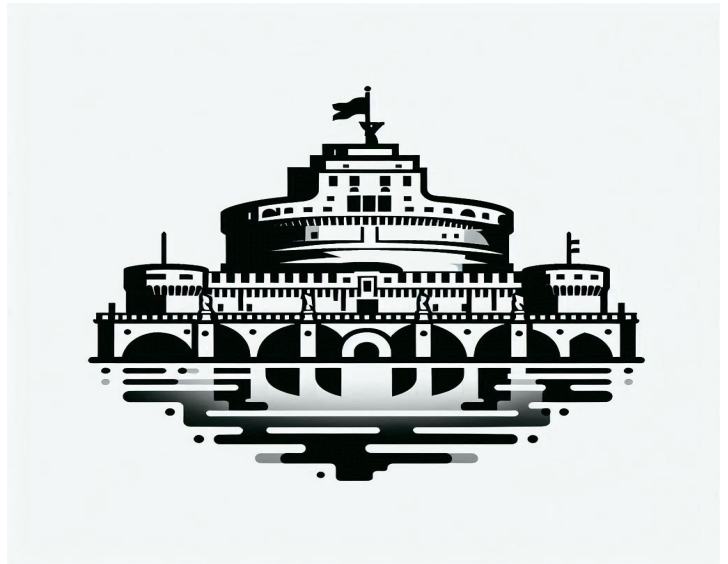


# Conflict of Laws



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When dealing with the wills and trusts of foreign individuals who have assets in Italy, lawyers face a range of challenges related to conflict of laws. Conflict of laws refers to the legal issues that arise when different jurisdictions' laws intersect or conflict with one another. This can be especially complicated in the context of estates, where multiple countries might have a claim over the disposition of assets, especially when individuals own property in multiple jurisdictions.

Preventing conflicts between different countries' laws can be avoided through careful planning and the strategic use of legal mechanisms. However, navigating the complexities of international succession laws requires expert legal advice to ensure the chosen approach is valid and enforceable. Consulting a lawyer is essential to structuring an estate effectively, preventing disputes, and ensuring assets are distributed according to one's wishes.

## Why are conflicting laws a problem?

- **Uncertainty in Determining the Governing Law:** Different jurisdictions may have competing rules on which law applies to the estate. This can lead to uncertainty about which country's laws govern the succession of assets, making it difficult to properly administer the estate.
- **Forced Heirship Rights:** Conflicts arise when the law of the decedent's home country conflicts with Italy's forced heirship rules, potentially disinheriting heirs entitled to a share of the estate under Italian law, or vice versa.
- **Invalidation or Non-Recognition of Foreign Wills and Trusts:** A foreign will or trust may not be recognized or enforced in Italy if it doesn't comply with Italian formalities, leading to complications in ensuring the decedent's wishes are carried out properly.
- **Legal Complexity for Trusts:** Italy's lack of recognition of trusts in the same way as common law jurisdictions can create difficulties in managing and distributing assets held in a trust, especially when the trust conflicts with Italian inheritance law.
- **Increased Litigation and Disputes:** Conflicting laws can lead to disputes between heirs, trustees, and other stakeholders over the interpretation and distribution of assets, resulting in costly and time-consuming litigation in multiple jurisdictions.

## How Conflicts of Laws are resolved:

When there is a conflict of laws, the legal system must determine which jurisdiction's laws apply to a particular case or issue. In cases involving cross-border issues like inheritance or trusts, the conflict may arise when different countries have conflicting rules or legal principles. Here's what typically happens:

- **Jurisdictional Determination:** The first step is to identify which court has the authority (jurisdiction) to hear the case. In the context of conflict of laws, this could involve determining whether the case should be handled in the country where the decedent was domiciled, the country where the assets are located, or another jurisdiction.
- **Choice of Law Rules:** Once the jurisdiction is determined, the court applies "choice of law" rules to decide which country's laws should govern the matter. This involves considering factors like the decedent's nationality, residence, the location of the assets, or where the legal relationship was established (e.g., where the will was executed). Different legal systems have different approaches to resolving conflicts of laws.
- **Recognition and Enforcement of Foreign Judgments:** If a conflict results in a judgment from one jurisdiction that conflicts with another jurisdiction's law, the court may have to decide whether to recognize and enforce the foreign judgment. If recognition is granted, the foreign judgment is treated as if it were issued by the local court.
- **Application of Foreign Laws:** When the court determines that foreign law applies, it may either apply that law directly or try to reconcile the foreign law with domestic law. If the foreign law conflicts with the country's public policy (e.g., fundamental principles of justice or the local legal framework), the court may refuse to apply it.
- **Potential for Litigation and Disputes:** Conflicts of laws often lead to litigation, especially if the parties disagree on which laws should apply. Disputes can arise over whether the foreign law should be recognized, how it should be interpreted, or how it interacts with the local laws. Inheritance cases, for instance, may result in disputes over forced heirship rights, the validity of foreign wills, or the distribution of foreign assets under different legal systems.

Ultimately, a conflict of laws leads to legal uncertainty, increased complexity, and the possibility of prolonged legal disputes as different jurisdictions' rules are reconciled.

One of the key problems is determining which country's law should govern the succession of the foreign individual's assets in Italy. Italy is a member of the European Union and adheres to EU Regulation 650/2012, which provides rules for cross-border inheritance matters within the EU. Under this regulation, the law applicable to a person's succession is generally determined by their habitual residence at the time of death. However, for foreign nationals who do not have their habitual residence in Italy, this regulation may not apply, leading to potential complexities in establishing the law that governs the estate.

In such cases, the Italian private international law rules must be applied. Italy follows the "national law" approach, which means that the law of the country where the decedent was a national at the time of death may apply to their estate, even if the assets are located in Italy. However, this can lead to conflicts if the foreign law diverges from Italian law, particularly with regard to inheritance rights, the formalities for executing a valid will, or the distribution of assets among heirs.

Another problem arises when the foreign jurisdiction has legal requirements that are incompatible with Italian law. For example, in some jurisdictions, certain heirs, such as children or spouses, have a mandatory right to a portion of the estate (a forced heirship rule), while Italian law also has its own set of forced heirship rules, particularly for descendants and spouses. These rules can clash if the foreign jurisdiction does not recognize Italy's specific forced heirship provisions, or vice versa. As a result, an estate may face disputes over whether certain heirs are entitled to a share of the assets located in Italy, even if the decedent's foreign will specifically excludes them.

Another issue arises with trusts, which are not a concept under traditional Italian law. The trust system is widely recognized in Anglo-Saxon jurisdictions like the UK or the US, but it presents a challenge in Italy because it does not fit neatly within Italian inheritance laws. Italian law recognizes a form of "trust" for the purpose of holding assets, but it does not provide the same level of recognition as common law jurisdictions. When a foreign individual has established a trust over assets in Italy, the Italian courts must determine whether the trust is valid under Italian law, and if so, how the assets should be treated for succession purposes. If the trust conflicts with the forced heirship provisions of Italian law, this can complicate the distribution of assets and lead to disputes between heirs and the trustee.

Finally, the recognition and enforcement of foreign wills and trusts in Italy can also be problematic. A foreign will or trust may not be automatically recognized by Italian courts, particularly if the will does not comply with the formalities required under Italian law. Italy requires that wills executed abroad follow the rules of the jurisdiction in which they were executed or comply with Italian formalities. This can lead to situations where a valid foreign will is challenged or not given effect in Italy, further complicating matters of succession.

## Avoiding Conflicts of Laws

To avoid conflict of laws in the context of wills and trusts of foreign individuals with assets in Italy, here are five practical strategies:

1. **Choose a Jurisdiction for the Will or Trust:** One way to prevent conflicts of laws is to specify in the will or trust the jurisdiction whose law will govern the distribution of assets. Under EU Regulation 650/2012, for instance, individuals can opt to apply the law of their nationality, even if they reside in a different country. This reduces uncertainty and ensures consistency in how the estate is handled across multiple jurisdictions.
2. **Clearly Specify the Form of the Will or Trust:** To avoid issues with non-recognition or invalidation, it's crucial that the will or trust complies with the legal formalities required by each jurisdiction involved. For example, in Italy, a will made in a foreign country must comply with the formal requirements of the country where it was made, or it must meet the standards set by Italian law. By ensuring the document meets these requirements, the risk of disputes over its validity can be minimized.
3. **Establish a Comprehensive Succession Plan:** Planning ahead by structuring a succession plan that clearly identifies the applicable laws and integrates multiple jurisdictions can help prevent conflict. This may involve creating multiple wills for different jurisdictions or a unified estate plan that specifies how assets in various countries will be treated. For instance, the use of a "primary" will in one jurisdiction and supplementary wills for assets in other jurisdictions can prevent confusion.
4. **Italian lawyers are not experts in Common Law:** One of the main problems people often find is Italian lawyers rarely have any understanding of common law principles and vice versa. This may lead to a lack of joined up thinking. It is therefore

essential to find an advisor who understands the legal systems in all the countries the assets are located. This step can help avoid inadvertent conflicts and the application of incompatible laws.

5. **Draft a Will or Trust with Clear Provisions for Multiple Jurisdictions:** When dealing with foreign assets, establishing a trust that explicitly addresses the jurisdictional complexities can help reduce the chances of conflict. Trusts should specify how the assets will be distributed under the laws of the relevant jurisdictions and consider how forced heirship rules may affect distribution. Involving a trustee with expertise in international estate planning can help align the trust's provisions with the applicable legal frameworks.

## Conclusion

Dealing with the wills and trusts of foreign individuals with assets in Italy presents a complex array of conflicts of laws. Legal practitioners must navigate differing rules on inheritance, forced heirship, and the recognition of foreign wills and trusts, all while ensuring compliance with Italian legal requirements. Careful planning and legal expertise are essential to minimize the risk of disputes and ensure the proper distribution of assets.