

Episode 61: Summary

Episode name: Without Consent: International Parental Child Abduction

Guest(s): Belinda Li

What area(s) of law does this episode consider?

International Parental Child Abduction (IPCA) under the 1980 *Hague Convention on the Civil Aspects of International Child Abduction*.

Why is this topic relevant?

IPCA occurs when a parent takes a child to another country without the permission of the child's other parent; it disrupts the child's life and negatively impacts their growth and development.

The *Hague Convention on the Civil Aspects of International Child Abduction* standardises the process of requesting the return of a child to the place of their habitual residence for determination of any parenting dispute on the merits in domestic courts.

What legislation is considered in this episode?

Hague Convention on the Civil Aspects of International Child Abduction

What cases are considered in this episode?

Secretary for Justice v Duncan [1993] NZFLR 870

- A mother wrongfully removed her 2 year old son from Australia, taking him to New Zealand without the permission of his father. One day, the father returned home and both the child and the mother were gone. A New Zealand judge granted the mother interim custody as she alleged the father was violent. 2 weeks later he flew to New Zealand and sought advice from 2 different lawyers who advised that it was unlikely his son would be returned under the Hague Convention. He returned to Australia and 4 months later made an application for his son's return with the NSW Central Authority. Due to the delay in making an application, the mother argued that the father had acquiesced to the removal of his son. The Court found that the delay in action was wholly due to erroneous advice given to him by the 2 lawyers he contacted in New Zealand. Therefore, he could not have been "reasonably expected to act" contrary to the advice. The mother was ordered to return the child to Australia and the child was not permitted to leave New Zealand unless it was to NSW, Australia.

What are the main points?

- IPCA is where a parent removes a child from their country of habitual residence without the consent of the other parent.
- The Family Law Watchlist alerts the Australian Federal Police that the child should not be leaving Australia and the child will not be permitted to get on an international flight.
- The Hague Convention provides a system to facilitate the return of a child from a country that is a signatory to the Convention. The aim of the Convention is to return children who are victims of IPCA to their country of habitual residence.

What are the practical takeaways?

- The Hague Convention sets up central authorities in each signatory country to assist in returning children to other signatory countries and otherwise facilitate the operation of the Hague Convention in that country.
- Australia recognises 83 of the Hague Convention signatory countries and has a bilateral agreement with both Egypt and Lebanon to help facilitate the return of children to either country or Australia.
- Seek advice from ISS Australia or a family law lawyer as soon as possible. This helps to show that you have not acquiesced to the child's wrongful removal or retention by reason of delay. If help is not sought soon enough, a court can conclude that the child's habitual residence is the new country.
- To prevent a child being wrongfully removed overseas, file a Family Law Watchlist Request Form so that your child's name gets noted on the Family Law Watchlist. This will ensure they cannot leave Australia if they are at risk of being abducted and alerts the AFP to the risk.
- If you believe your child has been removed overseas without consent, you are able to file a Hague Convention return application. You must prove that the child is under 16 years old, that you have rights of custody and are exercising them and that the child was habitually resident in Australia.
- If you are an Australian practitioner who wants to give the right advice if an IPCA issue comes across your desk, ring ISS Australia or look at their newsletter. If you're interested in the academic side of IPCA, look at the HCCH website or research case law on INCADAT.

How to:

How to make a Hague Convention return application

1. Go to the Attorney-General's Department website and download the '[Return of a Child under the Hague Convention Application Form](#)'.
2. Fill in the circumstances of the child's removal. Including details of the child's identity, the identities of both parents, and where the child is thought to be.
3. Draft and include an affidavit sworn by the left behind parent outlining the facts of the removal. Including any relevant court orders or whether there are existing local civil proceedings.

For further details on the Hague Convention return application, listen to Belinda's episode from 25:17.

Show notes

[Hague Conference on Private International Law Website](#)

[International Child Abduction Database \(INCADAT\)](#)

[International Social Service Australia Website](#)