

## **International Prenuptial Agreements Part IV:**

### **The Application of Foreign Law to Prenuptial Agreements in the U.S.**

**By Chaninat & Leeds**

*2 September 2011*

Many couples get married abroad yet eventually want to live in the United States. In fact, over 400,000 U.S. citizens marry citizens from other countries each year and an unrecorded number of U.S. couples have “destination weddings” in foreign countries. Many of these couples will have signed [prenuptial agreements in Thailand](#) or other foreign countries. As discussed in Part II of this series, U.S. courts do not have a uniform approach that controls prenuptial agreements. Some states apply the laws of the country where the couple signed the agreement, whereas other states will only apply U.S. law. State courts differ greatly in their applications of foreign laws. The three examples discussed below give a small taste of this complexity. Couples who plan to sign a prenuptial agreement abroad but want to enforce it within the U.S. should seek legal counsel who has practical experience with the application of foreign law.

In *Chaudrey v Chaudrey*, a New Jersey court reviewed a couple’s prior Pakistani divorce proceeding. After finding that the divorce was valid, the court then addressed the couple’s prenuptial agreement. The prenuptial agreement had been signed in Pakistan. It included clause limiting the wife’s financial rights to only 15,000 rupees (\$1,500) at the dissolution of the marriage. The court found that Pakistan’s prenuptial laws would apply to the agreement because it had been signed in Pakistan. Pakistan law does not allow prenuptial agreements to provide alimony to a spouse. The court found that the prenuptial agreement’s 15,000 rupees clause was a form of alimony. The court reasoned that the prenuptial agreement was invalid in New Jersey because it would be invalid under Pakistani law.

In the case of *Black v Powers*, the Virginia Court of Appeals reviewed a couple’s prenuptial agreement that had been signed in the Virgin Islands. The court applied the *lex loci* approach (See Part III), and held that the laws of the Virgin Islands would apply. The court applied Virgin Islands’ law and upheld the prenuptial agreement. If Virginia’s law had been applied, the prenuptial agreement would likely have been ruled invalid. The court specifically did not address whether it would violate Virginia’s public policy to hold the prenuptial agreement valid. Instead, the court merely applied the Virgin Islands law and upheld the agreement.

The court in *Mehtar v Mehtar* took a rather different approach to an international prenuptial agreement. In that case a Connecticut court reviewed a prenuptial agreement that had been signed in South Africa. The couple specifically contracted the agreement in order to opt out of South Africa’s default community marital property system. The court conducted a balancing test to determine which country’s laws would apply to the agreement. The test consisted of weighing seven different public policy goals( the needs of the interstate and international systems, the relevant policies of the forum, the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue, the protection of justified expectations, the basic policies underlying the particular field of law, the certainty, predictability and uniformity of result and ease in the determination and

application of the law to be applied) . The court stressed the importance of the parties' expectations and the parties' need for certainty in results. The court found that expectations of the couple outweighed the interests of Connecticut and applied South African law. The court found that the agreement was valid under South African law and therefore would be enforced in Connecticut.

As a brief glance at the above examples illustrates, U.S. courts do not consistently apply foreign laws to international prenuptial agreements. Couples who are interested in signing an agreement abroad but enforcing it within the United States should consult with legal counsel. The counsel should have practical experience in the application of foreign laws in U.S. courts.

If the couple is married in Thailand, it would be advantageous to contact [Thailand Prenuptial attorneys](#) prior to the marriage in order to create the best possible agreement for their situation.

**Related Documents:**

[International Prenuptial Agreements Part I](#)

[International Prenuptial Agreements: Part II](#)

[International Prenuptial Agreements: Part III](#)

[International Prenuptial Agreements: Part V](#)

[International Prenuptial Agreements: Part VI](#)

[International Prenuptial Agreements: Part VII](#)

[International Prenuptial Agreements: Part VIII](#)

[Thailand Prenuptial Lawyers](#)

[Divorce Law of Thailand](#)