

Jurisdictional Complexities in International, Multi-State Custody, Child Support & Parental Kidnapping cases

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2011 SC Bar Hot Tips CLE
Columbia, SC



Jurisdiction Chart: **UCCJEA** **Governing Law**

STATE LAW

CIVIL (not criminal)

**RECOGS INTERNAT'L
COUNTRIES AS STATES**

**Indian Tribal Cts are
treated as states**

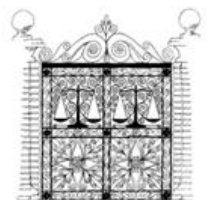


Jurisdiction Chart: **UIFSA** **Governing Law**

STATE LAW

CIVIL

**INTERNATIONAL
RECIPROCITY WITH
CERTAIN COUNTRIES**



Jurisdiction Chart:

PKPA

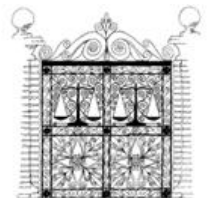
Governing Law

FEDERAL LAW
(Supremacy Clause Preempts State Law)

CIVIL

Does not apply in
International cases

State includes 50 states + District of Columbia +
Puerto Rico + US Territories



Jurisdiction Chart: **Hague Convention** **Governing Law**

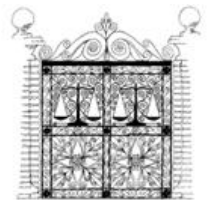
TREATY

(made law by ICARA)

(Only 46 Countries
have signed the Treaty)

CIVIL (not criminal)

**STATE & FED CTS HAVE
CONCURRENT ORIG JD**



Jurisdiction Chart: **UCCJEA** **Issues**

Determines Interstate Jurisdiction of Issues involving:

**Custody
Visitation
Dependency, Abuse, Neglect cases
Domestic Violence
Paternity
Guardianship
TPR**

(not Adoption cases in SC)

&

**Method to Register, Modify &
Enforce these Orders**



Jurisdiction Chart: **UIFSA** **Issues**

Establishes Jurisdiction of Issues involving:

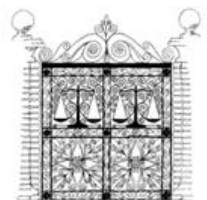
Child Support

Paternity Determination

Alimony

&

Method to Register, Modify & Enforce these Orders



Jurisdiction Chart:

PKPA Issues

Full Faith & Credit to Custody Orders

&

**Facilitates Enforcement of Custody & Visitation
Orders**

*Does not become involved in Modification cases,
only Enforcement cases.*



Jurisdiction Chart: **Hague Convention Issues**

*Determines Child's
Country of Habitual
Residence*
HOW?

**By Determining if there was a

Wrongful Removal
or
Wrongful Retention**



UCCJEA

SMJ, PJ & Age

This is a **SMJ** statute.

If state does not have SMJ over custody or visitation, SMJ cannot be waived
(i.e. parties cannot agree to state determining custody.)

Applies to Children under the age of 18.



UIFSA

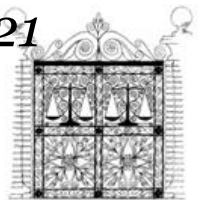
SMJ, PJ & Age

Blend of SMJ & PJ.

Exercise PJ over a Defendant by using the “special”
UIFSA Long Arm Statute.

**Age of emancipation is the age in the state where
the child support order was issued.**

*So, if enforcing a NY Order in SC, age of NY's emancipation is 21
even though SC's age is 18.*

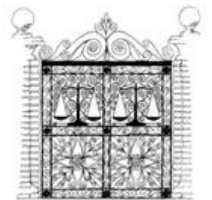


PKPA

SMJ, PJ & Age

SMJ Federal Statute.

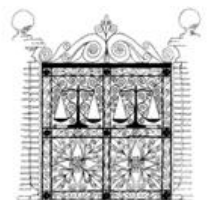
Applies to the enforcement of
custody orders for children under the
age of 18.



Hague Convention

SMJ, PJ & Age

**ONLY APPLIES
TO CHILDREN
UNDER THE
AGE OF
16!**



UIFSA

**Addresses
issues
such as:**

**Child
Support**

Paternity

Alimony



UIFSA: If an order **DOES NOT** exist:

Does Filing
Parent (Π)
have
Personal Jd
over non-
resident
Parent (Δ)?

**Must ask
UIFSA
Long Arm
Jurisdiction
Questions:**

8 questions.

UIFSA: If Order **DOES NOT** exist:

1. Can you serve Obligor in the state where PL lives?
2. Will Obligor submit to jurisdiction by consent?
3. Did Obligor ever reside in PL's state with child?
4. Did reside in the state & financially support the child & provide prenatal support?
5. Did Obligor direct child to live in Pl's state because of his Actions?
6. Did Obligor & Obligee have sexual intercourse in state & child *potentially* conceived there?
7. Any other basis for jurisdiction in State & US Constitutions

UIFSA

**Is there Personal
Jurisdiction
over
Non-resident
Obligor.**

No

**Π must file
in State
where Δ
lives.**

Yes

**Π can file in
state where Π
lives.**



UIFSA-
No Court
Order Exists
but Action(s)
filed

No

If no PJ
over Δ , Π
must file in
 Δ 's state

No

If there is PJ
over Δ , Π
can file
action Π 's
state.

Is an
action
filed?

Yes & as long as
 Π has PJ over Δ

Action can
Proceed
 Π 's state

Yes, but 2
actions are
filed

If there are 2
actions filed in
2 different states,
1st action filed in
state with PJ
 Δ prevails.



UIFSA:

If child support order exists &
Π wants to **MODIFY** child support:

Does at least 1
person, Mom,
Dad or Child,
reside in state
that issued
initial order?

No

Parent desiring to
Modify Order must
File in State where
Other Parent resides.

Yes

Only that State has
Continuing Exclusive
Jurisdiction to **modify**
the Order. (even if
child is only 1 who
lives in that state).

UIFSA:

- ◆ If alimony order exists and one party wants to modify:
- ◆ **Huge Quirk:** Only the state that issued the Initial Alimony Order can Modify that Order even if both parties have moved from that state.
- ◆ *EX: Even if there is a South Carolina order and the ex-Wife now lives in California & ex-Husband lives in Arizona, SC still is only state that can modify the Alimony Order.*

UIFSA: Enforcement

You can register child support/
alimony order in any state,
BUT you can only Enforce the child
support or alimony order in the
state where the Δ obligor earns
money and/or owns property.

