Principles of Civil Law

Lecture Title: Succession Part 2

Diploma in Law (Malta)

Lecturer: Dr. Carina Nagiah

Date: 14th November 2023

CAMILLERI PREZIOSI

Succession *continued*

Rights of the Surviving Spouse

A. Reserved Portion

Where a deceased spouse is survived by children or other descendants, the surviving spouse shall be entitled to one-fourth of the value of the estate in full ownership.

If there are no children or descendants as stated in article631, the surviving spouse shall be entitled to one-third of the value of the estate in full ownership.

B. Right of Habitation

- T he surviving spouse shall be entitled to the right of habitation over the tenement occupied as the principal residence by the said surviving spouse at the time of the decease of the predeceased spouse, where the same tenement is held in full ownership or emphyteusis by the deceased spouse either alone or jointly with the surviving spouse. he right of habitation conferred in this article shall cease on the remarriage of the surviving spouse, or if the surviving spous enters into a public deed of cohabitation.

Where the matrimonial home belongs in part to the surviving spouse, in any partition between the heirs of the deceased and the surviving spouse, the surviving spouse, or the said heirs, may demand that the property subject to the right of habitation be assigned to the surviving spouse upon a valuation which is to take account of such right of habitation over the property.

C. Right of Use of Furniture

The surviving spouse shall also have the right of use over any of the furniture in the matrimonial home belonging to the deceased spouse.

Cases where the surviving spouse cannot claim such rights

i. if, at the time of the death of one of the spouses, the spouses were separated by a judgement of the competent civil court, and the surviving spouse had, forfeited the rights referred to in those articles;

ii. where the predeceased spouse has, by his will, on the grounds of adultery, expressly deprived the surviving spouse of the rights referred to above

iii. if, in regard to the surviving spouse, there exists any of grounds on which such spouse would, be unworthy or incapable of receiving by will

Forms of Wills

A will may be either public or secret.

A public will is received and published by a notary in the presence of two witnesses in the same manner as any other notarial instrument, in accordance with the provisions of the Notarial Profession and Notarial Archives Act, even in regard to the signature of the testator, according as to whether the testator knows how to, and can write, or not. The signature of the witnesses is in no case dispensed with whatever may be the value of the thing disposed of by the will.

A secret will may be printed, type-written or written in ink either by the testator himself or by a third person.

Where the testator knows how to, and can write, the willshall, in all cases, be signed by him at the end thereof.

The paper on which a secret will is written, or the paper used as its envelope shall be closed and sealed.

The testator shall on delivering such paper declare that it contains his will.

A secret will shall be delivered by the testator to a notary, or, in the presence of the judge or magistrate sitting in the court of voluntary jurisdiction, to the registrar of such court.

The will shall be deemed to have been made on the day on which it is so delivered.

The notary who receives a secret will shall draw up the act of delivery, recording therein the declaration that this constitutes a secret will, on the paper itself on which the will is written, or on the paper used as its envelope.

The act of delivery shall be signed by the testator, the witnesses, and the notary.

Where the testator declares that he does not know how to, or cannot write, the notary shall enter such declaration at the foot of the act, and such entry shall be equivalent to the signature.

A notary who has received a secret will, shall, within four working days, to be reckoned from the day of the delivery, present such will to the court of voluntary jurisdiction for preservation by the registrar.

It shall not be lawful for any person who does not knowhow to, or cannot write, to make any disposition by a secret will without the assistance of a judge or magistrate

It shall be lawful for a testator who does not know how to, or cannot read and write, to apply for the assistance of any judge or magistrate being, even temporarily, in the island or place in which his assistance is required, including the judge or magistrate sitting in the competent court in which the will is to be deposited.

The judge or magistrate giving his assistance, as provided in the last four proceeding articles, shall be bound not to disclose the contents of the will

In public wills, the heirs, legatees, or their relations by consanguinity or affinity within the degree of uncle or nephew, inclusively, shall not be competent witnesses.

The testator may at any time withdraw his secret will from the notary to whom he shall have delivered it, if the will is still with such notary, or from the registry in which it shall have been deposited.

REPUBBLIKA TA' MALTA
QORTI CIVILI – (SEZZJONI GURISDIZZJONI VOLONTARJA

Niċċertifika illi fuq talba ta' Dr. Carina Naġiab.

Saret riċerka fir-registri miżmuma fil-Qorti Ċivili (Sezzjoni ta' Ġurisdizzjoni Volontarja) u lanqas gewwa dawk miżmuma fil-Qorti tal-Maġistrati (Għawdex) (Ġurisdizzjoni Superjuri) mis-sena 1938 sal-ġurnata tal-lum.

U mir-riċerki li saru irriżulta illi l-ebda testment sigriet ma' ġie depositat fir-registri tal-Qrati fuq imsemmija f'isem

[redacted] xebba, bint il-mejtin [redacted] imwielda Żurrieq, Malta u mietet Luqa, Malta, fit-8 ta' Ġunju 2018, ta' 93 sena.

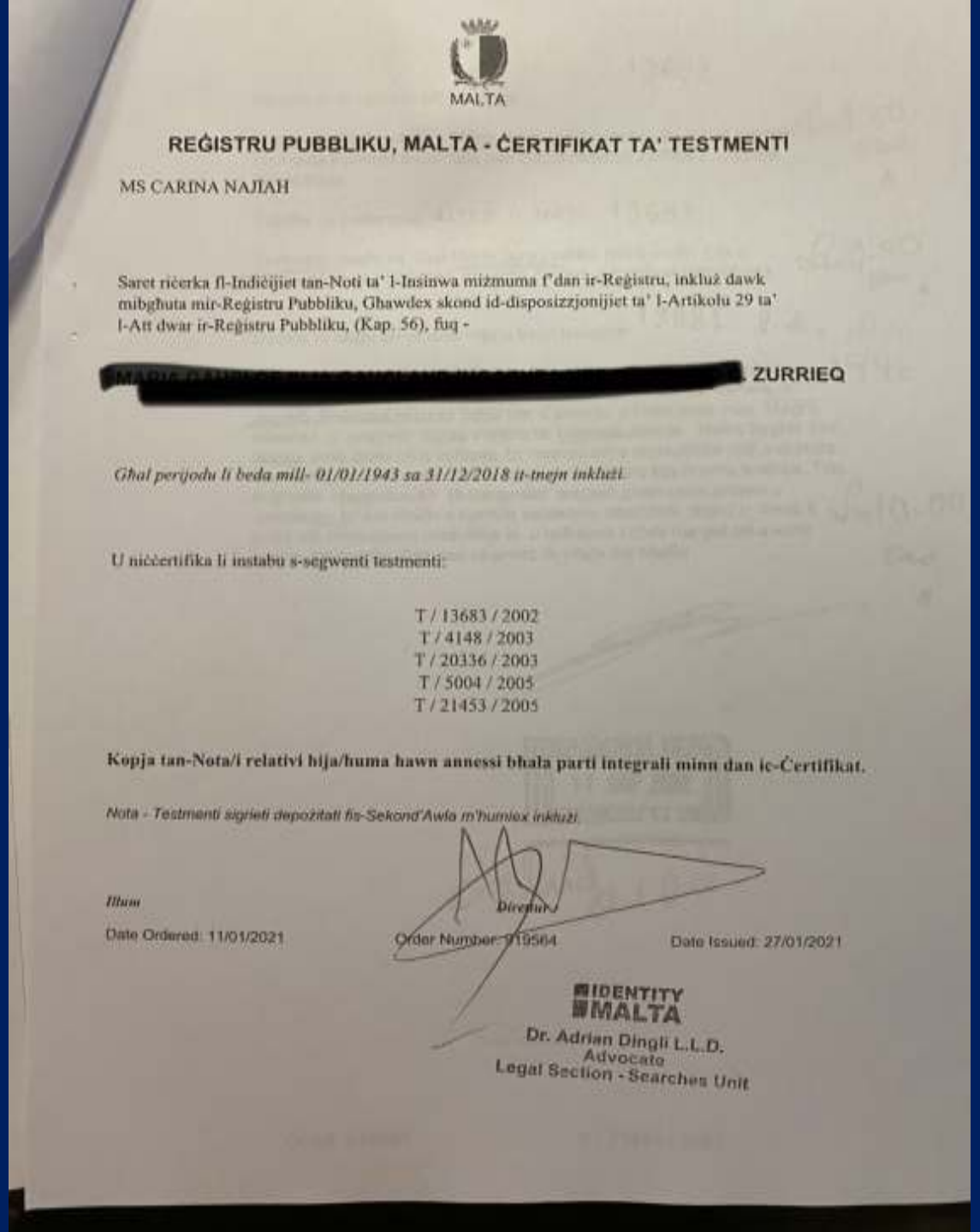
Illum 26 ta' Frar 2021

Deputat Registratur
CARMEN SCICLUNA
Deputat Registratur
Qorti Ċivili
Ġurisdizzjoni Volontarja

N.B. Għal kull buon fini testmenti sigrieti li ġew pubblikati għandhom jirriżultaw mir-riċerki li jsiru fir-Reġistru Pubbliku

Searches of Secret Wills

- Carried out at the Court of Voluntary Jurisdiction
- Last will would be the final will



MALTA

REĠISTRU PUBBLIKU, MALTA - ĊERTIFIKAT TA' TESTMENTI

MS CARINA NAJIAH

Saret riċerka fl-Indiċijiet tan-Noti ta' l-Insinwa miżmuma f'dan ir-Reġistru, inkluż dawk mibgħuta mir-Reġistru Pubbliku, Ghawdex skond id-disposizzjonijiet ta' l-Artikolu 29 ta' l-Att dwar ir-Reġistru Pubbliku, (Kap. 56), fuq -

[redacted] ZURRIEQ

Ghal perjodu li beda mill- 01/01/1943 sa 31/12/2018 it-tnejn inklużi.

U niċċertifika li instabu s-segwenti testmenti:

T / 13683 / 2002
T / 4148 / 2003
T / 20336 / 2003
T / 5004 / 2005
T / 21453 / 2005

Kopja tan-Nota/i relativi hija/huma hawn annessi bhala parti integrali minn dan ic-Certifikat.

Nota - Testmenti sigrieti depożitati fis-Sekond Awla m'humiex inklużi.

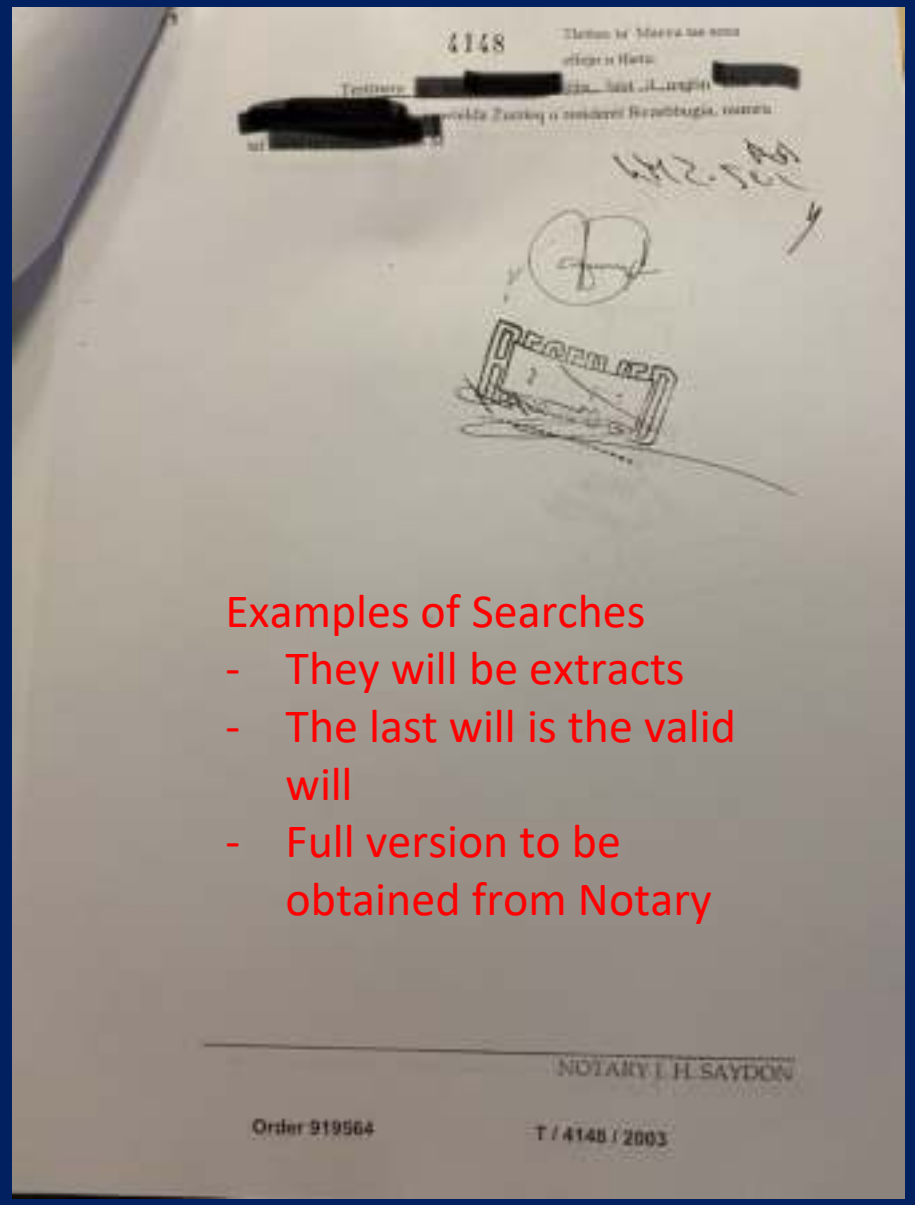
Illum *Direttur*

Date Ordered: 11/01/2021 Order Number: 119564 Date Issued: 27/01/2021

IDENTITY MALTA
Dr. Adrian Dingli L.L.D.
Advocate
Legal Section - Searches Unit

Searches of Public Wills

- At Public Registry
- A list will result if there are more than one wills
- The last will is the final and valid will


4148

[redacted]

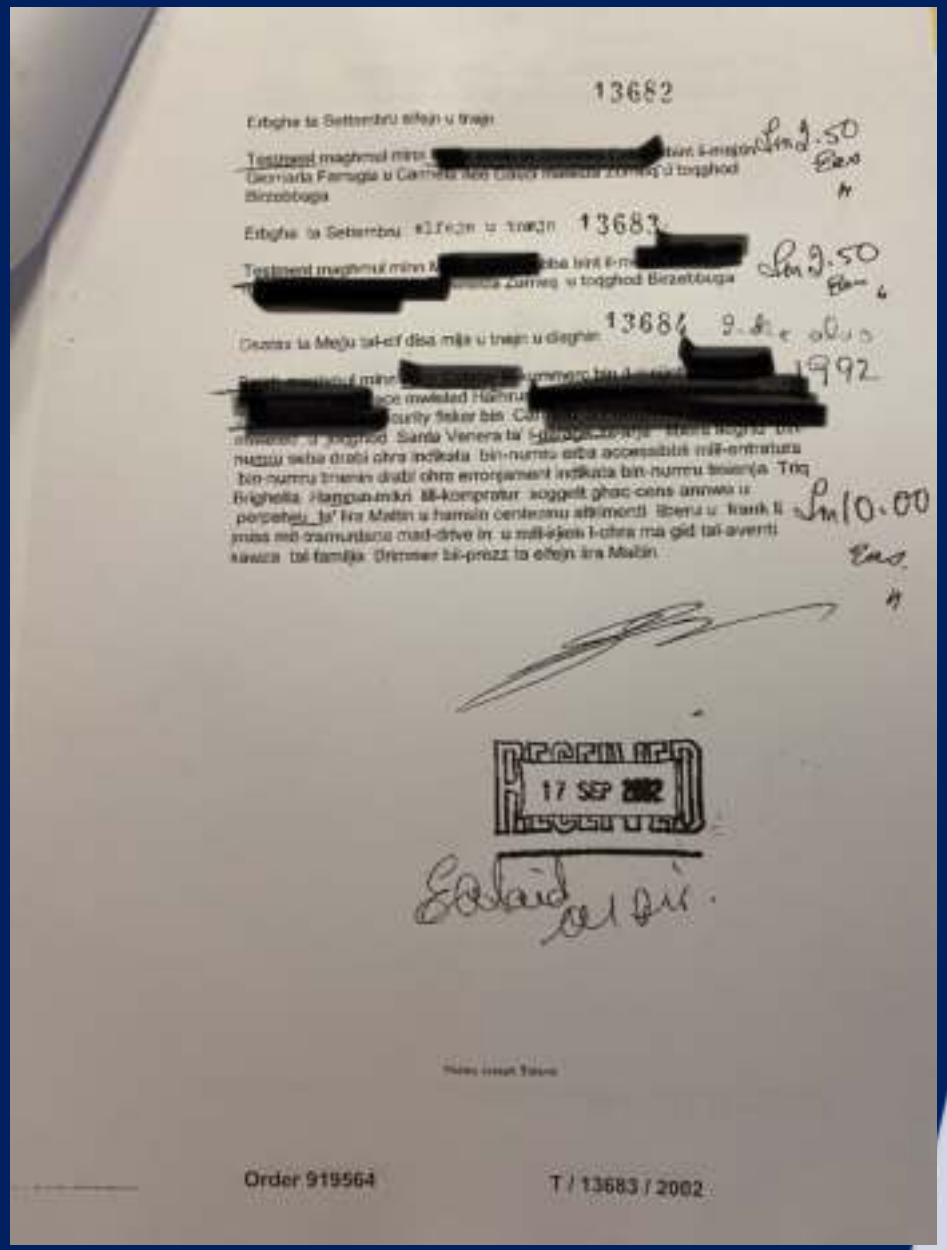
NOTARY I. H. SAYDON

Order 919564

T / 4148 / 2003

Examples of Searches

- They will be extracts
- The last will is the valid will
- Full version to be obtained from Notary


13682

Erbgha ta Settembru elfejn u tnejn

[redacted]

13683

[redacted]

17 SEP 2002

Order 919564

T / 13683 / 2002

Privileged Wills

places with which communications have been interrupted by order of the public authority, a will may be received in writing, in the presence of two witnesses, by a judge, magistrate, or notary, or by the parish priest, or other ecclesiastic in holy orders.

Any such will shall become void on the lapse of two months from the day on which communications with the place in which the testator is, shall have been re-established, or from the day on which the testator shall have removed to any place with which communications are not interrupted, provided the testator is still alive after the lapse of the said time.

Wills made at Sea

A will made at sea, on board any ship registered in Malta, may be received, in writing, by the master, or the person acting in his stead. In all cases, the will shall be received in duplicate, and in the presence of two witnesses who have attained the age of eighteen years.

The will shall be signed by the testator, by the person receiving it, and by the witnesses. Where the testator or the witnesses do not know how to, or cannot write, there shall be entered in the will a declaration stating the reason for which such signature was not affixed. Non-compliance with the provisions of this article shall render the will null and void.

Where, after the receipt of any such will, the ship returns to the port of Malta, the master, or the person in possession of the will, shall, within the time of eight working days, present such will to the court of voluntary jurisdiction, unless such will shall have been, before the expiration of such time, withdrawn by the testator

When the ship touches at any port outside Malta, the master, or the person in possession of the will, shall deposit one of the duplicates with the diplomatic or consular representative of the Government of Malta in that port or with a person serving in a diplomatic, consular or other foreign service of any country which, by arrangement with the Government of Malta, has undertaken to represent that Government's interests in that port or with a person authorized in that behalf by the President of Malta, or in the absence of such persons, with some trustworthy person being a citizen of Malta or other Commonwealth citizen, and shall, with all possible dispatch, transmit the other duplicate to the Authority for Transport in Malta who shall, within the time of eight days, present it to the said court.

A will made at sea, shall have effect only if the testator dies at sea or within two months after he shall have landed in a place where he could have made another will in the ordinary form

Heirs, Legacies and the Right of Accretion

If the testator has disposed only of a portion of the inheritance, the residue thereof shall vest in his heirs-at-law, according to the order established in the case of intestate succession. The same rule shall apply if the testator has only made singular legacies.

Any testamentary disposition founded on a reason which constituted the sole inducement of the testator, and which is false, shall have no effect

If the testator has stated a reason, and the indications of the will are not such as to show that such reason was the sole inducement, the testamentary disposition, even if such reason is proved to be false, shall have effect, unless it is proved that the testator was solely induced by the reason stated in the will.

Any testamentary disposition in favour of a person so uncertain that he cannot be identified even upon the happening of a contingency referred to in the will, is also void.

Any testamentary disposition made in favour of an uncertain person to be designated by the heir or by a third party is likewise void. Nevertheless, it shall be lawful to make a testamentary disposition by singular title in favour of a person to be selected by the heir or by a third party among several persons specified by the testator, or belonging to families, or bodies corporate, specified by him. It shall likewise be lawful to make a disposition by singular title in favour of a body corporate to be selected by the heir or by a third party, among several bodies corporate specified by the testator.

A testamentary disposition made in favour of the nearest relation of a person shall, in default of any other designation, be deemed to have been made in favour of the persons in whom the intestate succession of the said person would legally vest.

A disposition made in general terms in favour of the poor, shall be deemed to be made in favour of the poor of the island in which the testator resided at the time of his death.

If the person of the heir or of the legatee is erroneously designated, the testamentary disposition shall have effect, if the identity of the person whom the testator intended to designate is otherwise certain.

Any testamentary disposition giving to the heir or to a third party absolute discretion in fixing the quantity of the legacy is null, except where it is a legacy made by the testator by way of remuneration for services rendered to him during his last illness.

Where the thing forming the subject of a legacy belongs to a person other than the testator, such legacy shall be null, unless it is stated in the will that the testator knew that the thing was not his property, but the property of others, in which case the heir may elect either to acquire the thing bequeathed in order to make delivery thereof to the legatee, or to pay to such legatee the fair value thereof.

Case Study

Where, however, the thing so bequeathed, although belonging to others at the time of the will, is the property of the testator at the time of his death, the legacy shall be valid.

The same applies if the thing forming the subject of the legacy belongs to the heir, or to the legatee required under the will to give it to a third party.

Where a part of the thing bequeathed, or a right over such thing, belongs to the testator, the legacy of such thing shall be valid only to the extent of such part or right, unless it is stated in the will that the testator knew that the thing did not wholly belong to him.

Legacy of a thing belonging to the Legatee

Where the subject of the legacy is a thing which, at the time of the will, was already the property of the legatee, such legacy shall be null.

If the legatee shall have acquired the thing forming the subject of the legacy at any time after the will, either from the testator himself under an onerous title, or from any other person under any title whatsoever, he shall, in the event of the existence of the circumstances referred to in article 696 be entitled to claim the value of such thing, notwithstanding the provisions of article

Where the legatee shall have acquired the thing from the testator under a gratuitous title, the legacy shall be considered to be adeemed..

Conditional or Limited Dispositions

Any disposition, by universal (as a heir) or singular title (as a legatee), may be either pure or conditional.

Where the condition is impossible, or contrary to law or morals, it shall vitiate the disposition to which it is attached.

Where the condition is unintelligible it shall be considered as if it had not been attached

A condition prohibiting a first or a subsequent marriage shall be considered as if it had not been attached. Nevertheless, where a legacy consisting in a right of usufruct, use, or habitation, or in a pension or other periodical payment, is contingent on the legatee remaining, and limited to the period during which he or she remains a bachelor or spinster, or a widower or widow, the legatee shall be entitled to enjoy the legacy only as long as he or she shall remain a bachelor or spinster, or a widower or widow.

A condition in restraint of remarriage, attached to a testamentary disposition by one of the spouses in favour of the other, shall be valid.

If, in any testamentary disposition by universal title, the testator shall fix a day on or from which the institution of the heir shall commence or cease, such limitation shall be considered as if it had not been attached.

Any testamentary disposition, whether by universal or singular title, made by the testator on condition that he shall in return benefit by the will of the heir or legatee, is null.

Legacies

Any pure and simple legacy shall vest the legatee, as from the day of the death of the testator, with the right to receive the thing bequeathed, transmissible to the heirs of such legatee, or to any person claiming under him.

In the case of alternative legacies, the right of selection shall be deemed to be given to the heir.

The legatee must demand of the heir possession of the thing bequeathed.

In the case of immovable property the legatee may demand the grant of such possession be made by means of a public deed.(3) Unless the testator shall have otherwise provided the expenses relative to the deed shall be borne by the legatee

It shall not be lawful for the legatee to claim the fruits of, or interest on the legacy, except from the day on which he shall have, even by a judicial letter, called upon the heir to deliver or pay the legacy, or from the day on which the delivery or payment shall have been promised to him.

Where the subject of a legacy is a life annuity or a pension, such annuity or pension shall commence to run from the day of the death of the testator.

The thing forming the subject of the legacy shall be presumed to have been bequeathed, and shall be delivered, with its necessary accessories and in the condition in which it shall be on the day of the death of the testator.

The expense necessary for the delivery or payment of thelegacy shall be charged to the estate, provided this shall not prejudice the rights of the persons in whose favour the law reserves a portion of the hereditary property.

Where no one of several heirs has been particularly charged by the testator with the payment of the legacy, all the heirs shall be liable for the payment thereof, each in proportion to his share in the succession.

Where any one of the heirs has been particularly charged with the payment of the legacy, he alone shall be liable for such payment.

Where the subject of the legacy is a thing belonging to one of the co-heirs, the other co-heirs shall, unless a contrary intention of the testator is shown, compensate such co-heir for its value, either in cash or in hereditary property, each in proportion to his share of the inheritance, provided such legacy is not void, in whole or in part.

The testator can decide to either nominate an heir only, or legatees only, or both.

- Citazzjoni numru 506/2002/1 in the names Ir-Reverendu Patri Frangisku Azzopardi O.F.M. Cap nomine vs. Maria Hilda sive Hilda Cauchi et, decided 14th October 2004

Illi l-fatti f'din il-kawza huma ben cari u definiti, ghalkemm komplessi. Maddalena Vassallo kienet tiddetjeni l-fond 23, Triq l-Annunzjata, l-Hamrun, b'titolu ta' enfitewsi temporanea, fost diversi proprjetajiet ohra. Din kienet xebba u ma kellhiex tfal, u b'testment li hi ghamlet fis-27 ta' Lulju, 1939, fl-atti tan-Nutar Dottor Antonio Galea, hija ddisponiet mill-proprjeta' taghha b'diversi legati; f'dan it- testment, hija ma' ghamlet ebda istituzzjoni ta' eredi, izda minflok, holqot ezekutur testamentarju sabiex dan jiehu hsieb iwettaq ix-xewqat taghha kif espressi f'dak it- testment. L-ezekutur testamentarju mahtur kien il-Wisq Riverendu Patri Francesco Spiteri, Agostinjan, jew, f'kaz li dan ma jaccettax l-inkarigu, lill-Avukat Dottor Tommaso Caruana.

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI

Testementary Executors (Eżekutur Testamentarju)

It shall be lawful for a testator to appoint one or more testamentary executors.

No person who is under a disability to contract obligations, may be a testamentary executor. A minor may not hold the office of testamentary executor even though with the authority of the parent to whose authority he is subject, or of his tutor or curator.

It shall not be lawful for any testamentary executor to intermeddle with the administration of the estate before he is confirmed by the court of voluntary jurisdiction of the island in which the testator resided at the time of his death.

Before being so appointed by the Court, the testamentary executor will be requested to provide hypothecation of his property to be registered in the Public Registry, in order to ensure that he/she faithfully to carry into effect the will of the testator, and to render an account of his administration every year or once only, as the court shall, according to circumstances, direct.

It shall be in the power of the court, before confirming the executor to require him to make up an inventory of the property which he is charged to administer, or, a statement of such property to be verified by his oath, unless he shall have been exempted from making such inventory or statement by the persons to whom the property devolves, wholly or in part.

Executor cannot be exempted from rendering account. Any disposition calculated to exempt the testamentary executor from the obligation of rendering an account shall be inoperative.

The executor may, pending the procedure in confirmation, perform such acts as cannot without prejudice be delayed, and take such measures as are necessary for the preservation of the estate.

It shall be in the power of the said court, at any time, to grant to the testamentary executor a moderate fee, regard being had to the value of the estate to be administered by him, unless the testator himself shall have made provision as to such fee, or the executor shall have waived his right thereto.

The testamentary executor, for the purpose of paying the debts of the estate or of discharging the legacies, may, in the absence or insufficiency of funds in the estate, collect sums owing to the estate, or, in default, sell property. Such sale shall be made by public auction, unless the heirs agree, or the court, on the application of the executor, allows, that the sale be made otherwise.

The heir may prevent the sale by offering the means with which to pay the debts and discharge the legacies.

The office of the testamentary executor shall not descend to his heirs

Where the testator has appointed two or more testamentary executors, they can only act conjointly, unless the testator shall have authorized them to act even separately, in which case each shall be responsible for his own act only.

The expenses incurred by the testamentary executor in the discharge of his duties shall be borne by the inheritance.

The testamentary executor may, at any time, renounce his office, even though he shall have already commenced to act as executor. He may also on good cause shown be removed from office.

Where the testator has appointed two or more executors, and one or more has or have declined to accept the office, or renounced it, or has or have been suspended or removed therefrom, the said court may confirm the executor or executors remaining, and authorize him or them to carry into effect the will as if the testator had appointed him or them only, provided he or they be considered fit by the court.

The same rule shall apply in case of the death, absence, or illness of one or more of the executor.

In case of the death, absence, renunciation, or illness of the only executor, or of all the executors-nominate, the execution of the will shall vest in the heirs, unless the court of voluntary jurisdiction, with the consent of such heirs, or, the court of contentious jurisdiction, for just cause on the demand of any interested party, shall have conferred the office upon another person.

Revocation of Wills

No person may waive the power of revoking or altering any testamentary disposition made by him. Any clause or condition purporting to waive such power, shall be considered as if it had not been written.

A will may be revoked, wholly or in part, by a subsequent will.

It may also be revoked by any other act received by a notary with the formalities required for the execution of notarial acts, whereby the testator personally or through an attorney specially authorized, declares that he revokes his will, wholly or in part.

The mere withdrawal of a secret will from the notary, or from the registry of the court, or from the office of the consul wherein its hall have been deposited, shall operate as an implied revocation of the will.

A will which is void cannot have the effect of a notarial act so as to revoke a previous will.

Any testamentary disposition which has been revoked, can only revive by a fresh will.

Implied revocation by subsequent contrary dispositions.

Where a subsequent will has not expressly revoked a previous will or previous wills, it shall annul such only of the dispositions contained in the previous will or wills as shall be shown to be contrary to, or inconsistent with, the new dispositions.

The revocation made by a subsequent will shall be fully operative even if such subsequent will lapses, by reason of the predecease or disability of the heir-institute or legatee, or of the renunciation of the inheritance or legacy.

Intestate Succession

Where there is no valid will, or where the testator has not disposed of the whole of his estate, or where the heirs-institute are unwilling or unable to accept the inheritance, intestate succession takes place, in wholly or in part.

Who succeeds in succession *ab intestato*?

Intestate succession is granted in favour of the descendants, the ascendants, the collateral relatives and the spouse of the deceased, and the Government of Malta, in the order established by law.

In regulating succession among relations, the law takes into consideration the proximity of the relationship, and does not consider either the prerogative of the line or the origin of the property, except in the cases and in the manner expressly provided for by law

The proximity of relationship is established by the number of generations.

Each generation forms a degree.

What is direct line and colletarl line?

The series of degrees between persons descending the one from the other is called the direct line.

The series of degrees between persons descending not the one from the other, but from a common ancestor, is called the collateral line.

The direct line may be descending or ascending.

The descending direct line connects the ancestor with those who descend from him.

The ascending direct line connects a person with those from whom he descends.

In the direct line, as many degrees are counted as there are generations, not including the common ancestor. Computation of degrees in collateral line. In the collateral line, the degrees are counted by the generations, commencing from one of the relations up to, and exclusive of, the common ancestor, and then from the latter down to the other relation.

Who can beqeauth in intestate succession?

Persons who are incapable or unworthy of receiving under a will, for the causes stated in the Civil Code, are also incapable or unworthy of succeeding ab intestato.

Persons who, by fraud or violence, shall have prevented the deceased from making a will, shall also be, as unworthy, incapable of succeeding ab intestato.

The children or descendants of a person excluded as unworthy shall not be excluded by reason of the unworthiness of their parent or ascendant, whether they succeed in their own right or whether, in order to succeed, they have to stand, under the rule of representation, in the place of the parent or ascendant so excluded

Rules regarding intestate succession

A. Descendants and Survivng Spouse

Where the deceased has left children or their descendants and a spouse, the succession devolves as to one moiety (1/2) upon the children and other descendants and as to the other moiety (1/2) upon the spouse.

Where the deceased has left children or other descendants but no spouse, the succession devolves upon the children and other descendants.

Where the deceased has left no children or other descendants but is survived by a spouse the succession devolves on the spouse.

Children or other descendants succeed to their parents or other ascendants without distinction of sex, and whether they are born or conceived inmarriage or otherwise and whether they are of the same or of different marriage

Children succeed per capita when they are all in the first degree; they succeed per stirpes when all, or some of them, take by representation.

Therefore:

John Borg is widow and is deceased, and he had three children, Maria Borg, Thomas Borg and the pre-deceased Alfred Borg.

Therefore Maria Borg and Thomas take 1/3 of the estate each.

The pre-deceased Alfred Borg has 2 children, James and Jonathan Borg. Therefore, James and Jonathan Borg share between them the 1/3 which their father would have taken, therefore they take ½ of 1/3 each.

B. Ascendants and Colletarals

Where the deceased has left no children or other descendants, nor a spouse, the succession shall devolve:

(a) if there be an ascendant or ascendants and no direct collaterals: to the nearest ascendant or ascendants;

(b) if there be an ascendant or ascendants and direct collaterals: one moiety to the nearest ascendant or ascendants and the other moiety to the direct collaterals;

(c) if there be no ascendant or ascendants but there be direct collaterals: to the direct collaterals; and

(d) if there be neither ascendant or ascendants nor direct collaterals: to the nearest collateral in whatever line such collateral may be.

Direct collaterals = brothers and sisters, whether of the half or full blood or adopted and the descendants of predeceased brothers or sisters, of the half or full blood or adopted.

The brothers and sisters shall succeed per capita and their descendants per stirpes.

(a) if there be an ascendant or ascendants and no direct collaterals: to the nearest ascendant or ascendants;

(a) if there be an ascendant or ascendants and direct collaterals: one moiety to the nearest ascendant or ascendants and the other moiety to the direct collaterals;

Therefore: John Borg dies, is not married and has no children, and has siblings, the ascendants and the siblings will share between them in equal share, i.e. ½ to the Parent/s and ½ to the Siblings.

(a) if there be no ascendant or ascendants but there be direct collaterals: to the direct collaterals; and

Therefore: John Borg dies, is not married, his parents are dead and has no children, and siblings,, his siblings will inherit in equal shares between them.

(a) if there be neither ascendant or ascendants nor direct collaterals: to the nearest collateral in whatever line such collateral may be

Rights of the Government

Where the deceased is not survived by any of the persons entitled to succeed under the rules laid down in the foregoing articles, the inheritance shall devolve upon the Government of Malta.

Ten years Prescription

The action for demanding an inheritance, or a legacy, or the reserved portion, whether in testate or in intestate successions, shall lapse on the expiration of ten years from the day of the opening of the succession.

Nevertheless, with regard to minors, or persons interdicted, the said action shall not lapse except on the expiration of one year from the day on which they shall have attained majority, or the interdiction shall have ceased, as the case may be.

Succession is deemed to be open on the day of death.

Accepting or Renouncing to an Inheritance

No person is bound to accept an inheritance devolved upon him.

An inheritance may be accepted unconditionally, or under benefit of inventory.

Where an inheritance devolves upon a person subject to tutorship or curatorship, or upon a minor, it cannot be accepted by the tutor or curator, or by the parent exercising parental authority except under benefit of inventory.

Acceptance may be either express or implied. It is express, if the status of heir is assumed either in a public deed or in a private writing. It is implied, if the heir performs any act which necessarily implies his intention to accept the inheritance, and which he would not be entitled to perform except in his capacity as heir. (*Case Reference*)

Acts not implying acceptance of the inheritance

Arrangements made for the funeral, acts of mere preservation, or of provisional administration, shall not, unless the status of heir has also been assumed, imply acceptance of the inheritance.

Acts implying acceptance of the inheritance

Any donation, sale, or assignment of his rights of succession by one of the co-heirs, whether in favour of a stranger or of all or any of his co-heirs, shall imply his acceptance of the inheritance.

The same applies -(a) with regard to a renunciation made, even if gratuitously, by one of the heirs in favour of one or more of his co-heirs;(b) with regard to a renunciation made, even in favour of all his co-heirs indiscriminately, when such renunciation is made under an onerous title.

Where a person to whom a succession has opened dies without having renounced or accepted it, the right to accept such succession shall vest in his heirs. The heirs who have accepted the inheritance of the person from whom the right referred to in the last preceding article is derived, may nevertheless renounce the inheritance devolved upon, but not yet accepted by such person.

A person who has accepted an inheritance cannot impeach the acceptance, unless such acceptance was the result of violence, or of fraud practised upon him.

The right of accepting a vacant inheritance is prescribed by the lapse of thirty years.

Renunciation of Inheritance

Renunciation of an inheritance cannot be presumed.

It may only be made by a declaration filed in the registry of the court of voluntary jurisdiction of the island in which the deceased resided at the time of his death or by a declaration made by an act of notary public.

The declaration of renunciation referred to in this article shall not be operative with regard to third parties except from the time when it is registered in the Public Registry.

The heir who renounces a testate succession forfeits all rights to the intestate succession.

Provided that it shall be lawful for such heir to make, in the act of renunciation, a reservation in respect of the reserved portion of the property to which he may be entitled.

The heir who renounces is considered as if he had never been an heir. Nevertheless, his renunciation shall not operate so as to deprive him of the right to demand any legacy bequeathed to him.

In intestate successions, the share of the person renouncing accrues to his co-heirs. If the person renouncing is the sole heir, the succession evolves upon the person next in degree.

In testate successions, the share of the person renouncing shall devolve upon the co-heirs or the heirs-at-law.

The creditors of a person who renounces aninheritance to the prejudice of their rights, may apply to the courtfor authorization to accept such inheritance in the place of theirdebtor

News paper article: https://newsbook.com.mt/in-nutar-principali-tal-gvern-jinhatar-delegat-tal-atti-tan-nutar-barbara/

“ Il-Kunsill Nutarili spejga kif fit-30 ta’ Lulju, 2021, ġie mgħarraf uffiċjalment mill-Avukat Dr Phyllis Aquilina f’isem is-Sinjura Rosanne Barbara Zarb, armla tan-Nutar Ivan Barbara, illi hija kienet intavolat il-Qorti rinunzja tal-eredita’ tan-Nutar Barbara mill-armla tiegħu.

Ingħad li s’issa l-Kunsill ma għandux kopja tar-rinunzja jew tan-nota tal-insinwa tagħha u li din il-komunika uffiċjali mingħand Dr Phyllis Aquilina saret wara li l-Kunsill Nutarili kien talab formalment lill-imsemmija avukat biex tfornilu lista sħiħa tal-kuntratti u testmenti ppubblikati min-Nutar Barbara li għadhom mhux miġbura għall-viżta mill-Qorti, li għadhom fil-pussess tal-armla, jew tal-eredi jew ta’ terzi persuni.”

An heir who has renounced an inheritance may yet accept such inheritance provided –

(a) the right of acceptance shall not, in his regard, have lapsed by prescription; and

(b) the inheritance shall not have been already accepted by other heirs.

Nevertheless, such acceptance shall not operate so as to prejudice any right which may have been acquired by third parties over the property of the inheritance either by prescription, or by virtue of acts validly made with the curator of the vacant inheritance.

The court shall, on the demand of any person interested, fix the time of one month, which may, on good grounds, be extended to another month, within which the heir whether testamentary or heir-at-law shall be bound to declare whether he accepts or renounces the inheritance; and in default of such declaration within the said time, original or enlarged, the inheritance shall be deemed to have been renounced. (*Case Study – APS Case*)

Benefit of Inventory

It shall be lawful for the heir, notwithstanding any prohibition of the testator, to avail himself of the benefit of inventory.

The declaration of an heir that he does not intend to assume the status of heir except under the benefit of inventory shall be made in the registry of the court of voluntary jurisdiction of the island in which the deceased resided at the time of his death.

If among several heirs one is willing to accept the inheritance under the benefit of inventory, and one or more without such benefit, the inventory must be made.

The heir having the actual possession of the property of the inheritance, is bound to make up the inventory within three months from the day of the opening of the succession, or from the day on which he knew that the inheritance devolved upon him.

Where the heir has not, within the first three months, commenced the inventory or has not completed it within the said time, or within such further time as may have been allowed to him, he shall be deemed to have accepted the inheritance without the benefit of inventory.

When the inventory is completed, the heir who has not yet made the declaration of accepting the inheritance, shall be allowed the time of forty days, to be reckoned from the day of the completion of the inventory, to deliberate whether he would acceptor renounce the inheritance; and if, within the said time, the heir has not made in the registry of the said court a declaration renouncing the inheritance, or accepting it under the benefit of inventory, he shall be deemed to have accepted it under the benefit of inventory.

During the continuance of the time allowed for making up the inventory and for deliberating, the person entitled to succeed is not bound to assume the status of heir.

Nevertheless, such person shall be considered as curator *de jure* of the inheritance, and, as such, he may be sued as representing the inheritance to answer claims brought against it.

If such person fails to appear, the court shall appoint a curator to represent the inheritance in the proceedings.

The effect of the inventory is:

(a) that the heir shall not be liable for the debts of the inheritance beyond the value of the property to which he succeeds;

(b) that he may free himself from the payment of the debts by giving up all the property of the inheritance to the creditors, the legatees, and even to the co-heir who does not similarly elect to give up the property;

(c) that his own property is not intermixed with the property of the inheritance, and that he shall retain his right to enforce the payment of his own claims against the inheritance.

Vacant Inheritance

An inheritance, until it is accepted, shall be deemed to be vacant: and, on the demand of any person interested, the court shall, appoint a curator.

The curator of a vacant inheritance shall, first of all, make up an inventory thereof.

The curator shall exercise and prosecute all actions pertaining to the inheritance: he shall answer all claims brought against it, and shall administer the property thereof, subject to the obligation of depositing any money which may be found in the inheritance, or the proceeds of the sale of any movable or immovable property.

A court case against a vacant inheritance in the names Godfrey Cosaitis Et vs *Av. Dr Benjamin Valenzia LLD u Prokuratur Legali Nicholette Aquilina nominati b` digriet tat- 23 ta` Jannar 2019 fl-atti tal- ittra ufficjali numru 240/2018 bhala Kuraturi Deputati sabiex jirrapprezentaw l-eredita` gjacent ta` Saviour sive Silvio Loporto ET (*122/2018 JZM decided 29th October 2020)

Illi fit-tletin ta` Ottubru tas-sena elfejn u sbatax (30/10/2017), gie ffirmat konvenju fejn Saviour sive Silvio Loporto u Carmel sive Lino Loporto obbligaw ruhhom li jbieghu u jittrasferixxu lir-rikorrenti Godfrey u Susan konjugi Cosaitis, li obbligaw ruhhom li jixtru u jakkwistaw il-fond ossia dar bin-numru ufficjali tlieta u sebghn (73), fi Triq il-Kurcifiss, l-Isla

Saviour sive Silvio Loporto died during the validity of the promise of sale agreement.

The heir (the spouse Josephine sive Josette Loporto) was refusing to accept the inheritance of the deceased, as she wanted to get a better deal (in her opinion). However the Court ordered that the sale has to go through nonetheless, despite the fact that she had accepted the will of her husband with the benefit of the inventory.

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI