

Don't just get even, ladies – get more

It is often a hard, expensive road to take if you want to cite adultery as the cause for your divorce.

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RUMOURS of an affair that exploded online when Hollywood power couple Angelina Jolie and Brad Pitt broke up were hastily snuffed out by the supposed “other woman” – another Tinseltown A-lister, Marion Cotillard.

But the admiration that many had for the way Jolie took control of her marriage, and life, simply refused to die.

So what if the story about her hiring a private investigator to see if Pitt had cheated on her turned out to be baseless? Or that further revelations showed she is as much to blame as Pitt for their marital problems?

“Bradxit” has gotten many thinking about how they would handle infidelity in their own relationships, especially marriage.

In Malaysia, it was reported last year that adultery was the second most common cause for divorce (20.2%, after incompatibility at 35.5%) in the country, according to the Fifth Malaysian Population and Family Survey conducted by the National Population and Family Development Board.

Family lawyer Datuk Andy Low Hann Yong believes that adultery has been a common reason for divorce in Malaysia in the last few years.

“Roughly one-third of the divorce cases we handle are related to adultery,” he concedes, pointing out that adultery is a legal ground for the breakdown of a marriage in the unilateral petition of a divorce (without mutual consent) here.

Based on the cases handled by his firm, Low says a major reason for the rise of infidelity among married couples is due to the increased chances of affairs with the explosion of social media and the widening of social circles.

However, cyber romances, including cybersex, do not count as infidelity in Malaysia, which takes the Common Law definition of “adultery” – wrongful intercourse between a married individual and any man or woman other than their spouse.

“There has to be voluntary sexual relations between them,” says Low.

Interestingly, he notes, the number of cases involving cheating wives has also shown an increase.

“And in many cases, even when the couple don't cite adultery as the grounds for divorce, there is usually a third person in the mix – the new partner of either party – who is often the one pushing for the divorce, and sometimes is even more impatient with the way the divorce proceedings are going.

“So, most of the time, the relationship and situation are complicated,” he says, highlighting that if

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— Lee Khim

it is the wife who is the cheating spouse and she petitions for a divorce (walks away from the marriage), she will not be entitled to any alimony.

Luckily, women in civil marriages here whose husbands are cheating and having an affair have a legal recourse under the Law Reform (Marriage and Divorce) Act 1976 and can even “fight back” through the legal system.

“The reason for the breakdown of a marriage – in this case, adultery – will have a financial impact on the divorce settlement. If the wife is the ‘wronged’ party, she can use it as leverage in her divorce negotiations.”

In most cases, however, adultery has no or little bearing in the custody fight over the children and division of matrimonial property.

Toh Lee Khim, also a family law expert at Low and Partners, explains further: “In the division of property, the court will usually look at the individuals’ respective contribution.

When deciding on spousal maintenance, the court will look not only at the means and needs of the husband and wife, but also the degree of responsibility of each party for the breakdown of the marriage.

“So, if the cause of your divorce is because your husband is having an affair, you can get higher spousal maintenance.”

Maintenance normally means the standard of living the wife is used to during the marriage and includes clothes, house and pocket money she received during the marriage.

The bad news, says Toh, is that adultery is very hard to prove in court as the standard of proof is beyond reasonable doubt.

This is where evidence is crucial and hiring a private investigator (PI) would be necessary to help in the gathering and compiling of the evidence, she adds.

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Fairy tale no more: Jolie and Pitt with their adopted children Zahara and Maddox in Mumbai, India, during happier announcement of their divorce shocked many due to their seemingly harmonious relationship. — AP

times. The former couple's



Experts at work: Low (centre) and Toh advise clients to gather as much evidence as possible and hire a private investigator if necessary to strengthen their case in court.

tion our clients that the evidence has to be obtained in a lawful way to be admissible in court.”

“It is not cheap to hire a PI, so we make this very clear to our clients before they go down that path.

“But if they choose to hire one, we usually recommend PIs whom we know and have worked with before,” said Low.

PI fees usually range from RM80 to 200 per hour, with travel expenses billed on top of those fees.

For a comprehensive collection of evidence and reports, one would need to hire the PI for at least a few days.

The types of evidence that can support the adultery case in court are mainly surveillance photographs, which are combined with phone messages (that are sexual in nature), videos, bills and receipts – including a copy of the hotel regis-

tration if the “suspects” spend the night there – to establish the extra-marital affair.

Due to the laws governing the PIs, says Toh, most of the evidence gathered are usually circumstantial such as snapshots of the target couple in a restaurant or a car, or a receipt for a hotel room.

“What we do is put the evidence together to show the story and establish that there was an extra-marital affair.”

Wan Zairi Afhtar Ishak, director of My Private Eye Consulting Sdn Bhd, advises women to start gathering information as soon as their instincts tell them that something is wrong in their marriage.

“As soon as you have a gut feeling that your husband might be having an affair, you can start keeping tabs on him or start hiring a PI.

“Don't wait until you start your

divorce proceedings as that will be too late. By then, your spouse would have been advised to clean up his act or be more discreet, making it difficult for the PI to get any evidence.”

Low agrees, advising women to be on top of their family finances at all times so that they are prepared when things go south.

“Most of the time when it comes to divorce, it is not just the husband but both parties who will suddenly become ‘poor’, even to us, their lawyers, so that they can negotiate the legal fees,” he says.

What many Malaysian women don't realise is that the aggrieved wife can also sue for damages from the third party involved in the adulterous affair.

“It will be cited in the same suit but again, the adultery case needs to be proven without reasonable

doubt in court.

“We will also need to prove clearly what the damages are on the ‘victim’ as our family courts do not encourage huge compensations for the sake of revenge,” says Toh.

The bravado aside, most of the time, the cheated wives simply want their divorce case to be settled early – as the legal process can be taxing and stressful – so that they can get closure and move on with their life, she adds.

“We try to help them get there. If, in the end, they feel reconciliation is better for them and they want to go for marriage counselling, we will help them do that.”

Coming: What the Syariah laws provide for aggrieved Muslim women