

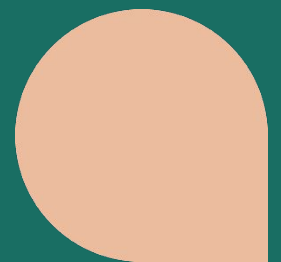
International Seminar 2021
Taiwan and Germany

Group 1
‘Residence and risk of homelessness’

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Case: Residence and risk of homelessness

- Case main character: **Peter**
- Peter has no further described mental health **issues**.
- Situation: Peter has decided to **stop paying the rent**, because “**someone**” told him that it is not necessary.
- Peter is **convinced** that he does not have to pay the rent and may use the money for what he wants.
- Peter likes his apartment and does not want to live on the street or in an accommodation for homeless people.
- The dilemma: If the Betreuerin/assistant does not organize payment of the rent, there is a high risk of Peter losing the apartment, because the landlord will terminate the contract.



- Who is **'somebody'**?
- **'Somebody'** could be an **illusion**.
- What did Peter exactly **understand** in the conversation with that somebody?
- Peter totally **trusts** the information from **'somebody'**. Does he trust the Betreuerin/assistant?
- Maybe he wants to use the rent money for **another purpose**?
- How can the Betreuerin/assistant **support** Peter in his idea of living?
- Why did the Betreuerin/assistant didn't **react until now**?

Our First
impressions
about the
case

Legal framework about renting an apartment

What will happen if Peter does not pay the rent for his apartment?

Germany

Peter has to pay the agreed rent, if he wants to stay in this apartment

§535 Abs. 2 German Civil Code

In case of non-payment the rental agreement can be terminated by the landlord

§543 Abs. 2 Nr. 3a German Civil Code

The termination of the rental agreement can be averted, if the renter pays the unpaid rent

§543 Abs. 2 Nr.3 S.2,3 & §569 Abs.3 Nr.2 German Civil Code

Taiwan

If Peter does not pay within a deadline, the landlord may terminate the lease

§440 Taiwan Civil Code

The landlord may terminate the lease before expiry if the total rental or fees in arrears amount to two months' rent after notification

§10 Taiwan Rental Housing Market Development and Regulation Act

Obligation of Betreuerin/assistant

Germany

§ 1901 Abs. 2 S. 1 German Civil Code

- Maintain Peter's self-determination and autonomy
- Fulfill his function in the personal well-being of Peter

§ 1901 Abs. 2 S. 2 German Civil Code, Art. 12 Abs. 4 CRPD

Well-being includes the will and preferences of Peter

§ 1901 Abs. 3 S. 3 German Civil Code

To find out the will and preferences: obligation to talk

→ In the case there are many open questions, which need to be answered to understand Peter's will and preferences (supported decision making).

Taiwan

Article 15-2 .5 Taiwan Civil Code

Performing any act with the purpose of obtaining or relinquishing any right regarding real estate, vessels, aircrafts, vehicles, or other valuable property

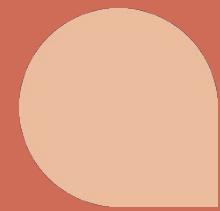
Article 15-2 Taiwan Civil Code

If the assistant does not give consent in cases where the interest of the person under assistance is unlikely to be prejudiced

There is no article that mentioned wills and preferences should be understood

→ In this case, it seems that the assistant can refuse to give consent to Peter's decision to protect his well-being

Things to consider for the conversation



- **Principles**(something based on the course lecture):
 - Patience: if Peter insists on his opinion
 - Coherence: connection, continuity, to talk like a conversation, not interrogation
 - Sensitivity: show empathy, try to understand Peter's feelings and thinking
 - Flexibility: be open to his answer
 - Objectivity: respect his answer, and don't feel attacked, not to deny what he heard
- Is the voice an **illusion** or **delusions**? -> Has Peter lost the sense of **reality**?
 - Is Peter currently receiving or not receiving treatment?
 - Has there been a proposal for treatment?
 - Mental illness? Dementia? Drug abuse?
- Is there **cognitive impairment**?

Questions to Peter

What do we want to know more from Peter?

What is the intent/wish/will of Peter?

- **Family or friends**

"Are there any family members you still keep in touch with? "

Show concern about his social life

If needed, we can arrange casual discussions with Peter's family or friends. ⇒ multi-informant

Questions to Peter

What do we want to know more from Peter?

What is the intent/wish/will of Peter?

2. Money

"Is the money you now have enough for your daily life? "

"What do you want to use the money for? "

Show concern about his quality of life

Respect his answer which he puts as priority

Mention the importance to have a shelter but avoid conflict

Questions to Peter

What do we want to know more from Peter?

What is the intent/wish/will of Peter?

3. Renting an apartment

"Where do you want to live? "

"What is the detail of your contract between you and the landlord? "

"Why is it not necessary to pay the rent, according to somebody? "

Determine:

Peter's will to live in his apartment.

How he understands the contract

If he knows the possible consequences if the contract is breached

Questions to Peter

What do we want to know more from Peter?

What is the intent/wish/will of Peter?

4. Who is Somebody?

"Could you introduce 'somebody' to us? "

"Is it a good friend or have you known each other for a longer time? "

"When and where did you talk to 'somebody'? "

Encourage Peter to talk more

Avoid showing distrust towards Peter's words

Aware of change of condition

Assumptions based on German Law

- The Betreuerin has among others the functions of the affairs of the appartement. According to § 1907 Abs. 2 German Civil Code the Betreuer is obligated to inform the court about the danger of losing the apartment. So the loss of the apartment (as a center of life) can be prevented
2. If the Betreuerin acts against the will of Peter, she needs to ask herself,
- Would the Peter's residence be at risk, if his will is implemented?
 - Is Peter's will influenced by a misinterpretation? And would the person want the same, if this is not the case (Book Fröschle, S. 61 f., Federal Court (Germany):, judgement 22.7.2009 - XII ZR 77/06)

Assumptions Based on Taiwanese Law

According to section 5 of paragraph 1 of Art 15-2 of Civil Code:

- If what Peter really wants is terminating the lease,
 - ⇒ The assistant can refuse to give his/ her consent.
 - If Peter just does not want to pay the rent, (the landlord would terminate the lease)
 - ⇒ The assistant cannot stop him.
- Management Of Affairs Without Mandate?

Some problems in current Civil Code:

- An assistant seems not to be obliged to talk to Peter or respect the will of Peter
- Articles concerning assistance are incomplete
 - ⇒ Any way to fix it?

Discussion

LET'S THINK MORE!

What do you think about
an obligation to talk?

Is an obligation to talk
an essential condition
to get to know the
wish and will of a
person?

Thanks for listening!



感謝！
Danke
schön!

