



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Contents of testament

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Zápatí prezentace



Dig. 28.5.60.6 , Celsus 16 Dig.

Si ita scriptum fuerit: " titius ex parte tertia, maevius ex parte tertia heredes sunt: titius, si intra tertias kalendas navis ex asia venerit, ex reliqua parte heres esto": videamus, ne titius statim ex semisse heres sit: nam duo heredes instituti sunt, sed titius aut ex semisse aut ex besse: ita sextans utique erit in pendent et, si condicio exstiterit, ex besse heres erit, si non exstiterit, ille sextans maevio ad crescet. sed si decesserit titius, antequam condicio existat, deinde condicio exstiterit, tamen ille sextans non titii heredi, sed maevio ad crescet: nam cum adhuc dubium esset, titio an maevio is sextans datus esset, titius decessit nec potest intellegi datus ei qui tempore dandi in rerum natura non fuit.

Where the following is stated in a will: "Let Titius be my heir to a third part of my estate, and Maevius be my heir to another third, and let Titius be my heir to the remaining third, if a ship should arrive from Asia within three months." Let us see whether Titius will not immediately become the heir to half of my estate, for two heirs have been appointed. Titius will either be an heir to one-half of it, or to two-thirds, so that a sixth of the estate will be in abeyance, and if the condition should be fulfilled, Titius will be the heir to two-thirds of the estate, but if it should not be fulfilled, the sixth will accrue to Maevius. If, however, Titius should die before the condition is fulfilled, and it should be fulfilled afterwards, the sixth of the estate which remained in abeyance will not accrue to the heir of Titius, but to Maevius; for Titius died when it was still doubtful as to whether he or Maevius would be entitled to the said sixth, since it could not be understood to have been given to him who was no longer in existence at the time it should have been allotted.



Questions

- How does the law understand these sentences: „...and let Titius be my heir to the remaining third, if a ship should arrive from Asia within three months.“
- What would change if there were „within three Greek calendae“?
- What possibilities could happen in this case?
- Why does Titius immediately inherit one half, although he was designated for one third only?
- What kind of principle follows from that?
- Titius died a week before the ship arrived (within established period), could his son claim a part of the estate?



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Section 1476

Inheriting takes place on the basis of an inheritance contract, testament or by means of a statute. These reasons may also operate together.

Section 1504

The share of an heir who does not inherit and has no substitute heir becomes vacant and shall proportionately accede to the shares of the other designated heirs only if all heirs have been designated to receive an equal share of the inheritance, or a share defined by a general expression signifying equal division.

Section 1505

(1) A person to whom a particular share of inheritance has been left does not have the right to the accession.

(2) If some heirs have been designated with a share while with others without it, the vacant share shall accede in favour of the designated heirs without a share.



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Section 1551

(1) In his testament, a decedent may provide a condition, determination of time or a mandate.

(2) Where a clause of lesser importance only aims to apparently harass an heir or legatee as a result of the decedent's manifest arbitrariness, it is disregarded. A clause of lesser importance which is clearly contrary to public order or is incomprehensible is also disregarded.

Section 1563

(1) If a person is granted a right with an impossible resolutive condition, it is disregarded.

(2) A provision of a testament which grants a person a right with an impossible suspensive condition is invalid



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Thank You for Your attention

P. Salák jr.