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Abstract:

Legatum per vindicationem was introduced into Polish law in 2011. The majority of legal scholars treat it as the type of a testamentary disposition that solely results in the acquisition of ownership by a legatee. It has, therefore, only ‘real’ effect and is not a source of any obligation between an heir and a legatee. The aim of this article is to prove the opposite. The main thesis is that *legatum per vindicationem* also results in the obligation to transfer ownership and take over a thing that is due to a legatee by an heir. It is, thus, a testamentary disposition, which can be regarded as *legatum per damnationem* (the so-called ‘ordinary’ legacy) combined with an additional ‘real’ effect, namely, the automatic acquisition of ownership of a thing bequeathed by a legatee. This theoretical assumption can be supported by at least three arguments. Firstly, by the wording of Article 981⁶ of the Polish Civil Code (the PCC) which provides that the provisions on *legatum per damnationem* apply accordingly to *legatum per vindicationem* (to all the aspects not dealt with differently). Secondly, by the findings of the jurisprudence as regards unjustified enrichment. The additional ‘obligational’ effect of *legatum per vindicationem* seems to properly ‘justify’ the fact that it is through the legacy that a legatee becomes enriched. The material benefit gained by a legatee is, in this way, ‘justified’ in the light of the unjustified enrichment regime. Thirdly, the view presented in this article corresponds with the way in which ownership is transferred in Polish law inter vivos. Polish law has adopted a consensual model of the transfer of ownership (that is based on French law) which presumes the ‘double’ effect of a contract. Similarly, *legatum per vindicationem* can be regarded as a disposition with ‘double’ effect. The article reveals practical consequences of the presented thesis. Perhaps the most important of them is the following one: due to the fact that it has the ‘obligational’ effect, *legatum per vindicationem* should be governed by the provisions on the performance of

obligations and the effects of non-performance (Articles 450–486 of the PCC), as well as by the provisions on *legatum per damnationem* providing for the time limit of the performance (Article 970 of the PCC) and the responsibility for defects in the thing bequeathed (Article 978 of the PCC).