

FAMILY LAW ISSUES

Going through a relationship breakdown is an emotional and difficult time for anyone, but when you find yourself having to do this whilst living in a country that is not your home, it can feel even more daunting.

As one of the world's leading law firms, we work with international families and their children. We aim to help families achieve a good settlement in the complex minefield surrounding international law here and abroad.

There are many misconceptions and differences in international family law in England, here are a few of the most common:

- **England only ever applies English law.** Many countries apply the law of the country with which a couple may have the closest connection. There are many expats who have been most disconcerted when they have expected their own domestic law to be used
- **Marital agreements.** England ignores marital agreements where there was no independent legal advice and disclosure. Many countries have a culture of marital agreements yet either with no legal advice or one joint lawyer. There is often considerable anger when it is discovered that a marital agreement will have little effect
- **Financial outcomes.** In deciding financial outcomes on divorce, England presumes that each spouse has made an equal contribution to the marriage, albeit in different ways. They are treated equally. There is no need to prove equal contribution. This is very different. Some expats are from countries where there is no gender equality and the continued emphasis by English law and English lawyers on gender equality infuriates and can be hard to comprehend. Even with the many countries where there is gender equality, most still require an analysis of the respective contribution, giving more weight to financial contribution than being a homemaker and raising the children
- **Divorce proceedings have to be issued very fast.** If the expat family has connections with another EU member state. EU law says that the country where the proceedings are lodged first deals with matters, even if there is a lesser close connection. Financial outcomes around Europe differ dramatically. So speed is essential to secure the best financial outcome even though sadly this detracts from any attempts to reconcile, negotiate or mediate
- **Extra-territorial effect.** In exceptional circumstances, England and Wales will make orders which have effect abroad. So-called extra-territorial effect. However, it will make orders to prevent forced marriage, FGM and similar to take effect abroad for someone with English connections
- **Foreign assets, real property, bank accounts and other resources held abroad.** The English courts regularly make orders, on divorce, in respect of foreign assets, real property, bank accounts and other resources held abroad. Courts in some countries will only make orders in respect of assets actually held in their country. Having a divorce in England might mean that financial orders are required in respect of assets held at home or abroad
- **Financial disclosure.** The courts in England and Wales have some of the most extensive financial disclosure powers around the world. Assets held in foreign trusts, bank accounts or companies, or even in the name of somebody else on behalf of another, will be fully taken into account in coming to a fair outcome
- **Children cannot be taken abroad without the permission of both parents.** England is one of the most vigorous countries around the world in pursuing the return of abducted children, working closely with governments and lawyers in other countries
- **Parliamentary statutes.** Family law is not mostly found in Parliamentary statutes. Some is in EU law, at least until we leave the EU. Most law is found from judges decisions in reported cases. It is acknowledged this makes it more difficult to understand what the law is. It does however, mean there is much flexibility and discretion in individual cases and opportunity to change with the times.

OTHER FAMILY LAW ISSUES FOR EXPATS

Recognition of foreign marriages and divorces

England and Wales has a very liberal policy and will recognise most marriages and divorces abroad. The primary exception is some talaqs granted abroad without reference to any registration system. We recognise polygamous marriages entered into abroad. England has same-sex marriage and civil partnerships and will invariably recognise those relationships entered into abroad. However, family law and immigration law can sometimes have different requirements. England has no system of registration of foreign marriages and divorces.

Divorce

A divorce can be obtained even if the marriage took place abroad, even if one spouse is abroad, even if the assets are abroad, even if neither are English nationals, even if the breakdown occurred abroad, and even if there is a marital agreement saying it should occur abroad.

If there are divorce proceedings here and abroad then, apart from with EU countries, England will decide which country has the closest connection to the family. If it is the other country, England will stop its own proceedings, technically known as a stay, so they can go ahead in the other country.

Financial Outcomes

If there is an English divorce, then the English courts will deal with the financial aspects. This includes all assets of both spouses, wherever they may be in the world, and in whosever name they may be held. A settlement will only occur when the full financial picture is known. The disclosure process is often very extensive, can be highly intrusive, is expensive on legal costs and yet of fundamental importance to produce a fair outcome. Trying to avoid giving self-disclosure, hiding assets or misrepresenting finances is rarely successful. Most often it results in higher orders and costs penalties.

All of the assets acquired during a marriage relationship, including some premarital

cohabitation, are shared equally on divorce unless an unequal division is required for fairness reasons, which is almost always the needs of one spouse. Conversely, all non-marital assets are not shared at all unless, again, required for fairness reasons such as needs. Nonmarital assets are pre-relationship, inheritances, gifts and some postseparation assets. The exercise of fair division can only occur after comprehensive disclosure.

In practice many cases are resolved based on needs. These can be very generous especially if there was a high standard of living. England makes some very substantial orders, redistributing the assets held by the spouses. Even if one spouse has not worked throughout the marriage, he or she will still be entitled to half of the assets acquired by the other spouse who may have worked very long hours and travelled significantly.

Marital Agreements

England will take marital agreements into account in dealing with the financial matters on divorce if both parties had a genuine opportunity to take separate and independent legal advice before entering into the agreement. This will invariably include financial disclosure. In these circumstances, England will treat such agreements as if binding. Nevertheless, it will still not prevent a needs-based claim, e.g. for maintenance, alimony or a property. The marital agreement will influence the sharing aspect of a claim on divorce.

In some European and other countries, the tradition is for either no legal advice or only one joint adviser. Of course the English courts will take such an agreement into account but it is far more likely that it will be given little or no weight. This invariably causes a shock. But England has real anxieties that marital agreements may be unfair to one spouse, perhaps the more financially weaker spouse, who may not have fully understood the significance of the agreement they were entering into if there was no independent legal advice.

Child Relocation

A parent must have the permission of the other parent to take a child to live with them abroad. This may be on relationship breakdown when one

parent may remain in this country. The criteria is the best interests of the child. This is invariably a very difficult and emotional situation. It will mean one parent will therefore have fairly limited contact with the child, even with the opportunity for travel to the country where the other parent is moving. Although English law used to favour the parent seeking to relocate abroad with a child, there has been a significant change in recent years. It is now more balanced and child-focused. Good enquiries need to be made by the parent seeking to relocate about arrangements for the child in the other country with good proposals for the so-called left behind parent to have very good contact. Without this, permission to relocate may be very unlikely.

Children Abduction

The primary warning for any expat family member is do not inadvertently abduct your own child. Without the consent of the other parent to move with a children to another country, there is a very real risk of being accused of child abduction. In the UK and many countries, parental children abduction is a criminal as well as civil offense. The UK is party to an international law, the 1980 Hague Convention, a very successful international treaty designed to remedy parental child abduction. International cooperation attempts to secure the return of a child. Abduction is when a parent either wrongfully retains abroad or wrongfully removes abroad without the other's agreement. So keeping a child longer abroad on holiday can be an abduction. Going back home with a child after living here can be abduction. If a child may have been abducted, it is crucial to obtain fast and specialist legal advice.

Adoption And Surrogacy

Adoption is a wonderful means of offering a home to child who, for whatever reason, is unable to be raised by their birth parents. Adoption is not to be entered into lightly as it creates a lifelong relationship with a child. The adoption of a child from another country is complex and involves family law, immigration and criminal law considerations. Always take preliminary immigration and family law



advice. Not all adoption orders made abroad are automatically recognised here. It is essential to double check whether a foreign adoption order will be recognised in this country and to work out well in advance the means by which recognition of the foreign adoption order or status as a parent can be achieved.

Surrogacy has some similarities with international adoption. There is separate procedure for arranging a surrogacy with a birth mother abroad. Again it is important to consider immigration law elements.

The International Family Law Group LLP is a specialist practice based in Covent Garden, created in 2007 specifically to look after the interests of international families and their children. It is one of the world's leading international firms in this area. It combines solicitors, mediators, arbitrators and foreign qualified lawyers. It works closely with specialist lawyers around the world along with UK specialist immigration lawyers and other areas of law. It receives instructions from many UK law firms. It works with the UK government in child abduction matters. It has a range of lawyers with different charging rates. For more information on our services please go to www.iflg.uk.com or contact David Hodson at david.hodson@iflg.uk.com or +44 20 3178 5668.

David Hodson OBE is co-founder of iFLG and acclaimed as a world leading specialist and received the OBE for services to international family law.

The contents of this article are for reference purposes only. They do not constitute legal advice and should not be relied on as such. Legal advice should always be sought for your specific circumstance.

Moving to another country can be an exciting time BUT...

- **What happens** if your relationship breaks down?
- **What happens** if one of you decides to return home with the children?
- **In which country** do you get divorced/legally separated?
- **How** will your finances be divided?

When problems occur specialist and urgent legal advice is crucial.

The **International Family Law Group LLP** is a firm of solicitors with years of experience working with international families and their children.

At **iFLG**, we provide sensitive and proactive settlement focused legal advice which helps you achieve the best outcome.

We also offer mediation and arbitration. Our offices are fully equipped for international meetings with Skype.



- Separation & Divorce
- Financial Settlements
- Unmarried Relationships
- Marital Agreements (pre-nups)
- Proceedings Abroad
- Children (including relocation & abduction)

For initial help
please contact us on:

+44 (0)20 3178 5668

or email

enquiries@iflg.uk.com

020 3178 5668
enquiries@iflg.uk.com

www.iflg.uk.com