



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

LEGACY

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Zápatí prezentace



WHAT IS LEGACY?

- Gift of personal property through a will by the writer of the will (the 'testator') to an individual or organization (the 'legatee').
- is the institute of law of succession consisting of unilateral legal action in the case of death, by which the testator gives a certain property advantage to the recipient of the estate.
- Heir
 - universal succession - liability for debts
- Legatee
 - singular succession AFTER universal succession
 - he doesn't participate in inheritance procedure
 - Legacy is a debt on the inheritance



Legacy in Roman law

LEGATUM

- based on ius civile
 - only as a part of testament
(only the Roman citizens may be the legatees)
 - very formal
 - four types (2 basic, 2 supplementary)
- Per vindicationem
- Per praeceptionem
 - Per damnationem
 - Sinendi modo

FIDEICOMMISSUM (Trust)

- Absolutely informal
 - not protected by ius civile
 - Protection by „morality“
 - May exist without will (fideicommissum ab intestato)
- Change at Augustus time
- Beginning of protection x also beginning of formalization and limitation (Flavius)
- Justinian - the type which will be more profitable for the legatee, will be used, regardless of the words that the testator used



FIDEICOMMISSUM

■ CODICILLI

- fideicommissum in the letter - as supplement of testament or ab intestato
- Codicilar clause - at the end of testment „if this testament will be invalid due to lack of form, but the form would be sufficient for codicil, let it be a codicil“

■ FIDEICOMMISSUM HEREDITATIS

- the heir has the obligation to issue the whole testator's estate to the trustee
- He has the obligation to pay all debts
- Limitation by SC Trebelianum and SC Pegasianum
- the heirs keep religious rights (sacra privata, iura sepulchrum)

■ FIDEICOMMISSARY SUBSTITUTION

- the heir must, after a certain period of time, hand over testator's estate to another person - who is not an heir (semel heres, semper heres), but trustee

■ FIDEICOMMISSUM FAMILIAE RELICTUM

- The order of the testator that some estate (typically farmhouse, or manor) must remain in the family



LEGACY TODAY

German legal tradition

- different between the heir and legatee like in roman law

France

- System of „reserve“ - difference is not so strong

Hungary

- Only terminologically different, the legatee also has responsibility for debts (but limited)

Czech republic (1964-2012) and Slovakia (1964-today)

- non existing regulation of legacy - the heir has the whole estate, a part, or a certain thing (car) - he is an heir and has (limited) liability for debts



LEGATUM today

Terminological

- in ABGB „Vermächtnis“ x legatee is „Legatar“

Legacy today is a mix of legatum and fideicommissum

- It is formal (mostly the same form, like the will)
- X not only in testament - may be also in codicil (F. ab intestato)

Not limited (most codes) x limitation by Falcidian portion (CZ CC 2012)



FIDEICOMMISSUM today

- **CODICILLI - codicil (dovětek)**
- **SUBSTITUTIO FIDEICOMMISSARIA**
- **Substitution in trust - only terminology (in fact the second one is not a trustee, but also an heir)**
- **No „substitution“ but „institution“**
- **FIDEICOMMISSUM HEREDITATIS**
- **In Roman law limited for 4 generations x in Middle Ages without limitations**
- **Middle Ages „Fideikomiss“ - inspiration from Spain and Italy, from 17th century until 1924**
- **CzCC 2012 - sec. 1448 „Trust“ - inspiration in CC Quebec**



Altenklingen (Switzerland) - trust from 1595



https://en.wikipedia.org/wiki/Altenklingen_Castle



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Thank you for attention

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