

Ondřej Frinta

Law of Succession



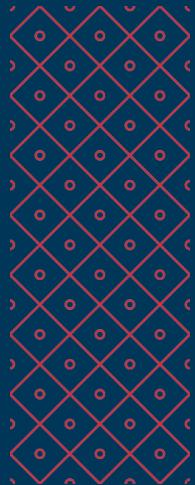
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(ECtHR: Jarre vs. France, No. 14157/18)



Chapter 1

Notion: Law of Succession



Notion: Succession Law

objective sense: a set of legal rules regulating the transition of rights and duties of a deceased person

X

right to inherit (subjective sense): right of a person arising in relation with the death of its predecessor (“right to be an heir”)

= **absolute right**

= operates *erga omnes* (against everybody)

= every other subject has a duty not to disturb the exercise of this (subjective) right



Chapter 2

Fundamental Principles



Fundamental Principles: (1) Liquidation of the Estate VS (2) Preservation of the Estate

Ancient history (before Roman Law): no law of succession developed

= the Estate will be buried together with deceased person

X

the society develops: it makes no sense to destroy the property

= the property will be preserved

= **Q: who shall master the property left after deceased person?**



Fundamental Principles: (1) Succession of a Collective VS (2) Succession of an Individual

Q: who shall master the property left after deceased person?

A collective (principle of collectivism)

= the estate will be transferred on a collective (village, tribe, state/ruler)

X

An individual

= the estate will be transferred on another individual



Fundamental Principles: (1) Familiarization VS (2) Testamentary Freedom

Q: Who shall master the property left after deceased person?

An individual

= the estate will be transferred on another individual

2. But Abram said, “O Lord God, what will you give me, for I continue childless, and the heir of my house is Eliezer of Damascus?” 3. And Abram said, “Behold, you have given me no offspring, and a **member of my household will be my heir.**” 4. And behold, the word of the Lord came to him: **“This man shall not be your heir; your very own son shall be your heir.”**

(Genesis 15)

= **Solus deus heredem facere decedere potest, non homo.**

= Principle of familiarization = preserving the estate in the family lineage



Fundamental Principles: (1) Familiarization VS (2) Testamentary Freedom

Q: who shall master the property left after deceased person?

An individual

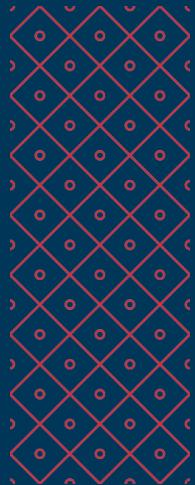
= the estate will be transferred on another individual

X

Testamentary Freedom

= **current principle based on a more general principle of the autonomy of will**

= the owner can dispose with his estate not only during his life (ownership freedom), but also *mortis causa* (in the case of death)



Chapter 3

Universal Succession VS. Singular Succession



Universal Succession

“Heres in omne ius mortui, non tantum singularum rerum dominium succedit.”

D 29, 2, 37 – Pomponius

The heir enters in all rights (*nota bene*: and duties!) of a deceased, not only in ownership of single things.

Note: he enters also the debts!

X

exceptions: rights and duties bound exclusively to a deceased person



Singular Succession

special (separate, exceptional) legal succession

the transition of rights and duties in relation with the death of a predecessor, but under **other provisions of law** than provisions on succession law

= independently on being or not being an heir

e. g.: Sect. 2279 (lease of flat is passing on member of lessee's household)

X

distinguish: new right is created to other person based on the death of another person

= no succession; e. g. Sect. 82 para 2: After the death of an individual, the protection of his personality rights may be claimed by any of his close persons.



Chapter 4

The Moment of Transition of the Estate



The Moment of Transition of the Estate

Succession right is **created upon the decedent's death.** ...

(Sect. 1479)

= the moment of death = the moment of creation of succession right

= rights and duties are passing at the moment of and by the death of a person (or later)

Q: Two persons have died almost at the same time, but we don't exactly know, which one died as first. Give possible solution!



The Moment of Transition of the Estate

Q: Two persons have died almost at the same time, but we don't exactly know, which one died as first. Give possible solution!

In general, two possible solutions can be offered:

- 1) They will be presumed to die at the same moment
- 2) They will be presumed to die in a sequence of intestate succession (NOT used in Czech Civil Code!)



The Moment of Transition of the Estate

Q: Two persons have died almost at the same time, but we don't exactly know, which one died as first. Give possible solution!

Sect. 27:

If a legal consequence is dependent on an individual surviving another individual, and it is not certain which of them died first, **they are all presumed to have died at the same time.**

a counter-proof is allowed

= Important legal consequence for legal succession!



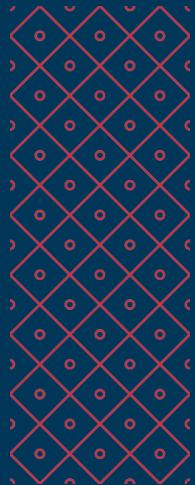
The Moment of Transition of the Estate

Q: Two persons have died almost at the same time, but we don't exactly know, which one died as first. Give possible solution!

Sect. 1479:

If some people have died **simultaneously**, at the same moment of time, **they are not able to inherit after each other**

= it applies to all legal titles of succession!



Chapter 5

Prerequisites of Inheritance



Prerequisites of Inheritance

- 1) The death of natural person
- 2) Existence of estate left, more precisely existence of rights and duties
- 3) Legal title:
 - inheritance contract
 - testament (testamentary succession)
 - operation of law (intestate succession)
- 4) Capacity to inherit:
 - absolute
 - relative



Chapter 6

Legal Titles (1): Inheritance contract



Legal Titles (1): Inheritance contract

By the inheritance contract the testator calls up the second party or a third person as an heir or as a legatee and the second party accepts it.

(Sect. 1582)

Q1: when suitable to call up a third person as an heir or legatee?

Q2: Is there a difference between heir and legatee?



Legal Titles (1): Inheritance contract

Q1: When suitable to call up a third person as an heir or legatee?

= e. g. when third person has no capacity to perform legal act in such an extent to be able to enter into inheritance contract (e. g. child, a person with limited capacity to perform legal acts)

Q2: Is there a difference between heir and legatee?

Heir enters in all rights and duties (= incl. debts)

X

Legatee has (only) a right against an heir on handing over an object of legacy

= He is **not** universal successor, no transition of debts under legacy



Chapter 7

Legal Titles (2): Testament



Legal Titles (2): Testament

= act in law (juridical act), which is:

unilateral (! no consent of heir needed !)

revocable (! can be freely changed by the testator !)

non-addressed (! has not to be delivered to an heir to have legal effects !)

by which the testator disposes of his assets *mortis causa* for the case of his death



Legal Titles (2): Testament

different forms of testament:

1) holograph testament

- (Greek: holós = by myself; + graphein = to write)

2) allograph testament

+ public (notarial) deed testament (in some cases required by Civil Code)

Q: Which form of testament you prepare if you type your testament on PC, print the file and sign it?

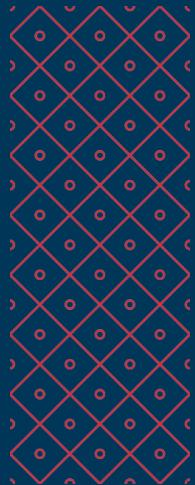


Legal Titles (2): Testament

Q: Which form of testament you prepare if you type your testament on PC, print the file and sign it?

This is **allograph** testament!

(it is not written solely by your own hand)



Chapter 8

Legal Titles (3): Intestate Succession



Legal Titles (3): Intestate Succession

succession by operation of law

takes place when there is no succession based on inheritance contract or testament

in European context usually based on family lineage

in European context members of family usually sorted from close to more distant relatives

in European context **no discrimination** based on sex and origin (legitimate or illegitimate children)

Q1: How far shall the intestate succession go in family lineage?

Q2: Shall a cohabiting (not married, but living as being so) person inherit as well?



Legal Titles (3): Intestate Succession

Q1: How far shall the intestate succession go in family lineage?
the risk of so called “*smiling heirs*”

Example in Czech Civil Code: six classes of intestate heirs

- 1st class: spouse, children (+ offspring)
- 2nd class: spouse, parents, cohabiting person
- 3rd class: siblings, nephews/nieces, cohabiting person
- 4th class: grandparents
- 5th class: great-grandparents
- 6th class: uncle/aunt, cousins, children of nephews/nieces



Legal Titles (3): Intestate Succession

Q2: Shall a cohabiting (not married, but living as being so) person inherit as well?

Under Czech Civil Law a tradition from 1950's (from Civil Code No. 141/1950 Coll.)

In 2nd class not allowed to inherit as a single-person heir

= allowed to inherit no more than $\frac{1}{2}$ share (together with e. g. spouse or parent)

In 3rd class allowed to inherit as a single-person heir



Chapter 9

Forced Share / réserve hérititaire



Forced Share / réserve héritaire

The principle of familiarization **in contrast with** the principle of testamentary freedom

= none of these two principles is applied in its pure/single form

(which would mean no testament allowed or absolute freedom to dispose with estate mortis causa)

In European context civil codes there is usually a **mixture of these two principles**

= **forced share / réserve héritaire (réserve légale)**



Forced Share / réserve héritaire

Forced Share (forced heir, statutory heir) under Czech Civil Code

= a person having right to his compulsory (mandatory) share on inheritance

who they are: descendants of deceased person **X not a spouse!**

what are they entitled to:

minors: they obtain at least $\frac{3}{4}$ of their intestate share

adults: they obtain at least $\frac{1}{4}$ of their intestate share

= a balance between principle of familiarization and principle of testamentary freedom



Forced Share / réserve héreditaire

ECtHR: Jarre vs. France, No. 14157/18

64. The Court therefore sees no reason to depart from the reasoning of the domestic courts insofar as, on the one hand, **it has never recognised the existence of a general and unconditional right of children to inherit part of their parents' property...**

65. The Court notes that the domestic courts thus respected the deceased's freedom to dispose of his property by will, which reflected a 'continuous and well-defined' approach to ensuring that his surviving spouse would benefit from his entire estate, by noting the absence of any fraudulent intent in his approach and observing that the validity of the trust under Californian law was not disputed and should therefore be accepted...

= in European context, there is no right of children to inherit after parents



List of Sources – Civil Code, Case Law

Relevant provisions of Czech Civil Code:

Sects. 1475-1720

Case law:

ECtHR: Jarre vs. France, Application no. 14157/18



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