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Lawnet / Eurojuris
Private Wealth Practice Group
Cross-Border Wills (French & Spanish)

www.buckles-law.co.uk



Matthew Cameron

Partner (French Legal Services)

T: + 44 (0) 7738 731354

E: matthew.cameron@ashtonslegal.co.uk

Dennis Phillips

Senior Associate (Spanish Services)

T: + 44 (0) 115 985 3473

E: dennis.phillips@buckles-law.co.uk



Agenda

Our discussion today

- ▶ Will writing for cross-border estates
- ▶ Common Law practitioner's point of view
- ▶ Brussels IV – we will presume you know this!
- ▶ The pros and cons of preparing one or multiple Wills

English law Wills to cover French or Spanish assets?

- ▶ No hard and fast rule, there will be circumstances where one Will is best, e.g.:
 - ▶ Cost
 - ▶ Conflicting provisions
 - ▶ Omission of assets
- ▶ Traditionally it has been better to have separate Wills for French and Spanish assets
- ▶ This view seems to be changing, especially for France

France	Spain
Intestacy through inertia ('shorts & flipflops syndrome')	
Accidental revocation BUT not if your clients instruct specialists in French & Spanish law who understand the interaction between both laws	

Freedom of testamentary disposition avoidance of foreign forced heirship/legal reserve/intestacy

France (forced heirship /reserve)		
Deceased leaves	Legal reserve	Disposable portion of the estate
1 child	½	½
2 children	⅔	⅓
3 or more children	¾	¼
Spouse only	¼	¾

Spain (intestacy)		
Deceased leaves		
Spouse and descendants	Usufruct (life interest) to spouse over 1/3 rd	Remaining 2/3 rd s to descendants 1/3 outright, in equal shares between children & 1/3 rd bare ownership (with spouse who keeps usufruct). It can be distributed unevenly if more than one child.
Ascendants and spouse	Usufruct (life interest) to spouse over 50%	Remainder to ascendants
Spouse but no descendants or ascendants	To spouse outright	
No spouse, descendants or ascendants	To collateral	

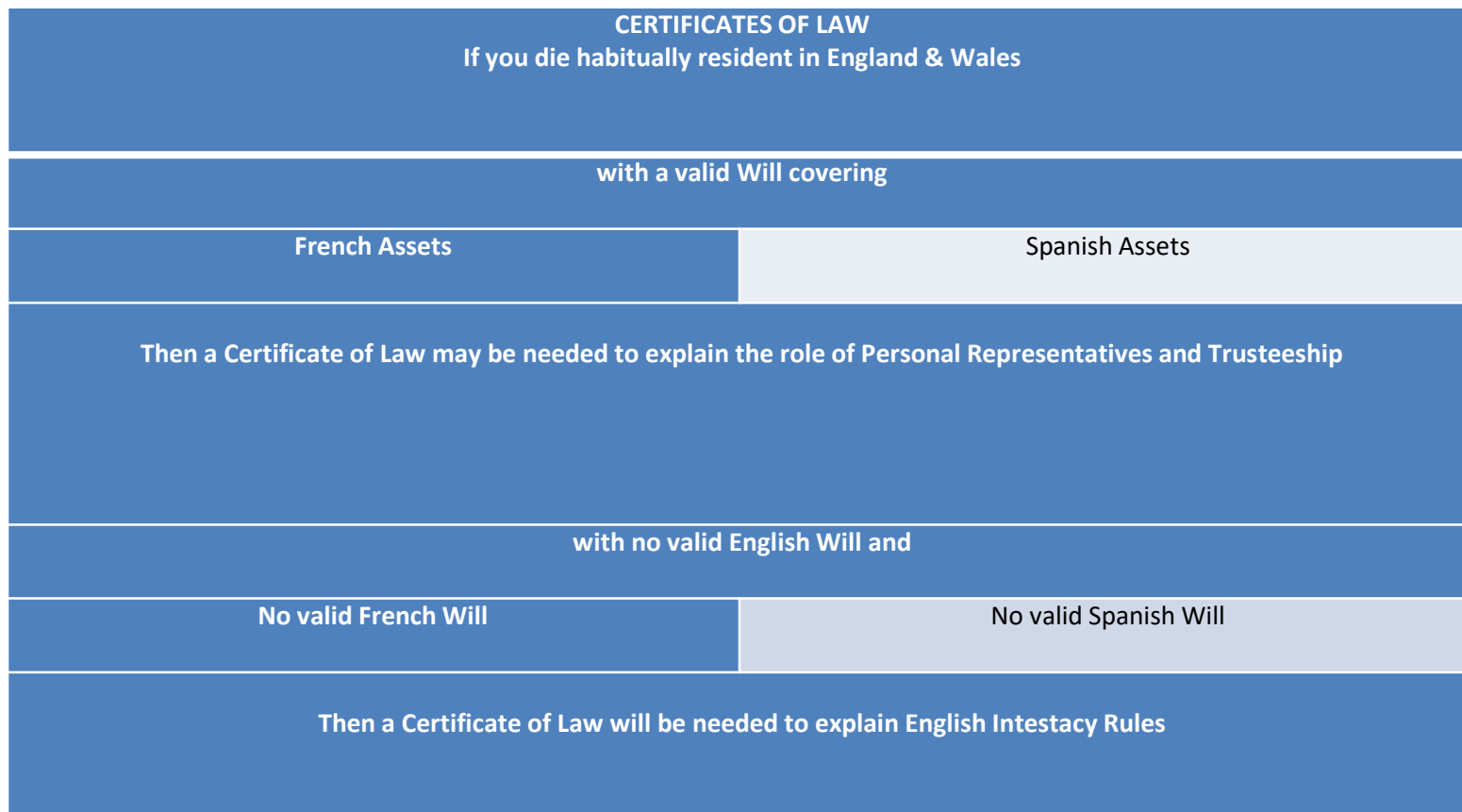
Avoid the problems with recognition of trusts and trustees

France	Spain
Discretionary and IIP Trusts	Non-beneficiary executors treated as beneficiaries from a Spanish Inheritance Tax perspective
Severe taxation	Problems can be solved but increase the administration costs

Minimise delay with the foreign estate administration

French & Spanish Notaries require a translated Grant of Probate	
France	Spain
<ul style="list-style-type: none"> ▶ Many French <i>Notaires</i> insist on GoP from UK on French will with choice of E&W law <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> ▶ Apply to French Court for equivalent of GoP (uncertain process and procedure) <p style="text-align: center;">BUT</p> <ul style="list-style-type: none"> ▶ Head start if the Will is in the French form (though Fr Notaries may still insist on Certificates of Law) 	<p>Avoid:</p> <ul style="list-style-type: none"> ▶ GoP applications holding up Spanish estate administration <ul style="list-style-type: none"> ▶ 6-month deadline within which to pay Spanish Inheritance Tax (late payment interest and €500 penalty?) ▶ Spanish estate administration holding up completion of the English estate ▶ Cost and delay where Grant would not have been needed to administer the English estate

Certificates of law



Charitable gifts

UK charities don't like the responsibility of owning and maintaining foreign assets	
Estate administration problems	
France	Spain
<ul style="list-style-type: none"> ▶ Charitable exemption? ▶ Extra administrative procedures 	<ul style="list-style-type: none"> ▶ High administration costs
Solutions?	
Avoid leaving French or Spanish assets to UK charities or, if testators are intent on making charitable gifts of the foreign assets, consider giving to a French/Spanish charity with similar purposes?	
<ul style="list-style-type: none"> ▶ Easier to prove charitable exemption; but ▶ Difficult to fulfil criteria for exemption (different types) 	

Form of Wills

France	Spain
<p>Choice between:</p>	<p>Main choices:</p>
<p>▶ ‘Authentic Form’ Will</p> <p>Signed and witnessed by Notary/ies in France</p> <p style="text-align: center;">OR</p> <p>▶ Holographic Will (with professional support)</p>	<p>▶ Notary in Spain – double column or Spanish version with separate Spanish translation</p> <p style="text-align: center;">OR</p> <p>▶ UK based Spanish specialists (e.g. Buckles Solicitors) preparing double column version</p>

Choice of Law clauses

Should express Choice of Law clauses be incorporated into both English and French/Spanish Wills?	
France	Spain
<p>Yes</p> <ul style="list-style-type: none"> In nearly every case; but Question if British testator is domiciled in France but has some assets in the UK 	<ul style="list-style-type: none"> If HR in E&W – ideally <p>Not necessary for Spanish assets but there may be assets in countries other than Spain being covered by Will made in England which may require choice of E&W law clause</p>
	<ul style="list-style-type: none"> If HR in Spain and making an English Will covering Spanish assets – Yes

Drafting points on English Wills covering French and Spanish assets

If, having considered the pros and cons of one Will or two and you conclude that one (English) Will *is* best, then:

France & Spain

- ▶ Make **gifts** of French/Spanish estates rather than allowing the foreign estates to fall into residue
- ▶ Make provision to pay French/Spanish taxes and expenses from the English estate

Brexit?

	France	Spain
Succession	UK not party to Brussels IV so no change after Brexit	
Local inheritance tax	Taxation outside scope of Brussels IV so Brexit not expected to change IHT position in France	Spanish Inheritance Tax treatment of non-resident beneficiaries? Return to pre-2015 high tax regime for non-residents?
	Brits with assets in France and Spain will continue to be affected by Brussels IV	



Thank You

Buckles Solicitors
www.buckles-law.co.uk
0115 947 4500
[@buckleslawyers](https://twitter.com/buckleslawyers)

Ashtons Legal
www.ashtonslegal.co.uk
0330 404 3268
[@ashtonslegal](https://twitter.com/ashtonslegal)