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Permanent inheritance as an object of civil rights: Theoretical aspects

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The paper investigates the legal nature of inheritance as an object of civil rights. The purpose of the paper is to identify the legal nature and constitutive features of permanent inheritance as an object of civil rights. The basis of any methodology consists of such interrelated elements as the research object, its subject and purpose. They influence the choice of research methods; they depend on the validity of the results. The object of research is inheritance as an object of civil rights, the subject is its special kind, which can be notionally named permanent inheritance. This necessitates the use of specific methodological approaches, which will reveal the distinctive features of the permanent inheritance and the specificity of this object, including such methods of research as dogmatic, formal-logical, systematic, comparative law. Inheritance is described as a set of subjective rights and legal obligations of a deceased person, which passes to their legal successors – heirs. The universal nature of hereditary succession, both primary and derivative, is investigated. Assets and liabilities of inheritance were identified. The term "permanent inheritance" is introduced into the scientific circulation, its essence, specific features and varieties are characterized.

Keywords: objects of civil rights, inheritance, inheritance as an object of civil rights, permanent inheritance.

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INTRODUCTION

Understanding civil rights is one of the topical issues in civilistics. However, the inheritance as an object of civil rights has not received adequate attention in the legal literature. This causes problems of a practical nature concerning the identification, acceptance and division of a particular legal regime of inheritance. Unlike other conventional civil rights objects, inheritance is characterized by the fact that its occurrence is necessarily linked to such legal fact as the death of the testator.

Permanent inheritance as a special object of civil rights constitutes such testator's rights and obligations that are dynamic in nature, the content of which at the time of inheritance release and until its acceptance and registration by heirs is difficult or, for natural reasons, impossible to determine. Permanent inheritance objects may include the rights and obligations of the testator arising from both contractual and non-contractual obligations.

Permanence is characterized by the composition of the duties of the testator under separate contracts, which allows the succession in accordance with the general rules of termination of the obligation of death of an individual (obligation from the contract of life maintenance (care), rent), since their meaningful content can be determined only with time. Permanent in nature are also the obligations to compensate for property damage (damages) and non-pecuniary damage caused by the testator, which are inherited by the heirs.

Among objects of permanent inheritance, the authors also consider the right to challenge the transaction committed by the testator during their lifetime. Satisfaction of the heir's claim in court regarding declaration of the gift contract, purchase and sale agreement, the will concluded by the testator as null and void will may increase the assets of the inheritance. The concept of permanent inheritance also covers tangible objects, the value of which, due to their particular legal nature, is difficult to determine or depends on chance (businesses, collections, personal papers, etc.).

The presence of objects in the hereditary mass, which fall under the concept of permanent inheritance prevents the objective assessment of

the ratio of assets and liabilities of the inheritance, causes uncertainty in the behaviour of the heir and constitutes an additional factor that complicates the decision to accept or abandon the inheritance. The presence of "permanent" objects in the inheritance should be considered as a possible basis for renewal of the period for acceptance of the inheritance, missed by the heir, which will be in conformity with the general principles of justice and expediency.

The purpose of the paper is to establish the legal nature and constitutional features of permanent inheritance as an object of civil rights. The basis of any methodology consists of such interrelated elements as the research object, its subject and purpose. They influence the choice of research methods and the validity of the results depends on them. The object of research is the inheritance as an object of civil rights, the subject is its special kind, which can be notionally named permanent inheritance. This necessitates the use of specific methodological approaches that will reveal the distinctive features of permanent inheritance and the specifics of this object, including such methods of research as dogmatic, aristotelian, systematic, comparative law.

CHARACTERISTICS OF INHERITANCE AS A SET OF RIGHTS AND RESPONSIBILITIES

Civil rights, as an objective category of positive law, have conventionally been understood as "that which" in the doctrine of civil law. Article 177 of the Civil Code of Ukraine, among the objects of civil rights, distinguishes: things, including money and securities, other property, property rights, results of works, services, results of intellectual, creative activity, information, including other tangible and intangible goods (The Civil Code… 2003). The legislator characterizes some of the objects, classifies them, sets forth features of acquisition and termination of rights to them.

Inheritance is a special object of civil rights because of the universality of legal succession. According to the civil legislation of Ukraine, like in many other countries of continental Europe, the heir shall

be obliged to accept the entire inheritance, whatever it may be and wherever it is; the will of the heir to accept the inheritance applies to all objects of the inheritance at the same time, including those, the existence of which was unknown to the heir at the time of inheritance release. The subject of universal succession is the totality of the rights and obligations of the predecessor in title, which pass to their legal successors. The legislators leave the heir little choice: they must either accept the entire inheritance or abandon the entire inheritance. The French legislators also share the concept of unity of inheritance – everything that constitutes the property of the deceased (assets, liabilities, rights and obligations) transfers to the legal successor in order of succession (Malaurie & Aynès 2008).

A similar scientific position is taken by German scholars, who, upon commenting on the article 1922 of the Civil Code of Germany, state that after the death of a person, their property (inheritance), as a single whole, passes to one or more persons (heirs) (Sarvarian 2016).

Inheritance is the set of subjective rights and legal obligations of a deceased person, which passes to their legal successors – heirs. Inheritance consists of property rights and obligations, that is, the inheritance includes not the property but the right to a property (Tatsyi & Butler 2017). There are other opinions among scientists. Thus, some German scholars believe that the inheritance (Erbschaft) must be understood as a set of values (monetary and other) that belong to the testator (Langenfeld 1987). Inheritance is a memory of the past generation and a hope for the future. It is a testimony to the realization of plans and dreams, the equivalent of the time spent and the physical efforts of the deceased person. Inheritance is a testament to how successful was the life of the testator.

A characteristic feature of the inheritance as an object of civil rights is also that the legal succession process itself takes place within a period of time stipulated by the law, and such an object, in fact, does not have an owner. The former owner died and their legal capacity terminated, such a person has ceased to be a legal subject, and the successor has not yet had time to exercise their subjective right to inheritance and has not

legalized the property of the objects of inheritance. In Roman law, between the opening of the inheritance and its acquisition, the latter was called "lying" (*hereditas iacet*), and the things that were part of it were considered to be nobody's and in the period of the republic could be seized by anyone (Sanfilippo 2002).

The concept of "hereditary mass" or "inheritance" does not depend on the number of objects that actually make it up. The inheritance includes the property due to the heir on the day of inheritance release, including all rights and obligations that belonged to the testator at the moment of inheritance release and did not terminate as a result of their death (Article 1218 of the Civil Code of Ukraine). The size of the inheritance, its assets and liabilities do not affect the timing and the procedure for accepting or abandoning it. An inheritance may include property that was owned by the deceased, but is owned by another person on legal or illegal grounds. In such case, the right to claim the property from another's illegal ownership is transferred to the heir as the legal successor.

The legislator, as a rule, defines the specifics and carefully regulates the procedure of transition of certain types of property to the heir (real estate, including enterprises and property complexes, houses, land plots), limited circulating things, deposits in the bank (financial institution), etc., including property rights of the testator-participant of commercial and non-profit organizations, other property rights of the testator: property rights of the author of works of science, literature, art, invention, utility model, industrial design; the right to compensation for losses suffered by the testator in a contractual relationship; the right to recover damages (fines, penalties) in connection with the debtor's failure to perform its contractual obligations, which was awarded by the court to the testator in their lifetime; the right to compensation for non-pecuniary damage awarded by the court to the testator in their lifetime.

It is controversial to think of inheritance as an object restricted in civil transactions, since the scope of legally significant actions, in particular, inheritance transactions, is quite narrow and is conditioned by the nature of inheritance. Accordingly, inheritance may be the object of

solely hereditary relations, as opposed to real, binding, or corporate civil relations (Tsytovich et al. 2015).

Inheritance can cover not only things that are restricted in transactions, but also those that are included in the civil transactions – houses, land, vehicles, securities. Subsequent to the proper legalization of inheritance rights, they act as independent objects of civil rights and without any restrictions participate in the civil transactions. It does not exclude the hereditary legal succession and the individual rights of the testator granted to them in court. Thus, French lawyers believe that the heir has the right to file action in pursuit of protecting the so-called mixed rights, which also constitute part of the inheritance (Guével 2004).

The Ukrainian legislature also allows for the possibility of involving a legal successor in a court case at any stage of the trial. However, not all property belonging to the testator on the day of their death constitutes part of the inheritance. Thus, for natural reasons, the number of rights and obligations of the testator does not pass to the successors, but ceases to exist after their death. Inheritance does not include personal non-property rights to life, health, welfare, respect for honor and dignity, maternity and paternity, inviolability of good standing, inviolability of private life, non-interference in personal and family affairs. The heirs do not inherit the right to scientific degrees, to academic and military titles, state awards.

Rights and obligations that are property, but which are purely personal, are not inherited. This is the right to receive alimony, the right to participate in partnerships and the right of membership in associations of citizens, unless otherwise provided by law or the relevant constituent documents. However, if this does not, for example, refer to the subjective right of the citizen to alimony, but refers to the specific amount of alimony or accrued and unpaid earnings, i.e. to the subjective right of the deceased person, which was not achieved in life, then in the absence of the requirements of the members of the family these sums shall be included in the inheritance.

The specific rights and obligations of the deceased are not included in the inheritance because of their special legal nature, since they

are intrinsically linked to the identity of the deceased (the rights and duties of the trustee and the attorney). The rights and obligations, the occurrence of which is connected with the death of the testator are not the object of the hereditary legal succession (the right to receive the sum insured under the personal insurance contract, etc.). The rights of the testator, acquired in public legal relations – constitutional, administrative, and others – are not included in the inheritance, as they contain no civil law component.

CHARACTERISTICS OF THE GROUNDS FOR INHERITANCE

At the time of inheritance release, property and property rights may belong to the testator on various legal grounds: on the basis of property rights (above all, on the right of ownership, on the right of the owner of easement, emphyteusis, superficies, or other rights to property of another); on the basis of a binding law (the right of a claim based on a contract or obligation that arose or may arise out of a contract – the obligation to cause harm, to acquire or retain property of another without sufficient legal grounds); on the basis of exclusive law (intellectual property rights – industrial property rights, copyright); other legal grounds (family law, labour law, housing law, social security law, etc.).

The right to inheritance may be primary when a person is made an heir according to a made will, otherwise, in the absence of a will, the person acquires a right to inheritance in accordance with the law through kinship or family ties. A derivative right to inheritance is acquired when the heirs by primary right are deprived of inheritance rights by virtue of a law or court decision. Thus, when the will is invalidated by the heirs, the heirs are deprived of the grounds for the inheritance and the heirs by law are called to inherit. If, however, the person who is the heir by law has attempted on the life of the testator or committed another unworthy act, they shall be excluded from inheritance by law and the right of inheritance shall pass on to the next stage of heirs. The heirs, both by will and by law, may, due to different circumstances, abandon the inheritance, and in this case, persons who would not have received it under ordinary circumstances become heirs.

In the aggregate of objects that make up the composition of inheritance, it does not always appear as an invariable static legal category, since qualitatively new objects may appear after the moment of inheritance release (fruits, revenues, industrial, or agricultural products) or, conversely, some objects in its composition may cease to exist due to natural causes. For certain objects of hereditary legal succession, a characteristic feature is their permanence.

The permanence of the object of hereditary legal succession lies in an uncertainty of quantitative and qualitative characteristics, its constant changes, in the movement of its constituent elements and, above all, those that affect its value. Permanence creates certain difficulties for the heir to be certain about the decision to accept or abandon the inheritance. Of course, the testator can simplify their heirs' inheritance procedure by carefully expressing their last request in the will. Kelly (2013) notes that the disposal of property against the possibility of death not only encourages a person to work and invest, contributes to the accumulation of capital, but is also socially significant, strengthens family relationships and encourages children to care for their parents (pp. 1125–1126). However, most people do not hurry to make wills. Thus, even in the UK, including England and Wales, despite the "aging" population, the number of those with desire to express their last request by making a will does not increase (Sloan 2017).

Regardless of the grounds for the acquisition of property and property rights, some of them may become permanent. Thus, the peculiarity of inheritance of enterprises is that the object of hereditary succession is dynamic, constantly in motion. Enterprise means the only property complex used by the entrepreneur in its activity, which may include buildings, structures, equipment, machines and units, vehicles, raw materials, finished goods, land, money, securities, various kinds of property rights, including intangible objects (trademarks, company names), including intellectual property rights (transfer to the owner of the enterprise of certain rights under the copyright agreement, license agreement, contract on the transfer of rights, etc.). A particular entity that

is part of an enterprise is know-how, i.e. information about objects, facts, events, processes, etc., regardless of the form of its provision.

The assets and liabilities of such an entity are constantly changing and, at the time of inheritance release, the heir cannot always ultimately decide whether to accept or abandon the inheritance. Such uncertainty at the moment of inheritance release can contribute to the adoption of an unjustified, wrong decision by the heir and lead to the occurrence of negative consequences of property character for them. Thus, under German legislation, if an inheritance includes a trading company, the heir also becomes liable for business-related debts (Creifelds 2000).

French legislation establishes a special order of "anomalous inheritance" that extends to the inheritance of certain things, such as inheritance of copyright, since the latter has both personal non-property and property nature (Jubault 2005). Anomalous inheritance also includes inheritance of family heirlooms, i.e. things that are of particular intangible value to the family, regardless of monetary value, the inheritance of which does not fall under the legislatively stipulated rules of inheritance, and which the court may transfer to one of the responsible members of family. These can be jewellery, weapons, paintings, documents, letters, and more (National Reports… 2011).

The concept of personal papers of an individual cover documents, photos, diaries, other records, personal archival materials, etc. An individual has the right to create, use and dispose of the personal papers at their own discretion. The right of disposal also extends to those personal papers that are the property of the individual. No one shall have the right to see other people's documents. Researchers are granted access only as a privilege (Yoxall 1984).

The scientific literature distinguishes two approaches to the relation between the terms "personal papers" and "personal documentation". According to one approach, these terms are identical. According to another, documents constitute one of the elements of the general concept of "personal papers". In our view, the coexistence of these approaches is possible, since they are both acceptable and complementary.

The term "document" is translated from Latin as "proof". The document is entitled to name the substantive manifestation of the processes of reproduction, dissemination and storage of information. The personal papers of an individual constitute their property.

Personal papers and their use, in particular through publication, are permitted only with the consent of the individual to whom they belong. If the personal papers of an individual concern the privacy of another person, their use, including through publication, requires that person's consent. In the event of the death of the said individuals, personal papers may be used, including by way of publication, only with the consent of their children, widows (widowers) and, if they are not, parents, brothers and sisters.

The right to personal papers includes the right to dispose of them. In a will, a person can determine the fate of personal papers (to transfer them to a museum, to an archive, to give them avay, to sell at auction, to destroy, etc.). Personal papers are not only the object of pleasant family memories. They can serve as a source of knowledge for scholars (Cucu-Oancea 2012). Diaries, letters, and autobiographies, and home archives constitute valuable documentary sources for historians and social researchers (McCulloch 2004). Private archives are one of the most important sources of information for research and the memory of the nation (Al-Hinai 2018).

Personal papers, as a rule, are purely ordinary records. However, in some cases, these documents may contain information of scientific or historical content that will transform them into a variety of intangible goods and confer value on the property. Inherited personal papers, which at the time of inheritance release were considered by heirs solely as family heirlooms, can unexpectedly bring a benefit. Thus, private letters from the famous French chansonnier Charles Aznavour were auctioned at a starting price of 30-40 thousand euros (Aznavour 2019). Therefore, inherited personal papers can have considerable material value and offset the existing liabilities of the accepted inheritance.

Permanence is also characterized by the composition of the obligations of the heir under separate contracts, which allows legal

succession in accordance with the general rules of termination of liability due to the death of an individual. The obligation shall be terminated by the death of the debtor if it is inextricably linked to them and cannot be performed by another entity.

This provision shall not apply to cases of hereditary legal succession under an annuity or life care contract. Life care contract is a typical aleatory contract that does not change its legal nature even after the death of the acquirer, since it is unknown at the time of acquirer's inheritance release that they must provide the maintenance and necessary care to the alienator under the contract and what the balance will be between the costs incurred and the property acquired under the contract. The heirs of the acquirer, after careful analysis of the content of the contract and evaluation of their abilities (both of material and actual assistance), factoring in the uncertainty of the term of providing such maintenance and care, can either agree to act as legal successors of the deceased or to withdraw from the contract.

Obligations to compensate for property harm (damages) and non-pecuniary damage, which are inherited by the heir are also permanent in nature. The heirs must compensate for those damages and harm which the testator had caused to other persons in his lifetime, but has not performed their obligation to compensate.

The heirs also inherit other obligations of the testator arising from the non-contractual obligations, including the acquisition or preservation of the property without sufficient legal grounds. If the heir unreasonably acquired or kept the property at the expense of another person, after their death, the property shall be subject to restitution to the victim in kind, and if such a restitution is impossible, the heirs shall be obliged to recover its value. The extent of these obligations depends on the number of inherited heirs and the size of the inherited shares. The amount of responsibility of the heirs is directly proportional to their share of the inheritance. However, the amount of their liability is formally limited by the assets received.

Permanent inheritance objects include the right to challenge a transaction made by a testator in their lifetime (Kukharev 2019). This

refers to cases where, after the inheritance release, the heirs believe that the transactions concluded by the testator are contrary to the general conditions of validity of the transaction, were concluded as a result of error, deception, or not in accordance with the internal will of the testator. As a rule, this refers to the gift contracts of the testators concluded for the benefit of third parties, the sale of real estate at a significantly reduced price, and, basically, the will drawn up by the testator, under which third parties become unjustifiably involved. The consequence of invalidating such transactions is an increase in the amount of inheritance property, however, at the moment of inheritance release, the person concerned cannot be sure that such a case will be decided in court in their favour, and the court fees incurred will be justified.

The case law on invalidating a will or recognition of contracts concluded by the testator as invalid, despite a certain identity of the charges, is very diverse. However, the res judicata principle alone does not require national courts to follow precedents in such cases; it may take some time to achieve consistency of legislation, therefore periods of conflicting judicial practice are permitted if such judicial practice does not undermine legal certainty. This means that two courts, each in its own jurisdiction, are able to decide on similar (in fact and law) cases, reaching diverse, but still rational and motivated conclusions (Vitkauskas & Dykov, 2018).

Civil legislation of Germany provides for a special inherited right to a lawsuit against spouses regarding the division of property acquired in marriage (Weirich 2004). This right also has signs of permanence, since there is no certainty that the violated rights will be protected by the court, and the trial will not lead exclusively to additional costs for the heir.

In France, the heir can, in fact, determine the amount of inheritance that they will inherit themselves. In accordance with Article 768 of the Civil Code of France, the heir accepts an inheritance with all assets and liabilities. However, they may declare the acceptance of a net asset and demand an inventory of the estate with the involvement of creditors. In such case, the liability for the obligations of the testator is

limited to assets. If the assets of the inheritance are not enough to satisfy the claims of creditors, they may demand the satisfaction from the legatees (Articles 792-796 of the Civil Code of France) (Code Napoléon 1803). According to the Civil Code of Germany, the heir shall also be liable for all the obligations of the testator (§ 1967 of the Civil Code of Germany). However, the legislator also stipulates the heir's liability limited by the size of the assets of the inheritance if trusteeship (inheritance management) is established or proceedings are instituted due to the inability of the estate (§ 1975 GGU) (Bürgerliches Gesetzbuch 1896). Article 1032 of the Civil Code of Poland also provides for the right of the heir to the so-called inventory privilege, which limits their liability to assets of the inheritance, provided that they did not intentionally conceal the inheritance property (Załucki 2016).

In Ukrainian legislation, the privilege that is granted at the request of the heir regarding limited liability has transformed into the following principle: heirs shall be obliged to satisfy the creditor's demands in full, but within the value of the property received by inheritance (Article 1282 of the Civil Code of Ukraine). In our opinion, this is the most justified approach to solving the issue of the extent of liability of heirs to the obligations of the testator. The status of the heir can be acquired by a person directly – upon making a will in their favour, due to the direct affiliation with the line of heirs called for inheritance, or indirectly – in cases of non-acceptance of the inheritance by the direct heirs, their elimination as unsuitable and inheritance of the right to an obligatory share.

The mere fact of the death of the testator is insufficient for a person to become the legal successor of the rights and obligations of the deceased. The right to inherit is a subjective civil right. Its meaning lies in the fact that after the inheritance release, the heir has the following rights: to accept the inheritance or refuse the inheritance in general in favour of specific heirs.

To become the successor of the deceased, the heirs must accept the inheritance, that is, the heir must exercise their right to inherit, which is granted by the legislation. Inheritance can be accepted both formally

(with the submission of an appropriate application and obtaining a certificate of the right to inheritance), and informally, when, in accordance with the law, the heir is considered to have accepted the inheritance.

When calling the heir to inherit on several grounds simultaneously (by will, by law, in accordance with the hereditary order), the heir may accept the inheritance on one of the grounds. Acceptance of an inheritance by one heir does not mean acceptance of the inheritance by all heirs, each of them must independently declare their intention to accept the inheritance.

In Western Europe, two types of inheritance are distinguished (Wenkstern 2012). The first type is inherent in common law countries. After the death of the testator, the court approves the person administering the inheritance, and after paying off the debts the "pure" inheritance is transferred to the heirs. In the countries of the continental system, the idea of Roman law on the complete replacement of the testator by the heirs is embodied.

Acceptance of an inheritance is the assurance of the consent of the heir to enter into all legal relations of the testator, which together constitute the inheritance. Such consent must be expressed in a legally established manner, that is, by performing certain legal actions stipulated by law. The fact that the heir may not have known that the inheritance covers things with a special legal regime (weapons, certain types of land, objects of state, cultural or historical significance, etc.) does not affect the acceptance of the inheritance. Acceptance of an inheritance as a unilateral transaction is characterized not only by special methods of acceptance, but also by the impossibility of expression of will with a condition or reservation on the part of the person accepting the inheritance.

The heir cannot declare the acceptance of the inheritance in shares or refuse it, provided that there are certain events or circumstances that may occur in the future. The statement of acceptance of the inheritance, including the statement of renunciation of the inheritance, is unconditional and irrevocable. The adoption of such a decision is influenced by a number of circumstances of both subjective and objective nature: the presence or absence of family or kinship with the testator, the

relationship with the testator and its nature, financial status of the heir, the composition of the inheritance, the ability to determine the ratio of its assets and liabilities, the presence of inheritance of permanent objects of inheritance succession in nature.

CONCLUSIONS

A prerequisite for the emergence and development of inheritance relations is also the existence of objects in respect of which succession is allowed after the death of a person. Inheritance property does not always coincide with property that was in possession or even in ownership of the testator. Therefore, in the theory of civil law and in the practical activities of notarial and judicial bodies, the exact determination of the boundaries of the hereditary mass is of great importance.

Inheritance as an object of civil rights has a certain difference from the legislative and doctrinal understanding of this concept. In legislation and doctrine, the term “object” is endowed with positive content and means property, property rights, the result of work, benefits, etc., that is, everything beneficial. Whereas the term “object of civil rights”, used in relation to the inheritance, can, under certain conditions, acquire negative connotation.

In the absence of assets, when the inheritance consists only of obligations (payment of debt, forfeit, compensation for non-pecuniary damage, etc.) or if the liabilities of the inheritance significantly exceed its assets, the object of succession will be endowed with negative connotation, since the provisions of civil legislation oblige the debtor to full compensation for losses. At the same time, the legislation of certain countries of continental Europe enshrines the right of the heir to limited liability for the debts of the testator.

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