Managing Family Law Disputes

Three Unique Perspectives

How to achieve early cost-effective resolution

Avoid Bitter Litigation

Preserve Your Wealth and Wellbeing

An E-Book co-written by Christopher Whitelaw, Principal of the Commercial Disputes Management Centre, Sydney, Mimi Fong, Master NLP Coach, Sydney and Dianna Jacobsen, Principal of Shine at Business, Melbourne.

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Introduction

Anyone who chooses to look into this will find plenty of evidence that there are very few winners, plenty of losers and lots of collateral damage when separated couples decide to take their property division disputes to Court.

Here is a *quick checklist* of the dark side of family law disputes that end up going to court –

- The court process polarises the parties rather than bring them closer together;
- The court process ensures that the former partners become distrusted enemies who can only communicate through their lawyers, rather than be mature friends who can co-exist, co-operate and consult with each other on important matters such as the shared parenting of their children;
- Litigation breeds anger, distrust, suspicion, resentment and frustration;
- The legal process combined with spouse polarisation guarantees huge legal bills, and many disputes will see each party run up a legal bill of a $100,000 or more;
- These massive legal costs diminish the net estate able to be divided at the end of the stoush, and everyone, except the lawyers, are worse off;
- It now takes 2 years or more, from the date that a party files an Application for Final Orders in the Court, to get to a hearing of the dispute;
- During this time each party's share of the net equity is locked up and cannot be put to any constructive use (e.g. via investments) to increase each party's net wealth and improve future prospects including for retirement needs;
- The litigation mentality and legal process forces parties to focus on the past and on a fixed asset pie to be divided between them at some point in the future to meet their needs; as opposed to a different model (discussed below) that assists them to stand back from the fray, gain a more objective and commercial view of things (e.g. by considering what future benefits and opportunities are available to each if they can work out an early settlement and avoid depleting their net assets by incurring large legal fees) and make a mutual commitment not to litigate and seek an early resolution of their dispute on terms that are fair to each and that will allow each party to re-start and re-build as quickly as possible.
- The litigation model breeds fear, resentment and a competitive power struggle between the two sides that serves only to deepen and prolong the dispute and escalate legal costs.

Litigation is supposed to be the last resort, not the first. But too many family property disputes are being litigated and at great personal and financial cost to both parties. Why?

The Family Law Rules provides clear guidelines to promote early property dispute resolution via lawyer assisted negotiations, mediation and/or conciliation or arbitration. The aim and purpose of these guidelines is to avoid or shorten litigation,

spare parties the stress and costs of protracted litigation and to reduce the burden on the court system and ultimately the taxpayer. But they cannot be enforced if one or both parties choose to ignore them. Why is this so? What's the point of providing a full set of guidelines for early and cheap dispute resolution if they can simply be ignored without penalty? This e-book will answer this question.

Family Law Legal Practitioners control the litigation experience for their respective clients in a property dispute. **What are the chief factors that will determine whether lawyers will achieve early settlement for their clients and minimise their financial and personal stress or engage in protracted and expensive litigation?** This e-book will address this question.

In its recent report concerning civil dispute resolution in the federal justice system sent to the Federal Government, the Productivity Commission singled out family law property disputes for special mention.

It pointed out the following –

- That the Court's power to award costs against a party and/or a party's lawyer in appropriate circumstances where there is evidence that no genuine attempt was made to try and shorten the dispute and avoid the burden and cost of litigation should be more frequently exercised as a sanction to deter such conduct; and that the Court should exert more hands-on supervision of cases to try and promote early settlement.

  Currently, the Court's own Rules of practice and procedure provides no mechanism for one party to require a recalcitrant party who is wilfully ignoring the early settlement guidelines, and thereby unnecessarily driving up costs, to adhere to those guidelines. The most that the aggrieved party can do is to ensure that he/she has made full and frank disclosure of all relevant personal and financial information required to be disclosed by the family court act and rules and followed that up with making an open offer of settlement to the other party. By taking these steps, a party will enhance his or her chance of getting the court to order the recalcitrant party that ignored the early settlement guidelines, and made no genuine attempt to settle early, to pay all or part of his/her legal costs when the litigation is finalised via a court judgement.

- That the civil justice system was too slow, too expensive and too adversarial. It encouraged the government to find better ways to promote dispute resolution outside of the courts.

- That the adversarial behaviour of parties and their lawyers hindered the resolution of disputes and even exacerbated them. It recommended changes to the rules governing the conduct of parties and lawyers, including the way costs are awarded, to improve incentives to cooperate and resolve dispute early and without litigation or with less litigation.

- That governments should further explore the use of targeted pre-action protocols for types of disputes (including family property disputes), which could benefit from narrowing the issues and from alternative dispute resolution strategies. This should be done in combination with strong judicial oversight of compliance with pre-action requirements and guidelines.

How can these Commission comments and recommendations be applied to family property disputes so that more disputes are settled early, without litigation and without huge legal costs eating up the pie?

Christopher Whitelaw will address these issues in this article. He will cover the 7 chief factors that will determine whether a family law property dispute will resolve early and conserve most of the available divisible equity, or whether it will spiral into expensive and stressful litigation with a large chunk of the net equity being consumed by legal costs.

Christopher's perspective is based on his experience both as a lawyer (barrister) and on his experience as a mediator specialising in managing and resolving commercial disputes. A family law property dispute is essentially a "commercial dispute" because it is a dispute about money and assets.

Mimi Fong, a former corporate lawyer, is a Master NLP Practitioner and Coach who works with people on the emotional level and helps them to navigate major changes in their lives. She teaches her clients how adverse and challenging circumstances can be converted into opportunities for personal growth. Many of her clients are business owners, entrepreneurs and professionals.

Mimi Fong will provide 10 key strategies to assist in managing the emotional fallout which inevitably comes with a relationship break up and division of assets and she will also address how to reach a level of emotional and self-awareness and understanding that will allow a potentially sensitive situation to be approached with a clear, non-judgmental perspective, increasing the chances of achieving a mutually satisfactory outcome.

Dianna Jacobsen is the founder and principal of Shine at Business in Melbourne and has been supporting small business for over 25 years. She assists them across a wide range of needs including financial strategy, business development and management, business dissolution, life balance, personal empowerment, and commercial, property and family law matters.

Dianna Jacobsen will focus on and address pertinent questions such as: Who really wins in the fight over money? How can there possibly be a WIN-WIN outcome? Can we salvage our business despite this upheaval? She will address the relevant aspects one by one to guide you, the reader, through the matters which will need to be considered in a family, property or business dissolution.

Dianna and Mimi have teamed up with Christopher in recent times to provide **a unique holistic service** to help manage and resolve property division disputes between separated spouses that used to be in business together. They had been partners in life and partners in business. In some cases they had been working together to build up their personal and business assets over many years. They elect to use this service because they realise that the litigation alternative could be hugely damaging and prejudicial to them personally, to their children, to their business and to their hard won success and wealth.

Are these people immune to hurt feelings, anger, resentment and distrust? Not at all. The difference is that they had a consciousness or an awareness that made them want to seek out a better alternative to their rushing off to engage lawyers to wage war against each other in the Courts. Instead, they wanted and chose to find experts who had the skills and ability to help them sort out their separation on all fronts, including division of property assets, in a way that would not destroy and diminish what they had worked so hard to build and accumulate over the years. They wanted to engage experts who could help them work out a fair and equitable deal as quickly as possible; one that would allow each of them to re-start their lives with dignity and adequate financial means.

The purpose of this e-book is to offer three intertwining perspectives on the issue of spousal separation and the resolution of property disputes without resort to litigation.

The purpose of this e-book to highlight how such disputes can be effectively and efficiently managed and resolved without lengthy, painful and costly litigation and without aggravating and deepening the personal fall out and emotional hurt between the parties and its consequences for any children of the relationship.

Chapter 1: Christopher Whitelaw's Perspective

A commercial approach to managing and resolving such disputes involves educating both parties about the factors and principles contained in the Family Law Act relating to property disputes and intertwining that with other factors that are part of "commercial good sense". The goal is to achieve a commercially fair and sensible outcome as quickly as possible.

Separated couples can start working on settling their property division prior to obtaining a divorce, but are required to file any Application for Orders in the Court within one year of obtaining a divorce.

This is important to note as many separated couples with children will not file for a divorce until a year or more has gone by since they separated. The immediate issues they face will be shared parenting arrangements for their children and how to split up their assets.

What happens in the first 3-6 months after the date of separation will often be determinative of whether the parties will reach an early out of court resolution at minimal financial cost, and without a total falling out between themselves; or whether they adopt an aggressive litigious stance and take their dispute to court.

It is important to be aware that pretty soon after a formal separation, which usually involves one party departing the former matrimonial home, one or both of the parties will start to shift his or her emotional gears in a way that will precipitate friction and discord between them. This is because it is often the case that the "issues", "troubles", "differences" and "disagreements" that have led to the separation have been brewing and deepening over the years, but up until the actual decision to separate have in various ways been kept under wraps, contained, explained or buried as parties continue to struggle to keep the relationship afloat, often "for the sake of the children" or to preserve joint wealth and financial stability.

Once formal separation occurs, the underlying issues bubble to the surface and may manifest as anger, resentment, blame and so on. This influences how one party now "feels" about the other, and this is reflected in his or her words and actions. Before very long these words and actions breed confrontation and animosity with other party and the can quickly cause the dispute to worsen and escalate. Very soon the parties are arguing over everything – how to share their time and parenting of their children, share responsibilities and how to divide up their property and assets. Once the parties lose respect for each other, and start to treat each other as the enemy, they are on the slippery slope that inevitably leads them on to the dark path of litigation.

Therefore time is of the essence. Time is of the essence to make the right moves and take the right actions and decisions in order to avoid the evitable polarisation

and enmity that will cause each party to rush into the arms of willing litigation lawyers who specialise in these disputes. Once this occurs, the frequent outcome is full on war that leads to one party filing a case in court.

Right from the beginning, and all the way to the end, there is a clear choice of direction open to each party. That choice is to seek appropriate help to resolve the dispute out of court using self-help and assisted dispute resolution services, or to resort to the tools and weapons of litigation.

What will influence a party to go one-way or the other?

Based on my experience over the last 20 years I would suggest there are 7 chief factors –

1) Mental attitude and emotional maturity;
2) Personal character, beliefs and values;
3) Cultural influences;
4) Awareness and consciousness about the alternatives to litigation;
5) Where each party first goes to seek advice and how much influence and persuasion each of those persons has over the party's thinking;
6) The "lawyer factor";
7) The "Legal System factor" - The court system used to manage the dispute and the degree of effective judicial oversight and intervention (or lack of it).

1.1. Mental Attitude & Emotional Maturity

None of us are the same. Some of us have a more positive, optimistic and constructive mental attitude, and some of us have a more negative, pessimistic, combative, contrarian and so on attitudes. Some of people have greater emotional maturity that permits them to stand back and gain a more objective view of things rather than allow themselves to be consumed with hate, anger, resentment and a desire to punish and blame.

The emotionally mature spouse is eventually able to accept the change that has occurred and move into a space that is amenable to seeking appropriate advice and guidance about how to settle and resolve any disputes early, via cooperative assisted negotiation, so as minimise trauma and stress to all concerned and to avoid expensive litigation that has the potential to seriously diminish the available pie for division.

Without a doubt, the more positive and optimistic attitude will lead a person to consider and be open to ways and opportunities to sort things out, on all fronts, with the former spouse regardless of what led up to the separation.

Such a person is more likely to seek out a person with the right skill set and experience to help the parties to work out an out of court agreement covering shared parenting issues and property/asset division.

When both parties share a similar positive attitude they can make the decision jointly to seek out this assistance. They are clear about their reasons for doing so. Usually, the stated reasons include 1) being mature and sensible, 2) being responsible to their children, 3) being fair to each other and 4) wanting to avoid unnecessary legal costs that will deplete their mutual financial resources.

Those with less emotional maturity and who have a more negative and pessimistic attitude are more likely to buy into feelings of distrust, blame, anger and resentment that will see him or her move fairly quickly to seek out an aggressive litigation lawyer to manage things for them. When instructing that lawyer, the person with the negative attitude will very likely instruct that lawyer in a way that seeks to paint the worst possible picture of the ex-spouse and requests the lawyer to make use of all possible litigation tactics and manoeuvres during the case that will make early settlement prospects extremely remote unless the other party is willing to settle on terms that substantially favour the party with the negative make up.

Litigation tactics embrace such things as treating the opposing spouse as some sort of culprit that cannot be trusted so that the lawyer may pursue him or her with multiple demands and subpoenas to disclose every bit of information and every document conceivable in a hunt for full financial and asset disclosure, and seeking every possible restraint and limitation on the other spouse's ability to enjoy full

shared parenting rights and or apply any spare funds or equity to some constructive use that will help improve their net wealth position.

Such aggressive tactics work to alienate and antagonise the other party, and naturally this leads to further escalation and prolongation of the dispute with commensurate escalation of legal fees all round.

Those who possess more mental, emotional and spiritual maturity are generally more aware and conscious and are able to gain clearer vision. When life delivers challenges and painful experiences, such as a relationship break up, they realise that provides an opportunity to learn and grow. Instead of falling into the abyss of self-pity that breeds negative feelings such as anger and resentment, they look for ways to accept and transform. Believe it or not, such people can even find a way to still feel grateful for life's blessings even in the midst of such a crisis. They move their focus to asking helpful and constructive questions such as, "What can I learn from this?" and "What can I do to regain my balance and move on from here?" They are **future focused**, not stuck in the past.

The more problematic spouse will be one that falls into a state of cynicism, anger and bitterness. This leads to an unhelpful attitude that keeps them negatively focused and which engenders a feeling of entitlement. In their mind they are now at war and they are fighting for the biggest share of a finite and diminishing pie.

The contrast between these two kinds of people is huge and often hard to reconcile. Lawyers who are just trained in legal skills may have either no interest or no ability to deal with this and don't even attempt to. If the spouses want to fight it out, let them. If one wants to fight it out, and the other doesn't – well stiff cheddar, fight or perish, because lawyers act on their client's instructions and if the client insists on fighting to the death, regardless of legal advice, then the lawyer must implement those instructions.

1.2. Personal character, beliefs and values

Differences in personality, character, values and beliefs are often what lead to the breakdown of a marriage and ultimately a divorce. We call it "incompatibility". These same differences come into play post separation. Some are inclined to be more reasonable, fair and judicious than others. Some are inclined to be more forgiving and empathetic. Some are willing, by nature, to seriously compromise what his or her lawyer might advise is a legal right or entitlement under the Family Law Act if the matter went to a final Court hearing simply to be magnanimous and show a caring attitude towards the former spouse.

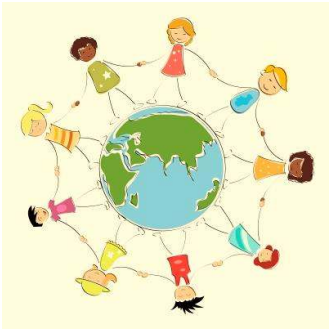
On the other hand, some separated spouses are by nature prone to blame and seek retribution as compensation for their hurt, embarrassment and belief that it is all the fault of the other party. They are not open to reason. They will not countenance compromise to achieve an early settlement of the dispute, no matter how commercially sensible the deal is. They will make demands and threats rather than negotiate. They will adopt rules of engagement that are combative and aggressive and treat the ex spouse as the enemy. They will often be impervious to the pleas of their own children to sort things out and cut an early deal that will allow both parents to end the acrimony with dignity and on fair financial terms. Clearly, this makes early resolution nearly impossible to achieve.

Hard-wired beliefs about "who is to blame", "what I should get" and "what my ex should pay" make it very hard for earnest lawyers who want to promote early negotiation and early settlement to be heard by their client. Such clients are prone to sack their lawyer if he/she perceives the lawyer is not willing to do their bidding. Some lawyers will be happy to let such difficult clients go, but others will dance to their tune as long as they can afford to keep paying the legal bills.

When your values are clear to you, making decisions becomes easier.

Roy E Disney

1.3. Cultural Influences



We have many inter-cultural marriages these days. In the early days of the relationship, and even before the parties decide to marry or live together in some permanent way, the cultural differences may not have become fully apparent. Cultural conditioning based on traditions and customs can be deeply engrained. They convert into a set of deeply held beliefs about many things, for instance cleanliness, manners, respectful language, relationship with parents, how to raise and care for children, education, study and so on.

These culturally conditioned beliefs can be like “sleepers” waiting to be activated throughout the course of the relationship.

They can destroy a marriage if the parties are never able to properly reconcile their differences.

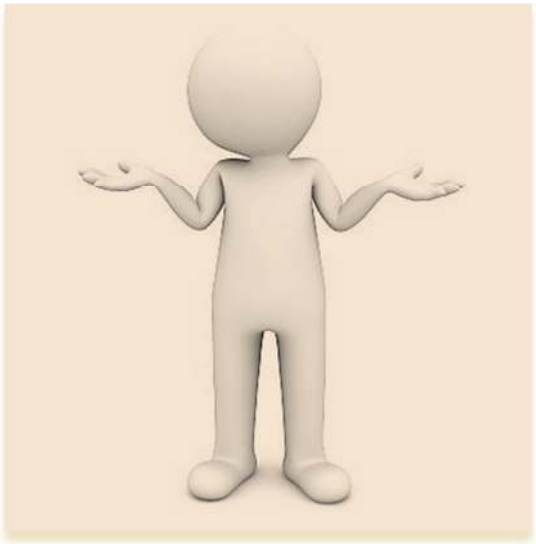
They can have a huge impact on how each party deals with separation and divorce. People from some cultures may experience a sense of loss of face and cultural embarrassment about the failed marriage. Even though Australia is a “no fault” divorce country, some cultures promote a strong need to identify fault and attribute blame. Any party affected in this way will find it very difficult to really hear what a lawyer is saying to him or her about early settlement and adopt a commercial approach.

In the worst case scenario, some cultural beliefs demand that the matter be decided by a court no matter what legal advice is received about the advantages of negotiating an out of court settlement.

1.4. Awareness of the alternatives to Litigation

Lack of awareness means ignorance. You are probably familiar with the legal maxim "Ignorance of the law is no excuse". If you happen to commit a crime, pleading ignorance of the law provides no defence. In the context of family law, ignorance of the alternatives to litigation and how to access and benefit from those alternatives can be very costly both on personal and financial level.

Gaining the right level of awareness, that can really make a difference, will often turn on two factors – firstly, a party's genuine desire to find a viable alternative; and secondly who that party goes to for first advice.



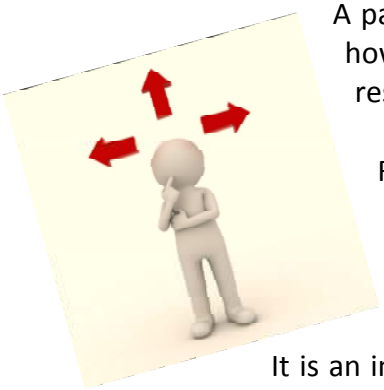
1.5. The importance of First Advice

Make no mistake about it; gaining awareness is a personal choice. You know the saying, "You can lead a horse to water, but you cannot make it drink." Some people have an agenda and/or personal disposition to prefer litigation, whether consciously or unconsciously. It is well known by those who study the mind and emotions that people tend to look for evidence to back up a belief. If one party has a belief that the other party has done them wrong, has ruined his/her life, has failed him/her and should therefore be blamed and punished, that party will, knowingly or unknowingly, be constantly seeking proof and validation of that belief.

People with an open or hidden agenda to litigate will tend to seek first advice from people who will tend to support the litigious mentality rather than steer them away from it.

Remember this too – not all lawyers are the same. Some will be very good at giving that first advice, but others won't be. Some may be very skilful at explaining the alternatives and the benefits of early settlement; while some may be shockingly bad at it. Others (and hopefully only a few) may have a personal agenda to move a party into litigation and keep him/her there as long as possible where more legal fees can be generated by keeping the parties polarised and fighting for a bigger slice of the financial pie.

1.6. The Choice of Lawyer Factor



A party's choice of lawyer will often make a huge difference in how quickly a family law property dispute can be managed and resolved.

Regrettably, however, clients often seek out a lawyer that will reflect back to them how they personally feel about the ex-spouse and the dispute and who will validate and support their belief.

It is an interesting phenomenon that a person's choice of pet often reflects and says a lot about that person's inner nature and character. It is even uncanny how much some dogs resemble their owner. Often the aggressive and pugnacious person owns an aggressive and pugnacious dog.

The same applies here. The choice of family law lawyer often strongly reflects the nature and personality of the client.

Lawyers who don't speak the same language as the client will often clash with the client. The client will find that lawyer's advice and approach disagreeable and objectionable. In due course the client will fire that lawyer and seek out another that will more closely align with the client's "type" (personality, character and beliefs). Now there is a good fit. They are meant for each other.

Regrettably, such a lawyer, who chooses to fall into step with the client in this way, and to foster and encourage the client's rage, blame and sense of being a victim etc. is not being the best lawyer. Indeed, they are the worst kind of lawyer and such a lawyer can play a major role in keeping the parties at war and inflating the litigation costs, sometimes considerably.

The best lawyer is the lawyer who knows the law well and who lives and breathes the principles of family law as enshrined in the Family Law Act and in the well-known case law and who can skilfully educate the client right from the start and put them on to the right path. The best lawyers know how to do this without offending and alienating the client. The best lawyers can combine "good legal advice" with a bit of "tough love" to bring the client on board for trying to achieve early settlement on fair and equitable terms.

If both parties' lawyers are "good lawyers" in this sense, the probability of success in early out of court settlement will be very high.

If both parties declare war on each other, and seek out the worst sort of lawyers who will take sides with each and conduct the war for them, then of course they will have their war to the bitter end and the lawyers will fill their coffers with a large slice

of their estate. In such instances, the reality is, as we all know, only the lawyers end up being winners and grinners.

If one party wants war and finds a lawyer who will support that stance, and the other party wants to settle as early as possible on fair terms and avoid protracted and costly litigation and finds a lawyer to support that approach, you can end up with an awkward Mexican stand off. Each lawyer tells the other lawyer what his or her client wants, but they can never breach the divide. One lawyer has instructions from his client to get together early with the other lawyer and work through the issues and close the gaps via sensible negotiation and strike a deal; but the other lawyer has a client who instructs him not to do this. Lawyers are bound by their instructions.

Good lawyers are always able to clearly state their client's position and support any early offer of settlement by reference to specific evidence/facts, financial information and the law. They move quickly to provide an accurate balance sheet of the parties' assets and liabilities, to highlight the financial contributions and resources of each party and to refer to applicable decided cases that back up their client's case for splitting the net property assets in a particular fashion.

Bad lawyers stonewall and simply assert what their client wants to assert. They offer no substantiation for the percentage split of assets they demand. It is simply done on a "take it or keep litigating" basis.

Good lawyers work constructively and cooperatively with the other party's lawyer to find common ground and to identify as quickly as possible what can be agreed on and what cannot be agreed. When they have a list of what is not agreed, then discuss ways and options to resolve those impasses without litigation. You know the old saying, "where there is a will there is a way". It is invariably true.

Bad lawyers spend all their time taking actions that build up opposition and adversity and drive up legal costs.

I hope I am making the point well enough.

Choice of Lawyer is a major factor in determining whether a dispute will settle early and fairly or be hotly litigated.

1.7. The Legal System Factor

Once a dispute is filed in the Family Court (or Family Law Division of the Federal Circuit Court) it becomes subject to the court's case management system to progress it from first directions hearing to final trial.

Currently, due to inadequate government funding of the system, there are not enough judicial officers and other essential personnel to permit filed property dispute cases to be finalised quickly and cost effectively. It may take 2 or more years for the matter to be allocated a final hearing date before a judge.

Once a party files a dispute in Court, it will managed by the Registrars of the Court so that it progresses to a number of directions hearings, to what is called a "Case Conference" and then to a "Conciliation Conference" before it will be placed in a waiting list to get a final hearing date before a judge.

The highly experienced and trained Registrars will do what they can to foster settlement at the Case Conference and then at the Conciliation Conference. These are informal conferences held in the Registrar's own office at the Court. They will allow each party (directly or through a lawyer) to outline his/her case and to state how and why that party believes the net asset pie should be divided up in a particular fashion. After each party has spoken, the Registrars are allowed to give their own guidance to help promote settlement. This guidance is based on many years of solid experience in these types of disputes. They also invariably warn the parties about the cost and risk of litigation.

But here is the catch – only sensible and emotionally mature people listen to the important guidance given by the Registrar at these conferences. The emotionally immature person, filled with anger and hatred, still blaming the other party for all his or her woes, will often be recalcitrant and deaf to the Registrar's guidance and words of wisdom.

It is at this point that the current system fails and lets litigants down. The Registrars can personally witness these events, but can do little about it. A Registrar can witness with his or her own eyes, during these Conferences, that one party is acting in a totally delusional, irrational and irresponsible way, but is not equipped with any power under the Family Law Act or Rules to take pre-emptive action.

The Family Law Act provides extensive criteria to be applied to resolving property disputes and the Family Law Rules provide an extensive set of guidelines on what is expected of parties and their lawyers to try and work cooperatively and sensibly to resolve disputes early and cost effectively via negotiation, by the lawyers meeting early to discuss the issues and try to close the gaps, by arranging early mediation and so on.

But here's the problem – these guidelines are just guidelines and not enforceable. A party can choose to ignore them. A party can instruct his/her lawyer to ignore

them. Parties consumed with anger, who blame the other party, who want retribution to punish the other, or who regardless of any sensible legal advice being received to promote early settlement on sensible commercial terms want to go to trial, can ignore these guidelines with impunity.

The bottom line is that a party who is determined to go to trial no matter what, and who chooses to dismiss and reject sensible offers of settlement coming from the other party, cannot be stopped.

This is a failure of the legal system in this jurisdiction.

In almost all other legal jurisdictions in Australia, strict case management rules require parties to show that their case/defence/response has sufficient merit to be proceeded with. Court Practice and Procedure Rules have "teeth" that permit a lawyer to file early challenges to a case/claim that demonstrably has no merit and is bound to fail.

In all other jurisdictions a party may make an early offer of settlement that shows a true and genuine attempt to resolve the dispute early and thereby avoid continuing and escalating legal costs. They are called Offers of Compromise. To qualify as an offer of compromise the offer made must demonstrate that the party is willing to take less than the proper value of his or her claim to achieve an early end to the dispute.

In all other jurisdictions, if a party makes a genuine early offer of compromise, and other party rejects it, and the party making the offer achieves an outcome at the hearing that is as good as or better than the offer of compromise, the Court will order the other party, who rejected the offer, to pay the full legal costs of the party that made the early offer.

The whole aim and purpose of this law relating to legal costs is to encourage early offers of settlement and to avoid costly litigation. That makes good sense. A serious penalty awaits the party who rejects an early offer that should have been accepted. It acts as a deterrent to those who might choose to conduct frivolous litigation by rejecting fair and just offers of settlement without any factual or legal justification, forcing the other party to maintain the litigation and incur substantial additional legal costs.

In the Family Court this law that applies in all other jurisdictions of the nation <u>does not apply</u>. The standard rule in family law disputes is that each party bear his or her own costs. This is stated in the Family Law Act. The Court is invested with power to order one party to pay the costs or part of the costs of the other, but it is entirely at the court's discretion. It is well known that it is not often that the Family Court orders one party to pay the other party's costs. So the deterrent effect is much weakened. This encourages irresponsible rejection of offers of settlement and what in other jurisdictions might be classified as a weak or hopeless case without any reasonable prospects of success.

This could all be stopped in an instant if Parliament amended the Family Court Act to allow more efficacious judicial intervention, supervision and oversight after the Conciliation Conference, either at the instance of the Registrar or at the instance of one of the parties.

Such conduct would also be deterred if the Act made it clear that judges should award costs if it finds that a party had no reasonable basis (factual and legal) to reject a genuine and reasonable offer of compromise that would have spared a substantial amount of additional legal expense being incurred by the party who made the offer, even if the result of that order to pay costs leaves the party ordered to pay the costs in a much worse off financial position. That is the penalty to be paid for failing to engage in genuine attempts to settle the case and avoid those legal costs.

Having stated this view, I fully understand that the position is more complicated when a party to the proceedings lacks legal representation. Litigants in person now abound in the family law jurisdiction. If a person is unable to afford legal representation and obtain proper, timely and helpful legal advice throughout the course of the litigation, then clearly the task of deciding whether to make a costs order against that person for failing to accept an earlier reasonable offer of settlement will be a more difficult task for the court.

Chapter 2: Mimi Fong's Perspective

So what can you do that is within your own power and control to help achieve an early and cost-effective resolution that is the least painful for all involved? How can you prevent yourself from being sucked into a whirlwind of negative emotions, initiated by you or not?

Our emotions and emotional state influence our physiology, our behaviour and our actions. They can positively support you to achieve the outcomes that you want, or create roadblocks and barriers that escalate the situation and prevent you from moving forward.

When a couple separates and a division of assets are involved, it is not uncommon for both parties to experience anger, distrust, suspicion, resentment, fear and frustration. In fact it is often understandable and you would not be human if you didn't.

Where it becomes unhelpful however is when these emotions become the driving force for one or both parties and add fuel to an already sensitive and potentially volatile situation. One thing leads to another and before you know it, you both end up in a bitter and protracted legal battle, out of pocket and financially and emotionally drained.

A separation/divorce is generally not going to be an enjoyable experience but there are steps and actions that you can take to minimise the emotional and financial fallout, and create an outcome that each of you is satisfied with.

The solution to this lies in your mindset and having a level of emotional and self-awareness and understanding that will allow you to approach the situation with a clear, non-judgmental perspective.

So how is this possible? I will share my 10 key tips.

2.1. Allow yourself to grieve

Whether or not you were the initiator, you are still experiencing a personal loss so it is crucial that you allow yourself the time and space to acknowledge it and grieve.

Be aware that your grief may manifest in different ways and will pass through different stages – anger, denial, guilt (what could I have done differently?), sadness and finally acceptance. This is natural and there is no time limit to the grieving process, as everyone's healing process is different. Being aware of this, acknowledging this, and being gentle with yourself during this time is very important.

For some people, it may help to journal your emotions as they arise and what are the triggers. Apart from helping you to become more aware of your emotions, and helping to identify a possible pattern, it can also be a great form of release.

2.2. Letting go of the past and focusing on the present and future

We all carry with us emotional baggage and past experiences and memories that influence our present and future behaviour and actions. It's what makes us who we are however it doesn't have to define us going forwards.

For many of us, it is far easier to live in the past and carry the hurt we have experienced, as it is familiar to us and what we know, and can also provide a convenient justification for decisions we make and actions we might take that can be less than productive. Crucially though, it can also hold us back and stop us from moving forward, and make us blind to seeing any future opportunities and benefits that are available from working out through this as painlessly as possible to arrive at an early settlement.

Letting go usually involves some form of forgiveness or acceptance – whether it's you, someone else, a situation or even an unknown third party. The irony is that whatever you're holding onto, it's probably hurting or bothering you much more than it does anyone else.

Now this is an important point so listen carefully.

Letting go doesn't mean we condone a situation or behaviour. It's about lightening OUR load. Because when we let go of whatever is bothering us, we set ourselves free and get to reclaim that energy for ourselves.

You don't need to know HOW to let go; you just need to be WILLING. You can't change the past, but you can learn from it and change how you feel going forwards.

And remember – whatever you find it hardest to let go of is probably what you need to let go of the most!

While you may not wish to do anything about these right now, just listing what you need to let go of here will raise your level of awareness and you'll naturally begin to loosen your grip.

So, simply write a list of what you're holding onto, what you are fearful of, what slows you down, what riles you up and anything that gets in the way of you being the best you can be.

Imagine letting go of everything on this list. How does it feel??

2.3. Secondary gain

Secondary gain is the benefit(s) a person gets from not resolving a problem. It can be something that the person is not conscious of doing e.g. being not consciously or intentionally manipulative.

Understanding if secondary gain is at play will not only benefit the person who is holding on to it, but it will allow those around that person who might be affected by it to also understand what is happening. This is the first critical step to forming strategies to then deal with it and look at having those needs met elsewhere.

So after you have written your list of what you need to let go of, write next to each of these how you benefit by holding on.

If you're struggling with identifying a benefit (there must be something or you wouldn't be holding on to it), ask yourself, "What do I gain by keeping hold of this?" Perhaps by holding on to resentments, fear, anger, hurt, you don't need to accept your part in the situation, it provides you with a good excuse not to do something or take action, it stops you from feeling how hurt you really were, or maybe you get to stay in 'the right' or avoid dealing with someone or doing something.

Finally, ask yourself this – does the benefit of *letting go* outweigh the benefit of *holding on*?

2.4. Gaining closure

Gaining closure on the relationship can help you move on and deal with the separation process more objectively and without judgement. For many people, it can be important to understand the WHY. Why did the relationship end? Could I have done anything different? Could it have been saved?

You may find the answers to these questions from your former partner. However be also prepared for this not to happen as the other person may not be willing to be honest with you about this, or be in the frame of mind to openly communicate with you. If that is the case, you may need to find a resolution or form of closure, which does not involve the other party.

You may even have to face the possibility that you will never really know however the acceptance of this can act as closure in itself.

2.5. The importance of open, constructive and honest communication

One of the most common reasons for a break up is the lack of effective communication. So how sensible is it to carry this into the separation process?

Communicating openly, constructively and honestly not only creates positive feelings on both sides, but it also allows you to appreciate a reality that is different to yours, which is helpful in de-escalating situations of potential conflict and finding an amicable solution.

Communication is a two way process. It is not just about conveying your point of view and how you feel. It is also about listening to the other person.

The act of being heard can give the other person a feeling that you are understanding, appreciating and validating their perspective, which in turn promotes a greater degree of reciprocal openness, appreciation and understanding, leading to a higher probability of achieving an outcome that meets everyone's needs.

2.6. Not assigning blame

If you are honest with yourself, it is likely that neither of you were blameless or conducted yourself in such a way that did not lead to the break up. It takes two to make and break a relationship. Whether this was a lack of action on your part, or you were the protagonist, ultimately it is irrelevant when you are navigating through the separation process, as each of you will want to see their side of the story and assign blame accordingly.

However a relationship break up does not happen overnight. It is a gradual process involving contributory action from both parties over a period of time.

By assigning blame, you get to be in the right however it is important to ask yourself how does that help the separation and healing process? Assigning blame is an exercise of emotional judgement, which can detract from clear thinking and adopting an objective and, where appropriate, commercial view, in regards to your decision-making. It can only serve to colour your perspective and prevent you from taking a solutions-oriented approach.

2.7. Recognising shared and common objectives

Too many disputes focus on the differences between the parties involved. This only widens and reinforces the divide.

By identifying, agreeing upon and focusing on shared and common objectives, particularly where shared assets are involved, you are more likely to find a solution that each party will be satisfied with which meets both your needs, as you are each working towards the same goal. Once a collective bigger picture is established, you can start working backwards from there to figure out how to go about achieving and maintaining this.

For example, if you have both worked hard on building up a business together, would you want all that hard work to go to waste? Consider what is best for the business, which you may find surprisingly will be best for you both.

Similarly where there are children involved. What is the best outcome for your children under the circumstances? How do you specifically go about achieving this?

Document your shared and common objectives to avoid any future misunderstanding. If you feel or notice yourself straying off that objective, remind yourself of the collective bigger picture to bring yourself back on track.

2.8. Learning from your experience

When you are ready and are able to take a step back and be more objective, ask yourself what you can learn from this experience to turn this into an opportunity for growth and a platform to springboard into the next new phase in your life.

Remember though that it's not about assigning blame or who is in the right or wrong.

It's about how you can do better next time, what you can learn about yourself and how you relate to others, and as a result of knowing yourself better, how to make choices in the future which are more aligned with who you are. As we say in the NLP world – *there is no failure, only feedback*.

Questions such as –

- ✓ *How did I contribute to the issues in the relationship?*
- ✓ *Am I repeating the same mistakes and is this a pattern for me?*
- ✓ *How do I behave in situations of conflict and could I have handled it more constructively?*
- ✓ *How do I deal with stress?*
- ✓ *Could I have communicated more openly or more constructively?*
- ✓ *Why did I choose to be with this person? How are they a reflection or mirror of who I am?*

2.9. Taking good care of yourself

Like any highly stressful experience, it is vital that you take good care of yourself in every way – emotionally, spiritually and physically. It is well documented that emotional stress can affect your immune system resulting in physical ailments like head-aches, getting the flu, and being more vulnerable to becoming sick.

Make sure as an absolute minimum that you get plenty of rest, keep up your fluid intake, eat well and exercise.

Take time out to nurture yourself and engage in activities that will calm, recentre, rebalance and relax you. This might be going for a walk, meditation, listening to music, reading a favourite book or getting a massage.

Don’t be afraid to put yourself first and say NO without feeling guilty or anxious. Do what you feel instinctively is right for you and don’t worry about what others think or say.

2.10. Finding support

Surround yourself with trusted friends and family throughout this time. You don't have to do this alone. This is an important part of the healing process.

Spend time with those who uplift and energise you. Who will listen to you without judgement and criticism, and be positive and keep you grounded.

Cultivate new friendships, particularly if you lose friends as a result of the break up. An infusion of new energy and people not associated with the break up might be just what you need.

Seek expert guidance and assistance in the form of a counsellor, dispute resolution expert or life coach if you feel that you are struggling to do it with the current resources at hand. Draw upon their experience and expertise to help you make the transition. Having an outsider's perspective can be vital in helping you to take a step back, bring in a fresh approach, and stop you from not seeing the wood for the trees.

By adopting all or some of these strategies, not only will you be doing the best for yourself, but you will importantly be able to gain better clarity and perspective, which means you will be in a more effective mindset and be better equipped to tackle some of the more practical issues that may need dealing with as a result of this, such as taking steps to protect your financial interests, custodial arrangements if children or pets are involved, and the division of assets including businesses you both may be involved in.

A separation/divorce can be a positive experience and one from which you can grow and learn from, opening up new opportunities and providing the chance for self-discovery taking you on a journey that may have never been possible before. Take it from someone who has been there herself and who knows.

Chapter 3: Dianna Jacobsen's Perspective

While money may not be the most important thing in our lives, it certainly is one of the most impactful; and because of that, it triggers some of our most emotional responses: fear, greed, stress, worry, joy….

Who Really Wins in the Fight over Money?

To most of us, our money – i.e. our accumulated wealth in any guise - represents our security and well being; so when this is threatened, we tend to get defensive and take whatever action is necessary to 'protect' our assets. Unfortunately, we are so indoctrinated with the world of litigation, that our automatic response is to 'dig in our heels' and throw the case to our solicitors, to defend our wealth and, often, to 'prove a point' to someone: that you won't be ripped off, that you're not a push-over, that they can't just have 'their own way'…. But who does this really hurt? OURSELVES!! It costs a packet, locks us into court proceedings for months if not years, drags those closest to us though the drama with us, and the whole thing generally ends up really ugly, regardless of the 'legal' outcome. How is this a 'win'?

Money? How did I lose
it? I never did lose it.
I just never knew
where it went.

Edith Piaf

3.1. How Can There Possibly Be a Win-Win Outcome?

There is another way: the parties can elect to work together to establish and implement a strategy, which results in an equitable division of the family assets and the parental responsibilities. This leaves considerably more of the accumulated 'wealth' intact, and causes considerably less angst and anguish to all concerned. Admittedly, emotions do tend to run high during this period, so it is important to have professional support at hand throughout the whole process, to prevent unnecessary interaction and possible antagonism between the parties. This can then lead to a much more expedient and amicable conclusion, and a much more amiable relationship between all involved once the matter has been finalised.

When a relationship breaks down, besides the obvious emotional aspects requiring resolution, there are often a set of common 'financial' factors to discuss and resolve, primarily: the children, the business, the family home, possibly a rental property, superannuation, maybe some investments, household goods and chattels, motor vehicles, life insurance policies, wills and guardianships, child support/Centrelink, tax entities, and mismatched future earning capacities.

Within the strategic planning process it is necessary to examine these one by one, but first and foremost it is important to guide each of the parties, separately, to reflect 'without prejudice' on their new 'picture' of life. What this means is that we all hold a mental 'picture' of what we think our lives should 'look' like. When a relationship breaks down, we often feel 'lost' because we have no clear 'picture' anymore.

One of the first things I encourage any person to do after a relationship breakdown, or a trauma of any kind, is to '**rebuild their picture**'. Vision boards are a great tool for this, or a journal to describe your desired outcomes. The important thing is to mentally step back from all resentments and emotional charge and objectively consider how you'd like life to 'look' from this point forward. It is critical that this exercise is done with YOU in mind; this is not about the other party.

Of course, this picture is not set in stone. It will evolve as time passes and life unfolds; but it is imperative to have this for a start, so as to allow the other 'pieces' of your life's 'picture' to be built towards this desired outcome.

To work through the various factors is really a case-by-case process, and will have differing outcomes depending on many variables associated with the specific circumstances of each case and each couple. Hence, the following aspects will necessarily be broad and generic, and definitely not taken as a 'one-size-fits-all' scenario.

3.2. The Children

When it comes to the children's welfare, this is clearly a hugely emotional issue, understandably. Sadly, in relationship breakdowns, the children all-too-often become the 'pawns' in the 'game'. This does not need to be the case. If the parties are both willing, it is quite possible to work in conjunction with an appropriately-trained mediator, to look at the issues around the children's continued welfare – such as age, schooling, residency, the optimum balance of care between the parents, extra-curricular activities, financial support, emotional support – and hence develop a practical and workable Parenting Plan.

Then there are the financial aspects to consider, such as paying for childcare / school fees / extra-curricular activities, who controls the kids' savings accounts, who holds private health insurance for the children, and how does child support and Centrelink impact all of this?

Many of these questions will be answered subject to the parents' decisions, such as where each party chooses to live, distances involved in shared care, the ages of the children and so forth. There are various methods of adequately addressing each of these issues, depending on the circumstances. Sometimes it is useful to have a joint bank account, where each party deposits an agreed weekly amount, and this covers the children's expenses such as school fees and childcare. Sometimes the parents will collaborate to financially support the children, other times a set plan is required to alleviate arguments or misunderstandings. Regardless of the circumstances, rest assured there is a way of dealing with all challenges!

3.3. The Family Home

Once more, the best place to begin when deciding upon who will take over the family home, is for discussion with the parties as to where each "wishes" to reside in the future, removing all malice and manipulation from the equation. Other considerations which may or may not be relevant will be related to the children – such as ages, schooling, childcare, stability, etc. - and financial considerations – such as mortgages, rental agreements, feasibility of keeping the home, necessity for funds to pay out the other party, etc. Like the other points under discussion, this too will depend a lot on the individual needs and circumstances of each particular couple. Bear in mind the transfer of titles, refinancing of loans, updated insurance policies and other notifications (rates, water, utilities) that need to be addressed. The bonus is that under family law, you will probably be exempt from stamp duty on the transfer of the property.

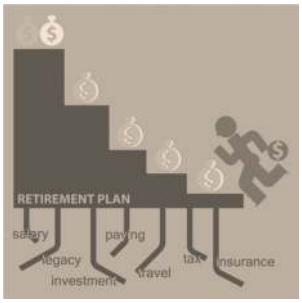
3.4. Rental Property

Often, if one party intends to keep the marital home, the other party will keep the rental property, either to adopt as their main residence, or to 'balance up' the distribution of assets. Again, depending on the financial position of the couple, there may be the necessity to sell this property and use the proceeds for distribution or other purposes, but remember to allow for the likely need to reduce the loan, given that the asset base is reducing, and also the Capital Gains Tax implications triggered by the sale of an investment asset. The taxation consequences will vary, depending on surrounding circumstances, so the parties must be sure to speak to their tax adviser to make decisions that are correct for their unique situation. It is also important to check that any investment property one person plans to move into is not held by their superannuation fund, as this is not permissible under the laws governing these entities.

If one party is planning to retain the rental property, as with the primary residence, it will be necessary to transfer the title to that person, and refinance any joint loans according to acceptable bank parameters.

3.5. Superannuation

Superannuation can be held either in individual names, under industry or retail funds, or possibly jointly – and maybe with other members as well – in a Self Managed Superannuation Fund (SMSF). If held individually, no division is strictly necessary, however, it is generally taken into account when distributing the asset base, from the viewpoint of equalising the superannuation balances, relative to future earning potential of each party. As always, this will be a case-by-case analysis and strategy, and again it will depend upon the parties involved: their ages, employment status, pension status, future earning capacity, future financial needs and so forth.



Personal insurances are often held in superannuation funds, and life insurance policies are often 'owned' by the spouse, so it will be necessary to review the terms under such policies to update the preferred beneficiaries in the event of the death of one of the parties.

Superannuation funds can have a 'Binding Death Nomination' written into them, which means that upon the death of an individual, the trustee of the superannuation fund distributes the funds according to that directive, and these funds do not form part of the overall Estate. Again, it will be prudent to review and update this nomination to ensure all fund proceeds are passed to the appropriate beneficiaries, post-separation.

If the parties are members of a SMSF, it may not be practicable to divide the funds immediately upon separation, as the assets of the fund may be held in illiquid assets, such as commercial property or long-term investments. In this case, it can be written into the terms of the separation agreement that the funds will be paid to the member leaving the SMSF, at a given point in time, over a period of time, or at such a time as the asset is sold or reaches maturity. Sometimes it may be an option for the SMSF to borrow to pay out the departing member, but experts must be consulted in this case, as there are complex rules governing borrowings associated with superannuation funds.

3.6. Other Investments

If these other investments are reasonably liquid, then it is easy to divide and distribute them. More often, though, these could be represented by longer-term or less liquid investments, in which case a cost-benefit analysis needs to be done regarding 'breaking' the term of an investment, versus waiting until it reaches its date of maturity. In the latter case, this would again be stated in the separation agreement, so the parties know that they will each get their share at a future set point in time.

If there is a share portfolio, it may not be necessary to sell the shares to distribute the value. Financial advisers can guide the couple as to whether a transfer of ownership can be enacted, and whether this will be exempt from stamp duty or Capital Gains Tax under the Family Law provisions.

3.7. Household Goods and Chattels

Remarkably, this is the area that often causes the most contention! And while it is important that each party be heard and their requests factored in as much as possible, it is also important to remember that this is just furniture! Unless particular items have sentimental value to one party or the other, these are generally the easiest items to replace, and the lowest cost of all the divisible property!

One way of addressing this is to have each party write a list of the things they especially wish to keep and allocating those items first. The items that both parties want can then be discussed based on the reasons why they want them (family heirloom, practicality, custom-made, etc.) and a fair trade-off reached. Sometimes it works to have things held in the style of 'custodian', and the items must go to the children when they are old enough. Other things are best sold and the proceeds divided.

As with everything, it is a case-by-case discussion, and most things are not a problem, usually just a few things lead to heated discussion over ownership! And remember, the two parties almost always have different versions of how that item came to be in their possession, so it is critical to remain objective and be the 'observer' in this delegation process.

3.8. Motor Vehicles

If the division of vehicles – including motorbikes, caravans, trailers, boats and the like – is not obvious, then there needs to either be 'fair' distribution, or sale of the item and the proceeds distributed. Be mindful of vehicles or other assets owned in the name of the business, and any implications under tax law if the asset has been on a depreciation schedule or had GST claimed against it. Bear in mind, the 'Written Down Value' for tax purposes is rarely equivalent to 'Market Value', so the parties must liaise with their accountant when it comes to such items and how they should be 'treated' in this instance.

3.9. Life Insurance Policies

Life insurance can be held either within superannuation funds or outside of super. Either way, they are generally taken out over the life of 'the insured' and 'owned' by another person, often the spouse. Upon marriage breakdown, most people opt to update their nominated beneficiaries, often citing their children as the recipients of the insurance proceeds in the event of their death.

Other personal insurance policies should also be reviewed, to ensure all relevant payouts are directed to the appropriate persons, should a claim be enacted.

3.10. Wills, Guardianships, Powers of Attorney

One of the first things people do upon separation is to update their wills. And while this is important, it is often done 'in the heat of the moment', and sometimes need to be redone a little later, so as to be structured correctly for both the available beneficiaries – particularly if young children are involved – and for the resultant assets that are being covered in the Will. For instance, if a business is one of the assets held, a different legal document is required to that of a straightforward 'garden variety' will. And superannuation requires another style of nomination to pass the funds to the elected beneficiaries without being exposed for contestation.

Testamentary trusts are a popular vehicle for leaving assets to young children. These trusts allow the capital to be protected, while providing for the children with the income generated, and are priceless in ensuring the capital cannot be accessed by other parties, whether well-meaning relatives or undesirable friends, until the age nominated under the terms of the trust.

If there are young children involved, a document governing Guardianship should something befall the parents is recommended. Obviously this is something that the parents, ideally, would discuss and agree upon, and a suitable person nominated.

Powers of Attorney (POA) give medical, financial or enduring authority to another person to make decisions on someone's behalf should they be unable to do so. Generally these are set up with the spouse being the POA, but upon separation, it is advisable to revoke former POA's and appoint a new, trusted person as POA.

3.11. Child support & Centrelink

This is often the first thing people do – particularly women – upon separation: register at Centrelink and the Child Support Agency (CSA) as a 'single parent' and 'start the process' and the timeline for their eligibility for benefits. Sometimes this works in their favour, but sometimes not. Once in the 'system' it can be very difficult to reverse, and once emotions cool a bit, the parties can find themselves locked into arrangements that are not conducive to them.

Additionally, at that initial point, there are a lot of 'unknowns', so the information submitted to these departments is often erroneous, in terms of childcare arrangements, maintenance, asset base and so forth. Be sure to discuss the implications with your advisers, as these payments hinge on income and assets tests. It is also detrimental to the mediation process for one party to go in, 'guns blazing', as it results in the other person necessarily being on the defensive from the outset.

Alternatively, once a mutually agreed-upon Parenting Plan is established, it could be that a private maintenance arrangement is also agreed-upon. Whilst there are still obligatory registrations required with Centrelink and CSA, the terms and tone of these are significantly different, and can be so much more amicable, without jeopardising eligibility for benefits.

3.12. Tax Entities

Usually these will go hand-in-hand with the dissolution of the business, but not always. When people approach any issue 'in reality', they often forget the 'on paper' aspect. This is where actual asset ownership may come into effect, or the couple may hold a Family Trust or Company under which both parties are significant stakeholders, and can't simply declare that the other person is no longer involved.

Under some of these entity rules, it is important to review who else may be affiliated with your structure: for instance, under a Family Trust, depending on who the 'key person' is, in-laws and other relatives may be 'linked' to the business, regardless of whether the former spouse is still physically involved in the day-to-day operations or not! Be sure to discuss your existing tax entities – used and unused – with your tax adviser, and look at the options for closing-off access to parties who are no longer meant to have a stake in these.

There could also be pending tax issues, such as past years Income Tax Returns not yet lodged, which may have implications around Tax Payable, Family Tax Benefit (FTB), or Capital Gains Tax (CGT). When this is the case, it is recommended to include in the Separation Agreement that these expenses or refunds are to be shared when they are due.

3.13. Future Earning Capacity

In many cases, one spouse will predominantly go into 'fear' mode, and from this, irrational behaviour can escalate. This 'fear' mode is primarily triggered by two things: fear around loss of children, and fear around loss of money.

If one spouse – more often the woman – has spent more time at home raising the children, it is quite likely that this person will have a lower level of superannuation, be earning a lower level of wages, and possibly be facing a lower earning capacity in future years than the other spouse.

In this case, provision will be discussed, depending on needs for children's care and the like, to equalise the financial situation of each party. This may include transferring some superannuation to the spouse with the lower superannuation balance, or having a regular 'maintenance' payment to supplement their income in order to provide adequate care for their children, and so forth.

This is best addressed on a case-by-case basis, weighing up the specific circumstances and wishes of each couple. Regardless of how it is addressed, it is addressed so that neither party is left in a markedly worse position than the other.

3.14. Can we salvage our business despite this upheaval?

Often this is the big 'sticking point' when it comes to 'disconnecting' the parties after a relationship breakdown, but it need not be, if managed correctly. It is largely about proper sequencing.

Again, it is important for each of the parties to honestly consider whether they do or don't want to remain in the business, and not for any reasons other than how they'd like their future life to be. If both parties want 'out', that's easy: we tidy up the business and sell it. If both parties want 'in', this takes a little more strategizing.

Generally the business is the passion or skillset of one of the people involved, and the 'default' job for the other person, and if one of the parties wants the business, it is fairly straight-forward to develop the strategy overall that will accommodate this, while compensating the other person in a realistic manner, both financially speaking, and in terms of a workable time frame to do so.

It is critical, however, that both parties realise that anything they say or do, either to the staff or clients, or about the business or the other person, can be significantly detrimental, not just to that other person, but to the business, because all parties 'lose' if the goodwill or current value of the business is diminished. It is foolishness to think that if you are slurring the other person it doesn't reflect primarily on yourself, and, by association, the business!

To facilitate the division of the business or dissolution of its assets, again, it is important for the parties to liaise with their adviser, and discuss considerations such as tax entities, assets held – both tangible and intangible, business goodwill, staffing continuation or termination costs, other business partners or contracts, branding and marketing, intellectual property, key person insurances, buy-back options, commercial lease arrangements, and a whole raft of other possible issues, again depending on the specific business and unique circumstances of that couple.

Then it is basically a matter of working through these issues and addressing them one by one, according to the future direction the business and each party will be taking. This is where it is of paramount importance to work with advisers who have an understanding of the relevant rules and laws, governing areas such as legal, tax, commercial, property, employment, GST, possibly Centrelink, and so forth, to ensure no unexpected repercussions later arise.

So, YES, your business can be salvaged after a relationship breakdown, as long as the correct steps are taken, in the right sequence.

Similarly, it is possible to work through all of the other areas – financially and emotionally – to ensure a result that is as fair and equitable as possible, and as conducive as possible to future relationship that is civil and respectful.

Conclusion

The three of us have come together to offer these different, but overlapping perspectives, in the sincere hope that this e-book will be widely disseminated and get into the hands of the right people. The 'right people' are those who still have a chance to make better choices that will ultimately affect their quality of life, wealth and happiness.

We hope that our joint contribution in this field, where the risks of personal and financial damage are so high, will help more separating couples become better informed and aware, and so more able to navigate themselves and their assets away from the potential hazards that await the unwary and towards those who can work with them, in a cooperative and creative way to achieve a commercially sensible and fair outcome for each of them and their children.

Much of success in life is connected to our **ability to manage change and overcome life's challenges**. Our journey through life is never quite as we expected or wanted, and to do well and prosper requires resilience and determination. Separation and divorce can be one of life's biggest challenges. It creates a catalyst for change, re-thinking, re-orientation and re-calibration of our lives to get back on track and re-aligned with our goals and core values.

Depending on the approach you choose, post separation disputes can become your worst nightmare and have you bogged down and entrapped in bitter and nasty litigation for years, or become a launch pad for positive and beneficial change for both parties and their children.

Choose the right path, and the dispute might be fully resolved within months at relatively low expense when compared to litigation.

Chris, Mimi and Dianna specialise in working with separating couples to help them avoid bitter litigation and achieve early and cost-effective resolution that culminates in the filing of an Application in Court to obtain the Court's approval of their own negotiated terms of settlement.

Please feel free to contact any of them for further information. A brief bio for each of them, containing contact details, is attached.

Christopher Whitelaw

Christopher is a barrister, mediator and arbitrator. He established The Commercial Disputes Management Centre (CDMC) in 2010. CDMC specialises in the management and resolution of commercial type disputes. The focus is on early resolution and the avoidance of litigation. CDMC applies a process, methods and strategies designed to contain, deescalate and manage a dispute in a way that gets parties able to work cooperatively and creatively with a trained disputes resolver to achieve early resolution without incurring major legal costs.

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Website:www.commercialdisputesmanagementcentre.com.au

Mimi Fong

Navigating through a challenging divorce or separation and rebuilding your life when the dust has settled, transitioning from a successful corporate career to being a business owner, returning to work after time off, or balancing your career with being a hands-on parent – these are just a few of the major career, role and life changes you may experience which Mimi has also experienced for herself.

Using NLP and Time Line Therapy ® combined with her extensive business and life experience, Mimi offers a unique fusion of skills and expertise including over 15 years of experience as a coach and mentor, an international recruiter/ head-hunter, and a former lawyer.

Her passion is to help and proactively support YOU through the major changes in your life that you may be struggling to cope with on your own, and help you to move forward, as she has, with clarity, renewed energy and focus.

Dianna Jacobsen

Dianna Jacobsen has over 25 years' experience in developing personalised strategies to guide people to discovering their "ideal" life, in terms of financial well-being and personal empowerment.

Having experienced chapters in her own life, Dianna works with people to examine their *individual* and specific needs, and then assists them to implement a realistic action plan to accomplish their goals.

Combining a background in accounting, financial planning, small business management, and personal empowerment and relationship coaching, Dianna specialises in working both locally, with businesses, families and individuals to guide them to freedom and success, and nationally, in providing specialist financial and business advice to her clients across Australia.

Dianna writes regularly for a number of publications and websites, addressing topics spanning a broad range of small business management and personal empowerment issues. She speaks regularly at conferences and conducts workshops and seminars.

Dianna brings a fresh and uplifting approach to the business and financial aspects of life. Her clients leave each session with a straight-forward, personalised Action Plan, feeling clear on the steps they need to take to break through their barriers and achieve financial well-being and personal empowerment!

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SHINE AT BUSINESS

What Next?

SPECIAL OFFER

If you would like to enlist Chris, Mimi and Dianna's assistance to help you manage your separation on all fronts without resort to litigation, including the division of property assets, in a way that will preserve what you have worked so hard to build and accumulate over the years, and enable you to re-start your life with dignity and adequate financial means, then we have a **SPECIAL OFFER FOR YOU**.

You will receive **10% off** their services when you book your appointment with each of them, quoting the above discount code.

Note that this offer is valid only for 30 days from the date of downloading of this E-Book.

Disclaimer

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Nothing stated by the authors should be used as a substitute for independent advice sought from professionally qualified experts and advisers.