

Chapter 28: Guidance on answering the self-test questions

Question 1: Your client, Ali, has two children with his ex-wife Samantha. The couple cannot agree where their children shall live. Ali receives a telephone call from Samantha threatening to take the children to live with her in Edinburgh. Advise Ali which court orders he can seek to prevent Samantha from taking the children.

Presuming that Ali and Samantha live in England or Wales, moving the children to Scotland would be removing the children from their current jurisdiction.

Ali could obtain a Child Arrangements Order (CAO) and/or a prohibited steps order forbidding Samantha from removing the children from England and Wales with the permission of the court.

Question 2: Would your answer differ if Samantha had threatened to take the children to Spain?

As Samantha has threatened to remove the children from the UK, a Port Alert could be issued if the threatened removal is imminent. In terms of orders, the advice would be the same in terms of residence and/or prohibited steps orders.

Question 3: Samantha manages to remove the children to Spain. Advise Ali on the steps that can be taken to recover the children.

If the children have been removed to Spain, the Council Regulation (EC) No. 2201/2003 of 27 November 2003 will apply. As the children's habitual residence is England and Wales and the children were removed wrongfully, Ali can use the European Convention to recover the children, unless Samantha raises a successful defence.

Question 4: Would your answer differ if Samantha had removed the children to India? (You may need to use your IT skills to look on the internet for signatories to the Hague Convention!)

After looking at

http://www.reunite.org/pages/signatories_to_hague_eu_conventions.asp, it can be seen that India is not a signatory to the Hague Convention. The alternatives for the recovery of the children include the potential extradition of the abducting parent, taking proceedings in India for the recovery of the child, or warship proceedings in England and Wales.