Transmission of the succession

1 Oblatum (that which is offered to the successor)
   a Prolegomena: acquisition of rights v. exercise of rights
      1) Causes of this confusion
      2) Effects of this confusion
   b Analysis
      1) Acquisition: of “transmission” properly so called
         a) Definition (CC arts. 870, 871, 872, 1469, 1626)
         b) Prerequisites (CC arts. 937, 947, 954, 964-966)
         c) Effects
            1] Ownership (CC arts. 871, 880, 1469, 935, 938)
               a] *Abusus*
                  1} *Inter vivos* transfer (CC art. 938)
                     a} Prerequisites to transfer
                        1/ Succession procedure (?): no
                        2/ Estate tax (?): no
                     b} Object of transfer
                        1/ Where object is the entirety of a particular thing or of an ensemble of things
                        2/ Where object is a share of a particular thing
                        3/ Where the object is a share of an ensemble of things
               b] *Usus & fructus*
                  2] Possession (CC arts. 871, 880, 1469, 3441, 3442, 1626 (1870), 936)
      2) Seizin
         a) Historical source
         b) Definition
         c) Nature
            1] Ownership (?): no
            2] Possession (?): no
            3] Informal administration (?): yes
         d) Regime
            1] Old law
            2] Current law (CC arts. 935, 936 & 939)
               * Only remaining distinctive seizin right: right of “universal successor” to “represent” de cujus
      2 Responsum (the successoral option)
         a Introduction (CC art. 947)
         b Domain: testate & intestate successions
         c Holders
            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
1) Required events
   a) Opening of the succession, i.e., death of dead dude (CC art. 949)
   b) "Falling" of the succession to the successor (?) (art. 949 cmt. & editor’s note; art. 950)
      1] Exposition
      2] Necessity (CC art. 949 cmt. & editor’s note; art. 950)
      3] Illustration
   c) Fulfillment of conditions (?)

2) Capacity requirements
   a) General rule
      1] Old law (CC art. 1004 (1870))
      2] New law ?)
   b) Exception: minority (CC art. 948)

3) State of mind requirements
   a) Consent requirements
      1] Modalities (especially conditions)
      2] Qualities
         a] Old law (CC art. 1009 (1870))
            1} Fraud?
            2} Duress?
            3} Error?
            4} Lesion?
         b] New law (?)
   b) Knowledge requirements
      1] Knowledge of opening of succession (CC art. 950)
      2] Knowledge that succession has "fallen" to him (CC art. 950)
      3] Knowledge of nature of succession--testate or intestate (CC arts. 982 & 981 (1870) & CC art. 952 & cmts.)

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. 959)

1/ Definition
2/ Rules
   a/ General rule (CC art. 959, cl. 1)
   b/ Exceptions:
      1° Sale under other title (CC art. 959 cmt. (b))
      2° Acts of administration, custody, or preservation (CC art. 959 & cmt. (a))
      3° Acts of piety & humanity (CC art. 1001 (1870))
   b} Omission to deny heirship in debt-collection action (CC art. 959 cmt. (c))
   c} Disposition of inheritance rights
      1/ Direct: donation, sale, or assignment (CC art. 959 cmt. (c))
      2/ Indirect: directed or compensated renunciation

2] By extent of exposure to liability
   a] Old law
      1} Unconditional (simple) acceptance
      2} Acceptance with benefit of inventory
   b] New law (CC art. 961, 1416, 1425)
   c) Effects (CC arts. 961, 1416, 1425)
      1] Exposition
         a] Limitation of liability (CC art. 961, 1416, 1425)
         b] Preservation of claims (CC art. 956)
      2] Temporality (CC art. 954)
      3] Revocability
         a] Invalid acceptance
         b] Valid acceptance

2) Renunciation
   a) Definition
      1] True renunciation v. pseudo-renunciation (disguised acceptance plus donation)
   b) Prerequisites
      1] Substantive
         a] Capacity (?)
         b] Consent (?)
      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 (CC art. 964)
   a} Where the renouncing successor has descendants
   b} Where the renouncing successor does not have descendants
      1/ Where the renouncing successor is called to the succession alone
      2/ Where the renouncing successor is not called to the succession alone

3} Right to renounce
   a} Liberty (CC art. 966, sent. 1)
   b} Independence (CC art. 966, sent. 2)

4} Method of division (CC art. 964 cmt. (e))
   2] Temporality (CC art. 954)
   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)

h) Prescription of the option (CC art. 962 & art. 3502)
   i) Creditors' rights
      1) Creditors of the deceased (CC art. 962, sent 2 & cmt. (c))
      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)

D Distribution of the estate
   * Introduction
   1 Collation
      a Definition (CC art. 1227)
         1) "Supposed or real return"
a) Real return
b) Supposed return (CC arts. 1251 & 1253)

2) "Mass of the succession"

3) "Heir"
   a) Domain of collation
   b) Scope of "heir"

4) "In advance of his share or otherwise"
   a) In advance of his share
   b) Otherwise

5) "Divided together with the other effects"

b) Rationale

   1) Exposition of theories
      a) Theory no. 1: moral principle of "equality" of treatment of children
         (CC art. 1229, cl. 1)
      b) Theory no. 2: "presumption that what was given or bequeathed to
         children [or descendants] by their ascendants so disposed of in
         advance of what they might one day expect from their succession"
         (CC art. 1229, cl. 2)

2) Relationship between the theories

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
            2} Descendants beyond the first rank (CC art. 1238.A)
            3} Disinherited descendants (?)
      2] Who have been personally and directly gratified by the
deceased.
         a] General rule
            1} Exposition (CC art. 1238.A)
            2} Illustrations:
         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
            2} Grandchildren who represent their parents in the
succession of the deceased grandparent
               a} Exposition (CC art. 1240)
               b} Illustration
   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
2) As to objects (gratui ties)
   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
      2] Various other gratui ties
         a] Certain expenditures (CC art. 1243)
            1} For "establishments"
            2} For payment of debts
         b] Other advantages (CC art. 1248)
            1} Sale of property at discount ("very low") price
            2} Payment of price
            3} Expenditures to improve property
            4} Donated use
            5} Fruits of donated property (?)
   b) Objects excluded
      1] By operation of law
         a] With respect to time
         b] With respect to type of gratuity
            1} Legacies
            2} Customary gifts of small value ("manual gifts")
               a} Exposition (CC art. 1245)
               b} Illustration
            3} Expenses for support or education
      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)
                  2/ Rules for problem cases: disguised
               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)

d/ Execution

1) In general

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

1} Date of evaluation

a} Rule: "The right to demand collation . . . applies with respect to gifts . . . valued as of the date of the gift." CC art. 1235 (rev. 1996).

b} Scope

2} Adjustments to value

a} Deductions for expenses

1] Principle: The collator can deduct from the amount due the value of certain authorized expenses he has incurred on account of the property (CC art. 1269)

2] Covered expenses: necessary expenses (CC art. 1257)

b} Reformation of value to price received in forced sale

b] Regulation of the value due

1} How value is given

a} Taking less

b} Paying money

1/ When required

2/ When due

3/ How secured

2} How value is distributed

a} Methods

1/ In kind

a/ Deduction
1° Exposition
2° Illustration

b/ Imputation
1° Exposition
2° Illustration

2/ In money (liquidation)
a/ Exposition
b/ Illustration

b) Option
1/ Availability
a/ General rule: option
b/ Exceptions
1° Deduction precluded where assets left at death don't "fit" distribution Rqs
2° Imputation precluded where
   a° Assets left at death don't fit distribution Rqs
   b° Consent of collator and collatees is not unanimous
3° Liquidation precluded where right to choose prescribes

2/ Relativity
a/ General rule: the option is relative to each collatee, i.e., one may choose one option and the others another
b Exception: imputation RQs agreement of all collatees

3/ Procedure:
a/ General rule: free choice at any time
b/ Exception: forced choice
   1° Collator demands choice
   2° Collatees must choose within 3 days

b) Collation by nature: in kind return
1] Definition (CC art. 1254)
2] Mechanism
   a] Physical return
   b] Adjustments
      1] Expenses (CC arts. 1256 & 1257)
         a} Principle
         b} Covered expenses: useful and necessary
      2] Improvements (CC art. 1258)
      3] Mortgages (CC art. 1264)
      4] Damage (CC art. 1260)

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
   1) Common modes
      a) Prescription
         1] Term: 10 years
         2] Commencement: opening of succession (death)
      b) Renunciation (doctrinal)
         1] Definition: abandonment of a right
         2] Timing: after the succession had been opened
         3] Prerequisites:
            a] Substantive
               1} Capacity
               2} Consent (free)
            b] Formal: express or tacit
         4] Modalities
            a] Right itself
            b] Right to a particular mode of execution
   2) Unique mode: judgment of possession

2 Partition
   a Types of partition (CC arts. 1295 & 1296)
   b Subjects (CC art. 1307, 1318, 1329)
   c Procedure
      1] Inventory (CC art. 1325)
      2] Suit (CC art. 1329)
      3] Collation (CC arts. 1331-1334)
      4] Mode of partition (CC arts. 1336)
      5] Notice (CC art. 1347)
      6] Settlement of accounts (CC arts. 1349-1354)
      7] Formation of the active mass (CC arts. 1355-1360)
      8] Division of property into “lots” (CC arts. 1364-1367)
      9] Delivery of property (CC art. 1379)
     10] Amendment (CC art. 1380)
   d Warranty (CC arts. 1384, 1387, 1388)
   e Rescission (CC arts. 1399-1401, 1413)

3 Reduction
   a Stage 1: calculation of mass
      * Definition
         1] Step 1: determination & valuation of assets left at death
            a] Determination
               1] What's included
                  a] All property, movable and immovable, corporeal and incorporeal (i.e., credit rights), under the deceased's
control or held in his name or owed to him at his death
* Includes assets earmarked for legacies
* Includes assets out “on loan” to or “on deposit with” others
* Includes deceased’s credit rights against successors, including forced heirs, i.e., debts they owed deceased
c] Assets that seemed to have left the deceased’s patrimony but did not: objects of absolutely null *inter vivos* transfers
  1) Absolute simulations
  2) Donations or sales in improper form
  3) Prohibited substitutions
  4) Other transfers that violate rules of public order
d] Assets that though they left the deceased patrimony, can be called back into it, provided that they are, in fact, called back:
  1) Objects of donations *inter vivos* that are in a position to be revoked
  2) Objects of lesionary sales
  3) Objects of relatively null *inter vivos* transfers

2] What's excluded
a] Rights of the deceased that terminated at death, e.g., usufruct
b] Assets acquired by the deceased subject to a resolutory term or condition tied to the deceased's death
c] Assets subject to the right of successorial return in favor of an ascendant of the deceased
d] Assets of familial character and of low value, such as common family heirlooms

b) Time of valuation: time of death of deceased

2) Step 2: deduction of debts
a) Prolegomena: identification of step 2 (*correction* of CC art. 1505(A) & (B)).
b) Exposition
  1] What's included in the deduction
     a} All debts of deceased not subject to modalities
     b} All debts of deceased subject to a condition or term, provided term has arrived or conditional has been fulfilled
     c} Includes debts to heirs, including forced heirs, and to legatees
     d} Includes taxes owed by deceased
     e} Include funeral charges
  2] What's excluded from the deduction
     a} Costs of reduction
     b} Estate taxes (paid by successors)

3) Step 3: fictitious addition of "donations *inter vivos*"
   a) Necessity
   b) Determination
      1] What's included
a] Donations *inter vivos*, properly so called

b] Other advantages (same as in actual collation)
   1] Expenses incurred for "establishment" for heir (1243)
   2] Expenses incurred for payment of debts (1243)
   3] Sale of thing at a "very low price" (1248)
   4] Annuities
   5] *Not* federal T-bills

2] What's excluded
   1] Certain donations *inter vivos*
      a] By type
         1° Remunerative donations
            a] Definition (1523, ¶ 4; 1525)
            b] Rules of exclusion/inclusion
               1° Not included at all if value of services is 2/3 or more of value of donation
               2° If value of services is less than 2/3 of value of donation, the excess is added back
         2° Onerous donations
            a] Definition (1523, ¶ 3; 1524)
            b] Rules of exclusion/inclusion
               1° Not included at all if value of charges is 2/3 or more of value of donation
               2° If value of charges is less than 2/3 of value of donation, the excess is added back
      b] By time: all donations made outside of 3 years of the donor's death (1505.A)

2] Certain other advantages
   a] By type
      1] Life insurance: both premiums and pay out excluded (1505.C)
      2] Retirement plans: both contributions and pay out excluded (1505.D)
      3] "Manual" gifts, i.e., small customary gifts (1245)
      4] Expenses for support or education (1244)
      5] Federal T-Bills
   b] By time
      c] Time of evaluation: time of donation
         4) Step 4: division of active mass between disposable and forced portions
            * Simply multiply: (the quotients) x (the mass)

b Stage 2: Imputation
   1] Introduction
   2] Definition
      a] In general
      b] In the context of forced heirship
3) Significance:
   a) determinative of whether reduction is necessary at all
   b) potentially determinative of which gratuities get reduced, for it can have
      effect of altering the order of reduction set out in CC art. 1508

4) Scope (of gratuities to forced heirs that are even potentially subject to
   imputation to the forced portion)
   a) Mortis causa gratuities to forced heirs
      1] General rule: all (but only) those mortis causa gratuities counted as
         “assets left at death” in the calculation of the estate mass
      2] Exceptions (certain mortis causa gratuities that are not included in
         the calculation of the estate mass) (1505.C & -.D)
         a] Life insurance in favor of forced heir: must be imputed to
            beneficiary's legitime
         b] Retirement benefits in favor of forced heir: must be
            imputed to beneficiary’s legitime
   b) Inter vivos gratuities to forced heirs: all (but only) inter vivos gratuities
      “fictitiously added back” in the calculation of the estate mass

5) Rules of imputation
   a) Explication
      1] Destination of imputation: to what is the gratuity imputed
         a] Forced heirs who accept the succession
            1} If the gratuity is exempt from collation, it is imputed to the
               DP
            2} If the gratuity is not exempt from collation, then it is
               imputed as follows:
               a} Principal imputation: to the FP, more precisely, to
                  the legitime of the benefitted forced heir
               b} Secondary imputation: if the gratuity exceeds the
                  forced heir’s legitime, then the “excess” is imputed
                  to the DP
            b] Forced heirs who renounce the succession: imputed to the DP
      2] Order of imputation
   b) Illustration

   c Stage 3: sanction for exceeding DP (reduction)
   1) Inception (of the right to demand reduction)
   2) Subjects
      a) Active subjects (obligees)
         1] Identity
            a] Forced heir whose legitime is not yet satisfied
            b] Transmitters, i.e., heirs or legatees, of such forced heirs
            c] Transferees (assigns), including creditors, of such forced heirs
               * Prerequisites:
                  1} Transfer after death of deceased
                  2} Express conventional assignment (CC arts. 2642-2653)
            d] Not creditors of the deceased
      2] Nature of right: divisible, i.e., each can act independently of the
         others
      b) Passive subjects (obligors)
1) Original recipients
   a) Forced heirs
   b) Other heirs
   c) Third persons
2) Gratuitous transferees of original recipients

3) Order of reduction
   a) 1st division: legacies, then *inter vivos* gratuities (CC arts. 1507 & 1508)
   b) 2d division:
      1] Legacies: proportional reduction
      2] *Inter vivos* gratuities
         a) General rule: reverse temporal reduction, i.e., reduce most recent gratuity first in its entirety, then proceed to next, and so on (CC art. 1507)
         b) Exceptions
            1} “Skipping” insolvent donees (CC art. 1509)
            2} “Skipping” donations *inter vivos* that have been integrally imputed to a legitime

4) Extent of reduction (CC arts. 1508 & 1510-1511)
   a) In general: the entire donation, up to the amount necessary to pay the legitime
   b) Exceptions:
      1] Remunerative: only the "gratuitous portion," i.e., difference between value of thing and value of services, up to the amount necessary to pay the legitime
      2] Onerous: only the "gratuitous portion," i.e., difference between value of thing and value of charges, up to the amount necessary to pay the legitime

5) Modes of payment (CC art. 1513)
   a) Possibilities
      1] In kind
      2] Payment of the legitime
   b) Selection
      1] General rule: obligor gets to choose
      2] Exception: where obligor has disposed of thing by onerous title, obligor has no choice but to pay in value
   c) Payment complications
      1] With payment in kind
         a] No. 1: damage
            1} Problem: donee, through his fault, damages property while under his dominion
            2} Solution: donee is "accountable for any diminution in the value"
         b] No. 2: burdens
            1} Problem: donee puts "charges or encumbrances," e.g., lease or mortgage, on property while under his dominion
            2} Solution: donee is "accountable for any diminution in the value"
         c] No. 3: improvements
1) Problem: donee puts up improvements on the property while its under his dominion

2) Solution: no special rule; therefore, general principles (?)

2] With payment in money
*
Illustration

6) Prescription
a) Identification of the claim
b) Elements (CC art. 3497, ¶ 3)
1] Delay: 5 years
2] Trigger event: "date the will is filed for probate"

End of

PART II: SUCESSIONS