



MARTIN GEORGE & CO.

(M.A.G.C.O)

Attorneys-at-Law

E Mail: mag4law@hotmail.com
Website:
<http://martingeorge.net/>

PORT -OF SPAIN OFFICE:
#43 Dundonald Street,
Cor. Gordon & Dundonald
Streets Port of Spain,
Trinidad, West Indies.
Tel: (868) 624-7257
Tel / Fax: (868) 623-5187

TOBAGO OFFICE:
33 Bacolet Park
Scarborough,
Tobago, West Indies.
Tel: (868) 639-1809
Tel/Fax: (868) 639-1579

US MAILING ADDRESS:
11158 Highland Circle,
Boca Raton
Boca Woods
Florida,
33428 USA

LEGAL TOPIC: INITIAL STAGES OF A DIVORCE IN TRINIDAD AND TOBAGO

By: Janelle Ramsaroop
Attorney-at-Law
Martin George and Co.
Attorneys-at-Law



Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Khoorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC, Sarah Lawrence LL.B (Hons) LEC and Sara Martinez
LL.B (Hons) LEC**

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

➤ WHAT IS A DIVORCE?

A divorce is essentially the dissolution of a marriage whereby all legal rights between a husband and a wife have been extinguished completely.

➤ HOW ARE DIVORCE PROCEEDINGS COMMENCED?

Divorce proceedings are initiated by way of a document known as a “Petition for Divorce” whereby the party wishing to initiate the divorce proceedings is known as the “Petitioner” and the other party is known as the “Respondent”. Divorce proceedings are initiated in the Family Court of Trinidad or the Family Court of Tobago.

➤ ISSUES TO BE DETERMINED BEFORE INITIATING DIVORCE PROCEEDINGS

1. How long have the parties been married?

The parties to a marriage must have been married for at least one year before either party can commence divorce proceedings unless there are *exceptional circumstances*. This means, for instance, if you were married on September 22nd, 2019, you will not be able to commence divorce proceedings until September 22nd, 2020 or thereafter.

- **Section 5 (1) of the Matrimonial Proceedings and Property Act**

Chap 45:51 provides:

“5. (1) Subject to subsection (2), no petition for divorce shall be presented to the Court before the expiration of the period of one year from the date of the marriage.”

2. Where are the parties domiciled?

- **Section 2A of the Matrimonial Proceedings and Property Act Chap**

45:51 essentially suggests that one of the parties must either be domiciled in Trinidad and Tobago on the date when divorce proceedings have begun; or that one party was habitually resident in Trinidad and Tobago throughout the period of one year ending with that date when divorce proceedings have begun.

➤ **GROUNDS FOR DIVORCE**

Interestingly, there is only one ground for divorce in Trinidad and Tobago, this is the **IRRETRIEVABLE BREAKDOWN OF THE MARRIAGE.**

This is in accordance with **Section 3 of the Matrimonial Proceedings and Property Act Chap 45:51** which states

“3. After the commencement of this Act the sole ground on which a petition for divorce may be presented to the Court by either party to a marriage shall be that **the marriage has broken down irretrievably.**”

How this ground is satisfied is based on the facts particular to your situation, of course each case and each marriage will be different. **Section 4 (1) of the Matrimonial Proceedings and Property Act Chap 45:51** provides those facts on which the ground of “an irretrievable breakdown” will be founded:

“4. (1) The Court hearing a petition for divorce shall not hold the marriage to have broken down irretrievably unless the petitioner satisfies the Court of one or more of the following facts:

(a) that the respondent has committed **adultery** and the petitioner finds it intolerable to live with the respondent;

(b) that the respondent has **behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent;**

(c) that the respondent has **deserted the petitioner for a continuous period of at least two years** immediately preceding the presentation of the petition;

(d) that the parties to the marriage **have lived apart for a continuous period of at least two years** immediately preceding the presentation of the petition and the respondent consents to a decree being granted;

(e) that the parties to the marriage **have lived apart for a continuous period of at least five years** immediately preceding the presentation of the petition.”

At least one of these facts must therefore apply in order to fulfil the sole ground that the marriage has broken down irretrievably.

➤ **A CLOSER LOOK: FACTS WHICH SATISFY THE GROUND FOR DIVORCE**

1. ADULTERY

- Legislation

Section 4 (1) (a) of the Matrimonial Proceedings and Property Act

Chap 45:51

- **Definition**

- Adultery is consensual sexual intercourse that occurs between a married person and a third-party person of the opposite sex during the course of that married person's marriage.
- To constitute adultery, there must be the actual act of sexual intercourse. According to the English case of ***Dennis v Dennis [1955] 2 All ER 51 CA***, such intercourse must involve the penetration of the woman's vagina by the man's penis.
- Homosexual conduct with a third party is therefore not considered adultery in Trinidad and Tobago.

- **Burden and Standard of Proof**

- The burden of proof is on the person alleging the adultery.
- The standard of proof is on a balance of probabilities.
- It is not necessary to prove this fact directly. For instance, if the Petitioner can show that the Respondent is cohabiting with a third-party of the opposite sex or if the Respondent has a child with a third-party, this should be sufficient for a Court to draw inferences of adultery.
- It is important to note that if a Divorce is proceeding on the ground of Adultery, the Third Party must be specifically named and must be added to

Martin George LL.B. AMABE

**Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC
Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara
Martinez LL.B (Hons) LEC
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**

the Petition as a Co-Respondent and must be served with the Divorce Proceedings in the same manner as the Respondent is served.

- It is equally important to know that there is a time-line for you to be able to claim Adultery as there can actually be a Legal Defence to it as we will now explain.

- Defence to a Claim of Adultery

If a Petitioner continues to live with a Respondent for a period in excess of six (6) months after that Petitioner has become aware of the adulterous conduct of the Respondent, then that Petitioner cannot rely on adultery.

- **Section 8 (3) of the Matrimonial Proceedings and Property Act**

Chap 45:51 provides:

“(3) Where the parties to the marriage have lived with each other for any period or periods after it became known to the petitioner that the respondent had, since the celebration of the marriage, committed adultery then—

(a) if the length of that period or of those periods together was six months or less, their living with each other during that period or those periods shall be disregarded in determining for the purpose of section 4(1)(a) whether the petitioner finds it intolerable to live with the respondent; but

(b) if the length of that period or of those periods together exceeded six months, the petitioner shall not be entitled to rely on that adultery for the purposes of section 4(1)(a).

2. UNREASONABLE BEHAVIOUR

- Legislation

- **Section 4 (1) (b) of the Matrimonial Proceedings and Property Act Chap 45:51 .**

- Definition

There is no fixed definition for unreasonable behaviour but the Petitioner must be able to show that the Respondent has behaved in such a way that is so intolerable to the Petitioner, so much so, that the Petitioner can no longer be reasonably expected to live with the Respondent. Some common examples may be:

- The Respondent has become an alcoholic;
- The Respondent refuses to contribute financially to the matrimonial household;
- The Respondent has become abusive toward the Petitioner or the children of the marriage.
- The Respondent is uncaring and withholds affection.

- Burden and Standard of Proof

- The burden of proof is on the party alleging the unreasonable behaviour.
- The standard of proof is on a balance of probabilities.
- The Court must be satisfied of the unreasonable behaviour and the fact that the Petitioner cannot reasonably be expected to live with a spouse who displays such behaviour.

- Defence

If a Petitioner continues to live with a Respondent for a period in excess of six (6) months after that last occurrence of the Respondent's unreasonable behaviour then that Petitioner cannot rely on unreasonable behaviour.

- **Section 8(4) of the Matrimonial Proceedings and Property Act Chap 45:51** states :

“(4) Where the petitioner alleges that the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with him, but the parties to the marriage have lived with each other for a period or periods after the date of the occurrence of the final incident relied on by the petitioner and held by the Court to support his allegation, that fact shall be disregarded in determining for the purposes of section 4(1)(b) whether the petitioner cannot reasonably be expected to live with the respondent, if the length of that period or of those periods together was six months or less.”

However, there may be those situations where the Petitioner might have no alternative place of abode besides the matrimonial home and therefore is forced to continue living in an intolerable situation and in such cases the Court may still grant relief. *Lord Denning* made accommodation for these persons in the case of **Bradley v Bradley [1973] 3 All ER 750** where he held:

“in exceptional circumstances, where it is shown that the petitioner has had no option but to continue living there, the petitioner will satisfy the requirements”

3. DESERTION

- Legislation
 - **Section 4 (1) (c) of the Matrimonial Proceedings and Property Act Chap 45:51**

- Definition

Desertion is, essentially, where one spouse separates himself/herself from the other with intentions to bring the co-habitation permanently to an end without reasonable cause and without consent of the other spouse. It is not so much a withdrawal from the physical place of the matrimonial household, but it is a withdrawal from the state of things in the marriage, that is, the marital obligations.

- Elements To be Satisfied

The Petitioner must be able to show that the Respondent had intention of physical separation and intention to bring the co-habitation to an end without consent from the Petitioner.

- Burden and Standard of Proof

The burden of proof is on the Petitioner to show that the desertion without cause subsisted throughout the two (2) year period.

The standard of proof is on a balance of probabilities.

- Defence

There is no desertion if there is an agreement to separate and any such agreement may be oral, written or implied.

4. TWO YEARS SEPARATION WITH CONSENT

- Legislation

- **Section 4 (1) (d) of the Matrimonial Proceedings and Property Act**
Chap 45:51

- Definition

Living apart is not the same as desertion. To satisfy separation, both parties must have the intention to live apart. Both parties must therefore be living in

separate households. It must, however, be noted that a married couple can be separated but still reside under the same roof (***Mouncer v Mouncer* [1972] 1 WLR 321; *Fuller v Fuller* [1973] 1 WLR 730**). Thus it is possible to live in separate households under the same roof. Both parties must also consent to a Decree being granted if parties are relying on this fact.

5. FIVE YEARS SEPARATION (*without Consent*)

Legislation

- **Section 4 (1) (e) of the Matrimonial Proceedings and Property Act Chap 45:51**

Definition (same as above)

To satisfy separation, both parties must have the intention to live apart. Both parties must therefore be living in separate households. Again, a married couple can be separated but still reside in the same house (***Mouncer v Mouncer* [1972] 1 WLR 321; *Fuller v Fuller* [1973] 1 WLR 730**).

There is no need for parties to consent to a Decree being granted under this fact.

© 2020 MARTIN ANTHONY GEORGE & CO