

## 2. SEPARATION – YOUR OPTIONS

### 1. Divorce

You can divorce only

- after 1 year of marriage
- if the relationship has irretrievably broken down,
- and you can prove one of five facts:-
  - a) Adultery (of the other party)
  - b) Unreasonable behaviour (of the other party)
  - c) 2 years' desertion (by the other party)
  - d) 2 years' separation (if your spouse consents to a divorce)
  - e) 5 years' separation (if your spouse does not consent).

Even if the marriage has clearly broken down – unless one of these five facts is proved to the satisfaction of the court, you will not be granted your divorce.

In the course of divorce proceedings, the Court can make Court Orders finalising all financial and child related matters.

**The Child Support Agency (CSA) generally assumes responsibility for child maintenance.**

For more information concerning divorce, please refer to Fact Sheet 3 "Divorce".

### 2. Separation

If you cannot satisfactorily prove one of these above five facts, or if you do not wish to divorce, as an alternative you could separate from your spouse.

There are broadly four routes that you can take:-

- a) A simply, physical separation ("actual separation")
- b) Actual separation plus **all** financial matters and/or child related matters sorted out by a Consent Agreement in a Deed of Separation.

Whilst the terms of the Deed are not binding – indeed it may well lapse if you later reconcile – it is the next best thing to a Court Order and certainly better than nothing – it certainly shows what your intent was. At least, the Deed might prove morally binding on both of you, and at most, the terms agreed might be adopted by the Court in due course when financial arrangements are being considered in divorce or judicial separation proceedings.

- c) Actual separation plus **some** financial matters and/or all child related matters sorted out by Court Orders.

If you and your spouse cannot agree on arrangements for sorting financial matters and/or child related matters upon separation, then the Court can assist to some degree.

Unless there are proceedings relating to the marriage (divorce or judicial separation) the Court cannot make **final** financial orders. The court also has no power to make orders in respect of the former matrimonial home or other property and assets. However a Court can order a lump sum for a child's immediate capital needs and also a spouse maintenance order, if you are not adequately maintained by your spouse (or if he or she has deserted you or behaved unreasonably toward you), to meet your income needs.

A Court can make orders concerning children. For further information please refer to sheet A5 'contact and residence'

- d) Judicial separation plus **all** financial matters and/or child related matters sorted out by Court Orders.

If your spouse is not prepared to agree financial matters and/or child related matters, in default of agreement, orders can be made by the County Court in judicial separation proceedings.

Judicial separation proceedings can be taken within the first year of marriage. A party **still** has to prove one of the five facts referred to above under the heading 'Divorce', but the marriage need not have broken down irretrievably.

Judicial separation is, step by step, similar to a divorce, save that at the conclusion; you are still husband and wife. Judicial separation merely relieves you formally of any obligation to live together and allows the Court to make final Orders concerning financial matters and the children.

***Disclaimer: The material contained in this fact sheet is for general guidance only. It is specific to the law of England and Wales, and represents a brief outline of the law current as at the date of the fact sheet. It is not intended to constitute, or to be a substitute for, legal advice specific to your case. Dunn and Baker will be responsible only for advice specifically given to you.***

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