ISSN: 0128-7702
Pertanika J. Soc. Sci. & Hum. **20 (S)**: 101 - 110 (2012)

International Parental Child Abduction in Malaysia: Foreign Custody Orders and Related Laws for Incoming Abductions

Suzana Muhamad Said and Shamsuddin Suhor*
Faculty of Law, Universiti Kebangsaan Malaysia,
43600 Bangi, Selangor, Malaysia
**E-mail: sudin@ukm.my*

ABSTRACT

A marriage that fails leaves behind a trail, a scar difficult to heal. More often than not, children from that marriage suffer the most and become victims of the tug of war between the parents. This fight between spouses gets even worst if the parent abducted his or her own child. When this happens, the left-behind parent will be without remedy, especially if the child is abducted across national boundaries. Even when a custody order is granted from court, the order is only valid within the respective country and not outside its jurisdiction. Therefore, the issue of recognition of foreign custody order is important when addressing international parental child abduction. This is because the non-recognition of foreign custody order could lead to international parental child abduction and forum shopping to find a jurisdiction that would favour the parent who had abducted the child. International parental child abduction is not a new phenomenon and in Malaysia, the case of Raja Bahrin, which happened about twenty years ago, is a brutal reminder of this phenomenon. Thus, this article examines the Malaysians laws relating to international parental child abduction and whether these laws are adequate enough to curb the problem of international parental child abduction.

Keywords: International parental child abduction, recognition of foreign custody orders, foreign custody orders, parental child abduction in Malaysia

INTRODUCTION

Parental child abduction is phenomenal (Buck, 2000), but it is not unusual for international parental child abduction to happen nowadays with the ease of transportation from one place to another worldwide (Smith, 2010). The risk of abduction may increase in connection with custody disputes (Stark, 2005), and non-finality of custody orders obtained from a foreign country which creates uncertainty will contribute to the risk of abduction (Wu, 1995). There are two situations of international parental child abduction: the incoming abduction of children from abroad to Malaysia and the outgoing abduction, i.e. abduction of children from Malaysia to a foreign country.

The case of *State Central Authority v Ayob* (1997) 21 Fam LR 567 illustrates the difficulty faced by a left-behind parent if a child is abducted to Malaysia. In the case of *Loh v Kalliou*, [2007] FamCA 444, the court in Australia refused to allow a child to be taken back to Malaysia by a Malaysian mother for a holiday. The situations mentioned in *State Central Authority v Ayob* and *Loh v Kalliou* are clear examples demonstrating the difficulty of a left-behind parent when a child is abducted to Malaysia and the anxiety of a parent for a child to travel to Malaysia and never returned.

Received: 22 July 2011
Accepted: 5 December 2011
*Corresponding Author

The only international instrument for international parental child abduction applicable to the whole world is the 1980 Hague Convention on the Civil Aspects of International Child Abduction (1980 Child Abduction Convention) of which Malaysia is not yet a member. If a child is abducted to Malaysia, the provisions under the 1980 Child Abduction Convention are not applicable. This means the domestic laws of Malaysia will govern parental child abduction.

The central rationale of the 1980 Child Abduction Convention is that it is the originating court that should have jurisdiction to determine custody disputes. The 1980 Child Abduction Convention specifically aims at remedying wrongful removals and not the merits of a custody claim. Its objective is the swift return of children (except in rare circumstances) to their country of "habitual residence" where a court of proper jurisdiction will determine the custody issues. For example, the 1980 Child Abduction Convention provides reciprocal arrangements to ensure prompt return of children under rightful custody to the child's habitual residence.

OBJECTIVE

This article examines the related laws applicable for incoming child abduction to Malaysia. In this context, incoming abduction arises in a situation where a child is wrongfully removed or retained away from his or her country of habitual residence to another jurisdiction by a parent without the knowledge and consent of the left-behind parent. This article also seeks to find whether the current laws in Malaysia are adequate enough to handle incoming abductions.

FOREIGN CUSTODY ORDERS IN MALAYSIA: THE COMMON LAW RULES

As shall be seen, one factor for parental child abduction is the common law rules which disregard foreign custody orders and thus create the risks of parental child abduction. In other words, this encourages one parent who is unhappy with a custody decision to seek another jurisdiction with the hope of obtaining a more favourable custody order (Tan, 1995). Such practice is known as forum shopping (Bell, 2003). There is no doubt the existence of other factors for international parental child abduction to happen. Non-recognition of foreign custody orders is not the sole factor for parental child abductions. Other reasons include the lack of confidence to the court system (Lyon, 1993), religious factor (Raja Bahrin & Wickham, 1997), bitterness of the custody dispute that causes abduction (Dyer, 2000) and often occurs when parents separate or begin divorce proceedings.

RECOGNITION OF ORDERS IN MALAYSIA

A foreign judgment needs to be recognized in order to be enforceable. Recognition of foreign judgments refers to the procedure, whereby a foreign judgment is accepted as a local judgment and has a legal binding effect. The purpose is usually to enforce the foreign judgment to compel compliance to the other party with that particular judgment. A party may seek recognition of a foreign judgment without the intention of seeking its enforcement. For example, the judgment may be presented in a second jurisdiction as a defence to an action, or the party may be seeking a declaratory judgment in the second court.

According to Clarkson and Hill (2006), the question to be asked therefore is not whether foreign judgment should be recognized and enforced but which judgment should be recognized and enforced. The authors quote Slate in *Adams v Cape Industries plc* [1990] Ch 433, that the law is based on "an acknowledgment that the society of the nations will work better if some foreign judgments are taken to create rights which supersede the underlying cause of action, and which may directly enforced in countries where the defendant or his assets are to be found."

Generally, the basis for recognition and enforcement of foreign judgments is either the theory of obligation or comity/reciprocity. The

theory of obligation is that if the original court has jurisdiction in the actions duly determined, the judgment should prima facie be regarded as creating an obligation between the parties in the foreign proceedings and so be recognized and enforceable (Clarkson & Hill, 2006). This basis of recognition and enforcement of foreign judgments was encapsulated by Blackburn in the case of *Schibsby v Westenholz* (1870) L.R. 6 Q.B 155 on page 159, as follows:

> *"The judgment of the court of competent jurisdiction over the defendant imposes duty or obligation on him to pay the sum for which judgment is given, which the courts are bound to enforce."*

At common law, a judgment in *personam* from a foreign court will be entitled to recognition and enforcement if it is regarded as creating a debt between the parties, the debtor's liability arising on an implied promise to pay the amount of the foreign judgment, and the judgment must be final and conclusive for a definite sum of money being a judgment from a court of competent jurisdiction which is consistent with public policy of the local court and 'not tainted with collusion or fraud' (Platto, 1989).

Judgments in *rem* "may affect the position of third parties" including the parties in the proceedings. They involve mostly "the issue of status and arise in the context of family proceedings." The conditions for recognition of judgments in *rem* are that the judgment is from a court of competent jurisdiction, final and conclusive and on the merits (Clarkson & Hill, 2006).

According to Clarkson and Hill (2006), "the idea of reciprocity is where the courts in X should recognise and enforce the judgments of country Y, if mutatis mutandis the courts of country Y recognise and enforce the judgments of country." On the other hand, the theory of reciprocity requires reciprocal treatments for mutual enforcements between countries to recognize the judgments from their respective courts. In *Indyka v Indyka* [1967] 2 All ER 689, the court said that "reciprocity appears to mean - if you will recognise that we have this jurisdiction, we will recognise that you have a similar jurisdiction." As an example, within the European Union, reciprocity is the basis of recognition of foreign commercial judgments under the Brussels I Regulation and foreign family judgments (divorces and parental responsibilities orders) under the Brussels II Regulation (Clarkson & Hill, 2006).

Foreign judgments have no direct operation in Malaysia but may be enforceable under statutes (Khaira, 2007), or as a debt under the common law. Certain foreign judgments that are recognized and enforceable under the legislation of Malaysia include judgments in commercial matters, maintenance orders, arbitral awards, probate and letters of administration issued by the Courts of Probate in the Commonwealth and also insolvency matters with Singapore.

The main legislation for the recognition of foreign judgments in Malaysia is the Reciprocal Enforcement of Judgments Act 1958 (Revised 1972) (Act 99). Act 99 makes provision for the registration and enforcement of judgments of foreign superior courts, where a reciprocal agreement has been entered into between a foreign country and Malaysia. In addition, Act 99 also provides for recognition of foreign judgments from a reciprocating country by way of registration before it can be enforceable. The High Court Rules 1980 provides the procedures for registration of foreign judgments within the ambit of Act 99. Foreign judgments from a superior court shall apply under the Act if the judgments are final and conclusive, monetary in nature and from a country or territory in the First Schedule of the Act. Any foreign judgment coming under Act 99 shall be registered unless it has been wholly satisfied, or it could not be enforced by execution in the country of the original Court. The countries in the First Schedule include the United Kingdom, Singapore, New Zealand and India. If a judgment does not originate from a country declared in the First Schedule, the common law rules apply.

THE COMMON LAW RULES ON FOREIGN CUSTODY ORDERS

In terms of recognition and enforcement of foreign custody orders, the common law rules apply as there is no legislation for reciprocal provision related to foreign custody orders in Malaysia. The basic position at common law is that custody orders are not final and conclusive [*McKee v McKee* (1951) AC 352]. The circumstances of parents and children can alter (an often do), and as such, the orders are always open to revision. The best interest of the child is always the paramount consideration. This, of course, gives rise to the central problem that a parent who is unhappy with a decision of the court may abduct the child to another country in the hope of obtaining a more favourable decision. In short, the non-finality of custody orders can encourage forum shopping.

In Malaysia, Section 47 of the Law Reform (Marriage And Divorce) Act 1976 (Act 164) provides that in all matrimonial matters "the court shall…act and give relief on principles which in the opinion of the court are, as nearly as may be, conformable to the principles on which the High Court of Justice in England acts and gives relief in matrimonial proceedings." In particular, Section 27 of the Civil Law Act 1956 (Revised 1972) (Act 67) provides that "in all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the date of the coming into force of the Act, regard being had to the religions and customs of the parties concerned, unless other provision is or shall be made by any written law." The point is that though reference may be made to the law in England, religious and customs of the parties concerned must be taken into consideration.

The common law rules of private international law provide that the welfare of the child is to be the paramount consideration in any proceedings concerning children. Malaysian courts have the discretion to re-open custody disputes on the basis that it is for the best interests of the child as the paramount consideration, as decided by the apex court of Malaysia in *Mahabir Prasad v Mahabir Prasad* [1981] CLJ 124, [1981] 2 MLJ 326.

In the international arena, the 'best interest of the child' is also the concern of the main international instrument on children widely ratified; the United Nations Convention on the Rights of the Child (UNCRC) 1989 provides that "in all matters concerning children, the best interests of the child shall be a primary consideration." The courts in many jurisdictions are bound by statute to apply the best interests of the child test in matters related to children. This is no exception to Malaysia. Among the statutes are the Child Act 2001 (Act 611), Guardianship of Infants Act 1961 (Revised 1988) (Act 351), Law Reform (Marriage and Divorce) Act 1976 (Act 164), and Islamic Family Law (Federal Territory) 1984 (Act 303). Section 88(2) of Act 164 (Civil) and Section 86 (2) of Act 303 (*Syariah*) make it mandatory for the courts to consider the welfare of the child as being paramount, and subject thereto, the wishes of the parents and of the child. This principle has consistently been applied in Malaysia as have been demonstrated by the judicial pronouncements in many cases.

The law on foreign custody orders in Malaysia is based on the common law rules in *McKee v McKee* (1951) AC 352 that were followed in Malaysia in *Mahabir Prasad v Mahabir Prasad (Mahabir Prasad)* [1981] CLJ 124, [1982] 1 MLJ 189, [1981] 2 MLJ 326. *In Mahabir Prasad*, the Federal Court of Malaysia decided that a Malaysian court does have jurisdiction to decide cases involving foreign custody even when a foreign court has granted a custody order. The court was of the view that although regard may be made to a foreign custody order, "the matter is never *res judicata*. A custody order is not final and conclusive" as the best interest of the child is of paramount consideration.

In *Mahabir Prasad*, the father, who was a Malaysian citizen, had married an Indian national. From the marriage, they had two infant daughters and stayed in Malaysia. Upon breakdown of the marriage, the mother returned to India, while the children were with their

father in Malaysia. The mother then applied for dissolution of the marriage and custody of the infants, which was awarded to the mother by the court in India. The parties had previously entered into a deed of separation by which the custody of the infants was given to the father. The father then applied for custody of the infants at the High Court at Kuala Lumpur but was unsuccessful. The Judge in the High Court held that the father was *estopped* from making the application as the decision of the court in India was conclusive as against him, and there was no evidence to show any change of circumstances to justify a re-consideration of the custody order granted by the Indian Court. The father then appealed to the Federal Court of Malaysia. The Federal Court decided that, though regard may be made to foreign custody order, the order is not final and conclusive, as the paramount consideration is the best interest of the child.

The Federal Court in *Mahabir Prasad* reversed the High Court's decision and referred with approval the decision of the Privy Council in *McKee*. *McKee* decided that in the questions of custody, the welfare and happiness of children are the paramount considerations to which even foreign custody order from a court of competent jurisdiction yield. In *McKee*, the Privy Council held that though proper weight is to be given to the foreign order, it depended on the circumstances of each case. This means the existence of a foreign court order is merely an element to be considered to the issue of custody because 'the best interests of the child' prevail.

Raja Azlan Shah in *Mahabir Prasad* said:

> *"It is the law of this country and as it is the law of India that the welfare and happiness of the infant must be the paramount consideration in child custody adjudication. Consequently, although our courts must take into consideration the order of a foreign court of competent jurisdiction, we are not bound to give effect to it if this would not be for the infant's benefit. We cannot regard that order as rendering it in any way improper or contrary to the comity of nations if the courts in this country consider what is in his best interest."*

The Court further held that "a custody order cannot from its nature be final or irreversible. It is only of persuasive authority." The court held that a change of circumstances could justify a reassessment of the matter.

Based on this decision, the case was remitted and fixed for a rehearing on the issue of custody of the children at the High Court. However, after time-consuming and costly litigation, the rehearing was decided in favour of the mother on the basis that it was in the best interest and welfare of the children to live with their mother in India. The father appealed but the appeal was dismissed in the Federal Court.

This litigation demonstrates the central weakness in the law established by *McKee* (Beumont & McEleavy, 1999). If both the originating country (India) and the receiving country (Malaysia) apply 'the best interests of the child test', it is likely that the receiving country will endorse the original decision. The result will then be a pointless, lengthy and expensive litigation, and for the child, a traumatic experience. Thus, it is suggested that since both countries, namely, Malaysia and India, apply the best interest test in their custody cases, a custody order from any one country, Malaysia or India, should be well accepted and recognized unless a change in circumstances.

However, it must be recognized that circumstances for children and their parents can change after a custody order, which is why custody orders in most countries are never final. This is also the rationale in *McKee* that though proper weight is to be given to a foreign order, it is dependent upon the circumstances of each case which may change and differ from the time when the foreign order was obtained. The real issue, when there has been such a change of circumstances, is whether the courts of the originating or the receiving country are more appropriate to revisit the custody order and to decide whether the original court order be re-opened for scrutiny.

Apart from tedious litigation, the common law rules on foreign custody orders could defeat the purpose of comity between nations and respect of the laws and sovereignty of other countries' culture and values (Ong, 2007). The rule that foreign custody orders can be disregarded, on the basis of 'the best interests of the child,' has created uncertainty and encouraged forum shopping. This can lead to serious implications of parental child abduction. According to Tan (1993), the principle in *Mahabir Prasad* by following *McKee* 'serves to promote kidnapping by a parent who is unhappy with the way one court has adjudged the merits of custody.' This indirectly condones parental child abduction. As such, it is suggested that a global solution is needed to overcome the problem of international parental child abduction in Malaysia in this regard.

While the decision in *Mahabir Prasad* remains good law, there have been important developments in the law relating to recognition of custody orders from a foreign jurisdiction through the introduction of the doctrine of *forum non conveniens* in custody disputes in Malaysia (Muhamad Said & Suhor, 2009).

SOME RELATED PROVISIONS ON CHILD ABDUCTION IN MALAYSIA WITHIN THE DOMESTIC CONTEXT

The legal provisions on child abductions in Malaysia are scattered in the Child Act 2001 (Act 611) and the Penal Code of Malaysia (Revised 1997) (Act 574). The provisions are mainly concerned with trafficking of children or abduction for illegal purposes. Accordingly, it is a crime to abduct or kidnap a child from her or his lawful custodian.

Abduction and kidnapping are two serious offences under the criminal law of Malaysia. The main statute for criminal law in Malaysia is the Penal Code of Malaysia (Revised 1997) (Act 574). The offence of abduction or kidnapping upon conviction, carries the maximum imprisonment of 7 years and liable to fine. The term 'abduction' under the criminal law of Malaysia means when a person by force compels or by deceitful means induces a person to go from any place. This article, however, refers to parental child abduction as kidnapping from lawful guardianship under Section 361, which is more relevant. The Penal Code differentiates between abduction and kidnapping. Kidnapping is provided for under Section 359. There are two kinds of kidnapping, namely, kidnapping from Malaysia (Section 360) and kidnapping from lawful guardianship (Section 361). Kidnapping from Malaysia includes kidnapping from a person who is legally authorized to consent on behalf of the kidnapped person.

For the purposes of this article and in light of the 1980 Child Abduction Convention, the term that will be used is abduction, which means the wrongful removal or retention of a child from the child's country of residence to another jurisdiction by a parent without the consent or knowledge of the other parent.

Abduction from lawful guardianship or lawful custodianship is subjected to the law of child abduction in the courts of Malaysia. To establish a case of abduction from a lawful guardian or custodian, the law requires that the custody of the child has been conferred by virtue of any written law or by an order of a Court, including a *Syariah* Court Order. "Lawful guardian" includes any person who is lawfully entrusted with the care or the custody of such minor or other person. In the case of *Syed Abu Tahir a/l Mohamed Ismail v Public Prosecutor* [1988] 3 MLJ 485, Zakaria Yatim J held that "in considering the expression 'lawful guardian' in Section 361 of the Penal Code, the court must give it a meaning which accords not only with Section 5 of the Guardianship of Infants Act, but also with the explanation to Section 361 of Act 574. The words 'lawfully entrusted', which appear in the explanation, must be construed liberally. It is not intended that the entrustment should be made in a formal manner. It can be done orally and is not even necessary that there should be direct evidence available about the entrustment as such. From the course of conduct and from the other surrounding circumstances,

it would be open to the court to infer lawful entrustment in favour of the person in whose custody the minor is living and who is taking her care in all reasonable ways. In this sense, parental child abduction would unlikely be applicable as the abductor is also a person having legal rights over the child.

Part VIII of Act 611 deals with trafficking and abduction of children. Meanwhile, Section 52 of Act 611 creates the offence of taking in or sending out a child whether within or outside Malaysia without any appropriate consent of the person having lawful custody, including the *Syariah* Court Orders.

Any parent or guardian who does not have the lawful custody of a child and takes or sends out a child, whether within or outside Malaysia, without the consent of the person who has the lawful custody of the child commits an offence and shall on conviction be liable to a fine not exceeding ten thousand Ringgit or to an imprisonment for a term not exceeding five years or to both.

The court may make a recovery order upon application by or on behalf of the person having a lawful custody to direct any other person who is in a position to do so to produce the child on request to any authorized person or authorize the removal of the child by any authorized person or require any person who has information as to the child's whereabouts to disclose that information to the authorized person or authorize any police officer to enter into any premises specified in the order and search for the child, using reasonable force if necessary. However, this provision is only applicable if the child is within the jurisdiction. If the child is out of jurisdiction, extradition of the person who is in position to produce the child could be an option, but it may not ensure the return of the child (Lowe *et al.,* 2004).

Section 48 of Act 611 deals with unlawful transfer of possession, custody or control of a child by a person for any valuable consideration, and such a person shall on conviction be liable to a fine not exceeding ten thousand Ringgit or to an imprisonment for a term not exceeding five years or to both. This is unlikely to be a provision applicable to parental child abduction.

The court is also given power, under Section 101 of Act 164 and section 105 of Act 303, to issue an injunction to restrain the taking of a child who is under the lawful custody of a person out of Malaysia, failure of which shall be punishable and subject to contempt of court. This shows that the act of taking away a child from his or her lawful custody is a very serious offence. The provision allows a father or a mother or any interested person to apply for an injunction to restraint the child from being taken away from Malaysia or permission to take the child away from Malaysia. This application must be made to court and subjected to situations where there are pending matrimonial proceedings, where there is an agreement or an order of the court. In *Sokdave Singh a/l Ajit Singh v Sukvender Kaur a/p Daljit Singh*, the application by the father to restrain the child from being taken out of Malaysia was dismissed as the court was of the opinion that there was no likelihood of risk for the child to be abducted abroad. The father in this case was assuming that the child might be taken out from Malaysia to follow his mother if she was offered work outside Malaysia. This means the court requires strong evidence if one parent needs to apply under this provision. This imposes a difficult situation for a parent from abroad in incoming abduction cases who has successfully obtained custody from Malaysia to take a child away from Malaysia to her/his country of residence if it is objected by the other parent. This would then be a futile effort as the custody order is just a paper judgment and does not guarantee the return of the child to a country of residence.

It is interesting to note Section 83 of Act 303 provides for how a right of custody is lost. In that provision, the right of custody to the mother is lost if she changes her residence to prevent access to the father, except if taken to her place of birth. This provision allows a divorced mother to take her child to her place of birth. It has not been tested in court whether this could also apply to cases where the mother

is from abroad. Alas, the provision to prevent removal of the child from Malaysia seems to be in conflict with Section 83.

An application for *habeas corpus* could also be made if a custody order has been granted to a parent but the other parent has abducted the children. This provision requires a validly enforceable custody order to be applicable. Non-compliance with custody orders is also a contempt of court.

In the *Syariah* context, the *Syariah* court does not have a jurisdiction to create criminal offences, which comes within the jurisdiction of the Federation. The Federal Constitution of Malaysia only empowers the State Legislature to create offences against the precepts of Islam and the prosecutions of these offences are to be held in the *Syariah* courts. The criminal jurisdiction of the *Syariah* courts, as conferred by the Federal law, is to be found in Section 2 of the Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355).

Looking from a broader view, although there is no provision related to offences for parental child abduction, there is a possibility that the *Syariah* Court may legislate offences related to parental child abduction in the *Syariah* Courts. This is based on some recent decisions in the Civil Court that Act 355 should be construed by applying the "subject matter approach" in criminal matters, as decided in the cases of *The Islamic Council of Penang & Butterworth v Shaik Zolkaffily* [2003] 4 AMR 501, *Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara & Anor* [1992] 2 MLJ 241 and *Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib* [1992] 2 MLJ 793. The contention is because parental child abduction involves the elements of wrongful removal or retention by one parent from a legal custodian cum parent which custody was derived from matrimonial proceedings.

All these laws are applicable in the Malaysian context and require lawful custody to establish the offence of child abduction. According to Lowe (2004), extra caution is needed when parental child abduction is regarded as a criminal offence as 'courts often show a marked reluctance to return the abductor to face criminal charges.' According to Kirby (2010), further consideration is needed to categorize parental child abduction as a criminal offence, apart from the psychological impact to the abducted child. The reason being that the abductor is the child's own parent.

However as discussed above, obtaining a custody order does not secure the return of the abducted child as there is a restriction to prevent taking or relocating a child away from Malaysia, which leaves a parent who was given custody to be in an awkward and difficult situation.

PROCEDURES FOR THE RETURN OF A CHILD IN INCOMING ABDUCTION

For cases of incoming abduction to Malaysia, the left-behind parent can depend on three avenues, namely, informal diplomatic channels and assistance from the Ministry of Foreign Affairs with the cooperation from the police and immigration, re-abduction through the use of personal resources and finally, submission to the jurisdiction of the courts of Malaysia. The first could be an endless effort, the second is too dangerous, and the last is costly and time consuming. As of now, Malaysia has no reciprocal arrangement on child abduction issues thus far.

There is also no specific procedure for the return of an abducted child. Furthermore, Malaysia does not have an agency like the Central Authority, which was created under the 1980 Child Abduction Convention, to handle abduction cases. If assistance is required from the Malaysian authorities by individuals, the Ministry of Foreign Affairs of Malaysia and the foreign country will arrange it through diplomatic channels.

CONCLUSION

Parental child abduction does not necessarily occur in cases related to foreign custody orders as the sole factor. Parental child abduction could happen even when there is no custody order. However, non-finality in the foreign

custody orders creates the risk of parental child abduction, as decided in *McKee* followed in *Mahabir Prasad*. In cases where children are involved, the best interests of the child have always been the paramount considerations. This is also the position in Malaysia, in which the provision is incorporated in the statutes.

Based on the above examination of the Malaysian laws, it is obvious that these laws are rather inadequate to resolve the issue of international parental child abduction; as to where it stands today, it does not have any international cooperation or reciprocal arrangement with any country in terms of international parental child abduction.

Hence, it is vital to have a systematic and structured legal framework to curb international parental child abduction in the context of Malaysia. As such, there is a need for a global solution which could promote and enhance international cooperations on the issue and ensure prompt return of abducted children to their familiar surroundings.

ACKNOWLEDGEMENT

Special acknowledgement to Prof. C.M.V. Clarkson, University of Leicester, UK for her comments on earlier drafts of this paper.

REFERENCES

Adams v Cape Industries plc [1990] Ch 433.

Arbitration Act 2005 (Act 646).

Bankruptcy Act 1967 (Revised 1988) (Act 360).

Bell, A. S. (2003). *Forum Shopping and Venue in Transnational Litigation*. London: Oxford University Press.

Beaumont, P. R., & McEleavy, P. E. (1999). *The Hague Convention on International Child Abduction*. Oxford ; New York: Oxford University Press.

Buck, T. (2000). *International Child Law.* London: Cavendish Publishing Ltd.

Child Act 2001 (Act 611).

Civil Law Act 1956 (Revised 1972) (Act 67)

Clarkson, C. M. V., & Hill, J. (2006). *The Conflict of Laws*. London: Oxford University Press.

Lyon, C. M. (1993). *The law relating to children*. London ; Austin, Tex.: Butterworths.

Dyer, A. (2000). *To Celebrate a Score of Years*. Keynote address of the New York University Journal of International Law and Politics Annual Symposium, New York City, February 25, 2000. Retrieved on November 1, 2008, from http://www3.law.nyu.edu/journals/jilp/issues/33/pdf/33a.pdf.

Emanuel v Symon [1908] 1 KB 302,

Federal Constitution of Malaysia, Ninth Schedule First List.

Guardianship of Infants Act 1961 (Revised 1988) (Act 351). Retrieved on August 10, 2008, from http://en.wikipedia.org/wiki/Child_abduction#Parental_child_abduction.

Indyka v Indyka [1967] 2 All ER 689.

Islamic Family Law (Federal Territory) 1984 (Act 303).

Khaira, H. S. (2007), Enforcement of Foreign Judgments over Immovable Property in Malaysia. *Quarterly Law Review, 34*.

Kirby, M. (2010). Children Caught in Conflict - the Child Abduction Convention and Australia. *International Journal of Law, Policy & the Family, 24*(1), 95-114.

Law Reform (Marriage and Divorce) Act 1976 (Act 164)

Loh v Kalliou [2007] FamCA 444.

Lowe, N. V., Everall, M., & Nicholls, M. (2004). *International movement of children : law practice and procedure*. Bristol: Family Law.

Mahabir Prasad v Mahabir Prasad [1981] CLJ 124, [1981] 2 MLJ 326.

Maintenance Orders (Facilities for Enforcement) Act 1949 (Revised 1971) (Act 34)

McKee v McKee (1951) AC 352.

Mohamed Habibullah bin Mahmood v Faridah bte Dato Talib [1992] 2 MLJ 793.

Muhamad Said, Suzana, & Suhor, Shamsuddin. (2009). *The Law Review* (p.537-532). Thomson Reuters, Sweet & Maxwell, Asia.

Ong, D. S. L. (2007). Parental Child Abduction in Singapore: the Experience of a Non-Convention Country. *International Journal of Law, Policy & the Family*, *21*(2), 220-241.

Platto, C. (1989). *Enforcement of Foreign Judgments Worldwide.* Great Britain: Graham & Trotman, International Bar Association.

Pritam Singh v Public Prosecutor [1970] 2 MLJ 239

Probate and Administration Act 1959, (Revised 1972) (Act 97), ss 51 – 58.

Raja Bahrin, & Wickham, B. (1997). *The Raja Bahrin Story.* Singapore: Times Book International.

Re E (D) (An Infant) [1967] Ch 287.

Reciprocal Enforcement of Judgments Act 1958 (Revised 1972) (Act 99).

Schibsby v Westenholz (1870) L.R. 6 Q.B 155.

Sokdave Singh a/l Ajit Singh v Sukvender Kaur a/p Daljit Singh [2001] MLJU 113.

Stark, B. (2005). *International family law : an introduction*. Burlington, VT: Ashgate.

State Central Authority v Ayob (1997) 21 Fam LR.

Sukma Darmawan Sasmitaat Madja v Ketua Pengarah Penjara & Anor [1992] 2 MLJ 241.

Syed Abu Tahir a/l Mohamed Ismail v Public Prosecutor [1988] 3 MLJ 485.

Syed Abu Tahir a/l Mohamed Ismail v Public Prosecutor [1988] 3 MLJ 485.

Tan, Y. L. (1993). *Conflicts issues in family and succession law*. Singapore ; Austin, Tex.: Butterworths.

The Islamic Council of Penang & Butterworth v Shaik Zolkaffily [2003] 4 AMR 501,

Wu, M. A. (1995). Guardianship, Custody and Abduction of Children Across National Boundaries. *Malayan Law Journal*, *1*.

Wu, M. A. (1996). Enforcement of Foreign Civil Judgments. *Malayan Law Journal, 2,* xcvii.