



EULawInEN

EU LAW TRAINING IN ENGLISH LANGUAGE:
BLENDED AND INTEGRATED CONTENT AND LANGUAGE TRAINING
FOR EUROPEAN NOTARIES AND JUDGES



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by the European Union's
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Methodology

Step 1. Identify the area of law concerned.

Step 2. Consider which aspect of private international law is at issue.

Step 3. Find the relevant EU and international legal sources.

Step 4. Check the substantive, geographical and temporal scope of the respective EU and international instruments; and where more than one instrument is relevant, check their relation to each other.

Step 5. Find the correct provisions.

CASE 1 (Case E.E., C-80/19 - still pending before the CJEU)

A Lithuanian national whose habitual place of residence on the day of her death was possibly in another Member State, but who in any event had never severed her links with her homeland, and who, inter alia, had drawn up, prior to her death, a will in Lithuania and left all of her assets to her heir, a Lithuanian national, and at the time of the opening of the succession it was established that the entire estate comprised immovable property located solely in Lithuania, and a national of that other Member State surviving his spouse expressed in clear terms his intention to waive all claims to the estate of the deceased, did not take part in the court proceedings brought in Lithuania, and consented to the jurisdiction of the Lithuanian courts and the application of Lithuanian law.

Questions

1. Is the situation in the main proceedings to be regarded as a succession with cross-border implications under the Succession Regulation and this Regulation must be applied to this situation?
2. Is a Lithuanian notary who opens a succession case, issues a certificate of succession rights and carries out other actions necessary for the heir to assert his or her rights to be regarded as a 'court' within the meaning of Article 3(2) of Regulation?
3. Is this certificate a 'decision' within the meaning of Article 3(1) (g) of the Regulation?
4. If not, are the Lithuanian notaries entitled to issue certificates of succession rights without following general rules on jurisdiction and such certificates are considered as the authentic instruments that have legal effects in other Member States?
5. Habitual place of residence of the deceased may be established in only one specific MS?

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6. Must it be concluded that the parties concerned in the present case agreed that the courts in Lithuania should have jurisdiction and that Lithuanian law should be applied?

CASE 2 - Succession law

Mohammed was born in Saudi Arabia in 1939. After working in his family company, during the 1977 oil crisis he was posted to Italy to manage the business relationship with several Italian oil companies.

In 1985 he met Maria, an Italian citizen born and bred in Italy. Mohammed and Maria married in a civil ceremony in Rome. Their parents disapproved the marriage because of their different religious background.

Maria and Mohammed continued to live in Rome until 2005 but had no children.

When Mohammed retired in 2007, the couple moved to London. The couple decided to rent a house while waiting to find the "perfect" house. Unfortunately, in October 2015 Mohammed was diagnosed with a terminal disease and he died in April 2016.

However, shortly before moving to the UK, Mohammed purchased, in his own name, an holiday home in the South of Italy.

Shortly after the transfer to the UK Mohammed opened a number of bank accounts, whereupon his UK banker introduced him to a local solicitor to sort out his estate planning.

By his English form will dated 3 April 2007, he appointed two UK-based professionals as executors and left his whole estate to his wife.

Mohammed was also advised to transfer some of his UK bank accounts to his wife by way of lifetime gifts. By the time he was diagnosed with his terminal illness Mohammed had already transferred most of his UK bank accounts to Maria but while he managed to make further transfers some accounts remained in his name at the time of death.

At the funeral, Mohammed's brother Ahmed told Maria that his solicitors were looking into the Will and he was considering challenging both the Will and the lifetime gifts.

Question

What is the position in relation to the various UK bank accounts? Will Ahmed's challenge succeed in relation to those accounts?

CASE 3 - Succession law

Mr. Richard Johnson is a British citizen born in 1940 in London. Starting in the 1975's he worked in Paris for an international organization. In early 1980's, he bought a spacious apartment in Paris.

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Mr. Johnson, who has learned fluent French, has a wide circle of friends with whom he socializes. He met Michael Franks, a Canadian lawyer. Richard and Michael soon became a couple.

Shortly after 2000, Richard and Michael started spending more and more of their days off in Spain.

Mr. Johnson then bought a beautiful beach house in Marbella, Spain. After his retirement in 2010, Mr. Johnson started to build a new network of friends, mainly among expatriate British retirees living in Marbella. Michael, who is five years younger than Richard, continued to work from Paris and frequently flew in for the week-end when his companion was in Spain.

Mr. Johnson has learned bits of Spanish, but he is far from being fluent in the language.

On average, Mr. Johnson spends at least five months a year in Paris, where Michael continues to work. Mr. Johnson has kept his apartment there and has kept a very tight network of friends in Paris. His bank and main physician are located in Paris. He prefers to spend the winter in Spain, with Michael joining him for the week-ends and occasionally for a longer stay. Mr. Johnson also frequently travels. On average, Mr. Johnson spends more time in Spain than he does anywhere else. His beach house is also his most expensive asset.

During a skiing holiday in Italy in January 2014, Mr. Johnson is trapped in a mountain hut for three days because of a very heavy snow storm. Fearing for his life, he drafts a will on a piece of paper. Mr. Johnson's will includes the following provisions:

«I leave £ 150,000 to my dear sister, Jeanne.

I leave my collection of rare coins to my friend Jimmy Browden.

I leave my residuary estate to the love of my life, Michael Franks and appoint him as the sole executor of my will.»

Remembering the advice he once took from a solicitor, Mr. Johnson also dates and signs the will, which he stores in his wallet. One day later, the storm subsides and he is able to come back to Paris. Three years after coming back from his dreadful experience in Italy, Mr. Johnson is killed in a traffic accident on his way home from a dinner in Marbella.

A couple of weeks after the funeral, Michael informs Jeanne about her late brother's will. Jeanne would like to challenge her brother's last disposition of property.

Questions

1. Which rules apply to Jeanne's claim?
2. Do the courts in Paris have jurisdiction to hear the claim made by Jeanne?
3. Assuming the courts of Paris have jurisdiction to hear the case, is the will drafted by Mr. Johnson valid?
4. Will the courts in Paris grant Jeanne's claim and hold that Mr. Johnson's will must be put aside or will these courts rule in favor of Michael Franks?

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