



Trends and Foundations: recent court cases

Paolo Panico

STEP Israel – 20th Conference – Tel Aviv, 19 – 20 June 2018

Further readings

International Trust Laws, 2d edition

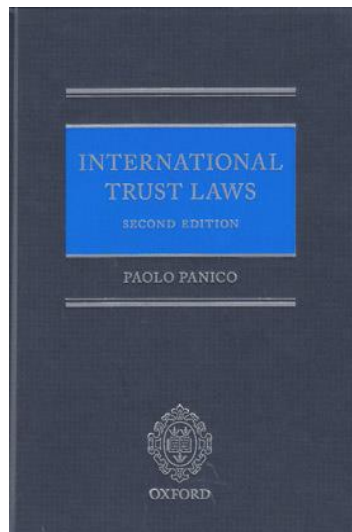
Paolo Panico

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Private Foundations: Law and Practice Paolo Panico

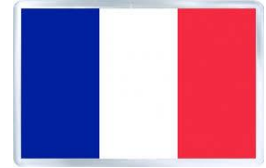
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Cour de Cassation – Arrêt n° 1005 du 27 septembre 2017 (16-17.198)

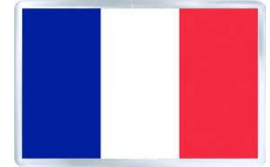


- Facts:

- Estate of composer Maurice Jarre, who died in California in 2009 after almost 50 years as a Californian resident
- Most of Maurice Jarre's estate had been settled on a Californian law trust where he and his wife (a Californian national) served as trustees and lifetime beneficiaries
- The trust included shares in a French unlimited company «*société civile immobilière, SCI*» that owned properties in Paris
- Maurice Jarre devolved all his personal assets to his wife under his Californian law will, where he stated his intention to disinherit his son and daughter from a previous marriage

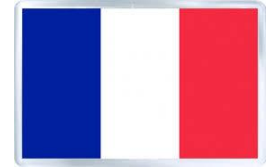
- Children's claims:
 - (i) Art 2 of the Law of 4 July 1819 provides that a French heir who has received less than a foreign heir under a will is entitled to claim the difference from the foreign heir
 - (ii) Forced heirship is part of France's international public policy whereas testamentary freedom would be an «Anglo-Saxon exception» and cannot be enforced on French property
 - (iii) The contribution of French real estate into the SCI is a fraudulent transaction by which the settlor purported to convert immovable property into movable property with a view to avoiding French law and its international public policy provisions (ie, forced heirship)

Cour de Cassation – Arrêt n° 1005 du 27 septembre 2017 (16-17.198)



- **Judgment (Paris Court of Appeal Case 14/26247 of 11 May 2016 affirmed):**
 - **Art 2 of the Law of 4 July 1819 was abrogated by the Constitutional Council in its decision of 5 August 2011 (n° 011-159 QPC) – as no reserve was made, it could not apply to any matters for which litigation was pending at the time of the decision**
 - **«A foreign law to which the rule of conflict of laws applies and which excludes forced heirship is not, in and of itself, contrary to French international public policy and may not be set aside unless its real application to the case in question leads to a situation that is inconsistent with the rules of French law that are deemed to be fundamental»**
 - **Mr Maurice Jarre was a long time Californian resident, married since 1965 in the US, and his children are not in a situation of financial need or distress -> French conflict of laws rules provide for the application of Californian law (which ignores forced heirship) and there is no reason to apply French law to the case**

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NB After 17 August 2015 the EU Regulation 650/2012 (“EU Succession Regulation”) provides for the application of the law of the “last habitual residence” to the entire estate (including immovable property) -> there is no more need to contribute French real estate to a French company (“SCI”) in order to transform real estate into shares (ie, movable property)

NB The Court made reference to the children’s financial situation -> similar reasoning to s 1(1)(e) of the *Inheritance (Provisions for Family and Dependants) Act 1975*: ie, no forced heirship but the court may make an order if the testator did not make “reasonable financial provisions” for relatives or “any person ... who immediately before the death of the deceased was being maintained, either wholly or partly, by the deceased” (Cf *Ilott v The Blue Cross* [2017] UKSC 17)



Thank you!

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