

CASE STUDY

Laura is an Australian citizen, born in Australia and now living in France with her husband, Charlie.

Charlie was also born in Australia. He has Australian and Italian citizenship.

Laura and Charlie were married in August 2009 in Sydney, Australia. Before they married they entered into a pre-nuptial agreement in Australia.

An extract of the terms of the agreement is as follows:

Charlie acknowledges that:

He has no entitlement to the property and financial resources in Schedule 'B' (Laura's separate property) herein, any accretion of them or income from them and further that he will make no claim at law or in equity in relation to those assets.

(...)

Financial Consequences on Breakdown of the Marriage

If the parties are residing in a property which forms part of Laura's Separate Property, then Charlie shall vacate the said property within 28 days of the date of the permanent breakdown of the marriage.

(...)

Spousal Maintenance

In the event of a permanent breakdown of the marriage, neither party shall have any obligation to provide any spousal maintenance for the other either:

- (a) During the course of their marriage; and/or*
- (b) After the permanent breakdown of the marriage;*
- (c) And each of the parties acknowledge that they have no obligation at law or in equity to provide any financial support for the other.*

This is an Agreement to which the [relevant Australian] Act applies in respect of spousal maintenance.

One of the purposes of this Agreement is to make provision for the maintenance of Charlie and Laura.

The provision in this Agreement for Charlie which is attributable to his spousal maintenance is the sum of \$1.

The provision in this Agreement for Laura which is attributable to her spousal maintenance is the sum of \$1.

(...)

Governing Law

This agreement is to be governed and construed according to the law in force in the Commonwealth of Australia and the parties each submit to the jurisdiction of Australia.

In July 2010 Laura is offered an opportunity to work in Paris and is offered an expatriate contract with her current employer. Charlie and Laura decide to take advantage of the opportunity and they move to Paris. With the employment contract Laura benefits from an advantageous rental of an apartment in Paris with the lease contract signed between the owner and the company she worked for. Laura and Charlie settle into the apartment and it is the matrimonial home.

Unfortunately Charlie is bored in Paris and spends a lot of time chatting with young women on dating websites. Laura is extremely upset when she discovers this and decides that the marriage is over. Although Laura has asked Charlie to vacate the matrimonial home, Charlie continues to live there, returning back in the early hours of the morning, often drunk.

Laura has now filed for divorce on an emergency basis before a French judge. She asks the French judge to apply the Australian pre-nuptial agreement and to give her the use of the matrimonial home and order that Charlie vacate the property. Charlie asks the French judge to disregard the Australian pre-nuptial agreement and to order that Laura pays his spousal maintenance (alimony). He also asks for an order that he may continue to reside in the matrimonial home.

Please consider

1. Would the terms of the pre-nuptial agreement be enforced by a judge in your country? Would there be any formality requirements that would need to be met before the agreement would be enforceable?
2. Are there any clauses which would be questioned by a judge in your country? Would your answer differ if the pre-nuptial agreement included a valid jurisdiction election for the purposes of the EU Maintenance Regulation, or a valid election of applicable law for the purposes of the Hague Protocol?
3. Would the drafting of the 'separate property' clause have any impact on Laura's application for an order requiring Charlie to vacate the property? Are there any other remedies available to Laura/protections available to Charlie in relation to the occupation of the matrimonial home?
4. Would your answer to any of the questions above change if Laura and Charlie had a child?