



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

TREASURE TROVE

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Zápatí prezentace



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Treasure - definition



PRESENT-DAY LAW

- **§ 398 ABGB:**
- If things are exposed in money, jewellery, or other precious things that have been in the shelter for so long that their former owner can not learn about them, they serve as a treasure.
- **Draft CZCC 1937**
- Treasure is a valuable thing that one can suppose it has been hidden for a long time and belongs to noone. Every creature that is of scientific or artistic value is considered to be a valuable thing.
- ZGB, BGB - no definition
- Is there a definition in your law?



ROMAN LAW

- D 41,1,31,1 Paulus 31 ad ed.:
- *„Thensaurus est vetus quaedam depositio pecuniae, cuius non exstat memoria, ut iam dominum non habeat..*
- *„Treasure is an old-fashioned deposit of money where there is no awareness who it belongs to.“*

- ***Depositio*** - a thing intentionally hidden
- ***Vetus*** - for a long time hidden
- ***Non extat Memoria... dominum*** - had an owner (ne res nulius) x he was not known
- ***Pecuniae*** - money, valuable thing (debatable)



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Thing discovered x treasure



Thing discovered

- Someone discovered it x not clear, how the owner lost it
- Abandoned thing
 - The original owner does not want it anymore.
 - Possible to keep it (occupation) - necessary to grasp it
 - It cannot be assume that a discovered thing is abandoned!
- Lost thing
 - The original owner lost it independently on his will.
 - Ownership is preserved - necessary to return it to him
 - Roman Law - necessary to announce it, in case noone claims - acquisitive prescription
 - Nowadays - a specific kind of an acquisition of the right of ownership (de facto limitation of time of a proprietary action - 3 years)



Discovery of a treasure + thing hidden

- Treasure - safekeeping x the owner is not known
- Owner
 - - original / possible to find out - e.g. coat of arms on the coffer, on the basis of dating of coins, it is possible to determine who the last owner of the house was.../ x irrelevant
 - - present-day owner - We can know who had hidden a treasure, but we do not know who the inheritor of it is. x if the inheritor is known, then the „treasure“ belongs to him - Law of Succession excludes a discovery of a treasure
- Discovery of a treasure
 - The finder is the one, who has seen it first x not the one, who has touched it first
 - Stable interpretation of glossaries
- Thing hidden
 - ABGB - a treasure is a specific kind of a hidden thing
 - Thing hidden - the same regime as a thing discovered x other regime as a treasure
 - Difference between a treasure - valuable thing x only discovered on land (a valuable thing in a secret drawer is a thing hidden) - continues in § 399: the owner of a treasure is from one half the finder and from the other half the owner of the estate



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Valuable - a thing valuable



Is an obligatory requirement?

- YES
- Roman law?
- ABGB
- ZGB?
- NO
- BGB
- Code civil



„Thing valuable“

■ Roman law

- pecuniae (Paul), monilia (Cod.Th), mobilia (Cod. lust.)
- Money, jewellery, movable properties

■ ABGB

- Geld, Schmuck, andere Kostbareiten
- Money, jewellery, other preciousness (czech translation:drahocennosti)

■ ZBG

- Wertgegenstand
- What is the difference between „Kostbarkeit“ and „Wertgegenstand“?
- A thing precious x a thing valuable (values are also moral - not „only“ appraised in money)



What is valuable?

■ Roman law

- Money - value according to a content of precious metals
- Jewellery
 - - surely art work x not all of them - often were remaken
 - Value of the metal

■ The Middle Ages

- Glanwill: „Some kind of metal“
- Precious metals belong to the sovereign



Treasure in Podmokly – 1771

Discovery of Celtic gold coins „iris“, altogether 7000 coins (cca 45kg)

Survived less than 50 pieces (20 pieces at National Museum, something at Křivoklát Castle and in foreign collections)

The rest was melted down and used for production of new ducats (gold coins).



Kostbarkeit x Wertgegenstand

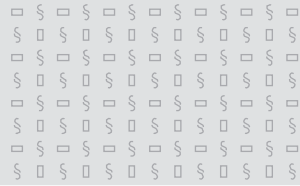
- Kostbarkeit
- ABGB (1811) x passed from previous regulations (half of 18th century)
- - remnant of „Roman and Mediaeval conception“
- Valuables consist in value of metal

- Wertgegenstand
- ZGB (1907)
- Modern approach
- Valuables consist as well in a historic, cultural and art value.
- It is a part of a cultural heritage - principally the owner is a state, which protects it



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Owner of a treasure



Roman law

- Archaic time - owner of estate (superficies solo cedit) - the same in the Bible
- Early empire - state(aerarium)/fiscus
- Hadrian - $\frac{1}{2}$ finder, $\frac{1}{2}$ owner of estate
- Severovci - fiscus
- Konstantin - fiscus x finder $\frac{1}{2}$ as a reward for announcement
- Leon (... n.l.) - finder and owner ($\frac{3}{4}$ a $\frac{1}{4}$)
- Justinian - like Hadrian

- Not linear progress - modern time alike



Owner of a treasure in ABGB

- Codex Theresianus
 - Erblose Sache - a thing without a heir
 - Escheat to the sovereign x reward for a finder and owner of estate
- Martini's Draft
 - „Herrenlose Sache“ - a thing without an owner
 - The same ownership + finder's fee
- Not came into force x repercussion in Decrees of Marie Theresia, Joseph II a Leopold (cancelled ABGB x in Slovakia valid until 1950)
- ABGB (1811)
 - Owner, finder and state (1/3 each of them) - Zeiller - on the grounds of opportunity
 - Hofdekret 1846 - 1/2 finder, 1/2 owner of estate - modification in order not to come about concealing
 - The Decree cancelled by the Act of 1999 (act that cancelled all the additions of ABGB, that didn't go through a proper legislative process) - return to the situation in 1811
 - 2002 - by an Amendment of Act of Police there was a return to the version of ABGB after 1846



Ownership of a treasure on a territory of CR

- Interwar time
- ABGB (after r. 1846) + Decrees of sovereigns (state-finder-owner 1/3 each of them)
 - **Draft 1924** - a finder and an owner of estate x state has a pre-emptive law (influences of ZGB - e.g. special section for products of nature)
 - **Draft 1931** - as in ABGB after an Amendment 1846 (1/2)
 - **Draft 1937** - state-finder-owner of estate (proposal of Ministry of Finance because of tax reasons x Ministry of Education was against)
 - **Draft 1946** - a state was the owner - pays out a finding's fee or leave a proportionate part
- Postwar time
 - CC1950 - a thing discovered and hidden, of which the owner is not known, belongs to a state (unless it is imperceptibly valuable)
 - CC1964 - a thing discovered and hidden, of which the owner is not known, belongs to a state (even if it is imperceptibly valuable)
 - 1958 - first codification of protection of cultural sights - archeologic discovery was defined
 - **1987** - new Act of cultural sights - valid /amended/ up to now



Finder's fee

- Interwar Drafts (1924, 1946)
 - - not less than a value of a discovery (motivation to not conceal)
- Order 1941
 - - During archaeological surveys carried out by state institutions, there is an obligation to compensate for the damage caused by the research and in case of a valuable finding to replace the value of metal of this finding to the landowner.
 - Archeological discovery according to Act of 1958, 1987 - finder's fee
 - 10% cultural historical value (i.e. cca 30% of market price)
 - Discovery of precious metal - 10% of the value of the metal from which the thing was made



Not allowed finding

- § 400 ABGB
- How not allowed?
- Not allowed archeologic works x but prohibition of use of witchcraft
- The same see Cod.Th.....



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Thank You for Your attention

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