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DIVORCE IN THE U.K.

Jurisdiction

The jurisdiction to grant a divorce in England or Wales depends upon whether at least one of the parties to the marriage has sufficient connection with the country. (Note that this is stated "England or Wales" because Scotland is a separate legal jurisdiction, and so the question in that particular case is whether one of the parties to the marriage has sufficient connection with the country of Scotland.) The two latter countries form one legal jurisdiction within the United Kingdom; Scotland forms quite another.

In very general terms the English courts have jurisdiction to grant a divorce if either spouse:

- (a) is domiciled in England or Wales when the proceedings are begun, or
- (b) is habitually resident in England or Wales throughout the period of one year ending with the date on which proceedings are begun.

The latter condition means that anyone in the world of whatever nationality and wherever they were married can obtain a divorce in England so long as they have been habitually resident here for a qualifying period.

What is more significant is paragraph (a) because "domiciled" is not the same as "resident" and is much wider. This is what enables many people resident overseas to obtain a divorce here although they do not actually live here at the moment. Naturally, one must have sufficient connection with the country to establish the necessary domicile but it is important to understand that one does not have to actually be in England in order to obtain a divorce here.

Filing for divorce in the U.K. may have consequences on the division of military retirement benefits. Additionally, the Defense Financial Accounting Services (DFAS) will not recognize a foreign order and it will be the responsibility of the parties to file this foreign order in the states, if and only if, either party is entitled benefits through DFAS.

What happens when both the U.S. and U.K. issue a divorce decree?

This situation typically arises when one party, for example the active duty husband, files for divorce in the UK. He may do this because he has been a resident here for at least one year immediately preceding the filing of the divorce petition. It doesn't matter whether both parties are American or whether they were married in the United States or anywhere outside the UK.

The wife then returns to the US before divorce proceedings have been concluded here. She in turn issues a divorce petition in the US. She is almost certainly entitled to that on the basis of her American domicile although, of course, that sort of question will depend on the local law of the particular state. There are now two divorce petitions legitimately pending and the English courts have to decide which of them should proceed.

There are in fact rules about how cases such as this should be decided. If the wife in the above example wanted the proceedings to be heard and determined in the US (because, for instance, she wanted a pre-marital agreement enforced) then she would have to apply to the English divorce court to have the husband's divorce petition "stayed." If she were successful in such an application then the husband would be prevented from proceeding with the divorce in England and the US courts would deal with the divorce.

The English courts decide questions such as these on a test which is best described as the "balance of convenience." In this example, one of the factors that would obviously weigh with the court would be that both parties were American. It might be rather different if one spouse were English and the other American as might easily be the case.

The court would also be influenced by how long the couple had lived in England, where the bulk of their property was, whether there were any children and, if so, where they were. All of these factors and others would come into play. After weighing them up the court would then decide whether it was better for the divorce to proceed in England or the US. These are the sort of factors that are taken into account when there is a conflict of jurisdiction. There is no mechanical answer. Each case depends on its own facts.

Grounds

"Unreasonable behavior" is the most frequent ground for divorce in English divorce law and solicitors are frequently asked what constitutes "unreasonable behavior." Divorce in England & Wales is based on "irretrievable breakdown" of the marriage but this breakdown must be proved by evidence of one of five "facts":

- Adultery
- Unreasonable behavior
- Desertion
- Two years' separation with consent
- Five years' separation without consent

Three of these grounds - desertion, two and five years' separation - involve considerable periods of delay before obtaining a divorce is possible. At least two years in the case of the first two and five years in the case of the last. Similarly, the parties cannot use adultery if there has been none. This means that "unreasonable behavior" is the method of choice for most couples who want an "instant" divorce in cases where no adultery is involved.

People often approach a solicitor and say they want a divorce based on "irreconcilable differences." They are in an unhappy marriage and want to bring it to an end. This is perfectly natural and understandable. Nevertheless, it is not possible to obtain a divorce based on "irreconcilable differences."

To obtain a divorce on this ground English law insists that (a) that the marriage has broken down irretrievably and (b) that one of the parties to the marriage has behaved in such an unreasonable manner that the other finds it intolerable to live with him or her. Although this sounds like a difficult thing to prove the reality of the matter is that the courts do not set a very demanding standard and in practice it is not normally too difficult to find some examples of "unreasonable behavior" sufficient to satisfy a court that a marriage has broken down. The courts adopt a realistic attitude.

Very often clients ask what constitutes "unreasonable behavior." Obviously, it covers extreme types of behavior such as habitual drunkenness or violence but it is by no means necessary to allege anything as serious in a divorce petition. In fact, because no-one likes receiving a petition based on their unreasonable behavior, it is very often sensible to keep the allegations to the bare minimum that will suffice to obtain the divorce even in circumstances where very much more could be added. A few paragraphs are normally sufficient and in a case where a marriage has in fact irretrievably broken down it is unusual not to be able to find some instances of unreasonable behavior which will suffice for the purposes of obtaining a divorce. It is important to understand that the courts are not too demanding about this - particularly where the parties are agreed on a divorce.

Naturally, if the parties are not agreed on divorce the requirements of the courts are stricter because the allegations will be subject to scrutiny but in the overwhelming majority of cases the allegations are unchallenged because very few divorces are ever defended.

Time Limits In general one must present a divorce petition within no more than six months from the last incident of unreasonable behavior relied upon if the parties are continuing to live together. There are two reasons for this. Firstly, it is perfectly easy to accept unreasonable behavior and many people do. The second reason is rather more important because it does sometimes catch people out. It is that it is a rule of law. However, this rule only applies if the parties continue to live together after the latest incident of unreasonable behavior.

If one leaves it too long the parties may then have to wait two years from the date of the separation before one of them can petition for divorce based on two years' separation. And this is dependent upon the other's consent. If that consent is not forthcoming the person who wants the divorce may have to wait until the separation has lasted five years unless in the meantime his/her spouse relents. This can be extremely awkward if the reason for wanting the divorce is to remarry so it is worth bearing these formal and practical time limits in mind.

People often think they can get a divorce based simply upon "irreconcilable differences". The truth of the matter is that this usually means "unreasonable behavior" and in order to obtain a divorce on the ground of unreasonable behavior one has to comply with the rules applicable to that particular ground including any time limits.

Representation

Air Force attorneys are not authorized to represent individuals eligible for legal assistance in civil court, whether back in the United States or here in the UK. What is more, most legal assistance attorneys are not licensed to practice law in the U.K., and so may only offer limited services in advising on rights and obligations. The legal office maintains a current list of local solicitors willing to assist you in this process should you consider filing in the U.K.