

Testamentary capacity and disinheritance

Abstract

Disinheritance is an institute of law, which gives the testator opportunity to shorten, or not to leave the forced share to the forced heir for which he is entitled by law. The testator can act in this way only if grounds for disinheritance are met. Grounds for disinheritance are defined by law. However, the legislator does not explicitly state who has this legal capacity. We infer this fact logically.

The purpose of diploma thesis is the institute of disinheritance, its overall analysis and demonstration on examples from case law. Also, to evaluate the institute of testamentary incapacity, or the incapacity to make disposition of property upon death, and the institute of disinheritance and put them into context. At the same time, to point out whether legal definition of the testamentary incapacity could have been defined in a different way in the law.

The diploma thesis is systematically divided into four chapters, which are then divided into subchapters.

The first chapter explains the basic terms which are used in connection with institute of disinheritance. It also demonstrates the most important of the legal principles related to it.

The second chapter deals with incapacity to make disposition of property upon death. It is pointed out here that the demonstration of the institute can be perceived as problematic in this way, ie by a negative definition. Definition of capacity would seem more appropriate. Subsequently, this institute is put in connection with the institute of disinheritance.

The third chapter, as the most significant chapter of diploma, deals with the institute of disinheritance, its general description and a deeper analysis of the individual grounds for disinheritance, which are supported by the cited statements from the case law. In this respect, case law is a key pillar in the interpretation of some of the grounds, which includes abstract and undefined words by law.

The last chapter is a brief excursion into Serbian law in terms of disinheritance and how is this institute governed by Serbian law.