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Wills - international issues

By Luis Batalha, Director & Edwin Montoya Zorrilla, Law Graduate

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Making a will can become complicated when a person lives in one country, but has assets in another country. Trying to obtain property under a will can also become complicated, if the person who passed away lived in one country, but the person who was left the property lives in another country. In this article, we consider some of the difficulties that can arise when wills have one or more international elements. Some possible solutions are also considered.

Wills made overseas

A NSW Court will recognise a will made overseas where the will was made correctly under the law of the country where it was made. The following example illustrates this:

> **Example 1**
> Maria was born in Italy. While living in Italy, she bought a house in Venice. At age 75, Maria decided to move to Sydney to spend her final years with her family. Ten years later, Maria passed away in Sydney. Maria never made a will in Australia; she only made a will in Italy, in accordance with Italian law. Fortunately, for her family members, who reside in Sydney, they can actually access her property in Italy, in a NSW Court (*Succession Act* 2006 (NSW), Pt 2.4, s 48).

To give effect to a foreign will, a NSW Court may have to translate the foreign will into English. A NSW Court may also have to obtain the help of a foreign qualified lawyer to see if the will was correctly prepared under the law of the foreign country.

Other Australian States have similar laws to NSW regarding foreign wills (see *Succession Act* 1981 (Qld), Pt 2 Div 6; *Wills Act* 1997 (Vic) Pt 2, Div 6; *Wills Act* 2008 (Tas) Pt 2, Div 5;

Wills Act 1936 (SA) Pt 3); *Wills Act* 1970 (WA) Pt 7, *Wills Act* 1968 (ACT) s 15A, *Wills Act* 2000 (NT) Pt 5).

Making an international will

Some countries have a special type of will called an international will. This type of will is recognised if it is made in a particular format, irrespective of where and by whom the will is made. The below countries recognise international wills:

Australia	Croatia	Holy See	Libya	Sierra Leone
Belgium	Cyprus	Iran	Niger	Slovenia
Bosnia-Herzegovina	Ecuador	Italy	Portugal	United Kingdom
Canada	France	Laos	Russian Federation	United States of America

The following example illustrates the effect of an international will:

> **Example 2**
> Boris is a Russian citizen, who lives in Australia. Boris has property in both Australia and Russia. He is unsure about whether he needs to have 2 wills – one in each country, or whether one will alone is enough. Since both Russia and Australia are listed above, Boris can make just the one international will in Australia, which will be recognised in Russia (or vice versa). Even if his heirs are located in both countries, they will still be able to obtain property under his one international will.

An international will can easily be prepared in NSW (*Succession Act* 2006 (NSW) s 50B). An international will:

- must be in writing;
- can be in any language;
- may be by hand or any other means;
- must be declared and signed by the testator in the presence of an "authorized person" and 2 independent witnesses (who will not obtain any property under the will); and
- must be signed by the "authorized person" and the 2 witnesses in the presence of the testator.

Who is an "authorized person" varies from country to country. In NSW, an authorised person includes an Australian qualified lawyer and a notary public. An international will is generally accompanied by a certificate from the "authorized person". The certificate will state that the will meets the requirements for an international will and is thus acceptable. However, even if a certificate is not included, the will may still be acceptable.

Other situations

A will made in Australia, under NSW law, may not be recognised in some overseas countries. This may give rise to difficulties for those who would like to leave overseas property under an Australian will. The following example illustrates this:

> **Example 3**
> Rashmi is an Australian citizen, who lives in Australia. She owns a farm in India, as well as property in Australia. Rashmi would like to leave her farm in India to her daughter living in Australia. Rashmi does not obtain legal advice and prepares an Australian will in which she states that her farm is to go to her daughter. Rashmi later passes away. Unfortunately for Rashmi's daughter there is no guarantee that, under Indian law, her Australian will can pass ownership of the Indian farm.
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> Making an international will would likewise provide no guarantee that the farm in India would pass to her daughter. India may or may not recognise an international will under its own domestic law. To address this issue Rashmi would have to consult an estate planning lawyer qualified in Indian law.

The above example would apply if Rashmi's farm had been located in Brazil, China, Spain, Turkey, Germany, Japan, South Korea and Indonesia, instead of India.

Conclusion

If you are considering preparing a will in Australia but have property overseas, as well as in Australia, then it is important to consider not only local law but also the laws of the country where your property is located. batallion legal offers a range of legal services and advice on wills and the distribution of property of deceased persons. We are happy to help you with any issue you may face, with an international dimension.