

Child Abduction and Forum Shopping: The Hague Convention on Child Abduction to Protect Children in Cases of Parental Divorce*

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Abstract

The present article explores the issues of international child abduction and forum shopping in the context of divorcing parents, with a primary focus on the Hague Convention on the Civil Aspects of International Child Abduction. The research draws inspiration from the growing global occurrence of child abduction in cross-border divorce cases and the strategic use of jurisdiction known as forum shopping—to legitimize such actions or avoid responsibility. Existing literature addresses child abduction from psychological and legal angles but insufficiently covers the convergence of abduction with forum shopping and the Convention's role in mitigating it. The objective of this research is to evaluate the Convention's effectiveness in safeguarding children and discouraging abuse in private international law. For the present study, a doctrinal and analytical approach was employed, further supported by case law. The study also incorporates empirical data and documented cases to assess the Convention's practical application. The findings demonstrate that while the Hague Convention on Abductions has improved international cooperation and the return of abducted children, its success is limited by non-universal ratification, legal loopholes, and challenges in enforcement. The Convention's provisions do limit forum shopping by prioritizing the child's habitual residence, yet do not preclude it. This research contributes to private international law by clarifying how the Convention may be abused for jurisdictional manipulation. It offers practical recommendations, such as broader ratification and consistent application standards. The study adds value by filling a notable gap in the literature. It sets the objectives of defining transboundary child abductions, identifying the scope of the Hague Convention, understanding how forum shopping can be used to avoid justice, and the mechanisms of the Convention to fight such abuse.

Keywords: Child abduction; Forum shopping; Private international law; Hague Convention on the Civil Aspects of Child Abduction

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اختطاف الأطفال والتسوق القضائي: اتفاقية لاهاي بشأن اختطاف الأطفال كوسيلة لحماية الأطفال في حالات طلاق الوالدين

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ملخص

يتناول هذا البحث قضايا الاختطاف الدولي للأطفال والتحاييل على القانون في سياق الطلاق بين الوالدين، مع التركيز الأساسي على اتفاقية لاهاي بشأن الجوانب المدنية للاختطاف الدولي للأطفال. ويستند إلى تزايد حالات الاختطاف الدولي للأبناء في حالات الطلاق عبر الحدود، والاستخدام الاستراتيجي للاختصاص القضائي المعروف بتخيير الاختصاص أو تسوق الاختصاص القضائي، بهدف إضفاء الشرعية على مثل هذه الأفعال أو التهرب من المسؤولية. وعلى الرغم من أن الأدبيات الحالية تناولت قضية اختطاف الأطفال من الزاويتين النفسية والقانونية، فإنها لم تغط بشكل كافٍ تقاطع الاختطاف مع التخيير في الاختصاص، بهدف اختيار النظام القضائي الأنسب للأطراف ودور الاتفاقية في الحد من ذلك.

يهدف البحث إلى تقييم مدى فعالية الاتفاقية في حماية الأطفال ومنع إساءة استخدامها ضمن القانون الدولي الخاص. واعتمد البحث منهجاً تحليلياً ونظرياً مدعوماً بالسوابق القضائية. وشمل بيانات تجريبية وحالات موثقة لتقييم التطبيق العملي للاتفاقية.

تُظهر النتائج أن اتفاقية لاهاي ساهمت في تعزيز التعاون الدولي وإعادة الأطفال المختطفين، لكنها لا تزال محدودة الفعالية بسبب عدم التصديق العالمي عليها، ووجود ثغرات قانونية، وصعوبات في التنفيذ. ومع أن أحكام الاتفاقية تقلل من فرص التسوق القضائي من خلال إعطاء الأولوية لمكان الإقامة المعتاد للطفل، فإنها لا تمنعه بشكل كامل.

يُسهّم هذا البحث في إثراء القانون الدولي الخاص، من خلال توضيح كيفية إساءة استخدام الاتفاقية لأغراض التلاعب بالاختصاص القضائي. ويقدم توصيات عملية مثل توسيع نطاق التصديق على الاتفاقية وتوحيد معايير تطبيقها. ويسهم في سد فجوة في الأدبيات القانونية.

الكلمات المفتاحية: اختطاف الأطفال، تخيير الاختصاص، تسوق الاختصاص، القانون الدولي الخاص، اتفاقية لاهاي

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Introduction

Divorces are dramatic and have many aspects that, if handled poorly, can detrimentally impact children.¹ Perhaps one of the most challenging issues is a cross-border divorce where a child is abducted; it represents a prominent challenge that raises many ethical issues.² With globalization and ever-increasing transnational family relations, child abduction has become even more widespread.³ In fact, it might even be larger than statistics suggest due to the alleged high number of unreported cases.⁴ Therefore, because of the deep and personal impact that a divorce has on the integrity of family relations and the emotional reaction of parents to a divorce, divorces are not uncommonly accompanied by abductions.⁵

Parents in their emotional, conflict-driven situation are often advised by lawyers, who often have a good understanding of how to make it difficult for the other parent to get custody rights. Perhaps one of the most common practices in this regard is “forum shopping,” which involves the strategic choice of a jurisdiction that is the most favorable for one party in initiating divorce and custody proceedings therein.⁶ This practice is so prominent that some lawyers even strongly advise it and consider the lack of appropriate forum shopping as “gross negligence.”⁷

Often, forum shopping in the context of divorce and child custody results in the parent abducting the child to the preferred jurisdiction, where the case will be filed.⁸ Such actions not only disrupt family relations and the lives of children caught in the crossfire but also undermine legal security. To address these complex issues, the international community has adopted the Hague Convention.⁹

The Convention represents an international effort to establish uniform procedures for the prompt return of children who were wrongfully removed or retained by their parents to their country of habitual

1 Jennie Brand et al., *Parental Divorce is Not Uniformly Disruptive to Children's Educational Attainment*, 116(15) PNAS, 7271 (2019).

2 Ericka A. Schnitzer-Reese, *International Child Abduction to non-Hague Convention Countries: The Need for an International Family Court*, 2 Northwestern Journal of International Human Rights, 1 (2004).

3 Ilaria Queirolo, *International Child Abduction and the 1980 Hague Convention in Practice: The Biran Case*, 2 It. Rev. Int'l & Comp. L., 193 (2022).

4 Ericka A. Schnitzer-Reese, *International Child Abduction to non-Hague Convention Countries: The Need for an International Family Court*, 2 Northwestern Journal of International Human Rights, 1 (2004) at 4.

5 Basem Abbas Al Ubaidi, *The Psychological and Emotional Stages of Divorce*, 3 Journal of Family Medicine & Disease Prevention, 3:060 (2017).

6 Luiz Eduardo Salles, *The Rise of Forum Shopping* in Forum Shopping in International Adjudication: The Role of Preliminary Objections, 18 (2014).

7 Jeremy Morley, *Forum Selection and International Divorce*, Jeremy D. Morley International Family Law Blog, (Mar 13, 2015), <https://www.international-divorce.com/2015/03/forum-selection-and-international.html> (last visited May 28, 2025).

8 John Bolch, *Forum shopping and the case of Mantegazza v Mantegazza*, Stowe Family Law (Jul. 5, 2018). <https://www.stowefamilylaw.co.uk/blog/2018/07/09/forum-shopping-and-the-case-of-mantegazza-v-mantegazza/> (last visited May 28, 2025).

9 Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, 1343 U.N.T.S., 243.

residence.¹⁰ It also protects the rights of parents by providing mechanisms that ensure maintenance of healthy relations of the child with the parents while containing the latter in their familiar environment.¹¹ Typically, a parent who falls victim to such practices endures a lot – financial and emotional struggles which are especially overwhelming when looking for an abducted child at the same time.¹²

It is, therefore, necessary to examine the significance and the impact of the Convention on Private International Law (PrIL) and divorce and child custody cases. The analysis relies on the notions of PrIL, as the rules and principles that determine the applicable law, jurisdiction, and recognition of judgments in transboundary cases involving two or more jurisdictions. The Convention plays a significant role in harmonizing the otherwise conflicting legal systems and, at the same time, facilitates the recognition and enforcement of foreign judgments in marital cases.

This paper strives to shed light on the implementation, success rates, and challenges of the Convention as an effective mechanism to combat child abduction and discourage forum shopping. Also, it will provide an overview of the Hague Convention and its provisions, analyze its impact on PrIL, and evaluate its effectiveness in combating child abduction and deterring forum shopping. Divided into six sections.

The first section provides a comprehensive overview of child abductions. This overview attempts to clarify why it is necessary to address child abduction, the prominence of forum shopping, and the impact of the Convention on the matter. The section delves into the scale of the problem and the adverse impact it has on both parents and children. The second section turns to the practice of forum shopping as a means of legitimizing abduction. It highlights the prerequisites for forum shopping in divorce and child custody cases. Although forum shopping can be observed on a national scale and among international courts, the focus of the second section is on transnational forum shopping between different national jurisdictions and the PrIL aspects of the practice. The third section examines the relevance of the Convention to such cases. It evaluates the historical background and the effectiveness of the Convention to address the problem of child abduction. It also delves into how the Convention resolves a conflict of laws by harmonizing legal standards, providing for recognition of foreign judgments, and making forum shopping difficult.

1. When Parents Become “Kidnappers”: Child Abduction and its Impact

To properly understand the impact of the Convention, the necessity for it, and its application in the context of PrIL, we must first delve into the issue of child abduction and how the Convention relates to forum shopping. This section presents the definitions behind these terms, or the lack of such definitions

¹⁰ Ilaria Queirolo, *International Child Abduction and the 1980 Hague Convention in Practice: The Biran Case*, 2 *Int'l & comp. L.*, 193 (2022), at 193.

¹¹ Julia A. Todd, *The Hague Convention on the Civil Aspects of International Child Abduction: Are the Convention's Goals Being Achieved?*, 2 *Indiana Journal of Global Legal Studies*, 555 (1995).

¹² *Id.* at 553.

thereof, as well as the motivations for parents to abduct a child. For comprehensiveness, some cases of child abduction and forum shopping will be analyzed.

1.1. Defining Child Abduction

There is no precise legal definition of child abduction. Various jurisdictions provide different definitions, yet the Convention does not define the term. Nevertheless, it is commonly understood that international or cross-border child abduction is the removal of a child from the country where the child resides without the permission or the legal authority to do so provided by a guardian or a parent enjoying full or joint custody rights.¹³ The most popular definition is the one provided by Agopian: “Parental child-stealing is the act of a parent abducting or detaining a child from the custodial parent in violation of a custody decree.”¹⁴ Other authors have given similar definitions to the phenomenon. Gelles, however, includes cases where the child is not returned after a visit, and one parent keeps the child’s whereabouts concealed from the other parent, thus preventing visits.¹⁵ Therefore, even the custodial parent can still be considered an abducting party if they deny access to the visiting parent.¹⁶ It is irrelevant, however, how far the child is or whether the parents are already divorced or not. Nor does it matter whether the child is taken for a day or a month.¹⁷

Abduction must be differentiated from kidnapping, which a non-family member of the child typically carries out.¹⁸ By contrast, abduction is conducted by a family member who takes the child without the consent of the other parent. Most commonly, this occurs in cases of divorce where one parent relocates to a different jurisdiction (country) and takes the child, refusing to return the child to the child’s place of residence, where the other parent or guardian family member lives.

The taking of children by their parents has always been an issue when it comes to divorce and marital disputes.¹⁹ However, the numbers have never been as high as in contemporary times due to several reasons. The surge of international child abductions began around the 1970s, mostly because of the rise of international marriages between people from different religious, ethnic, cultural, and national backgrounds.²⁰ This period was also accompanied by an overall increase in divorce rates and

13 *International Child Abductions: A Guide for Affected Parents*, Canada Consular Services, 2 (2023); See also *Y (The Father) v Y (The Mother)* (Child Abduction and Custody Act 1985, Re) [2025] EWHC 1598.

14 Michael W. Agopian, *Parental Child-Stealing*, Lexington, 1 (1981).

15 Richard James Gelles, *Parent Child Snatching: A Preliminary Estimate of National Incident*, 146 *Journal of Marriage and the Family*, 736 (1984).

16 Inger J. Sagatun & Lin Barrett, *Parental Child Abduction: The Law, Family Dynamics, and Legal System Responses*, 18 *Journal of Criminal Justice*, 437 (1990).

17 Rex Forehand et. al., *Parental Child Abduction: The Problem and Possible Solution*, in *Advances in Clinical Child Psychology* (Benjamin B. Lahey & Alan E. Kazdin eds., 1989).

18 Sagatun & Barrett, *supra* note 16 at 433.

19 Sanford Katz et. al., *Legal Issues in Parental Kidnapping*, National Institute of Justice Conference on Parental Kidnapping (1980).

20 Lisa Nakdai, *It’s 10 P.M., Do You Know Where Your Children Are?: The Hague Convention on the Civil Aspects of International Child Abduction*, 40 *Family Court Review*, 252 (2002).

the inability of parents to reach mutually acceptable agreements.²¹ The problem today is gargantuan in both national and international dimensions. There have been more than 359,000 cases of child abduction reported in the United States alone.²² Internationally, there are over 8 million cases of missing children, many of whom are found to have been abducted by family members.²³ These numbers, however, might be significantly higher due to the *dark figure* of unreported cases.²⁴ The fact that more cases are being reported today should also be taken into account when determining the reasons why there is an increase in cases. Nevertheless, the overall impression in academic circles is that cases of abduction have been growing.²⁵

1.2. Potential Perpetrators and Potential Victims

Despite the prominence of the problem, it has remained largely understudied, with major data gaps.²⁶ Today, there are many stories, data collections, and research studies on the topic.²⁷ One of the most recognized, cited, and influential works²⁸ in the field is Agopian, who studied 91 cases of child abductions to understand the perpetrators and victims better.²⁹ These cases were all derived from the District Attorney's office in Los Angeles, U.S.A., in the late 1970s for a period of one year.³⁰ While this research falls more within the field of criminology and psychology, it sheds light on the phenomenon. The study reveals some characteristics of wrongful acts, which are crucial for discussion.

Agopian categorized the cases he studied by two circumstances: Whether the abduction occurred before or after a court granted custody, and the perpetrator's gender. Due to their significance, Agopian's findings are detailed below. All cases studied involved parents who were divorced (69) or separated (22).³¹ It excluded abductions from family quarrels. Notably, in divorced-parent cases, abduction occurred within 18 months of the custody order in 38 of 69 cases, and in only 26 cases more than two years later.³² This indicates the emotional nature of the decision of the abducting party. A person is more likely to commit a child abduction shortly after the divorce has happened when their emotional

21 Agopian, *supra* note 14.

22 Branka Vuleta, *30 Scary Kidnapping Statistics You Can't Afford to Ignore*, Legal Jobs Blog, (May 18, 2023) <https://legaljobs.io/blog/kidnapping-statistics> (last visited May 28, 2025).

23 Pat Flangan, *The Lost Children; 8 Million Kids Disappear Around The World Every Year Including 800,000 Lost In The Us As Campaign Is Launched Scandal 1*, The Free Library (2014) <https://www.thefreelibrary.com/the+lost+children%3b+8+million+kids+disappear+around+the+world+every...-a0369199192> (last visited May 28, 2025).

24 Gelles, *supra* note 15.

25 Sagatun, & Barrett, *supra* note 16 at 434.

26 Forehand et. al., *supra* note 17, at 114.

27 Monique Cloud Boudreaux, Wayne D. Lord & Stephen E. Etter, *Child Abduction: An Overview of Current and Historical Perspectives*, 5 Child Maltreat., 64 (2000).

28 Forehand et. al., *supra* note 17, at 114-116; Sagatun, & Barrett, *supra* note 16 at 434.

29 Agopian, *supra* note 14.

30 *Id.*

31 *Id.*

32 *Id.*

state is unstable.³³ In most other cases, the abduction occurs after strong emotional triggers.³⁴

Fathers committed 71% of abductions, but as mothers were granted custody in 9 of 10 divorce cases at the time, the 29% of abductors who were women represent a larger share than it appears. Forehand, Long, and Zogg note this suggests children are more vulnerable to abduction when fathers have custody.³⁵ The reason why this is left to the psychologists. Yet, one must interpret this study with a grain of salt, as Agopian himself has warned that his sampling procedures and the samples themselves were not truly representative.³⁶ Therefore, one could argue that the Agopian study is inconclusive.

Agopian's findings were confirmed by Sagatun and Barret, whose study of 43 cases found 20 occurred before a court decision, 21 after, and 2 were undetermined.³⁷ In 25 of the 43 cases, the mother was the abductor. Most father-led abductions occurred before court orders, while most mother-led abductions defied existing orders.³⁸ This study supports Agopian's conclusion that mothers are more frequent abductors and offers insight into how court decisions affect the cases. However, both studies share drawbacks: small sample sizes, requiring broader research for consistent conclusions, and a focus solely on U.S. cases, limiting global applicability.

The first drawback was addressed in 2018 by the National Center for Missing & Exploited Children (NCMEC), which examined 11,761 cases between 2008 and 2017.³⁹ The study echoed Agopian, Sagatun, and Barret, finding most abductors were female: 53.9% mothers, 36% fathers. NCMEC added a category for other family members, 9.7% of cases, who were also most often female.⁴⁰ The NCMEC study found that abductions usually happen in low-income families.⁴¹ Despite focusing on U.S. abductions, the cases spanned diverse ethnicities and cultures, greatly enhancing sample quality.

While the emotional toll of child abduction is clear, one may ask: "Why would a parent abduct their child?" Freeman's recent research offers several reasons.⁴² Interviews with thirty-three parents⁴³ who abducted their child revealed several reasons: dissatisfaction with the child's living conditions or lifestyle, wanting to leave a partner without leaving the child, cultural pressure after divorce or separation, and protecting their reputation with family.⁴⁴ Notably, many abducted the child to prevent

33 Marilyn Freeman, *The Effects and Consequences of International Child Abduction*, 32 Family Law Quarterly, 609 (1998).

34 *Id.*

35 Forehand et. al., *supra* note 17, at 114.

36 Agopian, *supra* note 14.

37 Sagatun, & Barret, *supra* note 16, at 437.

38 *Id.* at 437-438.

39 *Family Abductions: What We've Learned an In-Depth Analysis by the National Center for Missing and Exploited Children*, National Center for Missing & Exploited Children, 5 (2018).

40 *Id.*

41 *Id.*

42 Freeman, *supra* note 33, at 20.

43 *Id.* at 17.

44 *Id.* at 20.

them from living with the other parent, often as punishment, especially when jealous of a stepparent. Abduction served as control over the former partner, expressing anger, shame, or possessiveness. In some cases, it stemmed from feeling the legal system had been unfair, using abduction to “correct” an unfavorable custody decision.⁴⁵ This research has even more weight, considering that most of the interviewed persons were involved with international child abductions.⁴⁶

In conclusion, both parents can be child abductors, but women abduct a child more often than men. There needs to be thorough research on the topic of how child abduction appears in different parts of the world. For example, we do know that Turkey has a massive abduction problem, with 14.86 abductions per 100,000 people.⁴⁷ The study by Harris and Associates suggests that there are 459,000 to 751,000 child abduction incidents per year.⁴⁸

We still know little about how these numbers are distributed or who potential victims and perpetrators are. Qatar noted the issue’s importance in 2018, but specific national data remain scarce, requiring further research. The Hague Convention, discussed below, has had a major impact, with 2,730 cases reported in 2019.⁴⁹ While this data is the primary focus of criminology, it is relevant for determining whether the international regimes against child abductions are effective.

2. Forum Shopping as Means of Facilitating Child Abduction

While child abduction within a nation is most often a criminal offense,⁵⁰ parents have always found creative ways to legitimize and even legalize abduction. One of the most widespread practices in this regard is to resort to “forum shopping,” which, in essence, involves choosing a jurisdiction that is the most favorable for one party to initiate divorce and custody proceedings.⁵¹ Typically, the abductor seeks a jurisdiction that is more sympathetic in legislation and culture to the situation of the parent and is more advantageous for the parent. By using more favorable material and procedural law or even biases within one country, one parent may facilitate the desired outcome of the parent’s custody or divorce case. However, this is often at the expense of the other parent and, as already discussed in the previous section, adverse to the mental health of the child. This section covers the forum shopping phenomenon and how it is applied in divorce cases and to facilitate child abductions.

⁴⁵ *Id.*

⁴⁶ *Id.* at 19.

⁴⁷ *How To Prevent Child Abduction During a Custody Battle*, Gardner Quad Squad (2022) <https://gardnerquadsquad.com/how-to-prevent-child-abduction-during-a-custody-battle/> (last visited May 28, 2025).

⁴⁸ Gelles, *supra* note 15.

⁴⁹ Naomi Buck, *Every Parent’s Nightmare: Your Spouse Flees the Country with Your Kids, and the Government is in no Rush to Help*, The Globe and Mail (Apr. 11, 2019) <https://www.theglobeandmail.com/opinion/article-international-abductions-canada-has-to-move-faster-when-foreign/> (last visited May 28, 2025).

⁵⁰ UK Child Abduction Act (1984).

⁵¹ Salles, *supra* note 6, at 16.

2.1. What Makes Forum Shopping Possible?

The term “forum shopping” was first used in the *Helene Curtis Indus. v. Sales Affiliates* case in 1952.⁵² Some 15 years later, the phrase was popularized by United States Judge Skelly Wright, who called it a “national legal pastime.”⁵³ Since that moment, the term has been referred to on hundreds of occasions by national and international courts of all types and levels.⁵⁴ Although “forum shopping” does not appear in any legislation or international instrument, it has been recognized by Black’s Law Dictionary.⁵⁵ However, questions remain: How does one forum shop, and how is it permissible?

Countries enjoy sovereignty, which is their exclusive right to exercise their powers within their territory and over their people, with no intervention from other countries.⁵⁶ Therefore, in terms of private matters, sovereignty is relevant to issues such as jurisdiction, choice of law, and the recognition and enforcement of foreign judgments.⁵⁷ Forum shopping exists as a “weak point” of these principles. The forum shopper abuses the inherent rights of a country guaranteed by public international law.⁵⁸ There are two prerequisites for forum shopping to be possible.

As foreshadowed by the discussion of internal affairs and sovereignty, two or more courts must be competent to address the case.⁵⁹ In other words, two or more courts must have jurisdiction to hear the case, which has two separate aspects when it comes to transnational forum shopping. To determine if a court has jurisdiction, the court must look at whether the country itself can exercise jurisdiction over the case. The matter of jurisdiction is resolved by the rules of private international law.⁶⁰ The general rule is that there needs to be a nexus between the country and the case – usually the plaintiff, the respondent, or the object of the case.⁶¹

Most commonly, jurisdiction is based on the nationality of the applicant through the active personality principle.⁶² There is room for some abuse here since, in the globalized world of today, many countries provide citizenship rather easily. For example, Ireland requires the mere residence of 1 year to be considered a citizen with some conditions afterward, and one can become a citizen of Singapore by working there.⁶³ To prevent abuse and the too-easy granting of jurisdiction in a child abduction

52 *Helene Curtis Indus. v. Sales Affiliates*, 105 F. Supp. 886, 902 (S.D.N.Y. 1952)

53 Skelly Wright, *The Federal Courts and the Nature and Quality of State Law*, 13 Wayne Law Review, 333 (1967).

54 Gita F. Rothschild, *Forum Shopping*, 24 Litigation, 40 (1998).

55 Henry Campbell Black, Black’s Law Dictionary 58(1990).

56 Samantha Besson, *Sovereignty*, 22 European Journal of International Law, 29 (2011).

57 Gerald Kreijen et al., *State, Sovereignty, and International Governance* 43 (2002).

58 Markus Petsche, *What’s Wrong with Forum Shopping - An Attempt to Identify and Assess the Real Issues of a Controversial Practice*, 45 International Law, 1005 (2011).

59 Christopher A. Whytock, *The Evolving Forum Shopping System*, 96 Cornell Law Review, 486 (2011).

60 Gleider Hernández, *International Law* 183 (2019).

61 Hersch Lauterpacht, *International Law Being the Collected Papers of Hersch Lauterpacht* 489 (1970).

62 Hernández, *supra* note 60, at 180.

63 *Easiest Countries to Get Citizenship 2023*, World Population Review (2023) <https://worldpopulationreview.com/country-rankings/easiest-countries-to-get-citizenship> (last visited May 28, 2025).

case, the International Court of Justice (ICJ) suggests an answer. In *Nottebohm*, the ICJ ruled that there needs to be more than a mere declaration of citizenship. There also has to be evidence of the person's closer association with the chosen jurisdiction.⁶⁴ Unfortunately, it depends on the country whether it will follow the *Nottebohm* reasoning as it pertains to the jurisdiction of the ICJ rather than dictating a general rule for all countries.

Other ways to establish jurisdiction in another legal system are to prove the habitual residence of the child, the nationality of the other parent, or where the family has been living and owns the property.⁶⁵ While forum shopping was initially used as a matter of convenience for both clients and lawyers,⁶⁶ today's focus has shifted towards the interests of the client and the likelihood of a favorable decision, even if the overall costs of case filing would increase.⁶⁷

In addition to the country's jurisdiction as a prerequisite to forum shopping, the court must also rule that national legislation recognizes that the court has jurisdiction over the matter; in other words, the court is competent to hear the child custody matter. Typically, the procedural law of a country provides for some rules under which it is determined whether the court is competent or not.⁶⁸ In fact, the Hague Convention includes rules governing the competence of courts, which are crucial in this context. Even where principles of international customary law permit a state to exercise jurisdiction, the case can only be filed if the state's domestic law recognizes and implements that jurisdictional basis.

Forum shopping exists because of the heterogeneous nature of the legal systems available; Bell⁶⁹ states that the lack of uniformity of laws from country to country or state to state is at the root of why forum shopping exists.⁷⁰ No one would seek another jurisdiction if all would lead to the same result based on the same rules and procedures. Heterogeneity, however, is guaranteed in the multicultural world of today, where civil, common, and Islamic law systems operate on parallel levels. The legal culture is also different, as some practices could be accepted in one country but be considered unlawful or unacceptable in others. This is the case with witness training, which is common in the United States but is unethical in the majority of European countries⁷¹ and even banned in Switzerland.⁷² This heterogeneity is not limited to laws but also applies to non-legal differences, such as cultural biases

64 *Nottebohm* (Liechtenstein v Guatemala), Second Phase, ICJ Reports 4 at para. 23 (1955).

65 Christopher A. Whytock, *Domestic Courts and Global Governance*, 84 Tul. L. Rev., 71 (2009).

66 Neal Miller, *An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction*, 41 American University Law Review, 400 (1992).

67 Morley, *supra* note 7.

68 UK, Contempt of Court Act (1981); Qatar, Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law (2017).

69 Andrew S. Bell, *Forum Shopping and Venue in Transnational Litigation* 25 (2003).

70 *Id.* at 25.

71 William W. Park, *A Fair Fight: Professional Guidelines in International Arbitration*, 30 J. L. Conflict & Int'l Aff., 2 (2014).

72 Nathalie Voser, Benjamin Gottlieb, & Luka Groselj, *Arbitration in Switzerland*, Thomson Reuters Practical Law, UK Practical Law (2020) <https://uk.practicallaw.thomsonreuters.com/9-513-8272> (last visited Nov. 22, 2023).

and public morals.⁷³ Forum shopping requires some differences in the legal system, such that victory is more likely in one country than another.

Two types can be identified – domestic and transnational. Domestic forum shopping is the practice where a plaintiff chooses the most appropriate court within the national legal system.⁷⁴ By contrast, transnational forum shopping is where a plaintiff chooses the most favorable court among the courts of different countries.⁷⁵ Another division worth mentioning is horizontal and vertical forum shopping. Horizontal forum shopping is when the party strives to find the best venue for a case among the available courts on the same level.⁷⁶ Vertical forum shopping is the practice of choosing among the courts of different levels – a regional rather than a district court, a court of cassation, or even an international tribunal.⁷⁷ This article focuses on forum shopping as the most relevant for PrIL and conflict of laws. The choice of courts among national ones is ignored since all national courts regularly apply the same centralized legislation. The distinction between horizontal and vertical forum shopping may have some significance when it comes to moving the case up beyond the national boundaries and seeking remedies before international tribunals. While it seemingly does not relate to the research objectives of this dissertation, it helps distinguish between “good” and “bad” forum shopping.

2.2. The Pros and Cons of Forum Shopping

Generally, forum shopping is a legal and legitimate tactic used by lawyers around the world. Some lawyers argue that not employing it in the best interests of the client would be gross negligence.⁷⁸ Yet its application remains controversial. There are three main opinions in academia as to the legitimacy and appropriateness of forum shopping – against the practice, conditionally in favor, and in favor of the practice.⁷⁹

The majority of academics believe that forum shopping is a bad practice and must, therefore, be avoided or banned altogether.⁸⁰ As support for their opinion, these scholars cite the characteristics of fairness, legitimacy, integrity, and costs of the proceedings.⁸¹ Forum shopping results in legal uncertainty, as the legal system may not properly assess the situation brought before the court. In the author’s observations, forum shopping also goes against the principle of balance of advocacy on both sides of a dispute, as forum shopping can put the other party under financial strain. Stéphanie Grignon-Dumoulin accurately points out that forum shopping shifts the result from what the law is

73 Arthur Taylor Von Mehren, *Theory and Practice of Adjudicatory Authority in Private International Law: A Comparative Study of the Doctrine, Policies and Practices of Common- And Civil-Law Systems* 194 (2003).

74 Whytock, *supra* note 65 at 481, 485.

75 *Id.*

76 Mary Garvey Algero, *In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*, 78 Neb. L. Rev., 80 (1999)

77 *Id.*

78 Morley, *supra* note 7.

79 Petsche, *supra* note 58, at 1005.

80 Richard Maloy, *Forum Shopping? What’s Wrong With That?*, 24 Queen’s Law Review, 25 (2005).

81 Salles, *supra* note 6, at 18.

to where the law is applied.⁸² Other authors object to the practice by citing the *forum non conveniens* principle,⁸³ which states that a court should decline to exercise its powers if there is a more appropriate court to hear the case. International treaties, including the Hague Convention, commonly strive to bar the practice.⁸⁴ All of this indicates that forum shopping is an undesirable method of dispute resolution.

The second group of scholars argues that the practice is not only morally acceptable but that it can have potentially beneficial results.⁸⁵ In fact, jurisprudence seems to be in favor of this group, recognizing it as an appropriate litigation strategy.⁸⁶ Algero, for example, points out that the practice of forum shopping can be used to avoid procedural barriers and protect the interests of a party.⁸⁷

However, her most notable comment concerns the practice of forum shopping in divorce and child custody cases.⁸⁸ She points out that *vertical* forum shopping in such cases may be beneficial as it provides for a more unified standard of evaluation of the child's best interests.⁸⁹ Before the enactment of the United States Parental Kidnapping Prevention Act of 1980, which required courts within the U.S. to recognize each other's decisions, parents would regularly abduct their children to more favorable country jurisdictions.⁹⁰

The third group argues that forum shopping is almost always permissible, save for some circumstances.⁹¹ There are certainly benefits of forum shopping in many fields, such as commercial law and intellectual property disputes.⁹² However, as discussed in the previous subsection, the psychological detriments for a child from child abduction can be severe. While there are some conceivable scenarios where forum shopping would be beneficial for the child, the risk of child abduction is not worth it.

2.3. Child Abductions through Forum Shopping

Divorce and child custody are strategic games for some, where both pursue victory at any cost. As

82 Stéphanie Grignon-Dumoulin, *Forum Shopping-Article 31 de la CMR*, 11 University of Louisville Law Review, 609 (2006).

83 Whytock, *supra* note 65, at 517.

84 Petsche, *supra* note 58, at 1005.

85 *Id.*; Pamela K. Bookman, *The Unsung Virtues of Global Forum Shopping*, 92 Notre Dame L. Rev. 579 (2016); Patrick Mullinger, *The Mall of Litigation: The Dangers and Benefits of Forum Shopping in American Jurisprudence*, U. Cin. L. Rev. Blog (Nov. 17, 2021), <https://uclawreview.org/2021/11/17/the-mall-of-litigation-the-dangers-and-benefits-of-forum-shopping-in-american-jurisprudence/>;

86 *Goad v. Celotex Corp.*, 831 F.2d 508, 512 n.12 (4th Cir. 1987); *International Shoe Co. v. Washington*, 326 U.S. 310 (1945).

87 Algero, *supra* note 76, at 93.

88 *Id.* at 98.

89 *Id.*

90 *Id.*

91 Petsche, *supra* note 73, at 1005; Oswaldo Ruiz-Chiriboga, *Choosing the Most Favorable Venue: Forum Shopping, Shopping Forums, and Legal Pluralism in Ecuador*, 12 Mex. L. Rev. 53 (2019).

92 Rothschild, *supra* note 54, at 40; See also Jonas Bens, *Revisiting Forum Shopping: Navigating Normative Pluralism, Navigating Sentiments*, 56 Legal Pluralism & Critical Soc. Analysis 273 (2024).

in any game, strategy is key, and forum shopping allows the abducting parent to choose their select the jurisdiction most likely to grant a favorable outcome. When it comes to children, however, it is usually about winning, and as discussed earlier, “winning” is not always accompanied by altruistic motivations. Forum shopping is done by snatching the child to a jurisdiction where the interested parent will be granted custodial rights.⁹³ This not only provides a means to prevent the other parent from taking legal action but also gives a legal way to avoid criminal responsibility.⁹⁴

An example of this is the *Mantegazza v Mantegazza* case,⁹⁵ which was heard in the United Kingdom. The case concerned a family where the husband was a notoriously wealthy Swiss national who lived in Monaco. His wife was British and resided in Switzerland with their two children despite wanting to return to London. The couple had met in England, where the husband had been working for over four decades. They married in Switzerland and concluded an agreement, which included a clause that marital matters would be dealt with in accordance with Swiss law. Both filed for divorce, the wife in England and the husband in Switzerland. During the divorce, Mrs. Mantegazza argued before the UK courts that she would not receive “substantial justice” in Switzerland. The argument was rejected because of the pre-marital agreement. It appears that the decision prioritized the pre-marital agreement’s choice-of-law clause over the child’s welfare considerations, arguably in conflict with Article 3 of the UNCRC.

However, in the author’s opinion, the decision was erroneous. While it provided for Swiss law to be applied, it said nothing about the relevant court that should decide a divorce case. The decision has almost no reasoning about the interests of the child.

Placing Montegazza’s factual circumstances in another hypothetical scenario, one can see how problematic this decision is, especially in instances where Sharia law is applied. Forum shopping presents a great danger for children in cases of parent separation.⁹⁶ This illustrates the tension between contractual jurisdiction clauses and the mandatory consideration of the child’s best interests under international family law. Addressing this practice in terms of child custody matters is of paramount importance to safeguard the child’s best interests.

3. The Hague Convention on the Civil Aspects of International Child Abduction

The Child Abduction Convention can be a useful tool to avoid the issues discussed above. The Convention discourages the practice of forum shopping by providing clear guidance on jurisdiction,

93 Morley, *supra* note 7; See also Luciano Castelli, Camilla Arzini & Rosanna Stancampiano, *Forum Shopping: A Legal Loophole or a Strategic Advantage? A Glance at the Italian Experience*, Int’l Bar Ass’n (Apr. 4, 2025), <https://www.ibanet.org/forum-shopping-Italian-experience>.

94 Leena Yousefi, *Jurisdiction in Family Matters: Forum Shopping Can Backfire*, Ylaw (May 17, 2022) <https://www.ylaw.ca/blog/jurisdiction-in-family-matters-forum-shopping-can-backfire/> (last visited May 29, 2025).

95 *Mantegazza v Mantegazza* [2017] EWHC 3811. See also Katarina Trimmings, Tung Le Xuan & Konstantina Kalaitsoglou, *The 1996 Hague Convention on International Child Protection in the UK Post-Brexit: Focus on Jurisdiction and Recognition and Enforcement*, 38 Int’l J.L. Pol’y & Fam. 1 (2024).

96 Morley, *supra* note 7.

promotes cooperation rather than competition between jurisdictions, and establishes mechanisms that ensure the prompt return of abducted children.

3.1. Historical Background of the Convention

The practice of child abduction is not new and had existed for decades before the Convention's adoption.⁹⁷ Canada proposed the Convention in 1976, noting that there was a significant increase in the wrongful removal of children and their retention in foreign countries.⁹⁸ Professor Perez-Vera pointed out in the Convention's explanatory report that, at the time, child abduction frequently occurred where a parent would seek an administrative or judicial act in a country that would legalize the factual situation that the parent had created through abducting the child.⁹⁹ After four years of negotiations and consultations with countries – members of the Hague Conference – the Convention was adopted in 1980. There was opposition to the adoption of the Convention in some countries, such as the U.S., but, in the end, the necessity for such a treaty prevailed.¹⁰⁰ It has since become one of the central instruments for children's protection in cases of divorce and parental separation.¹⁰¹

As of today, the Convention has 103 members and binds together a number of different legal and social cultures.¹⁰² Among the members are the USA, China, France, Canada, the UK, Turkey, and Switzerland. Qatar, however, and its neighbors from the Arab Peninsula are not members of the Convention.¹⁰³ The Convention has proven effective so far, and there are regular reports on the number of abductions and processed cases under the Convention mechanisms, as well as self-policing mechanisms of countries reporting to each other for non-compliance with the Convention.¹⁰⁴

3.2. Main Characteristics of the Convention

The Convention serves to counteract the wrongful removal of children and to provide mechanisms for their return to their habitual residence.¹⁰⁵ Despite the fact that PrIL has predominantly procedural rules, the Convention departs from these restrictions and has a more interesting approach to custody rights. It creates material obligations for countries that are result-oriented and focuses on the “return

97 Sagatun & Barrett, *supra* note 16, at 434.

98 Peter H. Pfund, *The Hague Convention on International Child Abduction, the International Child Abduction Remedies Act, and the Need for Availability of Counsel for All Petitioners*, 24 Fla. L. Rev., 51 (Spring 1990).

99 Elisa Pérez-Vera, Child Abduction in Offprint from the Acts and Documents of the Fourteenth Session 43 (1980).

100 *Id.*

101 Yousefi, *supra* note 94.

102 *Status Table: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, HCCH (Nov. 14, 2022) <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24> (last visited May 29, 2025).

103 *Id.*

104 *Release of the 2023 Annual Report on International Parental Child Abduction*, US Department of State (2023) <https://www.state.gov/release-of-the-2023-annual-report-on-international-parental-child-abduction/> (last visited May 29, 2025).

105 Pfund, *supra* note 98, at 51.

the child” policy.¹⁰⁶ This substantial approach avoids technical and procedural consequences that may be sought by the party who is forum shopping, and that undermines the goal of the Convention, namely the repatriation of the child.¹⁰⁷ Notably, however, the Convention does not provide substantial rules on custody rights but instead addresses only provisional remedies for the return of the child.¹⁰⁸

What is interesting is that it avoids the use of the “child’s best interest,” which has two explanations. First, the Convention was adopted before the United Nations Convention on the Rights of the Child,¹⁰⁹ which introduced the phrase internationally. Furthermore, commonly, the evaluation of a child’s best interests before the Convention was used to justify forum shopping, as most courts believed they were the ones that would have the child’s best interest in mind.¹¹⁰

Additionally, the Convention does not limit itself to cases where the parents are divorcing, or there is a custody order. It applies to any situation involving a breach of custody rights.¹¹¹ This includes marriage breakdowns and separation of the spouses, where one of the parents has reasons to leave the habitual family residence. As discussed earlier, regardless of the background of the case, child abduction has adverse psychological effects. The Convention’s preamble provides its goal to protect children from the harmful effects of their wrongful removal or retention, as well as the goal to remedy the abduction by returning the child.¹¹² What is more interesting is that, after the abduction, the situation has been reversed: the parent engaged in child abduction cannot obtain a new forum to request custody, which serves as a strong preventive mechanism.¹¹³

Overall, the Convention is more result-oriented and has been instrumental so far for the 103 countries that are parties to it. The non-compliance of other members is noticeable as it undermines the effectiveness of the Convention. Nevertheless, the treaty is an important safeguard for the future of this world due to its focus on children.¹¹⁴

3.3. Key Rules and Mechanisms of the Convention

Before engaging with the substantive rules, one must understand the scope of the Convention. There are three requirements for its application. First, the country of the child’s habitual residence, which has been described as a flexible term for the Convention, and the country to which the child

106 Linda Silberman, *Interpreting the Hague Abduction Convention: In Search of a Global Jurisprudence*, 18 IILJ., 6 (2006).

107 Yousefi, *supra* note 95.

108 Silberman, *supra* note 106.

109 UN Convention on the Rights of the Child (Nov. 11, 1989), 1577 UNTS 3.

110 Algero, *supra* note 76, at 93.

111 Silberman, *supra* note 106.

112 Convention on the Civil Aspects of International Child Abduction, 25 October 1980, 1343, UNTS, 89.

113 *Id.*

114 *Release of the 2023 Annual Report on International Parental Child Abduction*, US Department of State (2023) <https://www.state.gov/release-of-the-2023-annual-report-on-international-parental-child-abduction/> (last visited May 29, 2025).

has been abducted need to be parties to the Convention.¹¹⁵ The courts are guided by several factors to determine this. First, citizenship should not be the determining factor. Second, the child may have only one habitual residence. Third, habitual residence relates to the common residence of the child prior to the abduction.¹¹⁶ In the *Feder v. Evans-Feder* case,¹¹⁷ the Court based its decision on the location where the child has been physically present for sufficient time to get accustomed to well-known surroundings.

The second part stems from the *Lotus Principle* under international law, which provides that there are no limitations to a country's sovereignty save for a limit that the country has accepted.¹¹⁸ The second requirement is that the child be less than 16 years old for the Convention to apply.¹¹⁹ This second requirement is unfortunate as the majority of child abduction cases occur with teenagers.¹²⁰ Finally, the child must have been wrongfully removed or retained, which excludes situations where the parent has custody rights under the law of habitual residence. For the Convention to be applicable, there must be a breach of custody rights.

The Convention provides two tracks of redress – an administrative and judicial one. Under Article 6 of the Convention, every member country must designate a Central Authority to discharge the duties under the Convention.¹²¹ The administrative track is enforced through that Central Authority. The return of the child is administered following an application to that Authority in the country of the child's habitual residence or any other member country.¹²² The judicial track is engaged when the party initiates judicial proceedings in the jurisdiction where the child is being kept.

This administrative procedure is designed to promote speed and cooperation between Contracting States, minimizing the need for contentious litigation. Central Authorities are obligated under Article 7 to take “*all appropriate measures*” to discover the whereabouts of a wrongfully removed or retained child, secure the voluntary return of the child, and exchange information about the child's welfare. The efficiency of this track, however, depends heavily on the resources, responsiveness, and expertise of the designated Central Authority in each State.

The judicial track is engaged when the party initiates judicial proceedings in the jurisdiction where the child is being kept. However, the judicial track only applies to members of the Convention. In cases discussing the Hague Convention, such as *Diorinou v. Mezitis*,¹²³ courts have affirmed that a third country is not entitled to the same credit and faith.

115 Convention on the Civil Aspects of International Child Abduction, 25 October 1980, 1343, UNTS, 89, Art. 4.

116 *Friedrich v. Friedrich*, 983 F2d 1396, 1401 (CA 6, 1993).

117 *Feder v. Evans-Feder*, 63 F3d 217, 224 (CA 3, 1995).

118 *France v. Turkey, Case of the S.S. Lotus*, Judgment No 9, 1927, PCIJ, Ser A, No 10.

119 Convention on the Civil Aspects of International Child Abduction, 25 October 1980, 1343, UNTS, 89, Art. 4.

120 Marilyn Freeman, *Parental Child Abduction: The Long-Term Effects*, International Centre for Family Law, Policy, and Practice, 20 (2014).

121 Convention on the Civil Aspects of International Child Abduction, 25 October 1980, 1343, UNTS, 89, Art. 6.

122 *Id* Art. 8.

123 *Diorinou v. Mezitis*, 237 F2d 133, 143 (CA 2, 2001).

In the judicial context, Article 12 plays a critical role. If proceedings commenced within one year of the wrongful removal or retention, the court must order the return of the child forthwith. If more than one year has passed, the court still retains discretion to order the return, but the opposing party may raise the “settled environment” defense. This provision reflects a tension between the deterrent aim of the Convention and the reality that the child may have developed significant ties to the new environment.

Nevertheless, a non-signatory country may resort to international comity. In the judicial track’s proceedings, the filing party may request the return of the child or arrange access to the child.¹²⁴ The ability of a parent to request access to a child relates to the situation where a parent with custody rights has left jurisdiction over the child, and the non-custodial parent is asking for visitation.

Protection of the child’s best interests is an unstated goal in the Convention’s language. Under Article 13, the country is not required to return the child if the abductor had consent or custody rights of the child or, more notably, if there is a grave risk that the return of the child would expose them to physical or psychological harm or otherwise place the child in an intolerable situation.¹²⁵ For example, in *Friedrich v. Friedrich*, the Second Circuit Court ruled that grave risk exists in two situations: if there exists an imminent danger to an abducted child, such as war, diseases, or other calamities, and if the child would be subjected to abuse, neglect, or extraordinary emotional dependence on the parent in the new jurisdiction.¹²⁶ This also aligns with Article 12 of the UN Convention on the Rights of the Child, which recognizes the participatory rights of children in matters affecting them.

Finally, Article 20 provides that return may be refused if it is not permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms. Although rarely invoked, this provision acts as a safeguard against orders that would result in violations of constitutional norms or binding human rights obligations.

Conclusion

The protection of children is of paramount importance as they are among the most vulnerable in every society, particularly when one of the individuals they depend on most — a parent — becomes the source of harm. Divorces and separations are inherently disruptive events in a child’s life, but the wrongful removal or retention of a child magnifies the harm, inflicting severe psychological and emotional consequences that may endure for years. These effects, ranging from post-traumatic stress to long-term parental alienation, underline why such acts are criminalized in many jurisdictions and

¹²⁴ Convention on the Civil Aspects of International Child Abduction, 25 October 1980, 1343, UNTS, 89, Art. 21.

¹²⁵ *Id* Art. 13.

¹²⁶ *Friedrich v. Friedrich*, 983 F2d 1396, 1401 (CA 6, 1993); For times of war in particular see Iryna Dikovska, *Removal and Retention of Children in Times of War: The Hague Child Abduction Convention and the Case of Ukraine*, 89 *Rabels Zeitschrift für ausländisches und internationales Privatrecht* (RabelsZ) 132 (2025).

recognized as a serious breach of both family and international law.

This study has demonstrated that international child abduction, when combined with forum shopping, exposes systemic weaknesses in private international law. The Hague Convention on the Civil Aspects of International Child Abduction remains the most significant multilateral instrument in addressing the problem, yet its effectiveness is undermined by specific shortcomings. The absence of universal membership leaves significant legal and territorial gaps, allowing abductors to exploit safe haven jurisdictions. Divergent national interpretations of crucial provisions such as “habitual residence,” “grave risk,” and “child’s objections” lead to inconsistent outcomes and undermine predictability. Procedural delays often erode the Convention’s goal of prompt return, enabling abducted children to become settled in a new environment and creating grounds for refusal under Article 12. Furthermore, the Convention lacks strong enforcement mechanisms, and without a binding compliance authority, deterrence is weakened.

Addressing these deficiencies requires measures that go beyond general appeals for cooperation and instead focus on precise, implementable mechanisms. Universal adherence should be pursued through targeted accession strategies under the Hague Conference, including technical assistance to non-member states, phased compliance schedules, and integration of accession commitments into broader trade or diplomatic frameworks.

Harmonization of interpretation is necessary through binding explanatory protocols that clarify contested legal concepts and reduce the scope for jurisdictional manipulation. Specialized judicial capacity should be established through the creation of national “Hague Chambers” or designated family law divisions, equipped with training in international child abduction and mandated to handle such cases on an expedited basis. Effective enforcement would be strengthened by the creation of a centralized compliance mechanism within the Hague framework with the authority to monitor state performance, publish compliance ratings, set binding timelines for the execution of return orders, and facilitate cross-border enforcement.

In parallel, an automatic jurisdiction-freeze mechanism should be introduced so that once an abduction claim is filed, competing proceedings in other jurisdictions are suspended until the child’s habitual residence is determined. Return orders should also be accompanied by enforceable undertakings guaranteeing the safety, welfare, and continuity of care of the child in the state of habitual residence. By adopting these measures, the Convention would be better equipped to meet its objectives, limit the manipulation of jurisdiction, and safeguard the best interests of children in cross-border disputes.

Bibliography

Primary Sources

Convention on the Civil Aspects of International Child Abduction, 25 October 1980, 1343, UNTS, 89.

Qatar, Law No. 2 of 2017 Promulgating the Civil and Commercial Arbitration Law (2017).

UN Convention on the Rights of the Child (Nov. 11, 1989) 1577 UNTS 3.

Case Law

Diorinou v Mezitis, 237 F2d 133, 142-143 (CA 2, 2001).

Feder v Evans-Feder, 63 F3d 217, 224 (CA 3, 1995).

Friedrich v Friedrich, 983 F2d 1396, 1401 (CA 6, 1993).

Goad v. Celotex Corp., 831 F.2d 508, 512 n.12 (4th Cir. 1987).

Helene Curtis Indus. v. Sales Affiliates, 105 F. Supp. 886, 902 (S.D.N.Y. 1952).

Mantegazza v Mantegazza [2017] EWHC 3811.

Nottebohm (Liechtenstein v Guatemala), Second Phase, I.C.J Reports (1955).

Books

Bell, Andrew S. *Forum Shopping and Venue in Transnational Litigation* (2003), (<https://doi.org/10.1093/oso/9780199248186.001.0001>).

Black, Henry Campbell, 'Black's Law Dictionary ' (1990).

Bowlby, John. *Attachment and loss: Separation* (1973).

Kreijen, Gerald et al. *State, Sovereignty, and International Governance* (2002),

(<https://doi.org/10.1093/acprof:oso/9780199245383.001.0001>).

Lauterpacht, Hersch. 'International Law Being the Collected Papers of Hersch Lauterpacht (1970)', (<https://doi.org/10.1017/CBO9780511793912.033>).

Salles, Luiz Eduardo. *The Rise of Forum Shopping in Forum Shopping in International Adjudication: The Role of Preliminary Objections* (2014), (<https://doi.org/10.1017/CBO9781139565745>).

Von Mehren, Arthur Taylor, *Theory and Practice of Adjudicatory Authority in Private International Law: A Comparative Study of the Doctrine, Policies and Practices of Common- And Civil-Law Systems* (2003).

Pérez-Vera, III Elisa. *Child Abduction* in Offprint from the Acts and Documents of the Fourteenth Session (1980).

Journal Articles

- Atkeson, Beverly M., et al. *The Effects of Divorce on Children* in Benjamin B. Lahey & Alan E. Kazdin, (eds.) 5 *Advances in Clinical Child Psychology* (1982).
- Agopian, Michael W. Agopian, 'Parental child-stealing', *Lexington*, 1 (1981), (<https://doi.org/10.1177/0192513X8100200405>).
- Whytock, Christopher A. Whytock, '*The Evolving Forum Shopping System*', 96 *Cornell L. Rev.* 481, 486 (2011).
- Wright, Skelly Wright, '*The Federal Courts and the Nature and Quality of State Law*', 13 *WLR* 317, 333 (1967), (<https://doi.org/10.2307/1288858>).
- Yousefi, Leena Yousefi, *Jurisdiction in Family Matters: Forum Shopping Can Backfire*, *YLA* (May 17, 2022) [<https://www.ylaw.ca/blog/jurisdiction-in-family-matters-forum-shopping-can-backfire/>].
- Al Ubaidi, Basem Abbas Al Ubaidi, '*The Psychological and Emotional Stages of Divorce*', 3 *J Fam Med Dis Prev*, 3:060 (2017), (<http://dx.doi.org/10.23937/2469-5793/1510060>).
- Algero, Mary Garvey Algero, '*In Defense of Forum Shopping: A Realistic Look at Selecting a Venue*', 78 *Neb. L. Rev.* 78, 80 (1999).
- Brand, Jennie Brand et al., '*Parental divorce is not uniformly disruptive to children's educational attainment*', 116(15) *PNAS*, 7266-7271 (2019), (<https://doi.org/10.1073/pnas.1813049116>).
- Bolch, John Bolch, '*Forum shopping and the case of Mantegazza v Mantegazza*', *Stowe Family Law*, (Jul. 5, 2018).
- Boudreaux, Monique Cloud et al. *Child Abduction: An Overview of Current and Historical Perspectives*, 5 *CHILD MALTREAT*, 63-72 (2000), (<https://doi.org/10.1177/1077559500005001008>).
- Freeman, Marilyn Freeman, *The Effects and Consequences of International Child Abduction*, 32 *FLQ*, 603 606-609 (1998).
- Forehand, Rex et al. *Parental Child Abduction: The Problem and Possible Solution*. in Benjamin B. Lahey & Alan E. Kazdin, (eds.) 12 *Advances in Clinical Child Psychology* (1989).
- Gardner, Richard Gardner, *Parental alienation syndrome vs. parental alienation: which diagnosis should evaluators use in child-custody disputes?* 30 *AJFT*, 93-115, (2002).
- Gelles, Richard James Gelles, 'Parent child snatching: A preliminary estimate of national incident'. 146 *JOUR. MAR. FAM*, 735, 735-736 (1984), (<https://doi.org/10.2307/352616>).
- Greif, Geoffrey L. Greif, '*The Long-Term Aftermath of Child Abduction: Two Case Studies and Implications for Family Therapy*', 37 *AJFT*, 273, 279-280 (2009), (<http://dx.doi.org/10.1080/01926180902754711>).

- Grignon-Dumoulin, Stéphanie Grignon-Dumoulin, *Forum Shopping-Article 31 de la CMR*, 11 ULR 609-10 (2006), (<https://doi.org/10.1093/ulr/11.3.609>).
- Hegar, Rebecca L., Hegar and Greif, Geoffrey L. Greif, *Abduction of Children by Their Parents: A Survey of the Problem*, 36 SW, 421-426 (1991).
- Maloy, Richard Maloy, 'Forum Shopping? What's Wrong With That?'. 24 QLR 25, 25 (2005).
- Miller, Neal Miller, 'An Empirical Study of Forum Choices in Removal Cases Under Diversity and Federal Question Jurisdiction', 41 AULR 369, 400 (1992).
- Nakdai, Lisa Nakdai, 'It's 10 P.M., Do You Know Where Your Children are?: The Hague Convention on the Civil Aspects of International Child Abduction', 40 Fam. Ct. Rev., 251, 252 (2002), (<https://doi.org/10.1111/j.174-1617.2002.tb00837.x>).
- Park, William W. Park, 'A Fair Fight: Professional Guidelines in International Arbitration', 30 JLCIA (2014).
- Petsche, Markus Petsche, 'What's Wrong with Forum Shopping - An Attempt to Identify and Assess the Real Issues of a Controversial Practice', 45 INT'L L. 1005 (2011).
- Pfund, Peter H. Pfund, 'The Hague Convention on International Child Abduction, the International Child Abduction Remedies Act, and the Need for Availability of Counsel for All Petitioners' 24 FLQ 35-51 (1990).
- Queirolo, Ilaria Queirolo, 'International Child Abduction and the 1980 Hague Convention in Practice: The Biran Case', 2 IRIC, 191, 192-193, (2022).
- Rothschild, Gita F. Rothschild, *Forum Shopping*, 24 Litigation, 40, 40 (1998).
- Senior, Neil, Toba Gladstone, & Nurcombe, Barry. *Child Snatching: A Case Report*, 21 J. AM. ACAD. CHILD PSYCHIATRY., 579-583 (1982), (<https://doi.org/10.1097/00004583-198211000-00012>).
- Sagatun, Inger J. Sagatun & Barrett, Lin Barrett, 'Parental child abduction: The law, family dynamics, and legal system responses'. 18 JCJ 433-442, 437 (1990), ([https://doi.org/10.1016/0047-2352\(90\)90058-J](https://doi.org/10.1016/0047-2352(90)90058-J)).
- Schnitzer-Reese, Ericka A. Schnitzer-Reese, *International Child Abduction to non-Hague Convention Countries: The need for an International Family Court*, 2 Nw. J. Int'l Hum. Rts. 1 (2004).
- Silberman, Linda Silberman, 'Interpreting the Hague Abduction Convention: In Search of a Global Jurisprudence' 18 NYUPLLTW 1, 6 (2006), (<https://dx.doi.org/10.2139/ssrn.723161>).
- Spilman, Sarah K. Spilman, *Child Abduction, Parents' Distress, and Social Support*, 21 VV, 149 (2006), (<https://doi.org/10.1891/vivi.21.2.149>).
- Todd, Julia A. Todd, 'The Hague Convention on the Civil Aspects of International Child Abduction: Are the Convention's Goals Being Achieved?', 2 IJGLS, 553, 553-555 (1995).

Web Sources

Buck, Naomi Buck, 'Every parent's nightmare: Your spouse flees the country with your kids, and the government is in no rush to help', The Globe and Mail (Apr. 11, 2019) <https://www.theglobeandmail.com/opinion/article-international-abductions-canada-has-to-move-faster-when-foreign/>.

Easiest Countries to Get Citizenship 2023, World Population Review (2023) <https://worldpopulationreview.com/country-rankings/easiest-countries-to-get-citizenship>.

'How To Prevent Child Abduction During A Custody Battle', Gardner Quad Squad (2022), [<https://gardnerquadsquad.com/how-to-prevent-child-abduction-during-a-custody-battle/>].

Qatar, US Call for Ending Children Abduction in Conflicts, Crisis, Permanent Mission of the State of Qatar to the United Nations, (2018). <https://ny.mission.qa/en/media/news/detail/2018/11/27/qatar-us-call-for-ending-children-abduction-in-conflicts-crisis>.

Release of the 2023 Annual Report on International Parental Child Abduction, US DEPARTMENT OF STATE (2023) <https://www.state.gov/release-of-the-2023-annual-report-on-international-parental-child-abduction/>.

Status Table: Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, HCCH (Nov. 14, 2022) <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24>.

Vuleta, Branka Vuleta, *30 Scary Kidnapping Statistics You Can't Afford To Ignore*, Legal Jobs Blog, (May 18, 2023) <https://legaljobs.io/blog/kidnapping-statistics>.

Miscellaneous

Family Abductions: What We've Learned: An In-Depth Analysis by the National Center for Missing and Exploited Children, National Center for Missing & Exploited Children (2018).

Global Affairs Canada. *International Child Abductions: A Guide for Affected Parents*, 2 (2023)

Katz, Sanford et. al., 'Legal issues in parental kidnapping', National Institute of Justice Conference on Parental Kidnapping, (1980) ([https://doi.org/10.1016/0047-2352\(90\)90058-J](https://doi.org/10.1016/0047-2352(90)90058-J)).

Voser, Nathalie Voser, Gottlieb, Benjamin Gottlieb & Groselj, Luka Groselj, 'Arbitration in Switzerland', Thomson Reuters Practical Law, UK Practical Law (2020) [<https://uk.practicallaw.thomsonreuters.com/9-513-8272>].