

Remedies to common inheritance issues

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IN Jersey law, the concepts of *légitime* and *rapport à la masse* play critical roles in the distribution of a deceased person's movable/personal estate. These legal doctrines seek to ensure fairness between heirs.

Movable estates typically include assets such as cash, cars, investments and personal belongings but exclude real estate.

LÉGITIME

Légitime is a right that guarantees portions of the deceased's movable estate assets to any surviving spouse or civil partner and any children of the deceased. Accordingly, where a movable will excludes a spouse, civil partner or issue, that excluded party can make an application to the Royal Court to enforce their right to a portion of the estate assets.

Following an application for *légitime*, the movable estate is divided into three parts:

1. **Spouse's Share:** Where there is a surviving spouse or civil partner, they are entitled to one-third of the net movable estate. The spouse or civil partner will receive two-thirds if there are no surviving children or grandchildren. This includes adopted children but excludes stepchildren.
2. **Children's share:** The children of the deceased are collectively entitled to one-third of the movable estate. This share is divided equally among all the children (or their heirs). The children will receive two-thirds if there is no surviving spouse or civil partner.
3. **Disposable portion:** The remaining one-third of the estate can be left to anyone or any entity, including non-family members. It devolves in accordance with, so far as possible, the deceased's wishes as set out in their moveable will.

RAPPORT À LA MASSE

The deceased may have, during their lifetime, made a significant gift to a child, grandchild, spouse or civil partner. Following death and pursuant to *rapport à la masse*, the value of that gift to the spouse, child, grandchild or civil partner can be ordered by the Royal Court to be paid into the estate pot. Then the distribution to heirs is recalculated by the executor.

The aim is to prevent one heir from receiving a gift which causes a detriment to the other heirs and greatly decreases the value of the estate. This would unfairly reduce the share owing to family members under the doctrine of *légitime*.

When an application for *rapport à la masse* is made, the heir who has received the gift has to decide whether to pay the value of the gift into the estate and then take their share of the estate, or to keep the value of the gift and cease to be a beneficiary of the estate.

Any heir wishing to make a *rapport à la masse* application may also be ordered to pay the value of any lifetime gifts they have received.

CAPACITY AND IMMOVABLE WILLS

It's important to note that *légitime* and *rapport à la masse* only apply to movable estate assets. An application can be made to challenge an immovable will (and a movable will) if there is a question about:

- a. The deceased person's capacity at the time they made the relevant will (i.e. whether they were mentally fit and capable of making the will).

- b. Whether the deceased person was under duress at the time of making the will, or was unduly influenced by another person.
- c. Whether there was a mistake in the drafting of the will.

In addition, a surviving spouse or civil partner can occupy part of immovable property/real estate pursuant to dower rights.

Share transfer properties are considered movable property.

PRACTICAL CONSIDERATIONS

The above introduces complexity into estate planning, especially when significant lifetime gifts have been made or when a person attempts, in their will, to distribute assets in a way that could disadvantage certain heirs.

Given these complexities and the strict time periods within which to make a claim, it is advisable to seek expert legal advice at an early stage when planning your estate or when involved in inheritance disputes.

For further guidance and to discuss your specific needs, please contact Viberts Law Firm. Our team of experienced legal professionals is here to help you navigate these challenging areas of law.



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