



EUROPEAN COOPERATION IN CIVIL MATTERS

TEXT 3

Family Matters and Parental Responsibility

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Key terms (*English*)

Study online: https://quizlet.com/_2tgrbk

1. *Dissolution of marriage* : What is Dissolution of Marriage (Divorce)? . Dissolution of marriage (divorce) ends a marriage or domestic partnership. It restores the parties to single status.
2. *Maintenance*: or Alimony or Support is the term used in many countries and states for financial support paid to either children or the ex-spouse after a divorce. In some states the term "alimony" has been replaced with the term "Spousal Maintenance" or "Spousal Support" or "Family Support." Child Support or Child Maintenance is also often used.
3. *Modify an existing order or decision*: This means that there has been a significant change that requires a new maintenance, custody and visitation arrangement - parties can ask for a court hearing to change the existing orders.
4. *Recovery of the maintenance claim*: This means to successfully enforce fulfilment of the recognised maintenance obligation and to recover and collect the maintenance.
5. *Matrimonial property*: Matrimonial property is any property or assets either spouse owns or obtains before or during the marriage. synonym: *Community Property of Spouses*:
6. *Financial Disclosure*: Each party has a duty to provide 'full, frank and clear disclosure' of all their 'financial and other relevant circumstances' so that they each have sufficient knowledge to make an informed decision.
7. *Earmarking Order*: A pension attachment order means that part of a person's pension income or lump sum is diverted to their spouse on the pension member's retirement. However this method is now rarely used as it gives the non-pension member spouse less security of income.
8. *Financial Settlement* : The transfer of a property as part of a divorce settlement.
9. *Freezing of Assets*: A freezing order (formerly called a *mareva* injunction) is an interim injunction that restrains a party from disposing of or dealing with his assets. The usual purpose of a freezing order is to preserve the defendant's assets until judgment can be enforced.



Material for Day 3:

AIM: discuss the matters of family matters and parental responsibility in the light of case law and current state of affairs in connection with the COUNCIL REGULATION (EC) No 4/2009.

on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations –

Target: Having gone through the material you will be able to use relevant Regulation terminology and have a meaningful discussion on the topic of matters of family, child custody and maintenance based on authentic case law:

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| Task 1: Please practice talking to your partner: | |
| Have you ever | |
| - had to decide a cross border case related to dissolution of marriage: if so, where was the marriage concluded and what nationality were the divorcing spouses? | |
| - awarded shared custody of children to divorcing spouses residing in different states or at least in different cities? | |
| - awarded alimony (maintenance) to an ex-spouse upon resolution of marriage that you considered to be quite substantive | |
| - issued a decision regarding enforcement of a custody agreement | |
| - awarded sole residential custody of children to one parent only while denying the other divorcing spouse access or visitation of the children | |
| - deprived one parent of legal custody of children and if so, why | |
| - modified a maintenance order after full financial disclosure of the relevant spouse | |



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| PLEASE ELABORATE WHEN YOU ANSWER THE QUESTIONS AND IF YOU HAVE NOT DEALT WITH THE CASES YOU MAY DESCRIBE CASES YOU HAVE HEARD OF | |
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| | |
| Task 2: CASE study : Please read and try to remember: | |
| <p>AB V JJB (EU MAINTENANCE REGULATION: MODIFICATION APPLICATION PROCEDURE) [2015] EWHC 192 (FAM)</p> <p>The case concerned an application by a German national to vary a German order.</p> <p>The parties had divorced in Germany in 2000, following which the wife moved to England to live. On 2 April 2014, the wife received, out of the blue, a letter from her former husband’s solicitors, serving court papers which included a direction requiring her to file a compendious financial statement by 2 June 2014.</p> <p>On 29 April, the legal representative of the wife (Penningtons Manches) sent a considered letter inviting the former husband to withdraw his application, failing which he would himself apply to dispose of the application by striking it out or to dismiss it for want of jurisdiction or as an abuse of the court’s process. When the former husband did not withdraw his application, James Stewart proceeded with a strike out application on behalf of the former wife.</p> | |
| Turn the page face down and try to retell the information. | |
| | |
| Explain the meaning of: | |
| to strike out an application | |
| to withdraw the application | |
| To file a financial statement - financial disclosure | |



| | |
|---|--|
| To dismiss for a want of jurisdiction | |
| Abuse of court process | |
| To vary or modify a court order (to apply to have the order modified) | |
| Task 3 Please read and try to remember: | |
| <p>In essence, the former husband had filed an application for a financial order in Form A in the Slough County Court in the belief that this was sufficient to confer jurisdiction onto the English court under Chapter VII of the Maintenance Regulation. More concerning was the fact that the Slough County Court - apparently oblivious to the workings of the Maintenance Regulation - had issued the application and had given standard directions which included the filing of a detailed financial statement, referred to above.</p> <p>The strike out application sought by the wife was brought on a number of grounds including:</p> <p>Form A is wholly inapplicable to a Maintenance Regulation case as ‘financial order’ is defined in rule 2.3 FPR 2010 and an application may only be made in or after an application for a matrimonial or civil partnership order (i.e. divorce, nullity, dissolution etc.) – FPR 9.4 i.e. the husband’s free-standing application had no substantive underlying jurisdiction.</p> <p>Turn the page face down and try to retell the information.</p> | |
| | |
| Task 3 Please read and try to remember: | |
| <p>Chapter VII of the Maintenance Regulation is the only conceivable route by which the English court could have the jurisdiction to vary a foreign maintenance order (N.B. Chapter VII is entitled ‘Cooperation between Central Authorities’ and sets out a very specific process, including a specific form, by which an application may be made).</p> <p>Sir Peter Singer disagreed with Mostyn J’s interpretation in <i>EDG v RR</i> [2014] EWHC 816 (Fam) where he identified that there were two available routes for enforcement – directly under Chapter IV of the Maintenance Regulation and through the Central Authority under Chapter VII.</p> | |
| Try to retell : | |



Task 4: Read and remember

The former wife also argued, as an alternative, **that the application should be struck out for abuse of process** (as it was an undisguised exercise in ‘**forum shopping**’) and/or by virtue of FPR 4.4. This particular argument was not considered in any detail in the judgment as Penningtons Manches succeeded on points 1 and 2 above. The judge also felt it inappropriate to deal with these fall-back submissions given the pending Supreme Court decision in an appeal from *Vince v Wyatt* [2014] 1 FLR 246.

It is hoped that this judgment will provide some clarity in the operation of the Maintenance Regulation and, in particular, how to issue an application appropriately. The only route laid down by the Maintenance Regulation is via the Central Authorities and there is no permissible short-circuit option.

Task 5: Discuss:

If you imagine that you are in the shoes of the UK judge and in your country you receive an application to modify a maintenance order - or rather a decision of a German court not awarding maintenance to a former spouse - the marriage had been dissolved in Germany and the maintenance and financial settlement issues were decided by the German Court where the spouses resided at the time of dissolution of marriage - would in your opinion, the fact that the divorced spouse had in the meantime moved and is currently residing in your jurisdiction give rise to your court having territorial jurisdiction over the matter of modification of the maintenance order?

How many years after a final dissolution of marriage would one of the former spouses be able to successfully seek maintenance -and on what grounds and under what circumstances?

Have you ever awarded maintenance to a former spouse with no children being born - what was the reasoning behind your decision and what were the facts of the case?

Task 6: answer the questions:



THE EUROPEANISATION OF DOMESTIC FAMILY LAW

While substantive family law ostensibly remains under the sole competence of EU countries, the EU is empowered to take measures concerning family law with cross-border implications on the basis of a special legislative procedure which make European rules directly applicable in member states.

This jurisprudence has given rise to a variety of EU Regulations on family matters which have forever altered UK domestic family law. These regulations include:

Brussels II R (Council Regulation (EC) No 2201/2003) concerning jurisdiction and the recognition and enforcement of judgements in matrimonial matters;
the Rome III Regulation (Council Regulation (EU) No 1259/2010), implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (which, if the United Kingdom decides to opt into, would lead to judges throughout the UK applying foreign law);
perhaps the most controversial, the Maintenance Regulation, which is intended to ensure a consistent approach to the jurisdiction for and enforcement of maintenance orders (which was the subject of AB v JJB.)

Task 7: Discussion with Legal Practitioner :

Discussing questions:

Under your national law do you think the Court would grant a maintenance application if the marriage had been dissolved in a different member state?

Under what circumstances may a divorced spouse seek financial order in your country?

May a Court in your country grant a maintenance order to the former spouse 10 years after divorce? If so under what circumstances?

Does your language recognise the term of "forum shopping"? Would this be prohibited in your country?

Does the law in your country recognise the concept of "abuse of process? If so, explain the details.

Explain the arguments of the wife against the application of the ex-husband.



Task 8: Error Correction

Error correction is an important element of the teaching/learning process; therefore it should be treated positively.

There are several possibilities to correct errors. These should include teacher correction, self- correction, and student-to-student correction.

You will be presented with some samples of Language your lecturer collected in the course of the discussion with Legal Expert: try to identify the error, explain what kind of error this is and correct it - you can also explain why such language is incorrect.

Use the following guide of the most common types of errors:

a) Grammar/Structure:

- a. Tense
- b. Word order
- c. Omission
- d. Articles
- e. Agreement

b) Phonology

- a. Pronunciation:
- b. Intonation
- c. Word stress
- d. Sentence stress
- e. Syllable omission

c) Concept/Meaning

- a. Incorrect use of word – collocation:
- b. Incorrect use of structure
- c. Incorrect use of function



Optional task: based on Task 5 make mini presentations about the case.

Guidelines : in your mini presentation choose some of the below structures and phrases:

I am going to talk about
I would like to talk about

The facts of the case are as follows
The circumstances material to the case are

What needs to be pointed out is
The relevant legal provisions in the instant case expressly stipulate that

The Court in the instant case would find / will find / finds that
The case law indicates that

The argument that shall not stand as
The Court accepts that argument that ...

The judgement of the court in the instant case would have to reflect whether ...

You can make notes for your mini presentation here:



Optional tasks: watch two videos related to divorce and discuss:

<https://youtu.be/6PpQk63iIWw>

What is the subject matter of the meeting or negotiation?

Can you understand and repeat some of the phrases while focusing on intonation and pronunciation?

Can you briefly summarise what the legal issue is?

What act in the video precedes the wedding ceremony and what - if any - are the implications of it?

Can you understand and repeat some of the phrases while focusing on intonation and pronunciation

https://youtu.be/gFKba_Esjt0

What question does the client ask his legal counsel and his assistant and what are the linguistic implications of the answers:

Can you understand and repeat some of the phrases while focusing on intonation and pronunciation?

<https://youtu.be/jO5jRBNsgk0>

Family Law vocabulary study set: https://quizlet.com/_2tgrbk

Funny videos:

<https://youtu.be/6PpQk63iIWw>

https://youtu.be/gFKba_Esjt0

<https://youtu.be/jO5jRBNsgk0>