

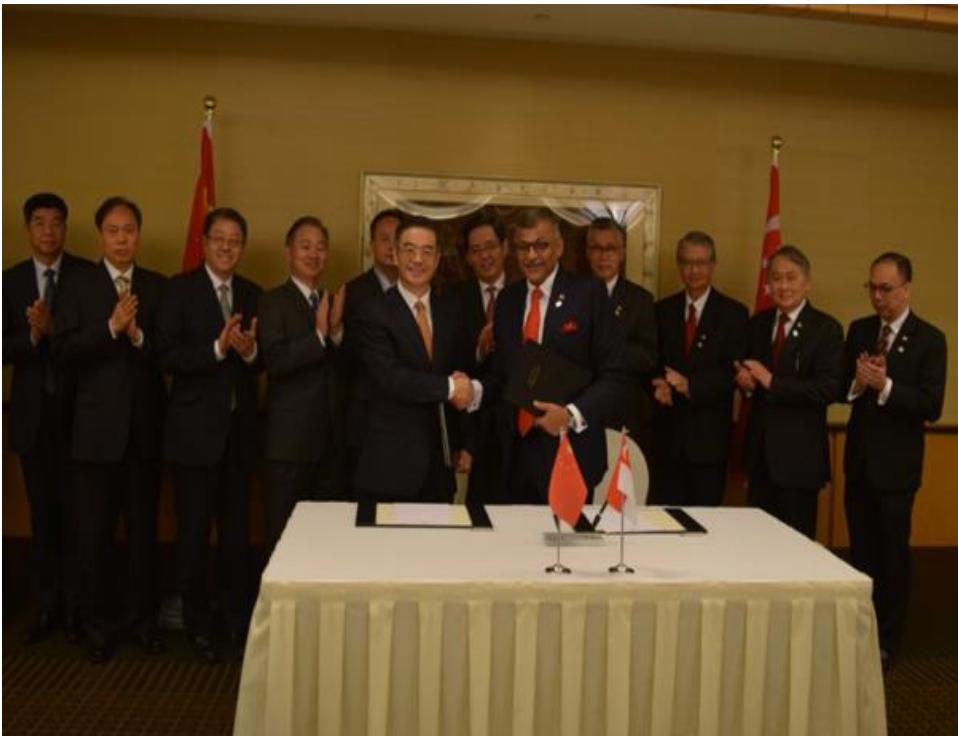
Cross-Border Families and Related Litigations

Presented by

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**Memo between the
Supreme People's Court and
the Supreme Court of
Singapore on Recognition
and Enforcement of Money
Judgments in Commercial
Cases**

CL v. ZRC, FCMC11118 / 2014

- Thus the wife's expert opinion is consistent with the husband's expert that there is no law or judicial interpretation which prohibits the Mainland Court to make judgment on overseas assets.
- Further, the wife's expert only stated that it is fairly difficult for a Mainland court to dispose the assets not located in China, the expert did not go further to state that the PRC court would not take into account of the overseas assets in considering the merit of the matter.
- Indeed Mr Clough (wife) did not dispute the Mainland Court do have jurisdiction to divide overseas assets but submitted that in practice the Mainland Court would not do so. Mr Chan (husband) objected to this as this again was not supported by any evidence.

Jurisdiction

Australia	China
<ul style="list-style-type: none">• If “matrimonial cause” within the meaning of s 4(1) of the Family Law Act 1975, then s 39(4) of that Act• Family Law Act s 31(2): Jurisdiction over persons outside AUS• The Moçambique rule	<p>Jurisdiction in personam</p> <ul style="list-style-type: none">• Habitual residence• Overseas Chinese (Hua Qiao)• Foreigner
FNC	<p>Not accepting the case</p> <p>Proving of foreign property</p>
Family Law Act s 79: alteration of the property rights of the spouses, unaffected by whatever their pre-existing property rights may be	

Zhou v Wang, Pudong New District Court Shanghai 2015

- Married in 2005
- Zhou and his mother wired around 500,000 RMB to Wang in AUS to purchase real estate in AUS
- Zhou applies to divorce and to divide the money.
- Court: both parties agree that the money has been used to purchase real estate in AUS. Because the real estate is outside of China and **its detailed information cannot be proved**.
Therefore, the court cannot divide the property.

Choice of Law

Australia	China
<p>Married Women's Property legislation: Marriage of itself has no effect on the property of the spouses</p>	<p>Chinese Marriage Law: Marriage of itself has effect on the property of the spouses obtained after marriage-joint marital property</p>
<p>Movables: <i>prima facie</i> determined by the law of the matrimonial domicile at the time of marriage</p> <p>Immovables:</p> <ul style="list-style-type: none">• If the parties have entered into an express marriage contract, the law governing that contract so long as the <i>lex situs</i> permits it;<ul style="list-style-type: none">○ <i>Re De Nicols</i> [1900] 2 Ch 410○ <i>Murakami v Wiryadi</i> [2011] NSWCA 7• Where no contract, the <i>lex situs</i> or <i>lex fori</i> applies.	<p>Chinese Choice Law for Foreign-Related Cases</p> <p><i>Article 24</i> the property relation between husband and wife,</p> <ul style="list-style-type: none">• Party autonomy: habitual residence, nationality, or main properties• No agreement:<ul style="list-style-type: none">○ the laws at the mutual habitual residence;○ if no, the laws of the mutual state of nationality <p><i>Article 27</i> a divorce by litigation: <i>lex fori</i></p> <p><i>Article 36</i> immovables: <i>lex situs</i></p>

Fu v Toni, Pudong New District Court Shanghai 2015

- Husband (Italy) and Wife (China) agree that Husband will sell the real estate in Italy and compensate the Wife 2.5 M RMB.
- The judge issued a judgment accordingly.
 - The real estate is located outside of China and cannot be determined in this case. But the Husband agreed to compensate the Wife 2.5 M. This is not against Chinese law and should be supported by the court.
- Similar case: **Tan v Chen, NanXian People's Court 2015**
 - Parties agree that the real estate located in the US and a car registered in the US belong to Chen

Liu v Wu, Intermediate People's Court Foshan City Guangdong Province 2013

- De facto marriage in Macao in Feb 2007 and registered in Mainland in May 2007
- Bought a real estate in Macao in Feb and registered in March 2007: the buyer Wu is married, the wife is Liu, the marriage is based on joint marital property
 - 1st instance: *lex situ*
 - 2nd instance: the law of mutual habitual residence-Mainland law
- Money transferred from Bank of China to International Bank Macao in March 2007
 - 1st and 2nd instance: the law of mutual habitual residence-Mainland law

Wang v Tong, No. 1 Intermediate People's Court Beijing 2015

- The parties have been separated for 20 years and each own a real estate in China and the US, respectively.
 - 1st and 2nd stance: *lex fori* (Chinese law should be applied because this is a case involving divorce in China)
 - The court considers the status quo of each party's life and divide the marital property according the convenience of life. Confirmed by the appellate court.
 - The plaintiff failed her onus of proof.

Judgments

Australia	China
<p>Money Judgment</p> <ul style="list-style-type: none">• Common law<ul style="list-style-type: none">○ Eg. <i>In the Marriage of Miller and Caddy</i>, (1986) 10 Fam LR 858○ <i>Kemeny v Kemeny</i>, (1998) 23 Fam LR 105• FJA<ul style="list-style-type: none">○ <i>Sywak v Sywak</i> [2009] NSWSC	<p>Bilateral Treaties</p> <ul style="list-style-type: none">• Civil judgments <p>Reciprocity</p>

Liu v Ma [2017] VSC 810

- That statement of principle was applied by Sully J in *Federal Finance and Mortgage Ltd v Winternitz*[6] and by Bryson AJ in *Independent Trustee Services Ltd v Morris*. The authors of *Nygh's Conflict of Laws in Australia* say that '[t]he judgment of Sully J implies that the connection must be an active one as evidenced by the holding of a passport, an application for a pension and voter registration'.
 - In this case, they were natural citizens born in the jurisdiction. They were married to one another in China. Each held a Chinese passport. They had substantial activities or financial affairs in China. The first defendant was an executive director of the third defendant. And there is evidence that Chinese law does not recognize dual nationality.
 - In my view, there is a legal and factual basis sufficient to establish 'international jurisdiction'. Accordingly, the JRE application ought be granted.

China-Singapore de facto reciprocity

Case	Judgment Rendering Court	Cause of Action at the Judgment Rendering Court	JRE Court	Applicable Law in the JRE Proceedings
<i>Giant Light Metal Technology (Kunshan) v. Aksa Far East</i>	Intermediate People's Court, Suzhou City, <u>Jiangsu Province</u> , China, issued in 2010	Contract	High Court of Singapore, Case No. [2014] SGHC 16, issued in 2014	Common Law (no requirement of reciprocity)
<i>Kolma v. SUTEX Group</i>	Higher Court of Singapore, Case No. 013 Civil Judgment, issued in 2015	Contract	Intermediate People's Court, Nanjing City, <u>Jiangsu Province</u> China, Case No. (2016) Su-01 Xie Wai Ren 3 Civil Judgment, issued in 2016	Article 282 of the Chinese CPL

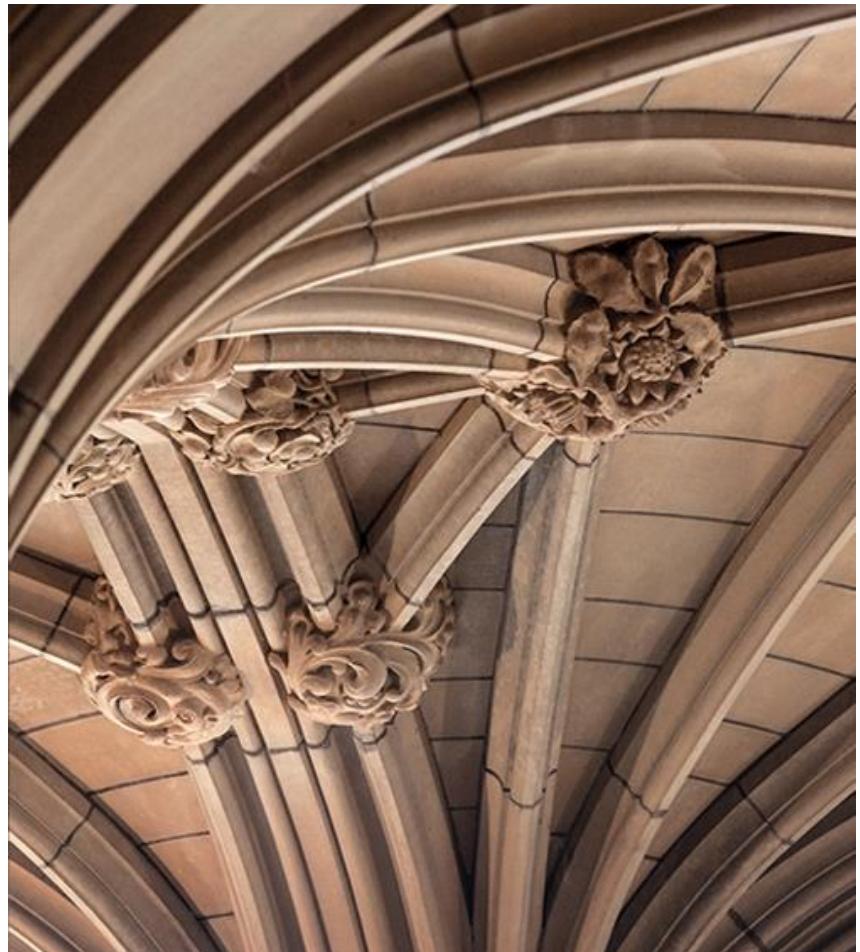
Xiaoxia Lv v Yuejun Xu, the Intermediate People's Court in the Hanzhou City Zhejiang Province 2017

- Lv applied to to recognise and enforce a Singaporean judgment issued in 2013: granted divorce and determined the custody of children, division of property and allocation of litigation fees.
- According to Provisions on Procedural Issues Concerning Recognition of Foreign Divorce Judgments and Articles 281 and 282 of the Chinese CPL, the Court only recognised the part of the Singaporean judgment that granted divorce and not the part that determined the custody of children, division of property and allocation of litigation fees.

Thoughts for the potential judicial assistance cooperation in division of marital property



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Thank you and questions

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