**Law of Succession – Inheritance Law**

- a will used to decide about immovable property

- a testament used to decide about movable property

- the official name – The will and testament of ….

- the person who makes a will – **a testator/trix** *(poručiteľ)*

- the person who should get the property – **a heir** *(dedič)*

**- will is a formal declaration by a person of what he wants to happen to his property after he dies**

- the last will – the one which is legally effective

- the will takes effect only after the death of the person and thus only last will is legally binding

- intestate succession – if there is no testament (dedenie zo z*ávetu*)

- testate succession – *(dedenie zo zákona)*

**Conditions that must be met**

1. **The age** – the testator must be at least 18 years old
2. the testator must be **of sound mind** (not intoxicated, under the influence of drugs or alcohol, no mental disease)
3. it must be **the free will** of the testator (he cannot be forced)
4. the will must be in a **written form** (video testaments are not legally valid)

- the written form doesn’t mean that it needs to be a document (on the paper)

1. every will has to be **signed and dated** by the testator

- if the testator is not able to write – Re Finn – 1936 – the will can be signed by a thumbprint

- the signature can be anywhere on the will (it doesn’t have to be at the bottom of the document)

1. in order to make a valid will, at least **two witnesses** are required

- Re Gibson – a blind person is excluded from being a witness

- there is no age limit for becoming a witness. However, the person must understand the consequences of being a witness

- the witness or the spouse of the witness should not benefit from the will

**Privileged wills**

- soldiers on actual military service

- sailors at sea

(their lives are endangered)

**Conditions for a privileged will**

1. the **age limit** is **lowered to 14**
2. the will **doesn’t have to be in a written form** – it can be in an **oral form**. In this case, at least 2 witnesses are required. If the will is in a written form, no witnesses are required

- Re Jones – 1981

 - soldier in northern Ireland, he got shot while he was on duty, 2 witnesses, oral will

- Rapley v. Rapley – 1983

- sailor, made a will at home, written form, without witnesses, no privileged will, because he was not on the sea

- the document by which the will is changed is called **a codicil**

- when making a codicil, the same formalities apply

**Revoking a will** *(zánik platnosti závetu)*

1. making a **new will**
2. **formal revocation** of the will without making a new will
3. **By marriage** the will is revoked. The only exception is, if the will is made in contemplation of marriage (there is said who is the future spouse)
4. **by divorce** – in case of divorce, those previsions of the will by which some property is transferred onto the wife or husband become ineffective. The rest of the will is valid.
5. by **destroying the will** purposefully by the testator

**Gifts of Property**

* **devise** – real property (the person who receives it is called a devisee)
* **legacy / bequest** – personal property (a legatee)

- legacy usually means a gift of money and bequest is a gift of a particular object (a car)

**A Legacy / Bequest:**

* **specific** – the testator leaves a clearly identified thing to someone
* **general** – there is not identified a specific thing
* **residuary** – the testator leaves specific things to a few people and the rest to one person – a **residuary legatee.** This is called **a residue of the estate**

- **estate** is the property of the **decedent**

**Intestate succession**

- a person who dies without making a will have **died intestate**

- his property will be distributed according to the **rules of intestacy**

- it starts with the **next of kin** – the persons most closely related to the decedent by blood or affinity

- **bona vacantia estate** (ownerless property) – if there are no surviving relatives, the whole estate will **escheat** – revert to the crown

**Testamentary freedom**

- a principle according to which a person is free to leave his property to anyone he wishes

= the relatives could be **disinherited**

- **the forfeiture rule –** when the heir kills the decedent, he forfeits the right to inherit

- the rule can be modified if the killing was not deliberate

**Personal Representatives of the estate**

- after a person’s death, his estate is administrated by the **personal representatives (PRs),** usually named in the will itself (if not, the court names one)

* **executors** – named by the will
* **administrators** – if there is no-one named by the will or if there is no will

- wills are submitted and approved by a court according to a process known as **probate**

- the first thing a PR has to do is **obtain the right to act**

- an executor has the right to act under the will but still has to apply for probate (an official form)

- an administrator has to apply for **letters of administration**

- the PRs must list all the debts that were owed at the time the deceased died, as well as all the assets

- then the Probate Registry will issue probate or letters of administration

- where there is an objection to probate or letters of administration being granted, the person who objects – **the caveator** – must inform the Probate Registry of the objection

- this is called **filing (lodging) a caveat** (for example when there is a dispute as to whether the will is valid)

- once probate or letters of administration have been granted, the PRs can collect in all the deceased’s assets

- the PRs must first pay the debts starting with funeral expenses

- then the PR distributes the remaining assets to the heirs