Law of Succession Past Papers

Model Answers

CVL4026

The European Law Students' Association
MALTA

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Question 1

Paul's Estate

Paul's estate is regulated by a secret will. As a point of departure, a person who has not completed the sixteenth year of his age is incapable of making a will, as per **Article 597(a).** Moreover, according to **Article 598(1)** those who have not completed the age of eighteen years cannot make a will other than remuneratory dispositions. Although Paul's will contemplated remuneratory dispositions he still nominated his parent's as heirs, which cannot be done by a sixteen year old.

It is provided that the notary of Paul realised that he forgot Paul's secret will in the drawer. This is not a pertinent fact since a will shall be deemed to have been made on the day on which it was so delivered *to the notary*, in line with **Article 656** of the Civil Code. Hence, Paul was still under the age of eighteen and thus did not have the capacity to make a will other than remuneratory dispositions.

Consequently, upon the death of Paul, John and Anna are entitled to succeed Paul's estate as heirs.

Descendants

Since the will is invalid, Paul died intestate and the descendants inherited everything in equal portion between them.

Anna's Estate

Anna's estate is regulated by a will *unica charta*, wherein she nominated her three children as heirs with the residue to be inherited by her husband.

Future Children – Adam

Anna nominated her three children as heirs. At the time that the will was made, John and Anna only had three children, being Mark, Eve and Paul, and the testator did not cater for future children, being Adam, then as per **Article 748** of the Civil Code. Thus, Adam shall be entitled only to his reserved portion. Consequently, Adam shall be entitled to 1/12th of his mother's estate and shall also impute everything that they have received during his lifetime as per **Article 620(4).**

This action also needs to be brought within ten years from the opening of succession.

Three Children as Heirs

Having been nominated as heirs, Mark, Eve, and Paul shall continue the personality of their mother and shall inherit a bundle of rights and obligations. Notwithstanding this, since Paul predeceased his mother, then his three descendants shall tacitly substitute him in his place to the inheritance as per **Article 745(2**). The two descendants shall be entitled to tacitly substitute their father, owing to the fact that if the testator had died intestate, they would still have benefitted by the rule of representation.

Legato di Residuo

The testator also stipulated a *legato di residuo* for the residue to be inherited by her husband. It is contended that this disposition is invalid by virtue of **Article 758(1). Article 758(3)** establishes that a *legato di residuo* is only valid if a spouse makes in favour of the surviving spouse, a bequest and then substitutes him by another beneficiary in the residue. In this case, the testator made in favour of her descendants a bequest and substituted them for her spouse in the residue. Consequently, this provision retraining Mark, Eve, and the descendants of Paul, shall be considered as if it had not been written.

John's Estate

John's estate is regulated by a *unica charta* will and two other ordinary wills.

Unica Charta

In his *unica charta* will, John nominated his wife Anna as sole heir. However, it so happened that Anna predeceased him. Consequently, the descendants being, Adam, Mark, Eve and Paul shall tacitly substitute their mother, by virtue of **Article 745(2),** owing to the fact that had the testator died intestate, the four descendants would still have benefited by the rule of representation.

Modification

The testator, after the death of his wife, modified his will which he could have validly done so in terms of **Article 786** of the Civil Code in such a manner that he left two legacies.

Legacy to his Friend

The testator left a legacy to his friend, all movable furniture in the matrimonial home which he shared with his predeceased wife. It is argued that this would constitute a *legato di cosa altrui* since the share of the wife was inherited by their three children. The friend must demand the possession of the legacy from the heirs, according to **Article 726(1).** This is because *'id-dritt tal-legat hu dritt ta' proprjetà, iżda jibqa' dritt inċert u suġġett għall-kontestazzjoni sakemm ma jiġix immiss fil-pussess'* as stated in ***Concetta Vella et v. Mariosa Portelli et* (24.06.2008).**

Legacy to Paul and Adam

The testator also left a legacy of a garage to Adam and Paul jointly and in equal shares. Owing to the fact that Paul predeceased the testator, then his two descendants shall tacitly represent their father in his share and no accretion shall take place since tacit substitution takes effect in preference to the right of accretion, as remarked by Professor Caruana Galizia.

Therefore, the garage shall be inherited as follows:

- ½ to Adam
- ¼ to Descendant 1 of Paul
- ¼ to Descendant 2 of Paul

Adam and the descendants of Paul shall also demand possession from the heirs in terms of **Article 726(1)**. Such demand shall be made by means of a public deed according to **Article 726(2).** Although a public deed is not required *ex lege*, it is recommended that such demand is made by a public deed as it will constitute irrefutable proof that the legacy has been paid. The expenses relative to the deed will be borne by Adam and the descendants, as per **Article 726(3).**

Furthermore, interest will start to accrue immediately upon the death of the testator according to **Article 727(2)(b).**

Additional Will

It is provided that upon the insistence of his children Mark and Eve, the testator made an additional will and nominated them his sole heirs. It could be salient to question whether the insistence by the children would constitute illicit duress on the testator and thus, render it null. Nevertheless, presuming that it is valid, the following would be noted:

However, Mark and Eve both renounced to the inheritance, which renunciation must have been 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 and this in terms of **Article 860(2).** Having renounced to their father's inheritance, their descendants shall not be entitled to represent their parents since 'no person may take as the representative of an heir who has renounced', as per **Article 864(1).**

Thus, the testator's heirs-at-law would subsequently step in, these being according to **Article 809**, Adam and the descendants of Paul. Furthermore, as per **Article 810(2),** the heirs-at-law shall succeed *per stirpes*, since some of them are taking by way of representation. Therefore, the heirs-at-law would be entitled to:

- Adam – ½ of John's Estate
- Descendant 1 of Paul – ¼ of John's Estate
- Descendant 2 of Paul – ¼ of John's Estate

Settlement of the legacies

If the heirs are reluctant to settle the legacies, then the first step to be taken by the legatees is to demand the possession from the heirs of their respective legacies and this according to **Article 726(1).** Once this demand is made, then the heirs become obliged to discharge the legacies.

Additionally, once this demand is made, the legatees shall be entitled to claim the fruits of, or interest on the legacy as per **Article 727**. However, in the case of those legacies, the subject of which are immovable property, then interest shall accrue immediately.

If the heirs still are reluctant to settle the legacies, then it is advised that an action be brought by any of the legatees against the heirs so that the court can order the heirs to either pay the sum of the legacy or to put in possession of the legacy.

Question 2

Sam's Estate

Sole Universal Heir

Sam's estate is regulated by an ordinary public will, where he nominated his wife as sole universal heir with the residue after her death to be inherited by his future children. First of all, it is lawful by virtue of **Article 747** of the Civil Code for the testator to cater for the birth of future children. Secondly, it can be contended that the wife shall be entitled to succeed her husband and inherit a bundle of rights and obligations, with the condition of the *legato di residuo*.

It is presumed that the wife accepted the inheritance of her husband, owing to the fact that she donated the matrimonial home to one of her three children. Such act constitutes *un atto di eredi*.

The testator stipulated a *legato di residuo* which disposition is valid in terms of **Article 758(3)** of the Civil Code. In this case, the surviving spouse shall be restricted from disposing of the estate which she inherited by donation or by will. Since it emerges that the widow donated the matrimonial home to one of her three children, then it can be contended that she contravened the *legato di residuo*. Thus, an action may be brought by the other descendants within five years from the opening of succession as per **Article 758(5).** This donation of immovable property shall be considered as null and this as per **Article 758(6).** However, it must be kept in mind that if between the spouses there was the community of acquests, then the wife owns ½ of the property, thus the residue shall only be that which belonged to her husband and which she had inherited.

Reserved Portion

The descendants in this case are also entitled to the reserved portion, meaning 1/6th each.

Ian's Estate

Privileged Will – Formalities

Ian's estate is regulated by a will which he made on board a cruise liner. A will made at sea under Maltese law is a privileged will, provided that certain formalities were followed.

Presuming that the cruise liner was a ship registered in Malta, then according to **Article 676(1)** of the Civil Code such will must have been 'received, in writing, by the master, or the person acting in his stead'. Moreover, such 'will shall be received in duplicate, and in the presence of two witnesses who have attained the age of eighteen years', as per **Article 676(3).** According to **Article 677** such will must have been 'signed by the testator, by the person receiving it, and by the witnesses'. The non-observance of these formalities renders the will null and void.

Furthermore, the master has an obligation under **Article 678** to enter into the log-must and muster-roll 'make and sign an entry relating to the receipt of such will'. This is of importance as such declarations constitute the contents of the will. In order for the will to be preserved, the provisions of **Article 679** of the Civil Code shall be observed. If the next port is Malta, the master is obliged to present the will within eight working days in the Court of Voluntary Jurisdiction. However, if the ship touches at any port outside Malta, then the Master shall deposit one of the duplicates with the Consular and the other duplicate shall be dispatched to the Authority for Transport in Malta who are responsible to present the will before the Court of Voluntary Jurisdiction within eight days.

It is of importance for the privileged will to retain its validity that Ian died within two months after the drawing up of the privileged will, and this in accordance with **Article 680** of the Civil Code. Since it is provided that Ian died a couple of weeks after his return to Malta, then it will be presumed that this condition was also satisfied.

If the formalities as enunciated have been observed, then such will shall be considered as valid.

Heirs-institute

In his will, Ian nominated all his children heirs without specifying whom such descendants are. Notably, Joan was already pregnant with their child Zak when Ian died. According to **Article 600**, Zak shall be entitled to succeed his father as a co-heir, owing to the fact that at the time of the testator's death, he was already conceived. Furthermore, since Sam predeceased the testator, then his descendants can tacitly represent their father, according to **Article 745(2).**

In this case the descendants shall be entitled to either accept or renounce their father's inheritance. By virtue of **Article 861**, the descendants can also renounce the inheritance and reserve their right in respect of the reserved portion. In this case, Maria and Zak will be entitled to 1/9th of their father's estate, whilst the descendants of Sam shall be entitled 1/27th each and this as per **Article 616(1)** of the Civil Code. Moreover, they shall be bound to impute everything that they have received from their father according to **Article 620(4).**

Collation

On the other hand, if the descendants accept the inheritance, then an action for collation may be brought by Zak according to **Article 913(1),** since it does not emerge that the testator has otherwise provided.

In this case, the testator and Joan donated to Sam and Maria a plot of land each when they got married, on which both constructed their matrimonial home.

Presuming that Ian and Joan were married and that the community of acquests existed between Ian and Joan, then what shall be subject to collation is ½ of the land donated, respectively. Secondly, if the donation was made to Sam and Maria during marriage, then this ½ is further split up into ¼, respectively. Having established this, what can be collated is ¼ of the value of the lands at the time of the opening of succession, as per **Article 931(1).** The improvements made to the plot of land shall not be subject to collation and this according to **Article 932(1).**

Thus, by virtue of **Article 913**, Zak being a descendant and a co-heir can demand collation against:

• Maria, being a descendant, co-heir and donee; and

• The three descendants of Sam, tacitly representing their father, as per **Article 919(2).**

Notably, even though the wife of Sam donated the matrimonial home i.e. the land donated, to one of her children, what she could have donated in 1/2 of the value of the property, since the other ½ belongs to the heirs of Sam.

Joan

Ian did not bequeath anything onto his wife Joan. Although it is not specifically provided that Joan and Ian were married, it is being presumed that they were so married, since it is later on provided that Joan "remarried".

In this case, Joan may claim her reserved portion being ¼ of the value of the estate in full ownership as per **Article 631** of the Civil Code, together with the right of habitation over the tenement occupied as the principal residence at the time of the decease of the predeceased spouse, however, this shall be until she remarries. Furthermore, she would be also entitled to the right of use over furniture found in the principal residence according to **Article 635** of the Civil Code.

Any claims for the reserved portion or for the acceptance of an inheritance must be brought within 10 years from the opening of succession, according to **Article 845** of the Civil Code.

Joan's Estate

Joan's estate was regulated by an ordinary public will, which she made after remarrying.

Usufruct to Maria

The testator left the usufruct of her estate to her daughter Maria contingent upon her remaining a widow. The condition in restraint of marriage is a valid condition as per **Article 712(2),** owing to the fact that the subject-matter of the legacy is a right of usufruct.

Sole Heir

The testator also nominated as her sole heir her second husband, on the condition that he does not contract another marriage and that the inheritance be effective only upon attainment of his 75th birthday. It is contended that whereas the first condition is valid, according to **Article 712(3)**, the second condition is not. The second condition can be referred to as a limitation of commencement of the institution of the heir and shall be as per **Article 714** of the Civil Code deemed to have not been attached. The law assumes that the heir will continue the personality of the deceased and such status shall have been assumed from the moment of the testator's death.

A second issue is the fact that the testator bequeathed all of her usufruct to her daughter and thus the second husband, although instituted as heir, is only entitled to the bare ownership of the testator's estate. If the second husband renounces to the inheritance and reserves his right to the reserved portion, and it appears to him that the value of the usufruct surpasses the disposable portion, then according to **Article 621(1),** the surviving spouse shall either abandon his right of ownership and make a claim for the reserved portion, or else accept the disposition.

Claims for the Reserved Portions

The testator did not bequeath anything in favour of Maria. In this case, Maria can claim her reserved portion which shall amount to 1/9th of her mother's estate. Moreover, Sam's descendants can also claim the reserved portion which would have been inherited by their father, in which case they would be entitled to 1/27th of Joan's estate.

Zak's Estate

It seems that Zak died without having drawn up a will and thus his inheritance will be regulated by the rules of intestacy. Since it does not emerge that Zak was survived by a spouse or by descendants then his collaterals shall inherit him according to **Article 812(c)** of the Civil Code.

Since Maria renounced to her brother's inheritance, then according to **Article 863(1),** her share shall accrue to the other co-heir. Since Sam predeceased Zak, then his descendants will succeed per capita, owing to the fact that they are all standing in an equal degree. On the other hand, Maria's descendant cannot inherit her uncle since her mother blocked representation.

September 2014

Question 1

Mario's Estate

Mario's estate is regulated by an ordinary public will.

Heirs-Institute

Mario nominated Fiona, Alf and Brian as their universal heirs in equal portions of 1/3rd each. Notwithstanding this disposition, Alf and Brian predeceased the testator. **Article 745(1)** establishes that a testamentary disposition shall lapse if the beneficiary shall not survive the testator. However, this may be remedied either through a vulgar substitution clause, which does not emerge in this case, through accretion, which cannot take place in this case owing to the fact that the shares where specified by the testator and lastly through tacit substitution.

It is provided that Alf died childless, meaning that tacit substitution does not take place. In this case, Alf's 1/3rd undivided share shall be taken up by intestate succession. On the other hand, Brian was survived by two descendants and thus in terms of **Article 745(2)** his two descendants shall tacitly represent their father and shall thus inherit 1/6th share each. Owing to the fact that the testator died intestate, tacit substitution shall take place whereby only Fiona would have benefitted and the collaterals would not have been owed anything.

According to **Article 810**, Fiona is considered to be the heir institute of the testator. It is therefore for this reason that the vacant ⅓ is to be taken up by her.

Legacies

In Favour of Paola

The testator left three legacies, the first one being a sum of money to Paola, which the testator had previously lent to her. Moreover, Paola had also subsequently contracted even more debts with the testator. If this disposition is a *legatum liberationis* and thus the testator stated that he is discharging Paola from the debt, then according to **Article 706** this legacy shall only discharge Paola from the debts which were due to Mario at the time of the will. Thus, the debts which were subsequently contracted shall not be deemed to have been discharged by the legacy. In this case, the legacy would not be susceptible to delivery and thus will only operate towards the extinguishment of the right.

Moreover, the testator left an antique clock to Paola, which he had eventually donated to her. It is through **Article 702(3)** that, due to the fact that the legatee acquired the thing from the testator under a gratuitous title, the legacy shall be considered to be redeemed.

Therefore, this disposition is also rendered null.

In favour of Donna

The testator left a legacy to Donna through discharging her from her debt due to him. It is provided that, prior the demise of the testator, Donna has repaid all her debts in full. By virtue of **Article 703**, if the legacy consists in discharging a debtor from a debt due to the testator, then it 'shall only have effect with regard to such portion of the debt as shall still be owing at the time of the death of the testator'. Since Donna repaid her debts, then it is submitted that this disposition is also rendered null.

Claim for the Reserved Portion

In terms of **Article 861**, Fiona may also elect to renounce to the inheritance and rather claim her reserved portion, whereby in such case, the heirs-at-law would inherit the testator per capita and these include Brian's descendants.

In accordance with **Article 632**, Fiona is entitled to succeed ⅓ value of the estate in full ownership. Fiona enjoys the right of habitation of the matrimonial home in accordance with **Article 633** and also enjoys the right to the use of furniture found in such matrimonial home by virtue of **Article 635**. It must be pointed out that since Fiona has remarried, her right in the matrimonial home shall cease upon the remarriage in accordance with **Article 638(8).**

Fiona's Estate

Secret Will

Fiona's estate is regulated by a secret will, which she delivered by hand to a fourth-year law student in order to proceed with it in terms of law. It is submitted that a fourth-year law student can certainly not be deemed to be a notary and thus this secret will lacks form. Fiona had two choices, either to deliver the will to the registrar in front of a judge or magistrate in the Court of Voluntary Jurisdiction or else to deliver the will to a notary public. If the notary public receives Fiona's will from the fourth-year law student, then he cannot accept it. Thus, this will shall be considered to be inexistent.

Intestate Succession

Having established that the secret will is inexistent, then Fiona's estate shall be regulated by the rules of intestate succession. Having been survived by a spouse, then Brendan shall be entitled to the whole lot of Fiona's estate and this is so in accordance with **Article 810**.

Notwithstanding this, Brendan also has the right to renounce the inheritance of the testator and reserve his right for the reserved portion. In this case, it does not seem that the spouses had any descendants and thus Brendan shall be entitled to ⅓ of his wife's estate and also has the right as per **Article 633** to the right of habitation of the matrimonial home. This is so notwithstanding the fact that such matrimonial home was not owned by Brendan.

If Brendan does claim his reserved portion, then according to **Article 812(a)** the heir at law would then be Phyllis provided that Fiona did not have any descendants.

Question 2

Maria's Estate

It is provided that Maria died intestate and thus her estate shall be regulated by the rules of intestacy. Having been survived by her husband, in accordance with **Article 810** of the Civil Code, David would inherit the whole lot of the testator's estate. David would also have the right over their matrimonial home, contingent upon David not remarrying and the right to use the furniture found therein.

Notwithstanding this, David may renounce to his wife's inheritance and reserve his right for the reserved portion which shall amount to 1/3rd of the value of the estate in full ownership according to **Article 632**. The claim for accepting the inheritance or the reserved portion is barred by the lapse of ten years from the opening of succession as per **Article 845** of the Civil Code. In that case, the heirs-at-law of Maria shall be her ascendants and direct collaterals, being Antonio, Lisa, Jeanette and Donna, which shall inherit as follows and this as per **Article 812(b)** of the Civil Code:

- Antonio & Lisa ½ - ¼ respectively.
- Donna & Jeanette ½ - ¼ respectively.

Jeanette's Estate

It does emerge that Jeanette made a will and thus her estate shall also be regulated by the rules of intestacy. Moreover, it is not provided whether Jeanette was survived by a spouse and thus in this case it shall be presumed that Jeanette was solely survived by the three descendants. Consequently, her heirs-at-law shall be the three descendants as per **Article 809** of the Civil Code which shall inherit 1/3rd each respectively.

The three descendants could also renounce to their mother's inheritance and instead claim the reserved portion which shall amount to ½ of their mother's estate. Hereby, as per **Article 616 (2),** it would amount to ⅓ each respectively. Consequently, in accordance with **Article 620 (4),** they shall be bound to impute everything that they have received during their lifetime.

If the descendants renounce and reserve their right for the reserved portion then Jeanette's heirs-at-law shall also be her ascendants and direct collaterals as per **Article 812(b),** which shall inherit as follows:

- Antonio & Lisa ½ - ¼ respectively.
- Donna ½

Since Maria was not survived by any descendants then Donna shall inherit the whole lot.

Lisa's Estate

Lisa's estate was regulated by a *unica charta will*, which was later modified by an additional *unica charta will.*

Reciprocal Bequest

Due to Lisa passing away first Antonio inherits the full ownership of the matrimonial home. Since the testators did not reciprocally bequeath by universal title, but rather by legacy, then Antonio can only bring a claim for the reserved portion. Consequently, if the share of the property bequeathed to him by will does not satisfy his reserved portion as per **Article 620(5)** of the Civil Code. Thus, Antonio cannot renounce to this legacy and instead claim his reserved portion.

Co-Heirs

The testator nominated her three children as co-heirs conjointly and specified the shares of each amounting to ½ to Donna, ¼ to Jeanette and ¼ to Maria, with the right of accretion between them. The first issue is that Maria and Jeanette both predeceased the testator. In this case, since the testator stipulated the right of accretion between them, then this shall prevail over tacit substitution since the intention of the testator prevails. Moreover, accretion shall still take place, notwithstanding the fact that the law provides that accretion shall only take place if the shares are not fixed. Consequently, in this case if Donna accepts the inheritance, then Jeanette's and Maria's share shall accrue upon her, meaning that she becomes her mother's sole heir.

If Donna renounces to her mother's inheritance, then the testator would be deemed to have died partly intestate. In this case, since Lisa was survived by her spouse Antonio, he shall be the heir-at-law and this as per **Article 810** of the Civil Code.

Additional Will

Pre-Legacy to Donna

In the additional will, in terms of **Article 709** of the Civil Code, the testator left a pre-legacy, of the right of their matrimonial home to Donna contingent upon her remaining a spinster. Firstly, it can be noted that since the matrimonial home belongs ½ to Antonio and ½ to Lisa, this is a *legato di cosa altrui*. Thus, what Donna inherits is the ½ of the right of habitation over the matrimonial home and this is so in accordance with **Article 698** of the Civil Code. This is so since it does not emerge that the testators stipulated that they are aware that the matrimonial home belongs jointly to them.

Secondly, the condition in restraint of marriage is a valid condition in terms of **Article 712(2)** being a right of habitation. Since it does not appear that Donna married then this legacy subsists. Thirdly, it is noted that Antonio inherited the ownership of the matrimonial home, whereas his daughter inherited the right of habitation. Consequently, it can be maintained that if Antonio thinks, which is quite unlikely, that the right of habitation surpasses the disposable portion of the testator.

In accordance with **Article 621** of the Civil Code, Antonio may have the option either to abide by the testamentary disposition or else to abandon in favour of Donna the full ownership of the disposable portion and claim his reserved portion.

Conditions imposed on the co-heirs

Having established that Donna becomes the sole heir of the testator, then it can be contended that these conditions only apply in her favour. The first condition restrains the heir from accepting with the benefit of inventory is not valid as per **Article 713** and shall be considered as if it had not been attached. Moreover, the second condition shall also be considered as if it had not been attached as per **Article 714**. The law assumes that the heir will continue the personality of the deceased and such status shall be deemed to have been assumed from the moment of the testator's death.

Antonio's Estate

Antonio's estate is regulated by a *unica charta* will which was later modified by a secret will. It is being presumed that the secret will has been delivered in accordance with the formalities required by law and thus it shall be considered to have effect from the date of the act of delivery. Conversely, it should be added that if the notary did not follow the correct procedure he might be held liable for certain consequences under **Article 661** of the Code of Organisation and Civil Procedure.

Article 786 of the Civil Code establishes that,

'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.'

In this case, it does not emerge that the secret will contains any inconsistent dispositions with the *unica charta* will and thus these wills shall be considered separately below.

Unica Charta Will

First of all, the reciprocal bequest has reached its full effects upon the death of his wife. Consequently, the only disposition which shall be considered is the nomination of his co-heirs, being the three children. In this case, the same observations made with respect to Lisa's estate shall also be applicable in this case. Therefore, Jeanette's and Maria's accrue upon Donna and provided that she accepts her father's inheritance then she will become the sole heir. Interestingly, if Donna renounces to her inheritance and either reserves her right for the reserved portion which would amount to 1/3rd of her father's estate, or else renounces without reservation. Therefore, as per **Article 864(2)** Jeanette's descendants shall take in their own right and shall succeed per capita, inheriting 1/3rd of their grandfather's estate respectively.

Additional Will

Upon the death of Antonio, Donna shall be entitled to inherit the other ½ of the right of habitation over the matrimonial home. Secondly, as already established the conditions imposed upon the heir shall be considerable to be null.

Secret Will

Antonio also drafted a secret will whereby he left two legacies to Helena. The first legacy is a sum of money for remuneration for services rendered. Notably, if the *unica charta* will contained a forfeiture clause then since this is a *legato remuneratorio* then this shall not lead to forfeiture, as established in ***Maria Bianchi vs. Maggur James A. Galizia*** **(1937)** where the Court of Appeal held that

'fil-ġurisprudenza tagħna ġie ħafna drabi stabbilit illi t-testatur għandu d-dritt iħalli legat rimuneratorju avolja jkun għamel testment unica carta mingħajr ma jiddekadi mill-vantaġġi li jiġuh minn dak it-testment'.

Moreover, the testator also left a precious legacy to Helena. Arguably, this can be considered as an indeterminate thing, particularly if the testator had other paintings. In this case, the heir/s shall be endowed with the right of selection, who 'cannot be compelled to deliver a thing of the best quality, but cannot offer a thing of the worst quality' as per **Article 722**.

In this case, Helena shall demand possession from the heir/s as per **Article 726(1).** In this case, interest will not start to run, except from the day on which Helena shall by, even by judicial letter, called upon the heir/s to deliver her legacy, or from the day on which the delivery or payment shall have been promised to her by the heir/s as per **Article 727**.

June 2015

Question 1

Maria's Estate

Maria's estate is regulated by a *unica charta* will, a secret will and a public will.

Conflict between Wills

Secondly, it must be noted that Maria only handed over her secret will to the notary upon her death bed, thus after the drawing up of the *unica charta* will. **Article 658(2)** establishes that a secret will 'shall be deemed to have been made on the day on which it is so delivered', therefore, the date of the secret will is irrelevant and thus it shall be deemed to have been made subsequent to the *unica charta* will. Since in the secret will the testator revoked all previous wills then her estate shall be solely regulated by the secret will and the ordinary public will.

According to **Article 786** '[w]here 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.' In this case, the public will does not seem to contain any contrary dispositions to the secret will as it merely contains bequests.

Secret Will

The testator nominated all her descendants yet to be born as heirs. This is a valid disposition catering for the birth of future children as per **Article 747**. Consequently, Clara, Rita and Kurt shall be considered as Maria's co-heirs which shall be entitled to inherit a bundle of rights and obligations.

Clara, Rita and Kurt can also bring an action for collation against their brother Mario, who was apparently donated a house on his marriage to Anna by the testators. Presuming that the donors were Maria and Martin then due to the community of acquests, what shall be subject to collation is ½ of the value of the property. Moreover, if the property was given jointly to Mario and Anna, then what shall be subject to collation is ¼ of the value of the house.

Ordinary Public Will

By virtue of the ordinary public will, the testator left a legacy to her son Kurt, all her moveable property effective upon the attainment of 21 years of age. This is a valid disposition, since the bequest is merely a legacy and thus **Article 714** does not apply. Consequently, this condition suspends the execution of the testamentary disposition until Kurt attains the age of 21 years. However, by virtue of **Article 717** Kurt shall still be entitled to obtain a vested right over the movable property.

Claims for reserved portion

Mario, Clara and Rita may also renounce to their inheritance and claim their reserved portion, in terms of **Article 861**. In terms of **Article 616** the descendants would be entitled to 1/3rd of the estate i.e. 1/9th each respectively. However, the descendants would be subject to the rules of imputation under **Article 620(4).** Kurt would also be entitled to claim his reserved portion if he renounces to the inheritance in terms of **Article 861** and only if the legacy does not suffice his reserved portion, in terms of **Article 620(4).**

Martin

Since Maria did not bequeath anything to her husband, then he will only be entitled to the reserved portion, which shall amount to 1/4th of the value of the estate in full ownership, and this in accordance with **Article 631** of the Civil Code. Over and above this, he is also entitled to the right of habitation over the tenement occupied as the principal residence by him at the time of death of Maria, provided that he does not remarry. He is also entitled to the right of use of the furniture which is found in the said residence as per **Article 635** of the Civil Code.

Mario's Estate

It appears that Mario died without having drawn up a will and thus his estate will be regulated by the rules of intestate succession. Having been survived by his spouse Anna then she is entitled to inherit the whole lot of her husband's estate as per **Article 810** of the Civil Code. Anna can also renounce to the inheritance and instead claim her reserved portion, which shall amount to 1/3rd of the estate as per **Article 632**, together with the right of habitation and the right of use of the furniture.

In that case, the testator's heirs-at-law would be his near ascendant and direct collaterals, which shall inherit him as follows as per **Article 812(b):**

- Martin ½
- Clara, Rita, Kurt inherit ½ - 1/9th respectively.

Martin's Estate

Martin's estate is regulated by a *unica charta* will and by an ordinary public will.

Unica Charta Will

In the unica charta will the testators had made a reciprocal bequest by which they nominated each other as universal heirs with a *legato di residuo* in favour of their descendants. Since Maria predeceased her husband and had revoked this reciprocal bequest then it can be contended that this disposition became ineffective.

In ***Maria Dolores et noe vs. Mifsud et*** **(14.04.2021),** the Court held that;

> '*Testment unica charta fejn il-konugi jaghmlu dispozizzjonijiet favur xulxin jitqies, fil-ligi Maltija, maghmul that kondizzjoni reciproka, fis-sens li d-dispozizzjonijiet ta' testatur favur testatur iehor jibqghu jghoddu diment li t-testatur beneficjarju ma jhassarx it-testment unica charta in kwantu ghal-assi tieghu.'*

Consequently, it can be contended that the testator died partly intestate, since the second will merely contains legacies. Having been survived by his descendants, then these shall be deemed to be Martin's heirs-at-law as per **Article 809**, who shall inherit their father in the following manner:

- Clara ½ of the estate
- Rita ½ of the estate

Since Mario predeceased his father and was not survived by any descendants, then his share accrues on the other co-heirs as per **Article 863(1).**

Second Will

Pre-legacy to Clara

In his second will, the testator left Clara one ring to be chosen by her from the rings belonging to her predeceased mother. It can be contended that since the testator only inherited the reserved portion from his wife, being a right of credit, then this is a *legato di cosa altrui.* Notably, Maria left all her movables to her son Kurt. In this case, since the testator stipulated that the ring did not belong to him but rather belonged to his predeceased wife, then as per **Article 696(1),** 'the heir(s) 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.' Moreover, since the testator left the choice of selection to Clara herself, being a legatee, then as per **Article 723**, she 'may select the best of the things of the given genus or species existing in the inheritance' but, 'if there be none' she 'cannot select one of the best quality'.

Pre-legacy to Rita

The testator also left Rita a necklace from a number of necklaces which also belonged to her predeceased mother. Intrinsically, the same observations made with respect to the pre-legacy left to Clara also apply in the case of the pre-legacy made to Rita.

The disposition in favour of Clara and Rita is considered to be a pre-legacy, since according to **Article 709**, a legacy left to an heir is deemed to be a pre-legacy. The law does not distinguish between legatees and pre-legatees and thus it is presumed that the pre-legatees are not exonerated from making the demand to be put in possession as per **Article 726(1)** of the Civil Code.

At this juncture, one ought to refer to **Article 772** were the right of selection belongs to the heir who cannot be compelled to deliver a thing of best quality, but cannot offer a thing of the worse quality.

Legacy to Anna

The testator also left Anna a substantial sum of money, ½ of which is to be made use of as agreed between them, and the other ½ to be given to that student who is placed first in the June 2015 exams. Regarding the first part of the legacy, it can be contended that this disposition is null in terms of **Article 693**, since if a sum of money is bequeathed to a person 'for the purpose of making such use thereof as the testator shall have declared to have confided to such person, is null…'

On the other hand, the second part of the legacy, namely ½ of the sum to be given to the student who is placed first in the June 2015 exams is valid, since the disposition is not made in favour of an uncertain person according to **Article 687**, but rather the identity of the person can become ascertainable upon the happening of a future contingency being the exams. In this case, the student who places first, must demand the possession of his sum of money from the heirs, as per **Article 726(1).**

Question 2

Karl's Estate

Karl's estate is regulated by a will on board a cruise liner. A will made at sea under Maltese law is considered to be a privileged will, provided that certain formalities were fulfilled. Presuming that the cruise liner was a ship registered in Malta, then according to **Article 676(1)** of the Civil Code, such will must have been 'received, in writing, by the master, or the person acting in his stead'. Moreover, such 'will shall be received in duplicate and in the presence of two witnesses who have attained the age of eighteen years', as per **Article 676(3).** According to **Article 677**, such will must have been 'signed by the testator, by the person receiving it, and by the witnesses'. The non-observance of these formalities renders the will null and void.

Furthermore, the master has an obligation under **Article 678** to 'make and sign an entry relating to the receipt of such will'. This is of importance as such declarations constitute the contents of the will. In order for the will to be preserved, the provisions of **Article 679** of the Civil Code shall be observed. If the next port is Malta, the master is obliged to present the will within eight working days in the Court of Voluntary Jurisdiction. However, if the ship touches any port outside Malta, then the Master shall deposit one of the duplicates with the Consular and the other duplicate shall be dispatched to the Authority for Transport in Malta, who are responsible to present the will before the Court of Voluntary Jurisdiction, within eight days.

In order for the privileged will to retain its validity, it is of importance that Karl must die within two months after the drawing up of the privileged will, in accordance with **Article 680** of the Civil Code Since it is provided that Karl died a couple of weeks after his return to Malta, then it is presumed that this condition was also satisfied. If the formalities as enunciated have been observed, then such will shall be considered valid.

Sole Universal Heir

By virtue of the privileged will, Karl nominated his wife Emma as sole universal heir with a *legato di residuo* in favour of his three children, presumably being Thea, Neil, and John. The *legato di residuo* is valid in terms of **Article 758(3)** and thus, upon the opening of succession Emma will be entitled to inherit a bundle of rights and obligations and continue the personality of her husband, with the condition that the residue is left to her three children. In this case, she will be restrained from disposing any of the inherited property either by will or by title of donation.

Reserved Portion

Thea, Neil, and John are also entitled to claim their reserved portion in terms of **Article 616(1)** of the Civil Code, which shall amount to 1/3rd of the value of the testator's estate, amounting to 1/9th each respectively. The action for the reserved portion shall be brought within a period of ten years from the opening of succession as per **Article 845** of the Civil Code.

Emma is also entitled to renounce to the inheritance and reserve her right in respect of the reserved portion as per **Article 861** of the Civil Code.

In this case, she will be entitled to inherit as per **Article 831**, ¼ of the value of the estate in full ownership, together with the right of habitation over their matrimonial home. The latter right shall lapse upon her remarriage to Frank and the right of use over the furniture found in the matrimonial home, and these according to **Article 633** and **Article 635**.

Daniel's Estate

It emerges that Daniel died without having drawn up a will and thus his inheritance will be regulated in terms of intestacy rules. Since Daniel was survived by two descendants, then as per **Article 809** of the Civil Code, the two descendants shall inherit the whole lot of their father's estate, inheriting ½ each respectively. Moreover, since the descendants were born out of wedlock, it is being assumed that Daniel was not survived by a spouse.

The two descendants are also entitled to renounce to their father's inheritance and instead claim their reserved portion. In this case, they will be entitled to 1/3rd of the testator's estate, amounting to 1/6th each respectively, as per **Article 616(1).** In such case they will be bound to impute anything received during their lifetime from their father, as per **Article 620(4).**

In this case, the testator's heirs-at-law will be his nearest ascendants, being Emma and Frank and his direct collaterals. Since it does not seem that the testator had any direct collaterals, then Emma and Frank shall as per **Article 812(a)** be the heirs-at-law and shall consequently inherit ½ of the estate each respectively.

Emma's Estate

Emma's estate is regulated by an ordinary public will made after the death of her first husband. Emma will be presumed to have inherited from Karl as a universal heir with the *legato di residuo.*

Universal Heir

Emma nominated her son Daniel as universal heir with the right of substitution only if he renounced to her inheritance. It so happened that Daniel predeceased the testator and the direct substitution clause was only operative if Daniel renounced to the inheritance and not in the case that he predeceased the testator. Thus, in this case, Article 754 shall not be regarded and the testator's intention shall be respected.

Notwithstanding this, the lapse of the testamentary disposition shall still be remedied through tacit substitution. As per **Article 745(2)** of the Civil Code, Daniel's two descendants shall represent him owing to the fact that had Emma died intestate, the descendants would still have benefitted by the rule of representation. Therefore, the descendants shall be regarded as the testator's heirs, inheriting *per stirpes* a bundle of rights and obligations amounting to ½ of the estate, respectively.

Plot of land to Neil and Daniel

The testator also left a legacy, namely a plot of land to Neil and Daniel jointly and in equal shares between them. As aforementioned, since Daniel predeceased the testator, then his two descendants shall represent him by way of tacit substitution and inherit the other equal share.

Had Daniel died without any descendants, then his share from the plot of land would have accrued upon Neil by way of accretion, since the testator did not stipulate the shares, and this as per **Article 738(2)** of the Civil Code.

Legacies to Frank

Condition in restraint of marriage

The testator left two legacies to her husband Frank, both upon the condition in restraint of remarriage. This is a valid disposition in terms of **Article 712(3).**

House

The testator bequeathed a house to her husband Frank, which house came from her first marriage to Karl. First of all, presuming that the community of acquests existed between Emma and Karl then Emma owns ½ of the property bequeathed to Frank. It is contended that she has inherited the other ½ upon the death of her husband. Notwithstanding this, since she had inherited her Karl's estate with a *legato di residuo*, then she was barred from disposing any of the inherited property by will.

Consequently, Thea, Neil and John all have the right to bring an action against Frank in terms of **Article 758(5)** within the period of five years from the opening of succession since that immovable property formed part of the residue as per **Article 758(4) (a**). In such case, as established by **Article 758(6),** shall be declared to be null.

Painting

The testator also left a precious painting which went missing some time after the death of Emma when Frank had already requested its delivery from the heirs. According to **Article 714(2),** the legacy shall lapse if,

> '…the thing has perished after the death of the testator, without the agency or fault of the heir, even though such heir may have been put in default for delay in the delivery thereof, provided the thing would have equally perished in the possession of the legatee.'

Legacy left to Thea

The testator also left a Thea the usufruct of her estate contingent upon her remaining a spinster. This condition in restraint of marriage is valid in terms of **Article 712(2)** since it consists in the right of usufruct. Secondly, Thea may also claim her reserved portion and in terms of **Article 620(5),** the property bequeathed to her need not be taken into account since the testamentary disposition is made in usufruct.

Claims for the Reserved Portions

In these circumstances, since the testamentary dispositions in favour of Frank had both lapsed, then it is wise to claim his reserved portion, which shall amount to as per **Article 831**, ¼ of the value of the estate in full ownership, together with the right of habitation over their matrimonial home and the right of use over the furniture found in the matrimonial home, and these according to **Article 633** and **Article 635**.

Furthermore, the descendants are also entitled to bring a claim for their reserved portion which shall amount to 1/3rd of their mother's estate, amounting to 1/12th each respectively as per **Article 616(2).** This is particularly the case of John since he is neither an heir, nor a legatee, nor a donee. Although Daniel predeceased the testator, since he was survived by descendants, then he shall still be counted when determining the number of children.

September 2015
Question 1

Paul's Estate

Paul's estate is regulated by a *unica charta* will which he made with his wife Maria. It does emerge that the testators inserted an express and specific forfeiture clause in terms of **Article 593** of the Civil Code. Consequently, they were at liberty to modify the *unica charta* will without incurring any forfeiture. In addition to this, there was no reciprocity clause so the consequences of revocation do not apply here.

Sole Heir

Paul nominated his wife as sole heir with the residue upon her death to be inherited by his children yet to be born. A clause to cater for future children may validly be stipulated in terms of **Article 747** and thus in this case James, Danny and Roberto shall be entitled to inherit the residue remaining from their father's estate upon the death of their mother. Furthermore, the *legato di residuo* is also a valid disposition in terms of **Article 758(3).** Thus, in this case Maria shall be entitled to succeed and continue the personality of her husband with the condition that she does not dispose of anything contained in the disposition by will or by title of donation.

Claims for Reserved Portions

The three descendants are also entitled to claim their reserved portion from their father's estate which shall amount to ⅓ of the estate, amounting to 1/9 respectively and this as per **Article 616(1).** In such circumstances they shall be bound to impute anything which they received from their father which is in line with **Article 620(4)** of the Civil Code.

Maria's Estate

Maria's estate is regulated by a secret will, a *unica charta* will, and a later modification of the *unica charta* will.

Secret Will

It is contended that this secret will is null and void in terms of **Article 672**, namely because according to **Article 663** it shall not be lawful for a person who does not know to write to make any disposition by a secret will without the assistance of a judge or magistrate. Since Maria deposited the secret will with her Notary without having resorted to the assistance of the judge or magistrate then such will is rendered without effect.

Unica Charta Will

Heirs

In the *unica charta* will the testator nominated her future children in terms of **Article 747** of the Civil Code as her sole heirs with a specific condition that she was to be cared for until her death.

Since James predeceased his mother then **Article 716** comes to the fore. According to which the testamentary disposition in favour of James would lapse due to his death; in that case Danny and Roberto are the sole heirs and James' children are only entitled to the reserved portion.

Effects of Modification

Notwithstanding the aforesaid, the testator made a modification in her will. Since the subsequent modification is inconsistent with the previous *unica charta* will then as per **Article 786**, the disposition contained in the *unica charta* will whereby the testator nominated her future children as sole heirs shall be annulled.

Modification of the Unica Charta

It is provided that when Maria was on her death bed, upon the insistence of her descendant James she modified her will and nominated him as sole universal heir. Arguably this may result in the testator's consent being vitiated by moral violence and/or fraud which led to the testator to modify her will in such a manner that she would not have done so if it weren't for James insistence.

An action could be brought by the other descendants against James descendants to nullify the modification made to the *unica charta* will upon the basis that Maria's consent was vitiated by moral violence and/or fraud and this in terms of **Article 981**. However, it needs to be sufficiently proven that the artefacts practised by James were such that without them Maria would not have modified her will. Indeed, the law does not presume duress and mere suspicion does not suffice, as upheld in ***Schembri vs. Galea*** **(1883)**.

In ***Emanuel Hayman et vs. Mary Caruana et*** **(6.04.2011),** the Court held that

'biex l-impunjattiva tirnexxi jeħtieg jirriżulta li r-rieda tat-testatur ġiet imdawra minħabba tali qerq u li t-testatur ma kienx jiddisponi kif iddispona li kieku ma kienx għall-qerq li twettaq fuqu.'

In order to determine whether moral violence had been exerted on the testator, as per **Article 978(3)** 'the age, the sex and the condition of the person shall be taken into account'. Therefore, the fact that at the time the testator altered her will she was in her elderly years and on her death bed shall all be considered in determining whether consent is deemed to be extorted by moral violence.

In those circumstances, it can also be claimed that James would be rendered unworthy to receive by will owing to the fact that he compelled and fraudulently induced his mother to make a testamentary disposition in his favour and this is so in terms of **Article 605(c)**. Notwithstanding this, in accordance with **Article 608**, James's descendants would still be entitled to the reserved portion which would have been due to James. Thus, the two descendants would be entitled to inherit the share belonging to their father amounting to 1/9th, further split up in 1/18th respectively.

Notwithstanding the above, it is submitted that most probably the Court will not accept that the testator's consent has been vitiated. The Court in ***Lorenza Bonnici et vs. Maria Dolores Mifsud et* (26.09.2013)**, took into account the fact that Dolores Mifsud was the person which took care of the testatrix and '*is-sens ta' rikonoxxenza tal-ġenituri lejn binthom kien diga' evidenti fit-testment unica charta'* .

Similarly in our case, James was taking care of his mother and the testator had already left him as a universal heir in the *unica charta* will. In ***Joseph Galea proprio et nominee vs. Maria Camilleri* (01.07.2005)** the Court maintained that:

'Il-fatt waħdu li testatur jiddisponi f'testment b'mod li joqgħod għax-xewqa ta' persuna oħra u biex jikkuntentaha ma jitqiesx bħala biżżejjed biex jista' jingħad li tali testment huwa frott il-qerq'

'Minn dan jirriżulta biċ-ċar li mhux kull żegħil jew suġġestjoni huwa kawza ta' nullità – irid ikun hem id-dolo.'

Heirs

If however, James is deemed to be unworthy then the modification shall be deemed to be null. Thus, it is submitted that the previous disposition whereby the testator nominated her future children as heirs shall subsist. This is so, provided that James shall not be entitled to receive by will and his descendants will, under the rule of representation, be entitled to 1/3rd of Maria's estate.

Usufruct of her Estate

The testator also left the usufruct of her estate to her brother Tony so long as he is unmarried. Such disposition is valid in terms of **Article 712(2)** since the subject of the legacy consists in a right of usufruct. Consequently, if Tony marries then he shall forfeit his right of usufruct over the estate of his sister.

Notably our law does not specifically provide whether a general usufructuary of an estate is an heir or a legatee. However, as propounded by our Courts and as evidenced in ***Michele Azzopardi pro et noe vs. Antonia Mangion et* (25.11.1946)** *' anki l-uzufrutwarju ghat-titolu universali huwa legatarju u mhux eredi*'. Consequently, this means that as a general usufructuary, Tony would need to demand to be put in possession in terms of **Article 726(1)** by the heirs. Interest will not start to run, except from the day on which Tony shall be, even by judicial letter, called upon the heirs to deliver his legacy, or from the day on which the delivery or payment shall have been promised to him by the heirs as per **Article 727**.

Moreover, as established in ***Curmi vs. Caruana Dingli* (1977)** the claim by the usufructuary to receive the fruits/interests from the assets subject to the usufruct, shall not translate as a claim for the vesting in possession of the legacy.

Claims for Reserved Portion

Notably, the testator's descendants may also renounce to their right of inheritance and reserve the right for the reserved portion in terms of **Article 861** of the Civil Code.

In this case the descendants would be entitled to ⅓rd of the estate, amounting to 1/9th respectively and this as per **Article 616(1)** subject to obligation of imputation. For the purposes of determining the reserved portion James was counted since although he predeceased the testator he was survived by descendants. Moreover, even if he is pronounced incapable of receiving property by will, in terms of **Article 618(1)** he shall also be taken into account for determining the number of children for the purpose of regulating the reserved portion.

Question 2

Tony's Estate

Tony died without having drawn up a will and thus his estate is regulated by intestacy rules. Having been survived by ascendants and direct collaterals, his estate will be inherited in accordance with **Article 812(b)** of the Civil Code:

- John & Jackie inherit ½ - amounting to ¼th each respectively.
- Anthony & Bernie inherit ½ - amounting to ¼th each respectively.

John's Estate

John's estate is regulated by an ordinary public will whereby he nominated Jackie as his sole with the residue to be inherited by his children. Since Tony predeceased the testator and did not have any descendants, then the *legato di residuo* is deemed to have been made in favour of Anthony and Bernie.

In this case, Jackie will inherit a bundle of rights and obligations with a *legato di residuo* which is a valid condition in terms of **Article 758(3)** of the Civil Code. The effects of such a condition is that it restricts the beneficiary from disposing of anything that she has inherited from her husband either by will or by title of donation. Since Jackie donated a substantial part of her inherited estate to all of her grandchildren, then depending upon what property Jackie donated, an action may be brought by Anthony and Bernie in terms of **Article 758(5)**. Such action can either be brought in Jackie's lifetime or else within five years from the opening of succession of Jackie's death.

Reserved Portions

Anthony and Bernie can also make a claim for their reserved portions which will amount to ⅓rd of their father's estate as per **Article 616(1),** which is further split up into 1/6th respectively, and contains the obligation of imputation in accordance with **Article 620(4).** For the purposes of determining their reserved portion, Tony was omitted, due to the fact that he predeceased the testator without any descendants. This claim must be brought within a period of ten years from the opening of succession as per **Article 845** of the Civil Code.

Jackie is also entitled to renounce to her inheritance and claim the reserved portion in terms of **Article 861** of the Civil Code. In this case she will be entitled to ¼th in full ownership of her husband's estate in terms of **Article 831** of the Civil Code.

Over and above this share, she is also entitled to the right of habitation over the matrimonial home in terms of **Article 633(1)** which shall cease on her remarriage. Bernie also has the right of use of the furniture found therein in terms of **Article 635**.

Jackie's Estate

It does not emerge that Jackie made a will and thus her estate will also be regulated by intestacy rules. Since Jackie was survived by descendants then in terms of **Article 809** of the Civil Code, her estate shall be inherited as follows:

- Anthony gets ½
- Bernie get ½

Notably, since the donations made by Jackie were made in favour of her grandchildren then they cannot be subjected to collation. If it so happens that Anthony and Bernie both renounce to their mother's inheritance, whether reserving their right to the reserved portion (in which case it will amount to ⅓ rd of the estate, 1/9th respectively) or not, her estate would be inherited by her grandchildren per capita and this in terms of **Article 863(2).** Consequently, since the grandchildren would be inheriting per capita then they shall all get ⅙th each. In these circumstances, if an action under the *legato di residuo* was not brought by Anthony and Bernie, then an action for collation may be brought by any one of the descendants and this in terms of **Article 917** of the Civil Code.

Max's Estate

Max died as a bachelor and intestate. It does not clearly emerge whether Max was survived by his parents or not. If Max was survived by his parents then they shall inherit the whole estate in terms of **Article 812(a)** of the Civil Code, amounting to ½ each respectively.

If, however, Max was solely survived by the 2 children of Anthony and by the 4 children of Bernie, then his estate shall devolve in terms of **Article 812(d).** Since Anthony and Bernie are in an equal degree then they shall succeed per capita, without representation, and thus Anthony will get ½ and Bernie will get ½.

If it so happens that either Anthony or Bernie renounce to their uncle's inheritance then in terms of **Article 863(1),** the share of the person who renounces accrues on the other co-heir.

June 2016

Question 1

Donald's Estate

Donald's estate is regulated by a secret will and a *unica charta* will which he had made with his wife Rose.

Conflicts between Wills

Since in the *unica charta* will, the testator did not state that he is revoking any of his previous wills, then one may assume that his two wills are to be read conjointly, with the latest will revoking any provisions which are inconsistent with it and this, as per **Article 786** of the Civil Code.

Secret Will

Donald made a secret will which he promptly delivered to his notary. Notwithstanding this, the notary only had delivered this secret will to the Court of Voluntary Jurisdiction some days after his death. It is contended that the secret will shall have been made prior to the *unica charta* will, owing to the fact that as per **Article 658(2),** a secret will shall have been made on the day on which it was so delivered, either to the Notary Public or to the Court of Voluntary Jurisdiction who shall draw up the act of delivery or the note of particulars, as the case may be. According to **Article 660** of the Civil Code the Notary Public has four working days to be reckoned from the day of delivery to present the will to the Court of Voluntary Jurisdiction. However, if he doesn't, then the will would still be deemed to be valid from the date of delivery, however, the notary would be condemned to a fine/interdiction in terms of **Article 661**.

Heirs – Secret Will

The testator by virtue of the secret will, nominated his future wife and future descendants yet to be born, heirs in equal portions between them. Catering for future descendants is a valid condition in terms of **Article 747**, and thus in this case, Sarah, Sean, Luke and Glen shall all be deemed to be Donald's universal heirs in equal portions. As regards the disposition catering for his future wife, it can be contended that it is a disposition involving an uncertain person, which however can be ascertained upon the happening of a future contingency being marriage, and this as per **Article 687**. Since Donald married Rose, then this disposition is rendered valid and shall also be deemed to be Donald's universal heir. Consequently, all the heirs shall be entitled to receive a share amounting to 1/6th of the testator's estate.

Heirs – Unica Charta Will

Notwithstanding the above, in the *unica charta* will Donald only nominated his four children as universal heirs. However, in any case, the *unica charta* will was revoked by the new designation of heirs.

Legacies

In the *unica charta* will, Donald left Rose two legacies, namely:

a. the full ownership of an apartment which he had inherited jointly with his sister from his parents; and
b. the usufruct of a house which he purchased before his marriage.

Since Rose is also an heir, then these two legacies shall be called 'pre-legacies' since, according to **Article 709** a legacy left to an heir is deemed to be a pre-legacy. The law does not distinguish between legatees and pre-legatees and thus it is presumed that the pre-legatees are not exonerated from making the demand to be put in possession as per **Article 726(1)** of the Civil Code.

As regards the first legacy, it can be contended that this constitutes a *legato di cosa altrui.* As per **Article 698**, since the testator owned ½ of the value of the apartment and he stated in the will that he knew that such thing did not wholly belong to him, then this disposition shall still be valid. In these circumstances, Rose can call up the heirs to pay her the legacy in full as directed by the testator, even though ½ of the apartment belongs to the testator's sister. This demand shall be made in terms of **Article 726(1).** Although a public deed is not required *ex lege,* it is recommended that such demand is made by a public deed as it will constitute irrefutable proof that the legacy has been paid. The expenses relative to the deed will be borne by Rose, as per **Article 726(3).** Furthermore, interest will start to accrue immediately upon the death of Donald according to **Article 727(2) (b).**

Regarding the second legacy, since the property was acquired before his marriage, then it will be deemed that such property is paraphernal and does not constitute a *legato di cosa altrui.* In this case, Rose shall also demand to be put in possession, however, interest and fruits will not start to accrue immediately, except from the day on which Rose shall, even by judicial letter, be called upon by the heirs to deliver her legacy, or from the day on which the delivery or payment shall have been promised to her by the heirs as per **Article 727**.

Sean's Estate

Sean died while still a bachelor and without any descendants. Therefore, his estate is to be regulated by the rules of intestacy. Having been survived by his mother and his siblings, his estate shall be inherited as follows according to **Article 812(b):**

- Rose – ½ of her son's estate.
- Sarah, Luke, Glen and Lisa – ½ of their brother's estate, amounting to 1/8th each respectively.

Lisa is also included in the testator's inheritance, since according to **Article 813(1),** direct collaterals mean 'brothers and sisters, whether of the half or full blood…'

Rose's Estate

Rose's estate is regulated by a *unica charta* will and an ordinary public will, which she had made after the death of her husband. Again, Rose did not revoke any previous wills and thus these two wills shall be read conjointly.

Unica Charta

Rose nominated her husband Donald as heir, with the residue upon his death to be inherited by their four descendants. However, since her husband predeceased her as per **Article 745(1)** this testamentary disposition shall lapse. Notwithstanding this, the lapse of the disposition can still be remedied either through tacit substitution or accretion, since no vulgar substitution clause was inserted. It is submitted that, tacit substitution shall take place in terms of **Article 745(2),** and thus Donald's descendants shall represent him by way of representation. However, this shall not include Lisa, since as established in ***Carmela Abela et vs. Dr Portanier et nomine*** **(1959**) *'għall-applikazzjoni ta' dan l-artikolu xejn aktar ma hu mehtieg ħlief li d-dixxendenti tal-persuna premota jew inkapaci jinsabu f'tali relazzjoni ta' familja mat-testatur li tkun possibli r-rapprezentazzjoni'.* Had Rose died intestate, Lisa would not have taken by way of representation and thus the only descendants which shall represent Donald are Sarah, Luke and Glen, since Sean predeceased the testator and did not have any descendants. Consequently, Sarah, Luke and Glen shall be the testator's universal heirs *per stirpes.*

With respect to *the legato di residuo*, it is propounded that since such condition was personal to Donald, then this condition shall lapse.

Second Will

By virtue of the second will, Rose made two legacies to her daughter Sarah, which shall be pre-legacies since Sarah is an heir *per stirpes.*

Sarah

The testator bequeathed to her daughter Sarah, an antique painting of which she had quite a few, to be chosen by her. Firstly, the thing forming the subject of the disposition can be considered to be an indeterminate thing, as per **Article 699**, since it is 'an indeterminate movable thing included in a genus or species'. Usually, the right of selection belongs to the heir, 'who cannot be compelled to deliver a thing of the best quality but cannot offer a thing of the worst quality' and this as per **Article 722(1).** Since Sarah is an heir *per stirpes,* then she can make the choice in terms of the aforementioned article. However, she will still need to demand to be put in possession from the other co-heirs, being Luke and Glen, and this in terms of **Article 726(1).**

The testator also bequeathed an antique furniture which Sarah eventually bought from the testator. Since the testator did not declare that she knew that the furniture will be later sold to the legatee, then this disposition shall be declared null, and this in terms of **Article 702**.

Donation made by Rose

Notably, Rose made a donation of an immovable property to Luke on the occasion of his graduation. In this case, an action can be brought by Sarah, Luke and Glen being descendants and co-heirs against Luke being a descendant, co-heir and donee, and this as per **Article 917** of the Civil Code since the property in question is subject to collation.

Claim for Reserved Portion

Notwithstanding the fact that the descendants are representing their father in their mother's succession, they can also claim their reserved portion per capita if they renounce the inheritance. In terms of **Article 616(1)** they shall be entitled to 1/3rd of their mother's estate which amounts to 1/9th each respectively, with the obligation of imputation as per **Article 620(4).** Sean was omitted since he died a bachelor without any descendants. However, as per **Article 620(5),** Sarah cannot renounce to her legacy and thus shall only be entitled to claim the reserved portion if such legacy does not suffice the value of 1/9th. On the other hand, Luke will most probably not get anything since he needs to impute the value of the donation as he has received from the testator.

However, since the testator did not bequeath anything in favour of Glen then, if the testator exceeded the disposable portion, he may bring an action for abatement which shall firstly attack the *relictum* and after the *donatum*. This action must be brought within the period of five years from the opening of succession, as per **Article 1823(1).**

Question 2

Luca's Estate

Luca's estate is regulated by an ordinary public will which he drew up at the age of 16 years whereby he nominated his friend Elena as universal heir. It is contended that this will is null and void, owing to the fact that a will drawn up by a 16 year old can only contain remuneratory dispositions and thus a 16 year old cannot nominate an heir, as per **Article 598(1).**

Consequently, he is deemed to die intestate. In this case, Luca was survived by his maternal grandparents, his father and a number of nephews and nieces as his direct collaterals. His estate will be inherited as per Article 812(a) by his father, being his nearest ascendant, since it does not seem that he had any direct collaterals. The nephews and nieces shall only be entitled to inherit from Luca's estate if 'there be neither ascendant or ascendants nor direct collaterals' and this as per **Article 812(d).** The estate would thus be inherited in the following proportions; ½ to his father and ½ to his nephews and nieces *per stirpes*.

Mark's Estate

Mark's estate is regulated by a will which was drawn up at a time when he was only temporarily interdicted for a couple of months due to illness by virtue of which he nominated his parents sole heirs. It is contended that as per **Article 599**, this will shall be null even though his incapacity was temporary and had ceased before his death. His incapacity emerges from **Article 597(c)**, since he was interdicted on the ground of a mental disorder. In ***Rosario maghruf bhala Louis Mallia et vs. John Mallia et* (02.05.2011),** the Court declared the will of the testatrix null and void owing to the fact that at the time that such will was made, she was interdicted.

Consequently, he is deemed to die intestate and thus his estate will devolve in terms of **Article 808(1),** ½ upon Ann, his surviving spouse, and ½ upon Jean his descendant. This shall be without prejudice to Ann's right of habitation over the tenement occupied as their matrimonial home and the right of use over the furniture and this in terms of **Article 808(2)** of the Civil Code.

Chris's Estate

Chris estate is regulated by a *unica charta* will which he made with his wife Mary. It does not transpire that the spouses stipulated an express and specific forfeiture clause and this, in terms of **Article 593** of the Civil Code. Consequently, they were at liberty to modify their respective part of the *unica charta* will without incurring any forfeiture.

Universal Heirs

The testators both nominated their two children as universal heirs, however, without any right of substitution. The phrase 'without any right of substitution' may potentially raise an issue of interpretation, however, it will be presumed that this means that the testators did not stipulate any vulgar substitution clause. Since Mark predeceased his father, then his descendant Jean shall represent him by way of tacit substitution as per **Article 745(2)** of the Civil Code, since had the testator died intestate, Jean would have still benefitted by the right of representation.

Mary

Notably, Mary has been nominated as an heir-at-law. However, in this case it is submitted that the testator's intention should be respected and thus Mary shall only be entitled to the reserved portion. Thus, in this case Mary shall be entitled to ¼ in full ownership of her husband's estate in terms of **Article 831** of the Civil Code. Over and above this share, she is also entitled to the right of habitation over the matrimonial home in terms of **Article 633(1)** which shall cease on her remarriage, together with the right of use of the furniture found therein in terms of **Article 635**.

Legacies

Chris also left a legacy of an apartment to his friends Luca and Elena in equal shares between them. Notably, Luca predeceased the testator and it is contended that in this case, accretion by operation of the law takes place as per **Article 737** of the Civil Code. Consequently, if Elena accepts her share of the apartment it shall not be lawful for her to refuse the accrued share, unless she shall renounce to her original share as per **Article 741**.

It is not evident whether this apartment was bought during the testator's marriage. If it was indeed purchased during the testator's marriage then by virtue of the community of acquests, he only possessed ½ of the property, thus disposing of a *legato di cosa altrui.* Since as per **Article 698**, the testator did not indicate in the will that he knew that the property did not belong to him in full, then it would only be valid for the portion which belonged to the testator.

Mary's Estate

Mary's estate is regulated by the *unica charta* will and by a privileged will. Since Mary did not state that she is revoking any of her previous wills, then one may assume that her two wills are to be read conjointly, with the latest will revoking any provisions which are inconsistent with it and this as per **Article 786** of the Civil Code, presuming that the privileged will has been made in terms of law. Moreover, since Mary died upon her return to Malta from the cruise, then the privileged will shall be deemed to be valid in terms of **Article 680** of the Civil Code.

Reserved Portion to Chris

The testator by virtue of the *unica charta* will, left the reserved portion to her husband. However, since her husband predeceased her, then this disposition shall be deemed to have lapsed.

Heirs

The testator nominated in the same manner as Chris did, her two children as universal heirs, however, without any right of substitution. In this case, the observations made above shall also apply in this case with a slight difference. In this case, the vacant portion of Mark would be solely inherited by Carla and Jean. Thus, Mary's heirs shall be Carla and Jean.

Usufruct of her Estate to Carla

In the privileged will, the testator left the usufruct of her estate to Carla, contingent upon her remaining unmarried. It is a privileged will since it is made on a board a sea vessel in line with **Article 676**. This is a valid disposition in terms of **Article 712(2)** since the subject matter of the disposition is a right of usufruct. Moreover, since Carla is an heir, then this legacy shall be deemed to constitute a pre-legacy, since according to **Article 709** a legacy left to an heir is deemed to be a pre-legacy.

The law does not distinguish between legatees and pre-legatees and thus it is presumed that the pre-legatees are not exonerated from making the demand to be put in possession as per **Article 726(1).**

Legato di residuo

Lastly, it is submitted that the *legato di residuo* made by Mary, by virtue of which she ordered that all the residue of her estate upon death of her heirs will be inherited by Jean, her grandson shall be deemed to be null. A *legato di residuo* can only be made in favour of a spouse and thus, as per **Article 758(1)** this provision shall be considered as if it had not been written.

September 2016
Question 2

Having been nominated as testamentary executor and wishing to accept such nomination, I shall make an application to the Court of Voluntary Jurisdiction in order to be authorised to distribute the testators' inheritance in accordance with their wills. Prior to the court's authorisation, I shall make up an inventory of the property which I am charged to administer or else a statement of such property to be verified on oath, since it does not emerge that the heirs have exempted me from such inventory and this as per **Article 767**.

It is of utmost importance that I do not intermeddle with the administration of the estate prior to the confirmation given by the court of voluntary jurisdiction as per **Article 766**. Consequently, pending this confirmation I shall only perform those acts which are necessary for the preservation of the estate as per **Article 769**. Lastly, according to **Article 766** of the Civil Code, I shall also hypothecate my property and render an account of my administration every year or once only, although the court may limit the amount for which my property is to be hypothecated as per **Article 766(2).**

Elizabeth's Estate

Elizabeth's estate is regulated by a *unica charta* will by virtue of which they revoked all previous wills and reciprocally nominated each other as universal heirs. From the facts, it was established that both of the spouses made unilateral modifications to their *unica charta* will. The relevant provisions in this regard are **Article 592** and **593** of the Civil Code.

There are two hypotheses which must be acknowledged. The first one is whether the *unica charta* will contained a forfeiture clause as expressed in **Article 593**. If the *unica charta* will contained this 'express and specific condition' then once one of the spouses made unilateral modifications as evidenced from the facts then the surviving spouse who had effectively revoked the will, shall forfeit all rights which such person would have enjoyed in virtue of such will on the estate of the predeceased spouse. If one were to apply this provision to the circumstances at hand, since her husband Philip had made a modification to the *unica charta* will, as the surviving spouse he would have forfeited any rights he enjoyed by virtue of this will on Elizabeth's estate. These rights would then be vested in the heirs according to **Article 594**. In this scenario, unless the *unica charta* will stipulated otherwise, the rights would vest heirs-at-law.

The second scenario would revolve around a *unica charta* will which did not include a forfeiture clause. In this case, both of the spouses would be at liberty to modify their respective parts of the *unica charta* will without incurring any forfeiture and without requiring the consent of the other spouse. If this were the case, then both Philip and Elizabeth were entitle to perform the unilateral modifications cited in the facts. Therefore, in spite of the modifications conducted by Philip, he would not be precluded from benefitting under the *unica charta* will.

Universal Heir

Having predeceased her husband, the reciprocal bequest and thus the *unica charta* will reaches its full effect and thus Philip shall be deemed to be Elizabeth's universal heir inheriting a bundle of rights and obligations and continuing the personality of the deceased. Since I have been nominated as testamentary executor then I shall be responsible for the payment of the debts and for discharging the legacies and not Philip.

Claim for Reserved Portion

Philip may also elect to renounce to his inheritance and reserve his right for the reserved portion and this in terms of **Article 861** of the Civil Code. In this case, since the spouses did not have any descendants he will be entitled to 1/3 of the value in full ownership as per **Article 632**. Over and above this share, he is also entitled to the right of habitation over the matrimonial home in terms of **Article 633(1)** which shall cease on his remarriage, together with the right of use of the furniture found therein in terms of **Article 635**.

Legacies

It is provided that the testatrix made a modification to her *unica charta* will whereby she left two legacies.

Legacy to Amanda

The testatrix bequeathed an antique desk purchased during marriage to her friend Amanda. Presuming that the community of acquests existed between the spouses, then the testatrix solely owned ½ of the value of the antique desk. Thus this shall be deemed to be a *legato di cosa altrui.*

Since the testatrix owned a part of the thing bequeathed, then this legacy shall only be valid to the extent of such part as owned by her, unless the testatrix stated in the will that she knew that the thing did not wholly belong to her and this as per **Article 698**. If the testatrix entered such declaration in her will then as per **Article 696**. I, as executor, shall be bound to either acquire the thing bequeathed in order to make delivery to the legatee or else pay to the legatee the fair value thereof. In ***Paolo Zammit vs. Rosa Zammit*** **(28/06/1957)** the court held that,

'Mhux rikjesta ebda klawsola jew formola specjali u hu wkoll indifferenti jekk it testatur jiehu zball fl-identita' tal-proprjetarju; pero' huwa mehtieg li jkun hemm dejjem din id-dikjarazzjoni.'

If no such declaration has been made in the will, then this legacy shall only be valid for the portion which belonged to the testatrix.

Legacy to Doris

The testatrix left €25,000 to her servant Doris for services rendered. First of all, as per **Article 705(2)**, this legacy shall not be deemed to have been made in satisfaction of Doris' wage. It is provided that this legacy has been made for services rendered.

Had the testators invoked a forfeiture clause, then this would not have led to the forfeiture since as established in ***Vincenzo Attard vs. Michelina Agius*** **(31/10/1952),**

'Il-Qrati tagħna rritenew illi l-ko-testatur f"testment unica charta jista" jagħmel legat remuneratorju b'testment partikolari tiegħu mingħajr ma jiddekadi mill-benefiċċji lilu derivanti mit-testment.'

In these circumstances, Doris and Amanda would need to demand to be put in possession in terms of **Article 726(1).** Interest and fruits will not start to accrue immediately, except from the day on which the legatees shall, even by judicial letter, called upon the heirs to deliver their legacies, or from the day on which the delivery or payment shall have been promised to them by the heirs as per **Article 727**.

Since I have been elected as testamentary executor then I shall deliver or pay their legacies and if there are insufficient funds in the estate, then I shall either elect to collect to sums owing to the estate or in default sell the property and this as per **Article 771(1).** In the case of the sale of property belonging to the estate, Philip may elect to pay the legacies himself from his own personal property and this as per **Article 772.**

Philip's Estate

Since Philip passed away after Elizabeth, it is immaterial to his dispositions under the *unica charta* will that Elizabeth modified the will. Nevertheless, it is crucial that as described above, one considers both hypotheses whether a forfeiture clause was actually present in the *unica charta* will or whether it was not. This will be dealt with accordingly when discussing the disposition of his estate below.

Universal Heirs

Notably, Philip had died disposing only of a portion of his inheritance, as he had only made singular bequests. In this case, **Article 684** establishes that the residue thereof shall vest in his heirs-at-law. Since Philip was survived by brothers and sisters, then according to **Article 812(c)** his direct collaterals shall be his heirs-at-law.

Legacy to Francesca

Presuming that Philip inherited his wife then the matrimonial home which he shared with Elizabeth shall be deemed to have passed over to him in full ownership. This disposition has been made with the condition that Francesca pays a small yearly allowance to Doris. This latter yearly allowance is referred to as a sub-legacy which is dealt with under **Article 697** of the Civil Code.

Profs Caruana Galizia also notes that it is possible for one to impose a duty of maintenance upon the legatee of a tenement. Moreover, he continues by maintain that if an individual charged with the delivery of a legacy is a legatee, as in this case, then *'he is not bound beyond the value of what has been bequeathed to him on the principle that nemo oneratus nisi honoratus.'* In light of the aforesaid, it is maintained that Francesca shall be bound to pay Doris this yearly annuity, which however shall not exceed the value of the tenement bequeathed to her by singular title.

Legacy of a Debt

The testator also bequeathed the legacy of a debt of €250,000 which he had lent him for his business. However, Paul had in the meantime repaid a substantial part of his debt. According to **Article 703**, when the subject of the legacy consists in a sum owing to the testator, then such legacy shall only have effect with respect to such portion of the debt as shall still be owing at the time of the death of the testator. Therefore, this legacy shall only be valid as regards the value of the debt which is still existing at the time of Philip's death and not the full €250,000.

June 2017

Question 1

Kevin's Estate

Kevin's Estate is regulated by an ordinary public will.

Universal Heirs

Kevin nominated his three descendants as his universal heirs, without making provision for future children, as per **Article 747**. Consequently, Ruth, Anna and Ian shall be entitled to inherit a bundle of rights and obligations and continue their father's inheritance.

Action for Collation

The testator and his wife donated an apartment to Ruth on the occasion of her marriage to Mario. In this case, an action for collation may be brought by Anna and Ian, being descendants and co-heirs against Ruth, being a descendant, co-heir and donee and this, in terms of **Article 913**. As provided in **Article 922**, donations made on the occasion of marriage shall be subject to collation, unless the testator provides otherwise. Presuming that the apartment belonged ½ to Lisa and ½ to Kevin, then collation will only be due to the inheritance of the Kevin, thus ½ of the value of the apartment. Moreover, if the donation was made conjointly to both spouses, then what shall be collatable is ¼ of the value of the apartment.

Ondine

Since Ondine was passed over, then she is only entitled in terms of **Article 748** to her reserved portion. According to **Article 616(1),** she will be entitled to 1/12 of her father's estate, with the obligation of imputation as per **Article 620(4)** of the Civil Code.

According to **Article 620(3),** there shall be the fictious reunion of the property disposed of by the testator under a gratuitous title. If it emerges that the testator exceeded the disposable portion, then an action for abatement may be brought by Ondine against her siblings and Lisa, by which she will firstly attack the *relictum* and thereafter the *donatum*. This action must be within a period of five years from the day of the opening of succession as per **Article 1823(1)** of the Civil Code.

Lisa

The testator left Lisa a legacy of their matrimonial home with all its movable contents together with all the money which they had saved, with the residue upon her death to be inherited by their three descendants. Presuming that the community of acquests existed between the parties, then what the testator is bequeathing is ½ of the value of the property, the rest already belonging to the legatee. A *legato di residuo* which is made in favour of the spouses is valid as per **Article 758(3).** In this case, Lisa shall be restrained from disposing of anything which she had inherited from the testator by will or by title of donation.

Notwithstanding this, the residue shall only include ½ of the value of the matrimonial home and certain and determinate movable property which can be identified. Therefore, excluding the money which they had saved, and this as per **Article 758(4)** of the Civil Code.

If taking into consideration the share of the property bequeathed to her, it emerges that it does not suffice her reserved portion, then Lisa may claim her reserved portion, which shall amount to ¼ of the estate in full ownership, as per **Article 631** of the Civil Code.

Ian's Estate

It transpires that Ian died without having drawn up a will and thus his inheritance will be regulated by the rules of intestacy. It is also provided that Ian died a bachelor and without any descendants. Moreover, Ruth and Anna have renounced to his inheritance. As per **Article 812(b),** his estate shall be inherited ½ by his mother Lisa and the other ½ by his direct collaterals.

According to **Article 806** of the Civil Code, representation cannot take place in respect of persons who are alive, and thus Ruth and Anna have essentially blocked their descendants from representing them in their inheritance of Ian. Since **Article 863(1)** establishes that in intestate succession, the share of the person renouncing, accrues to his co-heir, then Anna and Ruth's share shall accrue upon Ondine thereby inheriting ½ of her brother's estate. If Ondine also renounces to her brother's inheritance, then according to **Article 863(2)**, the succession will devolve upon the person next in line, thus being the descendants of Ruth and Anna, who shall inherit per capita.

Lisa's Estate

Lisa's estate is regulated by an ordinary will which she made after the death of Kevin.

Acceptance of Kevin's inheritance

Although it cannot be established with certainty, whether Lisa expressly accepted Kevin's inheritance, it can be contended that she tacitly accepted his inheritance by bequeathing the movable contents inherited from Kevin, and this as per **Article 850(3).** In ***Camilleri vs. Aquilina et*** **(1983)**, the court affirmed that an acceptance is tacit when *"l-eredi jagħmel att li neċessarjament timplika r-rieda tiegħu li jaċċetta l-wirt u li ma jkunx intitolat li jagħmel ħlief fil-kapaċità tiegħu ta' eredi."*

Heirs

Lisa nominated her four descendants' heirs contingent upon attaining fifty years of age. It is being presumed that the attainment of fifty years of age refers to the age of the testator. Had the testator died after the attainment of fifty years of age, then the descendants shall inherit their mother as co-universal heirs. Notably, Ian predeceased the testator without any descendants. Therefore, since tacit substitution cannot take place, then as per **Article 865** of the Civil Code, Ian's share shall accrue upon the other descendants' co-heirs.

However, if the testator died prior to attaining fifty years of age, then this disposition shall lapse. Consequently, she will be deemed to have died partly intestate, and thus her heirs-at-law shall be as per **Article 808(1),** Paul, Ruth, Anna and Ondine, inheriting as follows:

- Paul inherits ½ of the residue of the estate, without prejudice to his rights under **Articles 633, 634 and 635**.
- Ruth 1/6th of the residue of the estate.
- Anna 1/6th of the residue of the estate.
- Ondine 1/6th of the residue of the estate.

Legacy to Anna

The testator left a legacy of a right of habitation of a house to her daughter Anna until she remained a spinster. This is a valid condition in terms of **Article 712(2),** since the subject of the legacy consists of a right of habitation. Therefore, Anna will be entitled to enjoy the legacy only as long as she remains a spinster. It is presumed that this legacy is a 'pre-legacy' since, according to **Article 709**, a legacy left to an heir is deemed to be a 'pre-legacy'. The law does not distinguish between legatees and pre-legatees, and thus it is presumed that the pre-legatees are not exonerated from making the demand to be put in possession as per **Article 726(1).**

Legacy to Ruth as later modified by testator

The testator initially left a legacy of all the movable contents inherited from her late husband and her car to Ruth, the latter contingent upon placing first in her exams. However, the testator later modified her will and ordered that both legacies left to Ruth be bequeathed to her jointly with her brother Ian.

Accretion

First of all, since Ian predeceased the testator and was not survived by any descendants, then his share over the two legacies shall accrue upon Ruth as per **Article 737**. Accretion shall take place since all four conditions established by **Article 737** are fulfilled, these being:

a. There was the nomination of two co-legatees, namely Ruth and Ian;

b. Ian predeceased the testator;

c. It is a conjoined bequest, owing to the fact that although not made in the same disposition, the two legacies cannot be divided without injury as per **Article 739**;

d. The shares have not been fixed by the testator and this as per **Article 738(2).**

- Action for breaching the *legato di residuo*

Secondly, an action may be brought as regards the first legacy, by Ondine and Anna since the testator was bound by the *legato di residuo*, not to dispose of anything which she inherited from Kevin by will.

Since the subject of the first legacy consisted of the movable contents, then as per **Article 758(6),** nullity shall only ensue if the beneficiary was in bad faith. This action must be brought within the period of five years from the opening of succession as per **Article 758(5)** of the Civil Code.

Condition of placing first in her exams

These two legacies have been made contingent to the condition that she places first in her exams. A disposition made subject to an uncertain future event is valid, and thus the legacies shall only gain effect once Ruth places first in her exams, meaning that her rights for the legacies shall not vest in the legatee before the fulfilment of the condition, and this as per **Article 721(2).** If it so happens that Ruth dies prior to the fulfilment of the condition, then as per **Article 716** these two legacies shall be rendered ineffectual. According to **Article 717**, Ruth shall still have a vested right over the legacies until the fulfilment of the condition. Upon the fulfilment of the condition then Ruth shall demand from the other co-heirs, possession of the things bequeathed to her and this as per **Article 726**, notwithstanding the fact that she may herself be an heir.

September 2017

Ann's Estate

Ann's estate is regulated by a *unica charta* will which was later revoked by an ordinary public will. First of all, it does not transpire that the spouses stipulated an express and specific forfeiture clause and this is in terms of **Article 593** of the Civil Code. Consequently, they were at liberty to modify their respective part of the *unica charta* will without incurring any forfeiture and without requiring the consent of the other spouse. Furthermore, as per **Article 592(2),** where a *unica charta* will is revoked by one of the testators, with regard to his estate then it shall continue to be valid with regard to the estate of the other.

Heirs-at-law

Since the ordinary public will solely include a singular bequest then Ann shall be deemed to have died partly intestate and thus the residue of her estate shall vest in her heirs-at-laws as established in **Article 684** of the Civil Code. Having been survived by a spouse and descendants then her heirs-at-law shall be deemed to be Chris, Maria and Jesmond who shall inherit as per **Article 808(1):**

- Chris ½, without prejudice to his right of habitation over the matrimonial home and the right of use of the furniture found therein, which rights shall lapse upon his remarriage to Helen.
- Maria and Jesmond inherit ½ amounting to ¼th each respectively.

Action for Collation

An action for collation may be brought by Jesmond, being a descendant and a co-heir against Maria, being a descendant, co-heir and donee in order to rectify the inequality which arises from the donation which was made by the testator to Maria. Since the property was inherited by the testator from her parents then it will be deemed to have been paraphernal property over which Chris had no rights whatsoever.

The donation is subject to collation as it had been made on occasion of Maria's marriage and this is in line with **Article 922** of the Civil Code. Since the testator donated the property conjointly to Maria and her spouse Ray, then what shall be subject to collation is ½ of the value of the plot of land and this is in line with **Article 920(2).** Furthermore, the donee shall be entitled to the expenses which she had incurred in constructing the house and this as per **Article 932(1).** Collation shall be made by Maria by imputing the value of the plot of land valued at the time of the opening of succession in accordance to **Article 931(1)** of the Civil Code.

Legacy

Ann bequeathed some movable furniture which she had bought during her marriage with David. First of all, presuming that between the parties there was the community of acquests then this is a *legato di cosa altrui.*

Since the testatrix owned a part of the thing bequeathed, then this legacy shall only be valid to the extent of such part as owned by her amounting to ½ of the value of the movables. This is so, in accordance with **Article 698** whereby, unless the testatrix stated in the will that she knew that the thing did not wholly belong to her. If the testatrix entered such declaration in her will then as per **Article 696**, the heirs shall be bound to either acquire the thing bequeathed in order to make delivery to the legatee or else pay to the legatee the fair value thereof.

In ***Poalo Zammit vs. Roza Zammit*** **(28.06.1957**) the court held that,

'Mhux rikjesta ebda klawsola jew formola speċjali u hu wkoll indifferenti jekk it testatur jieħu żball fl-identita' tal-proprjetarju; pero' huwa meħtieġ li jkun hemm dejjem din id-dikjarazzjoni.'

If no such declaration has been made in the will, then this legacy shall only be valid for the portion which belonged to the testatrix.

Secondly, since the subject of the legacy consists in some movable furniture then it may be contended that such legacy consists of a determinate thing included in a given *genus* or species, then the legacy shall have no effect if no furniture is found to exist in the estate of the testator at the time of her death which is made clear by means of **Article 700(1).**

In this case, the legatee must demand the possession of the legacy from the heirs according to **Article 726(1).** This is due to the fact that *'id-dritt tal-legat hu dritt ta' proprjetà, iżda jibqa' dritt inċert u suġġett għall-kontestazzjoni sakemm ma jiġix immiss fil-pussess'* which was established in the case ***Concetta Vella et vs Mariosa Portelli et*** **(24.06.2008).**

Chris's Estate

Chris's estate is regulated by a *unica charta* will which he later revoked by an ordinary public will. Therefore, only the latter will shall be taken into consideration.

Heirs

The testator nominated as his sole universal heir his son Jesmond, which is effective upon the attainment of 40 years of age. First of all, the condition limiting the commencement of the institution of the heir shall as per **Article 714** of the Civil Code be deemed to have not been attached. The law assumes that the heir will continue the personality of the deceased and thus such status shall be deemed to have been assumed from the moment of the testator's death.

However, Jesmond had renounced to his father's inheritance, whether testate or intestate. Presuming that such renunciation had been made through a declaration filed in the registry of the court of voluntary jurisdiction or by a declaration made by an act of notary public as per **Article 860(2)**. Consequently, Jesmond has forfeited even his right to the reserved portion, since he did not make a reservation in this respect. Moreover, his descendants cannot represent him since representation cannot take place between persons who are alive.

Since Jesmond was the sole heir and thus accretion cannot take place, then his vacant share shall devolve onto the heirs-at-law of the testator. Having been survived by a spouse and descendants, then his estate shall be inherited as follows and this according to **Article 808(1):**

- Helen inherits ½ of the estate.
- Sandra and Maria inherit the other ½ of the estate, amounting to ¼th respectively.

Legacy to Helen

The testator left a legacy of an immovable to Helen, which already belonged to her, without him being aware of this. According to **Article 702(1)** where the subject of the legacy is a thing which, at the time of the will, was already the property of the legatee then such legacy shall be null.

Legacy to Sandra

The testator also left the usufruct of his estate to his daughter Sandra, contingent upon her remaining a spinster. This condition in restraint of marriage is valid in terms of **Article 712(2)** due to the fact that it consists in the right of usufruct. Secondly, since Sandra is an heir-at-law, then this legacy shall be deemed to consist in a pre-legacy and this as per **Article 709** of the Civil Code.

As established in ***Victoria Xuereb et vs. Angiolina Aquilina*** **(03.12.2010)** ***'l-użufruttwarju ġenerali ma hux eredi, avolja t-testatur isejjaħlu hekk, u huwa biss semplice legatarju.'*** Consequently, Sandra as a general usufructuary would need to demand to be put in possession in terms of **Article 726(1)** by Maria and Helen. Interest will not start to run, except from the day on which Sandra shall have, even by judicial letter, called upon Maria and Helen to deliver her legacy, or from the day on which the delivery or payment shall have been promised to her by Maria which is in line with **Article 727**.

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Alexandra's Estate

Alexandra's estate is regulated by a *unica charta* will. Firstly, it must be noted that the spouses stipulated an express and specific forfeiture clause in the *unica charta* will as per **Article 593(1).** Secondly, although as established in jurisprudence, if the testators only left each other as universal heirs, then the surviving spouse can alter the *unica charta* will without incurring any forfeiture. Such modification or revocation must have been made after the death of the other spouse.

Sole Universal Heir

Alexandra, by means of the *unica charta* will, had nominated her husband Mark as sole universal heir. Notwithstanding this, it is provided that during the lifetime of the testatrix, Mark made another will and therefore he shall be deemed to have forfeited the property which he has inherited from Alexandra, by virtue of the *unica charta* will. However, in ***Emanuela Gauci et vs. Laurence Mifsud et*** **(04.04.2006)**, the Court remarked that what one forfeits are the rights over the assets which have been inherited by virtue of the *unica charta* will *"imma mhux ukoll id-drittijiet tagħha legali"*. Furthermore, in terms of **Article 594**, Mark shall still retain the usufruct over the property which had devolved to him by virtue of the *unica charta*.

Since the testators did not provide what happens in the case of forfeiture and did not nominate any other heirs, as per **Article 594**, the ownership of the property bequeathed to Mark shall vest in Alexandra's heir-at-law. According to **Article 810**, the ownership of the estate of the testatrix shall also vest in Mark. Thus, it could be argued that Nadia and Andrew cannot proceed against Mark, as they are not the testator's heirs-at-law. However, one should note on this point, that conflicting judgements exist which could be cited by Nadia and Andrew and allow them to proceed against Mark.

Mark's Estate

Mark's estate is regulated by a *unica charta* will and an ordinary public will. Since Mark did not state that he is revoking any of her previous wills, then one may assume that his two wills are to be read conjointly, with the latest will revoking any provisions which are inconsistent with it and this as per **Article 786** of the Civil Code.

The *unica charta* will shall be deemed to have reached its full effect upon the demise of Alexandra and thus, one shall solely take into account the ordinary public will. Although Mark forfeited his right over the inherited property from his wife, the second will shall in no way be prejudiced by the forfeiture.

Universal Heirs

The testator nominated her two brothers, Robert and Maurice as joint universal heirs. As universal heirs, Robert and Maurice shall be entitled to inherit a bundle of rights and obligations whilst continuing the personality of the testator. First of all, it is not evident whether Mark had accepted his wife's inheritance which had devolved upon him *ab intestato*.

If he did not yet accept or renounce to Alexandra's inheritance, then in terms of **Article 856**, the right to accept such inheritance shall vest in Mark's heirs, being Robert and Maurice.

It is provided that Robert and Maurice want to proceed with the sale of the assets that they have inherited from Mark, including their brother's former matrimonial home, which had been donated to Alexandra from her parents before her marriage. First of all, in order to proceed with the sale of the assets, it is advised that they bring an action for the partition of the property in order to bring an end of co-ownership.

If the parties do not agree upon the choice, then, as per **Article 908** the court shall appoint an individual, 'to draw up a general statement of the property, to make up the respective shares of the inheritance and to fix what each co-partitioner is to receive'.

As regards the issue of the matrimonial home, since Mark inherited Alexandra *ab intestato*, then upon his demise, the inherited property passed by way of continuation to Maurice and Robert being the heirs. In line with the above, it can be argued that Robert and Maurice do in fact have a right of ownership over the property in question and consequently, can proceed with the sale of the matrimonial home.

Legacy to Alexandra

The testator also bequeathed the usufruct of the matrimonial home and of all of his bank deposits to his wife Alexandra. Since Alexandra predeceased the testator and was not survived by descendants and accretion shall not take place, then in terms of **Article 745(1),** this disposition shall lapse, and shall consequently be deemed to be a vacant share.

Legacy to Luke

The testator left his nephew, Luke, a legacy of the full ownership of a garage, which he had inherited with his brothers Robert and Maurice. This is a valid disposition in terms of **Article 696(1)** of the Civil Code and is termed to be a *legato di cosa altrui*. Since the testator owned a part of the thing bequeathed, then this legacy shall only be valid to the extent of such part as owned by him, unless the testator stated in the will that he knew that the thing did not wholly belong to him, as per **Article 698**. If the testator entered such declaration in his will then, as per **Article 696**, the heirs (Maurice and Robert) shall be bound to either acquire the thing bequeathed in order to make delivery to the legatee or else pay to the legatee the fair value thereof. In ***Paolo Zammit vs. Rosa Zammit* (28.06.1957)** the court held that,

"*Mhux rikjesta ebda klawsola jew formola specjali u hu wkoll indifferenti jekk it testatur jieħu żball fl-identità tal-proprjetarju; pero' huwa meħtieġ li jkun hemm dejjem din id-dikjarazzjoni."*

If no such declaration has been made in the will, then this legacy shall only be valid for the portion which belonged to the testator.

A demand shall be made by Luke in terms of **Article 726(1)** in order to be put in possession of his bequest. Although a public deed is not required *ex lege*, it is recommended that such demand is made by a public deed as it will constitute irrefutable proof that the legacy has been paid. The expenses relative to the deed will be borne by Luke, as per **Article 726(3).** Furthermore, interest will start to accrue immediately upon the death of Mark according to **Article 727(2) (b).**

Legacy to Lawrence

The testator left his nephew Lawrence his vintage sports car, on the condition that this legacy becomes effective on Lawrence's 25th birthday. Since this is a legacy, then the condition suspending the execution of the testamentary disposition, shall be deemed to be valid; therefore, **Article 714** does not apply. Consequently, this condition suspends the execution of the testamentary disposition until Lawrence attains the age of 25 years. However, by virtue of **Article 717**, Lawrence shall still be entitled to obtain a vested right over the movable property.

Legacy to Liam

The testator bequeathed to his youngest nephew Liam any watch from his private collection.

This legacy, consisting of an indeterminate movable thing included in a genus or species, shall be deemed to be valid, even if no such watch is found in the estate of the testator at the time of his will or at the time of his death, as per **Article 699**. In this case, according to **Article 722(1),** the co-heirs 'cannot be compelled to deliver a thing of the best quality, but cannot offer a thing of the worst quality'. The co-heirs can also refuse to make the selection and instead leave the choice in the court's hands as per **Article 722(3).**

Albert's Estate

It is confirmed by the notary that Albert died intestate and thus his estate shall be regulated by the rules of intestacy. It is argued that although Albert's marriage was in a crisis, it is not sufficiently clear whether Albert had separated from his wife at the time of his death. Consequently, it will be deemed that he was survived by his spouse, Elena, who thus retained her rights over her husband's property.

In terms of **Article 808(1),** Albert's estate shall be inherited as follows:

(a) Elena inherits ½ of the estate, without prejudice to her right over the matrimonial home and the right of use of furniture found therein and this notwithstanding the fact that the apartment was solely bought by Albert.

(b) Jake, Randall, Raymond and Reuben inherit the other ½ of the property, notwithstanding the fact that Jake was born out of wedlock.

Notwithstanding point (b), it is provided that Cynthia was six months pregnant with Albert's son at the time of the demise of Albert. It is submitted that since at the time of death the baby was conceived, then he is capable of also receiving by will and this in terms of **Article 600**.

Thus, the descendants shall inherit 1/10th of their father's estate. In this case, Cynthia may accept her child's inheritance under the benefit of inventory as per **Article 848** of the Civil Code.

Action for Collation

Potentially, an action for collation may be brought by the descendants' co-heirs against Randall in order to rectify the situation of inequality. Although education and instruction expenses are excluded from collation as per **Article 924** of the Civil Code, it can be opined that it is not entirely clear whether this exception covers expenses in respect of studies pursued abroad.

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Alan's Estate

Alan's Estate is regulated by a unica charta will. It is not sufficiently provided whether Alan and Betty where married at the time that they drew up their will. However, for the purposes of answering this question it will be assumed that Alan and Betty where indeed married and this as per **Article 595** of the Civil Code.

Universal Heir

The testators made a reciprocal bequest whereby they nominated each other as universal heirs. Having survived her husband Betty inherits Alan and continues in his personality.

Forfeiture Clause

The testators bequeathed a legacy of their summer residence to Annalise and Amber, which would pass onto Annalise and Amber after the surviving spouse's demise. Notably, the testators inserted a forfeiture clause solely with respect to this particular bequest. On the other hand, they granted the surviving spouse the *facolta di variare* without incurring forfeiture, as regards the other assets.

In the case at hand, the forfeiture clause came into effect the moment Betty drafted a new will which overlooked Annalise and Amber completely.

Betty's Estate

It is being presumed that Betty inherited as a universal heir her husband's estate. Her estate is regulated by a unica charta will, an ordinary public will and a later modification. Since the testator did not did not state that she is revoking any of her previous wills, then one may assume that her two wills are to be read conjointly, with the latest will revoking any provisions which are inconsistent with it and this as per **Article 786** of the Civil Code.

Betty originally made an ordinary public will whereby she nominated her sisters, Bella and Barbara as sole universal heirs over her entire estate. This will was later modified upon the insistence of Bella, whereby she nominated her as the sole heir to her estate. Arguably this may result in the testator's consent being vitiated by moral violence and/or fraud which led to the testator to modify her will in such a manner that she would not have done so if it weren't for Bella's insistence.

An action could be brought by Barbara to nullify the modification made to the ordinary public will upon the basis that the testator's consent was vitiated by moral violence and/or fraud and this in terms of **Article 981**. However, it needs to be sufficiently proven that the artifices practiced by Bella were such that without them the testator would not have modified her will.

In ***Emanuel Hayman et vs. Mary Caruana et*** **(06/04/2011)** the Court held that:

'biex l-impunjattiva tirnexxi jeħtieg jirriżulta li r-rieda tat-testatur ġiet imdawra minħabba tali qerq u li t-testatur ma kienx jiddisponi kif iddispona li kieku ma kienx għall-qerq li twettaq fuqu.'

In order to determine whether moral violence had been exerted on the testator, as per **Article 978(3),** 'the age, the sex and the condition of the person shall be taken into account'. Therefore, one shall take into account the fact that Betty was ill, bedridden and weak when she altered her will.

In those circumstances, it can also be claimed that Bella would be rendered unworthy to receive by will owing to the fact that he compelled and fraudulently induced his sister to make a testamentary disposition in her favour and this in terms of **Article 605(c)** of the Civil Code.

Notwithstanding the above, it is submitted that most probably the Court will not accept that the testator's consent has been vitiated. The Court in ***Lorenza Bonnici et vs. Maria Dolores Mifsud et*** **(26/09/2013),** took into account the fact that *'is-sens ta' rikonoxxenza tal-ġenituri lejn binthom kien digà evidenti fit-testment unica charta'.*

Similarly in our case, the testator had already left her as a universal heir in the ordinary public will. In ***Joseph Galea proprio et nominee vs. Maria Camilleri*** **(01/07/2005),** the Court maintained that:

'Il-fatt waħdu li testatur jiddisponi f'testment b'mod li joqgħod għax-xewqa ta' persuna oħra u biex jikkuntentaha ma jitqiesx bħala biżżejjed biex jista' jingħad li tali testment huwa frott il-qerq'

'Minn dan jirriżulta biċ-ċar li mhux kull żeghil jew suġġestjoni huwa kawża ta' nullità irid ikun hemm id-dolo.'

Universal Heirs

Presuming that the Court would not accept the fact that the testator's intention was vitiated, then Bella shall be deemed to be the sole universal heir, inheriting a set of rights and obligations.

Unica Charta Will

It is established Betty's subsequent wills run contrary to the *legato di residuo* found in the original *unica charta* will, then forfeiture is incurred by Betty.

Since Betty did not make an exception for such legacy in her subsequent wills through which she revoked the original *unica charta* will, Alan's siblings, Annalise and Amber could challenge Betty's inheritance of their brother's estate. It would be salient at this juncture to refer to ***Emanuela Gauci v. Lawrence Mifsud et*** **(04/04/2006),** wherein the Court explained:

'*F'dan il-każ, pero', it-testaturi ma illimitawx ruħhom li jaħtru lil xulxin werrieta wieħed tal-ieħor, iżda ipprovdew b'legati x'jiġri wara l-mewt tas-superstiti, u rabtu lill-xulxin biex ma jirrevokawx dawk il-legati*.

Minn qari tat-testment unica charta joħroġ ċar illi l-volontà tat-testatur kienet illi ssuperstiti ma tkunx padrun assolut tal-assi tal-predefunt; il-fattizzji partikolari tal-kaz juru li t-testatur predefunt, għar-residwu, ried jippreferixxi ċerti persuni għal dawk li talvolta tinnomina s-superstiti, u allura għandu jinghad li fil-waqt li s-superstiti kellha l-fakolta' illimitata li tiddisponi b'att "inter vivos", ma setgħetx tiddisponi mir-residwu b'att testamentarju'.

Claims for the Reserved Portion

It does not sufficiently emerge whether Betty has married the other man which she met after the demise of her first husband. It will be presumed that she was not married to him and thus he is not entitled to a reserved portion from Betty's estate. On the other hand, Edward is entitled to claim his reserved portion from his mother's estate amounting to 1/3 as per **Article 616(3),** with the obligation of imputation. This claim shall be brought within a period of 10 years and this as per **Article 845** of the Civil Code.

David's Estate

Since it does not emerge that David had made any wills then his estate will be regulated by intestacy rules. It is provided that David was survived by a spouse, Fiona and descendants and children. Consequently, his estate will be inherited as follows, and this as per **Article 808(1)** of the Civil Code.

Fiona shall inherit ½ of her husband's estate, without prejudice to her rights of habitation over the matrimonial home and the furniture found therein.

D1, D2, D3 will inherit 1/8 of their father's estate respectively.

The descendants of Gretta will then inherit 1/24 per stirpes.

Since the descendants are not all in the first degree, and this some of them are succeeding per stirpes, then they shall all take by representation and this as per **Article 811(2)** of the Civil Code.

Darren's Estate

Since Darren died intestate and without issue, then his estate will also be regulated by intestacy rules. In this case his estate will be inherited as follows and this as per Article 812(b) of the Civil Code:

Christian and Catherine will inherit ½ of their son's estate.

Denise will inherit ¼ of her brother's estate.

David's ¼ will be then inherited as follows: D1, D2, D3 will get 1/16 respectively.

The three descendants of Gretta will get 1/48 respectively.

Denise's Estate

Denise's Estate is regulated by a secret will which she had made at the age of sixteen.

Capacity to Dispose

According to **Article 597(a)** a person who has not completed the age of sixteen years shall be incapable of making a will. Notwithstanding this, **Article 598** provides that any person who has not completed the eighteen year of their age cannot make a will but can only make remuneratory dispositions. As Denise solely made legacies to remunerate her parents, for their care and support, then this will shall be deemed to be valid.

Furthermore, if the amount specified by the testator for the remuneratory dispositions is found to be unreasonable then the Court may in terms of **Article 598(2)** reduce such amount. Christian and Catherine would need to demand to be put in possession by the heirs of their legacies in terms of **Article 726(1)** of the Civil Code.

Formalities of Secret Will

It is also being presumed that the secret will has been made in accordance with the formalities required by law, namely that it was delivered on a paper closed and sealed and that the testator declared that such paper contained her will as per **Article 657**. Moreover, it is being presumed that once delivered to the notary public, he drew up the act of delivery which is of the utmost importance for the purposes of determining the day on which the will has been made.

It transpires that the notary forgot Denise's secret will in his drawer and only delivered it to the

Registrar, two weeks after he had received the will from Denise. It is submitted that although as per **Article 660** of the Civil Code, the Notary Public has four working days to be reckoned from the day of delivery to present the will to the Court of Voluntary Jurisdiction, if he does not then the will would still be deemed to be valid from the date of delivery, however, the notary would be condemned to a fine/interdiction in terms of **Article 661**.

Heirs-at-law

Since Denise only made legacies in her secret will, then she shall be deemed to have died partly testate and partly intestate and this as per **Article 864** of the Civil Code. As it is not provided that Denise was survived by a spouse, then her estate will be inherited by her descendants and this as per **Article 809** of the Civil Code who shall receive a share amounting to ½ each respectively.

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Amy's Estate

Amy's estate is regulated by an ordinary public will which she had made whilst still a 16 year old. According to **Article 597(a)** a person who has not completed the age of sixteen years shall be incapable of making a will. Notwithstanding this, **Article 598** whittles this down to remuneratory dispositions by providing that any person who has not completed the eighteen year of their age cannot make a will either than remuneratory dispositions. Consequently, the will made by Amy by virtue of which she nominated her mother as sole universal heir is null and void.

Heirs-at-law

Having died without a valid will then as per **Article 788** of the Civil Code, her estate shall be regulated by the rules of intestacy. According to **Article 812(b)** her estate will be inherited by her nearest ascendants and direct collaterals, in the following manner:

• Neil and Maria will inherit ½ of their daughter's estate, amounting to ¼ respectively.

• Anna, Sarah and Jan will inherit the other half, amounting to 1/8th respectively.

Neil's Estate

Neil's estate is regulated by a *unica charta* will which he had made with his wife Maria.

Universal Heirs

The testator nominated his three children as his universal heirs. Consequently, his descendants will inherit a bundle of rights and obligations and will continue the personality of Neil. As Amy has predeceased her father and did not have any descendants and the spouses did not stipulate any vulgar substitution clauses then as per **Article 737** of the Civil Code, her share will accrue upon the other instituted heirs and this since all the conditions for accretion to take place are fulfilled, namely:

• There are three co-heirs.

• One of the co-heir's predeceased the testator.

• It's a conjoined bequest, since it was made in the same disposition in terms of **Article 738(1).**

• The shares of each were not specified.

The second issue, pertains to the fact that the testator only nominated his three children as heirs and did not contemplate for any future children as per **Article 747** of the Civil Code. Consequently, Anna being passed over by the testator is only entitled to her reserved portion, which shall amount to 1/9 of the 1/3rd of her father's estate as per **Article 616(1),** with the obligation of imputation. As Amy predeceased the testator without having any descendants then she was not taken into account for the purposes of determining the reserved portion.

Maria

The testators made a reciprocal bequest of the non-disposable portions of their respective estates. It is contended that the testators could not have made a forfeiture clause, since this reciprocal bequest does not amount to 'the ownership of all their property or the greater part thereof' as per **Article 593(1)** of the Civil Code.

Maria will only be entitled to her reserved portion which shall amount to ¼ of the value of the estate in full ownership, and this in accordance with **Article 631** of the Civil Code. Over and above this, she is also entitled to the right of habitation over the tenement occupied as the principal residence by her, which right shall lapse upon her remarriage. She is also entitled to the right of use of the furniture which is found in the said residence as per **Article 635** of the Civil Code.

Legacy to Amy & Sarah

The testator left a legacy of his vintage car to Amy and Sarah jointly. Since Amy predeceased the testator then accretion will take place in terms of **Article 737** of the Civil Code, since all four conditions have been fulfilled, namely:

• There were two co-legatees.

• One of the co-legatee predeceased the testator.

• It is a conjoined bequest, owing to the fact that although not made in the same disposition, the two legacies cannot be divided without injury as per **Article 739**.

• The shares of each were not fixed even though the testator specified "jointly" and this as per **Article 738(2)** of the Civil Code.

Maria's Estate

Maria's estate is regulated by a *unica charta* will and a later modification made by a secret will. Since in the secret will, the testator did not state that she is revoking any of her previous wills, then one may assume that these two wills are to be read conjointly, with the latest will revoking any provisions which are inconsistent with it and this as per **Article 786** of the Civil Code. Secondly, as the testators did not insert any forfeiture clauses, then Maria will not incur a forfeiture by modifying the *unica charta*. Notwithstanding this, upon her remarriage, her rights of use and habitation of the matrimonial home shall cease.

At this juncture, one ought to refer to **Article 660 and 661** of the Civil Code. The process of submitting the secret will to the Court of Voluntary Jurisdiction and the consequences suffered by the Notary if secret will is delivered later than required by law are relevant to the case at hand.

Universal Heirs

By virtue of the *unica charta* will, the testator nominated her three children as universal heirs.

As we have established in the case of Neil's estate, Anna shall only be entitled to her reserved portion, amounting to 1/9th of 1/3rd of the testator's estate, whilst Amy's share shall accrue upon Sarah and Jan.

It is also provided that Sarah and Jan renounced to their mother's inheritance but reserved their rights to any legacies bequeathed to them. Sarah and Jan may validly do so in terms of **Article 862(2)** of the Civil Code, which provides that a 'renunciation shall not operate so as to deprive him of the right to demand any legacy bequeathed to him.'

It is also being assumed that Sarah and Jan renounced to their mother's inheritance in terms of Article 860(2), since as established in ***Gauci et vs. Galea illum Ellul et* (03.04.2003),** *"rinuncia non si presume, u l-prova trid tkun waħda ċerta u defenittiva".*

According to **Article 864(2)** if all the co-heirs renounce, then the children shall take in their own right and shall succeed per capita. Consequently, the descendants of Sarah and Jan shall inherit their grandmother per capita, and thus everything will be split equally between them.

Legacy to Jan

By virtue of the *unica charta* will, the testator left her son Jan the precious and expensive diamond ring which her husband Neil had given to her as a present on their wedding anniversary. Owing to the fact that this present was bought during the marriage and presuming that between the spouses there were the community of acquests, then this is a *legato di cosa altrui*, since what belonged to the testator was ½ of the value of the ring. Since the testator owned a part of the thing bequeathed, then this legacy shall only be valid to the extent of such part as owned by him, unless the testator stated in the will that he knew that the thing did not wholly belong to him and this as per **Article 698**. If the testator entered such declaration in his will then as per **Article 696**, the heirs shall be bound to either acquire the thing bequeathed in order to make delivery to the legatee or else pay to the legatee the fair value thereof. In ***Poala Zammit vs. Rosa Zammit* (28.06.1957)** the court held that, *"[mhux] rikjesta ebda klawsola jew formola speċjali u hu wkoll indifferenti jekk it-testatur jieħu żball fl-identita' tal-proprjetarju; pero' huwa meħtieġ li jkun hemm dejjem din id-dikjarazzjoni."*

If no such declaration has been made in the will, then this legacy shall only be valid for the portion which belonged to the testator. A demand shall be made by Jan in terms of **Article 726(1)** in order to be put in possession of his bequest. In this case interest shall not accrue automatically but rather shall start to accrue as 'from the day on which' Jan shall have 'by judicial letter, called upon' the heirs 'to deliver or pay the legacy' or 'from the day on which the payment shall have been promised' to him.

Legacy to Jan & Sarah

In her secret will the testator left the conjoint and successive usufruct of her estate to Jan and Sarah, contingent upon them remaining unmarried. First of all, Jan and Sarah will be entitled to this legacy, owing to the fact that as established in ***Victoria Xuereb et vs. Angiolina Aquilina*** (**03.12.2010**), '*l-użufruttwarju ġenerali ma hux eredi, avolja t-testatur isejjaħlu hekk, u huwa biss semplici legatarju.'* Consequently, Jan and Sarah as general usufructuaries would need to demand to be put in possession in terms of **Article 726(1)** by the heirs. Interest will not start to run, except from the day on which the co-legatees shall be, even by judicial letter, called upon the heirs to deliver her legacy, or from the day on which the delivery or payment shall have been promised to then by the heirs as per **Article 727**.

Secondly, the condition in restraint of marriage is a valid condition as per **Article 712(2),** owing to the fact that the subject-matter of the legacy is a right of usufruct. It does not transpire whether the co-legatees where married or no. If they were married, then this disposition lapses and thus it shall go in favour of the heirs, who have the ownership of the said estate.

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Mario's Estate

Mario's estate is regulated by an ordinary public will.

Universal Heirs

The testator nominated his three children as his sole universal heirs. Therefore, Jasmine, Maria and Anna shall inherit a bundle of rights and obligations and shall continue the personality of the deceased.

Since the testator did not cater for future children as per **Article 747** of the Civil Code, then his other child Joseph shall only be entitled to his reserved portion as per **Article 748** of the Civil Code, and this by virtue of the fact that at the time of the death of the testator, Joseph was already conceived as per **Article 600**. In this case, Joseph shall be entitled to 1/12 of 1/3 of his father's estate (1/36), as per **Article 616(1)** of the Civil Code, with the obligation of imputation. According to **Article 845(1)** the claim for the reserved portion must be brought within 10 years from the day of the opening of the succession, however, since most probably Joseph is still a minor then the said action shall not lapse except on the expiration of one year from the day on which he shall have attained majority and this as per **Article 845(2).**

Katia

The testator omitted completely his wife from his will. Consequently, Katia shall only be entitled to the reserved portion which shall amount to ¼ of the value of the estate in full ownership as per **Article 631** of the Civil Code. Over and above, Katia shall also be entitled to the right of habitation over the Gozo property, 'where the same tenement is held in full ownership by the deceased spouse either alone or jointly with the surviving spouse'.

Consequently, even though the Gozo property was paraphernal to Mario, Katia's right of habitation shall still subsist, provided that Katia does not remarry, and this as per **Article 633(8).** Moreover, her right shall subsist even if the said right has the 'effect of reducing, during the lifetime of the surviving spouse, the reserved portion due to any other person', as per **Article 633(5).** According to **Article 635**, Katia shall also have the right of use over any of the furniture found in the matrimonial home.

Sandra's Claim

Sandra is claiming compensation due to the fact that Katia and Mario's heirs had failed to grant her the vacant possession of the Gozo apartment immediately after the death of Mario. It is submitted, that since the property constitutes the matrimonial home, then Katia has the right of habitation over the said property. Despite the fact that Sandra has the right of ownership, as per **Article 732** of the Civil Code the legatee shall receive the property so encumbered, meaning that Sandra cannot interrupt or hinder the enjoyment of Katia over the Gozo property.

Legacy to Sandra

The testator left his apartment in Gozo by title of legacy to his friend Sandra. It is provided that the said property has been bought by Mario before his marriage to Katia, thus being paraphernal property, however, it was being used as their matrimonial home.

In this case, Sandra would need to demand the possession of the property in terms of **Article 726(1)** from the heirs, being Jasmine, Maria and Anna. As held in ***Concetta Vella et vs. Mariosa Portelli et*** **(24.06.2008)** -

"*id-dritt tal-legat hu dritt ta' proprjetà, iżda jibqa' dritt inċert u suġġett għall-kontestazzjoni sakemm ma jiġix immiss fil-pussess".*

Such demand shall be made by means of a public deed and the expenses relative to the deed shall be borne by Sandra, as per **Article 726(2)(3).**

Furthermore, interest will start to accrue immediately upon the death of Mario according to **Article 727(2)(b).**

Jasmine's Estate

Jasmine died a spinster without having made a will. It is being presumed that Jasmine inherited her father in her capacity as universal heir. Her estate will be regulated by the rules of intestacy, which according to **Article 812(b)** shall devolve upon Katia, Maria, Anna and Joseph in the following manner:

- Katia will receive ½ of the estate.
- Maria, Anna and Joseph will receive the other ½ of the estate, thus amounting to 1/12 of the estate.

Joseph is entitled to receive from the estate of his half-sister, according to **Article 813(1).**

Katia's Estate

Katia's estate is regulated by an ordinary public will.

Universal Heirs

The testator nominated her two surviving children, Maria and Anna as her sole universal heirs. Consequently, if Maria and Anna accept this inheritance then they shall inherit a bundle of rights and obligations. It is submitted that Maria may bring an action for collation against her sister Anna, in order to rectify the inequality which has been made owing to the donation made by the testator, during her lifetime.

The action for collation may be brought against Anna in terms of **Article 913(1),** since Anna is a descendant, co-heir and donee. Moreover, Maria can bring such an action since she is a coheir and a descendant.

Maria shall be entitled to the fruits and interests of the property subject to collation from the day of the opening of succession, as per **Article 928** and the share of Anna which shall be imputed is to be valued at the time of the opening of succession according to **Article 931(1).**

In these circumstances, it may be wise that Anna renounces to her mother's inheritance and claims her reserved portion since as per **Article 916**, 'an heir who renounces a succession, may, nevertheless, retain the donation'. In this case, Anna would be entitled to 1/18 of her mother's estate, as per **Article 616(1)** of the Civil Code. For the purposes of determining the reserved portion, Jasmine was omitted since she predeceased the testator and was not survived by any descendants. Notwithstanding this, as per **Article 620(4),** Anna is still subject to impute the value of the donation.

Legacy to Amanda

The testator left by singular title, any one item out of her collection of original paintings to her niece Amanda, to be chosen by her. The thing forming the subject of the disposition can be considered to be of an indeterminate thing, as per **Article 699**, since it is 'an indeterminate movable thing included in a genus or species'.

Article 722(1) presupposes that the right of selection belongs automatically to the heir, 'who cannot be compelled to deliver a thing of the best quality but cannot offer a thing of the worst quality'. However, it is submitted that if the testator left other instructions, then these shall prevail. Since Amanda was merely a legatee, then as per **Article 723**, she 'may select the best of the things of the given genus or species existing in the inheritance; but if there be none,' she 'cannot select one of the best quality'.

Having made the selection, Amanda shall then demand the possession of her painting from the heirs as per **Article 726(1).** In this case interest shall not accrue automatically but rather shall start to accrue as 'from the day on which' Amanda shall have 'by judicial letter, called upon' the heirs 'to deliver or pay the legacy' or 'from the day on which the payment shall have been promised' to her.

Legacy left to Rachel

The testator also left Rachel, the usufruct of her property in Sliema contingent upon Rachel remaining unmarried. This condition in restraint of marriage is valid in terms of **Article 712(2)** since it consists in the right of usufruct. Thus, if Rachel marries then she will lose her right of usufruct over the property which will then be reintegrated in the person vested with the ownership of the Sliema property.

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