International Family Law, Policy and Practice

MIDDLE AND FAR EAST THEMES IN INTERNATIONAL FAMILY LAW

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General Editor's Message

This issue of the journal for Winter 2022-23 is guest edited by a team of practitioners led by Alexandra Tribe, Director of the international law firm Expatriate Law of London, Abu Dhabi and Singapore, and as General Editor of *International Family Law, Policy and Practice*, I have therefore handed over to her the task of introducing her issue herself, as its Editor for this issue, which focuses on material in which her offices in the areas of the world where Expatriate's offices provide their particular expertise in international Family Law.

Sadly, ICFLPP has still been unable to offer another of our triennial international conferences in London since 2019 although we hope to find new ways of contributing to the international Family Law community before too long. Meanwhile ahead of Alexandra's upcoming conference in Abu Dhabi in April 2023 we have been grateful to her for her work on this issue and we look forward to being in touch with everyone working in the global Family Law field again soon.

Frances Burton

Dr Frances Burton

Co-Director ICFLPP and General Editor of *International Family Law, Policy and Practice*

Guest Editor's Message

It was a tremendous privilege to be asked to be guest editor of this issue of the International Family Law, Policy and Practice journal 2023. I look back fondly at the hugely successful ICFLPP conference in 2019, which incredibly was attended by speakers from 32 different jurisdictions. It was such an enjoyable event and wonderful to see lawyers and academics from so many different cultures exchanging ideas and practises, and learning from each other. The highlight for many was drinks and dinner at the formidable terrace of the House of Lords. What a treat for us all before being subjected to the dreaded Covid lockdowns.

This year's edition follows middle and far east themes in international family law, an area of great interest to me having practised from the UAE for 9 years. My firm's offices in the UAE and Singapore have allowed me to forge friendships with lawyers in these regions and keep abreast of their changing family laws and practices, and the challenges faced by practitioners undertaking cross border work.

The articles within this journal show the importance of collaboration with fellow international family lawyers to enhance and develop mutually beneficial contacts and a continued awareness of evolving cross jurisdictional global changes.

Looking ahead, we are excited to hold our firm's international family conference in Abu Dhabi on 27th and 28th April 2023, where over 20 leading figures in international family law from various jurisdictions will further discuss international family law developments.

I give my sincere thanks to Frances and Marilyn, and all contributors to this issue.

Alexandra Tribe

Alexandra Tribe

Managing partner, Expatriate Law

Editorial Board of *International Family Law, Policy and Practice*

The United Arab Emirates and England and Wales– a step towards reciprocal enforcement

Byron James*

The English High Court – as upheld by the English Court of Appeal – decided in a recent decision about a bounced cheque to uphold a judgment of the Dubai cheque. The decision is cited in the law reports as Lenkor Energy Trading DMCC v Puri1 ("Lenkor").

The English Courts decided that a Dubai determination on the liability of Mr Puri – a British citizen – for the amount of the cheque was neither contrary to public policy nor, for any of the other reasons asserted, unfair and therefore should be upheld.

There is a Bilateral Treaty between the UK and UAE dated 2006 covering a number of judicial assistance matters including enforcement. Article 14 of the treaty sets out that '*execution may not be refused solely on the ground that under its domestic law the Requested Party claims exclusive jurisdiction over the subject matter of the action or that its domestic law would not admit a right of action on it.*' However, in practice, one party establishing jurisdiction over a court matter in the UAE usually blocked the enforcement of a foreign order in the UAE courts. Mutual enforcement and recognition has been difficult and ultimately often not possible.

However, the Lenkor decision by the English Courts, triggered the UAE Article 85 of Cabinet Resolution No. 57 of 2018 concerning the Executive Regulations of Federal Law No. 11 of 1992 (as amended) – which allows for the UAE to enforce foreign judgments "*under the same conditions laid down in the jurisdiction issuing the order*". This therefore means that as England has upheld a UAE decision and enforced it, the UAE should now do the same by return to English judgments.

Following the Lenkor decision, the UAE Ministry of Justice avoided any doubt on the issue and issued a notice to all Courts describing the Lenkor case as "constitutes a legal precedent and a principle binding on all English Courts according to their judicial system" – this being a result of the English common law legal system where case law sets a binding precedent on lower courts. The Ministry of Justice notice went on to state that the UAE Courts must "*take the relevant legal actions regarding any requests for enforcement of judgments and orders issued by the English Court, in accordance with the laws in force in both countries, as a confirmation of the principle of reciprocity initiated by the English Courts and assurance of its continuity between the English Courts and the UAE Courts.*"

This is very significant news for England and the UAE. It means that a money judgment obtained in England should be considered capable of being upheld and enforceable by the UAE Courts with some certainty whereas before it was considered an avenue unlikely to succeed. This has the potential to extend beyond just corporate and commercial debts. It is likely to extend to those with credit card or loan debts in one country but living in the other, hoping to take advantage of the previous lack of reciprocity.

It will also be likely to have a huge impact on those who obtain English financial remedy orders on a divorce requiring a UAE resident to pay sums of money, whether it be for child maintenance, spousal maintenance, lump sum, property adjustment or otherwise. The advice to people in possession of such orders should now be that the UAE Courts are available and willing to enforce

* Byron James is a Partner at Expatriate Law based in the United Arab Emirates.

1 [2021] EWCA Civ 770.

those judgment debts obtained in England against the residents of the UAE.

This is very good news for those with English Court orders and very bad news for those hoping to hide in the UAE without paying them. In the coming year, we will see test cases progress through the UAE courts, hopefully showing successful enforcement, a significant development in comity of the courts in these two jurisdictions.

United Arab Emirates: Remedies for Parental Child Abduction under the Law

Dr. Hassan Elhais

The law which governs family matters and disputes (including divorce) in the United Arab Emirates (UAE) is the Federal Law No. 28 of 2005 (the UAE Personal Status Law)2. The Federal Law No. 5 of 1985 on Civil Transactions Law (the UAE Civil Law)3 is also applicable. The Emirate of Abu Dhabi has issued a new law called the Abu Dhabi Law No. 14 of 2021 (the Abu Dhabi Law)4 which mainly applies to non-Muslims based in Abu Dhabi. However, the UAE Law continues to apply to Muslims in Abu Dhabi. Our responses are generally based on the UAE Law unless specified otherwise. The UAE has issued a Civil Personal Status Law for non-Muslims at the Federal Level which will be effective from February 2023. The New Federal Law comes after the effective application of a non-Muslim Personal Status Law existing in Abu Dhabi covering matters related to alimony/ maintenance/ periodical payments. Alimony is commonly understood in international contests (particularly in the USA), the usual term in English law (including as applied in the civil jurisdictions of the EU) is 'maintenance' or 'periodical payments'.

Under UAE laws, neither of the parents shall relocate the children without the written consent of the other parent. And they shall not travel with the child without the written consent of the other parent. Both parents have the right to put a travel ban on their children. In matters related to children, the fundamental principle that is followed by the courts is to keep in mind the best interests of the child. In case a parent would like to travel with the children for a short visit but the other parent refuses then the parent would have the right to raise a request to the family court for permission to travel with the child. Pursuant to the Dubai Cassation ruling, the freedom to travel is guaranteed to every person under the United Arab Emirates Constitution. Therefore, so long as the parent's short travel does not prejudice the child, custody shall not be removed from that parent because of such short travel. Having said that, it is important to note that there is Decision No. 3 of 2021 in the Emirate of Dubai (Dubai Decision No. 3/2021 On the Adoption of the Manual of Procedures Organizing Personal Status Matters in Dubai Courts). One of the most significant changes in this Decision No. 3 of 2021 is organizing the freedom of travel with the child and the travel ban decision, which can be issued against the child by one of the parents. As per Article No. 14/a of this decision, the right to travel with the child shall be secured by the force of law, and protection of this right is beside the right of the father and mother, and in consideration of the child's right before any other. The decision provides a list of factors that the court may consider before issuing a travel ban at the request of either of the parents and the circumstances under which either of the parents may be authorized to travel with the child. The aforesaid Decision No. 3 of 2021 is applied in the Emirate of Dubai only. Parental Child Abduction may happen in the following two scenarios:

[2] Federal Law No. 28 Issued on 2005/11/19 On Personal Status Amended by virtue of Federal Decree-Law No. 8 dated 2019/08/29; Federal Decree-Law No. 5 dated 2020/08/25; and Federal Decree-Law No. 29 dated 2020/09/27.

[3] Federal Law No. 5 Issued on 1985/12/15 On the Civil Transactions Law of the United Arab Emirates State Amended by Federal Law no. 1/1987 dated 1987/2/14; and Federal Decree-Law No. 30 dated 2020/09/27.

[4] Abu Dhabi Law No. 14/2021 On Personal Status for Non-Muslim Foreigners in the Emirate of Abu Dhabi.

Scenario One
If the parties are residents of the UAE and one of the spouses abducts the child to another country. The following legal actions may be taken:

- The prejudiced party may file a court case in the UAE to claim custody of the child.

- Upon getting the custody court order from the local courts the custodian shall commence a criminal case for child abduction under the UAE Penal Laws.

After filing the criminal case, the custodian has the right to approach Interpol to seek an extradition request pursuant to Federal Law No. 39/2006 on International Judicial Co-operation in Criminal Matters.

Scenario Two
In case of child abduction from another country to the UAE. The following legal actions may be taken:

- If the mother has suffered harm and the child is under custody age, the mother may approach the court of urgent matters for an order to return the child to the mother until the custody matter is decided by the court. Such orders are issued within a few days, and the mother may execute the order with the assistance of the police.

- She may make an application to the court for a new custody case in the UAE to obtain child custody and also request a temporary decision of custody until the dispute is settled.

- If the mother has a custody court order from the local courts or from an international court, she can commence a criminal case for child abduction stating that she has child custody.

The last point brings us to another topic as to how the UAE courts may recognize the foreign court's order. A foreign court order granting custody can be recognized in the UAE, subject to the rules set out in Article 222 of the Federal Decree-Law No. 42/2022 on the Promulgation of the Civil Procedure Law. According to this Article, to enforce a foreign court order in the UAE, a petition has to be filed with the execution judge by the party wishing to obtain an execution order. While reviewing the application, the court will consider whether the UAE courts are exclusively competent to hear the dispute in which the foreign order has been delivered and that the foreign court, which issued it, had the authority to deliver it. It will be checked whether the order was issued by the foreign court in accordance with the laws of the country where it was issued and duly ratified. The UAE courts will also consider whether all litigants had been summoned to attend and were properly represented in the claim in which the foreign order was issued. It will also be verified that the foreign order has acquired the status of res judicata, does not conflict with a previous judgment or order of the UAE court, and is not against public order or the morals of the country. The execution judge may issue the decision within 5 days from the date of submission of the petition. An appeal may also be made from the decision of the execution judge. However only filing such an appeal shall not stop the enforcement, if the appellate courts do not decide to stop/ cancel or freeze the enforcement.

Alternatively, the parents may enter into a settlement agreement before the local courts in the UAE, where the parents must attend personally or through their lawyers, so long as at least one party is a resident of the UAE. This will enable the parties to agree on the period of the child's

travel, return of the child, and travel ban-related matters. The applicability or enforceability of this agreement is similar to a final local court order. The timeframe to execute a settlement agreement will be much faster than applying to enforce a foreign order in the UAE. Lastly, this process allows both parties to secure the terms and conditions that they want in advance, prior to bringing the child to the UAE.

The determination of Habitual Residence in the context of parental child abduction

Sonny Patel[5*]

Both Singapore and the United Kingdom are signatory states to the *Hague Convention on the Civil Aspects of International Child Abduction 1980* (the 1980 Convention) .[6] The Convention is given domestic legal effect in the UK by *the Child Abduction and Custody Act* 1985 (the 1985 Act).

The writer recently handled an application by a left-behind father for the summary return of his daughter to Singapore from England, following the abduction by the mother of one of their two children.

The primary issue was whether the child had acquired habitual residence in Singapore or retained habitual residence in England.

The couple made a joint decision to leave England and move to Singapore with their children. At the time of the move in March 2021, the father understood that the move was for an indefinite period of time (albeit he accepted that the move was not necessarily permanent). The mother's position was that the move was for a trial period only, and that if the move proved to be unsuccessful, that the family would return home.

The court concluded that the parties were both telling the truth about what they thought was agreed, but that there was in fact no clear, concluded agreement about the basis on which the family were moving to Singapore and no clear or concluded agreement that the mother would retain the right to say that the move was not a success and hence that the family should return to live in the UK.

After 15 months of life in Singapore, and escalating problems in the relationship between the parents, the mother unilaterally determined that the move to Singapore had been unsuccessful and fled with one of the party's two children. The father initiated a summary return application in England.[7]

The primary objective of the 1980 Convention is to restore the status quo by securing the prompt return of a child who has been wrongfully removed from his or her place of habitual residence. A removal or retention of a child is 'wrongful'[8] if it is one that is in breach of the rights of custody of the left behind parent under the law of the state in which the child is habitually resident.

If a court finds that such a wrongful removal has occurred, the relevant contracting state is obliged to order the return of the child forthwith unless a period of more than a year has elapsed since the date of the wrongful removal or retention and the child is settled in his or her new environment.[9] In this matter, the obligation on the court was therefore mandatory unless one or more of the

[*] Sonny Patel is a Partner of Expatriate Law in the Singapore office.

[6] Hague Convention on the Civil Aspects of International Child Abduction 1980.

[7] Hague Convention on the Civil Aspects of International Child Abduction 1980, Art 12.

[8] Hague Convention on the Civil Aspects of International Child Abduction 1980, Art 3 and 14; *Re S* [1994] 1 FLR 82; and *Re H* [1991] 2 FLR 262.

[9] Hague Convention on the Civil Aspects of International Child Abduction 1980, Art 12.

following applied: a finding that the father was not exercising legal rights of custody immediately prior to that date;[10] a finding that the child was not habitually resident in Singapore immediately before the child's removal; or if the mother could establish an exception to summary return (in this case under Art 13(b))[11] which would displace the mandatory obligation on the court and replace it with a discretion in relation to whether a return should be ordered.

The exceptions contained in Article 13(b) include the following: where the person applying for return consented to or subsequently acquiesced in the child's removal or retention; where there is a grave risk that the return of the child would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation; and where the child objects to return and has attained an age and degree of maturity at which it is appropriate to take the child's views into account.

In this matter, the mother's primary argument was that the child had never gained habitual residence in Singapore, therefore the child was in fact habitually resident in the jurisdiction of England and Wales prior to the alleged wrongful removal.

If the court agreed with the mother and found that the child was in fact habitually resident in England at the time of the removal from Singapore, the father's summary return application would fail as there would have been no 'wrongful' removal or retention.[12]

In support of her primary argument, the mother emphasised that the move to Singapore was a "trial period" only. She focused on issues relating to her employment opportunities in England versus in Singapore, her immigration status in Singapore, and the difficulties in the relationship between the parties.

The legal teams for both parties agreed that in respect of the exercise of evaluating a child's habitual residence, the current law in England is summarised in the cases of *Re B (A child) (Custody Rights: Habitual Residence*)[13] and *Re M (Children) (Habitual Residence: 1980 Hague Child Abduction Convention)*.[14]

The relevant principles applicable to the determination of a child's habitual residence can be extracted from both cases, distilled, and merged as follows:

a) The concept of 'habitual residence' corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, in particular the duration, regularity, conditions and reasons for the stay on the territory of a member state and the family's move to that state, the child's nationality, the place and conditions of attendance at school, linguistic knowledge and the family and social relationships of the child in that state must be taken into consideration.[15]

b) In addition to the physical presence of the child in a member state, other factors must be chosen which are

[10] Hague Convention on the Civil Aspects of International Child Abduction 1980, Art 5; *Re A* [2020] EWHC 2874, at para 74.

[11] Hague Convention on the Civil Aspects of International Child Abduction 1980, Art 13(b).

[12] Hague Convention on the Civil Aspects of International Child Abduction 1980, Art 3 and 14.

[13] *Re B* [2016] EWHC 2174.

[14] *Re M* [2020] EWCA Civ 1105.

[15] *Re A v A (Judgment 2 April 2009)* [2010] Fam 42.

capable of showing that that presence is not in any way temporary or intermittent.[16]

c) The test is essentially a factual one which should not be overlaid with legal sub-rules or glosses.[17] The factual enquiry must be centred throughout on the circumstances of the child's life that is most likely to illuminate his habitual residence.

d) The criterion does not require the child's full integration in the environment of the new state but only a degree of it.[18]

e) In certain circumstances the requisite degree of integration can occur quickly.[19]

f) The younger the child, the more their social and family environment will be shared with those on whom the child is dependent, giving increased significance to the degree of integration of that person or persons. However, this is not to eclipse the fact that the investigation is child focused. It is the child's habitual residence, which is in question and, it follows the child's integration which is under consideration.[20]

g) The focus is on the child's situation with the purposes and intentions of the parents being merely among the relevant factors.

h) There is no requirement that the child should have been resident in the country in question for a particular period of time nor is there any requirement that there should be an intention on the part of one or both parents to reside there permanently or indefinitely.[21]

i) It is the *stability* of a child's residence as opposed to its *permanence* which is relevant, though this is qualitative and not quantitative, in the sense that it is the integration of the child into the environment rather than a mere measurement of the time a child spends there.[22]

j) It would be highly unlikely for a child to have no habitual residence. If interpretation of the concept of habitual residence can reasonably yield both a conclusion that a child has a habitual residence and, alternatively, a conclusion that he lacks any habitual residence, the court should adopt the former.

k) It is possible for a parent unilaterally to cause a child to change habitual residence by removing the child to another jurisdiction without the consent of the other parent.

In *Re B* Hayden J was critical of lawyers who continue to fail properly to address the issue of habitual residence in a child-focused manner:

> If there is one clear message emerging both from the European case law and from the Supreme Court, it is that **the child is at the centre of the exercise when evaluating his or her habitual residence. This**

[16] *Mercredi v Chaffe* [2011] 1 FLR 1293, at para 49.
[17] *KL* [2013] UKSC 75; *A v A* [2013] UKSC 60, [2013] 3 WLR 761, at para 54.
[18] *Re A v A (Judgment 2 April 2009)* [2010] Fam 42.; *Mercredi v Chaffe* [2011] 1 FLR 1293, at para 55.
[19] *Re B* [2016] EWHC 2174, at para 39.
[20] *Re LC* [*2014*] *UKSC* 1; *AR v RN* [2015] UKSC 35, at para 60.
[21] *Re M* [1996] 1 FLR 887; *Re A* [1998] 1 FLR 497.
[22] *Re R [2015] UKSC 35, [2016] AC 76.*

> **will involve a real and detailed consideration of (inter alia): the child's day to day life and experiences; family environment; interests and hobbies; friends etc and an appreciation of which adults are most important to the child. The approach must always be child driven.** I emphasise this because all too frequently and this case is no exception, the statements filed focus predominantly on the adult parties. It is all too common for the court to have to drill deep for information about the child's life and routine. This should have been mined to the surface in the preparation of the case and regarded as the primary objective of the statements. I am bound to say that if the lawyers follow this approach more assiduously, I consider that the very discipline of the preparation is most likely to clarify where the child is habitually resident.[23]

Hayden J directs further comments to solicitors working on cases where the determination of habitual residence is the core issue:

> the solicitors charged with preparation of the statements must familiarise themselves with the recent case law which emphasises the scope and ambit of the enquiry when assessing habitual residence; if the statements do not address the salient issues, counsel, if instructed, should bring the failure to do so to his instructing solicitors attention; an application should be made expeditiously to the Court for leave to file an amended statement, even though that will inevitably result in a further statement in response; Lawyers specialising in these international children cases, where the guiding principle is international comity and where the jurisdiction is therefore summary, have become unfamiliar, in my judgement, with the forensic discipline involved in identifying and evaluating the practical realities of children's lives. They must relearn these skills if they are going to be in a position to apply the law as it is now clarified.[24]

In the Singapore/England case mentioned by the writer in the opening paragraphs, the court concluded that it was not necessary to establish definitively whether these parents had decided to remain in Singapore permanently as an intention to reside permanently there was not a prerequisite for a finding of habitual residence. There was no evidence that the children believed that the move to Singapore was a mere trial period. The court found, based primarily on the father's evidence, that from the children's perspectives the move to Singapore had all the appearance of a settled existence: they had started school, they were developing relationships with new friends and the father's family. The court concluded that the new arrangements quickly became sufficiently stable and settled to qualify as being 'habitual'. The court ordered the child to be returned to Singapore. [25]

J and R (Habitual Residence)[26] is a recent case with a similar core issue at the heart of the litigation. The parties moved from

23 *Re B (Judgement)* [2016] EWHC 2174, at para 18.

[24] *Re B (Judgement)* [2016] EWHC 2174, at para 18. (i-iv).

[25] Hague Convention on the Civil Aspects of International Child Abduction 1980, Art 18.

[26] *J and R* [2022] EWFC 104.

England to Spain and lived in Spain for 12 months. The mother then fled with the child back to England without the father's consent, arguing that taking the move to Spain was only ever meant to be temporary and that taking child back to England was merely a return home, and therefore a continuation of her prior habitual residence in England. Mrs Justice Roberts had no difficulty in finding that the child had acquired a sufficient degree of integration into his home, school and social life in Spain to enable her to find that he had acquired habitual residence in that jurisdiction. The court ordered the child to be returned to Spain.[27]

Habitual residence can be acquired very rapidly, and parental intention is just one relatively minor consideration in the overall assessment of habitual residence. A parent who believes that a move abroad was only ever meant to be temporary is unlikely to appreciate that they can quickly lose control over the decision of whether or when the children can be returned "home". It is therefore critically important that parents considering moving abroad with children should seek specialist legal advice before they move.

[27] *J and* R *(Judgment)* [2022] EWFC 104, at para 37.

Anti-suit injunctions v Part III: what is the future of cross border applications for financial relief? – A Singapore perspective

Linda Ong and Cherilynn Chee*

With the increasing number of expatriate families in Singapore, there have been significant legal developments in Singapore regarding cross-border family law disputes in recent years. In the case of *VEW v VEV*[28] the Court of Appeal of Singapore ("SGCA") considered, for the first time, whether an anti-suit injunction ("ASI") should be granted to prevent a party from seeking financial relief in England after the conclusion of divorce proceedings in Singapore, pursuant to Part III of the Matrimonial and Family Proceedings Act 1984 (c42) (UK) ("Part III") in England. This case is unlike typical ASI cases as it concerns (a) an English Part III application, which is intended specifically to cater for scenarios where there is already an overseas divorce outside England, and (b) more critically, Singapore has enacted its own legislation modelled after Part III, in the form of Chapter 4A of the Women's Charter[29] ("Chapter 4A"), allowing its own courts to similarly grant financial relief in the event there is already an overseas divorce outside Singapore.

The SGCA acknowledged that in deciding whether to grant the ASI in this case, a delicate process of balance must be undertaken as there are competing public policies involved. On one hand, there is local public policy in ensuring finality of litigation and ensuring that local court decisions are not undermined by foreign courts. On the other hand, Part III was intended to relieve the financial hardship of a divorcee who requires financial relief despite the fact that a matrimonial order had been made in a foreign jurisdiction. The tension between these public policies not only gives rise to issues of comity, the position taken by the Singapore court on this issue will, in consequence, affect future applicants who wish to seek financial relief under Chapter 4A in Singapore and may in turn be restrained by an ASI granted by a foreign court.

Financial relief consequent to foreign divorce

Applications under Part III and Chapter 4A allow a party to seek financial relief in the UK (in the case of Part III application), or Singapore (in the case of a Chapter 4A application) after an overseas divorce, provided there are sufficient connecting factors between the parties or the assets, with the UK or Singapore, as the case may be. In terms of procedure, an applicant must first obtain leave of court to commence proceedings under Part III/ Chapter 4A (the "Leave Stage"). After leave has been granted, the applicant must then meet the jurisdictional requirements and show that it is appropriate for the UK or the Singapore court to grant financial relief, taking into account several factors set out in the relevant legislations.

* Linda Ong is the Deputy Managing Director of Engelin Teh Practice LLC in Singapore and Cherilynn Chee is an Associate at Engelin Teh Practice LLC.

[28] [2022] SGCA 34.

[29] The Women's Charter (Cap 353, 2009 Rev Ed).

Relevant background facts in *VEW v VEW*

In *VEW v VEW*, the parties first met in England in 2008 and moved into a property in London (the "Property") in March 2009. The Property was owned by the Respondent husband solely. The parties then married in Italy in July 2011 and moved to Singapore in February 2012.

After the marriage broke down, the Appellant wife filed for divorce in England in June 2018 and the Respondent filed for divorce in Singapore immediately thereafter in July 2018. The Appellant failed in her application to stay the divorce proceedings in Singapore on the basis of *forum non conveniens*. The Singapore Family Court granted the divorce and made orders on all ancillary matters including, *inter alia*, the division of matrimonial assets (the "AM Orders").

Under the AM Orders, the Family Court held that the Property shall not be divided as it was excluded from the pool of matrimonial assets. The Appellant did not appeal against the AM Orders. Instead, the Appellant sought leave to apply for financial relief under Part III in the English court and she succeeded in obtaining leave pursuant to section 15(1)(c) of the MFPA which provides the ground for seeking financial relief where "*either or both of the parties to the marriage had at the date of the application for leave a beneficial interest in possession in a dwelling-house situated in England or Wales which was at some time during the marriage a matrimonial home of the parties to the marriage*". It is worth noting the aforesaid ground was not incorporated into Chapter 4A – the Singapore Law Reform Commission took the view that it was "*too tenuous a connection for the Singapore court to assume jurisdiction*".

The Respondent then applied for an ASI in Singapore to prevent the Appellant from pursuing her Part III application in the English court. He succeeded in the Singapore Family Court and in the Singapore High Court (Family Division). The Appellant thereafter appealed to the SGCA.

Findings of the SGCA in *VEW v VEW*

The SGCA found that it was not appropriate to apply the standard test considered in determining an application for an ASI as laid out in the Singapore landmark case of *Lakshmi*[30] ("*Lakshmi*"), for the following reasons:-

(a) **The significance of proceedings under Part III:** Unlike typical ASI cases, the whole basis of Part III is that it is wholly appropriate for two jurisdictions to be involved. Part III does not foreclose a grant of leave to an application even if a foreign court had already dealt with the financial issues in the divorce; instead it confers jurisdiction on the English court that is *additional* to the jurisdiction of a foreign court. Furthermore, the Leave Stage has been proven in practice to be useful in sieving out unmeritorious applications or those which amount to an abuse of process to ensure that the English court only intervenes in appropriate cases.

[30] *Lakshmi Anil Salgocar v Jhaveri Darsan Jitendra* [2019] 2 SLR 372.

(b) **The significance of Chapter 4A:** Given that Chapter 4A is modelled after Part III, the court must consider the implications of its decision on the public policy underpinning Chapter 4A and the potential ramifications for how foreign jurisdictions deal with Chapter 4A.

Instead of applying the standard test in *Lakshmi*, the inquiry before the SGCA ultimately turned on the third factor (out of five) in *Lakshmi* – whether the Part III proceedings would be vexatious or oppressive to the Respondent if allowed to continue. In that regard, the SGCA refused to apply the test for unconscionability (which was the test applied in the English case of *Aliye Ayten Ahmed and another v Mehmet Mustafa*[31], on the basis that the concept of unconscionability was too vague and general. The factors that may be considered in determining whether there was vexatious or oppressive conduct are non-exhaustive and the Singapore court must consider all of the circumstances of the case. For example, the commencement of Part III proceedings is vexatious or oppressive to the other party when the applicant does so to (a) oppress a former spouse by embroiling the former spouse in protracted dispute in England for the purpose of exerting pressure on the former spouse to settle in the foreign court; or (b) take advantage of a "more generous approach" in English law that the applicant may not have under foreign law and attempt to have a "second bite of the cherry".

In explaining the application of the test for vexatious or oppressive conduct, the SGCA made it unequivocally clear that the commencement of Part III proceedings cannot always be deemed as vexatious and oppressive, as this position would:-

(a) render Part III ineffectual and be an affront to comity;

(b) militate against the whole purpose of enacting Chapter 4A and be contrary the public policy behind Chapter 4A, as foreign applicants may be restrained by an ASI from applying to the Singapore court for financial relief pursuant to foreign divorce; and

(c) sit uncomfortably with the fact that the Leave Stage under Part III presumes that the UK court will be diligent in sifting out unmeritorious applications. The reality is that the considerations under the Leave Stage will inevitably overlap with the inquiry as to whether an ASI should be granted. Should the Singapore court grant an ASI against the commencement of Part III proceedings by default, this would preclude the English court from engaging in its own analysis under the Leave Stage. The Singapore court would effectively be taking the position that the Part III regime (and Chapter 4A) does not provide sufficient safeguards against abuse of process, and this would be contrary to the principle of comity.

To that end, the SGCA held that a Singapore court should generally be slow

[31] [2014] EWCA Civ 277.

to grant an ASI against the commencement of Part III proceedings. However, at the same time, the Singapore court is not precluded from granting an ASI to restrain a party from pursuing Part III proceedings as it must retain the ability to safeguard its own public policy, and the integrity of its court proceedings, where necessary. In that regard, the Singapore court will take into account factors such as, whether the English court has granted or denied leave, the stage of divorce proceedings in Singapore, and the nature of the parties' claims in the Part III proceedings.

Re-litigation

In *VEW v VEV*, the Family Court found that there would be re-litigation as the Appellant would be raising the same arguments and using the same factual matrix for her claim in the Property under Part III, and she should not be permitted to re-litigate this issue as the division of the Property was already fully considered and concluded under the divorce proceedings in Singapore. On appeal, the High Court (Family Division) further held that the adequacy of the Appellant's share of the matrimonial assets would necessarily have to be reviewed in its entirety by the English court in considering the Appellant's claim for the Property under Part III, and the English court may come to a different finding for the Singapore court, therefore justifying the grant of an ASI.

The SGCA found that what would constitute as re-litigation depends on the precise facts and circumstances of the case, and the issue must be one of substance and not merely form. While there may literally be "re-litigation" of the division of the Property, that is not the heart of the analysis in this instance. Unlike typical cases concerning the grant of an ASI, the Appellant has a statutory right to commence Part III proceedings in respect of the Property, and Part III/ Chapter 4A, by its very nature and literally speaking, will often involve a consideration of the same facts that were before the foreign court.

With respect to the issue of potential conflicting judgments raised by the High Court (Family Division), the SGCA found that Part III allows the English court to *supplement* the order of a foreign court, albeit there is a fine line between supplementing and *supplanting* a foreign court and there is a lack of guidance in distinguishing between the two. For example, it is unclear from the relevant parliamentary debates in Singapore as to what is the appropriate procedure in the event that the foreign court had made *some* financial provision (as opposed to no financial provision, at all or in relation to a specific asset) such that further financial orders by the Singapore court may give rise to conflicting judgments. Another issue highlighted by the SGCA is that any conditions attached to the grant of financial relief under Part III/ Chapter 4A, may also be inconsistent with Singapore's public policy in ensuring the finality of its judgments. For example, in *Agbaje v Agvabje*[32] and *UFM v UFN*[33], the applicants' willingness to relinquish their rights in respect of matrimonial assets in the foreign jurisdiction was either a condition of, or a relevant factor to the court in, granting financial relief under Part III/ Chapter 4A.

[32] [2010] UKSC 13.

[33] [2018] 3 SLR 450.

The SGCA took the view that in the aforesaid cases, the English court and the Singapore court were, in substance, either supplanting the foreign orders or foreclosing the possibility of such foreign orders.

The SGCA did not consider the above issues in full in *VEW v VEV* as there was no risk of conflicting judgments in the present case – the Singapore court had decided that the Property was not a matrimonial asset and therefore, the question of its division did not even arise under the Singapore divorce proceedings. The SGCA did however suggest that more active case management for Singapore cases could be helpful, for example, by inviting parties to confirm all the possible jurisdictions in which they intend to litigate the ancillary matters at the start of their divorce proceedings, so that the court and parties can consider whether certain assets should be left to be divided by foreign courts upon the divorce in Singapore.

Other findings

In addition to the above, the SGCA also made the following findings which future applicants should take note of:-

(a) There is no requirement for an applicant to exhaust all remedies in the foreign court before applying under Part III/ Chapter 4A. Thus, the commencement of Part III/Chapter 4A proceedings without first appealing against the decision of the foreign court, does not automatically mean that the applicant's conduct is vexatious and oppressive; and

(b) Misrepresentations made by an applicant under Part III/ Chapter 4A could be a factor weighing in favour of granting an ASI insofar as those misrepresentations were made in bad faith and/or suggest that the true purpose of the Part III/ Chapter 4A proceedings was to harass the other party.

Conclusion

The findings in *VEW v VEV* is highly relevant to UK citizens filing for divorce in Singapore. The Singapore court has adopted a flexible approach in determining whether the commencement of Part III proceedings is vexatious and oppressive to the other party, which would justify the grant of an ASI in Singapore. While the SGCA has cautioned that the Singapore court should be slow to grant an ASI to prevent a party from commencing Part III proceedings, the court's approach with respect to situations where there is a risk of conflicting judgments remains uncertain. Tensions remain between the need for finality of local judgments and considerations of comity. Future applicants should be therefore mindful that the Singapore court may grant an ASI to restrain them from commencing Part III proceedings if the Singapore court had made orders to divide the same asset(s) which the applicant is claiming for under Part III, even when leave has been granted by the UK court to commence Part III proceedings.

Besides that, similar to that of applications for *forum non conveniens*, it appears that the stage of the Part III proceedings (especially before or after the Leave Stage) when the application for an ASI in Singapore is heard, will also be a relevant consideration by the Singapore

court. Thus, parties must be forward thinking and strategic in commencing Part III proceedings in the UK, or in applying for an ASI in Singapore.

Crypto Currency in Chinese Divorce Proceedings

Claudia Ningning Zhao*

In recent years, with its popularity and wide acceptability, digital currency is taking a more and more important role in our life. Accordingly besides the traditional properties like bank savings, real estates, gold, vehicles, etc., digital currencies are more frequently mentioned and disputed in court proceedings including divorce proceedings involved in matrimonial property division. Crypto currency being as one form of digital currency, even though occupies a small portion in family cases, it is worth being discussed.

In China, the central bank digital currency is a legal tender in the form of digital currency issued by the People's Bank of China, which is abbreviated as E-CNY or Digital RMB and holding the same legal status with paper currency and metallic currency. Being on par with the traditional legal tender, the central bank digital currency issued by the People's Bank of China is attributed to the quality of commodity currency, which make it possible to be divided as the common property in divorce process at Chinese family court. Differently, crypto currency is lacking the same legal status as the central bank digital currency, so crypto currency is not able to circulate or be used being as currency in the market, which, however, does not prevent many courts in China from recognizing its property attributes as a virtual commodity. Since the crypto currency, as a virtual commodity, has economic value and can be dominated and controlled by human power, it can be classified into the scope of commodity under the condition where they are legally acquired. However, in judicial practice, we are always facing up the difficulties in proving the existence of crypto currency as well as deciding its price.

Similar to the traditional property dealt in our judicial practice, the crypto currency should not be disregarded if it is claimed for the division in divorce proceeding and also be able to be proved its existence by the claiming party, by the mutual confirmation of divorcing parties or by disclosing of the possessing party. However, the fact that the server is not registered within territory of China or is unknown will cause the enforcement to be impossible.

In China, so far, there is not the consensus, in judicial practice, on how to determine the price of digital currency. Generally speaking, the value of crypto currency is mainly determined based on the consensus through consultation or agreement reached by the parties, specifically by the parties to the case, based on the price of purchase or based on the result of judicial expertise.

Even though Chinese courts have provided some experience in dealing with crypto currency, we are still facing many problems and difficulties while dealing with crypto currency in family case proceedings.

* Claudia Ningning Zhao is a Partner of V&T Law Firm (Shanghai) Office China, Fellow of IAFL, Email: Claudia@familylawcn.com.

The relocation of children to Japan

Makiko Mizuuchi*

When a Japanese parent would like to relocate to Japan with his or her children, but another parent would not give a consent to the relocation to Japan, a Japanese parent may file a petition to the court in the U.K., applying for the relocation to Japan with his or her children.

If it is possible to obtain a 'Mirror Order'[34] or an equivalent order in Japan for a child who resides in the U.K. but travels to Japan for a holiday and/or permanently which would reflect the child arrangements orders made in the court in the U.K., the court in the U.K. may consider the relocation to Japan with children. Child arrangements include the visitation with children, contact with children, and etc. Thus, it can be a question whether it is possible to obtain a 'Mirror Order' or equivalent order in Japan which would reflect the child arrangements orders made in the jurisdiction of U.K.

There is no system in Japan by which the foreign court order regarding the child arrangements is registered in the court automatically. It is not possible to obtain a "Mirror Order", or an equivalent order in Japan through the courts, however there is an alternative mechanism. The parents (the mother and the father) can make an agreement in conciliation (mediation) proceedings in the family court in Japan regarding child arrangements which would reflect the child arrangements orders made in the court in the U.K. Under Japanese law, the agreement in conciliation (mediation) proceedings in the family court in Japan has the same effect as a court judgment.

It is quite common to make an agreement in conciliation proceedings in the court, whose contents are the same as the foreign court order regarding the child arrangements, the visitation with the child etc. There is a court precedent – written in Japanese - which permitted the relocation of the child to Japan on the condition that the both the mother and the father make an agreement in the court in Japan, the contents of which are the same as the contents of the order in the court in England (The court precedent in England is referred to on page 249, "The Practice of the International Family Law"[35] and refers to the use of recitals for matters outside of the court's power).

As to the court-based conciliation proceedings, it is not a jurisdictional requirement in Japan that the mother (and/or father(s)) and children are present in the conciliation proceedings. If the mother and/or the father cannot be present in the court on the court dates, their legal counsels need to be present in the court. If the legal counsel of the parties are present in the court, it is not required for the mother nor the father to be present in the court. The mother and father do not need to come to Japan to attend the conciliation sessions.

* Makiko Mizuuchi is an English-speaking specialist Japanese family lawyer based in Tokyo.

[34] A 'Mirror Order' refers to an equivalent order obtained by consent in a different jurisdiction to reflect the terms of the agreed order in the original jurisdiction. For example, if a child arrangements order is obtained in England, then this may be brought to a lawyer Country B to 'translate' the English order into a binding order by consent under Country B's family law legislation.

[35]The Practice of the International Family Law" by Mikiko Otani, Fujiko Sakakibara, and Tamiko Nakamura, published by the Nihon Kajoshuppan Corporation, February 2, 2012, Japan, pg 249.

Thus, prior to the relocation of the children to Japan, it is possible to make an agreement in the court-based conciliation proceedings in Japan which would reflect the child arrangements orders made in the jurisdiction of England and Wales. The court in England and Wales could make it a condition to obtain such agreement in the court-based conciliation proceedings in Japan in order to issue a relocation order of the children to Japan.

If both parties (the mother and father) agree, in the first session, both parties can/or may make an agreement. They can thus save time.

Same sex marriages conundrum: legislative intervention is the need of the day

Ranjit Malhotra and Gayatri Malhotra*

"Like old clocks, our judicial institutions need to be oiled, wound up and set to true time" [Lord Harry Woolf: Lord Chief Justice of England and Wales, June 2000 - October 2005]. This so very apt quotation is like the sound of the bugle at the start of the article by one of India's most celebrated jurists and constitutional law expert Mr. R.F. Nariman in his recent article titled "A court of the future: There is need to finetune mechanisms of accountability within judiciary," published in the Indian Express newspaper dated 12 November 2022.

He very eloquently starts the said article: "The reach of India's highest court is all-pervasive. The Supreme Court sits in final judgment over decisions not only of the high courts in the states (there are 18 high courts for 28 states and eight Union Territories), but also over a hundred tribunals, central and state, functioning throughout India. And the law declared by the Supreme Court, its pronouncements on the constitutional validity of enacted law, including constitutional amendments, is binding on all other courts and authorities in the country (Article 141). There is virtually no area of legislative or executive activity which is beyond the highest court's scrutiny."

This article briefly highlights some of the key raging issues and questions that have emerged or rather exploded following the historic judgment of the Hon'ble Supreme Court of India in a Constitution Bench of five Judges in the matter of *Navtej Singh Johar and Others Vs. Union of India through Secretary Ministry of Law and Justice*[36] decriminalising consensual same sex relationships.

That following the above-mentioned Constitutional Court judgment consequently judicial review petitions have been filed in various High Courts of the country seeking recognition of same sex marriages. Accordingly for reasons of uniformity and to avoid conflicting orders of coordinate High Courts across the country the Hon'ble Supreme Court of India in its order of 12 January 2023 transferred a clutch of petitions seeking recognition of same sex marriages before various high courts.

The petitioners in these cases can be clubbed in three distinct categories seeking recognition of same sex marriage under three compartmentalised central legislations i.e. Hindu Marriage Act, 1955 (hereafter "the HMA"), Special Marriage Act, 1954 (hereafter "the SMA") and The Foreign Marriage Act, 1969 (hereafter "the FMA"). The HMA codifies personal law as applicable to Hindus defined in the said legislation whilst the SMA and FMA are secular laws.

The recent petitions have been filed by two gay couples before the Hon'ble Supreme Court of India agitating for relief directly under Article 32 of the Constitution of India seeking enforcement of their fundamental rights and recognition of same sex marriages under the provisions of SMA. As central plank benefit is sought of Section 4 of the SMA which is gender neutral as it mandates the solemnisation of marriages between any two persons. And

* Ranjit Malhotra and Gayatri Malhotra are founding partners of Malhotra & Malhotra Associates in Chandigarh, India.

[36] [2018] AIR (Supreme Court) 4321.

alternatively praying for declaration of SMA as unconstitutional as it does not allow provisions for same sex marriages. Traditionally the jurisdiction of SMA is invoked when people of two different religions/nationalities get married. By following two options: Firstly, by solemnisation of their marriage before the Marriage Officer by giving the 30 days' intended notice before the solemnisation of the said civil marriage. The parlance for which in the UK is registry wedding. Secondly, in the alternative of registration of the religious marriage as celebrated in other forms in compliance of the personal law so applicable to the parties to the marriage.

Of late the 30 days non-negotiable mandatory notice period under SMA has become a big bone of contention in terms of privacy law issues. And rightly so. The Punjab and Haryana High Court at Chandigarh, India in *A and Another v State of Haryana and Others*[37] decided on 20 July, 2018 tersely held that the harsh 30 days' notice requirement violates the right to privacy.

Traditionally SMA recourse has been sought by interfaith couples. That when there are cross border marriages between a couple professing different religions generally there are no problems but for the fact that both the parties are bound down to be resident in the jurisdiction of the marriage officer for a continuous period of 30 days which of course is very difficult in today's times. But the 30 days' notice period in domestic interfaith marriages with all details of the parties to the marriage publically available before the office of Marriage Officer are enough of a handle to stir the communal cauldron. Having given a rise to a jurisprudence of runaway marriages and newly married couples seeking protection from the High Court of the competent jurisdiction. A very common phenomenon with a large body of reported case law before the Hon'ble High Court of Punjab and Haryana at Chandigarh, India. It is also not uncommon for LGBT couples in different parts of the country to approach High Courts for protection orders.

Most recently the Delhi High Court in a very progressive expansive judgment in *Arushi Mehra and Another v Government of NCT of Delhi and Another*[38] decided on 12 January 2023 permitted marriage of two foreign nationals under SMA.

The problem does not end here. Succession and inheritance issues cannot be ignored. There is a complex intricate web of secular and personal laws. Even if two persons get married under the provisions of SMA their succession and inheritance issues will continue to be governed by their respective personal laws. Hindu law has a separate well defined codified regime for testate and intestate succession.

Courts in India are somewhat reluctant to apply equality provisions of the Constitution of India to personal law. As also held in the case of *Harvinder Kaur v Harmander Singh Choudhry*[39] "…Introduction of Constitutional Law in the home is most inappropriate. It is like introducing a bull in the china shop…" and even more reluctant to apply constitutional provisions to succession laws.

In conclusion by invoking the jurisdiction of SMA to resolve the issue of solemnisation and registration of same sex marriages certainly is an incomplete

[37] *A and Another v State of Haryana and Others* [2018] in CWP No.15296 of 2018 (O&M).

[38] *Arushi Mehra and Another v Government of NCT of Delhi and Another* [2023] in Writ Petition (C) No. 15117 of 2022.

[39] [1984] AIR 1984 Delhi 66.

solution. Given some of the complexities as highlighted above there is a dire need for a more holistic approach to make Indian family law inclusive. Judicial intervention forcefully plugs the gaps and leaks from time to time but in fact legislative intervention is the dire need of today.

About the authors

Ranjit Malhotra was the first Indian lawyer to be awarded the prestigious Felix Scholarship to read for the LLM degree at the SOAS in 1992. He specialises in private international law, commissions expert reports on Indian family law issues in foreign jurisdictions renders expert analysis and testimony for family law, surrogacy and immigration cases and advises foreign lawyers. He is on the Board of Governors of the International Academy of Family Lawyers. He has also been lecturing regularly on International family law issues in major jurisdiction worldwide. His firm, Malhotra & Malhotra Associates, is on the panel of lawyers for eleven foreign missions / embassies in New Delhi. He can be reached at ranjitmalhotra1966@gmail.com.

Gayatri Malhotra is a Delhi based Advocate and she attained her B.A., LL.B. (Hons.) Degree from Jindal Global Law School, Sonipat in 2022. She can be contacted at malhotragayatri.17@gmail.com

Book Review: Chinese Family Law and Practice by Rong Tao Kohtz Chicago: American Bar Association Publishing, 2023

Editor's review

Chinese Family Law and Practice provides the most up-to-date information about Chinese family law statutes, court rules and court decisions. It is a much-needed reference guide on Chinese family law for practitioners around the world and includes a critical introduction to Chinese family law, from a practitioner's perspective, for further academic research. Rong Tao Kohtz' book is written in plain language and would also be an excellent source of information for non-lawyers.

Chinese Family Law and Practice has thirteen chapters. Chapter 1 is a cursory overview of the historical and cultural context in which contemporary Chinese family law has evolved. Chapter 2 outlines the sources of Chinese Family Law, including statutes, regulations, court rules, and case law. Chapter 3 introduces the key components of the Chinese family justice system – the People's Courts, the People's Procuratorates, lawyers, notary offices, government agencies, law enforcement, and community-based social services. Chapter 4 delineates the procedures and rules at every stage of family matter proceedings in Chinese courts, starting from commencing an action, to pretrial evidence collection and provisional remedies, to the trial, and finally to appeals and post-judgment enforcement. Chapter 5 explains the fundamental concepts and principles of Chinese family law.

Chapters 6 and 7 describe Chinese law on the formation and dissolution of marriage, specifically laws and regulations concerning marriage registration, validity of a marriage, grounds for divorce and annulment, and spouses' reciprocal rights and duties within the marriage. Chapter 8 focuses on distribution of marital property upon divorce. It is a detailed account of Chinese law on the classification of separate and marital property, pre- and post-nuptial agreements, division of marital property and debt, and special reliefs for unpaid domestic work, damages inflicted by marital faults, and post-divorce indigence.

Chapter 9 examines Chinese law that defines and regulates parent-child relationship, including paternity, parenthood, adoption, reproductive technology, parental rights and duties to dependent children, and adult children's filial support obligations. Chapter 10 explains Chinese child custody and child support law, and illustrates how child custody, visitation and support are determined in Chinese courts.

Chapter 11 reports China's recent domestic violence laws and judicial reforms that have been implemented to combat domestic violence. Chapter 12 provides thorough and in-depth analyses on the international aspects of Chinese family law and the conflict of laws. It discusses jurisdiction, choice of law, recognition and enforcement of foreign judgments, and special rules of civil procedure in foreign-related family matters. The final chapter comments on China's ambition and recent efforts to build a fair and efficient family law justice system capable of serving China's vast population while promoting family harmony and protecting vulnerable members of the family.

Chinese Family Law and Practice has received glowing reviews from family law practitioners and legal scholars. Melissa Kucinski, a prominent international family lawyer, commented that *"[i]t is absolutely vital when advising on a multi-jurisdictional family law case, to have a fundamental grasp of the foreign jurisdiction's laws and practice.*

Rong Kohtz has artfully pulled together a treatise, geared for U.S. lawyers, on the basic principles in Chinese family law in what will be a staple of any family lawyer's library." Benjamin L. Liebman, the Robert L. Liejf Professor of Law at Columbia Law School, called this book "*an insightful and comprehensive account of family law in China," and an "essential reading for anyone interested in the practice of family law in China*."

Rong Kohtz's book can be purchased online from the American Bar Association: Chinese Family Law and Practice (americanbar.org)

About the author

Rong Tao Kohtz is an expert in international family law, U.S. family law, and Chinese family law. Ms, Kohtz has counseled clients from nearly 60 countries and litigated high-impact family law cases in federal and state courts for nearly two decades.

She earned her J.D. and L.L.M. from Columbia University Law School, Master of Law from Peking University Law School, and B.A. in Economics from Beijing Normal University. Ms Kohtz is a fellow of the International Academy of Family Lawyers (IAFL) and addition to practicing law, she studies and teaches U.S. history at Central Michigan University.

Book Review: Women & Law by Reem Al Zadjali

Editor's Review

Women & Law brings together the laws that relate to women under the Omani law. The book not only includes Family law related subjects but also criminal, Civil, labour and cybercrime.

The book is written in a simple and straightforward manner so it can be easily understood and accessible to everyone, to help women be more aware of all their legal rights under the Omani Law. The book not only explains the laws in a simple and concise manner but gives examples from real cases which the reader can relate to.

The first chapter of this book starts with the law of the state which is the basis of Omani law and to show that both women and men should be treated equally by law and without any discrimination where all citizens have the right to equal opportunities, justice. The Second chapter about the Omani personal status law (Family law) discusses matters relating to women where the laws mentioned distinguish women from men which is all for the women's benefit and obligations granted to women from the time of engagement to all the issues related to marriage or her rights to ask for a divorce, custody, and alimony and the definitions by law of all aspects related all under the sharia law.

Later in the book, Ms Al Zadjali explains the crimes and punishments in cases directly against women or those which involve women as the perpetrator or victim. The book explains that the law clearly does not differentiate between men and women, and both are punished equally for their actions. The chapter included the right of legitimate defence where women have the right for physical defence at time of assault, other crimes such as adultery, legal age of consent and different crimes that affect family and the society and family law issues such as alimony under the criminal law.

Other chapters in the book include provisions regulating marriage between Omani women and foreigners as well as the steps to be taken to get approval for that and issues relating to citizenship.

The book includes articles from the Labour law that take into account the additional responsibilities of women as mothers and wives.

The civil status law has also been discussed and the cyber crime law as communication technology plays an important role in our lives and its important to discuss crimes related to that such as use of blackmail or threat or even the right of privacy.

About the author

Reem Al Zadjali is an expert family lawyer base in Oman. Her firm, Reem Al Zadjali Lawyers & Legal Consultants is a recognised law firm in the Sultanate of Oman in the capital city of Muscat.

Ms Al Zadjali is a fellow of the International Academy of Family Lawyers (IAFL). has been a member of IAFL.

Book Review: Women's Right to Property: Selected Case Law [2021] by the Legal Aid Society

Zahrah Sehr Vayani*

Many countries have reformed their laws to recognize equality of women and their rights to Divorce, Inheritance and acquiring Property. However, there is a dire need for awareness of such law reforms and their implementation, especially in countries such as Pakistan, where the rights of women are still governed under archaic discriminatory laws. An Advisor at the Legal Aid Society (Pakistan) on Women's Right to Property, as well as a legal expert/practitioner who has been representing women in family, property and inheritance matters for over twelve years, the author, Ms. Zahrah Sehr Vayani compiled the Case Law Book titled "Women's Right to Property" for the Legal Aid Society Pakistan.

The fundamental purpose of this book was to empower women in Pakistan who seldom know their rights to property and many other rights. Furthermore, along with litigants, the book also aids legal practitioners who fight for women's rights, especially in areas that fall within the domain of Family Law. These include: marriage, Khula, divorce, maintenance for women after and during marriage, marital property and inheritance rights of women.

For instance, a very common phenomenon in Pakistan is that women are often deprived of their inheritance rights by their brothers or even parents, and are told that once they are married, they are not entitled to any inheritance rights. Furthermore, in many scenarios, men have tried to reclaim properties and bridal gifts from women once the marriage ends through various means. The book addresses many case laws where the aforementioned issues have been comprehensively discussed by the superior courts of Pakistan, for example, the book discusses cases where the legal principle that once a property has been gifted to a woman by her husband or transferred in her name, that property only belongs to her and he cannot reclaim it once their marriage ends. The book further explains a woman's right to end her marriage, a right given to her by Islam, through a procedure known as the "Khula," and that it is fundamental that she is able to pursue this right without her husband's involvement.

This is critical to note as there is a common misconception in the Pakistani society that a woman cannot acquire "Khula" without her husband's consent resulting in many women being denied their legal right.

The author of the book also addressed areas of law that are underdeveloped in Pakistan and require immediate attention such as the lack of legislation on "Alimony." The book also sheds light on the inheritance laws of women that belong to religious minorities in Pakistan in accordance with the Succession Act, 1925. Furthermore, the author has compiled inheritance case law pertaining to the Transgender Community under the Transgender Person's (Protection of Rights) Act, 2018.

The book has been made available to litigants and practitioners as a resource to aid them

* Zahrah Sehr Vayani is a qualified barrister in England and Wales, non-practising Attorney at the New York Bar as well as a practising lawyer in Pakistan. Zahrah is the founding partner of Zahrah S. Vayani & Associates in Pakistan.

in their respective cases. It has also been distributed to the lower judiciary of the district/family courts of Pakistan, ensuring that the judges are sufficiently equipped to deliver justice.

About the author:

Zahrah Sehr Vayani completed her LLB Honours from the University of Manchester, following which she was called to the Bar of England and Wales in 2008 where she worked as a legal practitioner for three years. While she was working in London, Ms. Vayani successfully passed the New York Bar exam and became an Attorney at Law, New York (non-practicing).

In December 2020, Ms Vayani was appointed as a Non-Political, Subject matter and Technical expert on the "Provincial Parliamentary Advisory Committee for Child Abuse" (Sindh). Having dealt with many pro bono rape, child beggary and child abuse cases, she identified a few of the grass root issues in the criminal justice system in Pakistan and has been training the Sindh Police in evidence collection, understanding the law and representation in court. Ms. Vayani serves as the C.E.O of the Women Lawyers Association and has been a strong advocate for the advancement and empowerment of women in the legal profession and otherwise.

With her experience of 12 years practicing law in Pakistan, in 2021, Ms Vayani founded her own law firm, "Zahrah S. Vayani & Associates." Her areas of specialization include: corporate and commercial law, criminal law, family law, labour law, property law, competition law, taxation, contract law, constitutional and human rights law, intellectual property and banking law

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International Family Law, Policy and Practice

Submission of articles for publication in the journal *International Family Law , Policy and Practice*

The Editor and Editorial Board welcome the submission of articles from academics and practitioners for consideration for publication. All submissions are peer reviewed and should be original contributions, not already published or under consideration for publication elsewhere: authors should confirm this on submission (although material prepared for the Centre's own conferences and seminars may be accepted in suitably edited versions). Any guidance required may be obtained by contacting the Editor, (Frances Burton, at frb@frburton.com) before submission.

Each issue of *International Family Law, Policy and Practice* will be published on line and will be accessible through a link on the Centre's website. There will normally be three issues per annum, roughly coinciding with the standard legal and academic vacations (Spring: March-May depending on the date of Easter; Summer: August-September; and Winter: December-January). Copy deadlines will normally be three months prior to each issue. Certain issues may also be published in hard copy, for example, occasionally hard copy issues may be produced for commemorative purposes, such as to provide a collection of articles based on key conference papers in bound hard copy, but normally the policy is that provision of the online version only will enable the contents to be disseminated as widely as possible at least cost.

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The author is responsible for all copyright clearance and this should be confirmed on submission.

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Material should be supplied electronically, but in some cases where an article is more complex than usual a print out may be requested which should be mailed to the Editor, Frances Burton, at the production address to be supplied in each case NOT to the Centre as this may cause delay. If such a print out is required it should match the electronic version submitted EXACTLY, i.e. it should be printed off only when the electronic version is ready to be sent. Electronic submission should be by email attachment, which should be labelled clearly, giving the author's name and the article title. This should be repeated identically in the subject line of the email to which the article is attached. The document should be saved in PC compatible (".doc") format. Macintosh material should be submitted already converted for PC compatibility.

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The journal follows the widely used academic format whereby the author's name should appear in the heading after the article title with an asterisk. The author's position and affiliation should then appear next to the asterisk at the first footnote at the bottom of the first page of the text. Email address(es) for receipt of proofs should be given separately in the body of the email to which the submitted article is an attachment. Please do not send this information separately.

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These are discouraged but if used should be provided electronically in a separate file from the text of the article submitted and it should be clearly indicated in the covering email where in the article such an item should appear.

Headings

Other than the main title of the article, only headings which do substantially add to clarity of the text should be used, and their relative importance should be clearly indicated. Not more than three levels of headings should normally be used, employing larger and smaller size fonts and italics in that order.

Quotations

Quotations should be indicated by single quotation marks, with double quotation marks for quotes within quotes. Where a quotation is longer than five or six lines it should be indented as a separate paragraph, with a line space above and below.

All quotations should be cited exactly as in the original and should not be converted to *International Family Law, Policy and Practice* house style. The source of the quotation should be given in a footnote, which should include a page reference where appropriate, alternatively the full library reference should be included.

Cross-references (including in footnotes)

English terms (eg above/below) should be used rather than Latin (i.e. it is preferable NOT to use 'supra/infra' or 'ante/post' and similar terms where there is a suitable English alternative).

Cross-referencing should be kept to a minimum, and should be included as follows in the footnotes:

Author, title of work + full reference, unless previously mentioned, in which case a shortened form of the reference may be used, e.g. (first mention) J Bloggs, *Title of work* (in italics) (Oxbridge University Press, 2010); (second mention) if repeating the reference - J Bloggs (2010) but if the reference is already directly above, - J Bloggs, above, p 000 will be sufficient, although it is accepted that some authors still use "ibid" despite having abandoned most other Latin terms.

Full case citations on each occasion, rather than cross-reference to an earlier footnote, are preferred. Please do not use End Notes (which impede reading and will have to be converted to footnotes by the typesetter) but footnotes only.

Latin phrases and other non-English expressions

These should always be italicised unless they are so common that they have become wholly absorbed into everyday language, such as bona fide, i.e., c.f., ibid, et seq, op cit, etc.

Abbreviations

If abbreviations are used they must be consistent. Long titles should be cited in full initially, followed by the abbreviation in brackets and double quotation marks, following which the abbreviation can then be used throughout. Full points should not be used in abbreviations. Abbreviations should always be used for certain well known entities e.g. UK, USA, UN. Abbreviations which may not be familiar to overseas readers e.g. 'PRFD' for Principal Registry of the Family Division of the High Court of Justice, should be written out in full at first mention.

Use of capital letters

Capital letters should be kept to a minimum, and should be used only when referring to a specific body, organisation or office. Statutes should always have capital letters eg Act, Bill, Convention, Schedule, Article. Even well known Conventions should be given the full title when first mentioned, e.g. the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 may then be abbreviated to the European Convention. The United Nations Convention on the Rights of the Child should be referred to in full when first mentioned and may be abbreviated to UNCRC thereafter.

Spellings

Words using 's' spellings should be used in preference to the 'z' versions.

Full points

Full points should not be used in abbreviations.

Dates

These should follow the usual legal publishers' format:

1 May 2010 2010–2011 (not 2010-11)

Page references

These should be cited in full:

pp 100–102 (not pp 100–2)

Numbers

Numbers from one to nine should be in words. Numbers from 10 onwards should be in numerals.

Cases

The full case names without abbreviation should be italicised and given in the text the first time the case is mentioned; its citation should be given as a footnote. Full neutral citation, where available, should be given in the text the first time the case is cited along with the case name. Thereafter a well known abbreviation such as the Petitioner's or Appellant's surname is acceptable e.g. *Livesey (formerly Jenkins) v Jenkins* [1985] AC 424 should be cited in full when first mentioned but may then be referred to as *Livesey or Livesey v Jenkins*. Where reference is to a particular page, the reference should be followed by a comma and 'at p 426'.

For English cases the citation should follow the hierarchy of reports accepted in court (in order of preference):

- The official law reports (AC, Ch, Fam, QBD); WLR; FLR; All ER
- For ECHR cases the citation should be (in order of preference) EHRR, FLR, other.
- Judgments of the Court of Justice of the European Communities should be cited by reference to the European Court Reports (ECR).

Other law reports have their own rules which should be followed as far as possible.

Titles of judges

English judges should be referred to as eg Bodey J (not 'Bodey', still less 'Justice Bodey' though Mr Justice Bodey is permissible), Ward,LJ, Wall, P; Supreme Court Justices should be given their full titles throughout, e.g. Baroness Hale of Richmond, though Baroness Hale is permissible on a second or subsequent reference, and in connection with Supreme Court judgments Lady Hale is used when other members of that court are referred to as Lord Phillips, Lord Clarke etc. Judges in other jurisdictions must be given their correct titles for that jurisdiction.

Legislation

References should be set out in full in the text:

Schedule 1 to the Children Act 1989

rule 4.1 of the Family Proceedings Rules 1991

Article 8 of the European Convention for the Protection of Human Rights 1950 (European Convention)

and in abbreviated form in the footnotes, where the statute usually comes first and the precise reference to section, Schedule etc follows, e.g.

Children Act 1989, Sch 1

Family Proceedings Rules 1991 (SI 1991/1247), r 4.1 (SI number to given in first reference) Art 8 of the European Convention

'Act' and 'Bill' should always have initial capitals.

Command papers

The full title should be italicised and cited, as follows:

> (Title) Cm 1000 (20--) NB Authors should check the precise citation of such papers the style of reference of which varies according to year of publication, and similarly with references to Hansard for Parliamentary material.

Contributions in edited books should be cited as eg J Bloggs, 'Chapter title' (unitalicised and enclosed in single quotation marks) in J Doe and K Doe (eds) 'Book title' (Oxbridge University Press, 2010) followed by a comma and 'at p 123'.

Journals

Article titles, like the titles of contributors to edited books, should be in single quotation marks and not italicised. Common abbreviations of journals should be used whenever possible, e.g.

> J.Bloggs and J. Doe 'Title' [2010] Fam Law 200

However where the full name of a journal is used it should always be italicised.