

Family Law in Jersey: Overview

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A Q&A guide to family law in Jersey.

The Q&A gives a high-level overview of key issues including jurisdiction and conflict of law; pre- and post-nuptial agreements and matrimonial property regimes; divorce, nullity, and judicial separation; children; surrogacy and adoption; cohabitation; family dispute resolution; civil partnership/same-sex marriage; succession rights on divorce/dissolution; and controversial areas and reform.

This Q&A is part of the global guide to family law.

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Jurisdiction and Conflict of Law

Regulatory Framework

1. What are the primary sources of law in relation to marriage, marital breakdown and the welfare of children and give a brief overview of which courts will have jurisdiction to hear the dispute?

Sources of Law

Family law in Jersey is predominantly derived from statute.

The main Jersey statutes are the:

- Matrimonial Causes (Jersey) Law 1949 (as amended).
- Children (Jersey) Law 2002.
- Child Custody (Jurisdiction) (Jersey) Law 2005.

- Civil Partnership (Jersey) Law 2012.

These statutes are supplemented by:

- Matrimonial Causes Rules 2005.
- Children Rules 2005.
- Civil Partners Causes Rules 2012.

In addition, there are other statutes on specific issues such as adoption, child abduction, children in care and recognition of foreign divorces.

Some elements of English statute law have been incorporated into Jersey law through case law, such as the:

- English "section 25 criteria" (from section 25 of the Matrimonial Causes Act 1973), in financial remedy matters (*see Question 16*).
- Requirement for scrutiny of the care plan, in public law children cases.

Jersey case law, both reported and unreported, is available from www.jerseylaw.je. Jersey case law is supplemented by English and Guernsey case law where appropriate.

Court System

Family law matters are dealt with in the Family Division of the Royal Court of Jersey. Applications for divorce, civil partnership dissolution, financial remedies, private law children matters and adoption are heard by one of the two family registrars.

Defended divorces, appeals from the registrar, applications for injunctions, public law children matters, child abduction and other more complex cases referred by the registrar are heard in the Royal Court. The Royal Court has the same status as the High Court in England and Wales.

Apart from defended divorces (there have been none for several years), all family matters are heard in private in the Royal Court or before the registrar. Applications for some small maintenance claims and enforcement of maintenance orders are made to the Petty Debts Court (open court).

Appeals from the Royal Court are made to the Jersey Court of Appeal, with a final appeal being made from there to the Privy Council in London.

Jurisdiction



2. What are the main requirements for local courts to have jurisdiction in relation to divorce, property and children proceedings?

Divorce

Jersey is not part of the UK or a member of the EU. Therefore, EU Regulations concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters concerning parental responsibility do not apply and the relevant law is Jersey law.

The Family Division of the Royal Court of Jersey (family court) has jurisdiction in relation to divorce, nullity and judicial separation (Articles 3 and 6, Matrimonial Causes (Jersey) Law 1949):

- Where the parties are domiciled in Jersey when proceedings are commenced.
- Where either of the parties was habitually resident in Jersey for the year immediately preceding the date proceedings are started.
- In the case of nullity or presumption of death, where either of the parties were habitually resident in Jersey:
 - for the year immediately preceding the date proceedings are started (for nullity); or
 - for a year immediately preceding the death (for presumption of death).

Same-Sex Spouses and Civil Partners

The same jurisdiction rules apply for both civil partners (dissolution of civil partnership) and same-sex spouses (divorce).

Property

Financial remedies are generally applied for within divorce proceedings. Claims can be made for:

- Periodical payments (for children and spouses).
- Lump sum payments (with security as necessary).
- Property transfers.
- Orders for the sale of property.
- Variation of settlements.
- Interim orders.

Where the parties are not married and there are children, applications can be made for maintenance, lump sums and property transfers for the benefit of the children under Schedule 1 of the Children (Jersey) Law 2002.

The Separation and Maintenance Orders (Jersey) Law 1953 provides for applications to be made in the Petty Debts Court for maintenance between spouses and the transfer of tenancies, but the sums that can be claimed this way are small and this procedure is rarely, if ever, used.

Children

The jurisdictional limitations on applications in relation to children are found in the Child Custody (Jurisdiction) (Jersey) Law 2005.

Within matrimonial proceedings, orders for residence, contact, specific issue orders and prohibited steps orders under Article 10 of the Children (Jersey) Law 2002 can be made, provided the matrimonial proceedings are ongoing (unless the court considers it would be more appropriate for such matters to be determined outside Jersey) (Article 7, Child Custody (Jurisdiction) (Jersey) Law 2005).

For Article 10 orders not brought within matrimonial proceedings, the child must be either:

- Habitually resident in Jersey.
- Present in Jersey, but not habitually resident in Jersey or any part of the UK.

An exception to this is where there are ongoing matrimonial proceedings anywhere in the UK involving the child's parents. However, the Royal Court can make an order under its inherent jurisdiction if a child is present in Jersey and the court considers that it must exercise its powers immediately for the child's protection.

Domicile, Nationality and Habitual Residence

3. How do the concepts of domicile, nationality and habitual residence apply in relation to divorce, financial arrangements, and children?

Either party to a marriage can bring divorce proceedings if either of them has been habitually resident in Jersey for the year ending with the date of issue of proceedings or if the parties are domiciled in Jersey. This also applies to financial claims on divorce or dissolution of a civil partnership.

The domicile of a married woman was, until 24 March 2023, the same as that of her husband (by virtue of her domicile of dependence). The Marriage and Civil Status (Jersey) Law 2001 has now

been amended (Article 77A) to provide that at any time since 24 March 2023 a married woman will have her own independent domicile. Any married woman married before 24 March 2023 with a domicile of dependence is to be treated as retaining that domicile (as a domicile of choice) unless or until it is changed by the acquisition or revival of another domicile on or after Article 77A came into force.

There are no domicile or residence restrictions on applicants making applications under the Children (Jersey) Law 2002. Applications can be made in respect of a child who is not habitually resident or domiciled in Jersey or the UK, as long as the child is physically present in Jersey at the time of the application.

A legitimate child takes the domicile of their father, an illegitimate child, the domicile of their mother.

Conflict of Law

4. What procedure applies for a party applying to stay proceedings in favour of a foreign jurisdiction? What factors do local courts take into account when determining forum issues?

Procedure

If the Jersey courts have jurisdiction to accept an application for divorce or other family matters, then an application can be made in Jersey regardless of any other proceedings already being extant elsewhere. Jersey is not subject to Regulation (EC) 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels II Regulation). Therefore, issuing proceedings first in another jurisdiction does not necessarily oust the Jersey court. An application for a stay of Jersey proceedings is made by summons on Form 15 in divorce or financial remedy (ancillary relief) proceedings and Form C2 in children law proceedings.

A divorce petition must include details of any previous or current proceedings in Jersey or elsewhere, which relate to the marriage or any children.

Factors

If there is a dispute as to forum, a stay of the Jersey proceedings can be requested, this is decided on *forum conveniens* grounds.

The appropriate forum has been described as the forum "in which the case may be tried most suitably in the interests of all the parties and the ends of justice... that with which the action

had the most real and substantial connection" (*Federal Republic of Brazil v Durant International Corporation* [2010] JLR 421, para 19).

In *De Sa v Luis* [2009] JRC 027 it was held that where there were current and existing proceedings in Jersey, on the facts it was wrong for the respondent to bring ancillary relief proceedings in Madeira. The correct forum was Jersey and the respondent's actions in bringing the Madeiran proceedings were unconscionable.

Decisions in respect of forum in financial remedy applications are made at the case review hearing at which both parties must be present. Jersey law is applied in Jersey courts.

Anti-Suit Injunctions

The courts in Jersey cannot prevent parties making applications in other jurisdictions but can make and enforce orders relating to property in Jersey. There is a strong tradition of comity and the Royal Court of Jersey will, wherever possible, work with the courts of other jurisdictions.

Applicable Law

5. Are foreign nationals treated differently on divorce?

The courts of Jersey only apply Jersey law. Expert evidence of the law of other jurisdictions can be adduced where relevant to the proceedings before the courts, such as within child abduction proceedings. Foreign nationals are not treated differently on divorce.

Service of Proceedings

6. What are the requirements for service of divorce, financial and children proceedings in your jurisdiction?

A petition or summons in any cause or matter governed by the Matrimonial Causes (Jersey) Law 1949 must be served either personally or by post. Petitions and summonses can be served out of the jurisdiction without leave. The rules for service out of the jurisdiction are governed by Rule 10 of the Matrimonial Causes Rules 2005. Service by post or process server can be used or service can be achieved through official channels via the Greffier and the Bailiff being used. The rules in respect of service of children proceedings are dealt with in Rule 11 of the Children Rules 2005, but

do not refer to service out of the jurisdiction. Within Jersey, ordinary service can be by post, email or leaving documents at a person's address. Personal service within Jersey is effected by leaving the document with the person to be served and is usually effected by the Viscount. Service out of the jurisdiction in respect of children matters not within matrimonial proceedings is governed by the Service of Process Rules 2019. Permission of the Royal Court or Greffier is required for service out of the jurisdiction in matters under the Children (Jersey) Law 2002. Frequently, by agreement, lawyers will accept service of applications and petitions on behalf of their clients.

Pre- and Post-Nuptial Agreements and Matrimonial Property Regimes

Validity of Pre- and Post-Nuptial Agreements

7. To what extent are pre-nuptial and post-nuptial agreements binding?

In Jersey, the position for agreements is very similar to that in England and Wales and Guernsey. Pre-nuptial agreements do not bind the court, but their existence can be taken into account in the exercise of the court's discretion. Provided a decree of divorce or nullity or judicial separation has been made, the court has full power under the Matrimonial Causes (Jersey) Law 1949 to:

- Vary any marriage settlement or post-nuptial settlement (Article 27).
- Order that any property that one party is entitled to be transferred to the other party or any child of the family (Article 28).

When making financial orders, these applications are made in the Family Court, which is part of the Royal Court. The Royal Court must have "regard to all the circumstances of the case including the conduct of the parties to the marriage insofar as it may be inequitable to disregard it and to their actual and potential financial circumstances". If parties have entered into a pre-nuptial or post-nuptial agreement with the benefit of full disclosure and legal advice, in the absence of duress or undue influence, that will be taken into account as part of the conduct of the parties. A pre-nuptial agreement should therefore be taken into account by the Royal Court, but no agreement can oust the Royal Court's jurisdiction in respect of applications under the Matrimonial Causes (Jersey) Law 1949.

The case of *L v M [2016] JRC184A* confirms that a pre-nuptial agreement should be taken into account as part of "all the circumstances of the case". However, the parties will not be held to their bargain if to do so would leave one party in great need and the other with plenty.

If a pre-nuptial agreement has been properly entered into, with disclosure of the assets and full independent legal advice given to each party, the Royal Court is very likely to uphold the provisions of that agreement unless real hardship or manifest unfairness would be the result.

A marriage contract (*contrat du mariage*) can also be entered into before marriage. This deals with the parties' disavowing their rights to dower and forced heirship (*légitime*) on death, rather than divorce. It is registered in the Public Registry.

8. Do matrimonial regimes exist in your jurisdiction and is there a default matrimonial property regime?

Default Regime

Matrimonial regimes do not exist in Jersey.

Parties to a marriage retain their separate property during marriage but the court has wide discretion to redistribute property on divorce.

Procedure

Not applicable (see above, *Default Regime*).

9. How are foreign separation of property agreements and pre-nuptial and post-nuptial agreements treated by the courts in your jurisdiction?

If a divorce takes place in Jersey and a foreign separation of property agreement exists, it will be considered by the court, but will not bind the court. As with pre-nuptial and post-nuptial agreements, the court must consider any agreement as part of all the circumstances of the case and may follow its terms but is not bound to do so.

Divorce, Nullity and Judicial Separation

Recognition of Foreign Marriages/Divorces

10. Are foreign marriages/divorces/civil partnerships recognised in your jurisdiction?

Marriages

If a foreign marriage is validly contracted according to the law of the jurisdiction in which it took place, it will be recognised in Jersey. An exception to this general rule is that a marriage is void if at least one party is domiciled in Jersey and at least one party is under the age of 18. The permitted age of marriage in Jersey was raised from 16 (with parental consent) to 18 in March 2023.

Divorces/Annulment

Under the Recognition of Divorces and Legal Separations (Jersey) Law 1973 (RDLS(J) 1973), a decree of divorce or judicial separation granted in any part of the British Islands is recognised in Jersey, as are any divorces and legal separations that have been obtained by judicial or other proceedings in any other country and that are effective under the law of that country. The RDLS(J) 1973 does not apply to foreign annulments. However, if a marriage was void from the start (for example, due to bigamy), there will not be a subsisting marriage.

Where a divorce is recognised under the RDLS(J) 1973, neither spouse will be precluded from re-marrying in Jersey on the ground that the divorce is not recognised as valid in another country.

There is an exception to the recognition of a foreign divorce where, according to the law of Jersey (including its rules of private international law), there was no subsisting marriage between the parties. This used to preclude the recognition of same-sex marriages or dissolutions but no longer does so, since same-sex marriages became legal in Jersey in July 2018.

Civil Partnerships

Foreign civil partnerships and foreign dissolutions and separations are recognised in Jersey if they have been obtained by judicial or other proceedings in another country and are effective under the law of that country (Articles 60 to 61, Civil Partnership (Jersey) Law 2012).

Where dissolution or nullity of a civil partnership is recognised in Jersey, neither party will be precluded from entering into another civil partnership or marriage on the ground that the dissolution is not recognised as valid in another country.

Divorce

11. What are the grounds for divorce?

Divorce

Divorce is only available after three years of marriage, except in exceptional circumstances.

Grounds. The grounds for divorce are (on the part of the respondent):

- Adultery. (This ground is not available for same-sex couples applying for a dissolution of a civil partnership. In a divorce of a same-sex couple, for adultery to apply, the adultery must have been committed with a member of the opposite sex.)
- Desertion for two years.
- The respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.
- Incurable mental illness.
- Serving a prison sentence of more than 15 years (or life) (not available as a ground for the dissolution of a civil partnership).

The concepts of "collusion, condonation and connivance" attach to the above grounds. Irretrievable breakdown is not a ground for divorce.

A divorce or dissolution of a civil partnership may also be granted if either:

- The parties have lived apart for a year immediately preceding the filing of the petition and the respondent consents to the divorce or dissolution.
- The parties have lived apart for two years immediately before the divorce or dissolution proceedings are started (no consent required).

In such separation divorces, the parties must have lived apart for the whole of the period of either one or two years. Therefore, it is possible to obtain a divorce without alleging fault against the other party, but only where the parties have lived apart for at least one year.

There is no provision for attempted reconciliation. If cohabitation occurs during the separation, even for one night, the period of separation must start again.

The Law Commission of Jersey recommended in 2015 that no fault divorce without the need for the parties to live apart should be adopted in Jersey. However, this has not yet been taken up by the Government of Jersey although a consultation process was undertaken during 2019.

Procedure. A divorce petition must be filed with the Judicial Greffe (court office), together with:

- A Statement of Arrangements for Children, setting out the care and financial arrangements for the children of the family (not just birth children) (Form 5).
- The original marriage certificate.
- The court fee of GBP330 (paid by way of treasury receipt).

- An acknowledgement of service form (Form 4).
- An explanatory leaflet (Form 3).

The petition is then issued by the Greffe and returned together with Forms 3, 4 and 5 to be served. Service can be achieved by post, personally through the Viscount or via lawyers (if agreed).

The respondent must return Form 4 to the Greffe within eight days of service (if in Jersey, longer return times apply to service abroad) indicating whether or not the divorce is defended (and file an answer within 22 days if it is). If the petition is undefended, the petitioner must apply for a Greffier's Certificate (the application for a Greffier's Certificate is accompanied by an affidavit confirming entitlement to a divorce) and the matter is put on the "undefended list" for decree nisi to be pronounced. The court must be satisfied that the arrangements for the children are suitable before granting a decree nisi. Decree absolute can be applied for by the petitioner six weeks after decree nisi is granted and by the respondent three months after that.

The process for the dissolution of a civil partnership is the same as the divorce process, apart from the fact that slightly different language is used (for example, "application" instead of "petition").

Nullity

Grounds. A marriage or a civil partnership can be annulled if it is void, on the following grounds:

- At the time of the marriage or civil partnership, one or both of the parties was under 18 years of age.
- At the time of the marriage or civil partnership, one or both of the parties was already married or in a civil partnership with someone else.
- The parties are close family members, which includes:
 - parent;
 - adoptive parent;
 - former adoptive parent;
 - child;
 - adoptive child;
 - former adoptive child;
 - grandparent;
 - grandchild;
 - adoptive grandchild;
 - former adoptive grandchild;
 - sister;

- half-sister;
- brother;
- half-brother;
- aunt;
- uncle;
- niece; and
- nephew.

A person can also not marry or form a civil partnership with the following family members of a former spouse or civil partner:

- parent;
- adoptive parent;
- former adoptive parent;
- child;
- adoptive child;
- former adoptive child;
- grandparent;
- grandchild; and
- adoptive grandchild.

A marriage can also be annulled if it is voidable, on the following grounds:

- The impotency of one or both parties to the marriage since its celebration.
- The marriage was celebrated through fraud, threats or duress (this also applies to the dissolution of a civil partnership).
- The marriage has not been consummated owing to the wilful refusal of the respondent.
- Either party has taken steps for the recognition of their change of gender.
- The respondent is a person whose gender at the time of the marriage had become the acquired gender.
- The respondent was, at the time of the marriage, pregnant by some person other than the petitioner (or a former husband, while married). This also applies in the case of the dissolution of a civil partnership.

- The respondent was suffering from a venereal disease at the time of the marriage.
- Either party to the marriage was at the time of the marriage of unsound mind or was then suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children or subject to recurrent attacks of insanity or epilepsy. In the case of a civil partnership the wording is "that either party to the civil partnership was at the time of the formation of the civil partnership suffering from a mental disorder of a kind or to such an extent as to be unfit for a civil partnership".
- An interim certificate has, after the time of the marriage, been issued to either party to the marriage (pursuant to the Gender Recognition (Jersey) Law 2010).

For the last four grounds above, the court will not grant a decree unless all of the following are satisfied:

- The petitioner was, at the time of the marriage, ignorant of the facts alleged.
- Proceedings were instituted within a year from the date of the marriage.
- Marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree. In the case of a civil partnership, the word "sexual" is substituted for the word "marital".

In addition, the Royal Court cannot make an annulment order on the ground that a civil partnership is voidable if the respondent satisfies the court that the applicant knew it was open to them to obtain an annulment order but acted in such a way as to lead the respondent to reasonably believe they would not do so, and that it would be unjust to the respondent to do so.

Procedure. The procedure for nullity is the same as for divorce in that undefended causes can be dealt with without the parties attending a hearing, following the issue of a Greffier's Certificate confirming that the petitioner is entitled to a decree of divorce, judicial separation or nullity (see above, [Divorce](#)).

Judicial Separation (or Separation Order for a Civil Partnership)

Grounds. Judicial separation is available on the same grounds as divorce (see above, [Divorce](#)) with the addition of the respondent being "an habitual drunkard". A judicial separation can be obtained at any time after marriage, so can be used during the first three years of marriage when divorce is unavailable (see above, [Divorce](#)). A separation order in respect of a civil partnership can be made on any of the same grounds as a dissolution (but not because the respondent is an habitual drunkard).

Procedure. The procedure for judicial separation is the same as for divorce, in that undefended causes can be dealt with without the parties attending a hearing, following the issue of a Greffier's Certificate confirming that the petitioner is entitled to a decree of divorce, judicial separation or nullity (see above, [Divorce](#)).

12. What is the procedure and timeline for divorce?

Divorce

There is a timetable for the hearing of undefended causes in respect of divorce, dissolution of civil partnerships, judicial separation and nullity. The Family Court sits regularly throughout the year to pronounce decrees nisi (conditional orders in the case of civil partnerships). The respondent has eight days (if in Jersey) to return the acknowledgment of service to the Judicial Greffe. The application for a Greffier's Certificate is made on Form 20 and if the Family Court accepts that the petitioner is entitled to a divorce/dissolution, a Greffier's Certificate is granted and the matter is then put on the "undefended list" at least 12 days before the next decree nisi/conditional order hearing date. Decree absolute/final order can be applied for six weeks after decree nisi/conditional order has been pronounced. The whole process can take as little as ten weeks from the issue of the petition/application.

Nullity

The timeframes are the same as for divorce (see above, *Divorce*).

Judicial Separation

The timeframes are the same as for divorce (see above, *Divorce*).

Religious Marriage and Divorce

13. Are customary and religious marriages and divorces recognised in your jurisdiction?

Religious marriages within the Anglican Church are recognised in Jersey. Religious marriages within other religions, including Islamic and Jewish marriages and marriages within different Christian denominations, require either the involvement of a celebrant authorised by the registrar, or a separate civil ceremony in addition to the religious ceremony (Marriage and Civil Status (Jersey) Law 2001; Marriage and Civil Status (Jersey) Order 2018). Religious divorces are not recognised in Jersey.

A religious marriage or a customary marriage celebrated abroad is recognised in Jersey if it is a valid marriage in the country of celebration. A divorce obtained abroad is recognised in Jersey only if obtained by judicial or other proceedings effective under the law of that country and if at the time it was obtained, either of the spouses was habitually resident, domiciled or a national of that country (Recognition of Divorces and Legal Separations (Jersey) Law 1973).

Finances/Division of Assets

14. What powers do the courts have to allocate financial resources and property on the breakdown of marriage?

In relation to financial remedies (ancillary relief), the overriding objective is to deal with cases justly (rule 47, Matrimonial Causes Rules 2005).

The court has the power to vary trusts, marriage settlements, post-nuptial settlements or separation agreements in any way it appears to the court to be just, having regard to the means of the parties, the conduct of either of them (insofar as it may be inequitable to disregard it) or in the interests of any children of the family.

The court also has the power to:

- Transfer any property to the other party (or to the children of the family, or anyone else for the benefit of the children).
- Order periodical payments, lump sums (any sums may be ordered to be paid in instalments) and secure such payments, for both the other spouse and any children of the family.
- Order property to be sold and order who should receive the proceeds of sale, or insist that property is offered for sale to specific people or that there is a deferred sale.
- Order the execution of documents by others where a person does not comply with an order for sale.

There is also a power to vary, suspend or discharge orders. The court must have regard to all the circumstances of the case, including any increase or decrease in the means of the parties when making any such orders.

There is no power to make pension sharing orders or any power to set aside prior transactions that may have been made with the intention of defeating claims. However, Pauline actions (that is, setting aside transfers of property to others or into trusts made with the intention of avoiding paying a former spouse or defrauding creditors) and tracing claims are available if necessary.

Trust, company or other assets the legal title to which is not held by one of the parties can be taken into account as a financial resource, depending on the circumstances of the case. For example, if one of the parties is a beneficiary of a discretionary trust and has been provided with accommodation from the trust, this will be taken into account when an order is made. On the other hand, the Family Court cannot order a third party (such as a trust or a company) to make payments to a spouse, unless the third party has been joined to the proceedings. There can be "judicial encouragement", or the spouse can be ordered to "procure payment", but nothing more.

15. What factors are relevant to the exercise of the court's powers?

The Matrimonial Causes (Jersey) Law 1949 stipulates that the court must exercise its powers to make financial orders "having regard to all the circumstances of the case including the conduct of the parties to the marriage insofar as it would be inequitable to disregard it and to their actual and potential financial circumstances."

However, through case law (*Howarth v McBride (1984) JJ 1*) the English "section 25 factors" have been brought into Jersey law (see [Question 16](#)).

16. What is the court's current position on the division of assets?

Where required, there is a starting point of an equal division of assets. However, the court retains a wide discretion. In *J v M [2002] JLR 330*, it was stated that "the touchstone in all cases involving a division of matrimonial assets is fairness. The court must try to achieve fair financial arrangements between the parties, and the welfare of the children is a primary consideration. Nonetheless a ruthless application of the principle of equality will seldom lead to fairness."

The "section 25 factors" are frequently referred to in Jersey cases (section 25, English Matrimonial Causes Act 1973). These factors are absent from the Matrimonial Causes (Jersey) Law 1949, but have been brought into the equation through Jersey case law (*Howarth v McBride (1984) JJ 1*; *In the Matter of S [2011] JRC 119*). Although there can be no pension sharing orders made in Jersey, the fact that a party has a pension can be taken into account when dividing the other assets and such pension assets to be offset (*Brownbill v Southern 1999 JLR 94*; *S v W 1999 JLR N9*).

Generally, assets are divided equally unless the needs of the parties dictate that one party should have a greater share in all the circumstances, particularly the care of young children (*O v O 2005 JLR 535*). Wherever possible, the court will endeavour to preserve the matrimonial home for one of the parties, especially if there are children (*In the Matter of P [2009] JRC 159C*). Assets acquired

pre-marriage and after separation, non-mingled gifts and inheritances may be disregarded, again, depending on all the circumstances of the case.

The Jersey courts do follow English case law and such a course of action has been expressly encouraged by the court (*In the Matter of L* [2010] JRC 082A, the English cases of *Charman* ([2007] EWCA Civ 503, [2007] 1 FLR 1246) and *J v J* [2009] EWHC 2645 FAM were considered).

Non-matrimonial property can be disregarded by the court in reaching a conclusion as to the division of property. The matrimonial home, however, is usually classed as matrimonial property even if owned in one party's sole name and was pre-acquired. Where needs dictate, non-matrimonial property (for example, a non-mingled inheritance) will be taken into account as a resource available to the owner but is rarely transferred to the other party.

Where there is inadequate or misleading disclosure, the court will set aside orders if appropriate. It is no defence that the other party could have discovered the true position themselves (*P-S v C* 2006 JLR 463).

Where there are trusts, the court can order disclosure of information if it suspects that one party is hiding behind the trust (*M v G* [2003] JLR N28).

Finances/Spousal Maintenance (Alimony)

17. How does ongoing spousal maintenance operate following marital breakdown? Is maintenance awarded for a fixed term or on an open-ended basis? Is there a set formula or do judges have discretion over quantum and term?

Spousal Maintenance

There is no set formula for the award of spousal maintenance and no fixed term. The court has full discretion over the quantum and term of spousal maintenance. Generally, it is expected that parties will seek to maximise their own income and earning capacity following marital breakdown. This position was adopted in *Warn v Connetta* [2009] JRC 202, although in that case the wife's ill health precluded her from earning sufficiently and maintenance was therefore payable. If spousal maintenance is ordered to be paid for a fixed term, this is usually to take account of caring responsibilities of the recipient or the retirement of the payer. Sometimes a review of maintenance is included in the order, either on a specific date (for example, statutory retirement of either party) or in specific circumstances (for example, the recipient obtaining employment).

A clean break is considered preferable wherever possible, but spousal maintenance can be ordered and secured (Article 29, Matrimonial Causes (Jersey) Law 1949). When making maintenance orders, the court must have regard to all the circumstances of the case, including the conduct of the parties and their actual and potential financial circumstances.

Maintenance orders can be made on a joint lives basis or for a specified term. Maintenance does not cease on re-marriage, but orders can be discharged, varied or suspended (and revived). If orders are varied, the court must have regard to all the circumstances of the case, including any increase or decrease in the means of the parties.

Interim maintenance can be ordered to maintain a spouse during proceedings, including payments for legal fees (*S v C [2003] JLR, Note 24; In the Matter of O [2010] JLR, Note 18*).

Basis for Award

Spousal maintenance can be ordered to be paid for a fixed term or on a joint lives basis. Applications can be made to vary maintenance either in specified circumstances set out in the order or generally when there has been a change of circumstances. Consent orders can seek to limit the availability of a variation but orders made by the court cannot exclude the possibility of an application for a variation in the future (although claims can be dismissed and so not be amenable to variation).

Fixed Formula or Court Discretion

There is no set formula in respect of either quantum or term of spousal maintenance. Judges have complete discretion.

18. Is it common for maintenance to be awarded on marital breakdown?

Maintenance is awarded in Jersey, but not in the majority of cases. It is relatively common for maintenance to be awarded for a fixed period, to enable a party to re-train, or while children are very young. Maintenance will generally be capitalised where possible.

19. What is the court's current position on maintenance on marital breakdown?

There are few recent cases in respect of spousal maintenance.

In *Leapingwell v Sinclair [2012] JRC 215*, an application for nominal spousal maintenance made by a mother of two children, one of whom had developmental difficulties, was dismissed on the basis that it prevented there being a clean break. Although the mother benefited from accommodation provided through a trust, she was reliant otherwise on state benefits.

However, in other (unreported) cases, spousal maintenance has been ordered where the incomes and needs of the spouses dictate. There is a general desire to facilitate a clean break, so while significant sums of interim maintenance can be ordered (including for legal fees), substantive orders for spousal maintenance are less prevalent, maintenance being capitalised wherever possible.

Finances/Child Support

20. What financial claims are available to parents on behalf of children within or outside of the marriage?

Child maintenance claims in respect of children born within a marriage will usually be made within divorce proceedings when all financial matters affecting the family are considered. However, if a parent does not wish to divorce, or if they cannot divorce because they have not been married for three years or have not lived in Jersey for long enough to bring proceedings, they can make a claim for child maintenance under Schedule 1 of the Children (Jersey) Law 2002.

A parent, guardian or someone in whose favour a residence order is in force can make an application for financial relief by way of an application under Schedule 1 of the Children (Jersey) Law 2002. The court can order that either or both parents of the child make periodical payments, secured periodical payments, a lump sum payment or transfer property to the applicant for the benefit of the child or to the child personally. The court can also make an order for a settlement to be made for the benefit of the child. These applications can be made regardless of whether the parties are married, although usually where the parties are married applications are made within divorce and financial remedy proceedings under the Matrimonial Causes (Jersey) Law 1949. Orders usually last until a child's 17th birthday, but can be extended to no later than the child's 18th birthday, unless the child is in education or training or where there are special circumstances.

A "person" who is 16 years or more can also bring a claim for periodical payments or a lump sum if they are in education or training (or would be if an order was made) or if there are special circumstances, with leave of the court.

A "parent" means a biological parent. The law in Jersey does not yet recognise non-biological parents, although the Law Commission of Jersey has made recommendations in respect of parentage, assisted reproduction and surrogacy which would go some way towards remedying this. At present, a non-biological parent, if married to a biological parent, can make an application for a residence order without leave and, if unmarried, with leave of the court. Although parental orders following surrogacy are available in England and Wales (section 54, Human Fertilisation and Embryology Act 2008) for parents based in Jersey, such orders are not recognised in Jersey. Adoption is the other route by which a non-biological parent can become a parent.

An increasing number of same-sex female couples have had the IVF fertilised embryo of one mother placed in the other mother who then gives birth. Under customary law, the mother who

gives birth is the only legal parent. To date there have been no cases in Jersey asserting automatic parenthood on the part of the other mother in the scenario given above, but it would be interesting to see the outcome of such a case.

A joint residence order is the way in which most same-sex couples gain parental responsibility. Either parent can then claim child maintenance if they later separate. The difficulty arises if a same-sex couple do not marry, but have children and do not obtain a residence (or adoption) order. The non-biological parent may have difficulty making a financial claim in such circumstances.

21. On what basis is child maintenance calculated?

There is no Child Support Agency, Child Maintenance Agency or equivalent in Jersey. If not agreed by the parties, child maintenance is determined by the court. The family court has, in the past, been guided in the setting of child maintenance by the English child support levels, using the historic English rates as a guide. Generally, this was set as a percentage of net income of the non-resident parent.

However, this is not a strict formula and the rate can be altered depending on the time the children spend with each parent and all the factors listed below. In *E v F [2019] JRC 218* the court moved away from the formulaic approach, instead favouring an analysis of the income and expenditure of both parents and the actual cost of providing for the child. This case has caused a level of uncertainty in respect of child maintenance, but this approach will arguably produce fairer results than the formulaic approach.

An order for child maintenance can be made within divorce proceedings, and such maintenance can be secured, but not for persons beyond 21 years of age (Article 25, Matrimonial Causes (Jersey) Law 1949). However, the court can make such provision "as appears just". The case of *Byrne v Hall [2001] JLR 690* determined that maintenance may be paid in respect of children beyond the age of majority (in that case, 25 years), if in full-time education.

Child maintenance orders usually allow for index linking and, although it used to regularly include provision in respect of higher education, the current practice is that maintenance is agreed or ordered up to the end of secondary education, with provision for a review if the child goes on to higher education (at this stage, the payments are frequently made directly to the child). This is in order not to prejudice the parties' access to grants or loans that may be available from public funds for higher education costs at a future date. In addition to child maintenance, orders for the payment of school fees, school uniforms, school activities, childcare and doctors', dentists', and opticians' fees are common.

Orders for child maintenance, lump sum payments and transfers of property can be made under Schedule 1 of the Children (Jersey) Law 2002. Applications can be made whether or not the parents are married. Individuals over 16 years can apply for orders for financial relief for themselves under paragraph 2 of Schedule 1 of the Children (Jersey) Law 2002, if in education or training.

When making an order, the court must have regard to all the circumstances, including:

- The current and future means of the parties.
- The financial needs, obligations and responsibilities of the parties and the child.
- The income, earning capacity, property and financial resources of the child.
- Any physical or mental disability the child may have.
- The manner in which the child was being or was expected to be educated or trained.

22. What is the duration of a child maintenance order (up to the age of 18 years or otherwise)?

Maintenance orders usually last until a child's 17th birthday but can be extended to no later than the child's 18th birthday, unless the child is in education or training or where there are special circumstances. Child maintenance has, for example, been paid up to the age of 25 years (*Byrne v Hall [2001] JLR 690*) or even beyond for a child in education. This is not, however, automatic. Most orders will be until the end of secondary education with a review if the child proposes to go on to tertiary education.

23. Can a child (whether of legal maturity or otherwise) make a claim directly against their parents?

A "person" who is 16 years or more can also bring a claim (under paragraph 2 of Schedule 1 of the Children (Jersey) Law 2002) for periodical payments or a lump sum if they are in education or training (or would be if an order was made) or where there are special circumstances. Such claims by older children can be made against either or both of their parents. Leave of the court is necessary but unlikely to be withheld.

Orders usually last until the child's 17th birthday but can be extended to no later than the child's 18th birthday, unless they are in education or training or there are special circumstances. Child maintenance has been ordered to be paid up to the age of 25 years in *Byrne v Hall [2001] JLR 690*, where the adult child was studying to be a lawyer, or even beyond for a child in education. This is not, however, automatic.

Enforcement of Financial Orders

24. What are the main methods of enforcement to ensure compliance with financial orders following divorce/dissolution in your jurisdiction?

Enforcement of maintenance orders, either for spousal or child maintenance, is via the Petty Debts Court or Royal Court. There can be an "arrest on wages" so that the payments are made directly by the employer to the payee. Where assets or property have been ordered to be transferred from one party to the marriage to the other, and the transfer is not completed by the party who has been ordered to make the transfer, the Royal Court can order that the transfer is completed on behalf of the person in default, usually by the Viscount. In *S v T [2020] 029B*, at a time when the petitioner owed the respondent GBP3 million following an order of the Royal Court, the Royal Court ordered the transfer of another asset (from a bank which had been joined in the proceedings) to the respondent, on account of the money owed to the respondent by the petitioner.

Non-compliance with a financial order can also result in the party in default being held to be in contempt of court. In such circumstances, the party in contempt can be subject to a fine or a term of imprisonment. Enforcement may also be successful by the use of bankruptcy proceedings.

25. What is the legal position on the reciprocal enforcement of financial orders?

Certain financial orders (principally maintenance) made elsewhere can be registered in Jersey if the payer is resident in Jersey (Maintenance Orders (Facilities for Enforcement) (Jersey) Law 2000). Once registered, such an order can be enforced as if it were an order made in Jersey.

The registration process is straightforward:

- The court where the order is made sends a certified copy of the order to the Lieutenant-Governor.
- The Lieutenant-Governor forwards the order to the Greffier for registration.

Reciprocal arrangements included in the Maintenance Orders (Facilities for Enforcement) (Jersey) Law 2000 allow for orders made in Jersey to be registered and enforced in foreign jurisdictions by transmission to the other jurisdiction through the Greffier and the Lieutenant-Governor.

Financial Relief after Foreign Divorce Proceedings

26. What powers are available to the court to make orders following a foreign divorce? If such a power exists, what is the legal basis for making such an application?

There are no specific provisions in Jersey to make orders following a foreign divorce. It is not possible for an application to be made in Jersey following a foreign divorce. In cases where there are trusts, it may be possible for claims to be made in respect of the trusts, but this is not within the remit of the Family Court.

Applications can be made under the Children (Jersey) Law 2002 (*see Question 20*) irrespective of the marital status of the applicant.

Children

Custody/Parental Responsibility

27. What is the legal position in relation to custody/parental responsibility following the breakdown of a relationship or marriage? Do local courts in your jurisdiction recognise parenthood that has been established in another jurisdiction for the purposes of custody/parental responsibility, maintenance and so on?

General Position for Custody/Parental Responsibility

Where a child's father and mother were married to each other at the time of the birth they each have parental responsibility for the child.

Where the parents are unmarried, only the mother has parental responsibility (Article 3, Children (Jersey) Law 2002). The father can gain parental responsibility by:

- Being registered as the child's father under Article 55 or Article 56 of the Marriage and Civil Status (Jersey) Law 2001. This is generally applicable to births after 2 December 2016.
- Entering into a parental responsibility agreement with the mother.
- Order of the court.

When parents separate or divorce, there is no necessity for any custody order and each parent retains parental responsibility. It is assumed that the parents will make their own arrangements for the care of their children without any intervention from the court. There is a principle of no order under the Children (Jersey) Law 2002.

However, if the parents cannot agree about whom the child should live with, or how much contact the child should have with a parent (or others), an application can be made to the court for an order under Article 10 of the Children (Jersey) Law 2002. An order under Article 10 can designate:

- With whom a child lives (residence order).
- With whom the child has contact (contact order).
- Whether there should be a shared residence order.

With a shared residence order, the court can determine the time the child spends with each parent and also impose other conditions as necessary. The order relates to whom the child lives with, not to where the child lives.

Applications are made on Form C100 and sent to the Judicial Greffe with the court fee of GBP130 (by way of treasury receipt). The Form C100 is endorsed with a date for a preliminary directions hearing and returned for service on the other side.

When making orders in respect of children pursuant to the Children (Jersey) Law 2002, the child's welfare is paramount and it is assumed that delay is likely to prejudice the welfare of the child. The court must have regard to the "welfare checklist", which can be summarised as follows:

- The ascertainable wishes of the child.
- The child's physical, emotional and educational needs.
- The effect of change on the child.
- The child's age, sex, background and other characteristics.
- Any harm the child has suffered or is at risk of suffering.
- How capable the child's parents are of meeting the child's needs.
- The range of powers available to the court.

When an application is made for an Article 10 order, an officer of the Jersey Family Courts Advisory Service (JFCAS) is appointed to initially prepare a safeguarding letter to the court after undertaking police checks and speaking to each parent. The JFCAS officer may also meet the parents to see if an agreement can be reached. The JFCAS officer may then be required to prepare a report to assist the court, if ordered to do so. The court is also keen to avoid proceedings whenever possible. The Family Court has set up an out of court scheme called Family Foundation, where alternatives to court are canvassed and the parties are referred on to other agencies whenever it is suitable to do so.

In complex private law cases, a child can be separately represented by a JFCAS officer (as children's guardian) and a specialist children's lawyer, paid for from public funds. Although it is not usual for children to meet the judge in private law cases, it is possible.

Parenthood Established in Another Jurisdiction

Parenthood or parental responsibility is sometimes recognised in Jersey if established in another jurisdiction. If an unmarried father is named on the birth certificate of a child born in another jurisdiction, before 2 December 2016 (and so does not automatically have parental responsibility in Jersey), if the country in which the child was born gives that father parental responsibility, then that father will have parental responsibility in Jersey. Other ways of obtaining parenthood, such as parental orders obtained in England and Wales, are not yet recognised in Jersey. The Law Commission of Jersey has made recommendations in respect of parentage, which it is hoped will be passed into law in Jersey in the near future.

28. What is the legal position in relation to access/contact/visitation following the breakdown of a relationship or marriage?

The expectation is that a child will maintain a relationship and spend time with each parent and both their maternal and paternal families. The court does not become involved with arrangements for children on relationship or marriage breakdown unless the parents cannot agree. It is then open to either parent (and other family members, with leave of the court) to make applications under Article 10 of the Children (Jersey) Law 2002. The factors the court will take into account are listed in [Question 27](#). The welfare of the child is paramount.

A residence or contact order under Article 10 only lasts until the child reaches 16 years of age unless there are exceptional circumstances and the court specifically extends the order (up to age 18 years).

Orders for contact (and prohibited steps orders and specific issue orders) are made pursuant to Article 10 of the Children (Jersey) Law 2002. The same provisions apply as for residence orders.

There is provision for separate representation of children within private law cases and the court does order separate representation when necessary. Usually, a children's guardian (from JFCAS) is appointed to act for the child alongside a specially qualified children's advocate from the Jersey Children Panel. Public funding is available for children's representatives on a non-means tested basis.

Stepparents may bring Article 10 applications without prior leave of the court. Grandparents, other relatives and friends may bring proceedings under Article 10 with leave of the court. Leave is generally granted unless there are good reasons not to grant it.

International Abduction

29. What is the legal position on international abduction?

Jersey is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction 1980 (Hague Child Abduction Convention). The Hague Child Abduction Convention is dealt with through the Child Abduction and Custody (Jersey) Law 2005.

The Child Abduction and Custody (Jersey) Law 2005 also deals with the recognition and enforcement of custody decisions made in other jurisdictions.

The Attorney General is the central authority for child abduction purposes in Jersey. The cost of applications under the Child Abduction and Custody (Jersey) Law 2005 is not always at the expense of the States of Jersey unless the applicant is otherwise eligible for legal aid, but funding may be provided.

Article 77 of the Children (Jersey) Law 2002 contains specific provisions for orders made in any other part of the British Islands, giving effect to such orders as if they had been made in Jersey.

Applications in respect of children abducted from Jersey are made to the Attorney General's office. Once an application is made and the documents are provided, the Attorney General's office deals directly with their counterpart in the other country. It is generally an efficient system.

For children abducted to Jersey, again, the application is through the Attorney General as the central authority. Cases are heard in the Royal Court.

Leave to Remove/Applications to Take a Child Out of the Jurisdiction

30. What is the legal position on leave to remove/applications to take a child out of the jurisdiction? Under what circumstances can a parent apply to remove their child from the jurisdiction against the wishes of the other parent?

If a residence order is in force, no-one can remove a child from Jersey without either:

- The written consent of everyone who has parental responsibility for the child.
- Leave of the court.

However, this does not preclude the removal for a period of less than one month by the person in whose favour the residence order is made. A court can also grant general leave to remove to any person when making a residence order. If a person wishes to prevent a child from being removed from Jersey, an application can be made to the Royal Court for either:

- A prohibited steps order.
- An injunction.

The former course of action is to be encouraged, as this is within the Children (Jersey) Law 2002 and the child's welfare remains paramount.

If a person wishes to remove a child from Jersey, an application can be made for a specific issue order under Article 10 of the Children (Jersey) Law 2002. When such applications come before the court, the court must be satisfied that the arrangements proposed are in the child's best interests. There is a tendency to consider that a child will be better off living in Jersey if that child has lived in Jersey and is settled, but the interplay of the regime of housing qualifications can have an influence on the facts of any case. A parent who has a good reason for relocating, has made arrangements for education, accommodation, income, has a support network in the other country and has made or is proposing proper arrangements for contact with the "left behind" parent has a good chance of succeeding on an application to relocate.

Surrogacy and Adoption

Surrogacy Agreements

31. What is the legal position on surrogacy agreements in your jurisdiction? Is surrogacy available to individuals and cohabiting couples (both heterosexual and same-sex)?

There is no law relating to surrogacy in Jersey. As such, surrogacy arrangements are made with organisations in the UK and the medical profession in Jersey.

If parents who are domiciled in Jersey enter into a surrogacy arrangement, they can apply for a parental order in a Family Court in England or Wales under section 54 of the Human Embryology and Fertilisation Act 2008. This is an application in England or Wales under English law, and must be made to a court in England (or Wales). However, parental orders are not yet recognised in Jersey, although the Law Commission of Jersey has made recommendations in respect of parentage, assisted reproduction and surrogacy.

Adoption

32. What is the legal position in relation to adoption? Is adoption available to individuals and cohabiting couples (both heterosexual and same-sex)?

Adoption in Jersey is dealt with by the Adoption (Jersey) Law 1961. A child can be adopted in Jersey by a single person, a married couple, civil partners or a cohabiting couple (regardless of gender) if at least one of them is domiciled in the British Islands. Adopters can be heterosexual or homosexual. A child can be adopted by:

- People unrelated to the child, who must be 25 years old or over.
- A relative, who must be 20 years old or over.
- The child's mother or father.

A man cannot be the sole adopter of a female child, except where there are special circumstances.

Everyone with parental responsibility for a child must consent to an adoption unless the person:

- Is withholding their consent unreasonably.
- Cannot be found.
- Has abandoned or neglected the child.
- Is incapable of caring for the child.

There is also provision for the making of an order freeing a child for adoption.

There is no concept of "special guardianship" in Jersey.

Cohabitation

33. What legislation (if any) governs division of property and financial claims for unmarried couples on the breakdown of the relationship?

Cohabitants do not have any rights over and above their general civil and property rights.

Applications for child maintenance, lump sums and property transfers can be made under Schedule 1 of the Children (Jersey) Law 2002 where the couple have children.

There is otherwise no power to order sale or transfer property between co-owners of property who are not married. However, an older concept of "*licitation*" can be used to order sale by auction of jointly owned property.

The law in respect of cohabitation, confirming the position, was considered in *Flynn v Reid* [2012] JRC 100; [2012] JCA 169.

Family Dispute Resolution

Mediation, Collaborative Law and Arbitration

34. What non-court-based processes exist to resolve disputes? Is alternative dispute resolution mandatory? What is the current status of agreements reached through mediation, collaborative law and arbitration?

Mediation, collaborative law, private financial dispute resolutions (FDRs), non-compulsory court-led FDRs and arbitration are all available in Jersey, though these are not enshrined in statute and no alternative dispute resolution is mandatory.

The Family Court has set up Family Foundation, which is based in the court and gives parties the opportunity to reach an agreement without initiating court proceedings. Family Foundation can also refer the parties to other agencies.

Mediation is available for all issues through Family Mediation Jersey (FMJ). The mediation provided through FMJ is on the family model (as recognised in England and Wales), with a series of meetings typically lasting one to two hours. The Resolution Centre also provides mediation, in conjunction with Family Foundation. The model used there can either be the family model or the civil and commercial model of mediation.

Mediation can also be conducted using the civil and commercial model (especially in higher value cases), with mediators from England (usually senior family law barristers) and taking place over one or two days with each party being legally represented. Private FDRs are conducted in much the same way as this type of lawyer-led mediation. These methods have developed because financial dispute resolution hearings were not available in Jersey, largely because of the limited size of the judiciary dealing with these matters. However, a change of registrar has brought in the use of court-

based FDRs which have had some success in settling matters before a final hearing. However, they are not compulsory.

Collaborative law occurs in a minority of cases. Any agreement reached as a result of mediation, collaborative law, private FDR or arbitration is usually converted into a draft consent order, which once ordered by the court is enforceable as any other order.

Family law arbitration is available in Jersey but is rarely used (the author is the only qualified Family Law Arbitrator in Jersey).

35. What is the statutory basis (if any), for mediation, collaborative law and arbitration?

There is no statutory basis for mediation, collaborative law or arbitration, but equally there is nothing to prevent agreement being reached in any way in which the parties agree to work. Once an agreement becomes enshrined in a consent order, it has the same validity as any other court-ordered agreement.

There is judicial encouragement for dispute resolution methods that avoid court proceedings, especially in relation to children. Adjournments are granted readily to encourage negotiation or mediation and there is a readiness to uphold agreements reached by alternative means.

Civil Partnership/Same-Sex Marriage

36. What is the status of civil partnership/same-sex marriage? What legislation governs civil partnership/same-sex marriage?

The Civil Partnership (Jersey) Law 2012 allows same-sex couples to become civil partners and recognises same-sex unions from other jurisdictions.

Civil partners have the same rights and responsibilities towards each other as married couples. The minor differences in the legislation from the Matrimonial Causes (Jersey) Law 1949 relate mainly to grounds for the dissolution of the partnership (for example, no adultery and consummation in the context of nullity).

Civil partnerships are governed by the Civil Partnership (Jersey) Law 2012. Same-sex marriages became legal in Jersey in July 2018. In 2023, civil partnerships were extended to opposite sex couples.

Media Access and Transparency

37. What is the position regarding media access to and press reporting of family law cases?

Family proceedings are held in private. The information that can be published in respect of divorce cases is limited to names, addresses and occupations of the parties and witnesses, a concise statement of particulars, submissions and decisions on points of law and any judgment (provided the information is not likely to "injure public morals").

All children cases are held in private and nothing can be published which identifies, or is likely to identify, a child.

Members of the press do not generally have access to the family courts, but can be allowed in with leave of the court. They remain limited in what they can report. The press and the public do, however, have access to the published law reports, which are anonymised when they refer to children and increasingly any family matter. More cases in Jersey tend to be published on the Jersey Legal Information Board than are published in England and Wales.

Succession Rights on Divorce/Dissolution

38. How does divorce impact succession and estate planning in your jurisdiction?

When a couple divorce or have a civil partnership dissolved, all succession rights that they had as spouses come to an end. Succession rights are extinguished on divorce and dissolution.

A will prepared prior to divorce remains valid and in force, regardless of any divorce. Anyone specifically named in the will (for example, a former spouse) will still be able to inherit. However, any provision in the will for property to be left to "my husband" or "my wife" or "my spouse" or "my civil partner" and so on will fail if the testator no longer has a wife, a husband, a spouse or a civil partner due to divorce or dissolution.

There is forced heirship in Jersey (*dower* and *légitime*) but the provisions on both testate and intestate succession only apply to surviving spouses or civil partners (and other heirs). Once decree absolute (or a final order in a civil partnership dissolution) has been granted, the former spouse is excluded from the estate on intestacy and where there is a will (unless the former spouse/civil partner is specifically included in a will by name).

Controversial Areas and Reform

39. What areas of the law (if any) are currently undergoing major change? Which areas of law are considered to be particularly controversial?

Reform to family law is needed in the following areas:

- Divorce law would do well to be changed to move from the current largely fault-based grounds to no-fault divorce. A Law Commission consultation on divorce reform recommended reform in 2015. This has yet to be acted upon.
- Pension sharing orders and orders to set aside transactions made to defeat financial claims in divorce would be welcome as extra tools for the family courts.
- There are forced heirship arrangements of *dower* and *légitime*, which need to be reconsidered to meet modern demands.
- Although same-sex marriage has been adopted in Jersey, the consequential provisions relating to parental responsibility for non-biological parent spouses have not been brought into force. This leads to inequalities. Same-sex couples must apply for joint residence orders or adopt for both parents to obtain parental responsibility for their children. This remains an issue which affects an increasing number of people.
- There are no cohabitee rights in Jersey, apart from those in the general law (for example, joint property ownership, declarations of trust). This may be a matter for reform. A recent amendment to the Control of Housing and Work (Residential and Employment) (Jersey) Regulations 2013 now provides a definition for "eligible partner" and "enduring relationship" which could be a precursor to wider cohabitee rights in the future.

However, various family law matters have been reformed during 2023:

- The law of domicile has been amended to enable married women to have a domicile of choice separate from that of their husbands.
- The age at which a person can marry or enter a civil partnership has been raised to 18 years of age.

- Civil partnerships have been extended to opposite sex couples.

There have also been some improvements in relation to the completion of tax returns. Married husbands used to be legally responsible for the completion of their wives' tax returns. Although taxation is still not completely separate, married women can now complete tax forms independently of their husbands' tax forms, although the default legal position remains that husbands should complete them. The issue of completely independent taxation is still being debated by the States of Jersey.

Contributor Profile

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Professional and academic qualifications. England and Wales, Solicitor, 1998; Jersey, Advocate, 2010; Family Mediator, Family Law Arbitrator, Collaborative Lawyer; BA in Law, Trent Polytechnic; LLM Welfare Law, University of Leicester

Areas of practice. Family law; mental health law.

Recent transactions

- Divorce, civil partnership dissolution, nullity.
- Financial remedies including matters with complex business, trust and farming assets.
- Private children law including relocation, child abduction, residence, contact, prohibited steps and specific issue orders.
- Surrogacy and adoption.
- Public child law.
- Contested probate/Inheritance Act claims.
- Mental Health Review Tribunal matters.

Languages. English

Professional associations/memberships. Resolution; International Academy of Family Lawyers; Resolution Collaborative Lawyer; Chartered Institute of Arbitrators; Law

Society of Jersey; Jersey Family Law Association; Association of Lawyers for Children; Jersey Children Panel; Jersey Mental Health Law Panel; Institute of Family Law Arbitrators.

Publications

- *Family Law Jurisdictional Comparisons 2013, 2014, 2017, 2019, 2021.*
- *International Relocation of Children 2016, contributor to Family Law, International Family Law, Jersey and Guernsey Law Review.*

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