



**IAFL Asia Pacific Chapter Symposium
HOT TOPICS in International Family Law
Hong Kong, China**

Tuesday 2 December 2025

**Session Resources Pack
What is HOT in Forum Issues in Cross-Border Disputes?**

11:45 – 1:15 pm

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Eleanor is an Accredited Family Law Specialist and a Partner in the Family & Relationship Law group at Lander & Rogers. Eleanor has assisted clients in all areas of family law including property settlement, spousal maintenance, parenting matters, child support, financial agreements and matters involving international issues. Eleanor has particular expertise on financial matters involving complex structures such as trusts, companies and partnerships, including where assets are held both within Australia and overseas. Eleanor is also experienced in complex parenting matters, particularly in cases where an overseas element is involved. Eleanor is a member of the Specialist Accreditation Family Law Advisory Committee, which is responsible in overseeing and assessing other family lawyers in gaining their specialist accreditation in Family Law. She has been recognised in the Doyle's Guide as a Leading Family & Divorce Lawyer and Leading Parenting & Children's Matters Lawyer.

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Natalia is a trusted advisor with extensive experience in all aspects of matrimonial and family law, representing a wide range of clients, including those in high-net-worth cases involving business valuations, trusts, and interstate custody matters.

A Fellow of the American Academy of Matrimonial Lawyers and Adjunct Faculty at American University's Washington College of Law, Natalia has been featured in The New York Times, CNN, Essence, and Ebony. Recognized by Best Lawyers in America and Super Lawyers, she serves on the Boards of the Women's Bar Association (Treasurer), Fairfax Law Foundation, University of Virginia College Foundation–Greater Washington, and the AAML Foundation (President-Elect).

Natalia is also President of the AAML DC Chapter, a past President of the Fairfax Law Foundation, and Chair of the D.C. Superior Court's Magistrate Judges Advisory Merit Selection Panel. Recently, she was named a Diplomat of the American College of Family Trial Lawyers.

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Ivan Cheong is a partner and head of the divorce and family team at Withers KhattarWong in Singapore. He is a family law specialist with extensive experience in all areas of family law including contentious divorces, disputes over child custody, relocation of children, maintenance, division of matrimonial assets and family violence in the Family Justice Court (FJC) and Court of Appeal. He has represented clients in reported landmark judgments and has advised and acted for clients as lead counsel in matters involving division of matrimonial assets including digital assets for high-net-worth individuals, international relocation and abduction of children as well as Mareva Injunctions to prevent dissipation of matrimonial assets. Ivan is recognised for his expertise in global legal directories including Doyle's Guide, Chambers High Net Worth Guide, Legal 500, Benchmark Litigation and Asian Legal Business.

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Mingyue Gao is an Equity Partner at Guantao Law Firm, specializing in family law, trust law, and charity law. With 18 years of experience, he leads a team handling complex, high-value, and cross-border family wealth succession matters for prominent entrepreneurs and domestic financial institutions. His practice focuses on dignified wealth and charity succession, including will, inheritance, and guardianship services. Ranked as 'Up and Coming' in Private Client/Wealth Management by Chambers Greater China Region Guide 2025.

He is a member of the Family Law Committee of the Shanghai Bar Association and is a Mentor for Fudan University Law School's LLM Program. He was invited to serve as a visiting scholar at Yale Law School in 2025.

Mingyue Gao also provides legal services for LGBT group with high reputation.

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LL.B. from University of Montreal in 2000; Called to the Bar of the Province of Quebec in 2002; Member of the Canadian Bar Association and Vice-president of the Children's Law Section, Quebec division; Member of the Association of Family Lawyers of Quebec. Practice includes all aspects of family law, including child abduction cases, whether Hague cases or not. Prior to working in private practice, worked five (5) years at the Hague Conference on Private International Law, on the Children Conventions and in particular in matters of International Child Abduction, Recovery Abroad of Child Support and other type of family maintenance, Inter-country adoption and cohabitation outside marriage.

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What is HOT in Forum Issues in Cross-Border Disputes



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What is a forum dispute?

- Threshold issue
- Two or more competing jurisdictions



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Examples of international components



**Dual citizenship /
citizenship in different
countries**



**Current residence
in Australia and
overseas**



**Residence during
relationship and
properties owned in
Australia and overseas**

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Forum Dispute

Understanding Forum Disputes in Cross-Border Marriages

The Modern Context:

- Cross-border marriages are increasingly common as people move across jurisdictions for work and leisure
- When these marriages end, determining where divorce and ancillary matters are heard becomes the first major obstacle

What is a Forum Dispute?

- A disagreement over which court has the authority to hear a case
- Arises when a case has ties to more than one legal system
- Parties seek to have their case heard in a jurisdiction they believe will provide a more favourable outcome
- Occurs when parties file parallel proceedings in two jurisdictions



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Forum Disputes in the United States of America (Washington DC, Virginia, and Maryland)

By: Natalia Wilson Armstrong, Esq.
(Principal, Ain & Bank, P.C.)



Photo credit:
https://commons.wikimedia.org/wiki/File:Washington,_D.C._locator_map.svg#/media/File:Washington,_D.C._locator_map.svg

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What is a forum dispute? What are the typical scenarios where forum disputes arise?

- ▶ A forum dispute arises when different courts are asked to determine the same issue in a case.

- ▶ Typical scenarios where forum disputes arise:

- My ex-spouse and I lived in Washington DC. Our minor child goes to private school in Maryland. My ex moved out to Virginia nine months ago. Where can I file for custody?
- I live in Virginia and work in Maryland. My spouse lives in Washington DC and works in Virginia. Where can I file for divorce?

RESIDENCY REQUIREMENTS FOR DIVORCE/LEGAL SEPARATION MATTERS		
Washington DC	Maryland	Virginia
Six-months residency of one of the parties.	Residency of one of the parties at time complaint filed, if grounds occurred in Maryland. Six-months residency, if grounds occurred outside Maryland.	Six-months domiciliary and residency requirement for one of the parties.

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WHAT IS A FORUM DISPUTE

- When proceedings between the same parties, based on the same facts and having the same object are pending before the courts of two states which both have jurisdiction (*lis pendens*);
- When a court has jurisdiction to hear a dispute but exceptionally declines jurisdiction because it considers that a court of another state is in a better position to decide the matter (*forum non conveniens*)
- When a court does not have jurisdiction to hear a dispute but exceptionally hears it

Particularities of Canada

- Federal State
- Family Law is generally of provincial jurisdiction but Divorce is a of federal jurisdiction
- Forum Dispute rules in the *Divorce Act of Canada* and in provincial legislation;
- In Quebec: *Civil Code of Quebec* (Book X)

Common reasons for Forum disputes

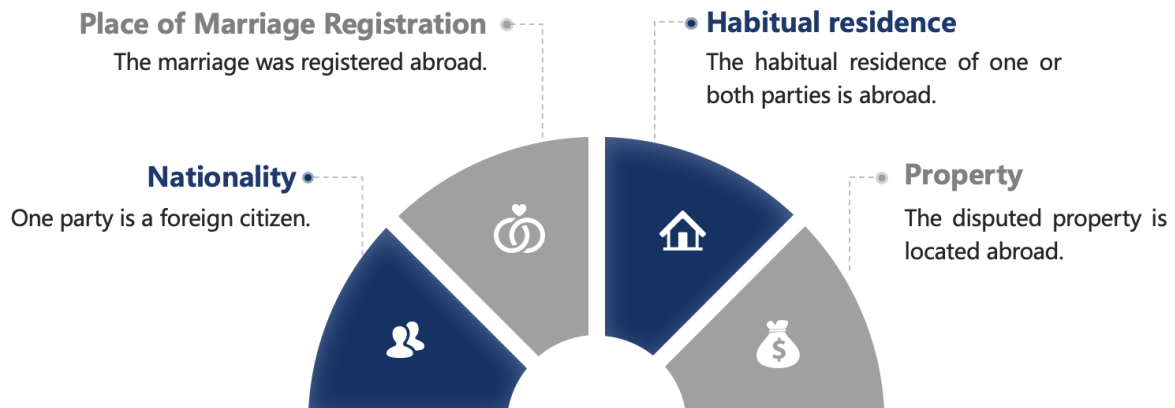
- Increased mobility
- International marriages and unions
- Assets in different jurisdictions

PART 01

What is a Forum dispute? What are some common issues / reasons in cases you have dealt with that gives rise to forum issues?



•Common reasons of Forum dispute



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•Common reasons of Forum dispute



- I am a U.S. citizen, my spouse is a Chinese citizen. We registered our marriage in the U.S. My spouse lives in China, and I live in the U.S. Can I file for divorce in a Chinese court?
- My spouse and I are both Chinese citizens. We registered our marriage in China and later settled in Canada. Can I file for divorce in a Chinese court?
- My spouse and I are both Chinese citizens. We registered our marriage in China, later obtained Hong Kong identity, and cancelled our Mainland China household registration. Can I file for divorce in a Chinese court?
- I am a Canadian citizen, my spouse is a Filipino citizen. We registered our marriage in Hong Kong, China. We are separated, and I live alone in Mainland China. Can I file for divorce in a Mainland Chinese court?

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What grounds jurisdiction for a family law matter to be initiated in Australia

Proceedings in relation to a child

Section 69E of the Act vests jurisdiction in relation to parenting proceedings only if:

- a) The child is **present in Australia** on the relevant day [meaning the day the application is filed or made]; or
- b) The child is an **Australian** citizen, or is **ordinarily resident** in Australia, on the relevant day; or
- c) A **parent** of the child is an **Australian citizen**, is **ordinarily resident** in Australia or is **present** in Australia, on the relevant day; or
- d) A **party to the proceeding** is an **Australian citizen**, is **ordinarily resident** in Australia, or is **present** in Australia, on the relevant day; or
- e) It would be in **accordance with a treaty or arrangement** in force between Australia and an overseas jurisdiction, or the common law rules of private international law, for the court to exercise jurisdiction in the proceedings.



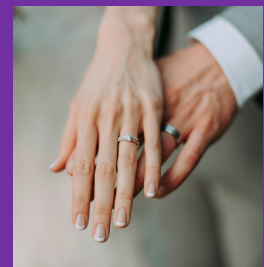
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MATRIMONIAL CAUSES

Section 39(3) of the *Family Law Act* (**the Act**) confers jurisdiction in respect of resolution of **matrimonial causes** where either party is:

- a. An Australian citizen;
- b. Domiciled in Australia; or
- c. Ordinarily a resident of Australia and has been for over one (1) year.



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DE FACTO FINANCIAL CAUSES



- Section 39B confers jurisdiction on the FCFCOA (Div 2) with respect of which de facto financial causes are instituted under the Act.
- Section 39A provides that a de facto financial cause may be instituted under this Act.
- Jurisdictional requirements provided by s39A(2) include that at least one of the parties of the de facto relationship be:
 - a) An Australian citizen;
 - b) Ordinarily resident in Australia; or
 - c) Present in Australia on either the day the application is filed, or the day which the application instituting the proceedings is made.

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Grounds for jurisdiction for a matter to be instituted in Canada (Quebec)

- **Divorce proceedings**
 - **Article 3 (1) Divorce Act:** A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been habitually resident in the province for at least one year immediately preceding the commencement of the proceedings;
 - **Article 3167 Civil Code of Quebec:** For actions in matters of divorce, the jurisdiction of foreign authorities is recognized if one of the spouses had his or her domicile in the State where the decision was rendered, or had his or her residence in that State for at least one year before the institution of the proceedings, if the spouses are nationals of that State, or if the decision would be recognized in any of those States. (...)
- **Parenting orders**
 - **Article 3142 Civil Code of Quebec:** Québec authorities have jurisdiction to decide as to the custody of a child provided he is domiciled in Québec.
 - **Article 6 (1) Divorce Act:** If an application for an order under section 16.1 is made in a divorce proceeding or corollary relief proceeding to a court in a province and the child of the marriage in respect of whom the order is sought is habitually resident in another province, the court may, on application by a spouse or on its own motion, transfer the proceeding to a court in that other province.

—Lavery

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Other grounds for jurisdiction under the Civil Code of Quebec

3141. Quebec authorities have jurisdiction to hear personal actions of an **extrapatrimonial and family** nature when **one** of the persons concerned is **domiciled** in Quebec.

3143. Quebec authorities have jurisdiction to decide actions in matters of **support** or applications for review of a foreign support judgment that may be recognized in Quebec, if **one** of the parties has his **domicile or residence** in Quebec.

3144. Quebec authorities have jurisdiction in matters of **nullity** of marriage or dissolution or nullity of civil unions if the **domicile or place of residence of one** of the spouses or the place of solemnization of their marriage or civil union is in Quebec.

3145. As regards the **effects** of marriage or a civil union, particularly those that are binding on all spouses regardless of their matrimonial or civil union regime, Quebec authorities have jurisdiction when the **domicile or place of residence of one** of the spouses is in Quebec.

The same applies as regards the effects of a parental union, particularly those from which the spouses may not derogate.

3146. Quebec authorities have jurisdiction to rule on **separation from bed and board** when **one** of the spouses has his **domicile or residence** in Québec at the time of the institution of the proceedings.

3147. Quebec authorities have jurisdiction in matters of **filiation** if the **child or one of his parents is domiciled** in Québec.

They have jurisdiction in matters of **adoption** if the **child or plaintiff is domiciled** in Quebec.

—Lavery

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What grounds jurisdiction for a family law matter to be initiated in the USA? Is there a difference between parenting versus financial matters?

- ▶ There **is** a difference between parenting versus financial matters. A court may **bifurcate** the divorce proceedings. Typically, the court adjudicates the custody matters before the financial matters. *See, e.g., VA. CODE. ANN. § 20-107.3(A).*
- ▶ Washington DC's family court hears all family law matters. Circuit Courts in Maryland hear family law matters. Virginia is more complicated.

Virginia Juvenile & Domestic Relations Court (JDR)

Virginia Circuit Court

- Divorces are filed in Circuit Court only
- Circuit Court can divest JDR's jurisdiction in certain cases

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What grounds jurisdiction for a family law matter to be initiated in the USA? Is there a difference between parenting versus financial matters?

- ▶ For custody and support cases where parties live in different states, uniform laws throughout the USA can help avoid competition and conflicts between jurisdictions.
 - Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)
 - Uniform Interstate Family Support Act (UIFSA)
 - Example: I live in Virginia with my minor child. The child's father lives in Maryland. I want child support from the child's father. Can a Virginia court enter a child support order?

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PART 02

What grounds jurisdiction for a matter to be instituted in your country?



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•Grounds for Jurisdiction in China



- **Basic Rule:** The court of the defendant's domicile has jurisdiction.
- **Exception:** If the defendant lives outside China, The court of the defendant 's domicile has jurisdiction.

《Civil Procedure Law》

Article 22: A civil lawsuit brought against a citizen shall be under the jurisdiction of the people's court of the defendant's domicile. If the defendant's domicile is different from their habitual residence, the case shall be under the jurisdiction of the people's court of their habitual residence.

Article 23: The following civil lawsuits shall be under the jurisdiction of the people's court of the plaintiff's domicile; if the plaintiff's domicile is different from their habitual residence, the case shall be under the jurisdiction of the people's court of their habitual residence:

(1) A lawsuit concerning personal status brought against an individual not residing within the territory of the People's Republic of China.

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•Grounds for Jurisdiction in China



- **For Chinese Nationals Residing Abroad:** Chinese courts may exercise jurisdiction under specific circumstances.

《Judicial Interpretations of the Civil Procedure Law》

Article 13: Where overseas Chinese who married in China and settled abroad file a divorce lawsuit with a people's court after the court of the country where they settled refused to accept the case on the grounds that the divorce lawsuit must be under the jurisdiction of the court of the place where the marriage was contracted, the case shall be under the jurisdiction of the people's court of the place where the marriage was contracted or of the last domicile of either party within China.

Article 14: Where overseas Chinese who married abroad and settled abroad file a divorce lawsuit with a people's court after the court of the country where they settled refused to accept the case on the grounds that the divorce lawsuit must be under the jurisdiction of the court of the country of which the parties are nationals, the case shall be under the jurisdiction of the people's court of the original domicile or of the last domicile within China of either party.

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•Grounds for Jurisdiction in China



- **Shanghai Courts** | Chinese courts have jurisdiction if any of the following conditions are met: Either party is a Chinese national; OR The marriage was registered in China; OR oth parties agree to submit to the jurisdiction of Chinese courts.

Notice of the Shanghai High People's Court on Issuing the "Q&A on Case Filing" 沪高法立[2011]1号

Question: What is the scope for accepting cases involving foreign-related marriage?

Answer: Foreign-related marriage cases mainly involve two factors: the nationalities of the spouses and the place of marriage registration. If at least one factor is not foreign-related, Chinese courts have jurisdiction, and the competent court shall be determined in accordance with the relevant provisions of the Civil Procedure Law. If both factors are foreign-related (i.e., both the plaintiff and defendant are foreign nationals and the marriage was registered abroad), Chinese courts may only accept the case if both parties jointly agree to submit to the jurisdiction of Chinese courts and it is genuinely necessary for Chinese courts to handle the case.

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What grounds jurisdiction for a family law matter to be initiated in Singapore?

Determining Forum Non Conveniens in Singapore

- Difference between matrimonial proceedings and stand-alone parenting orders applications.
- Matrimonial proceedings:
- Section 93 (1) of the Women's Charter grants jurisdiction to hear proceedings for divorce, judicial separation or nullity only if either party is:
 - a) Domiciled in Singapore at the commencement of proceedings (citizens of Singapore are presumed to have domicile); or
 - b) Habitually resident for a period of three(3) years prior to commencement of divorce proceedings.
- Financial matters and the Court's ability to decide on division of matrimonial assets and maintenance is contingent on and subsequent to the granting of a judgment of divorce (Sections 112 and 113 of the Women's Charter). Not possible for financial relief independent of divorce. A spouse may claim for reasonable maintenance for herself and the children during the marriage if she can show neglect. (Section 69)



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Parenting matters

- For standalone applications concerning the welfare of the child and where there are no ongoing matrimonial proceedings, section 5 of the Guardianship of Infants Act ("the Act") vests jurisdiction and empowers the Court to make any parenting orders in relation to a child including maintenance orders upon such and application being made by the parents or the guardians appointed under the Act.
- In general, jurisdiction arises when the child is physically present in Singapore or in non Hague Convention cases, where a child was habitually resident in Singapore prior to the child's wrongful removal from jurisdiction by the other parent.



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The Spiliada Test – Overview

Determining Forum Non Conveniens in Singapore

Legal Framework:

- Test originates from ***Spiliada Maritime Corporation v Cansulex Ltd [1986] UKHL 10 AC 460***
- Confirmed in Singapore in ***AZS and another v AZR [2013] 3 SLR 700***

Purpose:

- Determines whether proceedings should be stayed in Singapore on the grounds of forum non conveniens
- Two-stage test with distinct burdens of proof



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The Spiliada Test – Stage One

Stage One: Identifying the More Appropriate Forum

Burden of Proof:

- Party seeking the stay must demonstrate another available forum is clearly or distinctly more appropriate than Singapore

Connecting Factors Considered:

- **Convenience and expense factors:**
 - Availability of witnesses
 - Location of evidence
- **Governing law** of the transaction
- **Parties' connections:**
 - Where parties reside
 - Where parties carry on business



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The Spiliada Test – Stage Two

Stage Two: Special Circumstances

General Rule:

- If another forum is prima facie more appropriate, the court will ordinarily grant a stay

Exception:

- Stay may be refused if there are special circumstances by reason of which justice requires refusal
- Burden shifts to the plaintiff to demonstrate such special circumstances

High Threshold:

- **TGT v TGU [2015] SGHCF 10** demonstrates the stringent standard
- Foo Tuat Yien JC granted unconditional stay of mother's maintenance application in favour of Hong Kong
- Even though the stay meant the mother would have no avenue for seeking maintenance (being out of time in Hong Kong), this was not considered sufficiently "special" to refuse the stay



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Lis Alibi Pendens

Parallel Proceedings in Different Jurisdictions

The Doctrine:

- Applies where there are parallel proceedings in two different jurisdictions
- Latin term meaning "a suit pending elsewhere"

Legal Authority:

TDX v TDY [2015] 4 SLR 982 (Debbie Ong JC)

Key Principles:

- Pending foreign proceedings or foreign court orders must be considered when deciding whether Singapore proceedings should be stayed
- Lis alibi pendens is one factor in determining whether Singapore is the more appropriate forum
- Principle supported by Court of Appeal in ***Virsa Management (S) Pte Ltd v Welltech Construction Pte Ltd [2013] 4 SLR 1097***



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Other Considerations

Child Welfare and Jurisdictional Factors

Paramount Consideration:

In proceedings involving a child, the child's welfare remains paramount even in lis alibi pendens cases

Risks of Parallel Proceedings:

TDX v TDY [2015] 4 SLR 982 : Not in child's welfare to have two sets of proceedings and orders on guardianship, custody, care and control, and access

Multiplicity of proceedings leads to:

- Different and potentially conflicting orders
- Confusion and uncertainty
- Increased tensions between parents (adverse impact on child)
- Unnecessary costs, energy, and time expenditure



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Other considerations

Jurisdictional Factors:

- Child's mere residence should not be the deciding factor
- Child being born in Singapore and living there is not decisive
- Jurisdiction not based solely on nationality and residence of parties
- Great weight attached to location of subject matters in dispute (*Eng Liat Kiang v Eng Bak Hern [1995] 2 SLR(R) 851*)



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FORUM – THE TEST

*A party who has properly instituted proceedings in Australia has a prima facie right to have the proceedings determined by an Australian Court unless Australia is a **clearly inappropriate** jurisdiction for the determination of the dispute.*

The jurisdiction will be clearly inappropriate if the proceedings are deemed to be:

- a) Oppressive, that is seriously and unfairly burdensome, prejudicial or damaging; and
- b) Vexatious, that is productive of serious and unjustified trouble and harassment.



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Factors to consider

Obannon & Scarffe (2021) 62 Fam LR 397

Kent, Watts and Austin JJ:

1. Factors of convenience and expense, such as the location of witnesses;
2. Whether, having regard to their resources and understanding of language, the parties are able to participate in the respective proceedings on an equal footing;
3. The connection of the parties and their marriage with each of the potential jurisdictions and the issues on which relief may depend in those jurisdictions;
4. Whether the other potential forum will recognise Australian orders and vice-versa and the ease of enforcement in each country;
5. Which forum may provide more effectively for a complete resolution of the matters involved in the parties' controversy;

&

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Factors to consider (continued)

Obannon & Scarffe (2021) 62 Fam LR 397

Kent, Watts and Austin JJ:

6. The order in which each of the proceedings were instituted, the stage which they have reached and the costs incurred in each jurisdiction;
7. The governing law of the dispute;
8. The place of residence of the parties;
9. The availability of an alternative forum; and
10. Any legitimate juridical advantage to litigating in either jurisdiction.

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What test is used to adjudicate forum disputes? What types of relief can be sought in forum dispute matters?

► Inconvenient forum test

► Washington DC (DC Code § 13-425)

- “When any District of Columbia court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss such civil action in whole or in part on any conditions that may be just.”

► Maryland (Md. Rule 2-327(c))

- “On motion of any party, the court may transfer any action to any other circuit court where the action might have been brought if the transfer is for the convenience of the parties and witnesses and serves the interests of justice.”

► Virginia (Va. Code § 8.01-265)

- “The court wherein an action is commenced may, upon motion by any party and for good cause shown,
 - (i) dismiss an action brought by a person who is not a resident of the Commonwealth without prejudice under such conditions as the court deems appropriate if the cause of action arose outside of the Commonwealth and if the court determines that a more convenient forum which has jurisdiction over all parties is available in a jurisdiction other than the Commonwealth or
 - (ii) transfer the action to any fair and convenient forum having jurisdiction within the Commonwealth.”
- “Good cause shall be deemed to include, but not to be limited to, the agreement of the parties or the avoidance of substantial inconvenience to the parties or the witnesses, or complying with the law of any other state or the United States.”

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Test applied under the Divorce Act: Internal Forum disputes (between provinces)

3 (1) A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been habitually resident in the province for at least one year immediately preceding the commencement of the proceeding.

• Jurisdiction if two proceedings commenced on different days

- (2) If divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days, and the proceeding that was commenced **first** is not discontinued, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding is deemed to be discontinued.

• Jurisdiction if two proceedings commenced on same day

- (3) If divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day, and neither proceeding is discontinued within 40 days after it was commenced, the Federal Court shall, on application by either or both spouses, determine which court retains jurisdiction by applying the following rules:
 - (a) if at least one of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the child is habitually resident;
 - (b) if neither of the proceedings includes an application for a parenting order, the court that retains jurisdiction is the court in the province in which the spouses last maintained a habitual residence in common if one of the spouses is habitually resident in that province; and
 - (c) in any other case, the court that retains jurisdiction is the court that the Federal Court determines to be the most appropriate.

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TEST IN INTERNATIONAL FORUM DISPUTES (INCLUDING DIVORCE CASES)

*Civil Code of
Quebec*

3137. On the application of a party, a Québec authority may stay its ruling on an action brought before it if another action, between the same parties, based on the same facts and having the same subject is pending before a foreign authority, provided that the latter action can result in a decision which may be recognized in Québec, or if such a decision has already been rendered by a foreign authority.

3167. For actions in matters of divorce, the jurisdiction of foreign authorities is recognized if one of the spouses had his or her domicile in the State where the decision was rendered, or had his or her residence in that State for at least one year before the institution of the proceedings, if the spouses are nationals of that State, or if the decision would be recognized in any of those States. (...)

- *R.S. v. P.R.*, 2019 SCC 49 (CanLII), [2019] 3 SCR 643

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OTHER TESTS IN FORUM DISPUTES (CIVIL CODE OF QUEBEC)

FORUM NON CONVENIENS

3135. Even though a Québec authority has jurisdiction to hear a dispute, it may, exceptionally and on an application by a party, decline jurisdiction if it considers that the authorities of another State are in a better position to decide the dispute.

- *GreCon Dimter inc. v. J. R. Normand inc.*, 2005 SCC 46 (CanLII)

JURISDICTION OF NECESSITY

3136. Even though a Québec authority has no jurisdiction to hear a dispute, it may nevertheless hear it provided the dispute has a sufficient connection with Québec, if proceedings abroad prove impossible or the institution of proceedings abroad cannot reasonably be required.

- *Droit de la famille — 1830*, 2018 QCCA 24 (CanLII)

3138. A Québec authority may order provisional or conservatory measures even if it has no jurisdiction over the merits of the dispute.

3140. In cases of emergency or serious inconvenience, Québec authorities may also take such measures as they consider necessary for the protection of a person present in Québec or of the person's property if it is situated there.

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PART 03

What test is used to adjudicate forum disputes



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• Doctrine of Forum Non Conveniens



《Civil Procedure Law of the People's Republic of China》

Article 282 Where a people's court accepts a foreign-related civil case and the defendant raises an objection to jurisdiction, the court may, by ruling, dismiss the action and advise the plaintiff to initiate proceedings in a more convenient foreign court, provided that all of the following conditions are simultaneously met:

- ① The fundamental facts of the dispute did not occur within the territory of the People's Republic of China, and both the adjudication by the people's court and the participation of the parties in the proceedings would be significantly inconvenient;
- ② There is no agreement between the parties selecting the people's court as the forum;
- ③ The case does not fall under the exclusive jurisdiction of the people's court;
- ④ The case does not involve the sovereignty, security, or public interests of the People's Republic of China;
- ⑤ A foreign court is more convenient for adjudicating the case.

If, after the dismissal of the action, the foreign court refuses to exercise jurisdiction over the dispute, fails to take necessary measures to adjudicate the case, or fails to conclude the case within a reasonable period, and the plaintiff again brings the action before the people's court, the people's court shall accept the case.

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•Case: J v. Yin — Divorce Dispute



Case: J v. Yin — Divorce Dispute

Case No.: (2020) Liao 01 Min Zhong 4939

➤ Factual Background:

Both the plaintiff (J) and the defendant (Yin) were originally Chinese nationals. Subsequently, J acquired Australian citizenship, while Yin obtained Australian permanent residency. The parties registered their marriage in Australia, have three children (all Australian citizens), and the entire family resides in Australia. J now filed for divorce in a Chinese court. The court of first instance dismissed J's complaint. The appellate court upheld the original ruling and dismissed J's appeal.



•Case: J v. Yin — Divorce Dispute



➤ Holding of the Appellate Court:

All material facts concerning the marital relationship—including the emergence of conflicts, the breakdown of the relationship, and matters related to child-rearing—occurred in Australia. Furthermore, Yin had already initiated proceedings in an Australian court regarding child custody, division of marital assets, and divorce. These claims had progressed from pre-litigation mediation to formal court proceedings in Australia.

Accordingly, the Chinese court determined that exercising jurisdiction would be manifestly inconvenient in terms of applying the relevant law. The Australian court is better positioned to ascertain the facts of the case and adjudicate the dispute effectively.



•Case: B — Retrial of Divorce Dispute



Case: B — Retrial of Divorce Dispute

Case No.: (2021) Yue Min Zai No. 9

➤ Factual Background:

The plaintiff B (Canadian) and defendant J (Filipino) were married in Hong Kong. The marital relationship has irretrievably broken down. Mr. B claimed that courts in Canada, the Philippines, and Hong Kong would not accept their divorce case according to the respective laws of these jurisdictions. He therefore filed for divorce in a Chinese court. The first-instance court dismissed the case citing lack of jurisdiction, as neither party was Chinese and the marriage was registered abroad. The appellate court upheld the ruling. Upon retrial, the higher court reversed the decision, confirmed Chinese jurisdiction, and referred the case to a court in Guangdong for trial.

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•Case: B — Retrial of Divorce Dispute



➤ Holding of the Retrial Court :

B initiated divorce proceedings and submitted preliminary evidence (including Residence Permit and Accommodation Registration) proving his habitual residence in Guangzhou's Nansha District since 2017. According to Article 23 of the Civil Procedure Law, cases concerning personal status against individuals not residing in China may be under the jurisdiction of the plaintiff's habitual residence court. Therefore, B was entitled to file the case at his habitual residence, and the first-instance court had jurisdiction. The rulings of the lower courts dismissing the case due to lack of jurisdiction were improper and have been reversed.

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REMEDIES

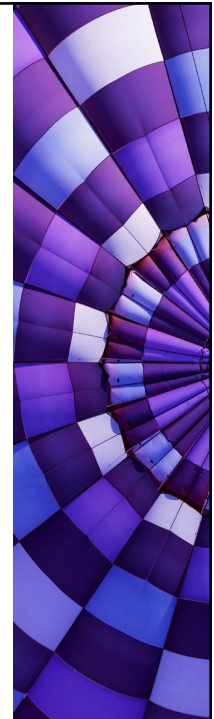
Anti-suit Injunction

- Personal restraint against continuing overseas proceedings

Stay of proceedings

- Permanent stay
- Temporary stay

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REMEDIES – INTERNATIONAL VS INTERNAL FORUM DISPUTES

Remedies under the Divorce Act Internal Forum disputes

- Dismissal (e.g. Art. 3(1))
- Transfer of proceedings (e.g. Art. 6(1))

Remedies under the Civil Code of Quebec International Forum disputes

- Stay of proceedings (lis pendens)
- Dismissal (forum non conveniens)

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Case Management Stays

Alternative to Forum Non Conveniens

Distinct Legal Basis:

- Courts can grant case management (or limited) stays to avoid multiplicity of proceedings without applying forum non conveniens principles
- Court must consider all circumstances and determine whether there is a need to ensure efficient and fair resolution of the dispute as a whole

Practical Application:

- In *XFS v XFT [2025] SGFC 1*, a limited stay was granted pending foreign appeal on validity of pre-nuptial agreement, as the outcome could impact Singapore's division of matrimonial assets
- No permanent stay was granted where foreign judgment on matrimonial assets was made in wife's absence without her voluntary submission to jurisdiction



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Transnational Jurisdiction Requirements

When Foreign Judgments Bind Parties

Four Grounds of Jurisdiction:

For a foreign judgment to be recognised in Singapore, the foreign court must have had transnational jurisdiction through :

- Presence in the foreign country
- Filing a claim or counterclaim before the foreign court
- Voluntarily submitting to jurisdiction by appearing in proceedings
- Agreeing to submit to jurisdiction before commencement of proceedings

Inchoate Submission:

- Consent to foreign jurisdiction for certain claims may be imputed to further claims in some circumstances where subsequent claim concerns same subject matter or is related
- However, consent will not be imputed where subsequent proceedings involve separate subject matter (e.g., pre-marital vs post-marital assets)



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Novel Issue: Partial Stays in Divorce Proceedings

XFS v XFT [2025] SGFC 1

- Limitations on Forum Non Conveniens

Consent Precludes Later Challenge:

- Where parties consent to Singapore court granting interim judgment for divorce, they cannot subsequently seek a stay of ancillary matters on forum non conveniens grounds
- By consenting to the divorce, parties acknowledge Singapore as the appropriate forum for all connected matters

No "Partial Stays" in Divorce:

- Ancillary matters proceedings cannot be stayed separately from divorce proceedings
- AM relief is derived from and consequent on the interim judgment - "one cannot exist without the other" and they are part of the same claim for divorce
- Principles allowing partial stays in commercial litigation do not apply to family proceedings



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PART 04 What relief is available?



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《Civil Procedure Law of the People's Republic of China》

Article 281 Where a people's court has accepted a case in accordance with the preceding article, and a party submits a written application requesting the court to stay the proceedings on the ground that a foreign court has already accepted the case prior to the people's court, the people's court may rule to stay the proceedings, except under any of the following circumstances:

- (1) The parties have agreed to choose the people's court as the forum, or the dispute falls under the exclusive jurisdiction of the people's court;
- (2) Adjudication by the people's court is manifestly more convenient.

If the foreign court fails to take necessary measures to adjudicate the case or fails to conclude the case within a reasonable period, the people's court shall, upon the party's written application, resume the proceedings.

Where a legally effective judgment or ruling rendered by a foreign court has been wholly or partially recognized by a people's court, and a party initiates an action in a people's court regarding the same claims that have already been recognized, the people's court shall rule not to accept the case; if the case has already been accepted, it shall rule to dismiss the action.

Recent case law? Recent updates to address changes/lessons from COVID?

- **Bailey v. Bailey**, No. 0678-23-3, 2025 WL 450245 (Va. Ct. App. Feb. 11, 2025) – Unpublished decision
 - **Holding:** “There was no limitation on the circuit court’s ‘appellate capacity’ to address the matters raised by mother in her motion to amend while the court retained jurisdiction of the case.”
 - On a *de novo* appeal, the circuit court had jurisdiction to adjudicate the particular case on the merits.

Practical Tips



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