

Synergia
LEARNING

FISA EC REGIONAL MEETING
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Choice of domicile

Domicile of choice shall be acquired by a person when he is lawfully present at a particular place and has the intention to settle there for an indefinite period.

- Can be domiciled in one country without being ordinarily resident there.

Choice of Domicile

Case scenario:
Mr A has a wife and children in Namibia and has a wife and children in South Africa. The family do not know that the other exist. Well, Mr A dies intestate and very soon thereafter the family 'discover' one another.

The question is not where the estate will be administered. The question is: Which Law will apply for intestate succession?
SA or Namibia Law?

ANC and insurance policies

Many issues to consider:

- Provision required in the ANC :- wording for exclusion from estate duty
- Possible creditor of the deceased estate if policy does not exist at time of death.

ANC and insurance policies

• Policy noted at time of marriage:

- Policy number needed?
- Replacement?
- How many children? Who will they be?
- Ownership?

ANC and insurance policies

- Rights that have been created?
 - Creditors of the deceased estate?
 - Claim under 4(b) for estate duty purposes?
- What if accrual exists – can the survivor spouse ‘reduce’ value in her estate as a result of this claim? Or, his reduced as a result of a claim?

Testamentary provision in an ante-nuptial

Pacta Successoria : invalid and unenforceable.

Exception is succession clauses in ante-nuptial contracts.

- Can appoint one another as ultimate heirs
- Can appoint children yet to be born as ultimate heirs
- Can appoint a 3rd party as ultimate heirs

Testamentary provision in an ante-nuptial agreement

- Should either of them draft a valid will subsequent to marriage, which will prevail?
- Is it possible to vary or revoke a testamentary provision?
- Can one waive their right to freedom of testation?
- Would this mean that one would waive the right to an accrual claim?

Simultaneous death & CGT

- What are the chances that husband and wife die within seconds of the other?
- Who inherits from the other?
- Who has a roll over for capital gains? Is there a roll over at all?


