

With more than often
end in divorce. the

[History](#)



With the rise of international interconnectedness, we are experiencing a rise in international marriages which more than often end in divorce. The child custody laws that apply domestically differ greatly and become more complex when a child is removed from their host country and/or retained in a country that is not their habitual residence. The San Diego Divorce Attorney understands the difficulties that arise when caught in between a divorce negotiation, let alone when a parent is relocating to a different country. We are here to provide the best representation and advice in any court of law within Southern California making sure our clients are guided throughout the whole experience to assure the most favorable outcome.

Before relocating with your child, it is essential to bring the case to a court of law within the child's "habitual residence" (where they go to school, where their home is located, etc.), in order to proceed with a legal custody jurisdiction. If the child is relocated, the custody jurisdiction and child abduction laws prevent a parent from gaining any legal or practical advantages by taking the child outside state or country parameters. If the child remains within his or her habitual residence or has returned to the host state or country, please scroll down to "Types of Custody Orders". In cases where the child is removed or retained in a different host state or country one must file a petition under The Hague Convention on the Civil Aspects of International Child Abduction. The Hague Convention ? The Hague Convention is a multilateral treaty with 98 signatories in all parts of the world including most states in western and eastern Europe, and a few countries in Africa, South America, and the Middle East. The convention was developed by The Hague Conference on Private International Law (HCCH) to provide an

effective and expeditious method to a return a child internationally abducted by either parent from one-member country to another.

Procedure The Convention states that a court must not engage in a child custody dispute when a Hague Convention action is filed. The Convention requires the immediate return of the child to his or her “habitual residence” and this process should be aided by any judicial and administrative bodies of the Contracting States. According to Article 11 of The Hague Convention Treaty, the judicial and administrative bodies of the country must act promptly and a decision must be made within six weeks from the date of commencement of the proceedings.

Wrongfully Removed or Retained Wrongfully removed or Retained is defined as a breach of custody rights. If a custody order has not taken place, both parents must look toward their country’s law regarding legal child custody. Article 3 of The Hague Convention Treaty, considers wrongful where – It is in breach of rights of custody attributed to a person, “under the law of the State in which the child was habitually resident” directly before the removal or retention of the child. If at the time of removal or retention a parent was already given the rights or would have been given the rights of custody and of access under the law. Overall, the removal or retention of a child by one of the joint holders without the consent of the other, is considered wrongful, because it has disregarded the rights of the other parent which are also protected by law.

Any person or institution or other body claiming that a child has been removed or retained, may submit a petition for return to the Central Authority of the child’s habitual residence. The Central Authority must then

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act directly and without delay transmit the application and notify the requesting Central Authority. Defenses Against the Hague Convention There are a few defenses to a claim of a wrongful removal or retention, detailed in Articles 12, 13, and 20 of The Hague Convention Treaty. The defendant can claim: that more than a year has passed before the petitioner commenced a judicial or administrative proceeding for the return of the child (Article 12) that the petitioner (parent seeking the return of his or her child) was not legally exercising the custody rights of the child at the time of the removal or retention (Article 13) that the child is old enough (age 16) with a high level of maturity to consciously oppose being returned to the petitioner (Article 13) that the petitioner had provided consent prior to the removal or retention of the child (Article 13) that there is a grave risk to the child's physical or psychological well-being (Article 13) that the return of the child would violate the child's basic human rights and fundamental freedoms If your child is wrongfully removed or retained in another state or country that is not their habitual residence, you should instantly contact your local attorney that is experienced in international custody disputes. ? To learn more about The Hague Convention on the Civil Aspects of International Child Abduction please visit: https://www.unicef.org/protection/hague_on_child_abduction.pdf

The UCCJEA In cases where The Hague Convention does not apply, we must look towards the child's home state jurisdictional laws. The UCCJEA, is a revision to the UCCJA which proved inconsistent with the Parental Kidnapping Prevention Act (PKPA). The UCCJEA, and the Parental Kidnapping Prevention Act ensure that child custody disputes are resolved without abducting or removing a child

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from his habitual residence. In many cases these acts prevent a parent from seeking other state courts willing to reverse unfavorable custody orders. The UCCJEA explains that jurisdiction for child custody can only occur in the child's home state, which is defined as the state where the child has inhabited for six consecutive months prior to the commencement of the proceeding. If more than one state has "significant connections" to the child or can provide evidence of it being the home state, the courts of those states must communicate and determine which state has the most significant connects to the child.

For example, a young child under the age of 16 has lived in the state of California for the last three years. If his or her mother move to Florida, and the child remains in California, then Florida will not have jurisdiction to determine custody over the child. California in this case would be the only state that can determine custody at this time. Types of Custody Orders Once it is established which state can determine custody, we can begin look at local custody jurisdiction and laws. In the state of California, there are two types of child custody: Legal custody, which determines who makes the important decisions for your child (health care, education, and welfare) Physical custody, which determines who your child will live with Legal Custody can be "joint" or "sole". Joint legal custody is where both parents share the rights and responsibilities to make the important decisions about the child's health care, education, etc.

? Though the parents share the responsibility to make important decisions upon the child, parents are not obligated to always. We recommend a high level of communication between parents in this situation in order avoid <https://assignbuster.com/with-more-than-often-end-in-divorce-the/>

another visit to the court. Physical custody like legal custody can also be “joint” or “sole”.

Joint physical custody means that both parents must share the child between households. Sole or primary physical custody means that only 1 parent has the right to live with the child and the other must seek visitation rights. Joint physical custody does not mean the child must live with both parents half the time with each parent. In these cases, the children typically live with one parent more than the other.

In some cases, the judge gives both parents legal custody, but not joint physical custody. This means parents can make the important decisions for their child, but the child must live with the parent with the right to physical custody. Types of Visitation Orders Visitation is arranged for parents who have the children for less than half of the time. Visitation is a plan for how parents will share time with their children. Often times visitation orders vary greatly depending on the situation of the divorce, the child’s best interest, and other important factors.

The court can rule visitation as follows: Visitation according to a schedule: this type of visitation is where parents create a detailed visiting program which includes dates and times to assure parents avoid future conflicts Reasonable visitation: this type of order does not require a detailed visitation program. This order works when parents get along well and are open to letting their child visit each other at any time Supervised visitation: this type of visitation order requires a parent, another adult, or a professional agent to accompany the child when visiting the other parent No visitation:

this type of visitation is ordered when it is too physically or emotionally harmful for the child to visit the other parent. To decide what visitation order to enact, the court will consider the following: The age of the child, The health of the child, The emotional ties between the child and the parents, The ability for either parent to take care of the child. If applicable, history of violence or substance abuse. And finally, the child's ties to school, home and community. To learn more about visitation orders you can visit: <http://www.courts.ca.gov/17975.htm>. In California, courts do not automatically give the right to either parent (father or mother).

The court must decide what is the best outcome for the child given the considerations above. In some cases, courts can choose to give custody to another legal agent if they deem both parents unable to provide and care for the child. More often than not, parents will try to work out their disputes in a court of law rather than resorting to wrongful removal or retention of a child in a different state or country. Divorced or separated parents of a child who wish to move their child out of the United States or of California, will need to file to specific custody actions that address international relocations.

For these cases a court will consider many factors including: The cultural conditions abroad, If it conflicts with a visitation order, If the foreign country would enforce their own visitation rights and limit the rights of the parent with visitation rights, If the country is a signatory of The Hague Convention. The domestic custody and visitation laws are complicated when parents inhabit the same state or region. For international matters, it is important and crucial to secure a favorable outcome, to contact an experienced attorney with the knowledge and capability to defend your <https://assignbuster.com/with-more-than-often-end-in-divorce-the/>

lawful rights. International Child Custody is a very serious and complicated matter which is why we employ the best attorneys ready to ensure your rights are not violated. To learn more about your rights to custody and visitation, contact the San Diego Divorce Attorney at 888-888-8888 or visit us at [www.](http://www.SanDiego-DivorceAttorney.com)

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