

Agenda

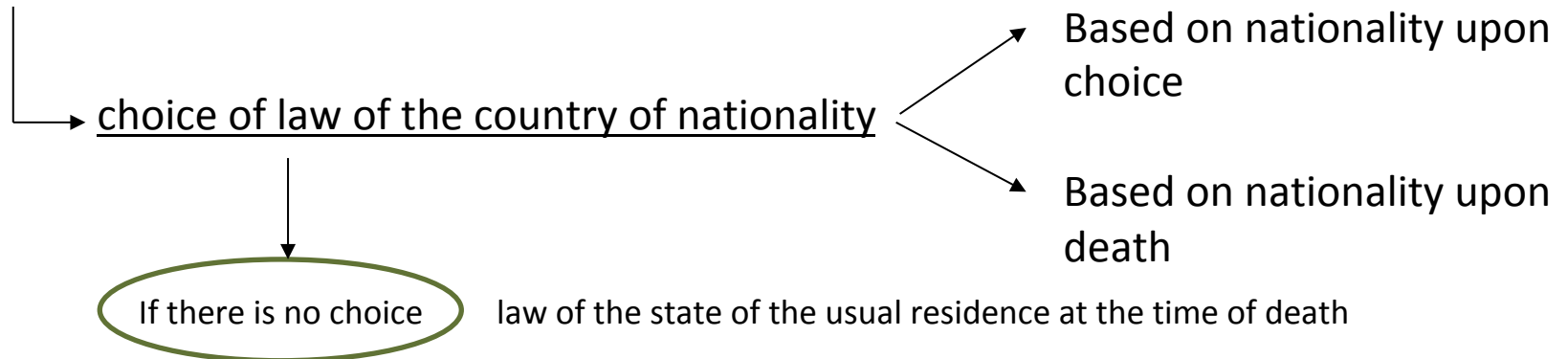
- ❑ **Possibility of choosing the civil law applicable to one's estate** (EU Regulation No 650/2012)

- ❑ **Analysis of civil inheritance rights**

- Belgian Law (reform September 1, 2018)
 - French Law
 - Spanish Law (+ procedural legal rights)
 - Italian Law
 - Portuguese Law
 - Polish Law
 - English Law
 - German Law
 - Slovakian Law
 - Croatian Law
- Who are the legal heirs?
 - What is each heir entitled to?
 - Does one have full freedom to distribute assets as one wishes?
 - Is it possible to establish an inheritance agreement with the heirs?
 - Etc.

Possibility to Choose the Civil Law Applicable to the Estate —EU Regulation No.650/2012—

□ If deceased = *usual resident* EU



□ If deceased = **NOT** *usual resident* EU

→ If property is in the EU: possible choices

→ if there is no property situated in the EU: EU Regulation No 650/2012 = not applicable

Usual Residence

—EU Regulation No.650/2012—

☐ Autonomous Notion

☐ Conditions

- objective
- subjective

☐ Note

- *Usual residence ≠ tax residence*
- EU officials can be *usual residents* of a country where they are non-tax residents

Civil Law Applicable to the Estate —EU Regulation No.650/2012—

- Single civil law for the entire estate (exceptions)
- Ways in which the choice of law can be expressed
- EU Protocol No. 7 dated 26/10/12?
- Multiple nationality?
- Choice of the estate law & inheritance reserve

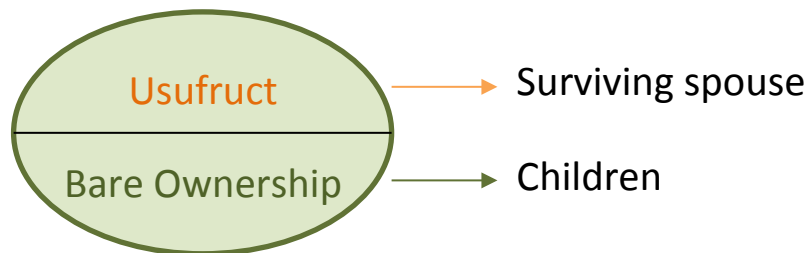
Belgian Estate Law

(Civil Estate Reform 1st of September, 2018)



❑ Entire estate = inheritance upon death

❑ Legal inheritance devolution (in the absence of a will)



❑ Possible derogations

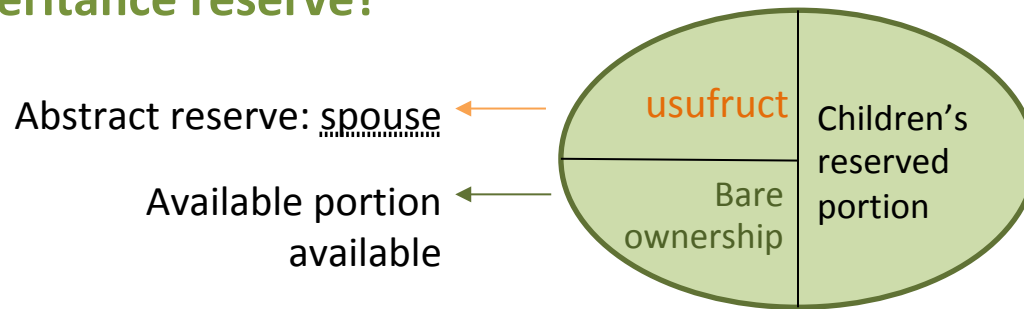
Succession: Belgian Law

—Will—



□ **Form:** private or notarised

□ **Absolute freedom within the framework of the will or obligation to respect the inheritance reserve?**



▪ Notes

- the spouse also has a dedicated reserved portion (usufruct on conjugal dwelling)
- if the portions are not respected:
 - Indemnity claim of the aggrieved heir / right to restitution in kind
 - Specificity—surviving spouse

□ **Publication:** central registry of wills

Belgian Estate Law

—Inheritance agreement—



□ Types of agreements

- Comprehensive inheritance agreement
 - ↳ Participants
 - Father and/or mother
 - + lineal descendants
 - + awarded individuals
 - ↳ Objectives
- Asset-specific inheritance agreement

Belgian Estate Law

—GIFTS—



☐ **Gifts to children:** indisputable or an advance on their inheritance?

- If gift = advance: awarded child must return the assets received

- Value: on the day of the donation (indexed)

- ↳ unless the child doesn't have it at their disposal (usufruct, etc.)

- Beneficiary of the report: other children (not spouse)

- ↳ derogation possible before the 1st of September 2018

- If gift = indisputable: no restitution by the awarded child

☐ **Gifts to spouse:** indisputable

Belgian Estate Law

—BLENDED FAMILIES—



- ❑ Marriage contract: “*Valkeniers clause*” (2nd marriage)
- ❑ Limitation of **interaction** between the surviving spouse and the children from a previous union
- ❑ Possibility of establishing an **inheritance agreement** defining everyone's rights



Deceased has one surviving spouse and two children.

Estate distribution WITHOUT will

- Spouse: usufruct of the entire estate
- Children: bare ownership of the entire estate

Inheritance WITH will

➤ Freedom vs hereditary reserve?

➤ Joint will: prohibited

Inheritance agreement: authorised



Deceased has one surviving spouse and two children.

- ❑ Estate distribution WITHOUT will

- ❑ Inheritance WITH will
 - Freedom vs. hereditary reserve?
 - Joint will: prohibited

- ❑ Inheritance agreement: authorised



Deceased has one surviving spouse and two children.

❑ Estate distribution WITHOUT will

❑ Inheritance WITH will

➤ Freedom vs. hereditary reserve?

➤ **Particularities related to autonomous communities** (17 foral rights)

- Catalonia: surviving spouse has no reserve **but** claim to cover basic living expenses
- Navarre: surviving spouse/children do not have any reserve
- Community of Madrid: federal law
- Andalusia: federal law

❑ Inheritance agreement & joint will: prohibited (unless in specific foral rights)



Deceased has one surviving spouse and two children.

❑ Estate distribution WITHOUT will

❑ Inheritance WITH will:

➤ Freedom vs. hereditary reserve ?

➤ Joint will: prohibited

❑ Inheritance agreement: prohibited

Polish Estate Law



Deceased has one surviving spouse and two children.

❑ Estate distribution WITHOUT will

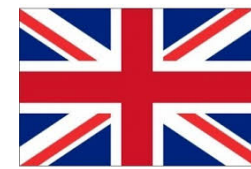
❑ Inheritance WITH will:

➤ Freedom vs. hereditary reserve?

➤ Joint will: prohibited

❑ Inheritance agreement: authorised if to renounce inheritance

British Estate Law



Deceased has one surviving spouse and two children.

❑ Estate distribution WITHOUT will

❑ Inheritance WITH will:

- Freedom
- No hereditary reserve, but claim to basic living expenses for both children and spouse, in the case of need
- Joint will: prohibited

❑ Inheritance agreement: authorised by form of a *trust*

German Estate Law



Deceased has one surviving spouse and two children.

- ❑ Estate distribution WITHOUT will
- ❑ Inheritance WITH will:
 - Freedom vs. hereditary reserve?
 - Joint will: authorised
- ❑ Inheritance agreement: authorised

Croatian Estate Law



Deceased has one surviving spouse and two children.

- ❑ Estate distribution WITHOUT will

- ❑ Inheritance WITH will:
 - Freedom vs. Hereditary reserve?

 - Joint will: prohibited

- ❑ Inheritance agreement: prohibited



Deceased has one surviving spouse and two children.

Estate distribution WITHOUT will

Inheritance WITH will

➤ Freedom vs. hereditary reserve?

➤ Joint will: prohibited

Inheritance agreement: prohibited

Questions & Answers

Thank you for your attention

Me Grégory Homans



DEKEYSER & ASSOCIÉS

FFPE – March 20, 2018

One-on-one Information Session: April 19, 2018

Me Manoël Dekeyser

