is to be divided for each particular class of cases.[225]

The Chinese Civil Code which follows the civil law theory of liability based on fault, provides that, even through the employer may be entirely free of fault, the court may still consider the relative economic conditions of the injured party and the employer, and, when justice requires, award the whole or a part of the damages. In other words, the civil liability of the employer is individualized in the same manner as punishment in the criminal law is individualized.[226]

It is believed that this principle of divided responsibility and division of the loss would be the happy compromise between the strict harshness against the master of the common-law rule and the partiality and liberality towards the employer of the Philippine law. It is not the former modified by the latter. Nor is it one limited by the other. It is the two rules together in one. It has a greater chance of being born and reared in Philippine jurisprudence because the legal climate here is conducive to the growth of such hybrids. If such an eventuality shall come to pass, then it shall be an added luster to the distinction accorded to the Philippines of being the only country except the state of Louisiana wherein the common law and the Roman Law have met and worked together hand in hand in the quest for justice itself.

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[225] See Takayanagi, *supra* note 209, at 439.
"Divided responsibility causes each to have an interest in order to avoid harm, a part of the consequences of which he will bear. At the same time, in all the cases where the exact conditions, culpable or fortuitous, in which the harm produced cannot be determined, we arrive at an acceptable solution, as well for the author as for the victim; the responsibility being divided between them will be more easy to support." Demogue, *Fault, Risk and Apportionment of Loss*, in READINGS IN JURISPRUDENCE AND LEGAL PHILOSOPHY 262 (Cohen & Cohen ed. 1951), also in 13 ILL. L. REV. 310 (1918).

[226] Wu, *Two Forms of Tortious Liability in the Modern Chinese Law*, 6 TUL. L. REV. 267, 270 (1932).

SOME VEXATIOUS QUESTIONS IN THE LAW OF SUCCESSION

*Edgardo L. Paras**

I. THE FORMULA: *ISRAI*

ONE of the most difficult subjects today in the law course is the subject of "Wills and Succession." Aside from purely academic points, a seemingly insurmountable barrier in the comprehension of the law lies in the proper solution of problems.

In testamentary succession, one effective formula I use (for class purposes) in solving problems is —

I S R A I

Meaning —

I — Institution
S — Substitution
R — Representation
A — Accretion
I — Intestacy

Meaning furthermore: Apply "Institution," if proper. If this cannot be done, apply "Substitution," if this is proper. If this cannot be done, apply "Representation," if proper. If not, apply "Accretion," etc.

Illustration

Problem. *T*, a testator, died without any compulsory heir, after instituting three friends, *A*, *B*, *C*, as his heirs. The estate of ₱30,000 is about to be distributed. *B* and *C* are capacitated and are willing to accept, but *A* had *predeceased T*. *A*'s share is claimed by the following:

(a) *S* — a sister of *T*, who was not given anything in the will, and who says she is "intestate heir."

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(b) *X* — a legitimate child of *A* who claims by representation.

(c) *B* and *C* — who claim by right of "accretion."

(d) *Y* — who had been designated in the will as *A*'s substitute if *A* should renounce the inheritance and who now wants to inherit by "substitution."

Question. Who is entitled to *A*'s share?

Answer. To determine who is entitled to *A*'s share of ₱10,000,[1] we apply *ISRAI.*

I — *A* was *instituted* but since he is dead, he does not inherit.[2]

S — The *substitute Y* does not get *A*'s share, for he is the substitute only in the case of *A*'s repudiation, not predecease.[3]

R — *X* cannot inherit by right of representation, because *A*, a voluntary heir who predeceased the testator, cannot be represented.[4]

A — Since the two requirements[5] of *accretion* in testamentary succession are present, *B* and *C* will get *A*'s share by accretion.[6]

I — It follows therefore that *S*, the sister, cannot claim *A*'s share by intestacy because, as between accretion and intestacy, our Supreme Court has ruled that accretion must prevail.[7]

Usefulness of the Formula

While the answer to the problem hereinabove given may seem absurdly simple to a bright student, the *average* law learner often finds himself hopelessly confused after studying and analyzing the various principles enunciated in the various chapters of the law; that is, he may not know that substitution is preferred over accretion or that accretion is preferred over intestacy. Hence the necessity of a simple key term, like *ISRAI,* which is really an order of preference and which will serve the student in good stead in the solution of complicated problems — complicated because of the use of several provisions from different chapters.

[1] *A*'s share is ₱10,000 because "heirs" instituted without designation of shares inherit in equal parts, Art. 846 CIVIL CODE OF THE PHILIPPINES (hereinafter cited as NEW CIVIL CODE); and three heirs were instituted in the problem.

[2] ((ART. 1025. In order to be capacitated to inherit, the heir, devisee, or legatee must be *living* at the moment the succession opens, except in case of representation, when it is proper." (Emphasis ours.)

[3] See Art. 859 NEW CIVIL CODE. Had the simple substitution been made without expressly mentioning *repudiation, Y* could have substituted in this case of *predecease.* See Art. 859, 2d par. NEW CIVIL CODE.

[4] Article 856, first paragraph, of the New Civil Code, states that "a voluntary heir who dies before the testator, transmit nothing to his heirs." Neither can *X* succeed in his own right for he was not instituted.

[5] "ART. 1016. In order that the right of accretion may take place in a testamentary succession, it shall be necessary:

(1) That two or more persons be called to the same inheritance, or to the same portion, therefore, *pro indiviso;* and

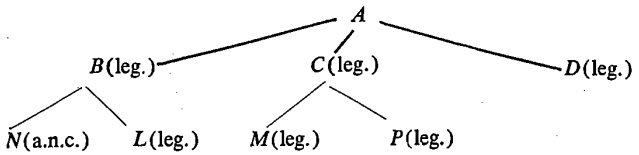
(2) That one of the persons thus called die before the testator, or renounce the inheritance, or be incapacitated to receive it." Art. 1016 NEW CIVIL CODE.

[6] By accretion, "the part assigned to one who renounces or cannot receive his share, or who died before the testator, is added or incorporated to that of his co-heirs, co-devisees, or co-legatees." Art. 1015 NEW CIVIL CODE. Article 1019 of the New Civil Code provides that "the heirs to whom the portion goes by the right of accretion take it in the *same proportion* that they inherit." (Emphasis ours.)

[7] "Art. 986 of the old Civil Code [now article 1022 of the New Civil Code] affords independent proof that intestate succession to a vacant portion can only occur when accretion is impossible." Torres v. Lopez, 49 Phil. 504, (1926).

It is clear that *institution* takes precedence over *substitution.*[8] Between *substitution* and *representation* there can be no conflict and they can be classed in the same category, for while *substitution* can refer only to the *free disposal,*[9] *representation* (in testamentary succession) can refer only to the *legitime.*[10] Between *substitution* and *accretion,* there is no doubt that the former is preferred, for while *substitution* is express, *accretion* is only presumed or implied substitution made by the law in taking into account the provisions of the will. We have already discussed the preference of *accretion* over *intestacy.*

Illustration of the Application of the Formula



Problem.[11] (a) *A* had 3 legitimate children, *B, C,* and *D. B* has an acknowledged natural child, *N,* and a legitimate child, *L. C* has two legitimate children, *M* and *P.*

In his will, *A* gave ₱30,000 each to *B, C,* and *N*; and disinherited *D* for a cause not provided for by law. *A* died on January 1, 1955, leaving an estate of ₱90,000. The *next day, B* died intestate. *C* is incapacitated to inherit. The inheritance proceedings are now in court. *N, L, M, P, C* and *D* now claim that they are entitled to part of the estate. You are the judge

[8] This is clear from the definition itself of substitution in article 857 of the Code — "Substitution is the appointment of another heir so that he may enter into the inheritance in *default* of the heir originally instituted."

[9] This is because no "substitution" can be imposed on the legitime, and if this is done, the same shall be considered as not imposed. Art 872 NEW CIVIL CODE. See 6 MANRESA COMMENTARIOS AL CODIGO CIVIL ESPAÑOL 372 (4th ed. 1931).

[10] Insofar as a compulsory heir is given *also* a part of the free disposal, insofar is he to be considered merely a *voluntary* heir. In case of predecease or incapacity, his own heir succeeds by right of *representation* to the *legitime* left behind — never to the free disposal given. Otherwise, we would have an instance of a *predeceased* or *incapacitated* voluntary heir transmitting some rights to his own heirs, contrary to article 856. See note 4 *supra.*

[11] Problem No. 9, Final Examination given in Manila Law College on October 11, 1955.

of the Court of First Instance. Distribute the estate properly, citing legal provisions and reasons in support of your answer.

(b) In the preceding problem, suppose *B* had predeceased *A*, and suppose all the other facts are the same, how would this affect your answer? If there will be no change, state your reason. If there will be a change, make the proper changes, indicating how much each claimant will receive and why.

Answer. (a) The entire estate will be distributed as follows —

N — ₱40,000 (₱30,000 as instituted heir, and ₱10,000 as his own intestate inheritance from *B*, who had succeeded *A* since he (*B*) was still alive at *A*'s death.)

L — ₱20,000 (as inheritance not from *A* but from *B*.)

M — ₱ 7,500 (by representation for half of *C*'s legitime.)

P — ₱ 7,500 (by representation for half of *C*'s legitime.)

D — ₱15,000 (because an ineffectively disinherited compulsory heir is still entitled to his legitime.)

₱90,000 (Total)

Explanation — Applying *ISRAI*, we note that the institution made cannot be given complete effect because *C* is incapacitated. By institution therefore, *N* gets ₱30,000; and *B* gets ₱30,000 (note that he did not predecease *A*). *C*'s share of ₱30,000 will not be completely vacant for ₱15,000, which is his legitime, goes by representation[12] to *M* and *P*. The vacant ₱15,000 will go to *D*, the compulsory heir who was ineffectively disinherited.[13] Although *B* really inherited ₱30,000 he cannot get this now since he is already dead. Assuming he has no other estate, this ₱30,000 will go *intestate* to *L* and *N*, the legitimate child getting double[14]

[12] If the person excluded from the inheritance by reason of incapacity should be a child or descendant of the decedent and should have children or descendants, the latter shall acquire his right to the legitime. Art. 1035, 1st par. NEW CIVIL CODE. Insofar as the other ₱15,000 remaining out of *C*'s share (had he been capacitated) is concerned, there is no right thereto by representation because it had originally been given to *C*, not as a compulsory heir, but as a voluntary heir or legatee. See also Resurreccion v. Javier, 63 Phil. 599 (1936); 6 SANCHEZ ROMAN, ESTUDIOS DE DERECHO CIVIL 639 (2d ed. 1899).

[13] See Art. 918 NEW CIVIL CODE which provides for the effect of disinheritance which does not fulfill the requisites of the law. Since a disinheritance refers only to the legitime, it follows that all the disinherited person can get is his legitime, should the disinheritance not be a legal one. 14 SCAEVOLA, CODIGO CIVIL COMENTADO Y CONCORDADO.

This is on the assumption of course that the free portion has already been completely disposed of.

[14] "If illegitimate children survive with legitimate children, the [legal] shares of the former shall be in the proportions prescribed in article 895." ART. 983 NEW CIVIL CODE. The first paragraph of article 895, New Civil Code, provides that "the legitime of each of the acknowledged natural children and each of the natural children by legal fiction shall consist of one-half of the legitime of each of the legitimate children or descendants."

the share of the acknowledged natural child; or ₱20,000 for *L*, and ₱10,000 for *N* in view of the express provision of the law. Summing up everything, we get the tabulation set forth above.

(b) The entire estate will be distributed as follows:

N — ₱45,000 (₱30,000 as instituted heir, and ₱15,000 by accretion.)

L — ₱15,000 (by representing *B* in so far as *B*'s legitime from *A* is concerned.)

M — ₱ 7,500 (by representation for half of *C*'s legitime.)

P — ₱ 7,500 (by representation for half of *C*'s legitime.)

D — ₱15,000 (because an ineffectively disinherited compulsory heir is still entitled to his legitime.)

₱90,000 (Total)

Explanation — Applying *ISRAI*, we note that the institution cannot be given complete effect because *C* is incapacitated, and *B* has predeceased the testator. By institution, it is clear that *N* gets ₱30,000 however. *C*'s share of ₱30,000 will not be completely vacant, for ₱15,000, which is his legitime, goes by *representation* to *M* and *P*. The vacant portion of ₱15,000 may just as well go to *D*, who is entitled to his legitime because the disinheritance was ineffective, having been made for a cause not provided for by law. *B*, having predeceased the testator, inherits nothing.[15] Instead the

[15] When *B* was given ₱30,000 in the will, it was in two capacities: ₱15,000 as a voluntary heir or legatee; ₱15,000 as a compulsory heir. As a voluntary heir, it is clear that he does not inherit and therefore transmits no rights. The first paragraph of article 856 of the Code states: "A voluntary heir who dies before the testator transmits nothing to his heirs." As a compulsory heir, since he is dead, it is clear that he does not inherit. Does he however transmit any right to the legitime to his own heirs? While it is true that the second paragraph of article 856 ("a compulsory heir *who dies before the testator*.... shall transmit no right to his own heirs, except in cases expressly provided for in this code") impliedly admits that there is a "transmission" insofar as the legitime is concerned, what the law really means is that instead of the predeceased compulsory heir getting the legitime, said legitime is to be given to his own heirs by right of representation. It is submitted therefore that the use of the term "transmit" is rather awkward, if of course what is meant by it is that the predeceased child *first had it*, for the truth is, he never had it in view of his death. Consider furthermore that a person who inherits by right of representation does not, through it, succeed the person he is representing. Thus, we find the following pertinent remarks of Mr. Justice J. B. L. Reyes in the *Lawyers' Journal*—

> The Code in fact recognizes no exceptions to this rule (that an heir who predeceases the testator transmits nothing to his heirs). The right of representation does not constitute an exception, because the one representing does not acquire the inheritance from the one represented. This is expressly recognized by Art. 971. Hence, representation does not imply that the one represented acquires and transmits rights to his representative. XV L.J. 557 (1950).

If however the word "transmit" would mean just a substitution or a handing over (as by a messenger or go-between for example) there would be more clarity in the meaning of the law. Hence, from this viewpoint, it may be said that instead of a predeceased compulsory heir getting his legitime, others (his own heirs) will get said legitime. It is in this sense that the word "transmit" as used in article 856 must be understood.

portion pertaining to *B*'s legitime would go to his own compulsory heirs by representation.[16] Although *N* and *L* are both compulsory heirs of *B*, only *L* will get the legitime of ₱15,000 by representation; *N*, cannot represent, for it is well known that an illegitimate child (*N*) cannot inherit *ab intestato* or by right of representation from the legitimate relative (*A*) of his parent (*B*).[17] Note also that when a person succeeds by right of representation, he succeeds not the person he is representing, but the person which the person represented would have inherited from.[18] The remaining ₱15,000 from *B*'s share. had he lived, would of course not be transmitted to *L*. What then should be done with it? Accretion[19] is the answer and the only *instituted* heir who can get it is *N*, who is neither dead nor incapacitated.

[16] See Art. 856 NEW CIVIL CODE.

[17] Article 992 sets up a barrier between the legitimate family on the one hand and the illegitimate family on the other. The article states —

> An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child. (Art. 992 *id.*)

The reason for the existence of the barrier is —

> [T]he illegitimate child is disgracefully looked down upon by the legitimate family; the legitimate family is, in turn, hated by the illegitimate child; the latter considers the privileged condition of the former and the resources of which it is thereby deprived; the former, in turn, sees in the illegitimate child nothing but the product of sin, palpable evidence of a blemish upon the family. Every relation is ordinarily broken in life; the law does no more than recognize this truth, by avoiding further grounds for resentment. 7 MANRESA, COMMENTARIOS AL CODIGO CIVIL ESPAÑOL 110 (4th ed. 1931); Grey v. Fabie, 68 Phil. 128 (1939).

Incidentally, the Code Commission regrettably believes (erroneously) that an illegitimate child *can represent* his parent (a legitimate child) in the succession of the grandparents' estate. Said the Code Commission, speaking of article 982 which states that "the grandchildren and other descendants shall inherit by right of representation" —

> If the provisions of the above article are correctly interpreted and understood, do they exclude the illegitimate issue of a legitimate child? The terms "grandchildren and descendants" are not confined to legitimate offsprings. *Memorandum of the Code Commission Addressed to the Joint Congressional Committee on Codification, Feb. 22, 1951.*

It is submitted that on this point, the Commission did *not correctly understand article 892.* An example will drive home the point. Let us say that an *intestate decedent* had two legitimate sons, one of whom had predeceased him leaving an acknowledged natural child. Who would inherit? According to the memorandum of the Code Commission, both the legitimate child (in his own right) and the acknowledged natural child of the predeceased legitimate child (by right of representation) would inherit. This is clearly wrong because in article 992, an illegitimate child cannot inherit *ab intestato* from the legitimate relative of his father.

What then should be our answer to the question — may an acknowledged natural child inherit by right of representation? It seems to me that the correct answer is a *distinction.* The acknowledged natural child can inherit by right of representation if the parent whom he is representing is *himself* an *illegitimate child* of the decedent; if the parent is a *legitimate* child of the decedent, however, the acknowledged natural child cannot inherit by right of representation in view of article 992.

[18] Art. 971 NEW CIVIL CODE.

[19] See Arts. 1016 & 1023 *id.*

II. THE TRUE MEANING OF THE ORDER OF LEGAL SUCCESSION

Problem. A decedent dies without a will, leaving an estate of ₱100,000. Surviving are two legitimate children — *A* and *B;* and a widow, *W*. How much does the widow, *W*, inherit?

Reason for Presenting the Problem. The problem seems amusingly simple, and indeed it is simple; that is — both the problem and the answer are simple. But not so amusing is the fact that some professors *disagree* on what the correct answer is.

The Answer. I believe this case is governed directly by article 996 found in the chapter of "Legal or Intestate Succession." Said article reads—

> If a *widow* or widower and *legitimate* children or descendants are left, the surviving spouse has in the succession the *same share* as that of each of the children. (Emphasis ours.)

Applying the article to the problem, there should be no doubt that the widow, *W*, gets a third of the inheritance, that is ₱33,333+; with *each* of the two children, *A* and *B*, getting the same amount. Certainly, to give any other answer would be to distort the plain meaning of the article involved.

The Dissent. Some professors have however a different answer. They would first give the compulsory heirs concerned their respective legitimes, and then, to *whatever* is *left* — they would apply the *order of legal succession.*[20] Thus, in the problem presented, after giving *A, B* and *W* their respective legitimes of ₱25,000 each (or a total of ₱75,000), they would give the remaining ₱25,000 to the two children, *A* and *B* (in equal proportions) *on the ground that in the order of legal succession, legitimate children come first.* Thus, the widow *W*, being only fourth in the order of legal succession, should be content with her legitime (and to them, her intestate share) of ₱25,000. They reason out further that a contrary answer would render nugatory the preference established in the "order" of legal succession.

Rebuttal of the Dissent. As has already been intimated, the "dissent" renders nugatory the *explicit* provisions of article 996. Where the law is clear, there indeed seems to be no room for interpretation or construction. Ordinarily, therefore, no further argument is needed. However, inasmuch as the *alleged principle* involved (namely, the obtaining first of the legitimes) is basic in the solution of problems in legal succession — so basic that its application constitutes a *fundamental error,* a more extended discussion is in order.

[20] The order of intestate succession is provided in articles 978 to 1014 of the code.

There seems to be no valid reason why legitimes should matter in legal succession (except of course the undeniable principle that "the legal or intestate share of the compulsory heirs is either greater than or at least equal to the legitime" — otherwise a person could automatically decrease the legitime of his compulsory heirs by the simple expedient of dying without a will).[21] Firstly, the table of legitimes is found in the chapter of testamentary succession, not in that of legal succession; secondly, the phrase "compulsory heirs" does not convey the same meaning as "intestate heirs" (though of course compulsory heirs are also and necessarily intestate heirs); thirdly, the law distinctly provides for "legal or intestate shares" as distinguished from the "shares in the legitime."

Regarding the "order of legal succession," the unanimous opinion is that it is *not necessarily successive*.[22] *i.e.*, though given varying places, the "compulsory heirs" are never excluded inasmuch as they are always entitled to their "legal or intestate shares." For example, while the law specifically provides that legal succession[23] appertains first to the direct descending line,[24] the law likewise states that the surviving spouse[25] and the illegitimate children[26] must be given their respective shares. These shares are necessarily the "legal or intestate shares," and not the "legitime." The shares of brothers and sisters, for instance, which are referred to in the same *phraseology* as the share of the surviving spouse, can certainly not refer to the legitime.[27] On the other hand, no provision allows us (in legal succession) to first get the "legitime" of the intestate heirs involved. How easy it would have been for the Code Commission or the law-making body to simply state or provide that such must be done; or that the order of legal succession refers merely to the "free disposal"[28] — had such been the true intent of the law.

The True Meaning of the Order of Legal Succession. In the light of what has been said, it is submitted that the "order of legal succession" applies more particularly to the *order of preference* enunciated by the law as between the compulsory heirs, on the one hand, and the legal heirs (who are *not* compulsory heirs, like the brothers, nephews, cousins) on the other; also to the order of preference *as among the legal heirs* (who are not compulsory heirs) *themselves; never* to the order of preference as among the compulsory heirs, though of course their legal or intestate shares vary. To say otherwise would be to distort the plain meaning of the various provisions of legal or intestate succession.

[21] If a person cannot *expressly* decrease the legitime of his compulsory heirs in a will, with greater reason will he not be allowed to do it in legal succession — which is only his *presumed* or *implied will.*

[22] Under the Spanish Civil Code, the principle may be said to have been one of *exclusion* and *successiveness;* under the New Civil Code, it is one of *concurrence.*

[23] Art. 960 NEW CIVIL CODE.

[24] Art. 978 *id.*

[25] See arts, 996, 997, 998, 999, 1000 *id.*

[26] *Ibid.*

[27] Article 996 of the Code states — "If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the *same share* as that of each of the children." Article 1004, speaking of brothers and sisters, provides — "Should the only survivors be brothers and sisters of the full blood, they shall inherit in *equal shares.*"

[28] The Civil Code is rather loose in its terminology insofar as the phrase "free portion" is concerned. It should be noted that the "free portion" is not always completely free, that is, it cannot just be given away to third parties, because the shares of the surviving spouse and the illegitimate children must first be satisfied therefrom. It is thus believed that the phrase "free disposal" more aptly describes that part of the free portion that is "really free."

III. COROLLARY PROBLEM: HOW MUCH IS THE INTESTATE SHARE OF THE SURVIVING SPOUSE IN CASE THERE IS ONE LEGITIMATE CHILD?

Reason for the Problem. The problem above stated would not have arisen had the law expressly provided for the answer. The sad fact however is that, while in testamentary succession, the law distinctly provides[29] for the *legitime* of the surviving spouse when there is only one legitimate child and says that "if only one legitimate child or descendant of the deceased survives, the widow or widower shall be entitled to one-fourth of the hereditary estate," there is no similar provision in legal succession. In both testamentary and legal succession, however, there *are* provisions for the surviving spouse's share if there be *two or more* legitimate children. In testamentary succession, article 892 provides —

. . . .

If there are two or more legitimate children or descendants the surviving spouse shall be entitled to a portion *equal* to the legitime of *each* of the legitimate children of descendants. (Emphasis ours.)

In legal succession —

ART. 996. If a widow or widower and legitimate children or descendants are left, the surviving spouse has in the succession the *same share* as that of *each* of the children. (Emphasis ours.)

Our Answer. It is hereby submitted that —

(a) If the only surviving relatives of the intestate decedent are the surviving spouse and the lone legitimate child, they will divide the estate *equally* between them, *i.e.*, each gets half of the estate.

This is clearly justified on three counts at least. Firstly, this complies (in a way) with article 996 which grants a surviving spouse an intestate share equal to that of *each* of the legitimate children (though of course

[29] Art. 982 NEW CIVIL CODE.

in the case presented there is only *one* legitimate child), and thus fulfills the law's apparent intention of considering for this purpose the surviving spouse as a legitimate child. Secondly, the legitime of both is preserved. Thirdly, on practical considerations, if one were to be survived by a wife and a legitimate child, we may presume that should he die without a will. his intention would be to divide the estate equally between his two heirs.

To give the legitimate child three-fourths of the estate, and the surviving spouse one-fourth (which would result should the legitimes be first distributed, the remainder to be given to the child, being first in the order of legal succession) would be to frustrate the natural order of things.

A third solution has also been proposed, namely, after giving to each his respective legitime, the residue must be divided in proportion to the respective legitimes. Thus, after the child has received ½ as his legitime, and the surviving spouse ¼, the remaining ¼ is to be divided between the two in the proportion of *2 to 1*. While this may seem just and equitable, it has the disadvantage of not falling, no matter how slightly, under the plain terms of article 996 which would seem to give the two heirs equal shares.

(b) If the only surviving relatives of the intestate decedent are the surviving spouse, the lone legitimate child, and the legitimate parents (or any other relative or relatives who are excluded in view of the presence of the legitimate child), the answer will be the same as in (a), that is, *one-half* goes to the child and the other *half* goes to the surviving spouse, all the rest being excluded.

This is merely corollary to the conclusion reached in (a) for the reason that the parents (and other similar relatives) are already excluded, both by the rules of the legitime[30] concerning compulsory heirs, and the order of intestate succession.[31] The presence or absence of such relatives would therefore be immaterial to the solution of the problems given.

(c) If the only surviving relatives of the intestate decedent are the surviving spouse, one legitimate child, and one acknowledged natural child, they will divide the estate in this manner: *one-half* for the legitimate child; *one-fourth* for the surviving spouse; and *one-fourth* for the acknowledged natural child.

It is evident in this case that to apply article 999 (which would give the surviving spouse exactly the same share as the legitimate child[32]) strictly

[30] Under article 887 of the Code, legitimate parents and ascendants succeed only in default of legitimate children and descendants.

[31] "In default of legitimate children and descendants of the deceased, his parents and ascendants shall inherit from him, to the exclusion of collateral relatives." Art. 985 NEW CIVIL CODE.

[32] "When the widow or widower survives with legitimate children or their descendants and illegitimate children or their descendants, whether legitimate or illegitimate, such widow or widower shall be entitled to the same shares as that of a legitimate child." Art. 999 *id.*

would be to prejudice the legitime of the legitimate child,[33] who, for legitime alone, should have been entitled to one-half — so much so that all a person would have to do, should he desire to decrease his only legitimate child's legitime would be to die intestate, as in this case. To avoid unfairness, in a case like this, article 892, paragraph 1, first sentence, and article 895, paragraph 3, should be applied *by analogy*. Under article 892, paragraph 1, first sentence, "if one legitimate child or descendant of the deceased survives, the widow or widower shall be entitled to one-fourth of the hereditary estate." Under article 895, third paragraph, "the legitime of the illegitimate children shall be taken from the portion of the estate at the free disposal of the testator, provided that in no case shall the total legitime of such illegitimate children *exceed* the *free portion*, and that the legitime of the surviving spouse must first be fully satisfied."

Hence, it would be wrong to divide the estate in this manner —

Legitimate Child	2 parts	(⅖)
Surviving Spouse	2 parts	(⅖)
Acknowledged Natural Child	1 part	(⅕)

While this solution might give the legitimate child a share equal to that of the surviving spouse, and would give the acknowledged natural child *one-half* of the share of the legitimate child, the error here lies in the fact that the legitime of the legitimate child has been impaired. As has already been discussed and proved, the legal or intestate share of a compulsory heir is either equal to, or greater than his legitime, never less.[34]

It would likewise be wrong to make the division in this way —

Legitimate Child	one-half
Surviving Spouse	one-half
Acknowledged Natural Child	nothing

This would clearly be wrong because the acknowledged natural child is not being given at least his legitime. The correct answer then, after eliminating all other possible solutions, would be —

Legitimate Child	one-half
Surviving Spouse	one-fourth
Acknowledged Natural Child	one-fourth

This solution clearly has the advantage of giving each his legitime, and none, not even the surviving spouse, should complain.

(d) If the only surviving relatives of the intestate decedent are the surviving spouse, one legitimate child, one acknowledged natural child, and one spurious child whose filiation has been declared or recognized, they will

[33] See following discussion in text.

[34] See note 19 *supra*.

divide the estate in this way: *one-half* for the legitimate child; *one-fourth* for the surviving spouse; *five-thirty-sixths* for the acknowledged natural child; and *four-thirty-sixths* for the spurious child.

This follows as a necessary corollary to the conclusion reached in (c). It is obvious that whenever an acknowledged natural child inherits together with a spurious child, the proportion between them is 5 to 4, by express provision of the law.[35] It cannot be said that here the legitime of the illegitimate children have been impaired; for their "reduced" legitimes are really their "legal legitimes" (and in this problem, also their intestate shares) by express application of article 983 read together with article 985.[36]

(e) If the only surviving relatives are the surviving spouse, the legitimate child, and two acknowledged natural children, the division will be as follows: *one-half* for the legitimate child; *one-fourth* for the surviving spouse; *one-eighth* each for the two acknowledged natural children.

This is also a necessary corollary of (c), the only difference being the needed division of the share of the acknowledged natural child into two, in view of the presence of two acknowledged natural children.

(f) If the only surviving relatives are the surviving spouse, the legitimate child, and one spurious child whose filiation has been declared or recognized, the division will be in this manner: the legitimate child first gets *one-half;* the surviving spouse, *one-fourth;* the spurious child, *one-fifth;* then, the remaining one-twentieth will be divided among the three in the proportion of 1/2, 1/4, and 1/5 respectively.

This follows from our desire to at least preserve even in legal succession the rights to the legitime. But instead of giving the remaining one-twentieth to the legitimate child (because of his being first in the order), it would seem more just, more equitable, and more in consonance with the spirit of the law to divide such residue among the three heirs, not indeed equally, but in proportion to their respective legitimes.

IV. The True Meaning (or Meanings) Of Collation

In the law of succession, there are at least three meanings of the term "collation" or the phrase "will be collated."

They are as follows —

[35] "If illegitimate children survive with legitimate children, the shares of the former shall be in the proportions prescribed by article 895." Art. 983 New Civil Code.

"The legitime of an illegitimate child who is neither an acknowledged natural, nor a natural child by legal fiction shall be equal in every case to four-fifths of the legitime of an acknowledged natural child." Art. 895, par. 2 *id.*

[36] See note 35 *supra.*

(a) "Will be collated" means that the amount or property involved will be computed in the determination of the net hereditary estate *and* said amount or property will be considered an advance of (imputed to) the legitime or the intestate share.

(b) "Will be collated" means that the amount or property involved will be computed in the determination of the net hereditary estate *but* will *not* be considered an advance of (imputed to) the legitime. (Here, the amount or property will be considered an advance of the free disposal.)

(c) "Will *not* be collated" means that the amount or property involved will *not even be computed* in the determination of the net hereditary estate, and therefore will not be considered as an advance of either the legitime or the free disposal or the intestate share.

Illustration of the First Meaning

Under the first meaning would of course come as a rule donations *inter vivos* given to *compulsory heirs,* and this is the meaning used in article 1061[37] and a portion of article 1062.[38]

Example. *A*, the decedent, in his lifetime gave ₱10,000 as a donation to *B*, his elder legitimate son. *A* soon died intestate leaving ₱90,000. Surviving are *B* and *C*, both legitimate children. Divide the estate.

Answer — The net hereditary estate would be ₱90,000 (property left) *plus* ₱10,000 (the donation) or a total of ₱100,000. The intestate share of each would be ₱50,000. *C* would therefore get ₱50,000 and *B* would get ₱40,000 inasmuch as he had received ₱10,000 previously. It is clear here that the purpose of this kind of *collation* is *equality* both in *quantity* and in *quality;* for under article 1073[39] if *B* had received the ₱10,000 in the form of an automobile, *C* would also receive in so far as possible ₱10,000 (out of his ₱50,000) also in the form of an automobile.

The answer just given can also be arrived at in a different way, under the same principle. Knowing the hereditary estate to be ₱100,000, it is clear that the legitime of each child would be ₱25,000. Having received already ₱10,000 deductible from his legitime, *B* is entitled to receive only

[37] "Every compulsory heir, who succeeds with other compulsory heirs, must bring into the mass of the estate any property or right which he may have received from the decedent, during the lifetime of the latter, by way of donation, or any other gratuitous title, in order that it may be computed in the determination of the legitime of each heir, and in the account of the partition." Art. 1061 New Civil Code.

[38] "Collation shall not take place among compulsory heirs if the donor should have so expressly provided, or if the donee should repudiate the inheritance, unless the donation should be reduced as inofficious." Art. 1062 *id.*

[39] "The donee's share of the estate shall be reduced by an amount equal to that already received by him; and his co-heirs shall receive an equivalent as much as possible, in property of the same nature, class and quality." Art 1073 *id.*

₱15,000 more as legitime and ₱25,000 from the free portion or a total of ₱40,000. *C* is entitled to both his legitime of ₱25,000 and his share in the free portion of ₱25,000 or a total of ₱50,000. In either solution, the purpose of "equality" has been attained.

Another Example. *A*, the decedent, in his lifetime, gave ₱10,000 as a donation to *B*, his elder legitimate son. In the deed of donation, it was expressly provided that the donation *"will not be collated."* *A* soon died *intestate* leaving ₱90,000. Surviving are *B* and *C*, both legitimate children. Divide the estate.

Answer — Out of the remaining ₱90,000 *B* and *C* will get an equal share, that is, each obtains ₱45,000. All in all therefore, *B* may be said to have received a total of ₱55,000 (the first ₱10,000 having been given to him as a donation); and *C*, a total of ₱45,000. The effect of the phrase "will not be collated" in the deed of donation is the granting of a *preference* (to said amount) to *B*. Is this preference allowed? Yes, because after all it is not inofficious, *i.e.*, the legitime of *C* has not been impaired.

But how much, in the problem, is the legitime of *C*? (We have to know how much the legitime is, in order to find out if it has been impaired or not; and to find out how much indeed the legitime is, *we must determine the net hereditary estate.*) The net hereditary estate is ₱100,000 (we obtained this by adding to the ₱90,000 left the donation of ₱10,000 even if the deed of donation had stated that it "will not be collated"), and the legitime of *C* is ₱25,000. Clearly, this legitime has not been impaired.

It is also clear that in article 1062, which reads — "collation shall *not* take place among compulsory heirs *if the donor should have so expressly provided,* or if the donee should repudiate the inheritance, *unless the donation should be reduced as inofficious,*" even if the donor expressly provides that the donation "will not be collated" — the donation must *nevertheless* still be computed in the determination of the net hereditary estate (to find out whether it is inofficious or not); and therefore "will not be collated" simply means that the amount or property given will *not* be considered an advance of the legitime, but an advance of the free portion, the purpose being to grant a *preference* insofar as said preference would not be inofficious, that is, prejudicial to the legitime of the other compulsory heirs.

Final Problem. Suppose, in the second example above given, the donation to *B* had been ₱80,000, and the father *A* had provided that the donation "will not be collated" and only ₱20,000 is left upon his death, how would the estate be divided?

Answer — If the donation would not be computed at all, the net hereditary estate would be only ₱20,000 and the legitime of *C* would be ₱5,000 (being one of *two* legitimate children). In such a case, the donation of

₱80,000 would not be reduced since after all the ₱5,000 legitime of *C* would still be satisfied out of the remaining ₱20,000 and would therefore be far from being impaired.

But as we have seen, the donation *must* be collated in that it must be computed in the *determination of the net hereditary estate.* The estate being ₱100,000, it is clear that *C*'s legitime of ₱25,000 is impaired; the donation to *B* must therefore be reduced by ₱5,000. *C* would therefore inherit the ₱20,000 residue and the ₱5,000 which he can demand from *B*. *B* on his part can be said to have lawfully received not only his legitime of ₱25,000 but also the entire free portion of ₱50,000 — or a total of ₱75,000.

Illustration of the Second Meaning

The second meaning of collation is aptly illustrated in the case of donations to strangers. Certainly, this kind of donation must not be collated in the sense that it is considered an advance of the legitime, for strangers are not compulsory heirs. *But* for the purpose of computing the net hereditary estate, a donation *inter vivos* given to a stranger must be *added* to the remaining estate, otherwise how can it be determined whether or not it is inofficious? In other words, it is submitted that a donation to a stranger is considered an advance of the free disposal. And this is what the law means when it says that "donations made to strangers shall be charged to that part of the estate of which the testator could have disposed."[40]

It thus seems strange that some commentators[41] are of the opinion that the donation to a stranger should *not* even be computed to determine the value of the net hereditary estate. Among them can be cited Sanchez Roman, Scaevola, and Manresa, and they give as their reason the fact that article 1061, which is the first article on collation, speaks only of "compulsory heirs."[42]

Illustrative Problem. *A* gave *B*, his legitimate child, a donation *inter vivos* of ₱50,000; and to *C*, a friend, a donation *inter vivos* of ₱100,000. When *A* died (without a will), what was left of his estate was only ₱100,000. Should the donation to *C* be reduced?

Manresa's Opinion — Donations to strangers should not be collated, meaning, should *not be added or computed.* Thus —

₱100,000 (estate)
\+ 50,000 (donation to *B*)
———
₱150,000 (net estate)

[40] Art. 909 *id.*
[41] 6 SANCHEZ ROMAN, ESTUDIOS DE DERECHO CIVIL 948-49 (2d ed. 1899).
[42] This is true but they forgot that 'collation" has different meanings.

Hence: Legitime — ₱75,000 (half of estate)
Free Portion — ₱75,000 (other half)

Since the donation to *C* is more than the free portion, it should be reduced by ₱25,000.

The Correct Solution[43] — Donations to *strangers* should be collated, that is, *added* to the net estate since they are advances of the free portion. Thus—

₱100,000 (estate)
\+ 50,000 (donation to *B*)
\+ 100,000 (donation to *C*)
₱250,000 (net estate)

Hence: Legitime — ₱125,000
Free Portion — ₱125,000

Since the donation given to *C does not exceed* the free portion, it should not be reduced. Notice too that the legitime of the child has not been impaired.

Commentary on Manresa's Solution — Manresa's solution is clearly unjust. Firstly, if *B*'s legitime is only ₱75,000, we cannot say that it has been impaired — for after all, can he not get all of it from the ₱100,000 still remaining? Besides, is not the donation of ₱50,000 to him already considered an advance of his legitime? If then *B*'s legitime is unimpaired, how can we say that the donation to *C* is inofficious? Secondly, donations to strangers are charged to the free portion — but how can they form part of the free portion unless they are considered as *added* in the determination of the net hereditary estate? Thirdly, under article 752 of the New Civil Code, "no person may give by way of donation more than what he may give by will." Impliedly, I can give as a donation as much as I am allowed to do so by way of legacy or inheritance in case I make a will. Now, then, suppose *today* I have ₱100,000 and I have *one legitimate child,* it is clear that I can validly dispose of ₱50,000 in favor of strangers. Surely, the donation would not be inofficious. If *tomorrow* I should die, leaving *one legitimate child* (same as when I made the donation) and leaving an estate of ₱50,000 (since ₱50,000 had already been given by way of donation) — then *if we follow Manresa's opinion,* this will happen: ₱50,000 will be hereditary estate (since the donation of ₱50,000 will not be added). The free portion will therefore be ₱25,000. Since the donation exceeds the free portion, it will be reduced by ₱25,000 — and the effect would be that the donation is valid only to the extent of ₱25,000 — which would

[43] This seems to be also the opinion of several other commentators. See Morell cited in 6 MANRESA, COMMENTARIOS AL CODIGO ESPAÑOL 410 (4th ed. 1931).

then be a clear absurdity. We should not construe the law as favoring an absurdity.

Has our Supreme Court already spoken on the subject? Definitely not. All it has said in the case of *Udarbe v. Jurado*[44] is that "donations are collationable only when the heirs of the deceased are *forced heirs* and when it is proven that it prejudices their legitime," quoting Manresa. By *implication,* it would seem that our Supreme Court, by citing Manresa, is of the opinion that donations given to strangers should not be collated. But examining the quotation more closely, one would conclude that the Supreme Court did *not* say that *only compulsory heirs* should collate; all it said was that there should be collation *only when there are compulsory heirs.* The two assertions are certainly *not identical, nor* do they mean the same thing. For admittedly, if there are no compulsory heirs, collation would be indeed *useless* (for there is no legitime to be preserved). The question the Court failed to decide was — "when there are compulsory heirs, are the donations to them the *only ones* to be collated (added)?" It is thus absolutely wrong to state that Manresa's viewpoint prevails in this jurisdiction.

Illustration of the Third Meaning

Article 1067 reads — "Expenses for support, education, medical attendance, even in extra-ordinary illness, apprenticeship, ordinary equipment, or customary gifts are *not subject to collation.*"

In this particular article, we may say that the law really means what it literally states, namely, that here the money or property involved will *not even* be computed in the computation of the hereditary estate. Such properties are indeed not considered as advances of the inheritance whether as part of the legitime or part of the free disposal. The reason for the law is clear; such expenses are not considered donations, their cause *not* being generosity but moral, social, or legal obligations. Moreover, consider the almost physical impossibility of computing the value of these things.

Example. *D* has two legitimate children, *A* and *B*. Because A required medical attendance for ten years on account of a psycho-neurosis, *D* spent *₱80,000* for him. *D* then died intestate leaving ₱20,000. Divide the estate.

Answer — The ₱20,000 will be simply divided equally between *A* and *B*. The net hereditary estate is not ₱100,000 (₱20,000 plus ₱80,000) but simply ₱20,000. Hence, it cannot be said that *B*'s legitime has been impaired.

[44] 59 Phil. 11 (1933).