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Title: „Forma testamentu w prawie amerykańskim" („The Form of Last Will and Testament in the United States Law")
Source: Kwartalnik Prawa Prywatnego („Quarterly of Private Law") year: 2012, vol: XXI, number 2, pages: 419–527

Keywords: American Law, United States Law, Will, Testament, Form, Formalities, Formalism
Discipline: Law (Private Law)
Language: POLISH
Document type: ARTICLE
Publication order reference4: Katedra Prawa Cywilnego i Prawa Prywatnego Międzynarodowego
Wydział Prawa i Administracji
Uniwersytet Śląski
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Abstract:

The Form of Last Will and Testament in the United States Law

There is no unlimited principle of liberty in regard to form of last will and testament in the United States law. Subject to statutory regulation on the contrary, a testament shall not be valid, unless made in accordance with formalities prescribed by statutes of wills. Therefore the testator has the right to make a testament only in such form that is provided by a wills act.

In this article author discusses the question of form of last will and testament in the United States law (more precisely: laws of states forming the United States). However, a detailed description of each formal requirement of every testament's form prescribed by states' laws is not the aim of this study. The references to concrete testamentary formalities are made only when it is useful in analysis of general solutions applied in the field of forms of testament. Moreover, the scope of this study is limited only to two forms of testaments, which are the most popular forms in American statutes of wills, i.e. formal will (also known as: witnessed or attested will) and holographic will. It is not the purpose of this article to examine other forms of testament provided by states' laws (e.g. notarial testament, oral will, soldiers' and sailors' will, military testamentary instrument, electronic will).

In this article, the main focus is placed on issues relating to the formalism of American regulations concerning the forms of testament. In author's opinion, the formalism should not be identified only with the doctrine of strict compliance (i.e. restrictive interpretation of statutes prescribing formal requirements of will). The concept of formalism should be read more broadly. Formalism is typical phenomenon of every regulation regarding form of testament (with the exception of total lack of formalities). However, a level of formalism may be different. It is affected mainly by the content of statute of wills and the method of judicial interpretation of that statute of wills.

After discussion on preliminary issues, the paper presents the changes in respect to formalism that have been made over the years in American: law, judicial practice and legal science. First of all, author analyses the traditional approach to form of testament and the formalism connected with it, i.e. mainly the doctrine of strict compliance and regulations regarding formal requirements in force before. Secondly, he discusses the trend occurring in the United States to reduce the formalism. Those remarks concern the legislative changes in that respect and judicial approval of the doctrine of substantial (sufficient) compliance. Author examines also some doctrines proposed in literature, i.e. substantial compliance doctrine (by Prof. J.H. Langbein) and dispensing power (harmless error) doctrine.

In the last chapter author presents the conclusions.