

MASARYKOVA UNIVERZITA
PRÁVNICKÁ FAKULTA

FORM OF TESTAMENT

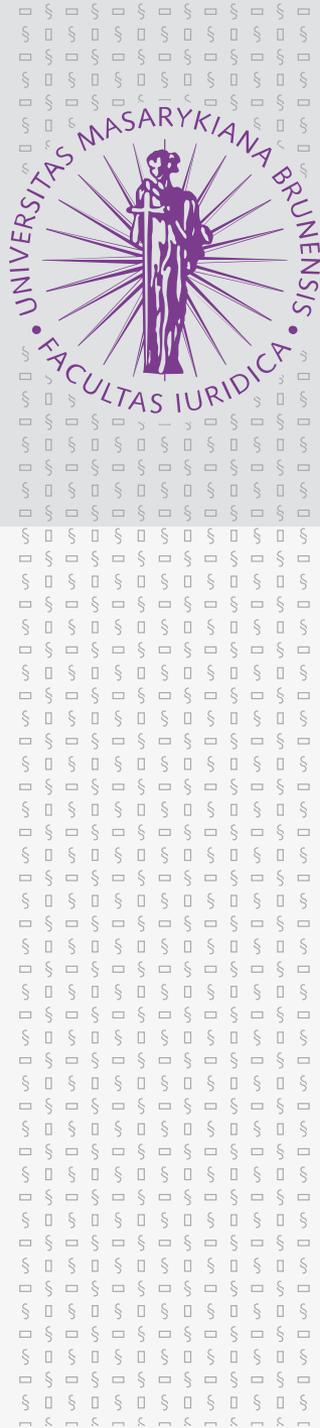
JUDr. P. Salák jr. Ph.D.

Zápatí prezentace



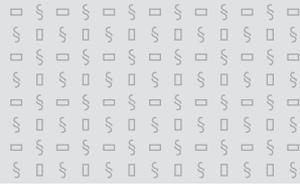
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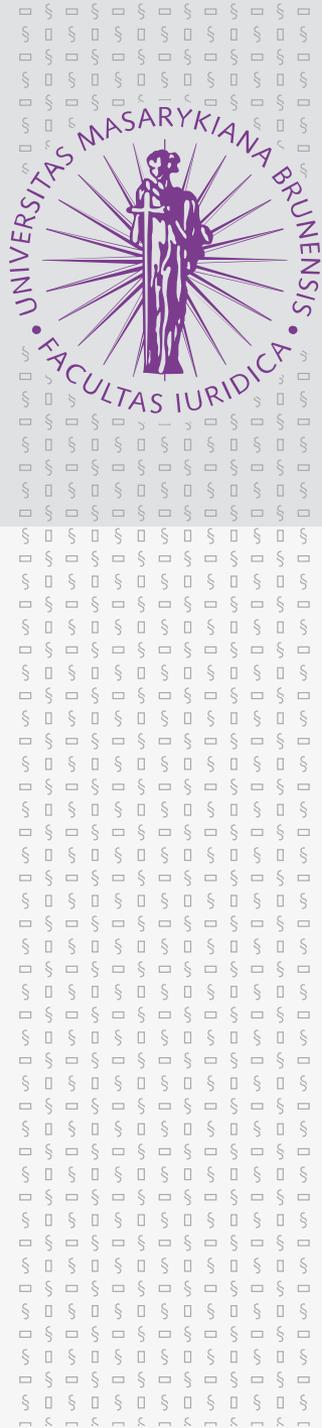
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IMPORTANCE OF THE FORM



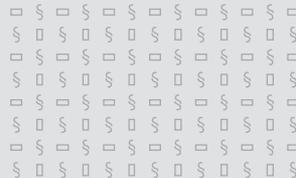
Why form?

- Religious reasons
 - Testamentum calatis comitiis
 - In procinctu - after auspices
- Reason of legal certainty
 - Mancipation testament
 - Gradual replacement of oral ones by written ones



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KINDS OF FORM



ORAL TESTAMENT

■ PROS

- It is easier in some ways:
 - Illiterate population (see ABGB § 584: „...cannot or does not want...“)
 - It could mend formal imperfections (written one with a hand print instead of a signature is like an oral one Gl. U.)
 - Today at making a will with relief (§ 1542 par.1 new CC)

■ CONS

- The question of legal certainty is limited by witnesses:
 - Trustworthiness
 - Memory
 - Life



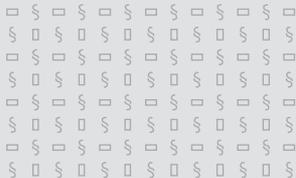
WRITTEN TESTAMENT

■ PROS

- Higher legal certainty than at oral one
 - Text is clear (x memory of witnesses at oral one)
 - Higher use-by than at oral ones (in fact it is limited by life of witnesses)

■ CONS

- Usually only one specimen - may be in danger of destruction
- Not all people can read and write (limited on its obtaining x they do not have to write it by themselves)
- There are situations when it is not possible to write
- Modern media - audio, alternatively audio-visual record of a will



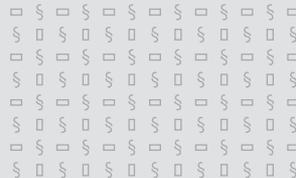
PUBLIC X PRIVATE TESTAMENT

■ PUBLIC

- Higher legal certainty (office guarantee an authenticity)
- Certainty of correct content (notary is legally educated - testament should not be incorrect x sometimes happens)

■ PRIVATE

- The easiest obtaining - testator can make it at home, sometimes there is no necessity of witnesses
- Not connected with financial costs



HOLOGRAPHIC x ALLOGRAPHIC TESTAMENT

■ HOLOGRAPHIC

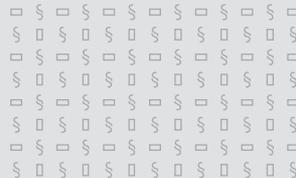
- The easiest form - ordinarily the testator does not need anyone, makes it by himself

■ X

- The problem is legal awareness - it can contain mistakes, the content can be unintelligible, it can be invalid as a consequence
- No one can know about the existence of the testament - appropriate to deposit it

■ ALLOGRAPHIC

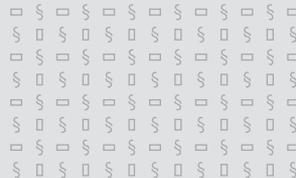
- If the testator can not write x if it is typewritten and not handwritten
- Two moments:
 - Drawing up a testament
 - Declaration that it is testator's will + signatures of witnesses
 - Independent on itself - i.e. a heir can draw up a testament too x then he can't be a witness of the declaration that it is a testator's will



REQUIREMENTS

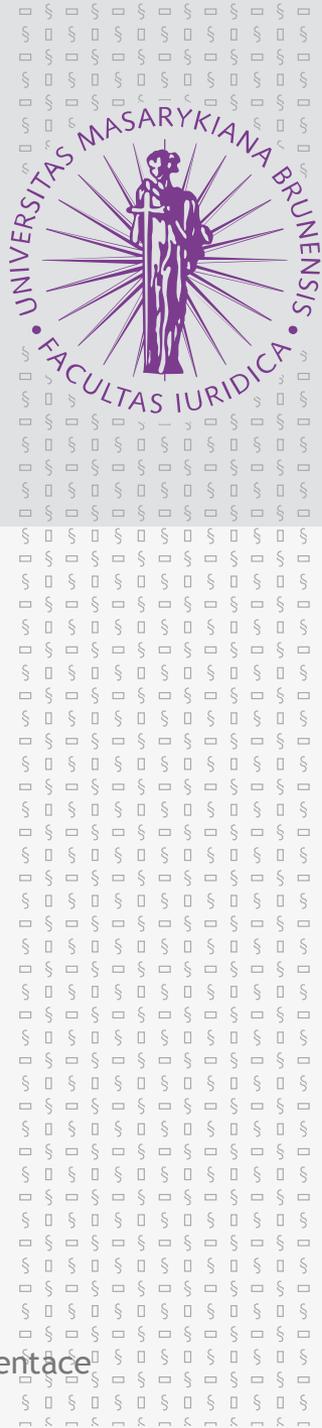
- Witnesses - to testify testator's will
- They do not have to know the content of the testament x or do they?
- Signature + sign showing they are witnesses (Hungarian law - missing sign „witness“ is a reason to invalidity of the testament)

- Place - obligatory (BGB until 1938) x facultative (ABGB) x not mentioned - CC2012
- BGB (before 1938) - signature, date and place at holographic testament also written in one's own hand (§ 2231 par. 2) - i.e. a testament written on a headed paper with a pre-printed statement of the place (e.g. company, or „Hotel X, Hamburg Altona) - is invalid



DATE

- BGB until 1938 - obligatory
- ABGB - facultative
- CC2012 - facultative x if there are several contradictory testaments, or the date is essential for interpretation and there is no date, the testament is invalid
- Explicitly mentioned x must be apparent (i.e. possible to conclude from the content of the testament)
- Form of date
- Day, month and year - 24. 12. 1977 x Christmas Eve 1980 - is it the same?
- Hungarian law (judicature from 1895) - yes
- Interpretation of CC 1950, 1964 - no - must be in the form stated by law
- Only one day, or is it possible to write more days? (not requirement of unitas actu)



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Thank You for Your attention

P. Salák jr.