The background features a dark blue field with several large, semi-transparent gear shapes. On the left side, there is a vertical strip with a colorful, abstract, and textured appearance, possibly representing a collage or a digital artwork.

# **Wills and Donations**

# Types of Wills

1. Noncupative by public act
2. Noncupative by private act
3. Mystic Will
4. **Statutory Will**
5. **Olographic Will**

# LA Law Recognizes 2 Forms

- ★ As of July 1, 1999 – Louisiana law only recognizes 2 forms of testaments as valid
  - ★ Olographic Testament
  - ★ Notarial Testament
- ★ However, if a testator wrote a will in accordance with the form requirements for one of the types of testaments which existed prior to the revision, then that testament is still valid.

# Special Note regarding Military Wills

★ A testament written for military personnel is valid in Louisiana if:

- ★ (1) it is valid under LA law; or
- ★ (2) its valid under the law of the state of making at the time of making; or
- ★ (3) it is valid under the law of the state in which the testator was domiciled at the time of making or at the time of death; or
- ★ (4) with regard to immovables, it is valid under the law that would be applied by the courts of the state in which the immovables are situated.

# Special Note regarding Oral Testaments

- ★ Louisiana law does not have any provisions that recognize oral wills, even if they are recorded on electronic media such as a videotape
- ★ Videotapes are sometimes used by attorney's to preserve demonstrative evidence such as competence of the testator or the absence of fraud and/or duress

# Foreign Testament

- ★ A written testament subscribed by the testator and made in a foreign country, or in another state, or a territory of the US, in a form not valid in this state, but valid under the law of the place where made, or under the law of the testator's domicile, may be probated in this state by producing the evidence required under the law of the place where made, or under the law of the testator's domicile, respectively

# Probating the Testament

- ★ A testament, whether valid under the pre-revision, or valid under current laws, must be probated in a court of competent venue and jurisdiction.
- ★ A Notarial Testament need not be proved, but rather will be filed and executed by the court and shall have the effect of probate

# Olographic Will

- ★ Must be entirely written, dated and signed in the handwriting of the testator.
- ★ Date may appear anywhere in the testament
  - For date to be sufficient, the day, month and year must be reasonably ascertainable
- ★ Testator must sign at the end of the testament
- ★ Anything written after the signature will not be considered invalid, but will be left up to the court's discretion as to the validity
- ★ Additions and deletions on the testament may be given effect **ONLY** if made by the hand of the testator

# Probating an Olographic Testament

- ✦ Must be proved by the testimony of 2 credible witnesses that the testament was entirely written, dated and signed in the testator's handwriting.
- ✦ Testimony may be obtained through written affidavits or depositions

# Notarial Will

- ✦ Shall be prepared “in writing”, dated and executed in the following manner if the testator knows how to sign his name and read and is physically able to do both.
- ✦ Testator shall sign his name at the end of the testament and on each separate page in the presence of a Notary and 2 “competent witnesses.”
- ✦ Testator shall also signify to them that the instrument is his testament

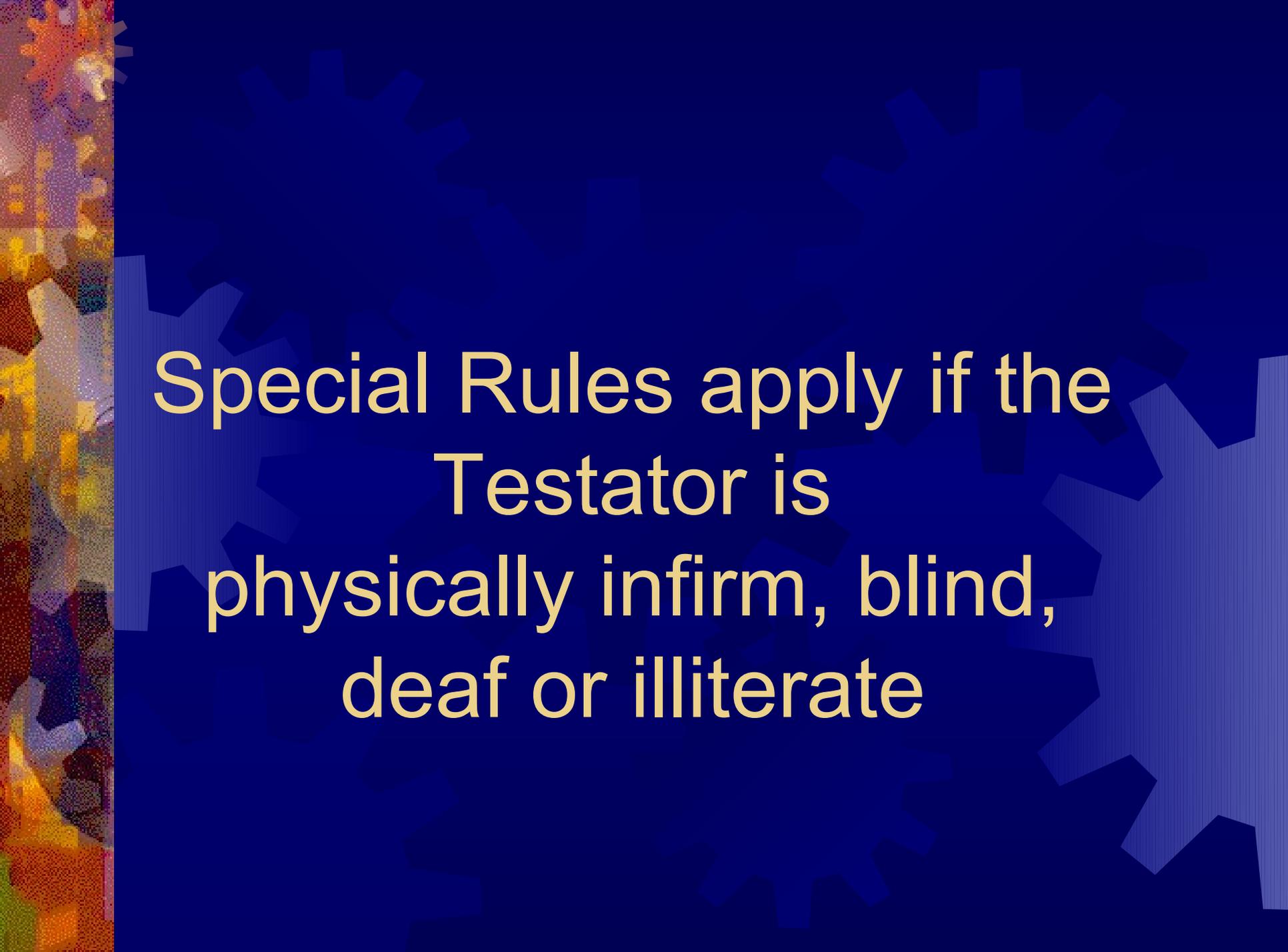
# Notarial Will Declaration

- ★ The Notary and Witnesses shall sign the following declaration:

“In our presence the testator has declared or signified that this instrument is his testament and has signed it at the end and on each other separate page, and in the presence of the testator and each other we have hereunto subscribed our names this \_\_\_\_ day of \_\_\_\_\_, 2005”

# “In Writing”

- ★ The form of the writing of the Notarial Will whether typewritten on a typewriter, computer or mimeograph is immaterial
- ★ Testament does not need to be in English – only needs to be in a language the Testator understands



Special Rules apply if the  
Testator is  
physically infirm, blind,  
deaf or illiterate

# If testator literate and sighted; but unable to physically sign

- ★ In the presence of the notary and 2 competent witnesses, the testator shall declare or signify to them that the instrument is his testament, that he is able to see and read but unable to sign because of a physical infirmity, and shall affix his mark where his signature would otherwise be required; and if unable to affix his mark, he may direct another person to assist him in affixing a mark, or to sign his name in his place. The other person may be one of the witnesses or the notary.
- ★ All sign the declaration

# Testator unable to Read

- ✦ Written testament must be read aloud in the presence of the testator, the notary and 2 competent witnesses. The witnesses and the notary must follow along with the reader.
- ✦ After the reading, testator must declare or signify that he heard the reading and that the instrument is his testament.
- ✦ Testator signs his name if able or affixes his mark or directs for it to be affixed.
- ✦ All sign declaration stating that testament was read aloud...

# Notarial Testament in Braille

- ✦ A testator who knows how to and is physically able to read braille, may execute a notarial testament accordingly:
- ✦ Must sign in the presence of a notary and 2 competent witnesses.
- ✦ The declaration in this form must be in writing, not in braille.

# Deaf or deaf and blind Notarial Testament

- ★ Must be able to read sign language, braille or visual English
- ★ Testament prepared and executed in the presence of a notary and 2 competent witnesses
- ★ Testator shall declare or signify that the instrument is his testament and sign his name at the end of the testament and on each other separate page of the instrument
- ★ If unable to sign then must signify by sign or visual English and affix his mark...

# Special Rules Regarding Witnesses

- ★ A person cannot be a witness to any testament if he is insane, blind under the age of 16, or unable to sign his name.
- ★ A person who is competent but deaf or unable to read cannot be a witness to a notarial testament.
- ★ If the witness or the notary is a legatee – it does not invalidate the testament, but may invalidate the legacy to that witness or notary
- ★ A person may not be a witness to a testament if that person is a spouse of legatee at the time of the execution of the testament.

# Kinds of Dispositions

## ★ Universal Legacy

- A disposition of all of the estate, or the balance of the estate that remains after particular legacies

## ★ General Legacy

- A disposition by which the testator bequeaths a fraction or a certain proportion of the estate, or a fraction or certain proportion of the balance of the estate that remains after particular legacies.
- May be separate/community; movable/immovable; corporeal/incorporeal

## ★ Particular Legacy (default category)

- A legacy that is neither universal nor general

## ★ Joint or Separate Legacy

- Joint = no assignment of shares; Separate = assigns shares

# What is a Forced Heir?

- ★ Forced heirs are descendants of the 1<sup>st</sup> degree who, at the time of the decedent's death, are 23 years of age or younger **OR** descendants of the 1<sup>st</sup> degree of any age who, because of mental incapacity or physical infirmity, are permanently incapable of taking care of their person or administering their estates at the time of the decedent's death [ La CC Art. 1493]

# NEW FORCED HEIRSHIP LEGISLATION

- ★ Effective August 15, 2003, the La Legislature added to the definition of forced heirs "descendants who have, at the time of decedent's death, according to medical documentation, an inherited, incurable disease or condition that may render them incapable of caring for their persons or administering their estates in the future."
- ★ The scope of this legislation could be very far reaching, the statute is vague and overbroad and likely to cause uncertainty for both estate planning and the probate of successions. **Act 1207**

# Forced Heir Entitled to Legitime

- ★ A forced heir may not be deprived of their portion of the decedent's estate reserved to him by law
- ★ Amount of forced portion:
  - ★  $\frac{1}{4}$  if one forced heir
  - ★  $\frac{1}{2}$  if 2 or more forced heirs

# Substitutions

- ★ **Prohibited Substitution:** Cannot donate in full ownership to a 1<sup>st</sup> donee, with a charge to preserve the thing and deliver it to a 2<sup>nd</sup> donee at the time of the 1<sup>st</sup> donee's death
- ★ **Vulgar Substitution:** May designate a third person to take a gift or legacy in the case the donee cannot take.

# Causes for Disinherison

- ✦ Must be **Express** and for **just cause**
- ✦ LA Civil Code Art. 1621 list the causes of disinherision of children by their parents
- ✦ Some Examples include:
  - ✦ Guilty of cruel treatment towards parent
  - ✦ Attempted to take life of parent
  - ✦ Struck parent or raised hand to strike parent
- ✦ May overcome disinherision by proving reconciliation with the testator

# Will Information Registry

- ✦ The Secretary of State in Louisiana is required to maintain a database for those residents who wish to register their testament.
- ✦ The database does not maintain information regarding contents or substance of the testament

# Donations – 2 Types

- ★ **Intervivos** (during life)
- ★ **Mortis Causa** (after death)
  - Must be in the form of a will, unless specifically covered by statute or governed by federal law.
  - Example: life insurance proceeds are payable by virtue of the provisions of the insurance contract
- ★ Form is critical and may destroy the donation if not in proper form
- ★ Gifts of corporeal movable property such as cash, furniture, jewelry and the like, may be made be manual donation [no form required]

# Immovable or Incorporeal Things

- ★ Form Required; otherwise invalid
- ★ Donation inter vivos must be done before a notary and 2 witnesses to be valid.

# Manual Gifts

- ✦ Not subject to any specific formality when delivered to the donee
- ✦ However, acceptance must be made during the life of the donee, cannot be accepted by heirs in the event the donee dies before acceptance

# Classification of Inter Vivos Donations

- ★ **Gratuitous** – donation made without condition and merely with liberality
- ★ **Onerous** – donation burdened with a charge
- ★ **Remunerative** – donation made to recompense for services rendered

# Revocation of Donation

## ★ Causes for revocation or dissolution

- ★ Ingratitude of the donee
- ★ Non-fulfillment of eventual conditions
- ★ Non-performance of the conditions imposed on the donee
- ★ Legal or conventional return

# Revocation for ingratitude

- ✦ If donee has attempted to take life of donor
- ✦ If he has been guilty towards cruel treatment, crimes or grievous injuries
- ✦ If he has refused him food, when in distress.

# Capacity

- ★ All persons have the capacity to contract, except unemancipated minors, interdicts, and persons deprived of reason at the time of contracting
- ★ A contract made by a person without legal capacity is relatively null and may be rescinded only at the request of that person or his legal representative

## Rescission of Contract for Incapacity

- ★ Upon rescission of a contract on the ground of incapacity, each party or his legal representative shall restore to the other what he has received thereunder.
- ★ When restoration is impossible or impracticable, the court may award compensation to the party to whom restoration cannot be made.