PART II: Successions

D Distribution of the estate

* Introduction

1 Collation

2 C.-B.-M. Toullier, Le Droit Civil Français
n° 452, at 283 (Duvergier rev., 6th ed. 1846; Carlos Lazarus tr. 1970)

452. The object of collation is to maintain among the heirs the natural equality that would be destroyed if one of the heirs could retain the donations or claim the legacies made to him by the deceased.

It is thus an equitable principle, that every heir, direct, collateral, or beneficiary, coming to a succession must collate to his coheirs, that is to say, must return to, or leave in the mass to be partitioned, everything he has received from the deceased by donation inter vivos or mortis causa, directly or indirectly. Art. 843.

in 3 Civil Law Translations 263 et seq. (Carlos E. Lazarus tr. 1969)

§ 627. Concept of Collation

In its proper acceptation, the term collation signifies only the return to the hereditary mass of the things that the deceased has disposed of inter vivos in favor of his heirs ab-intestato, to be reunited therewith. The Civil Code provisions which preclude the latter from claiming the legacies made to them by the deceased, do not constitute collation properly speaking because, different from things given inter vivos, the things bequeathed are retained in the succession where they are found at the time of the death of the deceased, rather than returned thereto. This difference between donations and legacies did not escape the redactors of the Code. Nevertheless, after having made and noted it in Arts. 843 and 845 [Cf. R.C.C. Arts. 1228, 1237], they did not deem it necessary to conform thereto when drafting the subsequent articles. Sacrificing exactness of terminology for brevity of language, they applied the word collation indifferently to the prohibition imposed on the heir-legatee from claiming the things bequeathed to him, as well as to the obligation imposed on the heir-donee to return the things given to him.

Thus, in the broad sense attributed to this expression by the Civil Code collation means both, the return to the hereditary mass of donations inter vivos, and the retention in this mass of the legacies which the deceased had made in favor of one or more of his heirs ab intestato, the purpose of such return and retention being to include the objects given or bequeathed in the partition to be made among all the coheirs in conformity with
the rules established in matters of legal succession.

As a general rule, after the law of March 24, 1898, the obligation to collate no longer exists with regard to legacies, and even when the testator has expressed a contrary intention, the legatee may demand the delivery of his legacy in kind, subject to collation to the succession by taking less.

However, the testator may order collation, and his will in this respect need not be express provided that it is indicated unequivocally from the tenor of the act and from the circumstances. ***

§ 628. General Principles

The Civil Code gives the donor and the testator absolute liberty of dispensing the donee from the obligation to collate to his own succession, or of imposing on the legatee the obligation to collate it. Art. 843.

But in the absence of a manifestation of a contrary intent, the law presumes that the author of an inter vivos disposition not accompanied nor followed by a dispensation from collation, did not intend that the donee should retain his donation and at the same time claim a hereditary portion in his intestate succession. The obligation to collate thus rests on the legally presumed intention of the disposer; and the general principle that dominates the whole subject of collation is the following:

Every disposition inter vivos, where the person to whom it was made comes to the legal succession of the disposer, must be considered, as regards the obligation to collate, as a simple advance on the hereditary portion of such person, except where the disposition was made with dispensation from collation. In all other cases, the donee may keep the donation given to him only if he renounces the intestate succession of the disposer. Arts. 843 and 845.

Prior to the law of March 24, 1898, the propositions above stated applied to legacies. Under Art. 843 as amended, legacies are reputed made with dispensation from collation, except that the testator may express a contrary intent if he so desires. From which it follows that the obligation to collate imposed by the testator on the legatee, rests on the intention of the former. . . .

a) Definition (CC art. 1227)

b) Rationale

[skipped]

c) Scope

1) As to subjects (persons)

a) Passive subjects (obligors): who owes the duty to collate
* Two cumulative requirements:

1] Certain descendants (CC art. 1228)

a] General rule: all descendants

b] Exceptions:

1} Descendant who renounces succession (CC art. 1237)

a} Principle

b} Limitation

SH 50. Imagine a woman, M, who has two children, A and B. During M's lifetime, she gives numerous gifts to A, worth a total of $100,000, and nothing to B. At her death, M, though debtless, is also penniless. A and B are then 19 years old. A renounces M's succession. Is she then free of the duty to collate? Why or why not? See CC art. 1237, ¶ 2.

2} Descendants to whom the succession has not fallen (CC art. 1238.A)

3} Disinherited + / unworthy descendants (?)

2] Who have been personally and directly gratified by the deceased.

a] General rule

1} Exposition (CC art. 1238.A)

2} Illustrations:

SH 51.1. GP has two children, F and U. F, in turn, has one child, A. GP gives A a farm worth $100,000. A dies, survived only by F, who inherits the farm. GP then dies, survived by F (aged 22) and U (aged 20). U demands collation. Will F have to collate the farm in connection within GP's succession? Why or why not? See CC arts. 1238.A & 1239.B.

SH 51.2. GP has two children, F and U. F, in turn, has one child, A. GP gives F a farm worth $100,000. Then GP dies, survived by F (aged 22), U (aged 20), and A (aged 2). Shortly thereafter, F renounces GP's succession. And then F dies, at which point A inherits the farm.
U demands collation. Will A have to collate the farm in connection with GP's succession? Why or why not? See CC art. 1240.

b] Exceptions

1) Grandchildren who receive gifts directly from the deceased grandparent during the life of the parent

a} Exposition (CC art. 1239.A)

b} Illustration

SH 52. GP has three children, F, U, and T. F, in turn, has one child, A, while U, in turn, has one child, B. GP gives A a farm worth $100,000. F dies, survived only by A; U dies, survived only by B. GP gives B a car worth $10,000. Then GP dies, survived by T (aged 18), A (aged 2), and B (aged 1). T demands collation. (i) Will A have to collate the farm in connection with GP's succession? See CC art. 1239.A. (ii) Will B have to collate the car in connection with GP's succession? Why or why not?

2) Grandchildren who represent their parents in the succession of the deceased grandparent

a} Exposition (CC art. 1240)

b} Illustration

SH 53. GP has three children, F, U, and T. F, in turn, has one child, A, while U, in turn, has one child, B. GP gives F a farm worth $100,000. F dies, survived only by A, who inherits the farm. GP gives U a car worth $10,000. Then GP dies, survived by U (aged 20), T (aged 18), A (aged 2), and B (aged 1). After that, U is declared unworthy. And then U dies. T demands collation. (i) Will A have to collate the farm in connection with GP's succession? Why or why not? (ii) Will B have to collate the car in connection with GP's succession? Why or why not? See CC art. 1240, cl. 2.

SH 50-53 summa. GP has two children, F and U. F, in turn, has one child, A, while U, in turn, has one child, B. GP gives F a farm worth $100,000 and, while F is still alive, gives A a car. F dies, survived only by A, who inherits the farm. Not long thereafter, GP gives A a boat. Then GP dies. Which of the following things, if any, will A have to collate in connection with GP’s succession: (i) the farm, (ii) the car, (iii) the boat? Why?
b) Active subjects (obligees): who has the right to demand collation

1] Descendants

2] Forced heirs

   a] Definition (CC art. 1493.A)
       1} Young
       2} Disabled

3] 1st degree

What is the significance, if any, of the words “of the first degree” as used in CC art. 1235? Given that a “forced heir” is, by definition, a “descendant[ ] of the first degree,” see CC art. 1493(A), is the phrase just redundant? What possible utility might the phrase have? May its point be to limit the right to demand collation to those who are forced heirs in their own right (i.e., ”young” and / or “permanently disabled” first degree descendants), thereby excluding those who, though not forced heirs in their own right, can nonetheless assert forced heirship rights via representation (i.e., “young” or “permanently disabled” second degree descendants)? Review CC arts. 1493(B) & (C).

SH 54.

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         GGF
           |
           GM*
           |
     A (21)    B(25,a)   C(26,p)    Dp (20)
           |
       X(2,r)    Y(1)
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After watching her 20-year old daughter, D, die in a freak accident, GM suffers a heart attack and dies. GM is survived by her father, GGF; her brother, GU; her other children, A (aged 21 and in good physical and mental health), B (aged 25 and profoundly autistic), and C (aged 26 and in good physical and mental health); a grandchild by C, X (aged 2 and profoundly mentally retarded); and a grandchild by D, Y (aged 1). On the way to GM's funeral, C is involved in a car accident that leaves him a paraplegic. Of GM's survivors, which can and which can’t demand collation? Why?
2) As to objects (gratuities)

a) Objects included

1] Donations inter vivos (CC art. 1468)

a] Evident donations

b] Disguised donations

1} Definition (CC art. 2444, 2025, 2027)

2} Subjection to collation (?): yes

2] Various other gratuities

a] Certain expenditures (CC art. 1243)

1} For "establisments"

SH 55.1. Upon Ti-Boy's graduation from law school, Pascal buys him a building in which to situate his office, buys furniture for the office, and gives him several thousand dollars to cover his other “start-up expenses.” Pascal then dies, survived by Ti-Boy and Lil-Fille, Pascal’s 18 year-old daughter. Does Lil-Fille have any collation rights vis-à-vis Ti-Boy? Explain.

2} For payment of debts

SH 55.2. When Olide learns that his son, Mauvais, who has defaulted on several substantial loans, is about to declare bankruptcy, he steps in and pays off Mauvais’ creditors, to the tune of $250,000. Olide then dies, survived by Mauvais and Torte, Olide’s 18 year-old daughter. Does Torte have any collation rights vis-à-vis Ti-Boy? Explain.

b] Other advantages (CC art. 1248)

1} Sale of property at discount (“very low”) price

SH 56.1. For the price of $50,000, Pascal sells his son, Ti-Boy, a yacht worth $150,000. Pascal then dies, survived by Ti-Boy and Lil-Fille, Pascal’s 18 year-old daughter. Lil-Fille now wonders whether she might have any collation rights vis-à-vis Ti-Boy with respect to the yacht. Can this “sale” be treated as a disguised donation (relative simulation), so that it would be susceptible to collation just like any other donation? Why or why not? See CC art. 2444. If not,
PART II: SUCCESIONS

is there perhaps some other basis on which Lil-Fille might demand collation? Explain.

NOTE

In some (but certainly not all!) cases in which a successor may be able to demand collation with respect to the “surplus value” of a sale made at a “very low” price, the successor may also be able to demand that the sale be rescinded on account of “lesion.” When would that be? When (i) the object of the sale was immovable, (ii) the price paid was less than ½ (50%) of the immovable’s fair market value, and (iii) the successor is in a position (due to the timing of the sale and the timing of the death of the de cujus-seller) to make the demand for rescission within one year of the date of the sale. See CC arts. 2589, 2595, & 2600. In such a case, the successor could demand either remedy, whichever suits his fancy.

2) Payment of price

SH 56.2. Pascal takes his son, Ti-Boy, down to the Chevrolet dealership to get him a pick-up. Though the act of sale indicates that Ti-Boy, not Pascal, is the buyer, Pascal pays the purchase price. Pascal then dies, survived by Ti-Boy and Lil-Fille, Pascal’s 18 year-old daughter. Does Lil-Fille have any collation rights vis-à-vis Ti-Boy? Explain.

3) Expenditures to improve property

SH 56.3. Out of affection for his son, Ti-Boy, Pascal hires Lecompte Landscapers to landscape Ti-Boy’s yard. Pascal then dies, survived by Ti-Boy and Lil-Fille, Pascal’s 18 year-old daughter. Does Lil-Fille have any collation rights vis-à-vis Ti-Boy? Explain.

4) Donated use

SH 56.4. Above his garage is an apartment that Pascal occasionally rents out for $500 per month. When Pascal’s son, Ti-Boy, falls on hard economic times, Pascal allows him to live in the apartment rent-free for several months. Pascal then dies, survived by Ti-Boy and Lil-Fille, Pascal’s 18 year-old daughter. Does Lil-Fille have any collation rights vis-à-vis Ti-Boy? Explain. See the jurisprudence that follows:

According to this article, lesion may be claimed “only by the seller.” This expression is potentially misleading. All it means is that the buyer can’t claim lesion; it does not mean that the seller’s successors can’t claim lesion. See CC art. 2600 (authorizing “each successor” of the seller to “bring an action for lesion individually for that share of the immovable corresponding to his right”).

-496-
Succession of Pierson,
339 So.2d 1337 (La. App. 3d Cir. 1976)

Even if depletion of the ancestor's estate would be pertinent, to hold that a gift of revenue never depletes the donor's ultimate estate is unrealistic. Modern investment practices do not justify such a view. The question of depletion, vel non, should be resolved on the facts of each particular case.

If decedent had barely subsisted from month to month and left no assets of any consequence, it could be argued that she would have consumed the rental revenues of the properties occupied by her children and the free occupancy would have had no effect on her estate's ultimate value. The record herein clearly shows the contrary. Mrs. Pierson lived to the full extent of her wishes during the years of free occupancy. Her estate was considerable. If she had rented out the properties instead of allowing their free use by her children, the estate would have been increased pro tanto.

Accordingly, we hold that a gift of use or habitation is not exempt from collation solely because of its nature as the equivalent of revenue or because revenues from collatable items are deemed exempt from collation. By this ruling we do not intend to require collation of every use or occupancy permitted by a parent to a child. Many of these will be so trifling, temporary, intermittent, on such occasions and under such circumstances that they would clearly fall within the language of the Gomez case as ". . . things usual for parents of this country to give to a child without thought or regard to his having to account for them to his co-heirs."

We think that the permitted occupancy of the garage apartment by David should be exempt from collation. David was never married; he and his mother were very close. He assisted her in many ways. Originally, he occupied a room in the family residence. After a maid who occupied the garage apartment left, he moved into it. The apartment was very meagre; its rental value was estimated at $25 per month. In winter, David was forced to move into the family residence with his mother. He actually lived in the family home with her for several months prior to her death. The arrangement was to a large extent for Mrs. Pierson's convenience and requirements. Considering all these circumstances, we conclude that the permitted occupancy ". . . was without thought or regard to his [David's] having to account for them [it] to his co-heirs."

Hunter moved into the residence around 1950 and paid rental for two years. He then added onto the house and thereafter paid only the taxes and insurance. A realtor fixed the rental value from 1952 to 1960 at $100 per month and thereafter at $120 per month. This would amount to $24,000. We cannot say that the whole rental value should be collated because it was not completely free. Hunter paid about $2,000 for the addition which inured to the value of the property and consequently the estate. Additionally, he paid insurance and taxes for the 18 years involved. The payments for the addition, insurance and taxes were part of the overall arrangement between him and his mother and should be calculated into the amount due. From the record available, we calculate the taxes and insurance paid for the 18 years at $2,880. We will allow this total of $4,880 for the addition, insurance and taxes as a credit against the gross rental
of $24,000 leaving a net collatable figure of $19,120.

5} Fruits of donated property (?)
[skipped]

b) Objects excluded

1) By operation of law

a] With respect to time


b] With respect to type of gratuity

1) Legacies

SH 57.2. GM has two daughters, D₁ and D₂. GM then makes out a will in which she leaves all of her property to D₁—a universal legacy. Then GM dies. D₂ (aged 21) then demands that D₁ collate this gratuity and that the property then be divided by forced heirship or intestate succession law, i.e., 50/50. Is D₁ required to collate this legacy? Why or why not? In Jordan v. Filmore, 167 La. 725, 120 So. 275 (1929), the Louisiana Supreme Court, speaking through Justice O'Neill, answered this question with a firm “no”. According to the court, collation applies only to inter vivos gratuities.

2) Customary gifts of small value (“manual gifts”)

a} Exposition (CC art. 1245)

b) Illustration

SH 57.4. GM has a son, S, and two daughters, D₁ and D₂. Before her death, GM gives D₁ a diamond ring worth $10,000. Then GM dies. S (aged 21) then demands that his sister D₁ collate the ring. D₁ refuses the demand, insisting that it falls within the "manual gift" exemption of art. 1245. Will this defense fly? Why or why not? See the jurisprudence that follows:

Succession of Fakier,
CALOGERO, J.

The issue in this case is whether certain property transferred by the testatrix to her daughters is subject to collation. The property in question includes a diamond ring which the decedent gave to one of her daughters . . . .

The parties seeking collation of the subject property are grandchildren, the children of testatrix's predeceased son. Under the terms of the will, the grand-children received only the share of the forced portion reserved for them by law, whereas the daughters were jointly bequeathed their respective shares of the forced portion and the entire disposable portion of the estate.

The trial judge rejected the grandchildren's demand for collation, finding that the diamond ring is not collatable for two reasons: (1) the decedent's *inter vivos* transfer constituted a manual gift, and (2) the will dispensed with the necessity of collation because it reflected the decedent's intent to favor her daughters to the maximum extent allowed by law. . . . Relying on similar reasoning, the court of appeal affirmed. *Succession of Fakier*, 509 So.2d 33 (La. App. 1st Cir. 1987). . . .

We now reverse that portion of the court of appeal's judgment which held that the ring is not to be collated. The ring is not exempt from collation simply because it was a manual gift. Nor did the decedent dispense with the necessity of collating the ring in her will, or in any other manner sanctioned by the Louisiana Civil Code. Therefore, the ring is subject to actual collation under the provisions of LSA-C.C. Art. 1227, et seq.

In 1981, after the death of her husband, Mrs. Fakier executed a statutory will. The will appointed Patricia as executrix of her estate, made certain specific bequests to her granddaughters and left the entire disposable portion of the estate to the two daughters. The testament contained the following explanation of the dispositions made therein:

In explanation of my bequests hereinafter made, I provide the following.

It was always my intention and the intention of George C. Fakier, Sr., that our three children would share equally at the time of our deaths, in the estate that we had acquired together during our marriage. George C. Fakier, Sr., had sincerely desired that our son, George C. Fakier, Jr., should have a business in order to support his family. Following the death of George C. Fakier, Sr., and at a time when George C. Fakier, Jr., was terminally ill, my daughters and I executed various documents, wherein George C. Fakier, Jr., and his heirs, were enabled to obtain, in full ownership, the entirety of our family business, George C. Fakier & Son, Inc. At the time of the disposition of the stock held by myself and by my daughters to George C. Fakier, Jr., and to his children, I and my daughters were not fully informed or made aware of the valuations, exact details, consequences and divestitures resulting from the transfer agreements. Accordingly, a significantly less dollar value was received by each of my daughters than they were apparently entitled to. As the direct result, the heirs of my son, George C. Fakier, Jr., have been greatly favored over my daughters by their sole ownership of a business corporation, owning real estate, improvements, and merchandise of great value, both then and now.
As a direct consequence of the lesser and unequal monetary sums received by my daughters in my husband's estate in comparison to the value of the monetary sums and benefits received by my son, George C. Fakier, Jr., and his heirs, as stated in the last preceding paragraph, it is my desire to provide my two daughters with as much property, of whatever nature, movable and immovable, community and separate, including all rights and credits that I may own at the time of my death, to the fullest extent and as may be authorized by law.

More particularly, it is my desire that my two daughters, Patsy Ann and Mary Jude, shall receive, along with the heirs of my son, George C. Fakier, Jr., their respective forced portions. Additionally, it is my express desire that my two daughters, Patsy Ann and Mary Jude, shall receive, in equal parts and share and share alike, the entirety of the disposable portion of my estate which remains after the computation of the forced portion to which each of my daughters and the heirs of George C. Fakier, Jr., shall each legally receive.

The grandchildren's motion alleges that the decedent made to her daughter Patricia an *inter vivos* donation of a ring valued at $10,000. . .

The grandchildren contend that because the decedent executed no instrument dispensing with the requirement that the ring be collated, actual collation must occur. The executrix disagrees, contending that decedent's will is the instrument which dispenses with the requirement of collating the ring.

LSA-Art. 1232 provides that the act which dispenses with collation may be the donor's last will and testament. In order to effectuate a dispensation, it is not necessary for the language of the will to include a direct reference to collation. Art. 1231 states that a declaration that the donation was "made as an advantage or extra part" is sufficient. The declaration that the donation was so intended may be made "in other equivalent terms," as long as that intention is set forth "in an unequivocal manner." LSA-C.C. Art. 1233.

However, Mrs. Fakier's will does not refer to the transfer of the ring, or to any other *inter vivos* donations that she may have made to one or more of her children. In order to relieve Patricia from the obligation of collating the ring, in a manner required by the Civil Code, the testatrix *could have* (1) made a reference in her will to the transfer of the ring, and indicated by appropriate language that she gave the ring to Patricia as part of the latter's extra portion, or (2) stated generally that all *inter vivos* gifts to her daughters, or to her children, were intended as advantages. The testatrix chose neither option, and the Civil Code requirements for dispensation from collation were not met.

The executrix would have us *assume* that because Mrs. Fakier left the entire disposable portion of her estate to her daughters (minus certain particular legacies), and stated in her testament that she desired to favor her daughters in order to equalize the effect of past advantages to her son, she did not intend for the daughters to collate any *inter vivos* donations. The trial court and the court of appeal accepted this assumption, reasoning that collation of the ring was contrary to the testatrix's intention.

We reject this assumption for two reasons. First and foremost, the Civil Code sets forth with precision the method by which a donor may dispense with collation, and absent
a dispensation sanctioned by the Code, courts are not free to decline to order collation based upon their assumptions about the donor's intentions. To the contrary, "collation is always presumed, where it has not been expressly forbidden," according to Civil Code Art. 1230.

Secondly, the will cannot be considered as a reflection of the testatrix's intentions regarding any *inter vivos* donations that she made to her daughters, for the simple reason that the will does not mention such donations. The fact that Mrs. Fakier's will expresses the desire for her daughters to inherit the disposable portion does not speak to whether she intended that Patricia would or would not have to collate the value of the ring by taking that amount less when succession assets are distributed. Further, if the testatrix gave the ring to Patricia as an advantage, that advantage would exist not only over the grandchildren, but also over Patricia's sister, Mary. There is no indication in the will that Mrs. Fakier intended to favor Patricia in this fashion.

Nor does the testatrix's expressed desire to have her three children "share equally" in the amount ultimately received from her and her husband, *inter vivos* and mortis causa, constitute a dispensation from collation. There is no indication in the will that Mrs. Fakier thought that collation of *inter vivos* gifts would defeat this equal sharing or the "evening up" that she hoped to achieve by bequeathing her daughters the disposable portion.

This case is readily distinguishable from *Darby v. Darby*, 118 La. 328, 42 So. 953 (1907), where the act of donation specified that the property was donated in order to place the donee on equal footing with other descendants who had received previous advances. We concluded that the language in that act of donation reflected the donor's intention that the donee receive the property described in the act of transfer as an extra portion. In this case, however, there is no document, be it the will or otherwise, which refers at all to the gift of the ring, or which generically exempts from collation *inter vivos* donations to Patricia. Thus we do not know what the testatrix's intentions were regarding the donation of the ring, and, in light of the presumption in favor of collation required by Art. 1230, we decline to guess.*

*. . .

* On the other hand, Mrs. Fakier *did* make clear her intentions regarding certain immovable property that she donated to her daughters, stating in the act of donation that said property was intended as "an extra portion."

Certain language in the court of appeal and trial court opinions indicates that the ring should be exempt from collation simply because it is a "manual gift." Civil Code Art. 1539 defines manual gift as "the giving of corporeal movable effects, accompanied by a real delivery." In support of the proposition that manual gifts are exempt from collation, the lower courts cited LSA-C.C. Art. 1245, an article which exempts from collation "things given by a father, mother or other ascendant by their own hands, to one of their children for his pleasure or other use."

In *Gomez (I)*, 67 So.2d 156, we examined in detail the history, purpose and scope of Art. 1245, and concluded that it does not exempt all manual gifts from collation. We found that when Art. 1245 speaks of things which parents give to their children "by their
own hands," it refers only to "those things usual for parents of this country to give to a child without thought or regard for the child having to account to his coheirs." 67 So.2d at 161. We noted that Art. 207 of the Louisiana Civil Code of 1808 listed customary parental gifts that were exempt from collation, including "small presents" and money given to a child "for play and for pleasures," and concluded that although the present code contains no such specific examples, Art. 1245 is intended only to exempt from collation items of this nature. 

At issue in Gomez (I) was whether monthly cash stipends given by the decedent to her daughter were exempt from collation under Art. 1245. We held that the money given to the daughter "is not one of those things contemplated by Art. 1245, and therefore is not exempt from collation under that article." Id. at 162. The same may be said here for the diamond ring, which is clearly not the type of customary parental gift to which Art. 1245 applies.

We noted in Gomez (I) that even if a manual gift is not exempt from collation, the donor may dispense with collation if his intention to do so "is clearly expressed in the manner and form required by the Code." Id. We then discussed the fact that Art. 1232 requires a formal, written dispensation, executed before a notary and two witnesses, and stated that obviously one way in which the donor of a manual gift could dispense with collation would be through compliance with Art. 1232. However, because the transfer of a manual gift "is not subject to any formality," [C.C. Art. 1539] we also discussed the possibility of allowing the donee to prove that the donor intended to dispense with collation, even when there is no formal dispensation under Art. 1232 we could hold that the donor's intent to dispense collation of a manual gift could be established by the facts and circumstances of the case. Under this latter holding the donee would have the burden of establishing the intent to dispense by strong and convincing proof so as to overcome the presumption of collation, for under our law, where the donor has remained silent, collation is always presumed. 67 So.2d at 163.

Because of the facts before the Court in Gomez (I), we did not find it necessary to rule definitively on the question of whether collation of a manual gift may be dispensed with, when the facts and circumstances of the case reveal "strong convincing proof" that such was the donor's intent.

We have already found here that there was no formal dispensation. As for the facts and circumstances of the case, we have only the decedent's will to consider, there being no testimony presented below that pertained to the donation of the ring. We have noted above that nothing in the will requires the inference that the testatrix intended for the ring to be an extra portion. Certainly the will alone does not constitute "strong and convincing proof" that such was the case.

Even if we were to employ the facts and circumstances test discussed in Gomez (I), the outcome of the case on this issue would be no different. There is no evidence in the record that the decedent intended to give Patricia the ring as an extra portion, and for that reason actual collation must occur.

3} Expenses for support or education
SH 57.5. M pays the tuition ($1,000) for D’s first year at the local community college. Then M dies. Can M’s son, S (aged 21), who chose not to go to college and, so, received no benefit comparable to that which D received, obtain collation of the tuition money? Why or why not? See CC art. 1244.

2] By effect of will

a] Permissibility (CC arts. 1228, ¶ 1; 1231; 1232; & 1233)

b] Presumption against exemption (CC art. 1230)

c] Prerequisites

1} Substantive

a} Capacity

b} Consent (free)

2} Formal

a} Manner of manifestation

1/ General rules:

a/ Legislation (CC arts. 1228, ¶ 1; 1230; 1231; 1232; 1233)

b/ Interpretation (jurisprudence & doctrine)

Review Succession of Fakier, reproduced above.

2/ Rules for problem cases: disguised donations/relative simulations

[skipped]

b} Solemnities

1/ Act whereby gratuity is extended,
e.g., act of donation inter vivos

2/ Authentic act passed after extension of gratuity

3/ Testament

c) Content

1/ "an advantage or extra part" (CC arts. 1231, 1232, 1233)

2/ "other equivalent terms, provided they indicate, in an unequivocal manner, that such was the will of the donor" (CC art. 1233)

[skipped]

e] Limit: disposable portion

[skipped]

d Execution

1) In general

Judging from the text of CC art. 1251, one would have to conclude that there are two and only two ways of discharging the duty to collate and that these two ways are called, respectively, “in kind” and “by taking less.” Yet even a cursory survey of the articles that follow reveals that there is still another possible way, namely, collation by payment of money. See, e.g., CC arts. 1277 & 1288.

In contemporary French doctrine, this third mode of collation and the mode of “taking less,” because of their obvious affinities to each other, are usually treated as two species of a single genre, called “collation by value,” which is then juxtaposed against “collation in kind” or, as the French sometimes call it, “collation by nature.” See, e.g., Alex Weill & François Terré, DROIT CIVIL: LES SUCCESSIONS – LES DONATIONS § 898, at 866 (2d éd. 1988). The presentation of the modes of collation that follows is based on this classification scheme.

2) Modes

a) Collation by value: taking less / payment of money
1] Definition: "when the donee diminishes the portion he inherits, in proportion to the value of the object he has received, and takes so much less from the surplus of the effects" (CC art. 1253)

2] Mechanism

   a] Determination of the value due

   [skipped]

   b] Regulation of the value due

   1} How value is given

      a) Taking less

      SH 62.1. M has two sons, A & B. Two years before her death, M gives A a tract of land worth $50,000. M dies. Aside from the land, she leaves, at death, an estate with a net worth of $150,000. B (aged 21) demands that A collate the land, which A elects to do by value. How does A do it? When he does it, what does he get? Explain.

      b) Paying money

      1/ When required

      SH 62.2. The same as before (SH 62.1), except that, this time, M leaves, at death, an estate with a net worth of $10,000. Again, A elects to collate by value. How does he do it now? When he does it, what does it cost him? Explain. See CC art. 1277.

   2/ When due

   [skipped]

   2} How value is distributed

   [skipped]

   b) Collation by nature: in kind return

   1] Definition (CC art. 1254)
2] Mechanism
   a] Physical return
   b] Adjustments

[skipped]

3] Options
   a] General rule: option
   b] Exceptions
      * Taking less is forced:
        1] By law
           a] Movables
           b] Destruction of property
           c] Alienation of property
           d] Excess of disposable portion/inconvenience in separation
     2] By will
        e] Extinction

[skipped]

2] Partition
[skipped]