We Need More Evidence: Application Flaws of the Uniform Child Custody and Jurisdiction Enforcement Act in California

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While the Uniform Child Custody and Jurisdiction Enforcement Act has gone a long way in protecting the rights of the child in custody disputes, it is still lacking in finding the best jurisdictional state in terms of access to evidence, which would enable a more fair decision and thus serve the best interest of the child.

The only way to determine children's best interests in custody disputes within the United States' logically based legal system is with evidence. Judges, simply stated, are assessors of evidence. They hear arguments based on and presented with evidence. They weigh evidence for the arguments and determine the balance. The presentation of available evidence to the judge determines the outcome of all court cases. Without available and reliable evidence, judges cannot correctly and consistently determine truth.

This is why jurisdiction is the first issue addressed in all court cases. Jurisdiction is the preliminary question of authority and evidence. After determining that presiding authority can adjudicate claims, courts assess the proper geographical location for hearing the disputes according to the place where evidence is most adequately available. It is in the best interest of courts and parties to resolve court matters in geographical locations where the optimum evidence is found. Evidence yields accuracy, fortifies truth, and indicates best interests. Accordingly, jurisdiction based on proper authority and reasonable evidence provides for the best interest of children involved in child custody disputes. Evidence is crucial to the principle of the best interest of the child. Upholding the best interest of the child is the paramount consideration in all child custody cases.

* Elizabeth Breinholt is a senior at Brigham Young University. She is majoring in marriage family & human development. After she graduates from BYU, Elizabeth plans to attend law school, where she would like to study family law.
The Uniform Child Custody Jurisdiction and Enforcement Act (hereinafter referred to as UCCJEA) is the law used by judges in every state in the United States of America to determine proper jurisdiction of child custody cases. The act is founded on good principles and generally upholds the best interest of children. However, at least as applied in California, sections of the act do not always uphold the best interest of children. The conglomeration of the sections of the act—specifically the exclusive and continuing jurisdiction clause—show an unjust imbalance of the two general principles of the act: stability and evidence. The UCCJEA minimizes evidence by overemphasizing stability and continuity for children through the duration of child custody disputes. This is readily seen with the exclusive and continuing section of the act as applied to current child custody proceedings. The UCCJEA should be revised to explicitly require jurisdictions that provide the best evidence. Consider the following scenario.

**II. Court Case:**

Forty-two-year-old Benjamin Holbrook is an elementary school teacher and the sole custodian of his fourteen-year-old son, Tyler, who was born in California. In 1998, after a California decree of divorce finalized, father and son moved to Utah. One year later, Tyler’s mother moved to Utah. The entire family lived in Utah for the next six years. In March of 2005, Tyler’s mother returned to California due to significant and terminal health problems.

On May 21, 2005, a police officer knocked on the Holbrook’s front door and informed Benjamin of Tyler’s recent illegal, under age, and life-threatening behaviors. At the end of the school year, Benjamin sent Tyler to his aunt (a real estate agent) and uncle (a specialized doctor) in California to remove him temporarily from bad influences and to allow him additional time with his terminally ill mother. (His mother’s illness rendered her incapable of caring for her son. However, Tyler typically visited these relatives for a couple of weeks each year and was comfortable with the arrangement.)

Upon Tyler’s arrival in California, the relatives requested that Benjamin sign a temporary guardianship order, for the next two-and-a-half months of summer, to enable them to provide fundamental support for Tyler (i.e., medical care). Benjamin reluctantly faxed his permission for temporary guardianship in the form of a short handwritten note. Benjamin did not sign

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1 To maintain confidentiality some names have been changed.
the official guardianship form and only sent the handwritten note because he understood that any order would be temporary.

Two weeks after Benjamin faxed his note of permission, on June 28, 2005, the relatives filed an action in probate court alleging Benjamin as abusive and detrimental to his son. The pleadings stated claims of physical abuse and emotional abuse and indicated that Tyler wanted to remain in California with his relatives. The relatives alleged that Benjamin washed Tyler's mouth out with soap, yelled at his son, and slapped him on the face. The pleadings stated that the relatives heard Benjamin yell at Tyler (prior to Benjamin's sending Tyler to California) during a telephone conversation, that there was supposedly one police report in Utah of domestic violence,¹ and that Benjamin is imbalanced and makes poor decisions. It should be noted that the pleadings did not include or allege that the father's physical discipline caused bruising, that physical discipline was exercised on a regular basis, or clarify the extent of or frequency of emotional abuse.

Four months after the relatives filed their first pleading, a superior court judge heard jurisdiction arguments and, according to the UCCJEA, ruled that California had and would exercise jurisdiction. The judge renewed the expired temporary order to retain Tyler in California with his aunt and uncle for the duration of the dispute.

Of the many questions that could be discussed regarding this scenario, subject matter jurisdiction is critical. Should California or Utah have had subject matter jurisdiction? The answer to this question could have significantly altered the outcome of the dispute. All states interpret law according to their own understanding and case law precedent. The fact that Benjamin voluntarily gave permission for temporary guardianship is highly significant in California.²

¹ The police report referred to by the aunt and uncle was actually a loud verbal argument between Tyler and Benjamin's present wife. A neighbor called the police.
² See Guardianship of Kasandra H., 64 Cal. App. 4th 1228 (1998); see also Guardianship of Simpson, 67 Cal. App. 4th 914 (1998) (two monumental cases for California probate determinations are Guardianship of Kasandra and Guardianship of Simpson. In these two 1998 cases the California Court of Appeals shifts the burden of proof to the parents seeking custody, includes an evaluation of moral fitness, examines the fitness of the guardians, and looks at the relationships between the child and parent and the child and guardian. This criterion differs from other types of custody and guardianship cases; The difference—the fathers voluntarily signed the temporary orders).
Due to the Holbrooks' prior residency in California, the current California divorce decree (including an initial custody ruling) and the current probate filings in California (including the temporary guardianship order), the Superior Court in California had jurisdiction to hear arguments to determine whether to retain jurisdiction or concede jurisdiction to Utah upon finding that Utah is a more appropriate forum. California properly heard jurisdiction arguments. However, because of the UCCJEA's improper standard of evidence, the court decision to retain jurisdiction in California was incorrect, unfair, and overlooked the best interest of Tyler. The bulk of the evidence and most pertinent evidence concerning the legal questions were in Utah.

It may be reasonable based on significant connections to the state of California, some evidence in California, or because of an emergency to argue for California to retain jurisdiction. California is not completely lacking in these areas. Regardless of whether or not California had proper jurisdiction, it should not have exercised it because it was not in the best interest of the child. This is where both the Superior Court and the UCCJEA failed. The judge used the UCCJEA as legally required for all child custody determinations in California. Nevertheless, the UCCJEA failed to protect the best interest of Tyler. Utah was a much more appropriate forum because of the availability of evidence.

The purpose of this article is to discuss the Holbrooks jurisdictional ruling, which occurred near the end of 2005. Facts of the case and application of jurisdictional law expose a detrimental problem with both the writing of the UCCJEA and the interpretation thereof. Benjamin was unable to pursue an appeal for financial reasons. This situation should be addressed to prevent other families from experiencing similar misguided and ultimately wrongful court actions.

The remainder of this article is as follows: Part III mentions historical background, the purpose of the UCCJEA, and the UCCJEA as a revised continuation of the Uniform Child Custody Jurisdiction Act (hereinafter UCCJA). Part IV briefly outlines and interprets key sections and factors of

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*Graham v. Superior Court of Cal., et al., 92 S. Ct. 1265 (2005 Cal. App. 2005) (the UCCJEA, as was the UCCJA prior to the UCCJEA passage, is superior to any and all other legal guidelines when determining jurisdictional disputes regarding child custody).*
the act, specifically addressing initial jurisdiction, exclusive and continuing jurisdiction, and emergency jurisdiction. Part V is application of the UCCJEA to the scenario of Benjamin Holbrook. Part VI provides possible solutions to a flaw in the UCCJEA's exclusive and continuing jurisdiction section. Part VIII concludes the discussion of the UCCJEA.

III. History & Purpose of Act:

The UCCJEA is a revised continuation of the UCCJA. It is important to know the legal situation prior to the UCCJA as well as how circumstances changed through the UCCJA's thirty-year life in order to understand the purposes of the UCCJEA. The laws began to change shortly before 1968. Patricia M. Hoff says, "Parents had a legal incentive to abduct children." The laws benefited those who performed unethical actions. State laws only required physical presence in their state to acquire jurisdiction. Parents could uproot their children, take a road trip to the state of choice—one that had favorable interpretations of child custody law that coincided with the parent's present situation—adjudicate custody, and return to the home state when proceedings ended. The parent with the children held the power.


The UCCJA swung the pendulum from the state requirement of merely physical presence in state to proof of the child's significant connection to the state. Lawmakers' main motivation for this act was to maintain stability for children unfortunate enough to experience custody disputes. They also desired an act to create some uniformity between states. A majority of states have enacted the UCCJA.¹

Though the act improved the issue of custody jurisdiction, some problems remained and other problems arose during the life of the act. The UCCJA did not (1) address matters of dual jurisdiction, (2) prevent judges in different states from issuing decisions on the same custody case, or (3) provide guidelines for enforcement of court rulings across states. It also did not (4) deal with modifications to custody in situations where parents and children moved to other states, (5) require every state to enact the act exactly as written or in conformity to other states, and (6) it did not specify that emergency jurisdiction was only temporary. Lawsmakers tried to cope with these unforeseen problems by passing other laws and acts (like the PKPA, VAWA, those determined at The Hague Convention, and ICARA). But the laws and acts conflicted with each other and the UCCJA. In the case of *In re Marriage of Newsome,* the Court of Appeals judge states frustration with the UCCJA and expresses a need to adopt a new jurisdictional act to address certain problems.

The utility of a new uniform act is evident in light of the varying interpretations the courts have given the UCCJA in light of the PKPA. In the case of *In re Marriage of Murphy* the court stated: "The PKPA is a full faith and credit statute. The PKPA applies only to the enforcement or modification of an existing custody decree or when a custody action is already pending in another state. If a custody decree does not already exist, or there is no custody action pending in another state, the federal act has no application." Contrary to the view of the Court of Appeals of Washington in *In re Marriage of Murphy,* the Court of Appeals in North Carolina in *Potter v. Potter* reasoned that even though the UCCJA is a jurisdictional statute and the PKPA a full-faith and credit statute, to ignore the PKPA and to be concerned only with the law of the forum in the absence of a pending foreign action is an unsatisfactory resolution. "[T]o allow custody decisions based upon significant connection jurisdiction without regard to the PKPA would..."
essentially render such decrees meaningless in any state but our own.”12 The Vermont Supreme Court in *Columb v. Columb*, 161 Vt. 103 (1993), stated, “The theoretical possibility that a home state would recognize a Vermont custody order issued without the full faith and credit protection of the PKPA is overwhelmed by the reality that courts have too often failed to respect other states’ custody decrees even when issued in conformity with the UCCJA and PKPA.”13

Twenty-nine years after its passage, NCCUSL, revising the UCCJA, blended aspects of other laws and passed the UCCJEA in 1997. The revisions include details and guidelines for dual state jurisdiction, domestic violence victims, custody modifications, and interstate jurisdiction enforcement. California adopted the act two years later. At present, most states in the U.S. use the UCCJEA. Specific benefits of the UCCJEA include better balance between home state jurisdiction and significant connections to states, faster case processing, better enforceability of any existing custody orders, smoother procedure for changing visitation schedules or rights, etc.

Though lawmakers removed the explicit written purpose of the act, after revisions of the UCCJA,14 the purpose of the UCCJA and UCCJEA are considered similar, if not the same.15

The Uniform Act . . . was promulgated for the stated purposes of avoiding jurisdictional competition and conflict, promoting interstate cooperation, litigating custody where child and family have closest connections, discouraging continuing conflict over custody, deterring abductions and unilateral removals of children, avoiding relitigation of another state’s custody decisions, and promoting exchange of information and other mutual assistance between courts of sister states.16

The UCCJEA appears to meet all of the criteria, a significant accomplishment. Child custody battles over jurisdiction are more straightforward than they were with the details and guidelines of the old act. A highlight of

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12 Potter, N.C. App. at 15.
16 Kumar v. Superior Court, 32 Cal. 3d 689, 695 (1982).
the UCCJEA is its reconciliation of presence in a state (the dominant factor prior the UCCJA passage) and significant connections to states (the dominant factor with the UCCJA). Both are important factors for consideration, but must be balanced. Focus on one without consideration of the other can lead to unfairness, injustice, and trampling on the best interest of the child.

The UCCJA and UCCJEA are similar in purpose and case law interpretation. Current California case law, now bound by the UCCJEA, cites the child custody jurisdiction interpretation of cases adjudicated under the UCCJA (including In re Stephanie M. Kumar v. Superior Court, and Plas v. Superior Court). This indicates that the UCCJEA is considered a revised continuation of the UCCJA in case law.

Though the change from the UCCJA to the UCCJEA brings many improvements, some concerns about the UCCJEA exist. Although some jurisdiction decisions are easier, there is a question of whether the provisions of the act really uphold the best interest of the child. The Holbrook case throws doubt on the principles behind the exclusive and continuing jurisdiction section of the act. This section may allow states to retain jurisdiction after an initial jurisdiction decision, permanently, when it is not in the best interest of the child to do so. That is, this section may allow a state to retain jurisdiction when the state no longer has sufficient evidence. Sufficient and necessary evidence is the only way, in our logically based legal system, that judges can correctly and accurately determine and uphold the best interest of the child. The test of this concern is evidence.

IV. Key Sections & Factors of The UCCJEA:

The most pertinent sections of the UCCJEA to this discussion of the Holbrook case are initial jurisdiction, emergency jurisdiction, and exclusive and continuing jurisdiction. Basic principles and provisions of these three sections are outlined below. This is not meant to be a complete analysis of these sections of the act, but highlight specific details relevant to the Holbrook case.

The UCCJEA has been in force in California for about five years. There is limited published case law interpreting the new act—only about a dozen cases. Some of these are dependency proceedings, which are difficult to apply to probate proceedings.
A. Initial Child Custody Determination. Initial custody dispute jurisdiction hinges on the child’s and, in part, on the parents’ residential status. Parties cannot change or choose jurisdiction merely by agreement. They cannot concede to a specific forum for personal convenience. The jurisdictional decisions must consider the best interest of the child and location of evidence, which does not always happen.

States may hear “initial” child custody disputes upon proof of:

- “Home state jurisdiction”\(^\text{19}\)
- Being “a more appropriate forum”\(^\text{20}\)
- Presence of “significant connections”\(^\text{21}\) and available evidence\(^\text{22}\)
- An emergency\(^\text{23}\) that allows temporary jurisdiction\(^\text{24}\)
- Or that no other state with jurisdiction will exercise jurisdiction.

\(^{19}\) Taylor M. v. Superior Court, 106 Cal. App. 4th 97 (4th Dist. 2003) (California ruled that parents of a child [involved in a dependency and adoption case] and adoptive parents could not simply agree to change the venue of the case from California to Texas because both parties thought Texas adoption laws were more agreeable. The biological parents, adoptive parents, and adoption agency agreed to allow Texas to finalize adoption because of California’s one year residency requirement. Texas lacked jurisdiction. It is in the best interest of the child to adjudicate custody where in the home state where significant connections and evidence as to the child’s “care, protection, training and personal relationships” exist. Further, this scenario does not establish a need for Texas to assume emergency jurisdiction).

\(^{20}\) Cal. Fam. Code §3402 (“initial determination” means the first child custody determination concerning a particular child).

\(^{21}\) Cal. Fam. Code §3402 (“home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period”).

\(^{22}\) Cal. Fam. Code §3427.

\(^{23}\) Id. §3421.

\(^{24}\) Id.
California initial jurisdiction case law is straightforward. In the case of *In re Claudia S.*, The Court of Appeals found that California properly assumed jurisdiction in a domestic violence dependency case where all three children were born and raised in California and both parents lived in California until the wife took the kids to visit their grandma in Mexico.26 "Nothing in the record suggests that [the children] ever lived outside California before they left to visit their grandmother in Mexico."26 These facts are simple. The court's decision is clear.

*Plas v. Superior Court* shows further insight on initial determination requirements.27 A mother brings her three-year-old son, who has dual citizenship in France and the USA, to California to visit extended family for the holidays. Four months later, while still in California, the mother files for divorce and requests sole custody of her son. The mother argues significant connection to and evidence in the state.

The Superior Court rules that mother and son have "minimal contact" with California but not the "maximum contacts . . . necessary to establish jurisdiction."28 Yearly month-long visits to California, extended family members in the state, and four months in the state prior to the commencement of action did not establish a significant connection to the state. The judge explains that the significant connection clause "is [meant] to limit jurisdiction rather than to proliferate it . . . [that] jurisdiction exists only if it is in the child's interest . . . [and that] the interest of the child is served when

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27 *Id.* at 243.
29 *Id.* at 1015 ("[Visiting a doctor, attending school, making friends, etc.] are unexceptional even in the context of short-term presence. While there is no question but that Gwen's connection with California satisfies almost any notion of "minimum contacts," the Commissioners' Note clearly states that *maximum* contacts are necessary to establish jurisdiction. The trial court ignored the fact that Gwen was born and raised in France, that he lived in France exclusively until shortly before the hearing, and that France is the only place where the parties and Gwen ever lived together as a family and is where Gerard has continuously maintained residence. These are the "substantial" and "significant" connections required by the Act, which California can claim only by exaggerating its minimum contacts.") See also *Bacon v. Bacon*, 293 N.W. 2d 819, 821 n. 3 (Mich. App. 1980).
the forum has optimum access to relevant evidence about the child and family." France has proper jurisdiction.

Initial jurisdiction provisions appear to balance stability and evidence. As we see in the case of In re Claudia S. and Plas, a strong motivation for initial jurisdictional decisions is finding a forum that has the best and most relevant evidence. This balance must continue throughout the entire jurisdiction process. The six-month home state clause is not a provision to allow anyone to change venues after six months, but stands as a preventative and protective clause. A six-month minimum keeps parents from forum hopping with ease but also allows a change of venue for other cases that may involve abuse or emergency. The initial jurisdiction section is a direct improvement of the conflict that existed prior to and during the UCCJA.

Temporary Emergency Jurisdiction. "The finding of an emergency is to be made only after an evidentiary hearing." California Family Code §3424 subdivisions (a) states, "a court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to, or threatened with, mistreatment or abuse." Emergencies are situations where a child is

31 In re Marriage of Newsome at 1 (explains the extent of significant connections and evidence. "Furthermore, there was insufficient evidence to support jurisdiction in California under the significant connection test. The children had lived in Texas for three years, there had been no visitation with their father during the three-year period, and the bulk, if not all, of the relevant information relating to the children was in Texas. Thus, there were maximum, as opposed to minimum, contacts with the State of Texas.").

32 In re A.C. 2005 p. 8 of 11.

33 (b) If there is no previous child custody determination that is entitled to be enforced under this part and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 3421 to 3423, inclusive. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 3421 to 3423, inclusive, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.
in “imminent danger.” Simply stated, “Emergencies under the act generally involve sexual or physical abuse.” Hafer v. Superior Court explains that “harsh” discipline or “insensitivity” is not enough to establish an emergency.

Here the mother has completely failed to describe any emergency condition warranting her harmful and lawless conduct. If the father is somewhat harsh, insensitive, too quick to discipline, that is not imminent child abuse. His possible slowness to diagnose medical problems or provide treatment is not such neglect as would warrant deprivation of custody on an emergency basis. We talk here of allegations of dental neglect, unawareness of early symptoms of bladder infection, possibly some spankings with a “switch” or hairbrush. This alleged neglectful and harsh parenting has been going on for more than three years. Is this tantamount to an emergency requiring removal of the children to California for a custodial modification procedure?

The answer is no. The judge concluded that these allegations are not enough to establish an emergency and change venue to California.

Court orders under emergency jurisdiction are temporary. The reasoning behind this is that as soon as a child is safe from abuse or harm there is no emergency. Jurisdiction returns to the proper state. Temporary orders are replaced as soon as state courts with proper jurisdiction issue an order. In the case of In re C.T. (2002) the court clarifies that since emergency jurisdiction is temporary, a court that acts under this jurisdiction cannot address questions of permanence. A temporary order will become permanent if no state takes further action. The state that made the temporary order then becomes the home state. Emergency jurisdiction is also allowable if it is probable and reasonable that a home state or country will not address the issue at hand.

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32 In re Joseph D., 23 Cal. Rptr. 2d 574, 574 (1993).
33 In re A.C. at 862.
35 In re C.T., 100 Cal. App. 4th 101, 108 n.1b (2002) ("... emergency jurisdiction may be exercised to protect the child only on a temporary basis." Once In re C.T. was removed from the potential of sexual abuse by temporary placement with her mother until a more permanent order could be invoked, Arkansas had jurisdiction).
36 Id. at 113 (In re C.T. cites In re Nada—father in Saudi Arabia gained custody of his children when his wife came to California. Father divorced wife, who moved to
Exclusive and Continuing Jurisdiction. The UCCJEA's exclusive and continuing jurisdiction clause makes interstate jurisdictional changes, after initial determinations, difficult. Courts view all subsequent child custody matters as continuations of the first action. This section of the UCCJEA concentrates on stability for children involved in order modifications or multiple custody disputes (i.e., children involved in more than one of the following: divorce, dependency, welfare, probate). It also protects children from parents' harmful tactics. Regardless of the possible varying circumstances, the courts recognize that the same child is still involved in a child custody matter. If California makes initial custody determinations or previously exercises emergency jurisdiction, California retains jurisdiction if the following is true:

1. The child has a "significant connection" with California and "substantial evidence concerning the child's care, protection, training, and personal relationships" is available in the state,

2. The "child, the child's parents, and any person acting as a parent" live in the state, or

3. If the state satisfies the rules of initial jurisdiction.

California and father awarded children. Five years later the father hits his daughter while vacationing in Florida, the mother takes both children to California with her, and the daughter discloses to her mother that she has been sexually abused. There was no evidence that a court in Saudi Arabia would address the problems disclosed by the children. Thus emergency jurisdiction was rightfully used.


Cal. Fam. Code §3422 (a) Except as otherwise provided in Section 3424, a court of this state that has made a child custody determination consistent with Section 3421 or 3423 has exclusive, continuing jurisdiction over the determination until either of the following occurs: (1) A court of this state determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships. (2) A court of this state or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in this state. (3) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under Section 3421.
In the case of *In re Marriage of Kreis*, a divorced father with sole custody asked the court to require someone to accompany his former wife and child on a vacation to another state. He was concerned about his former wife's mental state. Her health had been an issue in the initial custody order. The court acted as though the custody case of one year ago was not closed. Part of the court's rationale for retaining jurisdiction is that the parents and child had remained in California since the last action in the child custody case.

*Graham v. Superior Court* applied similar rationale. A mother, granted physical custody of her twin toddlers by stipulation in divorce proceedings, moved to New York. Four months later, she attempted to open a new custody case in New York and modify custody. New York stayed proceedings for lack of jurisdiction. California ruled that exclusive and continuing jurisdiction exists in California as long as the child or a parent with visitation rights remains in California after California's initial determination. 99

Both of these cases are divorce cases based on stipulations. The latest custody orders were granted no more than a year earlier. Both cases involve modifications between biological parents with some custody or visitation rights.

Courts consider exclusive and continuing jurisdiction to be in the best interest of the child. Some reasons may be that retaining jurisdiction maintains stability, prevents parental tactics of making another state the child's home state six months after the last custody order in order to try their luck in front of a new judge, and expedites modification actions.

Though it can be difficult to change jurisdiction after an initial determination, it is possible* because there are exceptions. *California Family Code* §3427 states that jurisdiction may be altered if a state has jurisdiction, but it is not a convenient forum. Here are the major factors considered by a court reviewing convenience:

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"Cal. Fam. Code §3423 (modification of another state's orders is allowable if California meets the initial jurisdictional requirements and the state that previously decided a custody matter rules that it does not have "exclusive and continuing jurisdiction." California is "more convenient," or no one involved in the custody dispute still resides in the other state)."
• Any "domestic violence"
• Amount of time the child has been absent from the state
• Geographical location of the courts in question
• Ability of the parties to monetarily support the adjudication in either forum
• Consensus of both parties on a forum state
• "Nature and location of the evidence . . . including testimony of the child"
• Possibility of a speedy resolution and the method necessary to do so
• And the courts knowledge of the case facts. 10

In Taylor M. v. Superior Court California retains jurisdiction of an adoption proceeding even though both parties agreed to Texas jurisdiction.11 It is in the best interest of the Canadian adoptive parents to move the adoption proceedings to Texas because California requires one-year residency prior to adoption. The court's first priority is the best interest of the child. The child was involved in dependency proceedings and Texas had no evidence about the child.

In Schlumf v. Superior Court the court of appeals determines that Wyoming is a more appropriate forum to contest custody because the father with sole custody of nine years and his children lived in Wyoming for five years prior to this dispute.12 Though the mother remained in California, Wyoming offered a more significant connection and better evidence. The judge considers transferring jurisdiction, for reasons of evidence and stability for the children, in the best interest of the children.

VII. Holbrook Argument

After thorough research of UCCJEA and case law, the Superior Court judge not only misinterprets the act and case law for the Holbrook case, but the judge also exposes a serious problem with the exclusive and continuing jurisdiction section of the UCCJEA. Both of these revolve around insufficient evidence.

The present Holbrook case is not a matter of initial custody jurisdiction because of the former divorce and California custody order. It could arguably fall within either emergency jurisdiction or exclusive and continuing jurisdiction. Emergency jurisdiction is straightforward and founded by evidence. Exclusive and continuing jurisdiction lacks a foundation in evidence and instead prizes stability for the child.

Emergency Jurisdiction. First, we will review emergency jurisdiction. As stated above, emergency jurisdiction typically means abuse or "imminent danger." It is also temporary. As stated in C.T. (2002), judges acting under emergency jurisdiction cannot address issues of permanence.

The allegations that Benjamin washes Tyler's mouth out with soap, yells at Tyler, has slapped Tyler on the face, and makes poor decisions are weak. These allegations are similar to the insufficient allegations in Schlumpf v. Superior Court. Even if Benjamin concedes to these allegations, to rule that this establishes an emergency is a stretch.

The one item that could reasonably make this an emergency jurisdiction situation would be verification of corroborating information of abuse within the police report in Utah of domestic violence. However, information about this event is in Utah, there is only one report alleged, and the existence of a report does not mandate that there was abuse (the police report makes claims of only a verbal argument). Simply stating that Benjamin is abusive does not establish emergency jurisdiction. The Superior Court judge did not have the police report when he ruled to renew the expired temporary guardianship order. There should have been proper evidence . . . evidence of Benjamin and Tyler's relationship is in Utah. Tyler's aunt and uncle are not eyewitnesses to any of the allegations of abuse. In order to justify his ruling, the judge had to consider this situation an emergency.

A determination that the scenario evokes an emergency does not allow California to keep jurisdiction. There must be other grounds for jurisdiction. As soon as the judge makes his order, no emergency exists and California's temporary jurisdiction ends. Further determinations in this case involve questions of permanence. Both Benjamin's fitness as a parent and whether Tyler's aunt and uncle should be permanent guardians are issues of permanence. Only the court with proper jurisdiction can address these questions. In this
situation, the court would need jurisdiction as it falls under the exclusive and continuing jurisdiction requirements.

Exclusive & Continuing Jurisdiction. California already had jurisdiction for an initial custody determination. Therefore, the section of the UCCJEA that could grant California jurisdiction at present is the exclusive and continuing jurisdiction section. Exclusive and continuing jurisdiction exists if the case scenario can satisfy any of the following questions:

- Does Tyler have a "significant connection" with California and is there "substantial evidence" concerning Tyler's protection, training, and personal relationships in California?
- Does Tyler, his parents, or "any person acting as a parent," live in California?
- Does California satisfy the rules of initial jurisdiction?4
- Is California a forum of convenience?

This is where the forum is questionable. California partially satisfies some of these questions.

Addressing the first point, one may argue that Tyler has a significant connection to the state (either referencing Tyler's mother, who moved back a few months ago or referring to his aunt and uncle whom he visits yearly and presently resides with); however, there is very little evidence in California about his "care, protection, training, and personal relationships."4 At the commencement of this action, Tyler had been in California for three weeks. The last six to seven years worth of evidence regarding Tyler, Benjamin, and Tyler's mom is in Utah. Utah has most if not all of the evidence about Tyler's schooling, friendships, relationship with his father, medical records, etc., for the last seven years of his life. With this information, a judge could determine and uphold Tyler's best interests. Comparing these two periods shows a large evidentiary discrepancy. Exclusive and continuing jurisdiction cases must meet both significant connections and sufficient evidence guidelines. Utah clearly better fulfills both of these requirements.

Tyler’s situation technically satisfies the next question about the residence of an acting parent in California. Both Tyler’s mom and his temporary guardians live in California. However, Tyler’s mom is not a party to this action as she lived in Utah for the six previous years, and technically Utah is still her home state because she has only been in California for four months. Tyler’s aunt and uncle clearly have home state status in California, but they have been Tyler’s temporary guardians for only a few weeks. Though likely, it is unclear if three weeks of living in California and a new, temporary guardianship order are sufficient to give the aunt and uncle parental status. Strict interpretation of California Family Code §3402 shows that the present arrangement might suffice.

California does not satisfy the third requirement, the rules of initial jurisdiction. Three sets of conditions establish initial jurisdiction. California fails to meet the requirement because of any or all of the following. First, California is not Tyler’s home state. Second, California fails to satisfy all three of the following items:

- Technically, Utah has home state jurisdiction and has not declined to act upon it. Utah did not waive initial jurisdiction rights to California by findings of emergency jurisdiction or more appropriate forum.

- Tyler may have a connection to California other than physical presence, but it is not significant. (Review the situation of *Plas v. Superior Court*, initial jurisdiction does not seem plausible. California has minimum contacts. Yearly month-long visits, a biological parent in the state who commenced action, and four months of living in California were not enough.)

- California has little, if any, evidence about Tyler’s “care, protection, training, and personal relationships.” Though there may be some

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*Cal. Fam. Code §3402* states that a “Person acting as a parent” means a person, other than a parent, who (1) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence within one year immediately before the commencement of a child custody proceeding; and (2) has been awarded legal custody by a court or claims a right to legal custody under the laws of this state.”

evidence in the state, most of the relevant information to this dispute is in Utah. Seven years of evidence in Utah as opposed to three weeks in California is a large discrepancy. Though California may be able to obtain access to much of the evidence in Utah, this section requires a measurement of evidence presently in California.

The last question under the exclusive and continuing section asks if California is a forum of convenience. It is not. As mentioned previously in this article, this section of the UCCJEA lists eight specific factors that need to be addressed. The answers to these questions for the Holbrook case are as follows:

- At present, there is no finding of domestic violence—evidenced in Utah.
- Tyler has been absent from California for seven years.
- The courts are approximately sixteen hours, by car, apart. This distance will greatly increase the cost of adjudication for the traveling party.
- Benjamin is an elementary school teacher working in a public school. He is out of debt and finishes paying bills and necessities of life with about two hundred dollars left each month, whereas Tyler's aunt and uncle have the combined salaries of a real estate agent and a specialized doctor. They are out of debt, own a large house in California, have hundreds of thousands of dollars in savings and investments, and have thousands of dollars left to spend each month after paying bills and necessities of life. This custody battle would have little impact on the aunt and uncle's finances. Benjamin would incur significant debt.
- Neither party agrees to which state should adjudicate the custody decision.
- The majority of evidence about Tyler, Benjamin, and Tyler's mom (including his "care, protection, training, and personal relationships") is in Utah. Only information about the aunt and uncle as well as Tyler's testimony is in California.
- There is no reason why either state could not expeditiously resolve this matter. (However, there is a possibility that Utah could move quicker because it is the location of significant evidence.)
- California has records of the prior decree of divorce and custody papers.
According to these eight items, California is a forum of convenience for the aunt and uncle. It is not convenient for Tyler or Benjamin. Adjudicating this case, with added costs for travel to California (including attorney fees, witnesses, tangible evidence), is extremely difficult for Benjamin.

California may be able to establish exclusive and continuing jurisdiction. This section provides four distinct ways to retain jurisdiction that we discussed. However, I do not think that they meet all of the necessary requirements to establish it and even if they presently do, they should not exercise it because of the lack of evidence. Three weeks versus seven years is quite a large difference.

Exclusive and continuing jurisdiction case law, most recently Kreiss** and Graham,** differs significantly from the Holbrook scenario; according to the parties involved in the actions, the time between custody orders, and continued residency in California. The Holbrook scenario does not involve two biological parents who are entitled to child custody or visitation. Tyler's aunt and uncle have standing only because of the temporary guardianship order. This scenario is not a modification of four months or one year. Seven years passed since the last custody order, during which time neither Tyler, Tyler's mother, or Benjamin continued to reside in California.

The circumstances of Graham and Kreiss are drastically different. Both cases find that a state retains continuing and exclusive jurisdiction if one parent with visitation rights lives in that state. This legal interpretation also does not fit the Holbrook case. In both Kreiss and Graham, a biological parent (party to the initial custody order) continued to live in California. The most important point in Kreiss and Graham is that significant evidence (from the time the actions commenced) remained in California. It was reasonable for California to retain both cases according to the continuing and exclusive jurisdiction clause because the courts rightfully had authority and evidence to make findings. It was not reasonable for the California judge to retain jurisdiction in the Holbrook case.

Presently under the UCCJEA it is legal, however unethical, to allow a state to retain jurisdiction if there is insufficient evidence in the state or

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when another state is more appropriate by measurement of evidence. The judge in the Holbrook case made two judgments of error: that emergency jurisdiction existed and that California should retain jurisdiction when the necessary and majority of evidence was in Utah.

VII. Future Directions of the UCCJEA:

The Holbrook case exposes problems with the exclusive and continuing section of the UCCJEA. One problem is that the section incorporates so many reasons why a court can and should retain jurisdiction that the section makes it appear that jurisdiction should continue in the same state of initial jurisdiction even if another forum is better or provides the best and necessary evidence.

This section of the act also fails to provide indications of which of its provisions is most or more important. It holds each provision equally important. For example, significant connection and substantial evidence is one provision whereas the mere presence of the child and a parent or a persona acting as a parent in the state is another ground for retaining jurisdiction. If a judge determines solely that a child and a parent are in the state, he can keep jurisdiction. This completely ignores evidence. The exclusive and continuing section of the UCCJEA needs to be better defined.

The writing of the exclusive and continuing jurisdiction within the UCCJEA should be clarified to specify the proper balance of the provisions therein. The different sections of the UCCJEA are meant to increase the availability of evidence, not detract from it. Clarifications to the act must stem from a realization that evidence is not only in the best interest of the child but is also the only means whereby a judge can make consistent and accurate determinations in our scientifically based legal system.

VIII. Conclusion:

The UCCJEA is based on good principles. It is an improvement from the UCCJA. It addresses many problems that used to vex judges, parents, and children involved in interstate child custody disputes. However, the act is not a perfect improvement. The act has a weakness when it comes to exclusive and continuing jurisdiction. The UCCJEA does not emphasize determining jurisdiction according to availability of evidence. This is evident in cases like the Holbrook case. It is too difficult to change venue after an initial custody
proceeding is determined within California even if there is insufficient evidence for a judge to determine and uphold the best interest of the child. California should not keep a court case under its jurisdiction if another forum is more appropriate regardless of a significant connection to the state. The UCCJEA must be revised to give stronger emphasis to evidence and provide better guidelines for determining the relative importance and weight by which provisions within the act should be measured. Such minor changes to the act could help people like Tyler and Benjamin Holbrook enormously in future cases.