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International Estate Planning and Probate: A Legal Bibliography of Selected Sources

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INTERNATIONAL ESTATE PLANNING AND PROBATE: A LEGAL BIBLIOGRAPHY OF SELECTED SOURCES

A preceding article initially identified the phenomenon causing the growth of foreign acquisition of assets in the United States. The widespread increase of both resident and nonresident aliens in this country has given rise to an unprecedented number of legal questions involving the probate of estates crossing national boundaries, questions often complicated as a result of transnational divorces and separations. Consequently, there is an increasing demand for U.S. attorneys, who practice estate planning and probate law, to develop an expertise in this area of the foreign legal system as well as in the conflict of laws rules regarding jurisdiction and choice of law. The attorney must also be knowledgeable regarding the procedural implications of the case.

This bibliography has been compiled to provide a source of information useful to the practitioner in these and related areas of the subject matter. The sources were restricted to the years 1985 to the present and geographically to the United States, Mexico, Canada, Latin America and Europe. The bibliography was further limited to works originally published in English.

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Branca v. Security Beneficial Life Insurance Company, 773 F.2d 1158 (11th Cir. 1985) (an Argentine judgment declaring the presumption of death of an Argentine insured was admitted as an exception to the hearsay rule; plaintiff beneficiaries relied on a Florida probate decree handed down in reliance on the Argentine judgment rather than alleging the collateral estoppel effect of the Argentine judgment itself).

In re Estate of Mario Sanchez (on appeal to 3d Dist. Ct. App.) Miami Review, Mar. 31, 1988, at 1. Mario Sanchez, a Venezuelan millionaire, died in 1983 without a will. He did, however, deposit almost $2 million in a Miami bank. The money was put in his name "in trust for" (ITF) his two sons, Mario Mack Sanchez and Mario Jose Sanchez. The signature cards for the account contained a provision that Florida law would govern.

After Sanchez died, twelve Venezuelans laid claim in Dade Circuit Probate Court as heirs. They claimed that they, too, were Mario Sanchez's children and under Venezuela's forced heirship law were entitled to equal shares of the $2 million.

Probate Judge Francis Christie agreed with the twelve alleged heirs and on December 30, 1987, he granted their summary judgment motion and ordered the money to be divided among all fourteen claimants. In Judge Christie's opinion, Sanchez lacked the legal ability to create a valid trust for his two sons in Miami, and therefore, his actions were illegal and constituted a fraud on the remaining twelve. Judge Christie also found that neither Florida, its citizens nor its banks had any interest in the disposition of the funds.

This case is presently on appeal to the Third District Court of Appeal. Some of the issues on appeal include what Venezuelan law dictates and the legal status of the twelve alleged illegitimate children. While the Third District Court decides which law governs the disposition of the money, the Florida Legislature will be considering a bill introduced by State Senator Jack Gordon (D-Miami Beach). The proposed law, which is modelled after a New York statute, would allow the following: (1) parties involved in contracts of $250,000 or more would be able to specify that Florida law gov-
erns any disputes and (2) in transactions in excess of $1 million, the parties would be able to designate that Florida courts hear any disputes. It has been argued that the proposed law will give some certainty of what law applies and also reduce litigation expenses to determine jurisdiction and the meaning of its laws.

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* I dedicate this article to my loving husband, Manny Maracini, for his unlimited patience and commitment during the past three years.

** I would also like to dedicate this article to my parents, Saul and Helen Miller, for their love and support throughout my law school experience.