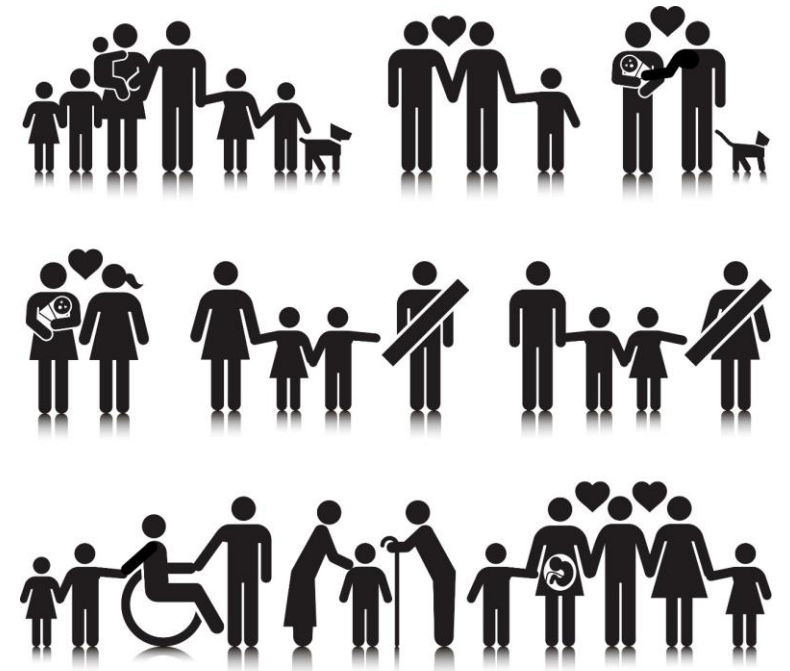




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# 50 Ways to Make a Family: Surviving and Thriving in the Task of Advising the Modern Family



IBA Private Client Tax Conference  
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# Presented By



Catherine D.A. Watson Coles, K.C., TEP  
Canada  
McInnes Cooper,  
[catherine.watson@mcinnescooper.com](mailto:catherine.watson@mcinnescooper.com)



Tom Amlot  
England  
Alexiou Fisher Phillips LLP,  
[tamlot@afplaw.co.uk](mailto:tamlot@afplaw.co.uk)



Andrew Powell, Barrister  
England  
4PB,  
[AP@4pb.com](mailto:AP@4pb.com)



# Presented By



Line-Alexa Glotin  
France  
UGGC Avocats,  
[la.glotin@uggc.com](mailto:la.glotin@uggc.com)



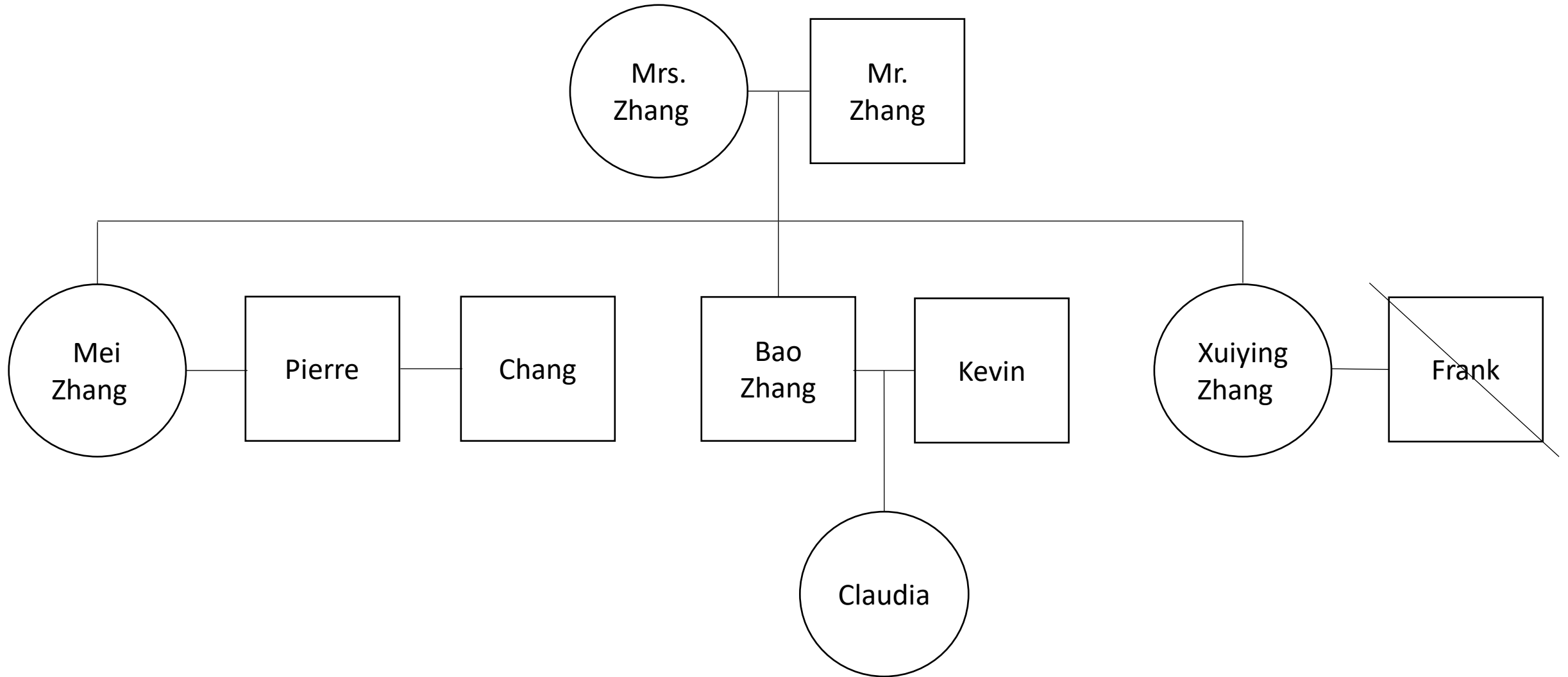
Shu Mei Hoon  
Singapore  
Drew & Napier LLC,  
[ShuMei.Hoon@drewnapier.com](mailto:ShuMei.Hoon@drewnapier.com)



Pleuni Visser  
Netherlands  
Loyens & Loeff,  
[Pleuni.Visser@loyensloeff.com](mailto:Pleuni.Visser@loyensloeff.com)



# Zhang Family Tree



# Case Study

- **Mr. Zhang and Mrs. Zhang:**
  - Originally from People's Republic of China, Singapore citizens
  - Currently residing in Hong Kong
  - UHNW couple – assets in Singapore
  - Parents of Mei, Bao, and Xuiying Zhang
- **The Zhang Children (all residing in France/ UK/ Netherlands/ Canada/ Singapore):**
  - **Mei Zhang (she/her):**
    - In a relationship with Pierre and Chang
      - The trio has decided to have a child – all three would seek a declaration of parentage
  - **Bao Zhang (he/ him):**
    - Legally married to Kevin
      - The couple has one child together, Claudia (conceived via surrogacy, using both sperm and egg donors) – legal parents in California, seeking recognition as parents in UK
  - **Xuiying Zhang (she/ her):**
    - Widowed – was married to Frank, who died suddenly in a car crash (no will)
    - The couple froze embryos while Frank was living
    - Xuiying's health issues have improved, and she would like to proceed with implanting frozen embryos



## Question Set #1

1. In your jurisdiction, could Mei, Pierre and Chang obtain a parentage order with respect to the child born in the polyamorous relationship?
  - a. Can M, P and C form a legal polygamous marriage in your jurisdictions?
  - b. Are M, P and C spouses for tax purposes in your jurisdiction?
  - c. Do their children qualify as an heir for each parent and enjoy heirship rights for legal purposes?
  - d. What is the gift and inheritance tax treatment applicable between parents and children?
  - e. Do these parents and children have spousal & child support obligations in case of separation/divorce or death?

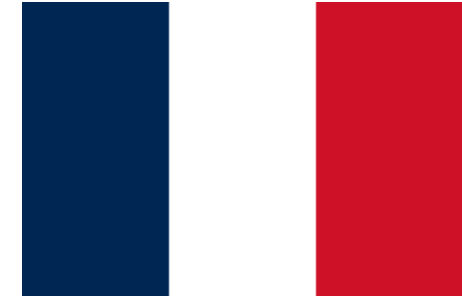
# Singapore



- Polyamorous marriages have no legal recognition
  - No spousal obligations for Mei, Pierre and Chang
  - Mei does not need parentage order as the biological mother but Pierre and Chang will not be granted parentage order
- Legal parenthood important in terms of status (& brings with it rights of inheritance, succession, and is the gateway for financial claims in respect of child maintenance)
- Children may have heirship rights under Mei but not under Pierre or Chang; No gift and inheritance tax; Mei has primary child support obligation but if she doesn't pay, Pierre and Chang may have to support the children

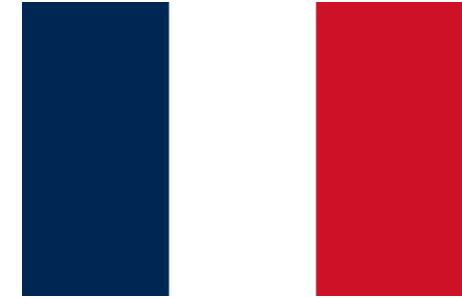
# France

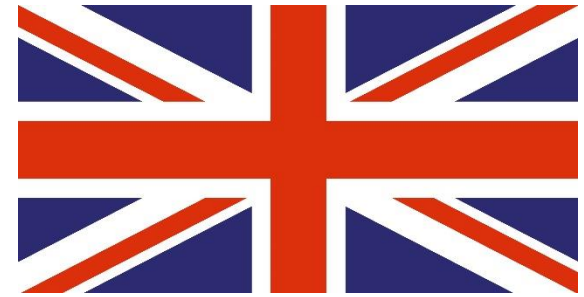
- Polyamorous relationships have no legal recognition
- **Civil partnerships available since 1999** : The civil solidarity pact is a civil partnership under French law and, with marriage, one of the two forms of civil union. Its purpose is to organize the common life of two adults of different sex or of the same sex, by establishing between them rights and duties in terms of support material, housing, assets, taxes and social rights



# France

- **Same-sex marriage** is possible since May 2013. This law opened up new rights for marriage, adoption and succession, in the name of the principles of equality.
- Legal parenthood are held by parents
- Parental (legal) responsibility can be held or imposed to different persons, not only parents and implies, notably, financial support as well as inheritance rights



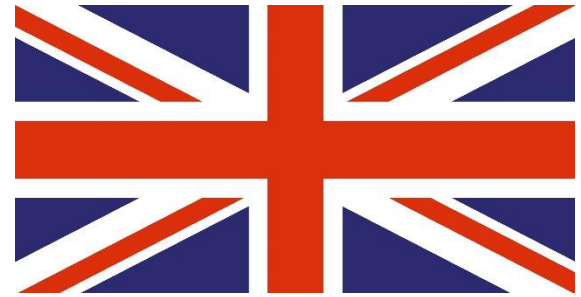


# UK

- Polyamorous relationships have no legal recognition
- Marriage for same sex couples available since 2014
- Civil Partnerships available for opposite sex couples since 2019
- Concept of legal parenthood differs to parental responsibility
- Legal parenthood can only be held by two individuals

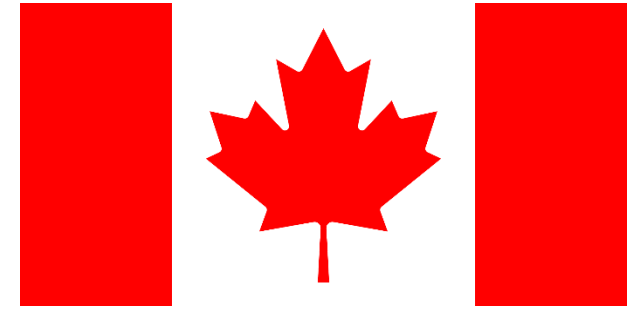
# UK

- Parental responsibility can be held by multiple individuals
- Legal parenthood important in terms of status (& brings with it rights of inheritance, succession, and is the gateway for financial claims in respect of child maintenance)



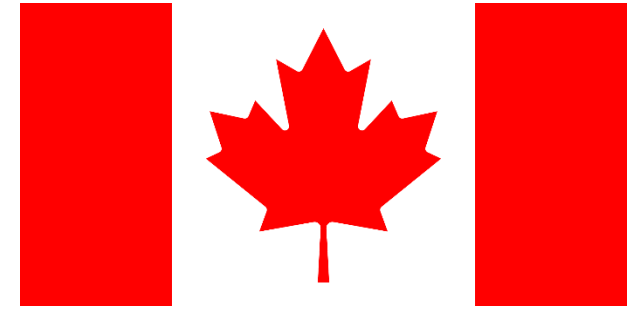
# Canada

- Polyamorous relationships are gaining legal recognition but marriage is restricted to 2 persons (same sex marriage available in Canada since 2003)
- Can have multiple spouses for tax purposes
- Legal parentage can be held by more than 2 persons
- Legal parentage gives rise to heirship status on intestacy



# Canada

- No gift or inheritance tax, but a deemed disposition of capital assets and a deemed income inclusion of registered assets (limited rollover for dependent children)
- Would likely have spousal support obligations and would definitely have child support obligations regardless of legal parentage status (*in loco parentis*)





# Netherlands

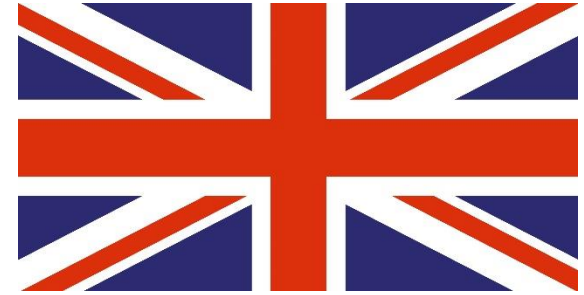
- Polyamorous relationships have no legal / tax recognition
- Legal parenthood can only be held by two individuals
  - Legislative amendment?
- Legal parenthood is the gateway for lower tax rates and higher exemptions for gift and inheritance tax purposes
  - Case law?
  - Legislative amendment?
- Spousal & child support obligations / polyamorous cohabitation contract





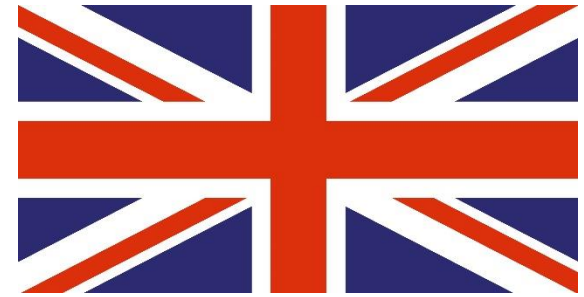
## Continued Question Set #1

2. In your jurisdiction, can Bao and Kevin get a parentage declaration for their child? If not what are there any other alternative orders or options available?
  - a. Do their children qualify as an heir for each parent and enjoy heirship rights for legal purposes?
  - b. What is the gift and inheritance tax treatment applicable between parents and children?
  - c. Do these parents and children have spousal & child support obligations in case of separation/divorce or death?



# UK

- No recognition of surrogacy arrangements abroad
- Parental order is the bespoke order for children born via surrogacy (operates in a similar way to an adoption order)
- Parental order affords the intended parents with recognition as the child's legal parents

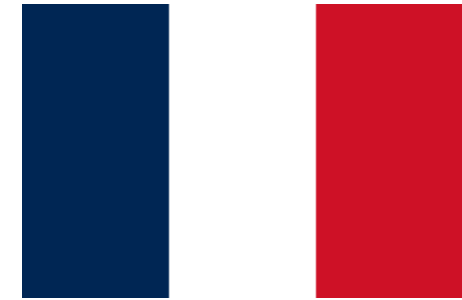


# UK

- S54 of the Human Fertilisation and Embryology Act 2008 sets out the criteria (e.g. consent of surrogate, domicile & genetic relationship)
- Only way to achieve legal parenthood either via a parental order or an adoption order

# France

- Surrogacy (GPA) is prohibited in France.
- The question of the recognition in French law of children born abroad by surrogacy has evolved in recent years. The law of August 2, 2021 relating to bioethics supplements the civil code in order to specify that the recognition of filiation abroad is assessed with regard to French law.
- The transcription of a foreign civil status certificate for a child born of surrogacy is thus limited to the biological parent alone. The intended parent having to go through an adoption procedure. Pending reform
- Legal parenthood recognition conditions the benefit of the status of heir and the tax provisions applicable between related persons



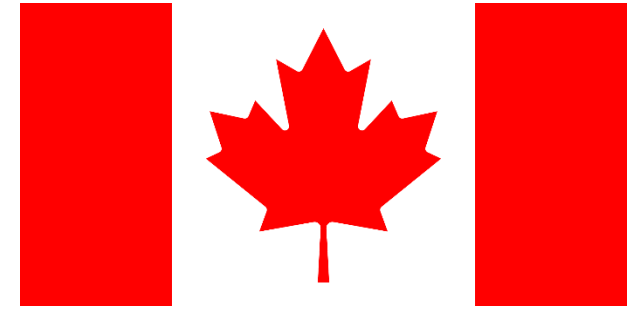
# Singapore



- Unable to obtain parentage order unless Bao and Kevin are long-term residents of Singapore, and necessity shown.
- Children do not qualify as heir under Singapore's intestacy laws since not biological nor legally adopted
- No gift and inheritance tax treatment
- No spousal support obligations
- Will have child support obligations

# Canada

- Bao and Kevin would have to get either a parentage order or an adoption order (options differ by province)
- Legal parentage gives rise to heirship status on intestacy
- No gift or inheritance tax, but a deemed disposition of capital assets and a deemed income inclusion of registered assets (limited rollover for dependent children)
- Would have both spousal support and child support obligations

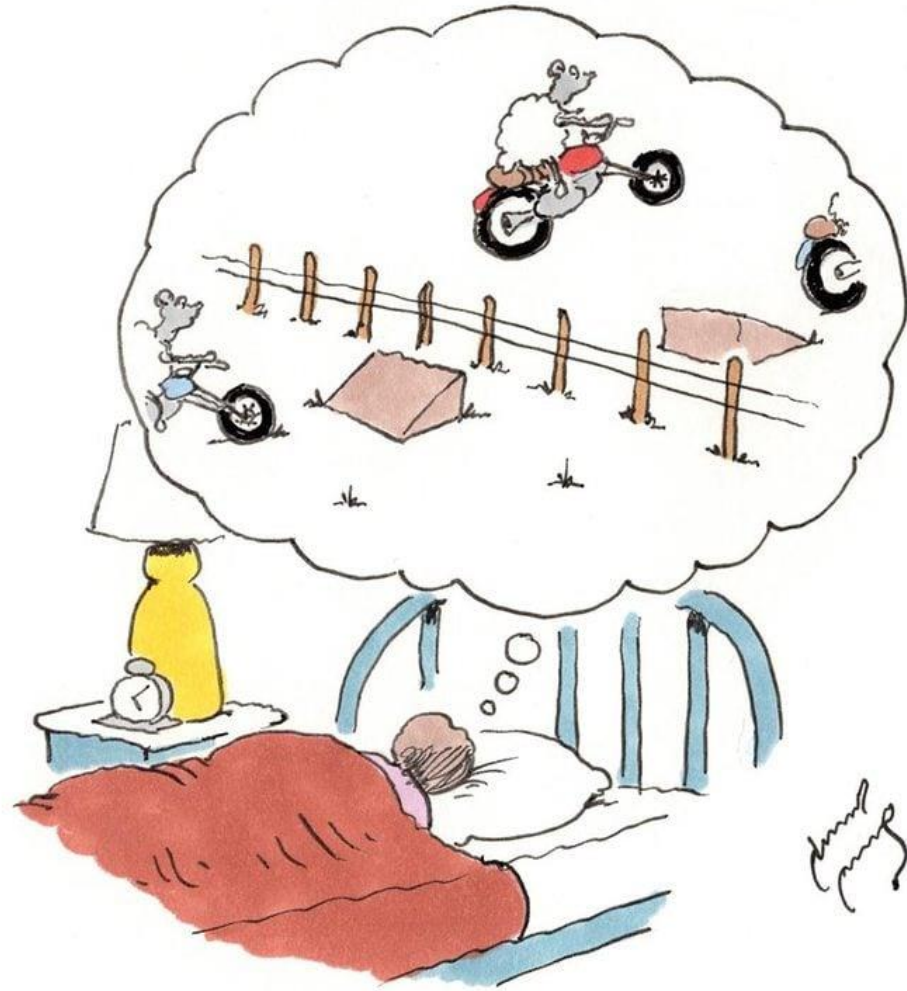




# Netherlands

- No recognition of the surrogacy arrangement
- Legal parenthood through adoption
  - Foreign adoption for same sex couples available since 2009
- Legal parenthood is the gateway for lower tax rates and higher exemptions for gift and inheritance tax purposes
- The Netherlands was the first country in the world to legalize same-sex marriage (2001)
- Spousal & child support obligations equal to traditional families

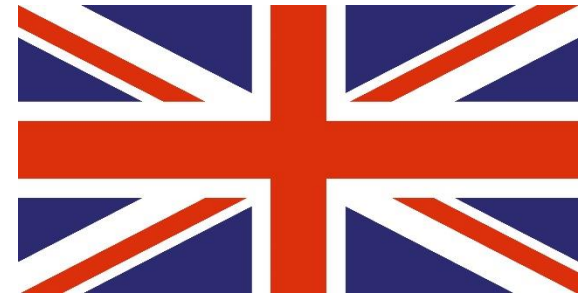




MIDLIFE SLEEP CRISIS

## Continued Question Set #1

3. In your jurisdiction, can Xuiying now use the frozen embryos as she wishes?

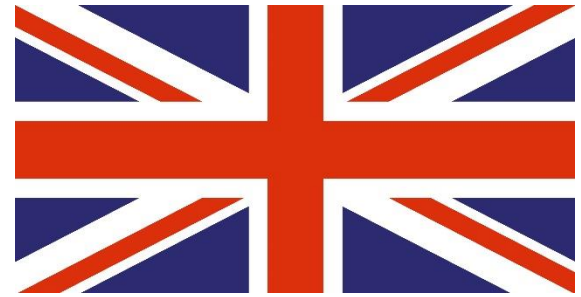


# UK

- Human Fertilisation and Embryology Authority provides regulatory oversight
- Consent always essential
- Regulated clinics will provide for posthumous conception in consent forms
- English courts have taken a realistic and flexible approach where possible

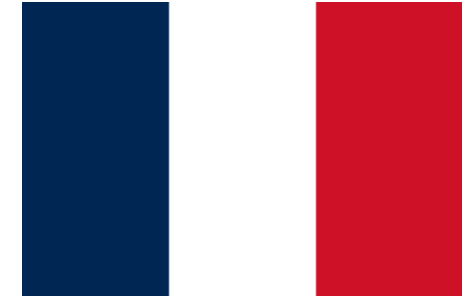
# UK

- *M v Human Fertilisation and Embryology Authority [2016]*  
(Grandparents using frozen embryos – carried by deceased's mother)
- *Jennings v Human Fertilisation and Embryology Authority [2022]*  
(partner's ability to use frozen embryos where no consent for posthumous surrogacy arrangement)



# France

- no insemination or transfer of embryos is authorized after the death of one of the members of the couple. It is only possible if the man and the woman forming the couple are alive
- When the two members of the couple are alive, they are consulted, in writing, each year, on their parental project in order to know if they maintain this project or not. If they wish to end it, they can request that the embryos be taken in by another couple, be donated for research or be destroyed.



# Singapore



- Ministry of Health Licensing Terms and Conditions on Assisted Reproduction Services (MOH LTCARS) requires written consent from the couple before any implantation. Written consent only valid for 3 months.
- Some AR centres have an internal policy that mandates the disposal of any frozen embryo upon the death of one spouse, divorce, or separation.

# Singapore

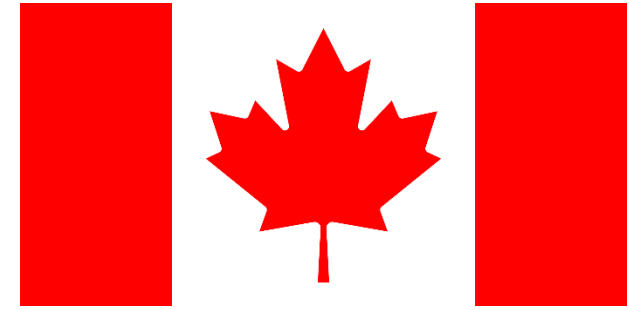


- Solutions
  - If the contract with the AR centre allows for it, take the embryos and implant in an AR facility outside of Singapore
  - Apply for an injunction to stop the disposal of the embryos and challenge the constitutionality of the MOH LTCARS policy



# Canada

- Federal *Assisted Human Reproduction Act*
- Must be written and specific authorization in order for human reproductive material to be used after death (or any other time)



# Netherlands

- Dutch Embryo Act
  - Consent always essential ('consent statement')





"We're really more of a department."

## Question Set #2

Given your answers above, how would the current trust structure above work for the children's current family structures – would their spouses and children be recognized?

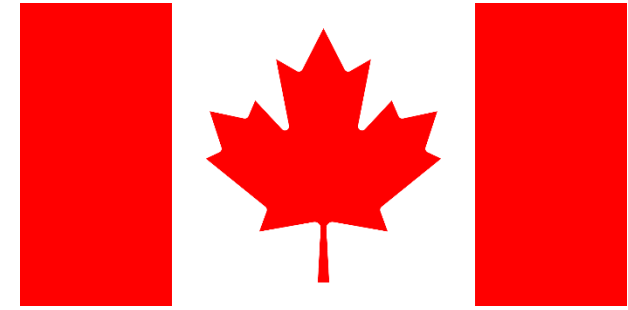
- a. Mei
- b. Bao
- c. Xuiying

# Canada

This question relates to the question of how much of their personal lives the Zhang children must reveal to their parents in order to have their families recognized by the Trust

## Mei

- her spouses will likely not be recognized
- her child will be recognized *if* the Zhangs choose a biological connection test (but not if they choose a legal wedlock test)



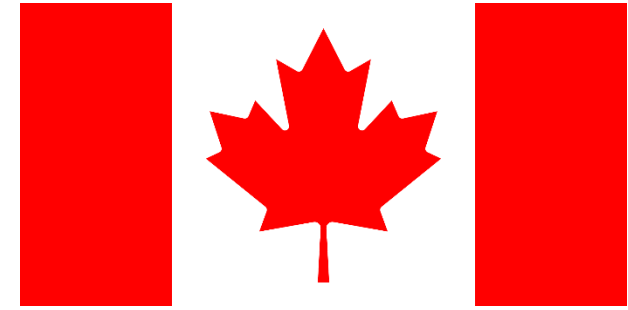
# Canada

## Bao

- his spouse might be recognized because they are legally married, but might not if Trust is governed by Singapore law which does not recognize same sex spouses
- his child will not be recognized if a biological connection test is utilized with no further qualification

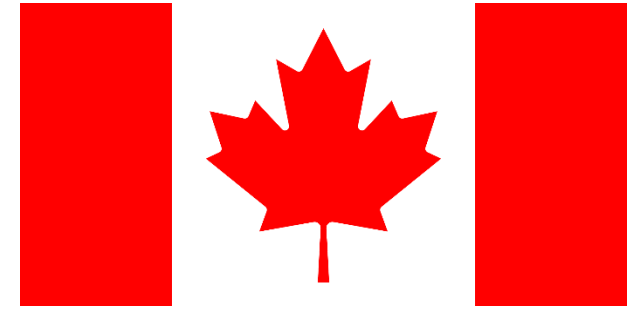
## Xuiying

- will her children be considered to be born in legal wedlock if she posthumously conceives?
- Her children will be recognized in any event if the biological connection test is utilized



# Canada

All of these issues can be drafted around, but only if the Trust drafter knows that they exist



# Singapore



- Solutions:
  - Marry in jurisdiction that allows polygamy
  - Draft a will to enable any child of Mei's to inherit regardless of whether the child is legitimate or illegitimate.
  - Draft terms of the trust deed to refer to define “partner” instead of “legally married spouse”.
  - Draft terms of trust deed to ensure child covered e.g. “any child, whether biological, born through surrogacy, or adoption”.



# Singapore



- Solutions:
  - Draft a will for spouse and child to inherit
  - Draft terms of the trust deed to refer to “partner” or “legally married spouse under the laws of any jurisdiction” instead of “legally married spouse”.
  - Draft terms of trust deed to include “any child, whether biological, born through surrogacy, or adopted or accepted as a child of the partnership or marriage”.

### Question Set #3

1. What are the tax consequences of the creation of a multi-generational trust structure (e.g. for gift and inheritance tax and income tax)?
2. To whom are the trust assets attributed/allocated during Mr. and Mrs. Zhang's lifetime for tax purposes? And to whom are the trust assets attributed/allocated after Mr. and Mrs. Zhang's death for tax purposes?
3. Are there any opportunities to optimise from a tax perspective?

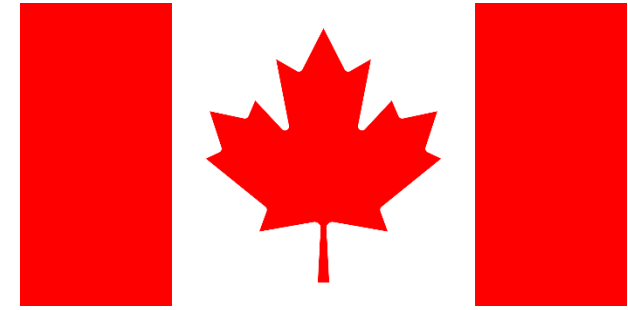
# Netherlands

- The trust is considered 'transparent' for Dutch gift and inheritance tax and personal income tax purposes.
  - Attribution rules
- No Dutch income tax or inheritance tax, since Mr and Mrs Zhang do not reside in the Netherlands
- Generation skipping as an opportunity to optimize?



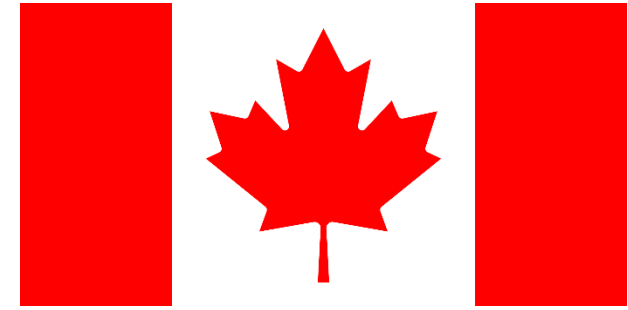
# Canada

- Canada respects trusts and so the trust will work as intended if it remains offshore
- Canada has broad deeming rules that deem non-resident trusts to be Canadian tax resident. Problems arise where:
  - Contributions by someone who is or later becomes a Canadian tax resident
  - control by Canadian tax resident



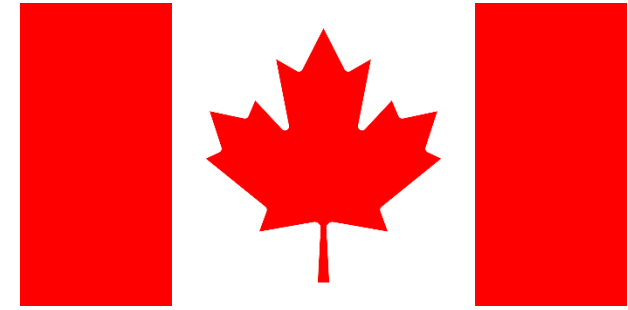
# Canada

- Result of deeming rules is that a trust can be structured perfectly at inception but run afoul of the deeming rules over its lifetime if Canadian tax residents are involved and care is not exercised
- Canadian beneficiary tax compliance requirements;
  - Distribution of Capital – requirement to file upon receipt of distribution but no tax payable
  - Distribution of Income – requirement to file upon receipt of distribution and tax payable



# Canada

- Optimization – ensure do not run afoul of the deemed residency rules, and ensure Canadian beneficiaries only receive distributions of capital



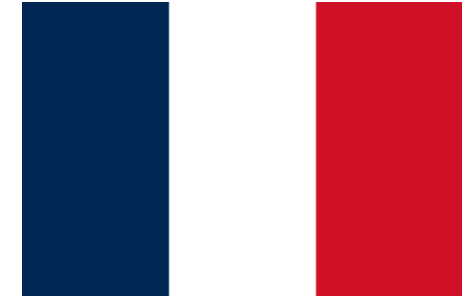
# Singapore



- Singapore does not have gift or inheritance tax
- Estate duty was abolished in 2008 to encourage wealthy individuals in Asia to move their assets to Singapore
- Generally offshore trusts will not attract tax; Singapore trusts will only attract tax if the underlying asset is taxable (e.g. immovable properties)
- Family Offices (Single or Multi) are extremely popular in Singapore for UHNW families because of tax incentives

# France

- The trust is transparent for gift and inheritance tax purposes
- Income tax is due in case of income distribution to French tax residents
- Estate planning / Generation skipping is possible, French law must be considered from a civil and tax standpoint







*"I think we're named after computer passwords."*

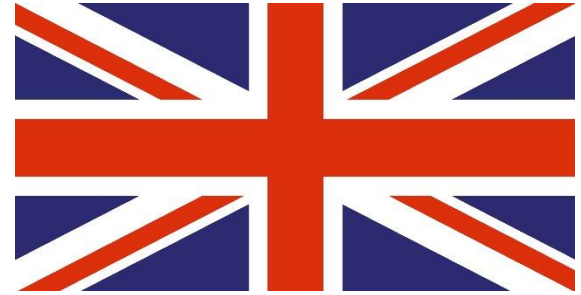
## Question Set #4

If the Trust Indenture requires a prenuptial or cohabitation agreement as a precondition to receiving a distribution, would that prenuptial or cohabitation agreement be enforceable in your jurisdiction?



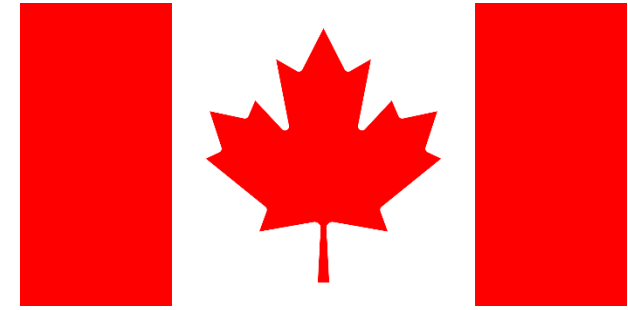
# UK

- United Kingdom Supreme Court upheld a pre-nuptial agreement in *Radmacher v Granatino* [2010]
- Heard by 9 Justices - Lady Hale only justice to dissent
- Increasing number of people choosing to co-habit
- Cohabitation agreements not binding
- Calls for reform



# Canada

- Domestic Contracts are respected by Canadian courts, as long as full financial disclosure is given and independent legal advice is received
  - Note that UHNW families are not always keen on full financial disclosure
- Marriage contracts/ Cohabitation Agreements highly recommended because trust itself may not be enough protection from a family court judge



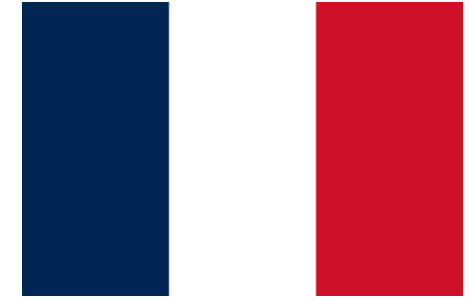
# Netherlands

- Prenuptial agreements / cohabitation agreements are enforceable
  - Spousal maintenance cannot be waived in advance



# France

- Marriage contract / Prenups are respected by French courts
- Cohabitation Agreements are not binding
- *French Court decisions hardly enforceable against a trustee of a trust governed by foreign law*



# Singapore

- Depends on what the scope of the agreement covers – Assets, Maintenance (Spouse), Maintenance (Child), Child issues
- Postnuptial > Prenuptial, though Prenuptials are very popular amongst international UHNW / HNW families
- Cohabitation Agreement – Not tested as no cohabitation regime; property law & contract law regime would apply – issues of gifts & resulting trusts often arise



# Singapore

- Court more likely to enforce agreement governed by foreign law and entered into by foreign nationals
- Issue of culture X full & frank disclosure X avoidance of written agreement / distrust of legal systems







# Questions & Discussion





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