

MEMORANDUM OF LAW: EQUAL DIGNITY OF COURTS

- 1.0 THIS COURT MUST PRESUME THAT A COURT OF A FOREIGN NATION WILL ACT CORRECTLY IN RENDERING A CUSTODY DECISION AND THAT A FOREIGN COURT'S CUSTODY DECISION IS TO BE GIVEN THE SAME EFFECT AS A CUSTODY DECISION OF THIS COURT.
- 1.1 The matter before this Court involves the realization that a foreign nation will act properly in rendering a custody decision.
- 1.2 In considering the actions of a foreign nation, this Court must look to the following:
 - 1.2.1 This Court must presume that the statutory law of the foreign nation is the same as California statutes on the same issue. *Hickman v Alpaugh* (1862) 21 Cal. 225, 226; *Norris v Harris* (1860) 15 Cal. 252, 254; *Glasband v Hussong* (Cal.App. 2 Dist. 1956) 146 Cal.App.2d 677, 686; *Van Buskirk v Kuhns* (Cal.App. 1913) 164 Cal.App. 472, 474.
 - 1.2.2 This Court must presume that the foreign nation acted regularly and within its jurisdiction. *In re Marriage of Steiner* (Cal.App. 5 Dist. 1979) 89 Cal.App.3d 363, 370.
 - 1.2.3 This Court must presume that foreign nations are no less concerned than this Court with the safety and welfare of children who are the subjects of custody disputes. *Archambault v Archambault* (1990) 407 Mass. 559 [555 N.E.2d 201, 207-208]; *Matter of R.L.S.* (Okl.App. 4 Div 1994) 879 P.2d 1258, 1263.
 - 1.2.3.1 The Hague Convention requires the courts of one Nation to repose confidence that the courts of another Nation will resolve custody disputes wisely and with compassion. That confidence is most sorely tested in a case where a court is convinced that its judgment and not that of a court in another Nation will best serve the interests of a child. The notions of comity demanded by international treaty obligations require us to concede that the courts of other Nations, even when they reach a different decision than we would have, are endowed with an equal measure of wisdom and sympathy. *Delk v Gonzalez* (Mass. 1995) 658 N.E.2d 681, 683-684
 - 1.2.4 Because of the havoc wreaked by simultaneous and competitive jurisdiction over child custody disputes, the Uniform Child Custody Jurisdiction Act (UCCJA) has been enacted by all of the States of the United States.
 - 1.1.4.1 The UCCJA is not a reciprocal law. The general policies of the Act and some of its specific provisions apply to international custody cases. Prefatory Note Master Edition, Uniform Child Custody Jurisdiction Act.
 - 1.2.4.2 The UCCJA applies to custody decisions of foreign nations. 9 Uniform Laws Annotated (ULA) 23 [California Family Code Section 3424].
 - 1.2.4.3 The UCCJA sets up jurisdictional rules for the enforcement of custody decisions and central to these rules is the common ground that all courts that make orders in conformity with the UCCJA are equally capable of rendering a decision that is in the best interests of a child.
 - 1.2.5 The United States is a "Contracting State" under The Convention on the Civil Aspects of International Child Abduction, done at the Hague on 25 Oct 1980 [The

Convention] within the meaning of Art. 35 of The Convention.

1.2.5.1 In interpreting The Convention, reference is made to the Explanatory Report by E. Perez-Vera, Hague Conference on Private International Law, Actes et documents de la Quatorzieme session, vol. III, 1980, p. 426 (Perez-Vera Report), which is recognized as an authority on the explanation of The Convention. *Levesque v Levesque* (D. Kan 1993) 816 F.Supp. 662.

1.2.5.2 The Perez-Vera Report, at Section 34, states the following:

To conclude our consideration of the problems with which this paragraph deals, it would seem necessary to underline the fact that the three types of exception to the rule concerning the return of the child must be applied only so far as they go and no further. This implies above all that they are to be interpreted in a restrictive fashion if the Convention is not to become a dead letter. In fact, the Convention as a whole rests upon the unanimous rejection of this phenomenon of illegal child removals and upon the conviction that the best way to combat them at an international level is to refuse to grant them legal recognition. The practical application of this principle requires that the signatory States be convinced that they belong, despite their differences, to the same legal community within which the authorities of each State acknowledge that the authorities of one of them - those of the child's habitual residence - are in principle best placed to decide upon questions of custody and access. As a result, a systematic invocation of the said exceptions, substituting the forum chosen by the abductor for that of the child's residence, would lead to the collapse of the whole structure of the Convention by depriving it of the spirit of mutual confidence which is its inspiration.

1.2.5.3 The heart of this statement are the words: ". . . the signatory States be convinced that they belong, despite their differences, to the same legal community . . ." This language and the terms of The Convention say that this Court must honor the decision of a foreign nation that is also a "Contracting State" to The Convention since the foreign court and this Court have equal status under The Convention.

1.2.6 The Supreme Court of Canada, in *Thomson v. Thomson* (Can.Sup. 1994) [1994] 3 S.C.R. 551, 572 [119 D.L.R.4th 253; 6 R.F.L. (4th) 290] similarly held the following on this point:

Twaddle J.A. continued that although the guiding principle in all matters dealing with the custody of a child is that the adjudicating court must take the order which is in the best interests of the child, the parties to the Convention have agreed that the concurrent exercise of custody jurisdiction is not in the best interests of a child (pp. 209-10). As regards judicial comity, he held that if the Convention is fully applicable, the court in the requested state

must accept the other court's order as having been made in accordance with the guiding principle. That court, he added, must also accept that the child's future welfare will be safeguarded by the court in its home jurisdiction.

2.0 CONCLUSIONS

2.1 The successful operation of the UCCJA is largely due to the fact that all courts that make orders in conformity with the UCCJA are equally capable of rendering a decision that is in the best interests of a child. Indeed the UCCJA would not have had the success that it has if this equality among the various court did not exist.

2.2 Similarly, the United States is one of many "Contracting States" under The Convention and in turn The Convention could not operate without this equality between courts of the United States and the foreign nations.

2.3 Accordingly this Court must accept as true that a foreign nation's court will make custody orders that are in the best interest of all children.

3.0 SUBMISSION

3.1 Respectfully submitted on March 6, 1996.

[Submitting Party]