e. Interpretation (CC art. 1611-1616)
   1) Testator’s intent controls (CC art. 1611)
   2) “Saving construction” is preferred (CC art. 1612)
   3) Uncertainty re identity of object (CC art. 1613)
   4) After-acquired property included (CC art. 1614)

D Exempted dispositions
   1) Exceptions under state law
      a) Life insurance
      b) Annuities
      c) Death benefits from retirement (pension) plans (accounts)
   2) Exceptions under federal law: savings bonds


End of
PART I: DONATIONS

II Successions
   A General principles
      1) Opening of succession
         a) Definition
         b) Prerequisites
            1) Actual death
               a) Definition
               b) Proof. Several possibilities:
                  1] Documentary evidence:
                     a] Death certificate signed by attending physician or coroner
                        (CCP 2821, ¶ 2)
                     b] Affidavits of 2 witnesses to event of death (CCP 2822)
                  2] Testimonial evidence (CCP 2823)
            2) Presumed death
               a) Disappearance upon exposure to great peril (CC art. 30)
                  1] Explication
                  2] Illustration
                  3] Prerequisites
                     a] Exposure to circumstances in which "death seems certain"
                        (CC art. 30 cmt. (b))
                     b] Illustrations of such circumstances (Bennett)
                     c] Contemporaneous disappearance
                  4] Proof (of predicate facts)
               b) Missing in action (La. R.S. 9:1441-1443)
                  1] Prerequisites (1441)
                     a] Active member of armed service
                     b] Reported missing
                     c] Armed service to which he was attached accepts the
                        presumption of his death
2) Proof (of predicate facts): certified copy of official certificate of armed service to which he was attached indicating that this service has accepted the presumption of his death

c) Long absence (per 934 & 54)
1] Prerequisites:
a] Absence (CC art. 47)
b] Long (CC art. 54)
2] Proof (of predicate facts)

Fixing the opening date
1) Where death is established through some means other than under CC art. 54
   a) Initial date: as determined by court
   b) Revised date (?)
2) Where death is established in the manner set out in CC art. 54
   a) Initial date: date of death as determined by court
   b) Revised date (CC art. 56)
      1] Proof: new evidence of a different date of death (56-1)
      2] Standard: clear & convincing evidence (56-1)
   c) Effects (CC art. 56-2)
      1] What must be restored (comment (c))
         a] Property itself, if initial successors still have it
         b] If not (i.e., if already alienated), then value
      2] What need not be restored: gathered fruits

d) Reversal of opening
1) Not actual death
2) Presumed death
   a) Disappearance upon exposure to great peril (CC art. 30)
   b) Missing in action (9:1441-1443)
      1] Possibility of reversal (§ 1442)
      2] Effects of reversal
         a] Return of property itself or, if transferred, its value plus "damages" for diminished value due to encumbrances
         b] Revenues, amount dependent on time of return
      3] Prescription: 30 years
   c) Long absence (CC arts. 934 & 54)
      1] Possibility of reversal (CC art. 57).
      2] Effects of reversal: right of recovery (comment (c))
      3] Prescription: none

e) Order of opening: commorientes
1) The problem
   * Possible solutions
   a) Approach #1: Rules based on characteristics pertinent to survivability (CC arts. 937-938 (1870))
   b) Approach #2: Arbitrary presumption
   c) Approach #3: Independent devolution
3) The chosen solution (CC art. 935 cmt. (g))
2  Aptitude to succeed: incapacity & declaration of unworthiness
   a  Incapacity
      1) Definition (CC art. 950, ¶ 1 (1870))
      2) Time of assessment (CC art. 939)
      3) Procedure: burden of proof (CC art. 952 (1870))
      4) Required qualities: existence (CC art. 939)
         a) Coming into existence
            1] One who has been born before the *de cujus* dies
            2] One who has been conceived before the *de cujus* dies, provided
               he is later born alive (CC arts. 940)
               a] Definition of conception (CC art. 26)
               b] Determination of time of conception
                  1} Importance: for *posthumously* born child
                  2} Method: general presumptions of paternity
                  3} Illustrations
            3] One who (i) is fertilized after his father’s death and (ii) is
               implanted in the womb of the father’s widow, (iii) with written
               permission of the father, and (iv) is then born within 3 years of
         b) Not going out of existence
            2] Presumed or declared death (CC art. 58)
               a] Prerequisites
                  1} Presumed dead
                     a] Long absence (CC art. 54)
                     b] Disappearance upon exposure to great peril (CC
                        art. 30)
                     c] Missing in action (R.S. 9:1441; CC art. 30 cmt.
                        (c)).
                  2} Declared dead (CC arts. 54 & 58)
      5) Effects
         a) Transmission
            1] Where representation is possible
            2] Where representation is not possible
         b) Seizin
   b  Unworthiness to succeed
      1) Definition (CC art. 964 (1870))
      2) Procedure
         a) Standing to bring action
            1] Statement of rule (CC art. 942)
            2] Illustration of rule
         b) Prerequisite: judgment
         c) Proceeding
         d) Prescription
      3) Cause
a) Ground: Judicial determination of successful or attempted intentional killing of deceased (CC art. 941)
   1] Successful or attempted intentional killing
   2] Conviction or judicial determination
      a] Conviction
      b] Judicial determination
b) Defense: reconciliation (CC art. 943)
   1] Definition
   2] Varieties
      a] Express
      b] Tacit
         1} Exposition (CC art. 975, ¶ 2 (1870))
         2} Prerequisites
            a} Knowledge of cause for unworthiness
            b} Failure to disinherit (?)

4) Effects
   a) Enumeration
      1] As to the devolution of the estate
         a] Unworthy party loses stake (CC art. 945 (1))
         b] Accretion of lost stake (CC art. 946 & cmt. (a))
            1} Intestate
            2} Testate
      2] As to the worthy heirs' rights vis-a-vis the estate: possession (CC art. 945(2))
         a] Must turn over poss'n to worthy heirs.
         b] Must also turn over all fruits collected from goods in his poss'n.
   3] As to the validity of the worthy heirs' acts with respect to the estate
      1] Sales, exchanges, dations en paiement
         a] Validity
         b] Recourse of worthy successors
      2] Donations
b) Characteristics
   1] Retroactivity
   2] Relativity
B Typology of successions
   1 Intestate succession
      a) Definition
      b) Classification of heirs
         1) Classes
            a) Descendants
            b) Ascendants
            c) Collaterals
            d) Spouse not judicially separated
         2) Nature of relation
a) By blood
b) By adoption (CC art. 880)

c) Modalities of heirship
   1) In one's own right
      a) Definition
      b) Illustrations
   2) By representation (CC arts. 881-887)
      a) Definition
      b) Illustration
   3) By transmission (CC art. 937)
      a) Definition
      b) Illustration

d) Rules of devolution
   1) In general
      a) Ranking among classes
      b) Ranking within classes (CC arts. 899, 900)
         * Counting degrees in the direct & collateral lines
   2) Division
      a) Non-community property
         1] Order of classes: (i) descendants, (ii) siblings--NO, parents--UF, (iii) siblings, if no parents, (iv) parents, if no siblings, (v) surviving spouse not judicially separated, (vi) other ascendants, (v) other collaterals
         2] Illustrations
            a] Descendants
            b] Siblings & parents
            c] Parents, but no siblings
            d] Siblings, but no parents
               * The complication of half-siblings
            e] Spouse not judicially separated
            f] Other ascendants
            g] Other collaterals
      b) Community property
         1] Order of classes: (i) descendants, (ii) surviving spouse not judicially separated, (iii) others (?)
         2] Illustrations:

e) Complications
   1) Representation
      a) Definition (CC art. 881)
      b) Scope:
      1] Representés
         a] Which can be?
            1} Descendants (CC art. 882)
            2} Siblings (CC art. 884)
         b] Which can't be?
            1} Ascendants (CC art. 883)
2} Collaterals other than siblings (CC art. 884)
3} Surviving spouse not judicially separated

2] Representatives (CC arts. 882 & 884)

c) Prerequisites
   1] Représentés:
      a] Dead (CC art. 886)
         1} Heir who renounces (?)
         2} Heir declared unworthy (?)
      b] Worthy (?) (CC art. 973)
         1} Old law (CC art. 901 (1870))
         2} New law

2] Representatives:
   a] Alive
   b] Worthy as to de cujus?
   c] Aptitude to accept succession of représenté? (CC art. 887)

d) Method of division (CC art. 885)
   1] Simple
   2] Complex

e) Illustrations
f) Effect (CC art. 881)

2) Transmission
   a) Definition
   b) Effect
   c) Illustration

3) Anomalous succession: retour successoral
   a) Definition (CC art. 897)
   b) Prerequisites
      1] Ascendant-descendant relationship
      2] Donation inter vivos by ascendant to descendant
      3] Donatum is immovable
      4] Descendant leaves no descendants of his own
      5] Object of donation is still “in the succession” or at least part of the price therefor is still owed

c) Effects
   1] Where object of donation is still in succession (CC art. 898)
   2] Where object of donation is not in succession, but at least part of price therefor is still owed

d) Illustrations

4) Adopted children
   a) Statement of problems
      1] Adopted child as heir
      2] Adopted child as de cujus
   b) Answers
      1] Full adoption
         a] Definition
b] Effects

1} Adopted child as heir
   a} Inherits from adoptive relations (CC art. 214.B)
   b} Inherits from blood relations (CC art. 214.C)

2} Adopted child as *de cujus*
   a} Adoptive relations inherit from him (CC art. 214.B)
   b} Blood relations do not (CC art. 214.C)

2] Partial adoption
   a] Definition
   b] Effects
      1} Adopted child as heir
         a} Inherits from adoptive relations (CC art. 214.B)
         b} Inherits from blood relations of both non-relinquishing and relinquishing biological parent (CC art. 214.C)
      2} Adopted child as *de cujus*
         a} Adoptive relations inherit from him (CC art. 214.B)
         b} Blood relations of non-relinquishing parent inherit from him (CC art. 214.C)
         c} Blood relations of dead or relinquishing parent do not (CC art. 214.C)

c) Illustrations

5) Illegitimates
   a] Introduction
   b] Definition (CC art. 180)
   c] Determination (CC arts. 184-190)
      1] Presumptions (CC arts. 184-186)
         a] Child born or conceived during marriage is presumed to be legitimate child of husband
         b] Child born after end of marriage, but within 300 days of end of marriage, is presumed to have been conceived during marriage
         c] All other children illegitimate, at least at first
      2] Disavowal (CC arts. 187-190)
         a] Remedy: action to disavow
         b] Parties
         c] Prescription
            1} Husband himself
            2} Heir/legatee of husband
         d] Proof
         e] Result: child illegitimate

d] Modes of filiation
   1] Benefitting person originally illegitimate.
      a] Modes that result in legitimation
1} By subsequent marriage of parents plus formal or informal acknowledgment (CC art. 198).

2} By parent's statement of intent to legitimate in notarial act (CC art. 200)

b] Modes that do not result in legitimation

1} By parents' formal acknowledgment (CC art. 203)
   a} Modes
      1/ Authentic act
         a/ Authentic act drawn up for this very purpose
         b/ Some authentic acts drawn up for other purposes
      2/ Birth certificate or baptismal certificate
   b} Effect
      1/ Challenge by acknowledger? (CC art. 206)
      2/ Challenge by acknowledger's successors? (CC art. 207)

2} By paternity action (CC art. 209)
   a} Definition
   b} Parties:
      1/ Child himself
      2/ Representative of child, if child is minor
   c} Prescription:
      1/ Exposition: earlier of (i) one year after death of supposed parent or (ii) child's 19th birthday
      2/ Critique
   d} Burden of proof
      1/ Preponderance, if putative father is still alive (209.A)
      2/ Clear & convincing, if he's dead (209.B)
   e} Proof
      1/ What evidence is relevant? (CC art. 187)
      2/ How does plaintiff get scientific evidence? (La. R.S. 9:396 et seq.)
         a/ From mother and putative father (396.A)
         b/ At least sometimes, from others, e.g., siblings co-heirs

2] Benefitting parent of person originally illegitimate
   a] Means enumerated (CC art. 891)
      1} Legitimation by notarial act (CC art. 200)
      2} Formal acknowledgement (CC art. 203)
      3} Paternity judgment in action by child (209)
      4} Informal acknowledgement, i.e., "openly and notoriously treat[ing] child as his own"
b) Means excluded

c) Means compared (CC art. 891)

3] Benefitting other relative of person originally illegitimate
a) Means enumerated
   1) Step 1
      a) Permitted:
         1/ Legitimation by notarial act (CC art. 200)
         2/ Formal acknowledgment (CC art. 203)
         3/ Paternity judgment in action by child (CC art. 209)
      b) Not permitted
         1/ Informal acknowledgment
         2/ Paternity action
   2) Step 2
      a) Legitimate filiation
      b) Same as Step 1
   b) Means compared: same

6) Spousal rights
a) Definition: who is a spouse?
   1] True spouse
   2] Putative spouse
      a) Definition
      b) Varieties of putative spouses
         1) Putative spouse in absolutely null marriage (CC art. 96)
            a) Definition of absolutely null marriage (CC art. 94)
               1/ Prior marriage (CC art. 88)
               2/ Same sex (CC art. 89)
               3/ Nearness of relation: one can't marry an ascendant, descendant, or collateral w/in 4th degree (CC art. 90)
            b) Prerequisites for putative status
               1/ General rule (CC art. 96, ¶ 1 & cmt. (d))
               2/ Exceptions:
                  a/ If impediment was prior marriage, putative status continues even after loss of GF until declaration of nullity or remarriage (CC art. 96, ¶ 2)
                  b/ Putative status completely foreclosed, notwithstanding good faith, if impediment is same sex (CC art. 96, ¶ 4)
         2) “Putative status” in relatively null marriage
            a) Definition of relatively null marriage (CC arts. 97 & 93)
1/ Duress (CC art. 93)
2/ Incapacity of discernment (CC art. 93),
e.g., insanity, mental retardation,
intoxication, naïveté (comments (c) & (d))
b) Prerequisites for & duration of putative status:
continues until marriage is declared null (CC
art. 97)
c] Effects: “civil effects” of marriage (CC arts. 96 & 97)
d] Illustration

b) Rights
1) Normal case: monogamy (only one spouse, either genuine or
putative)
a] Heir to full ownership
1} Separate property
2} Community property
   a} Legislation (CC art. 889).
   b} Jurisprudence
b] Heir to usufruct
1} In general
2} Definition (CC arts. 535-539, 551).
3} Type of usufruct
   a} Classification: legal (CC art. 890 comment (b))
   b} Significance
      1/ Duration: until death or remarriage (CC
       arts. 607 & 890)
      2/ Security
         a/ General rule: no (CC art. 573)
         b/ Exception: a "forced heir" who is
          not the child of the surviving spouse
          (i.e., step-child) can demand security
          (CC art. 1514)
3/ Tax
4} Property affected
   a} Only former community property . . .
   b} of which the deceased did not dispose by
testament (CC art. 890)