

Opportunities of arbitration in international family law

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INFINITY FAMILY LAW

Speaker

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'David Hodson KC is well regarded for his work in the family law field.'

"He is a go-to for international matters".

"He is so knowledgeable and experienced. He has a fantastic track record. He is a leading family lawyer".'

Chambers HNW UK

'David Hodson continues in the top league of London family lawyers'

'What he doesn't know about international family work isn't worth knowing'

The Legal 500 UK



Forum disputes in international family law

- 🌍 An international family will invariably have connections with two or more countries.
- 🌍 At a time of relationship difficulties, a choice usually exists as to which jurisdiction for the proceedings.
- 🌍 With significant differences in outcomes (finance and sometimes children) around the world, this choice can make a lot of difference.
- 🌍 Forum disputes are invariably very long, expensive on costs, backward-looking as to the history of the marriage and wider family, can produce contradictory outcomes between countries and fundamentally only resolve the country for the proceedings
- 🌍 We can and must do better

Forum disputes in international family law

- An obvious answer is resolution by agreement e.g. with assistance of mediators, lawyers etc
- Too often proceedings are issued quickly to protect positions including lis pendens. This acts against out of court resolutions
- Where separate sets of lawyers in different countries are involved, each charging their costs, the incentive to resolve can get lost. Risk that they each run their own sets of proceedings
- Needs a lead lawyer to run the case globally and that lawyer to be committed to out of court resolution
- Agreement can be about forum but can be of all issues. Bridges the differences of the different national laws which may apply
- See <https://internationalfamilymediation.com/> for a framework for international family mediation

Forum disputes in international family law

- 🌍 Out of court has been attempted in a case but no success.
- 🌍 Parties need a decision
- 🌍 Better to arbitrate than litigate. In family cases:
 - 🌍 Chose the arbitrator – specialist and knowledgeable
 - 🌍 Chose the process and what documents submitted and when
 - 🌍 Convenience of timing and location

Forum disputes in international family law

- 🌍 In-court forum disputes are decided by a judge from one of the countries involved
- 🌍 By its nature cannot be wholly independent
- 🌍 England v Australia Ashes with an umpire from either country?!!
- 🌍 Spain v Argentina in World Cup with a referee from either country?!!
- 🌍 Family forum disputes need a neutral arbitrator, from neither country
- 🌍 This needs a structure and arrangements in advance

The International Family Law Arbitration Scheme

- 🌐 <https://internationalfamilyarbitration.com/>
- 🌐 Designed by Prof Patrick Parkinson and Prof David Hodson
- 🌐 Launched 2017
- 🌐 List of arbitrators, part time or recent retired judges or senior lawyers, to conduct forum disputes
- 🌐 Criteria of closest connection
- 🌐 List of about 100 questions for each party of themselves and the other to highlight the connecting features to make easier for the arbitrator
- 🌐 Each party committed to abide by the outcome, with no other competing proceedings

The International Family Law Arbitration Scheme

- 🌍 Benefits
- 🌍 Often far more experienced arbitrator than whoever is the judge
- 🌍 Timings to suit e.g. not at nighttime for one party!
- 🌍 Closest connection via existing questionnaire
- 🌍 Disclosure, if any more needed, using tailor made process
- 🌍 Scheme itself free to use; creators have given to global family law community. Arbitrators charge usual rates
- 🌍 Crucially, experience should lead to settling all other issues such as children and finance via non court process. That is the big win
- 🌍 <https://internationalfamilyarbitration.com/>

The International Family Law Arbitration Scheme

- 🌍 So why not more used?
- 🌍 One party has adverse decision and goes off to their preferred country. How much will justice systems give weight to the original agreement and to a properly constituted arbitration decision? What can we do increase the likelihood globally?
- 🌍 Lawyers anxious about their choice of arbitrators if goes “wrong”? Experience in national cases. So let a third party decide.
- 🌍 Lawyers make more money through in court process in their country?
- 🌍 Lawyers unwilling to let lead lawyer run the arbitration?
- 🌍 Arbitration not yet in awareness of international families?
- 🌍 Awareness of lawyers of this scheme?
- 🌍 What else?

The International Family Law Arbitration Scheme

- 🌐 Welcome feed back and how the scheme can be improved and made more likely to be used

The International Family Law Arbitration Scheme

- 🌍 In any event, how can we encourage more countries to embrace family law in New York Arbitration Convention
- 🌍 Most entered a reservation when there was no arbitration happening in family law worldwide

Concluding remarks

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