



## Life in law - Audio

*Family law*

### CONTRIBUTORS

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### TRANSCRIPT

**Introduction - KB** **Marriage break-up, acrimonious financial disputes, child custody: these are just some of the challenges which face solicitor Elizabeth Hicks. Here she is at the start of her working day.**

**EH** My name's Elizabeth Hicks. I'm a partner and Head of the Family Law Team at Irwin Mitchell in London. I'm a family lawyer. That may sound strange because, actually, what my job involves is dealing with the break-up of families. I like to see what I do as helping people through probably what's one of the most difficult times of their lives. I don't do any legal aid work. It's all private clients, generally people who have inherited assets, and also a lot of international clients.

When I was younger, initially I wanted to be a nurse. My mother then had a car accident, showed me her stitches on the basis that she thought I'd be thrilled to see them at which point I said I don't want to be a nurse anymore. I then decided I wanted to be an archaeologist because I thought it would involve lots of travelling, not very much work, and just being out in the sun a great deal. Then I realised that actually law sounded quite appealing. So I applied and went to Cardiff University, and I read Law and French.

Most of my work is divorce-related in dealing with the financial side of the break-up, any children issues arising on the break-up, and also dealing with the actual practicalities of getting somebody divorced. Because the Civil Partnership Act has now been in force for about six years, I am seeing, sadly, more and more civil partnership dissolutions.

When a client comes to see me because they want a divorce, I have to explain to them that, unfortunately in England and Wales, it's still fault-

based. So you have to blame somebody for the fact that the marriage has broken down. There's only one ground for divorce in England and Wales, which is the irretrievable breakdown of the marriage, and that has to be proved by one of five facts. So you either have to say that the other person has committed adultery; or that they have behaved unreasonably and you find it intolerable to live with them - that's the legal test; or that you're getting divorced because you've been separated for two years and the other party agrees; or that you want a divorce on the basis that you've been separated for five years, in which case you don't need the consent of the other person; and the final ground is desertion. In all my years of practice, I have never once drafted a divorce petition on the basis of desertion.

The most common grounds are adultery and unreasonable behaviour. It's rare that either of those two facts have any impact on the financial aspects of the divorce. People think that because their spouse has gone off with someone else, that's going to have an impact on the financial side. It doesn't. We don't normally name the co-respondent in divorce proceedings, in other words we don't normally name the person with whom someone has had an affair. It used to be the case that you had to name them and, in fact, in Sheffield County Court in the north of England, up until as recently as a couple of years ago, they would not allow an adultery petition to go through unless you named the person with whom someone had had a sexual relationship. Thankfully, that's now changed.

Unreasonable behaviour petitions basically involve setting out four or five examples of how my client feels that their spouse has behaved unreasonably, and they find it intolerable to live with them. Examples of unreasonable behaviour that people put in tend to be: if it's a woman who is going for unreasonable behaviour against the husband, that he works too long, that he's not affectionate enough, that he's tired at weekends, that she's the one that has to organise their social life. If it's a husband against a wife, then the opposite tends to be true: so a husband will say that the wife isn't supportive of him in his job; she's not understanding when he comes home late; that she organises all these events at weekends, and all he wants to do is flop on the sofa and watch television; that she demands sex and he's too tired because he's been at work all hours.

The actual divorce process is relatively quick. There's two particular decrees that you get at a divorce: there's the *decree nisi*, and the *decree absolute*. It's all done on the paperwork unless somebody contests the divorce which is pretty rare nowadays. So the *decree nisi* is when a judge just reads out in court a list of names, and you have your *decree nisi*. Why that's important is that the court then has the power to approve a financial order setting out what's been agreed between the parties once *decree nisi*'s pronounced. By law you have to wait six weeks and a day between *decree nisi* and *decree absolute*, but generally people do not apply for *decree absolute* until you've sorted out the finances. The quickest divorce that I've done took about four months, and a lot of that is waiting for the court to process the paperwork. The longest one is one that is still ongoing where the husband came to see me in September 2006 and it's currently listed for a final financial hearing in January 2012, but that may go off for various reasons.

I act for both husbands and wives. I'm often asked do I act for more men than women, and I don't. But I have noticed there tends to be a cycle where I will act for a lot of men, and then it goes the other way and I tend to act for a lot of women. What I would tend to do would be to instruct a

male barrister for a female client so that there's more of a balance there in terms of the gender. The reason that we instruct a barrister is twofold. First of all because they tend to spend their lives in court on a day-to-day basis and, although the way that we deal with family cases and financial cases is based on the statute in this country, it's also based on case law. The barristers are at the coal face, they know what's going on even in those cases that aren't reported. The second reason for getting a barrister involved is that they are the specialist advocates. They're the ones who go to court, who present the case to the judge; they're the ones who are trained in cross-examining the witnesses in the witness box; they're the ones who are trained in how to pull all the evidence together and present it in the best way possible to the judge.

### ***Telephone rings***

EH  
EG at 6' 18"

**Hello.  
It's Emily from the office. I'm just wondering what time you'll be coming to speak to Sital about High Court tomorrow? . . . (Fade)**

EH

I'm asked how often I am in court. It really, really varies. I've got two cases coming up: one which is a six-day case in the High Court of Justice in London, and another one which is - and also a six-day case - which is in the Principal Registry of the Family Division, which is the specialist Family Court in London for the lower money cases and the not as complex cases.

There's no winning or losing in family law. It's really difficult when people say, well, what's a successful outcome? For me, and I think for most sensible family lawyers, a successful outcome is basically trying to sort everything out as quickly as possible in the circumstances. There's different ways of sorting out the finances on a divorce. Essentially, you've got the court process, and then you've got the alternative dispute resolution methods, ADR for short, which can involve collaborative law that I'm going to talk to you about, mediation, and also the couple just basically sitting round a table and trying to sort things out themselves or doing it with the help of their solicitors.

Collaborative law - it originated in the States and has been in this country for quite a few years now. I trained in 2005 as a collaborative lawyer. The collaborative law process is run and managed through an organisation called Resolution. Resolution has got about 5,500 members across England and Wales. It used to be an organisation known as the Solicitors' Family Law Association and its membership was solely family solicitors. However, in the last few years, it's expanded, it's changed its name, and now the members can be financial advisers, they could be counsellors, they can be therapists, all of whom have an interest in family law.

The collaborative process is a process whereby the couple, and their lawyers, agree at the beginning that they are going to deal with their case collaboratively. So the clients and both solicitors have to sign up to an agreement that says that, if they don't manage to sort out the financial aspects of the divorce through a series of meetings and they don't manage to reach an agreement, then the clients have to sack their lawyers and instruct new solicitors to go to court. So it's in everybody's interests, including the lawyers', to try and do a deal. Where it's also unusual and very different to the traditional method of sorting out a dispute, either through the court process or through sitting round a table and negotiating with the other party, is that you advise your clients in the meetings. So not just your client, but their spouse and their spouse's

lawyer hear the advice that you give. Now that's actually one of the features that really makes the process work.

I'm very actively involved with Resolution. In fact, I recently chaired a conference about alcohol and family law cases. I had one lady client who was an alcoholic and was going through the court process to sort out the finances, and at the settlement hearing she just didn't turn up. We had her brother's telephone number and he went round to check on her, and found her passed out on the sofa. She'd been hitting the bottle all morning and it was quite plain that the stress and the thought of going to court to sort out the finances was just too much for her. We did, fortunately because the husband was very sympathetic, manage to sort things out at the hearing, even though she wasn't there, and then subsequently got her approval to what we'd tentatively agreed. So it did have a happy ending.

### ***Traffic atmos . . . segue into coffee shop atmos***

**EH**

I'm just out of court. Just popped in for a hot chocolate on the way back to the office. The court is on High Holborn in the City of London. It normally takes me about ten minutes to walk from there to my office.

We are part-way through a trial that started on Monday, and it's now Thursday evening. The judge finished at about ten past five tonight. The case involved sorting out the finances on divorce and also with whom the children should live. Fortunately, we were able to settle the residence aspect in correspondence last week and so the issue that the judge had to deal with, and on which he's given a very short judgment this afternoon, has been where the children spend Christmas. And in the circumstances of this case he has ordered that the children should spend Christmas with Dad's parents and, as I'm acting for Dad, he is absolutely delighted.

We're back tomorrow morning at 11.30, where the two barristers are going to be putting their final arguments to the judge. The judge will then take a break over lunch and then at two o'clock will start to give his judgment, and that judgment's going to be sorting out the finances. So the house is going to be sold, and he will decide how much of the house goes to my client and how much of the proceeds of the sale of the house goes to the wife.

The worst part is really tomorrow from the client's perspective because he's said everything he can, he's given his evidence, he's been asked questions by his wife's barrister, and he will have to sit there for about an hour and a half tomorrow afternoon while the judge goes through the reasons as to why he's decided what he has and then, at the end of an hour and a half, he will know exactly what he's got. What tends to happen is that the judge will try and be sympathetic to both parents, or both parties, and then make a decision, and it's a little bit of a rollercoaster ride. Quite often you get a gut feel towards the end of a judgment as to which way it's going. But you just don't know. So we just have to wait until the judge makes his decision.

The other interesting thing about the trial this week is that we had the wife's mother in court giving evidence and although she's obviously her Mum, so therefore a very close member of her family, as soon as she's given her evidence she has to leave court. In family proceedings, because they are private, you cannot stay in court after you give your evidence unless both parties agree and the judge makes an order that the witness can stay in Court. The press aren't allowed into court other

than at final financial hearings. But even then they're limited in what they can report, and that's another reason why we're sitting in a coffee shop because you couldn't actually come into the court building.

I've been doing this job now for about 16 years. It's very difficult at times, but also very rewarding. The most difficult aspect is dealing with people's emotions. I had one client, a couple of years ago, where it was really tough. She'd made certain allegations against her husband and the fight between them was who their two children should live with. The judge took against her from the beginning. At the end of it, the judge started giving her judgment and my client got so upset that she ran out of court. The judge sent me after her, but she disappeared. Three hours later, I was round at her hotel and had to tell her that, unfortunately, because of the particular circumstances of that case, the judge had ordered an immediate change of residence so that her children were now living with the father. Not only that, but the judge said that she couldn't even speak to her children, let alone see them, until she had a full psychiatric assessment carried out. She was absolutely devastated. I, as you have to, held it together. She was in floods of tears, crying, shouting, screaming in a hotel coffee shop. And I came out of that and I just remember walking down Fleet Street with tears streaming down my cheeks at about eight o'clock at night thinking, why do I do this job?

The good side of the job, however, is acting for what I'd say are the angels. So when you're on the side of the angels, it's great. Where you're acting, for example, for a lady whose husband is being very deceitful about his finances, not telling you what he's got, and you dig, dig, dig, and you manage to unearth the, possibly not the true extent of his assets, but a large part of his assets.

I'm often asked by friends, and even some old clients, what makes a good family lawyer, what I think about being a family lawyer. And what I always say is: you have to be empathetic; you have to have fantastic communication skills; you've got to be a good listener. But there's also a boundary there. At the end of the day, the client is paying you for a job; they're paying you for your advice. So there's no point in being overly sympathetic: that's not what they want; they've got friends and family for that.

I wouldn't change what I do. I absolutely love it. I'm passionate about it. I couldn't do anything else. Even if I won the Lottery tomorrow, I'd still be here doing this job.

***Traffic atmos . . . (Fade)***

**AUDIO ENDS**