



### IAFL Introduction to European Family Law Conference, Thessaloniki, Greece

Thursday 18 April 15:15 - 15:45

Session 5: Young Lawyers' Award presentation, Olalla Garcia-Arreciado, England

**Presentation** 

IA 1 of 1







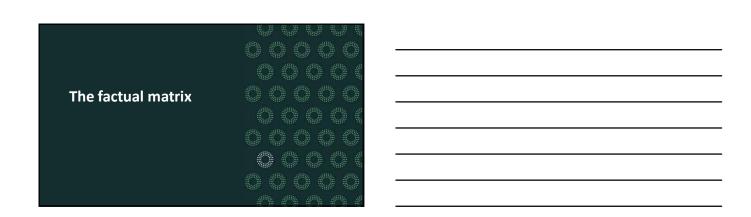


### IAFL INTRODUCTION TO EUROPEAN FAMILY LAW CONFERENCE IN COLLABORATION WITH THE LAW SCHOOL OF ARISTOTLE UNIVERSITY, THESSALONIKI EDUCATION PROGRAM

**Thursday 18 April** 

15:15-15:45 **Session 5:** Presentation of IAFL European Chapter Young Lawyers' Award 2024 By Olalla Garcia-Arreciado, England

HOWARD KENNEDY	
IAFL Young Lawyers' Award	
Presentation of the case study	
	-
Olalla García-Arreciado Thessaloniki, 18 April 2024	



The fac	ual matrix
Nationality	Habitual residence
<ul><li>– Mona: Spanish</li><li>– Franck: German</li><li>– Clara and Leo: unknown</li></ul>	<ul> <li>— Mona: Spain</li> <li>— Franck: England</li> <li>— Clara and Leo: Spain</li> <li>➤ N.B. Mono, Clara and Leo were habitually resident in England at the time of the divorce agreement</li> </ul>
	WWARD KENNEDY

# The factual matrix Provisions of the divorce agreement - Mona, Clara and Leo will relocate to Spain - Franck will remain in England - Franck will spend time with Clara and Leo (holidays) - Franck will pay €500 pm per child in child maintenance

### The factual matrix

### What went wrong...

- Franck says Mona is breaching the child arrangements
- Mona says Franck has stopped paying her child maintenance

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The legal issues	00000
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Enforcing the existing child arrangements	Enforcing child maintenance	Varying the existing agreement	-   -   -
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The legal issues		
Enforcing the existing child arrangements		
If there isn't an order	If there is an order	
No jurisdiction in England to make Children Act 1989 orders	When was it made?	
	When did the proceedings start?	
Jurisdiction lies with Spain		
(CC and LEC apply)	11pm, 31.12.2020	
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The legal issues  Enforcing the existing child arrangements		
1996 Hague Convention     Recognition by operation of law     Messures need to be declared enforceable or registered in Spain     Central Authorities must cooperate     Mona can apply to vary the terms of the order but the court should be slow to grant a variation (see the Practical Handbook)		

### The legal issues

### **Enforcing child maintenance**

### If there isn't an order...

- Child Maintenance Service lacks jurisdiction to make an assessment
- Jurisdiction lies with the English courts (Sch 1, Children Act 1989)
- Jurisdiction also lies with the Spanish courts (CC and LEC)
  - > Consider location of income/assets and duty of disclosure
- Additionally: 2007 Hague Convention for orders, enforcement & info

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### The legal issues **Enforcing child maintenance** Order made after Order made before If there is an order 31.12.20 31.12.20 When was it made? Article 67 of the - When did the 2007 Hague Convention Withdrawal Agreement proceedings start? Maintenance Regulation 4/2009 11pm, 31.12.2020 (Annex II) HOWARD

### The legal issues

### Varying the existing agreement

### If Franck wants to vary the child arrangements and maintenance...

- Jurisdiction lies with Spain (Regulation 2019/1111, Brussels II ter)
- Single set of proceedings to deal with both issues (CC, LEC and LJV)
- Best interests of the children are paramount re child arrangements
- New primary carer because Mona is in a same-sex relationship = breach of ECHR
- No formula for child maintenance, proportional to needs/resources

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# The legal issues Varying the existing child arrangements If Mona relocates to Switzerland... • Wrongful removal – 1980 Hague Convention engaged • Automatic joint PR under Spanish law equals having a right of custody • Return to Spain will be ordered unless an Article 13 defence applies • Interim contact can be ordered under 1980 or 1996 Hague Conventions • Mona must apply for an international relocation in Spain (LIV) • Again, the best interests of the children are paramount, but interpretations vary between countries

