PENNINGTONS MANCHES

# INTERNATIONAL FAMILY LAW REPORT

## ESCAPING THE LABYRINTH
## THE INTERNATIONAL DIVORCE LAW BAROMETER

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If you are a regular reader of any newspaper, you would be forgiven for thinking that getting a divorce is easy. London is often said to be the 'divorce capital of the world'. This reputation has been earned due to the perceived generosity of England and Wales in providing financially for the less well off spouse when dividing capital and awarding income. A previous International Family Law Report examined approaches to spousal maintenance internationally. This report provides analysis of divorce law in England and Wales and of the current state of play around the world.

It looks at where the law in England and Wales sits internationally. It examines how and in what ways other jurisdictions have adapted their divorce laws to reflect societal changes, how (and by whom) decisions are made about whether a divorce should go ahead elsewhere in the world, as well as considering reform in England and Wales.

The different bases and timescales for divorce internationally show areas of similarity but also, perhaps, some surprising differences in approach as to when, how and who gets to decide to bring about the end of a marriage. In Russia, Argentina, the Netherlands and California, divorce is inevitable if one spouse wants to end the marriage: their spouse cannot prevent it. There is no room to make accusations of fault to get a divorce. But there are jurisdictions at the other end of the spectrum; it is not possible to divorce at all in the Philippines.

The background to this report is, of course, the high-profile furore surrounding the case of Owens v Owens and the ensuing debate about the state of divorce law in England and Wales. A light has been shone from various quarters – the media, individuals in government, lobbying groups, academics and professional lawyers – on the conceptual and practical problems raised by a divorce law which is overly complex, restricts personal autonomy, compels state interference in private decision-making and promotes acrimony at a time when couples should be encouraged to use their energy to co-parent well and minimise bad feeling.

Owens has already been through a first judgment, one appeal and is being heard again by the highest court in the land, the Supreme Court, on 17 May 2018. The arguments will be re-stated and expanded on both sides. The legal hurdle for Mrs Owens is high due to the way current divorce law has been interpreted over the years. As the President of the Family Division, James Munby, said in the Court of Appeal:

"Judges have to apply the law as they find it, rather than as they would wish it to be."

For Mrs Owens this meant that the Court of Appeal felt unable to interfere with the first decision to refuse to grant her a decree of divorce. The question is whether the Supreme Court will agree with previous interpretations of the words of the relevant act or whether it will return to first principles to construe and apply it differently, providing a contrary result.

### *OWENS V OWENS* - KEY CASE IN A NUTSHELL

*Mrs Owens wants to divorce Mr Owens after many years of marriage. She asked the court for a divorce at a time when she had lived apart from Mr Owens for over two years, but as Mr Owens would not consent to a divorce, she had to make allegations of fault against him. Mr Owens 'defended' the divorce application. Despite the fact that Mrs Owens added 27 more specific allegations of Mr Owens' behaviour by the time the case came to be judged by a court, the court found the allegations to be "flimsy, hopeless and scraping the barrel". As a result, the court decided that, if Mr Owens would not consent to a divorce, it was compelled as a matter of law to require Mrs Owens to remain married, until the couple had been separated for five years. The case has thrown the current state of divorce law in England and Wales into sharp focus, illustrating that it is not fit for purpose in the twenty first century.*

### PHILIPPINES

Divorce remains illegal – for now. On 19 March 2018, a divorce bill was approved, which would allow divorce on a variety of fault and non-fault based grounds. A survey released in March 2018 showed that 53% of Filipinos support legalising divorce.

### ISRAEL

Divorce is fault-based unless the couple agree. It is governed by religious courts. To obtain a divorce in the Rabbinical Courts, either adultery, continuous spousal abuse, refusal to engage in sexual relations or inability to have children after ten years of marriage must be proven. A wife may remain married against her will if a husband refuses to grant a Get. In Sharia courts, divorce is easier for the husband by declaring "I divorce you" three times (talaq). In contrast, a wife must prove adultery or ongoing violence. For Christians divorce is predominantly based upon adultery, following byzantine law.

# INTERNATIONAL DIVORCE LAW BAROMETER

The Penningtons Manches family team has examined current divorce laws in 21 jurisdictions, highlighting any imminent changes, to create a multinational barometer of divorce laws, from hardest to easiest, with a focus on whether spouses have to fit the reasons for the relationship breakdown into fault-based criteria.

The barometer shows a wide range of approaches based on a number of factors which influence the ease or difficulty of obtaining a divorce:

**TIMESCALES** for when divorce is allowed. In some jurisdictions, such as the People's Republic of China, divorce is available immediately following marriage whilst in others spouses must wait for a certain length of time to pass before dissolving the marriage. It is common for divorce laws internationally to stipulate minimum periods of separation to prove that a marriage is over. In Malta, the minimum period of time from separation to divorce is four years.

**WHO CAN APPLY -** whether and in what circumstances divorce is possible at one spouse's instigation or by mutual consent. In California, a spouse can apply for a divorce and any opposition from their spouse is taken as further evidence that the marriage is over due to their 'irreconcilable differences'. In other jurisdictions, such as the United Arab Emirates, unilateral divorce is possible only if fault is alleged.

**WHETHER REASONS** must be given to satisfy whatever legal test to divorce applies. Russia permits divorce without an explanation being given for parting ways at all: an expression of a wish to divorce is enough to satisfy the test. In other countries, such as Israel, the reasons that a divorce can be obtained (and the method by which it can be applied for) differ depending on the gender of the person applying.

**WHO GETS TO DECIDE** that the marriage should be terminated. In the majority of jurisdictions divorce law is part of the civil law. But in others, religious courts provide the rationale for divorce, and the rules and procedure involved can vary depending on the religion of the particular couple. In Sweden divorce law is based on the premise that a spouse's desire to end a marriage shall be respected and the reasons do not require public scrutiny.

## DIVORCE LAW IN ENGLAND AND WALES TODAY:

### IRRETRIEVABLE BREAKDOWN – THE ONLY WAY

The one ground for divorce is that the marriage has broken down irretrievably. The court cannot find that there has been an irretrievable breakdown unless one of five facts has been proved (see barometer below for more detail). As can be seen, three of the five facts require fault allegations to be made by one spouse against the other.

Where the other spouse does not object to the divorce, the court will not normally inquire into irretrievable breakdown too closely: a court legal adviser will check that one of the 'five facts' above has been demonstrated but will not ask for proof. 98% of petitions are checked by legal advisers rather than judges to save costs and to ensure judicial time is allocated wisely.

It is only when the other spouse objects to the divorce and argues that they did not cause the marriage to fail that the complications begin. Then, the court must look at all of the evidence and use its judgement to decide if a divorce should be granted. This is the situation that has arisen in the case of *Owens*.

### UNITED ARAB EMIRATES

Divorce is fault-based unless the spouses agree. A conciliator attempts to reunite the parties. If this is not possible, a judge determines whether there is valid reason for the divorce based on a range of fault-based allegations, which must be proven. However, if both spouses agree that they should divorce, they can obtain a divorce through mutual consent.

### UK - ENGLAND AND WALES

The sole ground for divorce is that the marriage has broken down irretrievably. This is established by proving one of five 'facts'. Three of the five facts are fault-based: adultery, desertion and behaviour of the other spouse. The other two are based on periods of time apart. Divorce can be by mutual consent if the spouses have been separated for two years or more. The only way that a divorce can be unilaterally obtained without alleging and proving fault is through separation for five years. There is an absolute bar on applying for divorce within one year of the marriage.



# ENGLAND AND WALES – RIPE FOR REFORM

## DIVORCE LAW IN ENGLAND AND WALES

**The legal landmarks outlined in this report provide some context to understand how divorce law has evolved and why it has developed into its present form.**

Unsurprisingly, divorce was once governed by the church, was rarely granted and was always based on fault (the wife's adultery). Until the twentieth century, divorce was not permitted at all by consent: there was a strict bar on spouses colluding to obtain a divorce. The preservation of marriage was paramount: evidence was gathered to prove adultery and the court exercised its inquisitorial muscle to establish that adultery justifying divorce had taken place. It was not until 1937 that it was possible to divorce for reasons other than adultery. From 1937, divorce could be founded on one spouse's 'cruelty' against the other. This was to be distinguished from the 'wear and tear of ordinary married life'. The current law was drafted after decades of campaigning to introduce divorce without alleging fault. The present law, a mixture of fault and no-fault divorce, has been in place since the Divorce Reform Act 1969, nearly 50 years ago.

The tensions between traditionalists and progressives has been evident throughout the evolution of divorce law:

"The history of divorce is one of conflict between those who believe that divorce is an evil thing, destructive of family life and accordingly of the life of the community – and those who take the "humanitarian" view that when a marriage has irretrievably broken down it should be dissolved." (Sir Charlton Hodson – evidence to the Royal Commission on Marriage and Divorce, 1956, Minutes of Evidence, p.771)

### TIME FOR CHANGE

That the law in England and Wales has not kept pace with societal changes is plain: the amount of press coverage of *Owens* and the overwhelming support for change is clear. Change is required not only to alter the ground for divorce but to simplify the language used and the process employed is paramount in an environment where more spouses are going through the divorce process without any legal advice to guide them. The reality is that there is usually no real judicial enquiry (see box above) into the facts stated and getting from the start to the end of the process smoothly is a great deal easier for spouses who have the resources to engage a lawyer who is experienced in charting a safe course through for divorcing spouses.

### LEGAL CONTORTIONS - CURRENT DIVORCE LAW IN ENGLAND AND WALES

In autumn 2017, the Nuffield Foundation – an independent charitable trust – produced a research report *Finding Fault? Divorce Law and Practice in England and Wales* to inform the debate around divorce law reform. The authors found a mismatch between divorce law and practice and stated that the focus on fault was at odds with the move to reduce conflict and promote agreement in other areas of family law. The fact is that for decades spouses (and those advising them) have felt compelled to manipulate the reasons for a breakup to show that one spouse's behaviour has caused the irretrievable breakdown of the marriage, in line with the courts' interpretation of the law. As Sir James Munby stated forcibly in *Owens* in the Court of Appeal:

### FRANCE

Divorce can be by mutual consent or by unilaterally alleging fault. Since 2017, spouses can agree to divorce and reach a financial settlement which is drafted by a lawyer and registered by a notary to become final. Divorce by consent is available after six months of marriage. Fault by one or both spouses remains a basis for divorce. A judge decides whether the faults are serious enough. A spouse can also apply unilaterally for divorce after separation for two years and it cannot be opposed.

### MALTA

Divorce law was introduced for the first time in 2011. The law provides for no-fault divorce. A marriage can be dissolved by mutual or unilateral application if the couple has lived apart for at least four years out of the previous five and adequate financial support is being paid for the children and the ex-spouse. Spouses must use a mediator to agree upon child arrangements, financial support for the ex-spouse/child(ren) and to decide upon the division of property before the divorce can progress. Under Article 66I, the court must try to reunite the couple.

### INDIA

Divorce can be obtained by alleging fault or by mutual consent. Several religious marriage acts exist. The only requirement for divorce by mutual consent is that the spouses must have lived separately for one year. There is a statutory waiting period of between six and 18 months to finalise a mutual consent divorce under the Hindu Marriage Act but this waiting period can be waived by the Supreme Court. Under Islamic law a husband can divorce a wife by pronouncing talak ("I divorce you") in one of three ways, including the controversial 'triple talaq'. A wife can also divorce a husband, or the spouses can agree to divorce.

### UK - SCOTLAND

If the spouses agree to divorce, they can apply to divorce after separating for one year. If only one spouse wants to divorce, they can apply once separated for two years. To divorce before living apart for these periods, a 'pursuer' can make fault-based allegations against the 'defender' (adultery/behaviour).

### CHILE

No-fault divorce by agreement is possible once the spouses have separated for one year. If the divorce is not by agreement, a unilateral divorce without making allegations of fault is possible after living apart for three years. The law permits divorce on fault-grounds as well: the serious violation of the duties and obligations that marriage imposes or the duties and obligations with respect to the spouses' children. The result must be that life together is intolerable.

"... the law which the judges have to apply and the procedures which they have to follow are based on hypocrisy and lack of intellectual honesty. The simple fact is that we have, and have had for many years had, divorce by consent, not merely [by waiting two years from separation to divorce by agreement] but, for those unwilling or unable to wait for two years, by means of a consensual, collusive, manipulation of [the law]."

It is arguable that since the Court of Appeal decision in *Owens*, where the focus was on what is commonly referred to as the "unreasonable behaviour" of Mr Owens, the application of divorce law has taken a retrograde step. Family lawyers have been in a quandary: do the allegations have to be toughened to ensure they are not judged as too weak to prove that the marriage has broken down without any hope of reconciliation? The prospect of increasing the inevitable tension at the end of a marriage is anathema to family lawyers who seek to reduce the opportunity for conflict at such a difficult time, particularly when children are involved.

## PUBLIC SCRUTINY OF A VERY PERSONAL DECISION

Quite apart from the practical application of the law, there is a wider conceptual one: why should the state – here represented by the law and judiciary – have the absolute power to decide under what circumstances a marriage can end? The state has no ability to evaluate whether a marriage should start. Why should it have any ability to override personal choice as to when it can be terminated?

That the state has this determinative role at all is controversial. If both parties agree to divorce, surely it should be beyond the state's remit to prevent a couple divorcing on their own terms, with their own personal reasons for doing so whether or not they have lived apart.

The majority of 'right-thinking' people in 2018 might be shocked to find that a judge is able to deny a person a divorce. The question that inevitably flows is who has the right to decide whether a marriage should continue or end: one unhappy spouse unilaterally, both spouses together, the spouse who does not want the marriage to end or the state?

Thorpe LJ stated in *Bellinger v Bellinger* (2001) that marriage should be defined as:

"...a contract for which the parties elect but which is regulated by the state, both in its formation and in its termination by divorce, because it affects status upon which depend a variety of entitlements, benefits and obligations."

The question is whether state regulation of the legal relationship should extend to include the ultimate decision-making power as to whether the reason for a split is judged good enough or too trivial to allow a divorce. It is evident from the barometer below that in many other countries that question has already been addressed and answered long ago.

Despite the recent (and not so recent) clamouring by the public for no-fault divorce, opposition will still exist and a lack of governmental appetite for reform remains. It should also be remembered that state support for the institution of marriage as an aspirational concept still exists. It is evidenced in governmental policy such as the married couples tax break available to spouses but denied to cohabiting couples. The message that persists is that marriage is to be valued above other relationship models. The question is whether there should be any obstacles put in the way of ending a marriage as its counterpoint. As the Australian Attorney General observed at the second reading of the Australian divorce bill in the 1970s:

"... the two criteria..... for a good divorce law are that it should buttress rather than undermine, the stability of marriage and, when a marriage has irretrievably broken down, it should enable the empty legal shell to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation."

The Nuffield Foundation Report found that there is no link between introducing no fault divorce and the rates of divorce. The research concluded that divorce law in England and Wales is lagging behind the position in other advanced democracies. The bases for divorce cited in divorce applications were found to be starkly different where divorce is available without alleging fault within a reasonable timeframe. For example, in 2015 60% of all divorces in England and Wales were granted because one spouse made allegations of adultery or behaviour against the other, whereas in Scotland it was a mere 6%.

### SOUTH AFRICA

Divorce is due to the irretrievable breakdown of the marriage (or civil union) or because of the mental illness or continuous unconsciousness of a spouse. Irretrievable breakdown can be proven by living apart for one year or by alleging fault such as adultery or criminality.'The evidential burden is not very high.

### YOU SAY *POTATO*, I SAY *POTATO*

In California, marriage is dissolved due to the spouses' 'irreconcilable differences' with no requirement to allege fault. In England and Wales, the breakdown can be due to one spouse's behaviour and the impact it has on the spouse who is applying for the divorce. The legal shorthand that has developed for this is 'unreasonable behaviour'. The semantics are an interesting illustration of the way divorce law has developed in the two jurisdictions: as a private decision between two autonomous adults or an exercise in assigning blame for the marriage failing which may need state evaluation.

## JUDGING BEHAVIOUR – WHOSE STANDARD IS IT ANYWAY?

The test case of *Owens* has shown the problems in trying to apply a legal test to judge when a spouse's behaviour is bad enough to warrant a divorce. The current test is seemingly simple but devilishly hard to put into practice:

"Would any right-thinking person come to the conclusion that this husband has behaved in such a way that this wife cannot reasonably be expected to live with him, taking into account the whole of the circumstances and the characters and personalities?" (*Livingstone Stallard v Livingstone Stallard* (1974), but reconfirmed in *Owens* by the Court of Appeal].

The phrase "unreasonable behaviour" does not, in fact, appear in the statute, and its evaluation is fraught with ambiguity. It is an objective/subjective hybrid: the court will test the 'wrongdoer's' behaviour and its impact by reference to what a 'right-thinking person' would decide and by evaluating the impact of the behaviour of the particular spouse on the particular applicant. It will do so against the backdrop of the history of the marriage and knowing something of the individual spouses.

In contemporary society, the family takes on multiple forms. We live in an increasingly secular and pluralistic environment. A community of many faiths (and none). Our society no longer speaks with one voice on societal, religious or ethical issues. How then, when there is no common view, should the law decide what is acceptable or unacceptable behaviour by one spouse towards another and the tipping point at which that makes a life together intolerable?

### US - NEW YORK

No-fault divorce is possible after the relationship has broken down for six months or more. A divorce cannot be finalised until the financial and child arrangements have been agreed or determined by a court and incorporated into the divorce judgment. Fault-based grounds for divorce are still available but are now not common.

### JAPAN

Divorce is possible by mutual consent without any fault being alleged. More than 90% of Japanese divorces adopt this simple, non-judicial procedure. The alternatives are divorce by mediation or by court decision. The grounds for unilateral divorce if mutual agreement is not possible include uncertainty whether or not the spouse is dead or alive for three years or more or a 'grave reason' which makes continuing the marriage impossible. The latter has been interpreted as equivalent to 'irrecoverable breakdown' proven by alleging fault against the respondent spouse.

### NEW ZEALAND

Marriages are terminated by dissolution, not divorce. There is only one ground: the irreconcilable breakdown of the marriage. The only requirement for a dissolution is that the parties have been separated for two years prior to the application. This condition is absolute and it is not possible to reduce this timescale. The dissolution application can be made jointly or unilaterally.

## WHAT SHOULD A NEW DIVORCE LAW LOOK LIKE?

Resolution, which represents around 6,500 family justice professionals in England and Wales, and the Nuffield Foundation both agree that divorce should:

- be mutual or unilateral;
- be commenced by one or both spouses notifying the court that the marriage has broken down;
- involve a minimum waiting period of six months before one or both spouses can apply to make the divorce final; and
- leave the decision in the hands of the spouses.

# LANDMARKS IN DIVORCE LAW IN ENGLAND AND WALES

**1700s:** Marriage was for life. A man was very rarely allowed to divorce his wife by:

- gaining permission to live separately and apart from the Ecclesiastical Court;
- obtaining common law judgment for the wife's adultery; and
- securing the enactment of a Private Act of Parliament dissolving the marriage.

**Fault-based divorce was born.**

Prior to the introduction of judicial divorce in 1857 there had been only 317 divorces over a period of almost 300 years.

**1857:** The first **Matrimonial Causes Act** brought divorce to the civil courts.

- men could petition based on their wife's **adultery**. This had to be proved, as would the absence of any collusion or condonation of that adultery.
- women who wanted to divorce their husbands for their adultery needed also to prove an additional, aggravating factor of the adultery, such as **incest** or **bigamy**.

Adultery had to be proven conclusively: through witnesses or evidence of the party's character and opportunity to commit adultery.

The High Court in London was the only place to divorce, and proceedings were held in open court. The court had an inquisitorial role, delving into the facts rather than accepting evidence presented to it.

The preservation of marriage was paramount. Divorce by consent or granting divorce to a person who had themselves committed adultery was not permitted and was policed strictly through an elaborate state-funded machinery of espionage and evidence gathering.

**1923:** With **The Matrimonial Causes Act 1923** men and women were put on an equal footing for the first time. Divorce was granted on the basis of the other spouse's **adultery**.

**1937:** It was only through another **Matrimonial Causes Act** in 1937 that it became possible to divorce on the grounds of **cruelty, desertion for three or more years** and **incurable insanity** as well as adultery. These were termed **'matrimonial offences'**.

Divorce by agreement was still not permitted.

The offence of **cruelty** required the court to ask itself: 'what degree of bad behaviour is enough to permit a spouse to leave the other party?' This had to be distinguished from the 'ordinary wear and tear of married life'. The petitioner had to list in chronological order the specific acts, convince the court that they had occurred and that together they were sufficient to prove cruelty. Divorce was not allowed for 'incompatibility of temperament'.

Parliament also introduced a **bar to divorcing in the first three years of marriage**.

**1940s and 1950s:** Progressive opinion called for the ground for divorce to be on the fact of irretrievable breakdown of the marriage irrespective of whether or not a matrimonial offence had been committed and – if it had – by whom.

A Royal Commission in the 1950s could not decide the best way forward, and in the mid-1960s the Archbishop of Canterbury produced a report demanding reform of the law.

**1960s and 1970s:** The Government asked the newly formed Law Commission to research the most appropriate way to modernise divorce laws. The result was a compromise: the **Divorce Reform Act 1969**, which although now found in the **Matrimonial Causes Act 1973**, **still contains the divorce law of England and Wales** today.

The sole ground for divorce: **irretrievable breakdown** of the marriage. The court should not hold that there had been an irretrievable breakdown unless the petitioner satisfied the court or one or more of the **five facts**.

For the first time it was possible to divorce without alleging 'fault' but due to time apart. Divorce was also allowed after **one year** of marriage.

**1980s and 1990s:** The Law Society, Booth Commission and the Law Commission re-examined divorce which, in the majority of cases, relied on fault-based facts and encouraged animosity. Rather than re-examining the legal basis of divorce, there was focus on procedures that amplified acrimony at the initiation of divorce.

**1996:** Attempts to enact 'no-fault divorce' resulted in Part II of the **Family Law Act 1996**. The provisions required anyone wanting to divorce to attend an Information Meeting investigating the possibility of reconciliation and mediation (if reconcilation was not possible). If he, she, or they still wanted to divorce, a statement of marital breakdown had to be made to court. There would then be a period of reflection and consideration: for nine months if the couple had no children under 16, or 15 months if they did. After that, the court could finalise the divorce. But the new divorce provisions were never brought into force and were later repealed.

**2000s:** Calls for no-fault divorce continue, led by the late Sir Nicholas Wall in 2012 and encapsulated in Richard Bacon's Ten-Minute Rule Bill in 2015 which was not progressed.

The result is that fault-based divorce continues. The theory that formed current divorce law all those years ago remains: divorce should only be permitted if irretrievable breakdown is proven to the court's satisfaction. As a result, the practical application of the law to allow people to divorce before two or five years has passed, has adapted to enable divorce to take place regardless.

### SWEDEN

Fault-based divorce is not an option. No-fault divorce has been facilitated for over 100 years and the need for both parties to agree to a no-fault divorce was removed in 1973. If there is a child age 16 or under living with one of the spouses, there is a mandatory six month consideration period before the court will process the divorce. This consideration period also applies if one of the spouses objects to a divorce. If the spouses have lived apart for two or more years, either can ask for the divorce to be made immediately without a consideration period.

### AUSTRALIA

There is only one ground for divorce: the 'irretrievable breakdown' of the marriage, proven by living apart for one year. This has been the case since 1976. There is no scope to make allegations of fault within the divorce process.

### CHINA

No-fault divorce was established in 1980. Lack of mutual affection can be the basis for the irretrievable breakdown of the marriage. It is possible to apply for a divorce immediately following marriage as there is no requirement for the marriage to have lasted a certain length of time. As a result of the removal of legal barriers to divorce and societal changes, the divorce rate in China has increased dramatically since the 1980s.

### US - FLORIDA

A no-fault jurisdiction - divorce is granted either because the marriage has irretrievably broken down or due to the mental incapacity of one spouse for at least three years. The irretrievable breakdown does not need to be proven: the parties' state of mind is the main factor.

### NETHERLANDS

Only one ground for divorce: irreparable breakdown. There is no minimum length of marriage before a divorce application can be filed at court. Divorce is usually granted even in circumstances where the respondent objects. This law has been operational since 1971.

# INTERNATIONAL FAMILY LAW AT PENNINGTONS MANCHES

**Penningtons Manches acts in some of the leading cases in England and Wales representing clients including professionals, entrepreneurs, wealthy individuals, landowners, those in the public eye, or for their partners. The family law team has unparalleled expertise in the field of international family law.**

**Our team includes six Fellows of the International Academy of Family Lawyers (IAFL), an organisation of the world's leading international family law practitioners. In addition, members of our team hold leadership positions in other key global family law organisations, including the Family Committee of the International Bar Association (IBA), the Private Client Commission of the Association Internationale des Jeunes Avocats (AIJA) and the International Family Law Committee.**

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### US - CALIFORNIA


Dissolution is based on either irreconcilable differences that have caused the permanent breakdown of the marriage or one spouse's permanent legal incapacity to make decisions. There is a six month mandatory waiting period. Interestingly, a spouse is unable to oppose a dissolution as objecting to it is viewed as evidence of irreconcilable differences.

### RUSSIAN FEDERATION

The sole ground is irretrievable breakdown. No specific separation period is required. There is no fault-based divorce. In essence, the wish to divorce expressed in a divorce application by one spouse is sufficient to satisfy the legal requirements. It is not possible for a resistant spouse to stop a divorce being granted: if one party objects to the divorce, the court can delay granting a divorce for no longer than three months.

### ARGENTINA

Divorce laws were overhauled in 2015. Divorce is applied for either jointly or unilaterally with no fault allegations being made. There is no provision to allow fault-based divorce applications.

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