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WILLS AND ESTATE PLANNING IN ENGLAND AND BELGIUM

AN INTERNATIONAL PERSPECTIVE

A talk for the British and Commonwealth Women's Club of Brussels and Belgium
3rd October 2011
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1) INTRODUCTION

a) Summary

I qualified as a solicitor in London in 2002 and my practice is in the area of Wills, tax planning and succession law. I have had the fortune to work at one of the few firms in the UK with a specialist French property division, and as I speak French reasonably well, was able to draft wills and handle succession matters for many clients with assets in France, culminating in a 3 month stint earlier this year at a firm of notaires in Eastern France. The international aspect of Wills is also of personal interest to me as my parents, sitting here, are of different nationalities and have lived in Brussels for the last twenty years.

In helping my parents and other clients over the years, I have learnt about the Belgian rules, which are in many respects similar to the French. However, please note that I am not a specialist in Belgian law. I am an international lawyer who has a good understanding of French and Belgian law. The principle objective of this talk is therefore to give you an appreciation of the international laws applicable to your Wills regardless of where you live. It is also to explain the English law of Wills for those of you who hold assets in England and Wales and are unsure how those assets will devolve when you die.

In this talk I will start with English laws of wills trusts and inheritance tax. I will then cover roughly the same ground but in respect of Belgian law. After doing this, I will compare the two systems, and discuss the laws applicable when they both come into operation.

Before I go into English law however, I need to explain two things:

b) English, Welsh and United Kingdom laws

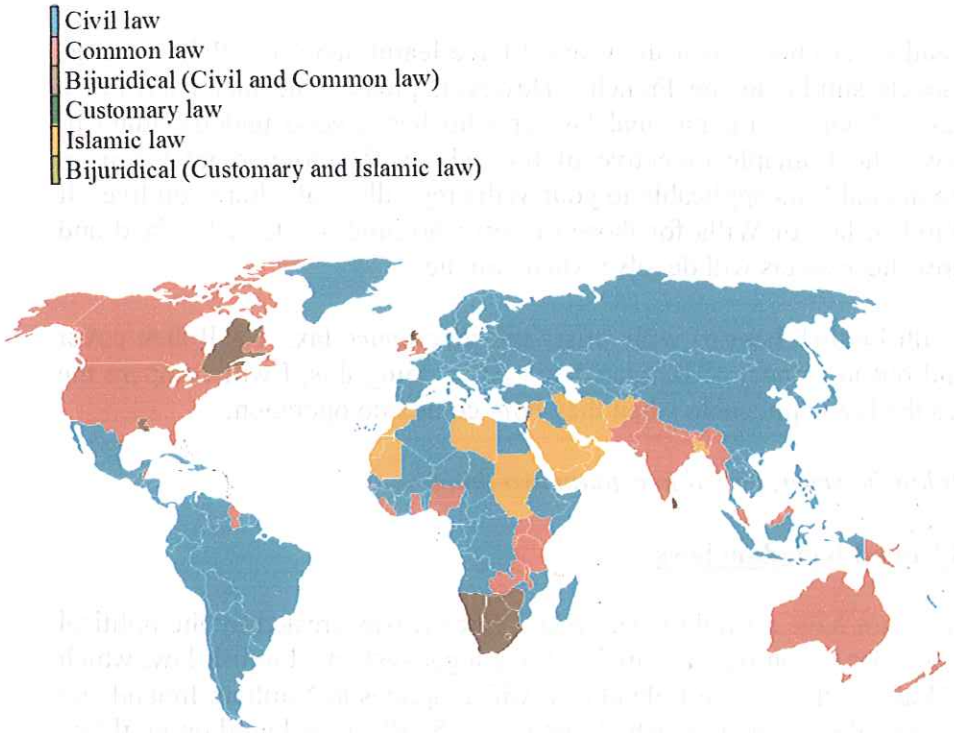
The United Kingdom does not have a single legal system since it was created by the political union of previously independent countries. It now has three legal systems. English law, which applies in England and Wales and Northern Ireland law, which applies in Northern Ireland, are based on common-law principles. Scots law, which applies in Scotland, is based on civil-law principles, with some common law elements. There are of course substantive fields of law which apply across the United Kingdom. However, I will not be explaining Scots or Northern Irish law in this talk, as that would take too much time, but will instead focus on English law.

c) Common and civil law jurisdictions

Generally, systems of law are based on either the "common-law" model or the "civil-law" model. Common law systems place great weight on court decisions, which are considered law with the same force of law as statutes. By contrast, in civil law jurisdictions courts lack authority to act where there is no statute, judicial precedent is given less interpretive weight and scholarly literature is given more. As a rough rule of thumb, common law systems trace their history to England, while civil law systems trace their history to Roman law and the Napoleonic Code.

Broadly, England, the U.S, and the commonwealth nations are common law jurisdictions, while most other countries in the world, including Belgium and France, operate under a civil law system or a system broadly similar to a civil law system. A key point to remember is that between civil and common law there is a *fundamentally different approach to the devolution of personal assets* and as a result, difficulties arise where these approaches conflict.

Legal Systems of the World



2) ENGLISH SUCCESSION LAW

a) Testamentary freedom

Under the common law, an individual has complete "testamentary freedom", literally, the right to leave one's assets by testament (a Will) to whomsoever he chooses, even at the expense of his wife and children. However, the English courts retain the discretion to set aside his will after his death. This discretion is broadly limited to the situation where he was supporting individuals up to his death (or married); they would therefore have legitimate expectation or need that this would continue and the courts will give force to this need. It is however, up to the disgruntled claimant to bring any such claim, and moreover they have a limited time within which to do so. Furthermore, it is worth noting that under English law marriage will automatically revoke a Will and divorce has the effect of automatically removing the former spouse.

b) Will formalities, storage and registration

It is important to remember that, while it is possible to write your will on the back of the proverbial envelope, in practice this will cause a big headache for your beneficiairies, and much greater legal fees as a result. In order to complete a will properly the following formalities are required:

1) Two adult witnesses are needed. They themselves, and their spouses, should be completely independent and not referred to or in any way interested under the terms of the document whether as a beneficiary or as an executor and trustee. There is no requirement or need for the witnesses to read the document although they should be told what it is.

2) The Testator (that is the person making his or her last will and "testament") must sign in ink by using all your initials and your surname, where indicated at the end, in the presence of the two witnesses.

3) The witnesses should then themselves sign in ink in your presence adding their addresses and occupations. Accordingly, all three of you should be together and see each other sign in sequence and complete the formalities.

4) The Will should be stored safely. It is to be emphasized that nothing must ever be pinned or attached to the document including by paper clip as that can lead to future difficulties. i.e. the probate registry demanding an affidavit from the executors confirming that an additional legacy had not been attached to the Will which has subsequently been removed.

5) The Will may be registered, for relatively low cost, at the national Wills Registry. This is a relatively new phenomenon in England and Wales, but is catching on quickly. A search of the register is invaluable if you have a deceased relative but no knowledge of their solicitors.

c) Executors and Personal Representatives

The persons responsible for administering the estate are called personal representatives. Where there is a Will the personal representatives will be the Executors named in the Will but where there is no Will and there is an intestacy, the Law identifies the people who are entitled to act as personal representatives and in that instance they will be known as Administrators. Where there is a trust in the Will, the executors become the trustees on conclusion of the estate administration. This is more important than many people realize, as while an Executors job may only last a few months, a trustee can be responsible for funds for thirty years or more, so it is very important to choose individuals with financial acumen and even more important, who get along together, as their decisions have to be *unanimous.* If there is doubt about the capability of a beneficiary to manage as an executor, or to get along with co-executors, you can consider appointing a professional executor, such as a solicitor or accountant, although remember that they will charge for their services, and some much more than others.

d) The Grant of Probate

The Grant of Representation is known as a Grant of Probate when there is a Will and a Grant of Letters of Administration where there is no Will in existence. The Grant is obtained from the Probate Registry of the High Court and is proof that the personal representatives identified in the document are entitled to deal with the estate. Without the grant, the Will is ineffective when trying to close all but small bank accounts, or trying to sell property or shareholdings.

A personal representative's Oath stating the deceased's details, the personal representatives' entitlement to a Grant and the gross and net value of the assets in the estate must be submitted together with the Will (if there is one). The Oath itself has to be very carefully drafted, every last detail must be correct, if one executor is not acting it must be explained why, if another has died, divorced or even moved house all these details must be compiled and explained to the Registrar correctly in the Oath. If any detail is missing, appears incorrect or is just unclear the Registrar may reject the Oath and the process will have to recommence.

Grants will be required in most commonwealth jurisdictions, including Jersey, the Cayman Islands and so on, and will cost significant legal fees to obtain. A Jersey Grant will be not less than £700 to obtain, even if there is only one bank account. However, there is a little known process known as "resealing" whereby the grant produced in one commonwealth jurisdiction is effectively rubber stamped by the probate court in another commonwealth jurisdiction, thereby saving significant legal and court fees in the process, not to mention the time that it would take to obtain a fresh grant in say South Africa or New Zealand.

e) Inheritance tax

Alongside the oath must be produced an Inheritance tax account, which is of different depth and complexity depending upon the value of assets in the estate. The account must be completed by the executors, who normally take legal advice when doing so. It contains a number of questions designed to test whether or not the deceased has made any lifetime gifts or investments with the aim of avoiding tax, and where those efforts have not complied with Revenue law, will highlight the fact to the Revenue who will claim additional tax as a result. If Inheritance Tax is payable it must be settled before the Grant of probate is issued except insofar as the tax is attributable to property and business assets where it can be paid by ten yearly installments with interest until the sale of those assets. It is possible for assets in the estate to be used to settle the tax but otherwise short term loans are usually available.

For the 2011/2012 tax year, the IHT rate is 0% on the first £325,000 (the "nil-rate band), and 40% on the rest of the value, at death, of an individual's taxable estate. The nil rate band normally rises annually and tax is only payable on the value of an estate above the nil rate band. From 2007 onwards the nil-rate band has been transferrable between married couples and between civil partners. Thus, for the 2011/12 tax year, a married couple will in effect have an allowance of £650,000 against inheritance tax, whilst a single person's allowance remains at £325,000. The mechanism for this enhanced allowance is that on the death of the second spouse to die, the nil rate band for the second spouse is increased by the percentage of the nil-rate band which was not used on the death of the first spouse to die.

Lifetime gifts made within seven years of death, with some exceptions, will not escape liability to tax. As we never know when we are going to die, this is an effective way of preventing sizable gifts of one's assets to avoid tax. Furthermore, gifts made with a "reservation of benefit" i.e. I give you my painting but it stays in my house, or I give you my house but I continue living in it, will be taxable in the same way.

Lastly, it is important to note that, while there is a "spousal exemption" from Inheritance tax, meaning that a legacy to one's husband or wife will not suffer tax, there is a significant reduction in this where a UK domiciled individual leaves assets to a non domiciled spouse. In such cases the spouse allowance is limited to £55,000 (see further below re domicile).

f) Deeds of Variation

It is currently possible for the beneficiaries of a deceased persons estate to vary the terms of a Will or intestacy within two years of the date of death. This is often done to make use of valuable tax allowances. If the Deed of Variation contains the appropriate elections for Inheritance Tax and Capital Gains Tax purposes the variation will be viewed as having taken place by virtue of the Will or intestacy. This will mean that the original beneficiary will not be viewed as having made a gift for Inheritance Tax purposes which he or she must survive for seven years if it is to be outside his or her estate for the purposes of calculating any Inheritance Tax. Take the example of a daughter inheriting 500,000 from her parents, but choosing to give 50,000 of this to her own children. If this is done via a deed of variation, the 50,000 would not be included in her own estate if she subsequently then died within 7 years of the gift.

g) Trusts

The will trust is one of the most widely used legal devices in the personal law applicable to residents of common law countries. A Will trust is used, for instance, to defer the legal ownership of minor heirs until the age of eighteen or more or until the death of the testator's spouse. Essentially a trust is an arrangement between two parties in which property (cash, shares, land etc) is held by one party (the trustee) on behalf of and for the benefit of the other party (the beneficiary). Usually there will be two or more trustees to ensure continuity and there may also be more than one beneficiary. Trusts are created by deeds or wills which set out the terms of the arrangement between the parties. There are two main types of trust:

Discretionary trusts

In a discretionary trust, instead of just one or several beneficiaries, there will be a class of beneficiaries who may or may not be named (i.e. spouse, children and grandchildren) and their entitlements are at the *discretion* of the trustees. The trustees will meet at least once each year and decide to which, if any, beneficiaries they will pay income and/or capital from the trust during the following year. Monies may be distributed at any time and unequally as between the beneficiaries. You will see therefore that decisions on distribution are made at the time of the distribution rather than at the creation of the trust, so you as the person setting up the trust have to be confident that the trustees will make wise decisions. To help them, you can draft a *letter of wishes*, setting out your intentions, but this will be non-binding guidance only.

Advantages:

A discretionary trust is the most flexible form of trust because it can include a large number of potential beneficiaries. You may have identified a particular group of people you want to benefit but you are unsure which of them, in the future, will need help or in what proportions. For example, as a grandparent you might decide to set aside capital for your grandchildren, including those who may be born later, even after your death. Furthermore, provided the trust deed grants them the power to do, trustees can bring a discretionary trust to an end by distributing all the trust property to the beneficiaries. Alternatively, they can choose to run it for several generations, as it can last for up to 125 years.

Life interest trusts

These provide that property or other assets is to be held in trust for the benefit of a given individual, normally but not always the surviving spouse, during his or her lifetime and then for the absolute benefit of other individuals, such as children. They can also allow capital to be paid to a beneficiary if the trustees agree. Quite often a half share of a property is placed in trust, the idea being to preserve at least half of the value of the house for the children regardless of the remarriage, bankruptcy or otherwise of the surviving spouse.

Typically these trusts provide that the surviving spouse shall be able to continue to live in the property on the condition that he or she meet the outgoings and that the surviving spouse can ask the Executors to join with him or her in selling the property and purchasing another

property to be held on identical trusts. If a replacement property is not purchased, then the deceased's share of the proceeds of sale will be invested and the income will be paid to the surviving spouse during his or her lifetime.

Tenancy in common

Easily forgotten is the fact that in order to ensure that your respective shares of the property pass under the terms of your Wills and not by right of survivorship, it is necessary to sever the joint tenancy of your property. In order to do this, it is necessary to sign a notice of severance.

Trust administration

Trustees need to make regular decisions about distribution. These decisions could be questioned in the future by the Inland Revenue and therefore detailed and accurate records must be kept of these decisions and of the meetings during which they take place. Annual income tax returns will also be required, although some investments are non-income producing and this can avoid the need for a tax return. The trustees may also need to consult professional advisers.

Summary:

- Freedom of choice with few limitations, but be aware of the marriage rule
- Be careful to observe the formalities
- Choose your executors wisely
- Calculate your assets in line with the nil rate band
- Consider your family's needs and the uses of discretionary or life interest trusts

3) BELGIAN SUCCESSION LAW

a) History

Robespierre and Saint-Just made state control of successions a keystone of the French revolution. In his desire to smash feudalism, Louis de Saint-Just urged that "nobody should be allowed to disinherit, or to make a will." The Civil Code has had a widespread influence in the world of law. Napoleon tried, and was relatively successful, in exporting the Civil Code to France's satellite nations. The continuing problem however is that widows had a thin time of it in countries that adopted the post-revolution Napoleonic code, and while the Code itself has stood the test of time, it is in some respects unsuited for modern families, as will be shown.

b) The regions

The law of Wills and succession is the same throughout the Belgian territory, however, inheritance tax is a regional tax, with different rules depending upon in which of the three regions (Flanders, Brussels and Wallonia) the deceased had his main fiscal residence in the last five years of his life.

c) Protected heirs

Belgian law has a system of forced heirship that protects certain heirs so that they cannot be excluded from inheriting part of a person's estate. Only persons who are blood relatives of the deceased, living at the time of death, may inherit, if there is no will. The only exception is the surviving spouse, who is a legitimate heir even although not blood related. The "reserve" is the part of the estate set aside by law for protected heirs, regardless of any will. There are three species of protected heir, ascendants, descendents and the surviving spouse. Note that if none of these three categories exist, then an individual is free to leave his assets to whomsoever he wishes (i.e. Battersea dogs home!).

If there are children their entitlements will be as follows:

- One child, half of the assets
- Two children, two thirds of the assets
- Three or more children, three quarters of the assets

If there are no children (or grandchildren to take their place), then parents or grandparents are entitled to one quarter of the assets for the mother's side and one quarter for the father's side, i.e. half of the assets.

Note that fortunately a surviving spouse can normally opt to take the usufruit in the entire estate instead of sharing it in the above proportions (see below).

d) The surviving spouse

According to article 745 of the Belgian Civil Code the *intestate* inheritance rights of the surviving spouse vary according to what other heirs are present. Three situations may be discerned.

i) When the deceased leaves descendants, adopted children or their descendants.

The surviving spouse receives an usufruit in the deceased's property.

ii) When the deceased leaves no descendants but other inheritors, i.e. ascendants or collateral parents up to the fourth degree of kinship with the deceased (cousins)

The surviving spouse receives an usufruit in the deceased's property and full ownership of the share of the deceased in any community property.

(If a house was community property, the surviving spouse will be full owner for the entirety; if a house was joint property in a regime of separation of assets, the surviving spouse will be full owner of his own half share, and only have a right of usufruit in the other half belonging to the inheritance, in which he will have to tolerate the rights of the deceased's blood relatives.)

iii) When the deceased leaves no other inheritors

The surviving spouse receives everything.

Note that these relate to the intestate rights of a surviving spouse, i.e. where there is no contrary intention expressed by the Testator via a Will or Donation. If the Testator wishes to provide further for his or her spouse, to a certain extent he can, so long as he has no surviving children or grandchildren. This is because, in the absence of descendents, a widow or widower is entitled to take the entire estate. It would appear that this needs to be specifically stated in a Will/Donation.

e) Life interests

The life interest (or usufruct/usufruit/vruchtgebruik) is the right to hold the assets of the estate and to collect and use the dividends, interest, rent, etc. Note that:

- It does not give a right to sell the assets of the estate.
- Both the heirs and the spouse have the right to ask that the life interest is converted into full ownership of some of the assets, but the spouse may refuse this conversion in respect of the house.
- The division of inheritance rights in usufruct and bare ownership during the usufruct may cause some practical problems. Often, heirs prefer full ownership.

- Notwithstanding any stipulation to the contrary, an heir receiving bare ownership may require that for all property subject to usufruct an inventory of real property and a list of personal property be made.
- He may also require that the sums of money be invested and that bearer securities, at the choice of the surviving spouse, be converted into registered securities or deposited in a joint bank account. Moreover the law makes it possible to convert an usufruit into full ownership, cash, or a price-indexed and guaranteed annuity.
- In practice, this is an important device. There is however little case law on this subject, because most of the time the conversion is negotiated and privately settled by the spouse and the "nu property" owners.

f) Matrimonial property and tontine clauses

A couple can make a marriage contract before a notary so that they either own everything jointly or own everything separately.

a) No contract

The default Belgian legal regime is a system of community property limited to the marital gains. The community assets are those acquired during the marriage for value or consideration. Income from professional activity is also community property.

When one spouse dies, half of everything owned by way of matrimonial property remains the property of the surviving spouse and is not part of the deceased person's estate. The other half of matrimonial property goes to the estate.

Besides the community property, there are two other patrimonies, the separate property of the husband and of the wife (article 1398 BCC). Separate assets are premarital goods and assets acquired during the marriage by way of succession, will or gift.

b) Contract

The marriage contract can adapt the community property regime by limiting or extending the community, or by introducing other distribution rules than the fifty-fifty rule, in favour of a surviving spouse. Alternatively they can opt for a separation of property contract so that they own no joint property and on death, all property of the deceased will belongs to his estate, including his share in co-owned property.

c) Tontine clauses

Joint owners can, when purchasing property, determine by deed that the total ownership of the property will pass to the last survivor.

g) Wills

i) Interaction with forced heirship rules

A will may only dispose of the assets that remain after these rules are applied. If there are no protected heirs then a will may dispose of all of a person's property. If a will leaves more to certain beneficiaries than is allowed under the heirship rules, the protected heirs can have the legacy reduced to the part of the estate the testator could dispose of without infringing their reserve. A protected heir can also ask the court to oblige beneficiaries of lifetime donations to return the part of the donation that has infringed their reserved right.

ii) Formalities

Under Belgian law, there are three valid forms of a will:

- Holographic will - This is handwritten, dated and signed by the testator and may be registered in the central register of wills.
- Public will - This is drawn up by a civil law notary in the presence of two witnesses, or by two civil law notaries.
- International will - An international will comprises both a private document and a notary deed.

iii) Heirs and Executors

In principle, the transfer is automatic, and the heirs do not need a court order to possess their inheritance.

However, under Belgian law the testator can choose to appoint, by will, one or more executors. Although he has limited powers, the executor must ensure that the estate is administered in accordance with the deceased's wishes. The will may also permit the executor to take possession of movable assets for one year and one day and during that period the heirs will be deprived of the movable assets.

The executor can sell the assets if there are insufficient funds to discharge all legacies for which he is responsible. He must render an account of the estate administration, once it is complete. Furthermore if the executor of the will has a mandate to file the inheritance tax return, he may be personally liable for the tax due.

h) Succession procedure

i) Marital property law comes first

In the case of death, the marital property system must first be settled. One half of the community (subject to any contractual modification) goes to the surviving spouse by virtue of marital property law, and has nothing to do with succession law. The other half of the community property passes under the law of succession.

ii) The Declaration de Succession

The statement of inheritance of a Belgian resident should be lodged with the tax office of the deceased's last tax domicile. This must be submitted within five months of the date of death beyond which the valuations of assets and liabilities cannot be changed. This is a narrow timeframe and therefore all necessary property valuations should be obtained quickly following death.

A distinction is made between the death of a resident and a non-resident of Belgium. In the estate of a Belgian resident, the declaration should be lodged, in the first instance, by each heir who should make the declaration on their own behalf and on behalf of all the other legatees. Although each heir should, in principle, lodge a declaration, it is standard practice to complete a single statement for all of them. In the estate of a non Belgian resident, the statement need only be lodged by those inheriting real estate located in Belgium.

Those lodging the statement may amend a statement already submitted until the deadline expires. Once the deadline (possibly extended) has expired, the statement becomes final and any subsequent amendment may incur a fine or be rejected. Late submission of a statement is fined (in principle 25 euros per month and per heir).

iii) Lifetime gifts

The estate includes all lifetime gifts given by the deceased, without any time limitation. For the calculation of inheritance tax, gifts in the three years before death are taken into account, unless donation tax was paid on these gifts.

i) Inheritance tax in Brussels

i) Timeframe

Inheritance tax or transfer duty should be paid within two months from the date on which the original deadline for lodging the statement expires. In principle, the tax should therefore be paid within 7, 8 or 9 months depending on whether the death occurred in Belgium, in Europe or outside Europe. The fact that the tax authorities have accepted an extension to the deadline for lodging the statement does not affect the date of payment. It is therefore possible that payment has to be made at the same time as the statement is lodged (if, for instance, the deadline for lodging the statement has been extended by two months). The heirs will then have to make an interim payment to avoid paying default interest.

ii) Rates

The rates vary according to the region and the degree of kinship, and are progressive. In Flanders, the maximum rate is 27 per cent in direct line and between spouses and cohabitants and a maximum of 65 per cent between other persons. In Brussels and Wallonia, the maximum rate in direct line is 30 per cent and 80 per cent between non-related persons.

Inheritance tax is calculated at different rates according to the heir's kinship with the deceased. The rates applicable to direct descendants, ascendants, spouses and legal cohabitants, in proportion to their share in the value of the taxable assets, are as follows:

Rate applicable to direct descendants and ascendants, between spouses and equivalent (includes grandchildren and grandparents)		
Euros	Rate applicable	Tax payable (inclusive)
Up to 50,000	3%	1,500
50,000 – 100,000	8%	5,500
100,000 – 175,000	9%	12,250
175,000 – 250,000	18%	25,750
250,000 – 500,000	24%	85,750
Above 500,000	30%	

iii) Exemptions

The first 15,000 Euros for a direct descendant, ascendant, spouse or legal cohabitant is exempt from inheritance tax. The amount exempt is increased, in favor of the deceased's children under the age of 21, by 2,500 Euros for each full year remaining until they turn 21. It is also increased, in favor of the surviving spouse or legal cohabitant, by 50% of the supplementary allowances granted to joint children under 21.

j) The Usufruit

The surviving spouse usually inherits the usufruct (usufruit/vruchtgebruik) of the deceased's estate. Likewise, the legal cohabitant inherits the usufruct of the family home and the furnishings therein. Consequently, when someone inherits a usufruct of a property which is part of the estate in full ownership (pleine propriété/volle eigendom), they are taxed on a taxable base calculated according to a percentage of the full ownership specified in the Tax Code according to the age of the usufructuary (usufruitier/vruchtgebruiker). The bare owner (nu-propriétaire/blote eigenaar) is taxed on the difference between the full ownership and the usufruct. The percentage of the value of the usufruct in relation to full ownership is as follows:

Age of the usufruitier	% of the usufruct value
20 or less	72%
20-29 years	68%
30-39 years	64%
40-49 years	56%
50-54 years	52%
55-59 years	44%
60-64 years	38%
65-69 years	32%
70-74 years	24%
75-79 years	16%
over the age of 80	8%

Example

Tim dies and leaves an estate of 100,000 Euros.

His heirs are his spouse Jane who is 69 and their two children Tom and Matthew.

Jane inherits the usufruct and the two children the bare ownership. The taxable base for Jane, who inherits the entire estate under usufruct, is €50,000 x 32%, i.e. €32,000.

The taxable base of each child under bare ownership is therefore (€100,000 - €32,000): 2, i.e. €34,000.

k) Special case of the main residence

If the deceased's estate includes a share in the full ownership of a property which served as the deceased's main residence for at least five years prior to their death and the said property is inherited by a direct descendant, ascendant, spouse or legal cohabitant, the inheritance tax (applicable to the net value of their share in such property) is determined as follows.

Table of preferential rates for the devolution of the family home		
Euros	Rate applicable to the corresponding band in first column	Total amount of tax (inclusive)
Up to 50,000	2%	1,000
50,000 – 100,000	5.3%	3,650
100,000 – 175,000	6%	8,150
175,000 – 250,0000	12%	17,150
250,000 – 500,000	24%	77,150
Above 500,000	30%	

For this provision to apply, the fact that the property concerned was the deceased's main residence shall, unless proven otherwise, be substantiated by means of an excerpt from the population register or register of foreigners.

An idea:

Unlike in France, assets passing by virtue of a community of property do not pass free of inheritance tax. Therefore, particularly where there are significant assets approaching or over 7 figures there is a strong incentive to share the worldwide estate with the children in order to maximize the allowances, although it would be prudent to check whether or not the life interest trust arrangement is recognized in Belgium as equivalent to an usufruit, especially if it is unlikely that the surviving spouse would need to spend capital. It will generally be preferable for a surviving spouse to take an usufruit in the entire estate, rather than, say, 50% of the estate outright, as 1) this should result in a lower overall inheritance tax burden and 2) the capital behind the usufruit is normally not required; what is needed is income.

4) CROSS BORDER SUCCESSION IN ENGLAND AND BELGIUM

Now that we have a broad understanding of the Common law and the Civil law, the English Rules and the Belgian rules, it is appropriate to consider what happens when these rules inevitably collide, when an individual is connected to more than one country. Generally speaking the domicile, habitual residence or nationality of the deceased operates to *connect* an individual and/or his assets to one country or another and consequently that country's laws.

a) Belgian domicile

Anyone who, at the time of their death, has established their domicile or centre of financial interest in Belgium, regardless of their nationality, is regarded as a Belgian resident.

Consequently, a Belgian resident is:

- Anyone who has set up their actual, main place of residence in Belgium;
- Anyone who has their main business base or professional base in Belgium;
- Anyone who, although not necessarily having their assets in Belgium, administers or supervises their management from Belgium.

Some people are presumed not to be Belgian residents: they include foreign diplomatic staff serving in Belgium (ambassadors, nuncios, charges d'affaires, etc.) and members of their family who are not Belgian, civil servants and other European Union employees who had, before leaving, a domicile in another Member State (conversely, civil servants and other Community employees who had their domicile in Belgium but reside in another Member State pursuant to their job continue to be Belgian residents).

b) Domicile in England and Wales

Under the common law, a person's connection to a particular legal system is determined by his domicile. From an English standpoint therefore, examination of the deceased's domicile is the starting point for any cross-border administration. It is generally understood that the English law of domicile is a much more complex concept than the Belgium or French concept of residence, and an altogether different test is applied. As a result a conflict may often arise, because an individual can be domiciled in a common law country but at the same time habitually resident in a civil law country. This means that two different countries may seek to assert their succession and/or taxation laws over his assets.

There is in fact a case currently running through the High Court in London concerning the domicile of a British national resident in Belgium, and some of the applicable rules are helpfully illustrated therein. Most of the following is copied verbatim from the excellent judgment of Deputy Judge Charles Hollander QC, as the lengths to which the judge goes to establish domicile is helpful in illustrating the nebulous and difficult nature of the concept.

Morris v Davies and others

The case started in 2008 on the death of Mr Davies, appeared in the courts earlier this year, and looks set to continue until 2013/2014 or it settles out of court. Effectively, the English High Court had to consider whether an Englishman had lost his domicile of origin and acquired a domicile of choice in either France or Belgium. If he had acquired a Belgian domicile, his Will was invalid and his property would pass under the intestacy rules.

Owen died unexpectedly of a heart attack aged 45 in Paris on 26 November 2008. He was born in England in 1963 and was a British citizen. He made his last will on 30 March 1996 which appointed a friend, Mr Adrian Morris, as executor, and left his worldwide estate to his uncle Clive. However, there is a jokey series of emails on 15 August 2008 between Owen and the Executor talking about death in which Owen says: I need to make provision for the cats well being. I have got a will, but I need to update it. As it stands, I believe it all goes to Natalie. It transpired that Owen was expressing his understanding that if he died, under English law his property would pass, notwithstanding his earlier will, to his fiancée and common law wife. He could not have been more wrong. It is also obvious that it was Owens intention that Natalie should succeed to his estate. Anything else would have been perverse.

Unfortunately however, his family did not agree with his wishes, and the case involves a dispute between the Owen's Executor Mr Morris, his fiancée, Mlle Natalie de Vleeschauwer, (a Belgian national) and his family. The family sought a declaration that Owen died domiciled in Belgium and that the will was a sham. They say also that the deceased was domiciled in Belgium and that succession to moveables is governed by Belgian law, that the will is void under Belgian law, that the will is void under English law as regards the Owen's immoveable property and that the will was obtained by undue influence. The Family had a direct financial interest in a favourable resolution of these proceedings whereas, interestingly, the fiancée had no direct financial interest but recognised that it was possible that she would probably be passed some of the estate voluntarily by the current beneficiary, while the family had made it clear that they would pass her nothing. *Ironically, it favoured British relations for Belgian rules to apply.*

Simultaneously, the family issued court proceedings in Belgium but subsequently an injunction was granted restraining the prosecution of the Belgian action, which has now been stayed until October 2011.

The judgment sets out the accepted principles of English law in this area, including:
· Every person receives at birth a domicile of origin.
· Every independent person can acquire a domicile of choice by the combination of residence and an intention of permanent or indefinite residence, but not otherwise.
· Existing domicile is presumed to continue until proof of the acquisition of a new domicile.
· Any circumstance that is evidence of a person's residence, or of his intention to reside permanently or indefinitely in a country, must be considered in determining whether he has acquired a domicile of choice.
A common summary of the law of domicile is that the domicile of origin is "sticky". In other words, strong evidence is required to establish a change of domicile.

Owens' life

Owen died unexpectedly of a heart attack in Paris on 26 November 2008 when attending a seminar. As appears below, at the time of his death Owen was working in Guyancourt, near Paris. Owen had fallen out with his family from about 1994 to 2002 over a family dispute arising from his grandfathers death and the administration of his estate, to the extent that Owen neither spoke to nor contacted anyone in the family in those years.

Owen was born in Newcastle in 1963. He went to school in Blackheath, left school after A levels in 1982 and was in the Royal Navy as a weapons officer until 1990. He took an engineering degree at the Royal Navy Engineering College during this time. From 1991 to 1994 he worked for Rover Group engineering and from 1994 until 2001 in Land Rover patent department. He lived in a property he had bought at 31 Back Lane, Lower Quintonnear Stratford-on-Avon. In 1998 he met Natalie at a training seminar in Strasbourg. She was a Belgian national who spoke fluent Flemish, English and French. She was a trainee patent attorney working in Belgium. He obtained a partial qualification as a patent attorney at Land Rover. Owen left Land Rover in February 2001 after BMW had purchased Land Rover when he took voluntary redundancy. It is apparent there were problems in the relationship between Owen and his boss. The effect of Owen falling out with one of his superiors was sufficiently serious and had such ramifications to have the effect that it would have been difficult for Owen to secure appropriate work thereafter in his relatively narrow field in the UK. In any event in the short term a non-compete clause limited his ability to find work. Owen thus looked for work abroad.

At the end of March 2001 Owen had a job interview with an Anglo-Belgian patent office, Bird Goen in Winksele, Belgium. He secured the job and started on 1 May 2001. He initially stayed above Bird Goens offices, then with a colleague and subsequently lived at Leybos 37, 3118 Rotselaar-Werchter in Belgium.

Owens relationship with Natalie was becoming closer over time. Those who knew him well said he had three passions in his life. One was his cats: he was devoted to his cats. Another was scrap metal: he was passionate about motorcycles and indeed every other form of scrap metal, and all of his premises were increasingly filled with parts of vehicles. On his cv he put his interests as including restoring old vehicles and motorsport. The third, as time went on, was Natalie. During this period, whilst Owen worked in Belgium, Natalie worked in France. They would meet up at weekends in Belgium. Her Belgian registration was at her grandmothers house at brouwerijstraat 39, 9630 Zwalm-Dikkele. Her aunts home was at borstekouterstraat 84, 9630 Zwalm-Roborst.

Owen had to register in Belgium to get a Belgian social security number and work in Belgium. He registered at his address in Werchter as a foreign EU citizen and was issued with the corresponding residence card. He opened a Belgian bank account so his salary could be deposited into it. In September 2001 Owen wrote letters describing himself as working in Belgium for an indefinite period from 28 September 2001. He stated on an Inland Revenue form that he expected to come to England for about six weeks in three years.

He then became disillusioned with Bird Goen and looked for a new job. In June 2002 he was offered a job with Renaults patent department at Guyancourt, France and started in September 2002. He gave up his flat in Werchter and after finding a temporary place to live in Guyancourt, moved in with an expat at 85 rue de Massy in 92160 Antony, France. According to Natalie, when Owen started with Renault, he tried to register in France but became frustrated when he was sent from one place to another by French bureaucracy, and quickly gave up, never to try again. Renault did not require him to register in France, so he did not do so.

On 12 October 2002 Owen obtained a further Belgian residence card, registering at the Roborst address. Natalie said in evidence that although the Dikkele address seemed more likely to remain constant, he chose Roborst because it was a more reliable address for receiving mail, particularly as a family member at Dikkele had an alarming tendency to throw away mail.

In spring 2004 Owen found a small flat near his work at 20 Rue Jules Michelet 78280 Guyancourt, France. His usual practice was at this stage to drive to Guyancourt on Sunday night, drop Natalie off at her work in Marcq en Baroeul, Belgium, then travel back to Dikkele on Friday night, picking up Natalie on the way. His cats lived in Dikkele, and were looked after by Natalie's father during the week.

In July 2005 Natalie left her job and started an 18 month period on a reduced salary with a non-compete clause which restricted her ability to work. She understood at this stage that a property in Dikkele which included her grandfathers old forge was likely to come on the market soon, and envisaged seeking to start a family with Owen and purchasing this family property. However, Natalie did not get pregnant, the forge did not in the event come on the market, and Natalie sought to return to work.

In 2006 Owen was passed over for promotion at Renault, which he found frustrating as he did not respect the successful candidate. This led to him looking for other jobs. He applied for jobs with Toyota in Belgium and Porsche in Germany. He was not successful in these applications, and continued at Renault, albeit dissatisfied with his work there.

Natalie obtained a job in Paris with Air Liquide in December 2006. She moved in with Owen at Michelet and they would spend the week in Paris and the weekend in Dikkele with the cats, who were known as the Hooligans. Natalie's evidence was that at this stage the Hooligans were the main reason for Owen returning to Dikkele at weekends. There were a couple of cats at Michelet too, who were not physically strong enough to travel to Belgium. Natalie's evidence was that Saturdays were often spent driving around in Belgium picking up spare parts for his motorbikes and other vehicles which he would purchase online

The Dikkele property involved using Natalie's father's house. This caused frustrations over time, particularly as Owen wanted a workshop for his scrap metal and they were both strong personalities. In April 2007, Natalie saw an advertisement for a run-down place at hauwstraat 28, 9680 Brakel-Zegelsem, Belgium which had both a workshop and living areas, albeit requiring restoration. Her evidence was that she thought this would combine the need for a workshop for Owen and somewhere she could be together with him when he was working. He

was more sceptical, but ultimately the property was purchased by her on the basis that this would be her property and both purchased and refurbished with her money.

The new property was referred to by all as the Hovel and was purchased by Natalie, in her name with her money. Natalie took ownership of the Hovel in July 2007. Thereafter work was done on planning applications to be made to the Belgian authorities through a Belgian architect. Planning permission was granted on 27 October 2008, so work had not commenced at the time Owen died. There is correspondence with the Belgian architect which reflects an input by Owen into at least some of the decision-making going beyond the workshop. Ultimately, after Owens death, Natalie went ahead with the plans and the work.

Owen still owned Back Lane. He spent about four weeks a year in the UK. He did not financially want to be out of the UK property market, but Back Lane was too far away from the Channel ports to be convenient and he discussed with his brother Adrian the possibility of selling Back Lane and investing the money in refinancing his mothers property in Bromley in return for part ownership. This did not in the event happen.

In 2007 Owen changed his Belgian place of registration from Roborst to Dikkele. Natalie's aunt had died and Owens registration at that address caused her widower problems in obtaining benefits. So he changed the registration to the Dikkele address on 28 July 2007.

Owen had proposed to Natalie in 2005/6. She accepted his second proposal. She was Catholic, albeit not from the same Catholic background as Owens family. Owen was a firm atheist. To please Natalie, Owen wanted to marry her in the Catholic church near Bromley where his fathers funeral had taken place in 2004, but this led to a major row and Owens mother said he could marry her anywhere but there, essentially because Natalie was not a Catholic in the tridentine tradition. An alternative was arranged whereby they would be married in a more ecumenical service in Cornwall but by the time of Owens death it had not yet occurred. Owen did not, according to Natalie, contemplate getting married outside England.

Owen did not speak Flemish. He retained a UK passport and driving licence. He retained bank accounts in England, Belgium and France. He appears never to have referred to himself as Belgian. He signed tax returns in Belgium. He joined Belgian motorcycle and gun clubs, and went to motorcycle shows in Belgium and continental Europe, but most of his friends remained English. All his holidays were taken in England. In 2006 he described himself in an email as British but resident in Belgium commuting to France weekly.In an email dated 13 October 2008 he describes himself as I am an expat in Belgium. An email to a motorcycle correspondent written to a Dutch email address and headed Re: gearbox shortly before his death, on 5 November 2008, repays citation:

I am British and my house is about 8km south of Stratford-upon-Avon, which makes it about 20km north from the annual Rudge rally site. However, I work at Renault just outside Paris near Versaille, so I am there during the week. To complicate things further, my missus is from Vlaanderen, so we are back at Oudenaarde at the weekends.

Contentions of the parties

The Executor claimed that Owen never lost his domicile of origin. He worked from 2002 in France but never developed any loyalty, affection or bond to France. He never even registered in France. His Guyancourt flat was simply a convenient place to stay in the week. As for Belgium, the Hovel was Natalie's property and deliberately bought as such. Ultimately, Owen never developed any loyalty to Belgium either. If he obtained a job elsewhere, as from time to time he hoped to do, he would move and Natalie would almost certainly move with him. He remained at heart an Englishman abroad and never developed an attachment to Belgium such that he lost his domicile of origin.

The Family Defendants point to the Hovel as a permanent home in Belgium. Owen never made plans to return to England although he had been gone for seven years. His cats, his fiance and his home were in Belgium. He hoped to have children there. He was registered with the Belgian authorities. Before he left England, he made it clear he was leaving for an indefinite period.

Discussion

Did Owen ever adopt a domicile of choice? France can readily be ruled out. Owen never developed any form of relationship with France. France was a job, a weekday home for when he was working, and base for a couple of cats who could not travel, but that was as far as it went. He never registered in France, or spent time there outside the working week. The connection with Belgium was of course more substantial. But the judge did not consider that Owen ever acquired Belgium as a domicile of choice. His reasons are as follows:

i) Owen retained property throughout in England, albeit much at least of that reason was to ensure that he retained a foothold in the English property market. His attitudes remained British: he never developed any affection for Belgium or Belgian culture. He seems to have retained an almost jingoistic Britishness. He never learned Flemish. He retained a UK passport and driving licence. He never purchased property in Belgium and his assets in Belgium consisted of one Belgian bank account with not much in it. His friends were English and his holidays were spent in England.

ii) He made it clear to Natalie that he wanted to send any children they had to boarding school in England. He told the Claimant that he intended to retire to England, although that seems to have been expressly rather vaguely. He made plans to get married in England.

iii) The Hovel did provide some element of permanence in Belgium. But Owen was not happy in his job and was, in the short or medium term, looking towards a move. He would, I find, have moved to wherever a job took him, whether the US, or continental Europe, or the UK. If it did not remain convenient to spend weekends in Belgium, he would not have continued to do so.

iv) It is also relevant to have in mind the circumstances of the purchase of the Hovel. This was, very deliberately, Natalie's property. Whatever common decisions were made about

refurbishment works, it is striking that this was not treated by Natalie and Owen as their joint property in the way a couple committed to the future together (as were Owen and Natalie) might have expected. It suggests, at least, that Owen was not willing to commit to a future in Belgium.

v) The Hooligans (the cats) were resident in Belgium. They would have provided a draw towards Belgium, as Owen was devoted to them. But Owen was accustomed to separation from his cats- he left cats when he left Back Lane, he had cats in Michelet and when he had looked for employment abroad in 2006 he must have contemplated leaving the Hooligans in safe hands in Belgium.

vi) It was suggested that the Hovel would become a family home in the future. But Natalie's evidence was that it had become clear to her in the course of her 18 months without work in 2005/6 that she did not wish to stay at home, with or without children, even though Owen would have been happy for her to do so and there was not a financial need for her to work. Her evidence was that Owen would have continued to look for jobs abroad and would have expected her to follow him.

vii) In 2001 Owen wrote letters stating that he was going to live in Belgium for an indefinite period. This meant, in my judgment, no more than that he did not know when he was coming back.

Judgment

On these facts, although the deceased had worked and lived abroad since 2001, the judge found that Owen never lost his domicile of origin and remained domiciled in England. He did not speak Flemish. He retained a UK passport and driving licence. He retained bank accounts in England, Belgium and France. He joined Belgian motorcycle and gun clubs, and went to motorcycle shows in Belgium and continental Europe, but most of his friends remained English. All his holidays were taken in England. In 2006, he described himself in an email as "British but resident in Belgium commuting to France weekly". In an email dated 13 October 2008, he said of himself: "I am an expat in Belgium." He planned to marry his Belgian fiancée, Natalie, in England and made it clear to her that he wanted to send any children they had to boarding school in England. As those arguing for domicile in England and Wales put it: "He remained at heart an Englishman abroad."

What is slightly disappointing in so far as this seminar is concerned is that this first judgment only covers English domicile, and several other legal issues remain to be established,(but I should be pleased to provide updates by email as the case develops). However, a good exercise at this stage is to consider those issues that are certain to be addressed during the hearings due to take place next year, and guess at the outcome based on the law as it stands.

c) Conflict of laws: immovable vs. movable property and succession law vs. taxation law

When making your wills and considering the devolution of your assets, it is important to be able to make two key distinctions that will apply following your death. There is a serious overlap between these areas, but if one manages to keep these fundamental distinctions in mind it is much easier to understand what rules to follow.

i) The first distinction is between *movable property* and *immovable property*. Movable property, such as bank accounts, paintings and investments, is generally subject to one set of rules whereas immovable property, that is to say, land and buildings, is subject to another.

Immovable assets easiest to govern as the rules are the same in both England and Belgium. They are governed by the law of the asset's location (lex sitae). Therefore, in Owen's case, his home in Stratford-on-Avon is subject to English law, regardless of his domicile, even if the Belgian Court goes on to determine that he is also domiciled in Belgium, which invariably it would.

Movable assets are more difficult, because under Belgian law, movable assets worldwide are governed by the law of the nation where the deceased had his habitual residence at the time of death. Under English law however, movable assets worldwide are governed by the law of the nation where the deceased had his domicile at the time of death. As explained above, habitual residence and domicile are two very different things. The fight that Owen's family Will have therefore, will be about the movable assets, not the immovable ones. The way the law works where this conflict applies is very complicated and I will not go into it in detail today. Suffice to say that the doctrine of "renvoi" will apply and that in all probability, any bank accounts in England would be subject to English law and those in Belgium would be subject to Belgian law.

It is worth adding that article 912 of the Civil Code provides that in case of division of an estate comprising assets situated outside Belgium, co-heirs who are not nationals of that foreign State may levy against all assets in Belgium, of whatever kind, a portion equal to that proportion of the assets in that country from which they would be excluded, on whatever grounds, by virtue of local laws and customs. This privilege may be invoked by Belgians and foreigners alike, except persons who have the nationality of the particular foreign country. This special regime does not seem to be applied frequently in practice but it is worth remembering nonetheless.

ii) The second distinction is between the *law of taxation*, that is to say, what nation is entitled to apply its taxes and to which assets and the *law of succession*, which is concerned with the validity of your Will, the rights of your family to inherit and the procedures applicable following a death. In both Belgium and England, inheritance tax will be charged on all assets within that country on death, regardless of where the deceased was domiciled or resident. However, if one country's rules determine that the individual concerned was also domiciled in their nation, then they will seek to apply inheritance tax to the deceased's worldwide assets. In Owen's case, he has been held to be domiciled in England, therefore, the English government will seek to tax his worldwide estate, including assets in France and Belgium. In Belgium,

later this month it is almost inevitable that he is held to have been domiciled in Belgium, and therefore they will seek to tax the property in Stratford Upon Avon. As his Will applies to that property, and Belgian law recognizes that the lex situs is English law and he leaves the asset to his uncle, there will be highly unfavorable tax rates applicable to the gift, as his uncle is not a preferred beneficiary. It is also possible that the French government holds that he was domiciled in France, which means that up to three countries could be seeking to tax assets out of their own jurisdiction, resulting in some very difficult and time consuming double taxation calculations.

d) Double tax treaties

Double taxation is clearly unfair, as if tax is paid in the UK, it will also potentially be paid again in Belgium on the same asset. To avoid the spectre of double taxation, many states have signed double tax treaties which determine the tax paid and offer a reduction based on taxes paid in a foreign jurisdiction.

At present, Belgian has only signed double inheritance tax treaties with France and Sweden and as a rule Belgium does not grant any relief for double taxation, except for inheritance tax paid abroad for overseas real property. Any other capital taxes paid abroad can only be offset against the net value of the assets as a liability of the estate. It follows that if you only substantial overseas assets your estate will suffer a lower overall tax burden if you have invested in immovable property.

e) Wills

Another issue that is easy to overlook is the formal requirements for Wills in both nations, which as you will recall, are very different. In England two witnesses must sign your will, whereas in Belgium most wills should be done by hand with no witnesses. Clearly therefore, a Will made in accordance with English law has not been validly made under Belgian law and vice versa.

Fortunately, both England and Belgium have ratified the 1961 Hague Convention on conflicts of law regarding the form of wills, which states that Wills are valid if they are drawn up in accordance with the legislation in force, either at the time of Will execution or the time of the testator's death:

a) in the territory where it was executed; or
b) in the territory where the testator was domiciled
c) in the territory where the testator was habitually resident
d) in the state of which he was a national
e) in relation to immovable property only, the *lex situs*

Applying this to Owen Davies' Will, made in England, Belgian law will recognize the Will as valid under the final heading, as it is valid (unless the family can prove undue influence as alleged) under the law applicable in the state of which he was a national and also presumably the first heading provided he executed the Will while still in England. As it presumably applies

to all his assets and not just immovable property it would not be entirely valid using the lex situs.

Clearly, although the Hague Convention covers most circumstances, there will be instances where it will not provide cover. Consider the case of the Sri Lankan lady who leaves her FTSE 100 shareholdings in an English Will form drawn up and signed by her at the offices of her Belgian notary. This is not protected under the Hague rules and will therefore prima facie be invalid.

Even where the Hague rules provide cover, it is common in practice to see simple but costly mistakes made by Testators, such as making a Will limited to one jurisdiction but then revoking all previous Wills instead of just the Will from that jurisdiction, resulting in a partial intestacy.

f) Problems with matrimonial property

Matrimonial law becomes particularly relevant to succession law where a cross-border estate is concerned. As in Belgium there may be a "community of property" between spouses. Each spouse will be a fifty percent owner in the assets acquired after marriage. This, naturally, limits the estate of which a spouse can dispose after death. This sits well with forced heirship rights that do not protect the spouse, who will be protected in advance by the matrimonial regime, but conflicts with common law countries that have no comparable system.

Difficulties here stem from the movement of individuals. An individual may move from a "separation of property", common law system to a community of property system which becomes, under one of the connecting factors described above, entitled to govern the succession of his estate. The unlucky surviving spouse will have restricted rights, having no community of property for the English assets and limited forced heirship entitlements under the civil law regime. Generally speaking, in Belgium it is the law of the country where a couple had their first residence or domicile as a married couple, or the couple's joint national law which will determine whether or not a matrimonial régime applies. It is very important to check this with one's notaire and if necessary to arrange for a matrimonial regime to be applied, otherwise, particularly for English couples, you will be presumed to have the "separation des biens" regime.

g) Trusts

Belgium has no trust legislation and Belgian law does not have the concept of a trust, although since 2004, foreign trusts are recognisable in Belgium. The legal and tax consequences of a foreign trust are complex and uncertain. Case law is scarce and Belgium does not recognise the 1985 Hague Trusts Convention. Legal scholars have tried to analyse tax consequences of a foreign trust under Belgian law, but their conclusions are still ambiguous. The Belgian Ruling Commission has recently ruled on the Belgian tax treatment of foreign trusts in two separate cases: ruling N° 900.329 dated 22 December 2009 and ruling N° 700.112, dated 8 December 2009. Regardless of any movement towards recognition, the forced heirship rules could limit the extent of the estate that a person could transfer to a trustee. If the trust is set up by will, the

trustee must ask for a court order to have the protected heirs hand over the assets to him and the courts have the right to limit this claim. If the individual had set up the trust in a trust deed before death, the protected heirs can ask the court to decide whether the amount of the assets transferred to the trustee breaches the forced heirship rules and if the deceased has given away more than is allowed under the rules, the court can order that part of the trust assets be returned to the estate. However, in practice, if the protected heirs do not invoke the forced heirship rules, the Belgian courts may not limit the trust.

h) Conclusion

The cross-border estate has a number of inherent difficulties that are largely due to the conflict of laws but are also a result of the practical misunderstandings which stem from linguistic and cultural differences. These international elements can not only make matters expensively complex but injustices may also result.

Problems may therefore arise where the English individual has made a will which includes worldwide assets, and these include property also subject to the laws of a civil law jurisdiction. He will need to ensure that some of this property passes to his children in accordance with the local forced heirship laws. This may not be foreseen or wanted, for instance where he expects to leave all to his partner, or he is estranged from his children and intends to benefit charity. Otherwise his will over worldwide assets will be essentially invalid, as the rights of any reserved heirs will take priority, and could give rise to potentially disastrous and costly litigation.

There are a number of straightforward and practical questions that every international should consider when drawing up their estate, for which please refer to the checklist on the following page.

Checklist: International Succession

Assets

- Which jurisdictions have assets situated in them?
- Which are movables and which are not?
- Can immovables be converted to movables via a company structure?

Connecting factors

- What is my domicile and could I be subject to the rules of more than one state?
- Do tax treaties/ arrangements apply between countries in which I own assets?
- If I intend to benefit a foreign charity, will it be exempt or subject to taxation?

Beneficiaries

- What is the domicile and residence of my beneficiaries?
- Which if any of my assets will be subject to forced heirship?
- If I have minor beneficiaries can assets be managed on their behalf?
- Who are my executors and will they have authority to act over all my assets?

Wills and marriage contracts

- Do I need more than one Will and if so does one Will mistakenly revoke the other?
- Should I register my Will(s) and if so where?
- Do I have a marriage contract even by default? Should I change it?