

# Which Law Applies to a Non-Muslim Expatriate's Will in the UAE?

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Wills and other matters relating to personal affairs, such as custody and divorce, are generally governed in the UAE by Federal Law 28 of 2005, known as the Law of Personal Status, which is based on Islamic Law.

In order to accommodate those residents of the UAE who ascribe to different religions, the Law of Personal Status permits a non-Muslim expatriate living in the UAE to elect to apply the law of his or her country to matters of personal affairs. Additionally Article 17 of the UAE Civil Code states that "inheritance shall be governed by the law of the testator at the time of his death". This article considers a judgments issued by the Dubai Court of Cassation illustrating the applicability of these provisions.

## **Summary of the Facts**

The case was filed by the widow of a recently deceased Indian national in her personal capacity and in her capacity as the guardian of their only son. Upon the death of her husband, the deceased's mother obtained a division of the husband's assets pursuant to Islamic Law which gave the mother one-sixth, the wife one-eighth and the son the remainder of the assets. The wife filed the case to dismiss this division of the assets and to give the entire estate to the son. In her claim, the wife relied on a will properly executed by her husband which gave all of his assets to his son upon his death and requested the court to enforce the will in accordance with the laws of India as her husband was a Hindu and not a Muslim.

## **Court of Cassation Analysis**

The Court of Cassation ruled that it was erroneous for the Court of First Instance and the Court of Appeal to characterise the claim as a claim to amend the previously issued division of the estate's assets. The Court pointed out that claim was for the enforcement of a will not to amend the division of assets as the lower courts characterised it. Since the lower courts' decisions did not evaluate the claim correctly, they should be overruled.

The Court expanded further by clarifying that in the application of the husband's will, the will should not be affected by the rules of the Law of Personal Status which state that a testator may not bequeath property to an heir. Under this rule, which is applicable to UAE Nationals and Muslim expats, a testator may not bequeath property to any of his heirs such as a son or a daughter except with the consent of the other heirs. The Court reasoned that a will's purpose is to pass property from one person to another and if these persons are not UAE nationals and they are not Muslims then the law they have chosen for themselves to govern their relationship shall apply to them.

The Court cautioned that while this principle allows non-Muslim residents to apply the law of their

own country to their wills, such laws will not be applied if they clearly offend public policy. Simply having a different division of assets, the Court specified, does not offend public policy.

#### Practice Note

Non-Muslim expatriates in the UAE may choose to have the law of their country of origin as the chosen applicable law in their will as long as their heirs are also not UAE nationals and not Muslim. If the will has a chosen applicable law and it is the law of the country of the origin of the testator, the court will respect that law and apply it except in cases where it is contrary to public policy to do so. As the court clarified in this decision, a different division of assets, such as equal inheritance for all children, would not be invalidated for violating public policy. It is critical to note that the court's enforcement of a will in accordance with foreign law is an exception and it is subject to strict procedural steps which must be followed otherwise the court will return to the default position of applying UAE law.