

Exploring the myths
about **divorce**
and separation



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Introduction

Divorce is one of those topics that everyone thinks they know about. From horror stories of their work colleague who got “taken to the cleaners” to celebrity splits in the news or even your own experiences closer to home, people are full of advice and “facts” about what someone should do and how the process works.

The reality is often very different though. Each divorce or separation has a unique set of circumstances and cannot be directly compared to any other. Coupled with incorrect terms that are bandied around, changes to the law and misinformation, the potential for people to be caught out when splitting up by trusting in what they have heard is immense.

This book and its website – www.divorcemyths.co.uk – aim to address some of the most common myths surrounding divorce. It highlights common claims and then sets the record straight.

It is not intended as a legal document and should be used as a guide only. When seeking a divorce or separation, or wishing to clarify the legal standing of a relationship, always seek expert advice from an experienced family law specialist.

Andrew Woolley

Woolley & Co, the specialist family law firm

www.family-lawfirm.co.uk

Top five most common myths about divorce and separation

- We are common-law man and wife so I have the same rights as if we were married.

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- I didn't commit adultery because I was already separated from my wife when it happened.

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- The wife always gets the house when a couple divorces.

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- Getting divorced is going to cost me a fortune.

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- The children always get to live with their mother.

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Annulment

I have been married for four years. The marriage has never been consummated as I refused to have sex with my husband, so I can get an annulment.

To get an annulment, it has to be the opposing party (in this case, your husband) who refuses to have sexual intercourse. You will not be able to get an annulment in the situation outlined above. If you wish to end your marriage, you need to seek legal advice on the appropriate grounds for divorce for your situation.

We've agreed between us to apply for an annulment. It will be quicker and less hassle than a divorce.

Under English law, an annulment can only be granted for very specific reasons that demonstrate a marriage was not legally valid. An annulment takes around the same time as a divorce to go through the courts and costs about the same. The legal process is similar and, while there are certain papers that have to be filed with the court and a procedure to be followed, provided you are both in agreement about the decision to divorce and on what grounds, it is a straightforward process.

Bankruptcy and divorce

My husband and I have separated and he is going bankrupt. However, I have been told I will get the house as I have our young children to bring up.

In the event of bankruptcy, the security of the matrimonial home will be threatened and the question will arise as to whether the property should be sold to pay off the creditors. It is therefore not a foregone conclusion that you will be able to retain the house. A specialist family lawyer will be able to look at the case and advise accordingly on how best to secure a home for the children.

My husband was declared bankrupt before we separated. We still own the family home jointly so I risk losing it in order to pay his debts.

If your husband was declared bankrupt, there may be creditors wishing to put a charge against the property in order to recover monies owed to them. Although they have the power to apply for the property to be sold straight away, it may not succeed if you are still resident there, particularly if you have dependant children. As and when the property is sold, money to pay your husband's creditors can only be taken from his share of the sale proceeds.

Children

I have to do what my husband says otherwise he can make me out to be a bad mother and take the children off me.

Only a court can, legally, remove your children from you. It is not a case of listening to what he claims to be the case, but the court would consider what had really happened, as well as obtaining reports and detailed evidence. Often there is no validity in this claim and in some cases it is simply used as a bullying tactic.

I'm not going to fight with my husband over custody because if I do my kids will have to go to court and they have already been through enough.

They will not have to go to court. Court proceedings over which parent the child should live with do involve court hearings but your children would not be required to attend. The court will often consider reports by welfare officers when making this decision. During the compilation of these reports, the children would normally be spoken to (if they were of an age where they could give an opinion) by the person writing the report, but these meetings would normally take place at home, or sometimes at school.

My children can decide when they want to see me. I don't want us all to have to stick to strict timetables on access as it is not practical.

In many cases, a couple can decide between them, and with the children, on access times. If the couple cannot decide, however, the matter is referred to the court. Depending on the ages of the children, their views may be taken into account, but ultimately a judge could decide on the level and pattern of contact. Ideally you need to try and come to an agreement with your partner that suits all of you.

Civil partnerships

I am in a civil partnership and our relationship has broken down, but I have been told that I cannot get divorced.

Technically that is correct, but you can legally end your relationship with a civil partner in much the same way as a divorce between man and wife, via a civil partnership dissolution. It is the same procedure as a divorce to a large extent with a petition filed with the court.

Cost of divorce

It costs about £20,000 to get a divorce these days.

These sorts of costs are very unusual for the average family. For cases where there are disputes about the house, the business, the children and any other aspects that have to go to court, then costs could be run up but it normally costs a fraction of this figure. Some law firms will offer a fixed fee. If you and your partner agree to a divorce and have decided how the finances should be dealt with, you can often have a lawyer draw up the relevant financial agreement and also get the divorce pronounced for about £3,000.

I've got no spare cash to get a divorce so I am entitled to legal aid.

Not necessarily. Public Funding (Legal Aid) is means tested but it is based on many factors, such as what your outgoings are as well as your income and assets. Any savings you have will also be taken into account. It is best to seek the advice of a legal aid solicitor who can explain further about the application process.

I want to divorce my wife on the basis that we have been separated for two years. Therefore, I don't need a solicitor and it will be cheaper than if I was divorcing because of unreasonable behaviour or adultery.

You may require further advice as to whether you satisfy the criteria to obtain a divorce on two years' separation. It

is not automatic and you will require your wife's consent. You will be quoted the same fee as if you were divorcing because of adultery, unreasonable behaviour or desertion, as the procedure is the same in each case.

There is no way of keeping the cost of divorce down or taking control of some of the costs myself.

There are many ways now in which the parties themselves can have control of the proceedings and, therefore, the costs. This can be through mediation or collaboration, where the parties agree not to go to court and agree to find resolutions between themselves. Expert legal input will be needed though to ensure all the legal requirements of a divorce have been satisfied and the correct paperwork has been completed and filed.

Our divorce is very amicable and we don't want to involve costly solicitors.

While you may be getting on well now, this could change in the future. It is important to consider setting your financial arrangements down in a Consent Order within divorce proceedings. You will then be able to apply to enforce the arrangement if things turn sour later on. Without a court order, you could subsequently face a costly legal battle over who gets what.

Divorce and pensions

A husband's pension is his for always and cannot be shared on divorce.

A pension can be a considerable financial asset, often second only to the family home. Any pensions held by a husband or wife should be considered when a financial settlement is being agreed. Pensions can be shared in a number of different ways in a divorce and specialist legal and financial advice should be taken so that you understand your options.

If I get 50% of my husband's pension, it is a fair pay-off.

This is not necessarily the case. Government statistics have shown that, as a woman, you are more likely to live longer, while research by Germany's Max Planck Institute has revealed that you are also more likely to be younger than your husband. To receive the same pension income as your husband you may need – and be entitled to – more than 50% just to be fair.

My wife and I married a year ago but she has been told that she is already entitled to half my pension.

When considering assets like this on divorce, while you will normally start from a central dividing point, equality can be departed from after all aspects have been looked at. A short marriage is one of the factors that can justify an unequal division, along with other issues such as disparity in incomes, earning potential and the ages of the two parties. A court will look at the length of the marriage when considering

the financial settlement, but can also take into account pre-marriage cohabitation in certain circumstances.

I'm not entitled to her pension as she had it before we were married.

Assuming it wasn't a very short marriage, normally who owned what before the marriage is largely irrelevant. A court will try to make what it considers to be a fair arrangement given the facts and relative needs now. Both parties' pensions will be considered as a part of that.

Divorce rights

If we divorce, she can get hold of half my business.

It is very rare indeed for a business to be sold just because of a divorce and the relevance of business is often that it produces the income to provide for any children. If the business can afford a lump sum and your ex-wife needs the financial support, you may have to take out funds for that purpose. Normally though, the main relevance of a business, apart from producing the income, is that its rough value goes into the pot when calculating the overall assets.

I'm not entitled to anything from his business.

You quite probably are entitled to something. It may be to a share of the income it produces, but much depends upon the nature of the business. You may have helped him to set up, you may have made a significant contribution to its success. These issues, and more, might mean entitlement to some funds from it.

Divorce and separation

Going to a lawyer means going to court.

Going to a lawyer means getting expert advice and experienced guidance, not necessarily going to court. Indeed, taking that advice will often mean avoiding appearing in court altogether. Many cases of divorce are dealt with without either party attending a court hearing.

Divorce means sorting out everything in one go. That means not just the marriage, but also the house, the kids and all the money issues.

That is not the way the legal system works. The word divorce simply means the ending of the marriage in a legal sense. Sorting out other issues connected to that are dealt with separately in a legal sense and may involve court proceedings if the parties cannot agree on arrangements between themselves.

You cannot personally serve divorce proceedings on individuals serving on board a Royal Navy warship on active service and travelling under radio silence.

You can. The papers can be served by the British Forces Post Office (BFPO) and the relevant armed force should then be obliged to set up a telephone link, via secure maritime satellite, to the Captain. He will be able to confirm, or otherwise, if the petition has been received on board. If so, an affidavit confirming service can be filed and the divorce progressed.

If my partner behaves badly or messes around, this will affect the outcome of our divorce.

It is very unlikely that this will happen. Fault in the breakdown of a relationship is not a factor that the court will make any ruling on and will play no part in it exercising its discretion with regard to financial issues. The court can take very extreme behaviour into account, but it is the exception rather than the rule.

I had a Nikkah (Muslim marriage). I am therefore married under UK law.

The Islamic marriage (Nikkah) is recognised in the UK provided certain criteria are met. The marriage ceremony must be undertaken in a mosque or other place of worship that is registered in accordance with the laws in the UK before it can be accepted as a valid marriage. Most places of worship are not registered as such. That means that any marriage ceremony performed in an unregistered establishment is not recognised as a valid marriage under UK law.

My husband has given me the Islamic Talaq divorce in the UK but this is not sufficient to be recognised here as a divorce.

There are strict guidelines concerning the granting of a divorce in the UK. Generally speaking, a Talaq divorce can be valid if it is given in the country in which the marriage was performed, provided certain criteria are met. A Talaq, properly executed, with witnesses, combined with the required notice periods as per Sharia law, can be recognised in the UK, making a divorce superfluous.

We have lived apart for five years, so I can automatically be divorced.

Divorce is not automatic under any circumstances, although after five years' separation consent of the respondent is not needed. However, service of the papers on the respondent still needs to be dealt with.

If I am the one to file for divorce, I will get a larger share of the assets.

It is largely irrelevant who divorces who. Unless there are severe issues of conduct, it is unlikely that it makes any difference on issues such as children and finances. The only circumstances where getting in first may be important are when you could choose which legal system to get divorced under. For example the English divorce laws are often seen as more favourable to wives than certain other countries.

If we wait for two years, we can get a 'quickie' divorce automatically.

There are five different reasons to start a divorce:

- Unreasonable behaviour
- Adultery
- Two years' separation with consent
- Five years' separation without consent
- Desertion.

In each case, the divorce process is virtually identical, and will take the same length of time. Currently, this is between four and six months from start to finish. There is no 'quickie'

option, despite the media often using the word, and it is not an automatic process.

My husband is going to divorce me because he says I am unattractive and don't make an effort any more. This is not a valid reason for divorce.

Technically, it can be. Anyone can start a divorce on the basis of the other person's behaviour, and it doesn't have to be proven to be correct. This would come under the grounds of unreasonable behaviour and is the most common ground for divorce in the UK.

It is not true that you are compensated for unreasonable behaviour.

Who divorces who and why are almost always totally irrelevant to the financial settlement. The only time it is relevant is when the behaviour is extreme.

I have heard that because my husband and I have agreed we want to divorce, we can do so just by showing we have irreconcilable differences and therefore don't have to wait.

This is not true as there is no such thing as a no-fault divorce, although there is current pressure on the Government for change. The petitioner still needs to establish adultery or unreasonable behaviour as the reason for the breakdown if they do not wish to wait for a period of two years' separation, at which stage they can divorce with the other party's consent.

Expat divorce

I was not married in the UK. That means I have to go back to obtain a divorce in the country where I was married.

Where you can divorce will depend on a number of factors but often where you are married is not relevant. Provided you or your partner are habitually resident or domiciled in the UK you can commence divorce proceedings here.

I am English but live in South America so I can't divorce in England.

You probably can divorce in England, though whether you should is a very complex subject that needs specialist legal advice. The right to divorce in England if you are living outside the EU is dependant upon a legal principle called domicile. For example, if you were both born in England and intend to return here, you certainly are still domiciled in England so could still divorce here.

I was married to my husband in the UK, which was our home for 20 years. We have been living in Hong Kong for two years and have now separated. I wish to get divorced but have been told that I have to petition in Hong Kong.

Just because you are living outside of the UK does not necessarily mean the UK courts do not have jurisdiction to deal with your divorce. Legal advice will need to be sought on whether any other countries have jurisdiction and then

it will need to be decided whether or not you can show that the UK is your country of domicile, something normally achieved quite easily if you have a UK passport, you intend to return to live here or have assets here.

I live in Sweden and although my husband and I can get divorced in England, there's no point as I'll have to keep coming back for court appearances.

If your divorce is straightforward and there is an agreement between you and your spouse, there should be no need for any court appearances. Your lawyer will prepare and file all the necessary paperwork for you. Depending on your financial circumstances, there may be good reasons for you to use the English court system rather than the Swedish one – for example, Swedish courts do not normally award maintenance.

I live outside the EU and I've read that the English courts are the most generous in the world to wives, so I have decided to divorce in England.

This may be possible, but it is a very complex subject and depends upon a legal concept known as “domicile”. If you and your ex have no real connection with England – and never have had – you are unlikely to be able to divorce here. A specialist family lawyer will be able to advise more fully on your unique case.

Finances

Just because we are married doesn't give him any legal right over my property, savings or inheritance.

This is a common misunderstanding. Marriage is a legally binding contract and one of its conditions is that once a couple are married, their assets and liabilities are considered to be jointly held and considered as such should they split up. While you are together, you may choose to keep finances separate, but if you divorce, the assets will be considered jointly.

All financial claims are automatically dismissed on pronouncement of the Decree Absolute.

This is not the case. They remain open indefinitely until either the court dismisses them on a separate application, or you re-marry. Your re-marriage only prevents you claiming against your former spouse – it does not prevent him/her claiming against you unless they also re-marry.

I obtained my divorce 10 years ago. It is too late to obtain a financial settlement.

If your financial position was not resolved upon divorce, either party can make an application to the courts to obtain a financial settlement. However, if you re-marry or your ex husband/wife dies, the matter becomes more complicated. Either way, you will need to seek expert advice.

If I get divorced, I will have to give my wife 50% of everything.

This is not a universal rule and depends on the circumstances of each case, especially the length of marriage and financial contributions each party has made. Generally speaking, the longer the marriage lasted, the more each party is entitled to each others assets – and likewise responsible for debts. If the marriage is short, the general rule is that each party goes out with what they brought in. Any assets accumulated within the marriage are divided based on factors such as the parties' resources, their housing needs, age and length of marriage. If there is an imbalance in income for example, a move away from a 50:50 split may be considered fair.

I have cared for the children throughout our marriage, but have not had a proper job. This means I am entitled to less when we divorce.

The court will view the caring of, and bringing up of, the children as a job in itself. The homemaker's role is a very important one and will not mean that you are entitled to less.

My adultery will affect what I will receive from the financial settlement.

The ground for divorce will have no bearing upon the financial settlement in most cases. The court can, in exceptional circumstances, take gross misconduct into account if the situation warrants it. This conduct has to be very serious indeed though, and would not incorporate adultery.

My name's not on the title deeds to our house and we are not married, but I will still get half as we have lived together as husband and wife.

Not necessarily. The first thing the party whose name is not on the title deeds should do is register a caution to protect their interests with the Land Registry. This will ensure that nothing can happen to their interest until an agreement has been reached with their ex-partner over the equity in the house. This area of law is complicated and specialist advice should be sought as to what entitlement you are likely to achieve. It may not be half, even if you have contributed financially.

My husband and I are in the process of divorcing. We have agreed how we will split the finances so we do not require a court order.

Until the parties have the financial arrangements incorporated into a court order, or re-marry, they both remain free to return to court at any time and ask for an order appropriate to the time when the application is made. If you have already come to an agreement this is the perfect time to obtain a court order and make everything final. It is not unusual for one person to later try to avoid informal agreements.

My husband and I have agreed privately how to split the finances as we do not wish to attend court for a Consent Order.

In most cases the procedure is straightforward and does not involve the parties attending court. Your lawyer will

prepare the Consent Order paperwork which will be filed with the court and placed before a judge who will make the order or ask questions. Without it, as mentioned in the previous myth, the finances are not considered settled and the issue can be re-opened at a later date.

We drafted a financial agreement between us at the time of separation and that is binding.

Unless the parties both had legal advice and there was full and frank financial disclosure, any agreement reached between the parties will not be classed as binding. A Consent Order is required (see above).

Closed bank accounts do not have to be disclosed

Not necessarily. At the point when you and your partner are trying to agree the finances, you will be required to provide all your financial paperwork, as will your partner. This information has to be current but as far as bank accounts are concerned, these must go back 12 months. If an account has been closed during that period you would still be expected to produce statements. Unless an account was closed a significant period of time ago, it is wise to disclose all closed accounts to avoid questions being asked by your partner's solicitor.

I am being chased by credit card and loan companies who are owed money by my husband. If he doesn't pay, I will be liable for the debts.

Credit card and loan companies can only take action against

the person who owes them money. If all the debts are in your husband's sole name, you cannot be sued because you have no legal agreement with those companies. They may continually contact you to ascertain the whereabouts of your husband, and you may get bailiffs knocking on the door, but they cannot take anything that doesn't belong to your husband. However, if any of the debts are in your joint names, you are at risk of legal action and are therefore advised to seek specialist legal and debt management help in relation to this.

We have no money so I don't need to worry about advice in relation to a financial settlement.

You may have no money now but you could earn or inherit in the future. Everyone should have a Consent Order confirming the settlement reached. The Consent Order usually contains a clean-break clause, and this means that it is final and binding, and prevents either party from making any further claims against the other for life, or against their estate should anything happen to them.

My friend only had to pay his wife £20,000 when they divorced. His case is similar to mine so I will have to pay the same.

Each case is very different in legal terms, even if yours seems similar to that of a friend or colleague. If the matter goes to court, a judge decides on what a fair settlement would be. This can vary significantly as each judge has their

own opinions. Small factors can make a big difference to a settlement, such as the value of your pension fund, or the hours you or your partner work.

I paid the deposit on the house we bought in joint names. I'll get that back first before the equity is split.

This is not the case unless there is evidence, such as a Deed of Trust, to show that it was intended that you would get back your deposit. Even if you can prove that you alone paid the deposit monies, without this declaration it can be difficult. It is very important that you get proper advice when you are buying a house with someone to ensure that the proceeds will be divided fairly if something goes wrong.

We are splitting up so will just have to divide all of our assets down the middle.

It can depend on the circumstances. Certainly with a long marriage, the court will try where possible to apply a 'yardstick of equality' to share things fairly. But if there are discrepancies – if one party is earning a lot more than the other, or if they wish to keep their pension intact, for example – the court may still award more of the capital to one party to even things out. If there are children involved this can change everything.

We separated three years ago and I have bought two houses since then. My wife won't be allowed to claim against those.

While the courts have been examining what can be described as matrimonial assets and non-matrimonial assets, there is always a provision that the court can take into account all the circumstances of the case. So if there was no matrimonial home and if the wife was caring for children of the family, she may still be awarded some assets which were acquired by the husband after their separation. It is sensible to draw up a separation agreement when splitting, setting out what you intend to happen.

I can take my wife to court to resolve financial issues without seeking a divorce.

Although it is possible to agree matters between you and put this in a Deed of Separation for example, it is not possible to have a court order without issuing divorce proceedings first.

I've always worked, paid the mortgage and provided everything. My wife has never worked and has just stayed at home with the children. She'll need enough to live on, but I will keep the rest.

So far as the law is concerned, there is no greater merit in financial contribution than there is in keeping house, raising the children and supporting a spouse in their career. A judge will try to divide assets equally and produce a fair result according to the needs of the parties. The party who

has not worked will often get a greater share of the assets because they have sacrificed a career for the sake of the family. The other is more likely to be able to borrow money if necessary and be better able to recover financially from the hit of finances being divided on divorce.

If we divorce, the court will sort out the money issues.

The divorce is only the ending of the contract of marriage. The divorce petition will include financial claims, but these are only theoretical claims. To pursue them, there must be a separate application to the court – it is not generated automatically. You can get divorced and do nothing about the financial issues. You would be well advised, however, to sort out the money at the same time so that you have certainty for the future. It is important to remember that the court will only need to become involved fully if the parties fail to reach an agreement.

We can't sort out the money without getting the court involved.

Once the first stage of divorce, Decree Nisi, has been granted, you can send the court an agreed Consent Order and, so long as it is reasonable, the court will generally approve it. The order will become legally binding on the parties once your divorce is made final.

Grandparents' rights

My husband's parents have told me that they have rights regarding the children and I can't legally stop them from seeing the children.

Grandparents do not have any specific legal rights when it comes to the grandchildren. If matters are in dispute, they first have to ask permission from the court to make an application. An application will only be successful if they can show that there has been a meaningful and on-going relationship.

Grounds for divorce

I can only divorce my husband if he does something wrong.

This is not strictly true. Although one party may divorce the other on the basis of their adultery, unreasonable behaviour or desertion, the other grounds for divorce are two years' separation or five years' separation. In each case, you must show the marriage has irretrievably broken down, but there does not need to be a specific wrongdoing cited as well.

Two women can commit adultery.

They cannot because it is still considered, in law, to be an improper association and not adultery. Adultery can only occur between a man and a woman, however, an improper association between two women or two men is insufficient in itself to secure a divorce on the ground of adultery. You would need to consider filing a petition on the basis of unreasonable behaviour instead.

I need evidence of unreasonable behaviour to divorce my spouse on that ground.

You don't need any evidence to prove unreasonable behaviour. It is a subjective test. You just need to include sufficient incidents that you consider unreasonable in the petition. If the judge agrees with you, the petition will go through.

I have been having an affair for six months. I can use my adultery to satisfy the court that my marriage has irretrievably broken down and petition for divorce on that basis.

The person who is seeking the divorce, or petitioner, cannot rely on their own adultery to prove the marriage has broken down. The other party would need to seek the divorce, citing adultery. Another ground will need to be pursued in this case to secure a divorce.

We can just divorce on irretrievable breakdown of the marriage. We don't want to say anything horrible about each other.

At present under English law, while the main ground for divorce is the irretrievable breakdown of the marriage, you have to cite one of five facts to support that. This involves you having to say something about the other party's behaviour or tell the court about any new relationship they have. If you can't or don't wish to do that, you have to separate and wait a period of two years (with the consent of the other party) or five years if they don't consent.

I'm not committing adultery as I formed the relationship after we separated.

If you have a sexual relationship with a member of the opposite sex while you are still married, then it is adultery, even if so far as you are concerned your relationship with your spouse has come to an end or you have been physically separated for some time. As such, it can be reasonably cited in any divorce proceedings brought by your former spouse.

I can divorce on the ground of irreconcilable differences.

There is no such ground for divorce. In order to get divorced, you have to prove to the court that your marriage has broken down irretrievably. This you do by relying upon one of the five grounds for divorce under The Matrimonial Causes Act 1973. These are adultery, unreasonable behaviour, two years' separation with consent, five years' separation without consent and desertion.

Assault requires you to physically hurt the other person or to be hurt by them.

In legal terms, assault means putting a person in fear of any harm to their person. Beware of making angry threats as you may see them used against you in writing as unreasonable behaviour or in a child contact case where the wife can say: "How can I take them to see him when he has threatened to kill me".

How to get a UK divorce

Divorce law is the same in Scotland as England.

There are similarities but in various respects it is importantly different and advice should be obtained. For example, there is a significant difference between the two countries on how they deal with a division of assets. In English law, the Matrimonial Causes Act gives the court discretion as to how assets and income are divided so no outcome is certain. A lot can depend on the judge you get, and different judges may give different outcomes. In Scotland, no such discretion exists and the basis of entitlement rests on rules and principles rather than discretion; for example any post-separation assets acquired by one party would be automatically retained by them, which would not be the case in England. So if you have the choice to issue in either England or Scotland, it is best to seek legal advice on which would be the best option for you.

I can get divorced on a 'quickie' basis in two weeks like all the celebrities seem to.

Whatever fact you rely on, a divorce takes approximately five to six months to complete. Couples can get a Decree Nisi agreed quickly, but everyone has to wait the same length of time – six weeks and one day – before the Decree Absolute can be applied for. Celebrities and newspapers like dealing in headlines rather than facts. No one can get a divorce any more quickly than anyone else. Often what the media are referring to is the additional cases to sort

out finances and access to the children, which can be dealt with on an amicable and timely basis through agreement, rather than the costly process of going through court proceedings.

We haven't lived together for two years so we are automatically divorced.

Under English law you still have to go through formal proceedings no matter how long you have been separated, in the same way as someone newly separated or contemplating divorce does. Being separated for two years can be the reason for the divorce, if both parties are in agreement, but the paperwork still needs to be completed for the divorce to be official.

If he does not sign the divorce papers, we cannot be divorced.

One party refusing to sign the papers does not block the process and the divorce can still happen without the co-operation of that party. The petitioner needs to show that the respondent has received/seen the papers. This means you have to get them personally served with the papers, usually by a court bailiff or process server. Your solicitor can then apply for dispensing with service of the papers, which is basically asking the court for permission to continue with your petition without having the response from your ex-partner.

I want to start divorce proceedings on the basis of two years' separation, but neither my spouse nor I officially recorded the date the separation started. I can't prove we have been apart for two years and so can't start proceedings.

You do not need any official record of your separation date. As long as at least two years has elapsed from the date of separation to the time you issue your petition, you can commence proceedings. If you divorce on this basis, your spouse will need to consent to a petition being issued. If he or she does not consent, your petition will fail and you will have to wait for five years' separation or use another one of the grounds for divorce.

Being 'nice' doesn't pay when it comes to trying to sort out a divorce.

Coming to an amicable agreement with your partner and getting that agreement drawn up into a legally binding document without the need to involve the courts is a much cheaper and less stressful way of approaching the divorce process than taking an aggressive or entrenched approach. It is wrong to assume that the two parties need to become aggressive and "push for everything that they can get" to reach a beneficial settlement.

Legal separation

A Separation Deed is legally binding. I want that because I don't want to divorce at the moment.

A Separation Deed is not legally binding, but simply evidence of your intentions to each other. It can be overturned or set aside if there is a significant change in the circumstances of one of the parties after signing but prior to any subsequent divorce. The divorce court district judge will consider a Separation Deed as one of the circumstances of the case when looking at how to divide your assets.

My Separation Deed will stop my spouse from claiming anything else from me.

A Separation Deed confirms the intention of the parties and as long as both parties have been legally advised and there has been full and frank financial disclosure, it is unlikely to be overturned. However, it would depend upon whether there had been a drastic change in one of the parties' financial circumstances since the deed was entered into, as mentioned in the previous myth.

Living together

I don't need to get married as I have the same rights as a common-law wife.

If you are just living together you should be aware that there is no such thing as a common-law wife or husband. To protect your legal rights you would need a Living Together Agreement. In some circumstances (as explained in the

next myth), a court may award a share of the equity to an unmarried ex-partner, but there are very many cases where they will not award them anything at all, even if they have lived together for years and have brought up the children of the family. This is because the whole area of law involved is very complicated, and certain criteria need to be met for you to have a claim.

We weren't married and the house was in my name. He isn't entitled to anything.

Even if the house was in your sole name, if your ex-partner can show that there was an agreement that he should have some share of the equity, either by showing there was a common intention in the way you acted, like making enquiries about having the house put into joint names, or such an agreement can be inferred, the court may find that you are holding the house on trust for him in part, and will decide what proportion is fair.

We don't need to see a solicitor with regards to our Living Together Agreement because we know what we want it to include and can do it ourselves.

A court will generally follow the contents of the agreement but only if it is fair and there has been full disclosure of finances. A court is more likely to uphold the agreement if both parties have sought independent legal advice. Taking the time to engage a solicitor at the start will ensure the agreement remains a relevant document.

Maintenance

The court has no involvement in deciding issues to do with child maintenance.

While this is true in the majority of cases as the Child Maintenance and Enforcement Commission (formerly the CSA) deals with it, the courts do retain jurisdiction to deal with child maintenance. This includes where the child is a step-child, where the absent parent lives abroad, where a top-up provision is needed, where school fees are payable, where the child remains in full-time education after school, or where the child is undertaking vocational training/apprenticeship and there are expenses to meet.

Once a child leaves school, a father no longer has to pay child support.

An absent father can be required to pay child support during a child's attendance at university and the gap year they often take before university but each case is looked at separately as there is no automatic right for maintenance to continue once a child leaves school. The court would normally expect an explanation as to why you and your child feel that provision should continue.

What you pay in maintenance for a child is linked to how often you may see them. That means when no child support paid there is no contact.

There is no relationship between maintenance and contact. The two issues are not linked in law. That said, if you can afford child support and do not pay it, the court may regard that as evidence of a lack of commitment and take this into consideration if called on to make a Contact Order.

My child lives with his mother, my ex-partner. I have to pay financial support via the Child Maintenance and Enforcement Commission.

It is advisable to only use the Child Maintenance and Enforcement Commission if you and your ex-partner cannot agree the level of financial support you should be paying. If you and your ex-partner do agree, there is no requirement, legal or otherwise, for the Child Maintenance and Enforcement Commission to become involved and assess you. However, if your ex-partner is in receipt of state benefits, such as Job Seekers Allowance or Income Support, this will trigger an automatic application so that her benefits can be adjusted accordingly.

Marital home

If I move out of the family home, I will lose my right relating to it.

If you are married or in a civil partnership, you will not lose your rights even if the house is not in your name. The court has the power to adjust rights in property and you can protect your interest in it by registering a caution against it, which will prevent your spouse selling or raising any funds against it until the court gets the opportunity to consider the matter.

It isn't wrong for me to break into my own property if I have been locked out by my partner, as I am a joint owner.

You may be entitled to break in but you could also be guilty of the offence of criminal damage, even to your own property. It is best to avoid breaking into the property and try to negotiate access to the house with your ex-partner directly or with the help of a solicitor.

The house is in my husband's name only, so I have no rights.

There is, by law, a right to live in the house as the matrimonial home and your lawyer can protect that right quite simply. A divorce court will not be concerned about whose name the house is in. It will simply be regarded as an asset of the marriage. The law notes who paid the mortgage but it is not relevant to who has rights with regard to the house.

The house is just in my name and I want to sell it. My wife can't stop me from doing that.

Your wife may be advised to register a notice at the Land Registry which would certainly impede any attempts you may make to sell or re-mortgage the property. If the court saw that you had tried to take steps of this sort unilaterally – for example you had tried to transfer it to a family member – they could order the house to be transferred back or grant an injunction preventing you from selling it. They would do this if they believed that you were trying to stop your wife from having her fair share of the assets.

My spouse and I have separated and he wants me to sell the former marital home, which is jointly owned. I am in a position to buy him out but he is refusing to agree to that and is insisting we sell. I don't want to leave but he says he will force me.

As joint owners of the property, no sale or transfer can take place without the consent of both parties. However, one party cannot lock the other into it by refusing to sell or transfer. If your spouse wants to realise his interest, he has a right to do so. If you are in a position to pay your spouse a lump sum for his interest in his property, it is unlikely the court would force a sale.

The wife always gets the house in any divorce.

There is no set rule in law that the wife gets the house, but children's needs are given priority. Because of that, they often stay with the mother. The court will firstly secure a home for the children. The end result is that it is often the wife who stays in the property, although the husband may have a charge so that he gets his share when the children have grown up and it is sold.

I've lived in this house all my life. The court can't and won't make me sell it.

It can do. The court takes into account the standard of living of the parties when making a decision. If the house is the main asset and it has equity tied up in it, the only option may be for it to be sold so the money can be released.

Parental rights

A father has no rights in respect of his children if he does not have Parental Responsibility.

A father without Parental Responsibility has the same right to make an application to the court on any issue to do with his child as a father with full legal fatherly rights. He can also apply to the court for Parental Responsibility at the same time, or can make that as a stand-alone application.

I'm their father. I pay child support. I have rights.

Not necessarily. If you are not married to the mother and/or not on the birth certificate, you may have no rights to any say in your child's place of residence, education or medical treatment, even if you are paying child support towards their upkeep. You would have to apply for Parental Responsibility to obtain such rights.

He/she is only my step-child so I have no rights even though I've been more like a dad to them than their own father.

There is normally a right to see the child regularly if it is in their best interest. A court would almost certainly award equal general rights as those of the natural parent, especially if the step-child has been looked after by you for some years. Note, though, that there may also be an obligation upon you to pay maintenance for that child.

Of course I have full Parental Responsibility for my son even though I am not married to his mother. I am his natural father.

Only the mother will automatically have Parental Responsibility. However, for children born since December 2003, the father will acquire Parental Responsibility if he is named as the child's father on the birth certificate. He may also acquire Parental Responsibility if he enters into a Parental Responsibility Contract with the mother, or the court grants one.

Prenuptial Agreements

Prenuptial Agreements are only for the rich and famous.

Not true. You may have been married before and have property that you wish to protect in case your second marriage breaks down. You may be a widower who is contemplating marriage but concerned that if anything happened to your new marriage, this may reduce the inheritance you wish to leave to your children. Perhaps you are contemplating a marriage but are worried that if things go wrong you may end up in an expensive court battle. These are different scenarios where a Prenuptial Agreement would be helpful to you.

I have been told that if I get a Prenuptial Agreement, all the assets I have will be mine if we ever get divorced.

This will, of course, depend on the contents of any agreement. You should also realise that while Prenuptial Agreements are a legal agreement they are not automatically legally binding in the UK. They are, however, increasingly carrying more weight with courts. If they are properly drafted and both parties have received independent legal advice, they can be persuasive in future divorce proceedings. They can be taken into account so it is essential that legal advice is sought at the outset to ensure that they are drafted appropriately.

Residence and contact

The kids can't live half the time with me and half with my partner.

Yes they can, assuming that is genuinely in the best interest of the children – and it is increasingly found to be so. Of course, you'd have to consider any possible impact upon things like schooling, after-school activities and friends. Normally a court won't interfere if the two parties can make their own arrangements.

The court will not commit someone to prison for breach of a residence or Contact Order.

The courts have recently acquired greater powers to enforce these types of orders but they still can impose custodial sentences for breach of something like a Contact Order. However, the biggest disincentive remains the court's power to decide that persistent breaches of their orders leaves them with little option but to make a residence order in favour of the other parent.

If I get divorced, my wife will automatically get custody of the kids.

The court is looking at the best interests of the child and there is nothing in law that states it is in a child's best interests to live with the mother rather than the father. The courts will determine what is in the best interests of the children and their welfare is of paramount consideration. The courts will look at various factors, including the age

and understanding of the children. The younger the child, the more likely it is that the majority of judges will decide the child is better with the mother, but as children get older their views will be given greater weight in deciding where they should live.

I want custody of the children and for my ex to have access.

Access and custody no longer exist in English law and so the idea of a party “winning” either of these is a myth. When the Children Act 1989 came into being, the issue of where children would reside became known as residence and the issue of them seeing the other parent was classified as contact. However, many people still use the older terms.

I cannot take my child on holiday without a Residence Order.

It is not necessary to have a Residence Order to take a child on holiday, particularly if both parents give their consent. A holiday of up to 28 days is possible without court permission or involvement. However, you should check with an experienced family law solicitor if you are unsure of the situation.

Spousal maintenance

My husband is obliged to pay me spousal maintenance so I can stay at home with our children.

Under the Matrimonial Causes Act 1925, there is the right to claim spousal maintenance. This is in addition to any maintenance payable for any children. However, it is not an automatic claim. It will only become payable if the party can show there is a genuine need for financial provision and can show that the former spouse can pay it.

Step-parents

I want to be able to give my children's step-father Parental Responsibility for my children but I can't do that without application to the court.

You can enter into a Parental Responsibility agreement between you and your spouse, but if your children's biological father has Parental Responsibility also, then his agreement will need to be obtained. If there are no objections, he can enter into the agreement with the mother and the step-parent.

Useful contacts

Woolley & Co, specialists in family law, was founded in 1996 by managing partner Andrew Woolley. It aims to give plain English advice on all family law issues, working with the latest technology and through its website

www.family-lawfirm.co.uk

to make clients' experience as easy and cost-effective as possible.

It has senior level lawyers spread across the UK and can offer a free initial 30-minute telephone consultation without obligation.

For more details, visit the website or call **0800 321 3832**.

Alternatively, you can email your enquiry to info@family-lawfirm.co.uk or browse the information on the website, which includes a number of helpful articles on family law issues, contact details for individual lawyers and information on fixed-fee services.

