

## Inheritance by Contract Institutions Legal Structure Problematic Issues

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**Introduction and material.** Inheritance by contract contains following institutions: inheritance contract (or, sometimes, agreement), agreement to appoint the heir or heirs, mutual wills, contract not to revoke joint or mutual wills, other institutions. Inheritance by contract institutions have two main legal structures (hereinafter – forms) – simple written form and notarial act form. Sometimes a notary form exists as the main form, simple written form is subsidiary. For example, Civil Law of the Republic of Latvia (hereinafter – Civil Law) provides, that “an inheritance contract must be certified pursuant to notarial procedures”.

However, mutual wills institution does not provide obligatory notarial form – rules of construction of the mutual will subordinate to the rules of the Civil Law section 446. They require that mutual wills are concluded in the situation of the Civil Law norms application in simple written form. The situation is more complicated in the case of understanding of the rules of construction of the mutual will, fixed in Uniform Probate Code. Section 2-701 of this Code contains the following disposition: “in the absence of a finding of a contrary intention, the rules of construction, in this [part] control the construction of a governing instrument. Term “governing instrument” interpreted in Section 1-201 of the Code and fixed in following disposition: “governing instrument” means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), transfer on death (TOD) deed, pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type”.

In the case of law enforcement – mutual will implementation by applying the rules of Private International Law (concretely – dispositions, provides by the term “governing instrument” mentioned above) by sworn notary on the territory of the Republic of Latvia – appears collision, which makes impossible the act of implementation of mutual wills, concluded within the territory of United States because of its legal structure problematic issues.

**Aim.** The objective of this work is to research inheritance by contract institutions legal structure in the situation of implementation of the contractual forms of inheritance into the legal systems of different countries. This research should be done based on the example of implementation of mutual will institution legal system of the Republic of Latvia.

**Methods.** Analytical method and legal act interpretation were used in the study.

### Results.

1. Deeds, trusts, other institutions implemented in Uniform Probate Code, have no qualification and legal interpretation in the Civil Law of the Republic of Latvia.
2. In the case of mutual will implementation, using above the mentioned terminology, leads to misunderstanding.
3. Notariate Law of the Republic of Latvia does not contain norms and dispositions, which provide direct implementation inheritance by contract institutions.
4. Republic of Latvia and the United States of America still have not joined the Convention of 5 October 1961 on the conflict of the Laws Relating to the Form of Testamentary Dispositions.

### Conclusion.

1. Complete Notariate Law with a division or a section, which shall provide legal regulation in the situation of application of norms of Private International Law, especially in the sphere of inheritance by contract institutions.
2. Connecting the Civil Law inheritance and obligation dispositions to the Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions and ratificate this Convention on the territory of the Republic of Latvia. This action helps to unify inheritance law with the law of obligations, remove misinterpretations and ease the procedure of implementation.