

**deti says:**

June 18, 2013 at 9:08 am

Agree with Nova in his analysis. My sense of how US family courts will respond to changing family structures is:

1. Contracts, legal agreements, etc. which purport to govern a marriage will be enforced only to the extent that enforcement isn't considered patently unfair as applied to the woman.
2. Any contract provisions that purport to govern child custody, visitation or support will be null and void, and won't be enforced at all, ever. The court will determine those issues based on the "best interests of the child" standard. Parents cannot contract away their obligations to support their child. As a practical matter, that prohibition applies mostly to fathers. That's never, ever going to fly in any US family court anywhere, now or in any kind of future I can envision.
3. A man won't necessarily be able to avoid alimony by avoiding legal marriage. The courts will use the "duck" standard: If it looks, walks and quacks like a duck, then it's a duck. So, if it looks like a marriage, the man and woman were living together as married and holding themselves out as married, then they're married in the eyes of the law, and alimony will be on the table.
4. You can't deprive a court of jurisdiction by stating in a contract that a court cannot assert jurisdiction over it or over the parties to the covenant. The entire point of a contract is that it can be legally enforced. A court asserts jurisdiction over the res, the object of the contract, and that res is the family or any member of it. Second, where the contract touches on family relationships, the court will assert jurisdiction over the disputes to facilitate "orderly" resolutions to the disputes.
5. Family courts are courts of equity. That means what will rule the day are general principles of fairness based on presently existing facts and circumstances. A US family court will not use rigidly applied legal rules and principles except within a legal framework that gives that court a lot of discretion.