

ETHICS CASE STUDY

Change in Marital Status of Clients

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Today's Objectives

- Keep you:
 - Awake
 - Engaged
 - Entertained
 - Interested
- Help you UNDERSTAND Ethics
 - Knowledge ≠ Understanding
 - Backwards Brain Bicycle (<https://youtu.be/MFzDaBzBLO>)

Ethical Case Study Format

Discuss Practical Application

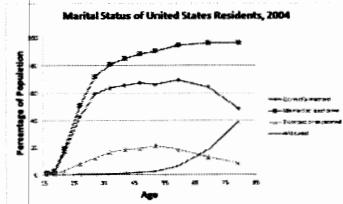
- Identify
- Analyze
- Decide
- Repeat

Leading Cause of Divorce?

Marriage !

Unless you are in Kansas
Or, in California

Americans believe in Marriage



Americans believe in Divorce

- Researchers estimate that 40% to 50% of all first marriages will end in divorce
- Researchers estimate that 60% of second marriages will end in divorce
- Most Americans (70%) believe that divorce, in general, is a morally acceptable choice

Odds are, you will deal with this type of ETHICAL dilemma in your career

Types of Changes in Marital Status

- Single to Married (Traditional or common-law)
- Single to Remarried
- Married to Separated
- Married to Divorced
- Married to Abandoned (No such thing as common-law divorce)
- Married to Deceased
- Still Divorcing (NY State record is 21 years; married for 16 years)
- Repeated Divorce Filings

Framework & Fun Facts

1. Is there a DUTY?
2. Is there a BREACH of that DUTY?
3. What does it COST to fix it?

Glynn "Scotty" Wolfe, a Baptist preacher from Blythe, California, holds the world's record for largest number of monogamous marriages for men – 29

Linda Wolfe holds the world's record for largest number of monogamous marriages for women – 23

What Duties do we owe our Clients?

- Confidentiality
- Loyalty
- Not create a conflict of interest
- Not act against client's best interest without informed written consent
- Timely communication
- Competence
- Ethical, zealous representation within the bounds of the law

Financial Issues – Marriage & Divorce

- Separate Property
- Separate Debts
- Community Property
- Community Debts
- Spousal Support (aka Alimony)
- Child Support (in OK, use statutory guidelines)

Financial Issues – Assets

- Homestead
- Rental Real Estate (Schedule E)
- Farm or Ranch (Schedule F)
- Oil & Gas Interest / Mineral Interest (Schedule E)
- Motor Vehicles
- Financial Investments & Retirement Accounts (1099-DIV, 1099-INT, 1099-R, Form 5498)
- Life Insurance

Financial Issues – Debts

- Secured
 - Mortgage
 - Car Loans
 - Boat Loans
 - Business Loans
 - Sears (revolving account)
 - Taxes

Financial Issues – Debts (continued)

- Unsecured
 - Credit Cards
 - Family & Friends
 - Taxes
- Priority
 - Student Loans
 - Taxes

Exercise #1

- Adam, son of a client, is graduating from OSU with a Master's Degree in Accounting
- Adam is engaged to his high school sweetheart, Eve, and they plan to get married later this summer
- Eve is graduating from the University of Tulsa, School of Law

Exercise #1 – Issues

- Is Adam your client?
- Is Eve your client?
- Taxes?
- Credit Cards?
- Student Loans?

Exercise #2

- Same facts as #1
- Adam is your client
- Eve owes \$1,000 in delinquent taxes
- Eve owes \$10,000 in credit cards
- Eve owes \$90,000 in student loans
- Neither Adam or You know about Eve's debt

Free Credit Report

- <http://www.AnnualCreditReport.com>
- Search "Free Annual Credit Report"; look for result that ends in ".gov" (<http://consumer.ftc.gov>) and follow the link
- Equifax
- Experian
- TransUnion

Tax Return Info

- Provide copies of prior year tax returns
- IRS Form 4506-T Request for Transcript
- IRS Form 2848 Power of Attorney and Declaration of Representative
- Personally visit the local IRS and OTC office

Student Loans

- Harder to independently verify
- IRS Form 1098-E Student Loan Interest Statement
- IRS Form 1098-T Tuition Statement (May have been used on parent's return)

Who cares what the answer is?

Is the situation a valid predictor of how the "happy" couple will handle future financial issues and conflicts?

Sit back and watch the FIREWORKS !!!

Exercise #3

- Same facts as Exercises #1 and #2
- Eve is also your client
- You are aware of Eve's debt
- But, you haven't been requested to do anything yet

Exercise #4

- Same facts as Exercises #1 to #3
- Adam and Eve have requested copies of their prior year returns
- Applying for a car loan
- Eve requests that you not disclose her debts to Adam
- Eve promises "to take care of it" – Eve's new job will pay her a signing bonus and pay-off her student loans after completing 5 years of employment

Exercise #5

- Same facts as Exercises #1 to #4
- Adam was "visiting" an ex-girlfriend from Kansas to break the news of his engagement to Eve – things did not go well – Eve doesn't know about the trip
- Adam has a \$12,000 out-of-state judgment against him
- Adam requests that you not disclose to Eve the existence of this debt
- Adam and Eve are applying for a mortgage so they can buy a house
- Adam's Dad calls and wants to know if YOU know why he is so "glum" lately?

Exercise #6

- Same facts as Exercises #1 to #5
- Adam and Eve were happily married last summer
- Adam and Eve bought a new car and house
- Since you timely filed their extensions, Adam and Eve brought their tax info to you on September 30th
- Eve is pregnant with twins (due January 1st), and medical complications may impair her future employment
- Adam's \$12,000 out-of-state judgment was for alimony even though never married

Highlights of Exercises #1 to #6

- Know when you have a "client" relationship
- Your "DUTY" does not begin until you have a client relationship
- Be careful about expanding your role beyond that of a financial professional
- Clients don't always tell you the WHOLE truth
- Things don't always work out as planned
- You must continually evaluate your client relationship
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Exercise #6 – Identify Potential Financial Issues

- Birthdate of twins will determine eligibility of dependency exemptions
- Eve's medical condition could significantly reduce their earning capacity
 - Car loan
 - Home loan
 - Student loans
 - Extraordinary medical expenses
- Disability (temporary or permanent)
- Estate planning
- ☺ How is that "SOUL MATE" thing working out?

Exercise #7

- Meet Clyde – a banking consultant that works out of his home
- Meet Bonnie – a school teacher
- His and Hers adult kids
- Married for 10 years
- They have agreed to terms of an "uncontested" divorce
- Clyde has always handled the finances, tax return preparations, etc. What little information is available, Clyde keeps locked away in his office

Exercise #7 (continued)

- House owned by Bonnie before she was married to Clyde
- During the marriage, Bonnie made all the mortgage payments from her separate income
- Clyde and Bonnie have agreed to let you "organize" their financial information for their "uncontested" divorce
- Bonnie explained all of this to you during your first appointment with her

Exercise #7 – Recommendations

- Determine the tax liability
- Determine the credit card liability
- Determine the mortgage liability
- Determine other financial issues
- Do you accept the engagement?

Exercise #8

- Same facts as Exercise #7
- Clyde has been completely unresponsive
- You have had no communication back from Clyde
- Taxes – delinquent for past 2 years; current year not filed
- Credit bureau reports
 - Clyde's credit score is so bad, he has no credit cards
 - Bonnie has \$20,000 in credit card debt in her name; she only recognizes one account which she had before they were married
- All payments made to you, drawn on Clyde's business checking account

Exercise #8 – Questions

- Who is your client?
- Does "payment" automatically make someone your client?
- What about filing the income tax returns?
- What filing status should Bonnie & Clyde use?
- What about credit cards? Call and cancel?
- What about the credit bureaus?

Exercise #9

- Bonnie filed all 3 years of income tax returns as "Married Filing Separate" since Clyde did not timely provide any tax-related information
- Clyde has agreed to repay the \$20,000 of credit card debt to Bonnie as part of their property settlement
- Clyde has been talking to a bankruptcy attorney and needs to be current on his income tax returns
- Clyde would like you to help him file his income tax returns since you are already familiar with his situation and he has finally "found" his paperwork

Exercise #10a

- Rhett and Scarlett have been married for 30 years
- Rhett is a Lawyer; Scarlett is a nurse
- Rhett takes care of all of the finances, tax return filings, etc.
- Scarlett just got a notice that her license could not be renewed because of an outstanding balance with the OTC
- Scarlett shows you the paperwork at church and asks if you can help her get her license renewed

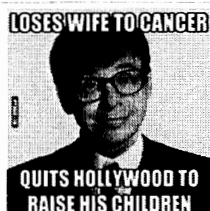
Exercise #10b

- Scarlett comes to your office
- Telephone call to the OTC reveals:
 - All the returns have been filed
 - \$100,000 is owed for the past 10 years

Exercise #10c

- Telephone call to the IRS reveals:
 - All the returns have been filed
 - \$500,000 is owed for the past 10 years
- Account Transcript shows bankruptcy filing in 2005
- IRS-provided copy of tax return shows Scarlett is the only W-2 wage earner
- Scarlett has no recollection of ever seeing or signing anything related to the taxes
- Louis Tully (a NYC transplant), a lawyer and accountant in Rhett's firm, always prepared the income tax returns

Louis Tully (aka Rick Moranis)



Exercise #10d

- Copy of bankruptcy petition and schedules shows a 401k plan with \$600,000 (How is this possible if Rhett is an "independent contractor"?)
- Rhett and Scarlett own a 2nd home on Grand Lake
- 20-foot Cobalt inboard/outboard boat
- Case originally filed as a Chapter 7
- Case then converted to a Chapter 13
- After Chapter 13 Plan was not confirmed, case was dismissed

Exercise #10e

- Scarlett files for divorce
- Rhett represents himself in the divorce
- Rhett awarded the houses, boat and debt
- Scarlett awarded the 401k plan now totaling \$750,000 as a property settlement
- Scarlett awarded \$2,000/month in alimony for 15 years
- After divorce decree finalized, it is discovered that Rhett moved the 401k to another broker
- After moving the 401k plan, Rhett withdrew \$350,000

Exercise #10 – Questions

- Have you acted "ethically"?
- Are you sure?
- Do you have a "DUTY" to report Rhett?
- Do you have a "DUTY" to report Louis Tully?
- Do you have a "DUTY" to report Rhett's law firm for allowing an independent contractor to participate in the 401k plan for employees?
- Do you have a "DUTY" to go on vacation?

Quotes

- Students look up for inspiration; look down in desperation; and left and right for information
- "I've had a lot of worries in my life, most of which never happened."
— Mark Twain
- "Ethics are so annoying. I avoid them on principle."
— Darby Conley
- "Ethically, she couldn't cause the suffering of any living thing. Logically, bacon cheeseburgers were delicious."
— Thomm Quackenbush, *We Shadows*

Bonus Round #1

- Bonnie's adult children called; before the divorce was final, Bonnie was killed in a weather-related accident.
- The \$250,000 life insurance policy provided by her employer named Clyde as the beneficiary
- Since you knew about the life insurance policy (excess premiums payments reported on her IRS Form W-2), why didn't you encourage her to change the named beneficiary?
- Bonnie's adult children would like copies of her prior year income tax returns
- Clyde called and would like copies of Bonnie's prior year income tax returns
- Clyde would like your help amending the returns to "Married Filing Joint"

Bonus Round #2

- Scarlett's parents called
- Scarlett is in the hospital on life-support, and Rhett is her health care proxy and is anxious to stop all heroic measures before the end of the month
- Upon her death, Rhett won't have to pay anymore alimony
- Why didn't you encourage her to update her estate plan?

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Reece B. Morrel, Jr. is an attorney, CPA and MBA. He is a partner with the firm of Morrel & Morrel, PC. When asked by his daughter's 3rd Grade teacher to describe to the class what he does, he replied that he likes puzzles and is really good at math. He became a CPA the year that Barry Sanders won the Heisman Trophy (Go Cowboys!) and gasoline was less than \$1.00/gallon. He is the author of the Lady Luck Gambling Diary and a frequent lecturer on the subjects of estate planning, taxation of gamblers, ethics and identity fraud.

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