

Edited Transcript of Lessons from Celebrity Divorce Disasters.

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Dan Couvrette: I'm Dan Couvrette, the publisher of *Family Lawyer Magazine*. Today's topic is about lessons from celebrity divorce disasters, and my guests are Sharon Klein and Nancy Chemtob.

Sharon Klein is the president of Family Wealth, Eastern US Region, for Wilmington Trust. She oversees the delivery of all Wealth Management services by teams of professionals and heads Wilmington's National Matrimonial Advisory Practice. Nancy Chemtob is a leading family law attorney in New York City. She is the founding and managing partner at Chemtob Moss Forman & Beyda. Nancy is a formidable trial attorney who has made or altered New York State family law in multiple cases. She is also highly adept at negotiating settlements.

Today, we are going to talk about the mishaps with marital agreements; gifts during marriage; and the downside of not updating estate planning documents in a timely manner. All using celebrity cases as illustrations.

Sharon began her career as a trusts & estates attorney, and she has over 25 years' experience in the wealth advisory arena. She is featured by Forbes as one of top 100 Women Wealth Advisors in the US and was named to *Crain's* 2020 inaugural list of the Most Notable Women in Financial Advice. She is a Certified Divorce Financial Analyst, a Fellow of the highly selective American College of Trust and Estate Counsel. Sharon will be inducted into the Estate Planning Hall of Fame in 2021, considered the height of professional accomplishment in the field.

Nancy has shared her expertise in *The New York Times*, *The Wall Street Journal*, *The New Yorker*, *The Atlantic*, and as a guest lecturer at Harvard Law School. Most recently, she was named to the prestigious American Lawyer's list of 2021 Northeast Trailblazers.

Dan Couvrette: Sharon, are there any lessons you can extract from disastrous celebrity divorce cases?

Sharon Klein: Yes, indeed. We'll discuss lessons learned from celebrity divorce mishaps, and we've grouped them into three broad categories. Nancy and I haven't been directly involved in most the celebrity cases we'll talk about, otherwise we wouldn't be able to get into the details for privacy reasons, unless the details are already public. We'll extract lessons from what's been reported in these cases and the first broad category is lessons learned regarding marital agreements, generally, whether that's a prenup or a postnup. The second broad category is issues involving gifting, either from third parties or between spouses. The third category we'll examine is the dire consequences that can result if estate planning documents have not been updated to reflect a divorce or a soon-to-be divorce.

Dan Couvrette: Let's start with the first category: prenups and where things have gone wrong – either with the prenup or it not being enforceable.

Sharon Klein: Jeff Bezos, one of the wealthiest men in the world didn't have a prenup, and McKenzie Bezos ended up receiving about 25% of his wealth or \$36 billion. Of course, you don't need to have that magnitude of wealth in order to get potentially burned by not having a prenuptial agreement in place. For example, the famous British comedian, John Cleese, who divorced his wife in 2008, reportedly paid her about \$16 million and an additional \$1.1 million a year for seven years. It was actually reported that as a result of the divorce, his wife's net worth exceeded Cleese's and he openly spoke to the difficulties of having to pay such a large sum. He said “I paid my ex-wife \$23 or \$24 million. That's an awful lot of money. And when you have to pay it over a period of seven years, even if you sell a lot of properties - I had five and now I have one - that's still a lot of hard work to be done just to earn the rest of it.”

The first lesson to be learned here is to have a prenuptial agreement. The potential roadblock some people raise is that prenuptial agreements have negative connotations because when a couple is planning a wedding, who wants to think about divorce? But a better way to think about it is to think of the prenuptial agreement as starting the marriage on the right footing, based on mutual understanding so there are no surprises, and everybody knows what they're getting into. Prenups can eliminate the financial uncertainty often associated with starting a household together. The wealthier spouse can feel confident that their assets are secure while the less wealthy spouse may be relieved to know that there'll be some property and/or alimony settlement regardless of the success of the marriage.

If you don't have a prenuptial agreement, community property states will generally divide the couple's assets that are acquired during the marriage in half while other states, like New York, generally make subjective assignments of ownership based on factors like a number of years married, children, lifestyle, and other factors.

Let me just add a word about business owners because typically business owners want to ensure that a family business stays within the family. It's really important to memorialize business ownership and succession rights in a prenuptial agreement, and then have that prenuptial agreement dovetail with a buy-sell agreement. According to recent research that Wilmington Trust conducted, 67% of business owners are not worried that divorce could impact their business. That of course makes them less likely to plan for that possibility and that lack of planning could have disastrous consequences. So again, the first lesson is to have a prenup.

The second lesson is to make sure the pre-nuptial agreement is enforceable by ensuring that you're properly represented by competent counsel. The celebrity case in point here is Steven Spielberg and Amy Irving. They got divorced in 1989 in California, which is a community property state. Spielberg allegedly wrote the couple's pre-nuptial agreement on a cocktail napkin, but a judge vacated the cocktail napkin prenup and Irving was awarded \$100 million and half of Spielberg's earnings in their divorce settlement. That couple was only married for four years.

As you can see, this is not a do-it-yourself business. Each party should retain independent counsel and by the way, retaining counsel is not important just for the substance of the prenup, but it's also important to ensure that all the formalities of signing a prenup are observed. The actual formalities required for entering into a prenup can vary from state to state. For example, in some states, a prenup won't be valid unless it's notarized. So, it's really important to get competent professional advice. A couple of other points are that couples should try to sign prenups as far in advance of the marriage as possible to avoid claims of duress, and you need to have adequate financial disclosure for a prenuptial agreement to be enforceable. It's generally better to err on the side of more financial disclosure rather than less to avoid a spouse later claiming, "If I had known how much was involved, I would never have agreed to X." So that's the first category for you, Dan.

Dan Couvrette: Nancy, are there any lessons you can share about prenuptial agreements and celebrities?

Nancy Chemtob: One important factor is why you're doing the prenuptial agreement. When a client comes to me and they say, "I want to have a prenuptial agreement" and I find out that their assets are a record collection and a dog, then I say, "You really don't need a prenuptial agreement," and then we dig deeper. What is it that you're hoping to protect that you need a prenuptial agreement that would set forth the terms of what you would get when you get divorced? Because it definitely is awkward to say, "Look at my beautiful wedding gown, let's go pick out the flowers, let's go register – and by the way, if we get divorced after 20 years, you get nothing."

Another thing to do is to turn to your financial advisor. I don't care if you have debt or a billion dollars, every single person needs a financial advisor to ask, "Should I lease a car? Should I buy a car? Should our name be on joint accounts or should I have my own account? And if my own account, what does it actually mean?"

Jack Welch made a huge mistake [in his prenuptial agreement]. He was a multi-billion dollar man who had a huge company with huge success, but he had something called a sunset clause in his prenuptial agreement. In that sunset provision, it said on the 10th year of his marriage, if he is still married to his wife, the prenuptial agreement just disappears. That's why it's called a sunset provision. Mr. Welch forgot about that provision. His wife did not. On the 10th year and one day, she filed for divorce and she got [her share of] all of the money that was earned during the marriage, divided as it should have been in the state.

In a prenuptial agreement, what mostly happens is there is a "consideration." For example, "If we get divorced you may not get 50% of my assets; instead, I'm going to give you X amount of dollars over Y number of years." They should start with a financial advisor: somebody that they click with, get along with, who's incredibly bright, who can give them the best possible advice. How to have a happy marriage, not fight about money, but make sure that they have their own security if everything goes bust.

Sharon Klein: To underscore Nancy's point that a skilled financial advisor can be very helpful to a couple, an advisor can remind clients to be cognizant about which accounts to pay expenses from. This can prevent them from, for example, inadvertently paying for the renovation of a marital home with separate property or inadvertently adding separate property to a joint account if the intent is to keep that separate property separate.

If you have a prenup that expires without any other provisions, like the Jack Welch example that Nancy offered, it's like you never had a prenup. The assets will be divided pursuant to state law, and who gets what can vary greatly depending on what state you're in and the particular circumstances of your case.

There are provisions that are sometimes inserted in a prenuptial agreement, which may make someone grin and bear it to take advantage of the extra assets they'll garner if the marriage lasts a certain number of years. The flip side is that those clauses may also be an incentive for the richer spouse to say "Time's up" and end the marriage before the additional asset entitlement kicks in; by some reports, that's exactly what Donald Trump did in announcing his divorce from Marla Maples. It was reported he did that in order to preempt a prenuptial clause that would have given Marla a much greater percentage of his fortune if they had been married longer. Again, the key is to have the right financial advisor and the right attorney representing you so that you can think these things through.

Dan Couvrette: Nancy, what if somebody hasn't set up a prenup? Are there any celebrity divorce situations where doing a postnup saved the day for the divorcing couple?

Nancy Chemtob: Just so everybody is clear, a postnuptial agreement is no different than a prenuptial agreement *except* that it is signed after the marriage. There are many reasons to negotiate a postnuptial agreement subsequent to the marriage. I once had a client – a very famous celebrity – who was not a celebrity at the time that they got married. There are a lot of indiscretions in many celebrity marriages, and every single time that this celebrity would cheat on his wife, she would say she was going to leave him.

Because he loved her, even though he couldn't stay faithful, he would offer something in exchange for her staying. One consideration once was a ski house in Aspen. Another time was a boat in the Bahamas. Another time it was a 15-carat diamond ring. All of those gifts that my celebrity client gave to his spouse whenever he cheated were not considered marital assets, so she got to keep them.

A postnuptial agreement resets the date of marriage and what you will get if you get divorced. A postnuptial is usually done to protect assets that were gained during the marriage; that's why it's often done if the marriage is on the rocks, or they think that they're only going to stay together until the children graduate high school, or there's another reason they think their marriage might blow up but they still want to give it a shot.

It's important to contact your financial advisor at every step because if you don't, you won't know if you are better off owning an asset or not owning it. Sometimes, there are huge tax

implications to an asset that you're going to end up having to pay, so you may not want that asset.

My advice to you is – just like you go to the doctor for an annual checkup – go to your financial advisor for an annual checkup. When presented with a postnuptial agreement, call a family law attorney and ask them to explain it to you.

Because it's against public policy, you cannot dictate what happens regarding children in a postnuptial or a prenuptial agreement. Children can always be awarded to one parent or the other during the course of a marriage, but that's a whole other topic.

Dan Couvrette: Sharon, as a financial professional, are you involved in both prenups and postnups?

Sharon Klein: We get involved in the planning. A prenuptial agreement or a postnuptial agreement needs to be drafted by an attorney – but it's really critical to get financial advice before signing. Some property that you think you want might have huge embedded capital gains. You have to run the projections to see what your lifestyle is going to be like, and you have to look at the tax status of assets. Retirement assets are tax-deferred, but wage income is currently taxable. There may be gift taxes or estate taxes to pay for an inheritance. There's a whole panoply of scenarios that we run using proprietary tools to create very sophisticated analytics, testing different situations so people know what they're getting into. Then they can make an informed decision about the prenup using the data, because the data doesn't lie.

Dan Couvrette: That makes sense Sharon. Nancy, what about gifts? If one spouse receives a gift from the other spouse or a third party, isn't that typically considered separate property if they do get a divorce?

Nancy Chemtob: Gifting is very important, and you always need to be aware and keep all of your records with regard to a gift from a third party during your marriage. Let's say a generous friend gave you a Porsche 911 while you're married. You want to preserve proof that your friend gave the Porsche to *you* and not to you and your spouse. That way, that gift would remain your gift and if you get divorced, the car does not get cut in half. But if you're married, and you buy your spouse a \$100,000 watch, it doesn't matter if it came from the money you had prior to your marriage or during your marriage.

If you buy your spouse a \$100,000 watch and then five years later, you get divorced, that watch is \$50,000 to one spouse and \$50,000 to the other spouse and there's no way around it.

What happens to the engagement ring if you split up *before* your wedding? I get asked this very often. You get engaged. You buy a beautiful diamond ring just like Jennifer Lopez and Alex Rodriguez. She got a gorgeous, I believe 11-carat ring, \$1.8 million, yet the marriage isn't happening. Question. Does she get to keep the ring? The answer is no because the ring is consideration for the marriage. If the marriage does not take place, then you need to return the

ring. If the marriage takes place and you're married for one day, you get to keep the ring. So, you should figure out if it's cheaper to cancel the wedding or keep the ring?

Dan Couvrette: Sharon, what about failing to keep estate planning documents updated? What can celebrity blunders teach us about that?

Sharon Klein: A lot! First and foremost, celebrity blunders teach us that estate planning documents should be updated to ensure that your heirs are always appropriate, and you shouldn't wait until the divorce is final. It's very important to focus on your planning while divorce is pending because it's likely the case that you don't want your soon-to-be ex-spouse to inherit one dollar more than you have to give them. During the pendency of a divorce, it might not be possible to change all of your estate planning. For example, you might not be able to change the beneficiary designation on a retirement account, but the point is that you should change whatever you can as soon as you can and be poised to change the balance as soon as you are able.

When we think about documents that should be reviewed while divorce is pending, the first one that comes to mind is a will because – subject to constraints of a prenuptial agreement that you might have signed or your provisions of your particular state's laws – ordinarily wills can and should be changed pending a divorce so that you at least leave your soon to be ex-spouse no more than you're required to leave him or her. A celebrity case in point here is the famous singer, Barry White. When he died in 2003, he had an estate estimated at \$20 million and he was separated but not yet divorced from his spouse. It was reported that since White had not updated his planning documents, his estranged wife inherited everything because they were still married when he died. They weren't yet divorced, and his long-time girlfriend and nine children received nothing.

When you're updating estate planning documents, don't forget that some assets pass by beneficiary designation, they do not pass under your will. For example, insurance proceeds, retirement accounts, and other accounts that have a beneficiary designation will not pass under your will and they need to be separately updated.

Talking about documents that need to be separately updated, healthcare designations and powers of attorney are documents where you designate people to make important healthcare and financial decisions for you. It's really key to update those forms while divorce is pending. Why? Let me give you a celebrity case in point. Gary Coleman, who was the famous actor best known for his role in the sitcom “Diff’rent Strokes.” He had finalized his divorce in 2008 and then in 2010, he sustained a head injury, and he was put on life support. He had not updated his healthcare proxy and his ex-wife made critical end-of-life decisions for him. Was that what he would have wanted? Maybe not.

The final lesson that comes from the celebrity scene in terms of estate planning lessons is to be very careful to pick the right executor and trustee.

The celebrity case that highlights this is the case of Claudia Cohen and Ron Perelman. Claudia Cohen was married to Perelman, who built most of his billion dollar fortune through a hostile takeover of Revlon. He had married and divorced four women – one of whom was Claudia. And she actually came from a wealthy family herself. She was divorced from Perelman at the time of her death. Her will named her ex-husband Perelman as executor and their daughter Samantha as the primary beneficiary. Now, despite the fact that apparently Claudia's will made her wishes very clear, including her strong desire to protect the relationship between her daughter Samantha and her father and her brother, Perelman filed extensive lawsuits on behalf of Cohen's estate, against his paralyzed, infirmed, and elderly ex-father-in-law and ex-brother-in-law, apparently spending millions of dollars in legal fees that came out of Claudia's estate.

One of the judges who presided over the case ruled that Perlman's lawyers had to be sanctioned because some of the claims they had filed were frivolous. It's just so sad to see this vicious fighting. It's really heartbreaking from a human perspective and extremely expensive from a financial perspective. So, the lesson is: when you prepare your will, when you prepare your trust, make sure you choose your executor and trustee wisely. Oftentimes a corporate executor and trustee is a good choice because corporate fiduciaries are neutral, they're independent, and they can often diffuse much of the acrimony that might attach to a friend or family member acting in that role and can actually save a lot of money and heartache at the end of the day.

Dan Couvrette: Wow. I always get scared when I talk with you, Sharon. You're very scary!

Sharon Klein: Good, good. Maybe you'll act. It's a call to action. That's what we want.

Dan Couvrette: People need to get into action – no doubt about it. Nancy, are there any other overall lessons that you think we can learn from celebrities in the divorce arena?

Nancy Chemtob: If you cannot produce a prenup or postnuptial agreement, then you cannot enforce it. So make sure to keep all of your important documents in a safe place. When I say a safe place, I mean you should send a copy to your lawyer and to your financial advisor so that in the middle of the night, your spouse isn't shredding documents that will enable you to set forth all of your rights.

As far as celebrities go, one of the cases that I did very publicly represent was Michael Douglas and Diandra Douglas. We were in court over the word “spinoff.” I'm sure all of you watched “Wall Street 1,” which had a spinoff, “Wall Street 2.” The question then became was “Wall Street 2” part of Mrs. Douglas's assets during the divorce because it was made during the marriage. Of course there was a prenuptial agreement, because these are very smart, successful people. We had to interpret the words “spinoff” and “sequel,” and we went to court over the question of whether a sequel is the same as a spinoff or is a spinoff the same as a sequel. You need to realize that the *words matter*.

When you're drafting, reviewing, or revising these agreements, sometimes they're done in a rush because there's a wedding the next day and they still haven't agreed on something. Take

your time, slow down, do everything weeks in advance. When you look at these documents, think about what's the worst-case scenario that could happen, and make sure the language in the agreement is clear.

Dan Couvrette: Sharon, do you have any final remarks you want to make on this subject, putting more fear into me and everybody else who's watching?

Sharon Klein: If you have celebrity status, Dan, you may as well let me add another tidbit about celebrities' rights and what they should be thinking about when they do marital agreements, and that's the right of publicity. The right of publicity is an individual's right to control and profit from the commercial use of their name, image, and likeness, and to prevent others from exploiting their persona for commercial gain. The right of publicity is actually governed by state law. Some states, like California, recognize what's known as a post-mortem right of publicity – which means the right for heirs to exploit a celebrity's name and image after the celebrity's death. New York actually just enacted a post-mortem right of publicity that became effective in May of 2021.

Not all states recognize the post-mortem rights, which are the after-death rights of publicity. But in those states that do, these are typically property rights and that means they're freely transferable by contract, gift, trust, or will. [The right of publicity] is something that should probably be covered in a marital agreement because it has value for a celebrity. To show you how much value it can have, take the ongoing Michael Jackson case. His executor valued his post-mortem right of publicity at \$2,000 on his estate tax return, and the IRS ruled that his post-mortem right of publicity was actually worth \$435 million. We could be talking about big bucks, so that's something else to think about if you're a celebrity doing a marital agreement.

Dan Couvrette: I want to thank both my guests today, Nancy Chemtob and Sharon Klein, for joining me and talking about this subject. Sharon, can you give a little bit of background about the services you offer at your firm?

Sharon Klein: Wilmington Trust offers the full spectrum of wealth management services and in the divorce arena that runs the gamut from providing comprehensive financial projections without proprietary tools to give attorneys the edge at the negotiating table, to investing settlement proceeds, to acting as neutral trustee in any jurisdiction in the country, to reviewing business valuations and the estate planning documents, all of which typically need to be updated, advising on insurance needs, providing custom financing, and comprehensive office services. We really provide the whole range of capabilities to people who are impacted by divorce.

Dan Couvrette: Nancy, I know you practice family law. Can you give me a few more details about your practice?

Nancy Chemtob: Yes, and thank you for having me as well. I started my firm in 1996 as a family lawyer, our firm does divorce, prenups, postnuptial agreements, and custody trials, and one of

our big issues is making sure everybody can continue to live the life they lived prior to the divorce by speaking with financial advisors and making sure that the money is secure.

Dan Couvrette: I know we've just touched the tip of the iceberg when it comes to prenuptial and postnuptial agreements, but I think one thing is evident from the conversation is that you need to work with professionals like Sharon and Nancy. Go to their websites to learn more about who they are and what they do, and how they can help you through your divorce or, if you're a professional, I also suggest that you reach out to them because they have so much expertise in these areas. Thank you again, ladies, for your time. It's been a pleasure.

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