

Jersey

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SECTION A: BRIEF SURVEY OF THE LOCAL SYSTEM

1. Type of System

Jersey has a mixed legal system of customary law and common law. Jersey derives its succession law from Norman French customary law, i.e. neither civil law nor common law, although the Royal Court of Jersey has in recent years also been influenced by many English common law authorities. A dichotomy between moveable estate and immoveable estate exists in that moveables need to be administered by executors or administrators, whereas immoveables vest directly in the heirs as at the date of death. Jersey law therefore distinguishes between matters of administration and matters of succession for moveables, but not for immoveables. Statute law is of increasing importance, particularly the Wills and Successions (Jersey) Law 1993 and the Probate (Jersey) Law 1998, both of which are influenced by common law concepts. **30.01**

Jersey is not a part of the United Kingdom and is an independent jurisdiction, both for succession purposes and for tax purposes. It is one of the Channel Islands, but Guernsey and the other islands have their own distinct systems of law. **30.02**

2. Wills

Formal validity as to a will dealing with a person's moveable estate is, as a matter of Jersey law, now governed by Art. 29 of the Probate (Jersey) Law, 1998 (see Section B8). So far as Jersey domiciliaries are concerned, the Royal Commissioner's Report of 1860 states that a will of moveables has to be signed by the testator/trix and, where it is holograph, it requires no witnesses, but otherwise there have to be two witnesses to attest its execution; however, it is not necessary (as it is in England) that they should, in his or her presence and in the presence of each other, attest the testator/trix's signature. **30.03**

Wills may only be made by persons of full age except that (since 1993) married minors may make a valid will. Wills of moveables should be in writing, dated or capable of being dated, signed, and properly attested. They should normally be dated but this is not an essential requirement if the dating can be established by extrinsic evidence. It is generally accepted (but not without doubt) that witnesses of moveables wills should **30.04**

be of full age. The age of majority was lowered from 20 to 18 by the Age of Majority (Jersey) Law 1999, which came into force on 1 November 1999. The will should not be witnessed by a beneficiary or by a relative of the testator/trix or beneficiary to the degree of first cousin by blood or marriage. An executor may act as a witness, but care should be taken not to include a gift or a charging clause in favour of a witness that would certainly invalidate the benefit and may well invalidate the whole will, although possibly a holograph will may stand unaffected even if witnessed, as there is no requirement for witnesses. Holograph wills of moveables are valid without witnesses if they are wholly written by (or can be proved to have been typed by) the testator/trix and signed by him or her. Two affidavits of handwriting are usually required to establish authenticity as to handwriting. A signed suicide note has been held¹ to be a valid holograph will. The concept of *donationes mortis causa* is accepted but that of a *nuncupative* or verbal will is not.

- 30.05** Wills of Jersey immoveables have special requirements and are governed by the *Loi (1851) sur les Testaments d'Immeubles* (as amended). They have to be read out loud to the testator/trix (unless they are holograph) and a declaration to this effect is included in the attestation clause. Two witnesses are required, one of whom must be a member of the States of Jersey, one of the law officers of the Crown, or an advocate or solicitor or, if the will is executed outside the island, the official witness must be a notary public. Mixed wills of Jersey immoveables and other estate have to comply with the more onerous essential validity requirements of wills of immoveables and therefore it is usual to make a completely separate will for the Jersey immoveables. The will should not be witnessed by a beneficiary or a relative of the testator/trix or beneficiary by blood or marriage to the degree of first cousin. The testator/trix must sign or acknowledge his or her signature in the presence of two witnesses. The witnesses must generally sign in the presence of each other and of the testator/trix, save that in light of the outbreak of the Covid-19 virus Jersey has introduced temporary regulations to permit wills of moveables and Jersey immoveables to be executed by a testator/trix before witnesses who are able to see the will being signed by the testator/trix by means of a video-link.
- 30.06** Wills concerning non-Jersey immoveables are, as a matter of Jersey law, governed by the rules of the *lex situs*.
- 30.07** Wills can be amended by codicil or the making of a new will at any time. The amendments will be valid if executed in accordance with the aforementioned rules in relation to moveable or immoveable estates as appropriate. Any alterations must be made at the time of signature and should be initialled by the testator/trix and both witnesses.
- 30.08** Marriage does not revoke a will under Jersey law.
- 30.09** A divorce, a decree of judicial separation, or abandoning before death the deceased spouse without just cause has the effect of revoking the appointment of the surviving spouse as executor or executrix and revokes any legacy, bequest, devise, or share of residue given to the divorced spouse.

¹ *Re Forbes* 1995 JLR 261.

- A revoked will may be revived by codicil. **30.10**
- With the coming into force of the Civil Partnerships (Jersey) Law 2012 on 2 April 2012, civil partnerships are now recognized in Jersey. This statute places civil partners on essentially the same footing as a married couple for tax and succession purposes. **30.11**
- Jersey law does not have a special regime for mutual wills. **30.12**
- A will can contain a discretionary power to appoint beneficiaries from a predetermined class. Where doubts exist as to the identification of a beneficiary, the identity of a beneficiary could be established by a statutory declaration made by a third party or by genealogical research. It is up to the executor to decide whether such identification is sufficient. If uncertain he or she could apply to the court for directions. **30.13**
- Trusts are regularly created or funded by will, which are usually deposited in the safekeeping of the lawyers preparing them. Jersey has no official register of wills. **30.14**

3. Intestacy

- The succession of moveables and immoveables where the deceased is survived by a spouse and/or issue is set out in the Wills and Successions (Jersey) Law 1993. Otherwise, the heirs-at-law are ascertained by customary law and they inherit, if more than one, as tenants in common. **30.15**
- Divorce or a decree of judicial separation or desertion without cause cancels the right to life enjoyment of the matrimonial home or the inheritance of any moveable or immovable estate on intestacy. **30.16**
- Prior to 29 January 2011, illegitimate children had full inheritance rights as far as the estate of their deceased mother is concerned but no rights at all as far as the estate of their deceased father is concerned: Legitimacy (Jersey) Law 1973. This position was amended by statute and with regards to estates that open on or after 29 January 2011 an illegitimate child (including an adulterine child) has the same rights of succession as if he or she were the legitimate issue of his or her parents. Adopted children have the same inheritance rights as legitimate children: Adoption (Jersey) Law 1961. **30.17**
- For immoveables, no act or document is required to vest the estate in the beneficiaries as this follows automatically on death of an intestate person. For moveables, a grant of administration is required, placing the legal title of the estate in an administrator on the death of an intestate person. **30.18**
- If spouse and issue survive, the first £30,000 of moveables and the household effects pass to the spouse and the residue is divided equally between spouse and issue. **30.19**
- Household effects* in this context include articles of household or personal use or ornament normally situate in or around the matrimonial home. The definition excludes articles used wholly or principally for business purposes, money or security for money, motor vehicles, and single articles or sets of articles worth over £10,000. **30.20**

- 30.21** Immoveables pass to the surviving spouse as to life enjoyment, with ownership being divided between the spouse and each of the issue in equal shares.

4. Freedom of Testation

- 30.22** As regards immoveables: subject to dower (*douaire*) rights (i.e. customary law rights given to widows) and, for estates which opened after 1 January 2014, rights equivalent to dower (*douaire*) (i.e. statutory law rights given to widowers and surviving civil partners), there is complete freedom of testamentary disposition of immoveables with the exception that gifts to a trust and substitutional gifts (whereby the testator/trix leaves property to one person through the intermediary of another) are prohibited. Life enjoyment (the *usufruit*) of a property can be given over property of which the bare ownership (the *nue propriété*) is given to other beneficiaries. There is no claim to *légitime* for immoveables. A widow and, since 2 April 2012 a surviving civil partner, and since 1 January 2014 a widower, is entitled to claim her or his dower (or statutory rights equivalent thereto), i.e. life enjoyment of one-third of the deceased spouse's/civil partner's immoveable estate. For estates that opened prior to 1 January 2014, a widower is entitled to his *viduité*, i.e. life enjoyment of all his wife's immoveables. The widow, widower, or surviving civil partner is entitled to dower even if there is no issue of the marriage/civil partnership as long as she or he had not deserted the deceased spouse/civil partner, prior to death, without cause. Dower has to be claimed and it is not lost on remarriage or a subsequent civil partnership. *Viduité* (which has been abolished for estates that open on or after 1 January 2014) only applies if a child was born of the marriage and is lost if the husband remarries. It is an automatic right that does not have to be claimed.
- 30.23** As regards moveables, *légitime* can be claimed against moveables only by the surviving spouse or civil partner and/or issue, as shown in Table 30.1.

Table 30.1 *Légitime*

Unmarried persons/persons not in a civil partnership	No restrictions on powers of disposition (unless they have children who can claim two-thirds of the <i>légitime</i>).
Married man—wife and children	Widow can claim the household effects and one-third. Children can claim one-third.
Married man—wife but no children	Widow can claim the household effects and two-thirds.
Widower—children only	Children can claim two-thirds.
Married woman—husband and children	Widower can claim the household effects and one-third. Children can claim one-third.
Married woman—husband but no children	Widower can claim the household effects and two-thirds.
Widow—children only	Children can claim two-thirds.
Widow/widower—no children	No restriction on powers of disposition.
Civil partner—civil partner and children	Surviving civil partner can claim the household effects and one-third. Children can claim one-third.
Civil partner—civil partner but no children	Surviving civil partner can claim the household effects and two-thirds.
Civil partner—children only	Children can claim two-thirds.

A will of moveables that ignores *légitime* rights will stand unaffected by them if these are not claimed within a period of a year and a day from, it is generally thought, the date of the issue of the grant of probate. Therefore, Jersey does not have full ‘forced heirship’ since the heirs are not forced to claim their *légitime*, and if they fail to do so the estate is distributed according to the terms of the will. **30.24**

Contracts of inheritance are not recognized. **30.25**

It is a well-established principle that gifts of moveables made by persons to their descendants are deemed to be advances of inheritance (*avance de succession*). The heir who has received an advance can be required to elect either to bring the value of the advance into the estate (*rapport à la masse*) or to keep it but not participate in the distribution of the estate (*rester sur les avances*). Contracts have in the past been made in relation to immoveables whereby a child or wife has established the exact property that he or she will inherit or over which she will have dower and these will be binding. The concept of *partage* no longer applies. There is no concept of successor or family settlements except in relation to contracts to regulate dower. **30.26**

Légitime, dower (*douaire*) or its statutory equivalent, and *viduité* rights can be exercised as shown already. **30.27**

Adopted children and, since 29 January 2011, illegitimate children have the same inheritance rights as legitimate children (see paragraphs 30.15 to 30.17). In collateral successions of immoveable and moveable estates, relatives of the half blood whether *consanguin* or *utérin* each take a half share, whereas relatives of the whole blood (relatives *germains*) each take a full share. **30.28**

5. Maintenance

Apart from *légitime* rights and survivorship to joint assets, there is no mechanism for maintenance to be claimable by anyone. Common law partners have no specific entitlement, although any jointly owned property will pass to them by survivorship. **30.29**

6. Community Property between Husband and Wife

Jersey law has no concept of community of property. **30.30**

Household and personal effects in the matrimonial or partnership home are normally regarded as jointly owned and passing to the surviving spouse or civil partner by survivorship unless there is evidence to the contrary, in which case the definition of household effects contained in the Wills and Succession (Jersey) Law 1993 is applied for succession purposes. If assets are held jointly but as *tenants in common*, the deceased’s share forms part of his or her free estate rather than passing to the joint owner. **30.31**

7. Joint Property

Joint property devolves to the surviving joint owner unless the ownership is as tenants in common, in which case the deceased’s share forms part of his or her estate. **30.32**

8. Gifts (*Inter Vivos*)

- 30.33** See paragraphs 30.25 to 30.26 for the effect of *avances de succession*.
- 30.34** The extent of the limit of the off-set of any *avances* is that of the presumptive share of the total estate. Above that limit, the heirs may elect to keep their *avances* and not to participate at all in the free estate.

9. Capacity

- 30.35** As to age, see paragraphs 30.2 to 30.6. A patient, being a person found not to be mentally capable under the provisions of the Mental Health (Jersey) Law 2016, may still be capable of making a valid will. The Royal Court of Jersey has tended to follow English precedent in this regard.² The patient is deemed to have sufficient mental capacity if he or she is judged to have the intention of the testamentary act and the understanding of the nature of his or her assets and the identification of those whom he or she may reasonably be expected to make provision for. Persons suffering from delusion or insanity may make a valid will during a lucid period. Administrators are appointed to manage the affairs of patients but Jersey has no concept of 'statutory wills,' since the testator/trix has to make the will him- or herself and it cannot be done by another on his or her behalf.
- 30.36** Subject to some minor exceptions, a gift to a minor is held by a court-appointed *tuteur* until he or she is of age. However, a gift of moveables can instead be retained by personal representatives until the minor is able to give a valid receipt. Alternatively, the will may give a direction to pay the parent or guardian, who can then give the executor a valid discharge. As regards immoveables, it is considered that the beneficiaries must be alive at the testator/trix's death. As regards moveables, absolutely entitled beneficiaries must be alive then, but a gift may be made in trust for unborn beneficiaries. In each case, unborn children (*en ventre sa mère*) qualify as persons in being as at the date of death of the testator/trix. If the beneficiary predeceases, the gift fails unless there are substitutional provisions. Gifts to charities are preserved from failure owing to uncertainty by the operation of the *cy-près* doctrine. Gifts to corporate entities are valid. Gifts in wills of Jersey immovable estate to associations fail unless the beneficiary is an incorporated association or qualifies as to another type of corporate entity.

10. Authority (Court, Notarial, or Other)

- 30.37** Subject to an exception for small value estates (see paragraphs 30.79 to 30.81()), Art. 19 of the Probate (Jersey) Law 1998 requires that a Jersey grant of probate or administration be obtained to establish the right to recover or receive any part of the moveable estate situate in the island of any deceased person. Jersey immovable estate passes automatically to the heirs without there being an executor or administrator or a grant of probate or administration. It is therefore not possible to have moveables, bequests, or legacies given out of Jersey

² See *Davies v Stirling* 1982 JJ 125 and *Trigg v Crapp* 1983 JJ 77. In both cases the English authority of *Banks v Goodfellow* 1870 LR 5 QB 549 was cited and applied.

immoveable estate. On an intestacy, there is no formal legal procedure whatsoever. If there is a will, it is usually registered at the Public Registry.

Applications are made by personal appearance only at the office of the Judicial *Greffier*, which performs the functions of the Probate Division of the Royal Court of Jersey (the '*Greffé*'). If personal application cannot be made, for example because of ill health or the applicant living abroad, an attorney needs to be appointed under a formal power of attorney to make the personal application for the grant. Probate Stamp Duty is presently charged on the net value of the moveable estate at the rate of 0.5 per cent on the first £100,000 of net estate (which has to be rounded up to the nearest £10,000) and £75 for each £10,000 of net value (or part thereof) thereafter but subject to a ceiling of £100,000 (which applies to any moveable estates having a net value of £13,360,000 or over). There is also an £80 application fee payable in each estate. **30.38**

Anyone wishing to prevent or oppose the issue of a grant may do so by lodging a caveat with the *Greffé*. The usual reason for lodging a caveat is if it is thought that someone might try to have an invalid will admitted to probate. **30.39**

11. Invalidity of Will

A will is invalid if it is formally defective by not having been executed properly or witnessed by properly qualified or independent people. It is invalid if the testator/trix lacks testamentary capacity. The onus of proof rests with the plaintiff who is seeking to disprove testamentary capacity. Holograph wills of moveables are valid without witnesses if they are wholly written by (or can be proved to have been typed by) the testator/trix and signed by him or her. Fraud, duress, coercion, and undue influence are also grounds for invalidating a will. **30.40**

A will that is formally invalid is void but may still have the effect of revoking a previous will. In a case that came before the Royal Court in 1999, a document that was not a valid will stated that it revoked previous wills but the revocation was held to be conditional on a new will being made and, as this was not the case, the previous will was held to be valid under the doctrine of dependent relative revocation. A will that is invalid for non-formal reasons is voidable. **30.41**

It has now been decided that the Jersey Court has the power to order rectification of a will (*Re Vautier* [2000] JLR 351). This remedy is discretionary and the Court has indicated that it will exercise this power only sparingly and with extreme caution where it is satisfied by clear and compelling evidence that a mistake has been made and that the words used do not reflect the testator's intentions. **30.42**

Although there is some earlier authority to the contrary, it is generally thought that where there is a dispute as to the capacity of the testator, his testamentary capacity must be proved by the person setting up the will.³ **30.43**

³ See *Trigg v Crapp* 1984 JJ 21 in which the Royal Court disagreed with the dicta made in the earlier case of *Davies v Stirling* 1982 JJ 125.

12. Simultaneous Death

- 30.44** *Commorientes* is covered by the Wills and Succession (Jersey) Law 1993, which provides for what is to happen in the event of two or more persons dying in an accident or in circumstances rendering it uncertain which of them survived the other. Article 9 of the 1993 Law allows any person interested in the estate of one or more of the deceased to apply to the Royal Court for an order declaring whether the deceased died simultaneously or the order in which they died. The court may take account of evidence suggesting one survived the other, although the onus of proving survivorship or a predecease rests with the party claiming this. If the court eventually makes an order that the persons are deemed to have died simultaneously, then their respective estates are to be distributed as if neither had survived the other. Nothing in this section of the 1993 law prevents a testator/trix from specifying in his or her will what should happen in the event of the simultaneous deaths or death in the same accident of the testator/trix and any beneficiary under such will.
- 30.45** The significance of this is that where a husband and wife die together in an accident, each is deemed to have predeceased the other. For example, if the husband left his estate to his wife but to his brother if she predeceased him and the wife left her estate to her husband but to her sister if he predeceased her, then the husband's estate goes to his brother and the wife's estate to her sister.
- 30.46** If no external evidence relating to the order of death can be provided, the court will hear additional evidence and make further enquiries.

13. Presumption of Death

- 30.47** If satisfied that the death of the person to whom the application relates may be presumed beyond all reasonable doubt to have occurred on or after a certain date, the Court, in its discretion, may make a declaration to that effect and such order as the circumstances require (Probate (Jersey) Law 1998, Art. 7). It is generally assumed that Jersey customary law will follow the presumption of death under English common law such that a person will generally be taken to be dead if, after seven years, (1) there has been no evidence of his or her continued existence; (2) the people most likely to have heard from him or her have not had any contact; and (3) inquiries have been made of that person without success.

14. Estate Taxes

- 30.48** Jersey has no death duties, estate duty (save for Probate Stamp Duty on moveable estates, as to which see Section A10), inheritance tax, gift tax, or capital gains tax. A Goods and Services Tax (GST) was introduced in Jersey in 2007 and is now fixed at a rate of 5 per cent and may be payable in some circumstances, but a supply of services (such as lawyers' bills) should be zero-rated if it is a supply of international services. Income tax is chargeable on natural persons at the rate of 20 per cent and this has been the applicable rate since 1940.

Income tax is chargeable in respect of the income of the period of the administration of the estate and is payable by the personal representative who is obliged to submit an income tax return for the estate. By concession of the Comptroller of Taxes no income tax is payable on income that is due to a beneficiary who is not resident in the island for tax purposes. Stamp duty is charged at between 0.5 and 6 per cent *ad valorem* on the transfer of any Jersey *situs* immovable.

15. Administration of Estates

The production of a grant is necessary (with certain exceptions—see paragraphs 30.70 to 30.74) to establish the right to recover or receive any part of the moveable estate situate in the island of any deceased person. Immoveable estate is not administered and passes directly to the heirs, without a grant under the maxim of *le mort saisit le vif sans ministère de justice*. Moveable estates are administered by the executor nominated in the will or by the executor dative if no executor is nominated in the will or if the executor so appointed is unwilling or unable to act. The court has discretion over the appointment of the executor dative, but it would usually be the surviving spouse or principal heir. On an intestacy an administrator is appointed. The heirs are not able to administer moveable estates as of right. They have to obtain a grant and the person who has the prior right to obtain a grant is a surviving spouse. Otherwise, it is the principal heir who is established in the order of priority under customary law and court guidance of: the surviving spouse, failing whom the eldest son and, if no sons, eldest daughter, and, if no issue, eldest brother, and, if no brothers, eldest sister, and, if no siblings, father, and, if no father, mother, etc. with the principal heir of a deceased principal heir taking his or her place by *représentation* in preference to the next in line. **30.49**

The persons so entitled to a grant may appoint a lawyer, trust corporation, or other person under a power of attorney to apply for the grant and administer the estate. The grant is issued to the attorney personally and not as the representative of the person so entitled or until the person so entitled makes an application as would be the case under English law. The attorney swears an oath to well and faithfully discharge the duties of the office of executor or to administer, according to law, all the moveable estate of an intestate deceased. **30.50**

No inventory of assets and liabilities is required on application for a grant. It is sufficient to swear the value of the net estate to not exceed the nearest £10,000 above the actual value. Probate stamp fees are payable on the application, but Jersey banks will not release part of the deceased's deposit in order to make funds available to pay the probate stamp fee. To do so would be to commit the offence of 'intermeddling' in the estate (i.e. disposing of assets without having obtained a grant), which is an offence punishable by an unlimited fine or imprisonment for a term not exceeding 12 months or both. **30.51**

Although estate accounts do not have to be submitted to the court as a general rule, there is an exception if an unsatisfied or disappointed beneficiary challenges the actions of the executor or administrator. The court has the power under the Probate (Jersey) Law 1998, Art. **30.52**

24, to order the executor or administrator, on the application of any person interested in the moveable estate of the deceased, to exhibit on oath in court a true and perfect inventory and account of the moveable estate of the deceased person.

- 30.53** It is generally thought that the persons who have rights to query and object to the manner of the administration are the residuary beneficiaries, the heirs-at-law (if they are entitled to share in the estate), and creditors. Residuary beneficiaries do not have the right to demand that certain assets are appropriated to their share of residue or that the estate is administered in a particular way. They only have a right to a *chose in action*, which is a right to have the estate administered properly. Beneficiaries who are due to receive pecuniary legacies or specific bequests can only object to the extent that they fail to receive their proper entitlement.
- 30.54** Jersey immovable estate passes automatically to the heirs, as stated. Beneficiaries who are due to receive pecuniary legacies and specific bequests are not strictly entitled to receive their inheritance until a customary law period of a year and a day has expired from the issue of the grant of probate. *Légitime* rights could be claimed within this period, possibly having the effect of abating the gifts. If a *légitime* claim is made, the gifts made in the will are discharged out of the disposable one-third (the *tiers disponible*).
- 30.55** Tangible assets such as jewellery, paintings, and motor cars are transferred by delivery. Stocks and shares can be transferred in satisfaction of a specific bequest or by appropriation to a residuary beneficiary's share of residue by completion of a stock transfer form. Otherwise, investments are sold and the beneficiary receives the net proceeds of sale. Cash due to pecuniary legatees and residuary beneficiaries is usually paid by cheque or by telegraphic transfer. They normally have to wait until the expiry of the year-and-a-day period from the issue of the grant of probate, and residuary beneficiaries will usually not be paid until the executors are sure that no *légitime* claim or action to avoid the will has been brought and until the beneficiaries have all approved the estate accounts, although interim distributions are often made in suitable cases. There is no statutory basis for paying interest on legacies under Jersey law, even after the year-and-a-day period has expired, but if a beneficiary sued for payment delayed beyond the year and a day and claimed interest, the court could award this at its discretion.
- 30.56** The Probate (Jersey) Law 1998, Art. 25, gives the power to the court to vary dispositions either under a will or intestacy and to direct how the distribution shall be altered. Such 'Deeds of Variation' have to be made within two years of the date of death and are normally done for tax purposes, e.g. to redirect an inheritance from an individual to a trust. The Probate (Jersey) Law 1998, Art. 26, provides that a beneficiary can disclaim his or her inheritance by giving notice in writing to the Judicial *Greffier* and to the executor or administrator.
- 30.57** Creditors are normally paid out of the residuary estate. If a legitimate claim is made, they are paid out of the gross estate before *légitime* is calculated. In an insolvent estate the executor would normally apply to the Royal Court for directions. Ordinarily the priority for a settlement of claims is: (1) costs incurred in winding up the estate; (2) funeral expenses and doctor in connection with last illness; (3) outstanding wages, rates, income tax, and rent; (4) other creditors.

If there is no will, the distribution is made according to the rules of intestacy as shown in Section A3. If there is a will but no executor nominate willing or able to act, an executor dative is appointed (see paragraphs 30.49 to 30.50), who distributes the estate in accordance with the terms of the will. **30.58**

As a matter of Jersey law, provided that all the heirs are ascertainable and have the relevant capacity, they are entitled, either during the administration or later, to enter into an agreement allowing for a division of assets other than that stated in the will, or provided for by the laws of intestacy. The mutual agreement of the heirs would create *in personam* rights and obligations as between each of them respectively. In addition, the Jersey Court may by order with the consent of all of the parties who in the opinion of the court should be consulted, and having regard only to the interests of the beneficiaries or heirs interested in the estate, vary any disposition (whether effected by will or intestacy) of the moveable estate of the deceased (Art. 25 of the Probate (Jersey) Law 1998, as amended). Any such variation shall have effect as if it were a disposition effected by a will of the deceased or under the law of intestacy. Any such reallocation of the assets would not have any taxation consequences in Jersey save that it could increase or decrease the assessment to income tax payable by any Jersey resident heir (see Section B12). **30.59**

The Royal Court will generally be willing to hear and determine cases brought before it which relate to the (im)proper administration of a deceased person's estate provided that (a) the court is satisfied that it has the requisite jurisdiction (see Section B1) and (b) the person bringing the application has sufficient *locus* (standing) to do so. A person who had been allegedly adversely affected by a decision or distribution made by an administrator/executor would ordinarily be regarded as having sufficient *locus*. **30.60**

16. Domicile/Nationality

The nationality or domicile of the deceased is irrelevant for the succession of Jersey immoveable estate, which is governed by Jersey law (the *lex situs*). The devolution of moveable estate and in particular rules relating to forced heirship and *légitime* and the identity of intestate heirs is governed, as a matter of Jersey law, by the law of the deceased's domicile at the date of death. The age of majority of a beneficiary is governed by the law of the beneficiary's domicile. Claims by foreign tax authorities are unenforceable in the Royal Court of Jersey, although death duties and inheritance taxes in the country of the deceased's domicile are an original liability of the personal representative wherever resident. The Jersey personal representative may be held liable for foreign debts wherever situate. **30.61**

At the Royal Court's discretion, a Jersey grant may be issued if there are no Jersey assets, but this is rarely seen in practice. The oath could, in theory, be sworn at a nil value if, for example, a Jersey bank holds certificates in safe custody in relation to non-Jersey assets, or a joint bank account may have passed automatically to the survivor, but a claim may be made that an accrual to the estate should apply for succession purposes, or the personal representative may seek to obtain standing in order to commence litigation in the Royal Court of Jersey. **30.62**

17. Charitable Giving

- 30.63** As regards immoveables, there are no restrictions on the ability of a person to gift Jersey immovable property to a charity on death (save for the application of any applicable dower (*douaire*), statutory rights equivalent thereto and *viduité* rights) provided that the charity has the capacity to own Jersey immovable property. Under Art. 11(2) of the Trusts (Jersey) Law 1984, as amended, a Jersey proper law trust shall be invalid if it purports to apply directly to immovable property situated in Jersey, and by Art. 49(2) of that Law, a foreign trust is unenforceable in Jersey to the extent it applies directly to immovable property in Jersey. Therefore, a devise of Jersey immovable property to a charity is generally made to a corporate body (such as a company with limited liability that will have the requisite capacity) owned by the charity rather than to the charity itself (which, depending on the constitution of the charity may lack the requisite capacity).
- 30.64** As regards moveables, the ability of a person to gift Jersey moveables to a charity on death is limited only by rights of *légitime* (see paragraphs 30.22 to 30.24).
- 30.65** Prior to 21 November 2014, there was no statutory definition of charity or charitable purposes in Jersey and the Jersey Court tested the charitable status of any purpose by reference largely to English case law. The Royal Court's judgment in the case of *Meaker v Picot* [1972] JJ 2161 was the leading authority in Jersey. That case decided, in broad terms, that in order for an institution, trust, company, or foundation to be regarded as charitable the property must be held for the benefit of one or more of (1) the relief of poverty, (2) the advancement of education, (3) the advancement of religion, and/or (4) other purposes beneficial to the community. It was also a requirement to show that the objects of the charity were for the public benefit.
- 30.66** Jersey's charities law was significantly revised and updated on 21 November 2014 with the coming into force of certain provisions of the Charities (Jersey) Law 2014. That Law defines charitable purposes in broader and more specific terms than at present (closely following sections 7(2) and (3) of the Charities and Trustee Investment (Scotland) Act 2005), for example making express provision for culture, sport, environmental protection, animal welfare, and philosophical beliefs.
- 30.67** It is possible to leave a gift for a specified charitable object instead of to a specific named charity by means of a will. The object must, however, be described with sufficient certainty as to be capable of being fulfilled. Jersey has a statutory equivalent to the English common law *cy-près* doctrine. Under Art. 47A of the Trusts (Jersey) Law 1984, as amended, in certain circumstances, for example if a purpose cannot be carried out having regard to the directions given by a settlor, the courts may declare that the trust property be held on trust for such purposes as they consider consistent with the intention of the settlor or the spirit of the gift.
- 30.68** It is possible to leave a gift to a foreign charity by means of a will.
- 30.69** An exemption from income tax is available where the conditions of Art. 115 of the Income Tax (Jersey) Law 1961, as amended, are satisfied. Under this provision, exemption is available in respect of any income derived from the property of a corporation association or

trust established in Jersey for charitable purposes. Exemption from income tax is also available in respect of income from the property of such a body established either in the United Kingdom or in Guernsey, where exemption from payment of income tax is allowed under the laws of those jurisdictions. The Comptroller of Taxes is also prepared to grant an exemption to income tax to (a) entities which are registered as charities with the Jersey Charity Commission and (b) certain charitable and voluntary organizations by concession (see the Comptroller of Taxes' concessions and practice).

SECTION B: APPLICABLE LAW/PROCEDURE WHERE FOREIGN ELEMENTS ARE INVOLVED

1. Jurisdiction

Under the Island's private international law rules, the Royal Court will generally hold that it has jurisdiction if (a) there is moveable or immovable property situated in Jersey or (b) the deceased died domiciled in Jersey. Due to the success of Jersey as a finance centre, an increasing number of foreign estates include Jersey assets, which usually fall into one of the following three categories: (1) bank accounts; (2) unit trust holdings; (3) privately owned investment companies. Other types of asset may include jewellery, coin, and stamp collections held in safe custody by Jersey banks, bearer bonds, nominee accounts, and shares in Jersey-registered public companies. **30.70**

The legal *situs* of the assets is normally the place where the rights to a *chose in action* can be enforced, i.e. the place of incorporation for shares in a company but the branch office for an account held with a bank. Bearer bonds are situate where the bonds are actually held. Eurobonds held by Euroclear, etc. to the order of a Jersey bank would not themselves be regarded as Jersey assets but rights to them under a nominee or investment management agreement with a Jersey company will be Jersey assets. If a foreign deceased's estate comprises shares in a privately held investment company, e.g. incorporated in British Virgin Islands or Liberia, but the share register of a company is held in Jersey where the administration of the company is conducted, then the shares in the company will be a Jersey asset. If the shares in the company are owned by a trust, the asset does not form part of the deceased's estate. It is considered that where an asset is held as bare trustee, i.e. as a nominee, the underlying asset will form part of the deceased's estate, e.g. shares in companies registered in nominee names, as well as the right to call for the asset. This may give rise to both Jersey and non-Jersey grants being required. A debt is situate where the creditor is resident unless it is a specialty debt that is situate wherever the specialty may be at the time of death. **30.71**

A Jersey grant needs to be obtained in order to acquire legal title to administer Jersey *situs* moveables. About 1,500 Jersey grants are obtained each year for estates of non-Jersey domiciliaries. Applications have been made in respect of persons domiciled in about 180 different jurisdictions in recent years. **30.72**

Jersey law will apply to moveable estate wherever situate of a Jersey domiciliary. For the estate of a non-Jersey domiciliary, the Jersey Court has jurisdiction as far as the appointment of the personal representative is concerned, while the essential validity of a will and **30.73**

the succession rights to the estate will generally be determined by the law of the deceased's domicile as at the date of death.

- 30.74** Jersey immoveable estate is governed by Jersey law no matter where the deceased is domiciled. Foreign immoveables owned by Jersey domiciliaries are governed by the *lex situs*, i.e. the laws of the jurisdiction where the property is situate, and the operation of *renvoi* may be relevant in this connection. Moveables are governed by the law of the jurisdiction of the deceased's domicile as the *lex successionis*. Jersey is therefore a 'schismatic' jurisdiction that has separate laws for moveables and immoveables (in common with all the jurisdictions of the British Isles) and is also a 'dichotomous' jurisdiction in that moveables are administered while immoveables are not administered (in common with Scotland and Guernsey but unlike England and Wales, Ireland, and the Isle of Man).
- 30.75** The Royal Court of Jersey has jurisdiction. In practice the Judicial *Greffé* performs certain functions of the Royal Court of Jersey's Probate Division and deals with most applications for grants of probate and administration, the lodging of caveats, and the appointment and removal of personal representatives in non-contentious situations. The Royal Court generally sits to determine only contentious or complex matters.

2. Applicable Law

- 30.76** Immoveables are dealt with under the *lex situs* and moveables are dealt with under the *lex successionis* (law of the domicile).

3. Foreign Succession/Inheritance Orders

- 30.77** Foreign orders are not recognized in relation to Jersey immoveable estate. For the Jersey moveable estate of a non-Jersey domiciliary, a foreign grant of probate or administration or confirmation, certificate of inheritance or succession, or notarial copy of a will such as an *Acte de Notaire*, and/or an affidavit of foreign law will be recognized, unless there is a separate Jersey will that governs the Jersey estate or a separate will dealing with the rest of the world outside the country of the deceased's domicile which *inter alia* therefore covers Jersey.
- 30.78** A small estates exemption procedure applies to Jersey moveable assets, with a value of under £10,000 held by the moveable estates of non-Jersey domiciliaries. It is not necessary to obtain a Jersey grant, but the Jersey institution that holds the assets will need to satisfy itself that it is releasing the assets to the right person.
- 30.79** The Jersey grant of probate or administration acts as a full indemnity to the Jersey bank or financial institution, who therefore can have no further requirements apart from identification documentation for recognizing the right to instruct them in releasing the deceased's assets.
- 30.80** In all other cases it is necessary to obtain a Jersey grant of probate or administration in order to collect the Jersey assets. There is no procedure for the resealing of foreign grants in Jersey. A 'fast-track' procedure for cases of British Isles domicile was introduced by the Probate (Jersey) Law 1998. Executors and administrators no longer have to appoint a local attorney

executor or administrator to obtain a Jersey grant and collect the Jersey assets in such cases. The *Greffé* no longer need to ‘make enquiries’ into the circumstances surrounding the British grant, but will accept a court-sealed and certified copy of that document at its face value. The personal representative is able to swear an oath of executor/administrator before his or her local solicitor in his or her home town and submit the copy death certificate, oath, and certified grant to a Jersey agent, such as a Jersey lawyer, who then obtains a *Greffier’s* certificate of grant of probate or administration, which is then submitted to the institution holding the Jersey asset with instructions to collect, transfer, or sell it.

If the small estates exemption or fast-track procedures do not apply, then it will be necessary to obtain a Jersey grant of probate or administration to deal with the collection of Jersey assets. Since 2 January 1999 it is no longer necessary to apply the test of domicile to the formal validity of wills if another method of validity applies, as shown in Section B8, and questions of *renvoi* therefore will rarely apply in respect to the issue of Jersey grants. **30.81**

Jersey recognizes trusts (see Trusts (Jersey) Law, 1984 as amended) and has its own customary forced heirship rules (*légitime*). Jersey has amended its private international law rules so as to create a statutory ‘firewall’ for Jersey proper law trusts such that the terms of any Jersey proper law trust should ordinarily overrule any foreign forced heirship rule. **30.82**

Under Art. 9 of the Trusts (Jersey) Law, as amended, any question concerning, inter alia, whether or not the trust avoids or defeats any foreign heirships rights has to be determined in accordance with the law of Jersey and no foreign law rule shall affect such question. Further the law of Jersey in relation to *légitime* does not apply to the determination of any of the listed questions unless the settlor of the trust is domiciled in Jersey. **30.83**

4. Two or More Succession or Probate Orders

Jersey immoveable estate is governed by Jersey law and does not recognize any foreign order. Jersey moveable estate is governed by the procedure shown in Section B3 as far as the appointment of an executor or administrator or the ‘formal validity’ of a will is concerned. Any foreign order referring to the ‘material validity’ of a will or the rights of beneficiaries or *légitime* or forced heirship rights are a matter for the Jersey executor/administrator to determine in relation to the devolution of the estate and the distribution of the assets to the heirs or beneficiaries. In cases of doubt, it would be usual for the matter to be resolved by obtaining an affidavit of foreign law from a lawyer who is an expert in the succession law of the jurisdiction of domicile. If this does not resolve any difficulties, a representation could be made to the Royal Court of Jersey for directions as to how to proceed or, in contentious matters, Jersey lawyers may be appointed to represent the rights of the various interested parties in an action to be heard before the court. **30.84**

5. Assets

If a Jersey-domiciled person owned no assets in Jersey but owned assets in another jurisdiction, a court-sealed and certified copy of any Jersey grant could be, in theory, obtained but such Jersey grants are rarely seen in practice. If no Jersey grant had been obtained, a foreign **30.85**

jurisdiction might rely on an affidavit of Jersey law provided by a Jersey advocate to determine rights to collect assets or to receive an inheritance. If there are no moveables requiring a Jersey grant to collect, it may be possible to obtain a Jersey grant in certain circumstances at the Royal Court's discretion. Connecting factors such as residency, nationality, or citizenship apply only if there is a *renvoi* involving, for example, British nationality and a 'close connection' with Jersey.

6. Expert Evidence

- 30.86** Expert evidence on foreign law is required in cases where it is not readily apparent which person or persons are entitled to apply for a Jersey grant or whether a will is valid or whether it applies to Jersey assets. An affidavit of foreign law is obtained from a lawyer who is an expert in the succession laws of the deceased's jurisdiction of domicile. He or she is required to state his or her qualifications and experience, set out the relevant facts of the particular case, confirm the domicile of the deceased, and determine which person or persons are entitled to administer the estate. Difficulties can arise, especially with civil and customary law jurisdictions that do not recognize executors and trustees, and where a large number of heirs may have entitlements, and over the position of minor beneficiaries. There may also be problems of conflicts of laws and the application of *renvoi*. The affidavit of foreign law is most commonly required in cases of intestacy where the foreign lawyer needs to interpret the effect of a certificate of inheritance or succession or where no order has been made. If a number of heirs are entitled, it is the practice to require all of them to appoint an attorney to apply for the Jersey grant rather than allow members of a class of beneficiaries to appoint one of their number as their attorney who in turn appoints a Jersey agent as his or her attorney because of the application of the doctrine of *delegatus non potest delegare*. An affidavit of foreign law may be dispensed with in certain circumstances, such as where the *Greffe* is familiar with the procedures in the particular foreign jurisdiction, for example a German *Erbschein*.
- 30.87** Such evidence is always provided by affidavit. The necessity for an appearance in the Royal Court of Jersey would arise only if there was a conflict of evidence by foreign lawyers that needed to be resolved by questioning them.

7. Unity of Succession

- 30.88** As stated at B2, immoveables devolve according to the *lex situs* while moveables devolve according to the *lex successionis*, and this schismatic approach contrasts with the unitarian treatment applied by most European jurisdictions. Jersey also has a dichotomous divide in that immoveables pass directly to the heir, according to the maxim of *le mort saisit le vif sans ministère de justice*, without any executor or administration of the asset, whereas moveables are administered with the executor or administrator having to obtain a grant of probate or administration and being responsible for the administration of the estate and thereafter distributing the estate after debts and expenses have been deducted by giving cash and/or assets to the beneficiaries receiving legacies, bequests, and shares of residue.

8. Formalities

As regards the formal validity of a will, the Probate (Jersey) Law 1998, Art. 29 provides that: **30.89**

- (1) A will shall be treated as properly executed if, at the time of its execution or at the time of the testator/trix's death, its execution conforms to:
 - (a) The internal law in force
 - in the territory where it was executed;
 - in the territory where the testator/trix was domiciled;
 - in the territory where the testator/trix was habitually resident; or
 - in a state of which the testator/trix was a national; or
 - (b) the law of the Island of Jersey.
- (2) For the purposes of this Article, the internal law in force in a territory or state is the law that would apply in a case where no question of the law in force in any other territory or state arose.

9. The Hague Convention

Jersey never ratified the *Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions*, but Art. 29, set out in Section B8, gives approximate effect to it, with the additional provision that conformity to the law of the Island of Jersey also gives formal validity. **30.90**

10. Wills

In general, in cases of conflicts or foreign factors, the law of the *situs* of the immovable or the law of the deceased's domicile usually provide the deciding factors. However, there may be exceptions and it is recommended that, where appropriate, an opinion should be obtained from a Jersey advocate. **30.91**

Jersey law governs the legal requirements for the execution of wills of Jersey immovable estate, the *lex situs* governs foreign immovables, and the law of the person's domicile at the time of making the will governs wills of moveables. **30.92**

The *lex domicilii* will govern construction and interpretation of terminology used in the will. A will trust may possibly be governed by another law if so stated, but there is no decided case on this. **30.93**

The law of the deceased's domicile would apply to the legal rights of heirs or beneficiaries. **30.94**

Capacity to inherit Jersey immovable estate is restricted so that devises to trusts, devises to unincorporated bodies, and 'substitutions' based on third-party determination are void. Capacity to inherit foreign immovables depends on the *lex situs*; capacity to inherit moveables depends on the deceased's domicile at the date of death. **30.95**

- 30.96** Capacity to make a valid will of Jersey immoveables depends on mental capacity (in the sense that the testator must know and approve the contents of the will⁴) and having attained the age of 18 (or if underage, being married). The provisions of the Age of Majority (Jersey) Law 1999 apply only to wills made after 31 October 1999 and not to codicils amending wills made before that date that do not specify the change of age. Capacity to make a valid will of foreign immoveables depends on the *lex situs*; capacity to make a will of moveables depends on the laws of the deceased's domicile at the time of making the will.
- 30.97** Essential or material validity affects the estate of a Jersey domiciliary in that there is no *légitime* claim for immoveables, but there is a claim (by spouse and/or issue) that can be made in respect of moveables. A legacy to a witness and undue influence would be matters for formal validity as opposed to essential validity. For gifts that offend against public policy, or that are for illegal or immoral purposes, it is probable that the ancient Roman maxim of *ex turpi causa non actio oritur* would apply to invalidate the gift.
- 30.98** There can be no power of appointment over Jersey immoveable estate since there can be no trusts or *substitutions*. If the subject matter of the power is foreign immoveables, this depends on the law of the *lex situs*. In cases of moveables it is probably the law governing the instrument, e.g. trust deed creating the power, which is the determining factor, but there is no decided Jersey case on this point.
- 30.99** The law governing amendment, revocation, and revival would normally be determined by the *lex situs* for immoveables and the *lex successionis* for moveables.
- 30.100** There is no *légitime* claim to Jersey immoveable estate but a non-resident would be entitled to claim *légitime* to the moveable estate of a Jersey domiciliary. The Jersey moveable estate of non-Jersey domiciliaries would be subject to claims made according to the laws of the jurisdiction of their domicile relating to *légitime*, reserved portions, or forced heirship, as appropriate. Article 9 of the Trusts (Jersey) Law, 1984 as amended protects Jersey proper law trusts set up by persons domiciled outside Jersey against forced heirship claims or claims that the old Jersey maxim of *donner et retiner ne vaut* should apply.

11. Domicile/Nationality

- 30.101** Formal validity applies if the will is executed according to the relevant laws either at the time of making the will or at the date of death. Succession rights are generally determined by the deceased's domicile at the date of death for moveables. Capacity and revocation are determined as at the time of making the will or the act of revocation.
- 30.102** The domicile of the beneficiary is not relevant where foreign elements are involved.
- 30.103** Domicile is a person's permanent home, the place where he or she intends to reside permanently. Whilst the physical fact of residence is an indicator of domicile, this may be overridden by evidence of an intention to return to another jurisdiction. A domicile of origin is generally considered to be harder to displace than one of choice and, unless a domicile

⁴ *Davies v Stirling* 1982 JJ 125.

of choice is clearly established and maintained, a domicile of origin will revive. Domicile is not the same as residence for tax purposes. Jersey follows English common law on matters of domicile, so that presumably no person can be without a domicile or have more than one domicile at the same time. It is common practice for Jersey wills to contain a declaration of domicile since in cases of doubt it is helpful to know the testator/trix's intentions at the time of making the will. Domicile relates to a territory with a separate and distinct legal system, as opposed to a country in the political sense. Therefore, there is no such thing as British domicile, or for example US, Canadian, or Australian domicile.

12. Taxation

Jersey immovable estate is not subject to income tax except in so far as the beneficiary who inherits and then leases the property that he or she has inherited is liable for Jersey income tax at the rate of 20 per cent on the rental income received, which is assessed on a calendar year basis. He or she is also liable to pay parochial property rates. **30.104**

Beneficiaries of Jersey moveable estates are liable to Jersey income tax only if they are resident in the island for tax purposes. The executor or administrator of an estate of a Jersey domiciliary has to complete a tax return for the period of administration and any assessments of tax payable are made on him or her personally. No assessment is made in respect of income to which a non-resident beneficiary is entitled. **30.105**

For the Jersey moveable estates of non-Jersey domiciliaries, there is no requirement to complete a tax return for the period of administration unless any of the beneficiaries are resident in the island. **30.106**

Jersey has no death duties, estate duty (save for Probate Stamp Duty on moveable estates, as to which see paragraph 30.93, inheritance tax, gift tax, or capital gains tax. A GST was introduced in Jersey in 2007 and is now fixed at a rate of 5 per cent and may be payable in some circumstances, but a supply of services (such as lawyers' bills) should be zero-rated if it is a supply of international services. There is no taxation applicable other than the Probate Stamp Duty mentioned previously. **30.107**