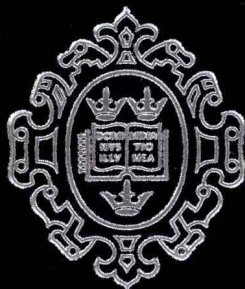

INTERNATIONAL SUCCESSION

THIRD EDITION

EDITED BY
LOUIS GARB
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OXFORD

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FOREWORD

My learned lord, we pray you to proceed,
And justly and religiously unfold
Why the law Salic that they have in France
Or should or should not bar us in our claim.

Shakespeare, *Henry V*, Act 1 Sc. 2, 9–12

We are all international lawyers nowadays. Our clients more and more have contacts with multiple legal systems. Born in one place, working and living in another, married to someone from a third, assets in a fourth, and so on. The law of succession on death, like every other part of the substantive law, in the twenty-first century is increasingly dominated by the adjectival rules of the conflict of laws, and infiltrated (or purified, depending on your point of view) by unifying conventions, treaties and even (as in the case of the member states of the European Union) supranational law.

But it is not enough to know the basic differences between systems. We must have access to points of detail, and quickly. What rights does a surviving spouse, an illegitimate child, or a parent have? Can the court take over the administration of the estate of the deceased? Can death be presumed, and if so, under what conditions? Moreover, knowing foreign rules of law is in itself not enough. A lawyer must also be able to compare other legal cultures to his or her own; for example, how important notaries are in the system, whether executors and administrators have any role to play, what kinds of evidence may be admitted, in what kind of court proceedings, and for what purpose.

I need all this, and more, in order to make sensible, well-informed decisions. Oh, and by the way, I don't want a long, expensive opinion in three weeks' time. I need to know *now*, and in as few words as possible.

What I need is this book. The relevant inheritance law and practice (including private international law rules) of fifty jurisdictions around the world, explained by professional lawyers from each of them by reference to a common questionnaire, thus facilitating comparisons between those jurisdictions. Here, for example, I find out quickly that not all civil law systems are the same, just as not all common law systems are the same. The Latin differ from the Germanic, and the Nordic from both. The former Eastern European are rather mixed, and the Far Eastern are simply eclectic. Of course, a work of this kind cannot be expected to answer in detail all the questions that might arise. But it amounts to an excellent primer for basic decision-making, and a really useful springboard for further enquiries and research.

This is a splendid resource, not only for the modern private client lawyer, but also for the litigator, and, dare I say it, even for the academic lawyer interested in this area. I recommend it to all of them. After all, you never know when the next king might pop in for legal advice.

Paul Matthews
School of Law, King's College London
September 2009

PREFACE

We live in an increasingly globalized world. This globalization has relevance in the context of the succession to assets on death. It is very rare these days for an investment portfolio to be invested otherwise than on an international basis, with investments in many different jurisdictions. More and more individuals now own assets in more than one jurisdiction as a result of the significant increase in personal wealth that has occurred across the western, middle and far eastern economies in particular, and the progressive abolition of exchange controls. Families have become more internationally diverse and there has been a huge increase in cross-border employment mobility, particularly in a European context.

To a significant extent, the rules of succession in any particular jurisdiction are unique to that jurisdiction. Although there may be similarities of approach, in particular across civil law jurisdictions, even here significant differences arise. The purpose of this work is to provide an easy-to-use analysis of the rules of succession applicable to particular jurisdictions and to explain how those rules inter-relate with other jurisdictions at an international level.

Accordingly, the chapter for each country follows a standard format and is based upon a uniform and comprehensive questionnaire that is intended to elicit coverage of the significant issues that may arise in any particular jurisdiction. The questionnaire is in two sections. The first provides for a brief survey of the relevant local legal system. The second considers variations to the local legal system when foreign elements come into play.

The common law jurisdictions are largely those whose law derives one way or another from the law of England and Wales. They generally provide for freedom of testation and the recognition and use of trusts, not only with regard to beneficial interests arising on death, but also with regard to the administration of the estate. Civil law jurisdictions, on the other hand, in particular those whose law derives from the *Code Napoléon*, have very different approaches to both probate procedures and the vesting of title on death. They also usually provide for strict family shares on death through what are generally known as forced heirship provisions.

It might be thought that an area as diverse as this would lend itself to harmonization. The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions 1961 has, where adopted, introduced some uniformity with regard to execution formalities. More recently, the European Union published a consultative Green Paper in March 2005 with regard to the possible legal harmonization of certain cross-border aspects of succession across the EU. No regulations have yet been made, but we have included an introductory section outlining the regulations that may be anticipated following the lengthy consultation exercise.

This book is a joint enterprise between the general editors and the contributors who have provided the chapters for each of the relevant jurisdictions. We are very grateful to the contributors for the work they have undertaken in providing thoughtful chapters. We hope that the book will be of great value not only to lawyers practising in this area but also to other persons and institutions who have to deal with succession issues, not least of all to those individuals and families who find themselves having to grapple with complex cross-border succession problems. To assist interpretation, we have included a glossary of the most common legal expressions that are used in a succession context.

Whilst every care has been taken to ensure the accuracy of the contents of this work, no responsibility for loss occasioned to any person acting or refraining from action as a result of any statement in it can be accepted by any of the editors, the contributors or the publishers.

The editors would like to thank Tammy Steiner, Ann Hill and, especially, Eva Abeles, at Herbert Smith LLP, for all the hard work they put into the coordination, the production and the processing of the contributions, and for keeping the project, and the editors, up to the mark.

The contributors have endeavoured to state the law as at 1 October 2009.

Louis Garb
John Wood
October 2009

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