Q&A written for "Living France"

We recently bought a house in France. We have no children, and our English wills leave all our assets to our local church. Do we need French wills?

This is an interesting question as it raises all sorts of issues that face international estate planners. Firstly, you say that you leave all assets to your local church, but do not, naturally, spell out that this is only to be on the second death, with assets passing to your survivor on the first. However, it is worth examining what exactly happens on the first death, to ensure that this is actually possible. If you have purchased the property "en tontine" which is effectively the same as a joint tenancy under English law, then the half share of the first of you to die will automatically devolve to your survivor. If instead you have purchased the property *"sous la regime de separation des biens"* then you have something more akin to a tenancy in common under English law, and that half share will need a notarial *"acte"* to transfer it to your survivor. As there are no children, this will not be a problem, but it is interesting to note that, until recently, if there were surviving parents, they would be entitled in priority to a surviving spouse, unless the tontine arrangement had been entered into at the time of purchase.

Turning to what occurs on the second death, it is helpful to consider your situation firstly from the standpoint of succession (which addresses your question on French wills) but then also secondly to think through the taxation issues that will arise. In terms of succession, if you wish to leave the property to your church, it is not impossible for them to take ownership without a French Will, but it will most certainly be more time consuming and expensive. The law applicable to your survivor's French property will be French law, regardless of whether or not he or she lives in France at the time of his or her death, due to the rule in international law that immovable property is governed by the law of the county in which it is situated. Logically it follows that a will made in the French form will naturally enable a smoother transition of ownership. Your English will appoints an executor to take ownership and transfer the asset to the church, but French law does not recognize the authority of an executor to deal with immovable property. Instead, the beneficiary has to either accept or renounce the inheritance, via a notarial "acte" and takes responsibility for dealing with the asset. The notaire who is asked to draw up the act will require an official translation of the English will and this will need to be "apostiled" i.e. made legal under international law, by the foreign and commonwealth office in London or one of its branches. These steps are relatively time consuming, and expensive. Put simply, a French will in one of the three French forms available will save time and money, and as can be seen below, there will be considerable taxation costs to be borne. It should also be added that, if you do own the property *"sous la regime de separation des biens"* then a French will would likewise be more practical on the first death than an English will, for the same reasons.

Turning to the matter of taxation, it should first be noted that, as with the succession of the property, French taxation law will apply to the property situated within its borders. This

immediately creates a problem. In short, your English assets will pass tax free to the charity (unless your survivor is resident in France at the date of his or her death) whereas your French property will not. In France, the exemptions and reductions allowed for inheritance tax "droits de mutation" are normally only given to those organisations with a registered office in France and it would not be possible to form such a registered office after the death. While there may be a possibility for an exemption applied for and obtained on the basis of legislative reciprocity, English law is similarly restrictive on gifts to foreign charities, so this is unlikely. This means that the tax on the gift will, after a small allowance, be at 60%. In a recent judgment of the European Court of justice, it was held that differences in the reliefs available to charities depending upon where they are situated within the European Community is contrary to the EC Treaty's provisions on the free movement of capital. This judgment has the potential to have wide-ranging consequences, but unfortunately it has yet to be tested against the taxing authorities in either England or France. Nevertheless, this judgement may have been implemented by the time you pass away, which one hopes will be a long time away! In the meantime, you may wish to take a pragmatic view, and restrict the gift to your church to your English assets, and select a suitable charity in France to receive your gift, instead of what would effectively be the French government. As you can see planning your French interests carefully is essential to avoid complications in the future. You should take advice from a lawyer well versed in the laws of both countries, or from two lawyers, each expert in the laws of his own country.