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What will be the outcome of Johnny Hallyday's inheritance battle?

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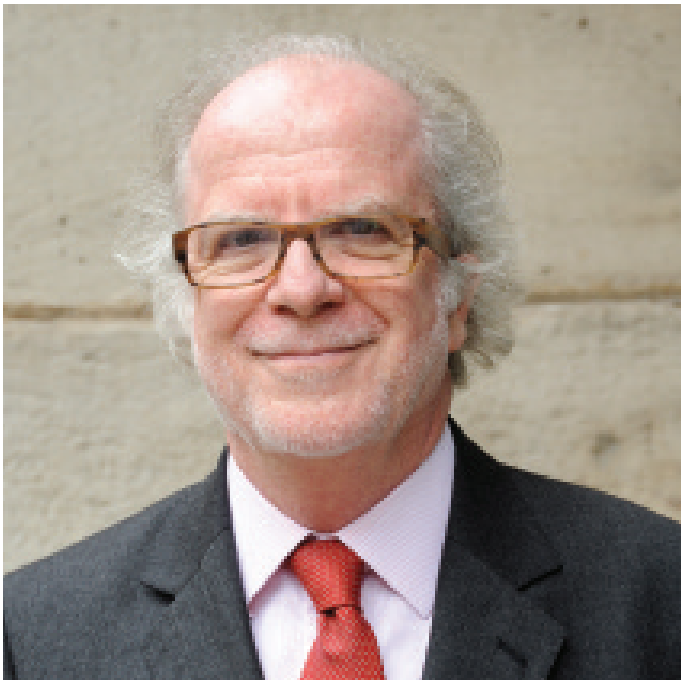
A couple of months ago a feud erupted over the estate of a French citizen, the French rock star Johnny Hallyday, who died on December 5, 2017. The "French Elvis," who lived in Los Angeles, died leaving everything to a US trust whose sole beneficiaries are Laeticia, his wife, and their two adopted daughters under his will drawn up under Californian law, where the singer spent much of his later years. Not surprisingly, the two children Mr. Hallyday had from previous unions, David and Laura, are challenging the will as infringing on French forced heirship rules. Contrary to what they are expecting, based on several previous experiences of successful representation of US estates challenged for the same reason, we think that they have very limited chances of success unless they can prove that their father's habitual residence was in France and not in California.

A very similar situation has recently given rise to the same controversy, which led to a decision of the French Supreme Court (*Cour de cassation*) on September 17, 2017. In this case, which involved the estate of a renowned music composer, the decedent, who was domiciled in Malibu, had set up a trust under the laws of California. He and his wife were the two settlors and also the two sole trustees of the trust. All moveable and immoveable, tangible and intangible assets belonging to the decedent were transferred into the trust.

The decedent also executed a will under which he bequeathed all his assets to the trust. He also expressly declared that he "intentionally and willingly omitted all provisions concerning his heirs from benefiting from his estate." As he died before August 7, 2015, his succession to movable property was still governed by the law of domicile and by the law of their location in respect of immovable property. In the case at hand, there was no French real estate property. Although there was a flat in Paris, it was owned through a company, the shares of which were treated as movable property. As a consequence, under French private international law of succession the whole estate was governed by Californian law.

The disgruntled children raised a number of arguments, including the non-recognition of the trust concept under French law, and that infringing on the French forced heirship rights of children to an estate was contrary to French public policy. The outcome depended on whether the French courts would decide that Californian freedom of testation (in the case at hand) should be treated as a matter of

> A FRENCH CITIZEN DOMICILED IN A COUNTRY WHICH RECOGNIZES FREEDOM OF TESTATION CAN LEAVE HIS ESTATE, INCLUDING FRENCH ASSETS, TO WHOMEVER HE WISHES



"**international** public policy," which implies that contradicting foreign policy must be ruled out, and not of mere "internal public policy," which does not.

There is a subtle but key difference between the two concepts. In principle, when French conflicts of law rules require a French judge to apply a foreign law (in this case the law of the State of California), the judge should disregard foreign law when it is in conflict with not only French internal public policy but also with international public policy. International public policy is considered to be a matter that has essentially universal agreement, at least amongst the nations of Western Europe and North America.

Although a foreign law that would offend basic human rights and understandings of equality by according preference to certain heirs based on sex, religion and/or primogeniture would almost certainly be treated as a matter of international public order, it has never been ruled that foreign laws respecting testamentary freedom similarly offend international public policy.

As a consequence, the Paris High Court ruled that a US domiciliary who died prior to 15 August 2015 could dispose of his estate as he or she wishes, without being subject to French forced heirship, and that a US trust is

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fully recognized by French law, even if the settlor is also the trustee and the primary beneficiary. The Paris Court of appeal, then the French Supreme Court confirmed the judgment in a test case which should be considered as a binding precedent. The only qualification the Supreme Court decision made is that forced heirship should be respected whenever the children are not of legal age, or whenever they are in a state of financial hardship. As the deceased's children were not in need, they were not then entitled to obtain compulsory shares of the estate as defined by French law.

As Mr. Hallyday's children do not appear to be in need either, it is very unlikely that they will win, unless they can prove that, in reality, their father's habitual residence upon his death was in France and not in Los Angeles.

The only difference between the two cases is that Mr. Hallyday passed away after July 17, 2015. This means that his succession is governed by the EU regulation of July 4, 2012, according to which the law applicable to an international succession as a whole shall be the law of the state in which the deceased had his habitual residence at the time of death, unless he had chosen in his will the law of the state of which he is a national.

Since Mr. Hallyday did not make such a choice and his children are not in financial need, their only possibility to obtain their share of the forced heirship portion would be to bring proof that the habitual residence of their father was in France. If they do not succeed they are bound to lose, even if their father's plan that his surviving spouse should benefit from all his assets, including his moral rights, may seem unfair to them according to the French media.

When a foreign law providing for freedom of testation is to be applied by a French court, as a general rule, the decedent's will is to be respected. This would also be the case for an American citizen living in France if he/she elects in his/her will to have his/her succession governed by US law (or more accurately by the relevant State law).

As usual, with this kind of litigation, the two disgruntled children sought to freeze Johnny Hallyday's assets and artistic rights. As this is a common procedure under such circumstances, and was also done in the test case mentioned above, a judge agreed to freeze the assets based in France, including the royalties from song rights pending the final ruling and liquidation of the estate. However, neither the U.S. based properties nor proceeds from a posthumous album's release, which is likely to be a huge seller, were frozen. In our opinion this is only a conservatory measure which should not necessarily be interpreted as meaning that Mr. Hallyday's inheritance will be found to be governed by French law unless the children can prove that their father's habitual residence was in France and not in California.