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Expert advice on how to handle
divorce, child custody, estate planning,
and other tricky aspects of family law

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KEEPING IT CIVIL

IN SOME WAYS, family law encompasses the most complicated and difficult cases in the legal profession. Rather than dealing with specific actions with clearly defined consequences, family law attorneys face situations that are ongoing and organic, even as their cases are being resolved. Each area involves taxes, businesses, property issues, probate and the emotional trauma of dealing with good people behaving badly. Whether they're assisting someone in dissolving a marriage, adopting a child or contesting a will, family law attorneys help clients maneuver the dangerous intersection of legal protocol and hurt feelings. Here, then, is insight into getting through the potential stumbling blocks of family law issues.

DIVORCE

Divorce-rate statistics are notoriously hazy. Anywhere from 20 to 50 percent of all marriages will end in divorce. In Southern California, the percentage is closer to 75. Divorce is a universal issue—one that nearly trumps (pardon the pun) the institution of marriage itself.

Nicholas Leto of Veltmann & Leto has been practicing family law for 28 years, long enough to have watched some interesting trends cycle through the San Diego divorce courts. Leto, a recipient of the prestigious Judge Norbert Ehrenfreund Family Law Award (the Norby), has witnessed the impact of the Internet and online affairs (an unfortunate by-product of military-town life, where one spouse might be gone for months at a time), as well as the false security of the "delete" button.

"People sometimes write the most negative things in an e-mail, and they somehow think

they're going to get a pass on that," says Leto. He adds: "You can subpoena records from Yahoo and AOL. You can recover a deleted e-mail and win a case on that."

Leto has also found that parties will go to great lengths to conceal their money, opening safe-deposit boxes for stowing their cash, putting money in other people's names, transferring it overseas or disguising it as loans. Not being entirely up-front about finances has traditionally been one of the hot buttons in ugly divorce cases. In a significant 1988 case, the court ruled that a husband could not take early retirement to pay less spousal support.

Another case in 1999 dealt with a husband's unexercised Qualcomm stock options, which had increased in value 20-fold between the time of the property division and the support hearing. That case went to the California Court of Appeals, where it was held that the options should indeed be factored into the amount of funds available for child and spousal support, but with a cap.

Often, divorce brings out the worst in people. It can boil down to one spouse who is willing to spend a great deal of time, money and resources to punish the other spouse—all because he or she is hurt. It is not uncommon for such a spouse to make visitation very difficult or spread bad rumors about the other. "It can be a constant, tedious, unrelenting situation," says Leto. Does he ever tell his own clients "Enough is enough"? All the time, he says.

The whole process can be over in a few months, or it can drag on for years. Leto, for example, has represented clients in their third divorces—while still working to resolve their first

ones. His firm focuses on high-asset complex cases and high-conflict child custody, and has taken on cases involving \$32 million businesses and others in which more than 100 properties were at stake. Whatever the income bracket, amicable mediation, he says, is the way to go. "It's quicker, cheaper and more civilized."

ALIMONY

The word "alimony" has had its share of bad press. Perhaps that's why people are now using the kinder, gentler wording "spousal support" in reference to money paid by the higher-income spouse to the lower-income spouse after a divorce. Once upon a time, it was almost a given that the paying spouse would be the husband, and that the stay-at-home ex-wife could count on a comfortable allowance in exchange for the years she sacrificed for her marriage.

Not anymore. Under modern statutes, a woman is just as likely to be ordered to pay support if she is considered the breadwinner in the family. Shawn Weber, a family law attorney at the firm Brave, Weber & Mack, has noticed another recent trend, particularly among San Diego judges.

"There is a tendency toward wanting both partners to get to work after the divorce," he says. Gone are the days when the stay-at-home mom could expect to live off alimony without earning some income on her own. This arrangement might sound reasonable enough, especially if you've just watched an episode of *The Real Housewives of Orange County*. As Weber points out, however, it's not always fair or healthy.

"In the typical case, you have a housewife who has stayed at home for 30 years," he says.

“Then comes the divorce, when —before she has a chance to get any sort of job training or retraining—she’s forced to go out and get a vocational job at \$12 an hour. That’s not good for the family.”

Weber much prefers cases that keep damage to a minimum. He’s proud of a divorce he handled in which he worked out a financial plan that benefited the entire family. “The two parents were special-needs. They had some emotional problems that made it difficult for them to do things the rest of us take for granted. And they had a special-needs adult child.” When the marriage fell apart, the husband requested that the mother stay at home to take care of the son rather than joining the workforce fulltime to pay the bills. “In court, we were able to work out a five-year financial plan in which that could happen,” says Weber.

Of course, not every divorce case has such a nice ending. “Not a week goes by that somebody doesn’t come in here with a marriage that is falling apart because of Internet pornography,” says Weber. One of his cases involved a husband who racked up \$50,000 in credit-card charges for lap dances and online pornography. That this man came from a very pious background made the situation more surreal. “He was obviously addicted and couldn’t stop,” says Weber. “And then his wife found the credit-card bills. There are a lot of cases where someone has found the credit-card bills.”

PRENUPTIAL AGREEMENTS

There is nothing romantic about a prenup. Drafting and signing a binding legal contract that spells out what each of you will walk away with if you divorce (and if things get ugly) flies in the soft, loving face of commitment. But when you take into consideration that California is a “community property” state that equally divides all property acquired during a marriage if the parties can’t come to an agreement, then hoping for the best but planning for the worst doesn’t sound like such a bad idea.

Most of what we know about prenup agreements we learned from E! True Hollywood Story, but these contracts aren’t just for celebrities, billionaires and serial spouses. Regular people with normal-size net worths are also getting prenups. Sometimes it’s to keep finances separate. Or maybe one spouse’s premarital debt needs to be confirmed and deemed the sole responsibility of that partner in the event of divorce. Of course, there’s also the simple reality that you just never know what might happen.

“In San Diego, you have extremely intelligent people who are very smart about wanting to amicably settle,” says family law attorney David Wilkinson, cofounder of the firm Wilkinson & Finkbeiner. “On the other side of the coin, there are people who are just pissed off.” That animosity could take many forms, so prenups can be written not only to keep a person from losing half of everything but also to provide for children from a previous marriage and to protect

family businesses from having private financial information made public.

Prenups can even contain clauses about the custody of pets. “Sometimes a client will walk away from a bunch of money to settle, and then they’ll fight for the dog,” says Wilkinson.

Obtaining a prenuptial agreement is fairly straightforward. Almost any family law attorney can help you negotiate and write up an agreement that is clear, fair and legally sound. They might even tell you prenups are a welcome diversion from the other types of cases they handle, since people are generally much happier at this end of a marriage.

Courts are still slightly leery of prenuptial contracts, though. Partners should have separate attorneys to help them write—or at least closely review—their portion of the agreement. Otherwise, there could be a question as to whether or not someone signed the contract under duress.

“A prenuptial agreement is always important,” says Wilkinson. “Just to have something that spells out the rights and obligations.”

Though none of this makes the “With this contract, I thee wed” process any less of a punch in the stomach, there are some common-sense ways to soften the blow. For example, it helps if you get the prenup out of the way early in the wedding planning process—60 days before the wedding is a good standard. Then, after the prenup agreement is mediated, drawn up and signed, do not bring it up again.

CHILD CUSTODY/CHILD SUPPORT

Consider how dramatically the family unit has changed over the past few decades. From stay-at-home dads to same-sex marriages to children born as the result of extraordinary fertility treatments, new issues have brought interesting challenges to both the traditional mother–father–2.5 children setup and old-school jurisprudence. Family courts have incorporated some of these major adjustments into their rulings. Nowhere is this more obvious than in cases involving child custody and child support.

Move-away cases are particularly difficult. One local attorney tells of a father whose ex-wife moved to San Diego from Virginia after the divorce. So he could be near his children, he moved here as well. Not long after he relocated, however, the wife moved back to the East Coast. Even the judge struggled with this difficult situation, but it was eventually decided that the children were better off living with their mother.

Another attorney tells of a father who hesitated to seek custody of his children, because he felt his estranged wife was in too delicate a mental state. “From the minute he walked in my door and told me the story, I wanted him to get custody of the children,” says San Diego attorney Sharon Blanchet. But he wanted to wait, and in the meantime, the wife made damaging accusations about him. After two and a half years, he finally got full custody.

It comes down to this: When parents can’t agree on how they’ll share their parenting re-

sponsibilities after their split, a judge has to make the decision for them. However, as Blanchet explains, that scenario is considered something of a last resort. “Most of these cases don’t go to trial, because it’s too expensive,” she says. We’re not talking about two businesses here. It’s just two people with diminishing assets.

Instead, most child support/child custody cases use facilitators, mediation and other out-of-court solutions to create a legally sound agreement that’s in the best interest of the children. A family law attorney can help you understand the specifics, but San Diego County also provides a free family law facilitator to help parents prepare forms, understand court procedures, calculate child-support payments using the court’s set guidelines and even collect child support.

Blanchet, a founding member of Ashworth, Blanchet, Christenson & Kalemkiarian, has served as judge pro tem for the San Diego Superior Court Family Law Division. With more than 20 years’ experience in this area of law, she welcomes the trend away from cutthroat litigation. Divorcing parents should understand that their children are living with the divorce day-to-day as well, she points out. The sooner they can get back into a healthy relationship with both parents, the better.

“Although none of it’s perfect,” says Blanchet, a frequent lecturer on the topic of family law. She once met a divorced couple at a seminar who painted and decorated identical rooms in their separate homes so their child could have some continuity, an arrangement that Blanchet described as “interesting.”

Perhaps the true miracle of child custody and child support cases is that divorced parents are able to work together at all—when even intact families have daily disagreements that go unresolved. “What you hope for,” says Blanchet, “are parents who can rise above their hurt.”

ADOPTION

Family law attorneys who focus on adoption issues are a highly specialized breed. It’s best to work with someone who has plenty of experience dealing with issues such as birth-parent rights, California’s 30-day waiting period (during which a birth mother can decide to take her child back) and the flood of anticipation and disappointment involved in the adoption process.

Though variations range from same-sex adoptions to international adoptions to “open adoptions” (in which the biological mother maintains some continued contact with the child), the two main types are agency adoptions and independent adoptions. With the former, you have the help and guidance of a public organization that knows the ins and outs of finding children, matching them with parents and making sure all of the necessary legal requirements are met. It’s still a very good idea to hire a lawyer to represent you.

Independent adoption, a highly regulated procedure that’s based on a direct arrangement between birth parents and adoptive parents, is

“a completely different animal,” says attorney Janis K. Stocks, of Stocks & Fentin. “It’s a leap of faith when you involve the birth mother. I try to be very up-front with my clients—that this is a woman who doesn’t know what it feels like to hold her baby in her arms, and sometimes after she holds that baby in her arms, she changes her mind. You have to go into this with your eyes wide open.”

Stocks, a Norby-winning attorney who has been doing adoptions since 1980, stresses that inexperienced people should not dabble in adoption law. Some of the laws regarding adoption are so obscure that many family law attorneys wouldn’t consider them an issue—until it’s too late.

The Indian Child Welfare Act, for example, states that the adoption of any child with American Indian ancestry must first be submitted to the tribal council for approval. “Even if you have a blond-haired, blue-eyed baby whose ancestor was on the 1920 census rolls, you have to notify the tribe.” The tribe can either approve the adoptive parents or insist that the child be given to parents with Indian ancestry. “I have several right now where we’re waiting to hear back from the tribe,” says Stocks.

If exact procedures such as these are not followed, an adoption can grind to a halt, says Stocks, who admits she had her doubts about going into this area of law. In law school, she was put off by the ideas of baby brokering and the “gray market,” but a personal experience with a birth mother who was referred to her by a doctor changed her attitude.

“This woman wanted more input in her child’s adoption than just handing the baby over to an agency,” she says. “I was able to help her with that, and that child is now 27.”

WILLS, ESTATE PLANNING AND PROBATE

It has great dramatic effect in movies, but you won’t see any real-life scenes of the mourning family gathered together for the reading of the will. Actually, there’s no such thing. The mechanisms of wills, estate planning and probate, which deal with how a person’s property is distributed after death, are much less theatrical.

That’s not to say that some of the cases wouldn’t make for a good movie plot, especially in San Diego, where many of the clients are transplants from other parts of the country. Tracking down survivors is often a challenge for attorneys such as John Wilson Brown of the firm Brown & Brown. He once had a client who left her property to a young man she’d help put through college.

“She left her entire estate to him, which was in excess of \$5 million,” says Brown. But he discovered after her death that she had provided an incorrect age, both during her estate planning and on her driver’s license. Only after tracking down the woman’s original birth certificate in a small town in the middle of the country did Brown discover that her beneficiary was 37 1/2 years younger than she was, and thus subject to a hefty skipped-generation tax in addition to the standard estate tax. “Good communication is important,” says Brown.

When a person dies, the estate is divided among survivors according to either a valid will, a signed living trust or (if he or she has not left a valid will) state laws governing the distribution of assets. It’s that last scenario that makes attorneys who focus on wills, estate planning and probate a necessity for anyone who plans to leave behind assets. This area of law requires an attorney who knows the laws regarding probate inside and out.

Anyone over the age of 18 “being of sound mind and memory” can draw up a simple “home-made” will, but an attorney can help make sure your written wishes adhere to the legal standards of probate court, which has specific rules about language, signing and witnesses. Besides, any amount of money you pay in legal fees pales in comparison to the financial consequences of a badly drafted document.

It is a complex area of law, encompassing issues as business-oriented as bankruptcy proceedings, as well as the deeply personal task of facing your own mortality. Brown says it’s the attorney’s job to share information that empowers the client to make some very important choices. It is the nature of this area of law, too, that clients need to make the right decisions before it’s too late.

As a particular word of caution, Brown says it’s important to revisit your estate planner if you are going through a divorce. In a probate that he just finished, the wife died during her divorce proceedings—leaving everything to her surviving spouse. “That might not have been what she wanted.”