widow of Ambrosio, dies leaving two legitimate children, Natalia and Felix. Another son Antonio died before his parents. Felix dies also after sometime and Natalia is left with all the property of the deceased Nieves. Then one Emilia comes up alleging that she is a natural daughter of Antonio, and claims part of the inheritance that should appertain to Antonio. What right has Emilia to the property now in possession of Natalia?

None, even if she proves acknowledgment because of the existence of the barrier under Art.992. Emilia was born out of wedlock, therefore as an illegitimate daughter even if she can prove acknowledgment, she is still barred by law to inherit intestate from the legitimate relatives of her father.

1193. F has an illegitimate child A and a legitimate child L. A is married to W. F dies. Later, A dies intestate leaving an estate of P1 Million. Divide the estate.

W gets everything. L gets nothing because the legitimate child of the father of an illegitimate child has no right to inherit from said illegitimate child.

1194. Joey was married to Pipay. Petitioners are the nephew and niece of Pipay. When Pipay died, she was survived by her husband and the petitioners. Joey executed and affidavit of adjudication of a parcel of land left by Pipay and sold it to Alma. Petitioners filed an action to recover their share of such land contending that they are entitled to inherit from Pipay. Will the action prosper? Why?

Yes, because what was inherited by Joey was only Y, of the parcel of land and the other Y, went to the petitioners, nephew and niece of Pipay. Joey therefore could alienate only Y, of the land. Under Art. 995, in the absence of legitimate descendants and ascendants, and illegitimate children and their descendants, whether legitimate or illegitimate, the surviving spouse shall inherit the entire estate, without prejudice to the rights of brothers and sisters, nephews and nieces should there be any under Art. 1001.

Under Art 1001: Should brothers and sisters of their children survive with the widow or widower, the latter shall be entitled to Y, of the inheritance and the brothers and sisters or their children to the other half.

1195. A, a spurious child, died intestate survived by B, the brother of his deceased mother, and C, his mother's legitimate granddaughter. May B and C inherit from A?

B and C cannot inherit from A. The reason is what is sometimes known as the principle of absolute separation between members of the legitimate family and members of the illegitimate family. According to this principle, an illegitimate child cannot inherit ab intestate from the legitimate children or relatives of his presumed or putative parent; neither can such legitimate children or relatives of his presumed or putative parent inherit ab intestate from the illegitimate child. Obviously, B and C are legitimate relatives of A's mother. There is, therefore, an impenetrable or impassable barrier existing between A, the decedent, on one hand, and B and C on the other hand.

1196. What is meant by law when it speaks of brothers and sisters, nephews and nieces, as legal or intestate heirs of an illegitimate child?

It refers to illegitimate brothers and sisters as well as to the children, whether legitimate or illegitimate, of such brothers and sisters. The law prohibits absolutely a succession ab intestate between the illegitimate child and the legitimate children and relatives of the father or mother of said illegitimate child. Between the legitimate and illegitimate family, there is presumed to be an intervening antagonism and incompatibility. The illegitimate child is disgracefully looked down upon by the legitimate family; the legitimate family in turn, is hated by the illegitimate child.

1197. What is the successional right of illegitimate children in intestate succession if they survive with ascendants and spouse?

If decedent is legitimate, the legitimate ascendants are intitled to Y, of estate, the illegitimates are entitled to X, and the surviving spouse is entitled to X. (Art. 1000)

If decedent is illegitimate, the parents are excluded; consequently, the illegitimates are entitled to Y, of estate, while the surviving spouse is entitled to the other Y,. (Art. 993&994)

1198. What is the successional right of illegitimate children in intestate succession if they survive with the spouse of the decedent?

The illegitimates are entitled to Y, of estate while the surviving spouse is entitled to the Y,. (Art.998)

1199. X died intestate survived by one legitimate child A, two acknowledged natural children, B and C, and two (2) acknowledged illegitimate children not natural, D and E. The estate is P72,000. How shall the inheritance be distributed?

Under the Family Code, the legitime of each illegitimate child (whether natural or not) shall consist of Y, of the legitime of a legitimate child. Therefore, the legitime of the two acknowledged illegitimate children and two acknowledged illegitimate children who are not natural in the above problem shall be the same. The 5:4 proportion has been eliminated under the family code and the 10:5 proportion is herein followed. To apply this proportion directly would result in the impairment of the legitime of A. Consequently, we must first satisfy the legitime of the survivors in the aforementioned problem. A shall, therefore be entitled to Y, of P72,000 or P36,000. Now, if she shall give Y, of P36,000 will not be sufficient to satisfy the legitime of the four (4) illegitimate children. So, the remaining free portion of P36,000 shall be divided among the four (4) illegitimate children equally. Consequently, the distribution shall be as follows: A shall be entitled to P36,000; B to P9,000; C P9,000; D to P9,000 and E to P9,000.

1200. X died intestate survived by two (2) legitimate children, A and B and one acknowledge natural child, C The estate is P80,000. How shall the distribution be made?

Two different theories have been advance in order to solve the above problem. The first is based upon the principle of exclusion, while the second is based upon the principle of concurrence. For the sake of convenience, we shall call the first the exclusion theory and the second the concurrence theory.

Under both theories, the legitime of the survivors must be satisfied first. Hence, since A and B are legitimate children of the decedent, they shall be entitled to 1/2 of P80,000.00. Consequently, each of them shall be given P20,000.00. On the other hand, since C is an acknowledge natural child, he shall be entitled to Y, of P20,000, or P10,000.00. There is, therefore, a balance of P30,000.00. How shall this balance be divided? It is here where there is a conflict between the two theories.

According to the exclusion theory, the balance of P30,000 shall be given to A and B, in conformity with the general order of succession. Consequently, under this theory, the share of each survivor shall be as follows:

A - - - - - - - - - - - - - P 35,000
B - - - - - - - - - - - - - P 35,000
C - - - - - - - - - - - - - P 10,000

According to the concurrence theory, the balance of P 30,000 shall be divided among the three (3) survivors in the proportion of 2:2:1 in conformity of the provisions of Art 983. A and B shall therefore, be entitled to 2/5 each of P 30,000 or P 12,000 each, while C shall be entitled to 1/5 of P 30,000, or P 6,000. Consequently, under this theory, the share of each survivor shall be as follows:

A - - - - - - - - - - - - - P 32,000
B - - - - - - - - - - - - - P 32,000
C - - - - - - - - - - - - - P 16,000

It is submitted that the solution according to the concurrence theory is the correct solution. The provision of Art 983 is explicit. Where there is a concurrence of legitimate and illegitimate children in the succession, the article declares that the proportions prescribed by Article 895 shall be observed. Under the exclusion theory, such proportions are not observed; as a matter of fact, they are discarded altogether. Besides, we must not lose sight of the new philosophy underlying the application of the order of intestate succession. As a result of the changes or innovations in the new code, it would be more accurate to say that the order of succession is now based not only in the principle of exclusion but also on the principle of concurrence. Consequently, the old method of distribution whereby acknowledged natural children would be entitled only to their legitime has no longer any place under our law.

1201. Can an adopting parent inherit from the adopted child whether testate or intestate?

An adopting parent can inherit from the adopted by testamentary succession. Under the testate succession, there is no law which prohibits the latter from making a will and instituting therein the adopter as heir, legatee or devisee.

Thus under the FC, the adopting parent can inherit from the adopted or get a share in the estate of the adopted on legal or intestate succession except only if the latter is survived by legitimate children and other descendants. When the parents, legitimate or illegitimate, or the illegitimate ascendants of the adopted concur with the adopters, they shall divide the entire estate, Y, to be inherited by the parents or ascendants and the other half by the adopters. When the surviving spouse, or the illegitimate children of the adopted concur with the adopters, they shall divide the entire estate in equal shares, Y, to be inherited by the spouse or the illegitimate children of the adopted and the other half, by the adopters. When the adopters concur with the illegitimate children and the surviving spouse of the adopted, they shall divide the entire estate in equal shares, Y, to be inherited by the illegitimate children, 1/3 by the surviving spouse, and 1/3 by the adopters. And when only the adopters survive, they shall inherit the entire estate.

1202. Before his death, X executed a will bequeathing P 10,000 to his friend Y. There is no other disposition found in the will. He is survived by his legitimate father, A, and an acknowledged natural son, B. His estate is P 40,000. How shall the distribution be made?

It is evident that mixed succession shall take place in this case. There is, of course, no question that the legacy of P10,000 in favor of Y shall be satisfied. After all it is not inofficious. How then shall the balance of P 30,000 be divided? Shall the provision of Art. 991 be applied literally so that A shall be entitled to P15,000 and B shall also be entitled to P15,000? It is clear that if this solution is followed, there would be an impairment of the legitime of A. Under the law on legitime, he is entitled to Y, of P40,000 or P20,000 by operation of law. Such legitime cannot be impaired whether by the expressed or the presumed will of the decedent. Hence, if anybody should be prejudiced by the legacy given to Y, and it cannot be avoided since it is admitted that such legacy must be respected, it should be B. Anyway, his legitime is not impaired. Consequently, the distribution must be made as follows:

A - - - - - - - - - - - - P 20,000
B - - - - - - - - - - - - P 10,000
C - - - - - - - - - - - - P 10,000

1203. A died without a will. He is survived by his widow, B and by one legitimate son C. The estate is P60,000. How shall the distribution be made?

B shall be entitled to Y, of P60,000 while C shall be entitled to the other Y,. Under Art. 996, if a widow and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each children. Consequently, B and C shall each receive P 30,000.

1204. A died without a will. He is survived by his widow, B, one legitimate son C, one acknowledged natural son D, and one illegitimate son E. The estate is P72,000. How shall the distribution be made.

B, the surviving spouse gets P 18,000; C, the legitimate son gets P 36,000;
D and E gets P9,000 each.

The surviving spouse concurs with the legitimate children and legitimate children in inheriting. Therefore, C as legitimate child, shall be entitled to Y, of the entire estate amounting to P36,000. B as surviving spouse is entitled to X of the entire estate amounting to P 18,000. D and E, as illegitimate children shall divide the remaining P18,000 equally between them since the free portion is not sufficient to satisfy their legitime, which should be P18,000 for each of them, (1/2 of the legitime of legitimate child).

1205. A decedent is survived by his widow and three legitimate children. If the succession is intestate and the property is P1 Million, how will the inheritance be divided?

Under Art. 996, if a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the same share as that of each of the children. Therefore, the widow and each of the three legitimate children will get P250,000.

1206. When may a nephew of a person inherit from the decedent?

A nephew may inherit from his uncle or aunt, if no descendant, ascendant or spouse survived the decedent

under Art. 1003, 1006 and 1008. That he is only a half-blood relative is immaterial. This alone does not disqualify him from being his aunt's heir. The determination of whether the relationship is of the full or half blood is important only to determine the extent of the share of the survivors.

1207. A died without a will survived by B, a brother of the full blood; C and D, brothers of the half-blood and Y a grandson of F, another deceased brother of the half-blood. The net remainder of the estate is P25,000, how shall such estate be distributed?

It must be observed 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. (Art. 1006,972,975) Consequently, the estate shall be distributed as follows:

B - - - - - - - - - P 10,000 in his own right

C - - - - - - - - - P 5,000 in his own right
D - - - - - - - - - P 5,000 in his own right
X - - - - - - - - - P 5,000 by right of representation

1208. X is survived by W, his widow; A and B, his legitimate children; C an acknowledged natural child; and D and E, acknowledged illegitimate children who are not natural. The net value of his estate is P 104,000. How much is the legitime of the above survivors? If X died intestate, how shall the estate be divided?

The legitime of A and B is Y, of the estate or P52,000 or P26,000 each. The legitime of W is equal to that of each legitimate child or P26,000.

The legitime of each illegitimate child should be Y, of the legitime of the legitimate child A and B which is P13,000. However, since there are three illegitimate children, the remaining P26,000 shall be divided among them equally or P 8,666.66 for C, D and E.

Applying the provisions of Arts 996 and 999 in relation to Art 983, which declares that if illegitimate children survive with legitimate children, the share of the former shall be in the proportions prescribed in Art. 895, the shares of the survivors are the same as those mentioned above. In other words, the survivors will be entitled to their legitimes only.

1209. X died intestate survived by the following: Y, his widow; A and B his legitimate children and C his acknowledge natural child. The net value of the estate is P140,000. How shall the distribution be made?

A and B as legitimate children gets Y, of the P140,000 as legitime equally divided between them or P35,000 each.

Y as widow gets the same share as that of a legitimate child so she gets P 35,000.

C as an illegitimate child gets Y, of the share of each legitimate child which is P17,500. The remaining P17,500 shall be divided among the survivors in the ration of:

2:2:2:1 = 2 shares each for the widow and two legitimate child and one share for the illegitimate child. Therefore, the distribution should be as follows:

A - - - - - P35,000 + P5,000 = P40,000
B - - - - - P35,000 + P5,000 = P40,000
W - - - - - P35,000 + P5,000 = P40,000
C - - - - - P17,500 + P2,500 = P 20,000

1210. X died survived by the following heirs: his widow W; his legitimate parents F and M; his acknowledged natural children, A and B and his acknowledged spurious children C and D. If the net value of his estate is P288,000, what are the legitimes of the survivors? If X died intestate, distribute the estate.

F and M as legitimate parents will receive a legitime equal to Y, of the estate of X amounting to P144,000 or P72,000 each.

W as surviving spouse is entitled to a legitime equal to 1/8 of the estate of X amounting to P36,000.

A, B, C and D as illegitimate children shall receive a legitime equal to X of the estate of X amounting to P72,000 or P18,000 each.

The remaining balance of P36,000 is the free portion.

If X died intestate, under Art.1000, Y, of the estate shall be given to F and M as legitimate parents, X to W as surviving spouse and the remaining X to be divided among the four illegitimate children. Therefore, the division of

the estate is as follows:

F - - - - - - - - - P 72,000
M - - - - - - - - P 72,000
W - - - - - - - - P 36,000
A, B, C and D - - - - P 18,000 each.

1211. X died without a will survived by his widow W; his legitimate brothers B and C; his nephews, E and F, who are the children of a deceased sister D. The net remainder is P24,000. Distribute the estate.

Under Art. 1001, should brothers and sisters or their children survive with the widow, the latter shall be entitled to Y, of the inheritance and the brothers and sisters or their children to the other half. Consequently, the estate shall be divided as follows:

W - - - - - - - - P 12,000 in her own right
B - - - - - - - - P 4,000 in his own right
C - - - - - - - - P 4,000 in his own right
E - - - - - - - - P2,000 by right of representation
F - - - - - - - - P2,000 by right of representation

1212. A died without a will survived by his widow W; X and Y, children of a deceased legitimate brother B; and Z, child of a deceased legitimate sister C. If the net remainder is P 24,000, divide the estate.

Under Art. 1001, Y, of the estate shall pass to the widow, while the other half shall pass to the three nephews in their own right. The latter do not inherit by right of representation because they do not concur with brothers and sisters of the decedent. Hence, the estate shall be divided as follows:

W - - - - - - - - - - P 12,000
X - - - - - - - - - - P 4,000
Y - - - - - - - - - - P 4,000
Z - - - - - - - - - - P 4,000

1213. A, an illegitimate spurious child died intestate. His nearest surviving relatives are: Uncle from the maternal side, and a half brother who is a legitimate child of his father with a woman other than the mother of A. Can these relatives inherit from A?

Both relatives cannot inherit from A. A's uncle from his maternal side cannot inherit from him, even if assuming that such uncle is an illegitimate brother of A's mother. He cannot inherit because of the principle that when an illegitimate person, such as A dies intestate without descendants or parents or surviving spouse, the only collaterals who can inherit from him are brothers and sisters, nephews and nieces under Arts 993 and 994.

Niether can A's half-brother inherit from him because of the barrier in Art. 992 which states that an illegitimate child has no right to inherit from the legitimate relatives of his parents, nor shall such children or relatives inherit in the same manner from the ilegitimate child.

1214. X is the adulterous son of A and B. When he died in 1970 without a will, he was survived only by his father A and his widow, W. How would you divide the estate valued at P100,000?

A shall be entitled to Y, of the estate or P50,000 while W ishall also be netitled to Y, or P50,000. Of course this presupposes that A had previously acknowledged X and that the latter had given consent thereto.

True there is no provision of the NCC which directly governs the situation, but the above solution is the most logical and the most equitable. In testamentary succession, the legitime of A is X while the legitime of W is also X (Art 903). In intestate succession, had A been a legitimate parent, his share would have been only Y, while the share of W would also be Y,.

1215. A died intestate survived by B, a brother by the full blood, and C, D, E and F, brothers of the half-blood. The net value of the estate is P120,000. Divide the estate.

Under Art. 1005, 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. Consequently, the estate shall be divided as follows:

B:C:D:E:F = 2:1:1:1:1

In other words, B shall be entitled to 2/6 or 1/3 of the P120,000 or P40,000; C, D, E and F to 1/6 of P120,000 each or P20,000 each.

1216. A died intestate survived by brothers of the half-blood C and E; G and H, legitimate children of a predeceased full blood brother B; I and J, legitimate children of a predeceased half blood brother D; K and L, legitimate children of another predeceased half blood brother F. divide the estate of P120,000.

The division of the estate of A shall be made per stirpes (Art 974). This is so because the above mentioned nephews and nieces of A shall inherit from him by right of representation. The division therefore shall be as follows:

C - - - - - - - - - - P20,000 in his own right
E - - - - - - - - - - P20,000 in his own right
G - - - - - - - - - -P20,000 by right of representation
H - - - - - - - - - - P20,000 by right of representation
I - - - - - - - - - - P 20,000 by right of representation J - - - - - - - - - - P 20,000 by right of representation K- - - - - - - - - - P 20,000 by right of representation L- - - - - - - - - - P 20,000 by right of representation

1217. A died intestate survived by G and H, legitimate children of a predeceased full blood brother B; I and J, legitimate children of s predeceased half blood brother D; and K and L, legitimate children of another predeceased half-brother F. Divide the estate of P120,000.

The rule for double share for full blood collaterals shall be applied. In other words, those of the full blood shall be entitled to a share double that of those of the half blood, this can be inferred from Art 1009 which declares that in the absence of brothers and sisters or children of brothers and sisters, the other collateral relatives shall succeed to the estate without distinction of lines or preference among them by reason of relationship by the whole blood. From this provision, we can deduce the rule that if there are nephews and nieces surviving the decedent, relationship by the full or half blood, becomes material in the distribution or division of estate.

Therefore, in the instant case, the estate of A shall be divided among G, H, I, J, K and L in proportions of 2:2:1:1:1:1. In other words, G shall be entitled to 2/8 or X of P120,000 or P30,000; H also to 2/8 or X of P120,000 or P30,000; I, J, K and L are entitled to 1/8 of P120,000 each or an amount of P15,000 each.

1218. 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.

a. If Don failed to execute a will during his lifetime, as his lawyer, how will you distribute his estate? Explain

After paying the legal obligations of the estate, I will give Ronie, as full blood brother of Don, 2/3 of the net estate, twice the share of Michelle, the half sister who shall receive 1/3. Roshelle will not receive anything as she is not a legal heir.

b. Assuming he died intestate survived by his brother Ronie, his half sister Michelle, and his legitimate son Jayson, how will you distribute his estate?

Jayson will be entitled to the entire P12 Million as the brother and sister will be excluded by a legitimate son of the decedent. This follows the principle of proximity where the nearer excludes the farther.

1219. A, deceased is survived by a half sister B on his father side and an aunt C, his mother's sister. He left as his only property that which was inherited from his mother. He died intestate. Who shall succeed to A's estate?

B shall succeed to A's estate. The law of intestate succession is explicit. Since both B and C are collateral relatives of the decedent A, therefore, the rule of proximity is applicable. Relatives nearest in degree exclude the more distant ones. B is a second degree relative of A, while C is a third degree relative. Besides, under the general order of intestate succession, brothers and sisters, whether of the full or half blood always exclude uncles or aunts.

Article 1008 - 1924

1220. In the event that brothers and sisters of the half blood shall succeed each other, up to what extent may they succeed in terms of their successional rights?

Brothers and Sisters of the half blood shall succeed per capita or per stirpes.

1221. Brothers and Sisters of the half blood as a rule may succeed each other, what rule must govern the said succession?

The law provides that the same rules laid down for succession between brothers and sisters of the full blood must be applied.

1222. Durant, deceased, is survived by a half-sister Brenda on his father's side and an aunt Vida, his mother's sister. He left as his only property that which was inherited from his mother. He died intestate. Who shall succeed to A's estate? Reasons.

Brenda shall succeed to Durant's estate. The law of intestate succession is explicit. Since both Brenda and Vida are collateral relatives of the decedent Durant, therefore, the rule of proximity is applicable. Relatives nearest in degree exclude the more distant ones. Brenda is a second degree relative of Durant, while Vida is a third degree relative. Besides, under the general order of intestate succession, brothers and sisters, whether of the full or half-blood always exclude uncles or aunts.

The fact that the entire estate consists only of property originating from the decedent's mother is of no moment. It is obvious that the property is not reversible.

1223. Lupino died without a will survived by: (a) Procopio, a brother of the full blood; (b) Gorgonio and Aniceto, brothers of the half-blood; (c) Sunshine, a daughter of Celestino, a deceased brother of the half- blood; and (d) Temiong, a grandson of Facundo, another deceased brother of the half- blood. The net remainder of the estate is PhP 25,000.00. How shall such estate be distributed?

It must be observed 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. Consequently, the estate shall be distributed as follows:

a) Procopio ------ PhP 10,000.00 in his own right;
b) Gorgonio ----- PhP 5,000.00 in his own right;
c) Aniceto ------- PhP 5,000.00 in his own right;
d) Sunshine ----- PhP 5,000.00 by right of representation; PhP 25,000.00

1224. When may a nephew of a person inherit from the decedent?

A nephew may inherit from his uncle or aunt, if no descendants, ascendants or spouse survived the decedent. That he is only a half-blood relative is immaterial. This alone does not qualify him from being his aunt's heir. The determination of whether the relationship is of the full or half blood is important only to determine the extent of the share of the survivors. (Heirs of
Uriate vs. CA, G.R No. 116775, January 22, 1998)

1225. X died in a plane crash, leaving no heir. Who may succeed to the estate of X?

Should there be neither brothers or sisters nor children of brothers or sisters, the other collateral relatives shall succeed to the estate. Thus, the other collateral relatives are excluded by the brothers/ sisters of the decedent or nephews/ nieces of the decedent. (Filomena Abellena vs. Gaudencio Ferraris, et al. August 13, 1965)

1226. The law recognizes the capacity of the collateral relatives to inherit from the deceased if the latter has no immediate

heir, up to what extent may said relatives inherit ab intestato?

The right to inherit ab intestato shall not extend beyond the fifth degree of relationship in the collateral line.

1227. Timothy Joseph a very handsome, sexy and wealthy businessman, died single during a plane crash. Two months prior his death, his parents and his two brothers died during an avalanche in Saudi Arabia. There were no relatives who claimed to be legally entitled to the estate of the deceased. Who may inherit from the properties left by Timothy Joseph?

The law provides that in default of persons entitled to succeed in accordance with the rules, in the absence of any relative within the fifth degree, it would not be wise policy to leave the property ownerless, hence, the state is considered as the last intestate heir, but the rules of court must of course be observed. The State inherits through an escheat proceeding.

1228. It is a recognized rule that the State may take possession of the property of the decedent. However, the state does not ipso facto become the owner of the estate left without heir. State the rules in order that the state may take possession of the property what are the rules that must be observed?

Distribution of Properties:

1. Pay debts and charges first.
2. Thereafter, personal property shall be assigned to the municipality or city where the deceased last resided in the Philippines.
3. The real estate, on the other hand shall be assigned to the municipality or city in which the same is situated.
4. If the deceased never resided in the Philippines the whole estate shall be assigned to the respective municipalities or cities where the same is located.

1229. What is the prescriptive period to re-claim a property delivered to the government?

A person legally entitled to the estate of the deceased may file a claim with the court within five years from the date the property was delivered to the state.

1230. What is the 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 renounces or cannot receive his share, or who died before the decedent, is added or incorporated to that of his co-heirs, co- devisees, or co-legatees. (Art. 1015)

1231. What requisites must concur in order that accretion will take place?

The requisites for accretion in testamentary succession are as follows:

1. Two or more persons are called to the same inheritance, legacy or devise jointly or pro indiviso
2. That there is a vacancy in the inheritance, legacy or devise as a result of predecease, incapacity, repudiation, or some other cause. (Art. 1016)

In intestate succession, only one requisite is necessary that there must be a vacancy in the inheritance as a result of predecease, incapacity or repudiation.

1232. When does the right of accretion take place?

In testamentary succession the right of accretion takes place in the following cases:

1. Predecease of the instituted heir.
2. Incapacity of the instituted heir.
3. Repudiation of the instituted heir.
4. Nonfulfillment of the suspensive condition imposed upon the instituted heir.
5. Ineffective testamentary dispositions.

In intestate succession the right of accretion takes place in the following cases:

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

It must be noted, however, that, strictly speaking, it is only in case of repudiation that there can be accretion in intestate succession because it is only then that there is a vacancy in the inheritance. However, whether the rules of intestate succession or accretion shall be applied in case of predecease or incapacity, the results are the same.

1233. What are the effects of accretion?

The following are the effects of accretion:

(a) The heirs to whom the portion goes by right of accretion take it in the same proportion that they inherit.
(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.

Except in the following instances: (a) In testamentary succession if the testator provides to the contrary; and (b) in case of purely personal obligations, which are not transmissible.

1234. How may accretion be avoided?

Accretion, which follows the decedent's implied desires may be avoided by the deceased himself:

(a) By expressly designating a substitute (naturally, the express desire is superior to the implied desire).
(b) By expressly providing that although accretion may take place, Still he does not want accretion to occur, that is, he desires no accretion in favor of those who ordinarily would be entitled to it.

1235. When does the right of accretion apply among compulsory heirs?

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.

1236. May the right of accretion apply to devisees, legatees, or usufructuaries? If so, how?

The accretion shall take place among devisees, legatees, or usufructuaries under the same conditions established for heirs. (Art. 1023)

1237. Christian gave T.J 1/3 of a Camaro Sports Car, and Von the other 2/3. Can there be accretion here even if the parts be unequal?

Under the old Civil Code, no, because the fact that the portion are unequal shows more or less "a special designation of parts" implying the intent of the testator to exclude accretion.

However, under the new Civil Code, it is believed that there can be accretion, since the mere fixing of aliquot parts does not necessarily make the property "determinate" or specific, for we still cannot ascertain which particular section or portion of the car, A and B were being made the exclusive owners thereof.

1238. What if the part repudiated is the legitime, will the right of accretion apply?

No, under the Civil Code, 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. (Art.1021 (2))

1249. In case of conflict between the right of representation and the right of accretion, which shall prevail?

In testamentary succession, there can be no possibility of any conflict between the right of representation and

the right of accretion, because while the first pertains only to the legitime of the compulsory heir who is represented, the second pertains only to the free or disposable portion which is rendered vacant by predecease or incapacity. In intestate succession, however, since both rights, refer to the entire portion which is rendered vacant by predecease or incapacity, there is a conflict in case the heir who dies before the decedent or is incapacitated to succeed is survived by his children or descendants and by his co-heirs, co-legatees or co-devisees. In such case, the right of representation shall prevail.

1250. In order that a person can inherit either by will or by intestacy, what requisites must concur?

In order that a person can inherit by will or by intestacy, the following requisites must concur: first, that the heir, legatee or devisee must be living or in existence at the moment the succession opens; and second, that such heir, legatee or devisee must not be incapacitated or disqualified by law to succeed.

1251. A and B are the decedent's brothers and only surviving relatives. A got his share, but B repudiated his share. Suppose B has a child Eva, may her daughter get B's portion?

No, for one who renounces his share may never be represented.

1252. T has two legitimate children, A and B. His estate was worth PhP 1 million. In his will, T gave A and B one-fourth each, and X was given one-half. X has a child Y.

a) If X predeceases T, who gets his share?

It would not be Y, for a voluntary heir (X) cannot be represented. On the other hand, A and B cannot get it by accretion for they were not given an part of the free portion. Intestacy then results, and A and B will get X's share as intestate heirs.

b) If B on the other hand predeceases T, who gets B's share?

A alone; not by accretion, but in his own right for the same is his legitime.

1253. Michael gave PhP 10 million (deposited at the Citibank) to Stephanie and Php 10 million (deposited at the Bank of the Philippine Islands) to Lynne. Stephanie and Lynne are Michael's friends. No substitute was appointed. Sandra, a sister of the testator, was given nothing. If Stephanie repudiates her share, who will get it?

Lynne will not get, there being no accretion since there was an earmarking of share. Therefore, Sandra, the sole intestate heir, gets Stephanie's share.

1254. A testator gave X, Y, of an undivided house, Y, 1/3, and Z, 1/6. If X repudiates his share, how will the repudiated share be divided?

If X repudiates his share, Y and Z will share in X's portion in the proportion of 1/3 to 1/6 (2 to 1) because this was the proportion in which they had been instituted.

1255. Mariano Reyes, in his last will and testament among other things, provided as follows: "I bequeath to my nephews A, B and C whatever credit balance there may be in my current account in the Citibank at the time of my death, in the proportion of one-third of each of them." A died before the testator leaving X, his only son as his heir. When Mariano Reyes died, there was a credit balance of PhP 30,000.00 in his account. Now the PhP 10,000.00 that would have correspond to A under the will had he survived, is claimed:

a) by X as A's heir
b) by B and C as accretion of their legacies
c) by the children of the testator, as the latter's legal heirs.

If you were the judge, to whom would you adjudicate the said sum and why?

Assuming that the legitime of the testator's children have not been impaired, the answer would be as follow:

a) Instituion cannot be applied, for A is dead.

b) Neither can substitution apply for no substitute has been expressly appointed.

c) Is representation by X as A's heir proper? No, because a voluntary heir or legatee who predeceases the testator cannot be represented; i.e., he transmits no rights to his own heirs. (For that matter, any voluntary heir cannot be represented).

d) Inasmuch as the requirements of accretion are present here (gift of a portion of the inheritance pro indiviso; predecease of one), B and C can claim in equal shares the shares of A.

e) It follows therefore that the intestate heirs cannot claim by intestacy said share, for accretion is preferred over intestacy. As has been stated by the Supreme Court, intestate succession to a vacant portion can only occur when accretion is impossible.

1256. What is meant by legal capacity to succeed?

It is the ability to inherit and retain property obtained in mortis causa. (It is also termed as passive testamentary capacity.)

1257. What are the kinds of Incapacity to succeed?

The following are the kinds of Incapacity to succeed:

a) ABSOLUTE- can never inherit from anybody regardless of circumstances.
b) RELATIVE- cannot inherit only from certain persons or certain properties, but can inherit from others or certain other properties.

Relative Incapacity has 3 kinds, and they are:
1) because of possible undue influence
2) because of public policy and morality, and
3) because of unworthiness.

1258. In testamentary succession, what is the test that must be applied inorder to determine whether or not two or more persons are called to the same inheritance, legacy or devise pro indiviso?

Generally, the test that should be applied is to determine whether or not the designation of the shares of each heir, legatee or devisee will result in a state of co-ownership or indivision. If it does, the right of accretion shall take place; if it does not, the right shall not take place. In other words, so long as the designation of the shares made by the testator "does not identify the share of each by such description as shall make each heir the exclusive owner of determinate property," such as "one-half for each" or "in equal shares" or any others, the right of accretion shall take place.

However, if the property bequeathed consists of money or fungible goods according to the second paragraph of Art. 1017 of the NCC, there shall be a right of accretion only if the share of each heir or legatee is not "earmarked." "Earmarked" simply means that there is a particular designation or a physical segregation from all others of the same class.

1259. "A" in his last will provide: "I bequeath to my nephews, X,Y and Z, whatever credit balance there may be in my current account in the PNB at the time of my death, in the proportion of 1/3 each." "X", however, died before the testator leaving "S," his only heir. When "A" died, he had a credit balance of PhP 120,000.00. Now, the PhP 40,00.00 that would have gone to "X" is claimed by the following:

a) "S," by right of representation;
b) "Y," by right of accretion; and
c) "B" and "C," children of "A," by right of intestate succession. Who is entitled to

the PhP 40,000.00? Reasons.

"Y" and "Z" are entitled to PhP 40,000.00. In this case, both of the requisites prescribed by law for accretion to take place in testamentary succession are present. (Art. 1016, 1017 NCC) The claim of "S" is untenable, because a legatee cannot be represented. The same is also true with regard to the claim of "B" and "C," because the right to inherit as legal heirs in this case must give way to the right of the co-heirs to inherit by right of accretion where the conditions prescribed by law for such accretion to take place are present. (Art. 1022 NCC)

1260. A certain testator instituted in his last will his nephews, "A," "B," and "C," and "D" as his universal heirs- "A" to inherit Y, of all his properties, "B," X. "C," 1/8, and "D," 1/8. During the settlement of the estate of the testator, "A" renounced his inheritance. The net remainder of the estate is PhP 160,000.00. Distribute the estate.

"A's" share of the inheritance (1/2 of PhP 160,000.00 or PhP 80,000.00) which is rendered vacant because of his repudiation or renunciation shall accrue to "B," "C," and "D," since the requisites prescribed by law for accretion to take place in testamentary succession are present. (Arts. 1015, 1016, 1017, NCC.) The problem, however, is how to divide the PhP 80,000.00 that would have gone to him among his co-heirs. According to Art. 1019 of the NCC, the heirs to whom the portion goes by right of accretion take it in the same proportion in which they inherit. Since the aliquot shares assigned to "B," "C" and "D" are X, 1/8, and 1/8 respectively, the proportion is 2:1:1. In other words, "B" is entitled to Y, of the vacant share , "C" to X, and "D" also to X. Hence, "B" shall receive PhP 40,000.00 by right of accretion in addition to PhP
40,000.00 in his own right, "C," PhP 20,000.00 by right of accretion in addition to PhP 20,000.00 in his own right, and "D," PhP 20,000.00 by right of accretion in addition to PhP 20,000.00 in his own right.

1261. In case of a conflict between the right of representation and the right of accretion, which shall prevail?

In testamentary succession, there can be no possibility of any conflict between the right of representation and the right of accretion, because while the first pertains only to the legitime of the compulsory heir who is represented, the second pertains only to the free or disposable portion which is rendered vacant by predecease or incapacity. In intestate succession, however, since both rights refer to the entire portion which is rendered vacant by predecease or incapacity, there is a conflict in case the heir who dies before the decedent or is incapacitated to succeed is survived by his children or descendants and by his co-heirs, co-legatees or co-devisees. In such case, the right of representation shall prevail.

1262. Compare representation and accretion.

We must distinguish between representation and accretion in testamentary succession and representation and accretion in intestate succession. Thus-

A. In testamentary succession: (1) As to

the legitime:

(a) In case of predecease of an heir, there is representation if there are children or descendants; if none, the other heirs inherit in their own right.

(b) In case of incapacity of an heir, the results are the same as in predecease.

(c) In case of disinheritance of an heir, the results are the same as in predecease.

(d) In case of repudiation by an heir, the other heirs inherit in their own right; no accretion.

(2) As to the free portion:

Accretion takes place when the requisites in Art. 1016, NCC, are present, provided that there is no substitute; but if such requisites are not present, the other heirs inherit in their own right.

B. In intestate succession:

(1) In case of predecease, there is representation if there are children or descendants; if none, the legal heirs inherit in their own right.

(2) In case of incapacity, there is representation if there are children or descendants; if none, the legal heirs inherit in their own right.

(3) In case of repudiation, there is always accretion.

1263. X died intestate , survived by: (1) B and C, his legitimate children; (2) D,E,F and G, legitimate children of A, a legitimate child of X who predeceased him; (3) H and I, legitimate children of B; and (4) J and K, legitimate children of C. B, however, had been previously convicted of an attempt upon the life of his father more than 10 years ago. C, on the other hand, repudiated his inheritance. If the hereditary estate is worth PhP 120,000.00, how shall it be divided?

Since A predeceased his father X, his legitimate children D,E,F and G shall now represent him in the succession. The same is true in case of B. Since he is incapacitated to inherit from his father because of an act of unworthiness, his legitimate children H and I shall represent him in the succession. It is different in the case of C. An heir who repudiates his inheritance cannot be represented. Therefore, the portion which C, repudiated shall now accrue to his co-heirs. But this co-heir A is dead; his other co-heir B is incapacitated. There can, therefore, be no accretion. Hence, applying the provisions of Art. 1022 of the NCC, the vacant portion shall pass to the legal heirs of the decedent. The legal heirs are, of course, the grandchildren D, E, F, G, H, and I, who will divide such portion per stirpes, since they inherit by representation. Thus the division shall be as follows:

D	----------	PhP 15,000.00
E	----------	PhP 15,000.00
F	----------	PhP 15,000.00
G	----------	PhP 15,000.00
H	----------	PhP 30,000.00
I	----------	PhP 30,000.00
		PhP 120,000.00

1264. State some basic rules in legal succession:

(1) The share of the person who repudiates the inheritance shall always accrue to his co- heirs (Art. 1018, NCC);

(2) The share of person who repudiates shall go to his co-heirs by their own right in the same proportion they inherit (Art. 1019, NCC);

(3) The heirs inherit all rights and obligations (Art. 1020, NCC);

(4) Among co-heirs, the right of accretion takes place only when the free portion is left to two or more of them, or to anyone of them or to a stranger (Art. 1021, NCC);

(5) If that part repudiated is the legitime, the other co-heirs shall succeed in their own right, not by accretion. (Art.1021, NCC)

1265. X died intestate survived by: (1) A, B, D and E, his legitimate children; (2) F and G, legitimate children of C, a legitimate son of X who predecease him; (3) H and I, legitimate children of D; and (4) J and K, legitimate children of E. D, however, is incapacitated to inherit from X because of an act of unworthiness, while E repudiated his inheritance. If the net value of the hereditary estate is PhP 120,000.00, how shall it be divided?

In the problem presented, actually, there are (3) shares which are rendered vacant. They are: first, the share which C would have inherited if he had not predeceased the decedent; second, the share which D would have inherited if he had the necessary capacity to inherit from the decedent; and third, the share which E would have inherited if he had not repudiated it. Since C is survived by two legitimate children, F and G, such children shall now represent him in the inheritance. The same is true in the case of H and I. They shall also represent their father, D, in the inheritance. It is different in the case of J and K. Since an heir who repudiates his inheritance cannot be represented, there will be accretion in favor of the co-heirs, A and B. (Arts. 1015, 1018, 1019, NCC.) Therefore, the hereditary estate of PhP 120,000.00 shall be divided as follows:

A	----------	P 24,000.00, in his own right
		12,000.00, by right of accretion
B	----------	P 24,000.00, in his own right
		12, 000.00, by right of accretion

F ---------- P 12,000.00, by right of representation G ---------- P 12,000.00, by right of representation H ---------- P 12,000.00, by right of representation I ---------- P 12,000.00, by right of representation

P 120,000.00

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1266. In order that an heir, devisee or legatee is capacitated to succeed or inherit he must be:

a) Living at the moment of institution as an heir, devisee or legatee, except in case of representation when it is proper.
b) Living at the moment when he learns such institution as an heir, devisee or legatee, except in case of representation when it is proper.
c) Living at the moment the succession opens except in case of representation when it is proper.
d) Living at the moment when the will is presented for probate, and he is capacitated to succeed.

1267. A child already conceived at the time of the death of the decedent is capable of succeeding provided;

a) It be born later and if however the fetus had an intra uterine life of less than seven months, it is not deemed born if it is dies within seventy two hours after its complete delivery from maternal womb.
b) It be born later and if however the fetus had an intra uterine life of more than seven months, it is not deemed born if dies within twenty-four hours after its complete delivery from the maternal womb.
c) It be born later and if however the fetus had an intra uterine life of less than seven months, survives after its complete delivery from the maternal womb.
d) It be born later and if however the fetus had an intra uterine life of less than seven months, it is not deemed born if it dies within twenty four hours after its complete delivery from the maternal womb.

1268. Testamentary dispositions may made to the State, provinces, municipal corporations, private corporations, organizations, or association for religious, scientific, cultural, educational or charitable purposes. All other corporations may succeed under a will unless:

a) Such corporation was created not for the purposes of religious, scientific, cultural, educational or charitable purposes.
b) Such corporation was created exclusively for the purposes of religious, scientific, cultural, educational or charitable purposes.
c) There is a provision to the contrary in their charter or the laws of their creation and always subject to the same.
d) There is a provision to the contrary in their charter or laws of their creation but the board can accept the same in behalf of the corporation.

1269. A priest or the minister of the gospel is capable to succeed if:

a) He heard the confession of the testator during his last illness or extended spiritual aid to him during such illness and had not acted as an instrumental witness.
b) He heard the confession of the testator during his last illness or extended spiritual aid to him during such illness prior to the probate of will.
c) He heard the confession of the testator during his last illness or extended spiritual aid to him during such illness after the making of the will.
d) He heard the confession of the testator during his last illness or extended spiritual aid to him during such illness.

1270. A ward's testamentary disposition in favor of a guardian is valid when:

a) The testamentary disposition was made before the final accounts of guardianship have been approved, even if the testator should die after the approval thereof.
b) The testamentary disposition given to the guardian when the latter is his ascendant, descendant, brother, sister or spouse before the final accounts of guardianship have been approved, even if the testator should die after the approval thereof.
c) The testamentary dispositions given to a guardian appointed by the court before the final accounts of

guardianship have been approved, even if the testator should die after the approval thereof.

d) The testamentary disposition given to a guardian who is the creditor of the testator before the final accounts of guardianship have been approved, even if the testator should die after the approval thereof.

1271. Which of the following is the disqualification to succeed by reason of unworthiness of an heir?

a) Any person while being an instrumental witness to the will kills the testator.
b) Any person convicted of adultery or concubinage with the ascendant of the testator.
c) Any person who has been convicted of an attempt against the life of the testator's live in partner.
d) Any person who falsifies or forged a supposed will of the decedent.

1272. When to judge the capacity of the heir, devisee or legatee to succeed?

a) His capacity at the moment of the making of the will whether he is capable to succeed shall be the criterion.
b) His capacity at the time of the probate of the will shall be the criterion.
c) His capacity at the time when it comes to his knowledge about his institution as an heir, devisee or legatee shall be the criterion.
d) His capacity at the time of the death of the decedent.

1273. testator becomes an unworthy heir if he fails to report it to an officer of the law within the period of:

a) Ten days unless the authorities have already taken action. b) Six months unless the authorities have already taken action. c) Fifteen days unless the authorities have already taken action.
d) One month unless the authorities have already taken action.

1274. If the person excluded from the inheritance by reason of incapacity should be a child or descendant and should have children or descendants, the latter shall:

a) Also be excluded from the inheritance.
b) Acquire the right to the legitime subject to the rule that he is excluded from the usufruct and administration of the property, pending partition.
c) Not acquire the right to the legitime but he has the right over the accrued fruits of the inheritance whether it be civil or industrial.
d) Acquire his right to the legitime.

1275. Any person incapable of succeeding , and despite exclusion entered into possession of the hereditary property shall be obliged to:

a) Return the hereditary property together with its accessions and liable for the fruits and rents he may have received, or could have received through the exercise of due diligence.
b) Prepare an inventory of whatever remaining in the hereditary property and return the same and liable for damages.
c) Withheld the fruits, because at the beginning he is capacitated however becomes an unworthy heir.
d) Make an accounting and administer the property.

1276. X was found to be an unworthy heir. What is his right over the hereditary property in his possession prior to the declaration of unworthiness?

a) He has no right whatsoever because his right will be transferred to his children or any ascendant, as right to representation is proper.
b) He has a right to demand indemnity for any expenses incurred in the preservation of the hereditary property, and to enforce such credits as he may have against the estate.
c) He has no right whatsoever aside from the administration of the hereditary property in favor of his children or descendants by virtue or representation.
d) He has the right to enforce claims over the hereditary property, especially to the credits accrued to the hereditary property through his personal efforts to increase the assets of the hereditary property.

1277. B is married; he was then having an affair with A, the common law spouse of MMM. MMM made a will instituting B as his only heir. At the last moments of MMM, he was told about the illicit relationship. He made no objections and decided to die. Is B incapacitated to succeed?

a) Yes, by reason of unworthiness as an heir, because he was then guilty of concubinage with the common law wife of the testator.

b) No, because there must be a final judgment finding them guilty of concubinage for him to be considered as an unworthy heir.

c) No because the testator has knowledge thereof and made no objections, therefore there is implied condonation . Under the law, the reason for unworthiness shall be without effect if the testator had knowledge thereof.

d) Yes because he is disqualified to succeed by reason of moral grounds.

1278. A is married to Y. Y is six months pregnant. A died in a car accident, because of depression Y gave birth to a baby named Baby James. Baby James died after Seventy Two (72) hours after birth. Is Baby James considered to have succeeded his father? Rule on capacity of Baby James to succeed.

a) Baby James has capacity to succeed and deemed succeeded his father, because birth determines personality and he has been conceived at the time the succession opens that is when his father died. Because a child already conceived at the time of the death of the decedent is capable of succeeding provided it be born later.

b) Baby James has no capacity to succeed because he has an intra uterine life of less than seven months and died after 72 hours from its complete delivery from the maternal womb. Hence not deemed born.

c) 8aby James has capacity to succeed and deemed succeeded his father. 8ecause a child already conceived at the time of the death of the decedent is capable of succeeding. 8aby James lived after twenty four hours after its complete delivery from the maternal womb hence considered born considering that he has intra-uterine life of less than seven months.

d) Baby James has no capacity to succeed and have not succeeded his father, because his mother is an unworthy heir, by letting him die after seven two hours from its delivery.

1279. Y made a will. A, B & C are present and saw Y the testator affixing his signature in his will. In fact they have read the Will and they learned that there are legacies given to them. Are they capable to succeed?

a) No. Because any witness to the execution of a will, the spouse, parents, or children or any one claiming under such witness, spouse, parents or children are incapable of succeeding.

b) Yes. 8ecause they are not instrumental witnesses in the making of the will. They should not be prejudiced by mere presence thereat.

c) No. Because aside from being a witness to as to the fact that Y has a will, their presence might have influenced the testator.

d) Yes. Because there is a need for the declaration for incapacity to succeed, and they are enjoying the presumption of capacity as opposed to inacpacity.

1280. X executed a will disposing all his properties for the prayers and pious works for the benefit of his soul. His executor asked the approval of the court and delivered all the properties to the church to which the testator belongs. The Solicitor General objected, claiming that the estate should be escheated or be delivered in favor of the state. Rule on the contention.

a) The Solicitor General is wrong. Because the law favors testacy over intestacy.

b) The Solicitor General is wrong. Because escheat proceedings can be made only when there is no more heirs of the decedent.

c) The Solicitor General is correct. Because the decedent cannot dispose his own property to the whole extent in favor of his own and prayers or pious works for his soul.

d) The Solicitor is correct. 8ut to the extent of the half of the properties of the testator.

1281. Tomas a Filipino executed a Will instituting his dog and his illegitimate son as his only heirs. Later he departed for United States and became a U.S citizen. What law shall govern the capacity of his illegitimate child to succeed?

a) Philippines law shall govern his capacity to succeed. Because at the time Tomas executed his will, he is a Filipino Citizen. The formalities and mode of disposition was intended to be made in accordance with Philippines Law.

b) Philippine law shall govern the capacity of his heir to succeed. The will is the paramount consideration when it comes to disposition of the properties of the testator. The will is valid, and however the disposition in favor of his dog is ineffectual.

c) The law of the United States shall govern, because capacity to succeed is governed by the law of the nation of the decedent.

d) The law of the United States because intestate and testamentary succession and to amount of successional rights and to the intrinsic validity of the testamentary provisions shall be regulated by the national law of the person whose succession is under consideration whatever may be the nature of the property and regardless of the country wherein said property is located.

1282. Who may bring an action for a declaration of incapacity and for recovery of inheritance, devisee or legacy?

a) The executor of the will or the administrator of the hereditary property. b) The preterited heir.

c) Any person who have interest in the succession.

d) Only the heirs.

1283. When to bring an action for the declaration of incapacity of an heir and for recovery of an inheritance, devisee or legacy?

a) Within ten years from the time the disqualified person took possession thereof.

b) Within five years from the time the disqualified person took possession thereof.

c) Within fifteen years from the time the disqualified person took possession thereof or before it is barred by laches.

d) Within one year from the time the disqualified person took possession thereof. e) Within four years from the time the disqualified person took possession thereof.

1284. What is the status of the testamentary dispositions/provisions in favor of a person disqualified by law to inherit?

a) Voidable.

b) Void.

c) Unenforceable. d) In officious.

e) Ineffectual.

1285. What is the status of the testamentary disposition/provision in favor of a person disqualified to inherit by reason of unworthiness?

a) Voidable.

b) Void.

c) Unenforceable. d) In officious.

e) Ineffectual.

1286. X, was sentenced to life imprisonment with an accessory penalty of civil interdiction, escaped from Bilibid Prison. He executed a Will instituting Pong a policeman, as an heir. Pong knows the institution. Because Pong is also a bounty hunter, he arrested X and deliver him back to jail. During the probate of the will, the heirs objected to Pong's capacity to inherit. Rule on the objection.

a) Pong is incapacitated to inherit because he is an unworthy heir.

b) Pong is capacitated to inherit because there was no attempt or any in the life of the testator.

c) X incapacitated to make a will, because he was then suffering from civil interdiction. The institution is ineffectual; hence Pong cannot inherit because the will is void.

d) Pong is capacitated to inherit because he is not disqualified by law nor considered as an unworthy heir.

1287. What is the nature of acceptance and repudiation of inheritance?

a) It is an act which is purely voluntary and free.
b) It is an act which is involuntary and free.
c) It is an act which is purely gratuitous and free d) It is an act which is onerous and free
e) It is an act which is partly voluntary, gratuitous and free.

1288. Which of the following grounds of incapacity to inherit by reason of unworthiness necessitates final judgment or conviction?

a) Any person who falsifies or forges a supposed will of the decedent.
b) Any person who accused the testator of a crime for which the law prescribes imprisonment for six years or more, if the accusation has been found groundless.
c) Parents who have abandoned their children or induced their daughters to lead a corrupt or immoral life or attempted against their virtue.
d) Any person who by fraud, violence, intimidation, or undue influence should cause the testator to make a will, or to change one already made.

1289. Is the incapacity to succeed by the priest who heard the confession of the testator during his last illness absolute?

a) No. The priest when excluded by law, there can still be the right of representation available to his descendants, in that way he is indirectly capacitated to inherit.
b) Yes. They are expressly excluded by law, hence they are absolutely excluded.
c) They are not excluded provided they heard the confession of the testator after the making of the will.
d) They can still succeed when they did hear the confession and have not exerted moral compulsion or undue influence to the testator.

1290. X executed a will. He instituted B, an instrumental witness to the will to the extent of P50,000.00 Pesos. It appeared that the testator has an unpaid indebtedness amounting to P100,000.00 Pesos from B. B, took it and applied to X's indebtedness. Is the institution valid?

a) Yes. Because the institution was not a pure act of liberality but, an onerous one. Were it not the indebtedness, B was not instituted.
b) No. Because it is an act of fraud against the creditors of the estate of X. A situation strictly guarded against by law.
c) No. Because instrumental witnesses are expressly disqualified by the law to succeed.
d) No. 8ecause a testamentary disposition in favor of a disqualified person, even though made under the guise of an onerous contract is void.

1291. H is a priest who heard the last confession of the N. F a minister of the same religious sect, extended spiritual aid to N during his last illness. Later, N instituted the religious and charitable organization founded by the religious sect where H and F belong. Is the institution valid?

a) Yes, because the disqualification to succeed is limited to the priest who heard the last confession of the testator or the minister of the church who extended spiritual aid.
b) Yes. Because testamentary disposition may be to associations for religious, scientific, cultural, educational, or charitable purposes, unless there is a contrary provision to their laws of creation or charter.
c) No. because the disqualification to succeed includes the church, chapter, community, organization or institution to which such priest or minister may belong.
d) No. Because the disqualification is absolute.

1292. Can the testator designate all his properties in favor of the poor in a certain locality?

a) No. because under the law the executor must deliver the half to the state for the purposes mentioned in article 1013.
b) Yes. Because the law favors testacy.
c) Yes. 8ecause unlike in cases where the testator had disposed all his properties in favor of his own soul where the executor with the permission of the court, shall deliver the half to the state

and the half to the religious organization where the testator belongs. The whole estate may be given to the poor.

d) No. because there is no particular designation in that case. Under the law after payment of debts and charges, the personal property shall be assigned to the municipality or city where the deceased last resided in the Philippines, and the real estate to the municipalities or cities respectively, in which the same is situated.

1293. Assuming there is general designation in favor of the poor in the will, to which or whom it will be given, in absence of any contrary intention?

a) The poor living in the domicile of the testator at the time of his death.

b) In case of a real property, the poor living in the municipality or city where the property of the testator is situated and if it is a personal property the municipality or city where the deceased last resided in the Philippines.

c) The poor living in the place where the testator executed his will.

d) The poor living in the nation of the testator at the time of his death.

1294. When the institution of an heir is conditional, which of the following is also considered?

a) The time of their compliance.

b) The legal possibility of the condition. c) The Nature of the condition.

d) The vagueness of the condition.

1295. B an instituted heir of D the testator. B was convicted with an offense for his attempt against the life of D's brother. However in the judgment there is a finding that such attempt aroused initially from a lawful self defense. Thereafter the other heirs objected to the capacity of B to succeed. Rule on the matter.

a) D is incapacitated to succeed by reason of unworthiness of an heir. Because of his act in attempting against the life of the testator's brother.

b) D is not disqualified to inherit by reason of unworthiness. The act aroused from a lawful defense. The law contemplates the absence of any legitimate reason in the commission of the act.

c) D is not disqualified. 8ecause only those convicted for an attempt against the life of the testator, his or her spouse, descendants, or ascendants are specially disqualified by law, the enumeration is exclusive.

d) D is disqualified. Because the enumeration is not exclusive, but pertains to the nuclear family of the testator, which includes a brother.

1296. The causes of unworthiness can be without effect if the testator should:

a) Condone them knowingly and intelligently.

b) Condone them in writing.

c) Condone the act without any mental reservations. d) Condone the act in the presence of the other heirs.

1297. D executed a will. Thereafter, he becomes very sick. He called at F and G, a physician and a nurse respectively. They extended incomparable care to the testator until his final breath. Later on it was discovered that in D's will, they were instituted as an heir for so much properties. Are they disqualified to inherit or succeed?

a) Yes. Because any physician, surgeon, nurse, health officer or druggist who took care of the testator during his last illness is disqualified to succeed without any distinction as to when.

b) No. 8ecause the will was already executed at the time they took care of the testator.

c) Yes. Because of the possibility of undue influence on the testator by the physician, surgeon, nurse, health officer or druggist who took care of the testator. Which the aims to prevent.

d) No. after all, the institution is onerous and they have no knowledge over the institution.

Article 1042 - 1057

1298. What is the effect of the presence of a VITIATED CONSENT in the acceptance and repudiation of the inheritance?

Because acceptance and repudiation are free and voluntary acts, the presence of vitiated consent gives rise to their revocability.

1299. What is the reason for allowing repudiation?

Simply because no one can be compelled to accept the generosity of anothe

1300. When is acceptance or repudiation may be made?

a.) The heir must be certain of the death of the decedent.
b.) The heir must be certain of his right to the inheritance. (thus, acceptance is useless when the will is void).

1301. Juan has been missing for 7 years, his wife and children decided to sell one of the land of Juan as for their support. One month after they sold the land, Juan reappears. What is the effect of the reappearance of Juan?

If the absentee appears or even without appearing but his existence is proved, he shall recover his property in the condition in which it may be found, the price of any property that may have been alienated or the property acquired therewith; but he cannot claim either fruits or rents.

1302. Why is the married woman allowed to repudiate an inheritance without the consent of the husband?

Because after all, if she gets the inheritance, it becomes her separate property.

1303. What are the ways of acceptance?

a.) express
b.) implied or tacit(thru actions would have no right to do except in the capacity of the heir)

c.) presumed

1304. When is the acceptance presumed?

If within 30 days after the court has issued an order for the distribution of the estate, the people concerned have not signified their acceptance or the repudiation.

1305. Pedro instituted Pedra as his heir leaving her apartment to her. After which Pedro has allowed Pedra to provisionally administer the apartment. Pedra start collecting its rent from the lessee and even start repairing some of the apartment damages. Does the act of Pedra of preserving and administration over the apartment of Pedro signify acceptance?

NO. Art 1049 provides the acts of mere preservation or provisional administration do not necessarily imply an acceptance of the inheritance neither do they signify a repudiation.

1306. Give three instances when inheritance is deemed accepted?

1. If the heir sells, donates, or assigns his right to a stranger, or to his co-heirs, or to any of them;
2. If the heir renounces the same, even through 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.

1307. Decided Case. Enteng owed a husband and the latter's wife P25,000. When Enteng inherited certain properties, he "RENOUNCED" the same in favor of the couple in order that the debt might be extinguished. Did Enteng accepted or renounced his inheritance?

The word "RENOUNCE" used in the document by Enteng, does not, under the terms of the document constitutes repudiation of an inheritance rather it actually means acceptance. Enteng even without expressly stating his acceptance thereof, he sells or disposes said property as payment for his debt, it is clear that he does so because he regards the inheritance as his very own.

1308. The rule on repudiation must be made expressly. Give at least three reasons behind such rule.

Repudiation should always be EXPRESS because: A.) It is an act of disposing of property rights.
B.) It is unnatural and resultantly disturbs juridical relations.
C.) The creditors of the renouncer should be more or less informed, hence, the need for an express renouncing.

1309. State 3 reasons how repudiation is made?

a. by a public instrument
b. by an authentic (genuine, not forged) instrument
c. by a petition to the court having jurisdiction over the testamentary or intestate proceedings but must be presented within 30days from order of court for the distribution of the estate, otherwise, this is deemed to be an acceptance.

1310. Rey instituted Papi, a friend to an estate of P1m. Rey has no compulsory heirs. Papi is indebted to Jim for P800,000. Although Papi is completely insolvent, he renounces the inheritance. Jim then petitions the court to accept the inheritance in Papi's name. Will he be allowed to do so?

Yes, but only to the extent of P800,000. The remaining P200,000 will not go to Papi but will go to the intestate heirs. If there be no relatives within 5th degree, the State will inherit the same as the last intestate heir.

1311. Milan died, leaving an estate worth P1m. In the will, Milan gave Cocoy, his friend, P200,000 and the rest to Bon, who is Milan's legitimate son. Milan did not give anything to Sherwin, his own legitimate brother. Bon repudiated his inheritance although he had no money and owed Gemar P500,000. Gemar was allowed to get this P500,000. The remaining P300,000 is claimed by Bon, Sherwin and Cocoy. Decide.

The P300,000 will not go to the renouncer, Bon, but will go to Cocoy to the friend by virtue of accretion. This is so, because by virtue of Bon's repudiation, there is no more legitime to speak of and everything is free. Accretion excludes Sherwin's right to inherit by intestacy.

1312. A in his will give P200,000 to B and P200,000 to C. B and C are A's legitimate sons. The estate is P400,000. B has a legitimate child D. B owes X P50,000 but B repudiated the inheritance although he was insolvent. X petitioned the court to authorize him (X) to accept the inheritance.

1. Will X be allowed to do so?
Yes, X will be allowed to accept in B's name but only to the amount of P500,000 which is his credit.

2. If there be any excess, who should get the same?
The remaining extra P150,000 will go to C (P100,000 in his own right by way of legitime and P50,000 by accretion.)

1313. Francis dies leaving P100,000 to Ely, a friend, who has a legitimate child Chito. A. What if Ely predeceases Francis? B. Would your answer be the same if Ely survives Francis?

a. If Ely predeceases Francis, Ely acquires no right since he is a voluntary heir and therefore does not transmit the P100,000 to Chito.

b. No because if Ely survives Francis and later Ely dies without having accepted or repudiated the inheritance, the right to accept or repudiate is transmitted to C.

1314. In the above problem, what if Ely dies later than Francis, but Chito renounces his right to inherit from Ely, can Chito make use of Art. 1053?

No, even if Ely was not able to accept or repudiate Francis' inheritance. This is evident because the transmission of said right to choose presupposes that the heirs of the original heir are willing to inherit from said original heir.

1315. Willie instituted his only son % of the estate. No other provision was made. The son repudiated his share as testamentary heir. However, the remaining X is now suddenly being claimed by the son himself and by the testator's brother- as intestate heirs. Decide.

The brother gets said X. While the son is the nearest intestate heir, his repudiation of the testamentary % renders him undeserving of the intestate share. For the same reason, the % should also be given to the brother.

1316. Jose died, leaving an estate worth P1million. In his will, Jose gave Wally, his legitimate son, P700,000. No disposition was made of the balance. If Wally repudiates the remaining P300,000, in what instance may he still get the portion of P700,000 later on?

If Wally repudiates the P300,000 which should accrue to him as the nearest intestate heir, WITHOUT knowing that he had also been made testamentary heir in the amount of P700,000, he may still accept this portion in the character of testamentary heir.

1317. Bong died, leaving Anne an estate worth P5 million which the latter expressly repudiated. However, later on Anne suffered a financial loss and wants to revoke her repudiation. Can she do that?

No. Art. 1056 provides that once an acceptance or repudiation is made, it is irrevocable. The reason of the law is to prevent confusion and instability of rights.

1318. What are the exceptions to the rule that once an acceptance or repudiation is made, it is irrevocable?

The exceptions are:

A.) When the acceptance or repudiation was made thru any of the causes that vitiate consent:

1. Mistake
2. Violence
3. Intimidation
4. Undue influence
5. Fraud

B.) When an unknown will appears.

1319. Aida, Lorna and Fe are testamentary heirs of Marco. More than 30 days has lapsed on the settlement proceedings and the court has issued an order for the distribution of the estate, Aida now wants to repudiate his share. Can Aida repudiate her share?

No. Art.1057 provides that within 30 days after the court has issued an order for the distribution of the estate in accordance with the Rules of Court, the heirs, devisees and legatees shall signify to the court having jurisdiction whether they accept or repudiate the inheritance. If they do not do so within that time, they are deemed to have accepted the inheritance.

Art.1057, provides a way for tacit or implied acceptance. Hence, if there are administration or settlement proceedings, the heirs, etc., cannot repudiate the inheritance after the lapse of thirty days.

1320. Manu Ginobli died instituting Tony Parker, a friend, as his only heir. The day after Manu died, Tony also died, leaving five children. Tony had not been able to signify either his acceptance or repudiation of Manu's inheritance. Is it permissible for two of the children to accept in his name, and other three to repudiate?

YES. Art. 1054 provides that should there be several heirs called to the inheritance, some of them may accept and the others may repudiate it. In the problem given, it is permissible for the two to accept and the other three to repudiate their shares but only with respect to their individual shares.

1321. Vic instituted Joey, a friend to an estate of P5 million. Vic has no compulsory heirs. Joey is indebted to Jimmy for P4 million. Although Joey is insolvent, he renounces the inheritance. Can Jimmy ask the court to accept the entire P5m inheritance in Joey's name. Is Jimmy right?

No. Under Article 1052 of the NCC, the creditor cannot accept everything that has been repudiated, they can accept only to the extent they have been prejudiced. In the given problem, Jimmy can accept but only to the extent of P4 million.

1322. In the above problem, what if Joey has still 3 Mercedez Benz as his property, can Jimmy petition the court to accept the inheritance in Joey's name?

The creditors will not be allowed to accept in the name of the heir if he has still enough properties of his own to cover his debts. In other words, the heir's own properties will first be liable.

1323. The effects of the acceptance or repudiation shall always retroact to the moment of the death of the decedent.

TRUE

1324. A person may accept or repudiate an inheritance even when he is not yet certain of the death of the person from whom he is to inherit.

FALSE. The heir must be certain of the death of the decedent.

1325. The absentee shall not be presumed dead for the purpose of opening his succession till after an absence of seven years.

FALSE. Till an absence of TEN years.

1326. Acceptance of Juridical entities does not require court approval.

TRUE

1327. Repudiation of Juridical entities does not need court approval.

FALSE. Approval of court is necessary by reason of public policy and interest because the act can result in loss of patrimony.

1328. An insane person cannot accept all by himself.

FALSE. An insane person can accept provided that he acted during lucid interval.

1329. Acts of mere preservation do not necessarily imply an acceptance.

TRUE

1330. Creditors can accept in their own name.

FALSE. Creditors do not accept in their own name, they accept in the name of the heir, devisee or legatee.

1331. The creditor cannot accept everything that has been repudiated, he can accept only to the extent they have been prejudiced.

TRUE

1332. If the heir should die without having accepted or repudiated the inheritance his right shall be transmitted.

TRUE

1333. Once an acceptance or repudiation is made, it is irrevocable.

FALSE there are exceptions when such acceptance or repudiation is made that vitiates consent like fraud, mistake etc.

1334. A threat to enforce one's claim through competent authority vitiates consent.

FALSE. It would not vitiate consent when such claim is just or legal.

1335. If an heir instituted under a suspensive condition accepts, but the condition is not fulfilled, the acceptance is naturally VOID.

TRUE

1336. One is not allowed to repudiate legacies with burdens when he accepts gratuitous legacies.

TRUE

1337. One who repudiates have basically owned or possessed the inheritance.

FALSE. One who repudiates is deemed never to have owned or possessed the inheritance.

Article 1058 - 1060: Executors and administrators

1338. Who is an executor?

An executor is a person nominated by a testator to carry out the directions and requests in his will and to dispose of his property according to his testamentary provisions after his death. (21 Am. Jur. 369)

1339. Who is an administrator?

An administrator is a person appointed by the court, in accordance with the governing statute, to administer and settle intestate estate and such testate estate as no competent executor was designated by the testator.

1340. Who is a special administrator or administrator pendente lite?

A special administrator or an administrator pendente lite is a one who is in the meantime to take possession and charge of the estate of the deceased, where there is a delay in the appointment of the regular executor or administrator until the questions causing the delay are decided and executors and administrators appointed. (Section 1, Rule 80).

1341. Who are considered as incompetent to serve as executors or administrators?

The following are considered incompetent to serve as executors or administrators: (a) A minor;

(b) A non-resident of the Philippines;

(c) One who is in the opinion of the court is unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude. (Section 1, Rule 78).

1342. May a married woman serve as an administrator?

Yes. A married woman may serve as executrix or administratrix, and the marriage of a single woman shall not affect her authority so to serve under a previous appointment.

1343. What are the powers and duties of the executor or administrator?

Basically, they are:

(a) Administration;
(b) Liquidation;
(c) Distribution. (Rule 84)

1344. Who is liable for the attorney's fees due the lawyer rendering legal services in relation to estate settlement?

As a general rule, it is the executor or administrator who is primarily liable for attorney's fees due the lawyer who rendered legal services for the executor or administrator in relation to the settlement of the estate and the executor may seek reimbursement from the estate for the sum paid in attorney's fees if it can be shown that the services of the lawyer redounded to the benefit of the estate. (Salonga vs. Hernandez-488 SCRA 449 [2006]). A claim for attorney's fees partakes of the nature of an administration expense, and the claim for reimbursement must be superior to the rights of the beneficiaries.

1345. C, who died in 1963, was an incorporator of PEI. J claimed to be an heir of C. as surviving heir, he claimed entitlement to the rights and privileges his late father as a stockholder. Upon the death the shareholder, who has the legal title over the stock?

The executor or administrator duly appointed by the court.

Upon the death of a shareholder, the heirs do not automatically become stockholders of the corporation and acquire the rights and privileges of the deceased as shareholder of the corporation. The stocks must be distributed first to the heirs in estate proceedings, and the transfer of the stocks must be recorded in the books of the corporation. Section 63 of the Corporation Code provides that no transfer shall be valid, except as between the parties, until the

transfer is recorded in the books of the corporation. During such interim period, the heirs stand as the equitable owners of the stocks, the executor or administrator duly appointed by the court being vested with the legal title to the stock. Until a settlement and division of the estate is effected, the stocks of the decedent are held by the administrator or executor. Consequently, during such time, it is the administrator or executor who is entitled to exercise the rights of the deceased as stockholder. (Puno vs. Puno Enterprises Inc.–September 11, 2009–G.R. No.
177066)

1346. Can the executor or administrator retain the whole estate and to administer estate not willed?

Yes. Executor or administrator to retain the whole estate to pay debts and to administer estate not willed. An executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration. (Section 3, Rule 84)

1347. When does an executor or administrator not accountable for debts due the estate?

No executor or administrator shall be accountable for debts due the deceased which remain uncollected without his fault. (Section 3, rule 85)

1348. In case of insolvency of the estate of the decedent, how may his debts be paid?

If the assets of the estate of the decedent which can be applied to the payment of debts are not sufficient for that purpose, the provisions on Preference of Credits shall be observed, provided that the expenses referred to in Article 2244, No. 8 (Legal expenses, and expenses incurred in the administration of the insolvent's estate for the common interest of the creditors, when properly authorized and approved by the court.), shall be those involved in the administration of the decedent's estate. (Article 1059, NCC).

1349. May the probate court issue writs of execution to satisfy the claims against the estate?

The general rule is that a probate court cannot issue a writ of execution, because its orders usually refer to the adjudication of claims against the estate which the executor or administrator may satisfy without the need of resorting to a writ of execution. The probate court as such does not render any judgment enforceable by execution.

However, by way of exception, the probate court may issue writs of execution in the following instances:

(a) to satisfy the debts of the estate out of the contributive shares of heirs, devisees, and legatees in the possession of the decedent's estate'

(b) to enforce payment of the expenses of partition; and

(c) to satisfy the costs when a person is cited for examination proceedings. (Pastor Jr. vs CA–G.R.No. 56340–June 24, 1983)

1350. If an executor or administrator is appointed, can he/she immediately enter upon the execution of his/her trust?

No. Before an executor or administrator enters upon the execution of his trust, and letters testamentary or of administration issue, he/she shall give a bond in such sum as the court directs. (Section 1, Rule 81).

1351. (a) May the court appoint a co-administrator?

Yes. The practice of appointing co-administrators in the estate proceedings is not prohibited. In Gabriel vs. CA, G.R. No. 101512, August 7, 1992, it was held that jurisprudence allows the appointment of co-administrators under certain circumstances, to wit:

"Under both Philippine and American jurisprudence, the appointment of co- administrators has been upheld for various reasons, viz: (1) to have the benefit of their judgment and perhaps at all times to have different interests represented; (2) where justice and equity demand that opposing parties or factions are represented in the management of the estate of the deceased; (3) where the estate is large, or from any cause, an intricate and perplexing one to settle; (4) to have all interested persons satisfied and the representation to work in harmony for the best interest of the estate; and (5) when a person entitled to the administration of an estate desire to have another competent person associated with him in the office." (Uy vs. CA et al–G.R.No.

167979- March 16, 2006).

(b) What are the duties of such co-administrator?

A co-administrator performs all the functions and duties and exercises all the powers of a regular administrator, only that he is not alone in the administration. (De Borja vs. Tan–97 Phil. 872)

1352. Is the order of preference in the appointment of an administration absolute?

No. It is well-settled that a probate court cannot arbitrarily and without sufficient reason disregard the preferential rights of the surviving spouse to the administration of the estate of the deceased spouse. But if the person enjoying such preferential rights is unsuitable, the court may appoint another person. The determination of the person's suitability for the office of the administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and such judgment will not be interfered with on appeal unless it appears affirmatively that the court below was in error.

Unsuitableness may consist in adverse interest of some kind or hostility to those immediately interested in the estate. (Sioca vs. Garcia =--44 Phil. 771; Silverio vs. CA–364 SCRA 188; Uy vs. CA et al., March 16, 2006).

1353. Who may oppose the issuance of letters testamentary?

Any person in a will may state in writing the grounds why letters testamentary should not issue to the persons named therein as executors, or any of them, and the court, after hearing upon notice, shall pass upon the sufficiency of such grounds. A petition may, at the same time, be filed for letters of administration with the will annexed. (Section 1, Rule 79)

1354. May an executor be appointed special administrator during the pendency of appeal from the order admitting a will for probate?

Answer:

Yes, because the appointment of a special administrator is based on the sound discretion of the court. (Ozaeta vs. Pecson–93 Phil. 416)

18. Question: May a corporation or association be appointed as an executor, administrator, guardian of an estate or trustee?

Yes. A corporation or association authorized to conduct the business of a trust company in the Philippines may be appointed as an executor, administrator, guardian of the estate, or trustee, in like manner as an individual; but it shall not be appointed guardian of the person of a ward. (Article 1060)

1355. When shall letters of administration be revoked?

Letters of administration is revoked if after the letters of administration have been granted on the estate of a decedent as if he died intestate, his will is proved and allowed by the court. (Section 1, Rule 82)

1356. What are the effects of the revocation of the letters of administration?

The following are the effects of the revocation of the letters of administration: (a) All the powers thereunder ceased;
(b) The administrator shall forthwith surrender the letters to the court; and
(c) To render his account within such time as the court directs. (Section 1, Rule 82)

1357. When shall the executor or administrator render an accounting of his administration?

(a) The executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration. (Section 8, Rule 85); (b) He shall render such further accounting as the court may require until the estate is wholly settled; (Section 8, Rule 85)

(c) The court may examine him upon oath with respect to every matter relating to any account rendered by him and shall so examine him as to the correctness of his amount before the same is allowed. (Section 9, Rule 85)

1358. If there is a claim of the executor or administrator against the estate, how shall he do it?

If the executor or administrator has a claim against the estate he represents, he shall give notice thereof, in writing to the court, and the court shall appoint a special administrator, who shall, in the adjustment of such claim, have the same power and be subject to the same liability as the general administrator or executor in the settlement of the claims. The court may order the executor of administrator to pay to the special administrator necessary funds to defend such claims. (Section 8, Rule 86)

1359. X mortgaged his property to Y to secure the payment of a loan. X failed to pay the debt, but in the meantime, Y died. State the power of the executor or the administrator.

A mortgage belonging to the estate of a deceased person, as mortgagee or assignee of the right of the mortgagee, may be foreclosed by the executor or administrator. (Section 5, Rule 87)

1360. When may the court order the sale of the personal properties of the decedent?

Upon the application of the executor or administrator, and on written notice to the heirs and other persons interested, the court may order the whole or part of the personal estate be sold, if it appears necessary for the purpose of paying debts, expenses of administration, or legacies, or for the preservation of the property. (Section 1, Rule 89)

1361. During his lifetime, X donated a property to his son Y. Where will the issue of advance inheritance be determined?

It shall be heard and determined by the court having jurisdiction of the estate. (Section 2, Rule 90)

1362. What does collation mean?

Collation refers to the act of restoring to the common mass of the hereditary estate, either actually or fictitiously, any property or right, which a compulsory heir, who succeeds with other compulsory heirs, may have received by way of donation or any other gratuitous title from the decedent during the lifetime of the latter, but which is understood for legal purposes as an advance of his legitime. (Articles 1061-1077)

1363. Article 1061 speaks of "every compulsory heir". Is the surviving spouse included here?

While it is true that the surviving spouse is a compulsory heir, still she is not included here because in general, donations to her during the marriage are null and void. (Article 133). Therefore, the ownership over said donated property still pertains to the donor (or his estate). On the other hand, moderate donations like birthday or anniversary gifts are not to be computed at all in determining the value of the estate.

1364. K has P 1M and has four children, R, J, Q, and G. During his lifetime he donated P100,000.00 to his son R. Later, he died intestate leaving the remaining P900,000.00. How should this amount divided among R, J, Q, and G?

The P100,000.00 is collationable, and therefore must be added to the remaining P900,000.00. The net hereditary estate is therefore P 1M which should be divided equally among R, J, Q, and G who should get P 250,000.00 each. But since R already received P100,000.00 as advance to his inheritance, he get only P150,000.00. Thus, the P900,000.00 will be divided as follows:

R will get P 150,000

J, Q, and G will get P 250, 000 each.

1365. R has two (2) daughters, S and C. He gave C a donation of P50,000.00 and expressly stated in the deed of donation that the same was not collationable. If R dies intestate leaving P 450,000.00, how should the same be divided?

The questioned amount shall be divided equally between S and C. S and C will each get P225,000.00. Thus, C

receives a total of P 275,000.00. because of the donation or a preference of P50,000.00.

1366. Suppose in the preceding problem, R did not state or provide the words "not collationable" would your answer be the same?

No, the answer would be different. If the donor had not said "no collation" equality was clearly being desired, so C would have received only P200,000.00 which added to the P50,000.00 would give her a share of P250,000.00 which is equal to S.

1367. (a)What does "preference" mean?

"Preference" means that the donor does not want the donation to be charged to the legitime because he wants to give the done the property in addition to the latter's legitime.

(b) Is it allowed?

Yes, a preference is allowed unless the legitime of the others would be impaired or is inofficious. In this case, the inofficious donation will be reduced. (Article 1062)

1368. If the donee repudiates the inheritance, to what portion of the estate should the donation be charged?

The donation should be charged not to the legitime but to the free portion if the donee should repudiate the inheritance. (Article 1062)

1369. What properties or rights which a compulsory heir may have received by gratuitous title from the decedent are not subject to collation?

(a) They are:

1. Property left by will;
2. Property which may have been donated by an ascendant of the compulsory heir to the children of the latter;
3. Property donated to the spouse of the compulsory heir;
4. Expenses for support, education, medical attendance even in extraordinary illness, apprenticeship, ordinary equipment, or customary gifts;
5. Expenses incurred by parents in giving their children a professional, vocational, or other career;
6. Wedding gifts consisting jewelry, clothing and outfit, given by the parents or ascendants, so long as they do not exceed 1/10 of the disposable portion. (Articles 1063, 1065, 1066, 1067, 1068, 1070 CC)

1370. R has two legitimate children, E and J. R made a will giving E a legacy of P50,000.00. There was no other provision in the will. The estate was P500,000.00. How will the estate left be distributed?

Inasmuch as the P50,000.00 has already been disposed of as a legacy, there's only remaining P450,000.00. The remaining P450,000.00 of the estate will be divided equally between E and J and each will therefore get P225,000.00. The P50,000.00 given as a legacy to E is not considered as an advance of the free portion. It is clear that by giving E the legacy , the testator intended to give him preference.

1371. Are grandchildren required to collate properties even if they have not inherited the same?

Yes. When grandchildren, who survive with their uncles, aunts, or cousins, inherit from their grandparents in representation of their father or mother, they shall bring to collation all that their parents, if alive, would have been obliged to bring, even though such grandchildren have not inherited the property. (Article 1064, par. 1)

1372. Are grandchildren required to collate those they may have received from the decedent during his lifetime?

Yes. Grandchildren shall also bring to collation all that they may have received from the decedent during his lifetime, unless the testator has provided otherwise, in which case his wishes must be respected, if the legitime of the co-

heirs is not prejudiced. (Article 1064, par. 2)

1373. Are parents obliged to bring to collation any property received by their children from their ascendants?

No. Parents are not obliged to bring to collation in the inheritance of their ascendants any property which may have been donated by the latter to their children. (Article 1065).

1374. Q has three (3) legitimate children, P, U, and V. U has a child O. Q donated P200,000.00 to O. Q died intestate leaving P1.2 M.

(a) How will his estate be divided?

The estate will be divided equally among P, U and V. P, U and V then will inherit P400,000.00 each.

(b) Is U obliged to collate what his child O received?

No, U is not required to collate what his child O received by way of donation. Under Article 1065 of the Civil Code, parents are not obliged to bring to collation in the inheritance of their ascendants any property which may have been donated by the latter to their children.

1375. Are donations made to the spouse of the child subject to collation?

No. Article 1066 of the Civil Code provides that neither shall donations to the spouse of the child be brought to collation, but if they have been given by the parent to the spouse jointly, the child shall be obliged to bring to collation one-half of the thing donated.

1376. What does the term "non-collation" under Article 1066 mean?

Non-collation under Article 1066 does not mean that the value should not be computed. It only means that although the value of the donation should be computed, its value should not be considered as an advance of the legitime of the child himself.

1377. R has three (3) children, D, E and F. R donated P400,000.00 to E. When R died, the remaining estate was P200,000.00. D and F accepted the inheritance while E repudiated the same. In this case, should the donation to E be reduced? Why? If so, how much?

Yes the donation to E should be reduced. D and F accepted the inheritance while E repudiated it, hence there will only be two compulsory heirs, D and F. The total estate would still be P600,000.00 and D and F are entitled to a combined legitime of P300,000.00 each. Inasmuch as the free portion is only P300,000.00 it follows that the donation to E which is P400,000.00 is inofficious, thus the same will be reduced by P150,000.00.

1378. How are expenses incurred by the parents in giving their children a professional, vocational, or other career be treated?

Expenses incurred by the parents in giving their children a professional, vocational, or other career shall not be considered as an advance to the legitime but as an advance to the free portion.

1379. Because C pitied his son X who had borrowed money he could not pay, C paid P50,000.00. When C died, X repudiated his inheritance. In this case, does X have to pay the estate?

No, because he is not a debtor. But of course the amount used should be reduced, that is, the estate of C may recover from X insofar as the legitimes of the other compulsory heirs have been impaired. (Article 1062)

1380. L has two (2) legitimate children M and N. When M and N married, L gave a P10,000.00 necklace to M and P20,000.00 trousseaur to N as wedding gifts. L left an estate of P100,000.00. Should the gifts be reduced?

Yes, both the gifts to M and N should be reduced because they exceeded 1/10 of the free portion. The free portion is P65,000.00 (P130,000/2=P65,000). One-tenth of P65,000.00 is P6,500. Since the gifts to M and N are P10,000.00 and P20,000.00 respectively, they clearly exceeded the limit provided by law. Hence, should be reduced.

(Article 1070)

1381. Are gifts in cash or money or real property included in Article 1070?

It is submitted that by analogy, cash or money or real property, may be included within the scope of Article 1070. (Civil Code, Vol.III, Paras, 16th Edition, page 622)

1382. Are the same things donated be the ones to be brought to collation?

No. The same things donated are not to be brought to collation and partition, but only their value at the time if the donation, even though their just value may not then have been assessed.

1383. What is the basis of the value referred to in the preceding problem?

It is the value at the time of the perfection of the donation, because it is this that really had been given gratuitously. (Civil Code, Vol.III, Paras, 16th Edition, page 623)

1384. D donated a car to his son H. Later on, the car was destroyed. Does H still need to collate the same?

Yes. The donation's subsequent increase or deterioration and even their total loss or destruction, be it accidental or culpable, shall be for the benefit or account and risk of the donee.

The owner, being the donee, bears the loss. Hence, even if the thing given has been lost by a fortuitous event, the donee must still collate its value. (Article 1071)

1385. A was legally married to K. They had a legitimate child Q. Both A and K agreed to give Q a house and lot. Later, A died. When C participates in the inheritance of A, how much should be collated by him?

Only half of the value of the house and lot should be collated by him.

Article 1072 provides that in the collation of a donation made by both parents, one-half shall be brought to the inheritance of the father and the other of the mother.

In this problem, both Q's parents agreed to the donation. Hence, he is only required to collate half of the value of the house and lot.

1386. How should the donee's share of the estate be reduced?

The donee's share of the estate shall be reduced by an amount equal to that already received by him; and his co-heirs shall receive an equivalent, as much as possible, in property of the same nature, class and quality. (Article 1073)

1387. A and B are co-heirs. Their father donated a residential land to B. Upon the death or during the life time of their father, may A also demand the same property donated to B?

a. No, because such is not granted by law upon him. b. Yes, because A is also a compulsory heir.
c. No, because the other co-heirs may oppose the same.
d. Yes, because the law is not satisfied with mere equality as to amount or value.

1388. In cases where the property donated to other heir is movables, and if giving of its equivalent to another is impracticable, the latter has only the right;

a. To receive its equivalent in cash or marketable securities at the rates of quotations and if this cannot be done, to sell the property of the estate at public auction and to distribute the proceeds thereof.

b. To get an equivalent (in Value) of other personal property. They have no right to demand cash or the sale of said personal property in order to receive cash.

1389. From the day on which the succession is opened up to the distribution of the estate, the fruits and interest shall belong:

a. To the done. b. To the estate.
c. To the co-heir.
d. To the person who files an ejectment case.

1390. What is the required basis of ascertaining the amount of fruits and interest of the property which is subject to collation?

a. Standard assessment.
b. Fair standard.
c. Sufficient standard test.
d. Complete standard.

1391. Where the donation made is totally in officious and the done incurred some expenses, the done who is obliged to collate has the right:

a. To be reimbursed for the necessary expenses or useful expenses incurred.
b. To remove the works even if will injure the estate.
c. To be reimbursed for expenses of pure luxury or mere pleasure. d. To be reimbursed for damages.

1392. Is the donee obliges to return the whole property donated when the donation is in officious?

No. He is only obliged to return properties that impairs the legitime of compulsory heirs. Art. 1076 is only applicable to donation that is on officious in its totality.

1393. During the stage of partition and distribution, may the co-heir raises a question involving collation?

No, it is premature to raise any question of collation (Rodriguez vs. Court of A. 91 SCRA 540)

1394. When there is already an administration proceeding filed over the state. Is it necessary that dispute concerning collation should be filed in a separate action?

No. Dispute between heirs with reference to the obligation to collate may be determined in administrative proceedings over the state without the necessity of the institution of a separate action. Guinguing vs. Abuton 48 Phil. 122 (1925)

1395. Should there be a questioned arising out regarding collation, does it interrupt the distribution of the estate?

No, such will not justify the suspension the distribution of the estate so long as adequate security is given to satisfy the replacement of what has not yet been accounted for.

1396. If the donor is still alive, is the donee has the duty to collate?

No, it is not demandable during the lifetime of the donor, whatever may be its object, movable or immovable on its form unless partition is made act inter vivos. (Ignacio v. Ignacio [CA] no.5465-R, July 31, 1951.

1397 From the moment of the death of the decedent, is it necessary for an heir to go to the court and ask for the declaration of his heirship?

No. An affidavit of extra-judicial declaration is sufficient to settle the entire estate of the decedent. (Cabuyao vs. Caagbay, 95 Phil. 614)

1398. Partition may be granted when:

a. There is payment of the of the improvements made by co-heirs. b. The co-heirs paid there dept to each other.
c. there is payment of debts of the deceased, if any, by the heirs before partition.
d. when one of the co-heir died.

1399. In an action for partition, the court may only issue an order for partition when:

a. There is agreement of partition among the co-heirs and creditors.
b. There is first determination of co-ownership.
c. The age of one of the co-heirs is already 18 years old and above.
d. One of the co-heirs renounce his indeterminate on the property involved.

1400. Can a co-heir alienate his indeterminate share in the property?

Yes, each co-heir has the right to his undivided interest or share and may therefore alienate it but the effect of such alienation shall be limited only up to the proportion which may be allotted to him in partition.

1401. What is the nature and purpose of partition?

So that each co-heir may enjoy and posses the property separately and exclusively.

1402. What is the prescriptive period given to a co-heir to assert his right to participate or opposed the said partition as co-heir, after he was given notice of extra judicial partition?

a. 2 years from notice or knowledge of partition.
b. 3 years from knowledge of partition
c. 4 years from knowledge of agreement.
d. 5 years from the determination of co-ownership.

1403. Should there be oral partition among co-heirs? Is that a valid partition although such is not embodied in a public instrument?

Yes, the public instrument is necessary only for the registration of the partition but not for its validity. (Alejandrino vs. CA 295 SCRA 536)

1404. How may partition be affected as to its source?

a. It may be provisional or permanent b. Total or Partial

c. It may be judicial or extrajudicial
d. By ordinary action in court.

1405. What is the required condition that must be complied with by co-heirs so that partition is valid?

a. notice to interested parties to be sent out or issued before the deed of settlement and/or partition is agreed upon.
b. there must be a hearing first.
c. Sending a copy of decision to co-heirs after partition. d. Letter indebtedness.

1406. M has three children A,B, C, and D . During his lifetime, A, B, and C sold their share in the paraphernal property to their sister D. Two years from the sale, their mother wants to cancel the sale because D refuses to return from home. Can the action prosper?

No, because it would be unjust and inequitable for the mother to revoke the sales which she herself authorized. This is a partition inter vivos made by the owner herself and she is stopped from questioning it.(Chavez vs. IAC 191 SCRA 21)

1407. What is s the remedy of a parent so that their business enterprise should remain intact during partition inter vivos?

A parent who, in the interest of his or her family, desires to keep any agricultural, industrial or manufacturing enterprise intact, may avail himself of the right granted him in this article, by the ordering that the legitime of the other children to whom the property is not assigned, be paid in cash. (Second paragraph of Art.1080).

1408. If the decedent herself petitions his estate by act inter vivos, is a will necessary for the validity of partition?

No, a will is not necessary for the validity of partition if the decedent wants to partition his property by act inter vivos, all that is required was to comply with the rules regarding ordinary conveyances of personal or real property.

1409. May a person make partition inter vivos to favor a stranger?

No, a person cannot make a partition inter vivos which favors a stranger without institution or designation of the stranger in a will, a stranger being without right to inherit intestate, except when the disposition is intended to take effect during life, in which case the formalities of an ordinary donation must be observed.

1410. Ale has two legitimate children, Ba and Boy. Ale entrusted the partition of his estate to their maid Dina. Upon the death of Ale, Ba and Boy opposed the designation made by their father on the ground that Dina is just a maid who has no right at all. May Ale entrust the power of partition to Dina?

a.) No, because Dina is just a maid with no interest on the property
b.) Yes, because if Ale will grant his children authority to partition his property, it will result to disagreement.
c.) No, because, in the presence of the compulsory heirs, designation of partition cannot be made.
d.) Yes, because Dina is competent and trusted by Ale to effectuate partition.

1411. May a person make partition act inter vivos although minor still reside therein?

Yes, it does not preclude such person by making partition or entrusting such partition to third person but the mandatary is required to make inventory of the estate after notification was given to co-heirs, creditors, devisees.

1412. Who is a mandatory?

A person who is entrusted to make partition who is not a co-heir after making inventory of property and notifying the co-heirs, the creditors, and the legatees or devisees.

1413. A mandatory has the power to:

a. Make physical division and inventory of the estate after notification to the co- heir the creditors,

and the legatees or devisees.

b. make disposition.
c. make designation of shares.
d. protect the estate of deceased.

1414. If the co-heirs and creditors cannot agree on partition what is their remedy if any?

Any of such co-heirs or creditors may ask the proper probate court to intervene.

1415. F owned a Honda car and he has two legitimate children A and B. Upon F's death, A and B exchange the car to C for a brand new Isuzu motorcycle. Five years thereafter, A and B sold the motorcycle and the proceeds is distributed. Is there a partition between A and B?

Yes, any act which is intended to effectuate termination of co-ownership is to be considered a partition even if the co-heirs should call the transaction a sale, or an exchange. (Abarintos vs CA 315 SCRA 550)

1416. A and B are owners of a ship. If the ship owned in common was donated to a stranger, was there partition?

Yes, Art. 1082.

1417. The testator may prohibit in his will the partition of the estate among the co-heirs for a period not exceeding:

a. 15 years b. 10 years c.
20 years d. 30 years

1418. Upon his death, the testator in his will prohibit the partition of the estate within a period of
20 years. One of the properties left by the testator was the business of poultry industry. Pedro, a co-heir was questioned by his co-heir for being incompetent to manage such property and there is view that such business is certain to collapse. May the co-heirs ask partition of the property even 20 years prohibition has not yet expired?

Yes, the court in the exercise of its discretion, upon petition of co-heirs may terminate the co-ownership for any of the cases for dissolution of a partnership or where the court finds compelling reasons to order the division.

1419. Does right to demand partition prescribe?

No, as long as co-heirs recognize expressly or impliedly, the co-ownership and no renunciation was made by other co-owners.

1420. What is the reason why co-ownerships not favored?

Co-ownership or community of property is not favored by law because it is not conductive to the development of the community property particularly it involves real estate.

1421. If there was no distribution of the estate despite the order of partition under the will, can a co-heir re-open estate proceeding?

No, the non-distribution of the state is not a ground for the re-opening of the estate proceedings. A seasonal motion for execution should be filed. If the executor or administrator or has possession of the share to be delivered, the probate court would have jurisdiction within the same estate proceeding to order him to transfer that possession to the person entitled thereto. However, if no motion for execution within reglamentary period, a separate action for recovery of the share would in order. (De Jesus vs. Daza, 77 Phil. 152 (1946)

1422. A co-heir or co-owner may not be obliged to remain in the co-ownership as a general rule, but they can agree to remain as co-ownership within a period of:

a. 10 years, renewable for anther 10 years b. 15 years,
renewable for another 15 years c. 25 years
d. 30 years

1423. F executed a will in favor of his children A and B. A and B agreed orally to partition the estate of the deceased. As a rule, is the partition valid?

No, a partition made before the will is probated is a nullity. (Ralla vs. Untalon 172 SCRA 858, 1989). The law enjoins the probate of the will and public policy requires it.

1424. A and B are husband and wife. Due to strained relationship and during their marriage they agree to partition their property including their home and walls and fences. Is the partition valid?

No, because it is prohibited by the law. The community- conjugal property of husband and wife, family home and party walls and fences, by the very nature of the community, cannot be legally divided.

1425. Testator XX has two children A and B. Testator XX instituted B his friend to the free portion to his estate, with a condition that B should first repair XX's bungalow in Sagada, Mt. Province. B fails to do so. Upon the death of XX, may B demand partition?

No, A voluntary heir instituted under a suspensive condition acquires no right until the condition is fulfilled; hence he cannot demand partition, but the pure heirs A and B may demand partition provided that they gave sufficient security for the right which the conditional heir may have in case the condition is fulfilled.

1426. Institution of voluntary heirs may be made conditionally therefore voluntary heirs may demand partition only

a. if he gives security
b. if the condition is complied with
c. if there is no compulsory heirs
d. if the compulsory heirs are deprive of their inheritance

1427. What is provisional partition?

Is one where a suspensive condition is imposed to a voluntary heir entitled in a will. Until and unless the condition is fulfilled or can never be complied with, such partition is provisional in nature.

1428. The law provides that division of property should be the same in nature, quality and kind. Is such requirement mandatory?

No, perfect equality cannot always be attained. The law provides that; in partition of state, equality shall be observed as far as possible, but if not,divide the property according to their agreement or the court may provides. Art. 1086

1429. A and B are c-owner of an airplane. Can C ask for physical division of such airplane?

No, because it will render such airplane unserviceable for the use for which it is intended; however, B may ask in court such property shall be sold at public auction and its proceeds be distributed among them.

1430. If one of the co-heirs paid tax on the estate owned in common, may he ask for reimbursement?

Yes, because it is useful at necessary expenses and if they share in the benefits and improvements; they should also share in the charges.

1431. What should the court do, if person holding real estate jointly or in common cannot agree which property is to be allotted to each?

a. A person having the right to compel the partition of real estate may fie an action for partition under rule 69, sec.1.
b. The court shall appoint commissioners to make partition
c. If the property is indivisible, the court may assign to one of the parties willing to take the same.
d. But if no one would like to take the property the court order the commissioners to sell the same and the proceeds are distributed.

1432. After partition, are co-heirs obliged to make reimbursement to one another for the income and fruits which they receive from the estate?

Yes, for it is logical and just.

1433. A, B, C are co-owners. They make partition of the property. At the time of partition C was abroad. Unknown to C, the property supposedly assigned to him, prior to partition was mortgaged by A and B to X. They promised to C that the property assigned to him is clear from any encumbrances. Is A and B liable for damages?

Yes, they are liable for damages caused by, malice or neglect and also for defects of title and quality of the partition assigned to a co-heir.

1434. AB, CD, EF are compulsory heirs of GH. Upon the death of GH, AB sold his hereditary rights to a stranger I before partition. Within what period CD and EF may exercise legal redemption?

a. Within 3 months from the sale of hereditary rights b. Within 4 months
c. Within 1 month from notification of actual sale
d. Within 14 years from oral sale

1435. After the lapse of 30-day period, an action to enforce redemption will not prosper, even if brought within the ordinary prescriptive period. Would the notification run even if it was oral?

Yes, in one case it was decided by the Supreme Court, it was held that co-heirs with actual notice of the sales were not allowed to invoke their right of redemption 14 years after the sale although no notice in writing was given them. (Alonzo vs. IAC 159 SCRA 259)

1436. After the co-heirs sold his share to a stranger and his co-heirs wants to redeem the property. The co-heir should first pay:

a. interest plus the original price
b. original price of the property only
c. original price plus damages
d. the expenses for litigation plus original price of the property and damages

1437. As a rule, an heir can redeem the interest in the property conveyed by one co-heir to another within one year and before partition, however, can an heir have a right also of legal redemption if the court is the one who sells the property?

No, 1088 does not apply to a sale of specific properties ordered by the probate court in the course of the administration and liquidation of the estate of a deceased person for the payment of debts of the deceased estate. For such sales are final and not subject to legal redemption. (Plan vs. IAC 1135 SCRA 20 1981)

1438. ABC are co-heirs, A sold his hereditary rights to C. Within one month of the sale, may B redeem the interest in the property sold by A?

No, the law provides that the sale should made to a stranger and not to co-heir, the reason of the law why the redemption is imposed to sale made to a stranger is to keep strangers out of a common ownership as their presence is considered undesirable. (De Jesus vs. Manglapus, 81 Phil. 315 (1957)

1439. For the purposes of allowable redemption, who are those persons, included in the term strangers?

Strangers include all persons who are not heirs of the deceased either by will or by law to the same inheritance of property. So, legatees or devisees, heir who cannot succeed because of incapacity, disinheritance or redemption, and creditors of deceased are strangers.

1440. Partition ends the co-ownership and makes each heir the exclusive owner to the property, hence, each heir is

entitled to receive:

a. The fruits of the property
b. Possession
c. Ownership on accretion
d. Title of acquisition or ownership

1441. After partition, as to who among the co-heirs shall be entitled to have possession of the title which comprises two or more parcels of land assigned to two or more co-heirs, or when the title covers only one parcel of land but it has been assigned to two or more co-heirs?

To an heir having largest interest, or in case the interest is equal, the oldest of the family shall get the little.

1442. 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:

a. Partition
b. Dissolution c. Rescission
d. Separation

1443. When the title comprises two or more pieces of land which have been assigned to two or more co-heirs, or when it covers one piece of land which has been divided between two or more co-heirs, the title shall be delivered to:

a. The one having the largest interest, and authentic copies of the title shall be furnished to the other co-heirs at the expense of the estate.
b. The one having the largest interest, and authentic copies of the title shall be furnished to the other co-heirs at the expense of the one who has the largest interest.
c. The one having the largest interest, and authentic copies of the title shall be furnished to the other co-heirs at their own expense.
d. The one having the largest interest, and authentic copies of the title shall be furnished to the other co-heirs at the expense of the one having the smallest interest.

1444. When the title comprises two or more pieces of land which have been assigned to two or more co-heirs, or when it covers one piece of land which has been divided between two or more co-heirs, If the interest of each co-heir should be the same:

a. The oldest heir shall have the title.
b. The one having the largest interest shall have the title.
c. The one having the smallest interest shall have the title. d. The one who chosen by one of the co-heirs.

1445. After the partition has been made, what the co-heirs shall reciprocally bound to warrant:

a. The title of each property adjudicated.
b. The title and the ownership of each property adjudicated. c. The title and the quantity of each property adjudicated.
d. The title to, and the quality of, each property adjudicated.

1446. An action to enforce the warranty among co-heirs must be brought within:

a. Ten years from the date the right of action accrues.
b. Five years from the date the right of action accrues. c. Four years from the date the right of action accrues. d. One year from the date the right of action accrues.

1447. The warranty of the solvency of the debtor can only be enforced during:

a. The five years following the partition.
b. The four years following the partition. c. The two years following the partition. d. The one year following the partition.

1448. Does co-heirs warrant bad debts:

a. No, it does not.
b. Yes, co-heirs warrant bad debts.
c. Yes, if so known to, and accepted by the distributee.
d. Yes, only if unknown to and accepted by the distributee.

1449. The obligation of warranty among co-heirs shall cease in the following cases except:

a. 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;
b. When it has been so expressly stipulated in the agreement of partition, unless there has been bad faith;
c. 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.
d. At the time of death of the testator.

1450. When partition, judicial or extra-judicial, may also be rescinded on account of lesion.

a. When any one of the co-heirs received things whose value is less, by at least one-fourth, than the share to which he is entitled, considering the value of the things at the time they were adjudicated.
b. When any one of the co-heirs received things whose value is less, by at least one- third, than the share to which he is entitled, considering the value of the things at the time they were adjudicated.
c. When any one of the co-heirs received things whose value is less, by at least one-half, than the share to which he is entitled, considering the value of the things at the time they were adjudicated.
d. When any one of the co-heirs received things whose value is less, by at least one-fifth, than the share to which he is entitled, considering the value of the things at the time they were adjudicated.

1451. The partition made by the testator cannot be impugned on the ground of lesion, except:

a. When the legitime of the compulsory heirs is impaired, or when it appears or may reasonably be presumed, that the intention of the testator was otherwise.
b. When the legitime of the instituted heirs is thereby prejudiced. c. When the legatee and devisees legitime is prejudiced.
d. When legitime of the voluntary heirs is impaired.

1452. The action for rescission on account of lesion shall prescribe:

a. After four years from the time the partition was made.
b. After three years from the time the partition was made.
c. After two years from the time the partition was made.
d. After one year from the time the partition was made.

1453. Can an heir who has alienated the whole or a considerable part of the real property adjudicated to him maintain an action for rescission on the ground of lesion.

a. He cannot maintain an action for rescission on the ground of lesion, but he shall have a right to be indemnified in cash.
b. He can maintain an action for rescission on the ground of lesion and shall have a right to be indemnified in cash.
c. He cannot maintain an action for rescission but only on the ground of lesion.
d. He can maintain an action for rescission on the ground of lesion as long it affect its legitimes.

1454. Does the omission of one or more objects or securities of the inheritance cause the rescission of the partition on the ground of lesion.

a. Yes, preterition of an object in the partition gives rise to rescission.
b. No, preterition of an object in the partition does not give rise to rescission.
c. Yes, because it prejudice the legitimes of the compulsory heirs. d. Yes, but rescission is not the remedy.

1455. A partition which includes a person believed to be an heir, but who is not:

a. Shall be void only with respect to such person.
b. Shall be voidable only with respect to such person.
c. Shall nullify the partition of all the legitimes of all the heirs. d. Was no effect at

all.