

A Survival Guide from Heartbreak and Toxic Relationships

Includes emotional and legal recovery tips

You are
worthy of
the love you
long for and
desire

A l i M u r r a y

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The Survival Guide is a practical guide designed to provide you with vital information, practical skills and tools. It is designed to support you practically.

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Intro from the Author Ali Murray



We have all experienced heartbreaks, disappointments, and relationship problems in our lives that we should take the time to address. It's not the ending of a relationship that matters most, but how quickly we choose to pick ourselves up and dust ourselves off. To **keep moving our lives forward** without dragging our "old baggage" around with us is the key to success.

We can't choose whom we fall in love with, but we can choose how we are going to handle ourselves and whether the love we are experiencing and the relationship we are in is good for us or not.

Many of us have been brought up to believe that we will get married, have two or three children, and live happily ever after. Or perhaps, if we have had unhappy childhoods, we are led to believe that a knight in shining armour will sweep us off our feet like Cinderella and rescue us from ourselves. So what happens when things go wrong and your fairytale turns out to be a fallacy?

For many of us, the biggest challenge is to decide when enough is enough and when we should call it quits and move forward.

I have generally found that individuals who have been abused as children or who have grown up in abusive homes are more tolerant of spousal abuse. This could be because it may be difficult for such people to identify what constitutes abusive behaviour, or it may take longer for them to get to a point where enough is enough. If this is applicable to you, then this Relationship Survival Guide will help you to gain a more balanced perspective on what constitutes a good vs a toxic relationship.

The following few chapters of the Relationship Survival Guide will take you through identifying toxic love patterns and relationships, with practical tips and tools. There is also practical legal advice on divorce processes and restraining orders, etc, in case your problems have escalated to a point where you require the intervention of the courts.

Help is at hand. Have the courage to reach out and take it.

Warm regards

Ali Murray

In order for a relationship to flourish you need to be able to resolve issues that you are experiencing in the relationship. Whether the relationship is still fairly new or well-established, and no matter what's happening in your relationship, you essentially have three options in the way you deal with it. (For more on resolving relationship issues purchase our *Relationship Enrichment Guide for Women, with great tips for men*)

What is important for you to remember is that there are TWO of you in the relationship and in order for the relationship to be successful YOU BOTH need to be **sincerely and genuinely committed** to resolving your relationship issues and handling each other with kindness, consideration and respect.

In summary the 3 options that you have are to:

- 1. Accept it**
- 2. Fix it**
- 3. Call it off**

Studies have shown that it takes three-to-five years for couples to make the final decision to end a relationship that is not working for them.

Option 1: Accept It

Are you accepting your flawed relationship because you don't believe you deserve more? Do you have friends, family and colleagues whom you see living with the devil they know and **they could do better**? Do you want to try to understand/assist them? Then read on.

Practical Reasons People “Accept The Devil They Know”

Emotional Issues: In many cases a person's sense of self-worth and self-esteem has become so worn down that they either feel it is better to stay with the “devil they know” or they believe no-one out there would want them.

Financial Issues: Women in many countries are still **financially dependent** on their men, and women in developing countries like South Africa may not have the luxury of being able to get a social grant or be in line for a council house if they are single and unemployed OR you have a good living standard and not be financially stable enough to support yourself and the kids on your own. You worry about where you would live and how you would feed and look after the kids on your own. You tell yourself that all of this stuff is more important than YOU.

“The person who controls the money controls the power” In many cases the **abusive partner is also controlling the finances**, making it highly difficult for the partner to take pro-active steps to end the relationship.

The Kids: The kids are at good schools with established friends and you don't want to disrupt their education. Your partner may have threatened to take the children away from you if you try to leave – so you tell yourself you will stay until the kids are out of the house and can make their own decisions.

Identifying Toxic Relationships

Special note: Children in homes where there is domestic violence are more likely to be abused and/or neglected. Most children in these homes know about the violence. Even if these children are not physically harmed, they may have emotional and behaviour problems.

Legal Issues: People do not know their legal rights, and do not know how to go about legally untangling themselves from an abusive relationship. They do not know where to go to seek professional advice that is discreet and confidential. See the back of the book for an in-depth analysis of legal issues around relationships.

There is no judgment here. I think that many women completely underestimate what they are prepared to put up with to make sure that they and their children get everything they need – like a good school and education, food and a roof over their heads. In many cases, women bargain with themselves and say that they would rather keep their nice home, superficial friends, social life and expensive cars and clothes than pack their bags and leave.

Maybe you've got to the point where you don't know if you really want to continue with your relationship, or maybe you suspect your relationship may be **becoming abusive** but are not really sure. If so, then **read on**.

If you are choosing to accept issues that are fundamental to the wellbeing of the relationship and sweeping them under the carpet, chances are that they are going to **come back and bite you** in the butt eventually, anyway. Your window of opportunity to salvage or resolve your relationship issues and to stop your relationship spiralling into a vortex of abuse may have expired.

Option 2: Fix it

To resolve issues in a relationship, there needs to be a willingness to step out of your comfort zone and **change some of your habits**. With great change comes great stress, but you ultimately need to decide if you are willing to let go of the old and be open to change so that you can build and enrich your relationship and give yourself the chance to love and fall in love with your partner all over again – to let the “magic” happen and you BOTH need to be genuinely committed to resolving the issues.

Warning Signs:

If you or your partner are at the stage where you are completely indifferent to the other's need to communicate and resolve an issue, then you need to seriously consider why you are still in the relationship.

Option 3: End It

Even when you know it's time to move on, it's never easy to take that **first step**. Whether you've been together for months or years, it takes courage and determination to let go of your illusions, process your emotions and make the necessary arrangements to deal with shared resources and friends. Understanding what to expect and how to deal with it can make all the difference!

Appendix I Identifying Toxic Relationships

Love and Hate

Love should not be turned on as a reward, or turned off as a punishment. Real love does not allow destructive and abusive behaviours to go unchecked. Love speaks out for justice and protests when harm is being done. Love points out the consequences of hurting oneself or others. Love allows room for anger, grief or pain to be expressed and released, and it does not threaten or withhold itself if it doesn't get what it wants. Love cares what becomes of you because love knows that we are all interconnected. Love is inherently **compassionate** and empathetic. Love honours the sovereignty of each soul.

There is a fine line between love and hate. Feelings of inferiority, inadequacy, jealousy, control and rejection can turn the love you once had for one other into hate.

Warning:

In the toxic love pattern, with its inability to resolve issues, the levels of frustration start escalating and the risk of your relationship becoming abusive or even potentially life threatening or fatal is high.

Characteristics of toxic love

Source: Melody Beattie & Terence Gorski.

Love	Toxic Love
Development of self	Obsession with the relationship
Room to grow, expand; desire for other person to grow	Security, comfort in sameness; intensity of need seen as proof of love (may really be fear, insecurity, loneliness)
Separate interests; other friends; maintains other 'meaningful' relationships	Total involvement with the other person; limited social life; neglect of old friends, interests
Encouragement of each other's expanding; secure in own worth	Preoccupation with other's behaviour; fear of other changing
Appropriate Trust (i.e. trusting partner one's to behave according to his/her fundamental nature)	Jealousy; possessiveness; fear of the competition; protects "supply"
Compromise, negotiation or taking turns at leading. Problem solving together	Power plays for control; blaming; passive or aggressive manipulation
Embracing of each other's individuality	Trying to change other to own image
Relationship deals with all aspects of reality	Relationship is based on delusion and avoidance of the unpleasant
Self-care by both partners; emotional state not dependent on the other's mood	Expectation that one partner will fix and rescue the other
Loving detachment (healthy concern about partner, while letting go)	Fusion (being obsessed with each other's problems and feelings)
Sex is free choice growing out of caring & friendship.	Pressure around sex due to insecurity, fear & need for immediate gratification
Ability to enjoy being alone	Unable to endure separation; clinging
Cycle of comfort and contentment	Cycle of pain and despair

“As long as we believe that someone else has the power to make us happy then we are setting ourselves up to be victims. Co-dependence is the dance of wounded souls” ~ Robert Burney M.A

Religious Posers/Predators

If you are devoutly religious, you may fall prey to religious posers or predators and it is important for you to develop discerning skills in this regard when choosing a partner.

Conservative religious communities try to insulate themselves from religious posers/predators in the vain attempt to avoid such people and the threat they pose to their worlds. The problem is that these people exist among religious communities often camouflaged in religious garb. They cynically **exploit** the often naïve adoration of an individual who has fallen in love with them and the community who made them welcome in the name of compassion and kindness.

Once these predators have you in their grip they will manipulate you into doing what pleases them all the time and may even go as far as instructing you on how a good wife/partner should behave and quote religious verses to you to reinforce that their demands of you are reasonable and scripture-based.

Chances are if something feels out of kilter/off to you and you can't quite put your finger on it and everyone else seems to like them, then there is something wrong and you need to go with your gut/spirit/instincts ringing the alarm bell!

All guys and girls have less-than-admirable moments, but there are warning signs that your partner is bad for you:

Signs of a Toxic relationship

1. Consistently feeling worse about yourself as you become more involved with a boyfriend is a giveaway that something isn't right, says Diana Kirschner, Ph.D, author of *Love in 90 Days*.
2. Feeling that you have to walk on eggshells around your partner as well as 'drop everything' to spend time with them - even though they've proven they wouldn't do the same for you.
3. The relationship starts to become emotionally/physically **abusive**.
4. Pay attention if your friends and family **disapprove** of the relationship, pay attention!

Can you change the Toxic Cycle?

1. You need to understand that what you've experienced **isn't** how love has to be or should be. If that is the case then:
2. Seek **professional help** as an individual or as a couple and investigate whether this problem can be resolved.
3. If it cannot be sorted out, end the relationship, ASAP.

Picture what your life could be like in 10 years if you're still choosing partners who treat you badly instead of partners who care for you in a positive way. What does the future hold for you?

Warning:

If this continues to escalate and the Relationship Enrichment Guides practical tools are not resolving the issues, it is vital that you seek professional help. **Don't leave it until it gets really bad again. Book the appointment and get the professional help you need to either save your relationship or yourself.**

Ending A Toxic or Abusive Relationship

If you are in an abusive relationship, you may find that leaving is not that easy. It is easy enough for people around you to say, "Why don't you just leave if your partner is not good to you?" But chances are that you have become so financially, emotionally and mentally **worn down** that you feel powerless about putting structures in place to help yourself, so that you can leave.

Identifying Abuse

There are many excuses for abuse: they lost their temper, they're under stress, something hectic happened, their partner was being unreasonable... but ultimately the abuser becomes violent and that speaks for itself. A reasonable person should not be violent – let alone regularly violent. **Resorting to violence is part of the abuser's personality.**

How we know an abuser's behaviours are not about anger and rage

The abuse cannot simply be ascribed to anger, because there are many situations that make him angry. (in many cases the abuser is a male). He doesn't assault everyone who makes him angry – the guy who cut him off in traffic or the colleague who doesn't carry his weight at work. It's only his partner whom he abuses; in the privacy of his home, away from witnesses, he beats up **his so-called lover**.

However he's able to stop the abuse at will. The minute a neighbour phones in a complaint and the police arrive, he'll be relaxed and looking as innocent as a cherub. This proves that **the abuse is planned and managed** and part of his make-up – not the result of some uncontrollable outburst.

A total loss of control is characterised by outrageous, indiscriminate violence, but an abuser's assaults will often be well-controlled. He'll hit on the soft tissue, the stomach, the side, places where the bruises won't show. These are **highly-calculated beatings**, not the acts of someone who is 'out of control'. There will be a gradual increase the number and intensity of assaults, as if he's building to some kind of climax. If you're a survivor of these attacks, find the strength to **get out** before things get to this stage.

Domestic abuse breaks the partner down both physically and psychologically in order to gain **total control** over the victim. But it's not just about beatings; an abuser employs a variety of tactics to break down his partner's spirit.

Isolation: An abuser will try to separate you from your support networks.. They will isolate you from your work colleagues, your social circle and your family. You may find you need permission to see your own friends. Your best weapon against abuse is to get the support of your friends and family. (Source: Domestic Abuse Intervention Project, MN)

Domination: The abuser becomes the apex of the relationship, everything happens through him. He makes all the decisions and issue orders, as if he is running a company and you are the subordinate. Or, he treats you like his possession, like you're his slave!

Shaming: Having engineered a constant stream of dramas and confrontations, the abuser will always identify that they are **your fault**. They set out to humiliate and shame you, to destroy your self-esteem and self-respect. This can take the form of insults, and public reprimands... whatever prevents you from asserting your independence.

Violence and Intimidation: Initially the violence will not be inflicted on the partner; it will involve screaming and the smashing of objects, just to show what he is capable of. Then this will escalate to direct threats of what he will do to you if you displease him. He will threaten to assault, or even murder you, your friends or your family. He may also threaten lawsuits, financial devastation, taking the kids away, or even suicide.

Blame-shifting: After an episode of abuse, the abuser will blame stress at work, his childhood or some traumatic experience for his actions. Or he will try to convince the abused that it wasn't really that bad in the first place. Finally, he will blame the person he is abusing. If you would just listen, this wouldn't happen!

Cycle of Violence: Domestic abuse falls into a common pattern, or cycle of violence:

Abuse: This is the beginning of the abuser asserting power. He becomes aggressive or violent. It is a simple resort to physical force to establish dominance. The idea of a relationship as a partnership has already gone out of the window.

Regret: This is not quite the same as guilt, since the abuser doesn't feel personally responsible for the abuse - it's always someone else's fault. They really regret that they have 'shown their hand' and now risk being caught or prosecuted for their violent behaviour.

Explaining: "If you'd just listen, this wouldn't happen!" the abuser might say. "Can't you think?" or "Do I have to do everything around here?" It's all about rationalising the abuse, attributing it to the faults of their partners and the unreasonable stress that they are under as the only useful person around.

The honeymoon phase: Often a period of abuse will be followed by one of peaceful, almost loving behaviour. The abuser is creating doubt in the mind of the victim. The abuse seems like an aberration, a once-off. "He's not really like that," the partner might think. This makes the victim more likely to stick around, instead of leaving the relationship.

Visualising: They may seem quiet on the surface, but during the normal phase, the abuser is often fantasizing about another bout of abuse. Psychologically, he is boiling with rage and imagining what kind of abuse he will inflict on his partner.

The trap: Now it's time to lay a trap for the partner. The abuser creates a situation where the partner is doomed to fail one way or the other, which will justify another round of abuse. "Why was your phone engaged?" "Why didn't you phone me back?"

The victim of abuse sometimes feels sorry for the abuser, especially because of the loving honeymoon phases. They start to think that they can help him deal with his issues, that fundamentally he's a good man. This saviour complex is dangerous, because basically he is an abuser and the partner is in constant physical danger.

The danger is also emotional and psychological. The longer one is involved in an abusive relationship, the deeper the emotional scars and the greater the physical danger you face.

No one deserves this kind of emotional, mental and physical pain – and your first step towards breaking free is **recognising** that your situation is abusive. Once you accept that you're in an abusive relationship, you can start getting the help **you** need.

A clearer understanding of what constitutes domestic violence

Although both MEN and WOMEN can be abused, most victims are women and children. Anyone can be a victim of domestic violence.

Domestic Violence or DV can happen to anyone, irrelevant of your education, employment or marital status.

Domestic violence and emotional abuse are behaviours used by one person in a relationship, between adults who are or have been intimate partners or family members, regardless of gender or sexuality to control the other. Partners may be married or not married; heterosexual, gay, or lesbian; living together, separated or dating.

Examples of abuse include:

- Name-calling or putdowns.
- Keeping a partner from contacting the family or friends.
- Withholding money.
- Stopping a partner from getting or keeping a job.
- Actual or threatened physical harm.
- Sexual assault.
- Stalking.
- Intimidation.

Violence can be **criminal** and includes physical assault (hitting, pushing, shoving, etc.), sexual abuse (unwanted or forced sexual activity), and stalking. Although emotional, psychological and financial abuses are not criminal behaviours, they are forms of abuse and can **lead to** criminal violence.

The violence takes many forms and can happen all the time or once in a while. An important step to help yourself or someone you know in preventing or stopping violence is recognizing the **warning signs** listed on the "Violence Wheel".



You can't cure your partner – YOU CAN CHOOSE LIFE FOR YOURSELF!

At the end of the day YOU need to make the choice to save yourself and I have genuinely found that for every abusive person there are ten good men and women waiting to help you if you are brave enough to reach out and ask for help. Amongst these ten people there is at least one good man or woman who will step in to help you even if you haven't asked for it – if he or she just knew what was going on!

It may take more than a few therapy sessions to recover from severe relationship problems. In fact, for some people it can take a lifetime to recover. What is important for you to realise is that heartbreaks, disappointments and varying levels of relationship problems, including abuse do not define you. You define you, and I would like to encourage you to take the pro-active steps you need to take to get back your desire for a full and satisfying life.

Have the courage to choose life for yourself !

Domestic Violence and Protection Orders

Definition of Domestic Violence: Any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality.

Practical steps to protect yourself and get out safely

Keep a journal: in a safe place where your abuser won't find it. Write down all the ways that you're being abused. Financial control, emotional put-downs, isolation, threats, bullying and any physical violence or threats to you, pets, property or someone you love.

Build a support system: Get a therapist, and go to a support group. Tell at least two or three people the honest story about what is happening in your relationship. Victims stay in the relationship hoping it will get better. But abuse is progressive and always gets worse over time. Victims are not always aware of community resources and don't plan on the abuse occurring again. Victims hope and pray that each episode is an isolated incident.

Get out: If you are not yet strong enough to get out, create a safety plan, but work on trying to get out! Victims are afraid and over time begin to doubt their rights to have a safe, healthy and happy relationship.

Realise you deserve a healthy relationship: You may not feel that way, but you do! And abuse is illegal. Victims often gradually give up more and more of their control over their lives, even giving businesses and money to their abusers.

Educate yourself: Empower yourself with knowledge about your situation. Develop yourself with courses and reading. Do not give up control over things you can do for yourself. Domestic abuse is ultimately fatal to the body, mind and spirit. Yet there is reason to hope. Many abused by their partners have found their way out of violent relationships and have rebuilt their lives. You can find a happy, healthy relationship. Staying in the relationship for the sake of the children is **not a good excuse**. Children witnessing domestic violence is now considered a form of child abuse that is prosecuted in many countries.

Don't delay. Get help in dealing with domestic violence and take control of your life. An Interim Protective Order from the Magistrate's Court will offer protection under the law. File a Domestic Violence Complaint.

Domestic Violence Safety

Sometimes there are **warning signs** before the escalation of violence and there are times when no matter what is done, a violent incident will erupt.

Know your abuser's red flags: Be alert for signs and clues that your abuser is getting upset and may explode in anger or violence. Come up with several believable reasons you can use to **leave the house** (both during the day and at night) if you sense trouble brewing.

Identify safe areas of the house: Know where to go if your abuser starts an argument or attacks you. Avoid small, enclosed spaces without exits (such as closets or bathrooms) or rooms with weapons (such as the kitchen). If possible, head for a room with a **phone** and an outside **door** or window.

Be prepared to leave at a moment's notice: Keep the car fuelled and facing the driveway exit, with the driver's door unlocked. Hide a spare car key where you can get it quickly. Have **emergency** cash, clothing, and important phone numbers and documents stashed in a safe place (at a friend's house, for example).

Practise escaping quickly and safely: Rehearse your escape plan, so you know exactly what to do if under attack from your abuser. If you have children, have them practise the escape plan too.

Come up with a code word: Establish a word, phrase, or signal you can use to let your children, friends, neighbours, or co-workers know that you're in **danger** and the police should be called.

Make and memorise a list of emergency contacts: Ask several trusted individuals if you can **contact them** if you need a ride, a place to stay, or help contacting the police. Memorise the numbers of your emergency contacts, local shelter, and domestic violence hotline.

Keep change and cash on you at all times: Know where the nearest **public phone** is located, and have change available so you can use it in an emergency situation to call for help. Also try to keep cash on hand for taxi fare.

Additionally, to keep yourself safe from domestic abuse and violence you should **document** all abuse. If you've been injured, take photographs. If you have been abused in front of others, ask witnesses to write down what they saw. Finally, don't hesitate to call the police if your abuser has hurt you or broken the law. Contact the police even if you think your abuser might have broken a law. Assaulting you, stealing from you, and destroying your property are all crimes.

What to take with you when you leave an abuser

Here is a helpful list of items to get together when you are planning on leaving an abusive situation. Hide them in the home or leave them with a trusted neighbour, friend, or relative. Important papers can also be left in a safety deposit box – these days you can hire private boxes at shopping malls etc. If you have children, take them and your pets (if you can).

Item	Done <input type="checkbox"/>
Identification	
Birth certificates	
ID book, numbers written on paper if you can't find the ID book	
Birth certificates	
Driver's licence	
Photo identification or passports	
Important personal papers	
Marriage certificate	
Divorce papers	
Custody papers	
Legal protection or restraining orders	
Medical aid papers and medical cards	
Medical records for all family members	
Children's school records	
Investment papers/records and account numbers	
Work permits	
Immigration papers	
Rental agreement/lease or house title deed	
Car ownership papers, registration and insurance information	
Funds	
Cash	
Credit cards	
ATM card	
Chequebook and bankbook with deposit slips	
Keys	
House	
Car	
Safety deposit box or post office box	
A way to communicate	
Phone calling card	
Mobile phone	
Address book	
Medication	
At least a month's supply of all medicines you and your children are taking, as well as a copy of the prescriptions.	
A way to get by	
Jewellery or small objects you can sell, if you run out of money or stop having access to your accounts	
Things to help you cope	
Pictures, keepsakes, children's small toys or books	
Funds	
Cash	
Credit cards	
ATM card	

Appendix III The Civil Divorce Process in South Africa

With regards to taking children overseas: New travel regulations in South Africa state that if you want to travel overseas with your child you need his or her unabridged birth certificate, and an affidavit of consent from the other parent.

A Mediated Divorce

Sadly, not all relationships work out. However it is possible to be amicably divorced. It is an inability to resolve problems within the marriage that often causes conflict situations. **Mediation** offers an option for resolving issues in an objective, reasonable and responsible way.

In essence, a mediated divorce is an unopposed divorce but the parties attend mediation in order to **agree** on certain topics such as contact with the children, parental plans, maintenance, finances, and settling the accrual.

It is important to remember that a marriage can be dissolved. Even when there is mediation prior to a divorce, and the parties agree, the procedure of an unopposed divorce still needs to be followed whereby a summons will be issued and a settlement agreement/parenting plan will be entered into. The plaintiff will attend court on the day if there are children and get on the stand and state that what was agreed in the settlement agreement is in the best interest of the parties. Before the settlement agreement becomes an order of court, this needs to be endorsed by the family advocate if there are children involved.

The Benefits of Mediation:

- Children **recover** faster.
- Children do not become the **casualties** in the divorce process.
- Parenting plans give children a sense of **security** and oneness in both homes.
- **Parents** recover faster from divorce and are able to move forward with their lives in a positive & constructive way.
- Mediation bypasses the expensive **litigation** process of a divorce.
- Mediation opens up the channels of **communication** for parents post-divorce.

WHEN CAN A DIVORCE NOT BE MEDIATED:

1. Mediation is a **voluntary** process and both parties must want to mediate.
2. Mediation cannot be forced.
3. If there is a lack of **transparency**.
4. If there is emotional, physical or financial **abuse**.
5. If there is a **protection order** in place.

A Civil Litigated Divorce

When a couple is unable to reach agreement on a settlement it becomes necessary for you to approach an attorney for an opposed divorce.

The divorce process in litigated divorces is relatively straightforward in most cases. However if the divorce is **acrimonious**, the financial and emotional consequences can be profound.

Most divorces are usually emotionally-charged, but it is important to remember that a court is not a court of emotion, it is a court of **law and facts**.

Remember that this is a divorce for you and it is a job for an attorney. Most attorneys have a *quota* of work that they need to bring in per month and financial targets that need to be met. Your emotionally charged divorce is like a **Platinum Pot** to an attorney.

Not all lawyers have integrity, or are level headed and have the best interests of the family unit at heart. You need to be **extremely selective** regarding whom you choose to be your lawyer. It should be someone who is experienced with family law matters.

However, there are some things that it's **not** worth going to court over.

Do you really want to fight over that old couch and tea set? After you are divorced, the only thing that possession will remind you of is your ex. With all the expensive litigation you're engaging in over old stuff, you could have bought yourself some nice new things. Why not give yourself a fresh start and de-clutter your life!

IT IS A DIVORCE – BOTH OF YOU WILL BE GIVING UP THINGS

Ask yourself: Do you want to waste huge amounts of money so your lawyer can go and sip piña coladas in the Bahamas on the fruits of your misery and acrimony?

High Court vs Regional Magistrates Court

Until the Regional Courts Amendment Act came into effect in 2010 to amend the Magistrate's Court Act of 1944, all divorces had to be heard by the High Court.

Divorces, whether they are contested or uncontested, can now be heard in the Magistrate's Court or in the High Court having jurisdiction in your area.

High Court:

The High Court System is backlogged and it can take anything from nine months to three years to secure a High Court trial date. Most of the settlements between parties are still reached on the steps of the High Court on the day you go to trial for the divorce, before you actually go in to see the Judge.

In order to appear in the High Court you will need to have an attorney and an advocate to appear on your behalf before the Judge. That will cost you R20 000-R60 000 per day. Your costs for this type of litigation could range between R20 000.00 and R1.5 million, depending on the level of acrimony of the divorce.

Regional Magistrates Court:

- You can have a divorce date set down within **two to three months** of applying for a divorce.
- You only need to pay an **attorney**, or you can appear **yourself**.
- Costs: Anything from **R1 000** upwards.

Steps to be followed in a litigated divorce:

The information required will include:

Step 1: Issuing of summons:

A divorce action is instituted and this is where you essentially place “your side of the story” in what is called the “particulars of the claim” as to why you wish to get divorced.

This includes:

- Parties’ names, sex, occupation, where they reside
- Whether the parties are married in community of property
- Where and when they were married
- Reasons for the breakdown in the marriage (not living together, fighting, abuse, adultery, lost love, lost communication and so on)
- Children: names, ages, sex and where they will be primarily resident
- Contact to the children/child (the person that the children will not be living with)
- Maintenance for the children
- Schooling, tertiary education, books, medical aid and so on
- Pension funds, if any
- Division of assets – immovable and movable assets
- Spousal maintenance – the amount and how long spousal maintenance will be paid (e.g. one year, five years, until remarriage, lifetime) – this needs to be justified.

Step 2: Service of summons on Defendant

This needs to be personal service by a sheriff and cannot be merely delivered to the person by his or her attorney.

When it comes to calculating court days, public holidays and weekends are excluded. The way you count is **first day out, last day in**. i.e. you don’t count the day that the document was served but you do count the last day.

10 days later	Defendant is to enter an appearance to defend
20 days later (20 days after the notice of intention to defend has been served)	Defendant is to file a plea and counterclaim – this answers the Particulars of the Claim and admits or denies what is placed in the POC as well as sets out the counterclaim
15 days later (after the PLEA AND CC)	Plaintiff to file replication* (if any) to plea and plea to counterclaim

After the replication is filed, the pleadings are closed, unless there are any amendments that need to be done.

Step 3: Discovery process

In the period between the close of pleadings and waiting for a trial date, there is a process called discovery. During which each party demands to **see the documentation** and other material like tape recordings, documents and so on that the other party intends to use at trial. In this time a date can be applied for by the Plaintiff (the person who filed for the divorce). The Defendant (person who has been served with divorce papers) can only apply for a date if the plaintiff has not applied for one for a period of **six weeks**.

Our law does not allow documents to be brought to trial without the judge or magistrate's consent, this means that **all the documents** that one plans on using at court need to be 'discovered' to the other side.

Each and every document that a party will use at trial must be "discovered", i.e. the other party must be given an opportunity to **read the document** before the trial commences. The documentation may include bank statements, shareholdings in companies, credit card statements, bond accounts and tax returns, etc.

It is usually during the discovery process that most of the hidden documents are **found**, as there are processes that can require specific documents to be brought forward.

An attorney may issue *subpoenas* to relevant financial institutions to deliver documents the other party failed to deliver. It often happens that at the commencement of the divorce, all the relevant documents 'disappear' out of the house and the difficult task of following the paper trail begins. Often an attorney will advise a client to immediately **make copies** of all the relevant documentation that will be used later as evidence to prove the value of the spouse's estate.

During this process, the following must be complied with:

- After the close of pleadings, either party may deliver a notice to the other calling on him/her to deliver a **schedule** (list) specifying the books and documents in his/her possession or under his/her control that relate to the action (case) and that he/she intends to use in the action or that tend to prove or disprove either party's case. The schedule, verified by affidavit, must be delivered by the party required to do so within the specified period of time stated in the court rules.
- If **privilege** is claimed for any of the books or documents scheduled (i.e. if the party believes that he/she cannot be forced to disclose something), such books or documents must be separately listed in the schedule and the **grounds** on which privilege is claimed in respect of each must be set out.
- Each party must allow the other party to **inspect** and make copies of all books and documents disclosed or specified in a schedule delivered to them.
- A book or document not so disclosed may not be used for any purpose at the trial by the party in whose possession or under whose control it is, without the **leave of the court** on such terms as to adjournment and costs as may be just. This means that if the other side needs time to read through and study the documents that were not disclosed before the trial, the court may adjourn the proceedings at the **cost** of the party that did not disclose the documents and rule that said party pay the wasted costs for the day. The other party may then call for and use such a book or document in the cross-examination of a witness.

Further discovery and particulars

Further discovery is possible if a party believes that, in addition to the documents, books or tape recordings disclosed, other relevant documents or recordings may be **in the other party's possession**. If the whereabouts of such items are known, the party requesting them must state this in his/her notice for further discovery to the court.

Further and better discovery is a mighty weapon in a divorce proceeding to obtain **additional information** regarding a spouse's financial status. A major advantage is the fact that the party who receives the notice must reply under oath. Any false statements can lead to prosecution for perjury.

In terms of the court rules, a party may deliver a notice requesting such further particulars as are strictly necessary to enable him/her to prepare for trial, not less than 20 days before the trial. If a party does not adhere to such a request or fails to do so timeously and sufficiently, the other party may request for the case to be dismissed.

Pre-trial conference

The court may at any stage after close of pleadings, or at the request in writing of either party, direct that an **informal conference** be conducted in the presence of the judicial officer in chambers, in order to consider a settlement of disputes.

Trial

Trial proceedings commence with both parties or their legal representatives being given an opportunity to deliver an **opening address**, whereby the court is informed of the issues that are in **agreement** and those that are in **dispute** between the parties.

If, on the pleadings, the **burden of proof** is on the plaintiff, he/she must give evidence first. Where the burden of proof is on the defendant, the defendant will be first.

A **witness** who is not a party to the action may be ordered by the court to leave the court until his/her evidence is required or after his/her evidence has been given; or to remain in court after his/her evidence has been given, until the trial is terminated or adjourned.

Any witness may be examined by the court as well as by the parties, and the court may decide to call a witness **not** called by either party if it thinks his/her evidence necessary in order to discover the truth or answer the question before it.

After both parties have given evidence, whoever went first may again address the court. The other party then has a chance and the party who went first may reply.

Judgement

A divorce trial must culminate in the **granting of judgement**. The court may grant any of the following orders:

- Judgement for a party in respect of his/her **claim** in so far as he/she has proved the same;
- Judgement for a party in respect of his/her **defence** in so far as he/she has proved the same; or
- **Absolution** from the instance if it appears to the court that the evidence **does not justify** giving judgment for either party.

Costs

In giving judgement or in making any order including adjournment or amendment, the court may award such costs as may be just. These costs may also be subject to taxation. While costs are generally awarded to the **successful party**, this is not an immutable rule. A court may decide not to award costs at all, or may apportion the costs of the proceedings between the parties.

Other steps in the divorce legal process:

Make application for a trial date Call on other side to discover

Before trial: About 12 weeks before trial – compile pre-trial agenda. Call on other side to attend pre-trial. Consult with experts. Give notice of intention to call experts (if any). Experts must file a joint report which must be lodged with the Registrar at roll call

Six weeks before: A pre-trial minute must be registered, lodged and filed with Registrar of High Court. If not filed, then court will not allocate a judge on the day of the Trial. In the Johannesburg High Court a certification conference must be applied for in order to determine whether the matter is ready to go to trial.

20 days before: Delivery request for further particulars for the purposes of trial.

10 days before: Other side to delivery reply to request for further particulars for trial.

Bundles must be prepared before the trial and be properly indexed and paginated. This is usually the function of the Plaintiff's attorneys (the person who has filed for the divorce)

The court file must be properly indexed and paginated. This is the function of the Plaintiff. This must be done Two weeks before the trial date as the file goes to the judge and the matter will be struck off the roll if this is not compiled with.

Customary law marriages

If you are married by Customary or Traditional Law and not Civil law and decide to have a divorce the process is similar. You are still married in terms of South African law, but you will automatically be married in **Community of Property**.

Grounds for a divorce

Irretrievable breakdown of the marriage

A court must be satisfied that the marriage relationship between the parties has reached such a state of disintegration that there is no reasonable prospect of the restoration of a normal marriage relationship between them. As far as the court is concerned, evidence of an irretrievable breakdown includes that:

- The couple has not lived together as man and wife for a period of a year prior to filing for a divorce.
- Refusal of marital privilege (consummation of marriage)
- Adultery/Affairs
- Mental, economic or physical abuse
- Incompatibility
- Loss of love
- Mental illness of one partner or continued unconsciousness (minimum six months)
- Imprisonment of one partner after having been declared a habitual criminal by the court.

Elements of a Divorce

There are two elements:

1. **Financial:**
 - Division of assets and liabilities
 - Maintenance for children
 - Spousal maintenance
2. **Children:**
 - Care
 - Contact
 - Guardianship
 - Primary residence
 - Parenting plan
 - Maintenance

Children Parental Plan

The High Court is the upper guardian of all children. The high court will do what is in the best interests of the child(ren), **not** what is in the best interest of the parents. The Children's Act is of particular importance. Read this Act on the internet or ask your attorney for an easy guide explaining how the Children's Act works.

In practice, all divorce papers (the settlement agreement or parenting plan) that affect minor children are sent to the family advocate to be reviewed before they can be set down in court. If there is a settlement agreement in terms of an unopposed divorce, it must be sent to the Family Advocate so that it can be endorsed that the agreement is in the best interests of the minor children. It is important to remember that **the parents are divorcing each other. The children are not divorcing their parents.**

The Family Advocate will only intervene if there is a care and contact dispute or if there are factors in the agreement that they do not deem to be in the best interests of the children.

Custody

The concept of custody has been done away with and now both parents have full parental rights and responsibilities, with one or both having primary **care** of the child (i.e. it mainly resides with one of them).

Guardianship

Both parents are guardians of the children during marriage and after the divorce. It is only in exceptional cases that guardianship is taken away from one of the parents.

Guardianship relates to the signing of indemnities and other documents on behalf of the child. For example

- Application for **passport**.
- Consent to **marry** while a minor.
- The **adoption** of a child.
- The **removal** of a child from South Africa.
- The **purchase** of immovable property.

There are new travel regulations in South Africa that state that if you want to travel overseas with your child you need the unabridged birth certificate and an affidavit of consent from the other parent on the certificate.

ACCESS now called CONTACT.

- It is the constitutional right of the child to have reasonable access to **both parents**. It is not the right of the parents to grant access.
- There is nothing in the law that stipulates how **frequently** a child should see parents. However it is advisable to create some **structure** as this alleviates conflict with parents and gives the child a sense of stability.
- Try and keep access as **flexible and amicable** as possible.
- Keep the process of saying goodbye at front doors happy and meeting and greeting on return happy too.

Supervised access may be necessary in cases of abuse or where the child may be subjected to dangerous behaviour, for example driving under the influence of drugs and alcohol.

Divided access is where the child is given to a third party or family member, e.g. a grandmother or aunt, and access to the child needs to be divided between both parents.

Family member in relation to a child means:

- a) A **parent** of the child
- b) Any other person who has **parental responsibilities** and rights in respect of the child
- c) A grandparent, brother, sister, uncle, aunt or cousin of child
- d) Any other person with whom the child has developed a **significant relationship** which resembles a family relationship.

Abandonment. A child is deemed to be abandoned if a parent has had no contact with a child for no apparent reason for three months.

Technological access. This comprises contact such as telephone calls, e-mails, faxes, text or SMS.

General Guidelines followed by the Family Advocate for Access

Children under 3	Frequent access for short period of time No sleepovers – unless this is already a norm No long holidays with one parent
Children 3 – 6	Overnight stays phased in gradually starting with 1 night and increasing to 2 nights. Alternate holidays not longer than 2 weeks at a time Regular telephonic access is advised
Children 6 – 12	Full alternate holidays and full alternate weekends
Adolescents 12 – 18	Focus on needs of teenager.

The effects of divorce on children

Children are like seismometers– they are extremely sensitive to **conflict** between their parents and pick up the high levels of stress that usually come with the decision to divorce.

The way children interpret and perceive their parents’ divorce can have a long-term impact on their own relationships and how they perceive themselves and the world.

The difference between how well and how poorly a child reacts to a divorce has a lot to do with how both **parents handle** the children.

In order to do well children need:

1. Their parents to **stop fighting** – and not to fight in front or in their vicinity.
2. Do not burden children by letting them become **involved** in parental disputes and being caught up in the middle.
3. Parents need to accept the situation and **move on**.
4. Their parents to acknowledge that it is a **sad situation** and that they are sorry that it has happened.
5. To hear that their parents are trying to cope to **make things better** and that everything will work out in the end.
6. To hear their parents **respect** each other and not bad -mouth each other.
7. Constant and consistent **contact with both parents** to ensure continued positive relationships with both parents.
8. To be told clearly in a language they can understand what **changes** will be taking place
9. To know where they will live, who they will live with, and **what the changes will involve** i.e. change of schools, house, suburb family relationships, etc.
10. To know that they are **not** divorcing their parents and that they will be able to see both parents and that they will not be forgotten or neglected.
11. Themselves to be **heard**, listened to and talked to

The most important points to explain to children:

By John Haynes – specialist on family mediation

1. You to tell them that you are getting divorced.
2. They need to know that they did not cause the divorce
3. They need to know that you will not be getting back together.
4. They need to know that you both love them and that this will not change
5. To know that they do not have to choose between the parents.
6. That as parents they still may have arguments in the future. Most adults do, but
7. They do not have to take sides in the arguments.
8. What the future living arrangements will be.

Feelings that children experience with a divorce:

Fright	They do not understand their parents' anger, depression, or fanatical behaviour. They fear they will be left by both parents. They fear the lack of money. They fear for the safety of their parents and themselves. They fear the changes that will take place.
Guilt	They believe they have caused the divorce. They have been "bad" and are being punished for being bad etc.
A time of feeling rejected	They are a nuisance. They feel rejected by their parents. They feel rejected by their friends. They feel rejected by their grandparents.
They feel split	They feel split between their parents. They feel split that they can't choose both. They feel split that they are forced to take sides
A time of feeling lonely	They feel isolated. They feel unloved and are left alone more than prior to the divorce.
A time of added responsibility	They feel responsible for their parents' happiness. They feel responsible for their siblings; They feel responsible for the household chores & finances.
A time of sadness	They grieve the loss of the departed parent and family unit. They grieve for the loss of their old familiar way of life. They grieve the loss of their house, friends, pets.
A time of shame and embarrassment	They feel ashamed about being a product of divorce. They feel ashamed and embarrassed about their parents' new attitudes and behaviour patterns
A time of confusion	Their world has become unstable and unpredictable. They perceive adults as being unreliable. Family life is unimportant and relationships do not last.
Feel deprived	Feel uncared for

Parenting plans for children

In a parenting plan you will discuss

1. Naming of the child/children
2. Living arrangements
3. Moving home/country
4. Religion/faith
5. Family arrangements
6. Maintenance
7. Medical aid
8. Education
9. Health & Emotional wellbeing
10. Death of parents
11. Writing a new will
12. Re-evaluating the above plan
13. Communication, consultation, resolving conflict

Post-divorce mediation

Post-divorce mediation is an excellent method of resolving frustrating and complicated ex-spouse and new spouse set-ups. You can also write this into your settlement agreement so that if there are any disputes involving the children, the parties will attend post-divorce mediation to **resolve the dispute**. Mediators who are skilled in the art of dispute resolution can assist in situations where divorced couples have remarried. The chief benefit of post-divorce mediation is being able to avoid animosity, misunderstandings and a lack of communication through skilled facilitation and avoiding situations where children suffer unnecessarily.

Domestic violence and protection orders

Steps to overcoming domestic violence

You have the right to apply for a **protection order** at the magistrate's court in the area that you reside in.

You have the right to lay a criminal charge at the police station and to apply for a **protection order**.

What is a protection order?

A protection order is an order issued by the court at your request, ordering a person with whom you have had an intimate/domestic relationship to **stop the abuse**. It may also prevent the abuser from sourcing help from third parties to continue with the abuse.

What is the purpose of a protection order?

A protection order is meant to **prevent** the re-occurrence of domestic violence or sexual harassment by stating what conduct the alleged abuser must refrain from. If the abuser contravenes a protection order, once a protection order is granted, he or she can be **arrested**. The protection order is enforceable throughout the country irrespective of what jurisdiction your protection order was granted in. An interim order is granted when a warrant for arrest is issued at a police station. If it is contravened by abusers they can be arrested. With an interim order the abuser will need to attend court to show why the order should not be made final.

If the abuser **disobeys** the protection order, this must be reported to the police immediately with a copy of the protection order so that the respondent can be arrested and be brought before court. Only the Magistrate may release the arrested person, as the Magistrate issues the warrant.

Who can apply for a protection order?

Any victim of domestic violence can apply for a protection order. If a child is being abused, a partner/guardian or any person acting on their behalf or who is responsible for them can apply for a protection order for them. This should happen with their permission.

Please note that this sounds easy, but there are **procedures** that need to be followed in order for a protection order to be granted.

The magistrate cannot just dish out protection orders to people who feel that they are being abused by their partners or who wish to get them back for having an affair etc. Applicants have to follow the correct application procedures and have to appear in front of the **Magistrate** to explain why they wish to have a protection order.

The procedure to apply for a protection order is as follows:

The complainant must make an **affidavit** and complete an **application form** at a police station. Setting out what happened and how the DV occurred

- **Supporting** affidavits by persons who have knowledge of the matter in question, may accompany the application. This means that if anyone has seen the DV or has been told, they will make an affidavit stating that what is contained in the complainant's affidavit is true and correct. (Whatever is said relating to them)
- These documents must be handed to the clerk of the nearest court. The court will consider the application **immediately**.
- The application for a protection order is not limited to the complainant. An application for a protection order may be brought on **behalf** of the complainant by any other person who has an interest in the well-being of the complainant. This

- includes a counsellor, a health service provider, a social worker, a teacher or a member of the SAPS.
- If the court is satisfied that there is **sufficient evidence** that the suspect is committing or has committed an act of domestic violence/harassment and that unnecessary hardship may be suffered by the complainant as a result of the act, the court will issue an interim protection order against the respondent.
- The application for an interim protection order may be brought at **any time** and not only during office hours or on court days.
- The purpose of this interim protection order is to provide **immediate protection** to the complainant.
- The interim protection order has no force or effect until it has been **served** on the respondent – the person who has allegedly committed the Domestic Violence.
- The court is also required to issue a **suspended warrant of arrest** for the respondent. This means that a warrant will lay at the police station. A breach of the protection order requires that the respondent must be arrested by the police immediately.
- The interim protection order is not a final order from the court, but a temporary order which grants immediate relief until **the return date** (the date on which the applicant and the respondent, after being given due notice, are to appear before court to have the protection order made a final order). On this return date, the respondent is afforded the opportunity to present to the court reasons why the protection order should not be made final.
- If the respondent does not appear in court on the return date, but the court is satisfied that proper notice has been given to the respondent and that there is sufficient evidence that the respondent has committed or is committing an act of domestic violence/sexual harassment, the court may make a **final order** on the return date.

The protection order will prevent the respondent from –

- Committing any specified act of domestic violence/sexual harassment
- Entering the joint residence or entering a specific part of the residence
- Entering the victim's residence if they are not living together
- Entering the victim's place of employment/office
- Having contact with a child or children, if it is in the best interest of the child.

If a protection order has been obtained, the respondent cannot prevent the victim or a child who usually lives at the shared residence, from entering or remaining in the shared residence or any part of it.

When applying for a protection order, the complainant may request the removal of the respondent's **firearm** or other dangerous weapon. If the Magistrate orders the police to remove the firearm, the police will keep the firearm until the case has been finalised.

The firearm can only be **returned** to the respondent by order of the court, and the court may add conditions. The court may also order the State to keep the firearm if it is in the best interest of the victim's safety.

The court may order a police officer to **accompany** a complainant to retrieve his/her property from a specified place to ensure the safety of the complainant.

Important: If a respondent disobeys the protection order, it must be reported to the police immediately, with the copy of the protection order so that the respondent can be arrested and be brought before court. Only the Magistrate may release the arrested person as the Magistrate issues the warrant.

If you have been assaulted

Sexual assault:

- Sexual assault is defined as the sexual violation of a person **without their consent**.
- There are various types of sexual assault, but the best known is **rape**.
- Sexual assault may be perpetrated on or by men and women and it is not confined to forced penetration by the penis, but may include a **range** of forced sexual acts.
- As difficult as it may be, if any of this happens to you, **do not**, under any circumstances, wash your hands, your clothes, your mouth (including brushing your teeth) or your genitals. You must seek immediate medical attention at an emergency medical facility or a rape crisis centre.
- If possible, take a trusted **friend or family member** with you, as there may be important information to record which you may be too distressed to remember.
- Here you will be fully **examined** and various samples will be taken, including nail clippings, genital and mouth swabs and possibly undergarments.
- A **rape kit** is used with a serial number on it. The rape kit is provided by a named police officer involved in the case, and the serial number of the rape kit is linked to your case number.
- It is advisable that you or your friend **take note** of the police officer's name, their designation, the case number and the serial number of the rape kit.
- The doctor must break the seal and **reseal all evidence** as well as sealing the box. This is very important.
- This is handed from police to doctor, and doctor to police to maintain the **chain of evidence**. If this chain is broken, evidence may be disputed and the case may collapse. It is thus advisable to take clean undergarments to change into after your examination. The doctor doing the examination should record in as much detail as possible all injuries sustained, drawing diagrams if possible.
- The box is handed over to the police who will assist you in obtaining what is called a **J88 form**. This form is a document that the medical doctor who examined you should complete describing all injuries noted, including your emotional status and any evidence of substance use.
- There are also **diagrams** that the doctor must complete that indicate injuries. The doctor is also required to fill out an affidavit saying under oath that he or she has examined the patient.
- The J88 form serves as **proof of the injuries** sustained and will be necessary to lay and sustain a charge. Make sure you get a full examination of all your injuries and that the doctor records and takes note of all of your injuries.

Common assault

Common assault follows a similar process. Again, seek medical assistance immediately, do **not** change clothes, wash, clean wounds etc. Also do not **delay**, even if you know that your injuries are minor. You will not be able to claim if there is no medical verification of the injuries you have sustained from your assault. As with sexual assault, the doctor will make notes and diagrams of your injuries, also on a J88 form. Please remember, it is not the doctor's duty to verify the events of the assault, their duty is merely to record the injuries and state whether they are in keeping with the alleged method of assault.

If you do claim

- The J88 form does not constitute a charge, nor is it a case number. The J88 merely shows that you have **seen a doctor** and that he has examined your body as well as any injuries that you may have sustained.
- You still need to lay a **charge of assault** with the police, either at the hospital if there is a one-stop rape crisis centre, or at your police station.
- It is then up to the **police** to investigate your charge and to decide whether to prosecute the case criminally. You may also wish to pursue a civil claim, even if the police do not proceed with prosecution. A case may not be prosecuted if the injuries are very minor, or if there is contested evidence of the circumstances surrounding the event.
- A criminal case needs to be proved **beyond reasonable doubt**, and a civil case is judged on the **balance of probability**. (This is just the legal standards that are implemented)
- You can personally pursue a civil case, in addition to a criminal case. A criminal case is taken up by the state prosecution authority, whereas you will need to pursue the civil case yourself.

Civil Claim:

If you are pursuing a civil claim against the person who assaulted you, you will need to decide in advance **how much** you are looking to claim from the person. This could include the costs of your medical attention and loss of earnings immediately after the assault and in the long term.

Also, consider the long-term emotional effect of the event, and the fact that you might need psychiatric and/or psychological intervention and care. When you discuss your claim with your lawyer, you need to factor in the **hidden costs** of claims, which include lawyers' fees and expenses. In some cases, lawyers will take your case on a no-win, no-pay basis, but they will take a significant portion of any payment that you win. Otherwise, their fees must be budgeted for as you consider your claim.

If you are at fault

Assault can take place when you are the undisputed innocent victim of the crime, but it can also take place under circumstances where there is **mutual aggravation**, such as in a fight.

If your assault happened in the context of a fight, this does not mean that you cannot lay a charge of assault, but you need to be aware that you may also be charged with assault for your part in the incident. Even if you did not physically assault your assaulter, you might be shown to have **provoked** the assault by your words or actions.

If there were witnesses to the assault, they may be called upon to testify in favour of your claim or refute your evidence. You should also be prepared for a court appearance where your version of the event might be challenged. In some cases, your assaulter may choose to **settle** out of court and a lengthy case can be avoided. In either course of events, a lengthy and expensive process can be expected. Also, if the case proceeds in court, you may be at risk of criminal charges if the assault involved retaliation on your part.

At the end of the day

Any instance of assault will be extremely traumatic. No one wants to have to claim for a case of assault. However in a case where you are the victim of an assault, you are entitled to seek compensation for the damages you suffered. There has to be actual damage to claim, though.

Always ensure that you avoid any interaction with the perpetrator and do not attempt to seek revenge. In the case of an assault, you want to be able to deal with the situation and move forward with your life.

Evictions:

South African law governing eviction of a tenant is complicated and requires legal advice. The prevention of Illegal Eviction from and the Unlawful Occupation of Land Act No 19 of 1998 (also called PIE), governs the eviction process. There are two types of evictions – Residential and Commercial Evictions

It is important to note that:

No-one can be evicted from their home, or have their home demolished **without an order of court** made after considering all the relevant circumstances. No legislation may permit arbitrary evictions.

Evictions can only be carried out by the **Sheriff of the Court** in terms of an order of Court.

Legal assistance:

If you have a family matter that you need help with, we suggest that you:

1. First see if you qualify for Legal Aid, you will need to earn less than **R3 000** a month to qualify for Legal Aid
2. Many of the Universities have Legal Aid Clinics. There is one at UJ, and one at Wits that you can approach to assist you.
3. You can approach them Pro-Bono and see if they will be prepared to assist you free of charge. There are many legal aid and pro bono desks that sit at specific courts every week, one day a week.
4. You can contact an attorney of your choice and book an appointment, and your attorney will advise and guide you on the way forward.

Children's Courts

- A Children's Court is a special court that deals with issues **affecting children**.
- The children's court also **takes care** of children who are in need of care and protection and makes decisions about children who are abandoned, neglected or abused.
- **Any** person/child may approach the clerk of the children's court when he/she believes that a child may be in need of care and protection.
- The Children's Court can place a child in **safe care** or refer the child and/or the parent to services that they may require.
- Children's Court does **not** deal with criminal cases. There are several children's courts situated in Johannesburg and you must attend one in the area where the children are resident.

It is not a failure to end a relationship that is abusive. It takes a lot of courage and strength to stand up for yourself and your children and to walk away from a relationship that is not good for you.

The wheels of justice sometimes turn slowly but they do turn! We have good judges and magistrates in South Africa and I would like to encourage you to take the necessary steps to protect yourself and your loved ones. We have an amazing country with a multicultural nation of vibrant, resilient people. It is time for all of us to stand together as brothers and sisters, mothers and fathers, friends and family against abuse.

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