



RELATIONSHIPS

# Facing the facts of child abduction

## FAMILY MATTERS

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As the world becomes more globalised, marriage between people of different nationalities is also becoming commonplace. In Thailand, marriages have been taking place between Thai nationals and foreign nationals for many decades. Such international unions often raise cultural, religious and legal issues for the spouses.

Prior to marriage, the spouses will need to decide where they will marry, where they will live and, if they plan to have children, what nationality their children will be and how and where they will be raised.

Matters become even more complicated if the relationship breaks down and there are children involved. Invariably, each spouse will want custody of the children, and the foreign spouse may wish to take the children back to his or her own country. Sadly, disputes over child custody may even escalate to the extent that one party kidnaps the children and removes them from the

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country where they reside. This is known as international child abduction.

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (HCCH) defines child abduction in Article 3 as “a removal or the retention of a child which a) 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 removal or retention; and b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention. The rights of custody mentioned in subparagraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State”.

In addition, Article 4 of the HCCH states that “(t)he law is applicable to any child in a Contracting State, except a child over 16 years old”. The HCCH is a multilateral treaty that seeks to protect children from the harmful effects of abduction and retention across international boundaries by providing a pro-

cedure to bring about their prompt return.

Child abduction can occur when the parties are unmarried, or during marriage or after divorce. The following examples are all considered to be child abduction under the HCCH:

A: Jack, an American, married Pornthip, a Thai national, and they relocated to the US. They subsequently divorced, and Pornthip agreed that Jack would have sole legal custody of their two children, while she would have visitation rights. One day, Pornthip requested that the children be permitted to come to Thailand for one month during their school break. Jack agreed and Pornthip took the children to Thailand. After the one-month holiday, Pornthip did not return the children to the US.

B: John, a British national, married Suda, a Thai national and they lived in Thailand. Their relationship broke down and John decided to return to the UK and file a divorce action there. They have a daughter who has a British passport. John took his daughter to the UK without his wife’s consent.

C: Tom lived with his Thai girlfriend, Pranee, in the US and they had one child together. According to US law, Tom

is the legitimate father of the child and he and his girlfriend shared legal custody of the child. One day, Pranee disappeared with the child and he discovered that she had taken the child back to Thailand.

Thailand is a contracting state to the HCCH, but it has not yet enacted any implementing statutes. This means that it is very difficult for a party seeking the prompt return of a child who has been abducted to Thailand to enforce the HCCH. Law-enforcement agencies, like the Royal Thai Police, are reluctant to become involved as they consider it to be a family matter. This means that it is up to the party seeking the return of the child to try to trace the whereabouts of the child, which may require engaging the services of a private investigator.

If the child can be located, the only option available to the party seeking the return of the child is to file proceedings with the Thai Family Court. In the case of unmarried fathers, such as Tom in scenario C above, they must first secure their parental rights by applying for legitimisation of the child.

However, in a case where the party abducts the child to another country, if such country is a contracting state and has already enacted implementing

statutes, the party remaining in Thailand can request assistance from Thailand’s central authority, which is the Office of the Attorney General in Bangkok. The Office of the Attorney General will act promptly to contact the central authority of the other contracting state, and since contracting states in Western jurisdictions already have effective procedures under the HCCH, this is likely to be an effective solution to bring about the return of the child to Thailand.

Clearly, the options described above — such as pursuing one’s rights under the HCCH — are measures of last resort that are only applicable when a situation has already deteriorated significantly. When a relationship begins to break down and children are involved, parents need to act reasonably to find common ground that is in the best interests of the children. Resolving disputes through mediation or other amicable means is a good option for families in distress.

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