

Legal Strategy 1: Nullity of the Choice of Law Clause

(focus: invalidate the clause, default to Spanish law)

Basis

- Will says: “*subject to the law of my nationality*” → ambiguous, since your mother had **two nationalities** (Spanish by origin + British by marriage).
- Article 22 EU Succession Regulation: choice of law must be **express and unequivocal**.
- Ambiguity = invalid choice → default rule applies (Article 21): **law of habitual residence** at death → Spain.

Consequences

- Spanish law governs succession.
- Under Spanish Civil Code Articles 806–808:
- Children (*herederos forzosos*) cannot be disinherited except for specific causes.
- You and your brother are each entitled to a portion of the *legítima* (two-thirds of the estate must be reserved for children).

Strength

- Strong argument, because the ambiguity is clear.
- Courts tend to protect heirs and interpret doubts in favour of Spanish law.

Legal Strategy 2: Action for Reduction of Donations (Acción de Reducción)

(focus: even if will is valid under British law, lifetime gifts are brought into account under Spanish law)

Basis

- Even if your sister argues successfully that British law applies:
- Your mother’s lifetime donations (the land from your brother, bank money, etc.) may be treated as **collations (colación)** or excessive gifts under Spanish law.
- Under Articles 818–822 Civil Code, such donations can be **reduced or clawed back** if they prejudice the *legítima*.

Consequences

- Court could order that donations made to your sister be **counted against her share**.
- If they exceed what she could receive under Spanish law, the excess is clawed back into the estate for equal distribution.

Strength

- Strong complementary claim.
- Even if British law is applied, you can still argue that the donation rules under Spanish law must apply because the properties/assets are in Spain.



Combined Approach

In practice, an inheritance lawyer would likely use **both strategies together**:

1. **Primary claim:** The will's choice of law is invalid → Spanish law applies → you get your *legítima*.
2. **Subsidiary claim:** Even if British law applies, donations must be reduced → your sister's windfall is clawed back.

What you would need to gather for your lawyer

- Copy of your mother's will.
- Death certificate.
- Birth certificates (yours, brother's, sister's → to prove forced-heir status).
- Mother's Spanish birth certificate (showing Spanish nationality of origin).
- Donation deed from your brother to your mother (2013).
- Evidence of money transfers your sister made from your mother's accounts.
- Proof your mother lived in Spain (habitual residence).

With these two strategies, you have **real grounds to challenge** both the exclusion in the will and the donations that benefited your sister.



Do you want me to make a **numerical example** of how the estate would be divided if Spanish law applies (3 children, donations included), so you can see what you and your brother might realistically claim?