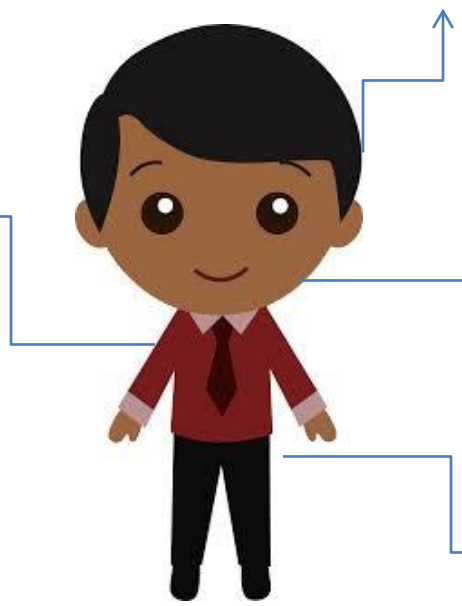


EU Succession Regulation- The Impact on a Non-EU Country ~Sri Lanka~

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Meet Mr. Fernando – the real deal Sri Lankan!

Mr. Fernando is a High Net Worth Individual from Sri Lanka who owns town houses all over Europe.







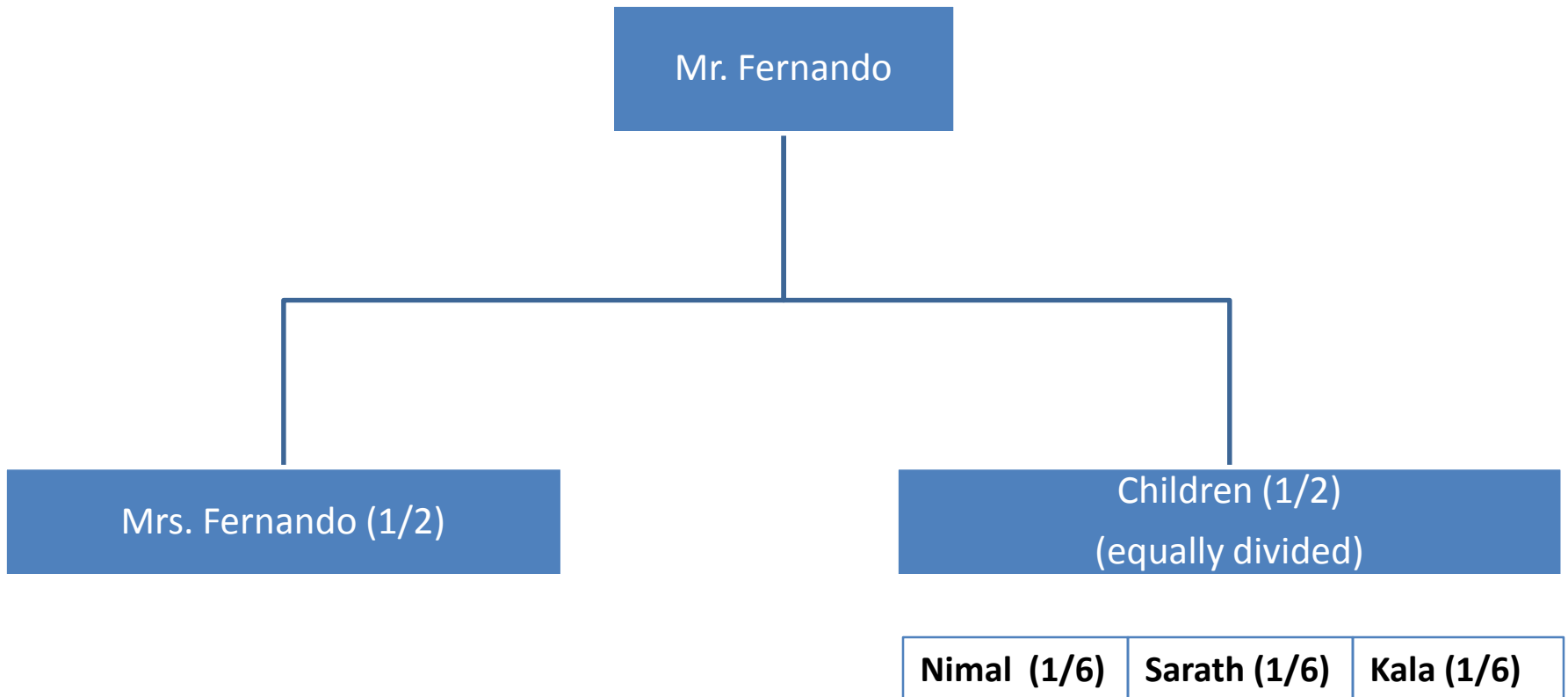
Sri Lankan Law on Succession

- Laws on Succession in Sri Lanka
 - Matrimonial Rights and Inheritance Ordinance
 - Wills Ordinance
 - Prevention of Frauds Ordinance
 - No estate duty; no gifts tax
- Freedom of testation in Sri Lanka is a principle enshrined in section 2 of the Wills Ordinance No.21 of 1884; NO overriding forced heirship!

Intestate Succession in Sri Lanka

- The Matrimonial Rights and Inheritance Ordinance contains provisions governing intestate succession in Sri Lanka.
- **Immovable Property**
 - Section 21(1): Inheritance *ab intestato* to the immovable property in Sri Lanka of a person deceased **shall be governed and regulated by the following provisions of this Ordinance** wherever such person may have or have had his actual or matrimonial domicile.
- **Movable Property**
 - Section 21(2): Inheritance *ab intestato* to the movable property of a person deceased **shall be governed and regulated by the law of the country in which he had his *domicile* at the time of his death.**

Succession under the Matrimonial Rights and Inheritance Ordinance



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Section 2 of the Wills Ordinance

- It shall be **lawful** for every person competent to make a will to **devise, bequeath, and dispose of by will all the property within Sri Lanka** which at the time of his death shall belong to him, or to which he shall be then entitled, of whatsoever nature or description the same may be, **movable or immovable**, and all and every estate, right, share, or interest in any property, **and which if not** so devised, bequeathed, or disposed of **would devolve upon** his heirs-at-law, executor, or administrator, **to such person** or persons not legally incapacitated from taking the same, **as he shall see fit** ; and **no will made either within or beyond the limits of Sri Lanka** subsequently to the time when this Ordinance shall commence and take effect **shall be** or be liable to be **set aside as invalid** or in officious, either wholly or in part, **by reason that any person who** by any law, usage, or custom now or at any time heretofore in force within Sri Lanka, **would be entitled to a share or portion of the property of the testator**, has been excluded from such share or portion, or wholly disinherited by or omitted in such will; but every testator shall have **full power to make such testamentary disposition as he shall feel disposed**, and in the exercise of such right to exclude from the legitimate or other portion any child, parent, relative, or descendant, or to disinherit or omit to mention any such person, without assigning any reason for such exclusion, disinheritance, or omission, any law, usage, or custom now or heretofore in force in Sri Lanka to the contrary notwithstanding :

- Mr. Fernando, who is supposed to be happily married to Mrs. Fernando, meets a beautiful French realtor, Giselle and falls in love with her.



- He wants to leave everything to her, all houses and all the gems in them too!

The EU Regulation on Succession (Brussels IV) – IMPACT?



Article 22 of the Succession Regulation

Article 22

Choice of law

1. A person may choose as the law to govern his succession as a whole the law of the State whose nationality he possesses at the time of making the choice or at the time of death.

Article 23 of the Succession Regulation

- Article 23 which deals with the Scope of the Applicable Law provides that the law so determined [pursuant to Article 22] shall govern the succession as a whole.
- Article 23 2. provides that the law shall govern in particular:
 - (b) the determination of the beneficiaries, of their respective shares....
 - (j) the sharing-out of the estate.....

Article 34 of the Succession Regulation

Article 34

Renvoi

1. The application of the law of any third State specified by this Regulation shall mean the application of the rules of law in force in that State, including its rules of private international law in so far as those rules make a *renvoi*:

(a) to the law of a Member State; or

(b) to the law of another third State which would apply its own law.

2. No *renvoi* shall apply with respect to the laws referred to in Article 21(2), Article 22, Article 27, point (b) of Article 28 and Article 30.

Private International Law in Sri Lanka

- Sri Lanka PIL: would likely correspond to Private International Law rules as applied by the English Courts, subject to any local statutory modification.
- English common law principles governing domicile of origin and of choice are applicable in Sri Lanka
 - (*Annakedde v. Myappen*).
- Choice of Law / Applicable Law element of PIL
 - *International Science and Technological Institute v. Rosa and Others*

Applicable English Private International Law Rules in Sri Lanka

- In the scholarly work of Dicey and Morris, the general principles of Private International Law in regard to testamentary succession are laid down in numerous rules.
- For example:
 - Rule 104
 - The material or essential validity of a will of **movables** or of any particular gift of movables contained therein is governed by the law of the testator's **domicile at the time of death**.
 - Rule 105
 - The material or essential validity of a will of **immovables** or of any particular gift of immovables contained therein is governed by the law of the country where the immovables are situated (**lex situs**).

Mr. Fernando, habitually resident in France, and his Last Will

- Jurisdiction
 - Habitual residence – Article 4 - French Court –
over succession as a whole

Applicable law

- Applicable Law
 - Habitual residence – Article 21(1) - French law
 - If an Article 22 declaration in Last Will choosing SL law – SL law applies
 - Is a choice of law declaration in a Last Will valid under SL law? Does it matter?

Validity of section 22 declaration

(40) A choice of law under this Regulation should be valid even if the chosen law does not provide for a choice of law in matters of succession. It should however be for the chosen law to determine the substantive validity of the act of making the choice, that is to say, whether the person making the choice may be considered to have understood and consented to what he was doing. The same should apply to the act of modifying or revoking a choice of law.

3. The substantive validity of the act whereby the choice of law was made shall be governed by the chosen law.

European Certificate of Succession

- European Certificate of Succession (ECS)
- Sri Lankan law on resealing of foreign probates
- Resealing of ECS in Sri Lanka?

Sections 554U et seq. of the Sri Lankan Civil Procedure Code

CHAPTER XXXVIII B

FOREIGN PROBATES

554 U. Where a Court of Probate or other authority in a foreign country has either before or after the fifteenth day of December, 1977, granted probate or letters of administration in respect of the estate of a deceased person, probate or letters so granted may, on being produced to, and a copy thereof deposited with, a competent court, be sealed with the seal of that court and thereupon shall be of like force and effect and have the same operation in Sri Lanka as if granted by that court.

Definition of a Court of Probate

“Court of Probate” means any court or authority by whatever name designated having jurisdiction in matters of probate;

“probate” and “letters of administration” include any instrument having in any foreign country the same effect which under the law of Sri Lanka is given to probate and letters of administration respectively.

What is an ECS (Article 62) and what is its effect (Article 69)

CHAPTER VI

EUROPEAN CERTIFICATE OF SUCCESSION

Article 62

Creation of a European Certificate of Succession

1. This Regulation creates a European Certificate of Succession (hereinafter referred to as 'the Certificate') which shall be issued for use in another Member State and shall produce the effects listed in Article 69.
2. The use of the Certificate shall not be mandatory.
3. The Certificate shall not take the place of internal documents used for similar purposes in the Member States. However, once issued for use in another Member State, the Certificate shall also produce the effects listed in Article 69 in the Member State whose authorities issued it in accordance with this Chapter.

What is the purpose of an ECS (Article 63)?

Article 63

Purpose of the Certificate

1. The Certificate is for use by heirs, legatees having direct rights in the succession and executors of wills or administrators of the estate who, in another Member State, need to invoke their status or to exercise respectively their rights as heirs or legatees and/or their powers as executors of wills or administrators of the estate.

2. The Certificate may be used, in particular, to demonstrate one or more of the following:

Tentative Conclusions

- Uncertainty of interpretation of the Regulation
- Choice of law issue has to be resolved
 - Would choice of applicable law be recognised in SL?
 - No decision yet by French Courts or Sri Lankan Courts
- In regard to ECS, these would not be resealable in Sri Lanka