

CLE (1 hour)
(.25 hours ethics)

Representing Divorce Injury Clients

How Suing an Abusive Spouse can Improve Divorce Results

by R. Keith Perkins

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R. Keith Perkins

- Practicing Law for 30 Years
- Primarily Representing Domestic Tort Victims
- Won nearly \$300 Million in Domestic Tort Judgments
- Taught Law Schools & Legal Conferences Nationwide
- Author of *Domestic Torts: Representing Divorce Injury Clients* published by Thomson Reuters
- Career Devoted to Helping Victims of Abuse and the Lawyers who Serve Them



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- **Three Key Questions:**

1. What are Domestic Torts (i.e. *Divorce Injury* claims)?
2. Why haven't I heard more about them before?
3. Why its critical I learn about them now?

- **Legal Ethics** and Avoiding Legal Malpractice

- **Introduce New Tools** and Resources to Help You

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Three Key Questions:

1. What are Domestic Torts?
2. Why haven't I heard more about them before?
3. Why its critical I learn about Domestic Torts now?

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What are Domestic Torts?



- Includes:
- Domestic Violence
 - Sexual Assault
 - Date Rape
 - Child Abuse & Molestation
 - Video Voyeurism
 - Revenge Porn
 - Fraud (including Paternity)
 - Alienation of Affections
 - Seduction
 - Sexually Transmitted Diseases
 - Invasion of Privacy
 - Interference in Family Relationships
 - Elder Abuse
 - Conversion
 - Destruction of Property
 - **Murder**
 - And many more...

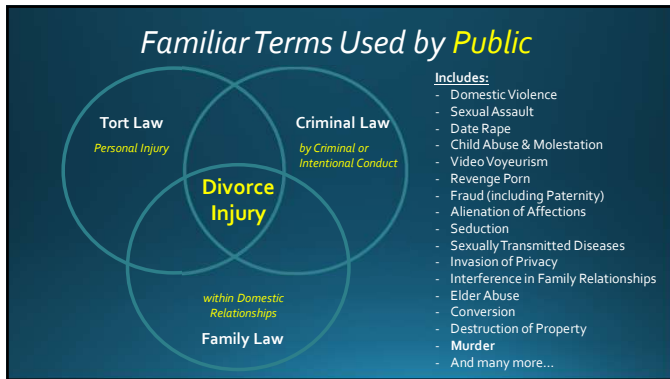
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Technical Legal Terms Used by Lawyers



- Includes:
- Domestic Violence
 - Sexual Assault
 - Date Rape
 - Child Abuse & Molestation
 - Video Voyeurism
 - Revenge Porn
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Three Key Questions:

1. What are Domestic Torts?
2. **Why haven't I heard more about them before?**
3. Why its critical I learn about Domestic Torts now?

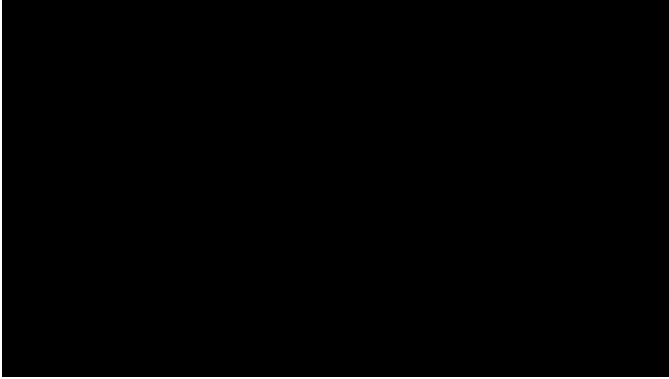
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Until the late 1800's, **women were** legally viewed as **property** of their husband, father, or even their employer.

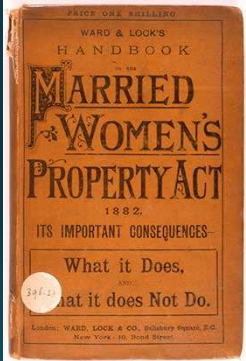
An injury to a woman created a legal right for the husband who could sue for "his" **loss** of property damages.

The woman had **no right to sue** for her own injuries...

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"Married Woman's Property Acts"

During the latter half of the 1800's, individual states began enacting statutes that for the first time recognized women as their own separate, legal person.

These laws permitted women to:

- own property in their name;
- work for their own a salary;
- write wills and sign contracts;
- and sue for damages to their property.

But change came slowly... in piecemeal fashion.

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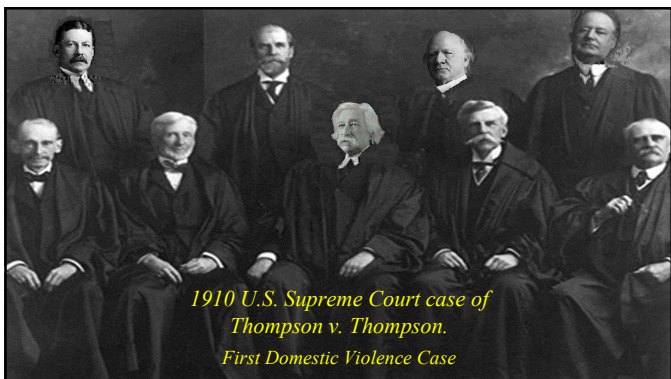
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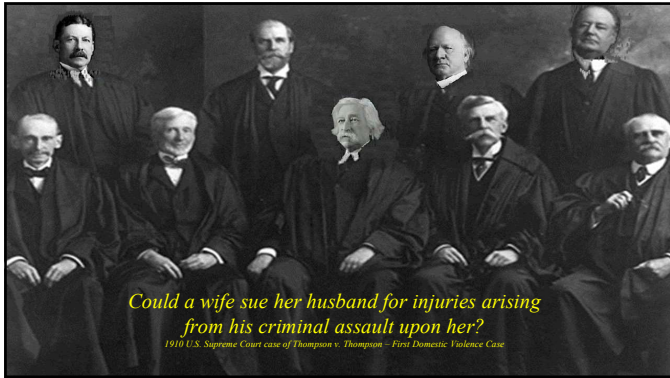
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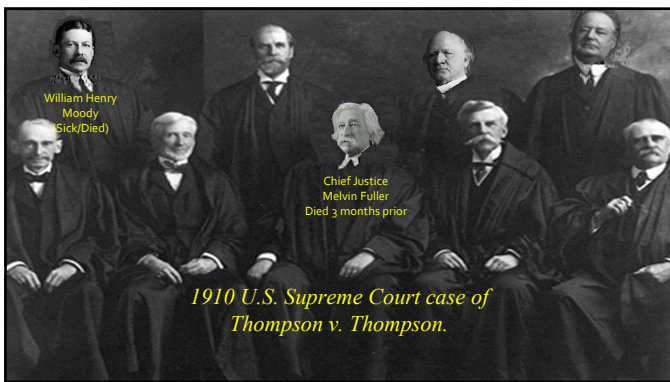
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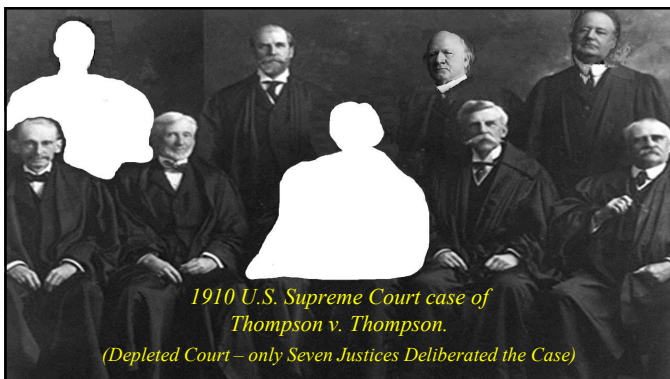
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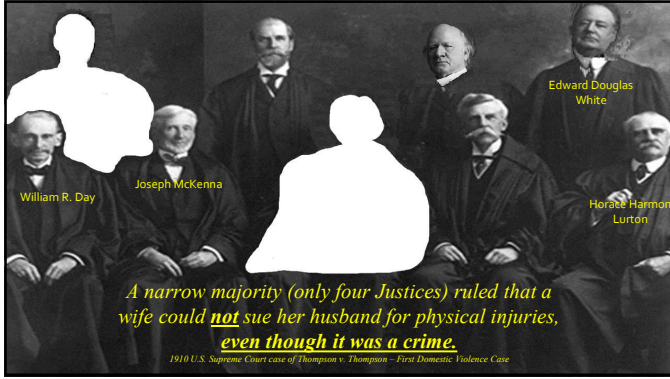
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Majority Opinion
 1910 U.S. Supreme Court case of *Thompson v. Thompson*
 – First Domestic Violence Case

The majority of the Supreme Court feared that “**the possible evils**” of permitting a wife to sue her husband for her injuries would “**open the doors** of the courts to accusations of all sorts of one spouse against the other, and **bring into public notice** complaints for assault, slander, and libel, and alleged injuries to property of the one or the other, by husband against wife, or wife against husband.”

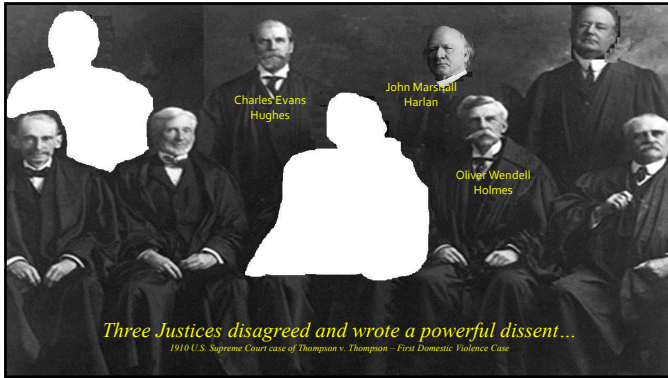
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Majority Opinion
 1910 U.S. Supreme Court case of *Thompson v. Thompson*
 – First Domestic Violence Case

Therefore...
 U.S. Supreme Court majority concluded that it did not believe that it was the intention of the “Married Women’s Acts” “to **revolutionize** the law governing the relation of husband and wife as between themselves.” Therefore, the majority **ruled a wife could not sue** her husband for injuries caused by his intentional crimes against her.

Finally, the majority rationalized that a spouse did not need a right to sue for damages because they were **already given enough relief** for such “atrocious wrongs,” ... **they “may resort to the criminal courts ... [or get a] divorce....”**

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Minority Dissent Opinion
 1910 U.S. Supreme Court case of *Thompson v. Thompson*
 – First Domestic Violence Case

“Under the construction now placed by the majority on the Married Woman’s Acts, the Court is put in the **anomalous position** of allowing a married woman to sue her husband for the recovery of her property, but **denying her the right** or privilege to sue him for damages arising from his brutal assaults upon her person.

[We] will not assume that Congress intended to bring about any such result. **[We] cannot believe** that it intended to permit the wife to sue the husband for damages to her property, and at the same time **deny** her the right to sue him for injuries committed against her person.”

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Unfortunately, **nearly every state followed** the U.S. Supreme Court’s 1910 *Thompson v. Thompson* decision **to prohibit all domestic torts**, which denied women the right to sue husbands for criminal assaults...

... and continued for most of our past century.

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**So...
Who Represents
Divorce Injury
Victims?**

1 Million Divorces
per year

4 Million Incidents
of Domestic Violence
per year

"Accidents"
If Insurance Coverage
(Not "Intentional" Torts)

**Extremely Difficult for Divorce Injury
Victims to find a Lawyer**

The infographic features a central map of the United States. To the left, there are images of books labeled 'Divorce', 'Family', and 'Law'. To the right, there is an image of a stethoscope over a book labeled 'PERSONAL INJURY LAW'.

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Through the Victim's Eyes
(warning: intense)

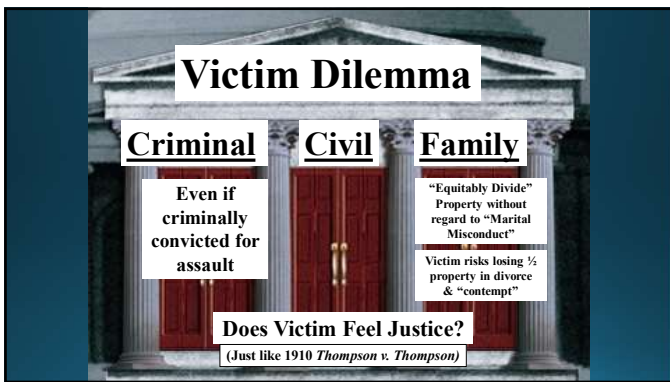
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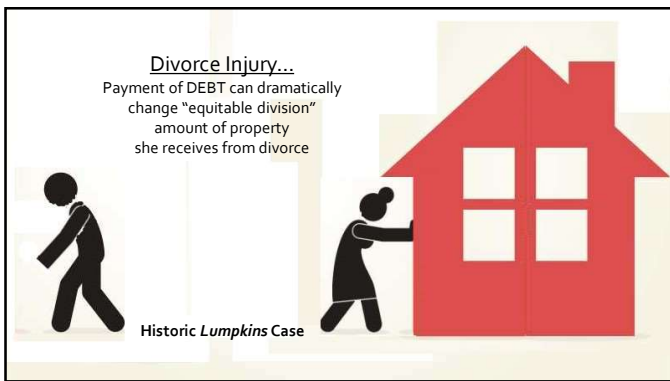
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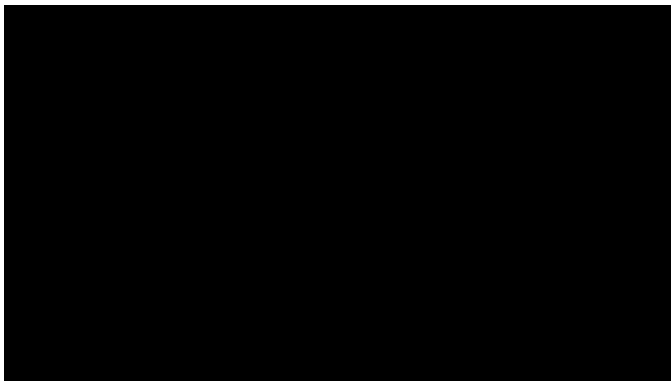
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Three Key Questions:

1. What are Domestic Torts?
2. Why haven't I heard more about them before?
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What Percent of U.S. Divorces include Domestic Violence as a "Major Factor" for Women?

42% to 44%

* 42% per With This Ring: National Survey on Marriages in America, 2005
** 44% per Oklahoma Baseline Survey on Marriage and Divorce, 2002

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Legal Ethics **Four Options:**
As Divorce Attorney for Client's who have been Abused

1. Represent them!! (Do BOTH Divorce AND Injury Claim)
2. Do Divorce; but Refer Injury Claim to another attorney
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Legal Ethics What is the **Danger** of Ignoring Injury Claim?
HUGE Malpractice Liability!!

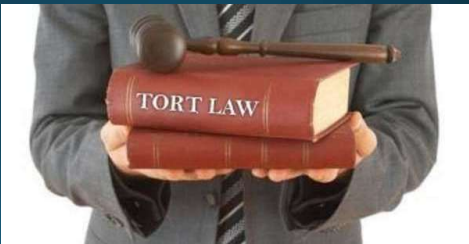


Prediction: this will increase greatly

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Legal Ethics

Why?
The truth is you already KNOW this!




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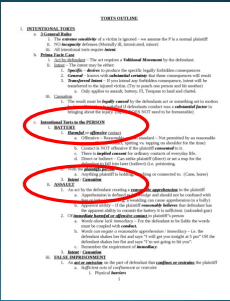
Legal Ethics **1st Year Law School Basics**

At law schools, the standard **first-year** curriculum includes courses in the following subjects:

- civil procedure,
- contracts,
- criminal law,
- property, and
- **torts.**



Assault & Battery



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Legal Ethics **Bar Exam:**
All Lawyers are **EXPECTED** minimum capability

Multistate Bar Exam (MBE)

For the Multistate Bar Exam portion, you will have 200 multiple-choice questions to answer over a period of six hours. The MBE covers the following seven subjects (which are equally tested):

- Contracts and Sales (25 multiple choice questions)
- Constitutional Law (25 multiple choice questions)
- Criminal Law and Procedure (25 multiple choice questions)
- Civil Procedure (25 multiple choice questions)
- Evidence (25 multiple choice questions)
- Real Property (25 multiple choice questions)
- **Torts (25 multiple choice questions)**

Because all seven subjects are tested equally (and they also all appear in some capacity on the essay portion of the Uniform Bar Exam, as discussed below) it is very important to know these subjects well!

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Legal Ethics **Duty to Inquire**
American Bar Association (ABA) Model Rules of Professional Conduct

CLIENT-LAWYER RELATIONSHIP
Rule 1.1 Competence
A lawyer shall provide **competent representation** to a client. Competent representation requires the legal knowledge, skill, **thoroughness** and preparation reasonably necessary for the representation.

COMMENT:
Thoroughness and Preparation
[5] Competent handling of a particular matter includes **inquiry into** and analysis of the **factual** and legal elements of the problem.

Maintaining Competence
[8] To maintain the requisite knowledge and skill, a lawyer should **keep abreast of changes in the law** and its practice.

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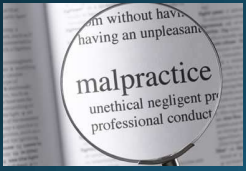
Legal Ethics **Duty to Inform**
 American Bar Association (ABA) Model Rules of Professional Conduct

CLIENT-LAWYER RELATIONSHIP
Rule 1.4 Communication
 ...
 (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT:
Explaining Matters
 [5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation...
 The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests...
Withholding Information
 A lawyer may not withhold information to serve the lawyer's own interest or convenience...

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Legal Ethics **Legal Malpractice**



Four standard elements are:

- 1) An attorney-client relationship;
- 2) Negligence by the attorney;
(i.e., failure to inquire or inform client)
- 3) Financial loss to the client;
- 4) Caused by the attorney's negligence

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Legal Ethics **Legal Malpractice (Case)**

Stephen v. Sallaz & Gatewood, Chtd.
 150 Idaho 521 248 P.3d 1256 (2011) Supreme Court of Idaho

The Supreme Court held that:

- (1) divorce attorney committed legal malpractice by failing to investigate, inform, and advise client regarding the fair market value of marital property;
- (2) law firm was liable for attorney's legal malpractice;

"Client retained the attorney for assistance with her divorce proceedings, this representation implicitly included assistance with the valuation of the marital property, and ... making a minimal investigation into the value of the property..."

"An attorney in a divorce proceeding must also pursue the most equitable division of community assets for his or her client."

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Legal Ethics *Legal Malpractice (Case)*
Wolfe v. Wolf Eyeglasses
 375 Ill.App.3d 702 (2007) Appellate Court of Illinois

Plaintiff alleged in her legal malpractice action that [her divorce attorney] had failed to discover hundreds of thousands of dollars in the possession of the ex-husband at the time she entered into the agreement. Plaintiff alleged that defendant had wrongly informed her that she was not a candidate for maintenance, and she negligently failed to inform plaintiff of her rights... and failed to conduct sufficient discovery...

She is alleging that [her divorce attorney's] negligent misrepresentation did not permit her to make an informed decision about accepting the settlement agreement...

That, had [her divorce attorney] conducted meaningful discovery of the husband's assets and informed her that she was eligible for maintenance and for interim attorney fees, she would not have entered into the settlement agreement.

We reverse the order dismissing plaintiff's claim and remand for further proceedings.
Reversed and remanded.

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Legal Ethics *Attorney Malpractice Risk*

Defendant/Spouse Actions:	Malpractice Risk
1) Threatened client, but never caused physical harm	Low <i>(Lowest Risk/Severity)</i>
2) Physically harmed client, but it was never reported	Medium
3) Physically harmed client and it was reported to police/doctors	High
4) Criminally charged for assault/battery	Very High
5) Criminally convicted for assault/battery	Extreme
6) Criminally convicted for assault/battery and traumatic injuries	Catastrophic

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Legal Ethics **\$50 Million Legal Malpractice**

2019 Arizona Court of Appeals case

Legal Malpractice arising from a Domestic Torts Claim

Review Denied and Ordered Depublished January 7, 2020

IN THE
ARIZONA COURT OF APPEALS
 DIVISION ONE

STEVEN GIBSON, JR., Plaintiff/Appellant,

vs.

PAUL J. THEUT, et al., Defendants/Appellees.

No. 1 CA-CV 17-0562
 FILED 3-12-2019

Appeal from the Superior Court in Maricopa County
 No. CV2018-094831
 The Honorable David M. Talamante, Judge (Retired)

AFFIRMED IN PART; REVERSED IN PART; REMANDED

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Legal Ethics Two Essential "Must Do"

- 1) **INQUIRE:** Ask every client if they have been abused by their spouse.
- 2) **INFORM:** Inform every client of potential right to sue abusive spouse; which may affect amount of property they receive in divorce

Practice Tip: Have EVERY client fill out a "Divorce Injury" screening Questionnaire at the first interview, asking if they have been injured.

Include a written Notice of Legal Rights & Information regarding potential divorce injury claims – what is the potential implication to the client's case, statute of limitations, whether the attorney will take the case, refer the case, etc.

(Will provide LINK to Form you can Download and use).



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Legal Ethics Four Options:

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Legal Ethics **Four Options:**
As Divorce Attorney for Client's who have been Abused

1. Represent them!! (Do BOTH Divorce AND Injury Claim)

KEY: cannot do divorce injury lawsuit on contingency fee basis.
 Must do injury lawsuit paid hourly - Just like already doing for divorce anyway

ABA Model Rules of Professional Conduct
 CLIENT-LAWYER RELATIONSHIP – Rule 1.5 Fees
 (d) A lawyer shall not enter into an arrangement for, charge, or collect:
 (3) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of... property settlement...
 COMMENT: Prohibited Contingent Fees
 [6] Paragraph (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained.

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Legal Ethics **In House Referral**
OPTION: In House Referral Solution

Designate one attorney at your law firm to do Divorce Injury Claims

YOU want to be that lawyer



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Why do both Divorce & Injury Claim?

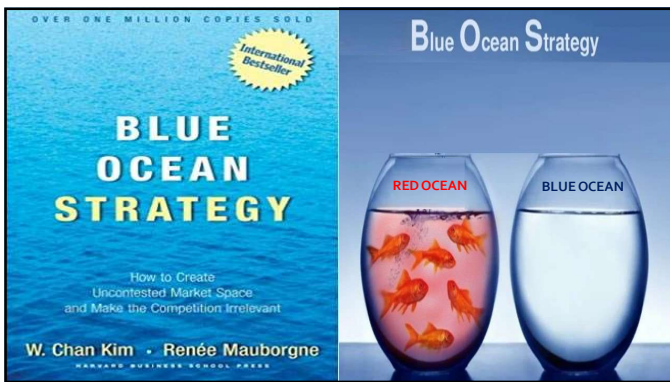


#1 Reason: Many clients need it desperately!
 Huge, Underserved Population
 Remember 42% of Divorced Women say Domestic Violence "major factor"

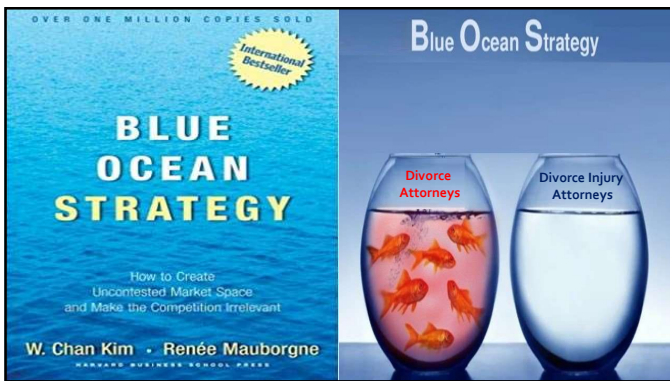
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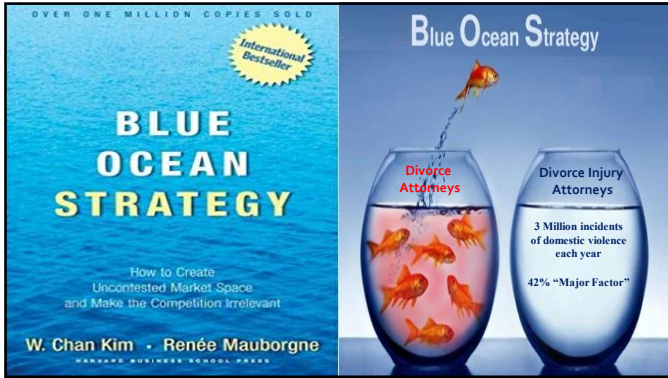
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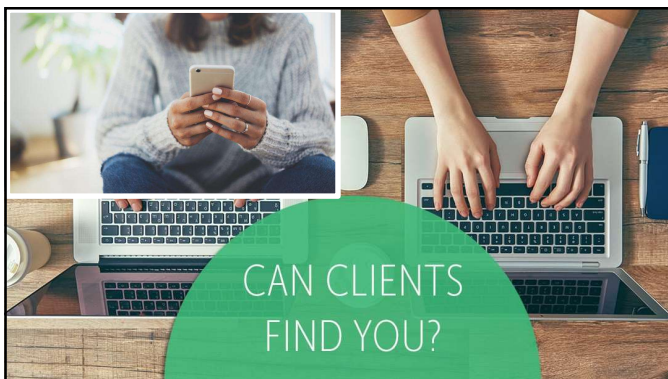
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YOUR RIGHTS

Your Right to Sue An Abusive Spouse

You may have the right to sue an abusive spouse for causing your injuries. This may arise from: hitting, beating, choking, cutting, dragging, confining, intentionally causing physical injuries, unwanted forced sex, sexually transmitted diseases, secret sex tapes, kidnapping children, death threats, threats to harm your children or pets, unauthorized showing your nude photos, interfering in child custody, etc.

[FIND A DIVORCE INJURY ATTORNEY](#)

May Impact Your Divorce & Division of Property

Suing an abusive spouse may result in a money judgment in your favor. In a divorce, this may become a debt your abusive spouse owes to you. This debt may change the sum of money or property you get in your divorce.

Example: A married couple has \$200,000 worth of equity in their home. Often, the divorce court equally divides this equity and each spouse gets \$100,000.

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- DON JONES, JONES PLC, MESA ARIZONA
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- DRACO MALFOY, MESA, ARIZONA
- LUNA LOVEGOOD, MESA, ARIZONA

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Top Priority Paid Listings Options Available

DIVORCE INJURY ATTORNEYS



Janette Smith, Scottsdale

Janette Smith is a partner with Smith Jones & Johnson. Her office is in Scottsdale, Arizona. She handles cases primarily throughout Maricopa County. Janette practices exclusively in the area of family law and has over ten years of experience. She graduated from Arizona State University School of Law in 2011. Janette has a great compassion for people and especially for representing women who have been abused by their spouses.

Janette is an trusted counselor who has advised many women through the difficulties of divorce. While she knows that no one really wins in a divorce, she carefully inquires into whether women have been injured by an abusive husband, and if warranted, will file a civil lawsuit against the abusive spouse for money damages. This may greatly impact the division of property in a divorce. Janette helps women who are going through the most difficult times in their lives... and come out able to start life anew.

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SOCIAL MEDIA MARKETING



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Target Audiences



Primary Audience:

- Women
- Over 18
- Married
- Living in state
- Net worth \$100K+

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- Easy, plug and play National Online Legal Directory
- "Blue Ocean" of Prospective Clients
- High Value Marketing, for very low cost (or free)
(including social media: Facebook, Instagram, YouTube, etc.)
- We leverage cost benefit of group marketing
- Increased Profitability: One Client = Two Billable Cases
- Better results, happier clients
- **Paid Priority Ad Listings Available. TOP SPOTS now Available!!**

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Four Options:
AT MINIMUM... Easily Make Needed Referrals

1. Represent them!! (Do BOTH Divorce AND Injury Claim)
2. Do Divorce; but **Refer** Injury Claim to another attorney
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"For Attorneys:" Helpful Tools

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- Top Listing Spots Available (Paid)
- Order #1 Divorce Injury Law Book
- Download Helpful Legal Forms



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for Free



Domestic Torts:
Civil Litigation Arising
From Criminal Conduct
Within Family Relationships



Forms




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Blue Ocean Strategy





Top Spots
Available
NOW!!

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