

Consultation Exercises (roleplay)

Demonstration

Cast:

Attorney: Mareesa
Mrs. Newton: Anneke
Receptionist: JM
Presenter: Frikkie
Panel: Piet
Andrew
Mr Haupt

The client, Mrs. Newton, comes to see the attorney for legal advice. She explains the background to the problem as follows:

Mrs. Newton was originally married to Mr. Brown and there were three children born from the marriage.

Mrs. Newton has no income as she married Mr. Brown when she was still quite young and they agreed that she would look after the children while she would work and provide for the family financially.

Mrs. Newton was at all times an excellent mother and a great wife to Mr. Brown.

However, he was a very undependable worker, could not hold down a job and could not maintain the family.

Mr. Brown and Mrs. Newton ran into severe financial difficulties and this led to a lot of domestic conflict. Eventually, Mrs. Newton decided that she wants to divorce Mr. Brown. They drafted a settlement agreement and got divorced. Mrs. Newton was awarded custody of the minor children, while Mr. Brown would have very liberal access to the children. Mr. Brown also had to pay maintenance towards the children.

The relationship between Mr. Brown and Mrs. Newton improved after the divorce and Mr. Brown was a very positive influence on the lives of his children. However, Mrs. Newton met another man, Mr. Smith, whom she later married.

Mr. Smith was very well off financially, but was so involved in his work that he did not spend a lot of time with Mrs. Newton and the children; he was an absent stepfather and husband, but he loved Mrs. Newton and tried to show this by providing her with a very luxurious lifestyle.

From time to time, Mr. Brown and Mrs. Newton still had fights as he could still not hold down a job and often did not pay the maintenance towards the children. Mrs. Newton did

not want to take legal action against Mr. Brown, as she still loved him and she felt he was still an excellent father to the children, but the tension from their fights started to affect the relationship between and the marriage of Mr. Smith and Mrs. Newton.

Finally Mr. Smith suggested that he legally adopt the three children and then he would take care of them as his own. This would eliminate the fights and tension and the children will be much better off. Mr. Brown agreed to sign the necessary documents, provided that he would still have full and free access to the children. Mr. Smith and Mrs. Newton agreed, as both felt that they wanted Mr. Brown's presence in the lives of the children. And so it was done.

After a few months, the marriage between Mr. Smith and Mrs. Newton began to deteriorate at an alarming rate. Mr. Smith was never home and when Mrs. Newton confronted him about it, she felt that he did not appreciate everything she was doing for him and the children. Finally, Mrs. Newton consulted a lawyer and initiated divorce proceedings against Mr. Smith.

Mr. Smith contested the divorce, but after a few months, the divorce went through. According to the order of court, custody of the children was awarded to Mrs. Newton and Mr. Smith had to pay substantial maintenance towards both Mrs. Newton and the children (which, due to the adoption, were considered his children for all legal purposes). The parties agreed that, instead of monthly maintenance, Mrs. Newton would take ownership of Mr. Smith's mansion, in which both herself and the children lived for the past few years. Because Mr. Smith never really developed a relationship with the children and because he indicated during the divorce that he does not want to have anything to do with them, no order was made regarding any right of access that he might have. Exactly one week after the divorce, the registration of the mansion in Mrs. Newton's name was finalized.

In the meantime, realizing that to him a personal relationship was more important than money, Mrs. Newton re-kindled her relationship with Mr. Brown. 2 Months after her divorce from Mr. Smith, Mrs. Newton and Mr. Brown got married again. That was now 4 months ago. They are living together in the mansion with the children. Due to the fact that Mr. Smith pays quite a large amount of money into Mrs. Newton's account each month (in accordance with the maintenance order for the children), there is more than enough money for the family to live comfortably and so Mr. Brown's inability to maintain his family is no longer an issue. In fact, the family is happier than ever, as Mr. Brown quit the job he had and now stays at home with Mrs. Newton to raise the children. All this leads to a rather bad relationship between Mr. Brown and Mr. Smith. Now Mr. Smith is threatening to approach the court to get the maintenance order set aside and to get custody, alternatively access to the children. Mrs. Newton wants to know what his legal position is.

Consultation Group Exercise (act as clients for firms)

Cast: Everyone,
Mr Haupt – walk around assessor
Lourens – camera man

Script:

You are 45 years old. You married your spouse on the 14th of February 1984, out of community of property. Three children were born from the marriage:

Ashley, female, 15 years old
Barney, male, 13 years old
Christo, male, 12 years old

You don't work, as you and your spouse agreed that you would stay at home and take care of the children. You did, however, take on a few casual jobs, as and when the opportunity arose. From these jobs you made between R 500 and R 2 500 per month, depending on the month; some months you did not work at all and had no income. You have no formal qualifications past grade 10.

Your spouse is a prominent doctor in the area where you live. He/she is also, at present, the mayor of the town.

Your problem is that your spouse abuses you and the children. It began right after your first child was born; your spouse started drinking and would shout at you if the baby was crying and demanded that you get "it" to stop immediately. If you didn't, he/she hurt you by manipulating pressure points on your shoulders or arms to get you to comply immediately. You would then take the baby out of earshot of your spouse and take care of the baby until it was asleep again. Afterwards, your spouse would always give the explanation that he/she had a very stressful job, was tired and needed the time to relax and rest.

When you / your spouse was pregnant with the second child, your spouse started smacking Ashley whenever she cried. Sometimes he/she would hit the child in the face. When you tried to intervene, your spouse started assaulting you, using household objects as projectiles and weapons.

You wanted to leave your spouse at that stage, but felt that you could not, as you had responsibilities towards your children.

Eventually, however, after the second child was born, you felt that you could not stay in the marriage any longer, as it was harmful to both yourself and your children. You consulted a lawyer, but your spouse found out about it. Your spouse then broke down and cried and apologised, promising never to hurt you again and begged you for a second chance.

After a serious talk with your spouse, you became convinced of his / her sincerity and reconciled with him / her. The reconciliation process resulted in another pregnancy.

Soon after you and your spouse became aware of this third pregnancy, the abuse started all over again. Each time that you considered leaving, your spouse would cry, apologize and promise never to hurt you again and offer to do anything it takes to save the marriage. He/she even went for professional help regarding his/her drinking problem, but always at some faraway place so that his/her image would not be tainted in the community where you lived. You fell into a pattern of abuse and forgiveness that was difficult to break; you felt trapped and alone and could not see any way out of this; in fact, you started to consider this to be normal.

This year, Christo went to high school. One day he came back from school with a tear in his shirt from climbing a tree. Your spouse lost control, shouted at Christo and pushed him into his room, which resulted in him falling and breaking his arm. Your spouse put the arm in a cast and instructed Christo to tell people, if questioned, that he broke his arm when he fell out of tree.

This made you realize that you had to get your children away from your spouse. You made an appointment with a lawyer in town, but your spouse found out about it, cancelled the appointment, took all the cash you had, hit and kicked you and shouted that, due to your actions, you and the children will have to go without any money from him/her for the next month. You were also not to leave the house. He/she repeatedly told you that you were a stupid, uneducated child whom he/she took pity on when he/she married you and that you were unappreciative and could not be trusted with anything.

You remember years ago hearing on the radio that universities have law clinics that can help people who can't go to private attorneys. You do not want your spouse to find out about your seeking legal advice, so you came to the law clinic with your children when you found out that your spouse would be in Bloemfontein for the day. You now want to know if and how the law can help / protect you and your children.

Consultation Group Exercise (act as clients for firms)

Cast: Everyone

Mr Haupt: Walk around assessor

Lourens: camera man

Script:

You are presently staying at 12 Church Street, Pretoria West (if asked for your address, provide this address).

You are 28 years old part-time clerk. You and your spouse reside in Kimberley. As a result of frequent quarrels, you packed your clothing and some personal belongings and came to Pretoria to visit your mother for an unspecified time (you put in leave for a month; you intend going back to your job and to Kimberley, which you regard as your permanent home. Do not disclose this to students unless asked).

During the course of the month you were informed by a friend that your spouse is having an affair. As a result of this you decide to see the Law Clinic in Pretoria to get some advice on what you should do in case you want to proceed with a divorce (you are not sure whether you are married in or out of community of property, as you do not know the terminology. If asked by students, you may tell them that you and your spouse never entered into any ante nuptial contract.)

You have three children, one from a previous marriage (do not disclose this fact without being prompted to do so).

Your spouse is a municipal worker and has indicated that he / she will not grant you a divorce (you are very concerned about this).

You want a divorce, whatever assets you are entitled to and custody of the children.

You want to know whether you would be entitled to claim maintenance on behalf of the children, as your spouse has indicated that he / she intends signing them of.

Make up whatever extra facts you need in response to questions, staying within the spirit of the facts given. Do not volunteer any facts. Ultimately, you will need enough information for the students to be able to fill in an application form. They have about 1.5 hours available in total (which includes opening a file and filling in an application form), so make sure that you have detail like an ID number (which doesn't contradict your age) etc. Also try to subtly create the impression that you still love your spouse very much and would have liked to still be married to him / her, but you simply cannot reconcile yourself with the affair.

Furthermore, you will have great financial difficulties if your spouse stops giving you money (students should consider rule 43 application, amongst other things). You have

very little information regarding your or your spouses' financial position, as your spouse handles the finances and you do not work with it at all – your salary gets paid into your spouse's account, who then simply gives you an allowance of R 1 500 per month to buy household necessities with.

When asked to sign the indemnity form, you should be uncomfortable with it, need it explained to you carefully and question the need for the various provisions. Especially, ask them why you are being helped by students, not lawyers; why they need the indemnity (do they intend to mess up your case) and why you should cede any cost awards to the clinic.

Your income is more or less the following:

Gross salary: R 1 200 per month

You normally get a Christmas bonus of R 500 in December

You and your spouse are renting an apartment for R 1 000 per month

Your parents are always trying to help you out financially to look after the children, so they give you R 600 per month

You have no savings or substantive assets

While you have very little information about your spouse's finances, you suspect the following based on some documents you accidentally saw:

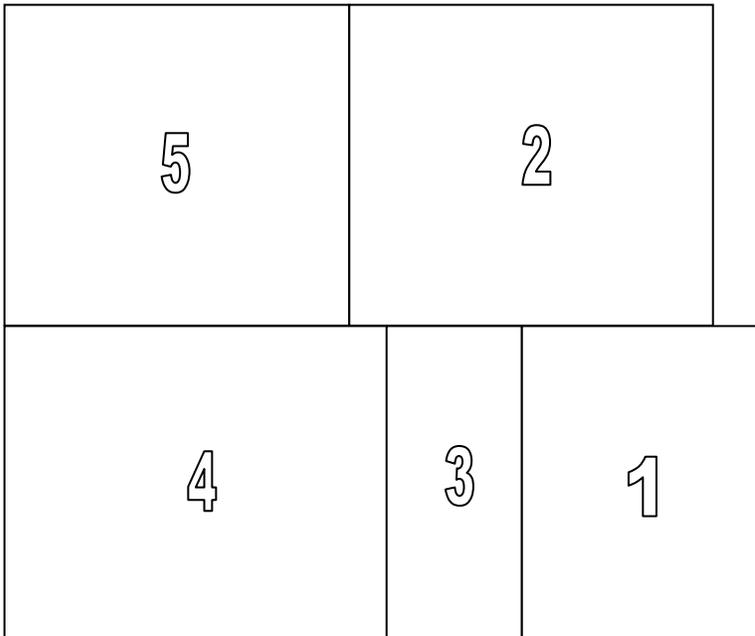
Your spouse earns about R 4 000 per month and has about R 20 000 in a savings account (you think). On this, he / she earns interest of about R 150 per month.

Negotiation Exercise 1

Property Side A

Facilitators:

Briefing Side A: Mr. Haupt
Briefing Side B: Lourens Grové



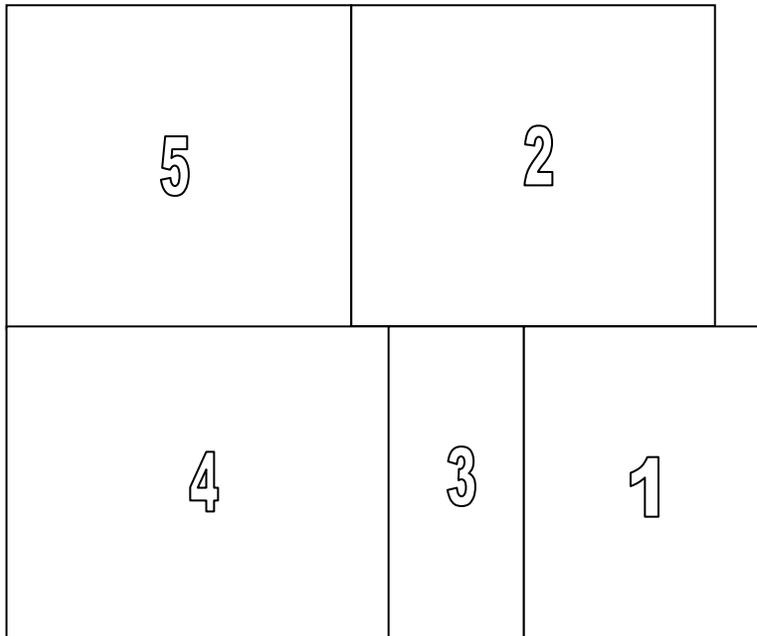
Instructions from client:

Your client, Mr Jones, the owner of erf 1 has just sold the property to a buyer as he is moving to a retirement village. He also owns the adjacent stand (stand 3) which itself cannot be built upon as it is too small. The buyer of stand 1 has indicated that he doesn't really need the adjacent stand (stand 3) but would buy it for R 30 000. The owners of stand 4, Mr & Mrs Smith, had previously expressed interest in stand 3 but nothing came of it. The only other possible buyer, the owner of stand 2, is presently abroad but he is not interested in acquiring stand 3. This is not known to the Smiths. Approach the Smiths and try to sell the stand to them for as much as possible, but for not less than R 30 000.

Property Side B

Facilitators:

Briefing Side A: Mr. Haupt
Briefing Side B: Lourens Grové



Instructions from client:

Your clients, Mr & Mrs Smith, the owners of stand 4, has inherited an amount of R 150 000 from an aunt and they are now in the position to upgrade and add to their home – a long awaited ideal. They have been informed by their architect that it would be great if they could acquire stand 3, but that they should not pay too much as the more they pay for stand 3 the less money there will be for the building improvements. They are aware of the fact that the new buyer of stand 1 has offered R 30 000 to the owner of stand 1, which was apparently refused. The owner of stand 2, who is presently overseas, may also be interested in acquiring stand 3 as he previously expressed a wish to acquire the stand. Stand 3 is too small to be sold to anybody other than the owners of stands 1, 4 or 2 as it is too small to be utilized independently. Try to buy stand 3 for as little as possible. Bear in mind that the quote for the intended alterations to their existing home on stand 4 amounts to approximately R 80 000.

Negotiation exercise 2

Sexual Harassment Side A

Cast:

Piet Breedt:	Piet Breedt
Mareesa Erasmus	Mareesa Erasmus

Instructions from client:

Your client is Mr. Piet Breedt, a partner in the biggest law firm in Durban, who is also in charge of human resources at the firm. He plays a prominent role in society and is inter alia chairperson of the ethics committee of the KZN Law Society. He is accused of making certain inappropriate suggestions to a female PA, Mareesa Erasmus. She claims that during a performance management interview he told her that while he is satisfied with her job performance her interpersonal relations are not up to scratch. He suggested that she relaxes more and get in touch with her feminine side. She says that he suggested that perhaps she should spend a weekend with him in his beach house at Ballito. She claims that being a very religious & principled person this was a traumatic experience to her. When she objected to his behaviour he informed her that she had just blown her chances of ever becoming a partner and that if she knew what was good for her she would leave. Your client denies this and informs you that he has a good reputation and that 70 female employees can all testify that he has never harassed any of them over the years. He claims that Mareesa Erasmus is an overambitious troublemaker. It is your client's opinion that Mareesa is trying to make his life difficult. He explains that Mareesa and himself were the two candidates for the position he currently holds and that she is jealous about him getting the position. He was advised by his partners that the firm cannot possibly afford the bad publicity that a court case based on discrimination, harassment and constructive dismissal of a female employee would bring about. He has a mandate to settle the matter by way of negotiations for as little as possible with a maximum of R 150 000 severance pay (which equals her annual salary) on condition that the details of the settlement remains confidential.

Sexual Harassment Side B

Cast:

Piet Breedt:	Piet Breedt
Mareesa Erasmus	Mareesa Erasmus

Instructions from client:

Your client is Mareesa Erasmus who informs you that she was discriminated against, sexually harassed & constructively dismissed by the behaviour of her boss Mr. Piet Breedt, the senior partner in the biggest law firm in Durban, where she worked as an PA for R 150 000 per year. He became overly friendly towards her & suggested that she joins him for a weekend at his beach house at Ballito. When she took exception to this he threatened her with dismissal etc. She would love to take him to court and make him & the firm pay for this. The problem is that he is a very influential person and that she will find it impossible to afford the legal costs of a drawn out court case. She is also aware that other female staff is too intimidated to testify on her behalf and would most probably testify for him. She needs as much money as possible to set up her own practice in Durban as she cannot leave the city seeing that her bedridden mother is staying with her in the family home. She maintains that she will find it extremely difficult to find a job with another firm in Durban, because other practitioners hold Mr. Breedt in high regard. She needs at least R 150 000 to set up practice but stresses that she expects more and that she does not want to go to court. She also expects a written apology. She is willing to give up on this should she get enough money to set up law firm.