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Rapporteur

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1st part

Competence conflicts of the Law of Successions

A. Sources

1. International treaties

- Nordic Convention on Succession 19.11.1934
- Nordic Convention on Marriage 6.2.1931
- Nordic Convention on the Recognition and Enforcement of Judgments Concerning Judgments in Civil Cases 11.10.1977

2. National Law

- Act on Inheritance 5.2. 1965
- Act on Nordic Convention on Succession 31.5.1935
- Degree on Nordic Convention on Succession 16.7.1935
- Marriage Act 13.6.1929
- Act on Nordic Convention on Marriage 18.12.1931
- Degree on Nordic Convention on Marriage 31.12.1931
- Act on Nordic Convention on the Recognition and Enforcement of Judgments Concerning Judgments in Civil Cases 28.10.1977
- Degree on Nordic Convention on the Recognition and Enforcement of Judgments Concerning Judgments in Civil Cases 2.12.1977
- Act on the Recognition and Enforcement of Nordic judgements Concerning Civil Law Cases 21.7.1977

B. Judicial Jurisdiction

1. Domicile

There is no legal definition on the concept of domicile in the positive law of Finland. According to standard opinion, the prerequisite for domicile is that the person must permanently live in a state in order to have permanent residence there. The domicile shall be changed only upon the condition that a person has moved his residence to another state and that he or she has the intention to stay there permanently.

There is no exact length of the actual living in a state which is needed to create the presumption of domicile. Sometimes even a short stay in a new state may create the presumption of domicile, if for example a Finnish citizen, who has temporarily had his or her residence abroad, returns to Finland to stay there permanently. But on the other hand the long

stay in a country may be without any consequences as to the matter of domicile, if a person has had his or her home without his intention to have a residence in such a state (let's assume that he or she has been in a prison).

Domicile is always individual, so the domicile of a husband may be different to the domicile of his wife. The domicile of a minor depends upon the domicile of his or her parents. The use of the concept of domicile is not coherent, sometimes it refers to the actual living place or habitual residence.

New international private law rules in Finland are based on the notion of domicile in the sense which clearly differs from the habitual residence.

2. Nationality of the deceased

Nationality of the deceased may play a remarkable role in cases concerning succession. The Finnish court is competent to give a decision that the property of the estate shall be handed over to be administered by an estate administrator or upon petition appoint a suitable person as distributor of the estate, if the deceased has on his or her death habitual residence or domicile in Finland, or if the decedent had Finnish citizenship and he or she had ordered that the succession shall be solved by the Finnish law. In the same way the court is competent, if the decedent had Finnish citizenship and the administration of estate or the distribution of estate shall not happen in that state, where the decedent had his or her habitual residence or domicile.

Distribution of estate is always valid from the point of view of the form of the distribution of estate if the distribution was made according to the formalities of the state, which citizenship the decedent had on his or her death.

3. The domicile of the defendant

The domicile of the defendant is not relevant in succession cases because an alien has the same right as a Finnish citizen to inherit in Finland. However the Supreme Court decided, in the decision 1993:65, that the surviving spouse does not have the right to administrate the estate undivided because a surviving spouse was expelled from Finland and the reentry to the country was refused for the subsequent five years. With regard to these circumstances and taking into account that the surviving spouse had no intentions to return to Finland, the Supreme Court considered that the spouse was not entitled to the proceeds of the apartment of the deceased under the rules concerning the right to administrate the estate undivided, because the purpose of that right was to improve the protection of the surviving spouse by allowing that spouse to continue to live in the dwelling used as common family home.

4. The nationality of the plaintiff or the defendant

The nationality of the plaintiff or defendant does not make a difference.

5. The application of the substantive law of Finland concerning successions (forum legis)

Look at the 2nd part of questionnaire

6. Property of the estate being situated in Finland

Look at the 2nd part of questionnaire.

7. The choice of law made by the deceased

Look at the 2nd part of questionnaire.

8. The choice of law made by the heirs or beneficiaries

The heirs and beneficiaries do not have the right to make a choice, this right belongs only to the decedent.

9. Specific jurisdiction for urgent measures to preserve the estate

The competence of court concerning matters of succession is wide in Finland. The leading principle is that in the urgent cases the court has power to act if there is a reasonable causa to give an authoritative decision (Act of Inheritance 26:1- 4). In the Finnish legal system the administrator of estate takes care in concrete cases about the property of estate and this is the reason why the trap to give such a decision is low.

10.-11. The risk that there is no other jurisdiction and other bases for jurisdiction

The risk that there is no other jurisdiction is not high, rather on the contrary.

C. The scope of application for all the above mentioned judicial jurisdiction

The starting point is that the judicial jurisdiction covers the whole estate both within and outside the territory of Finland.

2. Jurisdictional bases

- a. Yes
- b. Yes
- c. Yes
- d. Yes
- e. Yes
- f. Yes

D. Proof of jurisdiction

I. May the court declare that it has no jurisdiction of the matter

Yes

II. May the court, although it has jurisdiction, declare itself *forum non conveniens*?

In the Finnish legal literature, the doctrine of *forum non conveniens* has weak support but it is unknown in legal praxis. Look closer at *Walamies, Juhani: Tuomioistuimen yleistoimivalta siviiliprosessissa*. Helsinki 1982. Doctoral dissertation. The title in German is *Die internationale Zuständigkeit im Zivilprozess* (ISBN 951-855-054-9). The author of this book writes in the summary of the book (page 314) from this doctrine in the following way: „...Die skizzierte, mit Genugtuung zu begrüßende Entwicklungstendenz in der Rechtsprechung reicht jedoch - auch wenn sie weiterhin fortgesetzt wird - nicht aus, um unnötige und für die andere Partei unbillige Gerichtsverfahren zu verhindern. Zu ihrer Ergänzung bedarf es noch der Gestattung eines gewissen freien Ermessens zur Versagung der Zuständigkeit auch für die Fälle, in denen man nach den herkömmlichen Auslegungsregeln nicht umhin kann, exorbitante Forummregeln anzuwenden. Für dieses Ermessen stellt wiederum die anglo-amerikanische *forum-non-conventiones*-Theorie ein brauchbares Denkmodell dar, und man

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sollte ihre Entstehung im Bereich einer anderen Rechtstraditionen nicht als ein Hindernis für ihre Anwendung ansehen. Das finnische Recht beinhaltet nämlich ohne Zweifel Elemente, die den Faktoren gleichkommen, die zum Entstehen der forum-non-conventiones-Doktrin in Schottland und zu ihrer umfassenden Übernahme in den USA geführt haben“.

III Is there any influence in the scope of jurisdiction, if another state claims exclusive jurisdiction for its own courts

No, there is not.

IV. May the court decide the matter if the defendant does not appear before the court?

The duty of the courts to hear the defendant varies; in most cases the court has to hear the defendant.

E. Litispendens and connectivity

I. May the courts of Finland decide, although the case is already pending, within a foreign jurisdiction?

The traditional starting point has been that the cases already pending in a court abroad do not occur litispendens -effect. This rule, connected with the rule recognition and enforcement of the judgement given by a foreign court, is possible only if there is a binding treaty, which has been implemented as a part of the Finnish legal system. Exceptions to this rule make the rule of Lugano Convention. Similar rules, which could have the litispendens -effect on the matters of succession, do not exist.

II. How does the law of Finland define the identity of the claims?

The identity of the claims presumes that the parties in the new process are the same. The identity of the claims will be lost if in the new process there is a new party, who was not in the first process. Litispendens -effect does not however presume that in the new process the (original) parties shall continue as plaintiff or defendant. On the contrary, the typical situation is that they shall change their roles so that the former plaintiff is a defendant and the former defendant is a plaintiff in the new process. If the aim of the new process is the very same as it was in the former process, there is a question about litispendens -effect. But if the aim of the new process is something else, in that case there is no question of litispendens.

III. Do the rules about litispendens also apply to the question of connectivity?

The rules concerning litispendens -effect have a very limited role in the question of connectivity because of the fact that the cases already pending in a court abroad do not occur litispendens -effect without the support of binding law.

2nd part

Recognition and Execution of Decisions

A. Sources

1. International treaties

In Finland, as well as in the other Nordic countries, the main rule is that foreign judgments in civil matters are not recognized or enforced, unless specifically otherwise stated in law. On the other hand, Finnish legislation contains several provisions on the international competence of the courts and the effect of foreign judgements. Usually these provisions are based on international agreements. The Finnish legal system does not specifically recognize international agreements, conventions or treaties which are directly applicable. For an international treaty binding on Finland to become applicable in Finland, it must be implemented through domestic measures.

There is not a single treaty whose scope is only the succession. All the questions concerning the recognition and execution of decisions shall be solved by the common provisions.

For instance, in 1932 and 1977 the Nordic countries: Finland, Sweden, Norway, Denmark and Iceland signed an agreement on the recognition and enforcement of judgements concerning civil claims. These agreements, which are implemented as part of the Finnish legal system, regulate the recognition and enforcement in the Nordic countries of judgements passed in one of them. An agreement on the recognition and enforcement in civil matters was also signed in Vienna in 1986 between Finland and Austria.

Finland has also joined certain international general agreements on the recognition and enforcement of foreign judgements. These include for instance, the general agreement on the recognition and enforcement of judgements concerning the maintenance of a child, signed in Hague 1958; the general agreement on the recognition and enforcement of decisions concerning maintenance, signed in the Hague; the European convention on recognition and enforcement of decisions concerning custody of children, signed in Luxemburg 1980. All these special agreements, however, have such narrow scope that they shall not have any role in the recognition and execution of decisions concerning successions.

On 1 July 1993, Finland joined the general agreement on the competence of the court and enforcement of judgements within civil law signed in Lugano in 1988 (the Lugano Convention). The aim of this general agreement is to facilitate the reciprocal recognition and enforcement of judgements in the member states of the EC and EFTA and its provisions correspond to those of an earlier general agreement of the same title signed in Brussels in 1968 by the EC member states, which Finland joined on 1 April 1999. The Lugano and Brussel conventions are at present the most important international conventions on the enforcement of civil judgements.

There are two bilateral agreements, which contain orders concerning succession. The first one is an agreement between Finland and the Soviet Union from 1979. That agreement was implemented as part of the Finnish legal system by law on 7.12.1979. According to that

agreement, a citizen of Finland and a citizen of the Soviet Union do have the same right as a native citizen who lives in his or her home state to inherit the property which is located on the area of contracting part or inherit some other rights which are realisable on the similar area. They have also same right to make and revoke a will as a citizen of the contracting state.

A similar agreement was made between Poland and Finland on 27.5.1980.

2. National Law

The Finnish legal system does not contain general provisions on the recognition and enforcement of foreign judgments concerning matters of succession.

According to the Nordic Convention on Succession from 1934, the recognition and execution of such a judgement or such a settlement, which concerns the right based on succession or will, the right of the surviving spouse, administration of estate or distribution of estate or the responsibility of the debt of the decedent, shall apply to the law of that state, where the recognition or execution has been asked.

B. Foreign judgement and other decisions concerning successions

I. Does Finland recognise foreign judgements concerning successions ipso iure or does the recognition require a special procedure?

Finland does not recognise foreign judgements concerning succession ipso iure. This is a very fragmented area of law. There are in practice, cases where foreign judgements have been recognized de facto without any support from written law.

II. What are the requirements for recognition?

- 1-2. The prerequisites to recognition are normally found in the international treaties on recognition and the complementary domestic legislation. These provisions specify the cases in which judgements may be recognized. The convention on the recognition and enforcement in civil cases, signed between Finland, Denmark, Iceland, Norway and Sweden at Copenhagen on 11 October 1977 regulates the recognition if the judgement is given in some of the Nordic countries and if the decedent had his or her domicile in some of these countries (later: The Nordic Recognition Agreement).

The Nordic Recognition Agreement from 1977 defines the recognizable judgements as judgements in civil and commercial matters. As a recognizable judgement, the agreement defines such judgements and such settlements, which concern the right based on succession or will, the right of the surviving spouse, administration of estate or distribution of estate or the responsibility of the debt of the decedent, if the decedent had Norwegian, Swedish, Icelandic, Danish or Finnish citizenship and he or she had his or her domicile in some of the Nordic countries.

Under these conditions all judgements given in some of the Nordic countries concerning succession are recognized in Finland. According to the Nordic Recognition Agreement, the execution of the judgement given in some of the Nordic countries concerning succession is possible on the condition that before the execution, the local Finnish court declare the judgement enforceable (exequatur proceeding). Exequatur proceedings are of a summary nature. Decision is taken on the application without oral hearing, on the basis of documents.

The recognition of a foreign judgement may, in principle, come up also as a preliminary question in any legal proceedings in Finland.

The recognition and execution of judgements concerning matters of succession given elsewhere than in some of the Nordic countries is almost totally unregulated. No uniform and all-inclusive answer can be found in the rules on the recognition of foreign judgements to the question whether the recognition court reexamines the jurisdiction of the rendition court. It is obvious that the power to reexamine can in any case only extend to international jurisdiction, not to the division of jurisdiction between the domestic courts in the rendition country.

The recognition arrangements made by Finland rely on the presumption that the recognizable judgment is final. This means that it is not appealable to a higher court through ordinary channels of appeal so that the proceedings continue in an appellate instance. Finality is determined by forum law. However, the recognition rules contain a number of exceptions from this finality -criteria.

There is no deadline in the rules on recognition after which the recognition of a foreign judgement is no longer possible in Finland.

3. Following general international practice, Finland has adopted the line that a foreign judgement is not recognized if it is found to be contrary to *ordre public*. Understandably, these grounds for refusal are rarely satisfied in a system where judgements are recognized according to international treaties. To date, no legal praxis of the interpretation of the grounds for refusal has evolved in Finland.

The term *ordre public* refers, in the first place, to a conflict observed in the substantive content of judgement, a conflict between the content of the judgement and the basic values and principles of Finnish legal system. But furthermore it must be required that the proceedings leading to the judgement must satisfy certain basic criteria, especially as regards the hearing of the opposite party: the document initiating the proceedings must have been served on the defendant in an appropriate manner and with a sufficient deadline and the defendant must have been afforded a right to be heard during the proceedings.

The Nordic judgements are an exception from these criteria as they concern the right based on succession or will, the right of the surviving spouse, administration of estate or distribution of estate or the responsibility of the debt of the decedent. The law of that state shall be applied where recognition or execution has been asked. According to the Nordic recognition agreement from 1977 the judgement given in some of the Nordic countries is recognized in Finland even though the opposite party has not used his or her right to be heard in the process, if the judgement concerns a matter of succession.

From the various treaties and rules on the recognition and execution of foreign judgements the general principle may be induced that the judgement is not recognized, if in the same case a judgement has been rendered also in Finland and the domestic case was filed earlier than the foreign case. In principle, the grounds for refusal of recognition are considered *ex officio* by the court.

III Specific rules concerning the recognition and execution of decisions of voluntary jurisdiction or of administrative authorities concerning successions

According to the Nordic Convention on Succession from 1935 the administrator of estate has the right to represent the estate in all Nordic countries, if the court of some of the Nordic

countries has made a decision on the petition of a party to the estate, that the property of the estate shall be handed over to be administered by an estate administrator.

C. Other documents

I. Wills executed abroad

1-2. No, there is no specific procedure for the recognition of wills executed abroad.

II. Official documents concerning the position as an heir

If a foreign court or a foreign authority has been competent to confirm that someone has the position as an heir of an estate, these documents are recognised in practice in Finland without a special support from law.

D. Validity of judgements and other official documents

I know there is no problem for registration in the land register if the petition document is a foreign judgement which is final or if the document is a certificate about the partition of an estate executed abroad which is final too, if the applicant can prove that the court has been competent to make a decision or he can prove that the partition of an estate is made in the correct form according to the law where the partition was made.

3rd part

Conflict of Laws/ International Private Law

A. Literature

Klami, Hannu Tapani - Kuisma, Eira: Suomen kansainvälinen yksityisoikeus. 3., uudistettu painos. Jyväskylä 2000. (ISBN 952-14-0173-7)

B. Treaties

I. Multilateral treaties

a) Which multilateral treaties has your state ratified, which has it signed

Finland has signed or ratified only two of the multilateral treaties which are listed in the questionnaire. The treaty, which is ratified and implemented as part of the national legal system by law in Finland is number 2 in the list or Hague Convention of 5.10.1961 on the conflicts of laws relating to the form of testamentary positions (SopS 77/76) and the treaty, which is signed but not ratified by Finland is number 7 in the list, in other words Hague Convention of 14.3.1978 on the law applicable to matrimonial property regime.

b) Do you have any information whether and how these treaties are being followed in the legal practice in Finland

I haven't ever heard that those treaties had played some special, remarkable role in the legal practice.

II. Bilateral treaties with other European states

1. Which bilateral treaties with other European states has your state ratified, which other has it signed?

1.1. Suomen ja Puolan välillä solmittu sopimus oikeussuojasta ja oikeusavusta siviili-,perhe- ja rikosasioissa (SopS 68/81) (The contract on the legal protection and legal aid in civil law-, family law - and criminal law matters between Finland and Poland)

1.2. Suomen ja Neuvostoliiton välillä solmittu sopimus oikeussuojasta ja oikeusavusta siviili-, perhe ja rikosasioissa (SopS 48/80). Viimeksi mainittu sopimus on vahvistettu voimassa olevaksi Suomen ja Venäjän välillä 11.7.1992. (The contract on the legal protection and legal aid in civil law-, family law - and criminal law matters between Finland and the Soviet Union. This contract is confirmed to be in force between Finland and Russia 11.7.1992)

2. Nordic treaties or Scandinavian dimension

This question does not belong to the original questionnaire, but it's important from the Nordic point of view. 70 years ago all of the Nordic countries managed to agree the common international private rules. Finland, Iceland, Norway, Sweden and Denmark made a contract on international private law matters concerning marriage, adoption and guardianship on

6.2.1931. That contract was implemented as part of the Finnish legal system by an act 18.12.1931. Later on, this contract carried the name „*Nordic convention on Marriage*“.

Another remarkable nordic treaty is „*the Nordic convention on Succession*“. That treaty is based on a contract between Finland, Iceland, Norway, Sweden and Denmark made in 1934 in Copenhagen on international private law matters concerning inheritance, wills and administration of estate. This contract was implemented as part of the Finnish legal system by an act on 16.7.1935. These nordic treaties are based on a double connection model: it's necessary that the decedent had the citizenship of some of the Nordic countries and also that the decedent had domicile in some of the Nordic countries.

C. National rules on conflict of laws („Erbkollisionsrecht“)

I. Which rules govern the national law on conflicts of law (das nationale Erbkollisionsrecht)

There were very few rules in Finland in the national law on conflicts of law in the area of succession up to 1.3.2002 and the whole private international law was full of gaps and was mostly based only on few and old precedents. This situation changed when the parliament accepted in October 2001 the government's proposition on the new legislation. These new rules shall come into force on 1.3.2002 as part of the Marriage Act and the Act of Inheritance. 5 new parts (108-142§§) were added to the Marriage Act and a 26th Chapter (26:1-20) was added to the Act of Inheritance. The titles of these chapters are „Rules on the private international law“.

II. Applicable law absent the choice of law

1. Does your law distinguish between the succession to immovables and to movables

The Finnish private international rules are based on the principle of the unity of estate (Nachlassseinheit). There is only one single conflict of laws for the whole estate.

2. The relevant factor determining the applicable law

- a) The relevant factor in making the choice of the applicable law is domicile (let's name this domicile, domicile I) of the decedent. In cases where the decedent has earlier had his domicile in another state (by definition domicile II), the applicable law is domicile I only, if the decedent was a citizen of the domicile I -state or the decedent had his permanent home (habitual residence) in domicile I-state at least during the five years before his or her death (Act of Inheritance 26:5).

If these rules determine that domicile II is the applicable law, then the relevant factor which determines the applicable law is the citizenship of the decedent (citizenship state). If, all things considered, the decedent had a closer connection to another state (the factual connection state) than to the citizenship state, in that case the factual connection determines the applicable law (Act of Inheritance 26:5.2).

- b) The domicile principle has been chosen because of the fact that it is, from the point of view of all parties, easiest in practice. Main arguments for this principle according to the government's proposal are the following:
- the decedent normally has tighter connections to the state in which he or she lives permanently than to his or her citizenship state

- the estate of the decedent is located mostly in the state where the decedent has his permanent home
- the decedent normally makes his will according to the rules, which are in force in the state where he lives (domicile I)
- the advocates who are guiding the decedent know best the rules and principles, which are in force in their own state
- the courts may solve the problems according to rules, which are in force in their own state
- it is easier to get legal advice on the rules and principles of that state, where the decedent lived in his lifetime

c. Are there special rules for stateless persons and asylum seekers?

No, there are not

d. The situation of property and the applicable law

If, in the country where the real estate is situated, special rules concerning real estate are in force and the aim of these rules is to protect the source of livelihood or profession or the aim is to keep inherited property undivided in the possession of the family or if in that country, where the real estate is situated, analogical special rules are in force, then those rules must apply also in cases, where the applicable law is the law of another state (Act of Inheritance 26:8.1).

e. Other rules and choice of law

According to the new private international rules concerning real estate renvoi is forbidden, because the applicable law is always the material (substantive) law of the domicile. There is one exception to this principle. If the distribution of estate will be carried out according to the rules, which are not in force in Finland but in another state, the administrator of the estate must give an account of his or her administration to someone who has the right to represent the estate according to those rules, which are applicable in that state, where the decedent has on his death his habitual residence or domicile (Act of Inheritance 26:16.3) .

Choice of law may of course lead to the final result, that the formal uniform rule for movables and immovables is broken. This may happen for example when the decedent has used his or her right to choose the law.

3. There is no difference between succession to land and succession to movables in Finland

Questions in this group are irrelevant because the private international rules in Finland are not based on the distinction between the nature of property.

4. Special rules for specific questions

- a.** The decedent had the capacity to make a will, if he or she had the capacity according to the rules of that state, which is determined to be the applicable law. The decedent had the very same capacity to make a will, if she or he had capacity to make a will according to the rules, which were in force in that state where the decedent had his or her domicile or habitual residence and finally the decedent had the capacity to make a will, if he or she had the capacity to make a will according to the rules, which were in force in the citizenship state (Act of Inheritance 26:10).

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- b. There are no special rules concerning the testamentary dispositions being made by two or more persons in one document. According to new rules all the questions concerning the form of a will and a revocation of a will shall be solved by the rules expressed in Hague Convention of 5.10.1961 on the conflicts of laws relating to the form of testamentary positions (Act of Inheritance 26:9.1). That convention is implemented as part of the Finnish legal system by law (835/1976).
- c. The decedent's capacity to make a contract on inheritance (Erbvertrag) and the validity of such a contract shall be solved by the rules of that state, in which the decedent had his domicile at the time when the contract was made. If anyhow, the applicable law on inheritance is the law of another state, validity of the contract on inheritance depends on that law (Act of Inheritance 26:11).
- d-h. All questions concerning validity of the content of a will, possibility of the testator changing or revoking the testament, the rules on how the estate shall be transferred from the deceased to beneficiaries, the administration of the estate and succession to the state or crown shall be dealt with by the law, which has been determined as the applicable law (Act of Inheritance 26:7)

III. Choice of law regarding intestate or testate succession

1. Does your law allow any choice of law regarding the succession

The answer is: yes, the decedent is allowed to prescribe the law regarding the succession (Act of Inheritance 26:1).

2. Detail of the choice of law

- a) The choice of law is possible for all property. The choice of law is always an „all or nothing“ decision. It is not possible to limit the choice of law for a property situated in Finland or abroad. This kind of restriction is null and void from the point of view of choice of law. Therefore, if someone has made such a restriction, it may have legal consequences as a will. In this case it is a question of interpretation of the will.
- b) The decedent may prescribe law regarding the succession that the applicable law is the law of that state, whose citizenship the decedent had at the time when he or she made an order or the applicable law is the law of that state, whose citizenship the decedent had on his or her death. If the decedent has dual citizenship, he or she may make a choice between the laws of these two states in spite of the nature of the factual connections to these two states (Act of Inheritance 26:6.2)

The decedent may also prescribe law regarding the succession that the applicable law is the law of that state, where the decedent has his or her domicile at the time when she or he made an order or at the time of his or her death. It is also permitted to choose as applicable law the law of the state, where the decedent has had earlier his or her domicile.

The choice of law regarding the succession always means the choice of substantive rules of succession, which means that the renvoi is forbidden.

If the decedent was married at the time when he or she made an order of choice of law, he or she may also prescribe the law regarding the matrimonial property between spouses (Act of Inheritance 26:6.3).

- c) The choice of law regarding the succession must always be made in the form of a will. Choice of law made in the form of a will is valid if it is made in the form, which is allowed according

to the Hague Convention of 5.10.1961 on the conflicts of laws relating to the form of testamentary dispositions (Act of Inheritance 26:6.1).

- d)** The choice of law should be made as an express choice, so it is not recommended that it is made tacitly. An express choice is however not the condition of the valid order, the interpretation of a will may indicate that the intention of the decedent was to make the choice of law.
- e)** If someone tries to make a choice which he is not allowed to make, the choice is null and void as a choice of law. It may however have some consequences as a will, if it is possible to interpret the expression as such.
- f)** The choice of law is possible to revoke, but it must be revoked in the form of a will (Act of Inheritance 26:6.4). If someone revokes his or her choice of law regarding the succession, the applicable law shall be determined by the main rule, see C II 2 a.
- g)** The validity of the choice of law depends on the criteria which were in force at the time of making of the choice.

IV. Simultaneous application of more than one law

This question is not relevant from the Finnish point of view.

V. Compensation for different distribution by the state where the property is situated

This question is not relevant from the Finnish point of view.

VI. Succession and marital property

An engaged couple and spouses have the right to choose the law regarding their matrimonial property. The choice must be made in the form of literary contract in order to be valid. The contract is revocable, but the revocation must be made in the same form as the contract, in other words: literary (Marriage Act, section 130).

As the applicable law to the matrimonial relationship the spouses may prescribe the law of that state, where one spouse or both spouses have domicile or the law of that state, whose citizenship the spouse had at the time of making the contract (Marriage Act, section 130.2).

If the domicile of one spouse or both spouses has changed to another state during the marriage, the spouses may prescribe as the applicable law also the law of that state, where the both spouses had their latest habitual residence (Marriage Act, section 130.2).

If the spouses have not used their right to make a choice the law regarding their matrimonial property, the applicable law is the law of that state, where both spouses have their domicile after their marriage (Marriage Act, section 129.1).

If the domicile of the spouses has later moved to another state, the law of that new state is the applicable law after the spouses have had their domicile in that new state at least five years. There is however one exception to this five year requirement rule. The law of the new state is determined as the applicable law immediately after the spouses have got the domicile, if the spouses have had earlier during their marriage domicile in that state or both of the spouses have the citizenship of that state (Marriage Act, section 129.2).

The law regarding the matrimonial relationship between the spouses does not change because of the change of the domicile of the spouses, if the spouses or the engaged couple have made the contract on the applicable law (Marriage Act, section 129.3 1st rule). These rules are

excluded also, if the spouse has got the right to ask division of matrimonial property because of divorce, judicial separation or on the petition of divorce before that time, when the law of another state would be the applicable law (Marriage Act, section 129.3 2nd rule).

If the spouses do not have their domicile in the same state, the matrimonial relationship between spouses shall be dealt with by the law of that state, with which the spouses (all things considered) have the closest connection (Marriage Act, section 129.4).

The applicable law is always the substantial law of the state.

2. „One law is applicable to marital property and another to the succession“

The rules regarding succession and marital property are not coordinated. Because of this fact it is possible that one law is applicable to marital property and another one is applicable to the succession. This kind of situation is possible if the spouses have connections to the different states and these connections determined that the applicable law regarding the matrimonial relationship and the applicable law regarding the succession are not the law of the very same state. This may be a result of the choice of the applicable law.

3. What are the main problems?

There are many possible different ways to protect a surviving spouse if the marriage breaks down by the death. It is possible to give the surviving spouse a strong or weak protection by the matrimonial rules and also a strong or a weak protection by the rules regarding succession. There are logically four different combinations: 1) weak matrimonial - weak inheritance - solution, 2) weak matrimonial - strong inheritance -solution 3) strong matrimonial - weak inheritance -solution and 4) strong matrimonial - strong inheritance -solution. Very often the chosen solution is balanced so that the legal position of the surviving spouse is just and acceptable.

In all Nordic countries the legal position of the surviving spouse is strong and based on model 4. Because of the fact that the rules concerning the application of law may lead to the result that both matrimonial and inheritance rules are based on the model 1, it has been necessary to be prepared for this situation.

Therefore in Finland if the deceased was at the time of his or her death in a marriage, the distribution of estate may be adjudicated, if the final result of the partition of matrimonial property and the distribution of estate is unjust and unfair because of the fact that , the applicable matrimonial law and the applicable inheritance law are determined by the different states. The adjudication is possible if the surviving spouse or the descendants make the claim on it. The adjudication of distribution may lead the final result in favour of the descendants, if they should suffer from the determination of the applicable law (Act of Inheritance 26:13.1).

The measure of the just and fair result must take in to the consideration the final result of such a (fictional) partition and distribution of estate, which had been the final result of the combination, if the law applicable to the succession had been the same as the law applicable to the matrimonial relations (Act of Inheritance 26:13.2).

VII. Law applicable to the form of wills and other testamentary dispositions

1. Which law is applicable to the form of wills

What has been ruled in the Hague Convention of 5.10.1961 on the conflicts of law relating to the form of testamentary dispositions must apply to the form of a will and to the form of a revocation of a will. The same rules must apply to the form of waiving or renouncing the

inheritance, to the form of contract on inheritance and to the forms of all kind of legal acts mortis causa (Act of Inheritance 26:9).

The capacity to make the contract on inheritance (Erbvertrag) and the substantial validity of such a contract and its legal effects shall be governed by the law of the state where the deceased had his domicile at the time the contract was made. If however at the time the contract was made, the law regarding the succession had been the law of another state, that law shall also govern the contract on inheritance (Act of Inheritance 26:11).

2. The form of testamentary dispositions executed by more than one person

There are no special rules for the formal validity of testamentary dispositions in this case, but in this case Hague Convention of 5.10.1961 is in force (Act of Inheritance 26:9.1).

3. Which legal questions are being considered questions of form?

In the Finnish legal system only procedural rules, which define how the will shall be made, belong to the questions concerning the form of a will. A will shall be made in writing in the simultaneous presence of two witnesses, who, after the testator has signed the will or acknowledged his or her signature thereon, shall attest the will with their signatures. They are to be aware that the document is a will, but it is in the discretion of the testator whether or not to inform them of the contents of the will (Act of Inheritance 10:1).

The questions concerning the capacity to make a will and similar ones belong to the questions of the substantial validity of the will (Act of Inheritance 13:1, 14:5).

VIII. Ordre public regarding successions

I. The requirements of the international ordre public regarding successions in Finland

1. The single rule of another state, which had been determined as the applicable rule, must be ignored if the application of it would lead to results, which were in (incompatible) conflict with basic values of the Finnish legal system (Act of Inheritance 26:19.2).

2. Would your law accept ...

- a. No, without a doubt it would be ignored by ordre public
- b. Yes, I think so because the national law of Finland also excluded the children born out of wedlock from the inheritance from their father 1922-1976. But the answer is no, if the question is the right of the child after her or his mother.
- c. Yes, according to the Finnish legal system this kind of solution would be acceptable even though the non-married partner or a homosexual partner does not have the right to inherit a decedent, if she or he has not made a will in favour of his or her partner
- e. The statutory limitation of the testamentary power would be acceptable, but the contractual limitation would not be, if the consequence of that kind of limitation would lead to a conflict with the basic values of the Finnish legal system.
- f. Revocation of a joint will is always valid in Finland. A contract regarding the inheritance would be acceptable if it is acceptable in the state where it was made and the law of that state is determined as applicable law.
- g. Irrevocable renunciation to the intestate succession during the testators life would be acceptable in Finland

- h. Discriminatory testamentary dispositions would be in conflict with the basic values of Finnish legal system
- i. he order of a will against morality would always be in conflict with the basic values of Finnish legal system.

IX. Renvoi and applicable law in states with more than one legal system

1. The common attitude in all Nordic countries is critical against renvoi. Also in Finland the new private international rules regarding matrimonial property relationship between spouses and private international rules regarding succession are based on the same kind of starting point. The rules of conflict do not accept the renvoi. There is only one exception to this principle. The administrator of estate must render account of his or her administration to the person who is competent to represent the decedent's estate according to the private international rules which are in force in the state where the decedent had domicile on his or her death, if the distribution of estate shall not be undertaken in Finland (Act of Inheritance 26:16.4).
2. The distinction between movables and immovables is in this context unknown in Finland.
3. There are neither such special rules for intestate or testamentary succession nor for the formal validity of testamentary dispositions
4. There is only one legal system regarding successions in Finland.

X. Applicable law concerning preliminary questions

If successions depends on a preliminary question concerning family law, the applicable law is determined by independent application (*lex fori*).

XI. Scope of rules on the law applicable to successions

1. Which legal questions are being covered?

According to the law applicable to successions the following legal questions shall be solved in Finland:

- 1.1. The scope of intestate succession, the capacity to inherit, the capacity to get a will
- 1.2. The principle of groups of heirs, the size of portion of estate
- 1.3. The forced share or similar protected share of estate
- 1.4. The advancement on an inheritance, the role of gift *inter vivos* in the distribution of estate, the duty to return back the advancement on an inheritance or gift to real distribution of estate
- 1.5. The waiver or renunciation of the inheritance, forfeiture of a right based on inheritance or a will, disinheritance, the right of an heir or a beneficiary barred time
- 1.6. The substantial validity and legal effects of a will or other dispositions *mortis causa* and the revocation of a will or other dispositions *mortis cause*
- 1.7. The right to administer the estate undivided or to administer and use the property of estate or receive the proceeds of estate and
- 1.8. Right to receive maintenance or support from the estate (Act of Inheritance, 26:7).

- 2a. The International Private Law rules regarding succession shall be applied also to transfer of property, payment of debts and all types of administration of estate.

- 2b.** If the decedent had domicile in Finland on his or her death, the administration of estate covers all the means and debts of the deceased in spite of the fact in which state the means and debts may be. The administrator is also competent in making decisions concerning the means and debts situated abroad.

4th part

Substantive Law on Successions

A. Sources and Literature

I. Legal Sources

Within the family of great legal systems, the Finnish legal system belongs to the branch of the Roman-Germanic legal culture. The importance of the Roman-Germanic legal culture is still quite evident in, for example, the law of inheritance and wills. The framework of the Finnish legal system is based on status enacted by the Parliament. The hierarchy of status includes the Constitution from the 2000 at the top with Acts and Decrees below it. According to the prevailing view, if the content of law is unclear, it may be determined with the help of travaux préparatoires, general legal principles, jurisprudence and legal practice. Legal practice is of particular importance in guiding the interpretation of the law in the field of family and inheritance law. The gap between common law countries and the Roman-Germanic legal culture has greatly diminished in this respect.

The family and inheritance law in force in Finland is a whole formed by numerous provisions. According to the current doctrine, the most important of the sources of law is legislation, in this very context „The Act of Inheritance (5.2.1965/40), the Act on the implementation of the Code of Inheritance (5.2.1965/41) and the Inheritance and Gift Tax Act (12.7.1940/378).

Intestate succession and testamentary succession are governed by a single Act, the Act of Inheritance. The Act of Inheritance is divided into 26 chapters which cover all of the general provisions on inheritance, numerous procedural provisions as well as the provisions on how the estate is to be administrated and finally distributed. In practice the handling of matters concerning inheritance and wills requires a general picture of all the provisions that affect the transfer of property upon the previous owner's death. The Act of Inheritance cannot be applied in a vacuum. Knowledge of matters involving estates requires a lot of information on the sources from Family and Child Law. The most important sources in this context are The Marriage Act (13.6.1939/234, 16.4.1987/411), The Act on the implementation of the Marriage Act (13.6.1929/235), The Marriage Decree (6.11.1987/82), The Paternity Act (5.9.1975/700) and the Adoption Act (8.2.1985/153).

II. Literature and Judgements

Widely used textbooks on the law of successions of Finland are the following (the titles of the books are translated here, the books are published in Finnish)

Aarnio, Aulis - Kangas, Urpo: Suomen jäämistöoikeus I. Lakimääräinen perintöoikeus. Juva 1999 (Intestate succession I), LXIX + 844 pages + indexis 63 pages. (ISBN 952-14-0260-1).

Aarnio, Aulis - Kangas, Urpo: Suomen jäämistöoikeus II. Testamenttioikeus. Helsinki 2000. (The Law of Wills II). LI + 692 + indexis 42 pages. (ISBN 952-14-0240-7).

Lohi, Tapani: Vastuu kuolleen henkilön velasta. Helsinki 1998. XXXII + 418 pages (Die Haftung für die Verbindlichkeiten einer verstorbenen Person). (ISBN 952-14-0107-9).

Lohi Tapani: Ennakkoperinnöstä. Helsinki 1999. XX + 291 pages. (Über die Vorausempfang auf den Erbteil).(ISBN 952-14-0271-7).

If the concept „Judgements“ / “Rechtsprechung“ in the title of this chapter should be understood as a cluster of single cases, „precedents“ concerning the law of succession, it is not possible to make such a list from the leading cases in the Finnish Legal System. The precedents however play a very important role in the interpretation of law. The term precedent is normally used to refer to a decision of the Supreme Court or of the Supreme Administrative Court. Because of the fact that the Supreme Court tends to give guidelines only in important cases, the decisions of the Courts of Appeal (there are 7 courts of appeal in Finland) therefore have a value as precedent in respect of the rest of the cases.

Precedents have never been legally (formally) binding in Finland. A judge in a lower court cannot be punished if she or he departs from precedents. But in the textbooks the precedents play a very important role as a source of law: e.g. in the books „Intestate succession“ and „The Law of Wills“ more than 1200 cases from the Supreme Court and more than 1000 cases from the seven Courts of Appeal are quoted.

B. Intestate succession

1. Inheritance of the relatives

A person may only inherit if he or she is alive at the moment of the decedent's death (Act of Inheritance 1:1). A child conceived prior to the decedent's death stands to inherit if it is born alive (Act of Inheritance 2:1). The capacity to succeed does not depend on nationality, domicile or habitual residence of the heir (Act of Inheritance 1:3). The right to inherit requires a legally valid relationship , for example, a relationship between the parent (motherhood/fatherhood) and the child. Paternity may also be confirmed after the decedent's death (Paternity Act, section 26.4). A person stands to inherit whenever he or she and the decedents are linked in a manner specified in the law i.e. by being related, by marriage, by birth or through adoption. Intestate succession dictates who receives the inheritance in case the decedent has not disposed of his or her property by a will.

The Act of Inheritance is based on the so-called principle of groups of heirs or the parentelic principle (2nd chapter of Act of Inheritance). There are three parentela. The first parentela consist of the lineal descendants (Act of Inheritance 2:1). Lineal descendants have the primary right to the decedent's estate. In a case where the closest descendant has died or lacks the right to inherit, his or her descendants take his or her place (Act of Inheritance 2:1.1). Within the group of lineal descendants the right of substitution is unlimited in the way that each branch shall receive a equal share (Act of Inheritance 2:1.1).

In the first parentela all children, whether born in or out of wedlock after 1975 or adopted after 1980 are entitled to inherit with equal shares.

If the decedent was not married at the time of death and is not survived by any lineal descendants, his or her mother and father each receive one half of the inheritance (Act of Inheritance 2:2.1). The decedent's brothers and sisters divide a dead parent's portion so that each branch shall receive an equal share. In cases where the decedent's brother and sisters have died, their descendants succeed them (Act of Inheritance 2:2.2). If the deceased is survived by half-brothers or half-sisters, they shall inherit on the same basis as full siblings the share of their father or mother. If a half-brother or half sister has died, their descendants

shall take his or her share. If there are no full brothers or sisters or their descendants, the half brothers and half-sisters shall inherit the entire estate. The order of inheritance follows each branch and the right of substitution is also unlimited within each branch in this second parentela (Act of Inheritance 2:2.3).

If the decedent is not survived by any heirs of the first and second parentela, the estate devolves on the decedent's grandparents. If the descendant is survived by grandparents on both sides, they shall be entitled to inheritance with equal shares. If a grandparent is dead, his or her children shall receive the share of that grandparent. If the deceased grandparent had no children, the share of that grandparent shall pass to the surviving grandparent on that side. If there are no grandparents or their children on one side, their share shall pass to the other side. The right of substitution ends with the decedent's uncles and aunts i.e. the siblings of the decedent's mother and father (Act of Inheritance 2:2.1-3). Cousins do not inherit.

II. Are there any special rules for children born out of wedlock or for adopted children?

A. If the child was born out of wedlock between 1922-1976, the child is still nowadays a so-called illegitimate child. The legal position of illegitimate children was -and partly still is- governed by the Illegitimate Children Act from 1922. An illegitimate child took his mother's surname; his or her custody was vested in the mother. The illegitimate child only inherits from his or her mother and her relations as well as his or her own descendants, and these persons alone take the whole property of the child intestate. It was also possible however, during the years 1922-1976, that the putative father made a declaration of legitimation and by this act of acknowledgement or recognition the illegitimate child got the status of a recognized illegitimate child. Such a recognized child has the same right to succeed his or her father as the child born in wedlock. These rules are still important because the average age of children at the time of the death of their parents is very high, about 50 or bit more and because of the fact that the new legislation concerning the legal position of children did not have the retroactive effect.

New legislation concerning the legal position of children came into force in 1976. That practically abolished any differences in the legal position of legitimate and illegitimate children. With regard to the children's right, the same principles apply to all children if they are born on 1.10.1976 or later. At present, a child born out of wedlock also inherits from the father and the father's relatives if the birth of the child has been on 1.10.1976 or later. Under the Paternity Act of 1975, paternity must however be established if the child is born out of the wedlock.

B. It is possible to distinguish two periods of adoption in Finland. During the years 1925-1980 the rules of adoption were based on the principle of weak adoption (*adoptio minus plena*). The weakness of the old adoption means that the bloody tie of the adopted child and his or her biological parents was not broken by the decision to adopt. An adopted child inherits from the biological parents in a normal way and from the adopting parents with certain limitation following from the rules of *portio legitima* or forced shares of the natural descendants of the adoptive parents. If the adopted child dies prior to the adoptor, his right of succession passes to his descendants. Where the adopted child dies leaving no issue, the adoptive parents inherit from him, but property devolved upon the adopted child from a natural relation will revert to the adopted child's natural relations according to the rules of distribution.

The adoption system under the Adoption Act 1980 and under the Adoption Act 1985 differs from the old one. According to the new legislation when the adoption is confirmed, a normal

parent-child relationship is created between the adoptive parent and the child in the legal sense and the parental duties of the child's biological parents terminate (*adoptio plena*). The child is integrated into the adoptive family with regard to provisions based on relationship by blood or marriage. The transfer of the child to the adoptive family is final. Adoption cannot be revoked or dissolved, except by a new adoption.

III. The surviving spouse's share and the influence of marital property

- a) The legal position of a widowed person is always the combination of marital right and right of inheritance, if a person is survived by both a spouse and lineal descendants of the first parentela. According to the Marriage Act, each spouse owns his or her own property and because of this fact it has been said that Finland has a system of separation of property which has been considered the best way to promote equality between the spouses (Marriage Act, section 34). However this is a little bit of a misleading way to describe the content of the matrimonial property system. The spouses have a marital right to each other's property (Marriage Act, section 35). This marital right is a spouse's right to the property of the other. It entitles the spouse to one half of the net value of all of the spouse's property subject to the marital right when the distribution of matrimonial assets is carried out after the dissolution of the marriage. But this is only the main rule.

The main rule of equal sharing does not apply where the partition of property is administered between a surviving spouse and the heirs of the deceased spouse. In such cases the surviving spouse is protected by a special rule under which if he or she would be liable to make the compensation payment to the heirs under the generally applicable rules, he or she is not required to hand over any of his or her property. The purpose of the rule is to protect the surviving spouse personally against the claims of the heirs of the deceased spouse (Marriage Act, section 103.2).

If the surviving spouse is a less-owning party at the partition, the ordinary equal sharing in halves shall be carried out and the heirs are liable to make the compensation payment to the surviving spouse according to the generally applicable rules.

If a person is survived by both a spouse and lineal descendants of the first parentela, the surviving spouse is protected by the right to keep the estate undivided and in his or her possession (Act of Inheritance, 3:1a.1). However, this maximum protection is limited by the lineal descendants' right to demand the distribution of the estate. Regardless of any such demand for distribution, the surviving spouse has the benefit of minimum protection. He or she is entitled to retain in his or her possession until death the dwelling used as the common home as well as all household goods. Only in the case that the surviving spouse owns a dwelling suitable for a home may the lineal heirs distribute the decedent's apartment while the surviving spouse lives (Act of Inheritance, section 3:1a.2). The right to keep the estate undivided is protected against a will by the first deceased spouse (Act of Inheritance, section 3:1a.1). It can under no circumstances be set aside or restricted by a will.

In principle, a surviving spouse may only lose the right to keep the estate undivided where divorce proceedings between the spouses were pending at the moment of death of the first deceased spouse or where there had been a mandatory impediment to marriage (Act of Inheritance, section 3:7). The right to keep the estate undivided does not terminate even if the surviving spouse concludes a new marriage.

- b) If the decedent is not survived by any lineal descendants, the estate devolves on the surviving spouse (Act of Inheritance, section 3:1). The decedent's heirs (so-called secondary heirs) have

a right to the inheritance that is postponed until after the death of the surviving spouse. After the surviving spouse's death, the estate is to be divided between the secondary heirs and his or her own heirs into two halves (Act of Inheritance, section 3:1.2).

When the decedent is succeeded by a surviving spouse, the spouse receives a nearly unrestricted right to dispose of the property inherited. This right may be termed restricted right of ownership. The surviving spouse may, at will, dispose of the property *inter vivos*, regardless of the secondary heirs' interests (by sale, exchange or gift). However, the surviving spouse may not make any testamentary disposition that would prevent the secondary heirs from realizing their lawful right with respect to the estate. Any testamentary stipulation which would infringe the rights of the secondary heirs is null and void (Act of Inheritance, section 3:1.2).

A surviving spouse may only inherit if the deceased is in a valid marriage at the moment of his or her death. The inheritance right of a surviving spouse is not protected against the will of the deceased spouse by rules corresponding to the forced shares of a descendant. However, the surviving spouse has a right to keep the estate undivided in the same manner as described above in chapter A (Act of Inheritance, section 3:1a.1).

IV. Are there any share for unmarried cohabitants or for homosexual cohabitants?

In Finland there is no share for unmarried cohabitants according to the inheritance law. If the same sex partners have registered their relationship, the surviving partner has the same rights as the surviving spouse as described above in chapters A and B.

V. Under which circumstances does the estate go to the state

In a case where the decedent has no surviving relative in the line of inheritance or beneficiary under a will, the inheritance devolves on the state (Act of Inheritance, chapter 5). The estate devolved on the state is administered by the unit of Legal Affairs of the State Treasury Office (Act of Inheritance, section 5:2.1). The unit oversees the administration of the estate inherited by the state, the verification of the authenticity of wills submitted to the state for information and decides on whether state-inherited assets should be handed over to outside or retained for the state if the value of the estate inventory deed is under 500.000 Euros . The council of state makes the decision if the value is more than 500.000 Euros (Act of Inheritance, 5:2.4).

The state does not always retain the ownership of the property it has received. The property may be passed on in whole or in part to the municipality where the decedent last lived or, in the case of real estate, also to the municipality where it is located. The transfer is possible in all cases in which there are no special reasons for the state to retain the property or to use it for some other purpose.

The property received by the State may also be transferred to a relative of the decedent or to some other person close to him or her, if such a transfer can be considered reasonable in the circumstances (Act of Inheritance 5:2.3).

VI. Examples

1. A surviving spouse -case

A, the deceased person ----- B, a surviving spouse

X Y, born in wedlock

Spouse A has property worth 100,000 Euros and surviving spouse B, 50.000 Euros. The debts and liabilities of A are amount to 5,000 and those of B, to 15.000. The partition is computed as follows:

	<u>A</u>	<u>B</u>
property	100,000	50.000
debts and liabilities	5,000	15,000
net wealth	95,000	35,000

The net wealth of the spouses is added up, giving 130,000. This total net wealth is divided into two, giving 65,000 as the share of each side. Thereafter this figure is compared to the net wealth of both sides. If there is a difference between this figure and the net wealth of the surviving spouse, the difference has to be covered by giving the surviving spouse more property. In this example X and Y have to give the surviving spouse 30,000 from A's property, where after the surviving spouse has 65,000.

After that the legal position of the surviving spouse depends upon whether she or he has full ownership of the residence that is suitable as a home for the surviving spouse. Let us assume that B owns a suitable home. In that case X and Y may divide the A's estate and both of them will immediately receive 32.500. But if B does not own a suitable home him/herself and such a home belongs to A's estate, the surviving spouse may retain as one undivided whole in his or her administration, the residence that was used as the joint home of the spouses or another residence that is part of the estate and suitable as a home for the surviving spouse.

The situation changes a bit if the surviving spouse is wealthier than the deceased spouse. The surviving spouse has no duty to give his or her property to the heirs (Marriage Act, section 103.2).

Spouse A has property worth 100,000 Euros and surviving spouse B, 500.000 Euros. The debts and liabilities of A amount to 5,000 and those of B, to 15.000. The partition is computed as follows:

	<u>A</u>	<u>B</u>
property	100,000	500.000
debts and liabilities	5,000	15,000
net wealth	95,000	485,000

In this case the surviving spouse can keep in his or her ownership 485.000 and still have the same right to keep A's estate undivided if she or he does not own the suitable home and such a home belongs to A's estate.

The customary residential chattels in the joint home shall always be left in the administration of the surviving spouse as an undivided whole (Act of Inheritance 3:1a.2).

2. A grandchild- case

A, the deceased person ----- B, a surviving spouse

X, born in wedlock Y, born in wedlock, died

Y1, a grandchild

According to the facts of case 2 and case 1, the legal position of surviving spouse B is the same in both cases. The lineal descendants X and Y1 shall receive immediately or later an equal portion of A's estate. Y1 takes the place of Y and both branches shall receive an equal portion.

3. No offspring -case

Secondary heirs of A

The heirs of surviving spouse

(mother, father, brother,
sister and so on)

A, a deceased spouse

B, a surviving spouse

In this case the estate of A devolves on B (Act of Inheritance 3:1). B has the right to inherit from A and this right does not depend upon the matrimonial relations between A and B. So also in the case where A and B have no matrimonial right to their property because of the marriage settlement, B shall inherit from A. The secondary heirs' right to the inheritance is postponed until after the death of B (Act of Inheritance 3:1.2). After B's death B's estate is to be divided into two halves between the secondary heirs and B's heirs.

Let's assume that on his death, A had property of a value of 400.000 and B had at the same time property of a value of 300.000. A died in 1970 and B in 2002. When B died the value of B's estate was 1.300.000. This 1.300.000 is to be divided into two halves, so that both sides get 650.000. This is only the main rule, there are many exceptions to this.

4. No spouse nor offspring -case

M, A's mother

B, A's brother

A, a deceased person C, earlier deceased sister

C1, a A's niece

Let us assume that the value of A's estate is 1.000.000 Euros. Half of it belongs to his mother, so she shall get 500.000. Because A's father is dead, the brothers and sisters shall divide his portion. The descendants of a predeceased C shall take the place of C. Because C had only one descendant C1, she or he shall receive C's portion. So B and C1 shall get 250.00 each .

C. Execution of a will/testamentary disposition

I. What is the minimum age required in order to make a will?

As a rule, only a person who has reached the age of 18 years may dispose of his or her property by a will (Act of Inheritance 9:1). If a person concludes marriage prior to the age of 18

years, he or she achieves testamentary capacity. He or she retains that capacity even if the marriage is then dissolved before his or her majority.

A minor who has reached the age of fifteen may dispose of any property he or she is entitled to administer by a will and dispose of independently. Such property includes primarily the minor's own earnings from work, the proceeds from them and any property purchased with them (Act of Inheritance 9:1).

II. Formal requirements for wills or other testamentary dispositions

1. Which are the usual forms used in your state for a will

- a) The standard form of the will is strictly regulated. The minimum required is a document signed by the testator and witnessed by two witnesses qualified at the time of the signing of the will (Act of Inheritance 10:1). The witnesses shall be simultaneously present and they are to be aware at the time that the document they witness with their signatures is a will.

The document may be written by hand or typed. The statutory form of the will does not include the date.

- b) The emergency (oral) will (Act of Inheritance 10:3) . If the testator is prevented by illness or other compelling reason from following the standard form of the will, he or she may make it orally in the simultaneous presence of two witnesses. The simultaneous presence of the two witnesses is thus a requirement in form, the neglect of which causes the will to be null and void. The witnesses are to be qualified according to the same criteria as the witnesses in general.

An oral will is only valid if there is a compelling reason that prevents the testator from making it in writing. The reason may be either a physical or a mental obstacle.

The emergency (holographic) will (Act of Inheritance 10:3). An emergency will may also be made by the testator personally writing the text of the will and signing it. The holographic will is valid without witnesses, if the testator is prevented by illness or some other compelling reason from using the standard form of a will. The requirements for making a holographic will are thus the same as those for an oral will. A typical situation for making a holographic will is suicide.

2. The question on international testaments is not applicable in Finland

Finland is not a signatory state to the Washington Convention of international testaments of 26th October 1973.

3. How many percent of people die intestate or leaving a will?

In 1996 I published an empirical study on wills. According to research, 25 % of all people leave a will and 75 % of people shall die intestate. The most common type of will is joint will of husband and wife: more than 36 % of them leave a will in favour of the surviving spouse. The activity of making a will depends clearly on the size of the estate. If the size (value) of the estate is high, it is highly probable that the owner has made a will. It is the same kind of correlation of the activity to make a will if the owner has no close relatives and without a will the inheritance devolves on the State.

The average time to make a will is about 9 years before death.

4. Special forms of testaments -what is the maximum period of validity?

An emergency will, whether oral or holographic, is only valid for a short time. The testator is to make a new will according to the statutory requirements if she or he has had the opportunity to dispose of his or her property in writing (Act of Inheritance 10.3.2) for three months after the obstacle has been removed.

5. Testament's register

In Finland we do not have a register of testaments, so it is not possible to register testaments made abroad .

D. Wills and testaments

I. Erbeinsetzung (=universal will or universal legatee) und Vermächtnis (=legatee or legacy or bequest)

The Finnish Code of Inheritance makes the clear distinction between „Erbeinsetzung“ and „Vermächtnis“. If there is a question about „Erbeinsetzung“, the person to whom the will is made, he or she is entitled to the decedent's estate among the heirs and the surviving spouse. A heir and a universal legatee shall be considered parties even when their rights have been contested (Act of Inheritance 18:1).

If there is a question about „Vermächtnis“, the person to whom the will is made, he or she is not entitled to the decedent's estate. A legacy that is to be executed from a undistributed estate shall be executed as soon as this can be done without causing detriment to anyone whose right is dependent on the settlement of the estate (Act of Inheritance, chapter 22).

II. Bequest: Does it make the beneficiary owner of the property or does it create only an obligation against the heir?

To the extent that a will infringes the right of an heir to a forced portion, the will is invalid in respect of such heir. The situation may be such that the value of the bequest is so high, that a will infringes the right of an heir to a forced portion. In that case a forced portion of an inheritance prevents fulfilment of the bequest. According to the Finnish Law the bequest creates only an obligation against the decedent's estate or after the distribution of estate against the heir.

III. Administration of the estate

1. Is the administration of all estates mandatory

Yes, the administration is mandatory, but the way in which it is done is voluntary. There are three different possibilities of administration of an estate. The first is private administration of an estate (Act of Inheritance, chapter 18). Private administration is based on the decision making of the parties concerning the decedent's estate. When special administration of a decedent's estate has not been arranged, the parties (the heirs, the universal legatees and the surviving spouse) shall jointly administer the property of the estate in order to settle the estate (Act of Inheritance, section 18:2)

The second way to administer an estate is the so-called official administration of an estate (Act of Inheritance, chapter 19). On the petition of a party to the estate, the court shall decide that the property of the estate shall be handed over to be administered by an estate administrator (Act of Inheritance, section 19:1.2).

The third type of administration is the administration by the executor of the will (Act of Inheritance, section 19:21). If an executor has been appointed in the will, he or she shall carry out the administration of the estate.

2. Who may nominate the administrator?

In the case of private administration no nomination of a administrator is needed because this alternative is sk. presumptive model, which is based directly on the law. In practice this is the most common way to administer the estate, about 99 % of all estates shall be administered in this way.

The court shall always nominate an estate administrator and the executor of the will must be appointed in the will by the testator.

3. May the administrator transfer property belonging to the estate?

In private administration the parties (the heirs, universal legatees and the surviving spouse) must make all decisions unanimously, they must always reach a consensus about the content of a decision. The parties shall present the estate in respect of third parties and can both sue and be sued in matters concerning the estate. Only a measure which does not bear delay may be performed even if the consent of all the parties cannot be obtained (Act of Inheritance, section 18:1.2).

In official administration the estate administrator shall represent the decedent's estate alone in respect of third parties and can sue and be sued in matters concerning the estate (Act of Inheritance, section 19:13). So in this model the parties are excluded from the decision making in the administration. Real estate may not be transferred to the third party by the estate administrator unless the parties consent (Act of Inheritance , section 19:14). If the said consent cannot be acquired, the court on petition may agree the measure.

The executor of the will has the same authority as an estate administrator, unless the will indicates otherwise. The executor of the will shall not have the right to surrender the estate into bankruptcy. The authority of the executor of the will shall not diminish the right of the surviving spouse to participate in the settlements of the estate (Act of Inheritance 19:21.2).

There is no time limitation or any maximum period for the administration of the estate.

4. Does the court control the administrator?

It is possible to divide the control of the administration into two categories: control during the administration and control after the administration. During the private administration, each of the parties has the right to make a petition to the court that the estate shall be handed over to be administered by an estate administrator. The change of the administration model is always possible, the system is very flexible.

During the official administration, the control of the administration belongs to the parties. On the petition of a party to the estate or of a person whose right is dependent on the settlement of the estate, the court may require that the estate administrator render an account of his or her administration or appoint a person to examine and report on the administration (Act of Inheritance 19:18.2). If an estate administrator is not suitable for his or her duties, he or she shall be dismissed on the petition of a person whose right is dependent on the settlement of the estate (Act of Inheritance 19:6.2). If the court becomes aware of factors on the basis of which an estate administrator is to be considered unsuitable for his or her duties, the court may dismiss him or her on its own action.

After the administration, the control of private administration is based on the compensation of damages. A party shall pay compensation for any damage that she or he has caused, deliberately or through negligence, in administering or taking care of the estate (Act of Inheritance, section 18:7). In the official administration the estate administrator shall observe all care in his or her duties and shall pay compensation for any damage that he or she has caused deliberately or through negligence to the estate or to a person whose right is dependent on the settlement of the estate (Act of Inheritance, section 19:19.1-2).

The control of the executor of the will is similar to the control of the estate administrator.

IV. Which other clauses are being used often?

The testamentary trust -institution (or similar one) is unknown in Finland.

E. Special rules concerning certain types of property

The Act of Inheritance from 1965 did not include in its original form special rules concerning distribution of a farm, but the law was changed quite radically in 1983. Chapter 25 of the Inheritance Code regulates the distribution of a farm as part of an estate (Act of Inheritance, sections 25:1 - 25:10). If the estate includes a farm from which the farmer of the farm and his or her family members can obtain their primary livelihood, a heir or recipient of a universal legacy who stands to inherit at the time of the distribution and who has sufficient vocational qualifications to engage in an agricultural occupation (*suitable farming successor*) shall have the right to demand that this farm together with the agricultural chattels belonging to it is undistributed, in his or her portion.

See closer the distribution of a farm *Mattila, Heikki E. S.*: Les successions agricoles et la structure de la société. Un étude en droit comparé. Helsinki 1979 (ISBN 951-9464-04-2).

F. Limits to the revocation of a will (joint and mutual will)

The will is the expression of the last will of the testator. Thus a will needs to be revocable at any point prior to the testator's death. The decedent cannot make a binding promise or contract not to make or not to revoke a will (Act of Inheritance, section 10:5). The donatio mortis causa is forbidden if not made in the form of a will in Finland (Act of Inheritance).

While the revocation of a will is free in form, the most common way is for the testator to make a new will that is in conflict with the earlier one. The new will may overlap either in whole or in part with the earlier one.

If a will has been made in writing as per the statutory form, the simplest way of revoking it is to destroy the document, for instance by tearing up or burning the document or by completely striking through the text.

The revocation of a will may cause the testator to lose his or her's own right to another will. A person, by unilaterally revoking or changing a reciprocal provision (the joint and mutual will), shall forfeit his or her right under the will (Act of Inheritance, section 10:7).

G. Limits on the testamentary power of disposition

I. Legal nature of limitation

The 7th chapter of the Act of Inheritance regulates forced portion of inheritance. The legal nature of forced portion is „sachenrechtlich“ in the sense that an heir has the right to get his or her forced portion from the estate. If the decedent has bequeathed his or her estate or a part thereof on condition that the beneficiary pay the forced heir a sum of money that corresponds to the forced portion or the part missing thereof, a will shall be valid if the payment takes place at the latest within a reasonable period specified by the heir (Act of Inheritance, section 7:5.2). So the legal nature of forced portion is voluntary „obligationrechtlich“. Forced portion has nothing to do with the possible need of support of an heir.

II. Who is entitled to the force share

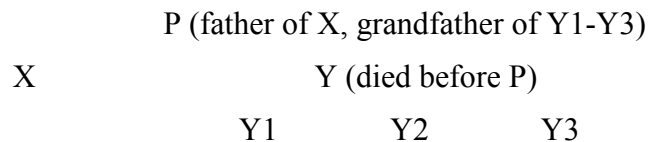
A lineal descendant and an adopted child as well as the descendant of such shall be entitled to a forced portion of the estate of the decedent (Act of Inheritance, section 7:1.1).

III. How big amount is the forced portion?

There is now an upper value limit of the forced portion. The only limitation of the forced portion is that the forced portion shall be one half of the value of the regulatory portion of the estate that according to the main rule devolves on the heir (Act of Inheritance 7:1.2).

In determining the forced portion, a person whom the decedent has disinherited in a will or who for some other lawful reason shall not inherit shall also be taken into account (Act of Inheritance 7:2).

Example



regulatory portion according to the main rules

X= ½, Y1, Y2, Y3 each of them 1/6

the forced portion

X= ½ x ½ in other words 1/4, Y1, Y2 and Y3 each of them ½ x 1/6 or 1/12

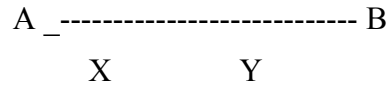
IV. Is there a time limit in order to take court action to claim the forced share?

It is not necessary to take legal action in court to enforce the forced portion. To the extent that a will infringes the right of an heir to a forced portion, the will is invalid in respect of such a heir. However, in order to retain his or her forced portion in full, the heir must serve notice thereof upon the beneficiary under the will within six months from the date when she or he was informed of the will (Act of Inheritance 7:5.3).

V. Are gifts made by the testator or contracts on marital property taken into consideration for calculating the amount of the forced share?

In determining the forced portion, consideration shall be given to the value of the property that, under the Marriage Act, belongs to the testator. So in this context a contract on marital property (the marriage settlement) may play a great role.

Example



A and B have made contract on marital property in which the spouses have *excluded* from the marital right any property owned or later acquired by a spouse. In this case one must only separate A's and B's assets to define A's estate. So if A owns let say 1.000.000 Euros and B 600.000 Euros, the size of A's estate is 1.000.000. Based on this the regulatory portion of an heir is 500.000 and the forced share 250.000.

If A and B did not have the contract on marital property (the marriage settlement), B would have had the matrimonial right to A's property. Under these conditions the size of A's estate would have been the following:

$$1.000.000 + 600.000:2 = 800.000$$

And based on this the regulatory portion of A and B had been 400.000 and the forced share, half of it, in other words 200.000.

The gifts given by the deceased in his lifetime (gifts inter vivos) shall play a great role in the forced share system. The role of the gift must always be calculated so that the calculation takes into account firstly the concrete estate, which means the net property.

Example:

A , gross of his estate	1.000.000
Debts	600.000
Net	400.000

If, then the owner has given gifts inter vivos, those gifts must be taken into account in the following way:

- 1) An addition shall be made first to the assets of the estate for an advancement made by the decedent. According to this rule all gifts, given by the decedent during his or her lifetime to a lineal descendent, shall be deducted from the inheritance of the latter, unless otherwise stipulated or unless a contrary intention can be inferred from the circumstances (Act of Inheritance 6:1, Act of Inheritance 7:3.3) .
- 2) An addition shall be made secondly, in the absence of special reasons to the contrary, for a gift given by him or her when living in such circumstances or under such condition that, with regard to its intent, the gift shall be equated with the will (Act of Inheritance 7:3.3).
- 3) And finally, thirdly an addition shall be made also when the decedent has given a gift to his or her descendant or adopted child or to a descendant or spouse of the same if the

apparent purpose of the gift was to favour its recipients to the detriment of an heir entitled to a forced portion (Act of Inheritance 7:3.3).

In the absence of circumstances to the contrary, the value of the property shall be determined according to its value at the time it was received (Act of Inheritance 6:5, Act of Inheritance 7:3.3).

Let's now assume that A gave a gift to X in 1989 and the value of the gift was at the time 2.000.000. The value of the gift must now be added to the net value of the estate, which addition gives the result of the value of „the forced share estate“ 2.400.000. The regulatory portion of each heir in this case is 1.200.000 and the value of the forced share of each is 600.000. Now we can notice that there is not enough money in the estate to pay the forced share to Y. Y alone gets the whole estate, but there is still a gap between his forced share and the real share. In these circumstances Y has the right to ask for the supplement to a forced portion by action within one year from the date the heir was informed of the death of the decedent and of the gift made by the decedent infringing the right of the heir to his or her forced portion; however, no later than within ten years after the death of the decedent (Act of Inheritance 7:10).

H. Waiver or renunciation of the inheritance or of a forced share

Notwithstanding the provisions on the right of an heir to a forced portion, the decedent may disinherit said heir if the heir, through a deliberate act, has seriously offended the decedent or a relative or adopted child capable of inheriting the decedent or a decedent of such person. The same shall apply if the heir continuously leads a dishonourable or immoral life (Act of Inheritance 15:4.1).

The disinheritance shall be stipulated in a will stating also the reason thereto (Act of Inheritance 15:4.2).

An inheritance forfeited by an heir in the manner provided by an heir shall devolve on the person who would have been entitled to the inheritance if the heir had died before the decedent (Act of Inheritance 15:5).

Example

	A	
X		Y
		Y1

A had two sons and because of immoral life of Y, A had disinherited Y in his will. A left the estate, the value of which is 100.000. Now X and Y1 shall share the estate and both of them shall get 50.000. Of course A may limit Y1's right to the forced portion, i.e 25.000.

I. Transfer of property upon the testator's death

I. Is there any special procedure where and when the inheritance is being opened?

Succession is opened by death or by declaration of death. The death opens the process in which the estate of the deceased shall finally pass to the heirs who at the moment of death are entitled to intestate succession to the deceased's estate.

A missing person may be declared dead by a decision of court of the last known habitual residence of the person. The declaration of the death creates a presumption of death and of the moment of death (Act on Declaration on Death, section 11).

II. Is there any rule upon the persons dying at the same time

If an heir has died and it cannot be proven that she or he survived the decedent, the heir shall be considered to have died before the decedent. In other words under such circumstances such persons do not succeed each other (Act on Inheritance 1:2).

III. Is the property of estate transferred to the heir immediately upon death ?

This question concerning the transfer of ownership (or property) from the deceased person to his heirs has been under very intensive discussion in Finland from the 1930's until the 1970's. According to the standard view in Finland the answer to the question is: the inheritance can be described as a process, which may last in fact quite a long time, from months to years. The process is opened by death and after the death the administration of estate starts and firstly, after the distribution of the estate the ownership is transferred to the new owner. As I described earlier, the administration period gives guarantees to the heirs that a single heir cannot make decisions concerning the estate alone.

IV. Acceptance and renunciation of the inheritance

If an heir, by accepting the will or otherwise, gives notice to the decedent in writing that he or she renounces the inheritance, the said renunciation shall be valid (Act on Inheritance 17:1.2).

However, the heir shall receive his or her forced portion unless he or she has received reasonable consideration thereof or unless his or her spouse, on the basis of a will, or his or her descendants, by operation of law or on the basis of a will, receive property corresponding to the forced portion (Act on Inheritance 17:1.2).

After the death of a person an intestate heir as well as an beneficiary under a will may renounce his or her rights to the testate as long as he or she has not taken part in administration of the estate, disposed of the property contained in the estate or otherwise taken such measures which indicate to a third person that he or she has accepted and received the inheritance or the will (Act on Inheritance 17:2a).

The renouncement must be made in writing and it is binding also upon a descendant who has not received property corresponding to his or her forced portion. Such a renouncement made after the death of a person is also legally binding upon the creditors of the heir or beneficiary.

V. Are there any limitations on the equitation of the property by foreigners

A foreigner has the same rights as a Finnish citizen to inherit in Finland. If Finnish citizens do not have a right to inherit in a State or Finnish citizens as heirs are in a less favourable position to inherit than citizens of this State, a corresponding restriction regarding the citizens of that State may be provided by Decree (Act on Inheritance 1:3). This is a very old rule, which has no role in practice.

K. Payment of claims against the estate -responsibility of the heirs and beneficiaries

I. Do the heirs/beneficiaries acquire the estate as well as the debts?

The estate of a deceased person passes upon death to the heirs and/or beneficiaries under a universal will. The devolution takes place in the form of universal succession. The estate devolves as a whole on the heirs, including the assets, debts and liabilities of the deceased. They become also, in principle, liable for the debts of the deceased, but an heir may renounce the inheritance as long as he or she has not taken such measures that the heir can be deemed to have accepted the inheritance.

If the estate is not surrendered into the administration of an administrator or into bankruptcy upon a petition made within one month of the inventory of the estate, a party shall be liable for the debts of the decedent that he or she knew of at the time of the inventory (Act of Inheritance 21:1).

If the distribution of the matrimonial assets or of the inheritance is carried out before all of the debts are paid, a party who has participated in the distribution of the matrimonial assets or of the inheritance or received property devolving on him or her in such distribution shall be liable for the debts of the decedent which he or she knew of at the time (Act of Inheritance 21:12).

II. If there is more than one heir/beneficiary, is there a joint responsibility or is every heir responsible only for a certain quota of the debts

If more than one person is liable for the debts of the decedent, they shall be jointly liable. What one person has paid shall, to the extent that compensation therefore is not paid from the assets of the estate, be apportioned among those liable as is deemed reasonable, taking into consideration the guilt of each and the other circumstances (Act of Inheritance 21:16).

III. Is the heir's responsibility limited to the net amount of the estate?

The main rule is, that if the parties of the estate do take care of their duties, the responsibility of parties are limited to the value of the estate. But if they do not take care over their duties, they are responsible for the debts along with their own property (Act of Inheritance 21:1).

If the party in whose care the estate is, fails to have the estate inventory carried out in due time, he or she shall be liable for all the debts of the decedent (Act of Inheritance 21:14).

The personal responsibility of the debts shall apply if a party, at the inventory of the estate or in confirming the inventory deed under oath, knowingly reports something falsely or deliberately fails to report a factor in his or her knowledge and in so doing endangers the rights of the creditors (Act of Inheritance 21:14).

L. Plurality of heirs

I. Structure

1. If there are more than one heir, do they form a common property or which type of honourship?

This question concerning the difference between „Gesamthands- oder Bruchteilsgemeinschaft“ belongs to the old legal tradition, which was known as

„Begriffsjuriprudence“. From the analytical point of view this question is not important; it is much more important to analyse what type of rights and duties the parties have according to the positive law between the death and the final distribution of the estate. To this latter question it is possible to give an answer without taking into account the distinction between „Gesamthands- oder Bruchteilsgemeinschaft“. Instead of this distinction the devolution may be described as a process in which the ownership from the previous owner transfers little by little to the heirs.

2. Who administers the estate if there are more heirs?

When special administration of a decedent's estate has not been arranged in accordance with the Act of Inheritance, the parties shall jointly administer the property of the estate in order to settle the estate (Act of Inheritance 18:2).

II. Partition of the estate

1. Is there a partition of every single property (partition in nature)?

This question is in the same way useless as question L1 in interpreting the positive law. We do not need these kind of questions to be able to give an answer to the question: „what the heirs may do or must do during the administration before the distribution of estate“. The heirs must make all decisions during the private administration unanimously. If they are unable to make decisions, the estate may transfer from the private administration to the administrator.

2. Is there any form required for the partition?

In this sense, during the administration of estate and before the distribution of estate, certainly not. But of course there are formalities for the distribution, but in this questionnaire there is no question about it. By the way, why?

M. Alienation of a share in the inheritance

1. Can a share of the inheritance be alienated to a third person?

Upon the death of the decedent, an heir or a universal legatee may transfer their positions within the estate to one another (Act of Inheritance 17:3).

2. Are there any form required for the alienation?

The alienation must be made in writing (Act of Inheritance 17:3).

3. Are the other heirs entitled to buy the share first?

No, they must accept the alienation in all circumstances.

N. Proof of the position as an heir

I. Is there any special form of proof for the heir or the administrator/executor

The inventory must indicate the identity of the heirs and the beneficiaries under a universal will. The inventory can be supplemented by a separate certificate (Act of Inheritance 20:9a).

II. Which is the content, consequences and especially the probatory force of such a certificate?

The certificate confirms that all the heirs and beneficiaries under a universal will in the inventory are true and rightful heirs and entitled to the estate. A legal act, which the heirs and beneficiaries under a universal will have made instead of the estate with someone who is not a part of the estate, is valid, if the legal act is made by all the heirs and beneficiaries in the inventory even if there is a party, who is an heir or beneficiary under a will and therefore his or her name should be in the inventory, but it is left out of the list of parties, if and only if the person with whom the legal act was made did not know and he or she should not have to know that there was a lack in the inventory (Act of Inheritance 20:9c).

The question of the validity of the certificate abroad is also difficult. The system is created to protect all persons who are taking legal acts with the heirs and beneficiaries instead of an estate. The validity of certificate abroad depends upon whether a foreign court accepts the certificate and also on the other criteria for a valid legal act.

III. Which authority makes the certificates?

The local registration office gives the separate certification upon application of the heirs (Act of Inheritance 21:9a.2). The local registration offices (37 in Finland) are local state administrative authorities. The local registration offices are responsible for maintaining their regional Population Information System and their local information services, as well as for acting as both the local authority handling Trade Register and Register of Associations matter and the guardianship authority. Other services offered by the local register, notary public services, the investigation of impediments to marriage and performances of civil marriages and the same-sex partnerships, name changes and finally the confirmation of the list of parties to estate inventories.

The local registration office is competent to confirm the list of the parties of estate also in cases where there is a party, who is not a Finnish citizen. In Finland the local registration office does not confirm the amount of property and debts of estate in Finland or abroad.

O. Reform

I. Are there any plans to reform the law of inheritance in Finland

We have here in Finland made two proposals to change a subsystem in Code of Inheritance. The first one has the connection to the forced share system. The government has given the parliament a proposal, which takes away one type of gift from the forced share system, which is still currently possible to be added to the value of estate. It is the third addition, which shall be made also when the decedent has given a gift to his or her descendant or adopted child or to a descendant or spouse of the same if the apparent purpose of the gift was to favour its recipients to the detriment of an heir entitled to a forced portion (Act of Inheritance 7:3.3).

Another proposal is made by the working group of ministry of justice. According to their proposal the system of personal responsibility of debts should cut out the Code of Inheritance.

II. Which major reforms has been made for the law of inheritance within the last years?

1965 The Act of Inheritance was enacted

Finlande

- 1983** A surviving spouse got the right to administer the estate of his or her former spouse as an undivided whole
- 1983** A suitable farming successor got the right to continue the farm
- 2001** Partners in same-sex partnership and spouses in marriages got the same rights (in force 1.3.2002)
- 2001** Private-international rules were added to the Marriage Act and to the Act of Inheritance (in force 1.3.2002).