



Legal Matters

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 Dying to Understand

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Our experiences throughout life give us a basic understanding of what other people do. As patients, we have an idea about what doctors do. After a tooth extraction, we are good enough to give a dental opinion. Our knowledge extends into the realms of plumbing and building. We are often eager to give financial advice, and may even go as far as being closet psychologists! But when it comes to legal matters, most of us have no idea.

What do lawyers actually do?

What makes them so knowledgeable?

Most people who do legal DIY discover that lawyers have a unique skill set and although it is difficult to quantify, it is essential. DIY lawyers often end up in trouble because they do not have the experience to know the difference between a well-placed comma and a full stop. They don't know the context of the law any more than a plumber knows his way around the greater vessels of the heart.

When it comes to legal matters, we need to admit, that as non-legal people, we have no idea and we need a lawyer.

So, coming back to my original question, "What do lawyers actually do?", my best answer based on my ignorance, is that lawyers are the referees in life. They not only write the rules of the game, but they also interpret the rules of the game, and it is in the interpretation that the good lawyers shine.

If you have ever played a game with a competitive sibling, you will know why a referee is needed. As a child, your referee would have been a parent. In the chaotic adult world where cheating occurs, by accident or intentionally, it is good to have a lawyer on your side to give you a winning chance.

When it comes to end-of-life matters and dying, the term 'Getting your affairs in order' is commonly used. While this may seem the right time to ensure that all the t's are crossed and l's are dotted, our affairs should be in order as soon as we are legally competent. Leaving things to the last minute is reckless because who can ever know when this 'last minute' will be?

Here are four responsible things to think about today.

Think about what you own

When it comes to personal wealth, we often get distracted by the amount of money we have in the bank, our property portfolio, or our share investments. The everyday things seem to be so 'everyday' that we don't give them any consideration, but we should. Our possessions are what we have control over and because they belong to us, we need to be accountable for them.

This is not so important if we use our possessions for our pleasure and purpose, but it changes if they are to be owned and used by others. We will all eventually reach a point in life or at the end of life where we have no further need of our earthly possessions, so what do we do with them at that time?

It may be easy and uncomplicated if we possess nothing, or if there is no one to inherit our possessions, but if there is competition for our possessions, it can get very messy, very quickly. If we have anything of value, there will be competition. Contested wills are commonplace and nasty experiences for those who should be entitled to possessions but are excluded by a poorly worded will and the sometimes-fuzzy interpretation of the law.

When there is competition, we need to be very clear about the rules of the game which is why we need a watertight and bombproof will. We need a will that clearly directs and indicates what is to be done with our possessions when we no longer need them. It may be easy as in "sell everything and divide the cash between the three children" or it may be specific as in "the diamond ring goes to Sue, the tanzanite necklace goes to Anne and the Remington Shotgun goes to Bob."

To make a will is not easy. It requires thought about who gets a share of our possessions, how they get to share in our possessions and importantly, if applicable, who may not get to share in the spoils. These thoughts may change, and it is important to have a fresh will that is up to date and reflects the natural changes that occur in life. There is no use bequeathing all your worldly goods to your grandmother if she is no longer there to accept the kind gift.

Hot tip – go and speak to a lawyer.

The thing about your money

Money does not grow on trees; it is hard earned often through sweat and often tears. Those who make money easily are in the minority. When it comes to hard cash, the most difficult thing to consider is what to do with it.

It is important to enjoy your money and spend it on things that matter, after all, you cannot take it with you. There is some fun in spending the children's inheritance because it is for personal use, but it is not fun if these hard-earned dollars disappear into the government coffers as a tax contribution.

When you think about your money, consider where to keep it so that it is safe and secure for personal use, and when that is no longer required, for the use of those you care about.

Many lawyers offer good advice in future-proofing your money in superannuation or trust funds so that they are safe from taxes and other nasty surprises that no one sees coming. A good lawyer has seen it all and knows how to dodge expected bullets.

Think about your health

It is difficult to imagine the possibility of being unhealthy when we are in the prime of our life, but intensive-care beds attest to the fact that sometimes things can go catastrophically wrong. When that happens, we need to be sure about the game plan and who is going to keep score.

An advanced directive is an important document that describes your wishes about your health when you are no longer able to communicate. In one of the longest and saddest court cases in America, Terry Schiavo suffered a catastrophic brain injury and was left in a permanent vegetative state without any clear direction about what to do in these circumstances. Who would ever have thought this could happen?

Her husband wanted to turn off the futile medical care, her parents opposed this cruel thought. After thousands of dollars, legal battles, and the intervention of President George Bush, it was determined that ending her feeding was not unreasonable. She died in peace after an eight year battle.

An advanced directive would have certainly helped in this case. A simple statement such as, "In the event of an incurable medical event with no prospect of recovery, I want comfort cares only and not artificial life support", would have made it easier for all.

We may all reach a point where we are unable to communicate. It is up to us to clearly state our intentions and wishes for such an event. It does not take a lot to do this, in comparison to what it takes if we do not do this.

Go and see a lawyer and define the best way to clearly say what you intend for the when you are unable to say it for yourself.

Think about who you trust

I recently injured my arm and was obliged to wear a sling for six weeks. As an independent I can do it all myself person, I had to rely on my wife for many things that I took for granted. Showering was a team effort, driving was a team effort, getting dressed was a team effort. I had to rely on and trust my wife to do all those everyday things I could normally easily manage on my own.

Taking it a step further, what if I was so incapacitated that I was unable to do my everyday tasks due to illness? While shopping and cleaning are easy favours to ask, there are some things, based on their contractual nature, that only I can do. Things like banking, mobile phone services, utility accounts, medical consents, and the list goes on. When these are not serviceable due to ill health, I need someone to be my legal representative.

It is important to ask and have a trusted person to act on your behalf for a time when you will not be able to. Think about someone who you trust and speak to a lawyer about the need for a Power of Attorney.

For each of these, you need to create the rules of the game the way you want it to be played. While it may be easy to go with the flow and accept the generic rules of wills and testaments, advanced directives, financial planning, enduring power of attorney or government regulations around estate planning, don't! The reason for saying this is that those who want to take advantage of you may know these rules and they may know all the ways to bend them and massage them to their benefit.

While this may seem conspiratorial, it is not, and I am sure there are many lawyers who will be able to tell horror story after horror story about contested wills and poor outcomes with self-managed legal matters.

Make your own rules and ensure that they can be defended by any lawyer. At the heart of good legal advice is the understanding that this is about YOUR game and how you want it to be played and interpreted within the rules of law. Speak to a lawyer to give you the advantage you need, when you need it.