

	<i>Preface</i>	v
	<i>Contents</i>	vii
	<i>Abbreviations</i>	xviii
	<i>Authors</i>	xxvi
PART I	Harmonization of Succession Law in Europe: The Current Debate	
CHAPTER I	Need and Opportunity of Convergence in European Succession Laws	
	Walter Pintens	3
1	Introduction	5
2	Need for Convergence in European Substantive Succession Laws	6
3	Opportunity of Convergence in European Substantive Succession Laws	8
3.1	Spontaneous Harmonisation	8
3.1.1	The Statutory Portion of the Surviving Spouse	8
3.1.2	Compulsory Portion of Children	12
3.1.3	Conclusion	17
3.2	Institutional Unification	19
3.2.1	Achievements	19
3.2.2	Promotion of What We Have	21
3.3	Legal Scholarship	21
4	Conclusions	22
CHAPTER 2	Testamentary Freedom or Forced Heirship? Balancing Party Autonomy and the Protection of Family Members	
	Andrea Bonomi	25
1	Introductory Remarks	27
2	The Connecting Factor of the Last Habitual Residence of the Deceased	29
3	The Choice of Applicable Law	31
4	Agreements as to Succession	34
5	The Public Policy Exception	36
6	Final Remarks	38

PART	II	New Trends in Catalan Succession Law	
CHAPTER 3		Between Tradition and Modernisation: A General Overview of the Catalan Succession Law Reform	
		Esther Arroyo i Amayuelas – Miriam Anderson	41
	I	Introduction	43
	I.1	The Diversity of Private Law Systems in Spain	43
	I.2	Catalonia: From the 1960 Compilation to a Civil Code	44
	2	An Overview of the Law of Succession in Book IV of the Catalan Civil Code	45
	3	The Law of Succession and Legal Tradition: New Rules for Old Principles	48
	3.1	The Appointment of an Heir Is a Prerequisite for the Validity of a Will	49
	3.2	The Heir As a Universal Successor	51
	3.3	<i>Nemo Pro Parte Testatus, Pro Parte Intestatus Decedere Potest</i>	51
	3.4	<i>Semel Heres, Semper Heres</i>	52
	4	The Impact of Social and Economic Changes on the Law of Succession	54
	4.1	Freedom of Testation and Respect for the Testator's Wishes	54
	4.1.1	New Grounds for Unworthiness and a Longer List of Victims of Reprehensible Conduct	55
	4.1.2	A New Ground for Disinheritance: The Lack of Normal Family Interaction Attributable to the Forced Heir	56
	4.1.3	The Protection of the Elderly Testator	57
	4.2	The Adaptation of the Law of Succession to New Family Models	58
	4.2.1	The Equalization of Spouses and Cohabitants	58
	4.2.2	Improvements in the Position of the Surviving Spouse or Cohabitant	60
	4.3	Succession within the Family Business: The Modernization of Inheritance Agreements	65
	5	Changes within Tradition: The Incomplete Reform of the Forced Share	68
	6	Conclusions	71
CHAPTER 4		Testamentary Freedom and Its Limits	
		Esteve Bosch Capdevila	73
	I	Introduction	75
	I.1	The Testator's Will as the Supreme Law of Succession	75
	I.2	Protecting Testamentary Freedom	75
	I.3	The Types of Limits to Testamentary Freedom	75

2	Limits Derived from the Testator's Wishes	77
2.1	Provisions in a Will Aiming to Prevent Future Testamentary Modification or Revocation	77
2.2	<i>Ad Cautelam</i> Clauses: Do They Protect or Limit Testamentary Freedom?	77
2.2.1	The Admission of <i>Ad Cautelam</i> Clauses in the Catalan Legal Tradition and in the Precedents of Book IV of the CC Cat	78
2.2.2	The Silence of Book IV of the CC Cat Regarding the <i>Ad Cautelam</i> Clauses	79
3	The Limits Imposed by a Third Party: The Problems Caused by <i>Captatorias Institutiones</i>	80
4	The Legal Limits to the Content of Testamentary Provisions	82
4.1	Limits that Affect the Conditions that a Testator Can Impose	82
4.1.1	Limits Deriving from the Principle <i>Semel Heres Semper Heres</i>	82
4.1.2	Limits Derived from Certain Conditions Being Unlawful	84
4.2	Limits Affecting Specific Clauses	85
4.2.1	The Incompatibility between Testate and Intestate Heirs and Testamentary Freedom	86
4.2.2	The Limits Imposed on Fideicommissum	86
4.3	The Lineage Principle	87
4.4	Discriminatory Clauses	87

CHAPTER 5	Freedom of Testation, Compulsory Share and Disinheritance Based on Lack of Family Relationship Antoni Vaquer Aloy	89
1	Preliminary Remarks	91
2	Reforms of the Compulsory Share in European Laws of Succession: No Abrogation, Only Reduction	92
3	A Weaker Compulsory Share in Catalonia	93
4	The New Ground for Disinheritance in Art. 451-7.2 e of the Catalan Civil Code	95
4.1	Subsistence of the Compulsory Share, with Widening Grounds for Disinheritance	95
4.2	Behaviour-Based Succession Systems	95
4.3	Compulsory Share, Disinheritance and Descendants' Behaviour in Catalan Law	98
5	Concluding Remarks	103

CHAPTER 6	Freedom of Testation Versus Freedom to Enter Into Succession Agreements and Transaction Costs	
	Susana Navas Navarro	105
I	Introduction	107
2	The Legislator's Choice: An Inheritance Agreement Prevails Over and Is Sometimes Incompatible With a Will	109
3	The Deceased's Choice: Succession Within the Family Business	112
3.1	Preliminary Remarks	112
3.2	The Family Estate: From "Homestead" to "Business"?	115
3.3	Economic Costs Derived from Entering into Succession Agreements	117
3.3.1	Transaction Costs and the Choice of the Successor	118
3.3.2	Economic Costs Derived from the Deceased's Change of Mind	120
3.4	Possible "Efficient" Instruments for Succession Within the Family Business	123
4	Final Conclusions	125
PART	III National Perspectives on the Law of Succession in the 21st Century	
CHAPTER 7	Freedom of Testation in England and Wales	
	Roger Kerridge	129
I	Introduction	131
2	History	131
3	Trusts as a Restraint on Freedom of Testation	134
4	The Mortmain Act	136
5	The 'Construction' (or Interpretation) of Wills	137
6	The <i>Pla and Puncernau</i> Case Viewed from England	139
7	Contracts to Leave Property by Will, Proprietary Estoppel and Mutual Wills	142
7.1	Validity of a Contract to Leave Property by Will	142
7.2	Proprietary Estoppel	142
7.3	Mutual Wills	143
8	Freedom of Testation in England in the Twentieth and Twenty First Centuries	145
9	What Problems Are There Under the 1975 Act?	148
10	Particular Problems with Children and Step-children	151
11	Reform of the 1975 Act	151

CHAPTER 8	Law of Succession and Testamentary Freedom in Germany A. Röthel	155
1	Introduction	157
2	Testamentary Freedom and Public Policy (§ 138 BGB)	157
2.1	Conditional Inheritance: "Undue Influence" on Heirs?	158
2.2	Wills in Favour of Disabled People or of People in Need versus Social Welfare	159
2.3	The "Rule Against Perpetuities"	159
2.4	Particular Testamentary Prohibitions	161
3	Testamentary Freedom and the Compulsory Portion (§§ 2303 ff. BGB)	162
3.1	Overview of the Basic Concept	163
3.2	Reforms in the Law on Compulsory Portion (2009)	164
3.2.1	Increase of Compulsory Portions Due to <i>Inter Vivos</i> Donations (§ 2325 BGB latest amendment)	164
3.2.2	Deferment (§ 2331a BGB latest amendment)	164
3.2.3	Deprivation of the Compulsory Portion (§ 2333 BGB)	164
4	Testamentary Freedom and Inheritance Agreements	165
4.1	Overview of the Applicable Law	165
4.2	Reform Debate	165
5	Summary: Requirements of Freedom of Testation Fit for the Present Day	166
CHAPTER 9	The Law of Succession in Hungary Zoltán Csehi	167
1	Introduction	169
2	Freedom of Testation versus <i>Ordre Public</i>	170
2.1	Restrictions Imposed by Human Rights and Fundamental Rights	171
2.1.1	Preliminaries on Human Rights	171
2.1.2	The Modern Hungarian Constitution	172
2.1.3	The Practice of the Constitutional Court Concerning Succession	173
2.2	Public Law Restrictions	175
2.3	Private Law Restrictions	175
3	Freedom of Testation versus Legally Granted Hereditary Rights	177
3.1	Preliminaries on Compulsory Share	177
3.2	Functions of the Compulsory Share	177
3.3	The Rules on Compulsory Share	180
3.3.1	Beneficiaries	180
3.3.2	Extent	182

3.3.3	Basis	182
3.3.4	Facts Affecting the Allocated Share	183
3.3.5	Payment	183
3.3.6	Obligor	183
3.3.7	Collisions with Other Rights	184
3.3.8	The Future of the Compulsory Share	184
4	Freedom of Testation versus Freedom to Enter into Inheritance Agreements	184
4.1	Contracts Regulated Outside the Law of Succession	185
4.1.1	Support Contract	185
4.1.2	Life Insurance	185
4.1.3	Savings Deposits	185
4.1.4	Copyright	186
4.2	Contracts Within the Law of Succession	186
4.2.1	Inheritance Contracts	186
4.2.2	<i>Donatio Mortis Causa</i>	188
4.2.3	Contract Among Descendants on Anticipated Inheritance	189
5	<i>De Lege Ferenda</i>	190
CHAPTER 10	Freedom of Testation in Italy	
	Andrea Fusaro	191
1	Freedom of Testation and <i>Ordre Public</i>	193
1.1	Freedom To Make a Will: Different Types of Wills	193
1.2	<i>Ordre Public</i>	193
1.2.1	The Prohibition of Indefinite Settlements	193
1.2.2	Conditions Imposed on the Heir	194
2	Intestacy	194
3	Freedom of Testation and Hereditary Rights Legally Granted	195
3.1	Forced Share	195
3.2	Subjects	196
3.3	Quotas and Rights	196
3.4	Calculation of the Forced Share	197
3.5	The Reduction of Testamentary Dispositions and Donations	197
3.6	The Circulation of Assets	197
4	Freedom of Testation versus Freedom to Enter into Inheritance Agreements	198
	Annex: Draft of a Family Agreement	200

CHAPTER 11	Acquisition of Property by Succession in Dutch Law. Tradition between Autonomy and Solidarity in a Changing Society	
	J. Michael Milo	203
1	Introduction	205
2	Principles and Developments in Dutch Succession Law	205
2.1	Principles and Other Determining Factors	205
2.2	Developments in Precodified Dutch Law	208
2.3	From the First Codification Onwards	211
3	Contemporary Succession Law in General	214
3.1	Succession and Matrimonial Property Law	214
3.2	Succession, Systematization, and Acquisition of Property	215
3.3	Intestate Succession	217
3.4	Testamentary Dispositions and Restrictions	218
4	Position of the Spouse and the Children	223
4.1	Intestate Positions of Spouse and Children	223
4.2	Testate Position of Spouse and Children	225
4.3	Forced Heirship	226
5	Concluding Remarks	226
CHAPTER 12	The Norwegian Approach to Forced Share, the Surviving Spouse's Position and Irrevocable Wills	
	Peter Hambro	229
1	Introduction	231
2	The Forced Share Inheritance	231
3	The Contents of Wills	234
4	The Position of the Surviving Spouse	235
5	Irrevocable Wills	238
6	Other Irrevocable Instruments	239
6.1	Insurance Policies	239
6.2	Pre- and Postnuptial Agreements	240
CHAPTER 13	Restraints on Freedom of Testation in Scottish Succession Law	
	Eric Clive	241
1	Underlying Values	243
2	Freedom of Testation and Protection of Certain Claimants	245
2.1	Fixed Share for Spouse or Civil Partner	246
2.2	Fixed Share for Issue	249
2.3	Protection of Cohabitants	251
3	Other Restraints on Freedom of Testation	253

3.1	Inheritance Tax	253
3.2	Limitations on Accumulation of Income	254
3.3	Limitations on Future Liferents	255
3.4	Purposes Otherwise Contrary to Public Policy	256
CHAPTER 14	Freedom of Testation in Slovenia	
	Suzana Kraljić	257
I	Introduction	259
2	Freedom of Testation	260
2.1	<i>Ordre public</i>	260
2.2	Forced Share and <i>Exheredatio</i>	260
3	Especial Limitations for Agricultural Holdings	265
4	Inheritance Agreements	267
CHAPTER 15	Freedom of Testation, Legal Inheritance Rights and Public Order under Spanish Law	
	Sergio Cámara Lapuente	269
I	Overview	271
2	Limits on the Freedom to Dispose <i>Mortis Causa</i> in the Spanish Civil Code and in the Autonomous Communities	271
2.1	Legal Frame	271
2.2	Description of the <i>ex lege</i> Rights in Favour of the Deceased's Family	272
2.3	Assessment of the Main Legislative Trends	278
2.3.1	Strengthening the Legal Position of Surviving Spouses	278
2.3.2	Legal Rights in Favour of a Cohabitant	279
2.3.3	Scarce Enlargement of the Grounds of Disinheritance and Unworthiness	281
2.3.4	Special Protection for Certain Social Groups	282
3	Material Freedom of Testation	283
3.1	The Current Debate Regarding the Suppression or Modification of the Forced Share ('Legítima')	283
3.1.1	Arguments in Favour of Forced Shares ('Legítimas')	284
3.1.2	Arguments in Favour of Testamentary Freedom	285
3.2	Proposed Solutions	286
3.3	Channels for Relaxation without Eliminating the Forced Share	289
3.3.1	Reforms Already Implemented in the Spanish Civil Code	289
3.3.2	Other Reforms that Might be Suitable in View of Comparative Law (Both Interregional and International)	290
3.4	Other Possible Enlargements of Material Freedom of Testation	293

CONTENTS

4	Formal Freedom of Testation	293
4.1	Testamentary Forms	293
4.2	Inheritance Agreements, Joint Wills and Other <i>Mortis Causa</i> Instruments	294
4.3	Delegation of the Power to Make a Will, Appointment of Representatives with the Power to Choose Beneficiaries or to Distribute the Estate, or Appointment of Trustees (<i>'fiducia sucesoria'</i>)	296
4.4	Notaries' Plea for Further Reforms	299
5	Freedom of Testation and Public Order	299
5.1	Is the Forced Share a Matter of Public Order?	299
5.2	Does the Spanish Constitution Guarantee the Forced Share?	300
5.3	Scope of Spanish Public Order in International Succession	301
5.4	Public Order and Fraud to the Law of Succession	303
	<i>Bibliography</i>	308