

# Factors which Affect Courts in Relocation Decisions

*Bridging the Gap between Empirical Evidence –  
and Socio-Legal Practice*

ISCP Bonn, Germany, 10<sup>th</sup> July 2014

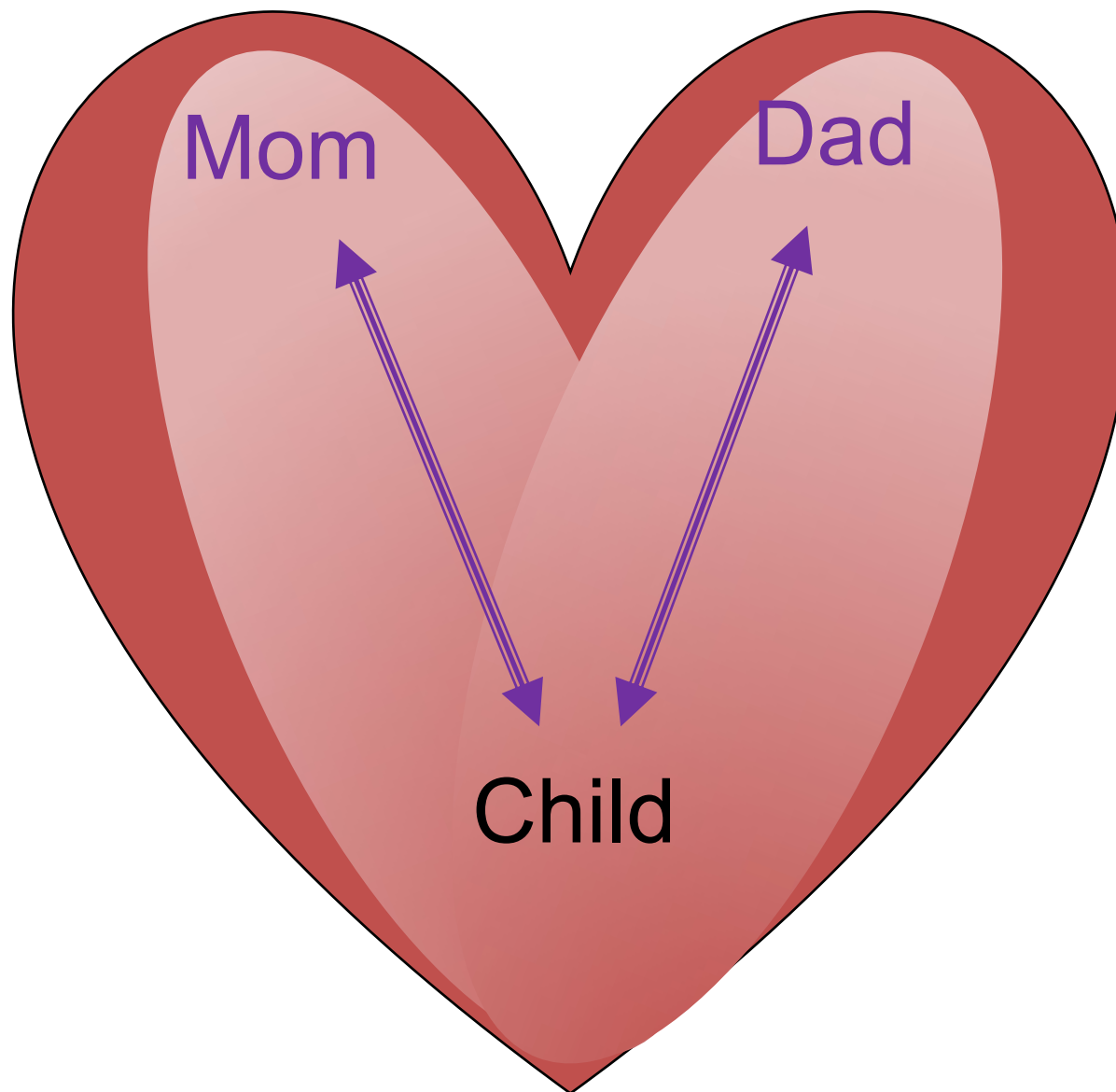
**Prof. Dr. jur. Yoav Mazeh**

Faculty of Law, Ono Academic College

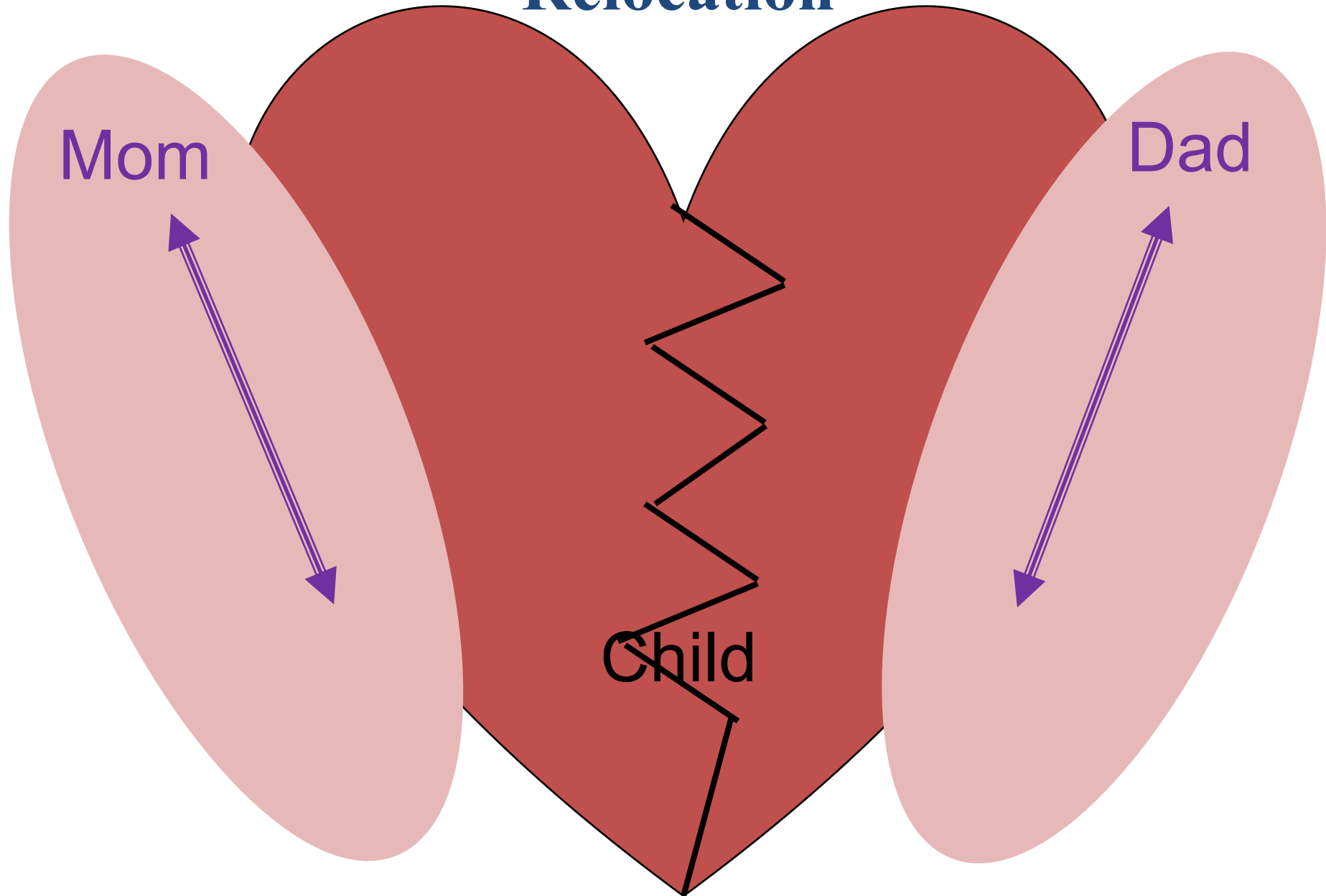
and Jerusalem Van Leer Institute

yoav.mazeh@ono.ac.il

# Normal Divorce



# Relocation



# Judgment of Solomon



# The Normative Question:

## What Should Affect Relocation Decisions?

### The “Child’s Best Interest”

1. Quality of Parenthood
2. Level of Parental Involvement
3. History of Violating Relationship of Other Parent with Child
4. Child’s Will
5. Prior Agreement between Parents
6. Cause for Relocation
7. Harm to Child

**Custody**

# **The Gap between Empirical Evidence and Socio-Legal Practice:**

## **Israeli Practice of Relocation**



### **3 Milestones:**

**2001**

**2009**

**2014**

# LCA 4575/00 *Jane Doe v. John Doe* (8.1.2001)

- Boy 11 months old – 4½ years: Practically Equal Parenting
- Divorce Agreement:
  - Broad Parenting Time
  - Overseas Clause
  - Formal Custody to Mother

*3 months later ... Mother applies to relocate to UK*

- Evaluation:
  - Equal Parenting Abilities.
  - Mother Despises Father, (High Risk of Alienation).
  - But ... *Tender Age Doctrine* (1962).

# LCA 4575/00 *Jane Doe v. John Doe* (8.1.2001)

## What Should Affect Relocation Decisions?

1. Quality of Parenthood
2. Level of Parental Involvement
3. History of Violation
4. Child's Will
5. Agreement
6. Cause for Relocation
7. Harm to Child

## The “Child’s Best Interest”:

- Quality of Parenthood: Both Parents were equally capable.
  - Level of Parental Involvement: For nearly 4 years, from age of 11 months, very broad parental time.
  - History/Alienation: Psychologist is very concerned about risk of alienation by mother.
  - Child’s Will: N/A
  - Prior Agreement between Parents.
  - Cause for Relocation: Dorner: The Cause is Absolutely Irrelevant.
- Custody:

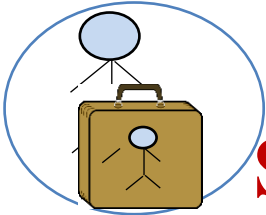
The custody was based on agreement. (The same agreement which prohibited to take him abroad). When the baby was 11 months old.
- Harm to Child:

No Discussion of the harm of disconnecting the child from his father.  
The only relevant harm to the child is if his mother is unhappy.

# LCA 4575/00 *Jane Doe v. John Doe* (8.1.2001)

- 3. History of Violation
- 4. Child's Will

## Tender Age Doctrine



**Custody as  
Sole Determent**



**Mother-Child  
Enmeshment**

- 1. ~~Quality of Parenthood~~
- 2. ~~Level of Parental Involvement~~
- 5. ~~Agreement~~
- 6. ~~Cause for Relocation~~
- 7. ~~Harm to Child~~

## 9201/08 *Jane Doe v. John Doe* (5.4.2009)

Between ages of 15 months and 7½ years: Practically Equal Parenting

- Mother **Abducted** Child to Germany
- **Prevented Any Contact with Father.**
- Mother Worked as Air Stewardess (child was looked after by granny).

- German Court(s):

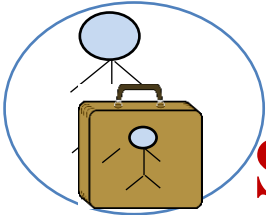
- Mother Abducted Child
- Joint Custody
- Returned Child to Israel

### Child Returned to Israel

- Psychological Evaluations:

- 1<sup>st</sup> (child 2 yrs): allowed relocation.
- 2<sup>nd</sup> (child 5 yrs): against relocation.
- 3<sup>rd</sup> (child 8 yrs): against relocation.


# 9201/08 *Jane Doe v. John Doe* (5.4.2009)



**Custody as  
Sole Determent**



**Mother-Child  
Enmeshment**

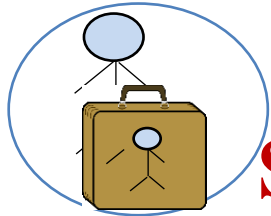
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1. ~~Quality of Parenthood~~
  2. ~~Level of Parental Involvement~~
  3. ~~History of Violation~~
  4. ~~Child's Will~~
  5. ~~Agreement~~
  6. ~~Cause for Relocation~~
  7. ~~Harm to Child~~

## RFMA 1858/14 *John Doe vs. Jane Doe* (3.4.2014)

- Between ages of 6 months and 5 years:
- Father is Primary Caretaker (day & night).
- Mother is Dysfunctional (didn't bring up her previous daughter).
- Mother Abducted Child (repeatedly).
- Workaholic Mother (works evenings even in her parenting time).
- **Child wants to stay with father.**
- **3 Psychological Evaluations:**
- In Favour of Father as Primary Caretaker, and
- Against Mother's Relocation with Child.

# RFMA 1858/14 *John Doe vs. Jane Doe* (3.4.2014)

## Tender Age Doctrine



**Custody as  
Sole Determent**



**Mother-Child  
Enmeshment**

1. ~~Quality of Parenthood~~
2. ~~Level of Parental Involvement~~
3. ~~History of Violation~~
4. ~~Child's Will~~
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7. ~~Harm to Child~~

# Conclusions

# **The Gap between Empirical Evidence and Socio-Legal Practice**

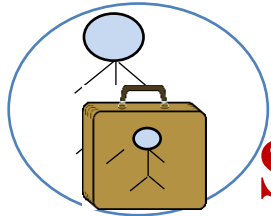


# The Theory

1. Quality of Parenthood
2. Level of Parental Involvement
3. History of Violation
4. Child's Will
5. Agreement
6. Cause for Relocation
7. Harm to Child

# The Legal Practice

## Tender Age Doctrine



**Custody as  
Sole Determent**



**Mother-Child  
Enmeshment**

**Many Cases  
Followed**

1. ~~Quality of Parenthood~~
2. ~~Level of Parental Involvement~~
3. ~~History of Violation~~
4. ~~Child's Will~~
5. ~~Agreement~~
6. ~~Cause for Relocation~~
7. ~~Harm to Child~~

# Unfortunately ... there is a gap



But let us hope  
that together we can bridge that gap



# For the Sake of the Children



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