Topic Legacy

I. What is the difference in the object between „testament“ and „codicil“ (Testamentary clause on legacy)?

Only a testament provides the possibility of establishing an heir – A codicil only provides the establishment of a legacy. Codicil can exist simultaneously with a testament, or ab intestato, meaning even though a testament was not written.

II. Is the codicil (Testamentary clause on legacy/Kodizill – in german) in some civil codes in Europe today - use google , may help

The differentiation between testament and codicil was taken from Roman law and was later acquired by ABGB (1811), from which the inter war drafts of Civil law codifications took their inspiration. But not only them, throughout time ABGB served as a source of inspiration also for the Czech civil code (2012) and Civil code of Lichtenstein. After the amendments of ABGB in 2004 and 2015, the institute of codicil was taken out of the codification, thus leaving the codicil only in the Czech and Lichtenstein Civil Codes.

For example, in Spain it is also in force, but not in all the Autonomous Communities, that is, not all over the country. They are admitted to Navarrese civil law, Catalan and Balearic Foral Law.

In Portuguese law there is a similar figure but with more restrictions, since it is only possible to establish some recognitions and instructions on minor issues.

III. Was the legacy possible in Czech CC1950 and 1964? Was there any substitution?

Though the institute of legacy was possible in the Czech CC 1950, it was heavily restricted - the value of all legacies (combined) couldn't be more than ¼ of the whole inheritance, and simultaneously it couldn't have been objects of great value.

The institute of legacy was no longer present in the Czech civil code from 1964. But Communists were persuaded that those, who had any benefits from the inheritance, should have had a liability for the testator's debts. Even the CzCC from 1950 acknowledged situations, in which the successor could have been admitted to a certain object (a house, a car) and then held the liability for debts of the testator to the amount of the value of the object. This type of succession was known as "singular succession" at the time.

IV. What is the different between legatum and fideicommisum in roman law?

Legatum – a formal establishment of a legacy that was possible to conduct only in testament. Later also in Codicil. It was also protected by the law early from the times of the Republic – even though there existed many restrictions (in form and content). For example, only Romans could have profited from Legatum.

Fideicommissum – an informal legacy, which for its lack of formal elements wasn't protected by the law (In the times of the Republic). The institute got its protection later from the emperor. Because it wasn't restricted, it was possible to establish fideicommissum not only in a testament, but also independently of the testament, and even in a case when the testament wasn't made at all. Both

Romans and foreigners could bequeath property by a fideicommissum. With the law protection commenced also the restrictions for fideicommissum – for example SC Pegasianum included the restrictions regarding the Falcidian portion also for the Fideicommissum.

V. Do you have a trust or trust like institute ij your law?

Spain – no

Cyprus - is considered as a common law country, a comprehensive definition of "trusts" under Cyprus law does not exist. Cyprus trust law is mainly regulated by the Trustee Law, Chapter 193 and the International Trusts Law of 1992, and is essentially based on the English system. The court, through case law, has deemed that a trust arrangement is a structure whereby the holder of a property (the "trustee") has an obligation to manage that property for the benefit of another (the "beneficiary"). The trust is created by transferring the legal ownership of the trust property from the previous owner (the "settlor") to the trustee, though the beneficial ownership over that asset belongs to the beneficiary. The terms upon which the trustee should manage the property are usually written and expressed in a trust deed. Finally, the validity of the trust will depend on the existence of the following three certainties: 1. Certainty of intention – express intention of the settlor to create the trust, 2. Certainty of subject matter – readily identifiable assets that will form the trust property, 3.Certainty of objects – beneficiaries must be ascertained or ascertainable