Artículo de investigación

Singular succession due to inheritance in ancient Roman law

СИНГУЛЯРНЕ НАСТУПНИЦТВО ВНАСЛІДОК СПАДКУВАННЯ В ПРАВІ ДАВНЬОГО РИМУ

Sucesión singular debido a la herencia en la ley romana antigua

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Abstract

The authors of the article analyzed the hereditary laws of ancient Rome (legatum and fideicommissum). The object of the study of the article is the inheritance (universal or singular) by legatum and fideicommissum. Under universal inheritance, all the rights and obligations of the testator were transferred to the heir. The singular inheritance is a transfer of exclusive property and property rights, but not duties. The Legatum is one of the oldest legal institutions that has already been fixed in the laws of the XII Tables. Fideicommissum is an assignment of posthumous commandments, a form of refusal instead of a legatum.
It can be concluded that the Romans divided the succession into universal and singular since it could relate either to the property as a whole, and as a consequence – to all its constituent parts, or only certain parts of the property.

Keywords: Universal succession, singular succession, legatum, inheritance law, will.

Анотація

Автори статті проаналізували спадкове законодавство Стародавнього Риму (legatum і fideicommissum). Об'єктом дослідження статті стали суспільні відносини щодо спадкування (універсальне та сингулярне) шляхом легатів та фідеїкомісів. При універсальному спадкуванні до спадкоємця переходили всі права та обов'язки, які належали за життя спадкодавцю. Сингулярна наступність визначається як перехід майна і майнових прав, але не обов'язків. Легат – один із найдавніших правових інститутів, який був закріплений вже в законах XII таблиць. Fideicommissum – доручення посмертних заповідальних розпоряджень, форма відказів замість легата.
Є можливим зробити висновок, згідно з яким римляни проводили розподіл правонаступництва на універсальне і сингулярне, оскільки воно могло стосуватися або майна як цілого, і як наслідок – всіх його складових частин, або лише тільки окремих частин майна.

Ключові слова: універсальне правонаступництво, сингулярне правонаступництво, легатум, спадкове право, заповіт.

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Resumen

Los autores del artículo analizaron las leyes hereditarias de la antigua Roma (legatum y fideicommissum). El objeto del estudio del artículo es la herencia (universal o singular) por legatum y fideicommissum. En virtud de la herencia universal, todos los derechos y obligaciones del testador fueron transferidos al heredero. La herencia singular es una transferencia de propiedad exclusiva y derechos de propiedad, pero no deberes. El Legatum es una de las instituciones legales más antiguas que ya ha sido fijada en las leyes de las XII Tablas. Fideicommissum es una asignación de mandamientos póstumos, una forma de rechazo en lugar de un legatum.
Se puede concluir que los romanos dividieron la sucesión en universal y singular ya que podría relacionarse con la propiedad como un todo y, como consecuencia, con todas sus partes constituyentes, o solo ciertas partes de la propiedad.

Palabras clave: Sucesión universal, sucesión singular, legatum, ley de herencia, voluntad.

Introduction

The respect for human rights is today the main task of any country at any stage of its development. Every member of society must have the opportunity to live, work, accumulate property with the idea that, in case of his death, all property will go to his relatives in accordance with his will or under the law. Nevertheless, not in all countries the institution of inheritance works properly.

This problem arose a long time ago. Even at the time of the formation and development of Roman private law as such, the same problems existed in Roman society. These factors determine the relevance of the research topic. The significance of the transfer of property in the manner of inheritance found its manifestation in the legal sources of those days. The main principle of the transfer of rights and responsibilities from one person to other persons (heirs - successors) should be the principle of universality. However, the legal norms of those times regulated the social relations, and that social relation gave rise to a singular succession, which arose as a result of inheritance and was characterized by the transition of exclusively property benefits to individuals - legatee (beneficiaries) by separate orders of the heir.

Methodology

The methodology of the study were general scientific and special methods of knowledge of legal phenomena. The dialectical method as a general method of scientific knowledge and historical method allowed to study the inheritance by legatum and fideicommissum. In addition, the method of system analysis, as well as the system-structural and formal-logical methods, help to clarify the essence of the universal succession and singular succession.

Moreover, the use of the comparative-legal method helps to explore the ancient Rome experience of regulating the relations of inheritance.

Furthermore, the formal legal method shows the legal norms of ancient Rome legislation which regulates the problems of inheritance.

Analysis of recent research

The problems of inheritance in Roman law were explored by domestic and foreign specialists in the field of Roman law, for example Yakovlev, V. (2005), Novitskyi, I. (n.d.), Vyndshejd (1874), Khvostov, V. (1907), Borysova, V., Baranova, L., Brockhaus, F. (2010), Goncharenko, V. (2007), Leshhenko, V. (2004), Kharytonov, Y. (2008), Grymm, D. (1916), Kalyuzhnyj, R. (2005).

Presentation of key research findings

The foundations of the inheritance institute existed even in the time of the original organization of society. The transfer of the deceased person's property was based on centuries-old customs and ethnic traditions that existed in the inhabitants of certain territories. The emergence of law as a regulator of relations created the basis for consolidating the provisions on the transfer of property, property rights and obligations of the deceased to the heirs.

At different times, the law has undergone numerous modifications concerning the development of morality, society, and

statehood. The legal tradition, in this particular area of legal regulation of any country, has developed on the foundations laid in ancient Rome, which were based on the ideas of natural law, the principles of justice, and integrity.

Classical and Byzantine variants of Roman law were of great importance for the formation and further development of all legal systems. Moreover, the highest level of reception is in private law.

Roman private law was reflected in the settlement of hereditary relations.

There were four stages in the development of Roman law:

a) Inheritance for jus civile;
b) Inheritance by the praetorian edict;
c) Inheritance under Imperial legislation;
d) Inheritance in " Justinian Law" (actually "after" Roman law).

Each of these periods is marked by the emergence, development or limitation of certain principles on which the inheritance law of the Roman Empire was built.

In ancient Rome, inheritance could occur in one of two ways that determined the amount of inheritance: universal or singular. Under universal inheritance, all the rights and obligations ща the testator were transferred to the heir. Along with the property and privileges, the heir also received responsibility for the debts and obligations of the deceased.

The concept of the distribution of succession to universal and singular succession is borrowed by the legislation of a number of states belonging to the Romano-Germanic legal family, in particular, Ukraine, Poland, and Lithuania, from the traditions of Roman private law (Tsybulska, Voronina, Fomichova, Tokareva, & Matiiko, 2019).

There was also a singular inheritance (as a transfer of exclusive property and property rights, but not duties). This inheritance was in two historical forms: the civil form of a singular succession called «legatum», and the nationwide form – «fideicommissum». The essence of both of these forms is the order of the heir, which is beneficial to the third party and must be done by the heir.

The wills content was made by the testator, however, it should be noted that the Romans did not recognize the existence of the will if it did not have two testamentary orders: the named heir and the distribution of hereditary property. In the foreground, the will indicated the specific heir, to whom the inheritance should be transferred. The "named heir" meant "the beginning and basis of the whole testament" - "caput et fundamentum totius testamenti" and should be carried out in a solemn and order forms (Yakovlev, 2005). If the will contained exhaustive instructions (to whom and by what portion the property should pass after the death of this person), but no one was named as heir, then the will was invalid (Novitskyi, I. (n.d.).

The next step of the testator after the indication of the heir was the act of distribution of hereditary property. Romans distinguished several ways of distribution of hereditary property. For example, in the will one could appoint one heir to the property – "heres ex asse" or several persons ("heres ex partibus") without determining the shares in advance. Accordingly, if the will did not indicate all the property owned by the testator, "heres ex asse" received all the property, and "heres ex partibus" was entitled to a proportional increase in the inheritance.

When the testator distributed less property than he had between the heirs, then the heirs' (heres ex partibus) part of the heritage increased proportionally. Conversely, when the testator distributed more property than testator had between the heirs (heres ex partibus), in this case, their shares decreased proportionally.

One way of distributing hereditary property among the Romans was called institutio "ex re certa" and "ex certa re". At "ex re certa", the testator ordered that a certain thing mast be excluded from the succession of the heir, and at "ex certa re" the succession took place concerning a certain thing. At the same time, the question regarding the debts of the heir remained unresolved, which was contrary to the universal nature of the hereditary succession. Therefore, this method of indication of the heir was declared invalid and the will must be destroyed (i.e. declared invalid). To avoid such consequences, Roman law assumed that such a will can be considered as valid, and Roman law offered three possible ways out of this situation:

- If the testator indicated one heir as "ex re certa", then such heir can inherit the whole inheritance. And then the words of the "re certa" were considered as unwritten;

- If, from many heirs, some were indicated as "ex re certa", and others were without it, then only the last were considered as heirs;
- If all heirs were indicated as "ex re certa", they were all considered as indefinite heirs, and then, they were successors of equal shares. "Certa res" belonged to each of them as a "pre" lagatum. This was expressed in the will as follows: “My heirs should be A, B, and C; moreover, A should receive this heritage, B should receive this heritage, C should receive this heritage» (Yakovlev, 2005).

Thus, the Romans divided the succession into universal and singular, since it may relate either to the property as a whole, and as a consequence – to all its constituent parts, or only to certain parts of the property (Vyndshejd, 1874).

In the era of Puritan law, only the legatum was known to Roman citizens (Khvostov, 1907).

The Legatum is one of the oldest legal institutions that has already been fixed in the laws of the XII Tables. According to the norms of this institute, the inheritance was given to the wife and children, who were excluded from the right of succession inheritance. Legatum were widely used in practice (Yakovlev, 2005; Borysova, & Baranova, 2007).

Legatum is an order of the testator was carried out by will not to the main heirs, but to another person (Brockhaus. 2010). Legatum recognized the assignment on the heirs (under the will) any obligation in favor of one or more persons (Roman law, n.d.). The legatum did not apply to heirs-at-law (Goncharenko, 2007). It was impossible to leave such a will, which established only the legatum laid on the heir to "ab intestato". If the testator desired this, he had to turn the heir "ab intestato" into "heres testamentarius" in the will.

In the era of national Roman law, one of the changes in the institute of inheritance concerned the act by which legatum could be left. Until then, these orders could be implemented only in the will. To facilitate the testator's abandonment of legatum, the jurisprudence of that time recognized that the legatum could be left not only in the will but also in the codicill (composed without any formalities in writing by the testator in case of death, which did not include the indication of the heir) (Khvostov, 1907).

The diversity of the types of legatum confirms the content of Justinian's Digests. They directly identified the following types of legacies: usufruct, income, residence, services, easements, peculias, wines, oils, food supplies, gold, silver, jewelry, dresses, statues, debt relief, etc.

The Romans classified the variety of types of legatum into separate groups.

Legatum of special things concerned individually determined things, which were a transmission object that should be given to the legatee. The specific things were transferred to the legatee with the easements that lay on or owed to it.

The legatum of things defined by genus (generis) was carried out by selecting the legatum of one thing from the whole inheritance (for example, one horse).

The legatum of the set of things ("universitas"). Legatee was entitled to this set if all things that at the moment of death were part of the whole.
The legatum of the sum of the amount or quantity. The testator had the right to inherit a sum of some amount without the individualization; the testator gave the thing of his choice.

The rent legatum referred to the legatum of things that were replaced by species, the issuance of which was repeated in known periodic terms (legatum anum, menstruum), which is inherited.

Property rights legatum. Such legatum conferred on the legatee real rights: the right to pledge, emphitheism, superficies, or exempt the legatum from the rights that the testator himself had for the thing.

The "legatum debiti" was recognized when the testator assigned his debt to the creditor. The lender became the legatee.

The "legatum liberationionis" – the legatum of debt relief provided the legatee the right to demand from the heir to be released from debt, or to be protected by the acceptance against the claim by the heir for that debt.

The legatum of claims ("legatum nominis") obliged the heir to file a lawsuit against the debtor of the testator ("actio utilis").

The alimony legatum consisted of clothing, and housing. This legatum could be obtained in some cases before the death of the testator. Certain legatum of this kind were intended to reach adulthood: 18 years for men and 14 for women.

The alternate legatum provided the legatee with the right to choose things from the testator. Persons subject to the "legatum optionis sen electionis" also used the right to choose.

Thus, although the legatum acquired the right to legatum with the death of the testator ("dies legati cedit"), he used his right to legatum from the moment of acceptance of the inheritance ("dies legati venit"), except the cases where the refusal was appointed under a suspensive period (when the legatum could acquire it through a lawsuit against the heir burdened by him).

Furthermore, there was a rule that stated that the right to legatum could pass to the heirs only in the event of the death of the legatee before the acquisition of the legatum.

The subject of the legatum could be all that was in the civil circulation ("commercium"), and what has the economic and moral interest to the legatee (Yakovlev, 2005).

In addition to the legatum, as noted above, the assignment of a dying person in favor of a third party, the fideicomissa, was also practiced (Leshhenko, 2004; Kharytonov, 2008). Fideicommissum is an assignment of posthumous commandments, a form of refusal instead of a legatum (Grymm, 1916).

They appeared as a result of a weakening of formalism and were possible on the basis of oral or written requests by the testator at the time of death to the heirs to perform any affirmative action in favor of third parties.

In the era of codified law, legatum and fideicommissum were united by essence and form (Kalyuzhnyj, 2005), henceforth they could be in the wills and the codicillas, both verbally and in writing; it required the involvement of five witnesses (Khvostov, 1907).

Conclusions

It can be concluded that the Romans divided the succession into universal and singular since it could relate either to the property as a whole, and as a consequence – to all its constituent parts, or only certain parts of the property (Vyndshejd, 1874). These principles in hereditary law, formed in that day and were reflected by a reception in all modern countries. These principles apply to both the Romano-Germanic (continental) and the Anglo-Saxon legal system. Therefore, the problem outlined is relevant for the study of the further influence of the norms of the hereditary right of the Roman era on the development and functioning of the system of law of both the individual country of the named legal family and the legal system as a whole.

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