



Divorce Myths By Jodi Wyman

One of the most common myths in family law relates to divorces. People believe they have to work at gathering evidence about their spouse to use in Court when they want a divorce. They believe the television and movie scenes where one spouse hires a private detective to get photos of the other spouse cheating. They try to gather proof that their partner is committing adultery, abusing alcohol or drugs, or is in some way behaving as a bad husband or wife.

In reality, none of this really matters.

The Divorce Act lets either spouse apply for a divorce based on adultery, cruelty or the couple having been living separate and apart for one year. If one partner wants to apply for a divorce based on adultery, they can go to Court and provide proof and a Judge will issue a divorce. There is however no extra financial compensation or any other benefit. A divorce based on living apart is the same as a divorce based on adultery or

cruelty. It just means the couple is divorced.

Like every rule, there can be exceptions. It is possible to have a pre-nuptial agreement that mentions bad spouse behaviour such as infidelity. It could be that the agreement is void if one partner ends the marriage, or acts in a way to cause the other person to end the marriage. In the event of adultery, the terms of settlement could change. This sort of agreement is far more common on television than in real life.

After a couple has been separated for one year, the divorce will proceed the same way and have the same end result regardless of which partner files for divorce. The spouse who is guilty of adultery or cruelty cannot however file for divorce based on their own bad behaviour. They will have to wait out the one year.

Our legal system is a no-fault one, meaning that the property division applies the same way regardless of who was to blame for the end of the marriage. For the most part, why the marriage

ended is irrelevant to custody, access, child and spousal support (unless for example one partner's behaviour would also affect the children). When the couple comes before the Court, it is accepted that the marriage is over, and the Judge just has to deal with what happens next.

No one has to file anything in Court to be legally separated. Once the couple decides to live separate and apart, they are legally separated and the year begins to run.

Lawyers are also frequently asked about annulments. The myth is that if the couple did not consummate the marriage, it can be annulled and will not be legal. There is a separate set of rules with respect to getting a religious annulment. Legally however, as long as each spouse actually is who they said they are, and they are not too closely related to each other, the marriage is legal. The couple does not have to be married for a certain period of time, they do not have to actually live together and they do not have to consummate the marriage.