2 Responsum (the successoral option)

a Introduction (CC art. 947)

b Domain: testate & intestate successions

c Holders

To whom does the option belong?

1) Successors

2) Creditors of successors (CC art. 967)

d Divisibility of option

1) Right (CC art. 947, sent. 2., & cmt. (a))

2) Effect

e Prerequisites for exercise of option

... 

2) Capacity requirements

a) General rule

1] Old law (CC art. 1004 (1870))

 LOUISIANA CIVIL CODE art. 1004 (1870)

Those who are not capable of contracting obligations, such as persons interdicted,
can not accept an inheritance; but the curators of such persons can accept successions
falling to those who are under their curatorship, by pursuing the formalities prescribed
by law.

2] New law (?)

b) Exception: minority (CC art. 948)

3) State of mind requirements
b) Knowledge requirements

1] Knowledge of opening of succession (CC art. 950)

2] Knowledge that succession has "fallen" to him (CC art. 950)

f) Freedom of exercise of option

1) Substantive rule (CC art. 962)

2) Procedural questions

a) Who can compel the successor to choose (CC art. 962 cmt. (c))

b) How the successor can be compelled to choose

g) Enumeration of options

1) Acceptance

a) Definition

b) Modalities

1] By manner of manifestation of will (CC art. 957)

a] Formal (formerly “express”)

1} Definition (CC art. 957, sent. 2)

2} Prerequisites

a} Mode

b} Intent

b] Informal (formerly “tacit”)
1) Definition (CC art. 957, sent. 3)

2) Illustrations

   a) Acts of ownership (CC art. 957)
      
      1/ Definition

      2/ Rules

      a/ General rule (CC art. 957, cl. 1)

      b/ Exceptions:

      1° Sale under other title (CC art. 957 cmt. (b))

      2° Acts of administration, custody, or preservation (CC art. 957 & cmt. (a))

          ...

      b) Omission to deny heirship in debt-collection action (CC art. 957 cmt. (c))

   c) Disposition of inheritance rights

      1/ Direct: donation, sale, or assignment (CC art. 957 cmt. (c))

      2/ Indirect: directed or compensated renunciation

SH 44.8. Jean Sot dies, survived by his sons, Beau Sot, Geau Sot, Meau Sot, Seau Sot. Beau Sot renounces his inheritance without qualification in return for $300, which his three brothers put up, $100 from each. Geau Sot then renounces his inheritance in favor of Meau Sot for nothing. Have Beau Sot and Geau Sot renounced, as appears to be the case, or have they done something else? Explain. See CC art. 960.

2] By extent of exposure to liability

   a] Old law
SH 45. Olide makes out a valid testament in which he leaves all of his property “jointly” to his buddy Pascal’s children, Ti-Boy and Lil-Fille. Upon Olide’s death, Ti-Boy, without thinking much about it, announces that he “accepts” Olide’s succession. But then, as he considers how well off he is (he’s a lawyer) and how rough his little sister has it (she’s a public school teacher), he changes his mind: he announces (in authentic form) that he’s “revoking” his acceptance and “renouncing” his rights in favor of Lil-Fille.\(^1\) The next day, however, Ti-Boy dies. His son and only heir, Ti-Pascal, who’s always been the back sheep of the family, immediately informs his aunt, Lil-Fille, that he considers his father’s about-face to have been ineffective and, on that basis, demands that he be given half of Olide’s estate (the half that Olide had left to Ti-Boy). Lil-Fille rejects the demand. Who will prevail? Why? See the jurisprudence and the doctrine that follow:

\[\text{Evans v. Evans,}\]
\[410 \text{ So.2d 729 (La. 1982)}\]

It has been suggested in brief that a renunciation is not barred by a prior acceptance. The only support for this position is found in Poultney’s Heirs v. Cecil’s Executor, 8 La. 321 (1835), wherein the court in dicta indicated that, under the Code of 1808, an heir could renounce after having accepted, and then accept again "at a later date." Cf. Clauss v. Burgess, 12 La.Ann. 142 (1857). This language is surplusage and not to be given much weight. The Code unequivocally declares in C.C. 1009 that:

\(^1\) Ti-Boy does this on the assumption, which is correct, that if he renounces, then his share will accrete to his sister, Lil-Fille, as his joint, universal co-legatee. See CC art. 1592. Note that the special exceptional rule of CC art. 1593 does not apply here. And why not? Because the kinship relationship between the testator (Olide) and the legatees (Ti-Boy and Lil-Fille) that that article requires is lacking here: Olide, on the one hand, and Ti-Boy and Lil-Fille, on the other, are “just friends.”
"The heir, who is of age, can not dispute the validity of his acceptance, whether it be express or tacit, unless such acceptance has been the consequence of fraud practiced or violence exercised against him; he never can urge such claim under a pretext of lesion."

Although this article does not expressly forbid renunciation of a prior acceptance, it clearly states that an acceptance cannot be disputed in the absence of fraud or violence. Such strong language demonstrates the irrevocable nature of an acceptance; it was not intended that an acceptance could be lightly revoked. Therefore, we hold that Victor Scott, having unconditionally accepted the succession, cannot now revoke that acceptance in order to cure the testament with a renunciation of his bequest. The material deviation from the prohibition in C.C. 1592 . . . renders the will as a whole null and void under C.C. 1595. The succession must therefore be distributed pursuant to the laws of intestacy.

2) Renunciation

a) Definition

* True renunciation v. pseudo-renunciation (disguised acceptance plus donation)

SH 46.1. A dies, survived by her siblings, X, Y, and Z. X and Y both renounce without qualification or compensation. Here there's clearly a renunciation by X and Y, which benefits Z.


SH 46.3 A dies, survived by her siblings, X, Y, and Z. X, out of "love and affection for Z," renounces "in her favor." Is there a renunciation here? Why or why not? See CC art. 960.

b) Prerequisites

. . .

2] Formal (CC art. 963)

a] Manner of manifestation: express

b] Manner of commemoration: written
c) Effects

1] Enumeration

a] For the renouncing successor

1} Loss of rights in the estate

2} Dispensation from collation (CC art. 1237, ¶ 1)

b] For other successors: “accretion”

1} Definition

2} Beneficiaries

   a} Intestate succession (CC art. 964)

   b} Testate succession (CC art. 965)

3} Right to renounce

   a} Liberty (CC art. 966, sent. 1)

   b} Independence (CC art. 966, sent. 2)

... 

3] Revocability

a] Invalid renunciation

b] Valid renunciation

1} Principle (?)

2} Prerequisites

   a} Old law

   1/ Article 1031 prerequisites

   a/ No prescription of right to
accept

b/ No acceptance by other heirs

2/ Other prerequisites

a/ Substantive: capacity, consent, etc.

b/ Formal

b} New law (?)

3} Limitations (CC art. 1031)

SH 49. X, a widower, dies, survived by his children, A and B, and his brother, Y. By testament, X leaves his pirogue to A and his bass boat to B. All his other assets are to devolve by intestate succession. A renounces; B does nothing. After the court appoints Y as administrator, Y proceeds to amass and to liquidate X's property to pay off the succession debts. Included in the sale is X's pirogue, which Y sells to T for fair market value. About that time, A, who's since discovered that X had more property than everyone had believed, changes his mind, revokes his renunciation, and accepts with benefit of inventory. A now wants to rescind the sale of the pirogue by Y to T, arguing that "Papa lef' me dat dere pirogue." Under the old law could A get the pirogue back from T? Why or why not? See CC art. 1031, ¶ 1 (1870) (“So long as the prescription of the right of accepting is not acquired against the heirs who have renounced, they have the faculty still to accept the succession, if it has not been accepted by other heirs, without prejudice, however, to rights which may have been acquired by third persons upon the property of the succession, either by prescription, or by lawful acts done with the administrator or curator of the vacant estate.”)

h Prescription of the option (CC art. 962 & art. 3502)

Cynthia Samuel, Katherine S. Spaht & Cynthia Picou,
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Question 1: The decedent died survived by two children, A and B. At the time of the decedent’s death A accepted the decedent’s succession but B took no action either to accept or to renounce. It is now thirty years since the decedent’s death. (1) As between A and B (or their heirs if A and B have since died) who owns the decedent’s property? (2) If a trespasser entered into possession of the decedent’s land two years after his death, can A and B or their heirs evict the trespasser?

Sun Oil Co. v. Tarver, 52 So. 2d 437 (La. 1951), held that under old article 1030
after thirty years of inaction an heir lost his status as heir vis à vis a co-heir who had accepted. Old article 1030 was a prescription on the faculty or status of heirship. In the problem above, after thirty years A would be the only heir under old article 1030. B and B’s heirs would no longer have a claim against A for their share of the estate. However, both A and B or their heirs could sue to evict the trespasser, who could not plead article 1030’s prescription and who has no ownership rights until the period for acquisitive prescription has run.

The new law repealed old article 1030. There is no longer a prescription on the status of heir. Instead, new article 962 contains a new presumption of acceptance and a new provision that for good cause a successor may be compelled to accept or renounce.

Article 3502 provides: “An action for the recognition of a right of inheritance and recovery of the whole or a part of a succession is subject to a liberative prescription of thirty years. This prescription commences to run from the day of the opening of the succession.” This article was originally intended to bar a claim by an heir whose existence was unknown to or whose filiation was disputed by the other heirs who have taken possession of the estate claiming to be the only heirs. It was not intended to cover the situation such as the one above where A does not deny that B was originally an heir. If lawyers are not careful to observe the original purpose of article 3502, the article may end up serving the same function as old article 1030. The second sentence of article 3502 appeared for the first time when the article was revised and reenacted in 1983 and is now acknowledged by the redactor to be incorrect. The prescription should begin to run when the heirs who claim to be the only heirs take actual possession of the property. Do you see why?

*Question 2:* The decedent had three children, A, B, and C. All accepted formally. A took actual possession of Blackacre, which was part of the decedent’s estate. May A prescribe against B and C or effectively prevent them from partitioning that property? See. La. Civ. Code arts. 1305, 1320-21, and 3478.

1) Creditors’ rights

1) Creditors of the deceased (CC art. 962, sent 2 & cmt. (c))

What is “good cause”? What are “appropriate circumstances”?

2) Creditors of the called successor(s)

   a) Introduction (CC arts. 3182-3183)

   b) Nature of the right (CC art. 967, 2044, 2036)

   c) Prerequisites (CC art. 967)

   1] Called successor renounces
2] Renunciation "prejudices" the creditor's rights

a] Possibilities:

1] Any refusal/renunciation whatsoever (?)

2] Only a refusal/renunciation that increases the called successor's insolvency (?)

b] Solution

d] Effects(CC art. 967, sent. 2)