FUNDAMENTALS OF INHERITANCE LAW IN THE USA

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Abstract. The article examines the fundamentals of inheritance law in the USA as a prominent representative of the Anglo-Saxon legal system. It shows the legal nature of inheritance, which differs significantly from the understanding of inheritance in countries belonging to the Romano-Germanic legal system. Within the framework of the conceptual apparatus, issues related to the time and grounds for opening an inheritance are examined. The main institutions of inheritance law in the USA, such as inheritance by will and by law, are studied. The issues of the order of inheritance by law are covered. Attention is paid to individual forms of wills, the legal capacity of a person to make and revoke a will in various states. The features associated with the restriction of freedom of testamentary dispositions by means of a compulsory share are revealed.

Keywords: inheritance, inheritance by law, inheritance by will, compulsory share, right of representation, order of inheritance, real property, personal property, USA.

Inheritance law, being a part of the legal system of each state, was and remains relevant, since it represents the sphere of social relations that can affect each of us to one degree or another. At the same time, inheritance relations have always been distinguished by their conservatism, conditioned by historical, religious and cultural traditions, which entails different legal regulation of these relations in the law of different states.

The legal nature of inheritance in different legal systems is interpreted differently. Let us dwell on the study of inheritance law of the USA as a country representing the Anglo-Saxon legal system.

Is there such a branch or even a sub-branch as inheritance law in American law? I think not. But this does not diminish its importance in the least. The fact is that the coordinate system, if one can put it that way, of the Anglo-American legal system does not coincide at all with the one we are accustomed to. There is no strict division of law into branches, into public and private, and our traditional civil law as such is not distinguished at all [6, p. 66]. The legal system of the United States, following English law, is divided into common law and equity, the boundary between which is very conditional.

The common law of the United States is a colonial legacy of Great Britain. As is known, in England in the 11th century, royal courts (curia regis) appeared, which were

used as a means of uniting the country, creating a single legal field. Based on local customs, these courts eventually developed norms that became mandatory throughout the country. The totality of these norms constituted the common law. Judges sought to ensure uniform application of common law norms throughout the country and for this purpose often used references to previously adopted court decisions - precedents - in similar circumstances. Any justified deviation from a precedent also became a precedent. In fact, judges created the law [10, p. 45].

By the 15th century, a situation had developed in which new social relations could no longer be regulated by common law precedents, and in this case, plaintiffs had to seek "justice" not from the royal courts with claims, but with petitions to the king through the Lord Chancellor. Thus, the second component of English law was formed - the law of equity. The courts of equity gradually supplemented and expanded the common law with their precedents. The main sources of both English and American law are judicial precedents and statutes.

As R. David and K. Geoffrey-Spinosi note, "... for an American lawyer, as for an English one, law is only the law of judicial practice; the norms developed by the legislator, no matter how numerous they are, somewhat confuse lawyers who do not consider them a normal type of legal norms; “these rules truly enter into the system of American law only after they have been repeatedly applied and interpreted by the courts, when it will be possible to refer not to the rules themselves, but to the court decisions that applied them. If there are no precedents, the American lawyer will readily say: “On this issue the law is silent,” even if there is a completely obvious rule of law relating to this issue” [3, p. 276].

The legal system of the United States has fundamental features that arise from the federal structure of the state. Along with the federal system, each state has its own independent legal system. All this leads to certain difficulties associated with both the choice of a competent jurisdictional body (federal court or state court) and the choice of applicable law. The interweaving of federal regulation and regulation at the state level, statutory and precedent norms has led to the emergence and development of conflict of laws in each state. Conflict of laws answers the question: what norms should the court be guided by in the event of a clash - "conflict" - of disparate norms [10, p. 136].

Unlike the countries with the Romano-Germanic legal system, where inheritance is understood as universal succession, in the USA, inheritance is not a succession in rights and obligations, but a liquidation of the testator's property, during which the debts owed to him are collected, his debts are paid, his tax and other obligations are extinguished, etc. The heirs have the right to a net remainder.

All this is carried out within the framework of a procedure called "administration" and takes place under the supervision of the court. Thus, here the heirs are not the

successors of the rights and obligations of the testator. The property of the latter is transformed into a special kind of trust property and in this capacity it first goes to the judge, from him to a special representative appointed by him (the so-called administrator) or to a person appointed by the testator in the will (the so-called executor), and from them, after the completion of the procedure and the corresponding decision of the court, the remaining property is transferred to the heirs.

Inheritance relations in the United States are regulated by precedents and legislation adopted both at the federal level and at the level of each individual state, as well as by the norms of the Uniform Probate Code (UPC), approved in 1969 by the National Conference of Commissioners on Uniform State Laws. This code has been adopted in whole or in large part by a small number of states. The opening of an inheritance is a legal fact by virtue of which inheritance legal relations arise.

The grounds for opening an inheritance in most countries of the world are the death of a citizen or the declaration of a citizen's death by a court, which entails the same legal consequences as his death. The time of opening an inheritance in European law and Russian law is the day when the citizen actually died, while in the United States the concept is not "the day of opening of an inheritance", but "the moment of opening of an inheritance", that is, the day, hour and minute.

Unlike American inheritance law, in Europe and Russia, when determining the time of opening of an inheritance, the time gap that may exist between deaths that followed one another, but on the same day, is not taken into account. Thus, the difference in time, calculated in hours and minutes within the same day, is not taken into account. The regulation of the issues raised in American law is carried out in a different way. All states except Louisiana and Ohio have two different approaches to the consequences of death in close succession: most states have recognized the Uniform Law on Simultaneous Death, and a minority have recognized the rules on death in rapid succession, usually the ULD on 120 hours of survival. The rules of the Uniform Law on Simultaneous Death apply only if the sequence of deaths is not proven. If there is sufficient evidence that one outlived the other at least for some time, then these rules will not apply and the heirs will inherit one after another.

The rules of the ULD are similar to the Russian ones, but unlike Article 1114 of the Civil Code of the Russian Federation [1], the ULD rules use as a measure of calculation not the day (24 hours), but the exact count of time from the hour and minute of the death of the deceased earlier, which is 120 hours. But if, in the absence of an heir, the property becomes ownerless and subsequently passes to the state, then the rules on the 120-hour survival are not applicable and the property will be transferred through the heir.

In Russian law, the moment of death is determined based on medical indications of irreversible changes that have occurred in the human brain and the unambiguous

onset of biological death (cessation of biological activity in the cells and tissues of the body), and not just clinical death (cessation of activity of the cardiovascular and respiratory systems of the body while maintaining the viability of the remaining parts of the body and the possibility of returning to its normal functioning) in the manner established by the Instructions for establishing human death based on the diagnosis of brain death [4], and corresponds to the principles of the Law "On Transplantation of Human Organs and / or Tissues" of 1992 [9].

At the same time, in the United States, a person can be considered alive as long as at least one of the three specified elements of the body functions, for example, the brain is already dead, but the heart is still working. Thus, V.B. Panichkin and O.Yu. Borovik in their work, referring to the stories of lawyer Bill Davis (Washington, District of Columbia), indicate that because of this, some heirs resorted to such a dubious procedure as connecting their testators with a non-functioning brain to an artificial respiration apparatus, so that the latter would live until January 1, 2002, when the tax deduction rate from inherited property increased from 675 thousand to one million dollars. Accordingly, at the beginning of 2002, they asked doctors to turn off the apparatus and kill their relatives [6, pp. 173-174]. The grounds for inheritance include the law and the will. The property of those who died without a will passes to the "heirs by law". They are determined by state legislation.

Despite the existing differences in state laws, in general, inheritance legislation is primarily aimed at protecting the property interests of the surviving spouse, children, and, in the absence of the latter, the parents of the deceased [7, p. 779]. In most states, the spouse and children are considered first-order heirs; however, unlike Russian law, their shares in the inherited property are not equal. The spouse’s share depends on whether the testator has children and can amount to between half and one third of the property if there are any, and if there are none, the surviving spouse can receive all of the property. For example, in the state of California, according to section 6401 (c) of the Inheritance Code, a spouse inherits half of the property if there is one child, and one third if there are two or more children. Children have the right to all of the inherited property if there is no surviving spouse.

According to the norms of the Unified Tax Code, children inherit a share of the property of the deceased minus the portion of the inheritance due to the surviving spouse, and in the event of the death of any or all of the children, their children, that is, the grandchildren of the testator, will be called to inherit. In such a case, the parents and other relatives of the deceased do not inherit. In this case, we are talking about such an institution of inheritance law as the right of representation. The right of representation is the right of persons specified by law to take the place of the heir by law that would have belonged to his parent if he had not died before the opening of the inheritance. This right also extends to nephews and nieces, other relatives whose

parents, if alive, would have inherited from the deceased. In their study, V.B. Panichkin and O.Yu. Borovik [6, p. 114–115] indicate that if the testator leaves only grandchildren alive after his death, there is a "split in the regulation" regarding how the inheritance should be divided among them: "strictly by right of representation" or "equally with regard to the right of representation."

The following situation is given as an example: a testator who died intestate had three children who died before him, leaving three grandchildren. Two of them are the children of a son, one is the child of a daughter, and the third of the children had no children at all. The rule common to all states is that in this case the three grandchildren must inherit, and the deceased child, who had no descendants, is not allocated a share. Inheritance "strictly by right of representation" is used in only a few states (for example, Texas and California).

In the given example, the child of the testator's daughter will receive half of the property, and the children of the son will divide his share, each receiving one-fourth of the inherited property. Other states have an "equal divisions with right of representation" rule of inheritance, meaning that shares are allocated at the level of the generation closest to the testator in which there is at least one surviving descendant. 85 The inherited property is distributed equally among all descendants of this generation, including among the deceased in the person of their descendants.

The parents or one of them, as well as the descendants of the parents (for example, the testator's sister) inherit if the testator has neither a spouse nor children. Other relatives inherit in the absence of the above-mentioned persons. If none of the heirs (individuals) remain, the property becomes ownerless and becomes the property of the state.

The question of the classification of inherited property as movable and immovable is of great practical importance, since this entails certain legal consequences related to the possibility of drawing up an oral will, the onset of testamentary capacity with respect to the disposal of movable and immovable property with various encumbrances, etc. In American law, a division of property into real property and personal property (or chattels) has historically developed, which is based on the use of different forms of legal protection. In relation to the first, a real claim for restoration of possession is filed, and the rights to the second are protected by a personal claim for compensation for damage caused. Real property includes land and everything connected with it, in particular, minerals, subsoil, etc.

Personal property includes all other property, that is, actually movable. Movable property is subdivided in turn into things that have a physical/material essence (tangible personal property), and intangible things, such as rights and interests (in tangible personal property). Rights to intellectual property, shares and bonds, in particular, relate to intangible things. A separate type of property ("fixture") is distinguished,

which has mixed features: both movable and immovable. “Fixture” is movable property combined with immovable property, or permanent belonging to immovable property. The sale of a plot of land is usually considered a sale of a "fixture", that is, unless otherwise specified, it also implies the sale of everything that is connected to the land. The sale of a house includes the sale of the land, garage, outbuildings, water pipes and windows [10, p. 146].

Such objects as sea and air vessels, inland waterway vessels, space objects, which are considered real estate in the Russian Federation, are considered a special type of movable property in the United States - property subject to registration. Another basis for inheritance is a will, which is an expression of the will of a person, clothed in the form prescribed by law, regarding the legal fate of his property in the event of death. At the time of drawing up a will, its amendment or the act of its cancellation, a person must have testamentary capacity, which in most states occurs at the age of 18.

However, some states, such as Georgia, provide for an earlier age of testamentary capacity, which is 14 years. The requirements for mental capacity or mental state when drawing up a will are not as strict as those imposed on the execution of other civil law transactions. Thus, recognition of the testator as incompetent by a court and the appointment of a guardian for him does not prevent the drawing up of a will (in contrast to the requirements of Russian law).

In American inheritance law, the following forms of wills are distinguished: - certified by witnesses (attested will), which is a standard form that is signed by the testator in the presence of two (in some states three) witnesses and can be either handwritten or printed; - holographic will, which is personally handwritten and signed by the testator without witnesses; – an oral will, which is made in the presence of one to three witnesses and, as a rule, by sailors during a voyage, soldiers during war and armed conflict, as well as by any persons facing imminent death.

Along with the above-mentioned wills, which are unilateral transactions, some states provide for a joint will, in which the will of two or more persons is simultaneously expressed. Such wills can be revoked at any time at the request of any of the testators. But if at least one of them dies, the other is obliged to execute the instructions in favor of third parties, if he used the instructions made in his favor. In practice, joint wills are most often made by business partners, as well as spouses.

The freedom of testamentary disposition is limited by the rules on the compulsory share of the inheritance. The circle of compulsory heirs and the size of the compulsory share due to them may differ in different states. In most US states, the testator's freedom to dispose of his or her property is limited only in favor of minor children and the surviving spouse, and various legal institutions are used to protect the interests of the latter: dower, indefeasible share, community property, homestead and family allowances. The most widespread is the indefeasible share, which guarantees the

surviving spouse the receipt of a fixed sum of money and a certain part of the testator's property, or only part of the property [2, p. 584].

According to the legislation of some US states, the surviving spouse does not have the right to a compulsory share of the inheritance if: 1) he or she abandoned the deceased spouse; 2) he did not provide assistance or refused to provide assistance to the deceased spouse; 3) he dissolved the marriage or declared the marriage invalid in another state or in a state that is not considered valid in the state of the deceased spouse's last permanent residence; 4) the marriage was at the stage of making a final judgment on legal separation on a claim against the surviving spouse [8, pp. 107-108].

In addition to the surviving spouse, in the United States, the necessary heirs include the minor children of the testator. However, since, as in the case of the surviving spouse, almost every state has its own inheritance legislation, the protection of the rights of the minor children of the testator through a compulsory share in the inheritance is a rather complex set of legal norms. At the same time, a common feature of American inheritance legislation is the rather weak protection of the minor children of the testator [5, p. 43].

As V.B. Panichkin and O.Yu. point out, Borovik [6, p. 270], "… given the extremely complex system of rules on the "forgotten child," which solves only part of the problem, the institution of a compulsory share for minor children, which is familiar to European inheritance law, exists only in Louisiana, the only state that does not belong to the Common Law system. This is due to the fact that minors can dispose of their property only through a guardian, who, as a rule, is the surviving spouse, and therefore it is more expedient to transfer a larger share of the inherited property to him in order to ensure the protection of the minor child.

In conclusion, it should be noted that this article is an attempt to introduce the basics of US inheritance law, the specificity and complexity of which stems primarily from the different understanding of the very nature of inheritance that has developed within the framework of the Romano-Germanic and Anglo-Saxon legal systems. Moreover, additional difficulties arise due to differences in the legal regulation of this area of relations at the level of different states.

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