



# AsPacEd

August 2022

## August AP Hour Review

### Reciprocal Recognition and Enforcement of Mainland China and Hong Kong Judgments in Family Cases

#### – Is there an International Perspective?

The AP Hour on 22 August 2022 was conducted by Zoom and was very well-attended. [A recording of the July AP Hour has been posted on the IAFL website and is available here.](#)

On 15 February 2022, the Arrangement signed between Mainland China and Hong Kong was put into effect, providing machinery for the reciprocal recognition and enforcement of “*legally effective Judgments*” in Matrimonial and Family cases. Would this impact on international Family Law practice?

Five Fellows spoke on this topic at the interactive AP Hour on 22 August 2022 - from Shanghai: [Claudia Zhao](#) and [Jason Tian](#); and from Hong Kong: [Jeremy Chan](#), [Dennis Ho](#), with [Corinne Remedios](#) moderating the discussion.

Corinne set out the background. In the past, considerable difficulties were posed by parallel proceedings and/or children being taken across the border and retained there. The new process, based on which application was commenced first rather than a race to judgment, was hoped to be a change for the better. The machinery provided for registration of “*legally effective Judgments*” in the requested jurisdiction, whereupon pending proceedings on the same dispute would be stayed. Notably, from an international perspective, although a foreign Judgment recognised either on the Mainland or Hong Kong, was not a “*legally effective Judgment*” enforceable in the other jurisdiction, express exceptions for setting aside registration included the earlier recognition of a foreign Judgment in the requested jurisdiction.

The Speakers referred to historical issues and queried whether anything had changed as to: Status (marital and parentage), Children and Finances. Factual Scenarios that illustrated potential international perspectives were considered.

On children issues, Dennis referred to historical issues with interim orders or return orders. He noted that although an Explanatory Memorandum to the Hong Kong legislation adopting the Arrangement defined an “*order in relation to custody*” to include interim orders, access, and return orders, the Arrangement itself and the Hong Kong legislation are silent as to such definition. Claudia echoed his concern and noted that it was unlikely that a return order would be recognised and enforced on the Mainland, at least not with practical effect.

Jason noted the different terminology and approach as to child care orders. He considered that although the higher courts have overturned orders splitting siblings, it was likely that lower courts would continue to do so. To address such concern, Dennis referred to the proviso that when considering whether to enforce a Mainland child care order in Hong Kong, the Arrangement specifically provided that the Best Interests principle should be considered.

On finances, Jeremy indicated that in the past the Mainland Courts declined to deal with property outside the Mainland and wondered whether despite the Arrangement, this would remain the case. Claudia agreed with him. Jeremy noted that a “*Part IIA*” application would continue to be the remedy for foreign nationals to deal with what was “left over”. Hence Hong Kong could remain a gateway after a Mainland divorce.

[The detailed PowerPoint for the August 2022 AP Hour has been uploaded onto the IAFL website and can be accessed here.](#) As noted above, the session has been recorded and this has been uploaded onto the website.

[Corinne Remedios](#)

President, IAFL AP  
Hong Kong Chambers

23 August 2022





**Caption:** [Corinne Remedios \(HK\)](#) (top left), [Claudia Zhao \(PRC\)](#) (top right), [Dennis Ho \(HK\)](#) (middle left), [Jeremy Chan \(HK\)](#) (middle right), [Jason Tian \(PRC\)](#) (bottom).

## **IAFL AP Lunch on 14 August 2022, in Adelaide**

Members of the IAFL Asia Pacific Chapter attending the Australian National Family Law Conference 2022 met at the start for Sunday Lunch on 14 August 2022. Seen below, dining at Treasury 1860:





**Clockwise from left:** Andrew Davies (bottom left), Marg Neal, Ian Kennedy AM, Greg Howe, Damien Greer, Jacky Campbell, Geoff Sinclair, Nigel Nicholls, Debra Parker (middle back), Stuart Barr, Jason Walker, William Sloan, Alison Ross, Glen Thompson OAM, David Burrell, Paul Fildes, Geoff Wilson (bottom right)

AP President Corinne Remedios was unable to attend due to continuing Covid-19 regulations in Hong Kong but a message from her was played at the beginning of the lunch. Here is an extract:

*"Those of us in the IAFL Asia Pacific Chapter Committee, including Nigel Nicholls, Geoff Wilson, John Spender, Jason Walker who are present with*



*you at the Lunch, were delighted that many of you were able to take part in our monthly “AP Hours” during the lock-downs imposed by Covid-19. I think we all recognise that it is not only the sharing of high-end law and practice, but the equally important synergy engendered by the mingling of people who have devoted their lives and energy to finding legal, social and psychological solutions for families.”*

## **AGM**

*5th Annual  
General  
Meeting of  
IAFL Asia  
Pacific  
Chapter*

**UTC 04:00**

**22.09.2022**

*We look forward  
to seeing you!*

Fellows of the Chapter are reminded that the Chapter AGM is to take place on Thursday 22 September 2022 at 04:00 UTC (midday Hong Kong). There will be no AP Hour for September.

[Details of the AGM have been posted on the website and the notice and agenda can be accessed here.](#)

The AGM will be a great opportunity to reflect on the work and events of the Chapter over the past year, hear about the forthcoming events for the Chapter, farewell the current Management Committee and Executive (including many long standing officers of the Chapter who will *hang up their boots*) and welcome your incoming members of the Management Committee and Executive.

It will also be an opportunity to hear about the plans of the incoming team for the next term.

Please mark your diaries and join the meeting either electronically or attend one of the hubs hosting the meeting.

Further details about the various hubs around the regions will be posted shortly.

**IAFL Asia Pacific Chapter Fellow  
Profile: Winnie Chow**



IAFL Fellow profile: Winnie Chow

We recently had the pleasure of catching up with [Winnie Chow](#).

Winnie is a Fellow from Hong Kong. In this conversation, she shares something of her journey with IAFL, including the many terrific Conferences she has had the opportunity to attend.

## In The News

### Singapore

***Singapore to lift ban on gay sex, enshrine man-woman marriage in constitution.***

Singapore will repeal an archaic law criminalising sex between men to reflect "current social mores", but will simultaneously amend its constitution to protect existing laws barring marriage equality.

The dual move of repealing the law - a holdover from colonial times - and amending the constitution represented a "political

### China

***'Not without my corgi': divorce in China turns nasty after couple can't agree on custody of pet dog***

A court has had to mediate between a childless couple seeking a divorce after they could not agree on custody of their pet dog.

After the story was reported, it caused widespread online conversation in China about the fate of pets in a divorce.

A divorce settlement in China stalled after the couple were unable to

accommodation ... that balances different legitimate views and aspirations among Singaporeans on the issue", Prime Minister Lee Hsien Leong said.

The controversial law's repeal "will bring the law into line with current social mores, and I hope, provide some relief to gay Singaporeans", Lee said.

The announcement was widely expected, with local media publishing reports speculating on the form of constitutional amendments that might be enacted to accompany the scrapping of a law that is a holdover from British colonial rule.

In March, the Court of Appeal upheld the law - as it had done in previous occasions - maintaining its position that any change to the status quo would require a decision by the executive branch.

The judges stopped short of saying the law was constitutional, noting instead that it was "unnecessary" to consider that question as the appellants in the latest case did not face "any real and credible threat of prosecution".

Consecutive attorneys general in the past decade have said they would not enforce the law.

With these concerns in mind, the government will fortify the nation's current legal definition of marriage: only marriages between one man and woman are recognised in the

agree on custody of their pet corgi went viral on mainland social media.

The couple, surnamed Xu and Li, from Quzhou city in Zhejiang, eastern China, agreed to get divorced in April this year.

With the help of a local court, they reached agreement on the disposal of joint assets from their seven-year marriage, with one exception - custody of a pet corgi dog they had raised together.

The couple have no children, but both are enthusiastic animal lovers, video news sharing platform btime.com reported.

The court helped the couple divide up joint assets including property and vehicles quickly as neither party had any objections.

However, when it came to their pet dog, the court was surprised that both demanded full custody of the animal.

The woman, Xu, told the court that she deserved ownership of the corgi. She said not only did she buy the dog, but that she raised it by herself. The corgi has become a part of her family and has been by her side ever since, she claimed.

She added that her ex-husband Li didn't take responsibility for looking after the corgi. She described him as a workaholic, who in his spare time played video games.



city state.

Lee said the constitution would be amended to "protect the definition of marriage from being challenged constitutionally in the courts".

"This will help us repeal S377A in a controlled, carefully considered way.

It will limit this change to what I believe most Singaporeans will accept, which is to decriminalise sexual relations between consenting men in private," Lee said.

"But it will also keep what I believe most Singaporeans still want, and that is to retain the basic family structure of marriage between a man and a woman."

## **Singapore**

### ***When horses became part of the matrimonial brawl***

A father sought to have the three horses that were bought for his daughter to be included among the matrimonial assets so that he could collect a share of their value during a bitter divorce.

The couple were married in the United States in 1998 and came to Singapore to live and work in 2003.

The husband used to work in the IT industry but is now pursuing a master's degree in data science.

His wife was a vice-president of a marketing company in Singapore but she runs her own marketing

Although Li acknowledged that he did not feed the animal as often as his ex-wife, or clean up after it, he said he often walked the dog and considered it to be his child.

The court accepted that the corgi was a joint asset in the marriage, but one which couldn't be divided easily.

Eventually, the couple reached an agreement that the corgi would live with the woman, while every month Li should pay alimony to her for taking care of the dog. If the animal became ill, they must share the dog's medical expenses.

Li was given legal visitation rights to the corgi.

After the story was reported, it caused widespread online conversation about the fate of pets in a divorce.

One person commented: "A pet is a part of the family, it's understandable the divorcing couple wanted to fight for it."

Another said: "Now that more couples give up on having children, keeping pets as kids will probably rise."

## **China**

### ***Woman told to return lover's gift of US\$560,000 to his wife after Chinese court ruled illicit affair not recognised by law***

The wife of a man having an affair

business now. They have a daughter, 20, a university student.

Their two-decade marriage ended in 2019 and all returned to the US after the split.

As the divorce was filed in Singapore, the case concerning the division of their assets, which included their \$2.9 million Singapore home, was heard in the High Court.

In all, they had total assets of around \$5 million.

The price for keeping horses. While property, shares and cash formed the bulk of their wealth, the husband argued that three horses, named Puffin, Henri and Sammi, should form part of the assets to be divided as they were bought using joint funds for their daughter's equestrian training in the US.

Other than the purchase price of the horses, which was not revealed by the court, the husband could not produce any document that shed light on the value of the animals.

As a result, High Court Justice Choo Han Teck declined to add the horses to the couple's assets because the purchase price could not provide any indication of their current value. But he said the couple should treat the horses as "trust items" for the benefit of their daughter, who still rides them.

"No one knows for how long, nor how long the horses can continue,"

with another woman, with whom he fathered a child, has sued for the return of money he gave the woman.

The man's girlfriend said she is also a victim as the man had lied to her that he was already divorced.

A Chinese court has ordered the girlfriend of a married man return 3.79 million yuan (US\$560,000) he gave her over 14 years to his legal wife, because the affair is "against public customs".

According to documents released by the People's Court of Zhuanghe in Liaoning, northeastern China, a woman, surnamed Li, sued another woman identified by the pseudonym Xiaoxia, seeking the return of 3.79 million yuan Li's husband had given to the woman since 2008.

Li and her husband, surnamed Wang, have been married since 1991.

Wang's extramarital affair came to Li's attention two years ago when she discovered he had been sending money to Xiaoxia.

Wang admitted his relationship with the woman and revealed that they have a 10-year-old son. In addition to cash payments, he also bought properties and a car for her.

Xiaoxia told the court she is also a victim and that Wang had lied to her that he was divorced. She said she urged him to marry her and have the union registered officially, but said he

Justice Choo noted. "I am certain that unlike motorcars, they are unlikely to have any antique value. It is more likely that the parties are going to end up quarrelling over the costs of putting them to pasture."

The cost of maintaining the horses amounts to more than \$2,000 a month, or more than half of the total estimated monthly expenses for the daughter.

While the husband expressed his support for her equestrian training, he mostly challenged the expenses relating to the horses.

But the court found that the cost was not excessive because the wife had recent documents to show the actual expenses for taking care of the animals.

Justice Choo, however, reduced the total monthly expenses for the daughter by more than \$500 because a monthly telephone bill of \$160 was deemed as excessive, while there was no justification for needing \$600 a month for "medical expenses".

In all, the father's share of her monthly maintenance was about \$1,900.

## **India**

### ***Bachelor fights law banning surrogacy for singles***

India's new law limiting surrogacy to married couples is being legally

kept delaying by using various excuses.

The court found that Wang had transferred 1.47 million yuan (US\$218,000) to Xiaoxia between 2013 and 2020. He also bought her two flats in 2012 and 2014 worth a total of 1.45 million yuan. In 2013, Wang bought her a car for 870,000 yuan.

In its ruling, the court said neither party of a marriage can spend the couple's common property without the other's consent. It means assets acquired during a marriage belong to both partners.

It found that Wang had infringed Li's rights and that his relationship with Xiaoxia goes "against public customs" and is not protected by law.

Xiaoxia argued that the money given to her by Wang was used to raise their son, but the court said the case was about ownership of assets and not about child support.

However, Xiaoxia has the option to file a separate case and sue Wang for child support to raise their son.

The court ordered Xiaoxia to return the money to Li immediately.

## **Japan**

### ***Trans woman not parent of her child rules Japanese Court***

A transgender woman who froze her sperm when she was a man cannot



challenged by a single man who wants to become a father.

Lawyer Karan Balraj Mehta, 32, had his family's support to become a parent via surrogacy. But under the new law, passed in December to regulate the hugely popular industry, he is ineligible.

Mehta said he fully supported the law when it was passed because surrogate mothers needed to be protected against unscrupulous middlemen, touts, and hospitals out to exploit them.

As a lawyer who practises in the High Court of Delhi, he said he understood that this exploitation went unpunished because the women were mostly uneducated, unaware of their rights, and with no group protecting them.

Many women, desperate for money, signed contracts without reading them. Others signed nothing at all. On payment day, some were paid less than the amount promised to them.

"India needed regulation urgently but the government went too far the other way. You can - and must - protect surrogate mothers, but why limit the rights of single men and women to become parents?" Mehta asked. Under the law banning commercial surrogacy, almost all - single people, live-in couples, and same-sex couples are ineligible.

A single woman can only have a

be recognised as the parent of the child she helped produce, a Japanese court has ruled.

A judge yesterday said only a child born before a trans woman went through her surgical and legal transition could be legally seen as hers, while a child born after her transition cannot.

The trans woman had two daughters with her female partner using sperm preserved before her transition.

Four years ago, she was legally permitted to change her gender on her family register. Though her partner was recognised as the legal mother of the girls after giving birth to them, the trans woman's request to be recognised as their parent was not accepted by a Tokyo family court in February.

That court said that "there is currently nothing in Japanese law to recognise her parental rights", a ruling the woman appealed.

Yesterday, the Tokyo High Court ruled that she could be recognised as the parent of the daughter born before her legal gender change, but not the child born after.

Japan is the only Group of Seven nation not to recognise same-sex marriage.

'There is currently nothing in Japanese law to recognise her parental rights'.

surrogate baby if she is a divorcee or a widow aged 35 to 45. Even married couples can only opt for commercial surrogacy if they cannot have children on medical grounds or have only one child. "These exclusions are unfair. We can't restrict having children only to married people. It is my fundamental right to be a father," Mehta said.

His childhood friend, aged 31, who requested anonymity, is a co-petitioner and the mother of a daughter. Her reason for wanting a surrogate child is because her pregnancy was very difficult.

"I want to have another child so that my daughter will be a sibling but I cannot go through the same experience of pregnancy and childbirth again. It was too traumatic," she said.

Since the law was passed, those who work with infertile couples had predicted legal challenges because the law is discriminatory against those who are not heterosexual and married.

Mehta said he believed there were thousands of people like him who were upset with the law. Fertility experts, meanwhile, said they were getting calls from childless couples horrified by the new law. Some were considering flying to Kenya, the United States or Georgia in Eastern Europe to find surrogates there.

## **Sri Lanka**

### ***Revision to Kandyan Marriage and Divorce Act approved***

The Cabinet Ministers have approved the revision of the Kandyan Marriage and Divorce Act that requires parental consent for the marriage of a minor and to remove the existing non-conformities.

A legal draughtsman has prepared a bill for this purpose, and the clearance of the Attorney General has also been received for this.

Accordingly, the cabinet ministers approved the proposal presented by the Justice, Prison Affairs, and Constitutional Reforms Minister to publish in the Govt. Gazette and consequently table it in parliament for approval.

# Bangkok: 30 May - 2 June 2023



Please save the date using the **Add to Calendar** links below.

Hotel bookings are now open.

Add event to calendar



## ***AsPacEd would love to hear from Fellows!***

***The Editors would love to hear from you; if you have an article or a news item for publication in AsPacEd, please contact***

***[Ivan Cheong](#), [Samantha Gershon](#), [Sally Nicholes](#) or [William Sloan](#).***

***The Co-ordinators would love to hear from you; if you would like to suggest topics or speakers for a future AP Hour, please contact***

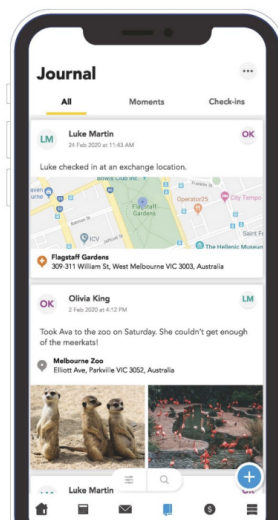
***[Corinne Remedios](#) or [Geoff Wilson](#).***

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