



WILLS AND PROBATE CONFERENCE

Brussels IV | The meaning of succession post *Shamoon*

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50 Most Influential
2018



Succession

Succession

Trusts

Succession

Trusts

‘the establishment of trusts gives rise to an extraordinary phenomenon of tax evasion. According to Transparency International France, 80% of the global proceeds of tax evasion transit via trusts’.

Eric Alauzet, French MP, 2013

Succession

Trusts

1978

Succession

Trusts

1978

UK/IRE Accession Convention 9 Oct 1978
to Brussels Convention of 1968

Succession

Trusts

1978

UK/IRE Accession Convention 9 Oct 1978
to Brussels Convention of 1968
⇒ Lugano Convention 1988
⇒ Brussels I Regulation 44/2001

Succession

Trusts

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1985

Hague Trust Convention
(applicable law)

Succession

Webb v Webb, ECJ, 17 May 1994 C-294/92

Gomez v Gomez [2008] EWHC 259 (Ch)

Trusts

1978

UK/IRE Accession Convention 9 Oct 1978
to Brussels Convention of 1968
⇒ Lugano Convention 1988
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1985

Hague Trust Convention
(applicable law)

Succession?

Trusts

Brux
I

Succession?

Trusts

Brux
I

Succession?

NO!

Trusts

“The Regulation [44/2001] shall not apply to ... the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and

Art. 1(2)(a) of Reg 44/2001

Brux
I

Succession?

NO!

Trusts

“This Regulation [1215/2012] shall not apply to ...wills and succession, including maintenance obligations arising by reason of death”

Art. 1(2)(f) of Reg 1215/2012

Brux
I

HTC

Succession?

NO!

Trusts

“The Convention does not apply to preliminary issues relating to the validity of wills or of other acts by virtue of which assets are transferred to the trustee.”

Brux
I

HTC

Succession?

NO!

Trusts

See *Winker v Shamoon* [2016] EWCH 2017 (Ch)

Art. 1(2)(a) of Reg 44/2001

All change?

Succession

Trusts

**Brux
IV
(650/
2012)**

Succession

Trusts

Brux
IV
(650/
2012)

- Jurisdiction
- Applicable law
- Recognition/Enforcement of decisions
- Acceptance/Enforcement of authentic instruments
- Creation European Certificate of Succession

Succession

Trusts

Brux
IV
(650/
2012)

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Succession

Trusts

=>19.3 million EU citizens
living in another EU MS
=> 35.1 million people
born outside the EU

Source: Eurostat, March 2017

Brux
IV
(650/
2012)

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Succession

Trusts

Brux
IV
(650/
2012)

- Matrimonial property
(EU Reg 2016/1103)
- Gifts, joint tenancy, etc.
- “The creation,
administration and
dissolution of trusts”

Succession

Trusts

Brux
IV
(650/
2012)

- Matrimonial property (*EU Reg 2016/1103*)
- Gifts, joint tenancy, etc.
- “The creation, administration and dissolution of trusts”

“This should not be understood as a general exclusion of trusts.”

Succession

Trusts

Brux
IV
(650/
2012)

- Matrimonial property (*EU Reg 2016/1103*)
- Gifts, joint tenancy, etc.
- “The creation, administration and dissolution of trusts”

“Where a trust is created under a will or under statute in connection with intestate succession ...

Succession

Trusts

1978

Brux
IV
(650/
2012)

- Matrimonial property
(EU Reg 2016/1103)
- Gifts, joint tenancy, etc.
- “The creation,
administration and
dissolution of trusts”

*... the succession law should
apply with respect to the dev*

Succession

Trusts

Brux
IV
(650/
2012)

- Election in favour of national law (22)(1)
- Election will govern succession as a whole
- Includes powers of executor (23)(2)(f)
- Includes liability for debts (23)(2)(g)

It's all fine then...

**Testamentar
y Trusts**

**Minor
children**

**Structural
differences**

**Inheritance
Tax**

Testamentar y Trusts

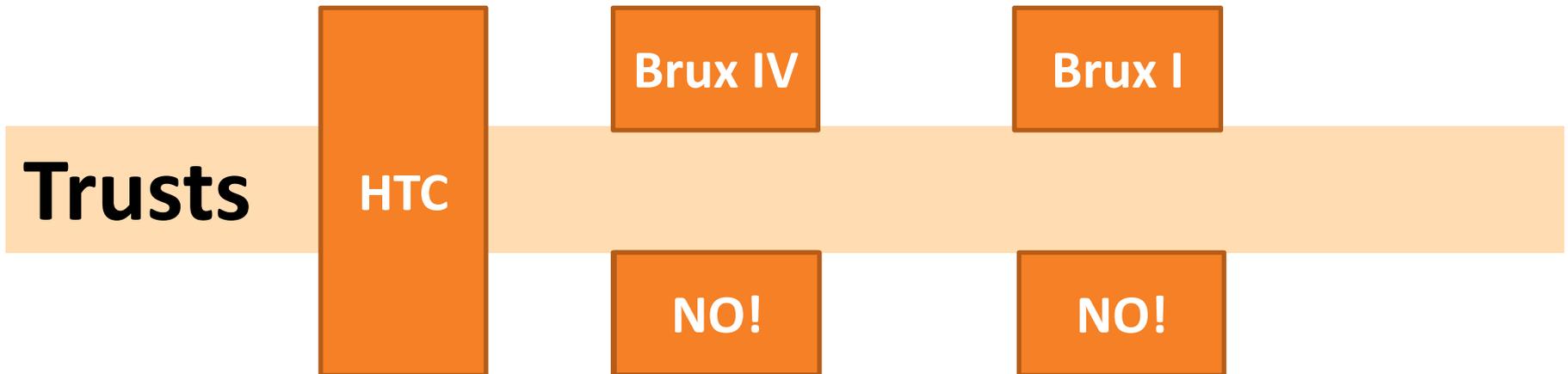
Trusts

HTC

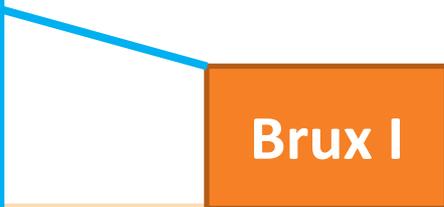
Brux IV

NO!

Testamentar y Trusts



(b) The expression 'wills and succession' covers all claims to testate or intestate succession to an estate. It includes disputes as to the validity or interpretation of the terms of a will setting up a trust, even where the trust takes effect on a date subsequent to the death of the testator. The same applies to proceedings in respect of the application and interpretation of statutory provisions establishing trusts in favour of persons or institutions as a result of a person dying intestate. The 1968 Convention does not, therefore, apply to any disputes concerning the creation, interpretation and administration of trusts arising under the law of succession including wills. On the other hand, disputes concerning the relations of the trustee with persons other than beneficiaries, in other words the 'external relations' of the trust, come within the scope of the 1968 Convention (see paragraph 109 *et seq.*)



Brux I



NO!

Schlusser Report to UK/IRE's 1978 Accession

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**Structural
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Inheritance
Tax

1. Inheritance Tax Return IHT 200 (nb problems where eg Swiss Bank refuses to disclose existence of bank account before Grant of Probate)
2. Payment of IHT on movables before Grant issues

3. **Application for the Grant of Representation**

4. Collect in assets
5. Pay liabilities and legacies
6. Settle pre death income tax etc (nb Swiss Bank account tax issues)
7. Negotiate and settle IHT
8. Prepare Estate Accounts
9. Distribute estate to beneficiaries

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