

**Brussels II bis**

**By**

**Hélène Poivey-Leclercq  
and  
Fredric Renström**

---

---

---

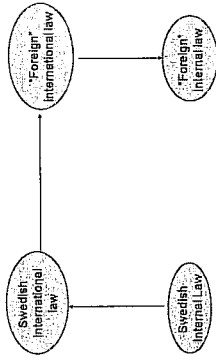
---

---

---

---

---



---

---

---

---

---

---

---

---

**PRACTICAL DIVORCE CASES**

1. Mrs Smith approaches you by e-mail, saying that she desperately wants to divorce her husband, Mr Smith, who is terrible.

She says that she is English, residing in the Netherlands. Mr Smith (who also is English) is working for a Swedish company in Paris since two years, and has just recently bought an apartment there, saying that he is now going to live there with his French girlfriend (which perhaps is the reason for Mrs Smith being so upset).

How can you help her?

---

---

---

---

---

---

---

---

In which country may she seek a Divorce?  
Let us look at Brussels II bis, and in particular Article 3;

Art 3  
Habitual residence of the spouses  
Last habitual residence if one of the spouses still lives there  
Habitual residence of the defendant  
If joint application; habitual residence of either of spouses  
Habitual residence of plaintiff if he/she resided there for a year prior to application  
Habitual residence of plaintiff if he/she resided there for 6 month prior to application if nationality or domicile (Ireland and UK)  
Mutual nationality or domicile (Ireland and UK)

Article 6.  
A spouse habitually resident in or a national of an EU state (domicile for Ireland & UK) =  
Only article 3 -5  
Article 7  
If no EU Court Jurisdiction according to arts 3-5 = domestic rules on Jurisdiction

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---



Mr Svensson seeks your advise as to where in Europe (if at all) he can seek a divorce? He naturally also wants to know what financial consequences he would face on a possible forums? Etc.

Jurisdiction in France?  
Jurisdiction in Sweden?  
Elsewhere?

---

---

---

---

---

---

---

---

Would anything change if the wife was a Chinese citizen?  
Any changes in relation to Jurisdiction?  
Financials?  
Would the Marriage Contract be recognized?  
In all parts?

---

---

---

---

---

---

---

---

3. Mrs Dupont, a French citizen, is married to Mr Dupont, another French citizen. They have lived in Sweden during the whole marriage (we know that it is a rather odd choice, but this is still true). Mrs Dupont believes that Mr Dupont has been having an affair. She wants to "win" as much as much as possible, and by doing so, be a bit nasty to Mr Dupont. She wants your advise. What do you suggest to her?

---

---

---

---

---

---

---

---

Where can she ask for a Divorce?  
Applicable law on Divorce?  
Which law would be applicable on their financial relations?  
Applicable law on maintenance TODAY?  
Security Measures? Etc?  
Would it be different if Mrs Dupont instead was Mr Dupont,  
having a registered partnership with Mr Dupont?

---

---

---

---

---

---

---

---

4. Mr John Jones, an American citizen from Texas, is married to a Swedish girl, Eva. They used to live jointly in Italy. He still lives there, but she has taken their joint child Johannes (with the consent of John) to Sweden, and been there for 7 months.  
Where can he or she ask for a Divorce?  
Applicable law on Divorce?  
Which law would be applicable on their financial relations?  
Applicable law on maintenance TODAY?  
Jurisdiction in relation to Johannes?  
Others?

---

---

---

---

---

---

---

---

Parental responsibility  
Article 8  
Habitual residence of the child at the time when the application was filed.  
See however Article 9, 10 and 12

---

---

---

---

---

---

---

---

5. Mrs Bond, an Italian citizen is married to an Irish Citizen, Mr Bond, and they are residing in Ireland. They have two children, Steve and Sue. She calls you from Italy to where she has moved (without the consent of Mr Bond), with the Children. How would you advise her? What questions would arise? In which country would she be able to seek relieve?

And if you instead would be advising Mr Bond?

Article 9, 10 and 11 (Do not forget the other Articles)

The Haag-convention on child abduction.

We should also (but not now since that will be discussed I am sure later today on another workshop) look at the following Articles;

- Artikel 10 Jurisdiction in case of abduction
- Artikel 11 Return of children
- Artikel 12 Agreement about Jurisdiction
- Artikel 15 Transferral of the case to another more appropriate forum
- Artikel 16 Commencement of application
- Artikel 28 Enforceable Orders
- Artikel 40-42 Enforcement

6. Mr Olsson, a Swedish citizen, is married to a Greek citizen, Mrs Olsson. They moved to China shortly after the marriage. Upon living China, Mrs Olsson moved to France and has lived there for two months, when Mr Olsson contacts you. Mr Olsson himself moved to Australia, because of his job, at the same time as Mrs Olsson moved to France. They have a Swedish Marriage Contract.

Can he apply for Divorce in Sweden? Or in Germany? Or elsewhere?

What other issues would have to be regarded?

If they have children and they have moved with their mother to France, which forum would be applicable?

In which country would the maintenance for the wife and the children be heard? And which law would be applicable?

What about the marriage contract? Would that be upheld? Applicable law in relation to the financial relations?

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---

---