



LPC BUDDY

Family Law & Practice
2024



THE DEFINITIVE,
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Family Law

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Colour Coding Guide	<ul style="list-style-type: none"> ❖ Blue Text – Reference to statutes and case law. ❖ Green Text – Reference to textbook¹ paragraphs, workshop tasks² and other notes in this guide. ❖ Orange Text – Reference to procedural rules (Civil Procedure Rules and Family Procedure Rules) and Court Forms.
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¹ Textbook references are to the CLP Legal Practice Guides by CLP Publishing.

² References to Workshop tasks are to University of Law workshop tasks (which may be adopted by other LPC institutions). The content and structure of Workshops is subject to change at short notice and so task references should be treated as a general guide only.

Jurisdiction of English Courts to Hear Suits for Divorce

❖ [Family Law & Practice, 3.4](#)

Overview	❖ English courts only have jurisdiction to deal with a person’s matrimonial affairs where the below situations apply!
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<p>When will the English court have jurisdiction?²</p> <p>Family Law & Practice, 3.4.1</p>	<p>❖ The English courts will have jurisdiction where any of the following circumstances apply:</p> <table border="1" style="width: 100%;"> <tr> <td style="background-color: #e0e0e0;">Both parties... s5(2)(a), (b) and (f)</td> <td> <ol style="list-style-type: none"> 1. Are habitually resident in England and Wales; or 2. Were last habitually resident in England and Wales, and one of them still resides there; or 3. Are domiciled in England and Wales; or </td> </tr> <tr> <td style="background-color: #e0e0e0;">The applicant... s5(2)(d) and (e)</td> <td> <ol style="list-style-type: none"> 4. Is habitually resident in England and Wales and has resided there for at least a year immediately before the application was made; or 5. Is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made; or </td> </tr> <tr> <td style="background-color: #e0e0e0;">The respondent... s5(2)(c)</td> <td> <ol style="list-style-type: none"> 6. Is habitually resident in England and Wales; or </td> </tr> <tr> <td style="background-color: #e0e0e0;">In a joint application... s5(2)(ca)</td> <td> <ol style="list-style-type: none"> 7. Either of the parties is habitually resident in England and Wales. </td> </tr> <tr> <td style="background-color: #e0e0e0;">Either of the parties... s5(2)(g)</td> <td> <ol style="list-style-type: none"> 8. Is domiciled in England and Wales. </td> </tr> </table> <p>❖ In considering the above options, it is necessary to define both “habitual residence” and “domicile”:</p> <table border="1" style="width: 100%;"> <tr> <td style="background-color: #e0e0e0;">“Habitual residence” Family Law & Practice, 3.4.2</td> <td> <ul style="list-style-type: none"> ❖ A person’s “habitual residence” is located where the “centre of interests” of a person’s life is. ❖ It does not have to be permanent, only habitual, and must have stable character (<i>Z v Z (Divorce: Jurisdiction)</i> [2010] 1 FLR 694). </td> </tr> <tr> <td style="background-color: #e0e0e0;">“Domicile”</td> <td> <ul style="list-style-type: none"> ❖ A person’s domicile is, broadly, their “permanent home”. </td> </tr> </table>	Both parties... s5(2)(a), (b) and (f)	<ol style="list-style-type: none"> 1. Are habitually resident in England and Wales; or 2. Were last habitually resident in England and Wales, and one of them still resides there; or 3. Are domiciled in England and Wales; or 	The applicant... s5(2)(d) and (e)	<ol style="list-style-type: none"> 4. Is habitually resident in England and Wales and has resided there for at least a year immediately before the application was made; or 5. Is domiciled and habitually resident in England and Wales and has resided there for at least six months immediately before the application was made; or 	The respondent... s5(2)(c)	<ol style="list-style-type: none"> 6. Is habitually resident in England and Wales; or 	In a joint application... s5(2)(ca)	<ol style="list-style-type: none"> 7. Either of the parties is habitually resident in England and Wales. 	Either of the parties... s5(2)(g)	<ol style="list-style-type: none"> 8. Is domiciled in England and Wales. 	“Habitual residence” Family Law & Practice, 3.4.2	<ul style="list-style-type: none"> ❖ A person’s “habitual residence” is located where the “centre of interests” of a person’s life is. ❖ It does not have to be permanent, only habitual, and must have stable character (<i>Z v Z (Divorce: Jurisdiction)</i> [2010] 1 FLR 694). 	“Domicile”	<ul style="list-style-type: none"> ❖ A person’s domicile is, broadly, their “permanent home”.
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¹ This is set out in the following legislation: [s5\(2\) Domicile and Matrimonial Proceedings Act 1973](#) (heterosexual couples); [Marriage \(Same Sex Couples\) \(Jurisdiction and Recognition of Judgments\) Regulations 2014 \(SI 2014/543\)](#) (same sex married couples); [Civil Partnership \(Jurisdiction and Recognition of Judgments\) Regulations 2005 \(SI 2005/3334\)](#) (couples in a civil partnership).

² [Workshop 1, Prep Task 3, Question 1](#)

	<p>Family Law & Practice, 3.4.3</p>	<ul style="list-style-type: none"> ❖ It can be acquired in one of three ways: <table border="1" data-bbox="561 241 1469 1167"> <tr> <td data-bbox="561 241 762 566"> <p>As a domicile of origin.</p> </td> <td data-bbox="762 241 1469 566"> <ul style="list-style-type: none"> ❖ Domicile of origin arises at birth, based on the person's parents' domicile. ❖ If their parents were married, the child's domicile will be the same as the father's. ❖ If their parents were unmarried, the child's domicile will be the same as the mother's. </td> </tr> <tr> <td data-bbox="561 566 762 808"> <p>As a domicile of dependency.</p> </td> <td data-bbox="762 566 1469 808"> <ul style="list-style-type: none"> ❖ A dependent person has the domicile of the person who they are considered to be dependent upon by law. ❖ This can apply to unmarried children under the age of 16 or mentally disordered persons. </td> </tr> <tr> <td data-bbox="561 808 762 1167"> <p>As a domicile of choice.</p> </td> <td data-bbox="762 808 1469 1167"> <ul style="list-style-type: none"> ❖ Every person over 16 can acquire a domicile of choice. ❖ They must: <ul style="list-style-type: none"> ➤ Be actually resident in the country; and ➤ Have an intention to reside in that country permanently and indefinitely. </td> </tr> </table> 	<p>As a domicile of origin.</p>	<ul style="list-style-type: none"> ❖ Domicile of origin arises at birth, based on the person's parents' domicile. ❖ If their parents were married, the child's domicile will be the same as the father's. ❖ If their parents were unmarried, the child's domicile will be the same as the mother's. 	<p>As a domicile of dependency.</p>	<ul style="list-style-type: none"> ❖ A dependent person has the domicile of the person who they are considered to be dependent upon by law. ❖ This can apply to unmarried children under the age of 16 or mentally disordered persons. 	<p>As a domicile of choice.</p>	<ul style="list-style-type: none"> ❖ Every person over 16 can acquire a domicile of choice. ❖ They must: <ul style="list-style-type: none"> ➤ Be actually resident in the country; and ➤ Have an intention to reside in that country permanently and indefinitely.
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<p>Jurisdiction in the EU</p>	<ul style="list-style-type: none"> ❖ Brussels II Revised governs jurisdiction in EU countries. ❖ In practice, to determine the jurisdiction of a court in another country you would seek advice from a local lawyer. ❖ However, for the purposes of the LPC, Brussels II Revised contains broadly the same provisions as s5(2) Domicile and Matrimonial Proceedings Act 1973, so you can use s5(2) as a guide to answer whether the client can issue divorce proceedings in another EU Member State. 							

Selecting a Jurisdiction.

❖ [Practical Law: Divorce and dissolution: jurisdiction and forum shopping: selecting a jurisdiction](#)³

<p>Steps to choose a jurisdiction.</p>	<ul style="list-style-type: none"> ❖ Some applicants may be able to choose whether to start proceedings in England and Wales or elsewhere. This may occur, for example, where one member of the couple has been habitually resident in England, but the other has not. ❖ Where a choice of jurisdiction is available to the client, the solicitor should take the following steps⁴:
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³ See: <https://uk.practicallaw.thomsonreuters.com/9-538-3065>, required reading for [Workshop 1](#).

⁴ [Workshop 1, Prep Task 3, Question 2](#)

	<p>Instruct a family lawyer in the non-English jurisdiction.</p>	<ul style="list-style-type: none"> ❖ The first step is to instruct a family lawyer in the non-English jurisdiction to establish: <ul style="list-style-type: none"> ➤ Whether jurisdiction exists in the foreign country; ➤ Whether there might be a lengthy process in order to establish jurisdiction; and ➤ The pros and cons of using that jurisdiction to issue the petition, having regard to the various factors below. 						
	<p>Act quickly to ensure the client gets jurisdiction in their preferred state.</p>	<ul style="list-style-type: none"> ❖ Under Brussels II Revised, the court of the state “first seised” of the divorce gains exclusive jurisdiction of the proceedings. ❖ This can lead to a "jurisdiction race" where both parties attempt to gain jurisdiction in their preferred member state. 						
<p>Factors for the client to consider.</p>	<ul style="list-style-type: none"> ❖ Where a client has a choice of jurisdiction, a wide range of factors may be relevant to determining which jurisdiction a client should choose. These fall into four main categories: <ul style="list-style-type: none"> ➤ Considerations relating to the substantive law to be applied to the divorce; ➤ Considerations relating to how the divorce proceedings will be conducted (procedural considerations); ➤ Considerations relating to enforcement; and ➤ Ancillary considerations. 							
	<p>Substantive law considerations.</p>	<ul style="list-style-type: none"> ❖ The client should consider what impact the law of a particular jurisdiction will have on the outcome of proceedings. In particular: <table border="1" data-bbox="568 1529 1481 2087"> <tr> <td data-bbox="568 1529 783 1731"> <p>Which law will the foreign court apply?</p> </td> <td data-bbox="783 1529 1481 1731"> <ul style="list-style-type: none"> ❖ Does this depend, for instance, on religion or nationality? ❖ Might the foreign court apply English law in any event? </td> </tr> <tr> <td data-bbox="568 1731 783 2011"> <p>What type and quantum of financial orders are likely to be made in each jurisdiction?</p> </td> <td data-bbox="783 1731 1481 2011"> <ul style="list-style-type: none"> ❖ For example, are periodical payments available? </td> </tr> <tr> <td data-bbox="568 2011 783 2087"> <p>Is there a material</p> </td> <td data-bbox="783 2011 1481 2087"> <ul style="list-style-type: none"> ❖ Is there a limit on the quantum or duration of maintenance? </td> </tr> </table> 	<p>Which law will the foreign court apply?</p>	<ul style="list-style-type: none"> ❖ Does this depend, for instance, on religion or nationality? ❖ Might the foreign court apply English law in any event? 	<p>What type and quantum of financial orders are likely to be made in each jurisdiction?</p>	<ul style="list-style-type: none"> ❖ For example, are periodical payments available? 	<p>Is there a material</p>	<ul style="list-style-type: none"> ❖ Is there a limit on the quantum or duration of maintenance?
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		<p><u>difference in the law that will affect the outcome?</u></p>	<ul style="list-style-type: none"> ❖ How is child maintenance dealt with? ❖ Is conduct taken into account? ❖ What approach is taken to pre-owned or inherited property? ❖ Is the legal ownership of an asset likely to be significant? ❖ What weight is given to any nuptial agreement? ❖ Can the court vary post-nuptial settlements (for example, trusts)? ❖ Are there clean break powers?
		<p><u>What approach is likely to be taken to a party's capital and income needs?</u></p>	<ul style="list-style-type: none"> ❖ Different jurisdictions will take different approaches to the division of the parties' capital and income. Is the approach appropriate?
		<p><u>Where are the pensions located?</u></p>	<ul style="list-style-type: none"> ❖ Can the court make an order against foreign pensions, or indeed any pensions? ❖ If not, is there any trade-off?
		<p><u>How will the foreign court approach assets held in, and income earned by, a company in which a party has an interest?</u></p>	<ul style="list-style-type: none"> ❖ English Courts cannot touch assets that are genuinely owned by a third party, such as one of the spouse's limited companies.
		<p><u>What approach does the foreign court take to trust assets and income?</u></p>	<ul style="list-style-type: none"> ❖ Is it likely that trust assets will be considered to be nuptial or non-nuptial?

		<p>Will the foreign court make costs orders?</p>	<p>❖ If yes, will they be for meaningful amounts?</p>
	<p>Procedural Considerations</p>	<p>❖ How divorce proceedings are conducted can impact their outcome, as well as the experience of the client, and the time and costs involved.</p>	
		<p>Might the foreign jurisdiction transfer financial proceedings to another country?</p>	
		<p>Are there any existing proceedings in another country and if so, can they be stopped?</p>	<p>❖ Is there a possible jurisdiction race?</p>
		<p>Will the English court take any steps to prevent the hearing in the selected forum?</p>	<p>❖ The English Court has the power to issue a “Hemain injunction” to temporarily stop foreign proceedings where a respondent tries to gain advantage by pursuing proceedings in a foreign jurisdiction that may produce a more favourable outcome.</p>
		<p>How long will the proceedings take to conclude?</p>	
		<p>What is the foreign court's approach to disclosure?</p>	<p>❖ Is there scrutiny of disclosure? ❖ Can disclosure be tested by questionnaire?</p>
		<p>Is it possible to obtain interim provision in the other jurisdiction?</p>	<p>❖ Will any interim provision allow costs to be funded?</p>
		<p>What approach does the foreign court have to expert evidence?</p>	

		<p><u>Where are any witnesses located?</u></p>	<ul style="list-style-type: none"> ❖ Will there be difficulties if witnesses are overseas? ❖ What is the availability in a jurisdiction of video and teleconference facilities?
		<p><u>Are there any evidential rules that make proceeding in one jurisdiction more favourable?</u></p>	<ul style="list-style-type: none"> ❖ Will there be an opportunity to <u>test the other side's evidence</u> by cross-examination? ❖ Can evidence be obtained from third parties or institutions under compulsion? ❖ Is there any difficulty with hearsay evidence?
		<p><u>Will the foreign court assume responsibility over matters relating to the welfare of the children by virtue of it hearing the divorce?</u></p>	
		<p><u>Are there practical matters that affect the choice?</u></p>	<ul style="list-style-type: none"> ❖ Language barriers? ❖ Inconvenience? ❖ Cost of travel? ❖ Consider the client and their legal team needing to travel for hearings.
		<p><u>Will the proceedings be held in public or be capable of being reported in the press?</u></p>	
		<p><u>Will the cost of any forum dispute outweigh the potential benefit?</u></p>	
	<p><u>Enforcement considerations</u></p>	<ul style="list-style-type: none"> ❖ Will the overseas court be able to make <u>sufficient orders in relation to the divorce</u>, and in relation to <u>the assets</u>? Can any order be enforced? 	

		<ul style="list-style-type: none"> ❖ Consider: <ul style="list-style-type: none"> ➤ Will the foreign court recognise the marriage or civil partnership and have jurisdiction to deal with dissolution? <ul style="list-style-type: none"> ▪ This is of particular relevance to same sex marriages and civil partnerships. ➤ Will a decree of divorce from the foreign jurisdiction be recognised in all of the countries that it needs to be? ➤ Will the financial orders obtained be enforceable in the jurisdiction where the assets are? <ul style="list-style-type: none"> ▪ Where are the assets located? ➤ What means of enforcement exists in the foreign jurisdiction and how effective and costly are they? ➤ If a financial order is made abroad, will the other party still be able to apply to the English court for further financial provision? ➤ Can freezing orders or other relevant interlocutory injunctions be obtained in the foreign jurisdiction and enforced? ➤ Will foreign recognitions be automatic or require a new set of proceedings in the country where enforcement will take place?
	<p>Ancillary considerations.</p>	<ul style="list-style-type: none"> ❖ Will there be tax or immigration consequences of admitting domicile or residence in a country? ❖ Will there be any impact of the choice of jurisdiction (or any orders made) on the parties' wills, inheritances and issues of forced heirship? ❖ What impact will a forum dispute have on children, health and well-being of the family as a whole?

Judicial Separation Orders

❖ [Family Law & Practice, 3.8](#)

<p>Overview</p>	<p>❖ A judicial separation order is an alternative to divorce which can be utilised to end marital obligations (but not the marriage itself) where, for example, religious beliefs forbid divorce.</p>						
<p>Reasons to seek judicial separation.</p>	<p>❖ A judicial separation order can be sought:</p> <ul style="list-style-type: none"> ➤ At any time after the marriage. Judicial separations are not subject to the “one year rule”, so this can assist a spouse who seeks to separate within the first year. ➤ By clients who have religious or moral objections to divorce. 						
<p>Effect</p>	<p>❖ Judicial separation does not dissolve a marriage. Instead, it brings marital obligations to an end. Its main effects are as possible:</p> <table border="1" data-bbox="293 779 1481 1659"> <tr> <td data-bbox="293 779 512 1220"> <p>The court can make financial orders.</p> </td> <td data-bbox="517 779 1481 1220"> <p>❖ The court can make the same financial orders as it is entitled to do upon divorce, with the exception of pension sharing or clean break orders.</p> <p>❖ The court can make orders for:</p> <ul style="list-style-type: none"> ➤ Maintenance pending suit. ➤ Periodical payments (which may be secured); ➤ Lump sum orders. ➤ Property adjustment orders. ➤ Pension attachment order. ➤ Orders for sale. </td> </tr> <tr> <td data-bbox="293 1227 512 1503"> <p>The parties’ wills will remain unaffected.</p> </td> <td data-bbox="517 1227 1481 1503"> <p>❖ Unlike divorce, judicial separation has no impact on the parties’ wills.</p> <p>❖ However, if one party dies intestate, their property devolves as if the other party to the marriage had died.</p> <p>❖ This means that the surviving spouse will not benefit (s18(2), MCA 1973).</p> </td> </tr> <tr> <td data-bbox="293 1509 512 1659"> <p>The parties cannot remarry until they divorce.</p> </td> <td data-bbox="517 1509 1481 1659"> <p>❖ The marriage is not brought to an end by a judicial separation, as such the parties will be unable to remarry unless and until they obtain a divorce.</p> </td> </tr> </table>	<p>The court can make financial orders.</p>	<p>❖ The court can make the same financial orders as it is entitled to do upon divorce, with the exception of pension sharing or clean break orders.</p> <p>❖ The court can make orders for:</p> <ul style="list-style-type: none"> ➤ Maintenance pending suit. ➤ Periodical payments (which may be secured); ➤ Lump sum orders. ➤ Property adjustment orders. ➤ Pension attachment order. ➤ Orders for sale. 	<p>The parties’ wills will remain unaffected.</p>	<p>❖ Unlike divorce, judicial separation has no impact on the parties’ wills.</p> <p>❖ However, if one party dies intestate, their property devolves as if the other party to the marriage had died.</p> <p>❖ This means that the surviving spouse will not benefit (s18(2), MCA 1973).</p>	<p>The parties cannot remarry until they divorce.</p>	<p>❖ The marriage is not brought to an end by a judicial separation, as such the parties will be unable to remarry unless and until they obtain a divorce.</p>
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<p>The parties cannot remarry until they divorce.</p>	<p>❖ The marriage is not brought to an end by a judicial separation, as such the parties will be unable to remarry unless and until they obtain a divorce.</p>						
<p>Grounds</p>	<p>❖ The applicant must complete a statement of judicial separation on the application Form D8S to confirm that they seek a judicial separation (s17 MCA 1973).</p> <p>❖ As with divorce, it is possible to jointly apply for a judicial separation with the other partner to the marriage.</p>						

Nullity

❖ [Family Law & Practice, 3.7](#)

What is nullity?	<ul style="list-style-type: none"> ❖ In certain circumstances, a marriage can be annulled whereby the marriage is declared either: <ul style="list-style-type: none"> ➤ Void: the marriage is treated as never having existed on the basis that it is invalid for policy reasons prescribed by statute. ➤ Voidable: the marriage continues to exist but can be annulled at the option of one of the parties, on the basis that it is in some-way, defective (the grounds for which are historical and/or policy driven). ❖ The status of a marriage as being either void, or voidable, has the following consequences:
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	Void	Voidable
Consequences Family Law & Practice, 3.7.1	<ul style="list-style-type: none"> ❖ The marriage is treated as never having existed. 	<ul style="list-style-type: none"> ❖ The marriage can be annulled at the option of one of the parties. ❖ The marriage exists and is valid until a nullity of marriage order is obtained.
Grounds Family Law & Practice, 3.7.2 - 3.7.3	<ul style="list-style-type: none"> ❖ A marriage will be void where: <ul style="list-style-type: none"> ➤ <u>The parties are too closely related to each other.</u> <ul style="list-style-type: none"> ▪ Prohibited degrees of relationship are defined in Sch 1 Marriage Act 1949. They include, for instance, parent and child, grandparent and grandchild, and relationships between siblings. ➤ <u>Either party was under 18 at the time of the ceremony.</u> <ul style="list-style-type: none"> ▪ Previously, the minimum age was 16, however this was raised to 18 from 27 February 2023 	<ul style="list-style-type: none"> ❖ A marriage will be voidable in the following situations: <ul style="list-style-type: none"> ➤ Non-consummation: <ul style="list-style-type: none"> ▪ This is where a party is unable to “complete” the marriage by having sexual intercourse, either due to incapacity, or wilful refusal. ➤ Lack of consent to the marriage e.g., due to: <ul style="list-style-type: none"> ▪ Duress; ▪ Mistake (normally mistaken identity, or a mistake as to the nature of the marriage ceremony); or

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	<p>as a result of The Marriage and Civil Partnership (Minimum Age) Act 2022.</p> <ul style="list-style-type: none"> ➤ <u>Either party was already lawfully married.</u> 	<ul style="list-style-type: none"> ▪ Unsoundness of mind i.e., if either party cannot understand the nature of the contract of marriage. ➤ One party was suffering from a mental disorder such as to make them unfit for marriage; ➤ An interim gender recognition certificate was issued to the respondent after the marriage. ❖ An applicant will not be able to obtain a nullity of marriage order if: <ul style="list-style-type: none"> ➤ The applicant behaved in such a way as to lead the respondent reasonably to believe that they would not seek to end the marriage; and ➤ If would be unjust to the respondent to grant the order (s13(1) MCA 1973).
<p>Availability of ancillary orders.</p> <p>Family Law & Practice 3.7.4.1</p>	<ul style="list-style-type: none"> ❖ The parties to both void and voidable marriages are entitled to apply for the same orders as are available on divorce in relation to: <ul style="list-style-type: none"> ➤ Children; and ➤ Property and finance. 	
	<p>Available orders in relation to children.</p>	<ul style="list-style-type: none"> ❖ The orders available in relation to children are: <ul style="list-style-type: none"> ➤ Child Arrangements Orders; ➤ Prohibited Steps Orders; and ➤ Specific Issue Orders.
	<p>Available orders in relation to</p>	<ul style="list-style-type: none"> ❖ The orders available in relation to property and finance are: <ul style="list-style-type: none"> ➤ Orders for maintenance pending suit;

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	<p>property and finance.</p> <ul style="list-style-type: none"> ➤ Periodical payments orders (which may be secured); ➤ Lump sum orders; ➤ Property adjustment orders; ➤ Orders for sale; ➤ Pension sharing orders; and ➤ Pension compensation sharing orders. 	
<p>Legitimacy of children.</p> <p>Family Law & Practice 3.7.4.2</p>	<ul style="list-style-type: none"> ❖ Children of a void marriage will only be legitimate if, at the time of conception, both parents reasonably believed that: <ul style="list-style-type: none"> ➤ The marriage was valid; and ➤ The father was domiciled in England and Wales at the time of the birth (or, in the case of a father who dies before the birth, he was domiciled in England and Wales immediately before death). ➤ s1 Legitimacy Act 1976. 	<ul style="list-style-type: none"> ❖ Children of a voidable marriage are legitimate on the basis that the marriage it is treated as existing up to the nullity of marriage order.
<p>Effect on a will.</p> <p>Family Law & Practice 3.7.4.3</p>	<ul style="list-style-type: none"> ❖ A marriage ordinarily revokes any previous wills made by that individual. ❖ However, where a marriage is declared void, this effect is reversed; a will is not revoked on the basis that marriage is treated as never having existed. ❖ A nullity of marriage order being granted has the same effect as a divorce; in other words, the ex-spouse is treated as 	<ul style="list-style-type: none"> ❖ Whilst the marriage is voidable, any previous will remains valid, as if the marriage was valid. ❖ A nullity of marriage order being granted will result in the ex-spouse being treated as having died on the date of the order (the same effect as divorce).

	Void	Voidable
	<p>having died on the date of the order, meaning anything the ex-spouse was due to inherit will be passed on to the next beneficiary who is entitled to it, in line with the terms of the will.</p> <ul style="list-style-type: none"> ❖ If the will does not specify another beneficiary (e.g., because everything is left to the spouse), the assets will pass under the intestacy rules. 	<ul style="list-style-type: none"> ❖ As a result, anything the ex-spouse was due to inherit will be passed on to the next beneficiary who is entitled to it, in line with the terms of the will. ❖ If the will does not specify another beneficiary (e.g., because everything is left to the spouse), the asset will pass under the intestacy rules.



Process Options¹❖ [Family Law & Practice, 2.5.1-2.5.7](#)

Overview	❖ The below table summarises the various options available to couples to resolve a divorce whilst keeping matters out of court.
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	What is it?	Pros	Cons
The parties negotiate their own agreement.	<ul style="list-style-type: none"> ❖ The parties negotiate their own agreement, with or without professional support. 	<ul style="list-style-type: none"> ❖ This is the cheapest option. ❖ It avoids the potentially inflammatory perception of one party being the first to instruct solicitors. 	<ul style="list-style-type: none"> ❖ Divorces can be complex and the parties may not be equipped to deal with this without legal advice. ❖ This is only likely to work where a divorce is mutual and the parties still maintain sufficient trust so as to be able to agree financial matters and arrangements for any children.
Solicitor Negotiations	<ul style="list-style-type: none"> ❖ Solicitors negotiate on behalf of each party. ❖ This can take the form of: <ul style="list-style-type: none"> ➤ Correspondence: e.g., offers and counteroffers in letters with the aim of reaching a settlement; or ➤ A “round table meeting”: where the parties are gathered in the same building, with solicitors negotiating face to face. 	<ul style="list-style-type: none"> ❖ A decision achieved through negotiation is more likely to be better and longer lasting than if a court imposes a solution. ❖ It is cheaper than litigation. ❖ It can result in a quick and confidential settlement. 	<ul style="list-style-type: none"> ❖ This will only work if both parties are willing to try and resolve their differences in good faith. ❖ The parties remain “siloed”, which can result in a lack of a collaborative approach. ❖ If negotiations are protracted, this can increase time and costs.
Mediation	<ul style="list-style-type: none"> ❖ The couple engage a mediator who seeks to help the couple resolve their issues by negotiated agreement. 	<ul style="list-style-type: none"> ❖ This is cheaper than litigation. ❖ It can result in a quick and confidential settlement. 	<ul style="list-style-type: none"> ❖ Cheaper than litigation but can still be costly.

¹ [Workshop 1, Prep Task 1; Workshop Task 1](#)

	What is it?	Pros	Cons
	<ul style="list-style-type: none"> ❖ Family mediations typically differ from mediations in civil/commercial cases, in that they generally take place over a series of 90-minute sessions over a period of weeks or months, with solicitors only being directly involved by advising their client between sessions. ❖ Anyone wishing to start court proceedings in most types of family cases must first attend a Mediation Information and Assessment Meeting (MIAM), where a mediator provides information about the process and assesses whether the case is suitable for mediation (s10, Children and Families Act 2014). 	<ul style="list-style-type: none"> ❖ A good mediator should be able to help a party understand why their position on certain matters is unreasonable and may need to be resiled from. ❖ Can result in a practical solution. 	<ul style="list-style-type: none"> ❖ Not binding; the parties can walk away from a mediation at any time. ❖ Mediation is unlikely to be appropriate for certain clients (e.g., victims of domestic violence or where one person is particularly vulnerable and/or feels unable to speak up in front of their former partner). ❖ Parties may change their minds on a suggested outcome after consulting with their solicitor which can result in slow progress.
Hybrid mediation.	<ul style="list-style-type: none"> ❖ In a traditional family mediation, the solicitor does not remain “in the room” with the parties, who are “handed over” to the mediator. The solicitor will normally advise their client between sessions. ❖ A hybrid mediation adopts a more traditional civil mediation model where each party’s solicitor has a more active role and is in a separate “subgroup” at the mediation with their client. The mediator will then typically move between rooms and seek to facilitate agreement. 	<ul style="list-style-type: none"> ❖ This model is more appropriate for vulnerable clients, as there is no need for the parties to meet face to face, and having their legal team with them can help the client find a voice. ❖ Each room creates a “safe space” to discuss matters privately with the mediator without the party feeling like they are over-committing. 	<ul style="list-style-type: none"> ❖ Parties may prefer to have time between sessions to go away and consider proposals. ❖ Not binding; the parties can walk away from the mediation at any time.
Collaborative law.	<ul style="list-style-type: none"> ❖ The parties typically attend a number of four-way meetings with specially trained collaborative lawyers. 	<ul style="list-style-type: none"> ❖ The process is tailored to the parties’ specific circumstances, with no timetable imposed. 	<ul style="list-style-type: none"> ❖ There is a risk of no agreement being reached.

	What is it?	Pros	Cons
	<ul style="list-style-type: none"> ❖ The aim of the meetings is to troubleshoot, problem-solve, and come to an amicable resolution, rather than engage in an adversarial divorce process. ❖ The parties can decide the rules and agenda they want to follow, and may bring in experts such as life coaches, counsellors and financial experts. ❖ They will typically sign a “participation agreement” which confirms that they are both committed to resolving all outstanding issues caused by the relationship without going to court 	<ul style="list-style-type: none"> ❖ The parties try to come to an agreement on their own terms which is more likely to be easier to live with and successful in the long term. ❖ If successful, it will reduce legal costs. ❖ It can reduce animosity and conflict. ❖ It allows the process to be looked at through the involvement of other collaborative professionals. ❖ If the negotiations break down, the couple will generally have to use different solicitors if they wish to proceed to litigation, which acts as an incentive to follow through with the procedure. 	<ul style="list-style-type: none"> ❖ If the collaborative process fails, both parties must instruct new solicitors which will increase costs. ❖ Is unlikely to be successful if there is deep mistrust between the parties, e.g., due to the breakdown of the marriage.
Early neutral evaluation.	<ul style="list-style-type: none"> ❖ The parties jointly appoint an evaluator who will give their opinion on the likely outcome of the case were it to go to court. ❖ The parties can then negotiate in the light of the evaluator’s opinion. ❖ The evaluator’s opinion is not binding and the parties are free to accept or reject it. 	<ul style="list-style-type: none"> ❖ Early neutral evaluation can help to narrow the issues between the parties. ❖ It allows parties to become more realistic about their legal position and therefore facilitate a resolution to a dispute. 	<ul style="list-style-type: none"> ❖ It is not binding, and so can be ignored by both or either of the parties if they disagree with the opinion. ❖ If this is the case, the process can ultimately be a waste of time and costs.
Arbitration	<ul style="list-style-type: none"> ❖ The parties agree to put the matter before an independent third party who considers the dispute and makes a decision for them. 	<ul style="list-style-type: none"> ❖ Arbitration is normally quicker, more flexible and less formal, than going through court. 	<ul style="list-style-type: none"> ❖ The process is unlikely to be suitable where there is, for instance, a need for evidence to be tested in court (e.g.,

	What is it?	Pros	Cons
	<ul style="list-style-type: none"> ❖ The parties sign up to the rules of the arbitration scheme and agree to be bound by the arbitrator’s award/determination. 	<ul style="list-style-type: none"> ❖ It is confidential. ❖ It produces a binding outcome in that ordinarily a court order will be obtained which mirrors the arbitration award. ❖ It can be used to decide discrete issues, or the entire dispute. ❖ It gives the parties more say in the way proceedings are run; e.g. the choice of venue, how and when to meet, and the points of the process which they require the arbitrator’s input on. 	<p>due to a risk that a spouse is trying to hide assets).</p>
The Certainty Project	<ul style="list-style-type: none"> ❖ The Certainty Project essentially makes use of a Med-Arb dispute resolution process. ❖ In other words, there is a mediation, followed by arbitration if the mediation does not successfully resolve all matters. 	<ul style="list-style-type: none"> ❖ The potential risk of losing at an arbitration can focus the parties’ minds to come to an amicable agreement at the mediation stage. ❖ It is confidential, and quicker than going to court. ❖ It will produce a decisive outcome. ❖ It allows some matters to be resolved by mediation, but areas where there is continued disagreement to be resolved at the arbitration. 	<ul style="list-style-type: none"> ❖ It can be costly to proceed with a mediation followed by an arbitration (though will still be cheaper than going to court).