



## BREXIT AND MARRIAGE BREAKDOWN

Chair: Anna Worwood (England)

Panel: Daniel Eames (England), Delphine Eskenazi (France), Rachael Kelsey (Scotland), Magda Kulik (Switzerland) and Maryla Rytter Wróblewski (Denmark), Sandra Verburgt (Netherlands)

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### Law for divorce/finances involving EU Member States from 1 January 2021

Countries	Hague 1970	Hague 1973	Hague 2007	Lugano 2007
England & Wales	✓	✓	✓*	?**
Scotland	✓	✓	✓*	?**
France	✗	✓	✓	✓
Netherlands	✓	✓	✓	✓
Switzerland	✓	✓	✗	✓
Denmark	✓	✓	✗	✓

\* The Convention will be entered into force for the UK on January 2021.  
\*\* It is not clear whether Lugano will apply intra-UK.

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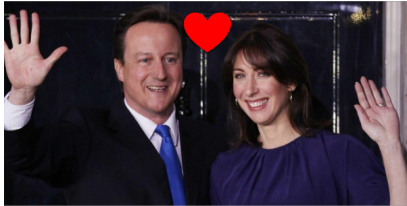
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### Case study 1: Dave and Samantha



Dave and Samantha – a dream team.  
Married since 1996.



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### Case study 1: Dave and Samantha



They last lived together in a fabulous, luxury ski chalet in the French Alps which has been in Dave's family for years having holed up there in late 2016 following the Brexit furore.

At first life was good: the slopes and apres-ski were gorgeous...



...and there was no Nigel Farage breathing pints and pontificating on "Blighty in the good old days".



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### Case study 1: Dave and Samantha



More importantly, there were no re-moaners or paparazzi hounding Dave. He prefers a quiet life having had his fair share of excitement in his younger days.



Booze...



to



...Snooze



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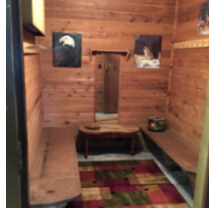
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### Case study 1: Dave and Samantha

However, the cracks began to show when Dave embarked on vol 2 of his memoirs; this time spending many hours ensconced in the pine-scented confines of the chalet sauna.



No, not this!



More this!



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### Case study 1: Dave and Samantha

Samantha, anticipating months of lonesome lockdown with Dave lost in a world of words, hankers for the alluring retail opportunities that London has to offer. She packs up and leaves for the UK in September 2020.



However, she opts to stay at their holiday home in Cornwall and gets stuck into her work in the fashion industry remotely given the pandemic.

Now, after 3 months of separation, Samantha has no intention of re-joining Dave in the Alps. Dave has decided never to return to the UK. He is now a committed Francophile and he is applying for French citizenship. Samantha is contemplating her next move....



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### Case study 1: Dave and Samantha

Samantha seeks advice on divorcing in England.

Dave has sent her emails which suggest that he may have come to the conclusion that the marriage is over too.



Their biggest asset is the French chalet.

What are Samantha's options re issuing for divorce?

What about sorting out the finances?

What if Dave takes action in France?



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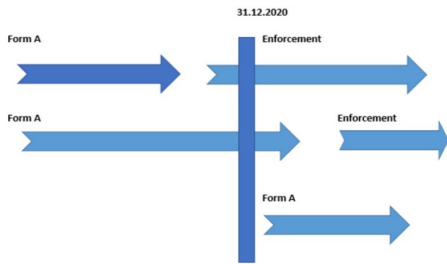
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### Finances – Recognition and Enforcement



- At the moment, if she issues **before 11pm on the 31 December 2020**, recognition and enforcement of any financial order will be under current EU law.



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### Case study 2: Dave and Samantha continued...



It is 4 December 2020. Samantha decides that she cannot ruin Dave's festivities by sending a divorce petition with his Christmas card. **Instead, she issues divorce proceedings in England in January 2021.**

Dave and Samantha have a series of Zoom meetings to try to resolve their finances amicably.

In March 2021, Dave informs Samantha that he is off to live in the **Netherlands** and pursue dubious business interests with some mates from university.



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### Case study 2: Dave and Samantha continued...



Financial negotiations break down in summer 2021 when Samantha suggests that she should have half of the chalet and Dave's shepherd's hut. **Dave takes local advice on his options to sort out the finances.**

*Dave decides to focus on his new business and does not take any steps.*

*Dave and Samantha lose contact in July 2021. It is now November 2021. Samantha has obtained a financial order for spousal maintenance in September 2021 in England. She needs to enforce in the Netherlands. Will the Netherlands recognise the financial order and can she enforce it?*



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### Case study 3: Dave and Samantha

What if Dave has been living in Copenhagen since 2016 and Samantha has been living in Cornwall since September 2020.

What if it was Dave seeking to bring the marriage to an end and resolving the finances taking Danish advice in early December 2020? What if he wanted to wait until after the Christmas festivities?



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### Case study 4: Dave and Samantha

During the course of financial disclosure, it transpires that Samantha has set up a successful sports fashion business focusing on tennis.

She owns 100% of the business which has offices and manufacturing premises in Zurich. A financial remedy order has been made in England & Wales that necessitates the sale of the business premises to pay Dave a lump sum. Samantha refuses to cooperate. Dave seeks advice on enforcement in Switzerland...



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### Case study 5: Dave and Samantha

Rewind again: what if Samantha retreated to Scotland after leaving the French Alps in September 2020 rather than Cornwall?

Fearing living in England alone through another lockdown, she decided that it would be better to stay with some Scottish family members who live in Edinburgh.

Can she bring divorce proceedings in Scotland?



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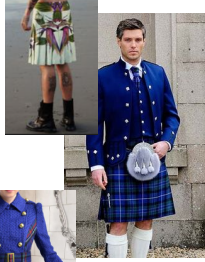
### Case study 5: Dave and Samantha



Meanwhile, David has moved back to England to live with his mum because his second volume memoirs did not make the bestsellers list.

The value of the chalet has plummeted and he is unable to rent it out due to Covid.

Samantha's fashion empire is going from strength to strength and Dave is contemplating whether he can make a maintenance claim to meet his monthly outgoing and seeks advice...



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### Questions

- What if they were civil partners, not married?
- What if they were same sex spouses?
- What if they were married in Italy and had entered into a default matrimonial property regime?
- What if they had a prenup with a choice of court clause? Does it matter when it was entered into (pre/post 31 Dec 2020)?
- What if there are competing proceedings?



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