



**IAFL Asia Pacific Chapter Symposium
HOT TOPICS in International Family Law
Hong Kong, China**

Tuesday 2 December 2025

**Session Resources Pack
What is HOT in Parenting Matters in Cross-
Border Disputes?**

09:45 – 11:15 am

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Winnie sees her role as a problem solver, helping clients resolve their family conflicts with bespoke solutions that draw from a variety of dispute resolution options. Her practice covers a wide range of international family law matters, both mainstream as well as complex and atypical. She is recognised locally and internationally in raising awareness of children and family issues and making a positive change in the practice of family law.

Winnie plays a leading role in seeking to improve the resolution of family conflict and is prominent in introducing and developing Collaborative Practice and Parenting Co-ordination as means of dispute resolution in Hong Kong. In addition, she is trained in family mediation, to act as a child consultant in child-inclusive mediation, and in private financial adjudication.

Winnie is a founding member and sits on the executive committee of the Hong Kong Collaborative Practice Group, a Fellow of IAFL (appointed as Parliamentarian in 2013 and Vice-President between 2014 and 2018), an executive committee member of the Hong Kong Family Law Association and the Hong Kong Law Society's Family Law Committee. She frequently shares her experience as a family lawyer through a number of talks in Hong Kong and overseas.

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Richard is a partner at Green Kaminer Min & Rockmore, LLP in New York City. His practice focuses almost exclusively on international family law issues.

He has extensive experience in Hague Abduction Convention cases having litigated over 60 Hague cases across the United States including several appeals. In 2022 Richard argued the case of Golan v. Saada on the issue of “Grave Risk of Harm” before the U.S. Supreme Court.

Richard frequently lectures and writes on the topic of international family law. He is a Fellow of the International Academy of Family Lawyers and is the current Co-Chair of the IAFL 1980 Hague Committee.

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Admitted to Tokyo Bar Association in 2009, specialising in family law with particular focus on international family cases. Education: International Christian University (B.A., 1997), University of Tokyo School of Law (J.D., 2007), Pittsburgh University Law School (LL.M., cum laude, 2008). Membership: International Family Law Section of the Japan Federation of Bar Associations; Hague Convention Committee of Tokyo Bar Association. Other notable positions: Lecturer at Chuo University Law School.

INMACULADA RUZ

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Inmaculada is a member of the Bar Association of Girona since 1984 and Barcelona since 1991. She holds a BA in Law from the University of Valencia and has been practicing law for over 35 years. She was the chair of the Family Law Committee at the Bar Association of Barcelona for seven years, Founder Member of FDFSI, (President) (Foro de Familia y Sucesiones. Internacional), member of the Board of the Catalan Association of Collaborative Law and liaison with the ENCP.

Inmaculada handles divorce cases, both domestic and international. She deals with matters in dissolution of matrimonial, economic regimes, matrimonial litigation, matrimonial economic regimes, proceedings involving minors.

She is a specialist in International cases of child abduction.

She has been a lecturer at the Legal Practice Course of the Barcelona Bar Association University, national and international conferences, and frequently publish articles in specialized.

Inmaculada is a certified collaborative lawyer.

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Partner of Chauveau Mulon Associés dealing exclusively with Family Law. Since she joined the Bar, Elodie has always been involved in matters directly concerning the profession and Family Law. She used to be a member of the Paris Bar Council and also the National Bar Council (CNB). She is currently a member of the board the National Bar Council, her mandate runs until 2025. She has been awarded the "Medal of Honor", and is a member of the family law commission of the Paris Bar. She is also the president of the Institut du droit de la famille et du patrimoine, a member of the Association of Practitioners of Collaborative Law and member of the Association Law and Procedure. Author of various family law publications, she takes part regularly in conferences and CPD courses for other family law practitioners, and co-directs the Family Law edition of the Gazette du Palais. She is also in charge of the Family Law faculty of the Law school which trains lawyers (EFB) and president of the family and inheritance committee of the European Bar (CCBE).

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FACT SHEET

Felix and Madeleine have been married for 15 years. They were married in Japan and lived there for 14 years.

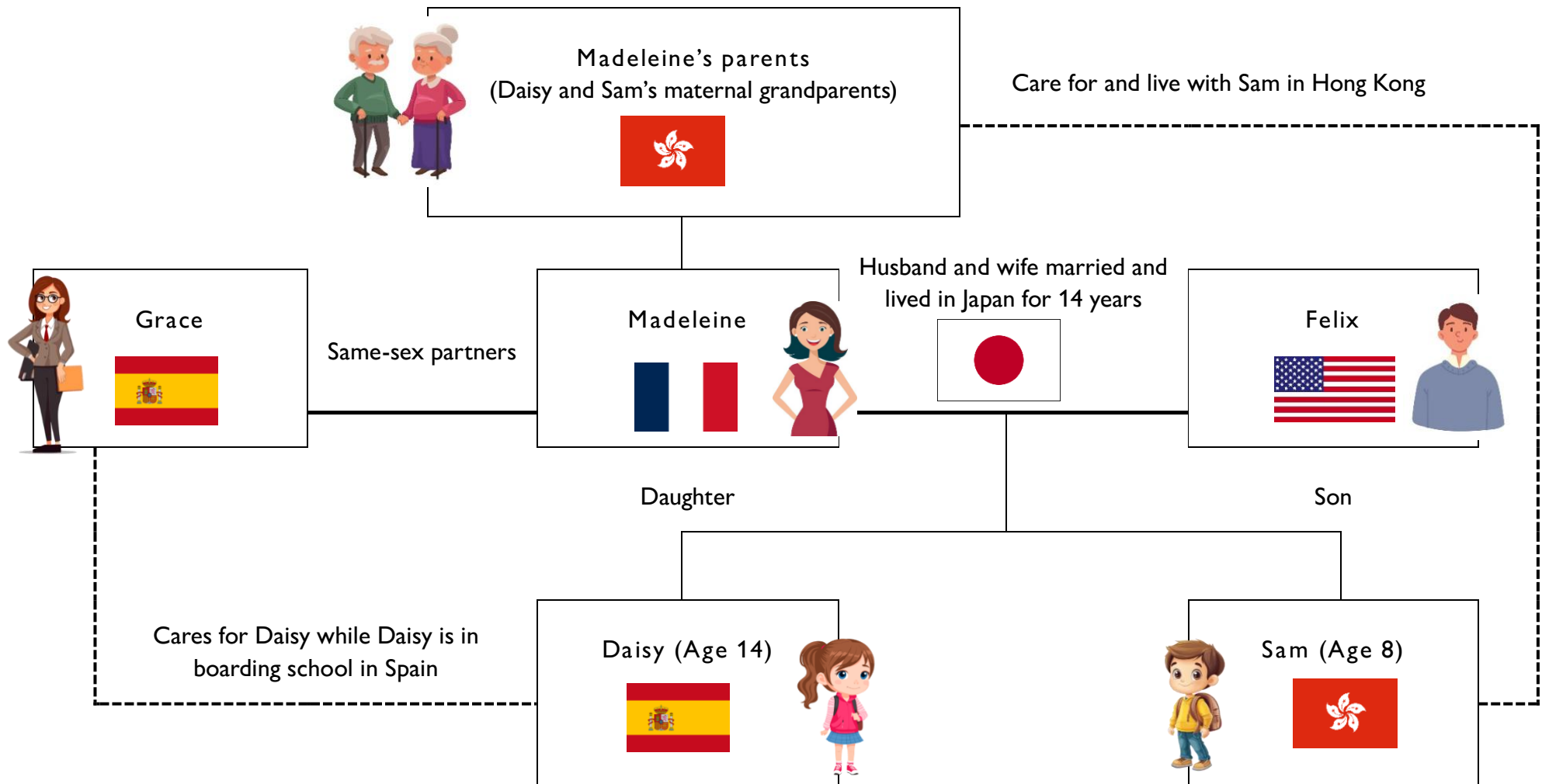
Felix is American and Madeleine is French. They have two children, Daisy who is 14 and Sam, who is 8. Daisy has been attending boarding school in Spain for 2 years and her appointed guardian is Grace, who lives in Spain and is Madeline's new partner. Daisy has been in Grace's care whenever she stayed in Spain over the school holidays.

About a year ago, Felix, Madeleine and Sam moved to Hong Kong. Madeleine's parents moved with them to help care for Sam. Currently, Sam is in Hong Kong with his maternal grandparents. Meanwhile, Madeleine has taken up a new job in France, which allows her to be closer to Daisy and Grace in Spain. Felix has also moved to the US to take up new employment, having accepted that the marriage has broken down when he found out about Madeleine's romantic relationship with Grace.

Dispute has now arisen as to the arrangements for the children. Felix wants Daisy to stop attending boarding school in Spain, and for her and Sam to move with him to the US. Meanwhile, Madeleine wants Sam to move with her to France and Daisy to stay in

boarding school in Spain. It is against this context that we will be exploring a number of issues arising from this family dynamics and the various jurisdictions that are involved.

IAFL Symposium – Hong Kong
What is HOT in Parenting Matters in Cross-Border Disputes?
Fact Sheet – Family Tree



IAFL Hong Kong Symposium on 2 December 2025
What is HOT in Parenting Matters in Cross-Border Disputes?

Speakers:*Elodie Mulon (France)**Masami Kittaka (Japan)**Inmaculada Ruz (Spain)**Richard Min (USA)***Moderator :** *Winnie Chow (Hong Kong)*

1. Custody – What that really means in your jurisdiction and other terminology used?

France

In the French legal system, we do not use the term *custody* but rather of **parental authority** (*autorité parentale*).

Parental authority is defined by the French Civil Code (articles 371-1 and following) as **a set of rights and duties aiming to protect the child, ensure their security, health, moral and material well-being, and support their education and development while respecting their person**. It belongs jointly to both parents, whether they are married, separated, or divorced, except in very specific circumstances where one parent may be deprived of it.

Key points about parental authority in France:

- **It is shared:** As a principle, both parents exercise parental authority together, even if they no longer live together.
- **It is about responsibilities, not ownership:** The focus is on the child's best interest, not on the rights of the parents.
- **Practical arrangements:** When parents separate, the court does not decide "custody" in the sense of giving a child to one parent, but rather determines the child's **residence** (with one parent or alternately with both) and organizes **visitation rights** for the other parent if necessary.
- **Child's voice:** The child, depending on age and maturity, can be heard by the judge to express their views on living arrangements.
- **Limitation or withdrawal:** In exceptional cases (violence, neglect, danger for the child), parental authority can be limited or withdrawn from one parent.

Hong Kong

During the marriage, custody is exercised jointly by both parents. On divorce, orders can be made either for joint custody or sole custody for your children. Custody means having parental responsibilities and gives a parent a say in the important decisions in their children's lives, for example, change of name, education, extracurricular activities, religious upbringing, permanent relocation and medical needs.

We have authority confirming that the difference between joint and sole custody is academic, since having sole custody does not mean a parent has a unilateral say over the children. The custodial parent will still have to consult the non-custodial parent. While the right to be consulted does not include a power of veto, it is nevertheless a substantial right. It is not merely a right to be informed, it is a right to be able to confer on the matter in issue, to give advice and to have that advice considered. The non-custodial parent can also challenge any decisions of the custodial parent by making an application to the Court. *PD v KWW* [2010] 4 HKLRD 191 –

https://legalref.judiciary.hk/lrs/common/ju/loadPdf.jsp?url=https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2009/CACV000188_2009.doc&mobile=N

The other issue to consider is care and control. Whoever has care and control of the children will have the children living with that parent. Usually, the parent who has been the primary carer would continue with the care and control of the child. Conversely, the parent without care and control will have access to a child. Access arrangements can take place either by consent, or as ordered by the Court. It can be left flexible, or clearly defined. Access can include a combination of overnight visits, and daytime visits.

More modern approach is to agree the actual sharing of the children's care and use neutral terms like parenting plan or say *"the child will spend time between the Father and the Mother as follows :-* "

Japan

In Japan, we do not use the word "custody," but "Parental authority" is used.

"Parental authority" covers the following issues:

- physical custody
- determination of residence
- permission to work
- claim for child handover
- management of the child's property
- agent for the child's acts relating to the family relationship and property management

"Parental authority is close to legal custody, but not the same.

A parent without parental authority :

- Owing a financial duty to support the child
- Access is not established as a right of parents, but the parent without parental authority may ask for access.
- "Access" is not considered to have anything to do with "Physical custody".
-

“Parental Authority” up to Spring 2026

It can be shared by married parents only during marriage.

It is given only to one parent if parents are not married or divorced.

“Parental Authority” after Spring 2026

The amended Civil Code will take effect from Spring 2026.

Joint parental authority after divorce (or without marriage) becomes an option. However, even for the parents with joint parental authority, if one parent is designated as "Kangosha (physical custodian)", he/she can solely exercise parental authority without consulting the other parent.

How will this amended law be implemented?

Publication by the Japanese government:

(English)

■2024 Family Law Reform in Japan

<https://www.moj.go.jp/content/001421487.pdf>

(Français)

■2024 Réforme du droit de la famille au Japon

<https://www.moj.go.jp/content/001427830.pdf>

Spain

In Spanish family law, the term ‘custody’ refers to the daily responsibility for the care, attention and cohabitation of minor children when their parents separate, divorce or cease to live together.

After divorce or separation, custody may be shared or exclusive between the parents.

However, all important decisions concerning children under the age of 18 or with special needs fall within what we call parental authority, which, whether jointly or separately, belongs to both parents and can only be withdrawn by court order. This includes issues such as health, residence, education and religion.

It is possible that parents, after their separation or divorce, may agree to delegate certain powers inherent in parental authority to the other parent, or that the judge may order this, for example, decisions on education issues.

USA

In the United States, “custody” refers to the legal rights and responsibilities that a parent (or sometimes another adult) has over a child. It’s a broad term that covers both decision-making authority and physical care. However, because “custody” can mean different things in different states and contexts, U.S. family law often breaks it down into two main categories and uses additional terminology to describe nuances

Two Main Types of Custody

1. Legal Custody

- Definition: The right and responsibility to make major decisions about the child’s life — such as education, health care, religion, and general welfare.
- Forms:
 - Sole Legal Custody: One parent has the exclusive right to make these decisions.
 - Joint Legal Custody: Both parents share decision-making authority, even if the child lives primarily with one parent.

2. Physical Custody

- Definition: Refers to where the child actually lives and who provides daily care.
- Forms:
 - Sole Physical Custody: The child lives primarily with one parent; the other usually has visitation rights.
 - Joint Physical Custody: The child spends substantial time with each parent, even if not exactly 50/50.

In everyday terms:

- “Custody” defines who decides for the child and where the child lives.
- The trend is toward shared parental responsibility, emphasizing cooperation rather than control.
- Modern courts focus on the best interests of the child, not parental “ownership.”

Other Common Terminology:

Courts and legislatures have been shifting away from the word “custody” in favor of more neutral, child-centered language. Depending on the state, you might see terms such as “parenting time,” “parenting plan,” or “allocation of parental responsibilities” instead of “custody.”

For example, in New York the terms “legal custody,” “physical custody,” and “visitation” are commonly used. However, in Florida “parental responsibility” and “time-sharing” are used instead.

In Hague Abduction context:

As defined by Articles 3 and 5 of the Hague Convention, “rights of custody” include “rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence.” This generally means legal custody but can also include a *ne exeat* right which means a parent must give their consent before a child is relocated even if they do not possess other legal custody rights.

2. Can a child’s voice be heard? If so, how are they heard in the decision-making process where there is a dispute over the children’s arrangements?

France

- The Hearing of the Child before the Family Court Judge (JAF)

A child may only be heard by the Family Court Judge (JAF) if considered to have reached the age of discernment. In practice, this generally corresponds to around 8 or 9 years old. However, this assessment is left to the judge’s discretion, and may therefore vary from one jurisdiction to another, or even from one judge to another.

Even if the child has reached the reference age, the judge may still consider that the child does not yet have sufficient maturity. The evaluation is therefore always carried out on a case-by-case basis, with an aim to harmonize practices across courts and courts of appeal.

- Family mediation and dispute resolution

Family mediation offers an alternative to taking a case before a judge. When a separation occurs, it often brings about significant changes for the child: a new family structure, and sometimes the arrival of new figures such as stepparents, a parent’s new partner, or step-siblings. In this context, it is essential that the child is clearly informed about these changes, their concrete impact on daily life and living arrangements. The child must also be able to rely on the emotional stability of their parents and maintain a well-defined place and role as a child.

With the increasing use of child hearings in legal proceedings, recognizing the child’s right to be heard in any decision that concerns them, new practices are emerging in family mediation. The aim is to help parents better perceive and understand their children’s needs—whether expressed or felt—so that these needs can be taken into account when making decisions about the separation.

Family mediation is defined as a process of building or rebuilding family ties, based on the autonomy and responsibility of the individuals affected by a separation. It involves the support of a family mediator — an impartial, independent, and qualified third party with no decision-making power — who, through confidential meetings, facilitates communication between the parties and helps them manage conflicts within a family context that is constantly evolving.

Hong Kong

Hong Kong is a signatory to the UNCRC and observes Article 12(2) – a child has views which should be given due weight in accordance with age and maturity and be provided with an opportunity to be heard in judicial and administration proceedings affecting the child either directly or through a representative. Therefore,

Through the Court process:-

1. Whenever there is a dispute, our Court will routinely order a report to be conducted by our Social Welfare Department. The Social Welfare Officer is seen as the “eyes and ears of the Court” and would interview the parents, the children, all relevant carers and sometimes other third parties such as the teachers, nannies/helpers, and therapists.
2. Our Court can also order a psychological report/custody evaluation whereby a mental health professional will assess family members and relevant carers and provide feedback and comments or observations from the children.
3. Our judges can also meet with the children directly to gather their views and thoughts. These meetings are usually orally recorded and shared with the parties afterwards. The parents and their legal representatives are usually not in attendance during the meeting. Such a meeting can be initiated by our Court, on application by the parties or the children involved.

PDSL5 - [Guidelines for Judges Meeting Children in Family Proceedings](#)

4. A child can also be separately represented either by the solicitor to represent his or her views, or by an Official Solicitor appointed by the Court who would usually be there to represent his/her best interest.

PDSL 6 - [PDSL6 Guidance on Separate Representation for Children in Matrimonial and Family Proceedings](#)

Outside the Court process, the parties can consider: –

1. Child inclusive mediation where the mediator can act as both the child consultant and mediator and meet with the children. Otherwise, there would be a separate child

consultant who will meet with the children and then work with a mediator to bring their voices back into the mediation process.

2. Collaborative Practice - we can have a child expert who is usually a mental health professional, meet with the children and again bring their views and voices back to the negotiations with the parents.
3. Parenting Coordination - the parenting coordinator may choose to meet with the children, gather their views and thoughts and bring it back to the parents within the discussions.

In all of the above processes, the children are not directly involved within the negotiations/discussion with the parents.

Japan

Investigation by the family court investigator:

- A judge appoints a family court investigator (often a social worker or psychologist)
 - o considers the child's views as part of determining what serves the best interests of the child.
 - o no fixed age, but the investigators generally hear directly from children around 10 years or older, depending on maturity.
 - o A family court investigator interviews a child, visiting his/her home and school, and preparing a report summarizing the child's situation and views as well as the investigator's opinion.
- Children's views
 - o While the child's opinion is respected, it is not decisive.
 - o Judges often accept the investigator's opinion whether the child's views are genuinely independent or influenced by a parent, weighing them against other factors such as emotional stability, continuity of care, and the parenting environment.

Representation by an independent lawyer:

- An independent representation for the child is legally possible
- Not commonly used

Spain

In Spain, there are various mechanisms in order to ensure that the voices and opinions of minors are heard and taken into account in legal proceedings. Among the most relevant are the following:

A. Judicial examination of the minor

In contentious proceedings, the judge may order the examination of the minor provided that they are 12 years of age or older, or are younger than that age but demonstrate a sufficient degree of maturity. The examination is carried out in the court itself, in a private setting and without the presence of the parents, in order to guarantee the child's freedom and sincerity. Lawyers are also not present. During the interview, the judge gathers information about the child's preferences regarding living arrangements, their relationship with each parent, their current environment, and any other relevant aspects in order to determine the measure that best protects their best interests.

B. Reports from the psychosocial team attached to the Court, if requested by the judge. To produce these reports, the children are interviewed by the psychologists and social workers on these teams, who listen to them and gather their opinions, wishes, and perceptions about the measures that affect them, thus ensuring that their voice is reflected in the proceedings and taken into account by the court when deciding on their circumstances and well-being.

C. Psychological reports provided by the parties

In addition to the judicial mechanisms, each parent may provide independent expert reports prepared by psychologists or specialised experts. These reports offer an independent assessment of the minor's emotional state and their relationship with their parents and may include recommendations on the most appropriate custody, visitation or cohabitation arrangements.

Furthermore, in all proceedings there is a Public Prosecutor who represents the minor and safeguards their best interests.

USA

Yes — a child's voice can and often should be heard in custody or child-arrangements disputes, though how this happens depends on the child's age, maturity, and the legal setting (state family court or international abduction case in federal court).

Legal Principle: Best Interests of the Child

All U.S. courts decide custody and visitation based on the "best interests of the child." Part of that assessment can include the child's preferences, particularly if the child is mature enough to express a reasoned view.

- The child's wishes are one factor among many—courts also consider safety, stability, parental cooperation, history of abuse, etc.

- There's no automatic right for the child to choose, but their perspective carries more weight as they grow older (often around age 12 or older, depending on the jurisdiction).

How the Child's Voice Is Heard

There are several mechanisms courts use:

a. In-Camera (Private) Interview with the Judge

- Sometimes called a "Lincoln hearing" (from *Lincoln v. Lincoln*, N.Y. 1969).
- The judge speaks privately with the child in chambers, often with a court reporter but without the parents present. Sometimes the child's attorney might be present.
- The goal is to reduce pressure on the child while still informing the court.
- Used in many states for older children who can articulate their wishes.

b. Guardian ad Litem (GAL) or Attorney for the Child (AFC)

- The court can appoint a guardian ad litem (GAL) or attorney for the child to represent the child's interests.
- The GAL investigates, interviews the child and others, and reports to the court.
- In some states, especially where there are allegations of abuse or high conflict, a child's attorney (different from a GAL) advocates for what the child *wants*, not just what is "best." In New York, they use an AFC whose job is to advocate for their client like a parent's attorney and cannot substitute their own judgment unless the child is too young to articulate their views.

c. Child Custody Evaluator or Family Court Services Interview

- Forensic psychologists or social workers may interview the child as part of a custody evaluation or Family Court Services assessment.
- Their professional report to the judge summarizes the child's expressed views and their developmental and emotional context.

d. Testimony (Rare)

- Direct testimony by a child in open court is uncommon and discouraged because it can be traumatic.

In Hague Abduction context:

Generally, in-camera interviews or forensic experts are used to provide the court with information about the child's views. Less often, a GAL can be appointed to assist the court with ascertaining the child's views.

Recent Developments:

The Uniform Law Commission in the U.S. has developed a model statute titled the Uniform Judicial Interview of Children Act (sometimes called the "Judicial Interview of Children Act") for enactment by states finalized on September 22, 2025. The act seeks to create a uniform procedural framework for when and how a judge or judicial officer may interview a child in a family law (custody/visitation) context.

A “judicial interview” is defined as a conversation, not in open court, between a child and a judicial officer for the purpose of eliciting the child’s views, *not* the same as sworn testimony. The act applies to family-law proceedings (custody, parenting time, etc.) where other laws authorize a judicial officer to interview the child. It specifically *excludes* proceedings under child welfare / abuse/neglect statutes.

The judicial officer has discretion whether to conduct an interview, but must consider factors such as:

- the child’s willingness or expressed desire to communicate;
 - the child’s age, maturity, and capacity to formulate and communicate views;
 - potential benefit vs. potential harm (embarrassment, retaliation, breach of relationship) to the child;
 - whether other processes (e.g., evaluation, testimony) might better serve the purpose.
- If the child has *expressed a desire* to be interviewed (or to *not* be interviewed), the Act provides a presumption (in favor or against) unless overridden by the factors.

Procedure and Record Keeping

- The Act prescribes that a judicial officer must give reasonable notice of the interview, permit certain participants (child’s attorney or GAL, interpreter) but not necessarily the parents’ attorneys.
- The record of the interview must be made (or at least a summary) and decisions made about access (whether parties can access the transcript or summary) and record sealing/privacy.
- The judicial officer must explain to the child (in age-appropriate language) that:
 1. the child is *not required* to answer questions;
 2. their views will be considered but the judicial officer is the decision-maker.

Weight Given to Child’s Views

- The Act includes a section indicating the judicial officer must determine what weight to give the child’s communicated views, considering factors like maturity, possible undue influence, and the context of the interview.
- Importantly: the child’s interview is *not* intended to replace the evidentiary hearing or fact-finding process. It should not be used in lieu of adjudicating contested factual issues.

Why This Matters

- Many states allow or practice judicial interviews of children (in-camera, or otherwise) in custody/visitation cases, but there has been little uniform statutory guidance. The lack of consistent procedures creates variability in how children’s views are elicited and how due-process concerns are addressed.

- In international child-abduction (Hague Convention on the Civil Aspects of International Child Abduction) cases, the child's views (if of sufficient age and maturity) can influence the return decision. The ULC act explicitly contemplates application in Hague context.
- The act strikes a balance between giving children a voice and maintaining robust procedural protections (parents' due process rights, proper record-keeping, avoiding child testimony issues, avoiding interview used as fact-finding).

3. Does domestic violence impact consideration of children matters? If so, how?

France

The Juvenile Judge does not intervene in separations but only when a child is at risk.

Their mission is to protect minors, and in certain cases, young adults up to 21 years old.

- **Children at risk:** intervenes when a minor's health, safety, or morality is endangered, or when their education or development (physical, emotional, intellectual, social) is seriously compromised (Article 375 of the Civil Code).
- **Referral:** may be petitioned by the child, by one or both parents, by the public prosecutor, or through a child protection report transmitted by social services.
- **Educational assistance:** orders measures to protect the child, prioritizing remaining within the family environment.
- **Placement:** if this is not possible, may place the child with:
 - one of the parents,
 - a family member,
 - a trusted third party,
 - child welfare services,
 - a minor care service.
- **Limits of jurisdiction:** decisions do not concern parental authority.

In summary: the Juvenile judge does not resolve family disputes but ensures judicial protection of children at risk, with jurisdiction extending beyond majority (up to 21 years old).

Currently, a bill is under consideration in the National Assembly to create a special protection order for children who are victims of domestic violence. This bill seeks to establish, modeled on the protection order available in cases of spousal abuse, a safety order dedicated to children who are victims of violence. This order would allow the Family Court Judge, petitioned by one parent or by the public prosecutor, to intervene in cases of

suspected incestuous rape, incestuous sexual assault, or acts of violence against a child, particularly where recurrence is feared.

This bill is part of an evolving body of case law on the matter:

- **Case law development:**

Court of Cassation, First Civil Chamber, May 23, 2024, No. 22-22.600

In May 2024, the French Court of Cassation issued an important decision regarding the protection of children in the context of domestic violence.

The facts were straightforward: a mother, victim of domestic violence, requested a protection order not only for herself but also for her child. The Family Court Judge agreed, prohibiting the father from any contact with his son. Challenging this decision, the father argued that only the mother was at risk and that no evidence established a direct risk to the child.

Before the Court of Cassation, the father contended that the Family Court Judge could only issue a protection order for the benefit of the child if a risk to the child's safety was specifically established, which could not be inferred solely from the fact that the mother was herself exposed to probable violence threatening her integrity.

The Court of Cassation upheld the lower court's ruling. It held that when violence is likely committed against a parent, the judge may extend protection to the children, even without specific proof of danger to them. According to the High Court, domestic violence inherently creates a climate of risk for children, either because they may themselves become victims, or because the relationship between the abusive parent and the children constitutes a source of pressure or indirect threat against the other parent.

- ✓ This decision therefore strengthens child protection by affirming that the safety of the victimized parent and that of the child are inseparable, and that the judge must be able to broadly restrict the rights of the abusive parent, in the best interests of the family.

Hong Kong

If there is an issue of domestic violence, be it emotional, psychological or physical, and where it is shown that it has impacted the children's welfare and demonstrated that it is not in the best interest to continue with the current arrangements, the Court can intervene and vary or suspend existing custody or access order, as considered necessary.

We also have a specific Practice Directions SL 10.1 dealing with child arrangements where there is an issue raised in relation to the domestic violence (which however does not apply to adoption or Hague Convention cases):

[legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PDSL10.1.htm&lang=EN](https://www.legalref.judiciary.hk/lrs/common/pd/pdcontent.jsp?pdn=PDSL10.1.htm&lang=EN)

The purpose of this is to consider whether we need to have an expedited fact-finding hearing and provide interim orders that are in the best interests of the child involved.

However, domestic violence does not equate to automatic changes in the custody and care arrangements. It would depend on the facts of each case, actual impact on the child, severity of the matter and in most cases, the Court will look to rehabilitate the relationship cautiously and where necessary, can order suspended access, supervise access, gradual introduction of access, attendance in programmes approved by Social Welfare Department to change attitude/behaviour leading to granting of the Injunction or family therapy, by way of examples.

Japan

After the amended law becomes effective in the Spring of 2026, domestic violence will become one of the decisive factors to decide regarding a parental authority holder.

The law says that “the court must grant parental responsibility to one parent if the child’s interests would be harmed by granting both parents parental responsibility.”

This includes cases where granting both parents parental responsibility could possibly lead to abuse of the child or to domestic violence, either physical or psychological.”

However, the term domestic violence has not been specifically defined, and it remains unclear how this provision will be applied in practice.

Spain

Domestic violence has a decisive impact on family law proceedings in Spain when the interests of minors are at stake. The guiding principle is always the best interests of the child, which means ensuring that they grow up in a safe and violence-free environment.

In this regard, judges may suspend or limit the visiting and custody rights of the parent involved in acts of violence, assessing in each case the seriousness of the acts, their duration, the available evidence and the consequences for the child. This is not an automatic measure, but an individualised and reasoned decision.

In addition, the child has the right to be heard if they are sufficiently mature, and court decisions must provide a detailed explanation of why certain protective measures are being taken.

In summary, domestic violence acts as a conditioning factor and can significantly restrict custody or visitation rights, always under the premise of safeguarding the well-being and safety of the child.

USA

Yes — domestic violence has a significant impact on child custody determinations in the United States. Courts are required to prioritize the child’s best interests, and evidence of domestic violence is considered a major factor in assessing what arrangement serves those interests.

Some states have also been enacting laws defining “coercive control” that provide guidance to courts to evaluate more than just physical violence as part of a custody dispute.

Here’s how it typically affects custody decisions:

1. Legal Presumptions

In many states (for example, California), if a parent has committed domestic violence against the other parent or the child, the law creates a rebuttable presumption that awarding custody—especially legal or physical custody—to that parent is not in the child’s best interest.

- This means the abusive parent must prove that granting them custody would still serve the child’s welfare.
- Evidence such as rehabilitation, counseling completion, or a period without further violence may be required to rebut this presumption.

2. Safety and Well-Being Considerations

Judges must ensure the safety of the child and the non-abusive parent. Courts often:

- Limit or supervise visitation for the abusive parent.
- Impose protective orders that restrict contact.
- Order exchange locations (like police stations or supervised centers) to minimize conflict.
- Consider trauma exposure — even if the child was not directly abused but witnessed violence.

3. Pattern and Severity of Abuse

Courts examine:

- Type and frequency of abuse (physical, emotional, psychological, financial).
- Impact on parenting ability (e.g., coercive control, fear, intimidation).
- Child’s relationship with both parents — including whether the abusive behavior undermines the other parent’s authority or the child’s sense of security.

4. Evidence and Procedure

Evidence may include:

- Police or medical reports
- Testimony from the victim, children, or witnesses
- Prior protective orders or criminal convictions
- Expert evaluations (e.g., psychological assessments)

Judges may also appoint forensic evaluators or children's attorney to assess the family's circumstances and make recommendations.

In New York, domestic violence training is now a mandatory requirement for a forensic evaluator to be appointed by the court. In addition, as a result of the death of a young child after unsupervised visitation, there is pending legislation to provide more guidance on custody determinations when domestic violence is alleged or present.

In Hague Abduction context:

Domestic violence is relevant to the Article 13(b) "grave risk" exception — allowing a court to refuse return of a child if doing so would expose them to physical or psychological harm.

4. *Does same sex parenting affect consideration of children's custody and care arrangements? If so, how?*

France

Since 2013, French law has undergone significant changes to better reflect the reality of same-sex families. With the legalization of same-sex marriage, adoption became possible for same-sex couples under Article 346 of the Civil Code, which states that "no one may be adopted by more than one person, except by two spouses." As a result, several thousand same-sex partners have been able to adopt their spouse's child. Today, three main mechanisms coexist to establish parentage: adoption, joint recognition, and exequatur.

Alongside the concept of the biological parent or the legal parent in cases of adoption, the notion of the **social parent** has emerged. This refers to a person who is not connected to the child through a legal or biological parent-child relationship. It is someone who behaves as a parent but does not hold legal parental status.

A social parent may not have been involved in the initial parental project but acts as a parent or stepparent in daily life. Homoparental family structures bring specific challenges and issues when viewed in relation to traditional family models and French law.

Hong Kong

On a practical basis, no. The fact that Madeleine is in a relationship with Grace should not impact her own application for the children's custody or care arrangements on divorce, and Grace would simply be seen as a partner who will become one of the carers available to assist Madeleine.

Grace will likely be seen as a social/psychological parent. Depending on the strength of the relationship between Madeleine and Grace, options of elevating Grace's position with any legal status would be limited. Because they are a same sex couple, even if Madeleine and Grace were to subsequently marry or enter into a civil partnership overseas, they would not be able to engage in step-parent adoption because there would be no valid marriage recognised in Hong Kong and consequently, they do not fall within our legislation that provides for an applicant to be a person who is married to a parent of the child.

What the parties can do is for Grace to apply for Children to legal be made Wards of Court and seek care and control of or access to the children, or to be appointed as a guardian of the children.

Neither option will elevate Grace's legal status to one of a legal parent to legally co-parent with Madeleine even if Madeleine and Grace were to form an enduring long term civil partnership or marriage that is valid overseas.

Japan

Same-sex parents are raising children in Japan; however, since same-sex marriage is not legally recognized, both parents in a same-sex couple cannot share custody of their children under the current law.

Spain

Not at all. In Spain, since the approval of **Law 13/2005 on 30 June**, same-sex marriage has been completely legal, and with it, the right to adoption on equal terms with heterosexual couples has also been recognised.

Therefore, the fact that Madeleine has a new same-sex partner does not imply any special treatment nor does it affect the assessment of the care of the children, just as it would not if she had a partner of the opposite sex.

USA

Only if the same-sex relationship impacts on parentage. Generally that would not be the case but in the context of a Hague Abduction case, it may impact on recognition of a person's "rights of custody" if parentage is not recognized by a foreign country.

IAFL Hong Kong Symposium on 2 December 2025

Panel Discussion - What is HOT in Parenting Matters in Cross-Border Disputes?



Speakers: Elodie Mulon (France); Winnie Chow (Hong Kong); Masami Kittaka (Japan); Inmaculada Ruz (Spain) Richard Min (USA)



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Does same sex parenting affect consideration of children's custody and care arrangements? If so, how?



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Custody – What that really means in your jurisdiction and other terminology used?

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FRANCE

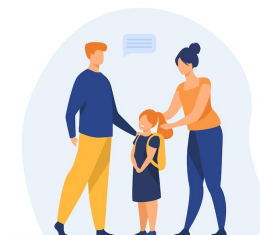
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FRANCE



TERMINOLOGY

- The term *custody* is generally translated as “*garde*” in French. In France, this term is commonly used in everyday language to refer to the child’s residence.
- The legal equivalent of *custody* in the French system is “*autorité parentale*” (parental authority).



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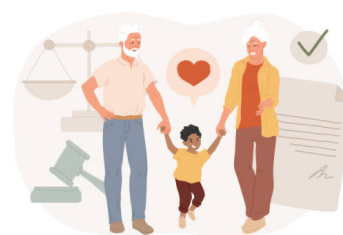
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FRANCE



SCOPE OF PARENTAL AUTHORITY

- **Definition of Parental Authority** (Art. 371-1 of the French Civil Code) : Parental authority is a set of rights and duties with the child’s best interests as its purpose. It aims to protect the child in matters of safety, health, privacy, and morality, to ensure the child’s education, and to support their development, while respecting the child as a person.
- **Rights and Duties of Holders of Parental Authority:**
 - Right to consent to the child’s marriage, adoption, or emancipation
 - Right and duty concerning residence, including authorization for the child to leave the household
 - Right and duty of supervision
 - Right and duty of education (academic, religious, moral, and intellectual)
 - Right and duty to safeguard the child’s health
 - Duty to protect the child’s privacy and image rights



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THE EXERCISE OF PARENTAL AUTHORITY

- In principle, both parents exercise parental authority jointly (Art. 372 of the Civil Code)
- Parental authority is exercised unilaterally :
 - When parentage is established for one parent more than one year after the birth of a child whose parentage has already been established for the other parent, the latter remains the sole holder of parental authority (except in cases of a joint declaration by both parents) (Art. 372 of the Civil Code).
 - When one of the two parents dies (Art. 373-1 of the Civil Code).



"My parents have joint custody which means I have equal time listening to them complain about each other."

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JUDICIAL WITHDRAWAL OF PARENTAL AUTHORITY BY CRIMINAL COURTS

- **Criminal courts may withdraw parental authority or its exercise in the event of a criminal conviction for** (art. 378 du code civil) :
 - a crime or incestuous sexual assault against the child
 - a crime committed against the other parent
 - a crime or sexual assault committed against the child
 - a crime committed against the other parent
 - an offense committed against the child or the parent
 - or, when the parent is a co-perpetrator or accomplice of a crime or offense committed by their child



"Okay, okay, I get it now. This is your way of saying I did something illegal."

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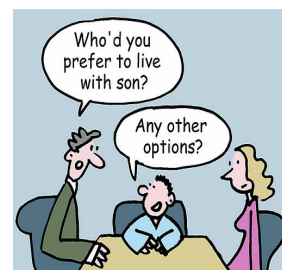
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JUDICIAL WITHDRAWAL OF PARENTAL AUTHORITY BY CIVIL COURTS

- **Withdrawal of the exercise of parental authority:**

- Parental separation: Parental authority continues to be exercised jointly (Art. 373-2 of the Civil Code). By way of exception, the judge may decide, if it is in the child's best interest, to grant the exercise of parental authority to only one parent (Art. 373-2-1 of the Civil Code).
- In the event of a cause of loss or objective fact: Withdrawal is automatic when it results from the parent's inability to express their will due to incapacity (Art. 373 of the Civil Code).



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JUDICIAL WITHDRAWAL OF PARENTAL AUTHORITY BY CIVIL COURTS

- **Total withdrawal of the parental authority** (Art. 378-1 of the Civil Code) :

- In the event of endangerment of the child's safety, health, or morality: Endangerment may occur through abuse, habitual and excessive consumption of alcohol or drugs, notorious misconduct, criminal behavior, lack of care, or inadequate guidance.
- In the event of parental neglect in the presence of an educational assistance measure: When parents voluntarily fail to fulfill their duties for more than two years.



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IMPACT OF JUDICIAL WITHDRAWAL ON PARENTAL AUTHORITY

- **A parent deprived of the exercise of parental authority retains** (Art. 373-2-1 of the Civil Code):
 - The right to consent to the child's marriage, emancipation, and adoption
 - The obligation to provide maintenance and the right of supervision
 - Visitation and accommodation rights : By way of exception, these rights may be suspended in cases of serious reasons.



"Why is it called 'visitation', you're my daddy, not a visitor."

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IMPACT OF JUDICIAL WITHDRAWAL ON PARENTAL AUTHORITY

- **Total withdrawal of the parental authority** (Art. 379 of the Civil Code):
 - Total withdrawal of parental authority automatically applies to all attributes, both financial and personal, attached to parental authority.
 - It releases the child from their obligation to provide financial support to the parent
 - It results in the automatic loss of the parent's right of visitation and accommodation (Cass. Civ. 1re, 21 October 2025, No. 24-10.369).



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JAPAN

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JAPAN



TERMINOLOGY

- In Japan, we do not use the word "custody," but "*Parental authority*" is used. "*Parental authority*" is close to legal custody, but not the same.



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SCOPE OF PARENTAL AUTHORITY

- **Parental authority" covers the following issues:**
 - physical custody
 - determination of residence
 - permission to work
 - claim for child handover
 - management of the child's property
 - agent for the child's acts relating to the family relationship and property management
- **A parent without parental authority :**
 - Owing a financial duty to support the child
 - Access is not established as a right of parents, but the parent without parental authority may ask for access
 - "Access" is not considered to have anything to do with "Physical custody"



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ONGOING DEVELOPMENT

- **"Parental Authority" up to Spring 2026**
 - It can be shared by married parents only during marriage.
 - It is given only to one parent if parents are not married or divorced.
- **"Parental Authority" after Spring 2026**
 - The amended Civil Code will take effect from Spring 2026.
 - *Joint parental authority after divorce (or without marriage) becomes an option. However, even for the parents with joint parental authority, if one parent is designated as "Kangosha (physical custodian)", he/she can solely exercise parental authority without consulting the other parent.*



Implementation of the amended law: publication by the Japanese government in english (<https://www.moj.go.jp/content/001421487.pdf>) and in french (<https://www.moj.go.jp/content/001427830.pdf>)

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SPAIN



TERMINOLOGY

- In Spain, “*CUSTODY*” and “*PARENTAL AUTHORITY*” are different terms.
 - “*CUSTODY*” refers to the daily responsibility for the care, attention and cohabitation. After the break-up may be joint or exclusive.
 - “*PARENTAL AUTHORITY*” includes all important decisions concerning children under the age of 18 or with special needs. This includes issues such as health, residence, education and religion. The general rule is joint parental authority.



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USA

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USA



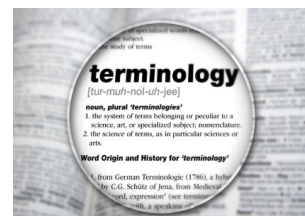
TERMINOLOGY

- **In everyday terms:**

- “Custody” defines who decides for the child and where the child lives.
- The trend is toward shared parental responsibility, emphasizing cooperation rather than control.
- Modern courts focus on the best interests of the child, not parental “ownership.”

- **Other Common Terminology:**

- Courts and legislatures have been shifting away from the word “custody” in favor of more neutral, child-centered language. Depending on the state, you might see terms such as “parenting time,” “parenting plan,” or “allocation of parental responsibilities” instead of “custody.”
- For example, in New York the terms “legal custody,” “physical custody,” and “visitation” are commonly used. However, in Florida “parental responsibility” and “time-sharing” are used instead.



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TERMINOLOGY

- **In Hague Abduction context:**

- As defined by Articles 3 and 5 of the Hague Convention, “rights of custody” include “rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence.” This generally means legal custody but can also include a *ne exeat* right which means a parent must give their consent before a child is relocated even if they do not possess other legal custody rights.



USA



SCOPE OF PARENTAL AUTHORITY

- In the United States, “custody” refers to the legal rights and responsibilities that a parent (or sometimes another adult) has over a child. It’s a broad term that covers both decision-making authority and physical care.
- However, because “custody” can mean different things in different states and contexts, U.S. family law often breaks it down into two main categories and uses additional terminology to describe nuances





USA



TYPES OF CUSTODY

- Legal Custody**
 - Definition:** The right and responsibility to make major decisions about the child's life — such as education, health care, religion, and general welfare.
 - Forms:**
 - Sole Legal Custody:** One parent has the exclusive right to make these decisions.
 - Joint Legal Custody:** Both parents share decision-making authority, even if the child lives primarily with one parent.





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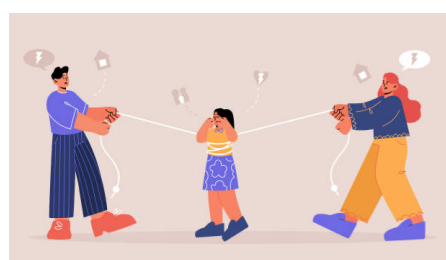


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TYPES OF CUSTODY

- Physical Custody**
 - Definition:** Refers to where the child actually lives and who provides daily care.
 - Forms:**
 - Sole Physical Custody:** The child lives primarily with one parent; the other usually has visitation rights.
 - Joint Physical Custody:** The child spends substantial time with each parent, even if not exactly 50/50.





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TERMINOLOGY

- Custody – having parental responsibilities
- Gives a parent a say in the important decisions in their children's lives, for example, change of name, education, extracurricular activities, religious upbringing, permanent relocation and medical needs.
- Can be joint or sole



"You want to speak to the head of the household?
There is no head of the household. My parents
are into shared decision making."

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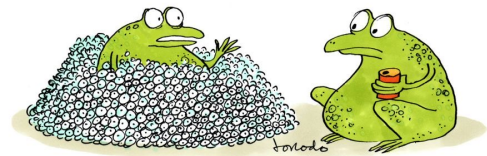
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SCOPE OF PARENTAL AUTHORITY

- The difference between « joint » and « sole » custody is academic
- ≠ Unilateral say over the children
- Non-custodial parent:
 - Has right to be consulted
 - Can give advice and to have that advice considered
 - Can challenge any decision of the custodial parent



"I got custody of the kids."

HONG-KONG



THE EXERCICE OF PARENTAL AUTHORITY

- Often, most parents are concerned about the daily care arrangements
 - Care and control
 - Access
- More modern approach:
 - To agree the practical arrangements of Daisy and Sam's daily care
 - Use neutral terms like parenting plan or say "*Daisy and Sam will spend time between Felix and Madeleine as follows:-.....*"



"SINCE THEY DIVORCED I'M LIVING WITH MY MOM,
BUT EVERY OTHER WEEKEND MY DAD IS ENTITLED
TO TAKE ME FOR A WALK."

Can a child's voice be heard? If so, how are they heard in the decision-making process where there is a dispute over the children's arrangements?

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USA



HEARING OF CHILD

- **Legal Principle: Best Interests of the Child**

- All U.S. courts decide custody and visitation based on the “best interests of the child.” Part of that assessment can include the child’s preferences, particularly if the child is mature enough to express a reasoned view.
- The child’s wishes are one factor among many, courts also consider safety, stability, parental cooperation, history of abuse, etc.
- There’s no automatic right for the child to choose, but their perspective carries more weight as they grow older (often around age 12 or older, depending on the jurisdiction).



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HEARING OF CHILD

- In-Camera (Private) Interview with the Judge
 - Sometimes called a “Lincoln hearing” (from *Lincoln v. Lincoln*, N.Y. 1969).
 - The judge speaks privately with the child in chambers, often with a court reporter but without the parents present. Sometimes the child’s attorney might be present.
 - The goal is to reduce pressure on the child while still informing the court.
 - Used in many states for older children who can articulate their wishes
- Guardian ad Litem (GAL) or Attorney for the Child (AFC)
 - The court can appoint a guardian ad litem (GAL) or attorney for the child to represent the child’s interests.
 - The GAL investigates, interviews the child and others, and reports to the court.
 - In some states, especially where there are allegations of abuse or high conflict, a child’s attorney (different from a GAL) advocates for what the child *wants*, not just what is “best.” In New York, they use an AFC whose job is to advocate for their client like a parent’s attorney and cannot substitute their own judgment unless the child is too young to articulate their views.



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HEARING OF CHILD

- Child Custody Evaluator or Family Court Services Interview
 - Forensic psychologists or social workers may interview the child as part of a custody evaluation or Family Court Services assessment.
 - Their professional report to the judge summarizes the child's expressed views and their developmental and emotional context.
- Testimony (Rare)
 - Direct testimony by a child in open court is uncommon and discouraged because it can be traumatic.



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HEARING OF CHILD

- In Hague Abduction context:
 - Generally, in-camera interviews or forensic experts are used to provide the court with information about the child's views. Less often, a GAL can be appointed to assist the court with ascertaining the child's views.



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HEARING OF CHILD

- **Recent Developments:**

- The Uniform Law Commission in the U.S. has developed a model statute titled the Uniform Judicial Interview of Children Act (sometimes called the “Judicial Interview of Children Act”) for enactment by states finalized on September 22, 2025. The act seeks to create a uniform procedural framework for when and how a judge or judicial officer may interview a child in a family law (custody/visitation) context.
- A “judicial interview” is defined as a conversation, not in open court, between a child and a judicial officer for the purpose of eliciting the child’s views, *not* the same as sworn testimony. The act applies to family-law proceedings (custody, parenting time, etc.) where other laws authorize a judicial officer to interview the child. It specifically *excludes* proceedings under child welfare / abuse/neglect statutes.



USA



HEARING OF CHILD

- **The judicial officer has discretion whether to conduct an interview, but must consider factors such as:**
 - the child’s willingness or expressed desire to communicate;
 - the child’s age, maturity, and capacity to formulate and communicate views;
 - potential benefit vs. potential harm (embarrassment, retaliation, breach of relationship) to the child;
 - whether other processes (e.g., evaluation, testimony) might better serve the purpose.
- **If the child has *expressed a desire* to be interviewed (or to *not* be interviewed), the Act provides a presumption (in favor or against) unless overridden by the factors.**



USA



HEARING OF CHILD

- **Procedure and record keeping**

- The Act prescribes that a judicial officer must give reasonable notice of the interview, permit certain participants (child's attorney or GAL, interpreter) but not necessarily the parents' attorneys
- The record of the interview must be made (or at least a summary) and decisions made about access (whether parties can access the transcript or summary) and record sealing/privacy
- The judicial officer must explain to the child (in age-appropriate language) that:
 - The child is *not required* to answer questions;
 - Their views will be considered but the judicial officer is the decision-maker.



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HEARING OF CHILD

- **Weight given to child's views**

- The Act includes a section indicating the judicial officer must determine what weight to give the child's communicated views, considering factors like maturity, possible undue influence, and the context of the interview.
- Importantly: the child's interview is *not* intended to replace the evidentiary hearing or fact-finding process. It should not be used in lieu of adjudicating contested factual issues.



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HEARING OF CHILD

- **Why this matter?**

- Many states allow or practice judicial interviews of children (in-camera, or otherwise) in custody/visitation cases, but there has been little uniform statutory guidance. The lack of consistent procedures creates variability in how children's views are elicited and how due-process concerns are addressed.
- In international child-abduction (Hague Convention on the Civil Aspects of International Child Abduction) cases, the child's views (if of sufficient age and maturity) can influence the return decision. The ULC act explicitly contemplates application in Hague context.
- The act strikes a balance between giving children a voice and maintaining robust procedural protections (parents' due process rights, proper record-keeping, avoiding child testimony issues, avoiding interview used as fact-finding).



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LEGAL FRAME OF THE JUDICIAL HEARING OF THE CHILD

- **The Brussels II Ter Regulation** requires courts to allow any child capable of discernment to meaningfully participate in proceedings and express their views
- **Article 388-1 of the Civil Code** provides that a minor may be heard by the judge in all proceedings concerning them.
- The interpretation of this article is broad : the notion of “proceedings” includes all types of procedures, including amicable or out-of-court procedures, for example, divorce by mutual consent with the child-related form.
- **Article 338-1 of the Civil Procedure Code** provides that a minor capable of discernment shall be informed by the holder(s) of parental authority, the guardian, or, where applicable, by the person or service to whom they have been entrusted, of their right to be heard and to be assisted by a lawyer in all proceedings concerning them.



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JUDICIAL HEARING BEFORE THE JUVENILE COURT JUDGE

- **Preparatory phase:**
 - The juvenile court judge is obliged to hear any minor capable of discernment in the context of educational assistance proceedings, even if the minor does not request it
 - The child may be assisted by a lawyer if capable of discernment, but this is not mandatory
- **Decision phase:**
 - Although the hearing of the minor is formally provided for in Article 1189 of the Code of Civil Procedure, it remains at the judge's discretion



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PROCEDURE OF THE CHILD HEARING

- The child may be heard alone, in the presence of a person of their choice, or assisted by a lawyer. The child has the right to a lawyer chosen by themselves or their parents (Art. 338-1 and 338-6 of the Code of Civil Procedure). If no lawyer is chosen, one is appointed by the Bar President.
- After the hearing, a report is drafted. After being read to the child, the report is added to the case file and is accessible to the parties' lawyers.
- The hearing report must be communicated to the parties, and this communication must be either mentioned in the judgment or documented in the procedural record (*Cass. 1re civ.*, 12 July 2023, No. 21-19.362).



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NON-JUDICIAL HEARING

- **The hearing of the child takes place outside of any judicial proceedings in the following cases:**
 - Within the framework of family mediations.
 - In divorce proceedings by mutual consent through lawyers' agreement (divorce without a judge).
 - At the parents' voluntary request to have their child heard before any referral to the judge.



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NON-JUDICIAL HEARING

- **Role of child interviewers:**

- The child interviewer is appointed to conduct a hearing according to a structured process in which the child expresses themselves, enabling them to participate in any decision that concerns them, particularly in the context of establishing or restoring relationships, prevention, conflict resolution, or obtaining consent.
- The child interviewer informs the child, listens to their opinions, feelings, and needs regarding the situation, and reports them orally—if possible in the child's presence—to those who must make the decisions.



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HEARING OF CHILD

- **The most relevant mechanisms are the following:**
 - Judicial examination of the minor
 - Reports from the psychosocial team attached to the Court
 - Psychological reports provided by the parties



JAPAN

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HEARING OF CHILD

○ Investigation by the family court investigator

- Often, a social worker or psychologist
- Interviewing a child, visiting his/her home and school and preparing a report summarizing the child's situation and views as well as the investigator's opinion

○ Representation by an independent lawyer

- Legally possible, but not commonly used



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HEARING OF CHILD

○ Children's views

- While the child's opinion is respected, it is not decisive
- Judges often accept the investigator's opinion on whether the child's views are genuinely independent or influenced by a parent, weighting them against other factors such as emotional stability, continuity of care, and the parenting environment
- From children around 10 years or older, depending on maturity



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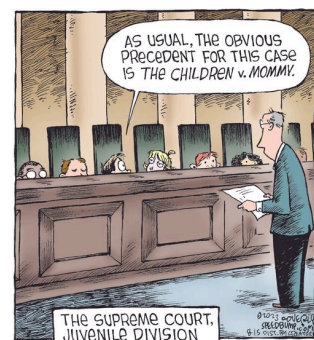
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HEARING OF CHILD

Hong Kong is a signatory to the UNCRC and observes **Article 12(2)**:

A child has views which should be given due weight in accordance with age and maturity and be provided with an opportunity to be heard in judicial and administration proceedings affecting the child either directly or through a representative.



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HEARING OF CHILD

Through the Court process:

- Social Welfare Report
- A psychological report/custody evaluation report
- Meeting with the judge
- Separate representation



Outside the Court process, the parties can consider:

- Child inclusive mediation
- Collaborative Practice
- Parenting Coordination

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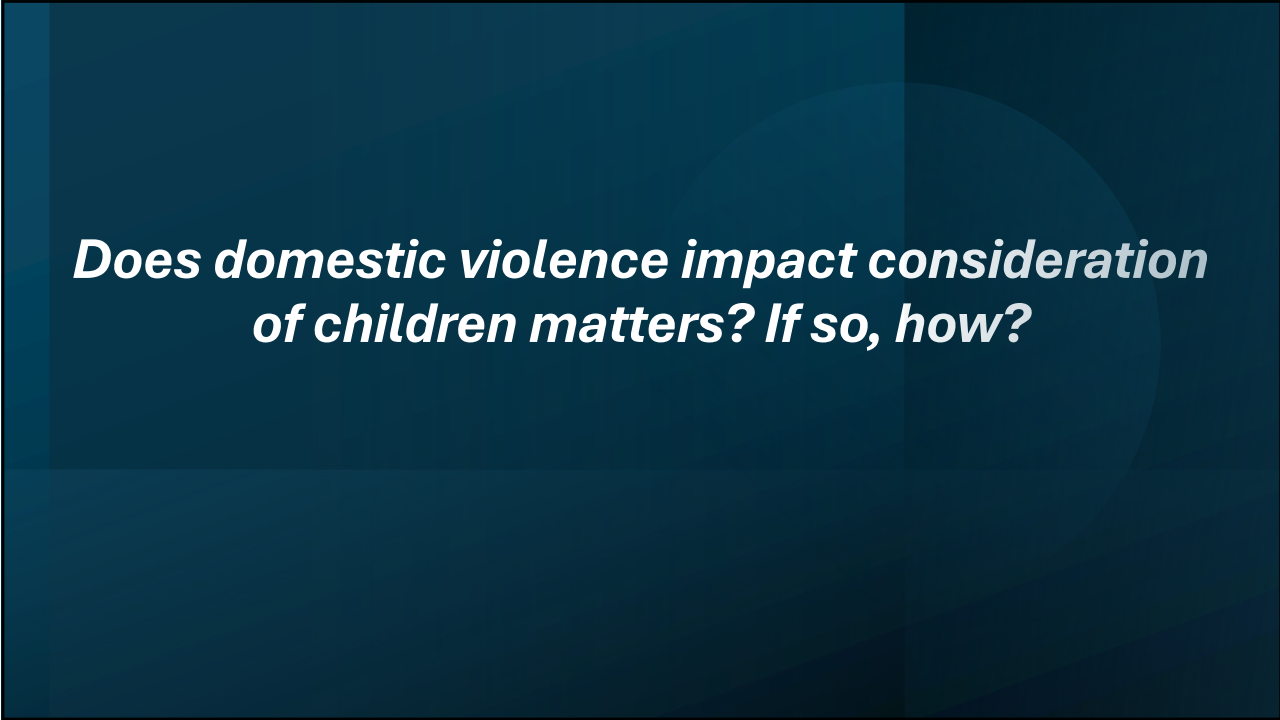
HEARING OF CHILD

- In all of the above processes, Daisy and Sam are not directly involved within the negotiations/discussion with Felix and Madeleine
- Consideration of the type and level of involvement of the child depends on age, maturity and the child's own wishes
- All guided by what's in the child's best interest



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***Does domestic violence impact consideration
of children matters? If so, how?***

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SPAIN



IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- **Domestic violence** acts as a conditioning factor and can significantly restrict custody or visitation rights, always under the premise of safeguarding the well-being and safety of the child.
- The judge will examine case by case.



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IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- After the amended law becomes effective in the Spring of 2026, domestic violence will become one of the decisive factors to decide regarding a parental authority holder.
- The law says that *“the court must grant parental responsibility to one parent if the child’s interests would be harmed by granting both parents parental responsibility.”*
 - This includes cases where granting both parents parental responsibility could possibly lead to abuse of the child or to domestic violence, either physical or psychological.”
 - However, the term domestic violence has not been specifically defined, and it remains unclear how this provision will be applied in practice.



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IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- **Yes** — domestic violence has a significant impact on child custody determinations in the United States. Courts are required to prioritize the child's best interests, and evidence of domestic violence is considered a major factor in assessing what arrangement serves those interests.
- Some states have also been enacting laws defining “coercive control” that provide guidance to courts to evaluate more than just physical violence as part of a custody dispute.



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IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- **Legal Presumptions :**
 - Many states (e.g., California) create a **rebuttable presumption** that custody to an abusive parent is not in the child's best interest.
 - Abusive parent must show custody would still serve child's welfare.
 - Evidence may include:
 - Completion of counseling/rehabilitation
 - Period without violence



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IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- **Safety and Well-Being Considerations :**

- Ensure child and non-abusive parent safety.
- Possible court actions:
 - Supervised or limited visitation
 - Protective orders restricting contact
 - Exchanges at safe locations (police, supervised centers)
- Consider trauma exposure, even if child was a witness only



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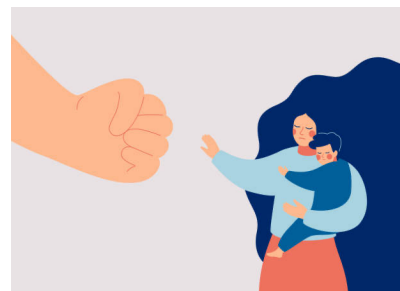
IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- **Pattern and Severity of Abuse**

- Examine type and frequency of abuse: physical, emotional, psychological, financial.
- Assess impact on parenting ability: coercion, intimidation, fear.
- Consider child's relationship with both parents and impact on security.

- **Evidence and Procedure**

- Key evidence:
 - Police or medical reports
 - Testimony from victims, children, witnesses
 - Prior protective orders or criminal convictions
 - Expert evaluations (psychological assessments)
 - Judges may appoint : forensic evaluators or children's attorneys for recommendations.



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IMPACT OF DOMESTIC VIOLENCE ON PARENTAL AUTHORITY

- **Automatic suspension of the exercise of parental authority** in the event of criminal proceedings (Article 378-2 of the Civil Code):
 - A crime committed against the other parent
 - A crime or an incestuous sexual assault committed against the child



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IMPACT OF DOMESTIC VIOLENCE ON PARENTAL AUTHORITY

- **Criminal courts may withdraw parental authority or its exercise in the event of a criminal conviction for** (art. 378 du code civil) :
 - a crime or incestuous sexual assault against the child
 - a crime committed against the other parent
 - a crime or sexual assault committed against the child
 - a crime committed against the other parent
 - an offense committed against the child or the parent
 - or, when the parent is a co-perpetrator or accomplice of a crime or offense committed by their child



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IMPACT OF DOMESTIC VIOLENCE ON PARENTAL AUTHORITY

- **Withdrawal of the exercise of parental authority by civil courts :**
 - In the event of parental separation, the judge may grant the exercise of parental authority to only one parent if it is in the child's best interest. Violence perpetrated by a parent may be taken into account.
- **Withdrawal of parental authority by civil courts** (art. 378-1 of the Civil Code) :
 - The withdrawal of parental authority may occur in cases where the child's safety, health, or morality is at risk.



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IMPACT OF JUDICIAL WITHDRAWAL OF THE EXERCISE OF PARENTAL AUTHORITY

- A parent deprived of the exercise of parental authority retains visits and accommodation rights. By way of exception, these rights may be suspended in cases of serious reasons.
- Possible adjustments to the exercise of visitation rights : meetings in a supervised setting, meetings in the presence of a third party, etc.



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IMPACT OF JUDICIAL WITHDRAWAL OF THE PARENTAL AUTHORITY

- The withdrawal automatically applies to all attributes, both financial and personal, attached to parental authority
- Thus, the total withdrawal of parental authority results in the automatic loss of visitation and custody rights for the parent concerned (Cass. Civ. 1re, 21 October 2025, No. 24-10.369)



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PROTECTION ORDER BEFORE THE FAMILY COURT JUDGE

- A protection order is an emergency measure issued by the Family Court Judge (*Juge aux Affaires Familiales*, JAF) in cases of domestic violence to protect the parent who is the victim of violence (**Article 515-9 of the Civil Code**). Several measures may be included in such an order (Article 515-11 of the Civil Code):
 - Prohibition from contacting the victim
 - Prohibition from entering certain locations
 - Mandatory medical or psychological treatment
 - Granting use of the marital home
 - Separate residence for the spouses



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PROTECTION ORDER BEFORE THE FAMILY COURT JUDGE

- The child does not benefit from specific protection under the protection order; they are protected indirectly when exposed to domestic violence, through the protection of the victimized parent.
 - **Cass. Civ. 1^{ère}, 23 May 2024, No. 22-22.600:** Domestic violence inherently creates a climate of risk for children, either because they may themselves become victims, or because the relationship between the abusive parent and the children constitutes a source of pressure or an indirect threat against the other parent.



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ONGOING DEVELOPMENT LAW FOR PROTECTION ORDER

Bill No. 557 of 14 November 2024



Strengthening the judicial protection of children who are victims of domestic violence. This bill proposes extending the protection order mechanism to children victims (amendment of Article 515-9 of the Civil Code).

Bill No. 1552 of 10 June 2025



Reform of Article 375 of the Civil Code and creation of a binding national framework for child protection. This bill proposes the establishment of a judicial protection order for children who are in danger or whose development is compromised.

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CHILD PROTECTION BY THE JUVENILE COURT JUDGE

- **Protection of minors at risk:** The juvenile court judge may take **educational assistance measures**, ranging from family support and monitoring to placing the child in care. The judge's intervention should be requested when one of the following **serious risks** threatens the minor:

- Physical health
- Mental or psychological health (e.g., behavioral disorders)
- Physical safety (e.g., exposure to violence)
- Material security (e.g., precarious housing)
- Morality (e.g., exposure to delinquency)
- Education



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CHILD PROTECTION BY THE JUVENILE COURT JUDGE

- **Referral to the juvenile court judge:** The following persons may bring the matter before the juvenile court judge:
 - The child themselves
 - The child's parents, acting jointly or individually
 - The child's guardian, foster family, or any other person responsible for the child
 - Child welfare services (*Aide Sociale à l'Enfance*, ASE) or any other agency responsible for child care
 - The Public Prosecutor, usually informed by departmental services or by any public official who witnesses an offense committed against or by the child



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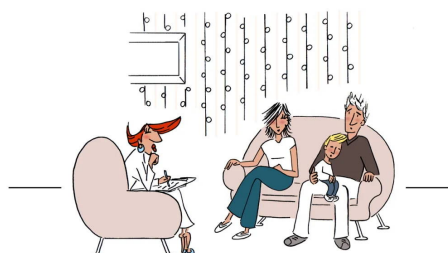
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CHILD PROTECTION BY THE JUVENILE COURT JUDGE

- **Measures to protect minors at risk:**
 - Family support and monitoring measures
 - Educational assistance measures in an open environment
 - Placement measures
 - Family mediation measures



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IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- If there is an issue of domestic violence, our court will:
 - Consider how it has impacted the welfare of Daisy and Sam
 - Consider if in the best interest to continue with the current arrangements
 - If not, will intervene to vary or suspend existing custody or access order, as necessary
- Specific Practice Directions SL10.1 dealing with child arrangements where there is an issue raised in relation to the domestic violence:
 - To consider whether we need to have an expedited fact-finding hearing, and
 - To provide interim orders that are in the best interests of the child involved



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IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

- **Domestic violence ≠ automatic changes in the custody and care arrangements. It depends on:**
 - Facts of each case
 - impact on Daisy and Sam
 - severity of the matter
- In most cases, the Court will look to rehabilitate the parent/child relationship cautiously



"HEY, THE THERAPY WORKS! I FEEL BETTER ALREADY!"

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IMPACT OF DOMESTIC VIOLENCE ON CUSTODY DECISIONS

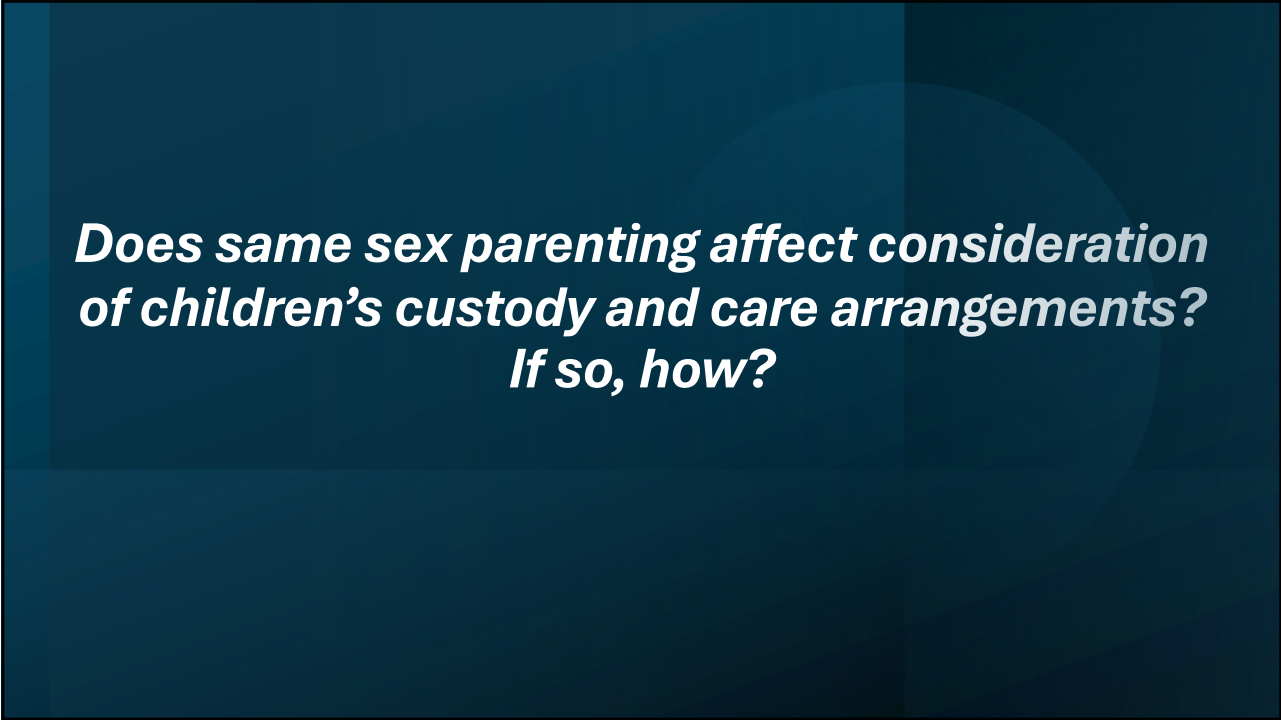
- **Where necessary, the Court can order:**
 - Change in care arrangements
 - Suspended access
 - Supervised access
 - Gradual introduction of access
 - Attendance in programmes approved by Social Welfare Department to change perpetrator's attitude/behaviour



"It's for when my Dad gets supervised access."

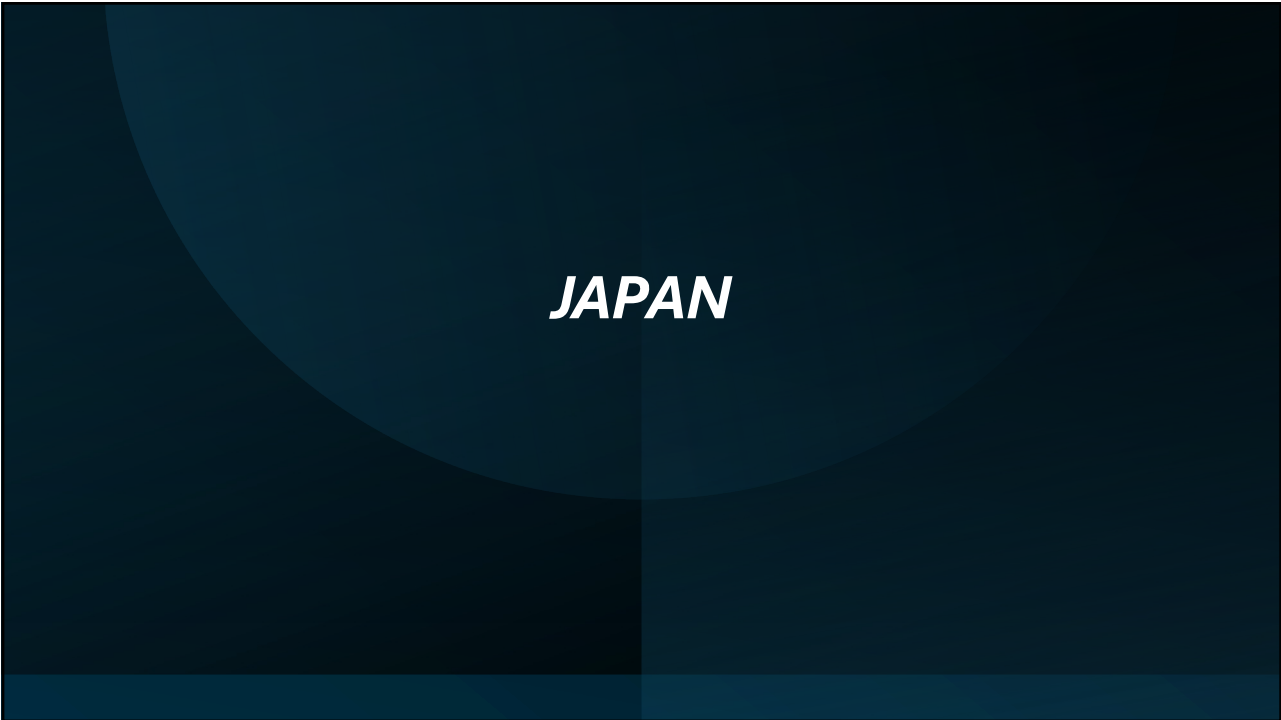
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***Does same sex parenting affect consideration
of children's custody and care arrangements?
If so, how?***

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THE IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY

- Same-sex parents are raising children in Japan
- However, since same-sex marriage is not legally recognized, both parents in a same-sex couple cannot share custody of their children under the current law.



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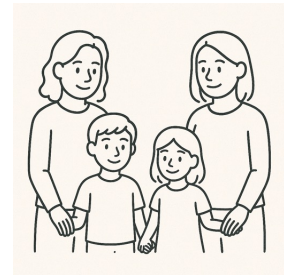
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IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY

- Since the approval of **Law 13/2005 on 30 June**, same-sex marriage has been completely legal, on equal terms with heterosexual couples.
- Therefore, the fact that Madeleine has a new same-sex partner does not imply any special treatment nor does it affect the assessment of the care of the children.



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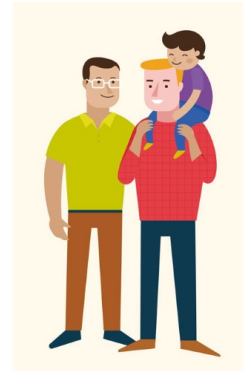
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IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY

- Legal recognition of same-sex parenting has existed since **Law No. 2013-404 of 17 May 2013**.
- In France, same-sex parenting has no impact on the determination of the child's residence or on any other aspects of the exercise of parental authority.



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IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY



• ADOPTION :

- **Law No. 2013-404 of 17 May 2013:** Opening adoption to married same-sex couples.
- **Law No. 2022-219 of 21 February 2022:** Opening adoption to all couples, regardless of the form of their union (civil partnerships and cohabiting partners).



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IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY

• GESTATIONNAL SURROGACY :

- Gestational surrogacy is prohibited in France (**Article 16-7 of the Civil Code**).
- Recognition of surrogacy arrangements carried out abroad:
 - **Biological parent** : Since the Mennesson and Labassee rulings (ECHR, 26 June 2014) and the ruling of the Court of Cassation of 3 July 2025 , France recognises the parentage of the biological parent.
 - **Intended parent** : Since 2024, when a foreign judgment recognising the parentage of a surrogate mother abroad is subject to exequatur, the parentage of the intended parent must be recognised as such and not as an adoption (Cass. civ. 1ère, 2 October 2024, no. 22-20.883 and 23-50.002; Cas. civ. 1ère, 14 November 2024, no. 23-50.016)



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IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY

• OPENING MEDICALLY ASSISTED :

- **Law No. 2021-1017 of 2 August 2021**: Opening Medically Assisted Reproduction to married or civilly partnered female couples and to single women.
- Parentage is established for the social mother simultaneously with that of the biological mother, without the need for adoption.



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IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY

- Only if the same-sex relationship impacts on parentage.
- Generally that would not be the case but in the context of a Hague Abduction case, it may impact on recognition of a person's "rights of custody" if parentage is not recognized by a foreign country.



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IMPACT OF SAME-SEX PARENTING ON CHILD CUSTODY

- **For Mother (Madeleine)**
 - Madeleine's sexual orientation itself should not impact her own application for the children's custody or care arrangements on divorce
- **For Mother's partner (Grace)**
 - Seen as someone to support Madeleine's care Daisy and Sam
 - Psychological and/or social parent
 - Limited options of elevating Grace's position with any legal parental status
 - Impact on Daisy and Sam –not afforded same treatment/protection had parents remained married in a heterosexual relationship



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***THANKS FOR YOUR
ATTENTION !***