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**Introduction to the Laws of Timor-Leste**

# **The Law of Succession**

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## TABLE OF CONTENTS

PREFACE TO THE SERIES.....	3
Objectives and Overview .....	5
I. Introduction .....	6
II. The Timeline of a Typical Inheritance Assignment.....	8
The Early Stages: Opening & Summoning.....	8
Determining the Successor's Capacity .....	9
Determining Whether a Right of Representation Exists.....	10
Acceptance; Repudiation .....	10-11
Addressing Any Inheritance Challenges.....	11
Summary, Questions and Answers .....	11-12
III. Rights & Responsibilities of Successors.....	14
Liabilities of Successors .....	14
Distribution of the Inheritance .....	15
Management of the Inheritance .....	16
Summary, Questions and Answers .....	17-18
IV. Legitimate Succession .....	19
Who Qualifies as a "Legitimate" Heir? .....	19
First Class; The Spouse and Descendants.....	20
Second Class: The Spouse and Ascendants .....	21
The Lower Classes: Siblings, Collaterals, and the State.....	21
Summary, Questions and Answers .....	22
V. Compulsory Succession .....	23
Who are the Rightful Heirs, and What is their Fair Share? .....	23
Exceptions to Compulsory Succession .....	24
Summary, Questions and Answers .....	25-26
VI. Testamentary Succession.....	27
How to Create a Legally Binding Will .....	27
Types of Wills.....	28
Dispositions & Legacies .....	29
Substitutions & Trusts.....	30
Challenging a Will; Executing the Will.....	31-32
Summary, Questions and Answers .....	32
VII. Review, Charts, Questions and Answers.....	34
GLOSSARY OF SELECTED TERMS .....	38

## **Preface to the Series: *Introduction to the Laws of Timor-Leste***

Timor-Leste has enjoyed a decade of formal independence. The country's democratic institutions have grown during this period. But, as thoughtful Timorese are quick to point out, much remains to be done. Building viable and professional state institutions takes time. And growing the human resource capacity within those institutions is always a major challenge to new states.

The capacity building imperative in Timor-Leste is both striking and compelling. Establishing state agencies in the first instance is relatively much easier than filling those agencies with effective professionals that uphold their duties and responsibilities. Building the capacity of a pool of Timorese who hold, or may hold, positions within legal and other state institutions is crucial. Likewise, building an educated understanding and awareness of the obligations and responsibilities of key actors within legal institutions, and government institutions more broadly, contributes to setting demands and expectations for performance among the polity. Encouraging professionalized capacity within state institutions, on the one hand, and thoughtful and calibrated demands for performance by citizens, on the other hand, are essential dynamics for the development of the rule of law and a democratic state in Timor-Leste. Institutions of higher learning, such as universities and professional training centers, can and should play a key role in stimulating and sustaining this dynamic. Indeed, education is foundational.

This paper is part of the *Introduction to the Laws of Timor-Leste* series of papers produced by the Timor-Leste Legal Education Project (TLLEP). This series seeks to critically engage the reader in thinking about the laws and legal institutions of Timor-Leste, and is based on a model of educational writing first introduced in TLLEP's *Introduction to Professional Responsibility in Timor-Leste* textbook, published in 2011. Founded in March of 2010, TLLEP is a partnership between The Asia Foundation and Stanford Law School. Working with local actors in the Timor legal sector, the project's goal is to positively contribute to the development of domestic legal education and training in Timor-Leste. USAID provided funding for this series through its Timor-Leste Access to Justice Program.

The authors of the legal working papers focused on writing in clear, concise prose, and on using hypothetical legal situations, discussion questions, and current events. Through this style of writing and pedagogy, the aim is to make these texts accessible to the largest possible audience. The texts are designed to be broadly accessible to experienced Timorese lawyers and judges, government officials, members of civil society, Timorese students in law, and the international community. They cover topics ranging from constitutional law to inheritance law to the Petroleum Fund Law.

These working papers represent the dedicated efforts of many individuals. Stanford Law School students authored the texts and subjected each working paper to an extensive editing process. The primary authors for this series were Peter Broderick, Daniel Cassman, Margaret Hagan, Brian Hoffman, Lexi Shechtel, and Anne Johnson Veldhuis, all Class of 2013, Jessica Fox, Hamida Owusu, and Samuel Saunders (all Class of 2014) edited the series under the guidance of Stanford Rule of Law Fellow Megan Karsh ('09). The students benefitted from the substantial and extensive guidance provided by Brazilian lawyer Dennys Antonialli (LLM '11) and Geoffrey Swenson ('09), TLLEP's former in-country director and legal advisor to the Asia

Foundation's Dili office. The program has also received extensive support from Kerry Brogan, previous Country Representative Silas Everett, current Country Representative Susan Marx, Juliao de Deus Fatima, and a host of other Asia Foundation staff. USAID Timor-Leste provided vital financial and programmatic support to the program. We especially thank USAID Director Rick Scott and USAID staff Ana Guterres and Peter Cloutier. The US Embassy in Dili, especially Ambassador Hans Klemm and Ambassador Judith Fergin, have been incredibly supportive. I would be remiss if I did not thank the former and current deans of Stanford Law School, Deans Larry Kramer and Liz Magill, for their unwavering support of this project.

Finally, this series of papers simply would not have been possible without the many thoughtful and critical insights from Timorese judges, educators and lawyers, and those who work within Timorese institutions. Prosecutor General Ana Pessoa, Public Defender General Sergio de Jesus Hornai, and President of Court of Appeals Cláudio Ximenes were extremely gracious in clarifying issues related to their respective organizations and offering constructive suggestions. The textbooks received vital input from National University of Timor-Leste (UNTL) faculty and staff throughout the drafting and review process including comments from Rector Aurelio Guterres, Law Deans Tome Xavier Geronimo and Maria Angela Carrascalão, Professor Benjamin Corte Real, and Vasco da Cruz of the Portuguese Corporation. Feedback from UNTL students themselves on draft text was immensely helpful for the final text. The Judicial Training Center (CFJ) has also been a source of wisdom throughout the drafting process, particularly CFJ Director Marcelina Tilman, Erika Macedo, and Bernardo Fernandes. The text benefited as well from the contributions of Charlie Scheiner and La'o Hamutuk, the staff of the Ministry of Justice Legislation Unit, AALT Executive Director Maria Veronika, Judge Maria Netercia, Judge Jacinta Coreia, JSMP Executive Director, Luis de Oliveira, JSMP Legal Research Unit Coordinator, Roberto da Costa, ECM director Lino Lopes, and Sahe Da Siliva. We are also grateful to Gualdinho da Silva, President of the National Petroleum Authority, for two wonderfully engaging meetings.

In addition to this series and the already-published texts on professional responsibility, constitutional rights, and contracts, TLLEP has plans to complete the first edition of a new textbook in 2013 entitled *An Introduction to Criminal Law in Timor-Leste*. All texts are updated as the legal landscape changes. The most recent versions of all published texts are always available for download online free of charge on TLLEP's website: [www.tllep.law.stanford.edu](http://www.tllep.law.stanford.edu).

To the students, educators, legal and government professionals that use this book, we sincerely hope that it sparks study and debate about the future of Timor-Leste and the vital role magistrates, prosecutors, public defenders, private lawyers, and government officials will play in ensuring the country's future is bright.

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# The Law of Succession

## OBJECTIVES

- To introduce terms common to succession law.
- To identify the typical timeline of a proper succession.
- To introduce the primary rights and obligations of those who receive an inheritance.
- To understand how to administer a succession when the deceased does not leave a will behind.
- To understand what portion of an inheritance must go to close relatives.
- To develop an introductory appreciation of a will and its common components.

## OVERVIEW

- Succession law deals with how to distribute a deceased individual's property.
- A proper succession must determine which individuals or groups are the appropriate heirs and summon them to the succession.
- Once the succession is arranged, all heirs must decide how to best distribute the inheritance, and must manage the inheritance appropriately according to law.
- If the deceased does not leave a will behind, the Civil Code lists procedures for identifying who receives the inheritance according to principles of *legitimate succession*.
- Even if the deceased leaves a will behind, the law guarantees that a certain portion of the inheritance will go to close family members according to principles of *compulsory succession*.
- A *testamentary will* is the primary means of communicating the deceased's wishes after death, but the will is still limited by law in its construction and demands.

## I. INTRODUCTION TO THE LAW OF SUCCESSIONS

### SECTION OBJECTIVES

- To define important terms and explain the purpose of succession laws.

All of us own possessions. These possessions may include expensive items like an automobile or a house, or more basic goods such as clothing, small appliances, or the paper you are reading now! Individuals can also own more complex goods as well, such as debt, the right to government benefits, or a trust. The law of successions creates a legal framework for deciding who owns an individual's possession, rights, and obligations in the unfortunate event that the person becomes seriously incapacitated or dies.

This paper will provide a very basic introduction to these important laws. The terms, concepts, and rules discussed in this paper can be found in Book V of the Civil Code of Timor-Leste. This paper is organized into two primary parts. The first part will address the typical timeline of a **succession** and the rights and responsibilities people who receive an **inheritance**. The second part discusses the three types of successions recognized under Timorese law:

1. **Legitimate Succession,**
2. **Compulsory Succession, and**
3. **Testamentary Succession.**

We will also attempt to identify places where succession law is ambiguous. This means that the law may not have a clear answer about how a situation should turn out. Finally, like the other papers in this series, we will present hypothetical scenarios, questions, and answers to help you improve your understanding of the topic. We encourage you to also read the Civil Code carefully for more information on succession law.

Article 1888 of the Civil Code, introduces the definition of **succession**:

#### The Civil Code of Timor-Leste

##### Article 1888: Concept

Succession is defined as the entitlement by one or more persons to the legal patrimonial relationships of a deceased person and the consequent restitution of the assets that used to belong to that person.

As you can see, Article 1888 uses complicated legal language in its definition. Another, simpler way to understand succession is the right a person or people have to receive a deceased's persons assets (also called the **estate**) based on the legal relationship between the people. For example, a child with no other siblings receiving the rights to own his parent's farm after his father passes away. As you learn about the law of successions, you will see many difficult legal terms. Please refer to the glossary at the end of this paper for more information about these words.

## II. THE TIMELINE OF A TYPICAL INHERITANCE ASSIGNMENT

### SECTION OBJECTIVES

- To explain the timeline of assigning an inheritance.
- To identify the requirements necessary for an individual to be a successor.
- To discuss issues of inheritance acceptance, repudiation, and petitions.

In this section we will learn about how a typical inheritance proceeding happens. We will also identify the issues and questions that must be addressed at each stage of the process. It is important to remember, however, that every inheritance presents unique questions and challenges. Therefore, there is no single blueprint for accomplishing an appropriate inheritance assignment.

### 1. The Early Stages: Opening & Summoning

A succession technically **opens** (begins) at the exact moment of the Author's death and at the location of his or her last residence. The **Author** is the deceased individual whose assets are being considered for inheritance. The Author decides what will happen to her assets when she dies – even if the Author does not actually write any instructions down. The Author can also be called **the Deceased**. For example, if Leopoldo has lived in Dili his whole life, but passed away while taking vacation in Maubisse, his succession would still happen in Dili.

Once the succession is opened, the **heirs** of the “**first order of succession**” must be gathered. The order of succession is described in more detail later in this paper. For now, understand that **Successors** are people who can receive the assets that formerly belonged to a deceased individual. An **heir** is a type of **successor**. An heir can receive all of the deceased's person's assets or a percentage of the assets if there is more than one heir. Heirs are almost always children or another close relative of the deceased. Heirs cannot be identified until the time of the Author's death. Before that point they are merely an **heir-apparent**. This means that the person could become an Heir if he lives longer than the Author.

If the first order heirs do not want the succession or are unable to legally accept it, the law requires that **second order heirs** receive the inheritance. If they do not want the succession



or are unable to legally accept it, third order heirs receive the inheritance - and so on. For example, if Leopoldo's children now live in Portugal, and have no interest in settling his estate, the law would move onto other heirs, such as Leopoldo's parents or siblings.

### **The Civil Code of Timor-Leste**

#### **Article 1895: Occasion and Location**

The succession opens at the moment of the death of its Author and at the location of his or her...last domicile.

#### **Article 1896: Summoning of heirs and legatees**

- (1) ...the persons summoned...shall be the heirs of the first order of succession...
- (2) If the heirs of the first order...do not wish or are unable to accept it, the subsequent ones shall be summoned, and so forth successively...

## **2. Determining the Successor's Capacity**

Determining a potential successor's **Capacity** means to find out whether the person can legally be a successor. Any person born or conceived prior to the Author's death can be successor. This also includes "newborns not yet conceived who are children of a specific person who is alive at the time the succession is opened." Civ. Code 1897(a). This provision means that unborn children can serve as successor as long as one of their parents is alive at the time of the Author's death. Article 1897 also permits corporations to be successors.

Though all legal persons can serve as successors, there are some situations where a person is considered not to have the capacity to fulfill this role. Articles 1898 – 1902 also list situations that can disqualify a person from being a successor. Make sure you review these articles when determining capacity. Some examples of disqualifiers include: if a person is convicted as the perpetrator or accomplice of murder against the Author or a close member of the Author's family; if the person deceitfully forced the Author to change his or her will; and if the person inappropriately tampered with the Author's will. If any of the listed actions are found to be true, then that individual is considered **unworthy** of succession.

## The Civil Code of Timor-Leste

### Article 1901: Effects of unworthiness

- (1) Once unworthiness is declared, the restitution of the succession to the person unworthy of inheriting is deemed non-existent and he or she shall...be considered as a bad faith possessor of the respective assets.

### 3. Determining Whether a Right of Representation Exists

When identifying which heirs should be present when the succession opens, the law also considers the descendants of heirs that cannot accept the inheritance (usually because of death). For example, imagine that an elderly widow dies, but is **survived by** three children. This means that she has three children still alive after her death. During the elderly widow's lifetime, she actually gave birth to four children. The eldest, Vincente, died many years prior to the widow's own death. Even though Vincente died many years ago, if he has any children, they would hold a **right of representation**. This means that Vincente's children have the right to Vincente's share of the widow's assets after her death. Because Vincente has three siblings still alive, this share would equal one fourth of the widow's assets.

### 4. Acceptance

Once everyone that needs to be present is identified and their capacity has been checked, each person must **accept or repudiate** the inheritance. Typically, people are happy to accept the inheritance, so we will explain **Acceptance** first. Acceptance is the means of perfecting ownership over the inherited assets, "irrespective of their material seizure." Civ. Code Art. 1914. This means that the act of acceptance is what determines whether the person has a right to the inheritance. Acceptance is what matters in the law, not actually physically possessing the assets. A person can most easily express acceptance of the inheritance by writing. The law also recognizes some forms of tacit acceptance. Acceptance must occur within ten years of the successor learning of the inheritance. Once acceptance is made, it is irrevocable.

### 5. Repudiation

The law does not force an individual to accept an inheritance. It is possible that an inheritance could be a burden to have, or that the person entitled to inherit sees another successor

needs or deserves the inheritance much more. Regardless of the reason, every person is given the opportunity to repudiate, but only **in full**. This means that successors cannot repudiate certain parts of the general inheritance while simultaneously accepting other parts. However, this “in full” requirement does not apply to discrete and separable legacies. A **Legacy** is a gift of a specific thing or amount of money to another person, called the “**legatee**.” For example, an individual may accept one legacy or gift and repudiating another legacy.

If an individual does repudiate the inheritance in full, the law treats that individual as if he or she was never summoned, and moves on to the next rightful heir or legatee. This is done until all of the deceased’s assets are accounted for. Like acceptance, repudiation is irrevocable.

## **6. Addressing Any Inheritance Challenges**

You may have thought the timeline ends with acceptance/repudiation. However, like many areas of the law, there is an opportunity for others to challenge the decisions made. Under the law, these challenges to succession are known as **petitions for inheritance**. If a challenger can demonstrate that he or she is the true heir to the inheritance, the law will transfer the remainder of the inheritance from the supposed heir, or another third party, to the true heir. When addressing these petitions it is important to consider whether all involved parties accepted the inheritance and any subsequent transfers in good faith. If not, the calculation of what is owed to the true heir may need to be adjusted accordingly.

## **7. Summary**

This section discussed the procedural timeline of a succession. All successions legally open at the exact moment of the Author’s death. At the same time, all heirs-apparent become heirs. Similarly, legatees-apparent become legatees. The challenge then becomes identifying who exactly these people are, and determining whether each of them has legal capacity to serve as a successor. During this process, it is important not only to consider living heirs, but those that have already died in order to determine who has right of representation. Finally, only after all components of the estate have been accepted by a successor, and all legal challenges settled, is the inheritance considered officially **assigned**.

### Questions

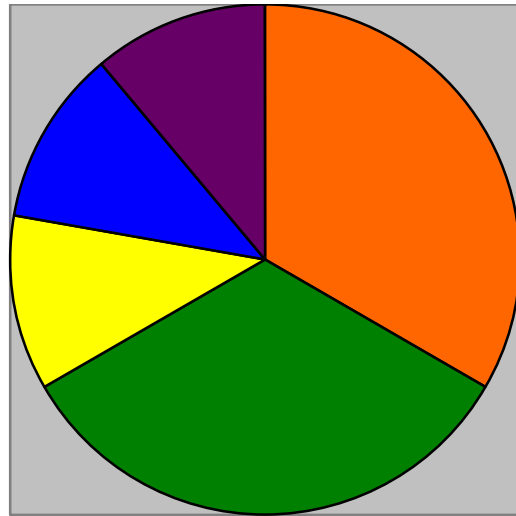
1. Suppose Manuel owns a small farm just outside of Suai. Unfortunately, Manuel has an untimely accident and passes away. He does not leave behind a will, but he is survived by two sons, Jose and Antonio. At first, neither son shows any interest in accepting the land that Manuel owned, nor do subsequent orders of heirs come forth to accept the property. For a few years, Jose occasionally sends an employee of his to check up on the land.

Nine years later, Antonio changes his mind and decides to accept that land. He does so through a formal acceptance in front of a notary public and informs Jose of this action. Two years later, after Antonio has turned the land into a very wealthy farm, Jose demands a share of the land, claiming he accepted the property by sending an employee to check on the land several years ago. Is Jose correct - should he own half of the farm?

2. Imagine that Ana has passed away. During her life she had three children: Sofia, Henrique, and Lúcia. All three children also had three kids of their own, making nine grandchildren total. Unfortunately, Sofia passed away a few years before Ana's death. If Ana leaves her entire estate to her rightful heirs, what portion do the following receive: Sofia's children, Henrique & Lúcia, and Henrique & Lucia's children? What principle is used to determine Sofia's children's portion of the assets?

### Answers

1. Probably not. The law does not recognize "managerial acts," like occasionally sending an employee to check on the land, as acceptance. Jose might be able to use this action to help demonstrate tacit acceptance, but it is probably not enough on its own. Jose also did not challenge Antonio's use of the land until after ten years had passed.
2. Sofia's children would each receive one-ninth of Ana's estate. This is equal to one-third of one-third of Ana's estate. This is because these children are the rightful heirs to Sofia's percentage, which is one-third of the assets. Because there are three siblings total, Henrique, Lúcia, and Sofia would each receive one-third. Henrique and Lúcia's do not directly receive any assets because Henrique and Lúcia are still alive. Finally, the principle used to determine Sofia's children's portion is the **right of representation**. See the chart on the next page for a visual representation of these amounts:



- Henrique (1/3)
- Lúcia (1/3)
- Sofia's 1st Child (1/9)
- Sofia's 2nd Child (1/9)
- Sofia's 3rd Child (1/9)

### III. RIGHTS & RESPONSIBILITIES OF SUCCESSORS

#### SECTION OBJECTIVES

- To explain what happens after an inheritance is assigned.
- To understand the liabilities of successors.
- To explore how the inheritance is distributed among heirs.
- To understand how a successor appropriately manages an inheritance.

This section explores what happens after the inheritance is assigned. In an inheritance, a successor gains both riches and burdens. The riches are relatively straightforward. For example, the successor may acquire and enjoy a house, land, money, or variety goods. The burdens are not as clear. Therefore, this chapter focuses mostly on the many legal obligations a successor acquires once he receives the inheritance.

#### 1. Liabilities of Successors

When a successor is given potentially valuable property through an inheritance, the property can also come with **liabilities**. For example, those receiving the inheritance are liable for the costs of dealing with the Author's death, and appropriately executing the Author's will (if he or she wrote one), among other duties assigned by statute.

#### The Civil Code of Timor-Leste

##### Article 1932: Liability of the inheritance

The inheritance shall be liable for funeral and related expenses pertaining to its Author, the burden [of] the testamentary succession, the management and liquidation of the hereditary assets, the payment of the debts of the deceased, and the fulfillment of the bequests.

As you can see from Article 1932's language, accepting the inheritance also means accepting all potential burdens attached to it. However, if the cost of the burdens exceeds the value of the inheritance, the successor is not obliged to pay them - although he or she must prove

this is in fact true. For example, imagine Manuela just inherited a small house in an inheritance from her brother. However, if the debt owed on the house is more than the house's value, the law would not force Manuela to pay this difference. All obligations last until the inheritance has been fully disposed of.

## 2. Distributing the Inheritance

Inheritances that have only a single successor present few distribution problems. However, many inheritances include a variety of individuals, and even groups or organizations. Making decisions on who owns what can be difficult, costly, and very contentious.

These distributions can happen through private agreements (called **extra-judicial distribution**), or through the Office of the Public Prosecutor if the State feels one or more of the heirs will not receive equitable treatment. Though the law generally allows private agreements to distribute the inheritance in any manner agreed upon by the successors, there are some statutory requirements. For example, if a surviving spouse remains in the inherited home, he or she is given preference to continue to live there for the remainder of his or her life.

The final distribution issue is the very confusing issue of **collation**. Collation is the restitution (or return) of goods donated to an heir during the time of the Author's life, that must be returned to the inheritance, in order for the heir to be able to participate in the succession.

### The Civil Code of Timor-Leste

#### Article 1971: Concept

- (1) Descendants wishing to be part of the succession of their ascendants shall restitute to the...inheritance the property and assets that were donated to them in life, in order to equalize shares: this restitution is called collation.

For example, Ruel frequently allowed his son, Hugo, to use his truck. When Ruel dies, Hugo must return the truck to the collective inheritance if he wishes to participate in the opening of the succession. However, if Hugo bought the truck from his father before his father's death, Hugo would rightfully own it, and not have to return it to the inheritance. Exactly what qualifies as a donation is a difficult issue, so be sure to consult Articles 1971 – 1985 of the Civil Code when working through this issue.

Once all of these distributions are made, each individual heir is the sole successor of that piece of the inheritance. For example, if Ruel's heirs decide that Hugo will receive the donated truck in his share of the inheritance, the truck becomes Hugo's sole property.

### **3. Management of the Inheritance**

Even if the inheritance does not have many liabilities or distribution concerns attached to it, the successors must still appropriately manage the inheritance. This responsibility is assigned to the **head of the household**. Article 1944 defines who qualifies as the head of the household:

#### **The Civil Code of Timor-Leste**

##### **Article 1944: Establishment of head of household**

- (1) The position of head of household shall be assigned to the following persons, in the following order:
- (a) To the surviving spouse...;
  - (b) The executor...;
  - (c) The relatives who are legal heirs;
  - (d) The testamentary heirs.

The responsibilities of the head of household include general oversight and care for the assets of the inheritance, collecting debts related to the inheritance, and collecting and distributing profits from the fruits of the inheritance. For example, if valuable crops are grown on an inherited piece of land, the head of the household is responsible for distributing the profits from these crops. Throughout a person's time as head of household, he or she must share proceeds with other heirs if requested, and at a minimum, keep the other heirs informed on the condition of the inheritance.

An eligible head of household may choose not to fulfill this role under certain circumstances, including old age and illness. In addition, the head of household may be removed if her or she "fraudulently conceals the existence of property belonging to the inheritance," "does not manage the inheritance prudently and zealously," or otherwise does not comply with the law. Civ. Code Art. 1950.



#### 4. Summary

After the initial successors have been identified and the inheritance is assigned there are still several issues to address. At this point, the successor(s) must consider concerns related to liabilities, distribution, and management. It is useful to think of liabilities as any and all burdens attached to the inheritance. These often take the form of funeral costs, satisfying the deceased's debt, or executing the deceased's will if she wrote one before death. Deciding which accepting heir gets which portion of the inheritance can be a difficult issue that has the potential to frustrate family relationships. However, the law still prefers that successors complete this distribution on their own through extra-judicial distribution. Finally, even after distributions, a head of household must be identified to manage the inheritance, especially those parts that are not easily divisible among the successors. He or she must do so competently, or risk being removed from the position.

#### Questions

1. Suppose Yasmin passes away unexpectedly. She is survived by four adult children. Her heirs to her inheritance are identified to be her husband and children, all of whom accept the inheritance in writing. After acceptance, the youngest child Luis gets into a serious motorbike accident. He is hospitalized as a result of the accident and has not woken up yet, although he is still alive. Luis also has two children of his own.

Unfortunately, Luis was not well liked by the other members of the family. Therefore, instead of waiting for Luis to wake up, the other successors proceed with extra-judicial distribution of the inheritance. What legal concerns are present in this fact pattern, and how might the authorities respond?

2. João is a coffee farmer whose wife died many years ago. He owns a successful coffee plantation in Alieu. In his will he has granted his entire plantation to his two sons. In the distribution agreement between the two, it is decided that Rodrigo shall serve as head of the household for the plantation. The other brother does not live in Alieu, and it is difficult to split or sell the plantation. In addition, Rodrigo is an expert coffee cultivator. In fact, Rodrigo is so talented that the plantation quickly begins generating increased profits. Can Rodrigo keep all of these profits for himself?

#### Answers

1. The major legal concern is whether Luis will receive equitable treatment in the distribution since he is currently in the hospital. Since he cannot be present at the negotiations, and because the other successors do not like Luis, there is a serious risk that he will not receive

his fair share. In such a case, the State may intervene through the Office of the Public Prosecutor and either delay the distribution or assign someone to represent Luis.

2. No. Although Rodrigo is managing the plantation, he does not own it. He and his brother each own half. Rodrigo may keep his share of the profits and the portion necessary to cover the cost of maintenance and operation of the plantation, but the rest rightfully belongs to his brother. In order to follow the law, Rodrigo must inform his brothers of the condition of the property, and share the profits if his brother requests them.

## IV. LEGITIMATE SUCCESSION

### SECTION OBJECTIVES

- To define and explain when legitimate succession occurs.
- To identify what types of heirs are “legitimate” heirs.

The first type of succession we will explore is **legitimate succession**, which is very common in Timor-Leste. For example, in the Pinto family, the father – Hugo – has recently died. Hugo had a wife, several children, as well as, brothers, sisters. Hugo’s parents are also still alive. Hugo’s death was unexpected and, because he was fairly young, he never considered drafting a will.

Why is the fact that he never drafted a will important?

This fact is important because if Hugo had written a will, the family would have to follow **testamentary succession rules** (which we will explain later). Legitimate succession only occurs when the deceased had not made plans for how his or her property would be disposed of at the time of death. In these cases, the law has to decide who owns the deceased’s property by calling forth **legitimate heirs**. This is why this type of succession is called “Legitimate Succession.”

### The Civil Code of Timor-Leste

#### Article 1998: Opening of legitimate succession

If the deceased has not disposed of part or all of his or her...property...at the time of death in a valid and effective manner, legitimate heirs are called to the succession.

#### 1. Who Qualifies as a “Legitimate” Heir?

The first thing the law determines is who among Hugo’s large family has the strongest legal claim to Hugo’s property. Article 2000 describes a hierarchy of claims:

## The Civil Code of Timor-Leste

### Article 2000: Classes of persons entitled to inherit

(1) The order for calling heirs...is the following:

- (a) Spouse and descendants;
- (b) Spouse and ascendants;
- (c) Siblings and their descendants;
- (d) Other collaterals up to the fourth degree;
- (e) The State

What this “order” means is that the law must first ask, “Does the deceased have a spouse and descendants?” If so, the entire estate goes to the spouse and descendants (if they want it). If not, the law moves onto the next class of heirs, and so on. In other words, each class has a **right of preference** in relation to the classes of heirs below them in the list.

## The Civil Code of Timor-Leste

### Article 2001: Preference of classes

The heirs of each of the classes of persons entitled to inherit have *right of preference* in relation to the following classes (emphasis added).

So, who is entitled to have Hugo’s estate?

Since Hugo had a wife and several children, the law would grant them Hugo’s assets. But what would happen if Hugo had divorced his wife a year ago, and never had children with her? In that case, Hugo’s estate would go to his living parents (also called his **ascendants**). For more practice, you can try changing the composition of Hugo’s hypothetical family, and then identify who would be the most legitimate heir.

## 2. First Class: The Spouse and Descendants

Now we will look at the classes of heirs more closely. Firstly, a spouse and descendants have the strongest right to the deceased’s estate. For example, imagine that Hugo’s wife and three children are still alive after his death. His wife is named Odete, and his three children are

named Fernando, Manuel, and Carla. The law of succession tells us that Odete and her children receive Hugo's estate in equal parts.

### **The Civil Code of Timor-Leste**

#### **Article 2006: General rules**

(1) Sharing between spouse and children is done per capita, dividing the inheritance in as many parts as there are heirs; the share of the spouse, however, may not be less than one quarter of the inheritance.

(2) If the Author of the succession leaves no surviving spouse, the inheritance is divided among the children, in equal parts.

### **3. Second Class: The Spouse and Ascendants**

Imagine now that Hugo and Odete never had children. In this case, Odete would be considered part of the second class, along with Hugo's ascendants. This means a spouse can only be part of the first class if the couple also had children. If Hugo had never married or never had children, his entire estate would go to his parents. In the following excerpt be sure to notice how what percentage of the estate is given to the spouse and the parents.

### **The Civil Code of Timor-Leste**

#### **Article 2009: General rules**

(1) If there are no descendants and the Author...is survived by spouse and ascendants, *the spouse is entitled to two thirds of the inheritance, and the ascendants to the remaining third* (emphasis added).

### **4. The Lower Classes: Siblings, Collaterals, and the State**

Most cases of legitimate succession occur through the first two classes. However, in situations where the deceased does not have a spouse, children, or living parents, or none of these classes wants the estate, the law must look elsewhere.

**Siblings** may include full or half brothers and sisters. **Collaterals** are simply more distant relatives, such as aunts or cousins. Finally, if no legitimate heirs can be identified, or if none of the heirs want the estate, the State receives the inheritance.

## 5. Summary

Legitimate succession occurs when the deceased has not appropriately assigned some portion of his or her estate through a will. When this occurs, the law attempts to work around the deceased's silence by assigning the property to those heirs closest to him or her. Preference is almost always given to spouses and direct descendants (children and their descendants). However, since not everyone dies at a time when they have a spouse or descendants, the law will also consider other groups, such as parents or siblings. Ultimately, if none of these options are available, the State receives the inheritance and will dispose of it accordingly.

### Questions

1. Suppose Mariana, an unmarried, successful business woman passes away at the age of forty-three, but is survived by her parents, and three older brothers. A year earlier, Mariana's only daughter died during childbirth, but her daughter, Roselia, survived. Because Mariana does not have children or a spouse at the time of her death, who inherits her estate if she does not leave a will?
2. Jorge was orphaned at the age of sixteen, leaving him without parents or grandparents to care for him. From that point, he worked primarily as a deckhand on the Nakroma Ferry. Unfortunately, Jorge dies during a storm at a young age. Shortly afterward, it is discovered that Jorge has several thousand dollars in savings. It is also discovered that Jorge has two brothers and two half-sisters. What additional information would you need to know to make a proper legitimate succession? If this fact pattern mentions all of Jorge's known family relations, who receives his inheritance, and in what shares?

### Answers

1. Her granddaughter Roselia. Nothing in legitimate succession destroys right of representation. Mariana's granddaughter, as a descendant, remains a first-order legitimate heir, and is therefore entitled to the full inheritance since Mariana's daughter has died.
2. To execute a proper legitimate succession we would need to find out if there are heirs that have a right of preference to the siblings. This could only be a spouse, descendants, or ascendants. However, since Jorge is a true orphan, we know he does not have ascendants (parents). Therefore, we would need to figure out if Jorge had a wife or any children. If the fact pattern mentions all of Jorge's family relations, then his siblings would receive the inheritance, but not in equal shares. The shares of full siblings must be twice the size of the half siblings' shares.

## V. COMPULSORY SUCCESSION

### SECTION OBJECTIVES

- To introduce the definition and purpose of compulsory succession.
- To identify who qualifies for compulsory succession.
- To discuss exceptions to compulsory succession.

**Compulsory succession** is the second type of succession. It is concerned with the portion of the deceased's estate that he or she cannot dispose of through a will because it is already assigned to a rightful heir. To explain, let's look at another hypothetical family - the Da Silva family. Julio is the patriarch of the Da Silva family. He recently passed at the old age of eighty-six after a very happy life. Julio was a thoughtful man, and made sure he updated his will every couple of years. However, the rules of compulsory succession promise certain parts of Julio's estate to certain family members, regardless of what he has written in his will. This section explores those legal promises.

### The Civil Code of Timor-Leste

#### Article 2020: Compulsory legacy

The compulsory legacy is the portion of property that the testator may not dispose of, as it is legally destined for rightful heirs.

#### 1. Who are the Rightful Heirs, and What is their Fair Share?

Many types of family members identified in legitimate succession are **not** eligible for a compulsory legacy. For example, the law does not promise any portion of the deceased's estate to brother, sisters, aunts, cousins, and many other types of family members. Instead, only "the spouse, descendants, and ascendants are considered **rightful heirs**." Civ. Code Art. 2021. In addition, children of descendants are also eligible. For example, imagine that Julio had three children, but one of them, Rosario, passed away several years before Julio's death. Before

Rosario died, she has two children of her own. These children are rightful heirs to Rosario's share of Julio's estate. Notice, that this is another type of **right of representation**.

Identifying who qualifies as a rightful heir is actually the easy part. The difficulty comes in calculating each person's compulsory share of the estate. For example, the "compulsory legacy of the spouse and children, if there is competition [for the estate], is two thirds of the inheritance." Civ. Code Art. 2023. Under this Article, if Julio's will attempts to give away half of his estate to Colégio de São José in Dili, the law would not allow this. This is an example of a testamentary gift that would infringe on the rightful heirs' compulsory legacy.

There are many other subtleties in the calculation of compulsory legacies that we will not cover in detail here. Please review Articles 2026 – 2028 of the Civil Code for more information related to calculating compulsory legacies. For calculation issues related to the important area of gifts and donations please visit and Articles 2032 – 2042 of the Civil Code.

## 2. Exceptions to Compulsory Succession

There are two primary ways the Author can avoid compulsory succession: **(1)** By establishing a testamentary wish that the rightful heir accepts, or **(2)** proper disinheritance. Under the first exception, the **testator** (or the person who write the will) can inject into his or her will a wish, or preference, on how he or she would prefer to see their estate divided upon death. However, any of these preferences that infringe on the right of a compulsory legacy have to be accepted (or, at least not explicitly repudiated) by the rightful heir.

For example, imagine that Julio's widow and children all knew that the Colégio de São José in Dili meant a lot to Julio because he taught there for many years. As a result, they might decide not to repudiate Julio's wishes. In that case, as long as Julio's family does not affirmatively repudiate Julio's donation within a given period, the law shall respect Julio's **testamentary wish** to make the donation.

### The Civil Code of Timor-Leste

#### Article 2029: Testamentary wishes in lieu of compulsory legacy

...

- (3) If the heir, having been notified...makes no declaration [against the wish], the testamentary wishes are deemed to have been accepted.



The second way to avoid compulsory succession is through **disinheritance**. The law allows the Author to disinherit rightful heirs if those heirs commit certain actions. These actions are limited to serious offenses, such as criminal acts against the Author, the Author's family or property, or vicious slander or perjury against the Author. For example, if one of Julio's children was convicted of burning down Julio's home, the law does not want to force Julio to give his convicted child a share of his estate.

### 3. Summary

Rules of compulsory succession seek to protect the interests of those heirs traditionally closest to the deceased individual. Only spouses, descendant, and ascendants are eligible. These protections are recognitions by the law that many spouses, descendants, and ascendants rely on the deceased's estate for financial and personal security. If the deceased could simply will away these resources upon death, many families would be financially destroyed after the death of an income earner. However, these rules provide flexibility for families who wish to see their loved one's testamentary wishes fulfilled. That way, the families are not forced to give inheritance to a disgraced heir that has betrayed the deceased.

#### Questions

1. Tomas is an incredibly wealthy oil executive, but he passes away without ascendants. At the time of his death, Tomas was worth about \$2,000,000. He leaves behind an incredibly detailed will that makes several testamentary gifts to his favorite nonprofit institutions. He gave \$150,000 to UNTL, \$50,000 to the Tour de Timor cycling race, \$50,000 to the National Hospital, and \$400,000 to the Roman Catholic Church of East Timor. However, Tomas' spouse and children are furious about these gifts. Can they stop some or all of these gifts under the rules of compulsory succession?
2. Imagine that Diogo includes in his will a testamentary wish to grant half of his estate to his closest friend, Mateus. Diogo's wife, and two living daughters support this decision, even though Diogo's estate is not large. They support the wish because many years ago, Mateus saved Diogo's young family from the violent threats of a neighbor. Since then, Mateus' family has experienced very difficult financial constraints. Diogo and his family hope the testamentary wish would help return the favor and save Mateus' family. However, Diogo's son is dead and Diogo's grandson does not approve of this gift to the Mateus family. Can Diogo's grandson block this testamentary wish?

### Answers

1. No. Under compulsory succession, the spouse and children are guaranteed two-thirds of the inheritance. Here, Tomas is giving away \$650,000 total of his \$2,000,000 estate. These gifts still leave Tomas' rightful heirs with at least two-thirds of the estate. Maybe they can try to win some of it back in the Tour de Timor!
2. Yes. Again, we encounter the issue of the right of representation. Diogo's grandson, as a descendant, is one of the rightful heirs to Diogo's estate. So long as the grandson has not committed a serious offense against Diogo, he cannot be removed from the list of rightful heirs. Since the testamentary wish infringes on the compulsory heir's legal rights, and he does not accept it, the wish cannot be granted. If Diogo's family wants to help the Mateus family, there are some types of **trusts** that might be able to achieve the same ends (but these types of financial arrangements are not discussed in this paper).

## VI. TESTAMENTARY SUCCESSION

### SECTION OBJECTIVES

- To identify how to create a legally binding will.
- To identify the primary types of wills and the principle components of a will.

The final type of succession is **testamentary succession**. This area of the law governs the construction, interpretation, and application of an individual's written will. Many individuals, particularly older men and women, find that it is a good idea to create a will in order to communicate their wishes after they have died. Testamentary succession rules seek to make sure these wishes are appropriately interpreted and enforced by the law.

Testamentary succession is the final title in the book on succession laws, and it is the most complex. In this paper we will cover basic concepts of testamentary succession. We will focus particularly on what a will looks like, types of wills, the important components of a will, and how to execute a will.

#### 1. How to Create a Legally Binding Will

Unlike many other types of contracts, a will is a **unilateral document**, meaning there is no need for another individual to accept the terms written in the document. Additionally, any portion of the will can be changed by the **testator**. A testator is the person who executes a will. A person can only be the testator of his or her own will.

A will is a very person document that expresses an individual's wishes after they have died. Therefore, the will must be completed by the testator, with only technical assistance from other people. To be effective, a will must express "clearly and completely [the testator's] wishes." Civ. Code Art. 2044. This means the will's substantive portions cannot be written by another individual, vague and confusing language should be avoided and secret promises and unauthenticated documents are not allowed. A will cannot include grants to unidentifiable, unknown, or unspecified people. Any portion of the will that offends these rules is considered **null**. A portion of a will that is null is invalid.

In addition to being clear and complete, a will must be executed at a time when the testator has the capacity to do so. This means the testator must be of clear and competent mind and understand what he or she is writing. The testator must be an adult and cannot be suffering from a mental disorder. In addition, there exists a series of rules governing times of **limited capacity**, such as when a testator drafts the will during times of sickness. During these times, it is important to consider whether a conflict of interest might exist between the condition of the testator and the individual receiving a disposition from the will.

Let's look at an example of limited capacity/conflict of interest issues. Imagine that Santina is dying of an illness. She is currently being treated by doctors and nurses, and receiving spiritual guidance from a priest. She wants to draft a will before her death, so she consults the services of a notary. In her will, she leaves gifts for the doctors, nurses, priest, and even a gift for the notary. However, the law says these gifts are null and void. Why?

These gifts are null because they create conflicts of interest. The doctors, nurses, priest, and notary could use their closeness to the testator to inappropriately extract gifts from the dying individual. Receiving gifts also distort these people's professional incentives to give care to any person, regardless of how much wealth they have. Anyone assisting with a will, or providing professional care for a person during the time of drafting, should not receive dispositions from the will, unless they are also close family members.

## 2. Types of Wills

The most common types of will are: (1) **public wills**, and (2) **sealed wills**. Public wills are "written by a notary in his or her register book," and because of their public nature, they are the most secure. Civ. Code Art. 2068. Sealed wills are "written and signed by the testator or written by another person at the request of the testator and signed by the latter." Civ. Code Art. 2069. Even a sealed will needs to be approved by a notary, but it does not need to be entered into the register book. There also exists a variety of "**special**" wills, which attempt to address unusual situations where a testator may not have the ability to create a more common will. These include situations of war, wills made at sea, or wills made by Timorese in foreign countries.

### 3. Dispositions & Legacies

The actual contents of a will are usually called **dispositions**. Disposition refers to how the testator divides his or her estate up. For example, legacies (which you read about above) are a type of disposition that usually describes a particular gift to individuals or groups.

As a general rule, a testator is free to make any dispositions to any group or individual. However, there are also some restrictions. Several kinds of dispositions are null and void under the law if they are impossible to perform or offend public policy. For example, the testator cannot compel an individual to marry, move cities, or commit a crime as a condition to receive the inheritance. Can you think of any other obligations that are likely to be forbidden?

#### **The Civil Code of Timor-Leste**

##### **Article 2093: Impossible conditions, contrary to law, public order or offensive to good custom**

...

- (2) A condition contrary to law or public order, or offensive to good custom, is...considered as if it had not been written...

A testator can attach some conditions to a disposition. For example, the testator may request that if property given in the disposition is eventually sold, it will be sold to a particular person. Another example is if the testator requires that the property be managed in a way that does not ruin it for future successors. When thinking through any dispositional condition, it is important to ask whether the condition compels another person to perform some action. If so, ask whether that action is fair and just given the circumstances. In addition, be sure to seek guidance from the Civil Code.

Remember, legacies are *usually* dispositions of a discreet item or sum of money to a particular legatee. (We say “usually” because there are some examples of indeterminate things qualifying as a legacy, but they are not discussed in this paper). There are a variety of different rules for legacies, depending on who actually owns the thing being given away. When considering a legacy it is important to ask:

- 1) Did the testator own the thing, in part or in whole, at the time the will was signed?
- 2) Did the testator own the thing, in part or in whole, at the time of his death?

The first question helps us understand the intent of the testator, and second question helps us determine whether the testator has the power to give the gift away after death.

Let's look at an example: Joaquina, an early graduate of UNTL, has recently passed away. During her lifetime she collected many books, and wants to grant these books to the UNTIL library. If she owns this collection in full, and the value of the collection does not offend rules of compulsory succession, this legacy is most likely valid. However, what if half the books are actually owned by her husband? Or if, in the time between writing her will and her death, she sold the collection to another person? In these scenarios the legacy may be null and void.

Finally, it is typically the responsibility of the heirs, in their respective proportion, to fulfill the testator's legacy, and to incur all costs associated with fulfillment. However, like many areas of succession laws, this is simply a default rule. The testator retains the freedom to explicitly state otherwise in the will. For example, Joaquina may state in her will that UNTL is responsible for fulfillment, and may receive her collection of books only if they incur the cost of collecting and transporting them back to the university.

#### **4. Substitutions & Trusts**

The law allows testators to design a will that anticipates and plans for the occasion when a certain heir or legatee does not accept the inheritance. **Substitution** is the act of replacing an heir who does not or cannot accept the inheritance.

#### **The Civil Code of Timor-Leste**

##### **Article 2144: Concept**

- (1) ...[S]ubstitution occurs when the testator may replace by a certain other person the chosen heir when this person cannot or will not accept the inheritance.

Typically, a testator may simply say that co-heirs replace one another. For example if Joaquina has two sons, Jose and Antonio, she may say in her will that if one son does not accept the other son receives his portion. But, the Civil Code also allows testators to make very specific substitutions.

Now imagine that Joaquina decides to give her collection of books to Antonio, her youngest son, so he may develop a love for reading. However, Antonio currently lives abroad,

and spends most of his spare time watching Hollywood movies and playing video games. Joaquina is worried he will not accept this particular inheritance, but she wants to try anyways. Just to be safe, she lists UNTL as the substitute for Antonio. This substitution is permissible under the law, so long as the value of the books does not offend the rules of compulsory succession.

The other common form of substitution is **trustee substitution**, or more simply a “**trust**.” In a trust, the testator chooses a particular heir, or heirs, to hold and manage the inheritance for someone else. The heir or heirs managing the trust have certain duties they must fulfill, typically to make sure that the inheritance is not squandered, and is capable of benefiting future heirs or legatees (called **trustees**).

### **The Civil Code of Timor-Leste**

#### **Article 2149: Concept**

The term trustee substitution, or trust, is given to the disposition according to which the testator imposes on the chosen heir an encumbrance to conserve the inheritance, so that at the time of his or her...death it reverts to the hands of another; the heir charged with this is called the fiduciary, and trustee is the beneficiary of the substitution.

Now let's imagine Joaquina sets up a trust. What might that look like? She might assign the role of **fiduciary** to her son in Timor-Leste, and assign the value to her grandchildren or a favorite charity as the trustee. If Jose accepts, it would be his responsibility to ensure proper management of the estate, to use its assets only in furtherance of the trust, and to properly turn the trust over to the trustee at the time of his death.

## **5. Challenging a Will: Null, Annul, Revoke, or Expire**

Every will may be challenged, and any attempt by the testator to prohibit a legal challenge of his or her will is not permitted. A challenge, including a testator challenging his or her own will, can strike down a will entirely, or a portion of it. This is done by demonstrating that the will, or a portion of it, does not meet the requirements of the law, and is therefore **null**. A testator may also revoke his or her will, either expressly by saying so in writing, or tacitly by creating a new will that conflicts with the prior will. Finally, a particular disposition of a will can

simply expire if the disposition becomes impossible or the disposition is not accepted by the person(s) called to the succession.

## **6. Executing the Will: the Testamentary**

The **testamentary** is the individual, or group of individuals, responsible for “observing the fulfillment of...all or part of [the will].” Civ. Code Art. 2181. The testamentary must be legally competent to perform these duties, and expressly or tacitly accept to perform them. His or her responsibilities may include making funeral arrangements, overseeing the execution of all dispositions, and possibly the fulfillment of legacies and sale of property. The testator has the ability to define the scope of the testamentary’s lawful responsibilities.

## **7. Summary**

The will is the only means for the deceased to legally communicate their wishes. To execute a proper will, a competent adult testator must complete its substantive portions. In addition, its component pieces must be written in clear and complete language. While the law gives testators freedom in drafting their will, the will cannot make demands that are impossible or beyond the scope of what is legal. Testamentary law also allows testators to account for uncertainties in the form of substitutions, or provide for future generations or causes through the formation of trusts. This flexibility in the law allows individuals to effectively transfer their property after death, while also considering the other people affected by the testator’s death.

### **Questions**

1. Suppose you are a lawyer specializing in wills. However, one day you are informed that one of your best friends is dangerously ill. Your friend calls you to the hospital to assist her in developing a will? Upon your arrival, you discover that your friend is of competent mind, but her body is very weak from the illness. As you begin to discuss the details of her will, she instructs you that she wants to leave you a part of her estate because you are one of her closest friends. Does this present a conflict of interest? What should you do as a lawyer and a friend?
2. Joaquina writes in her will that UNTL is responsible for fulfillment, and may receive her collection of books only if they are responsible for the cost of collecting and transporting the books back to the university. Can she request this as a condition of her inheritance?



3. Imagine Leonor sets up a trust to benefit her only grandchild, who she is very close to. She assigns her oldest daughter, Carla, the role of fiduciary. The principle value of the trust is based on an expensive home on a hill above Dili. After Leonor's death, Carla moves into the house. Has Carla violated her obligations as fiduciary?

### **Answers**

1. The Civil Code does not have a specific article for legal professionals similar to the one for doctors or priests. However, the spirit of the law suggests that those assisting the sick in drafting a will should not benefit from the will. Therefore, as a precaution, it may be advisable for you to recommend to your friend that she find another expert in wills, or remove you from her will.
2. While some conditions are explicitly forbidden in the code, unique situations such as this will not have a direct answer in the Civil Code. You have to ask yourself, is this condition fair and just? If Joaquina lives in Dili, or nearby, it seems completely reasonable to ask the University to collect and transport the gift if they want it.
3. No, as long as she is not doing any damage to the value of the home. It is the fiduciary's responsibility to conserve the inheritance. However, this does not forbid the fiduciary from enjoying the trust while he or she is managing it.

## VII. REVIEW

### SECTION OBJECTIVES

- To review the procedural timeline of a succession.
- To review the legal rights and obligations of successors.
- To review legitimate, compulsory, and testamentary types of succession.

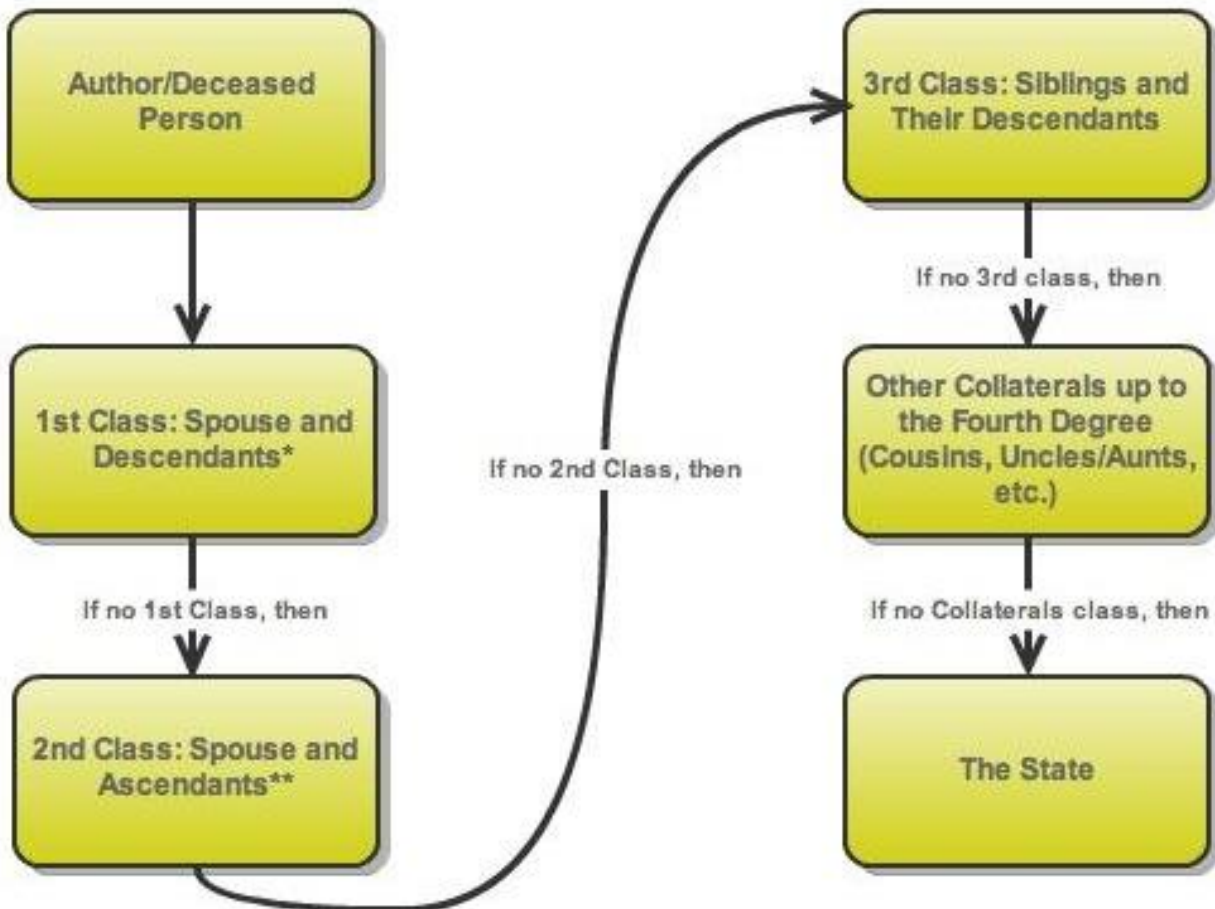
In this chapter we introduced the law of succession. This law is the means by which the law distributes a deceased person's property. We first explored a typical timeline of assigning an inheritance to successors. This process begins at the death of the Author. After that event, all appropriate successors, both heirs and legatees, need to be summoned. After considering issues of capacity and representation, all successors are given the choice to accept or repudiate the inheritance. Next, we explored what happens after the initial assignment of the inheritance. We focused on the many burdens of being a successor, including the obligation to address all liabilities attached to the property, and to legally distribute and manage the inheritance.

In the following sections, we saw that there are three types of succession: legitimate, compulsory, and testamentary. Legitimate succession occurs whenever the deceased does not account for the disposition of his or her estate. For legitimate succession, it is essential to determine the rights of preference between the various classes of legitimate heirs. Compulsory succession seeks to protect the inheritance of rightful heirs, even over the testamentary wishes of the testator. Only certain family members are eligible for this protection, but the law is sufficiently flexible to allow families to maneuver around compulsory succession if they choose. The final and most complex area of succession law is testamentary succession. We only learned the basics of this complicated area of law. Particularly, testamentary law seeks to provide the deceased a means to communicate their wishes, but these wishes are limited by other public interests.

Again, we encourage you to read Book V of the Civil Code in its entirety to gain a deeper understanding of the Law of Succession. Also note that other areas of the Civil Code affect succession laws, particularly family law. Finally, other statutes, such as the Public Prosecutors Code, impact aspects of succession laws.

Before reviewing the last Question and Answer section, we have provided a few succession charts/tables for quick reference. However, remember that each succession presents unique challenges. These charts/tables should not be considered examples of the only way succession can happen.

### Legitimate Succession Chart



\* A surviving spouse is entitled to at least 1/4th of the Estate.

\*\* A surviving spouse is entitled to at least 2/3rds of the Estate.

### Minimum Compulsory Legacies Table\*

Type of Heir**	Compulsory Legacy
Spouse + Descendant	At least 2/3rds of the inheritance.
Spouse without Descendants	At least 1/2 of the inheritance.

<b>or Ascendants</b>	
<b>Descendants without Spouse</b>	At least 1/2 or 2/3rds of the inheritance, depending on whether there is only one child, two children, or more.
<b>Spouse + Ascendants</b>	At least 2/3rds of the inheritance.
<b>Ascendants</b>	At least 1/2 or 2/3rds of the inheritance, depending on whether parents or grandparents are called.

\* Only the spouse, descendants, and ascendants are eligible for Compulsory Succession.

\*\* Remember to always consider the **right of representation** when determining types of heirs.

### Questions

1. Can you state the order of legitimate heirs?
2. What is the difference between an heir and a legatee?
3. Why is it necessary for a descendant wishing to participate in a succession to return all donations given to him or her by the Author?
4. Which rightful heirs may qualify for compulsory succession?
5. What can an Author or testator do to prevent a rightful heir who has committed a violent crime from inheriting her assets?
6. Who may assist a terminally ill individual in crafting a will?

### Answers

1. The order of legitimate heirs is: spouse and descendants, spouse and ascendants, siblings and their descendants, other collaterals up to the fourth degree, and the State.
2. While both are types of successors, an heir is a successor that receives the deceased's estate in full (or a percentage if there is more than one heir). By contrast, a legatee receives only a specific asset or amount of money. An heir may also be a legatee, but a legatee cannot be an heir.
3. The descendant must return the donation because it remains a part of the deceased's estate. It is not the property of the descendant (also called a **donee**). In order to be a good faith participant in the succession, the heir must return any and all donations, because all

participating successors share interest in the entire estate. The act of returning the donation is called collation. Try to remember the borrowed truck example we used above when thinking about collation.

4. Only the spouse, descendants, and ascendants are considered rightful heirs.
5. In the case of legitimate succession, the rightful heir no longer meets the requirements of capacity because of the crime committed. In the case of compulsory succession, the rightful heir is subject to an exemption, and no longer a rightful heir. In testamentary succession, the rightful heir can be disinherited.
6. Anyone not receiving benefits from the will can help. Even the doctor, priest, or notary may assist in drafting the will. A conflict of interest only presents itself if the will includes a disposition granting assets to one of these professionals.

## GLOSSARY OF SELECTED TERMS

**Ascendant:** All the direct ancestors of a specific person (for example, the Author's parents, grandparents, and great-grandparents).

**Author/ Deceased:** The Author is the deceased individual whose assets are being divided in the will. The terms "author" and "deceased" are used interchangeably in this paper.

**Descendant:** All persons that are descended from a specific ancestor (for example, the Author's children, grandchildren, and great-grandchildren).

**Disposition:** The specific ways in which a will distributes the deceased's property.

**Encumbrance:** Any burden or obligation attached to a piece of property.

**Estate:** In this paper, an estate is all the real property and assets a person owns at the time of his or her death.

**Heir:** A type of successor that receives the deceased's estate in-full (or a percentage if there is more than one heir). Heirs are almost always children or other close relatives of the deceased. An heir cannot be identified until the time of the Author's death. Before that point the Heir is merely an heir-apparent, and becomes an heir only if she outlives the Author.

**Legacy:** The gift of a specific thing or amount of money to another person (called the legatee).

**Legatees:** A type of successor that receives a specific amount of assets when the Author dies. This is usually according to a provision in the will.

**Null/Annul:** To find something invalid or improper, and to subsequently treat it as though it never existed.

**Right to Representation:** The principle that the rightful heirs of an individual who has died may still inherit the portion of an estate that the dead person would have received if he or she were still alive.

**Successors:** Those individuals entitled to the assets of the Author.

**Testator:** The person who executes a will. You can only be the testator of your own will.

**Usufruct:** Although we do not cover this concept in detail in the paper, it appears in many places in the Law of Succession. Usufruct is the right an individual has to use and enjoy the property of another, provided its substance is neither impaired nor altered