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SUCCESSION AGREEMENTS IN BRAZIL: EXTRAJUDICIAL FEASIBILITY AND LEGAL LIMITS - A COMPARATIVE PERSPECTIVE WITH PORTUGAL AND GERMANY SYSTEMS

Pactos Sucessórios no Brasil:
Viabilidade Extrajudicial e Limites
Jurídicos em Perspectiva Comparada
com Portugal e Alemanha

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ABSTRACT | Purpose: This article examines the legal feasibility of succession pacts in Brazil. It focuses on the formalization through public notarial deeds, considering constitutional limits on private autonomy and the protection of forced heirs rights. The succession pact models of Portugal and Germany are also brought up, as they follow a similar Romano-Germanic Brazilian legal system. **Methodology:** The research follows a theoretical exploratory qualitative approach. The analysis of doctrines in the specialized literature subsidizes arguments of the premise on the legality of administrative succession pacts. Jurisprudential sentences, a case study and the analysis of Portuguese and German legal frameworks wrap up succession pacts also help back up the use of extrajudicial via to this end. **Findings:** Although Article 426 of the Brazilian Civil Code expressly prohibits contracts relating to the inheritance of a living person, constitutional principles protecting the autonomy of individual rights and comparative experiences of positive legal systems support a flexible interpretation. The European models discussed demonstrate that succession agreements, under the safeguard of extrajudicial services, would work, preserving the rights of forced heirs and maintaining the legal certainty. **Originality:** The study contributes to contemporary debates on succession planning and dejudicialization in Brazil. It offers a critical reassessment of traditional unneeded prohibitions and proposes institutional pathways for a more functional and modern succession pacts framework in Brazil.

Keywords | Inheritance agreements; Private autonomy; Dejudicialization; Notary Office; Succession pacts dejudicialization.





RESUMO /Propósito: Este artigo examina a viabilidade jurídica dos pactos sucessórios no Brasil. Enfatiza a formalização dos pactos por meio de escrituras públicas, considerando os limites constitucionais à autonomia privada e a proteção dos direitos dos herdeiros necessários. Os modelos de pacto sucessório de Portugal e da Alemanha também são abordados, por seguirem um sistema jurídico romano-germânico, similar ao brasileiro. **Metodologia:** A pesquisa segue uma abordagem teórica exploratória qualitativa. A análise de doutrinas na literatura especializada subsidia os argumentos da premissa sobre a legalidade dos pactos de sucessão administrativa. Sentenças jurisprudenciais, um estudo de caso e a análise dos marcos legais português e alemão complementam a possibilidade administrativa dos pactos sucessórios e também contribuem para fundamentar o uso da via extrajudicial para esse fim. **Principais Resultados:** Embora o artigo 426 do Código Civil brasileiro proíba expressamente contratos relativos à herança de pessoa viva, os princípios constitucionais que protegem a autonomia de direitos individuais e experiências comparativas de sistemas positivos sustentam a flexibilização interpretativa. Os modelos europeus discutidos demonstram que pactos sucessórios, sob salvaguarda de serventias extrajudiciais, podem funcionar, preservando herdeiros necessários e mantendo a segurança jurídica. **Originalidade:** O estudo contribui para o debate contemporâneo sobre planejamento sucessório e desjudicialização no Brasil. Oferece uma reavaliação crítica de proibições tradicionais desnecessárias e propõe caminhos institucionais para um arcabouço de pactos sucessórios mais funcional e moderno no Brasil.

Palavras-chave | Pactos sucessórios; Autonomia Privada; Desjudicialização; Cartório; Desjudicialização de pactos.

1 INTRODUCTION

In recent decades, inheritance laws have undergone significant transformations. Socioeconomic dynamics and paradigmatic shifts in how individuals understand estate planning and private autonomy became the main drivers. The anticipation of inheritance effects, through legal instruments that provide greater predictability and security in the transfer of assets, is, accordingly, gaining ground and relevance. Among the transfer instruments, the so-called succession agreements, yet controversial in Brazil, have aroused increasing interest. due to the contemporary trend of dejudicialization of property relations. The movement seeks mainly to alleviate the overburdened Brazilian judicial system. It also reflects on the role of notary offices as legitimate instruments for consensual conflict resolution and prevention.

In Brazil, however, the historical resistance to the succession agreements is linked to the seal of inheritance contracts of living persons. It finds shelter in the restrained terms of the Article 426 of Brazilian Civil Code. The seal enforcement terms have been questioned by contemporary scholars. A systemic reinterpretation of the legal process is proposed in the light of the constitutional principles of private autonomy, human dignity, and freedom of contract. This reinterpretation spotlights the limits of state intervention in lawful as well in consensual patrimonial choices, especially aiming at the anticipatory and rational organization of family and inheritance.

Lately, the Brazilian normative context has been leaning towards valuing extrajudicial means of solving conflicts and of formalizing sensitive legal issues. Iconic examples of this trend are the possibility of consensual divorces and probate proceedings through public deeds. Such measures demonstrate a growing confidence in the role of notaries as agents of the effectiveness of rights, as well as the legal security. Normative questions could be raised, as the possibility to recognize the validity of the succession agreements. For instance, agreements drawn up in notary offices, would be respecting the fundamental principles and guarantees of the Brazilian legal system?



This question becomes even more pertinent when considering how foreign legal systems, such as those of Portugal and Germany, deal with the subject. In Portugal, succession agreements are allowed by the Portuguese Civil Code in specific situations, notably between couples, as a legitimate form of organizing succession. In Germany, the Erbvertrag (inheritance agreement) is presented as a consolidated and socially accepted contractual modality, with clear and predictable rules. Comparing models will allow us to visualize how distinctive legal traditions deal with the challenge of balancing the patrimonial freedom of individuals, protecting heirs and public order.

Furthermore, examining European experiences on inheritance can provide valuable insights for a critical rationale on the rigidity of Brazilian law. Also, it sheds light on the possibility of making agreements compatible with the drivers of Inheritance Law principles. That is, instead of simply importing foreign models, to foster strategies that inspire practical solutions compatible with Brazilian reality. This comparative approach is particularly rich in demonstrating that contractual succession planning does not necessarily conflict with constitutional values, but may, on the opposite, promote them.

On the other hand, it's necessary to recognize the main risks and limitations inherent of such agreements, by adopting the alternative judicial methodology and instruments to solve inheritance conflicts. Succession agreements can involve family disputes, vulnerability of parties, and the need for information and consent rigor. Therefore, the legal and practical viability of succession agreements should not be analyzed simplistically. It requires due caution and a critical eye to consequences embedded in the clauses, considering not only the technical aspects of the contract, but also the social and ethical impacts of its implementation. At this point the notary's role proves essential, as guarantor of the contract legality as well as of the needed objective good faith of the terms.

This article, therefore, proposes to investigate the legality and limits of succession agreements in Brazil. Here we analyze the possibility of its formalization in notary offices in light of the principles of private autonomy, the social function of contracts, and the legal certainty. Our premise is that the Brazilian rigid judicial process requisites can be permissive to alternative, faster and secure proceeding carried out through notary offices. To this end, we use national and foreign, mainly from Portugal and Germany, doctrines, arguments and views, as well as emblematic jurisprudential decisions. We hope to contribute to the elaboration of a modern, effective model of inheritance process in the country, aligned with new demands of contemporary society.

2 SYNTHESIS OF THEORIES AND LEGAL PERSPECTIVE

The theoretical foundation of this study rests on the core principles of Brazilian contemporary Civil Law. Emphasis is on private autonomy, the social function of contracts, and the evolving institutional role of the notarial profession. Private autonomy is understood as the individual's freedom to manage his own patrimony, in accordance with personal interests. As Gagliano and Pamplona Filho (2022) note, this is a relational principle whose effectiveness depends on the application of moral values such as good faith and human dignity, in face of the social function of property. These aspects become especially relevant when succession is proposed *inter vivos*, in



anticipation to legal effects traditionally considered for the post-mortem scenario. This conceptual framework underscores the needs to reassess succession planning in a way that harmonizes individual freedom with broader normative commitments.

In Brazil, the prohibition of agreements regarding the inheritance of a living person, embedded in Article 426 of the Civil Code, has been the subject of increasing doctrinal criticism. Farias and Rosenvald (2021) argue that the provision must be interpreted in light of constitutional principles, particularly private autonomy as a foundational value of the legal system. In his view, “an absolute and inflexible prohibition of juridical acts with succession-related content can no longer be sustained, when such acts are grounded in consensualism, transparency, and the preservation of third-party rights.” (Farias & Rosenvald, 2021, p. 23). Hironaka (2019) similarly advocates flexibility to classical interpretation of article 426. She proposes succession agreements be recognized as effective tools for family planning, provided that protective limits are observed. All such critiques sum up to a growing demand for a more nuanced and constitutionally coherent understanding of succession-related pacts.

At the international level, Portuguese doctrine offers a particularly rich basis for comparative analysis. In Portugal, the Civil Code allows succession agreements between consorts under specific conditions (Arts. 1700 and 2020 of Portuguese Civil Code), and the doctrine acknowledges their usefulness within the asset’s separation regime. Sottomayor (2020, p.50), for example, argues that such agreements “constitute a legitimate expression of the parties’ autonomy and may serve as an important instrument for patrimonial and familial stability.” Prata (2018) highlights the essential role of notarial intervention as a mechanism of oversight and of legal assurance of pacts. German doctrine, through the institution of the *Erbvertrag* as regulated by Article 1941 and paragraphs, of the German Civil Code, likewise recognizes the binding force of succession, under the requisite formalities. Leipold (2015) emphasizes its relevance for intergenerational patrimonial organization. These comparative insights reveal consolidated European experiences that can meaningfully contribute to the Brazilian debate.

This theoretical framework seeks to integrate doctrine and practice by considering both the socio-legal reality of Brazil and progress already consolidated in European law systems. One is not advocating for the unrestricted admissibility of succession agreements in Brazil. Rather questioning the rigidity of the prevailing interpretative model and, at the same time, proposing a more contemporary and functional interpretation of succession law. This move requires reflection on the appropriate limits of private autonomy, the protection of heirs, and the role of the notarial profession as a guarantor of agreements and of legal certainty. By maturing impacts of inheritance issues, this study may contribute to a critical and constructive debate on the potential reconfiguration of succession law in Brazil, better aligned to the normative and social values of the twenty-first century.

2.1 Private Autonomy and Constitutional Limits

Any analysis of the admissibility of succession agreements in Brazil must begin with a careful examination of the principle of private autonomy. It’s essential, in addition, to look at



its relationship with the constitutional and statutory limits that shape the Law of Succession. Private autonomy, understood as the individual's freedom to determine his/her own legal affairs, becomes a cornerstone in the Brazilian civil-law system. The main reason is the linkage with the constitutional protection of individual's human dignity roofed by art. 1, III of Federal Constitution (Brasil, 1988). By granting individuals the ability to structure their patrimonial interest according to his/her own will, this principle provides a legitimate foundation for succession planning. It includes contractual instruments, so long as such arrangements do not infringe inalienable rights or mandatory rules of public order. This concept highlights the need for reconciling individual's self-determination with the structural constraints of the constitutional system.

Despite its importance for lawful behavior, private autonomy is subject to specific limitations within Brazilian succession law. One constraint in the legitime heirship regime, set forth in Article 1.846 of the Civil Code, refers to the reserve of half of the patrimonial value of a testator, for necessary heirs. It prevents the testator from freely disposing of the entirety of his/her assets. This limitation reflects the legal system's commitment to protecting the family as a core unit of social solidarity. It also ensures patrimonial continuity across generations. As Rodrigues (2020, p. 198) observes, "the legitime heirship constitutes a limit on testamentary autonomy and expresses the principle of family solidarity." Accordingly, any succession agreement that seeks to circumvent or violate this mandatory bridle will inevitably be rendered null.

At the same time, contemporary scholarship increasingly recognizes that private autonomy should be exercised within boundaries. For instance, it should be compatible with constitutional principles regarding the social function of property, the objective good faith, and equality (Brasil, 1988, art. 5, XXIII). Martins-Costa (2016, p. 61) argues that "modern contractual autonomy is not an unlimited freedom, but a relational faculty realized in balance with the legal duties of loyalty, transparency, and cooperation." From this perspective, succession agreements, subject to the rule of legitime heirship and to notarial oversight, can be considered constitutionally compatible. They would safeguard both private intent and family protection. This relational understanding of autonomy supports a more flexible approach to succession planning.

This view gains further support from case law recognizing the validity of inter vivos legal arrangements. It produces indirect succession effects, provided they do not violate mandatory norms. Donations with reversion clauses, the creation of lifetime usufructs, and even the establishment of family holding companies have been upheld by courts when used to organize the transmission of assets during the transferor's lifetime. In the case REsp 1.544.646/MG, deliberated at the Superior Court of Justice, reaffirmed that "private autonomy, combined with the social function of the contract, allows parties to structure their patrimonial relations as long as they observe the legal and ethical limits of the system." These precedents demonstrate that Brazilian jurisprudence already tolerates forms of succession plans that bolster the logic of succession agreements.

From a systemic standpoint, the acceptance of succession agreements in certain circumstances would not represent a rupture with the Brazilian civil-law tradition. It rather becomes a coherent evolution of constitutional values. The Civil Code itself already recognizes contractual instruments designed to regulate future relationships, such as prenuptial agreements, cohabitation contracts,



and fiduciary arrangements. What the system requires is that such instruments do not infringe upon the core of the legal order. It particularly requires the enforcement of inalienable rights and the principles of family protection and legality. It becomes clear that the legal framework is not inherently incompatible with contractual mechanisms governing future patrimonial effects.

Moreover, the explicit recognition of succession agreements in constitutional systems of Portugal and Germany shows that these instruments do not undermine fundamental values such as dignity, equality, and solidarity. On the contrary, they may enhance values that promote predictability, stability, and fairness in intergenerational relations. The requirement of execution by public deed, under notarial control of legality, appears as an appropriate mechanism, reconciling contractual freedom with legal safeguards. Comparative experience thus, reinforces the feasibility of a model that balances autonomy with institutional oversight.

Ultimately, the path toward the potential acceptance of succession agreements in Brazil lies at the intersection of private autonomy and constitutional limits. Such acceptance will depend not only on legislative reforms, but mainly on a renewed understanding of the role of Civil Law, especially, in regard to family and patrimonial relations. This requires acknowledging the legitimacy of responsible and ethical succession planning, valuing consensual arrangements. In addition, it recognizes the notary's role as an agent of legality, information, and legal certainty. An updated approach of this kind would bring Brazilian succession law closer to the normative and social values of the twenty-first century.

3 METHOD AND TECHNIQUES

The methodological approach adopted for analyzing the phenomenon of Succession Agreements and for supporting the central premise of this article is qualitative in nature. That means, arguments coming from specialized literature are logically laid down in the analysis body as a research interpretation (Creswell & Poth, 2018). Since it develops arguments using the perspective of specialized literature the research is also theoretical, in type. In addition, as the source for arguments and evidences that subsidize the research premise are textual, the analytical process adopts the content analysis to align the sustaining substrates in the demonstration process (Lima et al., 2019).

The research process or protocol reflects the need for a theoretical and interpretative examination rather than an objective or statistical one. The analysis considers a close reading of the relevant Brazilian legal framework, particularly the Civil Code provisions governing succession and contracts, as well as the 1988 Federal Constitution, which establishes the foundational principles for Brazilian legal order. These normative elements are integrated with both national and foreign legal tenet to identify convergences and divergences in order to subsidize the premise in demonstration. The study also evaluates issues from National Council of Justice (NCJ) and notarial practice technical standards, as well. The latter help clarify the institutional role of Lnotary offices in formalizing acts of a succession-related nature. Together, these sources create the analytical foundation to sustain comprehensive and coherent arguments proving that the right, inherent



to individual's private autonomy, supervenes unnecessary judicial process to formalize his/her succession plan.

Comparative law helps expand the analytical horizon and situating the Brazilian debate within a broader legal context. Comparative law is not a mechanical exercise in transplanting norms, but rather a dialogical process that allows legal systems to learn from one another (Larenz, 2004). In this study, Portugal and Germany were selected as reference jurisdictions because they share civil-law Code similar to the Brazilian one. Also they hold well-established regulatory experiences with succession pacts. At last, Portugal and Germany line up notarial systems best known by its technical sophistication, within similar quality meritocratic parameters as practiced in Brazil. By drawing on these jurisdictions, the research gains conceptual depth and identifies potential pathways for adapting foreign insights to Brazilian legal needs.

In addition, this study incorporates an indirect empirical dimension. We examine a recent Brazilian case law that, although not expressly recognizes succession agreements, it addresses significant related legal situations. Judicial Courts in Brazil have increasingly interpreted certain legal instruments—such as donations with restrictive clauses—as legitimate forms of succession planning, as illustrated in the decisions of the Court of Justice of São Paulo, Civil Appeal No. 100XXXXX-XX.2022.8.26.0000. Also, we evaluate institutional statements from notarial organizations, such as Anoreg (Association of Notaries and Registers) and notarial colleges as well. The reason is these collegiates reveal a growing willingness to engage with extrajudicial succession mechanisms. These judicial and institutional developments demonstrate a strong trend in the Brazilian notarial practice toward agile alternative methods yet assuring juridical certainty.

4 SUCCESSION PACTS AND EXTRAJUDICIAL SERVICES

A succession agreement, as a legal construct allowing individuals to dispose the rights or assets that will be transferred upon a future death. Its primary purpose is to allow the owner of patrimony to organize the effects of his/her will on succession heirs in advance.

4.1 Succession Agreements in Brazilian Law

In succession pacts, the testator seeks legal certainty, predictability, and, often, harmony among heirs. In Brazil, however, this contractual modality faces strict legal constraints. Article 426 of the Civil Code states that “the inheritance of a living person cannot be the object of a contract.” It expressly prohibits, therefore, typical succession agreements, an apparent barrier to any attempt at contractual succession planning. This statutory restriction creates interpretive tension between traditional doctrine and the growing social demand for structured intergenerational planning.

The prohibition of succession planning is an inheritance from the nineteenth-century French model. The argument for this design is to preserve testamentary freedom, prevent undue pressure on the property owner, and protect the rights of forced heirs. Scholars, however, among them Martins-Costa (2016), argue that the rule has been applied in an excessively literal manner. It



completely disregards situations in which the parties decide freely on their interests, pursuing legitimate purposes. The author (p.74) contends that it is necessary “to reinterpret the dogmas of succession law in light of social needs and constitutional values.” It includes recognizing a broader and more responsible conception of private autonomy. Martins-Costa (2016) reflects a doctrinal trend supporting a movement toward aligning succession law with contemporary constitutional principles.

In daily practice, several legal instruments function as contractual substitutes for succession agreements. Examples are donations pacts with reversion clauses, cohabitation agreements, prenuptial agreements, and even the establishment of family holding companies. Although these instruments are not formally classified as succession agreements, they are widely used to achieve similar practical effects. Such practices reveal a social demand for effective legal mechanisms of inter vivos patrimonial planning. Farias and Rosenvald (2021, p. 56) note these practices demonstrate “the need to overcome an absolute, and at times anachronistic, prohibition on contracting succession effects.” In addition, advancements on the reinterpretation of law illustrate the gap between rigid statutory language and the adaptive strategies employed in succession pacts and planning practices.

A significant challenge emerges at this point. While doctrine and practice increasingly recognize lawful forms of anticipatory succession, the Brazilian legal system remains anchored to a broad and often outdated prohibition’s set of norms. Although generally restrictive, Brazilian case law has gradually acknowledged the validity of legal transactions that indirectly serve succession-related purposes. A notable example is the Superior Court of Justice’s decision in the case REsp 1.280.825/SP. The Court upholds the validity of a donation with reserved usufruct and a clause of inalienability. The Court recognizes the legitimacy of the arrangement, despite its evident succession-planning purpose. In the sentence, the Court emphasizes that “private autonomy, provided it respects public order, is compatible with the anticipatory transfer of assets.” This jurisprudence signals a cautious but meaningful shift toward a more flexible understanding of succession-related transactions.

Also, an important alert must be posed at this point. The interpretation of Article 426 must also be considered alongside the Article 1.911 of Brazilian Civil Code. The latter addresses the future inheritance under a clause conditioning agreement. The testator upholds the right of inalienability of the property, making it unseizable and uncommunicable. In spite of holding indirect link, this provision reinforces the idea of contracts restriction, concerning the inheritance of a living person. However, the Civil Code drives way under exceptional situations, in which some degree of prior commitment is admissible. Scholars argue that this possibility may open the door to the admissibility, in specific cases, of patrimonial agreements with succession effects, provided that requirements of formality, capacity, and legitimate interest are satisfied. This understanding suggests, therefore, that Brazilian Civil Code is not entirely incompatible with controlled forms of anticipatory succession agreements.

The growing role of the notarial offices in Brazil underscores the need to reinterpret contractual limits in the succession sphere. Law 11.441/2007, in Brazil, enables to effect the inventory, division of assets, consensual separation, and consensual divorce through administrative means. Also,



subsequent resolutions from the Justice Nacional Council (CNJ) on proceedings to formalizing administrative acts, have expanded the authority of notarial offices to handle consensual divorces, inventories, and partitions. Notaries, therefore, are increasingly viewed as key actors in mediating and formalizing legal transactions with significant patrimonial impact. According to Notaries and Registers Association (Anoreg), “the work of notarial offices contributes directly to social pacification and legal certainty in family and succession relations.” Anoreg (2023, p. 26) Thus, institutional evolution strengthens the case for recognizing controlled contractual mechanisms in succession planning.

Important to emphasize that the anticipatory organization of succession through contractual pact is not inherently incompatible with the values of the Brazilian legal order, as said before. As long as the rights of forced heirs and constitutional principles are abided by, a contractual succession planning, through administrative means, becomes legitimate and desirable. Both jurisprudence and doctrine converge toward the need for a critical reassessment of the broad prohibition on succession agreements in Brazil. It enables the evolution of succession law in line with contemporary social demands and with European models that afford greater space for private autonomy. Such a shift would align Brazilian succession proceedings aligned with modern expectations of legal certainty, patrimonial stability, and responsible intergenerational planning. To make this shift a reality, it's essential to consider the network of notarial services in country, to carry it out by means of dejudicialization processes.

4.2 Extrajudicial Services and the Role of Notary Offices

Any discussion of the potential admissibility of succession agreements in Brazil must address the broader phenomenon of Dejudicialization. In recent decades, dejudicialization methods, through consensual conflict-solving ways, have reshaped the practical functioning of Civil Law. Since the enactment of Law 11.441/2007, there has been a growing shift toward extrajudicial mechanisms for solving acts and conflicts previously set up exclusively under judicial intervention. Consensual divorces, inventories, and partitions, for example, may now be performed directly before a notary, provided that statutory requirements are met. Advancements in dejudicialization reflect a profound transformation in legal culture, one that increasingly values efficiency, speed, costs and private autonomy of individuals. Such evolution reveals a legal environment more receptive to process simplification and consensual solutions, including those related to succession planning.

Notary offices in this context, have assumed a central role in structuring systemic, but more complex transactions, particularly regarding family and succession law. By acting as guarantors of legality, notaries perform substantive, distinct functions, like guiding the parties, verifying legal capacity, assessing the balance of contractual clauses, and ensuring compliance with applicable legislation. As Paiva (2020, p. 89) observes, “modern notaries have ceased to be mere scribes and have become [by their function] true agents of social pacification and conflict prevention.” The expanded role of notaries strengthens the legitimacy of notarial presence in matters involving significant patrimonial consequences.



The ever evolving configuration of notarial functions proves that the Brazilian legal system seems ready to absorb innovative changes. That means, extrajudicial succession agreements may only need the right settlement of process for the extrajudicial run to be implemented. Although the legislation does not yet expressly recognize them (extrajudicial process), practical experiences easily show ample room for the formalization of succession-related acts, respecting the rights of heirs and abiding by the public-order norms. Notarial oversight can function as a protective filter, ensuring legality, transparency, and prevention of future disputes. Such a framework suggests that controlled forms of contractual succession planning are not inherently incompatible with the current system.

It's not surprising that indoctrinators increasingly propose the regulation of notarial involvement in patrimonial agreements with post-mortem effects. As Veloso (2021, p. 156) argues, "the presence of the notary in legal transactions of this nature not only ensures legality but contributes to the humanization of succession law." As professional assistants and holding public faith, notaries enable parties to express their will clearly upholding the public deed as an effective instrument of private autonomy. So, notaries may bridge constitutional principles and the established and growing extrajudicial practices. This position reinforces the argument that notarial role function as a legitimate and secure channel for succession-related arrangements.

It is important to emphasize that notarial role is not intended to replace judicial function in case of conflicts. Transiency between parties is required to lead consensus. Therefore, notaries can operate as mediators in conflicts solved by consensus. Other than that, notaries could work as conflict preventors, specifically in succession agreement. When such pacts are elaborate before a notary it could function as an instrument for organizing succession. Such agreements will be subject to a specific legal framework defining content, form, beneficiaries, and lawful limits. To be invested in legal formalities, however, such a framework would naturally depend on legislative reform or, at least, normative guidance from the National Council of Justice (CNJ). Within the legal architecture viewpoint, it's up to CNJ to recognize the validity of extrajudicial procedures. Therefore, there is a defined path that substantiates the institutional admissibility rather than a merely doctrinal possibility.

Once succession agreements are considered as dejudicialization process, it becomes evident that resistance does not stem from legal barriers. It comes from a culturally entrenched interpretation of succession as an exclusive post-mortem and judicialized event. In light of legislative flexibility and current notarial practice, however, it becomes difficult to justify such rigidity. The practical experience of notaries, the public's trust in these professionals, and the positive results of dejudicialization in other areas all reinforce the feasibility of extending the logic of the latter to contractual succession planning. The convergence of institutional practice and social demand thus suggests that the modernization of succession law is both viable and necessary.

The crescent autonomy of individuals in regulating own succession will comes closely to the strengthening of notary offices role in Brazilian society. The next section deepens the analysis through a comparative examination between Portuguese and German legal systems. As noticed before, both systems expressly recognize life succession pacts. The comparative analytical approach spotlights alternative regulatory models as a way to demonstrate how these jurisdictions



successfully reconcile contractual freedom of will with effective legal protection. Insights from the analysis intentionally target at valuable guidance for the future evolution of Brazilian succession law.

5 COMPARATIVE LAW: PORTUGAL AND GERMANY

Recent discussions on succession agreements have gained momentum in continental Europe. There is an effort to reconcile private autonomy and legal certainty. This movement is clearly evident in European Union law, particularly in Regulation EU No 650/2012. According to Kusuri (2025) and Hertel (2014), the Regulation creates a more favorable framework for succession planning in complex family contexts.

Portugal and Germany are good examples for analysis. Portugal generally maintains a prohibition on succession agreements. Germany follows the opposite path and widely recognizes the *Erbvertrag* (Succession Contract) as an instrument of inheritance law (Danneman, 2012). The expression “administrative succession agreement” is not a legal category in either system. It is a doctrinal construct. The expression designates agreements and contracts that not only distribute assets but also organize succession as a process. They involve asset management, family businesses, and asset protection. In general, they are contractual arrangements that anticipate and manage future succession, according to Salinas (2025).

In Portugal, as in Brazil, the starting point remains prohibition. The Portuguese Civil Code, in articles 1700 and 2194 et seq., forbids agreements on the succession of a living person (Leitão, 2021). Traditional doctrine associates this prohibition with the protection of the legitimate share and the idea of the unavailability of future inheritance. In recent years, however, this interpretation has been questioned, as the European context has changed. Regulation 650/2012 of the European Union allows succession agreements and regulates their effects in international successions. This, in the vision of Hertel (2014) and Costa & Souza (2022), creates a tension between Portuguese domestic law and the European regime.

Looking at the Portuguese literature, one can notice a recent two main trends. One, more restrictive, values the protection of the necessary heirs. It emphasizes the risk of capturing the will of the testator, especially the elderly and vulnerable. It defends maintaining the prohibition of succession agreements as a way of protecting the family Sottomayor (2020). The other trend, however, more open, recognizes the need for more flexible estate planning instruments. From a macro perspective, it highlights the role of succession agreements as mechanisms to drive family businesses continuity, complex estates distribution, and transnational families connections.

Several Portuguese authors, however, value the German experience. They use the *Erbvertrag* model to show the limitations of the Portuguese legal system. They argue that the rigid prohibition pushes the practice towards indirect solutions. That is, instead of formal succession agreements, a mosaic of inter vivos transactions with postmortem effects is used. For example: postmortem mandate, reversion clauses, prenuptial agreements with succession effects and, above all, corporate instruments that regulate the transfer of shares and stocks after the death of the partner. Part of the Portuguese doctrine also groups these mechanisms under the idea of “administrative



succession agreement”. The term does not designate a specific legal type but only describes a set of agreements that anticipate and administer the succession. This, on the other hand, allows avoiding the limiting figure of the prohibited succession agreement. However, doubts remain regarding the compatibility of these instruments with the prohibition of succession agreements, present in the Portuguese Civil Code.

In Germany, the scenario looks quite different. The *Erbvertrag* (Succession Agreement) is expressly provided for in the German Civil Code. It coexists with individual wills and joint wills (*gemeinschaftliches Testament*). It is recognized as a normal form of inheritance disposition (Salinas, 2025). Recent doctrine shows that the *Erbvertrag* goes beyond the simple allocation of assets, stabilizing succession expectations and preventing conflicts. This is especially visible in family businesses and corporate estates. The succession agreement defines not only who will receive assets, but also how is going to be the management power transfer, the company shares, and what voting rights will take place (Salinas, 2025).

The *Erbvertrag* (foreclosure agreement) has a preponderant contractual force, including binding effects. If compared to a will, for example, it reduces the freedom of revocation. German doctrine points out that the power of this influence is compensated by control mechanisms. As poses by Larenz (2004, p.211) “the legal predictability provided by the succession contract serves the ideal of justice in intergenerational relations.” This equilibrium between autonomy and fairness is a hallmark of the German approach. To this end, there are reinforced formalities, such as the central participation of the notary. In contrast, the parties can establish conditions, incorporate resolutive clauses, and other forms of flexibility. These elements ultimately mitigate the risk of excessive crystallization of inheritance relations.

Over the recent years, many German case law studies have focused on the interface between *Erbvertrag* and corporate law. One can also notice that a significant number of research reports examine succession in family businesses. In these cases, the *Erbvertrag* drives shareholder agreements and statutory clauses, lifting it to a kind of “family constitution” to be abided at postmortem by family members. It regulates the transfer of shares, the future management of the company, the rights and duties of successors, and exit mechanisms.

Within this logic, the doctrine speaks on *erbvertragliche Nachfolgeplanung* (inheritance contract in estate planning). The expression describes succession (patrimonial) planning center on the succession pact. It intends to organize succession as a process by defining who inherits and defining how, when, and under what conditions the assets will be exercised and managed by the heir(s). In this sense, the *Erbvertrag* assumes a clear administrative character (Prata, 2018).

The comparison between Portugal and Germany has also been used as a theoretical laboratory. A segment of Portuguese-speaking jurists shows that the German experience offers advantages in terms of predictability. Administrative succession agreements reduce litigation, ensure the continuity of family businesses, and allow for long-term planning, provided they are accompanied by effective safeguards. These safeguards include protection of the legitimate share, notarial control, and protection against abuses in asymmetrical relationships, such as between elderly ascendants and economically dominant descendants (Salinas, 2025).



However, another group raises concerns, noting that the German model operates within its own legal culture. This culture combines high formalization, a strong role for notaries, and a great awareness of the binding effects of inheritance agreements (Pazdan & Zachariassiewicz, 2021). If the model would be simply transposed to Portugal it could generate distortions if without no institutional and cultural adaptation.

A cross-cutting theme, present in much of the recent literature, on the other hand, is the impact of Regulation (EU) No 650/2012. The Regulation allows for succession agreements and disciplines the law applicable to cross-border successions (European Commission, 2026). In successions involving German people or patrimony, it is possible a succession agreement to arise being valid under German law and the chosen not German applicable law. The question is whether this agreement can produce legal effects in Portugal, under the internal prohibition.

Pazdan & Zachariassiewicz (2021) assess that Portuguese legal doctrine discusses different responses to the administrative or judicial solution in succession agreements. One part focuses on the functional qualification of the notarial system and the punctual application of public order. Another focuses on the distinction between the abstract recognition of the agreement and the concrete effectiveness of certain clauses. The trend followed by many jurists, especially pointed by Pazdan & Zachariassiewicz (2021), is toward mitigated acceptance. In other words, the agreement would be accepted in the context of legitimate estate planning and when there is no evident violation of the legitimate share of the necessary heirs.

In contrast, in German law, the focus shifts to the coordination between the *Erbvertrag* and the succession regimes of other countries. The EU Regulation allows for a degree of autonomy while choosing the applicable law, in each case. This assumption requires specific reflection on how the *Erbvertrag* projects itself in successions with connecting elements external to the German State. The greatest concern lies with European States that prohibit inheritance agreements, such as Portugal, for example (Pazdan & Zachariassiewicz 2021).

Thus, it can be said that the literature of legal scholars on succession agreements in Germany and Portugal, studied over the last five years, points to three main lessons. First, in Portugal, the typical succession agreement for a living person remains prohibited. Despite this, the use and study of contractual instruments that function as “administrative succession agreements”, in business and international contexts, is growing. Second, in Germany, the *Erbvertrag* is consolidated as a basic instrument of succession planning. It combines distributive and administrative functions, showing a strong influence on the succession of family businesses. Third, on the one hand, Regulation (EU) No 650/2012 and the transnational mobility of people and assets are putting pressure on more rigid systems, such as the Portuguese one, to review the rigidity of their prohibition. On the other hand, they force the more open German system to engage in dialogue with legal systems that strongly restrict succession agreements (Hertel, 2014; Pazdan & Zachariassiewicz, 2021).

Finally, the notion of an “administrative succession pact” helps to better understand this scenario. The functional notion of the pact indicates a shift in focus. On the one hand, the succession pact ceases to be merely a mechanism for the division of assets, which would favor the restriction of its function. Now, it has become a process of contractual organization of the transmission and



management of assets. This broadens its functional connections, making it a factor to be considered at the intersection of inheritance law, corporate law, and private international law.

6 FINAL CONSIDERATIONS

The analysis of succession agreements formalization under the Brazilian legal system reveals a fertile field of tension between tradition and modernity of customs. In other words, between the attachment to the norm prohibiting contracts of inheritance of a living person and new requisites of social demand for greater freedom on private patrimony. Although Article 426 of Brazilian Civil Code imposes a steady prohibition, the effective process of legal planning and the reality needs enforce procedural detours adapting law interpretation with alternative instruments that anticipate succession effects without violating public order or the rights of forced heirs. The growing use of patrimonial contracts in general, such as donations pacts with restrictive clauses, family holding structures, and reciprocal wills, demonstrates a society seeking security, predictability, and fairness in succession. Advancements, both in interpretation and in instruments prone respond to reality needs and effective toward succession pacts effect, illustrate that the rigidity of the statutory rule no longer aligns with contemporary social expectations.

The study shows that, although not yet expressly recognized by statute, the succession agreement in Brazil is not inherently incompatible with the constitutional principles embedded in the Civil Law. Private autonomy, when interpreted relationally and in balance with other constitutional values, may serve as a legitimate foundation for such instruments (succession pacts), particularly when embraced by appropriate notarial oversight. As argued throughout the text, notary offices provide the ideal institutional environment for formalizing succession agreements, reducing litigation and promoting legal certainty. Once formalized as institutional capacity, succession pacts reinforce the feasibility of controlled contractual succession planning.

The comparison of Brazilian adjudicatory succession pacts with the Portuguese and German systems shows practical differences. It demonstrates that rational regulation of operating practice of succession agreements, does not undermine the protection of heirs or the stability of succession. On the contrary, in the Portuguese and German jurisdictions, clear rules and formal procedures confer legitimacy and predictability on agreed succession, strengthening the preventive and conciliatory function of extrajudicial methods. While proving the need for formalization of proceedings in succession pacts practice, Portuguese and German systems assure the viability of succession planning through the dejudicialization methods. That is, the guidance capacity and execution feasibility of notary offices. These experiences offer valuable guidance for Brazil, although not as models to be copied uncritically, but as inspiration for designing a normative solution framework suited to the country's legal culture and constitutional principles.

Considering the premise of dejudicialization of succession contracts' processes, emission of public deed, from notary offices, it's a main product of formalization the concerned pacts. The guidance of the process would be required standard form, content, and control of legality. This approach would allow for safe, gradual, and efficient institutional progress, respecting the forced share, protecting vulnerable parties, and ensuring transparency to the beneficiary will. Such



a measure does not necessarily mean repeal to Article 426 of Brazilian Civil Code. It rather reinterprets the article in light of the Constitution, principles of social function and private autonomy. This interpretive shift would align succession law with contemporary institutional advancements.

Incorporated in the logic above, it is possible to conclude on sufficient theoretical, comparative, and practical basis at Portuguese and German system to support for the viability of succession agreements in Brazil. Historical resistance to these advancements should not indicate legal immobility, but instead encouragement to debate on the evolution of the succession law. For it is undisputable that social transformations and customs changes require solutions better suited to contemporary reality. The moment calls for constructive engagement rather than adherence to outdated prohibitions.

From a legislative perspective, it would be appropriate for the National Congress to consider reform proposals that regulate succession agreements with due caution. The experience of Law No. 11.441/2007 serves as a useful paradigm. It demonstrates that expanding extrajudicial pathways does not weaken the justice system. It helps strengthen and expand justice access entrusting extrajudicial methods, through the net of notary offices and the whole extrajudicial system of services in benefit of the citizen. From the standpoint of doctrine and available jurisprudence, further critical reflection would be needed on the limits of private autonomy and basic rights of individuals. Such advancements would contribute to a more coherent and modern succession contracts framework.

Ultimately, this article reinforces that the succession agreement, far from threatening the legal order, may represent a significant advancement toward a more rational, predictable, and equitable succession system. The key argument lies in recognizing that contractual freedom is not incompatible with protection of will. Anticipatory succession, when carried out in a responsible sense of due process, can serve as an instrument of family harmony and respect for the estate holder's will. It now falls to scholars, legislators, and legal practitioners to construct the institutional pathways. Legally feasible alternative process of succession planning would transform the extrajudicialization from possibility into a concrete and legal pathway.

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