Question Set:

Jurisdiction and conflict of law

Regulatory framework

Question Body:

1. What are the primary sources of law in relation to marriage, marital breakdown and the welfare of children and give a brief overview of which courts will have jurisdiction to hear the dispute?

Answer Body

Sources of law

Turkey has a civil law legal system that is mainly made up of written laws in the form of:

* The Constitution of Turkey (Constitution).
* Various statutes and international agreements.
* Law amending ordinances, regulations, and bye-laws.

The laws have a hierarchical structure, with the Constitution at its top.

Constitution

The Turkish legal system is based on the Constitution and on statutory law. It is a civil law system and case law is therefore not a major source of law.

The Constitution provides for several protections to the institution of family that are implemented through several statutory laws. The family is defined as the foundation of Turkish society, and the state must take necessary precautions to maintain the tranquillity and wealth of families in Turkey (*Article 41, Constitution*). Article 10 of the Constitution addresses the principle of equality between men and women. Article 20 of the Constitution provides for the right to respect family life and that nobody can act in a way that is against the privacy of family life. Therefore, the privacy of family life is directly guaranteed by the Constitution under the Turkish legal system. The protections are implemented by the provisions of Civil Code (Law No 4721), which are the primary source of law in relation to marriage, marital breakdown and welfare of children.

Court system

The Code of Civil Procedure (No 6100) determines which court has jurisdiction to hear family law proceedings. However, because family law requires various levels of expertise, separate family courts were established by the Code of the Foundation, Competence and Procedures of Family Court (No 4787).

Jurisdiction

Question Body:

1. What are the main requirements for local courts to have jurisdiction in relation to divorce, property and children proceedings?

Answer Body

Divorce

The Code of Civil Procedure determines jurisdiction in divorce proceedings. Under Code of Civil Procedure, the court in the defendant's domicile has jurisdiction. If the claimant has an independent residential property and the claimant has been living with their spouse for at least six months before filing for divorce, the case can be filed to the court where the husband or wife resides or where they have resided together (*Article 168, Civil Code*). As both situations are acceptable, the claimant can decide whether the case is filed according to the provisions of Code of Civil Procedure or Civil Code.

Same-sex spouses and civil partners

Civil partnership and same-sex marriage are not allowed in Turkey.

Property

Property disputes arising out of matrimonial law cases can be filed with the courts in the place of domicile of one of the parties. If the parties have different domiciles and both file a matrimonial case, the court to which the case was filed first will have authority. However, the division of matrimonial property can be judged by the court of the place of either party (*Article 207, Civil Code*)*.*

Children

The Civil Code contains many provisions relating to children. For example:

* Cases relating to paternity must be filed with the courts where one of the parties had domicile or where they had domicile at the time of the birth (*Article 283, Civil Code*).
* Cases related to developing a relationship with child must be tried in a court where the child is domiciled (*Article 326, Civil Code*).
* Courts in the defendant's domicile can hear cases about the guardianship of the child.
* The cases of change/remove of custody can be filed in the courts where the defendant is living in as the place where they are kept under custody by the parents (which is accepted as the child's domicile).

Domicile, nationality and habitual residence

Question Body:

1. How do the concepts of domicile, nationality and habitual residence apply in relation to divorce, financial arrangements, and children?

Answer Body

Disputes involving a foreign element

Under Turkish law, if the dispute involves a foreign element, the habitual residence determines the applicable law. The grounds and provisions for divorce and separation are governed by the common national law of spouses, as provided in the International Private and Procedural Code (5718). If the spouses have different nationalities, the law of their common habitual residence will apply. In the absence of it, Turkish law will apply. The same provisions also apply to claims for:

* Spousal maintenance.
* Separation.
* Nullity of marriage.

The spouses can choose the law of their habitual residence or the national law at the time of marriage to govern their matrimonial property. If no choice was made, the common national law of the spouses at the time of marriage will apply. In the absence of it, the law of their habitual residence at the time of marriage will apply. In the absence of such law, Turkish law will apply.

Additionally, any litigation concerning the personal status of foreigners such as guardianship, tutelage, missing persons and the declaration of death concerning foreign persons that do not have domicile in Turkey will be determined by the court where the person concerned has a place of habitual residence; if he is not resident, by the court where his assets are located.

Disputes not involving a foreign element

If the dispute does not involve a foreign element, domicile residence is important for determining the competent court. However, under the Civil Code, if the claimant (either the husband or wife) has their own residential property, and has been living with their spouse for at least six months before filing for divorce, the case can be filed to the court where the husband or wife resides, or where they have resided together.

The same rules apply for financial arrangements as these are seen as secondary provisions of the divorce decision.

Habitual residence applies when determining child maintenance payments.

Conflict of law

Question Body:

1. What procedure applies for a party applying to stay proceedings in favour of a foreign jurisdiction? What factors do local courts take into account when determining forum issues?

Answer Body

Procedure

A foreign judgment without recognition and enforcement in Turkey cannot be subjected to a judgment by the Turkish courts. If the foreign court's judgment can be recognised and enforced, Turkish courts will order a prejudicial question for the case that is pending in the foreign courts once the court is convinced of this application.

In the 15th Civil Chamber's decision of 21 June 2012, 2011/2901 E and 2012/4661 K, the Court of Cassation ruled a decision from the Romanian courts regarding a case pending in Turkish courts as it was found to constitute a "prejudicial question" under Turkish law. In another example, the Court of Cassation determined the conditions to accept such a request as "the subjects of the cases must be same, the foreign court's decision must be able to recognise and enforce in Turkey and the reciprocity principle between Turkey and that foreign court or any agreement must exist" (*2nd Civil Chamber's decision of 15 June 2010, 2009/13541 E. 2010/11899 K.).* However, there are many other examples where the Supreme Court refused to order a prejudicial question (for example the *2nd Civil Chamber's decision of 18 September 2008 and 2008/11211-12168 and the 2nd Civil Chamber's decision of 3 May 2011 and 2010/5217 E. and 2011/7574 K*).

Factors

In order to determine the relevant forum, the court will consider the following factors:

* Whether one of the parties is Turkish.
* The legal action brought in the foreign country relating to Turkish citizen's personal status.
* Whether the legal action and subject matter of the legal action is the same.

Anti-suit injunctions

Anti-suit injunctions are not stated clearly in the International Private and Procedural Code (5718), but if the Turkish courts have jurisdiction over the subject, they will can issue anti-suit injunctions to protect the rights of the applicant (*Article 40, Code 5718*). However, the interim decision of preventing the counterparty to take steps before a foreign court will not be made by a Turkish court.

Applicable law

Question body

1. Are foreign nationals treated differently on divorce?

Answer body:

The grounds and provisions for divorce and separation are governed by common national law of spouses. If the spouses have different nationalities, the law of the place of their common habitual residence will apply; and in the absence of a habitual residence, Turkish law will apply. Turkish law governs demands for temporary measures of the divorce or the separation *(Article 14, Code 5718)*.

The foreign individuals or legal persons who file or intervene in a lawsuit or initiate execution proceedings before Turkish court must provide a security whose amount will be determined by the court to cover the expenses of the legal procedures and proceedings, and any losses or damages incurred by the other party. The court can exempt the claimant, intervener or applicant for execution from providing a security on a reciprocity basis *(Article 48, Code 5718)*.

Service of proceedings

Question body:

1. What are the requirements for service of divorce, financial and children proceedings in your jurisdiction?

Answer body:

The notifications to other countries take place under the Notification Law and the Notification Rules. The notification will be held through the authorised institution of foreign country (*Article 25, Notification Law*). The translation of court and rogatory documents will be included to the notification and payment will be completed.

Under Turkish Law, the notifications are held through the Post Office Department and starts with the notification to the last address known or the address provided by the claimant and if it is not successful, continues with the registered address.

Under Turkish Law, there is no process for service via email, and Turkey is a party to the HCCH Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters 1965 (Hague Service Convention).

Question Set:

Pre- and post-nuptial agreements and matrimonial property regimes

Validity of pre- and post-nuptial agreements

Question Body:

1. To what extent are pre- and post-nuptial agreements binding?

Answer Body

There are two different systems that govern the marital property regime under Turkish law. The arrangement can be based on the legal marital property system or a separate nuptial agreement.

Under Civil Code, spouses can make nuptial agreements about the marital property, before, during and after the marriage.

There are two different forms of pre-nuptial agreement:

* **Pre-nuptial agreement.** The pre-nuptial agreement can be completed at a notary public.
* **Marital property regime.** The spouses can inform the marriage officer of the regime that they want to choose when they apply for the marriage.

(*Article 205, Civil Code.)*

If the spouses decide to choose a marital property regime during the marriage application, they must inform the registrar of marriage in writing. If the spouses choose a separate property regime with a pre-nuptial agreement under Article 242 of the Civil Code, each spouse can protect their usufruct, management and disposition rights on their own property (within legal limits). In this type of regime, each spouse is liable for their own debts in relation to their own property and on divorce, the spouses will not have any rights to a claim in each other's property. The marriage is related with public policy and the judge has absolute authority regarding conditions provided in a pre-nuptial agreement.

Spouses can only choose the regime of participation of acquired properties retroactively. In another saying, the spouses cannot choose or determine another regime that Code provides retroactively as starting from the marriage date besides than the regime of participation of acquired properties. Therefore, this kind of determination will be declared null and void and this legal restriction according the public order can not be passed based on the rules of freedom of contract*.” (Decision of Eighth Civil Chamber of 10 June 2014, 2014/4341 E. 2014/11910 K.)*

The conditions of the validity of the agreement will be considered together with the general rules of agreement under the Code of Obligations.

Question Body:

1. Do matrimonial regimes exist in your jurisdiction and is there a default matrimonial property regime?

Answer Body:

The spouses are subject to the provisions governing participation in acquired property. The parties may accept with a marital agreement one of the marital property regimes determined by the law (*Article 202, Civil Code*).

The legal marital property system is the participation on the acquired assets, which means that spouses will benefit equally from the assets acquired during marriage. If the spouses do not want to be subject to the legal marital property regime, they can choose a separate property regime, shared separate property regime or communal property regime. If none of the regimes is selected by the parties, there is automatic and legal participation in the acquired property regime.

Question Body:

1. How are foreign separation of property agreements and pre- and post-nuptial agreements treated by the courts in your jurisdiction?

Answer body:

The spouses can expressly choose the internal law of their habitual residence or national law at the time of the marriage to govern their matrimonial property. Where no such choice has been made, the common national law of the spouses at the time of marriage, or in the absence of common law the internal law of their habitual residence at the time of marriage will govern or if there is no habitual residence, Turkish law will apply. In case of liquidation of property, the immovable property is governed by the law of the state it is located in. If the spouses acquire a new common nationality on marriage, the laws of their new nationality may govern, if the rights of third parties are reserved *(Article 15, Code 5718)*.

If foreign spouses chose one of the provided regimes, the choice of law will apply to this marital regime. If a selection is not made, their habitual residence law will apply, and if there is no habitual residence, Turkish law will apply. If the provisions of the foreign law to be applied in a certain case are clearly contrary to Turkish public order, it will not be applied. When it is deemed necessary, Turkish law will apply *(Article 5, Code 5718).*

Question Set:

Divorce, nullity and judicial separation

Recognition of foreign marriages/divorces

Question Body:

1. Are foreign marriages/divorces/civil partnerships recognised?

Answer Body

Marriages

Foreign marriages are recognised in Turkey.

Under the International Private and Procedural Law, the legal capacity to marry must be governed by the respective national laws of the parties at the time of the marriage. The formal requirements and conditions of the jurisdiction where the parties married must be applicable.

Divorces/annulment

The parties must file a recognition case with a competent court for foreign divorce/annulment decisions. The court must analyse whether the foreign decision meets the conditions of recognition or not. A foreign court decree can serve as definitive evidence or a final judgment, provided that the court decides that the foreign court decree fulfils the conditions of enforcement (*Article 58, International Private and Procedural Law*). The competent court will decide on enforcement subject to the following conditions:

* The judgment must have been given on matters that do not fall within the exclusive jurisdiction of Turkish courts. If the judgment is likely to be contested by the defendant, the judgment must not have been issue by a state court which has considered itself competent.
* The court decree must not openly be contrary to public order.
* The right of defence of the defendant spouse must not have been seriously violated.

(*Article 54, International Private and Procedural Law.)*

If the right of defence of one of the spouses is seriously violated, or the law that applied to the divorce case is explicitly contrary to Turkish public order, the foreign divorce decree will not be recognised.

The decisions of divorce, annulment of the marriage made by foreign authorities can be recognised before civil registries in Turkey. This is either under a joint application of the parties, or where the parties apply separately, using their legal representatives who have special authorisation to start and follow the application procedure under a power of attorney.

Civil partnerships

Under Civil Code, marriage has close links with public order and the form of the marriage is strictly regulated. Therefore, civil partnerships are not recognised or regulated in Turkey.

Divorce

Question Body:

1. What are the grounds for divorce?

Answer Body

Divorce

Divorce must be based on a specific ground and the judgment of the court. The grounds for divorce are limited and specified under Articles 161 to 166 of the Civil Code (*Code 4721*). If one ground can be established, this is sufficient to file for divorce.

General grounds for divorce include the breakdown of marriage, divorce based on separation and consensual divorce. Special grounds for divorce are based on concrete facts and include:

* Mental illness.
* Adultery.
* Cruelty.
* Desertion (for a period exceeding six months).
* Criminal conviction.
* Addiction.

Special grounds for divorce

**Adultery.** To establish a ground for divorce based on adultery, there must be a valid marriage between the parties of the divorce. It is not an obstacle if the parties live separately, as the marriage remains between the parties. Another condition is that one of the spouses must have a sexual relationship with another person. Adultery will only be accepted if the sexual relationship was between persons of a different sex.

The right to file for a divorce on the basis of adultery remains until the spouse forgives her or his spouse, and lasts until six months starting from the finding out of the adultery and also the end of the five-year period following the adultery in any cases.

**Attempt on life, misbehaviour or indignity.** In Turkish law an attempt on life is defined as provoking or forcing suicide. Threats of death are not included in this context.

All kinds of torture, mental and physical cruelty, not satisfying a spouse's needs, forcing a sexual relationship and sequestration are all considered to be acts of serious misbehaviour.

Additionally, indignity is also a ground for divorce. However, the Court of Cassation ruled that not all behaviour that causes indignity will be a ground for divorce. It must be an extreme form of indignity.

The right to file for a divorce on these reasons remains until the spouse forgives her or his spouse, and lasts until six months starting from the finding out the grounds for the divorce and also the end of the five-year period in any cases.

**Delinquency or living a dishonourable life.** Delinquency is considered a ground for divorce if the behaviour is degrading (for example, robbery, fraud, falsification, smuggling, embezzlement and rape).

Living a dishonourable life means a life that does not comply with the honour, esteem or self-respect as understood in Turkey. The behaviour must be continuing in order to constitute living a dishonourable life. The Court of Cassation will consider the lifestyle of the parties and its continuity when deciding whether or not the spouse is living a dishonourable life.

**Desertion.** Under the Civil Code, desertion means that one of the spouses has left the family home without a valid reason. In practice, in order to satisfy this ground, the desertion of the spouse must be for the purpose of ending a common life together.

**Mental illness.** Mental illness is also accepted as a ground for divorce (except in the situation where one of the spouses has a serious and incurable illness). The mental illness must be determined and verified by medical science. For example, the Court of Cassation does not recognise epilepsy as a mental illness. The mental illness must also be proven by a report to be untreatable.

General grounds

**Breakdown of marriage.** This is the most common ground for divorce in Turkey and also known as a high-conflict divorce. To establish this ground, the conflict must be serious, violent and spouses must not want to continue with a common life together. Examples include the breakdown of a marriage caused by excessive jealousy that has made the marriage unbearable or forcing the wife to live with the husband's whole family (including distant relatives) in the same house.

**Consensual divorce.** To establish this ground, the marriage must have lasted for at least one year. Spouses must file the divorce case together or if one spouse files, the other spouse must accept the divorce. The judge is obliged to hear the spouses and consider the protocol signed by the parties in order to pronounce the divorce.

Nullity

Nullity is divided into two sections under Turkish law, non-existence and invalidity.

**Non-existence.** The marriage will not be considered to be a marriage if the founding elements of marriage do not exist. For example, same-sex marriages, marriage without a registrar of marriage, marriage without the attendance of one of the parties or marriage by proxy are non-existence marriages.

**Invalidity.** The following are examples of an invalid marriage:

* If one of the parties is already married and marries another person, the second marriage will be invalid.
* If one of the parties is unconscious during the ceremony.
* If one of the parties is suffering from a mental illness.
* If the parties are related and by their relation it is forbidden to marry.
* If one of the parties married as a result of the fraudulent behaviour of the other party.
* If one of the parties is mistaken about the identity of the other party or the qualifications that they have.

Judicial separation

The grounds for juridical separation are the same as for divorce. When a judicial separation is granted, the spouses' common life will discontinue and the spouses' can choose to live in separate places of domicile.

The obligations of the union of the marriage will continue (including the obligation of loyalty) and no rights gained through the marriage will be lost. The judicial separation starts when the court's judgment is definite and lasts between one and three years in duration. On the expiration of the court-specified duration, the judicial separation will automatically end, with no further judgment. Spouses can also decide to establish a common life together again and the judicial separation will end. If the parties cannot establish a common life after the judicial separation, one of the spouses will file for divorce.

**The fault for the divorce**

The grounds for divorce must be proven for a judgment of divorce. It is not possible to make a judgment regarding the divorce, compensation and alimony without the consideration of the fault. The judge will determine the parties' fault for the divorce. It is not necessary for the party not at fault to file for divorce. The faulty party also has the right to file. However, if the claimant has extra faults for the grounds of the divorce, the other party has right to object for the case and the defendant must have a little fault for the acceptance of the case. Additionally, the fault must be determined to rule for the pecuniary and non-pecuniary damages and the alimony. It must be underlined that the parties always have right to file a consensual divorce case without the evaluation of the fault if all the provisions are provided (*Article 166(3), Civil Code*).

Question Body:

1. What is the procedure and timeline for divorce?

Answer Body

After filing for divorce, the court prepares the preliminary proceedings report and serves the defendant with the lawsuit petition. The divorce cases proceed in writing and the stage for petitions continue with the submission of the reply petition by the defendant; submission of the reply petition by the claimant and the final petition is the second reply petition of the defendant. Thereafter, the court will set the hearing date and invite the parties to evaluate the grounds of the case and determine if there is any possibility for an agreement. After this hearing, the court begins examining the grounds, reasons and evidence. Most courts hear two to three hearings a year, and divorce proceedings take two to three years. The court also evaluates the custody of the child even if this is not requested, and temporarily determines the child support, custody and the alimony during the proceedings.

After a judgment is issued, the parties can appeal before the Regional Court of Justice. The first appeal process will take six months to one year and parties can appeal in the Supreme Court. The appeal process takes around one year.

If the case is an uncontested divorce, the court sets a hearing date and requires the presence of both parties at the hearing. It then announces the divorce decision if all conditions are fulfilled for this type of case.

Religious marriage and divorce

Question Body:

1. Are religious marriages and divorces recognised in your jurisdiction?

Answer Body

The marriage ceremony is performed publicly at a marriage office before a marriage officer and two witnesses who have the ability to distinguish. The ceremony can be performed at the other places which are found proper by the marriage officer upon the request of the persons who will be married (*Article 141, Civil Code*).

After the marriage ceremony is performed, the marriage officer provides a marriage certificate to the spouses. The religious ceremony of the marriage cannot be performed without presenting a marriage certificate. The validity of the marriage does not depend on whether a religious ceremony has been performed (*Article 143, Civil Code*).

If a provision of the applicable foreign law in a certain case is openly contrary to the public order of Turkey, that provision will not be applied. The form of marriage is governed by the law of the state where the marriage is solemnised (*Article 13/2, 5718 Code*)*.* A religious marriage which includes a foreign element and is held abroad and valid in that country, is also valid in Turkish law.

Finances/capital and property

Question Body:

1. What powers do the courts have to allocate financial resources and property on the breakdown of marriage?

Answer Body

In the absence of any pre- or post-nuptial agreements, the legal matrimonial property regime is the participation on the acquired assets (*see Question 16*).

If a pre- or post-nuptial agreement is found to be valid, the court will uphold the agreement. If the agreement is found to be invalid or does not exist, the court will deliver a judgment regarding the allocation of financial resources and property according to the Civil Code. The court will distinguish between individual property and property acquired during the course of the marriage when making a judgment. Additionally, during the divorce proceedings, the court will request that transfers of assets to third parties of any related transaction are limited. Capital assets must be kept secure until the end of the judgment and the parties can ask the court to take any necessary measures to achieve this.

The company shares will be considered as personal assets and will not be taken into account if obtained before 1 January 2002. However, income from assets is considered as acquired property without evaluating if it is obtained before or after 1 January 2002.

Question Body:

1. What factors are relevant to the exercise of the court's powers?

Answer Body

The court needs to determine the types of asset to be included in the division of matrimonial property (that is, what assets are personal assets). Any personal belongings, assets gained by way of a gift or any compensation awarded for pain and suffering are considered personal assets. Personal assets are not included in the division of assets. The court must rely an expert's opinion in determining the value of the assets.

Question Body:

1. What is the court's current position on the division of assets?

Answer Body

Before 1 January 2002, the Court of Cassation applied a separation of property regime to its judgments on the division of assets. This means that unless parties have reached any other property regime both parties will be able to claim sole ownership on the assets that are registered in their name.

However, after 1 January 2002, the regime of participation in acquired property has started to be applied (*see Question 14*). This is an advanced form of the former statutory regime of separation of property where the assets and debts of the spouses are calculated by taking their date of acquisition into account. Three types of property exist, that is, acquired properties, personal assets and shared properties (*Article 218, Civil Code*).

Acquired properties

Unless proved otherwise, all assets registered to one of the parties will be incorporated in the acquired property regime (*Articles 222 and 223, Civil Code*). The property must have written conditions attached to clearly state that:

* There is a valid asset that is subject to distribution.
* The acquisition of this asset must be finalised when the acquired property regime is applicable.
* The acquired property must be added to the pool of assets that are subject to distribution.
* The acquired property must not be considered a personal asset by law or agreement between the parties.

Personal assets

Personal assets are defined as personal belongings and are assets that have been acquired by either of the parties before the acquired property regime entered into force on 1 January 2002 (*Article 220, Civil Code*). Such assets include:

* Assets acquired without consideration, for example, inheritance or gifts.
* Non-pecuniary damages.
* Partial social security payments.
* Compensation related to labour law.

It is important to note that personal assets are not included in the division of assets.

A spouse cannot cancel the tenancy agreement of the family home, or transfer the family home, and cannot restrict the rights over the marital home without the explicit consent of the other spouse. The spouse that cannot provide consent or that has not given consent without a justified reason, can request the intervention of the judge. The spouse that does not have the ownership of the family home, can request land registry to add an annotation on it *(Article 194, Civil Code)*. An example is a decision by the Supreme Court Assembly of Civil Chambers on 15 April 2015. The property was considered as the marital house, and the defendant spouse transferred it to one of the defendants. Prior consent was not obtained from the claimant spouse. .. The transfer made without the consent of the spouse was therefore invalid. (*No 2013/2-2056 E. 2015/1201 K.*)

Finances/maintenance (alimony)

Question Body:

1. How does ongoing spousal maintenance operate following marital breakdown?

Answer Body

If one of the parties will suffer poverty as a result of the dissolution of the marriage and that party is not significantly more at fault than the other party, that party will be entitled to claim maintenance from the other party (*Article 175, Civil Code*). This is provided that the maintenance is in proportion to the financial strength of the other party.

Additionally, temporary maintenance is available during the divorce proceedings. This is to cover costs relating to the accommodation and maintenance of the spouse and childcare arrangements.

The question of fault is not essential in relation to obtaining temporary allowance. Any order for temporary maintenance will be removed when a final decision has been made.

The alimony is automatically removed if the maintenance creditor remarries or if the death of one of the parties occurs. Maintenance payment can be terminated by the court if the receiving party cohabits without a marriage, experiences a change in the financial circumstances or lives disreputably *(Article 176, Civil Code)*.

Question Body:

1. Is it common for maintenance to be awarded on marital breakdown?

Answer Body

It is common for maintenance to be awarded on marital breakdown in Turkey. In most cases, the judge will rule on the granting of maintenance (except in the case of consensual divorce) if certain conditions are satisfied.

Conditions for granting a maintenance award

The court can only make an award for maintenance on the request of one of the parties. Spouses can make a claim for spousal maintenance at any point during the year after the divorce has been finalised (*Article 178, Civil Code*).

The spouse claiming spousal maintenance must be the faultless party or at less fault than the other party. This is due to the indefinite nature of spousal maintenance, which will continue until the death of the party.

If the spouse claiming maintenance is more at fault than the other spouse, the court will reject the request for maintenance, even if the spouse will be in need after the divorce.

The spouse requesting spousal support must be in need after the divorce. This means that the spouse will have a reduced standard of living and be in poverty after the marriage. It is the practice of the Turkish courts that losing a high standard of living is considered as poverty and the courts will order the other spouse to pay spousal maintenance. For example, a spouse can obtain maintenance even if not in poverty and working in a modestly paid role when they had been married to a rich person.

Amount of maintenance to be awarded

The amount of spousal support must be proportionate to the other spouse's financial capabilities. The upper limit of the amount of spousal support is dependent on the financial position of the other spouse. If the other spouse is not able to pay and is also in poverty, the court will not make an order for maintenance.

Question Body:

1. What is the court's current position on maintenance on marital breakdown?

Answer Body

The court can decide to award maintenance (for an indefinite period of time) on the request of a spouse who will be in financial need as a result of the divorce. The court will decide whether or not the party will be in financial need and will also consider the party's financial position.

A Court of Cassation decision on 7 February 2013, (*2012/23551 E 2013/1785 K*), also recognised in the Court of Cassation Assembly of Civil Chambers' decision on 7 October 1998 (*1998/2-656 E and 1998/688 K*), determined that people who cannot afford their necessary expenses (for example, food, clothes, medical costs and transport) will be considered to be in financial need.

In another decision by the Court of Cassation Assembly of Civil Chambers on 7 July 2010, *(2010/2-371 E 2010/364 K)* it has been accepted that those do not have any income at a level that covers the compulsory and necessary expenditures to develop the financial assets of the individual such as eating, dressing, housing, health, transportation, culture, education should be considered as "poor". In addition, it was found that receiving the minimum wage is not considered an obstacle for claiming maintenance, and the spouse with low income can request maintenance if they can satisfy the relevant conditions (*2nd Civil Chamber on 17 December 2019, 2019/5103 E. 2019/12386 K.*).

Child support

Question Body:

1. What financial claims are available to parents on behalf of children within or outside of the marriage?

Answer Body

Both parents have mutual rights and are responsible for managing the children's assets (*Article 352, Civil Code*). When the parties divorce, the parent with custody must provide information that shows the assets of the child to the court. The parent must also notify all the important changes to the assets or the investments to the court. The parents can use the incomes received from children's assets to care, raise and education of the children and also to cover the expenses of the family in accordance with the equity.

All the expenses of care, education and protection of the children are covered by both parents (*Article 327, Civil Code*). If the child was born outside the marriage, the paternity of the father must be established legally in order to request the child maintenance from the father. That can be performed with the recognition before the authority or with the judgment of the judge. (*Decision of the Third Civil Chamber of Supreme Court dated 4 November 2019 and No 2019/3941 E. 2019/8662 K. as "As a result of the establishment of the paternity, the defendant's (father) obligation of maintenance is occurred"*).

Question Body:

1. On what basis is child maintenance calculated?

Answer Body

Child maintenance is a necessary requirement for participating in the cost of a child's education and care. The maintenance must be proportionate to the financial capabilities of the parent who does not have custody of the child.

Under Turkish law, there is no standard template for the calculation of child maintenance and the financial status of both parents must be considered, along with the needs and age of the child. Additionally, the incomes of the child will be considered while evaluating the amount of the child maintenance (*Article 330(1), Civil Code*). The calculation will be made by the judge based on the supporting documents regarding the needs of the child and the income of and participation to the child's needs by both spouses.

It is possible to bring an action to increase or decrease the amount of child maintenance.

Child maintenance must be paid on a monthly basis and not as a lump sum payment.

Question Body:

1. What is the duration of a child maintenance order (up to the age of 18 years or otherwise)?

Answer Body

The obligation of caring for the child continues for parents until the child reaches majority. It is accepted that the child becomes major with the marriage, turning into 18 years old and the judgment if all the required provisions are provided. When the child becomes major, the child maintenance is removed automatically without requiring any judgment. However, the major child has right to request alimony.

The parents are obliged to take care of the child in an extent that can be expected from them according to their financial status until the end of child's education (*Article 328/2, Civil Code*).

Question Body:

1. Can a child (whether of legal maturity or otherwise) make a claim directly against their parents?

Answer Body

Every person who is not devoid of the ability to act rationally, (due minority, mental illness, mental weakness, inebriation or any similar reason) has ability to "distinguish" (*Article 13, Civil Code*).Minors or special disabled person, who has discretion, cannot incur into a debt through their own acts without the consent of their legal representatives. Such consent is not required in gratuitous acquisitions (donation, lottery and so on) and exercising strictly bonded personal rights (*Article 16(1), Civil Code*).

A minor who has ability to distinguish can bring a child maintenance case (*Article 329(3), Civil Code*). However, the ability to distinguish is a comparative concept and is not defined under Civil Code, instead, it is evaluated by the judge on a case-by-case basis. An education maintenance can be requested if the education of the child continues, and even after the child has reached majority, the parents are still expected to take care of the child (that is, pay for the child's education until completion). (*Decision of Third Civil Chamber of Supreme Court dated 26 February 2015, No 2014/9271 – 2015/3016 K.*)

Enforcement of financial orders

Question Body:

1. What are the main methods of enforcement to ensure compliance with financial orders following divorce/dissolution in your jurisdiction?

Answer Body

For the conditions of enforcement of foreign decrees, see *Question 10*. If the foreign court's decision meets all conditions, it is possible to file a recognition and enforcement case to make the foreign decree applicable in Turkey. If the claimant has opinion that s/he will be unable to collect the financial orders from the defendant, he or she can request the interim injunction from the court. After the decision is granted and the claimant enforces it with an execution file, the claimant can collect the financial orders.

Question Body:

1. What is the legal position on the reciprocal enforcement of financial orders?

Answer Body

The general practice regarding the recognition and enforcement of foreign judgments is dependent on the fulfilment of certain conditions (*see Question 10*). However, the conditions do not need to be fulfilled for the part of the foreign judgment that relates to financial orders.

Turkey has ratified the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). In accordance with the New York Convention, if both states are parties to the New York Convention, the judgment at the jurisdiction of one state will not be required to fulfil the conditions of enforcement in the other state. The New York Convention is only related to the recovery of maintenance from one state party to provide for the other state party. Under the New York Convention, the party owed maintenance will apply to the remitter office with the required documents. The remitter office in Turkey is the Public Prosecution Offices, and it has jurisdiction in Turkey.

Financial relief after foreign divorce proceedings

Question Body:

1. What powers are available to the court to make orders following a foreign divorce? If so, what is the legal basis for making such an application?

Answer Body

The foreign judgments cannot be enforced without recognition and enforcement of the judgment (expect in cases concerning maintenance). Therefore, once the recognition/enforcement of the foreign order is completed, the foreign order will be considered applicable in Turkey.

There are no specific statutory provisions dealing with financial provisions following a foreign divorce.

Under Turkish Law, it is possible to increase or decrease the amount of maintenance awarded in a foreign divorce by bringing a legal action.

Turkey has also ratified the Hague Convention on the Law Applicable to Spousal and Child Maintenance Obligations 1973.

Question Set:

Children

Custody/parental responsibility

Question Body:

1. What is the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage?

Answer Body

Child custody has close links with the Turkish public order and can only be regulated by law, and not by an agreement made between parents.

The custody rights of a parent begin with the birth of the child and continue until the child is 18 years old. The child is considered to be under the custody of his parents and during the marriage the parents assert their custodial rights together. As a result, if the spouses agree that the mother can take the child to another country during the marriage and both spouses apply this agreement there will be no legal issue. However, if spouses have such an agreement but one of the spouses does not comply with its terms, the agreement cannot be enforced under Turkish law.

If the parties are not married, custody of the child belongs to the mother (*Article 337, Civil Code*). If there is a request, the judge will consider if there are reasons to take child from mother's trust and search if the child is common. The regulation of the custody of the child can only be determined for the common child. The mother will typically be given custody of an infant child, as the child is dependent on their mother's care.

In divorce cases, the judge will entrust custody to one of the spouses (*Article 336, Civil Code*). The judge will base his decision on the best interests of the child (even if the parents have a notarial agreement). Joint custody is not regulated under the Civil Code. However, according to Supreme Court practice, joint custody is accepted as part of the divorce settlement under consideration for the protection and the best interests of the child (*Decision of 2nd Circuit of Supreme Court, 20 February 2017 and 2016/15771 E and 2017/1737 K*).

The non-custodial parent has limited visitation rights, as set out by the court. The custodial parent must comply with the visitation rights that are declared in the court's verdict.

There are no specific grounds to determine custody and every case is considered individually. The judge will consider several factors, including but not limited to the financial position of the parent, whether the parent is able to afford the costs associated with custody. Additionally, in determining what is in the best interests of the child, the jobs, salaries and lifestyles of the parents are important. The court receives the expert report from court-appointed expert who has met both spouses and the child.

On 27 June 2018 (*2017/2-3117 E. 2018/1278 K*), the Supreme Court held that a child with the relevant level of understanding must provide their opinion on custody. Following this decision, it is accepted that a child of eight years of age and above has the relevant understanding, and can provide their opinion in relation to which parent they choose to live with (unless that choice conflicts with the best interests of the child).

Question Body:

1. What is the legal position in relation to access/contact/visitation following the breakdown of a relationship or marriage?

Answer Body

Both parents have the right to request contact with the child (*Article 323, Civil Code*). The party requesting contact with the child must ensure that the request does not hinder the child's development or education. The request may be rejected if it causes the child distress. The right can also be removed if used in a way that causes damage to the child. In exceptional circumstances, the right to contact can also be granted to third parties (particularly relatives).

The court considers the comfort and the best benefit of the child. The lifestyles, working times, behaviour of the parents to the child and places where the parents live will be considered when making the arrangements for personal relation. The duration of the personal visitation should not limit the custodial parent's right of custody.

If the custodial spouse wants to move to another country, they must report this to the court as the court is responsible for regulating the visitation rights of the non-custodial parent according to the parents' lifestyle. The court will regulate visitation rights in a different way in cases where the custodial parent lives abroad.

The Assembly of Civil Chambers states that banning a common child from leaving the country prevents the mother from performing her custodial obligation and violates the freedom of travel. As a result, banning a child from leaving the country should not be allowed.

The Assembly of Civil Chambers also stated that a foreign parent can still be awarded custody of the child. The Supreme Court had previously made different decisions on the matter asserting that custody must be given to the Turkish father on the grounds that the mother is living abroad and the child will not be raised according to Turkish culture and traditions. In later decisions, the Supreme Court changed its point of view and awarded custody to foreign mothers stating its belief that the benefit to the child is more important than being raised in Turkey.

International abduction

Question Body:

1. What is the legal position on international abduction?

Answer Body

Turkey is a party of the Hague Convention on the Civil Aspects of International Child Abduction 1980. Any provisions of Hague Child Abduction Convention will be valid and the procedure for returning the child will begin. Article 90 of the Constitution provides that the Hague Child Abduction Convention must be applied equally with national laws and its principles and conditions must be followed by the Turkish courts. Turkey placed the Ministry of Justice's General Directorate of International Law and Foreign Relations as the central authority and this central authority fulfils it through Chief Public Prosecutor's Office. Under Article 5 of the Legal Aspects and Scope of International Child Abduction Code (Law No 5717), after application is made regarding the abduction of the child, return of the child or set for the personal relation with the child, the Turkish authorities are responsible for:

* Detecting the place of the child.
* Taking all the necessary precautions to protect the benefits of the child.
* Making negotiations and taking precautions if the kidnapper is willing to return the child.

Precautions can include:

* Imposing a ban on leaving the country.
* Stopping all the proceedings to have or renew the passport on behalf of the child.
* Stopping all the proceedings to change or to take the register of the child.
* Retaining the child's passport or ID.

In the result of an abduction case held before Turkish court, if the return of the child is decided, the execution proceedings for the child's return will be started with the finalisation of the decision.

Leave to remove/applications to take a child out of the jurisdiction

Question Body:

1. What is the legal position on leave to remove/applications to take a child out of the jurisdiction? Under what circumstances can a parent apply to remove their child from the jurisdiction against the wishes of the other parent?

Answer Body

The custodian parent has the right to decide on the child's personal needs, including the child's place of domicile. Where a child is removed from the jurisdiction by voluntary agreement, the family court can decide on visitation rights according to the parties' living conditions and the need to consider the best interests of the child.

The custodian parent can relocate to another city without the permission of the other parent. However, this must be notified to the other parent. The non-custodian parent has right to request from the court to set visitation between him or her and the child. The court will make the arrangements considering the benefits of the child.

The judge takes required precautions or on request of one of the parent, in case new facts entail like getting married to someone else, being gone to other place or being deceased of one of the parent (*Article 183, Civil Code*). According to Article 183, moving to another country will be considered from the perspective of the child and other family members and the court can make a judgment as taking the custody from the custodian parent if it is considered with the best benefit of the child.

Question Set:

Surrogacy and adoption

Surrogacy agreements

Question Body:

1. What is the legal position on surrogacy agreements in your jurisdiction? Is surrogacy available to individuals and cohabiting couples (both heterosexual and same-sex)?

Answer Body

Under Turkish law, the mother is the person who gives birth to the child.

Surrogacy agreements are against Turkish legal rules and considered to be null and void. Parties cannot force each other to carry out the obligations of a surrogacy agreement. Under the new regulations, it is forbidden for doctors to provide information on surrogacy.

Adoption

Question Body:

1. What is the legal position in relation to adoption? Is adoption available to individuals and cohabiting couples (both heterosexual and same-sex)?

Answer Body

Adoption is regulated under Articles 305 to 320 of the Civil Code. The following conditions must apply:

* The person wanting to adopt must have looked after the child for at least one year.
* A couple with other children must not let the adoption of a child negatively affect any other children that they have.
* A couple wanting to adopt must have been married for at least five years and both must be at least 30 years of age.
* An unmarried person wanting to adopt must be at least 30 years of age.
* Unmarried and same-sex couples cannot adopt.
* There must be at least 18 years' age difference between the adopting person and the child being adopted.

The spouses can adopt together. However, unmarried couples, same-sex couples cannot adopt.

Question Set:

Cohabitation

Cohabitation

Question Body:

1. What legislation (if any) governs division of property and financial claims for unmarried couples on the breakdown of the relationship?

Answer Body

There is no regulation for the division of property for unmarried couples.

Question Set:

Family dispute resolution

Mediation, collaborative law and arbitration

Question Body:

1. What non-court-based processes exist to resolve disputes? What is the current status of agreements reached through mediation, collaborative law and arbitration?

Answer Body

Mediation is not commonly used as a method for resolving family law disputes. Legal action remains the most common method of dealing with family disputes.

There are two conditions that must be satisfied for a dispute to be eligible for arbitration:

* The first is whether or not the arbitration is convenient. The Court of Cassation has determined that disputes that are unrelated with public order are convenient and can be resolved using arbitration. Disputes related with public order cannot be solved through mediation.
* The second is whether the parties agree to settle the dispute using arbitration.

In Turkey, all family issues are related with public order. Therefore, it can be concluded that family disputes are not convenient for arbitration.

Question Body:

1. What is the statutory basis (if any), for mediation, collaborative law and arbitration?

Answer Body

See *Question 34*.

Civil partnership/same-sex marriage

Question Body:

1. What is the status of civil partnership/same-sex marriage? What legislation governs civil partnership/same-sex marriage?

Answer Body

Civil partnership and same-sex marriage are not allowed or recognised in Turkey.

Question Set:

Media access and transparency

Question Body:

1. What is the position regarding media access to and press reporting of family law cases?

Answer Body

Hearings are open to everyone (*Article 141, Constitution*). If the conditions so provide, family cases can be held in private, otherwise all the hearings are held in open courts.

The hearings and announcement of the decision are made in public (*Article 28, Code of Civil Procedure*). However, the court can make a judgment to hold hearings totally or partially in private if public morality and public protection makes it essential to do so. The court can decide this either on its own or at the request of one of the parties.

Question Set:

Controversial areas and reform

Question Body:

1. What areas of the law (if any) are currently undergoing major change? Which areas of law are considered to be particularly controversial?

Answer Body

Same-sex marriages are not regulated under the Civil Code. As a result, same-sex couples cannot take advantage of some of the provisions of the Civil Code, which is a violation of their human rights. This must be addressed and the law needs to be reformed.

A major change in family law relating to domestic violence occurred in 2012 under the Protection of the Family and Prevention of Violence against Women Code (Law No 6284). Despite the enactment of the Code, problems still exist in relation to domestic violence, as there are not enough shelters or the sanctions are not enough. To help solve the problem, programmes need to be developed to educate society and there need to be urgent reforms of the criminal justice system.

Question Set:

Covid-19

Question Body:

1. What has been the impact of Covid-19 and the resultant social distancing and lockdown measures on the family court system in your jurisdiction?

Answer Body

Due to the 2019 novel coronavirus disease (COVID-19), the Turkish legal proceeding system has stopped from 13 March 2020 to 15 June 2020. Therefore, hearings are postponed to a further date, and proceedings are no longer heard (with some exemptions, such as protection orders and urgent matters). Turkey had two essential decisions during the lockdown: one of them was about temporary custody, and the other one was about online communication. In the first case, it had been previously decided for the child to stay in a dorm under protection, and the father requested for the child to stay with him during the pandemic, rather than in a crowded dorm. The court then made an order for the child to stay with his father temporarily. In the second court's decision, the father of the child requested to have online communication on the weekends because of the lockdown, and the court ordered for video calls for the duration of the pandemic.