

Family Law

Jurisdictional comparisons

Second edition 2013

- Preface** James Stewart, Manches LLP
- Foreword** Cheryl Lynn Hepfer, Offit Kurman
- Argentina** Diego Horton, Perez Maraviglia & Horton Abogados
- Australia** Max Meyer, Meyer Partners Family Lawyers
- Austria** Dr Alfred Kriegler, Rechtsanwaltskanzlei Dr. Alfred Kriegler
- Belgium** Dr Jehanne Sosson, Soheila Goossens & Silvia Pfeiff, Wouters Sosson & Associés
- Bermuda** Rachael Barritt & Adam Richards, Marshall Diel & Myers Limited
- Canada** Esther Lenkinski & Lisa Eisen, Lenkinski Family Law & Mediation
- Chile** Daniela Horvitz Lennon, Horvitz & Horvitz Abogados
- Denmark** Maryla Rytter Wróblewski, Nyborg & Rørdam
- Dominican Republic** Dr Juan Manuel Suero & Elisabetta Pedersini, J.D., Aaron Suero & Pedersini
- England & Wales** James Stewart & Louise Spitz, Manches LLP
- Finland** Hillka Salmenkylä, Asianajotoimisto Juhani Salmenkylä Ky
- France** Véronique Chauveau, Charlotte Butruille-Cardew & Alexandre Boiché, Cabinet CBBC
- Germany** Dr Daniela Kreidler-Pleus, Kanzlei Dr Kreidler-Pleus & Kollegen
- Gibraltar** Charles Simpson, Triay & Triay
- Guernsey** Advocate Felicity Haskins, F. Haskins & Co
- Hong Kong** Catherine Por, Stevenson Wong & Co.
- India** Pinky Anand, Chambers of Ms Pinky Anand
- Israel** Edwin Freedman, Law Offices of Edwin Freedman
- Italy** Andrea Russo & Benedetta Rossi, Pirola Pennuto Zei & Associati
- Japan** Mikiko Otani, Tokyo Public Law Office
- Jersey** Advocate Barbara Corbett, Hanson Renouf
- Malaysia** Foo Yet Ngo & Kiran Dhaliwal, Y N Foo & Partners
- Mexico** Alfonso Sepúlveda García & Habib Díaz Noriega, Müggenburg, Gorches, Peñalosa y Sepúlveda SC
- Monaco** Christine Pasquier-Ciulla & Alison Isabella Torti, PCM Avocats
- The Netherlands** Carla L. M. Smeets & Caroliene Mellema, Smeets Gijbels BV
- New Zealand** Anita Chan, Princes Chambers
- Poland** Dr Joanna Kosinska-Wiercinska & Dr Hab Jacek Wiercinski, Wiercinski Kancelaria Adwokacka
- Republic of Ireland** Jennifer O'Brien, Mason Hayes & Curran
- Russia** Dr Catherine Kalaschnikova, Divorce in Russia
- Scotland** Alasdair Loudon, Turcan Connell
- Singapore** Randolph Khoo & Shu Mei Hoon, Drew & Napier LLC
- South Africa** Amanda Catto, Catto Neethling Wiid Inc
- Spain** Alberto Perez Cedillo & Paula Piquer Ruz, Alberto Perez Cedillo Spanish Lawyers & Solicitors
- Sweden** Mia Reich Sjögren, Advokaterna Sverker och Mia Reich Sjögren AB, Johan Sarvik, Advokaterna Nyblom & Sarvik AB, Fredric Renström, Lindskog Malmström Advokatbyrå KB
- Switzerland** Dr iur Daniel Trachsel, Langner Stieger Trachsel & Partner
- Ukraine** Aminat Suleymanova, Ivan Kasynyuk & Irina Moroz, AGA Partners
- United Arab Emirates** Alexandra Tribe, Expatriate Law
- USA - California** Suzanne Harris, Larry A. Ginsberg, Andrea Fugate Balian & Fahi Takesh Hallin, Harris Ginsberg LLP
- USA - Connecticut** Edward Nusbaum & Thomas P. Parrino, Nusbaum & Parrino, P.C
- USA - Maryland & Washington DC** Cheryl Lynn Hepfer, Sandra A. Brooks, Ronald L. Ogens, Christopher M. Wachter, Reeve Walters, Mary Katherine Hayburn, Catherine H. McQueen, Marjorie Just & Alex M. Allman, Offit Kurman
- USA - Minnesota** Nancy Zalusky Berg, Lilo D. Kaiser, Tara L. Smith Ruesga & Laura Sahr Schmit, Walling, Berg & Debele, P.A.
- USA - New York** John M. Teitler, Nicholas W. Lobenthal & Paul D. Getzels, Teitler & Teitler, LLP
- USA - Texas** Donn C. Fullenweider, Fullenweider Wilhite
- USA - Virginia** Katharine W. Maddox & Julie C. Gerock, The Maddox Law Firm, P.C.
- USA - Washington State** Marguerite C. Smith, Flexx Law

General Editor: James Stewart, Manches LLP

THE EUROPEAN LAWYER
REFERENCE

Family Law

Jurisdictional comparisons

Second edition 2013

**General Editor:
James Stewart
Manches LLP**



THOMSON REUTERS

General Editor
James Stewart
Manches LLP

Commercial Director
Katie Burrington

Managing Editor
Emily Kyriacou

Senior Editor
Caroline Pearce

Design and Production
Dawn McGovern

Editorial Assistant
Magdalena Wika

Published in July 2013 by Sweet & Maxwell,
100 Avenue Road, London NW3 3PF
part of Thomson Reuters (Professional) UK Limited
(Registered in England & Wales, Company No 1679046.
Registered Office and address for service:
Aldgate House, 33 Aldgate High Street, London EC3N 1DL)

A CIP catalogue record for this book is available from the British Library.

ISBN: 978-0-414028-70-8

Thomson Reuters and the Thomson Reuters logo are trade marks of Thomson Reuters.

Crown copyright material is reproduced with the permission of the Controller of HMSO and the Queen's Printer for Scotland.

While all reasonable care has been taken to ensure the accuracy of the publication, the publishers cannot accept responsibility for any errors or omissions.

This publication is protected by international copyright law.

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, or stored in any retrieval system of any nature without prior written permission, except for permitted fair dealing under the Copyright, Designs and Patents Act 1988, or in accordance with the terms of a licence issued by the Copyright Licensing Agency in respect of photocopying and/or reprographic reproduction. Application for permission for other use of copyright material including permission to reproduce extracts in other published works shall be made to the publishers. Full acknowledgement of author, publisher and source must be given.

© 2013 Thomson Reuters (Professional) UK Limited

Contents

Preface	James Stewart, Manches LLP	v
Foreword	Cheryl Lynn Hepfer, Offit Kurman	vii
Argentina	Diego Horton, Perez Maraviglia & Horton Abogados	1
Australia	Max Meyer, Meyer Partners Family Lawyers	17
Austria	Dr Alfred Kriegler, Rechtsanwaltskanzlei Dr. Alfred Kriegler	43
Belgium	Dr Jehanne Sosson, Silvia Pfeiff & Sohelia Goossens Wouters Sosson & Associés	59
Bermuda	Rachael Barritt & Adam Richards, Marshall Diel & Myers Limited	77
Canada	Esther Lenkinski & Lisa Eisen, Lenkinski Family Law & Mediation	97
Chile	Daniela Horvitz Lennon, Horvitz & Horvitz Abogados	115
Denmark	Maryla Rytter Wróblewski, Nyborg & Rørdam	133
Dominican Republic	Dr Juan Manuel Suero & Elisabetta Pedersini, J.D., Aaron Suero & Pedersini	147
England & Wales	James Stewart & Louise Spitz, Manches LLP	163
Finland	Hilkka Salmenkylä, Asianajotoimisto Juhani Salmenkylä Ky	183
France	Véronique Chauveau, Charlotte Butruille-Cardew & Alexandre Boiché, Cabinet CBBC	201
Germany	Dr Daniela Kreidler-Pleus, Kanzlei Dr Kreidler-Pleus & Kollegen	219
Gibraltar	Charles Simpson, Triay & Triay	241
Guernsey	Advocate Felicity Haskins, F. Haskins & Co	261
Hong Kong	Catherine Por, Stevenson, Wong & Co.	273
India	Pinky Anand, Chambers of Ms Pinky Anand	285
Israel	Edwin Freedman, Law Offices of Edwin Freedman	315
Italy	Andrea Russo & Benedetta Rossi, Pirola Pennuto Zei & Associati	337
Japan	Mikiko Otani, Tokyo Public Law Office	359
Jersey	Advocate Barbara Corbett, Hanson Renouf	375
Malaysia	Foo Yet Ngo & Kiran Dhaliwal, Y N Foo & Partners	387
Mexico	Alfonso Sepúlveda García & Habib Díaz Noriega, Müggenburg, Gorches, Peñalosa y Sepúlveda SC	403
Monaco	Christine Pasquier-Ciulla & Alison Isabella Torti, PCM Avocats	417
The Netherlands	Carla L. M. Smeets & Caroliene Mellema, Smeets Gijbels BV	435
New Zealand	Anita Chan, Princes Chambers	459

Poland	Dr Joanna Kosinska-Wiercinska & Dr Hab Jacek Wiercinski, Wiercinski Kancelaria Adwokacka	479
Republic of Ireland	Jennifer O'Brien, Mason Hayes & Curran	495
Russia	Dr Catherine Kalaschnikova, Divorce in Russia	513
Scotland	Alasdair Loudon, Turcan Connell	531
Singapore	Randolph Khoo & Shu Mei Hoon, Drew & Napier LLC	551
South Africa	Amanda Catto, Catto Neethling Wiid Inc	567
Spain	Alberto Perez Cedillo & Paula Piquer Ruz, Alberto Perez Cedillo Spanish Lawyers & Solicitors	585
Sweden	Mia Reich Sjögren, Advokaterna Sverker och Mia Reich Sjögren AB, Johan Sarvik, Advokaterna Nyblom & Sarvik AB, Fredric Renström, Lindskog Malmström Advokatbyrå KB	605
Switzerland	Dr iur Daniel Trachsel, Langner Stieger Trachsel & Partner	619
Ukraine	Aminat Suleymanova, Ivan Kasynyuk & Irina Moroz, AGA Partners	641
United Arab Emirates	Alexandra Tribe, Expatriate Law	659
USA - California	Suzanne Harris, Larry A. Ginsberg, Andrea Fugate Balian & Fahi Takesh Hallin, Harris Ginsberg LLP	675
USA - Connecticut	Edward Nusbaum & Thomas P. Parrino, Nusbaum & Parrino, P.C	691
USA - Maryland & Washington DC	Cheryl Lynn Hepfer, Offit Kurman	709
USA - Minnesota	Nancy Zalusky Berg, Lilo D. Kaiser, Tara L. Smith Ruesga & Laura Sahr Schmit, Walling, Berg & Debele, P.A.	729
USA - New York	John M. Teitler, Nicholas W. Lobenthal & Paul D. Getzels, Teitler & Teitler, LLP	749
USA - Texas	Donn C. Fullenweider, Fullenweider Wilhite	769
USA - Virginia	Katharine W. Maddox & Julie C. Gerock, The Maddox Law Firm, P.C.	787
USA - Washington State	Marguerite C. Smith, Flexx Law	811
Contacts		829

Foreword

James Stewart Partner, Manches LLP; Governor at Large, International Academy of Matrimonial Lawyers

During the past decade there has been a steady rise in the number of transnational marriages and relationships. The growth in the number of cases with an international dimension has made it vital for family law practitioners to understand the complexities involved in dealing with modern day cross-jurisdictional matters. The outstanding success of the first edition of *Family Law Jurisdictional Comparisons* is indicative of the fact that family lawyers throughout the world must, by necessity, have a thorough understanding of international family law.

Cases involving conflict of laws and questions as to the application of foreign law or the role of foreign courts are becoming increasingly common. Likewise, public international family law issues arising from a myriad of international treaties, regulations and conventions have given rise to a new body of international jurisprudence which all family law practitioners are now forced to grapple with. Against this background, I felt it was vital to provide family law professionals with a second edition of *Family Law Jurisdictional Comparisons*, which not only updates 30 of the original chapters, but which includes 16 new jurisdictions as diverse as Canada, Chile, Monaco, Spain and the United Arab Emirates. The book has also been expanded to include nine core US jurisdictions ranging from California and the state of Washington on the west coast, to New York and Maryland on the east coast.

I hope that this second comparative edition, with its ease of access and template style, will help simplify and raise awareness of the multifaceted issues surrounding family law in the jurisdictions which it covers.

The primary aim of this second comparative overview is to provide an accessible resource to family lawyers around the globe who are acting in cases with an international dimension. Each chapter has the same basic structure covering core areas of law as it is applied in each jurisdiction, conflict of laws, pre-nuptial and post-nuptial agreements, divorce (including financial claims after overseas divorce), children (including international child abduction, parental responsibility, adoption and surrogacy), cohabitation and same-sex relationships and the different forms of family dispute resolution. The chapters also address European and international conventions and the impact that such conventions have on domestic family law.

There are many common threads in family law across different jurisdictions. However, there are also very significant differences. For example, the way in which property is distributed on divorce varies widely. Certain jurisdictions have a system based on the notion of

community of property, while others give a wide discretion to the court and consider distribution based on need and resources. Similarly, there is a broad spectrum of approaches in relation to the award of post-marital maintenance. In certain jurisdictions an award is very rare, in some, maintenance may be limited to a fixed 'rehabilitative' period of time, while in others an open-ended award is favoured. The treatment of marital or pre-/post-nuptial agreements also varies markedly from jurisdiction to jurisdiction, with civil law jurisdictions traditionally giving contractual force to such agreements, in contrast with many common law jurisdictions where judicial discretion prevails.

There are also major differences in the recognition of rights for cohabitants and those in same-sex relationships, and while a number of jurisdictions have written constitutions in which fundamental family law rights are protected, in others there are no such constitutional rights.

A consequence of the disparities between family law regimes across jurisdictions is that parties may be able to select a jurisdiction that will better facilitate the resolution of their particular case. This may be a choice based on national procedure, or law. For example, the parties may choose a jurisdiction which favours forms of mediation or alternative dispute resolution (ADR), or one where there are likely to be fewer procedural delays.

My heartfelt gratitude goes to the leading family law and divorce practitioners in many countries who have worked so diligently to compile the chapters in the second edition. Most of these contributors are Fellows of the International Academy of Matrimonial Lawyers (IAML). I would also like to thank my colleagues at Manches' family department who have assisted me with this project, in particular my brilliant PA, Chrissy Louca, my partner Rebecca Carlyon and my trainees, Charlotte Doherty and Charlotte Eccles. Thanks too must go to my friend and colleague, Louise Spitz, for all her hard work on the English chapter of this edition. Louise is rightly recognised in Chambers' Guide to the Legal Profession as the 'senior statesman' of English family law.

Thanks too must go to Katie Burrington, Emily Kyriacou, Magda Wika and the entire reference book team at the European Lawyer without whose efforts this book would not have been produced.

Finally, I would like to personally thank Cheryl Hepfer (President of the IAML), William Longrigg (President-Elect), Sylvia Goldschmidt (President, USA Chapter), Alfred Kriegler (President, European Chapter), and the rest of my friends and colleagues in the IAML who have been so supportive of this project.

James Stewart
London, July 2013

Preface

Cheryl Lynn Hepfer Principal, Offit Kurman; President,
International Academy of Matrimonial Lawyers

Many of our clients now work and reside around the world. They reside and own assets in more than one country. There has been an increase in truly international cities, such as New York, London, Hong Kong and Tokyo. As a result, family has become much more international. International treaties and conventions, which include Council Regulation EC No 2201/2003 (Brussels IIR), as well as legislation within the United States, such as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), have proliferated. Perhaps the most crucial of them all is the Convention on the Civil Aspects of International Child Abduction (The Hague Convention). Those family law practitioners who deal with international clients must remain informed of the latest legal developments so that they can provide advice to their clients.

As President of the International Academy of Matrimonial Lawyers (IAML), I know the importance of having resources available that can lead practitioners through the intricacies of the laws that affect their clients. I am delighted, therefore, to endorse and contribute to *Family Law Jurisdictional Comparisons*, a unique publication which summarises family law regimes in 45 jurisdictions around the world. In such a complex area, there can be no substitute for the advice of specialists. I am very pleased, therefore, that so many of the contributors to this publication are Fellows of the IAML.

The IAML is a worldwide association of practising lawyers, who are recognised by their peers as the most experienced and expert family law specialists in their respective countries. The IAML has more than 600 Fellows in jurisdictions across the globe. The Academy's primary objective is to improve the practise of international family law throughout the world. One of the ways to best accomplish this objective is through its creation of a network of expertise in international family law which is available to other lawyers and to the wider public, whether they are considering an international marital agreement, choice of jurisdiction for divorce or if they find themselves involved in international child abduction proceedings.

This publication will be a tremendous resource for all family lawyers who are addressing international issues in their practices, which are bound to have more intricate components. The ability to compare the laws and procedures of so many jurisdictions in one book make this publication very worthwhile and applicable to our practices. The fact that the information is provided by so many Fellows of the IAML, who have the knowledge and expertise to identify and favourably resolve international issues, contributes significantly to its value.

I congratulate and commend James Stewart, the General Editor of this fine publication, and thank him for the opportunity to provide the Preface to this invaluable resource for those who practice international family law.

Cheryl Lynn Hepfer
Bethesda, MD, July 2013

Gibraltar

Triay & Triay Charles Simpson

A. JURISDICTION AND CONFLICT OF LAW

1. SOURCES OF LAW

1.1 What is the primary source of law in relation to the breakdown of marriage and the welfare of children within the jurisdiction?

The primary source of law in relation to the breakdown of marriage and the welfare of children within the jurisdiction is statutory and is contained in the Matrimonial Causes Act and the Children Act. The court also has inherent jurisdiction to deal with matters including those in relation to children, eg, wardship.

1.2 Which are the main statutes governing matrimonial law in the jurisdiction?

The main statutes governing matrimonial law in the jurisdiction are:

- the Matrimonial Causes Act;
- the Married Women's Property Act;
- the Children Act;
- the Maintenance Act.

2. JURISDICTION

2.1 What are the main jurisdictional requirements for the institution of proceedings in relation to divorce, the finances and children?

The main jurisdictional requirements for the institution of proceedings are detailed below.

In relation to divorce and judicial separation, the jurisdiction requirements are set out in section 4 of the Matrimonial Causes Act and the court has jurisdiction to entertain proceedings for divorce or judicial separation if:

- the court has jurisdiction under Council Regulation (EC) No 2201/2003 (Brussels II (revised));
- no court of a member state has jurisdiction under Brussels II (revised) and either of the parties to the marriage is domiciled in Gibraltar on the date when the proceedings are begun.

Under Article 3(1) of Brussels II (revised), in matters relating to divorce, judicial separation or nullity of marriage, jurisdiction lies with the courts of the member state. Under Article 3(1) (a) in whose territory there is the following:

- the spouses are habitually resident;
- the spouses were last habitually resident, in so far as one of them still resides there;

- the respondent is habitually resident;
- in the event of a joint application, either of the spouses is habitually resident;
- the applicant, if they have resided there for at least one year immediately before the application was made;
- the applicant is habitually resident if they have resided there for at least six months immediately before the application was made and is a national of the member state in question or, in the case of United Kingdom and Ireland, has their domicile there.

Under Article 3(1) (b) jurisdiction shall lie with the courts of the member state of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the domicile of both spouses.

In relation to finances, jurisdiction is generally founded under the relevant provisions of the Matrimonial Causes Act, which give the court wide discretionary powers, or under the Married Women's Property Act, normally when divorce, judicial separation or nullity proceedings are not taking place. In relation to the latter jurisdiction, the applicable principles are derived from the law of real property, equity and trusts.

In relation to children, the jurisdiction requirements are set out in section 3 of the Children Act 2009, which provides that subject to Council Regulation (EC) No 2201/2003 as implemented in Gibraltar by the Civil Jurisdiction and Judgments (Amendment Act) 2005, a court shall have jurisdiction under this Act if the applicant or the respondent or any of the respondents, or a child to whom the application relates, resides in Gibraltar.

Council Regulation (EC) No 2201/2003 applies to civil matters relating to the 'attribution, exercise, delegation, restriction, or termination of parental responsibility'. The scope of the regulation includes those set out in Article 1(2).

The Supreme Court of Gibraltar also has inherent jurisdiction with respect to children.

Gibraltar has also recently incorporated into domestic law the Hague Convention dated 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children.

3. DOMICILE AND HABITUAL RESIDENCE

3.1 Explain the concepts of domicile and habitual residence as they apply to the jurisdiction in relation to divorce, the finances and children

Council Regulation (EC) 44/2001 (Brussels II) applies to Gibraltar and makes provision for determining domicile for the purpose of the application of this Regulation. In addition, the Civil Jurisdiction and Judgments Act (CJJA) make specific provision for determining domicile for the purpose of the CJJA.

Section 24 (2) of the CJJA provides that an individual is domiciled in Gibraltar if and only if:

- he or she is resident in Gibraltar;

- the nature and circumstances of his or her residence indicate that he or she has a substantial connection with Gibraltar.

The concepts are, therefore, derived from local statute, common law and European decisions given and subject to the application of Brussels II. In relation to matrimonial causes, the domicile of an individual is determined according to those legal principles which are recognised in Gibraltar and/or which have been enacted in Gibraltar. Those principles are derived from English or European law.

Domicile is the legal relationship between a person and a particular territorial area and, generally speaking, arises either from that person's residence there, coupled with the intention of making it a permanent home, or from it being or having been the domicile of a person on whom they are, for this purpose, legally dependent; eg, the domicile of origin is acquired at birth and is the domicile of the person upon whom the child is dependent. In that regard, a legitimate child born in the lifetime of their father receives the domicile of the father, whereas an illegitimate child receives the domicile of the mother. The concept of domicile in Gibraltar is the same as that in England.

A person cannot have more than one domicile at any time and can acquire a domicile of choice by residing in another country with the intention of continuing to reside there for an indefinite period of time, coupled with the genuine intention of residing there permanently and not returning to reside permanently in the country in which they were previously domiciled or which represents their domicile of origin.

In non-Brussels II cases, Gibraltar also follows English law in relation to the concept of 'habitual residence'. As a matter of domestic law, a person is habitually resident in the jurisdiction where a person lives voluntarily and has settled for the regular order of that person's life. A person will not, therefore, be considered to be habitually resident in Gibraltar unless they have taken up residence and lived in Gibraltar for an appreciable period of time, although there is no concrete definition of the latter.

With regard to the application of Brussels II, 'habitual residence' has an autonomous meaning as a matter of European law and the author is of the view that, in the absence of further authority, the Supreme Court should follow the approach adopted by Mr Justice Munby in the English case of *Marinos v Marinos* [2007 EWHC 2047]. In the context of that case, reference was made to the explanatory report on Brussels II of Dr Borrás (Official Journal of the European Communities, C221/27, 16 July 1998) and the definition of habitual residence is as follows: *'the place where the person had established, on a fixed basis, his permanent or habitual centre of interests, with all the relevant facts being taken into account for the purpose of determining such residence.'*

Mr Justice Munby added in his analysis of the meaning that, in deciding where the habitual centre of someone's interests has been established, one has to have regard to the context and have examined various European case authorities. Given the application of Article 3 to family matters, he concluded that the place where the matrimonial home is to be found, the

place where the family lives *qua* family, is equally obviously an important factor in ascertaining the location of the habitual centre of a spouse's interests. The author is of the view that the Supreme Court of Gibraltar would follow this approach in appropriate circumstances where jurisdiction is claimed under Brussels II and, given the definition of the domicile of individuals in section 24 of the CJJA. Furthermore, as a matter of community law, it does not appear to be the case following *Marinos v Marinos* that an applicant can be habitually resident in two different countries at the same time; whereas, as a matter of domestic law, there can be more than one place of residence (see English case of *Ikimi v Ikimi*).

It should be noted that in the local case of *W v W D & M No 24* of 2008, the court struck out a local petition on the basis that it did not consider the court had jurisdiction under the former section 4 of the Matrimonial Causes Act, which then provided as follows: '*The court shall have jurisdiction to entertain proceedings for divorce or judicial separation if (and only if) either of the parties to the marriage:*

- a) *is domiciled in Gibraltar on the date when the proceedings are begun; or*
- b) *was habitually resident in Gibraltar throughout the period of one year ending with that date.'*

Both spouses had moved to Gibraltar and acquired category II tax statuses and become resident in Gibraltar and, as a requirement for that status, they had purchased approved accommodation in Gibraltar. However, the couple also subsequently purchased property in Spain and, based on the relevant facts before it, the court did not consider it had jurisdiction under the previous section 4 on the basis that neither party was resident or domiciled in Gibraltar based on the interpretation of those facts. The case of *Marinos v Marinos* was not considered in the judgment and the court appear to have followed domestic/English law to determine the matters before it in relation to the question of habitual residence/domicile. The question of jurisdiction under Brussels II was not considered in the judgment and it does not appear that the court was addressed on this, despite the apparent application of the Regulation. It should be noted, however, that the case predated the local amendment of section 4 of the Matrimonial Causes Act, albeit the Regulation was in application.

The local case of *Fisher v Small* 2005-06 Gib LR 1 provides local authority (although it is not a family case) to the effect that a category II individual is not to be considered as domiciled in Gibraltar within the meaning of section 24 of the CJJA, or considered resident in Gibraltar in the absence of evidence of actual residence in Gibraltar.

In the case of *T v T* (divorce jurisdiction: nationality and domicile), the court found that the court had jurisdiction under the Regulation in the case of two Gibraltarians given that both were domiciled in Gibraltar and Gibraltar was considered part of the United Kingdom for the purpose of the ruling. This decision was not appealed.

4. CONFLICT OF LAW/APPLICABLE LAW TO BE APPLIED

4.1 What happens when one party applies to stay proceedings in favour of a foreign jurisdiction? What factors will the local court take into account when determining forum issues?

What happens and what principles apply depends on whether jurisdiction is claimed either in Gibraltar or in the foreign court under Brussels II (revised), or whether no contracting state has jurisdiction under Brussels II (revised).

Assuming that Brussels II applies, the court will need to consider whether an automatic stay should be granted pursuant to Article 17. The latter requires an examination as to jurisdiction by the court of a member state which is seised of a case over which it has no jurisdiction under the regulation and over which a court of another regulation state has jurisdiction by virtue of the regulation. In those circumstances, if the local court is satisfied that the court of another regulation state has jurisdiction by virtue of the regulation, then it must declare of its own motion that it has no jurisdiction.

Where proceedings relating to divorce, legal separation or marriage annulment between the same parties are brought before courts of different member states, the court second seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established. Pursuant to Article 19(3), where the jurisdiction of the court first seised is established, the court second seised shall decline jurisdiction in favour of that court. If the court first seised does not have jurisdiction then the court second seised will have jurisdiction subject to jurisdiction having been established there.

In addition, section 8 of the Matrimonial Causes Act provides:

'The schedule to this Act shall have effect as to the cases for which matrimonial proceedings in Gibraltar may be stayed by the court where there are concurrent proceedings elsewhere in respect of the same marriage, but nothing in this schedule prejudices the power to stay proceedings which is exercisable by the court apart from the schedule.'

The schedule to the Act places a duty under paragraph 2 on the petitioner to furnish particulars in respect of any matrimonial proceedings they know to be continuing in another country outside Gibraltar. Pursuant to paragraph 3, where before the trial or first trial in any matrimonial proceedings which are continuing in the court in Gibraltar, it appears that:

- any proceedings in respect of the marriage in question or capable of affecting its validity or subsistence, are continuing in another jurisdiction;
- the balance of fairness (including convenience) as between the parties to the marriage is such that it is appropriate for the proceedings in that jurisdiction to be disposed of before further steps are taken in the proceedings, so far as they consist of a particular kind of matrimonial proceedings.

The court may then in its discretion order that the proceedings in the court be stayed or that those proceedings be stayed so far as they consist of matrimonial proceedings.

Pursuant to paragraph 1(2) of the schedule, the court, in considering the balance of convenience and fairness shall have regard to all factors appearing to be relevant including the convenience of witnesses and any delay or expense which may result from the decision whether to stay proceedings or not.

The court also has jurisdiction to stay proceedings under its inherent jurisdiction. The inherent power is exercised by applying the principle of *forum non conveniens*. In simple terms, the court will consider whether there is another available forum which is clearly more appropriate for the trial of the action and determine whether a stay should be granted, unless there are circumstances where justice, nevertheless, requires that a stay be granted.

B. PRE- AND POST-NUPTIAL AGREEMENTS

5. VALIDITY OF PRE- AND POST-NUPTIAL AGREEMENTS

5.1 To what extent are pre- and post-nuptial agreements binding within the jurisdiction? Could you provide a brief discussion of the most significant recent case law on this issue

Following the application of the amended Matrimonial Causes Act, which came into effect in January 2010, pre- and post-nuptial agreements are binding as financial agreements provided they come within the definition of financial agreement in section 31B, section 31C or section 31D of the MCA and subject to the provisions of section 31A to 31M. Prior to this Gibraltar law largely followed English law on this issue, although there is no local reported decision in relation to pre-nuptial agreements. There is, however, the Privy Council decision in *Macleod v Macleod* 2008 UKPC 64, which it submitted prior to the implementation of the amended Matrimonial Causes Act and part VIA was a binding authority.

The relevant sections provide as detailed below.

Section 31B(1) provides that if people who are contemplating entering into a marriage with each other make a written agreement with respect to any of the matters mentioned in section 31B(2), at the time of making the agreement, the people are not the spouse parties to any other binding agreement with respect to any of those matters and the agreement is expressed to be made under section 31B(1) that agreement constitutes a financial agreement.

Section 31B(2), in turn, permits a financial agreement before marriage in relation to the following matters:

- in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties, at the time when the agreement is to be made, or at a later time and before divorce, is to be dealt with;
- the maintenance of either of the spouse parties during the marriage, after divorce or both during the marriage and after the divorce.

Under section 31B(3), a financial agreement made under section 31B(1) may also contain matters incidental or ancillary to those mentioned in subsection 2 and other matters (although the latter is undefined).

Under section 31B(4), a financial agreement made as mentioned in

subsection (1) may terminate a previous financial agreement, however made, if all of the parties to the previous agreement are parties to the new agreement.

Under section 31C, financial agreements can also be made during marriage by the parties to a marriage subject to the provisions of that section and the subsections thereunder. The subsections generally follow those outlined under section 31B and the financial agreement can cover the same matters. However, the agreement must be expressed to be made under section 31C and it should be noted that under section 31C (3) a financial agreement under section 31C may be made before or after the marriage has broken down.

Under section 31D, financial agreements can also be made after a decree of divorce is granted in relation to a marriage (whether it has taken effect or not) provided the agreement is expressed to be made under section 31D and the parties are not parties to any other binding financial agreement under sections 31B, 31C or 31D of the Matrimonial Causes Act. It should be noted that a financial agreement under section 31D may also terminate a previous financial agreement, however made, if all of the parties to the previous agreement are parties to the new agreement.

Pursuant to section 31E (1), a financial agreement that is binding on the parties to the agreement to the extent to which it deals with how, in the event of the breakdown of the marriage, all or any of the property or financial resources of either or both of the spouse parties at the time when the agreement is made or at a later time and before the termination of the marriage by divorce are to be dealt with, is of no force or effect until a declaration of separation is made.

Under section 31E (5), the declaration of separation must be signed by both parties to the agreement and it must state that the spouse parties have separated and are living separately and apart at the time of the declaration. Separated is defined in section 31E (7) as meaning that the parties separated and thereafter lived separately and apart for a continuous period of two years immediately preceding the date of the filing of the application for a decree of divorce.

Under section 31G, it should be noted that a provision of a financial agreement which relates to maintenance of a child or children of the family is void unless it has been referred to the court and the court has expressed its opinion that the provision is reasonable and gives appropriate directions. It would, however, appear that such a clause could be expressed to be made as a maintenance agreement, provided it is compliant with the relevant provisions of part V of the maintenance agreement. The latter is reviewable by the court in any event.

In considering the above, it should be noted that a financial agreement under section 31 can be set aside under section 31L if the court is satisfied that:

- the agreement was obtained by fraud (section 31L (1) (a));
- a party to the agreement entered into the agreement for the purpose of defrauding or defeating a creditor or creditors of that party, or with

reckless disregard of the interests of a creditor or creditors of the party (section 31L (1) (b));

- the agreement is void, voidable or unenforceable (section 31L (1) (c));
- in the circumstances that have arisen since the agreement was made, it is impracticable for the agreement or a part of the agreement to be carried out (section 31L (1) (d));
- since making the agreement, a material change of circumstances has occurred (such as circumstances relating to the care welfare and development of a child of the family) and as a result the child, or if the applicant is the primary carer, a party to the agreement will suffer hardship if the court does not set the agreement aside;
- in respect of the making of the financial agreement, a party to the agreement engaged in conduct that was in all circumstances unconscionable.

There has not been any significant case law on pre-nuptial or post-nuptial agreements given the recent application of the amended Matrimonial Causes Act.

C. DIVORCE, NULLITY AND JUDICIAL SEPARATION

6. RECOGNITION OF FOREIGN MARRIAGES/DIVORCES

6.1 Summarise the position in your jurisdiction

Part IX of the Matrimonial Causes Act deals with the recognition in Gibraltar of divorces and legal separations obtained elsewhere. Under section 54 of the Matrimonial Causes Act, the validity of a divorce or legal separation obtained in a country outside Gibraltar shall be recognised if at the date of the institution of the proceedings in the country in which it was obtained:

- either spouse was habitually resident or domiciled in that country;
- either spouse was a national of that country.

Council Regulation (EC) No 2201/2003 / Brussels II (revised) also provides for the recognition and enforcement of judgments in matrimonial matters and, as stated above, applies in Gibraltar. The latter is applied by virtue of section 38A of the CJJA and under schedule 11 to the CJJA the minister responsible for justice is the central authority in Gibraltar for the purpose of Article 53 of Regulation 2201/2003. The Supreme Court may in turn make orders recognising or enforcing regulation state judgments in Gibraltar.

It should also be noted that under part V of the CJJA, Gibraltar and the UK are to be treated as if each were a separate regulation state for all purposes connected to the operation of Regulation 2201/2003 in relation to the respective jurisdictions.

7. DIVORCE

7.1 Explain the grounds for divorce within the jurisdiction (please also deal with nullity and judicial separation if appropriate)

Under section 16 of the Matrimonial Causes Act, and subject to the provisions of section 18 of the MCA, a petition may be presented to the Supreme Court by either party to a marriage on the ground that the marriage has broken down irretrievably.

Section 18 of the MCA imposes a restriction on petitions for divorce within three years from the date of the marriage (the specified period) in that no petitions can be presented within the specified period in the absence of the court granting permission to allow the presentation of such a petition.

Under section 18 (2) the court can grant such permission on either of the following grounds:

- section 18 (2) (a) – that the case is one of exceptional hardship suffered by the petitioner or exceptional depravity on the part of the respondent (subject to the interests of any child of the family and having regard to whether there is a reasonable probability of a reconciliation of the parties during the three-year period);
- section 18 (2) (b) – in any case where the petitioner is under the age of 16 years at the date of the marriage.

On a petition for divorce and pursuant to the provisions of section 16 (2), the Supreme Court shall not hold the marriage to have broken down irretrievably in the absence of the petitioner satisfying the court of one or more of the following facts:

- that the respondent has committed adultery, rape, sodomy or bestiality or is homosexual, and in any such case, that the petitioner finds it intolerable to live with the respondent;
- that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;
- that the respondent has deserted the petitioner for a continuous period of at least two years immediately preceding the presentation of the petition;
- that the parties have lived apart for a continuous period of at least two years and the respondent consents to a decree being granted on the basis of two years' separation;
- that the parties to the marriage have lived apart for a continuous period of at least three years immediately preceding the presentation of the petition.

The court cannot hold for the purpose of section 16 (2) b) that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent unless the petitioner satisfies the court that the behaviour is one or more of the following:

- conduct by the respondent that involves actual and reasonably substantial physical or mental injury to the petitioner or to any child of the marriage or either party, or the reasonable apprehension by the petitioner or any such child of such injury;
- constructive desertion by the respondent of the petitioner;
- unsoundness of mind or other mental disorder on the part of the respondent, where the condition is likely to be incurable and the condition has existed for at least three years or, in exceptional circumstances, the condition has lasted for less than three years and the effects of the behaviour of the respondent are directed towards the petitioner or towards any child of the marriage or of either party.

A petition for judicial separation may be presented to the Supreme Court

under section 30 of the MCA by either party to a marriage on the ground that any such fact that is mentioned in section 16 (2) exists. There is no minimum requirement that the parties have lived together for a period of three years prior to a petition for judicial separation being presented.

A petition for nullity may be presented to the Supreme Court by a husband or a wife asking that their marriage may be declared null and void under section 24 of the MCA.

A marriage is void on any of the grounds set out in section 25 (1) as listed below:

- that it is not a valid marriage under the provisions of the Marriage Act;
- that, at the time of the marriage, either party was already lawfully married;
- that the parties are not respectively male and female;
- that, in the case of a polygamous marriage entered into outside Gibraltar, either party was at the time of the marriage domiciled in Gibraltar.

The grounds on which a marriage is voidable are set out in section 25A and are as follows:

- the marriage has not been consummated owing to the incapacity of either party to consummate it;
- the marriage has not been consummated owing to the wilful refusal of the respondent to consummate it;
- either party to the marriage did not validly consent to it, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
- at the time of the marriage either party, though capable of giving a valid consent, was suffering, whether continuously or intermittently, from a mental disorder within the meaning of section 3 of the Mental Health Act of such a kind or to such an extent as to be unfit for marriage;
- at the time of the marriage the respondent was suffering from venereal disease in a communicable form;
- at the time of the marriage the respondent was pregnant by some other person other than the petitioner.

The bars to relief where the marriage is voidable are contained in section 25B of the MCA and the court shall not grant a decree of nullity on the ground that a marriage is voidable if the respondent satisfies the court that:

- the petitioner, with knowledge that it was open to have the marriage avoided, so conducted themselves in relation to the respondent so as to lead the respondent to reasonably believe that they would not seek to do so;
- it would be unjust to the respondent to grant the decree.

Under section 25B (2), the court shall not grant a decree of nullity by virtue of section 25A on the grounds mentioned in paragraph 25A(c) (either party to the marriage did not validly consent to it whether in consequence of duress, mistake, unsoundness of mind or otherwise), (d) (mental disorder of either party at time of marriage within section 3 of Mental Health Act), (e) (respondent suffering from venereal disease in communicable form at time of marriage) or (f) (pregnancy by someone else at time of marriage) unless it

is satisfied that proceedings were issued within the period of three years from the date of the marriage or leave for the institution of such proceedings has been granted after the expiration of that period. Under section 25A(3), the court also cannot grant a decree of nullity by virtue of section 25A on the grounds mentioned in paragraphs (e) or (f) unless it is satisfied the petitioner was ignorant of the relevant fact alleged.

Under section 25A(4), the court cannot grant permission to institute proceedings for nullity after three years of marriage unless it is satisfied the petitioner has at some time during that three-year period suffered from a mental disorder within the meaning in section 3 of the Mental Health Act and considers that, in all the circumstances of the case, it would be just to grant leave to institute nullity proceedings after the expiry of the three-year period.

8. FINANCES/CAPITAL, PROPERTY

8.1 What powers does the court have to allocate financial resources and property on the breakdown of marriage?

The Supreme Court of Gibraltar has wide discretionary powers to allocate financial resources and property in divorce, judicial separation or nullity proceedings. These powers are derived from the MCA and include the following powers under part VII of the MCA:

- power to make an order for periodical payments in favour of a party to a marriage under section 34(1)(b) or 40(6)(b), or in favour of a child of the family under section 34(1)(f), (2) or (4) or 40(6)(f);
- power to make an order for secured periodical payments in favour of a party to a marriage or in favour of a child of the family;
- power to make an order for a lump sum provision in favour of a party to a marriage under section 34(1)(c) or 40(6)(c), or in favour of a child of the family under section 34(1)(f), (2) or (4) or section 40(6)(f);
- power to make a property adjustment order which includes an order for the transfer and/or settlement of property;
- power to order maintenance pending suit;
- power to vary nuptial settlements, although it should be noted under the current provisions of the amended Matrimonial Causes Act, the power to vary is limited under section 35(1)(c) to varying for the benefit of children of the family. It is understood this is likely to be the subject of further amendment to permit variation for the benefit of a spouse to the marriage.

The court also has power to make pension sharing orders under part VIIA of the MCA.

Under section 37(1), it is the duty of the court in deciding whether to exercise its powers under section 34 to 36 of the Matrimonial Causes Act and, if so, in what manner to give first consideration to the welfare of any child of the family who has not attained the age of 18, and to have regard in the application of financial provision to a party to a marriage, the court shall have regard to the following matters:

- 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;

- the financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the foreseeable future;
- the standard of living enjoyed by the family before the breakdown of the marriage;
- the age of each party to the marriage and the duration of the marriage;
- any physical or mental disability of either of the parties to the marriage;
- the contributions which each of the parties has made, or is likely to make in the foreseeable future, to the welfare of the family, including any contribution by looking after the home or caring for the family;
- the conduct of each of the parties, whatever the nature of the conduct, and whether it occurred during the marriage or after the separation of the parties or dissolution or annulment of the marriage, if that conduct is such that it would in the opinion of the court be inequitable to disregard it;
- the value to each of the parties to a marriage of any benefit which, by reason of the dissolution or annulment of the marriage, that party will lose the chance of acquiring.

8.2 Explain and illustrate with reference to recent cases the court's thinking on division of assets

The courts in Gibraltar have tended to follow English case law. This is best illustrated by the reported case of *Caruana v Caruana DM 49 of 2000*, which followed and approved the approach adopted by the House of Lords in the English case of *White v White 3 WLR 1571* as the starting point on division of assets. The first instance decision and approach adopted by the then chief justice in the case was subsequently approved by the local Court of Appeal. The object of applying the criteria (as now enshrined in section 37) is to achieve the overarching objective of fairness and the starting point by which this is to be measured is against the yardstick of equality, although the courts have not gone as far as to say that the starting point should be equal division.

9. FINANCES/MAINTENANCE

9.1 Explain the operation of maintenance for spouses on an ongoing basis after the breakdown of marriage

Generally speaking, this will depend on a number of factors, including the age of the marriage, the age of the parties, the employment prospects of the wife and the respective financial circumstances and needs of the parties.

9.2 Is it common for maintenance to be awarded?

It is relatively common, subject to the particular circumstances of the case, although it should be noted that under section 38(1) it is the duty of the court to consider the practicality of a clean break between the parties and, naturally, that militates against the granting of maintenance in appropriate circumstances. However, the latter is clearly dependent on the facts of each

case and relevant considerations being applied in determining the issue.

9.3 Explain and illustrate with reference to recent cases the court's thinking on maintenance

An example of the court's approach to maintenance is illustrated by the local case of *Gonzalez v Gonzalez D & M 15 of 2004*, which was the subject of an appeal to the Court of Appeal. The judgment in respect of the latter is reported in 2005-2006 Gib LR 216. The Court of Appeal approved the approach adopted by the Supreme Court considering that it has given appropriate weight to the factors set out in the then section 32(1) of the MCA (now section 37(1)). Those factors included the parties' respective incomes, earning capacity, property and other financial resources, their financial needs and the ages and the duration of the marriage. The case illustrates that the court's general obligation was to apply the principle of equality of division and only depart from it if, and to the extent that there was, a good reason for doing so.

10. CHILD MAINTENANCE

10.1 On what basis is child maintenance calculated within the jurisdiction?

There is no prescribed formula. Under section 37(3) of the Matrimonial Causes Act, the court is to have regard to the following matters (non exhaustive):

- the financial needs of the child
- the income, earning capacity (if any) property and other financial resources of the child;
- any physical or mental disability of the child;
- the manner in which the child was being and in which the parties expected the child to be educated or trained;
- the considerations mentioned in relation to the parties as set out in paragraphs (a), (b), (c) and (e) of section 37(2) (see sub-paragraphs 8.3.1, 8.3.2, 8.3.3 and 8.3.5 above).

The Magistrates Court also has power to award maintenance under the provisions of the Maintenance Act.

11. RECIPROCAL ENFORCEMENT OF FINANCIAL ORDERS

11.1 Summarise the position in your jurisdiction

As stated above, Brussels I and Brussels/Lugano Conventions apply to Gibraltar by virtue of the CJJA. An application for the registration of a maintenance order in appropriate circumstances is made to the Magistrates Court.

In addition to the provisions of Brussels I, the Maintenance Orders (Reciprocal Enforcement) Act applies to Gibraltar and this is the statutory mechanism for the enforcement of maintenance orders emanating from designated countries and territories designated as reciprocating countries regarding maintenance orders generally, namely British Columbia, Malta, Nova Scotia, Ontario and UK and, in respect of maintenance orders of specified classes, Australia.

The Judgments (Reciprocal Enforcement) Act also applies to Gibraltar. This provides for the enforcement of foreign judgments in Gibraltar and is equivalent to the English Judgments (Reciprocal Enforcement) Act 1933. Lump sum and costs orders made by a recognised foreign court may be capable of enforcement, provided the judgments are final and conclusive between the judgment creditor and judgment debtor and a sum of money is payable thereunder. However, foreign maintenance orders fall outside the scope of this Act on the basis that they are capable of variation. It should be noted that the judgment cannot be registered unless pronounced within six years prior to application for registration.

In the absence of reciprocal enforcement provisions, a judgment or order of a competent foreign court will be enforceable in Gibraltar at common law by an action *in personam* on the judgment debt if, firstly, the foreign judgment is for a definite sum of money and, secondly, it is final and conclusive. A foreign judgment for a lump sum or for costs may, therefore, be enforced at common law.

12. FINANCIAL RELIEF AFTER FOREIGN DIVORCE PROCEEDINGS

12.1 What powers are available to make orders following a foreign divorce?

There are currently no statutory powers available to make orders following a foreign divorce.

D. CHILDREN

13. CUSTODY/PARENTAL RESPONSIBILITY

13.1 Briefly explain the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage

The position depends on whether the parents in question have parental responsibility for the child in question. Under section 11(1) of the Children Act, where a child's father and mother were married to each other at the time of the birth, they each have the right and duty of parental responsibility for that child. In the case of an unmarried couple who subsequently marry after the birth of the child then parental responsibility vests in the mother and in the father as well if he is named on the birth certificate of the child, or by virtue of a parental responsibility agreement between the parents or alternatively, by order of the court or if the child becomes legitimate under section 3 of the Legitimacy Act (which provides for the legitimacy of a child in the event of the subsequent marriage of that child's parents after his or her birth).

Under section 10 of the Children Act, parental rights are equal and subject to any court order or agreement. Statutory parental rights can be summarised as follows:

- the right to have the child living with him or her or to regulate that child's residence;
- the right to control, direct or guide in a manner appropriate to the stage of the development of the child, the child's upbringing;

- if the child is not living with the parent concerned, the right to maintain personal relations with the child and to have direct contact with the child on a regular basis;
- the right to act as the child's legal representative.

The legal position after breakdown of the marriage is therefore usually determined by agreement between the parents or by court order. If the latter then the first and paramount consideration for the court in determining any issue as to the upbringing of the child in question or in relation to the administration of that child's property or any income arising therefrom is the child's welfare. In determining whether to make an order under the Act, the no order principle is enshrined under section 4(5) which means that the court should not make any order unless it considers that the making of the order in question would be better for the child in question than making no order at all.

The types of order that can be made under section 25 of the Children Act are:

- residence order;
- contact order;
- prohibited steps order;
- a specific issue order.

13.2 Briefly explain the legal position in relation to access/contact / visitation following the breakdown of a relationship or marriage

The non-residential parent has the right under section 10 of the Act to maintain personal relations with the child and to have contact with him or her unless such right is curtailed by court order or agreement. If necessary, then an application can be made to court under section 25 for a contact order.

14. INTERNATIONAL ABDUCTION

14.1 Summarise the position in your jurisdiction

Until 18 March 2010, the International Child Abduction Act was passed by the local parliament. This Act extends the application of the Convention on the Civil Aspects of International Child Abduction, signed at the Hague on 25 October 1980, to Gibraltar. However, no commencement date has yet been given. The Act is therefore not yet in operation pending a commencement date being issued by the Government by notice in the local *Gazette*. It is however an offence under section 184(1) of the Crimes Act 2011 for a person, including a parent, to take a child under the age of 18 out of Gibraltar without appropriate consent and the requisite consent includes the other parent provided that parent has parental responsibility. Furthermore, the Children Act contains provisions giving effect to the 1996 Convention on Jurisdiction, Applicable law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, signed at the Hague on 19 October, 1996 as referred to above.

In the event of abduction to a non-Convention/non-EU state, then the appropriate course would be to obtain declaratory relief to the effect that

the removal was unlawful and to then seek the summary return of the child from the relevant jurisdiction. This is likely to be in the context of local wardship proceedings which may be commenced.

15. LEAVE TO REMOVE/APPLICATIONS TO TAKE A CHILD OUT OF THE JURISDICTION

15.1 Summarise the position in your jurisdiction

The application is normally made under the Children Act.

15.2 Under what circumstances may a parent apply to remove their child from the jurisdiction against the wishes of the other parent?

A person in whose favour a residence order has been made may take the child out of the jurisdiction for up to one month at a time, with no limit on the number of occasions, without the need for the consent of the other holders of parental responsibility, subject to the provisions of section 30. This provides that, where a residence order is in force, no person may remove the child from Gibraltar without the written consent of every person who has parental responsibility of the child, with the exception that, where a person in whose favour a residence order is made wishes to remove a child from Gibraltar for a period of less than one month, they can do so in the absence of a contrary order being made by the Supreme Court.

It should be noted that section 30(4) also permits a child to be removed from Gibraltar by a person in whose favour a contact order has been made during the period stipulated in that order, unless the child is a ward of court or subject to a care order, supervision order or emergency protection order, in which case leave must be sought before removing the child from the jurisdiction.

Therefore, subject to the above, permission is required to remove a child from the jurisdiction permanently or temporarily on holiday if it is against the wishes of the other parent or anyone else with parental responsibility for the child. That application is normally made for an appropriate order under the Children Act.

The first and paramount consideration for the court to consider under the Children Act is the child's welfare and, under section 4(2) of the Children Act, the child's welfare is considered to be best promoted by a continuing relationship with both parents as long as it is safe to do so. In approaching the question of whether leave should be granted for permanent removal, the court will also consider whether the application is genuine and not motivated by a selfish desire to exclude the other parent from the child's life and whether the proposed plans are realistic, well researched and investigated and in the best interest and welfare of the child. If the court is satisfied that the plans are *bona fide* and well researched, it will then consider the position of the other parent to see if they are motivated by a genuine concern for the child's welfare or a rather more selfish motive. The wishes of the child can also, in appropriate circumstances, be taken into account. Reference to the checklist contained in section 4(3) of the Children Act is not mandatory but those factors can be a useful point of

reference for the court and include the wishes of the child, their physical, emotional or educational needs, the likely effect on the child of a change of circumstances, their age, sex, background and any characteristics of the child which the court considers relevant.

In considering the issue of temporary visits, the court usually carries out a balancing exercise to weigh the benefit of the child of the proposed visit against the risk that the child might not be returned and, depending on the relevant facts, appropriate safeguards may need to be built into any order granting temporary removal.

E. SURROGACY AND ADOPTION

16. VALIDITY OF SURROGACY AGREEMENTS

16.1 Briefly summarise the position in your jurisdiction

Gibraltar law follows English law on this issue and surrogacy agreements are not enforceable locally.

17. ADOPTION

17.1 Briefly explain the legal position in relation to adoption in your jurisdiction. Is adoption available to individuals, cohabiting couples (both heterosexual and same-sex)?

The position is governed by the Adoption Act 1951. Jurisdiction to make adoption orders is vested in the Magistrates Court and the Supreme Court of Gibraltar. An application for an adoption order can be made under section 5 of the Adoption Act by an individual resident or domiciled in Gibraltar who is the mother or the father of the minor, a relative of the minor (grandfather, brother, sister, uncle or aunt) who has attained the age of 21 years or by an individual applicant who is over 25 years old. Under section 5(2) an application can be made on the joint application of two spouses provided one of the applicants is the mother or father of the minor and the other one is over 21 and section 5(3) specifically prohibits an adoption order being made authorising more than one person to adopt a minor unless the application is made by two joint spouses under section 5(2). This aspect of the legislation was successfully challenged in the case of *P v HM Attorney General for Gibraltar* (judgment of Dudley C.J. dated 10 April 2013) (unreported) where the Supreme Court held that the provisions of the Adoption Act which excluded a same-sex couple from jointly applying for adoption violated section 7 (the right to family life) and section 14 (discrimination) of the Gibraltar Constitution.

The Adoption Act sets out the requirements for the making of an adoption order. In short, the applicant(s) must be eligible to make an application for adoption under the Adoption Act under section 5, the child must have been in the care and custody of the applicant for the probationary period namely at least three consecutive months immediately preceding the date of the order, the welfare officer must have been put on notice of the intention to adopt in accordance with section 7 and the court must be satisfied under section 8 that requisite consents have been given under section 6 by every parent or guardian of the child unless the requisite consent is dispensed with by the

court on recognised statutory grounds. The court must also be satisfied under section 8(1)(b) that the order, if made, will be for the welfare of the minor and that the applicant has not received or agreed to receive any payment as a reward or in consideration of the adoption (except as the court may sanction) under section 8(1)(c).

F. COHABITATION

18. COHABITATION

18.1 What legislation (if any) governs division of property for unmarried couples on the breakdown of the relationship?

There is no legislation in place. The division of property for unmarried couples is governed by trust and equitable principles.

G. FAMILY DISPUTE RESOLUTION

19. MEDIATION, COLLABORATIVE LAW AND ARBITRATION

19.1 Briefly summarise the non-court-based processes available in your jurisdiction and the current status of agreements reached under the auspices of mediation, collaborative law and arbitration

The most popular non-court based alternative dispute process is family mediation. The latter is a voluntary process and the parties concerned enter into a mediation agreement with the mediator concerned in order to try to resolve the matters in dispute. Family mediation is encouraged in appropriate situations.

Arbitration can also take place subject to the agreement of the parties to arbitrate and the fact that an arbitration award cannot seek to oust the jurisdiction of the court.

Collaborative law is not seen in family practice in Gibraltar at present and the author is not aware of any locally trained collaborative lawyers.

19.2 What is the statutory basis (if any), for mediation, collaborative law and arbitration in your jurisdiction? In particular, are the parties required to attempt a family dispute resolution in advance of proceedings?

Arbitration is governed locally by the Arbitration Act. Mediation is encouraged, where appropriate, in the context of the furtherance of the overriding objective by active case management as enshrined in rule 4(6) (b) of the Family Proceedings (Matrimonial Causes) Rules 2010. There is no requirement for the parties to attempt a family dispute resolution prior to the institution of legal proceedings.

H. OTHER

20. CIVIL PARTNERSHIP/SAME-SEX MARRIAGE

20.1 What is the status of civil partnership/same-sex marriage within the jurisdiction?

There is currently no statutory recognition of such status in Gibraltar although it should be noted that the Gibraltar Constitution Order 2006 affords protection against discrimination (whether direct or indirect) as well

as recognising the right to family life. Indeed the latter is amply illustrated by the recent case of *R v HM Attorney General for Gibraltar* (2013) where the Supreme Court held that the provisions of the Adoption Act which excluded same-sex couples from jointly applying for adoption violated section 7 (the right to family life) and section 14 (discrimination) of the Gibraltar Constitution.

20.2 What legislation governs civil partnership/same-sex marriage?

There is currently no equivalent provision to the English Civil Partnership Act 2004 in force in Gibraltar, although it is understood that the current Government has stated that it intends to promote and implement legislation governing civil partnership. At the date of writing, no bill has been published. It is understood that the proposals do not intend to include same-sex marriage.

21. CONTROVERSIAL AREAS/RAPIDLY DEVELOPING AREAS OF LAW

21.1 Is there a particular area of the law within the jurisdiction that is currently undergoing major change?

There has been a substantial and extensive review of the Matrimonial Causes Act which has led to various amendments to the MCA. In addition, the Minors Act was repealed and replaced by the Children Act. Civil Partnership legislation is pending.

21.2 Which areas of law are most out of step? Which areas would you most like to see reformed/changed?

Prior to the first edition of this text, there had been a substantial overhaul of family law in Gibraltar. Since then family rules were introduced to complement the MCA and the Children Act. However, there are some discrepancies in those rules which need to be reviewed and updated. The author would also like to see an amendment to the MCA to enable applications for ancillary relief in respect of foreign divorce proceedings, as indeed is the case in England.

Contact details

GENERAL EDITOR

James Stewart
Manches LLP
Aldwych House
81 Aldwych
London WC2B 4RP
United Kingdom
T: +44 (0)20 7753 7409
F: +44 (0)20 7430 1133
E: james.stewart@manches.com
W: www.manches.com

F: +43 (0)1 533 42 65 – 4
E: kriegler@divorce.at
W: www.divorce.at

BELGIUM

Jehanne Sosson, Silvia Pfeiff &
Sohelia Goossens
Wouters Sosson & Associés
Avenue Louise, 87 bte 17
Brussels 1050
Belgium
T: +32 2 537 94 31
F: +32 2 538 81 55
E: wouters.sosson@skynet.be
W: www.wouters-sosson.com

ARGENTINA

Diego Horton
Perez Maraviglia & Horton Abogados
Azcuénaga 950 (1638)
Vicente Lopez
Buenos Aires
Argentina
T: +54 11 4797 7015
F: +54 11 4797 7015
E: dhorton@pmhabogados.com
W: www.pmhabogados.com

BERMUDA

Rachael Barritt, Adam Richards &
Georgia Marshall
Marshall Diel & Myers Limited
31 Reid Street
Hamilton
HM 12
Bermuda
T: +1 441 295 7105
F: +1 441 292 6814
E: rachael.barritt@law.bm
adam.richards@law.bm
georgia.marshall@law.bm
W: www.law.bm

AUSTRALIA

Max James Meyer
Meyer Partners Family Lawyers
Level 14, 59 Goulburn St
Sydney
NSW 2000
Australia
T: +61 02 8202 9202
F: +61 02 8202 9292
E: mp@meyerpartners.com.au
W: www.meyerpartners.com.au

CANADA

Esther Lenkinski & Lisa Eisen
Lenkinski Family Law & Mediation
Professional Corporation
94 Scollard Street
Toronto
Ontario M5R 1G2
Canada
T: +1 416 924 1970 ext. 23
F: +1 416 924 2356
E: elenkinski@lenkinskilaw.com

AUSTRIA

Dr Alfred Kriegler
Rechtsanwalt Dr. Alfred Kriegler
Hoher Markt 1
1010 Vienna
T: +43 (0)1 533 42 65

W: www.lenkinskilaw.com

CHILE

Daniela Horvitz Lennon
Horvitz & Horvitz
Huérfanos 770, Oficina 2303
Santiago 8320193
Chile

T: +56 2 638 5439

F: +56 2 638 0485

E: dhorvitz@horvitz.cl

W: www.horvitz.cl

DENMARK

Maryla Rytter Wróblewski
Nyborg & Rørdam
Store Kongensgade 77, 2. sal
DK 1264 København K.
Denmark

T: +45 33 12 45 40

F: +45 33 93 45 40

E: mw@nrlaw.dk

W: www.nrlaw.dk

DOMINICAN REPUBLIC

Dr Juan Manuel Suero &
Elisabetta Pedersini
Aaron Suero & Pedersini
Avenida Francia No 123
Edificio Khoury – Suite 101
Santo Domingo 10205
Dominican Republic

T: +1 (809) 532 7223

+1 (866) 815 0107

F: +1 (809) 532 6376

+1 (888) 297 8227

E: jsuero@dlawyers.com

epedersini@dlawyers.com

W: www.dlawyers.com

ENGLAND & WALES

James Stewart & Louise Spitz
Manches LLP
Aldwych House
81 Aldwych
London WC2B 4RP
United Kingdom

T: +44 (0)20 7404 4433

F: +44 (0)20 7430 1133

E: james.stewart@manches.com;

louise.spitz@manches.com

W: www.manches.com

FINLAND

Hilkka Salmenkylä
Asianajotoimisto Juhani Salmenkylä
Ky, Attorneys at law
Pakilantie 40
Helsinki 00630
Finland

T: +358 9724 0166

F: +358 924 8120

E: hilkka.salmenkyla@salmenkyla.fi

W: www.salmenkyla.fi

FRANCE

Véronique Chauveau,
Charlotte Butruille-Cardew &
Alexandre Boiché
Cabinet CBBC
8, Boulevard de Sébastopol
Paris 75004
France

T: +33 1 55 42 55 25

F: +33 1 55 42 55 29

E: v.chauveau@cbbc-avocats.com
c.butruille-cardew@cbbc-avocats.com

a.boiche@cbbc-avocats.com

W: www.cbbc-avocats.com

GERMANY

Dr. Daniela Kreidler-Pleus
Anwaltskanzlei Dr. Kreidler-Pleus &
Kollegen
Bahnhofstraße 29
Ludwigsburg
D-71638

Germany

T: +49 7141 920005

F: +49 7141 902900

E: kanzlei@kreibler-pleus.de

W: www.kreibler-pleus.de

GIBRALTAR

Charles Simpson
Triay & Triay
28 Irish Town
Gibraltar
T: +350 200 72020
F: +350 200 72020
E: charles.simpson@triay.com
W: www.triay.com

GUERNSEY

Advocate Felicity J Haskins
F Haskins & Co
College Chambers
3-4 St James Street
St Peter Port
GY1 2NZ
Guernsey
Channel Islands
T: +44 (0)1481 721316
F: +44 (0)1481 721317
E: haskins@haskins-co.com
W: www.haskins-co.com

HONG KONG

Catherine Por
Stevenson, Wong & Co.
4/F & 5/F
Central Tower
28 Queen's Road
Central, Hong Kong
T: +852 2533 2555
F: +852 2157 5531
E: catherinepor.office@sw-hk.com
W: www.sw-hk.com

INDIA

Dr. Pinky Anand
Senior Advocate
A-126 Niti Bagh
New Delhi 110 049
India
T: +91 11 41640960
F: +91 11 4174 0656
E: pinkyanand@gmail.com

ISRAEL

Edwin Freedman
Law Offices of Edwin Freedman
154 Menachem Begin Road
Tel Aviv 64921
Israel
T: +972 3 6966611
F: +972 3 6092266
E: edwin@edfreedman.com
W: www.edfreedman.com

ITALY

Avv. Andrea Russo &
Avv. Benedetta Rossi
Pirola Pennuto Zei & Associati
122, Viale Castro Pretorio
Rome 00185
Italy
T: +36 06 570 282658
F: +39 06 570 282733
E: benedetta.rossi@studiopirola.com
andrea.russo@studiopirola.com
W: www.pirolapennutozei.it

JAPAN

Mikiko Otani
Tokyo Public Office, Mita Branch
Honshiba Bldg. 2F, 4-3-11 Shiba,
Minato-ku
Tokyo 108-0014
Japan
T: +81 3 6809 6200
F: +81 3 5765 5750
E: motani2@nifty.com
W: www.t-pblo.jp/fiss

JERSEY

Advocate Barbara Corbett
Hanson Renouf
12 Hill Street
St Helier, JE2 4UA
Jersey
Channel Islands
T: +44 (0)1534 767764
F: +44 (0)1534 767725
E: barbara.corbett@hansonrenouf.com
W: www.hansonrenouf.com

MALAYSIA

Foo Yet Ngo & Kiran Dhaliwal
Messrs Y N Foo & Partners
H-2-12, Block H, Plaza Damas
Jalan Sri Hartamas 1
50480 Kuala Lumpur
Malaysia
T: +603 6203 2848
F: +603 6203 2847
E: ynfoo@ynfoolaw.com

MEXICO

Alfonso Sepúlveda García
& Habib Diaz Noriega
Müggenburg, Gorchés, Peñalosa
& Sepúlveda SC
Paseo de los Tamarindos 90, Torre I,
8th Floor
Bosques de las Lomas
05120 Distrito Federal,
México
T: +52 55 5246 3400
F: +52 55 5246 3450
E: alfonso.sepulveda@mgps.com.mx
habib.diaz@mgps.com.mx
W: www.mgps.com.mx

MONACO

Christine Pasquier-Ciulla
& Alison Isabella Torti
PCM Avocats
Athos Palace
2 rue de la Lujerneta
98000 Monaco
Principality of Monaco
T: +377 97 98 42 24
F: +377 97 98 42 25
E: cpasquierciulla@pcm-avocats.com
atorti@pcm-avocats.com
W: www.pcm-avocats.com

THE NETHERLANDS

Carla Smeets & Caroliene Mellema
Smeets Gijbels BV
Postbus 78067,
1071 KP Amsterdam
The Netherlands

T: +31 (0) 20 574 77 22
F: +31 (0) 20 574 77 33
E: carla.smeets@smeetsgijbels.com
caroliene.mellema@smeetsgijbels.com
W: www.smeetsgijbels.com

NEW ZEALAND

Anita Chan
Barrister
Princes Chambers
3rd Floor, 155 Princes Street
Dunedin 9016
New Zealand
T: +64 3 477 8781
F: +64 3 477 8382
E: anita@princeschambers.net
W: www.familylaw.net.nz

POLAND

Dr Joanna Kosinska-Wiercinska & Dr
Hab. Jacek Wiercinski
Wiercinski Kancelaria Adwokacka
T. Boya-Zelenskiego 4a/7, 00-621
Warsaw
Poland
T: +48 607 453 732
+48 601 547 119
F: +48 022 845 50 05
E: jkw@wiercinski.pl
j.wiercinski@wiercinski.pl

REPUBLIC OF IRELAND

Jennifer O'Brien
Mason Hayes & Curran
6th Floor, South Bank House
Barrow Street
Dublin 4
Republic of Ireland
T: +353 1 614 5000
F: +353 1 614 5001
E: jobrien@mhc.ie
W: www.mhc.ie

RUSSIA

Dr Catherine Kalaschnikova
Divorce in Russia
Moscow Bar of Arbitration Lawyers

Pechatnikov Pereulok 22
Moscow 103045
Russia
T: +7 926 710 1100
F: +7 495 6287839
E: info@divorceinrussia.com
W: www.divorceinrussia.com

SCOTLAND

Alasdair Loudon
Turcan Connell
Princes Exchange
1 Earl Grey Street
Edinburgh
EH3 9EE
Scotland
T: +44 (0)131 228 8111
F: +44 (0)131 228 8118
E: alasdair.loudon@turcanconnell.com
W: www.turcanconnell.com

SINGAPORE

Randolph Khoo & Hoon Shu Mei
Drew & Napier LLC
10 Collyer Quay
#10-01 Ocean Financial Centre
049315
Republic of Singapore
T: +65 6531 2418
+65 6531 2223
F: +65 6532 7149
E: randolph.khoo@drewnapier.com
shumei.hoon@drewnapier.com
W: www.drewnapier.com

SOUTH AFRICA

Amanda Catto
Catto Neethling Wiid Inc
6th Floor, Waalburg Building
28 Wale Street
Cape Town 8001
South Africa
T: +27 21 487 9300
F: +27 21 487 9301
E: amanda@cattonw.co.za
W: www.cattonw.co.za

SPAIN

Alberto Perez Cedillo
& Paula Piquer Ruz
Alberto Perez Cedillo Spanish
Lawyers & Solicitors
London office
1 New Square, Lincoln's Inn,
London WC2A 3SA
United Kingdom
T: +44 (0) 20 3077 0000
F: +44 (0) 20 7404 7821
E: cedillo@apcedillo.com
W: www.apcedillo.com

Madrid office
Paseo de la Castellana n.166
Esc 1-1o izq.
28046 Madrid
Spain
T: (+34) 91 230 6393
E: cedillo@apcedillo.com
W: www.apcedillo.com

SWEDEN

Mia Reich Sjögren
Advokaterna Sverker och Mia Reich
Sjögren AB
Ängelholmsvägen 1
Box 1010
SE-269 21 Båstad
Sweden
T: +46 (0)43 176120
F: +46 (0)43 175105
E: mia@reichsjogren.com

Johan Sarvik
Advokaterna Nyblom & Sarvik AB
Stortorget 17,
S-211 22 Malmö,
Sweden
T: +46 (0)40 772 50
F: +46 (0)40 611 09 25
E: johan@nyblom-sarvik.se
W: www.nyblom-sarvik.se

Fredric Renström
Lindskog Malmström Advokatbyrå

Box 27707
Stockholm 115 91
Sweden
T: +468 5992 9000
F: +468 5992 9001
E: fredric.renstrom@lmlaw.se
W: www.lmlaw.se

SWITZERLAND

Dr. Daniel R. Trachsel
Langner Stieger Trachsel & Partner
Heuelstrasse 21
Postfach
8032 Zürich
Switzerland
T: +41 43 222 62 62
F: +41 43 222 62 72
E: D.Trachsel@lstp.ch
W: www.lstp.ch

UKRAINE

Aminat Suleymanova, Irina Moroz
& Ivan Kasynyuk
AGA Partners
11A Nauki prospect
Kiev 03028
Ukraine
T: +38 044 206 06 75/76
F: +38 044 206 06 75/76
E: office@agalawyers.org
W: www.agalawyers.org

UNITED ARAB EMIRATES

Alexandra Tribe
Expatriate Law within Al Rowaad
Advocates
P.O. Box 40073
6th Floor, H Tower
1 Sheikh Zayed Road
Dubai
United Arab Emirates
T: +971 4358 9444
F: +971 4358 9494
E: Alexandra@expatriatelaw.com
W: www.expatriatelaw.com

USA – CALIFORNIA

Suzanne Harris, Larry A. Ginsberg,
Andrea Fugate Balian, Fahi Takesh
Hallin, David L. Marcus, Evan C.
Itzkowitz, Johnna K. Boylan, Dena
J. Kravitz, Jessica M. Spiker, Michelle
H. Chen & Jennifer R. Morra
Harris Ginsberg LLP
6420 Wilshire Blvd. 16th Floor
Los Angeles, CA 90048
T: +1 310 444 6333
F: +1 310 444 6330
E: sharris@harris-ginsberg.com
W: www.harris-ginsberg.com

USA – CONNECTICUT

Edward Nusbaum
& Thomas P. Parrino
Nusbaum & Parrino, P. C.
212 Post Road West
Westport, CT 06880
USA
T: +1 203 226 8181
F: +1 203 226 6691
E: enusbaum@nusbaumparrino.com
W: www.nusbaumparrino.com

USA – MARYLAND & WASHINGTON D.C.

Cheryl Lynn Hepfer
Offit Kurman
4800 Montgomery Lane, 9th Floor
Bethesda MD 20814
USA
T: +1 240 507 1752
F: +1 240 507 1735
E: CHepfer@offitkurman.com
W: www.offitkurman.com

USA – MINNESOTA

Nancy Zalusky Berg, Lilo D. Kaiser,
Tara L. Smith Ruesga
& Laura Sahr Schmit
Walling, Berg & Debele, P.A.
121 South 8th Street
Suite 1100
Minneapolis

Minnesota 55402
USA
T: +1 612 340 1150
F: +1 612 340 1154
E: nancy.berg@wbdlaw.com
W: www.wbdlaw.com

USA – NEW YORK

John M. Teitler, Nicholas W.
Lobenthal & Paul D. Getzels
Teitler & Teitler, LLP
230 Park Avenue
New York, NY 10169
USA
T: +1 212 997 4400
F: +1 212 997 4949
E: jmtteitler@teitler.com
nwlobenthal@teitler.com
pdgetzels@teitler.com
W: www.teitler.com

USA – TEXAS

Donn C. Fullenweider
Fullenweider Wilhite
4265 San Felipe, Suite 1400
Houston, TX 77027
USA
T: +1 713 624 4100
F: +1 713 624 4141
E: dcf@fullenweider.com
W: www.fullenweider.com

USA – VIRGINIA

Katharine W. Maddox
& Julie Curran Gerock
The Maddox Law Firm, P.C.
8221 Old Courthouse Road
Suite 101
Vienna
Virginia 22182
USA
T: +1 703 883 8035
F: +1 703 356 6120
E: kmaddox@maddoxlawoffice.com
jgerock@maddoxlawoffice.com
W: www.maddoxlawoffice.com

USA – WASHINGTON STATE

Marguerite C. Smith
Flexx Law, PS
1215 Fourth Ave
Suite 940
Seattle,
WA 98161
USA
T: +1 206 343 6362
E: Maggie@flexxlaw.com
W: www.flexxlaw.com
www.informeddivorce.com

Family Law

The outstanding success of the first edition of *Family Law* is indicative of the fact that family lawyers throughout the world must have a thorough understanding of international family law. This second edition updates the original chapters and adds to their number, providing essential current content reflecting family law throughout the world. The reader-friendly Q&A format allows readers to make easy comparisons between the litigation terrain in each country.

A remarkable breadth of jurisdictions is covered, 46 in all, while the contributors are all leading lawyers in their countries, including many Fellows of the International Academy of Matrimonial Lawyers, and are ideally placed to provide practical, straightforward commentary on the inner workings of their respective legal systems.

'This supremely practical book provides basic information on international law operating in no less than 30 jurisdictions... in this busy world the provision of basic legal information in an easily digestible form is what we all seek'

Lord Justice Thorpe, Head of International Family Justice for England and Wales, on the first edition of *Family Law*

