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ESTATE PLANNING IN HELLENIC ANTIQUITY: ARISTOTLE'S LAST WILL AND TESTAMENT

Anton-Hermann Chroust

I. Introduction

The text of Aristotle's last will and testament is preserved in the writings of Diogenes Laertius,¹ Ibn An-Nadim,² Al-Qifti Gamaladdin,³ and Ibn Abi Usaibi'a.⁴ Without question, this instrument is wholly authentic. Although in the course of its transmission it may have been somewhat mutilated or abridged, it remains the most revealing, as well as the most extensive, source of information among the few surviving original documents related to the life of Aristotle. It is safe to assume that the ancient biographers of Aristotle derived or inferred much of their information and data from this will. Concomitantly, this document supplies the modern historian with details that in many instances have been obscured, altered, or simply omitted in the traditional (and preserved) biographies of Aristotle.

The testaments of the early Peripatetic scholars, including Aristotle's, were carefully preserved and finally collated by Ariston of Ceos in his *Collection [of the Wills of the Peripatetic Scholars]*.⁵ Aside from a sense of reverence for the founder and former heads of the school, the primary reason these testaments were so carefully preserved is that, under Athenian law and according to the "bylaws" of the early Peripatus as they were established during the scholarchate of Theophrastus (died c. 286 B.C.), the school, including the grounds, buildings, library, etc., was the personal property of the scholarch, who frequently supported the whole venture out of his own private estate. Hence, in his last will and testament the scholarch could bequeath the school property, including the all important library,⁶ to whomever he chose, that is, to whomever he wished to

1. DIOGENES LAERTIUS, *βίων [καὶ γνώμων] τῶν ἐν φιλοσοφίαι εὐδοκμησάντων τῶν εἰς δέκα* (On the Lives [and Opinions] of Eminent Philosophers in Ten [Books]), bk. 5, paras. 11-16 [hereinafter cited as DIOGENES LAERTIUS].

2. IBN ABI YA'QUB AN-NADIM *Kitab al-Fihrist* [hereinafter cited as I VITA ARISTOTELIS ARABICA].

3. AL-QIFTI GAMALADDIN AL-QADI AL AKRAM, *Tabaqat al-Hukama'* (Schools of Wise Men) [hereinafter cited as III VITA ARISTOTELIS ARABICA].

4. IBN ABI USAIBI'A, *Kitab 'Uyun al-Anba' fi Tabaqat al-Atibba'* (Book of Sources of Information about the Schools of Doctors) [hereinafter cited as IV VITA ARISTOTELIS ARABICA]. The text transmitted by An-Nadim is almost identical to that of Usaibi'a. It is fair to assume that Usaibi'a used the text of An-Nadim.

5. DIOGENES LAERTIUS, bk. 5, para. 64; see STRABO, *Στράβωνος γεωγραφικῶν* (Geography), bk. 13, ch. 1, para. 54.

6. In the preserved will of Theophrastus we read: "And the whole library [of the school] I bequeath to Neleus." DIOGENES LAERTIUS, bk. 5, para. 52; see STRABO, *supra* note 5, bk. 13, ch. 1, para. 54; ATHENAEUS, *Ἀθηναίου Ναυκράτιου δειπνοσοφιστῶν* (Deipnosophists), bk. 1, para. 3A [hereinafter cited as ATHENAEUS]. Theophrastus, it must be borne in mind, expected that Neleus of Scepsis would succeed him in the scholarchate of the Peripatus. When Neleus failed to be "elected" scholarch, he went back to Scepsis, in the Troad, taking with him the library containing the intramural compositions or treatises of Aristotle, Theophrastus, and other early Peripatetics. This incident also explains why the doctrinal treatises of Aristotle and others became lost for some time. See Chroust, *The Miraculous Disappearance and Recovery of the Corpus Aristotelicum*, 23 CLASSICA ET MEDIAEVALIA 50 (1962). This also justifies doubts as to the authenticity of parts of the extant *Corpus Aristotelicum*.

succeed him in the scholarchate.⁷ Conversely, barring other evidence, the testament of the preceding scholarch also established the legitimacy of each succeeding scholarch and thus was of vital importance for the continuation of the school.

Although the text of Aristotle's will as it was recorded by Ariston of Ceos has been lost, it is believed that all of the versions of the will that have come down to us were ultimately derived from Ariston's *Collection*. Most scholars are of the opinion that the particular version preserved by Diogenes Laertius goes back to Hermippus, possibly through the intermediary of Favorinus, and that Hermippus himself probably derived his (abridged?) text from Ariston of Ceos.⁸ The versions recorded by An-Nadim, Al-Qifti, and Usaibi'a, on the other hand, appear to be based on Ptolemy (-el-Garib)⁹ and, more remotely, on Andronicus of Rhodes, Hermippus, and Ariston of Ceos. It is widely believed that around 900 A.D., Ishaq Ibn Hunayn made an Arabic translation of Ptolemy (-el-Garib)'s *On the Life of Aristotle*.¹⁰ It is indisputable that there exist certain compelling similarities common to all the Arabic biographies of Aristotle, which forces us to conclude that the Arabs all used one and the same source, Ptolemy's *On the Life of Aristotle*. They must have drawn on this work directly, or through some intermediary source — possibly a Syriac source, but more probably Ishaq Ibn Hunayn's Arabic translation of Ptolemy's work. Ptolemy's *Life*, in turn, was derived from Andronicus of Rhodes, who may have consulted or used, at least indirectly, Hermippus, or Ariston of Ceos, or possibly both.

Although Aristotle had spent many years in Athens (367-348 and 335-323 B.C.), his last will does not once refer to that city. Hence, it must be surmised that he wrote his testament after his flight from Athens in the (late?) summer or early fall of 323 B.C.,¹¹ that is, between the early fall of 323 B.C. and the late summer or early fall of 322 B.C., the likely time of his death; that he

7 This explains why the testaments of the scholarchs have been so carefully preserved. See DIOGENES LAERTIUS, bk. 5, paras. 51-57, 61-64, 69-74 (wills of Theophrastus, Straton, and Lycon); Chroust, *supra* note 6.

8 This view is based on the fact that in DIOGENES LAERTIUS, bk. 5, para. 64, we are informed that the will of Straton of Lampsacus has been preserved in the *Collection* of Ariston of Ceos, who is credited with having recorded and transmitted not only the will of Aristotle but also those of Theophrastus, Straton, and Lycon. See note 7 *supra*. In his testament Lycon mentions Ariston of Ceos as one of the persons who witnessed his will and also enumerates him among the men he charged with carrying on the work of the Peripatus. DIOGENES LAERTIUS, bk. 5, para. 70. Cf. ATHENAEUS, bk. 13, para. 589C (alluding to Hermippus' biography of Aristotle).

9 VITA ARISTOTELIS MARCIANA para. 43; VITA ARISTOTELIS LATINA para. 46. Usaibi'a, it will be noted, begins his account with the following introductory remark: "Thus speaks Ptolemy [-el-Garib] in his book addressed to Gallus on the life and history of Aristotle, his last will, and the list of his famous writings." IV VITA ARISTOTELIS ARABICA. For a discussion of the Syriac and Arabic biographers of Aristotle, see Chroust, *A Brief Summary of the Syriac and Arabic Vitae Aristotelis*, 29 ACTA ORIENTALIA 23 (1965). An attempt to reconstruct the general arrangement and main content of Ptolemy's lost work has been made by Düring, *Aristotle in the Ancient Biographical Tradition*, 68, 2 ACTA UNIVERSITATIS GOTHOBURGENSIS 472-74 (1957); and Chroust, *A Brief Account of the Traditional Vitae Aristotelis*, 77 REVUE DES ÉTUDES GRECQUES 50, 61-69 (1964). See generally Chroust, *A Brief Analysis of the "Vita Aristotelis" of Diogenes Laertius* (DL, V, 1-16), 34 L'ANTIQUITÉ CLASSIQUE 97, 126-29 (1965).

10 See A. BAUMSTARK, SYRISCH-ARABISCHE BIOGRAPHIEN DES ARISTOTELES 35 (1900). Hunayn's translation was made either directly from the Greek original or, what is more likely, from a Syriac translation of Ptolemy's work.

11 See Chroust, *Aristotle's Flight from Athens in the Year 323 B.C.*, 15 HISTORIA (ZEITSCHRIFT FÜR ALTE GESCHICHTE) 185 (1966).

wrote this will in Chalcis on the island of Euboea; that as a *metic* or "resident Macedonian alien" he did not, and under existing Athenian laws could not, hold any real property in Athens; and that on his departure from Athens in the year 323 B.C. he took with him all of his personal possessions,¹² which, judging from his last will and other evidence, must have been considerable.

II. The Text of Aristotle's Will

Diogenes Laertius

1. All will be well. But in the event anything should happen, Aristotle has made the following [testamentary] provisions:
2. Antipater shall be the [chief] executor as regards all testamentary matters and in general.
3. But until Nicanor shall return [or can take over], Aristomenes, Timarchus, Hipparchus, Dioteles and, provided he shall consent and circumstances shall permit him to do so, Theophrastus shall take charge both of Herpyllis and the children [Pythias and Nichomachus] and of the estate.
4. When the girl [Pythias] shall be grown up, she shall be given in marriage to Nicanor.
5. But if anything should happen to the girl [Pythias]—which heaven forbid and no such thing will happen—before her marriage [to Nicanor], or after she is married but before there are any [male] children, Nicanor shall have full powers, both as regards

An-Nadim, Usaibi'a, and Al-Qifti

By this will and testament I forever appoint Antipater [chief] executor of everything of which I die seized.

Until Nicanor shall arrive [or can take over], Aristomenes, Timarchus, Hipparchus, and Dioteles shall assume charge of all matters that require attention and take the necessary measures concerning my estate, my maidservant Herpyllis, my other maidservants and menservants, and the estate I shall leave. And if Theophrastus shall consent and be in a position to assist them in this task, he shall take charge as well.

When my daughter [Pythias] shall be grown up, Nicanor shall administer her affairs.

If she [Pythias] should die before she is married [to Nicanor], or after she is married but before she has a [male] child, Nicanor shall administer both her estate and that of my son Nichomachus.

12 This is borne out by the remark of Usaibi'a to the effect that when Aristotle fled from Athens in 323 B.C. no one interfered with his voluntary departure. IV *VITA ARISTOTELIS ARABICA* para. 9. See EUSEBIUS, *PRAEPARATIO EVANGELICA*, bk. 15, ch. 2, paras. 8-9; *DIOGENES LAERTIUS*, bk. 5, para. 16. Tradition has it that before he left Athens Aristotle gave his private library to Theophrastus. *ATHENAEUS*, bk. 1, para. 3A.

the child [Nicomachus, the son of Aristotle] and as regards everything else, to administer in a manner worthy of himself and of us.

6. Nicanor shall take charge of the girl [Pythias] and of the boy Nicomachus as he shall think proper in all that concerns them, just as if he were their father and [older?] brother.
7. And if anything should happen to Nicanor—which heaven forbid—either before he marries the girl [Pythias] or when he has married her but before there are any [male] children, any arrangements he may have made shall be valid and binding.
8. And if Theophrastus should be willing to live with [marry?] her [Pythias], he shall have the same powers and rights as Nicanor.
9. Otherwise the executors, in consultation with Antipater, shall administer as regards the daughter and the boy as seems to them to be best.
10. The executors and Nicanor, in memory of me and the constant affection which Herpyllis has borne towards me, shall take care of her in every other respect.

It is my intention that he [Nicanor] shall take charge of all this as he thinks proper, in all that concerns them [Pythias and Nicomachus], just as if he were their father and [older?] brother.

And if Nicanor should die before my daughter [Pythias] is married to him, or after her marriage [to Nicanor] but before she has a [male] child [by Nicanor], and if Nicanor in his will should make any arrangements concerning the property which I now have, this shall be admissible and binding.

If [after having married Pythias] Nicanor should die intestate, and if Theophrastus should consent and be willing to take his place, it shall be the same with him in all matters in which Nicanor was in charge of my son's [Nicomachus'] affairs, and also as regards my estate.

And if Theophrastus should be unwilling to take upon himself this trusteeship, then the executors appointed by me shall again turn to Antipater and in collaboration with him consider what they are to do with my estate and then make such arrangements as they see fit.

The executors and Nicanor shall bear me in mind when they make arrangements for Herpyllis. For judging from what I saw of her earnestness in rendering service to me and her zeal for all that was becoming for me, she has deserved well of me. They shall give her all she needs.

11. And if she should desire to be married, they shall see to it that she is given [in marriage] to one not unworthy of us.
And if she should desire to be married, they shall see to it that she is given [in marriage] to a man of good repute.
12. And besides what she has already received, they shall give her a talent of silver out of the estate and three handmaids whomsoever she shall choose, besides the maid she has at present, and the manservant Pyrrhaeus.
And besides what she already possesses, she shall be given one talent, equivalent of 125 Roman *librae*, and three handmaids whomsoever she shall choose, besides the maid she has at present and her manservant.
13. And if she should choose to remain in Chalcis, [she shall have] the lodge by the garden; if in Stagira, my father's house.
And if she should choose to remain in Chalcis, she shall live in my house, in the guesthouse by the garden [to be exact]. And if she should choose to live in Stagira, she shall live in my father's and grandfather's house. And
14. And whichever of these two houses she shall choose, the executors shall furnish with such furniture as they think proper and as Herpyllis herself may approve.
whichever of these two houses she shall choose, the executors shall furnish with such household articles as they think proper and as she may need and also whatever she may claim as necessary for her wants.
15.
As to my estate and my son [Nicomachus], there is no need for me to make a [formal] last will and testament.
16. Nicanor shall take charge of the boy Myrmex and see to it that he be taken to his own people in a manner worthy of me, together with the property of his which we received.
Nicanor shall take charge of the boy Myrmex and see to it that he is finally sent back to his home with all his property in any manner he desires.
17. Ambracis shall be given her freedom and, on my daughter's marriage, shall receive five hundred drachmas and the maidservant she now has.
My maid Ambracis shall be given her freedom, and if, after she has been set free, she remains in my daughter's service until my daughter marries, she shall receive five hundred drachmas and the maidservant she now has.
18. To Thales shall be given, in addition to the maidservant he now has and who was bought for him, one thousand drachmas and [another] maidservant.
To Thales shall be given the young girl we recently bought, a boy from among our servants, and one thousand drachmas.

19. Simon [or Simos], in addition to the money heretofore paid to him towards another servant, shall either have a servant purchased for him or receive an additional sum of money.
20. Tycho [Tachon], Philo, Olympius, and his child [boy-servant?] shall have their freedom when my daughter [Pythias] shall be married.
21. None of my [young] servants who waited upon me shall be sold, but they shall continue to be employed, and when they reach the proper age they shall have their freedom if they deserve it.
22. When the images which Grylion [Gryllion] has been commissioned to execute are completed, my executors shall see to it that these images are set up; namely, that of Nicanor; that of Proxenus, which it was my intention to have executed; and that of Nicanor's mother [Arimneste].
23. Moreover, they shall set up the bust which has been executed of Arimnestus to be a memorial to him, seeing that he died childless.
24. They shall also dedicate my mother's statue to Demeter of Nemea or wherever they think best.
25. And wherever they bury me, there the bones of Pythias shall be laid to rest, in accordance with her own instructions.
- To Simon [or Simos], in addition to the boy he already has received, shall be given money for another boy whom he may buy for himself, and besides this he shall further receive what the executors may deem proper.
- As soon as my daughter [Pythias] shall be married, my boys Tachon, Philo, and Olympius shall be given their freedom.
- Neither the son of Olympius, nor any of the other boy-servants who have waited upon me shall be sold, but shall continue their service as servants until they reach their manhood, and when they reach the proper age, they shall have their freedom. And what shall then be given to them shall be determined in accordance with what they have deserved [if God Almighty so decides].

26. And to commemorate Nicanor's safe return, as I have vowed on his behalf, they shall set up in Stagira stone statues of life size [four cubits high] in honor of Zeus and Athena, the Savors.

III. The Legal Context of the Will — Athenian Testamentary Law

Before discussing or analyzing the detailed provisions of Aristotle's last will and testament, it is necessary to say a few words about the Greek (Athenian) law controlling intestate and testamentary succession as it is reflected in Aristotle's will. It must be borne in mind, however, that any attempt to sketch an intelligent outline of the Greek law of succession encounters at the very outset a number of almost insurmountable difficulties. Apart from a few not always reliable references to, or citations from, Solon's legislation found in the speeches of certain Athenian forensic orators (logographers) or "lawyers" (who selected from existing legal materials whatever best suited their particular purpose), we have to rely primarily on the legal arguments made by paid and, hence, partisan advocates who addressed a court composed of laymen. The legal arguments made, for instance, by Isaeus or Demosthenes do not always make it clear whether they actually recite existing Athenian law, whether they merely "rationalize" existing social customs, or whether they urge upon the court what the law "ought be" in a particular case. It is presumed, however, that they refer to a Solonian law accounting for certain social patterns that existed during the early part of the sixth century before Christ and, hence, may only partially be related to the pattern of social (and legal) practices observed during the time Isaeus and Demosthenes made their arguments. From these sources, however, three major principles seem to emerge: First, the introduction of a valid, formal will was not, in itself, dispositive of the issue in dispute. An Athenian jury could always supplement or override the interpretation suggested by the instrument by resorting to its own sense of what was fair and equitable under the circumstances, acting in the light of its own knowledge and understanding of existing social patterns and generally accepted customs. Second, it was extremely difficult for any testator, no matter how adroitly he phrased his last will and testament, to escape the limitations and prohibitions imposed by existing customs. Third, the apparent fluidity and ambiguity of Athenian testamentary law were somewhat mitigated by the fact that legal decisions in such matters were made by people who were fully aware of the particular social context and the dominant social patterns in which testamentary transactions occurred.

The underlying policy governing the succession of estates seems to have been the notion that above all else the individual is merely a link in the chain of his race or clan. The general rule of intestate succession was that male descendants (or their male descendants) took precedence over female descendants. On the death of the father, the son or sons took the whole estate¹³ (unless there was

13 See ISAEUS, *περὶ τοῦ πυρρῶου κλήρου* (*In re Estate of Pyrrhus*) para. 59.

a valid will). If there were several sons, they took equal shares. No distinction was made between sons of different mothers or between adopted and legitimized sons, provided the latter were adopted or legitimized during the lifetime of the testator.¹⁴ Limited legacies to other persons could be made by formal will. They were restricted, however, to small bequests, manumissions, and gifts of life tenancies. The existing laws and customs made the alienation of the whole estate impossible. Hence, the son or sons (or their male descendants) or, if there was only a daughter, her male offspring by an agnate male relative (next of kin through males) were always the ultimate takers.

In principle, *unmarried* daughters had no intestate claim against their father's estate except for dowry and maintenance until they were married. *Married* daughters had no legal claim at all against the estate. But a testator, by a formal will, could always leave part of his estate to his daughter or daughters. If the only surviving descendant of a father who died intestate was an unmarried daughter, the estate "went with her" to the nearest male agnate who would claim her in marriage or, if no agnate was forthcoming, to the husband to whom the nearest male agnate would give her in marriage. In the latter case, the estate was temporarily transmitted to the prospective son-in-law to be kept for the anticipated grandson or grandsons by the daughter. Thus, where a father died leaving only one (legitimate) daughter but no sons, her nearest male agnate, if she had no surviving grandfather, could claim her in marriage and through her gain temporary control over the estate.¹⁵ This right of the agnate rested upon his relationship, and the daughter's position was akin to that of a plot of land — she had nothing to say about the matter. This mode of succession, which was called *ἐπίκληρος*, assured continuity in the passage of family property along an agnatic line of descent. At the same time, it kept the estate within the family of the deceased.¹⁶

The purpose of all this was to keep the property in the father's family by using the daughter, so to speak, as a channel for transmitting the father's estate to any male heir born to her. Only in this sense could she and the agnate who claimed her in marriage be called "heirs." Her husband was at best an "interim heir" who had a "temporary estate," that is, the right to manage the estate for the family's benefit until the wife's sons came of age (at the age of eighteen).¹⁷ Hence these sons (the grandsons of the deceased), as the ultimate takers, actually became entitled to the estate at birth. The decedent's grandsons, in the final analysis, were the true heirs to their grandfather's estate; their father, the husband of the deceased's daughter, was taken into the family in order to insure their inheritance. If the daughter was not yet of marriageable age, her

14 See DEMOSTHENES, *πρὸς Λεωχάρη περὶ τοῦ Ἀρχιάδου κλήρου* ([Aristodemus] versus Leochares, *In re Estate of Archiades*) para. 19.

15 Cf. ISAEUS, *supra* note 13, at paras. 4-43.

16 DEMOSTHENES, *πρὸς Μακάρατου περὶ Ἄγριου κλήρου* ([Sositheus] versus Macartatus, *In re Estate of Hagnias*) para. 51; DEMOSTHENES, *supra* note 14, at para. 22; ISAEUS, *περὶ τοῦ Κίρωνος κλήρου* (*In re Estate of Ciron*) para. 31; ISAEUS, *πρὸς Ξεναίετον περὶ τοῦ Ἀριστάρχου κλήρου* (Against Xenaenetus, *In re Estate of Aristarchus*) paras. 5, 12.

17 ISAEUS, *πρὸς Ξεναίετον περὶ τοῦ Ἀριστάρχου κλήρου* (Against Xenaenetus, *In re Estate of Aristarchus*) para. 12; ISAEUS, *περὶ τοῦ Κίρωνος κλήρου* (*In re Estate of Ciron*) para. 31; DEMOSTHENES, *Β. κατὰ Στεφάνου ψευδομαρτυρίων* (II. [Apollodorus] versus Stephanus, Charged with Perjury) para. 20.

nearest kinsman on her father's side became her "guardian" until she attained the proper age, unless the deceased had already appointed such a "guardian" by betrothing her to another relative.

If the deceased father failed to provide a dowry for his unmarried daughter or daughter the latter had an actionable claim against the estate for a suitable dowry. Where the deceased left only an adopted son, and where a legitimate daughter also survived, the adopted son had no right to alienate the estate left by the deceased. He had what we would call a life estate (subject to his duty to provide a suitable dowry for the daughter) together with a fiduciary obligation to preserve the estate for the benefit of the ultimate takers: the legitimate male children of the deceased's daughter.¹⁸ In case a man died intestate with no surviving descendants, his brother or brothers (by the same father) or the male descendants of the brother or brothers inherited. If the decedent had no brothers or nephews by married sisters, collaterals through the paternal grandfather inherited.

Since the days of Solon the testamentary power of a male freeman was recognized. Any male of age could make a formal will, provided he was a person of sound mind and body and not affected by drugs, coercion, constraint, or undue influence. Such a will would be executed in writing and in the presence of several witnesses. The testator's dispositive powers were subject, however, to restrictions designed to keep the bulk of the estate in the clan. As long as there were legitimate male descendants, the testator could make only limited bequests to persons other than his natural male descendants.

IV. An Analysis of Aristotle's Will

In addition to the complexity of Greek testamentary law, the interpretation of Aristotle's will in particular poses a number of involved technical problems, not the least of which asks what local laws or customs controlled the instrument. We know that Aristotle was born in Stagira, which at the time of Aristotle's death was part of Macedonia. This might also explain why he appointed Antipater "general executor" (*tutor honoris causa datus*). Stagira, however, was originally a colony of Andros¹⁹ or Chalcis (on the island of Euboea).²⁰ It is reasonable to assume that it was a joint colonial venture of both Andros and Chalcis.²¹ After spending his early youth in Stagira and Macedonia (at the court of King Amyntas), Aristotle lived in Athens (367-348 and 335-323 B.C.), in Macedonia (343/342-335 B.C.), in Assos or Atarneus (348/347-345/344 B.C.), in Mytilene (345/344-343/342 B.C.), and in Chalcis (323-322 B.C.). We also know that he owned real property in Stagira and Chalcis, and it must be presumed that throughout his life he remained a Macedonian citizen. Thus, as a Macedonian alien residing in Athens, he did not, and under the existing laws of Athens could not, possess any real property in Athens or Attica. Since he

18 ISAEUS, *supra* note 13, at paras. 50-51. The legal right of the ultimate taker as against the adopted son was called *κληρονομία ἀπάντων πάππων*.

19 THUCYDIDES, *Θουκυδίδου ἱστορίαι* (History), bk. 4, ch. 88, para. 2.

20 DIONYSIUS OF HALICARNASSUS, I EPISTOLA AD AMMAEUM para. 5.

21 It has been suggested that Stagira was founded in the thirty-first Olympiad (656-652 B.C.).

never became an Athenian citizen, Athenian law and custom, the law of Solon, did not necessarily control his testament or his estate. However, Stagira was a colony of Chalcis (and Andros), and Chalcis is said to have been a colony of Athens. Hence, it is possible that Athenian law was observed, at least in part, in Stagira and especially in Chalcis, the place where he probably made his last will and testament. Moreover, both Chalcis and Stagira at one time had been members of the Delian League, which, dominated by Athens, imposed the jurisdiction of Athenian law courts over certain civil and criminal issues arising within the member states of the League.²² All this, however, is by no means certain. Of the particular laws or customs of either Stagira or Chalcis we have no information.²³

A. Paragraph One

For some unknown reason, this purely formal clause is not to be found in the Arabic versions of the will. "All will be well" is a rather common introductory phrase in a formal Athenian will,²⁴ as is the passage "[b]ut in the event anything should happen,"²⁵ that is, in the event of the testator's death. Such introductory remarks are, in the main, mere formalities meant to have a reassuring effect on the testator's immediate family, implying that there are no grounds for undue concern just because a will has been made. They are somewhat similar to our introductory clause, frequently found at the beginning of a last will and testament: "I, John Doe, being of sound and disposing mind and aware of the unpredictable incidents of human life, declare this to be my last will and testament." Wills in ancient Greece also frequently have such general endorsements as: "This is the last will and testament of John Doe." Moreover, this introductory clause may also have the legal effect of disclaiming any and all coercion or undue influence on the testator by interested persons. In the event of a will contest, this might prove important; coercion or undue influence would invalidate the entire will under Athenian law.²⁶ Since Herpyllis, a bene-

22 Principal authorities for Athenian testamentary law are the forensic speeches of Isaeus. Isaeus himself was a native of Chalcis and, like Aristotle, a resident alien in Athens. Since Isaeus composed quite a few forensic speeches dealing with matters and issues arising from testamentary succession, it is not likely that there existed a great divergence between the law of succession prevailing in Athens during the latter part of the fourth century B.C. and that prevalent in Chalcis (or, for that matter, in any city that had formerly been a member of the Delian League or that had been settled by Athens).

23 For a discussion of the many and involved problems inherent in Aristotle's last will and testament, see Bruns, *Die Testamente der Griechischen Philosophen*, 1 ZEITSCHRIFT DER SAVIGNY-STIFTUNG FÜR RECHTSGESCHICHTE 1, 11-23 (1880); Hug, *Zu den Testamenten der Griechischen Philosophen*, UNIVERSITÄT ZÜRICH: FESTSCHRIFT ZUR BEGRÜSSUNG DER VERSAMMLUNG DEUTSCHER PHILOLOGEN UND SCHULMÄNNER 1 (1887); Plezia, *Testament Platonis i Arystotelesa*, 2 MEANDER 215-24 (1947). Some of these discussions and analyses disagree with the statements made by the author.

For additional information on ancient Greek law, see J. LIPSIUS, *DAS ATTISCHE RECHT UND RECHTSVERFAHREN* (vols. 1-3) (1915); J. BEAUCHEZ, *HISTOIRE DU DROIT PRIVÉ DE LA RÉPUBLIQUE ATHÉNIENNE* (1897); J. JONES, *THE LAW AND LEGAL THEORY OF THE GREEKS* (1956); W. ERDMANN, *DIE EHE IM ALTEN GRIECHENLAND* (1934); Wolff, *Die Grundlagen des Griechischen Eherechts*, 22 TIJDSCHRIFT VOOR RECHTSGESCHIEDENIS 9 (1952); Wolff, *Marriage Law and Family in Ancient Athens*, 2 TRADITIO 63 (1944).

24 E.g., DIOGENES LAERTIUS, bk. 5, para. 51 (will of Theophrastus). This will is also discussed in Bruns, *supra* note 23, at 23-36.

25 DIOGENES LAERTIUS, bk. 5, paras. 51, 61 (wills of Theophrastus and Straton of Lampsacus). See Bruns, *supra* note 23, at 36-41.

26 See generally DEMOSTHENES, *supra* note 17, at para. 14.

fiary under the terms of the will, was Aristotle's mistress but never his lawful wife, and since Nicomachus, likewise a beneficiary, was his illegitimate (though adopted) son by Herpyllis, such a precautionary clause was doubly important.

It will be observed that Aristotle here uses the past tense as well as the third person ("Aristotle has made the following [testamentary] provisions"), while the wills of Theophrastus, Straton, and Lycon²⁷ use the present tense and the first person (e.g., "I make these [testamentary] provisions"). It is possible, therefore, that in the case of Aristotle's will Diogenes relied on an epitomized version or paraphrase of the original, made perhaps by Favorinus (or Hermippus or Ariston of Ceos), or that Diogenes himself abridged and rephrased the instrument.

B. Paragraph Two

Antipater, the "acting regent" of Macedonia and Alexander the Great's lieutenant in Europe, is appointed *tutor honoris causa*, a kind of "honorary" or general executor of the estate.²⁸ Although basically different in background, education, outlook, and occupation, Antipater and Aristotle had been close friends for some time, as is evidenced by the ample correspondence that passed between these two men — a correspondence of which ancient literature contains many traces.²⁹ Antipater's authority and status guaranteed that the provisions of Aristotle's testament would be strictly observed and, if necessary, fully enforced.³⁰ Moreover, this appointment also put the heirs, legatees, and beneficiaries, as well as the other executors, under the personal protection of the powerful and apparently fair-minded Antipater, who, if necessary, might invoke Macedonian jurisdiction over the will. It should be borne in mind that Aristotle himself was a Macedonian citizen who, it appears, had been treated well by the Macedonian royal house and its immediate ministers and lieutenants.

C. Paragraph Three

Nicanor was the son of Proxenus and Arimneste, the (older?) sister of Aristotle, and, hence, was Aristotle's nephew and nearest male agnate as well as the "husband designate" of Pythias, Aristotle's daughter by his wife Pythias.³¹ As a matter of fact, under Athenian law Nicanor had the "privilege" of marrying Aristotle's daughter. Nicomachus, Aristotle's illegitimate though adopted son by

27 DIOGENES LAERTIUS, bk. 5, paras. 51, 61, 69 (wills of Theophrastus, Straton, and Lycon); Bruns, *supra* note 23, at 23-46.

28 AL-MUBASHIR, *Kitab Mukhtar al-Hikam wa-Mahasin al-Kilam* (The Book of Selections from Wisdom and Beautiful Sayings) para. 34 [hereinafter cited as II VITA ARISTOTELIS ARABICA].

29 VITA ARISTOTELIS MARCIANA para. 42; VITA ARISTOTELIS VULGATA (VITA PSEUDO-AMMONIANA, VITA PSEUDO-ELIAS para. 20. DIOGENES LAERTIUS, bk. 5, para. 27 lists no less than nine "books" of letters addressed from Aristotle to Antipater. See VITA ARISTOTELIS MARCIANA para. 23; VITA ARISTOTELIS VULGATA para. 21. It is interesting to note that some of Aristotle's political enemies in Athens were executed by Antipater after the battle of Crannon and the retaking of Athens in 322 B.C., which brought an end to the so-called Lamian War. See also IV VITA ARISTOTELIS ARABICA para. 20.

30 See notes 85-86 *infra* and accompanying text. Antipater's position was apparently akin to that of the Roman *tutor honoris causa datus*, as contrasted with the ordinary *tutor gerens*.

31 See Chroust, *The Genealogy of Aristotle*, 19 CLASSICAL FOLIA 139 (1965); H. BERVE, DAS ALEXANDERREICH 275-76 (1926).

Herpyllis, actually is the "universal heir," having a life interest in the estate as an adopted son.³² At the time Aristotle made his will, Nicomachus was still very young, though probably no longer a "baby."³³ As the "interim heir designate," Nicanor was to take actual possession of the whole estate,³⁴ except for those specified chattels expressly bequeathed to other legatees. If it is correct that at one time Aristotle had formally adopted Nicomachus, then the male issue of a marriage between Pythias and Nicanor would still be the ultimate takers. For an adopted son, as we have seen, had no right to dispose of or devise his father's estate, but merely had what we would call a life estate. From all this it would follow that Nicanor also had an interest and a duty in seeing to it that Aristotle's estate would not be depleted or alienated by Nicomachus to the loss of the ultimate takers — Nicanor's prospective male children by Pythias.³⁵

At the time of Aristotle's death in the late summer or early fall of 322 B.C., or at the time Aristotle wrote his testament in Athens or, more likely, in Chalcis, that is, between the fall of 323 B.C. and the time of his death, Nicanor apparently was abroad on what appears to have been a "dangerous mission,"³⁶ and, hence, in fact was unable to "take over." It has been surmised, though on rather tenuous grounds, that he had been sent by Alexander to the Olympic Games in the year 324 B.C. to announce to the assembled Greek states that Alexander had pardoned all political exiles (about 20,000 of them), that he had ordered the allied Greek states to receive back their banished citizens,³⁷ and that he claimed divine honors.³⁸ We also know that the people of Ephesus conferred upon Nicanor the honorific privilege of *προξενία* as the reward for some

32 See notes 101-14 *infra* and accompanying text.

33 II VITA ARISTOTELIS ARABICA para. 33, EUSEBIUS, *supra* note 12, bk. 15, ch. 2, para. 15, relates that Nicomachus died "in the war" a mere lad. This statement would find support in the will of Theophrastus, where the testator instructs his trustees to see to it that a memorial statue of Nicomachus is completed. DIOGENES LAERTIUS, bk. 5, para. 52. Diogenes also reports that "Aristippus, in the fourth book of his *On the Luxury of the Ancients*, asserts that he [Theophrastus] was enamored of Aristotle's son Nicomachus, although he was Nicomachus' teacher." DIOGENES LAERTIUS, bk. 5, paras. 38-39.

34 See notes 66-67 *infra* and accompanying text.

35 VITA ARISTOTELIS MARGIANA para. 3; VITA ARISTOTELIS VULGATA para. 2; and VITA ARISTOTELIS LATINA para. 3 maintain that Aristotle had formally adopted Nicanor, a statement not supported by the surviving evidence. The degree of *προξενία* bestowed upon Nicanor by the city of Ephesus (for some meritorious work he had done on the city's behalf), however, refers to him as "the [adopted] son of Aristotle" ("Νικάνορι Ἀριστοτέλους Στραγε [ἐπιλήρη]"). Still, the provisions of Aristotle's will (especially that in paragraph six, namely, that Nicanor ought act "as if he were the father and [older?] brother" of the two minor children, Pythias and Nicomachus) seem to militate against an assumption that Aristotle at one time adopted Nicanor.

36 Sextus Empiricus refers to Nicanor's "homecoming." SEXTUS EMPIRICUS, *πρὸς μαθηματικούς, πρὸς γραμματικούς* (*Adversus Mathematicos I*) para. 258.

37 It will be noted that under the terms of the Synedrion of Corinth Alexander had no authority to dictate to the Confederates in matters concerning the management of their internal affairs. But only two states, Athens and Aetolia (which were prepared to resist Alexander) objected. They objected primarily because if this edict were enforced they would lose some of their all-gotten gains: the Athenians would have to return their former lands to the Samians, and the Athenian settlers on Samos would have to relinquish the island. The Aetolians had taken over Oenaidae and driven out the rightful Acarnanian owners. They, too, would have to return to the Acarnanians their former property. See DIODORUS SICULUS, *Διοδώρου βιβλιοθήκης ιστορικῆς* (*Library of History*), bk. 18, ch. 8, paras. 4-7.

38 See generally DINARCHUS, *κατὰ Δημοσθένους* (*Against Demosthenes*): paras. 81, 103; DIODORUS SICULUS, *supra* note 37, bk. 18, ch. 8, paras. 3-4; QUINTUS CURTIUS RUFUS, *HISTORIARUM ALEXANDRI MAGNI MACEDONIS* (*History of Alexander the Great of Macedon*); bk. 10, ch. 2, paras. 1-7; H. BERVE, *supra* note 31, at 276-77. Apparently there was no objection to Alexander's demand for divine honors.

meritorious deed or deeds he had performed on behalf of that city.³⁹ It is not impossible that there existed a connection between this work for Ephesus and his activities on behalf of Alexander (or Cassander or another of Alexander's successors) and the "dangerous mission" alluded to in paragraphs seven and twenty-six. Since it appears that Nicanor in some ways was connected with certain political activities of Alexander and later became associated with Cassander, it might be assumed that at one time he belonged to the king's "inner circle" — something which, in the light of Alexander's steadily worsening temper, in itself constituted a constant "danger." Equally dangerous was Nicanor's subsequent association with Cassander, who, as it turned out, had Nicanor executed in 317 B.C. Perhaps Aristotle also remembered the tragic fate of his nephew Callisthenes of Olynthus, who was arbitrarily and cruelly put to death by Alexander in the year 327 B.C.⁴⁰ In brief, association with Alexander or with any of his successors invariably spelled danger.

Aristomenes, Timarchus, Hipparchus, and Dioteles were probably close friends,⁴¹ or perhaps relatives, of Aristotle.⁴² But we do not know from what city or part of Greece they hailed — whether they were Athenians, Macedonians, Chalcidians, or Stagiritis. There exists the remote possibility that these men were also the witnesses present at the time Aristotle made his will. In case the will should be contested, they would testify to the fact that the testator had executed this particular will and that at the time he did so he was not under undue influence. They were not, as is the case with the testament of Theophrastus, members of the "school" or *κοινωνία*, for in 323/322 B.C. Aristotle had no "school" of his own. These four men are to act in consultation with Antipater should any of the following situations arise: (1) in case Aristotle should die before Nicanor returns from his "dangerous mission"; (2) in case Nicanor should die on his "dangerous mission" and, hence, be unable to "take over"; (3) in case Nicanor should return safely but die before he marries Pythias, the daughter of Aristotle; (4) in case Nicanor should return safely, marry Pythias, but die before Pythias has a male child (heir) by him; and (5) in case Nicanor

39 R. HEBERDEY, *FESTSCHRIFT FÜR THEODOR GOMPERS* 412-16 (1902). It appears that Nicanor was rather active, both as a politician and soldier, in the service of Alexander and some of the Diadochi. This might be inferred from a number of references to him by ancient orators and historians. E.g., DINARCHUS, *supra* note 38, at paras. 81, 103; DIODORUS SICULUS, *supra* note 37, bk. 18, ch. 8, paras. 3-4; *id.*, bk. 18, chs. 64-65, 68, 72, 75; HYPERIDES, *κατὰ Δημοσθένους* (Against Demosthenes), col. 18; PLUTARCH, *Φωκίων* (Phocion) chs. 32-33. See generally 3 J. BELOCH, *GRIECHISCHE GESCHICHTE* 106, 108-9 (pt. 1), 192-93, 384 (pt. 2) (1904).

40 Should the statement about Nicanor's absence actually refer to the deeds he performed for Alexander rather than for Cassander, then Aristotle's will must have been drawn before June 13, 323 B.C., the date on which Alexander died in Babylon. If this is so, then the will was drawn in Athens rather than in Chalcis. It was the sudden death of Alexander that subsequently caused Aristotle to leave Athens rather hurriedly and to retire to Chalcis in the summer of 323 B.C. See Chroust, *supra* note 11.

41 See II *VITA ARISTOTELIS ARABICA* para. 34. It will be noted that the will of Theophrastus mentions Hipparchus as a member of the Peripatetic community. DIOGENES LAERTIUS, bk. 5, paras. 53-54.

42 Under Athenian law the appointment of an executor was not restricted to a kinsman of the testator. In order to prevent fraud or depletion of the estate by the executor or trustee, the latter (especially if he was not a relative of the testator) frequently received a generous bequest. Moreover, the testator, in order to prevent abuse, often attempted to create ties of kinship between himself and the executor or trustee. To this end he would endeavor to affianc[e] the executor to his (the testator's) wife or daughter.

should return safely, marry Pythias, have a male child by Pythias, but die intestate — provided in all cases that Theophrastus should be unwilling or unable to take charge of Herpyllis, the children, and the estate. Hence these friends or relatives are also “alternates” for Theophrastus. The latter, long a close friend of the family and perhaps a relative, is the chief executor after Nicanor, not counting Antipater, who is really an honorary trustee. As it turned out later, since Nicanor died rather early (in 317 B.C.) but not before he had married Pythias (though there were no male children from this union),⁴³ Theophrastus did in fact take charge of Nicomachus⁴⁴ and Pythias. Finally, the will provides that if everyone and everything else should fail, Antipater, the honorary “general executor,” should have authority⁴⁵ to make the final dispositions.

There exists a minor difference between Diogenes' text and that of the Arabs — a variation that might support the inference that Diogenes' is an abridged version. The Arabs refer to Theophrastus' particular status in a separate sentence which makes it quite clear that in case certain conditions should materialize, Theophrastus would take over the children as well as the whole estate. The most telling difference between the version recorded by Diogenes Laertius and that of the Arabs, however, is that the former simply alludes to Herpyllis, the mother of Nicomachus, while the latter speaks expressly of “my maidservant Herpyllis.”⁴⁶ This raises the problem of Herpyllis' true status. The author (Aristippus?) of *Aristippus or On the Luxury of the Ancients* relates that “Aristotle fell in love with a concubine of Hermias [Herpyllis?] and married her with the consent of the latter.”⁴⁷ This particular passage is, without doubt, badly garbled. Aristotle apparently never married Herpyllis, who may have been the former concubine of Hermias. Pythias, the lawful wife of Aristotle, was not Hermias' concubine but rather his adopted daughter and niece. Diogenes Laertius, citing Timaeus, also reports that Aristotle had a son, Nicomachus, “by Herpyllis, his concubine.”⁴⁸ Naturally, it is possible that Aristotle married Herpyllis after the death of his wife Pythias, the mother of Pythias. However, the terms of the will throw doubt on such a marriage.

43 SEXTUS EMPIRICUS, *supra* note 36, at para. 258.

44 DIOGENES LAERTIUS, bk. 5, para. 39.

45 This seems to be the obvious meaning of paragraphs three through nine of the will. Bruns, *supra* note 23, at 19-23 gives a different interpretation, as does O. SCHULTHESS, *VORMUNDSCHAFT NACH ATTISCHEM RECHT* 60-61 (1886).

46 In paragraph ten of the will (Arabic version) we are told of the loyalty and devotion with which Herpyllis had served Aristotle. This would indicate that she was his (or Pythias') maidservant.

47 DIOGENES LAERTIUS, bk. 5, paras. 3-4. See EUSEBIUS, *supra* note 12, bk. 15, ch. 2, para. 15. This story would conflict with the report that Aristotle married Pythias, the daughter (?) or sister (?) or niece (whom he later adopted) of Hermias of Atarneus, unless Pythias was also the concubine of Hermias. Pythias bore Aristotle a daughter, also named Pythias. Naturally, it might be possible that Pythias bore Aristotle the mother died soon after marrying Aristotle (that is, while Aristotle was still in Assos and near Hermias) and that after her death Aristotle took up with Herpyllis, whom he could not or would not marry because she had been Hermias' concubine. But if Pythias died while Aristotle was still with Hermias (348-345 B.C.), then her daughter Pythias would have been at least twenty-two years old at the time Aristotle made his will, a proposition that paragraph four of the will (“when the girl [Pythias] shall be grown up”) expressly contradicts. In any event, Aristotle's daughter Pythias was not yet eighteen years old at the time the will was drawn (probably in 323/322 B.C.) and, hence, must have been born after 341/340 B.C., that is, after Hermias of Atarneus had been captured and executed by the Persians.

48 DIOGENES LAERTIUS, bk. 5, para. 1; VITA ARISTOTELIS HESYCHII (VITA MENAGII, or VITA MENAGIANA) para. 4. See ATHENAEUS, bk. 13, para. 589C.

According to Eusebius, Herpyllis originally came from Stagira,⁴⁹ although this seems rather doubtful. If this were so, then Aristotle might have taken up with her after his return to Macedonia or Stagira in 343/342 B.C. and after the death of Pythias. But this assumption would vitiate the story that Herpyllis at one time had been the concubine of Hermias, though not the claim that she was a "woman of ill repute."⁵⁰ The problems of Aristotle's connections with Pythias, Herpyllis, and, perhaps, an unnamed concubine of Hermias are most confusing to say the least. As quoted above, the author of *Aristippus or On the Luxury of the Ancients*, a rabid detractor of Aristotle, claimed that Aristotle fell in love with a concubine of Hermias and married her with his consent.⁵¹ This would imply that Pythias, the daughter, adopted daughter, or niece (whom he adopted as his daughter) of Hermias, at one time was also Hermias' concubine. It might also imply that Aristotle married an unnamed concubine of Hermias whom he later abandoned in order to marry Pythias or that Herpyllis was originally this concubine of Hermias and that at one time, perhaps after the death of Pythias, Aristotle married her. Ignoring all slanderous exaggerations and fictions, it might be safe to assume that Aristotle married Pythias and that he married her either in Assos or Atarneus between 347 and 345 B.C., allegedly in order to "flatter" Hermias or, at some later time, because "he felt sorry for her."⁵² In the latter case, Aristotle's marriage to Pythias would have taken place in Macedonia (or Stagira) after the death of Hermias in 341/340 B.C. when Pythias was without a protector and thus the object of Aristotle's compassion. But it is unlikely that Pythias ever was the concubine of Hermias. Herpyllis, on the other hand, originally might have been the handmaid or servant of Pythias. Tradition has it that she was born in Stagira.⁵³ This would indicate that she became Pythias' handmaid only after Aristotle's return to Macedonia or Stagira in 343/342 B.C. Naturally, it is not entirely impossible that Herpyllis joined Pythias already in Assos or Atarneus and that, as the handmaid of Pythias, she was also one of Hermias' concubines. In any event, thanks to the persistent efforts of certain detractors of Aristotle, the whole problem of Aristotle's "domestic relations" has become hopelessly confused and utterly confusing. However, judging from his last will and testament, Aristotle's (brief?) marriage to Pythias must have been a happy one.⁵⁴

Although in his biography of Aristotle Diogenes Laertius admits that Herpyllis was Aristotle's concubine⁵⁵ as well as the mother of Nicomachus, it appears that for some (encomiastic?) reason the same Diogenes Laertius (or his source) omits any reference to her status in his version of Aristotle's will. In so doing he hints and perhaps intends to establish that she was, after all, Aristotle's legitimate wife. It is not impossible that after the death of Pythias, and perhaps in compliance with Pythias' last wish, Herpyllis, who was originally the handmaid of Pythias, became a freedwoman. In any event, the provisions of Aristotle's will,

49 EUSEBIUS, *supra* note 12, bk. 15, ch. 2, paras. 14-15.

50 See note 89 *infra*.

51 DIOGENES LAERTIUS, bk. 5, para. 3.

52 EUSEBIUS, *supra* note 12, bk. 15, ch. 2, paras. 14-15.

53 *Id.*

54 See notes 132-33 *infra* and accompanying text.

55 DIOGENES LAERTIUS, bk. 5, para. 1.

insofar as they relate to Herpyllis, indicate that by the time Aristotle drafted the will she was a freedwoman. The passage in his will that "if she [Herpyllis] should desire to be married, they [the trustees] shall see to it that she is given [in marriage] to one not unworthy of us"⁵⁶ seems to indicate that she was never married before (and, by implication, that Aristotle had a high opinion of her). In conclusion, it might be noted that aside from some of the implacable detractors of Aristotle,⁵⁷ and with the exception of Diogenes Laertius, the *Vita Aristotelis Hesychi*,⁵⁸ and the versions of Aristotle's last will and testament as they are recorded by some of the Arabs, no other *Vita Aristotelis* refers to Herpyllis. This fact, in itself, may be highly significant. It may also be indicative of the general confusion and uncertainty about Herpyllis among ancient authors, who apparently did not really know what to make of her.

D. Paragraph Four

Unless their source or sources were at fault, the Arabic translators obviously did not understand the meaning of the Greek term *ἐκδόσθαι* ("shall be given in marriage [to Nicanor]"). The Arabs probably believed that this expression meant "to be entrusted to" or "to be taken care of by." Hence, there is a startling difference between the two texts. This mistranslation, which completely corrupts the meaning of the Arabic version, is also carried over into paragraph five. There can be no doubt that the text transmitted by Diogenes Laertius is the correct one.

It was not an uncommon practice in Athens for a male agnate relative to take temporary possession and control of the estate by marrying the daughter of the deceased, or to gain this temporary control because he was expected to eventually marry her. Hence, he also became a sort of guardian of the decedent's daughter. As mentioned above, whenever the only descendant was a young and unmarried daughter, the estate of her father went not to her but rather with her to the nearest agnate who would marry her (or to the husband to whom the nearest agnate would give her in marriage).⁵⁹ In this fashion, the estate was actually transmitted to her anticipated son or sons who, upon attaining their majority, would become the ultimate takers.⁶⁰ In the meantime, the husband (Nicanor) would have a temporary estate or interest. This seems to be the intended effect of paragraph four, which indicates that at the time Aristotle wrote his last will Pythias was still rather young and had not previously been married. As a matter of fact, soon after Aristotle's death in the late summer or early fall of 322 B.C., Nicanor married Pythias. But he died soon afterwards without issue.

⁵⁶ *Id.* para. 13.

⁵⁷ *E.g.*, ATHENAEUS, bk. 13, para. 589C; EUSEBIUS, *supra* note 12, bk. 15, ch. 2, para. 15; TIMAEUS, frag. 157 in F. JACOBY, *DIE FRAGMENTE DER GRIECHISCHEN HISTORIKER* 645 (pt. 3, 1950).

⁵⁸ *VITA ARISTOTELIS HESYCHII* para. 4.

⁵⁹ ISAEUS, *περὶ τοῦ Κίρωνος κλήρου* (*In re Estate of Ciron*) para. 31; ISAEUS, *πρὸς Ξεναίτητον περὶ τοῦ Ἀριστάρχου κλήρου* (*Against Xenaenetus, In re Estate of Aristarchus*) paras. 12-13. It might be interesting to note that Plato advances similar views of the law. PLATO, *νόμοι* (*Laws*), bk. 11, para. 924E-925. Plato, however, insists that the rule ought not be rigidly enforced but that the law, like a good father, ought take into account disparity of age as well as defects of mind or body.

⁶⁰ DEMOSTHENES, *supra* note 17, at para. 20.

We know that Nicanor became Cassander's lieutenant as well as the commander of Munichia in 319/318 B.C. Late in 318, Nicanor won a naval battle over Polyperchon. Subsequently he fell out with Cassander, was charged with treason, and was executed, probably in the spring of 317 B.C.⁶¹ According to Sextus Empiricus, after the death of Nicanor Pythias married Procleus by whom she had two sons, Procleus and Demaratus.⁶² In his will, probably written about 286 B.C.; Theophrastus mentions Demaratus as one of the full-fledged members of the philosophic community of the Peripatus.⁶³ By that time, Demaratus must have been a grown man. This would imply that Pythias married Procleus approximately a year after Nicanor's death and that Demaratus, presumably the younger of her two sons by Procleus, was born about 314/313 B.C. After the death of her second husband, Procleus, Pythias married Medias (some sources call him Metrodorus), the physician, by whom she had a son, Aristotle, named after his maternal grandfather. At the time of Theophrastus' death (c. 286 B.C.), this Aristotle was still a youth. This seems to follow from a section of Theophrastus' will providing:

Let the community [of the Peripatus] consist of Hipparchus, Neleus, Straton, Callinus, Pancreon, and Nicippus. Aristotle, the son of Metrodorus [Medias] and Pythias, shall also have the right to study and associate with them, if he desires to do so. And the oldest of them [the community] shall pay every attention to him, in order to ensure for him the utmost proficiency in philosophy.⁶⁴

This passage makes it quite clear that at the time of Theophrastus' death Aristotle was too young to be included among the regular or full-fledged members of the Peripatetic community, or *κοινωνία*.

E. Paragraph Five

This provision is abridged and somewhat mutilated by the Arabic biographers, who consistently misunderstand or mistranslate the Greek term *ἐκδόσθαι*. Diogenes' version makes it amply clear that Nicanor, the nearest agnate and the prospective husband of Pythias, for the time being is to take charge of the whole estate and that he is to acquire a temporary interest in the estate. Moreover, this provision also empowers him, under certain circumstances, to use and administer the estate as he sees fit, provided that he keeps within the limitations imposed upon him by law and provided that he does not alienate or squander the estate to the detriment of the ultimate takers — his prospective sons by Pythias. All this is wholly in keeping with the general legal or social policy characteristic of the Greek (Athenian) law of succession, namely, that in the case of an unmarried minor daughter the estate went for the time being to the nearest agnate, the "temporary heir designate," who would either marry the girl or see to it that she would find a suitable husband. In this manner the

61. DIODORUS SICULUS, *supra* note 37, at bk. 18, ch. 75, para. 1.

62. SEXTUS EMPIRICUS, *supra* note 36, at para. 258.

63. DIOGENES LAERTIUS, bk. 5, para. 53.

64. *Id.*

estate was first transferred to the prospective son-in-law of the deceased and, ultimately, to the prospective grandson or grandsons. If the daughter should die either before marrying the heir designate or before she had a male child, the heir designate was authorized to do with the estate as he saw fit, provided there were no other male heirs in the agnatic line, including an adopted heir. Since at the time of Aristotle's death in 322 B.C. his daughter Pythias was not yet old enough to be married, she must have been born around 338 B.C., or perhaps a little later. This would imply that Aristotle had married Pythias, her mother, either shortly before or soon after the death of Hermias in 341/340 B.C. It is also reasonable to surmise that Pythias, the mother, died fairly soon after the birth of her daughter. This might be inferred from the fact that by the year 322 B.C. Nicomachus, the son of Aristotle and Herpyllis, was no longer a "baby" but a "young boy."⁶⁵ Since Aristotle's marriage to Pythias was apparently a happy one, it is fair to surmise that he "took up" with Herpyllis only after his wife's death. One might conclude, therefore, that Nicomachus was probably born about 330 B.C., that is, after Aristotle's return to Athens.

F. Paragraph Six

While Diogenes' version makes Nicanor appear to be a sort of guardian of the two children, Pythias and Nicomachus,⁶⁶ the Arabic version in a more general manner merely refers to Nicanor's right or power to administer, in his discretion, all matters pertaining to the children and the estate. Like Diogenes, the Arabs (An-Nadim excepted) also report Aristotle's wish that Nicanor should act as if he were a "father and [older] brother" to the two minor children. This latter statement has been interpreted, though probably erroneously, to mean that Aristotle had previously adopted Nicanor.⁶⁷ To adopt a prospective son-in-law and thus keep the estate in the father's family, however, was not an uncommon practice in ancient Athens (or Greece generally).

G. Paragraph Seven

This passage seems to confirm the fact that Nicanor, as an agnatic relative, was the "interim heir designate." As such, he could apparently make valid provisions for the administration of the whole estate (which he held temporarily) as well as for the care of the two minor children. The other heirs, or remaindermen, and the trustees would be bound by these provisions.⁶⁸ But unless he had been

65 Nicomachus was taught by Theophrastus and died a young soldier "in the war." *Id.* bk. 5, para. 39; EUSEBIUS, *supra* note 12, bk. 15, ch. 2, para. 15. This Nicomachus was apparently a ne'er-do-well. See note 107 *infra*.

66 Some of the modern interpreters of Aristotle's will consider this instrument primarily an appointment of Nicanor as the guardian of Aristotle's two minor children. See authorities cited note 23 *supra*. This view, which seems to have been fostered by the text transmitted by Diogenes Laertius, is not entirely correct. It must be borne in mind that Diogenes' text is only an abridgement of the original document and that his version may be badly garbled.

67 See note 35 *supra*. This passage probably signifies that as "interim heir" Nicanor is to act as guardian, thus assuming the duties of a father or older brother of the children.

68 It appears that these "other trustees," including Antipater and Theophrastus, were to act only if Nicanor should prove unable "to take over." See text accompanying notes 41-45 *supra*.

adopted by Aristotle during the lifetime of the latter, something that is very doubtful, Nicanor would control the estate only until Nicomachus came of age or until any male children born of Nicanor's marriage to Pythias reached their manhood at age eighteen.⁶⁹ Since, however, Nicomachus was only an adopted son of Aristotle (but was adopted during Aristotle's lifetime), according to Greek (Athenian) law he could acquire only a life estate;⁷⁰ on his death, therefore, the estate would revert to the male children of Nicanor and Pythias or, if there were no male children and if Nicanor should outlive Nicomachus and Pythias, to Nicanor. In the latter case, Nicanor would become the ultimate taker and would have the right to pass on the estate at death to whomever he chose, provided he kept the estate within agnatic lines and provided he was not an adopted son of Aristotle. This, in turn, implies that he would probably leave the estate to the prospective husband of his widow Pythias, or to be more correct, to the anticipated male offspring of Pythias' second marriage. If, however, Nicanor had been adopted by Aristotle, he would hold the estate for life but would have no interest to pass on at his death.⁷¹

This whole provision, however, is still somewhat puzzling. As a guardian under Athenian law, Nicanor could not, as a rule, make any arrangements binding the estate (or future estate) of his ward or wards. If, on the other hand, Nicanor was the adopted son of Aristotle (which seems very doubtful),⁷² then he could not make any testamentary provisions regarding the estate (in which he held only a life interest). Perhaps this whole passage merely empowers Nicanor to make testamentary provisions concerning the guardianship, rather than the estate, of Nicomachus and Pythias.

H. Paragraph Eight

Diogenes' text, it will be noted, is somewhat abridged and, by itself, difficult to understand or interpret. The Arabic version, on the other hand, makes it quite clear why and under what circumstances Theophrastus might "take the place" of Nicanor in case the latter should die without having made any provisions for the guardianship of the two minor children, Nicomachus and Pythias. In such a case, Theophrastus would become "interim heir designate" (on the same terms as Nicanor had been appointed "interim heir designate") as well as the guardian of Nicomachus and Pythias, provided Theophrastus should consent to this arrangement. Theophrastus would have the same rights, powers, and duties as had previously been granted Nicanor. The version preserved by Diogenes Laertius also implies that, if he wishes to do so, Theophrastus could "live with" (marry?) Pythias, of whose affairs he would be in charge. Judging from the scant evidence, Nicanor died intestate soon after marrying Pythias and without leaving a male heir.⁷³ Theophrastus apparently "took his place" but did not marry Pythias. This is evidenced by Theophrastus' last will, wherein he made

69 See DEMONSTHENES, *supra* note 17, at para. 20.

70 DEMOSTHENES, *supra* note 14, at paras. 67-68.

71 See notes 101-14 *infra* and accompanying text.

72 See note 35 *supra*.

73 See text accompanying note 61 *supra*.

certain provisions for Aristotle, the son of his "ward," Pythias, by her third husband, Medias. It must be assumed that it was Theophrastus who, after the death of Nicanor, gave Pythias in marriage, first to Procleus and then, after his death, to Medias.⁷⁴ It is not impossible that by 286 B.C., the year Theophrastus apparently died, Pythias had lost her third husband.⁷⁵

The provision found in paragraph eight of the will is somewhat ambiguous and puzzling. It might signify that if Nicanor should die and Theophrastus should be willing to marry (or "live with") Pythias, Theophrastus should also become the guardian of Nicomachus and Pythias. It has already been pointed out that under Athenian law a guardian could not make any binding arrangements regarding the property of his ward. Hence, the Arabic version is somewhat confusing.

An-Nadim calls Theophrastus the son of Aristotle's sister (Arimneste?),⁷⁶ and Al-Mubashir⁷⁷ and Usaibi'a⁷⁸ refer to him as "the son of his [Aristotle's] mother's sister." This latter version might be the result of a confusion with, or transfer of, Plato's relationship to Speusippus. None of the other *Vitae Aristotelis* claim that Theophrastus was in any way related to Aristotle. A number of factors, however, go to indicate that Theophrastus might have been a remote relative of Aristotle: (1) in Aristotle's will Theophrastus holds a position of great prominence — a position usually reserved only for relatives; (2) Theophrastus refers in his will to Demaratus,⁷⁹ the grandson of Aristotle through Pythias and Procleus;⁸⁰ (3) Theophrastus' will provides for a commemorative statue of Nicomachus, the illegitimate, though adopted, son of Aristotle;⁸¹ (4) Theophrastus owned a house in Stagira;⁸² (5) Theophrastus educated and took care of Nicomachus;⁸³ and (6) Theophrastus appointed Callisthenes, the son of the historian Callisthenes and the grandnephew or great-grandnephew of Aristotle, a trustee of his estate and of the Peripatus.⁸⁴

I. Paragraph Nine

Here, too, the Arabic version is more detailed, more definite, and probably closer to the original text of the testament than is Diogenes' report, which is

74 SEXTUS EMPIRICUS, *supra* note 36, at para. 258.

75 The testamentary provisions that Theophrastus made for the young Aristotle would seem to imply this. DIOGENES LAERTIUS, bk. 5, para. 53.

76 I VITA ARISTOTELIS ARABICA para. 16. This would imply that Arimneste, Aristotle's older (?) sister, had been married three times: to Demotinus or Callisthenes, the father of Hero (who was the mother of the historian Callisthenes); to the father of Theophrastus; and to Proxenus, the father of Nicanor.

77 II VITA ARISTOTELIS ARABICA para. 32.

78 IV VITA ARISTOTELIS ARABICA para. 34.

79 DIOGENES LAERTIUS, bk. 5, para. 53.

80 See note 62 *supra* and accompanying text.

81 DIOGENES LAERTIUS, bk. 5, para. 52.

82 *Id.*

83 *Id.* para. 39.

84 *Id.* paras. 53, 56. Theophrastus also composed a *Callisthenes or On Bereavement*. *Id.* para. 44. This work was probably a "memorial" or *consolatio mortis* dedicated to the memory of Callisthenes the historian, who had been foully murdered by Alexander in 327 B.C. This might be an additional indication that Theophrastus was related to both Callisthenes and Aristotle. For a detailed genealogy of Aristotle see Chroust, *supra* note 31; Chroust, *Aristotle and Callisthenes of Olynthus*, 20 CLASSICAL FOLIA 32 (1966).

obviously an abridgement. In a way, paragraph nine repeats some of the provisions that had already been laid down in paragraph two; where Antipater was made the "general trustee."⁸⁵ Paragraph nine reaffirms that if all other devices (the provisions of paragraphs three through eight) should fail for some reason or other, the other executors — Aristomenes, Timarchus, Hipparchus, Dioteles, and, perhaps, Theophrastus — should turn to Antipater and, together with him, look after the children and the estate. Since, however, Theophrastus apparently took charge of all matters as stipulated in paragraph eight,⁸⁶ presumably no need arose to put this clause into effect.

A brief review of the provisions we have examined so far would seem to indicate that Athenian law was to govern the interpretation of this instrument. This suggests that Aristotle, or whoever advised him when he drafted his will (lawyer Theophrastus ?), had some knowledge of the Athenian law of testamentary succession as well as a profound understanding of human nature. This is borne out, for instance, by paragraph three, which designates as executor and guardian a kinsman who would marry Aristotle's daughter. This executor, for the time being, is to take Aristotle's estate in default of a legitimate adult heir, in accord with the Athenian legal rule of agnatic descent. Paragraph four provides that Pythias, the legitimate daughter of the testator, is to be given in marriage to Nicanor, who, in keeping with Athenian law, was privileged to marry the decedent's daughter since he had died without leaving a legitimate son. Paragraph five reaffirms Nicanor's legal position as ultimate taker in default. According to Athenian law, an adopted son such as Nicomachus could not devise or alienate his father's estate. Hence the male offspring of a legitimate daughter of the deceased, in this case the son or sons of Pythias and Nicanor, would automatically take their grandfather's estate after the death of the adopted son. In keeping with Athenian law, paragraph five also stipulates that if the marriage between Pythias and Nicanor should fail of male issue, Nicanor as the nearest agnatic kinsman is to take the whole estate upon the death of Nicomachus. Paragraph six indicates that Nicanor's appointment was prompted by sentiments of kinship rather than by strict fiduciary concepts, while paragraph seven confirms the legality of Nicanor's actions as guardian, stipulating that his arrangements are to be "binding" (at least pending the appointment of a new guardian). Paragraph eight provides that in case of Nicanor's untimely death, Theophrastus is to take his place as guardian and is to have the privilege of marrying Pythias. Paragraph nine is a very general clause empowering the other executors to take charge should Theophrastus renounce his appointment. All these provisions seem in the main to be in accord with Athenian law.

J. Paragraph Ten

This paragraph, like the following four, makes a number of provisions for Herpyllis.⁸⁷ Like the Arabic version of paragraph three,⁸⁸ paragraph ten (espe-

85 See notes 28-30 *supra* and accompanying text.

86 Theophrastus apparently took charge after Nicanor's death in 317 B.C.

87 Under Athenian law the testator could make some limited bequests to persons other than his natural male heirs. See note 96 *infra*.

88 See text accompanying note 46 *supra*.

cially the Arabic text) makes it quite clear that Herpyllis was the maidservant or "mistress" of Aristotle rather than his lawful wife.⁸⁹ It also stresses the fact that Herpyllis was always a devoted and loyal servant, deserving, as the Arabic version proclaims, of generous reward.

Since Aristotle presumably died of a stomach ailment⁹⁰ in the late summer or early fall of 322 B.C., Herpyllis probably nursed him during his last illness. This is borne out by Athenaeus, who informs us that Aristotle lived with Herpyllis "until his death."⁹¹ But while Diogenes Laertius only refers in general to the "constant affection" that Herpyllis displayed towards Aristotle, the Arabs are more specific, extolling her earnestness in serving him and her solicitude for his well-being. It might be conjectured that the Arabic version, which stresses Herpyllis' loyalty and devotion to Aristotle, is closer to the original text than is the version preserved by Diogenes Laertius. This would seem more in keeping with the generally magnanimous tenor of the whole will. That Herpyllis was never Aristotle's legitimate wife and that she was of humble origin may be confirmed by the fact that in his will Aristotle makes no provisions for the repayment of a dowry⁹² or for her return to her own kin. However, the trustees are charged with "taking care of Herpyllis," which seems to imply that she was a freedwoman.

K. Paragraph Eleven

The main, though relatively insignificant, difference between Diogenes' version of this clause and that of the Arabs is that Diogenes Laertius speaks of a husband for Herpyllis "not unworthy of us," that is, of Aristotle and his kinsmen, while the Arabs refer more generally to "a man of good repute."⁹³ In brief, Aristotle apparently wishes to make it known that in case Herpyllis should consider marriage, she should choose, or be given in marriage by the executors to, a husband who would not bring disgrace upon her and, through her, upon Aristotle's family and friends.⁹⁴ It will be noted that the phrase "not unworthy of us" is also used in paragraph sixteen. Aristotle apparently is rather concerned

89 See generally *DIAGENES LAERTIUS*, bk. 5, para. 1; *VITA ARISTOTELIS HESYCHII* para. 4. Athenaeus comments:

As for Aristotle of Stagira, did he not beget Nicomachus from the courtesan Herpyllis and live with her until his death? So says Hermippus in his first book of his work *On Aristotle*, adding that she received fitting provisions by the terms of the philosopher's will. *ATHENAEUS*, bk. 13, para. 589C.

Eusebius, however, claims that "Aristotle married Herpyllis of Stagira." *EUSEBIUS*, *supra* note 12, bk. 15, ch. 2, para. 15. The dispositive provisions of paragraphs ten to fourteen, it will be noted, are in themselves not entirely inconsistent with the assumption that, after all, Herpyllis at one time became Aristotle's legal wife.

90 This is indicated by the story that Aristotle "placed a skin of warm oil on his stomach," presumably to alleviate pain. *DIAGENES LAERTIUS*, bk. 5, para. 16. See also *EUSEBIUS*, *supra* note 12, bk. 15, ch. 2, para. 8; *AELIAN, VARIA HISTORIA*, bk. 9, para. 23; *GELLIUS, ATTIC NIGHTS*, bk. 13, ch. 5; *CENSORINUS, DE DIE NATALI*, ch. 14, para. 16; Chroust, *The Myth of Aristotle's Suicide*, 44 *MODERN SCHOOLMAN* 177 (1967).

91 *ATHENAEUS*, bk. 13, para. 589C.

92 Cf. *DEMOSTHENES. κατὰ Νεαπας* (Against Neaera), paras. 51-52; *ISAEUS*, *supra* note 13, at para. 35.

93 This provision might be a further indication that Herpyllis was not Aristotle's lawful wife, although it was not unusual for a husband in his will to give his surviving wife in marriage to a kinsman or friend.

94 We do not know whether Herpyllis married after Aristotle's death.

with maintaining the good reputation (and social standing) of his family, his friends, and the members of his household.

L. Paragraph Twelve

In this instance the two versions are essentially identical, except that Diogenes Laertius specifically mentions the name of the manservant (Pyrrhaeus) who is to be given to Herpyllis. The Arabs make an interesting addition to their version: they assess the talent of silver referred to by Diogenes at "125 Roman *librae*."⁹⁵ This anachronistic comment is probably based on a much later gloss that might go back to Andronicus of Rhodes, who probably wished to explain to his Roman reader the "current value" of a talent of silver. In any case, this stipulation, like the following provisions, is indicative of the fact that Herpyllis was well treated by Aristotle and liberally provided for in his will — a testimonial to the philosopher's generosity.

M. Paragraph Thirteen

This clause provides for a permanent dwelling place for Herpyllis, but that does not imply that title to the property will be transferred to her. Rather, the houses in question would remain in the testator's family, as the property of his heirs. Herpyllis is given an option; she may live in Aristotle's house in Chalcis (or, to be more exact, in the guesthouse or lodge by the garden), or she may move to Stagira and reside in the house that Aristotle owns there.⁹⁶ We know that Aristotle had inherited a house in Chalcis through his mother Phaestis, a descendant of some settlers from Chalcis who had migrated to Stagira.⁹⁷ It was this house to which he retired, together with Herpyllis and the children, in the year 323 B.C.; here he made his last will and died in 322 B.C. Herpyllis, who may have been a native of Stagira,⁹⁸ is also given the option of returning to Stagira to live in Aristotle's ancestral home there. Aristotle had inherited this particular house from his father, Nicomachus, who had died while Aristotle was still rather young. Stagira, and probably Aristotle's home there, was destroyed by King Philip of Macedonia in 349 B.C. Tradition has it that at the intercession of Aristotle, Philip (or Alexander) rebuilt the town.⁹⁹ Aristotle's will would confirm this.

⁹⁵ So far as we know, the Roman *talentum maximum* never exceeded 120 *librae*. Hence, the reference to 125 *librae* may be due to a scribal error.

⁹⁶ Such generous provisions for loyal and valued servants were not uncommon in antiquity. It should be noted, however, that Aristotle does not and could not leave one of the houses to Herpyllis outright. Under Athenian law, he could not alienate this sort of property in a will, although he could grant more limited interests such as a life estate or life use.

⁹⁷ DIONYSIUS OF HALICARNASSUS, *supra* note 20, at para. 5.

⁹⁸ EUSEBIUS, *supra* note 12, bk. 15, ch. 2, para. 15. This may also be one of the reasons why Aristotle stipulates that Herpyllis could live in his ancestral home in Stagira if she wished to do so.

⁹⁹ The rebuilding of Stagira by King Philip or Alexander, which has been questioned by some scholars, is attested by VITA ARISTOTELIS MARCIANA para. 17; VITA ARISTOTELIS VULGATA para. 17; VITA ARISTOTELIS LATINA para. 17; I VITA ARISTOTELIS ARABICA para. 13; II VITA ARISTOTELIS ARABICA para. 27; IV VITA ARISTOTELIS ARABICA para. 25; DIO CHRYSOSTOM, B. *περι βασιλείας* (On Kingship, Number II) para. 79; DIO CHRYSOSTOM, *δημηγορία ἐν τῇ πατρίδι* (A Speech in the Public Assembly at Prussia) para. 9; AELIAN, VARIA HISTORIA, bk. 12, para. 54; PLUTARCH, *ὅτι οὐδ' ἡδέως ζῆν ἔστι κατ' Ἐπικούρου* (The Impossibility of the Good Life According to Epicurean Doctrine) para. 1097B; DIODORUS SICULUS,

N. Paragraph Fourteen

In this instance, the texts are almost identical, with one minor exception Diogenes Laertius relates that the executors are to give Herpyllis "such furniture as they think proper and as Herpyllis herself may approve." The Arabs, on the other hand, refer to those household goods she may need or "claim as necessary for her wants." To bequeath household articles to loyal servants of long and devoted service seems to have been a widespread practice in ancient Greece.¹⁰⁰

O. Paragraph Fifteen

For some unknown reason, the version preserved by Diogenes Laertius does not contain the rather important stipulation: "[a]s to my estate and my son [Nicomachus] there is no need for me to make a [formal] last will and testament." This passage seems to attest to the fact that Nicomachus apparently was to have what we would call a "life estate" in Aristotle's property. Nicanor would be an "interim heir designate," a sort of trustee or guardian, and the male offspring of the marriage between Nicanor and Pythias would be the ultimate takers. Thus, under Athenian law Nicomachus, as the illegitimate but apparently adopted son of Aristotle (adopted during the lifetime of Aristotle rather than in his will), would inherit the estate when he reached the age of eighteen. But being only an adopted son, Nicomachus could not devise or alienate the estate of his father, which on his death would revert to the male offspring of Nicanor and Pythias.¹⁰¹ Hence, Nicomachus acquired only a life estate, and the son or sons of Nicanor and Pythias, if there should be any, would be the ultimate takers. If, on the other hand, Nicanor should outlive Nicomachus, and if Nicanor and Pythias should have no male offspring, then Nicanor, the nephew of Aristotle, would become the ultimate taker after the death of Nicomachus and would have the right to pass on the estate to whomever he chose, provided the estate stayed within agnatic lines. This might also shed some additional light on the provision contained in paragraph seven, where Aristotle stipulates that "any arrangement he [Nicanor] may have made shall be valid and binding."

Paragraph fifteen, however, raises some further problems. In Athens, during the fourth century before Christ, the privileges of full citizenship, including

supra note 37, bk. 16, para. 52; PLINY, *NATURALIS HISTORIA*, bk. 7, para. 109; AELIAN, *VARIA HISTORIA*, bk. 13, para. 17; *id.* bk. 12, para. 54; PLUTARCH, *πρὸς Κωλότην ὑπὲρ ἄλλων φιλοσόφων* (Against Colotes in Defense of the Other Philosophers) para. 32, 1126C.

¹⁰⁰ Theophrastus' will, for instance, stipulates that of his "household articles so much shall be given to Pompylus as the executors think to be proper," because "Pompylus . . . [has] long been emancipated and [has] done me much service." *DIOGENES LAERTIUS*, bk. 5, paras. 54-55. Since Theophrastus was something of a lawyer — the catalogue of his writings preserved by Diogenes Laertius mentions several treatises on law — his last will and testament is of great interest from a technically legal point of view.

¹⁰¹ Under Athenian law, properly adopted or legitimized sons had the same rights to intestate succession as legitimate sons, provided the adoption or legitimation had taken place *during the lifetime* of the deceased. See text accompanying note 14 *supra*. But an adopted son could not devise or alienate the estate he had inherited either by adopting someone else or by a formal will. If he should die without male issue, as Nicomachus apparently did, the estate went as if he had never been adopted — in the case of Nicomachus, to the male children of Pythias. *DEMOSTHENES*, *supra* note 14, at paras. 67-68; *DEMOSTHENES*, *supra* note 17, at para. 14.

the right to hold land, were as a rule restricted to persons born of parents who were validly married Athenian citizens. An illegitimate child of an unrecognized union between two aliens — and in Athens both Aristotle and Herpyllis were aliens living in concubinage — could not inherit or acquire a life estate through adoption during the lifetime of the deceased. Moreover, under Athenian law adoption could not be used to legitimize an illegitimate son or to give citizen status to an alien.¹⁰² All this would indicate that paragraph fifteen would have no legal effect in Athens, though it would probably be effective in other Greek jurisdictions.¹⁰³ It may be assumed, therefore, that Athenian law was not meant to control this particular provision of the will. Conversely, paragraph fifteen may indirectly refer to a particular Athenian legal rule in that it may imply the following: since Nicomachus is the illegitimate offspring of an unrecognized union between two aliens, he cannot inherit under any circumstances, at least not under Athenian law, even though he has been formally adopted or legitimized during the lifetime of the testator. Hence, there is no need for the testator to mention him in his will, or “to make a [formal] last will and testament.” This, then, might suggest that Athenian law, after all, controlled the provisions found in Aristotle’s will. But under Athenian law Nicomachus may still have a claim to a special bequest (*νοθεία*).¹⁰⁴ Since Aristotle’s will does not contain such a special bequest (not to exceed 1,000 drachmas), it might be argued that (1) Athenian law did not control Aristotle’s will; or (2) the passage, “as to my estate and my son there is no need for me to make a [formal] last will and testament,” is actually an indirect reference to this special bequest — a reference that has been garbled by the Arabic biographers who were not conversant with Greek legal nomenclature; or (3) Aristotle deliberately refused to make such a special bequest; or (4) Aristotle intended Nicanor (or Theophrastus) to take care of Nicomachus¹⁰⁵ and, hence, felt that there was no need for him to make special provisions for Nicomachus — provisions which, under Athenian law, would be null and void.

Hence, we might have the following situation: (1) Nicanor, the nephew of Aristotle and presumptive husband of Pythias, is the guardian, trustee, administrator, and “interim heir designate” of Aristotle’s estate. (2) When Nicomachus comes of age he will be the heir. (3) In case Nicomachus should

102 See ISAËUS, *ὕπερ Εὐφίλητου* (*Ex rel. Euphiletus*) paras. 2-3.

103 Since Aristotle apparently did not leave any estate in Athens (something which we may infer from the fact that his will makes no reference to that city) Athenian policies regarding the legal status of the offspring of a legally unrecognized union between two aliens may not have affected Nicomachus’ claim against his father’s estate. Moreover this omission also disposes of the traditional view that Aristotle had a “school” in Athens (allegedly founded between 335/334 and 323 B.C.) on an equal footing with the Platonic Academy, or that he was the founder and the first “scholarch” or “head” of this “school,” although it does not deny that he probably inaugurated a new philosophic trend. While the preserved wills of Theophrastus, Straton of Lampsacus, and Lycon, all scholarchs of the Peripatus, are replete with provisions regarding the “school” and the school property, Aristotle’s will makes no reference whatever to such a “school” or school property (or library) or, for that matter, to any property in Athens. For the whole history of Western philosophy this fact constitutes probably the most important aspect of Aristotle’s last will and testament. It might compel historians of ancient philosophy to radically revise (and discard) the cherished thesis that Aristotle had a distinct school in Athens over which he presided.

104 See notes 113-14 *infra* and accompanying text.

105 Such an inference might be drawn from paragraphs five to seven of the will (Nicanor), or from paragraph eight (Theophrastus).

die before he comes of age, the estate goes temporarily to Nicanor, who holds it in trust for his anticipated son or sons by Pythias. (4) On the death of Nicomachus assuming he did come of age, the estate goes to Nicanor or to his male children by Pythias. (5) If at the time of Nicomachus' death Nicanor should have died without any male issue, the estate will go to the male children of Pythias by a second (or third) husband. (6) Until her marriage, Pythias, as the daughter of Aristotle, always has a claim against the estate for a dowry and for maintenance. As can readily be seen, paragraph fifteen greatly complicates the interpretation of Aristotle's will, especially if this instrument is controlled by Athenian law.

The phrasing of paragraph fifteen compels us to assume that at one time Nicomachus had been either legitimized or adopted by Aristotle. It does not imply, as some scholars have conjectured, that at one time Aristotle had married Herpyllis, the mother of Nicomachus, or that Nicomachus was the legitimate son of Aristotle and Pythias. Now we may also understand why Aristotle made such a detailed will concerning his personal estate: had he died intestate, Nicomachus, upon reaching the age of eighteen, would have inherited, or better, would have acquired a life estate or life interest in the whole estate of Aristotle to the exclusion of Pythias and Herpyllis. Hence, it is unlikely that this particular passage is merely a later interpolation, an encomiastic attempt to alter the original wording of the will in order to "legitimize" Nicomachus.¹⁰⁶ It must always be borne in mind that Diogenes Laertius' version, which omits this clause, is only an abridgement, based on either Favorinus or Hermippus, both of whom probably made use of the text quoted in Ariston of Ceos, and either of whom might themselves have epitomized Ariston's original text. This being so, Diogenes Laertius, or one of his sources, could very well have omitted some rather "obvious" stipulation that to him seemed "self-evident."¹⁰⁷

The legal problems connected with paragraph fifteen are many and complex.¹⁰⁸ If Nicomachus was indeed the legitimate son of Aristotle — if Aristotle either married Herpyllis (which is to be doubted) or had Nicomachus adopted or declared legitimate (which seems to be almost certain) — then under existing Athenian law (provided Athenian law was controlling) Nicomachus was the sole heir, subject to the restrictions imposed on the inheritance of an adopted son. In that case there would be no need for a formal will, although Aristotle could have made some limited bequests to other persons. For, according to the

¹⁰⁶ This view is held by some scholars.

¹⁰⁷ A passage in *Gnomologium Vaticanum* relates that when, as a student, Nicomachus displayed little or no interest in his philosophic studies, his teacher Theophrastus reminded him that he, Nicomachus, was not only the heir to Aristotle's estate but also the successor to his father's intellectual work. *GNOMOLOGIUM VATICANUM* frag. 330, at 130 (L. Sternbach ed. 1963). This remark, if historical, would indicate that Nicomachus did inherit Aristotle's estate. In view of the fact that Nicanor died without issue by Pythias, it seems quite likely that the whole estate went to Nicomachus. It is also possible that Nicomachus subsequently squandered his inheritance. When Epicurus and other detractors of Aristotle claimed that, in his youth, Aristotle had squandered his patrimony, they might have had Nicomachus in mind rather than Aristotle. See EUSEBIUS, *supra* note 12, bk. 15, ch. 2, para. 1; *DIAGENES LAERTIUS*, bk. 10, para. 8; *ATHENAEUS*, bk. 8, para. 354B.

¹⁰⁸ For discussions of some of these problems see Bruns, *supra* note 23, at 11-13; Hug, *supra* note 23, at 1-21; Plezia, *supra* note 23, at 215-24; O. SCHULTHESS, *supra* note 45, at 60-61.

law of Solon, only a male of age and of sound mind without a male descendant or agnatic kin had unrestricted testamentary freedom.¹⁰⁹ Thus, if Nicomachus was indeed the sole heir, then the whole testament of Aristotle would be nothing more than a series of limited bequests to persons other than Nicomachus, such as a life interest in or use of one of Aristotle's houses for Herpyllis¹¹⁰ and a list of manumissions and emancipations.¹¹¹ Moreover, the provisions relating to Nicanor would be tantamount to his appointment as guardian of Nicomachus and Pythias and nothing more,¹¹² a view held by some scholars. If, on the other hand, Nicomachus was indeed an illegitimate child, and if Aristotle had not adopted him prior to his death, then Nicomachus would not have had any legal claim to the entire estate, but merely a possible claim to a special bequest (*νοθεία*) not exceeding 1,000 drachmas.¹¹³ In such a case Pythias would be the sole heir.¹¹⁴ But since a daughter could not inherit, the nearest male agnate had the right (and the duty) to marry her and, through this marriage, to become "interim heir" for the purpose of transmitting the estate to his male children by the daughter of the deceased. Moreover, if Nicomachus was indeed an illegitimate, nonadopted child, Aristotle probably could not have appointed Nicanor guardian of Nicomachus. All this would again suggest that at one time Aristotle had adopted Nicomachus or had had him declared legitimate and that this adoption took place prior to Aristotle's death and not merely in his will.

P. Paragraph Sixteen

Paragraphs sixteen through twenty-one contain a number of provisions concerning the servants or slaves, both male and female, who were part of Aristotle's household or estate at the time of his death. Under Athenian law, a testator could choose to emancipate his slaves in a number of different ways, including outright and unconditional manumission, manumission on the expiration of a specified period of time or after the slave had attained a designated age, and manumission upon the occurrence of a certain event or upon the fulfillment of a specified condition.¹¹⁵ In his last will and testament, Aristotle makes use of all these possibilities. The large number of Aristotle's servants or slaves, not including Herpyllis (who was probably a freedwoman), indicates that Aristotle was well-to-do.¹¹⁶ Those from among Aristotle's servants and slaves who had served him

109 See DEMOSTHENES, *supra* note 17, at paras. 14-15.

110 See text accompanying note 96 *supra*.

111 See text accompanying notes 121-26 *infra*.

112 See text accompanying notes 65-72 *supra*.

113 In Athens, illegitimate sons lost all right to succession in 403/402 B.C. DEMOSTHENES, *supra* note 16, para. 51; ISAEUS, *περὶ τοῦ Φιλοκτῆμονος κλήρου* (*In re Estate of Philoctemon*) para. 47.

114 DEMOSTHENES, *supra* note 16, at para. 51.

115 Failure on the part of a freedman to comply with the conditions attached to his manumission might result in his being reduced once again to slavery. This, full freedom, as a rule, was not attained until all the conditions attached to the manumission were fully met.

116 Pliny, for instance, relates that Alexander gave generous support to Aristotle's scholarly and scientific investigations. PLINY, *NATURALIS HISTORIA*, bk. 8, para. 44. According to Eusebius, Lycon Pythagoraeus also referred to Aristotle's wealth. EUSEBIUS, *supra* note 12, bk. 15, ch. 2, paras. 8-9. See also AELIAN, *VARIA HISTORIA*, bk. 4, para. 19; ATHENAEUS, bk. 9, para. 398E; GELLIUS, *ATTIC NIGHTS*, bk. 3, ch. 17.

faithfully over a long period of time are to be set free immediately. They are also to receive some fairly generous legacies.¹¹⁷

Paragraph sixteen, which provides for the emancipation and return of young Myrmex to his kinsmen, manifests two slight differences between the text transmitted by Diogenes Laertius and that preserved by the Arabs: Diogenes refers here to "a manner worthy of me,"¹¹⁸ while the Arabs speak of "any manner he [Myrmex] desires." Moreover, Diogenes Laertius also mentions "the property of his which we received," while the Arabs only allude to Myrmex's property.¹¹⁹ Myrmex, it must be surmised, had a special status in Aristotle's household. Perhaps he had been sent to live in Aristotle's house in order to be trained or educated; perhaps he was a remote relative who had stayed with Aristotle for a while; perhaps he was a special gift that Aristotle wished to return. It has also been suggested that this Myrmex, who is mentioned in the will immediately after Herpyllis, might have been an illegitimate son of Aristotle and Herpyllis¹²⁰ who, unlike Nicomachus, had not been adopted by Aristotle. If this were the case, then the instruction found in the Arabic version of paragraph sixteen, that Myrmex "be sent back . . . with all his property" might refer to the special bequest (*νοθεία*) to which an illegitimate son was entitled under Athenian law and might indicate that he was to be returned to his mother's (Herpyllis'?) people. It is impossible, however, to verify these last two conjectures.

Q. Paragraph Seventeen

This section stipulates that Ambracia, apparently an elderly and trusted maidservant, be emancipated immediately. The Arabic version adds the significant clause that Ambracia shall receive an additional bequest if she stays in the services of Aristotle's daughter Pythias until the latter has married. Diogenes Laertius, on the other hand, implies that Ambracia would receive this additional bequest on Pythias' wedding day without having rendered further services to the family. Although it is impossible to determine which of these two versions is correct, it is reasonable to assume that Diogenes Laertius probably intended to convey the same notion the Arabs do. In any event, the Arabic version seems to make better sense: for additional services, Ambracia is to receive an additional bequest.

117 Ancient testators often emancipated their elderly and deserving slaves. In some instances they also rewarded them with small bequests.

118 This phrase is also employed in paragraph eleven. See text accompanying notes 93-94 *supra*. Here again, Aristotle seems to be concerned with having everything done in a proper and dignified manner, thereby upholding his own standards and the reputation of his family and household.

119 These differences in the texts may reflect (1) an inaccurate translation of the Arabic or (Syriac) biographers or their immediate source, or (2) a deliberate abridgement by Diogenes Laertius. Assuming that Myrmex was a slave, something which is by no means certain, it must be borne in mind that under Athenian law a slave, as a rule, was incapable of acquiring property for himself. But it was frequently in the interest of his master to leave at least part of what his slave acquired to him. The latter might use his earnings to buy his freedom.

120 The particular phrasing of this passage, however, casts doubt on this interpretation.

R. Paragraph Eighteen

Although not expressly mentioned, Thales,¹²¹ too, was presumably to be emancipated at once, unless he (or she?) had already been set free at some earlier time. Moreover, he was to receive an additional servant or slave. Aside from the fact that Diogenes Laertius refers to an additional *maidservant*, while the Arabs mention an additional *boy-servant*, there is only a slight difference in the wording of the two versions. According to Diogenes Laertius, it appears that Thales has already had his first servant for some time, while according to the Arabs he had only recently received his first servant and could now expect a second servant as well as the sum of one thousand drachmas.¹²²

S. Paragraph Nineteen

Diogenes Laertius, whose abridged text seems to be badly mutilated, implies that in addition to the amount of money he had previously received towards the purchase of another servant, Simon (Simos) was to have either a further servant bought especially for him or was to receive, in cash, the equivalent of the purchase price. Presumably Simon is likewise to be set free without delay, unless he had already been emancipated. The Arabs, on the other hand, relate that in addition to the servant he had previously received, Simon should receive money for the purchase of another boy-servant, whom he may buy himself, as well as an additional sum of cash, the amount to be determined by the executors. Unlike the Arabs, Diogenes Laertius does not mention that this additional sum is to be determined by the executors. Here, as elsewhere, the Arabic version seems to make better sense and is probably closer to the original document.¹²³

T. Paragraph Twenty

It is impossible to determine with any degree of certainty whether the name of one of the servants is Tachon or Tycho. Diogenes' reference to Olympius' child (son) — it is rather unlikely that a boy-servant of Olympius is meant here — can be found in the Arabic version of paragraph twenty-one, where, unlike Diogenes' text, the boy does not get his freedom after Pythias is married but only after he has reached the proper age and on the condition that he deserves this boon. Tachon, Philo, and Olympius — three adult manservants — are to receive their freedom after Pythias is married to Nicanor.¹²⁴

U. Paragraph Twenty-one

While Diogenes Laertius reports that none of the other servants may be

121 Some scholars are of the opinion that the name should be rendered "Thale" rather than "Thales" and that "Thale" was a maidservant.

122 We may imply that Thales (or Thale) was an elderly person who had faithfully served Aristotle for a long time.

123 It seems unlikely that the divergent Arabic text is the product of a later interpolation.

124 A similar stipulation may be found in the will of Theophrastus. *DIOGENES LAERTIUS*, bk. 5, para. 55. There the instrument provides that Manes and Callias are to receive "their

auctioned off under any condition, the Arabs modify this passage by relating that only the young son of Olympius and the other boy-servants may not be sold. These must continue serving the family until they have reached their manhood.¹²⁵ Hence, the Arabic text implies that some of the older slaves may be sold after all if the executors see fit to do so. The Arabs, but not Diogenes Laertius, also relate that when the boy-servants receive their freedom the executors may decide what, in accordance with their merits, shall be given to them. The emancipation of deserving (or elderly) slaves at the time of the testator's death and the bequeathing of a small legacy to them were fairly common practice in ancient Greece.¹²⁶ The remark, "if God Almighty so decides," is a typical Muslim phrase added by An-Nadim but not by Usaibi'a.

V. Paragraph Twenty-two

Paragraphs twenty-two through twenty-six are concerned with the erection of certain memorials in honor of some of Aristotle's closest relatives, with Aristotle's final resting place, and with some votive statues to be set up in Stagira. Any testator who wished to have the memory of his ancestors (or that of some near relative or himself) honored by appropriate measures usually charged his heirs or executors to establish and maintain certain memorial cults, or to set up statues of himself or of those persons he had named in his will.¹²⁷ Frequently the testator intended to have his memory and that of his ancestors honored with appropriate feasts or sacrifices. Since he might entertain doubts about the piety of his own children, he often included in his will provisions setting up special "trust funds" to be applied to this particular purpose, and he frequently appointed as trustee a kind of "association" consisting of close relatives or trusted friends. Perhaps from religious prejudice, the Arabic biographers omitted this part of Aristotle's last will and testament, which they probably correlated to "reprehensible" pagan practices violative of the provisions of the Koran forbidding the use of graven images. Perhaps they simply regarded these provisions as unimportant.

In paragraph twenty-two Aristotle stipulates that "images" (busts or statues) of Nicanor, Proxenus, and Arimneste, Aristotle's (older?) sister, should be set up. With this generous gesture, Aristotle manifests his gratitude towards Proxenus, who (as his "guardian"?) had taken care of the young Aristotle after

freedom on the condition that they stay four years in the garden [with the Peripatus and the property belonging to the Peripatetic community] and work together, and that their conduct be free of blame."

125 Lycon stipulates in his will that Agathon should be emancipated after two years, while Ophelio and Posidonius would be freed after four years of further service. *Id.* para. 73.

126 See *id.* para. 55 (will of Theophrastus); *id.* para. 63 (will of Straton of Lampsacus); *id.* paras. 72-73 (will of Lycon). Theophrastus expressly stipulated that one of his slaves, Euboeus, "must be sold," apparently indicating that he had been a poor servant. *Id.* para. 55. In his *Politics*, Aristotle stated that it was "expedient" that "liberty should always be held out to them [slaves] as the reward of their services."

127 Theophrastus' will directs that a bust of Aristotle, which had apparently been damaged, should be replaced (repaired?) and set up in the sanctuary of the Peripatus. DIOGENES LAERTIUS, bk. 5, para. 51. In his will, Straton of Lampsacus directs Arcesilaus, Olympichus, and Lycon to take care of his (Straton's) monument. *Id.* para. 64. Lycon's will stipulated that "proper commemorations" in his honor be instituted by his heirs and that a statue be erected in his memory. *Id.* para. 71.

the latter had lost his parents, and towards Arimneste, his sister and the wife of Proxenus. Arimneste, we may presume, had been a "second mother" to Aristotle after his parents' death. The fact that Aristotle later took over the education of Nicanor might indicate that Nicanor's parents, Proxenus and Arimneste, both died while Nicanor was still rather young.¹²⁸ Proxenus and Arimneste certainly were dead by 322 B.C., the probable year Aristotle drew up his last will and testament. In setting up the "image" of Nicanor, who was still alive in 322 B.C., Aristotle also wishes to acknowledge his indebtedness to Nicanor's parents. The sculptor, Gryllion (or Grylion), who had been commissioned to execute these images, cannot be identified.

W. Paragraph Twenty-three

Here Aristotle makes provision for a bust in memory of his (younger?) brother Arimnestus. Arimnestus apparently had died rather young without leaving any issue and, hence, had no one but his surviving brother, Aristotle, to remember and honor him as the duty of piety required.¹²⁹

X. Paragraph Twenty-four

The pious and apparently affectionate son provides that the statue or "likeness" of his mother Phaestis should be dedicated to, or erected in the temple of, Demeter of Nemea, or wherever the executors think best. Protogenes of Rhodes, a famous painter, is said to have painted the portrait of Aristotle's mother.¹³⁰ Whether or not the "likeness" mentioned here is this portrait cannot be determined. No temple of Demeter at Nemea (or of Nemea) has so far been identified, and we do not know the particular reason why Aristotle insists that his mother's statue or "likeness" be dedicated to Demeter.¹³¹ For some reason, Aristotle does not mention his father, Nicomachus. Perhaps he had died before the child Aristotle formed a lasting impression of him, or perhaps there once had existed some serious tensions or disagreements between the young Aristotle and his father.

Y. Paragraph Twenty-five

This passage implies that Aristotle had not designated his final resting place

128 VITA ARISTOTELIS MARCIANA para. 3; VITA ARISTOTELIS VULGATA para. 2; VITA ARISTOTELIS LATINA para. 3.

129 Similarly, Theophrastus stipulates in his will that the life-size statue of Nicomachus [the son of Aristotle and Herpyllis] should be completed. The price agreed upon for the making of the statue itself has been paid to Praxiteles, but the rest of the cost should be defrayed from the source above mentioned [the trust funds at the disposal of Hipparchus]. DIOGENES LAERTIUS, bk. 5, para. 52. The trust funds mentioned here are also to be "applied to complete the rebuilding of the Museum." *Id.* para. 51. The sculptor referred to is Praxiteles the Younger.

130 PLINY, NATURALIS HISTORIA, bk. 35, para. 106.

131 According to a tradition distinctly hostile to Aristotle transmitted by Lycon Pythagoraeus, the former is said to have sacrificed to his wife Pythias (on the occasion of her death?) in the same manner "as the Athenians sacrifice to Demeter of Eleusis." EUSEBIUS, *supra* note 12, bk. 15, ch. 2, para. 8. It is not impossible that the slanderous story related by Lycon is simply a perversion of the stipulation contained in paragraph twenty-three of the will, with a transfer from Phaestis (Aristotle's mother) to Pythias (Aristotle's wife).

but had left this to his executors or heirs.¹³² Aristotle's specific wish that the bones of his long-departed wife, Pythias, should be buried with his own remains, as Pythias apparently had wanted, indicates that Aristotle's (brief?) marriage to Pythias was a happy one.¹³³ This also indicates that he considered Pythias his only lawful wife and that he did not take Herpyllis as a second wife, as some have suggested.

Z. Paragraph Twenty-six

The stipulation that, in compliance with Aristotle's vow, the trustees or executors shall set up in Stagira life-size statues of Zeus and Athena in order to ensure, or show thanks for, the safe return of Nicanor bears out the fact, also alluded to in paragraphs three and eight, that, at the time of Aristotle's death, Nicanor was on a "dangerous mission" abroad. To provide for such votive statues in a will was not an uncommon practice in ancient Greece. This gesture also attests that Aristotle was a pious and god-fearing man¹³⁴ and that he must have been very fond of Nicanor, the intended husband of his only daughter. The votive statues are to measure "four cubits high," which for some unknown reason was taken by some scholars to mean "four animal figures."¹³⁵

V. Conclusion

From a technical or legalistic point of view, Aristotle's last will and testament poses a number of problems, most of which can be resolved, it is believed, in a reasonably satisfactory manner. Some scholars have denied outright that this instrument is in fact a will; others are in disagreement as to its ultimate meaning; and still others believe that in the process of transmission it has been severely mutilated and badly distorted. There is no conclusive evidence, however, to support any of these allegations.

Except for a few relatively minor details, there exists an undeniable agreement or accord between the Greek text of Aristotle's will preserved by Diogenes Laertius and the Arabic text. It is fairly safe to assume that, in some instances, Diogenes' version is slightly abridged, while the Arabic version is probably closer to the original document. To call the latter an "expanded interpolation" of the original text is not warranted by the evidence. Only on two major points do these two versions disagree. The Arabs explicitly refer to Herpyllis as Aristotle's

132 I VITA ARISTOTELIS SYRIACA relates that upon the death of Aristotle the grateful people of Stagira, in order to honor him and to show their gratitude for what he had done for his native city, brought his remains to Stagira. This story, with elaborations, additions, and embellishments, is repeated in II VITA ARISTOTELIS ARABICA paras. 25-30; III VITA ARISTOTELIS ARABICA; IV VITA ARISTOTELIS ARABICA paras. 30-31. See also VITA ARISTOTELIS MARCIANA paras. 17-18; VITA ARISTOTELIS LATINA paras. 17, 19. We possess no other evidence, however, in support of this attractive story. Since Pythias, Aristotle's wife, probably died in Stagira (or Macedonia) shortly before Aristotle returned to Athens about 335/334 B.C., it is not unlikely that she was laid to rest in Stagira.

133 This would dispel some of the nasty stories about the marriage of Aristotle and Pythias invented by a slanderous tradition and circulated in order to malign the couple. See note 47 *supra*.

134 See Chroust, *Aristotle's Religious Convictions*, 69 DIVUS THOMAS 91 (1966).

135 According to Plato, Socrates' last words were: "Crito, I owe a cock to Asclepius. Will you see to it that this debt is paid?" PLATO, PHAEDO para. 118A.

handmaid.¹³⁶ This important statement should dispel any doubt as to Herpyllis' true status in Aristotle's household. Moreover, the Arabic version, but not that of Diogenes Laertius, contains the provision that "as to my estate and my son [Nicomachus] there is no need for me to make a [formal] last will and testament."¹³⁷ This provision should make it clear that at one time Aristotle had adopted or legitimized Nicomachus, his son by Herpyllis. Aside from shedding light on the status of Herpyllis and Nicomachus, Aristotle's will also indicates that by 323/322 B.C., when the instrument was drawn up, Stagira must have been rebuilt, at least in part. Otherwise, the provision contained in paragraph thirteen, that if Herpyllis should elect to stay in Stagira she could live in Aristotle's paternal home,¹³⁸ would be meaningless.

The will also indicates that Aristotle must have been a well-to-do man,¹³⁹ that when he fled from Athens in 323 B.C. he managed to take with him most of his movable property and his large staff of servants, and that he owned no house or other real property in Athens. Unlike the testaments of other Peripatetic scholars (namely, those of Theophrastus, Straton of Lampsacus, and Lycon) Aristotle's will does not contain any provisions or stipulations concerning the "school property of the Peripatus." According to Strabo,¹⁴⁰ Aristotle donated his personal library to Theophrastus, probably at the time he fled Athens, perhaps in order to indicate that he wanted Theophrastus to be his "successor."¹⁴¹ Since Aristotle was a *metic* in Athens, under the existing Athenian laws he could not have owned any real property there. The Lyceum was a "municipal" building and, hence, was not his to bequeath. Theophrastus in contrast, could bequeath the grounds and buildings of the Peripatus to whomever he chose. Aristotle merely taught or discussed philosophic issues at the Lyceum, as did other teachers. Moreover, it is highly improper to call Aristotle the first scholar of the Peripatus, although he is certainly the founder of Peripatetic philosophy. Not being the scholar of the Peripatus or of any distinct "school," he could not dispose of the school property.¹⁴²

More broadly speaking, Aristotle's last will and testament is a truly noble document, attesting to the generosity and piety of the testator. To the point of being overmeticulous, Aristotle generously provides for all persons near and dear to him. Within the restrictions imposed upon him by law, he makes magnanimous provisions for Herpyllis, who shared his last years and who had borne him his only son. In a spirit of humanity and generosity, he not only frees his servants and slaves but also sees to it that they receive additional remunerations for their long and loyal services. In the waning days of his life, he recalls his faraway paternal home in Stagira, where he had spent what must have been a happy childhood. He remembers his long-departed mother; his (younger?) brother Arimnestus, who apparently had died at an early age; his foster father Proxenus,

136 See text accompanying note 46 *supra*.

137 See text accompanying notes 101-14 *supra*.

138 See note 99 *supra* and accompanying text.

139 See note 116 *supra* and accompanying text.

140 STRABO, *supra* note 5, bk. 13, ch. 1, para. 54.

141 See, e.g., I VITA ARISTOTELIS ARABICA para. 16; II VITA ARISTOTELIS ARABICA para. 32; IV VITA ARISTOTELIS ARABICA para. 34.

142 See note 103 *supra*.

who had taken charge of the boy Aristotle after the death of his father; his (older?) sister Arimneste, the wife of Proxenus, who had become his second mother; and Nicanor, the son of Proxenus and Arimneste and his prospective son-in-law. To honor these people he decrees that their memory be preserved in graven stone. He desires that his remains be buried with those of his long-departed wife, Pythias, the mother of his only daughter. The technical language of Aristotle's last will does not obscure his spirit of true humanity and genuine piety. In more than one sense, this document is the abiding testimony of a noble human being.¹⁴³

¹⁴³ See W. JAEGER, *ARISTOTLE: FUNDAMENTALS OF THE HISTORY OF HIS DEVELOPMENT*, 320-21 (1948).