

Chapter 10

The Divorce Settlement Obstacle Course – Nine Invisible Hurdles

The material we've covered so far will get us around the tip of the negotiation iceberg, but we cannot afford to overlook the really scary part: the 90 percent that lurks beneath the surface.

There, unseen, are the obstacles that we should be looking for. Some are everyday, common sense items that we are already somewhat familiar with; but few of us seem to understand how truly destructive they can be. Without being forewarned, we normally tend to brush them off and minimize their impact.

Here they are.

One Spouse Wants a Divorce, One Doesn't

At the beginning of a divorce case, one spouse is usually more motivated to end the marriage than the other one is. This causes a problem within a problem. Divorce is difficult enough when both parties agree that it's time, but having both parties at odds about getting a divorce creates another level of conflict. It automatically has a drastic effect on any hopes for an early resolution.

The announcement of a divorce often causes trauma to the less-motivated spouse. This forestalls their willingness to discuss settlement and hurts the motivated spouse's chances for an early resolution. It is wise if the motivated spouse does not push for a settlement before the other party has had ample time to come to grips with getting divorced.

More often than not, the one who wants the divorce will grow impatient and become less tolerant of the other's reluctance. They begin to resent the other party for dragging their feet or perhaps overplaying the trauma card, and this attitude complicates and inflames everything. It never pays to rattle someone who has power over us. And make no mistake, if the goal is to settle out of court, the spouse who wants the divorce the *least* is the one with all the power.

To make things even worse, the less-motivated spouses often tend to stall for time even after their emotional blockage has subsided. Some do this when their initial hurt turns into anger, some do it to enhance their bargaining position, and some do it just to make it hard for the other party.

Take This Deal and Love It

Even when both spouses are willing to discuss settlement, their varying styles can be problematic.

All decisions concerning a divorce are big decisions, and big decisions take time. They cannot be hurried, and it is naïve to expect otherwise. Just as water seeks its own level, we make decisions at our own level. One spouse's timetable cannot rule over the other spouse's timetable.

We process big decisions by systematically becoming familiar with the product (e.g., we seldom buy the first home we inspect, nor do we buy the first auto we see). It takes time to get comfortable with making a big move. This is true even if we actually want the item, but divorce requires more processing because it is not something we want – at least not in the same way we want a home or car.

Our individual comfort zone tells us when to make a decision. If that is threatened, we will take the path of least resistance. We will kick into our default mode and say no.

Delays may also occur if the parties have different personality types. For example, extroverts need less time to size up a situation than introverts need. Some individuals are impulsive by nature, while others are more deliberate and prone to indecision. We must allow for these style differences or we are likely to get a premature no.

In addition, the financially dependent spouse may need extra time to grasp the money aspect of divorce or to get a more comfortable understanding of their financial future. We all resent being rushed, we resent sales pressure, and we try to squirm away from both. Aside from annoying us or making us uncomfortable, these tactics also trigger distrust. If we lose trust, we say no or we stall until it becomes less awkward for us to say no.

Another aspect of this obstacle deserves special recognition. Simply put, we

categorically reject generous settlement offers that are made during the beginning stages of conflict. When we receive such an offer, we freeze as if someone just hit the pause button. If our mind was a physical object that we could observe, and if we could see it at that precise moment, our reaction would be just like that of a deer in headlights.

I don't think we react this way because of skepticism regarding the value of the offer or because of our ego or pride or our fear of being a sucker. I think it is simply what happens when something comes at us out of the blue. Asking a person to accept a particular deal, when they may not be prepared to discuss any deal at all, definitely falls into this category.

If your generous offer is made too early, expect to receive a cold response. It is not about how good the deal is or isn't. It is probably because of that big pause button in the sky.

You Won't Find Feelings on a Spreadsheet

Conversations between spouses concerning a divorce settlement are not as much about dollars as they first seem. They sound like they are about money, but they are really about unresolved feelings, which do not appear on a spreadsheet.

Feelings are a big part of divorce negotiations, and we must neutralize them before we can expect our negotiations to be productive. Unresolved feelings cause us to dwell on the problem instead of on the solution, and the longer we do this, the longer our divorce will take.

Feelings aren't right or wrong; they just are.

Talking settlement without talking about feelings is like trying to float a boat without water. We will never be pleased with a settlement agreement unless we vent all of our grievances before entering into it. Any immediate sense of relief we get from settling without venting is not worth the longer-lasting regret that follows.

This is another reason to tolerate our spouse's flak; it plays a large part in getting them to surrender.

You Started It

Our historic inability to settle our own divorces is based, in large part, on the fact that we can't resist injecting blame or fault into the negotiations.

**Do not blame your spouse for anything.
Blame just makes them angry, and angry people don't settle.**

No one wants to accept that they have been "bad." Think of when you were a child and got caught fighting with a sibling. Does "He started it" sound familiar? Blame will cause your spouse to shut down. Then you will never be heard.

Our tendency to blame is hazardous to our wealth. The smart money focuses on problem solving instead of blame placing. Blaming is also senseless because no one on this planet is ever wrong. It's *always* the other guy. Everyone, in every conflict, finds a way of exonerating themselves. If humanity had a universal mantra, it would be "*I'm innocent; it's their fault.*"

Your job is not to build a case to prove your partner is a rat or that you're right and your partner is wrong. You can stay married to do that or you can vent with your friends and family. Your job now is to save time, money, and pain; and blaming hinders all three. Build the bridge; don't blow it up.

"Don't find fault, find a remedy."

-Henry Ford

Blame fixes nothing and is totally useless. Here's an example of how useless it is.

Let's say you are stopped at a traffic light on a busy highway and get hit in the rear by a drunk driver. Your car sustains major damage and blocks traffic in both directions. A tow truck finally arrives after 90 minutes of incessant honking from the other motorists. Instead of immediately arranging to have your vehicle moved to the shoulder, you repeatedly complain to the tow operator about how innocent you are and how guilty the other driver is.

You can blame all day long, but it won't move your car, and it won't stop the honking.

Divorce Papers Are Scary

The mere involvement of the legal system will often cause unanticipated delays. I have yet to meet a person who took kindly to divorce papers filed by their spouse, no matter how “no-fault” the papers sounded. We do not like reading about our lives in court documents.

Divorce papers are formal, no-nonsense, and downright scary. A divorce case is still a legal case, and the law requires lawyers to meet certain standards of pleading even when their clients would prefer they refrain from riling up the other side. Lawyers have little choice in the matter. Court papers are court papers, friendly divorce or not. Even the most softened documents are humbling and brutal to the spouse who receives them.

Divorce papers also convey a sense of powerlessness, not unlike the feeling we get when a traffic cop reminds us we are not free to roam the countryside at any speed we wish. They let us know our civil rights have changed and that we can now be put under house arrest. The papers tell us that the legal system has taken away our keys to run our own lives – that the court is now empowered to dole out the constitutional rights (to freedom, movement, speech, property, privacy, etc.) that we may exercise during the time our case is pending.

You Can't Spend a Pound of Flesh

Another delay surfaces when one of the parties feels wronged or angry. They are the “victim,” and they want the court to know it. These spouses don't care if the case takes a long time; they just want the judge to know how bad their partner is. They count on the judge sharing their outrage and making the other party suffer, but this is just wishful thinking on their part. This behavior doesn't help them in court. All it does is make it harder for the other party to get them to settle. This costs everyone more money and frustration.

The worst place in the world to seek revenge is in the legal system.

Trying to get revenge costs too much, takes too long, and usually hurts us just as much as it hurts the person we want to hurt. It is like stabbing ourselves through the stomach with a sword in order to inflict pain on the guy standing in line behind us.

Most aggrieved partners do not take kindly to the fact that the court cannot consider misconduct as a factor in determining monetary or property awards. The

judge is not going to declare who the victim is, and then torture the wrongdoer spouse in the town square for all the neighbors to see.

Divorce is where the guilty go free.

It is asking a lot to expect an early settlement if one of the parties persists in entertaining unrealistic, though perhaps understandable, expectations about what the legal system will actually do for them. It's much too easy to be misled by Hollywood and a generation or two of TV lawyer shows that depict justice as being instantaneous and sure – you know, where the bad guy always gets what's coming to him and the good guy gets to walk off into the sunset, ready to do it all again next week. Real life doesn't work like this.

The judge cannot compensate you for your spouse's bad behavior. Most people entering divorce proceedings want their day in court because they want the judge to mete out the justice that their spouse has long withheld. You deserve it, right? Right. And yet our court system is not designed to give it to you!

As explained in Chapter 2, our divorce courts follow only the facts and the law. They do not take our hurt feelings or need for vengeance into account.

Incoming! Incoming!

We have not yet learned the importance of handling our spouse's aggression. If we know how to prepare for this, we have a good chance of neutralizing its effect.

How do we brace ourselves for this? We do it simply by expecting it. If you expect your spouse to cross the line, then you are prepared to handle it when they do.

A barrage of fury usually awaits all of us at the bargaining table. This is predictable. We should not be concerned about what our spouse says or does; how we respond to what's said and done is what should be important to us.

We should accept our spouse's behavior as the first part of a dance that will lead us to settlement. It is better for your partner to blow off now rather than in the corridor in front of the courtroom.

We seem to feel that bracing ourselves for an onslaught is optional, when, in actuality, it is of paramount importance. Don't take your spouse's confrontational

behavior personally. Instead, see it as a mere part of the whole settlement picture. It provides an excellent opportunity to show off your newfound poise. Welcome it.

We must anticipate some grief from our spouse and not allow ourselves to get bent out of shape when things start flying. Boxers do not flip out when they take a few punches; they expect it. The same is true when football players are tackled; it is part of the game.

It is, however, also very important that we do not underestimate how bad the aggression will be. We must expect the worst blast imaginable or we will instinctively respond with all the nastiness at our command. This reaction, of course, will cause the very delays that we are seeking to avoid.

Our goal is to dismantle our spouse's anger because angry people do not make deals. They fight.

Competitors in other endeavors know the importance of preparing for their event, so why don't we? The stakes in our contest are hardly unimportant; they involve our house, our kids, our pocketbooks, and our future. What makes us think we can just wing it and say whatever pops into our head? The answer is we cannot, and our expensive, overcrowded legal system proves this.

Cogito, Ergo Sue 'em

I think, therefore I am [*right*].

Divorcing spouses do not see problems in the same way. In fact, they are usually arguing about two different things without realizing it. If they saw the underlying facts of their controversy in the same way, they probably wouldn't be in conflict to begin with.

Here's another way of saying it: most disputers think they are in conflict because they cannot agree on a solution. What they fail to realize is that the conflict exists because they cannot agree on the problem.

An example: Husband wants more romance in the marriage and talks to Wife about his feelings. Wife responds by saying that Husband never helps her out around the house and he watches too much television.

Husband thinks the conflict is about the frequency of their intimacy. Wife thinks the conflict is about Husband's laziness and lack of appreciation for all she does. Doesn't he understand that she also would like to watch television? Instead, she works herself into near exhaustion, and her reward is to hear him ask for more pleasure in his already soft life.

If you gave truth serum to each of them, Husband would say that Wife was making too much of his so-called laziness and that laziness really has nothing to do with intimacy. He is resentful because she has grown indifferent to his needs.

Wife would say that Husband cannot reasonably expect her to be more amorous when she barely has enough time to brush her teeth. She is resentful because he is not appreciative of her sacrifices. She develops a belief that he is the one who has become indifferent.

Husband's "logic" fits the facts that only he sees. This "logic" is lost on Wife because she sees an entirely different set of facts (which are unknown to Husband). Likewise, Wife (who does not know that Husband sees different facts) bases her "logic" on facts that only she sees.

We apply our thinking to a solution using facts that do not exist in the other party's mind. One party's "logic" can only be persuasive to someone who sees the facts in the same way that that party does. Needless to say, this does not occur as often as we need it to.

Trust or Consequences

Another large impediment that presents itself during divorce discussions is lack of trust. Losing trust during divorce is quite common and normally begins when the spouses first start to pull away from one another.

Trust disappears overnight and does not announce its departure. It is one of the first things to go, because the multitude of negative feelings that accompany divorce promptly overrides any sense of trust that was established during the marriage.

The person you married did trust you, true. This new person does not. Accept this as a fact and don't debate it. You and your partner are not exceptions to this reality of divorce.

Let's face it: divorce is anti-trust. Your soon-to-be ex now has the natural right to be skeptical about you and anything you say. You are now the enemy. Expecting your soon-to-be ex to trust you is about as realistic as thinking you can kick-start Air Force One.

Trust is a vital ingredient to successful negotiation. With trust, deals get done quicker and easier. Never minimize the impact that its loss will bring to the bargaining table.

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