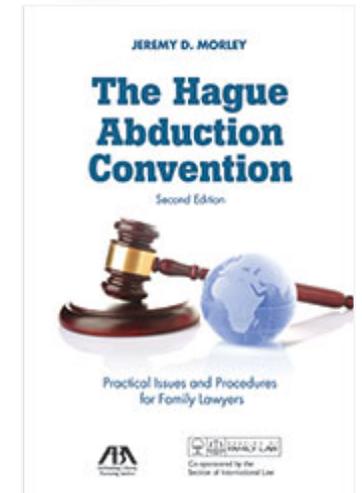
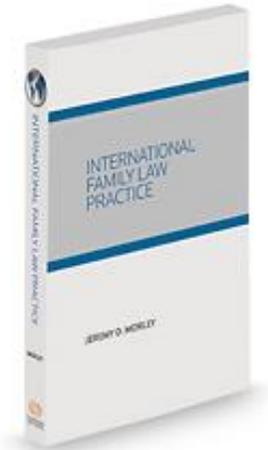


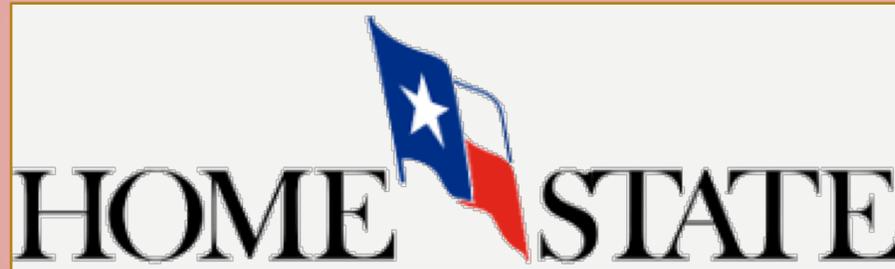
# U.S. ISSUES

## JEREMY D MORLEY





# “INITIAL CHILD CUSTODY JURISDICTION”



## HOME STATE PRIORITY

Any state that is not the “home state” of the child will defer to the “home state,” if there is one, in taking initial jurisdiction over a child custody dispute.

“Home State” means the State in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child-custody proceeding.

A period of temporary absence of any of the mentioned persons is part of the period.

# CONTINUING EXCLUSIVE JURISDICTION

Once a state takes jurisdiction over a child custody dispute, it retains continuing and jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until both parents & the child have moved away from that state.

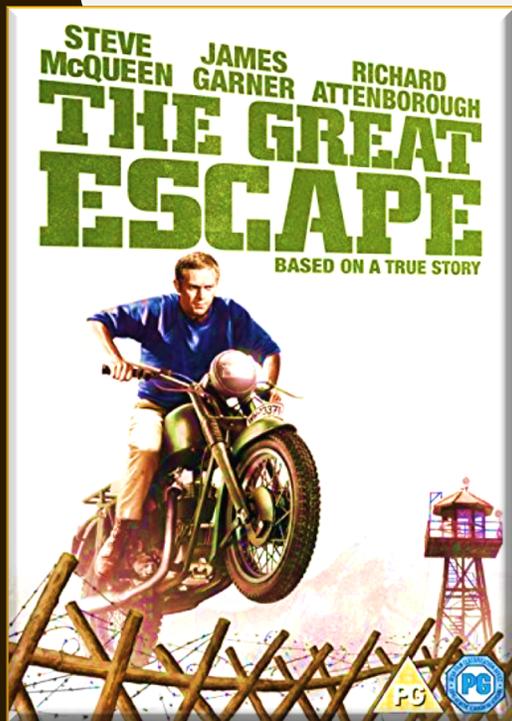
# REGISTER FOREIGN CUSTODY ORDER IN U.S. UNDER UCCJEA

**REGISTRATION OF HOME STATE ORDER** There is a simple procedure for registering a custody determination in another State.

## INTERNATIONAL APPLICATION

“A court of this State shall treat a foreign country as if it were a State of the United States for the purpose of applying” the UCCJEA.”





# THE 'ESCAPE CLAUSE'

MOST STATES “A court of this State need not apply this [Act] if the child custody law of a foreign country violates fundamental principles of human rights.”

NEW YORK “A court of this state need not apply this article if the child custody law of a foreign country as written or as applied violates fundamental principles of human rights.”

NEW JERSEY “A court of this State need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights or does not base custody decisions on evaluation of the best interests of the child.”

CONNECTICUT “...unless such determination was rendered under child custody law which violates fundamental principles of human rights or unless such determination is repugnant to the public policy of this state.”

# “UAE LAW” IN NEW YORK

“The UCCJEA ... mandates that any foreign nation must be treated as if it were a state within the United States for purposes of jurisdiction and inter-court cooperative mechanisms. The UCCJEA is not a reciprocal act. There is no requirement that the foreign country enact a UCCJEA equivalent. ...

The plaintiff was awarded custody of the children by the Abu Dhabi courts. The decision from the Court of First Instance noted that the mother usually has the right to custody of the children unless proven otherwise. The defendant made no showing to refute the custody award to the plaintiff. ...

Neither party alleges that any of the child custody laws of the UAE violate fundamental principles of human rights or that the Abu Dhabi courts were without jurisdiction to determine custody. Nor does this Court find any such violation or lack of jurisdiction. Therefore, based upon the principles of comity and pursuant to Domestic Relations Law § 75–d, this Court must recognize and enforce the custody determination of the Abu Dhabi courts awarding plaintiff custody.”

New York Supreme Court.



# “UAE LAW” IN CALIFORNIA

“One of the principal benchmarks of American due process is the assurance that individuals will be free of discrimination based on gender or religion ...It does not require an exhaustive analysis of the Dubai legal system for this court to conclude that the legal system in Dubai does not meet minimum due process standards under the 14<sup>th</sup> Amendment to the U.S. Constitution.”

California Superior Court, 2017.



# “EGYPTIAN LAW” IN WASHINGTON STATE

“This court shall not recognize Egypt as a “state” for the purpose of applying the UCCJEA”:

- Egyptian Family Courts apply Hanafi Code or Qadri Pasha Code.
- Automatic temporary custody to mother upon the divorce, although the child "belongs" to the father's family and the father has exclusive authority to make all parenting decisions.
- Egyptian family law disqualifies a Muslim mother from custody if:
  - Apostasy
  - She does not raise a child as Muslim and/or she herself does not comply with Muslim religious requirements.
  - She remarries
  - She moves to a location that is so far away from the father's domicile that he cannot visit the children and return to his home in the same day.

Father has sole authority to make parenting decisions relating to religion, property, education, and marriage.

Husband may use physical force against a "disobedient" wife (refusing husband's sexual desires, leaving the house without the husband's permission, or undermining his authority).

In family law cases, a woman's testimony is worth half of a man's.

Egyptian courts do not recognize foreign custody orders.

Egypt has not signed the Hague Abduction Convention

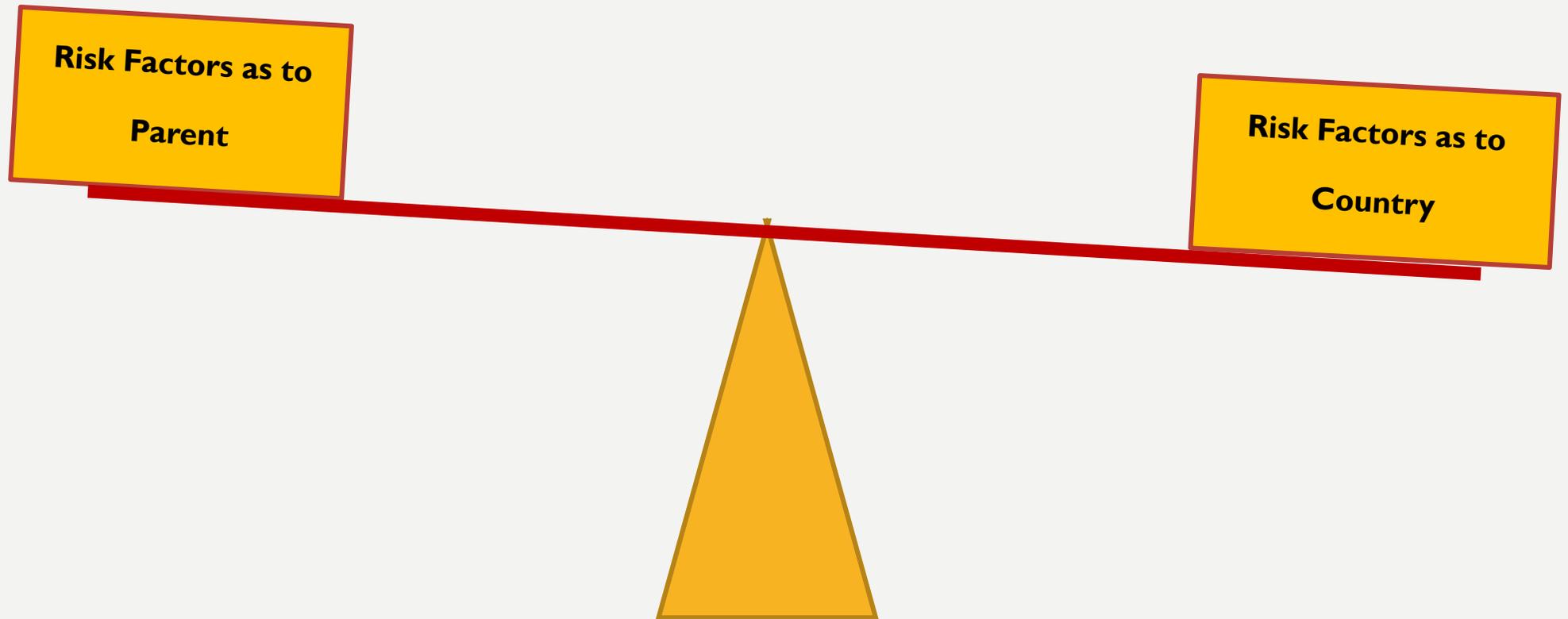


# ANTI-SHARIA LAWS

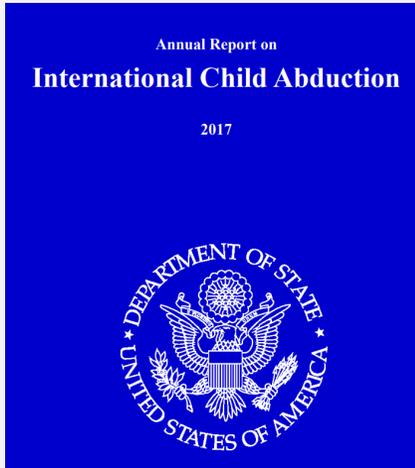
## **KANSAS Sec 60-5103. Limitations on Administrative or Judicial Reliance on Foreign Law**

Any court, arbitration, tribunal or administrative agency ruling or decision shall violate the public policy of this state and be void and unenforceable if the court, arbitration, tribunal or administrative agency bases its rulings or decisions in the matter at issue in whole or in part on any foreign law, legal code or system that would not grant the parties affected by the ruling or decision the same fundamental liberties, rights and privileges granted under the United States and Kansas constitutions, including, but not limited to, equal protection, due process, free exercise of religion, freedom of speech or press, and any right of privacy or marriage.

# CHILD VISITS TO MIDDLE EAST



# CHILD VISITS TO MIDDLE EAST



## NONCOMPLIANT COUNTRIES

### Tunisia

**Country Summary:** Tunisia does not adhere to any protocols with respect to international parental child abduction. In 2016, Tunisia demonstrated a pattern of noncompliance. Specifically, the competent authorities in Tunisia failed to work with us to successfully resolve open cases. As a result of this failure, 50 percent of requests for the return of abducted children have remained unresolved for more than 12 months. On average these cases have been unresolved for more than 4 years. Tunisia has been cited as non-compliant since 2014.

	2015	2016
Abduction Cases Open at the start of the year	4	4
New Reported Abductions	1	1
Total Abduction Cases	5	5
Reported Abductions Resolved During the Year	0	0 (0%)
Reported Abductions Closed During the Year	1	0 (0%)
Reported Abductions Still Open at the End of the Year	4	5 (100%)

### Jordan

**Country Summary:** Jordan does not adhere to any protocols with respect to international parental child abduction. In 2006, the United States and Jordan signed a Memorandum of Understanding to encourage voluntary resolution of abduction cases and facilitate consular access to abducted children. In 2016, Jordan demonstrated a pattern of noncompliance. The United States formally notified the Jordanian government of nine abduction cases in January of 2016. These cases have been open for an average of four and a half years, with the longest open for more than 12 years. Jordanian authorities have not responded to the U.S. request for assistance in resolving these abduction cases. Jordan has been cited as non-compliant since 2014.

	2015	2016
Abduction Cases Open at the start of the year	20	15
New Reported Abductions	6	5
Total Abduction Cases	26	20
Reported Abductions Resolved During the Year	0	8 (40%)
Reported Abductions Closed During the Year	11	3 (15%)
Reported Abductions Still Open at the End of the Year	15	9 (45%)

# ANTI-NON-HAGUE COUNTRIES

## MICHIGAN STATUTE M.C.L.A. 722.27a

“(10) Except as provided in this subsection, a parenting time order shall contain a prohibition on exercising parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction. This subsection does not apply if both parents provide the court with written consent to allow a parent to exercise parenting time in a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction.”

Michigan Court of Appeals,  
*Elahham v. Al-Jabban*, 2017 WL 942997 (2017), upheld award of sole custody to father in Michigan based solely on the fact that the mother lived with the child in Egypt, a non-Hague country.  
The trial court did not consider the best interests of the child.

# **DIVISIBLE DIVORCE**

- 1. In rem jurisdiction**
- 2. In personam jurisdiction**
- 3. Child custody jurisdiction**

# JUDICIAL COMITY



## Ahmad v. Khalil

Supreme Court, Kings County, New  
York. 40 Misc.3d 1206(A) 2013

# MAHR

## ***O.Y. v A.G.*** 2015 NY Slip Op 51190(U)

Married in Egypt in 1977. Husband and wife's uncle signed a mahr. Wife to receive \$131 if they divorced.

Couple moved to NY. Wife filed for divorce. Husband argued that the mahr limited wife's financial rights.

NY court: Claim barred because:

1. Wife never personally signed or acknowledged the mahr,
2. Husband did not present authentication as required under NY law.
3. Mere "de minimis benefit" of \$131 to the wife.

## ***ODATALLA v. ODATALLA***, 355 N.J.Super.305, 810 A.2d 93 (2002)

U.S. marriage with mahr - 1 gold coin immediately & \$10,000 as a deferred payment.

Wife: filed for divorce & sought specific performance of the *mahr* agreement.

Husband: (1) Applying *mahr* would violate the separation of church and state (1<sup>st</sup> Amendment); and (2) agreement invalid under NJ contract law.

Court: As long as it applied neutral principles of law to the validity and enforceability of the *mahr* agreement, "then the Mahr Agreement survives any constitutional implications."

Applying neutral principles of law (*i.e.* NJ contract law) the *mahr* was valid and enforceable because husband voluntarily bound himself to the agreement.

Videotape showed clear mutual consent.

Parole evidence rule to interpret the meaning of the written words of the contract, the \$10,000 deferred portion of the *mahr* was due on demand, death or dissolution of the marriage.

**Court equitably distributed the marital property, assets and debts and made a finding as to alimony.**

# STRATEGIC INTERNATIONAL DIVORCE

## Forum shopping:

Compare divorce grounds

Compare what is divisible property

Compare how divisible property is divided

Compare child support

Compare spousal support

Compare the discovery techniques of the jurisdictions

Compare the disclosure obligations imposed upon the parties in the various jurisdictions.

Consider courts' (and country's) opinions / biases as to:

- Nationality
- Race
- Gender
- Religion
- Wealth
- Child-raising
- For whom is it more convenient?
- Cost considerations?
- Facilities in court for evidence by video link?
- Will witnesses travel voluntarily?
- Can documents be subpoenaed?
- Availability of freeze orders

# TIPS – IF YOU’RE THE ONE STAYING

- Avoid threats (unless ....)
- Start the case (unless ....)
  - Give complete due process
- Do not step foot in (her) U.S. state
- Visa issues
- Embassy issues
- Collect evidence
- Make a deal and nail it down
- If (she) leaves with kids, act very quickly
  - in both jurisdictions(?)

# TIPS – IF YOU'RE LEAVING

- Collect and take the evidence
- Create the evidence
- Exhaust local efforts at protection, etc
- Have your legal expert(s) in place
- Have your war chest
- Use your local community
- RUN while you can
- Have US lawyers lined up
- Get Embassy help with passports
- Self-help can be v dangerous