

# International Family Law

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## I. International Conventions

### A. HAGUE CONVENTION ON INTERCOUNTRY ADOPTIONS

The United States deposited its instrument of ratification for the Hague Adoption Convention.<sup>1</sup> The Convention is aimed at ensuring that intercountry adoptions are made in the best interests of children and preventing the abduction, sale of, and traffic in children. The Convention entered into force for the United States on April 1, 2008. The Convention imposes duties on both the sending and receiving States. The sending State must determine that the child is eligible to be adopted. It must also decide whether there has been sufficient opportunity for the child to be adopted in its country of origin and that the adoption is in the child's best interests. The receiving State must decide whether the potential adopting couple is suited to adopt and whether the adopted child is eligible to immigrate to the receiving State. The Central Authority for the United States is the Office of Children's Issues in the U.S. Department of State.

### B. THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

As of March 1, 2008, the State Department's Office of Children's Issues became the primary contact for cases of children abducted both to and from the United States. The National Center for Missing and Exploited Children had been the primary contact for incoming cases prior to then.<sup>2</sup>

The United States accepted the accession of Costa Rica to the Hague Abduction Convention, and it went into force between the two countries on January 1, 2008.

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1. Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoptions, May 29, 1993, *available at* <http://laws.adoption.com/statutes/hague-convention-on-protection-of-children.html>.

2. Hague Conference on Private International Law, Authorities, [http://www.hcch.net/index\\_en.php?act=authorities.details&aid=133](http://www.hcch.net/index_en.php?act=authorities.details&aid=133) (last visited Feb. 26, 2009).

Japan has indicated its intention to become a state party to the Hague Abduction Convention. This will likely still be some years away, however, due to the required broad changes to its family code and development of implementing legislation.

C. THE 1996 HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY, AND MEASURES FOR THE PROTECTION OF CHILDREN

There is some impetus on the part of the State Department to move towards ratification of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility, and Measures for the Protection of Children, concluded October 19, 1996 (the 1996 Convention). The Secretary of State's Advisory Committee on Private International Law's (ACPIL) Study Group on the 1996 Convention held public meetings on December 7, 2007, and April 28, 2008, focusing on Jurisdiction, Applicable Law, and Recognition and Enforcement, and Cooperation. The purpose included descriptions of what obligations adoption of the 1996 Convention would impose on the United States if it ratified the treaty, how the treaty would benefit U.S. families, what specific children's issues the treaty would address, how they could be implemented in the United States, which state or federal laws would be affected, and which state and federal authorities could provide assistance in cooperating with particular requests under Chapters I and V. Currently, fourteen states and one non-member state are parties. Particular benefits of the 1996 Convention are reinforcement of the 1980 Abduction Convention and rules for recognition and enforcement of custody determinations.

## II. International Litigation

A. THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

As usual, most of the international family law cases in the United States involved the 1980 Hague Convention on the Civil Aspects of International Child Abduction and its implementing legislation, the International Child Abduction Remedies Act.<sup>3</sup> This treaty has more ratifications and accessions than almost any other treaty concluded under the auspices of the Hague Conference on Private International Law.<sup>4</sup>

An interesting issue regarding abductions which took place before the acceptance by the United States of Peru's accession, and which continued after the acceptance, was decided in *Viteri v. Pflucker*.<sup>5</sup> The court held that the Convention did apply to wrongful removals or retentions occurring after the Convention enters into force separately in each State, but

3. International Child Abduction Remedies Act, 42 U.S.C. § 11603 (2006).

4. Although widely adopted, numerous state parties are not in compliance with the treaty. See U.S. DEP'T OF STATE, REPORT ON COMPLIANCE WITH THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION, (Apr. 2008), available at <http://travel.state.gov/pdf/2008HagueAbductionConventionComplianceReport.pdf>

5. *Viteri v. Pflucker*, 550 F. Supp. 2d 829 (N.D. Ill. 2008).

before the Convention enters into force between the States. Nothing in the Convention or its drafting history implies or indicates that a State must be accepted by others to become a contracting State. Therefore, an application for return related to removal or retention does not have any effect in a contracting State until that individual contracting State has accepted the acceding State. An application can be made, however, for the return of a child abducted before the treaty enters into force between the two countries, so long as it occurred after each country ratified the treaty and the treaty is goes into effect between the two countries.

The Convention operates to return children to the State from where they were taken so that State can determine issues of custody and visitation. In order to obtain a return order, the petitioner must prove that the child was abducted from the country of the child's habitual residence, that the petitioner had "a right of custody" under the law of the abducted-from State, and that the petitioner was actually exercising those rights, or would have exercised those rights but for the abduction. Jurisdiction is appropriate in either federal or state court.

### 1. *Habitual Residence*

Because the Abduction Convention does not define the term "habitual residence," courts have had to determine this "fact-based" issue in a number of cases. In a major opinion, the Sixth Circuit rejected the parental intent test for changing the child's habitual residence as set out by the Ninth Circuit in *Mozes v. Mozes*.<sup>6</sup> The Sixth Circuit held that habitual residence is the place where the child has been physically present for an amount of time sufficient to be acclimatized to a degree of settled purpose from the child's point of view.<sup>7</sup> But a mother cannot turn a nine-week visit to the United States into an almost seven month stay and then claim that the child is acclimatized in the United States so as to shift habitual residence.<sup>8</sup> The court noted that the respondent cannot take advantage of the time-lapse in which she led the petitioner to believe that she was planning on returning to Australia to claim that the children have become "acclimatized." It would be fundamentally unfair, the court said, to allow the respondent to retain the children in the United States, without their father's consent and then claim in court that the children have grown accustomed to their new surroundings. In another case involving Australia and the United States, a mother who moved with the children to Australia to see if her marriage could be saved, did not change the children's habitual residence because she purchased a round trip ticket, kept most of her finances in North Carolina, the children never became acclimatized to Australia, and she had a prior order from a North Carolina court awarding her custody.<sup>9</sup>

In determining habitual residence, a Pennsylvania district court determined that it should look at how the child's presence in the foreign country fits within the larger picture of the history of this couple and the child.<sup>10</sup> An Illinois federal district court held that the children's habitual residence did not shift from the United States to Belgium even though

6. *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001).

7. *Robert v. Tesson*, 507 F.3d 981 (6th Cir. 2007).

8. See *Clarke v. Clarke*, 2008 WL 2217608 (E.D. Pa. May 27, 2008).

9. *Maxwell v. Maxwell*, 2008 WL 4129507 (W.D.N.C. Sept. 2, 2008).

10. *Mikovic v. Mikovic*, 541 F. Supp. 2d 1264 (M.D. Fla. 2007).

they lived there for three years because the father had promised the family that they would move back to the United States after he finished his schooling.<sup>11</sup> A mother's reservations about moving to Germany with her husband and children did not prevent the child's habitual residence from shifting to Germany because the family had taken all steps necessary to abandon their old habitual residence; the mother's removal of the child three years after the move was wrongful.<sup>12</sup> Therefore, when it appears that the parents intended to stay in the new State indefinitely in connection with the father's employment, habitual residence shifts from the United States to the new State.<sup>13</sup>

## 2. *Rights of Custody*

German law gives both parents a right of custody, and therefore a father's removal of a child, even with the consent of the German authorities, is considered wrongful.<sup>14</sup> A Colorado district court adopted the minority view and held that a *ne exeat* clause confers a right of custody on the non-custodial parent.<sup>15</sup>

In an unusual case, the Eleventh Circuit ruled that an Alabama state court's *ne exeat* order forbidding a minor child's mother, a native of the Netherlands, from removing her child from its jurisdiction pending its decision in a custody dispute with the child's father, a native of the United States, did not constitute a "retention" within the meaning of the Convention. It was undisputed the child had been in the mother's physical custody since his birth, and she still had physical custody of the child after the order was entered. The Convention, the court held, was meant to cover the situation where a child had been kept by another person away from the petitioner claiming rights under the Convention, not where the petitioner still retained the child but was prevented from removing him from the jurisdiction.<sup>16</sup>

## 3. *Defenses*

### a. Settled in New Environment

There are a number of defenses that the respondent may assert to prevent the child from being returned. One defense is contained in Article 12 of the Convention. It provides that the judicial authorities of the abducted-to country need not return the child if more than one year has elapsed between the abduction, or retention, and the filing of the petition for return and the child is settled in the child's new environment.

In cases involving this defense this year, one court determined that a child is settled in her new environment because she is performing two to three age levels above her own age, is well liked by her peers at day care, and has a strong core of friends and many relatives in Washington.<sup>17</sup> Another court, however, held that a child cannot be well settled in its new environment when neither the mother nor the children have legal alien

11. *Van de Sande v. Van de Sande*, 2008 WL 239150 (N.D. Ill. Jan. 29, 2008).

12. *McClary v. McClary*, 2007 WL 3023563 (M.D. Tenn. Oct. 12, 2007).

13. *See Sorenson v. Sorenson*, 563 F. Supp. 2d 961 (D. Minn. 2008).

14. *See In re Marriage of Witherspoon*, 66 Cal. Rptr. 3d 586 (Cal. Ct. App. 2008).

15. *Lieberman v. Tabachnik*, 2008 WL 1744353 (D. Colo. Apr. 4, 2008).

16. *Pielage v. McConnell*, 516 F.3d 1282 (11th Cir. 2008).

17. *Muhlenkamp v. Blizard*, 521 F. Supp. 2d 1140 (E.D. Wash. 2007).

status and are subject to deportation at any time.<sup>18</sup> On the question of whether an illegal alien can be well-settled in the United States, an Arizona federal district court determined that a child cannot be settled because he is an illegal alien, has no I-94 form and, even in the absence of the Convention, is subject to removal from the United States.<sup>19</sup>

It should be noted that the “well settled” defense can only be considered if the petition for return is filed more than one year after the removal or retention of the child.<sup>20</sup> A current controversial issue concerning this provision is whether the one year period can be tolled if the abducting parent has secreted the child during that period of time. According to the Ninth Circuit, the one year period can be equitably tolled when the abducting parent hides the child in order to ensure the left-behind parent cannot file within the one year period.<sup>21</sup>

#### b. Preference of the Child

A second defense is provided in Article 13. The child need not be returned if the child objects to being returned and has attained an age and maturity where it is appropriate to take account of the child’s views. A federal district court in Florida determined that a thirteen year old girl did not need to be returned to Argentina because she was an extremely bright and mature thirteen year old who persuaded the trial court that she enjoyed life in the United States and would have better opportunities there.<sup>22</sup>

The federal district court in Oregon denied a father’s petition to return the child to Hong Kong where the child, age twelve at the time of filing, but thirteen by the time of decision, was found to be of sufficient age and maturity. Based on a report and testimony of a psychologist, and an in camera interview with the child, the trial judge concluded the child had thought out her decision carefully, was not subject to the undue influence of either parent, and had decided to remain in Oregon.<sup>23</sup>

#### c. Grave Risk of Harm

A final defense is contained in Article 13(b) and provides that a child need not be returned if the child would be subjected to a great risk of psychological or physical harm if returned. The respondent is required to prove this defense by clear and convincing evidence.<sup>24</sup> In 2007, the Sixth Circuit in *Simcox v. Simcox*,<sup>25</sup> determined that a grave risk of harm existed to a four-year-old child and an eight-year-old child if returned to their father in Mexico. The father engaged in repeated physical and psychological abuse of the mother in children’s presence. Also, the evidence established that four of the five children in the family were abused and suffered from post-traumatic stress disorder. *Simcox* stressed three factors in determining whether there is a grave risk of harm to the child: if the nature of the abuse is serious, if the abuse happens with extreme frequency, and if there is a reasonable likelihood that it will occur again absent sufficient protections. Upon remand the dis-

18. *Lopez v. Alcalá*, 547 F. Supp. 2d 1255 (M.D. Fla. 2008).

19. *Valverde v. Rivas*, 2008 WL 4185831 (D. Ariz. Sept. 5, 2008).

20. *See In re A.V.P.G.*, 251 S.W.3d 117 (Tex. App.—Corpus Christi 2008).

21. *Duarte v. Bardales*, 526 F.3d 563 (9th Cir. 2008).

22. *Leites v. Mendiburu*, 2008 WL 114954 (M.D. Fla. Jan. 9, 2008).

23. *Man v. Cummings*, 2008 WL 803005 (D. Or. Mar. 21, 2008).

24. *International Child Abduction Remedies Act*, 42 U.S.C. §.11603(e)(2)(A) (2006).

25. *Simcox v. Simcox*, 511 F.3d 594 (6th Cir. 2007).

strict court determined there were no undertakings that would protect the children if they were returned to Mexico.<sup>26</sup> *Simcox* was followed in *Di Giuseppe v. De Giuseppe*,<sup>27</sup> when the court refused to return children to Canada because the court was certain the mother would abuse her children before a court in Canada could address the issue.

The Eleventh Circuit held that a grave risk of harm to a wrongfully removed child existed based on evidence that the father's violent temper and abuse of alcohol would expose the son to a grave risk of harm if were he to be returned to Australia. The court was not required to find that the son had previously been physically or psychologically harmed. Nor was the respondent required to prove that the social services agency would be unable to protect the child because that requirement is not authorized by the Convention and would present extreme difficulties of proof.<sup>28</sup> On the other hand, the First Circuit determined that there was no grave risk of harm in returning the child when the undertakings that the trial court had ordered, and which were agreed to by the husband, could alleviate any concerns about returning the child.<sup>29</sup>

California decided that when children have been removed by the civil authorities from their mother in Germany, it is error to award her temporary custody pending the children's return to Germany.<sup>30</sup>

#### 4. Enforcement

A decision of a court in the Netherlands finding that the mother had wrongfully removed the children was entitled to be recognized in the United States.<sup>31</sup> But, a decision of a Spanish court awarding custody of the child to the mother did not have to be recognized in the United States because the decision was in violation of the Abduction Convention.<sup>32</sup> Because the Spanish decision could not be recognized, the petitioner's incarceration for civil contempt for violating the order directing her to return her child from Spain was not in violation of laws or treaties of the United States. Thus, her habeas petition was appropriately denied.<sup>33</sup>

A mother's request that an order directing her to return the child to Venezuela be stayed was properly denied even though she argued that the president of Venezuela was an anti-American activist who would not honor any request from the United States, since she failed to show how the "bizarre anti-American ruminations of the President of Venezuela are relevant" to this case.<sup>34</sup> An oral settlement agreement reached between the children's parents in front of the court is enforceable in the father's case for the return of the children to Italy.<sup>35</sup>

26. *Simcox v. Simcox*, 2008 WL 2924094 (N.D. Ohio July 24, 2008).

27. *Di Giuseppe v. De Giuseppe*, 2008 WL 1743079 (E.D. Mich. Apr. 11, 2008).

28. *Baran v. Beaty*, 526 F.3d 1340 (11th Cir. 2008).

29. *Kufner v. Kufner*, 519 F.3d 33 (1st Cir. 2008).

30. *In re Marriage of Witherspoon*, *supra* note 14.

31. *Diallo v. Bekemeyer*, 2007 WL 4593502 (E.D. Mo. Dec. 28, 2007).

32. *Carrascosa v. McGuire*, 520 F.3d 249 (3d Cir. 2008).

33. *Id.*

34. *Vale v. Avila*, 2008 WL 2246929 (C.D. Ill. May 29, 2008).

35. *LoCasto v. LoCasto*, 518 F. Supp. 2d 1025 (N.D. Ill. 2007).

### 5. *Other Issues Under the Convention*

A federal district court in Colorado held it had the authority to appoint an attorney to represent a respondent in a Hague abduction proceeding if it is apparent to the court that a pro se litigant has a colorable claim but lacks the capacity to present it.<sup>36</sup>

The pendency of state court custody proceedings between divorced Israeli citizens, one of whom lived in the United States and the other of whom lived in Israel, did not support the district court's abstention under the Younger doctrine. The purpose of the Hague Convention, according to the Eighth Circuit, is to determine whether jurisdiction over a custody dispute was properly placed. Given that the custody determinations had been obtained from a state court and from an Israeli court, the district court was uniquely situated to adjudicate whether Israel or Missouri was the children's habitual residence. Furthermore, the Hague Convention issues were not properly or fully raised in state court.<sup>37</sup> In a state court, a proceeding to obtain the return of a child under the Abduction Convention can be joined with a custody action.<sup>38</sup>

A Virginia Court of Appeals dismissed the appeal of a father seeking review of two state court orders in a Convention return case under the Fugitive Disentitlement Doctrine, finding him a fugitive from justice after two orders of civil contempt were lodged against him. The Virginia Supreme Court affirmed.<sup>39</sup> The parties had been residing in Spain for eleven months when the mother took the child to Virginia to reside with her parents. The father, a Mexican citizen, filed a petition for return under the Hague Convention in the juvenile court, and after a hearing, the court ordered that the child return to Spain in the care of the Petitioner. Five months later, on de novo review, the circuit court vacated the prior order and issued a new order requiring the father to bring the child back to Virginia. Following a first and second show cause orders for contempt, the father refused to return the child to Virginia, and did not personally appear at the second contempt hearing. He then appealed the order of vacatur and both contempt orders. The court found a connection between the father's fugitive status and his appeal and granted the mother's motion to dismiss the appeal.

### 6. *Other International Child Abduction Issues*

On February 1, 2008, new passport issuance regulations went into effect.<sup>40</sup> To submit a U.S. passport application for children under the age of sixteen, both parents must consent, and minors must appear in person. The application must include evidence of child's U.S. citizenship, that these are the parents or guardian, and show a valid form of personal identification. The parents are required to sign and take an oath before an authorized passport acceptance agent. If the other parent does not show to sign, the appearing parent must further show evidence of a state court judgment showing that they are the sole legal custodian of the child or show notarized written consent of the other parent. The apply-

36. *Lieberman*, *supra* note 15.

37. *Barzilay v. Barzilay*, 536 F.3d 844 (8th Cir. 2008).

38. *In re J.J.L.-P.*, 256 S.W.3d 363 (Tex. App.—San Antonio 2008).

39. *Sasson v. Shenhar*, 667 S.E.2d 555 (Va. 2008).

40. *See* Passport Application-Minors, 22 C.F.R. § 51.28(a)(3)(ii)(E) (2008).

ing parent may also explain why the other parent's consent cannot be obtained. Other rules pertain to guardians.

## B. OTHER CASES INVOLVING INTERNATIONAL FAMILY LAW LITIGATION

### 1. *Premarital Agreements*

A 1974 premarital agreement drafted in Germany providing for the couple's property division is valid in New York when it was signed before a notary in Germany and the parties acted in accordance with the agreement throughout their marriage.<sup>41</sup>

In a dissolution of marriage case, the Ohio Court of Appeals affirmed the trial court's ruling that (1) the *mahr* provisions of an Islamic marriage contract were unenforceable under the Establishment Clause of the Ohio Constitution, which prohibits judicial enforcement of a contract for a religious act (payment of the *mahr*); and (2) the conditions under which the parties entered the marriage contract rendered it unenforceable as a prenuptial agreement.<sup>42</sup> While residing in Ohio, Zawahiri was presented with a form Islamic marriage contract where the *mahr* and deferred *mahr* were negotiated just two hours prior to the marriage ceremony, after guests had arrived. Thereafter the parties lived apart and accumulated no marital assets, and eventually Zawahiri filed to dissolve the marriage. Alwattar argued the \$25,000 deferred *mahr* in the *nikah* was a valid prenuptial agreement, and should be enforced as such. The trial court refused to enforce the *mahr* on the two grounds stated above. Alwattar's argument that the *mahr* should have been enforced as a general contract was not properly preserved and not reached.

### 2. *Marriage*

New York determined that a Canadian marriage between two New York residents of the same sex was entitled to be recognized in New York, and that therefore a community college improperly denied spousal health care benefits to the couple. The appellate panel noted specifically that New York had never enacted a "little-DOMA" law.<sup>43</sup> A New York trial court, in a divorce action arising out of a same-sex marriage entered into in Canada, determined that the best interests of the children warranted granting custodial rights to the non-biological, non-adoptive mother, since the biological mother held out the non-biological mother as a parent to the world and children. The children were given the non-biological mother's last name and birth announcements presented the non-biological mother as a parent of the children. The extended families of each party were encouraged to treat the non-biological mother as a parent. Additionally, the biological mother accepted health insurance and financial contributions from the non-biological mother for the children.<sup>44</sup>

Louisiana determined that a foreign marriage between first cousins, valid where contracted, was valid in Louisiana and not a violation of a strong public policy. This ruling relating to the marriage in Iran of Iranian citizens, who were later domiciled in Louisiana, also raised issues about the status of international relations between the United States and

41. *Stawski v. Stawski*, 843 N.Y.S.2d 544 (N.Y. App. Div. 2007).

42. *Zawahiri v. Alwattar*, 2008 WL 2698679 (Ohio Ct. App. July 10, 2008).

43. *Martinez v. County of Monroe*, 850 N.Y.S.2d 740 (N.Y. App. Div. 2008).

44. *Beth R. v. Donna M.*, 853 N.Y.S.2d 501 (N.Y. Sup. 2008).



Iran. The Family Court judge ruled that because of the poor state of those relations, he would not give any recognition or comity to any marriage or any document originating in Iran, which he referred to as being “an enemy of the United States.”<sup>45</sup> The Court of Appeals, however, noted that foreign documents are governed now by statute, not comity, and that the statute provides the means for admission of foreign documents such as this marriage certificate.<sup>46</sup>

### 3. *DIVORCE-Recognition of Foreign Judgments and Divorce*

The following cases demonstrate that in the absence of statutory recognition guidelines, the inquiry by the state court is a fact specific one.

The divorce that a husband obtained under Islamic religious law and secular Pakistani law, by performing *talaq*, would not be afforded comity in Maryland because the foreign *talaq* divorce provision was contrary to Maryland public policy. Under Islamic religious law and secular Pakistani law, only a husband had an independent right to utilize *talaq*, and a wife could utilize it only with the husband’s permission. This was contrary to Maryland’s Equal Rights Amendment. The court determined that the *talaq* procedure lacked any significant due process rights for the wife. The court also held that acceptance of the silence of the Pakistani marriage contract, regarding the division of property, as a waiver of the wife’s rights to marital property acquired during the marriage, would conflict with Maryland’s comprehensive statutory scheme designed to effectuate a fair division of property acquired by parties during a marriage.<sup>47</sup>

A husband was permitted to proceed with his civil marital dissolution action in New York, despite the parties having earlier received an Israeli divorce which had been predicated on an Orthodox Jewish divorce (*Get*). The New York court held the Israeli divorce was not entitled to recognition because the process by which it was obtained circumvented the constitutional and statutory marital dissolution scheme of New York.<sup>48</sup>

New York will accord comity and recognize a “customary divorce” terminating a “customary marriage,” both performed in Ghana, as long as jurisdictional circumstances would lead a court in Ghana to recognize it, but if the “customary divorce” did not address the parties’ financial rights and obligations, that action could be maintained in New York.<sup>49</sup>

A California court decided it was not required to recognize a 2002 Turkish divorce under either the Uniform Divorce Recognition Act or international comity. The parties married in 1996 in California and again in Turkey in 1998. The parties had consented to the 2002 Turkish divorce, but the translated judgment did not mention the California marriage and did not resolve rights and obligations that arose from that marriage. Therefore, wife’s dissolution action in California was proper.<sup>50</sup>

A New York trial court recognized a divorce obtained by the parties in the Ukraine in 1996 based on prior acts and acknowledgment of the parties, and dismissed a dissolution action filed by the former wife in 2008 on that recognition, estoppel and claim preclusion.

45. Ghassemi v. Ghassemi, 998 So. 2d 731, 736 (La. App. 1st Cir. 2008).

46. *Id.*

47. Aleem v. Aleem, 947 A.2d 489 (Md. 2008).

48. Tsirlin v Tsirlin, 866 N.Y.S.2d 96 (N.Y. Sup. 2008).

49. T.T. v. K.A., 867 N.Y.S.2d 21 (N.Y. Sup. 2008).

50. Lee v. Aydemir, 2008 WL 4606572 (Cal. App. Oct. 17, 2008).

Significant acts of the parties included a failed appeal of the Ukrainian decree and an agreement to compromise an action for dissolution filed by former husband in 2004 by reciting the existence of the 1996 divorce.<sup>51</sup>

#### 4. *Property Issues*

Washington held that a divorce court that has in personam jurisdiction over the parties may divide their interests in property that is located in Poland because there is a difference between jurisdiction to adjudicate personal interests in real property, which is a transitory cause of action and jurisdiction to adjudicate legal title in real property which must be brought where the land is located.<sup>52</sup>

Washington also held that a trial court acted within its discretion in applying the doctrine of comity to carry out orders of a British Columbia divorce court disposing of land within the state. In issuing an ejectment order against the tenant-in-common former husband and awarding possession of the property to the former wife for sale, the trial court also noted that the Canadian decision was fair and that no other alternative made sense. After sale of the property, the trial court would have discretion to transfer the proceeds to the Canadian court's registry for disposition.<sup>53</sup>

#### 5. *Children's Issues*

Numerous cases show state courts apply the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to international custody disputes, and *In re Marriage of Willson*<sup>54</sup> supplanted a Hague Abduction Convention remedy.

A Michigan court has exclusive continuing jurisdiction under the UCCJEA even though the mother and child have moved to Canada because the father exercises significant parenting time with the child in Michigan and therefore Michigan retains jurisdiction under section 202 of the UCCJEA.<sup>55</sup> By the same token, a father may not modify a Taiwanese custody order in Texas when the mother and child still live in Taiwan and that country has not relinquished jurisdiction.<sup>56</sup>

An Illinois trial court was affirmed when it exercised its discretion to allow a mother to exercise her visitation rights at her home in the United Arab Emirates. The father argued that because the UAE was not a party to the Hague Abduction Convention, he would not be able to enforce his custody order. The court noted that the father had previously been able to obtain some legal recourse in the courts of the UAE, and the mother had agreed that the child should reside in the United States.<sup>57</sup>

A trial court was without basis to impute to an Egyptian father income of \$680 per week based on New Jersey wages, as the father was not voluntarily underemployed by virtue of his returning to Egypt where he earned \$86 per month. The trial court could not impute income to the father based on New Jersey wages, since that amount bore no relationship

51. *Vartsaba v. Vartsaba*, 873 N.Y.S.2d 238 (N.Y. Sup. 2008).

52. *In re Marriage of Kowalewski*, 182 P.3d 959 (Wash. 2008).

53. *MacKenzie v. Barthol*, 173 P.3d 980 (Wash. Ct. App. 2007).

54. *In re Marriage of Willson*, 2008 WL 2790492 (Cal. Ct. App. July 21, 2008).

55. *White v. Harrison-White*, 760 N.W.2d 691 (Mich. Ct. App. 2008).

56. *In re J.H.*, 264 S.W. 3d 919 (Tex. App.—Dallas 2008).

57. *In re Marriage of Saheb & Khazal*, 880 N.E.2d 537 (Ill. Ct. App. 2008).

to father's earnings or ability to earn money under very different economic circumstances in Egypt.<sup>58</sup>

The Maryland Court of Appeals has held that the tort of interference with parent-child relations is recognized in Maryland. A suit can be brought by either a custodial parent or by a parent who has visitation rights with a child. Here, a father who had custody of one son and visitation rights with a second son stated claims against the children's mother and maternal grandmother after the mother and grandmother fled to Egypt with the children. The punitive damages awarded to the father after a jury trial were not found to be excessive.<sup>59</sup>

In a case where a UCCJEA enforcement action affected recovery of a child temporarily in Wisconsin, but removed from Spain after residing there two years, a California Court of Appeals affirmed the dismissal of mother's custody petition filed in California state court just days after she filed the same action in Spain. Her action in Spain was ultimately dismissed for the mother's nonappearance, and the Spanish case proceeded on the father's counter-petition to judgment. The mother eventually traveled to Wisconsin and filed there as well, but the father eventually filed a UCCJEA enforcement there and recovered the child.<sup>60</sup>

In a state child protective action, the California Court of Appeals found the trial court erred when it did not consider whether it had temporary emergency jurisdiction under the UCCJEA in a protective proceeding and released the children to the parents. Although the children moved back and forth across the U.S.-Mexican border weekly, it appeared they resided in Mexico.<sup>61</sup>

## 6. *Other Cases*

Federal immigration law that allows attorney's fees against his or her sponsor to enforce the sponsor's "Affidavit of Support" is not applicable in divorce cases.<sup>62</sup>

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58. *Ibrahim v. Aziz*, 953 A.2d 508 (N.J. Super. Ct. App. Div. 2008).

59. *Khalifa v. Shannon*, 945 A.2d 1244 (Md. 2008).

60. *Willson*, *supra* note 54.

61. *San Diego County HHS v. MV*, 2008 WL 163019 (Cal. Ct. App. Jan. 18, 2008).

62. *Iannuzzelli v. Lovett*, 981 So. 2d 557 (Fla. Dist. Ct. App. 2008).

