

Mariusz Załucki

Wills Formalities versus Testator's Intention

Functional model of effective testation for informal wills



Nomos



Mariusz Załucki

Wills Formalities versus Testator's Intention

Functional model of effective testation for informal wills



Nomos

The book is part of a research project funded by the National Science Centre (Poland), agreement No. UMO-2018/29/B/HSS/00361.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

ISBN 978-3-8487-7082-3 (Print)
978-3-7489-2472-2 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-8487-7082-3 (Print)
978-3-7489-2472-2 (ePDF)

Library of Congress Cataloging-in-Publication Data

Załucki, Mariusz

Wills Formalities versus Testator's Intention

Functional model of effective testation for informal wills

Mariusz Załucki

204 pp.

Includes bibliographic references.

ISBN 978-3-8487-7082-3 (Print)
978-3-7489-2472-2 (ePDF)

Scientific review:

Prof. Rita Lobo Xavier, Universidade Católica Portuguesa, Portugal

Prof. Fryderyk Zoll, Universität Osnabrück, Germany

and Jagiellonian University, Poland

1st Edition 2021

© Mariusz Załucki

Published by

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

www.nomos.de

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-8487-7082-3 (Print)

ISBN 978-3-7489-2472-2 (ePDF)

DOI <https://doi.org/10.5771/9783748924722>



Onlineversion
Nomos eLibrary



This work is licensed under a Creative Commons Attribution
– Non Commercial – No Derivations 4.0 International License.

Table of Contents

Introduction	7
(1) Development of provisions on the wills formalities in modern legal systems	15
1. Introductory remarks	15
2. Wills formalities and the evolution of legal regulations related to it	20
3. The consequences of failure to comply with wills formalities	29
4. Criticism of legal regulations concerning the wills formalities	32
(2) The search for a mechanism to relax the rigour of the wills formalities regulations	40
1. Departure from strict formalism	40
2. Ideas for the validation of wills executed against the regulations on the wills formalities	41
3. The views against the ideas for the validation of flawed wills	69
(3) Practice of the wills formalities regulations in the context of mechanisms to relax its rigour	76
1. Introductory remarks	76
2. Selected case-law based on the <i>substantial compliance</i> approach	77
3. Selected case-law based on the <i>dispensing power</i> approach	85
4. Selected case-law based on the <i>harmless error</i> approach	95
5. Selected case-law based on the <i>favor testamenti</i> approach	106
(4) Functions of the wills formalities regulations in the light of mechanisms to relax its rigour	117
1. Introductory remarks	117
2. The evidentiary function of the wills formalities regulations	120

Table of Contents

3. The channelling function of the wills formalities regulations	130
4. The cautionary function of the wills formalities regulations	140
5. The protective function of the wills formalities regulations	147
(5) Functional wills formalities. Proposal of a model solution based on testamentary intent	156
1. Introductory remarks	156
2. Replacing strict formalism by a functional approach	157
3. Solution to reconcile functional approach and formalism	165
4. Towards functional wills formalities	175
Conclusions and Recommendations	182
Bibliography	186