

PERSONALISED LEGAL ASSISTANCE

Professional legal and property consulting

SONNENBERG & ASSOCIATES PROPERTY AND LEGAL ADVICE NEWSLETTER #23

1. Legal Quotes

"Laws are spider webs through which big flies pass and little ones get caught." [Honore de Balzac]

"The more corrupt the state, the more numerous the laws." [Tacitus, *The Annals of Imperial Rome*]

"Do things that make you happy within the confines of the legal system." [Ellen De Generes]

2. Legal short

"Lawsuit: a machine which you go into as a pig and come out of as a sausage." [Ambrose Bierce]

3. Inspiring quotes

"A wise man gets more use from his enemies than a fool from his friends." [Baltasar Gracian]

"Enthusiasm moves the world." [Arthur Balfour]

"Laughter is an instant vacation." [Milton Berle]

4. Legal terms used in wills

1. Massing

Massing is when **two or more people** combine or **consolidate (mass) their separate estates (or, if they are married in community of property, their undivided half shares of their joint estate) into a single massed estate, prescribing in their (joint or mutual) will what must be done with this massed estate on the occurrence of a specific event**, usually the death of the first dying testator.

- Whilst both parties are still alive, either party may revoke their share of the joint will without informing the other party.
- After the death of one of the parties, the surviving party may not revoke their share of the joint will, if he or she has accepted some benefit in terms of the will.
- The survivor can choose to accept the (or a portion of the) benefits under the will. This election is known as "**adiation**". He or she is then bound by the terms of the will.
- If the survivor rejects the benefits in terms of the joint will, this rejection is known as "**repudiation**". If the survivor repudiates, he or she is not bound by the terms of the will and reverts to the legal position he or she enjoyed before the death of the testator. The survivor may then retain his or her property, and the joint will only then remains in force vis-à-vis the deceased's property (or share of the property). The deceased's property (or share thereof) will then devolve upon the other heirs or beneficiaries of the deceased.
- The survivor is obliged to make the election to adiate or repudiate within a reasonable time, but cannot be compelled to make the choice before he or she understands the material consequences arising from his or her election.
- If the survivor then dies before making the election to adiate or repudiate, the right to do so passes to his or her heirs or beneficiaries.

Should you wish to execute a joint will, it is advisable to consult a suitably qualified professional.

2. Collation

Collation is a legal obligation imposed on all descendants who wish to benefit in the estate of an ancestor, either by way of intestate succession, or as an heir in a will. This obligation is to account to the estate of the ancestor for any gifts or advances received from the ancestor during his lifetime.

- The basis of collation is that a parent is presumed to have intended to benefit his children/descendants equally.
- The effect of collation is to add to the amount that each beneficiary will inherit.
- An heir who refuses to collate is not entitled to claim his inheritance.
- Collation may be expressly dispensed with in the will of the testator, or waived by those entitled to

[the benefit thereof.](#)

- Monies spent on the maintenance of the descendant, monies spent on the descendant's education or an unconditional gift (provided that this expenditure is not substantial in relation to the ancestor's means and disproportionate to what other descendants have received), is not obliged to be collated.
- Collation only applies to heirs who have adiated.
- Legatees are not liable to collate, unless the will specifies otherwise.
- **Only intestate heirs**, or heirs in terms of a will of an ancestor (provided that they would have been his heirs had there been no will), **are obliged to collate** (e.g. a grandchild whose father is alive and who has been appointed an heir under his grandfather's will, need not collate. If his father is dead, however, he must collate not only what he received from his grandfather, but also amounts his father received).

I recommend adding a clause to your will specifically excluding the obligation of your beneficiaries to collate, should this be your intention.

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