Principles of Civil Law

Lecture Title: Succession Part 2

Diploma in Law (Malta)

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Succession

Recap

1. Types of wills- public, secret, unica charta, privileged
2. Testate and Intestate Succession
3. Dispositions by law and by man

Succession

Of the Institution of Heirs, and legacies Artilce 683 et seq

1. Institution of Heirs

Definition: The institution of heirs refers to the appointment of one or more individuals as universal successors to the estate of the deceased (testator). An heir inherits the entirety or a defined share of the deceased's assets, including rights, obligations, and liabilities.

Heirs as Universal Successors: Heirs are considered universal successors, meaning they inherit both the assets and liabilities of the deceased. This contrasts with legatees, who only receive specific assets or rights.

Succession

- **Types of Heirs**:

- **Legal Heirs**: Appointed by law under intestate succession when there is no will. They include spouses, children, and other family members, prioritized according to legal statutes.
- **Testamentary Heirs**: Named in the will by the testator. The testator may specify portions of the estate each heir should receive or name a single heir to inherit everything

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A **legatee** is a person who receives a specific item, sum of money, or piece of property through a will. Unlike heirs, legatees do not inherit any portion of the deceased's debts or broader obligations. Legatees are only entitled to the specific asset or assets bequeathed to them.

Characteristics of Legatees:

- **Singular Succession**: Legatees have a **singular title**, meaning they only receive what is specifically bequeathed to them in the will.
- **No Liability for Debts**: Legatees are not responsible for the debts of the deceased's estate. Their entitlement is limited to the specific legacy given to them, and they are not liable for any estate liabilities.
- A legatee can accept or decline a legacy, but they are not involved in the administration of the estate

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Acceptance and Renunciation: Heirs can either accept or renounce their inheritance. Acceptance can be express or implied, and renunciation must generally be formalized in writing before a notary.

Legacies

Definition: A legacy (or "legatum") is a specific gift of a particular item, sum of money, or right granted by the testator to a specific individual, known as a **legatee**. Unlike heirs, legatees are not responsible for the deceased's liabilities unless specified otherwise.

Succession

Art 684

(1) 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 establsihed in the case of intestate succesion.

(2) The same rule apply if the testator has only made signular legacies.

Art 832

Where several persons die in a common calamity and it is impossible to determine who survived the other, they shall, where any one of them is called to the succession of the other, be presumend to have died at the same time.

(this article is useful if for example a family die in the same accident)

Succession

Acceptance and Renuncation of an Inheritance

Art 844

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

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

Succession

- Art 846: *No person is bound to accept an inheritance devolved upon him*

- Art 847: *An inheritance may be accepted unconditionally, or under a benefit of inventory.*

- Art 848: *Where an inheritance devolves upon a person subject to tutorship or curatorship, or upon a minor, it cannot be accepted by the tutor or currator, or by the parent exercising parental authority except under benefit of inventory.*

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- Artilce 850: (1*) Acceptance may be either express or implied.*

(2) It is express, if the status of heir is assumed either in a public deed or in a private writing.

(3) 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 perofm excpet in his capaity as heir. (e.g. a person who withdraws any of the deceased's assets from a bank, and hence in so doing he is accepting the inheritance in an implied manner)

* In a 1993 Judgement, the court noted that since the heirs had split the gold items (of the mother) this meant that they have accepted the inheritance)

Succession

Art 851: *A person who, by a judgment of a competent court, has been declared to be an heir, or has been condemned expressly in such capacity, shall be deemed to be the heir with regards to all the legatees and creditors of the inheritance.*

But there are acts which do not imply that one is accepting the inheritance of a deceased person:

Art 852: *Arrangments made for the funeral, acts of mere preservation, or of porvisional adminsitration, shall not, unless the status of heir has also been assumed, imply acceptance of the inheritance.*

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- So funeral expenses, acts of mere preservation or provisional adminsitration do not imply acceptance. This principle ensures that individuals do not unintentionally become heirs by performing certain necessary or temporary actions regarding the deceased's estate.
- Funeral expenses: Which may be paid by relatives or friends, are considered an immediate and necessary obligation following a person's death.
- Payment of these expenses doesn't not signify that the person covering them has accpeted the inheritance. This allows close ones to arrange for the dignified burial without committing to the responsabilites or liabilites associated with inheritance.

Succession

- Acts of mere preservation: These acts refer to minimal, essential actions taken to maintain or protect the estate's value. Examples inlcude securing the deceased's property, paying inudrance to prevent lapses, or tending to perishable items.
- Purpose: preservation actions prevent the estate from losing value before the heir decided to accept or renounce the inhertiance.
- No implied acceptance : The law permits such measure without implying acceptance, as these acts are performed solely to safeguard the estate.

Succession

- This refers to interim management of the estate without any assumption of ownership. It can include tasks like arranging for the payment of urgent bills or managing assets that could otherwise cause loss.
- Provisional administration is strictly temporary, addressing only essential needs to maintain estate stability.
- **No Implied Acceptance**: Engaging in provisional administration does not obligate the person to accept the inheritance, allowing time to assess the estate's value, debts, and legal implications

Succession

Legal Implications and Safeguards

- These provisions are essential as they allow individuals to make immediate, responsible decisions without the risk of automatic inheritance. This is particularly important in cases where the estate may be encumbered with significant debts or other liabilities. Only express or implied acceptance, through actions beyond mere preservation or administration, binds an individual to the inheritance and its associated responsibilities

Succession

- Implied Acceptance
- **Transfer Actions**: When a **co-heir** donates, sells, or assigns their succession rights, they are treated as if they have accepted the inheritance, regardless of whether they have formally done so. This is because such actions indicate a clear exercise of control over the inheritance, which implies ownership.

- Art 853: *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.*

Succession

- **Types of Transfers**: **Donation**: If a co-heir gifts their share or portion of the inheritance to another person, this donation suggests that they are recognizing and exercising their right to the inheritance.
- **Sale**: Selling one's inheritance rights indicates an acceptance, as it implies that the co-heir has the authority to transfer these rights in exchange for value.
- **Assignment**: An assignment of rights, either to a stranger or another co-heir, similarly implies that the co-heir has accepted the inheritance, as they are asserting a claim over it.

Succession

- Art 856- *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 law here is envisaging when a person who was about to succeed another dies prematurely prior to accepting or renouncing to the inheritance.

e.g. Joe dies and leaves Mary as heir. Mary has not as yet decided whether to accept or renounce Joe's inheritance, but Mary dies. Mary is succeeded by Linda. Linda has two options:

Accept Mary's inheritance as well as Joe's

Accepts Mary's but renounces to Joe's.

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- But if Linda renounces to Mary's inhertiance she has no right over Joe's inheritance. This is listed in Artilce 857.
- Also note that one cannot bring an accusation after he/she has accepted an inheritance unless such acceptance was the result of violence, or of fraud against him/her.
- Artilce 859: *The right of accepting a vacant inheritance shall lapse after 30 years.*

Succession

Renunciation of an inhertiance

Article 860 *Renouncation of an inheritance cannot be presumed*

Thus it must be expressly declared. This means that if a person wishes to refuse an inheritance, they must formally renounce it in a clear and explicit manner. Silence, inaction, or implied behavior is generally not sufficient to indicate renunciation under the **Civil Code of Malta**.

It may only be made by a declaration filed in the registry of the Court of Voluntary Jurisdiction or by a declaration made by an act of notary public.

Succession

Artilce 861: *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 reserved in respect of the reserved portion of the property to which he may be entitled under any of the provisions of artilce 614 to 653.

Succession

Of the Capacity of disposing or receiving by will (Artilce 596 et seq)

Incapacity is the exception and capacity is the rule. The burden of proof is to be borne by the party alleging incapacity. Incapacity brings about the nullity of the testamentary provision in whole or in part depending on the circumstances.

Artilce 596 (1) *Any person not subject to incapacity under the provisions of this Code, may dispose of, or receive property by will.*

(2) All children and descendants without any distinction are capable of receiving by will from the estate of their parents and other ascendants to the extent established by law.

We have gone through some of these in the previous lectures but…

Succession

Capacity of disposing or receiving by will

- **Article 600 (1)** ***Those who at the time of the testator's death*** *or at the time of the fulfillment of a suspensive condition on which the disposition depended,* ***were not yet conceived are incapable of receiving by will.***

Note that the wording of the law here speaks of those or not as yet conceived and not those who are not yet born. So in such cases it is extremely important, why?

Because problems might arise if the testator disposes to his heirs and a child conceived but not as yet born. In such case it could result that the 'to be born' child will only be entitled the reserved portion.

Succession

Artilce 610: provides that the notary cannot benefit from either a public or secret will. (subject to certain instances, e.g. under the Trusts and Trustees Act, whereby a notary is not precluded from such if he is a trustee, which is still subject to certain limitations)

Article 611- Monastic Order at times cannot dispose or receive. (just as a note)

Also….A tutor or curator cannot benefit under a will made during the tutorship or curatorship by the person under his charge.

Succession

Unworthiness and Disherison

Unworthiness refers to situations where a person is legally excluded from inheriting due to certain actions or behaviors against the deceased or the estate. This exclusion serves as a penalty for acts that are considered morally or legally unacceptable.

Persons unworthy of receiving by will Article 605.

Succession

- **Grounds for Unworthiness**

The Civil Code specifies various acts that render a person unworthy to inherit, including Article 605:

- **(a)** ***Wilfully killed or attempted to kill the testator or his or her spouse*** **- Committing or attempting to commit a crime against the deceased**: Any act that directly harms the deceased, such as murder or attempted murder, disqualifies the perpetrator from inheriting.

Succession

- **(b)** *Charged the testator, or the spouse, before a competent authority, with a crime punishable with imprisonment, of which he knew the testator, or the spouse, to be innocent.* **- Bringing false accusations against the deceased**: If someone falsely accuses the deceased of a serious crime, they may be deemed unworthy to inherit.

Succession

- (c) *Compelled, or fraudulently induced the testator to make a will, or to make or alter any testamentary disposition.* – **note that the law here speaks of compelling or fraud.**
- *(d) Prevented the testator from making a new will, or from revoking the will already made, or suppressed, falsified, or fraudulently concealed the will.*

Note that such must be proven by a Court Judgement finding the person guilty

Succession

- But Rehabilitation : Artilce 606 states that : *Any person who has incurred any of the disqualifications in the last preceding article may receive by will if the testator has rehabilitated him by a subsequnet will or by any other public deed.*
- Some points to note:
- Usually descendants of the deceased person have a right to the reserved portion that was due to his unworthy parent.
- The unworthy person has no right, not even over the reserved portion.

Succession

Disherison Article 615 et seq

Disherison is the act by which a person (often a parent) expressly excludes a forced heir (such as a child) from their inheritance. This differs from unworthiness in that disherison is a deliberate act by the testator (the person making the will) and does not require that the disinherited person has committed any wrongdoing against the deceased.

So note the difference between unworthy and disherison. Disherison is made through a specific declaration of the testator stated in his will.

Succession

Artilce 623 provides the grounds on which a descendant may be disinherited:

(a) If the descendant has without reason refused maintenace to the testator;

(b) If, where the testator has become insane, the descendant has abandoned him without in any manner providing for his care;

(c) If, where the descendant could release the testator for prison, he was without reasonable ground failed to do so;

(d) If the descendant has struck the testator, or has otherwise been guilty of creulety towards him;

Succession

(e) If the descendant has been builty of grievous injury agaisnt the testator;

(f) If the descendnat is a prostitute without the knowledge of the testator

Artilce 625 (*1) The ground of disherison must be proved by the party alleging such disherison.*

(2) Where more grounds are stated, the proof of one is sufficient.

Artilce 629 *Where the ground of disherison is not stated, or is not proved, the person disinherited shall only be entitled to the reserved portion.*

Succession

Case:

Parents had an unica charta will and they disinherited several children, whilst nominating three of their children as universal heirs.

The plaintiff proceeded with a court case whereby the court was asked to:

1. to liquidate the reserved portion (which is still pending)
2. A warrant of prohibitory injunction to stop the defendants from disposing of property, including the two immovable property which they had bequeathed from their late parents.

Succession

Case cont.

The Court observed that:

1. Proof was brought that they are the children of their late parents (through birth certificates)
2. That the property disposed of was of the deceased parents and that such included:

(a) An aparmtent with an estimate market value of €160,000

(b) A house and garage with an estimate market value of €850.00

(c) A grave with an estimate value of €2,500

Succession

Case cont.

1. That the plaintiff was to be awarded roughly €72,000.
2. Upheld the warrant of prohibitory injunction.

Succession

So what can be disposed by a will?

Where the testator has no descendants or spouse, he may dispose by universal or singular title of the whole of his estate in favour of any person capable of receiving under a will.

Where the testator has descendants or a spouse, the disposable portion of his estate shall be that which remains after deducting such share as is due to the said descendants or spouse, through the dispositions of the reserved portion.

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Succession

The Reserved Portion

The reserved portion is the right with regards to the estate of the deceased reserevd by law in favour of the descendants and the surviving spouse of the deceased. Hence this portion cannot be disposed of and the remaining is the ‘disposable portion’.

Article 620, states that the resevered portion cannot be burdened or conditioned. And the reserved portion is calculated on the whole estate, after deductting the debts due by the estate and funeral expenses. And in the estate everything has to be inlcuded inlcuding anything which was given under a gratuitous title.

Succession

Rights of the Surviving Spouse

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 Article 631 of the Civil Code, the surviving spouse shall be entitled to one-third of the value of the estate in full ownership.

Succession

Right of Habitation Article 633

The 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 death 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. The right of habitation conferred in this article shall cease on the remarriage of the surviving spouse, or if the surviving spouse enters into a public deed of cohabitation.

And the right of use of the furniture in the matrimonial home belonging to the deceased spouse.

Succession

Surviving Spouse recap

So the surviving spouse has

- ¼ or 1/3 of the estate in full ownership
- Right of habitation over the matrimonial home
- Right of use of furniture in the matrimonial home

Succession

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

Succession

The Reserved Portion

Article 616 (1) -*The reserved portion due to all children whether conceived or born in wedlock or conceived and born out of wedlock or adopted shall be one-third of the value of the estate if such children are not more than four in number or one-half of such value if they are five or more.*

(2) *The reserved portion is divided in equal shares among the children who participate in it.*

(3) *Where there is only one child, he shall receive the whole of the aforesaid third part.*

Succession

Article 617 makes it clear that when we speak of 'children', the word includes the descendants of such chidlren in whatsoever degree they may stand, provided that such descendants shall only be reckoned for the child from whom they descend.

Article 618 (1) is very important for the purpose of determining the amount of the reserved portion for it provides that when taking into consideration the amount of children, one should also count children or other descendants who are incapable of receiving, or who have been disinherited, or who have renounced their share.

In cases when one of the children has been disinherited or is unworthy to receive, the descendants (if any) of such person shall get his share of the reserved portion.

Succession

If any of the persons mentioned in 618 (1) does not have descendants, then according to **618 (2)**, his share of the reserved portion devolves upon the other descendants of the deceased entitled to the reserved portion.

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.

Succession

- Example Ex: A has two children; B and C. C dies before A, leaving 3 children D, E and F. A eventually dies and leaves his friend G as his heir. 1/3 of his estate is the reserved portion. The persons entitled to divide it are B and C's children (D, E and F). However, in so doing they shall first the divide the 1/3 between B and C (even though dead). Then C's share is divided accordingly between D, E and F. The end result would be that out of the whole estate;
- - B gets 1/3 X ½ = 1/6.
- - D, E and F **each**

Succession

Benefit of Inventory

Once an heir accepts an inheritance, he will inherit both the deceased's assets and well as his liabilites. There will be cases when there is no way of determining whether the deceased left more assets than liabilites or vice versa. The benefit of inventory allows the heir prior to accepting an inheritance, to make a list of all the assets and liabilites belonging to the deceased that he was aware of.

Succession

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.

Succession

Benefit of Inventory

What if there are several heirs?

Article 880 provides that if among sveral 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.

Article 881 provides that the inventory is to be made by the heir having the actual possession of the property of inheritance, within 3 months, from the day of the opening of succession (being the date of death) or from the day on which he knew that the inheritance devolved upon him.

This article is really a safeguard to other heirs, to prevent a situation where the heir having possession of the property keeps delaying the decision

Succession

Article 882 provides that when the heir has not within the three month timeframe commenced the inventory or has not completed it within a said time, or within some other time that was afforded to him, he shall be deemed to have accepted the inhertience without the benefit of inventory. (with regards to the actual possession of the property of the inheritance). After the inventory is concluded the heir has **forty days** to make up his mind on whether to renounce or to accept, if no decision is made by him he shall be deemed to accept the inhertiance with the benefit of inventory.

Succession

- Article 884 deals with time frames for the benefit of inventory when the heir does **not have possession** of the property of inheritance.

  The time frames are the same as those for when the heir has possession but in this case the time starts to run from the day fixed by the Court.

- Article 885 provides that minors and interdicted persons shall not be forfeited the benefit of inventory 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

Article 890 – The Effects of the Inventory

(a) 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 a co-heir who does not similarly elect to give up his 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.

Succession

- Article 891 et seq deal with the duties of the Heir who enters upon inventory

The heir who enters upon inventory:

(a) Shall be bound to administer the property of the inheritance and to render an account of his administration to the creditors and the legatees;

(b) Cannot be compelled to satisfy claims out of his own property, except when he has been put in default to prodcue his account, and has not yet fulfilled this obligation;

(c) After the liquidation of the account, he cannot be compelled to pay out his own property except to the extent of the balance which results to be due by him

Succession

Artilce 892 provides that the heir who enters upon inventory shall not in his administration, be answerbable except for **gross negligence.**

Article 893 provides that creditors and legatees may demand that a **time be assigned to the heir for rendering his account.**

Succession

Vacant Inheritance

Article 903- An inhertitance, until it is accepted, shall be deemed to be vacant; and, on the demand of any person interested, the court shall, saving the provisions of article 886, appoint a curator, as provided in the COCP.

Article 904 (1)- The curator of a vacant inheritance shall, first of all make up an inventory thereof.

(2) The curator shall exerecise and prosecute all actions pertianing 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 fo any movable or immovable property, and of rendering an account to the person entitled to demand it.

Succession

Conditional and Limited Dispositions (Article 710 et seq)

Artilce 710- Any disposition by universal or singular title, may be either **pure or conditional.**

Pure Dispositions are those made by the testator without any conditions, terms, or limitations. This means that the beneficiary is entitled to the inheritance immediately and without fulfilling any specific requirements.

e.g. If a testator leaves a sum of money to Mary and provides in his will 'I leave 1,000 Euro to my friend Mary Borg', this is a pure disposition, Mary Borg will inherit 1,000 Euro directly upon the testator's death.

Succession

Conditional dispositions are subject to a condition, which may affect whether, when, or how the inheritance is received. The condition may either be **suspensive** (delaying the inheritance) or **resolutive** (terminating the inheritance if certain events occur).

e.g. of a suspensive condition- 'I leave 50,000 euro to my nephew Andrew Borg if he completes his University Degree'. Here, the inheritance depends on Andrew completing his degree, and he will only receive such once this condition is met.

Succession

Resolutive Condition, this allwos the inheritance to vest immediately, but the right to the inhertiance may be terminated if a certain event occurs.

e.g. 'I leave my house to my daughter Rose Borg, provided she does not sell it within ten years'. Rose inherits the house immediately, but her right to keep it ends if she sells it within the specified period.

Article 711- any conditions which are **impossible/ contrary to law/immoral** can impair the dispositon it is attached to, and might be deemed invalid.

Where the condition is **unitelligible** it shall be considered as if it has not been attached.

Succession

Article 712 – A condition prohibiting a first or subsequent marriage shall be considered as if it had not been attached.

But a restraint of marriage is allowable between spouses.

It is also allowable (whatever the relationship between the testator and the legatee) if the disposition consists in a right of usufruct, right of use, right of habitation, pension or periodical payment. The latter is particularly common with parents leaving a right of habitation in their principal home to unmarried children until they remain unmarried.

Article 713- the testator cannot in his will constrain heirs in availing themselves from the benefit of inventory.

Succession

Article 714 – in any testamentary disposition by universal title, the testator is not allwoed to fix a day on or from which states when the the institution of the heir shall commence or cease.

Article 715- Disposition on condition of mutual benefit, is null.

e.g. I leave Rose Borg as heir on the condition that Rose Borg leaves Raymond Borg as heir.

Article 716- Disposition depending upon an uncertain event. Such shall not be valid if the person in whose favour it is made dies prior to the fulfilment of the condition.

e.g. 'I leave 1,000 Euro to my nephew Jason Borg, upon his successful termination of his degree.' Such is valid unless Jason dies prior to completing his degree.

Succession

Article 687- 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.

Article 688- Any testamentary disposition made in favour of an uncertain person to be designated by the heir of by a third party is likewise void. But it is valid if such constitutes a disposition by singular title in favour of a person to be selected by the heir or by a third party amoung several persons specified by the testator, or belonging to families, or bodies corporate, specified by him.

Succession

Article 696- legacy of a thing beloning to others-(1) 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 other, in which case the heir may elect either to acquire the thing bequeathed in order to made delivery thereof to the legatee, or to pay to such legatee the fair value thereof.

(2) 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.

Succession

- Article 701- Where the subject of the legacy is a thing or a quantity to be taken from a specified place, such legacy shall only have effect if such thing is found therein; and if only a part thereof is found in the place specified by the testator, it shall only have effect to the extent of such part.

Succession

Representation and Accretion

Representation and **accretion** are two principles that apply to the distribution of an estate when heirs or legatees are involved. These rules are used to determine how an inheritance is divided when certain heirs are unable or unwilling to inherit, or when additional heirs stand in for predeceased family members.

- **1. Representation**
- The **right of representation** allows the descendants of a predeceased heir to inherit in the place of that heir. This rule is crucial in ensuring that inheritance rights "pass down" to subsequent generations if an heir who would have inherited has already passed away.

Succession

Cases Where Representation Applies:

1. **Intestate Succession**: If there is no will, the estate is divided among the legal heirs according to Maltese law. Representation ensures that the share of a predeceased child is passed down to their descendants.
2. **Direct Line Descendat**: Representation occurs only among descendants in the direct line. If an heir in a collateral line (e.g., a sibling) predeceases the testator, representation does not apply to their descendants.

Succession

- **2. Accretion**

Accretion is a principle that allows an heir's share of the estate to "accrue" or pass to co-heirs if the heir cannot or does not want to inherit. This rule prevents portions of the inheritance from remaining unclaimed or creating legal complications when an heir renounces their inheritance or fails to meet certain conditions.

Conditions: Accretion happens when:

1.An heir **renounces** their share.

2.An heir **predeceases** the testator without descendants.

3.An heir is **disqualified** from inheriting due to reasons like unworthiness.

4.There is no alternate heir named in the will.

Succession

- Accretion

Proportionate Distribution: When accretion applies, the remaining heirs receive the share of the disqualified, renouncing, or predeceased heir in proportion to their existing shares in the estate.

Example: If a testator leaves their estate equally to three friends, and one friend renounces the inheritance, the remaining two friends would split the renounced portion equally.

Succession

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.

Succession

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.

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

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI