

# ETHICS CASE STUDY

## Change in Marital Status of Clients

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# Today's Objectives

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- Keep you:
  - Awake
  - Engaged
  - Entertained
  - Interested
- Help you UNDERSTAND Ethics
  - Knowledge ≠ Understanding
  - Backwards Brain Bicycle (<https://youtu.be/MFzDaBzBIL0>)

# Ethical Case Study Format

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Discuss Practical Application

- Identify
- Analyze
- Decide
- Repeat

Leading Cause of Divorce?

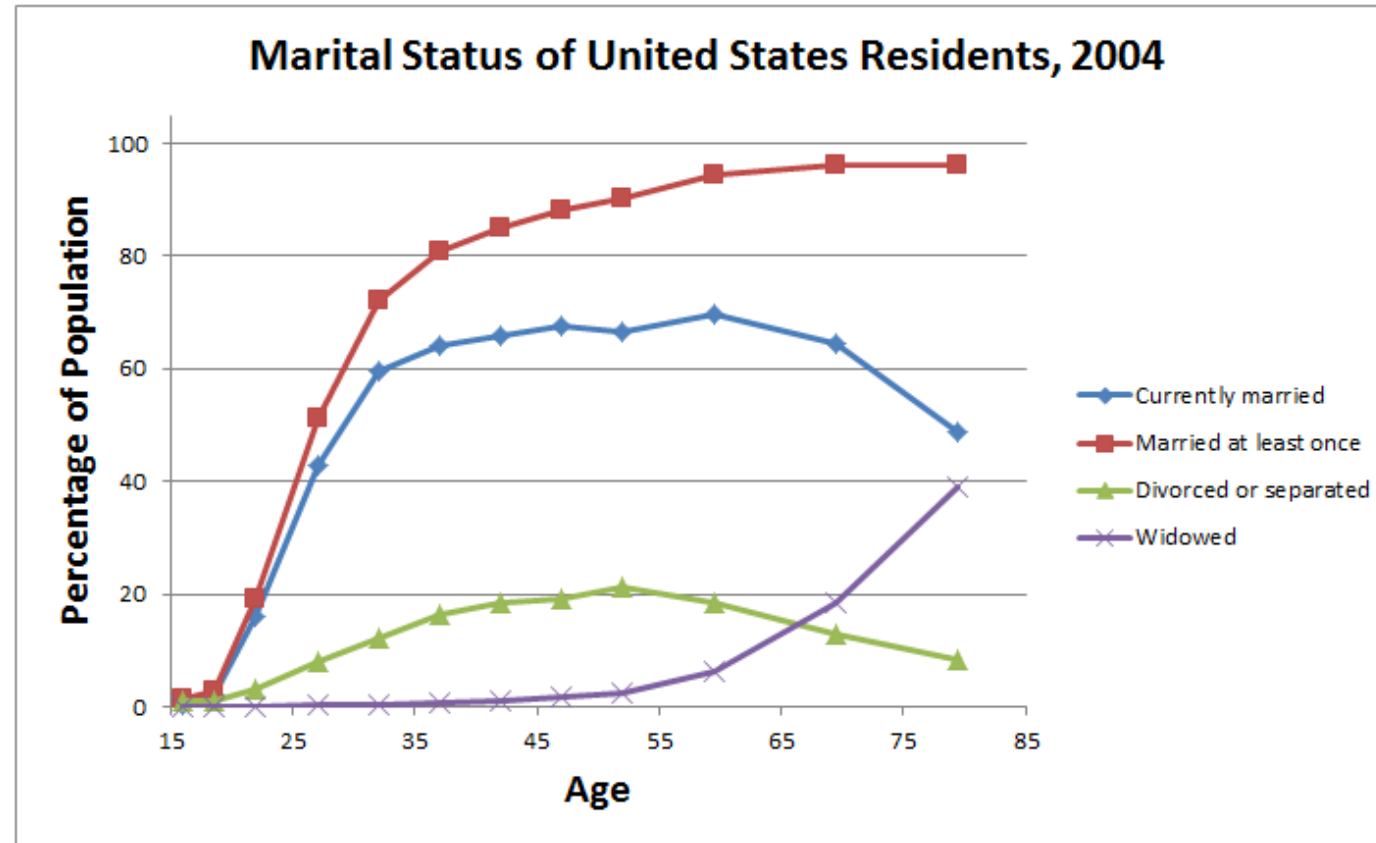
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**Marriage !**

Unless you are in Kansas

Or, in California

# Americans believe in Marriage



# Americans believe in Divorce

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- Researchers estimate that 40% to 50% of all first marriages will end in divorce
- Researchers estimate that 60% of second marriages will end in divorce
- Most Americans (70%) believe that divorce, in general, is a morally acceptable choice

Odds are, you will deal with this type of ETHICAL dilemma in your career

# Types of Changes in Marital Status

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- Single to Married (Traditional or common-law)
- Single to Remarried
- Married to Separated
- Married to Divorced
- Married to Abandoned (No such thing as common-law divorce)
- Married to Deceased
- Still Divorcing (NY State record is 21 years; married for 16 years)
- Repeated Divorce Filings

# Framework & Fun Facts

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1. Is there a DUTY?
2. Is there a BREACH of that DUTY?
3. What does it COST to fix it?

Glynn “Scotty” Wolfe, a Baptist preacher from Blythe, California, holds the world’s record for largest number of monogamous marriages for men – 29

Linda Wolfe holds the world’s record for largest number of monogamous marriages for women – 23



# What Duties do we owe our Clients?

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- Confidentiality
- Loyalty
- Not create a conflict of interest
- Not act against client's best interest without informed written consent
- Timely communication
- Competence
- Ethical, zealous representation within the bounds of the law

# Financial Issues – Marriage & Divorce

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- Separate Property
- Separate Debts
- Community Property
- Community Debts
- Spousal Support (aka Alimony)
- Child Support (in OK, use statutory guidelines)

# Financial Issues – Assets

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- Homestead
- Rental Real Estate (Schedule E)
- Farm or Ranch (Schedule F)
- Oil & Gas Interest / Mineral Interest (Schedule E)
- Motor Vehicles
- Financial Investments & Retirement Accounts (1099-DIV, 1099-INT, 1099-R, Form 5498)
- Life Insurance

# Financial Issues – Debts

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- Secured
  - Mortgage
  - Car Loans
  - Boat Loans
  - Business Loans
  - Sears (revolving account)
  - Taxes

# Financial Issues – Debts (continued)

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- Unsecured
  - Credit Cards
  - Family & Friends
  - Taxes
- Priority
  - Student Loans
  - Taxes

# Exercise #1

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- Adam, son of a client, is graduating from OSU with a Master's Degree in Accounting
- Adam is engaged to his high school sweetheart, Eve, and they plan to get married later this summer
- Eve is graduating from the University of Tulsa, School of Law

# Exercise #1 – Issues

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- Is Adam your client?
- Is Eve your client?
- Taxes?
- Credit Cards?
- Student Loans?

# Exercise #2

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- Same facts as #1
- Adam is your client
- Eve owes \$1,000 in delinquent taxes
- Eve owes \$10,000 in credit cards
- Eve owes \$90,000 in student loans
- Neither Adam or You know about Eve's debt



# Free Credit Report

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- AnnualCreditReport.com
- Search “Free Annual Credit Report”; look for result that ends in “.gov” (<http://consumer.ftc.gov>) and follow the link
- Equifax
- Experian
- TransUnion

# Tax Return Info

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- Provide copies of prior year tax returns
- IRS Form 4506-T Request for Transcript
- IRS Form 2848 Power of Attorney and Declaration of Representative
- Personally visit the local IRS and OTC office

# Student Loans

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- Harder to independently verify
- IRS Form 1098-E Student Loan Interest Statement
- IRS Form 1098-T Tuition Statement (May have been used on parent's return)

Who cares what the answer is?

Is the situation a valid predictor of how the “happy” couple will handle future financial issues and conflicts?

Sit back and watch the FIREWORKS !!!

# Exercise #3

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- Same facts as Exercises #1 and #2
- Eve is also your client
- You are aware of Eve's debt
- But, you haven't been requested to do anything yet

# Exercise #4

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- Same facts as Exercises #1 to #3
- Adam and Eve have requested copies of their prior year returns
- Applying for a car loan
- Eve requests that you not disclose her debts to Adam
- Eve promises “to take care of it” – Eve’s new job will pay her a signing bonus and pay-off her student loans after completing 5 years of employment

# Exercise #5

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- Same facts as Exercises #1 to #4
- Adam was “visiting” an ex-girlfriend from Kansas to break the news of his engagement to Eve – things did not go well – Eve doesn’t know about the trip
- Adam has a \$12,000 out-of-state judgment against him
- Adam requests that You not disclose to Eve the existence of this debt
- Adam and Eve are applying for a mortgage so they can buy a house
  
- Adam’s Dad calls and wants to know if YOU know why he is so “glum” lately?

# Exercise #6

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- Same facts as Exercises #1 to #5
- Adam and Eve were happily married last summer
- Adam and Eve bought a new car and house
- Since you timely filed their extensions, Adam and Eve brought their tax info to you on September 30<sup>th</sup>
- Eve is pregnant with twins (due January 1<sup>st</sup>), and medical complications may impair her future employment
- Adam's \$12,000 out-of-state judgment was for alimony even though never married

# Highlights of Exercises #1 to #6

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- Know when you have a “client” relationship
- Your “DUTY” does not begin until you have a client relationship
- Be careful about expanding your role beyond that of a financial professional
- Clients don’t always tell you the WHOLE truth
- Things don’t always work out as planned
- You must continually evaluate your client relationship
- You must continually evaluate your client relationship
- You must continually evaluate your client relationship



# Exercise #6 – Identify Potential Financial Issues

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- Birthdate of twins will determine eligibility of dependency exemptions
  - Eve's medical condition could significantly reduce their earning capacity
    - Car loan
    - Home loan
    - Student loans
    - Extraordinary medical expenses
  - Disability (temporary or permanent)
  - Estate planning
- ☺ How is that “SOUL MATE” thing working out?

# Exercise #7

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- Meet Clyde – a banking consultant that works out of his home
- Meet Bonnie – a school teacher
- His and Hers adult kids
- Married for 10 years
- They have agreed to terms of an “uncontested” divorce
- Clyde has always handled the finances, tax return preparations, etc. What little information is available, Clyde keeps locked away in his office

# Exercise #7 (continued)

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- House owned by Bonnie before she was married to Clyde
- During the marriage, Bonnie made all the mortgage payments from her separate income
- Clyde and Bonnie have agreed to let you “organize” their financial information for their “uncontested” divorce
- Bonnie explained all of this to you during your first appointment with her

# Exercise #7 – Recommendations

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- Determine the tax liability
- Determine the credit card liability
- Determine the mortgage liability
- Determine other financial issues
- Do you accept the engagement?

# Exercise #8

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- Same facts as Exercise #7
- Clyde has been completely unresponsive
- You have had no communication back from Clyde
- Taxes – delinquent for past 2 years; current year not filed
- Credit bureau reports
  - Clyde's credit score is so bad, he has no credit cards
  - Bonnie has \$20,000 in credit card debt in her name; she only recognizes one account which she had before they were married
- All payments made to you, drawn on Clyde's business checking account

# Exercise #8 – Questions

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- Who is your client?
- Does “payment” automatically make someone your client?
- What about filing the income tax returns?
- What filing status should Bonnie & Clyde use?
- What about credit cards? Call and cancel?
- What about the credit bureaus?

# Exercise #9

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- Bonnie filed all 3 years of income tax returns as “Married Filing Separate” since Clyde did not timely provide any tax-related information
- Clyde has agreed to repay the \$20,000 of credit card debt to Debbi as part of their property settlement
- Clyde has been talking to a bankruptcy attorney and needs to be current on his income tax returns
- Clyde would like you to help him file his income tax returns since you are already familiar with his situation and he has finally “found” his paperwork

# Exercise #10a

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- Rhett and Scarlett have been married for 30 years
- Rhett is a Lawyer; Scarlett is a nurse
- Rhett takes care of all of the finances, tax return filings, etc.
- Scarlett just got a notice that her license could not be renewed because of an outstanding balance with the OTC
- Scarlett shows you the paperwork at church and asks if you can help her get her license renewed



# Exercise #10b

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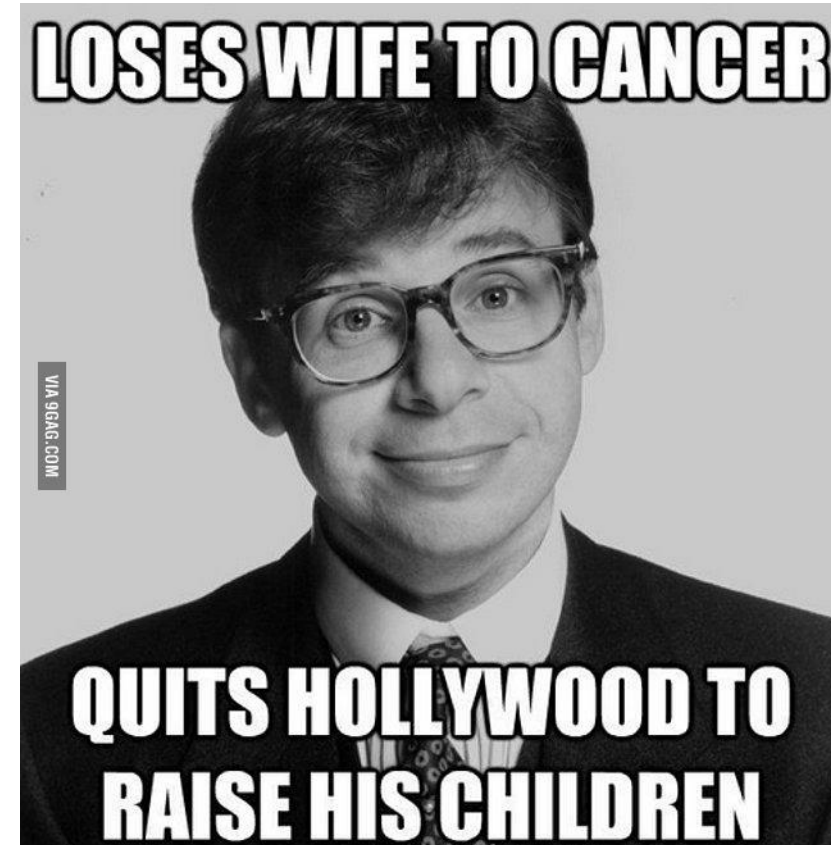
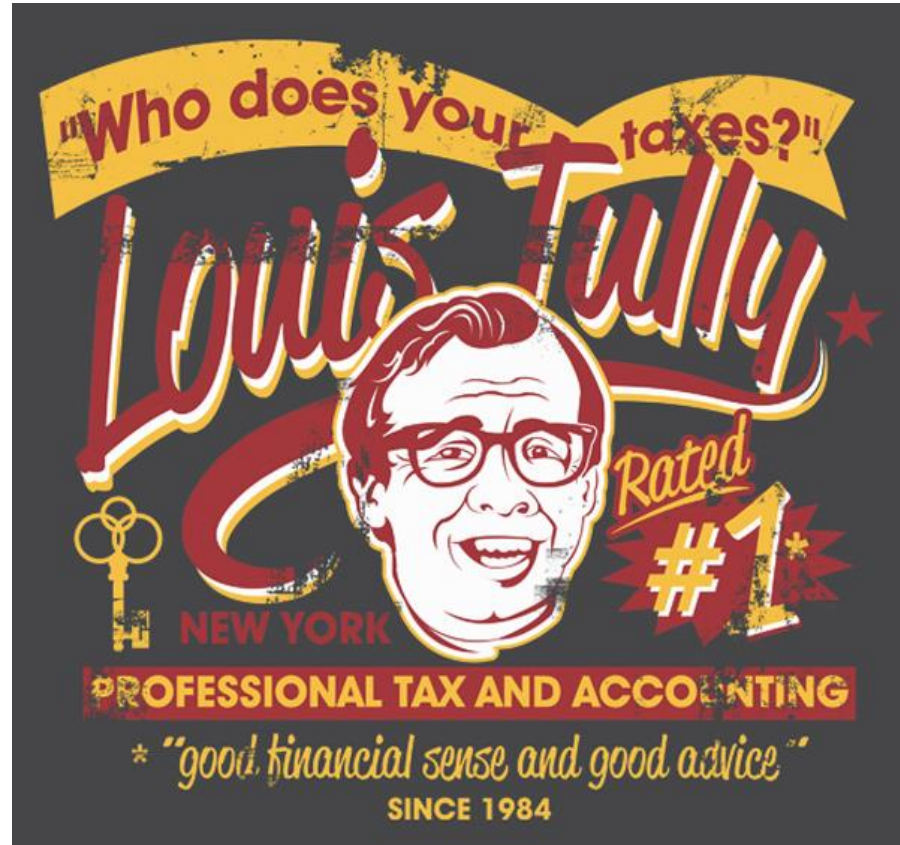
- Scarlett comes to your office
- Telephone call to the OTC reveals:
  - All the returns have been filed
  - \$100,000 is owed for the past 10 years

# Exercise #10c

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- Telephone call to the IRS reveals:
  - All the returns have been filed
  - \$500,000 is owed for the past 10 years
- Account Transcript shows bankruptcy filing in 2005
- IRS-provided copy of tax return shows Scarlett is the only W-2 wage earner
- Scarlett has no recollection of ever seeing or signing anything related to the taxes
- Louis Tully (a NYC transplant), a lawyer and accountant in Rhett's firm, always prepared the income tax returns

# Louis Tully (aka Rick Moranis)



# Exercise #10d

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- Copy of bankruptcy petition and schedules shows a 401k plan with \$600,000 (How is this possible if Rhett is an “independent contractor”?)
- Rhett and Scarlett own a 2<sup>nd</sup> home on Grand Lake
- 20-foot Cobalt inboard/outboard boat
- Case originally filed as a Chapter 7
- Case then converted to a Chapter 13
- After Chapter 13 Plan was not confirmed, case was dismissed

# Exercise #10e

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- Scarlett files for divorce
- Rhett represents himself in the divorce
- Rhett awarded the houses, boat and debt
- Scarlett awarded the 401k plan now totaling \$750,000 as a property settlement
- Scarlett awarded \$2,000/month in alimony for 15 years
- After divorce decree finalized, it is discovered that Rhett moved the 401k to another broker
- After moving the 401k plan, Rhett withdrew \$350,000

# Exercise #10 – Questions

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- Have you acted “ethically”?
- Are you sure?
- Do you have a “DUTY” to report Rhett?
- Do you have a “DUTY” to report Louis Tully?
- Do you have a “DUTY” to report Rhett’s law firm for allowing an independent contractor to participate in the 401k plan for employees?
- Do you have a “DUTY” to go on vacation?

# Quotes

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- Students look up for inspiration; look down in desperation; and left and right for information
- “I've had a lot of worries in my life, most of which never happened.”  
— Mark Twain
- “Ethics are so annoying. I avoid them on principle.”  
— Darby Conley
- “Ethically, she couldn't cause the suffering of any living thing. Logically, bacon cheeseburgers were delicious.”  
— Thomm Quackenbush, *We Shadows*

# Bonus Round #1

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- Bonnie's adult children called; before the divorce was final, Bonnie was killed in a weather-related accident.
- The \$250,000 life insurance policy provided by her employer named Clyde as the beneficiary
- Since you knew about the life insurance policy (excess premiums payments reported on her IRS Form W-2), why didn't you encourage her to change the named beneficiary?
- Bonnie's adult children would like copies of her prior year income tax returns
- Clyde called and would like copies of Bonnie's prior year income tax returns
- Clyde would like your help amending the returns to "Married Filing Joint"



# Bonus Round #2

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- Scarlett's parents called
- Scarlett is in the hospital on life-support, and Rhett is her health care proxy and is anxious to stop all heroic measures before the end of the month
- Upon her death, Rhett won't have to pay anymore alimony
- Why didn't you encourage her to update her estate plan?

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