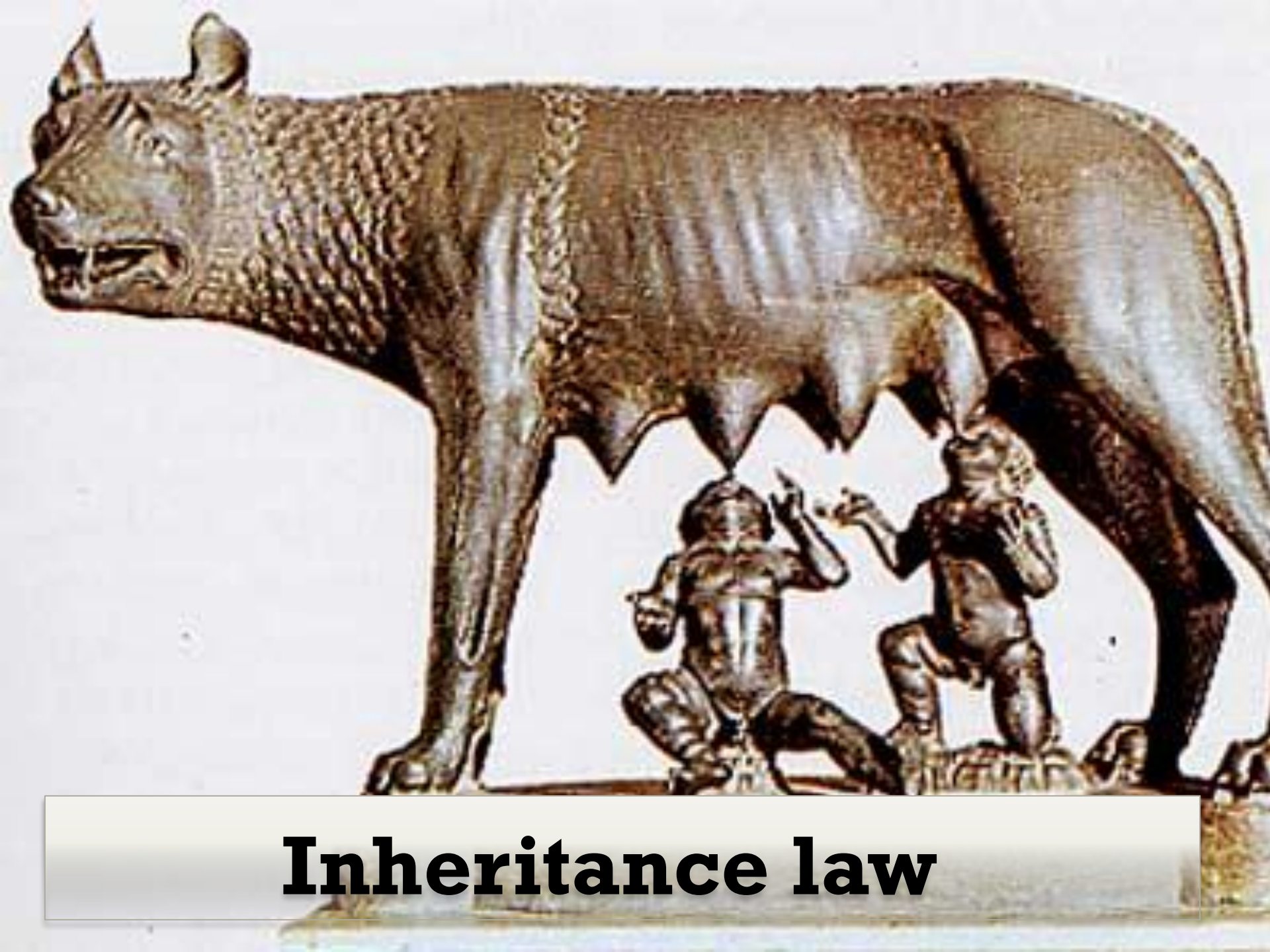

Inheritance law

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1. Concept and types of inheritance

Inheritance - a transfer of property of a deceased person to one or more persons (heirs).Heritage (hereditas) - in the civil law is composed of matter that connects the property rights and obligations of the testator.

As a result of inheritance, there is a universal succession - the property deceased entirely passes to the heirs, and all rights and obligations

are inherited.

At the same time, Roman law known and singular succession, heir get not all, but only certain things (human) of testator (legate).In Roman law of inheritance - a way of acquiring property mortis causa (ie in case of death of the previous owner).Thus, inheritance law is a set of legal rules governing the singular or universal succession mortis causa.

1. Concept and types of inheritance

Hereditary legal relations occurred when:

- testator was capable;
- Transmitted things could be the subject of inheritance;
- was the rightful heir;
- This successor was able to accept the inheritance;
- declared heir inheritance.

1. Concept and types of inheritance

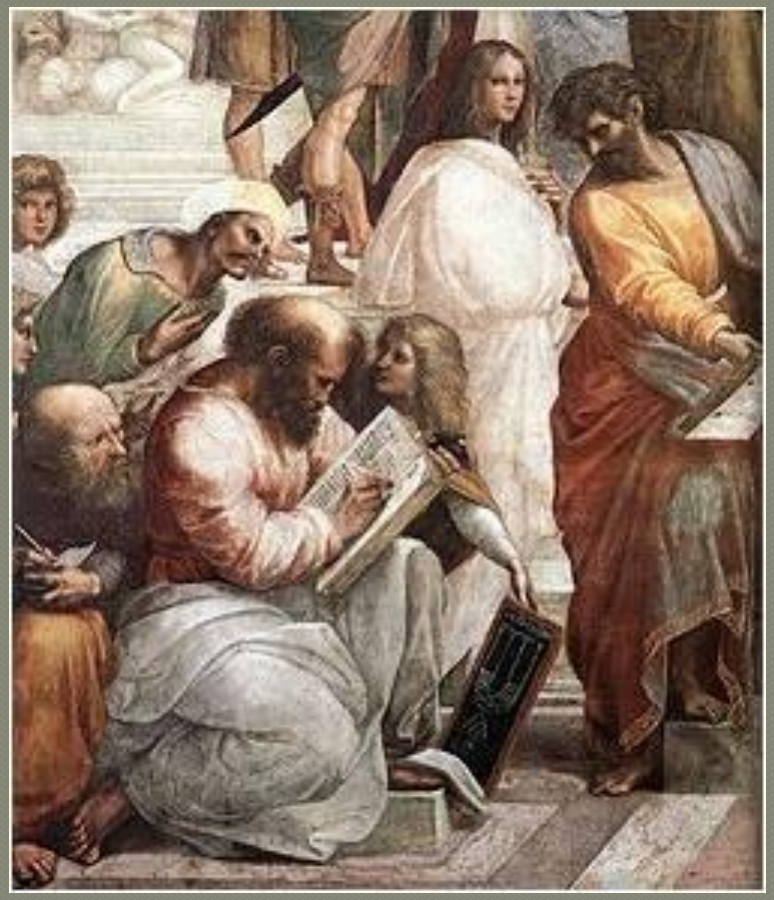
Rights of heirs in civil law are defended the special claims action hereditarie. The praetor gave judicial protection to persons who by the old laws had no right to inherit, and at the same time recognize the will, which was made without special formalities. In the conflict of rights the advantage had the civil heir (before pretory).

In the period of the Principate, the praetor protected the heir regardless of his status. So, along with the civilian property it was formed bonterra (Pretoria) property, pretiory inheritance with the actual receipt of property (the possessio bonorum cum res). In the era of the civil domnate old system of inheritance and Pretory almost merged.

The subjects of the law of succession: the testator and the heir(s).

The testator (defunctus) is a person with right, which was the carrier of hereditary rights and responsibilities. Physical person, which could be deceased, have received this status at the moment of death.

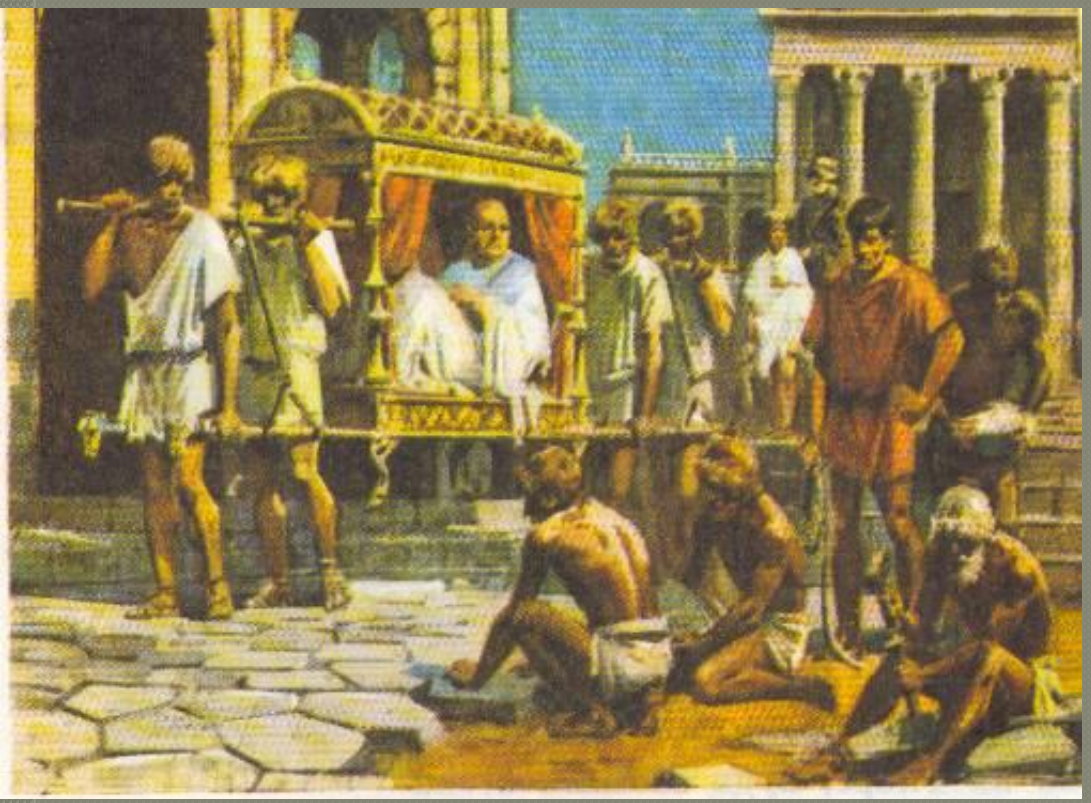
It could not be the testator:
legal entity;
Latin;
persons with a foreign law;
private slaves.



The subject of inheritance of personal and family could not be rights of the heir (the responsibility of the family cult of the sacra were part of the universal succession).

1. Concept and types of inheritance

The heir (Heres) is any person (natural or legal) that had a right to accept the inheritance.



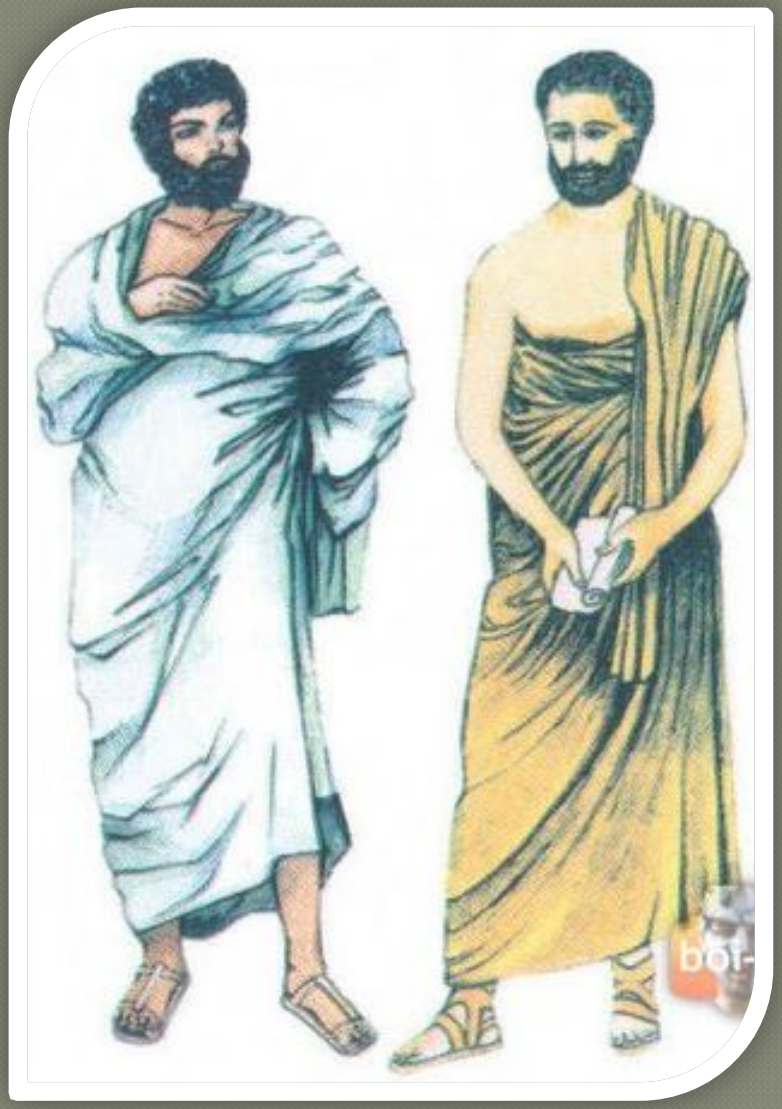
Persons who could accept the status of heir:

individuals were alive at the time of delices (ie. the time of death of the testator and the opening of the inheritance, including postumi is a person, conceived for the moment of death, but such that it is not born (as an exception); a wide range of individuals – women, subservient, slaves;
legal entity;
the Church (at the time of the Empire).

Types of inheritance:

- universal or singular
- Due to the will and the law
- Due to civil or pretory law

2. Inheritance due to the will



Testamentary carried out only capable Roman citizens (except for children of state prisoners and those who at the time of death has not been conceived) that could have testamente factio activa (the ability to make a will - testator) or testamenti factio passiva (the ability to accept the inheritance for heirs).

Heirs under the will of Roman citizens and their slaves, all legal entities.

Questions of inheritance by Testament could be considered centuriata courts and before the praetors.

2. Inheritance due to the will

The will (testamentum) is a unilateral act of the testator in the form of personal, formal expression of how distributed and who gets the property in the event of his death.

The legal validity of the will required a number of conditions:
it had to contain the appointment of a heir with the indication of his name (no name an heir, the will is invalid);
you need to follow the form of the will;
the testator (testator) had to have an active will capacity (persons over 12(14) years of age, able-bodied Roman citizens, not subject to; not insane, not slaves, not deaf, not convicted for crimes against the state);
the heir must have will passive ability (not a peregrine, not devoid of honor, not a business Corporation);
will in life you can change, cancel (unilateral act).

2. Inheritance due to the will

Forms of the will

In the classical law of wills were a normal (private, public) and special: you can change or cancel (unilateral act) will for life.

Normal:

• private normal (with strict formalities, but without the involvement of public authorities):
1) testamentum nuncupativum — nuncupative (oral) will of seven witnesses;
2) written wills, which were written by itself or under dictation, with a personal signature and seals of seven witnesses; the name of the heir could not be specified, it was stated in a special secret order (testamentum mysticum);
• public normal wills (formalities and with the participation of government authorities):
1) written will stored in the court or city magistrate (Pretory Testament);
2) a written will that was kept in the office of the Emperor;

2. Inheritance due to the will

Special:

(under emergency conditions without the seven witnesses):

1) will, during the plague;

2) a will made in the village;

3) a will in which the heirs are children of the testator;

4) for soldiers;

5) for the blind, deaf and dumb (more formalities).

2. Inheritance due to the will

The contents of the will (conditions of validity):

1) the freedom of content in full;
2) in Latin, and from 339 in Greek.
3) the heir can appoint one person or several persons, it is important that these persons were called by names;
4) the will could contain a special order (conditions, instructions); if they were illegal, immoral or impossible, it was considered a fiction (what they like);
5) could include the appointment of an executor, guardians, Trustees, about the liberation of the slaves at will (when a part of the inheritance of slaves were always released);
6) the appointment of an heir under the condition allowed, if the condition had vacudyne nature (i.e., execution is delayed until its occurrence there is uncertainty pendentia), in these cases, the inheritance was not opened at the time of death of the testator, and upon the occurrence of the condition.
7) will sub modo (laying) - i.e., the heir must comply with any obligation to use the property for a particular purpose, to erect a monument etc. If the heir was not complied with, subjected to measures of compulsory charactre.

Cancel of wills.

At any time could be cancelled and changed, made new.

The invalidity of the will.
Those covenants, which do not correspond in form and content and does not completed all the required steps for his competence.

Non-existent will.
Those which do not comply with the form of their compilation, were not appointed on behalf of the heir, the testator did not have testamentary law, the heir had no hereditary right.

Minor will.
Those that were not taken into account the inheritance rights of sons (quite minor), the rights of daughters, descendants and other necessary legal heirs (relative, relative minor).

3. The types of inheritance by law

Inheritance without a will is called inheritance by law.

types of inheritance by law

intestate inheritance

(dispositive-legal) when there is no will (not expressed the will of the testator), no flemms (informal manifestations of the will) it was followed intestate inheritance or dispositive legitimate inheritance ah intestato, i.e. after the person left no will; happen on degrees of kinship (stage of succession);

required inheritance

(imperial law) followed in the following cases:

- when making a will the testator beat their nearest relatives;
- if the testator has exceeded his authority;
- if the heir (bequest) has not taken or is not inherited.

3. The types of inheritance by law

Intestate inheritance. A common feature that determined the right to inheritance at all stages, was a kind of kinship of the heir of the testator.

In this regard, civil law distinguished three groups of heirs:

1. "their" heirs (persons subject to death, usually children and grandchildren, the inheritance was divided in equal shares),

2. the next agnate (brother, sister)

3. cognate (all blood relatives of the deceased, degree of relationship did not matter).

The value of the grouping was that the heir the next turn could be called for inheritance only in the absence of all heirs of the previous turn.

In the future, to replace the Patriarchal family and the total family ownership came to individual private property that was protected pretory right.

3. The types of inheritance by law

The old civilized system of inheritance based on agnat kinship, it was replaced by pretory system of inheritance. Pretory law has established not three, but four of the heirs.

I class	included children of the testator, including emancipatory, legitimized and adopted children;
II class	was all legitimate relatives and agnats;
III class	included cognats (blood, natural relatives) to the fifth degree (up to the seventh in the form of exceptions) the children inherit the mother and Vice versa;
IV class	included the husband (wife) of the deceased if the marriage was valid.

3. The types of inheritance by law

Postclassical law has established five categories of kognat inheritance by law:

I TURN	all the descending heirs of the deceased, while adopted children inherit equally with the natural children of the testator; for the same degree were equally shared with capitalization (increase in) proportion (per capita); grandchildren, great-grandchildren on the basis of representation (per stirpes); ie that would get a person having passed successively through all the discharges from the deceased;
II TURN	ascending relatives (ancestors) of the deceased, as well as brothers, sisters and their children;
III TURN	half brothers and sisters of the deceased;
IV TURN	all other lateral blood relatives of the deceased, regardless of degree of kinship; one degree of kinship, all receive in equal shares and on the principle of representation;
V TURN	spouse of the deceased.

3. The types of inheritance by law

The essential inheritance (mandatory). If the will passed the next of kin, they might require the recognition of the will invalid and to revise its terms of necessary inheritance.

Necessary hereditary right was considered as:

1) formally required by the law of succession is the right of sons and daughters etc. to be mentioned in the will, even though excluded from inheritance. The testator needs to deprive the names of sons, daughters and grandchildren of an inheritance, without a will is considered absolutely, or relatively unimportant and, therefore, entailed the opening of inheritance by law;

2) the material necessary hereditary is the right of close intestats heirs to receive a certain share of inheritance in the absence of reasons for depriving them of their inheritance.

4. The adoption and protection of the inheritance

Delition is the opening of the inheritance (comes at the moment of physical death of the testator).

After opening of the inheritance property is not passed automatically in the property of the heirs. To do this, they had to accept the inheritance.

Acceptance of the inheritance is the unilateral action of the heir, meaning his desire and ability to enter into the inheritance.

"Lying " heritage" is heritage in the period from delition to the accession of the heir. In the classical law of fiction, it belonged to the deceased, as if he was alive, which allowed to exclude any attacks on him.

The heir had to be alive at the moment of delition (to obtain the status of heir). Exception: postum person conceived before the testator's death but not yet born. To postums have applied the rule of Comino (persons killed in one accident, the time of death of each is impossible to ascertain).

According to the law of August a hereditary right possessed persons in marriage. Persons with children received a share of the childless.

4. The adoption and protection of the inheritance

Renunciation of inheritance had taken place, if the person said this is either not accepted the inheritance within the prescribed period and appropriate manner. Renunciation of inheritance had led to several consequences:

the legacy passed to the designated heir;

inheritance could go to the heirs of the same queue, and in their absence, to another;

the inheritance could pass to heirs at law;

in the absence of other heirs the property was exepted.

4. The adoption and protection of the inheritance

The procedure of acceptance of inheritance.

The deceased's children became his heirs automatically, and they did not have to take any action for the acceptance of the inheritance.

Inheritance taken by Declaration in two ways:

1) cretio - solemn Declaration not later than 100 days after delas - home of the heirs;

2) aditio - informal application within one year - right to appointed heirs.

Hereditary transmission is the transfer of the right to accept the inheritance (in pretory law).

Hereditary transmission is a situation in which the heir had survived the testator, that is, the inheritance was opened, but did not have time to accept him as he died. In this case, it was inherited by his heirs, so the children in this case were considered the heirs of his grandfather (the testator), and the heirs of his father, because he died after opening of inheritance.

Roman law in antiquity did not allow of the hereditary transmission, since the right of an heir was regarded as purely personal and therefore not transferable. In the future, the transmission was allowed, but limited to one year from the date of notification of the initial heir on the opening to him of the inheritance.

Joint heirs are the joint owners of heritage by quota, interest or ideal proportions of all the inheritance.

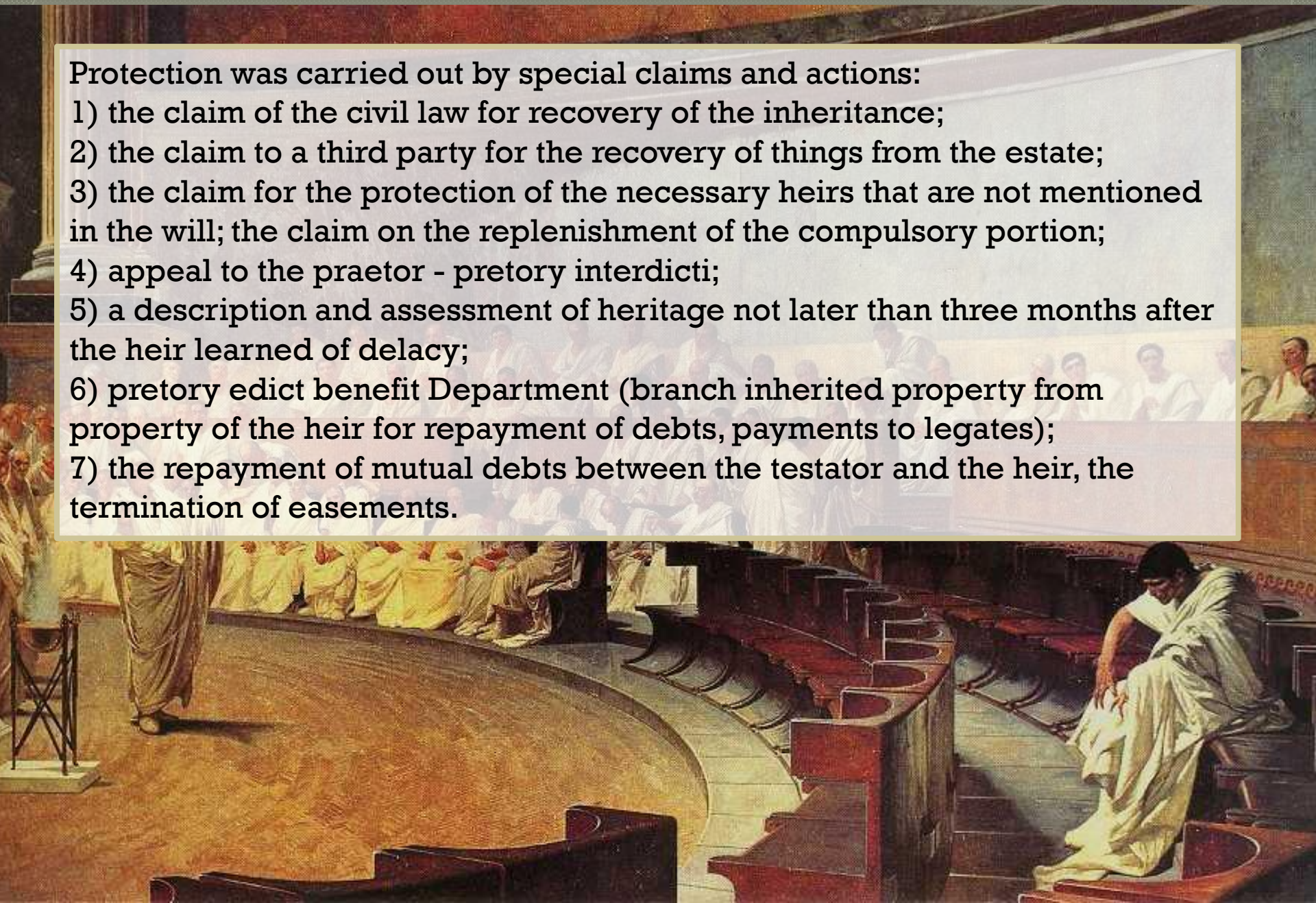
4. The adoption and protection of the inheritance

Inherit the debts.

Debt obligations passed to heirs (except for strictly personal debts and debts for torts) in proportion to their share of the inheritance. The heir was eligible to receive for the obligations of the testator, but was obliged to pay all the debts of the testator. Before the payment of the whole inherited property was not included in the property of the heir.

According to the rule of criminal profit that went to the heirs, subject to withdrawal, although the tort, they do not respond (D. 3.6.5).

4. The adoption and protection of the inheritance



Protection was carried out by special claims and actions:
1) the claim of the civil law for recovery of the inheritance;
2) the claim to a third party for the recovery of things from the estate;
3) the claim for the protection of the necessary heirs that are not mentioned in the will; the claim on the replenishment of the compulsory portion;
4) appeal to the praetor - pretory interdicti;
5) a description and assessment of heritage not later than three months after the heir learned of delacy;
6) pretory edict benefit Department (branch inherited property from property of the heir for repayment of debts, payments to legates);
7) the repayment of mutual debts between the testator and the heir, the termination of easements.

5. Singular succession (legets, fidcomitions).

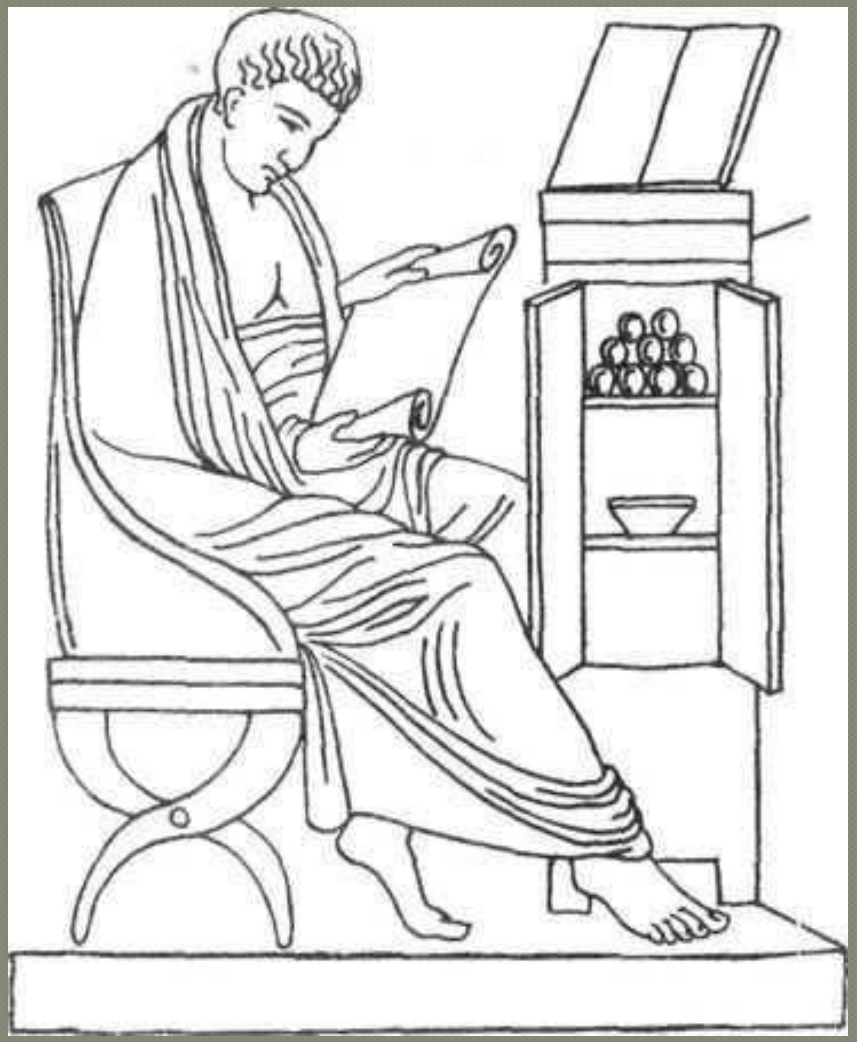
Singular succession is the inheritance of well-defined things (succession on separate things).

Types of Singular succession

legets

fidcomitions

5. Сингулярна сукцесія (легати, фідеїкоміси)



Legate (legatum), or bequest (deductions from the inheritance in favor of a third person) is the laying on of the heir by will the execution of any obligation in favor of one or more persons (legater), the issue of the inheritance to a third person any thing or just a set amount of money.

The legate had to be explicitly stated in the will. The legate could be installed only in the will and in cods.

Cods - written wishes of the testator for the distribution of the inheritance (was only valid upon confirmation in the will). Justinian establishes the legal force of all cods in oral or written form, in the presence of at least five witnesses.

5. Сингулярна сукцесія (легати, фідеїкоміси)

Types of legats:

1) the legate with real action (with property right) of "the legate of vindication";

2) Legat with obligation action execution (individual legates with an annual payment at a certain date) - "legate of obligations" provided the legatee contractual right to claim from the heir the will of the testator.

5. Сингулярна сукцесія (легати, фідеїкоміси)

The legate was acquired in two stages:

The first occurred after the death of the testator. Its value lay in the fact that if the legatee survived the testator, his right to receive a legate itself became capable of inherited. Therefore, if the legatee died before he could receive the legate, his right passed to his heirs.

The second stage is the time of the succession. Since then, the legatee or his heirs were entitled to claim their rights. Upon failure of heirs, they can file lawsuits.

5. Сингулярна сукцесія (легати, фідеїкоміси)

In the period of the Empire into practice of informal refusal - fidecomite.

Fidecomitee is a trust order that is taught in the will, an informal request to the heir (fdoca) to accomplish anything with a third party (fdecomite) at the expense of heritage ("order of conscience").

Fidecomites had a number of advantages to the legate:

fidecomites could be attributed not only to the heir under the will, but to the heir at law;

fidecomites could be installed in any form and not necessarily in the will (for example, in the form of letters, applications for probate, etc.);

fidecomites could be installed earlier or later most will.

5. Сингулярна сукцесія (легати, фідеїкоміси)

In 531, Justinian confirmed the merger of the legate, and fidecomites

Universal fidecomites is a universal succession, when all the inheritance passed fidecomite.

In the law of Justinian preserved only universal fidecomite. Fidecomites , which led to a singular succession, were combined into one group with the legates.

Family fidecomites - transfer of heritage within a single family in the interests of its individual members or multiple generations of one family (Justinian restricted to four generations).

Thank you for your attention!