

Law applicable to dispositions of property upon death

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La ley aplicable a las disposiciones testamentarias

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Former Spanish Regime

- Article 9.8 Spanish Civil Code: “Succession upon death shall be governed by the national law of the deceased at the time of death, whatever the nature of the assets and the country where they are located. However, testamentary dispositions and succession agreements ordered under the national law of the testator or of the parties at the time of their conclusion shall remain valid even if another law is governing the succession, although reserved shares shall be governed by the latter if applicable. The rights that by virtue of the law are attributed to the surviving spouse shall be governed by the same law governing the effects of marriage, respecting in any case the reserved shares of the descendants”.
- Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (HCCH, 42 Contracting States)



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Régimen español anterior

- Artículo 9.8 Código Civil español: “La sucesión por causa de muerte se regirá por la ley nacional del causante en el momento de su fallecimiento, cualesquiera que sean la naturaleza de los bienes y el país donde se encuentren. Sin embargo, las disposiciones hechas en testamento y los pactos sucesorios ordenados conforme a la ley nacional del testador o del disponente en el momento de su otorgamiento conservarán su validez aunque sea otra la ley que rija la sucesión, si bien las legítimas se ajustarán, en su caso, a esta última. Los derechos que por ministerio de la ley se atribuyan al cónyuge superviviente se regirán por la misma ley que regule los efectos del matrimonio, a salvo siempre las legítimas de los descendientes”.
- Convenio de 5 de octubre de 1961 sobre los Conflictos de Leyes en Materia de Forma de las Disposiciones Testamentarias (HCCH, 42 Estados contratantes)



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Current regime: testamentary dispositions

- Art. 24 Reg. 650/2012
- “admissibility and substantive validity
- “(...) law which, under this Regulation, would have been applicable to the succession of the person who made the disposition if he had died on the day on which the disposition was made. 2. Notwithstanding paragraph 1, a person may choose as the law to govern his disposition of property upon death, (...) the law which that person could have chosen in accordance with Article 22 (..)”



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Régimen actual: disposiciones testamentarias

- Art. 24 Regl. 650/2012
- “admisibilidad y validez material”
- “(...) ley que, en virtud del presente Reglamento, habría sido aplicable a la sucesión del causante si este hubiese fallecido en la fecha de la disposición. 2. No obstante lo dispuesto en el apartado 1, el disponente podrá escoger como ley que rija la admisibilidad y validez, (...) aquella que el artículo 22 le permite elegir, (..)”



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Current regime: succession agreements

- Art. 25 Reg. 650/2012
- Succession of one person vs. Several persons
- Admissibility, substantive validity, binding effects
- “law which, under this Regulation, would have been applicable to the succession of that person if he had died on the day on which the agreement was concluded (...) 3. the parties may choose (...) the law which the person or one of the persons whose estate is involved could have chosen in accordance with Article 22 (...)”



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Régimen actual: pactos sucesorios

- Art. 25 Regl. 650/2012
- Sucesión de una persona vs. varias personas
- Admisibilidad, validez material, efectos vinculantes
- “la ley que, en virtud del presente Reglamento, fuese aplicable a su sucesión si aquella hubiera fallecido en la fecha de conclusión del pacto (...) 3. las partes podrán elegir como ley aplicable al pacto sucesorio (...) a ley que la persona o una de las personas de cuya sucesión se trate habría podido elegir de acuerdo con el artículo 22 (...)”



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Current regime: common issues

- Art. 26 Reg. 650/2012: Substantive validity
- Art. 27 Reg. + Art. 75.1.II Reg. 650/2012: Formal validity
- Art. 83.3 Reg. 650/2012: Transitional provisions

Régimen actual: cuestiones comunes

- Art. 26 Regl. 650/2012: Validez material
- Art. 27 Regl. + Art. 75.1.II Regl. 650/2012: Validez formal
- Art. 83.3 Regl. 650/2012: Disposiciones transitorias



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