

# After you've gone . . .

**W**hen Jane's father, Tom, died in a traffic accident in Thailand, she found that not only had she lost her father, but she might also lose a large chunk of her inheritance.

She was drawn into a legal battle with her father's new Thai wife, Noi, who he had married just a year before his death. Jane's story is a wake-up call to all expatriates living in Thailand to consult a Thai-based lawyer to ensure that their last wishes will be respected.

Tom moved to Thailand from England several years ago to spend his retirement in sunnier climes. He had divorced Jane's

mother when she was very young and Jane was his only child. He made a will in England through a firm of solicitors, witnessed by two of the firm's staff. In it, he appointed Jane his sole executrix and left her his entire estate consisting of assets in both England and Thailand, so that she would have financial security for the rest of her life. He did not make a will in Thailand, thinking that his English will was adequate.

Jane instructed us to submit a petition to the Thai court for appointment as administrator in accordance with the terms of her father's will.

However, an objection to the petition was submitted by Noi, who alleged that the will was invalid and requested the court to appoint her as administrator.

Under the Thai Civil and Commercial Code, in the event that there is no will, the deceased's estate would be divided between Jane and his Thai wife equally. If the will is found to be valid, Jane would inherit the entire estate.

Sections 39 to 41 of the Thai Conflict of Laws Act B.E. 2481 (A.D. 1938) provide that a person's capacity to make a will is governed by the law of nationality at the time the will is made.

A person can make a will in accordance with the law of nationality or the law in the country in which the will is made. However, the interpretation of the will is governed by the law of the domicile of the testator at the time of death.

Tom lived in Thailand when he died, and therefore the interpretation of the will is in accordance with Thai law. Since the will was made in England, it must also be proven to the Thai court that the will was made in accordance with English law.

Proving the validity of the will to the satisfaction of the Thai court would require Jane to attend court to give witness testimony to prove that she is Tom's daughter and explain why he left his estate to her.

In addition, a handwriting expert would be required to prove that it was Tom's signature on the will and the two witnesses to the will would have to testify that they personally witnessed Tom sign the will. Finally, evidence as to English law concerning wills must also be presented.

Jane was not able to come to Thailand to attend the hearings because she has a young child to care for and also could not afford the time or expense of travelling

to Thailand. The professional witnesses also could not come to Thailand to give live testimony and their professional fees for doing so would be un economical. However, all three witnesses were prepared to provide their testimony in the form of an affidavit.

At the first court hearing, the Judge indicated that witness testimony in the form of affidavit evidence would carry little weight, since the opposing party, Noi, would not have the opportunity to cross examine the witnesses. In light of this strong indication by the Judge that the affidavit evidence would not be sufficient to establish the validity of the will, Jane was left with no choice but to negotiate with Noi.

She did not have a strong bargaining position, since Noi knew from the first hearing that none of the witnesses could come to Thailand to give evidence. Jane eventually settled with Noi and received half of the estate. However, if her father's wishes were respected, she would have received the entire estate.

In light of this case, expatriates living in Thailand with assets in both Thailand and another jurisdiction would be well advised to consider having two wills that are carefully drafted to ensure that each is limited to the assets in each respective jurisdiction. Although Thai law does recognise the validity of foreign wills, the practicalities of proving the validity of the will to the satisfaction of the Thai court may be onerous or even impossible to meet.

*(The names and facts in this story are fictional.)*

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