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## Legal Aspects of Inheritance in Multinational Families

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**Abstract:** The article addresses the legal complexity of inheritance in the context of multinational families. It examines the legal framework, both nationally and internationally, and highlights the importance of conventions and treaties in this area to harmonize regulations. In the first instance, the challenges posed by conflicts of laws and principles of private international law are discussed, including difficulties related to the choice of applicable law and the recognition of judgments in various jurisdictions. Another central aspect of the paper is the analysis of specific regulations in the European Union, the United States and other regions, highlighting the differences and similarities between them. The rights of heirs, especially those from mixed marriages or civil partnerships, are dealt with in a detailed manner, outlining the legal protection they enjoy. The article explores relevant jurisprudence to illustrate the applicability of legal norms in concrete cases. The conclusions bring to the fore recommendations for improving the legislative framework and future research directions are proposed, in order to adapt the regulations to the increasingly complex realities of multinational families.

**Keywords:** inheritance; multinational family; jurisprudence; succession

### 1. Introduction

The mobility of people and the increase in the number of multinational marriages and families have created major legal challenges in the management of cross-border

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inheritances. Within these families, the different legal systems involved can create confusion regarding succession rights, division procedures, as well as the interpretation of wills. Inheritances, regulated by civil law or national customs, often become points of conflict due to legislative differences between countries.

Thus, questions related to the applicability of national laws in cases of international inheritance, rights and obligations of heirs and cross-border estate administration are frequent. In addition, European Union legislation, through Regulation (EU) no. 650/2012<sup>1</sup>, attempts to simplify these issues by providing a framework for establishing the law applicable to inheritance within the member states. However, the complexity of cases outside the EU space and the impact of cultural and legislative divergences add an additional layer of difficulty.

This article explores the legal challenges and solutions regarding inheritances within multinational families, with a focus on the harmonization of legislation, conflicts of laws and the impact of court decisions on the succession rights of members of these families.

## 2. Legal Framework and Definitions

Inheritance in the context of multinational families is regulated by a complex set of national and international legal norms. These rules attempt to establish succession rights and resolve conflicts of law that may arise in cross-border succession proceedings. In this chapter, we will analyze the main applicable legal sources, including national legislation, international regulations and principles of private international law, and clarify the essential concepts involved in this area.

Each state regulates inheritance through its own set of legal rules, which vary according to legal and social traditions. In general, national succession law defines who has the right to inherit, what parts of the estate can be passed on and what obligations are imposed on the heirs. These norms can be classified into two major legal systems: civil law (of Continental inspiration) and common law (of Anglo-Saxon inspiration). For example, countries such as France or Germany operate on

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<sup>1</sup> Regulation (EU) no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, the recognition and enforcement of court decisions and the acceptance and enforcement of authentic documents in matters of succession and on the creation of a European Certificate of Succession.

principles codified in civil law, while the United States and Great Britain apply common law (Willenbacher, 2003).

Civil law tends to have stricter rules on the distribution of inheritance, protecting reserved heirs (eg children or surviving spouse). In contrast, in common law systems, testators are given more freedom, allowing them to dispose of their estate as they wish.

Private international law has a central role in resolving conflicts of law that arise in multinational inheritance cases. It sets out which law is applicable in a case of inheritance with foreign elements and which authorities are competent to resolve such cases. The fundamental principles of private international law include:

Multinational families can be affected by significant divergences between the legal systems of the states involved. For example, some countries apply a system of forced succession, where certain people are protected by inheritance law, while others allow full freedom in the disposition of wealth through a will. These discrepancies can generate disputes in the context of international successions, especially when the estate is dispersed in several jurisdictions (Cashin Ritaine, 2013).

Understanding the legal framework and key definitions is essential to successfully navigating the complexities of inheritance in multinational families. This chapter establishes the foundations on which the subsequent analyzes on the applicability and resolution of conflicts of laws in the international context will be built.

### **3. Legal Challenges in Cross-Border Inheritance**

Cross-border inheritance in multinational families raises a number of legal challenges due to the multiple legal systems involved, the cultural and legal differences between states and the complexity of the estate dispersed across multiple jurisdictions. These challenges include conflicts of laws, jurisdiction of authorities, issues related to the enforcement of wills and difficulties in the administration of international estates. This chapter examines the main legal difficulties encountered in the cross-border inheritance process and their impact on the heirs and authorities involved.

One of the most important obstacles in cross-border inheritance cases is the conflict of laws, that is, the situation where two or more jurisdictions claim to apply their own succession rules to the deceased's estate. In multinational families, it is common for the deceased to have assets in several countries, for citizens to be resident in

different states, or for the will to be drawn up in a jurisdiction other than that of habitual residence (Crivellaro et al., 2016).

These conflicts of laws can manifest in a number of ways. Depending on where the assets are located or the deceased's habitual residence, different laws may apply to parts of the estate. For example, a property located in France might be subject to French law, while a bank account in the UK might be governed by English law. Some legal systems require the protection of reserved heirs (such as children), while others allow greater flexibility in testamentary dispositions, which can lead to conflicts between heirs and courts in different countries.

Determining the competent court is another major challenge. In cross-border inheritance cases, courts in several states could claim the right to hear the case. This usually happens in situations where the deceased owned property in more than one country, the heirs live in different states, or there is a will that references more than one jurisdiction.

However, in cases where it is not clear where the habitual residence is or in situations where the heirs do not agree on its determination, jurisdictional disputes may arise. Wills play a crucial role in determining how a person's estate is distributed after death. In the case of multinational families, the applicability of wills in different jurisdictions can cause confusion and conflict (Griffith & Channon, 2013).

Once the inheritance has been determined, the administration of the estate can raise many practical and legal issues. This is a complicated task in international inheritance cases because it involves distinct legal and tax procedures in each jurisdiction where the deceased's assets are located.

In addition to strict legal challenges, cross-border legacies are often influenced by cultural and traditional differences between states. These differences can affect how heirs perceive their rights and obligations in the succession process. In some cultures, customary norms play a significant role in the distribution of goods, regardless of legislative provisions. These practices may conflict with civil or common law applicable in a particular jurisdiction. Heirs from different cultures may have different expectations about the fair distribution of assets or their role in the administration of the estate (Stum, 1999).

Cross-border inheritance is a complex field, full of legal challenges due to the diversity of national and international laws, jurisdictions involved and cultural differences. Conflicts of law, determining the competent court, the validity of wills and the administration of estates in several countries are just some of the obstacles

that can complicate the probate process. A careful approach, taking into account all relevant legal and tax elements, is essential to avoid litigation and to ensure a smooth transition of assets within multinational families.

#### **4. Inheritance in Various Jurisdictions**

International inheritance involves the application of very different regulations from one jurisdiction to another, each with its own particularities and legal frameworks for the distribution of heritage. Within multinational families, these differences become crucial, as inheritance may be governed by multiple legal systems, each with distinct rules regarding succession. In this chapter, we will analyze the regulations applicable in various jurisdictions, with an emphasis on the European Union, the United States and other regions of the world, to highlight the diversity and complexity of these succession rules.

The European Union (EU) has attempted to simplify and harmonize cross-border inheritance legislation between member states through a single legislative framework. Before the adoption of these common regulations, conflicts of laws between member states were frequent, due to the differences between civil law and common law systems.

Within the EU, most member states apply civil law, which protects reserved heirs such as the surviving spouse and children. However, differences remain significant, especially regarding succession procedures and inheritance taxation. For example, France and Germany have strict rules on the distribution of inheritance, while in other states such as the UK (before Brexit) there is more flexibility in wills.

One of the most important legislative initiatives in the field of cross-border successions is Regulation (EU) no. 650/2012, also known as the Succession Regulation. It was adopted to ensure a common legal framework for cross-border inheritance in the EU and is applicable from 17 August 2015.

The regulation introduces some key principles. The basic principle of the regulation is that the estate of a deceased person is governed by the law of the state in which he was habitually resident at the time of death. This provides a clear solution for legacies involving several Member States. The testator can choose to have his inheritance governed by the law of his nationality, whether he is a national of a Member State or a third country. This allows for some flexibility in succession planning. The Regulation also introduces the European Certificate of Heir, a

document automatically recognized in all Member States and which allows heirs to exercise their rights without the need to recognize judicial decisions from another Member State.

However, Denmark, Ireland and the UK (which has left the EU) do not apply this regulation, which can complicate inheritances involving these states.

In the United States, probate law is regulated at the state level, leading to considerable variation between different states. However, there are two large categories of legal systems: the common law system and the community property law system, applicable in several states such as California and Texas (Deaton, 2012).

Most American states apply common law principles, which give the testator freedom to dispose of his estate by will. The inheritance can be left to anyone, without major restrictions. However, the surviving spouse can claim a share of the estate, although there is no “succession reserve” similar to that in European civil law.

In states that apply this system, property acquired by spouses during marriage is considered community property. Thus, upon the death of one of the spouses, only half of the assets can be passed on to the heirs, the other half remaining in the property of the surviving spouse.

In the US, probate proceedings are often subject to a process called probate, which involves validating the will and administering the estate under the supervision of a court. Each state has its own probate rules, and their complexity can vary significantly.

Each US state has its own probate laws, which vary based on factors such as the existence of a will and the status of the heirs.

In addition to the European Union and the United States, other parts of the world have very different inheritance systems based on local traditions, customs and religious influences. In this context, differences in legal systems and cultural approaches can create additional challenges in cross-border succession.

In many Asian countries, inheritance law is influenced by cultural and religious traditions. In China, succession law is governed by the Civil Code, and legal heirs include spouse, children and parents. The system does not allow for much testamentary flexibility, and assets must be distributed according to precise rules, without the freedom to completely exclude legal heirs.

Indian succession law varies depending on the religion of the deceased. The Hindu Succession Act governs Hindu succession, while Muslim succession is governed by Sharia law. The Hindu Succession Act provides greater gender equality in succession rights, while Sharia mandates the distribution of patrimony according to strict rules (Mahesh Nath, 2018).

The Japanese succession system is governed by the principle of equality between heirs, but allows testators to freely dispose of assets by will. However, heirs have limited rights to contest a will (Thomas & Lewendon, 2020).

Latin America is dominated by civil law systems similar to those of continental Europe, but there are also specific local influences. Brazil applies a civil law system, where reserved heirs (spouse and children) have guaranteed rights to a part of the estate. The will can only be used to dispose of the rest of the estate. Argentine succession law imposes a succession reserve for legal heirs. However, there is greater flexibility in the matrimonial regime, which can influence the distribution of assets upon the death of one of the spouses<sup>1</sup>.

Cross-border inheritance brings a significant diversity of regulations, procedures and rights depending on the jurisdiction involved. For this reason, knowledge and understanding of these particularities are essential for avoiding conflicts and for efficient management of the heritage. Each region and state has its own particularities, which must be taken into account in international succession planning.

## **5. The Rights of Heirs in Multinational Families**

Multinational families, consisting of members living in various jurisdictions or holding multiple citizenships, face unique challenges with respect to inheritance and succession rights. The heirs of these families have rights that can vary substantially depending on the country where the laws apply, their family status and the presence of a valid will. This chapter explores the rights of heirs in such families, as well as how different legal systems influence these rights.

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<sup>1</sup> Inheritance law in Argentina (n.d.). *Angloinfo*. Retrieved from <https://www.angloinfo.com/how-to/argentina/money/wills-inheritance/inheritance-law>.

In most legal systems, legal heirs have well-defined succession rights, but these rights vary considerably from one legal system to another. In multinational families, the legal heirs are affected by the national law of each jurisdiction involved.

In civil law systems, such as those in continental Europe, there is a succession reserve (or “forced inheritance”), which guarantees legal heirs, such as the spouse and children, a share of the inheritance. In many European states, they cannot be completely excluded from the inheritance, even if the deceased makes a will in which he disposes of the entire patrimony to other people.

In countries with common law systems, such as the UK and the US, the testator is free to dispose of his assets freely through his will. However, the surviving spouse and, in some cases, the children, may have the right to contest the will if they feel they have been unfairly excluded.

In multinational families, these differences can create situations where an heir is recognized in one country but not in another jurisdiction. It is essential for heirs to understand the applicable law in each country where the deceased’s assets are located.

When a person dies without leaving a will (succession ab intestate), the law of the state where the deceased was habitually resident or where the assets owned are located will determine how the estate is distributed. In this case, the rights of the heirs are strictly regulated by the national succession law. In multinational families, this can lead to unexpected outcomes for heirs.

Heirs in an intestate estate should be aware that assets in different countries may be subject to very different intestacy regulations, which can lead to conflicts or delays in the distribution of the inheritance.

In multinational families, wills can be contested or cause conflict if they do not comply with the succession rules of the countries involved. Heirs may have difficulty asserting their rights in the presence of a will that does not comply with applicable national law (Cashin Ritaine, 2013).

In European civil law, legal heirs, such as children, have the right to challenge a will that does not respect the succession reserve. In France, for example, children are entitled to a share of the estate, regardless of testamentary provisions. In contrast, in common law countries, challenging a will is only possible in limited cases, such as the testator’s lack of capacity or undue influence.



In multinational families, wills must be recognized in all jurisdictions where assets exist. Although some countries recognize wills drawn up under the law of other states, in certain situations, complications can arise if the will does not meet the formal requirements of each jurisdiction. Regulation (EU) no. 650/2012 offers a solution through the European certificate of heir, which facilitates the recognition of wills in EU member states.

The rights of the surviving spouse(s) are variable according to the legislation of each country, and in multinational families, this aspect becomes extremely important. In some jurisdictions, the surviving spouse has additional protection, while in others, his or her rights may be more limited.

In many European countries that apply civil law, the surviving spouse has reserved rights to part of the estate, along with the children. In France, for example, the surviving spouse may receive the usufruct of the family home or part of the estate. In Italy, the husband has similar protected rights.

In common law countries such as the United Kingdom and the United States, the surviving spouse may receive the entire estate in the absence of a will or a significant share in the presence of children. However, a spouse's rights can vary significantly between US states, and in the absence of a will, some states impose limitations on inheritance.

Also, in countries that apply community property, as is the case in certain US states, the surviving spouse is automatically entitled to half of the community property acquired during the marriage.

Children are usually the primary beneficiaries of the inheritance in most jurisdictions, but their rights vary according to the legal framework of each country. In civil law systems, children have a guaranteed right to part of the estate, even in the presence of a will. This protects offspring against complete exclusion. In France, Spain and Germany, for example, children must receive a certain share of the inheritance.

In the common law, the freedom to dispose by will is greater. Children can be excluded from the will entirely if the testator so chooses, although they have the option to challenge the will provisions under certain conditions, such as undue influence or lack of capacity on the part of the testator.

In multinational families, child heirs must be aware of the laws applicable to each country where assets exist, as their rights may be protected in one country but limited in another.

Heirs with multiple citizenships may benefit from different legal rules depending on the legislation of each state involved. In such cases, it is important to establish the habitual residence of the deceased, which can determine the law applicable to the inheritance.

The rights of heirs in multinational families are influenced by the complexity of international regulations and the diversity of legal systems. Heirs must navigate an often confusing legal framework where their rights depend on the laws of the states where the deceased owned property or had their habitual residence. In this context, legal advice and proper succession planning become essential to protect the rights of heirs and avoid cross-border conflicts.

## **6. Conclusion**

Inheritance in multinational families poses numerous challenges and requires a deep understanding of legal regulations in various jurisdictions. From the choice of law applicable to inheritance to the reserved rights of heirs, managing a cross-border succession is often complicated by fundamental differences between legal systems.

In the European Union, Regulation (EU) no. 650/2012 created a clear framework for cross-border successions, providing flexibility in the choice of applicable law and introducing the European Certificate of Heir, which facilitates the recognition of heirs' rights in all Member States. However, the rules vary considerably in other parts of the world, such as the United States, where succession law is regulated at the state level, and in Asia or Latin America, where cultural and religious traditions play an important role in the distribution of patrimony.

The rights of heirs can be significantly different from one country to another. While in civil law systems legal heirs have clear succession guarantees, in common law systems the testator has greater freedom to distribute his estate as he pleases. The surviving spouse(s) and children are usually the primary heirs, but the degree of protection afforded to them depends on the jurisdiction.

International succession planning is thus essential to avoid conflicts and delays in cross-border inheritance. It is recommended that people who own assets in several countries or who have multiple citizenships consult with lawyers specializing in

international succession law to ensure that their wishes are carried out effectively and according to the applicable laws.

In conclusion, inheritance in multinational families is a complex and dynamic area that requires increased legal attention and careful planning. Heirs and testators alike need to be informed of their rights and obligations in various jurisdictions in order to effectively manage the estate and prevent potential legal conflicts.

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