



EU Law in EN

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



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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)

This case concerns a deceased Lithuanian national. Her habitual residence on the day of her death was possibly in Germany, but she in any event had never severed her links with her homeland.

She had drawn up prior to her death a will in Lithuania and left all her assets to her son from her first marriage, a Lithuanian national. The entire estate comprised immovable property located solely in Lithuania.

Her son applied to a Notary in Lithuania to open the succession and to issue a certificate of succession, but the Notary refused because he claimed that the deceased was habitually resident in Germany. The son brought court proceedings in Lithuania against this refusal.

The surviving spouse of the deceased, her second husband, was a national of Germany, the other Member State where the deceased could have been habitually resident. He expressed in clear terms his intention to waive all claims to the estate of the deceased. The surviving spouse did not take part in the court proceedings in Lithuania, and he consented to the jurisdiction of the Lithuanian courts and the application of Lithuanian law.

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Questions

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

In preparing your answer you should consider the opinion of the Advocate General M. Campos Sánchez-Bordona published on 26th of March 2020 (you can find the opinion on the website www.curia.eu in Bulgarian).

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CASE 2

Peter Muller is a German citizen, married (for the third time) to a German citizen and has 3 children:

- Frank, living in Germany (child of Peter's first wife)
- Joseph, living in the USA and Christian, living in Italy (children of Peter's second wife).

Peter owns 50% of a villa in St. Moritz (Joseph and Christian own the other 50% which they inherited from their mother) and 100% of a holiday home in Italy.

He was an Italian resident, just for tax reasons, but in reality living in Switzerland for 9-10 months per year. He died in Switzerland on 20th January 2020

Peter, during the Summer of 2010, while he was in Switzerland, drafted a handwritten holographic) Will in German.

The Will provides that all Peter's estate shall be divided in equal shares between the wife, Joseph, Christian and two nephews.

In the Will Peter states that he has been resident in Italy since 2004. He also states that he excluded Joseph from the succession because Joseph has already benefitted financially from him during his life. Peter states that Joseph received a gift worth higher than the reserved share provided for Joseph under German succession law (1/8).

Questions

1. Is the Will valid?
2. Can reference by Peter to German succession law be considered a valid choice of law?
3. Answer question no. 1 and no. 2 considering that the Will was not drafted in 2010 but in 2018.
4. If reference to the German succession law is not a valid choice of law, try to determine the habitual residence of Peter at the time of death.

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CASE 3

Davide is an Italian citizen who has been residing in London for a number of years, where he is *domiciled* (in the English meaning of the term) and works as manager of an investment fund.

Davide owns some bank accounts in London and Milan, an apartment in London, a villa in Porto Cervo (Sardinia, Italy) and a holiday home in Antibes (France).

Davide is married to an Italian woman, and bought the apartment in London when he was single, while the villa in Porto Cervo and the holiday home in Antibes were bought after his marriage, which took place on 2nd of February of 2019.

Davide wishes to plan his succession choosing the English (& Wales) law of succession, leaving all his estate to his wife.

Questions

1. Determine which is the applicable law to Davide's succession if he does not make any choice of law, with specific reference to the situation of the immovables.
2. Can Davide choose English law?
3. What is the situation of David's estate if the law applicable to his succession is English law, whether chosen expressly or implicitly under article 22 of the Succession Regulation?
4. What is the situation of the villa in Porto Cervo and the holiday home in Antibes under the Regulation (EU) no. 1103/2016?

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