

WILLS IN THE DIGITAL ERA

OPORUKE U DIGITALNOM VREMENU

Dubravka Klasiček

Faculty of Law, University of J.J.Strossmayer, Osijek, Croatia

Pravni fakultet, Sveučilište J.J.Strossmayera, Osijek

Abstract

Oral will is the only type of will that can be made orally, in front of two simultaneously present witnesses with general legal capacity. The way oral wills are made has not changed much since ancient Rome. However, today's technology has made it possible to create oral wills by recording testators last words on camera or by communicating them via video-call, thus eliminating the need for simultaneously present witnesses. Technology is also making an impact on testation in another way – by changing contents of the will. The digital world has taken hold of our lives, so most of us manage our financial accounts online, have social media accounts, store photos and other documents online. What will happen with all of this after we die? We can expect that, soon, we will be seeing more and more wills containing instructions concerning our digital identity and what will happen to it after our death.

1. Introduction

Wills are one of the most formal legal transactions in civil law today. There are different forms of wills and they all have to meet strict criteria in order to be valid. The oral will is the only type of will that does not have to be composed in writing and it can only be made under extraordinary circumstances, in front of two simultaneously present witnesses. If witnesses are not present at the time of the testator's death, he/she cannot make a valid will. In the past, the only way for someone to hear the testator's last words was to be present when he/she uttered them. Also, that was the only way for witnesses to serve as a means of controlling each other and to help prevent or minimize possible manipulations.

Sažetak

Usmena oporuka je jedina vrsta oporuke koja se može dati i usmeno, pred dva istodobno prisutna svjedoka s općom poslovnom sposobnošću. Način na koji nastaju usmene oporuke se nije puno promijenio od staroga Rima. Međutim, danas je tehnologija omogućila stvaranje usmene oporuke snimanjem davanja posljednje riječi kamerom ili komuniciraju putem video-poziva, čime se eliminira potreba za istovremenom prisutnošću svjedoka. Tehnologijom se također postiže veći učinak na drugi način - mijenja se sadržaj oporuke. Digitalni svijet je zahvatio naše živote, tako da je većina nas upravlja svojim financijskim računima online, koristimo društvene medije, pohranjujemo fotografije i druge dokumente na internetu. Što će se dogoditi sa svim time nakon što umremo? Možemo očekivati da će oporuke uskoro sadržavati i upute o našem digitalnom identitetu i što će se dogoditi s njim nakon naše smrti.

However, today with the help of technology, a testator can reach witnesses by making a video call and ensuring that they hear what he/she has to say. Alternatively, a testator could record his/her last words on camera, in which case no witnesses are necessary at all. Although, existing technology enables testators to use these methods, they are still not recognized by existing law. The second part of this paper deals with one's digital inheritance and what happens to it after a person dies. The contents of wills have mostly stayed the same since Roman times, but the increase of digital assets that the average person has today, will almost certainly lead to change. Most people think about their physical property and what will

happen to it when they die, but until recently, people have rarely considered what will happen to their digital assets after they are no longer among the living. However, it is to be expected that there will be an increasing number of provisions in wills concerning digital property and one has to be aware of possible problems that are connected with digital inheritance. For instance, the uninheritability of some digital assets and service provider agreements that might be in opposition with the testator's provisions left in a will.

2. Technology and oral wills

2.1. Types of wills in Croatia

In this paragraph, different types of wills in Croatia will be explained, but it has to be noted that similar types of wills exist in most countries in the world /1/. Wills are categorized into ordinary and extraordinary. Ordinary wills are the ones made during normal circumstances and an extraordinary will is made if the testator is not capable of making a will in a form required under normal circumstances. Ordinary wills are: holographic wills; wills composed in front of witnesses; public wills made in front of municipal court judges, municipal court counselors and public notaries; international wills made in accordance with the rules of the Convention providing a Uniform Law on the Form of an International Will /2/. The only type of extraordinary will, according to the Croatian Succession Act (SA)/3/, is an oral will made in front of witnesses /4/. Holographic will – a will written and signed with the testator's own hand. No other formalities are necessary/5/. This type of will cannot be written on a typewriter, computer or any other type of a machine; it cannot be written with the assistance of another person; it has to be written in the testator's handwriting (not in capital letters); the signature should consist of the testator's first and last name/6/. Will composed in front of witnesses (alographic will) – a will that does not have to be written with the testator's own hand, or even written by the testator himself/herself. Because of that, some additional formalities are needed in order for this type of will to be valid. According to Art. 31 of SA, the testator

must be able to read and write; must declare in front of two simultaneously present witnesses /7/ that the document in question is indeed his/her last will and testament; the testator and witnesses must sign the document. Public will – a will that is composed in front of municipal court judges, municipal court counselors and public notaries /8/. If the testator is not able to read, write or sign the document, this is the only type of will that he/she can compose and in that case, this type of will is composed in front of two witnesses. International will – a will that is composed in accordance with the rules of the Convention providing a Uniform Law on the Form of an International Will. Any written will can be an international will if it is composed in necessary form according to the rules applicable to international wills /9/. Oral will – the only type of extraordinary will in Croatia. For the purpose of this paper, it will be explained in more detail in the following paragraph.

2.2. Oral will

Before the Inheritance Act of 2003 was passed, there were other types of wills that had some similarities with the oral will, i.e. limited validity period and certain circumstances under which they could have been made. Those wills were military wills (extraordinary, public, written will, made in front of company commander or any other commander of the same or higher rank, valid for 60 days after the war ended, or 30 days after the testator's discharge from the army /10/) and a will made aboard a Croatian ship (extraordinary, public, written will, made in front of the ship's captain, valid for 30 days after the testator returned to Croatia /11/). Today, however, the oral will is the only type of will that is made only under specific circumstances and has a validity period. It is also the only type of extraordinary will and it is the only way a testator can compose a will in a different form, other than in writing. The reason for its existence is compliance with the principle of testamentary freedom, which is one of the basic principles of all modern succession laws /12/. This principle determines that all persons, who have testamentary capacity, are entitled to appoint their heirs in a will, as well as to limit

and/or encumber their rights, within the limits prescribed by law /13/. If all of the formalities necessary for an ordinary will to be valid always had to be satisfied, testators who found themselves under extraordinary circumstances, would not be able to compose a will, since they would not be able to meet all of the conditions required by law. Furthermore, if certain persons were not able to make a will only because extraordinary circumstances prevented them from meeting all of the conditions needed for validity of a will, the principle of testamentary freedom would be severely violated. Therefore, an extraordinary type of will must exist - a will that is composed under extraordinary circumstances, when all of the necessary prerequisites for validity of ordinary wills can not be fulfilled. There are still certain formalities that have to be satisfied in order for an oral will to be valid, but they are not as strict as the formalities required for other types of wills /14/. For an oral will to be valid, it has to be a) composed orally under extraordinary circumstances that prevented testation in written form, b) in front of two simultaneously present persons who are capable of being witnesses to an oral will and c) it will only be valid until its validity period passes /15/.

a) Testation may be done orally only under extraordinary circumstances. Whether these circumstances were indeed extraordinary is assessed from the aspect of the testator. Was he/she capable of testating in a different manner or was it only possible orally? Extraordinary circumstances will usually be situations in which the testator's life was in immediate danger. But, to determine whether an oral will was made under extraordinary circumstances, it has to be determined whether the testator, at the time of his/her death, was capable of making another type of will. The mere fact that testation is undertaken in extraordinary circumstances does not have to mean that the testator was unable to make a written will /16/. For example, war operations are certainly extraordinary circumstances, but during war operations a soldier can make a holographic will or even a written will composed in front of witnesses, if his/hers life is not in immediate danger at the time of testation. On the other

hand, a person's life can be in immediate danger (acute illness) and the person may not be able to make a written will, but the circumstances surrounding him/her do not have to be extraordinary (like war operations, natural catastrophes, traffic accidents etc.).

b) If a testator is incapable of making any type of written will, he/she can declare his/her last wishes orally, in front of two simultaneously present witnesses who possess general legal capacity. Witnesses or their spouses, extra-marital partners, ancestors, descendants, relatives in collateral line up to the fourth degree, together with spouses and extra-marital partners of these persons, can not be testamentary heirs and may not benefit from that oral will. If they do, those provisions will be null and void /17/. Because the will is oral, witnesses do not have to be able to read or write /18/. However, they obviously have to be able to understand the language in which the testator declared his/her last wishes. ^{Also,} witnesses to an oral will can not be a spouse or extra-marital partner of the testator, his/her descendants, adoptees or their descendants, his/her ancestors or adopters, relatives in collateral line up to the fourth degree or spouses of any of these persons /19/. The contents of the testator's will should be written down by witnesses or dictated to someone else who will write them down as soon as possible and as accurately as possible. Furthermore, that document should be delivered to a court or a public notary, in order to ensure the highest possible authenticity of the testator's will /20/. Nonetheless, the witnesses' failure to do so will not affect validity of an oral will, but it will certainly make it harder to determine the existence of the will and its contents. If those witnesses do not act in accordance with their statutory duty, they will be heard separately in the procedure of the announcement of the will /21/.

c) Oral will is the only type of will that has a validity period. It will be valid while extraordinary circumstances last and up to 30 days after they end. After that time period, it will cease to exist by operation of Art. 37/2 of the Succession Act. If the testator dies after that

time period, the oral will is not going to be treated as a title of succession.

2.3. Oral will in the digital era

As it was explained in the previous paragraph, one of the conditions for an oral will to be valid is that it is composed in front of two simultaneously present witnesses. Before the focus of this paper is turned to technology and its help in the making of oral wills, it has to be determined why witnesses have to be present when an oral will is being composed. The first and most obvious reason is that they have to be present to hear, understand and repeat what the testator said. They also have another role - they are there to control each other and to prevent or minimize possible manipulations of an oral will /22/. When it comes to witnesses as one of the prerequisites for validity of an oral will, one can immediately see possible problems. First of all, what if there are no witnesses present to hear what the testator had said before he/she died? Secondly, there might be people present, but they are not capable to be witnesses because they lack general legal capacity or do not understand the language that the testator is speaking. Another reason why they might not be capable of being witnesses is that they are the testator's close family members or he/she wants them to benefit from his/her will. Last but not least, there may be witnesses present to hear what the testator is saying, but at the time of testation they are under significant stress because they are also affected by extraordinary circumstances that led to the testator's death, so it is entirely possible for them not to correctly hear or to forget what the testator had said. Oral wills originated in ancient Rome and they have not changed much since then. However, at that time in history, there certainly was no other way of making sure someone heard the testator's last words, other than someone being there at the time of testation. With the development of technology, what was once unimaginable is now part of everyday life. Today most people have some way of recording a private video on camera or making a video call through a smartphone, tablet, laptop or computer. This technology could be utilized in helping testators make a valid oral will in case

there were no witnesses present at the time of his/her death. For example, witnesses could be reached through video call and could serve their purpose. They could hear what the testator was saying and serve as a means of controlling each other, without needing to be at the same place as the testator. If the testator could not reach witnesses through a video call, he/she could record an oral will on camera and ensure that his/her last words were recorded verbatim, without the risk of them being distorted by witnesses' memory or interpretation. Although, this can now be done with the help of technology, none of these possibilities are recognized by Croatian SA. However, under current legislation, if an oral will was composed in front of witnesses who were not present at the same place as the testator, but were reached through a video call, there may not be any problems concerning its validity. According to SA, an oral will is valid if it is composed in front of two simultaneously present witnesses, but SA is not clear about what the term 'simultaneously present' actually implies. It could be interpreted that the witnesses have to be present at the same place as the testator, but it can also mean that both or one of them could be reached through a video call /23/. Can possible manipulations happen if witnesses were not at the same place as the testator, but were reached through video call? Of course they can, but they can also happen if the will was articulated in front of witnesses who were present at the same place as the testator, since they are only human and humans are notoriously prone to manipulation or forgetfulness, and yet nobody is thinking of eliminating them as one of the conditions for validity of an oral will /24/. It can be argued that, if the witnesses to an oral will were reached through video call, it is still in accordance with the motive behind the stipulation that they have to be present simultaneously at the time of testation. They will still hear the testator's words and ensure that the oral will is not manipulated, as if they were at the same place as the testator at the time of testation /25/. Therefore, one might conclude that an oral will composed in front of witnesses who were reached through video call, could be deemed valid, if the case ended up in court, since it is in accordance with the

legislator's motive behind the stipulation that witnesses have to be present while an oral will is being made. The other possibility of including modern technology in the making of an oral will is if the testator recorded his/her last words on camera, with no witnesses present, whatsoever. However, unlike the above mentioned example, an oral will recorded on camera, without any witnesses present, could never be considered valid, according to present SA regulations, and persons with legal interest would have the right to ask for its annulment /26/. When considering this problem, the same question as before arises. Why is it necessary for witnesses to be simultaneously present when the testator is composing an oral will? As it was already stated: a) someone must be present in order to hear the testator's last words and b) witnesses serve as a means of control: they will ensure that the oral will is not manipulated in any way. If the testator's last words were recorded on camera, are not both of these conditions met? First of all, there was 'someone' present to hear testator's last words, it just was not a human being, but a device that recorded his/her words verbatim and, second, who better to ensure objectivity and the lack of manipulation, than a device that recorded precisely what the testator said, without human nature to interfere with it? In case of disputes, if a disgruntled family member or another heir claimed that the recording was manipulated, an expert witness can examine the recording, testify to its authenticity and easily solve the problem. It has to be stated that while researching this topic, the possibility of incorporating modern technology in the making of oral wills was not found in other legislations, either. Still, it is only a matter of time until development of technology causes such provisions to find their way into various succession acts all over the world, including the Croatian Succession Act. Some court decisions already exist that can support this claim. For example, in 2012 in Australia, the Supreme Court of New South Wales/27/ deemed a will in a Word document on a laptop to be valid, because there was strong evidence that the testator (Daniel Yazbek) created it and intended it to be his testament. He had told others about it, he titled it "Will" and he used lan-

guage indicating it was intended to be read after his death /28/. Since then a Supreme Court in Queensland, Australia /29/, has upheld a will typed in the "notes" app of an iPhone and, even more important for this paper, a will recorded on a DVD /30/. Therefore, legislators should take a firm stand and explicitly either allow or proscribe this possibility and fill this legal void /31/.

3. Managing our digital estate

3.1. Digital assets

A definition of a digital asset, as found in U.S.'s Fiduciary Access to Digital Assets Act (UFADAA), says it is "a record that is electronic". Electronic meaning that it relates "to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.", and record meaning "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form" /32/. Digital assets could be classified in different ways, and these types of property and accounts are constantly changing /33/. Some authors classify them as a) access information (not an asset in and of itself, but rather a means to accessing other assets); b) tangible digital assets (include photographs, PDFs, documents, emails, online savings accounts balances, domain names and blog posts, which may have financial, cultural or sentimental value), c) intangible digital assets (for example, "likes" on Facebook, website profiles, comments, reviews left on a blog etc.) and d) metadata (data electronically stored within a document or website about data's access history, location tags, hidden text, author history, deleted data, code etc.) /34/. Other authors classify them as personal (photos, videos, e-mails, playlists, medical, educational, legal, tax records etc., kept on a computer, other media, smartphone, uploaded onto a website), social (used as storage for photos, videos, other electronic files and for interactions with other people: email, blogs, online profiles like Facebook, Twitter, LinkedIn, MySpace), financial (banking, online trading, savings accounts, subscriptions, utility bills, other financial obligations, Amazon, PayPal, e-Bay) and business (client files, pa-

tient information, customer data etc.) /35/. When it comes to the digital world, there are three typical ways in which an individual can enter it – by using smartphones or computers; by registering with online services and setting up various types of accounts and by storing files through these accounts /36/. Peoples' presence in the digital world is growing, especially among younger people. When it comes to seniors, the growth is not as noticeable, but it can certainly be seen, and it is expected that more and more seniors will be present online in the near future /37/. Although most people have at least some type of digital assets, almost nobody has any contingencies for what will happen to those assets after they die.

3.2. Managing digital assets

People's personal property has economical and sentimental value, and so do their digital assets. If one views digital content as assets, it is a new form of personal property /38/. And if it is considered a form of property, it can be bequeathed to one's heirs, just like physical property. There is, however, a big problem with digital assets - they are intangible and invisible. People store documents, photos etc. on computers, tablets, smartphones, hosting servers, networks, cloud services; they register with different online services – email, banking, online purchases, photo sharing, website hosting /39/. Most of us have more than one online account, with different types of services, we pay bills, make investments, update information, renew subscriptions, open and close accounts all the time /40/. Because of the digital assets' intangibility and invisibility, family members and other heirs might have no idea about their existence, after a person dies. It is certain that when internet users die without any plans for their digital legacy, heirs and estate executors can only guess the users' wishes /41/. As a result, heirs and executors face many problems in getting access to the deceased's digital assets and handling them. They do not know what accounts the deceased subscribed to, how to access them or how to deal with the content within each account. They also do not know where important documents, family photos,

music or video collections are stored. They might not even know they exist.

Since most people fail to provide any instructions about what should happen to their digital assets in case of their death, a lot of undesirable things could transpire. Accounts may be abandoned if an executor cannot liquidate them because he/she does not know about them or cannot access them; if bills go unpaid, penalty charges can accumulate; businesses might suffer; documents, photos etc. might be lost forever if nobody knows where they are and/or how to access them /42/; unwanted secrets might be discovered.../43/ In order to minimize those problems, it is necessary to take certain steps: map one's digital assets; list passwords and access information in a secure location and keep that information up-to-date; make sure that files are not stored in old or uncommon formats that may not be accessible without special or outdated technology; give instructions as to what will happen to each digital asset – which should be kept, which made available to the public or certain person(s) and which ones should be deleted /44/. This could be easily done, either formally, in a will, or informally, by leaving instructions with a trusted person /45/. The easiest way to let heirs know about the testator's digital assets and his/her instructions concerning them is to incorporate such provisions in a will. Of course, not everything concerning one's digital assets should be put in a will. For example, it is not advisable to put access and password information in a will for two reasons. The first is because of privacy issues, since all testators' wills are going to be read at the pronouncement of the will, so everybody present at the hearing will be privy to them. The second is: this information changes often, so the will would have to be changed each time a password is changed, a new account opened or an old one closed. Therefore, this information should be drafted in a separate document which will supplement a will with login information /46/. They could be saved and password protected on a CD, DVD-R or USB flash drive or printed out, they could be stored in a safe deposit box or with an attorney. But, wherever this information is stored, someone

should either know about them (a trusted person) or their location should be mentioned in a will /47/. Some authors argue that wills can be an awkward method of planning for the disposition of digital assets because the formalities needed for the execution of wills are in opposition with rapidly changing nature and ownership of digital assets /48/. Provisions in a will regarding digital assets might become outdated quickly, so the will would have to be changed often to stay in accordance with changes concerning digital assets. Even if the testator puts provisions concerning his/her digital assets in a will, it is unclear whether service providers will respect them. However, in spite of all of that, it can be expected that provisions put in a will concerning digital assets, are going to become more common /49/.

3.3. Some possible problems concerning digital inheritance

Access to files people put on social media, networking or cloud sites is defined by service agreement with the provider /50/. These policies often preclude the principle of testamentary freedom, so, even if the testator makes arrangements concerning his/her digital assets in a will, the rights of executors and heirs are unclear with regard to digital assets, and family members may have to obtain a court order. But, even then, the company running the online account may not conform to the court order without a battle /51/. To name just a few examples: Google rarely allows the release of Gmail content and it reserves the right to terminate an account that has been inactive for a period of nine months. Gmail also has Inactive Account Manager where an account holder can let Gmail know who should have access to his/her information, and whether he/she wants an account to be deleted after a chosen period of inactivity /52/. Yahoo considers a person's account to be private property and if family members want to access a descendant's account, they have to take legal action in order to do so /53/. It may even happen that Yahoo deletes an account upon receipt of its holder's death certificate /54/. Hotmail will honor requests from a family member, benefactor or executor, if requisite documents are provided /55/. Facebook, upon re-

ceiving notice that a user has died, will put the profile in "memorial state" if a family member or a friend submits a request /56/. If a profile is put in such a state, certain profile sections will be hidden from view. Facebook will also remove a deceased's account if a verified immediate family member requests so /57/. Twitter will remove the deceased's account from its "Who to follow" suggestions, upon notification of a user's death /58/, but it will not let family members access the deceased's account /59/. So, even if the testator left login information and precise instructions about what is to be done with his/her account, heirs might be accessing those accounts in an unauthorized fashion. They could be violating terms of use and privacy laws and just because they have the testator's blessing to access and do something with those accounts and information on it, it will not exonerate them /60/. In the U.S., the above mentioned act, UFADAA, is trying to solve some of these issues. The Act is directed toward persons acting as a fiduciary: personal representatives of a decedent's estate, conservators for protected persons, agents acting pursuant to a power of attorney, and trustees. It gives them the power to access and control the deceased's digital assets in order to fulfill their fiduciary duties. Its purpose is to empower fiduciaries with the authority to access, control, or copy digital assets, while respecting the privacy and intent of the account holder. Even if the testator fails to make provisions about digital assets, the same court-appointed fiduciary that manages the person's tangible assets, can manage the person's digital assets, distributing those assets to heirs or disposing of them as appropriate /61/. Another problem with some digital assets is their uninheritability. A lot of digital assets are actually licensed and not sold, so people can use them during their life, but they can not transfer them and they can not bequeath them either. For example, if a deceased had an iTunes collection, he/she will not be able to leave it to his/her heirs, since Apple's legal department says this about apps: "*You may not rent, lease, lend, sell, transfer, redistribute, or sublicense the Licensed Application and, if you sell your Mac Computer or iOS Device to a third party, you must remove the Licensed Application from the Mac*

Computer or iOS Device before doing so.” /62/ The same goes for Amazon’s Kindle /63/. So, this is one more thing to take into consideration while thinking about bequeathing one’s digital assets to one’s heir.

4. Conclusion

Under the Croatian Succession Act, an oral will is only valid if it is made orally, under extraordinary circumstances, in front of two simultaneously present witnesses. The problem with this provision is that if the witnesses are not present at the time of testation, the dying person is not able to testate, which is contrary to one of the main principles of succession law – the principle of testamentary freedom. The presence of witnesses is needed for two main reasons. There has to be someone present to hear what the testator’s last words were and witnesses serve as a means of controlling each other so possible manipulations of the contents of a will could be minimized. In the past, there was no other way to ensure these conditions were satisfied, other than with witnesses being present. However, today, with the development of technology, this problem could be easily solved by reaching witnesses through video call or by recording an oral will on camera. Although the technology exists, no provisions concerning these are incorporated into the Croatian Succession Act. Therefore, oral wills made with the help of technology cannot, and most likely would not be considered valid. Oral wills are not a common way of testating and they are not made often, but since their existence is provided by SA, why not also incorporate provisions that will make oral wills made with the help of technology explicitly valid. When it comes to digital inheritance, one of the main problems is the lack of legislation and digital assets’ intangibility and invisibility. Recently, in some countries, legislators are making moves to start to change legal voids concerning succession of digital assets, but what most people can do to minimize possible problems their heirs might have when it comes to their digital inheritance, is to make provisions concerning their digital legacy, preferably in a will. Heirs should at least be notified of the deceased’s digital assets, provided with access information and given ex-

PLICIT instructions about what is to be done with each of deceased’s digital asset. Also, while incorporating provisions concerning digital assets into one’s will, one should take into consideration the digital assets’ inheritability and the providers’ service agreements that might preclude testamentary freedom.

Notes

- /1/ For different types of wills in the world, see: International Encyclopaedia of Laws, Family and Succession Law, Vol. 1-4, general editor: Blanpain, R., editor: Pintens, W., Kluwer Law International
- /2/ Convention providing a Uniform Law on the Form of an International Will, full text: <http://www.unidroit.org/instruments/succession> (5.7.2015.)
- /3/ Succession Act, National Gazette, no. 48/03, 163/03, 35/05, 127/13, 33/15, (further in the text: SA).
- /4/ Art. 30-40 SA.
- /5/ Art. 30 SA.
- /6/ Gliha, I., Family and Succession Law – Croatia, Suppl. 28 (August, 2005.) in International Encyclopaedia of Laws, Family and Succession Law, vol. 1., Kluwer Law International, 2005., pp. 226.
- /7/ About the conditions that have to be met in order for a person to be a witness to this, and other types of wills, see: Art. 35 SA.
- /8/ Art. 32 – 33 SA.
- /9/ Gliha, pp. 234.
- /10/ Gavella, N., Nasljedno pravo, Informator, Zagreb, 1990., pp. 174.
- /11/ Cf. *ibid*, pp. 172.
- /12/ Art. 7 SA.
- /13/ Josipović, T., Family and Succession Law – Croatia, Suppl. 28 (August, 2005.) in International Encyclopaedia of Laws, Family and Succession Law, vol. 1., Kluwer Law International, 2005., pp. 192. This principle is limited by rights of testator’s closest family members – forced heirs. They have the right to inherit a part of testator’s inheritance, under certain conditions, even against testator’s wishes expressed in a will. Art. 69 – 88, SA.
- /14/ Gavella, N., Belaj. V., Nasljedno pravo, Narodne novine, Zagreb, 2008., pp. 135.
- /15/ Cf. *ibid*, pp. 147.
- /16/ Gliha, pp. 236.
- /17/ Cf. *ibid*, pp. 238.
- /18/ Art. 38 SA.
- /19/ Art. 35/2, SA.
- /20/ Gliha, pp. 237.
- /21/ Cf. *ibid*, pp. 237.

- /22/ Kačer, H. Neka (prijeporna) pitanja hrvatskog oporučnog prava, *Liber Amicorum Nikola Gavella*, Građansko pravo u razvoju, Zbornik radova u čast 70. rođendana profesora emeritusa Nikole Gavelle, Pravni fakultet Sveučilišta u Zagrebu, 2007, pp. 737.
- /23/ Ibid.
- /24/ Cf. *ibid.*, pp. 738.
- /25/ Ibid.
- /26/ Ibid.
- /27/ <https://www.caselaw.nsw.gov.au/search?query=Yazbek&pagenumber=> (3.7.2015)
- /28/ <http://www.smh.com.au/nsw/being-of-sound-mind-and-pixels-wills-in-the-digital-age-20140725-zwokc.html> (3.7.2015.)
- /29/ <http://www.sclqld.org.au/caselaw/QSC/2013/322> (3.7.2015.)
- /30/ <http://www.sclqld.org.au/caselaw/QSC/2013/336> (4.7.2015.)
- /31/ Kačer, pp. 739.
- /32/ This Act was first passed in 2015 in Delaware and it gives power to fiduciaries, after an account holder dies, to manage an account holder's digital assets and have the same right to access those assets as the account holder, but only for the limited purpose of carrying out their fiduciary duties <http://www.uniformlaws.org/Act.aspx?title=Fiduciary%20Access%20to%20Digital%20Assets> (2.7.2015.)
- /33/ Beyer, G.W.; Cahn, N., *Digital Planning: The Future of Elder Law*, *NAELA Journal*, Vol. 9, No. 1, 2013, pp. 137, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2252653, (24.6.2015.)
- /34/ Haworth, S.D., *Laying Your Online Self To Rest: Evaluating the Uniform Fiduciary Access to Digital Assets Act, 2013*, pp. 4-5, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2269093&download=yes (25.6.2015.).
- /35/ Sharp, C., *Managing Your Digital Legacy, Will Others Be Able to Access Your Cloud-Based Files When You No Longer Can?*, *Online Searcher*, Vol. 37, No. 6, 2013, pp. 46., <http://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?sid=7d483b99-9559-4fe5-b83e-01ded7490e23%40sessionmgr113&crlhashurl=login.aspx%253fdirect%253dtrue%2526db%253dah%2526AN%253d92008532%2526lang%253dhr%2526site%253dehost-live&hid=101&vid=0> (25.6.2015.).
- /36/ Cf. *ibid.*, pp. 137.
- /37/ For statistical data, see: http://www.nominettrust.org.uk/sites/default/files/NT%20SoA%20-%20Ageing%20and%20the%20use%20of%20the%20internet_0.pdf
- /38/ Sharp., pp. 44.
- /39/ Cf. *ibid.*, pp. 45.
- /40/ Ibid.
- /41/ Haworth, pp. 2.
- /42/ For example, the case of Leonard Bernstein who left a manuscript for his memoir (*Blue Ink*) on his computer in a password protected file which nobody has been able to break and access. Beyer, Cahn *supra* note 33, pp. 139.
- /43/ Cf. *ibid.*, pp. 138-140.
- /44/ Sharp, *supra* note 35, pp. 46-47.
- /45/ BMO Wealth Institute, *Estate planning in the 21st century: New considerations in a changing society*, 2012, pp. 6, http://www.bmo.com/pdf/FINAL%20Canadian%20Eng-lish%20BMO%20Retirement%20Institute%20report%20April%202012_E.pdf (23.6.2015.)
- /46/ Haworth, pp. 2.
- /47/ Cahn, N., *Postmortem life on-line*, *Probate & Property*, Vol. 25, No. 4, 2011. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2026628 (2.7.2015.)
- /48/ Beyer, Cahn, pp. 150.
- /49/ Ibid.
- /50/ Sharp, pp. 45.
- /51/ Beyer, Cahn, pp. 139.
- /52/ Request regarding a deceased user account on Gmail: <https://support.google.com/accounts/contact/deceased?hl=en&rd=1> (3.7.2015.)
- /53/ Perrone, M., *What Happens When We Die: Estate Planning of Digital Assets*, *Journal of Law and Technology*, Vol. 21, Iss. 1, 2012, pp. 190., <http://scholarship.law.edu/commlaw/vol21/iss1/> (2.7.2015.)
- /54/ <https://policies.yahoo.com/us/en/yahoo/terms/utos/index.ht> (3.7.2015.)
- /55/ http://answers.microsoft.com/en-us/outlook_com/forum/oaccount-omyinfo/my-family-member-died-recently-is-in-coma-what-do/308cedce-5444-4185-82e8-0623ecc1d3d6 (6.7.2015.)
- /56/ <https://www.facebook.com/help/contact/651319028315841> (6.7.2015.)
- /57/ <https://www.facebook.com/help/150486848354038> (6.7.2015.)
- /58/ Perrone, *supra* note 53, pp. 192.

/59/<https://support.twitter.com/articles/87894-contacting-twitter-about-a-deceased-user-or-media-concerning-a-deceased-family-member#>
(6.7.2015.)

/60/ Perrone, supra note 53, pp. 206.

/61/
<http://www.uniformlaws.org/shared/docs/Fiduciary%20Access%20to%20Digital%20Assets/UFA>

DAA%20-%20Summary%20-%20August%202014.pdf (6.7.2015.)

/62/<http://www.apple.com/legal/internet-services/itunes/us/terms.html> (7.7.2015.)

/63/

http://www.amazon.com/gp/help/customer/display.html/ref=footer_cou?ie=UTF8&nodeId=508088 (7.7.2015.)