

Adulterous Text – Technology in Divorce Proceedings

In the nineteenth century, a wronged husband could sue the partner of his adulterous wife for having had “criminal (ie sexual) conversation” with her. In some American states, it is still possible to sue the adulterous partner of your spouse for financial damages, a fact one of my clients found out to his detriment when he was served with a law suit claiming \$1.5 million in damages for having an affair with the claimant’s wife ! The claim was based upon not only the financial loss to the marriage caused by the wife having left the home, but also upon the emotional distress caused to the family. Luckily, that case was compromised after all concerned had second thoughts, but it certainly proved shocking to an English man that he could be sued for damages over a private relationship!

In that case, the aggrieved husband had found out about the affair by tracking his wife’s Internet and mobile phone activities : he adduced the printed versions as evidence in his lawsuit. Gone are the days when we leave a “paper” trail in most cases, but text messaging, email, online social networking sites and so on leave a permanent and often explicit record of infidelity. A thought or image can translate into a text or email within seconds and be sent out into the world a moment later, to linger forever in the ether (or on the hard drive, at least).

Clients divorcing on the grounds of adultery or behaviour as a direct result of technological sleuthing is very common. A husband or wife may have suspicions that something in the marriage is not quite right and this will often prompt the nagging desire to check the other person’s phone records and emails or their Internet trail : this is particularly true if the spouse has been unusually careful about leaving their phone around, or is spending more time than usual online. Finding a series of passionate and sometimes explicit messages and images is usually devastating.

Whilst such exchanges may not always be evidence of actual adultery, the mere fact that a husband or wife has communicated with another person to such a personal degree will often be grounds for divorce based upon “unreasonable behaviour” : after all, an intense cyber-relationship can feel as full of betrayal to the other spouse as a full-blown affair.

Hacking into someone’s email account is illegal but many feel an overwhelming need to do so – the need to “find out” what their spouse has been up to often overrides concerns about privacy. In these circumstances, it is important not to fall foul of the Computer Misuse Act 1990 or the harassment laws in various jurisdictions – but cool rationality flies out of the window in such cases.

In the UK, if a spouse admits adultery, that is sufficient to allow a divorce to proceed : the third party does not have to be named (and in most cases, is not named). It is not necessary to produce evidence of text messages or Internet exchanges to the court in these circumstances. The only time at which these very private communications may be made public is if the other spouse denies adultery and the case proceeds to open court. A judge in those circumstances has to decide if on the balance of probabilities adultery has taken place – an assumption that may be hard to refute if there are reams of email and Internet print outs which make the denial pointless!