

# Table of Contents

## CHAPTER 1. WHAT IS INTERNATIONAL FAMILY LAW?

- § 1:1 Scope
- § 1:2 Introducing international family law
- § 1:3 What international family law is and is not
- § 1:4 Collaboration function of international family lawyer
- § 1:5 Areas in which an international family lawyer works
- § 1:6 The role of the international family lawyer
- § 1:7 Checklist of issues to determine at very beginning of international divorce case
- § 1:8 Pitfalls resulting from failing to perceive international family law issues
- § 1:9 Securing advice from an international family lawyer
- § 1:10 International family lawyer as expert witness
- § 1:11 Qualities required to succeed as an international family lawyer

## CHAPTER 2. RECOGNITION OF FOREIGN MARRIAGES

- § 2:1 Introduction
- § 2:2 Law of country where marriage occurred—Basic rule
- § 2:3 —Application of the rule
- § 2:4 Presumption of validity
- § 2:5 Common law marriages
- § 2:6 Law of country of most significant relationship
- § 2:7 Public policy—Marriage between family members
- § 2:8 —Polygamous marriages
- § 2:9 —Other issues

## CHAPTER 3. INTERNATIONAL PRENUPTIAL AGREEMENTS

### I. INTRODUCTION

- § 3:1 Need for international prenuptial agreements
- § 3:2 Basic issues concerning international prenuptial agreements
- § 3:3 Drafting a prenuptial agreement for an international couple
- § 3:4 Prenuptial agreements for clients with extensive international contacts

## II. PARTICULAR PROVISIONS IN INTERNATIONAL PRENUPTIAL AGREEMENTS

- § 3:5 Checklist of provisions of a good international prenuptial agreement
- § 3:6 Choice of law clause
- § 3:7 Selection of the governing law
- § 3:8 Choice of court clause

## III. PRENUPTIAL AGREEMENT IN U.S. COURTS

- § 3:9 Overview
- § 3:10 Which law governs?
- § 3:11 Foreign requirements

## IV. INTERNATIONAL VARIATIONS IN LAWS AND ATTITUDES ABOUT PRENUPTIAL AGREEMENTS

- § 3:12 Introduction
- § 3:13 Australia
- § 3:14 Austria
- § 3:15 Bahamas
- § 3:16 Brazil
- § 3:17 Canada
- § 3:18 China
- § 3:19 Denmark
- § 3:20 England and Wales
- § 3:21 Finland
- § 3:22 France
- § 3:23 Germany
- § 3:24 Greece
- § 3:25 Hong Kong
- § 3:26 Indonesia
- § 3:27 Ireland
- § 3:28 Israel
- § 3:29 Italy
- § 3:30 Jamaica
- § 3:31 Japan
- § 3:32 Luxemburg
- § 3:33 Netherlands
- § 3:34 New Zealand
- § 3:35 Norway
- § 3:36 Portugal
- § 3:37 Russia
- § 3:38 Scotland
- § 3:39 Singapore

## TABLE OF CONTENTS

- § 3:40 South Africa
- § 3:41 Spain
- § 3:42 Sweden
- § 3:43 Switzerland
- § 3:44 Taiwan
- § 3:45 Thailand
- § 3:46 Turkey

## CHAPTER 4. INTERNATIONAL DIVORCE

### I. INTRODUCTION TO INTERNATIONAL DIVORCE PLANNING

- § 4:1 International divorce planning
- § 4:2 Forum selection
- § 4:3 —Examples of appropriate forum selection
- § 4:4 Timing in international divorce planning

### II. INTERNATIONAL DIVORCE PLANNING PROCESS

- § 4:5 Steps in the international divorce planning process
- § 4:6 Step one: Analyze the family's entire economic picture
- § 4:7 Step two: Consult with the client as to his or her goals
- § 4:8 Step three: Provide an initial analysis of the law in several different possibly appropriate jurisdictions
- § 4:9 Step four: Focus on a few jurisdictions
- § 4:10 Select the jurisdiction
- § 4:11 Advise as to the steps now to be taken

### III. DIVORCE JURISDICTION

#### A. U.S. DIVORCE JURISDICTION

- § 4:12 Overview
- § 4:13 U.S. jurisdiction to grant a bare divorce
- § 4:14 U.S. jurisdiction to handle the financial aspects of a divorce
- § 4:15 U.S. jurisdiction based on "tag" service
- § 4:16 U.S. jurisdiction based on minimum contacts
- § 4:17 —One spouse moves to a U.S. state without the other spouse
- § 4:18 —Both parties live overseas, one spouse moves to a U.S. state without the other spouse
- § 4:19 —Both parties live overseas, both move to U.S., one relocates overseas

#### B. JURISDICTIONAL RULES IN FOREIGN COUNTRIES

- § 4:20 Overview

§ 4:21	Antigua
§ 4:22	Australia
§ 4:23	Austria
§ 4:24	Belgium
§ 4:25	Bermuda
§ 4:26	Bulgaria
§ 4:27	Canada
§ 4:28	Chile
§ 4:29	Costa Rica
§ 4:30	Dominican Republic
§ 4:31	Ecuador
§ 4:32	El Salvador
§ 4:33	England and Wales
§ 4:34	European Union
§ 4:35	Finland
§ 4:36	Germany
§ 4:37	Gibraltar
§ 4:38	Greece
§ 4:39	Honduras
§ 4:40	Hong Kong
§ 4:41	Jamaica
§ 4:42	Mexico
§ 4:43	Netherlands
§ 4:44	New Zealand
§ 4:45	Nicaragua
§ 4:46	Norway
§ 4:47	Pakistan
§ 4:48	Panama
§ 4:49	Singapore
§ 4:50	South Africa
§ 4:51	Spain
§ 4:52	Sweden
§ 4:53	Switzerland
§ 4:54	Taiwan

#### IV. STAYING OR DECLINING JURISDICTION

- § 4:55 Declining jurisdiction: U.S. courts
- § 4:56 Declining jurisdiction: Foreign courts
- § 4:57 Anti-suit injunction

#### V. GROUNDS FOR DIVORCE

##### A. IN GENERAL

- § 4:58 Grounds for divorce

## TABLE OF CONTENTS

### B. GROUNDS FOR DIVORCE IN FOREIGN COUNTRIES

- § 4:59 Introduction
- § 4:60 Australia
- § 4:61 Canada
- § 4:62 Denmark
- § 4:63 England and Wales
- § 4:64 France
- § 4:65 Germany
- § 4:66 Greece
- § 4:67 Ireland
- § 4:68 Japan
- § 4:69 Korea (South)
- § 4:70 Malta
- § 4:71 Mexico
- § 4:72 Netherlands
- § 4:73 New Zealand
- § 4:74 Pakistan
- § 4:75 The Philippines
- § 4:76 Sweden
- § 4:77 Switzerland
- § 4:78 Thailand

## VI. WHICH LAW APPLIES?

### A. IN GENERAL

- § 4:79 Overview
- § 4:80 Reasons why a court may apply the law of another country

### B. CHOICE OF LAW ISSUES IN U.S. AND FOREIGN COUNTRIES

#### 1. United States

- § 4:81 U.S. choice of law issues

#### 2. Foreign Countries

- § 4:82 Foreign countries' choice of law rules
- § 4:83 Austria
- § 4:84 Belgium
- § 4:85 England and Wales
- § 4:86 Finland
- § 4:87 France
- § 4:88 Germany
- § 4:89 Greece
- § 4:90 Japan

- § 4:91 Korea (South)
- § 4:92 Netherlands
- § 4:93 Poland
- § 4:94 Portugal
- § 4:95 Spain
- § 4:96 Sweden
- § 4:97 Switzerland
- § 4:98 Thailand

## VII. DIVISION OF ASSETS UPON DIVORCE

### A. IN GENERAL

- § 4:99 Fundamental issues

### B. DIVISION OF ASSETS IN FOREIGN COUNTRIES

- § 4:100 Australia
- § 4:101 Canada
- § 4:102 England and Wales
- § 4:103 Finland
- § 4:104 France
- § 4:105 Germany
- § 4:106 Greece
- § 4:107 Ireland
- § 4:108 Islamic countries
- § 4:109 Israel
- § 4:110 Japan
- § 4:111 Korea (South)
- § 4:112 The Netherlands
- § 4:113 New Zealand
- § 4:114 Singapore
- § 4:115 Sweden
- § 4:116 Switzerland
- § 4:117 Thailand

### C. FACTORS AFFECTING DIVISION OF ASSETS

- § 4:118 Relevance of conduct of the parties to division of assets in target jurisdiction
- § 4:119 Relevance of economic misconduct

## VIII. SUPPORT

- § 4:120 Introduction
- § 4:121 Spousal support internationally

## TABLE OF CONTENTS

### IX. PROCEDURAL ISSUES

- § 4:122 Disclosure
- § 4:123 —Civil law jurisdictions
- § 4:124 Service of process
- § 4:125 Interim injunctions
- § 4:126 Recognition of the decree
- § 4:127 Issues concerning legal fees

### X. OTHER CRITICAL FACTORS

- § 4:128 Judicial bias
- § 4:129 Corruption
- § 4:130 Criminal issues
- § 4:131 —India's "Dowry Law"
- § 4:132 —Korea (South)
- § 4:133 —Saudi Arabia
- § 4:134 —United Arab Emirates
- § 4:135 Role of law
- § 4:136 Dysfunctional legal systems

## CHAPTER 5. RECOGNITION OF FOREIGN DIVORCES

### I. INTRODUCTION

- § 5:1 Uncertainty surrounding recognition of foreign divorce
- § 5:2 Checklist of issues to consider to secure recognition of foreign divorce in U.S. courts
- § 5:3 Checklist of issues to consider when opposing recognition of foreign divorce in U.S. courts
- § 5:4 Basic principles
- § 5:5 Effect and extent of recognition

### II. JURISDICTION

- § 5:6 Introduction
- § 5:7 Domicile or residence of both parties
- § 5:8 Domicile or residence of one party
- § 5:9 Neither party domiciled or habitually resident
- § 5:10 Bilateral divorce
- § 5:11 The Uniform Divorce Recognition Act
- § 5:12 "Mail order" and ex parte divorces

### III. NON-JUDICIAL DIVORCES

- § 5:13 Administrative divorce

§ 5:14 Customary or religious divorce

#### IV. DEFENSES TO ACTIONS TO RECOGNIZE AND ENFORCE FOREIGN DIVORCE JUDGMENT

- § 5:15 Due process denied to defendant
- § 5:16 Violation of public policy
- § 5:17 Divorce procured by fraud or duress
- § 5:18 Equitable defenses—Estoppel
- § 5:19 —Laches
- § 5:20 —Unclean hands

### CHAPTER 6. INTERNATIONAL CHILD SUPPORT

- § 6:1 Introduction
- § 6:2 Jurisdiction
- § 6:3 Which law applies?
- § 6:4 Whose cost and standard of living should apply?
- § 6:5 Enforcement of a foreign support order
- § 6:6 Registration of a foreign country order
- § 6:7 Defenses to registration
- § 6:8 Rate of exchange
- § 6:9 Modifying a support order
- § 6:10 Evidence
- § 6:11 Methods of setting child support internationally
- § 6:12 Hague Maintenance Convention

### CHAPTER 7. INTERNATIONAL CHILD CUSTODY

#### I. INTRODUCTION

- § 7:1 Introduction to the Uniform Child Custody Jurisdiction & Enforcement Act
- § 7:2 UCCJEA: Coordination with Hague Convention, a comparison

#### II. UNIFORM CHILD CUSTODY JURISDICTION & ENFORCEMENT ACT: AN OVERVIEW

- § 7:3 Introduction
- § 7:4 Initial child custody jurisdiction—Home state jurisdiction
  - Application in particular cases
  - Significant connection jurisdiction
  - Application in particular cases
  - Jurisdiction by reason of jurisdiction being declined and default jurisdiction

## TABLE OF CONTENTS

- § 7:9 Exclusive, continuing jurisdiction
- § 7:10 Jurisdiction to modify
- § 7:11 Temporary emergency jurisdiction
- § 7:12 Simultaneous proceedings
- § 7:13 Inconvenient forum
- § 7:14 —Illustrative cases
- § 7:15 Unjustifiable conduct
- § 7:16 Information to be submitted to court
- § 7:17 Attorney's fees
- § 7:18 Notice

## III. APPLICABILITY OF UCCJEA TO FOREIGN COUNTRY CUSTODY ORDERS

- § 7:19 Introduction
- § 7:20 Limited scope of exception
- § 7:21 Meaning of "fundamental principles of human rights"—
  - Treaties
  - Caselaw
  - Repugnance in practice
  - Burden of proof
  - Corrupt systems

## CHAPTER 8. INTERNATIONAL CHILD RELOCATION

- § 8:1 Introduction
- § 8:2 Is a relocation application required?
- § 8:3 Overview of relocation law in domestic cases
- § 8:4 International relocation cases
- § 8:5 Factors supportive of international relocation
- § 8:6 Factors leading to denial of international relocation
- § 8:7 Special circumstances of expatriate spouses
- § 8:8 Conditions on international relocation
- § 8:9 Tips on winning an international relocation petition
- § 8:10 Tips on opposing an international relocation petition
- § 8:11 International relocation checklist

## CHAPTER 9. THE HAGUE ABDUCTION CONVENTION

### I. OVERVIEW

- § 9:1 Introduction
- § 9:2 Hague Convention overview
- § 9:3 Incoming and outgoing cases; definitions

- § 9:4      Role of counsel in outgoing cases
- § 9:5      Procedure in incoming cases
- § 9:6      The Hague application
- § 9:7      The Hague petition
- § 9:8      Important practice tips concerning the petition
- § 9:9      State or federal court?
- § 9:10     Service
- § 9:11     Stay of custody case
- § 9:12     Interim relief
- § 9:13     Initial appearance of both parties before the court
- § 9:14     Purposes of the Convention
- § 9:15     Expediting the case
- § 9:16     Guardian ad litem

## II. FUNDAMENTAL TERMS OF THE CONVENTION

- § 9:17     Introduction
- § 9:18     Definitions of “habitual residence”
- § 9:19     Proving or disproving “acclimatization”
- § 9:20     Proving or disproving settled purpose
- § 9:21     Proving intent to relocate
- § 9:22     Proving no intent to relocate
- § 9:23     Checklist of documents concerning relocation
- § 9:24     Definition of “right of custody”
- § 9:25     *Ne exeat* clause
- § 9:26     Exercise of rights of custody

## III. THE GRAVE RISK OF HARM DEFENSE

- § 9:27     Introduction
- § 9:28     Establishing the defense
- § 9:29     Traditional interpretation
- § 9:30     Newer interpretation
- § 9:31     Relevance of other country’s ability to protect
- § 9:32     Other issues

## IV. OTHER DEFENSES

- § 9:33     Consent
- § 9:34     Acquiescence
- § 9:35     Child’s objections
- § 9:36     One year and settled
- § 9:37     Tolling of the one-year period
- § 9:38     Human rights defense
- § 9:39     Fugitive disentitlement

## V. PRACTICAL AND PROCEDURAL ISSUES

- § 9:40     Discovery

## TABLE OF CONTENTS

- § 9:41 Evidence
- § 9:42 Use of foreign law
- § 9:43 Role of Central Authority
- § 9:44 Undertakings
- § 9:45 Legal fees and expenses
- § 9:46 Mediation
- § 9:47 Stays pending appeal

## CHAPTER 10. RECOVERING ABDUCTED CHILDREN FROM NON-HAGUE COUNTRIES

- § 10:1 Introduction
- § 10:2 Initial fact-finding
- § 10:3 Consultation with foreign counsel
- § 10:4 Demand for return of child
- § 10:5 Custody proceedings in the U.S
- § 10:6 The International Parental Kidnapping Act
- § 10:7 Extradition
- § 10:8 National Crime Information Center
- § 10:9 Actions based in tort
- § 10:10 Reverse kidnapping
- § 10:11 Role of the left-behind parent

## CHAPTER 11. PREVENTING INTERNATIONAL CHILD ABDUCTION

- § 11:1 Introduction
- § 11:2 No exit controls
- § 11:3 Practical non-judicial steps to prevent international abduction
- § 11:4 Representing a parent who seeks to enjoin foreign visitation
- § 11:5 Establishing a risk of child abduction
- § 11:6 Evidence that foreign legal system may support abduction
- § 11:7 Overcoming judicial reluctance in evaluating foreign legal systems; use of experts
- § 11:8 Establishing the adverse effects of international child abduction
- § 11:9 Cases in support of an order restraining foreign travel
- § 11:10 Representing the parent who wants to take a child for international visitation
- § 11:11 Evidence that foreign legal system would not support abduction
- § 11:12 Cases in opposition to an application to restrain foreign travel
- § 11:13 Terms of court order restraining removal
- § 11:14 Terms of court order permitting removal

Appendix 11A. Uniform Child Abduction Prevention Act, Section Seven: Factors to Determine Risk of Abduction

**Table of Laws and Rules**

**Table of Cases**

**Index**