

Forced Heirship in Israel – Is A Choice of Law Provision in a Last Will and Testament Enforceable?

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A choice of law provision is common practice in an individual's last will and testament, specifically where the testator may be subject to the laws of a number of jurisdictions. This may occur, for instance, where the settlor owns assets located in various jurisdictions or if the settlor is a citizen or resident of more than one country.

A case recently appearing before the Israeli Supreme Court raised the question of whether a testator may choose the law governing his/her last will in order to circumvent forced heirship provisions in his/her country of residence. The Decision of the Supreme Court should alert individuals whose estate may be subject to the laws of a number of jurisdictions as well as the legal profession rendering services to such international clients as to the applicability of a choice of law provision in a last will and testament admitted to probate in Israel. The case of the *Attorney General – General Guardian v. Anonymous* (594/04) concerned a last will validly executed in Israel by Ms. Klein, a citizen of Israel and of the Netherlands who resided in the Netherlands at the time of her death (the "Deceased"). The will bequeathed Ms. Klein's assets located in Israel to two of her three daughters. Based on Section 137 of the Succession Law 1965 (the "Succession Law"), discussed below, the probate court requested a legal opinion as to the laws of the Netherlands prior to the issuance of a probate order. Upon the refusal of the respondent to provide said legal opinion from the Netherlands and pursuant to a number of appeals, the case was heard by the Supreme Court. The issue before the Court was whether solely the laws of Israel governed the distribution of the Deceased's estate or whether it was subject to the laws of the Netherlands, the Deceased's place of residence at her death.

Section 137 of the Succession Law provides that the general principle is that an estate is subject to the laws of the jurisdiction in which a testator resides at the time of said testator's death. The Supreme Court held that Section 137 establishes the choice of law relating to inheritance and succession matters in Israel. By said provision, the legislature established the bond which, in its view, is central to the choice of law – the place of residence of the testator. Unless an exception listed in Sections 138-140 is applicable (none of which were relevant in the case of Ms. Klein), Section 137 governs the choice of law of a deceased's last will. i.e., assets located in Israel may be bequeathed subject to laws of a foreign jurisdiction where the place of residence of a deceased was not in Israel at the time of his/her death.

The Supreme Court held that the Deceased's estate was to be distributed in accordance with the laws of the Deceased's place of residence at her death. As the laws of the Netherlands include forced heirship provisions, the Supreme Court found that said Netherlands laws will be considered by the Israeli probate court and will govern the distribution of the Deceased's estate throughout the probate proceedings held in Israel.

Conclusion

It is important to note that Israel has no forced heirship laws. As a result the testator's choice of law in his/her last will may have significant consequences in this respect. Based on the case law described above, a testator may not disregard the laws of his/her country of residence in order to choose a law practiced in a more liberal jurisdiction regarding forced heirship.

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