1 Under what circumstances may a parent lawfully remove the child to another state without the other parent's consent?

The question of where the child should live permanently is subject to legal rules about the right to determine the child's place of residence, and so forms part of the *de facto* care of the child (Section 1631(1) of the Civil Code (*Bürgerliches Gesetzbuch,* BGB)). Like care for the child's property, this falls within the scope of parental responsibility under Section 1626(1) of the Civil Code.

Permanent residence is a 'matter of substantial significance' (*Angelegenheit von erheblicher Bedeutung*) within the meaning of Section 1687(1), first sentence, of the Civil Code – unlike, possibly, a short holiday to a neighbouring European country, for example, for which the mutual agreement of both parents is necessary if the parents have joint custody. A parent therefore needs the consent of the other parent to move abroad with the child, unless they have sole custody or at least the sole right to decide residency.

2 Under what circumstances is the other parent's consent necessary for the child's removal to another state?

The other parent's consent to the child moving abroad is needed if the parents have joint parental responsibility (the right to decide residency) (see also answer to question 1).

3 If the other parent does not consent to the child's removal to another state, though it is necessary, how can the child be removed lawfully to another state?

Taking the child to live abroad is lawful if the parent who wants to move with the child has sole custody or at least the sole right to decide residency.

If this is not the case and if there is disagreement between the parents on this matter, then, on the application of one of the parents, the family court (*Familiengericht*) may give one parent the right to decide the matter, under Section 1628 of the Civil Code. The Court must decide on the basis of what is in the best interests of the child, taking into account the particular circumstances and practicalities and the legitimate interests of those involved (Section 1697a of the Civil Code).

Furthermore, a parent living apart from the other may also apply to the family court under Section 1671(1) of the Civil Code to be awarded sole parental responsibility overall or sole parental responsibility for a particular issue – for example, the right to decide residency. The court will grant the application if the other parent agrees, unless the child of at least 14 years of age objects, or if removal of joint parental responsibility or partial transfer of full parental authority to the applicant is likely to be in the best interests of the child. If the court grants the application, the parent may freely decide where the child should reside.

4 Do the same rules apply to temporary removal (e.g. holiday, healthcare etc.) and permanent removal? If applicable, please provide relevant consent forms.

If a parent has sole parental responsibility, they are free to take their child abroad for short periods whenever they wish.

On the other hand, parents with joint parental responsibility must in principle take this decision jointly (Section 1627 of the Civil Code). If parents with joint parental responsibility live apart, both must decide jointly whether the planned journey is not a day-to-day matter, but a matter of substantial significance (Section 1687(1), first sentence, of the Civil Code). The parent with whom the child normally lives is entitled to decide on their own about daytoday matters (Section 1687(1), second sentence, of the Civil Code). The other parent can decide alone only in matters of actual care under Section 1687(1), fourth sentence, of the Civil Code). The legislation does not specify which matters are of substantial significance and which are day-to-day matters or matters of actual care. This issue is to be decided according to the particular circumstances of the case. In principle, both the parent with whom the child normally lives and the parent with contact rights can decide alone on temporary removal for holidays abroad, provided that the journey is not to a remote area or to an area where there is political unrest. However, the parent with contact rights must inform the parent mainly caring for the child in advance of the purpose of the journey. The parent mainly caring for the child can take decisions alone about routine medical treatment. However, if the child is to be removed to another country for the purposes of medical treatment, this should as a rule no longer be considered a matter of routine treatment.

A parent who does not have parental responsibility does not have the right to decide where the child should live. During the time of contact, this parent has the same powers under Section 1687a of the Civil Code as the parent with joint care for the child with whom the child does not normally live (Section 1687 (1), fourth sentence).

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