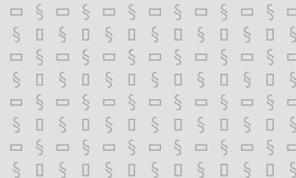


MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Contents of testament

JUDr. P. Salák jr. Ph.D.

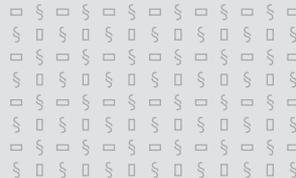
Zápatí prezentace



Dig. 28.5.60.6 , Celsus 16 Dig.

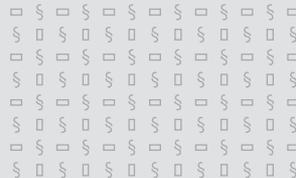
Si ita scriptum fuerit: " titius ex parte tertia, maevius ex parte tertia heredes sunt: titius, si intra tertias kalendas navis ex asia venerit, ex reliqua parte heres esto": videamus, ne titius statim ex semisse heres sit: nam duo heredes instituti sunt, sed titius aut ex semisse aut ex besse: ita sextans utique erit in pendenti et, si condicio exstiterit, ex besse heres erit, si non exstiterit, ille sextans maevio ad crescet. sed si decesserit titius, antequam condicio existat, deinde condicio exstiterit, tamen ille sextans non titii heredi, sed maevio ad crescet: nam cum adhuc dubium esset, titio an maevio is sextans datus esset, titius decessit nec potest intellegi datus ei qui tempore dandi in rerum natura non fuit.

Where the following is stated in a will: "Let Titius be my heir to a third part of my estate, and Maevius be my heir to another third, and let Titius be my heir to the remaining third, if a ship should arrive from Asia within three months." Let us see whether Titius will not immediately become the heir to half of my estate, for two heirs have been appointed. Titius will either be an heir to one-half of it, or to two-thirds, so that a sixth of the estate will be in abeyance, and if the condition should be fulfilled, Titius will be the heir to two-thirds of the estate, but if it should not be fulfilled, the sixth will accrue to Maevius. If, however, Titius should die before the condition is fulfilled, and it should be fulfilled afterwards, the sixth of the estate which remained in abeyance will not accrue to the heir of Titius, but to Maevius; for Titius died when it was still doubtful as to whether he or Maevius would be entitled to the said sixth, since it could not be understood to have been given to him who was no longer in existence at the time it should have been allotted.



Questions

- How does the law understand these sentences: „...and let Titius be my heir to the remaining third, if a ship should arrive from Asia within three months.“
- What would change if there were „within three Greek calendae“?
- What possibilities could happen in this case?
- Why does Titius immediately inherit one half, although he was designated for one third only?
- What kind of principle follows from that?
- Titius died a week before the ship arrived (within established period), could his son claim a part of the estate?



CC 2012

Section 1476

Inheriting takes place on the basis of an inheritance contract, testament or by means of a statute. These reasons may also operate together.

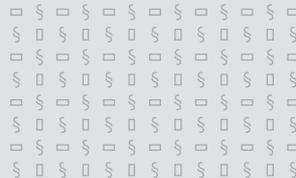
Section 1504

The share of an heir who does not inherit and has no substitute heir becomes vacant and shall proportionately accede to the shares of the other designated heirs only if all heirs have been designated to receive an equal share of the inheritance, or a share defined by a general expression signifying equal division.

Section 1505

(1) A person to whom a particular share of inheritance has been left does not have the right to the accession.

(2) If some heirs have been designated with a share while with others without it, the vacant share shall accede in favour of the designated heirs without a share.



CC 2012

Section 1551

(1) In his testament, a decedent may provide a condition, determination of time or a mandate.

(2) Where a clause of lesser importance only aims to apparently harass an heir or legatee as a result of the decedent's manifest arbitrariness, it is disregarded. A clause of lesser importance which is clearly contrary to public order or is incomprehensible is also disregarded.

Section 1563

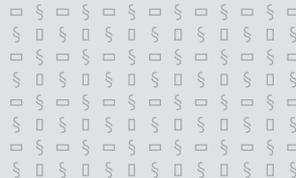
(1) If a person is granted a right with an impossible resolutive condition, it is disregarded.

(2) A provision of a testament which grants a person a right with an impossible suspensive condition is invalid



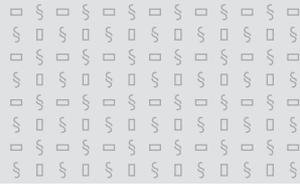
Question 1 - solution

- How does the law understand these sentences „...and let Titius be my heir to the remaining third, if a ship should arrive from Asia within three months.“
- There are two sentences:
- The **first** sentence is an inheritance institution
- The **second** one is a suspensive condition



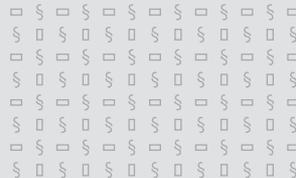
Question 2+3 - solution

- **What would change if there were „within three Greek calendae“?**
 - „Greek calendae“ does not exist that means, it is impossible condition
 - There are three possibilities of solution x each if them has differend solutions
- **1. would be deleted „Greek“**
 - Reason: mistake made by the inattentive author (like „on 31st june“)
- **2. would be deleted the condition**
 - Reason: presumption, that the testator wants to bequeath to the inheritor by the testament, not to hurt him (used in Roman law, today in czech law for resolutiv condition - sec. 1563 (1) CzCC2012)
- **3. would be deleted the condition and also the institution of the conditional third**
 - Reason: It is an impossible enactment. (use today CzCC2012 see sec. 1563 (2))



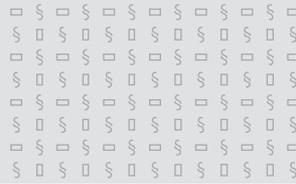
Question 2+3 - consequences of solutions

- **1. would be deleted „Greek“**
 - It would continue with a valid condition (wait, whether the ship arrives)
- **2. would be deleted the condition**
 - The condition would be deleted, therefore Titius gains the last part unconditionally and straight away.
- **3. would be deleted the condition and also the institution of the conditional third**
 - The released third remains - to whom should it pass on?



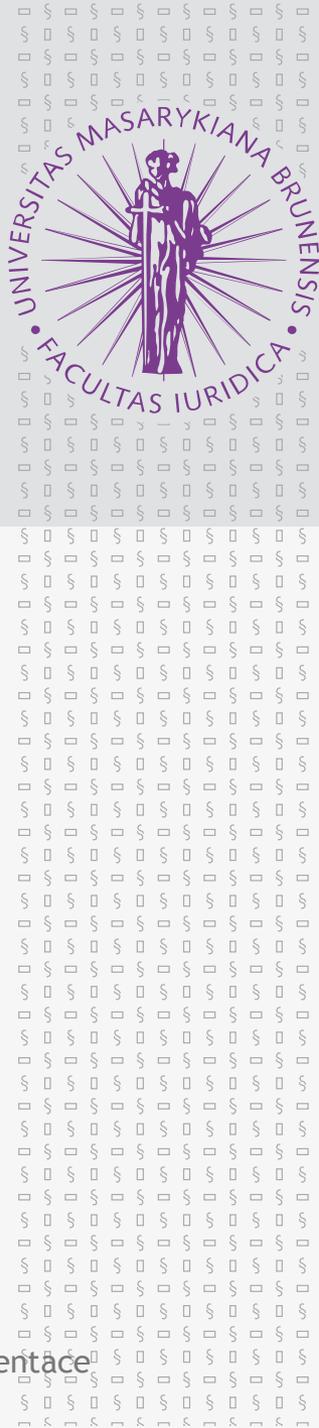
Question 4 + 5 - solution

- Why does Titius immediately inherit one half, although he was designated for one third?
- If the ship does not arrive - there are three possibilities:
 - 1. **Maevius receives the conditional third x not possible**, the condition prospers to Titius x not possible to allow that the non-fulfilment would prosper to Maevius
 - 2. **Someone else receives the conditional third** - distant legal heirs, alternatively the state - **not happened according to the text** (usually today - combination of testamentary succession and intestacy - in Roman Law it was impossible)
 - 3. **It divides between Maevius and Titius.** - Nemo pro parte testatus, pro parte intestatus decedere potest - **Not possible to combine a testament's succession and a legal succession.** - application of the one, excludes the other one (Roman law solution)



Question 5 - solution

- Titius died a week before the ship arrived (within established period), could his son claim a part of the estate?
- Quote from the fragment: „ *since it could not be understood to have been given to him who was no longer in existence at the time it should have been allotted.* “
- When is it given? - if the ship arrives
- Who is not part of this world? - Titius
- The condition prospered to Titius, it fell through with his death and his heir has no title to it.



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Thank You for Your attention

P. Salák jr.