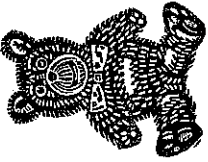




Special Focus On Family Law Issues



By **Hadrian N. Hatfield**

More and more divorces seem to include international issues. Recent reports of census data confirm an influx of immigrants into Maryland. Divorces with international aspects are a logical consequence. Maryland's proximity to the nation's capital, with its embassies, international organizations, and foreign companies, is another explanation.

Divorces with international components present attorneys with unique challenges and opportunities. The unsuspecting attorney will confront myriad hidden pitfalls, rooted in international or foreign

may be apparent where both spouses are American citizens. Yet, children born in another country may be able to claim a foreign nationality. And American parties may be dual nationals, able to begin a new life in another country as one of its citizens. Both situations could raise international issues.

Whenever an international aspect is found, the attorney must examine jurisdiction issues. One illustration was the Sri Lankan woman who thought her husband was living in the United States. Instead he filed for divorce while in Sri Lanka, where the laws favored him. Fortunately, she found out in time to avoid personal jurisdiction in Sri Lanka and start suit here. In another case, the wife of a Brazilian

client does not apply to Taiwan. The solution was service on his wife by letter rogatory, a lengthy and cumbersome procedure that involved the Court here, the U.S. Department of State, the American Institute in Taiwan, and local Taiwanese authorities.

Immigration issues can be particularly vexing. A foreign World Bank employee working here confronted a real dilemma when seeking to divorce his Ivorian wife. They had a son with whom the husband was very close. Upon divorce his wife would automatically lose her dependent G-4 visa and have to leave the country. Yet under his facts she would surely get custody. A more common immigration issue awaits clients who divorce while their permanent residency (green card) based on marriage to a U.S. citizen is still in conditional status. The timing and circumstances of divorce can affect their ability to remain in the United States. Immigration law, while complex and arcane, harbors many potential solutions to each problem. Early collaboration with com-

Conflict of law issues can arise even in the divorce context. Their analysis inevitably requires a comparison with foreign laws. The Brazilian wife who sued for alimony in the United States while living in Brazil provides an illustration of this dilemma. Should the American court apply local U.S. law, with its inherent policy choices, or the law of Brazil where the alimony recipient lives? Another example is the recently arrived European couple divorcing in the United States. The single major asset is a large pension belonging to one spouse. It was earned working for a foreign government agency while they lived abroad. What law should the American court apply to the distribution of property?

The existence and terms of a foreign statutory pre-nuptial agreement is another problem lawyers occasionally face. This usually arises when parties marry in a Civil Code country, for example France or Spain. Similarly, few attorneys are pre-

International Aspects of Divorce

pared to advise a divorce client with an Islamic law prenuptial agreement. Good old-fashioned research and legal analysis can yield the solution to some international issues. More often the solution requires joining forces with other professionals and experts. Almost always these cases require special time and effort spent with the client, learning about a foreign legal system and teaching about ours. This unique joy is offered by the increasingly common divorce cases with international issues.

Early detection of international issues is key. Most cases with international issues are easily recognized. Still, every potential client should be asked about citizenship and visa status. Another critical topic is any significant contact either spouse has with another country. No international issues

client filed suit for divorce and alimony in the United States, but moved back to Brazil early in the litigation. The husband sued her for divorce in Brazil. If a foreign court with personal jurisdiction over the U.S. domiciled spouse grants a divorce first, the binding alimony award may be very different. Jurisdiction issues may also determine the divorce court's authority to divide assets that are located in other countries.

Service of process problems can arise any time one party lives in another country. This happened to a Taiwanese client who desperately wanted a divorce from his wife living in Taiwan. Restrictive Taiwanese divorce laws prevented this for years. Promisingly, the client established domicile in the United States. Unfortunately, the Hague Convention on Service Abroad of Judicial and Extrajudicial Docu-

ment immigration counsel can greatly benefit clients.

The Hague Convention that addresses international child abduction brings rules and predictability to the most frightening situation any divorce client will likely face. This alone can give hope to the American whose spouse and children went to visit relatives abroad and never returned. It may be small comfort, however, to the client with children removed to one of a handful of signatory countries that remain recalcitrant and slow. It is of no help to the client with children hidden in a non-signatory country. The attorney must identify into which category a foreign country fits before advising of the consequences and options.

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