

WORKSHOP WITH

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DIVORCE : CIVIL LAW / COMMON LAW

CONVERGENCES AND DIVERGENCES

1. INTRODUCTION

- France and England/Wales as exemplars for Civil Law and Common Law
- neighbourly convergence/divergence
- conflicts of law/jurisdiction: Brussels II and the race to court

2. DISCUSSION OF PRACTICAL CASE EXAMPLES: OWN JURISDICTION

3. SOLUTIONS/PRACTICE

- Different roles of judge
- Comparative law/procedure

4. MONEY

- Matrimonial property regime or lack of it
- Pre-nuptial agreements
- Article 271 vs. MCA s.25

5. DISCUSSION OF PRACTICAL EXAMPLES: NEIGHBOURING JURISDICTION

6. CHILDREN: WELFARE PRINCIPLE/MONEY/RELOCATION

7. ADR: MEDIATION/COLLABORATIVE LAW

CASE A : « BIG MONEY » (BEFORE THE ECONOMIC CRISIS)

20-year marriage.

Husband now 45 years old, wife 43.

Two children, now 18 and 15.

No marital contract.

Wife a qualified dentist, gave up her career 15 years ago as a result of a joint decision but started working again 2 years ago, with an annual net income of €50,000 € (fifty thousand).

Husband a banker with annual net income of €3,000,000 (three million), of which 90% is a guaranteed bonus for the next two years.

No assets as the beginning of the marriage. Assets now €40m, of which half was inherited by the husband during the marriage.

1st case-variant :

Shorter marriage (say 5 years)

Children now only 8 and 5

Marital contract providing for a separation of assets.

2nd case-variant :

Divide all numbers by ten : therefore assets now €4m. No money inherited.

Husband's income now €300,000 and wife not working.

The "budget" for now two households is at least €300,000.

CASE B: « SMALLER MONEY »

Same facts as CASE A but different occupations and figures.

Husband is a male nurse. Wife is unqualified and works as a part-time cleaner.

Total capital €400,000 ; net income €30,000 pa (husband €25,000, wife €5,000).

Of the total capital, €300,000 is invested in the matrimonial home, €80,000 in the husband's pension and the rest in cash savings.

The couple is still paying a mortgage of €50,000 in installments of €3,600 per year for another 10 years. The annual budget for now two households is €30,000.

Case B-variant: children/relocation:

Wife wants to relocate to Australia:

- (a) where she comes from;
- (b) where her boyfriend comes from.