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Spousal Immunity & Private Marital Communications

by Michael J. Bace, Esq.

It is obvious to those who are married, that the arrangement has benefits too numerous to mention. Not only do married individuals enjoy the love and support of their partner, but the law also affords married couples a number of distinct benefits. Married individuals live longer; according to a Harvard University study, and other similar research, married women are twenty percent (20%) less likely to die of heart disease, suicide, and cirrhosis of the liver. In a recent study by researchers at UCLA, single men aged 19 to 44 are over fifty percent (50%) more likely to die prematurely than their married counterparts. The reasons are not so clear, but many pin the longer life on a reduction in overall stress. This may sound counter-intuitive to those living the single life, but married couples pool their income and thus accumulate greater wealth on average than single individuals, which can lead to less stress. Whatever the reasons, married individuals can also thank the law for two other important benefits: (1) spousal immunity and (2) the

testimonial privilege of private marital communications.

Spousal Immunity

Generally speaking, in the Commonwealth, a married person may not be compelled to testify against her spouse in a criminal proceeding. The privilege belongs to the witness-spouse. This means that if called to testify against her spouse, the witness can invoke the privilege, and decline to testify. Once invoked, the witness will not be required to testify. (M.G.L. Chapter 233 § 20). Generally, the privilege applies whether one of the spouses is the defendant or not; that is to say, if a third party is charged with a crime, a witness can not be compelled to testify against her spouse, even if the spouse is not the defendant.

There are limitations to the privilege. For example, if the proceeding is a Grand Jury, and a spouse is summonsed to appear and testify against her spouse, the privilege will not apply. The Supreme Judicial Court recently held that the spousal privilege may not be invoked at Grand Jury proceedings. *In the Matter of a Grand Jury Subpoena*, 447 Mass. 88, 99 (2006). The privilege will not apply in child abuse cases, or incest matters as well.

LAW OFFICE OF MICHAEL J. BACE, ESQ.
245 FIRST STREET, SUITE 1800
CAMBRIDGE, MA 02142 PH: 508.922.8328
WWW.BACELAW.COM

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Further, if a spouse makes what is referred to as an “excited utterance” at the scene of a crime, the privilege may not have any effect on the admissibility of the statement. For example, if the spouse blurted out, “I’ve been hit by a car!” at the scene of the crime, and then was asked to testify against her husband (the driver), even if the spouse invoked the privilege the statement could be admissible.

The privilege of spousal immunity is not all-inclusive, but it is a powerful benefit to marriage. The rule is especially powerful in a domestic assault and battery matter. If one spouse is assaulted by the other, but the victim is the sole witness, he or she may invoke the privilege and thereby all but defeat the prosecutor’s case.

Private Marital Communications

Married individuals often have private and confidential communications. The same statute that prevents spouses from being compelled to testify against each other, also affords a mechanism to keep private conversations protected. In fact, spouses *can not* testify as to their private conversations even if they *both* wish to do so. *Gallagher v. Goldstein*, 402 Mass. 457, 459 (1988). The rule is essentially an evidentiary rule that operates to exclude these private conversations. The rule applies in almost any civil or criminal matter. For the privilege to apply, there must have been a *marital relationship* when the communication was made, and the

communication usually has to have been made *in reliance upon the intimacy* of the relationship. The exclusion only applies to oral communications and not to written communications. Naturally whether or not a conversation was “private” or not will depend on the intent of both parties, and the particular circumstances.

There are a litany of exceptions to the rule in the Commonwealth. The rule will likely not apply in the following scenarios: (1) actions involving a contract between the husband and wife, (2) criminal proceedings where the defendant is charged with violating an abuse prevention order, (3) proceedings involving abuse of a minor, and (4) threatening actions made by one spouse against another. Additionally, if an attorney fails to object to the admission of private communications as evidence, or the Judge fails to exclude it, the evidence may be admissible.

Neither rule will likely apply in civil actions between the spouses, such as a Divorce proceeding where such information and testimony is crucial to an equitable result. The exclusionary rule for private communications between spouses is also not all-inclusive. Like most rules of law, it depends on particular facts and circumstances.

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