

The Impact of the Best Interest of the Child Principle on Child Custody

Rene Paquibut^{1*}, Geraldine Malaya²

¹Modern College of Business and Science, Oman; rene@mcbs.edu.om

²University of San Carlos, Philippines.

Keywords:

Child custody,
Court ruling on child
custody,
Custody cases,
Custody of minor children,
Tender years doctrine,
The best interest of the
child principle.

Abstract. This study aims to determine the impact of the principle of The Best Interest of the Child as applied on custody cases which seemingly runs counter to the Philippine Laws that grants to the mother the sole and primary custody of children below seven years old. This study utilized a qualitative research design through document analyses involving the said principle, as well as actual cases on child custody. This research also prominently considers cases decided upon by the Supreme Court of the Philippines. Although Philippine Laws did not codify *The Best Interest of the Child* principle, the Court's rulings are very much geared toward deciding the cases based on such principle, deciding on a case-to-case basis what constitutes the child's best interest in a particular case. Hence, even though a court's decision might not strictly adhere to the laws that grants to the mother the custody of a child below seven years old, this would be interpreted to mean that such decision is, above all, for the child's best interest. The principle does indeed have a remarkable impact on custody cases, as the child's best interest can even supersede the tender years doctrine that favors the mother in custody cases.

1. INTRODUCTION

The aim of this research is to know and establish the impact of *The Best Interest of the Child Principle* on custody cases involving minor children. The study focuses on the overall well-being and holistic growth of the child whose father is separated from his mother and one parent may be incapable of supporting him physically, emotionally and financially. Under Philippine Laws, the custody of a child below seven (7) years old is given to the mother. More specifically, when the parents of a child are separated, Article 213 of the Family Code is applicable, to wit:

"In case of separation of the parents, parental authority shall be exercised by the parent designated by the Court. The Court shall take into account all relevant considerations, especially the choice of the child over seven years of age, unless the parent chosen is unfit.

No child under seven years of age shall be separated from the mother, unless the court finds compelling reasons to order otherwise."

Joint custody is an arrangement where two co-parents share responsibility for a child—even if the parents do not live together and are not raising the child together in one household (Beiber, 2023). Such custody can either be a Joint Physical Custody or a Joint Legal Custody. In a Joint Physical Custody, the child spends time with both parents, while Joint Legal Custody refers to the parents' legal right to make relevant and important decisions in behalf of the child.

However, in the context of Philippine Laws, primary and sole custody is given to the mother of a child under seven (7) years of age in case the parents are separated. The father, upon the discretion of the Courts, may be given visitation rights if such contributes to the best welfare of the child. The circumstance of a joint custody of the separated parents, much less of the grandparents, over the minor child is not provided for in the Laws, hence, joint custody takes place upon the discretion of the Courts taking into account the best interest of the child.

1.1. Research Problem

Philippine Laws, and most specifically Article 213 of the Family Code of the Philippines, gives to the mother the sole custody of a minor child below seven (7) years old in case of separation from his father. The mother, whether financially capable or not, has the right to sue the father for support to answer for the needs of the child. The father, in turn, also has the right to demand visitation rights and even joint custody. The problem is when the mother, who has primary custody of the child, cannot provide for him an environment that is to his best interest. Following the principle of the *Best Interest of the Child*, can the father, or even the grandparents, be allowed custody of the child, if they are willing to support the child financially, physically and emotionally?

1.2. Purpose of the Study

The purpose of this study is to examine the impact and the probable influence of *The Best Interest of the Child Principle* on custody cases. This also explores other alternative forms of custody, including the likelihood and effects of a joint custody between one parent and the grandparents of a minor child, if the mother is separated from the father and one parent cannot, for any reason, support the child financially, physically and emotionally or is simply pervasively absent from the child's life. Time and again, specifically in Article 213 of the Family Code and Article 363 of the Civil Code, the custody of the child by the mother is considered important and given due consideration. Article 363 of the Civil Code states, "In all questions on the care, custody, education and property of the children, the latter's welfare shall be paramount. No mother shall be separated from her child under seven (7) years of age, unless the court finds compelling reasons for such measure." Since the law primarily considers the welfare of the child, this study investigates other forms of custody, including but not limited to, the effects of a joint custody between one parent and the grandparents of the minor child, when the parent granted custody cannot solely support him and the other is absent from his life.

2. METHODOLOGY

The qualitative research method is used in this study. Keith Punch defined qualitative research as 'empirical research where data are not in the form of numbers' and is based on something that is experienced or observed as opposed to being based on theory. Data could be in the form of videos, images, or artefacts (Punch, 1998). Specific to this qualitative research, the Case Study Method of research is utilized. Yin (2009) defines case study as an empirical inquiry which investigates a phenomenon in its real-life context. Qualitative data from relevant documents and actual custody cases were analyzed to answer the hows and whys instead of how many or how much (Brannan, 2022).

2.1. Limitations of the Study

This study recognizes the truism that for each and every case for custody, the welfare and best interest of the child is of paramount consideration. This study also takes into consideration Article 213 of the Philippine Family Code and Article 363 of the Philippine Civil Code that the mother has the primary and sole custody of a child below seven (7) years of age in case of separation from his father. This study then is limited only to those situations where the parents are separated and both the father and the mother are interested in having the custody of the child.

Under Philippine Laws, the grandparents are NOT allowed custody of the child in case one parent is present and capable of doing so. The grandparents are also UNDER NO OBLIGATION to support the child, even if their own child, the father or the mother of the minor is incapable of doing so. Hence, this study is also further limited to instances where the grandparents have the means to support the child and willing to do so, provided they can be granted some form of custody over him.

3. REVIEW OF RELATED LITERATURE

3.1. Child Custody

Child custody is a legal term regarding guardianship which is used to describe the legal and practical relationship between a parent or guardian and a child in that person's care. (Changes in Custody, 2017). In case of married couples, both the father and the mother exercise custody over their minor child. Philippine Laws posits that both the father and the mother jointly exercise parental authority over their minor children, and that in case of disagreement, the father's decision shall prevail.

However, in case of separation of the parents, whether in fact or in law, the question as to who gets to keep the custody of the child is always guided by the best interest of the child. Custody comes in different forms:

Legal custody involves the division of rights between the parents to make important life decisions relating to their minor children. Such decisions may include choice of a child's school, physician, medical treatments, orthodontic treatment, counseling, psychotherapy and religion (Dieringer, 2008). The type of legal custody observed may be a joint one, where both parents share decision-making rights, or a sole one, where only one parent has the rights to make key decisions without regard to the wishes of the other parent.

Physical custody may either come in the form of sole custody, joint physical custody, bird's nest custody, split custody, alternating custody, among others. Sole custody is a custody option when parents share a child they are not raising together. Under a sole custody arrangement, one parent takes care of the child for the majority of the time and typically also has the sole right to make decisions when it comes to the child. In some states, like Florida, USA, different terms are now used for sole custody, such as sole parental responsibility. However, the basic meaning of these different legal terms usually refers to the same basic thing—one parent spending the majority (or all) of the time with the child and having sole responsibility for making important decisions affecting the child (Bieber, 2023).

Joint physical custody is also called shared custody. When parents have joint physical custody, the child spends time with both of them. Usually, the child splits time equally, or close to equally. Each parent spends time with the child on a regular basis. However, joint physical custody is often used to refer to situations where the child primarily lives with one parent and has visitation or parenting time with the other. In some states if a parent is with a child a certain number of nights per year, they are considered to have joint physical custody (Bieber, 2023).

Bird's nest parenting uses all the advantages of shared custody while at the same time preventing its weaknesses, as it ensures that children have both a stable home and a continuity of their prior lifestyle, and the possibility to live everyday life with both parents. This arrangement avoids disruption in children's lives; keeping the routine, continuity, and permanency to which they are accustomed by remaining in the family home, whereby their school and neighborhood friendships can continue uninterrupted, and they can maintain meaningful relationships with both parents, which is crucial to their ongoing well-being (Kruk, 2013b).

Bird's nest parenting is often referred to as a child-centered and child friendly approach (Dalton and Hoult 2016; Hurwitz, 2016; Luscombe, 2011; Greenough v Greenoug, 2003; Sanghani, 2016; Wolf, 2016). The child-centered approach stems from considering the child's interests when making decisions about the child, taking the needs of the child into account as a first step (Toros et al. 2013). This principle is also central to bird's nest parenting, as it focuses on the needs and well-being of children, putting aside the parents' needs and wishes.

Split custody, according to a Georgia, USA, law, is applicable in situations where: "There are two or more children of the same parents, where one parent is the custodial parent for at least one child of the parents, and the other parent is the custodial parent for at least one other child of the parents. In a split parenting case, each parent is the custodial parent of any child spending more than 50 percent of the time with that parent and is the noncustodial parent of any child spending more than 50 percent of the time with the other parent. A split parenting situation shall have two custodial parents and two noncustodial parents, but no child shall have more than one custodial parent or noncustodial parent." Put plainly, in split custody situations, each parent serves as the custodial parent of at least one of the couple's children. Split custody arrangements are rarely uncommon; however, every family's situation is different {O.C.G.A. § 19-6-15 (a)(21)}.

Finally, alternating custody or alternate custody is that by which the child stays a predetermined period of time with the father and another period with the mother. This species is also known as the backpacker's custody, due to the fact that the child will be in constant periods of relay with both parents, because, as he has no defined place of residence, he will remain until the end of the period in which he is with one parent, when he must organize his belongings to go to the other parent for the next period. Another characterization of alternate custody consists in the exclusivity of the custody of one who is in full exercise thereof, hence,

when the child is in the custody of the mother for a recommended period, she will have the exclusive custody, in the same way that the father will also have the same exclusive custody for another period (Lando and Silva).

However, in most divorce or separation cases, the court grants the custody of the child to one parent and extends visitation rights to the other parent (Braver et al., 2011). In many cases, parents resolve child visitation disputes with assistance from a mediator, such as an attorney, or by mutual agreement (Bow, Gottlieb, & Gould-Saltman, 2011; Horvath & Ryznar, 2015). If the parents fail to come to an agreement, however, they take recourse via the courts (Ackerman & Pritzl, 2012; Adams, 2016; Flood, 2012). Courts intervene primarily to ensure the best interests of the child (Artis, 2004; Bow et al., 2011; Ellman, Kurtz, & Weithorn, 2011; Laufer-Ukeles, 2014).

3.2. The Best Interests of the Child

The 1989 Convention on the Rights of the Child (CRC) is the main legal instrument on the protection of children. It embodies four general principles: (I) The best interests of the child shall be a primary consideration in all actions affecting children (Article 3). (II) There shall be no discrimination on the grounds of race, color, sex, language, religion, political or other opinions, national, ethnic or social origin, property, disability, birth or other status (Article 2). (III) States Parties recognize that every child has the inherent right to life and shall ensure to the maximum extent possible the survival and development of the child (Article 6). (IV) Children shall be assured the right to express their views freely in all matters affecting them, their views being given due weight in accordance with the child's age and level of maturity (Article 12).

Furthermore, the best interest of the child is a threefold concept that includes a substantive right, a fundamental and interpretive legal principle, and a rule of procedure that aims to ensure the full and effective enjoyment of all the rights recognized in the United Nations Convention on the Rights of the Child (CRC) and whose primary consideration is to ensure the holistic development of the child (EMN – European Migration Network, 2021). Holistic child development refers to the well-being of the child in a broad sense, which includes basic material, physical, educational and emotional needs as well as the need for affection and security (EMN, 2021). The child's interest assessment is a simple and continuous procedure that should be undertaken in individual cases where decisions need to be made for an individual child, in light of the specific circumstances of each child or group of children, and should evaluate and balance all the elements necessary to make a decision in a specific situation for a particular child or group of children (UNHCR, 2006).

Article 3 of the Convention on the Rights of the Child (CRC) enshrines the principle of the best interests of the child, i.e., it stipulates that in every law, public or private initiative, and in every problematic situation, the best interests of the child must be given preeminent consideration (Versea, 2023). More specifically, Article 3 of the CRC expressly states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." (Unicef, 2019). The best interest of the child determination, therefore, describes a formal process with strict procedural safeguards designed to determine their best interest for particularly important decisions affecting the child. It should facilitate the appropriate participation of children without discrimination, involve decision-makers with relevant areas of expertise, and balance all relevant factors in order to evaluate the best option (European Commission, 2022).

In the case of the separation of the parents, whether in fact or in law, the tender years doctrine as regards custody is closely associated with the best interest of the child. As a part of family law, the tender years doctrine or tender years presumption has been in existence since the latter part of the 19th century. According to common law, the doctrine proposes that during the tender years of a child (which is generally regarded as such from the age of four and under), only the mother is allowed custody of the child (Baysinger Law, 2018). A healthy childhood was understood to be important for healthy social development. This doctrine was founded upon the belief that because children required continuous nursing care, mothers were the appropriate gender for providing such care (Rosen et al., 2009). It was frequently accepted that emotional support and primary caregiving were intrinsic elements in motherly attitudes and roles. Historically, there has been high support for the suitability of mothers in caring for children after a divorce (Gresk, 2013). Children, for the most part, remained in the mother's custody following separation or divorce (Braver et al., 2011; Holt, 2016; Rosen, Dragiewicz & Gibbs, 2009).

However, the tender years doctrine is not without criticisms. Most people who are critical of the family court system (and particularly the father's rights groups), contest that though the tender years assumption has been formally replaced by the joint custody legislation and the best interests of the child rule, it is still in practice, and is still the means by which most child custody cases are primarily determined nationwide in family courts (United States). Critics insist that the idea that the father has to prove that the mother is an unfit parent before he can be awarded primary custody, and the fact that the mother does not need to prove that the father is unfit in order to be granted custody, is contrary to what is indicated in the equal protection clause (Baysinger Law, 2018).

Today the best interests of the child and the joint custody legislation doctrine have become the norm in the United States and Europe respectively. The majority of the courts in the U.S. have ruled that the tender years presumption violates the 14th Amendment. Co-parenting and shared custody arrangements are now the norms for preventing the affected children from growing up with one parent's influence (this tends to produce more well-adjusted children). Since society today is different from what it was in the 20th century, the child custody law has needed to change. The tender years doctrine made much sense when mothers stayed at home and fathers worked, but that is not the case today. Both women and men share equal rights at the workplace, and therefore the same principle should be applied when it comes to parental responsibility. Meaning that both the mother and father have rights to the legal and physical custody of their children. Shared custody is an appropriate and natural evolution in the child custody law (Baysinger Law 2018).

3.3. Child Custody in the Philippines

The case of *Perez vs Perez* (G.R. No. 118870 March 29, 1996) tells the story of a husband and wife who eventually separated after several years of marriage. The Supreme Court of the Philippines summarized the case as follows: "Ray Perez, the husband, is a doctor of medicine practicing in Cebu, Philippines, while Nerissa, his wife, is a registered nurse. They were married in Cebu on December 6, 1986. After six miscarriages, two operations and a high-risk pregnancy, Nerissa finally gave birth to Ray Perez II in New York on July 20, 1992. Nerissa then began working in the United States in October 1988, and used part of her earnings to build a modest house in Mandaue City, Cebu. She also sought medical attention for her successive miscarriages in New York. She became a United States resident alien in February 1992. Ray, for his part, stayed with her in the U.S. and twice took care of her when she became pregnant. Unlike his wife, however, he had only a tourist visa and was not employed."

On January 17, 1993, the couple and their baby arrived in Cebu. After a few weeks, only Nerissa returned to the U.S. She alleged that they came home only for a five-week vacation and that they all had round-trip tickets. However, her husband stayed behind to take care of his sick mother and promised to follow her with the baby. According to Ray, they had agreed to reside permanently in the Philippines but once Nerissa was in New York, she changed her mind and continued working. She was supposed to come back immediately after winding up her affairs there. When Nerissa came home a few days before Ray II's first birthday, the couple was no longer in good terms. That their love for each other was fading became apparent from their serious quarrels. On the one hand, Nerissa did not want to live near her in-laws and rely solely on her husband's meager income of P5,000.00. She longed to be with her only child but he was being kept away from her by her husband. Thus, she did not want to leave RJ (Ray Junior) with her husband and in-laws. She wished for her son to grow up with his mother.

On the other hand, Ray wanted to stay in the Philippines, where he could raise his son even as he practiced his profession. He maintained that it would not be difficult to live in the country since they have their own home and a car. They could live comfortably on his P15,000.00 monthly income as they were not burdened with having to pay any debts. Nerissa was then forced to move to her parents' home on Guizo Street in Mandaue. Despite mediation by the priest who solemnized their marriage, the couple failed to reconcile and each fought to get custody of their minor child."

As to who between the father and the mother gets custody of the minor child, the Supreme Court of the Philippines decided to grant the custody to the mother, Nerissa. Specifically, the Supreme Court stated thus:

"The Family Code, in reverting to the provision of the Civil Code that a child below seven years old should not be separated from the mother (Article 363), has expressly repealed the earlier Article 17, paragraph three of the Child and Youth Welfare Code (Presidential Decree No. 603) which reduced the child's age to five years. The general rule that a child under seven years of age shall not be separated from his mother finds its *raison d'être* in the basic need of a child for his mother's loving care. Only the most compelling of reasons shall justify the court's awarding the custody of such a child to someone other than his mother, such as her unfitness to exercise sole parental authority. In the past the following grounds have been considered ample justification to deprive a mother of custody and parental authority: neglect, abandonment, unemployment and immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity and being sick with a communicable disease.

It is not difficult to imagine how heart-rending it is for a mother whose attempts at having a baby were frustrated several times over a period of six years to finally bear one, only for the infant to be snatched from her before he has even reached his first year. The mother's role in the life of her child, such as Ray II, is well-nigh irreplaceable. In prose and poetry, the depth of a mother's love has been immortalized times without number, finding as it does, its justification, not in fantasy but in reality."

In another case, the case of *Espiritu and Layug vs Masauding* (G.R. No. 115640 March 15, 1995) the Supreme Court has a different ruling, however. The facts of the case as summarized by the Court is as follows: "Reynaldo Espiritu and respondent Teresita Masauding first met sometime in 1976 in Iligan City where Reynaldo was employed by the National Steel Corporation and Teresita was employed as a nurse in a local hospital. In 1977, Teresita left for Los Angeles, California to work as a nurse. She was able to acquire immigrant status sometime later. In 1984, Reynaldo was sent by his employer, the National Steel Corporation, to Pittsburgh, Pennsylvania as its liaison officer and Reynaldo and Teresita then began to maintain a common law relationship of husband and wife. On August 16, 1986, their daughter, Rosalind Therese, was born. On October 7, 1987, while they were on a brief vacation in the Philippines, Reynaldo and Teresita got married, and upon their return to the United States, their second child, a son, this time, and given the name Reginald Vince, was born on January 12, 1988.

The relationship of the couple deteriorated until they decided to separate sometime in 1990. Teresita blamed Reynaldo for the break-up, stating he was always nagging her about money matters. Reynaldo, on the other hand, contended that Teresita was a spendthrift, buying expensive jewelry and antique furniture instead of attending to household expenses. Instead of giving their marriage a second chance as allegedly pleaded by Reynaldo, Teresita left Reynaldo and the children and went back to California. She claims, however, that she spent a lot of money on long distance telephone calls to keep in constant touch with her children. Reynaldo brought his children home to the Philippines, but because his assignment in Pittsburgh was not yet completed, he was sent back by his company to Pittsburgh. He had to leave his children with his sister, Guillerma Layug and her family."

In the battle for the custody of the children, the children, who at the time the decision was about to be rendered, were already over seven (7) years old, chose to be with their father. The Supreme Court then ruled in favor of the father, thus:

"In ascertaining the welfare and best interests of the child, courts are mandated by the Family Code to take into account *all* relevant considerations. If a child is under seven years of age, the law presumes that the mother is the best custodian. The presumption is strong but it is not conclusive. It can be overcome by "compelling reasons". If a child is over seven, his choice is paramount but, again, the court is not bound by that choice. In its discretion, the court may find the chosen parent unfit and award custody to the other parent, or even to a third party as it deems fit under the circumstances.

In the present case, both Rosalind and Reginald are now over seven years of age. Rosalind celebrated her seventh birthday on August 16, 1993 while Reginald reached the same age on January 12, 1995. Both are studying in reputable schools and appear to be fairly intelligent children, quite capable of thoughtfully determining the parent with whom they would want to live. Once the choice has been made, the burden returns to the court to investigate if the parent thus chosen is unfit to assume parental authority and custodial responsibility.

The Court of Appeals' finding that the father could not very well perform the role of a sole parent and substitute mother because his job is in the United States while the children will be left behind with their aunt in the Philippines is misplaced. The assignment of Reynaldo in Pittsburgh is or was a temporary one. He was sent there to oversee the purchase of a steel mill component and various equipment needed by the National Steel Corporation in the Philippines. Once the purchases are completed, there is nothing to keep him there anymore. In fact, in a letter dated January 30, 1995, Reynaldo informs this Court of the completion of his assignment abroad and of his permanent return to the Philippines.

The law is more than satisfied by the judgment of the trial court. The children are now both over seven years old. Their choice of the parent with whom they prefer to stay is clear from the record. From all indications, Reynaldo is a fit person, thus meeting the two requirements found in the first paragraph of Article 213 of the Family Code. The presumption under the second paragraph of said article no longer applies as the children

are over seven years. Assuming that the presumption should have persuasive value for children only one or two years beyond the age of seven years mentioned in the statute, there are compelling reasons and relevant considerations not to grant custody to the mother. The children understand the unfortunate shortcomings of their mother and have been affected in their emotional growth by her behavior."

3.4. Sole and Joint Custody

In a study conducted by Bauserman (2022), it became clear that children in joint physical or legal custody were better adjusted than children in sole-custody settings, but no different from those in intact families. For all categories of adjustment except academic adjustment (overall adjustment, family relations, self-esteem, emotional adjustment, behavioral adjustment, and divorce-specific adjustment), children in joint custody were better adjusted than sole custody children. Joint-custody parents reported less current and past conflict than did sole-custody parents, but this did not explain the better adjustment of joint-custody children. This shows that joint custody can be advantageous for children in some cases, possibly by facilitating ongoing positive involvement with both parents.

In one Philippine case, *Hirsh vs Hirsh* (G.R. No. 174485 July 11, 2007) however, the Supreme Court granted sole custody of the child to the mother instead of the joint custody asked for by the father. The Court summarized the facts of the case as follows: "Franklin and Agnes were married on December 23, 2000 in the City of Bacolod, and established their conjugal dwelling in Diniwid, Boracay Island, Malay, Aklan. On December 21, 2002, a child was born to them and was named Simone. In 2005, the couple started to have marital problems as Agnes wanted to stay in Makati City, while Franklin insisted that they stay in Boracay Island. On March 23, 2006, Agnes came to their conjugal home in Boracay, and asked for money and for Franklin's permission for her to bring their daughter to Makati City for a brief vacation. Franklin readily agreed, but soon thereafter discovered that neither Agnes nor their daughter Simone would be coming back to Boracay. "The father Franklin brought a case against the mother Agnes asking for the joint custody of the child. The Supreme Court, in ruling against Franklin, had this to say, thus:

"The Convention on the Rights of the Child provides that 'in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.' The Child and Youth Welfare Code, in the same way, unequivocally provides that in all questions regarding the care and custody, among others, of the child, his/her welfare shall be the paramount consideration.

The so-called "tender-age presumption" under Article 213 of the Family Code may be overcome only by compelling evidence of the mother's unfitness. The mother is declared unsuitable to have custody of her children in one or more of the following instances: neglect, abandonment, unemployment, immorality, habitual drunkenness, drug addiction, maltreatment of the child, insanity, or affliction with a communicable disease. Here, the mother was not shown to be unsuitable or grossly incapable of caring for her minor child. All told, no compelling reason has been adduced to wrench the child from the mother's custody."

In another case, the Court, although granting sole custody to the mother, also granted visitation rights to the father of the child. This is the case of *Silva vs Gonzalez* (G.R. No. 114742 July 17, 1997) and summarized as follows: "Carlitos E. Silva, a married businessman, and Suzanne T. Gonzales, an unmarried local actress, cohabited without the benefit of marriage. The union saw the birth of two children: Ramon Carlos and Rica Natalia. Not very long after, a rift in their relationship surfaced. It began, according to Silva, when Gonzales decided to resume her acting career over his vigorous objections. The assertion was quickly refuted by Gonzales who claimed that she, in fact, had never stopped working throughout their relationship. At any rate, the two eventually parted ways."

The children remain in the custody of their mother, which arrangement was not contested by the father. However, the controversy arose when the mother prohibited the father to visit the children and be in his company during the weekends. The Court, in finding for the father had this to say, thus:

"There is no doubt that in all cases involving a child, his interest and welfare is always the paramount consideration. The Court shares the view of the Solicitor General, who has recommended due course to the petition, that a few hours spent by petitioner with the children, however, could not all be that detrimental to the children. Similarly, what the trial court has observed is not entirely without merit; thus:

The allegations of respondent against the character of petitioner, even assuming as true, cannot be taken as sufficient basis to render petitioner an unfit father. The fears expressed by respondent to the effect that petitioner shall be able to corrupt and degrade their children once allowed to even temporarily associate with petitioner is but the product of respondent's unfounded imagination, for no man, bereft of all moral persuasions and goodness, would ever take the trouble and expense in instituting a legal action for the purpose of seeing his illegitimate children. It can just be imagined the deep sorrows of a father who is deprived of his children of tender ages.

The Court appreciates the apprehensions of private respondent and their well-meant concern for the children; nevertheless, it seems unlikely that petitioner would have ulterior motives or undue designs more than a parent's natural desire to be able to call on, even if it were only on brief visits, his own children. The trial court, in any case, has seen it fit to understandably provide this precautionary measure, i.e., "in no case (can petitioner) take out the children without the written consent of the mother."

3.5. Child Custody by the Grandparents

Under Philippine Laws, and with the presence of both parents, the grandparents can only acquire substitute parental authority in the event of the parents' unsuitability for the best interests of the child. This effectively means that the grandparents are not the priority in cases of custody litigations as regards the minor children. Article 210 of the Family Code of the Philippines states, "Parental authority and responsibility may not be renounced or transferred except in the cases authorized by law."

Under the Family Code of the Philippines, parents have the right to the custody of their children. However, if the parents are deemed unfit or has abandoned their parental responsibilities, custody may be transferred to a grandparent or other relative. The court may also award custody to a grandparent if it is in the best interest of the child. The Family Code, however, does not provide for an automatic right of grandparents to the custody of their grandchildren. In the absence of extraordinary circumstances, custody will generally remain with the parents. Grandparents seeking custody will need to file a petition in court, and the court will

evaluate the merits of the case based on various factors, such as the child's welfare and the ability of the grandparents to provide for the child's needs (Attorneys of the Philippines, 2022).

The case of Santos Sr. vs the Spouses Bedia (G.R. No. 113054 March 16, 1995) is one between the father of the child and the grandparents. The facts of the case, as summarized by the Supreme Court, is as follows: "Leouel Santos, Sr., an army lieutenant, and Julia Bedia a nurse by profession, were married in Iloilo City in 1986. Their union beget only one child, Leouel Santos, Jr. who was born July 18, 1987. From the time the boy was released from the hospital until sometime thereafter, he had been in the care and custody of his maternal grandparents, the spouses Leopoldo and Ofelia Bedia.

Leouel and wife Julia agreed to place Leouel Jr. in the temporary custody of the latter's parents, the spouses Bedia. The latter alleged that they paid for all the hospital bills, as well as the subsequent support of the boy because the father could not afford to do so. The boy's mother, Julia Bedia-Santos, left for the United States in May 1988 to work. Leouel alleged that he is not aware of her whereabouts and his efforts to locate her in the United States proved futile. The spouses Bedia claim that although abroad, their daughter Julia had been sending financial support to them for her son.

On September 2, 1990, the child's father Leouel, along with his two brothers, visited the Bedia household, where three-year old Leouel Jr. was staying. The child's grandparents contend that through deceit and false pretensions, the father Leouel abducted his son and clandestinely spirited him away to his hometown in Bacong, Negros Oriental. The spouses Bedia then filed a "Petition for Care, Custody and Control of Minor Ward Leouel Santos Jr.," before the Regional Trial Court of Iloilo City, with Leouel Santos, Sr. as respondent. After an *ex-parte* hearing on October 8, 1990, the trial court issued an order on the same day awarding custody of the child Leouel Santos, Jr. to his grandparents, Leopoldo and Ofelia Bedia."

Leouel Santos, Sr. appealed the decision to the Court of Appeals, who agreed to the decision made by the trial court. Undeterred, Leouel brought the case before the Supreme Court, who overturned the decision of the Court of Appeals and find in favor of the father of the minor child. Specifically, the Supreme Court ruled, thus:

Private respondents' (grandparents) demonstrated love and affection for the boy, notwithstanding, the legitimate father is still preferred over the grandparents. The latter's wealth is not a deciding factor, particularly because there is no proof that at the present time, petitioner is in no position to support the boy. The fact that he was unable to provide financial support for his minor son from birth up to over three years when he took the boy from his in-laws without permission, should not be sufficient reason to strip him of his permanent right to the child's custody. While petitioner's previous inattention is inexcusable and merits only the severest criticism, it cannot be construed as abandonment. His appeal of the unfavorable decision against him and his efforts to keep his only child in his custody may be regarded as serious efforts to rectify his past misdeeds. To award him custody would help enhance the bond between parent and son. It would also give the father a chance to prove his love for his son and for the son to experience the warmth and support which a father can give.

Private respondents' (grandparents) attachment to the young boy whom they have reared for the past three years is understandable. Still and all, the law considers the natural love of a parent to outweigh that of the grandparents, such that only when the parent present is shown to be unfit or unsuitable may the grandparents exercise substitute parental authority, a fact which has not been proven here. The strong bonds of love and affection possessed by private respondents as grandparents should not be seen as incompatible with petitioner's right to custody over the child as a father."

However, in another case, the Supreme Court of the Philippines awarded custody of the child to her grandparents instead of her parents. The case of the Spouses Luna vs the Spouses Salumbines (G.R. No. L-68374 June 18, 1985) tells the story of a child caught between the love of her parents and that of her grandparents. The Supreme Court summarized the facts of the case as follows: "The records of the case show that the herein private respondent Maria Lourdes Santos is an illegitimate child of the petitioner Horacio Luna who is married to his co-petitioner Liberty Hizon-Luna. Maria Lourdes Santos is married to her co-respondent Sixto Salumbides, and are the parents of Shirley Santos Salumbides, also known as Shirley Luna Salumbides, who is the subject of this child custody case.

It appears that two or four months after the birth of the said Shirley Salumbides on April 7, 1975, her parents gave her to the petitioners, a childless couple with considerable means, who thereafter showered her with love and affection and brought her up as their very own. The couple doted upon Shirley who called them "Mama" and "Papa". She calls her natural parents "Mommy" and "Daddy." When Shirley reached the age of four (4) years in 1979, she was enrolled at the Maryknoll College in Quezon City, where she is now in Grade III.

A few months before September, 1980, her "Mama" and "Papa" decided to take Shirley abroad and show her Disneyland and other places of interest in America. Shirley looked forward to this trip and was excited about it. However, when the petitioners (grandparents) asked for the respondents' (parents) written consent to the child's application for a U.S. visa, the respondents refused to give it, to the petitioners' surprise and chagrin. Shirley was utterly disappointed. As a result, the petitioners (grandparents) had to leave without Shirley whom they left with the private respondents (parents), upon the latter's request. The petitioners, however, left instructions with their chauffeur to take and fetch Shirley from Maryknoll College every school day.

When the petitioners (grandparents) returned on October 29, 1980, they learned that the respondents (parents) had transferred Shirley to the St. Scholastica College. The private respondents also refused to return Shirley to them. Neither did the said respondents allow Shirley to visit the petitioners. In view thereof, the petitioners filed a petition for habeas corpus with the Court of First Instance of Rizal, Branch XV, against the private respondents to produce the person of Shirley and deliver her to their care and custody. The case was docketed in court as Spec. Proc. No. 9417, and after the filing of an answer and due hearing, a decision was rendered on March 9, 1981, declaring the petitioners entitled to the child's custody and forthwith granted the writ prayed for."

The parents of the child Shirley appealed the decision to the Court of Appeals, which found the appeal in their favor. The grandparents finally brought the case to the Supreme Court who ruled in favor of the grandparents. Specifically, the Supreme Court stated thus:

"The manifestation of the child Shirley that she would kill herself or run away from home if she should be taken away from the herein petitioners and forced to live with the private respondents, made during the hearings on the petitioners' motion to set aside the writ of execution and reiterated in her letters to the members of the Court dated September 19, 1984 and January 2, 1985, and during the hearing of the case before this Court, is a circumstance that would make the execution of the judgment rendered in Spec. Proc. No. 9417 of the Court of First Instance of Rizal inequitable, unfair and unjust, if not illegal. Article 363 of the Civil Code provides

that in all questions relating to the care, custody, education and property of the children, the latter's welfare is paramount. This means that the best interest of the minor can override procedural rules and even the rights of parents to the custody of their children. Since, in this case, the very life and existence of the minor is at stake and the child is in an age when she can exercise an intelligent choice, the courts can do no less than respect, enforce and give meaning and substance to that choice and uphold her right to live in an atmosphere conducive to her physical, moral and intellectual development. The threat may be proven empty, but Shirley has a right to a wholesome family life that will provide her with love, care and understanding, guidance and counseling, and moral and material security."

4. FINDINGS

In case of separation of the parents, the question as to who has custody of the children depends, in all instances, as to the children's best interest. This is in accordance and in pursuance of the 1989 Convention of the Rights of the Child which is the main and global legal instrument for the protection of children. Article 3 thereof specifically posits that in every law, private or public, and in every problematic situation, the best interest of the child should be given paramount consideration.

Under Philippine Laws, the best interest of the child is also given primary consideration. Specifically, in Article 213 of the Family Code, the law provides that in case of the separation of the parents, the parent granted custody of the children is the one designated by the Court. The Court in coming up with the choice considers and reflects on who between the parents can best support the needs of the child in accordance to his best interest. However, the same provision of the law also stated that children below seven (7) years of age should stay with the mother. In other words, the mother is granted the custody of the minor children appurtenant to, or in consonance with the tender years doctrine. This doctrine emphasizes that giving the custody to the mother, with all her natural maternal nurturing and love, is in accordance to the best interest of the child.

Hence, in pursuance to this doctrine, in the case of *Perez vs Perez*, the Supreme Court, in granting custody to the mother, ruled that the mother's role in the life of her child, is well-nigh irreplaceable. The Court continued that in prose and poetry, the depth of a mother's love has been immortalized times without number, finding as it does, its justification, not in fantasy but in reality. However, the tender years doctrine has been recently questioned as inimical to the equal protection clause. The criticism emanates from the fact that the father is not put on an equal footing with the mother as to who can best provide the most suitable environment for the child's best interests. It is not denied that many families now have both the mother and the father working for the support of the family, whereas the tender years doctrine is more suited to the situation where only the father is the breadwinner for the family.

In another case, the case of *Espiritu and Layug vs Masauding*, the Supreme Court has a different ruling, however. Not surprisingly, the Supreme Court of the Philippines also looks at the totality of the case and its surrounding circumstances to finally come up with the choice as to who between the parents is most suitable for the child's best interest. In granting the custody of the children to their father, the parent of choice of the children who are over seven (7) years of age, the Court stated that in ascertaining the welfare and best interests of the child, courts are mandated by the Family Code to take into account all relevant considerations, and that if a child is under seven years of age, the law presumes that the mother is the best custodian. The Court contends, however, that the presumption is strong but it is not conclusive and can be overcome by "compelling reasons" and that if a child is over seven, his choice is paramount but, again, the court is not bound by that choice.

Primarily, the major custody arrangements are the sole custody of either parent, and the joint custody of both parents. Between the two, studies show that the best interest of the child is best served in a joint custody arrangement, all things being equal. In the Philippine case of *Hirsh vs Hirsh*, however, the Supreme Court granted sole custody of the child to the mother instead of the joint custody asked for by the father. The reason behind the Court's ruling is that the so-called "tender-age presumption" under Article 213 of the Philippine Family Code may be overcome only by compelling evidence of the mother's unfitness, and in the case, the mother was not proven to be unfit. Interestingly, in the case of *Silva vs Gonzales*, the Court, although granting sole custody to the mother, also granted visitation rights to the father of the child. Here, the Court recognizes that it is a natural aspiration of a parent to see, visit and spend time with his children, albeit in this case, such should be with the written consent of the mother who has custody over the children.

Although sole and joint custody arrangements are more pervasive in separation cases, other forms of custody practices are now being explored and even practiced. One such arrangement is the joint physical custody or the shared custody, where the child spends time with both of the parents, usually equally, or close to equally. Another type of custody arrangement is the bird's nest custody, or bird's nest parenting, which uses all the advantages of shared custody while at the same time preventing its weaknesses, as it provides a stable family home for the children where they get to spend time with both parents although not at the same time. Another interesting arrangement is the split custody practice, where in such split custody situations, each parent serves as the custodial parent of at least one of the couple's children. Finally, alternating custody or alternate custody or even backpacker's custody is that by which the child stays a certain and predetermined period of time with the father and another certain time period with the mother.

Although the parents, albeit separated, are in the best position to care for their children, there are circumstances, as the Court determines, to grant custody to persons other than the parents, if such would serve the best interest of the child. Hence, there are cases involving the grandparents seeking custody of the children even with the presence of the parents. One such Philippine case is the case of *Santos Sr. vs the Spouses Bedia*, where the father, Santos Sr. seeks custody of the child from the child's maternal grandparents, the Spouses Bedia, as the child's mother at the point was working abroad. The Court eventually ruled in favor of the father, contending that although the grandparents demonstrated love and affection for the boy, notwithstanding, the legitimate father is still preferred over the grandparents. The Court continued that the grandparents' wealth is not a deciding factor, particularly because there is no proof that the father is in no position to support the boy.

However, in another case, the Supreme Court of the Philippines awarded custody of the child to her grandparents instead of her parents. The case of the *Spouses Luna vs the Spouses Salumbines* tells the story of a child caught between the love of her parents and that of her grandparents, where the Spouses Luna are the parents, and the Spouses Salumbines are the maternal grandparents, specifically the grandfather and the step-grandmother of the child. The Court, in granting custody to the grandparents, took into consideration the choice of the child to be with her grandparents. The Court posited that the best interest of the minor can override procedural rules and even the rights of parents to the custody of their children.

5. DISCUSSION OF FINDINGS

The Philippine Laws is replete and very protective of the rights of the parents and the authority they exercise over the children, most especially those who are not yet of age. This is evident in the Family Code provisions on Parental Authority, specifically Article 209, pointing to the natural rights of parents over their minor children, Article 210, stating the non-transferability of such authority, and Article 211, promoting the joint exercise of parental authority, among others. Interestingly, Article 211 also proclaims that in case of disagreement between the spouses, the father's decision shall prevail.

The conflict on parental authority and custody arises when the parents become separated. Article 213 of the same Family Code emphasizes that in case of the parent's separation, parental authority shall be exercised by the parent designated by the Court. As to who is that parent, the Court shall take into consideration relevant circumstances surrounding each and every particular case, including but not limited to the choice of the child over seven (7) years of age. The same article of the law also emphasizes that no child under seven (7) years of age shall be separated from the mother, basically paving the way for the mother's custody of the children. This principle is reiterated in Article 363 of the Civil Code which states that in all questions on the care, custody, education and property of the children, the latter's welfare shall be paramount and that no mother shall be separated from her child under seven (7) years of age, unless the court finds compelling reasons for such measure. This is consistent with the principle of the tender years' doctrine, which considers the mother to be the best parent to nurture and take care of the child during his tender years.

However, the United Nations, in outlining the guidelines for the protection of children, actively promotes The Best Interest of the Child principle. Hence, in custody cases, the right of the mother to the custody of the children is not the prevailing consideration in the grant thereof. What should be of paramount consideration is the best interest of the child, and the child's best interest may not be automatically with that of the mother. The child's best interest can point to a custody by the father, a joint custody between the mother and the father, and even a custody by the grandparents, if circumstances should warrant it. Even if a joint custody is found by the Court to be in the best interest of the child, new and more practical joint arrangements are being tried and explored, since society had changed dramatically from the time the tender years' presumption had been hailed as the more proper manner to promote the welfare and well-being of the child.

As to who should have custody of the minor children in case of the separation of the parents then rests on three well-meaning principles that although have the same goal, may contradict one another in some aspect of their implementation. These three are The United Nations Principle of the Best Interest of the Child, the tender year's doctrine and the Law. Article 3 of the UN Convention on the Rights of the Child (CRC) enshrines the principle of the best interests of the child as it stipulates that in every law, public or private initiative, and in every problematic situation, the best interests of the child must be given preeminent consideration, and that the best interest of the child determination involves a formal process with strict procedural safeguards designed to determine their best interest for particularly important decisions affecting the child.

The tender years' doctrine, on the one hand, recognizes the mother as the best parent to nurture the child during his tender years. The tender years is then defined to be the age of four (4) years and below. Proponents of this doctrine posits that a healthy childhood was understood to be important for healthy social development and that mothers were the appropriate gender for providing such care since it was frequently accepted that emotional support and primary caregiving were intrinsic elements in motherly attitudes and roles. The tender years doctrine may seem to contradict certain aspects of the best interest principle but in its more nuanced sense, the application of the tender years' doctrine is really in consonance to the best interest principle in that granting to the mother the custody of the children below four (4) years of age, when the child is in most need of his mother's nurturing care, is actually to his best interest.

On the other hand, Philippine laws including jurisprudence, has a more inclusive albeit less pronounced stance as to who should be granted custody of the children. It recognizes the tender years doctrine in that as a rule, the mother is granted custody of the minor children during their tender years. A deviation, however, occurs on what is considered to be a child's tender years, for while the tender years' doctrine considers the age of below four (4) years, Philippine laws looks at the age of below seven (7) years. Philippine Laws also considers the choice of the child above the age seven (7), hence the custody could be granted to the child's choice, be that be the father, the mother, or even the grandparents. Above all these, however, is the recognition by the Philippine Laws of the principle of the best interest of the child as the paramount consideration in custody cases. As to what is the best interest of the child is often decided by the Courts on a case-to-case basis, as each case is unique and different. Hence, the best interest of the child may take the form of an application of the tender years' doctrine, or it could be the choice of the child above seven (7) years of age, or it could even be a form of custody that is tailor-made to a certain family as needed by the circumstances of a specific case.

6. CONCLUSION

The Principle of the Best Interest of the Child truly have a remarkable impact on child custody cases. Courts very much put importance to this principle when deciding who gets to have custody of the minor child. The seeming moral mandate from the United Nations to always consider what is the child's best interest is, however, bereft of specific and established guidelines as far as custody cases are concerned, hence Courts often times have to decide, on a case-to-case basis, what is truly the best interest of the child. Therefore, as to who gets to have custody of a child will depend on the circumstances present in the case, and since no two cases are exactly alike, what is determined to be the best interest of the child in one case, may not be necessarily be reflective of what is the best interest for the child's well-being in another. It is not, therefore uncommon for two cases, with seemingly similar facts, to be surprisingly decided differently.

The nuances present and even the subjectivity of judgment found in the determination of what is the child's best interest is not found in the application of the tender years' doctrine, since in this doctrine, it is very clear that a child below four (4) years of age still needs the mother's natural nurturing care. The custody then of the child, following the doctrine, is granted to the mother. Although the Best Interest of the Child principle already supersedes the tender years' doctrine, due consideration to the doctrine is still necessary in the determination of the child's best interest.

The Philippine Laws looks into the positive aspects of both the Best Interest of the Child Principle and the Tender Years' Doctrine, as it gives to the mother the custody of the child below seven (7) years old while recognizing that even this could be superseded by the best interest principle. Since there are no steps and guidelines recognized in the determination of the best interest of the child, the Courts at times make references to the tender years' doctrine as an application of the child's best interest.

Hence, the picture of what is a child's best interest in one case, could be remarkably different in another, even to two cases with quite similar facts, for indeed, no two cases are exactly the same.

7. RECOMMENDATION

From this research, three recommendations are in order. The First one is as regards to the United Nation's Convention of the Rights of the Child which establishes the best interest of the child principle. Although the UN is clear as to its goal of always considering the best interest of the child in all aspects of his life, it fails to give a set of guidelines on how the principle is to be implemented. What is clear though are the aspirational goals that are to be reached, not the specific methods on how to reach them. Admittedly, the application of the principle would have to be done based on the circumstances surrounding each unique and particular case, as it should be, but the recommendation is at least to set up a list of minimum requirements to spring board the proper implementation of the principle. In this way, Courts will have at least a guide with regard to the salient points that must be considered to make a proper assessment and determination. Unlike the tender year's doctrine where specificity is posited as regards its application, the best interest principle relies on the judgment of the Court as to each particular case, without allocating specific markers and goalposts that could have served as a useful guide in coming up with a decision pertaining to a situation that serves the child's best interest.

The Second recommendation is with respect to the Philippine Laws specifically addressing custody in the case of the separation of the parents. The Philippine Laws addresses custody by positing that no child below seven (7) years of age shall be separated from the mother, and that the choice of the child above seven (7) years of age shall be given utmost consideration, and yet all these can be superseded if the Courts decided otherwise, if such decision could lead to the child's best interest. However, the best interest principle is not codified in the Family Code. The nearest reference to the best interest principle is found in Article 363 of the Civil Code, stating the child's welfare being paramount as regards his care and custody. The recommendation then is to add or incorporate the best interest principle in the Family Code under the chapter on Parental Authority as a nod to the application of the best interest principle promoted by the United Nations. This way, it becomes clear that the decision for each and every custody case, although varied and disparate when compared to the others, all have an underlying goal to achieve in the best possible way, the best interest of the child.

Finally, it is also recommended to incorporate joint custody in the Family Code. The Family Code has a provision on joint parental authority, when the parents are still together, but it is silent as to joint custody when the parents are already separated. Time and again, studies have found the advantages of a joint custody on the children, and although joint custody is not prohibited in the law, it also is not actively promoted, hence, joint custody does not come as a matter of course. It still has to be contested in Court, leading to a litigation that could further deteriorate the relationship of the parents. Also, joint custody does not even necessarily have to be limited to the parents. Such could also extend to a joint custody with the grandparents if such circumstance could lead to the achievement of the child's best well-being. Above all these is the underlying notion that although the breakdown of the parents' relationship does have an effect on the child, it does not need to adversely affect his growth and welfare, and all considerations should be assessed to mitigate the impact of the parent's separation to its minimum and still achieve a solution, or even a situation, that although may not be the best outcome of the relationship of the parents, still actively works for and promotes the child's best interest.

REFERENCES

- Supreme Court of the Philippines. (2007, July 11). *Agnes Gamboa-Hirsch v. Hon. Court of Appeals and Franklin Harvey Hirsch*, G.R. No. 174485. https://lawphil.net/judjuris/juri2007/jul2007/gr_174485_2007.html
- Republic of the Philippines. (1949). *Civil Code of the Philippines*, Article 363. Republic Act No. 386. https://lawphil.net/statutes/repacts/ra1949/ra_386_1949.html
- Republic of the Philippines. (1987). *Family Code of the Philippines*, Article 209. Executive Order No. 209. https://lawphil.net/executive/execord/eo1987/eo_209_1987.html
- Republic of the Philippines. (1987). *Family Code of the Philippines*, Article 210. Executive Order No. 209. https://lawphil.net/executive/execord/eo1987/eo_209_1987.html
- Republic of the Philippines. (1987). *Family Code of the Philippines*, Article 211. Executive Order No. 209. https://lawphil.net/executive/execord/eo1987/eo_209_1987.html
- Republic of the Philippines. (1987). *Family Code of the Philippines*, Article 213. Executive Order No. 209. https://lawphil.net/executive/execord/eo1987/eo_209_1987.html
- Ackerman, M. J., & Pritzl, T. B. (2011). Child custody evaluation practices: A 20-year follow-up. *Family Court Review*, 49(3), 618–628.
- Artis, J. E. (2004). Judging the best interests of the child: Judges' accounts of the tender years doctrine. *Law & Society Review*, 38(4), 769–806.
- Attorneys of the Philippines. (2022). The legal landscape of grandparents' custody and visitation rights in the Philippines. Retrieved February 2024, from [https://attorney.org.ph/component/rsblog/post/445-the-legal-landscape-of-grandparents-custody-and-visitation-rights-in-the-philippines:contentReference\[oaicite:13\]{index=13}](https://attorney.org.ph/component/rsblog/post/445-the-legal-landscape-of-grandparents-custody-and-visitation-rights-in-the-philippines:contentReference[oaicite:13]{index=13})
- Bauserman, R. (2002). Child adjustment in joint-custody versus sole-custody arrangements: A meta-analytic review. *Journal of Family Psychology*, 16(1), 91–102. [https://doi.org/10.1037/0893-3200.16.1.91:contentReference\[oaicite:17\]{index=17}](https://doi.org/10.1037/0893-3200.16.1.91:contentReference[oaicite:17]{index=17})
- Baysinger Henson Reimer & Cresswell PLLC Attorneys. (2018). The tender years doctrine: Origin, history, modern usage and criticism. Retrieved February 2024, from [https://baysingerlaw.com/2018/02/tender-years-doctrine-origin-history-modern-usage-criticism/:contentReference\[oaicite:21\]{index=21}](https://baysingerlaw.com/2018/02/tender-years-doctrine-origin-history-modern-usage-criticism/:contentReference[oaicite:21]{index=21})
- Bieber, C., & Ramirez, A. (2023, March 31). What is joint custody? *Forbes Advisor*. Retrieved January 2024, from [https://www.forbes.com/advisor/legal/child-custody/joint-custody/:contentReference\[oaicite:25\]{index=25}](https://www.forbes.com/advisor/legal/child-custody/joint-custody/:contentReference[oaicite:25]{index=25})
- Bieber, C., & Ramirez, A. (2023, April 20). What is sole custody? Definition and examples. *Forbes Advisor*. Retrieved January 2024, from [https://www.forbes.com/advisor/legal/child-custody/sole-custody/:contentReference\[oaicite:29\]{index=29}](https://www.forbes.com/advisor/legal/child-custody/sole-custody/:contentReference[oaicite:29]{index=29})
- Bow, J. N., Gottlieb, M. C., & Gould-Saltman, D. J. (2011). Attorneys' beliefs and opinions about child custody evaluations. *Family Court Review*, 49(2), 301–312. [https://doi.org/10.1111/j.1744-1617.2011.01372.x:contentReference\[oaicite:33\]{index=33}](https://doi.org/10.1111/j.1744-1617.2011.01372.x:contentReference[oaicite:33]{index=33})

- Brandon, D. J. (n.d.). Research on child custody arrangements (compilation). Retrieved from http://agweb.ag.utk.edu/extension/fcs/humandev/coparenting/bkgrd_researchCustody.pdf:contentReference[oaicite:37]{index=37}
- Brannan, G. D., Brannan, J. M., & Tenny, S. (2022). Qualitative study. *National Library of Medicine, National Center for Biotechnology Information*. Retrieved December 2023, from <https://www.ncbi.nlm.nih.gov/books/NBK470395/>:contentReference[oaicite:41]{index=41}
- Braver, S. L., Ellman, I. M., Votruba, A. M., & Fabricius, W. V. (2011). Lay judgments about child custody after divorce. *Psychology, Public Policy, and Law*, 17(2), 212–240. <https://doi.org/10.1037/a0023194>:contentReference[oaicite:45]{index=45}
- Carlitos E. Sliva vs Hon. Court of Appeals and Suzanne T. Gonzales, G.R. No. 114742 (July 17, 1997). Retrieved February 2024, from https://lawphil.net/judjuris/juri1997/jul1997/gr_114742_1997.html:contentReference[oaicite:46]{index=46}
- Changes in custody. (2017). *DC.gov - Child Support Services Division*. Retrieved December 2023, from <https://oag.dc.gov/child-support/custody-visitation/changes-custody>:contentReference[oaicite:50]{index=50}
- Dalton, E., & Hoult, L. (2016). "Bird's-nest" custody takes off in the UK. Retrieved January 2024, from <https://www.co-operative.coop/media/news-releases/birds-nest-custody-takes-off-in-the-uk>:contentReference[oaicite:54]{index=54}
- Dieringer, J. K., Elsen, S. R., & Goldenhersh, S. E. (2008). Child custody. *Massachusetts Legal Services*. Archived from the original (PDF) on June 5, 2013. Retrieved December 2023, from https://www.masslegalservices.org/system/files/library/Child_Custody.pdf:contentReference[oaicite:58]{index=58}
- European Migration Network. (2021).
- European Commission. (2022).
- Georgia, USA Law, O.C.G.A. § 19-6-15 (a)(21). Retrieved January 2024, from <https://mtlawoffice.com/news/what-is-split-custody>:contentReference[oaicite:67]{index=67}
- Gresk, E. (2013). Opposing viewpoints: Best interests of the child vs. The Fathers' Rights Movement. *Children's Legal Rights Journal*, 33(1), 390–394.
- Holt, S. (2016). "Quality" contact post-separation/divorce: A review of the literature. *Children and Youth Services Review*, 68, 92–99. <https://doi.org/10.1016/j.childyouth.2016.07.001>:contentReference[oaicite:75]{index=75}
- Horacio Luna and Liberty Hizon-Luna vs Intermediate Appellate Court, et al., G.R. No. L-68374 (June 18, 1985). Retrieved December 2023, from https://lawphil.net/judjuris/juri1985/jun1985/gr_l68374_1985.html:contentReference[oaicite:76]{index=76}
- Kruk, E. (2013, July 16). "Bird's nest" co-parenting arrangements: When parents rotate in and out of the family home. *Psychology Today*. Retrieved from <https://www.psychologytoday.com/us/blog/co-parenting-after-divorce/201307/bird-s-nest-co-parenting-arrangements>:contentReference[oaicite:80]{index=80}
- Lando, G. A., & Silva, B. L. P. (2023). Joint custody or alternating custody: The analysis of the Brazilian Law No. 13,058/2014 and the doubt about the institute that became mandatory.
- Leouel Santos Sr. vs Court of Appeals, et al., G.R. No. 113054 (March 16, 1995). Retrieved from https://lawphil.net/judjuris/juri1995/mar1995/gr_113054_1995.html:contentReference[oaicite:85]{index=85}
- Nerissa Z. Perez vs The Court of Appeals (Ninth Division) and Ray C. Perez, G.R. No. 118870 (March 29, 1996). Retrieved from https://lawphil.net/judjuris/juri1996/mar1996/gr_118870_1996.html:contentReference[oaicite:86]{index=86}
- Organizing your social sciences research paper. (2024). *University of Southern California USC Libraries*. Retrieved from <https://libguides.usc.edu/writingguide/introduction>:contentReference[oaicite:90]{index=90}
- Punch, K. F. (1998). Qualitative research: Overview, design and grounded theory. In *Introduction to social research: Quantitative and qualitative approaches* (pp. [pages not specified]). Sage Publications.
- Reynaldo Espiritu and Guillerma Layug vs. Court of Appeals and Teresita Masauding, G.R. No. 115640 (March 15, 1995). Retrieved from https://lawphil.net/judjuris/juri1995/mar1995/gr_115640_1995.html:contentReference[oaicite:95]{index=95}
- Rosen, L. N., Dragiewicz, M., & Gibbs, J. C. (2009). Fathers' rights groups: Demographic correlates and impact on custody policy. *Violence Against Women*, 15(5), 513–531. <https://doi.org/10.1177/1077801209331409>:contentReference[oaicite:99]{index=99}
- Toros, K., Tiko, A., & Saia, K. (2013). Child-centered approach in the context of the assessment of the children in need: Reflections of child protection workers in Estonia. *Children and Youth Services Review*, 35, 1015–1022.
- UNICEF. (2019).
- United Nations Convention on the Rights of the Child
- UNHCR. (n.d.). Guidelines on determining the best interests of the child. Retrieved from <https://www.unhcr.org/media/unhcr-guidelines-determining-best-interests-child>:contentReference[oaicite:115]{index=115}
- Versea, F. (2023). The best interest of the child as put into practice worldwide. *Humanium*. Retrieved from <https://www.humanium.org/en/the-best-interest-of-the-child-as-put-into-practice-worldwide/>:contentReference[oaicite:119]{index=119}
- Yin, R. K. (2009). Case study research: Design and methods (4th ed.). SAGE Publications.