



**IAFL Family Law Conference  
Dubai, UAE  
12<sup>th</sup>-14<sup>th</sup> November 2018**



**Education Programme  
Materials Pack**

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**IAFL FAMILY LAW CONFERENCE  
EDUCATION PROGRAMME**

**The H Dubai, One Sheikh Zayed Road, Dubai  
Tuesday 13 and Wednesday 14 November 2018**

**Education Programme Chair: Maggie Rae**

**Tuesday**

- 09.30 **Welcome and introduction to the Education Programme**  
William Longrigg (England), IAFL Parliamentarian and former IAFL President
- 09.45 **Family Law in Dubai**  
Judge Dr Jasim AlHosani (UAE), President of the Court of Appeal for Personal Status, Dubai
- 10.30 **Sprinkler Session: Family Law in India**  
Malavika Rajkotia (India)
- 10.45 **Coffee Break and Networking**
- 11.00 **Marriage and Divorce: what does it mean?**  
Chair: Shabana Saleem (England)  
Panel: Sulema Jahangir (Pakistan), Elham Ali Hassan (Bahrain), James Carroll (England & Wales), Alexandre Boiché (France), Ghassan El Daye (Lebanon)
- 12.00 **The Malta Process**  
Chair: Anne-Marie Hutchinson OBE, QC (Hon) (England)  
Speaker: Philippe Lortie, First Secretary, Hague Conference on Private International Law (HCCH)
- 12.40 **Lunch Break and Networking**
- 14.00 **Child Custody**  
Chair: Tom Sasser (Florida, USA)  
Panel: Hassan Elhais (UAE), Mert Yalçın (Turkey), Sarah Hutchinson (England), Anil Malhotra (India)
- 15.00 **Sprinkler Session: The EU and Family Law and the implications of Brexit**  
Tim Amos QC (England), Charanjit Batt (England), Isabelle Rein-Lescastereyres (France)

- 15.15 **Tea Break and Networking**
- 15.30 **Child Relocation and Abduction**  
Chair: Anne-Marie Hutchinson OBE, QC (Hon) (England)  
Panel: Hassan Elhais (UAE), Chawkat Houalla (Lebanon),  
Rahima Nato Kalfane (France)
- 16.30 **Expats in Dubai: Social and legal issues**  
Speakers: Anne Jackson (England and UAE) and Alexandra Tribe  
(England and UAE)
- 17.30 **End of Session**

### **Wednesday**

- 09.30 **Family Governance**  
Chair: Piers Master (England)  
Panel: Diana Hamade (UAE), Tom Sasser (Florida, USA),  
Charlotte Butruille-Cardew (France), James Stewart (England)
- 10.30 **Sprinkler Session: International Mediation and Arbitration**  
Suzanne Kingston (England)
- 10.45 **Coffee Break and Networking**
- 11.00 **Division of assets on divorce - why jurisdiction matters**  
Chair: Alexis Campbell QC (England)  
Panel: Sumaiya AL Balushi (Oman), Rachael Kelsey (Scotland),  
Mukhtar Gharib (UAE), Hadiya Aziz (Pakistan)
- 11.45 **Sprinkler Session: How divorce is dealt with in Iran and what  
developments are taking place in Iran**  
Mozhdeh Pourmand (Iran)
- 12.00 **Recognition and Enforcement of Foreign Judgements**  
Chair: Tim Amos QC (England)  
Speaker: Ibrahim AlHosani (UAE), Diana Hamade (UAE),  
Alessandro Tricoli (UAE), Isabelle Rein-Lescastereyres (France)
- 12.45 **Wrap-up Session**  
William Longrigg (England), IAFL Parliamentarian and former  
IAFL President
- 13.00 **End of Education Programme & Lunch**

# **SPEAKER PROFILES**

## **SUMAIYA AL BALUSHI**

### **Legal Counsel**



Sumaiya Al Balushi (Legal Adviser) is an Omani lawyer. She joined Mohammed Al Ruqaishi Law Firm in 2012. She is a qualified to appear before the Omani Courts, local and international Arbitral Tribunals. She is experienced in preparing labour, criminal, civil, commercial, family and administrative memorandums.

Sumaiya is experienced in drafting different types of commercial and civil contracts as well as drafting legal opinions in different legal areas.

Sumaiya has extensive experience in dealing with governmental entities. Her work includes company formation, preparation all of the relevant documents, registering the company with Ministry of Commerce and Industrial, Muscat Municipality, Tender Board, Tax department at Ministry of Finance. She is experienced in trademarks registration as well. She attends board meetings and prepares for ordinary and extraordinary general meetings.

Sumaiya obtained her Masters in International Business Law from Queen Mary University of London in 2016 and her Bachelors in law from Sultan Qaboos University in Sultanate of Oman in 2011. She is an active member of the Omani Lawyer Association and she has organized many legal seminars and events related to legal awareness. She is a member of the Omani British Lawyers Association and the Anglo Omani Society.

Sumaiya speaks English, Arabic, Aurdu and Balochi.

**IBRAHIM MOHAMED HASSAN  
KHALIFAH AL HOSANI**

**ILaw Legal Firm &  
Ibrahim Al Hosani Advocates,  
Legal Services and Training**

**Dubai, UAE**



- Practicing lawyer registered with the Ministry of Justice, Dubai Department of Legal Affairs, Abu Dhabi Judicial Department and Ras Al Khaimah Courts
- Holder of the Bachelor's Degree in Law
- Owner and founder of ILaw Legal Firm and Ibrahim Al Hosani Advocates, Legal Services and Training
- Member of the UAE Association for Lawyers and Legal Advisors
- Accredited corporate legal advisor
- Legal trainer accredited by the UAE Association for Lawyers and Legal Advisors
- Accredited internal auditor
- Worked at Dubai Public Prosecution from 2002 to the start of 2014
- Worked at the Department of Islamic Affairs of Sharjah as an Imam and preacher from 1998 to 2002
- Worked at Dubai Islamic Affairs and Charitable Activities Department as a volunteer preacher from 2002 to 2007
- Participated in more than 1500 sermons, lectures, seminars and conferences across the UAE
- Presented many radio and television programs

## **JASIM MOHAMMED ALI ABDULLAH AL HOSANI**

**Senior Appellate Judge  
in Dubai Courts**

**Dubai, UAE**



### **Postgraduate Studies:**

First: In Sharia and Islamic Studies:

1. Islamic Studies Diploma
2. Sharia Judiciary Diploma

Second: In Law:

1. Private Law Diploma
2. Common Law Diploma
3. Doctor of Philosophy in Law, Arab Republic of Egypt, Ain Shams University, Faculty of Law

### **Experience:**

Judge in Dubai Court of Appeal since 19/01/2009

Chief Judge of Dubai Sharia Court since 16/05/2005

Judge in Dubai Courts since 20/01/2001

Former Head of Sharia Marriage Officers Committee in Dubai Courts

Former Deputy Head of Experts and Arbitrators Committee in Dubai Courts

Part Time Lecturer in Ajman University in Ajman and Fujairah

Part Time Lecturer in Saint George University

Part Time Lecturer in Al Falah University

Part Time Teaching Staff Member in the Federal Institute of Training & Judicial Studies

Part Time Lecturer in Dubai Judicial Institute

Member of the Advisory Board of the Faculty of Law, Al Falah University

### **Training Courses:**

Civil Transactions (Sources and Provisions of Commitment, Contracts, In-Kind Rights, Personal and In-Kind Insurance)

Provisions of Evidence

Litigation Basics (Civil Procedures)

Enforced Execution

Arbitration

Intellectual Property

Approach to Islamic Jurisprudence

Fundamentals of Jurisprudence

Civil Status

Internal Practical Training

Research Methods

### **Academic Participations:**

- Member of the Examiners Committee of a Master's Degree Entitled: "End of the Arbitrator's Task according to the UAE Law: Comparative Study with Judicial Precedents" - College of Law, Ajman University, Ajman
- Member of the Examiners Committee of a Master's Degree Entitled: "Transmission of a Lease Agreement to a Third Party in the Light of the Provisions of the Law of Tenancy and Regulation of Tenancy Relationship between the Lessor and Lessee in Abu Dhabi Emirate" - College of Law, Ajman University, Ajman
- Member of the Examiners Committee of a Master's Degree Entitled: "Doctor's Civil Liability for Putting off Instruments for Resuscitation from Death Brain Patients - Comparative Study" - College of Law, Al Ain University of Science and Technology, Al Ain Branch



- Member of the Examiners Committee of a Master's Degree Entitled: "Case Management System in Accordance with the UAE Civil Procedures Code" - Sharjah University, Sharjah
- Member of the Examiners Committee of a Master's Degree Entitled: "Legal System of Floors and Flats Property in the United Arab Emirates" - College of Law, Al Ain University of Science and Technology, Al Ain Branch
- Member of the Examiners Committee of a Master's Degree Entitled: "Legal System of Takaful Insurance Policy" - College of Law, Al Ain University of Science and Technology, Abu Dhabi Branch
- Participated in Preparing the Professional Diploma in International Islamic Commercial Arbitration, Sharjah University
- Participated in the 7th International Annual Forum of Law Specialists and Financial Islamic Industry Experts
- Attended Many National and International Academic Conferences and Seminars

#### **Published Works:**

- Jurisprudential Devices and Securitization (Tawarq Sale) between Islamic Jurisprudence and Law, Published by Dubai Judicial Institute
- Origins of Medical Check before Marriage in Sharia, Published in Dubai Legal Magazine, Dubai Public Prosecution
- Integration between Judiciary and Arbitration Roles in Hearing Islamic Financial Disputes, Published by Dubai Judicial Institute Magazine
- Social Networking Sites. New Conditions in Marriage Contract, Published by Dubai Judicial Institute Magazine
- Securitization (Tawarq) in the UAE Courts Judgments, Published as Part of the Research and Papers Submitted to the 7th International Annual Forum of Law Specialists and Financial Islamic Industry Experts Entitled: Judicial Judgments on Islamic Financial Contracts, 3-4/05/2017

#### **Legislation, Knowledge and Society Participations:**

1. Participated in preparing:
  - A. Arbitrators System in the Civil Status Cases in the Emirate of Dubai
  - B. Sharia Marriage Officers System in the Emirate of Dubai
  - C. Family Guidance & Reconciliation Regulations in the Emirate of Dubai
2. Participated in many special judicial committees
3. Represented Dubai Courts in some of the meetings of the Technical Committee on Legislations and Legislation Committee in Dubai
4. Instructed and trained prosecutors sent to work in the Federal Judiciary
5. Instructed and trained the Ministry of Interior police officers who will join the judiciary
6. Instructed and trained lawyers
7. Instructed and trained arbitrators in Civil Status Cases
8. Instructed and trained assistant prosecutors, Dubai Public Prosecution
9. Instructed and trained the students of the Professional Diploma in Commercial Arbitration
10. Participated in several societal training, educational and awareness programs:
  - Judicial regulations in the United Arab Emirates
  - Rights of divorced women in the light of the provisions of jurisprudence and the UAE Civil Status Law
  - Provisions of Inheritance in Sharia and Law
  - Alimony according to Sharia
  - Sharia controls of contemporary banking contracts
  - Seminar on the judicial applications in the light of the UAE and French Civil Status Laws
  - Introduction to the Child Rights Law and "Wadima"
  - Civil Status Law: Theory and Practice
  - Provisions of Guardianship
  - Practical Issues and Solutions in Divorce Cases
  - Participated in the radio program "Ask", Abu Dhabi Holy Quran Radio
  - Participated in the radio program "My Family Is My Kingdom" in Sharjah Radio
  - Participated in "Ask & You Will Never Regret" Program on Sharjah Television

**TIM AMOS QC**

**QEB Chambers**

**London, England**

[www.qeb.co.uk](http://www.qeb.co.uk)



Tim Amos is a barrister QC (Queen's Counsel) and mediator. He practises in London at QEB, where he is head of chambers. He specialises in international family law and especially conflicts of jurisdiction. His website in English, French and German is at [www.qeb.co.uk](http://www.qeb.co.uk).

Prior to becoming a QC in 2008, Tim was for seven years Standing Counsel to the Queen's Proctor, a government appointment in England to advise on all matters of family law with a public interest element. This included the validity and UK recognition of foreign marriage and divorce, in particular Sharia Nikah and Talaq (revocable, irrevocable and procedural), and the cultural differences between divorce as a private act and as a state act.

**HADIYA AZIZ**

**AzizLaw**

**Islamabad, Pakistan**



Hadiya is a legal practitioner and Advocate High Court based in Islamabad Pakistan. She has also worked as a criminal prosecutor at the Islamabad High Court, Pakistan. She is the founding member of AzizLaw - Advocates & Legal Counsel which is a litigation and corporate law firm. The firm deals in all areas of civil and criminal litigation, family matters, commercial matters, constitutional matters and corporate consultancy as well as arbitrations.

As the founding member of AzizLaw Hadiya is recognized as being its chief litigation counsel and have a vast experience of trial work at the District Courts of Rawalpindi/Islamabad. Her expertise includes command over the law of pleadings and evidence. Her primary focus is on providing legal representation on all civil, criminal, family, commercial and business matters (both contentious and non-contentious). The firm regularly appears before the District & High Courts of the country, representing multinational corporations, governmental bodies, statutory corporations and private individuals, in various contentious matters.

As a criminal prosecutor at Islamabad High Court, Hadiya has worked on numerous high profile cases where vital interests of the State are involved. These cases include murder references, financial fraud, terrorism related matters and accountability cases.

She is well known as an expert in family law matters. Hadiya has been appointed as amicus curiae thrice by the Islamabad High on various occasions to assist the court in complex issues relating to family law such as issuance of divorce certificate and the scope of the law on divorce in Pakistan. She has also handled a variety of work related to the family laws of Pakistan and has provided legal assistance in matters pertaining to dissolution of marriage, khulla, divorce (talaq), recovery of dower, maintenance, custody and other ancillary issues.

**CHARNAJIT BATT**

**QEB Chambers**

**London, England**

[www.qeb.co.uk](http://www.qeb.co.uk)



Charanjit is a barrister in private practice at the Family Bar in London. She specialises in divorce, financial remedies, and private children cases (including relocation). Charanjit has a keen interest in cases with an international aspect, and her language skills (Punjabi and Hindi fluent/native, and Spanish and Urdu at conversational level) often lead to her instruction on Indian and Spanish cases. She has also drafted pleadings, and has provided opinions on English law, for use in foreign jurisdictions. Charanjit has a full practice of her own but is also regularly led by silks.

Charanjit is ranked in legal directories in which she has been described as “a very strong advocate” and “a persistent advocate and is well respected by her colleagues”.

Charanjit is a member of the Family Law Bar Association, and Resolution.

**ALEXANDRE BOICHÉ**

**Cabinet Alexandre BOICHÉ**

**Paris, France**

[www.aboiche.com](http://www.aboiche.com)



He is a specialist in international family litigation and notably conflicts of jurisdictions or conflicts of laws, recognition of foreign judgments. As such, he conducts numerous judicial training programs for colleagues and judges in this domain both in France and abroad. Seeking to promote sustainable solutions, he also specializes in the drafting of international marriage contracts, divorce and parental authority agreements. He is also trained in collaborative law and Mediator specialized in NVC.

Since 2006, he has been an editor for the “Actualité Juridique Famille” law review edited by Dalloz in charge of international family law report and case-laws.

He is a fellow of the IAFL, the French Committee of Private International Law, the Louis Chatin Association.

**CHARLOTTE BUTRUILLE CARDEW**

**CBBC Avocats**

**Paris, France**

[www.cbcc-avocats.com](http://www.cbcc-avocats.com)



Charlotte is partner and co-founder of the firm CBBC.

Before starting CBBC, Charlotte worked in London and Paris Business Law, then family law and heritage. She has particularly focused her work towards international affairs with complex financial issues in family law. She has developed a particular expertise in prenuptial agreements, international civil partnerships and the Board or the litigation involving wealth structuring.

Charlotte emphasizes teamwork as well as listening and talking in order to understand the specific needs of each client and to work in the best interests of everyone.

Accredited Practitioner and Trainer in collaborative law, alternative dispute resolution technique based on integrative negotiation, introduced in France in 2007, Charlotte has also developed a real expertise in such international negotiations, and thus can provide her clients with a tailored alternative, fast and discreet.

She works in both French and English.

She is a member of many international organizations, working closely with universities and also teaching.

**ALEXIS CAMPBELL QC**

**29 Bedford Row Chambers**

**London, England**

[www.29br.co.uk](http://www.29br.co.uk)



Called to the Bar in 1990. Appointed Queens Council in 2017

Core practice area is matrimonial finance with particular interest in: international disputes; offshore trusts; pensions; and companies. Extensive experience in high net worth cases, unravelling complex financial arrangements. Hard negotiator but sensible and pragmatic advice. Children practice focuses on private disputes with a focus on international relocation cases.

Alexis lectures on family finance to solicitors, members of the Bar, universities and to the Judicial College (the body responsible for continuing professional development of all family judges).

### **Appointments**

Crown Court Recorder, 2010

Family Recorder, 2015

### **Memberships**

FLBA

Fellow of International Academy of Family Lawyers

Member of the Chartered Institute of Arbitrators (MCIA and IFLA)

Member of Lawyers Circle

## **JAMES CARROLL**

**Partner  
Russell-Cooke LLP**

**London, England**

[www.russell-cooke.co.uk](http://www.russell-cooke.co.uk)



James is a partner in the family team at Russell-Cooke LLP, a multi-disciplinary practice in London, England.

James specialises in the financial and other consequences of relationship formation or breakdown. His principal role is to help people separate sensibly. He is well known for having a commercial, constructive and resolution focused approach combined with the ability to pursue litigation through the courts with tenacity where necessary.

James is considered an expert in complex financial cases, including those involving businesses and trust/tax structures. He has considerable knowledge of pre-nuptial agreements (having sat on the Advisory Group to the Law Commission).

Many matters in which James is instructed involve an international dimension. James has lectured nationally and internationally including for the European Family Justice Observatory, the British Institute of International and Comparative Law and the International Association of Collaborative Practitioners.

In contrast with many family lawyers, James' practice is not limited to representing married couples or those in a personal relationship and as such he also acts for other family members, business partners or individuals who own property together or face family related legal issues.

He has a particularly strong reputation in resolving matters through constructive discussions and cooperation. James is both an accredited mediator and a collaborative family lawyer (both specialist forms of dispute resolution designed to reach solutions in a non-Court based arena).



## **GHASSAN EL DAYE**

**Partner**  
**Charles Russell Speechlys LLP**

**Dubai, UAE**

[www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)



Ghassan heads the Arabic regional litigation practice in the Middle East and specialises in all areas of dispute resolution with a particular emphasis on construction, commercial, civil, banking, real estate and criminal matters. Ghassan has over 23 years' experience in litigation and dispute resolution. His extensive in-depth experience in civil, Sharia, commercial, real estate, banking, construction and criminal laws have enabled him to represent clients in some of the region's most high profile and complex cases. Offering a full scope of litigation services from drafting to implementation of case strategies locally and internationally, Ghassan is one of few litigators who won multi-billion dollar cases for clients and advised on high complex and cross border disputes. In addition, Ghassan possesses thorough expertise in matters of civil, administrative, real estate, banking and Sharia'h law. Ghassan is admitted to practise in Lebanon.

### **Experience highlights**

- Acting for a Kuwaiti Investment Company listed on the Kuwait Stock Exchange in highly complex 2.6 billion AED litigation and arbitration proceedings against a Chinese Construction Company before the local and commercial courts in Abu Dhabi
- Acting for a leading Kuwaiti Real Estate Development Company in Qatar against a prominent main contractor in a 600m QAR complex litigation and arbitration proceedings before the local courts in Qatar and Qatar International Center for Conciliation and Arbitration
- Representing a leading semi-government Real Estate Development Company in Dubai against a prominent master developer to appoint a court expert to review and audit a 1.2 billion AED joint venture investment contract for off plan property sales of a huge residential project
- Advising a high net worth Saudi owner in Makkah against the developer of a hotel project in complex arbitration proceedings in Arabic over a 100 million Saudi Riyal contract before the Mecca and Jeddah Courts
- Acting for a prominent bank in the UAE in a landmark case of phishing, internet abuse and hacking of accounts
- Acting for a well-known UAE airline in a complex dispute which involved both conventional and Sharia law
- Acting for one of the largest tech companies in the Silicon Valley to recognise and enforce a California Court order before Dubai Courts for 10 million AED

**HASSAN ELHAIS**

**Al Rowaad Advocates & Legal  
Consultancy**

**Dubai, UAE**

[www.professionallawyer.me](http://www.professionallawyer.me)



For over 14 years of extensive experience as a Legal Consultant and team leader at Al Rowaad Advocates & Legal Consultancy, well-regarded as one of the most reputable family law firms in the UAE, Mr. Elhais has a wealth of knowledge coupled with experience within the legal field. His firm provides tailored service packages depending on the clients' needs. His team is committed to deliver the best possible legal solutions through the varied expertise which includes, amongst other things, arbitration, family law and inheritance law, commercial and civil litigations, criminal law, intellectual property etc.

Al Rowaad Advocates & Legal Consultancy has been awarded the Law Firm of the Year 2017 in the Middle East and Mr. Elhais has been personally awarded the Legal Consultant of the years 2014 and 2016, Civil Law Legal Consultant of the year 2015 by ACQ5 Global Awards, the UAE Leading Advisor of the year 2016 by M&A Awards, Litigation Legal Consultant of the year 2016 by Professional Sector Network Awards, Commercial Arbitration Legal Consultant of the year 2016 by Finance Monthly Global Awards.

With significant experience in the professional field, Mr Elhais provides legal opinions for his clients on various matters. He is also a licensed practitioner at the Dubai International Financial Centre (DIFC) courts. As a recognition of his expertise, the names of Mr Elhais and his firm are recommended by the embassies of multiple countries. He is also a regular contributor to major local and international newspapers, where he has published more than 300 publications and has given the interviews in prominent print and media. Mr Elhais is regularly invited to speak at different international conferences regarding family law.

Mr. Elhais obtained a diploma in private law including Sharia, philosophy of laws, litigation, commercial and civil laws. He is a holder of a Master of Law degree. Mr Elhais' experience in advising expatriates living in the UAE is broaden. He advises them in respect of the UAE family law and cross-border issues, such as the enforceability of foreign judgments in the UAE and the international movement of children.

## **MUKHTAR GHARIB**

**Advocate/Managing Partner  
Al Gharib & Associates Advocates &  
Legal Consultants**

**Dubai, UAE**

[www.alghariblawfirm.com](http://www.alghariblawfirm.com)



### **Career**

Mukhtar started his career by serving UAE as a Soldier for eight years. While in service, he went to the School of Law in Alexandria University, Egypt and graduated with Honors in 1995. In the early years of his career, he worked as an Associate for a leading law firm in Dubai and been practicing since 1998. He specializes in Family Law and represents clients in divorce, custody, inheritance, wills and guardianship.

### **License**

He is a licensed advocate for all the UAE Federal courts (Courts of First Instance, Courts of Appeal, Dubai Court of Cassation and the Federal Supreme Court).

### **Firm**

Al Gharib & Associates Advocates and Legal Consultants started on June 1st 2002. In the past 16 years, the firm have built a solid reputation for legal service excellence. Founder and Managing Partner, Mukhtar Mohammad Gharib, is a lawyer representing clients before the Dubai Courts, specializing in the areas of Personal Status (Family Law), and is a member of International Academy of Family Lawyers, the American Bar Association, and the International Bar Association and Corporate International.

### **Membership**

As a member of scientific associations for legal studies and the Emirates Human rights Association, he has authored various publications on legal issues related such as drugs, criminal offense, personal affairs issues such as alimony, civil rights and commercial issues. He is an active speaker on TV Programme called Al Mohamun (The Lawyers) in the UAE.

### **Languages**

Mr.Mukhtar is fluent in

- English
- Arabic
- Farsi

**DIANA HAMADE**

**Founder & Managing Partner  
International Advocate Legal Services  
(IALS)**

**Dubai UAE**

[www.ials.ae](http://www.ials.ae)



Diana Hamade is a UAE lawyer with right of audience before all UAE courts, including DIFC.

She is the founder of IALS, a private practice law firm focusing on high-end cross-border litigation in corporate, civil and estate law with a focus on family businesses and family law.

Diana is also a renowned Sharia and civil law expert who is regularly hosted as a speaker and trainer on wealth planning, family law disputes and ADR. Diana was the author of the legal affairs column in the National from 2011-2014. She currently writes the Legally Stylish Column in Villa88 magazine.

Diana is a fellow of IBA, IAFL, Arbitral Women & STEP Arabia.

## **ELHAM ALI HASSAN**

**Principal & Partner  
Head of Litigation**

**Manama, Kingdom of Bahrain**

[www.elhamlaw.com](http://www.elhamlaw.com)



Elham Ali Hassan has been practicing law in Bahrain for the last 25 years and is acknowledged as one of the leading litigators and arbitrators at the forefront of legal developments – she genuinely wants to help solve problems, knows how to deliver the highest quality service and professional representation, and is accustomed to handling high public profile matters, negotiations, and settlements. Elham advises and acts on behalf of multi-national organizations, institutions, agencies, and international law firms. Over the course of her career Elham has devoted substantial attention to solving problems involving shareholder, partnership and employment matters, contractual formation and interpretation, restraints of trade, insurance, intellectual property, land ownership controversies, franchises, financial transactions disputes, and the seizure of assets under maritime law. Elham has civil litigation experience at the pre-litigation, first instance, and appellate levels and criminal litigation experience. She has been admitted to both the Court of Cassation and Constitutional Court. She is often appointed as a Bahrain law expert before foreign courts of different jurisdictions. Additionally, Elham is a member of the Bahrain Chamber of Dispute Resolutions (the BCDR) roster as a panel member and as an arbitrator. Elham is a member of the International Bar Association, National Committee of International Chamber of Commerce, an ICC Court's member, a member of the Center of Commercial Arbitration for the GCC Countries, and of Dubai International Arbitration Centre.

### **Areas of Practice**

Civil/Commercial Litigation, Arbitration, Contracts, Employment Law, Insolvency Law, Property Law, Constitutional Law, Family Affairs/Human Rights.

### **Education**

LLB, Arab University of Beirut

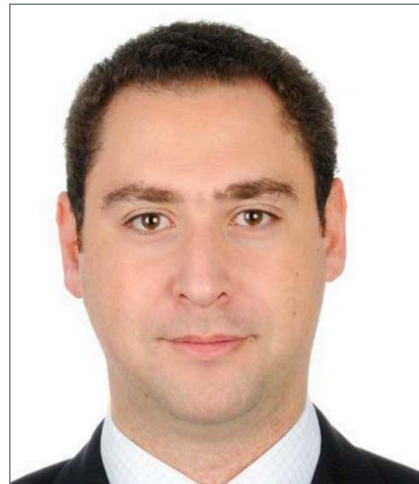
### **Languages**

English, Arabic, Farsi, and French

## **CHAWKAT HOUALLA**

**Partner & Senior Lawyer  
Adib & Houalla**

**Mina, Lebanon**



Chawkat M. Houalla Born in Mina (Tripoli) - Lebanon is a practicing Lawyer within the Jurisdiction of Lebanon and registered at the Tripoli Bar Association under the number 02312. Partner and senior Lawyer at Adib & Houalla Law office based in Tripoli Lebanon, Chawkat Houalla is a Bachelor in Law from Saint Joseph University in Beirut Lebanon (1998) and has a Master Degree (DES) in General Private Law from same University (2001). Chawkat Houalla is a member of the International Bar Association and has served at the Family Law committee as Islamic Law officer, Vice Chair and Senior Vice-Chair. Chawkat is advising the Minister of Labour in Lebanon and is serving as National Advisor for the EIIP program at International Labour Organization in Lebanon. He is frequently advising consular offices and embassies on the state of the Lebanese Laws especially the matters of related to family disputes and Child welfare. He frequently advises clients and represent the in court in cases related to Family disputes and child welfare.

**ANNE-MARIE HUTCHINSON**  
**OBE, QC (HON)**

**Head of the Children Department**  
**Dawson Cornwell**

**London, England**

[www.dawsoncornwell.com](http://www.dawsoncornwell.com)



Anne-Marie was admitted in 1985 and in 1998 joined Dawson Cornwell, one of the UK's leading family law firms, as Head of the Children Department. She is consistently named as one of the leading family lawyers in London in both Chambers and The Legal 500 and is singled out as a "star individual" in Chambers for cross-border disputes.

Anne-Marie specialises in all aspects of domestic and international family law and the international movement of children. She has expertise in divorce and jurisdictional disputes, with particular expertise in international custody disputes, child abduction (Hague and non-Hague), the EU Regulation on jurisdiction in family matters, relocations, children's law private and public, forced marriage and international adoption and surrogacy.

Anne-Marie is accredited by Resolution as a specialist family lawyer with specialisms in child abduction and children law, forced marriage and honour based violence. She was awarded the inaugural UNICEF Child Rights Lawyer award in 1999. She received an OBE for her services to international child abduction and adoption in the 2002 Queen's New Year's Honours List. In 2004 she was selected as Legal Aid Lawyer of the Year for her work with the victims of forced marriage. In 2010 she received the IBA Outstanding International Woman Lawyer Award. In 2011 she received a True Honour Award from IKWRO. In 2012 she was awarded an "Albert" by the Albert Kennedy Trust in recognition of her work on an international level in defending the human rights of young LGBT people. She was also presented by Jordans Family Law with the International Family Lawyer of the Year 2012 award and was awarded the prestigious IAFL President's Medal in 2014. Anne-Marie was appointed Queens Counsel honoris causa in 2016 and received an honorary doctorate of laws from the University of Leeds in 2016.

Anne-Marie is the immediate past Parliamentarian of the International Academy of Family Lawyers, chair of the Board of Trustees of Reunite: International Child Abduction Centre and past chair of the Women's Lawyers' Interest Group of the International Bar Association. She is a Founding Fellow of the International Surrogacy Forum, a Founding Member of the UK LGBT Family Law Institute, a Fellow of the American Academy of Assisted Reproduction Technology Attorneys and co-chair of the IAFL Surrogacy and ARTS Committee. She is a member of the National Commission on Forced Marriage at the House of Lords and an appointed panel member of the Government Review on Sharia Law in England and Wales. She is a member of numerous associations and committees and she is a member of the Central Authority Panel of Hague Lawyers.

She is a regular speaker and lecturer both within the United Kingdom and abroad and has made numerous television appearances. She is an international correspondent for "International Family Law" (Jordans) and she is joint author of the text book "International Parental Child Abduction". She sits on the Editorial Board of the Child and Family Law Quarterly (Jordans).

## **SARAH HUTCHINSON**

**Partner  
Farrer & Co**

**London, England**

[www.farrer.co.uk](http://www.farrer.co.uk)



Sarah advises on all aspects of family law, protecting her clients' interests and resolving their legal issues. She gives pragmatic advice, acting with sensitivity and consideration of the family as a whole and is recognised as much for her empathetic approach as for her incisive thinking. Sarah is a trained family mediator.

Sarah has considerable experience in advising on complex contentious and non-contentious family law matters in an international and domestic context. She supports individuals seeking to resolve challenging financial issues further to a marital or relationship breakdown and disputes relating to children. She also advises on pre-and post-nuptial agreements.

She is particularly well-known for her wide-ranging knowledge of the law relating to children, as well as the impact of relationship breakdown on children. She has been recommended in the Legal 500 for her skill in private children disputes.

Sarah has extensive experience of litigation but is also committed to achieving solutions outside of the court setting where appropriate and possible.

She acts for a wide range of clients, both male and female, from professionals and entrepreneurs to homemakers. Her clients value her sensible, pragmatic approach.



## **ANNE JACKSON**

**Family, Marriage and Divorce Coach**

**One Life Coaching ME Dubai**

[www.onelifecoachingme.com](http://www.onelifecoachingme.com)



Anne is one of Dubai's leading Relationship, Divorce & Self Development Coaches. Regularly interviewed and featured on Radio, TV and many publications, she is considered as a thought leader in her field. With over 5 years' experience and 1000's of hours in 1:1 coaching, training, workshops and motivational speaking, Anne knows the secrets of relationship and life success and her goal is to help people maneuver through life in a happy, positive way. Accredited by the AC (Association for Coaches UK) and by the British School of Coaching and passionate about helping people discover their true motivations, Anne is an advocate in applying positive psychology and using CBT tools in order to help her clients to create the life they truly want for their future.

Founder of One Life Coaching, ([www.onelifecoachingme.com](http://www.onelifecoachingme.com)) an organisation dedicated to supporting people maximise their potential in whatever they do, Anne works closely with her clients delving deeper into their values systems to identify their strengths, enhance self-awareness and increase understanding as to what drives their behavior.

Anne works both with couples who are looking for marriage guidance on how to save their relationship as well as helping couples and/or individuals who have reached the point of no return and have decided that their relationship has broken down irretrievably. Anne also works with couples to help them put together healthy co-parenting plans as well as working with the children of divorcing parents to give these children a much-needed safe space in order to have a voice in these difficult times.

## **SULEMA JAHANGIR**

**Dawson Cornwell**

**London, England**

[www.dawsoncornwell.com](http://www.dawsoncornwell.com)



Sulema is a dual qualified solicitor of the Senior Courts of England and Wales and an Advocate of the High Courts in Pakistan.

She undertakes all aspects of domestic and international family law including child abduction, child custody and the financial consequences of divorce and separation. She also acts for the victims of forced marriages, abandoned spouses and honour based violence.

Sulema graduated from Cambridge University in 2003. She completed her training contract and qualification at magic circle law firm, Freshfields Bruckhaus Deringer, before transferring into family law in 2010.

Prior to joining Dawson Cornwell, Sulema was a partner at AGHS Law Associates (the law firm of Asma Jahangir and Hina Jilani) which is the leading law firm specialising in family law and human rights work in Pakistan.

Sulema has assisted in providing advice to Parliamentary bodies in Pakistan on the implementation of laws on protection against domestic violence. She was the Chief Editor of the annual publication of "Violence Against Women in Pakistan" for 2010 and 2011. She is a member Resolution, the Punjab Bar Council in Pakistan, The Law Society of England and Wales, the Asian Association of Women Lawyers, LAWASIA, the Commonwealth Lawyers Association and a founding member of the British Pakistani Lawyers' Association.

Sulema is a regular speaker at conferences and appears on television and in the press. She has also written articles on legal topics in Pakistan and in the United Kingdom.

Sulema speaks fluent Urdu, Hindi and Punjabi.

**RACHAEL KELSEY**

**SKO Family Law Specialists**

**Edinburgh, Scotland**

[www.sko-family.co.uk](http://www.sko-family.co.uk)



Rachael is a solicitor and the 'K' of SKO Family Law Specialists, the largest niche family practice in Scotland.

Rachael works in Edinburgh and London, practising Scots Law. She advises on the full range of family law matters, with a particular interest and expertise on jurisdictional issues in family law cases, with over 90% of her practice now having some kind of jurisdictional element to it. She is one of only three 'leading individuals' in Scotland for family law in the current edition of the Legal 500- the only woman, and the only person under 50. She has been in 'Band 1' of matrimonial lawyers in Scotland in Chambers and Partners for many years, where her firm is top ranked, as it is in the Legal 500.

Rachael is Secretary of the IAFL having previously been Counsel to the Academy. She became President Elect of the European Chapter in September 2018.

In 2016 Rachael was appointed to the Family Law Committee of the Scottish Civil Justice Council by the Lord President (Scotland's most senior judge). She was a member of the Scottish Government Civil Sub-Group working on the implementation of vulnerable witness legislation and also on the Lord Advocate's working group on child witnesses. Rachael was previously Chair of the Family Law Association (2005-2006) and of Family Mediation Lothian (2008- 2017). Rachael was a founding member of the group set up to institute a bespoke Family Arbitration scheme in Scotland- FLAGS- and now trains arbitrators (family and commercial) in Scotland and abroad, as well as acting as arbitrator. She is a co-opted member of the management committee of the Scottish Branch of the Chartered Institute of Arbitrators.

## **SUZANNE KINGSTON**

**Partner  
Withers LLP**

**London, England**

[www.withersworldwide.com](http://www.withersworldwide.com)



Suzanne Kingston is regarded as ‘a pre-eminent force in Family Law’, Suzanne is very well known as for her expertise in all aspects of family work. In particular, she deals with the resolution of complex financial issues for high net worth individuals. Her cases often have an international element and she has considerable experience in dealing with prenuptial agreements and cohabitation issues. Suzanne is also equally confident representing parents in matters involving children, having handled numerous complex cases, including leave to remove. She is an accredited Resolution mediator and has a thriving mediation practice and is a qualified collaborative lawyer and trains collaborative law for Resolution.

Suzanne spearheaded the arbitration training for family lawyers and herself is an accredited arbitrator.

She was voted Family Lawyer of the Year at the Spear’s Wealth Management Awards 2015 and Lawyer of the Year Award at the Magic Circle Awards for Citywealth 2016.

Suzanne acts for a wide range of clients including well known personalities - footballers, actors and business people.

Suzanne uses not only her gritty litigation skills where necessary but also dispute resolution methods such as mediation, collaborative law or arbitration.

## **WILLIAM LONGRIGG**

**Partner  
Charles Russell Speechlys LLP**

**London, England**

[www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)



William Longrigg is a Partner at Charles Russell Speechlys. He specialises in divorce, financial relief (to include pre-nuptial and post-nuptial agreements) and private law children cases. He also has wide experience of cases with an international element. He was awarded International Family Lawyer of the Year by Jordans in 2014 and Family Lawyer of the Year by Spears Wealth in 2016. He was ranked in the top 10 London Family Law solicitors by Spears Wealth Magazine in 2015 and 2017. He is immediate past president of the International Academy of Family Lawyers and past president of the European Chapter of that organisation. William lectures on a range of family law issues including trusts and matrimonial breakdown and is a joint author with Sarah Higgins of Family Breakdown and Trusts for Butterworths. He joined Charles Russell & Co (as it then was) in 1985. He was described as “one of the best family lawyers of his generation” by the Citywealth Leaders List, 2015, Chambers UK, 2016 described him as follows: “The ‘very able’ William Longrigg is known for being ‘always pragmatic and sensible, and focusing on trying to resolve the issues’.

**MR PHILIPPE LORTIE**

**First Secretary  
Hague Conference  
on Private International Law (HHCH),**

**The Hague, Netherlands**



Philippe Lortie (1965, Canada), B.A.A. H.E.C. Montreal, LL.L., LL.B. and LL.M. University of Ottawa, joined HCCH as a First Secretary in 2001 after working for the Department of Justice of Canada for a period of 10 years where he held different positions in connection to international law including Head of Canadian delegations for a number of international negotiations of private international law instruments.

Philippe Lortie works primarily in the area of international child protection and family law. He has primary responsibility for the Hague 2000 Protection of Adults and 2007 Child Support Conventions, for which, in the latter case, he played a key role in the development. He also has responsibility for the Malta Process, the Judge's Newsletter on International Protection, the International Hague Network of Judges and issues concerning Direct Judicial Communications under the Hague 1980 Child Abduction and 1996 Child Protection Conventions. He is responsible for the finalisation of the Guide to Good Practice on Article 13(1)(b) of the Child Abduction Convention. He steers the HCCH feasibility study on the development of possible future instruments on the Recognition and Enforcement of Cross-border Family Agreements involving Children. Finally, he has the responsibility for a number of HCCH IT tools including the iSupport electronic case management and secure communication system under the Hague 2007 Child Support Convention.

## **ANIL MALHOTRA**

**Malhotra & Malhotra Associates**

**Chandigarh, India**



Anil Malhotra is a practising Advocate based in Chandigarh, India since September 1983. He attained Bachelor of Science (1980) and Bachelor of Laws (Professional) (1983) degrees from Panjab University, Chandigarh & an LLM degree from the University of London, London in 1985. He studied Comparative Family Law at London School of Economics besides Law & Society at School of Oriental & African Studies.

Well conversant with independently conducting civil, service, company, matrimonial and allied litigation at High Courts over India and Supreme Court. From 1986 to 1992, he taught civil procedural laws and matrimonial remedies for six years as a part-time lecturer at the Faculty of Laws, Panjab University, Chandigarh. Worked at High Court as Additional Central Government Standing Counsel from 1997 to 2000. Have represented substantial number of private clients for the past three decades by filing and defending independent petitions at the High Court and other Forums in matters relating to constitutional, civil, company, criminal, consumer and family disputes litigation. Has rendered substantial assistance as Amicus curiae with reported judgments on various issues of public law importance. Representing Government of Punjab pro bono, as counsel in defending vires of Punjab Travel Professionals Regulation Act, 2012, at the High Court since 2013.

For over 35 years, he continues to act as an Indian expert to render reports in foreign courts on appointment by the Bench in overseas jurisdictions. Conducts matters in Indian Courts pertaining to interpretation and application of foreign Court Orders regarding divorce decrees, child abduction, custody, maintenance, adoption, surrogacy and family related issues of Non-resident Indians (NRIs).

He has co-authored book titled Acting for Non-resident Indian Clients (Jordans 2005), India, NRIs and the Law (Universal 2009), Indians, NRIs and the Law (Universal 2011), Surrogacy in India: A law in the Making (Universal 2013), International Indians and the Law, (Universal 2014), Surrogacy in India - A law in the Making : Revisited (LexisNexis 2015), India, Inter Country Parental Child Removal and the Law (LexisNexis 2016) and The Removed Child and The Law in India (2018). He has significant published work and has both international and domestic conference participations. Has over 300 newspaper columns to his credit besides significant published work in journals.

As Chairperson, Task Force, Policy Procedures, Resolution and Grievances of NRIs, he has authored five reports for the Government of Punjab and has assisted in the enactment of The Punjab Compulsory Registration of Marriages Act, 2012 and Punjab Travel Professionals Regulation Act, 2012. He is an Advisor on NRI issues to the Government of Punjab & is a member of Nodal Cell for NRI Affairs in UT, Chandigarh. On January 29, 2007, he was elected to the International Academy of Family Lawyers. He is the Indian Representative of the Family Law Committee of International Law Association and has lectured at National Judicial Academy, Bhopal on 11 programmes and spoken at Chandigarh Judicial Academy. He has authored four publications on NRIs issues for the Government of Punjab.

Has conducted number of litigations on inter country parental child removal matters and has persistently proposed, debated and discussed need for India to sign the Hague Convention on Inter parental child abduction, 1980. As amicus curiae, his report on inter country parental child removal, forms part a Punjab and Haryana High Court judgment making a reference to the Law Commission of India, to recommend that India needs to consider signing the Convention. Handled litigation & campaigns for India to enact a law on surrogacy arrangements in India. Intends to persuasively pursue enactment of Indian legislation on these subjects.

On 25 April 2017, Co-opted by the Punjab and Haryana High Court, Chandigarh as a Member of the Committee, constituted by the Ministry of Women and Child Development, Government of India to examine in detail the legal issues involved and give recommendations on resolving problems of parents and children involved in issues relating to inter parental / inter country child removal while examining the draft Protection of Children (Inter-Country Removal and Retention) Bill, 2016, whose report was submitted to Government of India on 21 April 2018.



## **PIERS MASTER**

**Partner**  
**Charles Russell Speechlys LLP**

**London, England**

[www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)



Piers advises on a full range of international and UK personal tax, trust, succession and estate planning matters.

Piers acts for high net worth individuals from across the world, including a significant number of Lebanese nationals. He is well known for his work with Middle Eastern clients more general: he acts for many ruling family members and billionaires – often with US links. In addition he acts for many UK based clients including entrepreneurs and owners of landed estates.

He frequently advises on complex tax and succession matters for international individuals, and cross-border advice is at the heart of his practice. He is the head of Charles Russell Speechlys' International Private Wealth group.

Piers has extensive experience of providing joined up tax and immigration advice for clients looking to come to the UK under the Tier 1 (Investor) route.

He trained and qualified at Allen & Overy, having obtained one of the top double first class degrees in his year from Oxford University. He is a Visiting Professor at the University of Law and a regular speaker in the UK and internationally on matters of private client interest.

### **Experience**

- Advising a prominent Middle Eastern family with US citizen children on the establishment and administration of a global private trust company structure with very substantial assets, where managing US issues was of paramount importance.
- Advising several Lebanese clients on appropriate succession planning structures, including family investment companies.
- Advising several large families on US/UK estate planning exercises, including consideration of transferring assets to lifetime trusts to optimise availability of the various US and UK reliefs.
- Regular advice on the US/UK estate tax treaty.

### **Memberships**

Society of Trust and Estate Practitioners

### **Background & education**

MA, Classics (double 1st class), The Queen's College, Oxford, 1998

MSt, Classics, The Queen's College, Oxford, 1999

Qualified 2003, joined the firm 2007

## **RAHIMA NATO-KAFLANE**

**Partner  
BWG Associes**

**Paris, France**

[www.bwg-associes.com](http://www.bwg-associes.com)



### **BIOGRAPHY**

Member of the Quebec (Canada) Bar since March 31th, 2003 and of the Paris (France) Bar since July 21th, 2007.

French and Canadian.

Bilingual English and French.

Almost 14 years of experience in Family Law, my exclusive and only area of practice, with a strong dominant international.

Writing articles on the issues of private international family law in the quarterly edition of the Journal of Family Law, Gazette du Palais.

### **ORGANIZATIONS**

- Member of the International Association of Family Lawyers (IAFL)
- Member of the International Bar Association (IBA)
- Member of the Union Internationale des Avocats (UIA)
- Member of the Association des Avocats du Québec en France
- Member of the Franco-British Lawyers Society (FBLS)
- Member of the French-American Bar Association (FABA)
- Member of the Barreau de Paris « Commission en Droit de la Famille »
- Member of the Institut du Droit de la Famille et du Patrimoine (IDFP)
- Member of the « Association des Avocats du Québec en France » (AAQF)
- Referenced as a Lawyer in International Family Law at the Canadian Embassy in Paris, France

### **CONFERENCES IN INTERNATIONAL FAMILY LAW**

- Speaker at the Commission of family law at the International Bar Association (IBA)
- Speaker at the Academy of European Law (ERA)

## **MOZHDEH POURMAND**

**Managing Partner  
Andisheh Legal Firm**

**Iran**



Mozhdeh Pourmand is a qualified attorney and member of Iran Bar Association since 2005.

She is the managing Partner of Andisheh Legal Firm in Iran.

Being a law student she started working as legal intern with RAHI legal clinic providing social and legal services to the women victim of domestic violence or subject to the discrimination of legal procedure due to their gender.

Later as legal attorney she joined the network of volunteer lawyers providing consultancy and litigation legal services to women and children in family and penal cases.

She later moved to Dubai and worked for two years as Legal Council in a Legal Firm followed by moving back to Iran where she continued working as litigator and legal counsel till today.

She has several articles published in local newspapers and media regarding challenges and developments in family law with particular focus in divorce process for women.

Andisheh Legal Firm works closely with Iran Bar Association in providing free litigation services in family cases for women and also provides family law related legal advices one day per week through its social media channel.

She holds LLB,LLM and is graduated from Beheshti University in Iran. She speaks Farsi, English, French and has working knowledge of Arabic.

**MAGGIE RAE**

**Consultant  
Newton Kearns**

**London, England**

[www.newtonkearns.co.uk](http://www.newtonkearns.co.uk)



Maggie Rae qualified as a barrister and then requalified as a solicitor. She has specialised in family law undertaking both children and finance work. Maggie is currently the chair of Refuge, the UK's largest provider of accommodation for those who have experienced domestic violence. She has written extensively on family law and especially the law relating to pensions and divorce and also does quite a lot of teaching.

Maggie's hobbies are cooking and Pilates. She is currently training to be a Pilates teacher.

**MALAVIKA RAJKOTIA**

**Proprietor  
Rajkotia Associates  
India**

[www.rajkotiaassociates.in](http://www.rajkotiaassociates.in)



As the founder of Rajkotia Associates, I have been practicing law for over three decades in various District Courts, High Courts and the Supreme Court of India. My primary area of practice is family law. I have handled several high profile and complex divorces and property disputes.

I have authored a book Intimacy Undone: Marriage, Divorce and Family Law in India. The book explores the rocky terrain of marriages in India, and the dismantling of its socio-economic structure in a patriarchal society, although now at an intensely transformative stage.

**ISABELLE REIN LESCOSTEREYRES**

**BWG Family Law Firm**

**Paris, France**

[www.bwg-associes.com](http://www.bwg-associes.com)



Majored from HEC in 1995, admitted to the Bar in 1997, partner in BWG since 2005; specializing in international family law, both in children and financial matters; collaborative lawyer, Resolution Mediator, French expert for the CCBE, Member of the scientific committee of the “Etats Généraux du Droit de la Famille et du Patrimoine”; co-author of “Droit international privé, Exercices Pratiques”, 1st edition (2014) and 2nd edition (2015), Regular author in “Gazette du Palais” Family law edition, contributor to “Points de procedure et illustrations” of the “Daloz Action Droit de la Famille”; Member of various organizations including IAFL (past counsel), IBA (International Bar Association), UIA (Union internationale des avocats), FBLS (Franco-British Lawyers Society), FABA (French-American Bar Association), IDFP (Institut du droit de la famille et du patrimoine), AFPDC (Association Française des Praticiens du Droit Collaboratif), founding member, Family law commission at the Paris Bar.

## SHABANA SALEEM

Associate Barrister  
Charles Russell Speechlys LLP

London, England

[www.charlesrussellspeechlys.com](http://www.charlesrussellspeechlys.com)



Shabana specialises in international family law with a particular emphasis on the use of pre and post nuptial agreements, financial settlement following separation or divorce and child arrangements.

Shabana is a specialist family lawyer advising on all areas of family matters, with a particular expertise in wealth protection agreements and the financial claims following an overseas divorce. She previously worked in financial services and is adept at seeking the best outcome for her clients.

She trained as a barrister in private children proceedings and has represented clients in preliminary and final hearings on disputes concerning child arrangements, relocation of children abroad, child abduction and the unlawful retention of children abroad.

She has particular expertise in Sharia, assisting in complex cases concerning religious marriage ceremonies, family wealth, children matters and international child contact arrangements with an international element, as well as domestic cases.

### **Memberships & Appointments**

Young Barrister's Committee Member, Bar Council  
Resolution  
Family Law Bar Association  
The Honourable Society of Gray's Inn

### **Publications**

*The legal treatment of Islamic marriage ceremonies*, Oxford Journal of Law and Religion 2018

*Islamic Marriages: Given the independent review into the application of Sharia Law in England and Wales, what is the way forward?* Family Law May 2018 Volume 28 pp 501 - 638

*Managing Family Problems in the UAE*, Capital Letter BBG Vol 18 Issue 3 Autumn 2013

### **Languages**

Punjabi  
Urdu

**THOMAS SASSER**

**Managing Partner  
Sasser, Cestero & Sasser, P.A.,**

**West Palm Beach, Florida, USA**

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Thomas J. Sasser is the managing partner of the law firm of Sasser, Cestero & Sasser, P.A., which is located in West Palm Beach, Florida. He is Board Certified in Marital and Family Law. Mr. Sasser is a Fellow of the American Academy of Matrimonial Lawyers (“AAML”) and the International Academy of Family Lawyers (“IAFL”). He is a Diplomat of the American College of Family Law Trial Lawyers. He received his J.D. in 1995 from The University of Florida and his B.A. in 1992 from The College of William and Mary in Williamsburg, Virginia. He is a past Chair of the Family Law Section of The Florida Bar. In addition, he is a four-time past chair of the Florida Bar Marital and Family Law Board Certification Review Course. He is a past President of the Florida Chapter of the AAML and serves as the national Secretary of the AAML. He also is the Treasurer of the IAFL and has served on the Board of the United States Chapter of the IAFL. He served as the chair of the Palm Beach County Bar Association Family Law Practice Committee from 2003 - 2008. Mr. Sasser is the author of several articles for the Family Law Section Commentator and The Florida Bar Journal. He often lectures for the Palm Beach County Bar Association, The Florida Bar Family Law Section, the AAML and the IAFL.



## **JAMES STEWART**

**Partner  
Penningtons Manches LLP**

**London, England**

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A specialist in international family law and co-head Private Wealth (which includes the family, immigration, tax and trusts departments) at Penningtons Manches, London, James Stewart has been described as “one of the most visible faces of UK family law”. He is General Editor of the IAFL supported, “Blue Book”, Family Law: A Global Guide (2018, Thomson Reuters) which has become the definitive comparative text in the field of international family law. James also sits on the Consultation Board of Practical Law.

Admitted in England and in Northern Ireland, James’s practice focuses on high net worth financial cases, many of which have a Middle Eastern dimension. He is instructed by a significant number of family offices, trusts and other third parties who find themselves embroiled in English divorce proceedings. A recognised expert in marital agreements, James was invited to present at STEP Europe, Luxembourg, on international Pre-Nuptial Agreements and the EU Marital Property Regulation.

Highly ranked in all the legal directories, and listed in Super Lawyers, London “Top 10”, James is shortlisted in the Chambers High Net Worth Awards 2018 for Family Lawyer of the Year.

James’s reported cases over the last year include: R v A (divorce: property: add back) EWFC 59 (04 September 2018), AB v AC (divorce: property: pre-acquired wealth) EWHC 1319 (Fam) (01 February 2018) and O’Connell v Lovell (divorce: property: committal to prison) [2017] EWFC B99 (21 December 2017). He has successfully acted for Egyptian family office in a Judgment to be handed down later this month. Over the same period, James and his team have settled a number of UHNW cases on a private and amicable basis outside of the court arena.

James has been a Fellow of the IAFL since 2005 and is a former Governor at Large and Parliamentarian. He is now a member of the IAFL Reference Group and chairs the Academy’s PR Committee.

Outside of work, James chairs the Annual Legal Dinner which takes place at The Dorchester and which has become one of the highlights of London’s legal calendar. The Legal Dinner raises funds for Ireland’s leading peace building charity.

**ALEXANDRA TRIBE**

**Expatriate Law**

**London, England**

[www.expatriatelaw.com](http://www.expatriatelaw.com)



Alexandra and her father, David Hallam-Peel, co-founded Expatriate Law in 2010 to provide specialist family law advice to British expatriates worldwide, from the firm's base in London. Alexandra is accredited by Resolution as a specialist in International Family Law and Advanced Financial Provision and sits on Resolution's international family law committee. She is also a Fellow of the International Academy of Family Lawyers. Alexandra wrote the United Arab Emirates chapter of 'Family Law Jurisdictional Comparisons (2nd Edition)' and is a contributing author to Resolution's Guide to International Family Law.

Having practised family law in Dubai for 8 years, Alexandra has extensive knowledge of Sharia laws and their impact on family matters for expatriates. She regularly advises English law firms on Dubai laws and their implication. The majority of Alexandra's clients are based in the Middle East, but are from or have links to England. Alexandra specialises in international family law, in particular divorce, financial remedies on divorce, Schedule 1 claims and jurisdiction disputes. Alexandra has been involved in several reported cases, including acting for the successful wife in the matter of *Baldwin v Baldwin* [2014] EWCH 4857 (Fam) which was the test case for the workings of the EU Maintenance Regulations.

## **ALESSANDRO TRICOLI**

**Partner**

**Fichte & Co Legal Consultancy**

**Dubai, UAE**

[www.fichtelegal.com](http://www.fichtelegal.com)



Alessandro joined Fichte & Co in 2006 and is presently a partner at the firm. He specializes in ship finance, ship sale & purchase, construction and conversion. He regularly acts for owners, yards and banks in contentious and non-contentious matters relating to ship building, ship finance, and ship sale and purchase contracts. Given his finance background, Alessandro's clients naturally include ultra-high net worth families and individuals, and their family offices or private investments companies, for whom he regularly advises on wealth structuring and management as well as wealth and legacy protection.

Alessandro's broad knowledge further encompasses many areas of the firm's contentious work, with a particular emphasis on disputes resolution in which he advises a number of the firm's clients. Alessandro was leading the team that obtained the first recognition and enforcement of a foreign arbitral award under the New York Convention by the Fujairah Courts and was the instructing lawyer in both *Fiske Firmin v Firuzeh* and *Gulf Eyadah*, the two representative cases in the DIFC Courts for the enforcement of foreign arbitral awards and judgments. More recently he was involved in the dispute around "Luna", the second largest expedition yacht in the world, and her arrest by the UAE courts following a freezing order issued by the DIFC courts.

Before joining Fichte & Co Alessandro practiced in Italy with a top-tier insurance law firm, during which time he also assisted the Chair of Maritime Law at the University of Bologna. He then moved to the UK to read postgraduate maritime law at the University of Southampton and gained international work experience in London. Alessandro is the chairman of the Emirates Maritime Law Association and has been consistently named in the Legal 500 EMEA (Shipping) since 2011 (a professional lawyer who "gives sound, relevant advice on the matter at hand", with clients "particularly pleased with his expertise and knowledge in the maritime field"). He is also included in the list of Who's Who Legal (Transport) and was recognized in 2015 as Shipping & Maritime Lawyer of the Year (UAE) by Finance Monthly.

**MERT YALCIN**

**YTT Law Office**

**Istanbul, Turkey**

[www.yttlaw.com](http://www.yttlaw.com)



Mert Yalçın graduated from the Dokuz Eylül University Faculty of Law in 2001. As an active student, besides his studies, he was also involved in various organisations including being the President of ELSA's (European Young Lawyers Association) branch in Izmir and on top of that he began to learn the secrets of the profession when he was still a student by completing the internship in various Global Law Firms.

In 2001, he was registered as a lawyer in the Izmir Bar Association and began his professional career in a leading law firm. In 2002, he enhanced his knowledge by enrolling on various courses and lectures at the University of California, Los Angeles, in the USA. After returning from the USA, he continued his legal career in Istanbul and became one of the first founders of the prominent leading law firm in its Istanbul branch.

During the year 2005, he had been active in providing legal consulting services to foreign capital enterprises and some Fortune 500 companies which had invested in Turkey in order to give information about new investments or either to be in pursuit of their respective works.

Also, he has been a legal consultant in the investment and development projects of various real estate funds and has provided consultancy services to the leading construction firms. In addition, he has provided consultancy services to foreign natural individuals in the field of International Private Law. Furthermore, in 2005, he was a guest lawyer at the Bates Wells Braithwaite Law Firm in London.

In addition, he was also involved in one of the most important cases of Family Law in Turkey until today 'the case of Chelouche v Eskinazi' as the principal lawyer; by applying his international family law knowledge in addition to his corporate legal counselling expertise in this case. Moreover, he has provided legal services to clients from various nationalities as well.

In 2008, Mert Yalçın was invited by the U.S Ministry of Interior (Department of State) and was awarded with a 'Leadership Certificate' on behalf of the American Embassy in Turkey for his successful works in the field of International Family Law especially for the works he performed on the International Child Abduction Cases in 5 states and on the 1980 Hague Convention with regards to the Legal Aspects of Child Abduction.

During this period, in parallel with his commitments in International Family law, he significantly expanded his experience by engaging in the fields of

corporate/company law in particular International Arbitration. As a result, he has been working as a lawyer in the most important international arbitration cases present in Turkey.

In 2011, Mert Yalçın incorporated with Kortan Toygar, the Yalçın & Toygar Law Firm. Till this day they are both managing partners of the firm.

Mert Yalçın has been acting as a participant as well as a speaker in many local and international conferences. Concurrently, he is still actively contributing to the AIJA (International Young Lawyers Association) (the association which he used to successfully administer and carry out activities in it as a representative of Turkey), through various commissions. Mert Yalçın also participates in IBA (International Bar Association) Meetings where he works with different committees.

Moreover, Mert Yalçın has been recognised as an expert pundit in courts of different countries such as United Kingdom, America (California, New York, Florida) Switzerland, Holland, Canada and France either by physically being present in the courts or by expressing his opinion in writing.

Also, Mert Yalçın has been directly serving as Legal Advisor in consulates and embassies of various nations.

Mert Yalçın works as a great team leader when working with his colleagues and as a lawyer, his main principle is to provide top notch services to his clients by achieving the global standards.

Besides his career as a lawyer, Mert Yalçın is a squash player and as part of his hobbies, he enjoys riding motorbikes, travelling and fishing with a fishing spear as well as, fishing rod.

#### **Memberships:**

- Istanbul Bar Association
- AIJA
- INTA
- ELSA
- Sweden Chamber of Commerce
- British Chamber of Commerce
- LawPact
- Italian Chamber of Commerce

# Family Law in Dubai

## Personal Status Law Conference

Presented by:  
Dr. Jasim Mohammed Al Hosani  
Judge of the Dubai Court of Appeal

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## Judicial System – Jurisdiction & Order

- Judiciary in Dubai is independent from the Federal Judiciary of the United Arab Emirates.
- Order of Courts:
- Court of First Instance – Personal Status Court.
- Restricted Jurisdiction Circuit.
- Circuit of Temporal & Summary Matters.
- Execution Circuit Judge.
- Attestation Judge.

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## Order of Courts – Court of Appeal

- The Court of Appeal has Circuits for hearing the Appeals filed against judgments rendered by the Personal Status Court. The mission of the Court of Appeal is not limited to overseeing the appealed judgments in terms of the sound application of Law therein because once an Appeal has been filed, the subject matter of the dispute is wholly; and within the limits of the Appellant's demands; referred to the Court of Appeal in the sense that the subject matter is being re-brought, in its entirety, before the Court including all evidence, pleadings and arguments.

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### Order of Courts – Court of Cassation

The Court of Cassation has Circuits for hearing the Cassations filed against judgments rendered by the Court of Appeal. Being a Trial Court, in the event that the Court of Cassation reverses the contested judgments; either partially or wholly; or in case the Cassation was filed for the second time, then the Court of Cassation has to decide on the subject matter.

The Court of Cassation doesn't dispose of the subject matter and must remand the lawsuit to the Court that rendered the contested judgment in the following cases:

- Invalidity of the service;
- Lack of jurisdiction;
- A pleading; on the formalities; has been accepted and hence resulted in halting the proceedings

The Court, to which the lawsuit has been remanded, must adhere to the Cassation Judgment.

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### Subject-matter Jurisdiction in Personal Status

• **Court of First Instance:**

The Restricted Jurisdiction Circuit of First Instance; comprised of a Sole Judge; has the jurisdiction over personal matters such as engagement, marriage and the personal and financial effects thereof as well as divorce and its effects, dowry, children's custody, guardianship, custodianship and inheritance.

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### Court's System –Attestations 1

- Attestation Judge is responsible for attesting certificates either for Muslims or Non-Muslims such as:
- Ratification of Conversion to Islam & Proof of Islam
- Marriage Contract and its effects, Marriage Contract, Proof of Marriage, Proof of dowry increment, Proof of waiver of the dowry
- Divorce, Proof of Divorce, and Khul'/Khula [divorce on the wife's own initiative]
- Confirmation of Status: Confirmation of Maturity, Confirmation of Sharing in the Marital Home, Confirmation of Social Status
- Wills and Gifts: Probate of will, Proof of revocation of will, Appointment and Cancellation of the appointment of a guardian, Confirmation of appointment of a guardian to an estate, Proof of donation, Revocation of donation, Proof of dedication (waqf).

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### Court's System –Attestations 2

- Lineage and custody: Proof of Custody and Waiver thereof, Proof of the House of Custody, Proof of wardship and care.
- Authorizations: Trade authorization, Authorization for opening bank account for a minor
- Inheritance: Limitation of Succession

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### Challenging Personal Status judgments

- Judgments rendered in relation to Personal Status cases
- The time limit for challenging such judgments either by way of Appeal or Cassation is 30 days.
- All judgments rendered in relation to Personal Status cases can be challenged either by way of Appeal or Cassation except for conciliation judgments and judgments rendered for oath.
- Attestations:
- Attestations are unchallengeable and the only way to cancel them is to file a first instance lawsuit to obtain a revocation judgment.

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### Laws applicable to the lawsuits of Non-Muslims

Paragraph No. 2 of FEDERAL LAW NO. (28) OF 2005 ON PERSONAL STATUS stipulates: "the provisions of this Law shall apply to Non-UAE citizens unless they ask for the application of their law.

The litigant must prove the existence of a foreign Law and submit the same to the Court because a foreign law is considered as a material fact regarding which the burden of proof falls onto the party maintaining it.

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Conflict between National Law and Foreign Law

The purport of Articles No. 3 and 27 of the UAE Civil Code indicates that the UAE legislators has obligated the national judge to apply the provisions of the foreign law as indicated by the National Choice-of-Law Rules regardless of the origin of such foreign law as long as it doesn't contravene the Shariah, Public Order, or Public Morals.

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Travel Ban

The general is that the guardian of the fostered is the one that takes care of him/her and hence the Law has stipulated that the fosterer may not travel with the fostered child outside the State unless upon obtaining the written approval of his guardian and in case the guardian refused to give his approval and such travel had its justifiable reasons, then the matter shall be brought before the judge to dispose of it taking into consideration the rights of the fosterer and in accordance with what serves the interests of the fostered child; holder of the passport.

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# **Marriage and Divorce - what does it mean?**

# Marriage and Divorce – what does it mean?

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Chair: Shabana Saleem (England & Wales)

Panel: Elham Ali Hassan (Bahrain)  
James Carroll (England & Wales)  
Alexandre Boiché (France)  
Ghassan El Daye (Lebanon)  
Sulema Jahangir (Pakistan)

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# QUESTION TIME

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**Are there any criteria or exclusions that apply before the parties are allowed to marry? For example in relation to polygamous marriage**

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**What is the legal definition of marriage and if there is none, what are the minimum requirements for a ceremony to become a legally valid marriage ? Are there any special requirements or processes for particular religious or ethnic groups ?**

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**What is the process for the recognition of a domestic and foreign marriage ?**

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What is the process for the recognition of a domestic and foreign **divorce**?

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What conditions have to be satisfied before one or both parties can proceed with a divorce?

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What, if any, financial remedies are available to each spouse during the marriage?

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Can any form of agreement be settled before, during or after the marriage for the protection of any wealth ?

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What, if any, financial remedies are available following a divorce ?

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What is the most contentious area at this time in relation to the recognition of marriage and divorce in your jurisdiction ?

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## SPEAKERS PAPERS

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**IAFL: DUBAI: 11am, 13 November 2018**

**“Marriage and Divorce: what does it all mean?”**

**Answers to Written Questions**

**James Carroll, Partner, Russell-Cooke LLP**

**1. Are there any criteria or exclusions that apply before the parties are allowed to marry? For example in relation to polygamous marriage.**

For parties to enter into a valid marriage in England and Wales they must be permitted to marry and comply with certain formalities.

Both opposite and same sex marriage are permissible, as are civil partnership (a recognised civil union akin to marriage currently only available to same-sex couples, though potentially being extended to opposite sex couples).

A marriage will be void (i.e. the marriage will be deemed to never have existed) if:

- the parties are too closely related (‘prohibited degrees of relationship’ include siblings, parents, grandparents, nephews and nieces: *as such cousins marriages are valid marriages*);
- the marriage involves a child under the age of 16;
- a child marries under the age of 18 unless they have consent (usually of their parent or guardian, but other options apply, including the child applying to the court for consent);
- if either party is already lawfully married or in a civil partnership: polygamous marriages are therefore considered to be bigamous and void. However, this applies only to polygamous marriages conducted in England and Wales. Polygamous marriages if validly entered into outside *England and Wales* are *not void save if either party to the marriage is domiciled in England and Wales*; or
- if either party was unable to consent or lacks capacity to marry (see below regarding forced marriage);

By contrast, the following criteria will render a marriage voidable (i.e. capable of being subjected to an application for nullity but not automatically void):

- the marriage has not been consummated (either by inability of either party or wilful refusal by one party).
- that either party did not validly consent (e.g. through duress, mistake, or lack of capacity).
- either party was suffering from a communicable venereal disease. or

- that the Respondent to the petition was pregnant by someone other than the Petitioner.

The distinction between void and voidable marriage is key. A voidable marriage gives rise to the ability to obtain a decree of nullity which in turn permits an application for financial relief. A void marriage does not. Similarly, as a polygamous marriage entered into outside of England and Wales can be valid, the parties to that marriage may seek financial relief in England and Wales.

**2. What is the legal definition of marriage and if there is none, what are the minimum requirements for a ceremony to become a legally valid marriage? Are there any special requirements or processes for particular religious or ethnic groups?**

Historically, case law sought to define marriage. For example, the 1866 case: *Hyde v Hyde* described marriage as the ‘*voluntary union for life of one man and one woman, to the exclusion of all others*’. That said, as the law currently stands there is no strict legal definition of marriage in England & Wales. . As such, marriage is defined more by what it isn’t than what it is. For example, the Marriage Act 1949 sets out matters of practice and procedure to be followed to ensure a valid marriage whereas the Matrimonial Causes Act 1973 details the grounds on which marriages are void or voidable.

As well as being able to marry, the parties must also have complied with certain formalities. For example the requirements for publication of marriage ‘banns’ or a notice, that both the place of celebration and person celebrating being licensed to undertake marriage (*England and Wales therefore requires the licencing of the premises as well as the officiant*) etc.

An agreement to get married (an engagement) is not an enforceable contract in law, though the giving of a gift (commonly the engagement ring) is absolute save if it is given conditionally.

A marriage may be entered into at a certain places of worship, at an approved premises (such as a hotel) or at a registry office (the latter two commonly referred to as civil marriages). Both the place of marriage must be registered as a place of worship registered for marriage, and the officiant undertaking the ceremony must also be registered. It is key that not all religious marriages are recognised as valid marriages. Of fundamental importance is that unless an Islamic marriage is supported by a civil marriage (which could be undertaken at a mosque if both it and the officiant are registered) it will not be valid in England and Wales. By contrast, Christian marriages and Jewish marriages celebrated in synagogues or under the auspices of a synagogue will ordinarily be accompanied by a civil ceremony and the marriages will be recognised and registered in the usual way.

**3. What is the process for the recognition of a domestic and foreign marriage?**

For a domestic marriage registration of the marriage proves that a marriage took place. Registration takes place at local registry offices: <https://www.gov.uk/register-offices> though the General Register Office holds a central copy of all registrations for England and Wales: <https://www.gro.gov.uk/gro/content/>

The Church of England and the Church in Wales are allowed to register a marriage at the same time as performing the religious ceremony. They are the only organisations that are permitted to do so. Notice, in the form of marriage 'banns' are read on three Sundays before the ceremony in the parish church where the marriage will take place. Banns must be read.

For other religious marriages 28 days' notice must be given of the intended marriage to the Register Office. For the Church of England and of Wales instead of going to the Superintendent Registrar before the ceremony,

Ministers and priests of all other religions can be authorised to register marriages and must have a certificate or licence to do so from the local Superintendent Registrar. The authorisation is automatic for Jewish and Quaker marriages. For all other religions, if the official performing the ceremony is not authorised, either a Registrar must attend the religious ceremony or the partners will need to have separate religious and civil ceremonies.

If the registrar believes that a person is entering or has entered into a marriage for immigration purposes, the registrar has a duty to report this to the Home Office. The Home Office may wish to carry out investigations to ensure that the proposed marriage is not a 'sham'.

For foreign marriages, up until 1 January 2014 the Foreign and Commonwealth Office provided a service whereby foreign marriage certificates could be deposited with the General Register Office in England and Wales. This service has now been discontinued. In any event, the mere depositing of the documents did not lead to 'recognition' or 'validation' of the foreign marriage under the law of England and Wales. Therefore, no action is needed to register a foreign marriage in England and Wales. It is therefore important that the parties to the marriage take steps to secure any original marriage certificate or other documents regarding their marriage in case they are required in the future (e.g. in a divorce).

For a marriage celebrated in a foreign jurisdiction to be recognised as valid in England and Wales, both:

- The marriage must be "formally" valid. English law follows the principle of *lex loci celebrationis* (the law of the place of celebration). A foreign marriage will be recognised if it complies with the formalities of the country in which it was celebrated. If an overseas marriage is properly conducted, it will usually be recognised. It is not possible though for individuals to remarry in the UK without an overseas marriage first being dissolved.
- Each of the parties to the marriage must have "capacity". Capacity to marry is governed by the law of each party's pre-marital domicile.

Where there is doubt, an application can be made to the Court for a declaration of validity. That application may be made in respect of either a domestic or foreign marriage – or any ceremony which one party contends or denies is either a valid marriage. While the application may be made in respect of overseas marriages, at least

one of the parties must have been domiciled in England and Wales either on the day the parties were married or for one year prior to the application being made.

#### **4. What is the process for the recognition of a domestic and foreign divorce?**

For the recognition of a domestic divorce, provision of the final order in divorce, Decree Absolute, is required.

For foreign divorces, in Europe, the Brussels II bis Regulation currently provides the rules for the recognition of foreign divorces which in most cases will be automatic. The position post-Brexit is as yet unknown.

A divorce obtained by means of judicial or other proceedings in a country not a signatory to the Brussels II bis Regulation will be recognised if both:

- The divorce is effective under the law of the country in which it was obtained.
- At the date of the commencement of the proceedings, either party to the marriage was habitually resident, domiciled in or was a national of that country.

Divorces obtained other than by means of proceedings are only recognised if both:

- The divorce is effective under the law of the country in which it was obtained.
- At the date on which it was obtained, each party to the marriage was domiciled in that country or either party to the marriage was domiciled in that country and the other party was domiciled in a country under whose law the divorce is recognised as valid.

The Court may order that the Decree Nisi (interim divorce pronouncement) is not made Absolute (the final divorce pronouncement) until steps have been taken to dissolve a prescribed religious marriage. This applies to Jewish marriages and obtaining a Jewish divorce (Get) as well as obtaining an Islamic divorce (Talaq).

As Islamic marriages undertaken in England and Wales (unless accompanied by a civil registration) may not have legal validity there is no state based system providing for Islamic or Sharia divorces. The Islamic Sharia Council is one of many charities that grants religious divorces to help address this issue. The ISC deals only with Islamic marriage. Although the parties are provided with a certificate of divorce the ISC is not empowered to dissolve the civil marriage, just as the English and Welsh Courts do not have the power to dissolve an Islamic marriage.

By contrast, a Jewish religious marriage can take place at the same time as a valid English marriage. However, the Jewish divorce (Get) and civil divorce processes are independent of each other. Therefore, one can be divorced in Jewish law but not in English law and vice versa.

A forced marriage is where one or both people do not (or in the case of some people with learning or physical disabilities cannot) consent to the marriage. Typically pressure or abuse by family or the wider community is applied to force the marriage to take place. Marriage can mean a religious or civil ceremony (whether

or no legally binding). An arranged marriage is not the same as a forced marriage. In an arranged marriage, the families take the leading role in choosing the marriage partner but the choice of whether to enter the marriage is left to both people.

The Forced Marriage Act 2007 was brought in to prevent forced marriages and provide a way to exit those already in a forced marriage. It can regulate behaviour outside the jurisdiction as well as within England and Wales. This includes taking people abroad without knowing that they are to be married. Accordingly, it is possible to apply in advance for a Forced Marriage Protection Order to protect a person from being forced into a marriage. The Forced Marriage Unit, a joint team from the Foreign and Commonwealth Office and Home Office, has been created and can assist particularly when a protected person is abroad and communication is required with the High Commission or Embassy or foreign police.

**5. What conditions have to be satisfied before one or both parties can proceed with a divorce?**

A marriage may be dissolved on the basis that it has broken down irretrievably.

The Petitioner (the person starting the divorce/dissolution) must prove irretrievable breakdown of the marriage this has occurred on the basis of one of five facts:

- a. Adultery (this option is not available to same-sex couples); it is permissible but rare to name the co-respondent
- b. Behaviour (this has been the subject of a recent case in the Supreme Court (the highest Court in the United Kingdom) as to the nature of the behaviour and the impact on the petitioner and has renewed calls for the reform of divorce law in England and Wales).
- c. Desertion (this is very rarely used in practice).
- d. Two years' separation with the consent of the respondent (sometimes referred to as the 'friendly divorce' as it is not conduct based and requires the consent of both parties).
- e. Five years' separation.

The following criteria must also be met to obtain a divorce or dissolution in England and Wales:

- The parties have been married for at least one year before the divorce petition is sent to court.
- The court has jurisdiction to deal with the divorce proceedings based:
  - on the parties' habitual residence or domicile: Brussels II
  - sole domicile where no court of a Contracting State having jurisdiction.

A marriage may also be susceptible to:

- a) An application for a Judicial Separation: *which regulates the legal separation of the parties without terminating the marriage and can include financial provision.*
- b) An application for nullity on the basis that the marriage is void.

**6. What, if any, financial remedies are available to each spouse during the marriage?**

Whilst a marriage subsists, there are limited financial remedies available to the parties. Parties can make an application for maintenance, or a one off lump sum, during the marriage. The claim is made on the basis of a failure to provide reasonable financial support. However, such claims are incredible rare, perhaps because of the availability of interim remedies during the divorce process that provide for interim maintenance pending the divorce, including an order that one party make provision for the legal fees of the other.

It is important to note that England and Wales does not operate a system of matrimonial property regimes. Therefore, the determination and distribution of assets takes place upon divorce rather than through the selection of a regime upon marriage governing the financial relationship between the parties either during the subsistence of the marriage or on divorce.

**7. Can any form of agreement be settled before, during or after the marriage for the protection of any wealth?**

Yes: pre-and-post nuptial agreements are permissible, though not binding.

Although in the past, pre- and post-nuptial agreements have not been legally binding in England and Wales case law (*Radmacher v Granatino* [2010] UKSC 42) changed the Court's approach. Such agreements are still not binding on divorce but are given weight (sometime magnetic weight) when the Court adjudicates on the division of the finances on divorce. Four key principles arise:

- There is now a rebuttable presumption that courts should give effect to pre-nuptial agreements.
- Nuptial agreements cannot oust the jurisdiction of the court.
- The substance of nuptial agreements must be fair. Therefore, the agreement cannot prejudice the reasonable requirements of any children of the family and a failure to meet a party's needs or compensate them for relationship-generated loss may render it unfair to hold that party to the terms of the agreement.
- The circumstances surrounding the making of nuptial agreements will affect the weight given to the agreement upon divorce. If there is evidence of duress, fraud or misrepresentation, the agreement may be ignored. The weight attached to the agreement may be reduced if the parties do not take legal advice or have the benefit of disclosure prior to its execution.

Best practice suggests that each party should have independent legal advice and that there should be disclosure prior to entering into the agreement. Likewise, good practice

says that the agreement should be entered into sufficiently far in advance of the wedding. While there is no prescribed timetable, it is commonly said to be 21 or 28 days. This suggested timeframe is often not complied with and there is a practice of entering into post-nuptial agreements after the wedding confirming the terms of the pre-nuptial agreement. Equally, a post-nuptial agreement may be entered into any time after the marriage (such as when an inheritance is expected or as part of family wealth planning). Previously, it was said that a post nuptial agreements (of whatever form) may be 'more weighty' than a pre-nuptial agreement given that it could not be suggested that there was any pressure to marry. However, this has now been determined to no longer be the case, and both pre-and-post nuptial agreements are treated broadly similarly.

The status of nuptial agreements in England was considered in the Law Commission's Report, titled Matrimonial Property, Needs and Agreements published on 27 February 2014.

The Law Commission found that the Supreme Court in *Radmacher* went as far as it could in "endorsing the validity of marital property agreements without an amendment to the statutory framework". It has, therefore, recommended that legislation be enacted to introduce qualifying nuptial agreements (QNAs). Such agreements would enable couples to make binding contractual arrangements about the financial consequences of divorce subject to certain safeguards. Where a qualifying nuptial agreement exists, the court could only make orders where the needs of either party or a child of the family required it to diverge from the qualifying agreement. The Law Commission did conclude, however, that the concept of "fairness" used by the Supreme Court in *Radmacher* was too inexact to provide an appropriate safeguard so as to ensure that QNAs are upheld.

To satisfy the requirements, it is proposed that a qualifying nuptial agreement must:

- Be contractually valid - freely entered with the appropriate level of information. Any evidence of mistake, misrepresentation, duress or undue influence will cause the agreement to fail as a contract.
- Not be made within the 28 days immediately before the wedding ceremony (this wouldn't make an agreement invalid but would make it a pre-nuptial agreement not a qualifying nuptial agreement).
- Include material full and frank financial disclosure of both parties' financial situation meaning that the agreement must include a schedule of each party's assets.
- Include evidence that the parties' legal representatives provided specified advice.
- Not prejudice any children. If the agreement makes insufficient financial provision for children it will be set aside by the court.

- Not leave one or both parties dependent on state benefits, either now or in the foreseeable future.
- Include a review clause which suggests the agreement is reviewed every few years (five years is often agreed) or on a significant event happening (or both).
- Meet both parties' needs - measured with reference to standard of living during the marriage and proviso must be made for capital and income and include the children's needs.

The Law Commission recommendations regarding qualifying nuptial agreements are not currently the law.

## **8. What, if any, financial remedies are available following a divorce?**

The court has wide powers to make orders in relation to the division of assets on divorce including ordering a party to:

- Pay periodical payments (maintenance) to the other party for as long as the court decides is necessary. Maintenance in England and Wales has a much more narrow definition than that in Europe and is closer to the term alimony. It is designed principally to be a payment of income from income (though this isn't absolute). Despite the narrower definition maintenance award can be substantial and can last for a long time, or even until death. Maintenance can be paid either for:
  - A period of time that is non-extendable: such as a few years to re-establish financial independence, or when a child reaches a certain age (*this is known as a non-extendable term order*).
  - A period of time that is extendable: such as to retirement, but with the capacity to apply back to court to extend the term (*this is known as an extendable term order*).
  - For joint lives: this means to either a further order of the court, death or remarriage (remarriage of the receiving party automatically terminates spousal maintenance but not child maintenance) (*this is known as a joint lives order*).
  - An Order that does not include any provision for spousal maintenance is referred to as a 'Clean Break' order. By contrast, an Order may still be a Clean Break if the maintenance is 'capitalised' and paid as a lump sum.
- Pay a lump sum or sums.
- Child maintenance: This is treated differently to maintenance for the other party. For the majority of people, child maintenance is the province of a statutory body called the Child Maintenance Service and the Court does not have jurisdiction (unless the party's agree, which allows the Court jurisdiction to make an order enforceable for 12 months). The Court though does have jurisdiction to tackle child maintenance where the paying party's gross income exceeds £156,000 gross per annum or



where other criteria (such as the paying party residing overseas) apply. In those situations, the Court determines the award applying its discretion rather than the formulaic approach applied by the CMS.

- Transfer or sell property and distribute the proceeds – this is commonly real property but can relate to most forms of property such as cars, art, shares, etc.
- Share a pension fund.
- Vary any nuptial settlement or trust made for the benefit of one of the parties. This is a crucial provision enable the court (in the right circumstances) to adjust Trusts.

Generally speaking the final financial Order made by the Court will finalise all issues of capital and pensions for all time and it will not be possible to apply back to the court for further relief. That said, the court does have limited powers to vary the timing and, sometimes, amount of any lump sum that has been ordered and to revisit the order in extreme circumstances, such as non-disclosure of assets. If one party is to pay the other maintenance then, within the term or that maintenance, such payments are can be varied (either an increase or decrease) if there is a change in circumstances (as to can the term of maintenance unless the Order specifically bars this).

In determining the award, the court can take all assets in which the party/parties have a legal or beneficial interest (including trust, company or property interests, even where the legal title is held in third party hands) into consideration when calculating the assets available for distribution and division. This can extend to consideration of direct or indirect financial support provided by a third party (e.g. a new partner or family members). It is important to be aware that each case is different and decided on its individual facts. The court has a wide discretion in matrimonial cases and, as such, the below should be considered principles and guidelines only.

The court will firstly want to know what assets and liabilities (property, investments, pensions, credit card debts etc) each party has, whether in their own names or joint names, and the value of those assets and liabilities. Valuing these can sometimes be tricky and may require the instruction of an expert such as a surveyor to value a property or an accountant to value a business.

The court may then consider whether any of those assets or liabilities should be treated differently as being “non-matrimonial”. An example of this would be if a wife had owned a property before she met her husband or if a husband won the lottery after the parties had separated but before they were divorced. This does not exclude them from the pot available for division, but recourse should only be had to non-matrimonial assets to meet needs. It is important to realise therefore that simply because a party owned an asset prior to the marriage this does not mean that that party will retain that asset on divorce.

The court then decides how the capital pot, including pensions, should be divided and whether either party should pay the other maintenance in the future. In reaching a decision the court is guided by statutory authority (referred to as the section 25 factors as they originate from s.25 Matrimonial Causes Act 1973). These are:

*“25. Matters to which court is to have regard in deciding how to exercise its powers under ss 23, 24 and 24A:*

- (1) It shall be the duty of the court in deciding whether to exercise its powers under section 23, 24, 24A or 24B above and, if so, in what manner, to have regard to all the circumstances of the case, first consideration being given to the welfare while a minor of any child of the family who has not attained the age of eighteen.*
- (2) As regards the exercise of the powers of the court under section 23(1)(a), (b) or (c), 24, 24A or 24B above in relation to a party to the marriage, the court shall in particular have regard to the following matters:*
  - a. the income, earning capacity, property and other financial resources which each of the parties to the marriage has or is likely to have in the foreseeable future, including in the case of earning capacity any increase in that capacity which it would in the opinion of the court be reasonable to expect a party to the marriage to take steps to acquire;*
  - b. the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;*
  - c. the standard of living enjoyed by the family before the breakdown of the marriage;*
  - d. the age of each party to the marriage and the duration of the marriage;*
  - e. any physical or mental disability of either of the parties to the marriage;*
  - f. the contributions which each of the parties has made or is likely in the foreseeable future to make to the welfare of the family, including any contribution by looking after the home or caring for the family;*
  - g. the conduct of each of the parties, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;*
  - h. in the case of proceedings for divorce or nullity of marriage, the value to each of the parties to the marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring”.*

This list is not exhaustive and the order in which the criteria appear is not reflective of the weight which is applied. The Court will take account of ‘all the circumstances of the case’ and this has led to many additional factors being considered (for example, the presence of pre-nuptial agreements or the nationality of the parties). That said, while much emphasis is placed upon the changing interpretation of s.25, the factors listed above remain the governing and overriding principles from which financial remedies should be determined. Judges have though over the years added flesh to the bones of these factors and the following aspects are what the courts focus on when determining matters:

### **a) Fairness**

The outcome of each case must be fair and this means, in particular, that:

- (i) Only in extreme cases should conduct be taken into account. A court will not “penalise” a party even if it appears that they caused the marriage to break down.
- (ii) In the case of a long marriage, what each party entered the marriage with is less likely to be relevant.
- (iii) Financial contributions during a marriage are considered to be equal to non financial contributions. The fact that one party has gone on to work whilst the other has been the home maker is irrelevant to a court; each party plays their own role in the partnership and each role is equally important.

### **b) Sharing**

The court’s starting point is that marriage is a partnership and each ‘partner should share broadly equally the assets that have been built up during the course of the marriage. This sometimes leads to the question of what has been built up within the marriage. Should assets which could be considered ‘external’ to the marriage (i.e. one party bought them into a marriage, inherited them during the marriage, or acquired them after separation but before divorce) be included in the pot and shared equally?

Each case will turn on its facts. In cases where those assets which could be classed as being ‘non-matrimonial’ are required in order for each party to meet their ‘needs’ the court will usually include them in the pot. In cases where each party can meet their needs without utilising non-matrimonial assets they are less likely to be shared, although, if the marriage is a long one the Court may well still include them.

The sharing principle will not be engaged unless there is surplus finances available to the parties after needs has been met (see further below).

### **c) Needs**

The court will want to be sure that the pot is divided in a way which means that each party can meet his and her needs and, more importantly, the need of any relevant children. In particular the court will want to make sure that:

- (iv) The children and each party are adequately housed;
- (v) Each party has sufficient income to meet their needs; and
- (vi) Particularly in the case of older parties, each party is going to be provided for in retirement.

Each party will therefore have to work out what amount of money they need to re-house themselves in suitable accommodation, taking into account their mortgage capacity, and what they consider their annual outgoings to be.

Needs is a broad concept and has reference to the funds available, the length of the marriage and the standard of living enjoyed during the marriage. Consequently, what

the court considers someone “needs” to be will differ from case to case. Many separating families will have to accept a reduction in their outgoings now that there will be two households to support. Equally, the definition of needs does not have a ‘cap’ and very generous awards for large luxury properties, or budgets allowing for extravagant lifestyles can come within the definition of need.

**d) Compensation**

This principle is complex and is rarely relevant. It is where one party believes that they have suffered a ‘relationship generated disadvantage’, primarily financial, as a result of the marriage and should therefore be compensated. An example would be a wife who gives up a high earning career in order to care for the parties’ children and then is unable to earn at that level following the divorce.

**e) Yardstick of Equality**

Once a court has looked at the principles of fairness, needs, sharing and compensation it will measure its decisions against the “yardstick of equality” that is to say it will ask itself whether the assets are being divided equally between the parties and, if not, if this justified. Probably the most usual reason for a departure from equality is that one party “needs” more of the pot to meet their housing need.

**9. What is the most contentious area at this time in relation to the recognition of marriage and divorce in your jurisdiction?**

English and Welsh family law is riddled with historical and religious influences stemming from the prevailing attitude or times when the law was created. English society generally has become more diverse, yet the law does not fully reflect this. While reforms to marriage have been made (particularly the introduction of Same-Sex Marriage – interestingly by the conservative government), the role that religion plays in marriage is both still key and remains discriminatory. Specifically, while some religious ceremonies create valid marriages, the fact that an Islamic marriage does not automatically do so is often highly criticised and leads many people (particularly women) to believe that they enjoy legal status that in reality they do not have. There are calls for urgent reform. The following documentary may be of interest:

<https://www.channel4.com/programmes/the-truth-about-muslim-marriage>

**10. In your view, what area of reform is required in relation to clarifying the threshold of marriage and divorce?**

The English and Welsh divorce system still requires parties to demonstrate why the marriage has broken down. While not all grounds are ‘fault’ based, those that are not require a considerable passage of time before they can be used (either two year if there is consent or 5 years absent consent) – failing this the parties must either use the fact of adultery or more commonly behaviour. For many years, the family law community have fudged the issue using anodyne and agreed examples of behaviour causing the most senior family law judge to recently refer to the practice as ‘intellectual dishonesty’ (in his criticism of the current divorce system). The case in question, Owens, went to the Supreme Court in July 2018 who added their voice to the call for reform (though nonetheless confirmed the current law broadly as it stands). As a result

of this and vigorous campaigning by Family Law groups the government announced in September 2018 a consultation on the legal requirements for divorce. The process will be slow, but reform now looks likely. The case of Owens and the Consultation can be viewed (and responded to) here:

[http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2018/41.html&query=\(owens\)\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKSC/2018/41.html&query=(owens)))

<https://www.gov.uk/government/consultations/reform-of-the-legal-requirements-for-divorce>

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**IAFL FAMILY LAW CONFERENCE**  
**Dubai, UAE – 13/14 November 2018**

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**Marriage and Divorce: what does it mean?**

ALEXANDRE  
BOICHÉ  
— PARIS —  
AVOCATS

## **1. Are there any criteria or exclusions that apply before the parties are allowed to marry? For example in relation to polygamous marriage**

In French law, to get married a person must be 18 years old and single.

There are exclusions of the marriage between person of the same family (incestuous marriage).

Article 202-1 French civil code states that the applicable law to the conditions and the qualities to get married is the National law of the spouse.

Example in a marriage between a Belgium man and a Spanish woman, the Belgium law will be applicable to establish if the Belgium husband could get married and the Spanish will be applicable to establish if the Spanish woman could get married.

The national law will be applicable unless if it is contrary to the public policy.

For example a Man from Senegal already married will not be able to get married in France with a woman from Mali even if both laws admits polygamous marriage because it is contrary to the French public policy. But if he married her in Senegal the marriage will be recognized in France, it is called "effet atténué de l'ordre public", limited effect of public policy.

Independently of the applicable law a marriage requires the free consent of both spouses. This stipulation has been introduced to fight against forced marriage.

To favor marriage between person of the same sex when the law has been adopted in 2013, the legislator decide to add that a marriage between same sex person is possible if such marriage is admitted by the national law of the law of the residence of one spouse.

For example a Polish man resident in France could married a Russian man resident in Germany even if such marriage is prohibited by the national law of both spouses just because one of them is resident in France.

## **2. What is the legal definition of marriage and if there is none, what are the minimum requirements for a ceremony to become a legally valid marriage ? Are there any special requirements or processes for particular religious or ethnic groups ?**

There no definition of the marriage in French law the condition of the marriage and its effects are clearly defined in the Civil code.

A marriage shall be celebrated by an “officier d’état civil” in France, civil registrar officer who is a Mayor in the city. Religious marriages celebrated in France have no effect. In fact it is a criminal offense to celebrate a marriage without been a civil registrar officer, or to celebrate a religious marriage before a civil one.

There is no special requirement or process for particular religious or ethnic group.

### **3. What is the process for the recognition of a domestic and foreign marriage ?**

From the time it is celebrate in France by the civil registrar, the marriage is recognized in France. Spouses could ask at any time a hard copy of their marriage certificate.

For the foreign marriage is recognized in France from the time it has been celebrate lawfully in the foreign country. Article 47 of the civil Code states that foreign civil statute documents valid in their country of origin shall be recognize in France.

It could be a religious marriage if such form of marriage is valid in the foreign country it will be recognized in France. No process is needed to recognize a foreign marriage in France, but if one of the spouses is a French citizen, it is recommended to have the marriage register with the French consulate in the foreign country. The result will be that the spouses will get a French marriage certificate also.

### **4. What is the process for the recognition of a domestic and foreign divorce?**

The principle is that a foreign divorce is recognized automatically in France.

But if the marriage has been celebrated in France or abroad and a marriage certificate is kept by a French authority because of one the spouses is French, the divorce will need to be registered on the marriage certificate.

In this case, it is necessary to make a difference if the divorce has been pronounced in the European Union or in another country. If the divorce has been registered in the European Union, the registration of the divorce on the marriage certificate is very easy a translated copy of the divorce order and the certificate annex I of the Brussels II revised regulation shall be sent to the Civil registrar.

If the divorce has been pronounced by a non-European country, the registration will need to be asked at the Public prosecutor. The demand will have to justify that the foreign divorce fulfills with the conditions of regularity applicable to foreign order. Such conditions depend of the country of origin of the decision. Indeed, France has



signed a lot of bilateral conventions on civil cooperation that contained rules related to the recognition and enforcement of decisions.

For example there is Convention between France and UAE dated 9<sup>th</sup> September 1991 which article 13 gives the conditions for a UAE decision to be recognized in France or a French decision to be recognized in UAE.

If there is no bilateral convention a foreign decision is regular if it fulfills with 3 conditions :

- Competence of the foreign court a close link should exist between the case and the country,
- Conformity with the public policy
- Absence of fraud.

#### **5. What conditions have to be satisfied before one or both parties can proceed with a divorce?**

There is no specific condition.

#### **6. What, if any, financial remedies are available to each spouse during the marriage?**

Article 214 states the marriage creates a support obligation between the spouses, each spouse shall participate to the expenses of the family.

If one of the spouses does not contribute the other could file a petition to obtain a maintenance to compensate the non-contribution.

#### **7. Can any form of agreement be settled before, during or after the marriage for the protection of any wealth ?**

The spouses could sign a marriage contract related to their matrimonial property regime before the marriage to organize their patrimonial relations during the marriage. During the marriage they could under certain condition change their matrimonial property regime.

Spouses in an international situation could at any time before and during the marriage change the applicable law to their matrimonial property regime.

#### **8. What, if any, financial remedies are available following a divorce ?**

The less wealthy spouse could ask a compensatory allowance which a lump sum to compensate the breach in his or her level of life created by the divorce.

### **9. What is the most contentious area at this time in relation to the recognition of marriage and divorce in your jurisdiction ?**

The most contentious area is about the recognition in France of divorce pronounced abroad on the sole demand of the husband, also called repudiation or talaq. The French case law considers such divorce as contrary to the public policy and refused to recognize them in France.

There are many decisions about divorce pronounced in Algeria for example.

Other point in 2016, in French law the divorce by mutual consent of the spouses became a private divorce, the convention is prepared by the lawyer and registered with a notary. The problem is the legislator has forgotten international situation and such divorce are not recognized in many countries especially countries which whom French have a bilateral convention, because such conventions concern only judgment. People are divorced in France but not in their national country.

### **10. In your view, what area of reform is required in relation to clarifying the threshold of marriage and divorce ?**

The French law on divorce by mutual consent shall be changed to give the opportunity to the parties to have their divorce pronounced by a judge when they are in an international situation.

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# Marriage and Divorce: what does it mean in Pakistan?

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IAFL Dubai Conference, November 2018

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## Personal Laws

In the area of family law in Pakistan, the religious laws of each religious community (termed as "personal laws" in Pakistan) tend to govern in matters concerning the family alongside statutes and judicial precedents.

Muslims comprise about 97% of the population in Pakistan. The rules for recognition of marriages and divorce for Muslims are based on Islamic principles.

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## Essentials of a Muslim Marriage

In Islamic law, marriage is in the nature of a civil contract and therefore, all the major requisites for a valid contract should be fulfilled.

Contract: The requirements of a Muslim marriage are that there should be an offer and an acceptance.

Impediments: Both parties should have capacity to enter, in that the person should be sane and there should be no legal impediments to enter into the marriage.

Age: There is no requirement of adulthood but a person entering into a marriage must have attained puberty. Under Islamic injunctions a minor who has not attained the age of puberty is also able to enter into a marriage contract through his or her guardian

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## Essentials of a Muslim Marriage

The essential ingredients within a Muslim marriage are:

- Offer and acceptance
- Guardianship (Wilāyyah/Waliyy) where a minor enters into the marriage ;
- Dower (Mahr)
- Presence of Witnesses

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## Age of Marriage

There is considerable divergence amongst Muslim countries as to what is the legal marriageable age. In Iran the minimum age is set at 13 years for girls while in Jordan it is 18 years for both sexes.

In Pakistan the Child Marriage Restraint Act 1929 makes it a penal offence to contract a child marriage. A child is defined as a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age. The Act does not render a marriage contracted in its contravention as illegal.

Section 2(vii) of the Dissolution of Muslim Marriages Act 1929 provides that a female who has been given in marriage by her father or other guardian, upon reaching the age of 16 years and before she reaches 18 years, can exercise the option to repudiate such marriage provided the marriage has not been consummated.

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## Formalities of a Muslim Marriage – Nikkahnama

In Islamic law, a valid marriage takes place through entering into a nikahnama which is in the form of a civil contract between the husband and the wife.

A nikahnama is signed by both parties entering into a marriage and is witnessed by two persons. No legal specification about witnesses but must be one male Muslim adult.

The nikahnama sets out certain terms and conditions upon which an Islamic marriage is based.

**Presumption of Marriage** – under Islamic law is very wide.

The registration of marriage is compulsory and is prescribed under the MFLO 1961. But failure to register or comply with a formality does not render a marriage invalid.

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## Void and Irregular Marriages

### Irregular Marriages ("Fasid" marriages)

An irregular marriage or a Fasid marriage exists due to some irregularity or informality in the performance of the marriage.

A Void Marriage is that within the prohibited degree of relationship.

Inter-faith Marriages: Some inter-faith marriages may be void as opposed to irregular marriages.

Marriage contracted without witnesses;

Marriage with a woman during her iddat or period of waiting after initiating a divorce;

A fifth marriage by a man already having four wives;

Re-marriage with a thrice repudiated wife without an intervening marriage (Hilala Marriage – see discussion below).

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## Dissolution of Marriage

A man and a woman do not have the same right to divorce.

A husband can give Talaq. A Talaq in Pakistan must be registered with the Union Council. There is no set form but only requires presence of two witnesses. After 3 months and 3 reconciliation meetings the Union Council will finalise the Talaq.

A wife can give Talaq in the same way as the man provided she has the delegated right of divorce in the Nikkahnama.

Mubarrat – Parties mutually agree to dissolve the marriage.

A wife can give Khula where she does not have the delegated right to give Talaq. This is the most common form of divorce where the wife is issuing divorce. The wife has to apply to the court for divorce on the basis that she is unable to live with her husband within the limits prescribed by Allah.

Faksh or Dissolution through judicial pronouncement on a fault-based ground.

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## Talaq

Sections 7 and 8 of the MFLO 1961 relate to Talaq.

In case-law there is considerable uncertainty regarding mandatory registration of divorce.

MFLO applies to Muslim citizens of Pakistan "wherever they may be".

"Holiday Talaq" – Initially there were cases where the courts held that "holiday talaqs" were not admissible. More recently the tide has turned. Rulings from the High Court allowing a Husband to give a talaq to the wife while on holiday.

In some cases courts have gone further.

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## Khula – the Wife’s right to Divorce

No justifiable reason need be provided except the unwillingness of the wife to live in the marriage. In Pakistan this right emerged through judicial precedent in 1959 and then in 1967 solidified with the Supreme Court case of Khurshid Bibi.

Prior to this women relied upon the Dissolution of Muslim Marriages Act 1929 which set out narrow fault-based grounds. These still exist and are used where dower is in issue.

Expansion of Khula: - Family Courts (Amendment) Ordinance 2002 made changes to the West Pakistan Family Courts Act 1964 – addition on new s10(4)

*S. 10 – Pre-trial proceeding*

*(4) If no compromise or reconciliation is possible the Court shall frame the issues in the case and fix a date for recording evidence:*

*Provided that notwithstanding any decisions or judgment of any Court or Tribunal, the Family Court in a suit for dissolution of marriage, if reconciliation fails, shall pass decree for dissolution of marriage forthwith and shall also restore to the husband the Haq Mahr received by the wife in consideration of marriage at the time of marriage.”*

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## Zar-i-Khula

“Zar” in a broad sense means wealth and zar-i-khula implies the return of material benefits to a husband in exchange for a wife to obtain her ‘freedom from the marriage’.

**Further Expansion to Khula - The Punjab Family Courts (Amendment) Act 2015**

*“(5) In a suit for dissolution of marriage, if reconciliation fails, the Family Court shall immediately pass a decree for dissolution of marriage and, in case of dissolution of marriage through khula, may direct the wife to surrender up to fifty percent of her deferred dower or up to twenty-five percent of her admitted prompt dower to the husband.*

*(6) Subject to subsection (5), in the decree for dissolution of marriage, the Family Court shall direct the husband to pay whole or part of the outstanding deferred dower to the wife.”*

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## Conclusion

Rules on marriages and divorce are derived from religion and to some extent are fluid.

There is a strong presumption of Marriage.

The Husband and Wife do not have the same right of divorce.

It is controversial whether the registration of Talaq is a necessity. It will not override the presumption of marriage.

Khula is a wife’s right to divorce and has expanded considerably in the last few decades.

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# The Malta Process

## The Malta Process

IAFL – Family Law Conference  
Dubai, UAE, 12-13 November 2018

**Philippe Lortie**  
First Secretary, HCCH

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## Malta Process - Objectives

Promotes a **dialogue & co-operation** between Contracting Parties to the 1980 Child Abduction, 1996 Child Protection and 2007 Child Support Conventions and non-Party countries with legal systems based on or influenced by **Sharia law** for the resolution of complex, trans-frontier family conflicts

A complementary objective is to encourage the **implementation of the Hague Children's Conventions** in countries with legal systems based on or influenced by Sharia law

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## Malta Process – Methodology

**Exchange of views** among judges and other experts to reach a **common understanding** of what is needed and feasible to resolve cross-border family disputes, to secure the child's right to have continuing contact with both parents and combat international child abduction:

- Full appreciation of how **different legal systems** address cross-frontier family problems
- Respect for the **diversity** of the different legal systems and their basic values
- Process in which principles emerge on the basis of consensus ("**ownership**")
- Willingness to compromise in the pursuit of **share objectives – 1989 UNCRC**

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## Legal Diversity and Private International Law



- Significant **diversity of legal systems** around the world
    - ✓ common law
    - ✓ civil law
    - ✓ religious law (e.g., Sharia law)
    - ✓ customary law
- } One or more may influence a given legal system
- Private international law and HCCH have many **advantages**
    - ✓ Do not change the substantive rules of domestic legal systems
    - ✓ Respect for legal diversity
    - ✓ Provide frameworks for administrative and legal co-operation (e.g., Central Authorities)

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## Malta Process – UNCRC Principles



- The **UNCRC principles** (explicit or implicit) are **affirmed** as a basis for action. In particular:
- in all actions concerning children, the **best interests** of the child shall be a primary consideration;
  - a child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, **personal relations and direct contacts with both parents**;
  - a child should have the opportunity to learn to know and respect the **culture and traditions** of both parents;
  - States are obliged to take measures to **combat cross-border child abduction**.

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## Malta Process - Objectives



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## Malta Process – the Conferences



Judges and other experts (including mediators and Central Authority officials) periodically convene to exchange views on the resolution of cross-border family disputes, focusing on cases that have a connection with Sharia law



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## Overview: States Involved Over Time



Malta I - 2004

*Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia and the United Kingdom*

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## Overview: States Involved Over Time



Malta II - 2006

*Australia, Canada, Indonesia, Libya, Turkey and the United States of America*

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## Overview: States Involved Over Time



Malta III - 2009  
*Bangladesh, India, Israel, Jordan, Oman, Qatar and Switzerland*

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## Overview: States Involved Over Time



Malta IV - 2016  
*Iran, Japan, Kenya, Mauritania, Norway, Pakistan, Portugal, Saudi Arabia, Senegal and Singapore*

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## Malta Declarations 2004 & 2006



- ✓ **Common rules** which specify which authorities are competent to make decisions on custody and contact
- ✓ **Mutual recognition** of decisions so made
- ✓ Efficient and properly **resourced** administrative authorities (central contact points)
- ✓ Mechanisms to promote **agreement** (mediation)
- ✓ **Mutual trust and confidence** between the authorities in the different countries
- ✓ **Designations** of judges to the international Hague Network of Judges (**IHNJ**)

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## Malta Declarations 2009 & 2016



- ✓ Recommend continuing efforts to **improve co-operation** between **judicial** and **administrative** levels between States
- ✓ Encourage States to **develop capacity / structures**, including Central Authorities
- ✓ Encourage States to give **careful consideration** to join the **1980** Child Abduction, **1996** Child Protection and **2007** Child Support Conventions
- ✓ Reaffirm that mutual recognition of decisions based on **common grounds of jurisdiction** is ideal basis for international legal co-operation in child protection matters

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## Malta Declarations 2009 & 2016 (cont.)



- ✓ Highlight vital role of judicial / administrative authorities in assisting with **locating the child**
- ✓ Emphasize value of **direct judicial communications**
- ✓ Highlight value of **training programs** for judges and other professionals
- ✓ Recommend that authorities issuing **visas** should take **welfare** of children regarding contact to their parents in consideration
- ✓ Recommend establishment of **Working Party on Mediation** to promote structures and methods of mediation (2009)

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## Malta Declaration 2016



Participants at the 2016 Malta Conference note:

- that the Hague Children's **Convention** are designed to be **global in reach** and to be compatible with diverse legal traditions
- the publication of the **Emerging Guidance** regarding the development of the **IHNJ** and **General Principles** for **direct judicial communications** including commonly accepted safeguards
- the development of the Principles for the Establishment of **Mediation Structures** and the Creation of a system of **Central Contact Points** for International Family Mediation

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## A - Malta Process Mediation Structure

The Malta Principles call on **Central Contact Points** to maintain a list of suitable mediators, whose characteristics include:

- Knowledge and understanding of relevant international, regional and national law
- Experience with inter-cultural cross-border disputes
- Language competency
- Suitable training in family mediation

General principles which, subject to the applicable law, should inform the mediation process include:

- Informed consent and voluntary participation
- Neutrality, impartiality, fairness and confidentiality
- Considering the interests and welfare of the child

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## B - Malta Process Central Contact Point

States should establish a Central Contact Point for international family mediation, which should:

- Serve as a contact point for individuals and mediators
- Provide information on, *e.g.*:
  - ✓ Domestic mediation services and how they work
  - ✓ How a child can be located
  - ✓ How to enforce / give effect to agreements
- Promote co-operation, training and exchange of best practices
- Gather and make publicly available information on cases dealt with by Central Contact Points, actions taken and outcomes
- Process any requests for information / assistance expeditiously

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## C - Making Agreements Binding

The Principles contain practical considerations for the drafting of effective mediated agreements (*e.g.*, compatibility with different legal systems and drafting in different languages)

Steps to ensure the validity of cross-border mediated agreements:

- Close collaboration between mediators and legal representatives
- Ensuring agreement is enforceable before implementing it
- Provision of information on the relevant procedures by the Central Contact Points

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## Summary



- The Malta Process was established to:
  - ✓ Promote co-operation with countries with legal systems based on or influenced by Sharia law for the resolution of cross-border family conflicts
  - ✓ Encourage the implementation of the Hague Children's Conventions in such countries
- It (re-)affirms and builds on principles expounded in the 1989 UNCRC
- 39 countries have been involved in the Malta Process and / or the Working Party on Mediation, with diverse legal traditions represented
- The Malta Mediation Principles (2010), developed by the Working Party on Mediation in the context of the Malta Process, provide guidance and best practices for the establishment of effective mediation structures

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## UNCRC Principles affirmed in Malta Declarations



UN CRC principles affirmed in particular	Relevant CRC provisions
The best interests of the child shall be a primary consideration	Art. 3
Right to maintain personal relations and direct contact with both parents	Arts 9 and 10
Opportunity to learn to know and respect the culture and traditions of both parents	Preamble and Art. 30
States are obliged to take measures to combat the illicit transfer and non-return of children abroad	Arts 11 & 35
The right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development	Art. 27
The obligation of States to take all appropriate measures to secure the effective recovery of maintenance obligations from abroad	Art. 27
The right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development	Art. 27
The obligation of States to take all appropriate measures to secure the effective recovery of maintenance obligations from abroad	Art. 27

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## Thank you

Philippe Lortie  
First Secretary, HCCH



www.hcch.net

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**IAFL International Family Law Conference, Dubai  
Philippe Lortie: The Malta Process  
Supporting Documents**

Please click on the text below for links to the relevant documents:-

- [The 2004, 2006 and the 2009 Malta Process C&Rs](#)
- [The 2016 Malta Process C&Rs](#)
- [Central Contact Points for international family mediation](#)
- [Principles for the Establishment of Mediation Structures](#) in the context of the Malta Process [[Arabic](#)]
- [Explanatory Memorandum](#) on the Principles for the Establishment of Mediation Structures in the context of the Malta Process [[Arabic](#)]

# Child Custody

**Question 1**

*Where children are living with their parents which parent is responsible for the day-to-day and important decisions regarding the child's upbringing, for example education, health, diet, religious education, travel etc?*



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**Question 2**

*Where parents separate how are these decisions made?*



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**Question 3**

*If parents cannot agree about the child's upbringing or where the child should live can the courts decide and if they do on what basis do they make these decisions?*



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**Question 4**

*What is the position if the parents are not married?*



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*Where children are living with their parents which parent is responsible for the day-to-day and important decisions regarding the child's upbringing, for example education, health, diet, religious education, travel etc..*

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In case of family disputes the custody of the kids shall be with the mother. In accordance with Federal Law No. (28) of the Year 2005, Article 146/6 states that

*"The mother shall have the right of her children's custody in case of a dispute over the custody unless the judge decided otherwise for the child's interest."*

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However, it is important to note that the limits of the custody under UAE law is different from the custody under some other western laws.

The custody as per UAE laws includes the right to having the child physically with the mother. However, the rights to follow the education and the travel is controlled by the father who shall be considered a guardian. So the custody in our laws is similar to the physical custody in the western system.

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But some parts of the legal custody is given to the father as a guardian. The guardianship can be taken only from the father in certain conditions organized in article number 180 - 202 of personal status laws.

It will be taken only in very limited scenarios like if he face jail sentence, he has a sexual crime, or he bought the child's interest at risk or lack of care of the child but it has to be given to another male relative.

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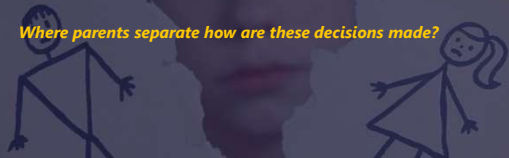
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Where parents separate how are these decisions made?



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We don't have physical separation under UAE laws. But we have only divorce. The divorce is the termination of marriage which could be initiated by the sole decision of one of the parties who decides to raise the divorce case in the court.

If that happens, special decision should be issued by the court or by joint decision through divorce agreement.

Incase parties decided to agree on divorce, the court wouldn't interfere in the agreed terms and conditions unless it contradicts the public morals.

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But if the divorce was raised by one of the parties, he will have to explain to the court the reason of such applications. One of the most common type of applications is the divorce for harm where the applicant, whether husband or wife has to explain to the court the reasons behind such applications and why he believes the life is difficult to continue between this couple.

The other type of divorce is called 'Khula'. It is a type of divorce which could be requested by the wife only. This is when she does not like to continue the marriage not because of husband's mistake but she doesn't like the husband anymore.

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*If parents cannot agree about the child's upbringing or where the child should live can the courts decide and if they do on what basis do they make these decisions.*

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In case the divorce was by consent, the child's arrangement could be lifted totally to the parent's decision. However, if it is not by consent, it has to be decided by the court. Taking into account that as per UAE laws, the child should more likely to be with the mother till certain age. (11 years for boys and 13 years for girls).

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The father may only claim the custody of the child before this age under certain terms and conditions. For instance, if the wife got married to another man, if she committed crime of honor, she brought the interest of the child under risk or she relocated the child permanently outside of the country without fathers consent.

Any of the parents has the right to request applying his home country law in the family disputes including the child's custody disputes.

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If both parents are from two different countries and both of them want to apply their law, the husband's law will be the applicable one. However, if one of the parties is dual national, the UAE law should be the applicable one.

(According to Article 13 of Law No. 5 of 1985 - Civil Law)

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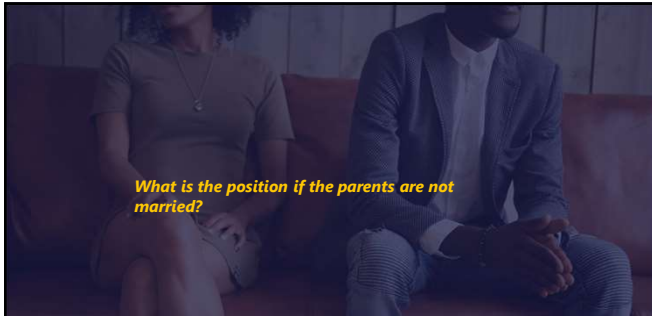
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**What is the position if the parents are not married?**

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If the parents are not married, any custody claims shall be dismissed. No guardianship rights and no child maintenance could be raised. If their physical relationship was interacted in the UAE jurisdiction, there might be a chance to refer the case to criminal jurisdiction for breaching of the UAE criminal law.

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**Any questions?**

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## Child arrangements in England & Wales

Sarah Hutchinson  
November 2018



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### Parental Responsibility for children: What is it?

- In England & Wales, people with Parental Responsibility (PR) make the decisions about a **child's welfare and property**.
- **Parental Responsibility (PR)** is all the rights, duties, powers, responsibilities and authority in relation to a child and his/her property by law.
- These decisions include where the child lives, their religion, their education and medical treatment.
- It is very unusual for a person with PR to have their PR removed, but in some extreme circumstances it might be formally limited.

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### Parental Responsibility: Who has it?

- A child's **mother** will always have PR for her child.
- A **father** will automatically acquire PR if married to the mother when the child is born.
- If the parents were not married at the time of the child's birth, a **father** can acquire PR if he:
  - (i) marries the mother and he is domiciled in England & Wales at that time
  - (ii) enters into a PR agreement with the mother and files it at court
  - (iii) obtains a court order giving him PR
  - (iv) is registered as the child's father on a register of births in the UK (this requires the mother's consent and applies only if the child was born on or after 1 December 2003)
  - (v) becomes the child's guardian
  - (vi) legally adopts the child.

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## Exercising Parental Responsibility

More than one person can have PR for a child at any time (usually the child's parents). The exercise of PR can therefore cause conflict between those who share it.

- Many day to day decisions can be made by one person with PR **without notifying or consulting** the other (e.g. activities the child undertakes on a day to day basis, daily meals, routine discipline, routine medical check ups while the child is with that parent)
- Some decisions can be made by one person with PR but they **must notify** the other person (e.g. medical treatment in an emergency)
- Other decisions must be made **with the prior agreement** of all holders of PR (e.g. which school a child should attend, planned medical treatment, immunisations, change of a child's name, if a child is to move outside of England & Wales).

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## Helping separated parents co-parent

For those decisions where an agreement is required, there are a number of options:

- **Discussions** between the parents direct
- **Separated parents information programme**
- Agreeing a **Parenting Plan** between the parents or with the help of a third party (e.g. a friend, relative, mediator, or lawyers)
- **Family therapy** (parents + therapist)
- **Mediation** (parents + mediator discussing and agreeing matters together)
- **Arbitration** (arbitrator determines the issue; only available for some issues).

If it is not possible to reach an agreement, then one of the parents will have to make an **application to court**. NB No Order Principle – the court can only be engaged and make an order if necessary and if in the child's best interests.

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## When parents can't agree: orders that the court can make

- The court can determine any disagreement that parents are having regarding the exercise of their PR including by way of **Specific Issue Orders** or **Prohibited Steps Orders**.

E.g. a Judge can make decisions regarding a child's schooling, whether a child should be immunised or receive a specific medical treatment, whether a child's name should be changed, whether a child should go on a specific holiday abroad etc.

- The court can also make **Child Arrangements Orders**.

E.g. with whom a child is to live, spend time or otherwise have contact, and where, including whether a child may permanently leave England & Wales.

NB No concepts of 'custody' and 'access' – even if a child lives predominantly with one parent, parents are equals.

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### When parents can't agree: the court's considerations

1. The **paramount** consideration by a court is the **child's welfare**.
2. Child focused approach – **child's rights** rather than the parents' rights.
3. General presumption: **involvement of both parents** in child's life will further the child's welfare.
4. General principle: any **delay** in determining an issue is likely to prejudice the welfare of the child.
5. The **welfare checklist**.

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### When parents can't agree: the court's welfare checklist

**Welfare checklist** for the court includes:

- (a) the ascertainable **wishes and feelings** of the child (nb age and understanding);
- (b) the child's **physical, emotional and educational needs**;
- (c) the likely **effect of any change** in the child's circumstances;
- (d) the child's **age, sex, background** and any characteristics which the court considers relevant;
- (e) any **harm** which the child has suffered or is at risk of suffering;
- (f) **how capable each of the child's parents**, and any other relevant person, is of meeting the child's needs;
- (g) the **range of powers** available to the court under this Act in the proceedings in question.

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### When parents can't agree: the first hearing in the court process

The court will first arrange a **short hearing** to identify the issues in dispute and try to resolve them.

- **All holders of PR** must attend.
- The **child or children** may come to the court building (depending on their age and the individual court) but they will not sit inside the courtroom for the hearing.
- A court welfare officer (also known as a Children and Family Court Advisory and Support Service (**CAFCASS**) officer) will attend the hearing as well. CAFCASS is responsible for safeguarding the interests of children involved in court proceedings. The CAFCASS officer may meet the children. The CAFCASS officer advises on what he/she considers to be in the child's best interests.

The judge will try to help the parties at the hearing. If an agreement can be reached, the court can make an order recording the agreement.

If not, then the court will decide what further evidence is required (e.g. statements from the holders of PR, a full report from CAFCASS and any expert evidence) and whether interim hearings are required.

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### When parents can't agree: the final hearing in the court process

Once all relevant evidence has been received by the court, a **final hearing** will be held when a Judge will consider all of the evidence and decide what is in the child's best interests.

- The court will hear oral evidence from the **holders of PR** (usually the parents)
- Occasionally the court may hear oral evidence from **other people** (e.g. relatives or friends).
- If a CAFCASS report has been prepared, the **CAFCASS officer** is only required to give evidence if the court considers that necessary.
- The court may hear oral evidence from **experts** (e.g. health professionals, if necessary).
- The court will rarely hear evidence from a child and the Judge will rarely meet the child.

Anyone who gives oral evidence will be asked about their written evidence by (i) their own legal representative, (ii) the other party's legal representative, and (iii) sometimes by the Judge. After hearing the evidence and listening to the legal arguments, the Judge will make an order deciding the issues in dispute.

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### Unmarried parents: essentially the same as married parents

- Crucial question is not whether the parents are married or not, but **who has PR for the child?**

If parents are married at the time of a child's birth, then they will both automatically have PR.

If parents are unmarried at the time of a child's birth, then the father will need to acquire PR. The most common route is by being named on the child's birth certificate. Once an unmarried father acquires parental responsibility **he is in the same position as a married father.**

Other than this automatic acquisition of PR for a married father, there are **no differences** between the rights and responsibilities relating to a child of married or unmarried parents.

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*Sarah advises on all aspects of family law, protecting her clients' interests and resolving their legal issues.*

*She is well-known for her wide-ranging knowledge and expertise of the law relating to children. She has been described as "one of the best children lawyers there are in terms of strategy; she has a very good rapport with her clients and supports them 100%."*

*Sarah has extensive experience of litigation but is also committed to achieving solutions outside of the court setting whenever appropriate and possible.*

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# Child Custody and Guardianship: Issues and Challenges in India

By **Anil Malhotra**, LLM, SOAS London, Advocate

**Ranjit Malhotra**, LLM, SOAS London, Advocate

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All codified personal laws of different religious communities in India identify biological parents as natural guardians of their children. In the case of Hindus, Section 6 of the Hindu Minority and Guardianship Act, 1956 (HMGA), prescribes that the natural guardian of a Hindu minor shall be the father, and after him the mother, provided that the custody of a minor who has not completed the age of 5 years shall ordinarily be with the mother. The HMGA rests the appointment or declaration of any person as a guardian of a Hindu minor by a Court on the welfare of the minor as the paramount consideration. However, in the absence of any statutory procedural remedy being available under the HMGA, all inter-parental child custody issues are invariably adjudicated through guardianship petitions preferred under the Guardian and Wards Act, 1890 (GWA), which is a secular law, and is invoked by all persons in India irrespective of religion and nationality. The Hindu Marriage Act, 1955 (HMA) and the Special Marriage Act, 1954 (SMA) also provide for adjudication of custody issues of children as an ancillary issue in pending proceedings under the respective enactments. However, inter-parental, intra-country or inter-country, child removal by a parent is not statutorily recognised as an offence or a wrongful act in India. In such a situation, the entire evolution of a jurisprudence on the subject of inter-parental child removal in India has evolved through beneficial interpretation of Courts from time to time. In matters of intra-country child custody disputes, the law has been consistent that the determining paramount factor will be the welfare and the best interests of the children. Superior financial or other rights of litigating parents will be subordinate in such determination and wherever possible, the wishes of the child will be ascertained in adjudicating such disputes.

However, the vexed question of *cross border inter parental child removal* not finding any legislative definition, remains a subject of varying judicial interpretation of the Supreme Court of India from time to time. India is not a signatory to the Hague Convention on Civil Aspects of International Child Abduction, 1980, acceded to by 98 other countries and thus wrongful removal and retention of a child domestically defies recognition and acceptance under codified Indian law, even though it is an offence internationally. A



corpus of 30 million non-resident Indians living globally in 180 countries with multifarious relationships creates an immense potential for unresolved child custody disputes upon a parent relocating to India or beyond its territorial borders, by violating foreign Court orders or being in infringement of parental rights in foreign jurisdictions.

The Hindu Minority and Guardianship Act, 1956 (HMGA), declares that the natural guardian of a Hindu minor boy or an unmarried girl shall be the father, and after him, the mother, provided that the custody of a minor who has not completed 5 years of age, shall ordinarily be with the mother. The HMGA does not contain any independent, statutory or procedural mechanism for adjudicating custody rights or declaring Court appointed guardians. The reference to the word “Court” in the HMGA relegates a parent or any other person seeking appointment as a “guardian” to invoke the provisions of a 127 year old colonial law i.e. the Guardian and Wards Act, 1890 (GWA) in India, and, wherein the where the aggrieved or violating parent is constrained to seek exclusive temporary custody of his biological offspring during the pendency of such hearing.

To be entitled to maintain a petition for Guardianship under GWA, the Guardian Judge will have jurisdiction only if the “minor ordinarily resides” within the territorial limits of the authority of the District or Family Court. In the celebrated judgment of *Ruchi Majoo v. Sanjeev Majoo*, AIR 2011 SC 1952, the Supreme Court of India has been pleased to hold that in exercising powers under the GWA, the Guardian Judge is competent to entertain a petition only if the “minor ordinarily resides” in its jurisdiction as “a Court that has no jurisdiction to entertain a petition for custody cannot pass any order or issue any direction for the return of the child to the country from where he has been removed, no matter such removal is found to be in violation of an order issued by a Court in that country. The party aggrieved of such removal, may seek any other legal remedy open to it. But no redress to such a party will be permissible before the Court who finds that it has no jurisdiction to entertain the proceedings.” The phrase “minor ordinarily resides” in GWA has been construed by some High Courts in different decisions as not being identical to mean “residence at the time of the application” or “residence by compulsion at a place however long, cannot be treated as the place of ordinary residence”, the purpose being to avoid mischief that a minor may be stealthily removed to a distant place and forcibly kept there to gain jurisdiction. Thus, the “minor ordinarily resides” has been interpreted to mean a “place from where he had been removed or in other words, the place where the minor would have continued to remain but for his removal.” In such a situation, a Guardian Judge may thus decline to exercise jurisdiction if the minor child resident abroad, does not “ordinarily reside” within his territorial limits, but is simply present there on the date of the filing of the guardianship petition.

In the backdrop of this statutory position, the Supreme Court and the High Courts in India, in the exercise of their extra-ordinary writ jurisdiction under Articles 32 and 226 of the Constitution of India respectively, issue a prerogative writ of habeas corpus exercising jurisdiction as *parens patriae* in their best discretion to adjudicate upon conflicting claims of parents for the welfare of children. Hence, the evolution of a beneficial law on inter-parental child custody issues has been a progressive phenomenon emerging through judgments of the various High Courts in India based on varying precedent settled by the Supreme Court of India from time to time.

The writ of Habeas Corpus for seeking implementation of child rights where the parents are fighting for the custody of their offspring was settled by the Supreme Court of India in *Gohar Begum v. Saggi alias Nazma Begum*, AIR 1960 SC 93, by following principles applicable to such writs in England to deliver custody of infants. In *Nil Ratan Kundu v. Abhijit Kundu*, AIR 2009 Sup SC 732, following English and American Law, the Supreme Court of India held that “the basis for issuance of a writ of Habeas Corpus in a child custody case is not an illegal detention”, but “the primary purpose is to furnish a means by which the court, in the exercise of its judicial discretion, may determine what is best for the welfare of the child, and the decision is reached by a consideration of the equities involved in the welfare of the child, against which the legal rights of no one, including the parents, are allowed to militate”. Hence, invoking of the writ of Habeas Corpus by a non-resident parent for child custody on the strength of a foreign court custody order is the only efficacious, speedy and effective remedy, since the minor “ordinarily resides” abroad and there is a bar of jurisdiction under GWA for a guardianship petition before a Guardian Judge.

In matters relating to inter-country parental child removal, the position of law has been varying. In *Surinder Kaur v. Harbax Sandhu*, AIR 1984 SC 1224 and in *Elizabeth Dinshaw v. Arvand Dinshaw*, AIR 1987 SC 3, the Supreme Court of India exercising summary jurisdiction, returned the removed minor children to the foreign country of their origin on the basis of foreign court custody orders. This was done on the basis of the principle of comity of courts and the prerogative of the jurisdiction having closest contact with the child to, determine all inter-parental child custody disputes.

However, in *Dhanwanti Joshi v. Madhav Unde*, 1998(1) SCC 112 , and in *Sarita Sharma Vs. Sushil Sharma*, 2000(3) SCC 14, the Supreme Court of India favored keeping the welfare and best interests of the child in mind over all other aspects. Accordingly, foreign court orders were held to be only one consideration in adjudicating child custody disputes which were to be decided by domestic courts on the merits of each case.

Subsequently in *Dr. V. Ravi Chandran v. Union of India*, 2010 (1) Supreme Court Cases 174, the Supreme Court of India held that foreign courts have already passed custody orders or consent orders between the parties and had granted the divorce to the parties, have the jurisdiction to deal with the custody matters of the child who should be returned to the respective country from where he/she has been removed.

In *Arathi Bandi v. Bandi J. Rao*, Judgments Today 2013 (II) SC 48, the Supreme Court of India held that the mother was singularly responsible for removal of the child from the jurisdiction of the US Courts and summary jurisdiction was exercised for return of the child to USA.

In *Shilpa Aggarwal v. Aviral Mittal*, 2010 (1) Supreme Court Cases 591, the Supreme Court of India held that where the child has spent his initial years and has intimate contact with the child, will have the jurisdiction to decide custody issues of the child based on comity of courts principle.

The Supreme Court of India in *Surya Vadanam v. State of Tamil Nadu*, 2015 (5) Supreme Court Cases 450, set at rest, a five decade chain of precedents laid down by courts in India from time to time to evolve a consistent approach in multi-jurisdictional child custody disputes and laid down following principles:

- *The Principle of Comity of Courts and Nations must be respected. The best welfare/ interest of the child should apply in such cases.*
- *The Principle of "first strike", i.e., whichever court is seized of the matter first, ought to have privilege of jurisdiction in adjudicating the best interest of the child.*
- *The Rule of Comity of Courts should not be abandoned except for compelling special reasons to be recorded in writing by a domestic court.*
- *Interlocutory orders of foreign courts of competent jurisdiction regarding child custody must be respected by domestic courts.*
- *An elaborate or summary enquiry by local courts must be held when there is a pre-existing order of a competent foreign court must be based on reasons and not ordered as routine when a local court is seized of a child custody litigation.*
- *The nature and effect of a foreign court order, reasons for repatriation, moral, physical, social, cultural or psychological harm to the child, harm to the parent in the foreign country and promptness in moving a concerned foreign court must be measured before ordering return of a child to a foreign court.*

However, in *Nithya Anand Raghavan Vs. State of NCT of Delhi & Anr.*, AIR 2017 SC 3137, the Supreme Court of India has done away with the principle of comity of courts and the principle of "first strike" in matters relating to inter-country, inter-parental child custody disputes and have laid down the following principles to be followed:

- *Concept of Forum Conveniens has no place in wardship jurisdiction.*
- *Principle of Comity of Courts not to be given primacy in child custody matters.*
- *Child removal cases to be decided on merits on welfare of child principle.*
- *Foreign Court order to only be one factor to be taken into consideration.*
- *Courts free to decline relief of return of child within its jurisdiction.*
- *Courts may conduct summary or elaborate enquiry on question of custody.*
- *High Court exercises parens patriae jurisdiction in cases of custody of minors.*
- *Remedy of Habeas Corpus cannot be used for enforcement of foreign Court directions.*
- *Avail other substantive remedy permissible in law for enforcement of foreign Court order.*
- *High Court can examine return of minor without being “fixated” on foreign Court order.*
- *“First strike” principle disagreed as being in conflict with the welfare of the child.*
- *Summary jurisdiction to return child be exercised in interests and welfare of child.*

Further, *Prateek Gupta Vs. Shilpi Gupta & Ors.*, 2017 SCC OnLine SC 1421, it has been held by the Supreme Court of India as follows:

- *It has been reiterated that the notion of “first strike principle” is not subscribed to and the judgment of the Supreme Court in Nithya Anand Raghavan has been subscribed to.*
- *Notwithstanding the principles of comity of courts, and the doctrines of “intimate contact and closest concern”, the issue of repatriation of a child removed from its native country is clearly founded on the predominant imperative of the overall well-being of the child.*
- *In the process of adjudication on the issue of repatriation, a Court can elect to adopt a summary enquiry and order immediate restoration of the child to its native country, if the applicant parent is prompt and alert in the initiative to do so. Overwhelming exigency of the welfare of the child will be the determining factor for such process.*
- *Doctrines of “intimate contact and closest concern” are of persuasive relevance, only when the child is uprooted from its native country and taken to a place to encounter alien environment, language custom etc. with focus on process of overall growth and grooming.*
- *There is no forum convenience in wardship jurisdiction and the welfare of the child as the paramount consideration will be the mandate.*
- *Considering that the child in question was barely 2-1/2 years old when he came to India and is now over 5 years old, the child of tender years, he ought not to be dislodged from the custody of his father whilst proceedings are pending before the Guardian Judge, Delhi.*

The Supreme Court of India in the case of *Nithya Anand Raghavan (supra)*, has enunciated new directions in matters relating to custody in inter country parental child removal cases by departing from the principles of comity of courts and first strike jurisdiction which had earlier been laid down in the verdict of *Surya Vadanani (supra)*. Whilst now holding that the jurisdiction of the writ of Habeas Corpus cannot be used and converted for executing the directions of a foreign court, the Supreme Court of India has ruled that the High Court may examine the return of a child to a foreign jurisdiction if it would be in the interests and welfare of the minor child. This would be done in exercise of *parens patriae* jurisdiction of the High Court without being “fixated” with the foreign court order

directing return of the child within a stipulated time, which would however be only a factor to be taken into consideration.

In *Surya Vadan* (*supra*), the Supreme Court of India following *Surinder Kaur Sandhu* (*supra*), held that the best interest and welfare of the child should be determined by the jurisdiction having, “most intimate contact” and “closest concern” since a foreign court would be “better equipped and perhaps best suited to appreciate the social and cultural milieu in which the child has been brought up rather than a domestic court”. In *Nithya Anand Raghavan* (*supra*), though it has been held that “the principle of comity of Courts cannot be given primacy or more weightage for deciding the matter of custody or for return of the child to the native state”, the “closest concern” doctrine does not seem to have been clearly shelved in determining the welfare of the child.

The decision in *Nithya Anand Raghavan* (*supra*), also requires “the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person” and holds that “instead, the other parent can be asked to resort to a substantive prescribed remedy for getting custody of the child” as “indubitably, merely because such an order is passed by the foreign court, the custody of the minor would not become unlawful *per se*”. Further, it has been held that “ordinarily, the custody of a “girl” child who is around seven years of age, must ideally be with her mother”.

The Supreme Court of India in its latest judgment in *Prateek Gupta* (*supra*), delivered on December 6, 2017, following the earlier Court precedent given in *Nithya Anand Raghavan* (*supra*), decided on July 3, 2017, has again firmly decided that the issue of the return of a child, removed from its native country by a parent against the other parent's wishes, will be predominantly based on the welfare of the child principle. Differing with previous judgments given in the past five years, wherein children were directed to be returned to their foreign homes, the Supreme Court, has now disapproved the primacy given to Orders of Foreign Courts on the issue of custody of minor children. Consequently, legal principles of such determination will no longer find preference and foreign Court Orders directing return of children will now not find automatic implementation. Determination of the welfare of the child now lies with the domestic Courts in the country.

In *Jasmeet Kaur v. Navtej Singh*, 2017 SCC Online Del 10593, based on the factual matrix of the case, the issue before the High Court of Delhi was regarding Section 9 of the GWA, which makes specific reference to the word “ordinarily resides”. Accordingly, it was held that since both the parties were US citizens, the expression “ordinarily resides” clearly

conveyed that a place of permanent residence in this case would be the US and not Delhi. Parties were married in USA and permanent residents of USA for ten years. The daughter was born in USA and the son had been born in India when the wife came in 2016 and refused to go back to USA. Her Guardianship petition was dismissed by the Family Court, Delhi in 2016 due to lack of jurisdiction and the High Court affirmed the judgment. The High Court held that the children and mother were not ordinarily resident in Delhi. The High Court of Delhi directed the wife to return to USA on the conditions agreed to by the husband. However, this order was set aside by the Supreme Court of India in *Jasmeet Kaur v. Navtej Singh*, 2018 SCC Online SC 174, with a direction on February 20, 2018 to the Family Court to decide the matter on merits in six months to determine the welfare of the children. Thereafter, the Family Court at Delhi, by a detailed judgment dated August 20, 2018 in *Jasmeet Kaur v. Navtej Singh*, 2018 SCC Online Family Court (Del) 1, has dismissed the guardianship petition and declined the sole guardianship/custody rights of the mother after adjudication of the matter on merits. The Delhi High Court in *Dr. Navtej Singh v. State of NCT*, 2018 SCC Online Del 7511, simultaneously by a decision dated March 6 and orders of May 20, 2018, in a habeas corpus petition has been pleased to direct that the mother and the two minor children of the parties shall return to USA upon fulfillment of the conditions prescribed, failing which the children along with their passports shall be handed over to the father for going to USA. At the time of the publication of this book, an appeal is pending with The Supreme Court of India in this matter against this judgment of The Delhi High Court.

The noteworthy evolving jurisprudence in the above case are noted in the compliance made by the US Court in passing "*mirror orders*" for implementation of the directions of the Delhi High Court judgment dated March 6, 2018 in *Dr. Navtej Singh (supra)* as a condition precedent for directing the return of the mother along with the two children to USA. The Delhi High Court had directed that the father shall move the US Court for recall of US Court orders dated November 17, 2016 and January 25, 2017 "*insofar as they direct respondent no. 2 to grant temporary physical and legal custody, and the sole legal and physical custody, of the two minor children to the petitioner..... The two minor children shall continue to remain in the custody of respondent no. 2 even after she returns to USA, till so long as the competent court in USA passes fresh orders on the aspect of temporary/permanent custody of the aforesaid two minor children after granting adequate opportunity of hearing to both the parties.*" The Delhi High Court also stipulated further arrangements to be made by the

petitioner to meet all the expenses of the respondent no. 2 and the minor children till such time she found a suitable job or restarts her professional career.

Upon the judgment of the Delhi High Court in *Dr. Navtej Singh (supra)* being placed before the US Court, fresh orders dated May 14, 2018 were passed by the US Court, partially recalling its earlier orders dated November 17, 2016 and January 25, 2017 granting sole custody to the father. Under the fresh US Court orders dated May 14, 2018, the children shall now remain in the custody of the mother. The US Court directed that the mother will return immediately to USA with the minor children who shall remain in custody of mother and the father will have reasonable interim visitation. The US Court also approved the affidavit of undertaking of the father confirming his conduct of compliance of the directions of the Delhi High Court contained in judgment dated March 6, 2018 in *Dr. Navtej Singh (supra)*.

The above evolving mirror order jurisprudence in child custody matters in India, wherein the US Court has passed mirror order directions to comply with the judgment of the Delhi High Court, can be a possible way forward to establish a precedent for return of children to their homes of foreign jurisdictions. This mirror order formula evolved by judicial mechanisms through the far sighted wisdom of the Indian Courts to ensure the best interest and welfare of the children, as also to provide them a family life with love, care and affection of both parents, can be cited as a possible method for return of children to foreign jurisdictions, till a law on the subject is enacted and some adjudicatory legal resolution process is evolved by any prospective law. Hopefully, if such a evolving mirror order jurisprudence finds judicial approval in India, children removed to India can benefit by being possibly reunited with both parents in their foreign abode. If such a practice is endorsed, it may also encourage Foreign Courts to permit children residing abroad to visit extended families in India, if an assurance is found for their return by a mirror order jurisprudence. This may perhaps be the best stop gap arrangement which can be evolved through the mechanisms of the Courts till a legislative solution is found to inter-parental child removal. Till then in India, matters will continue to be decided on adhoc parameters, in the best interest and welfare of children on a case to case basis.

# **The EU and Family Law and the implications of Brexit**



IAFL Dubai Tuesday 13<sup>th</sup> November 2018

## The European *Union?* - in 15 minutes: Community/Union/Family Law/Brexit

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WW2 1939-45 -> European Coal & Steel Community 1952



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### **UK *not* always against European integration!**

- Winston Churchill, 1946:

*“There is a remedy which ... would in a few years make all Europe ... free and ... happy. It is to re-create the European family, or as much of it as we can, and to provide it with a structure under which it can dwell in peace, in safety and in freedom. We must build a kind of United States of Europe.”*

- ‘Speech to the academic youth’ at the University of Zurich, Switzerland, 1946

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## ECSC 6 → EEC → EU28 (-1 = EU27)

- 1957 Treaty of Rome: economic ≠ legal harmonisation
- 1968 Brussels Convention: *geographic* competence
- maintenance as civil obligation: non-Family property
- 1992 Maastricht Treaty: EU single market + 4 freedoms  
– movement of goods, services, people, money
- 2000 “Brussels II”: divorce recognition/*priority* -DK
- 2003 “Brussels II Revised” = “2R/2A/II bis” + children
- 2009/11 Maintenance Regulation: *priority shopping*
- 2010/12 Rome III “enhanced co-op”: applicable law 14-17/27
- parallel East/West growing cultural division ...

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## “Two-speed” Europe: Rome III

- Blue = applying foreign (EU+) law in harmonised conflict of laws
- Red = individual approach to applying foreign law, including no foreign law (as in English Family Law).



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## Post-Brexit

- EU 27 continue as before, with each other and 3<sup>rd</sup>-states
- UK becomes third-state: reciprocity ends, *unless* agreed
- 45 years of UK laws need review/amendment: 1973!
- UK Family Law orders?: recognition/enforcement??
- Dispute resolution: European Court of Justice/CJEU?
- Political dynamics/“grandstanding”
- effect on ground for consumers/families/children
- adequacy of world/Hague safety-net?: abduction ...
- Hague maintenance instead of Maintenance Reg?
- Re-entering the Hague clubs as singleton UK?
- Future fragility UK: Scotland, Northern Ireland

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### The EU/French perspective: Isabelle

- Business as usual : regulations still applicable (BII Bis, Maintenance regulation, Hague protocole, Rome III and MPR regulation.
- Why would anybody leave such a table?
- Lis pendens rule with UK = 3<sup>rd</sup> state
- Race to court + race to a decision / cost / time
- Orders not to proceed

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### The EU/French perspective: Isabelle

What happens to English orders?

- Divorce : automatic recognition.
- Not the same in other member states
- Hague conventions do not offer reciprocity/equivalence
- Exequatur : delays / cost / prohibitive for small money cases (maintenance)

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### Wider UK/ "Commonwealth" perspective: Charanjit

- Commonwealth and relevance
- Delusions of empire / Empire 2.0
- Effect on divorce cases
- Effect on financial remedy cases

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**Conclusion + any (fast!) questions**

- And Coffee break!

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IAFL Dubai Tuesday 13<sup>th</sup> November 2018

**The European *Union*? - in 15 minutes:  
Community/Union/Family Law/Brexit**

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# **Child Relocation and Abduction**



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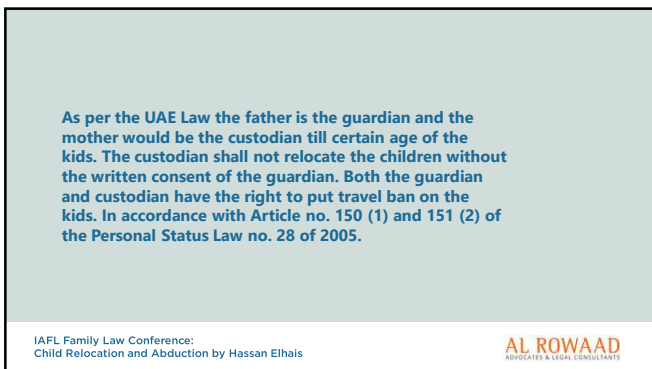
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Article 150 (1) states: "The mother may not take her child for travel or move him from the conjugal house during the existence of a conjugal relation or during the revocable divorce waiting period without his father's written consent."

Article 151 (2) states: "No guardian, father or otherwise, may take the child for travel in the custody period without the written consent of his custodian."

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In case the custodian would like to travel with the children for short visit but the guardian refuses then the mother would have the right to raise a request to the family court requesting to have permission to travel with the child.

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## Child Abduction



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**The child abduction that we will go through mainly via two scenarios:**

**Scenario 1: If two expats in the UAE and one of them abducted the child to other country: - in such scenario it could lead us to ask few questions:**

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**1. Does the family court have jurisdiction in this case?**

**In case of child abduction, the courts will have jurisdiction as per Article no. 6 which states " The State courts shall have jurisdiction on Personal Status lawsuits raised against an alien who has not, in the State, a domicile or residence or place of business, in the following:**

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**6.4) Where the lawsuit concerns the affiliation of a child, having in the State a domicile or residence, or is related to the guardianship on the person or property, whenever the minor or the person to be interdicted has, in the State, a domicile or residence or if the absent had therein his last domicile, residence or place of business.**

**6.5) Should the lawsuit concern a matter of Personal Status and the plaintiff is a citizen, or an alien having in the State a domicile, residence or place of business, in case the defendant has no known domicile or residence in a foreign country or if the national law is, in the State, the governing law."**

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**2. What are the legal action that could be filed in the family court if there is jurisdiction?**

The claimant has to file custody case under Article no. 149 and 152 of the Personal Status Law No. 28 of 2005.

Article 149 states *“The fosterer may not travel with the fostered child outside the State except with the written approval of his tutor. Should the tutor refuse to give his consent, the matter shall be submitted to the judge.”*

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Article 152 states *“The fosterer’s right to fosterage is forfeited in the following instances:*

*2) In case the fosterer elects a domicile in another city thus making it difficult for the tutor to attend to his duties.”*

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**3. Is there any other proceeding to be filed in any other courts?**



Upon getting custody court order from the local courts the custodian shall apply for criminal case for child abduction under Article no. 329 and 328 of the UAE Penal Code, 1987.

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Article 328 states that *“Whoever is the guardian of a child and abstains from delivering the child to a person, of whom he is a legal claimant in pursuance of a judgment or order from a judicial authority, shall be punished by detention or by a fine.”*

Article 329 elaborates *“Either parent or grandparent who abducts his minor child or his grandchild, by himself or through others, even without deception or coercion, from the person who is entitled to be his custodian or curator in accordance with a judgment or order passed by a judicial authority, shall be punished by the penalty provided for in the preceding Article.”*

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**3.2 After filing the criminal case, the custodian has a right to file expedition request as per Law number 39 of 2006. On international judicial cooperation and criminal matters according to Article no.7 the surrender of requested persons is conditional upon:**

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- 1) The crime for which the surrender is requested must be penalized by the Law of the requesting State to an imprisonment of at least one year or any other greater penalty.
- 4) Shall have no effect on the determination whether the act for which the surrender of a person is requested constitutes a penalized crime in the Laws of the two States, that the crime be mentioned under a different name or description or should their elements differ from each other.

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**Scenario 2:**  
***In case of child abduction from other country to the UAE.***

If two expats are living outside and one of them decide to abduct the child to the UAE. Such scenario could lead us to ask precise questions knowing that UAE is not signatory part of Hague convention.

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***1. If the claimant put judgment from international court? Will the UAE courts have jurisdiction to decide the case?***

Yes, Article no. 6 (4) and (5) of Personal Status Law which states that:

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6.4) Where the lawsuit concerns the affiliation of a child, having in the State a domicile or residence, or is related to the guardianship on the person or property, whenever the minor or the person to be interdicted has, in the State, a domicile or residence or if the absent had therein his last domicile, residence or place of business.

6.5) Should the lawsuit concern a matter of Personal Status and the plaintiff is a citizen, or an alien having in the State a domicile, residence or place of business, in case the defendant has no known domicile or residence in a foreign country or if the national law is, in the State, the governing law."

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**2. Under which law the case could be filed?**

The case could be filed under the UAE laws or under the applicant laws. Each party has right to apply his own country's law.

Article (1) of Personal Status Law no. 28 of 2005

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**3. What are the legal action which shall be taken by the father based outside in case of child abduction to the UAE?**

1. If the abducted child is the taken from his mother and he is under mother custody age. The mother will have the right to request for immediate urgent court order to deliver the child back to her.
2. She may file criminal case for child abduction using the foreign court order stating she has child custody.
3. She may file for new custody case in the UAE to get the child back.

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**4. What are the action that could be taken if there is a judgment from foreign courts while it will be recognized by the UAE Courts?**

Unfortunately, even if the claimant have judgment from the foreign court it shall not be recognized by the local courts by the following reasons:

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- Recognition of foreign court's judgment is through Article no. 235 of Civil Procedure Law which states "The execution of the decisions and orders delivered in a foreign country may be mandated in the state of the United Arab Emirates under the same conditions decided in the law of that country for executing the decisions and the orders delivered." It requires any foreign judgments to be decided in a case where the state courts are not authorized to examine the litigation in which decision or the order has been delivered.

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- If the child is missing in the UAE after being relocated in the UAE, the courts shall have jurisdiction as per Article no. 6 (4) of Personal Status Law Number 28 of 2005 which states "where the lawsuit concerns the affiliation of a child, having in the State a domicile or residence, or is related to the guardianship on the person or property, whenever the minor or the person to be interdicted has, in the State, a domicile or residence or if the absent had therein his last domicile, residence or place of business."

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- Especially in most of such cases the abducting parents would get the UAE resident visa which give the courts one more reason to have jurisdiction over the case in accordance with Article no. 6 (5) of the same Law which states " should the lawsuit concern a matter of Personal Status and the plaintiff is a citizen, or an alien having in the State a domicile, residence or place of business, in case the defendant has no known domicile or residence in a foreign country or if the national law is, in the State, the governing law."

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**Any questions?**

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**THANK  
YOU**

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*Rahima NATO-KALFANE*  
*Partner /Cabinet BWG Associés*

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**CHILD ABDUCTION AND INTERNATIONAL CHILD RELOCATION**

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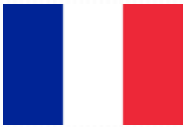
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**RECENT CASE LAW AND DEVELOPMENTS ON CHILD ABDUCTION**



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THE CONCEPT OF HABITUAL RESIDENCE

- The intention of the parents overrules the duration of the child's stay in a given State
- When the parents have agreed to set the residence of their child in a State, there can be no subsequent claim for abduction

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THE NOTION OF "RIGHTS OF CUSTODY" (ARTICLES 3 AND 5 OF THE CONVENTION)

- An agreement between the parents to adjust the arrangement regarding parental responsibility is irrelevant to determine who holds "rights of custody"
- A parent can hold "rights of custody" even though he is not the "custodian parent" (i.e. the child does not live with him/her on a regular basis)
- Reminder : the notion of "rights of custody" includes the right and duty to provide care to the child and to decide where he or she should live
- Public order considerations cannot thwart the concept of "rights of custody" as it is defined by the law of the State where the child had his/her habitual residence before the move

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APPRECIATION OF THE SITUATIONS WHERE JUDGES ARE NOT BOUND TO ORDER THE RETURN OF THE CHILD (THE SO CALLED "EXCEPTIONS")

- Tardiness of the action + integration of the child in his/her new environment : the circumstances that can be considered must regard the child
- The voice of the child (article 13 §2) : the child's objection to return to the country of his/her habitual residence is not decisive on its own.
- Existence of a grave risk that the return would expose the child to physical or psychological harm or otherwise place him/her in an intolerable situation. (article 13 §1b) :
  - ✓ Poor/bad/unusual material living conditions cannot be considered as exposing, alone, the child to a grave risk
  - ✓ The parent who invokes a "grave risk" must establish the circumstances he/she refers to (burden of proof)
  - ✓ Judges must take into consideration the information provided by the Central Authorities when assessing the existence of a "grave risk"

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General attitude of French judges toward child relocation disputes

- The decisive criterion is THE BEST INTEREST OF THE CHILD
- Case-by-case analysis
- Each demand is considered with the outmost care : significant impact on the life of children + judges also view their role in child relocation disputes as a way to reduce the incidence of child abduction
- Plaintiff must demonstrate that his or her project of relocation:
  - ✓ is legitimate
  - ✓ includes guarantees can be offered to protect the relationship with the other parent.

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Specificities of the French proceedings

- Experimental pre-trial mandatory mediation in some jurisdictions ;
- In all cases it is mandatory to demonstrate that attempts were made to resort to alternative dispute resolution methods before filing;
- The Juge aux Affaires Familiales has jurisdiction to rule over any matter involving parental authority;
- Parents have the obligation to inform their child that he or she can be heard in all matters that affect them.

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A. REQUIREMENTS FOR SEPARATED OR DIVORCED PARENTS WHO WISH TO TRAVEL ABROAD WITH A CHILD FOR THE PURPOSE OF A HOLIDAY

- In principle (i. e. unless decided otherwise), separated parents keep exercising joint parental authority.
- If a travel ban is set, parents need to agree to have it lift.
- How can a travel ban be set ?
- **Urgent situations** : a parent may demand the administration (Prefecture or the Police if it is the weekend, night time, or a bank holiday) to set a punctual travel ban (OST) if he or she is convinced that the child is about to be abducted or is in danger. This measure can last up to 15 days. It cannot be renewed.
- **Judicial travel bans** : the parent who fears that his or her child might be abducted files a request to the family judge. Adversarial procedure. Plaintiff must demonstrate a blatant risk of abduction. Can last up to 2 years and can be renewed.
- NB: travel bans are more likely to be issued in situations involving non-member States or States which are not a party to the 1980 Hague Convention.

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B. REQUIREMENTS FOR A PARENT WHO WISHES TO PERMANENTLY RETURN TO HIS OR HER HOME COUNTRY WITH THE CHILD FOLLOWING A SEPARATION OR DIVORCE

Judges value the following factor :

- **The practical conditions the country where the plaintiff wants to settle has to offer ;**
- **The child wellbeing and culture ;**

Particularly strong in this scenario

- **The legitimacy of the project ;**

Particularly strong in this scenario

- **Guarantees regarding the relation between the child and the "remaining parent".**

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C. REQUIREMENTS FOR A PARENT WHO WISHES TO TRAVEL ABROAD TO A NON-EU COUNTRY WITH THE CHILD TO ENABLE THEIR NEW PARTNER TO ACCEPT AN OFFER OF EMPLOYMENT IN THAT COUNTRY

- **Non-EU** country : harder to obtain (it may affect the effectiveness of the non-relocating parent's access rights).
- The "legitimacy" criterion will be problematic as the new partner may be seen as taking precedence over the non-relocating parent who will see his relations with the child altered.

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D. REQUIREMENTS FOR A PARENT WHO WISHES TO TRAVEL ABROAD TO A NON-EU COUNTRY TO BE EMPLOYED FOR A NON-PERMANENT, ONLY LIMITED TIME

- Classic scenario of a parent's expatriation. It happens more and more often.
- Main issue : whether or not the child's stability may be jeopardized, as the move is not permanent.
- The fact that the expatriation serves the advancement of the plaintiff's career (e.g. if he or she was offered a professional promotion) can be seen as an incentive as it may improve the child's living conditions if it implies that the custodial parent has a better income.
- In the case of a temporary move, there is no way under French law to secure that the parent will move back to France with the child at the end of the period.

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# Family Governance

**Question 1**

*The matrimonial risks to family business?*



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**Question 2**

*How to protect the family business against those risks?*



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**Question 3**

*Family charters – can they help?*



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**Question 4**

*UAE structuring for the family business  
- current and future developments?*



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## FAMILY GOVERNANCE: HOW TO AVOID A FAMILY CRISIS BECOMING A BUSINESS CRISIS – AN ENGLISH PERSPECTIVE

James Stewart MCI Arb  
Partner

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### What is Family Governance?

- Family governance', refers to the structures and processes families use to organise themselves and guide their relationship with their business;
- It covers two broad areas - governance of the business and governance of the family
- It is a system of joint decision-making, most often by a board of directors and a family council, which helps the owner family govern its relationship with its wealth and enterprises (to include business and charities)

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### Family businesses – the need for governance

Success often depends on:

- The legal system
- Business vehicles
- Ownership and organisational structure, including the holding of key positions
- Succession structure
- Stability within the family and beyond

*"Family business systems have an enduring advantage over all other kinds of enterprise in large part because of their long-term goals, plans, and commitments. Without stability, you lose your built-in advantage. Without adequate governance, you don't have adequate stability."*

John A. Davis

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## Family businesses – challenges

Good governance will enhance the survival chances of the family business and will anticipate:

- Generational change – what will happen when the second or third generation take over?
- Succession planning – is there an agreed succession plan?
- Corporate governance aimed at managing leadership and ownership changes
- Dispute resolution within the family



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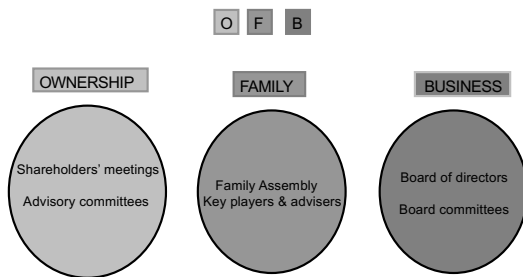
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## Structures



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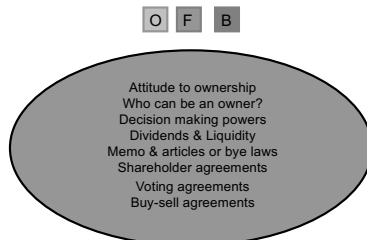
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## Business ownership



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## The Family

O F B

Maintain family glue  
Family constitution  
Financial security of generations  
Education of next generations  
Family philanthropy  
Media  
Wills  
Marital agreements  
Choice of law/marital property regimes  
Power of attorney  
Lifetime and testamentary trusts  
Estate plan  
Emergency plan



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## The Business

O F B

Executive directors  
Non-executive directors  
Decisions reserved for board  
Remuneration and incentives  
Role of board committees, audit, remuneration nominations; governance  
Service and employment agreements  
Incentive schemes



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## Forming a plan for the family

- Structures & control
  - Trust structures
  - Corporate structures
  - Family offices
- Family vision, wishes, long term goals
  - Mission statements
    - Growing the business
    - Protecting assets
    - Benefitting the wider family
- Family governance
  - Formal governance and family constitutions
  - Involving the wider family in decision making
  - Family issues, death/ incapacity or marital issues



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## Family Governance – Mission statements

- Define family vision, ambitions, long term goals
- Point of reference – good times and bad
- Improve a family's communication skills
- May include:
  - The role of individuals within the family;
  - the stewardship of particular assets and investments;
  - commitments to and aspirations for a family business.
- Important for key family members "buy into" the mission statement and the family as a whole can relate to it



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## Family constitutions/ charters

- Substantially more detailed than a mission statement
- Complement formal legal arrangements such as a shareholder's agreement, trusts, a family limited partnership
- Intended to govern a family's conduct in relation to its assets and major decisions
- May create executive bodies or committees, with representatives from different family units or generations
- A working document – may include:
  - how the business should be run;
  - how disputes between the family will be settled (consider arbitration / mediation);
  - what each individual's involvement will be with the family business;
  - what their goals are for the business;
  - what the family and its long term relationships will be with the business;
  - at what age younger generations should become involved with the business and sign up to the constitution; and
  - mechanisms for limiting succession & matrimonial risks to the family business.



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## Creating a Formal Family Constitution

- Understand "why the family want to be in business together?"
- Shared purpose in a family business is usually a combination of financial and emotional reasons:
  - Providing the desired level of financial security for a growing family
  - Achieving a lifestyle
  - Pride in a brand or a reputation for being a family enterprise
  - Creating, preserving and/or extending a legal or family ownership to pass to the next generation
- Process leading to the family constitution can facilitate the success of the business for the benefit of the next generations.
- Beware of dominant family member and/or hidden emotions, illness or agenda.
- Danger it will build expectations if not properly managed



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## Contents of the Family Constitution

- Section 1: Our Shared Purpose
  - A statement of why we are in business together
- Section 2: Ownership Governance
  - The role of owners
  - Bloodline or spouses
  - Working or non-working owners
  - Return on investment/dividend policy
  - Transferring ownership
  - Decisions reserved for owners (including how these are made)
- Section 3: Family Governance
  - The role of family members
  - Family Assembly and Family Council
  - Family policies (e.g. employment/remuneration of family members)
  - Resolving disputes and protecting the family business



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## Matrimonial risks to the family business (1) England– a generous and discretionary jurisdiction



**Warning:** A move to England may be an expensive mistake for business owners; the generous tax system is matched by an equally generous divorce system



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## Matrimonial risks to the family business (1) England– a generous and discretionary jurisdiction cont.

- Broad definition of what constitutes ‘marital property’
- Equality of division as a starting point in determining fairness
- Very considerable judicial discretion in determining fairness
- Trusts often regarded as “family resources”
- Financial awards which cannot be bettered elsewhere
- Foreign pre-nuptial agreements may not be recognised
- Courts may not liquidate business interests

**Warning:** A move to England may be an expensive mistake for business owners; the generous tax system is matched by an equally generous divorce system



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## Matrimonial risks to the family business (2) Claims following an overseas divorce

- Under Part III of the Matrimonial and Family Proceedings Act 1984 (MFPA 1984) spouses who have been **divorced overseas** and who have a **connection with England and Wales** may access the remedial financial remedies available in this jurisdiction if they have **suffered hardship** by reason of foreign divorce.
- Permission of the court is required
- Permission is often granted, particularly in the case of Middle Eastern wives with a connection to England (domicile, habitual residence for 1 year or the presence of a marital home)



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## Matrimonial risks to the family business (3) Forum shopping (case example)

- Chai v Peng – the Laura Ashley divorce
- 42 year marriage
- Assets of £300m
- Four year battle over whether divorce takes place in England or Malaysia
- £6 million in fees



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## Protecting the family business (1) The family constitution

- Marital agreements should be expressly referred to (see paragraph 11 and Appendix 3 in the sample Addams Family Constitution).
- In the case of international families, the family constitution should refer to matrimonial property regime best suited to the family (11.1(f)).
- The family constitution should seek to define and ring-fence assets which belong to the wider family, including the family business (Appendix 4).
- The family constitution should include ADR mechanisms (9).
- Not binding but will have some evidential weight



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**Protecting the family business  
(2) Marital agreements**

- Radmacher v Granatino [2010] UKSC 42
- ‘...should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement.’
- Lord Phillips - para 75



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**Protecting the family business  
(2) Marital agreements cont.**

- Rebuttable presumption that courts should give effect to pre-nuptial agreements
- They cannot oust the jurisdiction of the court
- They must not be manifestly unfair
- Circumstances surrounding the making of the agreement can be relevant



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**Protecting the family business  
(3) Marital property regime**

- *Versteegh* – Court of Appeal upheld the decision to follow a Swedish separation of property agreement entered into the day before the wedding, in the absence of any legal advice.
- *XW v XH* - Court did disregard an Italian separation of property PNA – but no legal advice and the wife did not speak Italian!
- Council Regulation EU 2016/1103 in matters of matrimonial property regimes, which comes into force on 29 January 2019 and which will apply in 18 MS (**but not in England**) will not apply in England even in the unlikely event that Brexit does not take place on 29 March 2019.
- The family constitution should anticipate a possibility of a family member marrying and residing abroad.



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**Protecting the family business**  
**(4) Choice of law clauses**

- **Applicable law** – England has no tradition of applying foreign law and the UK has not opted into Council Regulation 1259/2010 (Rome III).
- A choice of law clause may however help in the event of a jurisdictional conflict in a case outside of the EU where principle of *forum non conveniens* applies.



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**Protecting the family business**  
**(5) Family structures**

- Structuring the family business properly is the only way to protect family assets from business risks, including the risk of attack on the dissolution of a marriage.
- In a number of jurisdictions structures such as family trusts and other structures will not form part of the family resources.



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DATED

2018

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**ADDAMS FAMILY CONSTITUTION**

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Dodson & Fogg  
Bleak House  
Paternoster Square  
London  
EC4M  
*Solicitors to the Addams Family*

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## **1. INTRODUCTION AND OBJECTIVES**

- 1.1 This Family Constitution aims to set out the vision and guiding protocols of the Addams Family with regard to the ownership and management of Addams Family, the various Uncle Fester Trusts and other related entities under the collective ownership of The Addams family. Creating this clarity for the family should bring great strength, reassurance and unity to the Family and to the Business, and secure the future for succeeding generations.
- 1.2 This Constitution is a confidential family document and contains general statements of principle and moral statements of intent, which reflect the hopes and aspirations of the family. Although no legal obligations are created, by signing it each family member will confirm his or her commitment to it.
- 1.3 To be clear, this Constitution and the commitments it contains only relates to investments, ventures and financial activities which the individual members of the Addams Family do together or are able to do together. . These are referred to in this document as the 'Addams Family Assets'
- 1.4 The key objectives of this Constitution are to:
- (a) clarify and guide the relationship between the Addams Family, the Family Business and Uncle Fester Trusts;
  - (b) create a clear vision that governs and directs the beneficiaries and the management of the family entities and the Addams Family Assets;
  - (c) create forums for communication and learning to help promote responsible ownership and stewardship on behalf of the Addams family;
  - (d) help to ensure the relationship between the family and the businesses remains happy, fair, fruitful, prosperous and long lasting. This should also be the forum to discuss sensitive family issues;
  - (e) help to ensure that the business gains great strength and competitive advantage from its family ownership, and avoids the common pitfalls normally associated with family ownership; and
  - (f) to encourage current and future family members to continue to be effective owners.

## **2. FAMILY VISION AND VALUES**

The Family Vision for the business, trusts and investments is to be an ambitious family owned group which takes a considered, managed and long term approach to risk whilst preserving the core values bequeathed to the family by the late Gomez Addams. The core business will be to manage and grow a portfolio of residential and commercial properties. It is the Family's intention to generate superior investment returns across a range of asset classes over the long term to provide a growing store of value for shareholders, with stewardship in mind for

future generations. (This vision will be reviewed by the family at regular intervals and will be updated over time)

#### 2.1 **Honesty & Integrity**

As a family, we will strive to be just and fair in our dealings and true to the Addams Family motto - "Sic Gorgiamus Allos Subjectatos Nunc" or "We Gladly Feast on Those Who Would Subdue Us."

#### 2.2 **Unity, Support & Strength**

As a family, we will be mutually supportive, always act in a solid and unified manner and use our family ownership as a strength and competitive advantage. This will be achieved through effective communication.

#### 2.3 **Opportunities**

As a family, we value choice and opportunity that the business affords us and will always strive to respect and make best use of these.

#### 2.4 **Modesty**

As a family, we will aim to behave in a manner of which we are proud and operate in a respectful manner.

#### 2.5 **Loyalty**

As a family, we cherish the relationships we have built and will always treat family, colleagues and customers with fairness and respect and in a way in which we wish to be treated ourselves.

### 3. **OVERVIEW OF THE FAMILY AND BUSINESS GOVERNANCE (AS AT 1<sup>ST</sup> FEBRUARY 2018)**

#### 4. **ADDAMS'S FAMILY HOLDINGS**

##### 4.1 **Purpose**

The purpose of the **Addams** Board is to oversee the overall investment portfolio and asset allocation of the whole Family Group and to ensure it is being run in line with the overarching vision and mandate laid down by the family.

##### 4.2 **Membership**

The **Addams** Board will meet on a quarterly basis or as needed. Other individuals will be invited to attend as necessary.

##### 4.3 **Addams Investment Committee**

The committee is responsible to the Addams Board for the day to day investment strategy, asset allocation and communication between the Investment advisors and the Addams Board

##### 4.4 **Vision for the Business**

**Addams** is to be a conservative family-owned enterprise, managing and growing a diverse portfolio of businesses and properties and development land, which provide for the long term financial security of the **Addams** family.

#### 4.4 **Mandate of the Senior Management Team**

The Addams Board through the Senior Management Team have the autonomy to drive the business forward in line with the vision set out above, operating within the following parameters at all times:

Business activities to include:

- (a) The running and development of a tombstone factory;
- (b) Crocodile farm;
- (c) Speculative development *ie* swamps to be developed, although these projects should not account for more than 10% of NAV.

#### 4.5 **Authority Limits**

The shareholders agreement sets out the extent of the autonomy of the Addams Board and the specific matters where the shareholders' approval is first required. In addition, the independent chairs of Addams investment committee and Addams Board have a written understanding of the respective scope of activity of each company.

It will be necessary to achieve a balanced portfolio through an ongoing review of assets and seeking advice from outside experts when needed. The Board will consist of both Independent Non Executives and Executive members with relevant experience.

### 5. **FAMILY COUNCIL**

#### 5.1 **Purpose**

- (a) to develop a family of responsible stewards;
- (b) to better prepare the family via a forum where education, discussion and improved communication can be facilitated;
- (c) to create an aware and cohesive group of family members;
- (d) to provide an overarching Family vision for the Addams Board;
- (e) Informed challenges are welcomed;
- (f) The Family Council is **not** a business decision making body. However it is the body that shares information and communicates between the Businesses and the wider Family;
- (g) Confidentiality will be observed for the protection of the family. Any papers in relation to the Family Council circulated must be treated with utmost respect and should not be shared with non-family members.

## 5.2 **Membership**

The Family Council will include all direct Family Members 25 years old and over, between 18 and 25 family members can request an invite to attend. Partners may be invited if appropriate and if there is consensus.

The Family Council will include all direct Family Members 25 years old and over, between 18 and 25 family members can request an invite to attend. Partners may be invited if appropriate and if there is consensus.

## 5.3 **Role**

5.3.1 To be more specific, the role of the Family Council includes:

- (a) gathering views and answer any queries from the family where appropriate regarding anything to do with the family, the business or the Uncle Fester Trusts
- (b) communicating any company news or developments back to the family
- (c) acting as a support for any family
- (d) organising educational activities on behalf of the family which encourage responsible ownership and responsible financial management
- (e) continuing to develop a vision for the board
- (f) assisting in resolving any problems which may arise from the relationship between family members or between the family and the business
- (g) arranging family social gatherings

## 5.4 **Meetings**

5.4.1 The Council should meet twice a year offsite.

5.4.2 All family members included in the Family Council must attend all meetings, whether in person or through electronic means.

5.4.3 The Chair of the Family Council will be appointed by consensus and should be reviewed on a rolling three year basis. An agenda will be circulated in advance of all Council Meetings by the Council Chair. Any family member wishing to add an item to the agenda, should inform the Council Chair in advance of the meeting.

## 5.5 **Communication**

The Family recognise the importance of good communication between Shareholders and the Family Council and the Addams Board in order to avoid potential conflict or misunderstanding in the future.

5.6 To facilitate this, a number of communication protocols have been agreed as follows:

- (a) in order to keep the wider family up to date with the Businesses, a representative of both Boards will provide an overview as required. This should include a financial update and briefing; and
- (b) in order to help develop communication within the Family Council, the family have developed a series of meeting 'ground rules' which are outlined in Appendix 1.

## **6. WORKING FAMILY MEMBERS**

Entry into the Family Business will be an opportunity not a birth right and high levels of commitment and performance will be expected from working family members. Such members of the Family wishing to occupy management positions within the company should be suitable in terms of character and have relevant experience. All family members will need to go through the usual interview process. If there is a vacancy the role must be filled by the best candidate irrespective of their family connections based on their merit and skills to fulfil the role. However all family member of university age are encouraged to spend some time within the business completing work experience so that a real understanding of the family business starts to develop.

Any family member working in the business will also:

- (a) be subject to the same terms and conditions as non-family employees;
- (b) be given a role description and employment contract;
- (c) receive a market rate salary set by reference to outside benchmarks; and
- (d) receive an annual appraisal and be expected to work through individual development plans in line with all other employees.

## **7. FAMILY PHILANTHROPY**

It is the wish of the Family that they continue to donate to the Morticia Addams Charitable Trust in a meaningful manner

### **7.1 Vision for the Morticia Addams Charitable Trust**

The Morticia Addams Charitable Trust strives to support the community of which our business is a part and will look to participate in projects with longer term needs. The Family is looking to build up the charitable endowment, using the income to make charitable donations.

### **7.2 Trustees**

#### **7.2.1 Charity Committee**

- (a) The Charity Committee shall be convened to consider all applications for grants received;

- (b) All members of the Family until age 25 are expected to take an active role in the Charity Committee unless excused due to other commitments;
- (c) The Charity Committee shall actively encourage applications for grants in accordance with the Charity's objects and shall undertake such due diligence as they deem appropriate in assessing whether or not to offer support to registered charities. Any family member can request a specific area or charitable organisation for the Morticia Addams Charitable Trust to support in the future.
- (d) The Charity Committee shall formulate and keep under review an Investment Policy (in conjunction with appropriate advice) and a Distribution Policy and shall communicate such policies and any substantive amendments to them to the Chairperson for wider dissemination and discussion if appropriate.

### 7.3 **Communication**

In order to keep the Family up to date on donations made by the Trust, the Charity Committee will report to the Chairperson to enable the Chairperson to update the Family on a regular basis at the Family Council meeting.

## 8. **FAMILY TRUSTS (THE UNCLE FESTER TRUSTS)**

**Details of the trusts can be found in Appendix 5.**

The overall role and responsibilities of the Trustees of the Uncle Fester Trusts are as follows:

- a) to always act in accordance with their fiduciary duties, the terms of the Uncle Fester Trusts themselves and general trust law principles.
- b) to always act in the best interests of the beneficiaries.
- c) to take good and appropriate professional advice where appropriate.
- d) to attend and prepare for all Family meetings.
- e) to conduct themselves in fair, supportive and proper manner generally.

## 9. **DISPUTE RESOLUTION**

In case of family disagreements which might include:

- (a) an individual's concern or disagreement with a decision of Family Council or associated Family entity which cannot be resolved by open discussion in Family Council Meetings;
- (b) the Family Council's concern over breach of Constitution's commitments by member of the Family Council; or
- (c) disagreements between two or more members of the Family which involve Addams Family Assets

it is important to have a clear process to follow to try to resolve the problem.  
The following process can be put in motion by either party

### **FIRST STEP**

Opportunity to discuss the matter informally with the appropriate senior representative of the Family Office.

It is expected that such person will have had involvement and understanding of the wider context of the matter under discussion and will also be concerned to ensure the outcome is in the best interests of the Family as a whole, rather than one individual or branch of the Family.

### **SECOND STEP**

Convene a committee of appropriate independent advisors to the Family;

The committee should consist of at least 2 of the following (1) a representative from the Family Office (2) the legal advisors to the Family (3) the Independent Trustee (provided there is no conflict in respect of the matter under discussion) and (4) financial or investment advisors to the Family.

### **LAST STEP**

(d) Refer to independent mediator with commitment to abide by ruling:

If agreement cannot be reached informally, then the same process as is set out in the shareholders' agreement should be used - an independent mediator is appointed by agreement by the parties or, if they cannot agree, appointed by the Independent Trustee, and if following mediation, the parties are able to reach agreement, that agreement shall be recorded in writing and signed by the parties and the mediator whereupon it shall become binding on them; The costs and fees of the mediator, and any neutral venue shall be borne by the parties; or

### **[NB: Consider inserting an arbitration clause**

*“ if agreement cannot be reached informally in accordance with the provisions set out above, the matter will be referred to arbitration under the rules of the Chartered Institute of Arbitrators or any such replacement rules in force at the date of such dispute, controversy or claim and that:*

- *the tribunal will consist of an arbitrator who is a retired High Court judge;*
- *in default of agreement as to the identity of the arbitrator, the appointing authority will be the President for the time being of the Chartered Instituted of Arbitrators;*
- *the seat of the arbitration will be London;*
- *the law governing the arbitration agreement will be the law of England and Wales; and*
- *the language of the arbitration will be English.”]*

(e) Irreconcilable differences;

If agreement cannot be reached, the individual Family Member(s) will agree to trigger the exit mechanism, whereby he or she will sell their interest in the co-invested assets as set out below and will cease to be subject to this Family Constitution. The individual Family Member is able to trigger the exit mechanism at any stage of the Dispute Resolution process set out above.

## **10. EXIT STRATEGIES**

As the Family grows over subsequent generations, individual members may not wish to participate in the ownership of the Addams Family Assets, and may not want to be involved in the Family Council or commit to the responsibilities set out in this Constitution. This means there needs to be a fair means of withdrawing from co-investing in the Family Assets.

It is also acknowledged that disputes may arise which cannot be settled other than by an individual member of the Family no longer being involved in co-investing in Addams Family Assets and in such circumstances, members of the Family agree to be bound by the exit mechanism set out here. Members of the Family agree that the valuation method is fair at the point of triggering of the exit mechanism and acknowledge that subsequent increases (or decreases) in value of assets sold, are not reasons to reopen or dispute the valuation.

### **Addams Family Holdings**

The exit route from owning shares in Addams Family Holdings is as set out in the Shareholders' Agreement.

### **Exit following dispute**

Where an individual wishes to sell following a dispute, the holders of the Shares should consider carefully the recommendations of the person or persons involved in helping to resolve the problem in the Dispute Resolution process above in deciding to approve or veto the sale.

### **Exit following change of control**

It may be that in the future, one or more members of the Family will take executive control of the business or there is a significant restructuring or other change in the status quo which currently exists. It is anticipated that this Family Constitution will be reviewed and amended as appropriate to reflect the best interests of the Family in the changed circumstance and with due regard to the stated Family Vision and Values.

### **Co-invested assets**

The precise mechanism to exit from co-invested assets will depend on the nature of the assets, their liquidity and any legal agreement governing the co-ownership. However, all concerned Members of the Family will use their best endeavors to cooperate to enable an exiting member to sell their investment in a timely and fair manner. In return, the exiting member will agree to a time frame which does not prejudice the remaining Family investors.



## 11. INDIVIDUAL COMMITMENTS

11.1 Each Member of the Family Council shall commit to:

- (a) upholding the Family Constitution;
- (b) ***accepting that Addams Family Assets are to be ring-fenced from each family unit's own assets so that all decision making, control, information relating to and management of those assets are to be undertaken for the good of the wider Addams Family even if at the expense of or contrary to the wishes of the individual or their partner or spouse;***
- (c) maintaining confidentiality over all Family Council matters including discretion in written and oral communications, including all forms of social media;
- (d) ***enter into a pre-nuptial agreement as set out in in Appendix 3 in good time (3 months) before marriage; and***
- (e) ***NB: include mirroring provision requiring family members who are foreign nationals or who live abroad to enter into a marital agreement replicating the provision of Appendix 3 in all other relevant jurisdictions.***
- (f) ***NB: include a provision requiring family members who live in jurisdictions which are subject to Council Regulation EU 2016/1103 in matters of matrimonial property regimes, which comes into force on 29 January 2019 and which will apply to 18 Member States (not England or Ireland) to elect a property regime equivalent Le régime de la séparation de biens (France) or the equivalent, subject to the modifications necessary to replicate the requirements of Appendix 3.***
- (g) putting in place and keeping up to date a Will which complies with any restrictions concerning the devolution of shares or other Family assets contained in any Articles of Association or Shareholders agreement or any other governance document dealing with Family Assets and in accordance with Appendix 5.
- (h) putting separate Lasting Powers of Attorney for financial decisions in place in relation personal assets and separately in relation to Family Company shares.
- (i) putting in place a Lasting Powers of Attorney for health and care decisions .
- (j) to inform everyone of any significant changes to their personal affairs, which may reasonably be expected to impact on the Addams Family and Business at the next Family meeting if not sooner depending on the circumstances in question.
- (k) not act in such a way so as to give away or promise to give away any non-family member a beneficial interest or potential claim in respect of any

Family assets by virtue of their direct or indirect use of such assets, assisting or supporting them financially, providing accommodation or transferring or promising to transfer any Family assets to them.

- (l) Not to act in any way which might bring themselves or the family into public disrepute.
- (m) To inform the Family's advisors immediately of any issue or possible issue which might lead to legal difficulties, poor publicity, loss of confidentiality or otherwise negatively impact them or the Family as a whole.

## APPENDIX 1

### Addams Family Ground Rules

1. Everybody should be responsible and able to stop bad process, bad language or bad body-language by calling a 'time out'
2. Acknowledge hot-spots – record them and revisit them – don't start a meeting if there are hot-spots present
3. Always have a 15 min buffer time before a meeting starts – always start with a 'coffee session' to catch up and reconnect – this is an important part of the meeting
4. Meetings should always start on time and everyone should be there
5. Honour the time of the meetings - It's not acceptable to leave early before the meeting is concluded
6. No mobile phones or any other form of electrical device during meetings
7. Breaks will be held every 1.5 hour and will be included in the agenda
8. Process out loud – 'I'm uncomfortable with what's being discussed...' - Understand each others perspectives and bring feelings to the surface
9. Respect each others boundaries
10. Actively listen and ask questions in order to understand what people are saying
11. Celebrate and acknowledge our successes and give constructive feedback
12. Produce, circulate in advance and stick to the agenda and keep minutes. Everyone has a responsibility to put items on the agenda in advance
13. Always have a 'parking lot'
14. Don't hijack meetings with your own agenda
15. Family meetings should always be held in a neutral location
16. Meetings should always have a chairperson for the meeting

## **APPENDIX 2**

### **Addams Family Etiquette**

1. Celebrate and acknowledge our successes and give constructive feedback
2. Produce, circulate in advance and stick to the agenda and keep minutes. Everyone has a responsibility to put items on the agenda in advance
3. Always have a 'parking lot'
4. Don't hijack meetings with your own agenda
5. Family meetings should always be held in a neutral location
6. Meetings should always have a chairperson for the meeting

## APPENDIX 3

### Pre-Nuptial Agreement

When a Family Member decides to enter into marriage they commit to a significant change in legal status, which could have potentially adverse implications for the Addams Family in the event of divorce or dissolution. Pre-nuptial agreements can be an effective method of preserving family wealth in the event of divorce.

All direct Family Members are required to enter into a pre-nuptial agreement in good time prior to entering into a marriage. The Family Member should comply with the Preliminaries and the agreement should comply with the Formalities set out below.

#### Pre-nuptial agreement preliminaries

Any direct Family Member who is contemplating entering into marriage must:

1. Inform the Family Council in good time, and in any event no less than six months prior to the intended wedding.
2. Inform their intended spouse that they are required by this Constitution to enter into a pre-nuptial agreement.
3. Inform their intended spouse that they will be required to take independent legal advice from a qualified family law solicitor in relation to the agreement, assist them in identifying such a solicitor and, if appropriate, assume responsibility for the solicitor's fees.
4. Instruct a qualified family law solicitor to draft a prenuptial agreement.
5. Request the Family Council to prepare a document for disclosure to their intended spouse, setting out their interests in the Addams Family businesses, the estimated value of those interests, and their entitlement to income, at the time of entering into the agreement and in the future.
6. Ensure that information relating to the Addams Family businesses is provided to the intended spouse under cover of a legally binding Confidentiality Agreement.
7. Ensure that the agreement is prepared and sent to their intended spouse in good time so that they can obtain independent legal advice and the agreement can be finalised and signed in good time and in any event at least 28 days before the wedding.
8. Ensure that their intended spouse is treated with fairness, openness and respect so as to maximise the likelihood that the agreement will be upheld by the court as fair.

#### Pre-nuptial agreement formalities

Prenuptial agreements must:

1. Be drafted by a qualified family law solicitor.
2. Meet the criteria for a "Qualifying Nuptial Agreement" as defined in *Law Commission: Matrimonial Property, Needs and Agreements* (Law Com No 343) (27 February 2014).

3. Be drafted so as to be valid in any state in which the Family Member and their intended spouse reside or may be expected to reside during the course of their marriage and in any state that may potentially have jurisdiction in relation to divorce proceedings.
4. Make fair provision for the intended spouse and any children of the marriage so as to maximise the likelihood that the agreement will be upheld by the court as fair.
5. Be reviewed regularly so as to take account of changing circumstances, in particular the birth or adoption of any children, and no less than every five years.
6. Be open and transparent as to the Family Member's current and future interest in the Addams Family businesses.
7. Define the Family Member's current and future interest in the Addams Family businesses as non-matrimonial or separate property, with a view to ensuring that the Family Member's intended spouse will have no entitlement to any interest in the Addams Family businesses on divorce or dissolution.
8. Incorporate any specific Addams Family standard pre-nuptial agreement clauses that may from time to time be agreed by the Family Council.
9. Contain a Confidentiality Clause preventing the intended spouse from disclosing the agreement or any information relating to the Addams Family businesses to any third party, save for the purposes of seeking professional advice.
10. Contain certificates signed by both parties' solicitors confirming that they have received independent legal advice in relation to the agreement.

## **APPENDIX 4**

### **Reserved Assets**

Addams Family Assets shall not include the following:

1. All assets which are treated as belonging to a marital unit, including all assets owned jointly by a member of the Family and their spouse, civil partner or partner;
2. All assets which are owned personally by a Family Member and which are not part of an investment opportunity or venture offered to that Family Member by virtue of being part of the Addams Family;
3. All assets owned jointly by the Family Member and an individual or individuals who are not members of the Addams Family.

## **APPENDIX 5**

### **Estate Planning**

Part of the responsibility of owning Addams Family Assets is ensuring that they are passed on to the next generation in a responsible way. This means agreeing to follow rules and guidelines designed to limit as far as possible disputes and to pass on control of the legacy of the Family's business within the confines of succeeding generations of Addams Family Members who share the Family's vision.

#### **Wills**

All members of the Family are required to have a Will in place and to review it regularly. The solicitor who draws up the Will should be put in touch with the Family's legal advisor who will make them aware of the Family's Will requirements relating to Addams Family Assets. How the Will deals with personal assets is entirely a private matter and for the Family Member to decide.

#### **Spouses**

It is important to remember that a marriage automatically revokes a Will.

The articles of association do not allow spouses to inherit shares in the Addams Family holdings and limit transfers of the shares (during lifetime or on death) to members of the Addams Family or to certain Uncle Fester Trusts.

Spouses can be provided for by giving them a life interest in the Will in Addams Family Assets, separate from the other assets in the estate of the deceased which can pass outright to the spouse. This means they are automatically entitled to the income (dividends, interest etc) of the Assets that the Family Member was entitled to during life time. After the spouse's death (or if they do not need the income) the ownership of the assets should pass to the children (in trust or outright, depending on age) or to other Members of the Addams Family.

#### **Executors/Trustees**

Executors and Trustees are appointed to deal with a person's estate after death and if there is a trust, to look after assets until the beneficiaries receive them outright. The trustees therefore have the same decision making powers that the Family Member had during lifetime. It is important that the Trustees who will control Addams Family Assets are not third parties but one of the approved list of advisors or members of the Family who can act as trustees. Spouses are not permitted to be trustees of Addams' Family Assets.

#### **Other beneficiaries**

A Family Member who is not married but is in a committed long term relationship may choose to leave provision for that partner similar to that of a spouse – he or she may be given the right to receive income from the Addams Family assets for life.

Other than in exceptional circumstances, a Family Member who is not married or in an equivalent relationship and has no children, should leave his Addams Family Assets to other members of the Addams Family.



The appropriate exit procedure will be initiated if a Family Member's Will breaches these requirements.

## APPENDIX 6

### 12. UNCLE FESTER TRUSTS

- (a) **Settlor:**
- (b) **Type of trust:**
- (c) **Trustees:**
- (d) **Beneficiaries:**

#### 12.2

- (a) **Settlor:**
- (b) **Type of trust:**
- (c) **Trustees:**
- (d) **Beneficiaries:**

#### 12.3

- (a) **Settlor:**
- (b) **Type of trust:**
- (c) **Trustees:**
- (d) **Beneficiaries:**

#### 12.4

- (a) **Settlor:**
- (b) **Type of trust:**
- (c) **Trustees:**
- (d) **Beneficiaries:**

#### 12.5

- (a) **Settlor:**
- (b) **Type of trust:**
- (c) **Trustees:**
- (d) **Beneficiaries:**

# International Mediation and Arbitration

## International Arbitration and Mediation

Suzanne Kingston  
Family Partner  
Withers LLP

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## Menu for today

- Arbitration around the world
- The Hybrid Model
- The EU Mediation Directive
- Mediation in child abduction cases

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## Why now?

- Resolution of family disputes at crisis point
- Courts cannot cope with the volume of cases
- Government has attempted to divert suitable cases away from the Court system to DR
- Judicial support and encouragement
- Confidentiality

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## Arbitration around the world



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## England and Wales



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## Financial Arbitration Scheme

- April 2012
- Award – binding
- The Scheme does not cover:
  - Status of the relationship
  - Insolvency
  - Third party intervention left by agreement

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## Children Arbitration Scheme

- 2015
- Determination – binding
- Does not cover:
  - Status of the child
  - Abduction
  - Adoption
  - Surrogacy
  - External leave to remove

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## Judicial encouragement of arbitration

- S v S [2014] EWHC 7 Munby J
  - Endorsement of family arbitration – “magnetic factor”
  - Paves the way for arbitration to take centre stage
  - Endorsement of the approach in S v P [2008] [2FLR 2040]



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## Practice Guidance 23 November 2015 (Financial) 26 July 2018 (Children) President of the Family Division - Sir James Munby

- Procedure set out for lodging arbitral awards/determinations and making them into Court Orders



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## Benefit for your clients

- Parties select decision maker and continuity of decision maker
- Flexibility
- Control and pacing
- Confidentiality
- Informality
- Possibility of dealing with dispute issues
- Speed

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## Other schemes South Africa



- After much scepticism the Law Society and judiciary are very much on board and arbitration in South Africa may now become statutorily binding
- Pro bono arbitration schemes in townships to avoid allegations of two tier system?

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## Other schemes Hong Kong



- Reviewing the Arbitration Ordinance ('AO') which incorporates principles of the Model Law. The object of the Ordinance is to 'facilitate the fair and speedy resolution of disputes by arbitration' with an emphasis on party autonomy and limited court interventions
- The AO applies to 'an arbitration under an arbitration agreement ... if the place of arbitration is in Hong Kong'
- The position of arbitration in Hong Kong could be the same as in England
- There may be issues of enforcement but as long as the parties apply to the Court for an order that may be the route to deal with that issue
- As in England the direct arbitral route of appeal may be retained
- Ultimately Hong Kong lawyers decided on Private Adjudication - Practice Direction granted

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Other schemes

Scotland

FLAGS Family Law Arbitration Group Scotland



- No need for court order
- 47 Arbitrators trained
- 1 scheme incorporating both financial and children
- Arbitration assisting access to justice in rural areas

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Other schemes

New Zealand



- Exciting times - possibility of arbitration using the AMINZ Scheme with help from the FairWay Group
- Consideration of how scheme is to be formulated and best dealt with

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The new mediation landscape

- Hybrid family mediation model
  - Separate confidential meetings with each of the couple
  - And/or involving their solicitors more closely in the process
  - And/or adopting a more flexible approach to process within the bounds of ethics and workability

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### Where could the hybrid model be appropriate

- Where the couple's finances require more complex planning and negotiation
- Where either party has real difficulty negotiating on a face to face immediate basis in joint sessions
- Where either party has certain personality traits that make it hard to reach agreement
- Where a party has genuine inability to understand the other's thinking or intent and needs the space and help that separate meetings can offer

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### Continued.....

- Where a party wants to mediate but has genuine concerns or feels intimidated about negotiating directly with the other
- Where either party wishes to have a legal advisor alongside some or all of the negotiations
- Where negotiations are stuck and joint sessions are no longer helpful

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### Separate confidential meetings

- **Evidential status**
  - Reconciling confidentiality with open nature of financial disclosure
  - Significant harm to children or others
  - Adapting the Agreement to Mediate
- **Some preliminary questions**
  - What kind of issues are best dealt with separately?
  - What other criteria or circumstances indicate a preference for moving to separate meetings?

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Continued...

- Practical considerations:
  - Venue and room arrangements
  - Using the initial sessions to establish underlying issues
  - Do parties cope with being kept in separate rooms?
  - Having respective lawyers present
  - Preparing parties for separate meetings
  - What can be done for the party not being seen?
  - Other concerns about separate meetings?

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Continued...

- Some further considerations:
  - Who to see first?
  - Using waiting time effectively
  - Maintaining a time balance
  - Keeping parties involved and informed
  - Noting what can be disclosed and what can't
  - Encouraging disclosure where appropriate

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### The EU Mediation Directive

- The Directive of the European Parliament and of the European Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters came into force on 20 May 2011 through the Cross-Border Mediation (EU) Directive Regulations 2011
- It is **NOT** family law explicit
- It creates expectations that Member States will encourage mediation wherever possible

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### Some thoughts about international mediation

- Cross border mediation is a real specialism within mediation and should be undertaken by experts
- Ensuring quality of mediation will need a rigorous approach

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- It is hoped that mediated outcomes would enjoy the benefit of cross border recognition and enforcement
- The encouragement of family mediation creates a fundamental conflict with the race to issue in Brussels II
- Talking of Brussels II – what about Brexit?
- In the event of no deal, the Mediation Directive would be re-appealed. Where would that leave us?

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### Peculiarities of international family mediation

- Different languages and different cultural backgrounds
- Geographic distances and how the mediation is conducted
- Involvement of children in international family mediation
- Co-mediation as the model
- Costs of international family mediation
- Legal complexity of international family disputes

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## But what of the future

- We need:
  - An agreement on minimum common standards concerning mediation training and accreditation
  - Better information available to potential clients
  - Better commitment of governments and better co-ordination among states
  - Availability of sound legal information and advice

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## Mediation in Abduction Cases

- If the Court considers mediation appropriate then it can be utilised in international child abduction proceedings
- Provision of grant of non-means non-merits tested legal aid mediation for applicant parents in Hague convention cases
- Child abduction mediation pilot scheme was set up in 2006 run by Reunite with funding from the Nuffield Foundation
- Reunite still assist and provide mediators with specialised knowledge of international child abduction
- The child abduction mediation scheme complements the proceedings and is only embarked upon once proceedings have been issued
- There are three key stages:
  - Identification
  - Screening
  - Mediation

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# **Division of assets on divorce - why jurisdiction matters**

## Division of assets on divorce

" A husband and wife separate and divorce. There is no agreement as to how the family assets should be divided."

### 1 Basis of jurisdiction

Muslim Personal & Family Law  
Civil & Property Law

### 2 How is such a (process) decided in your jurisdiction?

Such a process is decided by approaching the Family Court. These family courts are established under Section 3 of the West Pakistan Family Courts Act 1964. The matters that these courts are competent to adjudicate upon are listed in a schedule given in the West Pakistan Family Courts Act 1964. Dissolution of marriage, dower, maintenance, dowry and personal property and belongings of a wife are all enlisted here. The aggrieved party approaches the Family Court for adjudication over the matter.

If there is a dispute over the ownership of a certain asset or complex question arise which need adjudication under civil and property law, then it will fall out of the scope of family courts and the mainstream civil courts will be approached.

### 3 Is the wife entitled to any part of the family assets and if so on what basis?

The wife is entitled to the dower amount (if unpaid at time of divorce). This is a sum of money/property/assets decided upon at time of marriage as consideration of marriage. She is entitled to a 'maintenance' amount for the iddat period (three months after divorce). She is entitled to all the assets that she brought to her marital home as her 'dowry'. She is also entitled to all the personal belongings she has including any gifts she has been given before and after her marriage. Recently the Supreme Court of Pakistan has laid out in a judgment that any assets that the husband may have bought in her name may be also considered as her gift. She is also entitled to any further assets that may have been detailed in the nikahnama (the marriage contract) to be given to her by the husband.

### 4 Will the wife get maintenance for herself and if so how will this be calculated?

She is entitled to maintenance from the time of separation till the actual divorce (if any). She is entitled to maintenance for three months' period of iddat after the divorce.

### 5 Will her actions or behavior affect this?

Her actions or behavior will not affect the maintenance of the three months' iddat period. However, as far as any time between the separation and divorce is concerned, it will be adjudicated whether she separated at her own will or whether she was driven out of the home by the husband and/or his family. In case of the latter she will be entitled to the maintenance for the separation period also.

**A husband and wife separate and divorce. There is no agreement as to how the family assets should be divided.**

## **1 Basis of jurisdiction**

- Property law- who owns the asset? How is title held vs 'beneficial interest'/trust
- Financial provision on divorce- divorce jurisdiction

### **General:**

Article 3 Brussels II rev:

1. In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or — the applicant is habitually resident if he or she resided there for at least a year immediately before the application was made, or
- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her 'domicile' there;

(b) of the nationality of both spouses or, in the case of the United Kin

Particular:

Domicile only = Court of Session (Scotland wide court)

Resident for not less than 40 days prior to the action being raised = Sheriff Court (local courts) or Court of Session

## **2 How is such a (process) decided in your jurisdiction?**

In the context of an action for divorce the court can make orders for financial provision.

## **3 Is the wife entitled to any part of the family assets and if so on what basis?**

- Share of net value of 'matrimonial property' - default is 50/50 split
- Distinction between net value and value of individual assets

Section 10 Family Law (Scotland) Act 1985

(1) In applying the principle set out in section 9(1)(a) of this Act, the net value of the matrimonial property shall be taken to be shared fairly between when it is shared equally or in such other proportions as are justified by special circumstances.

(2) [Subject to some provision re a substitute value to be applied to property to be transferred], the net value of the matrimonial property shall be the value of the property at the relevant date after deduction of any debts incurred by one or both of the parties to the marriage—

(a) before the marriage so far as they relate to the matrimonial property, and

(b) during the marriage,

which are outstanding at that date.

(3) In this section "the relevant date" means whichever is the earlier of—

(a) subject to subsection (7) below, the date on which the persons ceased to cohabit;

(b) the date of service of the summons in the action for divorce.

(4) [Subject to slightly different treatment for the value of interests and life policies, which is apportioned as against the period of the marriage, prior to separation] in this section and in section 11 of this Act "the matrimonial property" means all the property belonging to the



parties or either of them at the relevant date which was acquired by them or him (otherwise than by way of gift or succession from a third party)—

(a) before the marriage for use by them as a family home or as furniture or furnishings for such home; or

(b) during the marriage but before the relevant date.

#### **4 Will the wife get maintenance for herself and if so how will this be calculated?**

- **Aliment until divorce**

##### Section 4

(1) In determining the amount of aliment to award in an action for aliment, the court shall, subject to subsection (3) below, have regard—

(a) to the needs and resources of the parties;

(b) to the earning capacities of the parties;

(c) generally to all the circumstances of the case.

(2) Where two or more parties owe an obligation of aliment to another person, there shall be no order of liability, but the court, in deciding how much, if any, aliment to award against any of those persons, shall have regard, among the other circumstances of the case, to the obligation of aliment owed by any other person.

(3) In having regard under subsection (1)(c) above generally to all the circumstances of the case, the court—

(a) may, if it thinks fit, take account of any support, financial or otherwise, given by the defender to any person whom he maintains as a dependant in his household, whether or not the defender owes an obligation of aliment to that person; and

(b) shall not take account of any conduct of a party unless it would be manifestly inequitable to leave it out of account.

- **Periodical allowance after divorce**

- Bolt ons for economic burden of caring for children of the marriage under 16; adjustment to loss of financial support where there has been substantial dependency (max three years post divorce) and where serious financial hardship as a result of the divorce (unlimited)
- Presumption in favour of clean break and capitalisation- cannot have pa unless inappropriate or insufficient to capitalise
- Recent trend in favour of not capitalising

## **5 Will her actions or behaviour affect this?**

- Unlikely. Financial provision-

Section 11 (7)

In applying the principles set out in section 9 of this Act, the court shall not take account of the conduct of either party to the marriage unless—

- (a)the conduct has adversely affected the financial resources which are relevant to the decision of the court on a claim for financial provision; or
- (b)in relation to section 9(1)(d) or (e), it would be manifestly inequitable to leave the conduct out of account.

- Aliment- see sec 4(3)(b)

**Rachael Kelsey**  
**SKO Family Law Specialists**  
**Edinburgh and London**

**October 2018**

# **Recognition and Enforcement of Foreign Judgements**

PANEL SESSION: 14/11/18 High Noon

*Recognition and Enforcement of  
Foreign Judgments*

**Mr. Ibrahim Mohamed Hassan Khalifah Al Hosani**

**Ms. Diana Hamade, IALS Dubai, IAFL**

**Mr. Alessandro Tricoli, Fichte Legal, Dubai**

**Ms. Isabelle Rein Lescastereyres, BWG Paris, IAFL**

**Chaired by Tim Amos QC, QEB London, IAFL**

This will be an interactive discussion session (with PowerPoint) focussing on the different perspectives and different procedures available, depending on the nature and *stage* of the proceedings.

We have assembled lawyers from the UAE and Dubai in particular, and from the EU and UK, and with the assistance of the Dubai International Financial Centre (“DIFC”), in order to discuss methods, progress and prognosis for international enforcement (in all directions) - including the apparent tension currently between the onshore Dubai family/*sharia* courts and the “offshore” DIFC courts.

The panel includes Alessandro Tricoli, a shipping lawyer and partner in Fichte Legal Consultancy, Dubai, who will discuss the very latest developments in the English Akhmedova litigation, which “started out” with the matrimonial finance judgment of Haddon-Cave J in *AAZ v BBZ and others (Financial Remedies: Sharing Principle: Special Contribution)* [2016] EWCA 3234 and has now progressed, via the English Court of Appeal (including considerations of corporate veil piercing and privilege/fraud), to enforcement in Dubai of an English freezing order subsequent to the matrimonial finance proceedings themselves, by attaching the now well-reported super yacht “Luna”.

We then round off with a consideration of future East-West recognition within Europe, by reference to the CJEU case of *Sahyouni* 17/12/17 C-372/16 (German recognition of Syrian *talaq*) and how in turn this may impact on the controversial new extra-judicial French consent divorce.

IAFL Dubai Wednesday 14<sup>th</sup> November 2018

## **Recognition and Enforcement of Foreign Judgments**

### **PANEL SESSION**

**Mr. Ibrahim Mohamed Hassan Khalifah Al Hosani**  
**Ms. Diana Hamade, IALS Dubai, IAFL**  
**Mr. Alessandro Tricoli, Fichte Legal, Dubai**  
**Ms. Isabelle Rein Lescastereyres, BWG Paris, IAFL**  
**Chaired by Tim Amos QC, QEB London, IAFL**



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## **The UAE Civil Procedure for enforcement of foreign orders**

### **Mr. Ibrahim Mohamed Hassan Khalifah Al Hosani**

- practising lawyer
- registered with the Ministry of Justice, Dubai Department of Legal Affairs, Abu Dhabi Judicial Department and Ras Al Khaimah Courts
- based in the emirate of Sharjah



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## **Enforcing foreign Family Orders in the UAE**

### **Ms. Diana Hamade: IALS, Dubai + IAFL**

- Sharia Courts +DIFC: Dubai International Financial Centre
- family and personal status matters
- treaty arrangements within the Gulf Cooperation Council
- foreign judgments
- UAE not a signatory to the Reciprocal Enforcement of Maintenance Orders (REMO); but ...
- Civil Procedure Code Art.235 *if final*, no appeal, notarised
- issued by a competent court with both parties taking part in the litigation and not in conflict with local laws, public order (Sharia) or morals.



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## The English family law perspective

### Family Law Act 1986 s.46: Grounds for recognition.

(1) overseas divorce, annulment or legal separation obtained by means of proceedings recognised if—

- (a) effective under the law of the country where obtained; and
- (b) either party habitually resident/domiciled/citizen there.

(2) non-proceedings overseas divorce, annulment or legal separation recognised if—

- (a) effective under the law of the country where obtained; and
- (b) each party domiciled there (or recognising third) and neither hab res in UK for last 12 months

- Plus s.51(3) residuary discretion to refuse: policy/procedure
- Children/abduction/arrangements: best interests/policy?
- money orders/Hague Maintenance Convention 2007?

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## Case example: co-operation and convergence, or conflict?

- **Mr. Alessandro Tricoli**, shipping lawyer and partner in Fichte Legal Consultancy, Dubai
- involved in enforcement of an English freezing order against a yacht in Dubai
- English matrimonial finance judgment in, originally, AAZ v BBZ and others (Financial Remedies: Sharing Principle: Special Contribution) [2016] EWHC 3234 - "the Akhmedova case" + fraud/privilege/fact: Kerman v Akhmedova [2018] EWCA Civ 307
- Joint Judicial Committee/DIFC/Sharia Courts

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## The French/EU perspective

Isabelle Rein Lescastereyres, BWG, Paris + IAFL

- French internal law of foreign recognition
- CJEU case of Sahyouni 17/12/17: C-372/16
- German recognition of a Syrian *talaq* divorce
- Rome III ?-> Brussels II
- relevance to intra-European recognition of the new extra-judicial French consent divorce

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*"It's not what you know, its who ..."*

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**Questions and Conclusions**

- And see you in Milan!



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IAFL Dubai Wednesday 14<sup>th</sup> November 2018

***Recognition and Enforcement of  
Foreign Judgments***

**Tim Amos QC**

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