

**SUMMARY OF CHANGES MADE BY
COMPREHENSIVE REVISION OF SUCCESSIONS BILL (Acts 1997, No. 1421)**

General

Went generally into effect on July 1, 1999. **(Query: What does this mean? Suppose someone died prior to July 1, 1999. Does that mean that the rights of a person disclaiming on or after July 1, 1999 will be governed by the law in effect on the date of the decedent's death (since this is the effect of a valid renunciation for tax and non-tax purposes)? Or will those rights be governed by the law in effect on the date of disclaimer? If the latter, is the disclaimer valid for tax purposes because of a choice of recipient (where the will was silent)? We think that substantive rights dictate that the law in effect as of the date of death must govern. However, with respect to "probate," we think that a will executed prior to July 1, 1999 where the decedent also dies prior to that date may be "probated" pursuant to the new rules.**

No more commorientes. The decedent will be deemed to have survived the legatee or heir (Comment g to CC 935) **(Query: Is CC 31 really authority for this article? Query: could this be altered by will if it would assist the estate plan?)**

Seizin applies to all legatees (including particular legatees) (CC 936)

Unworthiness [Outline, pp. 11-12]

An action to prove an heir unworthy must now be brought in the succession proceeding, instead of as a separate proceeding (CC 941)

No presumption of forgiveness or reconciliation in unworthiness--must be proven (CC943) **(N.B. If client wants them forgiven, change will or acknowledge forgiveness in writing)**

The action to declare someone unworthy must be brought only by one who would succeed in place of or in concurrence with the successor to be declared unworthy, or by one who claims through such person (CC 942)

Prescriptive period on action for declaration of unworthiness is five years from date of death in an intestate succession and five years from the probate of the will as to testate successors (CC 944) **(Query: When is a will that doesn't have to be probated deemed to be "probated" for this purpose? There are several places in which some areas which revolve around "probate" need to be given some thought)**

Unworthy folks can't be fiduciaries in decedent's estate (CC 945)

Bequests to persons declared unworthy pass pursuant to the accretion rules in the will or, in the absence thereof, the rules prescribed in the Civil Code (CC 946)

In an intestate succession, the unworthy person is deemed to have predeceased the decedent (CC 946)

Neither the person who is declared unworthy nor the other parent of a child to whom succession right accreted via the declaration of unworthiness may claim the parental usufruct under CC 223 (CC 946) **(This rule seems a bit harsh—we understand the “hang around with dogs and you’ll get fleas”-“guilty by association”-“can’t allow one to do indirectly what one couldn’t do directly” arguments, but it seems without justification to penalize even a parent who is no longer married to the unworthy parent (no doubt having also been declared maritally unworthy), especially when now children are forgiven the sins of unworthy parents (and family is forever) when marriage sometimes is until something better comes along-What about amending CC 946 to provide for loss of parental usufruct for a *spouse-parent* of a person who is declared unworthy? Of course, in such a situation, one may find “divorce in anticipation of parental usufruct” coming into vogue, but the situations admittedly would be rare)**

Acceptance and Renunciation [Outline, pp. 12-13]

A minor’s legal representative may renounce only with court approval (CC 948)

A legacy that is subject to a suspensive condition may be accepted or renounced either before or after fulfillment of the condition (CC 953)

All successors are presumed to have accepted (CC 962)

For good cause a successor can be compelled to accept or renounce (CC 962) **(In the forced heirship context, why not create a procedure to force persons who could be forced heirs to come forward to whether they are or aren’t forced heirs, even if they don’t ever assert their rights as forced heirs?)**

A person who renounces a right in an intestate succession is presumed to have predeceased the decedent (CC 964)

Rights of an intestate successor who renounces accrete to those who would have succeeded if the renouncing heir had predeceased the decedent (instead of to the co-heirs of the same degree as the renouncing heir as was previously the law) (CC 964)

Rights of a person who renounces a legacy pass pursuant to the will, and in the absence of any contrary provision in the will, to the renouncing person’s heirs (and not to heirs in the same

degree as the renouncing person as under prior law), by roots (CC 965) Unlike accretion for any reason other than on account of renunciation, the renunciation accretion rule is not limited to children or siblings; the renounced property passes to the renouncing legatee's descendants (not to the co-heirs in the same degree as the renouncing legatee), unless the will provides otherwise (N.B. H.B. 1781 of the recently concluded 1999 Regular Session would have repealed this change, but failed to get out of the House)

Can accept or renounce accretion differently from acceptance/renunciation of the main legacy/inheritance (CC 966) **(This will require careful work in drafting renunciations so as not to create adverse tax consequences or from unexpected accretions due to timing of execution of renunciation-Example: Childless children want to renounce so that surviving parent, who is the universal legatee, gets it all-Child A renounces first but the renunciation is silent as to future accretions-All passed to Child B, who renounces but fails to expressly dispose of all accretions by way of renunciation to Child B-Did either child completely renounce? This will give real estate brethren fits)**

Renunciation must be in writing and does not require an authentic act (but still should use authentic act where real estate is involved) (CC 963)

In "I love you" will, if spouse wants to partially renounce in order to allow usage of the unified credit against federal estate taxes in the deceased spouse's estate, upon renunciation, absent any contrary direction in the will, the spouse's rights will accrete to the *spouse's heirs*, who may not be the same people as the decedent's heirs, so that if the surviving spouse has heirs who are different than the decedent's heirs, they too will have to all renounce if anything is to be salvaged. This must be carefully provided for by will

Former CC 1031, which previously permitted renunciations to be revoked in certain situations, has not been continued, although there is no express mention of the effect of its deletion in the new articles, the comments to the articles or in the cross-references; thus, prudence dictates that the former practice of renouncing rights to revoke renunciation should be continued

Query: Under the new regime, may children (or other heirs) renounce rights either in intestacy or via a will to get either separate or community property to a surviving spouse a la CC 889 (community property) or 894 (separate property), which would especially helpful either to ameliorate the effects of dying intestate (especially as to separate property) or to get an estate tax marital deduction? One commentator, John C. Blackman, Esq., says no as to both separate and community property, at least in the context of the federal estate tax marital deduction, because of repeal of CC 1022, on which the Louisiana Supreme Court relied in *Paline v. Heroman*, 29 So. 2d 473 (La. 1947). See, "Usufructuary Accounting: QTIP, non-QTIP and TPT Credit," *29th Annual LSU Estate Planning Seminar*, pp. 6-7. We're not so sure about his conclusion since CC 889 and 894 both remain in the Civil Code. The new law will raise the bar of difficulty in this regard and will put a somewhat higher premium on drafting

in anticipation of disclaimer.

Estate Debts; Allocation of Fruits and Products [Outline, pp. 7-10]

Whole new set of provisions relating to “estate debts,” which are defined as “debts of the decedent” which in turn is defined as “obligations of the decedent or those that arise as a result of his death” **(Query: Are estate taxes included within the definition of debts of the decedent?—estate taxes certainly could be construed to arise as a result of death)** and “administration expenses,” which are defined as “obligations incurred in the collection, preservation, management, and distribution of the estate of the decedent” (CC 1415-1429) Lots of new concepts here, so they should be read carefully **(Query: Do these rules conflict with and possibly override the Louisiana Estate Tax Apportionment Act provisions unless the will expressly says to the contrary or provides alternative rules for allocation of estate taxes?)** **(Query: What is the impact, if any, of a statement in the will that the testator’s “just debts be paid” on the applicability of these articles?)** **(Is this a properly delegable power to the succession representative?)**

Wills and Legacies [Outline, pp. 1-7]

Wills are no longer invalidated by subsequent birth or adoption of a child **(Be careful here and should probably still add this to wills)**

Public and private nuncupative wills and mystic wills are gone pecans; the only two types of wills are olographic and notarial **(essentially the old statutory will with a twist, that at long last has been accorded codal status after having “slummed it” for years with the hoi polloi in the Revised Statutes)** (CC 1574-1581)

Testator may confer upon executor the authority to allocate specific assets to satisfy a legacy expressed in terms of a quantity or value (CC 1572)

Testator can confer upon executor the power to pick charities or charitable trusts and even impose conditions on the legacies (Query: Is CC 1572, despite its breadth, as broad as LSA-R.S. 9:2271, which, in the context of a wholly charitable trust, permits a settlor to grant to a trustee the authority to *create* the beneficiary? One would have to say that, as a matter of statutory interpretation, there is a serious question as to whether a testator could validly grant to an executor under CC 1572 the authority to allocate to a charity not in existence as of the testator’s death (CC 939-a successor must exist at the death of the decedent)

The fact that a witness or the notary is a legatee does not invalidate a will. However, although the legacy to an unrelated witness or to even a related notary will be invalid, a witness “who would have been an heir by intestacy” will get the lesser of intestate share or the legacy (CC1582) **(Query: What happens if a collateral relative gets a small bequest but**

serves as a witness and her intestate share absent renunciation is zero (because others are ahead of her)? The lesser of a bequest of something or zero is always zero (We suggest a revision of this rule with some *de minimis* level (e.g., \$2,500))

Legacies are now either particular, general or universal (CC 1584) **(Other than taking the word “universal” out of the general legacy nee legacy under universal title, is there really any improvement?)**

A universal legacy is a disposition of all of the estate, or that which remains after particular legacies (CC 1585)

A general legacy is a fractional bequest or any other bequest “of a certain proportion” of an estate (which should cover pecuniary legacies), or a fraction of the balance of the estate that remains after particular legacies, as well as all, a fraction or a certain proportion of any **one** of the following categories of properties: separate property, community property, movable property, immovable property, corporeal property or incorporeal property (CC 1586)

A will could comprise (1) nothing but particular legacies (unlikely but theoretically possible), (2) nothing but one or more universal legacies, (3) one or more particular legacies followed by one or more universal legacies, (4) one or more general legacies or (5) one or more particular legacies followed by one or more general legacies **(This list appears to be exhaustive, since there can not be a universal legacy in a will in which there also is a general legacy-Comment (a) to CC 1585)**

Test your skill of the new types of legacies and decide whether the following legacies are particular, general or universal:

I give my estate to Bill _____

I give to Bill an amount which shall equal the maximum marital deduction available under the federal estate tax laws, reduced by the amount of federal estate tax credits (but without increasing the credit for state death taxes paid) as well as deductions available to my estate under IRC Sec. 2057 and exclusions from federal estate tax available to my estate under IRC Sec. 2031(c) _____ and I give the remainder of my estate to my children, in equal portions _____

I give to Bill a proportion of my estate which shall equal the maximum marital deduction available under the federal estate tax laws, reduced by the amount of federal estate tax credits (but without increasing the credit for state death taxes paid) as well as deductions available to my estate under IRC Sec. 2057 and exclusions from federal estate tax available to my estate under IRC Sec. 2031(c) _____ and

I give the remainder of my estate to my children, in equal portions _____

I give my vehicles to Sparky _____ I give to Bill the
remainder of my movable property _____ and I give the remainder of
my estate to the Church of Now _____
I give one-half of my vehicles to Sparky _____

I give three vehicles to Sparky, and I give my executor the authority to select from my
vehicle fleet at the time of my death the vehicles to be allocated to Sparky
_____. Extra Credit: Is this a valid delegation of the
authority to allocate? _____

I give one-half of my vehicles to Sparky _____

I give one-half of my tangible personal property to my wife _____
I give all of my real estate to Reverend Billy Joe Bob Jumpback _____

I give all of my MegaCorp stock, which constitutes my separate property because I
inherited these shares from my schoolmate, Pongo Twistleton-Twistleton, to Morris _

I give to Morris one-half of my separate property, which happens to consist solely at
this time of my stock in MegaCorp, which I inherited from my late Aunt Dahlia from
Brinkley Court _____

Extra Credit: What if the MegaCorp stock was really not his separate property, but
rather community property _____

I give my estate to Jeeves and to Anatole _____ **Last Gasp at**
Extra Credit: Is this bequest joint or not? _____

Last Last Gasp at Extra Credit: What is the name of the author whose
characters were featured above? _____

A will can be revoked by a writing that is entirely written and signed by the testator, but need
not be dated (CC 1607)

Bequests to and appointments of ex-spouses are revoked unless you expressly provide to the
contrary (CC 1608) **(There obviously will be times when one will want to provide to the
contrary) (N.B. This is inapplicable to beneficiary designations)**

A will governs the property that the testator has at time of death **(Instead of what the testator
had at the time of execution of the will, which was the former rebuttable default rule)**

(CC 1614)

Attestation clauses in notarial wills come in all varieties, but now the testator does not have to sign the attestation clause (this is similar to common law-UPC) (CC 1577-1580.1)

Accretion [Outline, pp. 11-15]

General rule as to joint legacies and separate legacies swallowed by exception (CC 1591-1593)

Accretion where legacies lapse is governed by a will, and in the absence of any such provision relative to lapse, goes differently depending upon whether the legatee is a child or sibling of the testator or a descendant of a child or sibling of the testator and whether the lapse is by reason of renunciation or some other reason; if the legatee is a child or sibling of the testator or a descendant of a child or sibling of the testator and the lapse is caused other than by renunciation, then the legatee's descendants by roots who were in existence at the testator's death take the accretion, even as to lapsed legacies (CC 1593) **(the renunciation accretion rules are set forth in CC 965, and those rules are different)**

Broad anti-lapse provision, which now prefers residuary legatees over intestacy (CC 1595)

Rights to Fruits and Products [Outline, pp.15-16]

One no longer has to have made demand for delivery of a legacy to start the clock running on a legatee's rights to fruits (Comment (i) to CC 1598)

Legatees of "a specified amount of money" and who are not trusts in which the surviving spouse has an income interest for life or naked owner/usufructuary arrangements where the surviving spouse is a usufructuary for life are entitled to interest "at a reasonable rate," beginning one year after the testator's death, but the executor may, on contradictory hearing, obtain an extension before interest begins to accrue **(Query: Presumably, a testator could provide otherwise, although CC 1598 is silent on this point)(While Comment (k) to CC 1598 outlines two situations where estate tax concerns militate toward a requirement that the legatee be entitled to the fruits from the date of the decedent's death, these situations both seem to assist only a surviving spouse bequest—what about Treas. Reg. Sec. 26.2642-2(b), which requires, for GST Tax valuation purposes, that certain bequests carry "appropriate interest," which, if interest is appropriate, will permit full usage of the estate tax value of the bequest to be used as the denominator of the "applicable fraction" for GST Tax purposes, but, if interest is not appropriate, the estate tax value is reduced by the present value of a payment computed using the IRC Sec. 7520 rate)**

Probate Procedure [Outline, pp. 16-18]

Statutory, nuncupative by public act and notarial wills are now self-proving, and no affidavits in support are required; court is simply to order that the testament be “filed and executed,” which is “given the effect of probate” (**How does LSA-R.S. 9:5643, which provides for a five year prescriptive period for “probating” wills, work with respect to wills that no longer require “probating”?**) (CCP 2891 and 3031)

Disinherison

Disinherison now is available for any “just cause,” which is no longer limited to the enumerated reasons set forth in the Civil Code (CC 1494, not amended by Acts 1997, No. 1421, but by repeal of CC 1617-1624)

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SCHEDULE FOR ELEVENTH ANNUAL FAMILY WEALTH CONFERENCE (All Cities)

- 7:30-8:15 **Registration**
- 8:15-10:00 **Recent Developments in Estate Planning.** A comprehensive, integrated review of the past year's state law and tax decisions and rulings and federal and state legislation and trends impacting estate planning, and how those items fit into everyday practice.
- 10:00-10:15 **Break**
- 10:15-11:50 **Recent Developments** (concluded)
- 11:50-1:20 **Lunch** (on your own)
- 1:20-2:50 **Drafting and Living Under the New Succession Laws.** The Legislature passed a comprehensive revision of the laws of succession in 1997, but it didn't go into effect until July 1, 1999. What's really different? How will succession forms and wills have to change? We'll review what is different. **With forms!**
- 2:50-3:10 **Break**
- 3:10-4:00 **Practical Valuation Tips and Traps.** Our clients have to live and die with the appraisers and their reports for federal estate and gift tax purposes. The case law is replete with obvious and not-so-obvious issues regarding valuation experts and their reports—some justified and some not so justified. We will chronicle the mistakes (alleged and actual) of others to create a checklist of items to bear in mind.
- 4:10-5:00 **Back to Drafting Basics.** What about drafting wills and trusts on a daily basis? We'll review basic tax and non-tax drafting considerations and cover a few "gotcha" areas to avoid. **With forms!**