THE RESERVA TRONCAL: PROSPECT & RETROSPECT *

RUBÉN F. BALANE **

Perhaps no other legal institution symbolizes the technical and esoteric nature of law studies as well and as effectively as the *reserva troncal.* Dreaded by law students as a deadly trap, disdained by lawyers as impractical and incomprehensible, used by civil law professors as an instrument of torture, the *reserva troncal,* in defiance of the Darwinian law of natural selection, has refused to perish in this jurisdiction. It survives, alive and well, its capacity to bewilder undiminished, in one solitary article in our Civil Code: the famous—or infamous—Article 891, of which even the formidable *Diccionario de la Administración Española* observes, timorously: ". . . apenas hay en el [artículo] . . . una sola palabra que no sea ocasión de dudas y perplegidades."[1]

In the six or so years that I have had the honor of holding this J.B.L. Reyes Chair in Civil Law (thanks to the liberality of the UP Law Alumni Foundation), I have heretofore successfully resisted the stubborn temptation to deliver a lecture on this topic, but finally I yielded, feeling that it was a sin too luscious not to commit, at the same time, however, realizing that with such a lecture topic, I should be lucky to have ten people in the audience.

In a more serious vein, however, two reasons convinced me that perhaps it is time for such a lecture: first, it seemed useful to compile and collate all the decisions rendered by our Supreme Court on the *reserva troncal,* and incidentally, in the process identifying those problems or questions on which the Supreme Court has not yet made a definitive ruling; and second, it is timely to give this institution a good second look, owing to the fact that work on a revised Civil Code is going on, and sooner or later, the Code Revision Committee, and eventually the legislature, will have to decide—as did the Code Commission and the Congress some 35 years ago—whether or not this *reserva* indeed deserves to survive.

In view, then, of the two-fold purpose just stated, the Supreme Court decisions will be mentioned in the course of the lecture, and some recommendations will be attempted at the end. If the recommendations sound

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** *J.B.L. Reyes Professor of Civil Law,* University of the Philippines.

[1] "There is in the article hardly a single word which does not give rise to doubt and confusion (trans. by author). 2 MARTÍNEZ ALCUBILLA, DICCIONARIO DE LA ADMINISTRACIÓN ESPAÑOL 169 (5th ed. 1892).

foolish to you, my esteemed listeners, I beg your kind indulgence in advance, invoking only, in mitigation of my deficiency, the provision of Article 526 that "mistake upon a doubtful or difficult question of law may be the basis of good faith."

Let us then start with some preliminary points.

I. CONCEPT

Reserva, as the term itself indicates, betokens the setting aside or the setting apart of something, putting it away from free disposition or circulation. The term itself, however, is broader than what is now called the *reserva troncal.* The word *reserva* in fact could have several different, though related, meanings. As Castán points out: "The word 'reserva' can be used in different senses, and in other countries, it is used to refer to the portion reserved for the compulsory heirs" (for which the term used by our Code is *legitimate*). "However," continues Castán, "in our law, and in its most generic sense, *reserva* refers to that obligation imposed by the law on certain heirs to preserve in favor of other persons property acquired by gratuitous title, or its value."[2] (trans. by author).

As the term is used and understood in Spanish and Philippine law, therefore, *reserva* can be delimited to what De Buen refers to as "an institution which forbids certain persons to dispose freely of some property or other, characterized, among other things, by its origin, and obliges said persons to ensure the transmission *mortis causa* of that property or its equivalent to individuals determined by law, provided that they survive the person required to reserve."[3] (trans. by author).

Reserva would therefore include the following elements: first, a duty imposed on certain persons to keep and preserve certain property; second, the duty arises because of the origin of the property; third, the existence of individuals for whom the property should be preserved; and fourth, the individuals are so favored *because* of some link they have to the origin of the property.

II. HISTORY

The idea of reserving property for the benefit of certain persons goes back to the Roman law. The *Codex Juris Civilis* of Justinian, in Laws 1

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2 4 CASTAN, DERECHO CIVIL ESPAÑOL, CÓMÚN Y FORAL 182-183 (6th ed. 1944). "Tiene la palabra 'reserva' varias acepciones, y en otros países se usa para significar la legitima de los herederos forzosos. Pero en nuestro Derecho, y en su acepción más genérica, consisten las reservas en la obligación que la ley impone a ciertos herederos de conservar a favor de otras personas los bienes adquiridos a título lucrativo, o el valor de los mismos."

3 [U]na institución que obliga a algunas personas a no disponer libremente de ciertos bienes, caracterizados, entre otras circunstancias, por su procedencia, y a asegurar la transmisión mortis causa de los mismos bienes o de su equivalente a otras personas determinadas, si existieran al fallecer aquellas." *cited in* CASTÁN, *supra,* note 2 at 183).

and 2, Title IX, Book V, entitled *De Secundis Nuptiis* (On Subsequent Marriages), provided that a person contracting a second or subsequent marriage was obliged to reserve for the benefit of the children of the previous marriage, whatever property he or she might have acquired by operation of law, will, donation, or any other gratuitous title from the deceased consort, or from any brother, sister or descendant of said children. It was thus a duty of reservation imposed upon the surviving spouse.

The Spanish Civil Code of 1889 retained this *reserva* of Justinian's Code, aptly (since it fell upon the widow or widower) called the *reserva troncal.* Articles 968 and 969 of the Spanish Code provide for this *reserva.*[4]

The Spanish Code, however, introduced a second *reserva*—one which not only had no counterpart in civil codes of other countries but which, in the words of Sánchez Román, *"no tiene precedente de identidad en nuestro Derecho anterior de Castilla"*—did not have an exact precedent in Castillian law. Scaevola in fact, in his treatment of this *reserva,* says that the "precedentes legales"—the legal precedents—thereof are "ninguno"—nil.[5] No exact precedent, that is to say, nothing quite identical to it in either the general or local laws of the Peninsula, but prototypes or analogues abounded in both general and foral law: in general law, there were the *Fuero Juzgo*[6] and the *Fuero Real*;[7] in foral law, the *Constitutions de Cathalunya,*[8] the *Fuero General de Navarra,*[9] the *Nóvisima Recopilación de Navarra,*[10] and the *Fuero de Vizcaya,*[11] among others.

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[4]"Art. 968. Además de la reserva impuesta en el art. 811, el viudo o viuda que pase a segundo matrimonio estará obligado a reservar a los hijos y descendientes del primero la propiedad de todos los bienes que haya adquirido de su funto consorte por testamento, por sucesión intestada, donación y otro cualquier titulo lucrativo; pero no su mitad de gananciales.

"Art. 969. La disposición del artículo anterior es aplicable a los bienes que, por los títulos en el expressados, haya adquirido el viudo o viuda de cualquiera de los hijos de su primer matrimonio, y los que haya habido de los parientes del difunto por consideración a éste.

[5] SCAEVOLA, CÓDIGO CIVIL 236 (4th ed. 1944).

[6] FUERO JUZGO lib. IV, tit. II, ley 8. "Quando el omne muerte, si dexas avuelos de parte del padre o de parte de la madre, amos deven aver egualmientre la buena del nieto. E si dexa avuelo de parte del padre, o avuela de parte de la madre, amos vengan egualmientre a su buena. E otrosi, si dexa avuela de parte del padre, o de parte de la madre, vengan la buena egualmientre. Esto es de entender de las cosas que ganó el muerto. Mas de las que él ovo de parte de sus padres o de sus avuelas, deven tornar a sus padres o a sus avuelos cuemo gelas dieron."

[7] FUERO REAL lib. III. tit. VI, ley 10. "Quando alguno muriere sin manda partan igualmente los hermanos, asi en la heredad del padre, como de la madre, como de los parientes que son en igual grado. E otrosi mandamos que el que muriere sin manda, e no dexare fijos ni nietos, e dexare abuelos de padre e de madre, el abuelo de parte del padre herede lo que fué del padre y el abuelo de la madre herede lo que fué de la madre; é si él habie hecho alguna ganancia, ambos los abuelos hereden de consuno igualmente."

[8] CATALUÑA. CONSTITUTIONS DE CATHALUNYA. Lib. VI tit. II. De pupillars y altra substitutions, y de successions dels impubers.

I

"Que si lo Pare moria fill o fills en pupillar edat jaguits, si aquells morien ans que de dret puxessen ser testament, quels bens paternals envers la Mare no ro-

We shall presently see that this new *reserva,* reduced to its basic nature was essentially intended to recognize the duality of genealogical lines of every individual—the paternal and the maternal, and that to the extent provided for in the new law, these lines, or trunks or branches (*troncos,* as of a tree) should be kept separate. As finally worded in the Spanish Code the provision read:

> *El ascendiente que heredera de su descendiente bienes que éste hubiese adquirido por título lucrativo de otro ascendiente, o de un hermano, se halla obligado a reservar los que hubiere adquirido por ministerio de*

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manguessen, axi pus proisme en grau al Fill constituida mas envers los pus proismes parents del Pare Defunct de la parentela dels quals los bens vingueren.

II

"Los impubers morints ab intestat, los bens que a aquells del Pare o del Avi o de altres de linea paternal, per qualsevol causa occasio o titol guanyats, seran pervingnts no a la Mare o als qui seran de part de la Mare pus proismes, mas als dits Pares e altres de aquella part pus proismes fins al quart grau ..."

9 NAVARRA. FUERO GENERAL lib. II. tit. IV, cap. VI. "Si algun hombre o alguna muyller han creaturas et las creaturas ovieren heredades por dono de padre o de madre o las creaturas ganassen o conqueriessen algunas heredades et moriessen algunas destas creaturas, las heredades daquelly muerto non deven tornar al padre ni a la madre, mas deven tornar a la hermandat, et si no ha hermanos, a los mas deven tornar a la hermandat, et si no ha hermanos, a los mas zercanos parientes sus bienes deven tornar. Maguer la creatura bien puede dar al padre et a la madre del mueble mientre es fivo, et non deve darse las heredades, et si es casado, la muger bien puede vedar que non dé de lo de eylla fuero."

FUERO GENERAL lib. II, tit. IV cap. XVI. "Si algun hombre o alguna muger muere sen creaturas, los bienes deyllos deben tornar ad aquellos parientes ond las heredades vienen por natura."

10 NOVISIMA RECOPILACION DE NAVARRA lib. III. tit. III, ley 6. "que los padres y ascendientes a falta de hermanos sucedan a los hijos ab-intestato, solamente en los bienes adquiridos y conquistados por los hijos por su propia industria, o por la de sus Padres; pero que no hayan de suceder, ni sucedan en los bienes troncales y dotales, en los quales a falta de hermanos prefieran y sucedan los parientes mas cercanos, de donde procedan los tales bienes y que en la sucession de estos bienes troncales los hermanos que hubeiren de excluir a los Padres sean hermanos de Padre y de Madre, y si fueren hermanos de mitad lo sean de la parte de donde vienen los bienes; y en tal caso prefieran á los Padre en la sucession, y no de otra manera ... Decreto. Que se haga como el Reino lo pide: con que los bienes troncales en que han de suceder los parientes más cercanos sean de algun ascendiente de los tales parientes y no transversal; y con que durante su vida los Padres casando y no casando puedan usufructuar los tales bienes.

Id., lib. *id.,* tit. *id.,* ley 7. "Por la ley 59 del año de 1604 suplicó el Reino que los Padres y ascendientes a falta de hermanos sucediessen a los hijos abintestatos y conquistados por los fijos con su propia endustria, o la de sus Padres, pero que no huviessen de suceder ni sucedan en los bienes troncales ni dotales, en los quales a falta de hermanos prefieran, y sucedan los parientes mas cercanos de donde proceden los tales bienes, y se concedio se hicieran como el Reino lo pedia en la forma que contiene la dicha ley y del pedimento y decreto han resultado dudas que han ocasion a pleitos y a diferentes inteligencias ... Por lo cual suplicamos a vuestra Magestad mande, interpretando la dicha ley, que su disposicion en las dichas palabras se entienda en los bienes troncales hayan de ser raices ... Decreto. A esto nos decimos que se haga como el Reino lo suplica."

11 VIZCAYA. FUERO. tit. XIV, ley 14. "y a falta de los tales descendientes y ascendientes legítimos, pueda disponer de todo el mueble a su voluntad, reservando la raiz para los profincos tronqueros."

Id., ed., ley 16. "Otrosi, dixeron: Que havian por Fuero, y establecian por ley, que toda raiz que home o muger comparen o hayan comprado en su vida, que lo tal no haya sido havido ni contade por mueble para lo enagenar ni disponer a voluntad: antes sea havido y condado por rayz como si oviesse havido de Patrimonio y abolengo: y no pueda ser dado ni mandado a extraño, salvo al heredero y

la ley en favor de los parientes que estén dentro del tercer grado y pertenezcan a la línea de donde los bienes proceden.[12]

Because it was the newer *reserva,* it came to be called by commentators, the "reserva extraordinaria," the older *reserva*—the *viudal*—being referred to as the *ordinaria.* Because it took into account, albeit only imperfectly, as we shall shortly see, the division of ancestry into lines or trunks, it was denominated the "reserva troncal." Other terms, because of various objections to the propriety or accuracy of the term "troncal," were also used, namely, "reserva lineal," or "familiar,"[13] and even "pseudo troncal."[14] In a recent case—*González v. Court of First Instance*[15]—the Supreme Court, speaking through Mr. Justice Aquino, mentions the alternative terms "troncal," "lineal," "familiar," "extraordinaria," and "semi-troncal."

How this new *reserva* found its way into the Code of 1889 is an interesting story in itself and deserves a few minutes of our time. The final form of the *reserva* was the product of a compromise which, as is usually the case in compromises, made a few people happy and many people unhappy. The compromise was a middle ground between the ideas of those who advocated strict *troncalidad*[16] (a word which defies precise

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profinco, que de derecho conforme á este Fuero, lo debe heredar, segun que los otros bienes rayzes que oviere."

[12] Spanish Civil Code Art. 811. The ascendant who should inherit from his descendant property which the latter may have acquired by lucrative title from another ascendant, or from a brother (or sister), is obliged to reserve whatever he may have acquired by operation of law in favor of relatives who are within the third degree and belong to the line from which the properties came. (trans. by author).

[13] 6-2 Sánchez Román, ETUDIOS DE DERECHO CIVIL 974 (2nd ed. 1910.)

[14] 6-2 Sánchez Román, *supra* note 13.

[15] G.R. No. 34395, May 19, 1981, 104 SCRA 479, (1981).

[16] The notary Juan Vallet de Goytisolo cites the following definitions and classifications of *troncalidad:*

"*Troncalidad* def.—the right or privilege by virtue of which those hereditary properties of a person which have a known family affiliation revert or return to the line (*tronco*) from which they originated, in those cases of intestate succession when there are no descendants" (quoted from Luis Mouton y Ocampo: *Troncalidad,* in Enciclopedia Jurídica Española, Vol. XXX, p. 455).

"Kinds of *troncalidad:*

"I. 1. *troncalidad completa*—where the principle of line (*el principio troncal*) always prevails over the principle of proximity of degree.

"2. *troncalidad incompleta*—where proximity of degree is preferred over troncalidad.

"II. 1. *troncalidad simple*—that which in the investigation of the origin of the properties does not go beyond the parents of the decedent. It simply follows the formula *paterna paternis, materna maternis* called in French *de simple coté.*

"2. *troncalidad continuada*—this does not content itself with separating the paternal-line properties and the maternal-line ones; rather traces the origin of the property as far as the ascendant who was its first owner, in order to assign it to the relatives of that first owner. Thus, in the succession of the property coming from the paternal grandfather, the paternal grandmother would be excluded, as well as all the other paternal relatives who do not belong to the branch of the said grandfather.

"3. *troncalidad pura*—this is more restrictive, both with respect to the property and to the persons benefitted, than *troncalidad continuada.* As to the property, only that is considered *troncal* which is inherited in the direct descending line. As to the

English translation but which may be rendered via a circumlocution, as the principle of absolute separation of genealogical lines) and those who preferred the principle of proximity of degree. The Chairman of the *Comisión codificadora* (the Code Commission), Don Manuel Alonso Martínez, relates the background story of the compromise, mentioning in particular the extreme views of some of the Code Commission members.[17] Parts of Alonso Martínez's account are quoted in the case of *Padura v. Baldovino*.[18] On this point, the comments of Castán are more interesting and deserve to be quoted:

> The argument was raised before the Code Commission that it would be unjust to allow property possessed by a family as part of its patrimony for one century or more, to pass to outsiders should it be inherited upon upon the death of a child or grandchild, by an ascendant who had contracted or was about to contract a subsequent marriage. After considering different proposals all designed to forestall such an eventuality, the Commission finally accepted the suggestion of Alonso Martínez, which was thought to harmonize everything in an acceptable system of *reservas;* a subcommittee was then formed to put the idea in shape, and the subcommittee, composed of Manresa, Goyena, Durán, and Franco, drafted the actual text of Article 811. By means of the draft article it was thought that the new Code would avoid the undesirable possibility of property of a family passing to another in spite of the existence of close relatives within the former, without at the same time giving rise to the exaggerated consequences of the principle of *troncalidad.* At the same time, it was hoped that the new article would narrow the gap between Castilian law and foral law and thus pave the way for legislative unity. This illusion of the codifiers proved vain, for, on the one hand, the new article failed to harmonize with foral legislations which accept the system of *troncalidad,* and, on the other, it produced in the national law an anomalous institution with a strange flavor. Furthermore, the wording of the text is so deficient that it has in fact given rise to interminable doubts and questions.[19]

What we have then in Article 811 of the Spanish Code is a *reserva* which, though based on the principle of *troncalidad,* considerably dilutes that principle. The dilution is criticized by Sánchez Román as revealing the vacillating spirit of the drafters—". . . revela el espíritu vacilante de sus redactores,"[20] (an observation which incidentally is verified by Alonso Martínez himself in an interesting litotes: "La Comisión . . . praclamó, no sin vacilar, la doctrina de la sucesión lineal).[21] This dilution is manifested in the following features:

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persons, only those are benefitted who are descendants of the ascendant who was the first acquirer of the property." (trans. by author).

GOYTISOLO, LA JURISPRUDENCIA DEL TRIBUNAL SUPREMO Y EL ARTICULO 811 DEL CODIGO CIVIL.

17 ALONSO, MARTINEZ, EL CODIGO CIVIL EN SUS RELACIONES CON LAS LEGISLACIONES FORALES 226-227 (1908).

18 G.R. No. 11960, December 27, 1958.

19 A CASTAN, *supra* note 2, at 186.

20 6 SANCHEZ ROMAN, *supra* note 13.

21 ALONSO, MARTINEZ, *supra* note 17, at 226-227, *quoted in* Padura v. Baldovino, G.R. No. 11960, December 27, 1958.

1. it compromises with the principle of proximity of degree by allowing the ascendant to get the property during his lifetime;

2. the limitation of its operation to third degree relatives within the family line of origin; and

3. the restriction of the tracing of the source to the ascendant or sibling who transmitted the property by operation of law, and not beyond him.[22]

Because of this dilution, some commentators hesitate to characterize it as truly *troncal,* a desitation that in several decisions the Spanish Supreme Court itself has given expression to.[23]

III. The Civil Code of 1949

As we know, the Spanish Civil Code was extended to the Philippines (as well as to Cuba and Puerto Rico) by royal decree and took effect here in December 1889, carrying to this colony the new *reserva,* together of course with the older *reserva,* the *viudal.* In 1947, when the Commission created by Executive Order No. 48 began work on a new Civil Code, our legal system had the two *reservas,* and two *reversiones*: the *reversión legal,* found in Article 812 of the old Code[24] and the *reversión* in adoption (the *reversión adoptiva*), found in Rule 100, section 5 of the Rules of Court of 1940.[25] The draft code submitted by the Commission to Congress abolished all the *reservas* and *reversiones,* but on the floor of Congress, the restoration of the *reserva troncal* was proposed and approved, and incorporated in the new Code as Article 891.[26]

Article 891 is a literal translation of the old Article 811:

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22 6 Manresa, Comentarios al Codigo Civil Español 263-264 (5th ed., 1921).

23 *Vide* 4 Castan, *supra* note 2, at 190; 6 Sanchez Roman, *supra* note 13.

24 "Los ascendientes suceden con exclusion de otras personas en las cosas dadas por ellos a sus hijos o descendientes muertos sin posteridad, cuando los mismos objetos donados existan en la sucesion. Si hubieran sido enajenados, sucederán en todas las acciones que el donatario tuviera con relacion a ellos, y en el precio si se hubieren vendido, o en los bienes con que se hayan sustituido, si los permutó o cambió."

25 "In case of death of the child, his parents and relatives by nature, and not by adoption, shall be his legal heirs, except as to property received or inherited by the adopted child from either of the parents by adoption, which shall become the property of the latter or other legitimate relatives, who shall participate in the order established by the Civil Code for intestate estates."

Note that this *reversion* can also operate as a *reserva;* i.e., in those cases where the recipients of the property upon the adopted child's death are the legitimate relatives of the adopter.

26 It is interesting to note that the *reserva troncal* is not found in the Civil Code of any other former Spanish colony. The Code of Puerto Rico of 1902 had reproduced the *troncal* in its Section 799 but the provision was repealed on 8 March 1906; the *viudal,* however, is still found in Section 2731 of that Code. Thus Puerto Rico and the Philippines—both of which remained Spanish possessions after the revolutions of Bolivar and San Martin in the South American colonies—have apportioned between themselves the two *reservas,* the former adopting the *viudal* and the latter, the *troncal.*

> The ascendant who inherits from his descendant any property which the latter may have acquired by gratuitous title from another ascendant, or a brother or sister, is obliged to reserve such property as he may have acquired by operation of law for the benefit of relatives who are within the third degree and who belong to the line from which said property came.

IV. PURPOSE

In *Padura v. Baldovino*,[27] the Supreme Court pointed out that "[t]he *reserva troncal* is a special rule designed primarily to assure the return of the reservable property to the third degree relatives belonging to the line from which the property originally came, and avoid its being dissipated . . . by the relatives of the inheriting ascendant (reservista)." In a recent decision,[28] the Supreme Court, citing Spanish authorities, explained the rationale of the *reserva troncal* to be to avoid *"el peligro de que bienes poseídos secularmente por una familia pasen bruscamente a título gratuito a manos extrañas por el azar de los enlaces y muertes prematuras,"*[29] or *"impedir que, por un azar de la vida, personas extrañas a una familia puedan adquirir bienes que sin aquél hubieran quedado en ella."*[30]

Sánchez Román, going into a little more detail, sets forth the purpose of this *reserva* as two-fold:

1. principally, to prevent the patrimony of a family from passing, through the accident of succession, to outsiders, enriching them at the expense of members of the family of origin who might be more economically disadvantaged; and

2. secondarily, to pay a kind of homage to the affinity that the property has for its origin and to the family's patrimony.[31]

V. REQUISITES

The requisites of the *reserva troncal,* according to our Supreme Court,[32] are four:

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[27] Padura v. Baldovino, G.R. No. 11960, December 27, 1958.

[28] Gonzalez v. CFI, 104 SCRA at 487.

[29] The danger that property existing for many years in a family's patrimony might pass gratuitously to outsiders through the accident of marriage and untimely death. (trans. by author); *vide* Alonso Martinez, *supra* note 17, at 192.

[30] To prevent outsiders from acquiring, through an accident of life, property, which, but for such accident, would have remained in the family. (trans. by author); *vide* the Spanish Court decisions of 30 December 1897 and 25 March 1933.

[31] 6 SANCHEZ ROMAN, *supra* note 13, at 990.

"[U]no principal, que es el impedir que la fortuna de una familia, por los accidentes y azares de la sucesión, pase a personas extrañas a la misma, enriqueciéndolas, en perjuicio de los parientes de aquella de donde los bienes proceden, quizá más necesitados; y otro más secundario, rendir cierto culto y homenaje al valor de afección que los bienes pueden tener por su procedencia, su origen familiar y a cierto relativo sentido de *patrimonialidad* familiar."

[32] Chua v. CFI, G.R. No. 29901, August 31, 1977, 78 SCRA 412, 416 (1977).

> 1. that the property was acquired by a descendant[33] from an ascendant or from a brother or sister by gratuitous title;
> 2. that said descendant died without an issue;[34]
> 3. that the property is inherited by another ascendant by operation of law; and
> 4. that there are relatives within the third degree belonging to the line from which said property came.[35]

The subsequent case of *Gonzalez v. Court of First Instance*[36] reiterates, in slightly modified form, the *Chua* enumeration, to wit:

> (1) a descendant inherited or acquired by gratuitous title property from an ascendant or from a brother or sister;
> (2) the same property is inherited[37] by another ascendant or is acquired by him by operation of law from the said descendant; and
> (3) the said ascendant should reserve the said property for the benefit of relatives who are within the third degree and who belong to the line from which the said property came.[38]

There are thus three actual transfers undergone by the property involved in the *reserva*: a first transfer from a person to his descendant, brother, or sister; a second transfer from that descendant (or brother or sister, as the case may be) to an ascendant other than the prior transferor (it is upon this second transfer that the *reserva* begins to exist); and a third transfer from that ascendant to the relatives specified in the article.[39]

The first transfer—from ascendant to descendant or from sibling to sibling—must be by gratuitous title (*título lucrativo*). The transmission, according to *Cabardo v. Villanueva*,[40] adopting Manresa's explanation[41] is by gratuitous title:

> when the recipient does not give anything in return. It matters not whether the property transmitted be or be not subject to any prior charges; what is essential is that the transmission be made gratuitously, or by an act of mere liberality of the person making it, without imposing any obligation on the part of the recipient; and that the person receiving the property transmitted deliver, give or do nothing in return.[42]

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[33] Should be "by a person."
[34] Should be "without *legitimate* issue."
[35] Citing 3 PADILLA, CIVIL CODE ANNOTATED 300 (6th ed.).
[36] 104 SCRA at 486.
[37] This needs clarification, i.e. not simply *inherited, but inherited through compulsory or intestate succession,* in order to fall under the phrase "operation of law."
[38] Manresa states the requisites to be as follows: "1. la existencia de un ascendiente a quien corresponda legítima, o la herencia intestada en la sucesión del descendiente; 2. la existencia en esa sucesión de bienes adquiridos por el descendiente en virtud del título lucrativo de un ascendiente o de un hermano; 3. la existencia de parientes del descendiente dentro del tercer grado y de la línea de donde los bienes proceden. 6 MANRESA, *supra* note 22, at 324.
[39] Gonzalez v. CFI, 104 SCRA at 486-487.
[40] 44 Phil. 186 (1922).
[41] *Vide* 6 MANRESA, *supra* note 22.
[42] *Cabardo,* 44 Phil. at 189, *cited in* Gonzalez v. CFI, 104 SCRA at 489.

Transmissions by gratuitous title are therefore reducible to two modes of acquisition: donation, and succession, whether compulsory, testate, or intestate.[43] Excluded of course from the term *donation* are the so-called onerous donations, which are not acts of liberality, as well as the remuneratory donations, to the extent of the value of the burden imposed.[44]

An interesting question regarding the meaning and application of the term "gratuitous title" arose in the case of *Chua v. Court of First Instance*.[45] The property involved there was a parcel of land inherited equally *pro-indiviso* by the decedent's son and wife, but with an obligation, expressly imposed by the court in the Intestate Proceeding, "de pagar a las [sic] Standard Oil Co. of New York la deuda de ₱3,971.20, sus intereses, costas, y demás gastos resultantes del asunto civil no. 5300 de este Juzgado." It was an obligation that apparently was made good by the two heirs, although in what proportion they shared, we are not told. On subsequent claim by paternal half-brothers of the decedent's son (who had also died and passed on the property to his mother), the contention was raised that there was no *reserva* because the first transmission had not been by gratuitous title, but for a consideraion—a contention which the court *a quo* sustained. Reversing the decision, the Supreme Court, speaking through Mr. Justice Martin, held that the transmission "was by means of a [sic] hereditary succession and therefore gratuitous." Nor did the fact that the son-heir was ordered to assume part of the transferor's unpaid debt change the nature of the transmission as gratuitous, for, as the Supreme Court pointed out:

> But the obligation of paying the Standard Oil Co. of New York the amount of ₱3,971.20 is imposed upon [the heirs] not personally by the deceased José Frías Chua in his last will and testament but by an order of the Court in the testate [sic: should be Intestate] Proceeding No. 4816 dated January 15, 1931. As long as the transmission of the property to the heirs is free from any condition imposed by the deceased himself and the property is given out of pure generosity, it is gratuitous. It does not matter if later the court orders one of the heirs . . . to pay the Standard Oil Co. of New York the amount of ₱3,971.20. This does not change the gratuitous nature of the transmission of the property to him. As far as the deceased José Frías Chua is concerned the transmission of the property to his heirs is gratuitous.

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[43] 6 MANRESA, *supra* note 22, at 309.

"Son titulos lucrativos por excelencia, a los que pueden reducirse cuantos quieran inventarse, a donación y la sucesión testada e intestada, y como tales se enumeran en el art. 968."

14 SCAEVOLA, *supra* note 5, at 272.

"Titulo lucrativo se llama a la adquisición del dominio de una casa sin dar otra, sin verificar prestación alguna, habiendo solo lucro, ganancia o utilidad en la adquisición . . ."

[44] *Cf.* Art. 733. On this point, *vide* 5 DIAZ & MARTINEZ, EL CODIGO CIVIL 298-299(1908).

[45] *Chua*, 78 SCRA 412.

A brief observation should be made: the essence of a gratuitous transmission is that the transferee should give or do nothing in return ("sin verificar prestación alguna," in Scaevola's words). It would seem that as long as the transferee has to give something in return, as a concomitant obligation for his receiving the property, the acquisition is, to the extent of whatever he had to give, not gratuitous, because his patrimony was not thereby enhanced. In effect, he should be deemed to have acquired gratuitously only as far as the value of the thing received exceeded that of the property or service he had to give. Might not it have been proper therefore in this case to have deducted from the son's share of the land the sum he had to pay and treat only the difference as gratuitously transmitted?

The death of the first transferee without legitimate issue makes possible the second transfer, which should be by operation of law (*por ministerio de la ley*) from the first transferee to his ascendant.[46] This can include only that which is acquired by the ascendant by way of legitime or through intestate succession. Neither donation nor succession by means of a will would be included here, inasmuch as the former would be by operation of a deed of donation, and the latter, by a testament. Thus Manresa says: "Esos bienes, en la sucesión *intestada*, son todos los bienes, porque todos se transmiten por ministerio de la ley."[47]

This being the accepted meaning of "operation of law," it is clear that the existence of legitimate issue of the first transferee will bar any possibility of *reserva troncal* because it would not then be possible for the ascendant to inherit by operation of law—neither by legitime because the legitimate descendants would exclude the ascendant, nor by intestacy, for the same reason.[48]

As already mentioned, it is at the moment of this second transfer that the *reserva* commences. The ascendant receives the property, together with the burden or duty of reserving it for the intended future recipients named in the law. Upon the ascendant's death occurs the third transmission of which the *Gonzalez* case speaks: the transmission from the ascendant to the relatives favored by the reservation.

VI. Parties

There are four parties in the *reserva troncal*: those whom we may term "preliminary," namely the first transferor and the first transferee (who is either the former's descendant or his brother or sister); and those who may be called "essential," namely, the ascendant who is the second

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[46] *Lacerna v. Corcino*, G.R. No. 14603, April 29, 1961, 1 SCRA 1226 (1961).

[47] 6 Manresa, *supra* note 22, at 312. For a fuller treatment of this matter, *vide* 14 Scaevola, *supra* note 5, at 274 ff.

[48] The only imaginable exception to this statement would be an instance where *all* the legitimate descendants renounce or are disinherited, or are unworthy to succeed.

transferee, and the relatives benefitted. The first transferor has, for the sake of convenience, often been called the *origin* or *mediate source;* the first transferee, the *prepositus* or *propositus,* or *praepositus;* the ascendant obliged to reserve, the *reservista* or reservor; and the relatives benefitted, the *reservatarios* or reservees. Among these parties there is a web of relationships involved, between the origin and the *prepositus,* between the *prepositus* and the *reservista,* between the *reservatarios* and the *prepositus.* Although the legal provision does not seem to specify the kind of relationship required and confines itself to generic terms, it is well-settled that all the relationships must be legitimate. Our Supreme Court had occasion to lay down this rule fairly early—in the case of *Nieva v. Alcala*[49] where the issue was whether an illegitimate sister of the *prepositus* (she was a natural daughter of the mediate source) was entitled to be a reservee. The Supreme Court, speaking through Mr. Justice Johnson, denied her claim, ruling that she would have been entitled to the property if she were a legitimate daughter of the mediate source. "This question," the Court stated, "so far as our investigation shows, has not been decided before by any court or tribunal. However, eminent commentators on the Spanish Civil Code . . . are unanimous in the opinion that the provisions of Art. 811 [now 891] of the Civil Code apply only to legitimate relatives."[50]

The *Nieva* ruling was reiterated in the cases of *Centeno v. Centeno,*[51] *Bureau of Lands v. Aguas,*[52] and *Gonzalez v. Court of First Instance.*[53]

A. *The Origin or Mediate Source —*

The first party to be considered is the origin or mediate source—he who by gratuitous title transmitted the property to a descendant, brother, or sister. Beyond the mediate source no inquiry is to be made. In Manresa's words, "it is unimportant whether that brother or that ascendant acquired the property by inheritance from a stranger or from relatives belonging to the other line, or by purchase; all that is required is that the property came from him and was acquired by the *prepositus* by gratuitous title."[54] (trans. by author).

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[49] 41 Phil. 915 (1920).

[50] The Spanish Supreme Court, in its Decision of 10 June 1918, has laid down the same doctrine.

For Spanish commentaries, *vide* 6 MANRESA, *supra* note 22, at 274-275; 14 SCAEVOLA, *supra* note 5, at 258-271; 6 SANCHEZ ROMAN, *supra* note 13, at 997 ff; 5 DIAZ MARTINEZ, *supra* note 44, at 297; VALVERDE, TRATADO DE DERECHO CIVIL ESPAÑOL 235-236 (4th ed., 1939).

[51] 52 Phil. 322 (1928).

[52] 63 Phil. 279 (1936).

[53] *Gonzalez,* 104 SCRA 479.

[54] 6 MANRESA, *supra* note 22, at 273.

Poco importante, pues, que ese hermano o ese ascendiente los adquiriese por herencia de un extraño, o de parientes de otra línea, o por compra; basta que de ellos procedan; que de ellos los adquiriera por título lucrativo el descendiente fallecido.

The Spanish Supreme Court expressed the same opinion when it held that "the text of Article 811 does not permit an inquiry into the source of the property beyond the ascendant or brother from whom the descendant of the reservor acquired it by gratuitous title."[55] (trans. by author).

A more interesting—and debatable—question is the relationship of fraternity between the mediate source and the *prepositus*. If the mediate source is a brother, must he be of the half-blood or can he be either of the full- or half-blood? It is a question on which our Supreme Court has not yet ruled. Justice J.B.L. Reyes[56] is of the opinion that the "brother or sister must be of half-blood as to the descendant; otherwise the property would not change lines in passing to a common ascendant of the *prepositus* and the brother." The argument has merit, for indeed if the purpose of the *reserva troncal* is to prevent the property from leaving the line, there is no point in applying it to those instances where the mediate source and the *prepositus* are siblings of the full blood for then the question of line would be immaterial, the full-blood siblings sharing *both* the paternal and maternal lines and having therefore the same relatives. The question of line—according to this view—would thus be material only if the sibling relationship is one of the half-blood for then the line of origin could be identified—paternal if paternal half-brother, maternal if maternal half-brother—and to that line of origin should the reservees belong. On the other hand, it could also be argued that no such distinction should be made, and the *reserva* should properly apply whether the fraternal relationship is of full- or half-blood. In the first place, the law makes no such distinction, *nec nos distinguere debemus*. In the second place, it can be argued that the line referred to in Article 891 is not, strictly speaking, the paternal or maternal line of genealogy of the *prepositus* but a *special* line determined by its two terminal points: the mediate source at one end, and the *prepositus* at the other, and therefore the emphasis made by the adherents of the first view on the paternal as distinguished from the maternal line would have no particular relevance.[57] It might also be proposed, in the third place, that the restriction of the fraternal relationship to the half-blood would open the door to consequences inimical to the intent of the article, as for instance in a case where the property, having been acquired gratuitously by an individual from his full-blood brother, is, upon that individual's death, inherited *ab intestato* by an ascendant who later contracts a subsequent marriage. If we were to follow the view that there is no *reserva troncal* in this situation, the property could possibly be

[55] "[E]l texto del art. 811 no autoriza para buscar la procedencia de los bienes, a afecto de determinar el parentesco lineal, mas allá del ascendiente o del hermano de quien los hubo por titulo lucrativo el descendiente del obligado a reservar." Spanish Supreme Court decision of 30 December 1897, reiterated in the decisions of 8 November 1906, 26 October 1907, 7 November 1937, 26 November 1943.

[56] 3 REYES & PUNO, OUTLINE OF PHILIPPINE CIVIL LAW 81 (1956).

[57] For a fuller discussion of this point, *vide* SANCHEZ ROMAN, *supra* note 13, at 998 ff.

transmitted by succession to the ascendant's second spouse who is both a compulsory and intestate heir, and such an eventuality would take the property out of the family to which brothers belonged, and cause its transfer to a total stranger. Nevertheless the question is an open one, and until a definitive ruling is handed down by the Supreme Court, genuinely arguable.[58]

B. *The Prepositus* —

The *prepositus*, who is a descendant, brother, or sister of the mediate source, is the first transferee of the property. The *reserva*, however, does not arise until the second transfer (by operation of law to the *prepositus'* ascendant). Hence no obligation to reserve is imposed by law until the property reaches the patrimony of the ascendant *reservista* through the process already described earlier. When the *prepositus* acquires the property, he has absolute ownership thereover. As such then he can exercise over the property all the rights proper to ownership and in so doing he can even prevent the incipient *reserva* from arising—he is, in Sánchez Román's words, "el árbitro de que aquellos bienes sean ó no reservables"[59] and he might very well desire to prevent a *reserva* in order to spare his ascendant the burden of reserving. He could exercise his ownership to abort a future reserva in three ways:

1. By substituting or otherwise alienating the property. Manresa points out that before the death of the descendant there exists as yet no *reserva* and if the said descendant consumes the property received by him by gratuitous title from an ascendant or brother, if he sells it, or substitutes it or in any other way alienates it, the possibility of a *reserva* is obviated, even if the ascendant should acquire what the *prepositus* received in exchange for it, because "that which was given to him no longer exists in his patrimony when the time for the *reserva's* inception arrives, and that which the ascendant acquired did not originate from the other ascendant or brother."[60] (trans. by author).

2. By bequeathing or devising the potentially reservable property. Such a disposition does not even have to be in favor of third persons; it

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58 Philippine commentators are divided on the matter. *Cf.* 3 CAGUIOA, COMMENTS AND CASES ON CIVIL LAW, 237 (8th ed., 1970); 3 PARAS, CIVIL CODE OF THE PHILIPPINES ANNOTATED 230 (8th ed., 1976); 3 TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 251 (1973).

59 6 SANCHEZ ROMAN, *supra* note 13, at 1028. "The arbiter of whether the properties will be reservable or not." (trans. by author).

60 6 MANRESA, *supra* note 22, at 315.

"Antes de la muerte del descendiente no existe reserva; por consiguiente no cabe hablar de sustitución. Si ese descendiente consume los bienes que por título lucrativo adquirió de un ascendiente o de un hermano, si los vende, los cambia o en cualquier forma los enajena, no se sustiuyen por el metálico o por los objetos que pueda adquirir en equivalencia, porque los que dié ya no existen en su patrimonio al nacer la reserva, y los que adquiere ya no son procedentes del ascendiente o del hermano."

could be in favor of the ascendant himself who is the potential *reservista,* who would then acquire the property not by operation of law but by will. To this there is no legal impediment — "ninguna prohibición ni limitación legal le impedía hacerlo"[61] — except only that the *prepositus* cannot impair the legitime of the ascendant by disposing by will of values in excess of the free portion.

3. By partitioning in such a way as to assign the potentially reservable property to heirs other than the ascendant (this again subject to the constraints of the legitime). This is a right granted to the *causante* by Article 1080, to the exercise of which the potential *reservatarios* cannot object.[62]

C. *The Reservista* —

It is only upon the second transfer — that transmission by operation of law from the *prepositus* to his ascendant — that the *reserva* commences. The ascendant-*reservista* is thus the first of the proper or essential parties of the *reserva* (the other being the class collectively referred to as the *reservatarios.*

The *reservista* must be an ascendant of the *prepositus,* of whatever degree. "El grado o la línea no importan, por lo tanto: todo ascendiente que hereda de un descendiente, se halla obligado a reservar los bienes a que se refiere el art. 811."[63] But it should be noted that the provision says "another ascendant"; "otro ascendiente"—that is to say, an ascendant *other* than the origin or mediate source. It is therefore clear from the text of the law that if, for instance, a person donates property to his son and, upon the son's death, the same property passes by operation of law to the father from whom it came in the first place, the father would not be obliged to reserve. That would be a case of *reversión legal* under Article 812 of the Spanish Code. It is clear from the wording of Article 891 (as also of the old Article 811) that the ascendant in such a case, who was himself the origin of the property, would not be obliged to reserve.[64]

But we come to a more interesting question: should the *reservista* belong to the other line, or may the mediate source and the *reservista* belong to the same line? A simple example will illustrate the problem: suppose that A receives by way of donation a parcel of land from his paternal grandfather X; upon A's death the parcel passes by intestacy to his father

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[61] 6 SANCHEZ ROMAN, *supra* note 13, at 1027-1028.

[62] 6 SANCHEZ ROMAN, *supra* note 13, at 1027, *Contra* 14 SCAEVOLA, *supra* note 5, at 303. "Sea o no sea oportuna y digna de aplauso su doctrina [i.e. del art. 811], este existe para que se cumpra, y la manera de conseguir su cumplimiento es la *adjudicacion forzosa* al ascendiente de los bienes adquiridos a titulo lucrativo por el descendiente de otro ascendiente o de un hermano. De la contrario, el articulo sera un mero conjunto de palabras sin actividad juridica, o muy escasa, pues una disposicion legal, forzosa o imperativa, se convierte en otra convencional a merced de la voluntad del descendiente."

[63] 6 MANRESA, *supra* note 22, at 271.

[64] 6 MANRESA, *supra* note 22, at 271.

Y (Y being X's son). Would Y then be obliged to reserve? It could be claimed, not without persuasiveness, that there should be no *reserva* in such a case because there is no call for its operation. Indeed if we remember that the purpose of the *reserva* is "impedir que personas extrañas a una familia pueden adquirir bienes que sin aquél hubieran quedado en ella,"[65] there seems to be no justification for imposing the *reserva,* inasmuch as the property never left the line. If the *reserva* is curative, in the sense that it purposes to undo an occurrence that has already taken place, namely the departure of the property from the line, there is in this instance nothing to cure, nothing to undo, for the property has stayed within the line. Such in fact is the opinion of Mr. Justice J.B.L. Reyes,[66] expressed in the following words: " 'Another ascendant' is one belonging to a line *other than* that of the reservista."

And yet the contrary view cannot easily be dismissed. Sánchez Román and Manresa are in agreement that the *reserva* would operate in that case (even if Vallet de Goytisolo in a brilliant and thorough monograph[67] disdainfully brushes aside Sánchez Román's argument as round-about—"afirmó rotundamente" — and Manresa's as unconvincing — "no nos convence ninguno de sus argumentos").

Manresa's and Sánchez Román's arguments could be reduced to two: first, that the law is couched in unequivocal terms and no qualification is mentioned (*Ubi lex non distinguit, nec nos distinguere debemus*), and second, that the purpose of the provision is not only curative, but preventive: to *bar* the possibilitty of property leaving the line through the intermediation of an ascendant.[68] An illustration of the second argument would be Manresa's example of property passing from the paternal grandfather to the grandchild and subsequently being inherited by the father who had contracted a second marriage: without the *reserva* the property could pass to the son's stepmother and thus would leave the line. The Supreme Court of Spain, in an *obiter dictum* in its Decision of 21 November 1902, stated that a *reserva* would exist even if the mediate source and the *reservista* belong to the same line.

The basic problem here is the vagueness of the provision, caused by its failure to specify clearly its purpose, and it again goes back to the indecisive attitude of the drafters regarding the extent to which they wanted to apply the principle of *troncalidad.* And so the problem stands.

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[65] See note 30, *supra.*

[66] REYES & PUNO, *supra* note 56, at 81.

[67] GOYTISOLO, *supra* note 16.

[68] 6 SANCHEZ ROMAN, *supra* note 13, at 991.

"Sin embargo, en defensa de esta generalidad del artículo, puede aducirse que el pensamiento capital de la ley fué *evitar* que por el intermedio del ascendiente, fuese este o no de la línea de que los bienes proceden, pasaran éstos a parientes de otra línea o a personas extrañas." (emphasis supplied).

D. *The Reservatarios* —

The *reserva troncal* is established for the benefit of a class or group of individuals: relatives who are within the third degree and who belong to the line from which said property came.[69]

The provision lays down two requirements for *reservatarios:* the first is that they must be of the line from which the property came. If the mediate source is an ascendant of the *prepositus,* the interpretation of this first requirement presents no problem: if the ascendant is the father or any paternal ancestor, the line of origin would of course be the paternal line; if the mother or any maternal ancestor, then the maternal line. Neither would there be any difficulty if the mediate source were a half-brother or -sister; if the father was the common parent (consanguineous), the paternal; if the mother (uterine), then the maternal. There would be a problem if the mediate source and the *prepositus* were brothers of the full blood, assuming we follow the view that a *reserva* exists in this instance. Since the fraternity is of the full blood it would not be possible to identify either the paternal or the maternal line. That is why Manresa says that in such a case "la cuestión de línea es indiferente."[70]

The second requirement, as worded in the provision, is vague: "who are within the third degree." Third degree from whom? Asks Manresa: "¿Se atiende, como en la línea a la persona de quien proceden los bienes de un modo mediato; se atiende al mismo ascendiente que debe reservar, o al descendiente de quien se hereda?"[71] Happily, however, this question is well-settled in this jurisdiction, as it is in Spain. In *Cabardo v. Villanueva,*[72] the Supreme Court, through Mr. Justice Street, explicitly ruled that the point of reference for computing the three degrees is the *prepositus.* The ruling is in conformity with the opinions of both Spanish and Philippine commentators.[73]

Thus in *Jardín v. Villamayor*[74] the *prepositus'* grand-uncle and first cousin once removed (i.e. the *prepositus'* father's first cousin) were held to be not *reservatarios* for being respectively, fourth-degree and fifth-degree relatives. On the other hand, in *Aglibot v. Mañalac,*[75] the *prepositus'* two

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[69] The original draft of the Spanish codal provision read: "en favor de los parientes del difunto que se hallaren comprendidos dentro del tercer grado, y que los sean por *la parte* de donde proceden los bienes." As finally worded: "en favor de los parientes que esten dentro del tercer grado y pertenezcan a *la línea* de donde los bienes proceden."

[70] 6 MANRESA, *supra* note 22, at 280.

[71] 6 MANRESA, *supra* note 22, at 275.

Does it refer to the person from whom the property came, or to the ascendant obliged to reserve, or to the descendant from whom he inherited? (trans. by author).

[72] 44 Phil. 186 (1922).

[73] 6 MANRESA, *supra* note 22, at 275.

"En este punto, con rarísima excepción, es unánime la opinión de los comentaristas: el parentesco ha de computarse con relación al descendiente de cuya sucesión se trata."

[74] 72 Phil. 392 (1941).

[75] G.R. No. L-14530, April 25, 1962, 4 SCRA 1030.

aunts, being his third-degree relatives were held to be *reservatarios*. The recent case of *González v. Court of First Instance*[76] reiterates the doctrine: "The person from whom the degree should be reckoned is the descendant, or the one at the end of the line from which the property came and upon whom the property last devolved by descent."

The third-degree relatives in relation to the *prepositus* then would be the following:

First-degree: — the father or the mother. At this point a question could be raised: the existence of children would normally bar a *reserva* from arising because there would then be no way by which the property could go to the ascendant by operation of law. But suppose that the *prepositus* did have a legitimate child who was however disqualified to inherit because of unworthiness, disinheritance or renunciation and consequently an ascendant of the *prepositus* inherited instead; would the child be a *reservatario?* One should think, without hesitation, that he would not qualify as such lest an absurdity occur. It is a sound principle that what one cannot do by direction one cannot do by indirection.

Second-degree: — grandparents and brothers and sisters, whether of the full- or half-blood.

Third-degree: — great-grandparents, uncles, aunts, nephews and nieces.[77]

Sánchez Román proposes a possible exception to the third-degree limitation: an instance where a child receives property gratuitously from his father and then upon his own death transmits it by operation of law to his mother. When the mother dies the surviving relatives of the son are a brother (two degrees away) and a grand-nephew, grand-child of a predeceased brother and child of a predeceased nephew (four degrees away, but a common descendant, being a great-grandson, of both the mediate source and the *reservista*). Sánchez Román opines that the grand-nephew in this case should not be excluded by the brother since they are both descendants of the mediate source.[78] Although an *obiter dictum* in *González v. Court of First Instance*[79] rejects the opinion as "irrelevant and sans binding force," it might be given a second look in some future case.[80]

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[76] *Gonzalez*, 104 SCRA, at 493.

[77] *Vide*, 6 MANRESA, *supra* note 22, at 281.

[78] 6 SANCHEZ ROMAN, *supra* note 13, at 1014 *citing* 96 CADAVAL, REVISTA DE LEGISLACION Y JURISPRUDENCIA 107-109.

[79] *Gonzalez*, 104 SCRA 479.

[80] The ruling in *Florentino v. Florentino*, 40 Phil. 480 (1919), in the light of which *Gonzalez* held Sanchez Roman's opinion to be irrelevant and sans binding force does not seem to be exactly in point because the ruling laid down there was that the *reservista* could not will the reserved property to one of several equally-related *reservatarios*. One of Sanchez Roman's arguments, however, is that in the situation cited by him, the existence of *reserva troncal* would create an absurdity as it would exclude someone who really should not be excluded, namely a direct descendant of

One point of controversy, unresolved as yet in this jurisdiction, is whether the *reservatario* should also be related to the mediate source. By way of illustration, suppose that the maternal grand-mother passed on property by inheritance to her grand-child who upon his death transmitted it by operation of law to his father. Would the maternal grand-father be a *reservatario?* It should be noted that although a relative on the mother's side, the maternal grand-father is not related to the origin. Ruling on just such a set of facts, the Supreme Court of Spain[81] held that the maternal grandfather was a proper *reservatario.* Explains Manresa: "[n]osotros creemos . . . que al llamar dicho artículo 811 a los parientes de la línea de donde los bienes proceden, sólo cabe hablar de dos líneas, la paterna y la materna *del descendiente,* sin atender a más subdivisiones que propriamente ya no son líneas, sino ramas o sublíneas . . ."[82]

Vallet de Goytisolo is unimpressed by the argument, pointing out that "las legislaciones modernas no distinguen ramas ni sublíneas, pero tampoco admiten la reserva lineal, creación original de Código español. El artículo no habla . . . de líneas paterna y materna, sino la línea de donde los bienes proceden."[83]

Sánchez Román espouses the view that the *reservatario* must, in addition to being a relative of the *prepositus* within the third degree, also be related by consanguinity to the mediate source. Without this element of "doble consanguinidad," he points out that results (as in the case above mentioned) would arise "completamente contrario á los fines de esta reserva . . ., de impedir que los bienes pasen á familia de otra sangre que la de la línea de donde aquellos procáden."[84]

The controversy, it seems to this writer, revolves around the meaning that should be given to the word *line.* If the term is interpreted to refer simply to the *prepositus'* genealogical descent from his immediate male

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both the mediate source and the *prepositus*—"una anomalía saliente . . . ya que a nadie podía parecer mal que ese bisnieto heredero forzoso de su bisabuelo, lleve participación en los bienes de tal procedencia, y lejos de lastimarse con esto ningún sentimiento, lo que lastimaría a la conciencia y al buen sentido es que se le hubiera excluído, y menos en nombre de una ley previsora para impedir que las riquezas de una familia pasen a manos extrañas . . ."

[81] Decision of 8 November 1894.

[82] 6 MANRESA, *supra* note 22, at 279.

"We believe . . . that article 811, in specifying the relatives from the line whence the property came, refers only to two lines—the paternal and the maternal—without taking into account subdivisions which are not properly lines, but branches or sublines . . ." (trans. by author).

[83] GOYTISOLO, *supra* note 16.

"Modern codes do not make distinctions of branches and sublines, true, but neither do they contain the *reserva troncal,* which is an original creation of the Spanish Code. The article does not speak . . . of paternal and maternal lines, but of the line whence the property came." (trans. by author).

[84] 6 SANCHEZ ROMAN, *supra* note 13, at 999-1000.

"Completely contrary to the purpose of this *reserva* . . . which is to prevent property from passing to persons not of the line of origin." (trans. by author).

In support of this view, *cf.* 3 TOLENTINO, *supra* note 58, at 252-253; 3 CAGUIOA, *supra* note 58, at 240.

and female progenitors, then it would refer only to the paternal and maternal lines, without subdistinctions, and Manresa would be correct. If, however, the term means the relationship between mediate source and *prepositus* (in which these two are the terminal points), then the *reservatarios* should, if they are to be said to belong to this line, be related to both terminal points, and Sánchez Román would be correct. Article 964 of our Code, which defines a direct line as "that constituted by the series of degrees among ascendants and descendants" seems to allow for the consideration of branches and sublines. Because of the use of the broad term "ascendants" every ascendant would be the terminal point of a line. Thus, a person would be bound, for instance, with his paternal grand-father in one direct line, and with his paternal grand-mother in *another* direct line, and so on. Hence, Sánchez Román's view does seem the better one.

The duration of the *reserva* depends of course on the length of the *reservista's* lifetime, unless he waives it sooner. It can and does happen, therefore, that a very long-lived *reservista* will be survived by several *reservatarios,* some of whom may have been conceived and born after the *prepositus'* death. The question arises: to be a qualified *reservatario* is it necessary that one be already living at the time of the *prepositus'* death? Otherwise stated, is it enough, for one to be a *reservatario,* that one is living when the *reservista* dies? There is a statement in *Padura v. Baldovino,*[85] reiterated in *Cano v. Director of Lands,*[86] both decisions, incidentally, penned by Mr. Justice J.B.L. Reyes, that the *reservatarios* inherit the reserved property not from the *reservista,* but from the descendant *prepositus.* Carried to its strict logical implication, and in the light of applicable codal provisions on capacity to succeed,[87] that dictum would consider as *reservatarios only* those individuals already living or at least already conceived at the time of the *prepositus'* death. The case just cited cannot, however, be taken to have furnished a definite answer to the question; in neither case was this particular matter even raised. True, there are some commentators who are of the view that a *reservatario* must be living when the *prepositus* dies.[88] And this is in fact the rule in Navarre, Aragón, and Vizcaya, with their stricter systems of *troncalidad.* But the view espoused by the majority of commentators—to the effect that it is enough that the

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[85] *Padura,* G.R. No. 11960, December 27, 1958.

[86] 105 Phil. 1 (1959).

[87] "Art. 1025. In order to be capacitated to inherit, the heir, devisee or legatee must be living at the moment the succession opens, except in case of representation, when it is proper.

A child already conceived at the time of the death of the decedent is capable of succeeding provided it be born later under the conditions prescribed in article 41.

"Art. 1034. In order to judge the capacity of the heir, devisee or legatee, his qualification at the time of the death of the decedent shall be the criterion."

[88] *cf.* 6 MANRESA, *supra* note 22, at 294. "El Sr. Lopez R. Gomez, sin fundamentar detalladamente su opinión, cree que, dado el sistema del Codigo, y atendiendo a los verdaderos principios jurídicos, deben excluirse del derecho de suceder en los bienes reservados a los parientes colaterales nacidos con posterioridad al momento en que hubo de constituirse la reserva."

reservatario be living at the time of the *reservista*'s death—appears to be more persuasive. As Scaevola points out: "The right granted by article [891] is one that arises from the mere quality of being a relative within the third degree and of the line of origin, not strictly a right acquired through succession."[89] And Manresa: "The *reserva* is established in favor of a group or class: the relatives within the third degree—not in favor of specific individuals; this group or class cannot be said to perish as long as there are relatives who comprise it."[90] Manresa in fact clinches the argument thus:

> If we were to suppose that only those who were living at the time of the descendant's death have a right to the *reserva,* if all those persons die so that when the ascendant *reservista* himself dies, the only relatives left are those who were conceived and born subsequent to the descendant's death, the result would be that *at the decisive moment, when the danger arises that the property may pass to another line, the property will so pass,* despite the existence at that moment of relatives within the third degree and of the line of origin. Does this interpretation realize the purpose of the lawmaker in enacting article [891]? In my judgment, not only is the purpose not realized, it is violated."[91] (trans. by author).

Let us suppose now that when the *reservista* dies, there are several individuals surviving, all of them within the third degree and belonging to the line of origin, but not of equal degrees of relationship with the *prepositus.* Will they all inherit *per capita,* irrespective of the inequality of degrees, or is there preference in favor of the nearer relatives?

Scaevola's view on this matter is well-known—he asserts that, in conformity with the principle of *troncalidad,* which only looks to the line of origin, all the *reservatarios,* regardless of difference in degrees of relationship should inherit indiscriminately and equally, provided they are all within the third degree of relationship. If, he asks, the *reserva* was established precisely as an exception to the system of legitimary succession, how can we apply thereto the principles of legitimary succession? That would be to disregard completely the spirit of the law, and to ignore its origin. Thus, he says: "Si en el instante del fallecimiento del descendiente existen varios parientes de éste en grado diverso y no es ajustado a derecho establecer la reserva en favor del más próximo en grado, no hay

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[89] 14 SCAEVOLA, *supra* note 5, at 342.

[90] 6 MANRESA, *supra* note 22, at 29.

[91] 6 MANRESA, *supra* note 22, at 296. Underscoring supplied.

"Pues bien; si suponemus que solo tienen derecho a la reserva las parientes dentro del tercer grado que existían en la época de la muerte del descendiente, que esos parientes fallecen todos y que al extinguirse la reserva, o sea al morir el ascendiente, solo quedan otros nacidos y concebidos despues, resultara, como dice Q. Macius, que en el momento decisivo, cuando surge el peligro de que los bienes pasen a otra línea por morir el ascendiente, los bienes pasarán, en efecto, a esa otra línea, a pesar de existir en ese momente parientes de tercer grado de la línea de donde los bienes procedén. Se cumple de este modo el fin que el legislador se propuso al dictar el art. 811? A nuestro juicio, no solo no se cumple ese fin, sino que se contraría en absoluto."

otro remedio que afirmar que deben ser llamados a ella todos conjuntamente."[92] Here again, regional *fueros* with stronger traditions of *troncalidad*—like Navarre, Vizcaya, Aragón, and Cataluña—disregard the differences in degree of relationship and make *all* relatives beneficiaries. This theory, however, known as the *reserva integral,* has not found favor in our jurisprudence. Mr. Justice J.B.L. Reyes in *Padura v. Baldovino*[93] discards Scaevola's theory in a thorough and persuasive exposition:

> The stated purpose of the *reserva* is accomplished once the property has devolved to the specified relatives of the line of origin. In the relations between one *reservatario* and another of the same degree, there is no call for applying the Art. 891 any longer; wherefore, the respective share of each in the reversionary property should be governed by the ordinary rules on intestate succession. In this spirit the jurisprudence of this Court and that of Spain has resolved that upon the death of the ascendant *reservista,* the reservable property should pass, not to all the *reservatarios* as a class, but only to those nearest in degree to the descendant (*prepositus*), excluding those *reservatarios* of more remote degree.
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> . . . .
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> In other words, the *reserva troncal* merely determines the group of relatives (*reservatarios*) to whom the property should be returned; but *within that group* the individual right to the property should be decided by the applicable rules of ordinary intestate succession since Art. 891 does not specify otherwise. This conclusion is strengthened by the circumstance that the *reserva* being an exceptional case, its application should be limited to what is strictly needed to accomplish the purpose of the law.
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> . . . .
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> The restrictive interpretation is the more imperative in view of the new Civil Code's hostility to successional *reservas* and reversions, as exemplified by the suppression of the *reserva viudal* and the *reversión legal* of the Code of 1889. (trans. by author).

Although the question involved in *Padura* was not precisely this but something else, i.e. whether there should be a distinction between full- and half-blood relationships among the *reservatarios,* the thinking of our Supreme Court on this matter is clear. *Padura* actually confirmed a seminal statement on the same point in *Florentino v. Florentino,*[94] and was in turn reiterated as one of the *obiters* in *González v. Court of First Instance.*[95]

It may be stated here that if there are, among the *reservatarios,* relatives of the full-blood as well as of the half-blood, such as full-blood brothers and half-blood brothers, or children of full-blood brothers and children of half-blood brothers, those of the half-blood are not excluded,

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92 *Vide* 14 SCAEVOLA, *supra* note 5, at 337-338.
"If at the moment of the ascendant's death, there exist several relatives in different degrees of relationship, and the law does not provide that the *reserva* shall be for the nearest in degree, there is no other remedy than to affirm that all are jointly called." (trans. by author).

93 *Padura,* G.R. No. 11960, December 27, 1958.

94 *Florentino,* 40 Phil. 480.

95 *Gonzalez,* 104 SCRA 479.

so long as they are of the line from which the property came,[96] but each of the half-blood gets only one-half the share of a full-blood, in accordance with the proportion laid down by Articles 1006 and 1008.[97]

As a qualification to the rule that among the *reservatarios* the nearer exclude the more remote, *Florentino v. Florentino*[98] ruled that there is a right of representation among the *reservatarios* as long as the representative is himself within the third degree. Actually, then, representation can work in the *reserva* in only one instance, i.e. in the case of a predeceased or incapacitated brother or sister (of the *prepositus*) being survived by children. Representation, however, takes place *only* in accordance with the laws of intestate succession, because of *Padura*, and therefore is barred if the brother or sister sought to be represented renounced the inheritance.[99]

VII. JURIDICAL NATURE

The nature of the *reservista's* right to the property has been the subject matter of much disagreement. The *reservista* has been characterized as or likened to, variously, a usufructuary, a possessor, a fiduciary in a fideicommissary substitution, a vendee in a sale with *pacto de retro*, a trustee.[100]

In our jurisdiction, the question was squarely raised and settled in *Edroso v. Sablan*.[101] The Supreme Court there, through Mr. Chief Justice Cayetano Arellano, rejected as having no support in law the theory that the *reservista* is a mere usufructuary. The ascendant *reservista*, according to *Edroso*, is an owner; he has "legal title and dominion." He has "the right to dispose of the property reserved, . . . the right to recover it, because he is the one who possesses or should possess it and have legal title to it." In short, the Court states emphatically, "all the attributes of the right of ownership belong to him exclusively—use, enjoyment, disposal and recovery." The *reservista's* right of ownership, however, is subject to a resolutory condition (a condition subsequent), that condition being the existence of *reservatarios* at the time of the *reservista's* death. The infelicitously worded *obiter* in *Florentino v. Florentino*,[102] that the *reservista* is "nothing but a life usufructuary or a fiduciary of the reservable property received," cannot be said to have reversed *Edroso because*, aside from its being *obiter*, the statement is clarified in the same paragraph by the following explanation:

> But if, afterwards, all of the relatives, within the third degree, of the descendant (from whom came the reservable property) die or dis-

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[96] *Rodriguez v. Rodriguez*, 101 Phil. 1098 (1957).
[97] *Padura*, G.R. No. 11960, December 28, 1958.
[98] *Florentino*, 40 Phil. 480.
[99] *Cf.* Article 977.
[100] For different treatments of this question, *vide* 4 CASTAN, *supra* note 2, at 187-188; 6 SANCHEZ ROMAN, *supra* note 13, at 977, 1030-1031; 6 MANRESA, *supra* note 22, at 267-268, 333-334; 5 DIAZ & MARTINEZ, *supra* note 44, at 296; 14 SCAEVOLA, *supra* note 5, at 308.
[101] 25 Phil. 295 (1913).
[102] *Florentino*, 40 Phil. at 489.

> appear, the said property becomes free property, by operation of law, and is thereby converted into the legitime of the ascendant heir who can transmit it at his death to his legitimate successors or testamentary heirs. This property has now lost its nature of reservable property...[103]

Moreover, the ruling in *Edroso* was confirmed in *Lunsod v. Ortega:*[104]

> The person obliged to reserve . . . was not only a usufructuary but also the owner in fee simple of the three parcels of land in question, notwithstanding the fact that they have the character of reservable property; . . . but it is also indisputable that [the *reservista*] acquired these parcels subject to a resolutory condition, that is to say, her ownership of said property was subject to said condition, to wit, that there should or should not exist at the time of her death relatives of Anacleta Ortega from whom she inherited said property, included within the third degree and belonging to the line from which said property came . . .

From the doctrine of *Edroso,* the following consequences flow:

1. The *reservista* may alienate the property, but the alienation will be subject to the same resolutory condition to which the *reservista's* ownership was subject. So it was held in *Nono v. Nequia,*[105] where the Supreme Court, speaking through Mr. Justice Pablo, pointed out:

> La reserva troncal es una condición resolutoria sobre el derecho del ascendiente que hereda: si a su fallecimiento, el descendiente tiene parientes dentro del tercer grado en la línea troncal, estos parientes son los que adquieren la propiedad en virtud de la reserva; como consecuencia, los sucesores o cesionarios del ascendiente pierden la propiedad porque la adquieren los parientes del descendiente; pero, si al fallecimiento del ascendiente el descendiente no tiene parientes dentro del tercer grado, entonces los sucesores o cesionarios del ascendiente se hacen dueños del terreno.[106]

The operation of this principle is clearly seen in *Philippine National Bank v. Rocha,*[107] where the property subject to the *reserva* was, as reservable property, alienated by the *reservista.* The transferee mortgaged it to the Philippine National Bank. Subsequently the *reservista* died, survived by *reservatarios.* The Court held that the property could no longer be sold to satisfy the judgment in favor of the Philippine National Bank because the alienation of the property was subject to the *reserva* and the *reser-*

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[103] In the same vein should be understood the lateral comment in *Gonzalez v. CFI,* 104 SCRA 479, that "the reservor is a usufructuary of the reservable property."

[104] 46 Phil. 664, 695 (1921).

[105] 93 Phil. 120, 122-123 (1953).

[106] The *reserva troncal* is a resolutory condition on the ascendant: if at said ascendant's death, the descendant has relatives within the third degree from the line of origin, those relatives will acquire the property by virtue of the *reserva*; consequently, the heirs or transferees of the ascendant lose the property because it is acquired by the said relatives; but if at the ascendant's death, the descendant has no relatives within the third degree, then the heirs or transferees will become absolute owners of the property.

[107] 55 Phil. 497 (1930).

vista's death meant the vesting of absolute ownership in the *reservatarios* and the loss of the transferee's rights.

2. The *reservatarios* cannot impugn or set aside the alienation by the *reservista* as long as the condition subsequent is pending, i.e., as long as the *reservista* is alive.[108]

3. The *reservista's* right of ownership is registrable, subject to the annotation, on the title, of the *reservatarios'* right.[109]

4. If there are *reservatarios* at the time of the *reservista's* death, "the *reservatario* nearest to the *prepositus* becomes, automatically and by operation of law, the owner of the reservable property."[110] Thus, the property is not deemed part of the *reservista's estate*[111] and can neither be made to answer for his debts, nor be considered in the computation of the legitime of the *reservista's* compulsory heirs.[112] Moreover, any disposition *mortis causa* which the *reservista* may have made of the property is, necessarily, inoperative.[113]

Supposing, however, that the *reservista,* by means of a will disposes *mortis causa* of the reserved property in favor of some of several *reservatarios,* thereby excluding the others, is such a disposition valid? This right is expressly granted the *reservista* in the *reserva viudal.*[114] There is, however, no equivalent provision in the *reserva troncal.* A Spanish Supreme Court decision of 8 October 1930 held that the *reservista troncal* had no such right, inasmuch as he has no power to dispose *mortis causa* of the reserved property. But a later decision, of 25 March 1933, allowed it, because the property would not leave the line anyway, and by analogy with Article 972. In the Philippines, the matter is settled — in two cases, *Florentino v. Florentino,*[115] and *González v. Court of First Instance,*[116] the Supreme Court expressly ruled against the validity of any testamentary disposition by a *reservista* in favor of one or some of several *reservatarios.* In the first case, the *reservista* had made a will instituting her daughter (who was one of *reservatarios*) as universal heiress of her estate and upon the *reservista's* death, the daughter took possession of all the properties of the *reservista,* including the property under *reserva troncal,* thereby excluding the other *reservatarios,* of whom there were fifteen. The Supreme Court, through Mr. Justice Florentino Torres, ruled that the daughter

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108 *Edroso,* 25 Phil. at 312-313.
109 *Vide* the dispositive portion of *Edroso,* 25 Phil. at 315.
110 Cano v. Director of Lands, 105 Phil. at 5.
111 *Cano,* 105 Phil. 1; *Cabardo,* 44 Phil. 186.
112 *Florentino,* 40 Phil. 480.
113 Arroyo v. Gerona, 58 Phil. 226 (1933).
114 Art. 972 of the Spanish Code provides: "A pesar de la obligación de reservar, podrá el padre, o madre, segunda vez casado, mejorar en los bienes reservables a cualquiera de los hijos o descendientes del primer matrimonio, conforme a lo dispuesto en el art. 823."
115 *Florentino,* 40 Phil. 480, 493-494.
116 *Gonzalez,* 104 SCRA 479.

could not acquire the reserved property to the exclusion of the other *reservatarios:*

> Whatever provision there is in her [i.e. the *reservista's*] will concerning the reservable property received from her son Apolonio III, or rather, whatever provision will reduce the rights of the other *reservatarios* . . . is unlawful, null and void.
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> . . . .
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> It is true that when Mercedes Florentino, the heiress of the *reservista* Severina, took possession of the property in question, same did not pass into the hands of strangers. But it is likewise true that the said Mercedes is not the only *reservataria.* And there is no reason upon law and upon the principle of justice why the other *reservatarios,* the other brothers and nephews, relatives within the third degree in accordance with the precept of article 811 of the Civil Code, should be deprived of portions of the property which, as reservable property, pertain to them.

In the second — and much more recent — case, there were several surviving *reservatarios,* some in the second degree of relationship (brothers and sisters of the *prepositus*) and some in the third degree (nephews and nieces). The *reservista* had left a will disposing of the reserved property in favor of the nephews and nieces alone. The issue was whether the *reservista* had the right to bypass some of the *reservatarios* (in fact those nearer in degree of relationship) in favor of others. The Supreme Court, speaking through Mr. Justice Aquino, declared that the *reservista* had no such right and that the reserved property went by right and by operation of law to the second-degree relatives, being the nearest in degree. The Court based its holding on the following consideration:

1. The reservees inherit the reservable property from the *prepositus,* not from the reservor;

2. To allow the reservor in this case to make a testamentary disposition of the reservable property in favor of the reservees in the third degree and, consequently, to ignore the reservees in the second degree would be a glaring violation of article 891;[117]

3. The reserved property does not form part of the *reservista's* estate, if there are surviving *reservatarios;* and

4. The rule of *stare decisis et non quieta movere* binds the Court to follow the doctrine of *Florentino.*

It may also be pointed out that these rulings are in perfect conformity with the *Padura* doctrine that in determining who should receive the reserved property, the rules of intestate succession should be observed, among which are that of proximity of degree and that of equality of sharing among those related in the same degree.

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[117] It should, however, be noted that Article 891 does not explicitly provide that the nearer in degree exclude the more remote.

We should look now at the other side, namely the nature of the *reservatarios'* right. While the *reservista* is alive, the *reservatarios* have an expectancy, subject to the suspensive condition that they survive the *reservista.* As to whether the *reservatarios* may dispose of this right of expectancy, there is some uncertainty. In *Bernardo v. Siojo,*[118] the Supreme Court, through Mr. Justice Imperial, ruled that any disposition of the expectancy by the *reservatario* during the existence of the *reserva* is void, first because it is violative of Article 1347 forbidding the execution of contracts with respect to future inheritance,[119] and second because it would be in conflict with the very purpose of the *reserva troncal,* which is to keep property within the line. On the other hand, there is the case of *Sienes v. Esparcia,*[120] where the Supreme Court, speaking through Mr. Justice Dizon, characterized the *reservatarios'* right as "a real right which the reservee may alienate and dispose of, albeit conditionally, the condition being that the alienation shall transfer ownership to the vendee only if and when the reservee survives the person obliged to reserve."

This writer is of the opinion that the *Sienes* ruling is the better one. In the first place, it construes the *reserva* more liberally in favor of the *reservatarios.* In the second place, all that the *reserva* seeks to accomplish is to bring the property back to the line of origin. If, once brought back, it should be disposed of by the members of that line, even though by a prior transfer, that should be the concern and the prerogative of the *reservatarios.* The law after all does not also mandate that the *reservatarios,* having been given the property, should not dispose of it.

VIII. The Property Reserved

As long as the property was transmitted from the mediate source to the *prepositus* by gratuitous title and then transmitted in turn by operation of law from the *prepositus* to the ascendant, there is a *reserva.* The same property must run this course, so to speak, so that if the *prepositus,* substitutes it in any way, the new property acquired in substitution is not reservable. But any property, so long as it goes through the two required transmissions, is reservable, "cualquiera que sea su clase, muebles o inmuebles, fructíferos o infructíferos, fungibles o no fungibles".[121]

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[118] 58 Phil. 89 (1933).

[119] Does this imply that the *reservatario* inherits from the *reservista?* If it does, it would be inconsistent with *Padura, Cano,* and *González, supra.*

[120] 1 SCRA 750, G.R. No. 12957, March 24, 1961.

[121] 6 Manresa, *supra,* note 22 at 313.

". . . whatever be its nature, movables or immovables, fruit-bearing or otherwise, fungible or non-fungible." (trans. by author).

Both Manresa (*supra* note 22 at 315) and Scaevola (*supra note* 5 at 309-310) assume that even money can be the subject-matter of *reserva troncal,* but it must be borne in mind that the money should be identifiable or capable of being earmarked as having come from the mediate source.

In *Rodríguez v. Rodríguez*,[122] a sugar quota allotment was held to be reservable even if it came into existence (by virtue of Act 4166) after the death of the mediate source, because, according to the Supreme Court, speaking through Mr. Justice Padilla, the "sugar quota allotment, in the language of the law (Sec. 9, Art. 4166) is 'an improvement attaching to the land'" and the land came by gratuitous title from the *prepositus'* father.

It may not always be easy, however, to determine whether the property that originated from the mediate source actually went to the ascendant *by operation of law,* as in a case where the *prepositus* who, having in his estate property received by him from other sources or by other means, leaves a will instituting his ascendant as his universal heir. How does one determine which of the properties were acquired by operation of law and which, by will? Two alternative solutions have been presented: one, aptly called the *reserva máxima* because it maximizes the scope of the *reserva,* proposes that as much of the property from the mediate source as is possible should be deemed to be included in the part of the estate that passes by operation of law.[123] The other solution, espoused by the majority of commentators,[124] is called the *reserva minima* or *proporcional* because it considers every property in the *prepositus'* estate to pass to the ascendant partly by operation of law and partly by will, in a proportion corresponding to the part of the estate, in relation to the whole, covered by the testamentary disposition. Thus, if the *prepositus* in his will disposed of the entire free portion in favor of the ascendant, one-half of every property would be deemed to pass as legitime and the other half, by testamentary succession.

Either solution is defensible: the *máxima* is more faithful to the spirit and ultimate purpose of the *reserva;* the *mínima,* on the other hand, is less oppressive on the ascendant and balances the purpose of the *reserva* with the policy of keeping the legitime unencumbered. In the Philippines, the matter is unsettled by jurisprudence, but the *mínima* is the more widely accepted view.

Once the *reserva* arises—upon the transmission of the property to the ascendant by operation of law—the *reservista* will be subject to the restrictions imposed by it. The alienation or substitution of the property will, as already pointed out earlier, be subject to the resolutory condition of the survival of *reservatarios;* the culpable loss of the property will

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[122] 101 Phil. 1098-1102 (1957).

[123] Diaz and Martinez opt for this solution; they say "como a nadie es dado, por medio de subterfugios, eludir el cumplimiento de las leyes ni menos lesionar derechos ajenos creados por la misma ley, si aquel caso se presenta en la práctica, entendemos que necesariamente deben darse en pago de la legítima los bienes que el descendiente heredó a título gratuito de otro ascendiente ó hermano, con lo cual la reserva troncal tendrá efectividad ...." *supra* note 44 at 302.

[124] *Vide* 6 SANCHEZ ROMAN, *supra* note 13 at 1026-1027; 6 MANRESA, *supra* note 22 at 319; 14 SCAEVOLA, *supra* note 5 at 284.

subject the *reservista* to the obligation to make good its value; and, as held in *Cano*,[125] upon the *reservista's* death, the reserved property is immediately shunted from the rest of the *reservista's* estate and hence is not considered part of his patrimony.

IX. Rights and Obligations

The belated inclusion of the provision on the *reserva troncal* in the draft Code during Congressional deliberation gave rise to one apparently unforeseen problem: the lack of any companion provisions for the implementation of the rights and obligations created thereunder. The problem, it is true, also existed under the old Code (Art. 811 of the Spanish Code also stands alone, without implementating provisions), but the old Code contained the *reserva viudal* which had implementing articles and the obvious solution was to "borrow" those articles and apply them by analogy to the *troncal*. In the cases of *Dizon v. Galang*[126] and *Riosa v. Rocha*,[127] the Supreme Court ruled that the provisions "tending to assure the efficacy of the reservation by the surviving spouse are applicable to the reservation known as 'reserva troncal' referred to in article 811." The reference was to articles 977 and 978, which laid down the obligations of the surviving spouse in the *reserva viudal*. As applied to the *troncal*, therefore, the obligations of the *reservista*, by virtue of the *Dizon* and *Riosa* decisions were:

1. to inventory all the properties subject to the *reserva;*

2. if immovables, to annotate their reservable character in accordance with the provisions of the Mortgage Law which provided in articles 191, 199, and 203 thereof for registration of the *reserva* within 90 days from acceptance by the *reservista*, and which provided, further, that after the expiration of such period, the *reservatarios* could demand compliance with the requirement;

3. to appraise the movables; and

4. to secure by means of a mortgage: a) the indemnity for any deterioration of or damage to the properties occasioned by the *reservista's* fault or negligence, and b) the payment of the value of such reserved movables as the *reservista* may have alienated onerously or gratuitously.

These then were the obligations of the *reservista troncal* and the corresponding rights of the *reservatario* were to demand them—under the old Code, by judicial borrowing from the *viudal*.[128]

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[125] *Cano*, 105 Phil. 1.
[126] 48 Phil. 601, 603 (1926).
[127] 48 Phil. 737, 745 (1926).
[128] The same solution was adopted by the Spanish Supreme Court in the Decisions of 8 November 1894 and 30 December 1897.

In the new Code, however, the *viudal* does not exist, and naturally neither do its companion articles. What then of all that past application by analogy when the analogue has perished? Some commentators[129] believe, with reason, that although the *viudal* and all its implementing provisions have been eliminated, the various obligations laid down thereunder had already been engrafted onto the *troncal* by jurisprudence, so that the retention of the *troncal* carried with it all those principles and interpretations already attached to it. Others[130] suggest that the obligations of the usufructuary under Article 583 may be applied by analogy, namely: 1) to furnish an inventory, and 2) to give security for the return of the property; and additionally, to annotate the *reserva* on the title as an encumbrance on the property.

This uncertainty is neither desirable nor necessary—it would not have arisen had the restoration of the *troncal* been more thoroughly considered and studied.

X. EXTINGUISHMENT

Various causes extinguish the *reserva troncal*:

1. The death of the *reservista*—at which moment the reserved property will pass automatically to the *reservatarios* (in accordance with the rule of preference explained above) in full, absolute, and unencumbered ownership;

2. The death of all *reservatarios*—in which case the *reservista's* title becomes absolute and unconditional;

3. Renunciation by all the *reservatarios,* it being understood, however, that no renunciation can bind any *reservatario* born subsequently (i.e., after the renunciation was made);

4. Total fortuitous loss of the reserved property;

5. Confusion or merger of rights, as when the *reservatario* acquires the *reservista's* right in a contract *inter vivos;* and

6. Prescription or adverse possession.[131]

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129 *Vide,* for example, 3 TOLENTINO, *supra* note 58 at 263 ff.

130 *Vide* 3 CAGUIOA, *supra* note 58 at 250-251.

131 14 SCAEVOLA, *supra* note 5 at 360.

"Tocante a los parientes conderecho a la reserva, es aplicable la doctrina, porque pueden no ejercer su derecho por ignorar la muerte del descendiente o por otra causa.

Dada esta posibilidad, entendemos que, tratandose de un derecho real sobre bienes inmuebles, prescribirá a los treinta años, contados desde la aceptación de la herencia por el ascendiente, momento determinante del derecho al ejercicio de la reserva; ..."

In *Maghirang v. Balcita* [46 Phil. 551 (1924)], the Supreme Court declined to rule explicitly on whether the *reservatario* has a prescriptible interest in the property.

XI. To Retain or Not to Retain—Criticisms by Way of Conclusion

It is time now — thank God — to conclude and make some recommendations. If the legislature should, at any time soon (or not so soon) ever consider a revision of the Civil Code, it will have to confront once more the question of the *reserva troncal* in Philippine law—to retain it or to discard it. One must confess to having mixed feelings about this question: as a professor of Civil Law one might have one good thing at least to say about the *reserva troncal*—it has been a fertile source of examination questions year in and year out, questions guaranteed to bedevil and confound students, and to incur their everlasting ire.

In a more serious vein, however, the question should be raised anew: is it worth retaining? The following points may be considered relevant for the purpose of deciding:

1. The *reserva* has its origins in the feudal system of the Middle Ages, a system in which it was essential to keep estates intact, not merely for proprietary purposes but also, and chiefly, for the purpose of centralizing the responsibility for defense against the Norseman or the infidel, or the neighboring lord. Along with this necessary practice grew such kindred institutions as primogeniture (which modern law has completely discarded), sub-infeudation, lordship and vassalage, knighthood and chivalry, and so forth, not to mention courtly love and the *droit du seigneur* or *jus primae noctis*. The danger from the Norseman and the Saracen has passed. There is hardly any crying need in this last quarter of the twentieth century to keep property intact within one family; on the contrary, the need is for diffusion rather than concentration. Surely, treating family patrimony as if they were feudal estates to be jealously guarded lest they fall into the soiled hands of the great unwashed is an anachronism that should be left in history books, where they properly belong, and not in Civil Codes.

As Castan points out:

> Resultan las reservas una institución poco conforme a los principios del derecho estricto, y menos al sentido del derecho moderno. Obedecen a un espíritu o sistema de recelos y desconfianzas, del que cada vez se van apartado más las legislaciones, convencidos de que dicho régimen es injusto en el terreno de los principios y estéril en el de las realidades prácticas.[132]

2. Related to the first observation is the fact that the *reserva* entails and encumbers property. An encumbrance — especially of the nature

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[132] 4 Castan, *supra* note 2 at 185.
"The institution of the *reservas* is hardly consistent with the principles of strict law, let alone with the spirit of modern law. The *reservas* are based on a spirit of distrust and suspicion from which modern law is veering away, aware that the regime (of *reservas*) is unjust in principle and sterile in practice." (trans. by author).

of the *reserva* where the chance of losing the property is very great (since all that is required is the survival of a single *reservatario*)— is never conducive to the development of property. What normally happens is that the *reservista*—faced with the prospect of losing the property to the other line, and therefore unable to transmit the property to his own heirs—will allow the property to stagnate, will not introduce permanent improvements thereon, will refuse to invest on it—all in all a thoroughly bad and economically unsalutary situation.

Another consequence of entailment is that it prevents the free circulation of property—for how many people will be eager to buy property under a resolutory condition? — and thus is not conducive to commercial growth. What the *reserva* indeed creates is a category of properties in cold storage, so to speak, shunted from the open market, and waiting to be liberated or, to maintain the metaphor, waiting to be thawed by their owner's death.

3. The *reserva* clutters the successional system. The system of legitimes and of intestate succession, already complex as it is, is further complicated by the special rule of the *reserva,* with its many detailed rules and minute distinctions. The move should be towards greater simplification of the successional rules, particularly in the legitimary portions[133] and in the concurrences of heirs. The abolition of the *reserva troncal* will contribute greatly towards rationalizing the unnecessary intricacies of the law of succession, already referred to by students, unaffectionately, as "the jungle of Civil Law" (where surely the *reserva troncal* is one of the most ferocious tigers).

4. The *reserva troncal* operates to penalize marriage and legitimate family relations. Since it has consistently been held to apply only to those legitimately related, no *reserva* would attach, for instance, to property inherited by an illegitimate parent from his illegitimate child, notwithstanding that such property originated from the other (illegitimate parent). This is one instance where the law seems to foster adulterous relations. The discrimination is, to be sure, unintended, but it is there.

5. It produces certain ridiculous absurdities by imposing its peculiar burden on the legitime.

The effect of the article is to burden the legitime and spare that which is transmitted by testamentary succession, thus reversing the policy of the law of protecting the legitime and allowing encumbrances or conditions to burden the testamentary portion. Or consider the following situation: the father transmits property by gratuitous title to his son. The son dies intestate, survived by his maternal uncle as his nearest heir. The property

[133] Note for instance the arbitrariness of the surviving spouse's share, which varies from one-half to one-third, to one-fourth, to one-eighth, and even to the share of one legitimate child, depending on the particular combination of heirs.

would have left the line and yet there would be no *reserva* because the heir was not "another ascendant." On the other hand, if the mother had survived the son, she would have inherited the property subject to the *reserva.* Why is the mother placed in a worse situation than the uncle? Or stated differently, why should the legitime be placed under a burden which is not imposed on a collateral relative's intestate portion?

6. There is really no compelling reason why the law should, in the particular situation governed by the *reserva,* seek to prevent property from transferring lines. With the abolition of the *reserva viudal,* this constantly happens, inasmuch as spouses are compulsory and intestate heirs of each other—so that succession by a person from his spouse is a direct transfer of lines, and no encumbrance is now imposed in such instances. The *reserva troncal* governs an indirect transfer, through the intermediation of the *prepositus,* so we now have an encumbrance imposed on an indirect transfer and none on a direct one. Transfer of property from one line to another, whether occurring directly or indirectly need not be frowned upon—these are after all one of the lateral effects (hazards, if one prefers the term) of that inviolable social institution defined so well in Article 52.

7. Finally, and I suppose all students of Succession will agree with this, the *reserva* troncal has caused a good deal of confusion and controversy because of its difficulty. The mischief it has caused is incalculable, and surely is not justified by whatever good it has done.

As our friend Manresa has so well expressed it: "La intelígencia de ese artículo no es además muy llana, de modo que no es extraño que haya suscitado dudas y cuestiones, muchas de ellas de difícil resolución."[134]

I had originally intended, in a moment of levity, to entitle this lecture, "Reserva Troncal—Ave Atque Vale" or "Reserva Troncal—A Swan Song," but I thought better of it. But it *is* time, I think, to lay the *reserva troncal* to rest and to consign it, with honors if need be, to legal history. I should like to think that this lecture is part of the obsequies for it.

It is only a hope I express. For one can never be too sure: the *reserva troncal* has become an old habit, and like all old habits, it dies very, very hard.

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[134] 6 MANRESA, *supra* note 22 at 265.
Understanding this article is no easy matter; it would not be far-fetched to say that it has engendered doubts and questions, many of them difficult to resolve.