Part III

a) Timber estate (to A)

1) AAD: unclear.  
   a) Form of donation OK.  
      * DIV of immovable requires authentic act.  
      † Here, act made before a notary + 2 witnesses.  
   b) Possible problem with acceptance.  
      1] Acceptance of DIV of immovable generally requires authentic act.  
      2] By exception, not required when donee is put into possession (tacit).  
         * Not clear whether exception applies to DIVs of immovables.  
         † Better view: yes; history; meaning of “chose”.  
2) FAB: no.  
   * Excluded under CC art. 1505(A); too old (more than 3 years).  

b) Cash (to A)

1) AAD: unclear.  
   a) No form problem.  
      * B/c corporeal movable, manual gift is OK.  
   b) Potential problem: possible unlawful condition.  
      1] Potential defect: may constitute improper interference with fundamental right to marry, which may include right to divorce.  
         a] French view: right to marry entails right to be married to whomever one wants, whenever one wants.  
2) Remedy: it depends –  
   a] If D’s “principal and determinative cause“ for making DIV was to get behavior in conformity w/ condition, then whole DIV is null.  
      * Jurisprudential rule, in derogation of legislation.  
      † If not, then DIV stands, but condition is stricken.  
2) FAB: no.  
   * Excluded under CC art. 1505(A); too old (more than 3 years).  

c) Mineral servitude (to B for $4,000)

1) AAD: no.  
   a) Sale at low price.  
      * Treated as such, not as disg’d DIV, b/c value given was > than 1/4 FMV.  
   b) Form proper.  
      * Act under private signature for sale of immovable.  
2) FAB: yes.  
   * An “other advantage” made w/in last 3 years of life; collatable.  
      * Only “gratuitous” part is added back ($6,000).  

d) Race horse (to E)

1) AAD: yes.  
   a) DIV valid.  
      † Proper form.  
      † B/c corporeal movable, manual gift is OK.  
   b) But it’s revocable.  
      * Cause: ingratitude.  
      † “Cruel treatment, crime, or grievous injury” is ingratitude.  
         a] Cursing, spitting involved grievous injury (psych. harm).  
         b] Vandalism of car was crime.  
      2] Action is heritable.  
      3] Not prescribed: less than one year.  
2) FAB: if not AAD, then yes.  
   * Don IV within last three years of life.  
   * Can’t be excluded as “customary gift”; too large.  

e) Share of Magdalene’s estate (to S)

1) AAD: no.  
   a) Not really a renunciation, but an acceptance plus donation.  
      * Departs from order of accretion set by legislation.  
   b) No form problem.  
      * Ordinary form requirements inapplicable.  
      † Only form required is that for renunciation.  
      † For renunciation, any writing is sufficient.
2) FAB: yes.......................................................... 0.5 1
   * Don IV within last three years of life........................................... 0.5
   f  Cash (to victim of B’s tort)
1) AAD: no............................................................ 0.5 1
   * Transfer valid............................................................. 0.5 1
      † An “other advantage” in form of payment of debt........................ 0.5 1
2) FAB: yes.......................................................... 0.5 1
   * Other advantage within last three years of life; collatable.............. 0.5 1 1.5
   g  Predial servitude (to R)
1) AAD: yes. .......................................................... 0.5 1
   * Donation invalid.......................................................... 0.5 1
      † Form problem............................................................ 0.5 1
         ‡ Predominantly gratuitous / onerous mixed transfer.................... 0.5 1 1.5
            # Alt. formulae: onerous mixed transfer is predominantly gratuitous if–
               @ O > 1.5 C. ....................................................... 0.5 1
               @ C < 2/3 O. ....................................................... 0.5 1
            # @ $15,000 > 1.5 ($5,000), i.e., $7,500.............................. 0.5 1 1.5
               @ $5,000 < 2/3 ($15,000), i.e., $10,000........................... 0.5 1 1.5
      ‡ DIV of incorporeal must be by authentic act................................ 0.5 1
         # Predial servitude is an incorporeal immovable........................ 0.5 1
2) FAB: if not ADD, then yes............................................. 0.5
   * Don IV within last three years of life........................................ 0.5
      † Only “gratuitous” part ($10,000) would be FABed........................ 0.5
   h  Check (to Our Lady)
1) AAD: yes. .......................................................... 0.5 1
   * Donation invalid.......................................................... 0.5 1
      † Form problem............................................................ 0.5 1
         ‡ DIV of incorporeal must be by authentic act.......................... 0.5 1
            # Personal check is an incorporeal movable.......................... 0.5 1
               @ True, if check gets cashed, whole transfer is treated as round-about
                  manual gift of cash.............................................. 0.5 1 1.5
               @ But here, it never got cashed................................... 0.5 1
2) FAB: if not ADD, then yes............................................. 0.5
   * Don IV within last three years of life........................................ 0.5
   i  Cash (to J)
1) AAD: yes. .......................................................... 0.5 1
   * Donation invalid.......................................................... 0.5 1
      † No form problem........................................................ 0.5 1
         ‡ B/c cash is corp. mov., manual gift is OK............................ 0.5 1
      † But no capacity......................................................... 0.5 1
         ‡ Full interdict suffers from per se incapacity to donate IV........... 0.5 1 1.5
2) FAB: if not ADD, yes.................................................. 0.5
   * DIV made within last three years of life.................................... 0.5
   j  Pension payoff (to E)
1) AAD: no.............................................................. 0.5 1
   * By special legislation (Rev. Stat.), belongs to named beneficiary........ 0.5 1 1.5
2) FAB: no............................................................... 0.5 1
   * Excluded by CC art. 1505(D). ............................................. 0.5 1 1.5
–B
I  Calculation of active mass. ............................................. 0.5 1
 a  Net assets left at death
  1) Assets left at death.................................................. 0.5 1
     a ) Assets under the de cujus’ control............................... 0.5 1
        1] House & lot...................................................... 120,000 | 0.5 1
        2] Stocks & bonds................................................. 10,000 | 0.5 1
        3] Bank accounts..................................................... 5,000 | 0.5 1
            SUBTOTAL 135,000 | 0.5 1
     b ) Recoverable assets.................................................. 0.5 1
        1] Cash (to A) ...................................................... 10,000 | 0.5 1
        2] Race horse (to E)................................................. 20,000 | 0.5 1
        3] Cash (to Vitter).................................................... 5,000 | 0.5 1
            SUBTOTAL 35,000 | 0.5 1
            TOT ASSETS........... 170,000 | 0.5 1
2) Debts left at death .................................................. 0.5 1
   * Error in CC art. 1505: subtract debts before fictitious aggregation. 0.5 1 1.5 2
   a) Home mortgage loan ................................................. 100,000 0.5 1
   b) Credit cards ........................................................ 30,000 0.5 1
   c) Back taxes ................................................................ 20,000 0.5 1
   d) Funeral charges ......................................................... 10,000 0.5 1
   TOT DEBS. .............................................. 160,000 0.5 1
   NET ASSETS. ...................................... 10,000 0.5 1
b) Fictitious aggregation .................................................. 0.5 1
   1) The renounced share of Magdalene’s estate (to S) .......... 130,000 0.5 1
   2) Cash (to victim of B’s tort) .................................. 40,000 0.5 1
   3) The donation of the servitude (to R) ......................... 10,000 0.5 1
   * Only the “gratuitous” part ($10,000) would be FABed. 0.5 1
   4) The donation of the check (to Our Lady) ................... 10,000 0.5 1
   TOT FICT AGG. ............................................ 190,000 0.5 1
   TOT ACT MASS. .............................................. 200,000 0.5 1
2) Apportionment of active mass ........................................... 0.5 1
a) Quotients
   1) Number of FHs / FH successors: 2 .............................. 0.5 1
   * Determined by number of forced heir representees. 0.5 1
   † Here, these are Beau & Cassie. 0.5 1
b) Division
   a) General rules:
      1) If there are 2 or more FHs, FP and DP are each ½. 0.5 1 1.5
      2) Legitimes: FP divided by heads .................................. 0.5 1
   b) Special rule: If FH renounces, leg. is subtracted from FP & added to DP. 0.5 1
   * Not applicable here .................................................. 0.5 1
b) Calculation
   1) FP (½ of 200,000) ................................................. 100,000 0.5 1
   * Legitimes (100,000 / 2) .................................. 50,000 0.5 1
   2) DP (1/2 of 200,000) ................................................. 100,000 0.5 1
3) Satisfaction of legitimes .................................................. 0.5 1
a) Satisfaction by “free” assets / intestate succession: none. 0.5 1 1.5
   * From net assets left at death, all $10K worth are tentatively awarded to A per DMC. 0.5 1
b) Satisfaction by imputation .............................................. 0.5 1
   * As general rule, only collatetable liberalities to FHs are imputable. 1 1.5 2
   1) Not the timber estate (to A) ........................................... 0.5 1
      * Not an FH; assumed to be AAD. 0.5 1
   2) Not the cash (to A) ............................................. 0.5 1
      * Not an FH; assumed to be AAD. 0.5 1
   3) Not the mineral servitude (to B) .................................. 0.5 1
      * Assumed to be AAD. 0.5 1
   4) Not the race horse (to E) ........................................... 0.5 1
      * Assumed to be AAD. 0.5 1
   5) Not the renounced share of Madgalene’s estate .......... 0.5 1
      * Not an FH. 0.5 1
   6) Cash (to victim of B’s tort): imputed to E’s account ... 40,000 1 1.5
      * Subject to collation .............................................. 0.5 1
      † Not exempted by will or by law .................................. 0.5 1 1.5
      † Not too old .................................................. 0.5 1
      E’s LEG BAL ......................................................... 10,000 1 1.5
   7) Not the predial servitude (to R) .................................. 0.5 1
      * Not an FH. 0.5 1
   8) Not the check (to Our Lady) ...................................... 0.5 1
      * Not an FH. 0.5 1
   9) Not the cash to Vitter ............................................ 0.5 1
      * Not an FH; assumed to be AAD. 0.5 1
   10) The proceeds of the pension plan (to E) ....................... 20,000 1 1.5
       * Imputation required by CC art. 1505.C ........................ 0.5 1
       † Excess $10,000 – taken from “tort payment” – is imputed to DP. 0.5 1 1.5
       ‡ Can’t be taken from pension proceeds b/c they are non-reducible. 0.5 1 1.5
       E’s LEG BAL ......................................................... 0 1 1.5
       F’s LEG BAL ......................................................... 50,000 0.5 1
       GLOB FP BAL ....................................................... 50,000 0.5 1

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c Satisfaction by reduction. .............................................. 0.5 1
  * Description........................................................................ 0.5 1
  * Ordre
    † Donations MC before donations IV. .............................. 0.5 1
    † Among donations MC, proportionally. ......................... 0.5 1
    † Among donations IV, in reverse chron’l order, up to 3 yrs back... 0.5 1 1.5
  * Exemption: can’t reduce what’s already been imputed........ 0.5 1
1 ) Donations MC. .......................................................... 0.5 1
  a ) Legacy to A .......................................................... 10,000 | 1 1.5
      * Because legacy to A insufficient to satisfy F’s LEG BAL, it must be
        integrally reduced.................................................. 0.5 1
        F’s LEG BAL ....................................................... 40,000 | 1 1.5
  b ) Not pension proceeds to E. ....................................... 1
      * Exempt from reduction under special state legislation.. 0.5 1
2 ) Donations IV. ........................................................... 0.5 1
  a) Check (Our Lady). ..................................................... 10,000 | 1 1.5
      F’s LEG BAL .......................................................... 30,000 | 1 1.5
  b) Predial servitude (to R). ............................................. 10,000 | 1 1.5
      * Only the gratuitous portion is reducible..................... 0.5 1
      F’s LEG BAL .......................................................... 20,000 | 1 1.5
  c ) Cash (to victim of Beau’s tort). ................................. 10,000 | 1 1.5
      * Only excess above imputation is reducible.................. 0.5 1
      F’s LEG BAL .......................................................... 10,000 | 1 1.5
  d ) Renounced share of Magdalene’s estate. ....................... 10,000 | 1 1.5
      * Reduced by only so much as is necessary to satisfy legitime.. 0.5 1
      F’s LEG BAL .......................................................... 0 | 1 1.5
------------------- The 3 DIVs reduced above were made w/in 3 yrs of death. ............... 0.5 1
e ) Not other, older donations IV........................................ 0.5 1
  1] Not needed: FP already satisfied thanks to imputation & reduction.. 0.5 1
  2] Those made before Dec. 1, 2000 are too old anyway: > 3 years. 0.5 1 1.5