TESTAMENTARY INHERITANCE IN ATHENIAN LAW

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Summary

In the introduction, the importance of the subject and the reasons for investigating it further are given. I have also mentioned the various Greek sources which have been used. The first chapter contains evidence from Homer and Hesiod which indicates that will-making in a very rudimentary oral form was not unknown in seventh-century Greece. In the second chapter, I have looked at Solon's law of testament, introduced in 594/3, which permitted a man to adopt someone by will. The third chapter consists of a discussion of the evidence from Sophocles, Euripides and Aristophanes concerning testaments, which suggests that in the fifth century, Athenians were often writing their wills as opposed to just making oral dispositions of property, and that these documents had various functions. Chapter 4 looks at the changes made to Solon's law by the Thirty Tyrants in 404/3. In Chapter 5, the legal competence to make a will is considered, particularly with reference to the clauses of exception in Solon's law, although this question is also examined with reference to a person's citizenship status. The longest chapter is the sixth one, which treats of the purpose of the testament. The evidence discussed here indicates that the Athenian will had a much wider scope than has often been thought. Chapter 7 concerns the formalities involved in witnessing a will, the means of ensuring that a testament was kept safe and vitiating the document. I have also discussed whether or not a will had to be written.

It seems as if there were no strict legal rules about these things, but that they were left to the testator's discretion. The final chapter concerns the arguments of the Attic orators when questioning a will's authenticity, and concludes that in the fourth century, arguments on grounds of forgery were probably used more widely in the courts than those based on capacity. In the conclusion, I have looked at the question of the chronology of the Athenian will, and have defended my results, which suggest that during the period under consideration, even though certain functions of the will were probably more prevalent in some centuries than in others, its fundamental purpose was the care of the οἶκος . Appendix 1 sets out the evidence concerning the relative positions of Nicanor and Nicomachus in the household of Aristotle, and Appendix 2 discusses the dating of the two fourth-century wills.

Introduction.

In the society of ancient Athens, the care of one's οἶκος and immediate family was of paramount importance. By means of his last will and testament, a man could assure himself that his last wishes in this respect would be carried out, unless, of course, the document was questioned or fell into dishonest hands. In ancient Athens, the will was still very much in its infancy, and there were no restrictions concerning details such as the manner in which the document was worded and so on; something which became more prevalent in Roman times. It is because Roman concepts of law were more closely defined that I have deliberately not applied them to Greek law, a thing which has been done often in the past, most notably by German scholars. In addition, the study of the testament sometimes provides an insight into the private and personal life of the testator, because in a man's will, one can see where his priorities lie, and thus catch a glimpse of the side of a man's character which might not have been displayed to his male contemporaries.

Despite the importance of the subject, there has been no full-length study of it in English, and the most recent study of the Greek will in general was written in German in 1909 (1). However, there are various articles concerning certain aspects of individual wills, in addition to the relevant chapters in text books of Greek law, and these have been of great value, even though I do not necessarily agree with all of the opinions expressed (2).

The ancient sources for the study of the Athenian will are fairly plentiful, and it is fortunate that part of the text of Solon's testamentary law is extant.

For the most part, I have relied upon the speeches of the Greek orators, particularly Isaeus and Demosthenes; there is also some information in Lysias, Hyperides, Aeschines and Andocides. Admittedly, no law-court speech is above suspicion, and Isaeus, my major source, has been particularly accused of dishonesty and much maligned, most notably by Sir William Wyse. However, I think that it must be borne in mind that any law-court speech will have a bias in favour of the person for whom it was written, and there will be an attempt to distort facts in order to strengthen one's client's case. That Isaeus was particularly skilled at this (3) does not make him an unreliable source, but merely indicates that he was a good lawyer. However, despite this natural bias, Isaeus may have been able to distort the facts of a case, but it is very improbable that he could distort a law or custom with which the jury was familiar (4).

I have supplemented this evidence with information from Diogenes Laertius concerning the wills of certain philosophers. Most of this information, with the exception of the will of Plato, concerns the post-classical period. For the most part, I have relied heavily on his verbatim quotations of the wills. This is because, in the one case where his text differs greatly from the Arabic translation, it seems very likely that the Greek version is correct, because in some points, the other is wrong in law (5). Therefore, even though

Diogenes Laertius is only as reliable as the source he is using, as far as the testaments of the philosophers are concerned, it seems as if his source transmitted the texts accurately.

I have also referred to the dramatists. Tragic drama has its problems as a potential source, the main one being that of anachronism . However, I do not think that this is a good enough reason for completely disregarding this evidence (6). Comedy poses different problems, such as the fact that one has to try and distinguish what might be regarded as literally true and what is a joke.

The opening chapter is a discussion from Homer and Hesiod. This is not of any direct bearing on Athenian law, but, in the absence of any evidence from Athens at this early stage, it is of some use in attempting to ascertain what might have been the case before Solon's law of testament.

In addition, I have also made use of Plutarch, Lives, Dionysius of Halicarnassus, Critical Essays, Ps.-Aristotle, Athenaion Politeia and Xenophon, Hellenica.

As far as legal boundaries are concerned, I have limited my discussion to cases which fell within the jurisdiction of Athenian law, and have not taken into account any information which can be found in various inscriptions and papyri concerning wills outwith Attica. There are two exceptions to this, namely the testaments of Conon and Aristotle, and I have given my reasons for including these in my discussion of them.

Unless otherwise stated, all three-figure dates are B. C.

Notes

1. Bruck, Schenkung.
2. These shall be referred to and discussed in the sections of my thesis to which they are relevant.
3. Dionysius of Halicarnassus, De Isaeo, 4, 14.
4. It could be objected that there is an example of a possible distortion of the law in Is. vi, 28. However, this is a reference to the Solonian law of testament which specifically forbids a man with legitimate sons to make a will ([Dem.] xlvi, 14), and this clause was probably only taken to refer to testamentary adoption. Therefore, even though this is not true in fact , since men with children did make wills , it is in accordance with the text of Solon's testamentary law.
5. This is the will of Aristotle, and the differences between the Arabic and Greek versions of the document are discussed in Chapter 6, Function.
6. cf. Lacey, Family, p. 10.

Chapter 1

Wills in Homer and Hesiod

The word διαθήκη and its verb διατίθημι do not occur in either Homer or Hesiod. The verb δίδωμι is found, but it generally refers to gifts as opposed to bequests. Any aspects of inheritance which might have some bearing on the subject of wills shall also be discussed. Since Homer is regarded as being the earlier poet of the two, I shall begin with Homer (1).

The authorship of the Iliad and the Odyssey is disputed. The two great epics are attributed to Homer, but it is not known whether they were composed by one inspired genius or in parts by several bards. Their date and place of composition is uncertain, although it is generally believed that they were composed about 700BC somewhere off the Greek mainland (2). It is probable that the poems were at first composed by an illiterate bard or bards and written down later. This matter is also open to conjecture (3). Therefore, the customs mentioned in the works are probably not only those of the period in which they are set, but also those of the period in which they were written. Furthermore, since the place of composition is uncertain, it is very likely that these customs were not indicative of the practices of just one location but several.

The first reference to inheritance is in the second book of the Iliad, when the previous owners of Agamemnon's staff are mentioned:

Ἥφαιστος μὲν δῶκε Διὶ Κρονίωνι ἄνακτι,
αὐτὰρ ἄρα Ζεὺς δῶκε διακτόρῳ ἀργειφόντῃ·
Ἑρμείας δὲ ἄναξ δῶκεν Πέλοπι πληξίππῳ,
αὐτὰρ ὁ αὖτε Πέλοψ δῶκ' Ἀτρέϊ, ποιμένι λαῶν·
Ἀτρεὺς δὲ θνήσκων ἔλιπεν πολύαρνι Θυέστῃ,
αὐτὰρ ὁ αὖτε Θυέστ' Ἀγαμέμνονι λεῖπε φορῆναι,
πολλῇσιν νήσοισι καὶ Ἄργεϊ παντὶ ἀνάσσειν.

(Hom. Il. ii, 102-108)

Here, two different verbs are used to describe the giving of property, namely δίδωμι and λείπω. The former is used with reference to the giving of the staff by gods and a demi god, and because these givers were immortals and could not leave legacies as such, δίδωμι refers to a gift as opposed to a bequest. On the other hand, λείπω is first used in conjunction with θνήσκων and refers to the giving of the staff by mortals, which suggests that it indicates a bequest as opposed to a gift "inter vivos" (4). The text does not make it clear whether an oral or a written bequest is referred to here. There are only two references to writing in the Homeric epics.

In the first, the Achaean warriors "make their mark" on lot tokens to decide who is to fight Hector (5). This suggests that they are illiterate. The second occurs in the tale of Bellerophon which relies on the transmission of a message written on "folded tablets":

.... πόρεν δ' ὅ γε σήματα λυγρά,
γράψας ἐν πίνακι πτυκτῷ θυμοφθόρα πολλά, ...

(Hom. Il. vi, 168-169)

This passage has been quoted to support the hypothesis that Homeric society was not completely illiterate. However, Jeffery suggests that the Bellerophon story's origin is not Greek but Lycian, and, since the message is "an integral part of the story any later teller would continue to repeat the traditional detail of the baneful signs without having any first hand knowledge of the thing itself" (7). This suggestion is compatible with the other evidence from Homer concerning writing, since this is limited to the mention of an illiterate's mark. Therefore, since Homeric society very probably was illiterate, λείπω refers to an oral as opposed to a written bequest. The verb ἀνάσσειν indicates the significance of the bequest; the staff was a symbol of regal authority, and the giving of it denoted the handing over of the kingdom to another.

It would have been necessary for the giver to specify whom he wished to receive the sceptre, since if this was not done, the succession probably would have been settled by force. In this case, λείπω is best interpreted as a bequest to take place after the death of the giver, since if a king were to leave a man with authority over his kingdom before leaving on a long journey, he might return to find a usurper on the throne, and would have to use force to regain it (8). Norton says of this series of bequests:

"That this is not simple hereditary succession would seem to be evident from the fact that Atreus who had sons, left it to his brother, Thyestes, and Thyestes who also had sons, left it to his nephew, Agamemnon. The simple narrative reads as if the men in question had a right to dispose of it as they wished and did so" (9).

However, Norton fails to recognize the fact that these bequests refer to the transferral of power as opposed to just property. The staff of regal authority could have been passed from Atreus to Thyestes because Agamemnon had not yet reached the age when he would be strong enough to rule, and this could be why Thyestes left the staff to Agamemnon rather than to his sons. In addition, he may have thought that Agamemnon, because of his military ability, would have been more able to maintain his ascendancy through might, since in Homeric society, the strength of a ruler or his sons was of paramount importance (10).

Therefore, the fact that the staff was passed from one person to another despite the fact that the givers had sons does not indicate that a man had the right to dispose of his property as he wished.

This separation between the Homeric king's authority and his private possessions is indicated in the conference at the beginning of the Odyssey. Here, in reply to Antinous' wish that Telemachus will not become king of Ithaca, Telemachus asks if it is possible for him to keep Odysseus' private property, and this request is acceded to by Eurymachus, another of Penelope's suitors (11):

"Τηλέμαχ', ἦ τοι ταῦτα θεῶν ἐν γούνασι κεῖται
ὅς τις ἐν ἀμφιάλῳ Ἰθάκῃ βασιλεύσει Ἀχαιῶν·
κτήματα δ' αὐτὸς ἔχοις καὶ δώμασι σοῖσιν ἀνάσσοις."

(Hom. Od. i, 400-402)

This passage indicates that a prince could expect to inherit his father's private property which would not be acquired by the next king if the prince himself did not ascend to the throne. On the other hand, if there were persons who were strong enough to overthrow his kingly authority, he might not necessarily inherit his kingdom. Therefore, it was to the advantage of a young prince if the throne was given to a trustworthy person, since this would lessen the likelihood of assassination and civil strife.

There is further evidence in the Iliad and the Odyssey that the son of a king did not necessarily succeed to his father's position as ruler.

When Aeneas challenges Achilles, Achilles taunts him with trying to curry favour with Priam in the hope that Priam will abdicate in his favour:

"... ἦ σέ γε θυμὸς ἐμοὶ μαχέσασθαι ἀνώγει
ἐλπόμενον Τρώεσσιν ἀνάξειν ἱπποδάμοισι
τιμῆς τῆς Πριάμου; ἀτὰρ εἴ κεν ἔμ' ἐξεναρίξῃς,
οὔ τοι τοὔνεκά γε Πρίαμος γέρας ἐν χερὶ θήσει·
εἰσὶν γάρ οἱ παῖδες, ὁ δ' ἔμπεδος οὐδ' ἀεσίφρων.

(Hom. Il. xx, 179-183)

This quotation suggests that it was possible for a king to abdicate in favour of someone else even if, like Priam, he had adult sons. It is not made clear how this could be done, whether by solemn public declaration or in private. The word ἔμπεδος implies that Priam would only abdicate if he were to become physically unfit, and ἀεσίφρων indicates that it is Achilles' opinion that Priam would only abdicate in favour of Aeneas if he were out of his senses. The latter is also apparent in Achilles' sarcastic tone.

That such a happening would not have been considered by Priam's sons is indicated by the fact that Hector assumes that kingly power will be passed through him to his sons (12). Furthermore, since Priam's sons have come of age and there are a great number of them, it is probable that even if Priam were to abdicate in favour of Aeneas, they would prevent him from coming to the throne by means of force.

Owing to the fact that legal concepts in the Homeric period were less developed than those in Athens at the time of the orators, the question of validity with reference to the bequest of a kingdom does not apply, since legal power rested with the king, not with a court of law, and the only manner in which the bequest would be upheld or invalidated would be by use of force, not equity.

Odysseus' conversation in the underworld with his mother, Anticleia, suggests what might have happened when a ruler was absent from his kingdom for a long time:

"εἰπὲ δέ μοι πατρός τε καὶ υἱέος, ὃν κατέλειπον,
ἦ ἔτι πὰρ κείνοισιν ἐμὸν γέρας, ἦέ τις ἤδη
ἀνδρῶν ἄλλος ἔχει, ἐμὲ δ' οὐκέτι φασὶ νέεσθαι.
εἰπὲ δέ μοι μνηστῆς ἀλόχου βουλήν τε νόον τε,
ἦὲ μένει παρὰ παιδὶ καὶ ἔμπεδα πάντα φυλάσσει
ἦ ἤδη μιν ἔγημεν Ἀχαιῶν ὅς τις ἄριστος"

"Ὡς ἐφάμην, ἡ δ' αὐτίκ' ἀμείβετο πότνια μήτηρ
καὶ λίην κείνη γε μένει τετληότι θυμῷ
σοῖσιν ἐνὶ μεγάροισιν· ὀϊζυραὶ δέ οἱ αἰεὶ
φθίνουσιν νύκτες τε καὶ ἤματα δάκρυ χεούσῃ.
σὸν δ' οὔ πώ τις ἔχει καλὸν γέρας, ἀλλὰ ἑκηλος
Τηλέμαχος τεμένεα νέμεται καὶ δαῖτας ἴσας
δαίνυται, ἃς ἐπέοικε δικασπόλον ἄνδρ' ἀλεγύνειν·
πάντες γὰρ καλέουσι. πατὴρ δὲ σὸς αὐτόθι μίμνει
ἀργῷ, οὐδὲ πόλινδε κατέρχεται."

(Hom. Od. xi, 174-187)

Here, the words ἧε... φυλάσσει suggest that the onus of keeping Odysseus' estate intact rests upon Penelope, which implies also that her future husband would also rule Ithaca. Finley states that the situation had arisen because the nobles of Ithaca "were agreed that the house of Odysseus was to be dethroned. Along with the rule, his successor was also to take his wife, his widow as many thought.

On this point, they were terribly insistent and it may be suggested that their reasoning was this, that by Penelope's receiving the suitor of her choice into the bed of Odysseus, some shadow of legitimacy, however dim and fictitious, would be thrown over the new king" (13). Finley does not make it clear whether he thinks that Penelope's new husband would also be the heir to Odysseus' private property in addition to ruling his kingdom. However, one of the suitors conceded that Telemachus could keep his father's private property in the event of his mother marrying again (14). The fact that Telemachus had to ask if he could retain his position as head of the οἶκος seems to suggest that this was not guaranteed to him, and implies that if the successful suitor were to employ enough force, Telemachus could also be ousted from this position. On the other hand, it is also possible that Telemachus' request is an example of him employing some of his father's guile to gain sympathy from the onlookers in the assembly. In addition, the words σὸν δ'οὖ... κικλήσκουσι indicate that despite the competition from the suitors, Telemachus is regarded as the heir to the throne and is treated accordingly.

Another matter arising from Odysseus' conversation with Anticleia is the position of Laertes, Odysseus' father. Finley assumes that Laertes retired because he was no longer strong enough to rule his kingdom (15).

If this was so, it is not clear in the poems whether he formally bequeathed his kingdom to Odysseus or whether the situation had evolved gradually in that Odysseus had slowly taken over the responsibility of ruling Ithaca. Another possiblility is that Laertes' absence from the running of the kingdom is because his presence "would not suit the plot of the Odyssey amd his withdrawal is at least likely to be a matter of artistic convenience as well as a reflection of actual usage." Calhoun then adds that there are examples of aged kings, such as Peleus, Idomeneus, Priam and Nestor (16). In addition, even though he is old and weak, Peleus is still king (17). However, when he is in the underworld, Achilles asks whether his father is still in a position of power, since he no longer has a son to protect him (18). Priam, although old, is still the Trojan king, and Nestor, despite his age, sailed to Troy, where he was of moral support to the Achaean army, and returned to rule his kingdom when the war was over. Laertes is the only king who is depicted in Homer's epics as having retired from public life. Therefore, it seems very probable that his retirement is for dramatic reasons, since if he were in power, the tale of Odysseus' homecoming and the sub-plot of the suitors would not be effective.

Therefore, as far as a kingdom was concerned, there was a distinct separation between a man's right to inherit his father's regal authority and his private property. It seems as if he was formally entitled to inherit the latter, but his right to the kingdom was not unassailable, and could be given to someone else by means of an oral disposition.

That it was possible for a man to give his son part of his property before death is indicated by the reference to the fact that Peleus had given Achilles his own armour to take with him to Troy:

... ὁ δ' ἄρα ᾧ παιδὶ ὄπασσε
γηράς· ἀλλ' οὐχ υἱὸς ἓν ἔντεσι πατρὸς ἐγήρα.

(Hom. Il. xvii, 196-197) (ὁ refers to Peleus).
Norton states that this passage "might be regarded as a 'donatio mortis causa'," but the fact that such a committal is mentioned seems to be an indication that the son was not necessarily a universal heir to his father's property (19). The view that the gifts were a "donatio mortis causa" could arise from the interpretation of γηράς as meaning "because he was going to die soon", which would be equivalent to θνήσκων in Iliad, ii, 106. However, Peleus' wife, Thetis, refers to him as being weighed down with years.

... ὁ μὲν δὴ γήραϊ λυγρῷ
κεῖται ἐνὶ μεγάροις ἀρημένος, ἄλλα δέ μοι νῦν·
(Hom. Il. xviii, 434-435)

Since she makes this statement shortly after the death of Patroclus, and Peleus had given Achilles his armour ten years previously, it seems very unlikely that this was a "donatio mortis causa". It is also possible that Peleus' gifts to Achilles are mentioned because they were gifts to Peleus from the gods.

There is also some evidence which is contrary to Norton's suggestion that the bequest of armour to Achilles indicates that a son was not necessarily his father's universal heir.

Achilles implies that if he had not chosen to come to Troy and die an early death, he would have inherited his father's property:

ἔνθα δέ μοι μάλα πολλὸν ἐπέσσυτο θυμὸς ἀγήνωρ
γήμαντα μνηστὴν ἄλοχον, ἐϋκτιμένην ἄκοιτιν,
κτήμασι πέρπεσθαι τὰ γέρων ἐκτήσατο Πηλεύς.

(Hom. Il. ix, 398-400)

Here, the word κτήμασι seems to refer to Peleus' private property as opposed to his kingdom. However, the fact that he also would have married, (γήμαντα ... ἄκοιτιν), suggests that he would probably succeed to the throne as well, since if he had a family, the line to the throne would be secure.

The importance of producing a son to succeed one in kingship is also indicated when Hector expresses the wish that his son rule the Trojans "with might" (20). Finley rightly states that the Homeric kings "were personally interested in pushing their family parallel to a point at which their sons could automatically follow them on the throne as they succeeded them in the oikos" (21). Therefore, if Achilles failed to marry, he would not be ensuring the future rule of the kingdom by his immediate family. Furthermore, Achilles himself regrets the fact that he is doomed to an early death, since Peleus will not have anyone from his family to succeed to the throne:

ἀλλ' ἐπὶ καὶ τῷ θῆκε θεὸς κακόν, ὅττι οἱ οὔ τι
παίδων ἐν μεγάροισι γονὴ γένετο κρειόντων,
ἀλλ' ἕνα παῖδα τέκεν πανακώριον.

(Hom. Il. xxiv, 538-540)

Here Achilles seems to take it for granted that if he had stayed at home and chosen a long uneventful life as opposed to a short heroic one, he would have inherited his father's kingdom. However, this would have depended on whether Achilles would have been able to establish and maintain his ascendancy by might. Therefore, it seems as if Achilles assumed that if he had not gone to Troy, he would have inherited both his father's kingdom and his personal property.

There is also a passage in the Odyssey in which one of Penelope's suitors states that Telemachus' property will be divided if he dies when sailing to seek news of his father:

"τίς δ' οἶδ' εἴ κε καὶ αὐτὸς ἰὼν κοίλης ἐπὶ νηὸς
τῆλε φίλων ἀπόληται ἀλώμενος ὥς περ Ὀδυσσεύς;
οὕτω κεν καὶ μᾶλλον ὀφέλλειεν πόνον ἄμμιν·
κτήματα γάρ κεν πάντα δασαίμεθα, οἰκία δ' αὖτε
τούτου μητέρι δοῖμεν ἔχειν ἠδ' ὅς τις ὀπυίοι."

(Hom. Od. ii, 332-336)

Here, the house, οἰκία , of Telemachus is to be treated differently from his other property, κτήματα. The latter is to be divided amongst all the suitors (δασαίμεθα), whereas his οἰκία is to be given to the one who marries his mother (οἰκία.... ὀπυίοι), and will presumably be the marital home. This suggests that if Telemachus lives, the successful suitor will not receive this property (22).

In addition, when Odysseus, disguised as a beggar, is telling a sorry tale to Eumaeus, he states that he is the son of a Cretan and his concubine, and that when his father died, his legitimate sons only gave him a dwelling place and a few gifts:

"... τοῦ δὲ ζωὴν ἐδάσαντο
παῖδες ὑπέρθυμοι καὶ ἐπὶ κλῆρους ἔβαλοντο,
αὐτὰρ ἐμοὶ μάλα πυῦρα δόσαν καὶ οἰκί' ἔνειμαν."

(Hom. Od. xiv, 208-210)

This quotation indicates that the legitimate sons of a man had the right to become universal heirs of his property which they divided amongst themselves, and that they were also free to give some of it to their father's illegitimate offspring if they so wished. This suggests that a bastard son probably did not have the right to inherit his father's property if there were legitimate male offspring.

There is an indication concerning what might have happened if a man only had legitimate female children and a bastard son. Menelaus had a daughter, Hermione, by his wife, Helen, and, when it became evident that she was unable to bear him more children, he had a son by a slave girl (23). The son's name, Megapenthes, indicates that the situation caused Menelaus great sorrow. Hermione was sent away in marriage to Achilles' son who was king of the Myrmidons, so it seems as if Megapenthes was to be the heir to both his father's οἶκος and kingdom.

Therefore, since it seems as if Achilles, Telemachus and Megapenthes were to become heirs to their respective father's property, and it is not mentioned that anyone except the Cretan's legitimate sons inherited his property, Norton's view that a son "was not necessarily the universal heir to his father's property" is not correct.

In addition to the giving of property "inter vivos", there is also an example of a bequest being made in event of death. This occurs when Telemachus is referring to the gifts which were given to him by Menelaus:

"Πείραι', οὐ γὰρ ἴδμεν ὅπως ἔσται τάδε ἔργα.
εἴ κεν ἐμὲ μνηστῆρας ἀνήνασθαι ἐν μεγάροισι
λάθρῃ κτείναντες πατρώϊα πάντα δάσωνται,
λάθ
αὐτὸν ἔχοντά σε βούλομ' ἐπαυρέμεν ἤ τινα τῶνδε·
αὐτὸ
εἰ δέ κ'ἐγὼ τούτοισι φόνον καὶ κῆρα φυτεύσω,
εἰ
δῆ τότε μοι χαίροντι φέρειν πρὸς δώματα χαίρων."
δῆ τότε μοι χαίροντι φέρειν πρὸς δώματα χαίρων."

(Hom. Od. xvii, 78-83)

At this point in the poem, Peiraeus has just offered to take the gifts which Menelaus and Helen have given Telemachus. These gifts consist of a silver mixing bowl, a two handled cup and a richly embroidered robe (24).

Telemachus' reply is to state who they are to belong to if he dies while fighting the suitors. His statement concerning this property begins with a conditional clause, εἴ κεν.. δώσωνται , which indicates that this is not a gift "inter vivos", since it is only to take place in event of death. The recipient of the bequest is to be either Peireaus (αὐτὸν... σε) or one of the bystanders (τινα τῶνδε), namely Mentor, Antiphus and Halisthernes in addition to Telemachus' guest, Theoclymenus (25).

Bruck cites this bequest as a typical example of the Roman form of bequest, "mortis causa donatio imminente periculo" (26). However, it is mistaken to apply Roman legal concepts to Greek examples, since Greek law, particularly at this very early period, was not as regulated as Roman law. Bruck also states that these gifts acted as a sort of deposit, which, if Telemachus were to die, Peiraeus could keep (27). This is not so, because the words τινα τῶνδε indicate that it was not necessarily Peiraeus who was to receive the goods in the event of Telemachus' death, but it could be one of the other men who were with Telemachus at the time the bequest was made.

De Ste Croix states that this bequest is an example of a man having a free right to dispose of πατρῷα than ἐπικτήτα (28).

However, the words πατρώια πάντα δάσωνται suggest that the reason why Telemachus does not dispose of his πατρῷα is not necessarily because he does not have the right to do so, but because his mother's suitors will divide it amongst themselves if he is killed (29). Therefore, even if he did bequeath it, the bequest could not be carried out.

Therefore, Odyssey, xvii, 78-83 is an example of an oral will, in which property is disposed of in the event of death. Since his father's kingdom will be given to his mother's successful suitor, and his πατρῷα will be divided amongst all of them, Telemachus is in effect disposing of all the property which he is able to give away. This passage indicates that such a bequest was permissible in Homeric times.

Further evidence concerning wills in Homeric times can be found when Penelope recounts to her suitors the parting words of her husband:

"... τῷ οὐκ οἶδ' ἤ κέν μ' ἀνέσει θεός, ἦ κεν ὄλωμαι
αὐτοῦ ἐνὶ Τροίῃ· σοὶ δ' ἐνθάδε πάντα μελόντων.
μεμνῆσθαι πατρὸς καὶ μητέρος ἐν μεγάροισιν
ὡς νῦν, ἢ ἔτι μᾶλλον ἐμεῦ ἀπονόσφιν ἐόντος·
αὐτὰρ ἐπὴν δὴ παῖδα γενειήσαντα ἴδηαι,
γήμασθ' ᾧ κ' ἐθέλῃσθα, τεὸν κατὰ δῶμα λιποῦσα."

(Hom. Od. xvii, 265-270)

Here, Odysseus is not certain whether he will return from Troy or not. He arranges for the care of his parents in his absence, which has been and is to continue to be the responsibility of Penelope. Odysseus grants Penelope permission to re-marry, and this is presumably to be done only in the event of his death. He does not specify a future husband for her, and the words γημαθ' ὧ κ' ἐθέλῃσθα indicate that she is to choose the man she would like to marry (30). The fact that she is to leave the house after re-marrying (κατὰ δῶμα πιποῦσα) indicates that Odysseus wishes his son to inherit his property. Since some of the arrangements made by Odysseus when leaving for Troy are in the event of death, these words to Penelope are in effect an oral will.

A matter which is closely connected with the discussion of the will is adoption, and Bruck cites the following passage as evidence that adoption took place in Homeric times (31):

ὡς ἐπὶ σοὶ μάλα πολλ' ἔπαθον καὶ πολλ' ἐμόγησα,
τὰ φρονέων ὅ μοι οὔ τι θεοὶ γόνον ἐξετέλειον
ἐξ ἐμεῦ· ἀλλὰ σὲ παῖδα, θεοῖς ἐπιείκελ' Ἀχιλλεῦ,
ποιεύμην, ἵνα μοί ποτ' ἀεικέα λοιγὸν ἀμύνῃς.
(Hom. Il. ix, 491-495)

At this point in his speech, Phoenix, the man to whom Peleus entrusted Achilles when Achilles left to fight in the Trojan war (32)., is using examples of his closeness to the warrior from his boyhood in which he treated him as a father.

In citing this passage, Bruck seems to take σὲ παῖδα... ποιεύμην as a statement that Phoenix adopted him. However, this is contrary to other evidence in the Iliad in which Achilles regards himself as Peleus' son and heir (33). Therefore, the words ἀλλὰ σε παιδα... ποιεύμην probably do not refer to an adoption "inter vivos", but to the fact that Phoenix treated Achilles in the manner in which he would have treated a son of his own. Since there is no other reference which could be regarded as evidence concerning adoption in Homeric times, it seems as if such a concept did not exist.

Hesiod's Works and Days is addressed to a certain Perses, who was the poet's brother. There are two references to inheritance in the work.

Towards the beginning of the Works and Days, Hesiod mentions a quarrel between himself and his brother concerning their father's property:

ἤδη μὲν γὰρ κλῆρον ἐδασσάμεθ', ἄλλά τε πολλὰ
ἁρπάζων ἐφόρεις, μέγα κυδαίνων βασιλῆας
δωροφάγους, οἳ τήνδε δίκην ἐθέλουσι δικάσσαι, ...

(Hes. W. D. 37-39)

This quotation indicates that in Hesiod's time, lawsuits concerning inheritance were common. The words ἤδη... ἐδασσάμεθ' indicate that Hesiod and Perses had agreed upon a division of their father's property.

However, there was an attempt by Perses to acquire more than he was entitled to (ἄλλα ... ἐφόρεις), but it is not stated exactly what property the quarrel concerned. West suggests that it could either refer to extra bits of land or moveable chattels (34). If ἐφόρεις is to be taken literally, it seems as if it might have been the latter. Hesiod suggests that his brother bribed the kings (35), but it is not stated specifically whether this bribery was successful and he won the case.

The importance of a son to inherit his father's pro

μουνογενὴς δὲ παῖς εἴη πατρώιον οἶκον
μου φερβέμεν· ὣς γὰρ πλοῦτος ἀέξεται ἐν μεγάροισιν·
φερ γηραιὸς δὲ θάνοις ἕτερον παῖδ' ἐγκατα λείπων.
ῥεῖα δέ κεν πλεόνεσσι πόροι Ζεὺς ἄφθονον ὄλβον·
γηραιος δε θανοις ετερον παιδ' εγκατα λειπων.
ῥεῖα δέ κεν πλεόνεσσι πόροι Ζεὺς ἄφθονον ὄλβον·
πλείων μὲν πλειόνων μελέτη, μείζων δ' ἐπιθήκη

(Hes. W. D. 376-380)

This quotation shows that Hesiod regards a son as useful because of the increase in wealth which he will bring to the household and because he will look after his father in old age (ὣς ... ἐγκατα λείπων). Neither here nor in any other part of the Works and Days does the poet mention the religious observances due to one's ancestors, and this implies that the continuation of these was probably not regarded as important.

It is possible that Hesiod states that it is advisable for a man to have only one son because the estate would not have to be divided on the father's death.

Therefore, the only references in Hesiod to inheritance concern succession by descendants. There are no references to adoption, oral bequest or written will.

In conclusion, the written will did not exist in either Homer's or Hesiod's time. In the Homeric epics, there is evidence that one could dispose of property by means of an oral bequest, as Telemachus did. There is no example of a man with sons disposing of his private property in this way, and succession was usually by his male offspring. The rules of succession to the kingship, however, were less rigid, since the ability to establish and maintain oneself in a position of power depended on one's strength and guile. Hesiod recognises the need for a man to have a son to inherit his property and care for him in old age, and this recognition was to lead eventually to the development of adoption. In neither poet is there evidence that adoption was in existence at this early stage.

Notes

1. However, cf. M. L. West, Hesiod, Works and Days, (Oxford, 1978), p. vi and n. 2.
2. M. I. Finley, The World of Odysseus, rev. ed., (London, 1977), pp. 15-16.
   J. M. Davison, "The Homeric Question", A Companion to Homer, ed. A. J. B. Wace and F. H. Stubbings, (London, 1962), pp. 245-259.
3. M. S. Jensen, The Homeric Question and the Oral Formulaic Theory, (Copenhagen, 1980), passim.
4. Norton, L. H. S. p. 39, n. 1, states that the orators use καταλείπω or λείπω as an equivalent of διατίθημι, and thus equates λείπω with διατίθημι with reference to the giving of the staff. However, λείπω or καταλείπω is found comparatively rarely in the orators with reference to a will: Lysias, xix, 40, Demosthenes, xxxvi, 3, 51, [Demosthenes], xlv, 35, xlvi, 27. Therefore the comparison with the later use of λείπω and καταλείπω is mistaken and cannot be taken as evidence for the use of λείπω in the context of the giving of the staff.

5 Hom. Il. vii, 175, 187, 189.

6 J. V. Luce, Homer and the Heroic Age, (London, 1975), p. 75.

7. L. H. Jeffery, "Writing", A Companion To Homer, ed. A. J. B. Wace and F. H. Stubbings, (London, 1962), p. 555.

8. Homer does not relate how the kingdoms of the various participants in the Trojan war were ruled during their absence. Finley assumes that there was merely "a strange hiatus in political leadership" and that, for the most part, with the exception of Agamemnon, the surviving kings just returned and resumed their authority, (op. cit. pp. 151-152).
9. Norton, L. H. S. p. 39.
10. Achilles' conversation with Odysseus in the underworld is indicative of this, (Hom. Od, 494-503).
11. Finley, op. cit. pp. 83-85.
12. cf. Hom. Il. vi, 478.
13. Finley, op. cit. p. 90.
14. See above, p. 11.
15. Finley, op. cit. pp. 86-87.
    cf. P. T. Stevens, Euripides Andromache, (Oxford, 1971) pp. 92-93, where he uses examples from tragedy to support his view that Laertes retired because of old age. However, he neglects the fact that this is the only example in Homer of a king retiring because he was too old to continue ruling.
16. G. M. Calhoun, "Polity and Society (i) The Homeric Question", Wace and Stubbings, op. cit. p. 436.
17. See below, pp. 17-18.
18. See n. 10.
19. Norton, ibid.
20. See n. 12.
21. Finley, op. cit. p. 83.
22. See above, pp. 3-4, 6-7.

23. Hom. Od. iv, 10-15.

    See also Lacey, Family p. 42.

24. Hom. Od. xv, 102-108, 111-129.

25. Hom. Od. xvii, 68-73.

26. Bruck, Schenkung, p. 5.

27. Bruck, op. cit. p. 6.

28. G. E. M. de Ste. Croix, "Athenian Family Law", Classical Review, 84, (1970), p. 390.

29. See above, p. 20.

30. cf. the wills of men with families written in fourth-century Athens, where a woman's future husband was sometimes chosen for her, Dem. xxvii 5, [Dem.] xlv, 28.

31. Bruck, op. cit. p. 11.

32. Hom. Il. ix, 438-441.

33. See above, pp. 8-9.

34. West, op. cit. p. 150.

35. βασιλῆας in Hes. W.D. 38 can be interpreted as "elders". See West, op. cit. p. 151.

Chapter 2

Solon's Law of Testament

There is no precise evidence concerning the laws of succession in pre-Solonian times. Plutarch only states that if a man died without sons, the property remained in the γενος , but does not explain how that was arranged (1). However, the exclusive right of the γένος concerning the inheritance of property ceased when Solon introduced his law of testament in 594/593 (2).

Quotations of and references to this law are found in the writings of the Attic orators in addition to Plato and Plutarch. Since all this evidence is from a later date than the writing of the law, it is firstly necessary to discern which parts of these references, if any, are later additions to the original Solonian law, or later interpretations of it.

1.

ΝΟΜΟΣ

Ὅσοι μὴ ἐπεποίηντο, ὥστε μήτε ἀπειπεῖν μήτ' ἐπιδικάσασθαι, ὅτε Σόλων εἰσῆγε τὴν ἀρχήν, τὰ ἑαυτοῦ διαθέσθαι εἶναι ὅπως ἂν ἐθέλῃ, ἂν μὴ παῖδες ὦσι γνήσιοι ἄρρενες, ἂν μὴ μανιῶν ἢ γήρως ἢ φαρμάκων ἢ νόσου ἕνεκα, ἢ γυναικὶ πειθόμενος, ὑπὸ τούτων τοῦ παραγωγῶν, ἢ ὑπ' ἀνάγκης ἢ ὑπὸ δεσμοῦ καταληφθείς.
([Dem.] xlvi, 14)

This is the most detailed extant quotation of the law, and since it was read out as a law by the clerk of court, it is reliable as a verbatim account of the law of testament as it stood in the fourth century. The words ὅτε ξόπων εἰσήγει τὴν ἀρχήν would not have been necessary about two hundred years after the law had been made, so it is likely that this law was not altered, with the exception of the deletion of some of the clauses by the Thirty (3). However, the fact that these clauses are quoted here in full and in part in other references indicates that they were probably restored by the democracy in 403/402 or shortly afterwards. There is no indication that this was the complete text of the law.

2.

ΝΟΜΟΣ

Ὅ τι ἂν γνησίων ὄντων υἱέων ὁ πατὴρ διαθῆται ἐὰν ἀποθάνωσιν οἱ υἱεῖς πρὶν ἐπὶ δίετες ἡβᾶν, τὴν τοῦ πατρὸς διαθήκην κυρίαν εἶναι

([Dem.] xlvi, 24)

This passage is also a direct quotation from the fourth century Athenian testamentary law. There is no evidence that this law was part of Solon's code.

There are also various interpretations of the law dating from the fourth century.

Isaeus

3.

καί μοι τὸν νόμον ἀνάγνωθι, ὃς κελεύει τὰ ἑαυτοῦ ἐξεῖναι διαθέσθαι ὅπως ἂν ἐθέλῃ, ἐὰν μὴ παῖδες ἄρρενες

ὦσι γνήσιοι. ὁ γὰρ νομοθέτης, ὦ ἄνδρες, διὰ τοῦτο τὸν νόμον ἔθηκεν οὕτως, ὁρῶν μόνην ταύτην καταφυγὴν οὖσαν τῆς ἐρημίας καὶ παραφυγὴν τοῦ βίου τοῖς ἄπαισι τῶν ἀνθρώπων, τὸ ἐξεῖναι ποιήσασθαι ὅντινα ἂν βούλωνται.

(Is. ii, 13)

This passage is part of an argument in defence of the validity of an adoption "inter vivos" which took place about twenty years before the death of the adoptive father. Since the testamentary law of Solon is referred to in defence of such an adoption, the argument suggests that Solon may have only legalized adoption "inter vivos".

4. ὅυτε γὰρ διαθέσθαι οὔτε δοῦναι οὐδενὶ οὐδὲν ἔξεστι τῶν ἑαυτοῦ ἄνευ τῶν θυγατέρων, ἐάν τις καταλιπὼν γνησίας τελευτᾷ.

(Is. iii, 42)

5. ὁ γὰρ νόμος διαρρήδην λέγει ἐξεῖναι διαθέσθαι ὅπως ἂν ἐθέλῃ τις τὰ αὑτοῦ, ἐὰν μὴ παῖδας γνησίους καταλίπῃ ἄρρενας· ἐὰν δὲ θηλείας καταλίπῃ, οὐν ταύταις. οὐκοῦν μετὰ τῶν θυγατέρων ἔστι δοῦναι καὶ διαθέσθαι τὰ αὑτοῦ· ἄνευ δὲ τῶν γνησίων θυγατέρων οὐχ οἷόν τε οὔτε ποιήσασθαι οὔτε δοῦναι οὐδενὶ οὐδὲν τῶν ἑαυτοῦ.

(Is. iii, 68)

6.

καὶ τῷ μὲν πατρὶ αὐτῆς, εἰ παῖδες ἄρρενες μὴ ἐγένοντο, οὐκ ἂν ἐξῆν ἄνευ ταύτης διαθέσθαι· κελεύει γὰρ ὁ νόμος οὐν ταύταις κύριον εἶναι

δοῦναι, ἐάν τῳ βούληται, τὰ ἑαυτοῦ.

(Is. x, 13)

Here it is alleged that a man could only make a will if he had legitimate daughters on the condition that he left the property "with them". However, there is no indication in the remaining text of the law that this provision was part of the law of testament, and since a girl without brothers would be styled an ἐπίκληρος, it is more likely that if this rule was Solonian in origin, it would have been included in his law concerning ἐπίκληροι (4).

7. Ἀλλὰ μὴν καὶ ὁ νόμος, ὦ ἄνδρες, οὐκ ἐάν τις διαθῆται μόνον, κυρίας εἶναι κελεύει τὰς διαθήκας, ἀλλὰ ἐὰν εὖ φρονῶν.
(Is. iv, 14)

8. δοῦναι μὲν γὰρ ὁ νόμος οὐδενὶ ἐᾷ τὰ ἑαυτοῦ, ἐὰν ὑπὸ γήρως ἢ ὑπὸ νόσου ἢ ὑπὸ τῶν ἄλλων ὧν καὶ ὑμεῖς ἴστε παρανοήσῃ.
(Is. iv, 16)

9. Οὗτοσὶ ὁ νόμος, ὦ ἄνδρες, κοινὸς ἅπασι κεῖται ἐξεῖναι τὰ ἑαυτοῦ διαθέσθαι, ἐὰν μὴ παῖδες ὦσι γνήσιοι ἄρρενες, ἐὰν μὴ ἄρα μανεὶς ἢ ὑπὸ γήρως ἢ δι' ἄλλο τι τῶν ἐν τῷ νόμῳ παρανοῶν διαθῆται.
(Is. vi, 9)

These quotations mention some of the clauses concerning the capacity of the testator to make a will, but in none of these passages are all these clauses mentioned.

Wyse states that in vi, 9 Isaeus omits the clause γυναίκι πιθόμενος because he "did not wish to attract attention to the influence which may have been exerted by Philoctemon's sister" (5). However, since most references to the law are incomplete, it seems as if this omission is of no particular significance.

10.

ἀλλὰ μὴν οὐδ' αἰσχυνθῆναι οὐδενὶ προσήκει ἐπὶ τοιαύταις διαθήκαις ὡς πλείστους μάρτυρας παρίστασθαι, νόμου γε ὄντος ἐξεῖναι ὅτῳ βούλοιτο δοῦναι τὰ ἑαυτοῦ.

(Is. ix, 13)

Here, the matter of having one's will witnessed is mentioned, but there is no indication whether this was a matter which was regulated by statute (6). The verb used with reference to the making of a will is δοῦναι.

Demosthenic sources

11.

εἰ γὰρ ὁ μὲν Σόλων ἔθηκεν νόμον ἐξεῖναι δοῦναι τὰ ἑαυτοῦ ᾧ ἄν τις βούληται, ἐὰν μὴ παῖδες ὦσι γνήσιοι, οὐχ ἵν' ἀποστερήσῃ τοὺς ἐγγυτάτω γένει τῆς ἀγχιστείας, ἀλλ' ἵν' εἰς τὸ μέσον καταθεὶς τὴν ὠφέλειαν ἐφάμιλλον ποιήσῃ τὸ ποιεῖν ἀλλήλους εὖ, . . .

(Dem. xx, 102)

Here, Solon's reasoning behind his drafting of the law is given a different interpretation from that of quotation χ^{3}, in that it is alleged that he wished to promote good will and a vying for generosity between the citizens.

12.

'ὅσοι μὴ ἐπεποίηντο' φησίν 'ὅτε Σόλων εἰσήγεν εἰς τὴν ἀρχήν, ἐξεῖναι αὐτοῖς διαθέσθαι ὅπως ἂν ἐθέλωσιν', ὡς τοῖς γε ποιηθεῖσιν οὐκ ἐξὸν διαθέσθαι, ἀλλὰ ζῶντας ἐγκαταλιπόντας υἱὸν γνήσιον ἐπανιέναι, ἢ τελευτήσαντας ἀποδιδόναι τὴν κληρονομίαν τοῖς ἐξ ἀρχῆς οἰκείοις ~~τοῦ ποιησαμένου~~ οὗσι τοῦ ποιησαμένου.

([Dem.] xliv, 68)

The beginning of this passage is a partial quotation from the law as found in quotation 1. However, there is no reference to the custom described in the words ὡς... ποιησαμένου in any other passage concerning the law of Solon, so it seems probable that this was not part of the original law, even though it was acceptable in fourth-century Athens. (7).

13.

καὶ ἄκυρά γε ταῦτα πάντα ἐνομοθέτησεν εἶναι ὁ Σόλων, ὅ τι ἄν τις γυναικὶ πειθόμενος πράττῃ, ἄλλως τε καὶ τοιαύτῃ.

([Dem.] xlviii, 56)

This quotation is a deliberate misinterpretation of one of the clauses in Solon's law, since in the text the term γυναικὶ πειθόμενος is not applied to everything a man might do, but only to the making of a will.

Hyperides

14.

ἔτι δὲ καὶ ὁ περὶ] τῶν διαθηκῶν ν[όμο]ς παραπλήσιός τούτοις ἐστίν· κελεύε[ι γὰρ ἐξεῖν]αι τὰ ἑαυτοῦ [δια]τίθεσθα[ι ὅπως ἄν] τις βούληται πλὴν [ἢ γή]ρως ἕνε[κεν] ἢ νόσου ἢ μανιῶν ἢ γυ[ναικὶ] πειθόμ[ενο]ν ἢ [ὑπὸ] δεσμοῦ ἢ ὑ[πὸ ἀνά]γκης κ[α]τ[α]λη[φθέντ]α.

(Hyp. iii, 17, col. 8)

Here, there is no mention of the clause concerning legitimate sons. Norton attaches significance to this, stating that its insertion would not be detrimental to the orator's argument (8). However, many of the clauses are omitted in other speeches with no particular reason. In addition, Hyperides is not discussing wills in this speech, but the validity or otherwise of agreements, and uses the law of testament as a comparison. Therefore, he might not have regarded the phrase concerning legitimate sons as necessary for the argument.

Plato

15.

Τὸν λόγον τοῦτον, ὠγαθέ, φοβούμενοι, τὸν νόμον

ἐτίθεσαν τὸν ἐξεῖναι τὰ ἑαυτοῦ διατίθεσθαι
ἁπλῶς ὅπως ἄν τις ἐθελῃ τὸ παράπαν . . . .

(ἐτίθεσαν refers to οἱ πάλαι νομοθετοῦντες)

(Plato, Laws, 922E)

This reference to the law of testament suggests that it permitted complete freedom of testament. However, the other quotations of and references to this law which contains the clauses concerning madness and so on indicate that this was probably not the case.

Plutarch

16.

Εὐδοκίμησε δὲ καὶ τῷ περὶ διαθηκῶν νόμῳ. πρότερον γὰρ οὐκ ἐξῆν, ἀλλ' ἐν τῷ γένει τοῦ τεθνηκότος ἔδει τὰ χρήματα καὶ τὸν οἶκον καταμένειν· ὁ δ' ᾧ βούλεταί τις ἐπιτρέψας, εἰ μὴ παῖδες εἶεν αὐτῷ, δοῦναι τὰ αὑτοῦ, φιλίαν τε συγγενείας ἐτίμησε μᾶλλον καὶ χάριν ἀνάγκης, καὶ τὰ χρήματα κτήματα τῶν ἐχόντων ἐποίησεν· οὔ μὴν ἀνέδην γε πάλιν οὐδ' ἁπλῶς τὰς δόσεις ἔφηκεν, ἀλλ' εἰ μὴ ~~ἀλλ' εἰ μὴ~~ νόσων οὕνεκεν ἢ φαρμάκων ἢ δεσμῶν ἢ ἀνάγκῃ καταδχεθεὶς ἢ γυναικὶ πειθόμενος, ...

(Plut. Sol. 21, 3-4)

Asheri states that this reference to the law is inaccurate, since Plutarch refers to the law as allowing complete freedom of testament (9). However, the words οὐ ... πεισθέμενος indicate that Asheri is not quite correct here. Gernet also finds this quotation inaccurate, and states that Plutarch refers to Solon's testamentary law as if he legalized the type of will which was more common in Plutarch's own time. In addition, Gernet states that Plutarch has overlooked the fact that the existence of male children only precluded a man from making a will (10). This is correct, since the words εἰ μὴ παῖδες εἶεν αὐτῷ suggest that a man with ~~legitimate~~ children of either sex could not make a will. Glotz states that in Plutarch, the law is accorded the importance it deserves (11). This is probably a reference to the fact that the law freed the individual from family control. Since the effect of the law was to allow the transferral of property to one outside the γένος, I agree with Glotz.

There are various omissions of various clauses in some of these quotations. The clause stating that Solon's law allowed a man to bequeath his property to whomsoever he wished is found in ten of these references (1, 3, 5, 9, 10, 11, 12, 14, 15, 16); the reference to legitimate children in eight, (1, 2, 3, 5, 8, 10, 11, [redacted]); the persuasion of a woman in four, (1, 13, 14, 15); madness in four, (1, 16, 8, 14); being locked up in three, (1, 14, 16); old age in four, (1, 7, 8, 14); force in three (1, 14, 16); ~~being locked up in three, (1, 14, 16)~~; drugs in two, (1, 16); illness in two, (1, 14) and the

provision that an adopted son could not make a will is found in ~~two~~ one (1, ~~10~~). This information indicates that quotation 1 is the most extensive in detail concerning the law. Since it is probably also a genuine quotation of Solon's law, I shall mainly refer to this text in my discussion.

There are various opinions concerning what form of διαθήκη Solon allowed. Some scholars take the view that he allowed adoption "inter vivos", others, testamentary adoption, and yet others that he permitted posthumous adoption.

Bruck holds the view that Solon's law permitted one to adopt "inter vivos", and that what was later regarded as a law of testament was but a later development (12). As his evidence he takes some references from fourth century Athens concerning adoption "inter vivos" and the importance of the continuation of the οἶκος, particularly Isaeus ii and vii. However, these references only show that adoption "inter vivos" was recognised in the fourth century as being a way by means of which a man could ensure the continuation of his οἶκος after his death, and is not convincing proof of the law of 594/593. Bruck also states that Plutarch, when stating that the law περὶ διαθηκῶν was introduced by Solon, misinterprets the law and understands it according to the practice of his own age. However, this does not take into account the other evidence concerning wills in fourth-century Athens (13), since he states that the wording of this evidence is not authentic, but refers to a later modification of

the law. Bruck is of the opinion that this change came about when the law was altered by the Thirty. However, this is not so, because the only alteration made at this time was the deletion of the clauses concerning capacity (14). Therefore, Bruck's arguments are not convincing.

Ehrenberg also holds the opinion that the law only permitted adoption "inter vivos", and that it was only later that testamentary adoption came about. As evidence for the later alteration of the law, he refers to [Dem.] xliii, 51 (15). However, even though the reference in this passage to the archonship of Eucleides suggests that the law regarding intestate succession may have been altered (16), it cannot be taken as evidence for the alteration of testamentary law. On the other hand, the quotation of the law of testament in [Dem] xlvi, 14 specifically refers to Solon, and this suggests that, with the exception of the temporary change made by the Thirty, the text of the law remained unaltered.

Harrison is also of the opinion that Solon only legalized adoption "inter vivos", and that the will originated in a contract between two parties: the adopter and adoptee or his representative (17). In addition, Harrison states that even though the words τὰ ἑαυτοῦ διαθέσθαι ὅπως ἄν ἐθέλῃ go back to Solon, it is "unsafe to build too much on the meaning of this word in constructing a view of the original or eventual nature of the Athenian will. All we can say is that the use of the word in this law is perfectly compatible with the theory that originally

Solon did nothing more than allow a man without sons to adopt whom he pleased "inter vivos"; but it is equally compatible with the view that he allowed such a man complete testamentary freedom" (18). However, the words "but ... freedom" considerably weaken Harrison's argument, since they indicate that it is based on probability only, and is not supported by any direct evidence.

There is also evidence that, contrary to these opinions, adoption "inter vivos" existed before Solon's archonship:

"Οσοι μὴ ἐπεποίηντο ... ὅτε Σόλων εἰσῆει τὴν ἀρχήν, ...
([Dem.] xlvi, 14)

Here, those who were adopted when Solon became archon are excluded from the right of making a will, thus indicating the Solon did not introduce adoption "inter vivos", but that it was, as Ruschenbusch states, already recognised as a device to ensure that a family would have descendants (19).

Gernet has various suggestions to make concerning the function of Solon's law. He states that the law concerned adoption "inter vivos" even though it already existed before Solon's archonsip. It is his opinion that the words ὅπως ἄν ἐθέλῃ indicate that Solon allowed a childless man to adopt someone who was outwith the circle of the γένος (20). Gernet also suggests that before Solon, one was only allowed to adopt agnate relatives. This view is based on evidence concerning adoption in fourth-century Athens in which the majority

of adoptions, either testamentary or "inter vivos", were of relatives on the female side (21). However, this cannot be taken as decisive evidence concerning the law in the sixth century. In order to support his opinion of the function of Solon,s law, Gernet suggests that the reference to the law in Isaeus ii,(ποιήσασθαι ὅντινα ἂν βούλωνται (ls. ii, 13)) implies that the original law concerned adoption and that later the wording was modified (22). Although I agree with Gernet in that texts attributed to Solon by fourth-century writers were sometimes not quite faithful reproductions of the original (23), I do not believe that Isaeus ii is more in accordance with the original law. This is because Gernet does not give a good reason for doubting the authenticity of the law as quoted in [Dem.] xlvi, 14. Since this would have been read out by the clerk of court it would have been the text of the law as it stood in the fourth century, and was also probably the text of the original sixth century law (24). Therefore, the evidence which Gernet cites is very inadequate.

Thalheim holds the view that the law of testament concerned testamentary adoption, and takes as his evidence Plutarch's reference to the law (25). However, Plutarch does not state that Solon allowed adoption by will, but that this law permitted a man to give his property (δοῦναι τὰ αὑτοῦ , (Sol., 21,3)) to whomsoever he wished. Therefore, this cannot be taken as evidence that Solon introduced testamentary adoption.

Asheri also holds this opinion, but does not cite

the evidence for his view.

MacDowell states as follows:

"Solon, in the first half of the sixth century was responsible for the next stage of development. He introduced a law permitting a man without sons to adopt a son by will so that the adoption took effect only after his death " (26).

This indicates that MacDowell thinks that Solon introduced adoption by testament. However, he does not cite any evidence in support of his opinion.

On the other hand, Lipsius interprets the law as quoted by Plutarch (Sol., 21,3-5) and Demosthenes (xx, 20) as allowing testamentary adoption of someone who was outside the γένος (27). Hammond follows Lipsius' opinion (28). However, the texts which Lipsius quotes as evidence do not contain specific details concerning the nature of the Solonian will.

Beauchet states that Solon introduced the liberty of choice of the heir whom a childless man could adopt by testament, and that adoption by will of someone within the γένος was already known. Therefore, Solon only codified existing practices and introduced liberty of choice (29). Glotz holds Beauchet's opinion, and states that the first will was made by a dying man who requested that his only daughter be married to his brother's son (30). However, he does not state his evidence for this, so his hypothesis is of no value. Furthermore, there is no evidence that testamentary adoption existed before Solon.

Freeman also thinks that Solon's law allowed adoption by testament, so that the chosen heir would only receive the property as a member of the family (31). In addition, she also mentions the view that the law also could have allowed posthumous adoption, but she does not express a definite opinion concerning this.

On the other hand, Wyse is of the opinion that the phrase ὥστε ... μήτ' ἐπιδικάσασθαι suggests that Solon legalised posthumous adoption, the method by which a person who was next of kin to the deceased could have himself adopted into the deceased's family (32). However, it is more probable that the words ὥστε ... μήτ' ἐπιδικάσασθαι expresses a direct result of an adoption, namely that a man once adopted could not claim an inheritance from his former family (33). Furthermore, if someone became the posthumously adopted son of a man, it was not by virtue of a will made by the deceased, but on either his own initiative or that of his representative (34). However, the wording of Solon's law suggests that the heir presumptive is not to take the initiative but the original owner is to do this. Therefore, Wyse is not quite correct in his opinion concerning the function of Solon's law.

Jones states that before Solon made his law, "the purposes of a will were effected by adoption, and after wills appeared adoptions, posthumous or "inter vivos," continued to be common" (35). This statement is not quite clear, since the words "the... adoption" imply that Solon legalized testamentary adoption, whereas "and...

common" suggest that the will introduced by Solon may have had functions other than adoption, and that posthumous adoptions were known before Solon, whereas there is no evidence concerning when the latter came into existence.

Adcock speaks of Solon's testamentary law as follows: "If there were no legitimate sons, a man had the right to bequeath his property to whomsoever he would. Very often, this took the form of adoption by testament, and, where property was left undivided, a will may be regarded as a form of posthumous adoption" (36).
Adcock does not define the term "posthumous adoption", although in the context in which it is used here, it seems to be synonymous with testamentary adoption. However, these two forms of adoption were very different from each other, since even though both took place after the death of the adoptive father, the latter was authorised by will, and the former was not. Therefore, Adcock is mistaken in his use of the term. Although it is implied in the words "very often" that other wills were legalized by Solon, he does not state what these were.

Andrewes states that by virtue of Solon's law a testator "regularly" adopted someone as his son and heir. He then adds that "Solon in his law used what became the standard terminology for testamentary disposition, διατίθεσθαι and διαθήκη : the provision might cover more than simple adoption "(37). However, Andrewes fails to state specifically what the other functions of the Solonian will could have been.

Therefore, in view of the fact that previous discussion of the function of Solon's law are inadequate, it is necessary to re-examine the evidence concerning the type of will which Solon legalized.

The clause on which the majority of previous discussions have been based is:

τὰ ἑαυτοῦ διαθέσθαι εἶναι ὅπως ἂν ἐθέλῃ, ...

([Dem.] xlvi, 14)

Since the word διαθέσθαι has many different interpretations (38), it is unwise to base one's argument solely on this word. As can be seen from my analysis in Chapter 6, the function of the Athenian will as understood from the evidence from the fourth and third centuries was concerned with other matters in addition to adoption (39). However, this cannot be regarded as reliable evidence concerning the nature of the Solonian will, since it dates from over two hundred years after the law was made.

There is, unfortunately, no evidence from sixth-century Athens concerning the exact function of the Solonian will, so it seems as if the best method of examining this law is to consider evidence from the times nearest to the sixth century, namely, the seventh and fifth centuries.

Even though the word διαθήκη does not occur in Homer, there is evidence that two forms of rudimentary oral will were in existence. One was the bequest of property in event of death, which suggests that in the

Homeric age, a man without sons may have been able to bequeath all his property to one nominated as his heir (40). The other was the will of Odysseus which was made before he left for Troy and in which he regulated family matters (41). There is no evidence that adoption was customary in the times of either Homer or Hesiod.

In the evidence from the fifth century, there are also several different types of will. In the works of the dramatists, there is evidence concerning three functions of the will: the arrangement of family matters (c. 440, c. 430) an inventory of property (c. 416) and the adoption of an heir who would marry one's daughter (c. 420) (42). In the writings of the Attic orators, there are also some wills dating from the fifth century; there are two wills concerning adoption (412, c. 406), two regulating family matters (410/409, 404) and one in which a complete bequest of property is made without adoption, (c. 415-413) (43). Therefore, extant evidence shows that in the fifth century, wills concerning adoption seem to be a little less common than wills regulating the care of family, and that other forms of will, namely the complete bequest and the inventory existed but were not quite so common.

It can be seen from this evidence that the major difference between the wills of the seventh century and those of the fifth is that in the latter adoption by testament was regarded as a legal form of will, whereas in the former it did not exist. Therefore, in view of this, it is probable that the major innovation of Solon's

testamentary law was that he legalized adoption by will, whereas previously the only legal form of adoption had been "inter vivos". However, there is no specific indication in the wording of the law that the only legal form of will was testamentary adoption, since διαθέσθαι is not synonymous with ποιήσασθαι In addition, the words ὅπως ἂν ἐθέλῃ do not mean "whomsoever ~~one~~ one may wish", which is how they are interpreted by those who are of the opinion that Solon only legalized adoption, testamentary or otherwise, of one outside the γένος . If this were meant, the wording of the law would probably have been ποιήσασθαι ὁντινα ἂν ἐθέλῃ , which it is not. However, the words ὅπως ἂν ἐθέλῃ, "however he may wish", imply that Solon allowed a man without legitimate sons complete freedom of testament, and that he was not debarred from making a will with a function other than testamentary adoption, such as a complete bequest of property or just an inventory of the contents of his estate. Since later evidence indicates that in the late fifth century and early fourth century, adoption by will was more common than at the end of the fourth century and the beginning of the third, it is likely that when the testament was legalized a childless man may have been more inclined to adopt someone as his heir and leave him his property, but he was also free to do otherwise.

In addition, seventh- and fifth-century evidence also points to another form of διαθήκη which was made by a man with children and in which the care of the testator's dependants was regulated. However, the words

in Solon's law, ἂν μὴ παῖδες ὦσι γνήσιοι forbid anyone with legitimate sons from making a will, and would seem to render such a document illegal. It is possible that the reason this clause was included in the law was to prevent legitimate offspring from being deprived of all or part of their inheritance, and so being left in reduced circumstances by the death of their father. It is, therefore, necessary to examine the question whether a will which did not deprive the children of their inheritance would be contrary to the law of Solon. By the time of the fourth century, when a man with children wrote a will, he would often leave a dowry for his wife and sometimes bequests for his children's guardians (44). Since such a will would detract from the value of the total estate, it is possible that a document containing these clauses would not have been legally admissable in the sixth century. However, there is evidence that Solon also wrote laws concerning dowries and guardianship. Plutarch states that Solon limited the dowry to be given to a woman on her marriage to three changes of clothing and a few pieces of furniture:

τῶν δ'ἄλλων γάμων ἀφεῖλε τὰς φερνάς, ἱμάτια τρία καὶ σκεύη μικροῦ τιμήματος ἀξία κελεύσας, ἕτερον δὲ μηδέν, ἐπιφέρεσθαι τὴν γαμουμένην.
(Plut. Sol. 20, 6)

Here, τῶν δ'ἄλλων γάμων are a reference to the fact that this rule affected all women who were not ἐπίκληροι, since before this passage, Plutarch speaks of the

position of the ἐπίκληρος. The words ἕτερον δὲ μηδὲν indicate that a woman's dowry was limited by law to the few objects mentioned and that the giving of money or land as a dowry was against the law, and because of this, the dowry laid down by law would not detract from the value of the estate. There is also evidence that Solon regulated matters of guardianship:

κάλλιστον δὲ κἀκεῖνο· τὸν ἐπίτροπον τῇ τῶν ὀρφανῶν μητρὶ μὴ συνοικεῖν, μηδ' ἐπιτροπεύειν, εἰς ὃν ἡ οὐσία ἔρχεται τῶν ὀρφανῶν τελευτησάντων.

(D.L. i, 56)(45)

Even though Diogenes Laertius approves of this law, he gives no indication as to how a guardian would be nominated if he was not the children's next of kin. It is a possibility that a man could appoint such a person by will. Therefore, it seems as if a will made by a man with legitimate sons may have been permissible if its terms were within the boundaries of the law; that is if the dowry of the female dependants was limited to three changes of clothing and some furniture, and if the guardian appointed was neither to marry the mother nor was the next of kin to the children. This possibility is strengthened by the fact that there is evidence in favour of this form of will from Homeric times onwards.

The provisions in the law with reference to the capacity of the testator now need to be discussed. The words Ὅσοι μὴ ἐπεποίηντο ... ὅτε Σόλων εἰσῆγε τὴν ἀρχήν seem to suggest that this exception was limited only to

those who had been adopted when Solon became archon. However, it is evident from literature dating from the later period that this exception also applied to all those who were to be adopted in the future (46). Such a provision was quite sensible, since an adoption took place with the intention of providing a line of successors to the οἶκος and caring for its religious cults, and if the adopted son did not produce a son of his own, but disposed of the property by will, there would be no guarantee that these rites would continue to be observed. There is no evidence concerning what was regarded as constituting madness, persuasion ~~of~~ by a woman and so on, and this might well have been the reason why the law was regarded as obscure (47).

There is no indication in the extant text of the law concerning the form which the Solonian will was to have taken. MacDowell seems to assume that a testament should be written (48). However, there is no specific evidence that this was so, and since oral wills were permissible at a later date (49), it seems likely that when the testament was first introduced, it did not have to be written but could also be oral. There is also no evidence concerning whether matters such as witnessing, codicils and revocation were regulated by law, or just left to the discretion of the testator.

Ehrenberg has suggested that Solon's testamentary law "chiefly concerned the upper class" (50). However, Solon in his poems states that his laws were for everyone:

θεσμούς θ' ὁμοίως τῷ κακῷ τε κἀγαθῷ,
εὐθεῖαν εἰς ἕκαστον ἁρμόσας δίκην,
ἔγραψα.

([Aristotle] Ath. Pol., xii, 4)

Here the words κακῷ τε κἀγαθῷ do not have a moral significance but a social one (51), namely that Solon's laws were for poor men in addition to the rich. Therefore, a man from a poor background would have had as much right to dispose of his property by testament as a rich man.

There is no evidence in Solon's poems concerning the motivation behind the making of this law. However, there are some suggestions concerning this in later literature.

Isaeus suggests that the law of Solon (which he confuses with adoption "inter vivos") was made for the benefit of the adoptive father (no 3). Demosthenes states that Solon introduced his law of testament not to deprive the next of kin but to enable persons to vie in generosity with each other. However, since the making of a testament would have had the effect of depriving the next of kin of a man's property, Demosthenes' logic is not quite sound here. Plutarch puts forward a moral and philosophical interpretation, namely that Solon placed friendship above kinship, favour above necessity, and made a man's property his own. However, this seems to be more a result of the law as opposed to Solon's motivation in making it. Therefore, since there is inadequate

evidence, Solon's motivation in writing his law of testament is open to conjecture.

In conclusion, Solon's law of of testament was not an example of his taking the middle path. This is because by means of this law he gave the individual the right to alienate his property from the γένος completely, and whether he did this by means of adopting a son or by bequest was left to his own discretion. It is also probable that he allowed a man with legitimate sons to make a will regulating their care, so long as they were not deprived of their estate. There is, however, a note of caution in the law, in that not everyone was given the capacity to dispose of property by testament.

Notes

1. Plutarch, Solon, 21, 3.
2. This is the traditional date for Solon's laws, but the matter is disputed. See Rhodes, A.P. pp. 120-122.
3. See Chapter 4, Alteration pp. 98-100.
4. [Aristotle], Athenian Politeia, 9.2, cf Plutarch Solon 20, 2.5. See also Rhodes, A.P. p.442.
5. Wyse, Isaeus pp. 494-495.
6. See Chapter 7, Formalities, pp.402-425.
7. cf. Is. ix, 33 and Gernet, D.G.S.A. p.125 and n.2.
8. Norton, L.H.S. p.66
9. D. Asheri, "Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece", Historia, 12, (1963), p.7.
10. Gernet, D.G.S.A. p.126.
11. G. Glotz, La Solidarité de la famille dans le Droit Criminel en Grèce, (Paris, 1904), p.342
12. Bruck, Schenkung, pp.53-55, n.5.
13. See above, pp.32-39.
14. See n.3.
15. V. Ehrenberg, From Solon to Socrates, ed. 2, (London, 1973), p.405, n.47.
16. J.C. Miles, "The Attic Law of Intestate Succession", Hermathena, 75-76 (1950) p.69.
17. Harrison, Law 1, pp. 82-85.
18. Harrison, Law 1, p. 150.
19. E. Ruschenbusch, Διατίθεσθαι τὰ ἑαυτοῦ , Zeitschrift der Savigny Stiftung, Rom. Abtlg, 79, (1962), p. 309.
20. Gernet, D.G.S.A. pp. 121-124.

21. Gernet, D.G.S.A. pp. 129-132.
22. Gernet, D.G.S.A. p. 127 and n. 5.
23. cf. quotation 14.
24. See above, pp. 32-33.
25. Thalheim, Lehrbuch der Griechischen Antiquitäten, 2, i, aut. K.F Hermann, (Leipzig, 1895), p. 70.
26. MacDowell, Law, p. 100.
27. Lipsius, D.A.R. p. 561.
28. N.G.L.Hammond, A History of Greece to 322 B.C., ed.2, (Oxford, 1967), p.163.
29. Beauchet, Droit 3, pp. 426-429.
30. Glotz, op. cit. pp. 342-343.
31. K. Freeman, The Work and Life of Solon (Cardiff, 1926) pp. 115-118.
32. Wyse, Isaeus, p. 249.
33. See Chapter 5, Capacity, pp. 131-132.
34. [Dem.] xliii, 11-13,
    [Dem.] xliv, 19-23.
35. Jones, L.L.T.G. p. 196.
36. F.E. Adcock, "The Reform of the Athenian State," Cambridge Ancient History, 4, ed.1 (Cambridge, 1926), p. 43.
37. A. Andrewes, "The Growth of the Athenian State," Cambridge Ancient History, 3, iii, ed.2 (Cambridge, 1982), p. 389.This indicates a change of opinion, since in an earlier work, Andrewes stated that adoption by will was "the only sense in which an Athenian had much testamentary freedom", The Greeks,(London, 1967), p.112.

38. For a detailed analysis of this verb, see Norton, L.H.S. pp. 11-38.
39. See Chapter 6, Function, pp. 363-373.
40. See Chapter 1, Homer, pp. 22-24.
41. See Chapter 1, Homer, pp. 24-25.
42. See Chapter 3, Drama, pp. 68-82, 88-92
43. See Chapter 6, Function pp. 175-181 (Dicaeogenes), pp. 189-193 (Pyrrhus), pp. 205-208 (Diodotus), pp. 195-196 (Dionysodorus), pp. 281-283 (Mneson).
44. See Chapter 6, Function, pp. 195-228.
45. Freeman (op. cit. p. 120 n 1) notes that this law has been regarded as spurious because it is contradicted by statements in the orators. Since Diogenes Laertius probably wrote his Lives in the third century A.D., he would not have had access to the ἄξονες, which seem to have been destroyed between 130 and 50 B.C. (E.Ruschenbusch, "Σολωνος Νόμοι", Historia Einzelschriften 9, (1966)). However, one of his primary sources was Apollodorus of Athens, who wrote his Χρονικά in about 140, (R.D. Hicks, Diogenes Laertius, 1, ed. 1, (London,, 1925), pp. xxv-xxvi), and who would have been able to have had access to the ἄξονες .Therefore the fact that the extant evidence from the fourth century is not in accordance with the law does not necessarily indicate that the law supposedly of sixth century origin is spurious, merely that the law concerning the matter of guardianship may have changed.

46. See Chapter 5, Capacity, pp. 129-134.

47. [Aristotle], Ath. Pol. ix, 2.

48. MacDowell, Law, p. 100.

49. See Chapter 7, Formalities pp. 425-428.

50. Ehrenberg, op. cit. p. 72.

51. Rhodes, A.P. p. 177.

Chapter 3

Inheritance and Testamentary Law in the Fifth-Century Athenian Dramatists

The noun διαθήκη and its verb διατίθημι do not occur in the works of the Greek tragedians, but are first used by the comic poet Aristophanes. However, information concerning both inheritance and wills are mentioned in the works of the tragedians Euripides and Sophocles (1). Since tragedy and comedy are very different from each other, I shall discuss them separately, although I shall not separate instances of inheritance in Euripides and Sophocles, since the two dramatists were roughly contemporary.

Inheritance in Sophocles and Euripides

Any evidence which can be obtained from tragedy should be treated with caution, since these plays were based on Greek myths and the tales which were written around Homer's Iliad and Odyssey and other epics. Therefore, as is the case with inheritance in Homer, the customs mentioned in these works are probably not only those of the time in which they were set but also those in which they were written (2), so I shall attempt to indicate any examples of anachronism where it may occur in the passages concerning inheritance.

It is firstly necessary to discuss any other aspects of inheritance in tragedy apart from inheritance by legitimate sons, in addition to writing about testaments. This is because if a man made a will, he more often than not wished to avoid the rules of intestate succession. Therefore, it is necessary to discover what these rules were in order to discuss the will in its correct perspective.

In both Hesiod and Homer, childlessness is regarded as a source of grief (3). This was especially so in the case of a king, since his family would no longer rule his kingdom after his death. There is no indication in tragedy that the situation could be remedied by means of adoption. However, there are several examples of bastards inheriting, and these are found in Euripides' Ion and Andromache and in Sophocles' Electra.

In Ion, Xuthus, and Creusa his wife, are childless, and so Xuthus seeks advice at the oracle of Delphi, where he is led to believe that Ion, the illegitimate offspring of Creusa and Apollo, is his own bastard son, fathered during a Bacchanalian orgy (4). It is because of this that Xuthus regards him as his heir:

ἀλλ' ἐκλιπὼν θεοῦ δόμους' ἀληθείαν τε σὴν
ἐς τὰς Ἀθήνας στεῖχε κοινόφρων πατρί
οὗ σ' ὄλβιον μὲν σκῆπτρον ἀναμένει πατρός,
πολὺς δὲ πλοῦτος·

(Eur. Ion, 576-579)

Here, the importance which Xuthus places on his fatherhood is indicated by the fact that he repeats the word πατήρ and seems to assume that Ion will identify with him as such. Even though Ion is not legitimate, he is regarded by Xuthus as the heir to his kingship (οὗ... πατρός). In addition, since Xuthus has already referred to his kingdom, the words πολὺς δὲ πλοῦτος are probably a reference to the personal wealth of his οἶκος , which Ion is to inherit as well. However, although Xuthus claims that Ion is the son of a freeborn woman, when a servant informs Creusa of what has happened, he makes a different statement concerning Ion's maternity:

καὶ τῶνδ' ἁπάντων ἔσχατον πείσῃ κακόν·
ἀμήτορ', ἀνάριθμον, ἐκ δούλης τινὸς
γυναικὸς ἐς σὸν δῶμα δεσπότην ἄγει.
ἁπλοῦν ἂν ἦν γὰρ τὸ κακόν, εἰ παρ' εὐγενοῦς
μητρός, πιθών σε, σὴν λέγων ἀπαίδαν,
ἐδώκιε' οἴκους εἰ δέ σοι τόδ' ἦν πικρόν,
τῶν Αἰόλου νιν χρῆν ὀρεχθῆναι γάμων

(Eur. Ion, 836-842)

Here, the servant attempts to prejudice the mind of Creusa against Ion by stating that he is the illegitimate son of a slave girl. He does not state that such a man would be unable to inherit the kingdom, but the words ἀμήτορ'...ἄγει suggest that he holds Ion in scorn because of his parentage.

The servant suggests that Xuthus could have taken different steps to ensure that the kingdom had an heir, such as fathering a son from a freeborn woman (εἰ παρ' εὐγενοῦς μητρός) or marrying again if Creusa disapproved of an illicit union (εἰ ... γάμων). There is no indication concerning what Creusa's position would have been if a second marriage had taken place. The first of these two alternatives suggests that a bastard son of a free woman probably had a higher standing with regard to inheritance than the illegitimate offspring of a slave girl. The words ἐσῴκισ' οἴκους indicate that the servant regards the begetting of a son as important for the continuation of the οἶκος.

There is also a reference in the Andromache of Euripides to a bastard being able to inherit a kingdom:

γυναῖκα δ' αἰχμάλωτον, Ἀνδρομάχην λέγω,
Μολοσσίαν γῆν χρῄ κατοικῆσαι, γέρον,
Ἑλένῳ συναλαχθεῖσαν εὐναίοις γάμοις,
καὶ παῖδα τόνδε, τῶν ἀπ' Αἰακοῦ μόνον
λελειμμένον δή. βασιλέα δ' ἐκ τοῦδε χρὴ
ἄλλον δι' ἄλλου διαπερᾶν Μολοσσίας
εὐδαιμονοῦντας.

(Eur. And. 1243-1249)

Here it is implied by the fact that he will be the ancestor of a long line of kings (ἐκ τοῦδε) that Molossus will inherit Helenus' kingdom. There is no indication that his illegitimacy (he is the son of Andromache and Neoptolemus) will prevent him from inheriting, but since Helenus had no sons of his own,

maybe this was regarded as a good enough reason for having Molossus on the throne.

It is notable that in these two cases of bastards inheriting, it is specifically stated that it is because there are no legitimate sons. However, in Sophocles' Electra, the children of Clytaemnestra's union with Aegisthus are regarded as the legitimate heirs, and Aegisthus is in a position of power. This is in spite of the fact that Orestes, the legitimate son of Agamemnon and Clytaemnestra is still alive. Segal attempts to assess the effect which Aegisthus' adulterous union and usurpation of authority will have on the minds of the Athenian audience:

"Usurping the masculine authority of the house, Clytaemnestra transmits that authority not to the son of her womb but to her lover, an older male who prevents the legitimate heir from acceding to his father's property. This usurper, at the masculine interior of the house, also stands in an anomalous, indeed outrageous position: instead of taking a wife to his own hearth, the usual practice in the patriarchal society of the fifth century, he has moved to her s, and borrowed her authority along with her oikos" (5).

However, even though the practice described here would have appeared most improper to a fifth-century Athenian audience, it was possible for such a thing to happen in Homeric times, where a similar situation occurs in Ithaca when Penelope's suitors are agreed that the successful one shall be ruler of the kingdom. The major difference

between the two situations is that whereas Orestes is not recognised as the heir to his father's οἶκος , Telemachus is to be permitted to retain this position (6). In Euripides' version of the play, Electra asks her mother why the kingdom was not given to her children by Agamemnon (7), but this was probably because at the time of Agamemnon's death, Orestes was but a child (8), and would not have been able to rule a kingdom by force or any other means. However, Electra bitterly points out that Clytaemnestra's children by Aegisthus will have prior right of succession over Orestes and herself, despite the fact that they are younger (9), and the union is unlawful (10). This is probably because Aegisthus' supremacy has not yet been questioned, and the right of his children by Clytaemnestra to inherit rests upon his ability to hold power by force. Once this position of power is successfully challenged, their right to inherit will cease, unless they prove to be stronger than the challenger, since in the heroic age, possession of a kingdom was decided by might, not equity (11). Therefore, the example in the Electra of bastards inheriting despite the existence of a legitimate son, rests on the ability of their father to rule the kingdom by might (12), and cannot be taken as indicative of fifth-century practices.

In order to prevent a usurper coming to the throne, there arose a custom whereby an older king who was no longer able to maintain his ascendancy by might, would allow his son to rule instead (13).

Cadmus handed the crown to his grandson Pentheus

while he himself was still alive:

Κάδμος μὲν οὖν γέρας τε καὶ τυραννίδα
Πενθεῖ δίδωσι θυγατρὸς ἐκ πεφυκότι
(Eur. Bacchae, 42-43)

The reason given here for Cadmus' abdication in favour of Pentheus is that he was getting old (γέρας), and it is probable that his age rendered him unable to rule effectively. This is further indicated at the the end of the play when Cadmus implies that Pentheus protected him from injury and insult (14).

At the time the Alcestis of Euripides takes place, Admetus is king even though his father, Pheres, is still alive. However, Pheres is still in possession of his private property:

πολλῶν μὲν ἄρχεις, πολυπλέθρους δέ σοι γύας
λείψω· πατρὸς γὰρ ταῦτ' ἐδεξάμην πάρα.

(Eur. Alc. 687-688)

The future tense of the verb λείπω indicates that Pheres probably intended to continue as owner of his private property, and so as head of the οἶκος , until his death. The fact that this property, which was in the form of land, was inherited from his own father is indicated by πατρὸς ... πάρα . Thus, when a king became too old to rule, he did not necessarily cease being head of the οἶκος.

A further example of a kingdom passing to a stronger and younger person is to be found in the Hippolytus, where Theseus reigns in both Troezen and Athens, even

though Pittheus, the past king of Troezen and Theseus' maternal grandfather is still alive (15).

On the other hand, it was not necessarily always the case that an older king would abdicate in favour of a younger man. This is indicated by the fact that in Euripides' Andromache, Peleus is still king, despite the fact that his grandson, Neoptolemus, is probably stronger than he is:

ἔνθ' οἶκον ἔσχε τόνδε παῖς Ἀχιλλέως,
Πηλέα δ' ἀνάσσειν γῆς ἐᾷ Φαρσαλίας,
ζῶντος γέροντος σκῆπτρον οὐ θέλων λαβεῖν.

(Eur. And. 21-23)

Stevens suggests that οὐ θέλων implies that Neoptolemus might have urged or forced the aged Peleus to step down from his throne, but in fact he allowed him to reign in Pharsalus while he himself withdrew to Phthia (16). However, the fact that Peleus is strong enough to prevail over Menelaus when he comes to kill Andromache (17) indicates that he is still strong enough to rule, although, despite Peleus' boasts (18), he would probably not be able to prevail in a case of hand-to-hand combat, since he was not strong enough to fight at Troy (19).

There are also some instances of will making and bequest in Greek tragedy.

In the Alcestis, before leaving for Thrace, Heracles gives a woman to Admetus to look after in his absence:

... γυναῖκα τήνδε μοι σῴζον λαβών,
ἕως ἂν ἵππους δεῦρο Θρηκίας ἄγων
ἔλθω, τύραννον βιοτόνων κατακανών.
πράξας δ' ὃ μὴ τύχοιμι (νοστήσαιμι γὰρ)
δίδωμι τήνδε σοῖσι προσπολεῖν δόμοις.
(Eur. Al. 1020-1024)

Here, Heracles does not specifically define the status of this woman, but since he later states that she was won by him as a prize in a sporting contest (20), it is very likely that her position is one of a slave, and as such she is regarded as his property. While he is giving this woman to Admetus to care for, Heracles also states that Admetus can keep her if he does not return (πράξας ... δόμοις). Bruck classes these words of Heracles as a "mortis causa donatio imminente periculo" and states that this is an instance of anachronism, a custom of Euripides' time being transferred to legend (21). However, it is mistaken to apply Roman legal terms to Greek law, because the latter was not as regulated as Roman law. In addition, in the Homeric era, there is an example of a bequest of property in the event of death (22) so this incident is not necessarily anachronistic. Therefore, Bruck is not quite correct in his analysis of the situation. Thus, it is more probable that these words of Heracles are an example of a bequest of property to someone outwith his family, in event of death, and so they constitute an oral will; although, of course, the

audience realise that he is in reality giving Alcestis back to her husband.

Ajax's speech to his illegitimate son, Eurysaces, could be interpreted as a type of oral will, since in it he states his last wishes before committing suicide:

ὦ παῖ, γένοιο πατρὸς εὐτυχέστερος,
τἄλλ' ἄλλ' δμοῖος· καὶ γένοι' ἂν οὐ κακός.
καίτοι σε καὶ νῦν τοῦτό γε ζηλοῦν ἔχω,
ὀθούνεκ' οὐδὲν τωνδ' ἐπαισθάνῃ κακῶν.
ἐν τῷ φρονεῖν γὰρ μηδὲν ἥδιστος βίος,
[τὸ μὴ φρονεῖν γὰρ κἀρτ' ἀνώδυνον κακόν,]
ἕως τὸ χαίρειν καὶ τὸ λυπεῖσθαι μάθῃς.
ὅταν δ' ἵκῃ πρὸς τοῦτο, δεῖ σ' ὅπως πατρὸς
δείξεις ἐν ἐχθροῖς οἷος ἐξ οἵου 'τράφης.
τέως δὲ κούφοις πνεύμασιν βόσκου, νέαν
ψυχὴν ἀτάλλων, μητρὶ τῇδε χαρμονήν.
οὔτοι σ' Ἀχαιῶν, οἶδα, μή τις ὑβρίσῃ
στυγνοῖσι λώβαις, οὐ δὲ χωρὶς ὄντ' ἐμοῦ.
τοῖον πυλωρὸν φύλακα τεύκρον ἀμφί σοι
λείψω τροφῆς ἄοκνον ἔμπα καὶ κεἰ τανῦν
τηλωποὺς οἰχνεῖ, δυομένων βήρας ἔχων.
ἀλλ', ἄνδρες ἀδπιστῆρες, ἐνάλιος λεώς,
ὑμῖν τε κοινὴν τήνδ' ἐπισκήπτω χάριν,
κείνῳ τ' ἐμὴν ἀγγεῖλαι' ἐντολήν, ὅπως

τὸν παῖδα τόνδε πρὸς δόμους ἐμοὺς ἄγων
Τεκμῶνι δείξει μητρί τ', Ἐριβοίᾳ λέγω,
ὡς σφιν γένηται γηροβοσκὸς εἰκαίᾳ,
ἕως τ' ἂν μυχοὺς κίχωσι τοῦ κάτω θεοῦ,
καὶ τἀμὰ τεύχη μήτ' ἀγωνάρχαι τινὲς
θήσουσ' Ἀχαιῶν μήτε λυμεὼν ἐμός.
ἀλλ' αὐτό μοι σύ, παι, λαβὼν ἐπώνυμον,
Εὐρύσακες, ἴσχε διὰ πολυρράφου στρέφων
πόρπακος ἐπτάβοιον ἄρρηκτον σάκος·
τἆλλα δ' ἄλλα τεύχη κοίν' ἐμοὶ τεθάψεται.

(Soph. Ajax, 550-577)

This address to Eurysaces takes place amongst the carnage of the slaughtered cattle. The tone of the speech alternates between toughness and tenderness (23).

The first wish which he expresses to his son is that he be like him in all else but his bad luck (ὦ παῖ ... κακός). This indicates that he sees his son essentially as an "heir to his heroism" and thus as a reflection of himself. After a few lines in a gentler, more philosophical tone (καίτοι ... μάθῃς) this sentiment is repeated (ὅταν ... τράφῃς). These lines (556-557) seem to suggest a request for vengeance. However, since Ajax plans to commit suicide, vengeance cannot be exacted against his enemies because they murdered him, since they did not. On the other hand, it is possible that Ajax regarded Agamemnon, Menelaus and Odysseus as responsible

for his plight, because the armour of Achilles was not granted to him, but to Odysseus, and it is this action which has brought about his decision to kill himself. However, the fact remains that Ajax's death is not caused by murder but by his own action.

Ajax also makes provision for the future care of Eurysaces. He tells the boy that Teucer, Ajax's half-brother, will be his guardian, and because of this, he need not fear insults (οὗτος... ἔχων). The word used to describe the function which Teucer will be fulfilling is τροφός as opposed to the term ἐπίτροπος . Bond states that "this is a word of contempt applied to a man" (25). However, in this particular example, Teucer is also referred to as a φύλαξ , and it is specifically stated that he is at present fighting the Trojans, (δυσμενῶν θήραν ἔχων), and these references detract from the more feminine implications of τρόφος . Since there is no reference in Homeric times to a man providing a guardian for his young son in event of death, it is probable that this clause in the will is anachronistic. Ajax also asks his comrades-in-arms to assist Teucer in his task (ἀλλ'... χάριν), since χάριν seems to refer to the task of caring for Eurysaces. The word ἐπισκήπτω indicates that solemnity of this request, and also governs the message which Ajax asks these men to give to Teucer. This is that he is to take Eurysaces to his home and show him to Telamon and Euryboia, Ajax's parents. The words ὡς... θεοῦ indicate that the hero wishes his son to care for his parents in their old age.

Ajax's final provisions concern his armour. The words καὶ τἀμὰ τεύχη μήτ' ἀγωνάρχαι τινὲς . . . . . κυμεῶν ἐμός are still part of the message which his seamen are to bear to Teucer, and contain the request that his arms are not to be made a prize to be contested for by his fellow Greeks. He then bequeaths his shield to Eurysaces (ἀλλ'... σάκος). This bequest recalls Ajax's earlier wish that his son emulate him; just as the shield was Ajax's outstanding characteristic, so does he wish it to be his son's. Concerning the remainder of his armour, he expresses the wish for it to be buried with him (τὰ ... τεθάψεται).

There are two omissions in the provisions of this will. Firstly, Ajax makes no arrangements for the future care of his concubine, Tecmessa, although it is possible that he may have wished Teucer to care for her as well, but there is no specific evidence concerning this, so the matter is open to conjecture. Secondly, he does not make provisions for the remainder of his possessions. Since his father Telamon is still alive (26), he is not head of his οἶκος, so he would not be able to dispose of this, but any other acquired possessions are not dealt with. This suggests that even though his son Eurysaces is illegitimate, these may have been intended to be inherited by him, since Ajax recognizes him as his son.

Therefore, the speech of Ajax to his son can be regarded as an oral will, since it involves the disposition of property and the care of his son in event of death. By means of it, he provides a guardian for his

illegitimate son Eurysaces, and states that the boy is to look after Telemon and Euryboia, he accepts his son as his heir and bequeaths him his shield, and states that the rest of his armour is to be buried with him.

Another instance of an oral will in Greek tragedy can be found in Sophocles' Trachiniae. This occurs towards the end of the play when Heracles extracts a promise from his son Hyllus to do whatever he asks (27), and proceeds to make two requests. The first of these, in which he asks Hyllus to carry him to the summit of Oeta and burn him there (28), cannot be taken as a will because there is no mention of what is to happen after his death. However, it can be regarded as a διαθήκη in the sense of contract, since Hyllus has promised to accede to his father's request. The second request is that Hyllus marry Heracles' concubine, Iole:

ἔγνως. τοσοῦτον δή σ' ἐπισκήπτω, τέκνον·
ταύτην, ἐμοῦ θανόντος, εἴπερ εὐσεβεῖν
βούλῃ, πατρῴων ὅρκίων μεμνημένος,
προσθοῦ δάμαρτα, μηδ' ἀπιστήσῃς πατρί·
μηδ' ἄλλος ἀνδρῶν τοῖς ἐμοῖς πλευροῖς ὁμοῦ
κλιθεῖσαν αὐτὴν ἀντὶ σοῦ λάβοι ποτέ,
ἀλλ' αὐτός, ὦ παῖ, τοῦτο κήδευσον λέχος.
(Soph. Trach. 1221-1227)

Here, the verb ἐπισκήπτω indicates the request, by means of which he formally disposes of Iole in the event of his death (ἐμοῦ θανόντος). The reasoning behind Heracles'

request is not so much to provide care for Iole but to prevent any one else but his son from sleeping with her (μηδ'... λέχος). Winnington-Ingram rightly states that Heracles asks this of Hyllus because he "can regard Hyllus in no other light than his own individuality, his own 'phusis' which explains, among other things, his insistence that he and no other should go to bed with Iole" (29). Thus, Heracles' motivation is pride as opposed to affection for either his concubine or his son. It is probable that Sophocles included this request in the play in order to avoid contradicting the legend which held that Hyllus was the husband of Iole (30), and cannot be taken as indicative of fifth-century practices. In view of the fact that Hyllus has already made a solemn promise to do what his father asks, this request can be regarded as a διαθήκη in the sense of a solemn compact or covenant (31) in addition to διαθήκη meaning will.

There are also two references in Greek tragedy in which writing is connected with will making.

One of these occurs in a fragment from Euripides' play, Palamedes:

τὰ τῆς γε λήθης φάρμακ' ὀρθώσας μόνος,
ἄφωνα φωνήεντα συλλαβὰς τιθεὶς
ἐξηῦρον ἀνθρώποισι γράμματ' εἰδέναι,
ὥστ' οὐ παρόντα πόντιας ὑπὲρ πλακὸς

τἀκεῖ κατ' οἴκους πάντ' ἐπίστασθαι καλῶς,
παῖσιν τ' ἀποθνήσκουσι χρημάτων μέτρον
γράψαντας εἰπεῖν, τὸν λαβόντα δ' εἰδέναι.
ἃ δ' εἰς ἔριν πίπτουσιν ἀνθρώποις κακὰ
δέλτος διαιρεῖ, κοὐκ ἐξ ψευδῆ λέγειν.

(Eur. Pal. 578, Nauck)

In this quotation, the speaker lists the benefits which the invention of writing has given to mankind. This is an example of anachronism, since Homeric society, in which the play is set, was probably illiterate (32), so this passage is best taken as evidence concerning fifth-century Athenian practices as opposed to earlier ones. It seems as if an oral will is regarded by the speaker as inadequate, since its contents will not be remembered. On the other hand, if the extent of his property is recorded in a will, his children will know what is theirs (παῖσιν ... εἰπεῖν), and the heir will know it (τὸν ... εἰδέναι). The function of the type of will which the speaker is talking about is that of an inventory of property, which indicates this was one of the functions of a will by the time of the fifth-century (33). Since the speaker refers to children, this indicates that in fifth-century Athens, a man with children was entitled to make a will which was in effect an inventory of his property. There is no reference to a will of this type in Homer, so it is probable that the function of the will referred to is

also an example of anachronism. A will having this function can also be used as evidence of the truth in event of a quarrel (ἀν...λέγειν). Here the word used to refer to the document is δελτὸς , and since Homer does refer to baneful signs being written on folded tablets (34), this is not an example of anachronism and cannot be taken as evidence concerning the materials on which wills were written in the fifth century. Therefore, this quotation indicates that in the fifth century, it was considered acceptable for a man, even if he had legitimate children, to write a will which was just an inventory of property.

The second reference in tragedy to a written will can be found in Sophocles' Trachiniae, where it is stated that Heracles left behind a tablet with writing on it. There are conflicting ideas concerning the contents of this tablet, so it seems best to quote the passages which refer to this tablet. The first reference to the tablet is ominous:

... τοιαύτην ἐμοὶ
δέλτον λιπὼν ἔστειχε, τὴν ἐγὼ θαμὰ
θεοῖς ἀρῶμαι πημονῆς ἄτερ λαβεῖν
(Soph. Trach. 46-48)

In a later reference, Deianira expands upon its contents:

δδὸν γὰρ ἦμος τὴν τελευταίαν ἄναξ
ὥρμᾶτ' ἀπ' οἴκων Ἡρακλῆς, τότ' ἐν δόμοις

λείπει παλαιὰν δέλτον ἐγγεγραμμένην
ξυνθήμαθ', ἁμοὶ πρόσθεν οὐκ ἔτλη ποτέ,
πολλοὺς ἀγῶνας ἐξιών, οὕτω φράσαι,
ἀλλ' ὡς τι δράσων εἶρπε κοὐ θανούμενος.
νῦν δ' ὡς ἔτ' οὐκ ὢν εἶπε μὲν λέχους ὅ τι
χρείη μ' ἑλέσθαι κτῆσιν, εἶπε δ' ἣν τέκνοις
μοῖραν πατρῴας γῆς διαιρετὸν νέμοι,
χρόνον προτάξας ὡς τρίμηνος ἡνίκα
χώρας ἀπείη κἀνιαύσιος βεβώς,
τοτ' ἢ θανεῖν χρείη σφε τῷδε τῷ χρόνῳ,
ἢ τοῦθ' ὑπεκδραμόντα τοῦ χρόνου τέλος
τὸ λοιπὸν ἤδη ζῆν ἀλυπήτῳ βίῳ.
τοιαῦτ' ἔφραζε πρὸς θεῶν εἱμαρμένα
τῶν Ἡρακλείων ἐκτελευτᾶσθαι πόνων,
ὡς τὴν παλαιὰν φηγὸν αὐδήσαί ποτε
Δωδῶνι θεσπῶν ἐκ πελειάδων ἕφη.

(Soph. Trach. 155-172)

Jebb states that the tablet which Deianira refers to in this quotation was inscribed with the oracular message which was given to Heracles at Dodona, and seems to assume that the will mentioned is an oral one (35).

Kamerbeek also holds that the δέλτος contains a memorandum of the oracle which Heracles received at Dodona, as opposed to his will, stating that ξύνθημα does not mean "agreement" or "covenant", but "letter", or "symbol" (36). Easterling is also of this opinion and states that "Heracles first revealed the prophecy to Deianira, then gave her his testamentary instructions, but Sophocles tells the story in the reverse order, so as to lay the strongest stress on the idea of the critical moment which is dramatically more important. The verbal repetition of χρόνον , χρόνως , χρόνου reinforces this emphasis" (37).

On the other hand, Norton states that the tablet contained Heracles' will, and that συνθήματα denotes "the contents of this testamentary document" (38). However, I agree with Kamerbeek and Jebb in interpreting the word as "letter" or "signs" as opposed to "covenant", which seems to be Norton's interpretation.

Since the majority view holds that the tablet contained an oracle, it is best to begin my discussion of it by citing the evidence which seems to support this view.

There are other references to the oracle in the play. One of these occurs when Deianira is trying to persuade her son, Hyllus to find out what has happened to Heracles:

Δη. ἆρ' οἶσθα δῆτ', ὦ τέκνον, ὡς ἐλείπετό μοι

μαντεῖα πιστὰ τῇδε τῆς χώρας πέρι;

Γλ. τὰ ποῖα, μῆτερ; τὸν λόγον γὰρ ἀγνοῶ.

Δη. ὡς ἢ τελευτὴν τοῦ βίου μέλλει τελεῖν

ἢ τοῦτον ἄρας ἆθλον ἐς τὸ γ' ὕστερον

τὸν λοιπὸν ἤδη βίοτον εὐναίων' ἔχειν.

(Soph. Trach. 76-81)

In this quotation, no reference is made to the oracle being written on a tablet, but the verb λείπω is used as opposed to φημί , which suggests that Heracles did not just tell her the oracle, but left something on which its terms were written. The words ὡς... ἔχειν indicate that Deianira knows the terms of the oracle. When the chorus refers to the prophecy (39) it does not state whether it was written down or not. However, in a moment of revelation when Heracles realises the real meaning of the oracle, he states that he did write it down.

ἃ τῶν ὀρείων καὶ χαμαικοιτῶν ἐγὼ

Σελλῶν ἐσελθὼν ἄλσος ἐξεγραψάμην

πρὸς τῆς πατρῴας καὶ πολυγλώσσου δρυός

(Soph. Trach. 1166-1168)

The reference to writing here suggests that the tablet probably contained the terms of the oracle.

However, lines 155-172 which narrate the relating of the oracle also include an account of Heracles' will. Even though Easterling states that the terms of each are

juxtaposed for dramatic effect, this could lead to confusion in the minds of the audience, since one would expect Deianira to say that Heracles told her what was to happen to his property and then related the oracle which was written on the tablet. The sequence of events as supposed by Easterling, namely Deianira mentions the tablet, then states that Heracles made an oral will, and following this relates what Heracles told her was written on the tablet seems illogical, since a completely irrelevant subject is interposed between tablet and oracle. So this passage is more easily interpreted as meaning that the tablet contained a disposition of property as well as a record of the oracle. The reason why the will is not mentioned elsewhere in the play in connexion with the oracle is that it is irrelevant to the plot, whereas the plot revolves around the interpretation of the oracle. It is probable that the will is mentioned in lines 155-163 for a dramatic purpose. Earlier on in the play, the subject of the tablet was introduced with ominous words (40). When its contents are revealed to be both a will and an oracle, the audience is further prepared for Heracles' death, since wills are inextricably linked with dying.

The terms of the will concern the testator's family. Firstly Heracles made provision for his wife:

...εἶπε μὲν λέχους ὅ τι / χρείη μ' ἐλέσθαι κτῆσιν...

(Soph. Trach. 161-162)

Concerning this, the first scholium on these lines reads:

ἔλεγεν προσήκειν ἐμὲ λαβεῖν τὴν προῖκα καὶ τὰ δῶρα ἃ ὑπὲρ τοῦ πέχους ἐκτησάμην.

(Schol. Trach. 162A)

This suggests that the words πέχους κτᾶσθαι refer to Deianira's dowry which she had brought with her together with any gifts which Heracles may have made to her (41). However, it was possible for a husband to increase his wife's dowry on arranging this matter in event of death (42), so the words πέχους κτᾶσθαι might not necessarily indicate that Heracles intended Deianira to take with her a dowry of exactly the same amount as she had brought with her. There is no indication of the precise value of Deianira's dowry, so it is open to conjecture whether Heracles increased the amount or not. Since there is evidence from fifth-century Athens that a man could give a woman gifts in addition to her dowry (43), it is possible that πέχους κτᾶσθαι could also include these. The provision of a dowry for Deianira is an example of anachronism, since it seems as if dowries were not customary in the heroic age of Greece (44). Secondly, Heracles divides his property amongst his sons:

... εἶτε δ' ἦν τέκνοις
μοῖραν πατρῴας γῆς διαιρετὸν νέμοι, ...

(Soph. Trach. 162-163)

It is not specifically stated here how much property each of the sons should receive. Kamerbeek seems to assume that each son will receive an equal share of patrimony

(45), but since there is no precise evidence concerning this, the matter is purely conjectural. Segal states that the will characterizes Heracles as a father-figure (46), which indeed it does.

The reference to the will being written is an example of anachronism, since writing was not known in the heroic age (47). Indeed, Deianira herself is depicted as not understanding the contents of the tablet (48), which suggests that she is illiterate. However, the material on which the will is inscribed, namely a tablet, is in accordance with early Greek customs, since such a practice is referred to in Homer (49).

Therefore, the tablet on which the oracle was written very probably did contain Heracles' will. The terms of this will are anachronistic and indicate that it was probably customary for a family man to make such terms in this will in fifth-century Athens.

There are thus various instances of anachronism in the evidence concerning wills and inheritance in Greek tragedy. These are references to wills being written down, the provision of a dowry for the testator's wife, the appointment of a guardian for his son, and the function of a will as an inventory. It is these instances of anachronism which can be taken as indicative of fifth-century practices.

Inheritance in Aristophanes

There is no need to attempt to discern anachronism when discussing inheritance in Aristophanes, since in his form of comedy, real-life situations and political events are taken and satirized. However, a different kind of caution needs to be employed when examining evidence from this source, since Aristophanes may distort or exaggerate for comic effect, and so it is necessary to deduce whether what is said is literally true or a joke. It is in the works of Aristophanes that the word διαθήκη occurs for the first time in extant Greek literature. There is also some information concerning the right of a bastard to inherit his father's property.

In Aristophanes' Birds, Heracles, Poseidon and a Triballian god enter Cloudcuckooland trying to arrange a settlement whereby the gods can be permitted passage through the new kingdom so that they will be able to receive men's sacrifices. While this is happening, Peisthetaerus states that Heracles is a bastard and so is unable to inherit any of his father's property:

Πο. τί δ' ὠβύρ'; οὐκ οἶσθ' ἐξαπατώμενος πάλαι;
βλάπτεις δέ τοι σὺ σαυτόν. ἢν γὰρ ἀποθάνῃ
ὁ Ζεὺς παραδοὺς τούτοισι τὴν τυραννίδα,
πέντης ἔσει σύ. σοῦ γὰρ ὄντα γίγνεται
τὰ χρήματ', ὅσ' ἂν ὁ Ζεὺς ἀποθνήσκων καταλίπῃ.
Πι. οὔμοι τάλως οἷόν σε περιβοᾶσεται.
δεῦρ' ὡς ἐμ' ἀποχώρησον, ἵνα τί σοι φράσω.

διαβάλλεταί σ' ὁ θετος ὦ πόνηρε σύ.
τῶν γὰρ πατρώων οὐδ' ἀκαρῆ μέτεστί σοι
κατὰ τοὺς νόμους· νόθος γὰρ εἶ κοὐ γνήσιος.

Ηρ. ἐγὼ νόθος; τί λέγεις;

Πι. σὺ μέντοι νὴ Δία
ὧν γε ξένης γυναικός. ἢ ἰτῶς ἄν ποτε
ἐπίκληρον εἶναι τὴν Ἀθηναίαν δοκεῖς,
οὖσαν θυγατέρ', ὄντων ἀδελφῶν γνησίων;

Ηρ. τί δ' ἦν ὁ πατὴρ ἐμοὶ διδῷ τὰ χρήματα
νοθεῖ ἀποθνήσκων;

Πι. ὁ νόμος αὐτὸν οὐκ ἐᾷ.
οὗτος ὁ Ποσειδῶν πρῶτος, ὃς ἐπαίρει σε νῦν,
ἀνθέξεταί σου τῶν πατρώων χρημάτων
φάσκων ἀδελφὸς αὐτὸς εἶναι γνήσιος.
ἐρῶ δὲ δὴ καὶ τὸν Σόλωνός σοι νόμον·
'νόθῳ δὲ μὴ εἶναι ἀγχιστείαν παίδων ὄντων
γνησίων. ἐὰν δὲ παῖδες μὴ ὦσι γνήσιοι, τοῖς
ἐγγυτάτω γένους μετεῖναι τῶν χρημάτων.'

Ηρ. ἐμοὶ δ' ἆρ' οὐδὲν τῶν πατρώων χρημάτων
μέτεστιν;

Πι. οὐ μέντοι μὰ Δία. λέξον δέ μοι,
ἦδη σ' ὁ πατὴρ εἰσήγαγ' ἐς τοὺς φράτερας;

Ηρ. οὐ δῆτ' ἐμέ γε. καὶ δῆτ' ἐθαύμαζον πάλαι.

(Aristoph. Birds, 1641-1670)

Much of the humour in this quotation lies in the fact that Heracles is treated as an ordinary Athenian resident as opposed to a demi-god (50). Lines 1644-1645 refer to the Athenian system of succession whereby a legitimate

son was entitled to receive all of his father's property, and the comedy here lies in the reference to Zeus dying, since he is an immortal and will not die. Peisthetaerus states that Poseidon is mistaken, and Heracles is not entitled to any of Zeus' property because he is a bastard. The reason he is regarded as such is because his mother is a ξένη , since she is a mortal and Zeus is a god. Patterson states that this statement is made in relation to no particular law at all (51). However, she later says that this passage indicates that "the child of a Xene was in the popular mind a nothos", and that this is Pericles' citizenship law (52), since Pericles' law of 451-450 decreed that to be an Athenian citizen, one had to be born of citizen parents to possess civic rights and to be considered legitimate (53). Therefore, it is probable that the words νόθος γὰρ ... γυναικός are a reference to Pericles' citizenship law. Athene is referred to as being Zeus' ἐπίκληρος (ἦ πῶς... γνησίων), and here the amusement lies partly in the statement's inaccuracy, since Zeus had legitimate sons, such as Ares and Hephaestus. Harrison indirectly indicates another humorous implication when he states that if one takes Peisthetaerus seriously, "he argues that Athene was Zeus' ἐπίκληρος and that Poseidon would get the property - by marrying Athene presumably, though Peisthetaerus does not say this" (54). This implication is amusing since Athene was a virgin goddess, and marriage would be unthinkable to her, although an Athenian ἐπίκληρος had no choice in whom she married (55).

Peisthetaerus then quotes a law concerning the inheritance of bastards, which he ascribes to Solon (ἐρῶ...χρημάτων) (56). The genitive absolute, παίδων ὄντων γνησίων is probably conditional, and thus suggests that a bastard may have counted as a relative if there were no legitimate children. The next clause of the law which is quoted concerns what would happen if there were no legitimate sons, namely that those nearest in γένος would then share (μετεῖναι) the property, and this suggests that a bastard might well have been able to inherit some property in default of legitimate sons (57). This indicates that the only reason why Heracles is to have no share of Zeus' property is because there is a legitimate daughter, Athene. The reference to Heracles not having been introduced into a phratry is an indication that the rule that only legitimate sons could be admitted into the phratry existed in Aristophanes' time as well as in the time of Isaeus (58).

Therefore, since the Athenian audience would have only found the situation amusing if a law prohibiting bastards to inherit if there were legitimate sons, or be enrolled in a phratry, had been current at the time, it is very probable that such a law existed. The passage also suggests that the references in tragedy to bastards inheriting all of their father's property (59) are probably not indicative of fifth-century practices.

It is also in Aristophanes' Birds that the word διαθήκη is found meaning "covenant" for the first time in extant Greek literature:

Πι. μὰ τὸν Ἀπόλλω νὴ μὲν οὔ,
ἢν μὴ διάθωνταί γ' οὕσδε διαθήκην ἐμοὶ
ἥνπερ ὁ πίθηκος τῇ γυναικὶ διέθετο,
ὁ μαχαιροποιός, μήτε δάκνειν τούτους ἐμὲ
μήτ' ὀργίπεδ' ἕλκειν μήτ' ὀρύττειν —

Χο. οὔτι που
τόν —; οὐδαμῶς.

Πι. οὔκ, ἀλλὰ τἀφθαλμιῶ λέγω.

Χο. διατίθεμαι γώ.

Πι. κατόμοσόν νυν ταῦτά μοι.

Χο. ὄμνυμ' ἐπὶ τούτοις, πᾶσι νικᾶν τοῖς κριταῖς
καὶ τοῖς θεαταῖς πᾶσιν.

(Aristoph. Birds, 438-446)

The verb διατίθημι and its noun διαθήκη are used constantly in this quotation to mean a pledge between two parties, and this is another sense of the preposition διά which means "between" here. Norton states that he does not think that "it would be possible to find a more definite and explicit meaning of a word than that

of διαθήκη in this passage. If there were no other occurrence of it in the language, this would be sufficient to establish the signification of solemn compact or covenant" (60). This definition of the word will have to be borne in mind when considering the word διαθήκη as referring to "will" or "testament", where διά takes the meaning "in different directions".

The first time διαθήκη is mentioned meaning "will" is actually in an earlier play by Aristophanes, namely Wasps which was performed in 422. This play is an amusing attack on the jury system of Athens and on Cleon (61). The major comic character, Philocleon, is an old man who is obsessed with being on a jury, and one of the major reasons for this is the pleasure and power which he obtains from it (62). One of the instances of him showing his power is the adjudication of an estate and its ἐπίκληρος:

ΦΙ. κἂν ἀποθνήσκων ὁ πατήρ τῷ δῷ καταλείπων
παῖδ' ἐπίκληρον,
κλαίειν ἡμεῖς μακρὰ τὴν κεφαλὴν εἱποντες τῇ διαθήκῃ
καὶ τῇ κόγχῃ τῇ πάνυ σεμνῶς τοῖς σημείοισιν ἐπούσῃ.
ἔδομεν ταύτην ὅστις ἂν ἡμᾶς ἀντιβολήσας ἀναπείσῃ.
καὶ ταῦτ' ἀνυπεύθυνος δρῶμεν· τῶν δ' ἄλλων οὐδεμί'
ἀρχή.

ΒΔ. τοῦτ' γὰρ τοι σεμνόν· τούτων ὧν ἐγὼ κάρυκας μακαρίζω.
τῆς δ' ἐπικλήρου τὴν διαθήκην ἀδίκως ἀνακογχυλιάζων.

(Aristoph. Wasps, 583-589)

This quotation contains the earliest reference in Athens to the position of an heiress. One of the clauses in Solon's law concerning ἐπίκληροι was that a man with a legitimate daughter could make a will adopting a son so long as the adopted son married the girl (63), and it seems as if the will in this passage has this function.

This quotation also indicates the ordinary man's attitude to a will, since although Philocleon can hardly be called a typical Athenian, he is such a clown and a rascal, wills were often regarded with suspicion, either because their validity was questionable or because they were thought to be forgeries (64). This attitude is, as Dover rightly states, exaggerated into one which is "not only fundamentally contemptuous of law, but has some affinity with a cowardly delinquency which earned very strong disapproval, injury to widows, orphans and heiresses" (65). The implication that injury is being done to the girl lies in the fact that she is legally obliged to marry, and so have sexual intercourse with the man to whom the court gives her, and Philocleon states that he will give her to the most persuasive speaker (line 586), which indicates a disregard for her father's wishes. This idea that the girl will be sexually abused is more fully expressed in line 589, where the words διαθήκην ... ἀναπογχυλάζων have a double meaning and can either refer to the will or to the heiress' physical condition (66). Philocleon's attitude towards the document is also indicated in the words κινεῖν μακρὰ τὴν κεφαλήν

, and in the adverb σεμνῶς which almost personifies the seals. MacDowell rightly states that these words are "a variation of the type of joke in which an important man is treated rudely; many people sometimes wish they would ignore or tear up an important document" (67).

This passage also provides some information concerning the sealing of a will. The seal or seals were generally made by a piece of molten wax being stamped by a special device which was normally engraved on a piece of metal (68). Here the plural τοῖς σημείοιϛιν is used, which suggests that on the will which Philocleon is envisaging, there is more than one seal. The seals referred to here are not the original ones, because these would have been broken for the contents of the will to be perused. Therefore, it is more probable that these seals are those placed on the document by the persons who read it after the testator's death, and maybe by others who witnessed this reading (69). The word κόγχη means the case in which the seal was enclosed, and this is the only example of this meaning of the word occurring in extant classical Greek literature. The scholia on Aristophanes' Wasps attempt to explain the word as follows:

585a. καὶ τῇ κόγχῃ: τοῖς σημείοις. VΓ Ald

ὡς κόγχας ἐπιτιθέντων ταῖς σφραγῖσι (v) φυλακῆς ἕνεκεν. R [ἀσφαλείας ἕνεκα VΓAld]. RVΓAld "κόγχη" δὲ τῷ κογχυλίῳ τῷ ἐπικειμένῳ ταῖς σφραγῖσι [διὰ

τὸ [τῷ ΓΑΙΔ] μὴ ἀφανίζεσθαι τοὺς τύπους αὐτῆς. VΓΑΙΔ.

585b ὅτι ἐν ταῖς σφραγῖσι· ταῖς ἐν τοῖς γραμματείοις κόγχην ἤτοι κογχύλιον ἐπιτιθάσιν, ὅπως μὴ ἀφανίζοιντο οἱ τύποι αὐτῶν· οἶμαι δέ, ὅτι ἔριον ἐπιτίθουν ἐκ κογχύλης βεβαμμένον

(Schol. 585a, 585b, Kostē)

Here, the reason given for the use of a κόγχη is to protect the seals, on a document, so that the impressions on the seal will not vanish, (presumably by being rubbed or otherwise tampered with). The material ~~with~~ which a κόγχη was made from is assumed to have been shell (κόγχύλιον). This assumption is also made by MacDowell, who states that a κόγχη was "either made from a sea-shell or else shaped like one" (70). However, since the purpose of such an object was to protect something, it seems unlikely that a brittle substance such as shell would be of much practical value, since it could break very easily. Therefore it is necessary to look at MacDowell's second alternative, in which he suggests that a κόγχη could be shell-shaped. However, he is not quite exact here, because shell-shaped can imply various different forms. The definition of the word given by Liddell and Scott states that in addition to meaning "shell", κόγλη can also mean anything shaped like a mussel shell, such as the boss of a shield, a small iron crucible or even an eye-socket (71). Therefore the shape would be roughly hemispherical. Since it would have not been practical to make the seal cap from shell, the other

meanings of κόγχη suggest that other materials could be used for this purpose such as metal or even carved bone.

Therefore, this passage indicates that in fifth-century Athens, a man could make a will in which he married his daughter to another and adopted him as his son. It can also be taken as evidence concerning the sealing of a will.

Thus, the evidence in Aristophanes concerning wills and the inheritance of bastards indicates that it was contrary to law for a bastard to inherit all of his father's property in Athens, that the word διαθήκη could also mean a solemn compact, and that wills in the fifth-century had adoption as one of their functions.

In conclusion, the evidence presented in this chapter shows that the will in fifth-century Athens had various functions. It could be made by a man with legitimate sons and either act as an inventory or contain provisions for the testator's wife and children, and a man with no legitimate sons was able to adopt by means of a testament. It could also function as a bequest. In addition, the passage from Aristophanes' Wasps indicates that by 422 a man was taking the precaution of having his will sealed, presumably so that it would not be tampered with.

Notes

1. No evidence concerning the matter can be found in the works of Aeschylus.
2. cf Chapter 1, Homer p.7.
3. Chapter 1, Homer, pp. 21-22 and pp. 27-28.
4. Euripides, Ion, 530-560.
5. C. Segal, Tragedy and Civilization, an Interpretation of Sophocles, (Cambridge, Mass., 1981) p.256.
6. See Chapter 1, Homer, p. 11 .
7. Euripides, Electra, 1087-1090.
8. This is shown in Soph. cf Electra, 1-22, where the aged servant points out the shrines of the town to Orestes. If Orestes had been an older child at the time of his escape from Argos, he would have remembered them himself.
9. Soph. Electra, 585-590.
10. Soph. El. 491-2.
    cf Lacey, Family, p.40, in which it is stated that the union was a legitimate marriage. However, the author produces no evidence in support of this.
11. See Chapter 1, Homer, pp. 8-13.
12. The fact that in legend a kingdom was not necessarily ruled by the legitimate king but by whoever was strong enough is shown in Euripides' play, Heracles Furens. Here, while Heracles is performing his labours, his throne has been unsurped by Lycus (Eur. H.F. 31-34), but when Heracles returns, Lycus is assassinated (Eur. H.F. 530-753).

13. cf. Chapter 1, Homer pp. 15-16.
14. Eur. Bacchae, 1320-2
15. Eur. Hipp, 794-796
16. P.T. Stevens (ed.), Euripides Andromache, (Oxford, 1971) p.93.
17. Eur. And. 547-767.
18. Eur. And. 758-767
19. See Chapter 1, Homer, pp. 17-18.
20. Eur. Al. 1025-1034.
21. Bruck, Schenkung, p.83
22. Chapter 1, Homer, pp. 12-13.
23. R.P. Winnington - Ingram, Sophocles, an Interpretation, (Cambridge, 1980), p. 31 n. 61.
24. K. Reinhardt, Sophocles, (Frankfurt, 1933), translated by V. Klosterman, (Oxford, 1979), p.34 Winnington - Ingram, op. cit. pp. 30-31.
25. G.W. Bond, Euripides Heracles, (Oxford, 1981), p.73.
26. Soph. Ajax, 1008-1018.
27. Soph. Trach, 1174-1190.
28. Soph. Trach, 1191-1202.
29. Winnington - Ingram, op. cit. p. 33.
30. R.C. Jebb, Sophocles, the Plays and Fragments, Part V, The Trachiniae, (Cambridge, 1892), p. 176.
31. See below, pp. 87-88.
32. For a brief description of the plot of this play, see the souces quoted by A. Nauck, Tragicorum Graecorum Fragmenta, (Hildescheim, 1964), pp. 541-542. For literacy in Homeric times, see Chapter 1, Homer, pp. 8-9.

33. The use of the will to include an inventory of property is also found in fourth-century evidence, see Chapter 6.
34. Chapter 1, Homer, p. 8.
35. Jebb, op. cit. p. 27.
36. J.C. Kamerbeek, The Plays of Sophocles, Part II, The Trachiniae, (Leiden, 1959), p. 61. Kamerbeek refers to Radermacher as thinking that the tablet contained the will. However, since I am unable to locate Radermacher's book on Sophocles, I cannot refer to his arguments in my discussion here.
37. P.E. Easterling, Sophocles, Trachiniae, (Cambridge, 1982), p. 97.
38. Norton, L.H.S. pp. 39-40 and p. 40 n. 2.
39. Soph. Trach. 821-826.
    cf. Easterling, op. cit. pp. 174-176.
40. Soph. Trach. 46-48.
41. So Easterling, op. cit. p. 97.
    Kamerbeek, op. cit. pp. 61-62.
42. See Chapter 6, Function p. 213 and n. 108.
43. See Chapter 6, Function pp. 206-207.
44. In Homer, the suitor obtains his bride "with many gifts" (Iliad, xxii, 472, Odyssey, xi, 281-4), and the custom of a girl's κύριος furnishing her with a dowry is not mentioned, (cf. Lacey, Family p. 41).
45. Kamerbeek, op. cit. p. 62.
46. Segal op. cit. pp. 93-94.
47. See Chapter 1, Homer pp. 8-9.
48. Soph. Trach. 154-160.

49. See Chapter 1, Homer, p. 8.

50. K.J. Dover, Aristophanic Comedy, (Berkeley, 1972), pp. 31-33.

51. C. Patterson, Pericles' Citizenship Law of 451-450BC (Salem, 1981), p. 15.

52. Patterson, op. cit. pp. 141-142.

53. Plutarch, Pericles, 37.

Patterson, op. cit. passim.

Lacey, Family, pp. 103-104.

MacDowell, Law, p. 67 and p. 87.

It is probable that those born outside marriage of persons who were both Athenian citizens, although regarded as bastards and thus without rights of inheritance, were considered as Athenian citizens. See D.M. MacDowell, "Bastards as Athenian Citizens," Classical Quarterly, 70, (1976), pp. 88-91.

54. Harrison, Law 1, p. 66.

55. Harrison, ibid.

56. However, I doubt the veracity of Hignett's statement in A History of the Athenian Constitution, (Oxford, 1952) p. 20 that the law ascribed to Solon in this passage is in fact a reference to Pericles' citizenship law, since it at no point refers to qualifications for citizenship, but only deals with the right of a bastard to inherit.

57. Harrison, Law 1, pp. 63-67.

MacDowell, Law, p. 99.

58. cf. Isaeus vi, 21-26, viii, 13 and Wyse, Isaeus, pp. 508-511.

59. See above, pp.61-65, 69-73.

60. Norton, L.H.S. p. 38.

61. D.M. MacDowell Aristophanes, Wasps (Oxford, 1971) pp. 1-4.

62. Ar. Wasps, 546-630.

63. See Chapter 2, Solon, p.35.

64. For a further discussion of this, see Chapter 5, Capacity, and Chapter 8, Genuineness.

65. Dover, op. cit. p. 127.

66. MacDowell, op. cit. p. 213.

67. MacDowell, op. cit. p. 212.

68. MacDowell, ibid.
See also Chapter 7, Formalities, pp. 434-436.

69. See Chapter 7, Formalities, pp. 436-439.

70. MacDowell, ibid.

71. L.S.J. p. 966.

Chapter 4

The Alteration of Solon's law of testament

by the Thirty Tyrants (404/403)

The period between the years 411 and 402 was a time of constitutional upheaval in Athens. It was also accompanied by a revision of the ancestral laws, which took place in three separate stages: 411-404, 404/3 and 403/2. The stage which is relevant to my discussion in the second, since there is evidence that the wording of the law of testament was changed in 404/3 when the Thirty Tyrants were in power in Athens.

The account of the alteration of this law is given by Aristotle:

... καὶ τῶν Σόλωνος θεσμῶν ὅσοι διαμφισβήτησεις εἶχον, καὶ τὸ κῦρος ὃ ἦν ἐν τοῖς δικασταῖς καταλυσαν, ὡς ἐπανορθοῦντες καὶ ποιοῦντες ἀναμφισβήτητον τὴν πολιτειαν· οἷον περὶ τοῦ δοῦναι τὰ ἑαυτοῦ ᾧ ἂν ἐθέλῃ κύριον ποιήσαντες καθάπαξ, τὰς δὲ προσούσας δυσκολίας ἐὰν μὴ μανιῶν ἢ γήρων ἢ γυναικὶ πιθόμενος ᾖ ἀφεῖλον, ὅπως μὴ ᾖ τοῖς συκοφάνταις ἔφοδος.

([Aristotle], Ath. Pol. xxxv, 2)

With reference to this quotation, it is firstly necessary to discuss the extent to which the Thirty altered Solon's law of testament. Sandys wonders whether the Thirty permitted men with legitimate sons complete freedom of testament, which would allow the bequest of an estate away from a legitimate son (1). In addition, Ruschenbusch states that the clauses governing the making of a will were removed by the Thirty (2), which also suggests that absolute freedom of testation was allowed. On the other hand, Rhodes thinks that κἀβάπαξ refers only to the words which follow it, namely προσοῦσως... ἀφεῖλον (3), and this suggests that men with legitimate children were not given complete freedom of testament. In addition, the author of the Ath. Pol. is referring to the removal of the ambiguities in Solon's law, and two of the clauses concerning the capacity to make a will, namely the existence of a legitimate son or the fact that the testator had been adopted, are matters which in most cases it would have been difficult to dispute (4). In addition these exceptions are not open to misinterpretation.

The clauses which are quoted as having been deleted bu the Thirty are those concerning madness, old age and persuasion by a woman. These are not, however, a complete list of the exceptions in Solon's law which were probably open to misinterpretation, since the list reads as follows:

ἂν μὴ μανιῶν ἢ γήρως ἢ φαρμάκων ἢ νόσου ἕνεκα ἢ γυναικὶ πεισθέντος, ὑπὸ τούτων τοῦ παρανοῶν, ἢ ὑπ' ἀνάγκης ἢ ὑπὸ δεσμοῦ καταληφθείς.

([Dem.] xlvi, 14)

All of these clauses are open to dispute because it is not specifically stated what constituted persuasion by a woman, influence of drugs, sickness and so on. This would be left to the discretion of the courts. In addition, the law was often paraphrased by those who referred to it (5), and this is what the author of the Ath. Pol. may have done. Therefore, it is very likely that the Thirty deleted all of the exceptions which could have been regarded as ambiguous.

It is now necessary to discuss the motivation of the Thirty in deleting these clauses from the law.

Aristotle states that the motivation behind the alteration of the law was to prevent sycophancy (ὅπως...ἔφοδος). Asheri agrees with Aristotle's statement, and says that "the reform was directed against sycophants which had flourished in the radical democracy" (6). Bonner and Smith state that the alteration of Solon's testamentary law is cited by Aristotle as an example of the Thirty changing laws in order to prevent sycophancy (7).

The word συκοφάντης was a term of abuse as opposed to a term of law, so a testamentary heir who was accused of relying on an invalid will might well call the one claiming to be the heir "ab intestato" a sycophant. In addition, it was often used with reference to a man who "made a practice of prosecuting without justification, whether because he hoped to get an innocent defendant convicted and so obtain a payment due to a successful prosecutor, or because he hoped to blackmail the defendant into bribing him to drop the case" (8).

In the procedure for claiming an estate under a will (9), there are three possible openings for sycophants. Firstly, a man could come forward claiming an estate for himself, alleging that he was a relative of the deceased, and that the will was invalid, in the hope that the testamentary claimant would bribe him to drop the case. Even though the term συκοφάντης was often used with reference to prosecutors, it is possible that such a man would be called a συκοφάντης by the other claimant. Secondly, a sycophant could act as a prosecutor for false witness against one who had solemnly declared that the testator had legitimate sons, so the will was not valid. This is improbable, since Aristotle uses the word sycophant to imply that such a man would contest the validity of a will, not defend it. Thirdly, the sycophant may have been the one who had sworn the solemn statement that there were legitimate children fathered by the testator, but this is unlikely, since the word sycophant was often used to refer to a prosecutor rather than defendant.

In addition, the second and third possibilities would not have been prevented by the alteration of the law, since the clause concerning legitimate sons was probably not deleted by the Thirty. Therefore, it seems as if the first possibility was the most likely. However, one would not expect many sycophants in inheritance cases, since generally only relatives of the deceased or testamentary heirs had any standing in these. The major exception to this would be if a man had died abroad after a long absence from Athens, as Nicostratus did, and in this case there were allegedly many false claimants (10).

In view of the lack of possible openings for sycophants in inheritance cases, it seems very improbable that the major reason for the alteration of this law was to prevent sycophancy. Therefore, the assumption of Asheri and Bonner and Smith is not correct.

There is another possibility concerning the motivation of the Thirty. The rhetra of Epitadeus, which permitted complete freedom of testament in Sparta, was probably introduced in the late fifth century (11). It is possible that the Thirty may have been influenced by this law since they were supporters of Sparta. The law is mentioned by Plutarch and Aristotle:

ἐφορεύσας δέ τις ἀνὴρ δυνατός, αὐθάδης δὲ καὶ χαλεπὸς τὸν τρόπον, Ἐπιτάδευς ὄνομα, πρὸς τὸν υἱὸν αὐτῷ γενομένης διαφορᾶς, ῥήτραν ἔγραψεν ἐξεῖναι τὸν οἶκον αὐτοῦ καὶ τὸν κλῆρον ᾧ τις ἐθέλοι καὶ ζῶντα δοῦναι καὶ

καταλιπεῖν διαθέμενον

(Plut. Agis. 5,3)

ὠνεῖσθαι μὲν γάρ, ἢ πωλεῖν τὴν ὑπάρχουσαν, ἐποίησεν οὐ καλόν, ὀρθῶς ποιήσας, δόδναι δὲ καὶ καταλείπειν ἐξουσίαν ἔδωκε τοῖς βουλομένοις·

(Aristotle, Pol. 1270a)

In the first of these quotations, the words πρὸς ... διαφορᾶς imply that Epitadeus introduced his law as a result of an argument with his son. This indicates that Spartan law granted freedom of testation to a man with legitimate male offspring. Both quotations suggest that the freedom to make a will was absolute, and that there were no clauses in the law which regulated a man's capacity to do this. Asheri states that the testamentary law of Sparta was not connected with adoption, since both Plutarch and Aristotle "use the terms δόδναι and καταλείπειν which in Attic sources design free forms of will, while the institution of an adopted heir is called διατίθεσθαι or εἰσποιεῖσθαι" (12). However, this argument is not convincing, because Plutarch uses the word διαθέμενον in conjunction with καταλιπεῖν . Since there is no indication in either Plutarch or Aristotle that the Spartan law of testament concerned adoption, it is more likely that it legalized absolute freedom of bequest. Even though the Thirty deleted some of clauses concerning a man's capacity to make a will, it was only those which were

open to misinterpretation, so they probably did not delete the clauses excepting men with legitimate sons or those who had been adopted. This indicates that their reform of the law was not as far-reaching as the innovation of Epitadeus. In view of this, it seems as if the Thirty were not influenced by the Spartan law of testament to any great extent.

There is another possible cause for the alteration of this law. Pseudo-Aristotle states that the Thirty diminished the power of the jury courts (καὶ τὸ κῦρος . . . πολιτείαν), and gives the deletion of the various clauses in the law of testament as an example of this. This suggests that the clauses in Solon's law which were deleted were often the cause of much litigation, and this would not be favoured by the Thirty, since there is also evidence that the Thirty took other steps to curtail the power of the courts (13). This indicates that the primary motivation of the Thirty in ammending this law was probably the reduction of the power of the juries, which would in turn strengthen their own position.

The fact that certain clauses in the law were removed does not necessarily indicate that the Thirty tampered with the ἄξονες (14), since the ἄξονες probably survived until about 130 or later (15). In addition, in [Dem.] xlvi, 14, the Solonian law of testament is quoted in what seems to be its original form (16). Therefore, it is more likely that the Thirty rendered the Solonian law of testament invalid by

inscribing a new, shortened version of the law.

In conclusion, the Thirty did not legalize complete freedom of testament to every male member of the Athenian population in line with the Spartan law, but this was probably limited to those who were neither adopted nor had legitimate sons. It is very likely that the major reason behind this ammendment was the reduction of the power of the courts. The fact that this alteration was removed after the democracy was restored is indicated by the evidence from fourth-century Athens in which the clauses concerning old age, madness and so on were used as evidence against the validity of a will in a court of law (17).

Notes

1. J.E. Sandys, Aristotle's Constitution of Athens, (London, 1912), p. 144.
2. E. Ruschenbusch, "Der Sogenannte Gesetzescode vom Jahre 410 v. Chr.", Historia 5, (1956), p. 125.
3. Rhodes, A.P. pp. 443-444.
4. However, Is. vi is concerned with the question whether there were legitimate sons.
5. See Chapter 2, Solon, pp. 32-41.
6. D. Asheri, "Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece," Historia, 12, (1963), p. 11.
7. R. J. Bonner and G. Smith, The Administration of Justice from Homer to Aristotle 1, (Chicago, 1938), p. 328.
8. MacDowell, Law, p. 62.
9. For a detailed description of this procedure, see Harrison, Law 1, pp. 156-162.
10. Is. iv, 7-10.
11. MacDowell, Spartan Law, (Edinburgh, 1986), pp. 104-105, but cf. E. David, Sparta between Empire and Revolution, (New York, 1981) p. 67 and J. Christien, "La loi d' Epitadeus: Un aspect de l'Histoire Economique et Sociale à Sparte," Revue Historique de Droit Francais, 52, (1974), pp. 202-209, where the dating of the law is placed at about the beginning of the fourth century. However, I find MacDowell's arguments in favour of an earlier date more convincing.

12. Asheri, op. cit. p. 13.

13. Xen. Mem. I, 2, 31.

    This is discussed in Bonner and Smith, ibid.

14. Rhodes, A. P. p. 441.

15. E. Ruschenbusch, "Σολώνος Νόμοι," Historia Einzelschriften 9, (1966), pp. 37-38.

16. See Chapter 2, Solon, pp. 32-33.

17. See Chapter 5, Capacity.

Chapter 5

The Capacity to Dispose of Property by Testament

The law of Solon, as it is quoted in part in the speeches by the Attic orators (1) does not specifically state what status one had to have with reference to citizenship in order to dispose of one's property by testament. However, the Attic orators would have only quoted those passages which were relevant to their respective cases, so this does not necessarily mean that such a clause was not included in the law. On the other hand, there is evidence that Solon included in his law certain clauses concerning insanity, the influence of a woman and so on (2). Therefore, I shall firstly discuss whether non-citizens were able to make wills in Athens, and then I shall attempt to define what limitations were imposed on these and Athenian citizens in terms of the capacity to make a will.

A slave was himself the property of his master (3), and any small amount of property which he could have acquired during his lifetime, such as necessary clothing, was automatically returned to his owner after his death. Therefore a slave had no testamentary rights.

There is relatively little information concerning the position of non-citizen freedmen with reference to their capacity to make a will. This might well be because freedmen probably did not own a substantial amount of property, since slaves were often manumitted

on or after the death of their master (4), and so would probably be fairly old on becoming free, and as a result, might not have the time to make much money. Therefore, such cases would not have been worth contesting. On being granted his freedom, an ex-slave had to be registered as a metic or a resident alien by his former master who became his patron (προστάτης) (5). If he died having produced legitimate children after his emancipation, they would become his heirs. It is, however, uncertain whether children born before he was freed would qualify to inherit from him. They probably did not, since slaves were not permitted to marry, although they could cohabit, and the children of such a union would have been regarded as bastards, and were therefore outside the ἐγχιστεία (6). In addition, such children would have been regarded as slaves themselves, in which case any property which they might have been able to own would have been regarded as the property of their master. Was a freedman without legitimate children permitted to dispose of his property by means of a will? There is some evidence concerning this question.

In Isaeus iv, two of the claimants of Nicostratus' estate, which was allegedly disposed of by means of a will, came forward stating that he was their freedman:

Κτησίας δ' ὁ βησαιεὺς καὶ Κρανάδς τὸ μὲν πρῶτον δίκην ἔφασαν τοῦ Νικοστράτου ταχάντου καταδεδικάσθαι, ἐπειδὴ δ' οὐκ εἶχον τοῦτο ἀποδεῖξαι, ἀπελεύθερον αὐτὸν ἑαυτῶν προεποιήσαντο εἶναι.

(Is. iv, 9)

However, the major argument in Isaeus iv is that the will of Nicostratus is a forgery (7), so it is more likely that Ctesias and Cranaus did not claim that the master-freedman relationship overrode a will, but that the will was a forgery.

In the Rhetoric to Alexander, there is an example of an argument to be presented in a law court:

"καθάπερ ὁ νομοθέτης κληρονόμους πεποίηκε τοὺς ἐγγυτάτω γένους ὄντας τοῖς ἄπαισιν ἀποθνήσκουσιν, οὕτω καὶ τῶν τοῦ ἀπελευθέρου χρημάτων ἐμὲ νῦν προσήκει κύριον γενέσθαι· τῶν γὰρ ἀπελευθερωσάντων αὐτὸν τετελευτηκότων ἐγγυτάτω γένους αὐτὸς ὢν καὶ τῶν ἀπελευθέρων δίκαιος ἂν εἴην ἄρχειν."

([Aristotle], Rhetoric to Alexander, 1422b)

No will is mentioned in this passage, so it refers to a freedman who died intestate. The words κύριον and ἄρχειν suggest that even though the freedman's original sponsor, (προστάτης) had died, he was still technically a member of the household from which he was freed, so the heirs of his former master had the right to inherit his estate if he died childless. The word δίκαιος implies that it was both according to law and social custom that this should happen.

Therefore, neither of these passages provides conclusive evidence as to whether a freedman could dispose of his property by testament.

There is a clause in the will of Theophrastus, as quoted by Diogenes Laertius, which is relevant to the

question of whether freedmen had testamentary rights:

Πομπύλῳ δὲ καὶ Θρέπτῃ πάλαι ἐλευθέροις οὖσι καὶ ἡμῖν πολλὴν χρείαν παρεσχημένοις, εἴ τι πρότερον ἔχουσι παρ' ἡμῶν καὶ εἴ τι αὐτοὶ ἐκτήσαντο καὶ ἃ νῦν παρ' Ἱππάρχου αὐτοῖς συντέταχα, διοχιλίας δραχμάς, ἀσφαλῶς οἶμαι δεῖν αὐτοῖς ὑπάρχειν ταῦτα, καθάπερ καὶ αὐτὸς διελέχθην Μελάντῃ καὶ Παγκρέοντι πλεονάκις καὶ πάντα μοι συγκατετίθεντο.

(D. L. v, 54)

The interpretation of this passage is disputed. Wyse states that this clause " has been interpreted as a renunciation of the right of succession possessed by the heirs of the patron" (8). It is not stated who has interpreted the passage in this manner, but this is what the words καθάπερ ... συγκατετίθεντο imply. Wyse himself suggests that Theophrastus' intention may have been " to prevent disputes about the conditions of the term of service (παραμονή), during which the so-called freedman was sometimes in a position hardly distinguishable from slavery, and to ensure that the heirs did not send Pompylus and Threpta out into the world stripped of all they possessed" (9). Wyse's argument here is inconsistent, because if Theophrastus' intention was to regulate his ex-slaves' terms of service for his heirs, then they would not be going "out into the world" with or without possessions, but would be remaining in the house serving Melantes and Pancreon. It is very dubious whether Melantes and Pancreon could avail themselves of Pompylus' and Threpta's property whilst the ex-slaves

were still living. This is because a freedman had only three disabilities with regard to property: he could not own land in Attica, anything which he had earned as a slave was regarded as being the property of his master, and if he was required to pay a particular sum to his manumittor as a condition of his emancipation, this also was not his (10). These conditions excepted, all property owned by a freedman was his and could not be taken from him in the manner which Wyse suggests, as this would constitute theft. In addition, Pompylus and Threpta are not said to have been affected by any of the property disabilities outlined above, since no land is mentioned, also they have long been free, πάλαι ἐλευθέροις οὖσι , therefore the money which they have earned was presumably gained after their manumission, and Theophrastus does not mention any debt due to him from them as a condition of their manumission. The fact that their property does belong to them so that they can dispose of it by will if they so wish, is further indicated by the word ἀσφαλῶς which in the legal sense is interpreted as "securely" (11), which here would indicate freedom of disposition, since Pompylus' and Threpta's property was not alienable from them other than after death.

Therefore, this passage from Diogenes Laertuis indicates that, in 280 when Theophrastus made his will, a freedman could not dispose of his property by testament unless he was permitted to do so by his former owner (12). It is probable that the position of a freedman in this respect was the same as it had been in the fourth

century, since it is very unlikely that a freedman's rights were less restricted in the fourth century than they were in the third.

It was possible for the state to liberate a slave if he gave true information that his owner had committed sacrilege (13). There is no evidence which indicates what happened to the property of a man who had been liberated in this way. If he died childless, his former master would probably not have inherited it because he had not given his slave his freedom. Therefore, it could have been either inherited by the state or, because he had been of service to the state, he might have been permitted to dispose of it by testament.

Aliens who were not normally resident in Attica would not be bound by Attic law, and their capacity to dispose of property by testament would be determined by the law of their native state. However, any property which a non-resident alien left behind him in Athens when he died was adjudicable under Athenian law (14).

The testamentary rights of a non-freedman metic are not documented in any extant evidence (15). However, if freedmen could make wills if permitted to do so by their owners, it is possible that metics could also do this.

The fact that metics had testamentary rights by the third century is indicated by the wills of Aristotle, Theophrastus, Strato and Lyco (16), all of whom were metics, and Diogenes Laertius does not state that these documents were invalidated by an Athenian court of law. However, there is some evidence that metic status may have gradually disappeared by this time (17) so the fact

that the peripatetic philosophers made wills cannot be regarded as evidence concerning the testamentary rights of metics in fourth-century Athens. It is, however, probable that no metic who was granted the right to possess land in Attica could dispose of it by will unless he was specifically permitted to do so (18). If a metic was given the right of testation, and if the validity of his will was questioned, the case would come before the Polemarch's court (19).

Male Athenian citizens (20) could make a will, but as a general rule, they could not do so if they had legitimate sons, and if they had female children, their property had to be disposed of "with them" (21). There were, however, some exceptions to this rule.

A man with illegitimate children was permitted to make a will since bastards had very limited inheritance rights under Athenian law (22). This is indicated by the fact that the speaker in Isaeus iii attempts to uphold his mother's claim to Pyrrhus' estate on grounds of kinship by asserting that Phile, the counter-claimant, is Pyrrhus' illegitimate daughter, and that this is why Pyrrhus adopted Endius by testament (23).

There is also a law which decreed that a father could make a will if his sons were minors:

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Ὅ τι ἂν γνησίων ὄντων υἱέων ὁ πατὴρ διαθῆται ἐὰν ἀποθάνωσιν οἱ υἱεῖς πρὶν ἐπὶ δέκετες ἡβᾶν, τὴν τοῦ πατρὸς διαθήκην κυρίαν εἶναι.
([Dem.] xlvi, 24)

Lane-Fox suggests that this law is a lie by Apollodorus, (24) which implies that it is not genuine. However, the text suggests that it is a quotation from law which was read out not by Apollodorus but by the clerk of court, which indicates that it is genuine. The type of will allowed by this law is not specified. However, it probably would provide for the adoption of a son, because the reason why a man with children would wish to dispose of his property by testament to take effect only if they died before or just after reaching adulthood was so that he could adopt another son by testament in view of this. This adopted son would then carry out the religious rites of the οἶκος . The two-year limit was placed on the time for allowing the validity of such a will because by the age of about twenty, the testator's son could either have been able to make a will himself (if, for example, he was departing on military service); or, even though as a general custom, Athenian males married rather later in life (25), he could have married and produced sons of his own.

This law is quoted by Apollodorus who argues that since both himself and Pasicles are alive, the will written by his father Pasio is not valid (26). However, this is not consistent with the fact that Pasio provided guardians for Pasicles (27), which would not have been done if he had intended the will to come into effect only if Pasicles died before he reached his majority or two years afterwards.

In addition, Karnezis questions the validity of the will made by Demosthenes (I). He states that the will

was only to come into effect if the orator were to die during his minority or within two years of coming of age, and that the will was deliberately written in accordance with this law (28). Karnezis supports his hypothesis as follows:

"If his (ie. the elder Demosthenes') son died while still a minor and there was no will, then the two women (ie. Cleoboule and Demosthenes' sister) would be ἐπίκληροι. Upon the decision of the court through a lawsuit (ἐπιδικασία) the next of kin who would claim Kleoboule (with her paternal property) (29) would be someone onn her father's side, not a relative of Demosthenes' household; his daughter would be claimed by his brother Demon. To avoid this situation, the will was written to take effect only if his son died, in which case the women would marry only the men stated therein, ie, Aphobos and Demophon. As it happened, the marriages never took effect" (30).

However, Karnezis neglects to take account of the fact that Demophon was to receive the dowry of Demosthenes' sister immediately (εὐθύς), that Aphobus was to live in the family home until the younger Demosthenes came of age in addition to receiving a dowry with Cleoboule, and that Therippides was to receive the interest on seventy minae until Demosthenes (II) came of age (31).

These bequests were taken by the beneficiaries soon after the death of Demosthenes (I), a fact which was admitted by the men themselves when each one is said to have stated that the others took the bequests given to them (32). Furthermore, if, as Demosthenes alleges, the will

contained instructions about the leasing of the property, the testator would have intended these to be carried out immediately. In addition, Karnezis ignores the fact that the will nominated Aphobus, Therippides and Demophon as guardians of the children. The fact that they took up their position as guardians as instructed is indicated by the fact that Demosthenes (II) later prosecuted them for embezzling his property.

Therefore, since Karnezis does not take into account the other functions of the will (33) which indicate that it was to be acted upon immediately after the death of the testator, his view that the document was invalid because it was only to take effect if Demosthenes (II) were to die within two years of coming of age is not correct.

In addition to the type of will which was valid if a man's son died during ~~their~~ his minority or two years afterwards, other forms of testament made by men with legitimate children were legal.

In Lysias xiii, Dionysodorus, who was allegedly betrayed by Agoratus, sends for his wife, the speaker's sister, from his prison cell, and makes his will in the presence of her and his friends:

ἐναντίον δὲ τῆς ἀδελφῆς τῆς ἐμῆς Διονυσόδωρος τά τε οἰκεῖα τὰ αὑτοῦ διέθετο ὅπως αὐτῷ ἐδόκει, καὶ περὶ Ἀγοράτου τουτουὶ ἔλεγεν ὅτι ⟨οἱ⟩ αἴτιος ἦν τοῦ θανάτου, καὶ ἐπέσκηπτεν ἐμοὶ καὶ Διονυσίῳ τουτῳί, τῷ ἀδελφῷ τῷ αὑτοῦ, καὶ τοῖς φίλοις πᾶσι τιμωρεῖν ὑπὲρ αὐτοῦ Ἀγόρατον· καὶ τῇ γυναικὶ τῇ αὑτοῦ ἐπέσκηπτε, νομίζων αὐτὴν κυεῖν

ἐξ αὐτοῦ, ἐὰν γένηται αὐτῇ παιδίον, φράζειν τῷ γενομένῳ ὅτι τὸν πατέρα αὐτοῦ Ἀγόρατος ἀπέκτεινε, καὶ κελεύειν τιμωρεῖν ὑπὲρ αὐτοῦ ὡς φονέα ὄντα.

(Lysias, xiii, 41-42)

In this passage, the testator has not yet got a legitimate child, but believes his wife to be pregnant by him (νομίζων... αὐτοῦ). It is not stated whether the will was written or oral, or what its provisions were. It is possible that the will was made to appoint guardians for the child and to set other matters of property in order (34). However, the purpose of this scene is not to digress upon Dionysodorus' testament, but to arouse the pity of the jury by exploiting the pathos of the position of his wife and unborn child. This is indicated further by the request of vengeance upon Agoratus (35). On the other hand, this passage does make clear the fact that one could make a will before the birth of one's child, since it would have been necessary to regulate property matters just in case it did not survive. This is also indicated by the fact that the testator in Hyperides ii, col. 4 made a will, even though his wife was pregnant at the time of his death.

In Lysias, xxxii, Diodotus makes a will and leaves two copies of it in the house. His capacity to do this is unquestioned by the speaker (36). The father of the orator Demosthenes also made a will (37), and when Demosthenes brought a lawsuit against his guardian, Aphobus, he did not question his right to do so.

The reason why the capacity of either of these two men to make a will is unquestioned seems to be that the children in both instances were under age, and it was therefore necessary for both the elder Demosthenes and Diodotus to regulate property matters with reference to their respective wives and children (38).

The question of the capacity of the banker Pasio to make a will is a little more complicated, since when he died he had two sons, and one had come of age and the other was still a minor. Pasio's will provided guardians for his younger son, Pasicles, bequeathed some goods and money to his wife, Archippe, and gave her as wife to Phormio, bequeathed a lodging house to his eldest son, Apollodorus, and provided for the management of the estate until Pasicles should come of age (39). Lacey states that one of the factors which validated the will was the fact that Apollodorus was away from Athens at the time of Pasio's death (40). However, although Apollodorus himself states that Phormio married his mother in his absence he does not say that he was not in Athens when his father died:

Ἐγὼ γάρ, ὦ ἄνδρες δικασταί, πολλῶν χρημάτων ὑπὸ τοῦ πατρὸς καταλειφθέντων μοι, καὶ ταῦτα Φορμίωνος ἔχοντος, καὶ ἔτι πρὸς τούτοις τὴν μητέρα γήμαντος τὴν ἐμὴν ἀποδημοῦντος ἐμοῦ δημοσίᾳ τριηραρχοῦντος ὑμῖν....
([Dem.], xlv, 3)

Since Apollodorus' trierarchy took place in 369/8, and it was during this time that Phormio allegedly married Archippe , Lacey's suggestion that this coincided with

Pasio's death in 371/0 is not correct. It may have been that Apollodorus was absent for other reasons when his father died, but in the absence of any evidence, this is purely conjectural. Therefore, it seems as if the allegation that the marriage of Archippe took place before Phormio took over the guardianship of Pasicles (41) is probably a misrepresentation of the facts. An important factor was that Pasicles was a minor and therefore Pasio had to make arrangements for his future well-being by providing guardians who would care for him and oversee the estate until he should come of age. If, as is alleged, Apollodorus was extravagant (42), this was an extremely wise move on the part of Pasio. Lacey states that Pasio's will "did not breach Solon's law, though it showed a fundamental weakness in it, since one son was adult (and thus prevented his father from making a will), one was a minor (and thus enabled him to do so);" (43). Lacey is not quite accurate here, since the law of testament which dates from Solon's time (44), does not specifically state what age the sons of a man had to be for his will to be regarded as valid, but specifically forbids him to make a will if he had sons at all (ἂν μὴ παῖδες ὦσι γνήσιοι).

Therefore, Lacey is probably referring to the law quoted in [Dem.], xlvi, 14, which probably permitted a type of will with a different function from that of Pasio's (45). In addition, it is probable that even in Solon's time, a man might have been able to make a will if he had legitimate sons who were minors, as long as he did not deprive them of their estate and its terms were within

the boundaries of the law (46). The fact that the validity of the will of the elder Demosthenes was not questioned by his son with respect to the legacies which were given from the estate, indicates that the custom, if not the law concerning this had probably changed since Solon's time. Therefore, it seems as if Pasio did have the right to make a will, because even though he had an adult legitimate son, his younger child Pasicles was still a minor and it was necessary to make arrangements for his care.

Conon, the Athenian general, left a will bequeathing over half of his estate away from his son by his second marriage (47). Part of his estate was in Athens, and it is probable that he gave this to Timotheus before his death:

ἔτι δὲ φαίνονται οὐδὲν πώποτε διενεχθέντες, ὥστε εἰκὸς καὶ περὶ τῶν χρημάτων ταῦτὰ γνῶναι, ἱκανὰ μὲν ἐνθάδε τῷ δεῖ ἑκάτερον καταλιπεῖν, τὰ δὲ ἄλλα παρ' αὐτοῖς ἔχειν· ἦν γὰρ Κόνωνι μὲν υἱὸς ἐν Κύπρῳ καὶ γυνή, Νικοφήμῳ δὲ γυνὴ καὶ θυγάτηρ, ἡγοῦντο δὲ καὶ τὰ ἐκεῖ δημόσια σφίσιν εἶναι ὥσπερ καὶ τὰ ἐνθάδε.

(Lysias, xix, 36)

The fact that the word εἰκὸς is used indicates that the speaker is not thoroughly conversant with Conon's financial concerns. However ἱκανὰ... ἔχειν implies that Conon's Athenian property was given to Timotheus before

his death, whilst he kept his belongings in Cyprus for his own use; presumably to support his wife and child there. Because of Conon's absence from Athens, and the confiscations which took place during the rule of the Thirty Tyrants, the value of this property may have decreased, and although the speaker's estimation of four talents may not be quite correct, since this is part of a hypothetical argument (48), the implication is that Timotheus' Athenian property was not worth a very large proportion of his father's estate (49). The will itself concerns the money in Cyprus which Conon kept for himself (50). Therefore the seventeen talents which he left to his other son was from the wealth which he had kept in Cyprus, and was not his Athenian property, as Lacey states (51). Conon's capacity to make a will bequeathing a great amount of his property away from his son was not affected by Athenian legislation since it was made in Cyprus. Furthermore, the fact that the speaker does not criticize this implies that although it may not have been common to do so, such a disposition of foreign property was not unheard of at the time this speech was made (388 or 387).

By means of firstly an oral agreement then a testament, Euctemon curtailed the inheritance rights of one of his sons by his second marriage to just one farm (52). The value of this property is not stated, but it probably would have represented less ~~then~~ of the boy's share of his father's estate than the property he would have been entitled to if Euctemon had not made the agreement (53). Wyse states that this arrangement was " a secret

compact between father and son, contrary to law and morality" (54). However, Wyse does not give his reasons for stating this.

Isaeus' narrative of how the agreement came about is as follows:

εἰδότες δ'οἱ ἀναγκαῖοι ὅτι ἐξ ἐκείνου μὲν οὐκ ἂν ἔτι γένοιντο παῖδες ταύτην τὴν ἡλικίαν ἔχοντος, φανήσοιντο δ' ἁπλῶς τινὶ τρόπῳ, καὶ ἐκ τούτων ἔσοιντο ἔτι μείζους διαφοραί, ἔπειθον, ὦ ἄνδρες, τὸν Φιλοκτήμονα ἐᾶσαι εἰσαγαγεῖν τοῦτον τὸν παῖδα ἐφ' οἷς ἐζήτει ὁ Εὐκτήμων, χωρίον ἓν δόντα.

(Is. vi, 23)

The fact that relatives (οἱ ἀναγκαῖοι) were involved in the dispute and persuaded Philoctemon to agree to the compact indicates that, contrary to Wyse, the compact was not a secret one. The words ὅτι ... διαφοραί refer to the allegation that Euctemon had threatened to re-marry and produce more children, and they imply that any children born from this union would not be Euctemon's offspring but others (55). It is possible that Wyse thought the agreement illegal either because it limited the inheritance of a legitimate son or because it was illegal to give a smaller share of property to one legitimate son than to another. However, in Demosthenes' speech against Aphobus, the orator does not argue that it was illegal for his father to make large bequests from a small

estate, but uses εἰκός arguments: it is unlikely that his father would have wished him to be deprived of the majority of his estate (56). This suggests that it was probably not illegal for a man to alienate some of his estate from his son. In addition, the speaker of Isaeus vi states that this agreement proves that the boy is illegitimate:

τοῖς γὰρ φύσει υἱέσιν αὐτοῦ οὐδεὶς οὐδενὶ ἐν διαθήκῃ γράφει δόσιν οὐδεμίαν, διότι ὁ νόμος αὐτὸς ἀποδίδωσι τῷ υἱεῖ τὰ τοῦ πατρὸς καὶ οὐδὲ διαθέσθαι ἐᾷ ὅτῳ ἂν ὦσι παῖδες γνήσιοι.

(Is. vi, 28)

However, the clause in the will of Pasio in which Apollodorus receives the bequest of a tenement house in addition to his half share of Pasio's property (57) indicates that it was possible to bequeath property by will to one's legitimate son. The law specified equal shares of their father's estate for legitimate sons (58) but Pasio's will indicates that this law could be overcome if a man decided otherwise in his will. Therefore the speaker's argument is not effective.

Thus, contrary to Wyse's opinion, it seems as if the testament of Euctemon was not contrary to law, even if it was contrary to Athenian "mores" in that it severely limited the inheritance of a legitimate son.

There is another passage in Isaeus which refers to the capacity of a man with legitimate sons to make a will:

εἴτε οὖν Ἀρίσταρχον φήσει τις αὐτὸν διαθέσθαι, οὐκ ἀληθῆ λέξει· γνήσιον γὰρ ὄντος αὐτῷ Δημοχάρους

υἱέος οὔτ' ἂν ἐβούλετο ταῦτα [δια]πρᾶξαι, οὔτε ἐξῆν δοῦναι τὰ ἑαυτοῦ ἑτέρῳ
(Is., x, 9)

Here, the words οὔτ'...[δια]πρᾶξαι imply that although Aristarchus (I) may not have wished to make a will, he could have done so. In addition, the wills of Pasio and Demosthenes (I) indicate that it was possible for a man with legitimate sons to make a will to take effect as soon as the testator died, and this could include various bequests. Furthermore, it was also legal for a man to make a will in the event of his legitimate sons dying during their minority or within two years of coming of age, and this could function as the giving of his property to another (59). Therefore, the words οὔτε...ἑτέρῳ are in accordance with neither law nor custom.

According to Isaeus iii, 68 and x, 13 it was illegal for a man to dispose of his property by will if he had a legitimate daughter, unless it was "with her". However, since it was possible for a man to dispose of some of his property by testament to others even if he had a legitimate son, it is even more probable that a man with a legitimate daughter could do this also, as long as he made ample provision for her.

In Menander's play, Dyskolos, the father of a girl of marriageable age disposes of his property when he is speaking to Gorgias, the son of his estranged wife and her first husband:

... τί δ' ἐστί, μειράκιον; ἐάν τ' ἐγὼ
ἀποθάνω νῦν - οἶμαι δέ, καὶ κακῶς ἵνα ἔχω -

ἄν τε περιεωσθῶ, ποιοῦμαί σ' ὑόν, ἄ τ' ἔχων τυγχάνω
πάντα σαυτοῦ νόμιζον εἶναι. τήνδε σοι παρεγγυῶ·
ἄνδρα δ' αὐτῇ πρόπριζον. εἰ γὰρ καὶ σφόδ' ὑγιαίνομ'
ἐγώ,
αὐτὸς οὐ δυνήσομ' εὑρεῖν· οὐ γὰρ ἀρέσκει μοί ποτε
οὐδὲ εἷς. ἀλλ' ἐμὲ μέν, ἂν ζῶ, ζῆν ἐᾶθ' ὡς βούλομαι·
τἄλλα πρᾶττ' αὐτὸς παραλαβών· νοῦν ἔχεις σὺν τοῖς
θεοῖς·
κηδεμὼν εἶ τῆς ἀδελφῆς εἰκότως. τοῦ κτήματος
ἐπιδίδου σὺ προῖκα τοὔμοῦ διαμετρήσας θήμισυ,
π[ὸ] δ' ἕτερον λαβὼν διοίκει κἀμὲ καὶ τὴν μητέρα.

(Men. Dysk, 729-739)

Lane - Fox (60) states that as Cnemon "is still alive, this arrangement is more ~~than~~ a gift than a will". However, the words "as he is still alive" are open to misinterpretation: one is not able to make a will if one is dead. Probably, Lane - Fox is of the opinion that the words ἄν τε περιεωθῶ indicate that this is not a testament. However, the fact that these words are preceded by ἐάν τ'ἐγὼ/ἀποθάνω νῦν suggests that the possibility of him surviving is an afterthought, and that these instructions were firstly intended to be carried out in the event of death. Therefore, this can be regarded as a will.

In this passage, Cnemon adopts Gorgias, but he cannot betroth him to his daughter because homometric brothers and sisters were not allowed to marry although

homopatric ones probably were (61). He does not give his daughter all of his estate, so she is not an ἐπίκληρος, but places her into the care of Gorgias (τήνδε σοι παρεγγυῶ, κηδεμὼν ... εἰκότως). Cnemon does, however, specify her dowry; she is to have half of his property (τοῦ κτήματος... θἡμίσου). With the other half, Gorgias is to provide for both the testator and his estranged wife, and is responsible for the management of this portion which is bequeathed to him (ἃ τ' ἔχων... εἶναι).

A similar incident can be found in Menander's Aspis when Chairestratos says to Chaireas:

ἐμε -[..] .. [ὠδμην

ἀ] εἰ σὲ μὲν λαβ[ὸν]τα ταύτη[ν τὴν κόρην

αὐτὸν δ' ἐκεῖνον τὴν ἐμὴν τῆ[ς οὐσίας

ὑμᾶς καταλεῖψειν τῆς ἑαυτοῦ κυρίους

(Men. Aspis, 278-281)

Here, the word σὲ refers to Chaireas, Chairestratos stepson, and αὐτὸν.. ἐκεῖνον to Kleostratos, who is believed to have died in battle.

I agree with MacDowell's argument that ὑμᾶς because it is the plural of "you" suggests that Chairestratos wished to adopt Chaireas as his son, otherwise he would have no right to any of the property. The reason why Chaireas would not be able to marry Chairestratos' daughter is because he is her uterine brother. In this passage, the speaker does not specify exactly how the property is to be divided between his daughter and Chaireas. However, the incident in Dyskolos suggests that Chairestratos

probably intended Kleostratos and his daughter to have half, and Chaireas and his niece to have the other half.

Therefore, both Cnemon and Chairestratos wished to provide an heir for themselves in preference to waiting for their respective daughters to produce a son. In both cases it seems as if the daughter is to be given half of the estate, and the adopted son the other half. MacDowell states that this half-and-half arrangement was required by law (63). However, even though Isaeus states that the law required an equal division of property between an adopted son and any sons born after the adoption (64), there is evidence that a father could, if he wished, give more property to one son than another (65). If this could be done to legitimate sons by means of a will, then it seems possible that an unequal division of property could be made by means of a will between an adopted son and a legitimate daughter if the son was not to marry the girl. Therefore, the half-and-half division of property which we find in Dyskolos was probably more in accordance with Athenian "mores" as opposed to legally obligatory.

With reference to the care of womenfolk, Apollodorus alleges that his father Pasio was not entitled to give his wife in marriage in his will because he was not her κύριος. He quotes a law whereby the only persons entitled to give a woman in marriage are her father, her homopatric brothers and her grandfather on her father's side (66). However, the terms of the will of the elder Demosthenes indicate that a man could dispose of his wife in marriage by means of a testament. In addition, the

will of Diodotus, and probably that mentioned in Hyperides ii, both indicate that a man was also allowed to provide a dowry for his wife by will. If a man made no arrangements for the care of his wife in the event of his death, she would then return to her nearest male relatives if she had any (67). Therefore, the law quoted by Apollodorus very probably refers to women who were either single or widows whose husbands had not provided for them. Therefore, Pasio was entitled to make provision for his wife in his will. The fact that Apollodorus shared his mother's dowry and her other property with Pasicles and the two children from her second marriage, indicates that he did recognize the validity of the union (68).

The right of one who was himself adopted to make a will is disputed, and rests upon the interpretation of two passages:

'Ὅσοις μὴ ἐπετετέλευτο' φησίν 'ὅτε Σόλων εἰσήγε εἰς τὴν ἀρχήν, ἐξεῖναι αὐτοῖς διαθέσθαι, ὅπως ἂν ἐθέλωσιν, ὡς τοῖς γε πολιτευομένοις οὐκ ἐξὸν διαθέσθαι ἀλλὰ ζῶντας ἐγκαταλιπόντας οἰκεῖον γνήσιον εἶναι, ἢ τελευτήσαντας ἀποδιδόναι τὴν κληρονομίαν τοῖς ἐξ ἀρχῆς οἰκείοις οὖσι τοῦ τελευτήσαντος
([Dem.] xliv, 68)

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Ὅσοι μὴ ἐπετέλευτο, ὅτε μήτε ἄπεστιν μήτε ἐπιδικάζεσθαι, ὅτε Σόλων εἰσήγε τὴν ἀρχήν,

τὰ ἑαυτοῦ διαθέσθαι εἶναι ὅπως ἂν ἐθέλῃ, ...
([Dem.] xlvi, 14)

The interpretation of this clause of the law is very difficult. It seems as if the exception "those who had not been adopted when Solon became archon" does not seem to have been limited to those who were adopted in Solon's time, but also referred to those who were adopted in later years. This is indicated by the fact that the law is used as part of the argument in [Dem.] xliv (69). Probably the point of the words ὅτε Σόλων εἰσῆει τὴν ἀρχήν was to indicate that the law was not retrospective; namely that those wills which had been made by adopted sons before Solon came into office would probably be valid.

The least complicated way of interpreting these two passages is that the law ordained that any man who had been adopted either "inter vivos" or by testament, (posthumous adoption evolved after Solon's law of testament had been introduced) (70), could not adopt by testament or "inter vivos" himself.
If such a man died childless, the estate of his adoptive father would revert to the adopter's relatives (ἢ τελευτήσαντος ... παιδὸς ἀμέλου). The reason for this was probably that whereas the adopter would have known the person he had adopted "inter vivos" or by testament, and, in addition a son adopted in the former manner might have even taken care of him (71), a son adopted by the adoptee would have had no link at all with the first adopter, and might not, therefore, have been so

conscientious in preserving the religious rites of the οἶκος . The property and the would, therefore, be better cared for if it reverted to the relatives of the adopter who might from among themselves find an heir for the house by means of posthumous adoption (72). By this means, the second adoptive son would still have a connection by blood with the adoptive father.

Wyse translates the clause Ὅσοι μὴ ... ἀρχήν as meaning "such persons as had been adopted without renouncing or obtaining a judgment before Solon's entry into office" (73). He, therefore, interprets the words ὥστε μήτε ἀπειπεῖν as meaning that "If a man after being adopted had renounced the bond and gone back to his own family, he was not to be debarred from disposing of his own" (74). This was true to a certain extent, for a man adopted "inter vivos" could renounce the bond and return to his former family, as Leocrates, the adopted son of Polyeuctus did (75), and in this case, Leocrates could dispose of his patrimony inherited from the family he had returned to, by means of a will. However, unless he had the agreement of his adoptive father, an adopted son could not renounce his adoptive family unless he left a legitimate son in his place.

Wyse states that "the meaning of the second qualification ὥστε ... μήτ' ἐπιδικάσασθαι is still disputed. I think that Solon had in view the practice of posthumous adoption ...., and desired to guarantee liberty of disposition to man who had succeeded to an estate as next-of-kin under a legal judgment, and afterwards from motives of piety of ~~of~~ the deceased owner" (76).

However, Solon's law did not legalise posthumous adoption, but adoption by testament (77), and since posthumous adoption was a later development, Solon could not have borne this possibility in mind when he drafted his law. It is, therefore, more likely that μὴ ἐπιδικάζεσθαι refers to the fact that when one was adopted, one could not claim any adjudicable inheritances from one's former family, since by being adopted a man severed all links with his natural family, and also refers to the right of one who had been adopted "inter vivos" to enter into an inheritance without an ἐπιδικασία . Therefore, a more feasible translation of the clause Ὅσοι μὴ ... ἀρχῆι would be "except those who had been adopted when Solon entered into office, so that they might not renounce or claim an inheritance by means on an ἐπιδικασία or διαδικασία ," and the phrase Ὥστε μήτε ἀπειπεῖν μήτ' ἐπιδικάσασθαι expresses two direct results of an adoption.

Whether the words Ὅσοι μὴ ἐπεποίηντο refer to one adopted "inter vivos" only or also to those adopted by will and posthumously is open to discussion.

Harrison follows Thalheim's arguments, and states that the reason why an adoptee "inter vivos" could not make a will and others adopted by will or posthumously could, was so that the ἀγχιστεῖς in the first circumstance would not have an opportunity to claim the estate after the adoptive father's death, because one adopted "inter vivos" could enter upon the estate without recourse to an ἐπιδικασία; whereas in the latter cases, the adoptee's claim could be contested in a court of law,

by means of a διαδικασία , before he entered upon his inheritance (78). This seems unlikely because adopted sons "inter vivos" had a stronger position in law by virtue of the very fact that the adoption was definitely made with the adopter's full consent (79). In addition, even an adoption "inter vivos" could be contested in the courts (80).

Lipsius suggests that those who had entered an estate by means of an ἐπιδικασία had the right to adopt in their turn (81). The term ἐπιδικασία was used to denote the process of claim and award where no counter-claims were made, so presumably the reason why Lipsius suggests this is because the adoption was undisputed in law and, therefore, the claimant's tenancy of the estate was quite secure, since even though the ἀγχιστεῖς had had the opportunity to claim the estate, they had not done so.

However, even though the claim was not disputed in the first instance, it was possible to dispute it later (82) and this would prevent the adoptee from adopting in his turn. Complications could have arisen if he had adopted a son "inter vivos" before the inheritance was contested. In addition, Harrison rightly notes that it is not stated " whether one adopted "inter vivos" who had not the best claim "ab intestato", or who in default of the adoption, would have had to share with other ἀγχιστεῖς related to the de cuius in the same degree as himself, could, by waiving his right to enter on the inheritance ἐμβατεύειν and submitting his claim to a court retain the right to adopt if he begat no sons" (83).

In view of the arguments against other possible interpretations of this law, the first point of view is the most plausible, namely that no adopted son, no matter how he had been adopted, had the legal capacity to make a will.

The law as quoted in [Demosthenes] xlvi, 14, is taken by Apollodorus to imply that new citizens had no testamentary rights:

ὁ τοινύν πατήρ ἡμῶν ἐπεποίητο ὑπὸ τοῦ δήμου πολίτης, ὥστε οὐδὲ κατὰ τοῦτο ἐξὴν αὐτῷ διαθέσθαι διαθήκην
([Dem.] xlvi, 15)

Harrison says that this is not necessarily an example of "pure sophistry" but that "from the point of view of the phratry, an important point of view in Solon's day at least, a naturalized foreigner was as much ποιητός as an adopted son and it is by no means unthinkable that his right to dispose of his property by will in the absence of sons of his body might have been equally restricted" (84). However, Harrison does not venture to suggest who would have inherited a naturalized citizen's property and, therefore, any religious obligations on his behalf in the event of his dying childless and intestate. In addition, a naturalized citizen had the same property rights as an Athenian citizen (85), shared the same liturgical obligations and could also hold office, so it is very improbable that they could not likewise dispose of their property by will according to the usual provisions, especially since metics had testamentary

rights and so had freedmen under certain circumstances (86). Therefore, Apollodorus' remark is "pure sophistry".

A man who held office could not make a will until the accounts of his office had been rendered:

πάλιν ὑπεύθυνον οὐκ ἐᾷ τὴν οὐσίαν καθιεροῦν, οὐδὲ ἀνάθημα ἀναθεῖναι, οὐδ' ἐκποίητον γενέσθαι, οὐδὲ διαθέσθαι τὰ ἑαυτοῦ, οὐδ' ἄλλα πολλά· ἐνὶ δὲ λόγῳ ἐνεχυράζει τὰς οὐσίας ὁ νομοθέτης τὰς τῶν ὑπευθύνων, ἕως ἂν λόγον ἀποδῶσι τῇ πόλει.

(Aeschines, iii, 21)

This quotation mentions the ways in which an officer of state could not alienate his property from himself, and the fact that his property was in the hands of the state until he had rendered his accounts. A man in such a position could not renounce his own οἶκος by becoming the adopted son of another man (οὐδ' ἐκποίητον γενέσθαι). It is difficult to understand why a man should adopt another "inter vivos" if the adoptive son still had to render his accounts to the state, since it would place his own property in the hands of the state. These words, therefore, refer to testamentary and posthumous adoption. The former, because the will could have been made before the man came to office, and, therefore, the testator would not have known the beneficiary's future position. If the testator died before the accounts of his adoptive son had been submitted, the adoption would not have taken place until after the audit had been held. Likewise, if the officer

were to become somebody else's son by posthumous adoption before the audit, the property of another man and not his own would be held as security by the state. Therefore, such an adoption would have taken place after the accounts had been presented. Any will which the officer made before presenting his accounts would have been regarded as invalid since the state held his property, and it was not, therefore, his own to dispose of until after his accounts had been given to the city. The reason why an officer could not alter his property circumstances in any way was that if his accounts were not satisfactory and he was found to be in debt, the amount owing to the state could be deducted from his estate (87).

The capacity of a woman to make a will was connected with whether or not she could own property, and to what extent her dowry and any gifts which she had received were her own (88). A woman's dowry was given to her on marriage by her father and then managed by her husband. If she was divorced, she did not keep the dowry, but it reverted with her to her former κύριος . Even her trousseau was not legally hers, but remained under the governance of her husband (89), although in practice it would be the woman who would make use of it. A woman could not, therefore, legally dispose of any property unless her κύριος permitted it, but the enforcement of this depended on the attitude of both woman and κύριος . Furthermore, a woman could not make a contract above the value of one medimnos of barley:

παιδὸς γὰρ οὐκ ἔξεστι διαθήκην γενέσθαι· ὁ γὰρ νόμος διαρρήδην κωλύει παιδὶ μὴ ἐξεῖναι συμβάλλειν μηδὲ γυναικὶ πέρα μεδίμνου κριθῶν.

(Is. x, 10)

Harrison states that this passage means that an Athenian woman could not contract above the value of one medimnos of barley unless her κύριος permitted it (90); however, since the law does not include this provision, it seems as if a woman could not contract at all above this amount (91). In addition, the meaning of this passage is ambiguous, because it is not clear whether the phrase πέρα μεδίμνου κριθῶν applies to both a child and a woman or to a woman only. Thus there is a possibility that if this phrase referred to just a woman, she did not have the same standing as a child, but was able to make a will for less than a medimnos of barley. However, the amount of money involved in such a transaction was so little that it seems unlikely that a woman would have wished to dispose of such a small amount by will. Therefore, it seems more probable that both woman and child had the same testamentary rights. There are, however, some cases where a woman has been party to a contract for a rather larger sum, and these contracts have been interpreted as wills.

In a speech of Demosthenes, Polyeuctus' wife lent Spudias, her son-in-law 1,800 drachmae, and at her death left papers noting this transaction:

ἦν μὲν γὰρ τὸ ἀργύριον παρὰ τῆς Πολυεύκτου

δεδανεισμένος γυναικός, γράμματα δ' ἔστιν ἃ κατέλιπεν ἀποθνήσκουσ' ἐκείνη.

(Dem. xli, 9)

However, this was not a bequest in a will διαθήκη but a loan which was noted in papers γράμματα which were left behind at death. This is emphasised later when the speaker refers to Spudias as having regard for neither the will of Polyeuctus nor the papers left behind (92). Therefore, the loan of Polyeuctus' wife was not a clause embodied in a will to take effect after death, but a loan made while she was still alive and noted in papers which were found on her death.

The case of Archippe, Pasio's wife, who was left a sum of money on her first husband's death (93) is a little more complicated. She is said to have given away some of her property to the children of her second marriage, which Apollodorus claimed after her death:

ὡς δ' ἐτελεύτησεν ἐκείνη, τριςχιλίας ἐγκαλέσας ἀργυρίου δραχμὰς πρὸς αἷς ἔδωκεν ἐκείνη διςχιλίαις τοῖς τούτου παιδίοις καὶ χιτωνίσκον τινὰ καὶ θεράπαιναν, ἐβυκοφάντει.

(Dem. xxxvi, 14)

Apollodorus himself states that when he last saw his mother on her deathbed, she was no longer mistress of her property and could not give him what she wanted to:

ἕκταῖος γὰρ ἦκων ἐτύγχανον, καὶ ἐκείνη ἰδοῦσά με καὶ προσειποῦσα τὴν ψυχὴν ἀφῆκεν, οὐκέτι τῶν ὄντων κυρία οὖσα ὥστε δοῦναι ὅσα ἐβούλετό μοι.

([Dem.] 1, 60)

Gernet interprets the first passage as being an indication that Archippe had wished to give some advantage by testament to the children of her second marriage (94), and Davies states that the language in the second passage confirms this (95). However, the gifts mentioned in the first quotation were more probably made "inter vivos" since there is no mention of Archippe bequeathing them on her deathbed, only that after her death, Apollodorus claimed this sum. Apollodorus' language in the second passage does not confirm the suggestion that Archippe made a will, since all he says is that his mother was not mistress, κύρια, of her own property when he saw her, which only indicates that if Phormio objected to her giving away any of her goods, she could not do so (96). There is, therefore, no mention of a testamentary bequest here.

The passage which could be most easily described as a testamentary bequest by a woman is mentioned in Lysias:

ἐκείνη γὰρ τούτῳ μὲν ἐπίστευσεν ἀποθανοῦσαν ἑαυτὴν ἐπιτρέψαι, Ἀντιφάνει δὲ οὐδὲν προσήκουσα πιστεύσασα ἔδωκεν εἰς τὴν ἑαυτῆς ταφὴν τρεῖς μνᾶς ἀργυρίου, παραλιποῦσα τοῦτον υἱὸν ὄντα ἑαυτῆς.

(Lysias, xxxi, 21)

However, in this incident, as Schaps rightly states, the woman's son, Philo, is no poorer than he would have been if she had not given this money for her funeral to Antiphanes (97). She is not, therefore, disposing of her property by means of either an oral or written will, but is giving Antiphanes the money with which to perform her

funeral rites; money which Philo would have spent if he had the responsibility for them. There is no evidence that she gave Antiphanes any other property. Therefore this transaction is not a will.

Since none of the above incidents concern testamentary bequests, one can conclude that it was contrary to law for women to make wills.

From the law as quoted in Isaeus, x, 10 ′98), it is clear that male children under the age of eighteen could not dispose of any property which they might have by means of a will. However, it is unlikely that a child could possess anything of value which was not in reality owned by his father, unless he was an orphan. In the latter case, the orphan's property would be in the care of a guardian until he should come of age. The right of a guardian to make a will in respect of his ward's property is extremely dubious, and there is no ancient evidence to suggest that he could. There are two cases extant in which the guardian of orphans has died whilst they were in their minority. In Isaeus i, the first guardian, Deinias, does not nominate the second, Cleonymus, in a will (indeed the two men were allegedly enemies), but on Deinias' death Cleonymus took charge of the boys, since he was their closest relative (99). The Philosopher Epicurus, who was the guardian of the children of Metrodorus and the son of Polyaenus, ensures their future well-being by means of his will, but does not dispose of their property (100). Thus, it was contrary to law for a man to make a testamentary disposition of his ward's

estate, but he did have the capacity to provide for his care.

In the evidence which survives from fourth-century Athens, there are arguments against the validity of wills which are from the following clauses in Solon's law of testament:

ἂν μὴ μανιῶν ἢ γήρως ἢ φαρμάκων ἢ νόσου ἕνεκα, ἢ γυναικὶ πεισθέμενος, ὑπὸ τούτων του παρανοῶν, ἢ ὑπ' ἀνάγκης ἢ ὑπὸ δεσμοῦ καταληφθείς.

([Dem.] xlvi, 14)

The arguments which are based upon these clauses shall be discussed with reference to each case.

In the speech concerning the estate of Nicostratus, mention is made of the law of Solon by which a man was not permitted to make a will if he was senile and so on, but no attempt is made to argue that Nicostratus' will was invalid because it was made under such circumstances (101).

Towards the end of Isaeus, ix, there is a reference to Solon's law of testament:

εἰ γὰρ τοῦτον ἐποιήσατο υἱὸν οὗ τῷ πατρὶ πολεμώσατος ἦν, πῶς οὐ δόξει τοῖς ἀκούσασι παρανοεῖν ἢ ὑπὸ φαρμάκων διεφθάρθαι;

(Is. ix, 37)

This suggestion is, however, founded on probability. There is no proof that Astyphilus was mad, just the implication that if he made such a will, he must have been mad.

In Isaeus, vi, the Solonian law of testament is read out to the court and paraphrased by the speaker:

Οὗτος ὁ νόμος, ὦ ἄνδρες, κοινὸς ἅπασι κεῖται, ἐξεῖναι τὰ ἑαυτοῦ διαθέσθαι, ἐὰν μὴ παῖδες ὦσι γνήσιοι ἄρρενες, ἐὰν μὴ ἄρα μανεὶς ἢ ὑπὸ γήρως ἢ δι' ἄλλο τι τῶν ἐν τῷ νόμῳ παρανοῶν διαθῆται.

(Is. vi, 9)

Wyse suggests that the clause γυναικὶ πιθόμενος is not included because "Isaeus did not wish to attract attention to the influence which ought have been exerted by Philoctemon's sister" (102). However, there is no reference to an allegation made by Androcles that Philoctemon made a will under the influence of his sister, so it is possible that Wyse is being a little over-suspicious here. In addition, it is not unusual to find the law of testament referred to only in part by the orators (103). The speaker then attempts to refute any arguments which could be made against the testator's sanity:

ὅστις γὰρ καὶ ἕως ἔζη τοιοῦτον πολίτην ἑαυτὸν παρεῖχεν, ὥστε διὰ τὸ ὑφ' ὑμῶν τιμᾶσθαι ἄρχειν ἀξιοῦσθαι, καὶ ἐτελεύτησε μαχόμενος τοῖς πολεμίοις, πῶς ἄν τις τοῦτον τολμήσειεν εἰπεῖν ὡς οὐκ εὖ ἐφρόνει;

(Is. vi, 9)

This refutation is made in the form of a rhetorical question, and although the fact that Philoctemon died fighting for the city indicates that he was not ill or

affected by medicines etc., it does not prove that he was in his right mind when he made the will or that he had not been influenced by a woman or forced. Wyse states that Androcles "did not assert that Philoctemon was of unsound mind" (104). However, since there is no extant copy of Androcles' speech , there is no definite way of knowing what Androcles alleged. It is possible that even if his main argument against the validity of the will was based on other grounds, he may have included a reference to this law in passing.

With reference to the will of Pasio, Apollodorus argues that the terms of the lease of the bank, which state that Phormio should not manage the bank without the permission of Pasio's sons, and the clause in the will in which Phormio is to marry Archippe are not compatible, and indicate that the will was made by someone of unsound mind (105). However, the clause in the lease ensured that there would be some measure of co-operation between Phormio and Pasio's adult son (106), and the marriage with Archippe was included in the will to strengthen Phormio's ties with the family and was not uncommon amongst bankers (107).

The speech in which the will of Polyeuctus is referred to was made by the husband of the eldest daughter in an attempt to obtain the portion of his wife's dowry which was due to him and which was noted in the will (108). It seems as if Spudias questions the validity of this clause in the will:

ἀντιλέγεται δὲ Πολύευκτον καὶ τὴν γυναῖκ' αὐτοῦ, καὶ φήσει πάντα ταῦθ' ὑπ' ἐμοῦ πεισθέντας καταχαρίσασθαι, . . .
(Dem. xli, 12)

εἰ φησὶν ὑπ' ἐμοῦ πεισθέντα Πολύευκτον προστάξαι τοὺς ὅρους στῆσαι τῶν χιλιῶν, . . .
(Dem. xli, 16)

ὥστ' οὐκέτι Πολύευκτος αὐτὰ πεισθεὶς ἐμοὶ κατεχαρίζετο, ὡς ἔοικεν, ἀλλ' ὑμεῖς αὐτοί.
(Dem. xli, 18)

In all of these quotations, the verb πείθω suggests that Spudias is claiming that the speaker persuaded Polyeuctus to include the notification of the debt in his will. However, if this is so, Spudias' case is not very strong, since there is no clause in Solon's law which states that a will is invalid if made under the persuasion of a man, but the relevant clause is limited to persuasion by a woman. It is possible that Spudias accused the speaker of using force, and this is cited in Solon's law as a reason for finding a will invalid (ὑπ' ἀνάγκης). The word ἀνάγκης may imply physical force as opposed to verbal force, although βία is more common for the former meaning. Therefore, the slanders which the speaker states are being levelled against him might be accusations of μοιχία or ὕβρις, although in the absence of Spudias' speech, this matter is open to conjecture. The speaker cites as evidence that he had not persuaded Polyeuctus, by producing witnesses who testify that Spudias' wife, the testator's younger daughter, was present at the making of the will, that Spudias was also invited to be present, but was unable to attend and made

no objection to the proceedings as related to him by his wife (109). Evidence to this effect is convincing, since if the speaker had used force on Polyeuctus, or had persuaded him to write the clause noting the debt in his will, it is possible that Spudias would have objected before Polyeuctus' death.

In the speech concerning the estate of Cleonymus, it is argued that Cleonymus revoked his will (110), and this argument rests on the fact that on his deathbed, Cleonymus sent for a magistrate:

ἤδη γὰρ ἀσθενῶν ταύτην τὴν νόσον ἐξ ἧς ἐτελεύτησεν, ἐβουλήθη ταύτας τὰς διαθήκας ἀνελεῖν καὶ προσέταξε Ποσειδίππῳ τὴν ἀρχὴν εἰσαγαγεῖν. ὁ δὲ οὐ μόνον οὐκ εἰσήγαγεν, ἀλλὰ καὶ τὸν ἐλθόντα τῶν ἀρχόντων ἐπὶ τὴν θύραν ἀπέπεμψεν· ὀργισθεὶς δὲ τούτῳ Κλεώνυμος πάλιν εἰς τὴν ὑστεραίαν Διοκλεῖ καλέσαι τοὺς ἄρχοντας προσέταξε· καὶ οὐχ οὕτως πω ἀσθενῶς διακείμενος, ἀλλ' ἔτι πολλῶν οὐσῶν ἐλπίδων ἐξαπίνης τῆς νυκτὸς ταύτης ἀπέθανε

(Is. i, 14)

Several aspects of this narrative are not clarified by the speaker. It is confidently alleged that Cleonymus wished to annul his will (ἀνελεῖν), whereas the only evidence for this assertion is that he sent for a magistrate. If he did wish to annul the will, he would have been severely lacking in common sense if he told one of the beneficiaries this and asked him to send for the magistrate. Furthermore, it is alleged that Poseidippus

did not send for the official, but even so, he arrived and was turned away from the house. If so, who sent for him? If a slave went, there is no evidence that he has been examined under torture or that a request for this has been made. Kennedy suggests that the magistrate who arrived may have been a friend who had nothing to do with the will but who just chanced to call (111). This would account for why he arrived without Poseidippus sending out for him, but it would not explain why he was sent away (καὶ τὸν . . . ἀπέπεμψεν). The fact that he was asked to leave is the only portion of the narrative which Isaeus provides witnesses for (112). Another explanation for Poseidippus' action lies in the words καὶ οὐχ . . . διακείμενος , which imply that Cleonymus was in no fit state to conduct business. If the magistrate was sent away because Cleonymus was "non compos mentis", then it seems as if the same conditions concerning the capacity to make a will may have also governed the capacity to revoke or alter a will, and if any change had been made by Cleonymus to his will on his deathbed, they would not have been valid, because they were taken while he was under the influence of sickness (ὑπὸ νόσου) (113).

Much of the nephews' argument against the validity of Cleonymus' will is based on the allegation that the will was made in anger and that he later regretted it, and wished to leave his property to his heirs "ab intestatē" (114). This anger was allegedly caused by a quarrel with this nephew's guardian, Deinias. No reason is given for the quarrel from which the emnity arose:

ὁπότερος μὲν οὖν αὐτῶν ἦν τῆς διαφορᾶς αἴτιος, ἴσως οὐκ ἐμὸν ἔργον ἐστὶ κατηγορεῖν.

(Is. i, 9)

Here, the words, ἴσως ... κατηγορεῖν indicate that the speaker seeks to dissociate himself from the quarrel, in that he does not state that he has no knowledge of its causes but that it is not his business to reveal them. Wyse is suspicious of this and suggests that "the subject of the quarrel may have been dangerous to touch, implicating not only Deinias but Deinias' whole family." Wyse also adds "Men are rarely cordial towards impecunious brothers-in-law" (115). However, if Deinias was the children's guardian at the time of the quarrel, their father would not have been involved because he would have been dead. According to the speaker, Cleonymus did not wish Deinias to perform his funeral rites if he died before his nephews came of age (116). In view of the importance attached to these, as can be seen from other speeches of Isaeus (117), this argument is quite valid; for if Deinias and Cleonymus were at variance with each other, it is possible that the religious observances due to the latter's οἶκος would have been neglected.

However, this does not explain why Cleonymus did not adopt one of his nephews and appoint a friend or relative as guardian if he wished his property to be inherited by one of them, or, if he wanted both of them to be his heirs, did not revoke the testament as soon as Deinias died. It is stated that Cleonymus declared before all

the citizens that he had no complaint against the boys and their father. Witnesses are produced to testify that the testator stated that he had no grudge against his nephews (118). However, the fact that he was not at variance with the boys does not necessarily indicate that he wished them to be his heirs. This anger on making the will is then used to suggest that Cleonymus did not have the capacity to make a will:

καὶ ἐμαρτύρησεν ὡς ὀργιζόμενος ἐκείνῳ καὶ οὐκ ὀρθῶς βουλευόμενος ταῦτα διέθετο. πῶς γὰρ ἄν εὖ φρονῶν, ὦ ἄνδρες, κακῶς ποιεῖν ἡμᾶς ἐβουλήθη τοὺς μηδὲν αὐτὸν ἠδικηκότας;
(Is. i, 11)

Here the speaker progresses from the statement that Cleoynmus was angry and ill advised when he made the will to the implication contained in the rhetorical question, that he must have been insane (πῶς ... φρονῶν) to have drawn up such a document. Wyse states that the speaker does not argue that the will is invalid because Cleonymus was mad when he made it but because he must have been mad no to revoke it (119). However, the continuing references to the testator's anger on making the will (120) imply that the speaker wished to create the impression that Cleonymus was out of his mind when he made the will. There is also the argument that the allegations of the heirs by testament that Cleonymus wished to alter or confirm the will indicate that he must have been insane to want to do this (121). Therefore, contrary to Wyse's suggestion, it seems as if the heirs "ab intestato" allege that Cleonymus was mad when he made

the will, because he was motivated to anger, and also that he was mad not to revoke it. Therefore, the argument against the will's validity is partially based on the supposition that Cleonymus did not have the capacity to make a will because he was mad (ἂν μὴ μανιῶν). However, this argument is not convincing, because even if the testator's motivation was anger, this does not necessarily mean that he was insane when he drew up the will, because one can be angry and yet sane.

Much of the argument in Isaeus x is concerned with the testator's capacity to own the property which has been disposed of by will. This poses the legal question: was a man legally entitled to dispose of property which was not his by law? Although the answer to this question may seem self-evident, it has been suggested that this may have been possible (122).

In order to discuss this question, it is firstly necessary to look at the background to this case.

By means of his will, Aristarchus (II) bequeathed his property to his brother Xenaenetus (II). Both of these men were the sons of a certain Cyronides who was the son of Aristarchus (I) but was adopted ~~to~~ by his maternal grandfather, Xenaenetus (I). Following the death of Aristarchus (I) his estate was inherited by his son Democharis who died, as did one of his sisters. Therefore, the surviving girl became an ἐπίκληρος . As such, she could have been claimed in marriage by her uncle and guardian Aristomenes or, failing this in the absence of other uncles, by his son, Apollodorus.

However, this was not done, and she was betrothed with a dowry to the father of the speaker, and Aristarchus (II) was adopted posthumously as the son of Aristarchus (I).

The speaker asserts that since the property did not belong to Aristarchus (II), he had no right to make a will concerning it:

ὁ γὰρ νόμος κελεύει τὰ μὲν ἑαυτοῦ διαθέσθαι ὅτῳ ἂν ἐθέλῃ, τῶν δὲ ἀλλοτρίων οὐδένα κύριον πεποίηκε. (Is. x, 2)

This is so. However, the onus is upon the speaker to prove that the property did not belong to the testator.

It is stated that Cyronides was adopted into the family of Xenaenetus (I) and thus had no right to possess his father's property:

Κυρωνίδης μὲν οὖν ὁ τοῦδε πατὴρ καὶ θατέρου τοῦ τόνδε τὸν κλῆρον ἀδικῶς ἔχοντος ἐξεποιήθη εἰς ἕτερον οἶκον, ὥστε αὐτῷ τῶν χρημάτων οὐδὲν ἔτι προσῆκεν· Ἀριστάρχου δὲ τοῦ πατρὸς ⟨τοῦ⟩ τούτων τελευτήσαντος Δημοχάρης ⟨ὁ⟩ υἱὸς κληρονόμος τῶν ἐκείνου κατέστη.

(Is. x, 4)

Here the order in which the events are described implies that Cyronides was adopted as the son of Xenaenetus (I) before the death of his father. If this had been the case, he would have had no right to any of his father's property. However, as Wyse rightly states, it is only suggested that the adoption took place before the death of Aristarchus (I) (123). No specific information is provided about how long before his natural father's death

Cyronides was adopted, and evidence is only given to the effect that Cyronides passed into another family, not about when this took place (124). Such an omission suggests that it is possible that following the death of Aristarchus (I), Xenaenetus (I) adopted Cyronides as his son. If this had been the case, Cyronides would have been heir to half of his father's property, and thus his son Aristarchus (II) would have had a right to the amount of property inherited by Cyronides from Aristarchus (I). Witnesses are produced to testify that Democharès' estate devolved upon the speaker's sister (125). This indicates that Cyronides was adopted before the death of Democharès, because otherwise Democharès' estate would have devolved upon him rather than his sister. Therefore, the maximum proportion of his natural father's estate which Cyronides would have possessed would have been half of it. Wyse states that the speaker's case "is terribly damaged, if not destroyed, if Xenaenetus (I) adopted Cyronides after the decease of his father" (126). However, this is not so, because it seems as if the speaker's mother did ~~not~~ have a right to half of the property.

The actions of the lady's guardian Aristomenes with reference to her estate are then described:

Ἀριστομένης γὰρ ἀδελφὸς ὢν ἐκείνου τοῦ Ἀριστάρχου ὄντος αὐτῷ υἱέος καὶ θυγατρός, ἀμελήσας ἢ αὐτὸς αὐτὴν ἔχειν ἢ τῷ υἱεῖ μετὰ τοῦ κλήρου ἐπιδικάσεσθαι, τούτων μὲν οὐδὲν ἐποίησε, τὴν δὲ αὐτοῦ θυγατέρα ἐπὶ τοῖς τῆς ἐμῆς μητρὸς χρήμασι

.Κυρωνίδῃ ἐξέδωκεν . . .
(Is. x, 5)

Here, the words ἀμελήσας . . . ἐξέδωκεν imply that Aristomenes was not acting justly by the girl by neither marrying her himself nor having her adjudicated to his son. Wyse states that the next of kin need not marry a poor heiress but was ~~to~~ entitled to give her away with a portion (127). However, this is not quite correct, since the law specifies that if the next of kin did not wish to marry an heiress from the thetic class, then she could be given to someone else together with a dowry and with her property (πρὸς τῆς αὑτῆς) (128). Roussel questions whether it may have been possible for the marriage to have taken place before the death of Democharès, so that the girl could not rightly be called an ἐπίκληρος (129). However, it was possible for a woman who was already married to become an ἐπίκληρος (130). On the other hand there is no evidence which states that this was the case with this particular girl. The fact that the law concerning heiresses specifies that the next of kin to a poor heiress has ~~to~~ both to dower the woman and marry her to someone else with ~~her~~ the property which belonged to her if he did not marry her himself indicates that Aristomenes was acting illegally if, as is alleged, he gave a woman's estate to his own daughter when he married her to Cyronides. Following this, the woman was married to the speaker's father:

μετὰ δὲ ταῦτα τὴν ἐμὴν μητέρα ἐκδίδωσι τῷ ἐμῷ

πατρί.

(Is. x, 6)

Here it is implied by omission that Aristomenes did not even provide the woman with a dowry. This would have the effect of making him appear as more of a scoundrel than he really was, since he did not give a dowry with her (131). However, no witnesses are called to prove the veracity of these allegations.

There is an indication that these allegations might be true. This is the fact that the speaker attempts to refute the opposing party's allegation that Cyronides paid a judgement debt on the estate:

... ἀλλὰ καὶ δίκην φασὶν ὑπὲρ τούτων τῶν χρημάτων τὸν πατέρα τὸν ἑαυτῶν ἐκτετικέναι, ...

(Is. x, 15).

The fact that Cyronides is alleged to have paid a debt owed by the estate suggests that he possessed all of it. The speaker attempts to refute this statement of his opponent by stating that it was not Cyronides' duty to have done this and that if the estate was in debt, he who claimed his mother ought to have dealt with the matter.

He also uses εἰκός argument by saying that since such generosity is unlikely, the estate was free from debt (132). However, the fact that Xenaenetus (II) could argue that Cyronides had paid a debt on the property suggests that the estate may not have been unencumbered.

However, even if, as Wyse suggests, Aristarchus (I) had been in debt to the state and Cyronides had made this debt good so that his natural father's descendants need not suffer ἀτιμία (133), or if the debt outstanding was equivalent to or greater than the amount of property remaining (134) there is no evidence that the payment of this debt would have entitled him to the legal ownership of the whole estate. Forster suggests that Cyronides "was inspired by a desire to clear the memory of his dead father by paying the debt which he left behind him and to give him, by posthumous adoption, a son who would carry on his family and perform those rites at his tomb on which every Athenian set so much store" (135). However, there is some doubt as to when the posthumous adoption of Aristarchus (II) took place. The speaker alleges that it took place after the death of Cyronides (136) but he offers no proof of this. On the other hand it seems as if Xenaenetus (II) has alleged that Aristarchus (II) was adopted before Cyronides' death (137). However, even if Cyronides himself after paying the debt had introduced Aristarchus (II) as the adopted son of Aristarchus (I), such inspirations, even if motivated by piety and generosity, do not constitute a legal right to own the property concerned.

The legality of the adoption is questioned when it is stated that the only legal manner of carrying out an adoption is by will:

οἶμαι τοίνυν πάντας ὑμᾶς εἰδέναι, ὦ ἄνδρες, ὅτι κατὰ διαθήκας αἱ εἰσαγωγαὶ τῶν εἰσποιήτων γίγνονται,

διδόντων τε ~~αὐτ~~ αὐτῶν καὶ υἱεῖς ποιουμένων, ἁπλῶς δὲ οὐκ ἔξεστιν.

(Is. x, 9)

Here, the speaker flatters the members of the jury by seeming to assume that they already know what he is going to tell them, (οἶμαι . . . εἰδέναι). However, contrary to the speaker's statement that no other form of adoption besides that by testament existed there is evidence that two other forms were recognised as legally valid, namely adoption "inter vivos" (138) and posthumous adoption (139). Furthermore, where adoption "inter vivos" was concerned, an adopted son might not necessarily inherit his father's property as soon as the adoption had taken place, but after his death (140), unless his adoptive father had become too old to administer his property himself (141). Therefore, the speaker's reasoning here is pure sophistry, and this means that the arguments following from this in which it is stated that neither Democharès nor Aristarchus (I) had the right to make a will adopting Aristarchus (II) are based upon unfirm precepts. In addition, the speaker states that he was compelled to alter his claim, and describes his mother as the sister of Aristarchus (II) (142). This indicates that the adoption was recognised as valid.

There is a rather strange omission in the speaker's presentation of the case. This is that he does not state that an adopted son was not legally entitled to make a will unless his adoptive father specifically allowed him to do so (143). Wyse suggests that the speaker probably

intended to "make two attempts on the property, first to attack the adoption, then, if repulsed, to bring a second action on the ground that an adopted son had not the power to make a will" (144). This seems quite probable. In addition, by entering into arguments that an adopted son had no right to make a will, the speaker would be accused of admitting that the adoption was valid, something which he wishes to deny.

It seems as if the jury's decision in this case would probably turn on the question of ownership. If the woman owned all or part of the estate, then Aristarchus (II) had no right to the whole property, and would not be legally entitled to give all of it away. Since Aristarchus ((II) was recognised as the adopted son, he was not legally entitled to make a will at all, but no argument is presented to this effect.

There are also references to the clause in Solon's law which states that a man could not make a will if under the influence of a woman. However, this clause is not applied to wills in any of our extant evidence. In one case, it is used in reference to a division of property, part of which are claimed by Olympiodorus who was allegedly influenced by his mistress (145); the other case refers to an adoption "inter vivos" which allegedly took place because the adoptive father was influenced by his first wife (146).

In conclusion, the right of making a will in fourth-century Athens belonged exclusively to males who had come of age, and in practice, if not in law, men with legitimate sons could dispose of some property by

testament. Men who had been adopted, whether "inter vivos", by will or posthumously, could not make a will. Those who had been given citizenship had testamentary rights as did metics. However, a freedman could only make a will if he was specifically permitted to do so by his former master. Guardians could not dispose of their ward's property by will, and neither women nor children had any testamentary rights . The fact that the clauses in the law of testament concerning the exceptions of madness and so on are referred to in the extant fourth-century evidence indicates that although these clauses were deleted by the Thirty Tyrants, they were later restored by the democracy. However, arguments from these clauses constitute the primary argument in only two cases, that of Cleonymus and Polyeuctus, and constitute the secondary argument in four, namely concerning the wills of Nicostratus, Astyphilus, Philoctemon and Pasio, and this indicates that other arguments such as forgery were probably more effective (147). In addition, it is probable that the clauses which governed the capacity of a man to make a will also applied to the revocation or alteration of the document.

Notes

1. See Chapter 2, Solon, pp. 32-39.
2. ibid.
3. Harrison, Law 1, pp. 171-177.
4. See my discussion of the wills of Demosthenes (I), Aristotle, Plato, Theophrastus, Lyco, Strato and Epicurus, in Chapter 6, Function.
5. Harrison, Law 1, pp.184-185.
   MacDowell, Law, p.82.
6. [Dem.] xliii, 51.
   See also MacDowell Law, p.91.
   and Chapter 3, Drama, pp. 83-86.
7. See Chapter 8 Genuineness, pp. 492-495.
8. Wyse, Isaeus, p.380.
9. Wyse, ibid.
10. Harrison, Law 1, p.184.
11. L.S.J. p.266.
12. This answers the question which Harrison thinks is an open one (Law 1, pp.148-149).
13. MacDowell, Law, p.83 and note 164.
14. See Demosthenes, lii where money belonging to Lyco of Heraclea which was deposited in Pasio's bank in Athens is the subject of a court case between Callippus, the proxenos of the Heracleotes at Argos and Apollodorus, the eldest son of Pasio.
15. cf. Harrison, Law 1, p.151 and
    Lipsius D.A.R. p.564, n.63 and p.567.
16 Diogenes Laertius, v, 11-11, 51-57, 61-64, 69-74.

17. D. Whitehead, "The Ideology of the Athenian Metic," The Cambridge Philological Society, Supplementary Volume no. 4, (Cambridge, 1977), pp.163-167.

18. See Chapter 6, Function, pp. 294-296 where Theophrastus disposes of his school by means of a will.

19. [Aristotle], Ath. Pol., lviii, 23.
For a discussion of this passage and further references, see also Rhodes, A.P., pp.652-657.

20. For female Athenian citizens, see below, pp. 135-139.

21. See Chapter 2, Solon, pp.34-35.

22. See n.5

23. Isaeus, iii, 41-42, 56, 72-75.

24. R. Lane-Fox, "Inheritance in the Greek World", Crux, Essays presented to G.E.M. de Ste. Croix on his 75th Birthday, (Exeter, 1985), p.228, n.84.

25. Lacey, Family, pp.106-107 and references.

26. [Dem.] xlvi, 24-25

27. Chapter 6, Function, p 226.

28. J.E. Karnezis, "The Hidden Purpose of Demosthenes' (I) Will", Zeitschrift der Savigny Stiftung, Rom Abtlg., 99, (1982), p.248.

29. There is no definite evidence that Cleoboule possessed any paternal property, unless Karnezis is referring here to the dowry which the elder Demosthenes received when he married her.

30. J.E. Karnezis, "Observations on the Will of Demosthenes," Classical Bulletin, 58, (1982), pp.65-66. The argument here is very similar to Karnezis' article in Z.S.S., pp.298-299.

31. Dem. xxvii, 4-5, Dem, xxviii, 15
See also Chapter 6, Function pp 211-216.
32. Dem., xxvii, 6, 40-46.
33. Chapter 6, Function, pp. 209-219.
34. As was the case with Demosthenes (I) and Diodotus.
35. Chapter 6, Function, pp. 195-196.
36. Lysias, xxxii, 5-7.
37. Dem., xxvii, xxviii, xxix, passim.
38. See Chapter 6, Function, pp. 205-221 for a detailed discussion of the clauses.
39. Dem. xxxvi, 8-9, 34, [Dem.] xlv, 28, 31, 37.
40. Lacey, Family, p. 137.
41. Dem. xxxvi, 8 also implies that the marriage took place soon after Pasio died, but cf. n. 107.
42. Dem. xxxvi, 8, 45.
43 Lacy, ibid.
44. [Dem.] xlvi, 14.
45. See above, p. 6.
46. See Chapter 2, Solon pp. 50-52.
47. Lysias, xix, 39-41,
Chapter 6, Function, pp. 261-264.
48. Lysias, xix, 34.
49. However cf. Chapter 6, Function pp. 262-263.
50. Davies, A. P. F. pp. 508-509.
51. Lacey, Family, p. 132.
52. Chapter 6, Function, pp. 265-267.
53. For the total amount of property, see Davies, A. P. F. p. 562.
54. Wyse, Isaeus, p. 510.

55. The speaker does not make his point very clear here. He might be hinting that Euctemon would introduce a foundling as his child, or that he would introduce illegitimate children who were products of an arranged adulterous union and born of his wife after marriage.

56. Dem. xxvii, 44-45.

Lacey, Family, p. 132.

57. Chapter 6, Function, pp. 226-227.

58. There is no quotation of this law in our extant evidence, but this is apparent from the divisions made in Dem. xxxvi, 11. The reference to the solemn agreement made between Olympiodorus and Callistratus to divide Conon's estate equally ([Dem.] xlvii, 9-13) which, it is stated, was made in accordance with the law, indicates that Athenian inheritance law probably specified that not only legitimate sons had to divide the property equally, but so did multiple heirs.

59. [Dem.] xlvi, 24, and above pp. 113-116.

Wyse, Isaeus, p. 658 states that this law permitted a man to nominate an heir in the event of his son dying. However, even though it is likely that this would be the function of a will made under this law, there is no specific indication of this in the text.

60. Lane-Fox, op. cit. p. 225.

61. Harrison, Law 1, p. 22 and n. 3.

62. D. M. MacDowell, "Love versus the Law: an Essay on Menander's Aspis", Greece and Rome, 29, (1982), p. 45.

63. MacDowell, op. cit. p.46.

64. Is. vi, 63.

Harrison Law 1, p. 85 and p. 131.

65. See above, pp. 121-124.

66. [Dem.] xlvi, 8.

67. Lacey, Family, p. 114,

MacDowell, Law, pp. 88-89,

Lipsius, D.A.R. p. 495.

68. Dem. xxxvi, 32.

69. [Dem.] xliv, 66-67.

70. Chapter 2, Solon, pp. 44-47.

71. Is. ii, 18.

72. Is. vii, 31, x, 6, xi, 49,

[Dem.] xliv, 43.

73. Wyse, Isaeus, pp. 248-249.

74. Wyse, Isaeus, p. 249.

75. Dem. xli, 3-4.

76. Wyse, ibid.

77. Chapter 2, Solon, pp. 44-50.

78. Harrison, Law 1, pp. 85-87 and references in notes 1 and 2 p. 86.

A.R.W. Harrison, "Marriages and Adoption in Athenian Law", Classical Review, 77, (1963), pp. 201-202.

79. Is. vii, 1-2.

80. This is indicated by Is. ii.

81. Lipsius, D.A.R. pp. 510-511, n. 41.

82. MacDowell, Law, p. 103.

83. Harrison, Law 1, p. 86.

84. Harrison, Law 1, p. 86 n.2

85. Harrison, Law 1, pp. 237-238.

86. See above, pp. 107-113.

87. Harrison, Law 1, p. 87.

88. This matter is beyond the scope of this thesis, for further information and references, see:

G. E. M. de Ste. Croix, "Some Observations on the Property Rights of Athenian Women", Classical Review, 84 (1970), pp. 273-279.

D. M. Schaps, Economic Rights of Women in Ancient Greece (Edinburgh, 1969),

Harrison, Law 1, pp. 112-115,

Lacey, Family, pp. 151-176.

89. Schaps, op. cit. p. 57.

cf. Harrison, Law 1, p. 236.

90. n. 89.

91. Depending on scarcity, the value of one medimnos of barley ranged from 3 dr. to 18 dr. (Schaps, op. cit. p. 136, notes 9, 10, 11). An exception to this law may have been the position of female street traders. However, it is unlikely that the trades which women were involved in would have concerned transactions of over one medimnos of barley (Schaps, op, cit. p. 61).

92. Dem. xli, 10.

93. [Dem.], xlv, 28.

94. L. Gernet, Démosthène, Plaidoyers Civils, Tome 1, (Paris, 1954), p. 263.

95. Davies A. P. F., p. 435.

96. Schaps, op. cit. p. 56.

97. Schaps, op. cit. p. 68.

98. See above, p.137.

99. Is. i, 9-12, 28.

100. D.L. x, 19-21.

101. Is. iv, 14,16.

102. Wyse, Isaeus, p. 495.

103. See Chapter 2, Solon pp. 40-41.

104. Wyse, ibid.

105. [Dem.] xlv, 16-17

106. Since Pasicles was under age when Pasio drew up the lease, and was also to be under the guardianship of Phormio, presumably this clause did not refer to him.

107. Dem. xxxvi, 29-32.
See also R. Bogaert, Banques et Banquiers dans les Cités Greques, (Leyden, 1968), p.63, p.71, pp.75-76.

108. Chapter 6, Function, pp.229-230.

109. Dem. xli, 17-19

110. See Chapter 7, Formalities pp. 455-457, 461-464.

111. G.Kennedy, The Art of Persuasion in Greece, (London, 1963), p.143.

112. Is. i, 15-16.

113. Wyse, Isaeus, p. 190, credits Isaeus with greater duplicity than he really has, by saying that the orator states that Cleonymus was not very ill on the day that the magistrate was sent for and that Isaeus seeks to conceal the fact that Cleonymus was too ill to see the official, since it is actually stated quite clearly that Cleonymus was not fit to conduct business, (καὶ οὐχ οὕτως πω ἀσθενῶς διακείμενος) (Is. i, 14)

114. No conclusive proof is offered by the heirs "ab intestato" that Cleonymus wished to withdraw the document, it is just argued that it is likely that he would have wished to do this (Is. i, 18). The reason why Cleonymus is said to have wished his nephews to inherit his property is that he had become friendly with them (ἐπεὶ δὴ ... ἐξέχθαν). (Is. i, 19)

he had become friendly with them (ἐπεὶ δὴ ... ἐξέχθαν). (Is. i, 19)

However, no definite proof is given that Cleonymus was closer in affection to his nephews than to his testamentary heirs besides the fact that he had fulfilled his duties as their guardian (Is. i, 11-12), and this was a legal obligation. ~~Since~~ That the nephews have to rely on testimony for what happened on Cleonymus' deathbed rather than stating that they were present themselves indicates that only the testamentary beneficiaries remained with him during his last illness. Furthermore, it is not argued that they carried out his funeral rites, nor is any reason given when they did not do so. Therefore, it is more likely that their opponents carried out these obligations, thus the argument that Cleonymus would have wished to revoke the will because his nephews were closer to him than his testamentary heirs is not very strong.

115. Wyse, Isaeus, p. 189.

116. Is. i, 10.

117. M. Hardcastle, "Some Non-Legal Arguments in Athenian Inheritance Cases", Prudentia, 12, (1980), pp. 12-16.

118. Is. i, 11-12, 16

cf. Wyse, Isaeus, p. 192.

The actual details of this alleged proclamation are not made clear.

119. Wyse, Isaeus, p. 195.

120. Is. i, 3, 10, 11, 13, 20, 21, 43.

121. Is. i, 21, 50.

122. See below, pp. 153-154.

123. Wyse, Isaeus, p. 655.

124. Is. x, 7.

125. ibid.

126. Wyse, ibid.

127. Wyse, Isaeus, p 656.

128. [Dem.] xliii, 54.

MacDowell, Andocides, On the Mysteries, (Oxford, 1962) pp. 145-146, surmises that if the heiress belonged to the lowest property class, the nearest relative was compelled either to marry her or to provide a dowry, but that, if she belonged to a higher class, he was permitted to provide a dowry as an alternative to marrying her or waiving his claim. However, this statement is supported by no evidence.

129. Roussel, Isèe Discours, (Paris, 1922), pp 176-177.

130. cf. Is. iii, 64.

131. Is. x, 19-20.

132. Is. x, 15-17.

133. Wyse, Isaeus, p. 662.

134. The property of Epilycus was in such a condition on his death, And. i, 117-121.

135. E.S.Forster, Isaeus, (London, 1962) pp.356-357.

136. Is. x, 6.

137. Is. x, 11.

138. Is, ii, vii, Menander, Dyskolos, 730-740.

139. [Dem.] xliii, Dem. xliv, Is. x.

140. This probably would have been the case with Leocrates, the adopted son of Poleuctus,Dem.xli, 3.

141. cf. Is. vii, 15.

142. Is. x, 2.

143. See the will of Aristotle, D.L. v, 12, Chapter 6, Function, pp.238-239.

144. Wyse, Isaeus, p.654.

145. Dem. xlvii, 6-7.

146. Is. ii.

Hardcastle, op. cit. pp.14-15, seems to assume that the adoption was by testament. However, this is not so, because it took place twenty three years before the death of the adoptive father (ii, 15).

147. See Chapter 8, Genuineness, passim.

Chapter 6

The Function of the Athenian Will

The purpose of this chapter is to attempt to ascertain the function, or several functions, of the Athenian will by examining the evidence concerning the testament in the fourth and third centuries. This chapter shall be divided into two main sections; the first shall discuss wills concerning adoption, and the second shall treat of wills which had a function other than adoption.

Wills involving adoption

The Solonian law of testament legalised adoption by will, and by this means the religious observances and the property of the testator's οἶκος would be transferred to the chosen person after the adoption had taken place (1). There are some wills which involve just an adoption, but there are others which, although involving an adoption, are a little more complicated. Those belonging to the former category, namely the wills of Nicostratus, Astyphilus and Philoctemon, shall be discussed first.

Nicostratus

The will of Nicostratus was made not later than 374, which was probably the date of his death (2).

Its validity is disputed in Isaeus iv, which was made on behalf of the claimants under the laws of intestate inheritance, Hagnon and Hagnotheus. Chariades, the claimant under the terms of the will, was a fellow soldier and a friend of the testator. At the beginning of the speech, it is implied that the will contained a bequest of property:

τὰ δὲ ἐνθάδε [μοι] συμβεβηκότα δοκεῖ μοι ὑμῖν ἱκανὰ γενέσθαι ἂν τεκμήρια, ὅτι ἅπαντες οἱ κατὰ τὴν δόσιν τῶν Νικοστράτου ἀμφισβητοῦντες ἐξαπατῆσαι ὑμᾶς βούλονται.

(Is. iv, 1)

Here the words κατὰ τὴν δόσιν suggest that the will contained a complete bequest of property without the heir being adopted as the testator's son. However, the speaker later criticizes Chariades for not burying his adoptive father:

ὅπου γὰρ τὸν αὑτὸν ποιησάμενον οὔτ' ἀποθανόντα ἀνείλετο οὔτ' ἔκαυσεν οὔτε ὠγολόγησεν, ἀλλὰ πάντα τοῖς μηδὲν προσήκουσι παρῆκε ποιῆσαι, πῶς οὐκ ⟨ἂν⟩ ἀνοσιώτατος εἴη, ὃς τῷ τεθνεῶτι μηδὲν νομιζομένων ποιήσας τῶν χρημάτων αὐτοῦ κληρονομεῖν

ἄξιος; ἀλλὰ νὴ Διὰ ἐπειδὴ τούτων οὐδὲν ἐπέλιπεν, τὴν οὐσίαν τοῦ Νικοστράτου διεχείριζεν

(Is. iv, 19-20)

The word ποιησάμενον implies that Chariades alleged that he had been adopted by Nicostratus. Although this could either mean a testamentary adoption or an adoption "inter vivos", it is very probably the former, because there would have been no necessity for Nicostratus to make a will if the latter had been the case. The burial of a man was generally undertaken by his heirs (3) but Nicostratus, being a mercenary soldier might well have died in action, as is suggested by the word ἀνείλετο. Since he died in a far-off land, it is more likely that he was buried in Egypt and his property, which was probably left in Ake, brought home, not his remains as is suggested by Wyse (4). If this is so, it is more likely that all the battle casualties were buried together, because of the hot climate in Egypt, as is the case in Menander's play, Aspis:

ὁ δ' ἡγεμὼν ἡμῶν ὁ χρηστὸς καθ' ἕνα μὲν
κλαίειν ἐκώλυσεν, διατριβὴν ἔσομένην
ὁρῶν ἑκάστοις θεολογῆσαι, συναγαγὼν
πάντας δ' ἀθρόους ἔκαυσε· καὶ σπουδῇ πάνυ

θάψας ἀνέζευξ' εὐθύς·

(Menander, Aspis 75-79)

This would explain why Nicostratus' remains were not buried by Chariades, and therefore the accusation of his opponent is groundless. There is no indication of the reason given by Chariades for not burying Astyphilus. In the quotation from Is. iv, 19-20, the word διεχείρισεν indicates that the testator is alleged to have placed his property into the care of Chariades. This is further proof that the will contained an adoption, since it was not unknown for an adoptive father to hand over his property to his adoptive son even before the adoption had been completed (5). The fact that the speaker does state that Nicostratus was Chariades' adoptive father indicates that the function of this will was probably adoption.

Astyphilus

Astyphilus served during the Theban war and then died on a naval expedition to Mytilene which took place after it (6). The next known expedition in the eastern Aegean was that led by the general Timotheus in 366 (7), which might have taken part in a minor skirmish at Mytilene. If this is the expedition which is being referred to in the speech, the will was made after the close of the Theban war in 371 and before Astyphilus set sail with Timotheus' fleet in 366.

By means of this document he adopted the son of his first cousin, Cleon:

Κλέων μὲν γὰρ φησι τὸν υἱὸν τὸν ἑαυτοῦ Ἀστυφίλῳ εἰσποιηθῆναι, καὶ ταῦτ' ἐκεῖνον διαθέσθαι.

(Is. ix, 34)

As in the case of the estate of Nicostratus, allegations are made that the son of Cleon did not bury Astyphilus, his adoptive father:

ἐπεὶ δ' ἐκομίσθη τὰ ὀστᾶ τοῦ ἀδελφοῦ, ὁ μὲν προσποιούμενος πάλαι υἱὸς εἰσπεποιῆσθαι οὐ προύθετο οὐδ' ἔθαψεν, οἱ δὲ φίλοι Ἀστυφίλου καὶ οἱ συστρατιῶται, ὁρῶντες τὸν πατέρα τὸν ἐμὸν ἀρρωστοῦντα, ἐμὲ δ' οὐκ ἐπιδημοῦντα, αὐτοὶ καὶ προύθεντο καὶ τἄλλα πάντα τὰ νομιζόμενα ἐποίησαν καὶ τὸν ἐμὸν πατέρα ἀσθενοῦντα ἐπὶ τὸ μνῆμα ἦγαγον εὖ εἰδότες ὅτι ἀσπάζοιτο αὐτὸν Ἀστύφιλος.

(Is. ix, 4)

As is the case with the funeral of Nicostratus, the bones or remains of the deceased were probably not brought back to Athens from abroad, since such a thing would have been very impractical, because in a hot climate bodies decompose very quickly (8). Therefore, the reference to the testator's remains is an example of the orator indulging in hyperbole to emphasise the πάθος of the scene. The word πάλαι with reference to the alleged adoption is also an example of hyperbole, since Cleon's son was not Astyphilus' long-adopted son, as it is

implied that it was by means of the will that Cleon's son was adopted by Astyphilus (9), so he would only be regarded as adopted once news of Astyphilus' death reached Athens and the adoption had been ratified by a court of law (10). Since the case is still in progress, this had not yet been done.

Philoctemon

Philoctemon was killed off Chios c. 367 (11), and the will itself was made in war time (12), although it is uncertain whether it was made before the quarrel with his father Euctemon. In his will, he adopted Chaerestratus as his son:

ἐπειδὴ γὰρ τῷ Φιλοκτήμονι ἐκ μὲν τῆς γυναικὸς ἣν συνῴκει οὐκ ἦν παιδίον οὐδέν, πολέμου δ' ὄντος ἐκινδύνευε καὶ ἱππεὺς στρατευόμενος καὶ τριήραρχος πολλάκις ἐκπλέων, ἔδοξεν αὐτῷ διαθέσθαι τὰ αὑτοῦ, μὴ ἔρημον καταλίπῃ τὸν οἶκον, εἴ τι πάθοι. τῷ μὲν οὖν ἀδελφῷ αὐτῷ ὡς περ ἐγενέσθην ἄμφω παιδε ἐτελευτηκάτην· τοῖν δὲ ἀδελφαῖν τῇ μὲν ἑτέρᾳ, ἣ ὁ Χαιρέας συνῴκει, οὐκ ἦν ἄρρεν παιδίον οὐδὲ ἐγένετο πολλὰ ἔτη συνοικούσῃ, ἐκ δὲ τῆς ἑτέρας, ἣ συνῴκει Φανόστρατος οὑτοσί, ἦστην υἱὼ δύο. τούτων τὸν πρεσβύτερον τουτονὶ Χαιρέστρατον ἐποιήσατο υἱόν· καὶ ἔγραψεν οὕτως ἐν διαθήκῃ, εἰ μὴ γένοιτο αὐτῷ παιδίον ἐκ τῆς γυναικός, τοῦτον

κληρονομεῖν τῶν ἑαυτοῦ.
κληρονομεῖν τῶν ἑαυτοῦ.

(Is. vi, 5-7)

The reason for Philoctemon wishing to adopt a son is given in this quotation, namely that he did not wish his house to be without an heir (μὴ . . . οἶκον) . Although the speaker mentions the testator's concern for the continuation of his οἶκος , he does not state that Chaerestratus claimed the estate as his adopted son as soon as he heard of Philoctemon's death. It seems as if the estate was claimed on the death of Euctemon, Philoctemon's father. Therefore, the testator's wishes were ignored. This was probably because Philoctemon's estate was not as valuable as that of Chaerestratus' father, Phanostratus, and thus it would be to Chaerestratus' financial advantage to remain in his own family until Euctemon died, and then to claim the estates of both Philoctemon and Euctemon (13). The terms of the will as mentioned in the quotation above indicate that it was possible for a man to dispose of his property conditionally. In this will, the condition is that Chaerestratus be adopted as the son of Philoctemon if no child was born to the testator, (εἰ μὴ - - - κληρονομεῖν τῶν ἑαυτοῦ.) . It is not made clear whether this clause applied to a child of Philoctemon who was born after his father's death, as well as one who was born before his father's death. If Philoctemon's wife was pregnant by him at his death, it does seem probable that so long as she did not re-marry before the birth of

her child, that child would become his father's heir. The birth of such a child would annul the will. No distinction is made between a possible male or female child in this will. A male child would prevent Chaerestratus from inheriting. However, if a female child were born, it might have been possible for Chaerestratus to marry her when she came of age, since she would be an ἐπίκληρος and he would be her next of kin, but in this case the estate would eventually be transferred to any male offspring. The relationship of the adopted son to the deceased is also indicated in Is. vi, 5-7. Chaerestratus is Philoctemon's nephew. The function of Philoctemon's will is, therefore, to adopt a nephew if the testator did not father a legitimate child before his death.

Dicaeogenes (II)

Dicaeogenes (II) died in a battle off Cnidus in January 411 (14). Therefore, his will would have been made at some point before his departure, and can be dated at 412 at the latest. By means of this will, he allegedly devised one third of his property to his nephew (15) whom he adopted as his son. The remaining two thirds was inherited by the testator's four sisters. ~~However, after twelve years Dicaeogenes (III) claimed the whole estate on the grounds that he had been adopted as sole heir by his uncle.~~ These events are narrated in Isaeus v:

ἀποθανόντος δ' αὐτοῦ ἄπαιδος διαθήκην ἀπέφηνε Πρόξενος ὁ Δικαιογένους πατήρ, ᾗ πιστεύσαντες οἱ ἡμέτεροι πατέρες ἐνείμαντο τὸν κλῆρον. καὶ ἐπὶ μὲν τῷ τρίτῳ μέρει τοῦ κλήρου Δικαιογένης ὅδε τῷ Μενεξένου Δικαιογένει, ἡμετέρῳ δὲ θείῳ, υἱὸς ἐγίγνετο ποιητός· τῶν δὲ λοιπῶν ἑκάστη τὸ μέρος ἐπεδικάσατο τῶν Μενεξένου θυγατέρων.

(Is. v, 6) (ἀποθανόντος refers to Dicaeogenes (II)).

According to the speaker, the estate was divided in accordance with these terms, and remained as such for twelve years. However, at a later date, Dicaeogenes (III) claimed that he had been adopted as the heir of the whole of his uncle's estate:

Δικαιογένης ... ἠμφεσβήτει ἡμῖν ἅπαντος τοῦ κλήρου, φάσκων ἐφ' ὅλῳ ποιηθῆναι υἱὸς ὑπὸ τοῦ θείου τοῦ ἡμετέρου. (Is. v, 7)

The outcome of this claim was that Dicaeogenes (III) was awarded the whole of the property. In these quotations, only one will, not two, is mentioned. It is only later in the speech that the speaker states that two wills were produced before the court, one just after the death of Dicaeogenes (II) and the other twelve years afterwards, both of which were invalidated:

δύο γὰρ διαθῆκαι ἐφάνησαν, ἡ μὲν πάλαι, ἡ δὲ πολλῷ ὕστερον· καὶ κατὰ μὲν τὴν παλαιάν, ἣν ἀπέφηνε Πρόξενος ὁ Δικαιογένους τουτουὶ πατήρ, ἐπὶ τῷ τρίτῳ μέρει τοῦ κλήρου ἐγίγνετο τῷ θείῳ τῷ ἡμετέρῳ υἱὸς ποιητός, καθ' ἣν δ' αὐτὸς ἀπέφηνε Δικαιογένης, ἐπὶ παντὶ τῷ οἴκῳ. τούτοιν δὲ τοῖν διαθήκαιν ἣν μὲν Πρόξενος ἀπέφηνε, Δικαιογένης ἔπεισε τοὺς δικαστὰς ὡς οὐκ ἀληθὴς εἴη· ἣν δὲ Δικαιογένης ἀπέφηνεν, οἱ μαρτυρήσαντες αὐτὴν τὸν θεῖον τὸν ἡμέτερον διαθέσθαι ἐάλωσαν ψευδομαρτυριῶν.

(Is. v, 15)

Here, the fact that two wills were allegedly produced before the court, each with different clauses concerning the amount of property left to Dicaeogenes (III) has been taken to imply that the testator left two wills, the function of the first being to adopt a son and leave a dowry for the testator's sisters, and the second to adopt a son and leave him all of the property (16). However, this view presupposes that a later will invalidated an earlier one without the necessity of having to destroy the first document, and it is unlikely that this was so (17).

If the speaker of Isaeus v is telling the truth, one would reach the conclusion that it was possible to adopt a son and yet alienate two thirds of the estate from him.

Norton accepts the speaker's statement:

"Isaeus tells of a case where a man without sons adopted the son of a friend in a will, leaving to him only one-third of his estate" (18).

However, Norton fails to refer to the successful claim of Dicaeogenes (III) twelve years later.

Wyse is a little more wary of accepting the speaker's allegations in chapter six of the speech:

"The language certainly leaves the impression that the sisters were not mentioned and claimed their portions "ab intestato;" but I should like fuller information before building much upon this incident. It is strange to find an Athenian adopting a son and limiting simultaneously the son's rights, it is stranger that in a will imposing such restrictions no provision should be taken for the disposal of the rest of the estate, and it must not be forgotten that twelve years later Dicaeogenes procured a judgment setting aside this will. Was some compromise effected between Proxenus on the one side and the husbands of the sisters on the other, Dicaeogenes at that time being a minor?" (19).

Davies is in accordance with Wyse's view, and states:

"Given that twelve years after the death of Dikaiogenes II his adopted son was able to obtain a judgment setting aside the will and giving him ownership of the entire estate of Dikaiogenes (II) (7-11) Wyse's surmise (Isaeus 414) is highly probable that the "testament" of 412/11 was in fact no more than a compromise between Proxenos (I) and the sons-in-law of Menexenos (I), Dikaiogenes (II) being at that date a minor, and that when the latter

came of age he was able to insist more exactly on the provisions of the will" (20).

However, Wyse does not surmise that there was only one will . Davies first seems to infer this from Wyse's question, but Wyse states that the earlier will was set aside, and this indicates that he thought that there was more than one will . On the other hand, Davies does distinguish between the "testament" of 412/11 and the later will.

The language used by the orator provides some insight into what might have occurred. The word which Wyse thinks leaves the impression that the sisters claimed the estate "ab intestato" is the verb ἐπιδικάζω in Is.v,6 . This verb implies that the sisters of Dicaeogenes claimed the remaining two thirds by means of an ἐπιδικασία , and uncontested claim for an inheritance (21). This, if it were true, could be taken to indicate that a man could make a will adopting someone as his son, and specify that only one third of the estate should be inherited by him, and leave the remainder to be claimed by his heirs by intestate succession, which is what Norton thinks. There are two wills which might be regarded as being similar. The will of Cnemon in Menander's Dyskolos adopts Gorgias but simultaneously alienates half of the estate from him. However, this is because Cnemon has a legitimate daughter who is the uterine sister of Gorgias, and thus is not legally permitted to marry him (22). In the will of Plato, the boy Adeimantus is bequeathed the philosopher's paternal home, but the remainder of his property is not

specifically disposed of, and is presumably to be inherited by his successors by the rules of intestate succession. There is, however, no evidence in Plato's will or elsewhere that Adeimantus was adopted as his son, so this can be regarded as a bequest (23). There is, therefore, no other example of a will with this function in Athens, and it must also be borne in mind that Dicaeogenes (III) later successfully claimed that he had been adopted as heir to the whole estate.

There is another interpretation of the events. When Dicaeogenes (II) died, his sisters, represented by their husbands, claimed his whole estate as heirs under the law of intestate succession. Proxenus then presented a will in which his son Dicaeogenes (III) was adopted as the son of Dicaeogenes (II). However, before a confrontation in a court of law, an agreement was reached, maybe with the aid of friends, that Dicaeogenes (III) should claim one third of the estate and the sisters of the testator should claim two thirds. Dicaeogenes (III) was probably a minor at the time, since the speaker states that the will was presented by his natural father Proxenus (ἣν ἀπέφηνε . . . τουτουὶ πατήρ). A similar situation is found in the speech concerning the estate of Cleonymus (Isaeus, i) where the claimants under the law of intestate succession were awarded one third of the estate in an out-of-court settlement (24). Here, as in Isaeus v, the estate is divided not in half but in the proportion of one third and two thirds. The reason why the speaker of Isaeus v refers to the claim as an ἐπιδικασία is because once the settlement had been

reached, each party put in a claim for the portion of the estate which it was agreed they should have, and this claim was not contested. However, when Dicaeogenes (III) came of age, he successfully claimed the whole of the estate under the terms of the will written by Dicaeogenes (II).

This explanation does, however, leave one question unanswered, namely: how can the speaker refer to δύο διαθῆκαι (Is. v, 15) if only one will had been presented to the court on two separate occasions? An explanation for this can be found in the fact that διαθήκη can mean a solemn compact or covenant in addition to a will (25), and Isaeus states that oaths had been taken to the effect that both parties concerned would adhere to the agreement:

ὀμόσαντες μὴ παραβήσεσθαι τὰ ὡμολογημένα, ...
(Is. v, 7)

This suggests that the speaker could well be referring to one compact and one will.

Therefore, it is most probable that the function of the will of Dicaeogenes (II) was to adopt Dicaeogenes (III) as his son, giving him the whole of his estate.

Hagnias

Hagnias died in 396 at the hands of the Spartans while he was on an embassy to Persia (26), and since he made his will as he was preparing to set out on this embassy (27), it can be dated at 396.

The case of Hagnias' estate is of particular interest because there are two extant speeches about it, both of which were written on behalf of different claimants. Since both accounts are very different, it is best to quote them together:

Ἁγνίας οὖν, ὅτε ἐκπλεῖν παρεσκευάζετο πρεσβευόμενος ἐπὶ ταύτας τὰς πράξεις αἰ τῇ πόλει συμφερόντως εἶχον, οὐκ ἐφ' ἡμῖν τοῖς ἐγγύτατα γένους, εἴ τι πάθοι, τὰ ὄντα κατέλιπεν, ἀλλ' ἐποιήσατο θυγατέρα αὐτοῦ ἀδελφιδῆν· εἰ δέ τι καὶ αὐτῇ πάθοι, Γλαύκωνι τὰ ὄντα ἐδίδου, ἀδελφῷ ὄντι ὁμομητρίῳ· καὶ ταῦτ' ἐν διαθήκαις ἐνέγραψε. χρόνων δὲ διαγενομένων μετὰ ταῦτα τελευτᾷ μὲν Εὐβουλίδης, τελευτᾷ δ' ἡ θυγάτηρ ἣν ἐποιήσατο Ἁγνίας, λαμβάνει δὲ τὸν κλῆρον Γλαύκων κατὰ τὴν διαθήκην.

(Is. xi, 8-9)

A different account of the events is given in the Pseudo-Demosthenic speech xliii:

Τουτουὶ γὰρ τοῦ παιδὸς ἡ μήτηρ, ὦ ἄνδρες δικασταί, γένει οὖσα ἐγγυτάτω Ἁγνίᾳ τῷ ἐξ Οἴου, ἐπεδικάσατο τοῦ κλήρου τοῦ Ἁγνίου κατὰ τοὺς νόμους τοὺς ὑμετέρους· καὶ τῶν τότε ἀμφισβητησάντων αὐτῇ τοῦ κλήρου τουτουί, γένει μὲν ὡς ἐγγυτέρω τις εἴη αὐτῶν τῆς γυναικός, οὐδ' ἐπεχείρησεν οὐδεὶς ἀντομόσαι (ὡμολογεῖτο γὰρ παρὰ πάντων τῆς γυναικὸς εἶναι ἡ κληρονομία

κατὰ τὴν ἀγχιστείαν), διαθήκας δὲ ψευδεῖς ἥκον κατασκευάσαντες Γλαύκῶν τε ὁ ἐξ Οἴου καὶ Γλαύκων ὁ ἀδελφὸς αὐτοῦ

([Dem.] xliii, 3-4)

These two accounts are so different that it seems as if either one or both of the speakers is lying. Furthermore, it is difficult to ascertain what exactly the will of Hagnias stated about the property.

The adoption of the girl is only mentioned in Isaeus xi. Thompson asks whether Isaeus asserts that "Hagnias adopted his niece while he was still alive, or does he say that Hagnias simply left a will adopting her on death?" (28). After comparing both the terms in this will to those in others and Hagnias' position to that of other testators, he concludes that Hagnias adopted the girl by will. Wyse finds Isaeus' language ambiguous, "since ταῦτ' ἐν διαθήκαις ἐνέγραψε may refer only to the bequest to Glaucon" (29). It seems as if the ambiguity lies in the fact that ταῦτ' can either be taken as meaning "these words" and would thus only refer to εἰ δέ τι ... ἐξίδου, or it could be taken as meaning "these clauses" and would thus also refer to the adoption of the girl. However, the fact that the adoption allegedly took place as a result of Hagnias being called to take part in an embassy, (ὅτε ἐκπλεῖν... εἶχον), suggests that it was not an adoption "inter vivos" which would have taken some time to complete (30), but was a testamentary adoption.

Therefore, according to the evidence from Isaeus xi, it seems as if one of the clauses of Hagnias' will was the adoption of the testator's niece.

[Demosthenes], xliii is silent about this adoption, since it is stated that Hagnias had died childless (31), but not that he had adopted his niece. The second passage quoted implies that Phylomache (who is referred to as the mother of the child) claimed Hagnias' estate by means of an ἐπιδικασία, an uncontested claim for an inheritance, shortly following Hagnias' death. However, since Hagnias died in 396 (32), and the deposition in [Demosthenes] xliii, 31 dates the award of the estate to Phylomache at 361, the speaker is not telling the truth. His intention in this passage is to leave the impression in the minds of the jury that Phylomache was the first to claim the estate. Furthermore, it is not to his advantage to admit that the will of Hagnias was at first regarded as genuine.

The precise function of the second clause of this will is difficult to ascertain. According to Isaeus, there was one heir, Glaucon; but in [Demosthenes] there are two, Glaucon and Glaucus. MacDowell follows Isaeus and states that Glaucon was the next claimant under the will, and that he was to be Hagnias' posthumously adopted son (33). Gernet makes two suggestions: firstly that Glaucon was intended to be Hagnias' posthumously adopted son; secondly that both Glaucus and Glaucon pretended to be the adopted sons of Hagnias by virtue of a will (34).

Presumably these two suggestions are intended to clarify the two different narratives, but Gernet neglects to say which orator he believes. Davies states that the estate of Hagnias was inherited by Glaucon (35). Wyse thinks that Glaucon was bequeathed the estate (36). Gernet's second suggestion is improbable, since there is no other example in Athens of a man adopting two sons by will. Since there is no reason for Isaeus not to mention Glaucus as another beneficiary, it is more likely that Glaucon was only made contingent heir in the will, and that the speaker of [Dem.] xliii is misrepresenting the events, possibly by confusing Glaucus' and Glaucon's later claim by intestate inheritance (37) with a claim of the latter by will. There is no indication in either speech that the will contained a second adoption. In Isaeus, δίδωμι is used as opposed to ποιέω , which implies a bequest. In [Demosthenes] no mention is made of an adoption, and one cannot be inferred since two heirs are named. Furthermore, if Hagnias had wished to adopt Glaucon, it seems more likely that he would have been adopted first in the testament. By this means Hagnias would have had an adopted son immediately, and there would have been no necessity for him to have adopted a girl and hope that she would produce him a son eventually.

A more precise definition of the function might also be found in an attempt to explain why, thirty five years later, the will was found to be invalid. Thompson thinks that when the claim was first made under the will, although it might have been contested, there was sufficient evidence to prove its authenticity, but in

361/0 Glaucon could not prove that the same will was genuine (38). This implies that Thompson might be of the opinion that the witnesses in the former case might have died.

There is another possible explanation. A man with legitimate children could make a will if they were minors, disposing of the property if they were to die before coming of age or two years after they came of age (39). This might have been possible also if a man adopted a minor, either "inter vivos" or by will. In the latter case there would be no necessity to write another will, but a second clause could be added stating that if the child were to die, someone could inherit the property. If this had been the function of Hagnias' will, then it would not have been valid after two years following his adopted daughter's coming of age. This explains why, thirty five years later, Phylomache received the estate.

The fact that Glaucon claimed Hagnias' estate thirty five years after his death indicates that Hagnias' adopted daughter either had no children or that her offspring predeceased her. Davies suggests that she did have a son, and that this son is the claimant Eupolemus, who is mentioned in [Dem.] xliii, 7 (40). However, if Eupolemus had been the girl's son, then he would have automatically inherited the estate, and Glaucon could not have claimed it by means of Hagnias' will. MacDowell's suggestion that Eupolemus might have represented Hagnias' mother (41) is therefore more credible.

Therefore the function of Hagnias' will was two-fold. It contained an adoption of Hagnias' niece, and a second clause which bequeathed the property to Glaucon if the girl should die before coming of age or two years after she came of age.

There are two other examples of a girl being adopted by will.

Theophon

Theophon probably died c. 369 (42), therefore his will would have been made in this year. The evidence concerning this will is found in Isaeus xi:

Θεοφῶν γὰρ ὁ τῆς γυναικὸς αὐτοῦ ἀδελφὸς ἀποθνήσκων ἐποιήσατο τῶν θυγατέρων αὐτοῦ μίαν, καὶ τῶν ἑαυτοῦ ἔδωκεν....

(Is. xi, 41)(αὐτοῦ refers to Stratocles)

Here, no mention is made of a διαθήκη , so it might be thought that the adoption (ἐποιήσατο) took place "inter vivos". However, the word ἀποθνήσκων indicates that the adoption was authorised when the adoptive father was dying which suggests that, since an adoption "inter vivos" took some time to complete, which could mean that if he was very ill, the formalities might not be completed before his death (43), the adoption was included in a will. The words τῶν ἑαυτοῦ ἔδωκεν indicate that the girl was to inherit all of Theophon's property. Since ἔδωκεν is preceded by ἐποιήσατο , it is clear that this is not a bequest without adoption. There is no other definite evidence concerning other clauses in the will. The fact that Stratocles acted as guardian of the girl for nine years (44) suggests that he was probably nominated as such by Theophon, maybe by will, since if no

such arrangement had been made, the duty would have probably devolved upon the nearest male relative (45), and Stratocles was only related to Theophon by marriage. It is not made clear whether this was an oral or written will. Therefore, the function of Theophon's will was the adoption of his niece by marriage and the appointment of her father as guardian.

Apollodorus

The will of Apollodorus was made before he set out for Corinth where the Athenian troops were stationed during the years 394-390 (46). The making of the will was motivated by his setting out on this campaign (47), so it can be dated between 394 and 390. By means of his will, Apollodorus adopted a girl:

εἰς Κόρινθόν τε στρατεύεσθαι μέλλων, εἴ τι πάθοι, διέθετο τὴν οὐσίαν καὶ ἔδωκε τῇ ἐκείνου μὲν θυγατρί, ἐμῇ δὲ μητρί, αὐτοῦ δὲ ἀδελφῇ, δοὺς αὐτὴν Λακρατείδῃ τῷ νῦν ἱεροφάντῃ γεγενημένῳ.

(Is. vii, 9)

Here, no adoption is mentioned, but, as Wyse rightly states, Apollodorus was not legally empowered to dispose of his half-sister in marriage while her father, Archedamus was alive. This clause indicates that an adoption was the subject of the first clause of the will. Wyse finds the legal aspect of the case puzzling since "Apollodorus had not become the adoptive father of the girl when he made the will and settled the marriage, since the adoption was only to take effect after his

death" (48). However, if Archedamus, the girl's father and therefore her κύριος agreed to the adoption, he would be agreeing also to his κυρεία being passed to Apollodorus after death. The only way in which Apollodorus could exercise his κυρεία would be to write down his wishes regarding her marriage in a will. This will was later rescinded as is indicated by the fact that Apollodorus eventually decided to adopt Thrasyllus, the speaker of Isaeus vii.

The final two wills to be discussed in this section of the chapter were both made by men with daughters, but the legitimacy of one daughter is disputed.

Pyrrhus

It is difficult to date precisely when Pyrrhus' will was made, because of the lack of internal evidence from Isaeus iii. Wevers, relying on his theory concerning prose rhythms, dates the speech at about 389 (49). MacDowell's revision of Wever s' system implies a rather later date of about 380 (50), and I find MacDowell's arguments convincing concerning this. Since the will was made at least twenty one years before Isaeus iii (51), the document would date at c. 401.

In Isaeus iii, Pyrrhus is stated to have adopted Endius, who possessed his estate for over twenty years:

Ἄνδρες δικασταί, ὁ ἀδελφὸς τῆς μητρὸς τῆς ἐμῆς Πύρρος, ἅπαις ὢν γνησίων παίδων, ἐποιήσατο Ἔνδιον τὸν ἀδελφὸν τὸν ἐμὸν υἱὸν ἑαυτῷ· ὃς

κληρονόμος ὢν τῶν ἐκείνου ἐπέβαιω πλείω ἔτη ἢ εἴκοσι, καὶ ἐν χρόνῳ τοσούτῳ ἔχοντος ἐκείνου τὸν κλῆρον οὐδεὶς πώποτε προσεποιήσατο οὐδ' ἐνεκαλεσε τῆς κληρονομίας ἐκείνῳ.

(Is. iii, 1)

In this quotation, the speaker does not state that the adoption was authorised by a will, and this implies that Endius was adopted "inter vivos". This could be because wills were regarded with a certain amount of suspicion in Athens, because of the possibility of forgery (52). It is only towards the end of the speech in chapter 56 that the fact that the adoption was by testament is mentioned, when the speaker states that a prosecution for perjury against the witnesses to Pyrrhus' will is pending. The precise function of this will is difficult to discern. It is alleged by the speaker's opponent that Pyrrhus had a legitimate daughter called Phile, who was probably at least two years old when he died (54). If so, she would have been classed as an ἐπίκληρος and Endius should have married her when she came of age. Instead she was married to Xenocles, an unrelated Athenian citizen (55), with a dowry of less than one tenth of the estate (56).

The arguments against Phile's legitimacy in Isaeus iii are not conclusive, and the fact that Phile contracted a legitimate marriage with an Athenian citizen, but did not inherit the entire estate, cannot be taken as definite evidence that she was illegitimate or the opposite (57). However, if she was legitimate, it seems as if she had been defrauded of her rights as an ἐπίκληρος.

If this were so, her husband could have taken action against Endius, but this might well have resulted in Xenocles losing his wife (58). A possible solution to this problem can be found in Menander's play, Aspis.

In Aspis, Cleostratus, a soldier, is believed to have perished in battle. His sister, who is being cared for by her uncle Chairestratus, is to marry his step-son Chaireas. However, since she has become an ἐπίκληρος to her brother's estate, she can be claimed in marriage by her uncle Smikrines, who is an old man but is her nearest collateral relative. Smikrines insists on his rights not because he is in love with the girl, but because he wishes to possess the property which he will receive with her. Chairestratus, therefore, offers to allow Smikrines to keep the property on the condition that he can marry the girl to Chaireas:

ΧΑΙΡΕΣΤΡΑΤΟΣ

ἀνθρωπίνως

τὸ πρᾶγμ' ἔνεγκε, Σμικρίνη, πρὸς τῶν θεῶν·
τῇ παιδὶ ταύτῃ γέγονε Χαιρέας δδὶ
σύντροφος δ μέλλων λαμβάνειν αὐτήν. τί οὖν
λέγω; οὐ μηδὲν ζημιοῦ· τὰ μὲν ὄντα γὰρ
ταῦθ' ὅσαπερ ἔστι λαβὲ σὺ πάντα, κύριος
γενοῦ, δίδωμέν σοι· τὴν δὲ παιδίσκην τυχεῖν
καθ' ἡλικίαν ἔασον αὐτὴν νυμφίου.
ἐκ τῶν ἰδίων ἐγὼ γὰρ ἐπιδώσω δύο
τάλαντα προῖκα.

ΣΜΙΚΡΙΝΗΣ

πρὸς θεῶν, Μελιτίδη
λαλεῖν ὑπείληφας; τί φῄς; ἐγὼ λαβὼ
τὴν οὐσίαν, τούτῳ δὲ τὴν κόρην ἀφῶ
ἵν' ἂν γένηται παιδίον, φεύγω δίκην
ἔχων τὰ τούτου;

(Menander, Aspis 260-273)

This quotation indicates that it was possible (although not necessarily according to Athenian "mores") to make an agreement whereby an heiress could marry someone nearer her own age, and her father's (or in this case brother's) property would be given to the person who should by law marry her. The quotation also shows, as MacDowell rightly states (59), that an heiress' property was neither her own nor her husband's, it belonged to the son whom she would hopefully produce eventually. It is possible that a similar sort of bargain may have been made between Xenocles and Endius, that the former would marry Phile, with a small dowry (60), while Endius would keep the property, even though by law Phile should have married Endius (61). Since Endius never married, the property would be inherited by Phile's male children by Xenocles (62).

Paoli draws a parallel between the assumption that Phile was not an ἐπίκληρος to her father's estate and the will of Cnemon in Menander's Dyskolos, where the testator's daughter is only left half of the estate.

He suggests from these two incidents that a legitimate daughter only had the right to a dowry and not to her father's complete estate (63). However, the situation in Dyskolos is different because Cnemon's adopted son is his daughter's homometric brother, and it was illegal for uterine brothers and sisters to marry. It was therefore a logical step for Cnemon to divide his property in half. Endius, on the other hand, was Phile's cousin, and could have married her legally.

It thus seems most probable that the will of Pyrrhus adopted Endius and stated that he should marry Phile when she came of age. Although Endius did become the adopted son of Pyrrhus, he did not marry Phile, and it is very possible that a pact of the type mentioned in Menander's play Aspis was made, whereby she married Xenocles and Endius retained the estate until he died.

Cnemon

Menander's play, Dyskolos was first produced during the archonship of Demogenes for the Lenaea festival. Therefore the evidence from the play represents the customs of about the year 317/6.

In this play, Cnemon adopts Gorgias as his son, but as his daughter could not marry him, since they were born of the same mother, he divided his property in half, giving half to Gorgias and half to his daughter as her dowry. This will therefore has a two-fold function, firstly to adopt a son and secondly to provide a dowry (64).

However, there is a great difference between Cnemon's will and the other wills, because although it was made because he thinks that he is dying, it is to take effect even if he still lives. Unlike all other wills involving adoption, in which the adoption took place after the testator's death, this authorises an adoption "inter vivos", by which means the property and the responsibility for the οἶκος are handed over to Gorgias immediately. This is indicated when Gorgias asks Cnemon about finding a husband for his sister, and Cnemon tells him that this is no longer his responsibility (65). Thus by means of a will, Cnemon renounces his position as κύριος of his οἶκος and hands it over to Gorgias whom he also adopts as his son. By means of this will he also specifies his daughter's dowry.

It is notable that in the wills discussed in this section, the majority contain the adoption of a relative. The exception to this is the will of Nicostratus.

Wills not involving adoption

This particular section shall be divided into two sub-sections, the first about wills made by men who had legitimate children, the second concerning those made by men who had no legitimate offspring.

Wills not involving adoption made by men who had legitimate children

In this section, the wills of Dionysodorus, Diodotus, the elder Demosthenes, Pasio, Polyeuctus, Aristotle, Conon, Euctemon and Euthycrates shall be discussed in addition to evidence found in Hyperides ii..

Dionysodorus

Dionysodorus was one of the victims of the Thirty Tyrants, and his will was made just before he died (6 6). It would thus date from 404/403. The terms of the will are not related, and it is just stated that he disposed of his property as seemed fit:

τά τε οἰκετα τὰ αὐτοῦ διέθετο ὅπως αὐτῷ ἔδοκει. (Lysias xiii, 41)

The word οἰκετα , meaning either household property or things pertaining to the family, suggests that this will might have been concerned with matters such as the amount to be set aside for his wife's dowry and the appointment of guardians for his unborn child. Dionysodorus also requested that vengeance be taken on his murderer:

καὶ ἐπέσκηπτεν ἐμοὶ καὶ Διονυσίῳ τουτῳί, τῷ ἀδελφῷ τῷ αὐτοῦ, καὶ τοῖς φίλοις πᾶσι τιμωρεῖν ὑπὲρ αὐτοῦ Ἀγόρατον· καὶ τῇ γυναικὶ τῇ αὐτοῦ ἐπέσκηπτε, νομίζων αὐτὴν κυεῖν ἐξ αὐτοῦ, ἐὰν γένηται αὐτῇ παιδίον, φράζειν τῷ γενομένῳ ὅτι τὸν πατέρα αὐτοῦ Ἀγόρατος ἀπέκτεινε, καὶ

κελεύειν τιμωρεῖν ὑπὲρ αὐτοῦ ὡς φονέα ὄντα.
(Lysias xiii, 41-42)

Arnaldo Biscardi suggests that this request for vengeance was a function of Dionysodorus' will (67). It is, however, specifically stated that Dionysodorus' will related to τὰ οἰκεῖα, and since it is not specifically stated that the request to take vengeance upon Agoratus was part of the will, but is reported by the verb ἐπισκήπτω it seems best to assume that it was not included in the will. Indeed, even if the request had not been made, it was the duty of a murder victim's male relatives to take vengeance upon the murderer (68). Dionysodorus' solemn injunction can be regarded as a διαθήκη, not in the sense of a will, but as a solemn compact or covenant (69). The solemnity of the command is indicated by the use of the verb ἐπισκήπτω. Such an injunction would have been a covenant between two parties, because one party demanded that vengeance be taken, and the other carried out the demand by prosecuting Agoratus for murder. Thus, Dionysodorus made two διαθῆκαι, one was a will, the other was a solemn covenant, firstly with his friends and relatives to avenge his murder, and secondly with his wife to tell her child, if she was pregnant, that Agoratus was his father's murderer.

The will mentioned in Hyperides ii (70)

The will mentioned in this speech was probably made at the latest in 336, the year of Dioxippus' victory at the Olympic games, since this was when the testator's widow re-married (71).

The text of Hyperides ii, For Lycophron is very ~~corrupt~~ fragmentary, so any attempt to reconstruct the function of the will referred to therein is based on the fragments which remain, and, to a certain extent, on the reconstructions which have been made with regard to the text.

It is not known for certain what the name of the testator was. The names Chremes and Charisandrus have been put forward, but neither of these suggestions is compatible with evidence from the text (72). Lycophron was charged with adultery with the testator's wife, and this speech is his defence. The woman was pregnant at the time of her husband's death, and this accusation calls the child's legitimacy into question.

The first indication of the function of the will in this speech is found in the following:

. . . . . ὁ Εὔ[φημος] ... πρ]ῶτον . . . . ἐπε]ὶ δὴ
ἐτε[λεύτησεν ἐκ]εῖνος . . . . . ρος ὁ Φλυ[εὺς] . . . .
ἐξ αὐτοῦ . . . . . (73)
. . . . . ὅτι ἡ γυν[ὴ] . . . . . τον καὶ το[. . . .]το
ἐκεῖνος [κυοῦ]σαν τὴν γυνα[ῖκα ἐξ] αὐτοῦ

καταλέ[λοιπε]ν, οὐ παρὰ τοὺς ν[όμο]υς γενόμενον.

(Hyp. ii, frag. iv, cols 46-47)

Here, there is a connection between a certain Euphemus and the testator, who is referred to in the words

ετε[λεύτησεν ..... φη̄υ[εὺς].

It seems as if it is with Euphemus that the testator leaves his wife when making his will on his deathbed (ἐτελεύτησεν ἐκ̣εῖνος), since it is later stated that certain relatives tried to eject him from the estate, which indicates that he must have taken up residence there (74). The speaker states that this was in accordance with the laws (οὐ... γενόμενον) , and the fact that the wills of Demosthenes (I), Pasio and Diodotus contain a similar clause (75) indicates that this is so.

The identity of Euphemus is uncertain. Blass has suggested that he was the brother of the woman (76), but, as Burtt and Curtis rightly state, this is improbable because the speech suggests that Dioxippus, her brother, attended her second marriage because he was the only one suitable to give her away (77). Therefore, they suggest that Euphemus was probably a friend of the deceased (78), and because of the reason mentioned above, this suggestion seems more probable than that put forward by Blass. The matter can be further elucidated by referring to certain other wills made by men with families.

In the will of the elder Demosthenes, three men are asked to act as guardians for his two children and two of these are relatives of the testator; Aphobus, who was supposed to marry the testator's wife and live with the children, was his nephew and Demophon was also his nephew. When mentioning the appointment of the third man, Therippides, the speaker states specifically that he was a friend of the testator since boyhood (79). When leaving on a military campaign, Diodotus places his family in the care of his brother, Diogeiton, who is also the father of his wife (80). On the other hand, Pasio does not appoint a relative as the guardian of his young son, Pasicles, but a trusted freedman of his named Phormio who is to also marry his wife (81). This might be explained by the fact that Pasio was a freedman himself, and as such might not have been able to trace his relatives, or those that he knew about might have been slaves. Therefore, it seems equally probable when looking at the terms of other testaments, that Euphemus was a relative of the testator, if only a fairly distant one.

Later in the speech, there is mention of this Euphemus providing the woman with a dowry:

...ἥ εὐθὺς ἐξεδόθη τάλαντον ἀργυρίου προσθέντος αὐτῇ Εὐφήμου, δῆλον ὅτι οὐ διὰ πονηρίαν, ἀλλὰ δι' ἐπιείκειαν;

(Hyp. ii, 13) (ἥ refers to the testator's wife).

Here, the word πονηρίαν implies that it has been alleged that Euphemus supplied the dowry out of base motives. Maybe the opposing party suggested that Lycophron had made a form of compact with Euphemus in which the latter was promised some sort of financial gain if he did this. In view of this possibility, it is likely that if a dowry of one talent of silver had been specified in the will of the woman's husband, such a clause could have been used in Lycophron's favour, and he could have made a reference to it in order to answer the accusation. However, this is not done. It is stated that Euphemus dowered the girl because of his ἐπιείκειαν. This is translated in the Loeb text as "kindness", (82) and rendered as such it implies that Euphemus provided the money from his own estate. This also suggests that no provision at all was made for the woman with respect to dowry in the will. However, this is contrary to other evidence found in the terms of wills made by men with families. In these documents, if there is a surviving wife, provision is generally made for her dowry, (83). The only possible exception is the will of Conon, but it is very likely that this was also done here (84). In addition, Epicurus provides for the dowry of a female dependant in his will, but leaves the amount to the discretion of his heirs (85). The word ἐπιείκειαν can also mean "fairness", and this translation combined with the evidence from other wills suggests that the testator had not specified a particular sum in his will, but stated that Euphemus could dower the woman from the estate as he thought was fitting, in a clause rather similar to that in Epicurus' testament.

The woman was married as soon as the dowry was provided for her (ἢ... Εὐφήμου). It is unlikely that she would have been pregnant at the time of her second marriage since such an arrangement would not have been very practical (86). It is therefore more probable that she would have been married after giving birth to the child, and its care would then be the responsibility of Euphemus, who would arrange for its care on the father's estate (87). That it was not usual for children to live apart from their mother is indicated by the fact that the children of Diodotus were evidently separated from their mother after she re-married (88).

Subsequent events suggest that the will contained a secondary bequest:

[εἰ δ', ὥσ]περ Ἀρίστων ἐ[ν τῇι ε]ἰσαγγελίαι γρά[φει], οὕτως ὑπέλα[βον τ]ὰ περὶ το[ύτων εἶν]αι, οὐκ ἔδει δήπ[ου αὐτοὺς κωλύειν [τοὺς ἐγγυ]τάτω γένους ἐξά]γειν τὸν Εὔφ[η]μον, ἀλλ' ἐᾶν· νῦν δὲ τοῦτο ποιήσαντες ἔργῳ μεμαρτυρήκασιν αὐτοί, ὡς ψευδής ἐστιν ἡ αἰτία κατ' ἐμοῦ. πρὸς δὲ τούτοις πῶς οὐκ ἄτοπον, εἰ μέν τι ἔπαθεν τὸ παιδίον ἢ γιγνόμενον ἢ καὶ ὕστερον ταύταις ταῖς διαθήκαις ἰσχυρίζεσθαι ἂν αὐτοὺς ἐν αἷς . . . . .
(Hyp. ii, frag 4, col. 47)

There have been various interpretations of these events concerning what they suggest was included in the will.

Curtis states that "a certain Euphemus, probably a friend of the husband, was to oversee the estate with the proviso that if the child died, the inheritance was to be returned to the husband's family. About three years later, when the child's good health lessened this possibility, certain relatives initiated legal proceedings against Lycophron in an attempt to prove him guilty of adultery and the actual father of the child, their ultimate purpose being to prove the will invalid, in which case the inheritance must revert to the family" (89). However, this does not explain the fact that the speaker's opponents, who were probably not the closest relatives and would not inherit if the will did state that the estate would revert to the intestate heirs, did not join with the latter in trying to eject Euphemus, but chose instead to rely upon the will.

Colin is a little more specific, he states that if the child were to die, the fortune would go to the relatives by marriage (parents par alliance); after the testator's death, the nearest relatives questioned the will, but those further removed did not do so, because they kept in mind the fact that they might inherit eventually, and that it was probably all these relatives who instituted the case against Lycophron in the hope of rendering the will invalid (90). However, Colin does not take account of the fact that if those who were not most closely related to the testator were to succeed in having the will declared invalid, they would not gain anything, because the property would be inherited by the closest relatives.

In addition, it seems unlikely that those who stood to inherit in the event of the child's death were relatives by marriage and thus belonged to the woman's family, because of the nature of the charge brought, since it would bring shame on the whole family. It is therefore more likely that even the more distant relatives were from the husband's family.

Burtt suggests that "certain relatives" (he does not specify whether close or distant) were to inherit the property in the event of the child's death. These relatives accepted the will, but others disputed it; three years later all the relatives joined together in an attempt to prove the child illegitimate (91). It is implied here that all the relatives involved were equally close to the testator, since they would all gain something if the child were to be declared illegitimate. However, this does not explain why they were divided over the question of the will's validity.

Therefore it is necessary to re-examine the evidence from fragment four in order to attempt to reconstruct what was written in the will.

If we are to believe the restoration, it seems as if there was an attempt to eject Euphemus by the closest relatives ([τοὺς ἐγγυ]τάτω γένους[ς]). The verb ἔξαγειν implies that Euphemus was living on the testator's estate and he had to be removed. Since he had been appointed guardian of the testator's wife and child by will, this attempt at ejection would have taken the form of attacking the validity of the will (92), since if the will were to be found invalid, then Euphemus would no

longer be residing on the testator's estate because his guardianship would cease. The fact that the speaker's opponents opposed (κωλύειν) this attempt suggests that they were not in the same kinship group as those who contested the will, and as such would not gain anything if the will were to be declared invalid. The fact that they relied on the will becoming operative also if the child were to die (εἰ μέν τι ... αὐτούς) suggests that there was a second clause by which they stood to inherit the testator's property on the child's death. It is very probable that this clause was included according to the law quoted in [Dem.] xlvi, 24, in which a man with legitimate sons could bequeath his property by will if his children were to die while still minors or two years after attaining their majority (93). Since there was more than one opponent to the speaker, as indicated by the plural αὐτούς , it is very unlikely that this clause provided for an adoption, but was a straightforward bequest of property. In view of the lack of evidence, it cannot be stated how the testator wished the property to be divided between these heirs, but unless he had stated otherwise in his testament, it would have been shared equally between them (94). Since these people would not have anything to gain if the will were declared invalid, but would rely on the child being declared illegitimate for the secondary clause in the will to come into effect, they would not seek to nullify the document.

Therefore, from the available evidence, it seems as if the will mentioned in Hyperides, ii provided for the guardianship of the testator's child after its birth and for the care of his wife; no specific sum was set aside for the dowry but this was probably left to the judgement of Euphemus who would most likely deduct the sum from the testator's estate; there was probably also another clause in which relatives more distant than those who would inherit in accordance with the laws of intestate inheritance would receive the property if the child were to die before two years after coming of age.

Diodotus

Diodotus was enlisted to serve under Thrasyllus in the Peloponnesian war. His will was made before he sailed to Asia in the archonship of Glaucippus (410/409). Therefore the document can be dated at 410/409 (95).

The will of Diodotus is mentioned in Lysias xxxii, which has been preserved in part by Dionysius of Halicarnassus (96). The testator, Diodotus, gave his will to his brother Diogeiton, just before setting out on military service:

διαθήκην αὐτῷ δίδωσι καὶ πέντε τάλαντα ἀργυρίου παρακαταθήκην· ναυτικὰ δὲ ἀπέδειξεν ἐκδεδομένα ἑπτὰ τάλαντα καὶ τετταράκοντα μνᾶς . . . , διςχιλίας δὲ ὀφειλομένας ἐν Χερρονήσῳ. ἐπέσκηψε δέ, ἐάν τι πάθῃ, τάλαντον μὲν ἐπιδοῦναι τῇ γυναικὶ καὶ τὰ ἐν τῷ δωματίῳ δοῦναι, τάλαντον δὲ τῇ θυγατρί. κατέλιπε

⟨δὲ⟩ καὶ εἴκοσι μνᾶς τῇ γυναικὶ καὶ τριάκοντα στατῆρας Κυζικηνούς.

(Lysias, xxxii, 5-6) (αὐτῷ refers to Diogeiton)

In this passage, five talents in deposit are given with the will. Presumably this money is to be repaid to Diodotus on his return or given to his son on coming of age. The verb ἀπέδειξεν indicates that the financial documents were not sealed as part of the will, since Diodotus shows them to Diogeiton. In addition, the will would have been sealed, and the seals of a will were broken and the will read on the death of the testator (97), whereas in the case under discussion, it would have been necessary for Diogeiton to have access to the financial documents while his brother was away on military service, so that the property could be administered in his absence, even if he were to return alive. That these documents were later sealed is indicated by the fact that further on in the speech they are referred as τὰ γράμματα - - - σεσημασμένα, (Lysias, xxxii, 7). Therefore, the terms of the will are those mentioned after ἐπέσκηψε δέ . There is no evidence whether the contents of the will are read out or shown to Diogeiton, but Diodotus commands (ἐπέσκηψε) his brother to carry out his wishes. The words ἔάν τι πάθῃ indicates that the demands to be made are those written in the will, since they are to be carried out after his death. By means of this will, both the testator's wife and daughter are to be dowered with a talent each (98).

In addition the wife is to receive also the goods in the room (τὰ ἐν τῷ δωματίῳ). This is presumably to be given to her in event of death and not as part of the dowry since these words are the object of δοῦναι not ἐπιδοῦναι . It is possible that this furniture might have been part of the property the woman had brought with her on marriage, but this is a matter which is open to conjecture since there is no evidence. The wife is also bequeathed twenty minae and thirty staters (99). There is no complaint that this property and money was not given into the care of Hegemon, the woman's second husband, after their marriage (100). However, Diogeiton only paid five thousand drachmae of her dowry and kept the other thousand:

τὴν δὲ μητέρα αὐτῶν ἐκδίδωσιν ἐπιδοὺς πεντακισχιλίας δραχμάς, χιλίαις ἔλαττον ὧν ὁ ἀνὴρ αὐτῆς ἔδωκεν.

(Lysias, xxxii, 8)

In this quotation no mention is made of the furniture and the thirty staters and twenty minae bequeathed to her by Diodotus as being part of the dowry, and this is a further indication that it was a bequest independent of the dowry.

One notable absence from Lysias' account of Diodotus' will is that the testator does not include the nomination of a guardian in the terms given. It is implied that he entrusted his children to Diogeiton without formally asking him to be their guardian:

χρόνῳ δὲ ὕστερον καταλείπει Διόδοτος [μετὰ Θρασύλλου] τῶν ὁπλιτῶν, καλέσας τὴν ἑαυτοῦ γυναῖκα, ἀδελφιδῆν οὖσαν, καὶ τὸν ἐκείνης μὲν πατέρα, αὐτοῦ δὲ κηδεστὴν καὶ ἀδελφὸν [ὁμοπάτριον], πάππον δὲ τῶν παιδίων καὶ θετόν, ἡγούμενος διὰ ταύτας τὰς ἀναγκαιότητας οὐδενὶ μᾶλλον προσήκειν δικαίως περὶ τοὺς αὐτοῦ παῖδας γενέσθαι, ...

(Lysias, xxxii, 5)

In this quotation, the very close relationship which Diogeiton has with Diodotus (brother and father-in-law) and his relationship with Diodotus' children (uncle and grandfather) are stated in order to emphasise the fact that he was the obvious choice for the children's guardian. The words διὰ ταύτας τὰς ἀναγκαιότητας indicate that the obligation was not one of law but of relationship. Furthermore, since Diodotus left his wife and children in the care of his brother Diogeiton for the duration of his military service he might have just assumed that Diogeiton would continue this care if he were to die on campaign, and so did not write this in his will.

Thus, the function of the will of Diodotus was to arrange the dowry of the testator's wife and daughter and to bequeath some money and property to the wife.

Demosthenes (I)

The year of the elder Demosthenes' death has been discussed in detail elsewhere (101), and occurred at the latest in 376/5.

His will was made just before he died, and thus can be dated at either 377/6 or 376/5.

The elder Demosthenes also made his will while his children were still minors, but unlike Diodotus, he made it while he was ill and not before setting out on campaign. Demosthenes (II) admits that he has not seen this will (102), so in attempting to assess what was contained in the document, it is necessary to be mindful of the fact that the orator relied upon the evidence of his mother (103).

Since the elder Demosthenes was dying at the time he made his will, it was necessary for him to appoint a person or several people to look after his property and family:

βουλευόμενος δὲ περὶ ἡμῶν, ὅτ' ἔμελλε τελευτᾶν, ἅπαντα ταῦτ' ἐνεχείρισεν Ἀφόβῳ τε τουτῳὶ καὶ Δημοφῶντι τῷ Δήμωνος υἱεῖ, τούτοιν μὲν ἀδελφιδοῖν ὄντοιν, τῷ μὲν ἐξ ἀδελφοῦ, τῷ δ' ἐξ ἀδελφῆς γεγονότοιν, ἔτι δὲ Θηριππίδῃ τῷ Παιανιεῖ, γένει μὲν οὐδὲν προσήκοντι, φίλῳ δ' ἐκ παιδὸς ὑπάρχοντι.

(Dem. xxvii, 4) A

ὁ γὰρ πατήρ, ὦ ἄνδρες δικασταί, ὡς ἠσθετο τὴν νόσον οὐκ ἀποφευξόμενος, συγκαλέσας τούτους τρεῖς ὄντας καὶ συμπαρακαθεσάμενος Δήμωνα τὸν ἀδελφόν, τὰ

σῶμαθ' ἡμῶν εἰς τὰς χεῖρας ἐνέθηκεν
παρακαταθήκην ἐπονομάζων.

(Dem. xxviii, 15) B

(In this quotation the words τούτους τρεῖς ὄντας refer to Aphobus, Demophon and Therippides).

The first quotation is the beginning of the narrative section of Demosthenes' first speech against Aphobus and as such is more factual and has less πάθος than the second quotation. In A the relationship of the guardians to the deceased is stated. Aphobus and Demophon are both nephews of the testator and Therippides is a friend of long standing. This is similar to the account of the occasion when Diodotus asks Diogeiton to care for his family, since in both cases the relationship of the picked guardian or guardians is stated. The words ἅπαντα ταῦτ' refer to both the elder Demosthenes' property and his dependants, and the word ἐνεχείρισεν indicates that he is giving them over to the care of Aphobus, Demophon and Therippides. In quotation B, the scene is a little more emotional than that described in A. Here, the elder Demosthenes describing his children and wife as a "deposit" (παρακαταθήκην) and, later in the scene, Demosthenes states that he was physically placed on Aphobus' knees:

κἀμ' εἰς τὰ τούτου γόνατα τιθείς
(Dem. xxviii, 16)

This alleged action of physically giving his little son to Aphobus would have a greater emotional impact on the jury than the description of the scene in passage A. Furthermore, another witness to the scene is introduced, namely Demosthenes' uncle, Demo, a person who is not included as a witness in xxvii (104).

The elder Demosthenes also made provisions for the dowries of his wife and daughter, and nominated a husband for each of them:

Δημοφῶντι δὲ τὴν ἐμὴν ἀδελφὴν καὶ δύο τάλαντ' εὐθὺς ἔδωκεν ἔχειν, αὐτῷ δὲ τούτῳ τὴν μητέρα τὴν ἐμὴν καὶ πρὸς ὀγδοήκοντα μνᾶς, καὶ τὴν οἰκίαν ⟨οἰκεῖν⟩ καὶ σκεύεσι χρῆσθαι τοῖς ἐμοῖς, ἡγούμενος, καὶ τούτους ἄν ἔτ' οἰκειοτέρους εἰ μοι ποιήσειεν οὐκ ἂν χεῖρόν μ'ἐπιτροπευθῆναι ταύτης τῆς οἰκειότητος προσγενομένης.
(Dem. xxvii, 5) (αὐτῷ δὲ τούτῳ refers to Aphobus)

τὴν μὲν ἀδελφὴν Δημοφῶντι καὶ δύο τάλαντα προῖκα δοὺς εὐθύς, καὶ γυναῖκ' αὐτῷ ταύτην ἐγγυῶν, ...

(Dem. xxviii, 15)

καὶ τούτῳ τὴν τ' ἐμὴν μητέρ' ἐγγυῶν ἐπὶ ταῖς ὀγδοήκοντα μναῖς

(Dem. xxviii, 16) (τούτῳ refers to Aphobus)

In these quotations, there is a difference in the words used for the betrothal. In xxvii, δίδωμι is used, whereas in xxviii, ἐγγυῶ is used. The only other testament in which a marriage is arranged between the testator's wife and someone else, the verb used is δίδωμι (105). It is therefore possible that ἐγγυῶ was the word used by the elder Demosthenes when he was telling those present of the terms of his will, but he actually wrote δίδωμι in the διαθήκη as Pasio did. There is, however, a passage in Menander's Dyskolos in which both ἐγγυῶ and δίδωμι are used:

τοιγαροῦν ἔγωγέ σ[ο]ι
ἐγγυῶ, δίδωμι πάντων [τῶ]ν θεῶν ἐναντίον
ἐνεγκεῖνος † δίκαιόν ἐστι π.[.]θη †, Σώστρατε.

(Menander, Dyskolos, 761-763)

The precise meaning of this passage is uncertain, because the text is corrupt, but it is specifically stated here that Cnemon's daughter is to be betrothed to Sostratus, and the words used to denote this are both ἐγγυῶ and δίδωμι However, later in the play, only ἐγγυῶ is used with reference to the betrothal (106). It is, therefore, difficult to state which word was used in the will, because of lack of evidence. Whichever word was used, this will indicates that one was allowed by law to dispose of one's womenfolk in marriage in a will.

Harrison states that the disposal of the testator's wife and daughter in marriage was "mortis causa" even though it took place "inter vivos", and therefore it could be thought that the ἐγγύη did not become operative until after the testator's death (107). The use of the present participle ἐγγυῶν does imply, however, that the ἐγγύη took place "inter vivos", and therefore it was probably the γάμος which was meant to take place after the elder Demosthenes' death. If the testator were to recover suddenly after contracting the ἐγγύη, it is very unlikely that Aphobus would have refused to give him back his wife.

The dowry which is given to Aphobus with Cleoboule, the testator's wife, is larger than the dowry she had brought the elder Demosthenes (108). Aphobus is also given the use of the house and furniture of his ward (τὴν οἰκίαν . . . ἐμοῖς), this is unusual, since it was the normal practice in Athens for the bride to move into her husband's home, not the other way round (109), but maybe the testator envisaged Aphobus living in his house with Cleoboule and his children, and moving back into his own house once Demosthenes had come of age. However, even though Aphobus took the dowry, the marriage never took place. The reason for this is not certain. It is implied that she refused to marry Aphobus:

οὐ μόνοι παῖδες ἐσμεν αὐτῇ, δι' οὓς κατεχήρευσε τὸν βίον, ...

(Dem. xxix, 26) (110)

This quotation suggests that Cleoboule gave herself up to a life of widowhood (κατεχήρευσε) because of her children. If this statement is true, then one might assume that a woman had the right to refuse the man her κύριος had chosen for her (111). It was, however, most unusual for a woman in Athens to choose her husband (112), and there is no other example in Greek literature of a woman refusing to marry the man picked for her, although there is an example of a woman allegedly refusing to have sexual intercourse with her husband (113). Therefore, if Aphobus had wished to marry her, even if she did not agree with this, she would have been compelled to have married him in accordance with the terms in the will. Thus, the phrase is probably not a true statement of fact but an example of hyperbole used to add dramatic effect to Cleoboule's oath.

In addition to not marrying Cleoboule, it is stated that Aphobus refused to maintain her, even though he was in possession of her dowry:

οὐ γὰρ διδόντος τούτου σῖτον τῇ μητρί, τὴν προῖκ' ἔχοντος.

(Dem. xxvii , 15)

The dowry given to a woman's husband on marriage was specifically meant to provide her with some sort of maintenance (114). Even though Aphobus did not marry Cleoboule, since he had taken her dowry, he was supposed to have maintained her. The word σῖτον in this quotation suggests that he even refused to give her food. If this is so, where did she obtain this from? One possibility is that she actually went to live with her sister and

brother-in-law, Democharès, who later had an altercation with Aphobus. However, Demosthenes does not specifically state that this happened, and such a statement would have had a very effective emotional impact upon the jury. Furthermore, if this had happened, it might have been possible for Democharès to bring a δίκη βίου against Aphobus on behalf of Cleoboulè (115). It is more probable that Aphobus had attempted to deprive her of some of her jewellery, as is indicated in his reply to Demosthenes:

καὶ ἔτι μικρὸν ἔφη πρὸς τὴν ἐμὴν μητέρα περὶ χρυσιδίων ἀντιλέγεσθαι.

(Dem. xxvii, 15)

Although it was morally wrong of Aphobus to have done this, it was not quite as bad as if he had deprived her of food.

Demophon is given Demosthenes' sister with a dowry which is far larger than that given to Aphobus; he has two talents, whereas Aphobus has only eighty minae. This is very different from the will of Diodotus in which both mother and daughter are given the same amount of money as a dowry, and the wife receives some furniture and a monetary bequest as well (116). Demophon is to receive the dowry immediately (εὐθύς), although, since the girl is only five at her betrothal, at least nine years would have to pass before her marriage. It is possible that this was done in order to ensure that Demophon would marry her when she came of age.

However, he did not do this, and furthermore, he neglected to marry her to another man with the dowry specified by her father (117).

Another clause of the will contained a bequest to Therippides:

κἀκείνῳ μὲν ἔδωκεν ἐκ τῶν ἐμῶν ἑβδομήκοντα μνᾶς καρπώσασθαι τοσοῦτον χρόνον, ἕως ἐγὼ ἀνὴρ εἶναι δοκιμασθείην, ὅπως μὴ δι' ἐπιθυμίαν χρημάτων χεῖρόν τι τῶν ἐμῶν διοικήσειεν.

(Dem. xxvii, 5)

The alleged reason for this bequest is that the elder Demosthenes was afraid that greed might otherwise tempt Therippides to mismanage the estate. However, this credits the testator with incredible foresight and incredible stupidity, for if he had thought that Therippides was not an honest man, it is unlikely that he would have been placed in such a responsible position. It is more likely that the elder Demosthenes included this clause in this will to compensate Therippides for the trouble which he was hopefully going to take caring for his wards' estate.

Another function of this will was an inventory of property:

ἐν γὰρ ἐκείναις ἐγέγραπτο, ὥς φησιν ἡ μήτηρ, ἃ κατέλιπεν ὁ πατὴρ πάντα,...

(Dem. xxvii, 40)

The damaging admission that Demosthenes has not seen his father's will is left until after he has given an extremely detailed inventory of the property in the previous thirty chapters. If this admission had been made earlier, it would have been detrimental to his case. The words ὥς φησιν ἡ μήτηρ indicate that the inventory given relied on evidence from Cleoboule. This indicates that she was acquainted with the details of her husband's property, like Diodotus' wife and Polyeuctus' wife (118). This property was worth approximately thirteen and a half talents (119). The ὑπόμνηματα mentioned in xxviii, 6 did not contain a complete inventory of the property:

ἐν οἷς πολλὰ τῶν καταλειπομένων οὐκ ἐγέγραπτο,...

(Dem. xxviii, 6)

These might have been similar to the documents which were sealed and deposited with Diodotus' will, and which contained information about certain loans. Another example of this can be found in Demosthenes, xli, where papers noting property matters are left by the wife of Polyeuctus and are sealed and deposited with a certain Aristogenes (120). In both of these examples, the papers concerned only contained details about particular property matters and were not complete inventories.

Demosthenes also alleges that his father wrote instructions concerning the letting of his property in his will:

ἐν γὰρ ἐκείναις ἐγέγραπτο, . . . τὸν οἶκον ὅπως μισθώσουσι.
(Dem. xxvii, 40)

ἐπισκήπτων μισθῶσαί τε τὸν οἶκον.
(Dem. xxviii, 15)

Sometimes, if guardians felt unable to oversee the management of the estate they were to care for, it would be leased out to someone else who would pay rent for it and keep the proceeds (121), thus they would be able to make a profit on the estate without having to do much. In these quotations, the word οἶκον does not refer to the actual family home, since Aphobus will be living in this (122), but to the business properties belonging to the elder Demosthenes, such as the sofa-making factory. The word ἐγέγραπτο suggests that the testator had written specific instructions about how and on what conditions the properties were to be let, and the verb ἐπισκήπτω indicates that the elder Demosthenes definitely wished this to be done. On the other hand, Aphobus stated that the deceased specifically ordered him not to lease the property because his father Gylon had been a debtor to the state, and if the property were thrown open to μίσθωσις οἴκου , its value could not be concealed (123). Since the alleged debt would have been inherited, a prosecution for debt (ἀπογραφή) might have been brought, resulting in confiscation of property (124).

However, the guardians placed Demosthenes in the position of ἡγεμὼν συμμορίας with a tax liability of three talents, one fifth of the total estate (125), thus suggesting that his estate was worth fifteen talents. By doing this they made public the value of the property, and if Aphobus' argument that the debt owed by Gylon was still unpaid was true, a prosecution could still have been brought. It is not made clear in the text when the guardians placed Demosthenes (II) as ἡγεμὼν συμμορίας , but if this was done soon after the death of Demosthenes (I), they may have thought that Demosthenes (II) would not realise or remember this fact. On the other hand, by the process of μίσθωσις οἴκου , they would have no control over the property unless they themselves were to bid for the lease, and even then, it would have been difficult for them to manage the property for their own benefit, since its value had to be declared on handing it over to the owner when he came of age (126). It is therefore very probable that the elder Demosthenes did indeed ask the guardians to lease the estate, but they did not do so, not because they wished to conceal its true value, since this was admitted by placing Demosthenes as ἡγεμὼν συμμορίας , but because they wished to keep some of it for themselves.

The third speech against Aphobus contains what might be regarded as being another clause of the elder Demosthenes' will. This speech is not part of the δίκη ἐπιτροπῆς which Demosthenes brought against his guardians but a defence of Phanus, who was charged by Aphobus with giving false testimony (127).

This testimony stated that a certain Milyas whom Aphobus had demanded for torture was not a slave but a freedman, and as such could not be tortured to give evidence (128). In this speech, it is stated that the elder Demosthenes freed Milyas on his deathbed:

ἐγὼ γὰρ, ὦ ἄνδρες δικασταί, καὶ περὶ τούτων ἠθέλησα τούτῳ παραδοῦναι βασανίζειν τὰς θεραπαίνας, αἳ τελευτῶντος τοῦ πατρὸς μνημονεύουσιν ἀφεθέντα τοῦτον ἐλεύθερον εἶναι τότε. καὶ πρὸς τούτοις ἡ μήτηρ κατ' ἐμοῦ καὶ τῆς ἀδελφῆς, οἳ μόνοι παῖδές ἐσμεν αὐτῇ δι' οὓς κατεχήρευσε τὸν βίον, πίστιν ἤθελεν ἐπιθεῖναι παραστησαμένη, τὸν ἄνθρωπον τοῦτον ἀφεῖναι τὸν πατέρ' ἡνίκ' ἐτελεύτα, καὶ νομίζεσθαι παρ' ἡμῖν τοῦτον ἐλεύθερον·

(Dem. xxix , 25-26)

In this quotation, the persons who witnessed the manumission of Milyas were some slave girls and Cleoboule, it is not stated that the guardians were present, whereas they acted as witnesses to the will (129). Furthermore, as soon as Milyas is freed, he is regarded as such by the family, but if this had been done by will, Milyas would have been manumitted after the death of the testator, as happens in the wills of the peripatetic philosophers (130). Thus, Milyas was not freed by will, but "inter vivos".

Therefore, the will of the elder Demosthenes functioned as a document giving instructions for the care of both family and property. The security of the testator's womenfolk was provided for by the arrangement of both dowries and their future partners in marriage. It also contained a bequest to Therippides to repay him for the trouble he was supposed to take helping to manage the estate. The will also allegedly contained an inventory of property and instructions concerning the letting of the estate.

Pasio

The will of the banker Pasio is recorded in Demosthenes, xxxvi and [Demosthenes], xlv and xlvi. The first of these speeches was made in defence of Phormio who was the testator's freedman. The second two were speeches for the prosecution of Stephanus for bringing false witness on behalf of Phormio.

The will of Pasio was made shortly before his death during the archonship of Dysnicetus in 371/70 (131), and unlike the cases concerning the estates of Diodotus and the elder Demosthenes, no family scenes are described in the speeches concerning Pasio's testament.

Like the elder Demosthenes, Pasio arranged a marriage for his wife, and provided a dowry for her:

ΔΙΑΘΗΚΗ

Τάδε διέθετο Πασίων Ἀχαρνεύς· δίδωμι τὴν ἐμαυτοῦ γυναῖκα Ἀρχίππην Φορμίωνι, καὶ προῖκα

ἐπιδίδωμι Ἀρχίππῃ τάλαντον μὲν ἐκ Πεπαρήθου, τάλαντον δὲ τὸ αὐτόθεν, συνοικίων ἑκατὸν μνῶν θεραπαίνας καὶ τὰ χρυσία, καὶ τἄλλα ὅσα ἐστὶν αὐτῇ ἔνδον, ἅπαντα ταῦτα Ἀρχίππῃ δίδωμι.

([Dem.] xlv, 28

This quotation seems to be only part of the διαθήκη of Pasio, since other clauses which were included in his will are not mentioned here. The reason for choosing Phormio as Archippe's future husband was that he would be more closely linked with the family and thus more inclined to care for the property (132), and carry out his duties as co-guardian of Pasicles (133). The wording of this section of the will is ambiguous, since δίδωμι might not be regarded as being the equivalent of ἐπιδίδωμι. Schaps finds it difficult in this case to discern "where the dowry ends and the gift to Archippe begins" (134). However, Watkins states that a syntactic phenomenon of Greek is the "iteration of a compound verb in a succeeding clause or sentence by the simple verb alone, but with the semantic force of the compound" (135). If this is applicable to the text of Pasio's will, it is probable that the items listed formed Archippe's dowry. Indeed, Apollodorus does not distinguish between his mother's dowry and trousseau, but treats the property mentioned as the former (136). Asheri states that this dowry constituted "a great part" of Pasio's property, and that this will indicates that by the fourth century one was legally empowered to bequeath such a large sum away from one's legitimate son (137).

It is true that the dowry given to Archippe is a comparatively large one (138), but since Pasio's estate was worth approximately sixty six talents at his death (139), Archippe's dowry was not the large proportion of the property which Asheri says it was (140), for Apollodorus himself puts the total value of the dowry at five talents. Such a large dowry did not render Apollodorus penniless as he alleges (141), since he was capable of performing various liturgies (142).

According to Apollodorus, the marriage to Archippe took place while he was absent from Athens on a trierarchy (c. 369/8) (143), and therefore took place a little while after Pasio's death. However, it is also suggested that Phormio first married Archippe and then took over the guardianship of Pasicles, Pasio's younger son (144):

Ἐπειδὴ τοίνυν ὁ Πασίων ἐτελεύτησε ταῦτα διαθέμενος, Φορμίων οὗτος τὴν μὲν γυναῖκα λαμβάνει κατὰ τὴν διαθήκην, τὸν δὲ παῖδ' ἐπετρόπευεν.

(Dem. xxxvi, 8)

In this quotation the fact that the marriage is mentioned first suggests that it took place before Phormio began to act as Pasicles' guardian. However, it would have been essential for Phormio to assume guardianship over Pasicles immediately, so that he could provide for his needs, but it might well have been more tactful to wait a little while before marrying Archippe, since it seems as

if Apollodorus did not approve of the match. Later in Demosthenes xxxvi, it is stated that Pasio took this step for financial reasons:

διόπερ Πασίων ὁ πατὴρ ὁ ἐμὸς οὐ πρῶτος οὐδὲ μόνος, οὐδ' αὐτὸν ὑβρίζων οὐδ' ὑμᾶς τοὺς υἱεῖς, ἀλλὰ μόνην ὁρῶν σωτηρίαν τοῖς ἐαυτοῦ πράγμασιν, εἰ τοῦτον ἀνάγκη ποιήσειεν οἰκεῖον ὑμῖν, ἔδωκε τὴν ἐαυτοῦ γυναῖκα, μητέρα δ' ὑμετέραν τούτῳ.

This quotation indicates that the marriage was arranged for the safeguard of Pasio's estate (ἀλλὰ...πράγμασιν) and that this was not the first time this had happened (οὐ πρῶτος οὐδὲ μόνος) (145). This was because one had to be competent in order to be able to manage a bank, "with the direction of a bank, as with no other form of inheritable property, an acute conflict was liable to arise between the claims of heredity and the requirements of professional competence, and a satisfactory solution was to be reached only if the latter had the upper hand" (146). Phormio was bought as a slave, but by 373 he had become cashier of the bank (147). The bank was not bequeathed to Phormio, but he was given the lease of it (148). This lease was not part of the will, but was handed to Phormio before Pasio's death, presumably when the testator became too ill to manage the business himself in 371/0 (149). The terms of the lease of the bank are quoted in the first speech against Stephanus:

ΜΙΣΘΩΣΙΣ ΤΡΑΠΕΖΗΣ

Κατὰ τάδε ἐμίσθωσε Πασίων τὴν πράπεζαν Φορμίωνι· μίσθωσιν φέρειν Φορμίωνα τῆς τραπέζης τοῖς παισὶ τοῖς Πασίωνος δύο τάλαντα καὶ τεττεράκοντα μνᾶς τοῦ ἐνιαυτοῦ ἑκάστου, χωρὶς τῆς καθ' ἡμέραν διοικήσεως· μὴ ἐξεῖναι δὲ τραπεζιτεῦσαι χωρὶς Φορμίωνι, ἐὰν μὴ πείσῃ τοὺς παῖδας τοὺς Πασίωνος ὀφείλει δὲ Πασίων ἐπὶ τὴν τράπεζαν ἕνδεκα τάλαντα εἰς τὰς παρακαταθήκας

([Dem.] xlv, 31)

Here, the annual rent of two talents and forty minae is presumably to be taken from the profits of the bank. It is not stated in the lease what was to happen to the remainder of the profit, but presumably Phormio was entitled to keep this. As far as the rent was concerned, it is stated in xxxvi, 9 that half of it was given to Apollodorus, so presumably the other half was put aside for Pasicles. It is also stated that the two sons had to consent to the lease, but since Pasicles was under age when the document was drawn up, this clause refers in practice to Apollodorus. This consent must have been given because otherwise Phormio would not have been able to manage the bank. The last clause of the lease is rightly explained by Davies who states that because Phormio was a non citizen and could not distrain for the return of loans which were held on the security of land, the value of these loans was transferred to Pasiό's name as a debt to the bank (150).

Pasio's shield factory was also leased to Phormio (151), but the terms of this lease are not known. However, probably half of the profits from the shield factory were given to Apollodorus (152).

When Pasicles came of age, Phormio relinquished the lease of both these properties and Apollodorus took the factory and Pasicles the bank (153).

The will also contained a clause naming Phormio as co-guardian of Pasicles. The other guardian was a certain Nicocles (154). This is similar to the will of the elder Demosthenes where one of the guardians is betrothed to the testator's wife, and is thus in the position of step father to his ward. Even though Pasio's elder son Apollodorus was twenty four when his father died, this move was a wise one if the allegations of Apollodorus' extravagant expenditure are true (155). There was no complaint of maltreatment brought when Pasicles came of age, so it can be assumed that Phormio dutifully cared for the property in his charge.

Pasio also set out how the property was to be divided between his two sons:

ἁρπάζοντας δὲ τούτου καὶ πολλ' ἀπὸ κοινῶν ὄντων τῶν χρημάτων ἀναλίσκειν οἰομένου δεῖν, λογιζόμενοι πρὸς ἑαυτοὺς οὐ ἐπιτρόποι, ὅτι, εἰ δεήσει κατὰ τὰς διαθήκας, ὅσ' ἂν οὗτος ἐκ κοινῶν τῶν χρημάτων ἀναλώσῃ, τούτοις ἐξελόντας ἀντιμοιρεῖ τὰ λοιπὰ νέμειν, οὐδ' ὁτιοῦν ἔσται περιόν, νείμασθαι τὰ ὄνθ' ὑπὲρ τοῦ παιδὸς ἔγνωσαν.

(Dem. xxxvi, 8)

This quotation indicates that Pasio attempted to ensure that his eldest son had a means of income before the eventual partition of the estate (156). An equivalent amount would be deducted for Pasicles when it came to the time for dividing the estate (εἰ δεήσει . . . ἀντιμοιρεῖν τὰ λοιπὰ νέμειν), and the remainder would be divided equally. Because of Apollodorus' extravagance, however, the division had to be made before Pasicles came of age.

Pasio's will also contained a clause which bequeathed Apollodorus a lodging house worth sixteen minae (157):

ὅταν μὲν τοίνυν τὴν διαθήκην ἀρνῆται, ἐκ τίνος τρόπου πρεσβεῖα λαβὼν τὴν οἰκοδομίαν κατὰ τὴν διαθήκην ἔχει, τοῦτ' ἐρωτᾶτ' αὐτόν.

(Dem. xxxvi, 34)

The reason for this bequest, namely that Apollodorus was the elder of the two boys, is the only known example of primogeniture being regarded in Attic inheritance law (158). Usually, the inheritance was divided equally between however many sons there were (159). Maybe this was done to ensure that Apollodorus would have some source of independent income, and therefore might not have to make too many inroads into the remainder of the estate.

The primary function of Pasio's testament was therefore to ensure that his estate be cared for properly.

This was why he bequeathed Archippe to Phormio and why he placed Phormio and Nicocles in a position of guardianship over Pasicles. Even the clause bequeathing the lodging house to Apollodorus can be regarded as being a means of providing the young man with a private income other than the remainder of the estate.

Polyeuctus

There is no internal or external evidence in Demosthenes, xli by which one is able to date the will of Polyeuctus, except that the speech is regarded as an early work of Demosthenes (160). Demosthenes' legal career commenced when he was aged twenty one, in 363 or 364, and he probably ceased writing speeches in 346/5 (161). Since it is regarded as an early speech, it could be placed within the first half of this period, namely 364/3-354/3. The will was made just before Polyeuctus' death when he was seriously ill (162), and the case was brought soon afterwards.

The will of Polyeuctus is referred to in Demosthenes' speech xli. Polyeuctus had no sons but two daughters. He married the elder to the speaker with a dowry of forty minae and the younger to Leocrates, his wife's brother, whom he adopted as his son. Ten minae of the elder daughter's dowry was to be left unpaid until after the death of Polyeuctus when Leocrates was to become responsible for the debt. However following a family quarrel, Leocrates was divorced from Polyeuctus' daughter and he left the family. The girl was then re-married to Spudias.

The speech was made in an effort to recover both the dowry, and the debts owed by Spudias.

The will of Polyeuctus is said to have recorded the portion of the dowry due to the husband of the elder girl:

καὶ ὡς τελευτῶν διέθεθ' ὅρους ἐπιστῆσαι χιλίων δραχμῶν ἐμοὶ τῆς προικὸς ἐπὶ τὴν οἰκίαν.

(Dem. xli, 6)

In the above quotation it is not made clear who exactly was to have been responsible for the debt after Leocrates left the family. However, since pillars are to be set up on the estate recording the debt, it is possible that Polyeuctus intended the money to be deducted from his estate. The significance of the ὅροι is that the house was intended to act as the security for this debt (163), so that the house could not be sold until the outstanding dowry had been paid. This is the only example of a house being mortgaged by means of a will.

It is not stated specifically whether Polyeuctus included a record of the money Spudias owed him in his will:

ἕτερον δ', ὦ ἄνδρες δικασταί, δύο μὲν μνᾶς, ⟨ἃς⟩ ἐμαρτύρησεν Ἀριστογένης ἐγκαλεῖν ἀποθνῄσκοντα Πολύευκτον ὀφειλομένας αὐτῷ παρὰ Σπουδίᾳ καὶ τὸν τόκον (τοῦτο δ' ἐστὶν οἰκέτου τιμή, ὃν ἐωνημένος οὗτος παρὰ τοῦ Πολυεύκτου, τὴν τιμὴν οὔτ' ἐκείνῳ διέλυσεν οὔτε νῦν εἰς τὸ κοινὸν ἀνενήνοχεν),

ὀκτακοσίας δὲ καὶ χιλίας, περὶ ὧν οὐδ' ἔγωγ' οἶδα τί ποθ' ἕξει δίκαιον λέγειν. ἦν μὲν γὰρ τὸ ἀργύριον παρὰ τῆς Πολυεύκτου δεδανεισμένος γυναικός, γράμματα δ' ἔστιν ἃ κατέλιπεν ἀποθνήσκουσ' ἐκείνη, ...

(Dem. xli, 8-9)

The verb ἐγκαλεῖν implies that the statement of the two talent debt was an oral one, and not written in a testament. Furthermore, this particular debt was also included in the documents left behind by Polyeuctus' wife at her death (164). Therefore, it is possible that Polyeuctus confirmed that this debt was still outstanding when he was dying. The other debt of eighteen hundred drachmae was also outstanding on Polyeuctus' death. This is indicated by the fact that the papers recording this debt were opened, copied and then re-sealed (165). Since Spudias was present at the time this was done, it is probable that these papers were opened after Polyeuctus' death (otherwise Polyeuctus would have been present also). Therefore, details of certain debts were not included in the will, but were sealed in other papers.

The will also included instructions concerning the distribution of property:

ὅτε γὰρ Πολύευκτος διετίθετο ταῦτα, παρῆν μὲν ἡ τούτου γυνή, καὶ δῆλον ὅτι πὰς τοῦ πατρὸς διαθήκας ἀνήγγειλεν, ἅπαξ τ' εἰ καὶ μηδὲν ἦσαν

εἶχεν ἀλλ' ἐν ἅπασιν ἡματτοῦτο.

(Dem. xli, 17)

This quotation implies, by the use of the word ἴσον that the estate was to be divided equally between the two daughters, who would in fact become ἐπίκληροι. Since there is no evidence that Spudias was adopted by Polyeuctus after Leocrates had been renounced, this equal division of property was quite usual (166), and would not normally have been recorded in a will. However, the fact that Spudias had already borrowed money from the estate, and there were ten minae owing to the elder girl's husband, made it necessary to make specific arrangements concerning the division of the estate. Since the heir to an estate inherited all debts due to it and all debts owed by it, it is possible that before the division was made, Spudias had to repay all his debts and the claimant had to receive the remainder of his wife's dowry.

Therefore the will of Polyeuctus was concerned with matters of property. By means of his testament he mortgaged his house and arranged the division of his estate between his two daughters.

Aristotle

The will of the philosopher Aristotle (167) was probably made in Chalcis where he died in 322, since there is no reference in it to the school and its property, and it is therefore uncertain whether or not the document came under Athenian jurisdiction.

There is a possiblity that it might have done, since Chalcis had been part of the Athenian empire, so Chalcidian law may have borne some similarity to Athenian law .

Two copies of the will of Aristotle are extant; one is included in the biography of Aristotle written by Diogenes Laertius and the second is in an Arabic translation of the life of Aristotle (168). Therefore, when discussing this will, I shall quote from both versions (169).

In the Greek text, the will begins as follows:

Ἔσται μὲν εὖ· ἐὰν δέ τι συμβαίνῃ, τάδε διέθετο Ἀριστοτέλης

(D. L. v, 11)

This opening is not part of the Arabic version of the will. Chroust states that the words ἔσται μὲν εὖ were common at the beginning of an Athenian will (170). However, this opening is found only in one other will, the will of Theophrastus (171). Therefore it is not as common as Chroust thinks it is. Düring thinks that since the other three wills of the peripatetic philosophers use the present tense διατίθημι rather than διέθετο, the words διέθετο Ἀριστοτέλης are a paraphrase by Favorinus or Diogenes (172). However, the portion of the will of Pasio which is read out to the court begins with the words:

Τάδε διέθετο Πασίων Ἀχαρνεύς·

([Dem.] xlv, 28)

In addition, Plato uses the word διέθετο at the beginning of his will (D.L. iii, 41). This indicates that the aorist form of the verb διατίθημι could be used when making a will. It is therefore possible that the words ἐὰν... Ἀριστοτέλης· were not a paraphrase but were the words which Aristotle actually used.

The Macedonian general, Antipater, is given the position of executor:

ἐπίτροπον μὲν εἶναι πάντων καὶ διὰ παντὸς Ἀντιπάτρον·
(D. L. v, 11)

"By this will I appoint Antipater for ever to be executor of everything that I leave". (D.IA)

Here, Antipater is appointed executor in order to ensure that all the conditions in the will are adhered to. There is no other example in any other extant Athenian will of someone who is not a beneficiary being appointed executor. However, the will of Plato is not clear on this point. The position of Hipparchus in Theophrastus' will is somewhat similar, since he is given control of some of the testator's estate, but it is not identical (173).

Five other executors are also appointed until Nicanor's arrival:

ἕως δ' ἂν Νικάνωρ καταλάβῃ, ἐπιμελεῖσθαι Ἀριστομένην Τιμάρχου, Ἵππαρχον, Διοτέλην, Θεόφραστον, ἐὰν βούληται καὶ ἐνδέχηται αὐτῷ, τῶν τε παιδίων καὶ Ἑρπυλλίδος καὶ τῶν καταλελειμμένων.

(D. L. v, 12)

"and until Nicanor shall arrive (and take possession), Aristomenes, Timarchus, Hipparchus and Dioteles shall take charge of all matters that require attention and take the necessary measures concerning my estate, my servant Herpyllis, my other maids and servants, and the property I leave; and if Theophrastus consents and he is in the position to assist then in this task he shall take charge as well" (D. 1A).

The Greek text differs from the Arabic in two respects. Firstly, in Diogenes Laertius, the four appointed and Theophrastus if he so wishes, are given charge of not only the estate and Herpyllis, but also of the children, τῶν παιδίων. However, in the Arabic text, no mention is made of the children. This clause implies that although Antipater is placed in the position of general executor, he will not be present to oversee the running of the estate after Aristotle's death, since other men have been appointed to do this. Antipater is therefore to ensure that the terms specified in the will are adhered to, but he is not to care for the estate in any other manner. The position of Aristomenes, Timarchus, Hipparchus, Dioteles and, (if he so consents) Theophrastus, is only a temporary one. They are to act as guardians only until Nicanor arrives. This clause indicates that, if Athenian law was observed in Chalcis, it was possible for an Athenian to appoint temporary guardians in a will who would hold the post until the one intended to care for the estate was able to take it up.

The second difference between the Arabic and Greek texts is very important with reference to the position of Herpyllis, since in the Arabic version it is specifically stated that she is Aristotle's maidservant (174).

There then follows a passage with clauses concerning Nicanor, Nicomachus and Pythias. Since the positions of these people have been the subject of much recent discussion, I shall quote this passage in full.

καὶ ὅταν ὥρα ᾖ τῇ παιδί, ἐκδίδοσθαι αὐτὴν Νικάνορι· ἐὰν δὲ τῇ παιδὶ συμβῇ τι - ὃ μὴ γένοιτο οὐδὲ ἔσται - πρὸ τοῦ γήμασθαι ἢ ἐπειδὰν γήμηται, μήπω παιδίων ὄντων, Νικάνωρ κύριος ἔστω καὶ περὶ τοῦ παιδίου καὶ περὶ τῶν ἄλλων διοικεῖν ἀξίως καὶ αὐτοῦ καὶ ἡμῶν. ἐπιμελείσθω δὲ Νικάνωρ καὶ τῆς παιδὸς καὶ τοῦ παιδὸς Νικομάχου, ὅπως ἂν ἀξιοῖ τὰ περὶ αὐτῶν, ὡς καὶ πατὴρ ὢν καὶ ἀδελφός. ἐὰν δέ τι πρότερον συμβῇ Νικάνορι - ὃ μὴ γένοιτο - ἢ πρὸ τοῦ λαβεῖν τὴν παῖδα ἢ ἐπειδὰν λάβῃ, μήπω παιδίων ὄντων, ἐὰν μέν τι ἐκεῖνος τάξῃ, ταῦτα κύρια ἔστω.

(D. L. v, 12)

"When my daughter shall be grown up, Nicanor shall administer her affairs; if she should die before she is married, or when she is married but before she has a child, Nicanor shall administer both her property and the

property of my son Nicomachus. It is my last will and testament that he shall take charge of this as he thinks fit, in all that concerns them, just as if he were their father or brother.

If Nicanor should die before my daughter is married or after her marriage but before she has a child, and if (in such case) Nicanor in his will has made arrangements about the property that I leave, this shall be admissable and legally valid" . (D. 1B-C)

The girl Pythias, who is the legitimate daughter of Aristotle, is to be given in marriage to Nicanor (ἐκδίδοσθαι αὐτὴν Νικάνορι). The reason why this stipulation is not included in the Arabic translation of the will is probably because the word ἐκδίδοσθαι has been misunderstood (175). A similar clause is to be found in the will of the elder Demosthenes, where Demophon is to marry the testator's daughter when she comes of age, but is to take her dowry of two talents immediately (176). Aristotle, however, does not put aside a dowry for Pythias. To a certain extent, this question is connected with the vexed subject of the precise positions of Nicanor and Nicomachus in Aristotle's household (177).

Chroust thinks that Nicanor was the "interim heir designate" and he was to manage Aristotle's estate until his sons by Pythias came of age (178). Thus, Chroust, although he does not state this specifically, seems to suggest that Pythias was an

ἐπίκληρος since her children were to be the ultimate heirs. In Athenian law, there was no such thing as an "interim heir designate", the role of the husband of

an ἐπίκληρος was to provide for her and care for the estate. He at no time was regarded as the heir, interim or otherwise (179). Chroust explains the position of Nicomachus by stating that since he was the adopted or legitimated son of Aristotle, "he could only acquire a life estate", and after his death the estate could revert to Nicanor and Pythias (180). However, if Nicomachus is to have a life interest in the estate, what is to happen to the children of Pythias and Nicanor during his lifetime? Chroust does not suggest a division of the estate, so it seems as if he envisages Nicomachus controlling the whole estate until he dies, with Nicanor ensuring that he did not alienate it. Such a situation is found nowhere else in our sources for Athenian law, and does seem very unlikely.

Düring (181) suggests that since Nicomachus is universal heir but is under age, Nicanor is to take possession of the estate upon his return. However, he does not state that when Nicomachus comes of age, Nicanor is to cede possession of the estate. Düring uses the Roman term "heres institutus" to describe Nicanor's position. This is an incorrect application of the term because an "heres institutus" was given the testator's estate or part of it in perpetuity, "semel heres, semper heres", and such an appointment had to be written at the head of a will using a particular form of wording such as "Lucanus heres esto" or "Lucanum heredem esse iubeo" (182). This is not done in Aristotle's will. In addition, the situation which Düring envisages does not explain the position of Pythias.

Gottschalk is of the opinion that Nicomachus was heir and that Pythias had been betrothed to Nicanor at an earlier date. Since the dowry was arranged at a girl's betrothal (183), this would explain why no dowry is specified in the will, since it might well have been paid to Nicanor earlier, just as Demophon was to receive the dowry of Demosthenes' sister immediately (184). There is, however, no indication in either text of the will that this took place.

Hug is of the opinion that Nicanor was universal heir to Aristotle's property, and was to marry Pythias, and that Nicomachus was the testator's bastard son by Herpyllis (185). However, no monetary provision is made for Nicomachus, so this view does not seem probable.

It is implied in the Arabic translation of the will that Pythias possesses property of her own, "Nicanor shall administer her property". Although it was possible for a woman to own a small amount of property, this generally tended to ~~be~~ consist of some household furniture, jewellery and clothing (186), the words "shall administer" implies that she owned part of the estate. However, since this is wrong in law (187), because if a man had a legitimate son, the property went to him (188), it seems more likely that the translator made a mistake here. No mention is made of a dowry in the Arabic text.

Since no dowry is referred to in either of the texts, it is most probable that the reason no dowry is to be given to Nicanor is because Nicanor is Aristotle's adopted son.

Unlike Leocrates, the adopted son of Polyeuctus, he does not receive the whole of his adoptive father's estate (189). This is because there is an under-age legitimate son, Nicomachus. Under Attic law, an adopted son shared equally with any legitimate son born after the adoption had taken place (190). Therefore, the estate is to be divided equally between Nicanor and Nicomachus after all the bequests have been paid. In addition, since Nicanor is an adopted son and not the uterine brother of the girl (as is the case with Gorgias, Cnemon's adopted son) (191), he is to receive Pythias with his half of the estate, and no dowry is necessary.

The provision in the Greek text that if Pythias should die, Nicanor should be κύριος of the property might be taken to indicate that he has complete oversight of the estate until Nicomachus come of age and can do with it as he wishes. However, after Nicomachus comes of age, the estate will have to be divided equally, which means that Nicanor is not empowered to do with it exactly as he wishes. Such a division is not stipulated in the terms of the will, but since it would have been in accordance with Athenian inheritance law, it would not have been necessary to do this. The only example of a clause in a will ordering an equal division between two sons is found in the will of Pasio, but this is an exceptional case, because Apollodorus is permitted to take money from his father's property before his younger brother Pasicles comes of age. The fact that this has to be specifically noted in the will indicates that this not usually permitted (192).

Therefore, although Nicanor is appointed κύριος of the estate by Aristotle, his powers were not as far-reaching as might be thought.

The provision that Nicanor is to care for Pythias and Nicomachus as if he were father and brother is found in both the Arabic and Greek versions of the will. This clause does not in itself indicate that Nicanor was the adopted son of Aristotle, but merely stipulates that in addition to ensuring the financial well-being of the estate, Nicanor is to have a close relationship with the children. It seems as if a similar situation was envisaged by the elder Demosthenes when he stated that Aphobus was to marry Cleoboule and have the use of the family home (193).

Both the Arabic and the Greek versions of the will allow Nicanor to make a will concerning his portion of the property. The Greek words used, πᾶσι κύριος ἔστω are also found in a similar clause in the will of Lyco (194), and are to be understood as permission to dispose of the property by testament.

This provision has been a puzzle to some scholars. Bruns is of the opinion that it indicates that Nicanor was not the adopted son of Aristotle (195). Chroust states that under Athenian law, neither a guardian nor an adopted son was allowed to make a will. He therefore suggests that Aristotle might have empowered Nicanor to make arrangements concerning only the guardianship of Nicomachus, rather than the whole estate (196).

Gottschalk, Düring, Hug and Mulvany fail to discuss this question at all.

This clause does not conflict with the fact that adopted sons did not have testamentary rights (197), but proves the fact. If an adopted son was allowed to bequeath his estate by testament, there would have been no necessity for Aristotle to include a clause to this effect in his own will. In order to overcome this law, such a provision was necessary. Nicanor's testamentary rights are limited, however, because he is only free to make a will if he and Pythias have no legitimate children, whereas men who were not adopted and had legitimate children could and did make wills (198). It is likely that the putative will of Nicanor might have included arrangements concerning the guardianship of Nicomachus, but such arrangements could also have been made by the executors. Indeed, after Nicanor's death, Nicomachus was cared for by Theophrastus (199). It is also probable that a will made by Nicanor might have included provisions for Pythias' dowry, and might have named a possible husband for her even though this is done by Aristotle in the next clause. Since Nicanor is Aristotle's adopted son and there is a legitimate son, Nicomachus, the former's testamentary powers will have been limited to his half of the estate as far legacies were concerned, but he might have been empowered to provide a guardian for Nicomachus and a husband for Pythias.

Aristotle also makes provisions for the care of his two legitimate children in the event of Nicanor's death.

ἐὰν δὲ βούληται Θεόφραστος εἶναι μετὰ τῆς παιδός, καθάπερ πρὸς Νικάνορα· εἰ δὲ μή, τοὺς ἐπιτρόπους βουλευομένους μετ' Ἀντιπάτρου καὶ περὶ τῆς παιδὸς καὶ περὶ τοῦ παιδίου διοικεῖν ὅπως ἂν αὐτοῖς δοκῇ ἄριστα εἶναι.

(D. L. v, 13)

"If Nicanor should die intestate and if Theophrastus consents and is willing to take his place it shall be so in all matters in which Nicanor was in charge of my son's affairs and also as regards my other 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 together with him consider what they are to do with my estate and then make arrangements as they see fit." (D. 1D)

These two quotations differ considerably. The provisor "if Nicanor should die intestate" is not found at all in the Greek, and it could either be an interpolation by the translator to explain the following clause or it could be taken to indicate that the will in the Greek text is an abridgement. Furthermore, there is no mention of the girl Pythias in the Arabic translation, but there are two specific references to her in the Greek, (τῆς παιδος). It is possible that the translator confused the gender and mistook τῆς παιδὸς for τοῦ παιδίου , and thus the interpretation of this clause differs quite considerably from the Greek. The fact that the words καθάπερ πρὸς Νικάνορα are placed next to μετὰ τῆς παιδος indicate that he is not to take

Nicanor's place in all things, that is, he is not to become the adopted son of Aristotle, like Nicanor, but that he is only to be "as Nicanor" with reference to the younger Pythias. Since Nicanor is instructed to marry the girl, these words indicate that Theophrastus is free to do this also if Nicanor dies. The Arabic text does not convey this sense, but states that Theophrastus is to take over the guardianship of the boy Nicomachus, but this is due to the probable confusion of τῆς παιδὸς with τοῦ παιδίου . Therefore it seems as if the injunction in this clause is that Theophrastus is to marry Pythias if he so wishes. Such a position would probably be taken to include the guardianship of Nicomachus since Nicanor is to undertake this. Following the death of Nicanor, Theophrastus did care for Nicomachus but he did not marry Pythias (200), but this does not indicate that he was not given the option of marrying the girl in Aristotle's will.

There is also a difference in the two translations of the Arabic version of the will, During says: "my other estate" whereas Chroust does not include the word "other" (201). If Düring is correct, the translation would imply that the estate of Aristotle was to be divided, probably between Nicomachus and Nicanor, whereas Chroust's version implies that the property was to be kept intact. I have checked the meaning of this clause with the help of a lecturer in Arabic, and the strict translation of it is: "it shall be so in everything which Nicanor undertook concerning the affairs of my son, and other than that (ie. other than the estate of Nicomachus), consisting of that which I have left."

This indicates that Aristotle envisaged a separation of the estate into two; probably one part to Nicomachus and one to Nicanor, because otherwise it would not have been necessary to add the words "and other than that."

Both the Greek and Arabic versions state that if Theophrastus did not wish to assume this position, the executors are to consult with Antipater. However, the Greek states that this consultation is to be about the children, whereas the Arabic says that it is to be about the estate, but this is a minor difference, since the care of one would in practice include the care of the other.

Chroust thinks that this section of the will might well indicate that Theophrastus was related to Aristotle. This is because he thinks that the testament of Aristotle gives him "a position which is usually reserved only for relatives" (202). Chroust supports his suggestion by stating that Theophrastus brought up Nicomachus, and that in his will, Theophrastus refers to Demaratus, Aristotle's grandson, he bequeaths property in Stagira, provides for a statue of Nicomachus and appoints Callisthenes, a distant relative of Aristotle as trustee of his estate. However, the position given to Theophrastus in Aristotle's will does not necessarily indicate that he was a relative, since it was not unknown for a non-relative to be appointed as guardian in a will. Phormio, in Pasio's will, was bequeathed the testator's wife and given the guardianship of his son, Pasicles, and Phormio was not a relative but a freedman of the testator (203).

Furthermore, Therippides, one of the guardians of the orator, Demosthenes, was a friend and not a relative of the elder Demosthenes (204). It is a direct result of the will of Aristotle that Theophrastus brought up Nicomachus, so this is not indicative of a blood relationship (205). It might have been as a result of this that he owned property in Stagira, since it has been suggested that it was bequeathed to him by Nicomachus (206). There is, however, no evidence that this was done, and the question of how Theophrastus came to possess this property is open to conjecture. The fact that he did own property in Stagira does not necessarily indicate that he was a relative of Aristotle. The fact that Theophrastus refers to relatives of Aristotle in his own will only indicates that he was a trusted friend of the family. Therefore, Chroust is probably incorrect in his assumption.

The following clauses of the will concern the position of Herpyllis which is itself a matter open to dispute (207).

ἐπιμελεῖσθαι δὲ τοὺς ἐπιτρόπους καὶ Νικάνορα μνησθέντας ἐμοῦ καὶ Ἑρπυλλίδος, ὅτι σπουδαία περὶ ἐμὲ ἐγένετο, τῶν τε ἄλλων καὶ ἐὰν βούληται ἄνδρα λαμβάνειν, ὅπως μὴ ἀναξίως ἡμῶν δοθῇ.

(D.L. v, 13)

"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 that she needs, and if she should desire to marry, they shall see that she be given to a man of good repute,". (D. 1E)

The first mention of Herpyllis in both of these quotations implies that she was a servant or freedwoman of the testator, who did not shirk her duties. There is no indication here that Herpyllis was Aristotle's second wife, as is suggested by Bruns and Mulvany (208), or that she was his mistress as is stated in some ancient sources (209). The provision that she be married, if she so wishes, in a manner not unworthy of the testator, also carries no suggestion that the two were married or that she was his mistress. It also implies that she was not of servant status, because there is no other will which states that a servant be married to one worthy of the master. The fact that Aristotle states that she is to be placed in the care of the executors and Nicanor indicates that Aristotle was her κύριος and that she had no close male relatives of her own. Therefore, she is to be cared for by those nominated. It must be assumed that the executors are to care for her until her death unless she marries. No separate provision is made for a dowry, but she is bequeathed money, servants and the right of abode in part of the testator's property:

δοῦναι δ'αὐτῇ πρὸς τοῖς πρότερον δεδομένοις καὶ

ἀργυρίου τάλαντον ἐκ τῶν καταλελειμμένων καὶ θεραπαίνας τρεῖς, ἐὰν βούληται, καὶ τὴν παιδίσκην ἣν ἔχει καὶ παῖδα τὸν Πυρραῖον· καὶ ἐὰν μὲν ἐν Χαλκίδι βούληται οἰκεῖν, τὸν ᾠκῶνα τὸν πρὸς τῷ κήπῳ· ἐὰν δὲ ἐν Σταγείροις, τὴν πατρῴαν οἰκίαν. ὁποτέραν δ' ἂν τούτων βούληται, κατασκευάσαι τοὺς ἐπιτρόπους σκεύεσιν οἷς ἂν δοκῇ κἀκείνοις καλῶς ἔχειν καὶ Ἑρπυλλίδι ἱκανῶς.

(D. L. v, 13-14)

"and besides what she already possesses, she shall be given one talent, equivalent to one hundred and twenty five Roman librae, and if she chooses to remain in Chalcis, she shall live in my house, in the guest-house by the garden; if she chooses to live in Stagira, she shall live in my father's and grandfather's house, and whichever of these houses she chooses, the executors shall furnish them with such household things as they think proper and as she may need, whatever she may claim as necessary for satisfying her wants." (D. 1E)

No provision is made for a dowry in either version of the will, but presumably the possessions she is given are to act in lieu of a dowry. Herpyllis already has a certain amount of property of her own, but how she came by it is not made clear. The Greek version implies, in the words πρὸς . . . δεδομένοις that it was given to her by someone, maybe the testator, whereas the Arabic translation is not specific.

The property which is given to Herpyllis bears no resemblance to the bequests to servants in other wills (210), but it is very similar to the dowries and bequests given to the wife of Diodotus and the wife of Pasio, (211). Since the former is bequeathed money and furniture and the latter is given (or dowered with) money, slaves, jewelry and furniture. However, in both of these examples, the dowry and bequest are given into the care of the woman's κύριος, whereas Herpyllis is to live independently (212). However, this is probably explained by the fact that a woman who was not an Athenian citizen did not necessarily have a κύριος (213). The right of abode in the testator's ancestral home which is given to Herpyllis if she so wishes, is unprecedented. The only one other example of a woman (in this case the testator's wife) and her future husband being given the use of the testator's house and furniture is in the will of the elder Demosthenes, and in this example the right of abode is granted only until his son should come of age (214). It is most unlikely that a freedwoman or mistress should be given this right. Since the tone of the clauses referring to Herpyllis seem too cold in reference to a wife, it seems unlikely that she was married to him. However, the bequests to her are larger than any others given to a servant it thus seems more probable that Herpyllis was either a dependent or ward of Aristotle, as is suggested by Gottschalk (215). If Chalcis did abide by Athenian law, these clauses indicate that a non-citizen woman could be bequeathed property in her own right, and that she could possess it

herself without having to give it into the care of her κύριος .

The Arabic version of the will contains a clause: "As to my estate and my son, there is no need for me to be concerned about testamentary provisions". (D. 2A) This clause is probably an interpolation by the translator, since in law it was not necessary to include such a provision (216). Chroust thinks this stipulation indicates that Nicomachus was to have a "life interest" in Aristotle's estate (217). However, if this were so, it would have been necessary for Aristotle to make specific provisions in his will. In addition, this clause is probably not genuine, and it thus proves absolutely nothing.

There follows a provision concerning a boy named Myrmex:

ἐπιμελείσθω δὲ Νικάνωρ καὶ Μύρμηκος τοῦ παιδίου, ὅπως ἂν ἀξίως ἡμῶν τοῖς ἰδίοις ἐπικομισθῇ ἐὰν τοῖς ὑπάρχουσιν ἃ εἰλήφαμεν αὐτοῦ.

(D. L. v, 14)

"Nicanor shall take charge of the boy, Myrmex and see that he finally is sent back to his home with all his property in the manner he desires." (D. 2A)
The exact position of Myrmex is not very clear. Chroust suggests that he was either a slave given to Aristotle, who provides here for his emancipation, or that he was a remote relative (218).

It is unlikely that he was a slave if, as the Arabic text states, he had property of his own, since slaves possessed no private property because anything given to a slave remained, like the slave, legally the property of the slave's owner. In addition, he is to be returned to his relatives (τοῖς ἰδίοις), and if he were a slave, it is not likely that his relatives would have been known or that they had sent him to Aristotle with property. Gottschalk suggests that he was probably a ward of the testator (219). However, this seems unlikely since he had relatives of his own to look after him. It is more probable that he was a pupil of Aristotle, which is why he is to be returned to his relatives on the testator's death.

Following this there are clauses detailing the treatment of slaves and freedmen after Aristotle's death.

The first slave to be mentioned is Ambracis:

εἶναι δὲ καὶ Ἀμβρακίδα ἐλευθέραν καὶ δοῦναι αὐτῇ, ὅταν ἡ παῖς ἐκδοθῇ, πεντακοσίας δραχμὰς καὶ τὴν παιδίσκην ἣν ἔχει.

(D. L. v, 14)

"My maid Ambracis shall be given her freedom, and if, after she has been made free, she remains in my daughter's service until my daughter marries, she shall receive five hundred drachmas and the maid she now has."

(D. 2B)

There is a slight difference here between the Arabic and the Greek texts.

In Diogenes Laertius, no condition is attached to the gift of five hundred drachmae and the maidservant; she is just to receive these when Pythias gets married, whereas according to the Arabic translation, she is only to receive these if she remains in service to Pythias until her marriage. It is not possible to state which of these two versions of the provision is correct, although the Arabic translation does seem more logical. The fact that Ambracis has to be confirmed in her possession of a slave girl (καὶ δοῦναι ... ἔχει , she shall receive . . . now has) indicates that any property which was given to a slave during his or her master's lifetime did not legally belong to him or her, and was returned to the estate on the master's death, unless instructions were given to the contrary.

The freedwoman Thale also receives a bequest:

δοῦναι δὲ καὶ Θαλῆ πρὸς τῇ παιδίσκῃ ἣν ἔχει, τῇ ὠνηθείσῃ, χιλίας δραχμὰς καὶ παιδίσκην.
(D. L. v, 14)

"To Thales shall be given the young girl that we recently bought, a boy from among our slaves and a thousand drachmas." (D. 2C)

This clause does not, as Chroust suggests, provide for the emancipation of Thale (220), who was probably a freedwoman since she already has property of her own. There are two difference between the Greek and Arabic texts. The Arabic version states that a slave boy is to be given to Thale, whereas Diogenes Laertius mentions a slave girl.

The Arabic version states that Thale is to receive two slaves (221), whereas the Greek states that she already possesses one servant (πρὸς τῇ παιδίσκῃ ἣν ἔχει) and is to receive another (222). Which of the two versions is correct is open to conjecture because there is no additional evidence.

Simon, who is presumably another freedman because he already possesses a slave, also benefits:

καὶ Σίμωνι χωρὶς τοῦ πρότερον ἀργυρίου αὐτῷ ⟨δοθέντος⟩ εἰς παῖδ' ἄλλον, ἢ παῖδα πρίασθαι, ἢ ἀργύριον ἐπιδοῦναι. (D. L. v, 15)

"To Simos shall be given, in addition to the boy for whom he already has received money, money for a boy whom he may buy for himself, and besides he shall further receive what the executors may find proper". (D. 2D)

Again, the two versions of the will differ here. Diogenes Laertius states that Simon is either to receive a boy or the purchase money for one and does not mention an additional bequest. The Arabic text, on the other hand, grants Simon both money for a boy and whatever else the executors may approve. It is not stipulated in the Arabic text that this additional bequest is to take the form of money, as Chroust thinks, but the words "what the executors may find proper" indicate that this gift is entirely at the discretion of the executors, and can take any form. There is no example in any Greek text of a bequest to a freedman being left entirely to the executors' discretion, so I am inclined to believe that this provision is an interpolation (224).

Further arrangements are made for the emancipation of slaves:

Τύχωνα δ'ἐλεύθερον εἶναι, ὅταν ἡ παῖς ἐκδοθῇ, καὶ Φίλωνα καὶ Ὀλύμπιον καὶ τὸ παιδίον αὐτοῦ. μὴ πωλεῖν δὲ τῶν παίδων μηδένα τῶν ἐμὲ θεραπευόντων, ἀλλὰ χρῆσθαι αὐτοῖς· ὅταν δ'ἐν ἡλικίᾳ γένωνται ὡς ἐλευθέρους ἀφεῖναι κατ' ἀξίαν.

ἐλευθέρους ἀφεῖναι κατ' ἀξίαν.

(D. L. v, 15)

"As soon as my daughter marries, my boys Tachon, Philon and Olympius shall be given freedom.
Neither the son of Olympius, nor any other of the boys who have waited upon me shall be sold, but they shall continue their service as slaves until they reach their manhood, and when they arrive at the proper age they shall have their freedom, as to what shall then be given to them shall be determined in accordance with what they have deserved [if God almighty so decides]." (D. 2E-2F)

Here also there are differences between the two versions. In Diogenes Laertius, the son of Olympius is to be freed, with his father, on the marriage of Pythias, whereas in the Arabic text, he is to remi~~ran~~ai in service until he reaches the proper age. What this proper age is is not specified, and there is no way of knowing what was actually the case. The Greek text states that none of the servants shall be sold, whereas the Arabic translation specifies that no boy servants be sold.

Again, it is difficult to decide which version is correct, although it might be possible that a mistake was made in the translation into Arabic. The clause "as to what ...decides" is not found in Diogenes Laertius, and is similar to the provision regarding Simon (225). There is no equivalent of this provision in any extant Athenian will, so I think that it is probably an interpolation.

The will of Aristotle is the first extant will in which there are clauses bequeathing property to servants (226). The only earlier will in which a slave is manumitted is the will of Plato (227), but here no legacy is given to her. The fact that the testament of Aristotle is the first will in which a legacy is left to a freedman, and that most wills after this date contain clauses to this effect (228), indicates that this bequeathing of gifts to freedmen was probably a later development in the function of the Athenian will.

It is at this point that the Arabic text ends. However, the Greek text of Diogenes Laertius continues with certain provisions for statues and burial.

He firstly decrees that statues of his family be set up:

ἐπιμελεῖσθαι δὲ καὶ τῶν ἐκδεδομένων εἰκόνων παρὰ Γρυπείωνα, ὅπως ἐπιτελεθεῖσθαι ἀνατεθῶσιν, ἥ τε Νικάνορος καὶ ἡ Πρόξένου, ἣν διενοοῦμην ἐκδοῦναι, καὶ ἡ τῆς μητρὸς τῆς Νικάνορος· καὶ τὴν Ἀριμνήστου τὴν πεποιημένην ἀνατεθῆναι, ὅπως

μνημεῖον αὐτοῦ ᾖ, ἐπειδὴ ἅπαις ἐτελεύτησε· καὶ ⟨τὴν⟩ τῆς μητρὸς τῆς ἡμετέρας τῇ Δήμητρι ἀναθεῖναι εἰς Νεμέαν ἢ ὅπου ἂν δοκῇ.

(D. L. v, 15-16)

The likenesses mentioned above, namely those of Nicanor, Proxenus and his wife (229), Aristotle's mother and Arimnestus, the testator's brother, had already been commissioned, so the purpose of the clause is not to put aside money for them, but to state that they are to be set up (ἀνατεθῶσιν, ἀναθεῖναι). The ordering of these likenesses is indicative of the testator's piety, since although one had to perform the funeral rites for one's next-of-kin, it was not necessary to make arrangements for an additional memorial. It is uncertain what form the likeness of the philosopher's mother took, whether it was a bust, statue or portrait, but it is the only memorial for which he suggests a place, namely the temple of Demeter in Nemea. The fact that Aristotle commissioned a statue of Nicanor, who was still living but away on a dangerous journey, is indicative of his affection for him. These clauses of the will have a two-fold purpose, firstly to inform the executors that the likenesses had been commissioned, and secondly to ensure that a place be found for them to be set up.

The next clause in the section concerns his burial:

ὅπου δ' ἂν ποιῶνται τὴν ταφήν, ἐνταῦθα καὶ τὰ Πυθιάδος ὀστᾶ ἀνελόντας θεῖναι, ὥσπερ αὐτὴ προσέταξεν'

(D. L. v, 16)

This quotation indicates the testator's great affection for his deceased wife Pythias and his respect for her wishes. It is not stated whether her command that they be buried together was oral or written, but it was not contained in a διαθήκη because women were not permitted to make wills (230). Aristotle does not set down specific instructions about his burial ~~like~~ as the other peripatetic philosophers did (231), but entrusts these to his next-of-kin, in this case his adopted son, Nicanor. This is not stated in the will because it was not necessary, since it was the accepted duty of an adopted son to bury his father (232).

The last clause of the will concerns the setting up of two statues if Nicanor returns safely:

καθεῖναι δὲ καὶ Νικάνορα σωθέντα, ἣν εὐχὴν ὑπὲρ αὐτοῦ ἠυξάμην, ζῳα λίθινα τετραπήχη Διὶ σωτῆρι καὶ Ἀθηνᾷ σωτείρᾳ ἐν Σταγείροις.

(D. L. v, 16)

This quotation is indicative of Aristotle's concern for the safety of his adopted son. Chroust states that providing "for such votive statues in a will was not an uncommon practice in Athens " (223). However, there is no similar provision in any other extant Athenian will, so Chroust is incorrect.

The words ζῶα τετραπήχη have been thought to mean "four animal figures" but they mean "figures four cubits high", that is, life-size figures (234).

The testament of Aristotle is the only will of which there are two versions. The primary function of the document is to provide for the care of his family by naming a guardian and interim guardians for Pythias and Nicomachus, and arranging Pythias' marriage. Secondly, he ensures that his other dependents, Herpyllis, Myrmex and his servants will be cared for following his death. The third function is a religious one, and it is probably because of the religious aspect that it is not included in the Arabic version (235). These final provisions indicate Aristotle's piety.

Conon

It is difficult to establish the exact year in which Conon died. He is last mentioned in connection with a mission to the Persian king (236). This mission took place in 392, and after it he died in Cyprus, but it is not known how much time elapsed between the mission in Persia and his death. Davies dates the death at 389 (237), whilst Hammond states that it occurred in 392 (238). There is no ancient evidence to support either of these dates. The will was made while he was ill (239), although it is not made clear whether it was made during his last illness.

The latest date for the making of this will is probably 389.

The testament of the Athenian general Conon was made in Cyprus and did not come under Athenian jurisdiction (240). However, the document might have been influenced by Athenian legal principles because the testator was a citizen of Athens. The provisions of the will are to be found in Lysias xix, which concerns the property of Aristophanes. This property had been confiscated by the state and was not as valuable as had been expected. Part of the argument consists of the example of the property of Conon which was allegedly of much smaller value than had been thought. A certain amount of caution must be employed when examining this will, since it is in the speaker's interest to minimise the value of Conon's property. In addition, it must be borne in mind that in his will, Conon only disposes of his Cyprian property. His property in Athens has already been given to Timotheus, his son by his first marriage (241).

The first provisions mentioned by the speaker are religious ones:

τῇ μὲν γὰρ Ἀθηναίᾳ καθιέρωσεν εἰς ἀναθήματα καὶ τῷ Ἀπόλλωνι εἰς Δελφοὺς πεντακισχιλίους στατῆρας·

(Lysias xix, 39)

It is not made clear to which temple of Athena the offerings are to be given, so it seems best to assume that since Conon was an Athenian citizen and because it is specified that the money for Apollo is given to his

main temple, it is likely that the money for Athena was left to her biggest temple, which was in Athens. The speaker does not state specifically how the money was to be divided between the two temples, so in the absence of this information it cannot be stated what proportion of money was left to what god. This is the earliest will in which legacies of a religious nature are found, and the other wills whose terms are known which have such provisions, date from just after the end of the classical period (242). The sum bequeathed by Conon for religious purposes is quite considerable, five thousand staters being equivalent to sixteen talents and four thousand drachmae (243).

Bequests are also made to the testator's relatives:

τῷ δὲ ἀδελφιδῷ τῷ ἑαυτοῦ, ὃς ἐφύλαττεν αὐτῷ καὶ ἐταμίευε πάντα τὰ ἐν Κύπρῳ, ἔδωκεν ὡς μυρίας δραχμάς, τῷ δὲ ἀδελφῷ τρία τάλαντα.

(Lysias xix, 40)

These bequests to Conon's brother (244) and nephew are thought by Lacey to be gifts with no conditions attached (245), whereas Davies is of the opinion that provisions for Conon's Cyprian wife and son are "implicit in the legacies of his brother and nephew" (246). No mention is made in the terms quoted of the future care of Conon's wife and child in Cyprus (247), but this does not necessarily indicate that no such provisions were made.

This is because the argument in this section of Lysias xix is concerned with the financial value of Conon's estate as indicated in his will, and any provisions other than financial ones might not have been included because they were regarded as being irrelevant to the case. In other wills whose terms are known, provisions are always made for the care of the testator's dependents, although these terms are not necessarily combined with a legacy for the guardian (248). In the will of the elder Demosthenes, three guardians are appointed. Therippides is given the interest on seventy minae, Demophon is to marry the testator's daughter and is to receive her dowry of two talents at once, Aphobus is to marry the testator's wife and receive a dowry of eighty minae and the right to use the house (249). In the will of Pasio, the testator's minor son, Pasicles, is to have as his guardians Phormio and Nicocles. It does not seem as if Nicocles received a legacy. However, Phormio is to marry Archippe, Pasio's wife and is to receive a considerable dowry with her. In addition, he is to receive any profits over and above the rent he is to pay for the shield factory and bank, while he is managing the premises (250). In both of these documents, the larger legacy (if a legacy is given to all the guardians) is given to the person who is to marry the testator's female dependent. Therefore it might be possible that Conon provided two guardians for his son, namely his nephew and brother. His nephew was to receive a legacy of one talent and forty minae and was to continue caring for the estate, and his brother, (if he was unmarried), was to

marry Conon's wife and receive with her a dowry of three talents. These terms are implied by the legacies given to the testator's relatives, especially when they are compared to other wills made by men with dependents. However, it must be emphasised that such a conclusion is based on conjecture, even though it does seem likely that Conon's will did contain provisions regulating the care of his dependents.

It is difficult to assess the value of the estate which these two relatives were to care for. It has generally been taken that in the last clause of his will, he bequeathed his property to Timotheus, the son by his first marriage (251):

τὰ δὲ λοιπὰ τῷ υἱεῖ κατέλιπε, τάλαντα ἑπτακαίδεκα.

(Lysias xix, 40)

There are two possible explanations of this clause, either the words τὰ δὲ λοιπὰ are misleading, and there existed more property which was given to Conon's son in Cyprus after seventeen talents had been bequeathed to Timotheus, or the remaining property was not given to Timotheus but inherited by Conon's other son. If Conon had written in his will that Timotheus was to receive τὰ δὲ λοιπὰ , then the clause would have effectively alienated all of his property from his other son, and this does not seem very probable. If on the other hand, Conon did leave the remainder of his property to his other son, it might seem as if Timotheus was unfairly deprived of some of his patrimony.

It is, therefore, necessary to attempt to examine the value of Timotheus' property. When Conon left Athens, he left his son by his first marriage his Athenian property:

ἔτι δὲ φαίνονται οὐδὲν πώποτε δεινοχθέντες, ὥστε εἰκὸς καὶ περὶ τῶν χρημάτων ταὐτὰ γνῶναι, ἱκανὰ μὲν ἐνθάδε τῷ υἱεῖ ἑκάτερον καταλιπεῖν, τὰ δὲ ἄλλα παρ' αὐτοῖς ἔχειν.

(Lysias xix, 36) (The other man referred to here is Conon's staff-officer, Nicophemus).

This statement is based on probability, εἰκὸς , but it does not seem likely that Conon would have sold his Athenian property and taken the proceeds, since this would have involved selling the family home. It is very difficult to assess exactly how much this property was worth. The speaker of Lysias xix suggests that Timotheus' whole estate was only worth four talents:

εἴ τις ὑμῶν ἔτυχε δοὺς Τιμοθέῳ τῷ Κόνωνος τὴν θυγατέρα ἢ τὴν ἀδελφήν, καὶ ἐκείνου ἀποδημήσαντος (252) καὶ ἐν διαβολῇ γενομένου ἐδημεύθη ἡ οὐσία, καὶ μὴ ἐγένετο τῇ πόλει πραθέντων ἁπάντων τέτταρα τάλαντα ἀργυρίου, διὰ τοῦτο ἠξιοῦτε ἂν τοὺς ἐκείνου καὶ τοὺς προσήκοντας ἀπολέσθαι, ὅτι οὐδὲ πολλοστὸν μέρος τῆς

δόξης τῆς παρ' ὑμῖν ἐφάνη τὰ χρήματα;

(Lysias xix, 34)

This argument is purely hypothetical, and cannot be taken as evidence that Timotheus' property was only worth four talents. In addition, it cannot be taken as evidence concerning the value of Aristophanes' estate at his death, because there is mention of some land worth five talents (253). It is possible that Timotheus' estate was worth much more than this, but the speaker is deliberately underestimating its probable value in order to heighten the impact which his rhetorical question will have on the jury. Therefore, this estimation is not very reliable, and it is necessary to look at other evidence. At the time of his trial in 373, Timotheus possessed a farm in the plain, which was held as security by the son of Eumelidas; and the remainder of his property - presumably this included his house in the Pireas and maybe the family home - was mortgaged for seven talents (254). This property was worth considerably more than the four talents estimated in Lysias xix. In addition, Nicophemus' son, Aristophanes, possessed an estate in Athens which was worth approximately fifteen talents, excluding his father's property in Cyprus (255). Since the estate of Conon was regarded as being greater than that of Nicophemus, it is probable that Timotheus' property in Athens, including both his father's estate and the wealth he had acquired on his own behalf, was worth more than fifteen talents, though how much more it is difficult to say.

Therefore, in view of the fact that Timotheus was already in possession of a considerable amount of property, it is far more likely that the words τὰ δὲ ποιπὰ τῷ υἱεῖ κατέλιπε refer to a bequest of property by Conon to his son by his second marriage. The reason this had to be specified in a will was because otherwise the two sons would have probably had to divide the property equally (257), if Cyprian and Athenian inheritance laws were alike in this matter.

Therefore, the will of Conon was concerned with the regulation of property matters, but did not regulate the Athenian part of his estate which he had already given to the eldest son. By means of this document, he bequeaths over half of his residual estate away from his son by his second marriage, setting aside some money for dedications to the gods and a smaller amount for bequests to his brother and nephew. It is possible that these bequests also had attached to them the condition that these relatives care for the deceased's family. Finally Conon used his will to ensure that the son in Cyprus inherited the remainder of his estate.

Euctemon

The agreement between Philoctemon and Euctemon is referred to as a διαθήκη because it supposedly concerned the disposition of Euctemon's property after his death (258). The date that this agreement was made is not certain. A verbal agreement took place before Philoctemon's death, but it is not made clear how long before (259). Therefore, it can only be dated before 367

at the latest. It is not specified when the verbal agreement was put into writing, but since this was done after Philoctemon's death when Chaireas was setting sail with Timotheus in 367/6 (260), it would have been made at the latest in 367 and repealed two years later in 365/4. Before discussing the will, it is necessary to review briefly the background to Isaeus vi, the speech in which the will is mentioned.

Euctemon was a wealthy Athenian who had three sons and two daughters by his first marriage. The speaker's opponent claimed that Euctemon was also married a second time to a certain Callippe by whom he had two sons (261). This indicates that he must have divorced his first wife, and even the speaker admits that Euctemon stopped living with her (262). It seems as if Callippe either died or was also divorced, since Euctemon was also betrothed to the sister of Democrates (263). Philoctemon, the last surviving son of Euctemon's first marriage, made a will by which he adopted his nephew, Chaerestratus (264). However, on Philoctemon's death, Chaerestratus did not get himself adopted under the terms of the will, but claimed both Euctemon's and Philoctemon's estate after Euctemon's death (265).

In Isaeus vi, the speaker alleges that Euctemon's sons from his second marriage are the illegitimate offspring of a prostitute named Alce, who gained ascendancy over Euctemon to the extent that she persuaded him to enrol one of the boys in his phratry as his son (266). However, Philoctemon objected to this and a verbal agreement was made whereby if Philoctemon raised

no objection to the boy's entry, then the boy would only receive one farm from Euctemon's estate:

ἔπειθον, ὦ ἄνδρες, τὸν Φιλοκτήμονα ἐᾶσαι εἰσαγαγεῖν τοῦτον τὸν παῖδα ἐφ' οἷς ἐζήτει ὁ Εὐκτήμων χωρίον ἓν δόντα.

(Is vi, 23)

If this agreement had not been made, Philoctemon would have been bound by the laws of inheritance to divide the estate in half after his father's death, because homopatric legitimate sons, even if they were the products of different marriages, were entitled to share equally in their father's property (267). Therefore, in giving the eldest son of Euctemon's second marriage only one farm, this agreement curtailed his inheritance rights. Following Philoctemon's death, Euctemon put this agreement into writing and deposited it with a certain Pythodorus (268). It is here that it is referred to as a διαθήκη . The reason why it is referred to as a will is because it is a document regulating the distribution of the testator's property and is to take effect after his death. However, this written will would not have been identical in its terms with the earlier verbal agreement , because Philoctemon , the latter's major beneficiary, had died. Since Euctemon also possessed two surviving daughters by his first marriage, it is possible that the property which he had intended Philoctemon to inherit was to be divided between them, and the testator's son by Callippe was still to inherit but one farm.

Wyse states that one of the reasons why Phanostratus and Chaereas, Euctemon's sons-in-law, agreed to the drawing up of this will was because they did not want "Euctemon to die sonless and intestate from fear that their wives would become ἐπίδικοι ," (269). However, under the laws of intestate succession, a son took precedence over a daughter (270), and since the boy had been introduced into his father's phratry he was legally the legitimate son of Euctemon. Therefore, in the absence of this διαθήκη , Euctemon's daughters were not entitled to any of his estate and would not become ἐπίδικοι . Thus the will deprived the boy of the majority of his patrimony, which is presumably why Euctemon later decided to cancel it two years after making it (271). Wyse also suggests that Euctemon might have "purchased the silence of his sons-in-law by dividing the bulk of his property between his two daughters; compare the will of Polyeuctus, which forms the subject of Dem. 41." (272) However, it is not possible to compare the will of Polyeuctus, because this was concerned with the repayment of debts owed to the testator's estate (273). In addition, this statement can only refer to the written διαθήκη , as opposed to the original agreement with Philoctemon.

Therefore, the will of Euctemon was a document which deprived a legitimate son of his right to inherit his father's property by only giving him one farm, which is presumably why the document was later withdrawn.

Euthycrates

There is no precise information concerning when Euthycrates died, except that his death allegedly occured when Astyphilus was but a small child (274). It is not stated exactly how old the boy was at this time but the word μικρὸν (ix,24) suggests an age of about three to four. If Astyphilus was about twenty when he first undertook military service in the Corinthian War, during the years 394-386 (275), the year of his father's death would have been c. 410.

There is no definite indication in Isaeus ix that Euthycrates made a will, but there is some evidence that this may have happened. When Euthycrates was dying, he gave his family a solemn command not to let his brother Thudippus approach the family tombs (276). At this time, Thudippus was probably Euthycrates' next of kin (277), and as such would be Astyphilus' guardian unless arrangements were made to the contrary (278). However, in this position, he would have been responsible for Euthycrates' funeral rites, and he was specifically forbidden to do this. Therefore, it would have been necessary to appoint someone else as the child's guardian. Even though the speaker does not specify who this was, there is some evidence concerning this.

It is alleged in the speech that Astyphilus was brought up by his mother's second husband:

ὅτε γὰρ ἐλάμβανε Θεόφραστος ὁ ἐμὸς πατὴρ τὴν ἐμὴν μητέρα καὶ Ἀστυφίλου παρὰ Ἱεροκλέους, ἦλθε καὶ

αὐτὸν ἐκεῖνον ἔχουσα μικρὸν ὄντα, καὶ διῃτᾶτο παρ' ἡμῖν τὸν ἅπαντα χρόνον ὁ Ἀστύφιλος, καὶ ἐπαιδεύθη ὑπὸ τοῦ πατρὸς τοῦ ἐμοῦ.

(Is. ix, 27)

It is specifically stated here that Theophrastus was nominated as the boy's guardian by will, but the fact that he brought up Astyphilus (ἐπαιδεύθη) even though he was not the child's closest male relative, suggests that he probably acted as such. It is likely that since he married his ward's mother, this may have been specified by will, as was the case with the younger Demosthenes' mother and Aphobus (279). In addition, Theophrastus allegedly cultivated Asyphilus' land:

Τὸ τοίνυν χωρίον τὸ ἐκείνου πατρῷον, ὦ ἄνδρες, ὁ πατὴρ ὁ ἐμὸς ἐφύτευσε καὶ ἐγεώργει καὶ ἐποίει διπλασίου ἄξιον.

(Is. ix, 28)

The fact that this was done, and the estate returned to Astyphilus doubled in value, suggests also that Theophrastus not only acted as the boy's guardian but performed his duty well. It is not made clear whether the will contained any instructions concerning the leasing of the estate, since the fact that Theophrastus farmed it himself does not indicate that this was not specified, since a child's guardian could undertake the lease of his ward's estate himself.

Therefore, it seems as if the will of Euthycrates appointed a guardian for the testator's child and authorised the marriage of his wife to the boy's guardian. Whether or not it contained instructions concerning μισθώσις οἴκου is open to conjecture.

Polyarchus

The alleged will of Polyarchus, the father of Cleonymus, that his son's property should be inherited by his great-nephews, is found in Isaeus i:

... ἔτι δὲ Πολυάρχου, τοῦ πατρὸς <τοῦ> Κλεωνύμου, πάππου δ'ἡμετέρου, προστάξαντος, εἴ τι πάθοι Κλεώνυμος ἄπαις, ἡμῖν δοῦναι τὰ αὐτοῦ.
(Is. i, 4)

Thalheim quotes this passage as an example of a testament made by a father with a legitimate son which was to take effect if he died before he came of age or two years afterwards (280). Beauchet is of the opinion that Polyarchus gave these instructions in a will, but does not say whether this will was made before or after Cleonymus reached his majority (281). However, the word ἄπαις implies that Cleonymus may have been adult by the time of Polyarchus' death, in which case the will would have no longer been valid. On the other hand, it is not clear whether these instructions did take the form of a διαθήκη, because the verb προστάξαντος is not found in any other extant evidence with reference to a will. In addition, a διαθήκη was concerned with what was to happen to the οἶκος after the testator's death, not with naming heirs for the testator's heir.

This is shown by the fact that no will (except these alleged instructions) concerns the disposition of property beyond the immediate adult heir or heirs (282). It is also dubious whether such a statement , even if it had been embodied in testament, would have been binding on Cleonymus unless it was intended to take effect only if Cleonymus were to die before reaching his majority or two years after it, and this is doubtful. Furthermore, even though these instructions are mentioned in the exordium of Isaeus i, no evidence or witnesses are produced later in the speech to verify that this happened. Since the veracity of this incident is supported by no evidence, it is possible that it is a fabrication. Therefore the passage cannot be taken as evidence concerning the function of the Athenian will.

It can be seen from this section that wills made by men with families had various functions. The majority of them provided for the care of the family in matters such as a dowry for the female dependents, and maybe the choice of a husband, and guardians for the children. In addition, a will made by a family man might include an inventory, notification of debts, certain bequests, and arrangements for the treatment of slaves. The exception to this is the will of Euctemon in which the son of a second marriage is deprived of his patrimony.

Wills not involving adoption made by men who had no legitimate offspring.

In this section, the wills of Cleonymus, Aristarchus and Mneson and the philosophers Plato, Theophrastus, Strato, Lyco, Epicurus, Arcesilaus and Crantor shall be discussed.

Cleonymus

There is no historical evidence in Isaeus i by means of which the speech can be dated. Therefore, it is necessary to rely on Wevers' estimated date of 355 (283). Even so, it is very difficult to ascertain exactly when the will of Cleonymus was made. The document was drawn up when the speaker and his brother were children under the guardianship of their uncle, Deinias (284). After Deinias' death, they were brought up by the testator, but they were not with Cleonymus when he died as is shown by the fact that they do not state that they were present themselves (285). This indicates that by the time of the testator's death, the speaker and his brother had come of age, since otherwise they would have still been living with Cleonymus, who was their guardian. The opening chapter of the speech, however, implies that they are still young men without much worldly experience, which would make them about twenty years old. Therefore, a very approximate date for Cleonymus' will could be c. 370-365.

The validity of the will of Cleonymus is contested in the first speech of Isaeus. This will was made in favour of several beneficiaries:

οὗτοι μὲν διαθήκαις ἰσχυριζόμενοι τοιαύταις, ἃς ἐκεῖνος διέθετο...

(Is. i, 3)

It is not made clear here how many beneficiaries there were under the terms of the will or what the names of all of them were. The speaker relates two indications that Pherenicus had incurred the testator's anger (286), and since he is trying to prove that the beneficiaries were not on good terms with Cleonymus before his death, it is very likely that Pherenicus was a legatee. Both Poseidippus and Diocles are mentioned in connection with sending away the magistrate who was allegedly called to revoke the will (287):

καίτοι πῶς ἂν ἕτερα τούτων γένοιτο ἀπιστότερα; τοὺς μὲν τηλικαῦτα μέλλοντας ἐκ τοῦ πράγματος κερδαίνειν, ὥσπερ ζημιωθησομένους, φυλάξασθαι τὴν διαβολήν, Κλεώνυμον δ' ὑπὲρ τῆς τούτων ὠφελείας τοσαύτην ποιήσασθαι σπουδὴν ὥστε Ποσειδίππῳ μέν, ὅτι καταμέλησεν, ὀργισθῆναι, Διοκλέους δὲ ταὐτὰ πάλιν εἰς τὴν ὑστεραίαν δεηθῆναι;

(Is. i, 23)

The fact that Poseidippus incurred Cleonymus' wrath through not carrying out his wishes implies that he was also a beneficiary under the will, since they would have had no reason for allegedly sending away the magistrate

if they had not been named in the document. Since Diocles is mentioned also, it is likely that he too was a beneficiary in the will.

It is possible that these men were related to the testator:

εἰ γάρ τις αὐτοὺς ἔροιτο διὰ τί ἀξιοῦσι κληρονόμοι γενέσθαι τῶν Κλεωνύμου, τοῦτ' ἂν εἰπεῖν ἔχοιεν, ὅτι καὶ γένει ποθὲν προσήκουσι καὶ ἐκεῖνος αὐτοῖς χρόνον τινὰ ἐπιτηδείως διέκειτο.

(Is. i, 36)

The word πόθεν indicates that the speaker is very wary of announcing the precise relationship of the beneficiaries to the testator, and because of this it is possible that they are of closer proximity than the speaker would like to admit. Since the claimants "ab intestato" are nephews of the deceased, it might be that the claimants under the will were first cousins on the male side (288). However, since the only evidence that they could have been this closely related to Cleonymus is the speaker's reluctance to state the proximity precisely, the matter is open to conjecture.

It is also disputed how many testamentary heirs there were. It has been thought that the following passages might provide some solution to the problem:

καὶ οὐ μὲν οἰκεῖοι καὶ οὐ προσήκοντες οὐ τούτων ἀξιοῦσιν ἡμᾶς καὶ τῶν ὁμολογουμένων, ὧν Κλεώνυμος κατέλιπειν, αὐτοῖς τούτων ἰσομοιρῆσαι·

(Is. i, 2)

οὗτοι δ' ἔργῳ λύουσιν ἐθέλοντες ἡμῖν ἰσομοιρῆσαι τῆς οὐσίας,...

(Is. i, 35)

The word ἰσομοιρῆσαι in these two quotations implies that the estate was to be equally divided in the abortive out-of-court settlement. The proportions of the proposed division were one third to the heirs "ab intestato" and two thirds to the testamentary heirs (289). On these grounds, Schoemann has argued that there were four beneficiaries under the will (290). On the other hand, there is a parallel of a possible similar decision in Isaeus v. Here, the estate is divided into the same proportions as the estate of Cleonymus, but the adopted son is to receive one third of the property and the heirs "ab intestato" are to have two thirds, which is to be shared equally (291). Therefore, it is possible that the word ἰσομοιρῆσαι refers to the fact that the two parts of the estate were to be divided into equal shares respectively, not that the heirs "ab intestato" were to receive the same proportion as the testamentary heirs. In addition, when witnesses are called to give evidence concerning this decision, it is not stated that an equal partition of the property was proposed:

Ἔτι τοίνυν ὡς οἱ τούτων φίλοι καὶ Κηφίσανδρος ἠξίουν νείμασθαι τὴν οὐσίαν καὶ τὸ τρίτον μέρος ἡμᾶς ἔχειν ἁπάντων τῶν Κλεωνύμου, καὶ τούτων μοι κάτει μαρτυρας.

(Is. i, 16)

Here, the word νείμασθαι does not necessarily indicate that the estate was to be divided into equal shares, even though the verb ἰσομοιρέω could have been used instead. Therefore, witnesses are called to give evidence not that an equal partition was suggested but that one third of the estate be ceded to the heirs ~~or~~ by the laws of intestate inheritance. Furthermore, the speaker only specifically names three opponents, Poseidippus and Diocles who allegedly were asked to send for the magistrate, and Pherenicus who was supposed to have incurred Cleonymus' anger. Therefore, it is more likely that there were three beneficiaries named in the will of Cleonymus.

There is also the problem concerning how closely the heirs by the will were related to each other. Albrecht has suggested that they were brothers (292). The evidence for this is the following:

εἰ μὲν τοίνυν Φερένικος ἢ τῶν ἀδελφῶν τις ἐτελεύτησεν, ...

(Is. i, 45)

However, Wyse rightly indicates that the meaning is ambiguous.

"It is not clear whether this means one of his (Pherenicus') brothers' or one of 'the brothers', a group contrasted with Pherenicus" (293).

In the speech, Diocles and Poseidippus were with Cleonymus before he died, and might well have been present at his death (294), whereas Pherenicus is referred as incurring the emnity of the testator at an earlier date (295). It therefore seems more probable that Diocles and Poseidippus were brothers, but Pherenicus, although possibly a relative, was not a brother of the other two.

Wyse suggests that although there is no specific statement that this will involved an adoption, it is possible that such a clause was included:

"There is nothing to show whether the testament enjoined that any of the heirs should enter by adoption the house of Cleonymus. It is not to the advantage of the speaker to mention such an injunction if it existed. His silence on the pathetic subject of the extinction of a family may be considered a sign that Cleonymus' will did provide for an adoption" (296).

De Ste. Croix is also of the opinion that this case is one of the instances in which an adoption can be inferred even though it is not mentioned (297), but he does not give his reasons for stating this.

On the other hand, Norton argues that Cleonymus' will did not contain an adoption, because the heirs seemed to share equally (298), and the word ὁμοῖος is used instead

of κλῆρον in referring to the inheritance (299). In saying that Isaeus i contains an "appeal to prevent fragmentation of an oikos" (300) Lacey seems to assume that Cleonymus did not provide for an adoption in his will.

There is nothing in the speech to show that an adoption had taken place, and in two other cases where the heir "ab intestato" questions the validity of a will involving adoption (301), he does not try to hide the function of the will. It could be that the reason that nothing is said about the extinction of the οἶκος is because the nephews of Cleonymus did not perform his funeral rites, but these were left to the heirs by testament. In addition, there is no other example of a will being made in which one beneficiary is adopted as the testator's son and given some property and the remainder shared amongst other testamentary beneficiaries. The only possible parallel can be found in the will of Dicaeogenes in which, according the speaker of Isaeus v, the testator adopted Dicaeogenes III and gave him one third of the estate, but left instructions that the remainder was to be divided amongst his heirs "ab intestato". However, it is very likely that Dicaeogenes III was adopted as universal heir, and the division amongst the heirs "ab intestato" was brought about as a result of an out-of-court compromise (302). Therefore, it is not probable that Cleonymus adopted one of his testamentary heirs, but that they were heirs by bequest.

The speech contains no information about how the estate was to be divided between the testamentary heirs.

Norton thinks that the heirs were to share in the property equally (303), and states that this is indicated in the following:

ἰσχυρίζονται γὰρ τοῖς διαθήκαις, λέγοντες ὡς Κλεώνυμος μετεπέμπετο τὴν ἀρχὴν οὐ πῦσαι βουλόμενος αὐτὰς ἀλλ' ἐπανορθῶσαι καὶ βεβαιῶσαι σφίσιν αὐτοῖς τὴν δωρεάν.

(Is. i, 18)

There is, however, no indication of an equal division in this quotation. The fact that various friends had suggested that two thirds of the estate was to be divided equally amongst the heirs by will does not necessarily indicate that they originally received an equal amount of property.

It is probable that in stating what each beneficiary should receive, Cleonymus wrote down an inventory of his property, as happens in the will of Plato (304).

Therefore, the will of Cleonymus did not contain an adoption, but bequeathed his property to three heirs , who were probably relatives of his. There is no way of knowing whether the property was to be equally divided between the testamentary heirs or not, but it is possible that the will contained an inventory of property.

Aristarchus

The will of Aristarchus was probably made during the Theban war, just before the testator's death (305). Therefore, it can be dated at 378-1.

The will of Aristarchus (II) is contested in the tenth speech of Isaeus. In order to discuss the function of this will, it is necessary to recount briefly the events preceding the speech.

Aristarchus (I) had two sons , Cyronides and Democharès, and two daughters. Cyronides was adopted by his maternal grandfather, Xenaenetus (I). At some point, Aristarchus (I) died, allegedly leaving the estate in debt (306). Democharès and one of the daughters also died. However, it is not clear whether the adoption of Cyronides took place before or after the deaths of Aristarchus (I) and Democharès (307). The surviving girl's guardian, Aristomenes, married this daughter to Cyronides, giving him the estate of Aristarchus (I). Thus, the surviving daughter did not become an ἐπίκληρος , but was married with a dowry to a man who was not a relative. Cyronides had two sons, Aristarchus (II) and Xenaenetus (II). After his father's death, the former was introduced as the posthumously adopted son of Aristarchus (I) (308). Aristarchus (II) fell in battle (309), and made a will in which his brother was to receive his estate.

The speech in which the will is mentioned does not state specifically what the function of the document was. The verb δίδωμι is used with reference to the will (310), thus implying that it contained a bequest rather than an

adoption. The hypothesis states that Aristarchus (II) made his brother, Xenaenetus (II), his heir (κληρονόμος) (311). However, the use of the word κληρονόμος does not necessarily indicate that Xenaenetus (II) was adopted, since it is used with reference to the testamentary heirs of Cleonymus who were not adopted by him. The fact that Xenaenetus (II) was named after his maternal great-grandfather indicates that his father intended him to remain in the οἶκος of Xenaenetus (I). In addition there is no evidence in the speech that Aristarchus (II) had adopted his natural brother in his will (312).

Therefore it is likely that the will of Aristarchus did not contain an adoption, and is an example of a man bequeathing his whole estate to someone else without adopting him as his son.

Mneson

Mneson died at about the same time as his brother Thrasyllus who died during the Sicilian expedition (313). Therefore, his will can be dated at c. 415-3.

There is a passage in Isaeus vii which suggests that a will was made:

Εὔπολις οὖν μόνος αὐτῶν λειφθεὶς οὐ μικρὰ ἀπολαύσας τῶν χρημάτων ἠξίωσεν, ἀλλὰ τὸν μὲν Μνήσωνος κλῆρον, οὗ καὶ Ἀπολλοδώρῳ προσῆκε τὸ ἡμικλήριον, πάντα εἰς αὐτὸν περιεποίησε, φάσκων

αὐτῷ δοῦναι τὸν ἀδελφόν, . . .

(Is vii, 6)

(Here, Eupolis and Mneson were brothers, and Apollodorus is the son of the third brother, Thrasyllus.)

The fact that Eupolis claimed his brother's whole estate (οὐ καὶ . . . ἀδελφόν) indicates that a will must have been allegedly made by Mneson, otherwise the estate would have been divided equally between Eupolis and Apollodorus in accordance with the laws of intestate succession (314).

The function of this will is disputed. De Ste. Croix is of the opinion that an adoption can be ~~implied~~ inferred from this passage, but does not support his statement with any evidence from the text or elsewhere (315). Gernet is a little more dubious and states that the passage might be referring to an adoption by will (316). On the other hand, Wyse thinks that if Mneson's estate was claimed by will, this is an example of a testament not containing an adoption, since he finds it "improbable that Eupolis pretended to have been made his brother's son" (317).

There is no other example of a man being allegedly adopted by his homopatric and homometric brother. Therefore a possible testamentary adoption here has no precedent. It is not stated when Eupolis' three children were born, but if they had been born before the death of Mneson, it is more probable that he would have adopted one of them to continue his line as opposed to his brother, and there are examples of the adoption of a niece or nephew by will (318). In addition, the word δοῦναι implies that the estate was allegedly given to Eupolis

without the condition that he become the adopted son of Mneson.

Therefore the function of the alleged will of Mneson (319) was probably the bequest of an estate without adoption. The fact that Eupolis was able to claim this brother's estate under the terms of such a will indicates that such a function was permissible in Athenian law in fourth-century Athens.

Archepolis

There is also some fragmentary evidence from Isaeus concerning the will of a man named Archepolis. There is no information by which the date of this testament can be established.

This evidence has to be regarded with a certain amount of caution because one is unable to reconstruct the speech from it, even though a summary is provided by Dionysius of Halicarnassus. The information is as follows:

Μετὰ ταύτην τοίνυν τὴν ἀπόκρισιν ἑτέραν διαθήκην ἐκόμισαν, ἣν ἔφασαν Ἀρχέπολιν ἐν Λήμνῳ διαθέσθαι.
(Is. fragment 3, 1, Thalheim)
ὁ δὲ τοῦ κλήρου κρατῶν παραγράφεται τὴν κλῆσιν, δεδόσθαι λέγων ἑαυτῷ τὰ χρήματα κατὰ διαθήκας.
(Dionysius of Halicarnassus, de Isaeo, 15) (320)

It seems as if these two quotations concern the same speech, because Dionysius of Halicarnassus states that the opponents are Aristogeiton and Archippus, and in

Thalheim, the two extant fragments are attributed to a speech entitled Against Aristogeiton and Archippus concerning the estate of Archepolis (321).
There is a difficulty here in that although there are two opponents named in the title, and the fragment of Isaeus quoted uses the plural forms of verbs (ἐκόμισαν, ἔφασαν) with reference to them, Dionysius of Halicarnassus states that only one of the speaker's opponents was in possession of the estate, (ὁ δὲ τοῦ κλήρου κρατῶν). It is possible that the reason two opponents are named was because even though there was only one testamentary claimant, the other opponent had stated that the document was deposited with him. However, because so little is known about this speech the matter is open to conjecture. Nothing is said about the function of the will in Isaeus, but Dionysius of Halicarnassus in his summary uses the verb δίδωμι in reference to the document. This implies that the will contained a bequest of the whole of the testator's estate to a man who was not to be adopted as his heir.

Therefore, from the little information available, it seems as if the alleged will of Archepolis contained a bequest without adoption.

Plato

The will of Plato was made in 347 at the latest, in the year of his death. It is quoted in Diogenes Laertius' biography of the philosopher. The document opens with the following words:

Τάδε κατέλιπε Πλάτων καὶ διέθετο·

(D.L.iii, 41)

The verb καταλείπω is not found in the opening of any other extant will, and is only found once in a surviving testament with the meaning "to bequeath" (322). However, καταλείπω is used later in this will to refer to slaves left as part of the estate, and it is used in other wills to denote the testator's estate (323). Therefore, it seems best to translate κατέλιπε as "leave behind", and this interpretation indicates that the will is to contain an inventory of property as well as arranging the disposal of the estate.

Plato firstly arranges the disposition of part of his landed estate:

τὸ ἐν Ἰφιστιαδῶν χωρίον, ᾧ γείτων βορρᾶθεν ἡ ὁδὸς ἡ ἐκ τοῦ Κηφισιᾶσιν ἱεροῦ, νοτόθεν τὸ Ἡράκλειον τὸ ἐν Ἰφιστιαδῶν, πρὸς ἡλίου δὲ ἀνιόντος Ἀρχέστρατος Φρεάρριος, πρὸς ἡλίου δὲ δυομένου Φίλιππος Χολλείδης· καὶ μὴ ἐξέστω τοῦτο μηδενὶ μήτε ἀποδόσθαι μήτε ἀλλάξασθαι, ἀλλ' ἔστω Ἀδειμάντου τοῦ παιδίου εἰς τὸ δυνατόν·

(D.L.iii, 41)

The piece of land to be bequeathed is specifically defined by its boundaries, which is not found in any other will. This property is left to a boy (παιδίου) Adeimantus (II). Davies suggests that he was the grandson of Plato's brother, Adeimantus (I) (324). This is probable because the two bear the same name, which indicates that they might be from the same family. Furthermore, it is unlikely that he was the son of Adeimantus (I) because he was a boy at the time the will was made (c. 347) and Adeimantus (I) was born c. 430 (325). Bruns suggests that Adeimantus (II) was the sole surviving descendant of Plato's brothers and sister, since otherwise the estate would have been shared amongst all of the heirs "ab intestato" (326). However, the fact that Plato specifically bequeaths the land at Iphistiadae to Adeimantus (II) indicates that there were probably others who had either an equal right to inherit or an even greater right. In addition, the fact that Adeimantus (II) is made partial heir shows that he was probably not the only heir "ab intestato", since if he had been, he would have taken possession of the estate without formality. Hug is undecided as to whether Adeimantus was adopted by Plato or was his heir "ab intestato" (327). No mention is made in the document of an adoption of Adeimantus (II) by Plato made either "inter vivos" or in the will, so it seems as if Adeimantus is to be partial heir without adoption, and is therefore to remain in his father's οἶκος as opposed to transferring to Plato's one (328).

It seems as if this estate was inherited by Plato and not bought by him. This is because he specifically states that the other estate in Eiresidae was bought from Callimachus (δὲ παρὰ Καλλιμάχου ἐπριάμην), and no such thing is said about the property given to Adeimantus. The fact that the estate at Iphistiadae is Plato's πατρῷα would account for the restriction on sale or exchange (μήτε ἀποδόσθαι μήτε ἀλλάξασθαι), since he would wish this property to remain intact and in the family. The fact that this was possibly his πατρῷα might well be the reason behind him bequeathing it to Adeimantus, since he might not have wished it to be divided between his heirs "ab intestato". The restriction on sale or exchange is presumably also a safeguard against Adeimantus' father or guardian either doing what Dicaeogenes is alleged to have done, that is, buying it himself (330) or from selling it to someone else, and thus depriving Adeimantus of the real estate.

The words εἰς τὸ δυνατόν are rather difficult to interpret and this expression does not occur in any other will. The editor of the Loeb translates this as "to all intents and purposes", but this is rather vague, since Adeimantus was a minor when Plato wrote his will, so he was legally unable to perform transactions amounting to more than one medimnus of barley (Isaeus x, 10). He would only be able to assume complete authority over the administration of the estate when he came of age.

Therefore εἰς τὸ δυνατόν cannot mean "let it be in the power of Adeimantus", as in meaning "let him have complete authority over it", because such a clause would be contrary to law. It is possible that these words may be an expression of a wish for the future, that is, "let it be for the authority of Adeimantus", it being understood that this would only be so when he comes of age. This suggestion would fit in with the immediately preceding clauses barring sale or alienation, and thus seems quite possible. This clause in the will is contrary to the arguments of both Harrison and Gernet, who state that a man had not such a free right to dispose of his πατρῶα in a will as that of ἐπίκτητα (331).

The next clause concerns some other landed property:

καὶ τὸ ἐν Εἰρεσιδῶν χωρίον, ὃ παρὰ
Καλλιμάχου ἐπριάμην, ᾧ γείτων βορρᾶθεν
Εὐρυμέδων Μυρρινούσιος, νοτόθεν δὲ Δημόστρατος
Ξυπεταιών, πρὸς ἡλίου ἀνιόντος Εὐρυμέδων
Μυρρινούσιος, πρὸς ἡλίου δυομένου Κηφισός.

(D. L. iii, 42)

It has been suggested that this piece of land was the site of the Academy (332). However, if it had been, it seems more likely that it would have been left to Plato's fellow scholars, as happens to the school of the peripatetic philosophers (333).

In addition, no restriction is placed on sale or exchange, which would probably have been the case if this property was Plato's Academy. Bruns is of the opinion that this estate was inherited by Adeimantus (334). However, the text contains no specific indication that this was done, and since Adeimantus is named as heir to Plato's other piece of land, it is probable that he did not inherit the estate at Eiresidae. It is more likely that this land was to be divided amongst Plato's heir or heirs "ab intestato". No heir or heirs are named for the remainder of Plato's property, either:

ἀργυρίου μνᾶς τρεῖς. φιάλην ἀργυρᾶν ἑλκουσαν
ρξε', κυμβίον ἄγον με', δακτύλιον χρυσοῦν
καὶ ἐνώτιον χρυσοῦν ἄγοντα συνάμφω δ'
δραχμάς, ὀβολοὺς γ'· ... οἰκέτας καταλείπω
Τύχωνα βίκταν Ἀποπλωνίδην Διονύσιον.
σκεύη <....> τὰ γεγραμμένα, ὧν ἔχει ἀντίγραφα
Δημήτριος.

(D. L. iii, 42-43)

It is very likely that these effects also were to be shared amongst Plato's heirs "ab intestato", since he bequeaths them to no one in particular. The inventory of furniture (σκεύη τὰ γεγραμμένα) does not form part of this will but is written in a separate document.

Since this document is referred to as τὰ γεγραμμένα as opposed to διαθήκη , it would not be a will as such, but more similar to the notes left by Polyeuctus' wife (335). It is enough for Plato here just to refer to this other document and not re-record the furniture he leaves.

In this testament, Plato also notes a debt owed to the estate:

Ξύλανείδης ὁ λιθοτόμος ὀφείλει μοι τρεῖς μνᾶς.

(D. L. iii, 43)

By noting this debt of three minae, Plato ensures that his heirs are aware that they can claim this sum. Since no person is named as the recipient of the money, it is probably to be shared amongst Plato's heirs "ab intestato". The testator also states that he is in debt to no-one:

ὀφείλω δ' οὐδενὶ οὐθέν.

(D. L. iii, 42)

Both of these quotations refer to the law whereby the heir to an estate inherited all the debts to it and by it, so it was wise to make note of these (336).

Plato also provides for the manumission of one of his slaves:

Ἄρτεμιν ἀφίημι ἐλευθέραν.

(D. L. iii, 42)

This is the earliest extant example of a slave being freed by means of a will (337). No bequest is left to the girl, and the testator does not even state that she is to continue to possess the personal effects such as clothing which she would have had the use of.

Such matters are left to the heirs to decide upon.

Finally the executors are named:

ἐπίτροποι Λεωσθένης Σπεύσιππος Δημήτριος
Ἡγίας Εὐρυμέδων Καλλίμαχος Θράσιππος.

(D. L. iii, 43)

This is the first extant will in which persons who are not specifically mentioned as beneficiaries are appointed as executors to an estate. There is no indication as to who these men are, whether some or all of them are the heirs "ab intestato" or persons who are completely disinterested. One of these men, namely Demetrius, also possesses the inventory of Plato's furniture. The role of these men is presumably to ensure that the estate is equally divided between Plato's heirs "ab intestato", and that the estate given to Adeimantus is administered fairly until he comes of age.

Therefore the will of Plato has several functions. Its primary purpose is to list the effects of his entire estate, part of which he bequeaths to Adeimantus, and the rest of it is to be inherited by his heir or heirs "ab intestato". He also uses his will to state a debt owing to the estate, and confirm that he is in debt to nobody, to free a slave and appoint persons as executors.

Theophrastus

The will of Theophrastus was made at the latest in 286, the year of his death, and is of particular importance from the legal aspect because this philosopher was the author of several works concerning law (338).

The testament opens as follows:

Ἔσται μὲν εὖ· ἐὰν δέ τι συμβῇ, τάδε διατίθεμαι·

(D.L. v, 51).

This is the first extant will in which the present (middle) form of διατίθημι is used in the opening sentence. In three earlier wills, namely those of Pasio, Plato and Aristotle, the aorist form of the verb is used (339).

The heirs to much of Theophrastus' property are named first:

τὰ μὲν οἴκοι ὑπάρχοντα πάντα δίδωμι Μελάντῳ καὶ Παγκρέοντι τοῖς υἱοῖς Λέοντος.

(D.L.v, 51)

Theophrastus does not state specifically the whereabouts of the property which is to be inherited by Melantes and Pancreon, however the word οἴκοι indicates that this is his property in Eresos in Lesbos, the place of his birth (340). The word πάντα indicates that Melantes and Pancreon are to receive the entire property. No instructions are given regarding the division of the estate, so it seems best to assume that the beneficiaries are to share equally, as was the case under the rules of intestate succession (341). The use of the word δίδωμι indicates that this is a bequest and that no adoption is involved. Therefore, this is an example of a man's πατρῷα being bequeathed without adoption (342). There is no indication in the will of the relationship of Melantes and Pancreon to the testator. Gottschalk suggests that they are Theophrastus' nephews, since Melantes was also the name of Theophrastus' father (343). This suggests that Leon is the philosopher's brother. However there is nothing in the text which indicates that they are the testator's nephews, because although Melantes is a family name, it is possible that the Melantes named in the will is a more distant relative. In addition if Melantes and Pancreon had been Theophrastus' natural heirs, as Gottschalk suggests (344), there would be no need to name them as beneficiaries, since they would have been entitled to inherit anyway, unless there were others of the same relationship with Theophrastus whom he wished to deprive of their inheritance. It therefore seems improbable that they were his closest relatives and the only heirs under

the law of intestate inheritance but were more distantly related to the testator.

Following this, reference is made to the property entrusted to Hipparchus (345):

ἀπὸ δὲ τῶν παρ' Ἱππάρχου συμβεβλημένων τάδε μοι βούλομαι γενέσθαι·

(D. L. v, 51)

The word συμβεβλημένων refers to Theophrastus' Athenian property, his money in Athens as well as the school and garden (346). There are several views concerning Theophrastus' ownership of the school. Bruns is of the opinion that Theophrastus must have been granted Athenian citizenship because he left property in Athens (347). Gottschalk thinks that Demetrius of Phalerum, a fellow pupil of Aristotle, helped him to obtain the right of ἔγκτησις by which means he became the owner of the land on which he built his school, and that this probably occurred at some point after 317 when he was appointed as governor of Athens by Cassander. He also adds that the help given might have been partially financial (348). On the other hand, there is some evidence presented by Whitehead that the division between citizens and non-citizens had lessened by the turn of the fourth century to the extent that eventually the status of the metic simply died out (349). If this was the case, then it might have been possible for Theophrastus to obtain ἔγκτησις . Diogenes Laertius speaks of the intervention of Demetrius of Phalerum as follows:

λέγεται δ' αὐτὸν καὶ ἴδιον κῆπον ἔχειν μετὰ τὴν Ἀριστοτέλους τελευτήν, Δημητρίου τοῦ Φαληρέως, ὃς ἦν καὶ γνώριμος αὐτῷ, τοῦτο συμπράξαντος.

(D. L. v, 39)

The word συμπράξαντος offers no clue about what really happened, since it does not specify the form of help given by Demetrius of Phalerum to Theophrastus. Since no mention is made in Diogenes Laertius that Theophrastus was made an Athenian citizen, it seems unlikely that this was so. In addition, Bruns' suggestion offers no explanation and takes no account of the intervention of Demetrius of Phalerum. The passage in Diogenes Laertius does not give any indication of the nature of this intervention, therefore it is necessary to examine in brief the position of the metic with reference to land ownership. In classical Athens, a metic was not legally able to own land or a house unless he was granted the right of ἔγκτησις γῆς καὶ οἰκίας (350). Some inscriptions exist conferring this right on metics. One of these inscriptions specifically states that the metic's right of ἔγκτησις is to be passed down to his descendants (351). This indicates that the right of ἔγκτησις was only hereditary if it was specified in the decree. The word used to specify descendants is ἔκγονοι which indicates that the right is limited to the children

and then grandchildren etc. of the recipient, and not to other family members such as nephews or uncles. Therefore if a metic who was granted this particular privilege were to die without legitimate children, the right of ἔγκτησις would not be inherited by the man who stood to inherit his other property. It is possible that this particular right was given only to men who had legitimate children. In other inscriptions, a limit is set on the value of the land which the metic is allowed to own (352). The fact that some of these inscriptions date from the third century indicates that even though there is some evidence that the differences between a metic and a Athenian citizen began to fade during the turn of the fourth century, the restrictions on the ownership of land still remained. Therefore, it does not seem very likely that Theophrastus would have been able to buy land without the right of ἔγκτησις . In his will, Theophrastus makes arrangements for the school, in effect bequeathing it for the use of scholarship and at least one of those who are to participate in overseeing it is a metic himself (353). This indicates that the ἔγκτησις γῆς καὶ οἰκίας granted to Theophrastus included the right of disposition of this land by means of a διαθήκη . According to the available evidence, a privilege of this kind was not granted to any other metic. Therefore, it is possible that Demetrius of Phalerum helped Theophrastus to obtain ἔγκτησις and also ensured that the decree included freedom of disposition (354).

It is this Athenian property which Theophrastus states that Hipparchus should make arrangements for:

πρῶτον μὲν [προβόπωμα γενέσθαι] τὰ περὶ τὸ μουσεῖον καὶ τὰς θεὰς συντελεσθῆναι κἄν τι ἄλλο ἰσχύῃ περὶ αὐτὰς ἐπικοσμηθῆναι πρὸς τὸ κάλλιον· ἔπειτα τὴν Ἀριστοτέπους εἰκόνα τεθῆναι εἰς τὸ ἱερὸν καὶ τὰ λοιπὰ ἀναθήματα ὅσα πρότερον ὑπῆρχεν ἐν τῷ ἱερῷ· εἶτα τὸ στωίδιον οἰκοδομηθῆναι τὸ πρὸς τῷ μουσείῳ μὴ χεῖρον ἢ πρότερον· ἀναθεῖναι δὲ καὶ τοὺς πίνακας, ἐν οἷς αἱ τῆς γῆς περίοδοί εἰσιν, εἰς τὴν κάτω στοάν· ἐπισκευασθῆναι δὲ καὶ τὸν βωμόν, ὅπως ἔχῃ τὸ τέλειον καὶ τὸ εὔσχημον.

(D. L. v, 51-52)

The fact that some of the building of the school had fallen into disrepair when Theophrastus wrote his will, as is indicated by these instructions, was probably a result of the siege of Athens by Demetrius Poliorcetes (355), and does not suggest that the school was receiving insufficient care from its owner. The fact that the likeness of Aristotle and the maps are to be put into particular place implies that they might have been there

previously, but had been removed in a time of danger. The word πρότερον indicates that before the upheaval, the school had been kept in good repair. The testator's order of priorites is indicated by the fact that he mentions the μουσεῖον , the place of learning, first. He does not specify how it is to be repaired but trusts those concerned, presumably the executors of the will (356) to ensure that everything is done well (κἄν τι ..... κάλλιον). It is not stated what form the likeness of Aristotle took, whether it was a full-size statue or a bust (357). The altar is also to be rebuilt (ἐπισκευασθῆναι).

Provision is also made for the completion of a statue of Nicomachus:

βούλομαι δὲ καὶ τὴν Νικομάχου εἰκόνα συντελεσθῆναι ἴσην. τὸ μὲν τῆς πλάσεως ἔχει Πραξιτέλης, τὸ δ' ἄλλο ἀνάλωμα ἀπὸ τούτου γενέσθω. ἐπιθῆναι δὲ ὅπου ἂν δοκῇ τοῖς καὶ τῶν ἄλλων ἐπιμελουμένοις τῶν ἐν τῇ διαθήκῃ γεγραμμένων

(D. L. v, 52)

It is very possible that this life size (ἴσην) statue of Nicomachus was to be of Aristotle's son of that name, since Theophrastus is named in Aristotle's will as the boy's guardian in the event of Nicanor dying (358).

The payment for the moulding (πλάσεως) of the statue had already been made, but the remainder of the cost was to be borne by the testator's liquid assets left in the care of Hipparchus. The word πλάσεως suggests that the statue was to be made of metal, presumably bronze, since a mould would not have been necessary for a stone statue. The place where the statue is to be put is not specified, but the testator leaves this for the executors to decide.

The section concerning various expenditures to be made ends with the following:

καὶ τὰ μὲν περὶ τὸ ἱερὸν καὶ τὰ ἀναθήματα τοῦτον ἐχέτω τὸν τρόπον.

(D. L. v, 52)

This sentence has no particular purpose besides showing the reader or listener that there are no more provisions concerning repairs to the school and so on.

Theophrastus next disposes of an estate in Stagira:

τὸ δὲ χωρίον τὸ ἐν Σταγείροις ἡμῖν ὑπάρχον δίδωμι Καλλίνῳ.

(D. L. v, 52)

The testator does not state how he came to possess this property, and it has been suggested that Aristotle's son, Nicomachus, bequeathed it to him (359). There is no evidence to prove that this was done, except the fact that it does not seem likely that Theophrastus would have wished to buy property in Stagira himself.

That there was a bond of affection between Theophrastus and Nicomachus is shown in the following:

οὗ καὶ τοῦ υἱέος Νικομάχου φησὶν ἐρωτικῶς διατεθῆναι, καίπερ ὄντα διδάσκαλον, Ἀρίστιππος ἐν τετάρτῳ Περὶ παλαιᾶς τρυφῆς.

(D. L. v, 39) (οὗ refers to Aristotle)

The sexual implication in ἐρωτικῶς might well be an exaggeration by Aristippus for an affection which did not cross the bounds of decency. It seems very unlikely that Aristotle would have nominated Theophrastus as the guardian of his son if he had possessed strong homosexual tendencies. Therefore, although it is possible that Nicomachus bequeathed his property in Stagira to Theophrastus, it is not proven.

The testator's library is then disposed of:

τὰ δὲ βιβλία πάντα Νηλεῖ.

(D. L. v, 52)

It is thought that the library included the works of Aristotle, and that after the death of Theophrastus, Neleus took them to Scepsis, where they passed into the hands of his heirs who were uneducated men, and neglected until they were bought by Apellicon of Teos and returned to Athens. According to tradition, they were afterwards seized by Sulla, and then taken to Rome where eventually they were restored by the grammarian Tyrhanio(360). To discuss the truth or otherwise of this tale is beyond the scope of this thesis and is very well discussed by Gottschalk (361). The will provides no clue to the

story's veracity, except to the fact that Neleus received Theophrastus' library. It is probable, as Gottschalk suggests, that Theophrastus intended Neleus to be his literary executor and arrange his papers for publication (362).

Following this, the testator states what is to happen to the school:

τὸν δὲ κῆπον καὶ τὸν περίπατον καὶ τὰς οἰκίας τὰς πρὸς τῷ κήπῳ πάσας δίδωμι τῶν γεγραμμένων φίλων ἀεὶ τοῖς βουλομένοις συσχολάζειν καὶ συμφιλοσοφεῖν ἐν αὐταῖς, ...

(D. L. v, 52)

This clause specifies the purpose for which the philosopher's property in Athens is to be used. It is to be a centre for communal scholarship. The fact that it is to be under group ownership is indicated here by the prefix σύν in the verbs συσχολάζειν and συμφιλοσοφεῖν. At this point, Theophrastus does not name the persons who are to administer the school (363), but just states that he is giving it to fellow scholars who wish to use it. The word ἀεὶ indicates that it is always to be kept for the purpose of study. This point is then expanded upon:

ἐπειδήπερ οὐ δυνατὸν πᾶσιν ἀνθρώποις ἀεὶ ἐπιδημεῖν, μήτ' ἐξαλλοτριοῦσι μήτ' ἐξιδιαζομένου μηδενός, ἀλλ' ὡς ἂν ἱερὸν κοινῇ κεκτημένοις, καὶ τὰ πρὸς ἀλλήλους οἰκείως καὶ φιλικῶς χρωμένοις, ὥσπερ προσῆκον καὶ δίκαιον.

(D. L. v, 53)

The first section of this quotation (ἐπειδήπερ ... κεκτημένοις) allows for the fact that not all the scholars may be present, and specifies that the property is not to be given into private ownership but is to be held in common (κοινῇ). This clause seems to be placing a certain restriction of freedom of disposition on those who are to administer the property, because even though it does not state that they are not to be allowed to make a will concerning it, it is not to be made the private property of anybody. Therefore, this clause does not completely curtail freedom of disposition, but only states that those men who live and study in the place are not to give the property to anyone. It is not made clear whether the ten men named by Theophrastus were to be succeeded by their own sons or other heirs. The word ἱερὸν seems to lend an air of sacredness to the bequest, and implies that the school is to be respected as a temple of learning. Those who study there are to live together in a spirit of affection and friendship (οἰκείως καὶ φιλικῶς). Theophrastus then names the men whom he wishes to have joint care of the school:

ἔστωσαν δὲ οἱ κοινωνοῦντες Ἵππαρχος, Νηλεύς, Στράτων, Καλλῖνος, Δημότιμος, Δημάρατος, Καλλιθένης, Μελάντης, Παγκρέων, Νίκιππος.

(D. L. v, 53)

Gottschalk states that:

"The legatees are a group of ten fellows who are to hold the property as a joint trust for the benefit of all the resident members of the group. The enjoyment - obviously - and probably the right to a voice in the control of the property was limited to those who were resident at any one time, a fellow who went away and subsequently returned to Athens would resume his right on his return" (364).

This suggests that the list of ten men was fairly rigid and would not be added to. Bruns is of the opinion that only these people were to care for the school (365). However, Strato, who was later voted head of the school (366), gave Lyco the property to administer in his will, which was made in 268 (367). It does not seem probable that this would have been done if Lyco had not been a member of the institution earlier. Since Lyco is not one of those named in Theophrastus' will, it seems as if the members named by Theophrastus allowed others, maybe some of the older students, to partake in the governing of the school when they were deemed suitable. It is possible that those named by Theophrastus were those whom the

testator deemed most suitable for governing the school and possibly teaching in it. Provision is also made for Aristotle's grandson to study in the school:

ἐξεῖναι δὲ βουλομένῳ φιλοσοφεῖν καὶ Ἀριστοτέλει τῷ Νικομάχου καὶ Πυθιάδος υἱῷ καὶ μετέχειν τούτων· καὶ αὐτοῦ πᾶσαν ἐπιμέλειαν ποιεῖσθαι τοὺς πρεσβυτάτους, ὅπως ὅτι μάλιστα προκόψῃ κατὰ φιλοσοφίαν.

(D. L. v, 53)

Aristotle is given the right to associate with the ten fellows only if he so wishes (βουλομένῳ), and if he does do this, then the eldest members of the group are to oversee his studies, as is indicated by the word ἐπιμέλειαν , which would not refer to care in the manner of a legal guardian but to care in the capacity of a student supervisor. The fact that Theophrastus makes this provision indicates that he was still on fairly close terms with the family of Aristotle the philosopher.

The testator then makes arrangements for his burial:

θάψαι δὲ καὶ ἡμᾶς ὅπου ἂν δοκῇ μάλιστα ἁρμόττον εἶναι τοῦ κήπου, μηδὲν περίεργον μήτε περὶ τὴν ταφὴν μήτε περὶ τὸ μνημεῖον ποιοῦντας

(D. L. v, 53)

Here, Theophrastus does not request that he be buried in his paternal estate in Lesbos but in the garden of the school (τοῦ κήπου). It is not specified who is to take care of his burial, but since Hipparchus is to preside over Theophrastus' liquid assets, it is probable that he is to provide the finance. If this is so, then this is the first known example of the cost of a burial being defrayed by someone other than a man's legal heirs (368). It is possible that the other executors are to ensure that the terms laid down concerning the place of burial, (which is not specified but has to be fitting, ἁρμόττον), and the expenditure are adhered to. If so, it seems as if the obligations concerning the burial of the testator are legal and not moral.

Provision is then made for the daily care of the grounds:

ὅπως δὲ συνείργηται, μετὰ τὰ περὶ ἡμᾶς συμβάντα, τὰ περὶ τὸ ἱερὸν καὶ τὸ μνημεῖον καὶ τὸν κῆπον καὶ τὸν περίπατον θεραπευόμενα συνεπιμελεῖσθαι καὶ Πομπύλον τούτων ἐποικοῦντα αὐτὸν καὶ τὴν τῶν ἄλλων ἐπιμέλειαν ποιούμενον ἣν καὶ πρότερον·

(D. L. v, 54)

Here, Pompylus, a philosopher and a freedman of Theophrastus (369) is to share caring for the property with, presumably, the ten named by the testator.

The word συνεῖργται implies that some sort of verbal agreement was made to this effect. The fact that the care of Theophrastus' monument is to be shared by a freedman indicates a further removal of the moral obligation of the testator's heirs to look after it to a legal one placed on the ten "fellows" of the school and Pompylus. It is possible that the reason behind this was that Pompylus lived nearby (ἐποικοῦντα) and would be able to maintain the grounds on a regular basis. He is also confirmed in his previous position in which, it seems, he exercised some care over the property.

The interpretation of the sentence

τῆς δὲ συνιτελείας ἐπιμελεῖσθαι αὐτοὺς τοὺς ἔχοντας ταῦτα.

(D. L. v, 54)

is a little difficult if taken out of context, but since it comes between two passages concerning Pompylus, it probably means that the ten administrators of the school are to care for the freedman's interests (370).

Following this, Theophrastus confirms Pompylus and Threpta (371) in their possession of a certain sum of money. By doing this he grants them the freedom to bequeath it by will (372). They are also bequeathed a maidservant:

δίδωμι δ' αὐτοῖς καὶ Σωματάλην τὴν παιδίσκην·

(D. L. v, 54)

It is not stated whether they are to possess the right of disposition over her. Therefore it is probable that after

the death of the couple she will be inherited by Theophrastus' heirs (373). Since Pompylus lived near the school and was closely connected with it, it is most likely that the decision concerning Somatale after his death would rest with the administrators of the school. Pompylus is also bequeathed some furniture:

τῶν δὲ οἰκηματικῶν σκευῶν ἀποδιδόντας Πομπύλῳ ὃ ἂν δοκῇ τοῖς ἐπιμεληταῖς καλῶς ἔχειν, τὰ λοιπὰ ἐξαργυρίσαι.

(D. L. v, 55)

The sort of furniture to be given and how much of it is left to the discretion of the executor. Since Melantes and Pancreon are to receive all Theophrastus' property in Lesbos, it is most likely that οἰκηματικῶν σκευῶν refers to the furniture in the philosopher's Athenian home.

There are also provisions detailing the treatment of slaves after Theophrastus' death.

Some slaves are to be manumitted:

τῶν δὲ παίδων Μόλωνα μὲν καὶ Τίμωνα καὶ Παρμένοντα ἤδη ἐλευθέρους ἀφίημι

(D.L. v, 55)

The word ἤδη indicates that these three slaves are to be liberated immediately, that is, as soon as the will is read.

Other slaves are to be freed only under certain conditions:

Μανῆν δὲ καὶ Καλλίαν παραμείναντας ἔτη τέτταρα ἐν τῷ κήπῳ καὶ συνεργασαμένους καὶ ἀναμαρτήτους γενομένους ἀφίημι ἐλευθέρους.

(D. L. v, 55)

Here, the two slaves Manes and Callias are to be freed only if they work in the garden for four years and behave well. The fact that these conditions are made indicates that if the two slaves do not keep them, they will not be manumitted after four years.

Some slaves are given to people:

δίδωμι δὲ καὶ Καρίωνα Δημοτίμῳ, Δόνακα δὲ Νηλεῖ.

(D. L. v, 55)

Both of the recipients number amongst those appointed as members of the school and the executors. In addition, Neleus is bequeathed Theophrastus' library.

One of the slaves is to be sold:

Εὔβουλον δ' ἀποδόσθαι.

(D. L. v, 55)

This is the only will in which it is specified that a slave is to be sold (374). Presumably this is because

Euboeus had not proved himself a particularly good slave, otherwise it seems as if such a decision would have been left to the discretion of the heirs.

The testator also bequeaths some money to Callinus:

δότω δ' Ἵππαρχος Καλλίνῳ τρισχιλίας δραχμάς·
(D. L. v, 55)

Callinus, the beneficiary, is both an executor of the will and one of the administrators of the school, and the money which he/h is to receive is to be taken from the testator's liquid assets entrusted to Hipparchus.

Earlier in the will, Hipparchus was made in charge of certain funds (375). The reason why this is done is given after the statement of the bequest to Callinus:

Μελάντῃ δὲ καὶ Παγκράτει εἰ μὲν μὴ ἐωρῶμεν Ἵππαρχον καὶ ἡμῖν πρότερον χρείαν παρεσχημένον καὶ νῦν ἐν τοῖς ἰδίοις μάλα νεανικῶς ἔχοντα, προεθέμεθα ἂν μετὰ Μελάντου καὶ Παγκράτους ἐξάγειν αὐτά. ἐπειδὴ δὲ οὐτ' ἐκείνοις ἐώρων ῥᾴδιον ὄντα συνοικονομεῖν λυσιτελέστερόν τι αὐτοῖς ὑπελάμβανον εἶναι τεταγμένον τι λαβεῖν παρὰ Ἱππάρχου, δότω Ἵππαρχος Μελάντῃ καὶ Παγκράτει, ἑκατέρῳ, τάλαντον· διδόναι δ' Ἵππαρχον καὶ τοῖς ἐπιμεληταῖς εἰς τὰ ἀναλώματα τὰ ἐν τῇ διαθήκῃ

γεγραμμένα κατὰ τοὺς ἑκάστου καιροὺς τῶν δαπανημάτων. οἰκονομήσαντα δὲ ταῦτα Ἵππαρχον ἀπηλλάχθαι τῶν συμβολαίων τῶν πρὸς ἐμὲ πάντων· καὶ εἴ τι ἐπὶ τοῦ ἐμοῦ ὀνόματος συμβέβληκεν Ἵππαρχος ἐν Χαλκίδι, Ἱππάρχου τοῦτό ἐστιν.

(D. L. v, 55-56)

At the beginning of this passage, the testator explains why Hipparchus is to be responsible for Theophrastus' money. It seems as if Theophrastus would have wished that the responsibility for his finances could have lain with Melantes, Pancreon and Hipparchus. However, the fact that Hipparchus is in debt to the estate (οἰκονομήσαντα ... πάντων) renders this impossible. The nautical word ναυηγηκότα implies that the nature of the debt is concerned with the failure of a shipping venture. Therefore, Theophrastus thinks it better that Melantes and Pancreon receive a talent each, which is more profitable (λυσιτελέστερον) than if they were to oversee the philosopher's finances with Hipparchus and divide the residue into three. Therefore, since Hipparchus is to oversee the money alone, he will be left with less than one talent for himself once the relevant payments have been made. Hug is of the opinion that the fact that Hipparchus is in charge of Theophrastus' liquid assets indicates that he is the chief heir (376). However, Hipparchus is only left with less than one talent, whereas Melantes and Pancreon are to receive a talent each as well as the testator's estate in Lesbos.

Furthermore, Theophrastus agrees with Melantes and Pancreon, not with Hipparchus, that Pompylus and Threpta should keep their money in perpetuity. Therefore, Hug is incorrect (377), since the terms of the will indicate that Melantes and Pancreon are Theophrastus' chief heirs. Hipparchus is to act with the executors in making the relevant payments from Theophrastus' estate (διδόναι ... δαπανημάτων). Gottschalk states that Hipparchus had a position "analogous to that of the Bursar in a college today" (378). However, the position of caring for the finances of the school is not conferred on Hipparchus in perpetuity, but he is only to oversee the financial provisions made in the will. Therefore, Gottschalk is incorrect. The word συμβολαίων indicates that Hipparchus had made certain contracts with Theophrastus. The fact that he has to be released from them (ἀπηλλάχθαι) means that these contracts involved Hipparchus in some sort of debt to the testator, and that unless Theophrastus specifies otherwise, he would have to repay them to the testator's heirs (379). In addition, it seems as if Hipparchus has made certain contracts in Chalcis in Theophrastus' name, and the testator specifically states that Hipparchus is to be responsible for these. Even though it is not specfically stated, it is probable that the clause was included to safeguard Melantes and Pancreon from any debt incurred by Hipparchus in Theophrastus' name.

Following the clarification of the position of Hipparchus, Theophrastus names his executors:

ἐπιμεληταὶ δὲ ἑστῶσαν τῶν ἐν τῇ διαθήκῃ γεγραμμένων Ἵππαρχος, Νηλεύς, Στράτων, Καλλῖνος, Δημότιμος, Καλλισθένης, Κτήσαρχος.

(D. L. v, 56).

Of the seven executors, there are some who have been given legacies, namely Hipparchus, Neleus, Callinus and Demotimos. All of them except Ctesarchus are named as governors of the school. Thus Ctesarchus is the only completely disinterested executor.

The remainder of the will concerns witnesses and the whereabouts of other copies of the document. This information will be discussed in a later chapter (380).

Therefore, the will of Theophrastus has several functions. In it, he disposes of his paternal estate to two men who were not necessarily his next of kin, and gives his estate in Stagira to one of his fellow scholars; he ensures that his school will continue to be used for the purposes of study, and names those who are to administer it; he provides for the care of his freedman Pompylus and states what is to happen to his slaves; he also makes arrangements concerning the debts owing to the estate and names his executors as well as noting the witnesses and the whereabouts of other copies of the document.

Strato

Strato was the philosopher who administered the peripatetic school from 286, the year of Theophrastus' death, until 268, the year of his own death. Even though he was not specifically appointed as head of the school by Theophrastus in his will, it is probable that he was voted into this position by the other members of the peripatos (381). Diogenes Laertius has preserved his will, which he found in the works of Ariston of Ceos (382).

The will opens as follows:

Τάδε διατίθεμαι, ἐάν τι πάθχω·

(D. L. v, 61)

The form of the verb διατίθημι which is used here is the same as that used by Theophrastus and Lyco (383). The verb πάθχω is not used in the opening of any other extant will.

The testator firstly bequeaths some property to two men, Arcesilaus and Lampyrio:

τὰ μὲν οἴκοι καταλείπω πάντα Λαμπυρίωνι καὶ Ἀρκεσιλάῳ.

(D. L. v, 61)

It is not stated here how these two men are related to the testator. Arcesilaus was the name of Strato's father, and Diogenes Laertius thinks that the beneficiary

of that name is the testator's father:

Διεδέξατο δ' αὐτοῦ τὴν σχολὴν Στράτων Ἀρκεσίλαου Λαμψακηνός, οὗ καὶ ἐν ταῖς διαθήκαις ἐμνημόνευσεν.

(D. L. v, 58)

However, this seems unlikely, since it is improbable that the philosopher's father would have survived him unless he lived to an extremely old age. This is because Strato would have probably been a fairly mature man in 286 to be placed as head of the school, so by his death he would have been at least in his fifties if not sixties. His father would have been about thirty years older. In addition, there is no indication in the will that Arcesilaus is the testator's father. Bruns suggests that Arcesilaus was either a son or a nephew of Strato, but he dismisses the former suggestion on the grounds that one could not make a legal will if one had a son, and concludes that he must have been a nephew (384). Hug is of the opinion that Lampyrio and Arcesilaus were both brothers and nephews of Strato (385). Gottschalk thinks that both of these men were nephews of the testator and probably his legal heirs (386). Arcesilaus is a family name, and the heir of this name is later given a certain amount of precedence. He is also to be the ultimate bearer of the funeral expenses, and this implies that he might have been Strato's next-of-kin, and the reason he is specifically named is because he is to share the property bequeathed here with Lampyrio. The two men are bequeathed Strato's property in Lampsacus, his paternal

home, (τὰ μὲν οἴκοι) (387). This would presumably consist of the testator's paternal estate in addition to any other property which he had acquired in Lampsacus.

Strato then mentions his burial:

ἀπὸ δὲ τοῦ Ἀθήνησιν ὑπάρχοντός μοι ἀργυρίου πρῶτον μὲν οἱ ἐπιμεληταὶ τὰ περὶ τὴν ἐκφορὰν ἐπιμεληθήτωσαν καὶ ὅσα νομίζεται μετὰ τὴν ἐκφοράν, μηδὲν μήτε περιεργον ποιοῦντες μήτ' ἀνελεύθερον. ἐπιμεληταὶ δὲ ἔστωσαν τῶν κατὰ τὴν διαθήκην οἵδε· Ὀλύμπιχος, Ἀριστείδης, Μνησιγένης, Ἱπποκράτης, Ἐπικράτης, Γοργύλος, Διοκλῆς, Λύκων, Ἀθάνης.

(D. L. v, 61-62)

Here, the responsiblity of carrying out the testator's funeral rites rests not with his major heir, Arcesilaus, but with nine men who are appointed as executors, (ἐπιμεληταὶ). This is probably because Arcesilaus was not expected to be in Athens at the time of the testator's death (388). It is not implied, however, that Lampyrio would be absent. Thus, the obligation to carry out the funeral rites of the testator is specified by means of this will. Although the executors are to have the responsibility of arranging for the financial outlay for the funeral, which is to be neither too expensive nor too frugal, the ultimate bearer of the cost is to be Arcesilaus. This is because the rest of Strato's money in Athens is to be given to him (389).

Strato then makes arrangements concerning the school:

καταλείπω δὲ τὴν μὲν διατριβὴν Λύκωνι, ἐπειδὴ τῶν ἄλλων οἱ μέν εἰσι πρεσβύτεροι, οἱ δὲ ἄσχολοι. καλῶς δ' ἂν ποιοῖεν καὶ οἱ λοιποὶ συγκαταβκευάζοντες τούτῳ.

(D.L. v, 62)

Here, the testator nominates Lyco as his successor to the school. At first, it might seem as if the conditions laid down in the will of Theophrastus (390) are being ignored here, in that it seems as if Strato is disposing of it as if it were his personal property. However, the testator gives reasons for his decision, namely that the other scholars are too old (πρεσβύτεροι) or too busy to administer the school. In addition, Strato is not giving the property to Lyco for his own personal use, but for the purpose of administering it, and he exhorts the others to assist him in the school's organization (καλῶς . . . τούτῳ).

He also bequeaths some property to Lyco personally:

καταλείπω δ'αὐτῷ καὶ τὰ βιβλία πάντα, πλὴν ὧν αὐτὸς γεγράφαμεν, καὶ τὰ σκεύη πάντα κατὰ τὸ συσσίτιον καὶ τὰ στρώματα καὶ τὰ ποτήρια.

(D. L. v, 62)

Here, as is the case with Theophrastus (391), Strato leaves his books to a fellow philosopher.

However, this bequest does not include the books he himself has written which presumably are to be kept in the school. Bruns suggests that these books are part of Strato's household property, and refers to the words at the beginning of the will, τὰ μὲν οἴκοι πάντα with reference to this (392). However, these words refer to Strato's property in Lampsacus, and it seems very improbable that Strato would have kept his scholarly works in Lampsacus when he was head of the school in Athens. Therefore, the books bequeathed to Lyco are probably part of Strato's Athenian estate. The furniture in the dining room, and the room's cushions and drinking cups (one assumes that these objects would be found nowhere else in the school), are presumably not specifically part of the school property provided by Theophrastus, but were Strato's own possessions which he had permitted the school to have the use of. It is possible that if he had not bequeathed them to Lyco, the heir to Strato's Athenian property would have received them.

There follows a bequest:

δότωσαν δὲ οἱ ἐπιμεληταὶ Ἐπικράτει πεντακοσίας δραχμὰς καὶ τῶν παίδων ἕνα ὃν ἂν δοκῇ Ἀρκεσιλάῳ. (D. L. v, 62)

Epicrates is one of the executors himself. Presumably the reason why it is stated that the ἐπιμεληταὶ are to give the money to Epicrates is because Strato wishes to emphasise that this money is to come from his Athenian

property. The slave to be given to Epicrates is probably one of the philosopher's slaves in Athens, since it seems unlikely that he would receive one from the testator's estate in Lampsacus.

A certain agreement is also cancelled in this will:

καὶ πρῶτον μὲν Λαμπυρίων καὶ Ἀρκεσίλαος ἀφέσθωσαν τὰς συνθήκας ἃς ἔθετο Δάϊππος ὑπὲρ Ἰραίου· καὶ μηδὲν ὀφειλέτω μήτε Λαμπυρίωνι μήτε τοῖς Λαμπυρίωνος κληρονόμοις, ἀλλ' ἀπηλλάχθω παντὸς τοῦ συμβολαίου.

(D. L. v, 63)

Strato does not specify the exact nature of this agreement. The fact that Iraeus is not to owe anything to Lampyrio or his heirs suggests that the agreement may have been a private one between Lampyrio and Daippus on behalf of Iraeus. However, if this had been so, it would not have been Strato's concern. Therefore, it is more probable that the agreement to be cancelled was one made by Strato with Daippus, and that on Strato's death, Lampyrio would stand to benefit, hence the reference to Lampyrio and his heirs.

There is also a bequest to one of the men:

δότωσαν δ' αὐτῷ καὶ οἱ ἐπιμεληταὶ ἀργυρίου δραχμὰς

πεντακοσίας καὶ τῶν παίδων ἕνα, ὃν ἂν δοκιμάζῃ Ἀρκεσίλαος, ὅπως ἂν πολλὰ συμπεπονηκὼς ἡμῖν καὶ παρεσχημένος χρείας ἔχῃ βίον ἱκανὸν καὶ εὐσχήμονα.
(D. L. v, 63)

Here it is not made clear who αὐτῷ refers to. It is unlikely that this word refers to Lampyrio, because he has already been given half of the testator's estate in Lampsacus, and could already support himself fittingly, whereas the beneficiary of this bequest is in need of it. Therefore αὐτῷ could refer to either Iraeus or Daippus. It seems unlikely that Strato would not have specified the beneficiary unless there was no possibility of the bequest being given to the wrong person. A possible clue to this problem can be found in the fact that the agreement was made on behalf of (ὑπὲρ) Iraeus. It might be that Daippus was the father or legal guardian of Iraeus and acted on his behalf, but by the time Strato made his will, Iraeus had come of age and Daippus had died . Indeed, Iraeus is mentioned elsewhere in the will, whereas Daippus is not. If this is so, then ἑαυτῷ would refer to Iraeus. The fact that he had worked with the testator (ὅπως --- ἡμῖν) suggests that he was either a fellow philosopher or a sort of secretary or clerical assistant. This bequest is probably to be taken from Strato's Athenian property.

The testator then manumits some of his slaves:

ἀφίημι δὲ καὶ Διόφαντον ἐλεύθερον καὶ Διοκλέα καὶ Ἄβουν . . . ἀφίημι δὲ καὶ Δρόμονα ἐλεύθερον.

(D. L. v, 63)

The fact that Dromon is mentioned in a different sentence and after another disposition has been made, probably indicates that he was either added as an afterthought or that the testator had forgotten to include him with Diophantus, Diocles and Abus.

Between these two sentences is another bequest.

Σιμίαν δὲ ἀποδίδωμι Ἀρκεσιλάῳ
(D. L. v, 63)

Here, Arcesilaus is to receive one of Strato's slaves. Simias is the only slave ~~which~~ whom Arcesilaus is to receive from Strato's Athenian property, because other than this, he is only given money (393).

The testator then states what is to happen to his money in Athens:

ἐπειδὰν δὲ παραγένηται Ἀρκεσίλαος, λογισάσθω Ἴραιος μετ' Ὀλυμπίχου καὶ Ἐπικράτους καὶ τῶν ἄλλων ἐπιμελητῶν τὸ γεγονὸς ἀνάλωμα εἰς τὴν ἐκφορὰν καὶ τἆλλα τὰ νομιζόμενα. τὸ δὲ περιὸν ἀργύριον κομισάσθω Ἀρκεσίλαος παρ' Ὀλυμπίχου, μηδὲν ἐνοχλῶν αὐτὸν κατὰ τοὺς καιροὺς καὶ τοὺς χρόνους.

(D. L.v, 63-64)

Here, Iraeus together with Olympichus, Epicrates and the other executors, is to prepare an account of the expenditure of the testator's funeral. It is difficult to ascertain what the words τὰ ἄλλα τὰ νομιζόμενα refer to, unless they are a reference to the ninth day offerings which took place after the funeral (394). It seems as if Olympichus is the one who is to have a greater responsibility for the money, since it is he who is to hand the remainder to Arcesilaus. Arcesilaus is only to receive the money (ἀργύριον), and nothing is said about any other property in Athens. It is possible that this only consisted of the books, slaves and furniture which Strato has already disposed of (395).

An agreement made by the testator is to be cancelled:

ἀράσθω δὲ καὶ τὰς συνθήκας Ἀρκεσίλαος ἃς ἔθετο Στράτων πρὸς Ὀλύμπιχον καὶ Ἀμεινίαν, τὰς κειμένας παρὰ Φιλοκράτει Τιθαμεινοῦ.

(D. L. v, 64)

Nothing is stated about the nature of this agreement and only the persons with whom it was made and the depositary are mentioned. Arcesilaus is to have the responsiblility of cancelling this agreement.

The final clause of the will concerns the making of the testator's monument:

τὰ δὲ περὶ τὸ μνημεῖον ποιείτωσαν ὡς ἂν δοκῇ Ἀρκεσιλάῳ καὶ Ὀλυμπίχῳ καὶ Λύκωνι.

(D. L. v, 64)

The responsiblility for overseeing the making of the monument rests with ~~Arcesilaus~~ Olympichus who is to hand over Strato's Athenian money to Arcesilaus, and Lyco, who is to be head of the school. It is not stated who is to bear the expense of erecting this monument, but presumably the money for it is to come from the testator's money in Athens, and thus ultimately Arcesilaus who is Strato's major heir.

The will of Strato, therefore, has various functions. It serves to dispose of the testator's property in Lampsacus and Athens, and to arrange the future well-being of the school. In it Strato appoints executors, cancels two agreements, arranges bequests and frees slaves. Central to the carrying out of the testator's wishes is Arcesilaus, who is to approve the slaves given to Epicrates and Iraeus, cancel one agreement and act with Lampyrio in cancelling another, and is to oversee the making of the testator's monument.

Lyco

The will of Strato's successor, Lyco, made c. 225, is also found in the works of Diogenes Laertius, who does not state his source for the document, but merely says that he stumbled upon it (περιετύχομεν).

The document begins as follows:

Τάδε διατίθεμαι περὶ τῶν κατ' ἐμαυτόν, ἐὰν μὴ δυνηθῶ τὴν ἀρρωστίαν ταύτην ὑπενεγκεῖν·
(D. L. v, 69)

The words τῶν κατ' ἐμαυτόν refer to the testator's property which he is to dispose of in his testament. It probable that the ἀρρωστίᾳ referred to here is the gout which Lyco was suffering from at the time of his death (396).

The testator then makes arrangements concerning his property:

τὰ μὲν ἐν οἴκῳ πάντα δίδωμι τοῖς ἀδελφοῖς Ἀστυάνακτι καὶ Λύκωνι.

(D. L. v, 69)

The words τὰ... οἴκῳ are ambiguous. The translator of the Loeb edition renders them as "all the goods in my house" (397). However, there is an example of antithesis here, τὰ μὲν ἐν οἴκῳ - - - τὰ δ' ἐν Ἄστει καὶ ἐν Αἰγίνῃ , (398) and this indicates that it is his property at home, in Troy as opposed to that in Athens or Aigina which he is disposing of. In addition, the words ἐν οἴκῳ are used later to refer to where Lyco wishes to be buried (399), and in this case, they can only mean "at home" in Troy. Therefore, it is very likely that the words ἐν οἴκῳ refer to Lyco's paternal estate in Troy. This property is bequeathed to the testator's brothers, Astyanax and Lyco. Bruns states that these men were not the philosopher's brothers but were the sons of brothers, and points to the fact that later in the will, Lyco is referred to as a nephew (400). However, in the list of the persons who are to take charge of the peripatetic school, two men called Lyco are named, the latter one being referred to as ὁ

ἀδελφιδῆς . It is probably the first-named Lyco who is to inherit the testator's property. In addition, if the philosopher had wished to bequeath his paternal property to his nephews, they would have been referred to as such and not as brothers. There is also a complication in that one of the beneficiaries has the same name as the testator. Gottschalk suggests that they might both be half brothers (401), but does not express an opinion as to whether they were homometric or homopatric brothers. Lyco (II) is obviously the younger of the two, since he is like a son to the testator (υἱοῦ τάξιν ἐσχηκότα), and this suggests that he is probably the issue of a later marriage of one of the philosopher's parents. Owing to the Greek custom of calling a man by his own name and that of his father, it seems unlikely that there would have been two men named Lyco, son of Astyanax (402), since this could have led to confusion. Furthermore, if Lyco (II) had been the son of Lyco (I)'s father he would have had the right of disposition over the estate (403), as Astyanax seems to have. The latter is indicated by the fact that Astyanax is not specifically given the freedom to dispose of the property, which suggests that he has this already. On the other hand, in order to ensure that Lyco (II) can dispose of the estate as he wishes, the philosopher has to grant him this right (404). No regulations are made concerning the division of this property, so it is probable that Lyco (II) and Astyanax are to share it equally. It is partially from this property that the testator's debts are to be paid (405).

Lyco (II) is also given additional property:

τὰ δ'ἐν ἄστει καὶ ἐν Αἰγίνῃ δίδωμι Λύκωνι διὰ τὸ καὶ τοὔνομα φέρειν ἡμῶν καὶ συνδιατετριφέναι πλείω χρόνον ἀρεστῶς πάνυ, Κ πατρῷα δίκαιον ἦν τὸν υἱοῦ τάξιν ἐσχηκότα

(D. L. v, 70)

Lyco (I) does not specify exactly what his properties in Athens and Aigina consist of, but he leaves all his possessions in both of these places to Lyco (II). The fact that these are left to his half-brother and not to Astyanax might indicate that they were not πατρῷα but ἐπίκτητα . The fact that the beneficiary is like a son to the philosopher (τὸν ... ἐσχηκότα) does not indicate that he is an adopted son of Lyco (I), but just that he takes the place of one (406). This emphasises the fact that Lyco (II) is very much younger than the testator, and supports my suggestion that he was probably the son of a later marriage of one of the testator's parents (407). There remains the difficulty concerning why he has been living with the philosopher for such a long time. If he had been orphaned, it seems more likely that he would have been placed under the guardianship of his natural father's relatives, as was the case with the younger Demosthenes and his sister (408). It is more possible that he was sent to the peripatos to be educated, and took up residence with his elder half-brother.

The management of the school is then mentioned:

τὸν δὲ περίπατον καταλείπω τῶν γνωρίμων τοῖς βουλομένοις, Βύλλῳνι, Καλλίνῳ, Ἀρίστωνι, Ἀμφίωνι, Λύκωνι, Πύθωνι, Ἀριστομάχῳ, Ἡρακλείῳ, Λυκομήδει, Λύκωνι τῷ ἀδελφιδῷ. προστυγχάνεσθωσαν δ' αὐτοὶ ὧν ἂν ὑπολαμβάνωσι διαμενεῖν ἐπὶ τοῦ πράγματος καὶ συναύξειν μάλιστα δυνήσεσθαι. συγκατασκευαζέτωσαν δὲ καὶ οἱ λοιποὶ γνώριμοι κἀμοῦ καὶ τοῦ τόπου χάριν.

(D. L. v, 70)

Here, the administration of the school is bequeathed to ten fellows, as happens in the will of Theophrastus (409). No head is appointed, as Strato appointed Lyco (I), but the responsibility of appointing a new head rests with the ten scholars. This might be an indication of what happened when Theophrastus died, namely that the ten who were left the school appointed a head from amongst themselves. Lyco (I) also appeals for co-operation for the sake of himself and the place. What happened to the school after the death of Lyco (I) is not known.

There are clauses in the will concerning the testator's funeral, but since these are scattered throughout the text, it seems best to discuss them together. He firstly states that the money for his funeral is to come from his estate in Troy:

καὶ οἶμαι δεῖν ἀποδοθῆναι ἀπὸ τούτων
. . . ὃ ἂν εἰς τὴν ἐκφορὰν ἀναλωθῇ καὶ
εἰς τἆλλα τὰ νομιζόμενα.

(D. L. v, 69)

The words ἀπὸ τούτων refer to the estate in Troy which Lyco (I) has just stated will be shared between Lyco (II) and Astyanax. There is no mention of who is to actually oversee the funeral here, but later he names the people who are to do this:

περὶ δὲ τῆς ἐκφορᾶς καὶ καύσεως ἐπιμεληθήτωσαν
Βούλων καὶ Καλλῖνος μετὰ τῶν συνήθων,
ὅπως μήτ' ἀνελεύθερος γένηται μήτε περίεργος.

(D. L. v, 70)

Here, Bulo and Callinus as well as their friends are charged with the funeral and cremation. As happens in the will of Strato, the testator wishes that the expenditure be neither too extravagant nor too mean (410). As is the case with Strato and Theophrastus, men who are not the major heirs are to take charge of the burial of the testator (411). Bulo and Callinus are also to provide the initial financial outlay:

παρεχέσθωσαν δὲ Βούλων καὶ Καλλῖνος καὶ ἃ ἂν εἰς τὴν ἐκφορὰν ἀναλωθῇ καὶ τἄλλα τὰ νομιζόμενα. κομισάσθωσαν δὲ ταῦτ' ἀπὸ τῶν ἐν οἴκῳ κοινῇ καταλειπομένων ἀμφοτέροις ὑπ' ἐμοῦ.

(D. L. v, 71)

The wording in this quotation is ambiguous, since the word ἀμφοτέροις might be taken to refer to Bulo and Callinus. There is, however, no reference in the will to either of these men being bequeathed a house either in common or separately, and since the words ἐν οἴκῳ can also mean "at home" (412), and there is a clause at the beginning of the will which states that the money for the funeral is to come from the testator's Trojan property, the word ἀμφοτέροις refers to Lyco (II) and Astyanax who are left the testator's πατρῷα . Gottschalk states that the money for the funeral is to be provided mostly from the testator's liquid assets in Athens (413). It seems as if Gottschalk might be confusing Lyco (I)'s will with that of Strato in which there is a clause to this effect. However, Lyco (I) specifically states that the money is to be claimed from his estate in Troy.

Following the funeral, Lyco (II) is to take responsibility for the burial:

περὶ δὲ τῆς ταφῆς ἐάν τ' αὐτοῦ βούληται Λύκων θάπτειν, ἐάν τ' ἐν οἴκῳ, οὕτω ποιείτω. πέπεισμαι γὰρ αὐτὸν οὐδὲν ἧττον ἐμοῦ

συνορᾶν τὸ εὔσχημον

(D. L. v, 74)

The burial mentioned here (τῆς ταφῆς) does not actually refer to the burial of the body as such but to the burial of the ashes, because Lyco (I) has said earlier that Bulo and Callinus are to oversee his funeral and cremation. Therefore, from the various clauses in the will concerning his funeral, it seems as if Lyco (I) wished Bulo and Callinus to oversee the funeral, pay for it and reclaim the money from the testator's estate in Troy, thus transferring the expenditure to Astyanax and Lyco (II). Following this, Lyco (II) is given the responsibility of interring the ashes.

The source for the repayment of the testator's debts is also not made clear in the will. At first, it is stated that they are to be paid from the philosopher's property in Troy:

καὶ οἶμαι δεῖν ἀποδοθῆναι ἀπὸ τούτων ὅσα κατακέχρημαι Ἀθήνησι παρά τινος ἔχων ἢ ἐκπεπραχώς.

(D. L. v, 69)

This quotation indicates that the testator's Athenian debts are to be paid from the property bequeathed to Astyanax and Lyco (II). This is because the words ἀπὸ τούτων refer back to the previous sentence in which Lyco (I) disposes of his πατρῷα . However, later in the will, Lyco (II) alone is given the responsibility of repaying certain debts of the testator:

ἀπὸ δὲ τῶν ἐν ἄστει Λύκων ἀποδότω πᾶσι παρ' ὧν τι προείληφα μετὰ τὴν ἀποδημίαν τὴν ἐκείνου.

(D.L.v, 71)

This clause seems to contradict the earlier one in which all that Lyco (I) has spent at Athens is to come from his Tro an property, because here, certain debts are to be repaid from the property in Athens, (ἐν ἄστει). The debts which are to come from this source are those which the testator incurred after Lyco (II)'s departure. It is not stated where Lyco (II) has gone, or how long ago he left. From the fact that he is to be one of the members of the school (414), it is possible that the testator assumed that the absence would only be temporary, and occurred while Lyco (I) was ill. Therefore, it is probable that only the testator's more recent debts are to be met from his Athenian property. Following this, there is mention of the payment of the doctors:

τιμησάτωσαν δὲ καὶ τοὺς ἰατροὺς Παυσίθεμιν καὶ Μηδίαν ἀξίους ὄντας καὶ διὰ τὴν ἐπιμέλειαν τὴν περὶ ἐμὲ καὶ τὴν τέχνην καὶ μείζονος ἔτι τιμῆς.

(D.L. v, 72)

Here, it is not made quite clear who are to pay the doctors, but since the nearest possible subjects of τιμησάτωσαν are Bulo and Callinus, mentioned two

sentences earlier, it is possible that these men are to meet this particular debt. In the sentence before the above quotation, it is stated that the money which Bulo and Callinus spend on the funeral is to be repaid from the testator's Trojan property. Therefore, it is possible to infer that the payment for the doctors is to be met from this source also. Therefore, the majority of the testator's debts are to be met from his estate in Troy, with the exception of any recent monetary advances which are to be repaid by Lyco (II) from the philosopher's Athenian property.

Lyco (II) is also given other responsibilities. He is to make over to the young men the oil from the testator's olive trees in Aigina:

τῶν δ'ἐν Αἰγίνῃ μοι γενομένων μορίων μετὰ τὴν ἐμὴν ἀπόλυσιν καταχωρισάτω Λύκων τοῖς νεανίσκοις εἰς ἐλαιοχρησίαν, ὅπως κἀμοῦ καὶ τοῦ τιμήσαντος ἐμὲ μνήμη γένηται διὰ τῆς χρείας αὐτῆ ἡ προσήκουσα.
(D. L. v, 71)

In this quotation, it is not specifically stated who the young men are who to receive the oil, whether the young men attending the school or all the young men in Athens. Since the philosopher enjoyed partaking in gymnastics (415), it is possible that the oil might be intended for the use of young men who also partook in this form of exercise. This is to be done in the testator's memory and also for one who honoured him, (ὅπως ... γένηται

). It is not stated who this man is, but it is possible that this man is Strato, who made Lyco head of the school. However, this is open to conjecture. Lyco (II) is also to put up a statue of the philosopher:

καὶ ἀνδριάντα ἡμῶν ἀναθέτω· τὸν δὲ τόπον, ὅπως ἁρμόττων ᾖ τῆς κατασκέυης, ἐπιβλεψάτω καὶ συμπραγματευθήτω Διόφαντος καὶ Ἡρακλείδης Δημητρίου.

(D.L. v, 71)

This statue was presumably to be set up in a suitable place in the school. This contrasts with the wills of Strato and Theophrastus where the testator does not provide for a statue of himself.

The remainder of the will is concerned for the most part with minor bequests and the emancipation of slaves.

Certain bequests are made in favour of the family of Callinus:

δίδωμι δὲ τῷ Καλλίνου παιδίῳ Θηρικλείων ζεῦγος, καὶ τῇ γυναικὶ αὐτοῦ Ῥοδιακῶν ζεῦγος, ψιλοτάπιδα, ἀμφίταπον, περίστρωμα, προσκεφάλαια δύο τὰ βέλτιστα τῶν καταλειπομένων· ὡς ἂν ἐφ ὅσον ἀνήκει πρὸς τιμήν, καὶ τούτων φανῶμεν μὴ ἀμνήμονες ὄντες.

(D.L. v, 72)

These bequests of household goods are made in gratitude,

presumably for past services rendered, but it is not stated what these services were.

Lyco (I) then introduces the clauses in the will which are to follow:

περὶ δὲ τῶν θεραπευόντων ἐμαυτὸν οὕτως ἐξάγω.
(D. L. v, 72)

The word θεραπευόντων suggests that these clauses are to deal with those who cared for the testator in his illness since θεραπεύω usually refers to looking after someone who is ill.

Firstly, Lyco (I) provides for this freedmen:

Δημητρίῳ μὲν ἐλευθέρῳ πάλαι ὄντι ἀφίημι τὰ λύτρα καὶ δίδωμι πέντε μνᾶς καὶ ἱμάτιον καὶ χιτῶνα, ἵνα πολλὰ πεπονηκὼς μετ' ἐμοῦ βίον εὐσχήμονα ἄγῃ. Κρίτωνι δὲ Χαλκηδονίῳ, καὶ τούτῳ τὰ λύτρα ἀφίημι καὶ δίδωμι τέτταρας μνᾶς.

(D. L. v, 72)

To Demetrius, who has been freed for a long time, he remits his purchase money, and gives five minas and an under and outer garment. The reason why these bequests are made to Demetrius is so that he will be able to maintain himself respectably. Criton is bequeathed four minae and his purchase money, thus indicating that he also was a freedman.

A slave boy named Micrus (his youth is implied by his name), is to be set free:

καὶ τὸν Μίκρον ἀφίημι ἐλεύθερον· καὶ θρεψάτω Λύκων αὐτὸν καὶ παιδευσάτω ἀπὸ τοῦ νῦν χρόνου ἐξ ἔτη.

(D. L. v, 72)

The boy is to be cared for and brought up by Lyco (II). The period set aside for his upbringing is six years, after which Micrus would presumably come of age. Therefore he was probably about twelve years old when the will was made. Since Lyco (II) is to bring him up, presumably the testator intends the two to live together.

A slave named Chares is also emancipated:

καὶ Χάρητα ἀφίημι ἐλεύθερον· καὶ θρεψάτω Λύκων αὐτόν. καὶ δύο μνᾶς αὐτῷ δίδωμι καὶ τἄλλα βιβλία τὰ ἀνεγνωσμένα·

(D. L. v, 73)

It seems rather odd that Lyco (II) is to care for Chares, who has already attained his majority, but the word θρεψάτω might refer to the fact that Lyco (I) wishes his heir to oversee his studies. That Chares is a learned man is indicated by the fact that he is bequeathed the philosopher's published works. Bruns finds this bequest of the books to Chares strange, but points to a parallel in circumstances with Pompylus, the freedman of Theophrastus, (416). Bruns is correct insofar as Chares was probably a philosopher like

Pompylus, but this is as far as the similarity goes. Pompylus had been a freedman for a long time, whereas Chares is only to be freed following the philosopher's death. Pompylus was also not bequeathed Theophrastus' writings, but these were part of the bequest of books to Neleus. Furthermore, unlike Pompylus, Chares is not given the responsibility of caring for the philosopher's monument. Therefore Bruns is not quite accurate in the parallel he draws. Chares is also bequeathed two minae.

Lyco (I) then makes provision for the care of his unpublished works:

τὰ δ' ἀνέκδοτα Καλλίνῳ ὅπως ἐπιμελῶς αὐτὰ ἐκδῷ.

(D.L. v, 73)

This clause is actually a departure from the introductory sentence to this section of the document in which Lyco (I) states that he is to deal with those who are his slaves and freedmen (417), since there is no evidence that Callinus was of servile status. It seems as if this clause was probably added here as an afterthought, prompted by the bequest of books to Chares. Callinus is to edit these unpublished works and then, presumably, publish them.

The testator then returns to the treatment of those who have been his servants.

Lyco (I) firstly mentions Syrus:

δίδωμι δὲ καὶ Σύρῳ ἐλευθέρῳ ὄντι τέτταρας

μνᾶς καὶ τὴν Μηνοδώραν δίδωμι· καὶ εἴ τί μοι ὀφείλει, ἀφίημι αὐτῷ·

(D.L. v, 73)

Syrus, who is already free (ἐλευθέρῳ ὄντι), is given four minae and Menodora. It is possible that she is his concubine, since otherwise it is more likely that Syrus would have been given a man as his personal servant. He is also released from any debt which he owes the testator. This is probably any of his πότρα which is still outstanding.

Hilara is bequeathed certain household goods:

καὶ Ἱλαρᾷ πέντε μνᾶς καὶ ἀμφίταπιν καὶ δύο προσκεφάλαια καὶ περίστρωμα καὶ κλίνην ἣν ἂν βούληται

(D.L. v, 73)

In addition to the furniture, she is to receive five minae. The words ἣν ἂν βούληται indicate that she is to choose which couch she wishes to have. The fact that she is given property of her own shows that she is a freedwoman, even though the testator does not specify this, because slaves had no property of their own.

Lyco (I) then frees certain other slaves:

ἀφίημι δ' ἐλευθέραν καὶ τὴν τοῦ Μίκρου μητέρα καὶ Νοήμονα καὶ Δίωνα καὶ Θέωνα καὶ Εὐφράνορα καὶ Ἑρμείαν.

(D.L. v, 73)

Here, no bequest is given to the slaves, and they are to be freed as soon as the will is read.

Other slaves are to be given their freedom after a certain amount of time:

καὶ Ἀγάθωνα δύο ἔτη παραμείναντα ἀφεῖσθαι ἐλεύθερον· καὶ τοὺς φορεαφόρους Ὠφελίωνα καὶ Ποσειδώνιον τέτταρα ἔτη παραμείναντας.

(D. L. v, 73)

Agathon is to remain in service for two years before receiving his freedom, and Ophelio and Posidonius are to serve for a further four years before being freed.

To three of those who have served him, Lyco (I) gives an additional bequest:

δίδωμι δὲ καὶ Δημητρίῳ καὶ Κρίτωνι καὶ Σύρῳ κλίνην ἑκάστῳ καὶ στρώματα τῶν καταλειπομένων ἃ ἂν φαίνηται Λύκωνι καλῶς ἔχειν. ταῦτ' ἔστω αὐτοῖς ἀποδείξασιν ὀρθῶς ἐφ' ὧν ἕκαστοι τεταγμένοι εἰσί.

(D. L. v, 74)

The gifts of a couch each as well as such coverings as Lyco (II) thinks proper are to be given to Demetrius, Crito and Syrus in return for services rendered. All of them were already free when the will was made.

None of the freedmen are bequeathed money or goods in perpetuity. In the case of those who were part of the

testator's property in Athens (418), this would have reverted to Lyco (II) or his heirs after the decease of the beneficiaries, if they had no relatives (419).

Lyco (II) is then given the freedom to dispose of the testator's Trojan estate:

ταῦτα δὲ πάντα οἰκονομήσαντι κυρία ἔστω ἡ δόσις τῶν ἐνταῦθα.

(D. L. v, 74)

The words τῶν ἐνταῦθα refer back to ἐν οἴκῳ in the previous sentence but one, and thus indicate that this clause concerns the property in Troy. Certain provisions have to be met before he can dispose of the estate. It is probable that the words ταῦτα ... οἰκονομήσαντι refer to the obligations placed on Lyco (II) which are written in the will. Some of these he will always have to carry out, namely the provision of the oil from the estate in Aigina, and the care of Chares and Micrus. Therefore it is very likely that Lyco (II) will only be able to dispose of the property at his death, and such a disposition would probably be included in a διαθήκη. This clause indicates that Lyco (II), who was not the testator's heir by the laws of intestate inheritance, was not legally able to dispose of the πατρῷα of the philosopher unless he was specifically given this privilege in a will. The words used here are similar to those employed by Aristotle when he gives Nicanor the right of testamentary disposition over his estate (420).

Thus, in the intervening century between the making of the will of Aristotle and that of Lyco, the law had not changed in this respect.

The will ends with a list of witnesses (421).

Thus, the testament of Lyco (I) has several functions. By means of this document he bequeaths his πατρῷα to Astyanax and Lyco (II) as well as giving Lyco (II) additional property in Athens and Aigina; he provides for his funeral and for the payment of debts owed by him; he lays various obligations on Lyco (II) in return for the fulfilment of which he is given the freedom of testamentary disposition over the Trojan property; he also provides for his freedmen and manumits some of his slaves.

Epicurus

The will of Epicurus was made at the latest in 271, is quoted in the writings of Diogenes Laertius and is partially discussed by Cicero. The former quotes two documents: the first is the will, referred to as διαθήκη, and the second is a letter which was written by the philosopher just before he died. The will is introduced with the words Καὶ διέθετο ὧδε, and after both the will and the letter, the words Καὶ διέθετο μὲν ὧδε are written. This indicates that Diogenes Laertius regards the letter as a form of testament. The letter contains a request which is to be carried out in the event of the testator's death (422), and because of this,

I shall include the relevant clause in my discussion. Cicero differentiates between the two documents, first mentioning the letter, then discussing various clauses in the will (423). Bruns neither quotes nor discusses the letter in his article.

The will opens as follows:

Κατὰ τάδε δίδωμι τὰ ἐμαυτοῦ πάντα Ἀμυνομάχῳ Φιλοκράτους Βαττῆθεν καὶ Τιμοκράτει Δημητρίου Ποταμίῳ κατὰ τὴν ἐν τῷ Μητρῴῳ ἀναγεγραμμένην ἑκατέρῳ δόσιν, ...

(D. L. x, 16)

Here, Epicurus leaves all his property to Amynomachus and Timocrates. Both men are identified by means of their father's name and name of deme. This identification indicates that they were both Athenian citizens and were probably not relatives on the male side, if relatives at all, of the testator since Epicurus belonged to the deme of Gargettus (424). This indicates that they were probably not Epicurus' heirs by the laws of intestate succession, since heirs through males took precedence over heirs through females. The will itself does not contain an inventory of the property which is to be left to these men, but this is to be found in a document deposited in the temple of Demeter (425). This document is not referred to as a will, but as a bequest, δόσις. The word δόσις can not be interpreted here as a bequest "inter vivos" since Epicurus is giving all he has and

such a gift should leave him in penury. It seems unlikely that there would have been any necessity to include a clause naming the beneficiaries in this will if this had been done in an earlier bequest. Therefore, it is possible that the written bequest firstly contained an inventory of property and then stated that this was to be given to certain persons who would be named in the will. The property named in the document, since it is τὰ ἐμαυτοῦ πάντα , would have consisted of the testator's πατρῷα in addition to acquired property such as the school. This clause is an example of a man bequeathing his πατρῷα to two men who were probably not relatives.

Timocrates and Amynomachus are Epicurus' principal heirs on the condition that they give the school over to someone else:

ἐφ' ᾧ τε τὸν μὲν κῆπον καὶ τὰ προσόντα αὐτῷ παρέξουσιν Ἑρμάρχῳ Ἀγεμόρτου Μυτιληναίῳ καὶ τοῖς συμφιλοσοφοῦσιν αὐτῷ καὶ οἷς ἂν Ἕρμαρχος καταλίπῃ διαδόχοις τῆς φιλοσοφίας, ἐνδιατρίβειν κατὰ φιλοσοφίαν·

(D. L. x, 17)

Epicurus bought the garden for eighty minae, and it was here that his friends came to live with him (426). Therefore, during the testator's life, it was his own personal property. Here, it seems as if the school is to be given over to common ownership, since it is to be made

over to Hermarchus and others who wish to study in it, and this might seem to be similar to the provisions in the will of Theophrastus in which the peripatetic school is given over to common ownership (427). However, Epicurus did not believe in the principle of common ownership (428), so such a clause would have been contrary to his philosophy. In addition, Hermarchus was a metic, and as such he could not own land unless granted the right of ἔγκτησις (429), and there is no evidence that he had this privilege. It seems more probable that Epicurus left the legal right of ownership of the school to Timocrates and Amynomachus, but wished it to be given over to Hermarchus and others for the purposes of study. This would not mean a transferral of ownership but one of authority, and Hermarchus, who is later referred to as ἡγεμὼν συμφιλοσοφούντων (430), would be in the position of a college principal or school headmaster today, in that he would not own the school but have powers of administration over it. The only difference between Hermarchus' position and that of a principal or headmaster is that he is able to leave the school to those who will be his successors in philosophy (καὶ οἷς - - - φιλοσοφίας). The word διαδόχοις is used as opposed to κληρονόμοις because the person or persons whom Hermarchus chooses to succeed him will not own the school either, but it will continue to be owned by Amynomachus, Timocrates and their heirs. Those studying in the school are to aid Amynomachus and Timocrates and their heirs in maintaining the property:

καὶ ἀεὶ δὲ τοῖς φιλοσοφοῦσιν ἀπὸ ἡμῶν, ὅπως ἂν συνδιαβιώσωσιν Ἀμυνομάχῳ καὶ Τιμοκράτει κατὰ τὸ δυνατόν, τὴν ἐν τῷ κήπῳ διατριβὴν παρακατατίθεμαι τοῖς τ'αὐτῶν κληρονόμοις, ἐν ᾧ ἄν ~~ποτε~~ τρόπῳ ἀσφαλέστατον ᾖ, ὅπως ἂν κἀκεῖνοι διατηρῶσιν τὸν κῆπον, καθάπερ καὶ αὐτοὶ οἷς ἂν οἱ ἀπὸ ἡμῶν φιλοσοφοῦντες παραδῶσιν.

(D. L. x, 17)

This passage is not addressed only to Hermarchus but to all those studying in the school. This quotation indicates further that Amynomachus and Timocrates are to own the school since otherwise they would probably not have to continue their association with it. It is not made clear in what way the scholars are to aid the owners in preserving the common life of the school. Maybe the members of the school are to help in some practical way, such as caring for and cleaning the property, in addition to ensuring that the frugal lifestyle (431) of those living in the school continues.

From the property bequeathed to Amynomachus and Timocrates, the use of a house in Melite is to be given to Hermarchus and his fellow scholars for a certain time:

τὴν δ'οἰκίαν τὴν ἐν Μελίτῃ παρεχέτωσαν Ἀμυνόμαχος καὶ Τιμοκράτης ἑνοικεῖν Ἑρμάρχῳ καὶ τοῖς μετ'

αὐτοῦ φιλοσοφοῦσιν, ἕως ἂν Ἕρμαρχος ζῇ.

(D.L. x, 17)

This house is only to be given to Hermarchus and those who study with him for Hermarchus' lifetime, therefore, after Hermarchus' death, his fellow scholars will no longer have the usufruct of the property. It is not stated what is to happen to this house after Hermarchus' decease, and in view of this it seems best to assume that it will then be ~~to~~ set aside for Amynomachus and Timocrates to use as they wished.

Provision is to be made from the property left to Amynomachus and Timocrates for certain observances:

Ἐκ δὲ τῶν γινομένων προσόδων τῶν δεδομένων ἀφ' ἡμῶν Ἀμυνομάχῳ καὶ Τιμοκράτει κατὰ τὸ δυνατὸν μεριζέσθωσαν μεθ' Ἑρμάρχου σκοπούμενοι εἴς τε τὰ ἐναγίσματα τῷ τε πατρὶ καὶ τῇ μητρὶ καὶ τοῖς ἀδελφοῖς, καὶ ἡμῖν εἰς τὴν εἰθισμένην ἄγεσθαι γενέθλιον ἡμέραν ἑκάστου ἔτους τῇ προτέρᾳ δεκάτῃ τοῦ Γαμηλιῶνος, ὥσπερ καὶ εἰς τὴν γινομένην σύνοδον ἑκάστου μηνὸς ταῖς εἰκάσι τῶν συμφιλοσοφούντων ἡμῖν εἰς τὴν ἡμῶν τε καὶ Μητροδώρου ⟨μνήμην⟩ κατατεταγμένην.

(D.L. x, 18).

The finance for these observances is to come from Epicurus' estate, and the reason the heirs are to consult with Hermarchus concerning them is probably because some are to take place in the school. Firstly, Amynomachus and Timocrates are to provide for the offerings for the testator's mother, father and brothers (εἰς τε τὰ --- ἀδελφοὺς). This is indicative of Epicurus' regard for his family's religious observances, since he places a moral obligation on those who are not necessarily relatives or adopted sons to continue these, even though his own οἶκος will become extinct after his death. It is not stated when these offerings are to be made, but it is possible that they might take place on the anniversary of the death of the person concerned (432). The provision for the continuation of the celebration of Epicurus' birthday (καὶ ἡμῖν --- Γαμηλιῶνος) is criticized by Cicero as being opposed to Epicurean philosophy about death (433). Cicero argues that it would have been more appropriate for Epicurus and his school to celebrate the day on which he became a wise man:

"Quod si dies notandus fuit eumne potius quo natus an eum quo sapiens factus est."

(Cicero, De Finibus II, xxxi, 103)

However, Cicero is being a little facetious here, for the acquisition of wisdom is a gradual process, and cannot be confined to one day only. Epicurus also asks that a monthly meeting in memory of Metrodorus and himself continue to be held. It is probable that prior to Epicurus' death, this meeting was held in honour of

Metrodorus only, since observances in one's memory are only held posthumously. Epicurus does not specify that this meeting is to take the form of a banquet, as is stated by Cicero (434), since the word σύνοδος does not necessarily mean this, since when this word is used in reference to a meal, this is specified by the word δεῖπνον . It is possible that a form of colloquium was intended to take place as opposed to a feast. The fact that Cicero refers to a banquet indicates that by his time, the meeting had come to take this form (435). This provision is similar to a clause in the will of Lyco in which the philosopher asks ~~that~~ his main heir to give the oil from his olive trees in Aigina for the use of young men in memory of himself and a benefactor (436).

Epicurus also makes provisions for observances in the memory of his brothers and Polyaenus:

συντελείτωσαν δὲ καὶ τὴν τῶν ἀδελφῶν ἡμέραν τοῦ Ποσειδεῶνος· συντελείτωσαν δὲ καὶ τὴν Πολυαίνου τοῦ Μεταγειτνιῶνος καθάπερ καὶ ἡμεῖς.

(D.L. x, 18)

In this quotation, there is no indication that these ceremonies were already observed by the school, but the words καθάπερ καὶ ἡμεῖς indicate that they were kept by the philosopher himself. It seems as if Epicurus wishes the school as well as Amynomachus and Timocrates to observe these days commemorating his brothers and Polyaenus,

since he has just referred to other observances to be adhered to by his heirs and the school.

The testator also provides for the care of certain children:

Ἐπιμεληίσθωσαν δὲ καὶ Ἀμυνόμαχος καὶ Τιμοκράτης τοῦ υἱοῦ τοῦ Μητροδώρου Ἐπικούρου καὶ τοῦ υἱοῦ τοῦ Πολυαίνου, φιλοσοφούντων αὐτῶν καὶ συζώντων μεθ' Ἑρμάρχου. ὡσαύτως δὲ τῆς θυγατρὸς τῆς Μητροδώρου τὴν ἐπιμέλειαν ποιείσθωσαν, καὶ εἰς ἡλικίαν ἐλθοῦσαν ἐκδότωσαν ᾧ ἂν Ἕρμαρχος ἕληται τῶν φιλοσοφούντων μετ' αὐτοῦ, σώφρονι αὐτῇ εὐτάκτου καὶ πειθαρχούσῃ Ἑρμάρχῳ.

(D. L. x, 19)

The children to be taken care of are the son and daughter of Metrodorus and the son of Polyaenus. The latter was a fellow scholar of Epicurus (437), and it is not clear for how long his son had been orphaned. Metrodorus was also a fellow scholar of Epicurus, and Diogenes Laertius states that after meeting Epicurus he only left him once for a total of six months (438). His closeness to the philosopher is testified by the fact that his son is also given the name Epicurus. Since there is no mention of him taking a woman as his wife but cohabiting with Leontion, an Athenian courtesan (439), it is probable that the children were offspring of this union. Metrodorus predeceased Epicurus by seven years, so his children had been orphans for this period (440).

Bruns states that in this clause, Hermarchus is made the children's κύριος (441). However, the participle συζώντων indicates that the boys are already living with him, and since this is so, it is probable that the girl is also in this position. The boys are old enough to be studying philosophy, presumably with Hermarchus in the school, which would mean that they were probably in their early teens. There is no indication as to the age of the girl, but Epicurus states that she is to be married, when she comes of age, to a philosopher whom Hermarchus shall choose. There is a condition attached to this, namely that she be well behaved and obedient to Hermarchus. This condition shows that even though Amynomachus and Timocrates are to care for the children, they are not intended to live with them. This is rather similar to what was intended to happen to the children of the elder Demosthenes, who lived with only one of their guardians, Aphobus, who was supposed to marry their mother (442). However, the similarity between the two cases ends with this, because the money for the elder Demosthenes' children was to be deducted from his estate, whereas Epicurus asks his heirs to maintain them:

δεδόσθωσαν δ' Ἀμυνόμαχος καὶ Τιμοκράτης ἐκ τῶν ὑπαρχόντων ἡμῖν προσόδων εἰς τροφὴν τούτοις, ὅ τι ἂν αὐτοῖς κατ' ἐνιαυτὸν ἐπιδέχεσθαι

δοκῇ ἐκοπουμένοις μεθ' Ἑρμάρχου.

(D. L. x, 19)

The maintenance which Amynomachus and Timocrates are to pay is to come from Epicurus' estate which is left to them. They are to consult Hermarchus concerning this matter, and this indicates that Epicurus has probably not set aside a particular sum for maintenance. There is no other example in surviving evidence of a man providing sustenance for orphans who are children of another man, from his own assets in his will.

Provision is also made for the girl's dowry:

τὴν δὲ προῖκα τῷ θήλει παιδίῳ, ἐπειδὰν εἰς ἡλικίαν ἔλθῃ, μεριδώσασαν Ἀμυνόμαχος καὶ Τιμοκράτης ὅσον ἂν ἐπιδέχηται ἀπὸ τῶν ὑπαρχόντων ἀφαιροῦντες μετὰ τῆς Ἑρμάρχου γνώμης.

(D. L. x, 20)

It might be taken that the word ὑπαρχόντων refers to Epicurus' estate, since Amynomachus and Timocrates are to be taking the money. However, just before this passage, Hermarchus is made κύριος of certain funds (443), and the reason why Amynomachus and Timocrates are mentioned here is that Epicurus wished them to consult with Hermarchus about this matter. Therefore, it seems as if the dowry money is not to come from the testator's estate but from the funds at the disposal of Hermarchus.

Epicurus also makes provision for the children in the event of Hermarchus dying before they come of age:

Ἐὰν δέ τι τῶν ἀνθρωπίνων περὶ Ἑρμάρχου γένηται πρὸ τοῦ τὰ Μητροδώρου παιδία εἰς ἡλικίαν ἐλθεῖν, δοῦναι Ἀμυνόμαχον καὶ Τιμοκράτην, ὅπως ἂν εὐτακτούντων αὐτῶν ἕκαστα γίνηται τῶν ἀναγκαίων, κατὰ τὸ δυνατὸν ἀπὸ τῶν κατελελειμμένων ὑφ' ἡμῶν προσόδων.

(D. L. x, 21)

Here, only the children of Metrodorus are to be provided for by Amynomachus and Timocrates. It is possible that the son of Polyaenus is not included here either because the philosopher overlooked him or, more probably, because he was nearing his eighteenth year, and would soon be independent. The money for their care is to come from Epicurus' estate. This is a repetition of the terms of an earlier clause in which Amynomachus and Timocrates are to maintain the children, and it is likely that the purpose of this repetition is to emphasise that the financial provision is to continue insofar as the children of Metrodorus are concerned. No provision, however, is made concerning who the children are to live with if Hermarchus dies. It is possible that Epicurus assumed that his heirs would ensure that all would be well in this respect, or it might be that in view of this omission, Epicurus charged Idomeneus to take care of the children of Metrodorus in a letter written just before he

died:

οὐ δ' ἀξίως τῆς ἐκ μειρακίου παραστάσεως
πρὸς ἐμὲ καὶ φιλοσοφίαν ἐπιμελοῦ τῶν παίδων
Μητροδώρου.

(D. L. x, 22)

Idomeneus was a fellow scholar of Epicurus and the children's uncle, since he married Metrodorus' sister, Batis (444). Idomeneus was not the children's closest relative, since Metrodorus had a brother named Timocrates who was a former member of the school (445). It is possible that the reason that Idomeneus is asked to care for the children as opposed to Timocrates is probably because Timocrates no longer belonged to the school and was out of sympathy with its members. The fact that Idomeneus is asked to care for the children here suggests that he had not previously done this. Since Idomeneus, like Hermarchus, was a member of the school, it is possible that Epicurus wished him to take the place of Hermarchus, if he died, with respect to living with the children. On the other hand it might be possible that Epicurus merely wished to provide another guardian for the children. Even though the nature of the request is not made clear, the first suggestion seems more probable, because the children already possessed three guardians, and there would have been no need for another one, whereas it would be necessary for them to have someone to live with if Hermarchus were to die. Cicero finds this request, made just before Epicurus' death, out of

character with the man's philosophy, and states that this proves that he was a man of upright character:

"Nam ista commendatio puerorum, memoria et caritas amicitiae, summorum officiorum in extremo spiritu conservatio indicat innatam esse homini probitatem gratuitam, non invitatam voluptatibus nec praemiorum mercedibus evocatam".

(Cicero, De Finibus, II, xxxi, 99)

However, in stating that this request was made "in extremo spiritu", Cicero omits the fact that Epicurus had made provision for the children's care in his will, and in neglecting this he bases his argument on unfirm precepts.

These careful provisions for the son and daughter of Metrodorus and the son of Polyaenus suggest that Epicurus had been appointed as one of their guardians. This is because this is the only will in which the care of children other than the offspring of the testator is so carefully provided for. If Epicurus had not been a guardian of the children, it is unlikely that he would have had any right to say who was to take care of them. It is probable that Hermarchus was not appointed κύριος of the children by Epicurus as Bruns states (446), but was appointed as co-guardian and asked to live with the children by Polyaenus and Metrodorus, since he was already living with them when Epicurus wrote his will. Therefore, Epicurus and Hermarchus were probably already guardians of the children, and in his will, Epicurus bequeaths his share of the responsibility to his heirs.

Hermarchus is also to be in charge of certain funds:

Ποιείσθωσαν δὲ μεθ' ἑαυτῶν καὶ Ἕρμαρχον κύριον τῶν προσόδων, ἵνα μετὰ τοῦ συγκαταγεγραμμένος ὡς ἡμῖν ἐν φιλοσοφίᾳ καὶ καταλελειμμένου ἡγεμόνος τῶν συμφιλοσοφούντων ἡμῖν ἕκαστα γίνηται.

(D.L. x, 20)

That these funds would have been inherited by Amynomachus and Timocrates if Epicurus had not included this clause in the testament is indicated by the fact that they are asked to place Hermarchus in charge of them. These funds were probably those which were placed at the disposal of Epicurus by his friends (447), and it probably would have been more sensible to have the head of the school in charge of them than for them to be given over to Amynomachus and Timocrates. It is from these funds that the dowry of Metrodorus' daughter is to be paid.

Provision is also made for others:

ἐπιμελείσθωσαν δὲ καὶ Νικάνορος, καθάπερ καὶ ἡμεῖς, ἵν' ὅσοι τῶν φιλοσοφούντων ἡμῖν χρείαν ἐν τοῖς ἰδίοις παρεσχημένοι καὶ τὴν πᾶσαν οἰκειότητα ἐνδεδειγμένοι συγκαταγράφεσθαι μεθ' ἡμῶν προείλοντο ἐν φιλοσοφίᾳ, μηδενὸς τῶν ἀναγκαίων ἐνδείᾳ καθεστήκωσιν παρὰ τὴν ἡμετέραν δύναμιν.

(D.L.x, 20)

It is not specified who Nicanor is, but since he is grouped with philosophers who have done good to the testator, it is possible that he might be one of these. The fact that plural forms for the subjects are used in the remainder of this clause (ἵν' - - - δύναμιν) indicates that other philosophers are to receive aid also. It is not made precisely clear what form this aid is to take, but since Epicurus states that he would like to keep those who have helped him from want, the help will probably be of a financial nature. Since this clause is grouped in the same paragraph as the passing over of certain funds to Hermarchus, and the recipients of this aid are to be philosophers of the Epicurean school of which Hermarchus is to be made head, it is most likely that the funds which Hermarchus is in charge of are to pay for this. The plural form of the verb ἐπιμεπείσθωσαν which is used here indicates that not only Hermarchus is to take care of the philosophers in need; but it is probable that Amynomachus and Timocrates who are mentioned in connection with the dowry for Metrodorus' daughter are to have some say in the matter as well, although since Hermarchus is κύριος of the funds, he is probably the one who will decide how much each man is to receive.

Hermarchus is to receive the philosopher's books:

Δοῦναι δὲ τὰ βιβλία τὰ ὑπάρχοντα ἡμῖν πάντα Ἑρμάρχῳ.

(D. L. x, 21)

The books are to be both those which Epicurus has written and those written by others.

Following the request that Amynomachus and Timocrates care for the children of Metrodorus if Hermarchus were to die, Epicurus refers to the carrying out of these powers:

καὶ τῶν λοιπῶν ἁπάντων ὡς συντετάχαμεν ἐπιμελείσθωσαν, ὅπως ἂν κατὰ τὸ ἐνδεχόμενον ἕκαστα γίγνηται.

(D.L. x, 21)

Here, Amynomachus and Timocrates are probably referred to, since they are mentioned earlier in the paragraph with reference to the children of Metrodorus. Since these men are to take charge of the other things laid down in the will, it seems as if they are being appointed as the executors as well as being the main heirs.

Finally Epicurus arranges for the manumission of certain slaves:

ἀφίημι δὲ τῶν παίδων ἐλεύθερον Μῦν, Νικίαν, Λύκωνα· ἀφίημι δὲ καὶ Φαίδριον ἐλευθερίᾳ.

(D.L. x, 21)

The slave Mys was a member of Epicurus' school (448), but there is no evidence concerning the others freed here.

None of those manumitted are bequeathed any money, but it is possible that if they were philosophers, they could be aided from the fund which was placed in the charge of Hermarchus.

Therefore, the will of Epicurus has several functions. In it, he bequeaths all his belongings, except for his books, to two men who are probably not relatives. These men are to make over the school to Hermarchus who is named as its head in the document. Provision is made for the continuation of certain celebrations in honour of the testator and Metrodorus, in addition to certain sacrifices for Polyaenus and Epicurus' family. The testator also ensures that those dependent on him be cared for, and this will is the only document in which the transferral of guardianship from the testator to his heirs is to be found. In addition, certain funds are placed into the hands of Hermarchus, slaves are freed and Amynomachus and Timocrates are made executors. Diogenes Laertius states that the will indicates the philosopher's goodness (449), as indeed it does.

Crantor

The philosopher, Crantor, died c. 290. There is no specific statement that he left a will. However, Diogenes Laertius states that Crantor left Arcesilaus all his property:

λέγεται δὲ καὶ τὴν οὐσίαν καταλιπεῖν Ἀρκεσιλάῳ, πλάντων οὖσαν δυοκαίδεκα.

(D.L. iv, 25)

Arcesilaus was not related to Crantor, but, in iv, 25, Diogenes Laertius seems to suggest that he was probably either a lover or a very close friend. Therefore, in order to override the claims of his closest relatives it would have been necessary for Crantor to write a will. There is no indication that Arcesilaus was adopted as Crantor's son, either in this passage or in Diogenes Laertius' life of Arcesilaus, so it is more likely that the will did not contain an adoption, but a complete bequest of property.

Arcesilaus

Arcesilaus died in 242, so his will would date from this year at the latest. The document is not preserved in full by Diogenes Laertius, but there is some information concerning it.

It is stated that he left his property to his brother, Pylades:

Λοιπὸν δὲ πρὸς τῷ τέλει γενόμενος ἅπαντα
καταλέλοιπε Πυλάδῃ τἀδελφῷ τὰ αὐτοῦ, ...

(D. L. iv, 43).

Here, it seems as if the testator's entire estate (ἅπαντα) was left to Pylades who is probably both his homometric and homopatric brother (450), and would thus be his heir by intestate inheritance anyway, so it seems as if it would not have been necessary for Arcesilaus to write a will. However, a further indication of the document's function is found in the letter which was sent with the will to Thaumasias, the testator's relative and a

depositary of the document (451):

διὰ γὰρ τὸ πολλάκις ἀρρωστεῖν καὶ τὸ σῶμα ἀσθενῶς ἔχειν ἔδοξέ μοι δικαίως ἂν ἔχειν, ἵν' εἴ τι γένοιτο ἀλλοῖον, μήτι σέ ἠδικημένως ἀπίω τὸν εἰς ἐμ' ἐκτενῶς οὕτω πεφιλοτιμημένον.

(D. L. iv, 44)

Here, the reason given for making the will is so that Thaumasias will not suffer as a result of the philosopher's death (ἵν' . . . πεφιλοτιμημένον). This suggests that Arcesilaus may have made certain provisions, possibly a bequest, in Thaumasias' favour. In addition, Arcesilaus gives Thaumasias the following injunction:

πειρῶ οὖν, μεμνημένος διότι σοι πίστιν τὴν ἀναγκαιοτάτην παρακατατίθεμαι, δίκαιος ἡμῖν εἶναι, ὅπως ὅσον ἐπὶ σοὶ τὰ κατ' ἐμὲ εὐσχημόνως ᾖ μοι διωκημένα.
(D. L., iv, 44)

The words ὅπως . . . διωκημένα suggest that Thaumasias was responsible ~~in~~ for ensuring that the clauses in the will were carried out fittingly, which implies that he was appointed as executor. Whether or not he was the sole executor is not made clear. It is also not clear whether this charge was also laid upon him in the will. However, if it had been, such an injunction would have been superfluous.

Therefore, the will of Arcesilaus contained the bequest of the majority of his property to Pylades, but probably also included provisions, possibly of a financial nature, in favour of Thaumasias.

Plato's Laws

There is a passage in Plato's Laws which is relevant my discussion of the function of the Athenian will. It begins with the mention of what is supposed to be an old man's complaint:

Α Ⓜ Δεινόν γε, ὦ θεοί, φηείν, εἰ τὰ ἐμὰ ἐμοὶ μηδαμῶς ἔξεσται δοῦναί τε ὅτῳ ἂν ἐθέλω καὶ μή, καὶ τῷ μὲν πλείω, τῷ δ' ἐλάττονα, τῶν δπόσοι περὶ ἐμὲ φαῦλοι καὶ ὅσοι ἀγαθοὶ γεγόνασιν φανερῶς, βεβασανισθέντες ἱκανῶς ἐν νόσοις, οὐ δ' ἐν γήρᾳ καὶ ἄλλαις παντοίαισι τύχαις.

(Plato, Laws, 922 d)

This quotation implies that the putative speaker is complaining that he is not allowed to give his property to those who merit it because he is prevented from doing so by the laws (452), thus suggesting that the law forbade testamentary freedom. However, the fact that Kleinias, the Athenian's interlocutor, states that the complaint is a valid one (453), indicates that there was probably a certain sector of the Athenian populace who felt this way as well. On the other hand, the Athenian goes on to say that the ancient law givers (οἱ πάλαι νομοθετοῦντες) were soft hearted (μαλθακοὶ) and gives the following reason:

ΑΘ Τὸν λόγον τοῦτον, ὠγαθέ, φοβούμενοι, τὸν νόμον ἐτίθεσαν τὸν ἐξεῖναι τὰ ἑαυτοῦ διατίθεσθαι ἁπλῶς ὅπως ἄν τις ἐθέλῃ τὸ παράπαν, . . .

(Plato, Laws, 922 e)

Here, Plato does not name those who, according to the speaker, allowed complete testamentary freedom. Since Solon introduced legislation permitting the making of a will in certain circumstances, it is possible that it is this law which Plato is referring to. The words τὰ ἑαυτοῦ . . . παράπαν suggest that at the time Plato was writing his Laws (c. 350-343) complete freedom of testation was permissible, and this had been the case for long enough for the introducers of this law to be referred to as "the law givers of old". However, the extant evidence concerning testamentary inheritance in fourth-century Athens indicates that a man with sons was not able to dispose of his property completely as he wished, since in all the wills written by men with children at this time, provision is made for offspring even though some bequests are made from the property (454). This suggests that in classical Athens, a man was not allowed to disinherit his son, as is implied in the passage. On the other hand, in fourth-century Athens, a man who had no legitimate children was able to dispose of his property as he wished, as is indicated in the wills of Cleonymus, Aristarchus and Plato himself (455). Thus, it seems as if the author is indulging in a little

hyperbole here, and because of this, the passage is open to misinterpretation and cannot be taken as definitive evidence concerning the position of Athenian testamentary law at the time Plato was writing.

Isaeus, iv, 8

There is also a sentence in Isaeus which touches upon the subject of this chapter:

Τήλεφος δὲ δοῦναι αὐτῷ Νικόστρατον ἅπαντα τὰ ἑαυτοῦ. (Is. iv, 8)

At this point in the speech, the past claimants to Nicostratus' estate are named in addition to the nature of their claims. The word δοῦναι would not refer to a gift "inter vivos", since the whole property was alleged to have been given, and it is very unlikely that Nicostratus would have left himself in penury. Therefore, this is probably a reference to a bequest by will, even though the verb διατίθεσθαι is not used. The wording here suggests that the speaker would have the jury believe that Telephus alleged that the deceased gave him all the property by will without adopting him. Wyse states that Schulin "rashly" gives this as an example of a man disposing of his property by will (456). It is indeed unwise to take this sentence as an example of an alleged bequest of property by will, since there is not enough information for one to assess what Telephus had stated in his claim for the estate. From the information given, it might be better to say that it was possible to allege in court that a bequest of property had been made without adoption. That such an allegation could be made

and possibly believed, indicates that it was not illegal to make a will in which one's property was given as a whole to someone without adoption.

Conclusion

By way of conclusion there now remains to be discussed various opinions concerning the function of the Athenian testament with reference to the evidence which I have presented on the preceding pages (457).

There are certain persons who are of the opinion that wills were primarily concerned with adoption.

Humphreys states that the most usual form of will was the conditional testamentary adoption by a childless man, and that wills did not regulate details such as outstanding debts and burial (458). Presumably the condition referred to by Humphreys is the acceptance of the person (or his or her guardian) nominated by the testator as the one to be adopted, but Humphreys does not state whether she is limiting this statement to the classical period or not. The table at the end of this thesis shows that out of the thirty eight wills we know about, ten concerned adoption, and this indicates that Humphreys is incorrect when she says that adoption was the most usual form of the Athenian will. If Humphreys is only discussing the extant evidence from the classical period, she is also incorrect, since from the extant evidence, nine wills concerned adoption and eighteen did not. Furthermore, she does not take into account the wills of Plato and Polyeuctus, both of which contain

clauses making note of debts due to the estate. Indeed, it seems as if the will of Polyeuctus was solely concerned with this matter. In addition, if Humphreys is referring to wills outwith the classical period, the wills of Theophrastus, Strato, and Lyco all make provisions in this respect, thus indicating that it was possible to regulate details such as burial in a testament.

Wevers states as follows:

"Since the only testamentary method of disposing of one's property involved some kind of adoption, every time there is mention of a will, an adoption is implied. Furthermore, no adoption of any kind was permissible if the testator had a legitimate son of his own. Consequently every time a will or adoption is mentioned, if one trusts Isaeus, it is implied that there was a man without male children" (459).

Wevers' opinion, based as it is on the evidence from Isaeus only, is a little one-sided. Even so, he does not take proper account of the fact that Isaeus i and x probably concern complete bequests of property by testament. Since Wevers limits his discussion of the function of the will to Isaeus, he neglects to take account of evidence in Demosthenes and Lysias, in which wills written by men with children are to be found.

MacDowell takes account of the other evidence in Demosthenes and Lysias, and comes to a fairly similar conclusion:

"Apart from adoption, there was not much scope for a will. A man could not use a will to bequeath his

property as a whole to anyone except by adopting him as a son. There was a law permitting a man to make a bequest to a bastard son, provided it was a fairly small amount --- and in the fourth century, we know of a few cases in which a man who had sons made a will to give instructions about the sharing of property between the sons or ...for a dedication ~~is~~ to a god; but that is all. It was not until the end of the classical period that it became possible for an Athenian to use a will freely to bequeath all his property to anyone he wished." (460).

The first sentence quoted there implies that there is more evidence about wills which concern adoption than there is about wills concerning other matters. However, the reverse is true, since there is slightly more information pertaining to wills which had functions other than adoption. In addition, the author neglects to take account of the fact that in certain wills namely the wills of Pasio, Diodotus and Demosthenes (I), the guardianship of children and the care of the wife is provided for. In two of these cases, namely in the will of Pasio and that of the elder Demosthenes a husband is chosen for the wife as well as a dowry provided. The elder Demosthenes also does both of these things for his daughter. Another function which MacDowell neglects to note is that the will could also act as an inventory of a man's property, and include such items as debts owed to and by the testator. The testament of Plato has such a function. As can be seen in the evidence concerning the testaments of Cleonymus, Mneson and Aristarchus, it was possible for a man to bequeath his property as a whole to

someone without necessarily adopting him (461). In the case of the will of Aristarchus, it seems as if the testator's estate was bequeathed as a whole to one man, Xenaenetus, who was not adopted as the testator's son. It is probable that Mneson also bequeathed all his property to his brother, Eupolis. Therefore, the evidence indicates that MacDowell is not quite correct in his assessment of the function of the classical Athenian will.

Gernet states that it was only in the third century that the testament came to function as a document which did not necessarily include adoption (462). De Ste Croix holds the same opinion (463). However, both men ignore the fact that in fourth-century Athens, the will did concern matters other than adoption, and that there are some wills which contain complete bequests of property.

Lipsius is of the opinion that in general, Athenian testaments concerned adoption, but they could also include the regulation of family matters and small legacies (464). However, this statement is not quite accurate, since there are also wills which contain inventories (Plato and Demosthenes (I)) and wills in which the testator's πατρῷα are bequeathed without adoption (Cleonymus, Aristarchus, Eupolis and Plato).

There are others who believe that the Athenian testament had a wider range of functions and was not limited to adoption.

Lacey thinks that wills could also be used to regulate the management of the testator's estate when he had sons who were still minors. He states that the will

of Pasio was not contrary to law because one out of his two sons was still a minor and arrangements had to be made for him (465). However, Lacey neglects to mention the fact that another function of the will was the bequest of a man's property without adoption if he had no legitimate children of his own.

Harrison writes that the Solonian law of testament later conferred "complete freedom of testament on a man who had no legitimate issue," and by the fourth century, men with legitimate sons could leave legacies to others from their property, but that there was "a fairly strong probability that a man had, whether by custom or by statute, a freer right to dispose of ἐπικτητά by will than of πατρῶα " (466). The fact that there are wills in which men with legitimate children bequeath their property to a person or persons who are not adopted by them indicates that a man without legitimate children did have a greater freedom of testament than one with legitimate children. There are four bequests of πατρῶα in the classical period (467), and in all these cases, the property is bequeathed to a relative or relatives. It is not until the Hellenistic period that we find a man's πατρῶα bequeathed to persons who were probably not relatives of the testator, as is found in the wills of Epicurus and Crantor. In addition, it is possible that Nicomachus, the son of Aristotle, bequeathed his estate to Theophrastus who was not a relative but a friend of the family. The other bequests of πατρῶα after the classical period are in favour of relatives. In none of these cases is a man with

legitimate children the testator, which indicates that even in a later era, a man could not disinherit his son. The evidence from the wills which are extant indicates that a man with legitimate children could leave ἐπίκτητα , acquired property such as slaves, money, etc., to men who were not necessarily relatives as well as relatives. This happens in the wills of the elder Demosthenes, Pasio, Conon, Diodotus and Aristotle. The fact that only men without legitimate sons bequeath their πατρῷα whereas men with legitimate children only dispose of ἐπίκτητα , indicates that a man did have a greater freedom to dispose of ἐπίκτητα than πατρῷα. The fact that there is a law which specifically states that any will made by a man with legitimate children would take effect if they died before reaching the age of twenty (468) indicates that this limitation on disposition of πατρῷα on men with sons was a legal one. Harrison fails to note that in classical Athens there is only evidence of a man bequeathing πατρῷα to relatives without adopting them, and this suggests that it was not customary and probably not legal for a man to bequeath his πατρῷα to one who was not related to him unless he adopted him, as Nicostratus is alleged to have done.

Norton ends his study on the will with the following conclusion:

"We may then conclude that at the time of the orators a man could dispose of his property by will without adoption, that wills not including adoption were perhaps unusual at that time, but became more and more common until, in the third century, the will came to be entirely

divorced from the idea of adoption which had given it birth" (469).

Here, Norton is incorrect when he states that wills not concerning adoption were unusual in the age of the orators, because there are more testaments from the classical period which have functions other than adoption than there are those which involve adoption. Norton also neglects to note Hagnias' will in which the testator's niece is adopted and which also contains a secondary bequest in event of her dying within two years after coming of age. It can be seen from the table at the end of this thesis that there was indeed a gradual alteration in the function of the will as time went on. In the early fourth century, 415-389, we know of nine wills, four of these concern adoption, one of the four contains a secondary bequest, and five are probably not concerned with adoption but with family matters and bequests. On the other hand, in the period 378-330, there is information about four wills which concern adoption and eight with other functions and there is only one extant record of a will concerning adoption after 364. This indicates that Norton is correct when he states that during the fourth century adoption became less common as a function of the will. However, the function of the testament at the beginning of the fourth century was less concerned with adoption than Norton's conclusion would have us believe. In addition, Norton is not correct when he states that in the third century the will was "entirely divorced" from the idea of adoption, since the evidence from Menander, concerning Cnemon's will,

indicates that adoption was still a function of the Athenian testament in the post-classical period.

Arnaldo Biscardi states that there were nine major functions of the Athenian will; 1. the nomination of a guardian for minors and a κύριος for women; 2. the provision of a second marriage for a wife; 3. the betrothing of a daughter; 4. to make an inventory and consolidate the family's financial affairs; 5. the provision of a dowry for wife and daughter; 6. the statement and division of duties concerning the patrimony; 7. the giving of instructions for one's funeral; 8. the giving of legacies and donations outside the family; 9. the commanding of one's son or unborn son to take vengeance for one's death (470). Here, Biscardi does not include the function of adoption, but this is acknowledged at the beginning of his article (471), and this list provides a statement of what Biscardi sees as the other functions of the Athenian will. However, he does not include the fact that it was possible to bequeath all one's property to someone without adopting him since number eight implies that only part of the estate could be given away in this manner. Biscardi also does not take account of the fact that a man could make provision in a testament for a bequest in lieu of his child or adoptee dying. Functions number six and seven are only found in wills after the classical period and indicate that the author is taking these into account. However, he neglects to include the function of the manumission and care of slaves in his list, and this is a common feature of the wills from the Hellenistic period.

This function of the Athenian will seems to have been a gradual development, since Plato's will (c. 347) is the first document, and indeed the only one from the classical period, in which a clause to this effect is found, whereas in the post-classical period, most of the wills in extant literature contain clauses providing for the manumission and care of slaves. The citation of the request for vengeance as a function of the Athenian testament is based upon the evidence in Lysias, xiii, 41 (472).

Asheri suggests that even if a man had a natural son, he could bequeath all his property to someone else (473). This concurs with Plato's view as expressed in Laws 922 b-e, but it is based on a misinterpretation of the function of the will of Pasio and can thus be ignored safely.

In conclusion, it is necessary for me to list the various functions of the Athenian will which can be found in the available evidence:

1. adoption of a (male or female) relative;
2. adoption of a (male) non-relative; (it may be just accidental that there is no evidence of adoption of a female non-relative);
3. complete bequest of property to a relative;
4. complete bequest of property to a non-relative (post-classical period);
5. complete bequest of property in the event of the death of legitimate children or adoptee;
6. guardianship of children;

7. provision for the care of children placed in one's charge;
8. naming of husband for wife and daughter;
9. provision of dowry for wife and daughter;
10. inventory of property;
11. statement of debts owed by and due to the testator;
12. list of executors;
13. list of witnesses;
14. manumission of slaves;
15. care of slaves;
16. miscellaneous bequests to relatives, friends, freedmen and slaves freed in the document;
17. expenditure from the estate other than that named in 16 above, such as donations to a god, or for a statue;
18. provisions for the care of estate (e.g. schools);
19. arrangements for burial;
20. the provisions for the continuation of the keeping of certain observances of significance to the testator;
21. the apportioning of property between legitimate sons.

Most of these things could probably have been done by a man with legitimate sons, except for the first four. On the other hand a man with a legitimate daughter could adopt, but had to marry the girl to the adoptee. An exception to this rule is found in Menander's Dyskolos, but this can be explained by the fact that the adoptee and the daughter are uterine brother and sister, and marriage between persons so related was not permissable. Legally, at the advent of the fourth century, Athenian testaments could contain most of the functions named above, with the exception of number four. At the beginning of the fourth century, there was a greater

tendency to adopt by will, and this gradually died out towards the end of the period. Even though no will in extant literature from classical Athens has functions eighteen or nineteen, it seems very improbable that such clauses would have been illegal, since Athenians attached great importance to religious observations.

Notes

1. See Chapter 2,Solon, pp. 41-50.
2. The reasons for my support of Valkenaer's emendation are given in Appendix 2.
3. Is. iv, 19, cf. vi, 39-42, viii, 21-27, ix, 3-4.
4. Wyse, Isaeus, p.391.
5. Is. vii, 15.
6. Is. ix, 14.
7. Dem. ii, 14, xv, 9.
   Deinarchus, i, 14.
   Isocrates, xv, 108-112
8. In Biblical times, a corpse was regarded as having decomposed by the third day after a person's death, hence the significance of Matt. 27: 62-66, Mark 16: 1-8, Luke 24: 1-8, John 11: 17, 20: 1-10.
9. Is. ix, 1,5,6,12-13,33.
10. Harrison, Law i, pp. 158-162.
    MacDowell, Law, pp.102-103.
11. W.E.Thompson, "Isaeus vi: The Historical Circumstances",Classical Review, 84, (1970), pp. 1-2.
12. Is. vi,5.
13. Chapter 8, Genuineness p. 527 n.51.
14. Is. v, 6, 42.
    Thucydides ,viii, 42.
15. There are different views concerning the relationship of Diogenes (III) to Dicaeogenes (II);Norton, L.H.S p.54 states that he is the son of a friend, Proxenus; Forster, Isaeus ,(London, 1927), p. 154 and Roussel, Isee, (Paris, 1922), p.83 both state that he was the son of Dicaeogenes' (II) uncle Proxenus;

Davies, A.P.F. p. 146, pp.476-477 states that he was the son of the testator's cousin, Proxenus.I agree with Davies' arguments on the grounds of chronology.

16. W.E.Thompson, "Athenian Attitudes towards Wills", Prudentia, 13, (1981), p.18 n.22.
17. See Chapter 7, Formalities, pp. 459-467.
18. Norton, ibid.
19. Wyse, Isaeus, p.414.
20. Davies, A.P.F. p.146.
21. Harrison, Law I, pp.158-160. It is possible that this verb could also be used to refer to an uncontested claim for an estate in accordance with a will.
22. Menander, Dysk. 730-740.
23. See below, pp. 285-286.
24. Is. i, 2, 16.
25. See Chapter 3, Drama, pp. 87-88.
26. Jacoby, F.G.H. 324 F 18 (Androtion), 328. 147.
27. Is. xi, 8.
28. W.E.Thompson, "De Hagniae Hereditate", Mnemosyne Supplementum, 44, (Leiden, 1976), p. 13.
29. Wyse, Isaeus p.684.
30. See Is. vii, where an adoption "inter vivos" was not completed before the death of the testator.
31. [Dem.] xliii, 23.
32. See above, p. 181.
33. MacDowell, Law, p.104.
34. Gernet, D.G.S.A. p.129.
35. Davies, A.P.F. p.71.
36. Wyse, Isaeus, p.671, p.685.

37. [Dem.] xliii, 7.

38. Thompson, op. cit. pp. 117-18.

39. [Dem.] xlvi, 24.

40. Davies, A. P. F. pp. 82-83.

41. MacDowell, Law, p. 105.

42. I agree with Davies' argument for this date in A. P. F. p. 84.

43. see Is. vii.

44. Is. xi, 42.

45. Harrison, Law I, pp. 99-104.

46. Xenophon, Hellenica, iv, 4.

47. Is. vii, 9.

48. Wyse, Isaeus, p. 557.

49. Is. iii, 3.

50. D. M. MacDowell, "Dating by Rhythms", Classical Review, 85, (1971) pp. 25-26.

51. Is. iii, 57.

52. cf. Is. vii, 1-2, iv, 10-18.

53. Is. iii, 3.

54. Is. iii, 31. This statement has to be an approximation in view of the lack of any precise information in the speech. However, if Phile had been married to Xenocles for more than eight years, and Pyrrhus died over twenty years before the case was brought to court, she was married twelve years after his death. Since Athenian girls were often married at about fourteen years of age, Phile was probably about two years old when Pyrrhus died.

55. Is. iii, 45.

See Wyse, Isaeus, p. 328.

The question concerning whether bastards should be admitted to Athenian citizenship is a subject of dispute, and too complicated to be discussed fully in this thesis. Is. iii, 45 is quoted in evidence concerning this. See:

Harrison Law I, pp. 63-65.

D. M. MacDowell, "Bastards as Athenian Citizens", Classical Quarterly, 70, (1976), pp. 88-91.

P. J. Rhodes, "Bastards as Athenian Citizens", Classical Quarterly, 72, (1978), pp. 89-92.

C. Patterson, Pericles' Citizenship Law of 451-450 B.C., Salem, (1981), p. 31 n. 20.

K. R. Walters, "Pericles' Citizenship Law", Classical Antiquity, 2, (1983), pp. 318-319.

M. H. Hansen, Demography and Democracy, (Vogens, 1986) pp. 73-75.

Even though I am inclined to agree with the arguments of Harrison and those who follow him that Is. iii, 45 suggests that bastards could be married to Athenian citizens, I do not think that this passage can be taken as trustworthy evidence concerning Phile's illegitimacy.

58. Wyse, Isaeus, p. 276.

59. D. M. MacDowell, "Love versus the Law, an Essay on Menander's Aspis", Greece and Rome, 29, (1982), p. 48.

60. Is. iii, 51.

61. Is. iii, 42, 68.

62. Is. iii, 23. The speaker does not specify the sex of the children, but perhaps it is against his interest to do so.

63. U.E.Paoli, 'Note giuridice sul Δύσκολος di Menandro", Altri Studi di Dritto Greco e Romano, (Milan, 1976), pp. 561-562.

64. See above, Chapter 5, Capacity, pp. 125-127.

65. Menander, Dyskolos, 749-752.

66. See above, Chapter 5, Capacity, pp. 117-118.

67. A.Biscardi, "Osservazione Critiche Sulla Terminologia Διαθήκη - Διατίθεσθαι ", Symposion 1979, (Athens,1981), p.33.

68. cf. Chapter 3, Drama, p.70.

69. cf. Chapter 3, Drama, pp. 87-88.

70. Here, I use the numeration used by Jensen in the Teubner text, (Leipzig, 1917). This is the text which I quote throughout when I refer to the first speech For Lycophron. As far as P.Oxy. 1067 is concerned, I shall be using the Loeb text, edited and translated by J.O.Burtt, (London, 1954), and shall refer to it as Hyp. ii (sp. 2).

71. Hyp. ii (sp.2), fragment xiii.

72. Hyp. ii, frag 4.
Hyp. ii, (sp. 2), frag. 1.
G.Colin, Hypéride Discours, (Paris, 1946), p.129.
J.O.Burtt, Minor Attic Orators, ii, (London, 1954) p.372, note a.

73. The remainder of column 46 is very fragmentary and extensive reconstruction would be necessary to render it comprehensible. Therefore, I have not quoted it

here.

74. See below, pp. 202-204.

75. See above, pp. 207-208, p. 213, pp. 223-224.

76. F. Blass, Das Attische Beredsamkeit, 3^2, (Leipzig, 1898), p. 68.

77. Burtt, op. cit. p. 372, note b.
J. B. Curtis, The Judicial Oratory of Hyperides, (Ann Arbor and London, 1971), p. 61, n. b.

78. Curtis, ibid.

79. Dem. xxvii, 4.

80. Lysias, xxxii, 4-5.

81. Dem. xxxvi, 8.

82. Burtt, op. cit. p. 391.

83. See below, the wills of Diodotus, Pasio and Demosthenes (I).

84. See below pp. 260-261.

85. D. L. x, 20.

86. This is because the speaker's opponent states that Lycophron tried to persuade the woman on her wedding day not to have sexual intercourse with her husband but to reserve herself for him (Hyp. ii, cols 3-4). If she had been heavily pregnant at the time of marriage, such an argument would not be effective since sexual intercourse at a late stage of pregnancy is not possible.

87. Any difficulty with feeding would be countered with the provision of a wet nurse.

88. Lysias, xxxii, 8-10.

89. Curtis, op. cit. p. 61.

90. Colin, op. cit. pp. 114-115.

91. Burtt, op. cit. pp.372-373.
92. The speaker does not state specifically on what grounds the testament's validity was questioned.
93. cf. The will of Hagnias, where it seems as if a secondary clause was included in the will, in which the property was bequeathed to someone else if the girl whom the testator adopted was to die within two years of coming of age.
94. cf. the will of Cleonymus.
95. Dionysius of Halicarnassus, Lysias, 21.
96. Dionysius of Halicarnassus, Lysias, 23-27.
97. See Chapter 7, Formalities, pp. 434-439.
98. cf. Dem. xxvii, 5.
99. This bequest , in addition to the gift of furniture might be regarded as an indication that a woman could own property on her own behalf. However, the wife of Diodotus stated in a family attempt to settle the dispute that she gave twenty minae and thirty staters (the money which she had been bequeathed) to Diogeiton after her husband's death (Lysias, xxxii, 15). This indicates that a woman's property was placed in the care of her κύριος .
100 The reference later in the speech to ἐπιπλα πολλοῦ ἀξια is probably not to this furniture, since Diodotus' wife is speaking about various debts which Diogeiton has recovered (Lysias, ibid.).
101 Davies, A.P.F. pp. 123-126.
102 Dem. xxvii, 40.

103 Dem. ibid.

104 See Chapter 7, Formalities, pp. 406-407 for a discussion of the witnessing of this will.

105 [Dem.] xlv, 28.

106 Menander, Dysk. 841-844.

107 Harrison, Law I, pp. 7-8.

108 Dem. xvii, 4.

109 Lacey, Family, p.110.

Harrison, Law, i, p.30 and notes 1 and 2.

110 The authenticity of Dem. xxix is disputed. Throughout this discussion, I have regarded it as a genuine Demosthenic work, because I do not find the arguments advanced against its authenticity convincing. The question as a whole is too involved to discuss here, and persons wishing to investigate the matter further are advised to refer to G.M.Calhoun,"A Problem of Authenticity", Transactions of the American Philological Association, 65, (1934), pp.80-102.

111 Lacey, Family, p.108.

112 Lacey, Family, p.107.

113 Hyperides, ii, 7.

114 Lacey, Family, pp.109-110.

Harrison, Law 1, pp.45-47.

115 Harrison, Law 1, p.104.

116 See above, pp. 206-207.

117 This is indicated by the fact that she is still living in the younger Demosthenes' house; Dem. xxvii, 65-66, xxix, 79.

118 Lysias, xxxii, 13-16.

Dem. xli, 17.

119 I have not discussed the detailed inventory set out in Dem. xxvii, 9-39, since this has been already discussed adequately by the following:

Davies, A.P.F., pp.126-131.

J.Korver, "Demosthenes gegen Aphobos", Mnemosyne, 10, (1941-1942), pp.8-22.

G.M.Calhoun's review of W.Schwahn, "Demosthenes Gegen Aphobos" in Classical Philology, 25, (1930), pp.86-89.

G.E.M. de Ste. Croix, "Demosthenes' τιμήμα and Athenian εἰσφορά", Classica et Mediaevalia, 14,(1953), pp.30-70.

120 Dem. xli, 6, 21. These papers are not an example of a will being left by a woman, see Chapter 5, Capacity, pp. 137-138.

121 Harrison, Law 2, pp.104-108, 293-296.

122 See above, p. 213.

123 Dem. xxviii, 1.

124 MacDowell, Law, p.166.

125 I have not discussed the complicated question of εἰσφορά in detail, because it is not strictly relevant to the will, see also:

De Ste. Croix, op.cit.

Davies A.P.F., pp.130-131.

126 Harrison, Law 1,pp.105-107 and notes.

127 See above n.110

128 Barbaric as it may seem to the modern mind, the Athenians only recognised evidence given by a slave if it was given under torture, see MacDowell, Law, pp. 245-247.

129 See Chapter 7, Formalities, pp. 406-407.

130 D.L. iii, 42, v, 14-15,55,63, 72-73.

131 [Dem.] xlvi, 13.

132 Dem. xxxvi, 30, cf. Dem. xxvii, 7.

133 see below, p. 226.

134 D.Schaps, The Economic Rights of Women in Ancient Greece, (Edinburgh, 1979), p.11.

135 C.Watkins, H.S.C.P. 71, (1966), p.115, quoted by Sommerstein, see n. 136 below.

136 With reference to this problem, I have found an unpublished article by A Sommerstein, "Preverbs and Dowries" of great use.

137 D.Asheri "Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece", Historia, 12, (1963), p.10.

138 cf. Dem. xxvii, 5, Lysias xxxii, 6.

139 Davies, A.P.F. pp.431-435.

140 Following Archippe's death, Apollodorus claimed his share of his mother's dowry, namely five thousand drachmae and some small items of property (Dem. xxxvi, 15, 32), but he only received the money which he had claimed. This money is regarded as a quarter of her property (Dem. ibid.), and thus by the time of Archippe's death, the monetary value of her dowry was three talents and twenty minae, excluding the household goods and slaves, whereas the dowry stated by Pasio was worth three talents and forty minae. Apollodorus himself puts the total value of the dowry at five talents (Dem. xxxvi, 38), which would indicate that the household goods were worth one

talent and twenty minae, but he was probably exaggerating.

141 [Dem.] xlv, 29.

142 Davies, A.P.F. pp. 439-442.

143 [Dem.] xlvi, 3.

Davies, A.P.F. p. 440.

144 Apollodorus' suggestion in [Dem.] xlv 84 that Pasicles is not his homopatric brother is supported by no testimony and should therefore be regarded as a malicious allegation.

145 Dem. xxxvi, 28-30.

146 Davies, A.P.F. p. 428.

147 [Dem.] xlv, 33, 35, 71-75, 80, 86.

148 cf. Davies, ibid.

149 [Dem.] lii, 13.

J. E. Sandys and F. A. Paley, Demosthenes Select Private Orations Part II, (Cambridge, 1910), p. xxi.

150 Davies, A.P.F. p. 432.

151 Dem. xxxvi, 4.

Davies, ibid. is incorrect when he states that the annual rent for both properties was two talents and forty minae, since the terms specified in the lease indicate that this rent was only applicable to the bank.

152 Dem. xxxvi, 9.

153 Dem. xxxvi, 11.

154 [Dem.] xlv, 37.

L. Pearson, Demosthenes, Six Private Speeches, (Oklahoma, 1972), p. 212, is incorrect when he states that the other trustees are unknown.

155 Dem.xxxvi, 8.

156 Sandys and Paley, op. cit. p.12.

157 [Dem.] liii, 13.

158 However, primogeniture could be relevant when there was an ἐπίκληρος, but the only known example of this is a fictional one in Menander, Aspis 141-143, 185-186, 253-256. See MacDowell, "Love versus the Law: an Essay on Menander's Aspis", Greece and Rome 29, (1982), p.47.

159 Dem. xlviii, 12-13.
Is. vi, 25-26.

160 F.Blass, Die Attische Beredsamkeit 3i (Leipzig, 1893), p.251.

161 J.F. Dobson, The Greek Orators, (London, 1919), pp.202-203.

162 Dem. xli, 5-6.

163 MacDowell, Law, pp.141-142.

164 These documents are not an indication that women had testamentary rights. See above, Chapter 5, Capacity, pp. 136-140.

165 Dem. xli, 21-22.

166 See above n.159.

167 W.Jaeger, Aristotle, (translated by R.Robinson), (Oxford, 1934), pp.320-323.
I.Düring, Aristotle in the Biographical Tradition, (Goteborg, 1957) pp.61-256 (passim).
A.H.Chroust, Aristotle, I, (London, 1973), pp.183-220.
H.B.Gottschalk,"Notes on the Wills of the Peripatetic Scholarchs", Hermes, 100, (1972), pp.314-342 (passim).
G.Bruns, "De Testamente der Griechischen Philosophen", Zeitschrift der Savigny Stiftung, I,

(1880), pp.11-23.

A.Hug, "Zu den Testamenten der Griechischen Philosophen", Festschrift fur Begrüssung der Vers. deutscher Philologen und Schulmänner, (Zurich, 1887), pp. 1-23 (passim).

167 Chroust, Arist. p.193.

168 Chroust, Arist. p.183 n.1.

Düring, A.B.T. pp.219-240.

169 Since I have no knowledge of Arabic, I have relied on Düring's and Chroust's respective translations of the will. According to Mr. J.Montgomery, a lecturer in Arabic at Glasgow University, these are, for the most part, quite satisfactory. All my quotations are from During whose division of the will into sections is used by Gottschalk.

170 Chroust, Arist. p.194.

171 D.L.v, 51.

see below, p. 292.

172 Düring, A.B.T. p.63.

173 See below, pp. 309-311.

174 This is the only question left unanswered by Gottschalk, Notes, pp.323-328. However, the clauses in the will referring to Herpyllis seem to indicate that she was not of servile status (see below, pp. 245-249.). Therefore, it is more probable that this statement is an interpolation by either the Arabic translator or his source.

175 Düring, ibid.

176 Dem. xxvii,5.

177 See Appendix 1.

178 Chroust, Arist. p.195

179 Harrison, Law 1, pp.132-138.

180 Chroust, Arist. p.203.

181 Düring, A.B.T. p.62.

182 J.A.C.Thomas, A Textbook of Roman Law, (Amsterdam, 1976), p.490.

183 Lacey, Family, p.105.

184 See above, pp.215-216.

185 Hug, op. cit. p.3.

186 cf. Dem. xxvii, 15

[Dem.] xlv, 28.

Lysias xxxii, 6.

187 cf.Chapter 5, Capacity, pp. 136-137 and p. 163 n. 88.

188 Harrison, Law I, p.130.

MacDowell, Law, pp.92-93.

189 Dem. xli, 3.

190 Is. vi, 63.

191 See above, pp.193-194.

192 See above, p. 227.

193 See above, p. 213.

194 D.L. v, 74.

195 Bruns, D.T.G.P. p.20.

196 Chroust, Arist. p.204.

197 See above, Chapter 5, Capacity, pp. 129-134.

198 Dem. xxvii, 5-6,

[Dem.] xlv, 28,

Lysias, xxxii, 6.

199 Appendix 1, p. 545, quotation 3.

200 D.L. v, 53.

201 Chroust, Arist. p.186.

202 Chroust, Arist. p.205.

203 See above, pp. 223-226.

204 Dem. xxvii, 5.

205 See n.199.

206 Gottschalk, Notes, p.324.

207 In this section of the chapter, I shall only discuss the position of Herpyllis with reference to the will. Those wishing to investigate the matter further should refer to the following:

Chroust, Arist. pp.207-209,

C.M.Mulvany, "Notes on the Legend of Aristotle.", Classical Quarterly, 20, (1926), pp.157-160,

Düring, A.B.T. pp.269-270,

Bruns, D.T.G.P. pp.17-19,

Jaeger, op. cit. pp.320-323.

208 See n.207.

209 See Appendix 1.

210 See the wills of Theophrastus, Strato and Lyco.

211 See above, p. 207, pp. 221-223.

212 See n.211.

213 Dem. lix, 46.

214 Dem. xxvii, 5.

215 Gottschalk, Notes, pp.326-328.

216 See Appendix 1 pp. 549-550.

217 Chroust, Arist. pp.209-211.

218 Chroust, Arist. p.213

219 Gottschalk, Notes, p.327.

220 Chroust, Arist. p.214.

221 cf. Chroust, ibid.

222 Bruns, D.T.G.P. p.21.

223 Chroust, Arist. p.215.

224 cf. Chroust, ibid. and p.400 n.139.

225 See above, p. 252.

226 One exception might be thought to be the will of Pasio, but here, Phormio had already been free for some time and was manager of the bank. In addition, he is given positions of great responsibility as the husband of Archippe, the co-guardianship of Pasicles and the lease of the testator's property.

227 D.L. iii, 42.

228 See below, the wills of Theophrastus, Strato and Lyco.

229 The lady was probably Aristotle's sister, see During, A.B.T. pp.263-264.

230 See Chapter 5, Capacity, pp. 136-140.

231 D.L., v, 53-54, 63-64, 74.

232 cf. Is. ii, 25, iv, 19-20, vii, 30, ix, 4.

233 Chroust, Arist. p.218.

Chroust adds "and Greece", but since I have not examined wills in areas of Greece other than those governed by Attic law, I am unable to comment on the soundness or otherwise of this part of his statement.

234 Bruns, D.T.G.P. p.22,

Chroust, ibid.

235 Gottschalk, Notes, p.315.

236 Xenophon, Hellenica, iv, 8:16.

237 Davies, A.P.F. p.508.

238 N.G.L.Hammond, A History of Greece to 322BC. 2nd edition, (Oxford, 1967), p.462.

239 Lysias, xix, 41.

240 καὶ αἱ διαθῆκαι, ἃς διέθετο ἐν Κύπρῳ.

(Lysias, xix, 39).

241 Chapter 5, Capacity pp. 121-122.

242 D.L. v, 15-16, 51, x, 18.

243 Davies, ibid.

244 Not his mother as Davies states (ibid). This seems to be a slip on Davies' part, since the text specifically states "brother" and there are no variant readings. In addition, on the same page, Davies states that Conon's brother received a legacy.

245 Lacey, Family, p.132.

246 Davies, ibid.

247 Lysias, xix, 36. Conon moved to Cyprus in 405, and died in 389. Therefore, if his youngest son was the product of a marriage contracted in Cyprus, he would have been in his minority.

248 cf. the will of Diodotus, and the will of Aristotle, in which no legacy is left to the guardian.

249 Dem. xxvii, 5-6.

250 See above, pp. 224-226.

251 Lacey, ibid.

Davies, ibid.

252 The translator of the Loeb text interprets ἐκείνου ἀποδημήσαντος as referring to Conon. This is incorrect, since at the time the speech was made, (388/387). Conon was dead. (Lysias trans. W.R.M. Lamb, (London, 1976) p.435.)

253 Lysias xix, 42.

254 [Dem.] xlix, 11.

See also Davies, A.P.F pp.509-510.

255 Lysias, xix, 42-43.

256 Lysias, xix 35, 42, 44.

257 MacDowell, Law, pp.92-93 and n.201.

258 Is. vi. 30.

259 Is. vi. 23-29.

260 The dates here are those put forward by W.E.Thompson, "Isaeus vi : The Historical Circumstances", Classical Review, 84, (1970), pp.1-2.

261 Is. vi, 13.

262 Is. vi, 21.

263 Is. vi, 22.

264 See above, p. 173.

265 See above, p. 174.

266 Is. vi, 21-22.

267 See n.257.

268 Is. vi, 27-28.

269 Wyse, Isaeus, p.514.

270 Harrison, Law 1, pp.130-132

271 Is. vi, 29-23.

272 Wyse, ibid.

273 See above, pp. 228-231.

274 Is. ix, 27.

275 Is. ix, 14.

276 Is. ix, 19.

277 This suggested by the fact that Euthycrates' death was caused by a violent quarrel with Thudippus over the division of some land which may have been an inheritance (Is. ix, 17), so it is possible that Thudippus may not have been adopted at this point.

278 Harrison, Law 1, p.100.

Wyse, Isaeus p.642.

279 See above, pp. 211-215.

280 T.Thalheim, Lehrbuch der Griechischen Antiquitäten, 2i, aut. K.F.Hermann, (Leipzig, 1895), p.184.

Wyse, Isaeus p.85 is incorrect when he states that the law was made in view of a man's son dying before he came of age, since it also provides for him dying two years after he had reached his majority.

281 Beauchet, Droit 3, p.705.

282 [Dem.] xlvi, 24 indicates that this would be possible with reference to children.

283 R.Wevers, Isaeus, Chronology, Prosopography and Social History, (The Hague, 1969), p.16.

284 Is. i, 11.

285 Is. i, 3-15.

286 Is. i, 31.

287 Is. i, 14, 42.

288 See sources quoted by Wyse, Isaeus, p.175.

289 Is. i, 16.

290 Quoted in Wyse, ibid.

291 Is. v, 6.

292 See n.290.

293 Wyse, Isaeus, p.227.

294 Is. i, 14.

295 Is. i, 30-32.

296 Wyse, Isaeus, p.176.

297 G.E.M. de Ste. Croix, "Athenian Family Law", Classical Review, 84, (1970) p.390.

298 However, see below, p. 279.

299 Norton, ibid.

300 Lacey, Family, p.126.
However, this statement is incorrect because there is no evidence in the speech to suggest that even if the estate was to be awarded to the heirs "ab intestato" one of them would become the posthumously adopted son of the testator.

301 Is. iv, ix.

302 See n.291.

303 Norton, ibid.

304 See below, pp. 284-291.

305 See Appendix 2.

306 Is. x, 15.

307 See Chapter 5, Capacity pp. 129-134 for the importance of this.

308 Is. x, 4-6.

309 Is. x, 22.

310 Is. x, 2.

311 Is.x, hypothesis, lines 19-21 (Teubner).

312 cf. Gernet, D.G.S.A. p.129.

313 Is. vii, 5.

314 MacDowell, Law, p.98.

315 De Ste. Croix, ibid.

316 Gernet, ibid.

317 Wyse, Isaeus, p.555.

318 Is. vi, 5-7.

Is. v, 6-7.

Is. xi, 8-9, [Dem] xliii, 3-4.

Is. xi, 41.

Is. iii, 1-2.

Eupolis had one boy and two girls, Is. vii, 3, 11, 18-21.

319 Apollodorus was later awarded half the estate of Mneson, (Is. vii, 6-7) and this indicates that the will was found to be invalid. The arguments which led to this verdict are not known.

320 S.Usher, Dionysius of Halicarnassus 1, (London, 1974), p.209. n.1, is mistaken when he states that only the summary remains, since there are two fragments attributed to the speech.

321 Thalheim, Isaei Orationes, (Stuttgart, 1903), p.187.

322 D.L. v, 62.

323 D.L. v,13, x, 20, 21.

324 Davies, A.P.F. p.332.

cf. Bruns, D.T.G.P. p.10.

325 Davies, ibid.

326 Bruns, ibid.

327 H.Hug, "Zu den Testamenten der Griechischen Philosophen",

Festschrift fur Begrüssung der Vers. deutscher Philologen und Schulmänner, (Zurich, 1887), p.2 n.1.

328 MacDowell, Law p.102.

Harrison, Law 1, pp.156-168.

329 There is no evidence concerning whether or not Ad~~e~~eimantus' father was alive at the time the will was made.

330 Is. v, 11.

331 Harrison, Law 1, p.125 and n.1, p.151 n.4, Gernet, D.G.S.A. p.144.

332 Bruns, ibid.

333 See below, the wills of Theophrastus, Strato and Lyco.

334 Bruns, ibid.

335 See above, p. 230.

336 Harrison, op. cit. p.124 n.4, p.125 n.4. Harrison neglects to quote this will as an example of this.

337 The elder Demosthenes did not manumit Milyas by will, see above, pp. 219-220.

338 D.L. v, 44, 45, 47.

339 [Dem.] xlv, 28
D.L. iii, 41, v, 13.

340 Throughout his discussion of this case, Hug (op. cit. pp.3-7) seems to assume that the words τὰ μὲν οἴκοι ὑπάρχοντα πάντα refer to the testator's Athenian property as opposed to interpreting οἴκοι as the place of the testator's birth.

341 MacDowell, Law p.99.

342 cf. the respective wills of Plato, Cleonymus, Aristarchus, Mneson.

343 Gottschalk, Notes, p.318.

344 Gottschalk, ibid.

345 See below, pp. 309-311.

346 Bruns, D.T.G.P. p.28.

347 Bruns, D.T.G.P. pp.23-24.

348 Gottschalk, Notes, p.329.

349 D.Whitehead, "The Ideology of the Athenian Metic", The Cambridge Philological Society Supplementary Volume no.4, (Cambridge, 1977), pp.163-167.

350 Harrison, Law 1, pp.237-238.

MacDowell, Law p.78

Beauchet Droit 3, p.94

351 I.G. II^2, 706.

J.Pecirca, The Formula for the Grant of Enktesis in Attic Inscriptions, (Prague, 1966), pp.98-99.

352 M.I.Finley, Studies in Land and Credit in Ancient Athens, 500-200 BC., The Horos Inscriptions, (New Brunswick, 1951), p.252 n.47.

353 This was Strato, who was later to become head of the school.

354 But this freedom of disposition is restricted by Theophrastus see below, pp. 301-302.

355 Gottschalk, Notes, p.320.

356 D. L. v, 56.

357 cf. R.D. Hicks, Diogenes Laertius vol. 1, 2nd. ed. (London, 1980), p.503.

358 D. L. v, 12, D 1A.

359 Chroust, Arist. p. 205.

360 Gottschalk, Notes, pp.335-336.

361 Gottschalk, Notes, pp. 336-342.

362 Gottschalk, Notes, pp.336-337.

363 See below, pp. 303-304.

364 Gottschalk, Notes, p.330.

365 Bruns, D.T.G.P. p.31.

366 Gottschalk, ibid.

367 See below, p. 322.

368 Is. viii, 21-28.

369 D.L. v, 36.

370 λυσιτέλειά really means "profit" or "advantage" (L.S.J. p.1067).

371 It is difficult to state whether Threpta was Pompylus' wife or concubine, since he may have married her after they had been manumitted.

372 See Chapter 5, Capacity, pp. 110-113.

373 cf. Is.iv, 9.

374 cf. D.L. v, 14.

375 See above, p.294.

376 Hug, op. cit. p.19.

377 Gottschalk, Notes, p.318 comes to the same conclusion, but only refers to Theophrastus' apology at the end of D.L. v, 55.

378 Gottschalk, Notes, p.330.

379 Harrison, Law 1, p.124

380 Chapter 7, Formalities, pp. 409-411.

381 Gottschalk, Notes, p.331.

382 D.L. v, 64.

383 D.L. v, 51, 69.

384 Bruns, D.T.G.P. p.38.

Here Bruns ignores the fact that men with legitimate sons could and did make wills. See Chapter 5, Capacity.

385 Hug, op. cit. p.7.

386 Gottschalk, Notes, p.318.

387 The antithesis, τὰ μὲν οἴκοι ... ἀπὸ δὲ τοῦ Ἀθήνηθεν indicates that the words τὰ μὲν οἴκοι are a reference to Strato's property in Lampsacus, because they are placed in contrast with the property in Athens.

388 D.L. v, 63.

389 D.L. v, 64.

390 See above, pp.301-302.

391 See above, pp. 300-301.

392 Bruns, D.T.G.P. p.39.

393 D.L. v, 64.

394 Is. viii, 39.

395 See above, pp. 317-320.

396 D.L. v, 68.

397 R.D.Hicks, Diogenes Laertius, 1, 2nd ed. (London, 1980), p.523.

398 See also n.387

399 D.L. v, 74.

400 Bruns, D.T.G.P. p.43

401 Gottschalk, Notes, p.318 n.1.

402 The complications involved with two men having exactly the same name are enumerated in Dem. xxxix, 7-18.

403 Harrison, Law 1, pp.144-146.

404 D.L. v, 75.

405 See pp. 329-331 below.

406 Bruns, ibid.

407 See above, p. 324.

408 Dem. xxvii, 5.

409 See n. 390.

410 cf. D.L. v, 62.

411 See above, the wills of Strato and Theophrastus.

412 See n.397.

413 Gottschalk, Notes, p.318.

414 See above, pp.325-326.

415 D.L. v, 67.

416 Bruns, D.T.G.P. p.45.

417 See above, p. 332.

418 The testator does not make it clear which slaves belonged to his Athenian property, and which belonged to his estate in Troy.

419 Is. iv, 9.

420 D.L. v, 13.

421 See Chapter 7, Formalities, p. 412.

422 See below, pp.350-351.

423 Cicero, De Finibus, II, xxx-xxxi.

424 D.L. x, 1.

425 See Chapter 7, Formalities, p.455.

426 D.L. x, 10.

427 See above, pp. 301-302.

428 D.L. x, 11.

429 See above, pp. 295-297.

430 D.L. x, 20.

431 D.L. x, 11.

432 This is comparable to the Roman Catholic custom of having a Mass said for the deceased's soul on the anniversary of his death.

433 Cicero, D.F. II, xxxi, 100-103.

434 Cicero, D.F. II, xxxi, 101, 103

435 Cicero, D.F. II, xxxi, 103.

436 See above, pp. 331-332.

437 D.L. x, 24.

438 D.L. x, 22.

439 D.L. x, 23.

440 ibid.

441 Bruns, D.T.G.P. p.51.

442 See above, p. 213.

443 See below, pp.353-354.

444 D.L. x, 22, 25.

445 D.L. x, 6.

This Timarchus is not identical with the testator's joint heir of the same name, since Metrodorus and his brother were citizens of Lampsacus, whereas the heir was an Athenian citizen.

446 Bruns, D.T.G.P. p.52.

447 R.D.Hicks, Diogenes Laertius, 2, ed.1, (London, 1925) p.547 n.C and references therein.

448 D.L. x, 10.

449 ibid.

450 D.L. iv, 28.

451 See Chapter 7, Formalities pp. 446-448.

452 Plato's suggestions for the law of testament in his ideal state shall not be discussed here, because they are not relevant to my discussion.

453 Plato, Laws 922d.

454 Such as the wills of Pasio, Dionysodorus, Diodotus, Demosthenes, Aristotle, Conon, Polyeuctus and that found in Hyperides ii (pp. 195-264 above).

It seems unlikely that Plato is referring to Spartan testamentary law, which apparently allowed complete freedom of testation, because Epitadeus' law concerning this was probably fairly recent, and he would not have been classed as a "law-giver of old". See D.M.MacDowell, Spartan Law, (Edinburgh, 1986), p.104.

455 See above, pp. 272-281, 284-291.

456 Wyse, Isaeus, p.376.

457 I have not discussed these views in chronological order because it seemed best to begin with those which have a very narrowly defined view of the function of the will, and then progress onto those which hold that the testament had several functions.

458 S.Humphreys, The Family, Women, and Death, (London, 1983), p.84.

459 R.Wevers, Isaeus, Chronology, Prosopography and Social History, (The Hague, 1969), p.115.

460 MacDowell, Law, p.101.

461 In fourth-century Athens, women could not manage property in their own name (Is. x, 10) so it is not necessary to include women in this statement.

462 Gernet, D.G.S.A. p.149.

463 G.E.M. de Ste. Croix, "Athenian Family Law", Classical Review, 84, (1970), p.320.

464 Lipsius, D.A.R., pp. 563-565.

465 Lacey, Family, p.137.

466 Harrison, Law 1, p.82, 125, 152.

467 Cleonymus, Plato, Aristarchus and Mneson, pp. 272-283, 284-291 above.

I here take πατρῶα to refer to the real estate inherited by the testator from his father, although there is no evidence that this distinction was defined by law.

468 [Dem.] xlvi, 24.

469 Norton, L.H.S. p.71.

470 A.Biscardi, "Osservazioni Critiche sulla Terminologia διαθήκη - διατίθεσθαι ", Symposion, 1979, (Athens, 1981), pp.32-33.

471 Biscardi, op. cit., p.1.

472 In this passage, the request does not seem to have been included in the written document, but can be termed as a διαθήκη , because it was a contract between two parties made on the expectancy of death.

473 D.Asheri, "Laws of Inheritance, Distribution of Land and Political Constitutions in Ancient Greece", Historia, 12, (1963), p.10.

Chapter 7

The Legal and Formal Requirements for the Making, Safekeeping and Revocation of Athenian Testaments

The Solonian law of testament, in the form in which it has survived in our extant sources, does not seem to have laid down specific requirements for the making, safekeeping and revocation of wills (1). Therefore, it is necessary to discuss the formalities involved in making the wills about which we know in order to find out whether there were any legal rulings in the fourth and third centuries concerning matters such as the form of the document, whether it had to be witnessed or not, and so on, or whether these were merely customary, and thus left to the discretion of the testator.

Witnessing

When a man was making his will, he may have called in persons to witness the document so that if its validity was questioned in a court of law, they could give evidence in favour of it. The purpose of this section is to discuss how many people could be required to do this, what connection a witness might have with the testator, whether it was a legal requirement to have one's will witnessed, and whether those present were

informed of the contents of the will.

Isaeus argues that it was in the testator's best interests for him to summon as many persons as possible to act as witnesses for his will:

ἅπαντα δὲ ταῦτα μάλιστ' ἂν ᾔδει ὅτι γένοιτο, εἰ μὴ ἄνευ τῶν οἰκείων τῶν ἑαυτοῦ τὰς διαθήκας ποιοῖτο, ἀλλὰ πρῶτον μὲν συγγενεῖς παρακαλέσας, ἔπειτα δὲ φράτερας καὶ δημότας ἔπειτα τῶν ἄλλων ἐπιτηδείων ὅσους δύναιτο πλείστους.

(Is. ix, 8)

This statement is developed into the argument that the evidence of these persons, to the effect that Astyphilus did not make a will, should be preferred to the testimony of οἱ ἐντυχόντες that they were present when Astyphilus made his will (2). The evidence from Isaeus, ix, 8 has been regarded as the usual custom with reference to the persons required to witness a will by Lipsius (3), Beauchet (4) and Norton (5), although the latter two scholars state that it was possible for a man to call in only a few witnesses to his will, but that this was unusual. However, there is nowhere a detailed discussion of all the available evidence concerning this matter. I shall therefore discuss each will about which there is some information ~~about which there is some information~~ about the number of witnesses present.

In the case concerning the estate of Dicaeogenes (II) (no. 10) one of the witnesses to the second testament, a man named Lyco, was found guilty of bearing false witness (6). According to the speaker, Menexenus who prosecuted Lyco was bribed by Dicaeogenes (II) . As a result of

this he ceased his action against the other witnesses:

...τοὺς δὲ μήπω ἐκλωκότας τῶν μαρτύρων ἀφεῖναι.
(Is. v, 13)

The plural forms used here suggest that there were at least two more witnesses to be prosecuted. This indicates that there were at least three persons who alleged that they had witnessed the making of the second will of Dicaeogenes (II).

The case of the will of Diodotus (no. 12) is not too clear with reference to the witnesses to it. Before leaving for military service, the testator called together his wife and his brother, Diogeiton, gave them a will, and related its terms to them (Lysias, xxxii, 5). It seems as if the document was copied and sealed in the presence of the testator's wife and Diogeiton (7). Therefore it is likely that these two people can be regarded as having witnessed the will.

When the witnesses to Pyrrhus' will (no. 14) are mentioned, they are merely referred to as τοῖς μεμαρτυρηκόσιν (Is. iii, 56), but it is not stated who they were or how many there were. However, the plural form suggests that there were at least two persons who alleged that they had witnessed the will.

Dionysodorus (no. 13) is recounted as having made his will in the presence of his wife:

ἐναντίον δὲ τῆς ἀδελφῆς τῆς ἐμῆς Διονυσόδωρος τά τε οἰκεῖα τὰ αὐτοῦ διέθετο ὅπως αὐτῇ ἔδοκει,....

(Lysias, xiii, 41)

This quotation suggests that the speaker's sister, who

was also the testator's wife, was the only person present when the will was made. However, the setting of Plato's dialogues Crito and Phaedo suggests that it was probably normal for a prisoner to receive daily visits from his male friends. In addition, the speaker continues by stating that Dionysodorus also told his wife that Agoratus was responsible for his death, and that the speaker, the testator's brother Dionysius and all his friends (τοῖς φίλοις πᾶσι) should take vengeance on him (8). This suggests that Dionysodorus' will was witnessed by at least four other people in addition to his wife.

It is rather difficult to ascertain how many witnesses were present when Hagnias (no. 15) made his will because of the lack of information. However, it is alleged that Theopompus gave testimony in favour of Glaucus' claim to the property by will:

καὶ Θεόπομπος ὁ τουτουὶ πατὴρ Μακαρτάτου ἐκείνοις συγκατεσκεύαζεν ἅπαντα ταῦτα καὶ ἐμαρτύρει τὰς πλείστας μαρτυρίας.

([Dem.] xliii, 4)

This quotation suggests that Theopompus may have been a witness to the making of Hagnias' will, since he gave evidence in favour of it. No reference is made to persons who gave similar testimony, but the will of Hagnias had been found invalid over thirty years after it had been made, and it is possible that if there had been other witnesses, they may have died in the intervening years.

According to the speaker of Isaeus vi, there were several persons present when Philoctemon made his will

(no. 26), as is indicated by the words οἱ παραγενόμενοι μαρτυρήσουσι (Is. vi, 7). However, it is not stated how many of them there were and whether they were connected with the testator in any way.

The situation concerning the witnesses to the will of the elder Demosthenes (no. 19) is not made entirely clear. The fact that Cleoboule, the testator's wife, and his children are placed into the hands of the guardians and called a "sacred deposit" (9), in addition to the fact that Demosthenes (II) incorporates Cleoboule's evidence into his speech (10), indicates that she was a witness to her husband's will. However, it is not stated precisely who else was present. In Dem. xxvii, 4, it seems as if Aphobus, Demophon and Therippides were the only persons present when the elder Demosthenes made his will, whereas in Dem. xxviii, 15, Demophon's father, Demo, is said to have been there as well (11). If this was so, his evidence concerning the will would have been of much use to Demosthenes (II). However, there is no indication in the first case against Aphobus that he was called upon to do this. Pearson suggests that this could be either because Demo had died before the case was brought to court or because he was unwilling to give evidence against his son Demophon. However, it is stated in Dem. xxix that he subsequently gave evidence against Aphobus, and that Aphobus gave testimony against him (13). This indicates that he was still alive when Demosthenes (II) brought his guardians to court. It is therefore more probable that he was unwilling to give evidence against his son. Therefore, there were four, or

maybe five witnesses to the making of the elder Demosthenes' will, one was a woman, two or three were relatives and one was a life-long friend of the testator. If Demo did act as a witness, then according to the terms of the will (14), he was the only disinterested person present.

In Isaeus, iv, the speaker refers to the witnesses who seem to have given evidence in favour of the will:

μήτε τῶν μαρτύρων τοῦ τελευτήσαντος ἐπιτηδείων ὄντων ἀλλὰ Χαριώδου....

(Is. iv, 23)

Here, it is implied that several persons had given evidence that they were present when the will was made, but it is not stated how many of these there were. Later, it is stated that certain persons have given evidence that Nicostratus was the son of Smicrus as opposed to the son of Thrasymachus as is suggested by the speaker (15). Wyse wonders whether the witnesses to the will are to be distinguished from these relatives (16). However, it is stated that these supposed relatives only gave evidence concerning the paternity of the testator (17). In addition, the will was made in a distant land, so it probably would not have been possible to have had relatives present except if they were on the same campaign, and there is no evidence in favour of this. Even though the speaker alleges that the witnesses were only friends of Chaereas, it is possible that those present were friends of Nicostratus too.

At first, Euctemon's will (no. 27) was an oral agreement made with the collusion of relatives (18). It is not stated how many people, if any, were present when this compromise was reached. However, it is alleged that when Euctemon wished to make a written record of his διαθήκη, he took certain persons, whose identity and number is not stated, to where the boat of his son-in-law Phanostratus was anchored. He then made his will in the presence of Chaereas, who was there also, Phanostratus and the persons whom he took with him (19). This indicates that there were at least four persons who witnessed the will being made, two of whom were relatives. It is not stated whether Pythodorus, the person who was the depositary of the will (20) was a witness to it being made.

When Polyeuctus made his will (no. 28), it seems as if he called together various persons to witness the fact. It is alleged that Spudias was requested to be present, but was not able to come, so he stated that it was sufficient for his wife to attend (21). That the testator's other son-in-law was there is indicated by the fact that he is accused of exerting force on Polyeuctus (22). There is no definite statement that the other daughter of Polyeuctus was there, but the verb ἐπράττομεν (Dem. xli, 17) seems to refer to both the speaker and his wife. It seems as if Aristogenes also witnessed the will, since he told Spudias of what had taken place (23). It is also stated that there is testimony given by persons who were there when the will was made (24). The fact that these persons are referred to as τοὺς . . .

παραγενομένους indicates that there are several of them, but there is no indication as to their number. It is possible that Aristogenes was one of these. There were, therefore, at least five persons present when Polyeuctus made his will, his two daughters and a son-in-law, Aristogenes, whose connection with him is not specified, and at least one other.

Cnemon's will (no. 32) is made in Menander's play, Dyskolos. Even though it is a fictional testament, such a disposition of property would have had to be credible to an Athenian audience. At the time he makes his disposition, he has been rescued by Gorgias after falling down a well, and it is Gorgias whom he addresses concerning his dispositions. It seems as if Myrrhine, his estranged wife is present, since he addresses her (25). The fact that Cnemon's daughter is also there is indicated when he requests her help (26). It seems as if Sostratus is standing in the background, since Gorgias points him out as a possible husband for the testator's daughter (27). However, it is likely that he may not have heard the terms laid down by Cnemon, since he is told to come forward (28). There were, therefore, at most four witnesses to Cnemon's will, two of whom were women.

At the end of his will, Theophrastus (no. 34) names certain persons as witnesses:

αἱ διαθῆκαι κεῖνται ἀντίγραφα τῷ Θεοφράστου δακτυλίῳ

σεσημασμέναι, μία μὲν παρὰ Ἡγησίᾳ Ἱππάρχου· μάρτυρες Κάλλιππος Παλληνεύς, Φιλόμηλος Εὐωνυμεύς, Λύσανδρος Ὑβάδης, Φίλων Ἀλωπεκῆθεν. τὴν δ' ἑτέραν ἔχει Ὀλυμπιόδωρος· μάρτυρες δ' οἱ αὐτοί. τὴν δ' ἑτέραν ἔλαβεν Ἀδείμαντος, ἀπήνεγκε δὲ Ἀνδροσθένης ὁ υἱός· μάρτυρες Ἀρίμνηστος Κλεοβούλου, Λυσίστρατος Φείδωνος Θάσιος, Στράτων Ἀρκεσιλάου Λαμψακηνός, Θηρίππος Θηρίππου ἐκ Κεραμέων, Διοσκουρίδης Διονυσίου Ἐπικηφίσιος.

(D. L. v, 57)

This passage has been given various interpretations. Wyse states that the people named here acted as witnesses to the making of the will (29), whereas Norton states that the persons named as witnesses were present when the will was deposited (30). However, Norton does not cite any evidence in favour of his opinion. The fact that a different set of witnesses are named with reference to Adeimantus, to whom a copy has to be sent by Androsthenes, suggests that the witnesses named in both cases are those who were present when the document was deposited. Only one of the witnesses is named elsewhere in the will. This is Strato, who became head of the Peripatos. Since Theophrastus might not have known who would have been present when the copies of his will were deposited as he was writing the document, it is possible that this paragraph was added later. This also suggests that Theophrastus kept the a copy of the will, otherwise he would not have been able to add this information. In each case there were four witnesses, whose identity is clearly stated by means of his father's name or by the

name of his place of origin.

The philosopher Lyco also names witnesses at the end of his will (no. 37):

μάρτυρες Καλλῖνος Ἑρμιονεύς, Ἀρίστων Κεῖος, Εὐφρόνιος Παιανιεύς.

(D. L. v, 74)

The relationship of these people to the testator is not made clear, and one of them is not a beneficiary under the will. It is possible that Callinus may be identical with the person who is to oversee the expenditure for Lyco's funeral (31), and whose wife and child receive small bequests (32). It seems as if both Ariston and Callinus are nominated as fellows of the school (33).

Therefore, in all the wills about which there is information concerning witnesses, more than one person acted as a witness to a testament being made. For the most part, in the fourth century, these seem to have been family members in addition to friends, although when relatives were not available, friends alone could act as witnesses. The fact that Isaeus argues that the evidence of "chance comers" that a man made a will is not to be trusted in comparison with evidence from his family and friends that this was not done (34), indicates that Athenian juries may have been suspicious of wills whichwere not witnessed by relatives and friends of the testator. However, no law is referred to which stated that a will had to be witnessed by persons connected with the testator, and this suggests that having one's will witnessed by persons whom one knew was a customary as

opposed to a legal obligation. In the wills which we know about from the third century, two were witnessed by persons whose relationship to the testator is not specified, whereas one was witnessed by the testator's family. This suggests that by the third century evidence from friends and acquaintances concerning wills was on an equal footing with that of family members. This was probably a change in custom as opposed to a change in law. In all examples, it seems as if those called were not necessarily fellow deme and phratry members, although this may have been the case where relatives on the male side and some friends were concerned. Furthermore, with those wills where we do have fairly specific information, it seems to have been the case that the number of witnesses did not have to be as large as Isaeus suggests in ix, 8, and in fact that to have such a large number of persons present when making one's will was perhaps unusual. Furthermore, even in this passage, the word μάλιστα suggests that although Astyphilus' will would be most effective if it was witnessed by relatives and so on, it seems to imply that it would also be valid if this did not happen. However, in view of the fact that the validity of a will could be questioned many years after it had been made, as happened with the will of Hagnias, it would have been a sensible precaution to have many people to witness its making. There seems to have been no legal ruling concerning the number of witnesses needed. This seems to have been left to the discretion of the testator.

From the wills discussed in the above pages, it can be seen that women sometimes were present when a testament was being made. Cleoboule was present at the making of her husband's will, as was the sister of the speaker of Lysias, xiii and the wife of Diodotus. Polyeuctus' two daughters were present when their father made his will. However, in none of these examples was a woman called into court to give evidence in favour of the document, even though it might well have been invaluable. Instead, this testimony is incorporated into the speech, as in the case of the evidence of Cleoboule (35). There are various opinions concerning the matter of women appearing as witnesses in a court of law. Bonner (36) and Leisi (37) hold that a woman was not allowed to testify in court, whereas Lacey states that in legal actions "Athenians allowed their womenfolk to give evidence" (38). However, there are no examples of this happening in a court of law. On the other hand, MacDowell states that "women and children seem never to have given evidence, though it is not clear whether that was because a law forbade them to do so, or just because it was considered socially improper for them to speak in a public court" (39). However, the fact that Diodotus' widow was prepared to swear an oath concerning his property anywhere her father wished (40), indicates that it was very probably not contrary to law for a woman to testify in a law court, but it was not customary for her to do so, since there is no suggestion in the extant part of the speech that she did swear an oath before the court. Therefore, because of this convention, it would

have been wise for a testator to have his will witnessed by at least one male in addition to a woman.

There is some evidence that it was not necessary for a will to be witnessed for it to be regarded as valid in Athenian law. The passage cited by various scholars with reference to this is in Isaeus, ix:

ἔτι δ', ὦ ἄνδρες, εἰ μὲν ὁ Ἀστύφιλος μηδένα ἐβούλετο εἰδέναι ὅτι τὸν Κλέωνος υἱὸν ἐποιεῖτο μηδ' ὅτι διαθήκας καταλίποι, εἰκὸς ἦν μηδὲ ἄλλον μηδένα ἐγγεγράφθαι ἐν τῷ γραμματείῳ μάρτυρα.
(Is. ix, 12)

Lipsius (41), Beauchet (42) and Norton (43) have regarded this passage as an indication that it was not necessarily a legal requirement for a man to have his will witnessed. However, as Harrison points out (44), the wording in the passage is ambiguous, since the word ἄλλον could be interpreted as "anyone other than Cleon" and thus suggest that only the writing down of Cleon's name as a witness was necessary for the will to be regarded as a valid. Wyse states that "there is an erasure in the ms. before μηδὲ large enough to contain Κλέωνα as the word would have been written by the scribe" (45). This possibility adds to the ambiguity of the passage, and suggests that it might well have meant "no one other than Cleon". Therefore, because the passage is ambiguous in its meaning, it cannot be regarded as satisfactory evidence concerning the witnessing of wills.

Therefore, since the evidence to the contrary is not satisfactory, it seems as if a man was formally obliged to have his will witnessed, although the number of such

persons was left to his discretion.

It is now necessary to examine whether those who witnessed the making of a testament were informed of its contents or whether its clauses were kept secret, also, whether there was any legal ruling concerning this matter.

There are various opinions concerning the secrecy or otherwise of a testament. Beauchet states that witnesses were only able to testify to the fact that a will had been made, but were unable to say whether the document produced in court was identical with that made by the deceased, and that if a witness were to be told the contents of a will, this would compromise the document's secrecy, so this was rarely done (46). Lipsius states that witnesses did not testify to the contents of a will, but only to the fact of its having been made (47), and this view is held by Norton (48). Both Jones (49) and Guiraud (50) state that the contents of a will were not usually revealed to those who witnessed it. Harrison states that "where there were witnesses they did not necessarily, though they might, know the contents of the will. They were simply witnesses that a will had been made, and, when it was in writing, it is at least doubtful whether they could vouch for the fact that the document produced was the document they had witnessed" (51). However, none of these scholars has discussed all the available evidence concerning this question, and for the most part, they seem to base their conclusions on a passage in Isaeus (Is. iv, 13). In addition to looking at this passage, I shall discuss the evidence concerning whether witnesses were told of the contents of a will as

it occurs in individual cases.

The passage mostly relied upon by scholars who state that the terms of a will were not related to witnesses reads as follows:

ἔτι δέ, ὦ ἄνδρες, καὶ τῶν διατιθεμένων οἱ πολλοὶ οὐδὲ λέγουσι τοῖς παραγιγνομένοις ὅ τι διατίθενται, ἀλλ' αὐτοῦ μόνου τοῦ καταλιπεῖν διαθήκας μάρτυρας παρίστανται,...

(Is.iv, 13)

At this particular point in the speech, the speaker has recently stated that in inheritance cases, proofs by argument should be preferred to testimony given by witnesses (52). This quotation seems to fall into the former category. The passage contains no reference to the standing of the law on the matter of relating the contents of a will to witnesses. The words τῶν διατιθεμένων οἱ πολλοὶ are not exhaustive; they suggest that the majority of testators, but not all of them, did not tell the witnesses of their wills' function; thus suggesting that for the most part, a man would be unable to testify to the clauses in a testament. However, since the orator is attempting to disprove the validity of the will of Nicostratus, it is possible that he is using the rhetorical device of hyperbole in order to heighten the jury's suspicion. The quotation contains no indication as to whether the witnesses who gave testimony in favour of Nicostratus' will were able to state its contents. Wyse states that it is not possible "to discover what amount of truth is contained in this generalization" (53). However, the fact that the speaker can make such a

claim suggests that in some cases the witnesses were not told of a will's contents, but it should not be taken as precise evidence of the legal formalities concerning this.

In another speech, Isaeus compares an adoption "inter vivos" with an adoption by testament, and states that the latter is more likely to be questioned by relatives because the provisions are ἀδήλους (Is. vii, 2). This generalization suggests that the contents of a will were kept secret.

There are also some cases in which it seems as if the witnesses were not told of the contents of a will.

At the scene of the making of the will of Dionysodorus (no. 12), there is no indication that the witnesses to it were told its function.

The validity of the will of Pyrrhus (no. 14) was questioned about twenty years after it was made by the means of the husband of Pyrrhus' legitimate daughter prosecuting the witnesses to it:

ὡς γὰρ οὐχ ὁμολογῶν [πῶς] ἐπεσκήπτετο τοῖς μεμαρτυρηκόσιν ἐπὶ τῇ διαθήκῃ τοῦ Πύρρου παραγενέσθαι.

(Is. iii, 56) (54)

Here the words μεμαρτυρηκόσιν... παραγενέσθαι suggest that the witnesses were only able to testify that they were present when the testator made his will, and were not told of the terms contained in the document.

Witnesses are called to testify that the will of Philoctemon (no. 26) was made and give evidence in favour of it (55). However, it is not stated whether these people were told of the will's function at the time of

its making. It is later stated that Androcles, the speaker's opponent, alleged that Philoctemon neither made a will nor adopted Chaerestratus as his son:

νῦν δὲ πῶς ἄν τις περιφανέστερον ἐξελεγχθείη τὰ ψευδῆ μεμαρτυρηκὼς ἢ εἴ τις αὐτὸν ἔροιτο "Ἀνδρόκλεις, πῶς οἶσθα Φιλοκτήμον' ὅτι οὔτε διέθετο οὔτε υἱὸν Χαιρέστρατον ἐποιήσατο;" ὡς μὲν γάρ τις παρεγένετο δίκαιον, ὦ ἄνδρες, μαρτυρεῖν, οἷς δὲ μὴ παρεγένετο ἀλλ' ἤκουέ τινος, ἀκοὴν μαρτυρεῖν.

(Is. vi, 53)

Here, the speaker's argument is not quite correct. In opposition to Androcles' allegation, no reference is made to persons who have given testimony both that Philoctemon made a will and that by it Chaerestratus was adopted as his son. It appears that he is arguing that Androcles cannot have known that Philoctemon did not make a will. The speaker is incorrect when he states that hearsay evidence was permitted, because this was only allowed if the person who had witnessed the event himself had died, and this was not the case with Philoctemon's will, since the evidence of the witnesses is given earlier on in the speech (56). Therefore, it seems as if those who gave testimony in support of the will might not have been able to testify to its contents.

On the other hand, there are cases where it seems as if the witnesses to a will were told of its contents.

When the speaker of Isaeus, v is recounting the prosecution of the witnesses to the will of Dicaeogenes (II) (no. 9), he states that one of them, a man named Lyco, had given the following testimony:

ὃς ἐμαρτύρησε Δικαιογένην ποιησθῆναι τὸν νῦν ὄντα ὑπὸ τοῦ θείου τοῦ ἡμετέρου ὄν ἐπὶ πᾶσι τῷ κλήρῳ.

(Is. v, 12)

This quotation suggests that when the will of Dicaeogenes (II) was probated the second time (57), Lyco was able to give precise evidence concerning it, not only stating that he was present at its making, but also that he knew its function, which was to adopt Dicaeogenes (II) and bequeath him all his property as opposed to just one third.

In the speech concerning the will of Cleonymus (no. 24), it is stated that there were questions put to him by Deinias, the guardian of the heirs "ab intestato" πάντων τῶν πολιτῶν ἐναντίον (Is. i, 11). Wyse states that these words suggest an altercation before the assembly, but quite correctly adds that this vagueness "could be a cloak for lack of testimony" (58). Indeed, no witnesses are called to verify this statement. Wyse states that the fact that the will was lodged with an ἀστυνόμος led Deinias to assume that it either abridged or abolished the rights of inheritance of the heirs-at-law, thus implying that the contents of the will were kept secret (59). However, the fact that this alleged altercation was in public and that Deinias asked whether Cleonymus had any quarrel with either the heirs or their father

(60), suggests that he knew the function of the will. In addition, the mere fact that a will was made and allegedly deposited with a magistrate does not necessarily indicate that Cleonymus had abridged or abolished the rights of his heirs "ab intestato", since it was possible for a man to regulate the disposition of property between his heirs by means of a will, as Pasio did (61). Wyse also suggests that the making of the will of Cleonymus was accompanied by public formalities at which Deinias happened to be present (62). However, there is no evidence in the speech which supports the suggestion that it was not an ordinary will and that it was made in public. Therefore, if the alleged public altercation did concern the terms of the will, it is possible that the document's terms were told to those present.

In Isaeus ix, the speaker alleges that if Astyphilus (no. 22) had wished to prevent his will from being challenged by his heirs "ab intestato", he should have called many people to witness the will, but if he did not wish anyone to know that he was intending to adopt Cleon's son, he had no need of witnesses (63). Wyse rightly states that the underlying assumption of this argument is that "witnesses may be expected to have knowledge of the substance of a will" (64). This is indicated in the words εἰδέναι ὅτι τὸν Κλέωνος υἱὸν ἐποιεῖτο . If witnesses generally only testified to the fact that a will had been made as opposed to also stating its contents, this argument would be based on very uncertain grounds.

The will of Euctemon (no. 27) is a rather complicated matter. This testament was at first an oral agreement between Euctemon and Philoctemon arrived at with the collusion of relatives:

ἔπειθον, ὦ ἄνδρες, τὸν Φιλοκτήμονα ἐᾶσαι εἰσαγαγεῖν τοῦτον τὸν παῖδα ἐφ' οἷς ἐζήτει ὁ Εὐκτήμων, χωρίον ἓν δόντα.

(Is. vi, 23)

It is not stated who these relatives were, they are simply referred to earlier in vi, 23 as οἱ ἀναγκαῖοι. Since these persons persuaded Philoctemon to accept a compromise, it is possible that they would have either known of or even proposed its terms. If these relatives were identical with the principal witnesses of the writing down of the agreement, who were Philoctemon's brothers-in-law Chaereas and Phanostratus, then the will's contents would have been known to them.

It seems as if the will of Diodotus (no. 12) was probably made in private (65), but the description of what happened before he set out on military service, where he is said to have related the document's contents, and probably copied the document and sealed it (66) indicates that the function of the will was told to those who were probably inscribed as witnesses.

The younger Demosthenes' second speech agianst Aphobus indicates that there were two opposing accounts of what happened when Demosthenes (I) made his will (no. 19). According to Aphobus, he did not agree to the terms of the document:

οὗτος δὲ καὶ μεταπεμφθῆναι φάσκων ὑπὸ τοῦ πατρός, καὶ ἐλθὼν εἰς τὴν οἰκίαν, εἰσελθεῖν μὲν οὔ φησιν ὡς τὸν μεταπεμψάμενον, οὐδ' ὁμολογῆσαι περὶ τούτων οὐδέν, Δημοφῶντος δ' ἀκοῦσαι γραμματέως ἀναγιγνώσκοντος καὶ Θηριππίδου λέγοντος ὡς ἐκεῖνος ταῦτα διέθετο, . . .

(Dem. xxviii, 14)

Here, the words δ'ἀκοῦσαι . . . ἀναγιγνώσκοντος indicate that Aphobus admitted that he heard the terms of the will being read out, and therefore suggest that he knew what these terms were. However, the words οὔ φησιν . . . τούτων οὐδέν suggest that he was not actually present in the room when the will was made. He states that he was acquainted with the document's terms by hearsay (καὶ . . . διέθετο). However, Demosthenes (II) alleges that Aphobus both knew and agreed with the terms of the will:

- - - καὶ προεισελθὼν καὶ ἅπαντα δωμολογημένος πρὸς τὸν πατέρα, ὅσαπερ ἐκεῖνος γράψας κατέλιπεν.

(Dem. xxviii, 14)

Here, Aphobus was allegedly the first to be present (προεισελθὼν), and was told the terms of the will by the testator, which is indicated by the fact that he allegedly agreed with them. Indeed, since Aphobus seems to have been nominated as the person who would marry the testator's wife and thus live with the children (67), this allegation seems quite plausible. Furthermore, in the scenes where Demosthenes (II) describes the making of

his father's will, the terms of the document concerning the care of the testator's dependents and the estate, but not, it seems, the inventory of property, are read out before the elder Demosthenes' wife and children, the three nominated guardians and, in xxviii, 15, Demo. The account of Aphobus as stated by the orator and the younger Demosthenes' account agree on one very important point, namely that those present when the testament was made knew its terms.

The will of Pasio (no. 21) is, in some respects, very similar to that of the elder Demosthenes. There is no evidence concerning whether Phormio witnessed it or knew of its terms. However, the very nature of the responsibilities placed upon Phormio, namely marrying the testator's wife and being guardian of Pasicles (68), are very similar to those placed upon Aphobus. Therefore it seems possible that Phormio was a witness to the will and that, like Aphobus, he was told of its terms.

If, for some reason a man wished to make arrangements for the disposition of his property after his death by means of an oral will (69), it would have been essential for persons to know of his wishes, since if they were not told, there would be no way of discovering the deceased's intentions.

Thus, the will of Polyeuctus was witnessed by various members of his family, one of whom was Spudias' wife. It is said that if there had been any terms which she had disagreed with, these would have been reported to her husband (70). Furthermore, Spudias was also given an account of the proceedings by Aristogenes and made no

objection (71).

In addition, all those present when Cnemon made his will knew its terms (72), except, perhaps, Sostratus, who may not have heard the proceedings.

Therefore, the evidence from our extant sources suggests that the witnesses to a testament were more often than not told of its contents. In the cases where an oral will was being made, this would be essential. However, the fact that Isaeus could suggest that the contents of wills were often kept secret implies that in a minority of cases, witnesses to a will could only testify that they were present when the document was made and could not give evidence concerning its contents. Since there is evidence in favour of Isaeus' statement, but also evidence against it, it seems most probable that there was no legal obligation placed on the testator either to tell witnesses of the terms of his will or keep these matters secret. This was left entirely to his own discretion.

There is also the question whether it was a legal necessity for certain clauses in a will to be told to the persons whom they concerned, and their consent accepted. The fact that Aphobus was able to argue that his agreement had not been obtained, whereas Demosthenes (II)attempts to prove that it had (73), seems to suggest that where guardians were nominated in a will, the testator was probably obliged to procure their consent, and if this was not done, then the relevant clauses in the will would not be valid. In addition, it seems as though it was probably a legal requirement for a man to

request permission from the adoptee's father if he wished to adopt someone by will and that person was under age (74). However, in both of these cases, these persons might not necessarily have acted as witnesses to the document (75).

In conclusion, it seems as if it was probably legally obligatory for a man to have his will witnessed by at least one person. However, what sort of people and how many these witnesses were, and whether they were told of the clauses which the document contained, were matters left to the testator's own wisdom and soundness of judgement.

Form

In this section, I shall discuss matters such as whether an oral will was permitted by law, whether there were any legal obligations concerning the set pattern a written will might have and the sealing of the document.

The concept of an oral as opposed to a written will has been little discussed. Both MacDowell and Jones (76) seem to assume that testaments were written. On the other hand, Lipsius, Paoli and Harrison admit this possibility (77).

The will of Cnemon in Menander, Dyskolos, (730-739) is an oral disposition of property, since there is no indication that the testator writes down his wishes. This could be because it may have been thought to be dramatically effective for the character to be telling his listeners his last wishes rather than merely writing them down. However, it seems as if this scene might be

equally as effective if Cnemon were to recite the terms of his will as he was writing it. Paoli states that this διαθήκη is not formal in character (78), but he does not explain exactly what he means by this, since he later states that the terms of this will are just as binding as if it had been a written document (79). It could be that Paoli is referring to the fact that the will was not written down, and there would therefore be no document to refer to after the testator's death. The opening words of the will are fairly similar to those of the testaments of the peripatetic philosophers, in that it begins with the words:

ἐάν τι ἐγὼ / ἀποθάνω νῦν

(Men. Dysk. 729-730) (80)

It is therefore possible that even in an oral will it was a formality to open with a clause stating "if I die". That this was probably not an obligation is indicated by the fact that some wills did not start in this manner (81). However, Cnemon adds a clause that states that the terms of his will are to be carried out even if he survives, ἂν δὲ περισωθῶ , (Men. Dysk. 731). The terms of his will are in the following order: the adoption of a son and the bequest of half of his property to him, and he is given the care of the testator's daughter and told to find a husband for her, the provision of a dowry for the girl, and the request that the adopted son care for the testator and his wife from the remaining property. For this scene to be plausible, it must not have been completely unknown for a man to dispose of his property in this manner.

Paoli suggests that the will of Demosthenes (I) was an oral dispostion of property (82). However, there is evidence from Demosthenes' (II) speeches against Aphobus which is contrary to this idea. The orator states that Aphobus had agreed with the terms of the will which his father had written:

... καὶ ἅπαντα διωμολογημένος πρὸς τὸν πατέρα, ὅθ' ὅπερ ἐκεῖνος γράψας κατέλιπεν.

(Dem. xxviii, 14)

Here the word γράψας specifically indicates that the testator's wishes were written down. In addition, Aphobus alleged that he heard Demophon reading something:

Δημοφῶντος δ' ἀκοῦσαι γραμματεῖον ἀναγιγνώσκοντος....
(Dem. xxviii, 14)

There are also other references which indicate that the will was a written document as opposed to an oral declaration (83). Therefore, Paoli's view is mistaken.

The will of Polyeuctus has been thought by Lipsius Beauchet and Gernet (84) to be an oral testament, but none of these scholars quote specific evidence in support of this. On the other hand, Harrison also thinks that Polyeuctus' will was not written, and supports his suggestion with the following:

οὐ δήπου καὶ τοὺς μάρτυρας ἔπειτα... ψευδῆ μοι μαρτυρεῖν ... τοὺς τὸ τελευταῖον ταῖς διαθήκαις παραγενομένους

(Dem. xli, 16)

He rightly states that this quotation implies that the terms of the will could only be discovered by questioning

witnesses (85). In addition, if the will had been written, it would have been very reliable evidence to present to the court. However, this is not done; the only papers which are presented to the court as evidence are those which Polyeuctus' wife left and in which certain debts are recorded (86). Furthermore, there is no specific reference to the fact that the document was written, since the verb used to refer to the actual making of the will is διατίθημι which can refer either to a written or an oral contract (87). Thus it is very probable that the will of Polyeuctus was oral and not written.

Therefore, it appears that it was not contrary to law for a man to make an oral as opposed to a written will. It is self evident that in the case of an oral will witnesses would have to be present, otherwise no one would know its terms. Besides this formal necessity, an oral disposition of property seems to have been allowed by law in addition to a written testament, although since the only means of discovering its terms was by the testimony of witnesses, it was not such a reliable way of disposing of property. There is no evidence that there were legal rulings concerning the form of such a declaration.

I shall now discuss whether there were any legal obligations concerning the manner in which a will was written, such as the order in which its terms were presented. There is no reference to a law which states that a testament had to be written in a particular way in order to be legally valid, as was the case in ancient

Rome (88). However, Ziebarth states that there are various similarities in the forms of wills found in Attica, other areas of Greece and in Egypt. They begin with a date, a personal description of the testator, and have a euphemistic formal opening. This is followed by the regulation of goods, the appointment of executors and the documents end with the naming of witnesses (89). My discussion is limited to wills from Athens, few of whose texts are extant, but I shall attempt to examine how true Ziebarth's list is with reference to these particular examples.

Even though the will of Pasio (c. 370/1) is introduced with the words λέγε δ' αὐτοῖς τὴν διαθήκην αὐτήν ([Dem.] xlv, 28), thus suggesting that the whole will is to be read to the court, its functions (90) suggest that in fact only the first part of the document is read out. It begins with the words:

Τάδε διέθετο Πασίων Ἀχαρνεύς.
([Dem.] xlv, 28)

Here, the aorist form of διατίθημι is used, and the testator identifies himself by the name of his deme. This is followed by clauses dealing with the care of his wife Archippe. Since this is the only part of the will which survives, it is impossible to state in what order the other terms were written and whether executors or witnesses were named.

The will of Plato (c. 347) begins with the words:

Τάδε κατέλιπε Πλάτων καὶ διέθετο.
(D. L. iii, 41)

Here also, the aorist form of διατίθημι is used, but the testator only identifies himself by means of his own name, as opposed to naming his father or deme. This is followed by a bequest of the testator's βίος and an inventory of property. The document ends with a list of executors.

(c. 322)

The opening words of the will of Aristotle as preserved by Diogenes Laertius are:

Ἔσται μὲν εὖ· ἐὰν δέ τι συμβαίνῃ, τάδε διέθετο Ἀριστοτέλης·
(D. L. v, 11)

This is the first time that both a wish that everything be well and a conditional clause are found; again, the aorist form of διατίθημι is used. This is followed by the appointment of executors, and clauses regulating the care of his dependents and the disposition of property, and the will ends with provisions of a religious nature. The opening sentence is not found in the Arabic version of the text, neither are the religious provisions.

The will of the philosopher Theophrastus (c. 288-285) begins as follows:

Ἔσται μὲν εὖ· ἐὰν δέ τι συμβῇ, τάδε διατίθεμαι·
(D. L. v, 51)

Here, the first three words are identical with those used by Aristotle in the opening of his will. A conditional clause is also found, but διατίθημι appears in the present tense. There are then clauses dealing with the disposition of property, arrangement of burial and the care of slaves. The document ends with the naming of executors and the witnesses to the depositing of various copies.

The will of Epicurus (c. 270) has no formal opening, but firstly orders the disposition of the philosopher's property. There are three various religious clauses and the document ends with orders concerning the care of dependents. There is also a letter which can be regarded as an additional διαθήκη (91), and this opens with the statement that it was written on the last day of the testator's life, τελευταίαν ἡμέραν τοῦ βίου (D. L. x, 22). This letter solely concerns the care of the children of Metrodorus.

Strato's testament (c. 269) begins with the words:

Τάδε διατίθεμαι, ἐάν τι πάθω·

(D. L. v, 61)

Here, the present form of διατίθημι and a conditional clause is found. This is followed by various dispositions of property, the naming of executors and further clauses regarding property. The testament ends with provisions for burial.

The will of the peripatetic philosopher Lyco (c. 228-224) opens as follows:

Τάδε διατίθεμαι περὶ τῶν κατ' ἐμαυτόν, ἐὰν μὴ δυνηθῶ τὴν ἀρρωστίαν ταύτην ὑπενεγκεῖν·

(D. L. v, 69)

Here, the present form of διατίθημι is used, and it is followed by a conditional clause which suggests that the testament was written during the testator's last illness. There are then various dispositions of property, clauses relating to burial, further dispositions of property.

The document ends with the naming of witnesses.

In the majority of the Athenian wills whose texts are extant, there is no indication of when the document was written. This is only found in two of them, namely the will of Lyco and the letter of Epicurus.

It is only in the earlier testaments, namely those of Pasio, Plato and Aristotle, that the testator names himself at the beginning of the will; this is not done in later testaments. In addition, in those wills which have formal openings, the aorist tense of διατίθημι is found in the earlier documents, whereas in the later wills, the present tense is used. Both of these differences between the earlier and later wills seem to indicate an alteration in custom as opposed to law, since it was possible not to have an introductory sentence as is indicated by the will of Epicurus. Only in the wills of Theophrastus and Aristotle which begin with ἔστω μὲν εὖ can the opening be regarded as remotely optimistic. In the main body of the will, there seems to be no set formal pattern, sometimes executors and witnesses are named, sometimes they are not, although clauses dealing with the disposition of property often, but not always, follow the opening sentence. The diversity in the setting out of the clauses in the extant Athenian testaments indicates that there were probably no legal or formal requirements concerning this matter, but that this was left completely to the discretion of the testator.

From the extant Athenian testaments, it can be seen that only in the will of Lyco are the witnesses to the document written in it (92). In addition, Isaeus states

that if Astyphilus had wished to make his will in secret, he need not have written the names of the witnesses in it:

...εἰκὸς ἦν μηδὲ ἄλλον μηδένα ἐγγεγράφθαι ἐν τῷ γραμματείῳ μάρτυρα.

(Is. ix, 12)

This quotation suggests that the names of the witnesses were sometimes written in the will by the testator, probably in the manner in which they are written down in the will of Lyco (D.L. v, 72).

There is a problem concerning whether witnesses could write their own names in a will, Beauchet, quoting Isaeus iv, 13 which states that most witnesses are not aware of the contents of a will, suggests that this indicates that witnesses did not write their own names in a will (93). However, Isaeus is rather misleading in this passage, because witnesses often did know the function of a will (94). In addition, it could have been possible to keep the secrecy of the document by means of placing something over the writing of the bequests and so on while the witnesses signed their names. There is, however, no evidence that this was done. In view of the lack of evidence concerning this matter, I would hesitate to agree with Beauchet, but state that this is an open question.

Since there is only one extant example of a will which contains the names of witnesses written in it, it seems as if the other testaments were either not witnessed at all, or that the identity of the witnesses was recorded elsewhere. Bunsen (95) suggests that the

names of witnesses could have been written on the outside of the document as opposed to being written inside it. However, there is no precise evidence which suggests that this was done, except that the names of witnesses were not written inside the other wills, which does not indicate anything. It is also possible that the witnesses may have attached their seals to the will and indicated by this means that they had witnessed the document (96).

In order to ensure that his will was not tampered with, a man could seal the document. This could also act as a means of identification. The material which was used to make the seal is not stipulated. Bonner suggests that the material may have been some sort of adhesive clay (97), citing the following passage as his evidence:

ἢν δὲ τούτων πάντων ᾖ καθαρός, σημαίνεται βύβλῳ περὶ τὰ κέρεα εἰλίσσων καὶ ἔπειτα γῆν σημαντρίδα ἐπιπλάσας ἐπιβάλλει τὸν δακτύλιον.

(Herodotus, ii, 38)

However, since in this section of the Histories Herodotus is describing the customs of the Egyptians in their religious practices, this cannot be taken as conclusive evidence that the Greeks used clay as a sealing material in addition to wax. Bonner states that the "brittleness of the clay as compared with wax in all probability led to the use of protective caps" (98). However, since there is no evidence that clay was used as a sealing material in Greece, and bearing in mind seals could be tampered with or even forged (99), it is even more likely

that seal caps acted as a measure to protect the seals from unscrupulous persons.

There is a problem concerning the question of whether a man allowed his witnesses to seal his will in addition to sealing it himself. Since the names of witnesses sometimes were not written in the document, this would be a means of identifying these people.

Isaeus has stated that witnesses to a will could not say for certain that the document produced in court was identical with that which they had witnessed being made (100), and this has been cited by Lipsius and Beauchet as evidence that a will was rarely, if at all sealed by the witnesses (101). However, there is other evidence which these scholars have not taken into account.

The peripatetic philosopher Theophrastus also refers to the practice in his will:

αἱ διαθῆκαι κεῖνται ἀντίγραφα τῷ Θεοφράστου δακτυλίῳ σεσημασμένα, . . .
(D. L. v, 57)

Here, the fact that the testator specifically states that the document is sealed with his signet ring (δακτυλίῳ) indicates that there was only one seal affixed to the document.

On the other hand, Wyse states that "there is also no evidence that the practice of sealing by witnesses was unusual, or forbidden, or considered inexpedient" (102), and he refers to two passages in which the seals of a will are mentioned in the plural form:

... ἵν' ἐκ τῆς ἀληθείας καὶ τοῦ τὰ σημεῖ' ἰδεῖν οὐ μὲν δικασταὶ τὸ πρᾶγμ' ἔγνωσαν, . . .

([Dem.] xlv, 17)

κλάειν ἡμεῖς μακρὰ τὴν κεφαλὴν εἰπόντες τῇ διαθήκῃ καὶ τῇ κόγκῃ τῇ πάνυ σεμνῶς τοῖς σημείοισιν ἐπούσῃ, . . .

(Aristophanes, Wasps, 584-585)

These passages are an indication that a testator may have asked his witnesses to join with him in sealing his will. On the other hand, Bonner states that since these wills are both examples of documents which were presented to the court, the original seals must have been destroyed to enable the heirs to read the contents (103).

There is also another case in which seals are referred to. This is not a will but the papers left by Polyeuctus' wife which record various loans made. In this instance, the seals are referred to in the plural, τῶν σημείων (Dem. xli, 17). The papers were written in the presence of the lady's brothers who were witnesses to the act (104). This is taken by Bonner as evidence that the testament was sealed by the lady's brothers as witnesses "and possibly by herself" (105).

Lipsius disagrees with Bonner, and states that the seals on the will did not belong to the woman's brothers but to the lady herself (106). However, this does not explain why more than one seal was attached to the document. It is possible that since the document had several seals and since it was written by Polyeuctus' wife, one of the seals belonged to her, but it would not have been necessary for her to seal it more than once, so the other

seals probably belonged to her brothers who had witnessed the document. It is possible that since women were not allowed to make contracts for more than a very small amount (107), this is the reason why the document bore more than one seal. On the other hand, this example could be regarded equally as a slight proof that the witnesses to a will may have been permitted to seal it.

Although Bonner is correct in stating that the seals mentioned in the passages quoted by Wyse were not those put there at the making of the will, he does not suggest how they came to be there. A solution to this problem can be found in reference to the will of Demosthenes (I):

ἀλλ' ἐχρῆν, ἐπειδὴ τάχιστ' ἐτελεύτησεν ὁ πατήρ, εἰσκαλέσαντας μάρτυρας πολλοὺς παραγενέσθαι κελεῦσαι τὰς διαθήκας, . . .
(Dem. xxviii, 5)

Bonner states that this passage shows the " witnesses did sometimes affix their seals to documents" (108). However, the words ἐπειδὴ...πατήρ indicate that Demosthenes is referring to events which should have taken place after his father's death. Therefore, the persons whom the guardians were supposed (ἐχρῆν) to call in would not have witnessed the making of the will. Demosthenes (II) does not make it quite clear what exactly these persons would witness, but it may have been the opening and reading of the will. The word ἐχρῆν suggests that it may have been customary for persons to be summoned by the relatives of the testator in order to witness the opening and reading of the will, and that they would then be requested to seal it.

A similar situation occurs in the case of the document left by Polyeuctus' wife:

ὁμολογουμένων δὲ τῶν σημείων καὶ παρὰ τῆς τούτου γυναικὸς καὶ παρὰ τῆς ἐμῆς, ἀμφότεροι παρόντες ἀνοίξαντες ἀντίγραφά τ'ἐλαβομεν, κἀκεῖνα πάλιν κατασημηνάμενοι παρ' Ἀριστογένει κατεθέμεθα.

(Dem. xli, 21)

Here, no witnesses are called to be present at the opening of the document left by Polyeuctus' wife. However, the genuineness of the seals is agreed upon by the daughters of the lady, and this is witnessed by their husbands who then break the seals and take copies of the document. It is not stated that anyone else was present when this was done. Therefore, in this case, the original seals of the document are replaced by others, and these are the seals of the persons who opened and read the document.

Thus, it is possible that Athenian wills could either be sealed by the testator only or by the witnesses as well, although the latter was perhaps uncommon. After the testator's decease, the original seals would be broken, the document read and then re-sealed. Where there were witnesses to this, they might seal it, otherwise the persons who broke the original seals would replace them with their own. There is no evidence that it was legally obligatory for a man to seal his will, but even though this was probably only customary, it would have been most unwise for this precaution not to be taken, since sealing a will could act as a deterrent for

unscrupulous persons.

Although the testator's seal would be a means of identifying a will, a testament might also have the name of the testator written on the outside, as Pasio's did (109). This would have been a very prudent step to take if the will was to be deposited in a public place (110).

Another form of security would have been to make copies of the will and deposit them in various places so that even if one was tampered with, another could be produced. There would, however, be the problem of deciding which would be the true copy if this happened. Even though Bonner states that " testators did not as a rule leave duplicates" (111), there are various cases in which it is evident that copies were left.

The document alleged to be the will of Pasio which was produced in court was a copy of the original testament, and evidence was furnished in proof of this (112). Apollodorus, in arguing that this copy was a forgery, states that:

Ἄξιον τοίνυν, ὦ ἄνδρες δικασταί, καὶ τόδε ἐνθυμηθῆναι, ὅτι διαθήκης οὐδεὶς πώποτε ἀντίγραφα ἐποιήσατο, ἀλλὰ συγγραφῶν μέν, ἵνα εἰδῶσι καὶ μὴ παραβαίνωσι, διαθηκῶν δὲ οὔ. τούτου γὰρ ἕνεκα <κατασεσημασμένας> καταλείπουσιν οἱ διατιθέμενοι, ἵνα μηδεὶς εἰδῇ ἃ διατίθενται. πῶς οὖν ὑμεῖς ἴστε ὅτι ἀντίγραφά ἐστιν τῶν διαθηκῶν τῶν Πασίωνος τὰ ἐν τῷ γραμματείῳ γεγραμμένα;
([Dem.] xlvi, 28)

Here, the words οὐδεὶς . . . ἐποιήσατο imply that copies of testaments were never made, which suggests that the copy of the document produced in court was not genuine. However, if copies of wills were contrary to both law and custom, it would have been very unlikely that Phormio would have won his case, since in ~~in~~ Dem. xxxvi, the speech on Phormio's behalf, the will is specifically referred to as a copy of the original (113). The reason given for never making copies of testaments was that the will would no longer be secret (ἵνα . . . διατίθενται), and from this passage, Beauchet concludes that if copies were made during the testator's lifetime, the will's secrecy would in some way be compromised (114). However, Wyse rightly states that "the logic is bad, since a duplicate may be kept as secret as the original" (115). This is because it was within the testator's power to make copies of his testament and not tell anyone of their contents in the same manner in which he could keep the function of his will secret. In addition, it is incorrect to say that the contents of a will were not divulged to anybody, since there is evidence to the contrary (116). Harrison suggests that Apollodorus could either be lying or "expressing in a very misleading way the fact that no one was obliged to make a public copy of what was written in his will" (117). However, it is very probable that Apollodorus is lying, since he specifically states that no one made a copy of a will. Apollodorus' statement is also contrary to the other extant evidence.

The will of Diodotus is at first referred to as διαθήκη (Lysias, xxxii, 5). However, later it is stated that copies were left behind. Since these are not mentioned at first, it is possible that both the διαθήκη and the γράμματα were copied in the presence of Diogeiton and then sealed (118).

Diogenes Laertius states that the philosopher Arcesilaus made three wills:

τρεῖς τε διαθήκας ποιησάμενος....
(D. L. iv, 43)

These words are ambiguous, because they could be taken to mean that three separate wills were made whose provisions may have differed. What was probably the case is indicated in the testator's letter to Thaumasias. Here, Arcesilaus refers to the document he is sending to Thaumasias as διαθήκας ἐμαυτοῦ, and those in the keeping of his friends and Amphicritus as αὐτάς (119), which implies that they are copies of the testament sent to Thaumasias. Thus, it seems as if two copies of the will of Arcesilaus were made.

The philosopher Theophrastus records the copies which were made of his testament in what seems to be an addition to the original will (120). This suggests that the testator retained the original document and made three copies of it.

There is also a reference to the copying of the document left by Polyeuctus' wife. In this case, copies of the document were made by the parties concerned following the lady's death. This suggests that even if no copies of a will were made, it may have been possible

for those affected by it to make a copy of it after the testator's death.

The fact that there are only four examples of copies of wills made (this is excluding the γράμματα left by Polyeuctus' wife) indicates that it was perhaps not usual for this to be done, but also that it was not contrary to law.

Depositing

In order to attempt to keep his will safe, a testator might deposit the document in the care of someone whom he trusted. That this was sometimes done is indicated in Isaeus, vii when the speaker, in comparing the trustworthiness of an adoption "inter vivos" to testamentary adoption states that the latter was effected by means of a sealed up document which was deposited with certain persons, κατέθετο παρά τισι (Is. vii, 1). Even though the plural is used here, unless copies were made, the document would only be deposited with one person (121).

In some cases, a will would be lodged with a relative. The will of Philoctemon was allegedly deposited with his brother-in-law Chaereas (122), and the will of Astyphilus was left in the safekeeping of his maternal uncle, Hierocles (123). The will of Euctemon was deposited with a certain Pythodorus of Cephisia who is described as a relative of his, προσήκοντι αὐτῷ (Is. vi, 27). In these cases it seems as if the person who is to take charge of the will is neither a beneficiary nor, in the wills where an adoption is the function, the

father of the adopted son.

The will of Diodotus and a copy of it were left in the house:

ταῦτα δὲ πράξας καὶ οἴκοι ἀντίγραφα καταλιπὼν ᾤχετο στατευόμενος μετὰ Θρασύλλου.
(Lysias, xxxii, 7)

Wyse states that one copy of the will of Diodotus was left in the keeping of Diogeiton and the other was left in the house (124). This suggests that the copies were left in two different places. However, Lysias does not state this specifically. The word οἴκοι suggests that both copies were left in the house, and since Diogeiton was probably asked to care for the children (125), a task which most likely would entail remaining in the house, it is possible that one copy may have been left with him. It is not stated with whom the other copy was left, but is is possible that it was entrusted to the testator's wife, since Diogeiton allegedly took certain papers from her following Diodotus's death (126), which either may have been financial documents, since she seemed to have had knowledge of her husband's financial circumstances (127), or a copy of the will, or both.

In the speech concerning the estate of Dicaeogenes (II), it is not made very clear who his will was deposited with. The speaker states that the will was produced by Proxenus:

διαθήκην ἀπέφηνε Πρόξενος ὁ Δικαιογένους πατήρ...
(Is. v, 6) (128)

This suggests that the document might well have been deposited with him. Thus, it seems as if the father of the adopted son was requested to keep the will. In addition, Proxenus was a relative of Dicaeogenes (II), very probably his cousin (129).

It is not specifically stated with whom the will of Hagnias was deposited. In Isaeus xi, it is stated that if the testator's niece and testamentary adopted daughter were to die, then Glaucon was bequeathed the estate (130). However, in the Pseudo-Demosthenic speech concerning Hagnias' estate, it is alleged that both Glaucus and Glaucon produced the will:

διαθήκας δὲ ψευδεῖς ἦκον κατασκευάσαντες Γλαῦκός τε ὁ ἐξ Οἴου καὶ Γλαύκων ὁ ἀδελφὸς αὐτοῦ.

([Dem.] xliii, 4)

Here, Glaucus, the one who probably did not benefit under the terms of the will is mentioned first, and there would have been no necessity to mention him at all unless he was giving evidence in favour of his brother's claim. The fact that the word κατασκευάσαντες applies to both Glaucus and Glaucon and only the latter was a beneficiary suggests that Glaucus may have been entrusted with the safekeeping of the testament. Glaucus was Hagnias' homometric brother and the full brother of Glaucon the secondary heir.

In his speeches against Aphobus, Demosthenes (II) does not state clearly with whom his father left his will. Following a detailed account of his father's property, the orator states that he is not in possession

of the testament which contained these details:

ἔτι δ' ἀκριβέστερον ἔγνωτ' ἄν, εἰ μοι τας διαθήκας, ἃς ὁ πατὴρ κατέλιπεν, οὗτοι ἀποδοῦναι ἠθέλησαν.

(Dem. xxvii, 40).

Here, the words ἀποδοῦναι ἠθέλησαν suggests that even though the will is not produced, it still exists, and that the reason why it is not brought before the court is that the guardians do not wish to give it up. Towards the end of the speech, it is alleged that the guardians have made the document vanish:

οἳ καὶ τὴν διαθήκην ἠφανίκασιν . . .
(Dem. xxvii, 64).

This suggests that the will might not exist any more, an idea which is developed in the second speech against Aphobus:

Πάντων δ' ἀτοπώτατόν ἐστιν, λέγοντας ὡς ὁ πατὴρ οὐκ εἴα μισθοῦν τὸν οἶκον, τὴν μὲν διαθήκην μηδαμοῦ τοῦτην ἀποφαίνειν, ἐξ ἧς ἦν εἰδέναι τἀκριβές, τηλικαύτην δ' ἀνελόντας μαρτυρίαν οὕτως οἴεσθαι δεῖν εἰκῇ πιστεύεσθαι παρ' ὑμῖν.

(Dem. xxviii, 5)

Here, it is not only stated that the guardians refuse to produce the document, but that they have destroyed it, (ἀνελόντας).

Because of the lack of evidence, it is difficult to say whether the will was still in existence by the time Demosthenes (II) brought the case against Aphobus.

In the three passages quoted, the plural forms suggest that all three guardians were responsible for not producing the will, and thus imply that it was deposited with all of them. However, it seems as if they did not reside together, and because of this, it would not have been possible to deposit the will with the three of them unless three separate copies were made, and given to each of them, but there is no evidence for this. Therefore, it is likely that the plural is used here to heighten the effect of Demosthenes' plea; he is an inexperienced young man conducting a case against a fraudulent guardian who has connived with the other two in keeping his father's will from him. A greater indication of the identity of the depositary is found in speech xxix. Here, it is stated that Aphobus alone was responsible for not producing the will:

... ταύτην μὲν οὐκ ἀπέδωκεν, ...
(Dem. xxix, 42) (ταύτην refers to διαθήκην)

Here, the third person singular form of the verb ἀποδίδωμι suggests that only one person refused to give up the will, and since Aphobus is being referred to here, it suggests that only he was given the will. In view of the fact that there is no evidence concerning whether or not copies were made, this seems more plausible. Thus, it seems very probable that the will of Demosthenes (I) was deposited with his nephew Aphobus.

The will of Arcesilaus was deposited with several persons. One copy was sent to Thaumasias:

τὴν δὲ τρίτην ἀπέστελλεν εἰς οἶκον πρὸς Θαυμασίαν ἕνα τινὰ τῶν ἀναγκαίων, ἀξιώσας διατηρῆσαι

(D. L. iv, 43).

It is not stated how Thaumasias was related to the testator, he is simply referred to as one of his relatives. It is probable that the word οἶκον refers to the testator's home, Pitane in Aeolis. It seems as if Thaumasias was a beneficiary under the terms of the will (131). A copy was also deposited with a certain Amphicritus, and another with certain friends in Athens:

κεῖνται δὲ Ἀθήνῃσιν αὗται παρά τισι τῶν γνωρίμων καὶ ἐν Ἐρετρίᾳ παρ' Ἀμφικρίτῳ.

(D. L. iv, 44).

Here, in his letter to Thaumasias, the testator does not state whether Amphicritus was a friend or relative of his. In addition, he does not state who the acquaintances in Athens are. However, the fact that one copy of the document was deposited with several persons, and there is no evidence that further copies were to be made, suggests that either these persons had a common abode or that they would jointly take care of the document which would be placed somewhere where they would all have access to it. Since Arcesilaus was the head of the Middle Academy in Athens, and several persons were to have care of the will, it is possible that the document was to be kept somewhere in the school, and thus in effect be deposited with more than one person.

Therefore, in the case of the will of Arcesilaus, it was deposited not only with different people but in three different parts of Greece. One of the depositaries was a beneficiary, but there is no evidence that the others were, although it is possible that those in Athens were fellow scholars of the testator.

The peripatetic philosopher, Theophrastus also deposited copies of his will with various persons. One copy was lodged with Hegesias, the son of Hipparchus, another with Olympiodorus and a third with Adeimantus (132). None of these persons benefitted under the terms of the will, although Hegesias' father, Hipparchus was a beneficiary. It is not stated whether these persons were friends or relatives of the testator (133). The depositing of these copies was witnessed by certain persons, and this is the only extant evidence that the depositing of a will was witnessed in addition to its making.

The text of the will of Pasio which is produced in the court is not the original document, but a copy of it, so it is presented to the court together with a challenge and evidence:

λαβὲ τῆς διαθήκης τὸ ἀντίγραφον καὶ τὴν πρόκλησιν ταυτηνὶ καὶ τὰς μαρτυρίας ταυτασί [, παρ' οἷς αἱ διαθῆκαι κεῖνται]. (Dem. xxxvi, 7).

Here, the genuineness of the clause παρ'... κεῖνται has been questioned by Huettner, and it is possible that it could be an interpolation, maybe from a marginal gloss. Sandys finds the plural παρ' οἷς inaccurate, since "the

will appears to have been deposited with one person only" (134). On the other hand, the plural τὰς μαρτυρίας suggests that more than one testimony was read out, and if the clause παρ'...κεῖνται is genuine, this would suggest that the will of Pasio may have been copied out more than once and deposited with more than one person. However, there is no evidence in any of the speeches concerning the case that this was done. In addition, there is some indication concerning the nature of this evidence in a later speech, when Apollodorus refers to it:

ὁ μὲν γραμματεῖον ἔχειν ἐφ' ᾧ γεγράφθαι 'διαθήκην Πασίωνος,' ὁ δὲ πεμφθεὶς ὑπὸ τούτου παρέχειν τοῦτο, εἰ δ' ἀληθὲς ἢ ψεῦδος, οὐδὲν εἰδέναι.

([Dem.] xlv, 18)

Since this quotation appears in the first speech of Apollodorus against Stephanus, it is probable that the evidence referred to was that mentioned in Dem. xxxvi, 7. In the above passage, the first person mentioned seems to be the depositary who claimed he had (ἔχειν) the will, and the second is Amphias who produced the document before the arbitrator Teisias (135), and alleged that he was sent by the depositary (πεμφθεὶς ὑπὸ τούτου). This suggests that only one person gave evidence that the will was deposited with him, and thus is further evidence that the genuineness of the clause παρ'...κεῖνται is dubious. The testimony of the depositary Cephisophon is then quoted:

ΜΑΡΤΥΡΙΑ

Κηφισοφῶν Κεφαλίωνος Ἀφιδναῖος μαρτυρεῖ καταλεχθῆναι αὐτῷ ὑπὸ τοῦ πατρὸς γραμματεῖον, ἐφ' ᾧ ἐπιγεγράφθαι 'διαθήκη Πασίωνος'.

([Dem.] xlv, 19)

This deposition suggests that after a will was opened and read, it could be returned to the person ~~with~~ to whom it was entrusted for safekeeping. The words καταλεχθῆναι ... γραμματεῖον indicate that Cephisophon inherited the will from his father Cephalion. There is nowhere any specific indication that a man was legally obliged to take care of a document which had been deposited with his father. However, since a man inherited all the debts owed to and by his father's estate, it is very probable that he would have also inherited all the other obligations concerned with the property, and this would include the responsibility for any documents placed in his father's care. There is no indication of the connection between the depositary and the testator, but the fact that Pasio was a freedman suggests that he was probably a friend. There is no evidence to suggest that Cephalion was involved in the business of banking as is implied by Davies (136). Therefore, a copy of the will of Pasio was deposited with Cephalion and this was inherited by his son Cephisophon. There is no indication that the depositary benefitted under the terms of the document.

It is alleged by the speaker of Isaeus i that the will of Cleonymus was lodged with a magistrate or several magistrates. For the most part, when referring to the depositing of the document, the speaker refers to

magistrate in the singular (137), although he twice refers to magistrates in the plural (138). The function of this magistrate is indicated when the speaker produces witnesses concerning the alleged attempt by Cleonymus to get the document back:

Πρῶτον μὲν οὖν ὑμῖν παρέξομαι μάρτυρας . . . ὡς Ποσειδίππον ἔπεμψεν ἐπὶ τὸν ἀστυνόμον, οὗτος δ' οὐ μόνον αὐτὸς οὐκ ἐκάλεσεν, ἀλλὰ καὶ ἐλθόντα ἐπὶ τὴν θύραν Ἀρχωνίδην ἀπέπεμψεν.
(Is. i, 15).

Here, it is stated that the magistrate was an astynomos, and it is implied that his name is Archonides (139). However, there is no evidence that an astynomos had the care of private documents such as wills as part of his official duty (140). The official functions of the astynomos were mainly concerned with matters of cleanliness of the streets and the enforcing of sumptuary laws (141). Demosthenes describes the man likely to be elected as astynomos, or any other minor official, as:

Ἄνθρωπος πένης καὶ ἰδιώτης καὶ πολλῶν ἄπειρος καὶ κληρωτὴν ἀρχὴν ἄρξας, . . .

(Dem. xxiv, 112)

Even though the orator is probably indulging in a little hyperbole here in order to heighten the contrast between these minor officials and wealthy ambassadors, the impression this quotation gives is that the former had not much experience of public office and this would suggest that it might not be wise to deposit a will with such persons. Indeed, since the astynomoi were not

appointed by election but by lot, (κληρωτὴν ἀρχὴν ἄρξας), this explains why they would be inexperienced. In addition, since this method of appointment was used, it would have not been outside the realms of possibility for Deinias to be elected and thus have custody of the document, a likelihood which the testator may have had to bear in mind.

Kennedy has suggested that the astynomos was a friend of the testator who just happened to call on him (142). However, this does not explain whether or not one was permitted to deposit a will with the board of astynomoi.

The will of Cleonymus is the only example we have of a testament allegedly being lodged with an astynomos. Because of this, Wyse has suggested that it was not an ordinary will and its making "was accompanied by public formalities at which Deinias happened to be present" (143). However, Wyse nowhere states in what way the will of Cleonymus could be regarded as not ordinary. Its function, namely bequest without adoption (144), although not very common in fourth-century Athens, was not extraordinary enough to require a public meeting, and there are other examples of wills which had a similar function and there is no evidence that public formalities were called for in these cases (145). There is, however, an article in Harpocration concerning the word δόσις :

δόσις· ἰδίως λέγεται παρὰ τοῖς ῥήτορσι συμβόλαιον γραφόμενον, ὅταν τις τὰ αὑτοῦ δι δῷ τινὶ διὰ τῶν ἀρχόντων, ὡς παρὰ Δεινάρχῳ. (Harpocration, v⁰)

This passage might be interpreted as meaning that it was only with the permission of the archon that a man could give all his property to someone by bequest without adoption. However, Beauchet states that Harpocration probably made a mistake, because the Athenians did not give their magistrates the responsibility accorded to their Roman counterparts, and follows Roeder in offering the explanation that Harpocration probably only intended to say that an heir by testament was instituted by means of the adjudication of the archon or the tribunal over which the archon presided (146). I find this explanation convincing.

In view of the fact that the keeping of documents was not an official duty of the astynomos, that there is no evidence that any magistrate had documents deposited with him because his duties entailed this and that Cleonymus would necessarily know the identity of the person who would be caring for his will, it is more probable that Cleonymus deposited his will with a certain Archonides, who may have been either a relative or a friend, and who happened to be in the official position of astynomos in the year in which the testator died (147).

It is not stated with whom the will of Epicurus was deposited. However, there is a reference in the testament to a δόσις which is lodged in the Metroon:

Κατὰ τάδε δίδωμι τὰ ἐμαυτοῦ πάντα Ἀμυνομάχῳ Φιλοκράτους Βατῆθεν καὶ Τιμοκράτει Δημητρίου Ποταμίῳ κατὰ τὴν

ἐν τῷ Μητρῴῳ ἀνεγεγραμμένην ἑκατέρῳ δόσιν,...
(D.L. x, 16)

Bruns finds it strange that a document which was in effect an inventory of property (148) was not included in a will but deposited in a state archive when it was possible to deposit such a document with the archon for greater security (149). However, he cites no example of a will which was deposited with the archon (150). The Metroon, where Epicurus states his δόσις was lodged was used as a sort of public record office (151). There is evidence that charges against a person were kept there from the late fifth century (152), and that affidavits and records of decrees were also deposited there (153). The records lodged here were placed in the charge of a δημόσιος or public slave (154), who would have no personal interest in them at all, and thus be a very trustworthy guardian. The fact that there is this reference in the will of Epicurus that a δόσις could be kept in the Metroon suggests that it might well have been possible for a διαθήκη to be deposited there as well.

Therefore, it was customary for a will to be deposited for safekeeping, and this was generally done with a friend or a relative, although it may have been possible for a man to deposit his will in the Metroon. However, there is no evidence that it was a legal obligation for a man to deposit his will, so it was probably possible for him to keep it himself, although this would not be a very practical arrangement if the testator was making a will in ~~the event of him~~ case of his dying dying while on military service. The majority of the wills

from the classical period about which there is information concerning their depositing, were lodged with relatives, whereas the wills from the non-classical period seem to have been deposited with friends. This seems to indicate an alteration in custom as opposed to law.

Codicils, Alteration and Revocation

Once a man had deposited his will, he might have wished to alter his dispositions of property, or revoke the document altogether. It is therefore necessary to examine the legal formalities concerning these matters.

It is alleged by the heirs "ab intestato" of Cleonymus that a testator could alter his dispositions by means of a codicil:

ἔτι δὲ καὶ εἴ τι προσγράψαι τούτοις ἐβούλετο, διὰ τί οὐκ ἐν ἑτέρῳ γράψας αὐτὰ γραμματείῳ κατέλιπεν, ἐπειδὴ τὰ γράμματα παρὰ τῶν ἀρχόντων οὐκ ἐδυνήθη λαβεῖν; ἀνελεῖν μὲν γάρ, ὦ ἄνδρες, οὐχ οἷός τ' ἦν ἄλλο γραμματεῖον ἢ τὸ παρὰ τῇ ἀρχῇ κείμενον· γράψαι δ' ἐξῆν εἰς ἕτερον εἴ τι ἐβούλετο καὶ μηδὲ τοῦθ' ἡμῖν ἀμφισβητήσιμον ἦν.
(Is. i, 25)

At this point in the speech, the heirs "ab intestato" have been arguing that Cleonymus wished to revoke (ἀνελεῖν) his will and it was for this purpose that he sent for the magistrate, as opposed to the claim by the testamentary heirs that he wished to alter the bequest

(155).

There have been various views expressed concerning the legal significance of this passage. Beauchet, Guiraud and Lipsius are of the opinion that it indicates that the terms of a will could be altered by means of a codicil (156). Norton states that "if codicils were not permitted, such a question would have been absurd in the mouth of the most sophistical lawyer and before the most ignorant judges" (157). On the other hand, Wyse argues that the passage does not prove that codicils were known in Athenian law, and that the function of a codicil is not sufficiently explained by those who state otherwise, and asks the following questions: "If the former dispositions of a testator could be altered in a supplement, what prevented the use of a "codicil" as an instrument to revoke a prior will? And if the same solemnities were required for "codicil" and testament, how were the two distinguished?" (158) Goligher agrees with Wyse, and asserts that a codicil was more or less a new will (159). Harrison states that the meaning of Isaeus, i, 25 has been obscured by commentators, but neglects to give his own interpretation of the passage. However, since he fails to mention the possibility of a man making a codicil, it seems as if he accepts the view of Wyse (160).

In view of the different arguments concerning the passage, it is necessary to re-examine it. The crux of the argument in Isaeus, i, 25 rests on the possiblility that Cleonymus could have made certain alterations in the form of a codicil if he had been unable to obtain the

document from the depositary. If codicils (γράμματα) were not allowed, then, as Norton states, this argument would not be credible. On the other hand, the words γράψαι ... ἐβούλετο imply that the testator could have written anything he wished in such a document, since no limitation is stated. However, this could be interpreted as being tantamount to making a new testament, and it is very probable that a later will did not annul a earlier one, unless the earlier one had actually been destroyed or defaced before a second one was made. Therefore, the argument in Isaeus, i, 25 suggests that it was probably legal to make a codicil, but its implication concerning the function of such a document is misleading.

Thus it is necessary to examine the probable function of the γράμματα which the heirs "ab intestato" are referring to. The fact that the testamentary heirs allege that Cleonymus called for the astynomos in order to correct or alter the bequest in some way (161) suggests that this could not be done by means of a codicil. Indeed, a substantial alteration, such as possibly cutting Pherenicus out of the will (162) could be regarded as functioning as another will altogether, since the bequests to the other heirs might well be increased as a result. Some clue to the probable function of a 'codicil' can be found in other inheritance cases, where there is mention of certain γράμματα. The will of Diodotus was deposited along with certain γράμματα which contained information concerning investments, loans and so on (163). The wife of

Polyeuctus left behind γράμματα in which were written details concerning her husband's property (164). Furthermore, Epicurus left an inventory of property, a δόσις, which was deposited in the Metroon (165). It was also possible to leave such details concerning property in the will itself, as Demosthenes (I) and Plato did (166), but the examples of Diodotus, Polyeuctus' wife and Epicurus indicate that it was possible to write financial details in a separate document, and such a document was referred to as γράμματα or δόσις. An explanation for such a practice could be that after making his will a man may have advanced a loan or incurred a debt or thought it advisable to make an inventory of the property he possessed, but did not wish to recall the original document from the depositary. These details would therefore be written in a separate document, sealed and maybe deposited, either with the will or in a different place. Such a document would not constitute a new testament, since it would not contradict or alter the clauses and bequests in the testament, but would just add further details. It is perhaps misleading to call such additions 'codicils' since in English law this word is used to refer to a document which can either modify or revoke a will, and this sort of document was not in accordance with Athenian law, and is not the function of the γράμματα in inheritance cases about which there is information.

Therefore, it seems as if codicils as they are referred to in English law were not valid in Athenian law, but that documents which clarified matters

concerning property were legal. Thus, Cleonymus' heir "ab intestato" is being deliberately misleading when he states that one could write anything one liked in a 'codicil', since this was not so.

There is very little evidence concerning the formalities involved in making a document such as this. The speaker of Dem. xli states that the brothers of Polyeuctus' wife were present when she recorded the debts owed to and by her husband's estate (9), and these papers were then sealed (21). There is, however, no evidence that witnesses were necessary when a man made such a record. These γράμματα could either be deposited in a separate place from the will, as happened in the case of Epicurus, or, alternatively they could be deposited with the will, but not necessarily sealed with it, which seems to have been the arrangement made by Diodotus (167).

Very much connected with the making of codicils is the question whether a later will could automatically invalidate an earlier one without the latter having to be recalled.

The speaker of Isaeus, v alleges that two wills which were made by Dicaeogenes (II) were produced before the court, the first in 411 and the second in 399; the former was found invalid and the credibility of the second was brought into question by the condemnation of one of the witnesses for perjury (169). Wyse finds it unlikely that Proxenus, with whom the first document was deposited was accused of ~~perjury~~ forgery by his own son, and suggests that Dicaeogenes III "may have asserted that the will which he put forward in 399 was made after the will

confirmed by the court in 411BC, and rendered the earlier document null and void" (169). Thompson interprets the events narrated in Isaeus v as follows:

"As I reconstruct the affair, the testator originally made this will to assure that his sisters received an adequate dowry, but once they were all married he changed his will, and gave his heir the entire estate (5.7). This second will was not discovered until the first had been probated. If the man who had custody of the will was abroad for several years in the Ionian War that would explain why it took so long to come to light" (170).

Thus, Thompson's suggested function of Dicaeogenes (II)'s first will rests on the assumption that a later will automatically invalidated an earlier one. However, his argument is not quite clear, since the words "but ... estate" suggest that Dicaeogenes (II) actually recalled the will and made alterations to it, whereas in the sentence immediately following this, it seems as if Thompson is assuming that Dicaeogenes (II) made two wills. The only evidence for this is the fact that the speaker states that two διαθῆκαι were made. However, the term διαθήκη can be taken in this context as meaning a "solemn compact" or "covenant" as well as a "will" (171). There is no specific statement in this speech that a later will automatically invalidated an earlier one.

Thompson also refers to a fragment of Isaeus in support of his argument:

Μετὰ ταύτην τοίνυν τὴν ἀπόκρισιν ἑτέραν διαθήκην ἐκόμισαν, ἣν ἔφασαν Ἀρχέπολιν ἐν Λήμνῳ διαθέσθαι.

(Is. frag. 1, Thal.)

Although Thompson does not discuss this quotation, the context in which he refers to it suggests that he takes it as evidence concerning whether a later will could invalidate an earlier, since it states that the speaker's opponents alleged that Archepolis made another (ἑτέραν) will in Lemnos. Thompson takes ἑτέραν as meaning 'second' (172). However, in the second fragment, the speaker refers to four wills being forged by his opponents:

Διαθηκῶν δὲ τεττάρων ὑπ' αὐτῶν ἐσκευοποιημένων.

(Is. frag. 2, Thal.)

Therefore ἑτέραν in fragment one might not refer to the second of these wills. Neither of these two fragments, which are all that remain of the speech, can be used as evidence that a second will invalidated the first, since even if Archepolis did make another will on Lemnos, this may have happened after the first document had been destroyed. In addition in the account of the speech given by Dionysius of Halicarnassus, it is stated that the main matters disputed are whether a will was made or not, and, if the will is challenged, who should possess the property. He does not state that there is an argument put forward that a later will invalidated an earlier one (173). Therefore the evidence from this speech which Thompson refers to is inconclusive.

On the other hand, there is some evidence concerning the question whether a later will automatically invalidated an earlier one in Isaeus i:

ἀνεκεῖν μὲν γάρ, ὦ ἄνδρες, οὐχ οἷός τ' ἦν ἄλλο γραμματεῖον ἢ τὸ παρὰ τῇ ἀρχῇ κείμενον.

(Is. i, 25)

There are various views concerning the interpretation of this passage, and I shall discuss these first.

Lipsius finds the wording of this clause absurd and states that it cannot be regarded as a "mark of an advocate's chicanery", adding that if a new will could invalidate an old, this argument would be untenable, and suggests a different reading:

οὐχ οἷός τ' ἦν ἄλλῳ γραμματεῖῳ ἢ τὸ παρὰ τῇ ἀρχῇ κείμενον.

(174)

However, I would hesitate in agreeing with Lipsius' emendation of the text, since the fact that the passage is obscure as it stands to the reader is an inadequate basis for adjusting it.

Norton agrees that a later will could not invalidate an earlier, but adds that there seems to be no serious objection to a codicil whose corrections could virtually render the will null and void. He also finds the words ἀνεκεῖν . . . κείμενον "such a peculiar statement as to awaken suspicion either that the text has been corrupted in transmission or that the orator was intentionally obscure at this point (175). However, Norton's view is

not consistent, because if a man was able to make a codicil which would render his testament null and void, such a document would amount to a new will, and so suggests that a later will could invalidate an earlier one, something which Norton denies.

Goligher argues that the case of the heirs "ab intestato" rests upon the argument that Cleonymus called for the astynomos in order to revoke the will. Therefore, if he could have revoked it in any other manner, their argument would be untenable, and the validity of the document would have been questioned on the grounds that it had been made when the testator was mad or forced by someone, but they "nowhere deny that the will had really been made in a perfectly valid manner". Goligher explains the reference to the allegation that Cleonymus made the will in a fit of anger by stating that these are put forward "solely to make it probable that the plaintiff's interpretation of their uncle's action in sending for the will is the right one". He concludes that a later will did not invalidate an earlier one. (176) However, the argument that Cleonymus was angry and thus out of his mind when he made his will does not seem to rest solely on the nephews' interpretation of the testator's later action, but seems to constitute an additional argument, namely that the will was invalid because it was made under the influence of anger (177).

Harrison states that the nephews' argument in i, 25 "would be grotesque unless there had been a rule that one will could not automatically be cancelled by a later one" (178). However, he does not elaborate further on the

matter.

On the other hand, Wyse translates ἀνελεῖν as "to take back", which is a possible translation of the verb in addition "to revoke", and proposes that the sentence ἀνελεῖν... κείμενον is such an obvious statement that it can be taken as indirect evidence that the Athenians did allow a later will to invalidate an earlier one. Wyse refers to the case of the testament of Dicaeogenes II with reference to this matter (179). However, in addition to using the verb ἀνελεῖν when suggesting Cleonymus' motives in sending for the depositary, Isaeus also uses the verb λῦσαι , which in the context can only really be taken to mean "to annul" (180), therefore, even though ἀνελεῖν can mean "to take back", it seems best to translate it as "to revoke". Furthermore, Isaeus v, the speech concerning the estate of Dicaeogenes II does not proffer any conclusive evidence concerning the vitiation of an earlier will by the writing of another.

The fact that it is stated in Isaeus, i, 25 that Cleonymus was not able to annul any other will than that which was deposited with the magistrate is self-evident and cannot be taken as definite evidence that an earlier will had to be returned before a later one could be written, but only that the document lodged with the astynomos was the only will which he could revoke. However, much of the argument of the heirs "ab intestato" is based on their interpretation of the reason why Cleoymus sent for the magistrate which allegedly was to revoke (ἀνελεῖν) or annul (λῦσαι) his will:

ἔλυσε δὲ πρὸ τοῦ θανάτου, πέμψας Ποσειδίππον ἐπὶ τὴν ἀρχήν.

(Is. i, 3) (The object of ἔλυσε is διαθήκην)

ἤδη γὰρ ἀσθενῶν ταύτην τὴν νόσον ἐξ| ἧς ἐτελεύτησεν, ἐβουλήθη ταύτας τὰς διαθήκας ἀνελεῖν καὶ προσέταξε Ποσειδίππῳ τὴν ἀρχὴν εἰσαγαγεῖν.

(Is. i, 14)

In the first quotation, the aorist form ἔλυσε denotes a completed action, so it indicates that the speaker wishes to convey the impression that the will was annulled <u>because</u> Cleonymus sent for the magistrate. In the second quotation, the fact that it is stated he wished (ἐβουλήθη) to revoke the will is followed by the statement that he sent for the magistrate implies that this could only be done by sending for the depositary and thus, presumably, having it returned to him. This suggests that the annulment of a will could not be effected merely by the writing of a new one, since if this were legal, the argument of the heirs "ab intestato" concerning the sending for the magistrate would appear ridiculous. Therefore, it seems as if the only way in which Cleonymus' will could have been annulled would have been by either destroying or defacing it.

Another case which does not seem to have been discussed concerning this question is the will of Euctemon. By means of this document, Euctemon limited the inheritance rights of the eldest of his two sons by Callippe to just one farm (181). If Euctemon had been able to revoke the document merely by writing a new will

by means of which his eldest son by his second marriage received his inheritance rights, as opposed to recalling the old one and physically destroying it, there would have been no necessity to bring the depositary to court in order to revoke it.

Therefore, there is very little extant evidence concerning whether a will could be invalidated by the writing of another one. However, the evidence cited in favour of this is neither conclusive nor convincing, whereas the arguments of Cleonymus' heirs "ab intestato" concerning his motives for sending for the astynomos and Euctemon's action in bringing Pythodorus to court to revoke his will would seem pointless if there was a law that a will did not have to be destroyed before a new one was made.

There is also the question as to whether it was possible to confirm a will. When Cleonymus was on his deathbed, he requested the return of his testament. The testamentary heirs claimed that this was because Cleonymus wished to alter his will:

ἰσχυρίζονται γὰρ τοῖς διαθήκαις, λέγοντες ὡς Κλεώνυμος μετεπέμπετο τὴν ἀρχὴν οὐ λῦσαι βουλόμενος αὐτὰς ἀλλ' ἐπανορθῶσαι καὶ βεβαιῶσαι σφίσιν αὐτοῖς τὴν δωρεάν.
(Is. i, 18)

Wyse states that βεβαιῶσαι is a gloss of the orator, but suggests that the testator may have wished to change the wording in the testament, (ἐπανορθῶσαι), in order to avoid some loophole (182). However, it is later stated that this form of bequest was unassailable:

τοῖς γὰρ ἄλλοις οὗτος ὅρος ἐστίν, ὦ ἄνδρες, τῶν δωρεῶν.
(Is. i, 24)

This quotation suggests that there would have been no necessity to confirm the will or to correct an ambiguity in the wording. Isaeus does not clarify what he means by the word βεβαιῶσαι . There is no reference to the confirmation of a will in any other text, and the fact that it is stated that such a will was the ultimate form of bequest suggests that it was probably not customary for a man to confirm his will.

Since one was not legally permitted either to write a codicil in which the dispositions in a will were altered, or to revoke a will by writing another, it is necessary to discuss whether any formalities, such as witnesses, the presence of a magistrate or even the permission of the testamentary beneficiaries, ~~was~~ were necessary in order to render the action valid in law.

Norton states that it was probably necessary to have a magistrate and preferably the witnesses to the making of the will present at its revocation (183). Guiraud is of the opinion that it was desirable to have a magistrate present when a will was revoked (184), and Beauchet suggests that a man had to declare his will null and void before witnesses (185). None of these scholars state whether either of these conditions were necessary when a man wished to alter his will.

The case of Cleonymus is cited by Norton with reference to the necessity for the presence of a magistrate at the revocation of a will (186). However, if, as I have suggested, the depositary of the will of

Cleonymus just happened to be an astynomos in the year in which Cleonymus died (187), then this case cannot be taken as evidence concerning the view that it was advisable to have a magistrate present at the revocation of a will. There is no indication in Isaeus, i that persons were called to witness the revocation or alteration of the will. Even though the astynomos was asked to return the document, there is no evidence that he would have been asked to stay. It is also apparent that Poseidippus and Diocles were in Cleonymus' house at this time (188), but again it is not stated whether their presence would have been required at the alteration or revocation of a will.

The case of the will of Euctemon is a little more complicated. The testator allegedly recalled the will from the depositary, Pythodorus:

ἀκούσας δ' ὁ Εὐκτήμων εὐθὺς ἀπῄτει τὸν Πυθόδωρον τὸ γραμματεῖον, καὶ προσεκαλέσατο εἰς ἐμφανῶν κατάστασιν. καταστάντος δὲ ἐκείνου πρὸς τὸν ἄρχοντα, ἔλεγεν ὅτι βούλοιτ' ἀνελέσθαι τὴν διαθήκην.

(Is. vi, 31)

Here, the fact that an action was brought against Pythodorus for the return of the document suggests that at first he refused to give it up, which meant that a legal remedy had to be found. This passage indicates that the action εἰς ἐμφανῶν κατάστασιν could be taken against a depositary who refused to return a will (189). The words καταστάντος . . . διαθήκην indicates that

during the course of this case, Euctemon had to declare before the archon that he wished to revoke (ἀνελέσθαι) his will. However, the fact that the archon was present when this occurred, cannot be taken as evidence that a magistrate had to be present when a will was revoked, since the only reason the archon was present was because Pythodorus firstly refused to submit the will, so the testator had to bring him to court to get it back.

The revocation of Euctemon's will was also witnessed by other persons. These were Pythodorus, Phanostratus, the κύριος of Chaereas' daughter and other persons whose names are not mentioned (190). It is not made clear whether the unnamed witnesses were the persons whom Euctemon brought with him to the quayside to be present at the making of the will (191).

Even though it was probably a formal obligation to have one's will witnessed at its making (192), there is no evidence that it was legally obligatory to have witnesses present at the document's revocation. The only case which remains extant in which a will was revoked is perhaps unusual in that the depositary refused to return the will, which meant that a case had to be brought before the archon.

There is also the rather complicated question concerning whether the permission of the beneficiaries was needed when revoking a will. Beauchet states that the cases of the wills of Euctemon and Cleonymus could be taken as evidence that this was necessary, but concludes that this probably was not the case (193). Wyse and Lipsius agree with his conclusion (194).

Harrison agrees with this to a certain extent when he states that "it must have been common for beneficiaries not to know that they had been named in a will until the death of the testator" (195). However, he also asserts that "where a will gave posthumous effect to an adoption inter vivos we must suppose that it could not be revoked without the consent of the adoptee, since he by his adoption had sacrificed all rights of inheritance from his father" (196).

In the case of the will of Cleonymus, it is very probable that if the testator had wished to make alterations to his will, it might have been to disinherit Pherenicus with whom he was at emnity (197). However, there is no indication that he was present when the testator sent for the depositary, but it is stated that Poseidippus and Diocles were there (198). Even if Cleonymus wished to revoke the will altogether, the fact that Poseidippus and Diocles were asked to send for the magistrate does not indicate that the beneficiaries' permission was necessary for a will to be revoked, since Pherenicus also stood to inherit, and there is no evidence that he was present when the testator made his request.

The case of the will of Euctemon is slightly more complicated. The depositary, Pythodorus, agreed to the revocation of the document, but on the observance of a particular condition:

ἐπειδὴ δ' ὁ Πυθόδωρος ἐκείνῳ μὲν καὶ τῷ Φανοστράτῳ παρόντι ὡμολόγει ἀναιρεῖν, τοῦ δὲ Χαιρέου τοῦ

τοῦ συγκατατεθεμένου θυγάτηρ ἦν μία, ἧς ἐπειδὴ κύριος κατέστην, τότε ἤξίου ἀνελεῖν, καὶ ὁ ἄρχων οὕτως ἐγίγνωσκε, . . .

(Is. vi, 32)

This passage has been a source of perplexity for many who attempt to account for the fact that the appointment of a guardian for the daughter of Chaereas or his presence (199) was necessary before the will was revoked. Norton, Lipsius and Wyse all suggest that the document was, in a certain sense, a contract between Euctemon and his son-in-law, and as such, could not be revoked without his permission (200). On the other hand, both Beauchet and Harrison disagree with this opinion. Beauchet states that a διαθήκη cannot be regarded as a contract because the clauses which it contains, which might be adoption, cannot be put into practice immediately (201). Harrison states that in Isaeus' usage, διαθήκη normally means "will" (202). However, both of these omit to state a proof which is of fundamental importance; namely that the διαθήκη of Euctemon detailed the disposition of his property after his death, which indicates that it is a testament as opposed to a solemn compact or covenant which is to be put into effect immediately. Harrison states that the girl in question was a beneficiary under the terms of the will and that " we cannot be sure whether in this particular instance the testator had an absolute right of revocation, and the action of Pythodorus, backed as it was by the archon, suggests that it was a moot point" (203). Beauchet states that this

request by Pythodorus could be taken to indicate that the permission of the heirs nominated in a will was necessary before it could be revoked, thus suggesting that the girl stood to benefit from the will, but he later rejects this suggestion (204). Hitzig is rather more cautious and states that it is not specified whether the son-in-law is mentioned in the testament and thus must be present at its revocation (205). This suggests that all those mentioned in a will had to be present when it was revoked. However, from the case of Cleonymus, it is evident that this was not necessarily the case. Wyse states that Chaereas was a "depositor" of the document and that it was necessary for his representative to be present in court (206). He also asserts that the will was a compromise " which could not be abrogated without the consent of the three contracting parties". However, it is not stated that Phanostratus consented to the revocation, only that he was present (τῷ Φανοστράτῳ παρόντι). The word συγκαθεμένου provides an indication as to what might have been the case here. The word can either be rendered "co-depositor" or "party to the agreement". The former suggests that Chaereas also deposited a document with Pythodorus, and there is no evidence in support of this. The latter suggests that the document was a compact between Chaereas, Phanostratus and Euctemon which it probably was not. There is another interpretation, however, namely that Chaereas may have been one of the ἀναγκαῖοι who had persuaded Philoctemon to make the agreement with Euctemon (208), which explains why he is

described as συγκατατεθεμένος . He was also one of the witnesses to the actual making of the written will (209). Therefore, it is possible that Pythodorus demanded that the guardian of Chaereas' daughter be present because Chaereas had been both instrumental in the preliminary oral agreement, and had been one of the witnesses to the will. These could be the reasons why the archon supported his demand (καὶ ... ἐγίγνωσκε).

Therefore, Pythodorus' demand that a representative of Chaereas' daughter be present at the revocation of the will of Euctemon does not indicate that the permission of the beneficiaries under the will had to be obtained before the document could be vitiated. What it does show, is that the depositary did have the right not to give up the will with which he had been entrusted unless certain conditions were complied with.

Harrison cites the case of the adoption of Leocrates by Polyeuctus with reference to the question whether the permission of a testamentary beneficiary had to be obtained before a will was revoked (210). Leocrates was adopted "inter vivos" as the son of Polyeuctus and given the hand of his adoptive father's daughter. The fact that while his adoptive father was living he was designated as his heir is indicated by the description of him as κληρονόμος (Dem. xli, 5). Following a quarrel between the two men, the girl was divorced from Leocrates and married to Spudias, Leocrates brought a suit against Polyeuctus and an agreement was reached (211).

Harrison states that even though it is not specifically stated, " it is clear that there was a will which had to be revoked because it was tied up with Leocrates' position as heir and adoptive son of Polyeuctus" (212). However, this is not clear at all, and there is no indication of Polyeuctus making a will with reference to Leocrates. In addition, Harrison does not state what he means by a will giving "posthumous effect to an adoption 'inter vivos'". If a man adopted a son 'inter vivos' he was recognized as such from the time of his adoption (213), and there is no indication whatsoever that an adoption made under such circumstances could be given "posthumous effect" in a will. Therefore, I disagree with Harrison's suggestion.

On the other hand, Harrison's argument raises the question as to whether an adoptive father was legally required to ask permission from the one whom he had adopted by will or his κύριος if the person concerned was under age. There is no evidence in any extant text concerning this. However, it seems as if the adopted son would probably know of the arrangements made, as Chaerestratus, the adopted son of Philoctemon did (214), and would probably have consented, since an adopted son lost all rights of inheritance within his natural family. This suggests that it was probably a formal requirement to inform him if the will was to be revoked, but it seems unlikely that a testator was legally required to ask his permission.

Therefore, it seems as if there were few formalities necessary with regard to the alteration or revocation of

a will. It was probably not a legal requirement to have witnesses present when a testament was being altered or revoked, but it may have been customary. In addition, it probably was not necessary to ask permission of the beneficiaries before revoking a will, but it may have been customary to inform the person if he was to have been adopted by means of the document.

In conclusion, there were few legal rules concerning the making, alteration and revocation of a will. It was advisable to have witnesses present at the making of a testament, but how many people and whether they would be relatives or friends of the testator was not defined by law. There was also no rule that the contents of a will had to be kept secret. It was not illegal for a man to make an oral disposition of property. There was no fixed order in which a man had to make his dispositions, and it does not seem to have been a legal necessity for the names of witnesses to be written in the document, since it is possible that their identity may have been discovered by their seals on the outside of the testament. Even though it was not common for a man to make copies of his will, this was not against the law.

It was commonplace, but probably not a legal obligation for a man to deposit his will with a friend or relative, and it is possible that it could also be deposited in the Metroon. A codicil by means of which one altered or revoked a will was not valid in law, but one could write an additional document which contained an inventory of property or just notes of debts owed to or by the estate. It was not necessary to have witnesses present

when a will was altered or revoked, and neither was it legally obligatory to ask permission from the beneficiaries before doing either of these things.

Notes

1. See Chapter 2, Solon, p. 53.
2. See Chapter 8, Genuineness, pp. 491-492.
3. Lipsius, D.A.R. pp. 568-9.
4. Beauchet Droit 3, p. 658.
5. Norton L.H.S. p. 60.
6. Is. v, 12-13.
7. See below p. 441.
8. Lys. xiii, 41.
9. Dem. xxvii, 5-7, xxviii, 14-16.
10. Dem. xxvii, 40, see also below, pp. 413-414.
11. In Dem. xxix, 56, Demo is described as συνεπίτροπος, which he was not.
12. Wyse, Isaeus, p. 654.
13. Dem. xxix, 33-36 are examples of Demo giving evidence against Aphobus; Dem. xxix, 20,52,56 are examples of Aphobus giving evidence against Demo. Davies (A.P.F. pp. 115-116) is incorrect when he states that all the references from xxix mentioned in this note are examples of Demo giving evidence against Aphobus.
14. See above, Chapter 6, Function.
15. Is. iv, 24.
16. Wyse, Isaeus p. 394.
17. See Chapter 8, Genuineness, pp. 493-494.
18. Is. vi, 21-26.
19. Is. vi, 27.
20. See below, p. 443.
21. Dem. xli, 17.
22. Dem. xli, 16.

23. Dem.xli, 18.
24. Dem. xli, 16.
25. Menander, Dyskolos, 709.
26. Men. Dysk. 740.
27. Men. Dysk. 753.
28. Men. ibid.
29. Wyse, Isaeus, p. 635.
30. Norton, ibid.
31. D.L. v, 71.
32. D.L. v, 72.
33. D.L. v, 70.
34. See above, pp. 402-403 and n. 2.
35. Dem. xxvii, 39.
36. R.J.Bonner, Evidence in Athenian Courts, (Chicago, 1905), p. 32.
37. E.Leisi, Der Zeuge im Attischen Recht, (Frauenfeld 1908), pp. 12-13.
38. Lacey, Family, p. 174.
39. MacDowell, Law, p. 243.
40. Lysias, xxxii, 13, cf. Dem. xxix, 26.
41. Lipsius, D.A.R. p. 568 n. 79.
42. Beauchet, Droit 3, pp. 658-659.
43. Norton, L.H.S. p. 60.
44. Harrison Law 1, pp. 153-154 n. 5,
    Wyse, Isaeus, p. 654.
45. Wyse, ibid. I have not looked at the existing manuscript to verify this.
46. Beauchet, Droit 3, p. 659, p. 661.
47. Lipsius, D.A.R. pp. 568-569.
48. Norton, ibid.

49. Jones, L.L.T.G. p. 195.
50. P.Guiraud, La Propriété Foncière en Grèce Jusqu'à la Conquête Romaine, (Paris, 1893), p. 252.
51. Harrison, Law 1, p. 154.
52. Is.iv, 12, see Chapter 8, Genuineness, pp. 489-491.
53. Wyse, Isaeus, p. 386.
54. The text at this point in the speech is a little dubious. See Wyse, Isaeus,p. 339 for a full discussion. If Radermacher's suggestion that there is a lacuna in the text here is correct, his interpolation, <... τὴν γὰρ ποίησιν> , would imply that the witnesses did know the terms of Pyrrhus' will. However, it is not wise to place much emphasis on a suggested emendation, which has been adopted by no recent editor of the speeches of Isaeus (ie., Thalheim, Wyse, Roussel and Forster).
55. Is. vi, 7.
56. Wyse, Isaeus,p. 541.
57. I hold that Dicaeogenes (II) only made one will, see Chapter 6 Function, pp. 175-181.
58. Wyse, Isaeus, p. 195.
59. Wyse, Isaeus, p. 194.
60. Is. i, 11.
61. See Chapter 6, Function, pp. 226-227.
62. Wyse, ibid.
63. The passage referred to here is quoted in full on p. 415 above.
64. Wyse, Isaeus, p. 386.
65. See above, p. 404.

66. See below p. 30.

67. See Chapter 6 Function, p. 213.

68. See Chapter 6 Function, pp. 221-222.

69. See below pp. 426-429.

70. Dem. xli, 17.

71. Dem. xli, 18.

72. See notes 25-27 above for references to this.

73. See above pp. 421-423.

74. This would not have been necessary if the adoptee was not a minor and able to make decisions on his own behalf. See Is. vi, 6-7 where there is no indication that Philoctemon approached Chaerestratus before making his will.

75. See the will of Epicurus, where there is no indication that those who were asked to care for the children of Metrodorus acted as witnesses, (Diogenes Laertius, x, 19).

76. MacDowell, Law, p. 100,
Jones, L.L.T.G. p. 195.

77. Lipsius D.A.R. p. 568 and n. 78,
Harrison Law 1, p. 153 and n. 41,
Paoli Altri Studi, p. 561.

78. Paoli, ibid.

79. This is indicated in that he immediately gives up all responsibility for his daughter.

80. See below, pp. 430-433, the wills of Aristotle, Theophrastus, Strato and Lyco.

81. See below, pp. 429-431, the wills of Pasio, Plato and Epicurus.

82. Paoli, Altri Studi, pp. 560-561.

83. Dem. xxvii, 40,43,49,64, xxviii, 3,5,14

84. Lipsius, ibid.

    Beauchet, Droit 3, p. 657 and n. 6.

85. Harrison, ibid.

86. Dem. xli, 10.

87. Dem. xli, 6,10,17.

88. J.A.C. Thomas, A Textbook of Roman Law, (Amsterdam 1976), p. 490.

89. Ziebarth, Διαθήκη, Paulys Real - Encyclopädie der Classischen Altertumswissenschaft v, (Leipzig, 1905), pp. 350-351.

90. See above, Chapter 6, Function, pp. 221-228.

91. See above, Chapter 6, Function, p. 340, pp. 351-352.

92. D.L. v, 74.

93. Beauchet, Droit 3, p. 659.

94. See above, pp. 416-425.

95. Beauchet, ibid.

96. See below pp. 437-438.

97. R.J. Bonner, "The use and effect of Attic Seals" Classical Philology, 3, (1908), p. 399.

    See also Chapter 3, Drama pp. 89-91.

98. Bonner, ibid.

99. Bonner, op. cit. p. 400.

100. Is. iv, 13.

101. Lipsius D.A.R. pp. 569-570,

    Beauchet Droit 3, pp. 661-662.

102. Wyse, Isaeus, p. 387.

103. Bonner, op. cit. p. 403.

104. Dem. xli, 9.

105. Bonner, ibid.

106. Lipsius, D.A.R. pp. 569-570 and n. 82.

107. Is. x, 10.

108. Bonner, ibid.

109. [Dem.] xlv, 18.

110. See below, pp. 450-454.

111. Bonner, ibid.

112. Dem. xxxvi, 7; [Dem.] xlv, 8,10,24-25, xlvi, 2-4,5,25.

113. Dem. xxxvi, 7.

114. Beauchet, Droit. 3, p. 663.

115. Wyse, Isaeus p. 386.

116. See above, pp. 415-424.

117. Harrison, Law 1, p. 154 n. 3.

118. See above p. 404.

119. D.L. iv, 44.

120. D.L. v, 56.

121. cf. also Guiraud, Prop. Fonc. pp. 252-253 who states that a will was often deposited with certain friends.

122. Is. vi, 7.

123. Is. x, 5,6,22.

124. Wyse, ibid.

125. See Chapter 6, Function, pp. 207-208.

126. Lysias, xxxii, 7.

127. Lysias, xxxii, 13-15.

128. Also Is. v, 14.

129. I agree with Davies' arguments in A.P.F. p. 145 and pp. 476-477.

130. Is. xi, 8.

131. See above, Chapter 6, Function, pp. 357-359.

132. D.L. v, 57.

133. See above, pp. 409-411.

134. J.E.Sandys and F.A.Paley, Demosthenes, Select Private Orations Part II, (London, 1910), p. 11.

135. [Dem.] xlv, 17,10; xlvi, 5.

136. Davies, A.P.F. 292.

137. Is. i, 4,15,18,21,25.

138. Is. i, 14,22.

139. It is necessary to note that there is a problem concerning the wording of the text here, and both Wyse and Forster read [Ἀρχονίδην] as opposed to Ἀρχονίδην, which is Thalheim's reading, and would indicate the name of the astynomos.

140. Harrison, Law 1, p. 154 n. 3. Although noting this point, Harrison does not draw any conclusions from it.

141. (Aristotle), Ath. Pol. 50, ii.
See also: Rhodes, A.P. pp. 573-575,
J.E. Sandys, Aristotle's Constitution of Athens, 2nd edition, (London 1912) pp. 195-197.

142. See Chapter 5, Capacity, p. 146.

143. Wyse, Isaeus, p. 194. Norton (L.H.S. p. 61, n. 11) states that Wyse asserts that the document was connected with state affairs, but I am unable to find any statement to this effect in

Wyse Isaeus.

144. See Chapter 6, Function, pp. 272-278.

145. See Chapter 6, Function, pp. 184-187, 280-284.

146. Beauchet, Droit 3, p. 665,

cf. Bruck, Schenkung p. 131 n.2.

147. This is contrary to the general view that the will was lodged in an official place, cf: P.Roussel, Isèe, (Paris 1922) p. 18, Guiraud, Prop. Fonc. p. 253, Beauchet, Droit, 3 pp. 663-664, Bruck, Schenkung p. 128.

148. Chapter 6, Function, pp. 340-341.

149. Bruns, D.T.G.P. p. 49.

150. Bruck, (Schenkung, p. 131) refers to the fact that the δόσις of Epicurus was lodged in the Metroon and that the testament of Cleonymus was in official custody as indicating that the will of Cleonymus was not a διαθήκη but a δόσις also. However, the function of the will of Cleonymus, although it may have included an inventory, was primarily a bequest of property as opposed to an act of gift in which the recipients were not named. In addition, the will of Cleonymus is specifically referred to as a διαθήκη and the verb διατίθημι is used with reference to its making (Is. i, 3,11,15,18,20,21, 24,26,30,34,35,41,42,43,48). In addition, it was probably not placed in official care. Therefore, the depositing of the will of Epicurus has no bearing on the title given to the document written by Cleonymus.

151. It is not within the function of this thesis to discuss the uses and history of the Metroon in depth. For this matter, refer to:
P.J.Rhodes, The Athenian Boule, (Oxford 1972) pp. 30-32, 141-142 and notes H.Thompson, "Buildings on the West side of the Agora" Hesperia, 6, (1937), pp. 127-140,152-153,203-209.

152. Chamaileon of Pontos in Athenaeus, ix, 407C.

153. Dem. xix, 129, Dinarchus, i, 86.

154. Dem. ibid.

155. Is. i, 22,26.

156. Beauchet, Droit 3, p. 666,
Guiraud, Prop. Fonc. p. 253,
Lipsius, D.A.R. p. 571 and n. 85.

157. Norton, L.H.S. p. 63 n.1.

158. Wyse, Isaeus, p. 209.

159. W.Goligher, "Isaeus and Attic Law", Hermathena, 14, (1906),p. 187.

160. Harrison, Law 1, pp. 154-155 and n. 5.

161. Isaeus i, 22,26.

162. Evidence is produced to the effect that the testator and one of the testamentary beneficiaries were not on good terms with one another (Is. i, 31-32). Here Isaeus uses the device of paraleipsis to avoid mentioning the cause of the quarrel between the testator and the testamentary heirs, but the plural form (τούτους) suggests that the testator was

at enmity with his beneficiaries. However, evidence is only produced to indicate that he was not on good terms with only one of them; namely Pherenicus.

163. Lysias, xxxii, 5-7.

164. Dem. xli, 18,21-22.

165. D.L. x, 16.

166. See Chapter 6, Function, pp. 216-217, 284-291.

167. See Chapter 6, Function, p. 206.

168. Is. v, 7,15.

169. Wyse, Isaeus, p. 415.

170. W.E. Thompson, "Athenian Attitudes Towards Wills", Prudentia, 13, (1981), p. 18 n. 22.

171. See Chapter 6, Function, pp. 181, 196.

172. Thompson, ibid.

173. Dionysius of Halicarnassus, de Isaeo, 15.

174. Lipsius, D.A.R. p. 571 n. 85.

175. Norton, L.H.S. p. 65 notes 3-4.

176. Goligher, op. cit. pp. 186-187.

177. See Chapter 5, Capacity, pp. 145-149.

178. Harrison, Law 1, pp. 154-155, n. 5.

179. Wyse, Isaeus pp. 208-209.

180. Is. i,3,14,18,21,25,43.

181. See Chapter 6, Function, pp. 264-267.

182. Wyse, Isaeus, p. 201.

183. Norton, L.H.S. p. 63.

184. Guiraud, Prop. Fonc. p. 253.

185. Beauchet, Droit 3, p. 671.

186. Norton, ibid.

187. See above, p. 453.

188. Is. i, 14.

189. cf. Lipsius, D.A.R. p. 587.

190. Is. vi, 32.

191. Is. vi, 27.

192. See above, p. 414.

193. Beauchet, Droit 3, pp. 670-671.

194. Beauchet, Droit 3, p. 671,
Lipsius, D.A.R. p. 571,
Wyse Isaeus p. 518.

195. Harrison, Law 1, p. 155.

196. Harrison, ibid.

197. Is. i, 31-32.

198. Is. i, 14,16.

199. The interpretation of καταστάσῃ is open to question. Wyse (Isaeus, pp. 519-520) suggests that καταστάσῃ means that the guardian of the girl be present, and asks, if it refers to an appointment of a guardian, why the girl did not possess one already. The answer to this question is that when a man died, he might not have appointed a guardian for his legitimate offspring, and if no one claimed the position, this was the responsibility of the archon. (Harrison, Law, 1, pp. 99-104, 109-111). However, I agree with Wyse (ibid.) that the interpretation "be present" makes more sense in that it corresponds to παρόντι in vi, 32.

200. Lipsius D.A.R. pp. 571-2 n. 87.

201. Beauchet, Droit 3, p. 671.

202. Harrison, Law 1, pp. 154-5 n.5.

203. Harrison, ibid.

204. Beauchet, ibid.

205. F.Hitzig, "Zum griechisch - attischen Rechte", Zeitschrift der Savigny Stiftung Rom. Abtlg.18, (1897), pp. 169-170.

206. Wyse, ibid.

207. Wyse, Isaeus, p. 514.

208. Is. vi, 23.

209. Is. vi, 27.

210. Harrison, ibid.

211. Dem. xli, 3-5.

212. Harrison, Law 1, p. 155 n. 1.

213. Is. ii, 18, vii, 1-2.

214. Is. vi, 6-7.

Chapter 8

The Genuineness of the Athenian Will

As can be seen from the evidence in the preceding chapter, there were various means by which a man could attempt to ensure that his will be regarded as genuine. However, in spite of these, the testator's disappointed heir or heirs "ab intestato" could question the validity of the will on two main grounds, firstly that the testator did not have the capacity to make it [1] and secondly that the will was not genuine. The purpose of this chapter is to examine the latter arguments, which were mainly factual (2). I shall discuss each will which is relevant to this Chapter in the same order as I have done in Chapter 6, Function.

Wills involving adoption

Nicostratus (no. 20)

Chariades' claim by testament (3) is contested by Hagnon and Hagnotheus, who claim the estate as heirs "ab intestato". The speech which remains on their behalf is an ἐπίλογος , (4) and this would mean that the majority of evidence would have been presented in the first speech.

An indication of the sort of evidence which was put forward in the earlier speech is found when the person speaking on behalf of the claimants "ab intestato" states

that in cases of inheritance, proofs from argument are more reliable than witnesses:

ἐν μόναις δὲ ταῖς τῶν κλήρων εἰσαγωγαῖς δοκεῖ μοι προσήκειν τεκμηρίοις μᾶλλον ἢ μάρτυσιν πιστεύειν.
(Is. iv, 12)

This statement implies firstly that the case of Hagnon and Hagnotheus is supported mainly by τεκμηρίον as opposed to μαρτύρια and secondly that their opponent Chariades was able to produce concrete evidence in the form of witnesses in favour of the will (5). The speaker gives his reasons why proofs by argument should be preferred in inheritance cases:

περὶ δὲ τῶν διαθηκῶν πῶς ἄν τις γνοίη τοὺς μὴ τἀληθῆ λέγοντας, εἰ μὴ πάνυ μεγάλα τὰ διαφέροντα εἴη, αὐτοῦ μὲν καθ' οὗ μαρτυροῦσι τεθνεῶτος, τῶν δὲ συγγενῶν μηδὲν τῶν πεπραγμένων εἰδότων, τοῦ δὲ ἐλέγχου μηδαμῶς ἀκριβοῦς γιγνομένου;
(Is. iv, 12)

Whereas at first the speaker has stated that in cases of inheritance generally τεκμήριον should be preferred to μαρτύρια, here he limits this to διαθῆκαι. It is possible that this subtle change from inheritance cases generally, which could concern rival claims by heirs "ab intestato", to cases just concerning wills, might have been made because Athenian juries were suspicious of wills (6).

The words εἰ μὴ... διαφέροντα imply that the witnesses Chariades has produced to testify to the genuineness of the will concur in their evidence. It is suggested, by means of the word καθ', that these men are bearing witness against the deceased, and thus that the document allegedly written by him is not genuine. In this particular case, the fact that the testator's relatives knew nothing of the will being made (τῶν δε... εἰδότων) is irrelevant, because if Nicostratus did make a will, it may well have been drawn up while he was abroad (7), and it is unlikely that his relatives would have known of it. Furthermore, contrary to the speaker's statement that there were no certain means of proving a will false, it was possible to do this, as can be seen from other cases (8).

Part of the speaker's case rests upon the fact that witnesses have been produced to state that Chariades and Nicostratus did not know each other:

νῦν δὲ οὔτε συγγίτους οὔτε φίλους οὔτ' ἐν τάξει τῇ αὐτῇ . . . (9) τούτων δ' ὑμῖν μάρτυρας ἁπάντων παρεσχήμεθα.

(Is. iv, 18)

παρέσχοντο δ' ὑμῖν μάρτυρας . . . ὡς Χαριάδης οὑτοσὶ οὐδαμῶς οὔτ' ἐνθάδε οὔτ' ἐπὶ στρατεύματι ἐχρῆτο Νικοστράτῳ, ἔτι δὲ καὶ τὴν κοινωνίαν, ἣ μάλιθ' οὗτος ἰσχυρίζεται,

-ψευδῆ οὖσαν.

(Is. iv, 26)

If this is so, the will would rightly be declared a forgery and thus be regarded as invalid, since it would be very unlikely that a man would adopt someone whom he did not know. However, at the beginning of the speech, it is admitted that the speaker is unable to produce evidence for events which took place in a far-away land, but that his evidence is limited to what happened in Athens (10). This indicates that the witnesses produced can only attest to the fact that Chariades and Nicostratus were not friends, or in the army together or had a business association when the testator was in Athens eleven years ago (11). It is possible that the two men only became friends at a later date after Nicostratus left Athens, a possibility which the speaker is unable to disprove by his own admission. Thus this argument is not convincing (12). However, the fact that the admission of lack of evidence from abroad is placed far from the references to the witnesses who have been produced means that this weakness in the argument would only be apparent to the most alert listener.

The speaker attempts to undermine the testimony given by those who state that they witnessed the will by alleging that they were not friends of Nicostratus but friends of Chariades (12). However, there is no mention of any evidence which has been produced to prove that this was the case. Furthermore, it has not been proven that the two men did not know each other while

Nicostratus was abroad, and if they were friends, it is possible that they would have had friends in common.

Arguments are also presented on the basis of kinship. It is stated that kinsmen have a greater right to inherit than testamentary heirs because their proximity to the deceased cannot be disguised (13). Witnesses are produced to testify that Hagnon and Hagnotheus were Nicostratus' cousins, and that they were not at variance with him (14). In addition, it is argued that if Hagnon and Hagnotheus had predeceased Nicostratus, he would have inherited their property. This is only true if Nicostratus was the son of Thrasymachus, whereas Chariades alleges that Nicostratus was the son of Smicrus (15) and can support his allegation by means of witnesses who claim to be relatives of the deceased:

μὰ Δί' ἀλλ' οὐκ ἔστιν ὁ Ἅγνων οὐδ' ὁ Ἀγνόθεος τοῦ Νικοστράτου συγγενής, ὡς οἱ ἀντίδικοί φασιν, ἀλλ' ἕτεροι. ἔπειτα τῷ μὲν κατὰ τὴν δόσιν τοῦ κλήρου λαχόντι μαρτυροῦσιν, αὐτοὶ δὲ κατὰ τὸ γένος οὐκ ἀμφισβητήσουσιν; οὐ γὰρ εἰς τοῦτό γε ἀνοίας ἥκουσιν ὥστε πιστεύσαντες ταῖς διαθήκαις οὕτως ῥᾳδίως τοσούτων χρημάτων ἀφίστανται.

(Is. iv, 24)

Chariades' allegation that Nicostratus was the son of Smicrus is firstly dismissed by an indignant oath, (μὰ Δι'... ἕτεροι). The only indication here that those

giving testimony on behalf of Chariades were allegedly relatives of the deceased is the suggestion that they would be able to claim Nicostratus' estate on the grounds of their relationship to him. This implies that these witnesses might have been the testator's next-of-kin and his heirs "ab intestato". There is, however, no certain proof of this. The speaker does not seek to disprove the opposing testimony by referring to witnesses he has produced in favour of his own allegation, namely that it was Nicostratus son of Thrasymachus who died in Ake and whose property is disputed. He has only been able to prove that his clients were relatives of Nicostratus son of Thrasymachus, not that this man was the person who died in Ake. In the absence of any evidence of his own he attempts to undermine his opponent's case by the cynical suggestion that his witnesses must be mad (ἀνοίας) to miss the opportunity of obtaining so much money by giving evidence on Chariades' behalf. This suggestion does not prove anything. Forster suggests that this topic had been dealt with more thoroughly in the earlier speech (16). However, the fact that the speaker fails to mention that witnesses have been produced to say that the deceased was the son of Thrasymachus suggests that this was not dealt with adequately in the first speech.

In addition, arguments on moral grounds are used. It is alleged that Chariades neither cremated Nicostratus nor carried out his funeral (17), he states that Chariades is a criminal (18) and ends with a eulogy of Hagnon and Hagnotheus.

In this particular case, it seems as if the jury's decision would turn on two major points, namely whether Nicostratus was the son of ~~Thrasymachus~~ Smicrus and whether the will was a forgery.

It seems as if Chariades is able to prove the former by means of evidence given by relatives of the deceased, whereas Hagnon and Hagnotheus can only prove that they are cousins of Nicostratus son of Thrasymachus, not that he was identical with the man whose property they are claiming. This lack of evidence means that their claim on the grounds of kinship is not convincing. As far as the latter point is concerned, if no evidence nearer than eleven years previously can be produced, Hagnon and Hagnotheus are not able to argue against its validity by means of witnesses. In view of the inadequate evidence presented in opposition to the will and with reference to the identity of the testator, it seems as if Chariades had a reasonable chance of winning his case.

Astyphilus (no. ~~21~~ 2)

The will of Astyphilus was allegedly made before he left for Mytilene on military service. The testamentary claimant is the son of the testator's paternal cousin, Cleon (19). However, the will's validity is questioned by the testator's homometric brother.

Towards the beginning of the speech the speaker states that his aims are to prove that Astyphilus did not make a will and that he is the only person entitled to inherit Astyphilus' property (20).

The first argument which is made against the will on legal grounds is that it was not witnessed by the proper people (21). The speaker states that, in order to ensure that a will would be upheld by a court of law, Astyphilus would have been sure (εἰκὸς) to have had it witnessed by relatives, demesmen, fellow ward members and as many others as possible (22). However, a rather damaging admission is made in a parenthetical clause that any witnesses who testify in favour of the document have been "persuaded" by his opponent:

εἰ μή τις ἄρα ὑπὸ τούτων πέπεισται ὁμολογεῖν παρεῖναι.
(Is. ix, 9)

Here, the word πέπεισται is deceptively vague, since it carries implications of bribery, but does not commit the speaker to a definite charge (23). By means of this statement the speaker seeks to damage his opponent's credibility. However, as Wyse rightly states, this suggestion also implies that there are witnesses to the will who fall into one of the categories which the speaker has mentioned earlier (24). Following this, witnesses who are demesmen, relatives and ward members give testimony that they were not asked to be present at the will making; it is alleged that evidence from such persons that they were not present is more convincing than contrary evidence from others who are not relatives of the deceased (οὐ μηδὲν προσήκοντες) and just chance comers (οὐ ἐντυχόντες) (25). However, in view of the suggestion that certain men acquainted with the testator were "persuaded" to testify that they were present at the will making, this argument is not plausible.

It is also stated that Cleon himself should have summoned persons to witness the will. Wyse correctly responds to this suggestion with the indignant question:
"What right had Cleon to invite anyone to witness another man's will?" (26).
It is very unlikely that a court of law would have accepted evidence in favour of a will given by men who were not friends of the testator but were only acquainted with either the beneficiary or, in this case, the beneficiary's father (27).

The will was allegedly deposited with Hierocles, the maternal uncle of the testator. Attempts are made to destroy his credibility by means of character assassination. Therefore, when the account of the alleged fraud is given, it is that much more plausible (28):

καὶ πρὶν μὲν ληχθῆναι τοῦ κλήρου, ὦ ἄνδρες, εὖ εἰδὼς ὁ Ἱεροκλῆς ὅτι οὐδενὶ ἄλλῳ γίγνοιτο τὰ Ἀστυφίλου ἢ ἐμοί, ἐν μέρει ἑκάστῳ τῶν ἐκείνου ἐπιτηδείων προσῄει πωλῶν τὸ πρᾶγμα καὶ τοὺς οὐδὲν προσήκοντας πείθων ἀμφισβητεῖν, λέγων ὅτι θεῖος εἴη Ἀστυφίλῳ καὶ ἀποφαίνοι διαθήκας ἐκεῖνον καταλελοιπότα, εἴ τις αὐτῷ κοινώσαιτο.

(Is. ix, 24)

Here, the picture drawn is of someone going from person to person regardless of whether they were related to the deceased, in the attempt to find someone who would claim

the estate and share the proceeds with him; his role would be to fabricate the will. Wyse rightly finds the passive λαχθῆναι misleading (29), because it does not indicate clearly whose application to the archon is being referred to, whether Cleon's or the speaker's, since it is suggested earlier in the speech that Cleon entered upon Astyphilus' estate as soon as his death was announced:

καὶ οὕτω σφόδρα Κλέων οὗτοσὶ καὶ πρότερον καὶ νῦν οὐδένα ἄλλον τὸν κλῆρον ἡγεῖται ἔχειν ἢ αὑτόν, ὥστ' ἐπειδὴ τάχιστα ἠγγέλθη Ἀστύφιλος τετελευτηκώς, ... εἰς τὸ χωρίον ἐνεβάτευσε, καὶ εἴ τι ἄλλο ἐκεῖνος κατέλιπεν, ἅπαντα ἔφη τοῦ υἱοῦ τοῦ ἑαυτοῦ εἶναι, πρίν τι ὑμᾶς ψηφίσασθαι.

(Is. ix, 3)

Wyse is of the opinion that the sections quoted here (ix, 24,3) are not compatible. He therefore suggests the following solution:

"If we believed in the honesty of Isaeus' narrative, we should be driven to suppose that no sooner did Cleon hear of his cousin's death than he laid hands on his property out of sheer rapacity and lawlessness, without troubling to make any declaration of his son's title, and that, some time afterwards, hearing of Hierocles' eagerness to participate in the fruits of forgery, or being visited by him in the course of his rounds, he perceived the utility of supporting his son's pretensions by will" (30).

However, the word κολωνώσαιτο suggests that Hierocles in looking for someone to aid him in his scheme, had his eye on a property which was not already occupied. In addition, it seems unlikely that after occupying the whole property, Cleon would be prepared to give part of it to someone else. No witnesses are produced to testify to the fact that Cleon occupied Astyphilus' estate as soon as his death was announced. Therefore, it is possible that the words ὥστ' ἐπειδὴ τάχιστα are an example of hyperbole, their purpose being to exaggerate Cleon's rascality. Therefore, it is more probable that after Astyphilus' death was announced, Hierocles thought of the idea of fabricating a will, and Cleon decided to aid him in this. The fact that the speaker does not make it clear whose application Cleon did not wait for (καὶ πρίν... κλήρου) suggests that after concocting the will together with Hierocles, Cleon applied to the archon, and moved onto the property before Astyphilus' half brother applied for the estate as next-of-kin and before the case was brought to court (πρὶν τι ὑμᾶς ψηφίσασθαι).

Wyse is also puzzled as to who was responsible for forging the will:

"The role assigned to Hierocles is simple, to depose falsely that a certain document was left in his keeping by Astyphilus. But who undertook the more difficult and dangerous part of the business? Who wrote the document and counterfeited the seal or seals?" (31).

However, the narrative in chapter 24 of the speech (32) assigns Hierocles a more central role than Wyse does, for

it is stated that he actually asked people to aid him in his scheme, stating that he intended to forge a will (ἐν μέρει ... κοινώσαιτο), it is very unlikely that he would have committed himself to asking persons to join with him in his scheme unless he also intended to procure witnesses and so on. The word πωλῶν which is used to describe Hierocles' activities has undertones of bribery, since this word was normally used in reference to people accepting bribes (33) and would thus refer to the alleged arrangement by which Hierocles would forge a will and receive payment for so doing.

Forster states that "no convincing proof is adduced for setting aside the will and no objection is raised to any of the circumstances connected with it" (34). However, some of those whom Hierocles approached are produced to testify that he went around "selling" his scheme, a problem which Wyse fails to tackle when discussing Isaeus' narrative (35). The fact that Hierocles' rascality is proven by testimony weighs very much in favour of the testament not being genuine.

The speaker uses a further argument against the probability of the will being genuine when he states that it was too great a coincidence to be credible that Astyphilus made his will just before the expedition on which he died (36). However, the will of Hagnias was made in similar circumstances, and it was found to be valid at first (37).

It is also stated that the fact that the members of Astyphilus' phratry did not accept Cleon's son as the adopted son of the deceased indicates that they knew that

the boy had not been adopted by him (38). If this scheme had been successful, this would have been beneficial to Cleon's case, since the acceptance of the boy would have implied that they believed the will to be genuine. However, the fact that the phratry refused to accept Cleon's son as the adopted son of Astyphilus proves nothing (39) except that as law-abiding citizens they would not take any steps until the verdict had been reached in a court of law.

The speaker seeks to support his case against the claim of Cleon's son by alleging that he is Astyphilus' next of kin, and thus more eligible to inherit his property. He is Astyphilus' uterine half-brother. However, the speaker mentions that Astyphilus had a sister. If she was still alive at the time of her brother's death, she would have been heiress (ἐπίκληρος) to her brother's property and the speaker would not be the heir "ab intestato" as he pretends. Wyse suggests that she may have died without issue or that she may have believed that the will was genuine and not come forward to claim the estate (40). In the stemma I have included Astyphilus' aunt, whose husband gives evidence in the speaker's favour that Euthycrates was at emnity with Thudippus (41). He is described as being one of Euthycrates' ἀγχιστοι, and this indicates that the aunt would have been Astyphilus' paternal aunt. If Astyphilus' sister had died without offspring, this paternal aunt would be next in line to inherit the deceased's property, since Thudippus had been adopted into another family, and collateral relatives through the

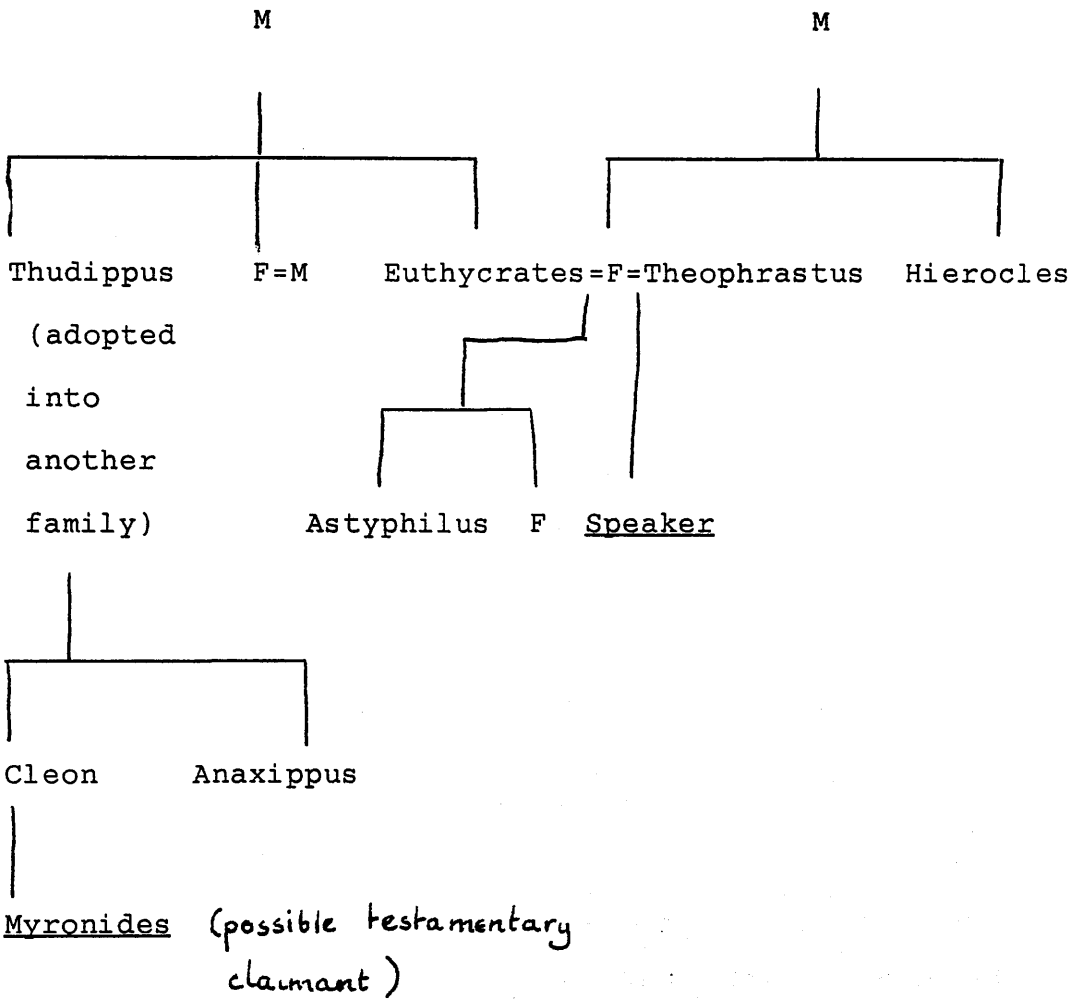
male line took precedence over relatives through females in the laws of intestate succession (42). Therefore, the speaker was not eligible to inherit his half brother's estate on the grounds of kinship. It is possible that he realized this, which would explain why he states that even if he was not Astyphilus' next-of-kin, he would be more eligible to inherit his estate than anyone else because the two were very close to each other (43). However, this does not prove anything of legal importance.

Other non-legal arguments are also brought forward in support of the speaker's claim. He states that his opponent did not carry out the deceased's funeral (44). In an attempt to prove that Astyphilus was at enmity with Cleon, the speaker alleges that Astyphilus' father was murdered by Cleon's father Thudippus (45).

In this particular case, the jury would have had two factors to consider when deciding on the verdict, whether the account of the alleged fraud was convincing and whether the speaker was indeed "heir ab intestato". The account of the alleged forgery of the will is convincing because witnesses are produced in favour of it (46). However, the speaker is not heir "ab intestato", since there are female relatives who are closer in their relationship to the deceased than he is. This fact is very skilfully concealed by the speaker who only mentions each of them once in passing (47). If Cleon alleged that his son Myronides had been adopted by Astyphilus, an inscription which dates from the middle of the fourth century describing Myronides of the deme Araphen as the

Isaeus ix

Stemma



son of Cleon suggests that Cleon might have lost his case (48). However, Cleon might have had more than one son. Evenso, because of the fact that the will is proved to be a forgery by means of witnesses and those who are more closely related to Astyphilus are only mentioned in passing, it is possible that the speaker won his case.

Philoctemon (no. 25)

Davies states that the allegation that Philoctemon adopted his nephew by will (49) "must be treated with great suspicion" (50). No reason is given for this statement, but it may have been made because there is no evidence that Chaerestratus claimed Philoctemon's estate as soon as he heard of his death, but waited until the death of the testator's father Euctemon, when he claimed both estates. In this speech he treats the two properties as identical (51). Chaerestratus is opposed by Androcles who alleges that Euctemon left two legitimate sons by a second marriage. The speaker devotes the majority of his speech to attacking the boy's legitimacy rather than supporting his claim by testament.

Chaerestratus has the will read out before the court, and produces as witnesses those who were present when it was made (52). It seems as if Androcles protested that Philoctemon made no will and died childless:

γέγραπται ὡς οὐκ ἔδωκεν οὐδὲ διέθετο Φιλοκτήμων· τοῦτο ἐπιδέδεικται ψεῦδος ὄν· καὶ γὰρ ὁ δοὺς

καὶ ὁ διαθέμενος ⟨ἐκεῖνος⟩, καὶ μαρτυροῦσιν οἱ παραγενόμενοι. τί ἔτι; τετελευτῆκαι ἄπαιδα Φιλοκτήμονα. πῶς οὖν ἄπαις ἦν ὅστις τὸν ἑαυτοῦ ἀδελφιδοῦν υἱὸν ποιησάμενος κατέλιπεν, ᾧ δικαίως ὁ νόμος τὴν κληρονομίαν ἀποδίδωσι καὶ τοῖς ἐξ αὐτοῦ γενομένοις;

(Is. vi, 62-63)

In this quotation, the words γέγραπται . . . Φιλοκτήμων indicate that part of Androcles' argument consisted of allegations that the will was a forgery. This is successfully refuted by the reference to the fact that the witnesses to the will have given testimony in favour of it. Androcles' other allegation, namely that Philoctemon died childless, is answered by means of a rhetorical question. This answer is misleading, since the words υἱὸν ποιησάμενος κατέλιπεν state that Philoctemon left an adopted son, thus suggesting that an adoption "inter vivos" had taken place, whereas he left a testament in which Chaerestratus was named as his adopted son. However, Philoctemon died in 367, and this speech was made fifty two years after the Sicilian expedition (53), which would date it at 364. No explanation is given as to why Philoctemon's estate was not claimed by Chaerestratus as soon as his death was announced. Indeed, Androcles and Antidorus attempted to inscribe the two boys as the adopted sons of Ergamenes and Philoctemon, and even though this attempt failed, there is no indication that it was countered by a protestation

that Philoctemon already had an adopted son, but that certain relatives clarified the situation (54). If Chaerestratus had already claimed the estate of Philoctemon as his adopted son, it is very improbable that Androcles and Antidorus would have taken such steps.

In this particular case, it seems as if the jury's decision as to whether or not the will was genuine would rest on whether Philoctemon made a will at all, and if so, why Chaerestratus waited so long to claim the estate. Although the testamentary claimant provides witnesses who allege that they were present when the will was made, he offers no explanation why he did not act on the will earlier, and why he left Philoctemon's house ἔρημος for about three years, an indication of a lack of respect for his adoptive father. This omission might well have led the jury to believe that the document was forged. In addition, in order to be awarded Euctemon's estate, it was necessary for Chaerestratus to prove that the two boys were not Euctemon's legitimate sons (55). There is an inscription dating from the mid-fourth century or later which mentions Chaerestratus son of Phanostratus of Cephisia (56), and if this dates from after the case, then Chaerestratus lost his claim.

Dicaeogenes (II) (no. 10)

The speech Isaeus, v was made by the representative of the heirs "ab intestato" to the estate of Dicaeogenes (II), and is an attempt to sue Leochares for surety. In an earlier chapter, I have suggested that only one will was made by Dicaeogenes (II) (57) but here I shall be

paying attention to the speaker's argument that two separate wills were presented to the court.

When referring to the fact that the first will had been found not genuine, the speaker states:

τούτων δὲ τῶν διαθηκῶν ἣν μὲν πρόξενος ἀπέφηνε, Δικαιογένης ἔπεισε τοὺς δικαστὰς ὡς οὐκ ἀληθὴς εἴη.

(Is. v, 15)

Here, no specific explanation is given for the reason why the courts decided that the earlier will was not genuine. Wyse states that it is unlikely that Proxenus was accused of forgery by his own son (58). Such an accusation does not seem probable, since it would be an example of filial disloyalty which the speaker would be expected to make much of. Wyse suggests that:

"Dicaeogenes may have asserted that the will put forward in 399BC was made after the will confirmed by the court in 411BC and rendered the earlier document null and void" (59).

There is, however, no evidence for such an interpretation of the events mentioned in this speech which points to such a possibility even though it has been argued that the events narrated in the speech suggest that this was the case (60). It might be that Dicaeogenes argued that the out of court agreement which was probably made between his father and his aunts was not in accordance with the wishes of the testator as expressed in his will (61). This agreement could be referred to as a διαθήκη because it was a solemn compact and those partaking

allegedly took oaths not to transgress its terms (62). This explanation seems more probable than that put forward by Wyse, because no specific reason is given for the earlier will being found invalid, and it would be in the speaker's interest to conceal such an agreement.

The second will was attacked by the heirs "ab intestato" by the means of prosecuting those who alleged that they had witnessed the document. This prosecution was carried out by one of them, Menexenus (III), and the conviction of one of the witnesses, Lyco, was obtained (63). However, Dicaeogenes (III) offered Menexenus (III) a share of the property, so the prosecution of the witnesses stopped:

τί ποιῆσαι; κομισάμενον αὐτὸν μέρος ἐκ τοῦ κλήρου ὅ τι ἐγίγνετο, ἡμᾶς μὲν ὑπὲρ ὧν ἔπραττε προδοῦναι, τοὺς δὲ μήπω ἐλαυνομένους τῶν μαρτύρων ἀφεῖναι.
(Is. v, 13)

Here, the language used is annoyingly vague. As Wyse rightly states, it is difficult to believe that people convicted of false witness could be released by the prosecutor; his suggestion that Menexenus (III) just promised to take no further steps if he recovered the share of the estate which was due to him (64) is a lot more probable. Wyse wonders why Menexenus (III) and Cephisodotus did not continue the prosecution themselves (65), but it is possible that the heirs "ab intestato" wished to present a united front. Witnesses are produced to testify to the treachery of Menexenus (~~III~~ IV), so this part of the narrative is probably truthful. Later in the

speech, the speaker states that the second will allegedly made by Dicaeogenes (II) is invalid because

οἱ μαρτυρήσαντες αὐτὴν τὸν θεῖον τὸν ἡμέτερον διαθέσθαι ἐάλωσαν ψευδομαρτυρίων.

(Is. vi, 15)

Here, the plural οἱ μαρτυρήσαντες suggests that some, if not all of the witnesses of the will were found guilty of perjury. However, there is only evidence that one of the witnesses to the will, a man named Lyco, was so convicted. It therefore seems as if the speaker is not telling the truth here and is disguising the facts so that he can put his case in a better light, since the conviction of one of the witnesses would only discredit the will, whereas the conviction of all of them would lead to the document being regarded as a forgery.

On the grounds that this second will had been found invalid, the heirs "ab intestato" put in a claim for the estate of Dicaeogenes (II). This was met by a protestation by Leochares who argued that the estate was not adjudicable. The reason behind this protestation is not given, but it is possible that Leochares argued that the will had not been found invalid. Leochares was prosecuted by the heirs "ab intestato" for perjury and was found guilty (66). If Leochares had stated that the will was genuine, then his conviction would indicate that the jury regarded the will as a forgery.

Therefore, as far as the wills allegedly made by Dicaeogenes (II) are concerned, the case made against the validity of the first will is not clarified, and the genuineness of the second document was undermined by the genuineness of the second document was undermined by the successful prosecution of one of the witnesses for forgery. Conviction of Leochares for false witness is probably an indication that this second will was later regarded as not genuine.

Hagnias (no. 15)

After the death of the girl adopted by means of Hagnias' will, the claim of the contingent heir, Glaucon, was contested by Phylomache, the testator's second cousin, and she was awarded the estate (67). Isaeus gives no reason as to why the will was declared invalid. On the other hand, Pseudo-Demosthenes puts forward the following allegation:

διαθήκας δὲ ψευδεῖς ἦκον κατασκευάσαντες Γλαύκός τε ὁ ἐξ Οἴου καὶ Γλαύκων ὁ ἀδελφὸς αὐτοῦ... αἱ δὲ διαθῆκαι, ἃς τότε παρέσχοντο, ἐξηλέγχθησαν ψευδεῖς οὖσαι.
([Dem.] xliii, 4)

Here, the word κατασκευάσαντες implies that Glaucus and Glaucon forged the document. However, no evidence is produced to prove this specifically, and the fact that no one questioned the will immediately after Hagnias' death suggests that it was firstly thought to be genuine. There is, however, another explanation as to why Glaucon lost his claim; since he had been named in the will as contingent heir on the death of the daughter adopted in the document and the will had been declared legal after

Hagnias died, Glaucon simply took possession of the property without putting in a claim for it. However, the fact that Phylomache was awarded the property indicates that a later jury found the document invalid. I have suggested in Chapter 6 that the reason for this might have been that the contingent bequest was only to come into effect if the girl were to die before coming of age or within two years afterwards (68). Glaucon claimed the estate about thirty years after Hagnias' death, and if the terms of the will were as I have suggested, it is likely that Glaucon lost his claim not because the will was found to be a forgery but because its terms rendered it invalid after a certain period of time.

Pyrrhus (no. 13)

By means of his will, Pyrrhus adopted Endius and probably stated that he was to be married to his daughter Phile (69).

The validity of this will was unquestioned for twenty years while Endius held the estate. However, Endius did not marry Phile, but she was married to a certain Xenocles. Following Endius' death, the sister of Pyrrhus claimed the property and was opposed by Xenocles who claimed the estate on behalf of his wife. It seems as if he is also questioning the genuineness of the will:

ὡς γὰρ οὐχ ὁμολογῶν [πῶς] ἐπεσκήπτετο τοῖς μεμαρτυρηκόσιν ἐπὶ τῇ διαθήκῃ τοῦ Πύρρου παραγενέσθαι.
(Is. iii, 56)

Here, the method to be used is that of prosecuting the witnesses who alleged that they were present when Pyrrhus made it. If successful, this would indicate that the document was a forgery. Since it seems as if this case is still pending there is no way of knowing whether the will was eventually proved invalid or not.

Wills made by men with legitimate children.

The will in Hyperides ii (no. 30)

In this particular case, the testator died leaving a pregnant wife and the legitimacy of the child is being questioned by certain relatives who are accusing Lycophron of adultery. Curtis states that the ultimate purpose of these relatives was to prove the will invalid (70). However, the prosecutors here are those who opposed the closest relatives when they tried to eject Euphemus (71). Therefore, they are not the heirs "ab intestato" but those who were bequeathed the testator's property in the event of his unborn child dying within two years of coming of age. This indicates that the speech against Lycophron is not an attempt to invalidate the will but to bring into effect the secondary bequest.

There is evidence in the speech that other relatives had attempted to remove Euphemus, who was probably nominated as guardian of the testator's wife and unborn child, from the testator's estate (72).

It is not stated what form this attempted ejection took, but since it was made by the heirs "ab intestato" ([τοὺς ἐγγυ]τάτω γένους), it probably took the form of an attack on the validity of the will, since this would be of greatest benefit to them, as they would then stand to inherit in event of the child's death. There is no evidence in the speech which indicates how the heirs "ab intestato" sought to find the document invalid, whether they prosecuted the witnesses for perjury in order to have the will declared a forgery, or whether they questioned the testator's sanity. The fact that a case was later brought against Lycophron by those who were nominated as contingent heirs indicates that the heirs "ab intestato" lost their case.

Therefore, since the attempt at invalidating the will failed, it can be assumed that there was sufficient evidence in favour of the document for it to be upheld by a court of law.

Pasio (no. 21)

Apollodorus, Pasio's eldest son, brought a case against Phormio for twenty talents which he alleged Phormio had taken from his father's estate, about twenty years after his father's death (73). Demosthenes, xxxvi is Phormio's response to this claim.

Part of Apollodorus' argument seems to have been expected to be directed against the will of Pasio, since the speaker states that Apollodorus told the arbitrator that a will was not made (μὴ γενέσθαι διαθήκην) and that the whole affair was a piece of forgery and trickery

(ἀλλ' εἶναι τοῦτο πλάσμα καὶ σκευώρημ' ὅλον) (74). Nothing more is mentioned about the arguments which Apollodorus used against the will. His allegations are refuted by the speaker:

ὅταν μὲν τοίνυν τὴν διαθήκην ἀρνῆται, ἐκ τίνος τρόπου πρεσβεία παρὼν τὴν συνοικίαν κατὰ τὴν διαθήκην ἔχει, τοῦτ' ἐρωτᾶτ' αὐτόν· οὐ γὰρ ἐκεῖνό γ' ἐρεῖ, ὡς ἃ μὲν πλεονεκτεῖν τόνδ' ἔγραψεν ὁ πατήρ, κύρι' ἐστὶν τῆς διαθήκης, τὰ δ' ἄλλ' ἄκυρα.

(Dem. xxxvi, 34)

The argument that Apollodorus accepted one clause of the will which was in his favour is convincing because it suggests that he regarded the will as genuine. The speaker emphasises the weakness in Apollodorus' case by the use of irony (οὐ γὰρ... ἄκυρα), he was prepared to believe those clauses of the will which were beneficial to himself, but not others.

From the Pseudo-Demosthenic speech xlv it is apparent that Phormio's plea was so effective that Apollodorus was not even permitted to speak (75). This would indicate that, amongst other points which had been made, the jury believed the will to be genuine.

Apollodorus later brought an action against Stephanus who had given testimony (76) that Apollodorus had refused Phormio's challenge to open a document which was allegedly a copy of the will of Pasio.

During the course of his two speeches against Stephanus, Apollodorus makes various attacks on the genuineness of his father's will.

It is suggested that the testament was not presented to the court in the proper manner:

οὐκοῦν εἴπερ ἀληθὲς ἦν, ἐχρῆν αὐτὸ τὸ γραμματεῖον εἰς τὸν ἐκεῖνον ἐμβαλεῖν καὶ τὸν παρέχοντα μαρτυρεῖν, ...
([Dem.] xlv, 17)

Here, the words εἴπερ ἀληθὲς ἦν suggest that the reason why the will was not placed into the evidence box was because it was not genuine, since ἀληθὲς can have this meaning. Although Apollodorus does not specifically state that the will was not put into the box into which all evidence presented at a public arbitration had to be placed (77) if the case was to be taken to court, the word ἐχρῆν implies that this was not done. However, the opposing party has deposed that the document was presented before the arbitrator, which would suggest that afterwards it had been sealed in the box with all the other written evidence. In addition, no evidence which had not been placed in this box was admissable before the court (78), and the fact that the document was read to the court (79)and accepted as genuine by the members of the jury (80) indicates that it had been put into the box as required. Therefore, this argument is not convincing.

Apollodorus also states that the will was a forgery because he did not possess the document himself whereas he should have inherited it together with his father's estate (81). However, it was not generally customary to

deposit a will with the heir to the property or with one who would benefit under its terms although this was done in some cases (82), and Apollodorus was both his father's heir and benefitted under the terms of the will in that he received an additional bequest besides his share in the property (83). Thus, this argument is not plausible.

An attempt is also made to find the will spurious by referring to the lease of Pasio's bank (84):

ἔστιν οὖν ὅστις ἂν τοῦ ξύλου καὶ τοῦ χωρίου καὶ τῶν γραμματείων τοσαύτην ὑπέμεινε φέρειν μίσθωσιν; ἔστι δ' ὅστις ἄν, δι' ὃν ὠφείληκεν τοσαῦτα χρήματ' ἡ τράπεζα, τούτῳ τὰ λοίπ' ἐπέτρεψεν;

([Dem.] xlv, 33)

Here, the speaker combines rhetorical question with εἰκός argument to attempt to prove the lease a forgery. The first question ἔστιν... μίσθωσιν; suggests that nobody would be prepared to pay the rent for the bank; however, the fact that there is no evidence to state that Phormio did not pay the rent, implies that there was someone who was prepared to do this. The second question ἔστι... ἐπέτρεψεν; suggests that Phormio was not a trustworthy person to be placed in charge of the bank because he led it into debt. However, the debt which Pasio is represented as owing the bank is probably a reference to loans made on the security of land (85), whereas Apollodorus implies here that this money was a deficit. Furthermore, the fact that Phormio was the bank's manager while Pasio was still alive (86) indicates that he was the most obvious choice for the position

which Pasio gave him.

Towards the end of the speech, Apollodorus suggests that Phormio wrote those parts of the will concerning Archippe's dowry and the bequest to her (87). However, this allegation is not supported by any proof.

On the other hand, in the second speech against Stephanus, Apollodorus argues that Pasio did not have the capacity to make a will (88). The fact that these arguments are used suggests that Pasio did make a will, and that it was genuine. Therefore, the arguments that the will was a forgery are rendered ineffective by those put forward on grounds of capacity.

Wills made by men without legitimate children and not involving adoption.

Cleonymus (no. 24)

In the case concerning the will of Cleonymus, it is suggested that the will is a forgery. The speaker argues that heirs by kinship have a greater right to inherit because their relationship cannot be disguised, whereas wills can be forged:

τὴν μὲν γὰρ τοῦ γένους οἰκειότητα πάντες ἐπιστάμενοι τυγχάνετε, καὶ οὐχ οἷόν τε τοῦτ' ἔστι πρὸς ὑμᾶς ψεύσασθαι· διαθήκας δ' ἤδη πολλοὶ ψευδεῖς ἀπέφηναν, καὶ οἱ μὲν τὸ παράπαν οὐ γενομένας, ἐνίων δ' οὐκ ὀρθῶς βεβουλευμένων.

(Is. i, 41)

Here, the device of antithesis is used to compare the trustworthiness of relationship with the unreliability of a testament. Even though it is mentioned that forged wills have been presented to the courts, there is no argument or evidence that this particular will is forged. It is probable that the speaker merely wished to suggest that the will was not genuine in order to leave a doubt in the minds of the jury. The words οὐκ ὀρθῶς βεβουλευμένων echo οὐκ ὀρθῶς βουλευόμενος from chapter 11 where they seem to be synonymous with εὐφρονῶν and the context implies that a will made by someone who was ill-advised was on the same footing legally with a forged document. The speaker also emphasises the duty which the claimants would have had towards Cleonymus' relatives:

Καὶ εἰ μὲν Πολύαρχος ὁ πατὴρ ὁ Κλεωνύμου, πάππος δ' ἡμέτερος, ζῶν ἐτύγχανε καὶ τῶν ἐπιτηδείων ἐνδεὴς ὢν ἢ Κλεώνυμος ἐτελεύτησε θυγατέρας ἀπορουμένας καταλιπών, ἡμεῖς ἂν διὰ τὴν ἀγχιστείαν καὶ τὸν πάππον γηροτροφεῖν ἠναγκαζόμεθα καὶ τὰς Κλεωνύμου θυγατέρας ἢ λαβεῖν αὐτοὶ γυναῖκας ἢ προῖκα ἐπιδιδόντες ἑτέροις ἐκδιδόναι, ...

(Is. i, 39)

Here, two responsibilities are mentioned; firstly the fact that they would have had to care for Polyarchus if he had been predeceased by Cleonymus and secondly that if Cleonymus had left daughters it would have been their

duty to marry them or provide them with a dowry. The first argument is weak because if Cleonymus had predeceased Polyarchus, his nephews, as Polyarchus' next of kin would have had the power of administering the property if he had grown too old to care for it himself. Wyse states that "Cleonymus' nephews ignore the fact that their uncle would not have inherited the family estate if he had died before his father, and that, if Cleonymus were dead and Polyarchus alive, their mother would be heiress with indefeasible rights of succession" (89). It is, however, possible that Cleonymus could have been in possession of the estate even if his father was alive, if Polyarchus had given him the rights of administration over his property (90). Furthermore, the mother of the heirs "ab intestato" is mentioned nowhere in the speech, and it is probable that she had died. Therefore, Wyse's argument that if Cleonymus had predeceased Polyarchus, his sister would become an ἐπίκληρος is probably irrelevant. On the other hand, Wyse is correct when he states that the other argument "loses much of its force" when it is remembered that the nephews would have had the right to marry Cleonymus' daughters and enjoy the use of the estate for many years. Because the situation envisaged would have been to the nephews' advantage, this argument is weak.

It is also argued that if the heirs "ab intestato" had predeceased Cleonymus, he would have had the right to inherit their estate, therefore they should inherit his property (91). This argument is somewhat amusing if one remembers that right at the beginning of the speech it is

stated that the nephews' estate was debt-ridden (92). However, this fact would only be apparent to the most alert listener, since the argument concerning reciprocal bequests is placed at the end of the speech.

Therefore, the arguments against the will of Cleonymus on grounds of fact are mainly concerned with the greater rights of the next of kin to inherit, and there is only a brief mention of the possibility of the will being a forgery. Neither of these are convincing.

Archepolis (no. 25)

The will of Archepolis was challenged by the testator's brother (93).

Dionysius of Halicarnassus states that one of the points to be decided upon was whether or not the testament was made:

...τῆς μὲν περὶ τοῦ γεγονέναι τὰς διαθήκας ἢ μή....
(Dionysius of Halicarnassus, De Isaeo, 15)

This quotation is somewhat misleading, since the fact that a will is presented to the court indicates that one was made. Perhaps the author is referring to the speaker's argument that the will was a forgery, a fact which he mentions later:

οὕτως ἐπὶ τὴν διαγραφὴν ἔρχεται, δι' ἧς ἀποδείκνυσιν οὐδὲ γεγενημένας ὑπὸ τοῦ τετελευτηκότος τὰς διαθήκας.
(D.H. De Isaeo, 15)

Here, the words ὑπὸ τοῦ τετελευτηκότος clarify what the author has said earlier. In one of the fragments of the

speech which remain, it is alleged that the speaker's opponents forged not one but four wills:

διαθηκῶν δὲ τεττάρων ὑπ' αὐτῶν ἐσκευοποιημένων.

(Th. fr. 2)

It seems as if the speaker's case is supported by witnesses, contracts and challenges in addition to arguments from probability (94). However in view of the fact that only two fragments of the speech are extant in addition to a very brief commentary by Dionysius of Halicarnassus, the arguments against the will's validity, besides the allegation that it was a forgery, cannot be ascertained.

There is also a small amount of additional evidence which it is necessary to discuss with reference to the reasons for finding a testament invalid.

At the beginning of Isaeus, vii, an adoption "inter vivos" is compared to a testamentary adoption. The speaker states that whereas in the former method, the adoptive father makes his wishes clear, a testamentary adoption can be questioned:

ὁ δ' ἐν διαθήκαις ἐγγυνάμενος ἀδήλους ἐποίησε, δι' ὃ πολλοὶ πεπλάσθαι φάσκοντες αὐτὰς ἀμφισβητεῖν ἀξιοῦσι πρὸς τοὺς ποιηθέντας.

(Is. vii, 2)

Here, the words ἀδήλους ἐποίησε seem to rely upon what may have been a certain distrust of wills in Athenian

courts, since a man did make his wishes very clear by means of testament.

The grounds on which a will was contested are given as forgery (πεπλάσθαι), which suggests that this might have been regarded by both himself and his listeners as the most common argument directed against the validity of a will.

There is also a mention of reasons for finding a will invalid in Aristotle's Problems:

Διὰ τί ἐνίοις δικαστηρίοις τοῖς γένεσι μᾶλλον ἢ ταῖς διαθήκαις ψηφίζονται; ἢ ὅτι γένους μὲν οὐκ ἔστι καταψεύσασθαι, ἀλλὰ τὸ ὂν ἀποφαίνειν· διαθῆκαι δὲ πολλαὶ ψευδεῖς ἤδη ἐξηλέγχθησαν οὖσαι.

(Aristotle, Problems, xxix, 3)

Here, the opening question Διὰ ... ψηφίζονται indicates that there was a bias in the Athenian courts in favour of heirs "ab intestato" as opposed to testamentary claimants, since it is asked why a verdict is more often returned in favour of the former.

The reason given, namely that the claim of heirs "ab intestato" cannot be disguised whereas wills have often been found ~~οι~~ to be forgeries echoes the argument produced in Isaeus, i, 42, and suggests that allegations of forgery were those most commonly presented against the validity of a will in an Athenian court of law.

Therefore, with reference to the table at the end of this thesis, it can be seen that of the twenty-nine non-fictitious wills which we know about, the validity of sixteen has been questioned, and of these, fourteen were

questioned in antiquity.

In eight of these cases, the major argument presented against the documents concerned was that they were forged, whereas in only four cases was the major argument from Solon's testamentary law. This indicates that allegations of forgery were used more often in an attempt to overthrow a will than arguments from the provisions in the law of Solon. Furthermore, sources other than cases concerning testaments suggest that the major argument used against a will was that it was a forgery. All the wills whose genuineness was questioned date from the classical period. There is no evidence concerning allegations made against wills in the post-classical period.

Notes

1. See Chapter 5, Capacity, passim, for these arguments.
2. As far as other non-legal arguments are concerned, see M. Hardcastle, "Some Non-Legal Arguments in Athenian Inheritance Cases", Prudentia, 12, (1980), pp. 12-26, although some points may be discussed more fully in these notes if necessary.
3. See Chapter 6, Function, pp. 168-171 for the function of this will.
4. This is indicated in the title of the speech which specifically denotes it as an ἐπίλογος
5. See Chapter 7, Formalities, p. 407 for a discussion concerning this aspect of the will.
6. cf. W.E. Thompson, "Athenian Attitudes Towards Wills", Prudentia, 13, (1981), p. 14.
7. Nicostratus left Athens eleven years before his death, (Is. iv, 1).
8. However, cf. pp. 495-504 where the will of Astyphilus is discussed.
9. There is probably a lacuna in the text at this point.
10. Is. iv, 1.
11. Is. iv, 8.
12. Is. iv, 23.
13. Is. iv, 15-16,22.
14. Is. iv, 26.
15. Is. iv, 4.
16. E.S. Forster, Isaeus, (London, 1962), p. 128.

17. M. Hardcastle, op. cit. p. 15 implies that κλῦσις and ταφή were identical. However, evidence from Menander's Aspis, 75-79,251 indicates that when a soldier died abroad, he may have been cremated in the land in which he died, and the funeral rites were carried out when the news of his death reached Greece (see Chapter 6, Function, pp. 169-171). Owing to the distance to be travelled from Ake to Athens (see map, Appendix 2, Dates), it is very likely that Nicostratus was cremated abroad, since it is probable that if his corpse had been shipped back to Athens, it would have been decomposing by the time it reached the city. By his own admission, the speaker has no evidence for what happened outside Athens, so he is not able to prove that Chariades did not carry out Nicostratus' cremation, only that he did not perform the testator's funeral rites when the news of his death reached Athens. The fact that Hagnon and Hagnotheus did do this does not prove anything, because many people carried out these rites hoping to inherit the estate (Is. iv, 7).
18. It seems as if this subject has been left until the end of the second speech, and no witnesses are produced to substantiate the allegation that Chariades was a convicted criminal (cf. Isaeus, viii, 46).
19. Cleon was only a relative by blood and not by law, since his father had been adopted into another family, (Is. ix, 1-2,33).

20. Is. ix, 1.
21. See Chapter 7, Formalities pp. 411-412.
22. Is. ix, 8.
23. D. Harvey, "Some Aspects of Bribery in Greek Politics", Crux: Essays presented to G.E.M. de Ste. Croix on his 75th Birthday, (Exeter, 1985), p. 79.
24. Wyse, Isaeus, p. 633.
25. Is. ix, 10-11.
26. Wyse, ibid.
27. cf. Is. iv, 23.
28. This is gradually built up throughout the speech. It is suggested that he is a liar (Is. ix, 6), a perjurer (Is. ix, 19), that he is both ungrateful for the kindness which the speaker and his family have shown him, and he is slandering the dead.
29. Wyse, Isaeus, p. 640.
30. Wyse, ibid.
31. Wyse, ibid.
32. This is quoted above on p. 497.
33. Harvey, op. cit. p. 85.
34. Forster, op. cit. p. 325.
35. Wyse, Isaeus, p. 626,640.
36. Is. ix, 14-15.
37. See below, pp. 510-511.
38. Is. ix, 33.
39. Wyse, Isaeus, p. 645.
40. Wyse, Isaeus, p. 643.
41. Is. ix, 19.

42. See Harrison, Law, 1, pp. 143-147.

43. Is. ix, 27-31.

44. See Chapter 6, Function, p. 172 and Hardcastle, ibid.

45. Is. ix, 16-20.

46. cf. Forster, ibid.

47. Is. ix, 19,29.

48. I.G. II ^{2} 1747.

49. See Chapter 6, Function, pp. 173-175.

50. Davies, A.P.F. pp. 562-563.

51. Wyse, Isaeus p. 484, followed by Forster, op. cit. pp. 197-198 states that Philoctemon had no property of his own separate from that of his father. However, the fact that he was wealthy enough to perform the office of trierarch more than once, and, as MacDowell points out (this article has not yet been published, but its contents were read out in a research students' seminar in autumn 1986 at Glasgow University), the fact that Androcles and Antidorus attempted to adopt the alleged sons of Euctemon into the respective οἶκοι of Philoctemon and Eramenes, indicates that their fortunes were separate. It is possible, though, that it was more profitable for Chaerestratus to remain in his natural father's family, because Phanostratus' fortune may have been greater than that of Philoctemon. This situation may have changed when Euctemon died, because the respective estates of father and son combined, which he is claiming in Isaeus vi, would have made it financially worthwhile transferring to Philoctemon's οἶκος.

52. Is. vi, 7-8.

53. Is. vi, 14.

54. Is. vi, 36-37.

55. Davies, A.P.F. p. 563.

56. I.G. II^2, 1177, 11.

57. See Chapter 6, Function, pp. 175-181.

58. Wyse, Isaeus, p. 415.

59. Wyse, ibid.

60. See Chapter 7, Formalities pp. 454-461.

61. See n. 57.

62. Is. v, 7.

63. Is. v, 12.

64. Wyse, Isaeus, p. 421.

65. Wyse, ibid.

66. Is. vi, 15.

67. Is. xi, 9-10, [Dem.] xliii, 3.

68. See Chapter 6, Function, pp. 184-187.

69. See Chapter 6, Function, pp. 189-193.

70. T.B. Curtis, The Judicial Oratory of Hyperides, (London, 1971), p. 61.

71. Hyperides ii, fragment 4. See Chapter 6, Function, pp. 197-205.

72. Hyp. ii, frag. 4.

73. This is based on the assumption that the division of Pasio's property (Dem. xxxvi, 8-9) took place long enough after the testator's death for the guardians to see that Apollodorus was a wastrel. The case itself took place eighteen years after this division (xxxvi, 19) and over twenty years after the death of Pasio.

74. Dem. xxxvi, 33.

75. [Dem.], xlv, 6.

76. [Dem.], xlv, 8 for quotation of testimony.

77. [Dem.], xlv, 15-19. This is in accordance with [Aristotle] Ath. Pol. liii, 2-3. For a discussion of this, see MacDowell, Law, p. 209, R.J. Bonner, Evidence in Athenian Courts, (Chicago, 1905), pp. 48-49, and the works there cited.

78. [Aristotle], Ath. Pol., lii, 2-3.

79. Dem. xxxvi, 8.

80. [Dem.], xlv, 19.

81. [Dem.], xlv, 21-23.

82. See Chapter 7, Formalities, pp. 442-455.

83. Apollodorus received a lodging house in addition to his half share of the property. See Chapter 6, Function, p. 227.

84. Chapter 6, Function, pp. 224-226.

85. Chapter 6, Function, p. 225.

86. [Dem.], xlv, 34.

87. [Dem.], xlv, 74.

88. See Chapter 5, Capacity, pp. 119-121.

89. Wyse, Isaeus, p. 219.

90. cf. Is. vii, 15.

91. Is. i, 44-47.

92. Is. i, 1,2.

93. Dionysius of Halicarnassus, De Isaeo, 15.

94. ibid.

Conclusion.

The subject of my concluding chapter shall be a brief discussion of the chronology of the Athenian will, since to my knowledge, this subject has not been touched upon by any previous student of Greek law. This analysis shall begin from the Homeric period because even though this evidence is not Athenian, it is of some use in attempting to ascertain what might have been the case before Solon's law of testament.

It could be objected that the number of wills which have been discussed is far too small for the statistics to be of any great significance. However, these thirty-eight wills constitute the majority of the extant evidence available at present to those studying Athenian testamentary law (1). Therefore, even though many other wills which we do not know about were probably made under Athenian jurisdiction, it seems unwise to disregard conclusions which this evidence leads one to just because it is not very extensive.

In view of the differing nature of the sources for this evidence, it might be thought that the conclusions drawn are somewhat distorted. However, this is not necessarily so. The wills dating from the earlier period are fictional, and are thus indicative of what might have been the case in ordinary daily life at this time. Conversely, when we move to the late fifth century and the whole of the fourth century, the nature of the evidence mostly consists of forensic speeches in which a will is disputed.

However, in addition to disputed wills, in the course of their arguments, these speeches sometimes mention testaments which do not appear to have been disputed (2), and this indicates that the evidence from forensic speeches is not as biassed as might be thought. On moving into the post-classical period, there is a definite difficulty, in that the majority of the evidence available concerning wills made under Athenian law at this time is from Diogenes Laertius' Lives of the Philosophers. Since the majority of these were single men, these documents cannot be regarded as evidence of the testamentary provisions which may have been made by married men. However, the respective wills of Aristotle and Cnemon are of some use in redressing this imbalance. Furthermore, the fact that none of the known wills made by single men during this period contained an adoption is very strong evidence that this had ceased to be a significant function of the testament. Therefore, although the evidence presented has to be regarded with a certain amount of caution because of its differing nature, this difficulty is unavoidable. However, its significance can not be overlooked completely, because the evidence found in the different sources does provide strong indications concerning what the people of Attica specified in their wills.

With reference to the function of the Athenian testament, the evidence concerning fictional testaments and those made in the fifth century suggests that the original function of the will was not adoption, as has often been thought (3), but was the care of the family,

since the majority of these wills are concerned with this. Although testamentary adoption was introduced by Solon in the sixth century as an additional function of the will, it did not become common until the fourth century, when there seems to have been more testamentary adoptions than wills concerning family matters.However, even during this period, wills with functions other than adoption probably outnumbered those with this purpose. As far as bequests of property by will are concerned, these do not seem to have been unknown in earlier times, but were comparatively rare. The available evidence suggests that by the fourth century, this form of will was equally as common as wills concerning family matters. Following the close of the classical period, it seems as if the testamentary bequest was a very common function of the Athenian will. In addition, throughout the whole period, a will could contain an inventory of property and a record of debts due to the estate.

As far as the marital status of the testator was concerned, the evidence suggests that there were far more wills made by married men than by single men in the two earlier periods; in the fourth century, the numbers of single and married testators were equal, and by the post-classical period, far more wills were made by single men. The marital status thus has a direct link with the function of the will.

The results suggest that it was far more common for the authenticity of a will to be questioned in the fourth century than in either the earlier or the later period, even though this is partially due to the nature of the

sources for these years. This does not seem to have any relationship with the increase of testamentary adoption. Conversely, all the wills concerning adoption in the evidence for the two earlier periods were questioned in a court of law. This suggests that at first, the Athenians tended to doubt the authenticity of wills with this function. Furthermore, all of the wills dating from the classical period whose major function was a bequest of property were questioned. This implies that later, testaments concerning this were regarded with a greater suspicion than those containing an adoption or regulating family matters. That the suspicion of wills probably lessened as time went on is shown by the fact that there is no evidence concerning the questioning of wills in the third century, although this could be partially due to the nature of the source material for this period.

Insofar as witnesses are concerned, the majority of testators in the two earlier periods did have their wills witnessed. Since the majority of the fictional wills were oral, this would have been necessary. On the other hand, in the fourth century, just under half of the wills were witnessed, and by the third century, there is evidence concerning the witnessing of only one quarter of the wills which we know about.

There was a lesser tendency in the two earlier periods to copy out and/or deposit one's will, whereas in the two later periods, there is evidence that either or both of these things were done by just under half of those testators about whom we have evidence.

Therefore, the period 700-200 saw the gradual evolution of the will from a very rudimentary oral arrangement of one's goods and family responsibilities, to a detailed written document which might contain many different minor clauses in addition to its major function. That the Athenian testament was inextricably linked with the care of the οἶκος is indicated by most of its functions: adoption of an heir; the care of one's family; an inventory of property so that one's heirs will know the extent of their inheritance; and even in those wills whose major function is bequest without adoption, arrangements are often made for the care of the testator's dependants. Thus, the basic underlying motive for making a will, namely the care of the οἶκος, probably did not alter to any great extent during the period under consideration.

Chronological Table of The Wills Discussed in this Thesis (4).

	TESTATOR	SOURCE	DATE	STATUS	FUNCTION	FORM	WITNESSES	COPYING & DEPOSITING	QUESTIONED
1	Odysseus	Homer, Odyssey	c.700(A)	m. ch.(m)	care of family marriage of wife	oral	told to wife		
2	Telemachus	Homer, Odyssey	c.700(A)	s	bequest of goods	oral	several friends		
		C. 594	SOLON'S TESTAMENTARY LAW .			ADOPTION BY TESTAMENT LEGALIZED.			
3	Ajax	Soph. Ajax	c.440(A)	m. ch.(m)	bequest and care of child	oral	2, Teucer and testator's concubine		
4	Heracles	Soph. Trach.	c.440(A)	m. ch.(m)	division of property regulation of wife's dowry	written	none at writing, but contents told to wife	left in the house but shown to wife	
5	Heracles	Soph. Trach.	c.430(A)	m. ch.(m)	marriage of concubine to son	oral	told to son		
6	Heracles	Eur. Alcestis	438(A)	m. ch.(m)	bequest of slave girl	oral	told to Admetus		
7		Aristophanes, Wasps	422	m. ch.(f)	adoption of a son to marry testator's daughter	written			yes
8		Eur. Palamedes	c.416(A)		inventory	written			
9	Mneson	Is.vii	415-3	s.	complete bequest of property				yes, no evidence for grounds, but indicated in Is. vii, 7.
10	Dicaeogenes(II)	Is.v	411	s.	adoption	probably written	minimum of 3	deposited with Proxenus -a relative	prosecution of witnesses could lead to a declaration of forgery
11	Euthycrates	Is. ix	c.410	m. ch.(m)	guardianship of child, marriage of of wife.				
12	Diodotus	Lysias, xxxii	410/409	m.ch.(m+f)	guardianship of children, dowry for wife and daughter.	written	wife and brother told	1 copy and will left in the house	

	TESTATOR	SOURCE	DATE	STATUS	FUNCTION	FORM	WITNESSES	COPYING & DEPOSITING	QUESTIONED
			404/3	DELETION OF CERTAIN CLAUSES IN SOLON'S LAW BY THE THIRTY TYRANTS.					
13	Dionysodorus	Lysias, xiii	404/403	m.ch.ex.	care of family request for vengeance		at least 4, wife and friends		
			403/2	PROBABLE RESTORATION OF THE CLAUSES DELETED BY THE THIRTY TYRANTS.					
14	Pyrrhus	Is. iii	401	m. ch.(f)	adoption of son to marry the testator's daughter	probably written			prosecution of witnesses could lead to a declaration of forgery
15	Hagnias	Is. xi [Dem.]xliii	396	s.	adoption (f) and bequest in the event of her death	probably written	at least 1	deposited with half-brother	suggestion of forgery but probably found invalid because of terms
16	Apollodorus	Is. vii	394-390	s.	adoption of a female relative				
17	Conon	Lysias xix	392-389	m.ch.(m)	bequests, probably the care of his son	terms suggest it was written			
18	Aristarchus	Is. x	378-371	s.	complete bequest of property	probably written			questioned on grounds of ownership of property bequeathed
19	Demosthenes (I)	Dem.xxvii xxviii xxix	377-375	m.ch.(m+f)	guardianship of children, dowry for wife & daughter, and naming of their husbands' inventory	written	3, maybe 4 including wife	deposited with Aphobus	
20	Nicostratus	Is. iv	374	s.	adoption of friend		at least 2		alleged forgery, but also mention of Solon's Law

	TESTATOR	SOURCE	DATE	STATUS	FUNCTION	FORM	WITNESSES	COPYING & DEPOSITING	QUESTIONED
21	Pasio	Dem. xxxvi [Dem.] xlv xlvi	370-371	m.ch.(m)	guardianship of minor son, division of property between sons, dowry and marriage of wife	written	probably Phormio	copied and deposited with a non-relative	forgery, mention of Solon's Law
22	Astyphilus	Is. ix	371-366	s.	adoption of a male relative	written	allegedly certain) relatives (Is. ix, 9)	deposited with Hierocles	forgery, brief mention of Solon's Law
23	Theophon	Is. xi	369/368		adoption of female female relative				
24	Cleonymus	Is. i	370-365	s.	complete bequest of property	written	probably witnessed because contents not secret.	deposited with a friend	argument from Solon's Law, testator wished to revoke it, forgery.
25	Archepolis	Is. frags 1&2 D.H. de Isaeo 15	not known	probably s.	written				alleged forgery.
26	Philoctemon	Is. vi	367	m.	adoption of a male relative	written	at least 2	deposited with brother-in-law	
27	Euctemon	Is vi	367/6	m.ch.(m+f)	regulation of property limiting the inheritance of a son by a later marriage.	first oral then written	at least 4	deposited with a friend	recalled in 365/4 but not questioned
28	Polyeuctus	Dem. xli	364-353	m.ch.(f)	recording of debts	oral	at least 5		questioned on grounds of force
29	Plato	D.L. iii	347	s.	bequest of and inventory	written			
30		Hyperides ii	336	m. ch.ex.	guardianship of child,, bequest to relatives in event of his death.	probably written			questioned but this failed.

	TESTATOR	SOURCE	DATE	STATUS	FUNCTION	FORM	WITNESSES	COPYING & DEPOSITING	QUESTIONED
31	Aristotle	D.L.v	322	m.(w), ch.(m+f)	care of family, bequests, manumission of slaves	written			
32	Cnemon	Menander, Dyskolos	316	m. ch.(f)	adoption of a male non-relative, dowry for daughter	oral	at least 4 (2 women)		
33	Crantor	D.L.iv	290	s.	bequest and oral regulation of burial				
34	Theophrastus	D.L. v	286	s.	bequest of , care of school, bequests, burial	written	depositing witnessed	3 copies deposited with non-beneficiaries	
35	Epicurus	D.L. x	271	s.	bequest of , care of school, care of orphan children of colleague	written		lodged in Metroon	
36	Strato	D.L. v	268	s.	bequest of property, care of school	written			
37	Arcesilaus	D.L. iv	c. 242	s.	bequest of property, minor bequest.	written		copied and deposited with a relative and friends.	
38	Lyco	D.L. v	228-224	s.	bequest of property, care of school, arrangements for burial.	written	three		

KEY TO ABBREVIATIONS:

(A) = anachronistic
m. = married
(w) = widowed
s. = single
ch. = child/children
(m)(f) = sex of child, male or female
ch.ex. = child expected

Results

Total number of wills		38
Function	adoption	10
	family	11
	bequests	14
	inventory	3
Status of testator	married	18
	single	16
Copied and deposited		12
Questioned		13
Witnessed		19
Fictional testaments, 700-416 (nos. 1-8)		
Number of wills		8
Function	adoption	1
	family	4
	bequests	2
	inventory	1
Status of testator	married	5
	single	1
	unknown	1
Copied and deposited		1
Questioned		1
Witnessed		5
Fifth Century, 416-401 (nos. 9-14)		
Number of wills		6
Function	adoption	2
	family	3
	bequests	1

	inventory	0
Status of testator	married	4
	single	2
Copied and deposited		2
Questioned		3
Witnessed		4
Fourth Century until 323 (nos. 15-30)		
Number of wills		16
Function	adoption	6
	family	4
	bequests	4
	inventory	2
Status of testator	married	7
	single	7
Copied and deposited		7
Questioned		9
Witnessed		7
Later Period (nos. 31-38)		
Number of wills		8
Function	adoption	1
	family	1
	bequests	5
	inventory	0
Status of testator	married	2
	single	6
Copied and deposited		3
Questioned		0
Witnessed		2

Notes

1. Other evidence consists of information concerning Solon's law and its alteration by the Thirty, which is discussed in Chapters 2 and 4. In addition, Plato's Laws also contains a brief discussion of the subject, see Chapter 6, Function, pp. 359-361.
2. Is. ix (no.11), vii (no.16), xi (no.23), vi (no.26), Lysias, xxxii (no.12), xix (no.17), Dem. xxvii, xxvii,xxix (no.19).
3. See particularly the concluding paragraphs of Chapter 6, Function.
4. This table is only a brief summary of the evidence. For further discussion, please see the relevant chapters.

Appendix I

The Positions of Nicanor and Nicomachus in the Household of Aristotle.

Even though this subject has been discussed in other places(1), I have decided to include it in my thesis because, in the light of various clauses in the will of Aristotle, the relative positions of Nicanor and Nicomachus are in need of further discussion. I shall begin with Nicanor.

The ancient evidence concerning Nicanor's position in Aristotle's household is as follows:

1. Vita Marciana

ὀρφανὸς δὲ γενόμενος ἀνήγετο παρὰ Προξένῳ τῷ Ἀταρνεῖ, οὗ τῆς μνήμης καὶ τροφῆς μνημονεύων τὸν αὑτοῦ υἱὸν Νικάνορα ἔτρεφε καὶ ἐπαίδευε καὶ υἱὸν ἐποιήσατο καὶ τελευτῶν ἐκέλευσεν ἐν διαθήκαις τὴν ἑαυτοῦ θυγατέρα Πυθιάδα γενομένην αὐτῷ ἀπὸ Πυθιάδος δοῦναι αὐτῷ πρὸς γάμον. (iii) (ὀρφανὸς refers to Aristotle).

The Vita Vulgata contains the same information , is very similar to the above quotation and is thought to be an abridgement of it (2), as is Ptolemy's Vita (3).

2. Vita Latina

"...post mortem autem Nicomachi et Festidos parentum ducitur a quodam nomine Proxeno Atarneo, cuius famam et nutrimentum habens in memoriam ipsius filium Nicanora educavit et docuit et sibi filium fecit et in morte sua precepit in testamento suam filiam in Pithaida genitam eidem a Pithaida tradi illi Nicanori in uxorem." (iii)

3. An inscription was found in Ephesus conferring the privileges of a πρόξενος on Νικάνωρ Ἀριστοτέλους Σταγειρίτης (4).

Therefore, with the exceptions of Diogenes Laertius and Hesychius, neither of whom mention Nicanor's standing in Aristotle's household, the Greek and Latin traditions state that Nicanor was Aristotle's adopted son. The Syriac and Arabic Vitae do not mention the adoption of Nicanor, with the exception of the Arabic translation of Ptolemy-el-Garib's Life of Aristotle (5), which is thought to have been an abridgement of the Vita Marciana.

Of the more recent views, Zeller, Jaeger and Lipsius are of the opinion that Nicanor was the adopted son of Aristotle (6), thinking that the arrangements in the will are indicative of this. They do not, however, state specifically which arrangements in the will indicate this, neither do they discuss this in detail. On the other hand, Bruns (7) states that there is no indication of an adoption in the will, and this opinion is considered correct by Mulvany, During and Chroust (8). Gottschalk (9) also finds the adoption very dubious.

If the evidence for Nicanor's adoption rested solely on the provision in the will that Nicanor should care for Pythias and Nicomachus as if he were father and brother (ὡς καὶ πατὴρ ὢν καὶ ἀδελφός), it would seem as if the Greek and Latin traditions are at fault, since this phrase does not indicate that an adoption took place. However, the fact that Pythias was not given a dowry when her marriage to Nicanor was arranged is an indication of the fact that an adoption took place,

since, according to Attic laws, if a man with a daughter adopted a man as his son, he married the girl to him. There would thus have been no need to give a dowry (10). Furthermore, the inscription found at Ephesus, which confers the right of proxenus on Nicanor, son of Aristotle of Stagira, refers to the Nicanor mentioned in the will. Chroust rejects the evidence presented by this inscription on the grounds that it does not concur with the fact that Aristotle does not specifically state in his will that Nicanor was his adoptive son (11). However, the clause in the will giving Pythias to Nicanor does suggest that he was adopted by the testator. In addition, there seems to be no good reason as to why the Ephesians would have wished to misrepresent the legal paternity of Nicanor, since if he had not been adopted by Aristotle, he probably would have been referred to as the son of Proxenus, as it is thought that he was the son of Proxenus and Aristotle's sister Arimneste (12). During conjectures that this inscription might have been made for the dangerous journey which Nicanor undertook at the time Aristotle was making his will (13), thus suggesting that he believes it to be authentic. He does not, however, discuss this inscription with reference to the possible adoption of Nicanor by Aristotle.

There are, therefore, two pieces of evidence in favour of the possibility that Aristotle adopted Nicanor as his son; one is a clause in the will and the other is an inscription. On the strength of these, it is my opinion that Nicanor was indeed adopted as Aristotle's son.

The position of Nicomachus is also open to dispute. The ancient and medieval evidence regarding his parentage is as follows (14):

1. Diogenes Laertius

ἔσχε δὲ καὶ υἱὸν Νικόμαχον ἐξ Ἑρπυλλίδος τῆς παλλακῆς ὥς φησι Τίμαιος .(v , 1)

2. Vita Hesychii

εἶχε δὲ καὶ υἱὸν Νικόμαχον ἐξ Ἑρπυλλίδος παλλακῆς.

3. Aristocles

Εἶθ' ἑξῆς φησι μετὰ τὴν Πυθιάδος τῆς Ἑρμίου τελευτὴν Ἀριστοτέλης ἔγημεν Ἑρπυλλίδα Σταγειρίτις ἐξ ἧς υἱὸς αὐτῷ Νικόμαχος ἐγένετο τοῦτον δέ φασιν ὀρφανὸν τραφέντα Θεοφράστῳ καὶ δὴ μειρακίσκον ὄντα ἀποθανεῖν ἐν πολέμῳ. (apud Eusebius, Praep. ev. xv)

4. Hermippus

Ἀριστοτέλης δ' ὁ Σταγειρίτης οὐκ ἐξ Ἑρπυλλίδος τῆς ἑταίρας ἐπαίδοποιήσε Νικόμαχον καὶ συνῆν ταύτῃ μέχρι θανάτου. (apud Atheneaus, xiii, 589c.)

5. Suda

Νικόμαχος, Σταγειρίτης, φιλόσοφος, υἱὸς μὲν Ἀριστοτέλους τοῦ φιλοσόφου, μαθητὴς δὲ Θεοφράστου, ὡς δέ τινες καὶ παιδικά. ἔγραψεν Ἠθικῶν βιβλία $\bar{\gamma}$ καὶ περὶ τῆς φυσικῆς ἀκροάσεως τοῦ πατρὸς αὐτοῦ. (15)(v. 398)

6. Vita Latina

"dimisit autem filium Nicomachum et filiam Pithaida. (47)

7. Vita Aristotelis (Leonardo Bruno Arentinus)

"Uxores habuit duas, Phitaida scilicet et Herpilidem, quarum Phitaida alii filiam, alii neptem Hermiiae Atarnei de quo supra diximus. Herpilidem vero

plerique ancillam eius fuisse tradidere, mortuaque uxore primo consuetudine ab eo receptam mox procreatis filiis pro uxore habitam. Ex hac Herpilide Nicomachus filius illi natus est....."

8. Vita Syriaca 1

"He left two children, both of tender age, a son called Nicomachus and a daughter." (11)

9. Al-Mubashir

"At his death he left one boy, Nicomachus, tender of age, and a young daughter."(33)

10. Usaibia.

"As to my estate and my son, there is no need for me to be concerned about testamentary provisions." (Will,D.2A)

Of the authors quoted here, Diogenes Laertius and, it seems, Hesychius, follow Timaeus in stating that Nicomachus was the illegitimate son of Aristotle and Herpyllis. Hermippus also suggests this in his rhetorical question. Aristocles and Arentinus both imply that Nicomachus was not a bastard, since both state that Herpyllis was Aristotle's wife, (Ἀριστοτέλης ἔγημεν Ἑρπυλλίδα , Herpilidem ... pro uxore habitam). The plural, "procreatis filiis," in Arentinus' account suggests that Herpyllis bore more than one child, but the tradition provides evidence concerning only one, namely Nicomachus.

The Suda does not mention who the boy's mother was (16). In addition, the Vita Syriaca and al-Mubashir's translation of Ptolemy-el-Garib's Life of Aristotle do not question Nicomachus' legitimacy.

There is also the clause in the Arabic version of Aristotle's will which states that there is no need to provide by testament for the boy. Gottschalk finds this clause spurious because it is in the wrong place and is "..either redundant or wrong in law" (17). Düring thinks that it is genuine because if it were not, it would have been inserted earlier in the will (18). However, in Attic law it was not necessary for a man to include such a clause in his will; a legitimate son just took what portion of his father's estate remained after bequests and debts (if any) had been paid. I therefore agree with Gottschalk and think that this clause in the Arabic version of the will is spurious.

Furthermore, there is no intimation in the Greek version of the will that Nicomachus was a bastard. If he had been illegitimate, it is very likely that Aristotle would have made some form of financial provision for him, since children born outside marriage could not inherit automatically (19).

Modern opinions concerning Nicomachus' parentage also differ. Mulvany and During (20) state that the will does not indicate that Nicomachus was illegitimate, and that the only source for this is Timaeus, who probably included the statement in his work as part of his calumny. In addition, Düring believes the sentence "as to my estate ... provision" to be genuine, and thus concludes that Nicomachus was the legitimate son of Aristotle and Pythias (21).Gottschalk, although he does not specifically support this view, by stating that Herpyllis was not Aristotle's wife or mistress but

probably a ward or relative, implies that he also thinks that Nicomachus was the child of Aristotle and Pythias (22).

Bruns is of the opinion that Nicomachus was the legitimate son of Aristotle and Herpyllis, and that Herpyllis was legally married to the testator (23). This is because there is no formal bequest to him in the will which there would have been had he been illegitimate. Zeller also states that Nicomachus was the legitimate son of Herpyllis (24). Jaeger is of the opinion that Nicomachus was Herpyllis' son, but he does not state whether he thinks the boy was legitimate or not (25). Chroust states that Nicomachus was the illegitimate son of Aristotle and Herpyllis who had later been legitimized or adopted (25). He does not, however, suggest how this could have been done, and therefore I do not find Chroust's suggestion convincing.

I agree with most of the arguments put forward by Mulvany and During, although, as stated above, I do not think that the sentence "As to ..... provisions" in the Arabic translation of the will is genuine. The tradition connecting Nicomachus with Herpyllis is grounded on Timaeus who is not a reliable source, and there is no evidence in Aristotle's testament which can be taken to suggest that he was either a bastard or the product of a second marriage with Herpyllis. I am therefore of the opinion that he was the son of Pythias (the philosopher's wife) and Aristotle.

~~Appendix I.~~ Notes.

1. See Chapter 6, Function, p. 373 n.1.
2. Düring, A.B.T. p.137.
3. Düring, A.B.T. p.131.
4. Düring, A.B.T. p.271.
5. Düring, A.B.T. pp 184-250.
6. Jaeger, Aristotle, (translated by R.Robinson), Oxford, (1934) p.320.
   Lipsius, D.A.R. pp.566-567, n.70.
7. Bruns, D.T.G.P. p.19.
8. C.M.Mulvany "Notes on the Legend of Aristotle", Classical Quarterly, 20, (1926), p.159.
9. H.B.Gottschalk, Notes, p.322.
10. Dem. xlii 3,
    Isaeus, iii, 68.
11. Chroust, Arist. n.37, p.391.
12. See n.8 and Chroust, Arist. pp. 76-79.
    Chroust's statement here that the provisions of Aristotle's will provide an analogy with a will written by his father Nicostratus in which Arimneste was married to Proxenus who was given the care of Aristotle, Arimnestus and the estate, is based on no evidence. Chroust's statement that this putative will of Aristotle's father, Nicomachus, indicates that Proxenus was a relative because "under Greek law only an agnatic relative was charged with such duties" is contradicted both by the will of the elder Demosthenes in which Therippides, a friend of the testator, is appointed as guardian of the children,

and by the will of Pasio in which the co-guardian of the testator's son, Phormio, is a freedman and not a relative.

13. Düring, A.B.T. n.271
14. Much of this evidence was collected from Düring, A.B.T. where some chapter references were not given.
15. "Suda's notice on the younger Nicomachus is understandable only if we assume that it was compiled by some ignoramus." Düring, A.B.T. p.291.
16. See n.15.
17. Gottschalk, Notes. p.325.
18. Düring, A.B.T. p.239.
19. MacDowell, Law, p.101.
20. Düring, A.B.T. pp. 266-267.
21. Düring, A.B.T. p.264.
    Mulvany, op. cit. p.158.
22. Gottschalk, Notes, pp.323-328.23.
23 Bruns, D.T.G.P. pp.17-19.
24. Zeller, op. cit. p.38 n.4.
25. Jaeger, Aristotle, translated by R. Robinson, (Oxford, 1934), p. 320.
26. Chroust. Arist. p.80, p.199, pp. 209-210.

Appendix II

The Dates of Two Wills, Nicostratus and Aristarchus (II).

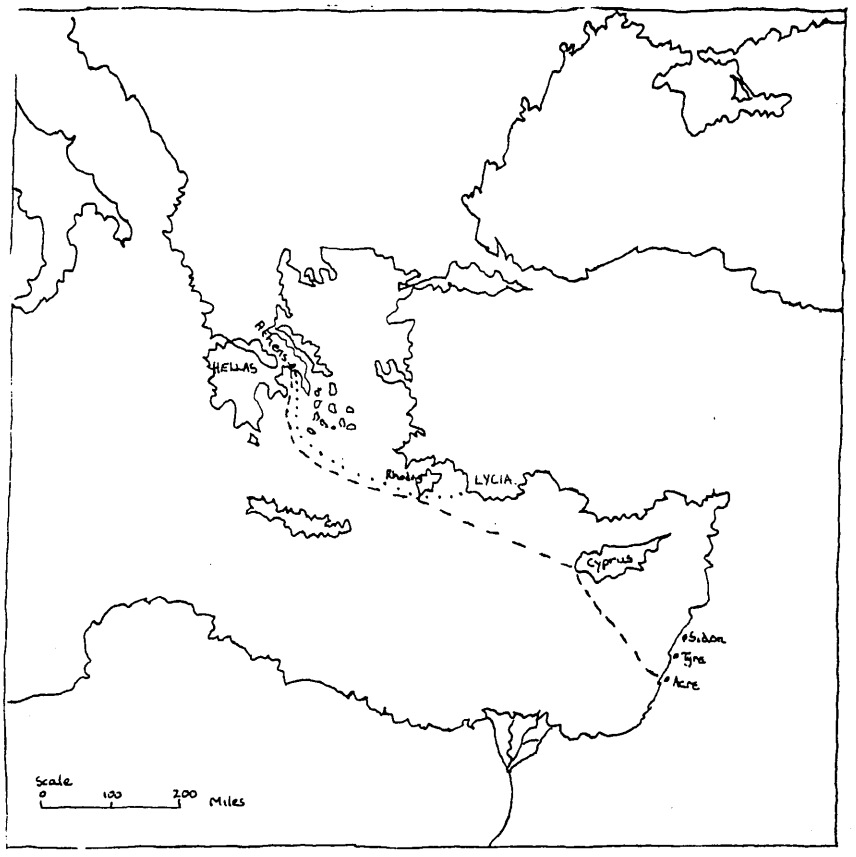
As far as the majority of wills are concerned, the date of their making is either not disputed or can be ascertained after a brief discussion of the available facts. However, the respective wills of Nicostratus and Aristarchus (II) fall into neither of these categories, so it seems best to review separately the evidence concerning them.

The date of the speech concerning the estate of Nicostratus is disputed. A suggested date is 374. This date is based upon Valckenaer's emendation of a difficult manuscript reading in Isaeus iv, 7.The word ἑξάκις in the question τίς γὰρ οὐκ ἀπεκείρατο, ἐπειδὴ τῷ δύο ταλάντω ἑξάκις ἠθλήτην; was amended to ἐξ Ἀκῆς .Ake was the town on the coast of Phoenicia where Greek mercenaries commanded by Iphicrates gathered in 374 (1). Wevers, however, dates the speech at approximately 350, arguing that it is a later speech of Isaeus because of the greater proportion of good prose rhythms (2). He thus proposes an alternative reading: ἑξάκις ἠθλήτην , but MacDowell rightly states that this reading is unconvincing because " he gives no parallel for the passive of ἀθλέω , nor for the active with an object meaning 'prize'; the object of this verb is normally 'struggle', 'danger' or the like"(3). However, MacDowell does agree that the passage provides "no adequate evidence for dating" (4).

Wevers argues against Valkenaer's emendation by saying that the solution, even though paleographically very sound, is too simple (5), and that the situation envisaged is improbable:

"The conjectured reading will have to mean that Nicostratos, whose estate is in question , died at Ake ca. 374 and that his money was returned to Athens for trial some time after his death. The first consideration is the oddity of a mercenary carrying 2 talents' worth of money with him. A battlefield is hardly a safe place to have such a large sum of money. But what is even more incongruous is to think that, after Nicostratos' death his money was dutifully sent to Athens from far off Phoenicia, only to be mercilessly fought over once it arrived safely at Athens. The picture of fourth century social conditions as portrayed by Isaeus as well as New Comedy make such unselfish loyalty highly incredible..... My estimation of Greek mercenaries makes it hard to believe that such a sum of money left by a dead soldier in Phoenicia would ever find its way back to Athens"(6).

On the other hand, there is a passage in Menander's play, Aspis in which Daos, the slave of Cleostratus, returns to Athens from Lycia with the property of his master who is presumed dead. In this instance, his property does not only consist of six hundred gold staters (2 talents) but also some cups, clothing and slaves (7). The reason Daos is in possession of these things is because he had been ordered to take them to Rhodes, deposit them there with a friend of his master



Key

- - - - Possible route of Nicostratus' slave

..... Route of Daos

and return to Cleostratus in Lycia. However, before he could do this, the Greek mercenaries were attacked by the natives , and thinking that his master had been killed, Daos went to Rhodes with the survivors, and then sailed to Athens, keeping his master's goods with him (8). It is therefore possible that a slave belonging to Nicostratus had returned from Phoenicia with his master's booty. (A possible route is illustrated in the map).This booty might not necessarily have consisted just of money as Wevers assumes, but also of other objects such as cups , clothes and slaves. Nicostratus would have had the opportunity of collecting a large sum of money and other property, since he had been absent from Athens for eleven years (9). The incident in Menander's Aspis indicates that it was not unusual for a soldier of fortune to have a large amount of property with him. This is also contrary to Wevers' argument. This incident in Aspis therefore indicates that Wevers' arguments against Valkenaer's emendation of the text on the grounds that the situation was improbable, are not sound (10). Therefore, the earliest date for Is. iv would be 374, which is the date accepted by Wyse, Forster and Thalheim (11). Since Nicostratus died in 374, his will would not have been made later than this.

The will of Aristarchus is also rather difficult to date. Wevers gives an approximate date of 355 (12), but it is generally thought that the speech was made during the Theban war (12),(378-371). MacDowell states that Wevers "is right in saying that the war mentioned in x need not be the Theban war, it may be the Social war, or

indeed any war with which the speech may be found to be contemporary" (14).

In view of the different opinions expressed, a further brief examination of the evidence is necessary. The speaker of Isaeus x served throughout the Corinthian war (394-390), which indicates a minimum age of eighteen in 394. Thus, his date of birth would have been 412 at the latest, although it could have been earlier, and the marriage of his mother would have taken place at least nine months before this, in about 413 or earlier. The estate was given to Cyronides before the marriage of the speaker's mother (15), thus the latest date for this would be 413. If the case for the inheritance took place in 355, this would mean that at least fifty eight years had passed before the case was brought, which was the first time the inheritance had been contested in court. Wevers seeks to explain this long delay by saying that excuses are made for it. However, the speaker only gives one excuse for the period after the Corinthian war (16), and does not account for any further delay. This implies that the dispute probably took place in the next war after the Corinthian war, since Aristarchus died in battle in a war which was still being fought when the case was brought to court (17). The next war which Athens fought after the Corinthian war was the Theban war, and since no further excuses are made for a delay other than the fact that the speaker was disfranchised after the Corinthian war, it seems most likely that the war in which Aristarchus died was the Theban war. His will was therefore made at the latest in 378-371.

Notes.

1. Diodorus Siculus, xv, 41.
2. R.Wevers, Isaeus, Chronology, Prosopography and Social History, (The Hague, 1969), p.21.
3. D.M.MacDowell, "Dating by Rhythms", Classical Review, 85, (1971), p.25.
4. MacDowell, ibid.
5. Wevers, op. cit. p.23.
6. Wevers, op. cit. p.22.
7. Menander, Aspis, 34-39, 82-89.
8. Menander, Aspis, 38-32.
9. Is. iv, 8.
10. It is necessary to acknowledge at this point that the text of Menander's Aspis had not been published when Wevers discussed the date of Nicostratus' will.
11. T.Thalheim, Isaei Orationes, (Stuttgart, 1903), Argumenta, p.xxxi,
    E.S.Forster, Isaeus, (London, 1962), p.129,
    Wyse, Isaeus, p.369.
12. Wevers, op. cit., p.16.
13. Thalheim, op. cit. p.xxxvi,
    Forster, op. cit. p.357,
    Wyse, Isaeus, p.652.
14. MacDowell, ibid.
15. Is. x, 5-6.
16. Is. x, 20.
17. Is. x, 22.

Key to Abbreviations.

As far as the abbreviations of the names of classical authors are concerned, I have followed L.S.J. when necessary. For the most part, I have referred to my secondary sources in full during the course of this thesis. However, in some cases where a a book or article has been used many times, I have cited it by means of the author's surname and an abbreviation of the title. These abbreviations are as follows:

Beauchet, L., Histoire de Droit Privé de la République Athénienne, 3, (Paris, 1897)

= Beauchet, Droit 3

Bruck, E.F., Die Schenkung auf den Todesfall, (Breslau,1909)

=Bruck, Schenkung

Bruns, G.,"Die Testamente der Griechischen Philosophen", Zeitschrift der Savigny Stiftung, Rom. Abtl., 1, (1880)

=Bruns, D.T.G.P.

Chroust, A.H., Aristotle, 1, (London, 1973)

=Chroust, Arist.

Davies, J.K., Athenian Propertied Families, 600-300 B.C. (Oxford, 1971)

=Davies, A.P.F.

During, I., Aristotle in the Biographical Tradition, (Goteborg, 1957)

=During, A.B.T.

Gernet, L., Droit et Société dans la Grèce Ancienne (Paris, 1955)

=Gernet, D.G.S.A.

Gottschalk, H.B., "Notes on the Wills of the Peripatetic Scholarchs", Hermes, 100, (1972)

=Gottschalk, Notes

Giuraud, P., La Propriété Foncière en Grèce Jusqu'à la Conquête Romaine (Paris, 1893)

=Guiraud, Prop.Fonc.

Harrison, A.R.W., The Law of Athens, I, II, (Oxford, 1968, 1971),

=Harrison, Law I, Law 2.

Jones, J.W., The Law and Legal Theory of the Greeks, (Oxford, 1956)

=Jones, L.L.T.G.

Lacey, W.K., The Family in Classical Greece (Auckland, 1980)

=Lacey, Family.

Lipsius, J.H., Das Attische Recht und Rechtsverfahren (Leipzig, 1905-1915)

=Lipsius, D.A.R.

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=MacDowell, Law.

Norton, F.O., "A Lexicographical and Historical Study of Διαθήκη ", (Chicago 1908) pp. 1-75, Historical and Linguistic Studies in Literature related to the New Testament, (Chicago, 1909) pp. 380-449

=Norton, L.H.S.

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=Rhodes, A.P.

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