

Family Law in Dubai
Alexandra Tribe



EXPATRIATE LAW



The expat family: Susan and Omar

- Susan born in England to English parents
- Omar born in Oman to Omani parents
- Both are Muslim
- Met in London, where Omar was educated and lived for 20 years
- Property in London
- Moved to Dubai in 2000
- A boy (8), and girl (10)



Practical considerations

- Can and should Susan stay in the family home in Dubai?
- What if Omar cancels her visa?
- Can Susan leave the UAE with the children?
- Will she remain in Dubai or repatriate?

Legal Considerations – which jurisdiction?

- Jurisdiction for divorce
- Financial outcome in both jurisdictions including interim
- Provision for legal fees
- Disclosure
- Enforcement

UAE laws

Federal Law No. 28 of 2005 on Personal Status. Article 1(2) provides:

- The provisions of this Law shall apply to citizens of the United Arab Emirates State unless non-Muslims among them have special provisions applicable to their community or confession. They shall equally apply to non-citizens unless one of them asks for the application of his law.
- Divorce by Talaq, Khulaa

Financial outcome on divorce in UAE

- 1. Compensation**
 - *Nafket Motau* – to cover ‘moral damage’
 - Compensation for lack of spending in previous year
 - *Nafket Eda* – support during 3 month waiting period
- 2. Civil claim** – Share of jointly owned property
- 3. Child maintenance**
 - Children’s costs
 - Housing
 - *Ojrat Hadana* (custody ‘salary’)

What if Omar issues proceedings in Dubai?



- Service of proceedings and notice is important
- Attendance at hearings and participation must be encouraged
- Warn clients about revocation risk

Will Omar's divorce be recognised in England?

Section 46(1) Family Law Act 1986 provides:
The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if -
(a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and
(b) at the relevant date either party to the marriage -
(i) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
(ii) was domiciled in that country; or
(iii) was a national of that country.

Recognition of Foreign Divorces in England

Section 51(3) Family Law Act 1986 provides:
... recognition by virtue of section 45 of this Act of the validity of an overseas divorce, annulment or legal separation may be refused if -
(a) in the case of a divorce, annulment or legal separation obtained by means of proceedings, it was obtained -
(i) without such steps having been taken for giving notice of the proceedings to a party to the marriage as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or
(ii) without a party to the marriage having been given (for any reason other than lack of notice) such opportunity to take part in the proceedings as, having regard to those matters, he should reasonably have been given; or
(c) ... recognition of the divorce, annulment or legal separation would be manifestly contrary to public policy.

Lachaux v Lachaux [2017] EWHC 385 (Fam)

Mr Justice Mostyn:

"I am satisfied that the proceedings were fair, and that the Dubai court gave the mother much latitude. The mother does not even begin to scratch the surface of demonstrating that this UAE divorce is contrary to English and Welsh public policy. On the contrary, I am satisfied that the divorce ground under Article 117 is entirely consistent with our public policy as it is virtually the same as the ground for divorce that is principally used here."

"It can be seen that the system is focussed on the best interests of the child but that for young children there is a presumption in favour of day to day care by the mother. There is no warrant for saying that the law discriminates against women in favour of men. If anything, it is the other way round."

Al Habtoor v Fotheringham [2001] EWCA Civ 186 [2001] 1 FLR 951

Lord Justice Thorpe:

"The United Arab Emirates constitute a foreign jurisdiction with which this country has a particularly close historical connection.

Orders issued by courts of the Emirates are entitled to the regard which we would expect the courts of the Emirates to have for our orders.

In my opinion the courts of this jurisdiction should be very slow to make orders that directly conflict with pre-existing orders in any friendly foreign state. The principle of comity requires no less."

Radsresht v Radsresht-Spain [2017] EWHC 2932 (Fam)

Mr Justice Cohen:

"My conclusion is that this divorce should not be recognised on both grounds, both that of notice and ability to participate. As to notice, the wife had no notice at all. All she had was a Power of Attorney which she could not read or understand, a copy of which had not been provided to her."



Remedies after Dubai?

- Part III MFPA 1984
- Financial remedies in England after a foreign divorce
- BUT consider enforcement


