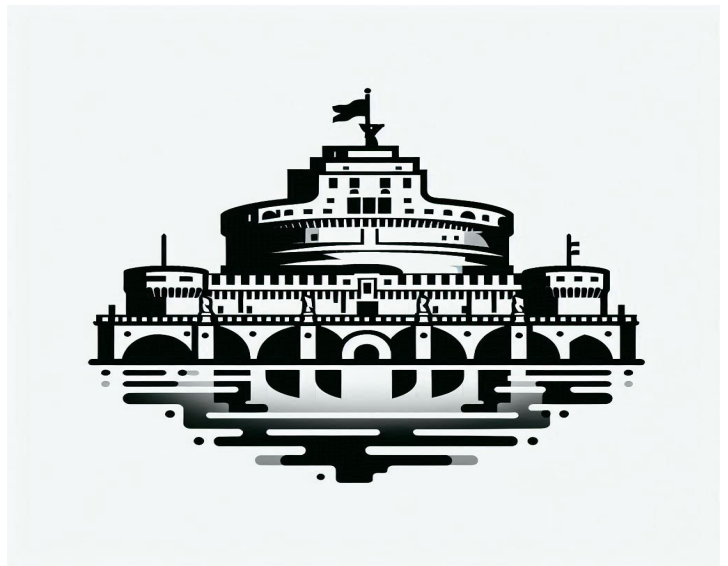


# Forced Inheritance



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# FORCED INHERITANCE

## Testamentary Freedom v Forced Heirship



Forced inheritance is a legal doctrine that restricts the freedom of individuals to distribute their estates as they wish. It is particularly relevant in civil law countries like Italy, France, and Spain, where a share of estate must be reserved for certain heirs, typically spouses and children. This system contrasts with common law jurisdictions, such as the UK or the US, where individuals have broad testamentary freedom. Forced heirship can create complications in cross-border estate planning, particularly when assets are located in multiple countries with differing succession rules.

In many cross-border estate cases, forced heirship can be avoided through careful planning and the strategic use of legal mechanisms. However, navigating the complexities of international succession laws requires expert legal advice to ensure the chosen approach is valid and enforceable. Consulting a lawyer is essential to structuring an estate effectively, preventing disputes, and ensuring assets are distributed according to one's wishes.

## Why avoid forced heirship Rules?

- **Family Circumstances and Needs** – The rigid allocation of shares does not consider individual circumstances, such as a child with greater financial need, a disabled heir requiring additional support, or estranged family relationships.
- **Business and Asset Protection** – Forced heirship can lead to the unwanted division of business interests or real estate, making it difficult to maintain control or keep assets intact for long-term financial stability.
- **Tax Efficiency and Estate Planning** – It may be more tax-efficient to structure an estate differently, such as through trusts or other estate planning tools, but forced heirship laws can interfere with these strategies.
- **Avoiding Family Disputes** – Disputes may arise if certain heirs are unwilling or unable to manage inherited assets, leading to litigation or forced sales, particularly in cases where heirs have conflicting interests.
- **Cross-Border Legal Conflicts** – If the deceased owns assets in multiple jurisdictions, forced heirship rules may clash with the laws of other countries, creating legal uncertainty, probate delays, and potential disputes between heirs in different legal systems.

## How Forced Heirship Works in Italy

Under Italian law, a testator cannot freely dispose of their entire estate if they have certain family members, known as *\*legittimari\** (protected heirs). These include:

- Spouse
- Children (or their descendants)
- In some cases, parents (if there are no children)

A portion of the estate, known as the *"quota di riserva"*, is reserved for these heirs. For example, if a deceased person leaves a spouse and one child, at least 50% of the estate must be allocated to them, regardless of what the will states. If two or more children exist, they must collectively receive at least two-thirds of the estate.

The remaining portion of the estate (*"quota disponibile"*) can be freely distributed. However, if a will disregards the reserved shares, the disinherited heir can challenge it in court to claim their legal entitlement.

## Legal Issues when dealing with Forced Heirship in International Estates

When dealing with cross-border estates, forced heirship can lead to several complications, particularly for individuals accustomed to common law principles or those holding assets in multiple jurisdictions.

### 1. Conflicting Succession Laws

Different legal systems may claim jurisdiction over the estate, leading to uncertainty over which rules apply. For instance, an Italian citizen who also holds UK citizenship and owns property in both countries may face competing legal frameworks. Italy applies forced heirship, while the UK allows testamentary freedom, potentially creating legal conflicts.

### 2. Application of EU Succession Regulation (Regulation 650/2012)

This regulation allows individuals residing in an EU country (including Italy) to elect the law of their nationality to govern their entire estate. A British citizen living in Italy could, in theory, choose UK law to avoid Italian forced heirship rules. However, if they fail to make this election explicitly in their will, Italian law may automatically apply.

### 3. Recognition of Foreign Wills

Wills drafted in common law countries may not be automatically recognized in Italy, especially if they attempt to disinherit forced heirs. Italian courts may invalidate parts of the will that violate local forced heirship rules.

### 4. Impact on Trusts and Jointly Held Assets

Many common law estate planning tools, such as trusts and joint tenancies with survivorship, do not fit neatly into the Italian legal framework. Italy does not fully recognize trusts, and jointly owned property may be subject to forced heirship claims, frustrating an

individual's succession plans.

## **5. Legal Disputes and Delays**

Disputes often arise when heirs challenge a will or seek to enforce their reserved shares. Litigation can be lengthy and costly, delaying the administration of the estate and creating financial and emotional burdens for the heirs.

## **Conclusion**

Forced heirship presents significant challenges for international estate planning, especially when assets are spread across civil law and common law jurisdictions. Careful planning is essential to minimize legal conflicts, ensure assets are distributed as intended, and avoid lengthy disputes. Strategies such as making an express choice of law under the EU Succession Regulation, structuring assets appropriately, and seeking professional legal advice can help navigate these complexities.