

## Some Problems in the Classification of Legacies

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## SOME PROBLEMS IN THE CLASSIFICATION OF LEGACIES

### LOUISIANA CIVIL CODE OF 1870:

ART. 1606. A universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease.

ART. 1612. The legacy under a universal title is that by which a testator bequeathes a certain portion of the effects of which the law permits him to dispose, as a half, a third, or all of his movables, or a fixed proportion of all of his immovables or all of his movables.

ART. 1625. Every legacy, not included in the definition before given of universal legacies and legacies under a universal title, is a legacy under a particular title.

### INTRODUCTION

Our Code divides testamentary bequests into three categories: universal legacies, legacies under universal title, and particular legacies. Whether or not a legatee will contribute to the debts of the succession, have seizin of the estate, profit by the lapse of other legacies and many other such questions can be answered only after the legacy has been classified.

Historically, these articles are the result of a compromise between the customary law of France and the written law. Under the customs there were three classes of succession beneficiaries: heirs (of blood), universal legatees, and particular legatees.<sup>1</sup> Heirs alone had seizin, regardless of their share in the estate. On the other hand, in the written law no testament was valid without an *instituted* heir<sup>2</sup> (really a legatee) who was seized in full of the succession.<sup>3</sup> The redacteurs of the Code Napoleon adopted the classification of the customs with few additions. The problem of seizin was solved by creating the category of legacy under universal title.<sup>4</sup> These forms were written into our Code of 1825, and later into the Code of 1870.

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1. Legacies under universal title did not exist, being classified simply as universal legacies. 4 Pothier, *Oeuvres, Traité des Testaments* (Nouvelle ed. 1830) 528-530, c. II, §§ 1, 2.

2. *Id.* at 528, § 1(1).

3. Troplong, *Droit Civil Expliqué*, 3 *Des Donations Entre-Vifs et Des Testaments* (3 ed. 1872) 310-311, n° 1763.

4. Coin-Deslisle, *Commentaire Du Titre des Donations et Testaments* (Nouvelle ed. 1855) 448-449, n° 16; 21 Demolombe, *Cours de Code Napoléon*, 4 *Traité des Donations Entre-Vifs et des Testaments* (5 ed. 1876) 502, n° 575.

## I. FRENCH

*The Universal Legacy and the Legacy Under Universal Title*

The wording of Article 1003<sup>5</sup> of the Code Napoleon caused great concern to the early commentators. It stated that a universal legacy was a disposition of the entire estate of the testator. Subsequent provisions of the Code, however, spoke of universal legacies in wills containing other legacies.<sup>6</sup> Fortunately, the commentators unanimously agreed that Article 1003 comprehended only the residuum or eventual entirety of the estate,<sup>7</sup> a view upheld by the French courts.<sup>8</sup> Baudry-Lacantinerie explains<sup>9</sup> that the word *universalité* used in this article, designates the legal concept of *patrimoine*. This includes not only the goods left by the testator, but also the debts and *charges* imposed by law or by the will of the deceased. Had the legislature intended to require a legacy of all the goods of the testator, it would have used the word *totalité*.

Article 1010,<sup>10</sup> after stating the general principle that the

5. Art. 1003, French Civil Code: "*Le legs universel est la disposition testamentaire par laquelle le testateur donne à une ou plusieurs personnes l'universalité des biens qu'il laissera à son décès.*"

(Translation) "A universal legacy is a testamentary disposition by which the testator gives to one or several persons all of the property which he may leave at his decease."

6. Arts. 1004 and 1011, French Civil Code, all contemplate situations in which a universal legacy would exist together with a legacy by universal title or with heirs to the reserve.

7. 11 Aubry et Rau, Cours de Droit Civil Français (5 ed. 1913) 445, § 714; 11 Baudry-Lacantinerie et Colin, Traité Théorique et Pratique de Droit Civil, 2 Des Donations (3 ed. 1905) 194, n° 2289; 3 Colin et Capitant, Cours Élémentaire de Droit Civil Français (8 ed. 1936) 946, n° 1170; 21 Demolombe, op. cit. supra note 4, at 473, n° 540; 13 Laurent, Principes de Droit Civil Français (2 ed. 1876) 561, n° 509; 4 Marcadé, Explication Théorique et Pratique du Code Civil (7 ed. 1873) 69, bis94; 5 Planiol et Ripert, Traité Pratique de Droit Civil Français (1933) 641, n° 611; 3 Toullier, Le Droit Civil Français (Dernière ed. 1833) 183, n° 506; Troplong, op. cit. supra note 3, at 321, n° 1774.

8. Req. 7 avril 1874, Dalloz 1875.1.166; Civ. 5 juillet 1886, Dalloz 1886.1.465; Nancy, 9 décembre 1891, Dalloz 1892.2.270; Req. 22 janvier 1894, Dalloz 1894.1.232; Req. 27 juillet 1899, Dalloz 1899.1.355, Sirey 1900.1.264; Req. 7 janvier 1902, Dalloz 1903.1.302; Portiers 29 janvier 1919, Dalloz 1919.2.41; Civ. 15 juillet 1930, Sirey 1930.1.387.

9. 11 Baudry-Lacantinerie, op. cit. supra note 7, at 194, n° 2290. A similar view is taken by Troplong, loc. cit. supra note 7.

10. Art. 1010, French Civil Code: "*Le legs à titre universel est celui par lequel le testateur lègue une quote-part des biens dont la loi lui permet de disposer, telle qu'une moitié, un tiers, ou tous les immeubles, ou tout son mobilier, ou une quotité fixe de tous ses immeubles ou de tout son mobilier.*"

"*Tout autre legs ne forme qu'une disposition à titre particulier.*"

(Translation) "A legacy under universal title is that by which the testator bequeaths a certain portion of the goods of which the law permits him to dispose, as a half, a third, or all the immovables, or all the movables, or a fixed portion of all his immovables or of all his movables.

"All other legacies form only a disposition by particular title."

disposition of a *quote-part* of the estate is a legacy by universal title, gives several examples. A majority of the commentators have agreed that these examples are restrictive and not merely illustrative.<sup>11</sup> Thus, a legacy of all the testator's houses or of all the movables in a certain building would be a particular legacy. But, if the examples in Article 1010 are held to be *absolutely* restrictive, the disposition of some other fraction of the estate, such as one-fourth, would have to be considered a particular legacy. This dilemma has been circumvented by substituting for the words *une moitié, un tiers* the phrase *une quote-part*.<sup>12</sup> This system has the advantage of being definite and at the same time conforms to the usual testamentary intention, so the objections to it need not be taken too seriously.

*Can a Will Include Both a Universal Legacy and a Legacy Under Universal Title?*

One of the most disputed problems arising out of codal definitions of universal legacies and legacies under universal title, is, how to treat a legacy of the residue of an estate when the testament also includes a legacy under universal title. To phrase it otherwise, can a legacy by universal title and a universal legacy coexist?

The argument is that when a testator makes a disposition by universal title, only a fractional part of the estate remains, and this could not support a universal legacy. For example, if A leaves one-third of his estate to B and the residue to C, C gets only two-thirds of the estate and a legacy of two-thirds of an estate is a legacy under universal title. But Article 1011<sup>13</sup> obviously contemplates a will in which a universal legacy and a legacy by universal title are found together, for it requires the leg-

11. 11 Baudry-Lacantinerie et Colin, op. cit. supra note 7, at 234, §§ 2386, 2387; 3 Colin et Capitant, op. cit. supra note 7, at 955-956, nos 1181, 1182; 21 Demolombe, op. cit. supra note 4, at 504, nos 577, 578; 4 Marcadé, op. cit. supra note 7, at 88, *bis*117; 5 Planiol et Ripert, op. cit. supra note 7, at 649, no 617.

12. 11 Baudry-Lacantinerie et Colin, op. cit. supra note 7, at 235, nos 2388, 2389; 3 Colin et Capitant, op. cit. supra note 7, at 955, no 1181; 4 Marcadé, loc. cit. supra note 11.

13. Art. 1011, French Civil Code: "*Les légataires à titre universel seront tenus de demander la délivrance aux héritiers auxquels une quotité des biens est réservée par la loi, à leur défaut, aux légataires universels; et à défaut de ceux-ci, aux héritiers appelés dans l'ordre établi au titre Des Successions.*"

(Translation) "The legatees under universal title must demand delivery of the heirs to whom a portion of the property is reserved by law, in the absence of such heirs, of the universal legatees; and in the absence of the latter, the demand shall be made of the heirs entitled to take in the order established in the title Of Successions."

atee by universal title to demand deliverance of his legacy from the universal legatee when there are no heirs to the reserve. An attempt to reconcile this apparent conflict has been made by holding that if the legacy of the entire estate *precedes* the legacy under universal title, it is a universal legacy; if it follows the legacy under universal title, it is nothing more than a legacy under universal title.<sup>14</sup> This result is based upon a conclusive presumption that if the testator first disposes of the entirety of his estate and later excepts from that a fractional part, his intention was to make a universal legacy. Conversely, if he first makes a legacy of a fraction of his estate, another legacy of the balance or residue can be intended only as a legacy under universal title.

Nevertheless, a considerable number of the most eminent commentators have taken a different view.<sup>15</sup> They rely on the true definition of a universal legacy as being a disposition of the residue or the eventuality of the estate.<sup>16</sup> They point out that it is not what the legatee *actually* receives that determines whether or not it is a universal legacy, but what he may *eventually* receive. Thus, even if the testator has disposed of all his property in other legacies, the gift of the residue still constitutes a universal legacy.<sup>17</sup> This view appears to be sound, especially in light of the accepted definition of a universal legacy.

The following compromise has been advocated: If a legacy of the residue is preceded by a legacy under universal title, the courts should presume that the intention was to create two legacies by universal title. However, this presumption is subject to rebuttal.<sup>18</sup>

### *The Particular Legacy*

Suppose that a testator dies leaving a total estate of twenty

14. Req. 17 octobre 1906, Dalloz 1907.1.497, note Guinée. 11 Aubry et Rau, op. cit. supra note 7, at 445, § 714; Coin-Deslisle, op. cit. supra note 4, at 451, n° 8; 7 Delvincourt, Cours de Code Civil (1824 ed. 1834) 9, n. 5; 9 Duranton, Cours de Droit Français (3 ed. 1834) 196, n° 186; 3 Toullier, op. cit. supra note 7, at 185, nos 511, 512.

15. 11 Baudry-Lacantinerie et Colin, op. cit. supra note 7, at 197, n° 2299; 3 Colin et Capitant, op. cit. supra note 7, at 947, n° 1171; 13 Laurent, op. cit. supra note 7, at 570, n° 516; Troplong, op. cit. supra note 3, at 331, n° 1784; 3 Zachariae, Le Droit Civil Français (transl. 5 ed. 1857) 248, § 487.

16. See note 3, supra.

17. Douai 1 mai 1894, Sirey 1895.2.1; Bordeaux 13 mai 1895, Dalloz 1895.2.438; Dijon 19 juin 1895, Dalloz 1896.2.165. 11 Baudry-Lacantinerie et Colin, op. cit. supra note 7, at 193, n° 2289; 6 Huc, Commentaire Théorique et Pratique du Code Civil (1894) 415, n° 329; 4 Marcadé, op. cit. supra note 7, at 70, bis 94. However, in 5 Planiol et Ripert, op. cit. supra note 7, at 642, it is suggested that this would be null, even though it is a vulgar substitution, allowed by Article 898 of the French Civil Code.

18. 5 Planiol et Ripert, op. cit. supra note 7, at 646, n° 614.

thousand dollars in cash and in his will leaves A ten thousand dollars without designating it as one-half of his estate. Would the legacy of the ten thousand dollars be particular or under a universal title? The French would seemingly hold this to be a particular legacy<sup>19</sup> because the apparent intention of the testator is to give to A ten thousand dollars, no more and no less. This would be the effect of a particular legacy. However, since it is a question of intention on the part of the testator, a contrary intention may be shown.

### *The Legacy of a Usufruct or a Naked Ownership*

Probably the most difficult legacies to classify are those dealing with the usufruct and the naked ownership of property. It is quite generally agreed that a legacy of the naked ownership of the testator's estate may be a universal legacy, since it gives an eventual right to the entirety of that estate.<sup>20</sup> Likewise, a legacy of a fractional part of the naked ownership of the estate might be a legacy under a universal title.<sup>21</sup> However, a very different problem arises when the legacy consists simply of the usufruct. Although Articles 610<sup>22</sup> and 612<sup>23</sup> indicate that such a legacy could be universal, under a universal title, or could be a particular leg-

19. Douai 28 janvier 1895, Dalloz 1896.2.110, Sirey 1896.2.206. 21 Demolombe, op. cit. supra note 4, at 469, nos 533, 534; 13 Laurent, op. cit. supra note 7, at 559, n° 508.

20. Toulouse 25 août 1871 et sui pourvois, Req. 3 décembre 1872, Dalloz 1873.1.233, Sirey 1873.1.73; Riom 23 décembre 1839 sous civ. 12 juillet 1892, Dalloz 1892.1.451, Sirey 1892.1.573; Angers 25 mars 1895, Sirey 1895.2.270. 11 Aubry et Rau, op. cit. supra note 7, at 444, § 714; 11 Baudry-Lacantinerie et Colin, op. cit. supra note 7, at 195, n° 2293; 21 Demolombe, op. cit. supra note 4, at 472, n° 538 (citing also a list of the commentators on this point); 9 Duranton, op. cit. supra note 14, at 197, n° 189; 13 Laurent, op. cit. supra note 7, at 573, n° 518; 5 Planiol et Ripert, op. cit. supra note 7, at 650, n° 618.

21. See note 20, supra.

22. Art. 610, French Civil Code: "*Le legs fait par un testateur, d'une rente viagère ou pension alimentaire, doit être acquitté par le légataire universel de l'usufruit dans son intégrité, et par le légataire à titre universel de l'usufruit dans la proportion de sa jouissance, sans aucune répétition de leur part.*"

(Translation) "A legacy made by a testator of a life annuity or of an allowance for support must be paid wholly by the universal legatee of the usufruct and by the legatee under universal title of the usufruct, in proportion to their enjoyment, without any right on their part to claim repayment thereof."

23. Art. 612, French Civil Code: "*L'usufruitier, ou universel, ou à titre universel, doit contribuer avec le propriétaire ou paiement des dettes, ainsi qu'il suit:*

*On estime la valeur du fonds sujet à usufruit; on fixe ensuite la contribution aux dettes à raison de cette valeur. Si l'usufruitier veut avancer la somme pour laquelle le fonds doit contribuer, le capital lui en est restitué à la fin de l'usufruit, sans aucun intérêt.*

*Si l'usufruitier ne veut pas faire cette avance, le propriétaire a le choix, on de payer cette somme, et, dans ce cas, l'usufruitier lui tient compte*

acy, this has been denied by most of the commentators. They contend that the donation of a usufruct can only constitute a particular legacy.<sup>24</sup>

Others say that Articles 1003 and 1010 when speaking of the *universalité* and the *quote-part* are speaking quantitatively and not qualitatively. Thus, to have a universal legacy or a legacy under universal title, the disposition need merely convey an *interest* in the residue or in a *quote-part* of the estate.<sup>25</sup> This theory would certainly give life to Articles 610 and 612 and would not necessarily cause new complications. If a testament created a legacy of the entire usufruct and another of the naked ownership, these could be treated as similar to joint universal legacies.

The Court of Cassation has rejected the distinction between the qualitative and quantitative aspects of Articles 1003 and 1010. However, it held that a legacy of the usufruct could be under universal title so as to hold the legatee for his share of succession debts.<sup>26</sup>

## II. LOUISIANA

### *The Universal Legacy and the Legacy Under Universal Title*

In Louisiana the French version of Article 1599<sup>27</sup> of the Code of 1825 was a verbatim reproduction of Article 1003 of the Code

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*des intérêts pendant la durée de l'usufruit, ou de faire vendre jusqu'à due concurrence une portion des biens soumis à l'usufruit."*

(Translation) "The usufructuary, whether universal or under universal title, must contribute with the owner to payment of the debts in the following manner:

The value of the estate, subject to the usufruct, is appraised; the contribution to the debts is then determined, in accordance with that value. If a usufructuary chooses to advance the amount for which the property is liable, the principal is returned to him without any interest, at the end of the usufruct.

If the usufructuary is not willing to make that advance, the owner has the choice between either paying such sum, and in that case the usufructuary owes him interest during the continuance of the usufruct, or causing a portion of the property subject to the usufruct to be sold, to the extent of what is due."

24. 11 Aubry et Rau, op. cit. supra note 7, at 444, § 714; 21 Demolombe, op. cit. supra note 4, at 510, n° 586; 13 Laurent, op. cit. supra note 7, at 574, n° 518; 5 Planiol et Ripert, op. cit. supra note 7, at 650, n° 618 and n. 1, citing other authors.

25. Cf. 5 Planiol et Ripert, op. cit. supra note 7, at 651, n° 618, n. 3.

26. Civ. 7 août 1827, Sirey civ; Req. 8 décembre 1862, Dalloz 1863.1.73, Sirey 1863.1.34; Toulouse 16 mars 1882, Sirey 1883.2.73, note Labbé; Req. 31 janvier 1893, Dalloz 1893.1.359, Sirey 1893.1.438; Civ. 19 juin 1895, Dalloz 1895.1.470, Sirey 1895.1.336; Rennes 30 juillet 190 et sur pourvoi; Req. 29 juin 1910, Dalloz 1911.1.49, note Capitant, Sirey 1913.1.33, note Huguency; Req. 27 novembre 1910, Dalloz 1911.1.176, Sirey 1911.1.168; Orléans 7 juillet 1906, Dalloz 1908.2.345, note Capitant, Sirey 1907.2.121, note Wahl.

27. La. Civil Code of 1825: "*Le legs universel est la disposition testamentaire, par laquelle le testateur donne à une ou plusieurs personnes l'universalité des biens qu'il laissera à son décès.*"

Napoleon. As pointed out previously, *universalité* was there used to designate the eventual entirety and not the *totalité* of the succession. To make matters worse the English translation<sup>28</sup> used "the whole of his property" for *l'universalité des biens*. Under such a translation, it is difficult to see how a universal legatee could coincide with any other testamentary beneficiary. However, the cases have uniformly overlooked this error.<sup>29</sup>

Article 1612<sup>30</sup> of our Code was also copied directly from the French Code. While the jurisprudence is silent as to whether the examples used are restrictive, Saunders indicates that they would be so regarded.<sup>31</sup> Since this is the French view,<sup>32</sup> it is very likely to be accepted by the courts.

### *Can a Will Include both a Universal Legacy and a Legacy Under Universal Title?*

The greatest conflict, as in France, centers around those testaments which provide for a legacy under universal title and a residuary legacy. Because of the confusion and conflicts in the cases, a clear picture can be obtained only by a chronological review.

The case of *Aubry v. Cujas*,<sup>33</sup> decided in 1835, involved an attempt by a legatee under universal title to force the residuary legatee to pay all the charges of the succession. The court without discussion held the residuary legacy to be a legacy under universal title. Ten years later in *Prevost v. Martel*,<sup>34</sup> the court dismissed a petition by the legitimate heirs of the testator attacking a legacy under universal title, because of the existence of a

28. Art. 1599, La. Civil Code of 1825 (Art. 1606, La. Civil Code of 1870): "An universal legacy is a testamentary disposition, by which the testator gives to one or several persons the whole of the property which he leaves at his decease."

29. *Shane & Withers v. Withers' Legatees*, 8 La. 489 (1835); *Prevost v. Mantel*, 10 Rob. 512 (La. 1845); *Shaw v. York*, 5 La. Ann. 146 (1850); *Succession of Chedome*, 34 La. Ann. 1239 (1882); *Succession of Burnside*, 35 La. Ann. 708 (1883); *Succession of Blakemore*, 43 La. Ann. 845 (1891); *Thomas v. Blair*, 111 La. 678, 35 So. 811 (1903); *Succession of Wilcox*, 165 La. 803, 116 So. 192 (1928); *Succession of Kneipp*, 172 La. 411, 134 So. 376 (1931); *Succession of Maus*, 177 La. 822, 149 So. 466 (1933); *Succession of Peters*, 192 La. 744, 189 So. 122 (1939).

30. La. Civil Code of 1870: "The legacy under a universal title, is that by which the testator bequeaths a certain proportion of the effects of which the law permits him to dispose, as a half, a third, or all of his immovables, or all his movables, or a fixed proportion of all of his immovables or all his movables."

31. Saunders, *Lectures on the Civil Code* (1925) 328, 329.

32. See *supra* note 11.

33. 8 La. 43 (1835).

34. 10 Rob. 512 (La. 1845).

residuary universal legatee who alone would profit by the lapse of such legacy. Later in the same year, the issue was squarely presented to the court in the case of *Compton v. Prescott*;<sup>35</sup> the holding was that if a legacy under universal title preceded a legacy of the residue, then the latter was also a legacy under universal title. In the opinion, the court discussed the question at length, citing the French commentators. This decision was approved in *Turner v. Smith*<sup>36</sup> in 1857. *Deshotels v. Soileau*<sup>37</sup> which came two years later has also been cited as upholding the same doctrine, but the insufficiency of the facts stated makes a positive determination of this fact impossible. It does, however, cite *Compton v. Prescott* with approval.<sup>38</sup> With the issue seemingly well settled, the court again cast doubt upon it. In the case of *Succession of Chedome*<sup>39</sup> in 1882, a residuary legacy following a disposition of one-fourth of the succession was held to be universal. This was accomplished by the strange procedure of finding that the legacy of the quarter was a particular legacy. Since then the issue has not been again raised. As a result of these decisions it seems very likely that although the French view announced in *Compton v. Prescott* is to be regarded as the law, the question is by no means settled.

#### *The Effect of the Testator's Intention.*

Although legacies are usually classified according to the nature of the disposition, the Louisiana court is inclined to give paramount importance to the intention of the testator. Thus a legacy to two nephews of three thousand dollars, which constituted the principal object of the estate at the time of the will, was held to be a conjoint universal legacy, because the testator had previously called the legatees his "heirs."<sup>40</sup> In another case<sup>41</sup> a disposition of one-third to A, one-third to B, and one-third to C was treated as a conjoint universal legacy. So also, was a disposition to two legatees of one-half each.<sup>42</sup> An even stronger example was a legacy of one-fourth which was treated as particular.<sup>43</sup>

Suppose a testator makes a disposition equal to the entire

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35. 12 Rob. 56 (La. 1845).

36. 12 La. Ann. 47 (1857).

37. 14 La. Ann. 745 (1859).

38. Ibid.

39. 34 La. Ann. 1239 (1882).

40. *Shaw v. York*, 5 La. Ann. 146 (1850).

41. *Shane & Withers v. Withers' Legatees*, 8 La. 489 (1835).

42. *Succession of Blakemore*, 43 La. Ann. 845 (1891).

43. *Succession of Chedome*, 34 La. Ann. 1239 (1882).

value of his estate; subsequently, but without any change in the will, the estate is enormously increased. Should the court under the presumed intention of the testator declare this to be a universal legacy?<sup>44</sup> The proper method, as pointed out in the Code,<sup>45</sup> is to rely on the intention of the testator only when it does not depart too far from the terms used. From the examples given it is apparent that the court has stretched the doctrine of "intention" to its outermost limits.

### *The Legacy of a Usufruct or a Naked Ownership*

On the nature of a legacy of the usufruct of an estate, our jurisprudence is brief but emphatic. The *Succession of Dougart*<sup>46</sup> upheld the view stated by Saunders, that the legacy of a usufruct can only be particular.<sup>47</sup> In so holding the court said the language used in Article 580<sup>48</sup> et sequentes, was inadvertant. Apparently there are no cases dealing with the legacy of the naked ownership of property.

### III. CONCLUSION

A general rule may be laid down on a broader and more troublesome problem of the interpretation of legacies. Articles 1606, 1612, and 1625 define the three types of legacies. The articles immediately following prescribe the effects of the legacies defined.<sup>49</sup> Therefore the legacy should be classified in order that the prescribed rights and duties of legatees may be ascertained. The

44. This was the exact situation in *Shaw v. York*, 5 La. Ann. 146 (1850).

45. Art. 1712, La. Civil Code of 1870.

46. 30 La. Ann. 268 (1878).

47. Saunders, op. cit. supra note 31, at 329.

48. Art. 580, La. Civil Code of 1870: "The legacy of an annuity or alimony left by a testator is to be wholly acquitted by the universal heir or legatee of the usufruct, and must be acquitted by the heir or legatee on an universal title, in proportion to his enjoyment without any claim whatever to reimbursement on his part."

49. Art. 1605, La. Civil Code of 1870, and a similar article (1002) of the French Civil Code provide:

"Each of these dispositions . . . shall have its effect, according to the rules hereafter established for universal legacies, for legacies under a universal title, and for particular legacies."

"*Et, bien que le testateur ait la liberté, en ce qui concerne les dénominations légales de ces différentes espèces de legs . . . dans ses dispositions, . . . toute dispositions . . . doit néanmoins . . . être ramenée à l'une des espèces de legs définies par la loi, et être appréciée suivant les règles établies pour les legs compris sous chacune de ces rubriques.*" 3 Zachariae, op. cit. supra note 15, at 246, § 487.

(Translation) "And, although the testator has the liberty, in that which concerns the legal classification of these different kinds of legacies . . . all dispositions . . . must nevertheless be brought into one of the kinds of legacies defined by law and must be judged according to the regulations established for legacies included under each of these rules."

Louisiana courts have on several occasions<sup>50</sup> erroneously classified a given legacy by asking themselves such questions as, "Did the testator intend to give the legatee seizin?" or "Did the testator intend to make the legatee contribute to the charges on the succession?" and so forth. These are clearly *ends* of classification and not *means*. A court using this method is guilty of circular reasoning. The proper question should be, "Did the testator intend to dispose of the eventuality, a quote-part, or a particular object of his estate?"<sup>51</sup> When the terms used by the testator are ambiguous or inadequate, resort should be had to the section of the Louisiana Code which prescribes general rules for the interpretation of legacies.<sup>52</sup>

50. See *Shane & Withers v. Withers' Legatees*, 8 La. 489, 496 (1835); *Compton v. Prescott*, 12 Rob. 56, 66 (1845).

51. "*La classification des legs s'opère sur le fondement de leur objet, suivant que celui-ci porte sur une universalité ou sur un objet particulier.*" 5 Planiol et Ripert, op. cit. supra note 7, at 641, n° 610.

(Translation) "The classification of legacies operates on the basis of their object, according to whether each one bears on the universality or a particular object."

"*Le question de savoir si telle disposition testamentaire constitue un leg universel, un legs à titre universel, ou un legs à titre particulier, doit être décidée d'après les définitions données par la loi, sans égard à la qualification que le testateur lui même peut avoir attribuée à sa disposition, dans le cas où cette qualification ne serait point en harmonie avec la nature réelle de cette dernière.*" 11 Aubry et Rau, op. cit. supra note 7, at 442, § 714.

(Translation) "The question of knowing if such a testamentary disposition constitutes a universal legacy, a legacy by a universal title, or a legacy by a particular title, must be decided according to the definitions given by law, without regard to the qualification that the testator himself might have given to his disposition, in the case where this qualification would not be in harmony with the real nature of the latter."

52. Arts. 1712-1723, La. Civil Code of 1870, prescribe "General Rules for the Interpretation of Legacies." Saunders, op. cit. supra note 31, at 346, says the redactors probably took these articles from Pothier who in turn got them from the Romans.

Since France has no similar section in their Code, the rule there is that the judge must strive to ascertain the intention of the testator without departing too far from the language used. 11 Aubry et Rau, op. cit. supra note 7, at 436, § 712. However, it is pointed out that the rules established for the interpretation of conventions in Art. 1156 et seq. of the French Civil Code would probably apply by analogy. 11 Baudry-Lacantinerie et Colin, op. cit. supra note 7, at 291, nos 2538, 3540.

In the application of these articles (1712-1723, La. Civil Code of 1870) by the Louisiana court, great confusion has been apparent. The focal point of this confusion has been Article 1722 which provides that in case the disposition expresses no time, the time of the making of the will is presumed. Hence, an undated legacy of all books would only include those owned at the time of the will. In *Shane & Withers v. Withers' Legatees*, 8 La. 489 (1835), the court refused to apply this article to a universal legacy, restricting it to particular legacies. While this in itself seems to be a reasonable interpretation, the court unfortunately used sweeping language to the effect that these rules "must find their application exclusively to special legacies." (8 La. at 497). This doctrine was affirmed in *Shaw v. York*, 5 La. Ann. 148

These are but a few of the problems which have arisen from the codal provisions on legacies. Due to limitations of space, the writer has avoided any inquiry into such interesting questions as what constitutes conjoint legacies, what are the liabilities of the various types of legatees, et cetera.

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### VENUE FOR CRIMINAL TRIALS IN LOUISIANA

The importance of the problem of determining the proper venue for the trial of criminal offenses has been recently brought to the foreground by the reversal of two important Louisiana cases solely on the ground that the trial had not been held in the proper forum.<sup>1</sup> The place where an offender should be tried is prescribed by the state constitution in practically all jurisdictions. Almost universally the rule is that the trial shall be held in the county or parish in which the offense was committed.<sup>2</sup> The difficulty is one of application. The various elements of a single crime often take place in different counties. In which of these counties is it proper to say the offense was committed? This is likely to be a question of policy.<sup>3</sup> The court may be influenced

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(1850). However, the Succession of Valentine, 12 La. Ann. 286 (1857), and Lawson v. Lawson, 12 La. Ann. 693 (1857), though not expressly overruling these cases did apply Article 1722, La. Civil Code of 1870, to universal legacies. Finally, the question seemed to be set at rest by Succession of Burnside, 35 La. Ann. 708 (1883), which expressly overruled these last cases insofar as they might conflict with the holding in the *Shane* case. Fortunately, the later cases have ignored the broad language of the *Shane* case and confined the decision strictly to the holding. Therefore, we must conclude that the application of the articles to the interpretation of legacies depends on the nature of the legacy and the particular article in question. Yet, certain of them, such as Article 1712, La. Civil Code of 1870, are undoubtedly applicable to any situation.

1. State v. Coenen, 194 La. 753, 194 So. 771 (1940); State v. Smith, 194 La. 1015, 195 So. 523 (1940). See also State v. Terzia, 194 La. 583, 194 So. 27 (1940) and State v. Todd, 194 La. 595, 194 So. 31 (1940).

2. It was a settled common law doctrine that jurors in one county were not competent to pass upon the guilt or innocence of a party in regard to a crime alleged to have been committed by him in another county. See *Buckrice v. People*, 110 Ill. 29 (1884), and authorities therein cited.

3. Levitt, *Jurisdiction Over Crimes* (1925) 16 J. Crim. L. and Criminology 316, 495, states the approaches as (1) the "territorial commission" theory, in which the locus of the crime fixes jurisdiction, (2) the "territorial security" theory which is concerned with the protection of a certain area from injurious consequences resulting from crime, and (3) the "cosmopolitan justice" theory based on the idea that acts detrimental to one territory will probably prove harmful to the rest.