

IMPROVEMENT GUIDELINES LAWS ON THE PRINCIPLE OF ALLOCATION

OF INHERITANCE TO STATUTORY HEIRS OF THAILAND

หลักการกันส่วนมรดกสำหรับทายาทโดยธรรมกรณีถูกตัดสิทธิโดยพินัยกรรม

ตามประมวลกฎหมายแพ่งและพาณิชย์ของไทย

Werapong Chaowalit¹, Niwat Wutti², Sumlit Ketyam³, Thanyalak Thongkon⁴, Thawip Srinuam⁵วีระพงศ์ เชาวลิต¹, นิวัติ วุฒิ², สัมฤทธิ์ เกตุແຍ້ມ³, ธัญลักษณ์ ทองกร⁴, ทวีป ศรีนรัม⁵

(Received: August 30, 2023 ; Revised: October 26, 2023 ; Accepted : March 27, 2024)

Abstract

Currently, the Civil and Commercial Code of Thailand sets no principle to protect the inheritance for statutory heirs, in particular, children, parents, and spouses. This means that their rights may be deprived of inheritance by will according to the freedom to make legal acts, resulting in assets belonging to the legatee of the testament who may not be a legitimate heir, in which the heirs of the deprived inheritance cannot make any arguments, except in the case of arguing that the will is unlawful. To be consistent with the roles and duties of each member in the family, with the theory of functional structure important to society as a system where various parts must work together to achieve balance, and in the functioning of the family institution as an important element, this forms inheritance laws in France,

¹ Head of Law Department, Faculty of Law, Southeast Bangkok University.

e-mail: werapong@sbu.southeast.ac.th

หัวหน้าสาขาวิชานิติศาสตร์ คณะนิติศาสตร์ มหาวิทยาลัยเชียงใหม่อีสท์แบงกอก

² Lecturer of the Law Program, Faculty of Law, Southeast Bangkok University.

e-mail: vvvdevvvv@gmail.com

อาจารย์ประจำหลักสูตรนิติศาสตร์ คณะนิติศาสตร์ มหาวิทยาลัยเชียงใหม่อีสท์แบงกอก

³ Police Major General Expert of the Royal Thai Police. e-mail: sumlit_ketyam@hotmail.com

ผู้ทรงคุณวุฒิ สำนักงานตำรวจนครบาลชัตติ

⁴ Senior Professional, Leasing, Big C Supercenter Public Company Limited.

e-mail: me.thanya34@gmail.com

เจ้าหน้าที่ชำนาญการอาวุโส ฝ่ายสินทรัพย์ บริษัท บีกซี ชูเปอร์เซ็นเตอร์ จำกัด (มหาชน)

⁵ Lawyer at the Lawyer's Office. e-mail: thwipk@gmail.com

ทนายความ ประจำสำนักงานทนาย

United States, and Germany which is the principle that limits freedom to do legal acts which is called, "Principles of Setting Aside Inheritance for the Statutory Heirs"

In the future, the Civil and Commercial Code of Thailand should revise its principles to set measures by imposing restrictions on the power to make juristic acts so as to pass on the asset of the deceased with reasonable limits and set aside the inheritance to provide protection to the statutory heirs, in particular, children, parents, and spouses, who may be affected in spending the rest of their lives in order to guarantee their well-being in case of death of the deceased.

Keywords: Setting aside Inheritance, Testament, Statutory Heirs

บทคัดย่อ

ปัจจุบันประมวลกฎหมายแพ่งและพาณิชย์ของประเทศไทย มีได้เมื่อการให้ความคุ้มครองการรับมรดกสำหรับทายาทโดยธรรม ในชั้นบุตร บิดามารดา และคู่สมรส หมายความว่า อาจถูกตัดสิทธิมิให้รับมรดกโดยพินัยกรรมตามเสรีภาพในการทำนิติกรรมส่งผลให้ทรัพย์สินต่าง ๆ ตกไปเป็นของผู้รับพินัยกรรมซึ่งอาจไม่ได้เป็นทายาทโดยธรรม โดยทายาทของเจ้ามรดกไม่สามารถโต้แย้งได้ เว้นแต่กรณีโต้แย้งว่าพินัยกรรมไม่ชอบด้วยกฎหมาย

เพื่อให้เกิดความสอดคล้องกับการปฏิบัติตามบทบาทและหน้าที่ของสมาชิกแต่ละคนในครอบครัว ตามทฤษฎีโครงสร้างหน้าที่ซึ่งมีความสำคัญกับสังคมในฐานะของการเป็นระบบที่มีส่วนต่าง ๆ ต้องทำงานประสานกันเพื่อให้เกิดความสมดุล ในการทำหน้าที่ของสถาบันครอบครัวอันเป็นองค์ประกอบที่สำคัญและจาก หลักกฎหมายมรดกของต่างประเทศ เช่น ประเทศไทย ประเทศไทย สหรัฐอเมริกา ประเทศไทยเยอรมนี มีบทบัญญัติที่ถือเป็น หลักจำกัดเสรีภาพการทำนิติกรรมเรียกว่า “หลักการกันส่วนมรดกแก่ทายาทโดยธรรม”

ในอนาคตประมวลกฎหมายแพ่งและพาณิชย์ของประเทศไทย ควรมีการแก้ไขเพื่อเสริมสร้างมาตรการ โดยการกำหนด การจำกัดอำนาจในการทำนิติกรรม ในการยกทรัพย์สินของผู้ตายให้อยู่ขับเขตที่เหมาะสม โดยการกันส่วนมรดกให้กับทายาทเพื่อเป็นการให้ความคุ้มครองให้กับทายาทโดยธรรมในชั้นบุตร บิดามารดา และคู่สมรสที่อาจจะได้รับผลกระทบในการดำรงชีวิต ให้มีหลักประกันความเป็นอยู่ในการดำรงชีพหากเจ้ามรดกถึงแก่ความตาย

คำสำคัญ : การกันส่วนมรดก พินัยกรรม ทายาทโดยธรรม ตัดสิทธิ

Introduction

The family institution is important. For the family to live with happiness, everyone in the family must support each other according to their abilities and status. The law therefore has a duty to husband and wife and children and parents are obligated to take care of each other, including the right to receive inheritance as statutory heirs. But when considering the Civil and Commercial Code on heritage of Thailand There is no provision of the law to protect the right of inheritance of statutory heirs in close order to the de inheritance, that is, descendants, spouses, and ascendants who are closely related to the inheritance. As a result, the deceased may make a will to bequeath the property to third parties according to his will together with the inheritance law There is no provision in this regard, as a result, the inheritance has the liberty to make a will of all his property to someone other than his statutory heir which if compared to the law in foreign countries such as France United States Germany.

But considering Thailand's Civil and Commercial Codes on inheritance, the death of the heir is important. Inheritors are the legal or testamentary heirs who inherit the estate as testamentary heirs. According to the principle of testamentary freedom, transfer its property to anyone and according to the principle of ownership, civil freedom and property ownership are considered expressions of the intention of the inheritor. This leads to the property ultimately belonging to others according to the intention of the property owner and having a legal effect. The heirs of an heir cannot argue unless the will is illegal.

The author believes that when the legitimate heir is deprived of inheritance rights, it may affect the existence of the heir. The Civil Code and Commercial Code should be revised to protect the inheritance of heirs, especially children, fathers, mothers, and spouses. This to some extent limits the freedom to make a will. This will have a positive impact and protection on legitimate heirs who may be affected or face difficulties in life. Having security and confidence in the economy of life, such as appointing legal heirs, especially children, fathers, mothers, and spouses. The right to apply for heritage protection in accordance with the proportion prescribed by law. Inheritor to death The Concept, Theory, and Principles of Thai Law Civil Code and Commercial Code, academic texts, research, and related articles.

Theories, Principles, and Concepts

In a study about the principles of inheritance division, the author has studied the theories, principles, and important concepts to support the principle of inheritance division as follows:

Structural-Functionalism Theory

This theory emphasizes society as a system in which different parts must work together to achieve balance. However, the changes or problems that occur cause the balance to be broken. In addition, maybe caused by factors both inside and outside society. This affects the changes in other parts of society, (Krainetee, Thammasatkan & Sangkharat, 2020) such as the functioning of the family institution, which is one of the elements of social institutions that must have both the function of procreation. parenting conferment of social status promotion of behaviors in various ways for human beings of the family institution. Providing education to acquire knowledge and wisdom. Duties of educational institutions, psychological dependence, including moral promotion ethics of religious institutions self-sustaining occupations of economic institutions and respect for compliance with rules and regulations for the social order of political and administrative institutions each institution has an important role and role in the creation of humanity and is important for maintaining a quality society. In addition, if there is a change in the functioning of any institution would have an impact on other institutions.

Private of Autonomy

The essence of the principle that empowers private individuals to make decisions about their own property, such as having the freedom to make a juristic act about property or freedom to determine the contents of the juristic act etc., (Sothipan, 2014) which is the basic principle in making all kinds of juristic acts in which a will is a type of juristic act. Therefore, it is under the principle of civil rights. Therefore, the law needs to be adjusted. In order to limit the scope of the principle, for example, according to the Civil and Commercial Code, Section 150 states that "Any purpose is expressly prohibited by law. It is impossible or contrary to public order or good morals is void" or section 1336, whereby the testator has freedom or freedom to make a will (Freedom Testament) to determine his property as long as it is not contrary to the law on property ownership Property rights are the fundamental

rights of individuals. To be used as a guarantee in the so-called liberty or independent land in the property of the individual against the state according to the legal theory of the School of Nature, John Locke, a British philosopher, said that human beings own rights. In property since ancient times, property rights are regarded as one of the essences of humanity that cannot be taken away.

Principle of Property Ownership

Proprietary is an important matter of property rights (Meenakanit, 2016). Ownership may be acquired as a result of a juristic act or law. Ownership is a property showing ownership of property. It is the most complete right that a person should have in property. The Civil and Commercial Code has placed the principle that the power that the owner of the property, whether immovable or immovable property, the owner of the property under section 1336 (Nisarat, 2015) means the owner of the property only and has the right to use the property. Dispose of one's property and the right to receive interest or pursue the return of the property from a person who has no right to hold the property.

The Concept of Limiting Ownership Rights.

Ownership is a concept with a long history since the Roman era, where ownership has absolute power over property. In other words, the owner has three rights: first, the right to use the property according to its current situation, second, the right to obtain any results and third, the right to sell property, including the destruction of property.

Although Germany had been influenced by the idea of individualism from the Romans. But in later periods, such concepts have been argued that they cannot meet the needs of society. Rudolf Von Jhering, a German jurist, proposed a theory that emphasizes the utility of law, that is, the idea that the public interest is the supreme law and the law exists to achieve the objectives of society. True ownership belongs to society, which is relative, so it must be used without conflict or conflict with society, and the use of ownership may be strictly controlled by law. Jhering's theory is known as objective theory, thereby enabling the subsequent development of laws governing the use of ownership greatly. Which later resulted in the amendment of the German Civil Code from individualism to adopting a system of

paternalism, which has socialist ideologies used as the basis for drafting the German Civil Code

For Thailand, it can be said to have been influenced by patriarchal ideas from Germany. The principle is that the public interest is higher than the law, and it is a model for maintaining social unity and preventing the weak. Section 1335 and 1336 of the Civil Code, they are necessary to comply with legal provisions, especially the public interest. Research has found that if there are sufficient reasons, the state can enact laws to control or restrict the rights of property owners. The power limitation of ownership may be imposed to protect interests or purposes. For the public interest, this is a regulation that restricts the sale of property rights to uphold the good morals of the people. For one or more personal interests.

General Principles of Making a Testament.

A will is the last command which expresses an intention to prescribe death in respect of property or affairs of the testator to have legal force in the event of the death of the testator by doing any form that is required by Civil and Commercial Code Section 1646 - 1648 with the following criteria:

The Concept of Making Will.

This concept inherits the principles of civil autonomy and property ownership and is the most complete right of an individual to his property, such as the owner's right to own his property, the right to use it, the right to obtain fruits, the right to dispose of and destroy it, etc. It is considered the most complete property right in the private law system, that is the protection of the concept of will by civil law. (Sipan, 2015)

Making a will is a unique form of will that is expressed by the intention of the property owner, known as the "heir". Give his property to others while he is still alive. A will is a legal act accepted by many countries' laws based on the principles of civil freedom and ownership. The property specified in the Wills Act is to make a will, such as in the Federal Republic of Germany and the United Kingdom, France, China, Japan, and other countries, including Thai law, when a will is considered a legal act. Therefore, it must be governed by the same legal principles as other types of law. The basic principles used in wills are general.

Norm Wills.

Whereas a will has the nature of a final decree, it means that a will or clause in a will, which is regarded as an order of the testator, shall come into force upon the death of the testator if the testator does not intend for the testator to take effect upon the testator's death. The karma has died, and the document of the death order is not a will. The declaration of intent to be a will must be in the form of an order.

This order is the last one that stipulates the person's property and the circumstances of death in various situations. This will take effect legally after his death and indicate that the intention of the death schedule must be the final order of the testator. Wills under Section 1847. The nature of the last order can be determined based on the will or will requirements made by the testator before the testator. Death karma and will or will requirements have legal effect.

The Inheritance Law of Thailand

Thai inheritance law originates from traditional customs (Soonthornpan, 2017) which have been practiced since ancient times since Sukhothai was the capital. There appears a message in one of the deep chakras "Prai Fah, clear face. Whose son of a jury has died more than the house of Father Chuea Suea Kham? It's an elephant asking for children and wives. Phrai Fah Khao Thai Wild betel nut forest to all his children" means that when a person dies, all inheritance is inherited to all children other relatives received no portion of the inheritance at all.

Inheritance law is the law concerning the property, rights, duties, and liabilities of the deceased. inheritance of inheritance type of heir heirs entitled to inherit Wills make known the principle of inheritance law that when a person dies, what actions must be taken and what the result will be. By taking various actions, the provisions of the inheritance law must apply, that is, when a person dies, it must consider whether the deceased has a spouse or not. If there is a lawful spouse, the property must be divided into different parts and must first consider whether the deceased has made a will or not or if a will has effect, a will be made or a will be affected only in part. The division of inheritance must be following the will made by the deceased. If a will or testament is not made in the part that has no force The inheritance will devolve on the heirs. which must be considered further that an inheritance to any heir, the Civil and Commercial Code, Book 6

Judgment of Dika No. 10809/2016. The deceased has bequeathed all of the deceased's estate to the defendant, it is considered to be a disposition of all inherited assets. The statutory heir who does not benefit from the will is disqualified from inheritance under the Code Civil and Commercial Law, Section 1608, the seven plaintiffs are therefore cut as a result of a will, resulting in no right to inherit the deceased unless the provisions in the will are in vain, the inheritance, therefore, falls to the statutory heirs.

Judgment of the Dika No. 4 3 9 7 / 2010. The inheritance made a will and disposed of all his inherited assets to Mrs. Lukchan. Co-plaintiff and Mrs. Malai, then it must be considered that the first defendant and other heirs who do not receive an inheritance from the will are cut off from inheritance under the Civil and Commercial Code Civil and Commercial Code, Section 1 6 0 8 , paragraph three. Because it is contrary to the Civil and Commercial Code, Section 1653 in conjunction with Section 1 7 0 5 , only the terms of wills on the part of the co-plaintiff would be complete. According to the Civil and Commercial Code, Section 1 6 2 0 , paragraph two in conjunction with Section 1699.

From the judgment of the Supreme Court, it can be seen that the statutory heirs are limited in their right to inherit as a result of the bequest of the bequeathed property to another person.

The Concept of Inheritance Right of Implied Heirs to Foreign Laws.

The legal concept of will in today's society consists of two main principles, namely civil independence and property ownership as mentioned in foreign countries, there is a concept of inheritance for statutory heirs. In the case where the statutory heir is restricted by the effect of the will which has the following countries:

France

In the French Civil Code, the main principles are: The law will protect the property shares of certain legitimate heirs of the giver. Restricting the grantee from giving their property, whether during their lifetime or through a will to a third party, in excess of the prescribed amount. If the giver violates the above principles when the giver dies. The law grants the legal heirs of the giver the right to demand

compensation in the form of money or our share of property. Return the recipient's property exceeding the amount specified by law.

For those who have the right to request a share of the property, the French Civil Code is stipulated and determined that the first person is a person who is a statutory heir of the son or descendant of the donor in any order who has the right to receive the inheritance of the donor according to the law on inheritance. That person is a statutory heir of the donor who has the right to request a share of the property without regard to how old such person is or whether such person can support himself or not. During the life of the giver is legally obligated to take care of such a person. This is because the right to share such property is a legal right that the law has guaranteed protection immediately since such a person was born as a legal person. (French Civil Code Section 912 para.1) However, such a person must not waive the right of inheritance of the giver. Because if such a person renounces the right of inheritance of the giver, then such a person is not an heir who will have the right to request a share of property anymore. (French Civil Code Section 913 para.1)

The United Stated of America

Louisiana Civil Code, the law only protects the property shares of certain legitimate heirs of the giver. Restrict the giver from giving their property, whether during their lifetime or through a will to a third party, to a proportion exceeding the rules. If the giver violates the above principles at the time of the giver's death, the law grants the legal their rights to the giver, grants him a share of property, and requires the giver to have a share of property. In addition, the heir with the right to make a request is the Louisiana Civil Code of the United States. It is determined based on the assumption of the necessity for the heirs to utilize the deceased's share of property. (Somton, 2017)

For those who have the right to claim property sharing, the Louisiana Civil Code of the United States, according to the rules stipulated by law can the descendants of the deceased have the right to claim property sharing. It is worth noting that the law does not confer any rights on the parents or spouses of the deceased in any way. In addition, the first descendant of the deceased must be a person under the age of 23 at the time of the deceased's death. As for the descendants of the first deceased over the age of 23. When the deceased dies, he

has no right to demand a share of his property. Unless that person is crazy, or a disability where the heir is unable to support themselves or permanently manage their property upon death. For the person who has the right to request a share of the property, the (Louisiana Civil Code Section 1493 A.) The latter condition does not take into account the age of the descendants in any way. This reflects the state's policy to protect descendants who are unable to support themselves by determining the share of the deceased's property to alleviate their suffering.

Germany

In the German Civil Code, the law restricts the power to make a will and elevates the deceased's property to an appropriate extent. Only in this way. If the deceased transfers their property to others during their lifetime, the law does not limit: In any case, unless such waiver is to evade privacy laws. As for the result of the testator unreasonably depriving the heirs of their inheritance rights, or the testator handing over their property to any successor who violates legal provisions in a lower proportion than the legal provisions. In principle, the law only grants rights to heirs who have the right to claim property sharing and exercises the right of the court to demand property sharing from legitimate heirs. Accept only general wills (heirs). but does not void a will made in contravention of that provision. void or not in any way.

According to the German Civil Code, there are three situations for those who have the right to claim a share of the property. In the first case, the children of the testator are the heirs of the closest class, while the heirs of the distant class inevitably lose the right to claim the share of the property. In the second case, the testator is the parents of the deceased, but the parents of the deceased have the right to claim the inheritance only if the testator has no heirs of the previous class, that is, heirs. (German Civil Code Section 2303) This is the same as the right of the spouse to inherit the estate mentioned above. In addition, the legal heir of the testator must be the person mentioned above. Only when required by law, the inheritor is entitled to claim a share of the property. In other words, the above-mentioned legal heirs shall not inherit the testator's estate. In this case, the inheritor is not deprived of inheritance rights, but in another case, the inheritor obtains an unreasonable share of the inheritance. Afterward, the law stipulated the rule for the above-mentioned legal heirs to inherit less than half of the estate's value. If the

deceased has not made a will. Inheritors can be considered as having a small share, and the law grants them the right to claim inheritance.

Conclusions and Recommendations.

Through the literature research on the related theories, concepts, and principles of testamentary succession, this paper expounds on the inheritance clauses of testamentary heirs who lose their inheritance rights.

Inheritance Laws of Thailand

It is a law that is rooted in Thai tradition and culture cling to blood intimacy. Determining how close a person has a relationship with a deceased person is entitled to inherit and share in the estate is in accordance with Thai customs and culture. Therefore, the duties of husband and wife and children and parents are obligated to take care of each other. But if considering the provisions of the Civil and Commercial Code on Thai inheritance, there are no provisions of the law to protect the inheritance rights of statutory heirs in close order to the inheritance. In which the deceased may make a will to bequeath the property to others, inevitably resulting in problems regarding the protection of the statutory heirs who will be affected in terms of living.

Structural-Functionalism Theory

It can be seen that the person in the family institution must comply with the roles and responsibilities of each member of the family and must have basic tasks (Basic Tasks) and the basic mission that the family must do so that members can live. It is important to society as a system that has different parts to work together to achieve balance, but changes or problems occur. and its role in the creation of humanity It is important to maintain a quality society and if there is a change in the functioning of one institution, it will affect other institutions. But it can be seen that the Civil and Commercial Code of Thailand does not have a legal structure that restricts the freedom to make a will. This results in the testator having the liberty to make a will, all property of a person to someone other than his statutory heir. Therefore, causing problems regarding the protection of the statutory heirs because the testator has both rights and obligations to bind the relationship in the family institution but when making a will, bequeathing property to other people, as if the testator did not pay back the family members. As a result, the statutory

heirs of the testator are not entitled to inheritance. It does not conform to the concept of family relationships and functional structural theory. Especially the heirs in the class, children, parents, and spouses. It can be seen that the inheritance law of Thailand is a law that is rooted in Thai tradition and culture cling to blood intimacy.

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Foreign Laws.

The French and German Civil Codes explicitly state that property owners may not bequeath their property by giving them affection more than the amount required by law. As for the German Civil Code, there is also a principle for the division of property to the statutory heirs. But the German Civil Code limits ceding to cases where ceding was made by the testator as a means of circumventing the law. The recipient shall return the said property in accordance with the provisions in the matter of unworthy windfall.

Conclusion

According to the Thai Heritage Law, a law guiding the improvement of the principles of protecting the legitimate inheritance of testators. The author believes that Thailand should develop guidelines for improving inheritance law by using the laws of France and the United States as guidelines. Limit the power to make a will to an appropriate extent. Protect the legitimate heirs of children, parents, and spouses who may be affected in their daily lives. If the heir dies, there is life security. Even in cases where the heir cuts off their legitimate heir with clear intent. According to the Civil Code and Section of the Commercial Code, specify the name of the successor in the will or submit it in writing to the competent official. 1608 should be given to the legal heirs who inherit the principle of partial inheritance mentioned above. However, it did not create a solution to refute the principle of civil independence that allows for the free conduct of property or independent legal acts. When determining the content of a legal act, only the legal principles are: The problem of using special measures instead of criminal proceedings according to the Juvenile and Family Court and Juvenile and Family Court Procedure Act B.E. 2010.

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