

# The Year in Review

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## International Family Law

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**THE YEAR IN REVIEW**  
**AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW**

## **International Family Law**

ROBERT G. SPECTOR AND MELISSA A. KUCINSKI\*

### **I. International Conventions: The Hague Conference**

#### **A. THE EXPERTS MEETING ON CROSS BORDER FAMILY SETTLEMENT AGREEMENTS**

In 2012, the Hague Conference's Council on General Affairs and Policy (Council) established an Experts Group to explore the recognition and enforcement of voluntary family agreements across borders.<sup>1</sup> After three meetings between 2013 and 2017,<sup>2</sup> the Experts Group recommended the Council authorize the drafting of a new binding instrument to address where the Group saw a deficit, namely, in recognizing "package agreements" country to country (i.e., family agreements that include a variety of issues instead of one discrete issue that can be enforced under one of the existing Hague Family Conventions).<sup>3</sup> The Council will review this recommendation at its annual meeting in early 2018.<sup>4</sup>

#### **B. SEVENTH SPECIAL COMMISSION ON THE PRACTICAL OPERATION OF THE 1996 AND 1980 HAGUE CONVENTIONS**

The Hague Conference hosted a Special Commission meeting in October 2017 for states to discuss the practical operation of the Hague Child Protection Convention and the Hague Abduction Convention.<sup>5</sup> States discussed topics ranging from delays in processing applications under the Conventions, cooperation among Central Authorities, ongoing work of

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1. Hague Conference on Private International Law (HCCH), *Report on the Expert's Group Meeting on Cross-Border Recognition and Enforcement of Agreements in International Child Disputes (From 12 to 14 December 2013) and recommendation for Further Work*, Prel. Doc. No 5, at 3 (Mar. 2014).

2. *See id.*; Family Agreements Involving Children, HCCH, <https://www.hcch.net/en/projects/legislative-projects/recognition-and-enforcement-of-agreements> (last visited Mar. 18, 2018).

3. Permanent Bureau, Accompanying Note to the "Draft Practical Guide to Family Agreements under the Hague Conventions," dated Feb. 4, 2018, Item III.4, ¶ 4 (Feb. 4, 2018).

4. *Id.* ¶ 3.

5. Seventh Special Commission Meeting (October 2017), HCCH, <https://www.hcch.net/en/publications-and-studies/details4/?pid=6545&dtid=57> (last visited Mar. 21, 2018).

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experts and working groups, and judicial cooperation. The Conclusions and Recommendations can be found on the Hague Conference's website.<sup>6</sup>

## II. International Litigation

### A. THE HAGUE CONVENTION OF OCTOBER 25, 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ("THE CHILD ABDUCTION CONVENTION")

Most U.S. international family law litigation involved the Child Abduction Convention and its implementing legislation, the International Child Abduction Remedies Act (ICARA).<sup>7</sup> U.S. federal and state courts have concurrent jurisdiction to decide a request for return of a child under the Child Abduction Convention.<sup>8</sup>

The Child Abduction Convention operates to promptly return children to their habitual residence.<sup>9</sup> To obtain an order returning the child, a petitioner must prove that the child was wrongfully removed from or retained outside of the child's "habitual residence" and that the petitioner had "a right of custody," which he/she was "actually exercising" (or would have exercised, but for the abduction/retention), under the law of the habitual residence.<sup>10</sup>

#### 1. *Applicability of the Child Abduction Convention*

The Child Abduction Convention only applies to countries that have ratified or acceded to it, and between countries that have accepted the other as a treaty partner.<sup>11</sup> Parties cannot stipulate to its applicability in a case.<sup>12</sup> The Convention ceases to apply when the child in question turns sixteen.<sup>13</sup>

In applying the Convention, the date of the child's wrongful removal or retention must be determined.<sup>14</sup> The Third Circuit held that a child's "retention date" is the date that the "noncustodial parent 'clearly communicates her desire to regain custody and asserts her parental rights to have [her child] live with her'" with clear and unequivocal communication

6. See HCCH Special Commission, Conclusions and Recommendations, (Oct. 10–17, 2017).

7. See 42 U.S.C. § 11603 (1988) (current version 22 U.S.C. §§ 9001–9011 (2014)).

8. See Jennifer Baum, Ready, Set, Go to Federal Court: The Hague Child Abduction Treaty, Demystified, *Sec. of Litig.*, A.B.A. (Jul. 14, 2014), <http://apps.americanbar.org/litigation/committees/childrights/content/articles/summer2014-0714-ready-set-go-federal-court-hague-child-abduction-treaty-demystified.html>.

9. DEPARTMENT OF STATE, ANNUAL REPORT ON INTERNATIONAL CHILD ABDUCTION 3 (2017).

10. Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, art. 3, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter Hague Convention].

11. Robert G. Spector & Bradley C. Lechman-Su, *International Family Law*, 45 INT'L LAW. 148, 151 (2010).

12. *Id.*

13. *Custudio v. Samillan*, 842 F.3d 1084, 1088 (8th Cir. 2016).

14. See *Blackledge v. Blackledge*, 866 F.3d 169, 178 (3rd Cir. 2017).

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by “words, actions, or some combination thereof.”<sup>15</sup> The court acknowledged that this determination is fact-intensive and will vary with the circumstances of each case.<sup>16</sup>

2. *Habitual Residence of the Child*

a. Intent Cases

The Child Abduction Convention does not define the term “habitual residence;” therefore, courts have made this fact-based determination in a number of cases, leading to a split among the circuits as to its definition.<sup>17</sup> The majority view, pioneered by the Ninth Circuit, looks to the parents’ shared intent in determining their child’s habitual residence.<sup>18</sup> In *Delgado v. Osuna*,<sup>19</sup> the parents’ combined intent to move to the United States to escape turmoil in Venezuela changed their child’s habitual residence, even though the father returned to Venezuela shortly thereafter.<sup>20</sup> Similarly, Paraguay became a child’s habitual residence when the mother and child officially moved out of the mother’s Houston, Texas apartment and joined the father in Paraguay, even though the child and mother returned to Houston a few weeks later.<sup>21</sup> In another case, a child of a U.S. Army soldier and his Japanese wife were considered habitual residents of Japan, and therefore the child had to be returned there, even though the father had obtained a custody order from Florida.<sup>22</sup>

In an Eleventh Circuit case, the court determined that parents of a newborn may not have had a shared intent as to the child’s habitual residence, where the father was from the United States and the mother from Guatemala.<sup>23</sup> The issue was whether the mother planned to move to the United States to raise the child with the father. However, the mother’s actions demonstrated that she moved to Florida for “a trial period.”<sup>24</sup> Therefore, the child’s habitual residence was Guatemala.<sup>25</sup> In another case, when the parents had not agreed to abandon their U.S. residence, the child’s habitual residence did not change to the Cayman Islands, even though the parents resided there for two years.<sup>26</sup>

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15. *See id.* at 179.

16. *Id.*

17. *See* Tai Vivatvaraphol, Back to Basics: Determining a Child’s Habitual Residence in International Child Abduction Cases Under the Hague Convention, 77 *FORDHAM L. REV.* 3325, 3325 (2010).

18. *Pennacchia v. Hayes*, 666 Fed. Appx. 677, 679 (9th Cir. 2016) (citing *Mozes v. Mozes*, 239 F.3d 1067, 1084 (9th Cir. 2001)).

19. *Delgado v. Osuna*, 837 F.3d 571 (5th Cir. 2016).

20. *Id.* at 581.

21. *Cartes v. Phillips*, 865 F.3d 277, 282 (5th Cir. 2017).

22. *Cunningham v. Cunningham*, 237 F. Supp. 3d 1246, 1265 (M.D. Fla. 2017).

23. *Ovalle v. Perez*, 681 Fed. Appx. 777, 781 (11th Cir. 2017).

24. *Id.* at 782.

25. *Id.* at 783.

26. *Eubanks v. Eubanks*, No. 17-1217, 2017 WL 3235446, at \*5, \*10 (E.D. La. Jul. 31, 2017).

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However, parents who could not even agree on whether their daughter's visit with her father in Arizona would be one month or two years certainly did not share an intent to change her home country from Mexico to the United States.<sup>27</sup>

b. Acclimatization Cases

The Sixth and Eighth Circuits continue to adhere to the doctrine that a child's perspective determines his habitual residence.<sup>28</sup> However, the Sixth Circuit recently held that, in cases involving very young children, it would be appropriate to use the shared parental intent standard.<sup>29</sup> In an acclimatization case from the Eighth Circuit, the court found that the habitual residence shifted from Israel to the United States because the mother moved the child to St. Louis, Missouri from Israel two years prior. In addition, she got a job in the United States, bought a car, rented an apartment, and established a home.<sup>30</sup> The child spoke English at home and participated in activities at his local Jewish Community Center.<sup>31</sup> As the child was quite young when he left Israel, the child had little remaining connection to Israel.<sup>32</sup>

3. *Rights of Custody and Their Exercise*

A removal or retention is only wrongful if the left-behind parent had a right of custody and was "actually exercising" that right at the time of removal, or would have exercised that right, but for the removal.<sup>33</sup> There were no significant cases discussing this issue during the last year.<sup>34</sup>

4. *Exceptions to Return*

There are a number of exceptions that a respondent may assert in arguing that a child should not be returned to the child's habitual residence.<sup>35</sup>

a. Child is Settled in His/Her New Environment

Article 12 of the Child Abduction Convention provides that the authorities need not return a child if more than one year has elapsed

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27. *Zaragoza Gutierrez v. Juarez*, No. CV-17-02158-PHX-GMS, 2017 WL 3215659, at \*2 (D. Ariz. Jul. 28, 2017).

28. Appellant's Amended Statement of Additional Authorities at 45; *Smith v. Kohen*, 352 P.3d 187 (Wash. 2015) (No. 91398-1).

29. *Ahmed v. Ahmed*, 867 F.3d 682, 689 (6th Cir. 2017).

30. *Cohen v. Cohen*, 858 F.3d 1150, 1154 (8th Cir. 2017).

31. *Id.*

32. *Id.*

33. Hague Convention, *supra* note 10, at art. 13.

34. *See id.*; *Defense to International Child Abduction Under the Hague Abduction Convention*, CARLTON FIELDS (Dec. 29, 2011), <https://www.carltonfields.com/defenses-to-international-child-abduction-under-the-hague-abduction-convention-12-29-2011/>.

35. *See Defense to International Child Abduction Under the Hague Abduction Convention*, *supra* note 34.

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between the child's abduction or retention and the child is now settled in the child's new environment.<sup>36</sup> The one-year period runs from the date the retention or removal became "wrongful." The factual findings used in determining the "now settled" defense are reviewed under the clear error standard.<sup>37</sup>

While normally children who are settled are not returned to their habitual residence, the trial court nonetheless has discretion to do so<sup>38</sup> A child who had lived with her father in Florida since 2013 was not settled and was therefore returned to her mother in Ukraine because the evidence showed she did not make many friends, was frequently tardy or absent from school, and had very few social or extracurricular activities.<sup>39</sup>

b. Grave Risk of Harm/Intolerable Situation

Under article 13(b), a court need not return a child if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."<sup>40</sup>

In *Pliego v. Hayes*,<sup>41</sup> the court held that the minor son of a Spanish diplomat and a U.S. woman who lived in Turkey had to be returned to Turkey to settle the custody issues. Hayes argued that because of Pliego's diplomatic status, he would be immune from suit in Turkey, thereby creating an "intolerable situation" under the Abduction Convention, as the courts would not be able to resolve the child's custody.<sup>42</sup> The Sixth Circuit disagreed, finding that no "intolerable situation" existed under the Abduction Convention that would preclude Turkish courts from deciding custody.<sup>43</sup>

In *Neumann v. Neumann*,<sup>44</sup> the district court ordered two children to be returned to Mexico, concluding that the return did not pose a grave risk of harm to the children.<sup>45</sup> However, because of a stay pending appeal entered by the Sixth Circuit, the return was not carried out and circumstances materially changed.<sup>46</sup> Most significantly, neither parent continued residing in Mexico, and if the children were returned there, the Mexican court might no longer be able, practically or legally, to resolve the custody dispute

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36. Hague Convention, *supra* note 10, at art. 12.

37. *Id.*

38. L.R. Havilland, *One Year Isn't Enough: How the Hague Abduction Convention's One-Year Limitation Encourages Abductors to Conceal Their Child's Whereabouts*, 51 FAM. L. Q. 73, 88 (2017).

39. *Tomynets v. Koulik*, No. 8:16-cv-3025-T-27AAS, 2017 WL 2645518, \*4 (M.D. Fla. Jun. 19, 2017).

40. *See Defense to International Child Abduction Under the Hague Abduction Convention, supra* note 34, at art. 13(b).

41. *Pliego v. Hays*, 843 F.3d 226, 228–229 (6th Cir. 2016).

42. *Id.* at 229.

43. *Id.* at 235.

44. *Neumann v. Neumann*, 684 Fed. Appx. 471, 472 (6th Cir. Mar. 27, 2017).

45. *Id.*

46. *Id.*

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between two American parents over their American children.<sup>47</sup> The fact that the Mexican court might not be able to resolve the custody dispute was seen as possibly presenting an intolerable situation with regard to the children.<sup>48</sup> Therefore, the Sixth Circuit ordered the case remanded to the district court to reconsider whether returning the children to Mexico would now expose them to “a grave risk” of harm or an intolerable situation.<sup>49</sup> The court also concluded that the exception for grave risk is necessarily determined at the time of the actual return rather than the time of the return order when there is appreciable distance between the two.<sup>50</sup> As pointed out by the concurring opinion, since everyone was back in the United States, the appeal was actually moot since Michigan had jurisdiction over the custody dispute.<sup>51</sup>

The Seventh Circuit continues to adhere to the idea that repeated physical and psychological abuse of a child’s mother by the child’s father, in the presence of the child (especially a very young child), is likely to create a risk of psychological harm to the child and justifies a non-return order, even if the mother had voluntarily returned one of the other children to the father.<sup>52</sup> In another case, a federal district court ruled that a boy must stay with his mother in the United States due to the “grave risk” of psychological harm facing him if he returns to French St. Martin to live with his father because “the legal system in St. Martin [appears] to be inadequate to protect Ms. Davies and K.D. from Mr. Davies’s abuse.”<sup>53</sup> The court concluded that domestic violence protection orders “[were] both difficult to obtain and [took] a long time to obtain, and the island [was] too small for someone to successfully hide.”<sup>54</sup> In another case, a child who suffered from post-traumatic stress disorder, because of the petitioner’s violence toward the respondent, did not need to be returned to Mexico.<sup>55</sup>

c. Mature Child’s Objection

In applying this exception, a court must consider whether the child objects to being returned to the country of the child’s habitual residence and not whether the child has a preference to live in one country over the other.<sup>56</sup> This issue is subject to review under the clear error standard.<sup>57</sup> A court has

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47. *Id.* at 472-73.

48. *Id.* at 473.

49. *See id.*

50. *See Neumann*, 684 Fed. Appx. at 473.

51. *See id.* at 485.

52. *See Hernandez v. Cardoso*, 844 F.3d 692, 696 (7th Cir. 2016).

53. *See Davies v. Davies*, 16 CV 6542, 2017 WL 361556, at \*21 (S.D. N.Y. Jan. 25, 2017).

54. *Id.*

55. *See Espinosa-Cisneros v. Solis-Lopez*, No.: 16-cv-00057-GMN-CWH, 2017 WL 1025175, at \*2 (D. Nev. Mar. 16, 2017); *see also Luis Ischui v. Gomez Garcia*, 274 F. Supp. 3d 339, 345-46 (D. Md. 2017) (holding mother suffered from PTSD as a result of sexual abuse from the father’s brother and father); *Oliver A. v. Diana Pina B.*, 151 A.D.3d 485, 486 (N.Y. App. Div. 2017).

56. *Custodio*, 842 F.3d at 1089.

57. *Id.*

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discretion to refuse the return of a child even if the child is mature enough to object to the return.<sup>58</sup> The discretion is very broad, and a trial court will normally be affirmed regardless of which way it exercises its discretion.<sup>59</sup>

In *Ochoa v. Suarez*,<sup>60</sup> the court found that children ages eleven and thirteen were mature enough to express an objection to being returned to Mexico.<sup>61</sup>

d. Human Rights and Fundamental Freedoms

Article 20 provides that the return of a child may be refused if it would not be permitted by the fundamental principles of the requested state relating to the protection of human rights and fundamental freedoms. As usual, there were no cases discussing this exception.<sup>62</sup>

e. Consent/Acquiescence to the Removal

In *Delgado v. Osuna*,<sup>63</sup> the father agreed that the mother should move to the United States with their child in order to escape political turmoil in Venezuela.<sup>64</sup> In another case, the petitioner repeatedly said that the child was better off with the respondent in the United States, obtained a passport for the child to go to the United States, and subsequently sent a text message reiterating the same point.<sup>65</sup> This evidence was sufficient to find a consent exception.<sup>66</sup>

On the other hand, the fact that the mother filed a return petition under the Abduction Convention one week after the father left with the child is strong evidence showing that the mother did not consent to the child's removal.<sup>67</sup> However, the filing of a divorce and custody action in state court does not indicate acquiescence to the child's removal as a matter of law.<sup>68</sup>

5. *Other Issues Under the Child Abduction Convention and ICARA*

a. Attorney's Fees

When a father sought fees and costs after a successful return petition, the court reduced his fee award by two-thirds because his law firm represented

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58. *Id.*

59. *Id.*

60. No. 1:15-CV-1104, 2016 WL 6956609, at 2 (W.D. Mich. Nov. 29, 2016).

61. *Id.* at \*2.

62. *See Defense to International Child Abduction Under the Hague Abduction Convention, supra* note 34, at art. 20.

63. *Delgado v. Osuna*, 837 F.3d 571 (5th Cir. 2016).

64. *See id.* at 580.

65. *Padilla v. Troxell*, 850 F.3d 168 (4th Cir. 2017).

66. *Id.* at 177; *see also Benitez v. Hernandez*, No. 17-917 (KM), 2017 WL 1404317, at \*8 (D. N.J. Apr. 18, 2017) (holding that consent was found when the father paid for the airline fee for a return ticket, drove the mother and child to the airport, arranged for them to be picked up, and found an apartment for them).

67. *Tavarez v. Jarrett*, 252 F. Supp. 3d 629 (S.D. Tex. 2017).

68. *See Willard v. Willard*, No. 17-cv-11645, 2017 WL 3278745, at \*5 (E.D. Mich. Aug. 2, 2017).

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him pro bono and the abducting parent had limited financial means.<sup>69</sup> However, other cases have found that attorney fees can be awarded under ICARA even if the petitioner's attorneys agreed to work for free.<sup>70</sup>

b. Procedural Issues

A court entertaining a Hague return petition has the authority to appoint counsel for the respondent.<sup>71</sup>

In *Salguero v. Argueta*,<sup>72</sup> the court allowed the father to testify by videoconference or telephone because he could not afford the international travel and he would be unable to obtain a visa to enter the United States by the time of the hearing.<sup>73</sup> Similarly, a mother whose pending refugee status precluded her from traveling to the United States to appear in proceedings on her petition for her child's return to Canada pursuant to the Hague Abduction Convention, was allowed to testify by video transmission.<sup>74</sup>

A father's post decree motion to enforce a return order by requiring the mother to surrender the children's passports was properly denied because the request should have been directed to the Mexican court as the country with jurisdiction over the custody dispute.<sup>75</sup> A settlement agreement that indicated the wife should have custody until the Italian court ruled was unenforceable in U.S. federal court and, instead, had to be presented to the Italian courts.<sup>76</sup>

c. Stays

In a recent Eleventh Circuit case, in determining whether to stay a return order pending appeal, the court considered four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.<sup>77</sup>

d. Temporary Restraining Orders

A petitioner seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. In determining whether a temporary restraining order is appropriate, of particular importance is the

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69. *Raps v. Zaparta*, 16 CV 386, 2017 WL 74739, at \*4 (S.D. N.Y. Jan. 5, 2017).

70. *See generally*, *Heslet v. Heslet*, No. 4:16-cv-00673 43 FAM L. REP. 1283 (D. Ariz. Jun 13, 2017).

71. *Pinto v. Gavilanez*, No. 16-cv-5201, 2017 WL 1051187, at \*1 (D. N.J. Mar. 20, 2017).

72. No. 5:17-CV-125-FL, 2017 WL 1113334, at \*2 (E.D. N.C. Mar. 23, 2017).

73. *See id.*

74. *Gamboa v. Murphy*, No. DKC 16-3716, 43 FAM. L. REP. 1067, (D. Md. Dec. 15, 2016).

75. *Madrigal v. Tellez*, 848 F.3d 669, 675-76 (5th Cir. 2017).

76. *Salizzoni v. Ferrer*, 1:16-cv-21610, 43 FAM. L. REP. 1308 (S.D. Fla. 2017).

77. *See generally*, No. 5:17-CV-125-FL, 2017 WL 1067758, at \*2 (E.D. N.C. Mar. 21, 2017).

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history of the respondent in secreting the child.<sup>78</sup> Another major consideration for a temporary restraining order is whether there is a risk of the respondent removing the child to a country that is not a party to the Hague Abduction Convention.<sup>79</sup>

**B. THE HAGUE SERVICE CONVENTION**

Ohio held that failure of the husband to serve the wife who was in Egypt in accordance with the Hague Service Convention meant that the entire divorce decree had to be vacated, including the provisions on custody.<sup>80</sup> A Texas default divorce had to be vacated because the husband, who resided in India, was not served in accordance with the Convention.<sup>81</sup> The U.S. Supreme Court held, in *Water Splash, Inc. v. Menon*, that the Hague Service Convention does not prohibit service of process by mail.<sup>82</sup>

**C. OTHER CASES INVOLVING INTERNATIONAL FAMILY LAW LITIGATION**

**1. *Marriage and Divorce - Jurisdiction and Recognition of Foreign Marriages and Divorce***

Kansas held that sham green card marriages are voidable under the Kansas annulment statute.<sup>83</sup> After finding that the marriage contract was not induced by fraud between the parties, the court held that sham marriages are not void in Kansas, even if they may violate federal law, as they are not specifically listed as void in Kansas and no Kansas law specifically prohibits sham marriages.<sup>84</sup> However, they are voidable under the discretion to annul a marriage for “any other reason justifying rescission,” because such marriages have an illegal purpose clearly contrary to public policy.<sup>85</sup>

Two Americans who married in Cuba were considered married even though at the time of the marriage, it was illegal for Americans to marry there.<sup>86</sup> A Louisiana federal court ruled against the state in a constitutional challenge to a law that requires naturalized citizens who were born outside

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78. *Id.*

79. See *Rose v. Blake*, No. 17-61602-CIV-SCOLA, 2017 WL 3491873, at \*1 (S.D. Fla. Aug. 14, 2017); see also *Hernandez v. Ochoa*, No. 17-830, 2017 WL 3575487, at \*2, 4 (D. N.M. Aug. 8, 2017).

80. *Tadross v. Tadross*, 86 N.E.3d 827, 828, 2017 WL 1024597, at \*1 (Ohio Ct. App. Mar. 16, 2017).

81. *Chukkapalli v. Mandava*, No. 05-15-01287-CV, 2017 WL 2871416, at \*3 (Tex. Civ. App.—Dallas Jun. 30, 2017).

82. No. 16-254, at 1 (U.S. 2016).

83. *Marriage of Kidane and Arayana*, 389 P.3d 212, 218 (Kan. Ct. App. 2017).

84. See *id.*

85. *Id.* at 217.

86. *Alvarez v. Tortora*, No. FM-02-1561-12, 2017 WL 3013101, at \*4 (N.J. Super. Ct. App. Div. Jul. 17, 2017).

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the United States to present a valid birth certificate from their home country before they can obtain a marriage license.<sup>87</sup>

A wife's motion to serve her husband via Facebook was denied, even though the husband was in Saudi Arabia, a non-signatory to the Hague Service Convention, because the wife failed to authenticate the Facebook profile as being that of the husband and did not show that he actually used this Facebook page for communication.<sup>88</sup>

Arizona did not have personal jurisdiction over a German citizen who lived and worked in Spain. However, since the petitioner had resided in Arizona for a sufficient time to satisfy residency requirements, he could obtain a divorce, even though no monetary matters could be adjudicated.<sup>89</sup> Iowa could divorce an Egyptian couple when the wife had lived in the state for more than a year, regardless of her reason for relocating to Iowa.<sup>90</sup> However, Florida determined that it was an inconvenient forum for a divorce of a same-sex couple who resided in London and New York and where divorce proceedings had already commenced in London.<sup>91</sup>

## 2. *Children's Issues*

### a. Custody – Jurisdiction and Enforcement

In Michigan, by statute, a court cannot authorize a parent to exercise parenting-time in a country that has not ratified or acceded to The Hague Abduction Convention.<sup>92</sup>

A Texas court erred in taking emergency jurisdiction over a child when the father offered no evidence of an emergency in which it was necessary to protect the child.<sup>93</sup> The fact that the mother moved with the child from India to Texas without the father's knowledge or consent is insufficient, by itself, to warrant the exercise of emergency jurisdiction.<sup>94</sup>

A New York trial court incorrectly entertained a petition to modify an Italian custody order when Italy retained exclusive, continuing jurisdiction over the child custody determination.<sup>95</sup> The fact that the father's return petition under the Hague Abduction Convention was denied was irrelevant to a proceeding under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).<sup>96</sup> Maryland also determined that a trial court exceeded its jurisdiction by entering an order that modified an existing German custody order when Maryland was not the child's home state and

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87. *Vo v. Gee*, No. 16-15639, 2017 WL 3394034, at \*4 (E.D. La. Aug. 8, 2017).

88. *Qaza v. Alshalabi*, 43 N.Y.S. 3d 713, 716 (N.Y. Sup. Ct. Dec. 5, 2016).

89. *In re Peck*, 395 P.3d 734, 740 (Ariz. Ct. App. 2017).

90. *In re El Krim*, 902 N.W.2d 591, 597 (Iowa Ct. 2017).

91. *DeStefanis v. Han Ming Tan*, 231 So. 3d 537, 539 (Fla. Dist. Ct. App. 2017).

92. *Elahham v. Al-Jabban*, 899 N.W.2d 768, (Mich. Ct. App. 2017).

93. *See In re S.J.*, 522 S.W.3d 576, 583 (Tex. Ct. App.—Houston [14th Dist.] 2017).

94. *See id.*

95. *Gallagher v. Pignoloni*, 145 A.D.3d 781, (N.Y. App. Div. 2016).

96. *Id.*

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there was no other jurisdictional basis to modify an existing order.<sup>97</sup> New York has ruled that it was required to defer to a simultaneous proceeding in Israel when the child's former home state deferred to the child's new home state (Israel) as a more convenient forum and a proceeding was commenced.<sup>98</sup>

A California court erred in a juvenile case by not contacting the authorities in Mexico, the child's home state.<sup>99</sup> On remand, the court was required to contact Mexico.<sup>100</sup> However, the California court would not need to independently verify that its email communication to a Mexican court had actually been received.<sup>101</sup> If no Mexican proceeding was commenced within six months, the California juvenile case would be allowed to proceed.<sup>102</sup>

A federal district court in Maryland determined that it should give comity to a Mexican return determination because there was nothing in the decision that would indicate that the court either misinterpreted the Hague Abduction Convention or was inconsistent with its fundamental premises and objectives.<sup>103</sup> The Mexico courts found that the father had consented to the children remaining in Mexico.<sup>104</sup>

**b. Visitation**

Massachusetts upheld a trial court's order that the father not be permitted to take the children to Peru for visitation because the children were young and had never been away from the mother.<sup>105</sup> Presumably, it will be permissible when the children are older.<sup>106</sup>

**c. Parentage and Child Support**

After a Swiss judgment establishing paternity and child support was registered in California to be enforced under the Uniform Interstate Family Support Act (UIFSA), a California court could not order genetic testing to challenge the registration of that order.<sup>107</sup>

In a rather extraordinary decision, Illinois decided that it could not order support for Mexican children because to do so would require, under Illinois

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97. *Pilkington v. Pilkington*, 149 A.3d 661, 664 (Md. Ct. Spec. App. 2016).

98. *See Hollander v. Weissberg*, 147 A.D.3d 831, 832–833 (N.Y. App. Div. 2017).

99. *In re A.C.*, 220 Cal.Rptr.3d 725 (Cal. Ct. App. 2017); The court found that the error was not reversible error.

100. *See id.* at 730–31.

101. *Id.* at 735.

102. *See id.* at 731; *see also In re Y.C.*, No. B272018, 2017 WL 1406582, at \*3 (Cal. Ct. App. Apr. 20, 2017).

103. *Alvarez v. Alvarez*, No. MJG-17-1010, 2017 WL 2335600, \*4 (D. Md. May 26, 2017).

104. *Id.*

105. *Villafranca v. Villafranca*, 81 N.E.3d 824, 824 (Mass. App. Ct. 2017).

106. *Id.*

107. *County of L.A. v. Superior Court*, 196 Cal.Rptr.3d 345, 346 (Cal. Ct. App. 2015).

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law, a parentage and custody order.<sup>108</sup> Since Illinois had no jurisdiction to determine custody, it followed that it could not order support.<sup>109</sup>

A former wife's petition to register and enforce a Canadian judgment awarding her child support arrearages was proper because it is not a valid defense under the UIFSA that Canadian law authorizes retroactive modification or rescission of support orders.<sup>110</sup>

d. Adoption

Illinois held that a Thai judgment establishing a biological father's paternity of triplets, conceived through assisted reproduction, and imposing support obligations on him, was not contrary to Illinois public policy and was entitled to comity.<sup>111</sup> Illinois had unambiguous statutory language that established that the Parentage Act applied to the narrow situation of an artificial insemination scenario involving a consenting husband and wife and a sperm donor and, thus, was inapposite to a father and mother's situation of a cohabiting couple who did not use donated sperm, had been in an intimate relationship for several years, participated in traditional wedding ceremony ritual, and freely consented to the procedure in writing.<sup>112</sup>

A surrogate's court erred by not dismissing a couple's action to vacate "or deny recognition of" foreign adoption orders under which they had adopted two children from Russia who later exhibited severe behavioral and psychiatric problems.<sup>113</sup> The provisions of the New York Domestic Relations Law relating to foreign adoptions do not authorize it to deny recognizing of or vacate foreign adoption orders.<sup>114</sup> These laws are "not intended to function as a means to abrogate a foreign adoption or deny recognition of a foreign adoption order on the basis of fraud."<sup>115</sup>

e. Immigration

An undocumented Honduran who turned eighteen after his mother filed for special immigrant juvenile findings in state court cannot appeal the dismissal of her petition because, once he reached the age of majority, the court no longer had jurisdiction over the case.<sup>116</sup> In Virginia, juvenile courts cannot conduct proceedings for the sole purpose of making the federally mandated findings required for a child to obtain Special Immigrant Juvenile status and the added legal protections that come with it.<sup>117</sup>

108. Department of Healthcare and Fam. Serv., v. Arevalo, 68 N.E.3d 552, 568 (Ill. App. Ct. 2016).

109. *See id.* at 557.

110. Henderson v. Henderson, 390 P.3d 1226, 1231–1232 (Ariz. Ct. App. 2017).

111. *In re* Parentage of A.H. v. Harlow H., 69 N.E.3d 902, 904 (Ill. App. Ct. 2017).

112. *Id.* at 909.

113. *In re* Child A, 145 A.D.3d 874, 875 (N.Y. App. Div. 2016).

114. *Id.* at 877.

115. *Id.*

116. *In re* Henry P. B.-P., 156 A.3d 673, 675 (Conn. App. Ct. 2017).

117. Canales v. Orellana, 800 S.E.2d 208, 216 (Va. 2017).

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An Italian ex-husband had no standing to seek a revocation of the visa issued to his ex-wife and children because the remedy he sought, i.e., the return of his children, could not be addressed by a visa revocation.<sup>118</sup>

### 3. *Other Cases*

#### a. Criminal Law

The long running Miller-Jenkins litigation concluded another chapter when a U.S. district court refused to set aside a conviction under the International Parental Kidnaping Crime Act (IPKCA) for one of the conspirators who helped Lisa Miller to leave the country.<sup>119</sup> The Illinois prison sentence received by a Pakistani father who abducted his children was properly increased because of the “unnecessary expenditure” of government resources caused by his crime.<sup>120</sup>

#### b. Property Division—Agreements

A German woman who did not understand the purpose and consequences of the premarital agreement presented by the man she was dating (to whom she became engaged after she signed it) was not bound by the agreement in their later divorce.<sup>121</sup> A New York trial court recognized a judgment from Abu Dhabi awarding the husband a monetary sum for the wife’s share of the carrying charges on their Egyptian and New York properties.<sup>122</sup> The court had previously recognized the parties’ Abu Dhabi divorce.<sup>123</sup>

#### c. Attorneys

An attorney who orchestrated her own sham divorce so she could pose as the fiancée of her ex-husband’s cousin, a Cuban national seeking entry into the United States, may never again appear in a New Jersey courtroom.<sup>124</sup>

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118. *See Demaj v. Zuchowski*, No. 3:15-cv-1652, 2017 WL 1246331, at \*2 (D. Conn. Dec. 21, 2017).

119. *United States v. Zodhiates*, 235 F. Supp. 3d 439, 447–49 (W.D. N.Y. 2017).

120. *See United States v. Ali*, 864 F.3d 573, 574 (7th Cir. 2017).

121. *In re Porter*, 381 P.3d 873, 880 (Ore. Ct. App. 2016)

122. *Alesawy v. Badawi*, 2017 WL 2914308, 889 (N.Y. Sup. Ct. Jul. 6, 2017).

123. *Badawi v. Alesawy*, 24 N.Y.S.3d 683, 684–85 (N. Y. App. D 2016).

124. *In re Machado*, 43 FAM L. REP 1325 (N.J. 2017).

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