

CONTENTS

About the Author	ix
Acknowledgments	xi
Preface	xiii

Chapter 1

Introducing the Hague Abduction Convention	1
§ 1.01 Introduction	1
§ 1.02 Parties to the Convention	2
§ 1.03 The Purpose of the Treaty	3
§ 1.04 Best Interests and the Hague Convention	5
§ 1.05 Threats to the Central Tenet	6
§ 1.06 Essence of the Convention	8
§ 1.07 The Key Terms in Article 3	9
§ 1.08 Overview of the Exceptions	10
§ 1.09 Step-by-Step Analysis in Any Hague Case	12
§ 1.10 Access Claims	13
§ 1.11 Relationship of the Convention to the UCCJEA	14
§ 1.12 Hague Convention and Criminal Law	17
§ 1.13 What the Hague Convention Is Not	18

Chapter 2

Procedural and Practical Issues	19
§ 2.01 Role of Central Authority	19
§ 2.02 The International Child Abduction Remedies Act	21
§ 2.03 Concurrent Jurisdiction	24
§ 2.04 The Hague Application	25

§ 2.05	Initiating the Case	26
§ 2.06	Expeditious Procedures	27
§ 2.07	The Initial Appearance	29
§ 2.08	Discovery	30
§ 2.09	Stay of Custody Proceedings	32
§ 2.10	Guardians/Lawyers for Children	33
§ 2.11	Evidence	34
§ 2.12	Child’s Testimony	36
§ 2.13	Use of Foreign Case Law	37
§ 2.14	Article 15 Declarations	38
§ 2.15	Interim Remedies	40
§ 2.16	Fugitive Disentitlement Doctrine	41
§ 2.17	Undertakings	42
§ 2.18	Legal Fees and Expenses	43
§ 2.19	Stays Pending Appeal	46

Chapter 3

Habitual Residence	51	
§ 3.01	Introduction	51
§ 3.02	“Habitual Residence” and “Home State”	52
§ 3.03	“Habitual Residence” and “Domicile”	53
§ 3.04	Drafting History	53
§ 3.05	Autonomous Interpretation	54
§ 3.06	Timing of the Wrongful Taking or Retention	55
§ 3.07	Overview of the Approaches to Determining Habitual Residence	57
§ 3.08	Problems with the Varying Approaches	59
§ 3.09	The First Approach: Parental Intent Preeminent	59
§ 3.09.1	Determining Parental Intention: The Ruling in <i>Mozes</i>	60
§ 3.09.2	The Ruling in <i>Gitter</i> : An Overview	61
§ 3.09.3	The Ruling in <i>Gitter</i> : Establishing Last-Shared Parental Intent	62
§ 3.09.4	Post- <i>Gitter</i> Second Circuit Cases as to Parental Intention	63
§ 3.09.5	Post- <i>Gitter</i> Second Circuit Cases as to Acclimatization	64
§ 3.10	The Second Approach: The Objective Circumstances Test	65

§ 3.11 The Third Approach: The Blended Test 68

§ 3.12 Policy Considerations 71

 § 3.12.1 In Favor of Parental Intent 71

 § 3.12.2 In Favor of Child Focus 72

§ 3.13 “Acclimatization” and Habitual Residence 73

§ 3.14 Parental Uncertainty 74

§ 3.15 Conditional Moves 75

§ 3.16 Sabbaticals and Time-Limited Overseas Postings 77

§ 3.17 Habitual Residence of Infants 79

§ 3.18 Useful Evidence 81

Chapter 4

Rights of Custody 85

§ 4.01 Convention Provisions as to “Rights of Custody” ... 85

§ 4.02 Step-by-Step Analysis 86

§ 4.03 Proof of Foreign Law 88

§ 4.04 Agreements Concerning Custody 89

§ 4.05 *Ne Exeat* Clause 90

§ 4.06 Rights of Custody Attributed to an Institution 91

§ 4.07 Exercise of Rights of Custody 92

Chapter 5

Consent and Acquiescence 95

§ 5.01 Convention Provisions as to Consent and Acquiescence 95

§ 5.02 Consent 96

 § 5.02.1 Meaning of the Term 96

 § 5.02.2 Relevant Evidence 96

 § 5.02.3 Temporary or Permanent Consent 99

 § 5.02.4 Retraction of Consent 100

§ 5.03 Acquiescence 101

Chapter 6

One Year and Settled 105

§ 6.01 Introduction 105

§ 6.02 Purpose of the Exception 106

§ 6.03 When the One-Year Period Commences 107

§ 6.04 When Proceedings Commence 108

§ 6.05	Tolling of the One-Year Period	109
	§ 6.05.1 Proving the Elements of Equitable Tolling	112
	§ 6.05.2 End of Tolling Period	115
§ 6.06	The “Settled” Requirement	116
§ 6.07	General Principles	117
§ 6.08	Burden of Proof	119
§ 6.09	Age	119
§ 6.10	Stability of Residence	120
§ 6.11	Presence of Relatives	122
§ 6.12	Employment of the Parent	122
§ 6.13	Immigration Status	123
§ 6.14	Social Lives of the Children	127
§ 6.15	Expert Testimony	128
§ 6.16	Discretion	128

Chapter 7

The Child’s Objections	133	
§ 7.01	Introduction	133
§ 7.02	Burden of Proof	135
§ 7.03	Similar Cases, Different Results	138
§ 7.04	Age and Maturity	140
	§ 7.04.1 Age of the Child	140
	§ 7.04.2 Maturity	141
§ 7.05	Expert Evidence	142
§ 7.06	Guardian ad Litem	143
§ 7.07	Clarity and Strength of Opinion	144
§ 7.08	Undue Influence	146
§ 7.09	Discretion	151

Chapter 8

Grave Risk of Harm	155	
§ 8.01	Introduction	155
§ 8.02	Burden of Proof	156
§ 8.03	The Distinction between Hague Cases and Custody Cases: Avoiding a “Best Interest” Analysis	157
§ 8.04	Evidence	159
§ 8.05	Expert Testimony	160
§ 8.06	Narrow Interpretation	161

§ 8.07	Broader Interpretation	165
§ 8.08	Grave Risk in General: What Constitutes a “Grave Risk?”	166
§ 8.09	Adjustment Problems Insufficient	169
§ 8.10	Separation from Primary Care Provider	171
§ 8.11	Separation from Siblings	174
§ 8.12	Relative Happiness or Living Conditions Insufficient	175
§ 8.13	Financial Hardship Insufficient	179
§ 8.14	Poor Parenting Insufficient	179
§ 8.15	Must Prior Harm Be Established?	180
§ 8.16	Must the Risk of Harm Be Imminent?	181
§ 8.17	Extent of Harm	183
§ 8.18	Isolated or Sporadic Abuse	183
§ 8.19	Grave Physical Risks: Terrorism and Zones of War ..	185
§ 8.20	Spousal Abuse	187
§ 8.21	Post-Traumatic Stress Disorder	189
§ 8.22	Need for Medical Treatment	191
§ 8.23	Intolerable Situation	192
§ 8.24	Whether Respondent Must Prove Lack of Protection in Habitual Residence	193
	§ 8.24.1 Such Proof Is Required	193
	§ 8.24.2 Such Proof Is Not Required	194
	§ 8.24.3 Sufficiency of Such Proof	196
§ 8.25	Undertakings: Authority to Require Undertakings ..	198
§ 8.26	Appropriateness of Undertakings	199
§ 8.27	Opposing Undertakings	203
§ 8.28	Types of Undertakings	204

Chapter 9

Human Rights Exception.....	205	
§ 9.01	In General	205
§ 9.02	Applicability in Specific Cases	206

Chapter 10

The Hague Convention and International Relocation

and Travel **209**

§ 10:1	Introduction	209
§ 10:2	International Child Relocation	209

§ 10:3 International Child Travel 211
§ 10:4 Provisions of Visitation Order 215

**APPENDIX 1: Hague Convention on the Civil Aspects of
International Child Abduction 217**

**APPENDIX 2: Explanatory Report Drawn Up by
Ms E. Pérez Vera 231**

APPENDIX 3: International Child Abduction Remedies Act... 283

APPENDIX 4: State Department Legal Analysis 291

**APPENDIX 5: Application Under the Hague Convention
on the Civil Aspects of International Child Abduction 329**

APPENDIX 6: Hague Convention—General Instructions 335

**APPENDIX 7: Uniform Child Custody Jurisdiction and
Enforcement Act..... 343**

Index 367

<http://www.pbookshop.com>