

Contribution for the Commission/Notaries of Europe colloquium on 19/20 March 2009 –

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Case study Succession Planning

Mr. President, ladies and gentlemen,

What I'm about to present to you, is a modern case of serial monogamy; we will deal with a reconstituted family. This, by itself, is not a very typical Dutch phenomenon, but the Dutch legal solutions for a situation like this are quite remarkable.

Bas, of Dutch nationality, is married to Penelope, of English nationality; the couple is living in The Hague and considering a move to Paris in view of the fact that Bas has been offered an interesting job there.

Both spouses have been married before.

Bas has a son from his first marriage, with whom the relation is troublesome mainly because he won't accept his stepmother. Penelope has three daughters from her first marriage, who go on very well with their stepfather – by the way, I understand from my British colleague Richard Frimston that there is a tendency to call the Penelope's of this world "Penny", which is a shame if one has such a beautiful name!

Bas, who is particularly wealthy, wants to make a will on the basis of the Dutch so-called *legal division (wettelijke verdeling)*, meaning that Penelope inherits only part of his estate but receives his whole estate. His son has to wait till his stepmother dies until he will receive the value of his share in his father's estate.

Also, using the possibility given by article 4:27 of the Dutch Civil Code, Bas wants to involve his stepdaughters in the legal division as if they were his own children.

In fact, this means that Penelope and every child will inherit one-fifth of the estate, the claim of the children being postponed until – in principle – Penelope's death.

Although being a forced heir, Bas's son has to accept this consequence of the legal division system. According to article 4:91 of the Dutch Civil Code, he also has to accept the fact that his stepsisters receive an equal part of the estate, even if this means that he receives less than his statutory share (*legitieme portie*).

Bas wonders if his choice for Dutch law will be accepted if he moves to France, especially if he buys a home in Paris. Will Penelope be the undisputed single owner of this house after his death, and will his son still have to accept the fact that his stepsisters inherit an equal part of the estate? These questions will be answered by my French colleague M. Jacoby.

From the point of view of tax estate planning, Bas made substantial gifts to his son and to Penelope's daughters. These donations were made under the condition that they could be revoked if Bas feels like it (*a volonté*), e.g. if one of the donees would become a drugs addict. In Dutch law, a gift can be made revocable.

Bas wonders if revocation of the donation will still be possible after he has moved to France, knowing that the French system still maintains the rule that a gift is irrevocable (*"donner et retenir ne vaut"*). Another question for Edmond Jacoby!

Bas also realizes that Dutch inheritance tax will be levied if he dies within ten years after leaving the Netherlands, because he is still supposed to be living in the Netherlands for tax

purposes (*fictitious domicile/woonplaatsfictie*); he wonders if France also levies an inheritance tax and, if so, if his heirs are compensated for double taxation.

This is the case presented to you this afternoon.

Thank you very much for your attention!

