Workshop exercise I

Case Study: Parental Responsibility and Child Abduction[1]

Case

Heidi (a German national) and Paul (a French national) have since 2003 been living together as a couple in Brussels, where they both worked. They were never married. In October 2006 their daughter, Laura, is born and in November 2008 their son, Nicolas. Paul has formally (in the presence of a civil servant) acknowledged that he is the father of the children and he is mentioned as such on the birth certificates. Under Belgian law this has the result that Heidi and Paul share parental responsibility for the children.

In February 2010 Paul gets an unexpected opportunity to work in Paris on secondment for two years. He takes this up in March 2010. He commutes between Brussels and Paris and also rents an apartment in Paris where he stays over two or three nights every week. The change in lifestyle puts strain on the family and Heidi and Paul's relationship deteriorates and eventually breaks up by the summer of 2010. Paul moves into his apartment in Paris. Both parents want the children to live with them.

Question 1

➢ Where can Paul institute court proceedings to request that the children reside principally with him in Paris?

Question 2

➢ If the parties mediate their dispute in Belgium and reach an agreement, does this agreement have legal effect in France?

Same Case, but:

Let us assume that the Brussels court ruled in November 2010 that the children must live with Heidi in Brussels every Saturday evening from 6.00pm until Wednesday 4.00pm and with Paul from Wednesday 4.00pm until Saturday 6.00pm. Heidi is responsible for taking the children to Paris on Wednesday afternoons. (She has the day off as she works 4 days a week.) Paul is responsible for taking the children back to Brussels on Saturday evenings. This arrangement works well for the first month. By mid-December, Paul starts to bring the children late and then takes up the habit of bringing them only on Sundays. Heidi is unsatisfied, as she wants to spend Sundays with her children.

Question 3

➢ Can Heidi enforce the Belgian court order in France? What are the possible grounds for refusal?

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Same Case :

From June 2011 on Heidi becomes very unhappy in Brussels. She starts looking for a new job in Cologne, where her parents and sister live. She does not tell Paul of her plans. In March 2012 Paul moves back to Brussels (his secondment having come to an end), into a new apartment. The arrangement concerning the children carries on as before.

In May 2012 Heidi moves to Cologne without a word to Paul. On the first Wednesday after the move she does not take the children to Paul's place. He calls her mobile phone, but she has cancelled her contract and he is unable to reach her. After phoning several mutual friends, he learns that Heidi is in Germany, presumably with the children. He phones Heidi's parents, but they refuse to give him any information about where Heidi and the children are. They blame him for having broken up the family and tell him that he has not say over what Heidi can and must do. As an unmarried father, their view is that he has no right to have the children living with him.

Paul is devastated. He has no idea what to do.

Question 4

➢ Can you help Paul? Explain the steps he must take and the course of the procedure that will follow.

Same Case :

Let us assume that the German court has refused Paul's application.

Question 5

➢ What can he do?

Legislation:

Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (Brussels IIbis Regulation)

Convention on the Civil Aspects of International Child Abduction, concluded in The Hague on 25 October 1980 (All EU Member States are party to this Convention.)