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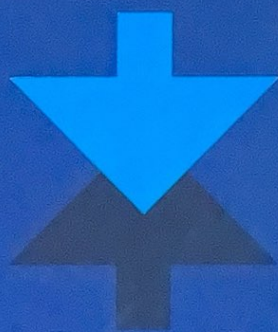
НАЦІОНАЛЬНІ, ПОРІВНЯЛЬНІ
ТА МІЖНАРОДНІ АСПЕКТИ

Українсько-англомовне
науково-практичне видання

LAW OF SUCCESSION

NATIONAL, COMPARATIVE
AND INTERNATIONAL ASPECTS

Ukrainian and English-language
scientific and practical edition



ПЕ ПРОВОА
ЄДНІСТЬ
РЕДАКЦІЯ
ЮРИДИЧНИХ
ВИДАНЬ

ГО «ЦЕНТР ПРАВОВИХ ДОСЛІДЖЕНЬ ФУРСИ»

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*Under the general editorship of Doctor of Law,
Professor, Honored Lawyer of Ukraine S.Ya. Fursa,
Candidate of Law, Associate Professor O.V. Kiriak*



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Видання стане у нагоді науковцям, суддям, адвокатам, нотаріусам, консулам, аспірантам, докторантам, усім, хто цікавиться як національними, так і міжнародними аспектами спадкового права.

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Ukrainian and English-language scientific and practical edition is dedicated to the analysis of contemporary issues in the law of succession, featuring contributions from Ukrainian and international scholars and practitioners. It addresses theoretical challenges within the law of succession and its specific institutions, judicial practices in resolving inheritance disputes, as well as notarial and consular procedures related to inheritance matters. The authors offer an in-depth examination of Ukraine's inheritance law, focusing on current and contentious aspects of wills and their various forms, analyzed comparatively with examples from Poland, France, and other countries. International dimensions of inheritance law are also explored, with a detailed review of foreign legislation, including that of France, Switzerland, Moldova, Latvia, Slovakia, and others. This comparative study aims to draw from international experience to facilitate the adaptation of Ukrainian legislation to align with European Union standards.

This publication will be valuable to academics, judges, legal practitioners, notaries, consuls, postgraduate and doctoral students, as well as anyone interested in national and international perspectives on inheritance law.

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CHAPTER 8.

PRISONERS OF WAR: INCARCERATED TESTAMENTS⁴⁶¹

8.1. The Historical Context of Wills in Wartime

The concept of inheritance has always been a mirror reflecting the societal, legal, and cultural values of its time. Among the numerous facets of inheritance law, the wills of prisoners of war present a unique and complex phenomenon, shaped by extraordinary circumstances and the constraints of captivity. The evolution of these wills offers valuable insights into how legal systems adapt to the dire realities of war, balancing the principles of autonomy and justice with practical considerations. This chapter explores the development of inheritance practices and legal frameworks surrounding the wills of prisoners of war, tracing their roots from historical precedents to contemporary applications.

The history of inheritance law underscores a persistent struggle to harmonize individual intent with societal norms and legal imperatives. Medieval England's primogeniture and entailment systems reveal how the legal framework was designed to preserve property within elite families, often at the expense of broader individual freedoms.⁴⁶² These systems, rooted in stability and legacy preservation, starkly contrast with the precarious circumstances faced by prisoners of war. The extraordinary duress under which such wills were often drafted complicates the usual assumptions about testamentary capacity and voluntary action, raising profound legal and ethical questions.

A critical aspect of this evolution involves gendered and social dimensions of inheritance law. In medieval times, women and lower social classes had limited rights to property and testamentary power.⁴⁶³ These restrictions underscore the challenges faced by prisoners of war, whose wills

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⁴⁶² Orth J. V. After the Revolution: «Reform» of the Law of Inheritance. *Law and History Review*, Vol. 10, No. 1 (Spring, 1992), pp. 34–36.

⁴⁶³ Shammass C. English Inheritance Law and Its Transfer to the Colonies. *The American Journal of Legal History*, Vol. 31, No. 2 (Apr., 1987), pp. 147–153.

often reflected the intersection of legal constraints and societal expectations. Captives, stripped of agency and stability, struggled to assert their intentions within frameworks not designed to accommodate their unique predicaments. This chapter examines how legal systems addressed – or failed to address – these challenges, revealing broader insights into the adaptability of inheritance law.

The American Revolutionary War marked a significant turning point in the legislative approach to inheritance. Following the conflict, a flurry of lawmaking sought to redefine property rights and testamentary freedoms.⁴⁶⁴ The experience of war and captivity during this period highlighted the necessity for legal mechanisms that could validate wills created under extreme duress. These developments set the stage for modern interpretations of prisoners of war wills, which strive to balance the preservation of testamentary intent with safeguards against coercion and undue influence.

The study of prisoners of war (POWs) and their last wills in earlier conflicts is notably constrained by the paucity of reliable records and academic analyses. Wars preceding the First World War were characterized by rudimentary record-keeping practices, often fragmented across jurisdictions and lacking standardization. The limited documentation that survives from these earlier periods is typically anecdotal, isolated, or incomplete, offering only a cursory glimpse into the experiences of POWs and their testamentary practices. This lack of comprehensive data creates a significant gap in understanding, leaving scholars reliant on indirect references or secondary accounts. Consequently, the wills of POWs from pre-20th-century conflicts remain an underexplored and inadequately documented subject, impeding detailed comparative studies and broader historical narratives.

In contrast, the First World War presents a pivotal shift in the documentation and availability of materials related to POWs and their wills. The war's unprecedented scale and the increased bureaucratic oversight of military affairs resulted in a richer corpus of records. The wills of soldiers, including those who became prisoners of war, were more systematically preserved due to advancements in administrative practices and the importance placed on managing the personal affairs of soldiers. Numerous examples of these wills have survived, providing researchers with a more extensive and detailed dataset for analysis. These documents not only illuminate the content of soldiers' last wishes but also reveal the procedural

⁴⁶⁴ Orth J. V. After the Revolution: «Reform» of the Law of Inheritance. *Law and History Review*, Vol. 10, No. 1 (Spring, 1992), p. 34

frameworks governing the creation, preservation, and transmission of wills under the complex conditions of wartime captivity.

This disparity in documentation between earlier wars and the First World War underscores the latter's unique value in advancing the study of POW wills. By examining the preserved wills of First World War soldiers, it becomes possible to draw meaningful conclusions about the content, intentions, and administrative handling of such documents. These insights can then be extrapolated to develop hypotheses about POWs in earlier conflicts, compensating for the gaps in direct evidence. Moreover, the systematic analysis of First World War wills allows for a deeper exploration of the sociopolitical and personal dimensions of testamentary practices during captivity, highlighting the evolving relationship between military institutions and the individuals who served within them. This comparative approach bridges the historical gap, providing a continuum for understanding the testamentary experiences of POWs across different eras.

The absence of a comprehensive statistical sample or centralized record-keeping system during the First World War presents significant challenges to the systematic study of prisoners of war (POWs) and their last wills. This limitation compels researchers to rely predominantly on fragmented materials and isolated documents. These records were often distributed among soldiers within specific military units, fronts, or armies, reflecting the decentralized nature of record-keeping during the period. Consequently, the scope of analysis for the wills of POWs is inherently constrained, as no unified or exhaustive database exists to facilitate a holistic examination of their last wishes.

Despite these challenges, the materials that have survived offer valuable insights into the practices and conditions surrounding the creation and preservation of wills by POWs. The available documents provide critical information about the bureaucratic processes governing military records, the logistical difficulties of wartime, and the personal circumstances under which soldiers – both combatants and captives – drafted their final testaments. These materials allow for a nuanced understanding of the similarities and differences in the handling of wills among soldiers actively engaged in combat and those taken as prisoners. However, the fragmented nature of the evidence necessitates a degree of extrapolation and interpretative analysis to construct a broader narrative regarding POW wills.

The information presented in this study primarily pertains to individuals who directly participated in hostilities during the First World War. By

examining the wills and associated documentation of soldiers who served on specific fronts or within particular armies, it becomes possible to draw meaningful analogies to the experiences of POWs. While the direct inclusion of POW-specific records may be limited, the parallels between their circumstances and those of combatant soldiers provide a foundation for drawing certain conclusions about the last wills of those who were captured. For instance, the conditions under which soldiers in active service completed their wills – often under duress or amidst the chaos of warfare – can reasonably be compared to the constrained and uncertain circumstances faced by POWs, whose ability to communicate their final wishes may have been similarly hindered.

Moreover, the absence of centralized data on POW wills underscores the importance of localized and context-specific studies to fill gaps in the historical record. By analyzing the distribution of surviving materials and cross-referencing them with broader trends observed among soldiers' wills, scholars can identify patterns and anomalies that shed light on the unique challenges faced by POWs in expressing and preserving their last wishes. This approach enables a deeper appreciation of the interplay between individual agency, institutional frameworks, and the exigencies of war in shaping the legacy of POW wills.

In conclusion, while the lack of a proper statistical sample limits the direct study of POW wills from the First World War, the surviving records provide a valuable foundation for exploration. Through careful analysis of relevant materials and by drawing analogies with the experiences of combatant soldiers, it is possible to infer significant insights into the conditions and practices surrounding the last wills of POWs. This study aims to contribute to the broader understanding of the wartime experiences of prisoners and their attempts to assert agency over their final affairs amidst the profound uncertainties of conflict.

In 2013, David Tattersfield,⁴⁶⁵ a trustee of The Western Front Association (WFA), provided expert historical guidance on the First World War to HM Courts and Tribunals Service (HMCTS), a branch of the Ministry of Justice. This consultation was part of a project aimed at digitizing and making accessible 277,450 soldiers' wills written between 1860 and 1986. Notably, 229,481 of these documents – over 80% of the total – originate

⁴⁶⁵ Tattersfield D., 'In the event of my death': An analysis of what can be gleaned from soldiers' wills, (2013). URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

from the First World War. The WFA's involvement was pivotal in assisting HMCTS and its collaborators in ensuring the historical accuracy and contextualization of this initiative.

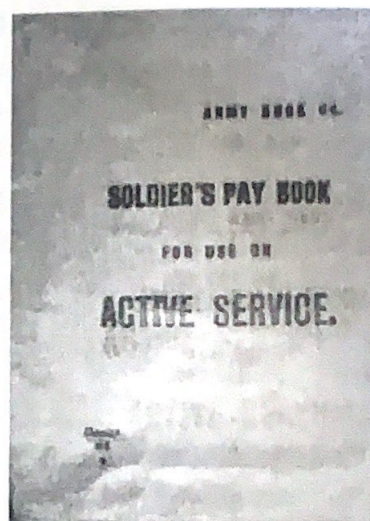
The number of First World War wills that HMCTS has made available is only about 25 per cent of the total British and Commonwealth fatal casualties and this appears to be substantially less than the full number of wills that one may expect to see. However, some investigation into the numbers has indicated that this may in fact be the full set of English wills.

Previously, wills of soldiers from the First World War have been available primarily for Scottish and Irish servicemen. While some wills of soldiers who survived the war exist, this project marked the first systematic effort to make the wills of English soldiers killed in the Great War widely accessible. This development offers a unique resource for family researchers, enabling genealogists to uncover previously unknown details and piece together fragmented familial histories.

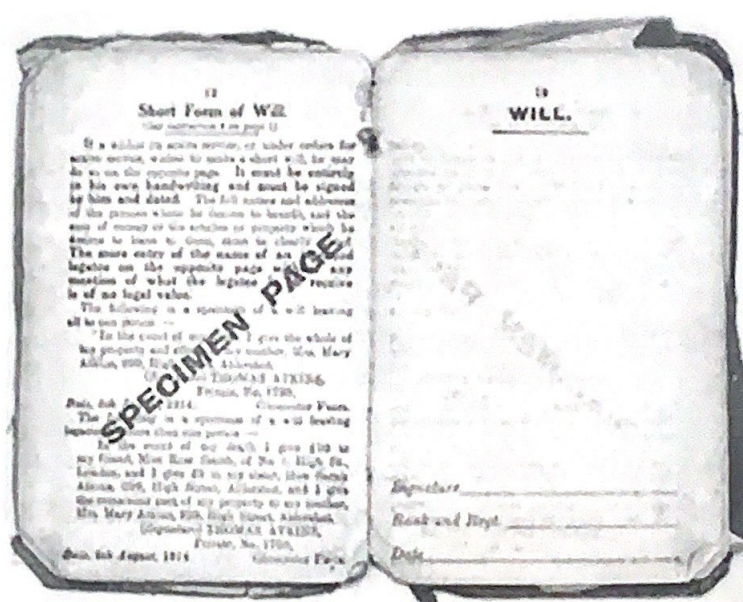
The wills made available through HMCTS pertain exclusively to non-commissioned officers (NCOs) and privates; the project does not include the wills of officers or members of the Royal Navy. Historical records suggest that sailors' and marines' wills fell under the jurisdiction of the Admiralty, separate from the War Office's stewardship of soldiers' wills. However, the whereabouts of these Admiralty records remain unknown.

Central to the creation of these wills was the Army Pay Book (AB64), issued to every enlisted soldier upon joining the army and carried at all times. The Pay Book contained crucial details, including next of kin, medical information, and training history. Additionally, it featured a designated section for recording a will, accompanied by a template to guide soldiers in drafting this vital document. Notably, during high-risk operations such as trench raids, soldiers would temporarily surrender their Pay Books to prevent identification if captured or killed.

This digitization effort not only preserves a significant aspect of war-time history but also enhances scholarly and public access to invaluable personal and historical records from the First World War.



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The content of the text in this image is as follows:

If a soldier on active service, or under orders for active service, wishes to make a short will, he may do so on the opposite page. It must be entirely in his own handwriting and must be signed by him and dated. The full names and addresses of the persons whom he desires to benefit, and the

⁴⁶⁶ **Image:** Soldier's Pay Book, AB64. Courtesy of the King's Own Museum. Source: URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

⁴⁶⁷ **Image:** Pages 12 and 13 of a Soldier's Pay Book, with instructions on how to complete the will (which in this case has not been completed). Courtesy of The Royal Anglian & Royal Lincolnshire Regimental Association, Lincoln branch. Source: URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

sum of money and the articles of property he desires to leave to them must be clearly stated. The mere entry of the name of an intended legatee on the opposite page without any mention of what the legatee is to receive is of no legal value.

The following is a specimen of a will leaving all to one person:

In the event of my death I give the whole of my property and effects to my mother, Mrs Mary Atkins, 999 High Street, Aldershot

(Signature) Thomas Atkins

Private No 1793

Gloucester Fusrs.

Date 5 August 1914

Beneath this template, the army included a specimen will designed for individuals intending to allocate legacies to multiple beneficiaries:

In the event of my death I give £19 to my friend, Miss Rose Smith of No 1 High Street, London and I give £5 to my sister, Miss Sarah Atkins, 999 High Street Aldershot, and I give the remaining part of my property to my mother, Mrs Mary Atkins, 999 High Street, Aldershot.

(Signature) Thomas Atkins

Private No 1793

Gloucester Fusrs.

Date 5 August 1914

Soldiers were typically encouraged to complete the will form when dispatched for active service as it was concluded by David Tattersfield.⁴⁶⁸ Consequently, it is reasonable to infer that many soldiers deferred completing the form until this critical juncture. The «informal» and unwitnessed nature of the will recorded in a soldier's pay book was deemed sufficient under English law to reflect the individual's testamentary intentions. In instances where a soldier received a new pay book, a new will could be executed; however, the procedure for altering the designated beneficiary before the issuance of a new pay book remains unclear.

In the event of a soldier's death, the will, if present in the pay book recovered from the body, would be extracted and forwarded to the War Office in the United Kingdom for processing and administration.

⁴⁶⁸ Tattersfield D., 'In the event of my death': An analysis of what can be gleaned from soldiers' wills, 2013. URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

WILL. 8/95009/1
In the event of
my Death I leave
all my Defects
to Mrs W. Walton
No 21 Craven St
Raversham
Dewsbury
England
Private W. Astbury
3598.

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According to the *Statistics of British Military Effort*,⁴⁷⁰ the deaths of Regular Army and Territorial Force other ranks during the Great War period up to November 1918 (excluding fatalities from the 'Empire,' Royal Navy, and Mercantile Marine) totaled 433,715. This figure does not include an additional 50,000 post-war fatalities commemorated by the Commonwealth War Graves Commission (CWGC). While it is conceivable that a small number of men who served in the Canadian Expeditionary Force (CEF), Australian Imperial Force (AIF), and New Zealand Expeditionary Force (NZEF) may have left English wills, the aforementioned figure serves as a reasonable basis for estimating the total number of English wills that might exist.

Using the same source, it is evident that recruitment in England and Wales constituted 86% of total UK enlistments, with Scotland accounting for 11% and Ireland 3%. For Scotland, the 11% recruitment share equates to approximately 48,000 soldiers. The National Archives of Scotland holds approximately 26,000 wills for Scottish soldiers, representing about 54%

⁴⁶⁹ Image: The will of William Astbury who left all his «Defects» to his adoptive mother. Source: URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

⁴⁷⁰ *Statistics of the Military Effort of the British Empire during the Great War, 1914–20* (London, 1922), 902 p.

of the total men recruited – closely aligning with the 60% survival rate of English wills. By contrast, the 9,000 Irish wills available account for only 26% of the total Irish soldiers recruited, highlighting a notable disparity for reasons yet to be determined. Adjusting for the likelihood that not all men recruited in England and Wales were domiciled in England for probate purposes, 86% of 433,715 yields an estimated figure of 372,995 English wills.⁴⁷¹

The discrepancy between this estimate and the 229,000 wills currently available – amounting to a «will survival rate» of approximately 60% – raises several explanatory hypotheses. These include the possibility that many soldiers, despite encouragement, did not draft a will or that their pay books, containing their wills, were not recovered from their bodies after death.⁴⁷²

Among the 60 missing wills of Ravensthorpe soldiers, 32 pertain to individuals commemorated on memorials to the missing, suggesting that their pay books – and consequently their wills – were never recovered from their bodies. In some cases, it can be reasonably assumed that the extreme destruction of their bodies during combat also led to the destruction of their pay books. This leaves 28 soldiers with known graves who do not appear in the HMCTS database and for whom it would be reasonable to expect a surviving will. However, it must also be acknowledged that some of these soldiers may not have completed the will form in their pay books at all.⁴⁷³

Further analysis reveals that of the 40 wills made available, 30% belong to soldiers commemorated on memorials to the missing, compared to over 50% of the wills being absent for those similarly commemorated.⁴⁷⁴ This data suggests a clear correlation between the recovery of a soldier's body and the likelihood of a surviving will. For those with known graves but missing wills, a range of factors may explain the absence. For instance, soldiers might have been buried hastily during combat, and their pay books could have been lost during exhumation and reburial in permanent ceme-

⁴⁷¹ Tattersfield D., *In the event of my death': An analysis of what can be gleaned from soldiers' wills*, 2013. URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

⁴⁷² *Statistics of the Military Effort of the British Empire during the Great War, 1914–20* (London, 1922). 902 p.

⁴⁷³ Tattersfield D., *In the event of my death': An analysis of what can be gleaned from soldiers' wills*, 2013. URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

⁴⁷⁴ *Statistics of the Military Effort of the British Empire during the Great War, 1914–20* (London, 1922). 902 p.

teries. Additionally, bodies recovered by enemy forces were often stripped of identification for intelligence purposes, which may have included the removal or destruction of pay books.

The lack of wills for soldiers whose bodies were not destroyed or lost presents an intriguing avenue for further investigation. This topic could serve as a valuable research project for degree-level students.

Interestingly, these observations are not confined solely to native soldiers. Similar trends are evident among prisoners of war, who were also subject to the same conditions of record survival and loss. Prisoners' pay books and wills were similarly at risk of being destroyed, lost, or withheld, particularly during their capture, detention, or transit. For those who perished as prisoners, their wills – if completed – were equally vulnerable to the chaos and logistical challenges of war.

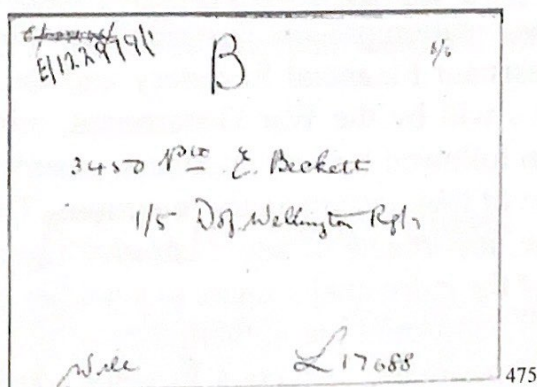
Despite these gaps, a significant proportion of wills appear to have survived. While some were not completed, destroyed, or lost during the chaotic conditions of warfare or transit, the overall survival rate of these documents, both for native soldiers and prisoners of war, underscores their resilience as historical artifacts.

Given the numerous practical difficulties associated with recovering pay books from the battlefield, coupled with the various reasons for their non-recovery, it is reasonable to surmise that the collection of wills published by HMCTS represents the entirety of English wills that were successfully recovered from the battlefields. These challenges included the physical destruction of pay books during combat, their misplacement amidst the chaos of war, or the failure to retrieve them from deceased soldiers' bodies. Furthermore, logistical issues during the transportation and archiving of documents may have contributed to the incomplete preservation of this critical material. As such, the wills that survived to be cataloged and published offer a unique and exhaustive representation of the testamentary records that endured the ravages of the First World War.

The preservation process of these documents provides insight into the meticulous administrative efforts undertaken during and after the war to safeguard these personal records. Each will was initially stored in an envelope that served as its primary layer of protection. A copy of this envelope has been included in the HMCTS archives, reflecting its role not just as a container but as an important artifact in its own right. This outer envelope often features a barcode, a modern addition introduced by the storage and scanning providers responsible for digitizing and maintaining the records.

This step ensures that the archival process meets contemporary standards of traceability and accessibility, linking each physical document to its digital counterpart and facilitating efficient retrieval for research and public inquiry.

Beneath this outer layer lies a second or 'inner' envelope, which holds additional historical significance. This inner envelope typically contains annotations made by clerks in the War Office, providing a snapshot of the administrative processes of the time. These annotations often include details about the soldier, such as their name, rank, and regiment, as well as notes regarding the handling and processing of the will. This layer of documentation underscores the care taken by War Office clerks to record pertinent information, ensuring that the wills were managed with a degree of diligence reflective of their profound personal and legal significance. Together, these envelopes and the annotations they contain offer a multi-dimensional view of the journey each will undertook from the battlefield to the archive, encapsulating both the chaos of war and the orderliness of post-war administrative efforts. This meticulous preservation process, despite its limitations, allows for an invaluable glimpse into the personal and institutional dimensions of soldiers' wills, solidifying their place in the historical record.



Within the inner envelope, two documents would have been included. The first is a form, signed «for the Assistant Financial Secretary,» which asserts that the enclosed document (the soldier's will) «appears to have been written or executed by the person named [on the form] and has been recognized by the War Department as constituting a valid will.» This form would have been completed several months after the soldier's death.

⁴⁷⁵ Image: The 'Inner' envelope containing the will of Private Ernest Beckett. Source: URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

INFORMAL WILL.

W.D. No. 1 2581641 DOMICILE. English
 Record No. 100/325563 11/11
 The enclosed document
 dated _____
 Name Fred Holmes end-edges _____
 Regt. No. 116695 Private appears to have been written
 and Rank or executed by the person
 Regt. 9th Bn 80 Infantry named in the margin while
 he was "in actual military
 service" within the meaning
 of the Wills Act, 1837, and
 has been recognised by the
 War Department as con-
 stituting a valid will.
 Died at Killed in action
 Date of Death 1 4 1916
 WAR OFFICE. J.C. King
 Date 7 3 17 for the Assistant Financial Secretary.

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In conclusion, the procedural framework outlined in the preceding analysis is highly relevant when applied to the context of wills executed by prisoners of war. The documentation process described, involving the completion of a form by the Assistant Financial Secretary and the subsequent recognition of the soldier's will by the War Department, mirrors the procedure that would have been followed for war prisoners, ensuring the legal validity and acknowledgment of their testamentary intentions. This standardized approach highlights the importance of administrative rigor in the recognition of wills, regardless of the individual's status as a soldier or a prisoner of war.

The form, which confirmed the authenticity of the will and its recognition by the War Department, reflects a broader administrative effort to maintain consistency and reliability in the handling of war-related legal documents. This systematic procedure suggests that, while the individuals involved may have been prisoners rather than active soldiers, the legal process governing the validation of their wills would have adhered to similar standards, ensuring their testamentary wishes were respected under wartime conditions.

⁴⁷⁶ Image: The War Office's Validation Certificate relating to Fred Holmes' will. The form's official name and exact rules relating to this being issued are currently not known. Source: URL: <https://www.westernfrontassociation.com/world-war-i-articles/in-the-event-of-my-death-an-analysis-of-what-can-be-gleaned-from-soldiers-wills/>

Furthermore, the delayed completion of the form, occurring months after the soldier's or prisoner's death, underscores the administrative challenges posed by war, where time constraints and logistical hurdles often result in delayed recognition of legal matters. However, the procedural continuity, despite these delays, demonstrates a clear intent to uphold the validity of wills, reflecting an ongoing commitment to respecting the legal rights of individuals even in extreme circumstances, such as during wartime incarceration.

By examining these procedures, it becomes evident that the treatment of wills from prisoners of war was not relegated to a separate or lesser process, but rather followed the same established legal protocol designed for soldiers. This parity in procedure underscores the broader legal and ethical responsibility to ensure that all individuals, regardless of their status as soldiers or prisoners, are afforded the same legal protections regarding their final wishes.

In sum, the application of the same procedural framework to both soldiers and prisoners of war highlights the consistency and fairness embedded in the legal recognition of wills during wartime. This analysis provides valuable insight into how legal institutions navigated the complexities of wartime death and inheritance, ensuring that the wills of both soldiers and prisoners were given the same due consideration and procedural legitimacy.

8.2. Wills under duress

The legal treatment of prisoners of war (hereinafter referred to as a POWs), particularly in regard to their testamentary rights, has been a critical area of development within international humanitarian law. As one of the earliest aspects of warfare to be codified in international law, the treatment of POWs serves as a benchmark for understanding the influence and applicability of legal and cultural norms in conflict situations. According to Jones H. in her article «Revising the Laws of War on Prisoners of War in the Twentieth Century: Introduction,»⁴⁷⁷ the evolution of laws governing POWs has been crucial in shaping the broader landscape of international humanitarian law. Jones notes that during its initial development in the

⁴⁷⁷ Jones H. *Revising the Laws of War on Prisoners of War in the Twentieth Century: Introduction. War in History*, Vol. 23, No. 4 (November 2016), pp. 408–415.

late nineteenth century, the treatment of POWs became a litmus test for the reach of legal norms in war, as these laws sought to balance military objectives with humanitarian concerns. In this context, the ability of POWs to prepare legally recognized wills, often under the most dire of circumstances, represents a vital intersection of law and humanity during armed conflict. This article explores various historical and contemporary case studies that illustrate how different legal systems have addressed the issue of POWs' testamentary rights, demonstrating both the legal frameworks established to protect such rights and the practical challenges involved in their implementation. Through these examples, we can highlight the ongoing evolution of POWs' legal protections, reflecting the broader humanitarian goals embedded in international law.

The issue of ensuring humane treatment for prisoners of war (POWs) has been a persistent challenge across centuries, as demonstrated by historical accounts such as Feltman's analysis of British treatment of German POWs during World War I. While the British government made official efforts to uphold the laws of war, a significant minority of British soldiers and officers disregarded these legal norms, often showing indifference to the mistreatment of captured soldiers (Feltman, 2010).⁴⁷⁸ This widespread disregard for POW rights, particularly at the individual level, underscores the persistent gap between legal frameworks and the actual implementation of humanitarian laws in wartime settings, a problem that has been prevalent in numerous conflicts across the globe. The inconsistent enforcement of POW protections, as evidenced in such cases, highlights the complexity of maintaining legal and ethical standards amidst the chaos of war.

In December 2014, the Ministry of Defence transferred to The National Archives the WO 416 series, a comprehensive collection of approximately 190,000 records documenting individuals captured in German-occupied territories during the Second World War. Predominantly, these records pertain to Allied military personnel, including servicemen from Canada, South Africa, Australia, and New Zealand. Additionally, the collection encompasses several hundred entries relating to British and Allied civilians, as well as a limited number of nurses who experienced wartime captivity.⁴⁷⁹

A significant portion of the series is dedicated to the documentation of deceased Allied airmen, whose remains were discovered in proximity

⁴⁷⁸ Feltman B.K. Tolerance As a Crime? The British Treatment of German Prisoners of War on the Western Front, 1914–1918. *War in History*. Vol. 17, No. 4 (November 2010), p. 438.

⁴⁷⁹ URL: <https://blog.nationalarchives.gov.uk/opening-prisoner-war-collection/>

to their downed aircraft. These records, while functioning as a testament to their deaths, do not classify these individuals as prisoners of war in the traditional sense. The documentation for each individual varies in scope, with the number of associated cards ranging from a single entry to as many as fifteen, though in most cases, only one or two cards are present.

The records are primarily presented in card format, with variable levels of detail. The information contained within these records typically includes:

- The name and number of the camp
- Country of origin
- Surname and given names
- Date and place of birth
- Father's given name and mother's maiden name
- Name and address of the next of kin
- Religious affiliation
- Health conditions, illnesses, and corresponding treatments
- Date and location of capture
- Details of transfers and transportation
- Accounts of escape attempts
- Circumstances surrounding death
- Military service details, including branch, rank, and service number
- Some of them even included the pics

This archival series constitutes an invaluable resource for understanding the diverse experiences of individuals affected by wartime captivity and conflict. By offering detailed personal and service-related data, these records contribute to broader scholarly inquiries into the social, military, and humanitarian dimensions of the Second World War.

of domestic law, thereby reducing the likelihood of disputes over their validity in the future. Furthermore, it embodies a recognition of the emotional and psychological significance of will-making for POWs, who, in the face of uncertainty about their survival or release, may derive a sense of security and agency from ensuring their loved ones are provided for according to their wishes.

In addition to these fundamental considerations, Article 120 of Geneva Convention (III) Relative to the Treatment of Prisoners of War, adopted on August 12, 1949,⁴⁸² serves as a vital mechanism for harmonizing international and domestic legal standards. By integrating international humanitarian principles with national inheritance laws, the provision fosters a system of complementary legal norms that enhance the rights and protections of POWs. This interplay between international law and domestic legal systems underscores the dynamic and adaptable nature of humanitarian law, which seeks to accommodate the complexities of diverse legal traditions while upholding its overarching human rights objectives. Furthermore, it reflects a recognition of the administrative and logistical challenges associated with facilitating the drafting, certification, and preservation of wills in captivity, where access to legal counsel and notarial services may be limited or entirely absent.

While the Geneva Convention provides a foundational framework for addressing the testamentary rights of POWs, the practical implementation of its provisions often requires supplementary measures at the national level. Individual states may develop specific regulations, administrative protocols, or support mechanisms to operationalize these international obligations effectively. For instance, some countries have established legal aid programs or assigned military legal officers to assist their nationals in drafting wills during captivity, ensuring compliance with domestic requirements. Others may facilitate the remote notarization or certification of such documents through diplomatic channels or humanitarian organizations, such as the International Committee of the Red Cross (ICRC), which plays a crucial intermediary role in verifying and transmitting these documents to relevant authorities.

These national-level adaptations not only address the unique challenges posed by wartime conditions but also enhance the effectiveness and ac-

⁴⁸² Geneva Convention (III) Relative to the Treatment of Prisoners of War, adopted on August 12, 1949. URL: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf

cessibility of the legal protections envisioned by the Geneva Convention. By complementing the broad humanitarian principles of international law with practical and context-specific measures, states contribute to a more robust and comprehensive system of protections for POWs. Moreover, these efforts underscore the enduring relevance of the Geneva Convention as a living document that continues to shape the legal and humanitarian landscape in the face of evolving challenges in modern warfare.

In conclusion, the certification and validity of wills made by prisoners of war represent a critical intersection of international humanitarian law, domestic legal systems, and practical considerations arising from the realities of armed conflict. Through the provisions of Article 120 of the Geneva Convention (III), the international community has established a clear and principled framework for protecting the testamentary rights of POWs, ensuring their dignity, autonomy, and legal identity are preserved even in captivity. However, the successful implementation of these protections depends on the continued engagement and adaptation of national legal systems, which play a pivotal role in translating the convention's humanitarian ideals into tangible and enforceable rights for individuals in wartime settings. This delicate balance between international and domestic law highlights the complexity and significance of safeguarding testamentary rights in one of the most challenging contexts of human existence.

The preparation and certification of wills by prisoners of war (POWs) is a complex issue governed by the interaction between international humanitarian law, national legal systems, and the challenging realities of armed conflict. This process has evolved over time, as different legal frameworks and pragmatic measures have been employed to ensure that POWs can exercise their testamentary rights, even in the extreme conditions of war.

As it was stipulated by H. Jones, categorization mattered because, as the nature of who was being taken prisoner in war diversified and expanded across the twentieth century, the applicability of the laws of war stipulations to protect prisoners was thrown into question.⁴⁸³

Several historical and contemporary case studies illustrate how these legal issues have been addressed. The treatment of prisoners of war (POWs) throughout history has often been marked by a disregard for their basic legal rights, particularly in terms of their ability to exercise testamentary rights, such as the preparation and validation of wills. In times of conflict, the legal

⁴⁸³ Jones H. *Revising the Laws of War on Prisoners of War in the Twentieth Century: Introduction. War in History*, Vol. 23, No. 4 (November 2016), pp. 410.

protections afforded to POWs are frequently undermined, and their personal belongings, including their most cherished possessions, are often seized as trophies of war. While international conventions, such as the Geneva Conventions, have sought to provide frameworks for the humane treatment of prisoners, these rights were frequently overlooked or violated in practice. During both World Wars, the ability of POWs to make legally recognized wills was not always a priority for their captors, who were more concerned with exerting power and control over the prisoners, often disregarding their personal and legal rights. In fact, during World War I, the notion of preserving the last will of a prisoner was of little consequence to the soldiers of the victorious armies, whose focus was primarily on extracting personal belongings and symbols of defeat from the captives.

This disregard for the prisoners' final wishes extended beyond material possessions, as the soldiers who took trophies often had no interest in ensuring that prisoners' wills, if they had made one, were recognized or executed. The dehumanizing environment of war, where prisoners were often stripped of their dignity and rights, made it difficult for them to assert control over their estates or plan for the future, even in death. As a result, while the idea of POWs preparing wills was acknowledged in international legal documents, the practical enforcement of these rights was inconsistent, and many prisoners were left vulnerable to exploitation and neglect. The issue of legal recognition of wills became particularly pronounced in cases where the soldiers were more focused on physical domination and material gain rather than adhering to the legal frameworks that sought to protect the prisoners' rights.

This was not an isolated phenomenon, but rather a pattern that continued through subsequent wars. For example, in World War II, despite the legal protections afforded by the Geneva Convention, POWs still faced significant challenges in ensuring their wills were both drafted and legally validated. Similarly, the seizure of personal belongings remained a widespread practice, with items being taken as spoils of war. These practices demonstrate the complex interplay between the legal rights of POWs, the conditions of captivity, and the cultural norms of warfare, where the humanitarian principles enshrined in international law often clashed with the brutal realities of armed conflict. The inability of many POWs to ensure their final wishes were honored, whether through the drafting of wills or the protection of their belongings, underscores the enduring struggle to balance legal protections with the conduct of war.

The number of deaths among prisoners of war (POWs) during World War I remains difficult to quantify due to the deliberate efforts of the k. u. k. (Imperial and Royal) Interior and War Ministries to suppress public knowledge of casualties. As early as the fall of 1915, both ministries agreed that reports concerning diseases and deaths among Army personnel and POWs, particularly in war zones, should not be disclosed to the public in official bulletins. Consequently, after the war, the «Ministry in Charge of Liquidating the War» was unable to provide any precise figures regarding the number of enemy POWs who had died while in Austro-Hungarian captivity (Moritz, 2014).⁴⁸⁴ This deliberate withholding of information highlights the lack of transparency and the difficulties in assessing the full impact of captivity on POWs during the war.

In contrast, during World War II (1939–1945), international humanitarian law, specifically Article 120 of the 1929 Geneva Convention Relative to the Treatment of Prisoners of War, sought to safeguard the legal rights of POWs, including their ability to draft and have their wills recognized. The Convention stipulated that POWs should have the opportunity to make wills in accordance with the inheritance laws of their home countries. In practice, this provision was not implemented in a full scale.

The treatment of POWs was not limited to legal protections but also involved the appropriation of personal items, which took on symbolic significance during wartime. In World War I, soldiers often took souvenirs from prisoners as a way to assert dominance and confirm their authority over the defeated enemy. These items, which ranged from valuables to military decorations or even personal mementos, were stripped from POWs as a form of psychological and material control. The act of taking personal possessions from prisoners, especially when the latter were helpless, not only signified power but also fulfilled an emotional need for the captors. As Feltman (2010)⁴⁸⁵ explains, the limited space in soldiers' packs or trenches meant they brought only their most cherished items to the front, and forcibly taking prized possessions from captured soldiers was empowering for those who participated in what could be described as «souvenir hunts.» This practice further underscores the complex relationship between power, possession, and the treatment of prisoners during wartime.

⁴⁸⁴ Moritz V. The Treatment of Prisoners of War in Austria-Hungary 1914/1915 in [1914: Austria-Hungary, the Origins, and the First Year of World War I], 2014, p. 240.

⁴⁸⁵ Feltman B.K. Tolerance As a Crime? The British Treatment of German Prisoners of War on the Western Front, 1914–1918. *War in History*. Vol. 17, No. 4 (November 2010), p. 453.

These instances, ranging from the suppression of casualty figures to the taking of personal possessions, illustrate the broader, often dehumanizing aspects of war, in which legal protections and individual rights were frequently disregarded, leaving POWs vulnerable to both legal and physical exploitation. The contrast between the suppression of death tolls in World War I and the legal safeguards for wills in World War II reflects the evolving, though often inconsistent, nature of international humanitarian law and the protection of POW rights across different conflicts.

Similarly, in Allied camps like Camp 13 in Australia, the International Committee of the Red Cross (ICRC) facilitated the process, acting as a neutral intermediary to assist Axis POWs in preparing their wills. The collaboration between wartime legal authorities and post-war national courts helped maintain legal uniformity across jurisdictions. For instance, the United Kingdom's Wills Act of 1837 and Germany's Civil Code (*Bürgerliches Gesetzbuch*) were instrumental in ensuring that wills drafted in captivity were valid upon the prisoners' release.

The recognition and validation of wills drafted by prisoners of war (POWs) during conflicts, such as those facilitated by the ICRC in Allied camps like Camp 13 in Australia, highlight the importance of international cooperation in ensuring the legal rights of captives. Just as the ICRC acted as a neutral intermediary to assist Axis POWs in preparing their wills, similar efforts were made across different conflicts to preserve prisoners' inheritance rights. These measures were not only legally significant but also humane, as they allowed POWs to maintain control over their estates despite the dehumanizing conditions of captivity. The collaboration between wartime legal authorities and post-war national courts ensured that these wills were legally recognized across jurisdictions, a practice rooted in frameworks like the United Kingdom's Wills Act of 1837 and Germany's Civil Code. This tradition of upholding the legal rights of POWs, particularly their testamentary rights, reflects the broader humanitarian principles that guide wartime conduct and continue to influence legal interpretations today.

Unfortunately, the dominant narrative surrounding the Vietnam War continues to perpetuate exaggerated views of American innocence and enemy perversity, which influenced U.S. diplomatic decisions for decades, including the refusal to establish formal relations with Vietnam for over twenty years. This historical understanding is shaped by an intense focus on the Johnson administration's actions, which overshadow the earlier

Eisenhower era when American control replaced French colonialism. The shift marked a new chapter in the centuries-long suffering of Vietnam under foreign powers, compounding the historical grievances that shaped the conflict. Research into Pentagon documents from the 1950s, initially dismissed as irrelevant, has revealed that these records have had a profound impact on shaping my understanding of the war. These documents highlight the complexity of the conflict and provide insight into the decisions made by U.S. leadership during that period (Cuddy, 2003).⁴⁸⁶

One crucial aspect often overlooked in the historical narrative is the legal and human rights issues faced by prisoners of war (POWs) during the conflict. Like in previous wars, the ability of POWs to exercise their inheritance rights, such as drafting and validating wills, was severely restricted by their captivity. The cultural and legal frameworks surrounding the treatment of POWs, including their right to manage their estates, were often disregarded in the chaos of war. The loss of personal possessions, including crucial documents like wills, further complicated the ability of POWs to ensure that their final wishes would be honored. In many cases, soldiers focused more on seizing material possessions than protecting the legal rights of the prisoners, including their inheritance rights. These issues continued to be exacerbated by the harsh realities of warfare, which often left POWs with little opportunity to exercise their legal and personal rights, further compounding the moral and legal dilemmas faced by those involved in the conflict.

8.3. Ukraine's Legal Framework for the POWs' Wills

In the contemporary context of the ongoing conflict in Ukraine, discussions surrounding the inheritance rights of POWs have become increasingly relevant. Ukraine's Law on Martial Law, adopted in 2015, along with subsequent decrees, introduced provisions for expedited and simplified testamentary processes during times of martial law. These measures are critical for ensuring that POWs can execute valid wills even under the stress of captivity. Legal aid organizations, including the Ukrainian Helsinki Human Rights Union, have worked in collaboration with international

⁴⁸⁶ Cuddy E. Vietnam: Mr. Johnson's War. Or Mr. Eisenhower's? *The Review of Politics*. Vol. 65, No. 4 (Autumn, 2003), p. 373.

bodies such as the ICRC to facilitate the drafting and certification of wills by POWs. In 2023 alone, over 500 such cases were recorded, highlighting the legal system's ability to adapt during wartime and provide support for POWs to exercise their testamentary rights. This proactive approach underscores the importance of safeguarding individuals' rights to manage their estates, even in the face of war and occupation.

According to the Resolution of the Cabinet of Ministers of Ukraine dated February 28, 2022, No. 164, regarding certain matters of the notariat in a wartime situation, it is stipulated that during martial law and within one month of its termination or cancellation, notarial actions shall be conducted with specific considerations and prohibitions. Notably, incomplete notarial actions requested by individuals associated with the aggressor state, as outlined in the Cabinet of Ministers' Resolution No. 187 of March 3, 2022, «On Ensuring the Protection of National Interests in Future Claims of the State of Ukraine in Connection with the Military Aggression of the Russian Federation,»⁴⁸⁷ shall be suspended. In the event that such an individual requests a notarial action, the notary or official performing notarial duties is obliged to refuse the request. These restrictions will remain in effect until the law regulating relations involving individuals associated with the aggressor state is enacted. However, it should be noted that these prohibitions do not extend to notarial actions related to the certification of wills of prisoners of war (art. 1).

Under martial law, powers of attorney, with the exception of those granting the right to dispose of real estate, manage and dispose of securities, corporate rights, and the wills of servicemen, as well as members of military formations, law enforcement agencies, and civil defense bodies involved in ensuring national security and defense, may be certified by the commander (chief) of these formations (bodies) or another person authorized by them. These powers of attorney and wills must then be sent through the General Staff of the Armed Forces, the Ministry of Defense, or the relevant law enforcement body to the Ministry of Justice or its territorial body for registration in the Unified Register of Powers of Attorney or the Inheritance Register. In the case of prisoners of war, the head of the camp or institution where the prisoner is held may certify their will. Certification of wills and powers of attorney must adhere to the Procedure for Certification of Wills and Powers of Attorney Equivalent to Notarized Wills, as

⁴⁸⁷ URL: https://zakon.rada.gov.ua/laws/show/164-2022-%D0%BF?find=1&text=%D0%B7%D0%B0%D0%BF%D0%BE%D0%B2%D1%96#w1_2

approved by the Cabinet of Ministers of Ukraine in Resolution No. 419 on June 15, 1994, and in line with the Ministry of Justice's recommendations.

These documents will be registered by the commanders (chiefs) of the respective formations (bodies, institutions) under a unique serial number in a designated register. After registration, the documents are transferred to the Ministry of Justice, which must ensure their transfer to a notary office within two working days. The notary office, in turn, is responsible for registering the documents in the Unified Register of Powers of Attorney or the Inheritance Register within three working days and storing them in the relevant state notarial archive. Following the termination or cancellation of martial law, the notary will transfer the documents for permanent storage to the archive within three months. The Ministry of Justice will notify both the relevant institutions and the notary office of the registration, ensuring proper documentation and communication throughout the process.

The National Information Bureau, established by the Ukrainian Government Decision of March 17, 2022, operates in full compliance with the Geneva Conventions. Its primary mandate is to collect, process, and disseminate data regarding prisoners of war, the deceased, missing individuals, and civilians who have been unlawfully detained by occupying forces. As part of its functions, the Bureau is authorized to facilitate the transfer of wills made by prisoners of war from the Russian Federation to the Protecting State. This mechanism ensures that the legal and testamentary rights of prisoners of war are upheld, even in the context of armed conflict.

However, it is important to note that, at present, there is no documented evidence that the Russian Federation is providing Ukrainian prisoners of war with the opportunity to draft and have their wills certified. This lack of provision constitutes a significant breach of international humanitarian law, as the right of prisoners of war to make testamentary dispositions is explicitly guaranteed under the relevant provisions of the Geneva Conventions. The failure to allow prisoners to exercise this fundamental right not only undermines their personal autonomy but also contradicts the international obligations of the detaining power.

The refusal to facilitate the making and certification of wills by Ukrainian prisoners of war is a clear violation of the legal frameworks designed to protect the rights of individuals in times of armed conflict. Such actions are inconsistent with the principles of humane treatment and respect for the dignity of persons detained in wartime. By disregarding these rights, the detaining power exacerbates the suffering of prisoners of war and violates

international commitments to the protection of human rights during conflicts. Consequently, this failure to respect the legal entitlements of prisoners raises serious concerns about the broader adherence to international humanitarian standards.

International law, as articulated in the Geneva Conventions, is designed to safeguard the rights of prisoners of war, including the protection of their testamentary rights. The violation of these rights, particularly by denying prisoners the opportunity to make legally recognized wills, not only undermines individual autonomy but also challenges the credibility of the international legal system in conflict zones. It is therefore imperative that the international community continues to monitor and hold accountable those responsible for such breaches of international law, ensuring that prisoners' rights are respected, regardless of the circumstances.

The certification, transmission, and recognition of legal documents prepared by prisoners of war (POWs) are explicitly addressed in Article 77 of the Geneva Convention (III) Relative to the Treatment of Prisoners of War, adopted on August 12, 1949.⁴⁸⁸ This provision emphasizes the responsibility of the Detaining Power to facilitate the transmission of such instruments, including wills and powers of attorney, through mechanisms established by international humanitarian law. By obligating the Detaining Power to enable the smooth exchange of legal documents, Article 77 upholds a fundamental principle of legal continuity for POWs, ensuring that their personal and property rights are safeguarded despite the adverse conditions of captivity.

The transmission process outlined in Article 77 involves collaboration with the Protecting Power or the Central Prisoners of War Agency, as detailed in Article 123 of the Geneva Convention (III). The Protecting Power, acting as a neutral intermediary, ensures that legal instruments prepared by POWs reach their intended recipients without unnecessary delay or obstruction. Similarly, the Central Prisoners of War Agency, established to address communication and documentation needs for POWs, plays a critical role in verifying the authenticity and legality of these documents. This institutional framework underscores the Convention's commitment to enabling POWs to exercise their legal rights, even while confined.

One significant aspect of Article 77 is its emphasis on «all facilities» being provided for the transmission of legal documents. This phrase imposes

⁴⁸⁸ Geneva Convention (III) Relative to the Treatment of Prisoners of War, adopted on August 12, 1949 https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf

a broad and proactive obligation on the Detaining Power, requiring them not only to refrain from obstructing the transmission process but also to actively ensure that POWs have the necessary resources and support to prepare and send such documents. For instance, POWs may require access to legal counsel, notaries, or administrative assistance to draft and certify documents in compliance with the legal standards of their home country. The Detaining Power's duty to facilitate these processes highlights the Convention's emphasis on preserving the personal autonomy and legal agency of POWs.

The specific inclusion of wills in Article 77 reflects the profound importance of testamentary rights in international law. By recognizing the need for POWs to create and transmit wills, the Geneva Convention acknowledges that war often entails life-threatening risks, making it imperative for individuals to address the disposition of their estates. This provision harmonizes with Article 120, which mandates that the validity of POWs' wills must conform to the laws of their country of origin. Together, Articles 77 and 120 create a cohesive framework that safeguards the testamentary intentions of POWs, ensuring their enforceability under both international and domestic legal systems.

The operationalization of Article 77 has been demonstrated in various historical and contemporary contexts. During World War II, for example, the International Committee of the Red Cross (ICRC) facilitated the exchange of legal documents between POWs and their families, ensuring compliance with both the Convention's provisions and the national laws of the involved countries. Similarly, in recent conflicts, such as the ongoing war in Ukraine, legal aid organizations and humanitarian agencies have implemented measures to assist POWs in drafting, certifying, and transmitting wills, often relying on the protections and procedures enshrined in Article 77.

Finally, the role of technology in facilitating compliance with Article 77 is an emerging area of interest. Digital communication platforms and secure transmission methods can enhance the efficiency and reliability of document exchanges between POWs and their representatives. However, these innovations also pose new challenges, such as ensuring data security and adherence to the principles of international humanitarian law. As conflicts evolve, the practical application of Article 77 must adapt to address these complexities while remaining steadfast in its commitment to upholding the legal rights of POWs.

In conclusion, Article 77 of the Geneva Convention (III) serves as a cornerstone of international humanitarian law, emphasizing the critical im-

portance of facilitating the transmission of legal documents for POWs. By providing a robust framework for the exchange of wills, powers of attorney, and other instruments, this provision ensures that the legal agency and personal autonomy of POWs are respected, even in the context of armed conflict. Its enduring relevance underscores the intersection of humanitarian principles and legal obligations, offering a model for safeguarding the rights of individuals under extraordinary circumstances.

Despite the existence of detailed international legal frameworks and national regulations governing the treatment and maintenance of prisoners of war (POWs), including the certification of their wills, practical implementation has often fallen short. International instruments such as the Geneva Conventions and national laws explicitly define the rights of POWs, particularly in relation to their ability to draft wills and ensure their testamentary dispositions are legally recognized. These legal frameworks aim to protect the personal rights of POWs, even in the midst of armed conflict, by establishing clear procedures for certifying wills, often with the assistance of designated legal authorities or intermediaries like the International Committee of the Red Cross (ICRC). However, despite these regulations, the reality of POW treatment during wartime has frequently been marred by neglect and non-compliance with established protocols.

In practice, numerous instances have emerged where POWs' rights to make wills or to have them legally recognized have been disregarded. This issue can be attributed to a variety of factors, including the chaotic conditions of wartime, the prioritization of military objectives over the legal rights of captives, and the general indifference or lack of awareness among military personnel. While international and national laws explicitly define the procedures for certifying the wills of POWs, there are instances where these procedures are either ignored or poorly implemented. In some cases, military authorities have shown little interest in upholding the rights of POWs to draft their final wishes, particularly when it comes to safeguarding their property or inheritance rights.

Moreover, the command structures of many military units and formations have often tolerated or overlooked such breaches. Soldiers and officers in the field, sometimes with the complicity or passive acceptance of their superiors, have taken advantage of POWs' vulnerable positions to ignore or even actively thwart their rights. This neglect is compounded by a broader disregard for the legal frameworks designed to protect prisoners, often dismissed as secondary to the exigencies of war. The mistreatment of POWs, including

In conclusion, the issues discussed regarding the regulation of inheritance relations in the context of armed conflict underscore critical deficiencies in the existing legislative framework, particularly at the level of primary legislative acts as opposed to secondary by-laws. The complexity and significance of this matter, especially in its potential to reshape various branches of law and law enforcement practices, necessitate interventions at the highest legislative tier. As highlighted by V.I. Yamkovy,⁴⁸⁹ although the Government and Ministry of Justice have made strides by introducing legislative innovations and restrictions aimed at the regulation of inheritance relations during wartime, these measures, while essential, remain incomplete and insufficient in their scope. The reliance on by-laws to amend or adapt the inheritance process during martial law, however, lacks the foundational legitimacy and legal robustness necessary for its full and comprehensive implementation. The absence of corresponding amendments at the legislative level renders these by-laws prone to challenges in their enforcement and interpretation.

In light of these concerns, it is imperative that the Ukrainian legislature undertakes a substantive revision of the Civil Code of Ukraine, particularly its provisions related to inheritance rights in times of conflict. The present framework, though modified by executive orders and temporary measures, does not adequately address the multifaceted issues surrounding inheritance during wartime, nor does it provide the legal certainty required for individuals to exercise their inheritance rights in the aftermath of conflict. Failure to enact comprehensive legal reforms at the statutory level could result in a cascade of legal ambiguities, creating substantial barriers for individuals seeking to claim or manage inheritance during and after wartime. Furthermore, the absence of a well-established legal procedure under martial law may give rise to potential abuses and violations of inheritance rights, exacerbating the challenges faced by affected populations. Therefore, it is essential that legislative amendments be made without delay, ensuring that the legal framework governing inheritance rights remains coherent, robust, and capable of withstanding the complexities posed by wartime conditions. By doing so, Ukraine would be taking a crucial step toward safeguarding the property rights of its citizens, fostering legal certainty, and preventing future disputes or injustices in the post-conflict recovery phase.

⁴⁸⁹ Yamkovyi V.I. Osoblyvosti spadkuvannia v umovakh voiennoho stanu [Peculiarities of inheritance in conditions of martial law] // Realizatsiia prav liudyny u diialnosti pravookhoronnykh orhaniv v umovakh okupatsii ukrainskykh terytorii: materialy V Vseukrainskoi naukovy-praktychnoi konferentsii (v avtorskii redaktsii), m. Kryvyi Rih, 30 veresnia 2022 roku. Kryvyi Rih: DonDUVS, 2022. S. 318.

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Українсько-англомовне науково-практичне видання присвячене аналізу українськими та іноземними вченими і практичними фахівцями актуальних питань спадкового права. Висвітлені проблемні питання теорії спадкового права та окремих його інститутів, судової практики з розгляду спадкових справ, нотаріальної та консульської практики вчинення нотаріальних проваджень, що пов'язані із спадковими відносинами. Автори ґрунтовно проаналізували інститути спадкового права України, зокрема, актуальні та проблемні аспекти заповітів та їх форми у порівняльному аспекті на прикладі Польщі, Франції та інших іноземних країн, міжнародні аспекти спадкових відносин. Запропонований глибокий аналіз іноземного законодавства щодо спадкового права Франції, Швейцарії, Республіки Молдова, Латвії, Словаччини тощо з метою вивчення українськими фахівцями іноземного досвіду та адаптації законодавства України до законодавства Європейського Союзу.

Видання стане у нагоді науковцям, суддям, адвокатам, нотаріусам, консулам, аспірантам, докторантам, усім, хто цікавиться як національними, так і міжнародними аспектами спадкового права.

Ukrainian and English-language scientific and practical edition is dedicated to the analysis of contemporary issues in the law of succession, featuring contributions from Ukrainian and international scholars and practitioners. It addresses theoretical challenges within the law of succession and its specific institutions, judicial practices in resolving inheritance disputes, as well as notarial and consular procedures related to inheritance matters. The authors offer an indepth examination of Ukraine's inheritance law, focusing on current and contentious aspects of wills and their various forms, analyzed comparatively with examples from Poland, France, and other countries. International dimensions of inheritance law are also explored, with a detailed review of foreign legislation, including that of France, Switzerland, Moldova, Latvia, Slovakia, and others. This comparative study aims to draw from international experience to facilitate the adaptation of Ukrainian legislation to align with European Union standards. This publication will be valuable to academics, judges, legal practitioners, notaries, consuls, postgraduate and doctoral students, as well as anyone interested in national and international perspectives on inheritance law.

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