

# Myths and Misconceptions in Family Law



## **IF I OBTAIN A DECREE ABSOLUTE THERE CAN BE NO FUTURE FINANCIAL CLAIMS**

- In order to prevent future claims you need a clean break consent order
- Even with minimal or no assets this is advisable to prevent claims on future assets e.g. inheritance/lottery winnings
- Vince v Wyatt – Divorce in 1994 and in 2015 Supreme Court have ruled a claim can be brought against a multi-million pound business the husband has acquired since the divorce
- Cost - £650 plus VAT if straightforward & agreed or can do in person – always court fee of £550 unless on certain benefits

## **I WANT TO OBTAIN A DIVORCE BASED ON IRRECONCILABLE DIFFERENCES**

- This is not currently a recognised ground for divorce in England and Wales
- There are five grounds for divorce; adultery, unreasonable behaviour, two years' separation with consent, five years' separation and desertion
- The separation grounds are the only 'non-fault' based grounds available and if you have not been separated for this period of time your only option is to proceed on a 'fault' based ground
- There is due to be a change to allow for a non-fault based divorce – The Divorce Dissolution and Separation Act 2020 was passed on 25 June 2020. The anticipated date is April 2022.
- Exciting progress as it will assist in reducing acrimony from the outset

## **IF THE OTHER PARTY HAS COMMITTED ADULTERY IT WILL AFFECT THE FINANCIAL OUTCOME**

- The 'fault' cited in the divorce is of no relevance to the finances
- The court has to consider both parties needs irrespective of fault
- The only fault that is of relevance in financial matters is if it is directly linked to the financial matters e.g. gambling, reckless spending and even in those circumstances it is extremely rare for this factor to be relied on as the court will prioritise the parties needs
- However, if you are a respondent and you see an allegation that does have this 'financial link' in the petition you can either try to get the other side to remove it if the petition has not been issued or allow the divorce to proceed but you should note on the acknowledgment of service that it's not accepted and reserve your right to defend that allegation in any future proceedings

## **WE ARE NOT MARRIED BUT WE ARE LIVING TOGETHER AND SO I HAVE RIGHTS AS A COMMON-LAW WIFE**

- Perhaps one of the biggest myths in family law. A poll in 2008 undertaken by Parliament confirmed that 51% believed in this concept
- If you are not married you do not have automatic financial rights
- Any rights are limited to the laws of property and trusts which is a complex area of the law and if you are not a joint owner it is difficult, although not impossible to establish a financial claim on the property
- There is some protection for those with children and the courts can make orders to preserve the home and make other financial orders, in some cases until the children have finished full-time education
- There has been a lot of legal consultation about this area of English law and many calls for reform to protect long-standing relationships where there are children. To date, no reform is imminent
- The best way to protect your interest is to have joint ownership and/or a cohabitation agreement

## **WE ARE MARRIED AND THEREFORE I AM ENTITLED TO HALF OF EVERYTHING**

- Whilst the starting point in cases is equality the court look a number of factors when deciding how the assets should be divided
- The most decisive factor in most modest cases is the needs of the parties, especially the needs of the children
- In cases where the assets exceed the needs the court aims for fairness and therefore it may place more weight on other factors such as the length of the marriage, contributions made

## **IF I TRANSFER ASSETS TO A THIRD PARTY THE COURT WILL IGNORE THEM**

- This is not the case and the court can either make an order for these to be transferred back to the spouse or 'add them back in' to the pot so that any order reflects the fact that the transferor of that asset has already had that money
- The transfers are likely to become common knowledge as both parties will have to provide the other with full disclosure of their financial documentation which includes bank statements and solicitors will pick up on unusual transactions in this documentation
- The court is likely to take a dim view of a party that has tried to conceal assets

## **IF MY SPOUSE HAS RACKED UP HUGE AMOUNTS OF DEBT, I AM LIABLE FOR HALF OF THIS**

- The contractual position is that despite being married the debt is personal and therefore only attaches to the person who has the contract with the creditor (unless you are guarantor)
- The repayments are therefore the responsibility of the spouse whose name they are in and if there are missed payments it should only affect their credit
- However, there is always a concern if the debts have become unmanageable as a bankrupt spouse will cause problems for you and debts being secured on the other spouses share of the property could cause the home to be at risk
- The matrimonial courts can look beyond the contractual liability and sometimes will consider the debt to be joint when considering the finances if both parties have benefitted from the debt
- It is also possible that regardless of who benefitted from the debt, the debts will be a factor for the court to consider when meeting the parties' needs – which is hard pill to swallow. Couples who therefore have a spouse who is a spender needs to be aware of the implications.

## **PRENUPTIAL AGREEMENTS ARE NOT RECOGNISED IN ENGLAND AND WALES**

- Although a prenuptial is still not automatically binding in England and Wales the presence of a prenuptial can still be of value and, even if not strictly enforced, is likely to be of relevance as one of the overall circumstances of the case
- They are becoming increasingly recognised by the courts particularly when they are properly drafted with both parties having had full legal advice
- Some of the most common use of prenuptials appear to be where one party has greater wealth that they are bringing to the marriage, are a beneficiary of a family trust or in circumstances where they are protecting anticipated inheritance due during the course of the marriage.
- The Law Commission has provided some guidance on how to enter in to a prenuptial to give it as much weight as possible

## **THE CHILDREN WILL ALWAYS STAY WITH THE MOTHER**

- Whilst it may appear that this is the case, the court is only guided by what is in the best interests of the child
- The use of a shared care arrangement is becoming more frequently used if it is practical and not disruptive for the child

## **FAMILY LAW DISPUTES WILL COST THE EARTH**

- Whilst you will inevitably incur legal fees if you instruct a solicitor the level of cost will depend on the route that you take
- There are a number of options available to try and minimise cost including mediation, negotiation and fixed fees
- The divorce process is procedural and therefore, if you have limited funds for legal fees and there are financial matters to resolve, the money is best used for that.
- If there are lengthy court proceedings this can result in significant legal fees on both sides so avoid if possible

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**Machins Solicitors currently run a free half hour clinic every Tuesday from 2pm-6pm and a fixed fee hour consultation for £210 plus vat.**

**If you would like more information about the issues raised in this article or any aspect of family law, please get in touch.**

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