

# What should we all know about Brazil's family law?



International  
Academy of  
Family Lawyers

IAFL

## IAFL Introduction to International Family Law Conference

Santiago, Chile  
September 5, 2023



# What should we all know about Brazil's family law?

There are **14.799** first degree judicial units in Brazil

**8.346** Civil Courts and **1.206** Special Courts

**376** of them are exclusively dedicated to family law matters

**77,3 million** processes in progress in the Judiciary

In the common courts the **top five issues** are family law disputes concerning **maintenance** and **kinship relations** (custody, adoption of a child, parental alienation, suspension of family power, maternity/paternity investigation, among others).



# What is the residence requirement to file for divorce in your jurisdiction?



## Jurisdiction

Access to the judiciary for filing divorce proceedings is **immediate** in Brazil because there is **no requirement** for prior attempts at consensual agreement, such as conciliation and private mediation

An action filed before a foreign court does not lead to *lis pendens*, that is, it does not prevent the Brazilian judicial authority from **hearing** the same case and related ones, even if already initiated in some other international jurisdiction

## Domicile and Residence

Domicile ≠ Residence

The domicile is **unique** and can be considered where the person **regularly** carries out their professional activities. On the other hand, there can be **many residences**

And so the domicile and the residence can be the same place

The domicile, regardless of residence, **may be expressly established in contracts**, pacts and/or terms.

# What is the residence requirement to file for divorce in our jurisdiction?

## Determination of Jurisdiction

Pursuant to Brazilian civil procedural law, actions in the consensual or litigious modality will be proposed:

- at the domicile of the guardian (even factual) of an incapable child;
- in the last domicile of the couple, in the absence of an incapable child;
- at the defendant's domicile, if neither party resides at the couple's former domicile; or
- at the victim's home in the case of domestic and family violence.

These are hypotheses of internal territorial jurisdiction and the interested party **will be able to contest** them, because they are not alleged *ex officio* by the judge

Regarding the sharing of assets located in Brazil, **the Brazilian judge has absolute jurisdiction**, in view of the principle of national sovereignty.



## Is there a required waiting period?

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Currently there is **no** waiting period required to enter a divorce. Considering that divorce is a **potestative right**, for the dissolution of heterosexual or same-sex couples, the will of one of the parties and the existence of a valid marriage are sufficient to apply for a divorce.

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## Is there a required waiting period?

**2007, Law 11,441** established the possibility for spouses to divorce through public deed, giving rise to extrajudicial divorce

**2010, the Constitutional Amendment n. 66/2010 (EC 66/2010)** established that there is no longer a need to apply, in the first place, for legal separation or to have grace periods to file for divorce, as it was before the constitutional change.

*Art. 226. The family, the basis of society, has the special protection of the State.*

*§6. Civil marriage may be dissolved by divorce.*

*(Brazilian Federal Constitution)*

*Art. 1.571. Marital partnership ends:  
IV - by divorce*

## Is there a required waiting period?

And so, the emergence of positivist ideals regarding divorce, whether judicial or extrajudicial, made it possible **to let go** of certain beliefs, such as:

**Blame any of them for the termination of the marriage;**

**Investigate the reason justifying the end of the marriage relationship, since the violation of marital duties (art. 1566 CC) already means the weakening of the marital relationship;**

**Prove the elapsed time of any possible repair period.**

Furthermore, by EC 66/2010, Brazil started to adopt in practice the single system (divorce) without the need to observe deadlines for its proposal and there are three modalities:

**Consensual extrajudicial divorce;**

**Consensual Judicial Divorce;**

**Litigious Judicial Divorce.**



## Under what circumstances will the family court have jurisdiction over children?

All discussions that involve children **must necessarily be treated by the family Court** (or the Civil court where there is no Family Court) and the Public Prosecutor.

*Art. 227: It is the duty of the family, society and the state to ensure children, adolescents and young people, **with absolute priority**, the right to life, health, alimony, education, leisure, vocational training, culture, dignity, respect, freedom and family and community life, as well as to protect them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.*

*(Brazilian Federal Constitution)*



**Child and Adolescent Statute (ECA- Estatuto da Criança e do Adolescente) 1990 (law n. 8.069/1990– reform in 2009 Law n. 12.010, articles 141, 142, 143 and 145)**

**Article 141. “Every child or adolescent is guaranteed access to the Public Defender's Office, the Public Prosecutor's Office and the Judiciary, through any of its bodies.”**



# Child support regime? How is it calculated?

It will be fixed or approved by a judge

It is determined, in general up to the age of graduating university

It is based on the binomial represented by the financial capacity of the maintenance provider (**possibility**) and the needs of the maintenance beneficiary (**necessity**), according to criteria of **proportionality** and **reasonableness**



There is no specific calculation for it. It depends on the standards of life and possibilities of the provider

# What are the marital regimes in Brazil?

The property **marriage** regimes regulate the marital relationships in Brazil, as well as the **cohabitation** or **de facto unions** relations.

## Partial Community of Property

Is the regime adopted as default if the parties do not one specific choose

Does **not** require a prenuptial agreement

Presupposes the **common effort** and communication of the property acquired at a cost by either party during the term of the marriage or *de facto* union relationship

# What are the marital regimes in Brazil?

## Universal Community of Property

**Requires** a prenuptial agreement signed by public deed, in which specific rules of incommunicability can be established

There **is** communication of all property, including liabilities

## Separation of Property

**Requires** a prenuptial agreement

There is **no communication** of property, except if the common effort of the claims is duly proven, as provided for in Precedent 377 of the Supreme Federal Court

**No** need to speak of a presumption of **common effort**



# What are the marital regimes in Brazil?

## Legal or Mandatory Separate Property

This regime is **imposed** by law in certain situations, as of:

People who contract marriage in breach of the suspensive causes of marriage

All those who depend on judicial supply to marry

A person over 70 years old

## Final participation in the assets

Each spouse or companion will own and manage their **own** property, which will always **remain incommunicable**. At the end of the marriage or cohabitation, the claims for the time of marriage or *de facto union* will be determined, even if arising from private or **common property** and divided in the proportion of 50% for each one

**Requires** the granting of rights over property, even if private

## Prenups?

The prenuptial pact is the document through which parties provide for the **economic** and/or **personal aspects** that will be followed in the marriage

It is when the property regime is established - or the couple can freely adapt the rules **in accordance to the law**

## What makes them valid?

It has to be made by a **public deed** and it has to be **registered** with a competent **real estate notary** to be valid

The end of the marital relationship or cohabitation **ends its effectiveness**

## Amendment to the property regime

The only possibility of changing the property regime after marriage is **through a judicial process**, necessarily **consensual**, with proof of the reasons for the request and safeguarding the rights of third parties.

## With what foreign country have you have the most cases?

USA, Portugal, UK, Argentina and Germany

## What international treaties with family law application do you see used the most in your jurisdiction?

- Alimony/maintenance

*Convention of 23 November 2007 on the International Recovery of **Child Support** and Other Forms of Family **Maintenance** & Protocol of 23 November 2007 on the Law Applicable to **Maintenance Obligations**, ratified by Brazil on 07.17.2017*

- Divorce

- Protection of Children

- Civil Aspects of International Child abduction

*Civil Aspects of International **Child Abduction** Hague Convention #28 of 1980. Brazil ratified it on 04.14.2000;*

*United Nations Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 11.20.1989 and ratified by Brazil on 01.26.1990.*



# Thank You!

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1010-1130 Session 1. Who Knew? Useful things you didn't know about the law in other jurisdictions. Short presentations and contributions from de floor.

**What should we all know about your country's family law?**

**Examples**

**What is the residence requirement to file for divorce in your jurisdiction?**

According to articles 29, 30 y 31 the civil code, a domicile is the one where a persona has lived for more than 6 months and where a couple lives together, according to article 156 fractions IV, XII and XIII of the Procedure Civil Code, the judge who will be competent for a divorce case will be the one of the conyugal domicile, in case of abandonment fo the cobnyugal domicile the one of the abandoned spouse. In cases of alimony or child support, the one of the plaintiff, or the one elected by the plaintiff. In personal actions of the civil state the domicile of the defendant.

**Is there a required waiting period?**

6 months

**Under what circumstances will the family court have jurisdiction over children?**

According to article 156 fraction XIII when jurisdiction is over child support, it will be the one of where the Plaintiff lives or where the plaintiff chooses.

**Child support regime? How calculated?**

Article 303, 308 and 311 of the Civil Code, parents are obliged to support their children, child support is to be calculated on the need of food dress home, medical attention education to give them a way of living, according to the possibilities of whom has to give them and the needs of whom receives them.

**What is the property distribution regime?**

Separation of goods and social community property article 178 of the civil code

**Prenups? What makes them valid?**

Article 179 and 180 of the civil code, they can be done before marriage or during marriage before a notary public in a deed and have to be part of the marriage licence.

**With what foreign country have you have the most cases?**

With US and Canada

**What international treaties with family law application do you see used the most in your jurisdiction?**

The child abduction Heague convention, the Heague convention for obtaining proof abroad and the Interamerican convention of obtaining proof abroad, and the Heague and Interamerican convention for serving abroad.



Warner Norcross + Judd LLP

August 23, 2023

International Academy of Family Lawyers  
Pre-Conference CLE  
Santiago, Chile 9/5/2023

**Re: Materials and Panel Presentation by Richard A. Roane**

1. What should we all know about family law in the United States?

*Given that there are 50 states in the United States, there is no easy answer.*

2. What is the residence requirement to file for divorce in our jurisdiction?

*In Michigan as in many US states, there is a 180 day minimum residency requirement in the state and a 10 day residency requirement in the county in which to file a divorce action. Some US states have shorter residency requirements of 90 days pre-filing.*

*Courts may take emergency jurisdiction in cases of domestic violence toward a parent or child. In such cases, the 180 day residency requirement may be waived but these are in rare circumstances.*

3. Is there a required waiting period?

*In Michigan, there is a 6 month statutory waiting period for a divorce Judgement with minor children, and a 60 day waiting period without minor children.*

4. Under what circumstances will the family court have jurisdiction over children?

*US Courts have jurisdiction over children when the child has been present in the US state for the immediate 6 months preceding the filing of a new case AND there is no action pending in any other court regarding custody of that child. Note however the emergency jurisdiction provisions above.*

5. Child support regime? How calculated?

*In Michigan as in many US states, a mathematical formula is used to calculate child support, taking into account the parent's respective income from all sources, tax filing status, number of overnights the child spends in each household, health insurance premiums, other child support orders or obligations if any. Some US states use a percentage of income of the parents to calculate child support. In Michigan, child support continues until a child reaches age 18 or*

*graduates from high school, whichever is later. Michigan does not give its family courts authority to order child support beyond high school graduation or attaining age 18, and therefore, higher education expenses cannot be court ordered. Some US states allow the family courts to order college expenses to be paid by one or both parents.*

6. What is the property distribution regime?

*Michigan follows an “equitable distribution scheme”, meaning that the Judge has broad discretion to order a property division that she or he deems fair under all circumstances. This broad discretion usually results in essentially a 50/50 division of “marital assets”. Parties may assert and try to prove “separate property” claims to keep certain assets (usually assets brought into the marriage) outside of the marital estate for division purposes.*

7. Prenups? What makes them valid?

*Twenty-eight US states have adopted the Uniform PreNuptial Agreement Act which sets forth a standard to establish or challenge the validity of a PreNuptial Agreement. Key provisions include a full disclosure of all assets including approximate values at the time of execution of the PreNuptial Agreement, absence of duress or pressure to execute the agreement, and access to independent legal counsel for each party to the agreement.*

*In Michigan (which has not adopted the Uniform Act), PreNuptial Agreements may be enforceable if they meet the above standards AND if they were fundamentally fair when executed. The Courts also look to any change in circumstances from time of execution to time of enforcement to determine whether the document is enforceable.*

8. With what foreign country have you have the most cases?

*Over the 36 years of my practice, I have had more cases involving Canada probably because of our shared borders and the proximity of Michigan to Canadian provinces.*

9. What international treaties with family law application do you see used the most in your jurisdiction?

*Hague Convention on Civil Aspects of International Child Abduction*

**1010-1130 Session 1. Who Knew? Useful things you didn't know about the law in other jurisdictions. Short presentations and contributions from de floor.**

**What should we all know about your country's family law?**

## **SPAIN**

**What is the residence requirement to file for divorce in your jurisdiction?**

According to article 22 quarter Ley Orgánica 6/1985, 1 July, Poder Judicial:

*c) In matters of personal and property relations between spouses, marriage annulment, separation and divorce and their modifications, provided that no other foreign Court has jurisdiction, when both spouses have habitual residence in Spain at the time the petition is filed or when they have had their last habitual residence in Spain and one of them resides there, or when Spain is the defendant's habitual residence, or, in the event of a consent order, when one of the spouses resides in Spain, or when the plaintiff has at least one year of habitual residence in Spain from the filing of the petition, or when the applicant is Spanish and has his habitual residence in Spain at least six months before filing of the petition, as well as when both spouses have Spanish nationality.*

**Is there a required waiting period?**

The answer is to find in the paragraph above mentioned. In certain circumstances a period is required:

- i. When de plaintiff has at least one year of habitual residence in Spain at least six months before filing the petition, and
- ii. When the applicant is Spanish and has his habitual residence in Spain at least six months before filing the petition.

On the other hand, in Spain we do not have the FAULT divorce, thus according to

*ARTICLE 81 of the Spanish Civil Code*

*"(...)*

*At the request of both spouses or of one with the consent of the other, once three months have elapsed from the celebration of the marriage. The demand will be accompanied by a proposal for a consent order drawn up in accordance with article 90 of this Code.*

*At the request of only one of the spouses, once three months have elapsed from the celebration of the marriage. The course of this period will not be necessary for the filing of the petition when the existence of a risk to life, physical integrity, freedom, moral integrity or sexual freedom and indemnity of the plaintiff spouse or the children of both is proven. or any of the members of the marriage”.*

### **Under what circumstances will the family court have jurisdiction over children?**

According to article 22 quarter Ley Orgánica 6/1985, 1 July, Poder Judicial:

*d) In matters regarding parentage and coparenting, protective measures of children and parental responsibility, when the child has his habitual residence in Spain at the time the petition is filed or the plaintiff is Spanish or habitually resides in Spain or, in any case, at least six months before filing the petition.*

*e) Regarding adoption, in the cases regulated by Law 54/2007, of December 28, on international adoption.*

*f) In matters of child support, when the creditor or the defendant thereof has habitual residence in Spain or, if the petition on child support is filled as ancillary to a matter of civil status or a parental responsibility petition, when the Spanish courts were competent to hear this last petition.*

### **Child support regime? How calculated?**

Spanish Civil Code applies in order to establish a child support amount: articles 142 to 153.

Consejo General del Poder Judicial (hereinafter referred as “CGPJ”), at the proposal of the Working Group of Family Judges, the CGPJ has been working on the creation of CHART and making these CHART available to judges, magistrates, lawyers and the general public, understood as a guiding instrument adapted to the experiences in this matter and elaborated according to scientific bases with the technical support of the National Institute of Statistics (INE). In 2013 it was published for the first time.

The new Tables have been prepared based on the data from the Surveys of Living Conditions and Family Budgets for the period 2014 and 2016, applying a factor corrector to eliminate the distortions of the new methodology and make them more homogeneous with the that is currently being used. The new Chart is in force since 2019.

In general, this Chart is not enough, thus in certain cases more criteria should be taken into account.

### **What is the property distribution regime?**

Spanish Civil Code the regime by default is Community of assets; in other areas of Spain as in Catalanian and Balears the regime by default is Separation of assets.

### **Prenups? What makes them valid?**

In the Spanish Civil code:

#### ARTICLE 1315

The economic regime of the marriage will be the one that the spouses stipulate in the matrimonial agreement “capitulaciones matrimoniales”, without other limitations than those established in this Code.

#### ARTÍCULO 1316

In the absence of matrimonial agreement or when it's ineffective, the regime will be that of the community assets

#### ARTÍCULO 1325

In matrimonial agreement, the parties may agree, modify or replace the economic regime of their marriage or any other provisions by reason thereof.

#### ARTICLE 1326

Marriage agreements may be granted before or after the marriage has been celebrated.

#### ARTICLE 1327

For their validity, the marriage agreement must be granted in a public deed.

#### ARTICLE 1328

Any agreement contrary to the Laws or good customs or usages limiting the equal rights that corresponds to each spouse will be null and void.

#### ARTICLE 1333

In all registration of marriage in the Civil Registry, mention will be made, where appropriate, of the matrimonial agreements that have been granted, as well as the pacts, judgments and other facts that modify the economic regime of the marriage.

If those or these affect real estate, will be registered in the Property Registry, in the manner and for the purposes provided in the Mortgage Law.

In the Catalan Law system are differences.

**With what foreign country have you had the most cases?**

With France, United Kingdom, USA, Israel.

**What international treaties with family law application do you see used the most in your jurisdiction?**

- *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (HCCH 1980 Child Abduction Convention)
- *Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children*
- Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations

**Brief Biography**

**Esther Susin Carrasco**

- Bachelor of Law from UNED in 1995.
- Graduate in Languages: English, French, German in 1985.
- Languages: Spanish, Catalan, French, English, German, Italian.
- Initiation to diplomatic career in 1990 at the University of Perpignan.
- Studied Community Law and the Maastricht Treaty at King's College London in 1992.
- Completed a post-degree program at the Universidad Autónoma de Barcelona (UAB) from 2009 to 2011, earning a Master's degree in International Family Law.
- Pursued another post-degree program at UAB from 2011 to 2012, focusing on a Master's degree in European Integration. The thesis topic was the relationship between The Hague Convention of 1980 (articles 13(a) and 13(b)) and Article 11 of Regulation (EC) No 2201/2003.
- Engaged in continuing education in Family Law at the School of European Law in Trier, Germany, attending sessions in 2006, 2010, 2012, 2013, 2014, and 2015.
- Completed equality training courses at the European Law School of Trier in 2017.
- Participated in TRACHILD, a training program for legal counsels representing children in criminal, civil-law, and administrative proceedings before the court, organised by the General Council of the Spanish Law in Madrid on October 30, 2017.
- Associated professor at the Universidad Politecnica de Cataluña, Master in Business and Management.



# BOARDING PASS



# BOARDING PASS



From  
**NYC**



To  
**LON**

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LOREM IPSUM

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Passanger Name	Gate
<b>BILL COOPER</b>	<b>D12</b>

Flight	Seat
<b>Q0145</b>	<b>A25</b>

Date	Time
10 NOV 2019	06:30

**NYC LON**



# THE RISE OF INTERAMERICAN FAMILY LAW

## DR. GONZALO GROSS

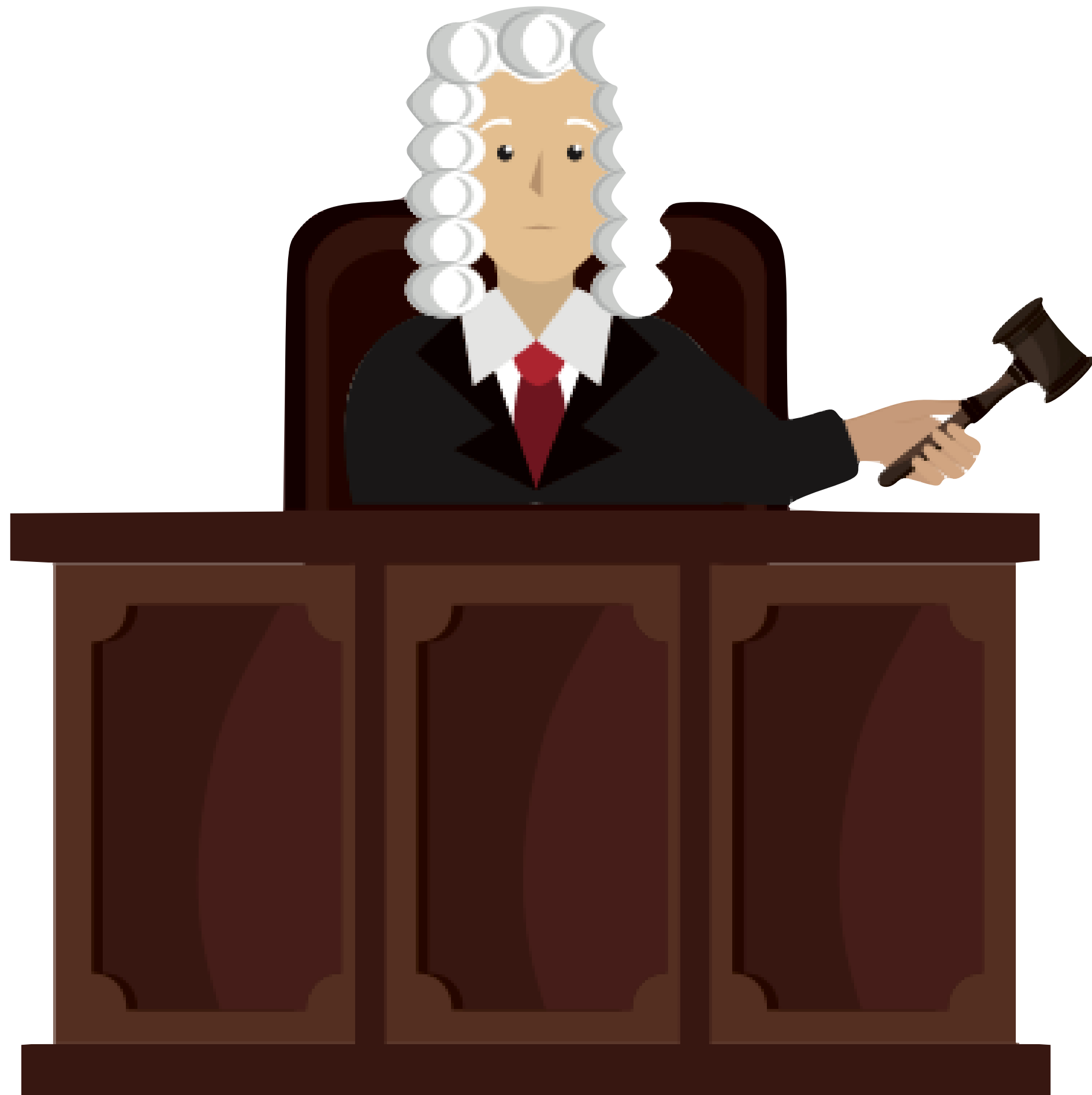







# INTERNATIONAL FAMILY LAW ISSUES / COUNTRIES



- **Divorce.** (COVID 19)
- **Child custody, Child support, Parenting Time.**
- **Inheritance.**
- **Argentina, Brazil, USA.**

# SERVICE AND EVIDENCE IN ANOTHER COUNTRY



- **Treaties.**
- **Contact a local attorney.**
- **Social networks.**  
- **Credit Cards.**   

# CHILD ABDUCTION



- **Not every children.** (Below the age of 16 years)
- **Abduction.** (wrongfully removed to or retained)
- **Hague 1980.**
- **OAS 1989.**

# CHILD ABDUCTION

**Civil Aspects of International Child Abduction  
Hague 1980**

<https://assets.hcch.net/docs/e86d9f72-dc8d-46f3-b3bf-e102911c8532.pdf>

<https://www.hcch.net/en/states/hcch-members>

**Inter-American Convention on the International Return of Children  
Montevideo 1989**

<http://www.oas.org/juridico/english/treaties/b-53.html>

<http://www.oas.org/juridico/english/sigs/b-53.html>



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