

Russians in London

- > Over 150,000 Russian born residents in London
- The number of public school pupils from Russia increased by 27.4 percent in 2013, to 2,150
- Surge in applications for Tier 1 (Investor) visas
- * "Russians top of the list of foreign buyers of £1m-plus London homes in 2013", The Guardian May 2014
- Political risk e.g. Yukos



Londongrad – divorce capital of the world

- > Broad definition of what constitutes 'marital property'
- > Equality of division as a starting point in determining fairness
- > Trusts often regarded as "family resources"
- > Financial awards which cannot be bettered elsewhere
- > Foreign pre-nuptial agreements may not be recognised
- > Courts may not liquidate business interests

Warning: A move to England may be an expensive mistake for business owners; the generous tax system is matched by an equally generous divorce system

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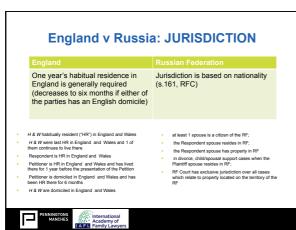
England v Russia: SOURCES OF LAW

Common law. No codified system. Family law is to be found in Acts of Parliament (statute law) as applied Parliament (statute law) as applied and interpreted by the courts (precedent). EU Regulations are applicable, notably Brussels IIR and International Conventions such as the Hague Convention.

Civil law jurisdiction. Statutory law is the only source of law. Family law is predominantly regulated by federal statutes including: • The Civil Code of Russia (1996) • The Family Code of Russia (1996)

- The Parting Code of Russia (1996)
 Federal Law and Acts of Civil Status (1997)
 The Federal Law on the Rights of the Child (1996)
- International conventions including The Hague Convention since October 2011.

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England v Russia: CONFLICT OF JURISDICTION

England Paragraph 9, Schedule 1 of the DMPA 1993 applies. A discretionary power on the court to order a stay if there are concurrent proceedings in any other non-Brussels IIR jurisdiction. The court will apply the principal of *forum non conveniens* and will consider if the balance of fairness between the parties means that it is appropriate for the proceedings to be stayed.

Anti-suit or Hemain injunctions are available

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There is no concept of forum non conveniens. If the case falls within Russian jurisdiction, the Russian court will hear the case (s.134 -409, Civil Procedure Code)

The Russian courts have limited power to discontinue their proceedings or to decline jurisdiction in cases in which another country's decisions are capable of being recognised and enforced in Russia – this does not include English decisions.



England v Russia: MARITAL AGREEMENTS

Prenuptial Agreements: Radmacher v Granatino – 'the court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications Marital Contracts: These are unless in the circumstances Voidable only in extreme prevailing it would not be fair to hold the parties to their agreement".

binding in Russia irrespective of the length of the marriage. Independent legal advice and financial disclosure are not required (s.8, RFC).

The courts retain discretion.

Country	Marital agreement*	Foreign marital agreements
France	Permitted. Executed before notary.	Recognised. Hague Convention 1978
Germany	Permitted. Executed before notary.	Recognised, subject to limitations.
UK	Radmacher - v - Granatino [2010] UKSC 42. Test by which marital agreements are binding: must be fair, independent representation and disclosure of assets may be considered.	Trend in favor of upholding such agreements (Radmacher v Granatino Test).
Switzerland	Permitted.	Recognised.
Austria	Permitted, subject to conditions. Not very common.	Recognised. Hague Convention 1978
Russia	Valid and enforceable. Executed before Notary.	Not recognised.
		* Mostly regarding matrimonial proper obal Guide (3rd Edition 2015, Thomson I

England v Russia: **ENFORCEMENT OF INTERNATIONAL MARITAL AGREEMENTS**

 England
 Russian Federation

 Kremen v Agrest [2012] EWIC4 51
 All prenuptial agreements must be simultaneously in front of a Russian Notary. Foreign marital agreements is manifestly unfair, a court will ignore it. A party would not usually be taken to have freely entered into a marital agreement with full appreciation of its implications absent independent legal advice.
 All prenuptial agreements simultaneously in front of a Russian Notary. Foreign marital agreements will not be upheld.
 legal advice.

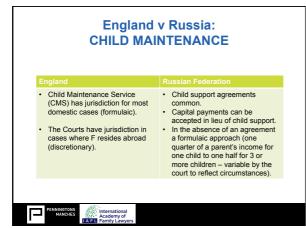
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England v Russia: **SPOUSAL MAINTENANCE**

A party's obligation to pay maintenance often continues until the death or remarriage of the recipient, especially where a wife has acted as a "home maker" and the husband has been primary provider.

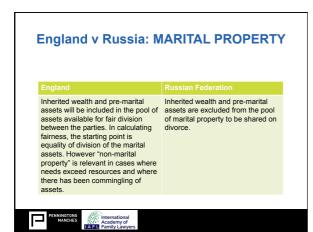
Russia takes a more restrictive approach than England and, even in the case of the very wealthy, maintenance orders are unusual.

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England v Russia: TRUSTS

	Trust interests will often be treated as a resource available to the family (Charman v Charman [2007] EWCA Civ 503).	The common law concept of the trust is alien to Russian law. However trusts are often used by well-to-do Russians as a wealth management tool. A typical example is when a wealthy Russian, often resident for tax purposes in Russia, sets up a trust in one of the international financial centres, such as the BVI (Vista), the Cayman Islands (STAR), or the Channel Islands
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England v Russia: FINANCIAL PROVISION

Only jointly held capital assets are available for division (s.34 RFC).

Pre-acquired property, inheritances are excluded (s.36 RFC).

Assets situated abroad are rarely

taken into consideration.

The Court's objective is to achieve fairness (*White v White* [2000] UKHL 54).

No bias in favour of the moneyearner against the home-maker.

Discretionary jurisdiction with the yardstick of equality serving as a check.

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Fairness, like beauty, is in the eye of the beholder

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Matrimonial aspects of wealth protection

Forum shopping

"refers to the practice of shopping for a court in a jurisdiction where a more favourable outcome is likely."

Fights over the most appropriate court to hear a case – are becoming increasingly common among globetrotting, often foreign-born wealthy couples living in Britain.



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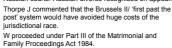


Anglo-Russian Divorce: recent cases

Golubovich v Golubovich [2010] & [2011]

Ilya

- Race for a Russian divorce which H won (notwithstanding allegations of forged documents).
- Hemain injunction made in England and ignored by the Russian courts. Russian divorce recognised on appeal.



Part III application successful. Capital award of £2.485million

Appealed/dismissed but wife left with an enforcement problem



Elena

Anglo-Russian Divorce: recent cases

F v Y (abduction: acquiescence) [2014]

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- Non-Hague abduction case in relation to a four year old child born in England to an Irish father and Russian mother.
- Child removed from England without father's consent.
- English court found acquiescence and refused to order return, implicitly accepting orders which had been made in the Russian courts
- An example of comity

NB. There are no reciprocal treaties between Russia and England in family matters and the principal of comity, whereby one jurisdiction will extend certain courtesies to another has rarely been applied by the Russian family courts in respect of English devices. decisions

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Advising relocating Russian clients

- Execute an English post-nuptial agreement prior to relocation. Replicate its terms in a Russian agreement
- Consider the establishment of an appropriate trust structure (effective in Russia & another hurdle in England)
- Governance documentation: statement of core values should require family members to enter into "family standard" marital agreements treating family business/trust interests as "separate property".
- Seek to agree the law applicable to any divorce: not binding in England, but helpful in other jurisdictions following Rome III
- Warn the client that the English courts will have jurisdiction in relation to any children following re-location

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