LOUISIANA CIVIL LAW
SUCCESSIONS & DONATIONS

I Donations

A Introduction to “donations”

B Common regime

1 Definition of "donation"
   a Intentional element: predominantly gratuitous
      1) Necessity thereof
      2) Definition thereof
         a) Meaning of "gratuitous"
         b) Meaning & significance of "predominantly" (CC arts. 1523-1525)
   b Material elements
      1) Juridical act
         a) Necessity thereof
         b) Definition thereof
      2) Disposition of a thing
         a) Necessity thereof
         b) Definition thereof
            1] Meaning of "thing"
            2] Meaning of "disposition"

2 Classifications
   a First scheme: time of effectivity / revocability
      1) Enumeration
         a) Donation inter vivos
            1] Definition (CC art. 1468)
            2] Distinctive characteristics
               a] Characteristics of the juridical act: multilateral
               b] Characteristics of the transfer
                  1} Effectivity: at present
                     * Transfer subject to a temporal modality
                        † Terms
                        † Conditions
                           ‡ Suspensive
                           ‡ Resolutory
                  2} Reversibility: irrevocable except for cause (CC arts. 1468 & 1559 et seq.)
         b) Donations mortis causa (legacies)
            1] Definition
            2] Distinctive characteristics
               a] Characteristics of act: unilateral juridical act
               b] Characteristics of transfer
                  1} Effectivity: at death
                  2} Reversibility: freely revocable
      3] Illustrations
2) Prescription & proscription  
   b) Second scheme: degree of gratuity  
      1) The scheme of the Civil Code  
         a) Description  
            1] Purely gratuitous (CC art. 1523, ¶ 1)  
               a] Definition  
               b] Illustration  
            2] Not purely gratuitous  
               a] “Onerous” donations  
                  1} Definition  
                  2} Illustration  
               b] “Remunerative” donations  
                  1} Definition  
                  2} Illustration  
         b) Criticism, condemnation, & rejection  
      2) The scheme as scientifically reconstructed  
         a) Categories of "mixed" acts of disposition in general  
            1] Onerous  
               a] Obligation that benefits the donor himself  
               b] Obligation that benefits others (?)  
            2] Remunerative  
         b) Subcategories of "mixed" contracts of disposition  
            1] Enumeration: predominantly gratuitous v. not predominantly gratuitous  
            2] Means of classification  
               a] Alternative statements  
                  1} Classic statement: value of O "manifestly exceeds" value of C or S if and only if value of O > 1 ½ times value of C or S  
                  2} Modern restatement: value of O "manifestly exceeds" value of C or S if and only if value of C or S < 2/3 value of O  
               b] Timing of evaluation  
                  a} Value of donatum (O)  
                  b} Value of services already rendered (S) or charge to be performed (C):  
                     1/ S (remunerative donations)  
                     2/ C (onerous donations): a posteriori v. a priori  
      3) Scope of classification  
      4) Significance of the classification  
         a) For inter vivos acts of disposition  
            1] Statement (CC art. 1526)  
               a] Purely gratuitous inter vivos contracts  
               b] Onerous & remunerative "mixed" contracts of disposition
1} Classification
2} Consequences
   a} Predominantly gratuitous
   b} Predominantly non-gratuitous
2] Exposition of variable effects
   a] Formation requirements
      1} Different capacity requirements
      2} Different consent requirements
      3} Different object requirements
      4} Different form requirements
   b] Modalities: resolitary condition of survivorship
      (reversionary rights)
   c] Others: collation & reduction
b) For donations mortis causa
   1] Exemption from “reduction”
   2] Exemption from other requirements (?)
3} Formation & validity
   a} In general
   b} Requirements
      1) Capacity
         a} In general
            1] Definition
            2] General rule: capacity
            3] Characteristics of donative incapacities
               a] Common characteristics
                  1} General
                  2} Absolute
               b] Variable characteristic
         b} Classifications
            1] Incapacity to receive (active incapacity)
               a] Cause(s) of incapacity
                  1} Admitted cause: nonexistence
                     a} General rule: existence is necessary
                     b} Definition
                        1/ Natural persons
                           a/ Existence has begun
                              1° Born
                              2° Conceived? or conceived & implanted?
                           b/ Existence has not ended
                        2/ Artificial persons
                           a/ Existence has begun
                              1° General rule: existence must have begun
                              a° Corporation: when
incorporated
b° Partnerships: when formed
c° Unincorporated associations: when formed

b/ Existence has not ended
b} Exception: existence is not necessary: posthumously conceived children

2} Other possible causes(?): minority, interdiction, mental defect (?)

b] Distinctive characteristic: an incapacity of enjoyment
c] Time of determination
1} Donation inter vivos
2} Donation mortis causa
d] Proof
1} Evidence: anything relevant to existence, including conception & implantation
2] Burden of proof (?)
e] Effects

2] Incapacity to give (passive incapacity)
a] Causes of incapacity
1} Minority
a} Donations inter vivos
1/ Rules:
a/ General rule: no capacity
b/ Exception: capacity to donate in favor of spouse or children
2/ Illustration
2} Donations mortis causa
a/ Rules
1° Under 16
a° General rule: no capacity
b° Exception: capacity to donate in favor of spouse or children
2° 16 up to 18: full capacity
b/ Illustrations

2} Interdiction
3} Inability to understand
a} Statement
b} Source
1/ Analysis
a/ Able to comprehend
b/ Generally (id. comment (e))
c/ Nature
d/ Consequences (id. comment (d))

2/ Illustration

b] Distinctive characteristic: incapacity of exercise

c] Time of determination

1} Donation inter vivos

2} Donation mortis causa

d] Proof

1} Burden of proof (CC art. 1482)

a} General rule

1/ Bearer

2/ Standard

b} Exceptions

1/ Explication

a/ Exception 1: donations inter vivos or mortis causa of property not covered by the limited interdiction order (1482.C, sent. 2)

1° Bearer

2° Standard

b/ Exception 2: donations mortis causa of property covered by the limited interdiction order (1482.C, sent. 1)

1° Bearer

2° Standard

2/ Illustration

2} Evidence: anything relevant to mental capacity

c) Effect

2) Consent

a) Definition

b) Characteristics

c) Formation: offer & acceptance

1] Requirements

a] Donation inter vivos

b] Donation mortis causa

2] Effects of absence of consent

d) Vices of consent

1] Types of vices

a] Fraud

1} Recognition

2} Definition

3} Proof

a} Evidence: anything relevant

b} BOP (CC art. 1483)

1/ Bearer
2/ Standard
   a/ General rule
   b/ Exception

4} Illustrations

2] Duress
   a] Recognition
   b] Definition
   c] Proof
      1} Evidence: anything relevant
      2} BOP (CC art. 1483)
         a} Bearer: party alleging duress
         b} Standard:
            1/ General rule: C&CE
            2/ Exception: preponderance, if
               a/ relationship of confidence
               existed between donor and defrauder
               b/ donor and wrongdoer and defrauder were not related by affinity, consanguinity or adoption

   d] Illustrations

3] Undue influence
   a] Recognition
   b] Definition (CC art. 1479)
      1} What's required:
         a} Substitution of volition (comment (b))
         b} By donee or third person (comment (c))
      2} What's not required:
         a} Knowledge by donee of third person's pressure (comment (c))
         b} Pressure contemporary with the execution (comment (d))
   c] Proof
      1} Evidence: anything relevant
      2} BOP
         a} Bearer
         b} Standard
            1/ General rule
            2/ Exception
   d] Illustrations

4] Error (?)
   a] Recognition?
      1} In Louisiana
      2} In foreign civil law jurisdictions
b) Definition (CC art. 1949)
c) Proof  
   1) Evidence: anything relevant
   2) BOP
      a) Bearer: challenger
      b) Standard: ?
d) Illustrations

2) Effect of vitiation of consent
   a) Type of nullity
   b) Extent of nullity (severability)

3) Cause
   a) Definition (CC art. 1967)
   b) Requirements (CC art. 1971)
      1) Present (existent)
      2) True
      3) Legal
   c) Proof: normal rules
   d) Effects:
      1) Type of nullity
         a) Absent or false cause: relative
         b) Illegal: absolute
      2) Scope of nullity: individual disposition only

4) Object
   a) Definition: equivocal
      1) Object of obligation: performance
      2) Object of performance: thing
   b) Requirements (CC art. 1971)
      1) Existent
      2) Possible (CC art. 1972)
      3) Determined or determinable (CC art. 1973-1975)
      4) Lawful
   c) Proof: normal rules
   d) Effects:
      1) Type of nullity: absolute
      2) Scope of nullity: individual disposition only

4 Limitations
   a) Limitation on magnitude: the disposable portion
      1) In general
         a) Statement of the rule
         b) Definitions (CC art. 1494):
            1) Forced portion (legitime, reserve)
            2) Disposable portion
         c) History & raison d'être
         d) Comparative law
         e) Characteristics of the limitation
1] Public order
   a] Statement
   b] Rationale
   c] Effects (CC art. 1494 & 1496)
      1} No direct impingement permitted
      2} Nor even any indirect impingements

2] In kind not by value
   a] Statement
   b] Effects

2) Prerequisites (for triggering the limitation)
   a] Opening of the succession
   b] Presence of at least one forced heir (CC art. 1493)
      1] Definition of "forced heir" (1493.A)
         a] Descendant
         b] First degree, i.e., child
         c] Young or disabled at the time of deceased's death
            1} Young: under 24
            2} Incapacitated:
               a} Actually incapacitated
                  1/ Cause
                     a/ Mental incapacity
                     b/ Physical infirmity
                  2/ Effect: inability to care for person or administer estate
               b} Potentially incapacitated
      2] Possible modes of "presence"
         a] Of right (forced heir for himself)
         b] By representation (1493.B & .C)
            1] Definition of "representation"
            2] Prerequisites:
               a} Possibility # 1 (1493.B)
                  1/ As to representé: predeceased child of deceased
                  2/ As to representative: any descendant of predeceased child (as a matter of biology, almost always a child of the predeceased child) (CC art. 882)
                  3/ Other: had child of deceased survived, he would have been "young" at time of deceased's death
               b} Possibility # 2 (1493.C):
                  1/ As to representé: predeceased child of deceased
                  2/ As to representative: child of
3] Disinherison
   a] Definition
   b] Subjects
      1} The disinheritor
      2} The disinheritee
   c] Requirements
      1} Substantive: just cause (CC art. 1619, 1620)
         a} Parent against child (CC arts. 1621)
            1/ Cruelty, crime, grievous injury (CC art. 1621(2))
            2/ Marriage by minor child without parental consent (CC art. 1621(6))
            3/ Conviction for serious felony (CC art. 1621(7))
            4/ Failure of major child to communicate with parent for two (2) years without just cause (CC art. 1621(8))
         b} Other ascendant against other descendant (CC art. 1622)
      2} Formal
         a} Express, implied or tacit? (CC art. 1619)
         b} Oral, written, authentic form? (CC art. 1618)
         c} Contents? Name? Cause?
      3} Timing
   d] Defenses: reconciliation, etc. (CC art. 1625, 1626)
      1} Reconciliation
      2} Other defenses: incapacity, lack of intent, justification
   e] Procedure: burden of proof
      1} Existence of the cause
      2} Defense of reconciliation (CC art. 1625)
      3} Defenses of incapacity, lack of intent, justification (CC art. 1626)
   f] Effect
   c) Acceptance of the succession
3] Quotients of disposable portion & forced portion
   a] Governing principles:
      1] Quotients depend on number of forced heirs
      2] Determination of number of forced heirs: number of forced heirs still alive plus number of forced heir représentés
b) Quotient-fixing rules
   1] General rule (CC art. 1495, ¶ 1)
      a] Deceased leaves one forced heir:
         1} Disposable portion: 3/4
         2} Forced portion: 1/4
      b] Deceased leaves two or more forced heirs:
         1} Disposable portion: ½
         2} Forced portion: ½
   2] Exceptions
      a] Where the (sum of the) legitime(s) exceeds the (sum of
      the) forced heir's(s') intestate share(s) (CC art. 1495, ¶ 2)
         1} Disposable portion: total estate less sum of the
            interest shares
         2} Forced portion: sum of the intestate shares
      b] Where one or more forced heirs (or representatives) is
         disinherited, is declared unworthy, or renounces (CC
         art. 1500)
         1} Disposable portion: disposable portion per
            general rule plus legitime of non-receiving forced
            heir
         2} Forced portion: forced portion per general rule
            less legitime of non-receiving forced heir
   4) Shares of the forced portion (legitimes)
      a) Where there's no representation: by heads
      b) Where there is representation: by roots and then, within each
         root, by heads
   5) Sanction (reduction) (CC art. 1503)
      b. Limitation on conditions: no impossible, illegal, or immoral conditions
         allowed (CC art. 1519)
         1) Causes
            a) Of impossibility
            b) Of illegality or immorality
               1] Pertaining to personal matters (status, lifestyle)
                  a] Marital status
                     1} Marriage
                     2} Remarriage
                     3} Divorce
                  b] Residence
                  c] Sex
               2] Pertaining to patrimonial matters
                  a] Limits on alienability
                  b] Limits on partition
                  c] Limits on the assertion of rights (penal clauses)
1) Definition of “penal clause”
2) Statement of rule
3) Illustrations
   a) Rights of public interest
      1/ Forced-heirship rights
      2/ Right to complain of defects of form
   b) Rights of private interest
      * Possibilities:
      1/ Right to complain of "will" problems (e.g., capacity, consent)
      2/ Right to complain of donation omnium bonorum (?)

2) Sanctions
   a) Legislative sanction
      1] Statement: the condition alone is void; otherwise, the donation is valid (CC art. 1519)
      2] Critique:
         a] Historical justification
            1} Roman law
            2} Revolutionary France
         b] Change of circumstances
   b) Jurisprudential & doctrinal sanction
      1] General rule: rule of the legislation
      2] Exception:
         a] Statement: nullity of the donation as a whole
         b] Theoretical justification
         c] Illustration

   c) Limitation on power to control donee's disposition of property: prohibition of certain substitutions
      1) Definitions: “substitution” and “fideicommissum”
      2) Prohibition (CC art. 1520 (2001))
         a) Statement
         b) Subjects
            1] Donor
            2] Donees
               a] Institute (or grevé): the donee who's supposed to take first
               b] Substitute (or appelé): the donee who takes after the first
         c) Prerequisites
            1] Double liberality
               a] Explication
               b] Implications
                  1} What's included (and, so, possibly prohibited)
2) What's excluded
   a) Joint legacy (and, so, permitted)
      1/ Description (CC arts. 1588)
      2/ Illustration
      3/ Rationale
   b) Donation dividing usufruct from naked ownership
      1/ Description
      2/ Illustration
      3/ Rationale
   c) Donation of successive usufructs
      1/ Description
      2/ Illustration
      3/ Rationale
   d) Vulgar substitution
      1/ Description
         a/ In general
         b/ Typical forms
      2/ Illustration
      3/ Rationale
   e) (Some?) double conditional legacies
      1/ Description
      2/ Illustration
      3/ Rationale
   f) Inefficacious substitution
      1/ Description
      2/ Illustration
      3/ Rationale

2] Duty to conserve & render
   a) Explication
      1) Definitions
         a) Conserve
         b) Render
      2) Requirement
   b) Implications
      1) What's included
      2) What's excluded
         a) Prohibition on alienation
            1/ Description
            2/ Illustration
            3/ Rationale
         b) Residuary legacies
            1/ Description
            2/ Illustrations
3/ Rationale
c} Precatory legacy (*fideicommissum* without duty to render)

1/ Description
2/ Illustration
3/ Rationale
d} Fideicommissum with power of selection

1/ Description
2/ Illustration
3/ Rationale

3] Successorial order

a] Explication
b] Implications
1) What's included
2) What's excluded: *fideicommissum* executable before death
   a/ Description
   b/ Illustration
c/ Rationale
d) Rules of construction
1] Reconstruction of intent: realize the donor's desires to the extent legally permissible
2] Preference for "saving" construction
e) Sanctions
1] Possible solutions
2] Retained solution: nullity of the donation

C Regimes applicable to particular types of donations

1) Donations *inter vivos*
a] Special requirements: form
  1) The requirements
   a) Act of (offer of) donation
      1] General rule: by authentic act (CC art. 1536)
         a] Explication
         b] Scope: all donations IV of all things no matter what category
            1) All donations IV
               a} Donations that appear to be donations
               b} Donations disguised as sales
                  * Illustration
            2] All things
               a} Immovables (CC art. 1536)
               b} Incorporeals (CC art. 1536)
               c} Corporeal movables (?) (CC art. 1538)
   c] Explication
2] Exceptions
a) Manual gift
  1) Explication
     a) By donor himself to donee himself
     b) By donor through representative to donee himself
     c) By donor himself to representative of donee
     d) By donor through representative to representative of donee
     e) By donor himself to both himself & donee
  2) Scope: corporeal movables only
     a) Definitions
        1/ Corporeal movables
        2/ Incorporeal movables
  3) Illustrations
b) Transfer of stock
c) Negotiation of negotiable instruments
d) Transfers to minors
b) Act of acceptance
  1) Definition
  2) Modes
     a) General rule
        1) Manner of manifestation: express (CC art. 1540)
        2) Form of manifestation: authentic act
           a) Statement
           b) Possibilities:
              1/ Acceptance expressed in the act of donation
              2/ Acceptance expressed in a separate authentic act
     b) Exception: tacit (CC art. 1541)
        1) Statement
        2) Scope:
           a) Corporeal movables donated by manual gift
           b) Things donated by authentic act
     3) Explication
  3) Effectivity
     a) Where the donation and the acceptance are made in the same act (CC art. 1540, ¶ 1): immediately
     b) Where the acceptance is made in a “posterior” act (CC art. 1540, ¶ 2): upon notification of the donor
     c) Recordation (insinuation) (CC art. 1554 & 1557)
2) The sanction
Revocation

1) Introduction (CC arts. 1468 & 1559)
2) Definition
3) Causes (CC art. 1559)
   a) Pseudo-cause: non-fulfillment of suspensive condition
   b) True causes
      1] Legal or conventional return
         a] Legal return
            1) Definition
            2) Varieties:
               a) The *retour successoral* (CC arts. 897-98)
               b) Right of collation (?)
         b] Conventional return (CC art. 1535)
            1) Definition
            2) Illustration
      2] Ingratitude (CC art. 1560)
         * Instances
            a] Attempted murder of donor
            b] Cruel treatment of, crimes against, or grievous injuries to donor
               1) Cruel treatment:
                  a) *Mens rea*: intent
                  b) *Actus reus*: physical mistreatment
               2) Crimes: intentional offenses against the person or property defined by the criminal law
               3) Grievous injuries:
                  a) *Mens rea*: intent
                  b) *Actus reus*: works, behavior, or even attitudes that damage his sentiments, honor or reputation
            c] Refusing food to donor when in need
      3] Failure to fulfill charges (CC arts. 1565-1568)
         a] Exposition
         b] Prerequisites
            1) General rule: revocation occurs as of right (automatic) (CC art. 1565)
            2) Exception: judicial declaration of revocation required (CC art. 1566)
         c] Limitations
            1) Donations to charities: conditions / charges that become impracticable or impossible of fulfillment: cy-pres doctrine (9:2331)
            2) Donations to religious institutions: conditions/charges after lapse of 10 years
4) Effects (CC art. 1569)
   a) In general:
      1] Action to recover thing given
      2] Remedies (restoration of thing given or damages)
   b) For particular causes
      1] Ingratitude (CC art. 1561)
         a] Action
            1) Subjects
               a} Plaintiffs
                  1/ Donor
                  2/ His heirs (sometimes)
               2) Defendants: the donee only
            2) Prescription
               a} Delay: one year
               b} Trigger: act of ingratitude or discovery of
                  that act by donor
         b] Remedies
            1] Where donee has not alienated the thing: return
            2] Where donee has alienated the thing: payment
               of value
            3] Where donee has allowed real rights to be
               acquired on the thing: real rights subsist
      2] Failure to fulfill charges (CC arts. 1565 et seq.)
         a] Donations of immovable property
            1] Action
               a} Subjects
                  1/ Plaintiffs: donor or his successors or
                     assigns
                  2/ Defendants (CC art. 1568)
                     a/ Donee
                     b/ The donee’s successors
                     c/ Gratuitous transferees of donee
                        or donee’s successors
               b} Prescription (CC art. 1567)
                  1/ Delay
                  2/ Trigger: day on which noncompliance
                     begins
            2] Remedies (CC art. 1568)
               a] Where donee has not alienated the thing: return
               b] Where donee has alienated the thing
                  1/ Onerously: payment of value
                  2/ Gratuitously: return
c) Where donee has allowed real rights to be acquired on the thing: reals rights subsist, but donee is liable for diminution in value

b) Donations of movable property

3) Legal or conventional return

2 Donation mortis causa

a General principles

1) Mode (CC art. 1570)
   a) Definition of testament
   b) Significance of statement

2) Permanence

b Special requirements

1) Formal
   a) Enumeration thereof
      1] Requirements common to all types of testaments
         a) Written act (CC arts. 1574, 1575, 1576 & art. 1574 cmt. (e))
         b) Personal act
            1) Not by proxy (CC art. 1571)
            2) Not with another (CC art. 1571)

      2] Requirements unique to diverse types of testaments (CC 1574)
         a) Olographic testament (CC art. 1575)
            1) Persons required: testator only (1575)
            2) Process: must be "entirely written, dated and signed in the handwriting of the testator" (1575)
               a) In the testator’s handwriting: testator must write instrument in his own handwriting
                  1/ Mechanical production excluded
                  2/ "Aided" production sometimes excluded
               b) Entirely written by hand of testator
                  1/ If made without testator's consent
                  2/ If made with testator's consent
                     a/ General rule
                     b/ Exceptions (?)
         c) Dated by hand of testator
            1/ Presence
            2/ Method of redaction
            3/ Place of redaction
            4/ Degree of specificity
            5/ Degree of completion
6/ Degree of accuracy
d} Signed by the hand of testator
1/ Presence
   a/ Ad initio
   b/ A posteriori
2/ Words
3/ Placement

b] Notarial testaments
1} Varieties
2} Requirements
   a} Common requirements
      1/ Persons required
         a/ Testator (CC arts. 1577 - 1580.1)
         b/ Notary (CC arts. 1577 - 1580.1)
         c/ Witnesses
            1° Number (CC arts. 1577 - 1580.1)
            2° Qualifications
               a° Physical qualifications: sane, sighted, over 15, & able to sign name (CC art. 1581)
               b° Juristic qualifications (CC art. 1582)
                  i General rule: neither a witness nor the notary
                  ii Exception
      2/ Process required (CC arts. 1577 - 1580.1)
         a/ Redaction
         b/ Dating
         c/ Presentation & declaration / signification
         d/ Signature or mark of testator
            1° Location
            2° Form
         e/ Attestation clause (declaration)
   b} Requirements unique to different kinds of notarial testaments
      1/ Standard notarial testament
         * Special requirements for testator:
he must know how to read and to sign his name and must be physically able to do both

2/ Non-standard notarial testaments

a/ For testators who are literate and sighted, but physically unable to sign (CC art. 1578)
   1° Special declaration / signification requirement
   2° Special signature requirement
   3° Special attestation requirement

b/ For testators who cannot read (CC art. 1579)
   1° Additional requirements
      a° Reading
      b° Witnesses  (CC art. 1581, sent. 2)
   2° Special requirements
      a° For declaration / signification
      b° For signature
      c° For attestation

c/ For testators who can read braille (CC art. 1580)
   * Special requirement for redaction

d/ For testators who have been declared deaf, but can read sign language, braille, or English written in Latin characters (CC art. 1580.1)
   * Special requirement for witnesses
      † Each must know how to read and to sign his name and must be physically able to do both
      † At least one must be a certified interpreter for the deaf
b) Sanction for non-compliance: absolute nullity (CC art. 1573)

2) Substantive
   a) Those applicable to all juridical acts
      1] Capacity
      2] Consent
         a] Real
         b] Free
      3] Cause: real, present, and lawful
      4] Object: possible, determinable, and lawful
   b) Those applicable only to donations mortis causa: rules on “delegation” (CC art. 1572)
      a] General rule: delegation prohibited (¶ 1)
      b] Exceptions (¶ 2)
         1} Power to allocate assets to satisfy legacies of value or quantum
         2} Power to award “charitable legacies”

Excursus:
Probate Procedure

1] Prescription
   a] For the action to probate a testament (9:5643)
   b] For the action to annul a probated testament (CC art. 3497)

2] BOP
   a] In an action to probate a testament (Code Civ. Proc. art. 2903)
   b] In an action to annul a probated testament (Code Civ. Proc. art. 2932)
      1} If action to annul is brought within 3 months of the date of probate: the burden is on the defendant (the proponent of the probated testament) to prove the authenticity and validity of testament
      2} If action to annul is brought after 3 months of the date of probate: the burden is on the plaintiff (the antagonist of the probated testament) to prove its inauthenticity and / or invalidity

   c. Legacies
      1) Classification
         a) Classification by number of legatees
            1] Singular
            2] Multiple
               a] Definition
b) Subclassification based on accretion (CC art. 1588)
   1) Classes: joint & separate
   2) Significance: accretion

b) Classifications based on the magnitude / scope of the bequest (CC art. 1584)
   1) Classes
      a) Universal legacy (CC art. 1585)
         1) Definition
            a) Statutory
               1/ Statement
               2/ Critique
            b) Doctrinal/jurisprudential:
               1/ Statement
               2/ Significance
                  a/ Forced portion
                  b/ Particular legacies
                  c/ Empty estate
                  d/ Usufruct
         2) Illustrations
      b) General legacy (CC art. 1586)
         1) Definition (CC art. 1586, sents. 1 & 2)
         2) Illustrations
            a) Of the whole estate
            b) Of classes of property
         3) Doubtful cases: gifts of the whole to multiple legatees
            a) Statement of the problem: Is the legacy “universal” or is it “general”?
            b) Characteristics of the problematic cases
               1/ Multiple legatees
               2/ Apparent disposition of the whole estate
            c) The criterion of distinction: Is the legacy joint or separate?
            d) Applications
      c) Particular legacy (CC art. 1587)
         1) Definition (CC art. 1587)
         2) Prerequisites
            a) Testator must own the thing
            b) Thing must be determinate or at least determinable
         3) Scope
4) Illustrations

2] Significance
 a] Seizin (CC art. 935-936)
  1) Explication of the possibilities
     a} Possession (CC art. 936)
     b} Representation (CC art. 935, ¶ 2)
  2) Statement of the difference
     a} Universal legatees & general legatees (CC art. 936, ¶ 2; CC art. 935, ¶ 2)
     b} Particular legatees (CC art. 936, ¶ 3; CC art. 935, ¶ 2)
 b] Liability (CC art. 1416)
  1) Explication of the possibilities (CC art. 1416; CC arts. 1602-03)
  2) Statement of the difference
     a} Universal & general legatees
        1/ Payment of estate debts (CC art. 1416)
        2/ Payment of particular legacies (CC arts. 1602 & 1604)
     b} Particular legatee (CC art. 1416 cmt. (a))
 c] Preference of payment (CC art. 1599)
  1) Explication of the possibilities
  2) Statement of the differences
     a} Particular legacies discharged first (CC art. 1600)
     b} As among particular legacies (CC art. 1601)
        1/ Those of particular objects first
        2/ Then those of groups of things second
        3/ Then those of money
           a/ Those expressly declared to be remunerative
           b/ All others ratably
  2) Lapse of legacies (CC arts. 1589-1596 & 965)
 a) Definition
 b) Causes
  1] Incapacity to receive (CC art. 1589(1) & (2))
     a] Legatee no longer in existence (CC art. 1589(1))
     b] Legatee not yet in existence (CC art. 1589(2))
  2] Failure of – or death of legatee before fulfillment of – suspensive condition (CC art. 1589(3))
  3] Unworthiness (CC art. 1589(4))
4] Renunciation (CC art. 1589(5))
5] Nullity (CC art. 1589(6) & (7))
   a] Absolute nullity (CC art. 1589(6))
   b] Relative nullity (CC art. 1589(7))
   c) Effects
      1] Inefficacy
    2] Accretion (CC arts. 1590-1596 & 965)
       a] By will (CC art. 1590, ¶ 2)
       b] By law (suppletive rules) (CC arts. 1590-1596 & 965)
          1} Principal rules (CC arts. 1591-1593, 1595, ¶ 2, &
             965)
             a} In general (CC arts. 1591-1592, 1595, ¶2)
                1/ Particular & general legacies (CC art. 1591 & 1595, ¶2)
                2/ Joint legacies (CC art. 1592)
             b} Exception (CC art. 1593)
                1/ Prerequisites
                   a/ Cause of lapse: some cause other than invalidity / nullity
                   b/ Legatee leaves descendants
                2/ Explication
                3/ Illustrations
          2} Residual rule (CC arts. 1596)
3) Extinction of legacies (CC art. 1597)
   a) Explication
   b) Causes
   c) Effects
   d) Illustrations
   e) Critique
d. Revocation (CC art. 1606)
   1] Definition
   2] Classification
      a] By source
         1] By operation of law
            a] Definition
            b] Instance: divorce (CC art. 1608(5))
         2] By operation of will
            a] Definition
               1] Express
                  a} Definition (CC art. 1691, ¶ 2 (1870))
                  b} Instances (CC arts. 1607(2), 1607(3),
                                     1608(1), 1608(4))
2) Tacit
   a) Definition (CC art. 1691, ¶ 3 (1870))
   b) Instances (CC arts. 1607(1), 1608(2), 1608(3))

b) By scope
1] General
   a] Definition (CC art. 1691, ¶ 4 (1870))
   b] Instances (CC art. 1607)
      1) Destruction of testament (CC art. 1607(1))
      2) Revocation in testamentary form (CC art. 1607(2))
         a} Valid testamentary form
         b} Intent to revoke
         c} Identity of form (?)
         d} Dispositive content (?)
         e} Probate (?)
         f} Substantive validity (?)
         g} Not itself revoked (?)
      3) Revocation by authentic act (CC art. 1607(2))
      4) Revocation handwritten & signed (CC art. 1607(3))

2] Particular (CC art. 1608)
   a] Definition (CC art. 1691, ¶ 5 (1870); CC art. 1608)
   b] Instances
      1) Declaration in testamentary form (CC art. 1608(1))
      2) Subsequent incompatible testamentary disposition (CC art. 1608(2))
         a} Incompatibility
         b} Substantively valid (?)
         c} Not itself revoked (?)
      3) Alienation of thing earmarked for legacy (CC art. 1608(3))
      4) Revocation by signed writing on testament (CC art. 1608(4))
      5) Post-testamentary divorce (CC art. 1608(5))
      6) Grounds for revocation of a donation inter vivos (CC art. 1610.1)

3) Withdrawal (of revocation) (CC art. 1609)