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American Beneficiaries and Estates of American Decedents in Hungarian Conflict of Laws

The United States of America has attracted more Hungarian emigrants than any other country in the world. The emigration from Hungary to these shores has resulted in estates in both countries and inheritances from one country to the other. This article deals with the legal status of American estates situated in Hungary and the rights of American beneficiaries: heirs, legatees and distributees of estates of a decedent of any nationality located in Hungary.

American-Hungarian relations in the field of succession differ considerably from those existing between Americans and, for instance, Italians, or between Americans and Englishmen. This is due, first of all, to the radical differences between the social and economic structures of the two countries and, then, to their significantly different laws of inheritance and succession. For these reasons it is advisable to glance briefly at the Hungarian laws of property and succession before turning to the Hungarian conflicts laws concerning devolution of property upon the death of the owner.

Scope of Property That Can Be Inherited

Reflecting the economic conditions and property relations in a society which is "progressing toward socialism," the Hungarian Civil Code of 1977 recognizes three kinds of property: social, personal and private.¹ Of the three, only personal and private property are subject to inheritance governed by the Civil Code. Social property comprises the bulk of the means of production owned by the state, the various cooperatives and economic organizations.

Personal property consists of "goods which directly serve or promote the

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¹The Hungarian Civil Code was enacted in 1959 (Law No. IV of 1959); it was *amended and restated* by Law No. IV of 1977, published in Magyar Közlöny (Hungarian Gazette) No. 78, 957, Oct. 25, 1977; hereinafter cited C.C. Sections 88-92 contain the classification and definitions of the various kinds of property.

personal and familial needs of citizens," sec. 92(1) C.C. There are two categories of personal property. The first category includes family homes, apartments, recreational homes, building lots, furnishings and articles of personal use. Ownership of buildings and lots is restricted. A single person or a family is allowed to own one dwelling house or apartment and one recreational home (e.g., a summer cottage in the country), or one dwelling house and one vacant lot for a summer cottage, or one vacant lot for a family home and one summer cottage or two vacant lots, one for a family home and the other for a summer cottage.² Again, the size of the buildings is restricted: a single person or a family can only have a dwelling house with no more than six rooms whose total area cannot exceed 140 square meters, or an apartment of maximum 125 square meters. As regards the recreational or summer home, it cannot have more than three rooms with a total area of 60 square meters.³ It should be noted, however, that bathrooms and kitchens do not count as rooms. If, as a result of inheritance, these limits would be exceeded, the owner is bound to transfer ownership of the excess property, e.g., by selling it within a certain period of time.

The second category of personal property includes certain agricultural land and assets belonging to such land as well as assets belonging to the household plots of members of collective farms, sec. 92(2) C.C. There are two kinds of agricultural land that can be held in private property: plots within built-in areas of urban developments and enclosed gardens in segregated areas within communal districts unsuitable for large-scale cultivation. The overall size of the two which can be owned by a single person or a family cannot exceed 6,000 square meters.⁴

The third type of property is private property which consists of "those means of production which are not declared to be in exclusive state ownership," (sec. 93 C.C.) Agricultural land of individually working small farmers⁵ and enterprises of private artisans are examples of private property. The state recognizes private property which serves the economically useful activities of small-scale producers of commodities. Private property is also subject to limitations concerning its quantity and size.

The main sources of income which can be used to purchase houses,

²Vékás, *The Legal Regulation of Personal Property in Hungary*, 17 ACTA JURIDICA 396, 401 (1975).

³Decree No. 15 of May 15, 1974, of the Council of Ministers, *cited by Vékás, supra* note 2, at 402.

⁴Decree No. 11 of April 18, 1973, of the Council of Ministers and Decree No. 6 of April 18, 1974 of the Ministry of Agriculture and Food, *cited by Vékás, supra* note 2, at 401. *See also* I. KOLOSS-VÁRY, *DIE RECHTSSTELLUNG DES AUSLÄNDERS IN UNGARN*, 79 (1974).

⁵Of agricultural land, 78% is cultivated by collective farms, 15% by state farms; approximately 7% is in the private ownership of small farmers. KÖZPONTI STATISZTIKAI HIVATAL, *MAI MAGYARORSZÁG*, 98 (1975).

automobiles, televisions and other items of personal property are wages, salaries or shares in the products of collective farms. In order to raise the level of productivity, the Hungarian government has been utilizing various means of incentives. For instance, managers and workers share in the profit obtained by state and other social enterprises; and members of collective farms are allowed to raise breeding animals on their household plots and to sell them for export.⁶ The state-conducted lotteries held weekly in connection with soccer games are very popular and also often result in the acquisition of large sums of money. Other kinds of income are derived from the enterprises of private artisans and entrepreneurs who provide a large proportion of such services as hair-styling, retail merchandising and auto, television and refrigerator repair. In addition, some other sources of income are interest on money deposited in state savings banks, income derived from copyrights, patents and inventions, and inheritance. As a result of the various means of incentives and sources of income, accumulation of considerable personal wealth is not a rarity in present-day Hungary. And, in contrast to the past when decedents' estates consisted mainly of landed property, today they overwhelmingly include dwelling houses or apartments, durable commodities and cash-in-hand or savings accounts.^{7,8}

Significant Features of the Hungarian Law of Succession⁹

Principle of Universal Succession

In contrast to American law, but in accord with most of the civil-law systems, Hungarian law adopted the Roman-law concept of universal succession. Section 598 of the Hungarian Civil Code provides that "upon the death of a person his estate passes as a whole to the heir." As is apparent from this provision, Hungarian law does not distinguish between movable and immovable estates; the entire estate passes immediately and directly to the heir or heirs upon the decedent's death. There is no need for the heir or heirs to make

⁶In one case in the summer of 1975, two young bulls exported to Italy brought in 70,000 forints the price of a medium-size East German automobile.

⁷The increasing volume of personal property is apparent from the following statistical data: expenditure for home buildings rose from 3,596 million forints in 1962 to 13,000 million in 1972; the amount of savings deposits jumped from 5,542 million forints in 1960 to 54,510 million in 1972; the number of automobiles sold in 1962 was 3,500, it rose to 49,200 in 1972; they sold 52,400 televisions in 1962 and 244,200 in 1971; in 1960 Hungarians spent 131 million forints on jewelry and 617 million forints in 1972. Vékás, *supra* note 2, at 398.

⁸Savings accounts which designate a named beneficiary *mortis causa* do not belong to the estate of the depositor, hence they are free of estate tax. Sec. 8 of Law Decree No. 9 of 1952.

⁹The law of inheritance and succession is one of the four branches of civil law that are governed by the Hungarian Civil Code; the other three are the law of persons, the law of property, and the law of obligations.

a declaration of acceptance. And, most importantly, the heirs are successors not only to the assets but also to the liabilities of the estate. However, in contrast to the civil-law rule of unlimited liability, the liability of the Hungarian heirs, just as that of the Americans, is limited. The Hungarian heirs are responsible for the debts of the estate only *cum viribus hereditatis*, i.e., only with those assets of the estate that can be seized by the heirs. In other words, the heirs are not liable with those assets of the estate which cannot be taken into possession (e.g., assets in a foreign country beyond the heirs' disposal), or with claims of the estate that are not recoverable (sec. 679 C.C.).¹⁰ In this connection it should be noted that Hungarian law, like the laws of many civil-law countries, allows the heirs to disclaim inheritance (sec. 600f C.C.).

Capacity to Inherit

The capacity to inherit is not a specific category in the Hungarian law; it is identical to the general capacity of holding rights, i.e., passive legal capacity as opposed to active legal capacity, the capacity to enter into legal transactions. Thus, any physical person has the capacity to inherit. The unborn child (*nasciturus*) is regarded as if it had already been born, and thus is capable of inheriting, provided that it is born alive not later than 300 days after the devolution of the estate, that is, the death of the *de cuius* (decedent or testator).¹¹

The Hungarian law of succession does not discriminate against alien heirs and it does not require reciprocity. In this connection section 600 of the Civil Code should be mentioned. This section enumerates the causes of elimination from inheritance as follows: unworthiness, exclusion or disinheritance by the testator, renunciation or disclaimer of the heir, and (in sec. 600b) incapacity to inherit by virtue of law.¹² According to the Official Exposé of Reasons of the Civil Code and the opinion of legal authors, section 600b is a legal ground for the eventual passing of a law, as an exceptional retaliatory measure, forbid-

¹⁰Cf. BACSÓ, *ÖRÖKLÉSI JOG*, 145-146 (1960). There are various devices available in the civil law countries to limit the heirs' liability to the net assets they have received, such as the French benefit of inventory (arts. 793-810 of the French Civil Code), and the West German administration of the estate by a court-appointed administrator for the purpose of satisfying the creditors, or the opening of bankruptcy proceedings against the estate (art. 1975 of the German Civil Code).

¹¹Cf. § 646 of the Hungarian Civil Code; BACSÓ, *supra* note 11, at 17-28.

¹²*Unworthiness*: a person is unworthy of inheriting if he or she has made an attack on the decedent's life (that is—deliberately and unlawfully killed, or attempted to kill, the decedent); has deliberately and unlawfully prevented, or attempted to prevent, the decedent from making a will; or, in order to partake in the inheritance, has made an attack on the life of a testate or intestate heir. Unworthiness can be condoned (§ 602 C.C.); *exclusion* is the elimination of an intestate heir without cause; *disinheritance* is the exclusion for cause of an intestate heir who is entitled to a compulsory share in the estate; *renunciation* is a bilateral *inter vivos* agreement between the *de cuius* and a prospective intestate heir; *disclaimer* is a unilateral refusal of accepting either intestate or testate inheritance.

ding or restricting inheritance by citizens of a state which discriminates against Hungarian beneficiaries.¹³ In other words, there must be a law curtailing inheritance rights of citizens of certain states. Discrimination by a foreign state against Hungarian beneficiaries does not, by itself, authorize the Hungarian authorities to apply retaliatory measures. At this time there is no law of succession which would treat alien beneficiaries differently from Hungarians.¹⁴ Moreover, there was no such law even in the 1950s and 1960s when some American courts denied or restricted the rights of Hungarians and some other nationals behind the "Iron Curtain" to inherit money or property left to them by American decedents. Thus, an Alabama court treated a Hungarian beneficiary as an "alien enemy."¹⁵ The New York courts denied transmittal of inherited funds to aliens living in communist countries under its "benefit rule," forbidding transmission of inherited funds to nonresident foreign heirs unless they proved that they would have "the benefit or use or control of the money or property" due to them.¹⁶ Frequently, however, any attempt to show benefit or use or control proved to be a futile undertaking since the courts attributed more weight to a 1951 United States Treasury Regulation than any evidence presented by the foreign claimant. The Treasury Regulation in question ordered the withholding of government checks intended for delivery in certain countries behind the Iron Curtain, including Hungary, by referring to the local conditions in those countries as not providing a reasonable assurance that the payees would receive the full value of those checks.¹⁷ In 1972, the United States concluded a consular agreement with Hungary, granting broad powers to the consul concerning administration of estates involving nationals of the sending state.¹⁸ Subsequently, Hungary was removed from the list of

¹³A MAGYAR NÉPKÖZTÁRSASÁG POLGÁRI TÖRVÉNYKÖNYVE, *Az 1959 évi IV. törvény és a törvényjavaslatának miniszteri indokolása*, 474 (Budapest, 1959). (The Civil Code of the People's Republic of Hungary, Law No. IV of 1959 and the Exposé of Reasons of the Bill); hereinafter cited EXPOSÉ OF REASONS. Cf. KOLOSSVÁRY, *supra* note 5, at 86; BASCÓ, *supra* note 11, at 27.

¹⁴KOLOSSVÁRY, *supra* note 4, at 86.

¹⁵*Pilcher v. Dezso*, 262 Ala. 249, 251, 78 So.2d 306, 307 (1955).

¹⁶*E.g.*, *In re Estate of Braier*, 111 N.E. 2d 424 (1953); *in re Geiger's Estate*, 195 N.Y.S. 2d 831 (1959); *In re Estate of Gargyan*, 211 N.Y.S. 2d 232 (1960). In *In re Szabados' Will*, 244 N.Y.S. 575, 578 (1963), funds were advanced to the Hungarian beneficiary so that he could come to the United States to receive the rest of funds in person. See N.Y. Surrogate Court Procedure Act, § 2218 and its predecessor, § 269-a of the Surrogate Court Act.

¹⁷31 C.F.R. § 211.3 (1951). On the list were Albania, Bulgaria, Communist-controlled China, Czechoslovakia, Estonia, Hungary, Latvia, Lithuania, Poland, Russia, East Germany, and East Berlin. An example of the great weight attributed by the New York courts to the Treasury Regulation is *In re Estate of Braier*, 305 N.Y. 148, 157, 111 N.E. 2d 424, 428 (1953), in which the New York Court of Appeals, discussing § 211.3 said: "That regulation was made, it should be noted with the benefit of all sources of information concerning conditions in Hungary that are available to a department of the federal government and not to the surrogate."

¹⁸Consular Convention between the United States of America and the Hungarian People's Republic, July 7, 1972. Ratified by Hungary on Nov. 11, 1972, and by the United States on April 16, 1973; entered into force on July 6, 1973. 24 U.S.T. 1141, T.I.A.S. 7641.

countries to which the Treasury Regulation applied.¹⁹ Under article 46 of the consular convention, the consular officer is authorized, in behalf of a national of the sending state, to receive money and property to which such national is entitled upon the death of a person of any nationality. The consular officer may, however, be required to present a power of attorney from his countryman; or to "present within a reasonable time appropriate evidence which verifies the receipt of the money and property by the national concerned"; or return them if he is unable to present such evidence. In exercising his rights, the consul is subject to the laws and jurisdiction of the receiving state.

No American case could be found dealing with the impact of the American Hungarian consular agreement, and the removal of Hungary from the Treasury list, upon the application of "benefit rules" and reciprocity statutes. It appears, however, that some courts have taken a new approach to issues in cases that involved nationals of other communist countries. A New York court acknowledged that "[t]o require identical possibility of use of the money in East Germany as in this country would in effect mean that under the guise of safeguarding the petitioner the benefit, use and control of the money, he would be denied such benefit, use or control completely."²⁰ East Germany, unlike Hungary, is still on the Treasury Department list. In a more recent case, affirmed by the Court of Appeals of New York, the surrogate was held justified in finding that Albanian residents would receive the benefits of their distributive shares of an American estate.²¹ Albania, like East Germany, is on the Treasury list. Apart from court decisions, there have been legislative changes representing liberal attitudes. The California legislature repealed article 259 of the Probate Code in 1974, which conditioned the right of nonresident aliens to inherit upon reciprocity.²²

The Hungarian laws that are relevant to the exercise of consular powers will be discussed later in the section dealing with the Hungarian administration of estates.

¹⁹The current list is found in 31 C.F.R. 211.1 as revised on April 8, 1976: People's Republic of Albania, Democratic Cambodia, the People's Republic of China, the Republic of Cuba, the Democratic People's Republic of Korea, the Democratic Republic of Vietnam, the Republic of South Vietnam, the German Democratic Republic and the Soviet Sector of Berlin, Germany. 41 Fed. Reg., 15847 (4, 15, 76).

²⁰*In re Estate of Becher*, 304 N.Y.S. 2d 628, 630 (1969).

²¹*In re Estate of Hajrindin*, 336 N.Y.S. 2d 265 (1972), *affirmed* 353 N.Y.S. 2d 731 (1974). In this case, as well as in the Becher case, *supra* note 20, foreign beneficiaries were permitted to withdraw funds in spite of subdiv. 1(a) of § 2218 of the Surrogate Court Procedure Act, which became effective on June 22, 1968, providing that if an alien beneficiary is domiciled or resident within a country to which government checks may not be transmitted by reason of government regulation, etc., "the court shall direct that the money due to such alien" shall be paid into court for the benefit of such alien. The money or property withheld shall be paid out only upon order or judgment of a competent court.

²²Stats. 1974, c. 425, p. 1025, § 1. WEST'S ANN. PROB. CODE, § 259-295.2.

Devolution of Estates

The estate devolves upon the heirs at the death of the decedent either by operation of law (intestate succession) or by disposition *mortis causa*.

Intestate Succession

As a preliminary, the children of the decedent are the intestate heirs in equal shares. The place of a child who has been eliminated from the inheritance is taken by his or her issue *per stirpes* (sec. 607 C.C.). Under Hungarian law there is no distinction between children born in wedlock and those born out of wedlock. Consequently, children born out of wedlock inherit not only from and through their mothers, but also from and through their fathers, provided that paternity has been established by a public acknowledgement of the father, by a judgment of the court in a paternity suit, or by the subsequent marriage of the mother and the father.²³ Adopted children are treated in the same way as the adoptive parents' natural children. Adoption, however, just as in several United States jurisdictions, does not affect the adopted children's inheritance rights from their blood relatives (sec. 617(2) C.C.), unless the adoption is a secret one governed by sec. 48(3) of the Family Code.

If there are no issue left, the surviving spouse will inherit. The scope of inheritance by the surviving spouse depends upon the nature of property left by the decedent. Hungarian law distinguishes three familiar property regimes: community property, separate property and ancestral property. Community property consists of all the assets which were acquired, either separately or jointly, by the spouses during the marriage. Assets acquired before the marriage and property inherited or received as a gift by one of the spouses during the marriage constitute separate property of the husband and the wife, respectively. Upon termination of marriage the community property is divided into equal shares.²⁴ Ancestral property consists of assets which were acquired by the decedent by way of testate or intestate inheritance or donation from an ancestor, or from the decedent's brother or sister, or from the brother's or sister's issue, provided that the latter obtained it by inheritance or donation from a common ancestor.²⁵

²³Sec. 36 of the Hungarian Family Code (Law No. 1 of 1974), Magyar Közlöny (Hungarian Gazette) No. 31, 275, May 14, 1974.

²⁴Sections 27-28 and 31(2) of the Hungarian Family Code.

²⁵Ancestral succession is an ancient institution in the Hungarian law. It has some feudal resemblances. Its rationale is that "especially in case of childless marriages of short duration, property should remain with the descendants of the person who acquired it and should not pass, as the result of a short marriage, to a family of strangers." EXPOSÉ OF REASONS, *supra* note 13, at 483. Before the enactment of the Hungarian Civil Code of 1959, the topic of ancestral succession was discussed extensively both within the legal profession and among the general public, and, as a result, the code preserved this old legal institution.

For a better understanding, let us assume that the estate consists only of community property. Upon the death of one of the spouses half of that property will be deducted from the estate and will become the individual property of the surviving spouse. If no eligible descendants survive, the surviving spouse will inherit the other half. If there are descendants eligible to inherit, they will succeed to that half of the estate, but it will be encumbered with the surviving spouse's life interest (*usufruct*, roughly, life estate). If the estate also contains separate property of the decedent and there are no issue, then the separate property which is not ancestral property (e.g., a summer cottage acquired by the deceased before marriage by means of a lottery winning) will devolve upon the surviving spouse. The ancestral property will be inherited by the decedent's parent from whom or from whose ancestor it devolved upon the decedent. In the absence of a parent, it will be inherited by his or her issue, or, if there are no issue, by the ancestor of the next degree or his or her issue, up to the ancestor from whom the asset had devolved upon the decedent by way of inheritance or donation (sections 611 and 612 C.C.). The surviving spouse is, however, also entitled to a life interest in the ancestral property (sec. 617 C.C.). If there are no descendants or surviving spouse, the ascendants and their issue will inherit (sections 608-10 C.C.).

Disposition Mortis Causa

Hungarian law recognizes two kinds of disposition *mortis causa*: testamentary disposition and contract of inheritance. As to the former, there are three types of testaments or wills: public, private, and oral. Persons with restricted active legal capacity (i.e., capacity to enter into legal transactions) can dispose of their estates only in a public will. Public wills, unknown to American laws, can be made before a notary or a district court judge (sec. 625(1) C.C.).

There are two types of the second device: the contract of inheritance in its narrower sense and donation *mortis causa*. The Hungarian contract of inheritance is somewhat similar to the American "contract to make a will." In a contract of inheritance the testator, usually an elderly person, appoints the other party as the heir to all or part of his estate in return for his maintenance by the other, either in kind or in form of life annuity (sec. 655 C.C.).²⁶

Donation *mortis causa* is the promise of a gift on condition that the promisee survive the promisor. It must consist of specified assets, e.g., a certain painting, as opposed to the estate as a whole or certain fraction of it. In con-

²⁶Childless elderly people have frequently resorted to contracts of inheritance. EXPOSÉ OF REASONS, *supra* note 13, at 512. Cf. Szirmai, Hungary, *The Law of Inheritance in Eastern Europe and in the People's Republic of China*, 5 LAW IN EASTERN EUROPE, 149, 166 (1961).

trast to American law, Hungarian law does not require transfer of the property itself before the death of the promisor (sec. 659 C.C.). The donation *mortis causa* as well as the contract of inheritance must comply with the formalities prescribed for either public or private wills (sections 659(2) and 656 C.C., respectively).

Dispositive Provisions

Although in the United States, as a general rule, a testator's freedom is limited almost solely by the right of a surviving spouse to take a forced share, (which is, in most cases, a percentage of the estate), Hungarian law, (like the German and the German-related legal systems), provides that certain near-relatives of the testator, if they have not been appointed as heirs themselves, are entitled to receive from the heir or heirs certain benefits. Under section 661 of the Civil Code, the testator's descendants, spouse or parents, in that order, are entitled to what is called a compulsory portion "if they are or would be intestate heirs in the absence of testamentary disposition" excluding them from inheritance. The compulsory portion is a right to demand from the appointed heir or heirs the payment of a sum of money equal to one-half of what the excluded relative would have received *ab intestato*, i.e., in absence of the testament. Thus, the compulsory portion or share is one of the liabilities of the estate. However, the testator may deprive the persons entitled to a compulsory portion of their claims; that is, they may be disinherited in certain instances enumerated in section 663 of the Civil Code: unworthiness (for this concept, see fn. 12), commission of a serious crime against the testator or his/her relatives in the direct line or his/her spouse, violation of a legal obligation to support the decedent, the leading of immoral lives, conviction of a crime punishable with imprisonment for five years or more, or serious violation of conjugal obligation.

Hungarian law does not recognize the possibility of splitting property rights into legal and equitable ownership. Consequently, creation of a trust, either *inter vivos* or *mortis causa*, is not possible under Hungarian law. Furthermore, there is no reversionary heir in Hungarian law. The Hungarian Civil Code of 1977 is against the imposition of restrictions upon the heirs by the decedent. Hence, it does not permit a testator to appoint heirs successively in such a way that "from the occurrence of certain events or from a certain date the heir is replaced, either wholly or partly, by another person" (sec. 645(1) C.C.). Such testamentary disposition is invalid unless it can take place as a simple substitution, that is, as an appointment of substitute heirs in case the heir appointed by the testator is eliminated from the inheritance, e.g., he or she dies before the testator or disclaims inheritance (sec. 645(1)2 C.C.).

Rules of Choice of Law of Succession

There has never been a statutory provision determining the basic Hungarian conflicts rule of succession, and court decisions had been quite inconsistent in this regard. Prior to World War I, as a result of the principles of universal succession and of the unity of estate, several courts, including the Hungarian Supreme Court, applied the law of the decedent's last domicile to both movable and immovable estates (*lex domicilii*).²⁷ Then, after World War I, the courts, adopting the principle of division of the estate, (scission principle), applied the law of the situs to immovables (*lex rei sitae*), and the national law of the decedent at the time of death to movables (*lex patriae*).²⁸ The reason for this dichotomy is said to have been protection of the interests of the landed aristocracy. Specifically, adoption of the scission principle and the resulting application of the *lex rei sitae* to landed property assured application of the Hungarian law of succession to entailed property situated in Hungary, regardless of the nationality of the decedent.²⁹ Legal scholars, especially Professor Szászy, advocated even before World War II the return to the principle of the unity of the estate and the application of the nationality law of the decedent as the basic conflicts rule of succession.³⁰ Finally, the Hungarian Supreme Court in its "decision of fundamental importance," dated October 28, 1952, accepted application of the decedent's national law to both immovable and movable property, in the absence of international agreements to the contrary.³¹ It should be noted, however, that, according to a 1958 opinion of the Hungarian Supreme Court, the 1952 decision has no retroactive effect. Consequently, estates devolved prior to October 28, 1952, are governed by the scission principle. The law of the situs applies to immovables and the national law of the decedent at death controls movables.³²

Reciprocity is not a prerequisite for the application of foreign laws of succession to Hungarian estates.³³ Thus, the immovable Hungarian estate of an American citizen who died domiciled in the United States is governed by the "American" law, i.e., the law of his or her domiciliary state, even though suc-

²⁷E.g., No. 432/1905 decision of the Civil Senate I of the *Kúria* (highest court of Hungary at that time), cited by RÉCZEI, *INTERNATIONALES PRIVATRECHT*, 397 (1960). (Originally published in Hungary under the title: NEMZETKÖZI MAGÁNJOG (1959); all the citations refer to the German version). Cf. TALLÓS & KIRÁLY, *NEMZETKÖZI VONATKOZÁSÚ KÉRDÉSEK AZ IGAZASÁGÜGYI SZERVEK GYAKORLATÁBAN*, 129 (1964). (International Problems in the Practice of Judicial Organs.)

²⁸Supreme Court's decision "of fundamental importance" published in 2 POLGÁRI HATÁROZATOK TÁRA, no. 212 (Decisions in Civil Matters) and in JOGI HIRLAP, 1941, case no. 225. See also SZÁSZY, *PRIVATE INTERNATIONAL LAW IN THE EUROPEAN PEOPLE'S DEMOCRACIES*, 367-368 (1964).

²⁹TALLÓS & KIRÁLY, *supra* note 27, at 130.

³⁰SZÁSZY, *NEMZETKÖZI MAGÁNJOG*, 511 (1938).

³¹No. 4804/1952, published in 3 POLGÁRI HATÁROZATOK TÁRA no. 602.

³²No. 639; opinion published in BÍRÓSÁGI HATÁROZATOK, 128 (1958).

³³RÉCZEI, *supra* note 27, at 400.

cession to immovable American estates of a Hungarian national who died domiciled in Hungary is determined under American conflicts laws by the law of the state where the property is located. Furthermore, application of foreign succession laws in accordance with the principle of *lex patriae* is apparently not restricted or excluded by resort to the principle of renvoi. The courts and other authorities, e.g., the minister of justice, are said to have been against acceptance of renvoi, even though it would call for the application of Hungarian law in cases involving immovables situated in Hungary.³⁴ Some authors espouse the view that renvoi cannot be accepted if it destroys the unity of the estate; but they also say that renvoi cannot be disregarded if it preserves this unity.³⁵ Thus, for instance, renvoi ought to be accepted in the case of an American decedent who died domiciled in Hungary leaving there an estate including both movables and immovables. In this case acceptance of renvoi would call for the application of the Hungarian law of succession to movables as well as immovables as the law of domicile and the law of the situs, respectively. According to the protagonists of renvoi, nonacceptance of the remission would result in narrowing the scope of application of the Hungarian socialist law in favor of a capitalist system of law. There are others, however, who object to the acceptance of the principle of renvoi on the ground that it would increase uncertainty of the law and, in the case of remission, its consistent application would lead to a vicious circle.³⁶

It is not the Hungarian law on conflicts but the Hungarian law on citizenship, Law No. V of 1957, which extends application of the Hungarian law of succession at the expense of foreign laws. The Hungarian law of citizenship, like several other European continental laws, is based on the principle of descent (*jus sanguinis*) and not, like American law, on the principle of the place of birth (*jus soli*).³⁷ Descent from a Hungarian father or mother is the decisive factor in acquiring Hungarian citizenship. Hungarian citizenship of either parent conveys Hungarian nationality to their offspring. This law might lead to strange consequences. Under the previous laws on citizenship, an illegitimate child acquired the nationality of his or her mother, and the father's citizenship was irrelevant. In contrast to the earlier laws, the presently prevailing legal rules do not discriminate between sexes or between children born in or out of wedlock. Consequently, an American-born child of a German mother, fathered out of wedlock by a Hungarian refugee who died thereafter in Vietnam, is a Hungarian citizen, provided that the father's paternity has been established in a paternity suit.

³⁴SZÁSZY, *supra* note 28, at 140.

³⁵E.g., RÉCZEI, *supra* note 27, at 75 and 400.

³⁶SZÁSZY, *supra* note 28, at 141.

³⁷See generally, SZLEZAK, DAS STAATSANGEHÖRIGKEITSRECHT VON UNGARN (1959).

According to the earlier law on citizenship, Law No. XIII of 1939, acquisition of a foreign citizenship through naturalization resulted in the loss of Hungarian nationality. Under Law No. LX of 1948, which replaced the 1939 statute, and also under the presently prevailing law, Law No. V of 1957, acquisition of a foreign citizenship is irrelevant. Citizenship can be lost only by release on application or by deprivation of citizenship.³⁸ As a rule, both means affect only the person who is released or deprived and not his or her family members (sections 14(1) and 16 (1) of Law No. V of 1957).

Due to the interaction of the two principles underlying nationality laws and the irrelevancy of acquisition of a foreign citizenship under Hungarian law, many Americans of Hungarian origin have dual nationality. All those Hungarians who left Hungary during and after World War II and who then became American citizens through naturalization—and their descendants—belong to the category of dual nationals, except for those very few who asked for and were released from, or were deprived of, their Hungarian citizenship. And, from the point of view of Hungarian law, a Hungarian with dual nationality is to be regarded as a Hungarian citizen.³⁹ As a result, the eventual Hungarian estates of a large portion of Hungarian-Americans are subject to the Hungarian law of succession as the *lex patriae* of the decedent. Similarly, their descendants will be subject to the Hungarian law should they become interested will be subject to the Hungarian law should they become interested as beneficiaries of estates located in Hungary.

For the sake of completeness, it should be mentioned that in a case of dual citizenship in which neither one is Hungarian, the person is to be treated as a citizen of the country with which he or she has stronger ties. Preference is given to the country of domicile and in absence thereof, to the place of birth.⁴⁰ In cases involving estates of stateless persons or of those whose nationality is doubtful or disputed, the law to be applied is the law of last domicile and, if it is unknown, the law of last residence.⁴¹ As regards women, nationality is affected neither by marriage nor divorce, nor by a change in the husband's nationality during marriage.⁴²

³⁸Upon request a Hungarian citizen may be released from Hungarian citizenship if the following conditions are met: (1) lack of outstanding taxes or any other public debts; (2) not being under indictment or criminal sentence; and (3) acquisition of the citizenship of another state (sec. 12 of Law No. V of 1957).

A person may be deprived of his citizenship if he resides abroad and has seriously violated his allegiance, or if he has been sentenced for committing a serious offense either by a Hungarian or a foreign court (sec. 15 of Law No. V of 1957).

³⁹Section 4 of Law No. V of 1957. As of 1976 the number of American residents who were either Hungarian-born or had at least one Hungarian-born parent was 603,668. *THE WORLD ALMANAC AND BOOK OF FACTS*, 212-213 (1976).

⁴⁰RECZEI, *supra* note 27, at 157.

⁴¹Sec. 44(2) of Law Decree No. 23 of 1952.

⁴²Hungary adhered to the New York Convention of February 20, 1957, on the nationality of married women. Cf. SZASZY, *supra* note 28, at 125.

Conditions of Succession

Death of the De Cujus

The first condition of succession, testate or intestate, is, of course, the death of the *de cuius* (decedent or testator). Death is a matter of fact; it must be duly proved. The usual proof is the certificate of death.

Like many laws in the civil-law world, but unlike American law, the Hungarian legal system adopted the institution of judicial declaration of death. Under section 23 of the Civil Code, a missing person can be declared dead if five years have passed since his or her disappearance without any sign of being alive. A judicial declaration of death creates a rebuttable presumption of death (sec. 25 C.C.), with the presumed day of death being the 15th day of the month subsequent to the disappearance, unless the circumstances of the case indicate another date. Since it affects the personal status of a person, declaration of death of a Hungarian citizen is within the exclusive jurisdiction of the Hungarian courts, in the absence of international agreements to the contrary.⁴³ Although incompatible with the personality principle, Hungarian courts are held to have jurisdiction for the declaration of death of a foreigner in exceptional circumstances, e.g., when someone wishes to raise claims of inheritance to assets located in Hungary owned by a missing foreigner.⁴⁴

Since taking jurisdiction does not necessarily mean application of the *lex fori*, the question has been raised as to what law should govern a judicial declaration of death: the national law of the missing person or the law of the forum, that is, Hungarian law. It seems to be the prevailing view that judicial declaration of death of a foreigner should be governed by Hungarian law.⁴⁵ The rationale of this view is that a foreigner can be declared dead only if he or she has had assets in Hungary, and the declaration will affect only the Hungarian assets. However, according to the unanimous opinion of legal authors, the question of succession will be determined in such instances by the national law of the missing person, even though the judicial declaration of death is unknown to that law.⁴⁶

Capacity to Inherit

As already mentioned, every Hungarian citizen has the capacity to inherit and, at this time, Hungarian law does not discriminate against alien

⁴³Sec. 15 of Law Decree No. 22 of 1952.

⁴⁴RÉCZEI, *supra* note 27, at 405; SZÁSZY, *supra* note 28, at 198; TALLÓS & KIRÁLY, *supra* note 27, at 51.

⁴⁵KOLOSSVÁRY, *supra* note 5; at 105, RÉCZEI, *supra* note 27, at 149.

⁴⁶*Id.* Decrees of judicial declaration of death rendered by German courts have been recognized as rebuttable evidence of death by New York courts, regardless of the nationality or domicile of the missing person. DROBNIG, *AMERICAN-GERMAN PRIVATE INTERNATIONAL LAW*, 153 (2d ed. 1972).

beneficiaries. In a given situation, however, a person may not be entitled to inherit. There is usually a distinction between absolute and relative incapacity to inherit. The former means a complete lack of such capacity, regardless of the decedent. For instance, in the earlier Hungarian law, members of certain religious orders were absolutely incapable of inheriting. In the presently prevailing view, absolute incapacity of certain classes of persons is against public policy since it would violate the principle of equality. Consequently, a foreign law of succession, declaring a certain category of persons, such as monks, convicts, or deserters absolutely incapable of inheriting would be disregarded.⁴⁷ However, Hungarian law recognizes relative incapacity, which renders a certain person incapable of inheriting from a certain decedent. Relative incapacity can result, for example, from certain willful and unlawful conduct of an heir or prospective heir against the decedent or a co-heir, which makes him automatically unworthy of inheriting, or which justifies the testator in disinheriting him in case he is a statutory heir who would otherwise be entitled to a compulsory portion in the estate.⁴⁸

A different case of relative incapacity is that of a surviving spouse who, at the time of the other spouse's death, lived separately and without any prospect of restoring the conjugal relationship. In such a case the surviving spouse cannot inherit from the other spouse, due to the lack of conjugal community which, according to Hungarian law, is the basis of inheritance between spouses (sec. 601 C.C.).

The various instances of relative incapacity to inherit play an important role in Hungarian law, as well as in all those laws by which the testator does not have the same testamentary freedom as his American counterpart. There is, therefore, a need for legal rules allowing elimination of certain heirs and other beneficiaries from inheritance.

Under Hungarian choice of law rules, relative incapacity of an heir or beneficiary is to be determined in accordance with the national law of the decedent. Since it is for this law to define the categories of intestate heirs, it is logical that the same law should determine the classes of those who are not eligible to inherit in given circumstances. However, because the legal norms governing relative incapacity, especially those defining unworthiness and the grounds for disinheritance, reflect policy considerations, some Hungarian jurists are of the opinion that the law of the forum cannot be entirely disregarded.⁴⁹ Thus, an heir who had attempted to kill the decedent could pro-

⁴⁷RÉCZEI, *supra* note 27, at 407; TALLÓS & KIRÁLY, *supra* note 27, at 133.

⁴⁸For unworthiness, see fn. 12 *supra*; causes for disinheriting a statutory heir are listed in sec. 663 C.C., e.g., unworthiness, the leading of immoral lives, serious violation of conjugal obligations.

⁴⁹E.g., RÉCZEI, *supra* note 27, at 407.

bably be held unworthy and would be denied his intestate share in a foreign decedent's Hungarian estate, even though the national law of the decedent would exclude the heir only if he had killed the decedent.

The relative incapacity to inherit might be the consequence of participation in drafting a will. In Hungarian law dispositions in favor of the judge or notary who drafted the (public) will are invalid (sec. 625 C.C.). Dispositions to witnesses attesting a (private) will are also invalid, unless the relevant parts of the will are written and subscribed by the testator himself (sec. 632 C.C.). Similar restrictions can be found in American statutes. Since relative incapacity of this nature affects the substantive validity of testamentary dispositions, it is governed by the national law of the testator.

The question of whether an unborn child has a conditional right to inherit is to be answered by the national law of the decedent. But whether the child acquires legal capacity retroactively at the moment of birth or only if he or she has lived for a certain period, depends on the national law of the child.⁵⁰

Intestate Succession

Since Hungarian conflicts rules designate the national law of the decedent at death as the basic law of succession, most of the issues of intestate succession are, in general, governed by that law: categories of heirs, grounds for elimination from inheritance, substitution of heirs who have been eliminated, order of succession, the distributive shares of the heirs, the mode of succession (whether the heir or heirs succeed automatically or must make a declaration of acceptance), the mutual relations between the heirs, and the scope of their liability for the debts of the estate.

Preliminary Questions

In most legal systems the categories of intestate heirs are comprised of the descendants, the surviving spouse and the ascendants of the deceased. According to Hungarian conflicts rules, the circle of relatives eligible for intestate succession, the order in which they inherit, and their share in the estate are governed by the national law of the decedent. However, the incidental questions, such as who the descendants or ascendants of the deceased are and the validity of a claim raised by a person to be the decedent's surviving spouse, are not subject to the *lex patriae* of the deceased. Issues concerning the existence, validity and proprietary consequences of marriage or the legal status of children born in or out of wedlock are, in general, governed by the *lex causae*, that is, the law the courts would apply if these questions would be presented as principal issues. A short discussion of Hungarian conflicts rules designating

⁵⁰SZÁSZY, *supra* note 28, at 196.

the laws applicable to these incidental or preliminary questions, would therefore seem to be in order.

MARRIAGE — FORMAL VALIDITY

The formal validity of a marriage is determined by the law of the place where it was celebrated (*lex loci celebrationis*).⁵¹ However, in two instances a marriage is regarded as valid even though the parties did not comply with the form requirements of the place of celebration: (1) under section 7 of the Hague Convention on the validity of marriage of June 22, 1901 (ratified by Law No. XXI of 1911), a marriage is valid if it was contracted in conformity with the forms prescribed by the national law of the parties; and (2) the marriage of Hungarian nationals contracted abroad is valid if it was solemnized by a Hungarian diplomatic officer, duly authorized to officiate marriages. In such instances, the parties have to comply with the form requirements prescribed by Hungarian domestic law.⁵²

At this juncture it must be noted that toward the end of World War II and immediately thereafter, numerous Hungarian refugees contracted marriages in various Austrian and German refugee camps. Most of those marriages were solemnized by persons such as ministers, priests, or camp commanders, who were not authorized to officiate marriages either by the local law or by the then-prevailing Hungarian law. Due to this defect, the parties to those marriages did not acquire the status of husband or wife. As was emphatically pointed out by a 1948 Hungarian governmental circular,⁵³ those marriages were to be regarded as nonexistent, and as such they entailed no matrimonial rights and duties at all. As a result, the surviving "spouse" had no intestate claim to the Hungarian estate of the deceased "spouse." However, since Hungarian law does not distinguish between legitimate and illegitimate children, the inheritance rights of offspring of nonexistent marriages are not affected by the nullity of their parents' marriage.

MARRIAGE — SUBSTANTIVE VALIDITY

If the parties are of the same nationality, the substantive requirements of marriage are determined by their national law. If they are citizens of different states, the requirements are determined separately for each by the law of his or her nationality.⁵⁴ However, if the designated foreign law violates Hungarian

⁵¹Sec. 15 of Law No. 23 of 1952 (*as amended by* Law Decree No. 40 of 1967).

⁵²Sec. 5 of the Code of Family Law, Law No. IV of 1974. Article 37(1) of the American-Hungarian Consular Agreement authorizes the consular officer "to solemnize a marriage, provided that both parties are nationals of the sending State and provided also that the solemnization of such marriage is not prohibited under the law of the receiving State."

⁵³115.400/1948 BM (issued by the Minister of Interior).

⁵⁴Sec. 16 of Law Decree No. 23 of 1952.

public policy, as in the case of a foreign law discriminating on the ground of race or creed,⁵⁵ it must be disregarded. Thus, it might occur that a marriage which is invalid in the country of the spouses on some racial or religious grounds would be valid in Hungary. Consequently, the surviving spouse would have his or her widow's share in the Hungarian estate of the deceased spouse.

Under Hungarian domestic law, a marriage is valid until it is declared invalid by a final decree of a competent court.⁵⁶ The spouses and the prosecutor, as well as interested third persons, are entitled to bring an action to declare a marriage invalid. The effect of an invalidated marriage upon matrimonial property rights depends upon whether or not the parties contracted the marriage in good faith. For the party who entered the marriage in good faith, not knowing of its invalidity, the property consequences of the invalid marriage are the same as those of a valid one. The effect upon inheritance rights of a marriage which has been declared invalid has been left to the courts to determine. Up to July 1, 1971, the courts did not have an opportunity to express their opinions in this matter, and the present writer is unaware of any court decision dealing with the issue subsequently. However, it can be noted that prior to the enactment of the Hungarian Civil Code of 1959, the courts recognized the intestate inheritance rights of surviving bona fide spouses.⁵⁷

PROPERTY RIGHTS DURING MARRIAGE

There is no statutory provision designating the law to be applied in matters concerning property rights in a marriage in which one or both spouses are foreign nationals. According to the apparently prevailing view, the law governing property relations during marriage is the national law of the spouses, provided that they are both citizens of the same state. If they are nationals of different states, the law to be applied is that of their domicile or last common domicile.⁵⁸

ANNULMENT — DIVORCE

The termination of matrimonial relations raises three distinct — but hardly uncommon — questions: the jurisdiction of the court, the applicable law and the recognition of foreign decrees.

As regards jurisdiction of the court, Hungarian law distinguishes marriages in which one or both parties are Hungarian citizens from those in which both spouses are foreign nationals. Under section 15 of Law Decree No. 22 of 1952,

⁵⁵TALLÓS & KIRÁLY, *supra* note 27, at 63.

⁵⁶Sec. 13 of the Code of Family Law.

⁵⁷BACSÓ *et al.* A CSALÁDIOGI TÖRVÉNY MAGYARÁZATA, 92 (1971). (Commentary on the Code of Family Law).

⁵⁸KOLOSSVÁRY, *supra* note 4, at 95-96; RÉCZEI, *supra* note 27, at 360-361; SZÁSZY, *supra* note 28, at 348-349; TALLÓS & KIRÁLY, *supra* note 27, at 73.

in the absence of international agreement Hungarian courts have exclusive jurisdiction in matters concerning the status of Hungarian citizens. Consequently, the jurisdiction of Hungarian courts is exclusive in matters of annulment, divorce and declaration of the validity or invalidity of a marriage of Hungarian citizens, regardless of the place of the marriage or the domicile of the parties (whether in Hungary or abroad). The same exclusivity applies to marriages in which only one of the spouses is a Hungarian.⁵⁹ Furthermore, since Hungarian nationals who have acquired a foreign citizenship are regarded as Hungarians (unless they have lost their Hungarian citizenship by release or deprivation), this rule also applies to Hungarians with dual citizenship. An interplay of Hungarian conflicts rules and citizenship laws might bring about strange and quite unexpected results. For instance, a married Hungarian citizen who left Hungary after World War II without his wife and came to the United States of America where he, after having obtained an *ex parte* divorce, married again, now lives in bigamy according to Hungarian law. The American divorce will not be recognized in Hungary. Under section 16 of the same law, a foreign judgment cannot be recognized if its recognition would violate the constitution or a mandatory rule (*jus cogens*) of the Hungarian law. Section 15 of this law prescribing exclusive jurisdiction of Hungarian courts in status actions is a mandatory rule, i.e., the parties cannot depart from it by their agreements. Would the Hungarian wife be entitled to her widow's share in the Hungarian estate of her "divorced" spouse? In a case like this one, she would not, in spite of the invalidity of the husband's American divorce under Hungarian law. As already mentioned, the surviving spouse is not entitled to his or her widow's share if the spouses lived separately at the time of the other spouse's death, and it is obvious from the circumstances of the case that there was no chance for restoring the marital relationship, (sec. 601(1) C.C.).

With respect to the termination of a marriage in which both spouses are foreign nationals, Hungarian courts will proceed only if at least one of the parties has been domiciled or resided permanently in Hungary and if the Hungarian decree will be recognized in the country of the parties. In a suit for annulment, Hungarian courts will apply either the law of the place of celebration or the national law of the parties, depending upon the basis of the suit and the place of celebration. In an action for dissolution the courts will grant a divorce only if it can be terminated under both the Hungarian law and the national law of the parties. Furthermore, in compliance with Hungarian domestic law, if divorce is granted, neither party will be declared to have been at fault in the breakdown of the marriage.

⁵⁹Cf. SZÁSZY, *supra* note 28, at 353.

Foreign decrees terminating marriages of foreign citizens will, in general, be recognized in Hungary if the foreign court had jurisdiction and if the decree is recognized in the country of the parties.⁶⁰

PARENT-CHILD RELATIONSHIPS

As previously noted, Hungarian law does not distinguish between children born in wedlock or out of wedlock, provided that the father of the child has been established.⁶¹ Under Hungarian conflicts rules, the question of who shall be deemed to be the father of the child is governed by the national law of the alleged father at the time of the child's birth. However, this rule applies only in cases in which both the alleged father and the child are foreigners. If the child is a Hungarian citizen, that is, if the mother is Hungarian, then Hungarian law must apply. In addition, the Hungarian law must be applied even though the child is a foreigner, but lives in Hungary and the Hungarian law is more favorable to him than the father's national law.⁶² This will happen, for instance, where the father's paternity has been established judicially, but his national law does not recognize judicial establishment of paternity as a means of fully legitimating a child born out of wedlock.

Under Hungarian conflicts rules, legal relations between parent and child are governed by the national law of the child. Again, however, if the child, who is a foreign citizen, lives in Hungary, the Hungarian law will apply if it is more favorable to him than his national law.

According to what appears to be the unanimous opinion of Hungarian authorities, public policy calls for the application of Hungarian law if that law is more favorable to the child than his national law, not only in *inter vivos* relations between parent and child but also in matters of inheritance involving children who are foreign citizens but live in Hungary. As a rationale for the extensive application of the rule of "the more favorable law," Hungarian authors point out that problems of inheritance are inseparably tied up with those of family law.⁶³

The Hungarian law, not distinguishing between "illegitimate" and "legitimate" children, in conjunction with the laws of succession and citizenship, might give rise to unwanted consequences. For instance, the "illegitimate" child of a Hungarian refugee, no matter where the child might live, is entitled to a distributive share in the father's Hungarian estate. Or, the child of an American citizen born out of wedlock to a Hungarian mother will

⁶⁰SZÁSZY, *supra* note 28, at 353-355; TALLÓS & KIRÁLY, *supra* note 27, at 76-88.

⁶¹Sec. 38 of the Code of Family Law. See p. 7, *supra*.

⁶²Sec. 17(1-3), Law Decree No. 23, 1952.

⁶³RÉCZEI, *supra* note 27, at 337 and 402; SZÁSZY, *supra* note 28, at 122; TALLÓS & KIRÁLY, *supra* note 27, at 89-90.

have, at least, his or her forced share in the father's estate located in Hungary. The same is true of the child, whether legitimate or illegitimate, of an American citizen if the child lives in Hungary.

ADOPTION

The law governing adoption is, in general, the national law of the adoptive parents. If they are of different nationality, adoption is governed by the law of their domicile.⁶⁴ However, the consent of the child and other persons and the approval of authorities required by the child's national law must also be obtained. Adoption of a Hungarian citizen by a foreigner is valid only if the competent Hungarian authority has approved it and consent has been obtained from those persons whose consent is necessary under Hungarian law.⁶⁵ As in some other countries, the obvious purpose of the Hungarian law is to prevent emigration. Adoption of a foreigner by a Hungarian presents no problem of conflict of laws. Under Hungarian law, a foreigner can be adopted only if he or she has been previously naturalized.⁶⁶ In other words, a Hungarian can adopt only a Hungarian. It is worth mentioning that under Hungarian law, as under the laws of some other countries, only minors can be adopted.⁶⁷ Hence, adoption of a Hungarian national of full age (eighteen years) being invalid, it has no legal effect in Hungary, e.g., the adopted person does not have the intestate inheritance rights of a child in the adoptive parents' Hungarian estate.

Testamentary Disposition

Dispositions *mortis causa* are, in general, subject to the law governing succession, that is, the national law of the decedent.⁶⁸ However, since a testamentary disposition, as a legal act manifesting the testator's intention, comes into existence before his or her death, certain special rules are also to be considered.

Modes of Disposition Mortis Causa

The modes or ways in which a disposition can be made are governed by the national law of the testator. Thus, the question of whether a testator can enter into a contract of inheritance, restricting voluntarily his or her testamentary freedom, is to be answered by the *lex patriae* of the testator. The same law is to be consulted with respect to the making of a joint will. In Hungarian law, under section 644 of the Civil Code, any kind of joint will, will be reduced if the same instrument is invalid.

⁶⁴SZÁSZY, *supra* note 28, at 361-362.

⁶⁵Sec. 48 of the Code of Family Law.

⁶⁶Sec. 47(3) of the Code of Family Law.

⁶⁷*Id.*

⁶⁸*Cf.* TALLÓS & KIRÁLY, *supra* note 27, at 153-156.

Formal Validity of Dispositions Mortis Causa

A testamentary disposition is valid if it conforms to the form requirements prescribed by the law of the place of making (*lex loci actus*), the national law of the testator, or the law of the forum, i.e., Hungarian law. Therefore, the will of a Hungarian residing abroad is formally valid if it meets the form requirements of the law prevailing either at the place of making the will or Hungarian law.⁶⁹ An American citizen's will, disposing of his or her Hungarian estate, is valid if it was drafted in compliance with the form requirement either of the *lex loci actus*, the *lex patriae*, or the *lex fori*.⁷⁰ Revocation of a will by a subsequent will, by obliteration of part of the will, by distinction or by accident is governed by the same laws that are applicable to the making of a will.

With respect to certain aspects of testation, Hungarian conflicts rules qualify the national law of the testator. Thus, material validity of a will, including the legal effects of impossible, illegal, or immoral conditions, is determined by the national law of the testator at death. Hence, a change in citizenship subsequent to the making of a will might affect the material validity of the testament. On the other hand, testamentary capacity is governed by the testator's *lex patriae* at the time of making the will. Subsequent change in citizenship has no effect upon the validity of the will. The extent of restrictions upon one's testamentary freedom is determined by the national law of the decedent at the time of his or her death. Thus, a change in nationality subsequent to the making of a will might affect the distribution of an estate. As already mentioned, Hungarian law limits a testator's freedom by providing a compulsory share for his or her children, spouse or parents. If, for instance, an American citizen, after making a will precluding his children from his estate, becomes a Hungarian citizen and dies as such, the children can claim their compulsory shares in their father's Hungarian estate, which is to be distributed according to the father's national law at death, i.e., Hungarian law.

Finally, another kind of restriction upon testamentary freedom is to be mentioned. This restriction is relevant to a testator's freedom in American-Hungarian relations, and it is due to the absence of the common-law trust in Hungarian law. The institution of trust is incompatible with that law which, like the civil-law systems in general, does not distinguish between legal and equitable ownership. Moreover, the trust is contrary to Hungarian public policy which opposes imposition of restrictions by the decedent upon the heirs,

⁶⁹Sec. 34 of Law No. XVI of 1876.

⁷⁰Decision No. 462 of the Civil Senate of the Hungarian Supreme Court, published in 1957 BIRÓSÁGI HÁTTOK, 152 (1957) (Judicial Decisions).

prohibiting them to dispose freely of their distributive shares (sec. 645(1) C.C.). Since under the basic conflicts property rule creation of a property right is subject to the laws of the situs, no trust can be established on either immovable or movable property located in Hungary.⁷¹

Administration and Distribution of Estates

Due to differences in the substantive laws of succession, there are significant differences between the American and Hungarian processes leading to the distribution of the assets of a decedent's estate among the beneficiaries.⁷² The most important features of the Hungarian law of succession are that, in contrast to the traditional Anglo-American law of succession, both movables and immovables pass directly and automatically to the heir or heirs, who inherit not only the assets but also the liabilities of the estate. Consequently there is no need and no possibility to appoint a personal representative, in whom the title to movables would vest upon the decedent's death, in order to collect the assets of the estate, to pay the debts, and to distribute whatever is left among the beneficiaries. Nevertheless, in Hungarian law, the winding up of a decedent's estate is not left to the heirs. Collecting the assets and distributing them among the beneficiaries and creditors is performed and supervised by public agencies, except for estates of insignificant value. Although a Hungarian testator can appoint an executor such an appointment is the exception rather than the rule. The status of the testamentary executor is significantly different from that of the American personal representative.⁷³ In his dealings with the estate he is the representative of the heirs, and they can withdraw his appointment at any time. His function is to take the steps necessary to administer the estate, but no rights or liabilities are vested in him. Whatever expenses are incurred by managing the estate are to be reimbursed by the heirs. In the absence of testamentary provisions to the contrary, management of the estate by an executor extends to the collection of assets and to the payment of those debts that cannot be postponed; but distribution of what is left is the function of the notary. The notary is the official in charge of the inheritance proceeding leading to the "transmission of estates" in accordance with the provisions of the testator's will, or in the case of intestacy, with the provisions of the law of succession. An American executor would very probably be allowed to act in

⁷¹RÉCZEI, *supra* note 27, at 195.

⁷²The procedure is governed by Decree No. 6/1958 (VII.4) I.M. (Minister of Justice) *as amended* by Decree No. 1/1975 (IX.17) I.M. (Minister of Justice) (Hereinafter cited as Inheritance Proceeding). For the first decree see 4 FERID-FIRSCHING, *INTERNATIONALES ERBRECHT, Ungarn* 32; for the amendment: Magyar Közlöny (Hungarian Gazette), 9, 17, 1975, No. 63, p. 888. For the Hungarian administration of estates in general, see NÉVAI & SZILBEREKY, *POLGÁRI ELIÁSBÍRÁS* (Civil Procedure) 496-506 (1971).

⁷³Sections 77-78 for Decree No. 6/1958 (VII.4) I.M.

the same capacity and to perform the same functions as the Hungarian testamentary executor.

The Hungarian administration of estates involves, as a rule, two stages: (1) preservation of the estate by taking an inventory of the assets and (2) the inheritance proceeding. Taking the inventory is performed by the local administrative agencies. The inheritance proceeding is conducted by a notary, a full-fledged lawyer, whose office is attached to a district court, a court of first instance. The most important task of the notary in this respect is to transmit the estate to the heir or heirs. This is done by the issuance of an "order of intestate succession; and the order of transmission of the estate is designed to certify those persons.

it. The purpose of the inheritance proceeding is to ascertain those persons who have acquired a right to the estate by virtue of the decedent's will or by the law of intestate succession; and the order of transmission of the estate is designed to certify those persons.

*Jurisdiction of a Hungarian Notary in the Administration of Estates*⁷⁴

The jurisdiction of a Hungarian notary is determined by the situs of the assets and the nationality of the deceased. His jurisdiction is *exclusive* in domestic movable or immovable estates of Hungarian citizens, as well as in domestic immovable estates of foreign citizens. Therefore, no decree or order issued by a foreign authority concerning such estates will be recognized in Hungary. The jurisdiction of a Hungarian notary is *conditional* in cases in which movable or immovable estates of Hungarian citizens are located in foreign countries. In such instances the notary may proceed only if so instructed by the Hungarian minister of justice. The minister will usually instruct the competent notary only if the Hungarian notarial order of transmission of the estate is recognized in the foreign country in which the estate is located.⁷⁵ That would probably take place in those countries whose conflicts rules designate the decedent's national law as the law of succession. Obviously, the United States does not belong in this category.

A Hungarian notary will assume jurisdiction in domestic movable estates of foreign citizens if so instructed by the minister of justice. In such cases, after an inventory of the assets reaches his office, the notary will issue a public notice inviting those persons who claim an interest in the estate, either as beneficiaries or as creditors, to report their claims within ninety days. The results of the notice must then be communicated to the minister. The notary

⁷⁴Sections 29 and 81-85 of Inheritance Proceeding, *supra* note 72.

⁷⁵TALLÓS & KIRÁLY, *supra* note 27, at 139.

cannot proceed further unless so ordered by the minister of justice, whose decision will probably depend upon the existence and nature of the claims.

It should be noted that there is no connection between jurisdiction and the applicable substantive law of succession. Even exclusive jurisdiction does not mean that the Hungarian law of succession becomes applicable. The rules of jurisdiction answer only the practical question of where — in what country, an estate is to be administered.

*International Aspects of the Hungarian Administration of Estates with a View to the American-Hungarian Consular Agreement*⁷⁶

Under the Consular Agreement between the United States of America and the Hungarian People's Republic, the receiving state confers certain rights upon the consular officer of the sending state and imposes certain obligations upon its own judicial and administrative organs. With respect to inheritance, these rights and obligations pertain to notification and preservation of estates and to the transmission of distributive shares.

The death of an American citizen in Hungary must be reported to the minister of justice, who, in turn, is bound to inform the American consular representative about it without delay and to transmit to him a copy of the death certificate or other document recording the death. Information about the death can be given by the competent notary or the local administrative agency directly to the consular officer.

If a foreign citizen dies leaving either a movable or an immovable estate in Hungary, the estate has to be inventoried by the competent local administrative agency. If the foreigner was an American citizen, the United States consular officer is entitled to take steps, in accordance with Hungarian laws and regulations, for the protection and preservation of the estate. For this purpose the American consul must be informed of the estate without delay. He is authorized to take provisional custody of the personal property left by the deceased. The consul must also be informed if an American citizen has an interest in a decedent's estate located in Hungary, regardless of the nationality of the deceased. Again, the consul is entitled to take steps, in accordance with domestic laws, for the protection and administration of the estate.

The second stage of the administration of estates is the inheritance proceeding. The entire estate situated in Hungary is subject to one single proceeding, which takes place either *ex officio*, i.e., on the notary's own initiative, or at the request of an heir, the testamentary executor or a creditor. The ter-

⁷⁶Sections 81-85 of Inheritance Proceeding, *supra* note 72; articles 42-47 of the American-Hungarian Consular Agreement, 24 U.S.T., T.I.A.S. 7641.

ritorially competent notary will initiate the inheritance proceeding *ex officio* if domestic immovables of Hungarian citizens are involved, if there is a minor having interests in the estate (movable or immovable), if there is no known heir, or if among the adult heirs there is one who resides abroad permanently.⁷⁷

The proceeding before the notary begins with the promulgation of the will, if there is any, and concludes with the issuance of an order of transmission of the estate. Because the notarial proceeding is, in principle, noncontentious, it is less formal than the procedure in civil litigation. If there is any dispute or conflict between or among the parties, the notary tries to bring about a friendly settlement. Once this is achieved, the notary issues a final order of transmission. In the absence of a settlement, the notary conveys the estate temporarily by a provisional order of transmission to one or more persons claiming the estate as heirs. The validity of the claim must be decided by the court in a lawsuit, which must be brought within sixty days from the serving of the provisional order of transmission. Most litigation involves disputes concerning the validity of the decedent's will.

If, among the beneficiaries, there is a person with permanent residence in a foreign country, the Hungarian foreign exchange authorities are to be notified; and if the distributive share of such person includes money or securities, it must be deposited for him in a blocked account at the Hungarian National Savings Bank.

*Foreign Exchange Regulations*⁷⁸

In the interests of the planned economy, Hungarian foreign exchange regulations impose restrictions upon certain transactions pertaining not only to domestic and foreign currencies, as the phrase might imply, but also to economic assets. The term economic assets means any object, right or service that has a value expressible in money, but not including domestic currency or foreign exchange assets. Restrictions are imposed not only upon foreign nationals but upon Hungarian citizens as well. From the point of view of foreign exchange regulations, the controlling factor is not nationality but permanent residence: a person whose permanent residence is outside Hungary is a foreigner (*deviza külföldi*, *Devisenausländer*) in the sense of these regulations, regardless of his or her citizenship. Consequently, citizens of any foreign coun-

⁷⁷Sec. 31 of Inheritance Proceeding, *supra* note 72.

⁷⁸Foreign exchange regulations have been in effect in Hungary since 1931. In 1950, the Hungarian government issued a comprehensive statute: Law Decree No. 30 of 1950 on the Planned Management of Foreign Exchange, which was replaced by the presently prevailing Law Decree No. 1 of 1974 on the Planned Foreign Exchange Management (January 17, 1974). An English translation of this Law Decree and of governmental decrees and announcements concerning its implementation was prepared by SOLYOM-FEKETE, *THE NEW FOREIGN EXCHANGE REGULATIONS OF THE HUNGARIAN PEOPLE'S REPUBLIC* (Library of Congress, Law Library, 1974).

try are treated in the same manner as Hungarians if they reside permanently in Hungary and, conversely, Hungarian citizens are treated as foreigners if their permanent residence is in a foreign country. (The latter category is apparently larger than the former due to the fact that Hungarian-Americans of dual nationality are regarded in Hungary as Hungarian citizens.)

The Hungarian foreign exchange regulations have no effect at all upon the capacity of alien nationals to inherit Hungarian assets, but they do affect the disposition and use of such assets inherited by "foreigners," that is, by nonresidents. According to the regulations, no approval of the foreign exchange authority is required for testamentary dispositions in favor of the nonresidents.⁷⁹ On the other hand, a compromise with a nonresident concerning inheritance rights, a contract of inheritance with or in the interest of a nonresident, or a renunciation or disclaimer by a resident of an inheritance if a nonresident would thereby inherit, requires the approval of the competent foreign exchange authority.⁸⁰ Furthermore, transfer of inherited property abroad and legal transactions (e.g., sales and conveyance of inherited movables and immovables) of nonresidents with residents or nonresidents must also be approved by foreign exchange authorities.⁸¹ Because it is difficult to keep inherited real property in good repair from a distance, the *inter vivos* transfer by nonresident beneficiaries of their distributive shares is an expedient solution. The foreign exchange authority, having jurisdiction to grant approval, renders its decision, as a rule, in writing, but is not required to justify the decision.⁸² If such transactions are approved, payment of the purchase price must be made to a blocked account at the National Savings Bank. According to the regulations "payment in forints to a nonresident shall be made to a blocked account, unless a statute or the foreign exchange authority provides for other means of payment."⁸³ This provision, establishing exceptions to the general rule, appears to make it possible for the Hungarian authorities to comply with the American-Hungarian consular convention, which provides in Article 46 that the Consular Officer shall be entitled in accordance with the laws of the receiving State "to receive money or property to which the national of the sending State is entitled upon the death of a person of any nationality, including shares in an estate. . . ." (par. c.). This provision of the consular agreement does not apply to Hungarian-Americans with dual nationality. Therefore, money inherited by them or that which is due to them as the purchase

⁷⁹Sec. 10 of Decree No. 1/1974 (I. 17.) P.M. (Minister of Finance) on the Implementation of Law Decree No. 1 of 1974.

⁸⁰Sec. 6 of Law Decree No. 1 of 1974.

⁸¹*Id.* and sec. 8(1) of Law Decree No. 1 of 1974.

⁸²Sec. 28(2) of Decree No. 1/1974 (I. 17.) P.M.

⁸³Sec. 7(1) of Decree No. 1/1974 (I. 17.) P.M.

price of a sold inheritance must be paid to a blocked account. Money so deposited does not bear any interest, and the holder's right to dispose of money in the blocked account is considerably restricted. What seem to be routinely applied restrictions are contained in the National Savings Bank's unsigned and undated circular distributed to the holders of blocked accounts. Most importantly, the money can be spent only in Hungary and only for the purposes strictly circumscribed in the bank's circular.⁸⁴

Noncompliance with foreign exchange regulations is discouraged by both civil and criminal sanctions. Section 200(d) of the Civil Code provides that any contract contrary to law or concluded by evasion of a law shall be null and void. Section 247 of the Hungarian Criminal Code defines the willful violation of foreign exchange regulations as a crime punishable by imprisonment up to three years and in aggravated cases up to eight years. Negligent violation of the regulations involving significant values constitutes a misdemeanor punishable by fine.

Summary and Conclusion

Unlike the traditional American choice-of-law rules invoking the *lex rei sitae* for immovable estates and the *lex domicilii* of the decedent for movables, the Hungarian conflicts law adopted a unitary approach based on the Roman-law concept of universal succession and, since 1952, calls for the application of the *lex patriae* of the deceased at the time of death both in movable and immovable estates. Testamentary capacity is, however, governed by the testator's national law at the time of making the will. In American-Hungarian relations the question might arise as to what is the national law of an American citizen whose domicile is abroad? An American national who dies domiciled in a foreign country is not a domiciliary, hence not a citizen, of a particular state of the Union whose law would be his "national law." This particular issue has not been raised by the Hungarian authorities consulted for the preparation of this article. Should such a problem arise, Hungarian notaries and courts could

⁸⁴The circular enumerates nine cases in which spending is allowed: (1) cost of stay in Hungary. Upon presentation of their passports, the holder of the account and his or her relatives (spouse, children, parents) are entitled to receive 600 forints (approximately 30 dollars) per day and per person for the duration of their stay in Hungary (this is a rather considerable amount of money in light of the average monthly income, which is 2,800 forints in Hungary); (2) hotel bills, provided that their amount exceeds 200 forints (10 dollars) per day and per person; (3) medical and hospital expenses incurred in Hungary; (4) financial assistance to relatives (but not beyond first cousins) residing in Hungary up to 1,000 forints (50 dollars) per month and per person, but the total amount cannot exceed 2,000 forints (100 dollars) per month. If the persons assisted are not relatives, the maximum amount cannot exceed 2,000 forints (100 dollars) per year; (5) funeral expenses of relatives who have died in Hungary; (6) costs of maintenance of their graves; (7) costs of installation of grave stones; (8) lawyer's fees; and (9) costs of maintenance and repair of real estate located in Hungary.

probably resort to the Uniform Probate Code as a system of law closest to the "national law" of an American citizen who has died as a domiciliary in a foreign country, unless they apply the law of last domicile.

The principle of nationality prevails in Hungarian conflicts law not only in regard to the law of succession but also in regard to the laws concerning questions that are incidental or preliminary to succession, such as validity of marriage, legal status of children born out of wedlock and adopted children.

Application of the principle of nationality is, however, not exclusive. Hungarian choice-of-law rules designate laws other than the national law of the decedent to govern certain issues. In such instances the conflict rules either exclude application of the *lex patriae* entirely or call for its alternative application, e.g., formal validity of wills is to be determined by the *lex loci actus*, the *lex patriae*, or the *lex fori*. If application of the national law is completely excluded, the exclusion is due primarily to two reasons: expediency and public policy.

Expediency

An obvious reason for nonapplication of the national law of the decedent is the lack of such law, as in the case of a stateless person. In such a case, Hungarian law designates the law of domicile, and if it cannot be ascertained, the law of the place of birth of the decedent, as the controlling law. Again, the law of domicile, or of residence, is to be applied if the citizenship of the deceased cannot be established, and also in cases of dual citizenship if neither one is Hungarian. Another example of expediency is the forum's resort to its own law when a legal device is used which is unknown to the national law of the *de cujus*, such as a possible case of judicial declaration of death of a missing American citizen who has had assets in Hungary. In such instances, the presumed death of a missing person will be declared in accordance with Hungarian law.

Public Policy

Complete exclusion of the *lex patriae* is mostly due to Hungarian public policy and, in many instances, it affects certain persons' capacity to inherit. In this regard, the effect of public policy is either permissive or prohibitive. Thus, a foreign law rendering a certain class of persons (e.g., monks) absolutely incapable to inherit would not be recognized by Hungarian law since such law would violate the principle of equality. On the other hand, it may fairly be concluded that a foreign law permitting a husband who killed his wife to inherit one half of her estate⁸⁵ would not be binding upon Hungarian courts and

⁸⁵See *Wadsworth v. Sick*, 254 N.E.2d 738 (Cuyahoga County Probate Court of Ohio 1970), husband indicted for first degree murder of wife, pleaded guilty to first degree manslaughter, allowed to take one-half of her estate as intestate share.

notaries, since it is contrary to the public policy excluding from inheritance those persons who have killed the decedent, along with those who have made an attack on the decedent's life.⁸⁶

An important expression of permissive public policy is found in laws concerning the rights of children to inherit. While the laws prevailing in the majority of the United States exclude children born out of wedlock from inheriting from and through their natural fathers,⁸⁷ Hungarian law recognizes their right if they are Hungarian citizens. Moreover, children born out of wedlock who live in Hungary are held to be entitled to succeed to their parents' Hungarian estates in accordance with the Hungarian law of succession, regardless of their nationality.

⁸⁶See *Unworthiness* in fn. 12 *supra*.

⁸⁷See, e.g., *Labine v. Vincent*, 401 U.S. 532 (1971). *But see* *Trimble v. Gordon*, 97 S.Ct. 1459 (1977), Illinois probate law allowing illegitimate children to inherit by intestate succession only from their mothers held violation by Fourteenth Amendment Equal Protection Clause.

