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Deathbed Gifts and Falcidian Portion

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Zápatí prezentace



Deathbed gifts

- Please, read the following judgment: *Sen v Headley* [1991] EWCA Civ 13 (28 February 1991) [online]. [cit. 2020-04-12]. Dostupné z:
<http://www.bailii.org/ew/cases/EWCA/Civ/1991/13.html>
- All the necessary information concerning deathbed gifts can be found in the text of the judgment and the questions to be elaborated



Falcidian Portion (quarta Falcidia) in Roman Law

- Gai Inst. 2, 227
- *Lata est itaque **lex Falcidia**, qua cautum est, ne plus ei legare liceat quam dodrantem: itaque necesse est, ut heres **quartam** partem hereditatis habeat: et hoc nunc iure utimur.*
- *The heir can retain one quarter of the net estate (net estate means after deduction of the debts). If the legacies exceed the limit, they are proportionally reduced.*



Falcidian Portion - Explanation

- Quite often, the testator appointed many legatees (people, who receive legacy/bequest, but are not liable for the debts of the testator). As a result, the heir was obliged to transfer (almost) all assets, but retain all the debts, which rendered acceptance of heritage detrimental, resulting in rejection of the heritage by the heir (this was detrimental for the legatees as well, because they were dependant on heir's acceptance). If there are more legacies, the proportional reduction takes place.
- E. g. Value of net heritage is 100. B should receive the bequest of 40. C should receive the bequest of 30. D should receive the bequest of 20. So the heir would have only 10 and he thinks it is not worth accepting the heritage for such small profit (bear in mind that he will be liable for any debt which might arise even later). If *quarta Falcidia* is applied, the heir can always retain one quarter (25, which is good motivation for him). After deduction B receives 33,33, C 25, D 16,67 (so it is still enough for the legatees, who do not risk any liability for debts, but the heir is already more motivated to accept the heritage)



Falcidian Portion - later development

- The rule of quarta Falcidia was later extended to all other institutes of succession
- Later (also in Middle ages and modern times), quarta Falcidia often partially merged with forced share
- Sometimes (e. g. in Byzantine empire or some Germanic countries), its share was changed (so it was not $1/4$, but e. g. $1/3$ or $1/10$)



Selected Literature

- BORKOWSKI, Andrew. *The Law of Donatio Mortis Causa*. Reprinted. Oxford : Oxford University Press, 2005. xiv+181 p. ISBN 1-85431-938-8.
- BÉRIER, Franciszek Longchamps de. *Law of Succession. Roman Legal Framework and Comparative Law Perspective*. Warszawa : Wolters Kluwer Polska, 2011. 290 p. ISBN 978-83-264-1468-8.
- ČERNOCH, Radek. Sen v Headley z hlediska romanistického. *Acta Iuridica Olomucensia*. 2014, Vol. 9, Supplementum 3: Recepce římského práva v Evropě, s. 51-57. ISSN 1801-0288.