

# UIFSA from A to Z

21<sup>st</sup> Annual AB 1058 Child Support Training  
Conference  
September 12-15, 2017

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## Agenda

- Background for UIFSA
- Standing and Jurisdiction
- What's New
- International Need to Know

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## The Way Back Machine

- Uniform Reciprocal Enforcement of Support Act (URESA): 1950
- Revised Uniform Reciprocal Enforcement of Support Act (RURESA): 1968

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## Give me credit!

- Full Faith and Credit for Child Support Orders Act (FFCCSOA): October 20, 1994
  - Runs concurrently with UIFSA today

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## Uniformity Rules

- Uniform Interstate Family Support Act (UIFSA) of 1996
  - PRWORA mandate by 1/1/1998
- UIFSA 2001
- 2007 Hague Convention
- UIFSA 2008

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## Main Concepts

- One Controlling Order
  - One order per paying parent + child
  - Multiple states may enforce
  - Only one state may modify

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## Main Concepts

- Full faith and credit to other states' orders
- Specialized evidentiary rules
- Non-parentage is not a defense to non-payment, once established

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## Application

- Articles 1-6: Support proceeding involving
  - Interstate cases
  - Foreign support order
  - Foreign tribunal
  - Obligor, obligee, child in foreign country

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## Application

- Articles 1-6: Tribunal may apply based on comity to order from other country
- Article 7: Convention cases only

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## Application

- IV-D Agency: Requests to/from IV-D Agencies
  - Other states, countries, tribes, or
  - Individuals (direct apps)
- Direct Request to Tribunal

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## Important Definitions

- State: U.S. states, territories, and Indian nations and tribes
  - UIFSA 1996 = State
  - UIFSA 2008 = state
- Outside this state
- Convention

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## Important Definitions

- Foreign Country
  - State, federal, treaty reciprocity
  - Comity
- Person
- Record

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## Special Evidentiary Rules

- Physical presence of nonresident party not required
  - FC § 5700.316(a)
  - Testimony allowed by telephonic or other electronic means
- Communications between tribunals permitted
  - FC § 5700.317

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## Jurisdiction Maxims

- Applicant and child do not need to reside in our state
- Look to Respondent:
  - Reside in California
  - Sufficient ties to California
  - Property in California to enforce

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## Jurisdiction to Establish

- Personal Jurisdiction over respondent residing in state, or
- Long Arm Jurisdiction over non-resident
  - Family Code § 5700.201

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## Contrast with Custody

- UIFSA jurisdiction based on location of parent paying support
- UCCJEA jurisdiction based on child's home state

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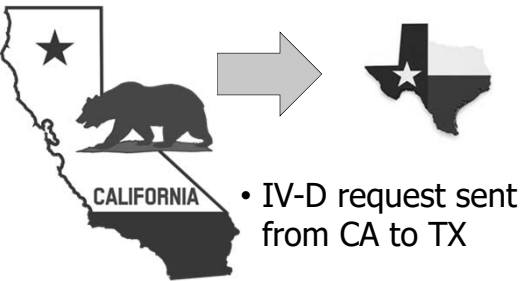
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## Establishment Scenario



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## Jurisdiction to Modify

- Continuing Exclusive Jurisdiction (CEJ)
  - FC § 5700.205
- Issuing state retains CEJ and is the only\* tribunal that can modify so long as at least one party remains there

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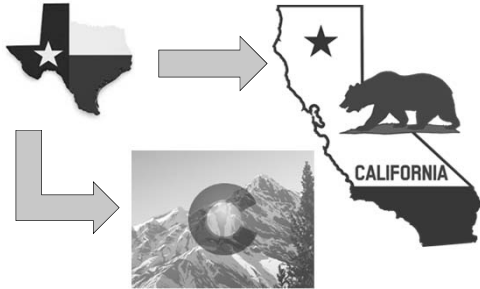
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## Play Away, Batter!



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## Modification Exceptions

- Consent
  - To Retain
  - To Shift
- International Move Away
- Foreign Order Modification

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## Retention Basics

- Issuing tribunal may modify, even if no party lives there, if parties consent
  - In a record, or in open court
  - FC § 5700.205(a)

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## Retention Scenario

- El Dorado County, CA order
- Parties all move to Stateline, NV



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## Shifting CEJ Basics

- Another tribunal with jurisdiction over at least one party may *assume* CEJ
  - Even if one party remains in issuing state
  - FC §§ 5700.205(b)(1), 5700.611(a)(2)

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## Shift Scenario



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## Move Away Basics

- Issuing tribunal retains jurisdiction to modify order if
  - One party resides in another (UIFSA) state
  - Other party resides outside the United States
  - FC § 5700.611(f)

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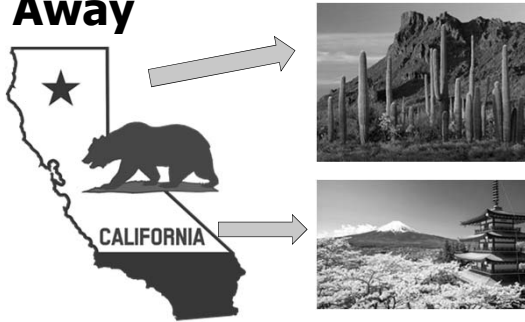
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## International Move Away



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## Foreign Order Modification

- U.S. Tribunal may modify a foreign support order if:
  - Issuing country *cannot* or *will not* modify
  - Tribunal has personal jurisdiction over all parties
  - FC § 5700.615

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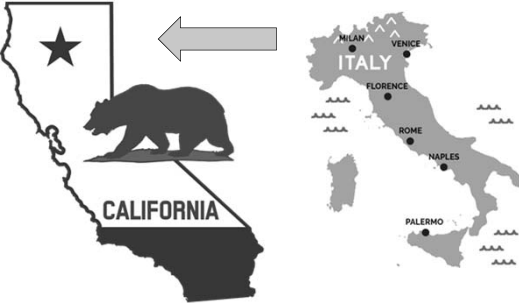
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## Foreign Order Scenario



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## Choice of Law

- Order-issuing state governs:
  - Amount of support
  - Age of emancipation
  - Interest rate
  - Allocation

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## Choice of Law

- Enforcing state governs:
  - Remedies used to enforce
  - Contempt actions, if any
  - Whether to register or administratively enforce

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## **Evidentiary Provisions**

- Physical presence of non-resident not required
- Communications with other tribunal
- ~~Under oath~~
- FC § 5700.316

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## **Registration Process**

- Registration lodges another state's (or country's) order in your tribunal
  - For enforcement,
  - For modification
  - For enforcement and modification

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## **Effect of Registration**

- Confirms validity of order
- Confirms stated arrears balance
- Limited defenses
- FC §§ 5700.601-615

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## Registration Contest

- IV-D Agency or Private Party files FL-570 Notice
  - Clerk mails Notice to parties
  - Request for Hearing FL-575
- Timeline to File Contest: 20 days from Notice

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## Available Defenses

- FC § 5700.607, unchanged
- Lack of personal jurisdiction;
- Full or partial payments made;
- Issuing tribunal stayed enforcement, etc.
- Parentage is NOT a defense

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## What's New?

- Forms!
  - Judicial Council Forms 1/1/2017
  - Federal OMB Forms in use by 1/15/2018

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## **Non-Disclosure**

- UIFSA requires extensive information disclosure to tribunal
- Non-Disclosure affidavit or pleading requires sealed information
- FC § 5700.312

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## **Non-Disclosure in Action**

- Judicial Council Form FL-511 obsolete
- DCSS non-disclosure form utilized when appropriate
- Other states' forms may look different

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## **Federal Forms Changes**

- Affidavit in Support of Establishing Paternity = Declaration in Support of Establishing Parentage
- Registration Statement = Letter of Transmittal Requesting Registration

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## Federal Forms Changes

- Confidential Information Form
- Personal Information Form under Section 311
- Change of Payment Location under Section 319(b)

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## Checklist: Establishment

- ✓ Summons (UIFSA) FL-510
  - ✓ Uniform Support Petition
  - ✓ General Testimony\*
  - ✓ Personal Information Form for UIFSA § 311\*
- \*Do not file in public access file

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## Checklist: Establishment

- ✓ Nondisclosure Finding/Affidavit\*
  - ✓ Declaration in Support of Establishing Parentage\*
  - ✓ Judgment Regarding Parental Obligations (UIFSA) FL-530
  - ✓ Notice of Rights and Responsibilities FL-192
- \*Do not file in public access file

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## Checklist: Enforcement

- ✓ Notice of Registration of Out-of-State Support Order, FL-570
- ✓ Letter of Transmittal Requesting Registration
- ✓ Personal Information Form for UIFSA § 311\*
- \*Do not file in public access file

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## \*\*All New\*\*

- 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance
  - In effect as of 1/1/2017 for the United States
  - Article 7 of UIFSA now applies

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## Ratification Updates

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|-------------------------------|----------------------------|---|
| • Albania                     | • Greece                   | • Slovenia  |
| • Austria <sup>2</sup>        | • Hungary <sup>1</sup>     | • Spain   |
| • Belgium                     | • Ireland <sup>1</sup>     | • Sweden <sup>2</sup>   |
| • Bosnia and Herzegovina      | • Italy                    | • Turkey  |
| • Brazil*                     | • Kazakhstan               | • Ukraine   |
| • Bulgaria                    | • Latvia                   | • United Kingdom of Great Britain and Northern Ireland <sup>1</sup> |
| • Croatia                     | • Lithuania                | • United States of America  |
| • Cyprus                      | • Luxembourg               |   |
| • Czech Republic <sup>1</sup> | • Malta                    |   |
| • Estonia                     | • Montenegro               |   |
| • European Union <sup>3</sup> | • Netherlands <sup>1</sup> |   |
| • Finland <sup>1</sup>        | • Norway <sup>1</sup>      |   |
| • France <sup>2</sup>         | • Poland <sup>1</sup>      |   |
| • Germany <sup>2</sup>        | • Portugal <sup>1</sup>    |   |
|                               | • Romania                  |   |
|                               | • Slovakia <sup>1</sup>    |   |
- <sup>1</sup> Federal Foreign Reciprocating Country  
<sup>2</sup> State Reciprocal Country  
<sup>3</sup> Except Denmark  
\*Ratified

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## Resource List

- Hague Convention – Child Support Section
  - <https://www.hcch.net/en/instruments/conventions/specialisedsections/child-support>
- OCSE International Page
  - <https://www.acf.hhs.gov/css/partners/international>

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## Convention Terms

- Creditor = custodial party = Obligee
- Debtor = non-custodial parent = obligor
- Decision = order
- Foreign support agreement AKA Maintenance Agreement = an agreement that is enforceable like an order
- Application = "Referral" under UIFSA = request under the Convention made through a central authority for assistance from another central authority

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## Hague Requests

A creditor (CP) may apply for:

- Recognition or recognition & enforcement of a decision made in the creditor's country or in the requested/enforcing country
- Establishment of a decision in the requested country, including establishment of parentage where necessary
  - Establishment of a decision in the requested country where recognition and enforcement of a decision is not possible, or is refused
  - Modification of a decision

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## Hague Requests

A debtor (NP) may apply for:

- Recognition of a decision, or an equivalent procedure leading to the suspension, or limiting the enforcement, of a previous decision in the requested country
- Modification of a decision

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## Request for Specific Measures

AKA Limited Services Request

Examples:

- Help completing an application
- Help determining if an application is necessary
- Help on an existing case in the requesting country
- Locate services
- Financial information provision
- Paternity establishment
- Service of documents
- Obtaining evidence

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## Establishment Process

- Application from Convention country to California central authority
- Follow Articles 1-6 unless inconsistent with Article 7

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**Hague Establishment  
Forms**

- ✓Summons (UIFSA), FL-510
- ✓Uniform Support Petition
- ✓Convention Transmittal form under Article 12(2)
- ✓Application for Establishment of a Decision

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**Hague Establishment  
Forms**

- ✓Restricted Information on the Applicant\*
- ✓Financial Circumstances Form
- \*Do not file in public access file

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**Recognition Process**

- FC § 5700.706
- Recognize order made or recognized by Requesting State
- Enforce order made by Requested State
  - May be another UIFSA state

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## Hague Recognition Forms

- ✓ Notice of Registration of an International Hague Convention Support Order, FL-592
- ✓ Convention Transmittal form under Article 12(2)
- ✓ Application for Recognition or Recognition and Enforcement
- ✓ Full text of decision or Abstract

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## Hague Recognition Forms

- ✓ Restricted Information on the Applicant\*
- ✓ Statement of Enforceability
- ✓ Statement of Proper Notice
- ✓ Financial Circumstances Form
- \*Do not file in public access file

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## Time to Contest

- Not later than **30 days** after Notice of Registration if contesting party resides in the U.S.
- Not later than **60 days** after Notice of Registration if contesting party resides outside the U.S.

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## Defenses

FC § 5700.708

- Order is manifestly incompatible with public policy;
- Issuing tribunal lacked personal jurisdiction consistent with FC § 5700.201 (long-arm);
- Order is not enforceable in issuing country;
- Order obtained by procedural fraud;
- Record pursuant to FC § 5700.706 lacks authenticity or integrity;
- Prior proceeding with same purpose and parties;

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## Defenses, cont'd

- Payment of alleged arrears, in whole or part;
- Order is incompatible with a more recent order involving the same parties and purpose, if the order is entitled to recognition and enforcement in this state;
- It is a default order without either prior notice and opportunity to be heard, or post-order notice and opportunity to appeal;
- Order is in violation of § 5700.711 (modification involving foreign obligee)

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## Effect of Non-Recognition

**If** a tribunal does not recognize a Convention order because:

- Lack of personal jurisdiction under FC § 5700.201
- Procedural fraud
- Prior proceeding was pending first
- Default order did not satisfy due process

**THEN:**

- The tribunal may not dismiss the proceeding without allowing reasonable time to request establishment
- And the LCSA must take all appropriate measures to request a new order (where an application is received through the Central Authority)

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## Scenario

- Kate and Jack conceived a child while stranded on an island nation
- After they are rescued, Kate moves to Montenegro, where she gives birth
- Jack returns home to California
- Montenegro obtains a child support order against Jack, which the California court refuses to recognize for lack of personal jurisdiction over him



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## Convention Modification

- FC § 5700.711
- Tribunal may not modify if obligee remains a resident unless
  - Obligee submits to jurisdiction; or
  - Foreign tribunal lacks or refuses to exercise jurisdiction to modify

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## Questions?

- Kristen Erickson-Donadee
  - [Kristen.Donadee@dcss.ca.gov](mailto:Kristen.Donadee@dcss.ca.gov)

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