

# FAMILY LAW ACROSS BORDERS

## CASES AND COMMENTS



**Melissa A. Kucinski**

*The George Washington University School of Law*

**Bruce Hale**

*Part-Time Lecturer, Northeastern University School of Law*

**Michael S. Coffee**

*The George Washington University School of Law*

AMERICAN CASEBOOK SERIES®

 WEST  
ACADEMIC  
PUBLISHING

# TABLE OF CONTENTS

---

TABLE OF CASES .....	XV
<b>Chapter 1. Introduction to the Study of International Family Law....</b>	<b>1</b>
1. Private International Law .....	1
A. Comity .....	2
B. Applicable Law .....	2
C. Jurisdiction .....	3
D. Recognition and Enforcement.....	3
E. Cooperation.....	4
2. Comparative Law .....	4
Sital Kalantry, <i>Regulating Markets for Gestational Care: Comparative Perspectives on Surrogacy in the United States and India</i> .....	5
3. Conclusion.....	14
<b>Chapter 2. Marriage.....</b>	<b>17</b>
1. Creating a Valid Marriage.....	17
A. Formal Requirements Under the Law Where the Marriage Was Contracted.....	18
(1) Consent to Marry.....	18
Singh v. Singh.....	18
B. v. L. ....	19
Comments .....	21
(2) Formal Ceremony with a Celebrant and a Marriage License.....	22
Amsellem v. Amsellem .....	22
Comments .....	25
Ponorovskaya v. Stecklow .....	26
Comments .....	36
(3) Payment of a Dowry .....	37
In re Marriage of Akon.....	37
Comments .....	41
(4) Participation in the Proceedings in Person.....	41
Tshiani v. Tshiani.....	41
Comments .....	50
B. Informal or Unwritten Requirements to Contract a Marriage .....	50
(1) Common Law Marriages .....	51
Cerovic v. Stojkov .....	51
(2) Religious Marriages.....	60
Jackson K. v. Parisa G. ....	60
(3) Customary Marriages.....	66
Kalyton v. Kalyton.....	66
2. Good Faith Belief of a Marriage That Is Otherwise Legally Deficient ...	69
In re Marriage of Vryonis .....	70

	Comments .....	77
3.	Recognizing a Marriage Contracted in Another Country .....	77
	A. Introduction .....	78
	Convention of 14 March 1978 on Celebration and Recognition of the Validity of Marriages .....	78
	Comments .....	79
	B. Lex Loci Contractus/Lex Loci Celebrationis .....	80
	Farah v. Farah .....	80
	Comments .....	82
	C. Public Policy Exceptions .....	83
	(1) Polygamy .....	83
	People v. Ezeonu .....	83
	Comments .....	85
	(2) Incest .....	86
	Ghassemi v. Ghassemi .....	86
	(3) Same Sex Marriage .....	94
	Martinez v. County of Monroe .....	94
	D. Law of the Country with the Most Significant Relationship .....	96
	Donlann v. Macgurn .....	97
4.	Marital Agreements .....	101
	A. Enforceability of Marriage Contracts .....	102
	(1) Religious Marriage Contracts .....	102
	Cohen v. Cohen .....	102
	Odatalla v. Odatalla .....	106
	Comments .....	110
	(2) Contracts Concluded in Other Countries .....	111
	Van Kipnis v. Van Kipnis .....	111
	Comments .....	115
	B. Selection of Marital Property Regimes Without Entering into a Marital Agreement .....	115
	Convention of 14 March 1978 on the Law Applicable to Matrimonial Property Regimes .....	115
5.	Unmarried Couples and Other Legal Relationships .....	118
<b>Chapter 3. Dissolution of Marriage .....</b>		<b>121</b>
1.	How to Properly Dissolve a Marriage .....	121
	A. Divorce Jurisdiction .....	121
	(1) Connection with the Jurisdiction .....	121
	Adoteye v. Adoteye .....	122
	Rzeszotarski v. Rzeszotarski .....	124
	Comments .....	128
	(2) Grounds .....	128
	Petition for Naturalization of Elizabeth Sullivan Lugan .....	129
	Comments .....	130
	B. The Divisible Divorce .....	131
	In re Marriage of Kimura .....	132

C.	Legal Alternatives to Divorce .....	136
	Thamilselvan v. Thamilselvan .....	137
	Comments .....	141
2.	Recognizing a Foreign Dissolution .....	141
	Maklad v. Maklad .....	142
A.	Comity .....	145
	Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations .....	146
	ALI Restatement 4th of Foreign Relations Law of the United States § 484 .....	147
	Sherif v. Sherif .....	148
	In re Marriage of Basith .....	149
	Dart v. Dart .....	151
	Comments .....	154
B.	Exceptions or Defenses to Recognition .....	155
(1)	Lack of Due Process .....	155
	Maqsudi v. Maqsudi .....	155
	Comments .....	161
(2)	Public Policy .....	162
	Alkhairy v. Atoum .....	162
C.	Practical Recognition .....	164
	Weber v. Weber .....	164
	Scherer v. Scherer .....	167
	Comments .....	172
D.	Simultaneous or Parallel Proceedings .....	172
(1)	Declining Jurisdiction as an Inconvenient Forum .....	172
	Jagger v. Superior Court .....	172
	Comments .....	177
(2)	Enjoining a Party from Proceeding in a Foreign Jurisdiction .....	178
	Federbush v. Shah .....	178
(3)	Substantially Similar Issues in Both Actions .....	183
	Russello v. Russello .....	183
	Comments .....	187
3.	Non-Judicial Dissolutions .....	187
A.	Administrative Dissolutions .....	187
B.	Customary Divorces .....	188
	Kaur v. Bharmota .....	188
	Matter of Dabaase .....	195
	Comments .....	197
C.	Religious Dissolutions .....	197
	Tal v. Tal .....	197
<b>Chapter 4. Family Formation .....</b>		<b>203</b>
1.	Parentage .....	203
	The Establishment of Legal Parentage: The Basic Principles .....	204

2.	Citizenship .....	207
	Tuan Anh Nguyen et al. v. Immigration and Naturalization Service .....	208
	Comments .....	229
	Sessions v. Morales-Santana .....	229
	Comments .....	240
	Andrew Mason Dvash-Banks, et al. v. Michael R. Pompeo, et al. ....	241
	Comments .....	249
3.	Inter-Country Adoption (ICA) .....	250
	A. Problems with Defining “Orphan” .....	252
	Rotabi & Bunkers, <i>In an Era of Reform: A Review of Social     Work Literature on Intercountry Adoption</i> .....	252
	B. Use of the Term “Orphan” to Achieve Specific Goals .....	253
	Shani King, <i>Challenging Monohumanism: An Argument for     Changing the Way We Think About Intercountry Adoption</i> ...	254
	C. Acknowledging Multi-Ethnic and Cultural Challenges .....	255
	D. The Hague Adoption Convention .....	257
	E. History of the Hague Children’s Conventions .....	263
	Ann Laquer Estin, <i>Families Across Borders: The Hague     Children’s Conventions and the Case for International     Family Law in the United States</i> .....	263
	Comments .....	264
4.	International Treaties in a Federal System: Navigating the Jurisdictional Issues .....	264
	In the Matter of the Adoption of: MAJB f/k/a ZJC, minor child .....	264
5.	Assisted Reproductive Technology .....	272
	A. Access to Medical Interventions .....	273
	Quintavalle, R (on the application of) v Human Fertilisation and Embryology Authority .....	277
	Comments .....	283
	B. Regulation of Donor Gametes .....	283
	21 C.F.R. § 1271 .....	283
	Case of S. H. And Others v. Austria .....	288
	Comments .....	290
	C. Regulation of Surrogacy .....	290
	Scherpe, Fenton-Glynn and Kaan (eds), <i>Eastern and Western     Perspectives on Surrogacy</i> .....	291
	Sital Kalantry, <i>Should Compensated Surrogacy Be Permitted or     Prohibited?</i> .....	293
	D. Resolving Conflicts with ISAs .....	296
	Jan Balaz v. Anand Municipality and 6 Ors .....	296
	Case of Paradiso and Campanelli v. Italy .....	302
	Case of Mennesson v. France .....	335
	Comments .....	352

<b>Chapter 5. Custody of Children .....</b>	<b>355</b>
1. The “Best Interests” of a Child .....	355
A. Legal Custody, Parental Responsibility, and Decision-Making ....	356
22 CFR 51.28 .....	356
B. Physical Custody and Time-Sharing .....	357
Schiff v. Schiff .....	358
Lazarevic v. Fogelquist .....	361
C. Best Interest Factors Common Among International Families ....	370
(1) Gender and Age Preferences .....	370
Hosain v. Malik .....	370
(2) Nationality and Immigration Status .....	381
Rico v. Rodriguez .....	381
(3) Culture .....	385
Schultz v. Elremmash .....	385
(4) Religious Preferences .....	389
Sagar v. Sagar .....	389
(5) Language .....	393
Martinez v. Kurt .....	393
D. The Child’s Voice .....	396
Duguma v. Ayalew .....	397
E. International Relocation of Children .....	400
Fiat v. Auffret .....	400
Comments .....	404
2. Jurisdiction over Custody .....	405
A. Jurisdiction to Issue an Initial Custody Order/Determination ....	405
UCCJEA Section 201. Initial Child-Custody Jurisdiction .....	406
(1) The Child’s “Home State” .....	407
i. Six Months .....	407
Seligman-Hargis v. Hargis .....	407
ii. For an Infant Under Six Months of Age .....	409
In re Calderon-Garza .....	409
iii. Temporary Absence .....	413
Garba v. Ndiaye .....	413
Comments .....	420
(2) Significant Connection Jurisdiction .....	420
Marriage of Sareen .....	420
(3) Default or Vacuum Jurisdiction .....	427
Toland v. Futagi .....	428
B. Jurisdiction to Modify an Existing Custody Order/ Determination .....	433
UCCJEA Section 202. Exclusive, Continuing Jurisdiction .....	434
UCCJEA Section 203. Jurisdiction to Modify Determination .....	434
EB v. EFB .....	435
White v. Harrison-White .....	439
People in Interest of AB-A .....	444
C. The UCCJEA’s Application to Foreign Orders .....	450
UCCJEA Section 105. International Application of [Act] .....	450

	Coulibaly v. Stevance .....	451
D.	Registration/Enrollment of a Foreign Custody Order/ Determination.....	459
	UCCJEA Section 305. Registration of Child-Custody Determination.....	460
	Hamdan v. Freitekh .....	461
	Comments .....	468
E.	Recognition and Enforcement of a Foreign Custody Order/ Determination.....	468
	UCCJEA Section 303. Duty to Enforce .....	468
	UCCJEA Section 306. Enforcement of Registered Determination.....	469
	Bellew v. Larese.....	469
F.	Emergency Temporary Custody Jurisdiction .....	472
	UCCJEA Section 204. Temporary Emergency Jurisdiction .....	472
	In re Marriage of Paillier .....	473
G.	Declining Jurisdiction .....	479
	(1) Permissive Declination: Inconvenient Forum .....	479
	UCCJEA Section 207. Inconvenient Forum .....	479
	Hirai v. Superior Court .....	480
	(2) Mandatory Declination: Unjustifiable Conduct.....	485
	UCCJEA Section 208. Jurisdiction Declined by Reason of Conduct.....	485
	In re Lewin.....	486
H.	The 1996 Hague Child Protection Convention .....	492
<b>Chapter 6. International Parental Child Abduction .....</b>		<b>495</b>
1.	The Hague Convention on the Civil Aspects of International Child Abduction.....	495
A.	Scope of the Hague Abduction Convention.....	496
	(1) Wrongful Removal or Retention .....	496
	(2) Geographic Application .....	496
	(3) Age of Child.....	497
B.	Remedy Established by the Hague Abduction Convention .....	497
C.	Entities Responsible for the Implementation of the Hague Abduction Convention.....	498
D.	Tools Helpful in Interpreting the Hague Abduction Convention .....	499
E.	Obligation to Return a Wrongfully Removed or Retained Child... 499	
	(1) Habitual Residence.....	500
	Monasky v. Taglieri .....	500
	Comments .....	508
	(2) Rights of Custody.....	509
	Palencia v. Perez.....	509
	Comments .....	516
	(3) Actually Exercising a Right of Custody .....	516
	Friedrich v. Friedrich .....	516

Comments .....	521
F. Exceptions to the Obligation to Return a Wrongfully Removed or Retained Child.....	522
(1) The Child Is Now Settled .....	523
Bejarno v. Jimenez .....	523
(2) The Petitioner Was Not Actually Exercising Custody Rights or Consented to or Acquiesced in the Removal or Retention .....	532
i. Not Actually Exercising Custody Rights .....	532
Lopez v. Bamaca .....	532
ii. Consent to Removal or Retention .....	539
iii. Acquiescence in Removal or Retention.....	539
Sacchi v. Dervishi .....	540
(3) Grave Risk.....	549
Cuellar v. Joyce.....	549
Saada v. Golan .....	555
(4) Mature Child Objection.....	561
Rodriguez v. Yanez .....	562
Comments .....	569
(5) Human Rights and Fundamental Freedoms .....	570
Hazbun Escaf v. Rodriguez .....	570
Comments .....	576
2. Criminal Kidnapping .....	577
3. Tortious Interference .....	577
4. Abduction Prevention.....	578
In re Axel Michael Sigmar .....	579
<b>Chapter 7. Financial Support of Children .....</b>	<b>595</b>
1. Establishment of Child Support Obligations .....	596
Gladis v. Gladisova.....	597
Comments .....	606
2. Modification of Child Support Obligations .....	607
Nicholas A. v. Jessica T.....	609
Comments .....	612
3. Recognition and Enforcement of a Foreign Child Support Order .....	613
A. Relevant Provisions of the Hague Child Support Convention .....	613
B. Relevant Provisions of the Uniform Interstate Family Support Act.....	615
Country of Luxembourg ex rel. Ribeiro v. Canderas.....	618
Comments .....	623
4. Central and Competent Authorities.....	623
5. Geographic Application of the Hague Child Support Convention .....	624
<b>Chapter 8. International Litigation and Judicial Assistance</b>	
<b>Issues .....</b>	<b>627</b>
1. Obtaining Evidence Abroad for a U.S. Family Law Action .....	627
A. Applicability of Rules of Court.....	627



B.	Hague Evidence Convention.....	628
(1)	Scope of Hague Evidence Convention .....	628
(2)	Geographic Application .....	628
(3)	Non-Mandatory Nature of the Convention .....	629
	<i>Societe Nationale Industrielle Aerospatiale v. United</i> <i>States District Court for the South District of Iowa</i> .....	629
	Comments .....	641
(4)	Form of Hague Evidence Convention Request .....	642
(5)	Transmitting a Letter of Request.....	642
(6)	Execution of a Letter of Request in a Foreign Country .....	642
2.	Obtaining Evidence in the United States for a Foreign Family Law Action .....	642
A.	Hague Evidence Convention.....	642
B.	Direct Petition Pursuant to 28 U. S. C. § 1782.....	643
	<i>In re Mariani</i> .....	643
3.	Authentication and Legalization of Documents .....	645
A.	Authentication (Final Certification of Genuineness).....	645
B.	Apostille (Certification Under an Applicable Treaty or Convention).....	646
(1)	Scope of Apostille Convention.....	646
(2)	Geographic Application of the Apostille Convention.....	647
(3)	Certificate Pursuant to the Apostille Convention .....	647
(4)	Competent Authorities .....	648
(5)	Registry of Apostilles.....	648
(6)	Reliance on Apostilles in the United States .....	649
	<i>H.S. v. M.S.</i> .....	650
4.	International Service of Process Issues .....	653
A.	Hague Service Convention.....	654
(1)	Scope of Hague Service Convention .....	654
(2)	Geographic Application of the Hague Service Convention ....	654
(3)	Requests of Central Authorities .....	654
i.	Designation of Central Authorities.....	654
ii.	Service Requests .....	655
iii.	Execution of Service Request .....	655
iv.	Certificate .....	656
(4)	Other Methods of Service .....	656
i.	Methods Enumerated in the Hague Service Convention .....	656
ii.	Methods Not Enumerated in the Hague Service Convention .....	657
(5)	Mandatory Nature of the Hague Service Convention .....	658
	<i>Volkswagenwerk Aktiengesellschaft v. Schlunk</i> .....	659
B.	The Inter-American Convention on Letters Rogatory and Its Additional Protocol .....	665
	<i>Yanyac v. Cazassa</i> .....	665
	INDEX.....	671