



MASARYK UNIVERSITY FACULTY OF LAW

Contract of Inheritance

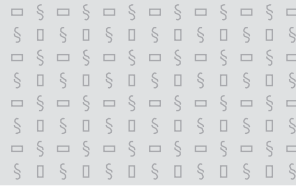
(Pact of Succession, *pactum successorium*)

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Basic Features

- 3rd delation ground (cf. testament, intestate)
- Form of Contract
 - 2 parties => One-sidedly irrevocable
 - In breach of „*Ambulatoria est voluntas defuncti usque ad vitae supremum exitum*“
- Universal succession (vs. deathbed gifts)
- Not in contemplation of death (vs. deathbed gifts)
- Enables to renounce the succession



Roman Law

- Neither civil nor praetorian law recognize

- Gai Inst. 2.114

...militibus ... quomodo uelint ... permittitur testamentum facere.

...soldiers ... are allowed to make a will in any way they want to...

- C 2.3.19 Imperatores Diocletianus, Maximianus

...invicem pactos esse, ut ad eum, qui superstes fuisset, res ... pertinerent...

...mutual pact ... that the property ... should belong to the survivor...

- Roßhirt: „Auf diese Stelle haben die Doctores die **Erbverträge der Adelichen** ex jure Romano gerechtfertigt, denn Sie **seyen milites**.“

At this place, the „Doctores“ vindicated the Roman law contracts of inheritance of aristocrats, as they were soldiers.

- Joint testament: Nov. Val. XXI, 1, 4 (Theod. et Val. 446)

...maritus uxorem, seu uxor maritum ... una charta ... se heredes scribant...

...husband ... appoint his wife ... or the wife ... her husband ... in a single document.³



Code civil

■ Art. 722 CC

Les conventions qui ont pour objet de créer des droits ou de renoncer à des droits sur tout ou partie d'une succession non encore ouverte ou d'un bien en dépendant ne produisent effet que dans les cas où elles sont autorisées par la loi.

Agreements having the purpose of creating rights or renouncing rights to all or part of a succession not yet opened or of an asset forming a part of it are effective only in the cases in which they are authorized by legislation.

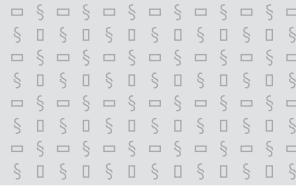
■ Grimaldi: *est nul*, as *c'est le pacte successoral type*

- In specific cases can be considered valid by legal science



ABGB

- Joint testaments (Wechselseitige Testamente): § 1248
 - Spouses
 - One-sidedly revocable, but one's retraction does not mean another's (unless joint contingent testament (*wechselbezügliches gemeinschaftliches Testament*))
 - All formal requirements (just signing document written by the spouse insufficient) (vs. BGB)
- Contract of Inheritance
 - Spouses/fiancés
 - Notarial deed (*Notariatsakt*)
 - Does not limit the contractual freedom *inter vivos*
 - Reserved quarter (similarly like *quarta Falcidia*)



BGB

- Joint testament (*Das gemeinschaftliche Ehegattentestament*)
 - drafting by one of the spouses and signature of the other sufficient (vs. ABGB)
 - Revoking by one makes the other's dispositions invalid
- Contract of Inheritance
 - Does not limit dispositions *inter vivos*
 - But contractual heir can challenge the donations made by the testator who was trying to hurt the heir's rights (§ 2287 Abs. 1)
- *Berliner Testament*
 - the spouses appoint one another as an heir and aside from that they appoint another heir, usually their children (cf. pupillary substitution).



Czechoslovakia and Czech Republic, Switzerland

- ABGB + Hungarian customary law, cancelled 1950, 1964
- 2012 taken over from ZGB
- Reserved quarter
- Notarial deed.
- Dispositions *inter vivos* generally not affected
 - But can be challenged should they interfere in the property reserved for the contractual heir; unlike the BGB, intention does not need to be involved.
- Not only husband, wife / fiancés.
 - ZGB allows that contract of inheritance is concluded not only by the spouses, but also by other people.
 - May be concluded as pension contract (*Erbverpfändung*), i. e. synallagmatic relationship in which the beneficent shall provide the testator with care and support (*Unterhalt und Pflege*)



Hungary

■ Customary law

- Contract of inheritance prevented from lucrative dispositions with the object thereof *inter vivos*
- Joint testament of spouses which could be retracted one-sidedly, but the mutual provisions were no longer effective upon such a retraction

■ Socialist law (contract of inheritance remained even though is capitalist)

- Transformed into synallagma;
 - providing care and support to the testator
 - prevents from dispositions *inter vivos*.
- Requirements of an allograph testament, i.e. entering into the contract in front of witnesses or notary public.
- Spouses, with certain limitations between parents and children

■ New Hungarian civil code

- Joint testaments of the spouses
- Contract of inheritance conditioned by provision of care and support



Poland

■ No contract of inheritance (Art. 941 KC)

Rozrzádzić majątkiem na wypadek śmierci można jedynie przez testament.

It is only possible to handle property mortis causa only by means of a testament.

■ No joint testaments (Art. 942 KC)

Testament może zawierać rozrzádzienia tylko jednego spadkodawcy.

There may only be a disposition by one testator in the testament.

■ Renunciation contract possible (Art. 1048 KC)

Spadkobierca ustawowy może przez umowę z przyszłym spadkodawcą zrzec się dziedziczenia po nim. Umowa taka powinna być zawarta w formie aktu notarialnego.

A statutory heir may reject his share upon an agreement with the testator. Such an agreement shall be made in a form of a notary deed.