

TABLE OF CONTENTS

I.
SUCCESSION AND SUCCESSION LAW

CHAPTER 1
SUCCESSION AND SUCCESSION LAW

§1. <i>MORTIS CAUSA</i> SUCCESSION AND THE LAW OF SUCCESSION.....	19
§2. THE PRINCIPLES OF SPANISH INHERITANCE LAW	21
§3. INHERITANCE AND THE RIGHT TO INHERIT. COMPOSITION OF THE ASSETS OF THE ESTATE	23
§4. TYPES OF SUCCESSION AND SUCCESSORS: THE HEIR AND THE LEGATEE .	26

CHAPTER 2
STAGES OF HEREDITARY SUCCESSION

§5. STAGES OF HEREDITARY SUCCESSION: OPENING, NOTICE, OFFERING AND ACCEPTANCE.....	31
A) Introduction	31
B) Opening of the succession.....	32
C) Notice to prospective heirs	35
D) Offering	35
E) Acquisition of the inheritance. Systems. Civil Code regime	36
§6. POSSIBLE INHERITANCE SCENARIOS.....	37
§7. THE RECUMBENT INHERITANCE	38
§8. TAKING POSSESSION OF INHERITED ASSETS	41

CHAPTER 3
CAPACITY TO INHERIT

§9. GENERAL REQUIREMENTS TO INHERIT	43
§10. ABSOLUTE INCAPACITIES AND THE SUCCESSOR’S SURVIVAL OF THE DECEDENT	44

§11. PROHIBITIONS ON, OR BARS TO, SUCCESSION	49
§12. UNWORTHINESS: CHARACTERISTICS, CAUSES, TIME, EFFECTS AND REINSTATEMENT OF THE UNWORTHY PERSON	52
A) Concept and characteristics	52
B) Causes	54
C) Time at which disqualification is determined	56
D) Effects	57
E) Reinstatement of the unworthy person	57
§13. THE LOSS OF INHERITANCE RIGHTS	58

CHAPTER 4

OFFERING OF THE INHERITANCE

§14. THE RIGHT TO ACCEPT OR REJECT. TYPES OF APPEALS	61
§15. RIGHT OF TRANSMISSION	62
§16. RIGHT OF REPRESENTATION. CONCEPT, BASES, EFFECTS	64
§17. RIGHT TO INCREASE; RIGHT OF ACCRETION. CONCEPT, BASES AND EFFECTS	69

CHAPTER 5

ACCEPTING AND REJECTING AN INHERITANCE

§18. ACCEPTANCE AND REJECTION: GENERAL THEORY	75
A) Definition and premises	75
B) Common features	75
C) Capability and legal entitlement	76
D) Time limit for accepting or rejecting. Notarial questioning and right to deliberate	78
§19. ACCEPTING THE INHERITANCE	80
A) Definition and manner	80
B) Acceptance of the inheritance and liability of the heir	82
§20. REJECTING THE INHERITANCE	82
A) Definition and manner	82
B) Effects	83
C) Rejection to the detriment of creditors	83
§21. ACCEPTANCE WITH BENEFIT OF INVENTORY	84
A) Definition and general effects	84
B) Application, manner and deadlines	85
C) Compiling the inventory	86
D) The administration of the inheritance	87
E) Payment of inheritance liens	87
F) Loss of benefit of inventory	88
§22. CLAIMING THE INHERITANCE	89

CHAPTER 6 COMMUNITY OF HEIRS

§23. CONCEPT, NATURE AND CHARACTERISTICS	91
§24. LEGAL STATUS OF THE COMMUNITY OF HEIRS	93
A) Normative sources	93
B) Subjects	93
C) Object	94
D) Rights, entitlements and obligations of co-heirs	94
E) Dissolution	97

CHAPTER 7 THE DIVISION OF AN ESTATE

§25. DIVISION: CONCEPT; THE RIGHT TO DIVIDE; THE ABILITY TO REQUEST DIVISION	99
§26. STANDARD OPERATIONS IN DIVISION: INVENTORY, APPRAISAL, LIQUIDATION, FORMATION OF LOTS AND DISTRIBUTION	102
§27. TYPES OF DIVISION: DIVISION EFFECTED BY THE TESTATOR, BY AN ESTATE DISTRIBUTOR, BY CO-HEIRS, BY AN APPOINTED ESTATE DISTRIBUTOR, BY A THIRD PARTY AND BY AN ARBITRATOR. JUDICIAL DIVISION	104
A) Division effected by the testator	104
B) Division effected by an estate distributor	105
C) Division effected by co-heirs	107
D) Division effected by an appointed estate distributor	108
E) Division effected by a third party and by an arbitrator	108
F) Judicial division	109
§28. EFFECTS OF DIVISION: TERMINATION OF THE COMMUNITY OF HEIRS AND THE OBLIGATION TO PROVIDE WARRANTIES OF GOOD TITLE AND AGAINST HIDDEN DEFECTS	109
§29. INEFFECTIVENESS OF DIVISION. RESCISSION DUE TO INJURY. ADDITION AND MODIFICATION	111
A) Ineffectiveness of division	111
B) Rescission due to injury	112
C) Partial and additional division	114

CHAPTER 8 COLLATION

§30. CONCEPT AND BASIS	115
§31. SUBJECTIVE REQUIREMENTS	116
§32. OBJECTIVE REQUIREMENTS	118
A) Collatable and non-collatable assets	118
B) The determination of the value of the assets and fruits	121
C) Effects of the collation	122

II. TESTAMENTARY SUCCESSION

CHAPTER 9

THE LAST WILL AND TESTAMENT; TYPES OF WILLS

§33. CONCEPT AND CHARACTERISTICS	127
A) Concept	127
B) Characteristics	127
§34. CAPACITY TO GRANT A WILL	129
A) General rule and prohibitions	129
B) Prohibition owing to age	129
C) Prohibition owing disability	129
§35. TYPES OF WILLS	130
A) Introduction	130
B) Ordinary notarial wills	130
C) Holographic wills	131
D) A note on special wills	132

CHAPTER 10

THE CONTENT OF THE WILL (I): THE HEIR

§36. THE APPOINTMENT OF THE HEIR	133
§37. THE ACTION OF PETITION FOR INHERITANCE	136
§38. LIABILITY OF THE HEIR BEFORE THE DEBTS AND BURDENS OF THE INHERITANCE	137
§39. DISPOSAL OF THE INHERITANCE: EFFECTS	139
§40. PROOF AND REGISTRATION OF THE RIGHT OF THE HEIR	141

CHAPTER 11

THE CONTENT OF THE WILL (II): LEGACIES

§41. CONCEPT AND CHARACTERS OF THE LEGACY	145
§42. SUBJECTS	145
§43. OBJECT	146
§44. ACQUISITION OF THE RIGHT TO THE BEQUEST	147
§45. ORDER OF PRIORITY FOR PAYING LEGACIES	148
§46. FAILURE AND EFFECTIVENESS OF THE BEQUEST	148
§47. TYPES OF LEGACIES REGULATED IN THE CIVIL CODE	150
A) Legacies of property belonging to the testator	150
B) Legacies of property not owned by the testator at the time of his death ...	151
C) Credit and debt legacies	152
D) Other legacies	152

CHAPTER 12

THE CONTENT OF THE WILL (III): THE SUBSTITUTIONS

§48. CONCEPT AND TYPES OF SUBSTITUTION	155
§49. ORDINARY OR VULGAR SUBSTITUTION	155
§50. PUPILLARY SUBSTITUTION	158
§51. FIDEICOMMISSARY SUBSTITUTION	160
A) Concept	160
B) Types	162
C) Ordinary fideicommissary substitution	166

CHAPTER 13

INTERPRETATION, INEFFECTIVENESS AND EXECUTION OF A WILL

§52. INTERPRETATION OF A WILL	169
§53. DEFECTS IN CONSENT	170
§54. REVOCATION OF A WILL	170
A) The power to revoke: essential characteristics and grounds	170
B) Types	171
C) Effects	172
§55. INVALIDITY AND LAPSE OF A WILL	172
A) Grounds for invalidity	172
B) The action of voiding a will	172
C) Effects	173
D) Lapse	173
§56. CARRYING OUT THE WILL: THE ROLE OF THE EXECUTOR	173
A) Duties of the executor and characteristics of the role	173
B) Capacity, designation and powers of the executor	174
C) Conclusion of the executor's role	175

III.

THE RESERVED SHARE

CHAPTER 14

LIMITS OF THE TESTAMENTARY WILL: RESERVED SHARES AND RESERVATIONS

§57. THE RESERVED SHARE IN THE SPANISH CIVIL CODE: CONCEPT AND NATURE	179
§58. BENEFICIARIES AND AMOUNT OF THE RESERVED SHARE	181
A) Beneficiaries	181
B) The reserved share of the descendants. The betterment	182
C) The reserved share of the ascendants	187

D) The reserved share for the widowed spouse. 188

§59. CALCULATION AND PAYMENT OF THE RESERVED SHARE. 190

 A) Calculation of the reserved share. Donation, computation and allocation. . 190

 B) Payment of the reserved share 193

§60. THE INTANGIBILITY OF THE RESERVED SHARE. 194

 A) Concept 194

 B) Qualitative intangibility. 195

 C) Quantitative Intangibility 196

§61. PRETERITION 199

 A) Concept, requirements and types 199

 B) Effects. 201

§62. DISINHERITANCE 202

 A) Concept, requirements and types 202

 B) Effects. 203

§63. RESERVATIONS. 204

 A) General ideas 204

 B) The widowed spouse reservation 205

 C) The reservation of lineal relatives 207

IV.

THE INTESTACY AND SUCCESSION AGREEMENT

CHAPTER 15

INTESTACY. SUCCESSION AGREEMENT

§64. INTESTACY 211

 A) General description 211

 B) Cases in which intestacy occurs 212

 C) General rules for appeals 213

 D) The order of succession. 214

§65. SUCCESSION AGREEMENT 218