



MASARYKOVA UNIVERZITA
PRÁVNICKÁ FAKULTA

Law of Succession Concept and Principle

Zápatí prezentace



Concept of Law of Succession

Law of succession serves primarily to identify those who will succeed in the legal position of the deceased (*P. Bonfante*)

Law of succession - a set of rules governing the transition of the property of a deceased individual to other subjects (*E. Tilsch*)

Succession - a transfer of the property rights and obligations of the deceased citizen, that was not determined at the moment of death, to his / her legal successor (*Hromada a kol., Právníký slovník, Orbis: Praha, 1966.*)



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LAW OF SUCCESSION PRINCIPLE



The principle of preserving values



Foto Harry Burton
(1879-1940)



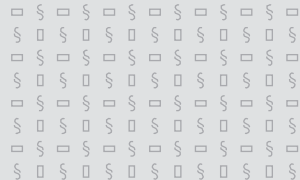
The principle of preserving values

- After whom to inherit
- What to inherit (movable x real estate from beginning)

Premises:

- Privat ownership of individual person
- The relationship between the person and his property finish with the death
 - Primitive religions - property was destroyed together with the defunct
 - „taboo“ - the thing belongs to the deceased even after his death, a disposition with it is forbidden
 - Gradual retreat - replacement for symbolic things, symbolic redemption from the dead, etc.

Does it matter today?



The principle of preserving values

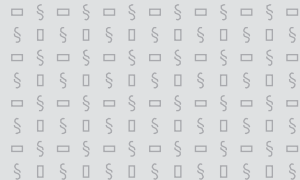
- Today:
- Important mostly at real estate
- But also: industrial enterprises and factories, copyright, etc.



pictures: www.mojeauto.cz a
<http://auta5p.eu>



Meaning/importance(?): this principle manifests the unity of mankind in the future, the solidarity of generations about themselves - it allows the continuation of quality of cultural level and the pursuit of goals that go beyond one human life



The principle of the transition to an individual person

- Privat ownership of decendent x what after the death?
 - transition to an individual person
 - transition to society as a whole - Bentham, St. Just, St. Simon
 - Restriction of succession in favor of society as a whole

Zdroj: www.wikipedia.cz





The principle of the transition to an individual person

Protagonists

- Motivation for productive activity
- It supports the effort to preserve for the next generation
- Leaving would reduce productivity and start tendency to spend all income
- „*Instead of general well-being, general poverty would be*“ (Glasson, dle Tilsche)

Oponents

- Maintaining inequality in society
- Profit without working
- Idea of abolishment of law of succession (Bakunin) x Karel Marx on 4th General Congress of the International Workingmen's Association (IWA) in Basel, 1869 in opposition to this idea - inheritance law is the consequence, not the cause of social relations



The principle of the transition to an individual person

- Restriction of succession in favor of society as a whole
 - Restriction of freedom of disposition
 - Restriction of intestacy
 - Qualitative restrictions- property that can be disposed of (for example: only movable property)
 - Quantitative restrictions - i.e. the value at which it is available
- Was partly applied in law in years 1948-1989 (not all)



The Principle of freedom of disposition

- Is succession on individual person x Who may be it?
- Principle of coercion (objectiv) - *Solus deus facere potest heredem, non homo*
 - Primitiv society, equable kind of life
 - Also in Middle ages
- Principle of freedom (subjectiv)- UTI LEGASSIT SUPER PECUNIE TUTELAVE SUAE REI ITA IUS ESTO (LDT V.3)
 - More developed society (monetary system and credit)
 - It can be said that it is a manifestation of ius disponendi



The Principle of freedom of disposition

Principle of coercion

- Pro: It strengthens family ties with equal access to everyone at the same level of kinship /x in history preferred first-born heirs, male descendant etc./, can mitigate unfair behavior in life /descendent in favour x not in favour/
- Con: weakening the authority of the head of the family, forces co-ownership, or to disperse property (pauperisation of czech aristocracy in 14th century), may lead to an attempt to transfer assets inter vivos

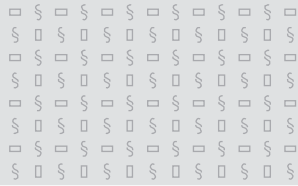
Principle of freedom

- Pro: it strengthens the sense of responsibility and care for care, ensures unity of property and prevents its fragmentation, allows for better continuity of work and solution of complicated property conditions
- Con: unequal position of the heirs, perpetuation of property inequality, the possibility of the testator arbitrarily, the heir may be unduly burdened, to limit inheritance (Trust etc.)



The Principle of freedom of disposition

- Limits of the principle
- Disposition limited to a number of future generations (Substitution in Trust x Trust)
- The need to respect the rights of forced heirs
- “la réserve héréditaire” (influence of Code Civil) - the testament is available only for a certain part of the property (in ABGB at prodigal), the rest is for the legal heirs
- Forced heirs - compulsory part for forced heirs, the rest can be disposed of
- Determining the heir by a third person - such as a family council, or the state - it is not possible, even if the testator pronounced it by himself



The principle of equality

- The principle of equality
 - All potential heirs have equal position x aristocratic principle (first-born heirs, male descendant etc.)
 - Typical for intestacy x it is also important for testacy (the intestacy is on its background and it also looks like it will be tested)
 - could be contrary to the principle of preserving values - therefore it is regulated by principle of freedom of disposition



Principle of universal succession

- Inheritance is *univesitas* - roman law
 - x old german law tradition - the inheriting asset is held in the whole by the person of the deceased and his death is disintegrated - there are different regimes of different assets (movable x real estate - e.g. England, "feminine" x "male" things - Magdeburg law)
- Plurality of heirs - each of them receives only a certain part of asset, it is not possible to inherit a specific thing (*heres ex re certa*)
- Debts - full responsibility of heir (classical roman law) x responsibility for debts limited by the value of the estate (german and english tradition, also justinian roman law)



The principle of freedom of heir acquisition and the principle of official ingerence at acquisition

- The principle of freedom of heir acquisition
 - Archaic law - heir *ipso iure* - the heir did not have to manifest, he became the heir at the moment of death of the deceased person
 - Roman law - principlly of addition - the heir (*voluntarii*) must decide whether to inherit the inheritance (x *heredes necessarii*)
 - BGB, ZBG - acquisition *ipso iure* (tradition + law implies a more typical situation - that is, that the heirs accept, not that they reject the inheritance)
 - ABGB (§ 799, 823)- the addition principle
 - NOZ - acquisition ispo iure
- the principle of official ingerence at acquisition (ABGB, ZGB)
 - Defunctus die - the heir accept the inheritance - the court shall confirm and the estate shall be surrendered by the heir
 - Every estate must be heard by the court



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Thanks for your attention

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