

**THE HIGH COURT  
FAMILY LAW**

[2005 / 102M]

**IN THE MATTER OF THE JUDICIAL SEPARATION AND FAMILY LAW REFORM ACT 1989  
AND  
IN THE MATTER OF THE FAMILY LAW ACT 1995  
AND  
IN THE MATTER OF THE GUARDIANSHIP OF INFANTS ACT 1964**

BETWEEN

P.W.Y

APPLICANT

AND  
P.C

RESPONDENT

**Judgment of Mr. Justice Garrett Sheehan delivered on the 23rd day of November 2007**

1. The respondent in the motion now before this Court is seeking an order setting aside the order of the High Court made herein on the 16th day of December, 2005, granting the applicant leave to seek relief pursuant to Part III of the Family Law Act, 1995.

2. The respondent's application is grounded *inter alia* on the notice of motion issued on the 12th day of April, 2006, the respondent's grounding affidavit, and the affidavit of laws of the respondent's Hong Kong solicitor David Hardy Glynn, a matrimonial law specialist in that country. For ease of reference I will refer in this judgment to the applicant as the wife and the respondent as the husband notwithstanding the fact that the parties are divorced.

3. The husband and the wife met in Hong Kong in 1988 while both were working there. The wife who is now forty four years of age and comes from Hong Kong and the husband who is now forty nine years of age and was born in England were married to each other in a marriage registry office in Hong Kong on the 10th day of September, 1991. There are two children of the said marriage N.J. who is now fifteen and E.C. who is thirteen.

4. The husband instituted divorce proceedings in Hong Kong in January, 2002 and a decree absolute was granted on the 23rd July, 2002.

5. The wife who is a university graduate ceased working when she became engaged to the husband and apart from an eighteen month period in or about 1996 when she set up a business from her home, she did not work during the course of the marriage. The husband and the wife spent the entire of their married life in Hong Kong. The husband subsequently became director and head of corporate finance for the company at which he had worked and retired in May, 2000.

6. Following the divorce the husband and the wife travelled to Ireland with their children. The court in Hong Kong had granted custody of the children to the husband with generous access to the wife. According to the wife the husband wished to preserve the appearance of a normal family unit for the children and she deposes in her affidavit that he has at all times forbidden and prevented her from advising the children of the breakdown of their marriage.

7. When they arrived in Ireland the husband and the wife resided together with their children in the South of Ireland for a number of months until the wife moved to Dublin and commenced a full time masters course at a third level institution spending weekends and some holidays with the children. The husband signed the lease for the apartment the wife first lived in and paid the rent for eighteen months.

8. The wife successfully completed her masters course in 2004 and in November, 2005 obtained a temporary contract of employment with an Irish bank. On the 16th day of December, 2005, she applied *ex parte* to this Court for the following reliefs:

1. An order granting the applicant herein leave to make application to this Honourable Court pursuant to Part. III of the Family Law Act 1995 for ancillary relief following the divorce of the applicant and the respondent herein by decree absolute granted by the District Court of Hong Kong made on the 23rd day of July, 2002.

2. Such further and other orders as to this Court shall seem just

9. The said application was grounded *inter alia* on the affidavit of the wife and the draft special summons which was subsequently issued on the 21st day of December, 2005, following the successful *ex parte* application on the 16th day of December, 2005.

10. The wife's claim in the special summons is in two parts marked A and B.

11. In part A the claim is for an order pursuant to section 29 (1) (e) of the Family Law Act, 1995 that the decree of divorce granted by the Hong Kong District Court on the 23rd day of July, 2002, dissolving the marriage as between the applicant and the respondent is not entitled to recognition in this State having been obtained by the respondent as a result of duress and/or without the free and voluntary consent of the applicant and/or without the applicant having received the benefit of independent legal advice and/or because the aforesaid divorce should be refused recognition as a result of a denial of substantial and/or natural justice and to recognise the aforesaid divorce would be contrary to the public policy of the State.

12. At A2 the wife seeks an order for a decree of judicial separation and the remaining twenty three orders the wife seeks in part A can be summarised as relating to an application for joint custody of the two children of the marriage and various ancillary financial reliefs.

13. In the second part at B the wife claims:

B1 In the alternative an order pursuant to s.23 of the Family Law Act, 1995 following the divorce of the applicant and respondent herein granted by the Hong Kong District Court on the 23rd day of July, 2002, for relief pursuant to Part III of the Family Law Act 1995 and in particular as set out hereunder. The remaining eighteen orders the wife seeks under part B can be summarised as relating to an application for joint custody of the two children of the marriage and various ancillary financial reliefs.

14. In the course of her grounding affidavit the wife deposed that throughout the marriage the husband had sought to exert complete control over all significant aspects of her married and private life and that as a result her decision making powers and free will were effectively suppressed by him. In particular she deposed that she was expressly forbidden by her husband to attend with her obstetrician/gynaecologist during and after her pregnancies save with his express prior consent and in his presence. The wife further deposed that difficulties arose in the marriage in 1996 and exhibited an agreement she entered into with her husband in January, 1997 which she alleged was not entered into freely by her. In this agreement the wife *inter alia* guaranteed that she would never again attempt to seek medical advice or services without proper prior discussion of the matter with the husband and would never again at any time or in any place or for any purpose ignore the husband's views in relation to such matters under any circumstances whatsoever.

15. The wife further exhibited a deed of separation dated the 16th day of January, 2002 and deposed that the statement in the said deed to the effect that she had entered into the agreement of her own free will and that she was not subject to any duress or any undue influence was wholly incorrect.

16. At para.45 of her affidavit the wife claimed that she could not now successfully apply for and obtain orders for financial relief in Hong Kong. As a critical part of the outcome of the husband's application to have the ex parte order set aside depends on the importance and weight to be attached to this claim it is as well to set para.45 out in full. It reads:

"I say and believe and am advised by my solicitors who have consulted expert legal advice in Hong Kong that had this deponent participated in the Hong Kong divorce proceedings and sought ancillary relief in that context the Hong Kong courts would have possessed jurisdiction to make ancillary relief. In that context, the Hong Kong courts would have possessed jurisdiction to make ancillary relief orders similar to those that can be made by both this Honourable Court and by the English courts. I say and believe and am advised that in these circumstances the orders that could have been made by the Hong Kong courts include maintenance pending suit, periodical payments, secured periodical payments, lump sum payments, transfer of property, settlement of property, and variation of settlement orders. According to expert advice received, I cannot now successfully apply for and obtain such orders in Hong Kong".

17. On the 20th day of January, 2006, the husband was duly served with a copy of the special summons and the wife's grounding affidavit. He was also served with copies of the various exhibits as well as the wife's affidavit of means and affidavit of welfare.

18. On the 16th day of March, 2006, the husband's solicitor entered an appearance in the following terms:

Without prejudice to the right of the respondent to contest the jurisdiction of the court to hear and determine the within proceedings we request you will enter an appearance herein on behalf of the respondent to the special summons served on the 20th day of January, 2006.

19. This appearance was followed up with the motion now before this Court issued on the 12th day of April, 2006. At that time the motion sought an order striking out the application of the wife for relief pursuant to s.29 (1) (e) of the Family Law Act, 1995 that the decree of divorce was not entitled to recognition in this State and for a further order setting aside the order of this Court granting the wife leave to seek relief pursuant to Part III of the Family Law Act, 1995.

20. In his grounding affidavit the husband refers to and exhibits a copy of the transcript of the divorce hearing which took place in Hong Kong before His Honour Judge Bruno Chan. He disputes the wife's averment that the divorce was obtained as a result of any duress exercised by him and denies that the wife was unable to exercise any free will in determining the approach to be taken by her to the divorce proceedings. He further deposes that both he and the wife continue to be domiciled in Hong Kong and denies that the wife was in any way disadvantaged or deceived by him in Hong Kong.

21. In due course this motion was listed for mention of the 7th day of July, 2006, together with the directions list hearing of the special summons. On that date the court ordered the husband to file an affidavit of means within six weeks and the wife to file her replying affidavit two weeks later.

22. The husband appealed against this order to the Supreme Court and on the 16th day of March, 2007, that court ordered that the appeal be allowed insofar as this Court had ordered him to file an affidavit of means.

23. The wife subsequently swore her replying affidavit on the 4th day of April, 2007 and an affidavit of laws of Linda Catherine Heathfield a matrimonial law specialist based in Hong Kong was filed on her behalf.

24. The essential point to note from the affidavit of laws sworn on behalf of the wife by Linda Catherine Heathfield and from the affidavit of laws sworn by David Hardy Glynn on behalf of the husband is that they are both clear that the wife's claim for periodic maintenance remains open in Hong Kong. This is also clear from a reading of the court transcript exhibited by the husband in his affidavit.

25. The wife issued a further notice of motion seeking an order pursuant to O. 28 of the Rules of the Superior Courts to amend her claim; that the divorce granted in Hong Kong was not entitled to recognition in this State by including the ground that it had been obtained by fraud and or collusion.

26. On Friday the 12th day of October, 2007, the wife withdrew her claim pursuant to s.29 (1) (e) of the Family Law Act, 1995 as set out in part A of the special summons.

27. Section 23 of the Family Law Act, 1995 provides for the making of relief orders where the marriage has been dissolved outside the State or the spouses legally separate. S.23 (3) (a) reads as follows:

"An application shall not be made to the court by a person for a relief order unless, prior to the application, the court, on application to it ex parte in that behalf by that person, has by order granted leave for the making of the first-mentioned application and the court shall not grant such leave unless it considers that there is a substantial ground for so doing and a requirement specified in section 27 is satisfied."

28. Section. 26 of the Family Law Act, 1995 deals with the appropriateness of making relief orders in this State and sets out nine matters which the court in particular shall have regard to when deciding whether or not to make a relief order.

29. Section. 27 of the Family Law Act, 1995 sets out three requirements one of which must be satisfied if the court is to have

jurisdiction to make a relief order.

30. As a number of English cases will be referred to in this judgment it is relevant to note that similar provisions apply in England in the Matrimonial and Family Proceedings Act, 1984. Section. 13 of the Act of 1984, in England is similar to s. 23 of the Family Law Act, 1995 and s. 16 of the Act of 1984, in England is similar to s. 26 of the Family Law Act, 1995.

31. The first issue the Court has to decide is does it have the jurisdiction to set aside leave granted pursuant to s. 23 (3) of the Family Law Act, 1995. If the Court does have such jurisdiction then the next matter it has to decide is whether the misleading statement in the wife's grounding affidavit to the effect that she had no remedy in Hong Kong is of such relevance that the court should set aside leave. If the Court decides that it is not, then that is the end of the matter. If on the other hand the Court finds that it is right to discharge the order granting leave then it must go on to decide whether in the light of the facts now disclosed it is appropriate to grant leave.

32. In opening his submissions on the Court's jurisdiction to set aside leave Mr. Durcan expressed the view that prior to the judgment of the Supreme Court in the case of *Toma Adam v. The Minister for Justice, Equality and Law Reform and the Attorney General* [2001] 3 I.R. 53 there was some doubt as to whether this Court could set aside leave on a basis other than mala fides. In the course of his judgment Hardiman J. stated at p.77:

"In my view any order made *ex parte* must be regarded as an order of a provisional nature only. In certain types of proceedings, either the apparent requirements of justice or the requirements of its administration mean that a person will be affected one way or another by an order made without notice to him and therefore without his having been heard. This state of affairs may, depending on the facts constitute a grave injustice to the defendant or respondent. In the context of an injunction, only a very short time will normally elapse before the defendant has some opportunity of putting his side of the case. In judicial review proceedings the time before this can occur will normally be much longer."

33. Hardiman J. then went on to cite with approval the observations of McCracken J. in *Voluntary Purchasing v. Insurco Ltd* [1995] 2 I.L.R.M 145 at p. 147:

"Quite apart from the provisions of any rules or statute there is an inherent jurisdiction of the courts in the absence of an express statutory provision to the contrary to set aside an order made *ex parte* on the application of any party affected by that order"

34. These observations were adopted by Kelly J. in *Adams v. The Director of Public Prosecutions* [2001] 2 I.L.R.M. 401.

35. Mr Durcan on behalf of the respondent then went on to submit that the original decision to grant leave in this case was based on flawed material. He submitted that the applicant had failed to put before the Court three categories of material. He submitted that there was incorrect evidence in regard to periodic maintenance and that not being available as a remedy in Hong Kong, secondly that there was an inadequate and unsatisfactory account of what happened before Judge Chan and thirdly, there was no evidence put before the Court that in fact it was open to the wife to apply in Hong Kong to have the settlement and consent order set aside on the very basis that she was suggesting of duress and undue influence.

36. Mr Shatter for the applicant submitted that the *Toma Adam* case and the case of *Adams v. The Director of Public Prosecutions* were concerned with judicial review applications and that it was an entirely different matter when it came to setting aside an *ex parte* order under Part III of the Family Law Act, 1995 where an applicant had to satisfy a number of statutory requirements before being entitled to leave. He suggested that the Court should not with respect to Part.III of the Family Law Act, 1995 superimpose principles which were relevant to judicial review proceedings. He further submitted that if the Court took the view that it had such jurisdiction then it should be very slow to exercise that jurisdiction. He submitted that his client's error concerning the unavailability of a remedy for periodic maintenance in Hong Kong was a minor one and further submitted that the Court should have particular regard to the remarks of McGuinness J. in the *Toma Adam* case where she stated at p.72:

"However I would accept the submission of counsel on behalf of the applicant in *Toma Adam* with which counsel on behalf of the respondents agrees, that this jurisdiction should only be exercised very sparingly and in a very plain case. The danger outlined by Bingham L. J. in the passage quoted above would be equally applicable in this jurisdiction. One could envisage the growth of a new list of applications to discharge leave to be added to the already lengthy list of applications for leave. Each application would probably require considerable argument – perhaps with further affidavits and/or discovery. Where leave was discharged, an appeal would lie to this court. If that appeal succeeded, the matter would return to the High Court for full hearing followed in all probability by a further appeal to this court. Such a procedure would result in wasteful expenditure of court time and an unnecessary expenditure in legal costs; it could hardly be said to serve the interests of justice. The exercise of the court's inherent jurisdiction to discharge orders giving leave should, therefore be used only in exceptional cases"

37. On the question of the court's jurisdiction to set aside leave granted pursuant to s. 23 (3) of the Family Law Act,1995 on a ground other than *mala fides*, lest there be any doubt, I hold that it is appropriate to adopt the principles set out by Hardiman J. in *Toma v. Adams and the Minister for Justice* and the Court does have such jurisdiction.

38. Section 26 (f) of the Family Law Act, 1995 directs the court before granting a relief order to have regard to any right which the applicant has or has had to apply for financial relief from a spouse under the law of any country other than the State and if the applicant has omitted to exercise any such right, the reason for that omission. While I accept Mr Shatter's submission that there is no evidence that his client's error in this case was made mala fides I do not accept his categorisation of his clients misleading statement in this regard as a minor error. It is clear that Quirke J. in *M. R. v. P. R.* [2005] I. E.H.C. 228 regarded the availability of a remedy in the foreign jurisdiction as particularly relevant. In the course of his judgment he stated:

"I am satisfied that it will be 'appropriate' for the court to intervene in the manner contemplated by s. 26 of the Act of 1995 only in exceptional circumstances and when the court is satisfied by way of evidence that the outcome achieved in foreign proceedings has been unfair or unjust in the circumstances and that no remedy is available to the applicant within the foreign jurisdiction."

39. Even if the availability of a remedy in a foreign jurisdiction is not determinative the important point to be made here is that when the wife applied to McKechnie J. for leave in December, 2005 the judgment of Quirke J. was the only Irish authority which had considered these sections.

40. Accordingly I hold that in this case there has been a material non disclosure of a serious nature in the wife's affidavit on foot of which leave was obtained. To use the words of McGuinness J. in *Toma* this is a 'plain case'. Accordingly I hold that the order of this court made on the 15th day of December, 2005 granting the wife leave to apply be set aside.

41. I must now go on to consider if in the light of the wife's application as it now stands whether or not she should be granted leave.

42. Before deciding whether or not to grant leave I must look at ss. 23, 26 and 27 of the Family Law Act, 1995. The court has no jurisdiction to grant leave unless one of the requirements of s. 27 is met. As both parties have been living in Ireland for more than a year the requirement pursuant to s. 27 (1) (b) is met.

43. It is clear from the submissions of both parties that the correct approach I should take is to look at ss. 23 and 26 together. In so doing I should take a preliminary view of the matter set out in s. 26 to ensure insofar as is possible that in Mr Durcan's words "a party does not have to have a trial to decide there should be no trial". It appears that there are two ways of looking at the appropriate test. The first is to say that the test is in fact twofold. The applicant must establish a substantial ground and establish that a court in this State is the appropriate venue for hearing her claim. Another way of looking at the matter maybe to say that inherent in the notion of substantial ground is the appropriateness of an order being made by a court in this State.

44. I propose first of all to consider the nine matters which s. 26 of the Family Law Act, 1995 directs the court to have particular regard to.

(a) 'The connection which the spouses concerned have with the State.'

The relevant factor here is that the husband and wife have been living here since the divorce in Hong Kong and the children attend school here. There is no indication that the husband has resumed employment. He has however put down roots in the sense that he has built a substantial home in the South of Ireland. There is no evidence that the wife who had temporary employment when she swore her first affidavit is working any longer. She continues to live in rented accommodation.

(b) 'The connection which the spouses have with the country or jurisdiction other than the State in which the marriage concerned was dissolved or in which they were legally separated.'

The relevant factors here are that the wife is from Hong Kong and as she says in her affidavit, is part of a traditional Hong Kong family. Her statement of means suggests she makes two annual trips to Hong Kong, one on her own and one with the children. The husband and wife spent their entire married life in Hong Kong and the husband spent the most significant part of his working life in Hong Kong. Most of the wife's assets are denominated in Hong Kong dollars and according to her first affidavit her husband has a substantial bank account in Hong Kong. In her subsequent affidavit she said she did not know where any of her husband's assets were apart from his home in Ireland. The husband states in his affidavit that both he and his wife continue to be domiciled in Hong Kong.

(c) 'The connection which the spouses have with any country or jurisdiction other than the State.'

Save what has been set out in (a) and (b) the only matters that seems relevant here are that the husband was born in England and according to the wife's first affidavit may have assets in Switzerland and the United States of America.

In taking (a), (b) and (c) together and noting the husband and wife's connections to this State I nevertheless attach far greater importance to their connections to Hong Kong.

(d) 'Any financial benefit which the spouse applying for the making of the order ("the applicant") or a dependent member of the family has received, or is likely to receive, in consequence of the divorce or legal separation concerned or by virtue of any agreement or the operation of the law of a country or jurisdiction other than the State.'

Mr Shatter on behalf of the applicant submits that his client got no financial benefit arising from the divorce. Mr Durcan for the respondent is not prepared to concede this on behalf of the husband and points to para. 5 of the separation agreement which provided:

"Each party will retain those assets that are now in their sole names, any jointly owned assets will become solely owned by the original purchaser. In the event of a dispute concerning the identity of the purchaser or any joint assets, or in the case of those items given to the parties jointly, such assets shall be divided by the parties on an alternating basis."

(e) 'In a case where an order has been made by a court in a country or jurisdiction other than the State requiring a spouse, or the spouses, concerned to make any payment or transfer any property for the benefit of the applicant or a dependant member of the family, the financial relief given by the order and the extent to which the order has been complied with or is likely to be complied with.'

Subject to the submissions made by Mr Durcan in respect of (d) there is no evidence before the court of any provision being made for the wife. In considering (d) and (e) together I attach limited significance to these matters.

(f) 'Any right which the applicant or a dependant member of the family has, or has had, to apply for financial relief from a spouse or the spouses under the law of any country or jurisdiction other than the State and, if the applicant or dependant member of the family has omitted to exercise any such right, the reason for that omission.'

I have already dealt at some length with this section and its importance in the circumstances of this case. One further point needs to be addressed. While the wife in her replying affidavit neither explains how the mistake in her original affidavit came to be made nor gave any reason for continuing to omit details of not exercising her right to apply for financial relief in Hong Kong, the thrust of replying affidavit is that the making of proper and fair provision for her requires not only the consideration of making periodical payment orders but also the making of property

adjustment orders and lump sum orders. The wife's connections with Hong Kong have already been set out. Witnesses to the issues to be tried are insofar as some have been identified are based in Hong Kong. The wife has given no reason for not litigating in Hong Kong though her solicitor has submitted reasons why it would certainly be more suitable for her to litigate here. While I do not regard this section as determinative I attach great weight to it in the circumstances of this case.

(g) 'The availability in the State of any property in respect of which a relief order in favour of the applicant or dependant member of the family could be made.'

The husband's home in Ireland is the only relevant asset.

(h) 'The extent to which the relief order is likely to be enforceable.'

Again the husband is presently amenable to this jurisdiction and has a home here.

(i) 'The length of time which has elapsed since the date of the divorce or legal separation concerned.'

Three years had elapsed before the wife initiated these proceedings. With regards to (g) and (h) I attach some significance to these factors. In light of the wife's allegations of duress and undue influence I attach minimal significance to the three year delay.

45. A number of English cases have been opened in the course of the hearing as to how I should approach this matter and I would like in particular to refer to the judgment of the Court of Appeal (Civil Division) in *Moore v. Moore* [2007] E.W.C.A. Civ 361, and the judgment of Thorpe L.J. at paras. 107 – 109 inclusive

There is no need to rehearse the case-law. For present purposes it suffices to make three points. First sections. 13 and 16 have to be taken in conjunction: *Jordan v. Jordan* [2000] 1 WLR 210 at 218 per Thorpe L.J. So although the ultimate question for the judge is whether there is 'substantial ground' for the application in addressing that question the judge has to have regard to 'all the circumstances of the case,' including, in particular all the matters referred to in section 16 (2), with a view to considering 'whether England and Wales is [the] appropriate venue.

Secondly, since the ultimate test is whether there is 'substantial ground' for the application, it is not necessary for the applicant to establish either hardship or injustice to obtain leave: *Jordan v. Jordan* [2000] 1 WLR 210, 221 per Thorpe L.J.

Thirdly, given the various factors referred to in section 16 (2) and indeed the heading to section 16 itself, it is plain that the judge considering an application for leave has to have regard to questions of comity and *forum (non) conveniens*."

46. With regard to the question of 'substantial ground' Mr Shatter submits that his client has set out sufficient material in her affidavit to get over this hurdle. He says that her allegations of duress and undue influence are supported by a careful study of the transcript of the proceedings in Hong Kong and the unusual agreement entered into by the parties in 1997. *Prima facie* these two matters do lend support to the allegations of duress and undue influence which she makes.

47. The kernel of the applicant's complaint in this case is that she was so dominated by her husband that she did not freely consent to the terms of the separation deed and did not freely participate in the court hearing in Hong Kong. These are issues that will have to be tried. The parties spent all their married life in Hong Kong and it is likely that relevant witnesses to these issues are based there. For instance at p. 18 of the wife's affidavit she states:

"I further say that I sought advice from my gynaecologist Dr L and also from Professor V. H., Consultant ENT surgery of the Chinese University of Hong Kong and the Prince of Wales Hospital whom the respondent trusted and attended on an ongoing basis and who had previously operated on him. Both Dr L. and Professor V.H. suggested that the respondent should seek the advice of a psychologist or psychiatrist and both suggested appropriate referrals. Although Christmas was approaching and it was difficult to secure an appointment Dr L arranged for the respondent and this deponent to meet with senior clinical psychologist at the Queen Mary Hospital, Hong Kong, Dr P.K.L. with the aim of discussing the respondent's mental and emotional difficulties."

48. It is conceivable that the three people mentioned here as well and Judge Chan's registrar could all be required as witnesses by either of the parties.

49. A further ground that Mr Shatter submits is relevant is the substantial disparity between the assets of the husband and the wife. The wife's assets come to 1.5 million euros while she suggests the husband's assets are in excess of 10 million euros. Mr Shatter also submits that a substantial reason for dealing with the matter in this State is that the husband is here, his only identifiable asset is here and he is also amenable to the jurisdiction. He submits that it would be most unfair to the wife to ask her to return to Hong Kong and that it could prove legally expensive and ultimately futile if the husband turned out to have no assets in Hong Kong. He also submitted that there is nothing in what the wife says about the background history that demands or requires proceedings being re-opened or pursued in Hong Kong. He also submitted that it could not be in the interests of the children that the mother initiate litigation in Hong Kong other than if the father stays in Ireland. He submits that it would ensure she did not have contact with the children while the litigation was going on. While disruption would occur as a result of proceedings in Hong Kong it need not be that great. The party's presence would only be required for the duration of the actual hearing. Presumably the wife's preparations for this present case would facilitate a smooth transition to representation in Hong Kong and while it will obviously add to her expense it is relevant that when she swore her grounding affidavit she had in excess of 1.5 million euros in her account and was working. Again as Mr Durcan pointed out it is of relevance to note from her affidavit of means that the wife goes to Hong Kong twice a year, once by herself and once with the children. He submits that this is yet another factor which supports his contention that the appropriate venue for this case is Hong Kong. Finally it is clear as Thorpe L.J. said above that the judge considering an application for leave has to have regard to questions of "comity and *forum (non) conveniens*". Taking into account the submissions that have been made to me the cases that have been opened and in particular the remarks of Thorpe L.J. which I have quoted above as well as the preliminary findings which I have made with regard to matters outlined in s. 26 of the Family Law Act 1995, I am compelled to the conclusion that in all the circumstances of this case the appropriate venue for the wife's claim is Hong Kong and accordingly I refuse her application for leave pursuant to Part III of the Family Law Act, 1995.

