Legal English for Judicial Cooperation in Civil Matters.

Regulation 2201/2003 on Matrimonial Matters and Parental Responsibility (Brussels IIa)

Eva Samaniego Fernández

1. General legal terms.

Choose the appropriate term below for the definitions.

TERMS

settlement	party	habitual residence	regulation
choice of court/forum selection	authentic instrument	leading question	hearing
draft	disposition	admission of debt	counterclaim
legal person	default	to have jurisdiction	action
pecuniary	bench trial	to fall due	hung jury
ADR (Alternative Dispute Resolution)	decision	conveyancing	dissenting opinion
transcript	trial court/court of record	expert opinion/evidence	injunction
to award	overturn	concurring opinion	breach of contract
legalisation	acknowledgement of receipt	irreconcilable	appeal
appearance	assignment	undertaking	damages

DEFINITIONS

1		Legal proceedings (civil or criminal).
2		Recognition by an addressee that a letter or notification has been received.
3		Drawing up a legal document to transfer the ownership of property from seller to buyer.
4		Where a judge disagrees with the majority opinion in a case.
5		Where a judge agrees with the majority opinion in a case.
6		The preliminary version of a legal document, such as a contract or an Act.
7		Where more than one court has the jurisdiction to hear a case and parties wish to select which one would be more favourable for their case.
8		To have the legal power to hear and decide a case.

9		Place (usually country) where a person habitually lives.
10		Person or group involved in a contract or in proceedings as a litigant.
11		A claim brought by a defendant in response to the claimant.
12		To decide (e.g. a court) that an amount must be paid to a party.
13		Evidence given by a witness who is a specialist in a certain subject.
14		When parties reach an agreement on the claim without pursuing the matter through a trial.
15		Document recording a legal act or fact whose authenticity is certified by a public authority.
16		Recognition by a party that an amount of money is owed.
17		Failure to carry out some or all of the terms of a contract.
18		In EU law, a legislative instrument that is binding in its entirety on all those to whom it is addressed. (Also: general term for a judgment).
19		Failure in duty or performance (i.e., to fulfil an obligation), e.g. "in _____ of appearance".
20		To reach a date for payment.
21		Something for which a solution is not possible (e.g. "_____ differences") or which cannot be made compatible (e.g. "_____ judgments")
22		Court session in which oral arguments are heard and evidence is presented.
23		Authentication, e.g. of a document, so that it is acceptable by a body/institution/court…
24		Related to money (e.g. "_____ damages", "non-_____ loss").
25		In the EU, instrument of general scope that is binding in its entirety and directly applicable in all Member States.
26		Monetary compensation awarded by a court in a civil action to a party who has been injured through the wrongful conduct of another party.
27		Annul, lift, repeal, revoke, reverse (e.g. "_____ a judgment").
28		An official or certified representation of what took place in a court during a trial or other legal proceeding.
29		A non-human entity that is treated as a person for limited legal purposes (also a single person having a separate personality before the law other than his own).

30		The submission to a court's jurisdiction; a lawyer declaring to the court that s/he represents a litigant in a case before the court (also referred to as "entering an _____").
31		A court order by which an individual is required to perform, or is restrained from performing, a particular act or course of conduct.
32		A court that hears and determines a case initially, as against an appellate court.
33		A method for resolving disputes other than by litigation.
34		To ask a higher court to reverse the decision of a trial court after judgment or other legal ruling.
35		A trial before a judge without a jury.
36		A jury that cannot reach a unanimous verdict.
37		A question put to a witness that suggests the answer the questioner wishes to obtain.
38		The transfer of a legal right by one legal or natural person to another.
39		The transfer of property by its owner.
40		(a) A promise to do or not to do a specified act. (b) A business.

2. Use of legal English

1. When you are representing a party in court you say that you are _____ a party.
2. When there's more than one judge sitting together they sit in _____.
3. When a judge sits by himself/herself, s/he sits _____.
4. When a case is heard with no public it is heard _____.
5. When a case is heard with public it is heard _____.
6. A lawyer who is active/working is called a _____ lawyer.
7. When a judge is dealing with a case he is _____ it.
8. A technical way of saying "intentionally" is: _____.
9. When a court supports the decision of a lower court: to _____.
10. Another way of saying "temporary measures" is _____ measures.
11. Some provisions may have the same *standing* as Acts, that is, they have _____ of law.
12. The necessary level of proof is called the _____ of proof.
13. When it is someone's responsibility to prove a case, it is called the _____ of proof.

3. Prepositions

Complete the phrases below using the correct preposition.

against, by, down, for, forth, from, into, to, on, out, through, under, up, upon, with

1. Members of official institutions must abide _____ the law in all circumstances

2. The defendant's lawyers carefully weighed _____ the submissions before answering.

3. Third parties are not eligible _____ that kind of compensation.

4. To sum _____, there were three very powerful reasons not to sign the contract.

5. The costs of litigation have been accounted _____ when calculating the final amount.

6. The parties _____ a contract must both sign it.

7. I think we can rule _____ any compensation at this stage of the proceedings.

8. We'll work _____ the sum right before the trial.

9. Counsel is subject _____ the requirements of the Civil Procedural Code.

10. The company was wound _____ last year due to persistent debt problems.

11. The defendant was served _____ the claim form.

12. Pursuant _____ the contract, the amount will be transferred next month.

13. His main concern was to protect the company _____ misappropriation.

14. The company's position is set _____ in paragraph 9 of the contract.

15. Parties have rights and obligations _____ a contract.

16. The company must set _____ very clear guidelines to deal _____ complaints.

17. The defendant submitted an application _____ the Court.

18. Defence lawyer skimmed _____ the witnesses' statements before going into court.

19. I think his company will benefit _____ the contract.

20. The lawyer's argument rested _____ a questionable interpretation of the Childcare Act 2016.

21. The trial judge ordered that the case be struck _____.

22. The figures of the financial report can be broken _____ as follows.

23. No rights are assigned _____ a third party under this contract.

24. The company agreed _____ the terms subject _____ certain conditions.

25. The claimant filed an application _____ an injunction.

26. The defendant was charged _____ murder.

27. Should there be a breach, we can always enforce the contract _____ the seller.

28. The legal team consists _____ three civil and two criminal lawyers.

29. The parent company will draw _____ its capital reserves to finance its new venture.

30. Negotiations between the parties have broken _____ .

31. The parties finally entered _____ the agreement after a long negotiation.

32. There is no third-party beneficiary _____ this contract.

33. The subsidiary company disposed _____ most of its assets because it had many debts.

34. Both parties are entitled _____ damages should there be breach of contract by either one.

35. The Chief Executive Officer pressed _____ a final agreement after the meeting.

36. The Regulation provides _____ different ways of transmitting and serving documents.

37. Unfortunately, the company has departed _____ generally accepted accounting principles.

38. Today the trial judge will hand _____ her judgment.

39. Any such questions might be objected _____ on the grounds that they are argumentative.

40. Your route of appeal depends on certain factors such as the court where the decision you wish to appeal _____ was made.

4. Latinisms

Give the Latin terms for the following definitions and then try to pronounce them in English.

1		Against a thing/property.
2		A pending suit or action.
3		From the beginning.
4		Acts and omissions in the exercise of State authority.
5		For a suit, for specific proceedings (e.g. "representative _____").
6		For this purpose.
7		This in return for that (an advantage/favour given in return for something).
8		"Please execute". "Declaration of enforceability" (when a national court verifies that a judgment issued by a foreign court may be executed).
9		The need for a forum (lit. *market*).
10		The law of the case (law governing the substance of the case).
11		By one of the parties. Based on one party's request, without hearing from the other side.
12		Law of the court in which the action is brought.
13		At first sight, on the face of it.
14		When someone or a body does something of its own motion, by virtue of their status or position.
15		In the absence of.
16		Law of the country where the harmful event occurred (for non-contractual obligations).
17		Adjourned indefinitely.
18		The reason/rationale for the decision.
19		The thing speaks for itself.
20		As much as he deserves.
21		Per day.

22		For each person.
23		In the room.
24		From what comes before, before seeing the facts.
25		Elsewhere.
26		In the matter of
27		Bring forth/give me the body.
28		In the place of a parent.
29		In good faith
30		In fact.
31		By right, by law.
32		By a subsequent act.
33		In the original position.
34		Otherwise known as.
35		Among other things.
36		Way of doing something.
37		Changing what has to be changed. (with the necessary changes)
38		Passing comments, comments “by the way” in a judgment.
39		The other way round.
40		The current state of affairs.
41		By itself.
42		By the fact itself, by the very fact.

5. General civil law terms

Match each term with the appropriate definition.

1	Statute of limitation	**a.** Proceedings brought by a defendant in response to the claimant's claim.
2	To strike out	**b.** To challenge, to oppose a claim.
3	Court costs/fees	**c.** Procedure whereby one party is required to inform the other of documents relevant to the claim.
4	Settlement	**d.** Cases concerning sums under a certain threshold.
5	Cross-examination	**e.** Circumstances that give a person the right to bring a lawsuit and to receive relief from a court.
6	Preponderance of the evidence/likelihood/balance of probabilities	**f.** One who claims or brings a claim; an applicant for justice.
7	Service	**g.** The person against whom an action is brought.
8	Preliminary/ temporary/ provisional/interim injunction	**h.** In a general sense, a statement under oath, usually given out of court.
9	Expert opinion/evidence	**i.** Formal statements by the parties to an action setting forth their claims (or defences).
10	Claimant	**j.** The degree of proof required in most civil actions.
11	Counterclaim	**k.** Statutes prescribing the maximum period of time during which various types of civil actions (and criminal prosecutions) can be brought after the occurrence of the wrong or the offence.
12	Submission	**l.** An order for the termination of a civil action without a trial of its issues, or without further trial.
13	Deposition	**m.** An injunction granted prior to a full hearing on the merits and which is not permanent.
14	Disclosure	**n.** The expenses involved in litigating an action.
15	Perjury	**o.** In general, the means provided by the law to help one party because the other party has acted contrary to the rules of law.
16	Summons (*subpoena*)	**p.** A sworn written statement made by a witness.

17	Cause of action	**q.** Questioning of a witness by a party that has not called the witness.
18	Pleadings (statement of claim)	**r.** Evidence given by a witness who is a specialist in a certain subject.
19	Title deeds	**s.** When the advocate questions his/her witness to support his client's version of events.
20	Strict liability	**t.** The party who is owed some money.
21	Defendant	**u.** Telling lies in court while under oath.
22	Small claims	**v.** The delivery of court documents.
23	Dismissal	**w.** Where parties avoid going to trial by reaching an agreement on the claim.
24	Examination-in-chief (direct examination)	**x.** To cancel an action, for example because the claim reveals no grounds.
25	Creditor	**y.** An argument pleaded before a court.
26	To contest	**z.** A court order requiring a witness to appear in court.
27	Witness statement (*affidavit*)	**a bis.** Responsibility for a wrong that is imposed without the claimant having to prove that the defendant was at fault (e.g. in product liability and defamation claims).
28	Legal remedy	**b bis.** The documents that prove a person's ownership of land.

6. Prefixes

Add prefixes (*dis-, im-, in-, ir-, il-, ab-, un-,* etc.) to each of these words to form their opposites (antonyms).

1. Agree
2. Licit
3. Dependent
4. Valid
5. Respective
6. Practicable
7. Legal
8. Fair
9. Normal
10. Written
11. Limited
12. Justice
13. Restricted
14. Direct
15. Formal
16. Comparable
17. Lawful
18. Constitutional
19. Likely
20. Reconcilable
21. Competent
22. Sufficiently
23. Reliability
24. Authorised
25. Effectiveness

7. Plain English

Replace the following with equivalents that are shorter and simpler:

1. by the introduction of:
2. for the allocation of:
3. of the provision of:
4. submit an application for:
5. carry out an evaluation of:
6. implement an investigation of:
7. conduct a review of:
8. perform an assessment:
9. effect a renewal of:
10. in view of the fact that:
11. with respect to:
12. a certain number of:
13. the majority of:
14. within the framework of:
15. for the purpose of:
16. in the event of:
17. if this is not the case:
18. if this is the case:
19. with reference/regard to:
20. in accordance with:

8. Compound adverbial-prepositional phrases

Use compound adverbial-prepositional phrases to fill in the gaps, using the explanation given in brackets.

whereat, hereafter, hereinafter, thereupon, whereof, thereafter, heretofore, thereof, whereabouts, hereinabove, therein, herewith, hereunder, wherefore, thereby, herein, hereto, whereby, thereto, hereby, whereupon

1. The questions raised in point 27 _____ have to be taken into consideration.

(PREVIOUSLY IN THIS DOCUMENT)

2. All procedural documents, as well as any other correspondence sent to the Board, must be lodged at the Registry of the Board (_____ "the Registry").

(LATER REFERRED TO IN THIS DOCUMENT)

3. Accordingly, by the present Communication the Commission formally informs the Council of its intention to adopt the measures presented in the Annex _____.

(TO THIS DOCUMENT, OR MATTER, OR PLACE)

4. The practice of holding national seminars open to all actors has _____ been seen only as part of the process of putting together national plans.

(BEFORE NOW, SO FAR, UP TO NOW)

5. Where a national accreditation body does not meet the requirements of this Regulation or fails to fulfil its obligations _____, the Member State concerned shall take appropriate corrective action.

(LATER REFERRED TO IN THIS DOCUMENT)

6. The six remaining approved evaluation reports are presented _____.

(WITH THIS DOCUMENT; ATTACHED)

7. The seller tried to charge extra interest, _____ the buyer objected.

(AT WHICH)

8. This article also contains the process _____ inspections supervised by the Commission are put in place to check the effectiveness of these measures.

(BY WHICH)

9. The current tobacco premium system will no longer exist as from 1 January 2006, _____ it is necessary to establish, as a transitional measure, a new basis for calculating the future quota buy-back price.

(AS A RESULT OF WHICH)

10. In witness _____ the undersigned, being duly authorised thereto, have signed this Protocol.

(OF WHAT/OF WHICH)

11. Private citizens may hand in unlicensed firearms to police authorities, _____ possible charges for illegal possession may be dropped.

(IMMEDIATELY AFTER WHICH)

12. The number of district courts is _____ reduced from 82 small local courts to 24 larger district courts.

(FROM NOW ON)

13. The parties _____ agree that, in the event of dispute, jurisdiction shall remain with the courts of Portugal.

(BY THIS MEANS, BY THIS DOCUMENT)

14. All other products mentioned _____ may be trademarks of their respective companies.

(IN THIS DOCUMENT, MENTIONED HERE)

15. This lease will be valid from one year from this date and will be renewed yearly _____.

(AFTER THAT TIME, IN THE FUTURE)

16. Corruption was found to scare away investment, _____ lowering economic growth.

(AS A RESULT OF THAT)

17. Copies or reproductions to be discarded shall be destroyed to avoid access to the information contained _____ or its later recovery.

(IN THAT PLACE OR DOCUMENT)

18. Please provide statistical data on the number of complaints received and investigated in this respect during the reporting period, as well as the number of prosecutions and convictions _____.

(OF WHAT HAS BEEN MENTIONED JUST NOW)

19. Legislative guides for the implementation of the United Nations Convention against transnational organized crime and the protocol _____ must be followed.

(ATTACHED TO IT/TO THAT DOCUMENT)

20. (...) it is _____ ordered and adjudged that payment be made to the claimant.

(DIRECTLY FOLLOWING THAT; CONCERNING THAT MATTER)

21. There is information about the _____ of those fugitives, but there is still little progress in arresting them.

(PLACE WHERE SOMEONE OR SOMETHING IS)

9. Family law terms.

(a) Give the terms for the following definitions. For each term you will find a clue.

1	**A _____**	Term usually applied to children removed from a country without permission from their parent(s).
2	**To a_ _ _ _**	To make a marriage void.
3	**Civil _____/_____**	A couple living together without getting married but with legal recognition.
4	**_____ with/_____ to the child**	Visitation by a parent who does not have the custody of a child.
5	**_ _ _ _ _ tion**	The abandonment of a spouse intentionally.
6	**D _ _ _ _ _ _ tion**	Legal procedure which ends a marriage or civil partnership.
7	**E _ _ _ _ ipation**	When a child acquires the rights of an adult before s/he is 18 (or otherwise legally of age).
8	**Sp _ _ _ _**	Husband or wife.
9	**D_____e**	The termination of a marriage by legal action.
10	**C _ s _ o _ y**	The care and control of a child, which a court may award to one or both of the parents after divorce (or separation).
11	**_ _ _ _ _ ation**	The termination of cohabitation of husband and wife, either by mutual agreement or a court decision.
12	**Parental _____**	Rights and duties that a parent has towards his/her child or children.
13	**N _ _ _ _ ty**	Legal invalidity of a marriage. Legal declaration that a marriage never came into being.
14	**_ _ _ _ _ _onial**	Related to a married couple (e.g. _____ property, etc.)
15	**Pre- _ _ _ _ _ _ _ agreement (pre _ _ _)**	Contract entered into in contemplation of marriage which usually establishes the property and financial rights of each spouse in the event of a divorce.
16	**_ _ _ _ _ _ hood**	Quality of being a father or a mother.
17	**Plac _____ nt**	When a child is put in out-of-home care.
18	**G_____**	Person who has the legal authority and duty to care for the personal and property interests of another person.
19	**F_____ family**	A family that takes a child into their home for a while because, for some reason, the child cannot live with his or her own family.
20	**_____er**	The person who has parental responsibility is the _____ of parental responsibility.
21	**A _ _ _ _ s rights**	Right to make inquiries, and to be given information as to the health, education, and welfare of the child, as well as to maintain a relationship with him/her.

24	**_ _ _ _ _ ment**	Legally declaring that the marriage never technically existed and was never valid.
25	**_____ul r_____ of a child**	According to Article 3 of The Hague Convention, this happens when the act: (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the _____ or retention; and (b) at the time of _____ or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention

(b) Form the appropriate adjective using the word in brackets for these combinations of words:

Source: Regulation 2201/2003

1. _____ (parent) responsibility
2. _____ (accede) rights
3. _____ (habit) residence
4. _____ (marry) annulment
5. _____ (law) separation
6. _____ (wrong) removal
7. _____ (suffice) time
8. _____ (practise) arrangement
9. _____ (territory) unit
10. _____ (ordinariness) appeal
11. _____ (join) custody
12. _____ (crime) offence
13. _____ (fostering) family
14. _____ (competence) authority
15. _____ (appeal) court
16. _____ (familiarise) dispute
17. _____ (fundament) principle
18. _____ (subsequently) judgment

19. _____ (expedite) procedures

20._____ (child) abduction

21. _____ (nation) law

22._____ (apply) law

23._____ (interest) party

24._____ (custody) rights

25._____ (authentication) instruments

26._____ (law) aid

27. _____ (center) authority

28._____ (fill) name

29._____ (refer) number

30._____ (enforce) judgment

10. Pronunciation. Council Regulation 2201/2003: frequent terms.

Pronounce the following:

1. child
2. matter
3. parental responsibility
4. recognition
5. access rights/rights of access
6. habitual residence
7. place of birth
8. marriage annulment
9. legal separation
10. divorce
11. wrongful removal
12. rights of custody
13. property
14. spouse
15. request
16. applicant

17. child placement
18. default of appearance
19. prejudice
20. hearing
21. exercise of rights of access
22. sufficient time
23. practical arrangement
24. annex (noun)
25. assistance
26. territorial unit
27. compliance
28. degree of maturity
29. certificate
30. non-return
31. retention
32. ordinary appeal
33. judge of origin
34. joint custody
35. criminal offence
36. foster family
37. competent authority
38. guardianship
39. protection of the child
40. revocation of adoption
41. appellate court
42. absence of document
43. cross-border situation
44. date of legal effect

45. civil-status record
46. resolution of family dispute
47. violation of fundamental principle
48. limited period of time
49. breach of right of custody
50. criterion of proximity
51. refusal of enforcement
52. forum of jurisdiction
53. dissolution of matrimonial ties
54. establishment of parenthood
55. multilateral convention
56. right of asylum
57. prorogation of jurisdiction
58. subsequent judgment
59. expeditious procedures
60. date of notification
61. child abduction
62. review of jurisdiction
63. attestation of enforceability
64. property
65. submission
66. hearing

11. Listening comprehension. Family law: habitual residence

Read the summary of the case below.

Published on 3 Feb. 2016

[2016] UKSC 4

UKSC 2015/0214

In the matter of B (A child)

On appeal from the Court of Appeal (Civil Division) (England and Wales)

This case considers whether a child's habitual residence ceased when taken from the United Kingdom and whether the Court of Appeal was wrong to decline to exercise the inherent jurisdiction to order the child's return to the UK. The Appellant and the Respondent were in a same-sex relationship which broke down in late 2011. Their daughter, B, was conceived by IVF and was born in April 2008. The Respondent is B's biological mother and sole legal parent. The Appellant considers herself to be a *de facto* parent. B, who is now aged 7, was taken from the United Kingdom to Pakistan by the Respondent in February 2014. Following this, the Appellant commenced Children Act proceedings, and applied for B to be made a ward of the court and to be returned to the UK. The High Court and Court of Appeal considered that it did not have jurisdiction to entertain the proceedings as B was not habitually resident in the UK when the Children Act proceedings were commenced. The courts declined to exercise the inherent jurisdiction to order B's return to the UK. The Appellant appealed to the Supreme Court.

The Supreme Court allows the appeal on the Appellant's application under the Children Act 1989 by a majority of 3:2, on the basis that B remained habitually resident in England on 13 February 2014.

IN THE MATTER OF B

[https://www.youtube.com/watch?v=l9NtHGNsxHM]

Listen to Extract 1 of the judgment and answer the following questions:

1. What type of court is dealing with the case? What type of case is it?

2. What is basically the case about?

3. Which court has primary jurisdiction to determine issues related to a child?

4. What kind of legislation determines the competent court?

5. What name was given to "child arrangement orders" formerly?

6. When can an application for child arrangement order be determined by a court, and according to what piece of legislation?

7. What Directive does Lord Wilson refer to?

Listen to Extract 2 of the judgment and answer the following questions:

1. Who are the parties to the case and what names are the parties given in this type of case?

2. What type of relationship did the parties have?

3. Of what ethnicity are the parties?

4. Who is B and of what nationality?

5. What happened in 2011? And in 2014?

Listen to Extract 3 of the judgment and answer the following questions:

1. On what basis does the appeal proceed?

2. Could the Respondent legally move B to Pakistan?

3. What was the answer to the question of B's residence in England by the lower court?

4. What was the answer to the same question by the Supreme Court?

5. Why does Lord Wilson say "this now becomes a third such case"?

6. What is the difference between how the concept of habitual residence used to be defined formerly and how it is defined nowadays?

Listen to Extract 4 of the judgment and answer the following questions:

1. What is relevant for the Supreme Court to decide whether on 13 February B had achieved sufficient disengagement from her English environment?

2. What was the Appellant's contention in her second application?

3. What was the lower court's decision on the second application?

EXTRACT 1

Lord Wilson will give the judgment of the Court.

This appeal is primarily about when a child loses his or -in this case- her habitual residence in a country.

Whether on a particular date a child was habitually resident in a country is often important, for under a European Union Directive and two International Conventions to which the UK is a party, it is the court of the country in which the child was habitually resident which has primary jurisdiction to determine issues in relation to that child.

Therefore, under the Family Law Act 1986, an application for what used to be called 'residence and contact orders', now called 'child arrangements orders' can be determined by a court here only if at the time when it was issued the child was habitually resident here or, if not habitually resident in any other EU country, was present here.

EXTRACT 2

The Appellant, a British woman of Indian ethnicity, had a same-sex relationship with the Respondent, a British woman of Pakistani ethnicity. In 2004 they began to live together in England. In 2007, as a couple, they successfully applied for fertility treatment. The sperm of an unknown donor was introduced into the Respondent and in April 2008 she gave birth to the child, B. So B is British too.

The Appellant acted as B's other parent both while her cohabitation with the Respondent continued and, following her departure from the home in 2011, during her periods of contact with B. On 3 February 2014, without notice to the Appellant, the Respondent took B to Pakistan. She intended that they should live there indefinitely and they've done so ever since.

On 13 February 2014, not knowing where B was, the Appellant issued an application for residence and contact orders. It was only a three month later that she learned that they'd gone to Pakistan.

EXTRACT 3

The appeal proceeds on the basis that, as a same-sex non-biological parent, the Appellant would be unable to persuade a court in Pakistan to consider her case because of the strength there of negative attitudes towards that sort of adult relationship. In law the Respondent did not need the Appellant's consent before removing B to Pakistan, but was B still habitually resident in England ten days later, so as to give our court jurisdiction to determine the Appellant's application? The lower court said no. They held that because of the Respondent's intention that they should live indefinitely in Pakistan, B had lost her habitual residence in England at the time of their departure even though ten days later she had not by then acquired habitual residence in Pakistan.

By a majority of three judges to two, this court allows the Appellant's appeal. It holds that B had NOT lost her English habitual residence by 13 February and it directs the Appellant's application to proceed.

Our law about habitual residence is changing. Three years ago this Court held that our concept of it should be governed by the test established by the court in Luxembourg, which requires there to be some degree of integration of the child in the environment of the country. The test is more child-focused than the one previously adopted here, which was heavily influenced by what at the relevant time had been intended by the child's parent.

In two recent cases in relation to different aspects of the concept, this Court has held that parental intention is no longer determinative in relation to a child's habitual residence. This now becomes a third such case. It's clear that while it remains possible for a child to lose one habitual residence before gaining another, the modern concept expects that both will normally occur simultaneously.

EXTRACT 4

In relation to the present case, the task is to look at all the circumstances in order to see whether by 13 February B had achieved the requisite degree of disengagement from her English environment, and highly relevant to that task is to enquire whether by that date she had achieved the requisite degree of integration in the environment of Pakistan. Having completed that task, the majority concludes that on 13 February B remained habitually resident in England.

The Appellant also issued a second application which, so she contended, the court should exercise jurisdiction to determine because B is British. The lower courts rejected that contention too. Jurisdiction based on a child's British nationality stems from the old doctrine, still valid, that, like British adults, British children owe allegiance to the Crown and that in return, by its judges, the Crown is obliged to make any necessary orders for their protection. Apart from observing that, while it must be exercised with caution, it is unhelpful to regard this jurisdiction as available only in extreme cases, we have no need to decide whether in this case the lower courts were right to decline to exercise it.

[Reproduced with permission]

12. Fill in the gaps using the clues provided in brackets.

PRESS SUMMARY

3 February 2016

In the matter of B (a child) [2016] UKSC 4 On appeal from [2015] EWCA Civ 886
JUSTICES: Lady Hale (Deputy President), Lord Clarke, Lord Wilson, Lord Sumption and Lord Toulson

BACKGROUND TO THE APPEAL

The girl at the centre of this appeal, B, is a British national now **(1)** _____ *(who is)* 7. The Respondent (a British national of Pakistani ethnicity) is B's biological mother and was previously in a same-sex relationship with the Appellant (a British national of Indian ethnicity), who has strong **(2)** _____ *(demands)* also to be described as a mother of B. The couple lived in England and set up home together, but they never became civil **(3)** _____ *(couple; companions)*. Following IUI treatment, given to them both as a couple, the Respondent gave birth to B in April 2008. The Respondent undertook most of B's care but the Appellant also helped care for her and, as co-parents, they took B out at weekends, in particular to visit members of their families.

In December 2011, the relationship **(4)** _____ *(came to an end)* acrimoniously and the Appellant left the family home. Over the next two years, the Respondent progressively reduced the level of the Appellant's contact with B. The Appellant objected and suggested mediation. Meanwhile, the Respondent decided privately to move with B to live in Pakistan where she says members of her wider family remain. She did not share this decision with the Appellant. On 3 February 2014 the Respondent moved to Pakistan with B where they have remained **(5)** _____ *(since then)*. Although the Appellant did not consent to it, B's removal to Pakistan was lawful. On 13 February 2014, unaware where the Respondent had taken B, the Appellant applied under the Children Act 1989 ("1989 Act") for orders for shared residence of B, or for contact with her. This application depended upon showing that B was "habitually resident" in England at the time it was issued (i.e. 13 February 2014). **(6)** _____ *(Afterwards)*, having learned that the Respondent had taken B to Pakistan, the Appellant also applied for orders under the court's inherent jurisdiction over B (as a British national) that she be made a ward of court and returned to England.

In July 2014 Hogg J held that (a) the English court had no jurisdiction to **(7)** _____ *(ascertain)* the Appellant's 1989 Act application because B had lost her **(8)** _____ *(usual)* residence immediately upon her removal to Pakistan on 3 February 2014; and (b) the inherent jurisdiction over a British national who was neither habitually resident nor present in England should be exercised only if the circumstances were "dire and exceptional", and this was not such a case. On 6 August 2015, the Court of Appeal **(9)** _____ *(discarded)* the Appellant's appeal. The Appellant appeals to the Supreme Court in respect of both applications.

JUDGMENT

The Supreme Court **(10)** _____ *(permits)* the appeal on the Appellant's application under the 1989 Act by a majority of 3:2 (Lord Clarke and Lord Sumption dissenting) on the basis that B remained habitually resident in England on 13 February 2014. Lord Wilson gives the lead judgment.

REASONS FOR THE JUDGMENT

Habitual residence

Lord Wilson (with whom Lady Hale and Lord Toulson agree) observes that two consequences flow from the modern international primacy of the concept of a child's habitual residence. First, it is not in the interests of children routinely to be left without a habitual residence [30]. Second, the English courts' interpretation of the concept of habitual residence should be **(11)** _____ *(in line with)* with its international interpretation [31]. The **(12)** _____ *(current)* case, however, involved a third aspect of the concept of habitual residence: the circumstances in which a child loses his or her habitual residence [32]. The traditional English law approach to this issue is heavily **(13)** _____ *(reliant on)* upon parental intention. In particular, in *In re J (A Minor)*, Lord Brandon observed that a person may **(14)** _____ (*stop*) to be habitually resident in a country in a single day if he or she leaves it with a settled intention not to return and settle elsewhere [33-34].

Lord Wilson notes that the Supreme Court in *A v A* held that the English concept of habitual residence should be **(15)** _____ *(guided)* by the criterion set out in the CJEU jurisprudence: namely, that there be some degree of integration by the child in a social and family **(16)** _____ *(context)*. This focuses on the child's situation, with parental intention being merely one relevant factor [35-38]. Lord Wilson identifies two points in the CJEU jurisprudence relevant to the issue of when habitual residence is lost. First, the effect of Recital 12 to the Brussels II Regulation is that, where the interpretation of the concept of habitual residence can reasonably follow two paths, the courts should follow the path perceived better to serve the interests of children. Second, the CJEU has **(17)** _____ *(confirmed, supported)* the view that, although it is conceivable that a child may have no habitual residence, this will only be in exceptional cases [40-44].

Lord Wilson **(18)** _____ *(comes to the conclusion)* that the modern concept of a child's habitual residence **(19)** _____ *(works)* in such a way as to make it highly **(20)** _____ *(improbable)*, albeit conceivable, that a child will be left without a habitual residence; the concept operates in the expectation that, when a child **(21)** _____ *(acquire)* a new habitual residence, he or she loses their old one. Lord Brandon's observation in *In Re J* should no longer be regarded as correct, and Hogg J fell into **(22)** _____ *(mistake)* in being guided by it [45-47].

Lord Wilson therefore **(23)** _____ *(declares)* that the correct question is whether B had by 13 February 2014 achieved the **(24)** _____ *(indispensable)* degree of disengagement from her English environment [48]. He concludes that, taken cumulatively, the factors pointing to the conclusion that B had *not* by 13 February 2014 achieved the requisite degree of disengagement compel the conclusion that she retained habitual residence in England [49-50]. Accordingly, the Appellant's application under the 1989 Act can and should **(25)**

_____ *(carry on, move to)* to substantive determination by the High Court (Family Division) [51].

Lord Sumption (dissenting) considers that Hogg J made no error of law and, having heard and **(26)** _____ *(re-evaluated)* the evidence, was entitled to find that B lost her habitual residence in England on 3 February 2014 [64-80]. Lord Clarke agrees [89-95].

Inherent jurisdiction

Given the majority's conclusion on habitual residence, it is unnecessary to decide whether the **(27)** _____ *(innate, natural)* jurisdiction can be exercised. Lady Hale and Lord Toulson observe that none of the reasons for caution when deciding whether to exercise the inherent jurisdiction has much **(28)** _____ *(strength)* in this case. They consider that the jurisdiction is not confined to exceptional circumstances; it could have been exercised if the court held that B required protection [59-62]. Lord Wilson agrees, but leaves open the question of whether it would have been appropriate to exercise the inherent jurisdiction in this case [53].

Lord Sumption (dissenting) considers that, unless the inherent jurisdiction is reserved for exceptional cases, it may be exercised in a **(29)** _____ *(way)* which cuts across the statutory scheme. He considers that the jurisdiction could not have been exercised in this case [81-87]. Lord Clarke, **(30)** _____ *(remarking)* that the jurisdiction must be exercised with great caution, agrees that it should not be used on the facts of this case [96-97].

References in square brackets are to paragraphs in the judgment

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: http://supremecourt.uk/decided-cases/index.html

13. Comparing divorce jurisdictions in international family law

(reproduced with permission)

Source: The Law Office of Jeremy D. Morley
http://www.international-divorce.com/Comparing-Divorce-Jurisdictions-in-International-Family-Law
June, 2008

(a) Explain the meaning of the expressions in bold in the text and then answer the questions after the text

When comparing possible jurisdictions for international family law cases, **it is frequently important to focus on procedural matters and not simply to compare the rules and practices** concerning the division of assets, maintenance and **other substantive issues**. For example, while it is important to know how different courts will determine which assets are to be divided upon a divorce and how they will determine the appropriate proportions, **it is often even more important to compare the disclosure obligations imposed upon the parties in the various jurisdictions**. By way of an example, California is at one extreme in requiring real disclosure, while Austria, Japan and many other **civil law countries** are at the other extreme in requiring very little disclosure.

These distinctions became apparent in a recent matter in which we were asked to compare possible jurisdictions for a divorce case. (The facts have been changed for confidentiality purposes). We determined that the client could bring suit for divorce as well as for the consequential financial issues in either California or Austria. We also concluded that the division of assets would yield similar results in both places and that, **while child support might be better in one jurisdiction, it would be offset by better spousal maintenance in the other**. The challenge was that our client believed that the other spouse was hiding assets and that it would, therefore, be necessary to conduct disclosure in order to ensure that the hidden assets were brought before the court. Accordingly, we compared the disclosure rules.

In civil law jurisdictions, such as some European countries, the practice is for the parties to be required to present their own evidence to the court, but **there are generally no procedures for a party to engage in self-directed discovery**. All that a party can do is ask a judge to sort out the evidence that each side presents and hope that the judge will decide to call a witness. A litigant is not expected to disclose all of his or her assets, and there are no penalties for failing to do so. Litigants are widely expected to present evidence that supports only their position, just as their witnesses are expected to provide only information that presents their position in a positive light. It falls to the judges to sort the evidence and the testimony. **They determine what evidence is germane to the proceedings** and, in many civil law countries, **they can call their own independent witnesses**.

California Law

The contrast with American states, but most especially with California, could not be more extreme. Section 721 of California's Family Code requires each spouse to make full disclosure to the other spouse of **all material facts** and information regarding **the existence, characterization, and valuation of all assets** and to provide equal access to information. This duty persists until each asset has been divided by **the trial court**. Section 2100(c) mandates full disclosure of all **assets and liabilities** of each party in the early stages of a divorce proceeding, **regardless of whether a party believes them to**

be community or separate property. Furthermore, the information must be updated when changes occur. **The parties are required to exchange preliminary and final declarations of disclosure** (Family Code, Sec. 2103). In order **to deter nondisclosure**, Section 2107(c) of the Code requires the trial court to impose monetary sanctions if a party fails to comply with disclosure obligations. **Sanctions shall be in an amount sufficient to deter repetition of the conduct**, and shall include **reasonable attorney's fees**, costs incurred, or both.

In *In re Marriage of Feldman*, 153 Cal.App.4th 1470, 64 Cal.Rptr.3d 29 (Cal.App. Dist.4 July 20, 2007), the California courts have made it clear that, not only must a spouse respond fully to requests by the other spouse for documents and information about assets, but **it is no longer necessary for a spouse to take the initiative in seeking such information**.

European Law

The contrast with civil law in Europe is dramatic. In California, **the spouse with knowledge of personal financial matters has the affirmative and continuing duty of making disclosure** and is at significant risk if the disclosure is insufficient. In civil law countries, the spouse with such knowledge has little or no obligation to disclose anything and may play "hide and seek" with assets in a "game" in which the asset-holding spouse can do the "hiding" and the other spouse has few methods of doing the "seeking."

Thus, in Austria, neither the General Austrian Civil Code nor the Austrian Marriage Act contain any explicit provisions obliging the spouses to provide each other or the competent authority with information on their income and assets. **If a spouse demands a certain amount, the other spouse needs to show that his or her assets are not as claimed**, but there is little or no way to force a thorough tracing of assets. In Germany, Section 1580 of the Civil Code requires divorced spouses to provide information to each other as to their income and assets, and the Code contains mechanisms to compel the delivery of such declarations, but there is little that a party can do in advance of trial to probe such declarations or to search for suspected assets.

In Spain, Article 774(2) of the Civil Proceedings Act authorizes the courts -- but not the parties themselves -- to request financial information that they consider necessary either from the spouses themselves or from third parties, especially for the purpose of deciding on **the economic effects of divorce**. If the spouses disagree on financial issues and **the respondent** refuses to divulge his or her assets or hinders efforts to obtain such information, the courts may resort to **indirect proof** or **proof by circumstantial evidence** in order to resolve such issues. This means that the power of **an aggrieved plaintiff** is extremely limited and he or she must hope that the judge is extremely proactive. Colleagues in Spain note that it is quite rare to find a proactive judge.

(b) Give synonyms or near-synonyms for the following:

- Procedural matters (l.2):
- Assets (l.3):
- Courts (l.4):
- Bring suit (l.13):
- To conduct (disclosure) (l.18):
- Evidence (l.22):
- Litigant (l.25):

- Extreme (l.34):
- Duty (l.37):
- Early (l.39):
- Monetary (l.43):
- Sanction (l.44):
- Explicit (l.60):
- Competent (l.60):
- Thorough (l.63):
- In advance of trial (l.66):
- Compel (l.65):
- To probe (l.67):
- To divulge (l.72):
- To hinder (l.72):
- To resolve (l.74):
- Proactive (l.76):

(c) Provide the missing prepositions in the following excerpts, taken from the text:

1. When comparing possible jurisdictions for international family law cases, it is frequently important to focus _____ procedural matters (…).
2. By way of an example, California is _____ one extreme _____ requiring real disclosure, while Austria, Japan and many other civil law countries are _____ the other extreme _____ requiring very little disclosure.
3. We determined that the client could bring suit _____ divorce (…) _____ either California or Austria.
4. We also concluded that the division of assets would yield similar results _____ both places and that, while child support might be better _____ one jurisdiction, it would be offset _____ better spousal maintenance _____ the other.
5. (…) it would, therefore, be necessary to conduct disclosure _____ order to ensure that the hidden assets were brought _____ the court.
6. In civil law jurisdictions, such as some European countries, the practice is _____ the parties to be required to present their own evidence _____ the court, but there are generally no procedures _____ a party to engage _____ self-directed discovery.
7. A litigant is not expected to disclose all _____ his or her assets, and there are no penalties _____ failing to do so.
8. It falls _____ the judges to sort the evidence and the testimony.

9. They determine what evidence is germane _____ the proceedings.
10. The contrast _____ American states, but most especially _____ California, could not be more extreme.
11. Section 721 of California's Family Code requires each spouse to make full disclosure _____ the other spouse _____ all material facts and information regarding the existence, characterization, and valuation _____ all assets and to provide equal access _____ information.
12. Sanctions shall be _____ an amount sufficient to deter repetition _____ the conduct, and shall include reasonable attorney's fees, costs incurred, or both.
13. (…) the California courts have made it clear that, not only must a spouse respond fully _____ requests _____ the other spouse _____ documents and information _____ assets, but it is no longer necessary _____ a spouse to take the initiative _____ seeking such information.
14. In California, the spouse _____ knowledge of personal financial matters has the affirmative and continuing duty _____ making disclosure and is _____ significant risk if the disclosure is insufficient.
15. If the spouses disagree _____ financial issues and the respondent refuses _____ divulge his or her assets or hinders efforts to obtain such information, the courts may resort _____ indirect proof or proof _____ circumstantial evidence _____ order to resolve such issues.

(d) Answer the following questions:

a. What is "forum-shopping" in family matters in the context EU family issues? What is the link between forum-shopping in divorce cases and the topic of the text?

b. Say whether these statements from the text apply to your national system in divorce proceedings:

Statement 1

> "Litigants are widely expected to present evidence that supports only their position, just as their witnesses are expected to provide only information that presents their position in a positive light. It falls to the judges to sort the evidence and the testimony."

Statement 2

> "A litigant is not expected to disclose all of his or her assets, and there are no penalties for failing to do so."

Statement 3

> "In civil law countries, the spouse with (..) knowledge [about the assets] has little or no obligation to disclose anything and may play 'hide and seek' with assets in a 'game' in which the asset-holding spouse can do the 'hiding' and the other spouse has few methods of doing the 'seeking'."

Statement 4

> "(…) the power of an aggrieved plaintiff is extremely limited and he or she must hope that the judge is extremely proactive. (…) it is quite rare to find a proactive judge."

14. Family matters: *De facto* rights of custody

Read the summary of the case below:

https://www.supremecourt.uk/decided-cases/docs/UKSC_2014_0093_Judgment.pdf

UKSC 2014/0093

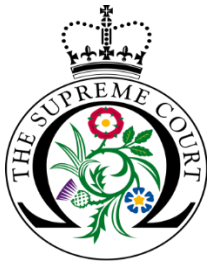
In the matter of K (a child) (Northern Ireland)
On appeal from the Court of Appeal of Northern Ireland

This appeal relates to whether *de facto* or inchoate rights of custody[1] constitute 'rights of custody' for the purposes of The Hague Convention on the Civil Aspects of International Child Abduction read with Brussels II Regulation (Council Regulation (EC) No 2201/2003).

The appellants are the grandparents of a child, KK, who was born on 13 March 2005 in Lithuania. KK lived solely in their care from shortly after his birth until 12 March 2012, while his mother, the respondent CC, moved to Northern Ireland. In February 2012 CC returned to Lithuania, brought to an end the Power of Attorney and temporary rights of guardianship she had granted to the appellants, and on 12 March 2012 seized KK and brought him to live in Northern Ireland. A year later the appellants applied under the Hague Convention seeking the return of KK based on their *de facto* rights of custody over him.

The Supreme Court by a majority allows the appeal, finding that the grandmother did enjoy 'rights of custody' such that K's removal from Lithuania was wrongful. It orders that K should be returned to Lithuania.

[1] 'Rights of custody' where a person without legal rights is caring for a child in the absence of the parent with those legal rights.



[Reproduced with permission]

UK Supreme Court Judgment, 15th May 2014
In the matter of K (a child)

[https://www.youtube.com/watch?v=hiDi61onXoY]

Watch the video of the judgment in this case and fill in the gaps.

(1) _____ **(2)** _____ Convention on international child **(3)** _____ is designed to protect children from the **(4)** _____ effects of being taken or kept away from their home country and to ensure that decisions about their future are taken in that country rather than in the **(5)** _____ of the country to which they have been taken. The remedy is to send them straight back to their home country. But this only applies where a child has been taken or kept away **(6)** _____, that is, in **(7)** _____ of rights of custody.

This case is about what is meant by "rights of custody". Does it apply only to those rights which are already legally recognised and **(8)** _____ or does it also apply to the **(9)** _____ **(10)** _____ rights of the people who have been looking after a child who has been abandoned or left in their **(11)** _____ by a parent?

The case **(12)** _____ a little boy whom we have called Karl. He was born in Lithuania in 2005. For the seven years from his birth until 2012 he was looked after by his **(13)** _____ grandparents. His mother came to live and work in the United Kingdom in 2006 and has lived there **(14)** _____ **(15)** _____, only once returning to visit the family in Lithuania. In 2012 she decided that she wanted Karl to live with her so she returned to Lithuania, **(16)** _____ the authorities of this, which had the effect of automatically ending the grandmother's legal **(17)** _____ and revoked the various authorisations she had given to the grandmother, for example to get a passport and travel abroad with Karl. However, he stayed living with the grandparents and the authorities made an **(18)** _____ that the mother was to have weekly contact with him.

She was told that legal **(19)** _____ to get him back would be long and **(20)** _____ and so she decided to take matters into her own hands. She and her new partner **(21)** _____ Karl on the street while he was walking home from school with his grandmother, bundled him into a van, drove him to the UK. He had to leave behind his home, the people whom he **(22)** _____ as his parents, his school and all his possessions and activities and go to a new home in a new country where he didn't speak the language, to live with people he didn't or **(23)** _____ knew. This was obviously just the sort of situation which the Convention was designed to remedy, but was the **(24)** _____ wrongful in Convention terms?

The lower courts **(25)** _____ that it was not, and the grandparents appealed to this court. The Supreme Court, by a majority, hold that it was. Rights of custody for the purpose of the Convention can include the **(26)** _____ of people who are undertaking the responsibilities and therefore **(27)** _____ the rights and powers which go with having the primary care over the child so long as –first, they are not sharing these with the person who does have the legally recognised right to determine where the child is to live; second, that that person has **(28)** _____ the child or delegated his care to them; third, that their care is not **(29)** _____ but officially recognised in some way and fourth, that there is every reason to believe that if they were to go to court in the home country, that court would preserve the **(30)** _____ **(31)** _____ while the child's future is being decided. These have been called 'inchoate' rights in this country and have been recognised here and in a few other countries.

These conditions apply to the status of Karl's grandparents. The authorities were supervising the situation on the basis that Karl would remain with them for the time being while being **(32)** _____ to his mother. Taking him out of the country without their **(33)** _____ was in breach of their rights of custody. Lord Wilson **(34)** _____ on the basis that the mother had revoked her agreement to the grandparents' looking after the child. It follows however from the majority decision that the court is **(35)** _____ by the terms of The Hague Convention to make an order that Karl be returned to Lithuania **(36)** _____.

Accordingly the appeal is allowed. The court will now **(37)** _____.

15. The hearing of the child; jurisdiction, recognition and enforcement in family matters; child abduction.

(a) Choose the correct answer for each numbered gap. More than one option may be correct.

JUDGMENT OF THE COURT (First Chamber)

http://curia.europa.eu/juris/liste.jsf?pro=&lgrec=es&nat=or&oqp=&dates=&lg=&language=en&jur=C%2CT%2CF&cit=none%252CC%252CCJ%252CR%252C2008E%252C%252C%252C%252C%252C%252C%252C%252C%252Ctrue%252Cfalse%252Cfalse&num=C-491%252F10&td=%3BALL&pcs=Oor&avg=&page=1&mat=or&jge=&for=&cid=188377

(extract taken both from the judgment and from the Advocate General's view)

22 December 2010

(Judicial cooperation in civil matters – Regulation (EC) No.2201/2003 – Jurisdiction, recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility – Parental responsibility – Rights of custody – Child abduction – Article 42 – Enforcement of a certified judgment ordering the return of a child handed down by a (Spanish) court with jurisdiction – Power of the requested (German) court to refuse enforcement of that judgment in a case of serious infringement of the child's rights)

In Case C-491/10 PPU,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Oberlandesgericht Celle (Germany), made by decision of 30 September 2010, received at the Court on 15 October 2010, in the proceedings

Joseba Andoni Aguirre Zarraga

v

Simone Pelz,

II– **The dispute in the main proceedings and the questions referred for a preliminary ruling**

38. The facts giving rise to the dispute in the main proceedings, as presented by the **(1)** _____, may be summarised as follows.

1. (a) requesting court
   (b) referring court
   (c) sending court
   (d) remitting court

39. Joseba Andoni Aguirre Zarraga and Simone Pelz were married on 25 September 1998 in Erandio (Spain). Their daughter from the marriage, Andrea, was born on 31 January 2000. The parents' family home was in Sondika (Spain).

40. The parents separated at the end of 2007. They each **(2)** _____ and applied for the award of **(3)** _____ of Andrea.

2. (a) brought a divorce process
   (b) brought a divorce claim
   (c) instituted divorce proceedings
   (d) commenced divorce proceedings

3. (a) sole custody
   (b) only custody
   (c) exclusive custody
   (d) unique custody

41. By decision of 12 May 2008, the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao (Court of First Instance and Preliminary Investigations No 5, Bilbao) (Biscaya, Spain) **(4)** _____ in respect of Andrea to her father. Andrea then went to her father's home. In June 2008, Andrea's mother moved to Germany. At the end of the 2008 summer holidays, during which Andrea had gone to visit her mother, the mother kept her daughter with her. Since 15 August 2008, Andrea has therefore lived in her mother's home in Germany. On the same day, the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao made an order prohibiting Andrea from leaving Spanish territory.

4. (a) gave temporary rights to custody
   (b) conceded interim rights of custody
   (c) awarded provisional rights of custody
   (d) adjudicated temporary rights to custody

42. Andrea's father then **(5)** _____ to Spain under the 1980 Hague Convention. That application was **(6)** _____ by order of 1 July 2009, on the basis of the second paragraph of Article 13 of that convention. The hearing conducted at that time showed that Andrea was resolutely and categorically opposed to her return to Spain. The expert **(7)** _____ by the court following that hearing concluded that Andrea's views should be taken into account in the light of both her age (10) and her maturity.

5. (a) requested to return his daughter
   (b) demanded to return his daughter
   (c) claimed to get his daughter devolved
   (d) applied to have his daughter returned

6. (a) rejected (b) dismissed (c) turned down (d) denied

7. (a) instructed
   (b) named
   (c) nominated
   (d) called

43. The Bundesamt für Justiz (German Federal Office of Justice) sent that order to the Spanish central authority by letter of 8 July 2009.

44. During the same month, the custody proceedings were continued before the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao. That court considered that **(8)** _____ should be obtained and that Andrea should be **(9)** _____, and set dates for both in Bilbao. Neither Andrea nor her mother attended **(10)** _____. The Spanish court rejected the earlier application by Andrea's mother for permission for herself and Andrea to leave Spain freely once the expert opinion had been obtained and Andrea **(11)** _____. **(12)** _____ the mother's express request that **(13)** _____ via video conference.

8. (a) a new expert's report
   (b) a fresh experts' declaration
   (c) a fresh expert opinion
   (d) a recent expert view

9. (a) listened individually
   (b) listened to personally
   (c) heard to separately
   (d) heard in person

10. (a) when called to do so
    (b) when called to so do
    (c) when appointed to so that
    (d) when ordered to do that

11. (a) was heard
    (b) had been heard
    (c) would be heard
    (d) would have been heard

12. (a) nor it granted
    (b) nor did it grant
    (c) neither it granted
    (d) neither it did grant

13. (a) Andrea's hearing was conducted

(b) Andrea's hearing was to be conducted

(c) Andrea's hearing be conducted

(d) Andrea's hearing had been conducted

45. By judgment of 16 December 2009, the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao **(14)** _____ sole custody of the child to the father.

14. (a) conceded (b) awarded (c) assigned (d) conferred

46. Andrea's mother **(15)** _____ against that judgment on the ground in particular that Andrea should be heard. By order of 21 April 2010, the Audiencia Provincial de Vizcaya (Regional Court, Biskaya) dismissed that request for the arrangement of a hearing for the child.

15. (a) interposed an appeal

(b) lodged an appeal

(c) appealed

(d) brought an appeal

47. On 5 February 2010, the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao **(16)** _____ of 16 December 2009 in accordance with Article 42 of Regulation No.2201/2003.

16. (a) certified the judgment

(b) authenticated the judgment

(c) confirmed the judgment

(d) validated the judgment

48. For her part, the child's mother made an application asking [the German court] not to make an order for enforcement and not to recognise that judgment.

49. By order of 28 April 2010, the Amtsgericht Celle (Celle Local Court, **(17)** _____ a family court, Germany) granted that application on the ground that the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao had not given Andrea a hearing before delivering its judgment.

17. (a) performing as

(b) judging as

(c) appearing as

(d) sitting as

50. On 18 June 2010, the child's father appealed **(18)** _____ that order.

18. (a) against
(b) Ø
(c) to
(d) for

51. The Oberlandesgericht Celle (Celle Higher Regional Court) **(19)** _____ the appeal was lodged, states that it has to address the following questions.

19. (a) before which
(b) in front to which
(c) at which
(d) opposite which

52. Although the judgment of 16 December 2009 is a judgment **(20)** _____ the return of the child following a judgment of non-return, which the court of the Member State of enforcement does not, in principle, have power to **(21)** _____, as is clear from *Rinau* and *Povse*, cited above, it considers that, in the event of a particularly serious infringement of fundamental rights, it should itself have a power of review to enable it to **(22)** _____ the enforcement of such a judgment.

20. (a) commanding
(b) ordering
(c) asking for
(d) petitioning for

21. (a) reconsider
(b) revise
(c) re-examine
(d) review

22. (a) defy
(b) resist
(c) combat
(d) oppose

53. The Oberlandesgericht Celle considers that, in the dispute in the main proceedings, the fact that the court of the Member State of origin did not hear Andrea constitutes an infringement of Article 24(1) of the Charter of Fundamental Rights. This is an infringement of such **(23)** _____ as to confer a power of review on the court of the Member State of enforcement on the basis of an interpretation of Article 42(1) of Regulation No.2201/2003 in conformity with the Charter of Fundamental Rights.

23. (a) seriousness
    (b) weight
    (c) significate
    (d) severity

(…)

55. The Oberlandesgericht Celle therefore decided to **(24)** _____ proceedings and refer the following questions to the Court for a(n) **(25)** _____:

24. (a) terminate
    (b) stop
    (c) stay
    (d) halt

25. (a) sentence
    (b) judgment
    (c) interim order
    (d) preliminary ruling

'(1) Where the judgment to be enforced issued in the Member State of origin contains a serious infringement of fundamental rights, does the court of the Member State of enforcement exceptionally itself enjoy a power of **(26)** _____, pursuant to an interpretation of Article 42 of the Brussels IIa Regulation in conformity with the Charter on Fundamental Rights?

26. (a) review
    (b) proofreading
    (c) overview
    (d) amendment

(2) Is the court of the Member State of enforcement obliged to enforce the judgment of the court of the Member State of origin **(27)** _____ the fact that, according to the case-file, the certificate issued by the court of the Member State of origin under Article 42 of the Brussels IIa Regulation contains a declaration which is manifestly **(28)** _____?'

27. (a) in spite
    (b) notwithstanding
    (c) despite of
    (d) neithertheless

28. (a) inappropriate
    (b) inadequate
    (c) inaccurate
    (d) wrongful

Consideration of the questions referred for a preliminary ruling

(b) Cross out the incorrect option in the underlined words:

> 44. As observed by the Advocate General in points 120 and 121 of his view, Regulation No.2201/2003 starts from the **(1)** hypothesis/assumption that the **(2)** erroneous/wrongful removal or **(3)** confinement/retention of a child in breach of a court judgment **(4)** dictated/handed down in another Member State is seriously **(5)** prejudicial/harmful to the interests of that child and it therefore lays down measures to **(6)** enable/ensure the devolution/return of the child to the place where he or she is habitually **(7)** domiciled/resident as quickly as possible. In that regard, that regulation set up a system **(8)** whereby/wherein, in the event that there is a difference of opinion between the court where the child is habitually **(9)** domiciled/resident and the court where the child is **(10)** wrongfully/mistakenly present, the former **(11)** detains/retains exclusive jurisdiction to decide whether the child is to be returned.

(…)

(c) In paragraph 44 at the beginning you can read the following sentence:

"**Nor did it grant** the mother's express **request that Andrea's hearing be conducted** via video conference"

- **"NOR DID IT GRANT"**: this structure is called '**inversion**'. In this kind of structure the order is reversed and the verb phrase or the operator comes before the subject (*Only once have I been in court*). Verbs that are not modal verbs or that are not the verbs *to be/to have* place the operator before the verb, as in a question (*At no time did defence lawyer interview the witness*; *Only then did the claimant react to the submissions by the defence* lawyer).In legal English you will find inversion in the following cases[2]:

1. As a conditional clause (instead of an *if*-clause):
   Had the prosecutor been aware of the existence of a witness…
   Should the court issue judgment in the afternoon…
   Were the judge to dismiss the case…

[2] In general English you may have seen it in formulaic expressions such as *So help me God; Long live the Queen, etc.*

2. In subject-operator inversion, in the following cases:
   a) Degree expressions with *so* and *such*.
      So anxious was Mary about being summoned to court that she could hardly breathe for a while.
      Such was the relevance of the new case that the judge had to adjourn another case before him.
   b) Negative and restrictive opening elements: *neither, nor, never, nowhere, on no condition, not only, hardly, no sooner, rarely, seldom, little, less, only*, etc.
      Rarely have I seen contempt of court in all my years of practice.
      Little did the defendant know that new evidence was about to be produced.
      'I wasn't aware that it was the right moment for submissions.' 'Nor was I'.

Now do inversion in the following sentences:

1. The court first seised has not claimed that it lacks jurisdiction.
   Nor _____ *the court second seised.*
2. Institutions must never violate vulnerable people's rights.
   Never _____
3. National courts have rarely provided legal aid in such cases.
   Rarely _____
4. There has seldom been so much publicity about a ruling issued by the CJEU.
   Seldom _____
5. Some EU countries will never support same-sex marriages.
   *Never*_____
6. Claimants must on no account show lack of respect for the judge during hearings.
   On no account _____

(d) - "…THE MOTHER'S EXPRESS REQUEST THAT ANDREA'S HEARING BE CONDUCTED VIA VIDEO CONFERENCE": this is a **subjunctive** in English. The subjunctive has practically disappeared from general English, with perhaps the only exception of very formal/very academic language[3].

[3] There are a few cases when it is used in general English (for example, fixed expressions: 'God save the Queen', 'so be it', 'God bless you', etc.). It is also occasionally seen in clauses expressing a condition, such as *If I be found guilty…* This usage is old-fashioned and excessively formal but it is still found in some common fixed expressions such as *if need be*.

Here are some important aspects to remember about the subjunctive:

1. It has the following structure: adjective/noun/verb + (that) + subject + the infinitive (without "to"). Do not forget that the verb does not show concordance with the subject.

   It's important that *you get to court* before 10.

   I demanded that *he apologise*.

   What do you suggest *we do*?

2. In colloquial language it has been replaced by the verb in the present, in the past, or "should" (It is essential that the evidence *is* considered; The court requested that the applicant *sent* the form).

The subjunctive is used in the following cases:

1. After adjectives such as "important", "essential", "crucial", "advisable", "urgent", etc.

   It is essential that the expert witness appear in court.

   It is crucial that urgent measures be taken as quickly as possible.

2. After verbs such as: "ask", "advise", "command", "demand", "insist", "order", "propose", "recommend", "request", "require", "suggest", "urge".

   We will recommend that she attend a formal hearing.

3. After nouns, in expressions like the following:

   There is also the recommendation that the lawyers of both parties try Alternative Dispute Resolution.

   There is the obligation that the judgment be enforced.

The use of the subjunctive seems very awkward when it involves a passive structure, a negative structure or a continuous tense, as in the following examples:

It is *important that the solicitor be waiting* for the barrister when she arrives in court.

He insisted *that Smith not be* defence lawyer in the case.

They recommended *that the summons be served* promptly.

Now use the subjunctive in the following sentences:

1. The Tribunal de Commerce de Paris ordered that _____ (*all the proceedings, join*).
2. The judge ordered that _____ (*such an objection, dismiss*) as inadmissible.

3. The prosecutor suggested that _____ (*exhibits one to four, make*) available to the jury.
4. Counsel recommended that defendant _____ (*change, his approach*) to the facts.
5. It was requested that _____ (*the parties, be*) present in the hearing.
6. It is essential that witnesses _____ (*be*) available in the premises of the court at all times.
7. The judge requested that the jury _____ (*leave*) the courtroom for a few minutes.
8. There is also the requirement on the vendor's part that advance payments _____ (*make*) before the end of the period during which the purchaser may withdraw without giving reasons.
9. The Commission may request that standards _____ (*draw up*) by the European standards organisations.
10. In the event of a withdrawal, an order that a party _____ (*bear*) the costs of the other party is only possible if the other party has made an application to that effect.
11. The President of the Fourth Chamber has ordered that the case _____ (*remove*) from the register.

(e) Join these sentences together using linking particles.

1. By decision of 12 May 2008, the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao (Court of First Instance and Preliminary Investigations No 5, Bilbao) (Biscaya, Spain) awarded provisional rights of custody in respect of Andrea to her father. Andrea then went to her father's home.

2. That court considered that a fresh expert report should be obtained and that Andrea should be heard in person, and set dates for both in Bilbao. Neither Andrea nor her mother attended.

3. In June 2008, Andrea's mother moved to Germany. At the end of the 2008 summer holidays, during which Andrea had gone to visit her mother, the mother kept her daughter with her.

4. Since 15 August 2008, Andrea has therefore lived in her mother's home in Germany. On the same day, the Juzgado de Primera Instancia e Instrucción No 5 de Bilbao made an order prohibiting Andrea from leaving Spanish territory.

(f) Turn these sentences into passive structures.

1. The Spanish court rejected the earlier application by Andrea's mother.

   _____

2. The Juzgado de Primera Instancia e Instrucción No 5 de Bilbao awarded provisional rights of custody in respect of Andrea to her father.

   _____

3. The Regulation lays down measures to ensure the return of the child.

   _____

4. At the end of the 2008 summer holidays the mother kept her daughter with her.

   _____

5. The court should take Andrea's views into account.

   _____

6. The Juzgado de Primera Instancia e Instrucción No 5 de Bilbao prohibited Andrea from leaving Spanish territory.

   _____

7. The requesting court retains exclusive jurisdiction to decide whether the child is to be returned.

   _____

8. The CJEU has to address the following questions.

   _____

(g) Read the question that the German court has referred to the CJEU and answer the questions below:

> '(1) Where the judgment to be enforced issued in the Member State of origin contains a serious infringement of fundamental rights, does the court of the Member State of enforcement exceptionally itself enjoy a power of review, pursuant to an interpretation of Article 42 of the Brussels IIa Regulation in conformity with the Charter on Fundamental Rights?'

1. Do you think that the court of the Member State of enforcement is entitled to review the decision of the original court on the grounds of a breach of a fundamental right in the main proceedings? Why?

2. Does the court of the Member State of enforcement have the power to oppose the recognition and enforceability of the judgment of the original court?

3. Would you say that Andrea's right to be heard was infringed?

4. In your country, is hearing a child when dealing with custody issues a right or an obligation? What about this case?

(h) Below is the decision handed down by CJEU. Read it and say whether you agree with it or not and why.

(…)

On those grounds, the Court (First Chamber) hereby rules:

In circumstances such as those of the main proceedings, the court with jurisdiction in the Member State of enforcement cannot oppose the enforcement of a certified judgment, ordering the return of a child who has been wrongfully removed, on the ground that the court of the Member State of origin which handed down that judgment may have infringed Article 42 of 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, interpreted in accordance with Article 24 of the Charter of Fundamental Rights of the European Union, since the assessment of whether there is such an infringement falls exclusively within the jurisdiction of the courts of the Member State of origin.

(1) View of the Advocate General. Below is the opinion of the Advocate General on this case and also on cases where children are involved. Say your opinion about what he states.

1. Disputes between a divorcing couple over the future of their common children can be a distressing not to say traumatising ordeal for the children concerned. That ordeal can be all the more difficult where, in the case of a mixed couple, one of the parents, who does not accept the measures taken in respect of the children by the court of the Member State where the couple resided, takes the children to his or her country of origin and endeavours to obtain a contrary judgment from the courts of that State. If that parent is successful, the children's situation is then governed by contradictory judicial decisions, the most common outcome of which being that all normal relations with the other parent are broken off, in some cases for a long period of time.

(…)

19. In all matters of custody, 'the interests of the child' are paramount. The child is entitled to stability, to be able to remain in his or her habitual place of residence, this being regarded as one of the essential foundations of the child's equilibrium and development. The child is not an object that the parents can use as a tool in the event of disputes between them.

(2) These are the last two paragraphs of the judgment in the case "Ciccone v. Ritchie" (source: England and Wales, High Court of Justice, Family Division: http://www.bailii.org/ew/cases/EWHC/Fam/2016/616.html) .

A brief summary of the events is the following:

Madonna and Guy Ritchie, who divorced in 2008, have a son, Rocco (15 at the time when proceedings started), who lived with his mother in the USA. Rocco remained in London with his father after visiting the UK and refused to return with his mother. Both parents started litigation in the USA and in the UK respectively. An American judge ruled that Rocco should return to his mother's custody, but decided not to issue a warrant to enforce the order. The child remained with his father in London. Rocco was a party to the proceedings in the UK. Madonna then decided to withdraw the proceedings started under the 1980 Hague Convention, and this was the only issue that the British judge had to rule on, but in the following paragraphs you will read how the British judge is urging the parents to resolve the disputes without the need for further litigation.

Read the following last three paragraphs from the judgment and compare the kind of language used by the British judge to the kind of language used by family judges in your national system, trying to establish similarities and differences:

Finally, I would say this. For all the interesting legal argument and great learning that is apparent from the admirable skeleton arguments and submissions of leading and junior counsel, at the root of these proceedings (and, I venture to add, the proceedings in the United States) is a temporary breakdown in trust. For all the media coverage, comment and analysis, this is a case born out of circumstances that arise for countless separated parents the world over.

The court should always be the option of very last resort when parents cannot agree matters in respect of their children. Whilst the law provides a mechanism for the resolution of disputes between parents in respect of their children, it is but a blunt instrument when compared to the nuanced virtues of calm discussion and considered compromise between those involved, accepting that this latter path can be a hard one on which to embark, and to sustain, in the context of relationship breakdown. It is for this reason that during the course of the proceedings on each side of the Atlantic Judge Kaplan and myself have repeatedly urged the parties to adopt a consensual approach to resolving the matters of dispute between them for the benefit of Rocco.

Within this context I renew, one final time, my plea for the parents to seek, and to find an amicable resolution to the dispute between them. Because agreement is not possible today does not mean that agreement will not be possible tomorrow. Most importantly, as I observed during the course of the hearing, summer does not last forever. The boy very quickly becomes the man. It would be a very great tragedy for Rocco if any more of the precious and fast receding days of his childhood were to be taken up by this dispute. Far better for each of his parents to spend that time enjoying, in turn, the company of the mature, articulate and reflective young man who is their son and who is a very great credit to them both.