

# SIMULATION AND FICTITIOUS MARRIAGES

**Sara Landini**

Associate Professor of Private Law, University of Firenze  
Responsible of the GoInEU Project Management and Coordination

[sara.landini@unifi.it](mailto:sara.landini@unifi.it)

*The content of this document represents the views of the Author only and it is his/her sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.*

This Project is implemented by Coordinator



UNIVERSITÀ  
DEGLI STUDI  
FIRENZE  
DSG  
DIPARTIMENTO DI  
SCIENZE GIURIDICHE

Partners



ELTE LAW  
FACULTY OF LAW



VNIVERSITAT  
ID VALÈNCIA

Centro de  
Direito da  
*Família*



Fondazione  
Italiana  
del Notariato



Associazione Avvocati  
Matrimonialisti Italiani  
Sezione Distrettuale di Firenze

# SESSION 1

## Defintion of the problem



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## In this first session we will look at the following topics:

- 1 – Definition
- 2 – Simulation in private law
- 3 – So called simulation in Family and Succession law



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# Definition

Generally speaking in case of simulation we have a public simulated will and a secret concealed will.

Different concept in European civil law countries:

French law → Simulation = Counter Statements

German Law → Simulation = Apparent and Hidden Transaction

Italian and Spanish Law → Simulation = Contract without effects between the parties

# Simulation in private law

## Main Distinctions:

Absolute Simulation: Apparent Transaction without effects between parties

Relative Simulation: Apparent Transaction and Hidden Transaction which produces effects between parties

# Simulation in private law

## Elements of Simulation:

Apparent Transaction

Hidden Transaction only in case of relative Simulation

Agreement regarding simulation: it expresses the will of the parties



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## So called simulation in family law

Simulation in family law it is mainly present in case of so called fictitious marriage where both spouses enter into marriage without willing all the marriage effects

A fictitious (or sham or fake) marriage or fake marriage is a marriage entered into purely for the purpose of gaining a benefit or other advantage arising from that status



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# SESSION 2

## Cases



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## In this second session we will look at the following topics:

- 1- Simulated Marriage in the middle age
- 2- Simulated Marriage in the present time
- 3- Is it a case of Simulation?



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# Simulated Marriage in the middle age

In 1212 Pope Innocenzo III declared invalid a marriage in a case of lack of consent of both spouses regarding one or more of the so called bona matrimonii:

- bonum fidei: "fides", or the faithful exclusiveness of the relationship, is a "bonum" or attribute of matrimony;
- bonum proles: "proles", or the "procreativity" [4] of the marital relationship, is a "bonum" or attribute of matrimony;
- bonum sacramenti: indissolubility, or the unbreakable permanence of the marital bond, is similarly a "bonum" or attribute of matrimony.



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## Simulated Marriage in the middle age

Eclesiastic Courts, according to the canonic code, still consider void a marriage in case of mental reserve of one spouse or in case of an agreement between spouses to not respect the “Bona Matrimonii”.



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## Simulated Marriage in the present time

A fictitious (or sham or fake) marriage or fake marriage is a marriage entered into purely for the purpose of gaining a benefit or other advantage arising from that status



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## So called simulated marriage

Fictitious marriages are different from cases of marriage fraud, in which one spouse feigns romantic interest, typically in order to obtain a residence permission or for economic interest.



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# Mental reserve in Marriage

The "mental reserve" must be distinguished from sham marriage. In case of mental reserve one of the spouses, while expressing outwardly its own nuptial consent, advances in its inner sphere some reserve regarding the marriage. This circumstance, however, does not affect the validity of the express consent and therefore has no juridical relevance for the civil law, for which only the declared will takes on value, unlike what happens in the canonical order, which attributes value to the will and not to the declaration.



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# Simulated Marriage in Italian civil code

According to art. 123 of the Italian civil code the marriage is sham when the spouses have agreed to not establish a common life and, therefore, not to fulfill the obligations and not to exercise the rights descending from the marriage, considering the same only as an instrument to achieve certain utilities of an ancillary nature.

For example: simulation is set up if with the marriage a person intends to pursue exclusively the achievement of citizenship (since 1983 however in Italy the citizenship is no longer automatic with the marital status), the right to a future survivor's pension, or to satisfy simple reasons of family convenience or social.

In judicial proceedings, the action for the invalidity of the marriage can be proposed within a year of the celebration and on condition that, in this period, the spouses have not cohabited as spouses.



## Is it a case of Simulation?

**Parties want to be married to get some marriage effects**

**But**

**Parties enter into marriage for purposes that are not related to the marriage.**



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# SESSION 3

## Concordat marriage



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## In this third session we will look at two cases of sham marriage:

1. Sham marriage aimed at resolving the lack of inheritance capabilities
2. Sham marriage aimed at obtaining permission to enter and remain in a foreign Country



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# Case 1

Marriage to obtain inheritance rights related to the marriage status:  
right to the share reserved to the spouse and/or pension rights

Invalid sham marriage → no inheritance rights related to marriage →  
invalidity of all acts realized by exercising inheritance rights



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

## Case 2

A sham marriage, or marriage of convenience, or a sham civil partnership describes a marriage or civil partnership entered into for immigration advantage by two people who are not a genuine couple.

What happens if one of the spouse dies ?

The other won't get inheritance rights and the share reserved to the spouse, if the successors of the dead sham spouse will be able to get the declaration of nullity of the marriage.



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# SESSION 4

## Judgment of the Canonic Court and conclusions



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

GoInEU



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# In this fourth session we will look at the recognition by civil Judges of judgement of the Canonic Court :

- 1 – Concordat Marriage and Simulation
- 2 – Italian Cassation Court 18 dicembre 2013, n. 28220



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

# Concordat Marriage and Simulation

- The marriage rite conducted according to the traditions of some religions can be recognized and registered by the civil registry office without having to enter into a separate civil marriage. This is the so-called **concordat marriage**.
- The Catholic marriage is regulated according to the canonic code
- According to Canonic Code a Marriage is invalid in case of simulated marriage, i.e. when spouses don't want to put in act the so called bona matrimonii or in case of mental reserve.



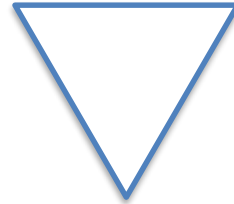
# Italian Cassation Court 18 dicembre 2013, n. 28220

- On 7th December 2005 the Ecclesiastic Tribunal of Reggio Emilia declared null a marriage because one of the spouses (M.) declared that “he doesn’t believe in Marriage”.
- The Court of Appeal of Bologna recognized the judgement of the Ecclesiastic Tribunal
- The other spouse ( C.) affirms that such judgement is against the public order because the mental reserve has no effect regards to civil effects of the marriage.
- The Cassation Court focuses on the consciousness of both C. and M about the mental reserve of M. So the Cassation Court confirm the judgment of the Court of Appeal of Bologna.



## Italian Cassation Court 18 dicembre 2013, n. 28220

- In case of nullity both spouses lose marriage inheritance rights .
- In case of nullity no divorce allowance



IS IT NECESSARY TO CONSIDER PUBLIC ORDER ALSO WITH REGARD TO SOLIDARITY BETWEEN SPOUSES?

# Conclusions

The marriage simulation remains a current theme because it represents a way to acquire privileged positions, for example with regard to the discipline of immigration and inheritance rights.

In the case of sham marriage, sham spouses want to be married and the marriage invalidity derives from the intent of the Legislator to sanction the use marriage, that is an expression of the noble intent of a sharing of life, like an instrument adopted only to achieve economic purposes.



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION



This Project is funded  
by the European Union's  
Justice Programme 2014-2020

**Thanks for your attention**



GOVERNING INHERITANCE STATUTES  
AFTER THE ENTRY INTO FORCE  
OF EU SUCCESSION REGULATION

**GoInEU**



This Project is funded  
by the European Union's  
Justice Programme 2014-2020