



EUROPEAN COOPERATION IN CIVIL MATTERS

TEXT 2

Family Matters and Succession

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Prepared for the purposes of a legal language seminar (Slovak Republic, Omšenie, Judicial Academy, 23 - 27, January 2017)

Study material is developed for the project “Training Legal Languages for Effective Functioning of Judicial Cooperation in EU”. It is produced solely for educational purposes. It has been created for the purposes of legal language training with the financial support of the Justice Programme of the European Union.



Key terms (*English*)

Study online: <https://quizlet.com/1fuvqp>

1. *Intent* : For a will to be admitted, it must be clear that the testator acted freely in expressing his testamentary intention. A will executed as a result of undue influence, fraud, or mistake can be declared completely or partially void in a probate proceeding.
2. *Legal Particulars*: an individual item, as contrasted with a universal quality.
synonyms: detail, item, point, fine point, specific, specification, element, aspect, respect, regard, particularity, fact, feature, circumstance, thing
3. *Authentic Legal Instrument* : Authentic instruments are documents drawn up and executed with due formality by a public officer entitled to do ... Authentic instruments include a guaranteed date, thereby simplifying proof.
4. *Notary Public*: A notary public is a public officer constituted by law to serve the public in non-contentious matters usually concerned with estates, deeds, powers-of-attorney, and foreign and international business.
5. *Notarised Signature*: means the signature of the person should be in the presence of a lawyer that would give the seal of notary public on the document. - signed that document in front of the notarizing public attorney.
6. *Necessary or Fixed Heir*: The law of forced heirship gave certain relatives, besides the spouse, an absolute legal right, of which they could not be deprived by will or gift, to inherit a certain portion of the decedent's estate.
7. *Choice of Law* : Choice of law is a procedural stage in the litigation of a case involving the conflict of laws when it is necessary to reconcile the differences between the laws of different legal jurisdictions, such as sovereign states.
8. *Executor of the Will*: The person legally allowed to deal with a deceased person's estate. By taking on these rights they also assume certain responsibilities and liabilities. These are the same as duties of administrators. The executors are responsible for distributing the estate of the person who has died in accordance with the terms of the deceased's will.



Material for Day 2:

AIM: discuss the matters of succession in the light of case law and current state of affairs

Target: Having gone through the material you will be able to use relevant Regulation terminology and have a meaningful discussion on the topic of matters of succession based on authentic case law:

Task 1: Please practice talking to your partner:	
Have you ever	
- had to decide a cross border succession case	
- issued a judicial declaration of validity of the Will	
- issued a judicial declaration of voidity of the Will	
- issued a decision regarding enforcement of a foreign judgement in the matters of succession	
- heard an interesting case related to the matters of succession	
- heard of an interesting succession case	
Task 2: Please read and try to remember:	
<p>Inheritance</p> <p>The vote for Brexit has increased concerns about property inheritance. Although the UK is not a signatory to the EU Succession Regulation it is a beneficiary of it and UK nationals who own property in the EU can specify in their Wills that they wish English law to apply to the succession. This allows property owners to avoid the fixed heirship rules imposed by a number of EU-member states. Once the UK has left the EU it will become a 'third state' under the Regulation and its position is currently less certain in respect of succession law.</p> <p>The Succession Regulation also envisages the introduction of a European Certificate of Inheritance across all member states, which would prove an individual's status as a legatee or as an executor. The UK will not now automatically be included in this stream-lining process.</p>	



Turn the page face down and try to retell the information.	
Task 3 Please discuss with your partner based on your knowledge and available facts:	
<p>Is your country a signatory or a beneficiary to the Succession Regulation?</p> <p>Do you think Brexit might have a negative effect on legal certainty of existing wills where the UK nationals have chosen other EU member state jurisdiction ?</p> <p>Does your country have strict fixed heirship rules or is it fairly difficult to disinherit a so-called forced heir?</p> <p>Does the succession or intestacy law in your country differentiate between a statutory heir (heir at law or heir by statute) and a forced heir who enjoys much greater protection than the heir at law and it is extremely difficult to disinherit him or her?</p> <p>Have you ever dealt with the EU Certificate of Succession?</p>	
Task 4: Vocabulary: revise and provide definitions or examples:	
<p>To circumvent the law</p> <p>Forced heir</p> <p>Heir at law</p> <p>To enjoy legal protection</p> <p>A signatory</p> <p>A beneficiary</p> <p>A third party</p> <p>A necessary heir</p>	
Task 5: Read and discuss :	



It will be interesting to see if the UK decides to opt into the EU succession rules later or remains one of the minority of EU states not to apply these rules. However, UK nationals living in another EU member state (except Ireland or Denmark) should be able to make use of these new rules from 17 August 2015.

So an English national living in France (for example) could elect for English law to apply to his or her succession, rather than the laws of France (where he or she is habitually resident). This could be particularly useful for avoiding French forced succession rules, which would otherwise apply, particularly in relation to French property.

Thus a French spouse of the above English national might currently be surprised to learn that part of their jointly owned French house will pass to the deceased's children, rather than automatically going to the surviving spouse.

Discuss:

In the event of death of one of the spouses in your country - may the real estate property owned by the deceased pass onto the children of the deceased or must the portion of the estate including the real estate always pass onto the surviving spouse?

Who would the forced heirs be in your country and how easy or difficult would it be to disinherit them?

Task 6: CIVIL PROCEEDINGS and SUCCESSION:

Please compare with your partner the succession laws in your countries:



The Czech Civil Code designates the heirs in cases of intestacy.

The Czech International Private Law Code provides that Czech courts can apply the laws of the deceased's citizenship, or country of habitual residence, to the estate of a foreigner who dies intestate; however if the Czech Civil Code becomes applicable, then the mandatory heirs are designated by law as follows:

The heirs are divided into four groups:

The first group includes the children and the spouse of the deceased; each of them inherits in equal portions;

The second group includes the spouse, deceased's parents, and persons that shared a "home" with the deceased and who took care of him/her, and/or were dependant on the deceased, for at least one year prior to the death. Members of this group inherit in equal portions, but a spouse will always get at least half of the property;

In the third group, the portions are equally distributed to siblings of the deceased and to those who had shared "the home" with the deceased for at least a year prior to his/her death and thus either participated in joint care of the household of the deceased or the deceased was dependant on them;

The fourth group includes grandparents and the grandparent's children – who inherit in the absence of grandparents. The inheritance is equally distributed between the grandparents of the deceased, and if none of the grandparents can inherit (due to no longer being alive), then the property is equally distributed to the children of these grandparents.

The heirs of the second group or the third group or the fourth group inherit only if there are no heirs in the preceding group.

In the case of intestacy, the heirs of all groups receive equal portions of the inheritance, except for the spouse in the second group. The ratios depend on the number of members in each group. The heirs may also be included in the "inheritance agreement," that modifies the ratios stipulated by law. The inheritance agreement must concern the whole property, must comply with the principle of good manners, and must be authorized by the court.

Czech law recognizes a **necessary portion**.

Czech law recognizes the right of certain individuals to inherit a portion of the descendant's estate. If executed under the rules of Czech law, the testator's will must respect this legal right, otherwise the will could be deemed invalid.

The necessary (forced) portion applies first to the deceased's children, then to the other descendants. The minimum necessary portion for minors is the same portion as that required by law (i.e. by the rules of intestate succession). The extent of the necessary portion varies according the number of children. The necessary portion designated for adults is at least one-half of the portion required by law. Czech law does not automatically recognize the spouse's right to a necessary portion.



Watch the video about some strange stipulations in Last Wills:

Would those be valid or void in your country? <https://youtu.be/Ec-2qHq814>

Task 7: Discussion with the Legal Practitioner :

Does the succession law in your country recognise common law marriage or long-term cohabitation?

Are long term cohabitation partners treated by the law in your country in a manner identical to spouses or differently? Please elaborate.

Does the law in your country treat civil partners in the same manner as married spouses for the purposes of the succession law?

Would persons dependant on the deceased - even if those weren't next of kin or blood relatives - fall within the category of necessary heirs under some circumstances? Please explain and elaborate.

In the event the deceased had a cohabitation partner and parents would any of those have preference should the deceased die intestate? Might the preference be overruled by a will? If so what do the relevant provisions of law applicable in your country stipulate?

Task 8: Case Study:

How precise is interpretation of a will in your country and how strict are the requirements imposed on the will in order for it to be deemed valid?



THE UK CASE: spouses signed a will on the same day before the same witness and drafted and facilitated by their family lawyer:

Mr Rawlings' will read:

"This is the last will of me ALFRED THOMAS RAWLINGS of [address]. 1. I REVOKE all former wills and testamentary dispositions.

2. IF MY wife MAUREEN CATHERINE RAWLINGS of [address] survives me by a period of one calendar month then I appoint her to be the sole Executrix of this my will and subject to my funeral and testamentary expenses fiscal impositions and all my just debts I leave to her my entire estate.

3. IF MY said wife MAUREEN CATHERINE RAWLINGS fails to survive me by a period of one calendar month I appoint TERRY MICHAEL MARLEY of [address] to be the sole Executor of this my will and subject to my funeral and testamentary expenses fiscal impositions and all my just debts I leave to him my entire estate.

IN WITNESS whereof I the said ALFRED THOMAS RAWLINGS have hereunto set my hand the day of 1999.

SIGNED by the testator in our presence and then by us in his: [space for witnesses]

The will of Mrs. Rawlings was signed to the same effect. The intent of the spouses was to disinherit their two sons - who, for the last ten years- would come and visit their parents once a year -in favour of their neighbour, who had acted as their long term carer doing their house repairs " shopping, and doctor's appointment transport on a regular basis."

Disinheriting a child under the UK law is not at all difficult.

However, there was one legal glitch in the instant case : as a result of an oversight on the side of the facilitating lawyer the will of Mr. Rawlings was signed by his spouse and the other way around.

The sons, after the death of their father, took no action and the property passed onto the surviving Mr. Rawlings. After his death the sons alleged invalidity of the will due to fundamental legal error and sought the judicial declaration of voidity.

What do you think?



The UK law expressly stipulates:

Section 9 deals with the signing and attestation of wills. So far as is material, it is as follows: Signing and attestation of wills

No will shall be valid unless -

- (a) it is in writing, and signed by the testator, or by some other person in his presence and by his direction; and
- (b) it appears that the testator intended by his signature to give effect to the will; and
- (c) the signature is made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and
- (d) [requirements of the witnesses]"

Ask your partner which legal source deal with particulars of the will in their country and if the required particulars are identical or similar to the ones stipulated by the above legal provision of the UK Civil Code.

In your professional opinion does the Will in the concerned case meet the relevant legal requirements as stipulated by the UK law?

Would the concerned Will meet the requirements of the national law in your country?

Would you declare the Will valid?

Could the intent of the parties override the fact that both Wills were signed by the wrong person?	
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Task 9: Case analysis in relation to the Succession Regulation

The Regulation expressly stipulates that:

In order to achieve those objectives, this Regulation should bring together provisions on jurisdiction, on applicable law, on recognition or, as the case may be, acceptance, enforceability and enforcement of decisions, authentic instruments and court settlements and on the creation of a European Certificate of Succession

Are you prepared to accept the concerned Wills as authentic (and enforceable) legal instruments?



Do the concerned Wills in your opinion create the legal act of succession?

Under what circumstances could children be disinherited in your country?

Read another section of the Regulation and discuss:	

This Regulation should allow all notaries who have competence in matters of succession in the Member States to exercise such competence. Whether or not the notaries in a given Member State are bound by the rules of jurisdiction set out in this Regulation should depend on whether or not they are covered by the term 'court' for the purposes of this Regulation.

Do all (public) notaries in your country have competence in matters of succession?

What criteria must a person meet in order to be able to act as a notary public and to have competence to deal with matters of succession?

Should a person or persons wish to contest the manner in which the matters of succession were handled by a notary, what options are available to them?

If a notary handling matters of succession is not sure regarding the interpretation of the Regulation, may he or she refer a preliminary question to either a national or a European court?

Would the notary in your country be covered by the term "Court" for the purposes of the Regulation?

The rules of this Regulation are devised so as to ensure that the authority dealing with the succession will, in most situations, be applying its own law. This Regulation therefore provides for a series of mechanisms which would come into play where the deceased had chosen as the law to govern his succession the law of a Member State of which he was a national.

Hypothetically, should Mr. And Mrs. Rawlings be habitually resident in your country for the last seven years preceding the death of the first of the spouses but the Will would have been drafted and signed and witness in the UK:

Would you feel your court has jurisdiction to assess the validity of the instrument?



Would you apply the national law of your country or the law of the country where the instrument was drafted?

Tasks 10: choose one topic and give a mini presentation on it

Give a short presentation to your partner summarising the facts of the hypothetical case.

Give a short presentation summarising the questions material to the case the court has to test.

Give a short presentation based on the national law of your country regarding the relevant and applicable legal provisions.

Give a short presentation summarising the likely outcome of this hypothetical case in your jurisdiction.

Give a short presentation summarising the reasoning behind the judgement you would be likely to render in such hypothetical case.

Guidelines : in your mini presentation choose some of the below structures and phrases:

I am going to talk about
I would like to talk about

The facts of the case are as follows
The circumstances material to the case are

What needs to be pointed out is
The relevant legal provisions in the instant case expressly stipulate that

The Court in the instant case would find / will find / finds that
The case law indicates that

The argument that shall not stand as
The Court accepts that argument that ...

The judgement of the court in the instant case would have to reflect whether



You can make notes for your mini presentation here

Key to exercises:

Links:

Key terms:

Succession Law vocabulary study set: https://quizlet.com/_1fuvgp

Funny videos: <https://youtu.be/Ec-2qHq814>