

An introduction to French succession law

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I. Preliminary points

1. Wide scope of succession law under French law

Includes:

- Devolution of assets
- Administration of estate
- Distribution / sharing-out of the estate

2. Property law issues

- Example of “tontine”
- Will drafting: no trusts under French law / “fiducie” not for transfers made without a consideration

3. Matrimonial regime and civil partnership issues

- Reminder of the applicable basic statutory regimes
- Possibility to include specific provisions applicable at time of death
- Rules apply even if surviving spouse or partner is not to benefit from succession
- Wills not revoked by marriage under French law

II. Devolution issues

1. Formal validity of wills

- Authentic wills and holographic wills
- International wills
- Joint wills not accepted
- 2. Successive transfers of property in time very limited

3. Forced heirship rights

- Forced heirship rights benefiting descendants or, in absence of descendants, surviving spouse
- But more rights can be granted to surviving spouse in presence of descendants and reduce their forced heirship rights
- Purpose of this rule: ensure respect of forced heirship rights, and maintain equality among heirs with forced heirship rights
- Limited possibility to waive forced heirship rights in advance

4. Clawback

- To ensure that forced heirship rights have been respected, among the heirs with forced heirship rights, and as far as the gifts and legacies made to third parties are concerned
- All lifetime gifts (with a few limited exceptions) therefore considered, with no limitation in time
- Particular attention to be paid to the valuation of lifetime gifts when clawback is considered

III. Administration of the estate

- Direct transfers to heirs of all rights and debts existing at time of death
- First consequence: three options available in relation to estate, including acceptance with some protection awarded to the heir against potential debts
- Second consequence: all assets, rights and debts held in common by the heirs under regime of « indivision »

IV. Sharing-out of estate / Distribution of assets

- Agreement of all heirs necessary
- Additional tax applicable if a notarial deed is made, which is compulsory when real property is involved
- If all the heirs do not agree, legal action can be started to obtain the sharing-out of the estate on the basis of a court decision