



MASARYK UNIVERSITY  
FACULTY OF LAW

# Law of Succession 19th-20th century

Zápatí prezentace



## Basic overviews of privat law acts on Czech territory

- 1811 - ABGB
- 1918 - 1920 - Trialism (ABGB, BGB, custom law + special acts)
- 1920 - 1939 - Dualism (ABGB, custom law + special acts)
- 1920-1938 - Efforts for the codification - Draft 1924, Draft 1931, Draft 1937
- 1939- 1945 - Influence of Nazi law and ideology (ABGB)
- 1945-1948 - Dualism
- 1948-1950 - Two-years project - recodification of law - unification and new law for „people-democratic“ republic
- Civil code 1950
- 1960 - Socialistic constitution - new recodification
- Civil code 1964
- 1991 - Novelization after the fall of communist regime (1989)
- 2012 - New civil code (valid from 2014)



# ABGB characteristic of the law of succession

- Built on continental tradition of reception of Roman law and natural law
- Preference to the will of the testator - testament, bequest (possible to exhaust all the estate) + preference to private acquisition (relatively little formal requirements)
- Inspiration from German law - contract of inheritance x only for spouses
- Medieval institutions - „aristocratic“ fideicommissum (on our territory cancelled by the Act of 1925)
- Liability for debts - complete except for inventory
- „The Liberal Spirit“ - combination of delinquent reasons (all three ones, alternatively more testaments side by side)
- 1811-1917 - possibility of derogating clause - in case testator's newer will did not fulfil requirement set by the older will, then the older will was valid (it should be allegedly a protection against enforced wills) - cancelled by III. Amendment 1917



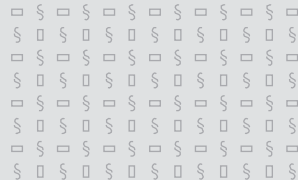
# Hungary

- Custom law + special acts
- Act about formal requirements of testament
- Preference to public acquisition over notary
- Specific institutions of medieval law:
  - Materna maternis - paterna paternis
  - If spouses do not have children, the property of the deceased spouse is not transferred to the spouse. The property returns back to the original family of the deceased spouse.
- Limited liability for debts



# BGB

- New classification in comparison to ABGB
- BGB respects disposition of the will
- Public testament preferred - private testament and private holographic testament were not possible even in the original proposal (influence of ALR, legacy of the justinian tradition)
- Inheritance agreement - possible to make with anyone
- Nazi regime (amendment 1938)
- - reflection of rasial regulations x changes were not as big as in other law areas
- -mitigation of formal requirements for holographic testaments (personal wish of A. H. - influence of ABGB) - preserved to this day



# Law of succession in the Communist bloc

- SSSR
  - - Decree of 27 April 1918, which confiscated the whole heritage higher than 10 000 rubles x not applied to the property gained by work
  - - 1925 - it was abandoned x inheritance tax was counted according to the seizure of heritage
- Poland
  - Decree of 8 October 1946 no. 238 (PD 46), Kodex ciwilny 1964
- Hungary(HCC59 - act IV/1959)
  - Formal testament remains
  - The System materna maternis preserved in limited extent
- generally - preference to the intestinal succession over the testamental succession



# Civil code 1950

- Classification - ABGB - property rights, law of succession, obligations
- Classification - CC 1950 (and CC 1964) - property rights, obligations, heir
- Reason: „*Statutory succession is caused by the family relationships and it strengthens the family as a foundation of the development of nation...*“  
(The explanatory report to the sec. 512 CC 1950)
- Gai Inst. 2.99: „*... nam vel ex testamento vel ab intestato ad nos pertinent.*“
- By way of contrast:
  - Succession can occur under the law or by testamentary disposition
  - (Sec. 599 par. 1 HCC IV/1959, Sec. 512 CC 1950)
- Difference between CC 1950 and CC 1964 - CC 1950 reacts to ABGB, CC 1964 did not have many regulations like this



## Code civil 1950

- Inheritance agreement - explicitly abolished
- Testament - restrictions:
  - - obligatory date of the testament
  - - non-existence of privileged testaments
  - - only one person (a contrario joint testament of spouses according to § 1248 ABGB)
  - - not possible to impose a condition (any condition is invalid)
  - - not possible to restrict heir to time (reaction to the substitution in trust - fideikommissarische Substitution v ABGB)
- Bequest - only for things of infinitesimal value; if all bequests exceed  $\frac{1}{4}$  of heritage, the bequested people become heirs
- Liability to debts limited to the seize of shares

## Civil code 1964

- Inheritance agreement - no reference
- Testament - identical to CC 1950
- Bequest
  - - not provided, nor mentioned
  - - replaced with „individual succession“ - possible to inherit particular thing, not only share (as well CC 1950 x parallelly to bequest)
- After 1989 only moderate adjustment of parties form
- Liability to debts limited to the seize of shares - preserved after 1989
- In comparison against CC 1950: not explicitly mentioned necessity to respect the will of testator with the reference to the fact, that it stands for general legal action





# Main limitations

- Required part in CC 1964 - adult heir:  $\frac{3}{4}$  of legal patrimony, minor forced heir: the whole legal part
- „respect“ for will - division of shares in accordance with the testament - only if all heirs agree - if at least one of heirs does not agree, it was divided otherwise



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Thank You  
for Your attenttion

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