

The Acquisition of Possession in Legacies *per vindicationem* in Classical Roman Law and its Influence in the Modern Civil Codes

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Introduction

In Roman law, the *legatum* was a gift that a testator conferred on somebody in his will by charging his *heres* or *heredes*. In the classical period there were two main types of *legatum*, the *legatum per vindicationem* (real effect) and the *legatum per damnationem* (compulsory effect), and two secondary types, the *legatum sinendi modo* and the *legatum per praeceptionem*. In the classical period, these secondary types were of minor importance and by the second century BC they were almost extinct. Finally in the post-classical period, the classical law of legacies was radically simplified, classical formalism was abandoned, and different classical types of legacies were amalgamated.

In this paper, I shall discuss what effect Roman law has had on regulating the acquisition of possession in legacies with real effect, the precedent of which is the *legatum per vindicationem* in our civil codes.

The legacy *per vindicationem* in Roman law gave the legatee ownership of the thing bequeathed, which meant that there was no need for an act of transfer. The legatee could claim the thing from the heir, or any other possessor, with the *rei vindicatio*. The testator who wished to create such a *legatum* had to observe certain forms, the most usual of which was *do lego*. Other forms, however, were permissible, for example *sumito*, *capito*, and *rem sibi habeto*, but none of them required the heir to effect an act of transfer.

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The law of legacies was studied with “unconcealed predilection”¹ by classical lawyers, but those who wrote lengthy treatises neglected the question of the legatee who acquires possession in legacies with real effect. In previous studies on this subject,² I have shown that the proper and usual way to acquire possession in this kind of legacy was unilateral apprehension by the legatee. The verbs *sumo*, *capito*, and *sibi habeo* clearly express the act of seizure that is the right of the legatee.

My thesis also focused on the *interdictum quod legatorum*.³ This interdict was first introduced by the praetor in the area of *bonorum possessio* in the first century BC to protect the *bonorum possessor*, and later it was extended to protect the *heres* from the legatee who had taken the thing bequeathed without consent:⁴ *ut quod quis legatorum nomine non ex voluntate heredis occupavit*. This interdict was introduced because of the *lex Falcidia*, a plebiscite in the year 40 BC, the aim of which was to encourage the heir charged with *legata* to accept the inheritance. The *lex Falcidia* granted the heir that a quarter of the net inheritance would be free from *legata*. In those cases where the *legata* exceeded three-quarters of the net inheritance, the charges were diminished proportionally.⁵

By studying the semantics of the words used in the *formula* of the legacy *per vindicationem* and analysing the sources of the interdict, I found that the original way for the legatee to acquire possession was apprehension. After the *interdictum quod legatorum* had been introduced, however, Roman law did not allow the legatee to take possession, unilaterally, of the thing bequeathed. On the contrary, the heir was required to give consent or even take action. Those modern codes which observe a division between legacies with real and compulsory effect come from this Roman idea.

This article studies this Roman rule in the main civil codes that have maintained the legacy with real effect. In particular, I focus on the Spanish, French, and Italian civil codes, and the Catalan Code of Succession. The four codes have articles which have very similar content. They all state that the legatee may not

¹ F. Schulz, *Classical Roman Law* (Oxford 1951), 314.

² L. Salomon, *Sine vitio nancisci possessio. La adquisición de la posesión de los legados en el derecho romano clásico* (Madrid 2003).

³ D.43.3 *Quod legatorum*; C.8.3 *Quod legatorum*.

⁴ M. García Garrido, “Notas sobre el interdicto quod legatorum,” in *Estudios Sánchez del Río* (Madrid 1967), 227.

⁵ See Schulz (note 1), 327.

take possession of the thing bequeathed on his own authority, but that he may demand that possession be delivered to the heir.

Article 885 of the Spanish Civil Code states:

El legatario no puede ocupar por su propia autoridad la cosa legada, sino que debe pedir su *entrega y posesión* al heredero o al albacea, cuando éste se halle autorizado para darla.

Article 271.3 of the Catalan Code of Succession act 40/1991 also states that the legatee may not take the thing bequeathed but that the heir may deliver it.⁶

El legatari tindrà acció contra la persona gravada per reclamar el lliurament o compliment del llegat exigible, i en el seu cas, contra la persona facultada per complir el llegats.

En el llegat amb efectes reals, quan la propietat de la cosa o del dret real susceptible de possessió hagi passat al legatari, aquest tindrà acció per exigir el lliurament de la possessió, i fins i tot per reivindicar la cosa o el dret contra qualsevol posseïdor.

Sense el consentiment de la persona gravada o, de la facultada al lliurament, el legatari no podrà prendre possessió, per la seva pròpia autoritat, de la cosa o drets llegats.

Tanmateix, el legatari podrà prendre per sí mateix la possessió quan el testador ho hagi autoritzat o el llegat sigui d'usdefruit universal, Així com a Tortosa, si tota l'herència està distribuïda en llegats.

Although the French *code civil* uses different terminology, the law of succession, so far as it concerns the acquisition of possession from legatees, states in article 1014:

Tous legs pur et simple donnera au légataire, du jour du décès du testateur, un droit à la chose leguée, droit transmissible à ses héritiers ou ayants cause.

Néanmoins le légataire particulier ne pourra se mettre en possession de la chose leguée, ni en prétendre les fruits ou intérêts, qu'à compter du jour de sa demande en délivrance,

⁶ R. M. Roca Sastre, "La adquisición de la posesión," *Revista General de Legislación y Jurisprudencia*, 193 (1953), 331–87.

formé suivant l'ordre établi par l'article 1011, ou du jour auquel cette délivrance lui aurait été volontairement consentie.

Along the same lines, article 649 of the Italian Civil Code states:

Acquisto del legato

Il legato si acquista senza bisogno di accettazione, salva la facoltà di rinunciare. Quando oggetto del legato e la proprietà di una cosa determinata o altro diritto appartenente al testatore, la proprietà o il diritto si trasmette dal testatore al legatario al momento della morte del testatore.

Il legatario però deve domandare all'onerato il possesso della cosa legata, anche quando ne è stato espressamente dispensato dal testatore.

As far as the acquisition of inheritance is concerned, the laws of succession compared can be divided into two main systems: the Roman and the German. The Roman system requires acceptance for inheritance to be acquired whereas the German system allows acquisition *ipso iure*. These systems are opposites: the former does not accept the transmission of possession in succession law, whereas the latter does. In Roman law, the heir became the owner of the inherited property once he had accepted the inheritance, but he did not become the possessor. To become the possessor, he had to take the corporeal things belonging to the inheritance under his physical control. The *sui* were an exception. They acquired possession automatically on acquiring the inheritance, with no need for acceptance.

The Spanish Civil Code

Article 440 of the Spanish Civil Code deals with the acquisition of possession by the heir, and states:

La posesión de los bienes hereditarios se entiende transmitida al heredero sin interrupción y desde el momento de la muerte del causante, en el caso de que llegue a adirse la herencia. El que válidamente repudia una herencia se entiende que no la ha poseído en ningún momento.

This article, from the code of 24 July 1889, is based on article 554 of the Project of 1851, the nearest predecessor to the Spanish Civil

Code. This article, in turn, was based on article 724⁷ of the French Civil Code, which itself had taken the German idea of possession, the *gewere*.⁸ Unlike Roman law, *gewere* did not require material apprehension for possession to be acquired. *Gewere* influenced the French *saisine*⁹ and by this route the *possessio civilissima* reached article 440.¹⁰

Once the heir accepts inheritance he is considered to be possessor of all the things of the inheritance from the moment the principal dies. This is the result of the so-called *posesión civilísima*.¹¹ Although the heir by law does not have real possession, he has the advantages of possession: the possibility of acquiring the thing by usucapion, the possessory interdicts, and the fruits. The *posesión civilísima* makes it possible for the heir to take the legal effects of possession from his principal. The aim is to prevent the estate from being without a possessor, which is something that could go against the interest of those who have the right of possession (e.g. a creditor or a tenant).

In the first place, Spanish doctrine¹² has studied the paradox of this article as far as the acquisition of possession of legacies is concerned. The legatee acquires the ownership of the thing bequeathed at the moment that the testator dies,¹³ but he may not

⁷ “Les héritiers légitimes et les héritiers naturels sont saisis de plein droit des biens, droits et actions du défunt sous l’obligation d’acquitter toutes les charges de la succession.”

⁸ Paragraphs 1922 and 1942 of BGB establish that possession is transferred by law with no need for apprehension and that this produces the same effects as possession obtained through apprehension.

⁹ J. M. Manresa y Navarro, *Comentarios al Código Civil Español*, 6:2 (Madrid 1957), 556.

¹⁰ G. García Valdecasas, “La adquisición de la herencia en el derecho español,” *Revista de Derecho Privado*, no. 323 (1944), 7–123, and “De nuevo sobre la adquisición de la herencia,” *Revista de Derecho Privado*, no. 406 (1951), 991–95.

¹¹ M. García Garrido, “De la bonorum possessio a la posesión civilísima,” *Revista de Derecho Notarial*, 55 (1967), 115–51, and J. Puig Brutau, *Fundamentos de derecho civil*, 3:1 (Barcelona 1989), 77–90.

¹² J. L. de los Mozos, “La adquisición de la posesión en los legados,” *Anuario de Derecho Civil*, 15:1 (1962), 864–920; M. Albaladejo, *Comentarios al código y comulaciones forales*, 12:1 (Madrid 1987), 312; J. Puig Brutau, *Fundamentos de derecho civil*, 5:2 (Barcelona 1977), 415; R. M. Roca Sastre, *Derecho hipotecario*, 3 (Barcelona 1995), 993 n.3.

¹³ Article 881 of the Spanish Civil Code states: “El legatario adquiere derecho a los legados puros y simples desde la muerte del testador y los transmite a sus herederos.” Article 882.1 states: “Cuando el legado es de cosa específica y determinada, propia del testador, el legatario adquiere su

take it on his own authority. He may only request that the heir deliver the thing bequeathed, because if he should take the thing unilaterally, the heir would be dispossessed. If this were to happen, the heir could interdict to recover the thing bequeathed. The legatee may not take the thing without consent but, should he do so, possession can be made legal if the heir gives authorization *a posteriori*.¹⁴ The legatee will have a non-removable possession. As a legatee, he has a personal action *ex testamento* and as an owner he has a *rei vindicatio*.

In the second place, Spanish doctrine has discussed the following question: what happens if the legatee already has the thing in his power at the time of the testator's death? Albaladejo¹⁵ distinguishes between material and immaterial possession. Article 440 means that the heir is a *civilissimus possessor*: that is to say, he has immaterial possession of the thing. Therefore, although the legatee already has the thing in his power, he only has material, not immaterial, possession. Therefore, to obtain full possession, he needs to claim immaterial possession.

Although article 885 requires delivery, the Spanish Civil Code in the end accepts the possibility that the thing can be taken by the legatee with the consent of the heir. The doctrine accepts that the consent of the heir to apprehension is an act that is equivalent to delivery.¹⁶ The main point here, however, is not to make a formal delivery but to prevent the legatee from taking the thing on his own authority. To prove that delivery is not essential in legacies with real effect, the doctrine has argued the possibility of accepting apprehension when the testator has given his authorization. Some civilists accept that this may be a possibility because of the dispositive nature of article 440, while others do not because of the imperative nature of the *possessio civilissima*. Jurisprudence accepts that it is possible: the legatee can take the thing bequeathed when the testator gives authorization. The doctrine agrees, however, that this rule cannot be applied when there are legal heirs that have not given their consent.

propiedad desde que aquél muere, y hace suyos los frutos o rentas pendientes, pero no las rentas devengadas y no satisfechas antes de la muerte."

¹⁴ M. Albaladejo, *Comentarios al código y compilaciones forales*, 12 (1987), 326, and F. García Goyena, *Concordancias, motivos y comentarios del código civil español*, 2 (Madrid 1973), 140.

¹⁵ Albaladejo (note 14), 318.

¹⁶ R. M. Roca Sastre, *Derecho hipotecario*, 2 (Barcelona 1995), 606.

The aim of this Spanish civil rule, as in Roman law, is to protect the integrity of the inheritance by preventing the possession of the legatee from going against rights which are specially protected by law: *quarta falcidia* in Roman law and legal heirs in Spanish law.

A further question that has been studied by Spanish doctrine is the nature of this kind of delivery. The delivery of the heir is not considered to be a tradition in the technical sense: that is to say, delivery is not a translation of possession with the intention of transmitting ownership, but simply a translation of possession, because the legatee was already the owner and the heir was merely the possessor of a thing that belonged to somebody else.

Nor in Roman law is delivery an essential point in legacies with real effect. Even in origin, delivery was a foreign element in this kind of legacy.¹⁷

Part of the doctrine states that the ruling of article 885 is based on the *possessio civilissima* of the heir.¹⁸ Some sources¹⁹ speak of the historical conception of the nature of legacy while others, with whom I agree, refer to *interdictum quod legatorum*.²⁰

The aim of article 885 of the Spanish Civil Code, as in Roman law and other codes, is to maintain the integrity of the inheritance, because this is a guarantee for creditors and legal heirs, who are specially protected by law.

The Catalan Code of Succession

The Roman ruling can also be found in Catalan civil law: the legatee may not take the thing bequeathed on his own authority but he may request the heir to deliver it.

Catalan law, article 2 of act 40/1991 of 30 December, states that succession comes into effect upon the death of the principal, and article 5 adds that the heir can acquire a thing bequeathed only with acceptance. The Catalan Code of Succession faithfully follows the Roman system. For this reason, although the heir may acquire the estate and rights of the principal, he does not have possession of the estate. Article 6 states that the accepting

¹⁷ J. B. Vallet de Goytisolo, *Estudios de derecho sucesorio*, 1 (Madrid 1980), 447–48.

¹⁸ Albaladejo (note 14), 328.

¹⁹ A. Calvo Meijide, *La posesión en el derecho hereditario* (Madrid 1997), 112.

²⁰ De los Mozos (note 12), 871–75, and R. M. Roca Sastre, *Derecho hipotecario*, 6 (Barcelona 1997), 93 n.21.

heir only has material and real possession.²¹ This is not a new development in the Catalan law of succession, but it is a feature which has a long Roman tradition. Classical Roman law required apprehension to acquire the possession of an inheritance. The figure of the principal first appeared in article 222-2 of the project to compile a special Catalan law in 1955. The acceptance of an inheritance transfers the rights of the principal and the *ius possidendi*, that is, the right to possess, to the heir, but it does not transfer the real possession of things. Acceptance legitimizes the heir to take possession of the inheritance but, as in Roman law, he needs to take possession of both the *animus* and the *corpus*. This can be done by occupancy, delivery, or recovery of possession. In accordance with what is stipulated in article 5 and 6, the effects of acceptance and possession are carried back to the time of death of the principal.

As far as legacies with real effect are concerned, article 267 states that there is no need for acceptance in order for the legatee to acquire full rights to the ownership of the thing that is the object of the legacy, but that he does not acquire possession. Like the heir, the legatee does not acquire possession without really and materially taking the thing. Article 271 stipulates that the legatee may not take possession on his own authority without the consent of the encumbered person. The legatee may proceed against the person encumbered with an action to request delivery.

However, the third paragraph of article 271 reads:

... sense el consentiment de la persona gravada o, de la facultada al lliurament, el legatari no podrà prendre possessió, per la seva pròpia autoritat, de la cosa o drets llegats.

Thus, *sensu contrario*, it accepts that one way of acquiring possession in legacies with real effect is, as in Roman law, to apprehend the thing bequeathed with the consent of the heir. The heir must give his consent because legacy may be reduced by certain circumstances (*quarta falcidia*). This rule serves as a guarantee to the heir who may count on the assets of the inheritance to pay creditors (article 36 CS), to verify the effectiveness of legacies (articles 373 ff. CS) and to protect the *quarta falcidia* (article 274.1 CS).

²¹ E. Torrelles i Torrea, *La possessió civilíssima i la possessió de l'hereu. Sistema d'adquisició de la possessió mortis causa* (Barcelona 1994).

The last paragraph of this article contains three more exceptions to this rule which accept that the legatee may take for himself the thing bequeathed. The first of these exceptions is when authorization has been given by the testator; the second is when the legacy is universal or general usufruct; and the third, only in Tortosa, is if the entire inheritance is distributed into legacies. The first exception is not provided for, as we have already seen, in the Spanish Civil Code and it is expressly denied in the Italian Civil Code. The doctrine²² states that even though the testator may give the authorization, the consent of the legal heirs is required because their right is preferential to the right of the legatees. The third exception²³ also requires that the legal heirs give their consent.

In this respect, as in others of the law of succession, the law of Catalonia embodies the great principles inherent in Roman law to a greater extent than the other civil laws in our legal tradition do. In the Catalan code, the Roman system of acquisition of possession in legacies with real effect — apprehension with consent — remains in force.

The Italian Civil Code

The Italian Civil Code of 1865 was based on the law of succession in the Napoleonic code. The current Italian code, however, has returned to the so-called Roman system and so requires the acceptance of inheritance.

Article 459 of the Italian Civil Code establishes that inheritance is acquired by the acceptance as heir. The acceptance comes into effect as from the opening of the succession.

Acquisto dell'eredità

L'eredità si acquista con l'accettazione. L'effeto dell'accettazione rissale al momento nel quale si è apperta la successione.

Article 460 states:

²² P. Albiol Marés, *Comentarios al código de sucesiones de Catalunya*, 2 (Barcelona 1994), 965.

²³ E. Vendrell Ferrer, "Lliurament i possessio de llegats. Comentari a la sentència número 1/1990, de 25 de gener de la Sala Civil del TSJ de Catalunya," *Revista Jurídica de Catalunya*, 3 (1990), 799.

Poteri del chiamato prima dell'accettazione. Il chiamato all'eredità può esercitare le azioni possessorie a tutela dei beni ereditari senza bisogno di materiale apprensione.

Egli inoltre può compiere atti conservativi, di vigilanza e di ammonostrazione temporanea, e può farsi autorizzare dall'autorità giudiziaria a vendere i beni che non si possono conservare la cui conservazione importa grave dispendio.

Non può il chiamato compiere gli atti indicati nei commi precedenti, quando si è provveduto alla nomina di un curatore dell'eredità a norma dell'articolo 528.

In accordance with what is stated in article 1146, from the moment of the succession, possession is with the heir. Article 460 gives the person summoned the appearance of a possessor but not real possession. The aim of this article is to prevent the settlement of possession from harming the interests of the heir. The fact that it is legitimate for the person summoned to the inheritance to undertake possessory actions does not mean that a succession of possession has taken place, even fictitiously. The person summoned has possessory interdicts but has neither possession nor detention.

The legacy is acquired without acceptance and the effects of the legacy are independent of the heir's acceptance. In the Italian Civil Code, the legacy and the testamentary succession are almost totally independent from each other.

Paragraph 3 of article 649 states that the legatee must claim possession of the legated thing from the heir even when the legatee has been authorized by the testator to take the thing by himself. Possession is the only relation between the inheritance and the legacy because the person summoned has the appearance of possession so that he can maintain the estate as a guarantee of his title. For this reason the period of *usucapio* for the heir begins at the moment of succession: the heir appears to have possession while the legatee may ask the heir for possession.

Although ownership is transmitted directly from the *de cuius* to the legatee, possession is transmitted not to the legatee but to the heir. The legatee need not ask the heir for possession formally but, as in other civil codes, the Italian code ends by accepting that the legatee can take the thing by himself with the consent of the heir. If the legatee already has possession by virtue of another title, he may ask the heir for possession because he has real possession, while the heir has the appearance of a possessor:

nemo sibi causam possessionem mutare potest (nobody can unilaterally change the cause of the possession).

Doctrine has debated the reason for this. Some believe that this rule is based on the fact that the person summoned acquires the appearance of the possessor of the inheritance. Others, however, consider that the heir is interested in keeping the inheritance available before the effectiveness of the legacy is known. It has also been suggested that this rule shows the compulsory nature of the legacy with real effect.²⁴

But possession can also be requested from another person who is encumbered or entitled to deliver. This shows that the rule cannot be explained by the fact that the inheritance is in possession of the heir but, as in Roman law, by the need to keep the inheritance whole. Again the most plausible explanation of this rule is based on the consequences of the legacy with real effect: the encumbered person must be able to keep possession until the efficacy of the legacy has been checked.

The French Civil Code

The French law of succession belongs to the German family. The sentence “le mort saisit le vif” means that, at the moment the principal dies, the heirs acquire all of his estate and rights so there is no interruption. Therefore, unlike the Roman system, the inheritance always has an owner. The Napoleonic code adopted its own customary system (common law) and not the Roman and feudal system. The French law of succession is a familiar law. The aim of the will is not to institute an heir but to establish patrimonial distributions, that is, universal legacies, with universal or specific title.

Article 1004 states:

Lorsqu’au décès du testateur, il y a des héritiers auxquels une quotité de ses biens est réservée par la loi, ces héritiers sont saisis de plein droit, par sa mort, des tous les biens de la succession, et le légataire universel est tenu de leur demander la délivrance des biens compris dans le testament.

This continuity is to prevent power from being interrupted. For this reason, the Code recognizes that some heirs can act as pos-

²⁴ See A. Masi, *Dei legati: art. 649–673* (Bologna 1979); L. Gangi, *La successione testamentaria* (Milan 1947); F. S. Azzariti, G. Martinez, and G. Azzariti, *Successioni per causa di morte* (Padua 1979).

sessors of the inheritance without needing to ask a judge for the *mise en possession*, as the other irregular successors without *saisine* have to do. *Saisine* is reserved for the unquestioned successors, who can take things by themselves, and carries all the effects of possession: execution of the actions, *usucapio*, and acquisition of the fruits.

Article 724 establishes *saisine* for the legal heirs whose title is unquestionable. Of the testamentary heirs, only the universal legatee has *saisine* (article 1006) because he has full inheritance rights and can therefore take things by himself with no formalities. Legatees with universal or specific titles can ask the intestate heirs for possession.

Saisine is a simple faculty for apprehending the inheritance and executing the right to prevent the loss of the inheritance. It is not related to ownership: legatees with universal or specific titles are owners of the thing bequeathed but they do not have possession, because the faculty of taking possession is not the same as the real taking of possession. *Saisine* enables the heirs without authorization to take and administer the inheritance, to carry out juridical acts, and to perceive the fruits. *Saisi* heirs, however, do not have the estate at their disposal.

The delivery of the bequest depends on the *saisi* heir verifying the title. When there is more than one legatee, they may all ask for their portions but there are no formalities connected to this request and to delivery. The delivery can be an express or tacit act. As in other legal systems, tacit consent can be understood to be the voluntary execution of the legacy.

French tribunals²⁵ have also accepted tacit delivery. When legatees take the bequest with the authorization of the heirs or are in possession with their consent, jurisprudence considers this act equivalent to delivery.²⁶ Should the heirs not wish to deliver the bequest to the legatees, the legatees have an action of delivery. This delivery does not transmit ownership because the legatee is already the owner and delivery does not preclude a possible action of reduction.

Conclusions

To sum up, I would like to emphasize the force in our legal system of a Roman rule that is not very well known: the legatee may take

²⁵ Cass. 1e civ., Feb. 17, 1971, D. 1971, Somm. 141.

²⁶ Cass. 1e civ., Nov. 18, 1968, D. 1969, J.C.P. [II] 15973.

a bequest on his own authority when he has the consent of the heir. All of the four codes studied here contain an article with very similar wording, stating that the legatee may not take a bequest but that the bequest can be delivered by the heir. However, as we have seen, both jurisprudence and doctrine accept that the legatee taking the bequest with the consent of the heir is equivalent to delivery. The act, performed this way, is in accordance with the law.

My thesis is that, in the domain of legacies with real effect, apprehension with consent is not equivalent to delivery but is the original way of obtaining possession. Originally in Roman law, the words used in the formula clearly expressed this act of apprehension and today these legacies prevail because our codes accept them even though in principle they do not. In the *ius civile*, the legacy with real effect was able to transfer a thing *recta via* from a deceased person to a legatee, with no intervention from the heir. Therefore, in this kind of legacy, unilateral apprehension by the legatee was the way to acquire possession. Unilateral apprehension was also the typical way of acquiring possession in relationships *mortis causa*. For example, there were originally two acts by which the *heredes extranei* could accept inheritance, *cretio* and *pro herede gestio*, both of which had an evident possessory structure and always consisted of an act of apprehension by the heir. So, I understand that, in the *inter vivos* relationships, apprehension with consent can be an act that is equivalent to tradition, as classical Roman jurisprudence has already admitted in cases of extended modes of tradition. In the legacies with real effect, however, apprehension with consent cannot be considered to be equivalent to tradition. In my opinion, and because of the wording of the legislator in the articles studied, both doctrine and jurisprudence have made a long and unnecessary journey and used a seemingly solid but mistaken argument to accept a fact that is inherent in legacies with real effect: *apprehension by the legatee with consent*.

The origin of all the articles studied from the various codes is the classical Roman *interdict quod legatorum*. They all have the same aim: to preserve the integrity of the inheritance as a guarantee of an interest that the legal system wants to protect. In Roman law, the aim was to protect the heir and to encourage testate succession and thus prevent property from remaining intestate; the aim of our current systems is to protect the rights of the legal heirs and the creditors of the principal.

This study shows that the origin and nature of an institution needs to be known if the current reality of our institutions is to be understood.
