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Accepting Foreign Property for a child

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5 March 2021

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Accepting Foreign Property on behalf of a child

- A common problem with inheritance of minors under civil legal systems
- *Hays v Hays* [2015] EWHC 3825 (Ch)
- *Re AC* [2021] 4 WLR 12
 - Section 8 of the Children Act 1989



Hays v Hays - Master Matthews

- Property in the 1st Arrondissement of Paris
 - Parents co-owners, father died
 - Was is *en tontine* or *en indivision*
 - Wanted to contract for sale
 - Property was in poor condition
 - Notary wanted authorisation of the English Court
 - Minor was habitually resident in England



Hays v Hays - Problems



- A minor cannot contract to sell property - *Doe d Thomas v Roberts* (1847)
16 M & W 778
- French immoveable property - Roman Law - dominium (a physical approach)
- English immoveable property - estates and interest in land (metaphysical)
 - Under section 1(6) Law of Property Act 1925 a minor cannot be a legal owner of land and has to hold through a trust



Hays v Hays - More Problems

- Children Act - argument but claim in Chancery Division
 - Judge lacked knowledge / refused to transfer
- Section 53 of the Trustee Act 1925 (vesting order)
 - but only if the minor is beneficially entitled to property
 - And not immovable property in France
 - Does not extend to authorising a sale
- Juge des tutelles - French Court could authorise a French child's parents
 - Judge found a French advocate and did his own translation of the French code
 - English judge could perform this function
 - Sale was in the child's interests

In re AC [2021] 4 WLR 12 - Peel J

- Mother and Father owned Italian immovable property in equal shares
half went to child
- Father died. Mother wanted to accept inheritance - she was not asking for an order for sale
- Child was habitually resident in England

Re AC - solutions

- English Court had jurisdiction on matters concerning parental responsibility under Art 8(1) EC Reg 2201/2003
- Section 3(1) Children Act 1989 was very widely drafted and parent responsibility included *all the rights, duties, powers, responsibility and authority by law a parent had in relation to the child and his property*
- Mother had a responsibility under section 3(1) to act in the child's interests in relation to property to which the child was entitled
- Could not receive property in the parent's own name but could take steps to make sure it was received in the child's own name

Re AC

- The Court was not being asked to enter into a sale
- If it were then *Hays v Hays* would need to be revisited because this would amount to a disposal of property but acceptance obviously did not and acceptance was plainly in the child's best interests
- Parties should not be dissuaded from making applications of this type but they should be made to the Family Court.

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Thank you.
Any questions please email
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