A good way to begin the study of family law is to give students an opinion poll. Begin by telling students before they learn about family law, you want to find out what their opinions are. Allow 5 minutes or so for students to complete the opinion poll. Tell students they are to give their opinions, not what they think the law is.

While students are completing the handout, draw a grid on the board to record their responses. For example:

<table>
<thead>
<tr>
<th>Agree</th>
<th>Undecided</th>
<th>Disagree</th>
</tr>
</thead>
</table>

1.
2.

Debrief student opinions. Develop a class composite first, by taking a show of hands for each statement, and recording the results on the chart.

Alternatively, you could make signs and post them across one wall of the classroom, and ask students to "Take a Stand" under the sign that most closely matches their opinion on the question. If the class is large, ask only a 1/3 of the students to stand up at once.

In leading the discussion, ask students to justify, or give reasons for their opinions. Encourage exchange between students, rather than just between yourself and the students, by asking students to respond to opinions of fellow students that are different from their own.

After discussion of opinions about each statement, tell students what the state of the law in Washington is in regard to the statement. When students' opinions vary from the law, ask whether they think the law should be changed. What could they do to affect that process? (write legislator, etc.) Allow 30-35 minutes for the debriefing of all questions.

Conclude the lesson by telling students they will now be looking at some specific areas of family law in more depth.
Opinion Poll

1. Couples should be required to live together for six months before getting married.

2. Women who take illegal drugs during their pregnancy should be prosecuted for child abuse.

3. If two people of the same sex want to get married, they should be allowed to do so.

4. Parents should have the right to discipline their children according to their own judgment.

5. Children should be required to support their elderly parents if they are in nursing homes and receiving government aid, such as Medicaid.

6. If a wife wishes to have an abortion, she should be able to do so without the consent of her husband.

7. A husband who physically abuses his wife should be prosecuted for criminal assault.

8. Parents who do not pay child support should have the payments withheld from their paycheck.

9. Contraceptives should be distributed at schools.
Opinion Poll: State Of The Law--Not "the answers!!"

It is important to stress that there is no "correct" opinion. The state of the law in Washington is presented here, but again, there is not a "correct" answer to an opinion poll.

1. Couples should be required to live together for six months before getting married. There is no such requirement in Washington or any other state.

2. Women who take illegal drugs during their pregnancy should be prosecuted for child abuse.
   In 1997, the South Carolina Supreme Court upheld the prosecution of Cornelia Whitner for criminal child neglect. Whitner v. S.C., 492 S.E. 2d 777 (1997) (amended and refiled, rehearing denied). cert. denied, 118 S. Ct. 1857 (1998). Whitner’s child was born with cocaine in its system from Whitner’s ingestion of crack cocaine during the third trimester of pregnancy. The court found that a fetus is a “person” or “child” within the state’s child abuse statute. South Carolina is the only appellate court in the country to uphold the convictions of pregnant women found guilty of taking illegal drugs, but South Dakota and Wisconsin amended their child abuse statute to include unborn children after the U.S. Supreme Court refused to hear the case. Many other women have been prosecuted for the offense in S.C. Florida, Ohio, Kentucky and Nevada have struck down laws similar to South Carolina’s.

   The similar case in Washington is State v. Dunn, 82 Wash.App. 122, 916 P.2d 952 (1996). As in Whitner, the State argued that “minor child” should include “fetus” in the child mistreatment statutes, as it does in the wrongful death statute. However, the Washington Court of Appeals refused to extend the definition that far and threw out the case. The Court stated, “When the Legislature intends to include the fetus in a class of criminal victims, it specifically writes that language into the statute.” 82 Wash.App. at 128.

   Crystal Ferguson was another pregnant woman in South Carolina who was drug-tested in the same program as Cornelia Whitner. She and several other women sued the Medical University of South Carolina over the drug-testing policy. They claimed it was both an unconstitutional search and seizure (because the hospital was a state actor and the testing was done specifically for law enforcement purposes) and a violation of Title VI (because it discriminated almost exclusively against African-American women). The case went all the way to the U.S. Supreme Court, which held that urine tests were searches within the meaning of the Fourth Amendment and that reporting of positive tests to the police without patients’ consent was an unreasonable search. Ferguson v. City of Charleston, 121 S. Ct. 1281 (2001).

3. If two people of the same sex want to get married, they should be allowed to do so.
RCW 26.04.010 defines marriage as a civil contract between a man and a woman. This was revised in 1998 as part of the nationwide struggle with same-sex marriage that culminated in the federal Defense of Marriage Act. This is discussed more fully in the section on marriage.

4. Parents should have the right to discipline their children according to their own judgment.
   Parents do not have a free hand in disciplining their children. The child abuse laws specifically define abuse and what types of punishment are considered abuse. Only "reasonable and moderate" physical discipline is allowed. These laws are discussed in detail later in this unit.

5. Children should be required to support their elderly parents if they are in nursing homes and receiving government aid, such as Medicaid.
   Washington currently has no law requiring children to support needy parents. Such a law was in effect until 1976, but it was repealed then, when the federal government told states that they would lose federal aid if they required people to pay for the care of blind and disabled parents.

6. If a wife wishes to have an abortion she should be able to do so without the consent of her husband.
   The U.S. Supreme Court has ruled that a spouse's consent cannot be required before a woman has an abortion. The Court based its opinion on the fact that the woman physically bears the child and is more directly affected, and to allow the husband veto power is an undue burden on the woman. Planned Parenthood of S.E. Pennsylvania v. Casey, 505 U.S. 833 (1992). However, the decision let stand other barriers to abortion, such as a 24-hour waiting period and teenagers needing either parental or judicial consent.

7. A husband who physically abuses his wife should be prosecuted for criminal assault.
   Washington has a comprehensive law dealing with spouse abuse. Under this law, if a spouse, former spouse, someone you live with or used to live with, someone you are related to by blood or marriage, someone you have a child with, or someone you have a dating relationship with (if the parties are 16 years old or over), abuses you, you can get help from either the criminal justice system or the civil legal system. The police are trained in special procedures to deal with domestic violence and must arrest a person who has abused (which means hit, or threaten to hit) and harmed you within the last four hours. The abuser will be prosecuted for criminal assault, and/or any other crime he has committed. (This law is discussed in more detail later in this chapter.)

8. Parents who do not pay child support should have the payments withheld from their paycheck.
   Child support payments may be "garnished" from wages if a judge orders it.
9. Contraceptives should be distributed at schools. The U.S. Supreme Court has held that sale of contraceptives to minors cannot be prohibited. Whether condoms or other contraceptives should be distributed at schools is being debated by many school boards across the country. The spread of AIDS and high rates of teenage pregnancy are cited as reasons in favor of distribution.

MARRIAGE
Washington Law on Marriage
In Washington, eighteen is the legal age for marriage. If you are seventeen, you may marry if you have the written consent of a parent or legal guardian. If you are younger than seventeen, you must also have the consent of a superior court judge. The judge gives consent if there is a necessity. If the consent of a judge is sought and pregnancy is involved, the parties must present a doctor's statement verifying the pregnancy, and the man must acknowledge that he is the father of the child.

Marriages between close relatives are not allowed in Washington. The law states that the couple may not be closer than second cousins.

In 1998, the Washington legislature amended the marriage statute specifically declaring marriage to be between two people of the same sex. RCW 26.04.010. Prior to that, in 1974 the Washington Court of Appeals interpreted the marriage statute to find a prohibition of same-sex marriage. The court upheld a county auditor's refusal to issue a marriage license to two men who wished to marry. The court found that the previous version of the marriage statute RCW 26.04.010, referring to "persons" to whom a marriage license may be issued, did not allow for same-sex marriage. The court reasoned that the principal objective of marriage is to have children and this is not possible with marriages between two people of the same sex. The court rejected the argument that the ban violated our state's equal rights amendment. Language from the court's opinion follows:

In the instant case, it is apparent that the state's refusal to grant a license allowing the appellants to marry one another is not based upon appellants' status as males, but rather it is based upon the state's recognition that our society as a whole views marriage as the appropriate and desirable forum for procreation and the rearing of children. This is true even though married couples are not required to become parents and even though some couples are incapable of becoming parents and even though not all couples who produce children are married. These, however, are exceptional situations. The fact remains that marriage exists as a protected legal institution primarily because of societal values associated with the propagation of the human race. Further, it is apparent that no same-sex couple offers the possibility of the birth of children by their union. Thus the refusal of the state to authorize same-sex marriage results from such impossibility of reproduction rather than from
an invidious discrimination 'on account of sex.' Therefore, the definition of marriage as the legal union of one man and one woman is permissible as applied to appellants, notwithstanding the prohibition contained in the ERA, because it is founded upon the unique physical characteristics of the sexes and appellants are not being discriminated against because of their status as males per se. In short, we hold the ERA does not require the state to authorize same-sex marriage.


Questions:
What is the court's reasoning?
How do you view the court's reasoning? Why?
Do these arguments stand up today? Why or why not?
Are there better arguments? What is the counter-argument?

The issue of same-sex marriage has not gone away. In Baehr v. Lewin, 74 Haw. 645, 852 P. 2d 44 (1993) plaintiffs, three same-sex couples, sought review of the denial of marriage licenses. The Supreme Court of Hawaii held that while the couples did not have a fundamental constitutional right to same-sex marriage arising out of the right to privacy, their equal protection claim was legitimate. The court decided that sex is a "suspect category" under the Hawaii constitution, and that the denial of marriage licenses to same-sex couples is unconstitutional unless the state can show that the law furthers a "compelling state interest" and that the statute is "narrowly drawn to avoid unnecessary abridgements of constitutional rights."

The case was remanded to the lower court, which issued an opinion in Dec. 1996, holding that the state had not shown a compelling state interest in denying marriage licenses to same-sex couples. Before that decision could have any ramifications, a Hawaii referendum changed the state constitution to declare that marriage had to be between a man and a woman.

If a state allows same-sex marriage, the repercussions for other states could be immense. Under the full faith and credit clause of the U.S. Constitution, all states must recognize the "public acts, records and judicial proceedings of every other state." U.S. Constitution, Article IV, §1. As a precaution, which some have argued was more symbolic than constitutional, in the summer of 1996, Congress drafted the "Defense of Marriage Act." It defined marriage as a legal union between a man and a woman and would allow states to refuse to recognize same-sex marriages performed in another state. President Clinton signed it into law.

In 2000 Vermont enacted a civil union law for same-sex couples. By registering their civil union, same-sex couples have become covered by over 350 state laws, including retirement and insurance benefits, and health care directives. Contrary to fears of an
onslaught, reports have indicated that there has been a slow stream of gay and lesbian couples to Vermont to register.

In addition, many businesses and corporations now provide the same benefits to same-sex couples that they give to married heterosexual couples. While many of the high-tech firms have done this, Boeing recently changed its long-standing policy to offer same-sex benefits. Washington’s Governor Locke also recently signed into law (in 2000) a bill allowing for same-sex benefits for state employees.

Washington also has substantial caselaw providing “quasi-marital” benefits to unmarried couples living together, known as “meretricious relationships.” See, e.g., Connell v. Francisco, 127 Wash.2d 339 (1995) (woman in seven-year meretricious relationship now ended entitled to equitable distribution of man’s property attained during the time they were together). (This is explained further in a separate section below.)

In Vasquez v. Hawthorne, 33 P. 3d 735 (2001), the Washington Supreme Court held that summary judgment was not appropriate in a case disputing the disposition of property belonging to the deceased member of a same sex couple. The court stated:

Vasquez presented claims for equitable relief under several theories, including meretricious relationship, implied partnership, and equitable trust. When equitable claims are brought, the focus remains on the equities involved between the parties. Equitable claims are not dependent on the "legality" of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties. For example, the use of the term "marital-like" in prior meretricious relationship cases is a mere analogy because defining these relationships as related to marriage would create a de facto common-law marriage, which this court has refused to do. In re Marriage of Pennington, 142 Wash.2d 592, 601, 14 P.3d 764 (2000). Vasquez at 33 P.3d 735

Questions:

• It was only in 1967 that the Supreme Court decided Loving v. Virginia, removing the bar to interracial marriages. If the notions and prejudices supporting that prohibition now sound antiquated, will the reasons now being cited against same-sex marriages also seem so?

• If Washington recognizes common-law marriages from South Carolina, shouldn't it recognize same-sex marriages from Hawaii?

• What are some of the advantages of marriage that same-sex couples seek? [health and retirement benefits; life insurance, income tax, estate tax and wrongful-death benefits, and spousal and dependent support.]

• Could/should they get these benefits without marriage? Which ones? Why or why not?

Annulment

In Washington, an annulment is called a declaration of invalidity. It will be granted for
the following reasons:

1. One or both of the parties was not 18 and did not obtain the required approval.
2. One or both of the parties was already married.
3. The parties were too closely related.
4. One or both parties lacked the capacity to consent, either because of mental incapacity or the influence of alcohol or drugs.
5. A party was influenced to marry by force or fraud (tricking the person, or lying about an important matter).

If the parties have not lived together as husband and wife after turning 18 or being capable of consenting to the marriage, the court will declare the marriage invalid. If they have lived as husband and wife since becoming of age or becoming able to consent, (for example, if a couple married when intoxicated, and stayed together after sobering up) the marriage will be considered valid.

Getting Married
The requirements for getting a marriage license in Washington are quite simple. No blood tests, witnesses, or identification are required. The couple must, however, swear that they are 18 years or older. Both bride and groom must apply, in person, at the county auditor's office. A fee of $37.00 is collected (cash only). The auditor will then issue the license, but the couple may not get married for three days. If the license is not used within sixty days, it expires. The license may be used anywhere in the state.

In Washington a marriage may be conducted by a judge, court commissioner, or by any licensed or ordained minister, rabbi or priest of any church. If a marriage is conducted by a person pretending to be a minister, the marriage is still valid as long as the couple believed that the ceremony was valid. Two witnesses must be present.

Common-Law Marriage
The state of Washington does not allow common-law marriages. If, however, a couple moves into Washington from another state that allows common-law marriage, such as South Carolina or Montana, Washington will consider the couple legally married as long as their marriage was recognized by that other state.

Page 329--Problem 6--Washington does not recognize common-law marriage. However, if a couple lived in another state that does recognize common-law marriage, and established a marriage by that state's laws, Washington state will recognize that couple as legally married.

HUSBANDS AND WIVES/FAMILY PROBLEMS

Marriage Problems
Getting married in Washington is relatively simple. Ending a marriage, however, can be a complex, costly, and stressful experience. As the national text states, there are many
mental health professionals who specialize in helping couples who are having marriage problems. Sometimes these marriage counselors can assist a couple to resolve their differences and avoid the costs, both monetary and emotional, of ending the marriage.

**Separation and Divorce**

If a couple no longer wishes to live together, but does not want to end the marriage, they may separate. Reasons a couple might not want to dissolve the marriage are because of religious beliefs, or so that certain benefits could continue, such as health insurance or social security. (A non-working spouse is entitled to social security payments based on the working spouse's income only after ten years of marriage.) The separation may be informal, without involving the court, or a legal separation, which is formalized by an order of the court.

Either the husband or wife may petition the court for a legal separation. The court must grant the petition unless the other party objects, and asks the court to order a dissolution or to order that the marriage is invalid. (In Washington, a divorce is called a dissolution.)

Under an order of legal separation, the husband and wife live separately, and usually enter into a separation contract. This contract contains their decisions on property division, custody of children, and any support payments. After six months, the court will convert the order of legal separation into a decree of dissolution (divorce) at the request of either the husband or the wife. The other party does not have to consent.

The court can examine the terms of the separation contract to determine whether they are fair if support or children are involved. Once the court has approved the agreement, either the husband or wife can petition the court to enforce the agreement, if payments are not made, or other provisions are not followed.

In Washington, a divorce is called a dissolution. Washington is a "no-fault" state, meaning that there is no requirement that either the husband or wife show that the other party did something wrong. Either the husband or wife can petition the court and say that the marriage is "irretrievably broken", which means it is beyond repair. Nothing further is required, and it does not matter who is at fault or whether both spouses agree.

A dissolution is started by either the husband or wife filing a Summons and a Petition for Dissolution with the Superior Court. The person requesting the petition is called the petitioner. That person must be a resident of Washington at the time the petition is filed, but need not be a resident for any certain length of time before filing. The filing fee is $120. If the person cannot afford to pay, the court may allow the petition to be filed without a fee, if the person can show the court that s/he is poor and unable to pay.

The petition can also contain requests for support, custody of children, and jointly-owned property. If the couple has children, a "parenting plan" must be filed within 180
days. The parenting plan will be discussed more fully in the section below on "child custody."

After the summons and petition are filed, they are served on the other party, who is referred to as the respondent. If the respondent does not file a reply in writing (called a "response") within 20 days (or 60 days if the respondent is out of state), s/he will be in default. The petitioner would have the right to have a Decree of Dissolution entered by the court.

After filing and service of the petition, a ninety-day "waiting period" begins. During this time, if either party wishes to try to save the marriage, s/he may ask to have the case transferred to Family Court. Some Family Courts in Washington have counseling services available.

After filing of the petition, either party may ask the court for temporary orders, which will remain in effect until a final decree is entered. These orders would typically deal with such issues as temporary parenting plans, support payments, and occupancy of the home.

During the ninety-day waiting period, the parties may be able to agree on the division of property, debts, a parenting plan and child custody. Any agreement can be formalized by a contract. At the time of dissolution, the court will be asked to examine the agreement to be sure that it is fair. If the court approves the contract, it will make it a part of the decree of dissolution.

If the parties have been able to agree on all matters, a short hearing is held before a judge or a court commissioner, who enters and signs the decree of dissolution. At that time, the marriage is dissolved.

If, however, the parties are not able to resolve their differences, a trial is held. At a trial the judge will make all decisions concerning support, custody of children, and property division. In some counties, the wait for a trial can be as long as one to two years.

When the husband and wife are unable to resolve their differences, an alternative to trial is family mediation. With mediation, the parties retain control of how their marriage will be ended, rather than allowing a judge to decide. The process is quicker and much less costly than a trial.

King County requires that all visitation and custody disputes be submitted to mediation. The Family Court has mediators available. There are also private mediators that charge for their services. The Washington Mediation Association was founded in 1982, and is the umbrella organization for professionals involved in mediation. Mediation services are also listed in the telephone directory.
Arbitration is another alternative to a trial. With arbitration, the parties may agree on an arbitrator, and to be bound by the arbitrator's decision. The arbitrator is authorized to make a decision on any matters submitted to arbitration. The arbitration hearing is less formal than a trial, and can be arranged much more quickly than waiting for a trial date.

Child Custody
In Washington, as of January 1, 1988, child custody is referred to as the "residential schedule" under a "parenting plan." All divorcing parents must complete a "parenting plan", which sets out the rights and responsibilities of each parent in great detail. Each parenting plan covers three major issues: a residential schedule for each child; a determination as to which parent or whether both parents will make important decisions for each child; and a process for resolving future disputes of the parents.

The residential schedule sets forth the child's time with each parent, including where the child will reside each day of the year.

The decision-making provision sets out whether one or both parents will have the authority to make major decisions about the child, such as education, non-emergency medical care, and religion. Decisions about day-to-day and emergency matters may be made by the parent with whom the child is staying at the time. Examples of these decisions would be what time the child must be home from a date, whether they may take the car to the shopping mall, etc.

The dispute resolution provision sets out a method by which the mother and father will attempt to resolve future disputes about the children. The method could be mediation, arbitration, court action or other (e.g. use of a counselor).

Washington's Parenting Act also includes special protection to parents or children who have been abused or neglected by one or both parents. If a parent has abandoned his or her child for an extended period of time, physically, emotionally or sexually abused any child, or engaged in domestic violence, the court in most situations is required to limit the residential time that parent may spend with the child. The court also may prevent that parent from making any decisions about the child, and order that any future disputes must be resolved by court action only.

A child can alternate between the parents' homes frequently only if the parents agree to such an arrangement or have already successfully shared custody and live close to each other. Such an alternating schedule will not be allowed if there is a history of abuse or domestic violence.

The parenting plan can be modified later only if the parents agree, or if there is a "substantial change" in the circumstances of either the child or the party that is not asking for the modification. The court would make a change in the plan only if it finds it is in the best interest of the child. The court considers specific factors found in RCW
26.09.260. The following are examples of changes in circumstance that would allow a modification.

1. The child's present home environment is unhealthy and the effect of making a change is outweighed by the advantage of the change.

2. The child has already begun to live with the party requesting the change, with the consent of the other parent.

Under Washington law, the court may order visitation for a person other than a parent (usually a grandparent) when it would serve the child's best interest.

A federal law, called the Indian Child Welfare Act, applies to any child custody proceeding involving a Native American child. The law is to protect Native American children from being placed away from their families, tribes, and culture. The law applies to foster care placement, adoptions and custody actions that could result in the placement of the child in an institution or in the home of a person other than the child's parents. Washington also has a state law, enacted 1987, with similar provisions.

**Alimony, Child Support and Property Division**

**Maintenance**

In Washington, alimony is called maintenance. Maintenance is money that one spouse pays to the other to help support him or her during the dissolution and afterwards in some cases. People tend to think of these payments as being from the husband to the wife. This was usually the case, the rationale being that in many cases, the wife did not work outside the home during the marriage, and lacked the skills to support herself independently. Maintenance can, however, be awarded to a former husband.

The Washington Supreme Court does not look upon maintenance with favor and has stated: "Alimony is not a matter of right. When the wife has the ability to earn a living, it is not the policy of the law of this state to give her a perpetual lien on her divorced husband's future income."

In awarding maintenance, the court considers the income of the spouse requesting it, and how long it will take the spouse to obtain the skills necessary to support himself or herself. Other factors are how long the parties were married, the standard of living during the marriage, the age and health of the spouse seeking maintenance, and the ability of the other spouse to pay. Maintenance may be short-term or long-term, but it is usually for a specific period of time.

**Child Support**

The court has the responsibility, at the time of separation or dissolution, to order support of any children of the marriage. Both the mother and father are required to support the child. A stepparent who lives with a stepchild can be ordered to pay support for the
child, on an equal basis with the natural parent. Child support can be ordered as part of the dissolution or separation proceeding, or in a paternity action.

Washington has a statewide uniform child support schedule. Judges and the parties use the Washington State Child Support Schedule to determine the basic amount of child support to be paid, by transfer payment from one parent to the other.

The court may deviate from the schedule under some circumstances. For example, if the parties have great wealth, or very large debts not voluntarily incurred, or if the child has a large income, or has special needs, such as because s/he is disabled, the court could deviate from the schedule. The court will also consider whether the parents are supporting children from other relationships. The court also must require either or both parents to provide health insurance for the child, if it is available through employment, or another organization at a reasonable cost.

The obligation to pay child support ends when the child turns 18 or becomes self-supporting. If the child has not completed his or her education by the age of 18, the court may award support beyond the age of 18. If support is ordered past the age of 18, the schedule is advisory only.

Once the amount of child support is decided, a transfer payment is due each month. If a parent fails to pay, contempt of court proceedings may be brought, and wage assignments or garnishment (requiring employers to subtract payments from wages) may be put in place.

It is expensive, however to hire a private attorney to bring the court actions necessary to enforce child support payments. The Washington Division of Child Support, a division of DSHS, will bring actions to collect support, particularly when the money is owed to a parent receiving public assistance. Their responsiveness to a purely private arrangement depends on the backlog of cases.

National statistics show that only 48% of the women who are supposed to receive child support receive the full amount regularly. Another 26% receive no payment at all, in spite of the presence of a court order.

**Property Division**
Washington is a community property state. This means that (with certain exceptions) all property owned or acquired by married persons who live in the state of Washington is presumed by the law to belong equally to both parties, regardless of whether both are employed. Each party is presumed to own one-half of the community property. This presumption may not seem important when the couple is deciding to get married, but should they decide to separate or dissolve the marriage, it becomes very important. It also comes into play when one of them dies, and property must be passed on to heirs.
The word "property" includes both real property, which means land or a house, and personal property, which can be money (including wages), stocks, jewelry, furniture, cars, boats, and any other type of property that is not land or a house. The courts have also expanded the definition of property that can be subject to the community property rules. For example, pensions and other retirement plans are community property, if they are a benefit of a job held during the marriage.

The law makes exceptions for property either the husband or wife owned before the marriage, for gifts made to one or the other separately, or for property that was inherited by one of the parties. Property that is inherited, owned before marriage, or acquired by gift by one of the parties is called separate property. If separate property is used to buy other property, the purchase is separate property. For example, if the wife uses cash that she inherited from her grandmother to buy herself a new car, and registers the car in her name only, the car is her separate property.

Separate property can, however, become community property if it is mixed with community property. For example, if the wife deposits the cash she inherited from her grandmother in a joint checking account with her husband, the cash may become community property, unless it can be segregated.

Debts are also classified as either community or separate. Debts incurred during marriage by either party are presumed to be community debts and both husband and wife are responsible for the debt. (This can be challenged in some cases.) The following rules are helpful in deciding whether property or debts are community or separate.

1. All property acquired after marriage, except gifts, bequests or inheritances, is presumed to be community property.
2. Separate property that is mixed with community property becomes community property.
3. Debts incurred during marriage by either husband or wife are community debts.
4. Property or debts acquired or incurred before the parties marry or after the parties separate are separate property and obligations.

Whether property is community or separate is important during the course of the marriage, because the nature of the property establishes limits on what can and cannot be done with it.

Both husband and wife are allowed to manage their community assets (with certain exceptions described below). This means that the wife, for example, is free to decide how to invest the money in the couple's joint savings account without consulting her husband. If she makes a bad decision by investing in a business venture that goes
broke, the husband is bound by her decision.

There are, however, several transactions that the law requires both husband and wife to join in to be valid. These are:

1. The purchase, sale, or encumbrance (which means borrowing money against the property) of real property.
2. The purchase, sale or encumbrance of community household goods, furniture or appliances.
3. The purchase, sale, or encumbrance of a business that both husband and wife manage.
4. A gift of community property.

For example, if Jan and Chung are married, and Jan wants to take out a second mortgage on their home to help pay for her to go back to medical school, she cannot sign the papers with the bank alone. Chung must take part in the transaction, and his signature and consent will be required also.

If the couple wishes, they may enter into an agreement specifying whether property is to be considered separate or community during the marriage. Such an agreement should be drafted by or reviewed by a lawyer, and both parties should seek individual legal advice to understand their property rights and the effect of the agreement on those rights.

Agreements of this type are sometimes entered into prior to marriage, sometimes when one party has much more money and property than the other. The "rich" party is usually trying to protect his or her assets from the effect of the community property laws. These agreements are called prenuptial agreements, which means "before marriage," and postnuptial agreements if entered into after the marriage. Courts examine these agreements closely, if they are presented for enforcement at the time a couple is separating or dissolving the marriage.

The court will examine such an agreement and if it appears to be fair and makes reasonable provisions for the less wealthy spouse, the court will enforce it as long as it was signed voluntarily and the parties made adequate disclosure of their financial resources at the time of signing.

If the agreement is not fair, the court will look more closely at all circumstances leading up to the signing of the contract. If, however, the contract was entered into voluntarily, there was full economic disclosure, both parties understood the consequences and each party had the opportunity to consult independent counsel, the court will enforce the contract even if it is not fair.

Whether property is community or separate is also important if the parties divorce. The
court will use its discretionary power to divide property so that the parties are treated fairly. The court will not necessarily divide the community property in half. The judge is supposed to figure out what is fair based on a number of factors and then issue an order allocating the property. The judge is required to consider the following factors in making a fair and equitable division of the community and separate property.

1. The nature and extent of the community property;
2. The nature and extent of the separate property;
3. The length of the marriage; and
4. The economic circumstances of each spouse at the time the division of property is to become effective (including age, health, education, employment history, and future earning prospects).
5. Economic misconduct by either party (e.g. hiding assets).

For example, if one party supports the other while s/he earns a professional degree, and the couple later ends the marriage, the court could order the "student spouse" to reimburse the supporting spouse. The court would consider the amount spent for educational costs, and the amount the student would have earned, had s/he been working. The court would also consider the future earning prospects of each spouse and the fact that the supporting spouse gave up his or her educational opportunities in order to support the student. All of these factors would be considered by the court when making a division of property, and when deciding whether to award future support (maintenance) to the supporting spouse.

Page 332--Problem 8
a. In Washington, Kelly's purchases would be community property and both Bryan and Kelly are responsible for the debt.
b. Both Bryan and Kelly are responsible for the debts, which are community debts.
Page 333--Problem 9

a. In Washington, the land would be Gloria's separate property.
b. In Washington, the court would consider the vacation home community property. The division would be subject to the "fair and equitable" standard.

Additional Exercise: Whose Property Is It?
Harold and Maude have been married for 30 years. Maude had a part-time job as a school librarian throughout the marriage, and stayed home to raise their 5 children. She has paid for approximately 20% of their living expenses. Harold has worked at various construction jobs throughout the marriage, and has contributed 80% of the family income. Presently, they have two older model cars, a home valued at $100,000, household furnishings, and a small boat that Harold uses for fishing, his passion in life. The cars and boat are all in Harold's name since he paid for them. All of the children are grown and self-supporting at this time.

Shortly after they married, Maude inherited a small house from her mother, which is in another town. She rents the house to someone else, and deposits the rent money into the joint savings account they opened right after they married. The title to the house is in Maude's name.

Harold has met a younger woman, and asks Maude for a divorce. Just before that, Harold withdraws most of the money in the joint savings account and takes the younger woman to the Caribbean on a vacation.

How will Harold and Maude's property be divided under Washington's community property laws? List the property to be divided, whether it should be characterized as community or separate, and who should get each item. Do you think this result is fair? Why or why not?

Answer: This problem works well as a roleplay. There are several possible options: Students playing the roles of Harold and Maude can negotiate an agreement about how to divide the property. Alternatively, mediation can also be used, assigning two students to be the mediators, and two others to be Harold and Maude. A court hearing could also be held, with attorneys representing Harold and Maude, and one student being a judge.

In preparation for the roleplay, have the students list the property owned by Harold and Maude and decide whether each item is community property or separate property.

<table>
<thead>
<tr>
<th>Item</th>
<th>Characterization</th>
<th>Owner</th>
</tr>
</thead>
<tbody>
<tr>
<td>Car # 1</td>
<td>Community property</td>
<td>Both</td>
</tr>
<tr>
<td>Car # 2</td>
<td>Community property</td>
<td>Both</td>
</tr>
<tr>
<td>House</td>
<td>Community property</td>
<td>Both</td>
</tr>
<tr>
<td>Household furnishings</td>
<td>Community property</td>
<td>Both</td>
</tr>
<tr>
<td>Boat</td>
<td>Community property</td>
<td>Both</td>
</tr>
</tbody>
</table>
All items of community property, which is all property mentioned in the problem except the house which Maude inherited, are subject to division between the couple. The court will look at the factors mentioned in the text—nature and extent of the community property and separate property, the duration of the marriage, and the economic circumstances of each spouse at the time of the division—to make a fair and equitable division.

Elaborating on these factors, courts will look at the condition each party will be left in after the divorce, the party through whom property was acquired, age of each party and their physical health, education, employment history, training, future earning prospects, date property was acquired, kinds of property involved and value of each party's respective contribution to the community property.

If fairness dictates, one party may be awarded separate property of the other spouse.

There is no "correct" answer to this problem, as the result will depend on what the judge finds to be fair and equitable. The judge may take Harold's larger contribution to the community estate into account, and may award him a larger share of the community assets. The court would also consider Maude's contribution to the household consisting of child-rearing and maintaining the household. Ask students how these contributions should be valued. How do women who have worked in the home generally find themselves at the end of a long marriage?

The statute states that division must be made "without regard to marital misconduct." Harold's affair would probably not be considered relevant to the division of property, but the vacation in the Caribbean might be considered a dissipation of the community assets and the court might take this into account.

The money in the joint savings account was mostly from Maude's rent, from her separate property. Although Harold has an interest in the money since it is in a joint account, Maude may be entitled to more of that money.

In the answer above, "both" beside the community property items means that the items could be awarded to either or both of them. (If an item is awarded to both, they can either sell it and divide the money, or one can buy the other out).

Questions:
How do our laws regarding division of property affect women and children?
Should our laws be changed? If so, how?

Other Decisions in a Marriage
Most couples marry with little thought of the many decisions they will be faced with during their marriage. While of course it is impossible to predict all of the issues that will arise, there are some questions that come up often. We will look at some of those issues and the law that governs them.

**Name change** - In Washington, use of the husband's last name by the wife is a matter of custom, not law. State laws in other states requiring the woman to change her name to her husband's have been ruled unconstitutional. Whether or not to use her husband's name is a personal decision for the wife to make. If she does not wish to take her husband's name, she can simply sign the marriage license and all related documents with her own name. No other action is needed.

If the wife wishes to take her husband's name, she can sign the marriage license and all related documents using his last name. Some women choose to use both their name and the husband's last name, separated by a hyphen. This is legal, and can be done by simply signing her name that way on the marriage license and other documents.

If the couple should dissolve the marriage, the wife can change her name back to her maiden name, by including this request in the dissolution petition.

Even if you are not marrying or divorcing, you may change your name at any time, as long as you are not doing so to avoid your creditors or escape some obligation, such as child support. It is legal to change your name by simply using the new name consistently and exclusively for all purposes. You may need a document to show creditors and other institutions, such as schools or employers, that your name change is valid. A sworn statement, called an affidavit of name change, should be sufficient for most purposes.

You may also change your name by court order, which would avoid any problems with documentation. To do this, you must file a petition and affidavit (sworn statement) with the District Court Clerk. In King County this costs $57 plus $5 per certified copy. On the day you file the petition (or the next day for civil matters, depending on which court you are in), you will appear before a judge or court commissioner to explain why you wish to change your name. As long as you are not avoiding creditors, the request will be granted and the clerk will issue a court order signed by the judge, granting the name change. This may be done without an attorney, if you have the necessary forms.

**Support** - Under this state's community property laws, discussed above, all money earned during the marriage by either the husband or wife is considered community property. Any debts incurred for items purchased for the family during the marriage can be paid for with community funds.

**Privileged Communications** - In Washington, communications between husband and wife are confidential and neither the husband or wife can be required to testify about
any statement made by one to the other during the marriage. There are exceptions for statements concerning child or spouse abuse.

**Spouse Abuse** - Spouse abuse is discussed below.

**Inheritance** - Since Washington is a community property state, one-half of all community property owned by the husband and wife passes to the surviving spouse when one or the other dies. The other half of the community property is distributed according to the will of the person who died, or passes under intestacy laws, which are laws that govern who gets the property of persons who die without a will.