

Change to Divorce Law Could Recall a TV Quiz Show: ‘To Tell the Truth’

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There are certain to be consequences if New York State introduces no-fault divorce, as now seems likely. The divorce rate might climb. Matrimonial battles will focus on bitter issues like support and child custody. The poor will be able to get divorced as easily as the rich. But there is something else. Those who are splitting up can just tell the truth.

For decades, New York State’s divorce system has been built on a foundation of winks and falsehoods. If you wanted to split quickly, you and your spouse had to give one of the limited number of allowable reasons — including adultery, cruelty, imprisonment or abandonment — so there was a tendency to pick one out of a hat.

Pregnant women have insisted they have not had sex in a year, one of the existing grounds; spouses claimed psychological cruelty for getting called fat; and people whose affairs have made Page Six have denied adultery. One legendary ploy involved listing the filing lawyer’s secretary as the partner in adultery (which may even have been true in a few cases).

“What the fault divorce system has done is that it has institutionalized perjury,” said Malcolm S. Taub, a veteran Manhattan matrimonial lawyer. “This play-acting goes on and everybody looks the other way and follows the script.”

On Tuesday, the [State Senate approved a bill](#) that would permit divorce without a claim that either side is at fault, and on Wednesday the State Assembly Speaker, Sheldon Silver, said his members were discussing the details of similar legislation. “I support the concept,” Mr. Silver said.

Nancy Chemtob, a lawyer who has been edging into the celebrity divorce ranks, said the requirement that someone find fault has long forced lawyers to question clients closely to try to find an acceptable reason to explain the split, even when the real reason is pretty simple: The client does not like his or her spouse.

Because dislike, no matter how intense, does not fit one of the legal slots, Ms. Chemtob keeps asking until her client says the magic words, like “he bought me a gym membership,” Ms. Chemtob said.

“I have to sit there like a shrink or I’m not even sure what, but definitely not a lawyer, pulling all this verbiage on grounds out of them,” she said. Lately, it seems, purchasing a premium workout package is code for, “You are a slob.”

That would not necessarily be cruel and inhuman treatment in the outside world, but in the matrimonial courts it can be more than adequate, said Robert S. Cohen, a leading New York divorce lawyer.

“One spouse gets on the stand and says, ‘He complains about the fact that I don’t make the bed every day,’ or one of them says ‘She complains that I don’t do the dishes,’ ” Mr. Cohen said.

In cases where both sides want the marriage to end, judges often declare such infractions fault enough, Mr. Cohen said. “There’s a clear feeling among the judges that fault should have been long gone from our system,” he said.

For judges, New York’s requirement of fault when the rest of the country has abandoned that requirement creates a series of problems. One of them is the need to listen to private information some of them feel is none of their business.

Acting State Supreme Court Justice Jeffrey S. Sunshine, the supervising matrimonial judge in Brooklyn, said it seemed somewhat 19th century to have people testifying about “constructive abandonment,” the legal term for rebuffing intimacy for a year or more.

“Should we really,” Justice Sunshine asked, “in the 21st century be having people get on the stand and testify that ‘my spouse refused to have sex with me?’”

Aside from the intrusion, Justice Sunshine added, it is not a subject that lends itself to an easy decision, since there are often no witnesses to what goes on in private. “Some of the claims may be dubious,” he said.

If the truth gets a workout in cases where both sides want to part, it can be wrenched completely out of shape in contested divorces. The facts can be leverage, lawyers say, and denying them can be used to stop a divorce case in its tracks.

Several divorce lawyers said there are multimillionaires in New York who have not been faithful but who are keeping their spouses in loveless pairings so as to avoid a division of wealth. They simply deny adultery.

Court battles over fault are destructive, said Norman S. Heller, the head of the matrimonial practice at the law firm Blank Rome. “It’s ugly,” he said. “It’s expensive. It poisons the relationship.”

New York law has long allowed people who agree to a divorce to get one if they both sign a separation agreement and live apart for a year. A new provision could do away with the need for the agreement.

But Marsha Garrison, a Brooklyn Law School professor who has studied the way New York divorce laws affect people, said that aside from streamlining the process, one of the most important aspects of a new law would be eliminating the winking and the white lies in cases where there are no separation agreements.

“We want people to respect the law,” she said, “not to engage in that kind of scamming.”

A change in the law is not expected to hurt the business of divorce law. Lawyers say there would remain plenty to fight about — including the age-old matrimonial topics: child custody and money. But it will make it easier for people who cannot afford expensive advice about what to say to get divorces.

But lawyers say their daily activities might be quite different. Ms. Chemtob said she would no longer delve into humiliations and belittlements, like the feelings of a man who claimed he was hurt because his wife asserted he did not look good in striped shirts.

The whole gym membership question may vanish from lawyers’ offices. Which could only be good news, Ms. Chemtob said. One client, she said, ended up having an affair with the gym’s trainer. Then the client’s husband — the one who had insulted her with the you-are-a-slob membership pass — would not give her a divorce, claiming she was committing adultery. “This whole area of law is driving us all crazy,” Ms. Chemtob said.

Lawyers are required to present arguments they believe to be true. Raoul Lionel Felder, the divorce lawyer, said he once flatly refused to represent a woman claiming constructive abandonment. The reason? The woman had a one-month old infant.

But, Mr. Felder conceded that it is sometimes hard to evaluate misery. “If the client is a good liar,” he said, “you’re not a detective.”

