

The Globalization of Family Law

The world continues to grow smaller and economies continue to expand globally. Your client's legal issues have continued to grow more complex and like everything else, family law has gone global. In today's world, it is very possible for a couple that was born, raised and married in Washington to now be living and operating a business in Germany with children attending school in France and have property or financial accounts in all three. If that marriage goes bad, is there a best place for it to go bad?

Prenuptial Agreements

Often, a good divorce starts with a good prenuptial agreement. Not surprisingly, there are significant differences in the enforceability of prenuptial agreements throughout the world. Although most U.S. states have some aversion to enforcing prenuptial agreements, they will generally do so provided certain conditions are fulfilled. But every country is different. Because of that difference, family law attorneys practicing internationally often have their clients get into "mirror agreements," which are prenuptial agreements drafted with identical terms, each referring to the laws of a different jurisdiction, and each "mirroring" the other. One such agreement, using the laws of the country most likely to enforce that agreement, is made primary.

Divorce

Of course, every country handles divorce differently, too. When a client comes in seeking advice regarding a divorce, multi-jurisdictional litigation requires not just determining which countries are available, but also determining which jurisdictions are most advantageous to the client's major concerns. If the decision is to pursue a divorce in the U.S., forming a global strategy for the client might mean seeking a state or federal receivership order and then ratification of that order in the other jurisdictions, allowing the receiver to take control of the marital assets wherever those assets may be situated in world.

There are problematic divorces that cause further confusion: religious divorces, such as the “triple talaq” (the Islamic divorce practice wherein the husband simply states his wish to divorce three times), and “quickie” or “migratory” registry office and bilateral divorces, requiring only spousal consent and limited paperwork. The legal effect of these divorces in any country other than the country rendering the actual divorce is difficult to determine quickly, and can later raise potentially unexpected issues.

Child Custody

Custody of children remains the most contentious of family law issues. International custody litigation takes many forms, but one of the most common is “abduction,” where one parent takes the children and moves to another country without the other parent’s, or a court’s, approval. Perhaps the most common international child abduction litigation occurring within the U.S. at any given time involves application of the Hague Convention on the Civil Aspects of International Child Abduction, which the U.S. and numerous other countries have adopted. The Convention is intended to prevent parents from unilaterally moving children across international boundaries for the purpose of finding a more sympathetic court and to prevent harms “thought to follow when a child is taken out of the family and social environment in which its life has developed.”

Also in play in international abductions are each state’s Uniform Child Custody Jurisdiction and Enforcement Act. Washington State’s UCCJEA, for example, explicitly extends the application of its provisions to the international arena and calls for recognition and enforcement of foreign custody decrees under most circumstances. Therefore, the same policies and practices that prevail in the United States with respect to custody decrees of sister-states should prevail with respect to foreign decrees.

Enforcement of Support Judgments and Orders

People from every corner of the world come to the U.S. not just to get their piece of the American Dream, but also to escape their financial difficulties. Each state’s Uniform Foreign Money-Judgments Recognition Act provides a statutory basis for registration and enforcement of foreign judgments. As of 2001, thirty states had adopted the UFMJRA which provides a streamlined process for registering a foreign judgment and thereafter acting to enforce it as though it were any other judgment.

Additionally, every state has adopted the Uniform Interstate Family Support Act, which explicitly extends its provisions beyond sister-states to the support judgments and orders of foreign countries. Because the UIFSA allows for recognition of administrative, quasi-judicial, and judicial orders it provides wide latitude to enforce orders made in countries with very different legal systems than those in the U.S. It also allows for the imposition of a new judgment for any unpaid support to date.

Domestic relations law remains in near constant flux both here in the U.S. and abroad. But one thing remains certain, many of your clients, whether you are a family lawyer or not, will have family law issues and family law has gone global. Just knowing what a U.S. court is likely to do in a given circumstance is only part of an ever growing, and challenging puzzle.

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