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Inheritance Rights and Protection

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Abstract: İnheritance law is a family-oriented legal institution shaping how families transfer wealth across generations. This review discusses the main components of inheritance law (inheritance tax rate, and testamentary freedom), and how they impact business families. It also explores common strategies used by business families to mitigate the effects of inheritance law, such as family trusts and corporate ownership transactions. Finally, this review discusses the evidence of the effects of inheritance laws on business families and their impact on social inequality. Overall, this review provides a comprehensive overview of inheritance law and its implications for business families.

Keywords: Inheritance, inheritance, special property, conception, notary.

Introduction.

This also applies to legislators: few countries in the world have directly addressed the issue of digital inheritance and passed laws that regulate it. One of them is, France, which enacted a law in 2018 that, in its Art. 63, regulates what will happen to person's data in a digital form, after he/she dies.[Footnote7] Even if a decedent has not left specific instructions, according to the same article, his/her heirs will have the right to access certain information in order to gain insight into decedent's inheritance or obtain certain digital assets that are of persona value to the family.[Footnote8] On the other hand, Germany might not have legislation concerning digital inheritance, but there is an important case where a court granted young girl's parents access to her Facebook profile.[Footnote9] After Facebook appealed that decision, court of appeal in Berlin in 2017 ruled completely the opposite and access to Facebook account was refused. The court claimed that they did not reach such a decision only to protect decedent's privacy, but also the privacy of all of her contacts she communicated with.[Footnote10] However, the Federal Supreme Court vacated court of appeal's decision and finally granted parents access to the account and its content.[Footnote11] This was a highly publicized case in the EU and because of it many people have started thinking about something they might have never thought about before. USA also has legislation dealing with digital assets and the death of their holder (more infra). However, most countries do not have legislation nor case law dealing with what happens to someone's digital assets when he/she dies. Therefore, it seems as if most countries and their legislators do not know what to do with this problem.

The number and value of this new type of assets will only grow and it is time to start implementing them into property law, law of obligations and, as this chapter shows, into inheritance law. Therefore, it is imperative to start teaching law students about the importance of these assets; their characteristics; differences between them and how to treat them, both while their owner/user is alive and after he/she dies. As some scholars have stated, if we do not react now, the "rule of technology" instead of the "rule of law" will govern this aspect of our lives (or "the rule of the cloud", instead of "rule of the land").[Footnote12]

When talking about the right of inheritance, like the civil right, it has two meanings

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should be understood: in objective and subjective senses. It is this kind of approach to content andmeaning allows and helps to clarify the essence of the right of inheritance, which is a multifaceted concept.In the objective sense, the right of inheritance is understood as the set of legal norms that regulate relations related to inheritance, that these relationstransfer of property (civil) rights and duties of the deceased person to other persons (heirs)occurs in the process of passing. In this sense, from the point of view of the set of inheritance law norms, the right of inheritance is one of the independent areas of civil law.acts as a structural element - component of law. These norms, which have essentially the same socio-economic foundation and are formed directly on the basis of centuries-old family, national and moral traditions of the society, differ from each other due to the fact that their specific legal and technical legal contents do not overlap. A country has its own right of succession (in an objective sense) that one of them from another it is distinguished and distinguished by its important characteristics. For this reason, the Republic of Azerbaijan succession law, succession law of the Russian Federation, succession of the United States right etc. existence, in general, it can be said that each state has its own right of inheritance. From the general right of inheritance, that is, from the existence of the right of inheritance common and uniform for all countries talking is illogical. In each state, the legal norms of inheritance in an objective sense are created by that state itself, and therefore the general laws applied in the states the right of inheritance does not exist. The right of inheritance in an objective sense is a structural element of civil law. What "status" does it include? In other words, in an objective sense, the collection of inheritance law norms that constitute the right of inheritance is a part of civil law. Does it create the institute or subfield as part of it? It should be noted that law since there is no unequivocal answer to these questions in the literature, it has become the subject of debate and discussion for a long time. That issue, that is, inheritance that law is an institution or subfield of civil law In the science of civil law (doctrine) is considered one of the most discussed issues.

Inheritance law includes inheritance by law, mandatory share of inheritance, procedure for drawing up claims related to inheritance and many other nuances. The need for proper and reliable legal service regarding these rights may arise at any time.The right of inheritance is reflected in the civil legislation as follows: "The transfer of the property of a deceased person to other persons is called inheritance." In other words, inheritance means the transfer of property and some personal non-property rights and duties of a deceased citizen to another person in accordance with the law.

Article 1134.2 of the Civil Code states that heirs can be persons who were alive at the time of the death of the testator, as well as persons who were born during the life of the testator and who were born after his death, regardless of whether these persons are his children or not, as well as whether they are legal entities. In the case of inheritance by will, legal entities organized before the opening of the inheritance are invited to the inheritance.

The certificate on the right of inheritance is issued to the heirs six months after the day of the opening of the inheritance. If the notary has information that there are no other heirs besides the persons requesting the certificate, the certificate of the right of inheritance can be issued earlier than six months.

The heirs who did not accept the inheritance within the period specified by the law can be registered in the certificate of the right of inheritance with the consent of all the heirs who accepted the inheritance. The consent must be expressed in writing before the certificate of inheritance is issued.

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If the heir called to accept the inheritance dies after the inheritance has been opened and does not have the opportunity to accept it within the specified period, his heirs can receive a certificate of the right of inheritance to the property left after the death of the original bequeather.

According to the Civil Code, the testator's children, parents and wife (husband) have the right to a compulsory share in the inheritance, regardless of the content of the will. This share should be half of the share (compulsory share) due to them at the time of inheritance by law. The right to demand a compulsory share is created at the moment of opening the inheritance. Such right of claim is inherited. Other heirs act as co-debtors before the person who has the right to claim the compulsory share.

Deprivation of the right to inheritance is based on the decision of the court. In addition, the bequeather can deprive the persons other than the compulsory shareholder of the inheritance at will. There is no need to file a lawsuit for this. On the other hand, compulsory share holders can be deprived of their compulsory share only in the cases specified by law and in a court order.

Sometimes disputes regarding inheritance arise between heirs and other persons, and the procedure for resolving these disputes is only within the jurisdiction of the court. Since the dispute cannot be resolved either by agreement of the parties or by notary procedure, the interested parties have the right to prepare a claim for inheritance and apply to the court. Claims filed on that dispute are called inheritance claims.

From the point of view of both material and procedural norms related to inheritance, there are periods (claim period) for pre-trial, trial and post-trial proceedings (criminal, civil, etc.) and they are of special importance.

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Everyone has the right to property. No type of ownership is preferred. Property rights, including private property rights, are protected by law. No one can be deprived of his property without a court order.

The right of inheritance guaranteed by Part VII of Article 29 of the Constitution is a subjective right, on the one hand, to bequeath and bequeath, and on the other hand, to accept and own the inheritance as an heir. Providing such a guarantee to the right of inheritance by the Constitution is a direct logical consequence of the principle of the inviolability of the right of private property, and is aimed at ensuring the continuity of the right to property without any restrictions.

Through the right of inheritance, in the event of the death of natural persons who are participants in the civil circulation, legal conditions are created for the non-disappearance of their rights and obligations arising from the legal relations established during their lifetime, and for their implementation by their heirs, as a result of which the continuity and continuity of the civil circulation are ensured, and the principles of legal certainty and legal trust are protected. .

Inheritance law, being one of the largest sub-fields of civil law, is based on the principles of universal legal succession, freedom of will, family provision, ensuring the rights and interests of compulsory heirs, free choice of persons called to inherit, protection of the rights and interests of the bequeather

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and heirs, legal rules and morality. Each of the mentioned principles is aimed at ensuring the other principle and can be limited by taking into account certain interests in the manner and limits provided by the legislation.

Thus, the inheritance is opened upon the death of a natural person or when he is declared dead, and the persons who may be the heirs of the bequeather are considered to be called upon to inherit from the moment of the opening of the inheritance. According to Article 1133 of the Civil Code, inheritance is carried out by law or will or both. Inheritance by law (the transfer of the property of a deceased person to persons specified by law) takes effect when the testator does not leave a will, or the will is considered invalid in whole or in part.

Thus, legal relations of inheritance begin from the moment of the death or declaration of death of the inheritor. Legislation conditioned the emergence of the right of inheritance upon the death or declaration of death of the testator, and established that this right belongs to the persons specified in the will in case of a will, and otherwise (in the absence of a will or is considered invalid) to the heirs determined by law.

According to the legislation in force, the authority to conduct relevant documentation related to inheritance matters is attributed to the authority of notary authorities.

According to Article 59 of the Law of the Republic of Azerbaijan "On Notary", when a notary issues a certificate of the right of inheritance by law, by requesting evidence of the fact of the death of the bequeather, the place and time of the opening of the inheritance, for the persons who apply for the certificate to be summoned to the inheritance according to the law he must check the existence of foundations, the composition and location of the inherited property.

According to the requirements of that Law, if there is no dispute regarding the circle of heirs, the size of the inheritance, the size of the shares, as well as the distribution of the inheritance among the heirs called to inherit, the formalization of the fact of acceptance of the inheritance is carried out in the notarial procedure.

According to Article 1246 of the Civil Code, the heir can accept the inheritance within three months from the day he knows or should have known that he is called to inherit. Acceptance of the inheritance is not allowed after six months have passed from the day the inheritance was opened.

In accordance with Article 1248 of the Civil Code, the court may extend the time limit for the acceptance of inheritance if the reason for the delay is justified. After the expiration of the term, if all other heirs accepting the inheritance agree, the inheritance can be accepted without going to court.

Taking into account the above, the period determined by Article 1246 of the Civil Code (six months) should be considered as the period provided for the realization (formalization) of the acceptance of the inheritance in the notarial manner, after six months have passed from the day of the opening of the inheritance, it should not be allowed to formalize the acceptance of the inheritance in the notarial manner. After the transfer of that period, the issue of acceptance of inherited property can be resolved in court.

Summary.

Older men and women have similar rights as allare born equal, and this does not change as wegrow older. Despite the existence of the UDHR,older people are not recognized explicitly underthe

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international human rights laws that legallyoblige governments to realize the rights of allpeople. A UN Convention on the Rights of Older Persons is necessary to ensure that olderwomen and men can realize their rights especiallythe right to property and inheritance rights ofwomen. The lack of policies to address theseissues is condemning millions of older people toa life of poverty instead of recognizing the activeeconomic and social contributions they havemade, and they can make to their families, communities, and society as a whole. Internationalhuman rights standards for identified vulnerablepopulations have gained increasing recognition inthe contemporary societies but due to the exis-tence of unclear legal clarity at internationallevel, the older people are vulnerable to beingsubjected to the lowest legal standards, especiallyif living in a country with parallel legal systems.Customary laws often prevail, which result inolder men and women being forcibly drivenfrom land and property following the death oftheir spouse.

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