BENEFICIUM INVENTARII IN THE ROMAN TRADITION OF EUROPEAN PRIVATE LAW[1]

O *BENEFICIUM INVENTARII* NA TRADIÇÃO ROMANA DO DIREITO PRIVADO EUROPEU

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Abstract

The currently effective civil law in its regulations concerning successors' liability for inherited debts invokes the option to acquire an inheritance with the benefit of inventory (Art. 1012 of the Civil Code); its roots can be found in *beneficium inventarii* introduced by Justinian. The Justinian construct of benefit of inventory found its way to the Polish legislation by way of the great European codifications of the 19th century which were in force in the territory of Poland in the time of foreign rule.
Keywords: Beneficium Inventarii; roman law; inheritance law.

Resumo

A atual regulamentação do direito civil no que diz respeito à responsabilidade dos herdeiros em relação às dívidas da herança permite a opção de adquirir a herança com o benefício de inventário (art. 1012 do Código Civil); suas raízes podem ser encontradas no *beneficium inventarii*, que foi introduzido por Justiniano. A construção justiniana do benefício de inventário foi introduzida no direito Polonês pelas codificações europeias do século XIX, que estavam em vigor no território Polonês quando este era dominado por potências estrangeiras.
Palavras-Chave: Beneficium Inventarii; direito romano; direito das sucessões.

1. A significant part of private law, among other things focusing on private ownership, is connected with the issue of continuing family property and contains permanent constructs subject to regulations of succession law. At the same time succession law has always been a determinant for the property-based functioning of the family and for the material level of the entire society. This was the case in the society of Rome; similarly, the growing importance of succession law can be seen in the contemporary Polish society, particularly since private ownership was reinstated

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as the foundation of the social and economic system. This situation results in a number of interesting issues connected with the development and changing fortunes of succession law, both in historical aspects (of Roman law) and in terms of the changes occurring in European and Polish legal systems. This also relates to the originally Roman principles of the successor's liability for inherited debts. The currently effective civil law in its regulations concerning successors' liability for inherited debts invokes the option to acquire an inheritance with the benefit of inventory (Art. 1012 of the Civil Code); its roots can be found in *beneficium inventarii* introduced by Justinian (KURYŁOWICZ, 1983, p. 67 et seq.). The Justinian construct of benefit of inventory found its way to the Polish legislation by way of the great European codifications of the 19th century which were in force in the territory of Poland in the time of foreign rule.

Other contemporary systems of legislation also apply the solutions adopted in the Roman law with regard to limiting the liability for inherited debt (e.g. Art. 7774 of French CC; §1975 of German BGB).

2. In Roman law acquisition of inheritance by an instituted heir was linked with liability for inherited debts. The heir, being a universal successor of the testator, was accountable for inherited debts and his liability extended to his entire (combined) property because inheritance acquisition resulted in a fusion of the testator's and the inheritor's property (D.50,17,62 Iulian). Such liability could exceed the value of the inheritance and extend to the heir's personal property. Therefore, in order to protect successors against materially adverse results of inheritance, certain favourable principles concerning successors' accountability for inherited debts were introduced. For instance, before accepting the legacy a successor to an over-indebted inheritance could enter into an agreement *(pactum de non petendo pro parte)* with creditors of the testator who were known to him where he made a commitment to assign a certain amount of what was due for him to the creditors of the inheritance. Only after that did he accept the inheritance (VOCI, 1960, p. 617). Additionally, heirs who acquired over-indebted inheritance could be granted *restitutio in integrum*, i.e. restoration to original condition, by Praetor, provided there were legal grounds for applying this principle. *Restitutio in integrum* obtained from Praetor (province

magistrate) resulted in revoking the effects of an executed legal action in the area of both material and formal law[3].

Additionally, necessary heirs *(heredes necessarii)* could take advantage of *beneficium abstinendi*, that is the right of an heir to abstain from accepting insolvent estate which was granted by Praetor or province magistrate[4]. On the other hand *beneficium abstinendi* was not applicable to a slave who in accordance with a will was an appointed heir and at the same time was manumitted *(servus cum libertate heres institutus),* even though he was recognized as a necessary heir. Such a *servus neccessarius* could only obtain *beneficium separationis bonorum* and by doing so restrict his accountability for inherited debts to the inheritance (ANKUM, 1968, vol. 2, p. 365 et seq.; BOJARSKI, 1997, p. 603 et seq.; BRETONE, 1958, vol. 4, p. 301 et seq.; GUARINO, 1944, vol. 10, p. 240 et seq.; GUARINO, 1940, vol. 60, p. 185 et seq.). Another privilege which restricted the heir's liability for inherited debts was *beneficium legis falcidiae.* It protected heirs against acquiring inheritances excessively burdened with endowments (bequests) by imposing a limitation of the size of bequests to three quarters of the inheritance *(quarta falcidia).* The successor was to be left with one quarter of clean inheritance[5]. Later the restrictions introduced on the grounds of *lex Falcidia* were adopted for *fideicommissa. Senatus consulta Pegasianum* from the times of Vespasian (73 CE) introduced changes related to fideicommissa and extended the application of ***quarta Falcidia*** for inheritances burdened with *fideicommissa* (so-called *quarta ex S.C. Pegasiano).* The above solution was also related to *fideicommissum hereditatis*, with applicable *quarta Treballiana* which could be retained by the successor even if the inheritance was issued as universal fideicommissum[6]. On the other hand an ordinance of Emperor

[3] For more information on *restitutio in integrum*, its legal grounds, nature of proceedings related to issuing it, as well as its effects, see: Bojarski (1963, vol.10, p. 15 et seq.); Kaser (1971, p. 215 et seq.); Kaser (1977, vol. 94, p. 101 et seq.).

[4] See: Biondi (1948, p. 23 et seq.); Fadda (1949, vol. 2, p. 36 et seq.); La Pira (1930; p. 48 et seq.); Piętak (1882, p. 82 et seq.); Voci (1960, p. 537 et seq.).

[5] For *lex Falcidie* the resolution of Plebeian Council of 40 BCE see: Ankum (1984, vol. 30, p. 28 et seq.); Bonifacio (1952, vol. 3, p. 229 et seq.); Franciosi (1973, vol. 1, p. 401 et seq.); Mannino (1981, vol. 84, p. 125 et seq.); De La Rosa Diaz (1994, vol. 2, p. 111 et seq.); Stein (1987, vol. 65, p. 453 et seq.); Schwarz (1943, vol. 63, p. 314 et seq.); Schwarz (1951, vol. 17 p. 225 et seq.); Wacke (1973, p. 209 et seq.)

[6] With regard to *senatus consultum Treballianum,* covering the subject of universal fideicommissum – the decree was passed in year 55 or 56, during the reign of Emperor Nero; the positions of consul were held by Marcus Trebellius Maximus and Lucius Annaeus Seneca. According to F. Longschamps de Barier (LONGSCHAMPS DE BARIER, 2006, p. 77 et seq. and bibliography used as its references) year 55 is more probable.

Antoninus Pius extended the application of ***quarta Falcidia*** to intestate heirs. Presumably in the times of Septimius Severus the provisions related to *lex Falcidia* were expanded to include *mortis causa capio* and particularly *donatio mortis causa*.

However, the above measures aimed at protecting successors against excessive liability for inherited debts did not always fully secure heirs' material interest and additionally were connected with certain procedural difficulties. Due to this, the problem of limiting successors' liability for inherited debts was finally resolved by Justinian.

3. The legal concept of the benefit of the inventory was introduced by Justinian into the constitution of 27 November 531 (C.6,30,22); accordingly, a successor who compiled a detailed inventory of the inherited assets within specified time, was liable for debts only up to the value of the inheritance (ESPÍNDOLA, 1982, vol. 7, p. 21 et seq.; ESPÍNDOLA, 1983, vol. 8, p. 13 et seq.; REGGI, 1967, p. 50 et seq.; WESENER, 1993, p. 410 et seq.):

C.6,30,22pr - 1 *(Imperator Justinianus): Scimus iam duas esse promulgatas a nostra clementia constitutiones, unam quidem de his, qui pro hereditate sibi delata existimaverunt, aliam autem de improvisis debitis et incertu exitu per diversas species eis imposito (...) Ex omnibus itaque istis unam legem colligere nobis apparuit esse humanum et non solum milites adiuvare huiusmodi beneficio, sed etiam ad omnes hoc extendere, non tantum si improvisum emerserit debitum, sed etiam si onerosam quis inveniat esse quam adierit hereditatem.*

Provisions set forth in this constitution were then repeated in the Institutions of Justinian:

I.2,19,6: Sed nostra benevolentia commune omnibus subiectis imperio nostro hoc praestavit beneficium et constitutionem tam aequissimam quam nobilem scripsit, cuius tenorem si observaverint homines, licet eis adire hereditatem et in tantum teneri in quantum valere bona hereditatis contingit, ut ex hac causa neque deliberationis auxilium eis fiat necessarium, nisi omissa observatione nostrae constitutionis et deliberandum existimaverint et sese veteri gravamini aditionis supponere maluerint.

The above excerpts from sources indicate that Justinian granted the benefit to all successors who acquired inheritance burdened with debts, not only due to

recklessness. Heirs did not have to ask for time for deliberating the issue, but were able to assume the inheritance and be accountable for inherited debts only up to the extent covered by the value of the inherited property.

Source texts related to the benefit of inventory contain references to earlier privileges limiting the accountability for inherited debts which were granted to selected categories of successors by Emperors Hadrian and Gordian. Justinian acknowledged the fact that his concept of *beneficium inventarii* originated from those privileges:

I.2,19,6: *Sciendum tamen est divum Hadrianum etiam maiori viginti quinque annis veniam dedisse, cum post aditam hereditatem grande aes alienum, quod aditae hereditatis tempore latebat, emersisset. sed hoc divus quidem Hadrianus speciali beneficio cuidam praestitit...*

In the same text Justinian reported that from the times of Emperor Hadrian an adult successor, over 25 years of age, who after acquiring an inheritance became aware of a debt unknown to him at the moment of assuming the inheritance, was entitled to ask Praetor for granting him with *restitutio in integrum:*

C.6,30,22pr. *(Imperator Justinianus): Sed etiam veterem constitutionem non ignoramus, quam divus Gordianus ad Platonem scripsit de militibus, qui per ignorantiam hereditatem adierint, quatenus pro his tantummodo rebus conveniantur, quas in hereditate defuncti invenerint, ipsorum autem bona a creditoribus hereditariis non inquietentur: cuius sensus ad unam praefatarum constitutionum a nobis redactus est. Arma etenim magis quam iura scire milites sacratissimus legislator existimavi.*

From the times of Emperor Gordian soldiers could benefit from the same privilege as well. By granting soldiers with the right of using *restitutio in integrum* Gordian protected them against excessive liability for inherited debts if they unknowingly acquired insolvent inheritance[7].

In accordance with Justinian law *beneficium inventarii* was applicable to all successors who did not take advantage of earlier solutions and did not ask for time for deliberation, irrespective of the fact whether they were appointed for inheritance by the testament or legal act and whether they were appointed for the inheritance in its entirety or part (C.6,30,22,1a and 2). An heir who wanted to take advantage of

[7] See also: Gai2,163; Fragmenta Augustodunensia 28-33; I.2,19,6; C.6,30,19; C.6,30,22,15 Justynian; Theoph. Instytut. 2,19,6; see also: Reggi (1967, p. 29 et seq.).

beneficium inventarii was to start taking inventory of the inherited property within time limits specified by the law (C.6,30,22,2) in the presence of a special officer[8]. The listed inventory was to be presented in writing either within three months, i.e. 30 days during which the inventory of the inherited property should have been initiated (C.6,30,22,2)[9] plus 60 days necessary for completing the task (C.6,30,22,2a) or within one year, in case of circumstances described in C.6,30,22,3[10]. Yet, the three-month period was binding for listing the inventory which was to provide grounds for restricting the heir's liability for inherited debts while the one-year period for making the inventory of inherited property was a special period which could be applied in situations set forth in the ordinance.

The option of restricting liability for inherited debts by means of the benefit of inventory was only available to instituted heirs. In the case of necessary heirs *(heredes necessarii)* they acquired legacy *ipso iure,* that is at the moment of appointment with no action on their part. Inheritance could be bequeathed to them without their knowledge or even against their will. On the other hand, external heirs *(heredes extranei)* in order to obtain an inheritance had to perform *aditio hereditatis,* that is a legal act by which external heirs acquired the legacy. It seems that in order to accept legacy it was sufficient to simply act as an heir, i.e. *pro herede gestio* or make an informal declaration of intent on the acceptance of the inheritance. Assuming the role of a successor and handling matters related to legacy was an informal action of an heir which by itself implied his intent to accept the inheritance[11]. In Justinian law the very act of asking for *tempus deliberandi* was treated as an initiation of the procedure of acquiring the legacy by the instituted heir.

Successors who did not comply with the aforementioned legal requirements would not have been able to benefit from the restriction of liability for inherited debts resulting from *beneficium inventarii* (C.6,30,22,12). On the other hand heirs who had listed the inventory of the inherited property in accordance with the aforementioned

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8 *Tabularius,* in Justinian law was a clerk keeping records or inventories who could also prepare legal and other documents. His presence was also necessary when inventory of inheritance was made in order to restrict liability for inherited debts.

9 The 30-day period was counted from the day of opening or notification of opening of the testament, or of appointing for the inheritance in accordance with a legal act or of being informed about the appointment for intestate succession.

10 The period could have been prolonged if the heir did not reside in the place where the inherited objects or majority of these were located.

11 For more information on *pro herede gestio* see Beduschi (1976, p. 167 et seq.); Voci (1960, p. 547 et seq.).

requirements were accountable only to the extent equivalent to the value ascertained by the inventory.

It is still disputed in the literature concerning the subject matter[12] whether a successor would have been liable towards creditors of inheritance with inherited assets *(cum viribus hereditatis),* or within the value of the legacy *(pro viribus hereditatis)*[13]*.* Those in favour of the first hypothesis *(cum viribus hereditatis)* as a correct one included: Bonfante (1963, p. 398), Fadda (1949*,* p. 414 et seq.) and M. Kaser (1971, p. 382) and R. Reggi (1967, p. 98). Those supporting the other option speaking of liability *pro viribus hereditatis* included B. Biondi (1948, p. 356 et seq.) and P. Voci (1960, p. 618). It seems the more logical arguments speak for the first hypothesis. The liability of a successor who acquired the legacy with *beneficium inventarii* was limited only to the inherited assets *(cum viribus hereditatis).* The scope of his liability did not exceed the assets which constituted the legacy and were listed in the inventory. Such liability for inherited debts did not extend to his personal property. It seems this indeed was the purpose for instituting the benefit of inventory by Justinian.

On the other hand, if we accept the second hypothesis according to which the successor was liable within the value of the legacy *(pro viribus hereditatis)* it may lead to the conclusion that in such a situation the heir's liability could have exceeded the inherited property. In such a case the successor may have been forced to satisfy the creditors of the inheritance up to the calculated value of the inherited assets. Such calculated value of the legacy could surpass its actual value and as a result could lead to extending the heir's liability to his personal property. It seems that limits of successor's liability defined in this manner were not the purpose of Justinian's constitution.

4. Later the institution of the benefit of inventory was adopted by the great codifications of the 19th century (SÓJKA-ZIELIŃSKA, 2009, p. 120 et seq.; SÓJKA-ZIELIŃSKA, 2008, p. 20 et seq.; WOŁODKIEWICZ, 2005, p. 43 et seq.). In

[12] More on the discussion concering the limits of successor's liability for inherited debts in case of acquiring legacy with the benefit of inventory can be found in Reggi (1967*,* p. 98 et seq.).

[13] The terms: *cum viribus hereditatis* and *pro viribus hereditatis* are not original source-based Roman phrases. However, they do correspond with Roman law in their meaning and they are used in legal vocabulary.

accordance with the Austrian civil code (RADZISZEWSKI, 1938, p. 266 et seq.) after acquiring an inheritance the successor brought forward the relevant testator (§ 547), assumed all liabilities related to the property incumbent on the testator, excluding financial penalties punishable pursuant to the law, if the adjudication concerning the testator had not yet been passed (§ 548). While making an express statement of intent for accepting the inheritance (§ 799) the heir had to indicate whether he accepted the inheritance unconditionally or with the proviso of legal benefit of inventory (§800). If the inheritance was acquired with the benefit of inventory, then pursuant to § 802 of the code, the court was obliged to immediately execute the inventory at the expense of the bequest. In such case the heir was liable towards creditors of inheritance and legatees only up to the extent which equalled the size of the legacy left by the testator. He was also entitled to deduct any receivables due for him personally from the deceased person, if these do not result from the succession law. In accordance with the prevailing opinions at that time, the heir was liable (personal liability and not related to an asset) towards creditors of inheritance and legatees only within the value of the legacy ascertained by the inventory, i.e. within the value of the inheritance at the moment of the testator's death *(pro viribus)* [14].

Moreover, in accordance with the Austrian Civil Code a successor could not be prohibited from accepting an inheritance with the benefit of inventory; not even inheritance contracts concluded by spouses could contain such a reservation (§ 803). Similarly a person entitled to legitime could accept it with the benefit of inventory (§ 804). However, after accepting an inheritance unconditionally, the heir could not later change his declaration and acquire the legacy with the benefit of inventory (§ 806). On the other hand, if a declaration of accepting an inheritance with the benefit of inventory was submitted, the law allowed for changing it into unconditional acceptance of the legacy. In the case of joint heirs, even if only one of them accepted the inheritance with the benefit, the effects of his declaration were applicable to the remaining co-heirs (§807). Furthermore, custodians or curators of persons without full legal capacity could not unconditionally accept or refuse to accept the inheritance without the court's consent; they were only entitled to accept it with the benefit of

[14] For more information on the rules regulating the liability of a successor who accepted an inheritance with the benefit of inventory, see: Wróblewski (1904, p. 772 et seq.) and Zoll, (1933, p. 295 et seq.).

inventory (§§ 233 and 806). Accordingly, an administrator of insolvent assets could accept inheritance exclusively with the benefit of inventory.

In accordance with provisions set forth in the German Civil Code (BGB), after accepting an inheritance a successor was accountable for inherited liabilities, which included the testator's debts as well as liabilities incumbent on the successor, in particular liabilities due to legitime, bequests and instructions, costs of funeral, inheritance supervision or other temporary arrangements connected with safeguarding the legacy (§1967) (ZYGMUNT, 1928, p. 376 et seq.; LISOWSKI, 1933, p. 873 et seq.).

A successor was responsible for inherited liabilities either in an unlimited manner or to an extent limited by making the inventory. This was because § 1993 stipulated an option where the hair could submit the list of the inheritance (inventory of inherited assets) and file it with the relevant court. Following a motion placed by a creditor of an inheritance, who should have supplied information adding credence to his claim, the relevant court would determine the period during which the heir had to compile the inventory (§1994). The period for making the inventory could be at least one month long, however not more than three months from the date of delivering the resolution specifying the length of the period. If this was determined before the acquisition of the inheritance, the duration of time was counted from the moment of filing a statement of the inheritance acquisition. The court handling the case could prolong the period following the successor's request (§1995). If the heir had not submitted the completed inventory by the end of this period he would have had unlimited liability for inherited debts (§1994). If the heir failed to complete the inventory due to force majeure, then following his justified request filed within 2 weeks from the time such event stopped, the court would have specified a new period for compiling the inventory. The same approach was taken if the heir did not know that the resolution specifying the length of the period had been delivered to him, and had not been responsible for the fact (§1996). The specified period for completing the inventory became invalid if inheritance administrator was instituted or if bankruptcy proceeding related to the inheritance was initiated (§2000).

Pursuant to § 2001 the inventory was to contain an exhaustive list of the inherited assets existing at the moment of opening the inheritance as well as any liabilities of the inheritance. It was to be compiled in the presence of relevant

authorities (municipal court) or officers (clerks of the court or bailiffs) as well as a notary (§ 2002). The costs of executing the inventory were at the charge of the succession. The inventory executed in this manner was to be submitted to the relevant court by the successor, unless the latter filed a request for the court handling the inheritance to compile the inventory, pursuant to § 2003.

If the inventory was executed on time, then in accordance with § 2009 the inventory was presumed to be complete, which means it was assumed that at the moment of opening the inheritance there were no other inherited assets. The above legal presumption was related to the heir and creditors of the inheritance. Additionally, the inventory was open to the public, which meant anyone having legal interest in it was to be allowed by the court to see it.

If the successor had deliberately executed an incomplete inventory or had listed non-existent inherited liabilities in order to put creditors of the inheritance at a disadvantage his responsibility for inherited liabilities was unlimited (§2005). Creditors of the inheritance could demand that the successor made an oath before the court stating that while executing the inventory he had acted with due diligence (§ 2006). A refusal to make such oath resulted in full responsibility of the heirs towards those creditors who had demanded the oath to be made.

Similarly, the Napoleonic Code[15] contained a stipulation allowing a successor to accept an inheritance simply or with the benefit of inventory (Art. 774). If the successor preferred to accept the inheritance with the benefit of inventory he was to file a declaration in the office of the civil tribunal of the first instance in the district in which such inheritance opened and such declaration had to be inscribed on the register destined to receive acts of renunciation (Art. 793). This was to be followed by a faithful and exact inventory of the inherited assets, to be executed within three months from the date of opening the succession, in accordance with Art.795. Additionally, the same article contained provisions on the time available for the successor to deliberate on the acceptance or renunciation of the inheritance.

The period was specified as forty days, which began to run from the day on which the three months allowed for the inventory expired, or from the day of closing the inventory, if it had been finished before the three months. During this period the

[15] More about the impact of Code Civil in Poland can be found in Grodziski (2005, vol. 57.2, p. 61 et seq.) and Malec (2005, vol. 57.2, p. 69 et seq.).

successor could not be forced to make a declaration of will and no sentence could be obtained against him (Art. 796 and 7) (MĄCZYŃSKI, 2008, p. 62 et seq.; FIDLER, 1916, p. 253 et seq.).

The heir who had executed an inventory of the succession was bound to payment of the inherited debts exclusively to the amount of the value of the goods collected by him. Furthermore, he could leave all the inherited assets to creditors of the inheritance and legatees (Art. 802 § 1). Additionally, his personal property could not be confounded with that of the succession, and finally he was entitled to claim the payment of his own receivables due from the testator (Art. 802 § 2) and deduct the costs of inventory which were at the charge of the succession (Art. 810). However, if the heir had been found guilty of concealing or had knowingly failed to include assets in the inventory, then in accordance with the provisions of Art. 801 he would have been deprived of the benefit of inventory.

5. The concept of the benefit of inventory found its way to Polish legislation by way of the great European codifications which were in force in the territory of Poland in the time of the foreign rule and after the country regained independence. During the interwar period works on codifying the succession laws were initiated as late as 1926; they were supervised by H. Konic, a lecturer at the University of Warsaw. However, no unified draft of succession laws was published before the outbreak of World War II and the works were limited to discussions of the main assumptions. For instance, during the Third Convention of Lawyers in 1936 the discussion included the issue of successors' liability for inherited debts. In practice during the interwar period the regulations introduced after the partitions of Poland were still applied; only some slight changes were introduced, for instance concerning a ban on breaking up farming estates and unifying the rules of drawing up military testaments (PŁAZA, 1997, p. 141 et seq.).

Similarly, the succession laws unified after 1946 (PRAWO SPADKOWE, 1946) contained stipulations limiting liability for inherited debts by means of the benefit of inventory. Pursuant to Art. 35 a declaration of acceptance or renouncement of a succession could be lodged only within 6 months from the moment the heir had learnt about being appointed for inheritance. If the heir had not lodged any declaration in that period the law assumed that he had accepted the succession

directly. There was one exception saying that if a successor did not have full legal capacity at the time the 6-month period commenced or ended, it was assumed that despite his failure to lodge a declaration he was acquiring the inheritance with the benefit of inventory (Art. 37). Similarly, in the case of legal persons a failure to lodge a declaration on acceptance or renouncement of the succession was equivalent to an acceptance of the inheritance with the benefit of inventory (Art. 38); the same rule was applicable to *gmina* (the smallest unit of administrative division of Poland) as well as the state treasury (Art. 39). In case of joint succession, if one of the appointed heirs lodges a declaration of accepting the inheritance with the benefit of inventory, the privilege was extended to the remaining persons appointed for the succession unless they had lodged a declaration of direct acceptance or renouncement of the inheritance (Art. 42). The heir who accepted the succession with the benefit of inventory was liable for inherited debts up to the value of the assets of inheritance ascertained in the inventory (Art. 49 § 2). However, an heir who had deceitfully removed or concealed inherited assets or had failed to enter them into the inventory, or had entered non-existent debts, had unlimited liability for inherited debts (Art.50).

The mode of conducting the inventory was regulated in detail by a decree on inheritance proceedings (O POSTĘPOWANIU SPADKOWYM, 1946). Pursuant to Art. 24, following a petition lodged by an heir, or an executor of the testament or a creditor having evidence of the debt, or the Prosecutor General, or tax authorities, the court was obliged to issue a decision with regard to executing the inventory. If such a petition had been lodged by a creditor of the inheritance, the court was to hear the successor before passing the decision (Art. 25). The date of executing the inventory was to be communicated to the entity lodging the petition, the heir and the executor of the testament (Art. 26). It was required that the inventory should include the entire inherited property, with a listed value of each asset, as well as all inherited debts (Art. 27). Additionally, if any unlisted property or assets were to be revealed later, it was necessary to supplement the inventory (Art. 30).

The issue of liability for inherited debts was then taken into account in the process of developing the draft of the civil code and elaborating the provisions concerning succession law. Initially the rules were based on limited liability of the successor (year 1951), yet in course of the discussions related to the draft of succession laws in 1954 they were changed and the assumptions contained in the

decree on succession law from 1946 were reinstated. The Civil Code enacted by *Sejm (*the Polish parliament) on 23 April 1964 contained provisions related to the benefit of inventory in Articles 1015 and 16; 1023 ; 1031 and 1033[16].

Similarly, in accordance with Polish civil law acquisition of the entirety of testator's property rights and obligations by the successor results in the latter's accountability for commitments made by the deceased. Furthermore, other inherited debts may result from opening the succession. In Polish civil law the scope of the heir's liability for inherited debts partly results from the contents of the declaration lodged in connection with accepting the succession[17].

A declaration of acceptance or renouncement of the inheritance can be lodged by the heir within six months from the date the latter was notified about the title of his assignment. A failure to lodge such a declaration is equivalent with direct acceptance of the succession (Art. 1015). However, if the heir is an individual without full legal capacity or if there are grounds for recognizing such an individual as legally incapacitated, and in a situation when the heir is a legal person, a failure to lodge a declaration in the defined time is equivalent to accepting the inheritance with the benefit of inventory. Additionally, pursuant to Art. 1016, if one of the successors has accepted the inheritance with the benefit of inventory it is assumed that the successors who did not lodge a declaration of intent have accepted the inheritance with *beneficium inventarii*[18]*.* Similarly, the State Treasury and units of administrative division (*gmina*) are not required to lodge any declaration on accepting the inheritance and they acquire the inheritance with the benefit of inventory (Art. 1023 §2)[19].

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16 For more information on the discussion concerning the development of regulations concering liability for inherited debts, see Przybyłowski (1969, p. 239 et seq.).

17 For more information on the successors' liability for inherited debts see Piątowski (2003, p. 174 et seq.); Skowrońska-Bocian (2010, p. 133 et seq.); Skowrońska-Bocian (1981) and Stobienia (1982, p. 28 et seq.).

18 If before the end of the period assigned for lodging a declaration of acceptance or renouncement of inheritance an heir has died without filing such a declaration, it can be lodged by his successors. The period for lodging this declaration may not terminate earlier than the period assigned for lodging a declaration concerning the succession left by the deceased heir (Art. 1017). Additionally, such declaration may not be lodged with conditional or temporal reservation and it may not be revoked by the heir (Art. 1018 § 1 and 2) Declaration of acceptance or renouncement of the inheritance is lodged with the court of laws or the notary. It may be lodged orally or in writing with an officially authenticated signature. An authorization to lodge a declaration of acceptance or renouncement of an inheritance should be executed in writing with an officially authenticated signature.

19 See also: Piątowski (1986, p. 291 et seq.) and Skowrońska-Bocian (2003, p. 217 et seq.).

An heir who has accepted the inheritance with the benefit of inventory is liable for inherited debts only up to the value of the inherited property ascertained in the inventory, that is to the actual value of the inherited assets (Art.1031 §2). The aforementioned limitation of the liability is revoked if the heir has deceitfully failed to enter assets into the inventory, or has entered non-existent debts into the inventory. The inventory is executed either following a motion (lodged by the heir, or a person entitled to legitime, legatee, executor of the testament, or a creditor of the inheritance and the appropriate tax office), or *ex officio* (when the heir has lodged a declaration of accepting the inheritance with *beneficium inventarii* and the inventory has not been executed previously, or if an administrator of inheritance has been appointed)[20].

The heir who took advantage of *beneficium inventarii* may plead his limited liability for inherited debts in course of both examination and enforcement proceedings. The execution of heir's liability limited in accordance with *pro viribus hereditatis* principle may lead to certain difficulties, particularly if the heir has paid back some debts without knowing about the existence of others, or if he has paid back only selected debts while being aware of others. Therefore, in accordance with the provisions set forth in Art. 1032 a successor who has accepted the inheritance with the benefit of inventory and has paid back some inherited debts without knowing about the existence of other debts is liable for the unpaid debts only up to the amount resulting from the difference between the value of the actual inherited assets ascertained by the inventory and the value of funds disbursed to settle the debts which he has paid back. On the other hand if he had been aware of the existence of other inherited debts but had failed to pay them back, his liability for these debts would exceed the value of the actual inherited assets but only up to the amount to which he would have been obliged had he paid back all the inherited debts properly. Additionally, the heir's liability due to bequests and instructions is always limited to the value of the actual inherited assets (Art. 1033)[21].

[20] Detailed rules for executing the inventory were defined in *Rozporządzenie Ministra Sprawiedliwości z 1.10.1991 r. w sprawie szczegółowego trybu postępowania przy zabezpieczaniu spadku i sporządzaniu spisu inwentarza* (Dz.U. Nr 92, poz. 411); see Art. 644 and 666 of the Code of Civil Procedure.

[21] More on the rules concerning successor's liability for legitime in: Skowrońska (1981, p. 3 et seq.) and Szpunar (1948, vol. 8, p. 51 et seq.).

6. The solutions adopted by Roman law with regard to limiting successors' liability for inherited debts are also applied by other contemporary European legislative systems[22]. These solutions were also incorporated into the currently binding European legal regulations via the civil codifications of the 19th century.

The Justinian *beneficium inventarii* is known to French law. The currently binding civil law of France, following the amendments introduced into the succession law in 2006[23] contains stipulations allowing for simple acceptance of inheritance or for limiting the liability for inherited debts by executing the inventory (Art. 768 et seq. c.c.)[24].

The option of limiting liability for inherited debts by means of *beneficium inventarii* is also stipulated by contemporary German legislative system. Pursuant to § 1993 BGB (Bürgerliches Gesetzbuch from 1900) a successor may provide the relevant court with an inventory executed in accordance with the requirements set forth in §§ 1994 – 2013 BGB, and by doing so limit his liability to the inherited assets.

Austrian succession law also allows for accepting succession unconditionally or with the reservation of the benefit of inventory (§§ 800-806 ABGB)[25].

Italian succession law takes a similar approach. Art. 470 of the Italian civil code from 1942[26] specifies options for the successor to accept the inheritance simply or with the benefit of inventory. The detailed procedure for executing the inventory of the succession is set forth in Art. 484-511 *codice civile*.

Similarly Spanish legislation introduces the option for accepting the inheritance with the benefit of inventory. The detailed procedures of executing the inventory of the succession as well as the issues connected with the time for deliberation have been regulated in Art. 1010-1030 of the Spanish *código civil* [27].

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22 More on the reception of *beneficium inventarii* in: Obarrio Moreno (2005, p. 61 et seq.).

23 Code Civil from 1804 changed with Act No. 2006-728 dated 23 June 2006 - Art. 1 Official Journal 24 June 2006; in force from 1 January 2007.

24 Art. 774 of the French Code Civil from 1804 already contained stipulations allowing successor to accept the inheritance directly or with the benefit of inventory. Detailed procedure of executing inventory and its effects for the successor and creditors of inheritance were stipulated in Art. 713-810 c.c.

25 Allgemeines Bürgerliches Gesetzbuch (Stand BGBl. No. 118/200).

26 R.D. 16 marzo 1942, n. 262 Approvazione del testo del Codice Civile.

27 Código civil z 1898 (Real Decreto de 24 de julio de1889 oraz Real Orden de 29 de julio de 1889).

7. Therefore, briefly summing up the issues connected with the benefit of inventory we can conclude that the Justinian model of this kind of liability for inherited debts found a permanent place in the later science of private law and was confirmed in modern codifications of law. It found its way to the Polish and European legal systems by way of the great civil codifications which were in force in Europe during the 19th century, and in the territory of Poland in the time of foreign rule and after the country regained independence in 1918. Similarly, Polish succession law unified and codified after World War II, as well as the contemporary systems of private law in other European countries beside the option of direct acceptance of inheritance allow for acquiring the succession with *beneficium inventarii.*

It should be emphasized that the Roman *beneficium inventarii* was a result of modern reforms which Justinian introduced, among others, into the succession law. These proved to be so well-founded that the principle discussed here, namely *beneficium inventarii* is an example of a Roman solution which transcended the barrier of centuries and became the core element of the modern regulations in the European systems of succession law.

REFERENCES

ANKUM, H. **La classicite de la separatio bonorum de l' heres neccessarius en droit roman**. In: Studi Groso, Torino, 1968, vol. 2, p. 365 et seq.

ANKUM, H. La Femme Mariée et la loi Falcidia, **LABEO**, 1984, vol. 30, p. 28 et seq.

BEDUSCHI, C. **Hereditatis aditio**. Milano: Giuffrè, 1976.

BIONDI, B. **Istituti fundamentali di diritto ereditario romano**. Milano, 1948, p. 23 et seq.

BOJARSKI, W. In integrum restitutio w prawie rzymskim. **Roczniki Teologiczno – Kanoniczne**, 1963, vol. 10, p. 15 et seq.

BOJARSKI, W. **Separatio bonorum**. In: Księdze Pamiątkowej ku czci Profesora Leopolda Steckiego, Toruń, 1997, p. 603 et seq.

BONFANTE, P. **Corso di diritto romano – I, Diritto di famiglia**. Milano, 1963, p. 398.

BONIFACIO, F. In tema di lex Falcidia. **IURA**, 1952, vol. 3, p. 229 et seq.

BRETONE, M. Gai. 2,187 – 189. **LABEO**, 1958, vol. 4, p. 301 et seq.

DE LA ROSA DIAZ, P. **Algunos aspectos de la lex Falcidia**. In: Studios en homenaje al Prof. F. Hernandez – Tejero, Madrid, 1994, vol. 2, p. 111 et seq.

ESPÍNDOLA, H. H. Notas sobre el beneficium inventarii, Sekunda parte: Las acciones. **Revista se Estudios Historio – Juridicos**, 1983, vol. 8, p. 13 et seq.

ESPÍNDOLA, H. H. Notas sobre el beneficium inventarii. **Revista se Estudios Historio – Juridicos**, 1982, vol. 7, p. 21 et seq.

FADDA, C. **Concetti fondamentali del diritto ereditario romano**. Milano, 1949, vol. 2, p. 36 et seq.

FIDLER, Jan (Ed). **Prawo cywilne obowiązujące w Królestwie Polskim**. Warszawa, 1916, p. 253 et seq.

FRANCIOSI, G. **Lex Falcidia, SC Pegasianum e disposizioni a scopo di culto**. In: Studi Donatuti, Milano, 1973, vol. 1, p. 401 et seq.

GRODZISKI, S. Wpływy Code Civil oraz innych kodyfikacji napoleońskich na ziemiach polskich (część I). **CPH**, 2005, vol. 57.2, p. 61 et seq.

GUARINO, A. Gai. 2,155 e il beneficjum separationis dell' heres necessarius. **SDHI**, 1944, vol. 10, p. 240 et seq.

GUARINO, A. Il beneficjum separationis dell' heres necessarius. **ZSS**, 1940, vol. 60, p. 185 et seq.

KASER, M. **Das römische Privatrecht**. München, 1971, vol. 1, p. 215 et seq.

KASER, M. **Das römische Privatrecht**. München, 1971, vol. 2, p. 382.

KASER, M. Zur In integrum restitutio, besonders wegen metus und dolus. **ZSS**, 1977, vol. 94, p. 101 et seq.

KURYŁOWICZ, M. The significance of Justinian Law. Nowe problemy prawa justyniańskiego. **Folia Societatis Lublinensis**, 1983, vol. 25, p. 67 et seq.

LA PIRA, G. **La successione ereditaria intestata e contro il testamento in diritto romano**. Firenze, 1930; p. 48 et seq.

LISOWSKI, W. **Kodeks Cywilny obowiązujący na Ziemiach Zachodnich Rzeczypospolitej Polskiej**, Poznań, 1933, p. 873 et seq.

LONGSCHAMPS DE BARIER, F. **O elastyczność prawa spadkowego. Fideikomis uniwersalny w klasycznym prawie rzymskim**. Warszawa, 2006, p. 77 et seq.

MĄCZYŃSKI, A. **Kodeks Napoleona, Kodeks cywilny Królestwa Polskiego, Kodeks zobowiązań i inne przepisy obowiązujące w województwach centralnych**. Warszawa, 2008, p. 62 et seq.

MALEC, D. Wpływy Code Civil oraz innych kodyfikacji napoleońskich na ziemiach polskich (część II). **CPH**, 2005, vol. 57.2, p. 69 et seq.

MANNINO, V. Cervidio Scevola e l' applicazione della Falcidia ai legati fra loro connessi. **BIDR**, 1981, vol. 84, p. 125 et seq.

O POSTĘPOWANIU SPADKOWYM. Dekret z dnia 8 listopada 1946 roku. **Dz.U.P.R**. Nr 63. poz. 346/46.

OBARRIO MORENO, J.A. La recepcie del beneficjum inventarii e les fonts en la doctrina catalana. **Revista de Dret Històric Català**, 2005, vol. 5, p. 61 et seq.

PIĄTOWSKI, J.S. **Prawo spadkowe**. Zarys wykładu. Warszawa, 2003, p. 174 et seq.

PIĄTOWSKI, J.S. **System prawa cywilnego – vol. 4 – Prawo spadkowe**. Wrocław-Warszawa-Kraków-Gdańsk-Łódź, 1986, p. 291 et seq.

PIĘTAK, L. **Prawo spadkowe rzymskie**. Lwów, 1882, p. 82 et seq.

PŁAZA, S. **Historia prawa w Polsce na tle porównawczym**. Kraków, 1997, vol. 1, p. 141 et seq.

PRAWO SPADKOWE. Dekret z dnia 8 października 1946 roku. **Dz.U.R.P**. Nr 60, z dnia 20.11.1946 r. poz. 328.

PRZYBYŁOWSKI, K. Ukształtowanie zasad dotyczących odpowiedzialności za długi spadkowe w polskim prawie cywilnym. **Studia Cywilistyczne**, 1969, vol. 13-14, p. 239 et seq.

RADZISZEWSKI, A. **Kodeks Cywilny austriacki z roku 1811 obowiązujący w Małopolsce i na Śląsku Cieszyńskim**. W tłumaczeniu S. Wróblewskiego wraz z ustawami uzupełniającymi. Lwów, 1938, p. 266 et seq.

REGGI, R. **Ricerche interno al. beneficjum inventarii**. Milano, 1967, p. 50 et seq.

ROZPORZĄDZENIE Ministra Sprawiedliwości z 1.10.1991 r. w sprawie szczegółowego trybu postępowania przy zabezpieczaniu spadku i sporządzaniu spisu inwentarza, **Dz.U. Nr 92**, poz. 411.

SCHWARZ, F. Die Rechtswirkungen der lex Falcidia. **ZSS**, 1943, vol. 63, p. 314 et seq.

SCHWARZ, F. War die lex Falcidia eine lex perfecta. **SDHI**, 1951, vol. 17 p. 225 et seq.

SKOWROŃSKA, E. Odpowiedzialność spadkobierców za zachowek w polskim prawie spadkowym. **Nowe Prawo**, 1981, vol. 1, p. 3 et seq.

SKOWROŃSKA-BOCIAN, E. **Komentarz do kodeksu cywilnego – Księga czwarta – Spadki**. Warszawa, 2003, p. 217 et seq.

SKOWROŃSKA-BOCIAN, E. **Odpowiedzialność spadkobierców za długi spadkowe**. Warszawa, 1981.

SKOWROŃSKA-BOCIAN, E. **Prawo spadkowe**. Warszawa, 2010, p. 133 et seq.

SÓJKA-ZIELIŃSKA, K. **Kodeks Napoleona. Historia i współczesność**. Warszawa, 2008, p. 20 et seq.

SÓJKA-ZIELIŃSKA, K. **Wielkie kodyfikacje cywilne. Historia i współczesność**. Warszawa, 2009, p. 120 et seq.

STEIN, P. **Lex Falcidia**. Ateneum, 1987, vol. 65, p. 453 et seq.

STOBIENIA, J. Spadek jako przedmiot realizacji odpowiedzialności za dług spadkowy. **Nowe Prawo**, 1982, vol. 3-4, p. 28 et seq.

SZPUNAR, A. Zachowek w polskim prawie spadkowym. **Państwo i Prawo**, 1948, vol. 8, p. 51 et seq.

VOCI, P. **Diritto ereditario Romano**. Milano, 1960, p. 617.

WACKE, A. **Die Rechtswirkungen der lex Falcidia**. In: Studien Kaser, Berlin, 1973, p. 209 et seq.

WESENER, G. **Beschränkungen der Erbenhaftung im römischen Recht: separatio bonorum und beneficium inventarii**. In: Ars boni et aequi, Festschrift für W. Waldstein zum 65. Geburstag, Stuttgart 1993, p. 410 et seq.

WOŁODKIEWICZ, W. Uwagi o roli prawa rzymskiego w pracach nad Code Civil des Francis. **CPH**, 2005, vol. 57.2, p. 43 et seq.

WRÓBLEWSKI, S. Komentarz do § § 531-824. **Austriackiego Kodeksu Cywilnego (prawo spadkowe)**. Kraków, 1904, p. 772 et seq.

ZOLL, F. **Prawo cywilne, vol. 4. Prawo familijne i spadkowe**. Poznań, 1933, p. 295 et seq.

ZYGMUNT, L. **Kodeks Cywilny obowiązujący na Ziemiach Zachodnich Rzeczypospolitej Polskiej**. Wojewódzki Instytut Wydawniczy. Warszawa – Poznań, 1928, p. 376 et seq.