CorporateLiveWire

FAMILY LAW 2024

VIRTUAL ROUND TABLE

www.corporatelivewire.com

Introduction & Contents

In this roundtable, our chosen experts provide insight into some of the biggest questions concerning those currently engaging in divorce proceedings. They outline the pros and cons of settling divorce outside the courtroom, address the key challenges surrounding the breakdown of international families, and explore the enforceability of pre- and post-marital agreements. The experts also explore the latest regulatory changes, noteworthy case studies and interesting developments surrounding family law in Singapore, South Africa, Spain, the United Kingdom, and in California, New York and Oklahoma in the United States.

James Drakeford
Editor In Chief

Meet The Experts

Natasha Kurth - Wedlake Bell
T: +44 (0)20 7406 1682
E: nkurth@wedlakebell.com

Natasha advises on a variety of family law matters with a focus on resolving the financial issues arising on divorce. Natasha has extensive experience in dealing with cases involving jurisdictional issues, complex corporate structures, inherited wealth and assets held in trust and/or outside the jurisdiction. She also has experience advising on pre-nuptial agreements and in relation to Schedule 1 proceedings. In recent years, Natasha has acted in a number of High Court cases which have proceeded to final hearing, in addition to injunction proceedings listed in the Queen's Bench Division.

Whilst Natasha advises clients in respect of contested proceedings, she is also involved with many cases which are dealt with more consensually and which may merit alternative forms of dispute resolution.

Natasha was listed as an "Associate to watch" in the 2023 Chambers UK Guide and in the 2022 and 2023 Chambers High Net Worth Guides.

Amanda Catto - Catto Neethling Wild Inc
T: +27 21 487 9300
E: amanda@cattonw.co.za

Amanda graduated from the University of Stellenbosch in 1992 with a BA LLB. She commenced her articles at the then Findlay & Tait in January 1993. She completed her articles and remained on at Findlay & Tait where she established and grew its family law department. She obtained her Masters in Family Law in 1997. She has practised exclusively in the area of family law since 1995. In 2007 Amanda, together with her partners, Anton Neethling and Grant Wiid, established a boutique family law practice, Catto Neethling Wiid Inc.

Amanda is a family law mediator, was a founding member of FAMAC (the Family Mediators' Association of the Cape) and believes in achieving amicable resolutions to disputes within families through discussion, rather than through litigation, wherever possible; but where litigation is unavoidable, Amanda advocates an expeditious and co-operative approach. She is furthermore a longstanding member of the Law Society of South Africa's Specialist Committee on Gender and Family Law Committees. Amanda was a committee member and past president of the Cape Town Attorneys Association from 2000 until 2020.

Amanda is a fellow of the International Academy of Family Lawyers and is frequently consulted on international matters where she has provided evidence as an expert in foreign courts. Amanda is a guest lecturer and external examiner at the University of Cape Town Law Faculty. She is a contributing author to Family Law: A Global Guide from Practical Law (Thomson Reuters, 2011 to 2020) and The Law of Divorce and Dissolution of Life Partnerships in South Africa (Juta, 2014).

Lindsay R. Pfeffer - Rabin Schumann and Partners LLP
T: +1 212 512 0831
E: lpfeffer@rsaplaw.com

Lindsay R. Pfeffer, a partner of Rabin Schumann and Partners LLP located in New York City, represents clients in divorce, custody and parenting access, equitable distribution, parentage and spousal and child support matters, and with respect to pre- and post-nuptial agreements. Ms. Pfeffer has litigated cases presenting landmark issues impacting parents in the LGBTQ community, habeas corpus and international child abduction proceedings and works with counsel in various jurisdictions on custody and prenuptial agreement matters.

Ms. Pfeffer is admitted to the New York and New Jersey State bars, and to various U.S. District Courts. She earned her B.A., cum laude, from Brandeis University and her J.D. from Benjamin N. Cardozo School of Law.

Meet The Experts

Barbara Mills - 4pb
T: +44 (0) 207 427 5200
E: bm@4pb.com

Barbara Mills is a family practitioner specialising in difficult, complex and sensitive cases concerning children. Her work primarily involves high conflict cases featuring allegations of serious abuse and parental alienation, representing parents- often where the outcome has life-changing consequences for the family.

She is committed to non-court solutions and has established a successful mediation and arbitration practice. She receives referrals from High Court judges, KCs and other professional colleagues. Her recent mediations include a dispute between two internationally acclaimed musicians and another where I assisted a foreign royal couple to reach resolution over the arrangements for their children across two countries.

Barbara is an accredited mediator and is qualified to consult children over 8 years whose parents are in mediation.

Staci Balbirer - Davies Friedman
T: +1 312 782 2220
E: sbalbirer@davisfriedman.com

Staci Balbirer concentrates her practice in the area of divorce and family law that encompasses issues related to complex financial matters, the allocation of parental responsibilities, child support, maintenance, property division, pre-and post-nuptial agreements, orders of protection and international custody disputes. Over the course of her practice, Staci has realized the need for assisting families with special needs children and handles matters for families with special needs children and adults in both the domestic relations and guardianship divisions.

Staci was named to the 2023 class of 40 Under Forty Illinois Attorneys to Watch. Since 2023, she has also been to The Best Lawyers in America list by Best Lawyers for her commitment to advancing family law. Since 2016, she has been named a Rising Star in Family Law by Illinois Super Lawyers , a designation awarded to no more than 2.5 percent of Illinois attorneys 40 years old or younger or in practice for 10 years or less.

Staci was named to the ISBA's Family Law Section Council in 2021 and recently accepted the council's appointment of her as the incoming Vice Chair. In 2022, she was inducted into the American Academy for Matrimonial Lawyers, an organization that highlights leaders in the matrimonial law industry and promotes excellence and professionalism and in 2023, she was inducted into the International Academy of Family Lawyers, a worldwide association of practicing lawyers who are recognized by their peers as the most experience and skilled family law specialists in their respective countries.

Laura McConnell-Corbyn - Hartzog Conger Cason
T: +1 405-235-7000
E: lmcconnell@hartzoglaw.com

Laura McConnell-Corbyn is a member of the firm Hartzog Conger Cason where she has practiced for the past 37 years since she graduated from the University of Oklahoma School of Law with Highest Honors. She is a Fellow and past Oklahoma President of the American Academy of Matrimonial Lawyers. She is listed in Best Lawyers in America where is recognized in the area of Family Law and has been the Family Law Attorney of the Year several times, including 2024. She is listed in Oklahoma Super Lawyers as one of the top 10 attorneys in Oklahoma. She is also recognized in Chambers and Partners Outstanding Business Litigators and is rated by Martindale Hubbell as AV Preeminent.

Shu Mei - Drew & Napier LLC
T: +65 6531 2223
E: shumei.hoon@drewnapier.com

Shu Mei is a sought-after advocate, international speaker, and a trusted advisor to the modern family. With a niche practice in private client and family disputes, Shu Mei appears regularly as advocate at all levels of the Singapore Courts on all matters affecting the family including division of matrimonial assets, maintenance, family violence, complex custody and international relocation, as well as trust and property disputes. As an accredited mediator and an accredited Collaborative Family Practitioner, she strives to find common ground even in the most complex of cases in negotiations and mediations, whether as an advocate or a neutral.

She has particular expertise drafting and negotiating prenuptial, postnuptial, financial arrangement and parenting agreements between family members. Shu Mei has been appointed to the Board of Governors of the International Academy of Family Lawyers (IAFL) as an Asia Pacific Chapter Delegate in 2023. She was appointed a Fellow of the International Academy of Family Lawyers (IAFL) in 2021. IAFL is a worldwide association of practicing lawyers who are recognized by their peers as the most experienced family law specialists in their respective countries.

She has provided legal expert opinions to assist the High Court of England and Wales, the High Court of Bombay, the Federal Court of Australia and the Family Courts of New Zealand. Shu Mei is also a Certified Digital Assets Advisor (CDAA) and has used her knowledge and expertise to resolve complex family disputes involving uncovering cryptocurrency and other forms of digital assets. Shu Mei's formative experience is rooted in commercial litigation and international arbitrations, and she has acted for corporations under SIAC, ICC, CIETAC, UNCITRAL and DIAC rules and is a member of the Singapore Institute of Arbitrators.

Shu Mei also speaks regularly about family law, private wealth, valuation of businesses, dispute resolution and mediation at local and international conferences. She is also the co-author of various academic articles and practitioner guides both locally and internationally.

Dena A. Kleeman - Kleeman Kremen Family Lawyers
T: +1 310-247-0727
E: dak@kleemanlaw.com

Dena A. Kleeman has practiced family law since her 1983 graduation from Stanford Law School, becoming a California Certified Family Law Specialist in 1994 and receiving specialized training as a divorce mediator in 1998. During the course of her career, Ms. Kleeman has handled complex divorce matters involving business valuation, divorce taxation, real property, and complex compensation, benefits, and intellectual property issues.

Ms. Kleeman currently serves as a judge pro tempore for the Los Angeles County Superior Court. She is a member of the ABA, the State Bar of California, the Los Angeles County Bar Association and the Beverly Hills Bar Association. She served on the Board of Trustees of the Los Angeles County Bar Association from 2003 to 2004 and currently serves as vice-chair of the Los Angeles County Bar Association Family Law Section, and is currently chair of its' Family Law Symposium subcommittee – a signature annual training program for lawyers and adjunct professionals. Ms. Kleeman has been named one of the top Family Law Attorneys in California by Super Lawyers since 2006. She is a member of the Association for Certified Family Law Specialists (ACFLS) and a member of the Association of Family and Conciliation Courts (AFCC).

Esther Susin Carrasco - E. Susin Cabinet Juridic Internacional
T: +34 93 72720 47
E: advocada@esthersusin.com

Specialist in Family Law, both national and international. and also in:

International abduction of children and adolescents. Change of residence of children and adolescents. Legal problems arising from surrogate mothers (Filiation). Divorces and breakups of couples with an international element.

Prenuptial contracts. Gender and domestic violence. Advice on all of the above on: Catalan, Castilian, English, German & French.

Q1. Can you talk us through the process for divorce in your jurisdiction?

Natasha Kurth

Kurth: To be eligible to start divorce proceedings in England and Wales, a couple must have been married for at least one year. They must also meet at least one of the jurisdictional criteria, which are based on the habitual residence or domicile of one or both parties to the marriage.

The process for divorce was reformed in 2022, as a result of The Divorce, Dissolution and Separation Act 2020. The sole ground of divorce remains the irretrievable breakdown of the marriage, but there is no longer a requirement to evidence it with one of five "facts", such as unreasonable behaviour, or adultery. It replaces this with the provision of a statement that the marriage has "broken down irretrievably" and no evidence to support the relationship breakdown is required. The changes in the law enable one party to make a sole application for divorce, but also enable the parties to make a joint application. These changes have been seen very positively, with a view to reducing acrimony at the outset of divorce proceedings.

After the divorce application is issued, you must wait 20 weeks before you can apply for a conditional order of divorce. Once this is granted, you must wait at least 43 days (six weeks and one day) before you can apply for a final order of divorce, which brings the marriage to an end. Once the conditional order is obtained, it provides the court with jurisdiction to make a full range of orders in relation to the financial matters. At this stage, it is usually advisable to wait to apply for a final order of divorce, pending resolution of the financial matters (to avoid the loss of spousal benefits).

Laura McConnell-Corbyn

McConnell-Corbyn: I practice in Oklahoma City, Oklahoma in the United States. The divorce process is now referred to as a dissolution. The result is the same as our old divorce procedures, but the name has changed to something that sounds "kinder and gentler." The process begins with the filing of a Petition for Dissolution along with an Application for Temporary Orders. The Temporary Orders will establish a baseline during the pendency of the action so everyone's basic needs are met and the schedule for seeing the children is established while the parties engage in a process of discovery to identify and value the parties' marital assets. If there are children, the law provides that (absent domestic violence in the marriage) the parties will generally share joint custody and equal time with the children. This general rule has several exceptions based on the needs of the children. The parties conduct discovery and then the matter is set for trial before a judge. Most cases are referred to mediation prior to trial so the parties can attempt to settle their disputes short of trial. Most cases do settle, and agreements are reached. For the cases that must be tried, it generally takes one to two years for a case to be fully concluded.

Esther Susin Carrasco

Carrasco: Divorce, like death or the declaration of death, is not limited to suspending the effects of marriage but dissolving it. Therefore, divorce, unlike separation, produces the subsequent extinction of a valid marital bond that has existed and produced its typical effects up to the moment it takes place. The process for divorce is decreed, regardless of the form of marriage celebration, as established by Article 81 of the Spanish Civil Code:

i. At the request of both spouses or one of them with the consent of the other, after three months from the celebration of the marriage.
ii. At the request of only one spouse, after three months from the celebration of the marriage. The time limit will not be necessary for the filing of the lawsuit when the existence of a risk to the life, physical integrity, freedom, moral integrity, or sexual freedom and integrity of the plaintiff spouse or both spouses' children or of any member of the marriage is proven.

Q1. Can you talk us through the process for divorce in your jurisdiction?

Esther Susin Carrasco

The plaintiff will be accompanied by a proposal of a regulatory agreement drafted by both parties or by a proposal for the measures needed to regulate the effects derived from the divorce. There are two types of proceedings: those processed by mutual agreement of both spouses and those processed in a contentious manner.

The procedure processed by mutual agreement (as established by Article 777 of the Civil Procedure Act) is initiated upon the request of both spouses, or one of them with the consent of the other. The divorce petition will be submitted in writing, accompanied by the proposal of the regulatory agreements to the judge, or the regulatory agreement will be signed in front of the Clerk of Court or in a public deed before a notary if there are no minor children.

The petition for the litigation proceeding is submitted at the request of one of the spouses (as established by Article 81.2 of the Spanish Civil Code). It is processed in accordance with the provisions of article 770 and the following of the Civil Procedure Act. The deadlines for submitting evidence are extended, and all types of evidence are admitted in cases where the judge has doubts about the accuracy of the alleged cause of separation. A particularity of this type of process is that at any time, the parties can request that the initially contentious procedure be converted into a mutual agreement one. Therefore, the proposal for a regulatory agreement must be included.

Shu Mei

Mei: There are two stages to divorce proceedings in Singapore.

At the first stage, if the court finds that the marriage should be dissolved, it will grant an interim judgement. There is only one ground for divorce: the irretrievable breakdown of the marriage. There are currently five facts to prove that the marriage has broken down irretrievably: adultery, unreasonable behaviour, desertion, separation for three years with consent to divorce and separation for four years.[1]

At the second stage, the court will make orders on the ancillary matters. Ancillary matters consist of the division of assets, maintenance for ex-spouses and children, custody, care and control, and access of the children.[2] After the second stage, the court will grant the final judgement of divorce.

There are two tracks for divorce in Singapore: the simplified uncontested track and the contested track. Parties can apply to proceed on the simplified uncontested track if they agree that the divorce will proceed on an uncontested basis and agree on all ancillary matters.[3] Under the simplified uncontested track, proceedings will take around four months to conclude.[4] Where all the documents are in order, the court may dispense of the parties' attendance during the hearing.[5]

If there is any disagreement on the divorce or ancillary matters, parties will proceed on the contested track. Here, the length of the proceedings will depend on the complexity of the matter and the particular issues that are contested.

1. Section 95, Women's Charter
2. Part 10, Chapters 4 & 5, Women's Charter
3. Rule 83(1), FJR
4. Section 99, Women's Charter; Rule 96(1), FJR; See also: https://www.judiciary.gov.sg/family/at-uncontested-divorce-hearing-simplified-track
5. Paragraph 18, FJC Practice Directions

Q1. Can you talk us through the process for divorce in your jurisdiction?

Amanda Catto

Catto: A divorce commences with the plaintiff instituting an action against the defendant by summons (setting out the orders sought). The summons is served by the Sheriff on the defendant personally. Following service, the defendant has 10 days within which to defend the action, should the defendant choose to do so. The defendant is then required, within 20 days of giving notice of his/her intention to defend, to deliver their plea. If the defendant wishes to deliver a counterclaim, the defendant must similarly do so within 20 days. The plaintiff may plead to the counterclaim. Further replication may follow. This process ordinarily takes three to four months and is termed 'the exchange of pleadings', the purpose of which is to determine the issues in dispute.

Pleadings are then considered closed. The matter is then enrolled to be allocated a date for trial. A trial date is likely to be set for approximately 24 months later.

In preparation for trial, there are a number of pre-trial steps that take place, which include: an exchange of relevant documentation between the parties (discovery), requests for trial particulars (interrogatories), the appointment of experts and the issuing of subpoenas. Pre-trial conferences are held throughout this preparation period under the regulation of a case management judge to ensure that the matter is trial ready on the date allocated.

If a matter becomes settled in the interim, the court will grant a decree of divorce incorporating the settlement.

Dena A. Kleeman

Kleeman: In the United States, the law and procedure regarding a divorce is state specific. I am a California attorney, so my answer is addressed to procedures in California. Basic questions and answers regarding the divorce process in California are:

What is the basic divorce process?

The (very) basic divorce process is:

- File for divorce
- Disclose finances
- Work out an agreement or litigate
- Submit final paperwork
- Receive signed judgment

The divorce process can increase in complexity the longer the marriage, the number of issues to resolve, the variety of assets and debts to divide or characterise as separate or community property, whether children are involved, and when addressing long term spousal support.

What are the divorce requirements in California?

In California, one of the spouses must have been a resident of the state for at least six months in order to file for divorce, although cases can be initiated sooner for certain emergency orders and for a legal separation. Choice of filing county depends on the county of residence of one of the parties.

How long from filing until I will be divorced?

In California, there is a six-month mandatory waiting period once divorce papers have been filed and served for a marriage to be ended by a divorce judgment. Property, support and child custody matters can be addressed sooner – if resolved consensually – or later, if still in dispute.

Q1. Can you talk us through the process for divorce in your jurisdiction?

Dena A. Kleeman

The length of a divorce varies greatly case by case. In general, the less you fight the quicker your divorce will be. Most high-net-worth divorces take one to two years to complete by settlement – and longer if by judicial decision. There are often interim matters to be decided along the way. If there are no children, and fewer property and support issues raised, the process is quicker.

Do I have to go to court for my divorce?

When it comes to divorce, court is not your only option. The majority of divorce cases resolve outside of court by settlement with the aid of attorneys representing the parties, or by opting for mediation or a collaborative divorce process.

Sometimes however, a trial is necessary to reach a fair resolution of a family's dispute, either on some or all issues. The policy of California law is to urge parties to settle as many issues as possible, before seeking a decision by a judge. It is possible to settle certain issues and "bifurcate" others, to move the process of resolving a divorce case forward, easing the emotional and financial cost on the parties.

Q2. Have there been any recent regulatory changes or interesting developments?

Natasha Kurth

Kurth: Family proceedings usually take place "in private", which means that whilst the general public cannot be present, accredited media representatives and legal bloggers can attend (some, not all) court hearings. Until relatively recently, however, there were heavy restrictions on what they could report about the proceedings.

In recent years, there have been moves towards increasing transparency in family law, with a view to improving public confidence and understanding of the family justice system. This resulted in the formation of the Transparency Implementation Group and, following publication of the Group's report, a transparency reporting pilot scheme has been trialled in certain courts. It is now being extended.

Amongst other changes, reporters are now entitled to see certain documents in financial remedy cases, including the parties' position statements and case summary (known as an "ES1") and can ask the court for additional documents. Where a reporter attends a hearing, the court will consider the terms of a "transparency order", which has been prepared in standard format and, as a starting point, permits anonymised reporting of case information. It is important to note that the transparency order does not permit reporting of names and addresses of parties, their children, schools, employers and certain other information, without express permission of the court.

This is a developing area and judicial opinion on this subject varies significantly. It is likely to be some time before the judiciary adopts a consistent approach and it is certainly something that all family law practitioners are watching closely. With these changes, it is likely that parties will give more careful thought to engaging in private forms of ADR, such as arbitration and private financial dispute resolution.

"Reporters are now entitled to see certain documents in financial remedy cases, including the parties' position statements and case summary (known as an "ES1") and can ask the court for additional documents."
- Kurth -

Q2. Have there been any recent regulatory changes or interesting developments?


Shu Mei

Mei: The law is evolving to better cater for reducing acrimony during divorce proceedings. The Women's Charter has been amended to introduce divorce by mutual agreement as a sixth fact of divorce.[1] This will allow parties to agree on a no-fault divorce without having to be separated for three years. The agreement must be in writing and must state the following:

- The reasons for the parties concluding that their marriage has irretrievably broken down;
- The efforts that the parties have made to reconcile; and
- The consideration the parties have given to the arrangements to be made in relation to their financial affairs and any child of the marriage.

An additional factor to consider is that the court must also not accept the agreement if it considers that there is a reasonable possibility that the parties might reconcile.[2]

Apart from the developments involving divorce, the Women's Charter has also been amended to better protect victims of family violence. The definition of family violence is being updated to make clear that it covers physical, sexual, and emotional or psychological abuse.[3] The amendments also empower the court to issue a stay away order to prohibit perpetrators from entering and remaining in the area outside the victim's home or other places frequented by the victim, as well as a no contact order to prohibit the perpetrator from visiting or communicating with the victim.[4]


Staci Balbirer

Balbirer: The Illinois House of Representatives has recently approved a bill titled "Uniform Cohabitants Economic Remedies Act" that would allow an individual who is or was a cohabitant to commence an action against the other cohabitant concerning entitlement to property based on the contributions to the relationship. This law, if passed, it would essentially confer more rights on "roommates" than some couples who are married and who have children together, significantly impacting the residents of Illinois.


Amanda Catto

Catto: Various options are available that determine the proprietary consequences of a marriage entered into in South Africa, depending on whether the spouses marry with or without a prenuptial agreement and the terms of the agreement.

The proprietary consequences of a marriage entered into after November 1984, where the system of accrual sharing was excluded, have left many spouses, usually woman, in a dire financial predicament. Their position was distinct from spouses who entered into a prenuptial agreement prior to November 1984, where the court held a discretion to redistribute assets in a fair manner on a basis similar to the discretion held by an English Court. This distinction affected spouses both on dissolution of a marriage by death or divorce.

In 2023, in *Greyling v the Minister of Home Affairs and Others,* the Constitutional Court held that section 7(3)(a) of the Divorce Act, which provided for a distinction between marriages entered into prior to and after November 1984, was inconsistent with section 9(3) of the Constitution as it unfairly discriminated on the basis of sex and gender. The time

1. Section 29, Women's Charter (Amendment) Bill 2021
2. Section 29, Women's Charter (Amendment) Bill 2021
3. Section 2, Women's Charter (Family Violence and Other Matters) (Amendment) Bill
4. Section 2, Women's Charter (Family Violence and Other Matters) (Amendment) Bill

Q2. Have there been any recent regulatory changes or interesting developments?

Amanda Catto

bar was removed. The effect of this judgment is that all divorce courts have a discretion in the circumstances where a prenuptial contract excludes accrual sharing to make a fair redistribution of assets. This is a significant change to our law and has alleviated the financial predicament of many spouses.

Simultaneously, in *EB v ER and Others* (Case CCT 364/21) [2023], the Constitutional Court determined that on death, spouses in such marriages would similarly be entitled to a fair redistribution of assets.

In *Women's Legal Centre Trust v President of the Republic of South Africa and Others* (CCT 24/21) [2022], the Constitutional Court held that a Muslim marriage is regarded to be a marriage as defined in the Marriage Act. Previously, religious marriages celebrated in terms of Muslim rites were not so recognised. The Court found that certain sections of the Marriage Act and Divorce Act were unconstitutional to the extent that they were inconsistent with sections 9, 10, 28, and 34 of the Constitution in that they differentiated between spouses who marry in terms of the Marriage Act and spouses that are married by Muslim rites in terms of Sharia Law. The effect is to afford spouses married by Muslim rites the same legal protection as those married in terms of the Marriage Act. The relevant legislation has now been promulgated to give effect to this development.

In *Bwanya v Master of the High Court* (CCT 241/20) [2021], Cape Town, held that surviving spouses in heterosexual life partnerships in which "partners undertook reciprocal duties of support" (which then dissolved by the death of one of them) would be entitled to claim benefits under the Maintenance of Surviving Spouses Act and the Intestate Succession Act. Although, this has been the situation of same sex life partners for some time, this was a significant development in respect of heterosexual life partners.

Dena A. Kleeman

Kleeman: California family law is always evolving, to address current social trends – and problems that arise from them. In California's court system, our legislature enacts laws and a related body implements them in regulations. But our courts are very effective in construing those laws and refining their meaning.

In the past several years, our statutory changes have evolved mostly in the area of domestic violence, child custody (as related to domestic violence situations) and premarital agreements. There is also a very recent push to permit couples who have resolved, or are resolving, their case through a mediated process, to file a joint Petition for Dissolution of Marriage, to expedite their case.

In the domestic violence arena, there is a broadening of the definition of what constitutes violence, to include situations that do not involve physical abuse (but abuse as harassment through electronic means, abuse through controlling conduct, and abuse through sexual coercion). Individuals under restraining orders to prevent abuse have significant limitations on their custody rights (rights of access) to their children.

In the arena of premarital agreements, recent statutory changes (and cases decided by courts) have focused on making sure the process is a fair one, and that time is adequately given for the marrying couple to consider the legal rights they are waiving and obligations they are taking on. By, for example, a waiting period, the requirement to obtain legal advice, and other process protections.

Q3. What about noteworthy case studies or examples of new case law precedent?

Laura McConnell-Corbyn

McConnell-Corbyn: I recently had a case decided by the Oklahoma Supreme Court, *Fitzpatrick v. Fitzpatrick* (2023 OK 81), in which the Supreme Court determined that a wife who gave up her career for the sake of building the husband's business interests should continue to share in the profits of the business after the divorce decree was entered. The Court determined that the husband would hold the stock interests in the business in a constructive trust so that the profits attributable to the interests would be shared equally between the husband and wife. This case is an extension of prior law regarding the continuing rights of a spouse to enjoy the benefits of assets that were acquired during the marriage when those assets are not easily valued.

Shu Mei

Mei: For the first time, the Singapore Court of Appeal in *WKM v WKN* (SGCA 1) [2024] has set out clear guidelines on when and how judicial interviews should be conducted in order to ascertain a child's wishes and feelings.

Whether a judicial interview should be conducted depends on the specific circumstances of each case. It may not be suitable in every case. The court should be mindful of a host of factors, including but not limited to:

- The age, emotional and intellectual maturity of the child;
- The relationship between the child's parents and whether there are concerns about excessive gatekeeping or the conduct of one parent alienating the child from the other parent;
- The child's general wellbeing and the consequences for the child should such an interview be conducted;
- The nature of the dispute and the stage of the proceedings, including the specific matters in issue; and
- The availability of other relevant material, such as reports by social workers and mental health professionals.[1]

The Court of Appeal also underscored the importance of maintaining the confidentiality of judicial interviews and avoiding direct quotes from the child in grounds of decisions. This allows the child to freely express their honest views without worrying about hurting either parent or being torn by a conflict of loyalty.[2]

While conducting the interview, the judge should explain to the child that their views will be taken into account but ultimately, it is the judge who is deciding the case.[3] The judge should also ask open-ended questions that allow the child to respond by using his or her free recall of events or give unencumbered responses about their feelings and emotions.[4]

Apart from guidance on judicial interviews of children, the Court of Appeal also provided guidance on the use of child welfare reports in child proceedings. Child welfare reports should also be kept confidential to provide a safe environment for the child to express their views honestly.[5] This would also prevent defensive reporting by child welfare officers because such reports would be far less useful to the court.[6]

Barbara Mills

Mills: An important new case which will change the landscape of litigation is *Churchill v Merthyr Tydfil County Borough Council* (EWCA Civ 1416) [2023]. -To summarise the basic facts, a nuisance claim was brought against the appellant local authority in respect of Japanese knotweed encroaching on the respondent's property from the local authority's adjoining land.

1. WKM v WKN [2024] SGCA 1 at [45]
2. WKM v WKN [2024] SGCA 1 at [43]
3. WKM v WKN [2024] SGCA 1 at [57]
4. WKM v WKN [2024] SGCA 1 at [58]
5. WKM v WKN [2024] SGCA 1 at [71]
6. WKM v WKN [2024] SGCA 1 at [71]

Q3. What about noteworthy case studies or examples of new case law precedent?

Barbara Mills

The respondent issued proceedings despite the local authority's indication that they would seek a stay if he did so in order for the matter to be dealt with through their internal complaints' procedure.

The local authority's subsequent application for a stay was dismissed by a Deputy District Judge on the basis that authority existed (*Halsey v Milton Keynes General NHS Trust* (EWCA Civ 576] [2004]) setting out that obliging an unwilling party to engage in alternative dispute resolution imposed an unacceptable obstruction on their right of access to the court. The local authority appealed to the Court of Appeal.

The Court of Appeal, allowing the appeal in part, concluded that Dyson LJ's comments in Halsey relied upon in the lower court were obiter. In other words, the comments are not legally binding and did not set a precedent. The judgment confirms that the courts have the power to:

- Stay proceedings to allow for non-court dispute resolution (NCDR) to take place.
- Order parties to engage in non-court dispute resolution even when they do not agree to this.

The applicability of the *Churchill* decision to family proceedings has since been considered by the High Court in *Re X (Financial Remedy: Non-Court Dispute Resolution)* (EWHC 538 (Fam)) [2024], in which Knowles J highlighted the mirror case management powers between civil and family proceedings and the upcoming changes to the family procedure rules, concluding that the *Churchill* decision is relevant to the family court's approach to NCDR going forward.

Changes to the family procedure rules, with the aim of encouraging greater use of NCDR, in line with the judgment in *Churchill* came into effect on 29 April 2024. The changes include:

- A new r3.3(1A) enabling the court to require parties to complete a form outlining their views on using NCDR as a means of resolving matters.
- A new r3.4(1A) giving the court powers to adjourn proceedings (where timetabling permits) to encourage parties to undertake NCDR.
- An amendment to r28.3 allowing the court to take into account a party's failure to attend a MIAM or NCDR when making a costs order in financial remedy proceedings. There is no corresponding rule for children proceedings but given the mischief and delay caused to children, it is hoped that the rule will be extended into proceedings concerning children

Dena A. Kleeman

Kleeman: New case law precedent that has brought upheaval to family law litigation in California involves new requirements for the presentation of evidence, and the use of evidence that experts can rely upon in valuations of assets, in recommendations on child custody, and on assessments of someone's ability to work and earn a living. In short, the new requirements limit evidence that relies on someone else's statements, or observations, pertaining to the case. An appraiser cannot testify to the square footage of real property, without properly authenticated government records of lot size/square footage. A child custody professional cannot recommend to the court a child custody arrangement based on a recounting of what a school teacher, police officer, or a nanny told them. Those individuals need to be subpoenaed and come to court. This evolution has, unfortunately, increased the cost of litigating a divorce case, in many respects.

Q4. With the Labour Party vowing to reform cohabitation laws in the build-up to the general election in the UK this year, can you talk us through the current system and how any changes may affect couples in the future?


Natasha Kurth

Kurth: It comes as a surprise to many that cohabitees in this jurisdiction do not automatically acquire rights akin to a married couple. If an unmarried couple live together and that relationship breaks down, the parties cannot automatically make a claim for maintenance, or to share in their former partner's assets, like on divorce.

In modern society, marriage or civil partnership is not the right option for some and this has the potential to cause real prejudice in situations where, for example, a couple may have been living together for a long time, in a relationship which has no practical difference to a marriage. If the couple have (non-adult) children together, or one party has made a financial contribution towards property held in the other party's name, there are options available, but this leaves a large section of society with no financial protection whatsoever on separation.

The Labour Party wish to reform the system, by providing cohabitees with similar rights to married couples. These proposals will be seen as a welcome development to many, who consider the present situation outdated and unfair and who have unsuccessfully campaigned for change for many years. Notably, the government chose not to progress recommendations for reform published by The Law Commission in 2007. We are yet to be informed of the detail of the Labour Party's proposed reforms, but it is understood that they are consulting with experts and reviewing approaches in other jurisdictions.

A huge number of people operate under the myth that 'common law marriage' provides the same financial rights on separation as a formal marriage. Even if the government does not implement reform, it is very important that these proposals are publicising this issue, in order that cohabitees are aware of their rights (or lack of) and are therefore able to make informed decisions.


Shu Mei

Mei: Singapore law currently only takes the period of marriage into account during divorce proceedings. Singapore also does not recognise cohabiting partners as being in a civil partnership/de facto relationship. However, developments in other common law jurisdictions, like the UK, may spur a change in Singapore's legislation in the future.

Q5. Some of the common misconceptions around pre-marital agreements are that they set the marriage up to fail and they are not legally enforceable. What is your opinion of pre-marital agreements and what best practice advice would you offer to anyone drafting theirs?


Natasha Kurth

Kurth: In *Radmacher v Granatino* (UKSC 42) [2010], the Supreme Court ruled that the court should give effect to a nuptial agreement that is freely entered into by each party with a full appreciation of its implications, unless in the circumstances prevailing it would not be fair to hold the parties to their agreement. Therefore, if a pre-marital agreement is prepared properly and is fundamentally fair to the parties, it is very likely to be upheld, notwithstanding that the court retains ultimate jurisdiction to determine financial awards on divorce.

There are pros and cons to pre-marital agreements. At a time when happy couples might prefer to be focusing on planning their wedding and future, negotiating a legal document premised upon the relationship failing can dampen the mood. However, discussing and agreeing financial arrangements from the outset can be liberating to some, providing clarity and greater certainty in the event of relationship breakdown (and hopefully avoiding expensive litigation later down the line, should the relationship not endure). As the parties should provide financial

Q5. Some of the common misconceptions around pre-marital agreements are that they set the marriage up to fail and they are not legally enforceable. What is your opinion of pre-marital agreements and what best practice advice would you offer to anyone drafting theirs?

Natasha Kurth

disclosure in the pre-marital agreement, preparing and discussing the document may mean greater transparency in respect of financial matters during the marriage. Very importantly, pre-marital agreements can play a crucial role in giving parties comfort and security within their marriage, particularly where there are significant family/inherited assets, which the agreement seeks to protect.

A very common problem is that pre-marital agreements are discussed late in the day and, more often than not, we are instructed to prepare an agreement at the eleventh hour. Not only can this be very stressful for the couple, but also, the agreement should be signed at least 28 days before the wedding, in order to avoid suggestion that is has been signed under duress. For this reason, if the agreement is signed very close to the wedding, a post-nuptial agreement should also be signed afterwards, affirming the contents of the pre-marital agreement. My best practice advice is to discuss the pre-marital agreement as early as possible with your partner and have this sorted well before the wedding.

Laura McConnell-Corbyn

McConnell-Corbyn: A premarital agreement can actually put a marriage on a firm foundation and reduce future conflict in families – particularly when the marriage is a second or third marriage. A premarital agreement will set out the expectations of the parties in advance of their marriage, including what assets are to be provided to the new spouse and what will be preserved for children by a prior marriage.

Each party to the premarital agreement should have counsel to explain the nuances of the agreement, but they should also speak primarily with one another regarding their financial expectations during the marriage. Negotiating a premarital agreement forces the parties to have the types of uncomfortable financial discussions that many couples avoid while they are in the premarital stages of "love."

Couples need to discuss how they will share money and how bills will be paid after their marriage. Negotiating a premarital agreement forces the couple to talk about whether they will have joint accounts and whether they will jointly own their home. They will be forced to discuss how funds will be shared on the death of a party. These discussions set the marriage on a firm path of communication and financial understandings that will strengthen a marriage.

I encourage couples to share the terms of the premarital agreement with their adult children after it is signed so the adult children also know what to expect in order to reduce opportunities for conflict between the adult children and the new spouse.

Esther Susin Carrasco

Carrasco: The so-called prenuptial agreements, well-known and widely used in some countries like the U.S., lack conceptual autonomy in Spanish Civil Law. In Spain, the autonomy of the will of future spouses is expressed through contracts known as "*capitulaciones matrimoniales*". In this contract, it is possible to determine or modify the matrimonial economic regime, align on inheritance agreements, make donations, and establish lawful stipulations even in anticipation of marital breakdown, as established in Article 231-19 of the Catalan Civil Code. Furthermore, the "capitulaciones" can be executed before or after the celebration of the marriage, even though they expire if the marriage does not take place within one year. Regarding the contractual capacity, agreements can be granted by those who can validly enter into a marriage. To modify the agreements or render them ineffective, the consent of all the persons who had granted them is necessary, along with the execution in a public deed.

Q5. Some of the common misconceptions around pre-marital agreements are that they set the marriage up to fail and they are not legally enforceable. What is your opinion of pre-marital agreements and what best practice advice would you offer to anyone drafting theirs?

Esther Susin Carrasco

Once the new matrimonial agreement has been formalised in a public deed, it must be registered in the corresponding Civil Registry (as established in Article 231-22 of the Catalan Civil Code). In addition, the Catalan Civil Code provides agreements in anticipation of a marriage breakdown in Article 231-20, which may be entered into the marriage contracts or in a public deed. These agreements in anticipation of marital breakdown lack explicit legal recognition in common civil legislation, the Spanish Civil Code, although numerous provisions of the Code support the generic validity of marital agreements in anticipation of divorce. In this regard, we can affirm that these agreements should be considered prima facie 3 Barcelona, 24 May 2024 valid and effective between the spouses as established in Articles 1255 and 1325 of the Spanish Civil Code.

Shu Mei

Mei: In Singapore, pre-marital agreements are not legally enforceable per se. However, they are nevertheless a factor that the Singapore court will consider when making an order for the division of assets during divorce proceedings.[1] Pre-marital agreements are useful for individuals with large amounts of pre-marital assets that they wish to exclude from division.

When drafting a pre-marital agreement, it is paramount that both parties obtain independent legal advice. It is also advisable for the agreement to only pertain to financial arrangements and not to touch on issues involving the children of the marriage. This is because there is a presumption that pre-marital agreements relating to the welfare of the children are unenforceable unless the party relying on the agreement can show that it is in the best interests of the children.[2]

Staci Balbirer

Balbirer: The current trend is that couples are waiting longer to get married and are now coming into the marriage with more assets and want to protect their hard work. Additionally, couples that are entering into premarital agreements are having tough conversations prior to marriage hoping leading into better communication skills during marriage. When drafting a premarital agreement, it is imperative to make a full and complete disclosure of all assets and liabilities. Go above and beyond-exchange bank statements and tax returns. I also always want the other side to be represented by an attorney and have as much time as possible to review and negotiate the agreement.

Lindsay R. Pfeffer

Pfeffer: Prenuptial and postnuptial agreements are recognised in New York State. New York Domestic Relations Law Section 236 (B) (3) explicitly provides: "An agreement of the parties made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties and acknowledged or proven in the manner required to entitle a deed to be recorded."

Foreign agreements are largely enforced, provided that the necessary formalities are met for the agreement to be valid and enforceable. An agreement's terms must not violate New York's public policy; there are limited other bases that might render an agreement, or certain of its terms, unenforceable (e.g. the agreement was procured by fraud, duress, coercion or contains unconscionable provisions).

1. Section 112(e), Women's Charter
2. AUA v ATZ [2016] 4 SLR 674 at [58]

Q5. Some of the common misconceptions around pre-marital agreements are that they set the marriage up to fail and they are not legally enforceable. What is your opinion of pre-marital agreements and what best practice advice would you offer to anyone drafting theirs?

Lindsay R. Pfeffer

New York courts will enforce the terms of prenuptial and postnuptial agreements so long as they are made in conformance with standards for contracts, meaning that the agreement cannot be the product of fraud, duress, or coercion, and cannot be unconscionable or violate public policy. Child support and child custody terms are usually not included in prenuptial and postnuptial agreements, as they are generally unenforceable and considered to be outside the scope of such agreements.

A New York marital agreement must be executed by the parties and acknowledged (as is required for a deed to be recorded, per the New York Real Property Law). Otherwise, a court will not be authorised to enforce the agreement.

The myth that prenuptial agreements set a marriage up to fail is dissipating. Prenuptial agreements are becoming more common and acceptable among marrying couples. Entering into a prenuptial agreement can foster alignment on expectations, financial goals and practices during the marriage, in addition to in the event of divorce. It requires each future spouse to disclose their assets and liabilities prior to marriage and opens up the line of communication about how finances will be handled during marriage and in a divorce. Prenuptial agreements may be especially beneficial for individuals entering marriage where there is a large disparity in assets, where one or both spouses has family wealth and/or expects to receive a large inheritance, where a spouse has substantial debt, or where an individual is entering into a second marriage.

Amanda Catto

Catto: There are three primary matrimonial property regimes in South Africa.

By default, parties married without a prenuptial contract are automatically married in community of property. On marriage, the assets and liabilities of the spouses are combined into a joint estate in which the parties own an undivided half share. Subject to limited exceptions, all future property, profits, and debts accrue to the joint estate. The spouses are entitled to deal with the assets of the joint estate and incur liabilities as they deem fit, subject to consent being required in certain instances. The joint estate is divided equally when the marriage is dissolved (by death or divorce).

If parties wish to opt out of the default position, they must enter into a prenuptial contract, in terms of which they may elect to include or exclude the accrual system. The accrual system applies automatically to any prenuptial agreement and must be specifically excluded.

In South Africa, prenuptial contracts are relatively common in more affluent marriages. Prenuptial contracts can be an important tool to ensure that parties protect their respective estates from each other's creditors during the marriage and to allow for effective estate planning. Although it is not a requirement for parties to obtain independent legal advice before entering into one, it is considered essential that spouses ought to secure independent advice, well in advance of the marriage.

When parties are married out of community of property with the application of the accrual system, they retain their separate estates during the course of their marriage. On the dissolution of the marriage (by death or divorce), the spouse with the lesser accrual in their estate will have a claim to an amount equal to half the difference between the accruals in the parties' respective estates during the marriage. Effectively, they will equally share in the growth of their respective estates during the course of the marriage.

Q5. Some of the common misconceptions around pre-marital agreements are that they set the marriage up to fail and they are not legally enforceable. What is your opinion of pre-marital agreements and what best practice advice would you offer to anyone drafting theirs?

Amanda Catto

Prior to the decisions in *Greyling* and *EB v ER*, mentioned above, parties married out of community of property with the exclusion of the accrual system had no property claims against one another (arising out of their marriage). Now all marriages where accrual sharing is excluded are subject to claims for redistribution based on fairness and the parties' circumstances on dissolution of the marriage by death or divorce.

For a prenuptial agreement to be valid as against third parties, it must be registered in a Deeds Office (a public registry). Prenuptial agreements are advised in all marriages, particularly so until the default position of parties otherwise being married in community of property remains the default.

Dena A. Kleeman

Kleeman: I prepare many premarital agreements, and believe they have many salutary effects. Here are many of their benefits in the event of divorce or unexpected death:

- They encourage a conversation with an individual's fiancé about his/her spending preferences (i.e. are you a saver or spender?).
- They educate individuals about how California (or his/her state of residence) marital property laws would apply to their financial affairs during marriage, to help make informed choices as to what you want.
- They allow an individual to plan for what funds the couple would like disposable to each, such as control over certain spending decisions during marriage. For example, with one of the spouses needs to save earnings for retirement; while other spouse has inherited wealth and doesn't need that ability.
- They allow a couple to plan for flexibility in investment of joint funds, or which of the couple is free to make certain decisions about those funds.
- They are designed to avoid future disputes over the terms of a divorce (or disputes with heirs) should this come about.

In short, although they have a "bad rap", premarital agreements can include generous terms to provide for a surviving or divorcing spouse when there is an inequality of resources, such as gift giving during a marriage, leaving a home to a spouse on death, or assuring financial security with life insurance.

Q6. Can pre-marital agreements be amended or cancelled to address new circumstances after marriage? If so, how often or at what stage should this be evaluated?

Natasha Kurth

Kurth: Pre-marital agreements in this jurisdiction should include review clauses, with a view to ensuring that the agreement remains fair and continues to meet the parties' needs. The agreement will not be upheld if these requirements are unfulfilled and, for this reason, review clauses are essential.

Typically, a pre-marital agreement might state that the terms will be reviewed on all or any of the following events:

- the birth of a child to the parties;
- the inability of one party to work for medical reasons for a certain period;
- bankruptcy;
- a significant change in the value of property belonging to either party;
- the parties settling and having the matrimonial home in another jurisdiction; or
- after a certain period of time (e.g. after every five years of marriage).

Q6. Can pre-marital agreements be amended or cancelled to address new circumstances after marriage? If so, how often or at what stage should this be evaluated?

Natasha Kurth

Including review clauses in the agreement can assist in showing the court that the parties have considered changes in their circumstances and that the amended agreement is fair.

Of course, a balance needs to be struck to ensure that the agreement is reviewed regularly enough to cater for changes that might impact upon its fairness, whilst bearing in mind the cost, stress and administrative burden of seeking further advice on and negotiating revisions.

Laura McConnell-Corbyn

McConnell-Corbyn: In Oklahoma, there is a split of authority regarding whether a premarital agreement can be amended during the marriage, but the better law and analysis says that because postnuptial agreements are unenforceable in Oklahoma, amendments to a premarital agreement that occur after the marriage are also unenforceable. *Hendrick v Hendrick* (OK CIV APP 15) [1999]. A premarital agreement can be "cancelled" by both parties agreeing in writing to do so, but any cancellation should relate to the entire agreement and not to certain portions of the agreement. Because premarital agreements should be assumed to be non-modifiable during a marriage, it is extremely important that the agreement be carefully negotiated with attention paid to future events that may occur so no modification would be necessary or contemplated by the agreement.

Shu Mei

Mei: Yes. After marriage, parties can enter into a post-nuptial agreement.

Parties who have entered into pre-marital agreements should enter into a post-nuptial agreement a few years into the marriage. This will allow them to reiterate what was agreed upon in the pre-martial agreement. This will make the agreement more persuasive to the court in the event of divorce because it shows that the parties' positions remained the same after being married. Alternatively, parties may also agree on fresh terms in light of a change in circumstances during the marriage. The reasons for entering into the new terms in the post-nuptial agreement should be included in detail.

If divorce or separation is imminent, parties can also enter into a separation agreement at that point in time. Such agreement should clearly set out how the matrimonial assets will be divided, the amount of spousal maintenance to be paid (if any) and the parties' agreement on the children's issues such as maintenance, custody, care and control and access.

Lindsay R. Pfeffer

Pfeffer: Yes, pre-marital agreements (known as prenuptial agreements in New York) can be amended or nullified after the date of marriage. Typically, a prenuptial agreement will contain a modification provision requiring that any modifications to a prenuptial agreement must be entered into with the same formalities as the original prenuptial agreement to be enforceable.

If a married couple enters into an agreement after the date of marriage, it would be considered a postnuptial agreement. Modifications or amendments to a prenuptial agreement or postnuptial agreement during marriage should be made well enough in advance of an event that would significantly impact the division of property or provisions for support in the event of divorce. This allows for appropriate negotiation time and to avoid the appearance of a spouse being coerced into the modification/amendment. If there are multiple revisions to a prenuptial or postnuptial agreement over the course of a marriage, it may signal to a court that a spouse may have agreed to such amendments or modifications against their interests under duress, which could result in the invalidation of those amendments/modifications.

Q6. Can pre-marital agreements be amended or cancelled to address new circumstances after marriage? If so, how often or at what stage should this be evaluated?

Amanda Catto

Catto: Changes to the provisions of a prenuptial contract are currently only valid if prior leave of the High Court is obtained (through application). This situation is likely to change in the near future to accommodate a less cumbersome procedure.

The Matrimonial Property Act allows for spouses to apply to amend or cancel their prenuptial contract. For this application to be successful, the court must be satisfied that:

- there are sound reasons for the proposed change;
- sufficient notice of the proposed change has been given to all creditors of the spouses; and
- no other person will be prejudiced by the proposed change.

The court may order that the matrimonial property system the spouses seek to change no longer applies and authorise the spouses to enter into a notarial contract that establishes their new matrimonial property system (subject to any conditions which the court may wish to include), which must then be registered at a Deeds Office.

A prenuptial contract is the founding document for the matrimonial property regime that the parties wish to regulate the proprietary consequences of their marriage. As the process to amend the prenuptial agreement is cumbersome, it is rare for parties to do so. Parties should, however, consider varying the terms of their matrimonial property regime when their circumstances dictate it appropriate to do so. The most common amendment is to register a post-nuptial agreement where one did not exist, thus allowing the spouses to avoid the vulnerability of an in community of property regime.

Dena A. Kleeman

Kleeman: Premarital agreements can be modified at any time, although both "parties" to the Agreement must agree on the modified terms, and the formalities for the modification must be followed, for example, they must be in a written agreement with notarisation.

Premarital agreements can also be revoked in their entirety by mutual written consent and they effect of the revocation considered on existing property and/or support rights and benefits.

Q7. Once an individual has decided they want a divorce, who should they tell first: their spouse or their attorney?

Natasha Kurth

Kurth: Most of my clients seek advice from me before they discuss divorce with their spouse. It is a daunting process, unknown to most, and I believe that it helps clients to understand what to expect, before embarking on it.

There are also scenarios where it is very important to seek legal advice before discussing the situation with a spouse. For example, if the client and/or their spouse has connections to other countries, it may be vital to consider which jurisdiction would be most advantageous to the client and issue proceedings there without delay. Alternatively, a client may have concerns that their spouse will dispose of assets, or move assets to jurisdictions where enforcement is difficult, once learning of the divorce. In such circumstances, we would consider whether it is appropriate to apply for an urgent freezing order, to protect the client's position before their spouse is alerted to the situation.

Q7. Once an individual has decided they want a divorce, who should they tell first: their spouse or their attorney?

Laura McConnell-Corbyn

McConnell-Corbyn: The first person with whom the individual should discuss divorce is the attorney. If there is domestic violence in the marriage, the attorney will need to assist in providing a safe space for the spouse and children when the divorce petition is served. If there is no domestic violence, it is still important to have a plan regarding how the spouse will support themselves and the children until a temporary order is entered. There is a period of time between the filing of the Petition and Application for Temporary Order and the first hearing during which there are no court orders governing support or timesharing with the children.

The attorney will advise the individual regarding how to financially protect himself or herself and how to prepare in order to have the most expeditious resolution of the issues. I recently resolved a case in which we negotiated the entirety of the resolution of the case prior to either person filing for divorce. The parties had a premarital agreement that contained penalties based on who filed the petition, so we negotiated the resolution of all issues in the case before either party filed a petition for dissolution. The parties in that matter will be divorced within 30 days of filing the petition.

Shu Mei

Mei: Their attorney. They need to be aware of their rights before going into a conversation with their spouse.

Staci Balbirer

Balbirer: Once a couple decides they are headed for divorce, a lawyer should be contacted. It's important to educate yourself on the rights and/or obligations that come with divorce in your state/country. For instance, how is child support or spousal support calculated? What are the laws regarding property division? Planning for your future starts at the early stages of divorce. Additionally, I always advise clients who are considering divorce to start better understanding their families' finances. Many clients have no idea what it costs to run their household so having a good understanding will help that person budget and be prepared for when the divorce actually happens.

Lindsay R. Pfeffer

Pfeffer: Their attorney. To be clear, this does not mean that an individual must formally retain an attorney before advising their spouse, and/or that the individual does not intend for the separation and divorce to be amicable. It means the individual should, at minimum, consult with an attorney before making their spouse aware of their intention to divorce for the purpose of understanding the scope of their rights and potential claims, as well as the potential claims of their spouse.

It is essential that the individual be educated in this regard before facing possible pressure from their spouse to waive particular rights in writing, or before placing themselves in a position that might be detrimental to their position on custody or finances in court.

The individual may feel more empowered and ready to face the challenges of divorce upon becoming educated about the divorce process and knowing that they have a source of support outside of the marriage to guide them through that process.

Q7. Once an individual has decided they want a divorce, who should they tell first: their spouse or their attorney?

Lindsay R. Pfeffer

Additionally, the individual may be in need of immediate judicial intervention on a custody or financial matter, or a family offence matter (such as seeking a temporary order of protection on the basis of domestic violence in the marriage) and would be able to prepare a strategy for litigation or motion papers to be filed with a court in advance of their spouse being notified.

Lastly, the date of filing for divorce, known as the "date of commencement" bears great significance in a matrimonial action under New York law. It acts as the "cut-off" date for the accumulation of marital assets. After the commencement date, the spouses' income and property acquired by that individual after that date will not be designated as "marital assets" but rather, "separate assets". The date of commencement also acts as a "cut-off" date for retirement assets, accumulation of marital debt, and possibly, the date from which a spouse may be ordered to pay child support or spousal maintenance retroactively.

There are also financial "automatic restraining orders" that go into effect upon the date of filing of a summons for divorce. Remaining quiet about when an individual may be planning to file for divorce will avoid the unfortunate circumstance of their spouse taking action with respect to the couple's finances or doing other "divorce planning" in a manner that is harmful to that individual's interests before these automatic orders go into effect.

Barbara Mills

Mills: Whether to speak to a lawyer or the other spouse first about getting a divorce is a decision that only the individual can make. Ideally, the spouse who wants a divorce will tell their partner first and then they can start a discussion with a view to an amicable separation. This can mean that even if lawyers are to be involved, the approach can be as joined up as possible.

'No fault' divorce was introduced in England and Wales in 2022, meaning that a couple can now make a joint application for divorce. There is no longer a need to apportion blame in the process and under this route there is no possibility of the divorce application being contested. Furthermore, the "one couple, one lawyer model" which was initiated by The Divorce Surgery of 4PB and is now widely available through solicitors, allows the couple to seek advice jointly so as to avoid becoming positional and adversarial from the very beginning.

However, the above ideal is often not possible and there are a number of reasons why speaking with a legal professional before raising the matter with the other spouse can be advantageous.

Speaking with a lawyer before taking any first steps will help to avoid any unintended consequences arising from the actions of the spouse seeking the divorce. Actions such as moving out of the family home or entering into an informal agreement with respect to the arrangements for child may have future consequences that require careful thought. Speaking with a lawyer before taking any action will enable the spouse seeking the divorce to ensure they are fully informed of the effects of their actions before taking any steps.

It is particularly important that initial legal advice is sought where there is a risk of the other spouse removing the children to another country. This is also true where the spouse seeking the divorce is the financially weaker party or does not have any control over the family finances and there is a risk of dissipation of assets if the other spouse is put on notice of the intention to divorce.

Q7. Once an individual has decided they want a divorce, who should they tell first: their spouse or their attorney?

Barbara Mills

Advice may also be necessary where there are safeguarding concerns in order to mitigate against any adverse reaction from the other spouse. Where domestic abuse or child safety are an issue, the lawyer will be able to signpost to services that will be able to assist. It is well established that most victims of domestic abuse are at their most vulnerable immediately before and during separation from their abuser.

A legal representative will be able to advise on the suitability of mediation or other forms of non-court dispute resolution at this early stage, and a solicitor will be able to engage in correspondence with the other spouse throughout the divorce process if the individual seeking advice does not wish to do so.

Dena A. Kleeman

Kleeman: If someone is considering a divorce, it is smart to consult with a divorce attorney in advance. The consultation is completely confidential and provides information to help an individual to make an informed choice about whether to divorce, what will be involved financially, and with respect to any children of the marriage.

That said, the decision to divorce is a very personal one – an emotional choice that has ramifications for an individual's emotional wellbeing, that of their spouse and that of any children of the marriage. Unless there are safety concerns, or concerns that one spouse will hide or abscond with financial information, I encourage my clients to speak with their spouse about wanting a divorce, the process of "dispute resolution' to use, initial planning for separating their households, and, in particular, how to discuss divorce with children, and prepare them for this major change in their lives.

Indeed, many couples seek information from mental health professionals to help them protect their children during (and after) the divorce process. This is a wise step.

Q8. What are the main challenges when dealing with complex assets following the breakdown of the family and what measures can be implemented to achieve a positive outcome?

Shu Mei

Mei: The main challenge would be the identification of the matrimonial assets that are liable for division. Parties may not provide full and frank disclosure of their assets or attempt to conceal certain assets. It may also be difficult to determine who the true beneficial owner of a certain asset is. Different experts should be engaged to assist in the identification and valuation of complex assets. These experts may include business valuation experts and forensic accountants.

Lindsay R. Pfeffer

Pfeffer: One of the main challenges when dealing with complex assets in a matrimonial action is what is known as separate property tracing. It is a spouse's burden to prove their own separate property claims. This means identifying and tracing their separate property. This task involves reviewing records and documentation pertaining to separate property that may have been commingled with marital property, and it is common for spouses to engage forensic accountants to perform this task on a spouse's behalf. This task is also required for establishing what are known as separate property contribution credits; for example, where a spouse contributes pre-marital separate property towards the downpayment or capital improvement on a marital residence acquired jointly by the spouses during marriage.

Q8. What are the main challenges when dealing with complex assets following the breakdown of the family and what measures can be implemented to achieve a positive outcome?

Lindsay R. Pfeffer

A measure that can be implemented to a achieve a positive outcome is for spouses to maintain complete and organised financial records showing the values and transactions relevant to tracing their separate property for date of marriage, during marriage and as of the date of commencement of a divorce action. These records include bank account statements, brokerage account statements, retirement account statements, credit card statements, mortgage documentation, and so on. This is important given the duration of time that may elapse between the date of marriage and date of commencement, and the difficulty a spouse may encounter in obtaining copies of the necessary records at a later date, and this will reduce the need for any "guesswork" in coming to a fair and equitable division of property in the divorce case.

Another main challenge when dealing with complex assets is the spouses' willingness to comply with their financial disclosure obligations in a matrimonial action. New York State allows for broad financial disclosure in matrimonial actions; however, there are measures in place to prevent harassment and purposeful bombarding of the other spouse in discovery. In the event of a spouse's failure or refusal to comply with their financial disclosure obligations, the other spouse may find it necessary to file a motion in court to compel the other spouse to comply with their obligations. A spouse's refusal to provide information and documents may also result in the taking of that spouse's deposition to gather the missing or additional information. Thus, a spouse's refusal to comply with their obligations can increase legal fees and costs for the other party. However, New York law provides spouses with remedies for recouping counsel fees and costs paid due to the non-compliant spouse's vexatious and obstructionist conduct. A spouse may file a motion in court seeking the payment of counsel fee and costs.

Amanda Catto

Catto: The extent to which complex structures will affect the expeditious resolution of a divorce largely relate to which marital property system the parties have entered into.

Whatever the situation, the greatest challenge in a contested divorce is inevitably determining the value of a spouse's interest therein and the extent to which the structures support the family's lifestyle. Difficult scenarios may arise, for example, where one of the spouses has placed family assets in a separate structure – like a trust. Where the true control and use of such assets is not readily ascertainable, spouses can abuse the form of separate entities to either dissipate assets or to misrepresent their true financial position. These scenarios may require the input of expert witnesses to evaluate and then testify as to the nature of the complex structure and who the controlling mind and ultimate beneficial owner is. This makes for a more costly and time-consuming divorce.

Furthermore, there is a general reluctance in such matters, by the financially controlling spouse, to share documentation and information and, in so doing, to attempt to thwart the claims of the other spouse.

Early, frank and comprehensive disclosure ought to be required, and then mediation encouraged, to mitigate the costs and delays that otherwise result.

Dena A. Kleeman

Kleeman: I typically refer to a "complex asset" case as a "high-net worth" divorce.

A high-net worth divorce is not defined by a strict dollar value, but raises a host of tactical, legal, and procedural complexities. These cases often include business entities that present valuation and division issues, requiring adjunct forensic accountants, appraisers, tax and transactional business attorneys to create a winning, professional team.

High-net worth divorce cases also present asset protection strategies, out of state property, and third-party ownership of community assets that require additional procedural steps.

Q8. What are the main challenges when dealing with complex assets following the breakdown of the family and what measures can be implemented to achieve a positive outcome?

Dena A. Kleeman

A high-net worth divorce often includes many types of compensation – equity compensation, deferred compensation, rents, royalties, residuals, and other future income streams, perquisites, deferred compensation that require analysis of tax attributes, and techniques to divide them in the context of a divorce case.

Dividing assets in a high-net-worth divorce takes the work of a team. Our office partners with forensic accountants, financial advisors, business valuators and licensed appraisers to ensure that our client's best interests are protected at every turn.

Q9. How is child custody usually determined during the dissolution or separation of marriage?

Esther Susin Carrasco

Carrasco: During the judicial process of divorce, decisions regarding the custody of children can be made in different ways. If the parents do not reach an agreement on child custody, the judge will evaluate the evidences brought by the parties, as well as the circumstances of the case in order to consider the best interests of the child as the primary factor in the final decision, taking into account the Article 2 of the Organic Law 1/1999[6], on the Protection of Children (Ley Orgánica 1/1996, de Protección Jurídica del Menor).

If the parents agree on child custody, they can submit the terms and conditions of the child's arrangements in their "Convenio Regulador", a contract that governs the divorce measures, to ensure balanced participation of both parents in the upbringing of the children. This agreement must be ratified by the parties in front of the Clerk. Regarding this topic, the Supreme Court of Spain, in Judgment No. 280/2017 of 9 May 2017 (Sentencia del Tribunal Supremo 280/2017 del 9 de Mayo de 2017), states that Article 92.8 of the Civil Code does not permit the conclusion that joint custody is an exceptional measure; on the contrary, it should be considered normal and even desirable because it allows the children's right to maintain relationships with both parents to be effective, even in crisis situations, whenever possible and feasible.

However, the same chamber has reminded that the interpretation of Articles 92.5, 4 Barcelona, 24 May 2024 92.6, 92.7 and 92.8 of the Civil Code must be based on the best interests of the minors who will be affected by the measure adopted. Therefore, the general statement in favor of establishing a joint custody regime does not imply that such a regime should always be adopted, as it is necessary to consider the specific case.

Q9. How is child custody usually determined during the dissolution or separation of marriage?

Shu Mei

Mei: The Singapore court generally makes orders for joint custody unless exceptional circumstances exist to warrant sole custody.[1] When parties have joint custody of a child, they must jointly decide on major decisions as to the child's upbringing, health, education and religion.

In addition to an order on custody, a care and control order gives a party authority and responsibility over the day-to-day matters of the child and other short-term decisions concerning his or her upbringing and welfare. The party to whom a care and control order is granted is also the parent who will be the daily caregiver of the child and who the child will live with.[2]

The court may make an order for sole care and control to one party or shared care and control. The practical effect of an order for shared care and control means that the child will spend roughly equal amounts of time with each party, although it may not necessarily be an equal split depending on the circumstances.

In deciding which parent should be given care and control of the child, a few trends emerge from Singapore case law:

- When all other factors are equal, care and control of a young child should be granted to the mother;[3]
- The court prefers to maintain the status quo and continuity of living arrangements;[4]
- Siblings should not be separated unless exceptional circumstances warrant it;[5]
- The court is likely to only make an order for shared care and control where parents can meet the high level of cooperation required and when the child is of a relatively mature age.[6]

The party without care and control will be granted access to the child. The court will generally grant the other party reasonable access to the child. However, the court may impose certain conditions upon a party's access to the child if the situation warrants it. For example, the court may make an order for supervised access if there are serious welfare concerns such as violence or serious neglect by the party in question.[7]

Lindsay R. Pfeffer

Pfeffer: Spouses may voluntarily agree to a custody and parenting access (also known as visitation) arrangement, the terms of which are incorporated into a divorce judgment, or, in the event that the spouses cannot agree, or there are issues requiring court orders, spouses may seek judicial intervention for the purpose of asking a court to determine their custody and parenting access.

The Supreme courts in New York State are authorised to issue orders for both interim (temporary) custody and parenting access, meaning during the pendency of the matrimonial action, and permanent (post-divorce) custody and parenting access. In contested custody cases, the court may appoint a Guardian Ad Litem or Attorney for the Child to represent the child's interests/preferences.

In addition, the court may order a forensic evaluation to be conducted by a qualified forensic evaluator for the purpose of aiding the court in making its determination. A forensic evaluation typically consists of interviews with the parents and child, contact with third party "collaterals" who have had direct contact with the parents and/or child, psychological testing, and review of relevant documentation from the child's providers/educators.

1. CX v CY [2005] 3 SLR(R) 690 at [37]
2. CX v CY [2005] 3 SLR(R) 690 at [31]
3. Soon Peck Wah v Woon Che Chye [1997] 3 SLR(R) 430
4. Wong Phila Mae v Shaw Harold [1991] 1 SLR(R) 680
5. Kim Chun Ahe v Ng Siew Kee [2002] SGDC 276
6. AQL v AQM [2011] SGHC 264
7. APE v APF [2015] SGHC 17 at [32]

Q9. How is child custody usually determined during the dissolution or separation of marriage?

Lindsay R. Pfeffer

If the parties cannot settle their issues, the court will hold a trial at which the parties can present testimony and documentary evidence relevant to the Court's inquiry and determination.

There are two forms of custody under New York law: physical custody (where the child resides and the child's time with each parent) and legal custody (decision-making for the child). The parents may share joint physical custody, or one parent may be the primary physical custodial parent subject to the other parent's parenting access time, or, on the rare occasion, one parent may have sole physical custody. The parents may share joint legal custody, or one parent may have final decision-making authority with the obligation to consult with the other parent, or, on the rare occasion, one parent may have sole legal custody without the obligation to consult with the other parent.

Amanda Catto

Catto: The Constitution directs that the best interests of a minor child are a priority in all matters concerning children and the standard by which all arrangements in respect of children are to be tested.

Parents share parental responsibilities and rights in respect of the guardianship, care, contact and maintenance of their children. How rights and responsibilities are to be exercised following the separation of the parties can be agreed between them, by concluding a parenting plan detailing the regulation thereof, post separation. Where parties cannot agree, an expert may be appointed to make recommendations. The parties are required to consider mediation to resolve disputes regarding the regulation of their shared parenting. In the absence of agreement, the Court, as the upper guardian of all minor children, will decide what arrangements are in the children's best interests.

Barbara Mills

Mills: Separating parents may be able to agree arrangements for how their child(ren) will spend their time. They may be assisted in doing so through non-court dispute resolution. If an agreement cannot be reached, an application for a court order can be made. The Child Arrangements Programme set out in PD12B will apply.

Orders concerning living and contact arrangements, called 'child arrangements orders', in England and Wales, can be made under s.8 of the Children Act 1989. The phrase 'custody' is also generally not used in the law relating to child arrangements in England and Wales.

Before a child arrangements order is made, the applicant will be required to attend an initial Mediation Information and Assessment Meeting ('MIAM'). There are some exemptions excluding a party from this requirement, including where domestic abuse or child safeguarding are in issue. A joint MIAM may take place where parties agree to this. At the MIAM, a mediator will be able to advise as to whether mediation is suitable to resolve the child arrangements dispute and to signpost in the direction of other useful services.

A child arrangements order can be made by the court to regulate:

- With whom a child is to live, spend time or otherwise have contact; and
- When a child is to live, spend time or otherwise have contact with any person.

Contact can be direct (i.e. face to face) or indirect (i.e. telephone communication, video calls or cards and letters). Contact may also be supervised or unsupervised. There is a presumption that the continued involvement of both parents following separation is in the child's best interests, unless there is evidence before the court rebutting this presumption.

The starting point is that a child has a right to spend time with each of their parents unless one is said to be a risk to that child.

Q9. How is child custody usually determined during the dissolution or separation of marriage?

Barbara Mills

The court's paramount consideration when it determines child arrangements is the child's welfare. The criteria set out in the welfare checklist at s.1(3) of the Children Act 1989 will be considered. Each application will be decided based on the individual facts and circumstances of the case. The Children and Family Court Advisory and Support Service ('Cafcass') will carry out safeguarding checks and usually will speak with the parents. Cafcass' role is to advise the court in relation to any safeguarding concerns and to present the court with an independent view on what is in the child's best interests.

Dena A. Kleeman

Kleeman: California law puts the safety of children first when it comes to making child custody determinations. A child's ability to have frequent contact with parents is also a major consideration since California law is designed to encourage parents to share the rights and responsibilities of child rearing.

Other considerations in custody decisions include the child's developmental stage and personality, the pattern of historical care, and the child's unique special needs (including special educational needs).

A judge will consider how the child has spent his or her time in the past, but is not necessarily bound by the "status quo". The court makes its custody decision based on the "best interests" of the child.

California also recognises that children may be bonded to more than one parent or caretaker. Our unique, "three-parent" statutes aim to keep children together with those to whom they are bonded.

Types of custody:

Two types of custody must be assigned when getting a divorce or in a parentage case – physical custody and legal custody.

- Legal custody: Legal custody gives parents the right to make decisions for their child. These decisions include decisions pertaining to healthcare, education, religious upbringing, extra-curricular activities and overall welfare. Legal custody can be joint or sole, meaning that parents can share legal custody or it can be exclusively assigned to one parent.

- Physical custody: Physical custody refers to who the child physically lives with. Physical custody can be joint or sole (primary). Joint custody does not always mean an equal 50/50 split in time, however. Each child custody schedule should be tailored to the unique circumstances of the family. Popular child custody schedules vary, from alternating weeks (50/50 split), to alternating weekends (one parent has primary custody and then alternates weekends with the other parent). When creating a child custody schedule, the best interest and wellbeing of the child should be the top priority.

Custody jurisdiction:

Sometimes there are questions regarding which court should hear a particular child custody case. Jurisdictional requirements are governed by both state, federal and international treaty law. Most recently, California passed legislation to protect parents and children who come to this state for gender transitional treatment. Other situations can present jurisdictional and other legal challenges when a parent wishes to move out of California.

Q10. At what age does the court consider the child's wishes regarding visitation?

Laura McConnell-Corbyn

McConnell-Corbyn: In Oklahoma, a child is presumed to have the maturity to express a preference regarding custody and visitation when he reaches the age of 12. The court is not required to follow those preferences. Indeed, courts do not abrogate their responsibilities in favour of the preferences of a 12-year-old. The court must consider the preference of the child, and if the court does not follow the preference, it must state affirmatively why the court did not follow the preference of the child. The court is given great discretion in making decisions regarding custody and visitation, and it is very uncommon for an appellate court to overturn a custody or visitation decision based simply on the preference of a child.

Esther Susin Carrasco

Carrasco: Children have the right to be heard in all cases. However, the rule set by the Supreme Court is that minors should be heard in such proceedings whenever they are older than 12 years or, even if they have not reached this age, they have sufficient maturity to be heard. So, in general, if minors are 12 years old or older, they make the statement directly to the judge in the presence of the prosecutor, through this judicial recognition. The regulation regarding the right of the child to be heard is found in:

- The United Nations Convention on the Rights of the Child (CRC or UNCRC), article 12.
- The United Nations General comment nº 12 (2009): The right of the child to be heard.
- The Organic Law 1/19996, on the Protection of Children, article 9. (Ley Orgánica 1/1996, de Protección Jurídica del Menor).
- The Law in Voluntary Jurisdiction 15/2015, of 2 July (Ley de Jurisdicción Voluntaria 15/2015, de 2 de julio).

Organic Laws are those related to the development of fundamental rights and public liberties (as established by Article 81.1 of the Spanish Constitution). Therefore, the children's right to be heard represents a fundamental right. This recognition, in both national and international frameworks, underscores the intrinsic nature of this right as a human right, essential for the protection and development of children, ensuring their active participation in decisions that impact their lives.

In Catalonia, Article 221-6 of the Civil Code of the Autonomous Community states that minors, in accordance with their age and natural capacity, and in any case if they are twelve years old or older, have the right to be informed and heard before a decision is made that directly affects their personal or patrimonial sphere. Article 7 of Law 14/2010, of 27 May, on the rights and opportunities in childhood and adolescence, also declares that children from the age of twelve have the power to be heard and to have all the procedural guarantees of the right to a hearing.

Shu Mei

Mei: There is no specified age where the court will consider the child's wishes. Singapore legislation provides that the court will have regard to the wishes of the child where he or she is of an age to express an independent opinion.[1] The ability of each child to express an independent opinion will vary in every case.

Nonetheless, whenever the Singapore court makes a child-related order, its paramount consideration will always be the welfare of the child.[2] The child's wishes will not be determinative of the court's decision.

1. Section 125(2)(b), Women's Charter
2. Section 125(2), Women's Charter

Q10. At what age does the court consider the child's wishes regarding visitation?

Staci Balbirer

Balbirer: There is not a specific age where the court considers the wishes of the child. Rather is it based on the maturity level of that specific child. The Court will want the opinion of the child but the weight it carries in the Court's final decision varies. For instance, young children are more easily influenced by their parents so their opinion may not actually be their own and would carry less weight. Teenager's opinions are usually given more weight, but ultimately it is not up to the child to decide his or her own visitation schedule and the child's opinion is just one factor in doing so.

Lindsay R. Pfeffer

Pfeffer: In New York, there is no particular age specified by statute or case law by which a child's wishes are to be considered by a court in a matrimonial action or family law proceeding. However, it is acknowledged that as a child grows older, that child's preferences will hold greater weight in court.

A Guardian Ad Litem or Attorney for the Child may be appointed by a court to communicate the child's wishes/needs and represent their interests.

A child's preferences cannot be determinative of a court's decision on custody and parenting access. A child cannot decide who they wish to live with, or how much time they will be in the care of either parent. In all child custody cases, the "best interests of the child" doctrine is paramount.

Some of the primary reasons why a child's preferences cannot be determinative are the possibility of attempted alienation of the child against the other parent, to the extent that the child does not recognise they've been alienated, or a parent placing pressure on the child to have the child parrot that parent's wishes.

Amanda Catto

Catto: The Children's Act sets out that "every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration." The Act further provides that before a person holding parental responsibilities and rights in respect of a child makes any major decisions involving a child, consideration must be given to the views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.

Consequently, there exists no fixed age dictating the child's entitlement to have their wishes heard concerning visitation matters. Rather, the Courts have a discretion to assess what weight to give the child's wishes, bearing in mind the specific child's age, maturity, and developmental stage. In order to do so, the Court may require input from professionals (such as psychologists or social workers) to provide evaluations regarding the child's maturity and ability to articulate their preferences effectively. Ultimately, the determination rests with the presiding judge.

As a major (at the age of 18 years), the adult child acquires the right to autonomous decision-making regarding visitation matters, thereby exempting them from regulation by either their parents or the court in respect of contact with their parents.

Q10. At what age does the court consider the child's wishes regarding visitation?

Barbara Mills

Mills: The court always has the child's wishes front and centre in its determination about child arrangements.

The court's paramount consideration is the child's welfare as set out in s.1 of the Children Act 1989). S.1(3) of the Children Act 1989 sets out the welfare checklist which the court will apply in determining what is in the child's best interests. The first criterion of the welfare checklist is "the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding)".

Therefore, the court takes the child's views into account, but these will be considered in line with what is appropriate given the child's age and ability to understand the situation. A child's wishes will not be determinative although depending on their age, very persuasive. The child's wishes will be one of the factors that the court will take into account when reaching a decision on living and contact arrangements.

Paragraph 4.5 of the Child Arrangements Programme (PD12B) sets out the ways in which a child's view may be put before the court and these include:

- By a Cafcass report.
- By the child being encouraged to write a letter to the court.
- In limited circumstances, by the child being a party to the proceedings.
- By the judge meeting with the child in accordance with approved Guidance.

The last of these circumstances will be rare in practice. The Guidance confirms that the child's age will be relevant in deciding whether the judge will meet with the child but that this will not be determinative: "In deciding whether or not a meeting shall take place and, if so, in what circumstances, the child's chronological age is relevant but not determinative. Some children of seven or even younger have a clear understanding of their circumstances and very clear views which they may wish to express."

The examples from the case law suggest that the views of children from the age of around 11 upwards will be taken into account. Although, there are examples of much younger children being considered mature enough to have their views heard. For example, in the case of *Re W* (EWCA Civ 520) [2010] a child who was aged six had their views on relocation taken into account by the court.

Dena A. Kleeman

Kleeman: By age 14, assuming a child wishes to address the Court on custodial preference, they are permitted to do so, although their input is just one factor for the Court in making its 'best interests' decision on visitation. For example, a child may wish to be with a "lenient" parent, while the parent seeking to impose salutary rules and limitations on conduct is seen as the less preferred parent. Other examples include a child wishing to be with a parent who can be abusive, because the child is scared of choosing otherwise. A careful probing by the court, and ancillary professionals, is often needed to 'tease out' the meaning behind the voiced preference.

Q11. Must a parent enforce a visitation order and what are the consequences for failure to produce the child for a visit?

Esther Susin Carrasco

Carrasco: The visitation order for children can be established by mutual agreement or by the judge. In the first case, the parents can present a child agreement ("*pla de parentalitat*") in court and subsequently ratify its content, declaring also the days and hours that the children will spend with the non-custodial parent. This mutually agreed visitation schedule must be judicially approved. In the absence of an agreement between the parents, the judge will determine the periods of time the children will spend with the non-custodial parent (as established in Article 236-11 of the Catalan Civil Code).

Regardless of the reason for not complying with the agreed-upon terms, failing to adhere to what is stipulated in the judicial resolution constitutes a legal breach. However, it is not an exclusive obligation of the non-custodial parent but also the parent who has custody. This parent must facilitate the visits and promote the child's relationship with the other parent, as long as it does not negatively affect the child's wellbeing. In the event of a visitation schedule failure, it is recommended to talk in the first place to the other party to prevent a recurrence and reach an agreement.

If no agreement is reached, it will be necessary to file a petition for the modification of the measures of the postmarital agreements, citing the new circumstances. If there is still no possible solution and visitation continues to be violated, a formal notice via certified mail will be sent to urge compliance with the court order or the agreements. If violations persist after the notice, it will be necessary to file a petition for enforcement of the court order or agreement, prompting the court to require the non-compliant parent to fulfil their obligation or provide reasons for refusing to adhere to the agreed-upon visitation order.

If the time limit has expired but the court has ex officio authorised the parents to comply but they continue to fail to do so, they may be punished with monthly fines in accordance with the provisions of Article 776.2 of the Civil Prosecution Act. These fines, which will be determined by the court, may be withheld for as long as is appropriate in each individual case. Another consequence through the civil proceeding, is the modification of the measures of the visitation order or even the loss of child custody.

Finally, though visitation breaches should be handled through civil proceedings, if the failure persists, it may constitute a crime of disobedience to authority under Article 556 of the Spanish Penal Code (CP).

Shu Mei

Mei: If one party does not comply with the court orders, the other party may commence enforcement proceedings which include committal proceedings for the non-complying party's contempt of court.[1] If found guilty of contempt of court, the offending party may be fined or sentenced to imprisonment.

Staci Balbirer

Balbirer: Visitation can be a tricky situation. While a Court's order should always be followed, there are times when a child absolutely refuses to visit with the other parent. I always advise clients to do everything in their power (absent physical force) to encourage a child to visit with the other parent. Facilitating a positive relationship between the child and other parent is part of being a parent and it is usually in the best interest of the child to have a relationship with both parents (there are exceptions of course).

1. Section 4, Administration of Justice (Protection) Act

Q11. Must a parent enforce a visitation order and what are the consequences for failure to produce the child for a visit?

Staci Balbirer

If a child absolutely refuses to visit with a parent, the Court will look at the underlying reasons why. This could also come with the appointment of an attorney for the child to investigate the situation. In my experience, the consequences of a child refusing to visit with a parent have varied-from entering an order for make-up time to limiting the non-facilitating parent's visitation-to nothing at all. It is completely dependent on the underlying situation.

Amanda Catto

Catto: Parents may not withhold contact that has been ordered by a Court, save where to do so is in the child's best interests. Parents otherwise risk being held in contravention of the order and in contempt of court. Parents also have a duty to respect the terms of any parenting plan that they have entered into with a co-holder of parental responsibilities and rights. The terms of a parenting plan, once concluded, are separately incorporated in a court order.

The Court will not take lightly a parent withholding contact and may order a modification of the parental responsibilities and rights of the non-compliant parent. This can be initiated by the other parent bringing an application for the variation of the defaulting parent's responsibilities and rights. An order may be made suspending for a period, or terminating, any or all of the parental responsibilities and rights, if this is regarded to be in the children's best interests.

Should a parent present a valid justification for the failure to facilitate visitation or if the child expresses reservations regarding the visitation arrangement, it becomes imperative to engage with experts to assist in resolving the matter expediently with the best interests of the child being held paramount.

Dena A. Kleeman

Kleeman: Courts expect parents to follow orders for visitation, and enforcement can include changes of custody, or even contempt convictions and sentences (quasi criminal penalties). That said, there is a recognition that, by a certain age, a child cannot be "forced" and parents need to "encourage" the visiting. Courts use tools for this encouragement, including parental and child counselling; gradual step ups in visits; and a re-arrangement of custodial time, to help make the visitation happen. There can be, of course, limitations if a court comes to understand that the refusal or reluctance to visit is truly due to harmful conduct on the part of the "resisted" parent.

Q12. At what age can a child refuse to visit with a parent or self-emancipate?

Shu Mei

Mei: There is no prescribed age at which a child can refuse to visit their parent, though the Court may take into account the independent views of an older child. Nonetheless, the parent with sole care and control has an onus to facilitate and encourage contact.

A party may apply to vary the court order on care and control or access if there is evidence of a material change in circumstances and if such variation is in the best interest of children.[1] If there is evidence of abuse or concerns for the child's safety, the court may revoke or vary an order granting access to the child. However, the court will require convincing evidence before denying a party reasonable access to the child.[2]

1. Section 128, Women's Charter
2. Elements of family law in Singapore, Third Edition at [9.164]

Q12. At what age can a child refuse to visit with a parent or self-emancipate?

Amanda Catto

Catto: The determination of a child's capacity to refuse visitation with a parent hinges upon an assessment of the child's age, evolving maturity and level of development.

As a child matures, their expressed preferences regarding visitation may be accorded greater weight by the Court. However, such preferences are not determinative, as the paramount concern remains the welfare and best interests of the child. The courts are alive to parental alienation and are likely to be intolerant of a child's refusal to visit a parent in such circumstances and direct remedial action.

Regarding self-emancipation, South African law provides that a child can be tacitly emancipated or expressly emancipated by order of court (the latter could be with or without the consent of a guardian, depending on the circumstances). The emancipation, however, only provides the child with greater freedom to contract and not with any rights conferred on persons over the age of 18 years in any piece of legislation.

Dena A. Kleeman

Kleeman: Emancipation in California requires a child to have financial self-sufficiency (such as a minor working in the entertainment industry) and be at least 14 years of age or older. A child can also become emancipated (free from parental support and control) if they enter the military or marry).

For a child who just doesn't want to visit, there is no set age, but, instead, there are family issues to be addressed by the courts, as I addressed above. Some judges are more pro-active than others in trying to keep children and parents in contact.

Q13. What are the main challenges surrounding the breakdown of international families and what considerations will be made when one or both spouses wish to relocate abroad?

Laura McConnell-Corbyn

McConnell-Corbyn: I recently tried a complicated custody case in which the parties had resided together in Brazil during their marriage, and the mother left in the dark of night while pregnant with the parties' twin sons. She moved back in with her mother in Oklahoma. The issues were greatly complicated by the Covid travel restrictions. The case was tried to the court regarding whether the twins would remain in Oklahoma, where they had been born, or would be given to the custody of their father in Brazil.

The court was presented evidence regarding the lifestyle of the children in each country, the ease of travel, and which of the parents is more likely to foster and encourage the relationship of the children with the other parent. After a 10-day trial, the court awarded primary custody of the children to the father in Brazil, based largely on the evidence showing that the mother would not be likely to foster and encourage the relationship of the children with their father. The children now reside primarily in Brazil and have visitation from time to time with their mother in Oklahoma.

Shu Mei

Mei: The main challenge involves the question of which jurisdiction should decide on the divorce proceedings. A party may wish to stay the Singapore proceedings in favour of a foreign jurisdiction. The applicant in the stay application would then have to persuade the Singapore court that Singapore is not the natural or appropriate forum for the dispute and that the foreign jurisdiction is clearly the more appropriate forum.

Q13. What are the main challenges surrounding the breakdown of international families and what considerations will be made when one or both spouses wish to relocate abroad?

Shu Mei

The natural or more appropriate forum would be the one with the most real or substantial connection to the dispute. The court will consider various factors including:

- Where the marriage took place and where it failed;
- The nationality, residence or domicile of the parties and children;
- The cultural background of the parties and children;
- Where the matrimonial assets are located;
- Whether there was a prenuptial agreement made in a specific country; and
- Where the witnesses are located, and whether they are compellable/willing to appear in court.

Another challenge arises when either party wishes to relocate with any children of the marriage. The party wanting to relocate with the children will have to make a relocation application to the court if the other party does not consent to the relocation of the children.[1] As with all issues involving children, the court's paramount consideration will be whether relocation is in the best interests of the child.

This parent's wish to relocate is relevant in the court's inquiry only to the extent that it is found that there would be a transference of the relocating parent's insecurity and negative feelings onto the child.[2] Other significant considerations will include the child's loss of relationship with the parent who is left behind. This consideration in particular will not be outweighed by the reasonableness of the relocating parent's wishes.[3]

Finally, when one party chooses to relocate abroad, issues as regards the enforcement of financial orders, including maintenance orders abroad, will have to be explored with foreign counsel.

Barbara Mills

Mills: When a family with international links breaks down, this can increase the complexity of the legal proceedings arising from the separation. Where the couple have connections to more than one country, this may create a dispute over the appropriate jurisdiction in which to issue divorce or child arrangements proceedings. An applicant must be able to demonstrate a sufficient connection to a country before issuing an application there (i.e. for England and Wales), establishing habitual residence or domicile. It is important that early legal advice is sought where a spouse has a connection to more than one country.

Additionally, where a spouse has international connections, the risk of child abduction increases. Where a spouse wishes to permanently relocate abroad from England and Wales and wishes to take a minor child with them, they must apply to the court for 'leave to remove' the child from the jurisdiction if the other parent does not agree to the move. If a person is named in child arrangements order as the person with whom the child should live, then they may remove the child from the jurisdiction for up to one month without requiring consent of the other parent. Consent is required for a trip of any longer duration or permanent removal.

On an application for leave to remove, the child's welfare will be the court's paramount consideration. As above, the welfare checklist will be applied. Court of Appeal case law confirms that the court must take a holistic approach, engaging in a welfare analysis of each of the options when deciding an application for relocation. Each option must be evaluated individually and then compared against competing options. The presumption of continued parental involvement will apply and the impact on the child's relationship with the 'left behind' parent should form part of the welfare analysis.

1. Section 126(3), Women's Charter
2. BNS v BNT [2015] SGCA 23 at [20]
3. BNS v BNT [2015] SGCA 23 at [25]

Q13. What are the main challenges surrounding the breakdown of international families and what considerations will be made when one or both spouses wish to relocate abroad?

Dena A. Kleeman

Kleeman: This is a very challenging area of family law. The United States is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, and we have an interstate compact, the Uniform Child Custody Jurisdiction and Enforcement Act, that contains custody and visitation enforcement provisions that govern not only across our state lines, but internationally. The goal is to honour the child custody orders of foreign nations, so long as they are obtained with 'due process' and are not in violation of basic human rights (i.e. against our public policy). The U.S. Department of State, as well as private attorneys, seek to enforce these international child custody orders.

But, of course, the decisions start with a court having jurisdiction making an order for child custody and visitation consistent with the best interests of the child involved. This includes permitting a child to move with a parent abroad, if that is determined to be in the child's best interests; but putting in place visitation orders for the "left behind" parent. Various techniques have been used in California to assure compliance, including the posting of bonds, ordering "mirror" registration of the custody orders in the foreign country to which the child is moving, and charging the costs of travel for visitation to the moving parent.

Q14. Has the recent increased use of technology in the legal industry helped to expedite proceedings or alleviate the strain on the legal system for family law matters?

Natasha Kurth

Kurth: Following the Covid-19 pandemic, the family law world changed almost overnight. Very quickly, lawyers were required to file bundles and other documents for court hearings electronically. Similarly, since the pandemic, papers are only sent to opponents or Counsel in hard copy on rare occasion. This is much more efficient and environmentally friendly.

Over recent years, the Court has introduced an online service for lodging applications and managing cases. At its best, this service can function much more efficiently (for example, applications for final orders of divorce are normally processed in a matter of minutes). However, at its worst, practitioners spend months trying to process certain documents. As proceedings become digitised, practitioners also have to be very careful to avoid mistakes, as was shown recently in a case which saw a law firm accidentally apply for a final order of divorce for the wrong client. The firm's application to set aside this order due to clerical error was rejected by the Court.

Technology is undoubtedly a positive force which has improved the efficiency of proceedings. However, with the introduction of new processes and systems, there are inevitable teething problems which must be ironed out along the way.

Shu Mei

Mei: Since the Covid pandemic, most hearings for family law matters have been conducted on Zoom. This has allowed the court to remain open during the pandemic to avoid a significant backlog of cases. Ever since then, the majority of court hearings have carried on via Zoom.

Q14. Has the recent increased use of technology in the legal industry helped to expedite proceedings or alleviate the strain on the legal system for family law matters?

Staci Balbirer

Balbirer: My opinion is that remote court proceedings have absolutely benefited the practice of law. Clients who would otherwise have to take an entire day off work can attend a court appearance sitting at their desk at work or at home. Clients are now able to be more involved and participate more in their own cases, which is important.

For attorneys, we can appear on cases in multiple jurisdictions in one day and our court time is now more time efficient, which ultimately means more cost efficient for the client. That being said, there are situations that lend themselves to appearing in person. For instance, a trial or evidentiary hearing with numerous documents or witness testimony. I still prefer face-to-face contact when I'm asking questions, especially on cross examination.

Amanda Catto

Catto: South Africa's legal system is still largely paper-based. However, since dealing with the Covid pandemic, there has been a concerted effort to utilise technology to expedite proceedings and alleviate the strain, though this is across all litigation and not necessarily focused on family law matters.

By way of example, some proceedings and/or witness testimonies can be done virtually, which limits the potential costs involved in travelling to Court. Another important feature is 'Case-Lines' which is an online serving and filing system that removes the need for physical attendance at Court to serve and file documents. However, this is still in the trial stages and is being tested out only in certain provinces.

Dena A. Kleeman

Kleeman: The use of technology has, in many instances, expedited the appearances of witnesses to facilitate litigation in the family law courts. As litigators, we have had to learn to conduct "remote trials" where witnesses testify from remote locations. Due to Covid, this was implemented quickly, although at great expense to the courts.

The strain on our family courts is still there, however, and ever-growing. Many litigants are turning to private judges (which are paid for by the parties), instead of the public court system, to expedite decision-making in their cases. Of course, there is controversy over the use of AI for legal research and briefing.

Q15. What are the pros and cons to resolving divorce cases through alternative means such as mediation or dispute resolution?

Natasha Kurth

Kurth: It is important to consider ADR with my clients from the very start. In fact, it is a requirement for clients in most cases to attend a Mediation and Information and Assessment Meeting, (a "MIAM") prior to issuing financial remedy proceedings on divorce. At that meeting, the mediator will discuss with the client (and potentially their partner) options available for resolution of these matters outside of court.

In the right cases, mediation provides an excellent option for exploring whether a financial agreement can be reached, without the additional costs and delays inevitable once court proceedings have been instigated. It may not be suitable in situations where communication has broken down between the parties, where there is a lack of trust and/or an unequal power balance. It will not be a suitable option if there has been abuse in the relationship.

The two most popular forms of ADR I see in financial remedy proceedings, are arbitration and private Financial Dispute Resolution (FDRs).

Q15. What are the pros and cons to resolving divorce cases through alternative means such as mediation or dispute resolution?

Natasha Kurth

Private FDRs can be organised outside of, or within Court proceedings. If proceedings have already been issued, the Court will endorse the parties bypassing the system (and the Court listed FDR) to deal with this hearing on a private basis.

An FDR hearing is intended to provide an opportunity for the parties to negotiate a financial settlement with the impartial assistance of a Judge. As the hearing is without prejudice, it allows the parties to make compromises, that cannot be used against them at a later date, if matters do not settle.

The parties are able to choose the date and location of the private FDR hearing and the Judge who will hear the matter (normally a practising barrister or retired Judge, who is financial specialist). It also offers privacy. The main downside is that the parties will have to pay for the Judge, the cost usually between £3,000-7,500 plus VAT. That said, with increasing delays in the court system, accelerating the process can assist in achieving an earlier resolution of matters and reducing overall costs for the parties.

Parties can appoint an arbitrator (again, normally a practising barrister or retired Judge, who is financial specialist) to make a decision about all or some aspects of the financial matters. Whilst it is possible to appeal an arbitrator's award, the decision will almost always be binding.

This process has all the same advantages of a private FDR. Again, the arbitrator can be chosen by the parties and will have much more time available to read the papers, in comparison with a Judge in Court. In agreeing arbitration, the parties obtain comfort that an outcome is effectively guaranteed. Again, the parties will have to pay for the arbitrator, but may achieve a cost saving by accelerating the process.

Esther Susin Carrasco

Carrasco: Mediation as a method of divorce resolution is established in Article 233-6 of the Catalan Civil Code. It is stated that at any stage of the matrimonial proceeding, spouses may request to submit their disagreements to mediation, or alternatively, the judge may refer them to an informational session on mediation.

In common civil legislation, at a state level, there is no specific regulation on family mediation, but as a civil matter, it is included in Law 5/12 of 6 July on mediation in civil and commercial matters. In addition, Article 770.7 of the Spanish Civil Prosecution Act establishes that the parties by mutual agreement may request the suspension of the process to submit to mediation.

Pros of resolving divorce cases through mediation:

- It is a process that allows both spouses to participate, facilitating their communication. This enables each party to present their claims, determine their agreements, listen to the other party's, and exchange positions. It promotes dialogue and helps reach consensual solutions.
- It is an impartial and confidential process. The mediator is a neutral third party who will not take sides with either of the spouses.
- It has lower economic and emotional costs. If the mediation process ends with an agreement, it will allow the parties to preserve family relationships and avoid going to court.
- It speeds up the procedure and the solution. Mediation helps expedite the process since there will be a maximum number of scheduled sessions, allowing parties to reach an agreement in weeks.

Q15. What are the pros and cons to resolving divorce cases through alternative means such as mediation or dispute resolution?

Esther Susin Carrasco

Cons of resolving divorce cases through mediation:

- Despite the advantages it offers, mediation is not always the solution for all types of divorce. Mediation works based on the free will of the parties involved. This means that there is the possibility of disappointment if one party fails to commit. There can be occasions where one party may show a less proactive attitude than the other, which can lead to discouragement or frustration in the other party.
- Family mediation is not advisable for cases where one member of the couple does not exercise control over their will and, therefore, is incapable of assuming acquired commitments or even of acquiring any commitment.
- Family mediation is also not advisable in cases where there is domestic violence. In these cases, decisions will inevitably be conditioned by the power imbalance that exists between the couple, leading to the fear of the other influencing agreements, with the consequent risk to the family members who are victims of violence.
- Finally, it would also be necessary to consider the legal weakness of mediation in the Spanish legal system and in the regional ones ("Comunidades autónomas").

Amanda Catto

Catto: Alternative Dispute Resolution is an important mechanism to limit the costs and time consequent upon litigating in Court. However, for it to be successful, parties need to be willing to meaningfully engage and provide full and frank financial disclosure so that a fair outcome can be reached. In South Africa, only mediation is allowed in family law matters, which may not be referred to arbitration.

A few of the advantages of ADR in divorce proceedings are:

- ADR is more time efficient than litigation and allows for a speedy resolution without needing to abide by civil procedure requirements.
- ADR more often allows for a more flexible and personalised solution tailored towards the parties' situation than a court order.
- ADR is generally more satisfying as parties may directly participate in the working out of their settlement.
- ADR is most efficient and may be done without the presence of legal representation.
- ADR is generally more affordable than litigation.
- ADR is less combative than litigation, which allows for the preservation of relationships and promotes collaboration which is necessary where there are children involved.

A few of the disadvantages of ADR in divorce proceedings are:

- ADR is not suitable for all cases, particularly those where there is a power imbalance, domestic violence, or complex financial disputes.
- ADR (in divorce matters) is non-binding in nature unless a settlement agreement has been made an order of court.
- ADR is dependent on the co-operation of the parties. If one party is not willing to co-operate, then ADR will ultimately fail.

It is hoped that the impetus to allow arbitration in family law disputes will imminently result in a change to South African law in this regard. It is desirable that qualified arbitrators with family law experience are allowed to determine disputes in a forum more appropriate to families than a court.

Q15. What are the pros and cons to resolving divorce cases through alternative means such as mediation or dispute resolution?

Shu Mei

Mei: An advantage to resolving divorce cases through mediation is that it encourages parties to come to an amicable resolution, which can be recorded as an order of court, and hence by enforced. This is especially beneficial for parties with children because it reduces the level of acrimony between parties. It is important for parties remain on good terms and work together to co-parent their children after divorce. However, mediation may not be suitable for cases which involve family violence, parental alienation, and child abduction.

Barbara Mills

Mills: There are a now a wide variety of Non-Court Dispute Routes (NCDR) for families in England and Wales, including mediation, arbitration, collaborative law and Early Neutral Evaluation. Taken together, these processes have the following advantages and disadvantages.

Pros:

- Flexibility and choice: NCDR provides separating spouses with a greater degree of flexibility and control than they would have via the traditional court process. The parties can choose a method of NCDR that suits them. Generally, arbitration and mediation processes, in particular, can be tailored in an entirely bespoke way to suit the parties. They can choose to proceed at a speed and at a venue that suits them, narrow the issues, choose who hears their dispute and will have a degree of control over what the process looks like (i.e. remote, in person, paper-based etc.).
- Less costly: Opting for NCDR reduces many of the financial risks and uncertainties that come with court proceedings. Parties will be able to avoid court entirely and resolve matters more quickly, resulting in less costs.
- Reduces tension: NCDR methods are collaborative processes. This increases the chances of parties moving forward with a positive relationship post-separation, which is particularly important when they will be co-parenting children. NCDR processes encourage parties to work together, as contrasted with the adversarial nature of court proceedings that can increase tensions.

Cons:

- Co-operation: NCDR will only be beneficial where both parties commit fully to the process and seek to resolve matters in a collaborative way. Where one or both parties are reluctant to engage with the process, it is unlikely that NCDR will be successful. The introduction of the new rules about engaging in NCDR or face the wrath of the court will assist with this.
- Suitability: NCDR is not suitable for all family law matters. Where there are issues of domestic abuse or child safeguarding, then there may be no choice but to resolve matters through the traditional court process. Similarly, where there is a power imbalance between spouses, NCDR may not be appropriate given that it relies largely on collaboration.
- Enforceability: Agreements or determinations made following NCDR are not automatically enforceable in the same way as court orders are. The parties will have to apply to the court to have the result reflected in a court order to make the outcome enforceable and binding.

Q15. What are the pros and cons to resolving divorce cases through alternative means such as mediation or dispute resolution?

Dena A. Kleeman

Kleeman: Mediation process: In mediation, the goal is to find an agreement that is satisfactory to both parties. Cooperation and collaboration is essential, but this does not mean that the parties have to agree on everything initially.

Benefits of mediation: There are many advantages to mediation. Some of the top benefits include flexibility, faster outcome, reduced costs, greater control, privacy, and preservation of relationship.

Flexibility: Mediation is designed to be efficient and flexible. Instead of waiting for the assigned court date, couples schedule their sessions to fit their schedule and needs. Mediation appointments with our mediation lawyers can be conducted virtually or in-person, which also allows for greater flexibility.

Faster outcome: Want your divorce to drag on? Fight over everything. Want to speed up your divorce? Compromise. Mediation allows couples to set the pace in their divorce instead of waiting on the court.

Reduced costs: In mediation, a couple hires a third-party mediator to help work out the details of the divorce which is typically reviewed by a consulting attorney prior to signing an agreement. Even if a couple cannot settle on every issue, mediation can still be financially beneficial. Instead of litigating every aspect of the divorce, mediation allows a couple to settle on the issues they can compromise on and then litigate the rest.

Greater control: When a couple resolves their divorce in court, a judge decides the nuances of their settlement. When a couple mediates, they are able to maintain control of their settlement and walk away with an agreement that works for both parties.

Privacy: When an individual goes to court, their divorce proceedings are public record (unless the judge orders the records to be sealed). In meditation, divorce proceedings are confidential and private.

Preservation of relationships: When children are involved in a divorce, maintaining a civil relationship with the other parent is optimal. Mediation allows parties to reach an agreement that works for each individual and walk away with a working relationship.

But for mediation to be effective, each party must be able to speak freely and advocate for themselves (with the help of the mediator). If abuse is a part of the picture, mediation is not the right fit.

Mediation is a possible option at every stage of the divorce, even if you are in the midst of litigation.

Another potential dispute resolution method for divorce is collaborative divorce, in which attorneys commit to negotiating cases to settlement, only, and will not serve as the litigating attorney if the collaboration method does not result in settlement. The concept behind collaborative divorce is to keep participants focused on options for resolution, rather than fomenting and further conflict.

CorporateLiveWire