# Seminar: The interpretation of the will in Roman juristic writings

## Prof. Francesca Scotti

***COURSE AIMS AND EXPECTED LEARNING OUTCOMES***

The purpose of the Seminar is to examine a series of law cases taken from the texts of the late-republican and classical Roman jurisprudence concerning the interpretation of ambiguous testamentary provisions.

In the late-republican and classical age whenever an ambiguous provision was found in a will the help of a jurist was required in order to i n t e r p r e t every unclear disposition to reconstrue a meaning that was supposed to be as much as possible consistent with the intent of the testator.

Therefore students will be led to confront the fragments of the Digest of Justinian from which the scrupulousness of the jurists in trying to save the last wishes of the deceased emerges with evidence.

Therefore through the exegesis of the texts students will be able to understand the function of interpretation as an indispensable tool to help testators to acquire a sort of social immortality that was supposed to go beyond physical death. In fact, thanks to the appointments of heirs and the predisposition of both bequests and testamentary trusts, every *pater familias* would ensure the perpetuation of his personality and social bonds after his death according to a sort of ‘ideology of survival’ that would characterise the ruling classes during the late republic and the classical era. In fact, every time a jurist would declare a testamentary provision unclear and thus void, he would put a definitive end to the life of the deceased.

At the end of the Seminar, students will acquire the ability to examine the doubtful cases described in the Roman juristic writings by following a series of logical steps aiming at identifying:

1. the actual case;
2. the possible material context (if its knowledge is necessary to better understand the problem);
3. the problem;
4. the reason why the problem arises (the so-called ‘*ratio* *dubitandi*’);
5. the solution offered by the jurist;
6. the reasons that support the solution (the so-called ‘*ratio decidendi*’).

Students will also be able to recognize the most relevant characteristics of gifts out of the inheritance, testamentary trusts, wills, manumissions etc., made by both *sui iuris* men and women, civilians and soldiers.

Lastly, thanks to the reading of the passages taken from the juristic writings, students will be able to acquire synthesis skills in expressing even complex legal concepts without indulging in unnecessary digressions aimed only at weighing down the legal arguments.

***COURSE CONTENT***

The exegesis will concern the passages relating to the interpretation of ambiguous provisions (such as, for example, heir’s institutions, disinheritances, substitutions, appointments of guardians, manumissions, bequests and testamentary trusts) found in the wills made by *patres familias*, *sui iuris* women and soldiers. Naturally, the analysis of the texts will not ignore, where possible, the ascertainment of the material context of each provision. The analysis’ aim is to understand the meaning of key concepts like:

1. relationship between *patres familias* and their subordinates;
2. aims of a will;
3. appointment of an heir;
4. disinheritance;
5. substitutions;
6. testamentary manumissions;
7. appointments of guardians;
8. differences between bequests and testamentary trusts;
9. differences between legatees and heirs.

To this end:

1. the original differences between gifts out of the inheritance and trusts of individual things and the subsequent and progressive approach of the former to the latter (characterized, the latter, by a lesser degree of formalism) will be taken into account;
2. the most relevant differences between ‘*ius commune*’ (concerning the wills of ‘*pagani*’, that is Roman citizens not serving the military) and ‘*ius singulare*’ (regarding the wills of ‘*milites*’, that is Roman soldiers) will be traced in the fragments taken from various juristic writings.

***READING LIST***

Notes from lectures. Additional study materials will be made available online.

***TEACHING METHOD***

Face-to-face or distance lectures (depending on the pandemic situation) focused on:

1. the analysis of the texts of Roman jurisprudence regarding the interpretation of ambiguous testamentary dispositions;
2. the presentation of the results of the most recent studies and data from Latin literary sources (e.g., Pliny the Elder, Ovid, Virgil, Horace, Catullus, Petronius, Martial) on the *modus vivendi* of the ancient Romans. Even the iconographic investigation (through the vision of images of monuments, mosaics, wall paintings, vases, fragments of fabric, all from the Roman age) will contribute to ‘vivify’ the content of those *mortis causa* provisions.

During the Seminar, a colleague from an Italian university will hold a lecture on controversial cases relating to the Roman law of successions.

***ASSESSMENT METHOD AND CRITERIA***

Students will be assessed on the basis of:

1. active participation in the exegesis of Latin texts (accompanied by an Italian translation) aimed at identifying in each step – with the help of the lecturer – the case, the problem submitted to the attention of the jurist, the reason why the problem exists, the solution and the reason it is based on;
2. oral exam consisting in the presentation of a passage analyzed during classes, at the students’ choice.

The assessment of both participation and oral exam will take into account:

1. the appropriate use of technical-legal terminology;
2. the reasoned and coherent structuring of the discourse;
3. the ability to identify the links between the various institutes and the legal problems involved in the law cases examined during the Seminar.

At the end of the exam, students will get one of the following marks: ‘sufficient’, ‘acceptable’, ‘good’ or ‘excellent’. Below sufficiency, the test will be negatively evaluated.

The grade of the oral exam will take into account both the participation during classes and the quality of the oral presentation of the fragment chosen by the student according to these percentages: 40% (participation) and 60% (oral presentation).

Depending on the situation of the pandemic, the final oral interview will be held face-to-face during the sessions of both exams of Roman law and Roman law Institutes or otherwise remotely, on the Microsoft Teams platform, on the dates that will be indicated by the lecturer at the end of the cycle of the Seminar’s lessons.

Professor Scotti will carry out this evaluation.

***NOTES AND PREREQUISITES***

There are no prerequisites to attend the course. However, students willing to attend the Seminar are supposed to have both a interest and an intellectual curiosity about problematic cases involving the interpretations of unclear testamentary dispositions faced and solved by Roman jurists.

In any case it is recommendable to have a basic knowledge of the Roman law of successions.

Other details both on the program and the reading list will be provided during classes.

**N.B**: The Seminar is open to students enrolled in all academic years and attendance may also be reiterated by those who attended previous Romanistic Seminars (in fact the fragments that will be studied during this Seminar are different from the ones examined during the previous Academic Years).

Should the current Covid-19 health emergency not allow face-to-face teaching, remote teaching will be carried out according to the procedures that will promptly be notified to the students.

*Office hours and room*

Professor Francesca Silvia Scotti will meet students every Thursday at 10.30 a.m. in her room on the 4th floor of the ‘*Gregorianum*’ building (seat of the Department of Legal Sciences), unless otherwise indicated on her web page, at http://docenti.unicatt.it/web/searchByName.do?language=ENG, or on the Faculty notice board.