

Marriage 101 for family lawyers

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Those of us who have been in the trenches of family law practice for decades have lots of experience with bad marriages. We each probably know more gruesome details about marriage breakups than we care to remember. Nagging. Laziness. Sloppiness. Being a workaholic. Reckless spending. Just plain falling out of love. Too much booze. Tawdry affairs. And even worse, serious mental or physical abuse.

Still, there are great marriages out there. In fact, it's an open secret that lots of family law

attorneys have fulfilling and stable marriages. So we should have good instincts as to what makes a successful marriage and what doesn't.

Every well-built house has a defined structure. If we seek to understand why some marriages are successful and others (those being nearly 50 percent of the total) are not, we can start by trying to reconstruct a durable house out of all the marital wreckage we have seen in our offices.

Let's call this a structural analysis of marriage. It's a way of looking at marriages that goes beyond all of the various distressing situations we have seen. We can look at those marriages in a different way by reflecting on their basic nature rather than by just examining the particular incidents. The task is to organize our experience with failed marriages and then invert that model. This enables us to look beyond all the debris and visualize the elements of a viable and lasting marital structure. A structural analysis also helps us understand how to help the parties handle marital breakdown.

From this perspective, a successful marriage should have these seven basic structural elements:

The starting point is a **healthy self-esteem** in both spouses. Another term for more or less the same thing is "inner strength." Someone who feels secure in his or her life will be much more likely to seek out a stable relationship and to respect the other partner.

Every marriage involves an extended series of tasks, some of which are rewarding and others rather mundane and tedious. The second element of a successful marriage is **responsibility** – for oneself, and to one's partner, the family, and the marriage. It's doing one's fair share and otherwise being a reliable partner.

As time passes, marriages go through many changes. Some are imposed externally and others are generated by the spouses. The third element is **adaptability to changes**. The goal is to adapt to both anticipated and unpredictable future changes. A successful marriage will find ways to adjust to future changes without upsetting the basic stability of the marriage relationship.

The fourth element of a successful marriage is one of the most important, namely **effective communication**. Communication means two quite different things. The first is sharing with one's partner what's going on – one's interests, ideas, concerns, events, plans, and so forth. The second is

negotiating. Every marriage has dozens of small (and at times quite important) decisions to work out every day. Collaborative negotiating and even just compromising are the ways to do this most effectively. Acceding to the other's wishes may also resolve differences, but that's not a good idea if it tends to go in one direction every time. Marital negotiations are by no means always verbal.

Each spouse brings into a marriage a collection of her or his interests, values, and beliefs. A marriage works best when there is general **compatibility** between spouses, so this is the fifth element. This certainly doesn't mean that spouses have to agree on everything, and in fact always trying to agree is probably a bad idea. Compatibility also involves taking joy in some of the differences, tolerating others, and negotiating those disagreements that are too important to let fester.

The sixth element is **intimacy**. Often it doesn't take a long time to develop sexual intimacy in a relationship. However, marital intimacy is much more than its sexual component. The challenge is not how to create intimacy, but rather how to nourish it as changes occur in the marriage. It's also necessary to try to limit those conditions that can erode intimacy as time passes.

There is a seventh element that works to hold the other six together, both individually and collectively. That basic key to a lasting marriage is **balance**. Balance may mean that some features are shared equally, while others are distributed unequally but in a balanced way. A properly balanced marriage is like an expensive mechanical watch – when all the moving parts work together it keeps nearly perfect time.

When things go wrong

Understanding the structure of successful marriages may help family lawyers better to understand the reasons that marriages fail. Those reasons in turn may assist in making more accurate predictions as to how difficult the divorce may be and in planning appropriate responses. For example, many marriages end with an affair, but that of itself may not fully explain why the marriage failed or even necessarily be a reliable predictor as to whether to anticipate a nasty divorce. When multiple elements of a successful marriage are missing, it becomes likely that the divorce will be more difficult.

Many marriages end due to incompatibility and lack of intimacy. This is where a spouse may sum up by saying, "It's not either of us, it's just the space between us." The spouses may choose to go their separate ways without wanting to fuel any ongoing hostility. When incompatibility has to do with serious disagreements over parenting styles, however, there is the potential for litigation over the parenting schedule and parental decisions to go on for years.

When a dysfunctional couple separates, it is not unusual for negotiations between spouses to become even less effective. What may have been just bad communication evolves into endless arguments that resolve nothing. Or these arguments are so stressful that the parties simply stop communicating. If the parties have not shared in the management of their finances, there may be issues of control. A controlling party may be reluctant to turn over information and documents, and this will further fuel the suspicions of the other party. These are the kinds of cases where there may also be disputes over the concealment or dissipation of marital assets or the tracing of separate property.

A failure to assume balanced responsibility for marital tasks often makes the settlement difficult to work out. Irresponsibility takes many forms and can result in arguments over such matters as employment, spending, investing, parenting, disloyalty, and self-aggrandizement. Over-responsibility may at times be as much of a problem as under-responsibility because both adversely affect the balance in the marriage. Addictions of all kinds also may raise serious issues of responsibility. In all of these situations, one or both of the parties may feel that they have not been fairly treated in the marital partnership.

A major issue in adapting to change arises when there is a stay-at-home parent and the marriage does not adjust to the ever-increasing independence of the children as they progress through levels of development and become adults. Divorce settlements generally tend to be more difficult in one-income families, not only as a result of spousal support issues, but also because of the resulting imbalance in retirement and other assets.

There are some marital problems that may involve most or even all of the negative elements. These include serious physical and/or mental abuse and problems with the criminal law system. Another category is marriages in which a spouse has defined psychiatric issues, such as an obsessive-compulsive disorder, serious clinical depression, one or more major chronic addictions, borderline personality syndrome, or a psychotic condition such as schizophrenia. Even in these cases, however, it may be useful to review the structural reasons for the failure of the marriage.

Having a structural understanding of how marriages do and don't work will help family lawyers, family mediators and collaborative professionals assist their clients in reaching sensible settlements. If the marriage has to end, the goal should be to at least have a sensible divorce.

- By Lawrence D. Gaughan. Gaughan is a family mediator and family law and collaborative practice attorney in Reston. He and his wife Joyce Holly celebrated their 30th anniversary in May, 2013.