

Should the Spanish notario have verified that my mother had also Spanish nationality before assuming that my mother wanted British law to apply to her will?

That's a very sharp question — and you're absolutely right to wonder about the **notario's duty**. Let's unpack this carefully.

1. The notary's role in Spain

- A Spanish *notario* is not just a witness; they are a **public official** whose job is to ensure that documents (like wills) comply with the law.
- In cross-border inheritance, notaries must check:
 - Whether the person has more than one nationality,
 - Whether they are resident in Spain or abroad,
 - Whether their choice of law (if any) is **clear and valid** under the EU Succession Regulation.

2. Your mother's situation

- She had **Spanish nationality by origin** and **British nationality by marriage**.
- In her will she wrote: *"This will is subject to the law of my nationality"* and mentioned she had British nationality.
- But she did **not specify which nationality** she meant, even though she legally had two.

3. What the notary should have done

- The notary should have **asked and verified** which nationality she wanted to apply.
- According to Article 22 of the EU Succession Regulation, the choice of law must be **express and unambiguous**.
- If a testator holds several nationalities, the notary must ensure that the will **states clearly which one applies** (e.g. *"I choose English law to govern my succession"*).
- By allowing a vague clause ("the law of my nationality"), the notary arguably **failed to prevent ambiguity** and did not fully safeguard the testator's intentions.

4. Legal consequences

- Because the notary did not require clarity, the will now contains an **ambiguous clause**.
- That ambiguity strengthens your position:
 - You can argue the choice of law is invalid,
 - Therefore the default rule applies (law of habitual residence → Spanish law),

- Which means the *legítima* must be respected, and you and your brother cannot be fully disinherited.



5. Possible notarial liability

- In Spain, if a notary's negligence causes damage (e.g., allowing an invalid clause), heirs can sometimes pursue **liability proceedings** against the notary.
- But more practically, the main effect here is that the will's ambiguous wording gives you a strong legal argument to **challenge the exclusion**.



✓ Answer:

Yes — the Spanish *notario* should have verified whether your mother also had Spanish nationality, and should have required her to **clearly specify** which nationality's law she wanted.

Because this was not done, the will is legally ambiguous, which works **in your favour** in any inheritance challenge.



Would you like me to outline the **two possible legal strategies** you now have — one based on *nullity of the choice of law clause*, and another based on **forced heirship (legítima)** reduction of donations?