

VOCABULARY EXERCISES

1. **Fill in the gaps with the following words:** infringements, enforce, protect, opportunity, breach, sole, enforceable, refer, origin, otherwise, maturity, uphold, duty, review, ratio, enforcement, requirement, mutual, power, inappropriate, hear, questions,
The missing verbs need to be put in the correct verb form.

As a (1) _____ of Brussels IIbis, courts have a (2) _____ to hear the child and in situations where a judgement is (3) _____ by the issuing of an Article 42 certificate, it is reiterated that the child must be (4) _____. Furthermore, paragraph 11 of Article 42 certificate requires the court of (5) _____ to expressly confirm that the child has been given this (6) _____, unless it was considered (7) _____ having regard to their age and (8) _____. To confirm that the child has been heard, when they have not, represents a procedural (9) _____. It would appear reasonable to suggest that a judgement, which contains a procedural breach such as this, cannot be (10) _____. However, the European Court of Justice (ECJ) decided (11) _____.

Aware that they had no power to (12) _____ a certified judgement following the decisions found in *Povse* and *Rinau*, the German court (13) _____ *Aguirre Zarraga* to the ECJ believing they should have such a (14) _____ in cases where there had been 'serious (15) _____ of fundamental rights.' The German court asked two (16) _____ of the ECJ.

Surprisingly, the ECJ replied that the court of (17) _____ (i.e. the German court) had no power of review; the court of origin (i.e. the Spanish court) retained the (18) _____ power of review. Furthermore, the court of enforcement was obliged to enforce the judgement. The ECJ's (19) _____ for this was that (20) _____ trust between states was sufficient to protect fundamental rights and that Germany should trust the Spanish court to (21) _____ the obligation to (22) _____ fundamental rights.

(An extract taken from the *Case Comment: Aguirre Zarraga v Simone Pelz* by Jayne Holliday, <https://www.abdn.ac.uk/law/documents/CaseComment-AguirreZarragavSimonePelz.pdf>. Accessed on 26/6/2017)

2. Match the terms in column A with their definitions in column B

A	B
service (of process)	1. right of a child to see a parent regularly or of a parent or grandparent to see a child regularly, where the child is in the care of someone else
custody rights	2. court order allowing a parent to see a child regularly, where the child is in the care of someone else
ward	3. stating that documents exist or have existed before a hearing starts in the civil courts
counterclaim	4. the situation where parties to a contract have agreed to refer any dispute arising from the contract to the decision of a specific court or the courts of a specific legal system
expert witness	5. the rights of a parent to keep and bring up a child after a divorce
sham marriage	6. person engaged in a lawsuit
default judgment, judgment by default	7. procedure for the declaration of a judgment delivered in one Member State as enforceable in another Member State
respondent	8. minor protected by a guardian
dilatory plea	9. delivery of a document (such as a writ or summons) to someone in person or to his legal representative
disclosure	10. expert who is a specialist in a subject and is asked to give his opinion on technical matters
access/right of access	11. legal case that a person or an organization starts against someone who has brought a case against them
litigant	12. person against whom an order is sought; person who answers a petition, especially one who is being sued for divorce
exequatur procedure	13. judgment without trial against a defendant who fails to respond to a claim
access order	14. form of marriage arranged for the purpose of acquiring the nationality of the spouse or for other reasons
prorogation	15. plea by a defendant relating to the jurisdiction of the court, which has the effect of delaying the action

3. Collocations: Match the verbs in column A with appropriate nouns in column B so as to get 9 collocations and make up/write a sentence for each collocation

- | A | B |
|-------------------------------|-----------------|
| a. to seize (in passive form) | 1. jurisdiction |
| b. to stay | 2. a judgment |
| c. to lodge | 3. a case |
| d. to hear | 4. a settlement |
| e. to serve | 5. an action |
| f. to contest | 6. an account |
| g. to bring | 7. a court |
| h. to preserve | 8. an appeal |
| i. to conclude | 9. proceedings |

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

3. Complete the following collocations by using one of the following verbs: award, file, enter, effect, set, confer, refer, undertake, strike, launch

- To _____ jurisdiction
- To _____ an appearance
- To _____ a claim
- To _____ a lawsuit against
- To _____ a court hearing
- To _____ procedural steps
- To _____ service on sb

- h. To _____ a balance between the protection of fundamental rights and the effectiveness of EU law
- i. To _____ custody rights
- j. To _____ a case

4. Turn the following verbs into nouns and make up sentences

E.g. to continue – continuation, continuity

The continuation of the proceedings is required for the purpose of the proper administration of justice.

to apply –

to receive –

to serve –

to hear –

to enforce -

to recognise -

to settle -

to refuse -

to infringe -

to withdraw –

5. Create antonyms by using one of the following prefixes: in-, im-, ir-, un-, non-,

reconcilable -

compatible –

respective –

competent –

relevant –

known –

appealable -

capable -

responsible -

mature -

appropriate -

recoverable –

Role play on direct judicial communication

Judge Martina Erb-Klünemann and Nella Popovic

Phone call 1:

Judge A is dealing with a case of custody rights. He/She phones judge B in member state B in order to understand a technical term used in a previous judgment of judge B.

Examples of such technical terms that family judges in one EU Member State use and that may not be clear to judges in other EU Member states could be as follows: “patria potestas” in Spain, „Aufenthaltsbestimmungsrecht“ in Germany or „ostvarivanje osobnih odnosa” (“exercise of personal relations“) in Croatia.

Phone call instructions:

Judge A: Call judge B and ask him/her to clarify the term that is not clear to you. Once he/she has done that, you are still not sure that you have understood well. Ask for more details.

Judge B: Ask for some more specifics and explain the term that you have been asked about. Offer your assistance in the future

Phone call 2:

Judge C is dealing with a case in which he/she needs to contact judge D in another country to talk to him or her about ordering supervised contact in the Member State of judge C.

Phone call instructions:

Judge C: Explain briefly what your call is about and why you have been approached by a parent in a particular case. Ask about the procedure previously followed in the country of judge D and the specificities of the case.

Judge D: Explain the substance of the case and the procedure that you have followed in your country in this case. If you are not sure about the content of the case, ask for a clarification. Offer your assistance in the future.

Modal verb + Perfect Infinitive

Extracts from the findings of the German Constitutional Court (slide 30 of the presentation on *Cross-border communication between courts and between central authorities* by Martina Erb-Klünemann)

- Even if it had been impossible to request the case files under the Council Regulation, the Local Court **should have tried** to use other means available under the Council Regulation.

- ...it **would have been** its duty to refer the question to the Court of Justice of the European Union pursuant to Article 267.3 of the Treaty on the Functioning of the European Union.

- Moreover, the court **could have asked** for assistance by way of general mutual judicial assistance, assistance not regulated and depending on the good will of the other state involved, but, from the facts of the case, an option that **might have been possible**.

Main use of would + perfect infinitive: In conditional sentences, type 3

Conditional sentences¹

Three types of conditional sentences:

Type 1 is used when we think the action or situation in the if-clause is possible or probable.

If I **have** time, I **will join** you.

If you **are going** home, I **can give** you a lift.

If she **has completed** her work, she **will join** us.

Type 2 is used when the statement in the if-clause is contrary to the known fact.

If I **had** a car, I **would give** you a lift.

If I **were you**, I **would buy** that house.

Type 3 is used when we refer to the past and to an action or situation that did not happen.

If counsel Jones **had received** the information in time, she **would have used** it in that case.

/ **Had** counsel Jones **received** the information in time, she **would have used** it in that case.

If Peter **had finished** his work by three o'clock, he **would have been** able to join us. / **Had** Peter **finished** his work by three o'clock, he would have been able to join us.

¹ Source: Thomson, A.J. and Martinet, A.V. (2003) *Oxford Pocket English Grammar*. Oxford University Press.

Complete the following sentences (Modal Verbs: could, should, would, must, may + Perfect Infinitive):

1. If the judge had referred a question for a preliminary ruling to the Court of Justice of the European Union, he _____ (to decide) it in a different manner.
2. He _____ (not do) that if he wanted to be invited to that party.
3. If judge Peters had called his fellow judge in France, he _____ (to obtain) an explanation of all the technical terms in the case.
4. If the child had not been heard, the court _____ (not issue) the judgment.
5. If her lawyer had prepared better, she _____ (win) the case.
6. Peter _____ (withdraw) his request if he had previously received all the required information.
7. If the child's parents _____ (not divorce), the child would not have moved to France.
8. He _____ (be) very popular – people loved his songs.
9. It _____ (be) Mary to tell you that. She was not at the meeting when we discussed it.
10. It _____ (be) Mary to tell you that. She was the only one of us who attended that meeting.

The hearing of the child - Presentation tips

Work in pairs. Describe to your colleague the rules of hearing children in your country and provide an example from your experience. Here are some expressions that you may find useful when discussing this topic²:

On the child's rights and interest:

- In the best/superior interest of the child
- To violate the rights of the child
- Infringement of the rights of the child
- Prejudicial to the interests of the child
- Detrimental to the child's interest/welfare
- Beneficial to the child's interest/welfare
- The interests of the child are paramount; of paramount significance for...
- Child's development and equilibrium

On the child's family situation:

- Separation of a child from a parent/to separate a child from a parent
- To cause psychological damage to a child
- To cause harm to a relationship with mother/father
- To jeopardise the child's integration into his family and social environment
- To harm the child's relationship with his/her mother/father
- To subject a child to distress
- To bring about/to cause a deterioration of the child's relationship with his/her mother/father
- To experience (psychological/emotional/sexual/physical) abuse
- Disengagement from the child's environment

On the issues at stake in the process of hearing children:

- To obtain the views of the child
- To take account of the best interests of the child
- To give the child an opportunity to be heard
- To give the child an opportunity to express his/her views freely
- To obtain an expert opinion/report;
- To obtain a fresh expert report (if the previous circumstances have changed)
- To hear a child via video conference

² A non-exhaustive list