

The 'D' Word

We often joke about the 'D' word (divorce) but for those of us who are experiencing or have experienced the breakdown of a significant relationship it is anything but a humorous experience. In divorce, there are no winners. A successful divorce, if ever there was such a thing, is not about winning battles but instead about resolving differences.

Unfortunately, many don't see it that way and, having had the privilege of practising in Family Law for over fourteen years with over 2,000 families, I have seen firsthand the damage that can be done to parents, children, families and friends as a result of an adversarial legal process.

Divorce is said to be one of the most significant grief events many of us will ever suffer. Is it any wonder then, that during divorce, good people suddenly seem to be mad?

As a Divorce Lawyer I have seen it all. People who in any other situation are entirely 'normal' all of a sudden turn into crazy versions of themselves- acting in ways even they would never expect. You see heartbreak does this to us. Love is a roller coaster of exhilarating highs

and sometimes the lowest of lows. Perhaps the lowest moment for many of us is that moment when you realise that love has passed, that moment when your stomach has that sick, sinking feeling and you realise love, as you wanted it, is over.

If falling in love is a romance novel then heartbreak would have to be a choose your own adventure novel- while it seems like you should have control, you don't and it feels like you are turning pages of your life hoping the ending will be good, only to have to turn back 4 chapters and start all over again. Like any good novel though, it does come to an end- eventually.

Just like falling in love, we all experience heartbreak in our own way. For some of us, it might appear to the outside world to have had no impact at all, but that person's insides will be tearing apart as they try to manage their grief. Others will run around the streets screaming at the top of their lungs, letting everyone know their pain. And most of us will fall somewhere between these two extremes.

Relationships encompass so much of our lives and yet we are given so little education in how to fall in love, stay in love and fall out of love. Divorce is still such a 'dirty' word and yet if you choose to get married there is a 50/50 chance that divorce will form part of your marriage. So why is it that divorce continues to be such a dirty word? Why is it that we can't start to see a divorce as part of a marriage- the part where you could constructively say 'thank you' for the experiences and time you have shared together?

I believe it is time that we rethink the word 'divorce'- it should not be a scary word, a dirty word or something we are embarrassed by. A divorce should be seen as a part of a marriage that, when managed well, we can look back on with some pride.

Earlier this year Gwyneth Paltrow and Chris Martin hit the front pages of the news with their wacky idea that they were ‘consciously uncoupling’. They were not ‘getting a divorce’ instead they had made a conscious decision to bring their marriage to an end in a positive way. In fact they had untangled their marriage well before we were even aware of it.

Their idea of ‘conscious uncoupling’ took the world of divorce by storm but few were critical of their decision. Instead, we were amazed that this could even be done. It can be done, you just have to choose it. And the key, I guess, is to choose it together. That doesn’t mean that your heart won’t still break, that you won’t want to yell and scream. But the choice you are making is that no matter what, you will try, together, to find a way to consciously fall out of love with respect, dignity and even some grace.

In writing this book I have spent countless hours rethinking ‘divorce’. When the Family Law Act (Cth) came into effect here in Australia in 1975 to get a divorce was a very different thing than it is now. Now divorce is commonplace- certainly not easy, but more accepted by society than ever before. For this reason I believe it is time we started to change how we think about divorce and that people like me, family lawyers and all in the Family Law system, focus on ensuring that couples are able to bring an end to their relationships with dignity and grace.

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ANNE'S STORY

A few years ago I had the opportunity to assist Anne, a thirty-five-year-old woman who had found herself stuck in the Family Court system. She was facing an application relating to the time her three-year-old son James would spend with his father, Bill.

Anne had fallen pregnant with James unexpectedly after only a fleeting relationship with Bill. Only a few months into Anne's pregnancy she found herself seeking legal advice as she and Bill could not even communicate on the simplest level. Bill refused to communicate with Anne and Anne thought there was no other way than to engage a solicitor to communicate with Bill on her behalf.

Anne was a well-educated professional from a caring family. She had not envisaged that she would find herself in the circumstances that she did.

Picture yourself, an expectant parent, not able to even pick up the phone to the mother or father of your unborn child and discuss what for most of us is the most exciting thing that will happen in our lives. Imagine instead that you are spending thousands of dollars corresponding through lawyers in letters with the mother or father of your child.

I remember well those nine (almost ten) long months that I carried my daughter. It was a tumultuous time. Alongside the expectation and excitement was much fear and illness. While my husband and I tried to ensure we had everything well organised, I can say it was still a very daunting and grounding experience when we first brought our daughter

home. I cannot imagine having to prepare for that day without the support of my husband. I particularly cannot imagine the impact it would have had on me, and no doubt my daughter, had I spent those ten months negotiating with my husband through legal representatives as Anne had done.

Anne had also had a difficult pregnancy with some health scares along the way. Rather than being able to share these challenges with Bill and seek his input and comfort, letters were again exchanged with Bill's lawyers to seek information that any other parents would have been able to share openly and easily over a cup of tea. There was no love. There was no support. There was no communication.

Before James had even been born he was being damaged by his parents who had engaged in a legal process that was designed to pit them as adversaries rather than as parents. By the time I met Anne she had spent well over \$150,000 in legal fees pursuing a dispute that no longer seemed to have any clarity as to its bounds. James was then three years old.

Anne had not been able to return to her professional career as the legal process had enveloped her life. Between parenting a young boy, reading legal documents and meeting with lawyers she could not even contemplate where she might be in a few weeks' time, let alone see a light at the end of her tunnel.

And then there was James. Poor James knew nothing other than two parents who, while loving him, could not even mutter a simple kind word to each other. The first three years of James' life arrived one morning in my office - two large archive boxes full to the brim with paper. Legal letters and

documents that sometimes referred to James but seemed to more refer to Anne and Bill and their distrust of one another. By this stage, Anne and Bill could have purchased a small house for the sum they had invested in the reams of paper in those archive boxes.

Each weekend, James went from Anne to Bill and back again on the side of a busy road where he cried and cried as he clung to Anne. It was not that James did not enjoy his time with Bill, it was that James knew nothing else than parents who could not even look at each other and say a simple hello. His mother arrived in fear, his father arrived in stoic anger and James was left to navigate the tricky minefield that is moving between two parents who cannot find a way to put their son's needs above their own.

James would be nine or ten now and I don't know what the future holds for him. I do know that his parents will never be able to sit at a table and share a dinner and a conversation with him about his successes at school. I know that when he comes to consider marriage himself, he will sit quietly for some time contemplating which of his parents he might invite to his wedding, as I doubt they could both be there together.

I know he will never look out into the audience of his school auditorium and see both his parents smiling back, sharing in his successes. And I know that James will, at some time in his life, ask himself what he did wrong that his parents can't just sit down together for him.

James will never see the archive boxes of paper that his parents invested every last dollar in, but instead he will see something far more damaging. He will see every other week of his life the two people he loves most in this world hurting each other with their silence.

It is our primary job as parents to raise our children to feel cherished and to enable them to be the very best that they can be and to live a fulfilled life. Anne and Bill in their own ways will tell you that they have raised James so that he feels 'cherished'. They have showered him with gifts, have plans for a good education and provide him with a caring home. And yet, I imagine that when James is old enough to tell us, he will say that he feels anything but cherished.

I worked with Anne for well over a year and saw her through to the 'end' of her legal process. I saw first-hand the damage, despair and emotional upheaval she felt as she found herself before the Family Courts. I also imagine that Bill suffered in a very similar way. And I know that James has already suffered more emotional turmoil than any young man needs.

This is why I know I would do everything I could to ensure my family did not venture into the Family Courts if I experienced a breakdown in my marriage. The Court process, as far as I can tell, has only one advantage: a Court, or a Judge, who will ultimately make a decision. They will tell you and your former partner how much time you can spend with your children or how much of your personal wealth and income you can retain.

If you find yourself in the Family Court process you are in essence 'buying' a decision maker. A person, who knows very little about you and almost nothing about your values or goals in life, who will ultimately tell you how much time you will spend with your children and how much of your hard-earned money you can retain.

Most people that I meet in my role as a family lawyer are more than capable of making decisions that relate to their children and their money - in fact, they do it every day. It seems however that the breakdown of a relationship suddenly makes these decisions very difficult for some people.

In Anne and Bill's case, it was not Anne's fault. Nor was it Bill's. It certainly wasn't James'. In fact, I am not sure we can blame any one person for the difficult mess this family found themselves in.

I am quite sure that if they had their time again they would both have done something differently. I imagine it would be something as simple as sitting down to have a chat.

Anne and Bill could live their separate lives, they could even choose to not much like each other, but at the end of the day had they just been able to sit down and have an honest conversation it is likely they would never have found themselves where they did some four years later.

Anne and Bill stand out in my mind as a family that really could have found a better way. I have had the joy of working with many families in my time as a family lawyer. I have watched some families negotiate their divorce with respect for each other that is boundless. For others, like James' family, the legal separation process leaves a mark on their lives that will never be forgotten.

It is my observations of families just like Anne's that have led me to want to share with you my knowledge of how you can protect yourself and your family during divorce and separation. There simply is a 'better' and easier way.

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THE LIGHT AT THE END OF THE TUNNEL

One third to one half of all marriages in Australia will end in divorce. Importantly, these statistics do not encompass the increasingly popular de facto relationships – those people in committed long-term relationships that choose not to get married – which have a higher chance of ending in separation than marriages.

In the end, this means that every thirty minutes an Australian child, just like James, will experience family breakdown. For some children, like James, their parents never had any significant relationship to begin with. Regardless, Australian studies have shown that children who experience the separation of their parents are at risk of poorer outcomes in adult life than their peers who have not experienced a family breakdown.

This is the most concerning part of any divorce or separation. While we are very lucky in Australia to have a fair and open Family Court system with committed, intelligent and diligent lawyers and Judges who assist families at very difficult times, your children are still at risk of poorer outcomes in adult life than their peers who do not experience the divorce of their parents.

However, it is important to remember that it is not your divorce that can cause harm to your children; it is the conflict that often ensues long after your separation that is the cause of harm. When children experience the two most important people in their lives in conflict day in and day out, those children are deeply affected and cannot go on to achieve their full potential.

So what do we do? I am not suggesting that you should not divorce, as research tells us that unhappy relationships also take their toll on our

children. However, there are many 'better' options than the Court process for separating families to resolve legal differences. This book will show you how.

Splitsville will guide you through the legal separation and divorce process in the least damaging way for both you and your family so that you can experience a dignified divorce.

While this book will guide you through the legal issues that may flow from the end of your marriage or de facto relationship, there will be many other issues that you will have to navigate as you move through your separation. In **Part 1** – Where do I start? I'll share with you the exercise I give all of my clients who are still contemplating whether or not separation is the right choice, as well as giving you some strategies to manage your grief and start your separation on the right foot. How you behave in the very early stages of your separation will have a significant impact on the resolution of any legal issues, how quickly (or slowly) you might get there, and your future relationship with your former spouse, so I urge you to take the time to read this part of the book before moving on.

Part 2 will cover the three main legal issues that arise in a separation – parenting arrangements, the division of your financial affairs and, if you are married, the dissolution of your marriage – and the law's stance on each of these.

Part 3 – The legal process will show you the range of options you have for finalising the legal aspects of your separation, including options outside the Family Court process. Here I'll also cover how to amicably negotiate with your spouse, a range of advisers who may be able to assist, and the paperwork you'll need to finalise the legal matters relating to your separation.

Not till we
are lost
do we begin
to find
ourselves

Finally, **Part 4** – Moving on will cover your life after your separation, including some tips to help you move forward and remain on good terms with your former spouse.

If you are focused on ensuring that you and your family, particularly your children, are not damaged by your divorce, then take the time to work through these chapters and seek advice specific to your circumstances from a specialist family lawyer.

IT WILL GET BETTER, JUST HANG IN THERE

The information in this book has been gathered from many years of watching my clients, my friends and sometimes my family experience the trials and tribulations of divorce. I have seen many a silly mistake but also have experienced and assisted many people who have managed to have a dignified divorce – one that they have been able to look back on when all the dust has settled with pride.

This year I have spent time speaking with clients, friends and family members to gain their insights on divorce and separation. There was one common theme from those who have been there – they all say, ‘It will get better, just hang in there.’

Splitsville will help you find your way to a place in the future where you too can look back on today and say ‘I am okay’.