

Should I Stay Or Should I Go?

GETTING DIVORCED: IN ENGLAND OR IN SPAIN?

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Christmas is coming up and you may have finally decided that your marriage is at an end. Your New Year's Resolution might be to get divorced and it may well be for the best.

A divorce will bring about the most dramatic changes to your life, not only emotionally but also financially, and that could include a change of house, work and routine. However, making any decision you should first consider where exactly to get divorced.

If you are a British national residing in Spain married to another British national or to a Spanish national, you have at least two options as to where you could get divorced; England or Spain.

The difference between getting divorced in Spain or in England could be huge depending on your own personal circumstances. Are you the bread winner? Do you have or expect a substantial inheritance? Have you contributed to a large pension in comparison to your spouse? In this article we will highlight some of the major differences between the Spanish and English family law systems in order to assist you in deciding where you should issue your application for divorce.

Timing and Reasons

You need to have been married for a minimum one year before applying for a di-

vorce in England. In Spain you only need to have endured three months of marriage life!

Why do you want to get divorced? The English Courts will ask for this information and you need to justify your reasons for the divorce. It cannot be that you are no longer in love with each other. The reasons have to be sufficiently serious to prove to the Court that the relationship has irretrievably broken down. There are various facts which can be used to prove the breakdown of the marriage including separation for two years (with the consent of your spouse), the fact that your partner has committed adultery and, most commonly, because of your partner's unreasonable behaviour.

On the contrary, the Spanish Courts will not ask you why you want to get divorced; it is unnecessary to justify the application.

Forum shopping

The Divorce process is started in Spain as in England by issuing the application for divorce with the court. The application then has to be served on your spouse, meaning that he or she has to receive it from the Court or from your lawyer. This step is very important as if you issue your divorce application in England and at about the same time your spouse issues his divorce application in Spain, the application that is issued first will determine in which country the divorce proceed. For example if you issue your application on 8th January in London and your spouse

issues his or her application on 9th January in Málaga, as your application has been issued first, the English Courts will be the Courts which will have jurisdiction for the divorce.

In an Anglo-Spanish divorce, forum shopping is a popular activity because depending on where you divorce, the outcome can differ significantly.

You do not need to return to reside in England, if you are now a Spanish resident, to issue your divorce application in England. As you are a British national you have the right to issue your application in England based on your domicile. However, we would not advise applying for divorce on the grounds of your spouse's sole domicile in England and Wales since this may exclude your claims for maintenance. An European Regulation (EC 2201/2003) sets up the grounds that determine in which country you can apply for divorce. The grounds are as follows:

"In matters relating to divorce, legal separation or marriage annulment, jurisdiction shall lie with the courts of the Member State

(a) in whose territory:

- the spouses are habitually resident, or
- the spouses were last habitually resident, insofar as one of them still resides there, or
- the respondent is habitually resident, or
- in the event of a joint application, either of the spouses is habitually resident, or
- the applicant is habitually resident if he or she resided there for at least a year

immediately before the application was made, or

- the applicant is habitually resident if he or she resided there for at least six months immediately before the application was made and is either a national of the Member State in question or, in the case of the United Kingdom and Ireland, has his or her "domicile" there;
- (b) of the nationality of both spouses or, in the case of the United Kingdom and Ireland, of the "domicile" of both spouses."

Next edition we will be looking at Matrimonial Property Regime, legal aid and maintenance



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