Question Blog
(presented in reverse chronological order)

Q  The general rule is that any and every descendant must collate back to descendants of the 1st degree who are forced heirs. The exception is if you do NOT get the property directly from the de cujus, you do NOT have to collate. But if you (as a grandchild) get the property because the child of a grandparent (your parent) gets the property and then dies and then you get that property via true representation, you do have to collate as an exception to the exception. Is this correct?

A  I'd put it this way:

  **General rule:** Any descendant who is called to the *de cujus'* succession must and need only collate back that which he directly and personally received from the *de cujus.*

  **Exception #1** (requiring *less* than what the general rule requires): If the descendant whom the *de cujus* directly and personally gratified is of the second degree and if this second-degree descendant received the thing from the *de cujus* while this second-degree descendant's parent was still alive, this second-degree descendant need not collate that thing (though he must, of course, per the general rule, collate back anything the *de cujus* may have directly and personally given him after his parent's death).

  **Exception #2** (requiring *more* than what the general rule requires): Any second-degree descendant who comes to the *de cujus*' succession by representation must collate back (in addition to anything he may have received directly and personally from the *de cujus*, per the general rule) that which his representee directly and personally received from the *de cujus.*

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Q  A sale of something at more than 1/4 of the purchase price, being a sale at a low price (as opposed to a disguised donation) is not subject to collation. Is this right?

A  No, collation applies *not only* to "disguised donations" (ostensible "sales" for which no price is paid or for which the "price" paid is less than 1/4 the value of the thing "sold"), but *also* to "sales at a low price" (true sales in which the price paid is greater than 1/4 the value of the thing sold but less than the value of the thing sold). *In one case as in the other,* the "surplus value" of the transfer, that is, the difference between the value of the thing and the "price" (if any) that was paid must be collated back.

  What differentiates these two types of transfer is *not their susceptibility of collation* (or, as we'll soon see, their susceptibility of reduction). Rather, the difference is more basic: whereas a "disguised donation" is, well, a "donation," a "sale at a low price" is, well, a "sale". Thus, the former is governed by all the special rules for donations, including those of capacity, consent, form, and revocability, whereas the latter is not but is instead governed by the rules for contracts in general and for sales.

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Q  I am in both of your courses (Successions and Family Law) this semester and I have found a disparity in my class notes with regards to the new law of filiation. In your lectures in both
courses, you said that one of the presumptions of paternity which operates in favor of both
the father and the child occurs where a man marries the mother of a child and formally
acknowledges the child. New CC art. 195. In Family law, you said that in order for this
presumption to come into existence, the mother must also concur in the act of
acknowledgment. However, in Successions you indicated that the concurrence of the mother
is a requirement for a different presumption — the one that arises from the “mere
acknowledgment” of the child and that works only in favor of the child. New CC art. 196.
Please advise me as to what the law is on this subject.

A The information recorded in your Family Law notes is correct. Concurrence of the mother
is a prerequisite for the presumption of paternity that arises by virtue of "marriage +
acknowledgment" (CC art. 195), not for that which arises by virtue of "mere
acknowledgment" (CC art. 196). It appears that I misspoke in my lecture to the Successions
class.

Q Representation and unworthiness are relative. This means that a representative can be
unworthy or have renounced as to a representee but still take from the estate of the de cujus.
Correct?
A Precisely.

Q Re “quasi-representation” . . . . Representation can take place even though a representee is
not dead because unworthiness and renouncing create the effect of death for purposes of
representation. Correct? For instance, suppose grandmother, G, dies in a tragic ATV
accident. She dies intestate. G is only survived by her sons, S and K, and her granddaughter
X. X is S’s child. S is declared unworthy because he cut G’s breaks and this caused G to
crash into Bayou Sulphur. Because S is unworthy, his rights “accrete” as if he had
predeceased. As a descendent of the first degree and still alive, K has an interest in G’s
estate. However, through quasi-representation, X also has an interest in G’s estate. Correct?
This result would be the same if instead S had predeceased G because S would be a
representee and X would be a representative. Correct?
A I concur in the results you’ve reached and in the reasoning that underlies them, save on one
point. As worded, the proposition “Representation can take place even though a representee is
not dead because unworthiness and renouncing create the effect of death for purposes of
representation.” is not entirely correct. In particular, part of it contradicts CC art. 886, which
provides that “[o]nly deceased persons may be represented”. Thus, it would be better to say,
“The effects of representation can take place even though the would-be representee is not
dead because unworthiness and renouncing create the effect of death for purposes of
representation.”

Q Same facts (as in Q posed immediately below), except no brother B. Instead, H is survived
by his maternal great grandmother, MGGM. Same result even though W occupies a higher
class than MGGM as to non-community property? Or can W renounce as to community
property and not as to non-community property?

A Though we now give the successor great discretion in deciding what to accept and what to renounce (the successor can pick and choose), I don’t believe we’ve gone so far as to permit the successor to do the irrational. And so, no, if W renounced her right to get H’s community property, we wouldn’t then allow her to accept it as (fictitious) separate property. The result, then, is that which you propose: MGGM, having inherited H’s share of the former community property, now becomes co-owner of that property with W.

Q Suppose H dies tragically in a nutria hunting accident. He leaves no descendants. But H is survived by his (not legally separated) wife, W, and his brother, B. H left no testament. H and W had some community property before H died. W renounces. Because H left no descendants, W is first in line to succeed to his community property. However, because W renounced, her rights “accrete” as if she had predeceased W. CC 964. This means H’s interest in the community property devolves as if it were non-community property. Since B is a privileged collateral, he is first in line to succeed to H’s non-community property. This leaves B as full owner of all of B’s non-community property, and leaves B and W in the interesting position of co-owners in the community property. Correct?

A Precisely.

Q I am still confused about the solution to the commorientes problem. I don’t understand how even if you assume that the other spouse predeceased the spouse whose property we are trying to dispose of, that say the sibling (SH2) gets 1/2 of the property. Could you explain that again?

A Here’s a step-by-step solution to the problem:

1 Devolution of Pascal's half of the community property.
   a For the moment, focus solely on Pascal's half of the community property and ignore Julie's half. (We'll deal with her half in Part II.)
   b Assume that Julie died first, Pascal died second.
   c On that assumption, what had, up until Julie's (hypothetical) death, been Pascal's half of the community property, became, at her (hypothetical) death, his separate property.
   d Among the potential successors of Pascal's separate property, his brother, Basile, ranks the highest (privileged collateral, second degree).
   e Therefore, Pascal's half of the community property falls to Basile.

2 Devolution of Julie's half of the community property.
   a For the moment, focus solely on Julie's half of the community property and ignore Pascal's half. (We already dealt with his half in Part I.)
   b Now, assume that Pascal died first, Julie died second.
   c On that assumption, what had, up until Pascal's (hypothetical) death, been her half of the community property, became, at his (hypothetical) death, her separate property.
   d Among the potential successors of Julie's separate property, her sister, Suzanne, ranks the highest (privileged collateral, second degree).
Therefore, Julie’s half of the community property falls to Suzanne.

Now, consider this additional hypothetical:

SH2-1. B and S, brother and sister, perish in a common calamity, such that it cannot be determined which of them predeceased the other. B is survived by (1) his wife, W, with whom he had established a “separation of property” regime by prenuptial agreement; (2) his maternal grandmother, G; and (3) his paternal uncle, U. S is survived by the same maternal grandmother, G, and the same paternal uncle, U, but no one else. Who inherits (1) B’s property and (2) S’s property? Why?

Solution:

(1) B’s property. – Focus, for the moment, solely on B’s property and ignore S’s property. (We’ll deal with her property in part (2).) Assume that S died first, B second. Even though B was married, his property, per his prenuptial agreement, was separate. Among the potential successors of B’s separate property, W, his wife, ranks highest (surviving spouse not judicially separated). Therefore, W inherits B’s property.

(2) S’s property. – Focus, for the moment, solely on S’s property and ignore B’s property. (We already dealt with his property in part (1).) Now, assume that B died first, S second. Inasmuch as S was single, her property was “separate”. Among the potential successors of S’s separate property, G, her grandmother, ranks highest (other ascendant). Therefore, G inherits S’s property.

Q What is the effect of donations of movable property for the revocation reason “failure to fulfill charges”?

A It’s unclear. Leaving aside the article on “return of fruits” – Article 1569 –, which we did not study and for which, therefore, you’re not responsible, there’s only one article that addresses the effects of a revocation pitched on this ground – Article 1568 – and that article, by its terms, seems to contemplate only donations of immovables. Even so, it may be permissible to read the article (especially if one takes into account its history) so that it applies to donations of anything, movables included, and, even if that’s not so, it may be permissible to extend the rule of the article to donations of movables by analogy. In either case, the “effect” of the revocation would be that the donor could, depending on the circumstances, recover the thing from the donee himself or from gratuitous transferees of the donee or the value of the thing from the donee.

Q If an unworthy successor has disposed of estate property by onerous title, what is the recourse of the worthy successor if the other party was not in bad faith? What is the recourse if the other party is in bad faith?

A 1) Good faith. – See CC art. 945(3): the unworthy successor must “account” for the value of the property, that is, must pay to the worthy successor a sum a money equal to that value.

2) Bad faith. – See CC art. 945(4), sent. 1: the transfer can be invalidated and, therewith, the property recovered.
Q Two questions about gratuitous transfers that are excepted from all or part of the special rules on donations . . .

1) Life insurance. – No form requirements, capacity/consent rules come from obligations, no fictitious add back, and no reduction. Correct?

2) Classic annuities. – Same rules as life insurance except subject to fictitious add back. Correct?

A 1) Life insurance. – What you say is correct, with the possible exception of “capacity/consent rules come from obligations”. The only authority we have on that question is dicta in Sizeler v. Sizeler, 127 So. 388 (La. 1930), but at least that’s something.

2) Classic annuities. – Not quite: there’s yet one more difference: unlike life insurance proceeds, annuity proceeds are reducible.

Q Following up on the last question, let me ask you whether a “promise to donate inter vivos” as opposed to a donation inter vivos is enforceable and, if so, what form, if any, it requires?

A Your question points up a disturbing lacuna in our legislation regarding donations inter vivos. Not long ago, one of the state’s appellate courts, arguably in dicta, proposed that the lacuna should be filled with the following rule: For a promise to donate inter vivos to be enforceable, it must meet the form requirements for a donation inter vivos. See Crosby v. Stinson, 766 So. 2d 615 (La. App. 2d Cir. 2000). The court based its conclusion on a supposed analogy between, on the one hand, (1) the relationship between (a) a promise to sell (or contract preparatory to a sale) and (b) a sale and, on the other, (2) the relationship between (a) a promise to donate (or contract preparatory to a donation) and (b) a donation: the court reasoned that if, as is true, a promise to sell will not be enforced unless it meets the form requirements for a sale, then a promise to donate will not be enforced unless it meets the form requirements for a donation. In my judgment, the court’s reasoning is sound and its conclusion correct.

Q Is a “promise to donate” a tacit revocation? For instance, in his first testament, Kilbourne leaves his bankruptcy code to Ti-Boy. Kilbourne only has one bankruptcy code. Some time goes by and Kilbourne strikes up a friendship with his lunch buddy, Jean Sot. Kilbourne then decides he wants to give his bankruptcy code to Jean Sot. However, the act of donation reads as follows, “I, Kilbourne, promise to donate my bankruptcy code to Jean Sot.” The act of donation is in authentic form. Has Kilbourne effectively revoked his previous disposition?

A What a great question! Too bad it has no clear answer, at least not to my mind. Everything depends on whether one reads CC art. 1608(3) literally or teleologically. Read literally, this legislation seems to require an actual disposition, that is to say, juridical abusus, the transfer of the real right of ownership. Now, a mere promise to donate, like a mere promise to sell, does not, it itself, effect such a disposition; to the contrary, all it does is to confer on the future transferee the right (a mere “credit” right) to demand that such a disposition take place in the future. But if one reads the legislation teleologically, then perhaps an actual disposition is not necessary; perhaps the conferral of a right to demand actual disposition would do just as well. Does not the one as much as the other indicate that the testator has
“changed his mind” with respect to the legacy, that is, no longer wants the thing in question to “go to” the named legatee? And is not the basis for this inference the same in both cases – that the testator has made it clear that he wants the thing in question to “go to” someone else right now, while he (the testator) is still alive?

Q A series of related hypothetical problems . . . .

1) In his first testament, Kilborn leaves all his cattle to Smith. In a subsequent testament, Kilborn leaves his cattle to Costonis in full-ownership and then in full-ownership to Joseph upon Costonis' death. The second testament obviously contains a prohibited substitution. Assuming both testaments are in proper form, what happens to the cattle? Is the first disposition to Smith revoked because the intent of the testator controls?

2) Let's change the facts. In the subsequent testament, Kilborn instead leaves a 1/2 interest to his cattle to Costonis and Joseph. However, Kilborn, a common law lawyer unfamiliar with Louisiana testamentary forms, typed-out the subsequent testament and signed at the bottom. The second testament is null for a want of form. What happens to the cattle? Is the first disposition to Smith revoked because the intent of the testator controls?

3) Another fact change. This time Kilborn is an experienced civil law lawyer with a picture of Alain Levasseur on his desk. He intentionally used an invalid form to trick Costonis and Joseph. What happens to the cattle? Is the first disposition to Smith revoked because the intent of the testator controls?

A 1) To resolve your first hypothetical problem, one must first ask and answer the following question, a pure question of law: for a legacy to be revoked by virtue of a “subsequent incompatible testamentary disposition” per CC art. 1608(2), need that subsequent incompatible testamentary disposition be substantively valid. The text of the legislation provides no answer; nor do the official revision comments thereto. One must, therefore, tap other possible sources of interpretative guidance, such as “history”. Though the comments to the legislation do not say so, the immediate predecessor to CC art. 1608(2) seems to have been CC art. 1693 (1870), which read as follows: “Posterior testaments, which do not, in an express manner, revoke the prior ones, annul in the latter only such of the dispositions therein contained as are incompatible with the new ones, or contrary to them, or entirely different.” In Succession of Ryan, 82 So. 2d 759, 763-64 (La. 1955) (see my textbook at pp. 320-21), the state supreme court, interpreting that article, concluded that the revocation therein contemplated takes place even if the incompatible disposition made in the posterior testament is substantively invalid. See also Frederick Wm. Swaim & Kathryn Venturatos Lorio, Successions and Donations § 15.5, at 402-03, in 10 Louisiana Civil Law Treatise (1995). This interpretation is consistent with that which the majority of French scholars and courts have given to the source of CC art. 1693 (1870), i.e., Article 1036 of the French Code civil. See, e.g., 5 Marcel Planiol & Georges Ripert, Traité Pratique de Droit Civil Français: Donations et Testaments n° 712, at 885-86 (André Trasbot & Yvon Lousouarn revs., 2nd ed. 1957); 11 Charles Aubry & Charles Rau, Droit Civil Français § 725, at 503 (Paul
Esmein rev., 6th ed. 1956), in 3 Civil Law Translations (Carlos E. Lazarus tr. 1969). Seeing no evidence in the text of new CC art. 1608(2) or in the comments thereto that the drafters thereof intended to change this established jurisprudential-doctrinal interpretation of the sources, I conclude that the new legislation should be interpreted in like manner.

With this threshold question settled, resolving your first hypothetical problem becomes child’s play. The legacy of the cattle made in the first testament cannot be executed because it has been revoked thanks to the “subsequent incompatible testamentary disposition” of the cattle made in the second testament, see CC art. 1608(2); the legacy of the cattle made in the second testament cannot be executed because it is absolutely null, see CC art. 1520. Thus, the cattle fall intestate.

2)&3) To resolve your second and third hypothetical problems, one must first ask and answer yet another pure question of law: for a legacy to be revoked by virtue of a “subsequent incompatible testamentary disposition” per CC art. 1608(2), need that subsequent incompatible testamentary disposition be formally valid, that is to say, must it be set out in proper olographic or notarial form. Because neither the text of nor the comments to the new legislation answer this second question any more than they did the first, we must, again, have recourse to history. In Succession of Barry, 196 So. 2d 265, 269 (La. 1967) (not in my textbook), the state supreme court, interpreting CC art. 1693(1870), concluded that the revocation therein contemplated does not take place unless the incompatible disposition made in the posterior testament is in proper testamentary form. See also Frederick Wm. Swaim & Kathryn Venturatos Lorio, Successions and Donations § 15.5, at 403 n. 22, in 10 Louisiana Civil Law Treatise (1995). French scholars and courts have unanimously interpreted Article 1036 of the French Code civil, the source of CC art. 1693 (1870), in precisely the same fashion. See, e.g., 5 Marcel Planiol & Georges Ripert, Traité Pratique de Droit Civil Français: Donations et Testaments n° 712, at 885-86 (André Trasbot & Yvon Lousouarn revs., 2nd ed. 1957); 11 Charles Aubry & Charles Rau, Droit Civil Français § 725, at 503 (Paul Esmein rev., 6th ed. 1956), in 3 Civil Law Translations (Carlos E. Lazarus tr. 1969). Because there’s no evidence in the text of new CC art. 1608(2) or in the comments thereto that the drafters thereof intended to change this established jurisprudential-doctrinal interpretation of the sources, the new law should, in my judgment, receive the same interpretation.

Now that we’ve settled that question, we can easily dispose of your second and third hypothetical problems. In the one case as in the other, whereas the legacy of the cattle made in the first testament will be executed, that made in the second testament will not be. Why? Because the second legacy, thanks to its improper form, is, of course, ineffective in itself (it’s null) and, further, is ineffective to revoke the first legacy per CC art. 1608(2).

Q Under DH 113.4, T’s revocation is proper even though it contains a prohibited substitution because there is no need for the substantive disposition in a revocation to be valid, correct?

A Yes, if by “valid” you mean substantively valid. If, as in DH 113.4, the mode of revocation
employed is one that requires “the forms prescribed for testaments” (see CC arts. 1607(2) & 1608(1)), then the disposition must, of course, be formally valid.

Q Valid testamentary form for the purposes of CC art. 1607(2) means valid olographic or notarial form, correct?
A Yes. And also for purposes of CC art. 1608(1).

Q If there is a residual general legatee or universal legatee, will CC art. 1596 ever be applicable?
A Provided that, by “residual general legatee”, you mean that which is described in CC art. 1595, ¶ 2, the answer is “no”.

Q This question is based on DH 110.6. Suppose Théophile makes the bequest to Constance and Cecile as separate, universal legacy. Who will get the share of the remains that was intended for Constance? CC art. 1592 is inapplicable because the legacy is now separate. CC art. 1593 does not apply because there is no proper familial relationship. The legacy was universal. As such, does CC 1595 kick-in so that accretion takes place in favor of Cecile?
A Your question, as worded, cannot be answered for it presupposes the existence of that which cannot exist, namely, a “separate, universal legacy”. The kind of legacy you have in mind – “I leave all the rest of my property to Constance and Cecile, share and share alike.” – would be, and could only be, a separate, general legacy (I’d prefer to say “separate general legacies”). If Constance’s legacy were to lapse, then what would have been her share (½ of the residue) would fall intestate per CC art. 1596. That share would not fall to Cecile per CC art. 1565, ¶ 2, for Cecile’s legacy is one that, in the words of that provision, “specif[ies] that the residue or balance is the remaining fraction of a certain portion of the estate after the other general legacies”.

Q Suppose a testament provides, “I leave my Hyundai to Joseph and , share and share alike. I leave all my other property to Kilborn.” The disposition of the Hyundai is a separate, particular legacy. Because the disposition of the Hyundai is particular, the residual legacy to Kilborn is universal. Suppose further that Joseph is declared unworthy and there is no CC art. 1593 familial relationship between the testator and Joseph. Because there is no CC art. 1593 familial relationship, CC art. 1593 is inapplicable. Because the disposition of the Hyundai was separate, CC art. 1592 is inapplicable. However, under CC art. 1591, accretion of Gaubert’s interest in the Hyundai takes in favor of Kilborn because he is the universal legatee. Is this analysis correct?
A Yes, except that the result follows not “under CC art. 1591", but rather “under CC art. 1595, ¶ 1”.

Q Why can a successor of the donor only bring an action for revocation of a donation inter
vivos for ingratitude if the donor dies within a year of the act of ingratitude?  

A  
Well, that depends on what you mean by “why”.  

If by “why” you mean “what legal authority – be it true law, i.e., legislation or custom, or mere persuasive authority, i.e., jurisprudence of doctrine – requires it to be so”, then the answer is simple, or so it would seem: the authority is CC art. 1561, par. 2, last clause, the apparent plain meaning of which is that the donor’s successors can’t sue if he dies later than one year after the wrongful conduct. It is possible, however, that the apparent “plain meaning” of the clause should be rejected – that, to the contrary, the clause should be interpreted as if it said, “unless . . . he died within the year in which he discovered the act of ingratitude”, so that, if he never discovered it, the action could be brought by the donor’s successor regardless of when the donor died. In fact, the overwhelming majority of French scholars, interpreting the source of our article 1561, have endorsed precisely this “non-literal” interpretation of the source article. See, e.g., 5 Marcel Planiol & Georges Ripert, Traité Pratique de Droit Civil Français: Donations et Testaments n° 510, at 646-47 (André Trasbot & Yvon Lousouarn revs., 2nd ed. 1957); 11 Charles Aubry & Charles Rau, Droit Civil Français § 708, at 410 n. 26 (Paul Esmein rev., 6th ed. 1956), in 3 Civil Law Translations (Carlos E. Lazarus tr. 1969); 1 Gabriel Baudry-Lacantinerie & Maurice Colin, Des Donations Entre Vifs et des Testaments n° 1625-1626, at 711-13, in 9 Traité Théorique et Pratique de Droit Civil (2nd ed. 1905); 3 Victor Marcadé, Explication du Code Civil n° 708, at 607 (7th ed. 1873); 7 Alexandre Duranton, Cours de Droit Français n° 562, at 489-90 (3d ed. 1834). Why? Well, the answer to that question bleeds over into the domain of the answer to the “other” question you may be asking . . . .  

If by “why” you mean “what’s the theoretical and / or political basis for that legislative rule”, then the answer is more complex. If one assumes that the pertinent portion of the article is to be interpreted literally, then explaining the basis for it becomes difficult. Indeed, one would be hard-pressed to come up with any explanation other than “the legislature just decided that, after a year from the donor’s death, the donee shouldn’t have to worry about revocation anymore”. But maybe the legislature had a different purpose in mind when it added the pertinent language to the article, i.e., to prevent the successors of the donor from bringing the action in circumstances in which it appears that the donor had forgiven the offense. But, if that was the legislature’s purpose, then the legislature should have written “the donor must die within a year of discovery of the wrong” rather than “the donor must die within a year of commission of the wrong”, for, without knowledge of the wrong, the donor could not possibly forgive it. This quite plausible reconstruction of the legislature’s purpose (telos) is the basis for the non-literal (teleological) interpretation of the French source article that I explained above.  

Which interpretation is “correct”? Well, if the question is “what do I think?”, then the answer is “the non-literal interpretation”, that is, that which cuts off the successors’ right to bring the action only if the donor dies within a year of his having discovered the wrong. But, if the question is “what would I predict our state supreme court would think?”, then the answer is “the literal interpretation”. As I’ve told you in class many times, the majority of our supreme court are now under the spell of hyperliteralism.

Q  What is the cure to a relative nullity as the effect of an incapacity to receive?
A The question rests on what is, in my judgment, an erroneous assumption, namely, that an incapacity to receive produces a nullity that is merely “relative”. To be sure, there’s at least some authority to the contrary, which I collected for you on p. 70 of the supplement. But, as I attempted to explain to you in class, that authority, when properly analyzed, does not speak to your question, which concerns incapacity to receive under CC art. 1472 (instead, they concern incapacity to receive under former CC art. 1491, repealed in 1991). My own opinion? Incapacity under CC art. 1472 produces an absolute nullity.

Q What is the burden of proof for the incapacity to receive?
A Since there’s no special rule, the usual rules would apply. The standard of proof, then, would be “preponderance of the evidence”. And I suppose, on the authority of CC art. 31, we’d have to allocate the burden of production and probably also the burden of persuasion to the party who claims that the supposed recipient had capacity to receive, i.e., “existed” at the critical moment.

Q What is the formation (offer and acceptance) for donation mortis causa?
A Because a donation mortis causa is a unilateral (as opposed to a multilateral) juridical act, its formation does not require “offer and acceptance”. All that’s necessary for its formation is what could be analogized to an “offer” in the case of a multilateral juridical act, that is, a unilateral expression of one’s will to be bound to perform a certain duty under the specified circumstances.

Q What is the effect of the absence of consent in a donation?
A The same as it is for the absence of consent to any juridical act, i.e., absolute nullity.

Q If we have a conjoint legacy to A and B (husband and wife) and A (husband) is the brother of the de cujus AND A dies before the de cujus, the general rule is that the legacy accretes to B (wife). The exception is that since A is the sibling of the de cujus, his descendent(s) will get it. My question is: Do his descendent(s) only get HIS interest, so that they become “co-owners” with B? OR does B get hosed and get nothing, allowing A’s descendents full ownership of the entire thing?
A It’s the former, that is, “his descendent(s) only get HIS interest, so that they become ‘co-owners’ with B”.

Q For revocation of a donation inter vivos due to ingratitude, is it correct that a successor of the donor can only bring the action if the donor has died within 1 year of the act of ingratitude?
A Yes, that’s right.

Q For revocation of a donation inter vivos brought by a successor, the action must be brought:
1) In a situation where the donor knew of both the act and the responsible party, within 1 year of the time the donor found out. (I think this is right...)

BUT

2) In a situation where the donor was unaware of either the act or the responsible party, do the successors have 1 year from the time they actually find out OR 1 year from the time they should have known?

A 1) Correct. Only I’d say “where the donor knew or should have known of both the act and the responsible party, within 1 year of the time the donor found out or should have found out”. You see, the donor’s constructive knowledge (not just his actual knowledge) will set the period a-running.

2) Either. Again, as in the case of the donor himself, in the case of his successors, constructive knowledge is sufficient.

Q I have a question about La. C.C. art. 1519. I would greatly appreciate your help in clarifying two points.

1) First, Louisiana law has not drawn a bright line with respect to conditions pertaining to person matters. Inside, what has developed is something like a three factor balancing test. That is, a court will look at the permanency, the scope, and the donor’s motive behind the condition. For instance, if a donation is conditioned upon the donee never getting remarried to anyone, this condition violates La. C.C. art. 1519 because it goes too far in permanency and scope. On the other hand, a donation conditioned upon the donee no remarrying his fiancé until the fiancé finishes graduate school in entomology might be permissible because the donor might want to see the donee be cared for in the future (a reasonable motive) and (if the fiancé only have one year left in school) the condition is not permanent. Correct?

2) Also, in the penal clause arena, Louisiana courts will allow a penal clause if the penal clause pertains to a right of private interest. A penal clause pertaining to a right of public interest will be struck down. A right is of public interest if when it is violated it creates an absolute nullity. A right is of private interest if the nullity is relative. Am I correct?

A 1) If by “[i]nside” you meant to say “[i]nside France”, then the answer to your question would be “yes”. But if you meant to say, “[i]nside Louisiana”, then the answer’s not so clear. You see, the truth is, we don’t know for sure if our courts, were they to be presented with the opportunity, would say that the laudableness / censurability of the donor’s “motive” is relevant. Now, that IS the position of both the French courts and the French scholars. And it MAY BE that our courts, if shown that jurisprudence and doctrine, would follow it. But so far, our courts have not been shown that jurisprudence and doctrine and, therefore, not surprisingly, our courts have taken no position on the issue. Be that as it may, I’m persuaded that our courts will eventually follow the French courts and scholars in this matter and, so, when you take the exam, you should proceed accordingly (i.e., assume that they will).

2) Yes, basically, though I’d prefer to formulate the rule in slightly different terms: Louisiana courts will uphold a penal clause against a CC art. 1519 challenge only if the rule that the penal clause deters one from invoking is not a rule of public order,
in other words, is a rule designed to protect only a private interest.