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Digital heirs: inheritance law in relation to virtual assets of economic and existential value.

Digital heirs: the right of succession in the face of virtual assets of economic and existential value
Digital inheritances: the right of succession in relation to virtual assets of economic and existential value

Jhonny Flores Barbosa Rélvas1
Dario Belfort Pereira2
Diego Moreira Mota3
Luiz Carlos Ferreira Moreira4

Abstract:

This study aims to examine the impact of inheritance laws on virtual assets, considering both their patrimonial expression and their highly personal dimension, in order to understand the feasibility and form of transferring these assets to heirs under Brazilian law. It starts from the premise that the increasing digitalization of social relations has broadened the traditional concept of patrimony, now encompassing virtual assets ranging from economically valuable content, such as cryptocurrencies and monetized accounts, to existential assets, such as photographs, messages, and social media profiles. Given this scenario, the study investigates the existing normative gaps in Brazilian law due to the lack of specific regulations on digital inheritance, and analyzes the need to distinguish between patrimonial and existential digital assets, especially in light of personality rights and privacy protection. To this end, a qualitative, exploratory, and bibliographical methodology is adopted, based on the analysis of specialized doctrine, current legislation, and...

Recent case law, including decisions from state courts and rulings from the Superior Court of Justice, shows that the Brazilian legal system still faces significant challenges in dealing with the succession of digital assets, making it necessary to resort to the analogical application of constitutional norms and principles. Therefore, it is concluded that specific regulation of digital inheritance is an essential measure to guarantee legal certainty, ensure the effectiveness of the right to inheritance, and simultaneously protect the personality rights of the deceased, promoting a balance between patrimonial and existential interests in the context of the digital society.

Keywords: digital inheritance. Inheritance law. Digital assets. Personality rights. Privacy.

DIGITAL HEIRS: Succession Law in the Face of Virtual Assets with Economic and Existential Value

Abstract

This article analyzes the applicability of succession law to digital assets, considering both their economic and existential value, to determine whether and how these assets can be transferred to heirs under Brazilian law. It is based on the premise that the increasing digitalization of social relations has expanded the traditional concept of patrimony to encompass virtual assets ranging

[1] Ninth semester student of Law at the Aparício Carvalho University Center – FIMCA. Email: midiasjhonnybarbosarelvas@gmail.com
[2] Ninth semester student of Law at the Aparício Carvalho University Center – FIMCA. Email: dario.belfort3@gmail.com
[3] Ninth semester student of Law at the Aparício Carvalho University Center – FIMCA. Email: motad0622@gmail.com
[4] Professor and advisor for the Law course at the Aparício Carvalho University Center – FIMCA. Email: luiz.moreira@fimca.com.br

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from economic content, such as cryptocurrencies and monetized accounts, to existential elements, such as photographs, messages, and social media profiles. In this context, the study examines existing legal gaps in Brazilian law, given the absence of specific regulation of digital inheritance, and the need to distinguish between patrimonial and existential digital assets, particularly in light of personality rights and privacy protection. To this end, a qualitative, exploratory, and bibliographic methodology is adopted, based on the analysis of specialized doctrine, current legislation, and recent case law, including decisions from state courts and understandings of the Superior Court of Justice.

The results indicate that the Brazilian legal system still faces significant challenges in addressing the succession of digital assets, necessitating the analogical application of legal norms and constitutional principles. It is concluded that specific regulation of digital inheritance is essential to ensure legal certainty, guarantee the effectiveness of inheritance rights, and, at the same time, protect the deceased's personality rights, thereby promoting a balance between patrimonial and existential interests in the digital society.

Keywords: digital inheritance; succession law; digital assets; personality rights; privacy.

1 INTRODUCTION

Technological advancements and the digitalization of social relationships have profoundly changed...
The concept of wealth. Currently, in addition to material goods, individuals accumulate digital assets.
of economic and existential value, such as cryptocurrencies, social media accounts, photo collections,
passwords and content in the cloud. According to Tartuce (2023), contemporary Civil Law should
to keep pace with the changing nature of property and emotional relationships, in order to encompass new forms.
of property and value.

Given this context of asset transformation, the need arises to understand
How does the Brazilian legal system address the succession of these digital assets? According to Gagliano and
According to Pamplona Filho (2022), hereditary succession is a legal phenomenon that ensures continuity.
of the estate after death, preserving the principle of human dignity and the social function of...
heritage.

However, the 2002 Civil Code did not expressly provide for digital assets, which generates
gaps regarding its transmissibility and its legal nature. Furthermore, the Federal Constitution
It simultaneously ensures the right to inheritance and the right to privacy, fundamental principles that...
They intertwine in the debate about digital inheritance. While the right to inheritance protects the aspect
In the context of property rights, the right to privacy protects the personal and existential content of these assets, such as...
Messages, images, and digital memories. Given this scenario, the challenge lies in balancing...
These two rights guarantee the preservation of the deceased's memory without violating their privacy.

Therefore, the research problem can be formulated in the following terms: is it possible to
transmission and sharing of digital assets, both of a patrimonial and existential nature, such as
Social media profiles, personal files, and virtual assets, in the Brazilian legal system, without

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to violate personality rights and data protection guaranteed by the Federal Constitution and comply with the LGPD?

Based on this problem, the present article aims to analyze the applicability of inheritance law regarding digital assets, considering both their economic value and their physical value. existential, with the purpose of understanding how these assets can be passed on to heirs. in the Brazilian legal system. It also seeks to identify the main concepts of property. digital technologies and their classifications within the legal framework, examining existing legislative gaps in Succession of virtual assets in Brazil and a comparison of the legal treatment of digital inheritance in other countries. countries that have already regulated the matter.

In this sense, according to Venosa (2021), inheritance is composed of all assets, rights and The deceased's obligations are transferable. However, the author points out that the rights of... Personal rights are, as a rule, non-transferable, which raises the problem of the sharing of digital assets. of an affective nature. This duality leads to the distinction between patrimonial digital assets, susceptible to Sharing, and existential digital assets, of a highly personal nature and, in principle, non-transferable.

Given this, the research hypothesis is based on the premise that digital goods... In terms of patrimonial nature, assets are fully transferable to heirs, while digital assets of Existential characteristics cannot be transmitted automatically, although it is admitted that... exceptional circumstances of access or management by heirs when expressly provided for The holder may remain in the position during their lifetime or when necessary to preserve legitimate interests, provided that the rights and interests of the holder are respected. Personality rights and data protection.

The relevance of this study lies precisely in analyzing the regulatory gaps and challenges. Interpretative challenges faced by Inheritance Law in light of new forms of virtual assets. (Souza, 2021). Furthermore, the aim is to understand the balance between the right to memory and to The privacy of the deceased and the patrimonial rights of the heirs, promoting reflections that contribute for legislative and doctrinal improvement. Therefore, the research is justified by its timeliness and The topic has practical importance, given the growing number of users of digital environments. exponentially, which increases the incidence of inheritance disputes related to virtual assets. This is therefore a topic that requires interdisciplinary analysis between Civil Law and Civil Law. Digital and Personality Rights, in order to ensure the effectiveness of succession in the digital age.

In terms of methodology, this research is characterized as qualitative, exploratory, and bibliographic. It is qualitative because it seeks to understand the legal nature of inheritance. digital law and its implications for Brazilian inheritance law, prioritizing interpretation and... Legal argumentation is used instead of statistical data. This is also an exploratory study. since the topic is still recent in the legal landscape and lacks specific regulation, the

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which requires the investigation of concepts, fundamentals, and possible normative solutions. Finally, it is
It is bibliographical, as it is based on theoretical and documentary sources, including books and articles.
scientific literature, legislation, and judicial decisions related to the subject of study.

Thus, this article is structured into four main chapters, organized...
in a progressive manner to enable an understanding of digital heritage from the perspectives
historical, legal, and jurisprudential aspects. Initially, the topic of social transformations is addressed and
technological advancements that have contributed to broadening the traditional concept of heritage,
demonstrating how the evolution of the virtual environment has influenced the formation of digital goods and their
economic and existential relevance in contemporary society.

Subsequently, the analysis of Brazilian inheritance law as applied to assets is developed.
digital, examining the constitutional and civil foundations of succession, as well as the gaps
Legislative matters relating to the transferability of virtual assets. This stage also discusses
limits imposed by personality rights, privacy, and the protection of personal data.
in the post-mortem context.

Next, an analysis of Brazilian case law on digital inheritance is carried out, starting from...
from examining recent decisions of national courts, with the aim of demonstrating how the Power
The judiciary has been facing challenges stemming from the absence of specific legislation and which
Criteria have been used to balance inheritance law and the protection of rights.
Personality in the digital environment.

Finally, the study presents a comparative analysis of the legal treatment given to
Digital inheritance in other countries, highlighting foreign experiences that already have...
specific regulations or mechanisms aimed at the succession of virtual assets, especially
Regarding the preservation of the data subject's wishes and the protection of digital data.

2. HISTORICAL AND SOCIOLOGICAL ASPECTS OF DIGITAL INHERITANCE

Technological expansion and the digitalization of social relations have profoundly transformed the system.
The concept of patrimony, which came to encompass not only material goods, but also assets.
intangible and digital. Contemporary society is embedded in a context where the presence
The virtual world becomes an integral part of individuals' identity and, consequently, of their personal collection.
patrimonial. In this scenario, as Tartuce (2023) observes, modern Civil Law must
to keep up with the changing nature of property relations, incorporating new forms of ownership and
valuable insights that emerge in the digital environment.

From this transformation, the concept of digital goods gains relevance, encompassing all

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virtual elements of a patrimonial or existential nature linked to a person, such as accounts on social media, files stored in the cloud, passwords, crypto assets, and digital works. According to Burille (2023) states that these assets can be classified into distinct categories, such as personal data, Property assets, existential assets, and hybrid assets. The latter are characterized by coexistence. of economic and emotional values. This classification highlights the complexity of digital inheritance and This demonstrates that not all virtual assets can be treated uniformly within the legal framework.

Given this scenario, technological advancement has also imposed a reconfiguration of relationships. economic factors are increasing the value attributed to digital assets. According to Pinheiro (2023), the growing monetization of social media profiles, digital channels, and cryptocurrency investments reveals that such assets have concrete economic relevance and should be recognized as part integral to an individual's assets. On the other hand, the author points out that certain assets Digital elements, such as private messages, photographs, and personal content, have an existential nature. being directly linked to the privacy and personality of the holder, which prevents its automatic equation with patrimonial assets.

From this perspective, the very concept of heritage goes through a process of expansion. Venosa (2021) already highlighted that assets are not limited to tangible goods, encompassing also intangible rights and values that are part of an individual's civil life. Thus, in the digital age, It is coherent to understand that heritage extends to virtual assets, including content. stored on digital platforms, electronic records and cloud files, which become to compose the contemporary heritage collection.

Furthermore, the evolution of the digital economy has significantly changed the way... Goods are produced, stored, and transmitted. According to Diniz (2022), the Law of Succession It must be reinterpreted in light of new technological paradigms, since the classical conception... Inheritance law does not adequately address the legal relationships arising from the digital environment. This finding reinforces the need for theoretical and regulatory updates to encompass non-existent assets. at the time the Civil Code was drafted.

Among the most emblematic examples of this new reality are cryptocurrencies, digital assets based on blockchain technology, which have real economic value, although not have physical materiality. According to Teixeira and Leal (2022), these assets represent a a significant challenge for inheritance law, especially due to the need for access to cryptographic keys, without which transmission to heirs becomes impossible. In this sense, the The author points to the will as one of the main legal instruments capable of enabling... succession of these assets.

In parallel, the notion of digital goods is also directly related to the rights of

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personality. As Doneda (2021) points out, personal data are intrinsically linked to the dignity of the human person, which implies the need for protection regarding its use and its destination, even after the death of the owner. This perspective reinforces the understanding that the assets Digital technologies possess not only an economic dimension, but also an existential dimension, which requires a differentiated legal treatment.

Therefore, it can be observed that the emergence of digital goods inaugurates a new paradigm. In the general theory of patrimony, the coexistence between economic value and affective value imposes on... Law faces the challenge of balancing the financial interests of heirs with the protection of memory. and the privacy of the deceased. In this sense, Bentes, Cândido and Viana (2023) point out that the nature The hybrid nature of these assets puts strain on the application of traditional legal concepts, such as the principle of saisine. especially given the limitations imposed by digital platforms regarding access and Account management after a user's death.

Thus, as Castro (2024) points out, the main contemporary challenge consists of to reconcile the right to inheritance with the right to privacy, while simultaneously ensuring the continuity of legal relationships and protection of the personal sphere of the deceased individual.

Therefore, technological advancement and the consolidation of the information society require a A reinterpretation of the concept of heritage in light of digital reality. Contemporary heritage. It transcends the limits of the physical world, encompassing a significant set of virtual goods that They carry economic and existential values, which highlights the need for adaptation of the law. to new social and technological dynamics.

3. Inheritance in Brazilian Succession Law and Digital Assets

In the Brazilian legal system, inheritance constitutes a fundamental right. expressly guaranteed by article 5, item XXX, of the Federal Constitution of 1988, which states: "The right to inheritance is guaranteed" (Brazil, 1988). At the sub-constitutional level, the matter is... regulated by the Civil Code of 2002, especially from article 1,784 onwards, which establishes: "Upon the opening of the succession, the inheritance is immediately transmitted to the legitimate and testamentary heirs." (Brazil, 2002). This device enshrines the principle of saisine, according to which the transmission of The inheritance is automatically transferred upon the death of the owner.

Despite this consolidated normative structure, the Civil Code did not address expressly digital goods, which generates significant interpretative gaps in the face of contemporary technological transformations. As observed by Gagliano and Pamplona Filho (2022), the absence of a specific provision requires that the succession of virtual assets be analyzed by

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through the analogical application of existing norms and general principles of Civil Law.

Given this scenario, it becomes essential to understand the legal concept of inheritance and its... limits. According to Mota (2022), inheritance comprises the set of legal relationships inheritable from the deceased, excluding those of a strictly personal nature, which are They cease to exist with death. This distinction proves fundamental to the analysis of digital inheritance, because This allows us to differentiate between assets of a patrimonial nature, which are transferable, and those of a non-patrimonial nature. existential, the transfer of which may imply a violation of personality rights.

Contemporary doctrine has highlighted that the digitalization of social relations has expanded This significantly alters the concept of inheritance, requiring a reinterpretation of succession laws. In this sense, Ghilardi and Rosa Filho (2022) argue that digital goods have a nature multifaceted, combining economic and existential elements, which makes it difficult to adapt to traditional categories of Civil Law. Thus, even in the absence of specific regulation, Principles such as the dignity of the human person, autonomy of will, and... should be applied. The social function of inheritance as interpretative vectors.

In a complementary way, Diniz (2022) states that Succession Law should be interpreted in light of new technological paradigms, since the traditional conception of Inheritance does not adequately cover digital assets. Therefore, assets such as social media profiles are not included. social media, accounts on digital platforms, files stored in the cloud, and non-virtual content They can be ignored by the legal system, under penalty of emptying the law itself. fundamental to inheritance.

Along these lines, legal doctrine points to the need to distinguish between digital assets. patrimonial and existential digital assets. According to Pinheiro (2023), patrimonial assets, as Cryptocurrencies, monetized accounts, and digital assets with economic value should be included in the estate. and be subject to division among the heirs. On the other hand, existential goods, such as messages Private information, photographs, and personal content require more careful analysis due to their... close connection to personality rights.

With regard to the protection of personal data, the importance of Law No. [number] stands out. Law 13.709/2018 (General Data Protection Law – LGPD), which establishes rules for the processing of personal data and reinforces the principle of informational self-determination. In accordance with Article 2 of... said law:

The discipline of personal data protection is based on the following principles:

> I – Respect for privacy; II – Informational self-determination; III – Freedom of expression, information, communication and opinion; IV – the inviolability of privacy, honor, and image; V – economic and technological development and

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> innovation; VI – free enterprise, free competition and consumer protection; and VII – the human rights, the free development of personality, dignity and the exercise of citizenship by natural persons.

From this perspective, Doneda (2021) highlights that data protection is directly linked to the dignity of the human person, which implies respect for the will of the holder regarding The fate of your information, including after death.

In the absence of specific legislation on digital inheritance, the legal system Brazilians have resorted to the analogical application of existing norms, including provisions of the Marco Civil da Internet (Brazilian Internet Bill of Rights). Civil Internet Law (Law No. 12.965/2014), which ensures rights such as privacy protection and... Intimacy in the digital environment. As Bentes, Cândido and Viana (2023) point out, this adaptation Interpretation demonstrates that the law seeks to respond to new social demands, even if... unsystematic form.

In this scenario, the autonomy of the will assumes a central role in the discipline of inheritance. Teixeira and Leal (2022) propose the use of digital wills as a suitable legal instrument. to fill regulatory gaps, allowing the owner to define, during their lifetime, the fate of their digital assets, Designate specific heirs and establish guidelines for accessing and managing their accounts.

Similarly, Mota (2022) argues that digital wills represent progress. relevant in adapting Inheritance Law to technological reality, by providing greater Legal certainty and predictability in inheritance relations involving virtual assets. This is about... therefore, a mechanism capable of harmonizing inheritance rights with the protection of rights of personality.

Thus, it is clear that Brazilian inheritance law faces the challenge of balancing tradition. and innovation. On the one hand, it is necessary to recognize that digital assets are part of the heritage of The individual, and therefore, must be considered in the succession process. On the other hand, it is necessary to duty to preserve the intimacy, privacy and wishes of the deceased, ensuring that the succession digital development should occur in accordance with constitutional principles and guiding ethical values. the legal system.

4 DIGITAL HEIRS: LEGAL CHALLENGES AND APPLICABILITY IN BRAZIL

The absence of specific legislation on digital inheritance is one of the main... Obstacles to legal certainty in Brazil, especially in light of the increasing incorporation of virtual assets. to the assets of individuals. In this scenario, the Brazilian legal system still shows itself

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dependent on doctrinal constructions and specific case law solutions, which generates
Uncertainties regarding the transmissibility and protection of these digital assets. As highlighted
According to Barreto and Neto (2016), digital inheritance represents a new challenge for the law, requiring...
Adapting traditional inheritance law structures to technological dynamics.
contemporary.

The difficulty legislators face in keeping up with technological advancements highlights a gap.
relevant regulations. The lack of specific regulations has led to analogical application.
of already established norms, especially those provided for in the Civil Code and the Brazilian Internet Bill of Rights.
However, such instruments are not sufficient to encompass the complexity of digital goods, which
They exhibit unique characteristics, such as immateriality and the coexistence of economic values.
and existential. In this sense, Tartuce (2018) emphasizes that the digital legacy imposes a reinterpretation of
classic institutes of Civil Law, especially regarding the delimitation of property.
transmissible.

The problem intensifies given the diversity of digital goods, which can include
from assets of economic value, such as monetized accounts and crypto assets, to content of a non-negotiable nature.
strictly personal, such as messages, photographs, and private files. This distinction is essential.
since existential digital goods find limits in the protection of rights of
personality.

As Cavalieri Filho (2012) teaches, personal rights are, as a rule,
non-transferable, which prevents unrestricted access by heirs when there is a risk of violation of the law.
intimacy and the private life of the deceased.

Furthermore, the operation of digital platforms introduces new obstacles to the succession of assets.
virtual. The terms of use, often imposed unilaterally, can restrict or even
Preventing access to accounts after the account holder's death creates a conflict with inheritance rights.
According to Leonardi (2020), the digital environment is governed by its own logic, in which protection
Privacy and personal data take center stage, requiring the interpreter to act accordingly.
cautious to avoid undue violations of fundamental rights.

In practical terms, the lack of clear guidelines also impacts the succession of digital assets.
linked to economic activity, especially those protected by security mechanisms, such as
passwords and digital authentication. The inability to access these elements may render the process unfeasible.
Transfer of assets, highlighting the need for proper succession planning.
Given this scenario, legal scholars have pointed to digital wills as a relevant instrument for...
to ensure the expression of the holder's will, allowing for the prior organization of the destination of their assets.
virtual goods.

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Given these gaps, the Judiciary has assumed a fundamental role in construction.
solutions for conflicts related to digital inheritance. In the absence of specific legislation,
Brazilian courts have been applying constitutional principles, such as the dignity of the person.
Human rights, the protection of privacy and autonomy of will, are essential to justifying decisions.

Within the Superior Court of Justice, although there is still no repetitive issue...
Specifically regarding digital inheritance, the Court has already addressed the matter in recent decisions, recognizing
the need to initiate a separate procedural incident for access to protected digital assets
by password, as well as the possibility of the digital inventory administrator acting in the identification and
classification of virtual assets (Brazil, 2025). This understanding highlights the concern of
The court aims to prevent indiscriminate access to personal content, while simultaneously seeking
to ensure the effectiveness of inheritance law regarding assets of a patrimonial nature.

This stance reveals a tendency of the Superior Court of Justice to adopt
Intermediate solutions that do not deny the existence of digital inheritance, but neither do they allow its...
Unrestricted transmission. Conversely, the Court indicates that the succession of digital assets must respect
constitutional limits, especially with regard to privacy, intimacy and dignity of
human person, reinforcing the need to distinguish between patrimonial and existential digital assets.

It can be observed, therefore, that Brazilian jurisprudence is still in the process of...
training, adopting case-by-case solutions that vary according to the circumstances of each case. In
In certain situations, the protection of the deceased's privacy prevails; in others, it is permitted...
access to digital assets by heirs, especially when interest is demonstrated.
legitimate or legally relevant.

Therefore, analyzing judicial decisions becomes essential to understanding how the
Inheritance law is being applied in practice in light of new technological demands. Next,
Relevant judgments are presented that highlight the different positions adopted by
Brazilian courts regarding digital inheritance, especially concerning access to content.
stored in a virtual environment.

4.1 Jurisprudential Analysis of Digital Inheritance in Brazil

The absence of specific regulations on digital inheritance has led the government to...
The judiciary is assuming a central role in constructing solutions for conflicts involving property.
virtual. Given this scenario, case law analysis reveals not only the complexity of
subject matter, but also the lack of uniformity in the interpretations adopted by the courts.
Brazilians, who sometimes prioritize protecting the privacy of the deceased, and sometimes recognize the rights of

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heirs to access digital assets.

Initially, it is worth highlighting a decision by the Court of Justice of Minas Gerais that demonstrates that prevalence of personality rights over inheritance interests, especially when...
It deals with digital goods of an existential nature:

> SUMMARY: INTERLOCUTORY APPEAL. INVENTORY. DIGITAL INHERITANCE.
> Digital assets. Unlocking access to the deceased's Apple account. Request for access to the deceased's personal information. Photographic collection and correspondence.
>
> Stored in the cloud. Denial. Violation of the deceased's right to personality and image. Protection of privacy and...
> PRIVATE LIFE OF THE DECEASED. EXISTENTIAL AUTONOMY. NEED FOR
> GUARANTEE. APPEAL NOT GRANTED. - The Federal Constitution enshrined, in its
> Article 5, the constitutional protection of the right to privacy (privacy is inviolable,
> Private life, honor, and image of individuals are protected, with the right to compensation for damages being guaranteed.
> (material or moral damages resulting from its violation) - The inheritance is transferred as a unified whole.
> which includes not only the deceased's material assets, but also their intangible assets, in which
> This includes digital assets of substantial economic value, as referred to in legal doctrine.
> of "digital inheritance," provided they have economic value - Digital assets
> They could therefore be subject to inheritance and should be listed in the inventory so that...
> operate the transmission causa mortis, while in relation to existential digital assets (photos,
> (files, videos and other data stored in the cloud with a password), it would not be possible to dispense with such.
> treatment, since these are issues related to personality rights,
> Non-transferable and of an eminently personal nature to the deceased - Possible transfer
> The succession of private digital collections may lead to a violation of the rights of
> Personality traits, which are, as a rule, non-transferable and persist even after death.
> Regarding the subject - Judicial authorization for access to the private information of the deceased user.
> It should only be granted in cases where there is economic relevance to justify it.
> Access to data kept confidential, by the interested party themselves, through a password or
> biometrics, without any mention of the possibility of succession or sharing - The
> The personal data of the deceased deserves legal protection in the context of the Internet.
> the deceased wanted other people to have access to his photographic collection, available
> only in the digital "cloud," would I have shared, printed, backed up, or performed the
> saving somewhere freely accessible to third parties (without a password), forwarded or written down
> The same thing somewhere - The user's wishes expressed during their lifetime must be considered.
> Regarding the destination of the content he inserts into the network, insofar as it is compatible with the
> internal legal framework and the terms of use of the providers, as a way of
> consecration of their existential autonomy. In the absence of a disposition of will, they must
> The terms of use of the providers should be applied — Appeal acknowledged, but not granted.

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> (TJ-MG - Appeal No.: 17438143020248130000 1.0000.24.174340-0/001,
> Rapporteur: Judge Delvan Barcelos Júnior, Judgment Date: May 22, 2024, 8th Civil Chamber
> Specialized, Publication Date: June 28, 2024.

The decision above demonstrates the adoption of a restrictive stance regarding the transmissibility of Digital assets are considered essential, reinforcing the protection of the deceased's privacy and private life. This... This understanding is in line with Leonardi's (2020) perspective, according to which the The digital environment demands special attention to data protection and privacy, even after death. of the holder. Thus, the denial of access to the digital collection reveals the Judiciary's concern in preventing the violation of highly personal rights, which, as Cavalieri Filho (2012) teaches, have essentially non-transferable character.

On the other hand, the case law of the Court of Justice of São Paulo also presents decisions that relax this protection, allowing access to digital assets in certain situations specific, especially when a legitimate interest on the part of the heirs is demonstrated:

> SUMMARY: APPEAL. Digital law. Request for access to e-accounts.
> Email and messaging app that allegedly belonged to the deceased son of the author. Sentence of
> The claim is unfounded. There is no proof of ownership of the accounts. Appeal by the plaintiff.
> Data regarding email account ownership, stored by the provider itself.
> It is impossible to require the appellant, in this specific case, to produce categorical proof of this.
> Fact. "Digital inheritance" is not regulated in Brazil. Possibility of analogy.
> with the legacy of personal letters and manuscripts. Comparison with interception.
> A telephone company that is not thriving. Possibility of the successor company inheriting this collection of information.
> Legitimate interest in clarifying the premature and unexplained death of the appellant's son.
> The specific circumstances of the case should prevail. The claim against Google is upheld.
> to determine the provision of access data to accounts belonging to the deceased.
> Technical impossibility of providing communication records via WhatsApp.
> Messages notoriously encrypted end-to-end. PARTIALLY APPROVED
> PROVIDED.
> (TJ-SP - Civil Appeal: 11239208220238260100, Rapporteur: Judge Celina Dietrich)
> Trigueiros, Judgment Date: August 30, 2024, 27th Chamber of Private Law, Date of
> Publication date: August 30, 2024.

In this case, a more flexible approach is observed, in which the Judiciary recognizes the possibility of access to digital data due to the legitimate interest of the heir, especially Given the need to clarify the circumstances of the policyholder's death.

This interpretation aligns with the idea that inheritance law should be applied in a way...

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functional and contextualized, as argued by Barreto and Neto (2016), when they state that inheritance

Digital technology demands legal solutions tailored to the specific characteristics of each individual case.

A joint analysis of these decisions reveals that the Brazilian Judiciary still does not consolidated a uniform understanding regarding digital inheritance, oscillating between strict protection of Personality rights and flexibility in favor of inheritance interests. This scenario reinforces the need for specific legislative regulation, capable of establishing objective criteria for to distinguish between patrimonial digital assets and existential digital assets, as well as to define the limits of access for heirs.

Given this scenario, as Tartuce (2018) points out, the evolution of Civil Law must to keep up with social and technological changes, in order to guarantee legal security and effectiveness in inheritance relations. Thus, the consolidation of normative parameters on the Digital inheritance proves essential to avoid contradictory decisions and ensure proper management. protection of both the individual's assets and private sphere, even after their death.

4.2 The Digital Will as a Planning Tool

SUCCESSION

The increasing integration of human life into the virtual environment has generated the need for legal mechanisms capable of ensuring the proper disposal of digital assets after the death of the owner. The holder. In this context, the digital will emerges as an important instrument of succession planning, allowing the individual to express their wishes in advance regarding... management, access, and transmission of your virtual assets. This mechanism seeks to reduce family conflicts, ensuring legal security and preserving both property interests and existential rights related to the digital legacy.

The lack of specific regulations on digital inheritance in Brazil has intensified The importance of estate planning focused on virtual assets, as Falcão points out. (2024), the public will assumes a fundamental role in the protection of digital assets, especially given the legislative gaps regarding the fate of accounts, files, and personal data. after the user's death. The author highlights that the use of this instrument allows not only the asset organization, but also the preservation of the owner's wishes regarding its contents. existential and highly personal.

Furthermore, digital succession planning constitutes an important manifestation of Private autonomy, an essential principle of contemporary Civil Law. In this sense, Pereira (2025) highlights that the digital will is directly related to the freedom to make a will and the right

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the individual's right to predefine the boundaries of the succession of their digital assets, provided that subject to the restrictions imposed by the legal share and the rights of the necessary heirs. The author It notes that technological transformations require a reinterpretation of traditional forms of A declaration of last will, especially in light of the expansion of intangible heritage.

In practical terms, the digital will also presents itself as a preventive mechanism. Given the technical difficulties related to accessing virtual assets. Accounts protected by multifactor authentication, cryptocurrencies stored in digital wallets, and files kept in Cloud-based services often rely on passwords or private keys known only to the user. holder. According to Silva (2025), the absence of prior information about these mechanisms may to make the transfer of assets to heirs impossible, causing irreversible financial losses. According to the author, a will functions as a strategic tool for recording instructions. secure regarding the administration and disposal of digital assets.

Another relevant aspect concerns the conflict between inheritance law and terms of use. taxes levied by digital platforms. Many companies responsible for social networks, services of Storage and communication applications establish clauses that restrict the Sharing access to accounts after the user's death.

Therefore, even when there is a will, limitations may arise. contractual issues that hinder the effective transfer of the digital collection. On this point, Lana and Ferreira (2023) argue that the absence of specific legislation ends up transferring to private platforms the power to define the limits of digital succession, which highlights the need for intervention. legislative measures to ensure greater legal balance between private autonomy and the protection of Privacy and the right to inheritance.

Furthermore, digital estate planning is not only relevant for asset purposes, but also... Also existential. The fate of social media profiles, personal messages, photographs, and files. Private matters involve issues related to memory, identity, and post-mortem privacy. Ferreira Neto and Bueno (2025) observe that the lack of prior definition of these contents contributes This leads to the judicialization of family conflicts and increases the risks of rights violations. The deceased's personality. From this perspective, the digital will plays an important role. preventive, allowing the data subject to establish clear limits regarding access, exclusion or preservation of their virtual content.

Therefore, the digital will is becoming a relevant planning tool. succession in contemporary society, especially in light of the expansion of virtual assets and due to the lack of specific regulation of digital inheritance in Brazil. Its use makes possible Greater legal predictability preserves the autonomy of the holder's will and contributes to a reduction.

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of conflicts involving digital assets, both patrimonial and existential. Thus, it becomes necessary to legislative evolution of Brazilian inheritance law, in order to expressly recognize mechanisms aimed at digital succession and ensuring adequate protection for new formats of built heritage in the virtual environment.

5. LEGAL TREATMENT OF DIGITAL INHERITANCE IN OTHER COUNTRIES

The growing relevance of digital goods in the contemporary landscape has driven... various legal systems are developing specific mechanisms to regulate their transmission after the death of the incumbent. Unlike in Brazil, where the absence of transmission is still observed. systematic regulation, foreign countries already have regulatory solutions and case law that seeks to balance the right to inheritance with the protection of privacy and rights. personal data. Given this scenario, comparative law proves fundamental to the Understanding the legal trends applicable to digital inheritance.

In the United States, the enactment of the Revised Uniform Fiduciary Access to Justice stands out. The Digital Assets Act (RUFADAA), which regulates the access of legal representatives to digital assets of deceased. This legislation establishes that the expression of the holder's will, during their lifetime, must to prevail, and may be expressed through a will or through available digital tools. through the platforms. As Naomi Cahn analyzes, the US regulation represents a A significant step forward in recognizing digital assets as an integral part of heritage, at the same time time when it imposes limits on access, especially with regard to the content of private communications (Cahn, 2019).

Within the European context, Germany presents one of the most emblematic precedents on the subject. subject. In a judgment delivered by the Bundesgerichtshof, the right of the family members of accessing the digital account of a deceased user on a social network, on the grounds that the assets Digital assets should follow the same inheritance logic as traditional assets. According to Paul M. Schwartz (2018), this decision consolidated the understanding that digital succession must respect the principle of the universality of inheritance, even if subject to limitations arising from the protection of personal data.

In turn, France adopted a more specific legislative approach when regulating the The fate of personal data after death. French law allows the data subject, while still alive, to... Establish guidelines for the storage, deletion, or transmission of your digital data. In the absence of an explicit declaration, the heirs may exercise certain rights, provided that respecting the limits imposed by the protection of private life. According to Judith Rochfeld (2020), this

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The model seeks to harmonize inheritance law with personality rights, especially in which refers to informational self-determination.

At the supranational level, according to Silva (2025), the European Union, through the General The Data Protection Regulation (GDPR) establishes relevant guidelines for data protection. personal matters, although it does not directly address digital inheritance. The regulation reinforces principles such as the dignity of the human person, privacy, and control over personal data, influencing the The way in which member states handle information on deceased individuals. According to Lilian Edwards (2016) argues that data protection in the European context helps to define The contours of digital succession, especially with regard to access to sensitive content.

Furthermore, international academic experiences have contributed to a deeper understanding. of the topic. In this sense, Rebecca G. Cummings (2019) highlights that the absence of standardization The global digital inheritance landscape generates legal uncertainty, especially in cases involving multiple parties. jurisdictions and digital platforms with their own policies. The author emphasizes the importance of Legal instruments that prioritize the will of the data subject and establish clear criteria for access. and the management of these assets.

Based on these international experiences, a common trend can be observed: recognition of the need for specific regulations for digital goods, coupled with valuing the autonomy of the holder's will and protecting personality rights. Thus, the Comparative law shows that digital succession requires innovative legal solutions capable of... To reconcile financial and personal interests.

In this scenario, it is clear that Brazil is still in the initial stages of addressing... Digital inheritance lacks specific regulations to ensure greater predictability and security. legal. The analysis of foreign experiences, therefore, offers important insights for the development of more appropriate regulations, aligned with technological transformations and fundamental principles of the contemporary legal system.

FINAL CONSIDERATIONS

This study showed that the increasing digitalization of social relationships has broadened significantly the concept of assets, incorporating virtual goods that they possess, Simultaneously, economic and existential value. In this scenario, Brazilian inheritance law finds itself... challenged to deal with a reality for which there is still no specific regulatory framework, what This creates legal uncertainty and often leads to solutions dependent on doctrinal interpretation and case law.

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The analysis demonstrated that, although digital assets may, as a rule,
While digital assets of an existential nature may be passed on to heirs, their limitations are established by rights.
of personality, especially with regard to intimacy, privacy and autonomy of
deceased. The absence of objective legal criteria for this distinction has led the Judiciary
adopting case-by-case solutions, sometimes restricting access to personal content, sometimes allowing it.
transmission of digital data in the face of legitimate interests, which highlights the need for
Standardization of understandings.

Furthermore, it was found that the Brazilian legal system has resorted to the application
analogous to the Civil Code, the Civil Framework for the Internet, and the General Data Protection Law, as well
as well as constitutional principles, such as the dignity of the human person and the autonomy of the will,
to support decisions involving digital inheritance. Given this scenario, instruments such as
Digital wills emerge as relevant alternatives to fill regulatory gaps and ensure...
The expression of the owner's wishes regarding the fate of their virtual assets.

Therefore, it can be concluded that specific regulation of digital inheritance is an urgent measure.
This is necessary to ensure greater legal certainty and predictability in inheritance matters.
Regulation should establish clear parameters to distinguish between digital assets and patrimonial assets.
digital assets include defining access limits for heirs and ensuring their protection.
Personality rights, even after death. Thus, Civil Law, in dialogue with the Law
Digital technology must evolve to keep pace with the transformations of contemporary society, promoting...
a balance between the effectiveness of the right to inheritance and the preservation of human dignity in
virtual environment.

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