

STUDY PAPER ON CONFLICT OF LAW ISSUES IN SUCCESSION MATTERS

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Common Law Choice of Law Rules Applicable to Succession

- ◆ succession to moveable property is governed by the law of the deceased's domicile at the time of death
- ◆ succession to immovable property is governed by the law of the place where the property is situated (*lex situs*)

Statutory Rules: Testate Succession

- ◆ Lack of Uniformity
- ◆ Uniform Wills Act (1966), s. 40(1)

40(1)As regards the manner and formalities of making a will of an interest in movables, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where,

- (a) the will was made; or
- (b) the testator was then domiciled; or
- (c) the testator then had his habitual residence; or
- (d) the testator then was a national if there was in that place one body of law governing the wills of nationals.

Testate Succession Possible Reforms

- ◆ Amend s. 40 to include nationality and habitual residence at time of death?
- ◆ Amend s. 40 to include lex situs?
- ◆ Extend s. 40 to immoveables?
- ◆ Codify the rules governing capacity?
- ◆ Codify the rules re. revocation by marriage, divorce & separation?
- ◆ Adopt a unitary approach, as in the 1989 Hague Convention?

Intestate Succession

Spousal Preferred Share

- ◆ Tom dies intestate, domiciled in Nova Scotia
- ◆ His total estate is worth \$250,000
- ◆ Moveables of \$200,000 and immoveables of \$50,000 (in N.W.T.)
- ◆ Survived by his wife (Jane) and a child from a previous marriage
- ◆ Nova Scotia law provides that Jane gets \$50,000 plus one-half of the residue. N.W.T. law is the same.
- ◆ How much is Jane entitled to?
- ◆ \$150,000 or \$175,000?

Possible Solutions

- ◆ Highest preferred share
- ◆ Abandon *lex situs* (as per Hague Convention): governed entirely by domicile/habitual residence

Entitlement to Preferred Share

Should intestate succession legislation be amended to include choice of law provisions to determine issues of status, particularly those akin to marriage, such as who is a “common law partner”?

Matrimonial Property Rights on Death

- ◆ Whose law governs?: lack of statutory uniformity
- ◆ Characterization: succession or matrimonial property?
- ◆ See example at para. 83
- ◆ Recommendation No. 12:

Consideration should be given to including in uniform legislation, provisions which address the issue of how the division of matrimonial property upon death should be characterized for choice of law purposes, to ensure that it is characterized as a matter of matrimonial property law rather than succession law.