



Serious criminal act by my newly married partner

Date: Tuesday August 20, 2013

Is this reasonable grounds to end a short 3 months marriage?

Scenario:

Heath and Bianca were married in April 2013. In early July 2013, after only three months marriage, Bianca discovered that Heath had been involved in an armed robbery earlier in the year and he was charged for the offence by the Police. Heath's criminal matter is still ongoing in the criminal courts and Heath has told Bianca that he intends to plead guilty to the charges.

After questioning Heath further about the armed robbery, Bianca has discovered that Heath has led a very chequered past and has a long criminal history involving driving offences, aggravated assault and dealing drugs. He even admitted to her that he had been in jail for a period of three months when he was 18 years old for stealing car parts.

Heath is not the man that Bianca thought she had married. She feels betrayed and as if Heath led her into their marriage using a false identity. Can Bianca claim that her marriage is null and void based on Heath's lies or does she have to apply for a divorce in the usual course through the Family Court?

Answer:

Nullity of marriage can only be made out in very limited circumstances, including bigamy, duress or one of the parties was under-age at the time of the marriage. It is therefore unlikely that Bianca will be able to make out a ground of nullity based on Heath's lies alone. Although Heath has betrayed Bianca emotionally by lying to her about his criminal history, he has not breached any laws in the Family Law jurisdiction regarding nullity or marriage.

For Bianca to be eligible for a divorce using the general avenue for divorce in the Family Court, she must be separated from Heath for a period of 12 months prior to her application for divorce being accepted for filing by the Family Court. Therefore Bianca must separate from Heath and wait for a 12 month period to expire prior to filing her application for divorce in the Family Court.

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