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ESTABLISHING A BANK BEQUEST IN FAVOUR OF A PERSON ENTITLED TO A LEGITIM*

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Abstract. The distinctive nature of the right to a legitim, which is conferred exclusively upon the descendants, spouse, and parents of the deceased, calls for the adoption of normative frameworks that serve as a robust guarantee of its effective enforcement. Within this context, certain provisions of the Polish Civil Code give rise to interpretative concerns, particularly those regulating the calculation of the legitim, the determination of the quantum of claims held by specific beneficiaries, as well as the principles and scope of debt liability arising from such entitlements. These provisions impose an obligation, subject to the statutory conditions, to take account of *inter vivos* gifts made by the deceased in each of the aforementioned scenarios. While such a legislative approach should, in principle, be regarded as entirely justified, the legislator's use of the term "gift" does not provide a clear answer as to whether, in the situations in question, other gratuitous legal transactions, distinct from a gift in the sense of a named contract under the Civil Code, should be interpreted as having the same legal effect, from the perspective of persons entitled to a legitim, as a gift made by the deceased. The *ratio legis* of the legitim and the *ratio* of inclusion of gifts in its calculation leads to the conclusion that the term employed by the legislator must be interpreted broadly. Accordingly, within the provisions on the legitim, the term "gift" should be understood as encompassing all deliberate legal acts (transactions) of the deceased which unilaterally confer a benefit upon another party at the expense of the deceased's estate, thereby resulting in a diminution of the estate's value. It should therefore be beyond doubt that, for the purposes of Articles 993 and 995 of the Civil Code, the term "gift" also encompasses, inter alia, an instruction for transfer of a bank deposit mortis causa. It also appears to be beyond doubt that the provisions of the Civil Code allowing for the sanctioning of unlawful conduct by heirs or legatees, particularly actions directed against the deceased, should apply to the beneficiary of an instruction for transfer of a bank deposit mortis causa, where such conduct results in the forfeiture of benefits obtained from the estate or as a consequence of the deceased's death.

Keywords: instruction for transfer of a bank deposit mortis causa; bank bequest; gift; right to a legitim.

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* The expression "bank bequest" does not constitute a term of legal language in the strict sense. It is used in reference to the institution regulated under Article 56 of the Act of 29 August 1997 Banking Law (Journal of Laws of 2024, item 1646 [hereinafter: BL]), namely, the instruction for transfer of a bank deposit mortis causa.

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1. FREEDOM OF TESTATION AS A FUNDAMENTAL PRINCIPLE OF PRIVATE LAW AND ITS LIMITATIONS

Freedom of testation, akin to the principle of freedom of contract, constitutes one of the foundational liberties underpinning the domain of private law [Księżak 2012, 17]. It denotes the capacity of a natural person to make legally effective dispositions of their property mortis causa by means of a will. The purpose served by the freedom of testation is self-evident. "The underlying principle is that the testator should be able to dispose of their estate mortis causa in a way that most accurately reflects their intentions, one that is both rational and responsive to the actual, as opposed to merely hypothetical, circumstances of the specific case" [Wójcik 1986, 173]. The testator may therefore dispose of their estate mortis causa in favour of any entity, disregarding close relatives or even the spouse. It goes without saying that the principle of freedom of testation is not absolute. Within the framework of the present inquiry, particular emphasis must be placed on the fact that, among the various constraints imposed on this freedom, those arising from the need, or even the necessity, to protect the interests of the testator's immediate family members are of paramount importance [Księżak 2012, 23]. While during the deceased's lifetime their closest relatives are primarily protected by the maintenance obligation, this duty expires upon his or her death due to its inherent connection with the testator (Article 922(2) of the Civil Code[1]). Although there is no longer a person legally bound to satisfy the needs of their immediate family members, those needs could still be met from the estate left behind by the testator. The case-law holds that the right to a legitim, insofar as it contributes to securing the sustenance of the testator's closest relatives, constitutes a continuation of the maintenance obligation that had previously rested upon the deceased.[2]

Both the legal doctrine and case-law emphasise at least a moral duty to support one's family, including the duty to leave benefits to closest relatives by way of succession [Witczak 2024, 551 with literature referenced therein]. Of course, from a legal standpoint, it is the law that determines which individuals from among the deceased's close relations must receive benefits upon their death. *De lege lata*, the individuals whom the legislator has placed under special protection following the testator's death are the testator's descendants, spouse, and parents. These family members are entitled to a legitim (Article 991(1) CC), and it is primarily through this institution that the protection of the testator's immediate family is implemented under the current legal framework [Kordasiewicz 2008, 413-15]. The legitim is understood primarily

[1] Act of 23 April 1964 Civil Code, Journal of Laws of 2014, item 1061 as amended [hereinafter: CC].

[2] Grounds to the judgement of 23 January 2014, ref. no. V ACa 742/13, Lex no. 797350.

as serving two key functions: "ensuring the continued support of the testator's closest family members, as a legal extension of the maintenance obligation, and "safeguarding the fulfilment of a form of intergenerational contract, along with the duty of mutual care and assistance within the family."[3]

As noted above, the freedom of testation is not absolute. The reasons for limiting this freedom are to be found, in particular, in the Constitution of the Republic of Poland.[4] The limitations are inherently bound to the constitutional imperative of safeguarding the guarantees enshrined in Article 18 of the Constitution of the Republic of Poland, namely, the protection of marriage, parenthood, and the family, as well as the right to family life as articulated in Article 47 therein. The entitlement of the testator's family members to participate in the estate, coupled with the curtailment of testamentary freedom, stems from the overarching constitutional principle that mandates the protection of values named in Article 18 of the basic law. The Constitutional Tribunal has consistently underscored the intrinsic connection between the right to a legitim, which undoubtedly serves to strengthen familial bonds, and the constitutional duty to protect marriage, parenthood, and family. The right to a legitim serves to guarantee "the solidarity inherent in the constitutional concept of parenthood, marriage, and family, thus representing a constitutionally justified limitation on the rights of the heir, in view of the need to protect the rights of others."[5] It is therefore in disputable that the absence of any form of "control" over the testator's exercise of testamentary freedom, in light of the need to protect the interests of their closest relatives, would stand in contradiction to the basic law.[6]

As previously indicated, the protection of the testator's family members within the Polish legal system is secured primarily through the institution of the legitim. Persons entitled thereto may, upon the testator's death, claim specific monetary amounts irrespective of how the testator chose to dispose of their estate mortis causa. It is to be recognised that, unlike in systems based on a fixed statutory reserve, a legitim does not impose a restriction on freedom of testation sensu stricto. The constraint on the testator's autonomy is purely economic in nature: their dispositions may extend to the entirety of the estate, while the individuals designated by the law acquire "only" a pecuniary claim corresponding to a defined fraction of the net worth of the estate [Księżak 2012, 23-24]. This implies that a testator can never exercise

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[3] So in the grounds to the judgement of the Court of Appeal in Warsaw of 23 January 2014, ref. no. V ACa 742/13, Lex no. 797350. See also grounds to the judgement of the Supreme Court of 14 March 2008, ref. no. IV CSK 509/07, Lex no. 445279 along with the case-law referenced therein.

[4] Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483 as amended.

[5] Judgement of the Constitutional Tribunal of 25 July 2013, ref. no. P 56/11, Legalis no. 722201.

[6] For more, see Witczak 2024, 552, with literature referenced therein.

full testamentary freedom to the exclusion of their closest relatives.[7] As aptly pointed out in the literature, "since the deceased was a member of the family, he or she cannot deny that fact by executing dispositions mortis causa, especially at a time when the interests of the family assume the greatest significance" [ibid., 56-57]. The purpose of the legitim is therefore to ensure that the closest family members designated by the law receive a specified benefit from the estate, regardless of, and even contrary to, the testator's intentions. The right to a legitim protects such individuals against the arbitrariness of the deceased's mortis causa dispositions[8] and against potential harm resulting from their exclusion.[9] As the Supreme Court has noted, "building on the premise of a close connection between the law of succession and family law, and on the interpretation of the mutual rights and obligations of spouses and of parents and children as shaped by the latter, judicial practice has consistently highlighted the value of the legitim as an instrument for safeguarding the institution of family law and social justice."[10]

2. PROTECTION OF THE TESTATOR'S CLOSEST RELATIVES AGAINST THE EFFECTS OF HIS OR HER LEGAL TRANSACTIONS *INTER VIVOS*

Given the normative framework of the legitim, it may be asserted that its function is to shield entitled beneficiaries not only from the detrimental effects of a will made by the testator, but also from certain *inter vivos* legal transactions specified by the law. The testator's closest relatives may be prejudiced not only through their exclusion from the will or by express disinheritance via a negative testamentary provision, but also as a result of legal transaction performed by the testator's during his or her lifetime which lead to a reduction in the estate whose net worth serves as the starting point for calculating the legitim [Kremis 1993, 130-31].

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[7] Judgement of the Court of Appeal w Łódź of 25 July 2013, ref. no. I ACa 141/12, Lex no. 1356561.

[8] See grounds to the resolution of the Supreme Court of 8 September 2021, ref. no. III CZP 7/21, Legalis and the case-law of the Constitutional Tribunal and the Supreme Court referenced therein.

[9] Judgement of the Court of Appeal in Katowice of 23 January 2014, ref. no. V ACa 742/13, Lex no. 1439043. Cf. e.g. grounds to the judgement of the Supreme Court of 28 April 2005, ref. no. III CK 569/04, Legalis no. 265946; grounds to the judgement of the Court of Appeal in Wrocław of 31 August 2012, ref. no. I ACa 1349/11, Lex no. 1120012; judgement of the Court of Appeal in Szczecin of 8 June 2017, ref. no. I ACa 102/17, Lex no. 2379141; decision of the Supreme Court of 5 April 2018, ref. no. II CSK 85/18, Lex no. 1770069 and the judgement of the Court of Appeal in Szczecin of 28 January 2021, ref. no. I ACa 544/20, Lex no. 2584157.

[10] Grounds to the resolution of the Supreme Court of 8 September 2021, ref. no. III CZP 7/21, Legalis.

A literal reading of the CC provisions governing the legitim suggests that the legislator has accorded particular significance, within the law of succession, to gifts, i.e. nominate contracts governed by Articles 888-902 CC, which must be considered in determining the amount of the legitim (Article 993), the scope of the relevant claim (Article 996), and its enforcement and the corresponding liability (Articles 1000-1001). Nonetheless, it would seem that a strictly textual interpretation of these provisions fails to convey their full meaning. There should be no doubt that the notion of a gift should be interpreted in light of the *ratio legis* underlying the provisions on the inclusion of gifts [Księżak 2012, 273]. The protection of the deceased's closest family members must always be ensured whenever the exercise of their subjective rights guaranteed by the law is at risk, particularly in the case of a right as exceptional as the right to a legitim. If the exercise of these rights is endangered by a situation in which the testator's estate is diminished as a result of legal transactions carried out during their lifetime, thereby rendering the protection of the testator's closest relatives upon death illusory, then the type of legal transaction that produces such an outcome should be of no relevance. It would thus appear that, similarly to gifts in the sense of nominate contracts under the CC, legal transactions executed by the testator that result in gratuitous benefits conferred at the expense of their estate, and which consequently reduce the value of the estate, should be treated in the same manner.

One of the legal transactions through which a beneficiary acquires a gratuitous financial benefit at the expense of the testator's estate is the so-called instruction for transfer of a bank deposit mortis causa. Pursuant to Article 56(1) BL, the holder of a savings account, a current-and-savings account, or a term deposit account may instruct the bank in writing to disburse, upon their death, a specified sum from the account to persons designated by them, namely, the spouse, ascendants, descendants, or siblings, subject to the condition that an instruction for transfer of a bank deposit mortis causa is excluded in the case of a joint account (Article 57 BL; see also Article 942 CC). It may be noted in passing that the legal character of the said instruction is a matter of scholarly debate. However, the prevailing view holds that it constitutes a unilateral legal transaction mortis causa, to which, by way of cautious analogy, the provisions of the CC on wills may be applied.[11] It has been repeatedly noted in the literature that the instruction for transfer of a bank deposit mortis causa bears "far-reaching similarities to a will" and that it constitutes "a special form of mortis causa disposition of the estate, operating alongside the primary form of such disposition, namely the will" [Pyzioł 1999, 114].

[11] For more, see Rakiewicz 2005, 995-1001; Szmitkowski 2001, 81-83; Piątowski, Witczak, and Kawałko 2025, 127-30.

Importantly, the amount paid pursuant to Article 56(1) BL does not form part of the estate of the account holder (Article 56(5) BL).[12] It is beyond dispute that this institution is of particular importance in the context of claims under the legitim, since, as previously mentioned, among the statutorily limited group of persons eligible to benefit from a bank bequest are those entitled to a legitim, namely the testator's descendants, spouse, and parents (see Article 56 BL and Article 991(1) CC).

The establishment of a bank bequest constitutes a mortis causa legal transaction and, as such, since the legal effects of the declaration of will made by the account holder are conditioned upon their death, the declarant may at any time modify or revoke the instruction. Revocability is one of the fundamental characteristics of mortis causa legal transactions. The deferral of legal effects until the moment of death of the person performing such transactions justifies, on the one hand, the absence of any binding force at the time a transaction is executed, and, on the other, the existence of the right to modify or revoke the said instruction (see Article 56(3) BL). A corresponding rule is set out in Book IV CC with respect to wills (Articles 944(1) and 946 CC). In the case of both an instruction for transfer of a bank deposit mortis causa and a will, it may happen that, prior to death, the account holder or testator performed not one but several legal transactions of different content, which, in extreme cases, may even be mutually exclusive. With respect to bank bequests, it is established that if the account holder has issued more than one instruction at different times, the instruction issued later takes precedence over the one issued earlier (Article 56(4) BL). The effects of revoking a will are regulated in a similar manner. Pursuant to Article 947 CC, if the testator has drawn up a new will without expressly revoking the previous one, only those provisions of the earlier will that are incompatible with the content of the later one shall be deemed revoked. It would appear that this principle should also apply to an instruction for transfer of a bank deposit mortis causa. This means that an instruction made later, i.e. one closer in time to the opening of the succession, revokes an earlier one to the extent that the two cannot be reconciled with the later bank bequest. Undoubtedly, in most cases it will be significantly easier to determine the legal effects of multiple instructions for transfer of a bank deposit mortis causa that cannot be fully executed than to ascertain the legal consequences of several successive wills. With respect to the said instruction, determining whether an earlier instruction remains consistent with a later one is reduced to a mathematical operation involving the statutory monetary limit prescribed for a bank bequest, naturally taking into account the amount of funds held in the account of the instructing party. According to Article 56(2) BL, the account holder's freedom to dispose of funds by way of a bank bequest is limited to an amount

[12] Judgement of the Court of Appeal in Gdańsk of 30 September 2020, ref. no. VI ACa 27/20, Lex no. 3316356.

not exceeding twenty times the average monthly remuneration in the enterprise sector, excluding profit-based bonuses, for the month immediately preceding the testator's death, as announced by the President of Statistics Poland (Article 56(2) BL).[13] The resolution of such a conflict will therefore depend primarily on the timing of the instructions for transfer of a bank deposit mortis causa made in favour of specific beneficiaries, and subsequently on the monetary limitation determined by the statutory threshold and the amount of funds held in the account by its holder. If such instructions were issued simultaneously and thus hold equal priority, the entitlements of the respective beneficiaries should be proportionally adjusted in accordance with the statutory limit and the total amount of funds held in the instructing party's account. It must be emphasised that the monetary limitation prescribed by the law for the instructions in question applies to all accounts held by the instructing party. It should also be noted that the revocation of a previously issued instruction becomes effective only if the subsequent instruction satisfies all the conditions required for the validity of a legal transaction and is capable of producing legal effects. The same principle applies to the revocation of a will. Where a will is revoked by the testator through the execution of a new will, the revocation of the earlier will is effective only if the new will is valid[14] and capable of being carried out in the sense that the individuals designated as heirs are capable of acquiring the benefits conferred upon them. This requires that they be sufficiently identified so as to clearly determine the circle of the testator's successors, that they have outlived the testator, and that none of the provisions of the CC mandate that they be treated as dying before the testator (Articles 928(2), 1010, and 1049(2) CC). As noted above, funds held in the testator's bank accounts do not form part of the estate solely to the extent that they are the subject of a bank bequest. In all other cases, the funds held in the deceased account holder's savings accounts, current-and-savings accounts, and term deposit accounts are subject to inheritance under the general rules. They may also be subject to an ordinary legacy, and the claim for payment of the funds held in the account, held by the account holder against the bank, may constitute the subject of a vindication legacy.

3. BENEFICIARIES OF A BANK BEQUEST

Restrictions applicable to the issuance of an instruction for transfer of a bank deposit mortis causa extend also to the category of potential beneficiaries of a bank bequest. As noted above, Article 56(1) BL sets out an exhaustive list of persons eligible to receive such a bequest, namely: the account holder's spouse, descendants, ascendants, and siblings. Whether

[13] In February 2025 this amount amounted to PLN 8,613.13 (Official Journal of Statistics Poland of 2025, item 12).

[14] Decision of the Supreme Court of 22 January 1974, ref. no. III CRN 326/73, Lex no. 1728.

a person designated by the account holder falls within this list should be assessed as of the moment of the opening of the succession.

Only persons expressly designated by the law may be beneficiaries of a bank bequest, which marks a significant distinction between this institution and the will, where the testator enjoys virtually unrestricted freedom in appointing their legal successors. The only limitation imposed on a person making a will is the catalogue of entities recognised under civil law. This means that the status of heir is determined, in principle, solely by legal capacity. Its existence is assessed upon the opening of the succession. The sole exception[15] concerns the *nasciturus*, as Article 927(2) CC explicitly provides that a child conceived at the time of the opening of the succession, meaning having no legal capacity, may still inherit, provided that it is born alive. The positive condition for acquiring an inheritance, being the capacity to inherit, can be verified only where the testator has sufficiently identified the successor in interest. Otherwise, the will should be considered ineffective. It is of course possible that a person appointed as heir in a will may not survive the opening of the succession. In fact, the testator may not be aware of that. In cases where a will satisfies all the requirements for a valid legal transaction, yet the persons designated therein have not lived up to the opening of the succession, or are deemed – by operation of law – to have predeceased it, the will is referred to in the literature as ineffective [Skowrońska-Bocian 2004, 202-204]. As noted above, by analogy, the designation, within the relevant declaration submitted to the bank, as the beneficiary of a bank bequest of a person who has not outlived or will not outlive the account holder should likewise be regarded as ineffective. Likewise, the designation of a beneficiary in a manner that fails to permit their clear identification should be deemed ineffective [Piątowski, Witczak, and Kawałko 2025, 126].

4. THE *RATIO* BEHIND THE INCLUSION OF GIFTS IN THE NET WORTH OF THE ESTATE FOR THE PURPOSE OF CALCULATING A LEGITIM AND OF THEIR INCLUSION WHEN DETERMINING THE AMOUNT OF A LEGITIM CLAIM

Any analysis of the significance of the instruction for transfer of a bank deposit mortis causa for a person entitled to a legitim[16] must begin with the fairly straightforward proposition that the legitim constitutes a claim for

[15] In view of the subject matter addressed, it is appropriate to exclude from consideration the conditional inheritance capacity of foundations and family foundations (Article 927(3) CC).

[16] Two issues, broadly simplified, merit discussion in this context: the significance of a bank bequest for a person entitled to a legitim, both in a situation where that person is simultaneously the beneficiary of the bequest, and where the bequest has been made in favour of individuals outside the circle of persons entitled under Article 991 CC.

payment of a monetary benefit representing the statutorily prescribed portion of at least the net worth of the estate. This is subject to the provision that, under Article 993 CC, debts arising from ordinary legacies and instructions are excluded from the calculation of the said net value. Bearing in mind that the legitim serves to protect the interests of the testator's closest relatives, the protection it offers should be effective in the sense that, absent specific circumstances justifying the deprivation of that right due to defined civil law events, the enforcement of the claim by the entitled party should produce a satisfactory outcome for the claimant. Such protection would be purely illusory if, during their lifetime, the testator made dispositions concerning their assets by entering into gift agreements with persons from outside the circle of the entitled to a legitim, thereby significantly reducing the active value of the estate, potentially, in extreme cases, to a near-zero level. The legislator sought to prevent such situations by introducing, at the stage of determining the amount of the legitim, an obligation to include in the net worth of the estate any gifts made by the testator during their lifetime. However, the effectiveness of this legislative intent may give rise to serious doubts if the relevant provisions are interpreted solely on the basis of their literal wording. As noted elsewhere, the law employs the relatively straightforward term "gift," understood as a nominate contract under the CC. The normative design of the legitim should shield beneficiaries from any "conduct" of the testator that unjustly diminish the estate, which, in principle, is intended to guarantee the satisfaction of their claims. The principle that the testator may not, through their own dispositions, affect the amount of the legitim appears to be largely respected by the legislature. This is reflected, as mentioned earlier, in Article 993 CC, which provides that, in determining the net worth of the estate, debts arising from ordinary legacies and instructions are not to be taken into account. Such a rule does not worsen the position of the heir, primarily due to the statutory limitation of liability for obligations arising from ordinary legacies and instructions, as set out in Article 998 CC. It should also be noted that, pursuant to Article 1003 CC, an heir obliged to satisfy a legitim claim may seek a proportional reduction of legacies and instructions [Księżak 2024, Article 993, in: thesis A.I.1.].

Gifts made by the testator during their lifetime are subject to inclusion in the net worth of the estate, and their relevance extends beyond the calculation of the legitim itself to the determination of the parties responsible for satisfying or supplementing the claim, as well as the rules and scope of liability for this specific type of inheritance debt. The rule that gifts made by the testator must be added to the net worth of the estate for the purpose of determining the amount of the legitim is subject to limitations, which, under Article 994 CC, are of a objective, temporal, and subjective nature. Pursuant to Article 994 CC, the following gifts are not included in the net worth of the

estate: minor gifts customary in a given social context; gifts made more than ten years prior to the opening of the succession, unless made to heirs or persons entitled to a legitim; gifts made by the testator before entering into marriage with the spouse claiming the legitim; and, in the case of determining the legitim for a descendant, gifts made at a time when the testator had no descendants.[17] It must be emphasised that the inclusion of gifts in the net worth of the estate is a purely technical procedure. It can be done independent of the condition of the gifted asset at the time of the opening of the succession and of whether the beneficiary is still in possession thereof. Under Article 1001(1) CC, the so-called residual enrichment of the beneficiary becomes relevant only in the context of liability for the debt linked to the legitim, in the event that the entitled party is unable to obtain full or partial satisfaction of the claim from the heir and subsequently from the vindication legatee.

5. THE SIGNIFICANCE OF THE BANK BEQUEST FOR THE AMOUNT OF LEGITIM AND THE SCOPE OF THE CORRESPONDING CLAIM. A POSITION OF THE LEGAL DOCTRINE AND CASE-LAW

Whereas the *ratio legis* behind the inclusion of gifts made by the testator in both the calculation of a legitim and the determination of the corresponding claim is beyond dispute, doubts inevitably arise with regard to the term "gift" as employed by the legislator. Adopting a purely literal interpretation gives rise to well-founded reservations about limiting the testator's detrimental dispositions, not only towards heirs but, above all, towards persons entitled to a legitim, to a single nominate contract under the CC, namely the gift, while disregarding numerous other gratuitous legal transactions that produce the same effect as the conclusion of a gift agreement. Legal scholarship rightly stresses that the "merely formal (typological) distinction" between a gift and other gratuitous legal transactions should not be the determining factor in matters concerning the calculation of legitim, the assessment of the extent of the claim, or liability for this particular inheritance debt. What should be decisive is the legal effect of the transaction, not the normative construct in which it is framed [Księżak 2012, 280].

The gratuitous character of a legal transaction executed by the testator should undoubtedly serve only as a point of departure in evaluating the relevance of a specific gratuitous benefit for a legitim claim. It is not possible to draw a simple, general, and unequivocal equivalence between all gratuitous transactions in this context. As previously said, all dispositions made from the testator's estate that reduce its assets should be treated in the same

[17] See, e.g. judgement of the Court of Appeal in Katowice of 4 April 2013, ref. no. V ACa 842/12, Lex no. 1305957.

manner. Only such benefits will prejudice persons entitled to a legitim in the same manner as gifts made by the testator. The bank bequest must be assessed in light of the above criteria, especially given that, as already noted, it may be established solely in favour of persons listed in the law, among whom there are individuals who may be entitled to a legitim.

The execution of an instruction for transfer of a bank deposit mortis causa results in a gratuitous benefit for the beneficiary of the bank bequest, and the payment of a specified sum from funds held by the testator as the account holder undoubtedly reduces the active value of the estate. Funds held in the testator's bank accounts will form part of the estate only where no bank bequest has been made, where it has been established invalidly, or where it proves ineffective. While it is generally accepted that rights transferred to designated individuals outside the succession regime, regardless of whether they are heirs, are not added to the net worth of the estate for the purposes of calculating the legitim, it is important to note that such rights are not of a uniform legal nature. Some of these rights, such as those arising from an instruction for transfer of a bank deposit mortis causa, remain under the testator's control, and it is precisely these rights to which the aforesaid principle does not apply.

In view of the fact that the law provides for multiple methods of satisfying a legitim, it is worth recalling that the testator may do so by means of a gift agreement, by appointing the person entitled to the legitim as an heir, or by establishing an ordinary or vindication legacy to their benefit. Although Article 991(2) CC uses the general term "gift," it is beyond doubt that this refers only to those gifts that have an impact on the amount of the legitim. Such gifts are credited towards the legitim in the proportion in which they were included in the net worth of the estate when calculated. It appears self-evident that, by extension, those gratuitous benefits which should be treated as having the same effect as a gift made by the testator, such as a bank bequest, should likewise be taken into account both at the stage of calculating the legitim and in determining whether, and to what extent, it has already been satisfied.

An analysis of the case-law and the positions adopted in the legal doctrine reveals that there is no consistent view regarding the interpretation of the term "gift" in the provisions of Book Four of the CC concerning the legitim. Above all, it must be noted that, regrettably, no uniform line of judicial practice has been established in this respect. One position maintains that the notion of "gift" under Article 993 CC should be interpreted broadly to encompass not only the nominate contract defined therein, but also any legal transaction that results in a gratuitous benefit,[18] that is, any deliberate legal act that causes a unilateral transfer of assets, leading to the enrichment of one

[18] Judgement of the Supreme Court of 7 April 2004, ref. no. IV CK 215/03, Lex no. 152889 and judgement of the Court of Appeal in Łódź of 25 March 2014, ref. no. I ACa 1204/13, Legalis.

party at the expense of the other (testator).[19] In support of this broader view, it is argued that such transactions, by diminishing the value of the estate, are just as detrimental to the heirs as a gift within the meaning of Article 888 CC and following provisions, since they ultimately prejudice their interests.[20] In contrast, a strictly formalist position maintains that the term "gift" as used in Article 993 CC should be understood narrowly as referring exclusively to a benefit ensuing from the performance of a contract governed by Article 888 CC, and not to any gratuitous transfer of assets from the testator's estate.[21]

The prevailing view in the literature holds that, for the purpose of calculating the legitim, amounts paid out from the testator's account pursuant to his or her instruction issued under Article 56(1) BL, although not forming part of the estate, are to be included in the value of the estate [Gwiazdomorski 1964, 1046; Pietrzykowski 1972, 1912-913; Kosik 1986, 548; Piątowski 1986, 61-62; Dyoniak 1990, 141; Szpunar 1977, 11; Idem 1998, 420; Idem 2002, 25; Stecki 1998, 314; Niezbecka 2012, Article 993, thesis 3; Skowrońska-Bocian and Wierciński 2017, Articles 993-995, thesis 8; Pazdan 2021, Article 993, Nb 5; Piątowski, Witczak, and Kawałko 2025, 129-130; cf. Piątowski 1985, 44-46]. It is consistently accepted that the value of the gratuitous benefit received by a person entitled to a legitim as a result of the execution of an instruction for transfer of a bank deposit mortis causa is to be credited towards their legitim [Gwiazdomorski 1964, 1046; Pietrzykowski 1972, 1912-913; Kosik 1986, 551; Piątowski 1986, 61-62; Dyoniak 1990, 141; Szpunar 1977, 11; Idem 1998, 421; Stecki 1998, 314; Niezbecka 2012, Article 996, thesis 1; Skoworńska-Bocian and Wierciński 2017, Article 996, thesis 1; Pazdan 2021, Article 996, Nb 6; Piątowski, Witczak, and Kawałko 2025, 129; cf. Piątowski 1985, 44-46]. Still, it must be acknowledged that dissenting views have also been voiced. Some representatives of the doctrine have expressly argued in favour of excluding the application of Articles 993 and 996 CC to instructions for transfer of a bank deposit mortis causa [Pyzioł 2004, 128].

As previously noted, there should be no doubt that one of the gratuitous benefits that can significantly reduce the testator's estate is the sum of money received as a result of the execution of a bank bequest. This effect resembles that of a gift agreement, as it involves a transfer of assets in favour of another party at the expense of the testator's estate. As already pointed out, a purely literal interpretation does not provide a definitive answer as to which the

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[19] Judgment of the Court of Appeal in Poznań of 23 May 2016, ref. no. VIII Ca 127/16, Legalis.

[20] See judgements of the Court of Appeal in Warsaw of 26 November 2014, ref. no. VI ACa 99/14, Official Database of Rulings of the Court of Appeal in Warsaw and the Court of Appeal in Wrocław of 9 November 2016, ref. no. I ACa 914/16, Official Database of Rulings of the Court of Appeal in Wrocław.

[21] See, e.g. judgement of the Supreme Court of 12 April 2013, ref. no. I ACa 286/13, Lex no. 1327634.

views prevailing in the doctrinal and judicial practice deserve acceptance. It is essential to rely primarily on a systemic interpretation. As one author aptly observed, an instruction for transfer of a bank deposit mortis causa does not operate in a legal vacuum [Księżak 2012, 284]. Treating an instruction for transfer of a bank deposit mortis causa as equivalent to a gift for the purposes of determining the amount of the legitim would entail the consistent application of the provisions on gifts to bank bequests, both at the stage of satisfying the legitim, that is, the manner in which the testator provides "compensation" to the entitled party, and at the stage of determining liability for inheritance debts. It is evident that such liability would extend solely to the debt arising from the legitim. Undoubtedly, this constitutes an inheritance debt accorded a privileged status by the legislator, in the sense that the circle of persons liable for its satisfaction has been extended beyond those "normally" encumbered with this liability, that is, the heirs and vindication legatees. As a rule, prior to the division of the estate, liability for inheritance debts rests with the heirs and the persons benefitting from vindication legacies (Article 1034^1(1) CC). However, in this respect, the legitim claim is somewhat weaker when compared with other inheritance debts, since a vindication legatee and the heirs are jointly and severally liable for the latter but not for the legitim. The liability for the legitim on the part of the legatee arises only when the entitled person's interest cannot be satisfied by the heirs (Article 999^1(1) CC) [Księżak 2011, 1081-1085; Idem 2024, Article 999^1, thesis A.1.]. Liability for the legitim is borne not only by the heirs and recipients of vindication legacies, but also by beneficiaries (Articles 1000-1001 CC), as well as ordinary legatees and the entitled designated in the relevant instruction (Article 1003 CC). In the latter case, however, legitim claims cannot be brought directly against these parties. Their liability may arise only where the heir seeks a corresponding reduction of legacies and the court upholds the claim. Adopting a broad interpretation of the term "gift" within the provisions governing on the legitim would mean that the entitled under Article 991(1) CC, if the heirs and vindication legatees are unable to satisfy the legitim-related debt, could target their claims at the beneficiaries of a bank bequest, just as they may at the recipients of gift.

6. THE ADMISSIBILITY OF APPLYING PROVISIONS SANCTIONING UNLAWFUL CONDUCT TOWARD THE TESTATOR TO BENEFICIARIES OF A BANK BEQUEST

A distinct issue concerns the admissibility of applying the provisions of Book Four CC – Inheritance – to sanction wrongful conduct on the part of beneficiaries of a bank bequest. Book Four CC provides normative mechanisms that permit certain individuals to be deprived of benefits acquired upon the testator's death where such acquisition would offend a sense

of justice. The legislator sets out limited grounds for exclusion from inheritance in Articles 928(1) and 1008 CC, yet, in the context of the discussion, attention should also be given to Article 940 CC, which permits the exclusion of the testator's spouse from intestate succession following a court judgement. This option is available if the testator had initiated divorce or separation proceedings on fault-based grounds but died before the final ruling, and the court, acting under Article 940 CC, found that the divorce or separation judgement would have been justified. This means, in the view of the adjudicating court, that the spouse's culpable conduct resulted in the permanent and complete breakdown of conjugal life [Witczak 2013, 96-97 and 379-392 along with the literature referenced therein].

The conduct named in Article 928(1) CC may serve as grounds for a declaration of heir's unworthiness to inherit, which, as a consequence, leads to his or her exclusion from the succession as if they had predeceased the opening thereof (Article 928(2) CC). Action to declare unworthiness to inherit can be initiated by individuals who have an interest in removing the heir from the succession. The legal standing to bring such an action is defined in broad terms: it is available to any person "who has an interest," and there is no requirement as to whether the interest should be legal or financial in nature [Witczak 2013, 318-20]. Disinheritance, in turn, constitutes a mechanism by which a legitim may be revoked at the testator's initiative, provided that a valid and effective will is executed expressly indicating a cause named in Article 1008 CC.

Clearly, the scope of these legal solutions as to the person varies. The broadest ambit pertains to unworthiness of inheritance, a quality that encompasses not only those deemed potentially unworthy but also the range of individuals vested with active legal standing in court proceedings. In contrast, disinheritance is more narrowly circumscribed, as it is designed to deprive individuals of the legitim, a right afforded exclusively to heirs from the first and second intestate succession groups. Disinheritance may be effected solely by the testator through a will (by the way, a similar result may also arise from other civil-law events, for example, the rejection of inheritance by a person entitled to the legitim, though such outcomes are independent of the grounds for disinheritance provided for in Article 1008 CC). The narrowest scope is afforded to the mechanism set out in Article 940 CC, as it applies exclusively to the testator's spouse and only in cases of intestate succession. The active legal standing is granted solely to heirs who inherit concurrently with that spouse [Witczak 2013, 374-79]. The aforesaid civil-law events fall within the category of the so-called negative grounds for succession, meaning that their occurrence in relation to a person who is otherwise capable of inheriting and holds a valid title to the estate results in his or her removal from the succession. Put differently, only those who are "worthy" of inheritance may actually inherit.

The issue of whether the provisions on unworthiness to inherit may be applied to beneficiaries of a bank bequest is a narrower aspect of the broader question concerning the admissibility of the same to individuals who derive financial benefits upon, and by reason of, the testator's death. The rules governing unworthiness to inherit is exceptional in nature and must be interpreted strictly, which gives rise to a fundamental question as to whether they may be applied to the beneficiary of a bank bequest. According to the prevailing view in the legal doctrine, the exceptional nature of this institution and its governing rules strongly argue against applying Article 928(1) CC to a person entitled under an instruction for transfer of a bank deposit mortis causa. It should not go unnoticed, however, that the said rules are applied to persons entitled to a legitim, despite the absence of an express statutory reference to that effect [Witczak 2013, 82].

In functional terms, the instruction for transfer of a bank deposit mortis causa bears certain similarities to a testamentary legacy: the benefit is acquired at the expense of the estate, and independently of whether the beneficiary enjoys the status of heir. Given that, pursuant to Article 972 CC, the provisions on unworthiness of inheritance apply accordingly to legacies, and under Article 981(5) CC to vindication legacies, it is worth considering whether, by way of cautious analogy, the provisions of the CC on legacy may also be valid for instructions for transfer of a bank deposit mortis causa, naturally, only to the extent that no divergent regulations arise from specific statutory provisions [Piątowski, Witczak, and Kawałko 2025, 129-30]. Although, on the face of it, the answer to this question may appear self-evident, given the exceptional nature of the wording of Articles 928-930 CC and the explicit prohibition against their extensive interpretation, which would seem to preclude the application of the provisions on unworthiness of inheritance to persons not expressly named in the law, such a position raises significant doubts when viewed through the lens of equity-based arguments. There can hardly be any justification for allowing an individual to derive a benefit from the death of a testator when that very death was caused by the individual's culpable conduct, such as committing an intentional offence against the testator's life. The absurdity of endorsing such reasoning would be plainly evident in practice. If the beneficiary of a bank bequest is an heir or a person entitled to a legitim, and this person is declared unworthy to inherit, he or she will be precluded from receiving any benefit from the estate based on their appointment as heir or any monetary benefit due under the legitim. Meanwhile, their claim filed with the bank and arising from the prior instruction for transfer of a bank deposit mortis causa, which only requires proof of identity and the certificate of the account holder's death, would nonetheless be fully met. It may, of course, be argued that the sums paid to beneficiaries of a bank bequest do not form part of the

estate. However, this argument loses much of its persuasive force in light of Article 681(5) CC, which expressly provides that the rules of unworthiness of inheritance apply to vindication legacies accordingly. Equitable considerations argue strongly in favour of an opposing view, namely, that the rules of unworthiness of inheritance should extend to individuals entitled under an instruction for transfer of a bank deposit mortis causa [Witczak 2013, 83].

Naturally, in analysing this issue, it is necessary to distinguish between two scenarios, each giving rise to a fundamentally different question. The first concerns a situation where the beneficiary of an instruction for transfer of a bank deposit mortis causa is also an heir, an ordinary legatee, a vindication legatee, or a person entitled to a legitim. So, does a declaration of unworthiness with respect to the heir also result in the forfeiture of the benefit arising from the instruction? The second concerns a beneficiary who does not fall within the group of persons who possess a passive legal standing in proceedings concerning unworthiness. Is it possible, by way of cautious analogy, to rely upon Articles 928-930 CC and seek a declaration of his or her unworthiness? Rejecting the applicability of the rules of unworthiness of inheritance to the beneficiary of a bank bequest would create a paradox: a person declared unworthy would be barred from claiming a legitim, yet that same legitim could be satisfied in whole or in part through a bank bequest granted to them even though they have been excluded from the succession pursuant to Article 928 CC.

A declaration of unworthiness is contingent upon the fulfilment of certain conditions, foremost among them the presence of expressly enumerated grounds under Article 928(1) CC, consisting of unlawful conduct attributable to the heir. The analogous application of the provisions on unworthiness of inheritance to individuals entitled under an instruction for transfer of a bank deposit mortis causa would imply that any person with an interest might seek to have the beneficiary of a bank bequest declared unworthy, should that beneficiary have intentionally committed a serious offence against the testator or interfered with the testator's freedom of testation, irrespective of whether they also inherit from the account holder (as a legatee or otherwise). As clearly noted above, equitable considerations argue that such a person should not be permitted to receive the benefit designated for them. However, it remains debatable whether the same conclusion should be drawn in a scenario where the beneficiary of a bank bequest coerced or deceived the testator into establishing an instruction for transfer of a bank deposit mortis causa to the benefit of the former. An instruction for transfer of a bank deposit mortis causa shares numerous attributes with a testamentary disposition. It is, however, far from disputed that while a defective declaration by the testator invalidates the legal transaction under Article 945(1)(2) and (3) CC, an instruction for transfer of a bank deposit mortis causa made under threat or by mistake

does not result in absolute invalidity. In such a case, the account holder has the right to revoke the legal consequences of the defective declaration of will in accordance with the general terms of civil law. While this may be of little relevance to the account holder, who in any case may revoke or amend the instruction at any time, it carries significance for his or her heirs, as they inherit the account holder's right to evade the legal effects of a defective declaration of will. This is but one of the reasons why the question so posed should be answered in the negative [Witczak 2013, 86-87].

The situation is somewhat different where the testator's spouse, who inherits under intestate succession and is simultaneously the beneficiary of a bank bequest, is excluded from the succession by a court judgment issued pursuant to Article 940 CC. The judgment issued in such proceedings does not pertain strictly to the testator's marriage in the sense that it does not dissolve the bond or result in a separation (as proceedings on this matter are discontinued upon the death of one of the parties pursuant to Article 446 of the Code of Civil Procedure); it "only" causes the exclusion of the spouse from intestate succession. Consequently, such a spouse does not inherit under intestate succession and is not entitled to a legitim. It is hardly acceptable that a testator who, during their lifetime, initiated divorce or separation proceedings alleging fault on the part of their spouse in the breakdown of conjugal life intended to bestow any benefit upon that spouse, especially considering that exclusion from succession under Article 940 CC also entails the denial of the right to a legitim. The problem, however, is that if the assessment at the moment of the opening of the succession must determine whether the person for whom a bank bequest was established falls within the circle of beneficiaries provided for in Article 56 BL, the answer, regrettably, must be affirmative. Furthermore, if the testator's spouse were also appointed as an heir to a will, a question arises whether, and if so, to what extent, a judgment issued pursuant to Article 940 CC would affect his or her entitlements under intestate succession [Dyoniak 1988, 56-64; Witczak 2013, 410]. If the similarity between a bank bequest and a will is taken into account, a definitive conclusion is far less straightforward.

CONCLUSION

In view of the fact that the right to a legitim operates as a protective instrument for the testator's closest relatives following his or her death, serving, in effect, as a continuation of the maintenance obligation previously incumbent upon the deceased, its legal structure should be designed to guarantee the effectiveness of that protection, ensuring that the claims of the entitled persons are genuinely satisfied. The objective is to guarantee that the deceased's closest family members receive a specific share of the estate upon the

testator's death, irrespective of what dispositions he or she has made mortis causa. However, since any harm to the testator's closest family members may be done not only through the execution of a will naming legal successors from outside the family circle but also through *inter vivos* legal transactions carried out by the testator that reduce the estate, it is essential that the statutory protection afforded to such persons not be merely nominal and taken into account in the course of "inheritance settlements" (particularly in relation to the legitim) covering gratuitous benefits conferred by the testator. Adequate protection of the deceased's closest family members can only be ensured if, in interpreting the applicable provisions of the CC on the legitim, particularly in the part concerning the obligation to make allowances for gifts made *inter vivos* by the testator, due regard should be given to the *ratio* of the institution. Although these provisions refer solely to "gifts," where the exercise of the right to a legitim is jeopardised by legal transactions performed by the testator that reduce the estate, the category within which such transactions fall, whether or not they constitute a gift in the sense of a named contract under the CC, should be of no relevance. It thus seems justified to treat, by analogy to a gift as defined by the CC, any legal transaction performed by the testator that results in gratuitous transfers made at the expense of his or her estate, and which ultimately lead to the lowering of its value, in the same way. Undoubtedly, an instruction mortis causa is such a transaction. It likewise appears uncontroversial that, by way of analogy, the provisions of the CC permitting the sanctioning of unlawful conduct by a beneficiary should apply to the recipient of such an instruction, thus allowing for the forfeiture of the benefit assigned to them by the testator.

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