WEALTH MATTERS

From a Prominent Divorce in the Affluent Class, Lessons for All

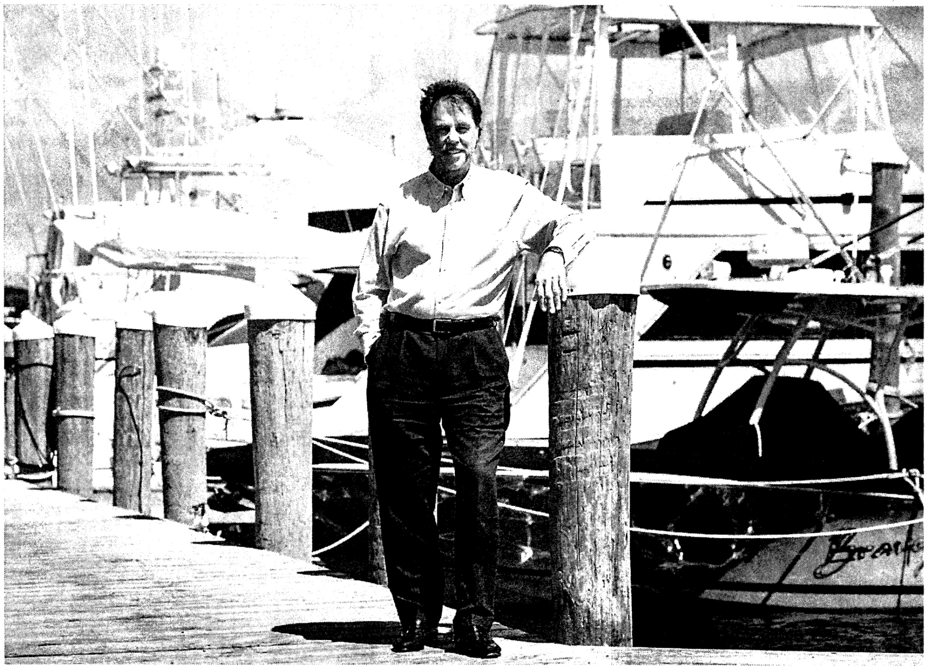
By PAUL SULLIVAN

IF all goes well, we'll never hear much about Rupert and Wendi Murdoch's divorce. The News Corporation chief executive and his wife will reach a settlement out of court for his third and her second divorce. If talks break down and the divorce goes to trial, however, we could be in for a round of sensational stories.

Over the years, I've tried to avoid writing about big money divorces like this. I've just been a bit prudish about something that is at best sad and at worst tragic. I always think of the children. But there is certainly plenty of practical advice to be gleaned from such an emotional issue, which is why lawyers and financial planners should tune in to the salacious gossip.

What little is known — or can be logically assumed — about the Murdoch divorce provides lessons for people with far less money.

There are at least four areas in the Murdoch divorce that other affluent people need to consider if they find themselves served with divorce papers.



GORDON M. GRANT FOR THE NEW YORK TIMES

Ilan Hirschfeld, of the marital dissolution group at Marcum, said he might challenge an old prenuptial agreement.

AGREEMENTS In the Murdoch case, there is reportedly a prenuptial agreement and two postnuptial agreements that modify the original contract.

Ilan Hirschfeld, national leader of the marital dissolution practice group at Marcum, an accounting firm, said postnuptial agreements generally solidify the prenuptial agreement and make the separation of assets cleaner. But if there is only a prenuptial agreement and it is very old, he would use forensic accounting to challenge it.

"If I'm representing the Mrs. and she's not happy because her husband is making 10 times what he was making in the beginning, I'll go back and say, 'Did you disclose all the assets?' or 'Was she properly represented?'" he said.

David Aronson, a founding partner of Aronson, Mayefsky & Sloan, took the opposite position. He said people who entered into prenuptial agreements lightly or without proper counsel could be sorely disappointed.

"Prenuptial agreements are routinely enforced in New York, even if they appear to be bad deals," he said, adding that the few recent cases in which they were overturned were "still exceptions to the rule."

One type of prenuptial agreement that could draw more scrutiny, Mr. Aronson said, is one drawn up to protect the earnings of the higher-earning spouse when both people were younger. "That's a very bad deal for the spouse who is never going to earn a lot of money," he said.

ASSETS Dividing assets between spouses is rarely as simple as deciding to split it 50-50 — or even 60-40. A lot depends on what kinds of assets are involved

tinction between passive and active assets. A passive asset would be a house or a stock portfolio, but not all of them can be parceled out.

Jason M. Katz, a private wealth adviser at UBS Wealth Management, said a municipal bond portfolio could be tricky to divide without slighting one spouse because bonds have different maturities and credit quality.

More difficult are investments in hedge funds and private equity. He said couples would have to wait until the next withdrawal period to get their money from a hedge fund, but with private equity they did not have the same option and could be in it for years, depending on how long the fund holds on to its investments. A way around this could involve one spouse trading away rights to it for something else, like a beach house.

A business, on the other hand, is an active investment, and the percentage a spouse is entitled to depends on how much he or she contributed to the business.

In the case of anyone who enters a marriage with an existing business, as Mr. Murdoch did with News Corporation, the calculation of what percentage of the business Mrs. Murdoch could be owed starts on the day they were mar-

pany on the day they filed for divorce. This is tricky: She traveled with Mr. Murdoch on business, particularly to her native China, and famously smacked a guy trying to throw a pie in his face. But what could she or any one person contribute to the success of a global company like News Corporation?

The calculation changes if the business was started while the couple was married. Mr. Hirchfeld said that a spouse of a business owner who stayed home and raised the children is generally awarded somewhere between 30 to 35 percent of the business.

"If the wife says 'We started the business together,' you have to look at how active the role is," he said. "I've had divorces where they can't live together anymore but agree to run the business together. The courts don't like that — it's a time bomb waiting to happen."

CHILDREN The care of any young children should, of course, be the primary concern of the divorcing parents.

To help with the financial part, many states have set up criteria that put a value on each child. In New York, the standard cost of care for one child is 17 percent of the combined income, 25 percent for two and 29 percent for three. But this calculation is capped at above that.

Mr. Aronson, who has been involved in prominent child support negotiations, said that basic payment did not include school, medical bills, child care or extracurricular activities, which can be as much or more than the child support.

"A lot of people think it's harder to represent rich people," he said. "In many respects, it's easier. When there is enough money going around it's easier to divide up the surplus. Otherwise you're dividing up assets that are crucial to people's day-to-day lives."

Yet he said no matter how lavishly the children lived before a divorce, there were limits to what they might expect afterward. "The courts will not, in the guise of child support, create a standard of living for the mother of the child or the ex-wife, whichever she might be, simply to enable the child to fly in private planes or have second homes," Mr. Aronson said, "even though that might have been the standard of living the child might have enjoyed had the marriage remained intact."

With children who have siblings from previous marriages, Mr. Hirschfeld said the negotiations could become trickier. Not only does the spouse with less want to make sure the children are provided for, but also that they receive the same treatment as children from previous or future marriages.

He suggested trusts for each child's care. A frequent request in a divorce is that the better-off spouse draw up a will leaving everything to the children from the current marriage, but that's not an effective solution. A new will could be written the day the divorce is final.

FEES For all but the wealthiest people, fees paid to lawyers, accountants, appraisers and other advisers can reduce what the spouse with less is fighting for. Jeffrey R. Cohen, a divorce lawyer at Cohen Goldstein, estimated that a cooperative divorce could cost 15 percent of the cost of one that dragged on or went to trial.

When it comes to agreeing on what people believe is their rightful share, he recalled telling clients: "If you're 10 percent away, I know you're going to settle your interest. If you're 15 percent, there's a chance. But if you're 50 or 75 percent away, you're going to war."

An alternative some practitioners advise is "collaborative divorce." (This is not to be confused with arbitration or mediation.) It is meant to minimize the costs — having one appraiser instead of his, hers and a neutral third appraiser, for example. It also focuses on getting to a quick, fair resolution.

"Spouses are assisted in coming up with their goals," said Tracy B. Stewart, a certified public accountant in College Station, Tex., who works on collaborate divorces. "Then they agree on the value of all the property. Then we generate options for each piece of property and brainstorm how best to divide these things so they both end up with a secure financial future."

It requires the couple to be ready to move on, even if they don't like each other any more. One of her more challenging but ultimately successful cases was working with a couple where the husband was addicted to alcohol, cocaine and sex. ("You think that wife wasn't mad?" she said.)

Where this or any type of negotiation fails is often over small things that have an outsize significance in a marriage.

"I have seen people fight over things that didn't need to be fought over and it cost them a lot of money," Ms. Stewart said. "If you're going to fight over the souvenirs you got in Europe 30 years ago and your attorneys have to listen to it — ka-ching, ka-ching, ka-ching."

Mr. Cohen said he told a story to clients who were headed for a long, expensive, contested divorce about the wife of a well-known billionaire who decided to take his offer and move on. "She says, 'Either I take the offer or he's going to keep me in court for the next seven years,' " he recalled. "She says, 'This is enough money for me. I can take care of my children and live a good life. I don't care how much he has.' "

Asked how often other spouses heard the story and did the same, he said, "I'd say she was the only one."