

Session of Nice – 1967

Testamentary Succession in Private International Law

(Tenth Commission, Rapporteur : Mr Riccardo Monaco)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Considering that testamentary succession is subject to the law governing succession in general (law of succession), but that it has not seemed possible, in the present climate of opinion, to propose a uniform solution for the determination of the said law ;

Having in mind the rules formulated by the Hague Convention of 5 October 1961, on the Conflicts of Laws relating to the Form of Testamentary Dispositions which has already come into operation and has served as a model for several national legislative measures ;

Considering that it seems useful to propose solutions to certain problems peculiar to testamentary succession, without prejudice to the determination of the law of succession, so as to achieve a relative unity in this field ;

Recommends the application of the following solutions in matters of testamentary succession :

1. That testamentary capacity should be recognized when it exists under the personal law of the testator at the time of making the testamentary dispositions ;
2. That the essential validity and the effects of testamentary dispositions should be governed by the law of succession, subject to the power of the testator to choose between the law of his nationality and that of his domicile ;
3. That the will should be considered valid as regards form if its form complies with the internal law :
 - a) of the place where the testator made it, or
 - b) of the nationality, domicile or habitual residence of the testator, either at the time when he made the disposition, or at the time of his death, or

- c) so far as immovables are concerned, of the place where they are situated ;
4. That the solutions contained in the preceding paragraph should apply also to the formal validity of the revocation of a will by testamentary disposition ;
5. That the powers of a testamentary executor nominated by the testator should be governed by the law of succession, subject to any provisions of the law of the place where the will is administered ;
6. That the powers of an administrator of the testamentary succession appointed by the court should be governed by the law of the court which appointed him ;
7. That the methods of administration of a will should be governed by the law of the place of its administration.

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(15 September 1967)