Until death or divorce

The problem with working with numbers all day and basing decisions on probability is that you start looking at everything in terms of odds. This comes in handy when making decisions about most areas of life but can end up making you very cynical about the chances of success in the areas of life where we desperately want to believe that our chances are better than others'.

Survival periods or chances of recovery in terms of a dread disease, bodily impairment or brain trauma are common examples of this. Thus, when we do financial planning for healthy individuals we are quite comfortable to discuss such topics, the potential risks as well as formulate a plan in terms of dread disease, disability or death. One area that advisors certainly almost never discuss, and surely not with happy newly-weds, is divorce. According to the latest figures by Stats SA, your chances of divorce are between 45% and 50%. Imagine the master of ceremony toasting to a 50% chance that the newly-wed couple will last till the end! The fact that this statistic is a sad one and surely not something you want to think about at the start of your marriage does not change the fact that this is the reality for a lot of people.

The average age at time of divorce in South Africa is 44 for men and 40 for women. The highest percentage of marriages that fail (27.6%) occur between 5 and 9 years of marriage. This group is followed by marriages between 10 and 14 years (18.8%) and then by marriages shorter than 5 years (17.8%).

What are the financial problems that divorce create in practice? Below are a few obvious problems from a financial planning as well as overall happiness point of view.

- Most people's retirement plans are barely executable when they stay together and as a result share costs in retirement. Whatever your current economic situation, unless the one spouse has a spending problem while the other is a disciplined investor, **both** will be worse off if there is a divorce before retirement and the accrual system was applicable.

- Marriage in community of property has mainly been replaced by marriages out of community of property WITH the accrual system. Besides some technical and legal aspects, the latter is very similar to marriage in community of property from a financial planning point of view if the parties had equal or small estates at the start. Where there is a big difference in earnings between two spouses, the person with the higher earnings and thus the one doing the bulk of the saving must be comfortable with the fact that should things go pear-shaped the other party is entitled to half of the accrual.

- Accrual in the case of something like agricultural land or a business that becomes very valuable over time **but that cannot be sold or that you will not want to sell at divorce** can have a devastating effect on cashflow and solvency for the person retaining the asset, having to pay over 50% of the value of that asset in cash. Often assets are placed in a trust to provide protection to one of the parties (normally the husband) in cases like this. The trust deed as well as the rights of the trustees involved will prove whether this structure would in fact provide the necessary protection as this is not a given. The administration of most trusts is so lacking that I want to go out on a limb and say that most who believe they enjoy the necessary protection in their trust are mistaken.

- When a spouse (often the wife) gives up her career and earning ability to become a homemaker it is imperative that **both** parties realise the seriousness of this decision and put measures in place to ensure that the financial future of the homemaker is not compromised should the marriage end in divorce. If this is not done, the wife (in this scenario) is placing her whole future on the line and she can easily end up in a situation where she is unhappily married but has no option other than to stay married. With this I am not saying that you should keep the back-door open but that over time, if not properly planned for, the balance of power between spouses can become so askew that one party can be exploited by the other.

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So, what to do? Obviously first prize would be to never get divorced. It certainly was not part of the plan the day you said "I do." The reality is (regardless of your religious or other beliefs) that despite your best efforts and intentions, your chances of success are about 50% with the majority of the risk on marriages younger than 14 years. Maybe try the following:

- If you are not yet married but on your way there, make an effort with your pre-nuptial contract. Everyone neglects it and does it last minute. Set up a proper document outlining what to do in a worst-case scenario. This may not be easy to do while you are busy finalising your guest list and picking photographers but this can save you a lot of grief, sorrow and embarrassment later. It also establishes the ground rules from day one and avoids resentment later. The refusal to do this, to me, borders on the refusal of a skydiver to learn how to deploy his emergency parachute because the idea of his main parachute malfunctioning is too traumatic.

- If married already, you should make sure that if things go wrong, both parties are able to carry on without financial inequality. Also, discuss with your financial planner the meaningfulness of planning SEPARATELY for retirement as well as together.

In conclusion: Last year there were 20 couples over the age of 70 who threw in the towel. Work and hope for the best possible outcome but plan for the worst.

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