

## About This Issue

With the increase in globalization, many family law attorneys find themselves addressing international issues. This volume of the journal is devoted to those frequently arising challenges. We have several articles on procedural issues, such as discovery, service of process, and strategic planning in international divorce cases. The enforcement of child custody support orders is a focus of two additional articles. We also feature two articles concerning the Hague Abduction Convention, one that addresses issues when there are competing claims under the Convention and conventions offering protection under asylum claims and another that concerns custody disputes between the United States and India, a country that has not adopted the Convention. There are excellent articles on diplomatic immunity, mediation and family law matters in Hong Kong. Student editors have also contributed thought provoking pieces on inter-country adoption, gender-affirming care and international adoption.

Our Issue Editors are Anne L. Berger and Helen Davis. Anne L. Berger has been practicing law in Massachusetts for over 50 years. She is a fellow of the American Academy of Matrimonial Lawyers and a fellow of the International Academy of Family Lawyers and has served in multiple positions on the governing board of both organizations. Ms. Berger is also a former Chair of the International Commission on Couples and Family Relations. Her practice concentrates on complex matrimonial matters with international components. Ms. Davis has been practicing family law for over 20 years and focuses on complex divorce and custody litigation. She is the former President and Chair of the Cavanagh Law firm in Phoenix, Arizona. She is also an adjunct professor at Arizona State University's Sandra Day O'Connor College of Law. She is certified as a family law specialist by the Arizona state Bar and a fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers.

Our first article is entitled, *Obtaining International Discovery in Family Law Matters*, by Anne L. Berger and Patricia A. Cooper. This article is intended to provide practical assistance to family lawyers in the various U.S. jurisdictions who either need to obtain discovery from non-U.S. sources for use in pending U.S. jurisdiction cases or who are assisting practitioners in non-U.S. jurisdictions to obtain discovery from U.S. sources for use in foreign cases. Part I of this article addresses discovery requests from foreign jurisdictions. Part II explores the reverse: discovery requests from cases originating in the United States directed to entities in foreign jurisdictions. Anne L. Berger, as mentioned above, practices in Massachusetts and is a fellow of both the American Academy of Matrimonial Lawyers and the International Academy of

Family Lawyers. She has served on the JAAML Editorial Board for many years. Her practice concentrates on complex international family law matters. Trish Cooper has been representing family law clients throughout the state of Colorado for more than 20 years. She obtained her law degree from the University of Virginia and her undergraduate degree in Psychology, magna cum laude, from Bryn Mawr College. Trish's practice emphasizes complex financial matters, often involving business valuation, trust interest analysis and valuation, premarital agreements, and asset tracing issues. Trish has been an AAML Fellow since 2011 and is a Past President of the Colorado Chapter. She is also a past Chair of the Family Law Section of the Colorado Bar Association and remains active on the Section's legislative and education committees.

Joseph Booth contributes *Enforcement of International Support Orders Under UIFSA* which discusses how the Act facilitates enforcing international child support orders. He explains that foreign countries can be considered "states" under UIFSA if they have similar laws for issuing and enforcing support orders. When discussing the process for registering a foreign support order in a U.S. state it highlights the circumstances in which the order is treated as if it was issued in that state. It further discusses the limited grounds for contesting registration, such as lack of jurisdiction. The effect of the 2008 amendments which implemented the Hague Convention on the International Recovery of Child Support are explained. This article also details the process for enforcing international orders, which involves translation, currency conversion, and registration and notice procedures. Finally, the article discusses the mechanics of direct access, defenses to registration, and grounds for refusal to recognize and enforce a registered Convention support order while outlining the process for recognizing and enforcing a foreign support agreement. Joseph Booth M. Div., JD, a fellow of the AAML was on the drafting committee for UIFSA 2001 and 2008 as an advisor from the ABA. He has a practice in family law and appellate law in Kansas. [www.boothfamilylaw.com](http://www.boothfamilylaw.com). He has chaired the ABA Family Law Section Publications Board since 2017 and has been an adjunct professor in family law for Washburn School of Law since 2008. He has been designated as a Super Lawyer from 2010 to present. Mr. Booth frequently writes and lectures on the unique jurisdictional challenges found in family law.

In *Recognition and Enforcement of Foreign Child Custody Orders*, Michael S. Coffee focuses on the many benefits to the recognition and enforcement of foreign judgments along with the potential risks. He opines that whether a child custody judgment will be recognized or enforced cannot be answered definitively in advance of an attempt to do so. Therefore, his article focuses on the practical steps that can be taken to increase the likelihood that a child custody judgement issued in one State will be recognized or enforced in a foreign State. In Part I, the article discusses rules applied by foreign States to the recognition

and enforcement of child custody judgments from other States. It then addresses steps that can be taken when litigating child custody in a court in the United States to increase the chance that the resulting judgment might be recognized or enforced in a foreign State. Finally, he focuses on steps that can be taken when litigating child custody in a foreign State to increase the chance that the resulting judgment might be recognized or enforced in a U.S. state. Michael Coffee is Professorial Lecturer in Law at the George Washington University Law School. He has taught courses in international family law and international law. Mr. Coffee has served as an attorney in federal government agencies for nearly thirty years. He currently serves as a Trial Attorney in the Office of Foreign Litigation at the U.S. Department of Justice. Mr. Coffee served over twenty years as an attorney-adviser in the Office of the Legal Adviser at the U.S. Department of State, where he worked in the Office of Private International Law and the Office of Treaty Affairs, amongst other offices. Mr. Coffee has served on and headed numerous U.S. delegations to meetings of the Hague Conference on Private International Law, including on governance matters as well as Special Commissions reviewing the operation of the Abduction Convention, Child Protection Convention, Child Support Convention, Adoption Convention, Service Convention, and Evidence Convention. He has also served on and headed U.S. delegations to meetings of the United Nations Commission on International Trade Law and the International Institute for the Unification of Private Law. He is a member of the American Law Institute and an Associate Fellow of the International Academy of Family Lawyers

Because judgments and orders entered by a court against a party who was not properly served are void, when the party to be served is in a foreign country, family law practitioners must understand whether service must proceed pursuant to international treaty governing service of process or some other process, such as letters rogatory. To assist family law practitioners, our next article entitled *International Service of Process in Family Law Matters* by Trish Cooper discusses the treaties governing international service of process and the requirements for effective service of process under these treaties, and if no treaty applies, the steps that must be taken to accomplish proper service in the foreign country. The article describes the role of state procedural rules when a party to be served resides in a foreign country. It also discusses the two international treaties to which the United States is party which govern service abroad and the procedures to be followed when effecting service under those treaties. Finally, the letters rogatory process that must be undertaken when a party to be served resides in a country that is not a party to an international treaty governing service of process are put forward. Trish, whose biography is outlined above as a co-author with Ann Berger, developed her interest in service of process abroad from

her research and work on a challenging case that required service in a country that is not a signatory to an international service treaty.

Our next article is entitled, *Navigating Diplomatic Immunities in Family Law: Finding an Appropriate Forum for Families Covered by Diplomatic Immunity* and is authored by Frances Goldsmith and Inès Amar. The article details in which cases immunity rules will predominate over certain fundamental rights and then analyzes where immunity rules stand in the hierarchy of rights in the realm of family law. It focuses on who is covered by such immunity and then on whether such immunity includes civil, jurisdictional and/or immunity to enforcement of a judgment. Frances Goldsmith is a partner of Libra Avocats in Paris, France and is specialized in resolving complex international cases whether in the context of litigation or amicably. She regularly advises clients on pre- and post-nuptial agreements with various international elements. Her experience—particularly on important transnational litigation cases—has allowed her to develop an expertise in international family and estate law. She has regularly been appointed an expert before foreign courts in litigation relating to matrimonial regimes and complex issues of dividing property and estate disputes, as well as for matters relating to children and parental authority. Ines Amar is an Associate at Libra Avocats in Paris, France. She is licensed to practice in the state of New York after pursuing an LLM at the University of Chicago as well as in France where she practices in international family law. This involves divorce and child custody and parental authority cases, as well as the drafting of prenuptial agreements which include international elements. She also deals with the enforcement in France of divorce or parental agreements or judgments issued abroad, and more generally with child-relating issues such as relocation cases, parental rights in adoption or assisted reproduction cases as well as child abduction.

*To Return or Not to Return – That Is The Question: Tensions Between Non-Refoulement and Orders Of Return Under the Hague Abduction Convention* by Melissa A. Kucinski and Richard Min focuses on asylum-seekers – specifically parents who cross an international border, enter the United States with their child, and then apply for asylum status on behalf of themselves and/or their child. Asylum-seekers who are physically present in the United States and are granted asylum status typically cannot be removed under the principle of non-refoulement, established in several international agreements explained in the article. On the other hand, the Hague Abduction Convention, ratified by the United States in 1988, is an international treaty that establishes a civil mechanism for the prompt return of children under the age of sixteen when they have been removed from or retained outside of their habitual residence in violation of custodial rights. The article explores existing U.S. asylum jurisprudence and examine how U.S. courts have addressed the tension between non-refoulement of an asylum-seeker and returning an abducted child. It further highlights some prospective legal issues,

such as ameliorative measures or returns to a third country that may arise out of this tension in future Hague Abduction Convention cases in the United States. Melissa A. Kucinski is an attorney and mediator focusing exclusively on international family law matters. She is a fellow of the American Academy of Matrimonial Lawyers and the International Academy of Family Lawyers and current or past chair of the international family law committees in the American Bar Association and New York State Bar Association. She has attended three consecutive Special Commission Meetings at the Hague Conference related to the Hague Abduction Convention and is a long-standing member of both the Uniform Law Commission's Joint Editorial Board on Uniform Family Law and the U.S. Secretary of State's Advisory Committee on Private International Law. Richard Min is a partner at Green Kaminer Min & Rockmore, LLP in New York City. His practice focuses exclusively on international family law, child abduction, high conflict custody, and cross-border custody issues. He has extensive experience in 1980 Hague Child Abduction Convention cases having been involved in approximately 100 cross border child abduction or custody cases and having acted as lead trial counsel in over 40 Hague abduction cases across more than a dozen states. He has argued several appeals and in 2022 argued only the fifth Hague case before the U.S. Supreme Court, *Golan v. Saada*, 142 S. Ct. 1880 (2022). He has also taught numerous legal education courses and authored articles on the topic of child abduction. He holds leadership positions in the New York State Bar Association and the American Bar Association and is a Fellow of the International Academy of Family Lawyers.

The purpose of our next article, *Strategic Planning for International Divorces* written by Jeremy D. Morley is to discuss the lawyer's role in working appropriately with clients to plan strategically for a potential divorce that has significant international elements. This article first focuses on the premarital issues that family lawyers handling international clients may face and then on the situations that arise after the marriage when an internationally connected client seeks advice about a potential or actual separation or divorce. Jeremy Morley is a New York attorney who concentrates on international family law, collaborates with family lawyers throughout the U.S. and globally, and often serves as an expert witness on international child custody and international divorce matters in jurisdictions throughout the United States and in other countries. He is the author of *INTERNATIONAL FAMILY LAW PRACTICE* (2020), a leading treatise on international family law in the United States, which is updated regularly, and of *THE HAGUE ABDUCTION CONVENTION: PRACTICAL ISSUES AND PROCEDURES FOR FAMILY LAWYERS*, published by the American Bar Association and now in its 3rd edition. His website is [www.international-divorce.com](http://www.international-divorce.com). He frequently appears as an expert witness on international child abduction prevention and recovery issues in courts throughout the world, regularly lectures on

international family law topics to the judiciary and bar associations and is often a media guest on international child abduction matters.

Stutee Nag contributes our next article entitled *International Child Custody Disputes Between India and the United States: No Hague, So Vague!* The article extensively compares the applicable laws and standards in international child custody disputes in India and the United States, specifically focusing on Indian child custody law. It centers on the typical issues that arise when one parent (the “taking parent”) removes the child from the United States to India (or vice versa) without the consent of the other parent (the “left-behind parent”). Part II provides the statistical facts concerning the presence of a large Indian population in the United States. Part III discusses international parental child removal from the United States to India and vice versa. Part III.A. in particular, discusses the cases of child removal from the United States to India. It differentiates the writ (habeas corpus) jurisdiction of an Indian court from the temporary emergency jurisdiction of a U.S. court. This Part further discusses the applicable standard for a writ of habeas corpus and the various governing factors for such a writ, in particular, the existence (and the weight) of a foreign custody order. It then lists the potential challenges for a left-behind parent in the United States. Part III.B. sheds light on the issues that may emerge for a left behind parent in the relatively limited (yet growing) number of cases where the child is removed from India to the United States. It discusses the need of the left-behind parent to secure a custody order from the appropriate Indian court. It then discusses the provisions related to the enforcement of a foreign custody order in the United States. This Part further addresses the various potential issues with securing a temporary emergency custody order in the United States and concludes with a discussion of the various challenges faced by a left-behind parent in India. Part IV provides a brief overview of the Hague Convention, addresses the reasons for Indian’s refusal to sign the Convention, and then discusses the efforts of the U.S. government to encourage India to sign the Convention. Part V enumerates and discusses various reasons why India must sign the Hague Convention. Part VI concludes with a suggestion that India must sign the Convention to address the rampant confusion regarding international child custody disputes involving India. Stutee Nag is a dual-qualified attorney. She is licensed to practice law in the courts of India and the State of New York. Her primary practice area is international family law, particularly international child custody and divorce matters involving India and the U.S. She has researched and written extensively on international family law issues concerning India and the U.S. She has testified as an international family law expert before U.S. courts.

Our next article, *Family Mediation: The International Context* is written by Dr. Róisín O’Shea and Dr. Sinéad Conneely. The article examines the trend towards national legal regulation as a support for

mediation growth, with particular emphasis on the European position, as well as the current international legal framework and developments in the facilitation of family mediation for cross border family disputes. It examines national legal frameworks for mediation within Europe and North America, and then provides an overview of international and supra-national legal frameworks that aim to facilitate the resolution of cross border disputes using mediation. It also looks at the work of International Social Service (ISS) between 2010 and 2018 where they conducted a global program focusing on international family mediation and includes a case study of a cross border family mediation. Finally, it highlights the need for an internationally agreed framework for family mediations that traverse legal borders to assist international families and their lawyers in navigating the complexities of dealing with more than one jurisdiction. Dr Róisín O' Shea BL is a Partner in ARC Mediation, Chair of the Irish Professional Mediators' Organisation CLG Ireland, is an IMI certified mediator, mediation trainer, legal academic, qualified barrister and Artist. She has significant experience as a mediator completing almost 600 cases since 2009 including Family (national and international cases), Work-place, Commercial disputes, Succession/Probate disputes, Wards of Court and EPA (Enduring Power of Attorney) disputes and Personal Injury claims. She is a valued expert in the field of mediation and continues to carry out academic research with her research partner Dr Sinead Conneely in the field that is published in peer reviewed journals. In 2023 she and Dr Conneely completed research commissioned by the Sentencing Committee of the Judicial Council into Sentencing & Relationship Violence in the District Court (Ireland). She was an Irish Professional, appointee to the Child Maintenance Review Group Ireland 2020-2022. Dr Sinead Conneely BL is a senior lecturer in law at the South East Technological University (SETU), in Waterford, Ireland. She completed her PhD and published a book entitled FAMILY MEDIATION IN IRELAND in 2001, which was the first systematic examination of the mediation experience there. With her research partner, Dr O'Shea, she has been involved in many research projects related to this field, including an innovative pilot project offering low cost family mediation through community centers, with an innovative and changing model, as well as a substantial study of family law disputes in the District Court.

Our final article is entitled, *The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement)* by Catherine Por and Calvin Lo. The Hong Kong Special Administrative Region ("Hong Kong") was established as a special administrative region of the People's Republic of China ("PRC") on July 1, 1997, pursuant to the Constitution of the PRC. Pursuant to the Constitution, the National People's Congress enacted the Basic Law of Hong Kong. The Basic Law is the constitutional document of Hong Kong, stipulating the basic principles and policies of Hong Kong. Notwithstanding its derivation from

the Constitution of the PRC, the Basic Law maintains Hong Kong's previous capitalist system and way of life which are to remain unchanged for fifty years, specifically confirming that the socialist system and its policies shall not be practiced in Hong Kong. The often-cited principle – “One Country Two Systems” is the most prominent feature of the Basic Law, putting Hong Kong in a unique position as the only territory in the PRC in which the common law system is practiced and constitutionally guaranteed. This article addresses an aspect of the relationship between Hong Kong and the PRC set out in a new agreement that provides relief to families by recognizing and enforcing matrimonial and family orders made in the two jurisdictions. It investigates the provisions and procedures in relation to divorces in marriages between residents of Hong Kong and the PRC then discusses the history of this relationship to understand the need for such reciprocal recognition and enforcement in divorces. Finally, it sets out the arrangement's aims. Catherine Por was admitted to practice as a solicitor in England and Wales in 1983 and in Hong Kong in 1991. She became a partner in the firm, Messrs Stevenson, Wong & Co in Hong Kong in 2001, heading the Family Department from 2003 to 2022, then becoming a senior consultant in 2023. Catherine specializes in all aspects of family law disputes and was part of a committee involved in the consultation of relevant stakeholders leading up to the passing of the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and enforcement) Ordinance and Rules into legislation in 2022. Calvin Lo was admitted as a solicitor in Hong Kong in 2014, becoming a partner in Messrs Stevenson, Wong & Co in 2022. Calvin handles a wide range of private client work, including family and matrimonial matters with Hong Kong-China cross border elements. He has had the experience of applying for a Certificate, certifying that a Hong Kong judgment was effective in Hong Kong prior to handing the case to Mainland China lawyers for enforcement.

We also feature three student Comments related to international family law. They are *Approaches to U.S. Inter-country Adoption Policy: A Brief History* by Saba Deutschmann, *Gender-Affirming Care for Transgender Adolescents: A Comparison of Approaches Among Countries* by Megan Tiede and *Across Oceans, Across Hearts: International Family Reunification* by Ashley Segnibo.

As usual our issue concludes with an excellent extensive bibliography of articles on international family law by Allen Rostron, Associate Dean for Students and the William R. Jacques Constitutional Law Scholar and Professor of Law, University of Missouri-Kansas City School of Law.

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