# Louisiana Law of Successions and Donations, A Précis

#### LOUISIANA CIVIL CODE PRÉCIS SERIES

Louisiana Law of Conventional Obligations Alain Levasseur 2d Ed. 2015

Louisiana Law of Obligations in General *Alain Levasseur* 4th Ed. 2015

> Louisiana Law of Property John Randall Trahan 2012

LOUISIANA LAW OF SALE AND LEASE Alain Levasseur & David Gruning 3d Ed. 2015

Louisiana Law of Security Devices Michael H. Rubin 2d Ed. 2017

Louisiana Law of Successions and Donations Elizabeth R. Carter 2021

> Louisiana Law of Torts Frank Maraist 2010

# Louisiana Law of Successions and Donations, A Précis

Elizabeth R. Carter

A.N. Yiannopoulos Professor of Law Judge Anthony J. Graphia and Jo Ann Graphia Professor of Law Louisiana State University



Copyright © 2021 Elizabeth R. Carter All Rights Reserved.

ISBN: 978-1-5310-1580-0 eISBN: 978-1-5310-1581-7 LCCN: 2020951239

Carolina Academic Press

700 Kent Street Durham, North Carolina 27701 Telephone (919) 489-7486 Fax (919) 493-5668 www.cap-press.com

Printed in the United States of America

#### To H.B.W., A.J.S., and S.F.R.

To my students.

## Contents

About the Author	xix
Acknowledgments	xxi
Chapter 1 · Scope of Louisiana's Successions and Donations Laws	3
Article 1: What Is Succession?	3
§ 1.1.1 The Meanings of Succession	3
§ 1.1.2 Successions Are Not Persons	4
a. Sources of Confusion	4
b. Significance of the Distinction	4
Article 2: Jurisdictional Reach of Louisiana Laws, Conflict of Laws	5
§ 1.2.1 Movables	5
§ 1.2.2 Immovables	5
a. Immovables Situated in Louisiana	5
b. Immovables Situated in Another State	6
Article 3: Non-Probate Property	6
§ 1.3.1 Probate/Non-Probate Divide	6
a. Probate Property, Generally	6
b. Non-Probate Property, Generally	6
§ 1.3.2 Non-Probate Property Governed by Form of Title	6
§ 1.3.3 Probate Property Governed by Beneficiary Designation	7
§ 1.3.4 Life Insurance	7
§ 1.3.5 Federal Preemption	8
§ 1.3.6 Special Problems with Financial Assets	8
Article 4: Kinds of Successions and Kinds of Successors	9
§ 1.4.1 Kinds of Successions	9
a. Intestate Successions	9
b. Testate Successions	9

c. Mixed Successions	10
§ 1.4.2 Kinds of Successors	10
Article 5: Comparison to the Common Law	10
Chapter 2 · Transmission and Seizin: Civil Code Articles 934–938	13
Article 1: Transmission	13
§ 2.1.1 Meaning of Transmission	13
§ 2.1.2 Transmission in the Civil Code	14
Article 2: Seizin	14
§ 2.2.1 Etymology	14
§ 2.2.2 Development of Legal Concept	14
§ 2.2.3 Seizin in Current Louisiana Law	15
§ 2.2.4 Possession Rights	16
Chapter 3 · Intestate Succession: Civil Code Articles 880–901	19
Article 1: Basic Features of Intestacy	19
§ 3.1.1 Origins	19
§ 3.1.2 Division between Community Property	
and Separate Property	20
§ 3.1.3 General Scheme	20
a. Family Trees in General	21
b. Counting Degrees in General	22
c. Counting Degrees: Direct Line	22
d. Counting Degrees: Collateral Line	24
e. Counting Degrees: Siblings and Their Descendants	25
f. Generation Assignments in Other Legal Systems	25
§ 3.1.4 Representation	26
a. "Per Stirpes" Method of Representation	26
b. Unresolved Issue	27
§ 3.1.5 Adoption	28
a. Inheritance Rights of Adopted Persons	28
b. Stepparents	28
c. Equitable Adoption	29
Article 2: Intestate Succession of Community Property	29
§ 3.2.1 Decedent Survived by Surviving Spouse	
(but Not by Descendants)	29
§ 3.2.2 Decedent Survived by Surviving Spouse and Descendants	29
Article 3: Intestate Succession to Separate Property	30
§ 3.3.1 Order of Inheritance, Overview	30

§ 3.3.2 Descendants	30
§ 3.3.3 Parents and Siblings (and Their Descendants)	31
a. Decedent survived by Siblings (but Not by Parents)	31
b. Decedent Survived by Parents (but Not by Siblings)	31
c. Decedent Survived by Parents and Siblings	31
d. Half-Siblings	32
§ 3.3.4 Surviving Spouse	33
§ 3.3.5 Other Ascendants	34
a. Example 1: Decedent Survived by B, C, X, and W	35
b. Example 2: Decedent Survived by C and W	35
§ 3.3.6 Other Collaterals	36
§ 3.3.7 Rights of the State	36
Article 4: Right of Return of Ascendants	36
§ 3.4.1 Policy and Origins	36
§ 3.4.2 General Operation of Article 897	37
a. Immovable Sold before Death	37
b. Effect of Encumbrances and Debts	38
Chapter 4 · Status as a Successor: Civil Code Articles 939–940	39
Article 1: Significance of Other Laws	39
Article 2: Successor Must Be in Existence at Time of Decedent's Death	39
§ 4.2.1 General Requirements of Existence	39
§ 4.2.2 Commencement and End of Juridical Personality	40
§ 4.2.3 Commencement and End of Natural Personality	40
a. Unborn Children	40
b. Timing of Death of Natural Persons	41
c. Missing and Absent Persons	42
Article 3: Applicable Conflict of Laws Provisions	43
§ 4.3.1 General Rule	43
§ 4.3.2 Special Rule for Louisiana Immovables	43
Chapter 5 · Unworthiness: Civil Code Articles 941–946	45
Article 1: General Rules	45
Article 2: Specific Effects of Declaration of Unworthiness	46
§ 5.2.1 Loss of Succession Rights	46
§ 5.2.2 Return of Property or Its Value	46
§ 5.2.3 Return of Property Transferred by Gratuitous Title	47
§ 5.2.4 Protection for Parties Who Acquire Property	
by Onerous Title	47
§ 5.2.5 Fiduciary Positions	47

ix

Article 3: Judicial Process Required	48
§ 5.3.1 Right to Bring the Action	48
§ 5.3.2 Prescription	49
§ 5.3.3 Affirmative Defenses	49
a. Reconciliation and Forgiveness	49
b. Other Affirmative Defenses	49
§ 5.3.4 Comparison to Common Law	50
Chapter 6 $\cdot$ Acceptance and Renunciation: Civil Code Articles 947–968	51
Article 1: General Rules	51
§ 6.1.1 Acceptance or Renunciation in Part or in Full	51
§ 6.1.2 Minors Deemed to Accept	51
§ 6.1.3 Timing, Generally	52
a. Timing, Suspensive Conditions	52
b. Timing, Coordination with Seizin	53
Article 2: Acceptance	53
§ 6.2.1 Form of Acceptance	53
a. Formal Acceptance	53
b. Informal Acceptance	54
c. Donative Renunciation Deemed Acceptance	54
§ 6.2.2 Presumption of Acceptance	55
§ 6.2.3 Effect of Acceptance	55
Article 3: Renunciation	56
§ 6.3.1 Form Required	56
§ 6.3.2 Accretion upon Renunciation	56
§ 6.3.3 Acceptance or Renunciation of Accretion	56
Article 4: Creditor's Rights	57
Chapter 7 $\cdot$ Donations, Generally: Civil Code Articles 1467–1469;	
1541–1551; 1570; 1573–1583	59
Article 1: Types of Donations	59
§ 7.1.1 Donation Defined	59
§ 7.1.2 Donations Inter Vivos	59
§ 7.1.3 Donations Mortis Causa	60
Article 2: Donative Intent	60
§ 7.2.1 Donative Intent: Inter Vivos Donations	60
§ 7.2.2 Testamentary Intent	61
Article 3: Donation Inter Vivos, Form	62
§ 7.3.1 Authentic Act	62
§ 7.3.2 Exception for Manual Gifts	63

CONTENTS	
CONTENTS	

§ 7.3.3 Exception for Certain Incorporeal Movables	63
§ 7.3.4 Special Issues Relating to Bank Accounts and Financial Assets	64
a. Electronic Transfers	64
b. Joint Bank Accounts	64
Article 4: Donation Inter Vivos, Acceptance	66
§ 7.4.1 Acceptance Required	66
§ 7.4.2 Timing of Acceptance	66
§ 7.4.3 Form of Acceptance	66
§ 7.4.3 Special Acceptance Rules	67
a. Acceptance by Mandatary	67
b. Acceptance by Creditor Prohibited	67
c. Unemancipated Minors	67
d. Acceptance Is Subject to Existing Charges	67
Article 5: Donations Mortis Causa, Form	68
§ 7.5.1 Olographic Testaments	68
a. Form Requirements	68
b. Writings below the Signature	69
c. Additions and Deletions	69
d. Date Requirement	69
e. Signature Requirement	69
§ 7.5.2 Notarial Testament, General Form Requirements	70
a. History and Comparison to Common Law	70
b. Reasons for Formality	72
c. Signatures and Date	72
d. Civil Code Article 1577 Testimonium and Attestation Clauses	73
e. Mechanics of Document Execution	75
f. Declaring or Signifying That the Instrument Is	
the Testator's Testament	75
g. Reading of Will Not Required at Will Execution	75
§ 7.5.3 Notarial Wills: Special Forms	76
a. Article 1578 Notarial Will — Testator Unable to Sign	
Because of Physical Infirmity	76
b. Article 1579 Notarial Will — Testator Unable to Read	77
c. Article 1580 Notarial Testament in Braille Form	78
d. Article 1580.1 Notarial Testament for Deaf or Deaf	
and Blind Testator	78
§ 7.5.4 Prescription	78
Article 6: Notarial Wills: Competency of Witnesses and Notary	79
§ 7.6.1 Competent Witnesses, Generally	79

xi

§ 7.6.2 Witnesses and Notary Should Be Disinterested Parties	79
a. Parties Prohibited from Witnessing	79
b. Effect of Interested Witness	80
c. Effect of Interested Notary	80
d. Fiduciary Appointments Not Considered Legacies	80
e. Comparison to Donations Inter Vivos	81
Article 7: Individual and Personal Nature of Donations Mortis Causa	81
§ 7.7.1 Testaments by Others Prohibited	81
§ 7.7.2 Testaments with Others Prohibited	81
§ 7.7.3 Testamentary Dispositions Committed to Choice	
of Third Person Prohibited	82
Article 8: Applicable Conflict of Laws Provisions	82
§ 7.8.1 Validity of Donations Inter Vivos	82
a. Incorporeal Movables	83
b. Corporeal Movables	83
c. Immovables	83
§ 7.8.2 Validity of Donations Mortis Causa	83
Chapter 8 $\cdot$ Capacity to Give and to Receive Donations:	
Civil Code Articles 1470–1483	85
Article 1: Capacity Generally	85
§ 8.1.1 Capacity to Receive	85
a. Timing	85
b. Donee Must Exist at Requisite Time Period	86
§ 8.1.2 Capacity to Give, Generally	86
a. Timing	86
b. Legal Capacity, Generally	87
c. Mental Capacity, Generally	88
Article 2: Nullity Due to Lack of Capacity	88
§ 8.2.1 Nullity of Donation Due to Lack of Capacity, Generally	88
§ 8.2.2 Nullity of Donation Due to Lack of Capacity, Interdicts	89
a. Full Interdicts	90
b. Limited Interdicts	90
c. Timing Issues	90
d. Effect of Modification or Termination of Interdiction	90
e. Significance of Unsuccessful Interdiction	91
§ 8.2.3 Prescription	91
Article 3: Nullity Due to Fraud, Duress, or Undue Influence	91
§ 8.3.1 Nullity of Donation Procured by Fraud	92
§ 8.3.2 Nullity of Donation Procured by Duress	93

CONTENTS	xiii
	0.0
§ 8.3.3 Nullity of Donation Procured by Undue Influence	93
a. Confidential Relationship	94
b. Susceptibility	94
c. Opportunity	95
d. Disposition	95
e. Coveted Result	95
§ 8.3.4 Burden of Proof	96
a. Relationship of Confidence	97
b. Related by Affinity, Consanguinity, or Adoption	97
§ 8.3.5 Effects of Fraud, Duress, or Undue Influence	98
a. Severability of Problematic Provisions	98
b. Effect on Fiduciary Appointments	98
§ 8.3.6 Prescription	98
Article 4: Applicable Conflict of Laws Provisions	99
§ 8.4.1 Capacity to Give: Donations Inter Vivos	99
§ 8.4.2 Capacity to Give: Donations Mortis Causa	99
Chapter 9 · Prohibited Donations: Civil Code Articles 1519–1522	101
Article 1: Impossible, Illegal, or Immoral Conditions	101
§ 9.1.1 Conditions Generally	101
§ 9.1.2 Effect of Impossible, Illegal, or Immoral Conditions	101
a. Usual Effect	101
b. Prime or Moving Cause Exception	102
c. Distinguishing Between Binding Conditions	
and Precatory Language	102
§ 9.1.3 Examples of Permissible and Impermissible Conditions	103
a. Conditions Relating to Marriage and Romantic Relationships	104
b. No Contest Clauses, In Terrorem Clauses	105
c. Restraints on Alienation	105
Article 2: Prohibited Substitutions	106
§ 9.2.1 Generally	106
a. Definition	106
b. Policy Justifications	107
c. Effect	108
d. Borderline Cases	109
§ 9.2.2 Relationship to Trusts	110
Article 3: Vulgar Substitutions	110
§ 9.3.1 Vulgar Substitution, Defined	110
§ 9.3.2 Etymology	110

§ 9.3.3 Scope of Permitted Vulgar Substitutions	111
a. Needs of the Modern Era, Seizin Challenges	111
b. Civil Code Article 1521: Maximum 6 Month Term	112
c. Special Rule for Forced Heirs	113
Chapter 10 · Additional Rules Applicable to Donations <i>Inter Vivos</i> :	
Civil Code Articles 1526–1533; 1556–1567	115
Article 1: Onerous and Remunerative Donations	115
§ 10.1.1 Onerous Donations	115
§ 10.1.2 Remunerative Donations	116
Article 2: Prohibited Inter Vivos Donations	116
§ 10.2.1 Donation of Future Property	116
§ 10.2.2 Donation Conditional on Will of Donor	117
§ 10.2.3 Donation Conditional on Payment of Future or	
Unexpressed Debts and Charges	117
Article 3: Right of Return to Donor	117
§ 10.3.1 Meaning of Right of Return	117
§ 10.3.2 Effect of Stipulation	118
Article 4: Revocation for Ingratitude	118
§ 10.4.1 Obligation of Gratitude, Meaning of Revocation	118
§ 10.4.2 Grounds for Revocation for Ingratitude	119
a. Donee Attempted to Take the Life of the Donor	119
b. Cruel Treatment, Crimes, or Grievous Injuries	119
§ 10.4.3 Prescription and Parties	120
§ 10.4.4 Effect of Successful Revocation for Ingratitude	121
Article 5: Revocation or Dissolution for Failed Conditions	121
§ 10.5.1 Failure of Conditions and Charges	121
§ 10.5.2 Prescription	122
§ 10.5.3 Effect of Dissolution	122
a. Donee Unable to Return Thing in Same Condition	122
b. Rights of Third Parties	122
c. Fruits	123
Chapter 11 · Limits on Donative Freedom:	
Civil Code Articles 1493–1500; 1617–1626; 2432–2437	125
Article 1: Forced Heirship	125
§ 11.1.1 Evolution of Legal Concept in Louisiana	125
§ 11.1.2 Comparison to Other American Jurisdictions	126
a. Pretermitted Heirs	126
b. Homesteads and Personal Property Set-Asides	127

§ 11.1.3 Forced Heirs, Defined	127
a. Children Younger than 24	127
b. Children with Various Illnesses and Disabilities	128
c. Grandchildren	128
d. Assisted Reproductive Technologies	129
§ 11.1.4 Amount of the Forced Portion, Legitime	129
a. Calculation, Generally	129
b. Calculation in Cases Involving Representation	130
c. Greenlaw Rule	131
d. Effect of Renunciation, Unworthiness,	
or Disinherison on Forced Portion	131
§ 11.1.5 Disinherison of Forced Heirs	132
a. Form	132
b. Causes for Disinherison	132
c. Timing	133
d. Burden of Proof and Related Matters	133
e. Affirmative Defenses	133
Article 2: Donation Omnium Bonorum	134
§ 11.2.1 Prohibition of Donation Inter Vivos of Entire Patrimony	134
§ 11.2.2 Effect of Donation Omnium Bonorum	135
Article 3: Marital Portion	135
§ 11.3.1 Spousal Protection from Disinheritance, Generally	135
a. Purpose of Marital Portion in Louisiana	135
b. Comparison to Common Law	136
§ 11.3.2 Marital Portion	136
a. Right to Seek Marital Portion	136
b. Amount of Marital Portion	137
c. Effect of Legacy	138
d. Prescription and Related Matters	138
e. Periodic Allowance	138
Article 4: Conflict of Laws Considerations	138
§ 11.4.1 Forced Heirs	138
§ 11.4.2 Marital Portion	139
Chapter 12 · Rights of Forced Heirs:	
Civil Code Articles 1227–1288; 1493–1514	141
Article 1: Right to the Legitime, Security	141
§ 12.1.1 Permissible Burdens on the Legitime	141
a. Usufruct to Surviving Spouse Permitted	141
b. Legitime in Trust	142

xv

§ 12.1.2 Security	142
Article 2: Reduction	143
§ 12.2.1 Calculation of Active Mass	143
a. Example	144
b. Effect of Non-Probate Assets	145
§ 12.2.2 Order of Reduction	145
a. Universal and General Legacies	146
b. Particular Legacies	146
c. Donations Inter Vivos	146
d. Intestate Decedents	147
§ 12.2.3 Additional Rules of Reduction	147
a. Reduction Only Available to Forced Heirs, Timing	147
b. Insolvent Donee	147
c. Onerous and Remunerative Donations	147
d. Fruits and Products	148
e. Manner of Making Reduction	148
f. Prescription	148
Article 3: Collation	149
§ 12.3.1 Definition and Purpose	149
§ 12.3.2 Right to Demand Collation	149
a. Right Limited to Forced Heirs Who Are Children of Decedent	149
b. Presumption in Favor of Collation	150
c. Dispensing with the Obligation to Collate	150
d. Protection of Legitime	150
§ 12.3.3 Persons Obligated to Collate	151
a. Timing, Valuation	151
b. Collation by Children and Other Descendants	151
c. Effect of Renunciation on Collation Obligation	152
§ 12.3.4 Gifts Subject to Collation or Exempt from Collation	152
a. Expenditures Exempt from Collation	152
b. Manual Gifts	152
§ 12.3.5 How Collation Is Made	153
Chapter 13 · Revocation and Modification of Donations Mortis Causa:	
Civil Code Articles 1606–1610.1	155
Article 1: General Principles	155
§ 13.1.1 Ambulatory Nature of Wills	155
§ 13.1.2 Contracts Relating to Wills Generally Prohibited	155

§ 13.1.3 Capacity and Intent Required	156
a. Capacity	156
b. Revocatory Intent	156
Article 2: Methods of Revoking or Amending a Will	157
§ 13.2.1 Revocation of Entire Testament	157
a. Revocation by Physical Destruction	157
b. Revocation in the Form of a Testament	
or by Authentic Act	157
c. Revocation by Handwritten Document	159
d. Comparison to Common Law: Revocation by Physical Act	159
e. Comparison to Common Law: Revocation by Writing	159
f. Comparison to Common Law:	
Dependent Relative Revocation	159
g. Comparison to Common Law: Revival of Revoked Wills	160
§ 13.2.2 Revocation of Legacy or Other Provision	160
a. Revocation in the Form of a Testament	161
b. Revocation by Contrary Disposition	161
c. Revocation by Inter Vivos Disposition	161
d. Revocation by Signed Writing on the Testament	162
e. Revocation by Divorce	162
Chapter 14 · Testamentary Dispositions and Interpretation:	
Civil Code Articles 1584–1604; 1611–1616	165
Article 1: Types of Legacies	165
§ 14.1.1 Particular Legacies	165
§ 14.1.2 Universal Legacies	166
§ 14.1.3 General Legacies	166
§ 14.1.4 Distinguishing between Universal and General Legacies	167
§ 14.1.5 Joint and Separate Legacies	168
§ 14.1.6 Right of Legatee to Fruits and Products	168
§ 14.1.7 Comparison to Common Law	168
Article 2: Lapse and Testamentary Accretion	169
§ 14.2.1 Reasons for Lapse	169
§ 14.2.2 Testamentary Accretion	169
a. Anti-Lapse Rule, Most-Favored Class Rule	170
b. Joint Legatees	170
c. Accretion of Particular Legacies	171
d. Accretion of Universal Legacies	171
e. Accretion of General Legacies	171

xvii

172
172
173
173
173
174
174
174
175
175
175
176
176
177
177
177
177
179

Index

### About the Author

Professor Elizabeth R. Carter is the A.N. Yiannopoulos Professor of Law and the Judge Anthony J. Graphia & Jo Ann Graphia Professor of Law at the Louisiana State University Law Center, where she teaches and writes in the areas of estate planning, taxation, civil law, and comparative law. Professor Carter also teaches courses in the University of Alabama's LL.M. program in taxation. She is an Academic Fellow in the American College of Trust and Estate Counsel.

Professor Carter earned a B.S. in Biology and a B.A. in Spanish from the University of Memphis, magna cum laude. She earned her J.D. from Tulane University Law School, magna cum laude. She was elected Order of the Coif, and was awarded a Civil Law Certificate. While at Tulane, Professor Carter served as an articles editor of the Tulane Law Review, Volume 81, worked as a research assistant to Professor A.N. Yiannopoulos, and was a founding member of the Tulane Civil Law Society. Professor Carter was awarded the 2006 Dean Rufus C. Harris Award for the Best Writing on a Civil Law Subject by the Tulane Law Review. Upon graduation, Professor Carter was awarded the 2007 Louisiana Bar Association Civil Law Award for attaining the highest grade in civil law studies. Professor Carter earned her LL.M. in Tax from the University of Alabama in 2010. Before joining the LSU faculty, Professor Carter worked at the New Orleans law firm of Lugenbuhl, Wheaton, Peck, Rankin & Hubbard where she practiced in the areas of estate planning and administration, business and commercial law, bankruptcy, and marine finance.

## Acknowledgments

The author thanks Professor Alain Levasseur for including her in this project. The author also thanks Beverly Perkins and Michael Arterburn for their assistance with this project.