



Financial Provision on Divorce in Ireland: An inconvenient truth

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Irish Divorce Provision: An Overview

- Prohibition on divorce in Irish Constitution pre-1996
- Family Law (Divorce) Act 1996
 - Allows for conservative divorce regime (minimum 4 year wait for divorce)
 - Division of assets based on ‘Equitable Redistribution’
 - Vast discretion given to the judiciary (list of factors to consider, no presumption of equal sharing, no pool of assets)
 - Note: 1996 Act (as a Bill) was published *before* referendum - political tool



Irish Divorce Provision: In Practice

- Key characteristic: Unpredictability
- Inconsistency at a national level (O'Shea, 2014; Coulter, 2009; Buckley, 2007)
 - Approach to asset division?
 - Approach to spousal maintenance/support?
 - Approach to child maintenance/support?
- Negatively affects settlements – little 'shadow of the law' to bargain in
 - 90% couples reach a settlement
 - Very little guidance
 - Plays into the hands, usually, of the financially stronger spouse



Advantages & Disadvantages

- Advantages
 - Ability to provide ‘tailor-made justice’/individualised justice
- Disadvantages
 - Inconsistent in outcomes (Cork v Dublin; even within Dublin Circuit Family Court)
 - Similar cases, very different outcomes
 - Unpredictability for settlements
 - Heavy focus on ‘needs’
 - Vulnerability of financially weaker spouses is amplified



An Inconvenient Truth

- Legislature were heavily influenced by socio-political considerations in 1995 (referendum) when drafting the Divorce Bill – political tool
- Weaknesses associated with the regime introduced are now very clear
- Future? Need to strike a different balance between rules and discretion
 - Example, incorporate more presumptions/principles around which discretion can be exercised where needed



