

## **Chapter 26: Guidance on answering the self-test questions**

**Question 1: Albert Morton has a child arrangements order for his daughter, Maddie Phelps, who lives with him and Maddie spends time with her mother every weekend. Albert wishes to take her on holiday to France for two weeks and to change her surname to Morton. Advise Albert on whether this is possible and the steps he should take.**

As Albert has a Child Arrangements Order (CAO) in his favour, he can remove Maddie from England and Wales for up to one month without requiring permission (see also Chapter 29). However, the change of surname is more problematic. When a CAO is in force, no person may change the surname of a child. If an agreement between the parents is not reached, an application will have to be made to the courts.

**Question 2: Sarah is the daughter of a French mother and Italian father who have recently divorced. Both parents wish their daughter to come and live with them in their respective countries of origin. Advise which orders will be necessary should the parties be unable to agree and the factors that the court will consider when deciding.**

The child's welfare will be the paramount consideration and the court will consider the welfare checklist as well as the practical arrangements suggested by each party for contact and education of the child as well as the reasons stated for wishing to leave the jurisdiction.

The general approach of the courts is to grant permission to the parent wishing to move unless the reasons for the move are unreasonable and there are compelling reasons to refuse. The court will look at the reasons for wishing to move and the plans for contact between the child and parent in the other jurisdiction to see if the child's welfare is safeguarded. There are human rights implications concerning a decision to allow a child to be removed from the jurisdiction as this interferes with one parent's right to family life under Art. 8 of the European Convention of Human Rights (ECHR). In *Payne v Payne* [2001] 1 FLR 1052, the Court of Appeal ruled that all parties had rights under Art. 8 and when such rights conflicted, the rights of the parties had to be balanced against each other.

**Question 3: Would your answer to question 2 above be any different if there were allegations of domestic violence?**

The welfare of the child is the paramount consideration of the court and the allegations of domestic abuse will be considered as part of the overall case. The court will make a finding of fact and consider the effect of the domestic abuse on the child. If the child is likely to suffer harm, this will be considered by the court as part of the final decision.