

Research on Balancing Testamentary Freedom and Limitation

MengYang Li

Law School, China Jiliang University, China

Abstract: In the field of law and morality, wills, as an important tool for the distribution of personal property, are regarded as a kind of respect for personal will and freedom. However, with the constant change of social, cultural and legal environment, the restriction of testaments freedom has gradually become one of the focus of public discussion. The purpose of this paper is to explore the impact of testamentary restrictions on personal freedom and the challenge of finding a balance between protecting the rights of family members and social justice. Due to various deficiencies and imperfections in the restriction on the freedom of will, the Inheritance Law of our country objectively violates the will of the decedent and infringes on the legitimate rights and interests of the decedent. Therefore, it is necessary to improve the restriction on the freedom of will in combination with public order and good customs and care for special groups to meet the needs of society. Reduce disputes between families's members caused by inheritance division, so that the masses recognize the inheritance law from their hearts and consciously abide by the inheritance law. The purpose of this paper is to stimulate in-depth reflection on the relationship between testamentary freedom and limitation, and to explore how to achieve the respect of individual will and the realization of social justice within the legal framework. Through the discussion of this complex issue, we hope to provide some useful reference and inspiration for the future law making and judicial practice.

Key words: Testamentary Freedom; Restrictions; Inheritance Law; Public Order and Good Customs; Legal Share

1. Overview of Our Country's Testamentary Freedom

1.1 The Legal Basis of Testamentary Freedom

Testamentary freedom refers to the right of the testator, or the decedent, to dispose of the property after his death by making a will. This right is regarded as an important part of the freedom of individual will and is one of the cornerstones of the modern society ruled by law. Its content generally includes the freedom to decide the content of the will, the freedom to decide the subject of the inheritance, the freedom to decide the distribution method and share of the inheritance, and the freedom to choose the way of setting up the will, the freedom to change or revoke the will, our judicial authorities currently affirm the freedom of the will and protect the will of the testator. For example, Wang Yi Wang Er (a pseudonym) and his wife set up a will to give the property under their name to Chen through bequeath, and in 2013 and 2020, Wang and his wife died one after another, and the will began to take effect. However, the five heirs refused to recognize the validity of the will, and the legal heir Wang SAN claimed that the will was invalid because there was no special part of his arrangement, claiming that he had no ability to work and no source of income. However, the court argued that the will establishment procedure was legal and notarized, and that although Wang SAN did not have the ability to work but had a pension, it did not meet the applicable requirements of the special share, so it was determined that the will was valid. It reflects that our judicial organs protect the freedom of will and fully respect the will of the decedent. [1]

1.2 The Value of Testamentary Freedom

As the concrete expression of the principle of autonomy of will in the succession code of civil law, testator freedom is self-evident in its importance to the integrity of the succession code. It can perfectly make up for various deficiencies of legal succession, and relatives under the same roof are inevitably close and

estranged. Naturally, the testator can make more appropriate arrangements than any law according to the family relationship and his own judgment, and at the same time, it can better protect personal property rights, so that the estate can be completely handled according to the will of the decedent, and maintain the harmony and stability of the family. If the will arranges to donate the estate to the society and other public welfare undertakings, it can create more wealth. Promote social harmony.

2. Limitation of Testamentary Freedom

Freedom is not intemperate freedom, in our country's restrictions on the freedom of will mainly have two aspects, one is that the content of the will should not violate one of the basic principles of civil law, the principle of public order and good custom, and can not cause damage to the public interest of society, the other is not to cancel the necessary share of the inheritance of the heir, that is, the so-called "special share" system. At the same time, there are also some restrictions on the freedom of will based on the characteristics of the legal system itself, such as the form of the will based on the legal principle must conform to the legal provisions, and the decedent with obligations based on the relativity of the contract must fulfill the obligations in order to obtain the estate. Specifically, it can be divided into the following categories:

2.1 Limitations Prescribed by Law

The restrictions provided by law are also the most severe of all the restrictions on the freedom of will. The legal system of different countries and regions has certain restrictions on the freedom of will. These restrictions may involve provisions in inheritance law, family law, property law, etc., aimed at protecting the interests of the beneficiaries of a will from abuse of testamentary freedom leading to unfair distribution of property. In the provisions of China's civil law system, the most representative restriction stipulated by law is the "special share system", also known as "mandatory share system".

This system originated in Japan, intended to reserve a certain proportion of property in family inheritance to the eldest son or heir to maintain the integrity and inheritance of family property, but today's "special share system" is intended to protect the vulnerable

groups, for this civil law provisions vary, but generally can be divided into three types. They include people who depend on the decedent and have lived together, children who have no financial resources and are unable to work, parents or spouses, and finally minor children. At present, there are two opinions in the current civil law in China, one is that the "special share system" applies to "people who have no working ability and no economic source", the second is that "fetus" must be included. [2, 3]

The establishment of this system not only realizes the family rearing function and maintains the basic social ethics, but also directly restricts the freedom of the will of the decedent through legal provisions.

2.2 Restriction of Social Public Interest

The abuse of testamentary freedom may lead to the concentration of wealth, social injustice and inequality. In order to maintain social public interests and social stability, the law may restrict the right of individuals to completely freely control property and impose certain restrictions on the freedom of testamentary to ensure the reasonable distribution of wealth at a certain level. For example, some countries have established inheritance taxes to tax estates exceeding a certain amount in order to achieve wealth redistribution and social equity. Shi Zhengwen, director of the Fiscal and Tax Law Research Center of China University of Political Science and Law, has expressed relevant views that China's current income distribution gap is large, and the gap between stock wealth is even larger. Among the policy tools to avoid the widening of income gap, inheritance tax can adjust the wealth gap, promote social equity, and promote the development of public welfare undertakings. Therefore, under the guidance of common prosperity, the introduction of inheritance tax in the future is undoubtedly the trend of The Times. [4]

2.3 Restriction of Family Traditions and Moral

In the context of Chinese society and culture, family traditions and moral values may also have an impact on the freedom of wills. Individuals may be bound by family elders or social conventions to take family traditions and moral responsibilities into account in their

testamentary arrangements.

2.3.1 Family harmony and inheritance

Family traditions emphasize family continuity and harmony. In some cultures, it is the responsibility of the eldest son or family heir to inherit and manage family property in order to preserve the family's tradition and dignity. As a result, testamentary freedom may be constrained by family tradition, requiring that the estate be distributed according to specific rules or traditions, rather than being left to the sole discretion of the individual. When making a will, individuals may consider the feelings and needs of family members, follow family ethics, and avoid causing conflicts and disputes within the family. Therefore, family morality may exert certain influence and limit on individual testamentary decision.

2.3.2 Children's education and future

In some cultures, parents are responsible for providing education and support to their children and ensuring their future development. Therefore, a will may be limited by consideration and a sense of responsibility for the future of the children, requiring that a certain percentage of the property be left for the education and living of the children.

2.3.3 Moral obligation and charitable giving

Wills may also be influenced by personal moral obligations and charitable giving. Some people may wish to donate a portion of their wealth to charities or social causes in order to give back to the community or fulfill their own moral ideals. This moral responsibility and charitable will may limit an individual's discretionary use of an inheritance.

3. Practical Problems and Case Analysis of Testamentary Freedom Restriction

3.1 Judicial Practice of Invalidation of Will

The eighth of the ten typical family cases issued by the People's Court of Nangang District of Harbin City: the decedent Zhang Mou and his first wife Qian Mou had a son Zhang Mou, and the two sides divorced; He registered his marriage with his second wife Liu in 2019 and had no children after marriage. When Zhang died on January 15, 2021, he personally wrote a will on April 24, 2020, which stated that "after Zhang's death, Zhang's housing provident fund will be inherited by Zhang", and the will indicated the year, month and date below the letter and had the

signatures of the decedent Zhang and the defendant Liu. The defendant Liu proposed that the decedent Zhang Mou made a printed will on September 21, 2020, which stated that "Zhang's housing provident fund is inherited by Liu mou", with the year, month and date indicated below the will, and two witnesses signed the will. The two witnesses did not witness the formation of the will, but only signed the will that was printed and signed by Zhang. The Nangang District People's Court makes an accurate judgment on the validity of printed wills in strict accordance with the principle of legal form in view of the newly emerging validity of printed wills. This is a typical legal norm to restrict the freedom of will with formal requirements, in order to establish a will in accordance with the form required by law, although the testator's intention is true, the will does not have the vitality of the legal sense.

3.2 Disputes in the Interpretation and Execution of Wills

In the search, I read such two cases: the first is the marriage of Jiang and Huang in Luzhou City, Sichuan province. Huang met Zhang in 1996 and began to live together with him. In 2001, Huang Mou suffered from liver cancer and then made a notary will pressure down all the property to Zhang Mou. After the death of Huang Mou legatee Zhang Mou holding a will to require the current property possessor Jiang Mou to deliver the property was rejected, then Zhang Mou sued, the court heard that Huang Mou made a will is a true intention, but against the principle of public order and good custom, so the will is invalid. The second case is that Wu is a nanny for Ye, and Wu learns to mount pictures from Ye, so the relationship between the two is also a mentoring relationship. In 1999, Ye Mou made a will to give all his property to Wu Mou, after Wu died, his daughter took Ye Mou's collection of precious calligraphy and painting without authorization, so Wu sued the court to ask for its return. The court heard that Ye Mou made a will of the intention to express true, so that the gift is valid, identified Wu as Ye Mou all the property of the legal owner.

The only difference between these two cases lies in the different relationship between the testator and the legatee. The public believes that the collision between public order and

good customs and testamentary freedom can be seen in case 1, while case 2 is a kind of social assistance behavior that should be actively encouraged. [5] However, only from the perspective of legal relationship, there is no difference between the two in essence, but the result of the judgment is completely opposite. Whether the principle of public order and good customs can reduce the effectiveness of the will should not be determined mechanically by whether there is a cohabitation relationship between the two, and whether the testator establishes a will simply to maintain an improper relationship between men and women should be comprehensively investigated. If Zhang takes care of Huang in case 1, he has been taking care of Huang after suffering from cancer. So whether the will still violates the principle of public order and good customs needs to be verified. These two cases expose the unclear judgment standard of whether there is a conflict between private autonomy and public order and good customs carried on the will at present, and the legislation needs to be improved.

3.3 The Role and Challenge of the Court in Testamentary Freedom and Limitation

The legal principle represented by the principle of public order and good custom and the legal rule represented by the special document constitute the current system of restriction of the freedom of will in our country, but whether such legal norms can be implemented in practice largely depends on the legal ability and professional quality of judicial personnel in the judiciary, so the court plays the most important role in the freedom and restriction of wills. At the same time, it is not difficult to find that in the judgment of inheritance, except for the will that violates the formal requirements of legal norms, in all cases involving the discretion of judges, they try to find a balance between the freedom of will and the public order and good customs or many other requirements that restrict the freedom of will by relying on the wisdom of judges, but this is also a challenge. It is necessary to establish a relatively clear boundary between the standard of conflict between testaments' freedom and limitation. If the judge is given too broad discretion, so that under the same legal system, the judge makes diametrically opposite judgments on similar or

even the same type of cases, then it is not only the sorrow of the losing party or the judge. It is also a mockery of the rule of law society under this legal system. [6]

4. Balance the Relationship Between Testamentary Freedom and Limitation

It is a complicated legal and ethical issue to balance the relationship between freedom and restriction of will, but the game between values is also an eternal proposition in jurisprudence. Freedom as the highest value has the so-called "imperial" status, is the eternal goal of human pursuit. In many of the objections to the freedom of will, most of the criticism uses fairness and justice as a weapon, while another effective and powerful impact is efficiency, social resources are effective, how to gather them all to the highest value. Efficiency, fairness, and justice are the only values that stand in opposition to testamentary freedom. In this value confrontation and game, whether there is a middle way, which can coordinate the relationship between the two, not only respect the imperial status of freedom, but also take into account the sonorous voice of other values, is a question worthy of deep investigation.[7]

4.1 Establish Comprehensive and Supporting Legal Norms

Establishing a clear legal norm to define the scope and limitation of testamentary freedom is the basis of realizing the balance between personal testamentary freedom and social justice. German scholars pointed out that "the most important feature of private law is the right of the individual to autonomy or self-development." Then, as a unilateral legal act, will undoubtedly carries many expectations of private law in the field of inheritance law.

For example, the principle of free will among the basic principles of will designations: emphasizes that the testator should be completely voluntary in the formulation of the will, without external intervention, and the mind is clear, able to understand their own behavior and its consequences. But at the same time, it stipulates the principle of clarity and the principle of legality to restrict it. It is like drawing a circle to freedom, but some scholars criticize freedom within the circle as not free, but as Hegel said, if we think that freedom is

to do whatever we want, we can only consider this view as a complete lack of ideological cultivation.

Looking forward to the laws of all countries in the world, all of them have done a slight degree of control over the freedom of will in the form of elements. The validity of a will does not depend on whether it is perfect or not, whether the expression of the meaning is true or not, or whether it violates the public order and good customs, but whether the testator establishes the will in a way recognized by the law, otherwise the will will not have the vitality recognized by the law, nor can it be recognized and supported by the state public power.[8] Most of the requirements for formal elements include written form, witnesses and notarial procedures. In addition, there are clearly defined legal inheritance rights of legal heirs (such as spouses, children, etc.), even if there is a will, this part of the property must be distributed to legal heirs in accordance with the law. Clarify who qualifies as legal heirs and who can be named as beneficiaries in the will. And set up executor and other will execution and dispute resolution mechanism.

By establishing such a comprehensive set of legal norms, it can not only protect the freedom of individuals to make wills, but also ensure that the execution of wills will not violate social justice and moral principles, but also protect the basic rights and interests of legal heirs, and achieve the balance between personal will and social responsibility.

4.2 Strengthen the Fairness and Rationality of Wills

4.2.1 Will notary system promotion

Strengthening the fairness and reasonableness of a will involves ensuring that the process of making and executing a will is fair and transparent, as well as ensuring the reasonableness of the contents of the will. At present, it is widely used to establish notarial procedures; A notary public can provide professional legal advice to help the testator better understand the law, ensure that the testator can better understand the legal provisions, and ensure that the content of the will does not violate the law. In addition, the formulation of the will will be carried out under the witness of a notary public to effectively prevent illegal acts such as forgery, coercion or fraud. After the will is made, the

notary office will also provide storage services to ensure the safety of the will and effectively prevent the will from being lost or tampered with.

4.2.2 Strengthen the flexibility of revocation and amendment of wills

It clearly stipulates under what circumstances the testator can revoke the will, such as the emergence of new family members or significant changes in property status, and establishes a simple will modification procedure, allowing the testator to adjust the contents of the will according to his own will and actual actions under the premise of not violating the law and moral principles. And considering that the will of the testator may change over time, for timeliness reasons, the testator should be allowed to revise the will several times before life to reflect its latest wishes.

4.2.3 Legal supervision and judicial intervention

The court can examine the validity of the will at the execution stage of the will to ensure that the content and form of the will comply with the provisions of the law. When there is a dispute over the content of the will, the court provides a notarized dispute resolution approach to protect the rights and interests of the legitimate heir while respecting the will of the testator.

The court can also issue relevant precedents to provide guidance for the formulation and interpretation of wills and to help the testator avoid common legal problems and disputes.

4.3 Strengthen Legal Education and Social Awareness

It is a delicate and effective way to balance the relationship between freedom and restriction of will by strengthening legal education and social awareness. This method not only focuses on the formulation and implementation of legal norms, but also finally enhances the public's legal cognition and moral responsibility, so as to promote a more reasonable and harmonious testator culture at the social level.

Through school education, community lectures, online courses and other channels, popularize relevant knowledge, let the public understand the importance of wills and the correct method of making wills, improve the legal literacy of the public, so that they can legally and

reasonably express their will when making wills. It is also necessary to provide professional training for lawyers, notaries and other professionals to enhance their ability to guide the process of making and executing wills, so as to ensure the fairness and legality of wills.

Through these methods, the public's understanding of the relationship between freedom and limitation of wills can be effectively improved, and the process of making and executing wills can be promoted as fair and reasonable, so as to protect the interests of family members and society as a whole while respecting the will of individuals.

5. Conclusion

In the overall construction of private law and the continuous revision with the change of times, if there is any bottom line that must not be touched, it should be that the autonomy of individual will must be adhered to, especially the will as its representative in the inheritance law. However, freedom is not absolute freedom, the person is in the society, the law is in the legal system, it is bound to be subject to many restrictions, the types of restrictions are various, China's current legal norms for the freedom and restriction of wills are not mature. To carry out legal transplantation requires legislation first and a long process of localization. In this process, when a judge faces the conflict between the values of freedom, fairness, justice and efficiency, how to exercise his or her discretionary power can objectively maintain the authority of the judiciary and enhance the credibility of the judiciary is particularly important. In my opinion, when facing such cases, the judge should give priority to the provisions of legal norms, and only when the results of the provisions are contrary to the general justice of society, the principle should be taken into consideration. The judge should be humble and merciful, rather than blindly maintaining the stability of the legal system and the authority of the rule of law.

Throughout the world, various attempts have been made at all times and at home and abroad

on how to handcuff a reasonable "shackle" to the freedom of will, but there has never been a way to convince everyone once and for all. The legal principles represented by public order and good customs and legal rules represented by special share have been constructed in our country to restrict the freedom of will. In addition, in many cases, under the premise of respecting objective facts and legal provisions, judges use their discretion to make many decisions that the public is convinced of. By combining the perfection of legal norms and judicial supervision in detail, they will find a convincing and feasible path while taking into account the freedom and restriction of wills.

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