




DIVORCE IN LONDONGRAD

ANGLO-RUSSIAN FAMILY LAW IN THE INTERNATIONAL ARENA

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FAMILY LAW: A GLOBAL GUIDE

3RD EDITION

Family Law is an essential guide that enables you to make quick comparisons between 46 international jurisdictions worldwide.

"This supremely practical book provides basic information on International Family Law...In this busy world the provision of basic legal information in an easily digestible form is what we all seek."

Lord Justice Thorpe, Former Head of International Family Justice for England & Wales

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



England v Russia: SOURCES OF LAW

England	Russian Federation
Common law. No codified system. Family law is to be found in Acts of 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: <ul style="list-style-type: none"> • The Civil Code of Russia (1996) • The Family 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.



England v Russia: JURISDICTION



England	Russian Federation
One year's habitual residence in England is generally required (decreases to six months if either of the parties has an English domicile)	Jurisdiction is based on nationality (s.161, RFC)

- H & W habitually resident ("HR") in England and Wales
- H & W were last HR in England and Wales and 1 of them continues to live there
- Respondent is HR in England and Wales
- Petitioner is HR in England and Wales and has lived there for 1 year before the presentation of the Petition
- Petitioner is domiciled in England and Wales and has been HR there for 6 months
- H & W are domiciled in England and Wales
- at least 1 spouse is a citizen of the RF;
- the Respondent spouse resides in RF;
- the Respondent spouse has property in RF
- in divorce, child/spousal support cases when the Plaintiff spouse resides in RF;
- RF Court has exclusive jurisdiction over all cases which relate to property located on the territory of the RF





England v Russia: CONFLICT OF JURISDICTION

England	Russian Federation
<p>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 <i>forum non conveniens</i> and will consider if the balance of fairness between the parties means that it is appropriate for the proceedings to be stayed.</p> <p>Anti-suit or <i>Hemain</i> injunctions are available.</p>	<p>There is no concept of <i>forum non conveniens</i>. If the case falls within Russian jurisdiction, the Russian court will hear the case (s.134 -409, Civil Procedure Code)</p> <p>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.</p>



England v Russia: DIVORCE

England	Russian Federation
<p>A fault based jurisdiction –</p> <ul style="list-style-type: none"> Part II FLA 1996 has not been implemented Irretrievable breakdown established by one of five facts 	<p>If no minor children, a divorce is a purely administrative procedure –</p> <ul style="list-style-type: none"> No fault Marriage terminated one month after submission No judicial involvement (s162, RFC) <p>With minor children or if divorce is contested a judicial procedure is initiated –</p> <ul style="list-style-type: none"> No fault Irretrievable breakdown is the sole ground (s22, RFC)




England v Russia: MARITAL AGREEMENTS

England	Russian Federation
<p>Pre-nuptial Agreements: <i>Radmacher v Granatino</i> – “the court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement”.</p> <p>The courts retain discretion.</p>	<p>Marital Contracts: These are binding in Russia irrespective of the length of the marriage. Independent legal advice and financial disclosure are not required (s.8, RFC).</p> <p>Voidable only in extreme circumstances (s.44, RFC).</p>

Marital Agreements: Europe

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 property rights
See also Family Law: A Global Guide (3rd Edition 2015, Thomson Reuters)



England v Russia: ENFORCEMENT OF INTERNATIONAL MARITAL AGREEMENTS

England	Russian Federation
<i>Kremen v Agrest [2012] EWHC 45</i> , involving Russian parties and an Israeli post-nuptial agreement, shows that where a postnuptial agreement 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 must be signed by both parties simultaneously in front of a Russian Notary. Foreign marital agreements will not be upheld.



England v Russia: SPOUSAL MAINTENANCE

England	Russian Federation
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.



England v Russia: CHILD MAINTENANCE

England	Russian Federation
<ul style="list-style-type: none"> Child Maintenance Service (CMS) has jurisdiction for most domestic cases (formulaic). The Courts have jurisdiction in cases where F resides abroad (discretionary). 	<ul style="list-style-type: none"> Child support agreements common. Capital payments can be accepted in lieu of child support. In the absence of an agreement a formulaic approach (one quarter of a parent's income for one child to one half for 3 or more children – variable by the court to reflect circumstances).



England v Russia: TRUSTS

England	Russian Federation
<p>Trust interests will often be treated as a resource available to the family (<i>Charman v Charman</i> [2007] EWCA Civ 503).</p>	<p>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</p>



England v Russia: MARITAL PROPERTY

England	Russian Federation
<p>Inherited wealth and pre-marital assets will be included in the pool of assets available for fair division between the parties. In calculating fairness, the starting point is equality of division of the marital assets. However "non-marital property" is relevant in cases where needs exceed resources and where there has been commingling of assets.</p>	<p>Inherited wealth and pre-marital assets are excluded from the pool of marital property to be shared on divorce.</p>



England v Russia: FINANCIAL PROVISION

England	Russian Federation
The Court's objective is to achieve fairness (<i>White v White</i> [2000] UKHL 54).	Only jointly held capital assets are available for division (s.34 RFC).
No bias in favour of the money-earner against the home-maker.	Pre-acquired property, inheritances are excluded (s.36 RFC).
Discretionary jurisdiction with the yardstick of equality serving as a check.	Assets situated abroad are rarely taken into consideration.



England...



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



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.




Forum Shopping – anywhere but England?

“Another Russian divorce case cements London as divorce capital of the world” – *Spear’s*, August 2014 

“Elena Rybolovleva, ex-wife of Russian billionaire Dmitry Rybolovlev, awarded \$4.8B in (Swiss) divorce ruling” - *Daily News*, May 2014 

“Boris Berezovsky pays out £100m in UK’s biggest divorce settlement” – *The Guardian*, July 2011 

“Final whistle for Abramovich as divorce is announced” – *Inside Divorce*, March 2007 



Anglo-Russian Divorce: recent cases

Golubovich v Golubovich [2010] & [2011]

- 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.
- Thorpe J commented that the Brussels II/ 'first past the post' system would have avoided huge costs of the jurisdictional race.
- W proceeded under Part III of the Matrimonial and Family Proceedings Act 1984.
- Part III application successful. Capital award of £2.485million
- Appealed/dismissed but wife left with an enforcement problem

Ilya



Elena



Anglo-Russian Divorce: recent cases

F v Y (abduction: acquiescence) [2014]

- 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 decisions



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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