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SIGNING A WILL IN SPAIN

As most of our Readers are British citizens who live in Spain or come here on holidays, we think they will find interesting to know how does it work when they leave some assets as inheritance in Spain.

The first aspect to establish is whether British or Spanish Law will be applied to your estate on your demise. This is a very important matter, as while English Law allows total freedom of testamentary disposition for British citizens, Spanish Law gives only limited freedom. Usually the spouse and children have priority rights to inherit.

The Spanish Civil Code says the nationality of the deceased at the time of the death should determine what happens to the entire inheritance, wherever the death occurs.

On the other hand, English Law establishes that the Law to be applied to the inheritance of a person is that applicable in the deceased's domicile, in the case of moveable assets; and the local Law, in the case of real estates. Therefore, when a person leaves real estates in Spain, English Law would refer this case to Spanish Law.

In spite of this situation, Spanish Law requires one Law to be applied to the entire inheritance, therefore, in Spain we would not distinguish between the Law to be applied to moveable assets and a Law to be applied to real estates, as English Law does. This point has been established by the High Court of Justice in Spain in its Sentences November 15, 1996 (Case Lowenthal) and May 21, 1999 (Case Denney). It has been also established by the High Court of Justice, Chancery Division, in England, Vice Chancellor Court, July 31, 1985 (Case Adams).

The Spanish High Court of Justice will only apply Spanish Law to the inheritance of a foreign person when this would lead to the international harmonization of solutions. This means that, in order to apply Spanish Law, the High Court of Justice requires, not only that the Law being applied to the inheritance as a whole, but also that the enforcement of this Spanish Law should lead to a similar result as would be obtained by the application of the foreign Law.

In this way, the High Court of Justice, in its Sentence November 15, 1996 (Case Lowenthal); and in its Sentence May 21, 1999 (Case Denney), established that the application of Spanish Law would not be acceptable when the foreign Law does not observe the Spanish system of compulsory inheritors, as is the case with English Law, under which British citizens have total freedom of testamentary disposition.

Nevertheless, the High Court of Justice paved the way for the enforcement of Spanish Law in its Sentence September 23, 2002 (Case FranÇois Marie James W.) in cases when all the deceased´s real estate is located in Spain, even though English Law does not share Spanish

system of compulsory inheritors . This sentence also disregards the requirement for international harmonization of solutions.

Generally speaking, we can make four classifications: when the deceased leaves only real estates in Spain and his/her domicile was in England; when he/she leaves real estates in Spain and his/her domicile was in Spain; when the deceased leaves real estates in England and only moveable assets in Spain and his/her domicile was in England; and when the deceased leaves real estates in England and Spain and his/her domicile was in England.

In the first case, when the deceased leaves only real estates in Spain and was domiciled in England, Spanish Law is to be applied.

In the second case, if the deceased leaves only real estates in Spain and was domiciled in Spain, Spanish Law is to be applied.

In the third case, if the deceased leaves real estates in England and only moveable assets in Spain and was domiciled in England, English Law is to be applied.

In the fourth case, when the deceased leaves real estates and moveable assets in England and Spain and was domiciled in England, English Law is to be applied.

Whatever yours situation, we will need to study your particular case in order to determine which Law is applicable to you.

At this point, I am sure you are wondering whether or not your ought to sign a will in Spain. Although you are not obliged to make a will, it is be advisable to do so. There will be no problem having your English will recognised as valid by the Spanish authorities, but it will be more expensive for your heirs to deal with. If you sign a Spanish will, you could decrease expenses and taxes, too.

Another reason to sign a will in Spain is that dying intestate can cause great difficulty to your heirs. The most important reason to advice you to sign a will in Spain is a question of time and money: if you only have an English will, your heirs will need to get probate of your English estate before being able to take any action in Spain. They will have also the expenses of official translation and legalisation of your documents.

With this short article we hope to help you in your decision to sign a will in Spain and also to plan your inheritance in Spain so that you have everything arranged for your heirs. You must, of course, take into consideration that this article does not substitute the specialised and professional advice, where we would study your concrete possibilities and we would look for the most convenient choice for your particular case.
