

Divorce and the obstacles facing matrimony in South Africa

Social networking sites should not be underestimated as contributors to divorce statistics. The impact of social network sites should not be underestimated in current divorce statistics as “virtual adultery” connects people outside of marriages.

The popularity of social networking websites like Facebook and Mxit have brought the possibility to make new friends, and reconnect with old friends from school or the more recent past, said Bertus Preller, a divorce and family law attorney at Abrahams & Gross in Cape Town. “It creates a platform for ‘virtual adultery’”. “As a divorce attorney I have seen a huge increase in the recent years in people producing print outs of emails, MXIT messages, Facebook wall screen-shots and sms messages to back up claims of their partner’s infidelity,” said Preller.

SA divorce statistics are high. Estimates suggest that 50% of all marriages end in divorce, or as much as two in three marriages end up in the divorce courts. A large proportion of those filing for divorce cite finances and money as the leading cause of separation - along with divorce or infidelity/ adultery, physical, emotional or verbal abuse, in-law problems, life transitions, addictions, childhood baggage, different life agendas, life overload, mid life crisis and controlling behaviour.

Money is a dominant theme. Many women stay in a marriage out of fear of being left with nothing. Preller said men generally want to keep their financial independence and tend to want to give away as little as possible. For many women, a divorce will be the biggest business deal of their lives. “They need to know the financial ramifications of the decisions that they are making in the divorce and for their future. I see often that many women do not have the slightest idea of the assets of their husband,” he said.

When a couple splits, a woman’s standard of living generally drops with about 25% in the first year after a divorce. Spousal maintenance is not a right any longer, though rehabilitative maintenance (i.e. temporary maintenance to tie the woman over until she finds employment or until her financial position improves) may be awarded to the wife depending on the circumstances of each particular case. A wife can also apply that her husband pays interim maintenance or pays a contribution towards her legal expenses pending the divorce action through rule 43 of the high court rules or she can apply for emergency monetary relief through the mechanisms of the domestic violence act if the husband abuses her financially.

Divorce is a business decision, said Preller. It is of utmost importance to obtain as much financial information as possible to establish the net worth of each party and their ability to make future payments such as child and spousal maintenance after divorce, he said. In larger divorce matters, a divorce attorney will appoint a forensic auditor to determine the exact assets and liabilities of the parties to arrive at a fair split of the assets. Any divorce attorney should work towards what will be in the best interests of the children, if children are involved.

When an estate has very few if any assets, it may be better to use an online divorce service and it does not make sense to litigate in a divorce court because of the expense. In SA law, the patrimonial consequences of a marriage are governed by the law of the place where the husband was domiciled at the time of the marriage. If for example the husband was domiciled in England at the time of the marriage and no Antenuptial contract was entered into, the marriage will be out of community and in

terms of English law. Should the parties later emigrate to SA, the marriage would remain out of community of property.

In a marriage in community of property, it is important to establish the net value of the communal estate at the date of divorce. Then one can establish what each party is entitled to. Often, spouses can't agree on a division on the joint estate and a Receiver or Liquidator needs to be appointed to divide the assets. When a marriage in community of property dissolves through divorce, each spouse is entitled to 50% of the joint estate, which includes the parties' pension benefits.

In a marriage out of community with accrual, an auditor often needs to be appointed to determine the accrual. Preller said however he's been involved in a number of divorce matters where extremely wealthy people were married in community of property. They may not have received the proper legal advice, "or became so focussed on the wedding ceremony that they forget about the consequences of a failed marriage.

Where there has been a shift towards shared responsibility is with children. "When there are children involved, women generally focus more on their wellbeing than men would do. However through the years I have seen a definite shift regarding the parental responsibilities over the children". More and more, shared parenting arrangements between spouses over the children.

Source Sunday Times – Business Times Interview by Adele Shevel

Bertus Preller is a Divorce and Family Law Attorney in Cape Town and has more than 20 years experience in law and 13 years as a practising attorney. He specializes in Family law and Divorce Law at Abrahams and Gross Attorneys Inc. in Cape Town. Bertus is also the Family Law expert on Health24.com and on the expert panel of Law24.com. His areas of expertise are Divorce Law, Family Law, Divorce Mediation, Custody (care and contact) of children, same sex marriages, unmarried father's rights, domestic violence matters and international divorce law.

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