



Moving from Kansas to Oz

**Introduction to Practical
Issues in International
Relocation Cases**

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Practical and Legal Factors Associated with International Relocation



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What Matters – What Does the Research Say?

- **Age of child**
- **Multiple attachments**
- **Unique role of father in child development**
- **Involved fathering research dovetails with recent relocation research**
- **Impact of relocation independent of divorce**

U.S. Federal and State Custody Jurisdiction Law

- **Federal statutes & treaties (Hague Convention, Federal Parental Kidnapping Prevention Act)**
- **Uniform model acts (UCCJEA, UCCJA)**
- **50 states – 50 different relocation doctrines**

Paradigm Clash:

Habitual Residence

v.

**Exclusive and Continuing
Jurisdiction**

**Habitual Residence
Paradigm:**

Jurisdiction Follows Child

**Exclusive and Continuing
Paradigm:**

**Decree State Retains
Modification Jurisdiction**

Recognition and Enforcement:

U.S. recognizes and enforces most foreign custody orders, will not modify foreign orders.

***Marriage of
Pallier and Pence***
(2006) 144 Cal.App.4th 461

**California cannot enforce
ne exeat and visitation portions
of French decree by modifying
custody from Mom to Dad.**

Marriage of Condon
(1998) 62 Cal.App.4th 533
(Upheld trial court okay
of move to Australia)

International moveaways require stronger showing:

- **Cultural differences**
- **Distance and money defeat frequent and continuing contact**
- **Loss of jurisdiction and enforcement of California orders**

Burden on parent seeking move:

- **No prejudice to child's rights and welfare due to cultural differences**
- **"Guaranteed" retention of California jurisdiction (bond, "registration," etc.)**
- **Preservation of relationship with left-behind parent in "logistically possible and financially feasible" way**

Marriage of Lasich
(2002) 99 Cal.App.4th 702
(Upheld trial court okay
of move to Spain)

- Purports to follow *Condon*
- Eight weeks summer, Christmas school vacation (but alternate Christmas), two one-week periods in Spain
- Bilingual schooling and day care
- Insufficient evidence of detriment

Legal Fictions in *Lasich* Order Ignored

- **Register this court's custody order under Hague Convention**
- **Due to the minors' residence 10 weeks or more a year in California, the minors are habitual residents of California**
- **Mother shall file at least annually in the courts of Barcelona a declaration acknowledging the minors' habitual-resident status and shall furnish proof of such filing to father**

- **Mother concedes that California retains exclusive jurisdiction**
- **Mother posts \$100,000 bond, forfeitable if she seeks to modify**
- **Mother's violation of any of these conditions shall be deemed a substantial change of circumstances and not in the minors' best interests**
- **Mother must get Spain to adopt this order, concede that California is habitual residence, and waive modification power**
- **Mother acknowledges that U.S. federal parental kidnapping criminal law applies, and waives extradition if she violates these orders**

Marriage of Abargil

(2003) 106 Cal.App.4th 1294

(Upheld trial court okay of move to Israel despite risks there, remanded for *Condon* compliance)

“We would be naïve to believe – and the trial court did not conclude – there is no danger in living in Israel, only that the benefits to [the child] of growing up there under his mother’s care outweighed the risks.”

What Expert Testimony Do We Need About Oz Custody Law?

- **Will Oz recognize and enforce a Kansas decree?**
- **Will Oz decline to modify a Kansas decree?**
- **If Oz asserts jurisdiction, what will a custody case in the Land of Oz look like?**

If Oz Might Modify or Decline to Enforce, Then What?

- **Expert testimony on abduction risk factors**
- **Disincentives (feasibility and efficacy)**
 - **Mirror orders**
 - **Bond**
 - **Offset against child support**
 - **Fear of prosecution in U.S.**

What Other Experts and Evidence Do We Need?

- **Child's ability to sustain long-distance relationships**
- **Impact of loss of left-behind relationships on child**
- **Moving parent likely to promote relationship with left-behind parent?**
- **Language**
- **Immigration, visa and travel restrictions – Oz to Kansas and Kansas to Oz**
- **Costs of travel and ability to travel**
- **Quality of life, safety, human rights and related issues for children in destination country**

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