

Lazarski University

Faculty of Law and Administration

mgr Paweł Blajer

Summary of doctoral dissertation "The Acquisition of Enterprise Through Specific Bequest: Substantive and Procedural Law Aspects" written under the supervision of dr hab. Małgorzata Manowska, professor at the Łazarski University

The doctoral dissertation discusses the substantive and procedural law conditions of establishing the acquisition of an enterprise through a specific bequest (*zapis windykacyjny*). The dissertation contributes to scientific progress by presenting **a new theoretical approach** both to the substance of the enterprise and to specific actions that should be taken if the enterprise is given through a specific bequest. The dissertation also answers a number of important questions concerning practical aspects of the process intended to establish the acquisition of an enterprise since no common practice has been shaped in this respect. For instance, how to determine the effectiveness of bequeathing an enterprise on the basis of specific elements of the factual situation? How should an enterprise be identified in actions related to giving a specific bequest and establishing its acquisition? What are the limitations in relying on statements concerning an enterprise made by parties to proceedings? When a specific bequest concerning an enterprise may be ineffective if item(s) of the enterprise are given through other bequest(s)? The analyzed issues are important primarily from the perspective of entrepreneurs and their legal successors. However, the conclusions in the dissertation also have an important educational value for other entities participating in proceedings to establish the acquisition of an enterprise given through a specific bequest, namely for judges, notaries public, court enforcement officers, administrators of the estate, executors of the estate, and creditors of the testator.

The structure of the dissertation reflects the complexity of the issue. It was necessary to start with fundamental issues related to the definition of enterprise under civil law, and then move on to various aspects of making an enterprise an item given through a specific bequest. Drawing on the conclusions of the discussion, the final part of the dissertation presents the

conditions of establishing the acquisition of an enterprise in proceedings carried out after opening the estate. This in turn helped to formulate the terms, conditions and principles that should apply in non-litigious estate proceedings to establish the acquisition of an enterprise given through a specific bequest.

In order to structure the discourse on bequeathing an enterprise, the author presented a new approach to the substance of the enterprise. The organizational factor remained of key importance, although the role of know-how was also widely discussed and emphasized as being crucial for activities related to determining whether a particular set of tangible and intangible assets constitutes an enterprise. The author formulated a proposal to verify seven conditions that apply specifically to an enterprise given through a specific bequest and help determine the validity and effectiveness of such legacy. The verification should be carried out according to a scheme or rules that differ from those applying to other items given through a specific bequest.

Two research methods were adopted, namely a dogmatic and legal method, and an empirical method. The research was extended to cover issues concerning the use of specific bequest by entrepreneurs, not only because of the need to address the theoretical conclusions in the dissertation, but also in order to determine the patterns of practice in the area of specific bequest as a new institution in the law of succession. The empirical research was carried out among notaries public and law firms. All the findings were presented in the dissertation in detail, assuming that they may be used by other researchers in their analyses, also in other fields.

In the dissertation, the author advanced one main hypothesis and eight auxiliary hypotheses. The key thesis stressed that, in proceedings carried out by a natural person to establish the acquisition of an enterprise given through a specific bequest, it is necessary to verify whether the substance of the enterprise was maintained in the objective and functional meaning. The auxiliary hypotheses concerned the correlation between know-how and the organizational factor within the enterprise, the manner of determining know-how based on a set of items, the continuity of the enterprise, the need for evidentiary proceedings to establish the acquisition of the enterprise given through a specific bequest and the possibility of presenting evidence permitted in estate proceedings, the role of enterprise documentation in evidentiary proceedings, the significance of the results of the proceedings establishing the

acquisition of the enterprise, and the need for further legal actions to contribute to business being continued by the legatee under a specific bequest.

The adoption of the main hypothesis as the leading hypothesis translated into the structure of the dissertation and the contents of individual chapters. The dissertation consists of six chapters. Chapter 1 presents the key issues related to the recognition of enterprise under civil law. This chapter provides the backdrop for the entire dissertation. It addresses issues related to, among others, the significance of the enterprise, its substance, legal nature, and legal relationships that may arise in connection with its complex structure. It also identifies essential elements that are necessary for the enterprise to become the subject of an act in law. The author presents the substance of the enterprise in economic terms, the organization within the enterprise, and the significance of know-how. Chapter 2 includes an extended discussion on the enterprise as an item of property given through a specific bequest, focusing among others on the scope of a specific bequest whereby an enterprise and its individual items are given; the admissibility of bequeathing an organized part of enterprise; the legal consequences of bequeathing an enterprise yet subject to a time limit, condition or instructions; the responsibility for estate debt related to an enterprise; the possibility of bequeathing a future enterprise or an enterprise that is part of joint property of spouses. Chapter 3 focuses on the proceedings to establish the acquisition of an enterprise given through a specific bequest. It also presents the limitations in notarial proceedings that may arise in enterprise-related activities. Chapters 4 and 5 show the results of research on notarial practice related to specific bequest and contractual practice (case study). The final chapter discusses firstly the issue and the risk of continuing business after the death of the testator, and then presents the areas that require additional legal actions to be taken in order for the legatee under a specific bequest to continue business.

In the conclusions of the dissertation, the author demonstrates that the institution of specific bequest does not fully implement the intention of the legislator to provide for quick bestowal of an enterprise. However, this does not imply that the process cannot be carried out under the provisions of law in force. The author emphasises the need to work out other solutions to bequeath an enterprise and pinpoints issues concerning certain items of enterprise and the taxation of the acquisition of an enterprise. The author also signals that the function of an enterprise in the modern economy has visibly changed, which also calls for a discussion on a new legal definition of the significance and nature of enterprises.