

JUST WHAT THE LAWYER ORDERED - DIVORCE DEBUNKED (part 1)

Calling it splitsville with the missus is no piece of cake. In the first of a two-parter, legal eagles Nicholas Aw and Montague Choy take on the big questions about quitting that marriage

On what grounds can one seek a divorce? Do I have to go to Court?

Nicholas says: You can file for a divorce on the sole ground that your marriage has broken down irretrievably. To show that, you must satisfy the Court one or more of the following five factors - adultery, unreasonable behaviour, desertion of two years, separation of three years by consent or separation of four years without consent. Your attendance in Court is necessary as you are presenting a petition for divorce. So forget what you see on local TV about just going to the lawyer's office to sign some legal documents and you are considered divorced!!

What is the difference between annulment and divorce?

Monty says: Basically, for divorce you are presumed to be married and that divorce dissolves the marriage. For an annulment you wish to declare that you were never married in the first place, so you actually become a swinging single again after the declaration. But be warned! The burden of proof and hurdles to cross for annulment are stringent.

How are our assets divided?

Nicholas says: The common misconception is that all assets get divided 50-50. But in truth, the power of the courts to divide assets are discretionary in nature. Further, only matrimonial assets get divided, so you first have to determine what actually comprises one. The Women's Charter (Cap 353) defines it as something that is "used or enjoyed by both parties or one or more of their children for shelter or transportation if for household, education, recreational, social or aesthetic purposes." Alternatively, if some asset has been substantially improved (a house has been renovated) during the marriage by the other party or by both parties it may be construed as a matrimonial asset too. The court will ultimately consider the facts of and order an outcome that is "just and equitable" to both parties.

On what grounds can I apply for a personal protection order against my spouse?

Monty says: The court may, upon satisfaction on a balance of probabilities that family violence has been committed or is likely to be committed, make a protection order restraining the person against whom the order is made. "Family violence" means the commission of any of the following acts - willfully or knowingly placing, or attempting to place, a family member in fear of hurt; causing hurt to a family member by such act which is known would result in hurt; wrongfully confining or restraining a family member against his will; or causing continual harassment with intent to cause anguish to a family member.

Nicholas Aw and Montague Choy are directors of Clifford Law Corporation, a full service law firm that is familiar with the handling of probate, estate corporate and commercial matters, family issues, civil and criminal litigation as well as Intellectual property matters.

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