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**WELCOME**  
TO OUR PRESENTATION  
ABOUT SWISS  
INHERITANCE LAW

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# **OVERVIEW OF SWISS INHERITANCE LAW**

Presented by:

**Dominic Baumgartner**  
Attorney at Law and Notary Public



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## What is Inheritance Law?

- Legal rules for distribution of a deceased person's estate
- Regulated in Art. 457 – 640 Swiss Civil Code
- Ensures fair and lawful distribution of assets
- Provides flexibility and opportunity of estate planning as well as the allocation of own estate
- Helps avoiding family disputes or provides guidelines

## In General

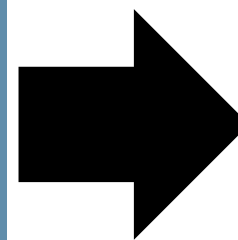
- Freedom of Testation as **guiding principle**
- Is there a **Last Will** or a **Contract of Succession**?  
➔ will apply, if issued according to the law
- **Limitations** by statutory entitlement provisions; can be waived by protected heirs
- **If no Last Will or Contract of Succession**: Distribution of estate **according to the law**; possibility of heirs to renounce the inheritance (e.g. in case of debts)
- **Governing law**: Swiss wills and contract of succession are subject to Swiss law; Possibility of choosing home law

## Matrimonial Property Regime / 1

- In case of death of a married person:

### First step:

- Dissolution of the matrimonial property regime; each spouse get its quota according to the agreed property regime (3 different types)
- If nothing is agreed explicitly: Art. 181 Swiss Civil Code (Participation in acquired Property)

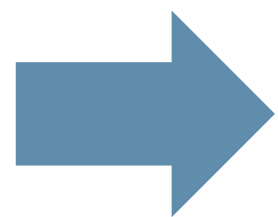


### Second step:

- The quota of the deceased spouse forms part of its estate and is distributed due to inheritance law
- Last Will, Contract of Succession or the law dictates the distribution

## Matrimonial Property Regime / 2

1. **Separation of Property** (each spouse has his own assets and debts)
2. **Participation in acquired Property** (ordinary matrimonial property regime; if nothing other is agreed; **most common**)
3. **Community of Property** (Common property and own property)



Can be agreed within a **Matrimonial Agreement** (Public Deed)

# Key Concepts



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## Matrimonial Property Regime / 3 Participation in acquired Property

### Own Property of each spouse

- Property at the time of marriage
- Gifts and inheritances during marriage
- Personal belongings
- Claims for satisfaction
- Cf. Art. 198 f. CC

### Property acquired during marriage

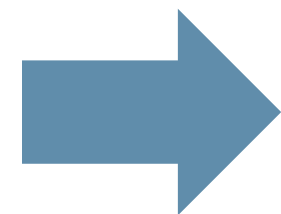
- All other than own property
- Assumption in favor of accrued gain
- Wages
- Income from own property (e.g. dividends on shares, rental income from real estate)
- Cf. Art. 197 para. 2 CC



## Matrimonial Property Regime / 4

### Participation in acquired Property

- Acquired Property is split 50:50 according to the law
- This dispositive provision **can be amended by a Matrimonial Agreement** (in favor of the spouse). Such an agreement must not affect the compulsory portion claims of non-joint children and their descendants.



For example: The entire acquired Property can be granted to the surviving spouse if there are only common children. This reduces the estate to be distributed under inheritance law in the second step in the sense of favoring the spouse most.

## Inheritance Regime / 1

If there is no Last Will or Contract of Succession in place, the statutory succession applies:

- Who are the potential heirs or beneficiaries?
  - First Class: Children (their descendants if already died)
  - Second Class: Parents (their descendants if already died)
  - Third Class: Grandparents (their descendants if already died)
  - Spouse or registered partner
  - Canton or Municipality
  - (Appointed heirs or legatees)

## Inheritance Regime / 2

**IMPORTANT:** If you live in a (non-registered) partnership, there is no legal protection of your partner without corresponding Last Will or Contract of Succession!

Also note that there is no longer an option to register a new partnership as there is the legal option to get married. The registered partnerships existing at that time remain in place.

## Inheritance Regime / 3

Examples:	In case you have children	In case you <u>do not have</u> children
You are married or living in a registered partnership	<ul style="list-style-type: none"><li>• 50% to your children</li><li>• 50% to the surviving spouse or registered partner</li></ul>	<ul style="list-style-type: none"><li>• 75% to the surviving spouse or registered partner</li><li>• 25% to your relatives and their descendants (parents, siblings, nephews and nieces, etc. if any; otherwise, 100% to spouse / reg. partner)</li></ul>
You are not married or living in a registered partnership	<ul style="list-style-type: none"><li>• 100% to your children</li></ul>	Depending on the situation: <ul style="list-style-type: none"><li>• 100% to your parents or their descendants</li><li>• 100 % to your grandparents if you no longer have parents and there are no descendants of your parents.</li><li>• 100% to the municipality or canton if you have neither (grand-)parents nor siblings.</li></ul>

# Last Will and Contract of Succession



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How to dispose of your estate?

Last Will (Testament)

Contract of Succession

# Last Will and Contract of Succession



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## Last Will (Testament) / 1

- Unilateral act of Testator (only party is Testator himself)
- 18 years old and in capacity to judge
- Issued by:
  - a. Public Deed
  - b. Holographic Will
  - (c. Verbal Will - only in exceptional circumstances (e.g. risk of imminent death))

# Last Will and Contract of Succession



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## Last Will (Testament) / 2

Holographic Will	Public Deed
<ul style="list-style-type: none"><li>• Entire document must be handwritten</li><li>• The Testator has to leave the date and signature (all handwritten)</li></ul>	<ul style="list-style-type: none"><li>• Prepared by Notary Public</li><li>• Attendance of two witnesses</li></ul>
<p><b>Conclusion:</b> Easy to issue and to change, cost sensitive, often kept as a secret, risk that it is not found, risk of false wording</p>	<p><b>Conclusion:</b> Higher legal certainty, lower risks of false wording, more costs, prevention of disputes, recognition in international relations</p>

# Last Will and Contract of Succession



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## Last Will (Testament) / 3

- Limitations: by statutory entitlement (“Pflichtteil”) provision
- The currently applicable compulsory portion is half of the statutory inheritance entitlement (Art. 471 CC).
- Entitled to a compulsory portion: Spouse or registered partner and children



# Last Will and Contract of Succession



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## Contract of Succession / 1

- Between two or more persons (bi- or multilateral agreement)
- It is a contract based on mutual agreement
- Issued by: only Public Deed prepared by Notary Public  
(in attendance of two witnesses)
- Last Will dispositions (e.g. determination of an executor) can be included
- Often chosen when children are willing to renounce their right to inherit upon the death of the first parent or against payment of a lumpsum during lifetime.

# Last Will and Contract of Succession



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## Contract of Succession / 2

- Possibility to clarify situations directly with involved persons
- Creates transparency
- Often needs more time due to multiple parties involved
- Often combined with a Matrimonial Agreement

# Last Will and Contract of Succession



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## Amendments and Revocation / 1

### Last Will

- Holographic Will:
  - On the same document
  - Clearly marked as amendment and newly dated and signed
- Public Deed:
  - Notarization of the amendment by the Notary Public (in attendance of two witnesses) or new Last Will (in legal form)
- Both:
  - **Revocation** by destruction or in one of the forms prescribed for its establishment; new Last Will with revocation of the previous one.

# Last Will and Contract of Succession



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## Amendments and Revocation / 2

### Contract of Succession

- Amendment:
  - Only if all parties of the contract agree
  - In a Public Deed (in attendance of two witnesses)
- Revocation:
  - General: only if all parties agree (**Public Deed not necessary!**)
  - Exception:
    - If conduction of a ground for disinheritance
    - Withdrawal from the contract in the event of non-fulfillment of an agreed obligation
    - Termination of the contract in the event of death of the contractual partner

# Major changes 2023



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## Revision of inheritance law in 2023 – most important changes / 1

- **Reduction of the compulsory portions of descendants (new  $\frac{1}{2}$  instead of  $\frac{3}{4}$ ) and abolition of the compulsory portions of parents**
- **Loss of entitlement to a compulsory portion in divorce proceedings / dissolution of a registered partnership (from date of lis pendens of the divorce proceedings)**

# Major changes 2023



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## Revision of inheritance law in 2023 – most important changes / 2

- **Allocation of half of estate to spouse besides other half as usufruct** (only in case of joint descendants)
- **Pillar 3a assets** are not part of the estate.
- **Prohibition of gifts:** In principle, gifts are not permitted after the conclusion of a Contract of Succession. The only exceptions are customary occasional gifts if it is not stated differently in the Contract of Succession. → contestable

# The Executor



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- Regulated only within TWO Articles in CC (Art. 517 f. CC)
- **Main tasks:** Administration of estate, Distribution of legacies, Preparation of distribution of estate
- **Independent Representative**
- **Supervised by authority**
- **Liability** for his activities
- **Very supportive** for inexperienced heirs

## Matrimonial Property Regime

- **Case by case:** The applicable regime has to be determined case by case.
- Choice of applicable law (e.g. in a matrimonial agreement), also with retrospective effect
- Limitation: Only law of common residence, law of place of marriage or law of home country of a spouse



## Inheritance Regime

- Regulated in Swiss Private International Law (PILA) or International Treaties (to be determined case by case).
- Courts and authorities of the last domicile in CH are generally responsible.
- All assets (worldwide) form a single estate.
- Choice of applicable law (e.g. in Last Will (Testament)); Limitation: Only law of home country (not possible if Dual-Citizenship! Art. 90 para. 2 PILA)

# Excursus: Advance Care Directive and Patient Decree



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## Advance Care Directive / 1

- Regulated in Art. 360 ff. CC
- Not connected to death but incapacity of judgement
- Appointment of a trusted person (e.g. spouse) for such a case
- Issued: - Public Deed  
- handwritten (incl. date and Signature)
- The fact that an Advance Care Directive exists can be registered with the civil registry office
- Revocation by one of the forms of establishment or destruction
- Validation by Adult protection authority

# Excursus: Advance Care Directive and Patient Decree



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## Advance Care Directive / 2

- Personal care, property care and/or representation in legal matters
- Instructions can be made
- If not accepted by appointed person or not capable of carrying out the mandate: a Substitute can be appointed
- Can be terminated by appointed person

# Excursus: Advance Care Directive and Patient Decree



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## Patient Decree / 1

- Regulated in Art. 370 ff. CC
- Not connected to death but incapacity of judgement
- Medical care directives (directly from the Patient)
- Issued by:
  - in writing (handwritten not mandatory!), with date and signature
  - Often as a form
- Possibility of appointment of a trusted person, who can decide on behalf of Patient

# Excursus: Advance Care Directive and Patient Decree



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## Patient Decree / 2

- Instructions can be made
- Revocation: Similar to the Advance Care Directive
- If not accepted by appointed person or not capable of carrying out the mandate: a Substitute can be appointed
- The fact that a Patient Decree has been issued and its deposit location can be registered on the health insurance card

# Final Conclusions



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- (Familiar-)Situations and relationships can change → Review of Testamentary Dispositions from time to time and amend them if necessary.
- Also legal situation can change → Adapt Testamentary Dispositions if necessary.
- Think about your estate and regulate it at times you are capable of it.
- **Recommendation:** Be proactive. Many disputes can be prevented by transparency and regulating your own Last Will.

**Q & A**



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**Questions?**



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**THANK YOU VERY MUCH  
FOR YOUR ATTENTION!**

**Please do not hesitate to contact me:**

RA Dominic Baumgartner

DIEDRICHSEN BAUMGARTNER

Advokatur Notariat

Alpenstrasse 1

6300 Zug

db@dblawn.ch

+41 41 720 11 00

