SPouse Abuse
An excellent handbook has been published by the Metropolitan King County Council, called "Domestic/Dating Violence." It contains information about violence continuums, the cycle of violence, what victims should do, effects on children and helpful information about resources in King County. It also includes a section on Adolescent Dating Violence. It is suggested that law students review the information in the handbook prior to teaching this section. This is a good unit to bring in a speaker to talk about the psychological aspects of domestic violence.

According to FBI reports, in the United States a woman is beaten every fifteen seconds by an intimate partner. Ninety-five percent of batterers are reported to be male, although abusers and victims may be both male and female.

The following is from a story in the Seattle Times, Jan. 9, 1995:

The findings of a long-term study on domestic violence commissioned by The Advertising Council and The Family Violence Prevention Fund are shocking. According to the study, about 30 percent of Americans say they know a woman who is currently a victim of spousal abuse. But despite that knowledge, only 18 percent said they've tried to help reduce domestic violence in the past year. When the study looked at attitudes toward domestic violence, there was a large gender gap. Women are much more likely than men to see domestic violence as an important social issue. For example, 77 percent of women believe that abusers should be arrested; men are divided in their opinion, with 54 percent saying abusers should be arrested and 48 percent saying the police should talk to the abuser in the man's own home. The Ad Council did the study as a prelude to a national public-service campaign designed to help combat domestic violence.

Thirty years after feminism, women are still being beaten in their own homes, and not just a scattered few. For those who want to help a victim, here's some advice from Janet Carter, associate director of The Family Violence Prevention Fund:
-- Never intervene personally during a domestic violence incident. Notify the police. Carter says many bystanders have been injured or killed just trying to help.
-- Give support to a victim of domestic violence you know and assure her that the violence is not her fault. Try to help her in any way you can.
-- If you know someone who is a batterer, let him know that his behavior will not be tolerated, and offer to help him get counseling. Do this when he is calm and away from his victim.
-- Show children that boys and girls should come together as equals. "So often, men who become batterers not only grew up seeing violence, they saw a father who had to be the king of his castle, with his wife his inferior. It's these kinds of attitudes that have to change," she said.
More recent national statistics show that incidents of domestic violence are declining. A Justice Department study showed a 21% drop in cases.\textsuperscript{1} The study also found that women are reporting abuse to police more frequently than in the past.\textsuperscript{2} A more local study, however, showed that one in six Snohomish County residents has at some time been a victim of domestic violence from his or her partner.\textsuperscript{3} “These numbers are much higher than the numbers the police have,” said Margaret Hobart, a spokeswoman for the Washington State Coalition Against Domestic Violence. “People are sometimes more open in surveys like this than they are with the police.”\textsuperscript{4} The website for the National Coalition Against Domestic Violence is \url{http://www.ncadv.org} and the national domestic violence hotline number is 1-800-799-7233.

**Domestic Violence Roleplay**
Ask for two volunteers to roleplay a discussion between Tom and Annette who hear a disturbance at their neighbor's house in the middle of the night. Ask the role-players to come to the front of the room, so that everyone can hear. (If they decide to call 911, have them roleplay the call.)

After the roleplay, ask the students who played Tom and Annette how they each felt. Ask the rest of the class if the roleplay seemed realistic. Would they have made a different decision? Why? What decision would they make?

Ask students:
Have you heard about similar situations? Does this happen in dating relationships? Why do you think husbands abuse their wives? What might happen next?

**THE NEIGHBOR'S DILEMMA**
Tom and Annette wake up in the middle of the night. Someone is knocking loudly at their door. Tom answers the door. It is their neighbor, Maria, who has been in this country for three years. They know Maria because she has asked them for help when she does not understand English. Maria is crying. Her mouth is swollen and bleeding. In her arms she is holding her 6-month old baby.

Tom asks Maria to come in, but she refuses. She asks Tom to take her baby and make sure he is safe. Tom asks why. Maria replies that her husband is angry with her. She tells Tom that he hit her on her face. He just left the apartment, but he threatened to come back soon and hurt her some more.

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\textsuperscript{1} Eric Lichtblau, *Drop in Domestic Violence Against Women Reported*, SEATTLE TIMES, May 18, 2000.
\textsuperscript{2} Id.
\textsuperscript{3} Mekeisha Madden, *Domestic Violence Detailed in Survey*, SEATTLE TIMES, January 24, 2000.
\textsuperscript{4} Id.
Tom asks Maria if he should call the police. Maria begs him not to call, saying that it would only make things worse. Tom takes the child and goes inside. Maria goes back to her apartment. Tom and Annette sit down and talk about what they should do.

**Washington's Domestic Violence Laws**

RCW 26.50.010 defines domestic violence:

1. "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member.

2. "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage, adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

3. "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

In Washington a person who has been physically abused, threatened with physical violence or stalked has a range of legal options:

- Obtaining a civil restraining order in connection with a dissolution, legal separation order, or parenting order.
- Obtaining a protection order.
- Reporting a crime.
- Filing a civil suit for damages against the abuser.

**Protection orders** under RCW 26.50 are available only to victims of domestic violence. An Order for Protection can be obtained without a lawyer. There are two types of orders - emergency orders, which last for up to two weeks, and full protection orders, which last for either a fixed period of time or are permanent. There is no filing fee, and the court supplies the necessary forms. If the victim is in immediate danger, an emergency order can be obtained without notice to the abuser, often on the same day. In King County, court legal advocates are available to assist victims obtain Protection Orders. Their number is 296-9547. (We have brochures available from this office.)
An Order for Protection can command the abuser not to threaten, harass, or molest the victim, and can exclude him/her from the victim's home, workplace or a child's daycare or school. The Order can also award temporary custody of children and order that the abuser get counseling. An Order may be issued by any court, but only the superior court can award custody of children or order the abuser to move out of the house.

If the abuser violates an Order for Protection or a temporary restraining order the police must arrest him. Of course, these orders will only be enforced if the victim calls the police to report any harassment or abuse.

The Criminal Legal System—Domestic violence as a crime:
Washington statutes do not define a separate crime of domestic violence. The approach is to rely on the existing criminal statutes, but supplement them with special procedures in cases involving domestic violence. The specific crimes are found in RCW 10.99.010 et seq. (and listed below).

Domestic violence includes but is not limited to any of the following crimes when committed by one family or household member against another: assault, reckless endangerment, coercion, burglary, criminal trespass, malicious mischief, kidnapping, unlawful imprisonment, violation of a Restraining Order, restraining the person or excluding the person from a residence, workplace, school or day care, violation of a Protection Order or No-Contact Order restraining the person or excluding the person from a residence, workplace, school or day care; stalking; rape, or interference with the reporting of domestic violence. RCW 10.99.020

If an attack is taking place, and the victim calls the police, the police must take a report, inform the victim in writing of her or his rights as a domestic violence victim, and make sure s/he is not in continuing danger. The police should have information about shelters and other community resources to help abused spouses. The police must also offer or arrange for transportation to a hospital if necessary, or to a shelter or other safe place. It is not necessary to decide whether or not to press charges at the time that the police come to the home.

There is a statewide 24-hour toll-free hotline with information about shelter and alternatives to domestic violence. That number is

1-800-562-6025

The police must arrest the abuser if there is reason to believe that the abuser assaulted the victim within the last four hours, and that the victim was injured by the assault. Even if the abuser is arrested, s/he will probably be out of jail within a few hours. Since that is the case, the judge can issue a no-contact order if there is a danger of further harm to the injured party. The no-contact order commands the abuser not to contact the victim by phone or in person until the trial date. If the abuser violates the no-contact order by
harassing or harming the victim, s/he can be arrested.

When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor.

If the victim does not call the police at the time of the incident, s/he may report it later and ask to press charges at that time. The prosecuting attorney has the authority to decide whether or not to file charges against the abuser. If the prosecutor decides not to press charges, the victim is entitled notice, and the right to request the filing of charges.

If charges are filed, only the prosecutor has the authority to drop them. The victim is a witness, and has no control over the case. It may take weeks, or even months for the case to come to trial. If the case does go to trial, and the abuser is found guilty, the judge can issue an order requiring that the abuser get counseling or alcoholism treatment, if there was alcohol involved. S/he can also be ordered to pay the victim for any medical expenses or property damage. The judge may put the abuser on probation, and will extend the no-contact order if the victim is in fear of future abuse. The judge can also order jail time, which may be suspended.
New legislation passed in 1996 added the crime of interfering with the reporting of domestic violence. Elements are: A person:
   (a) Commits a crime of domestic violence, as defined in RCW 10.99.020; and
   (b) Prevents or attempts to prevent the victim of or a witness to that domestic violence crime from calling a 911 emergency communication system, obtaining medical assistance, or making a report to any law enforcement official.

Law enforcement officers are required to offer victims copies of the following notice: "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you can ask the city or county prosecuting attorney to file a criminal complaint. You also have the right to file a petition in superior, district, or municipal court requesting an order for protection from domestic abuse which could include any of the following: (a) An order restraining your abuser from further acts of abuse; (b) an order directing your abuser to leave your household; (c) an order preventing your abuser from entering your residence, school, business, or place of employment; (d) an order awarding you or the other parent custody of or visitation with your minor child or children; and (e) an order restraining your abuser from molesting or interfering with minor children in your custody. The forms you need to obtain a protection order are available in any municipal, district, or superior court. Information about shelters and alternatives to domestic violence is available from a state-wide twenty-four-hour toll-free hotline at (include appropriate phone number). The battered women's shelter and other resources in your area are ... (local information)."

The Crime Victim Compensation Act may provide compensation for lost income or medical expenses. To qualify for benefits under this law, the incident must be reported to the police within 72 hours. It is not necessary to press charges.

Page 339--Problem 13
In Washington, a husband may be prosecuted for either rape in the first degree if he forces his wife to have intercourse with him by either: using or threatening to use a deadly weapon (or what looks like a deadly weapon); kidnapping her; seriously injuring her; or breaking into her house. He can be charged with rape in the second degree if he forces her to have intercourse with him or has intercourse with her when she is physically or mentally incapable of consenting.

A husband cannot be prosecuted for rape when he has intercourse with his wife and she has not consented, unless a factor mentioned above is present.

Many states do not allow prosecution for rape of a spouse. The protection from prosecution (called immunity) arises from the view that the wife is the husband's property, and the law's reluctance to interfere with private marital life. Those who favor immunity say the couple will not resolve problems themselves if they can take them to the courts, and that there is a right of marital privacy.
Alternative Exercise--Domestic Violence Simulation

Two neighbors, Bob and Tanya, talking about Arlene

Tanya: So, Bob, have you seen Arlene lately? Huh? Well look...she's got bruises all over her arms and one of her arms is broken and she's got a black eye. So whatdaya think?

Bob: So? I mean...What are you saying? Maybe she walked into a door or something.

Tanya: Oh come on, a door? You know, their house is too far away to hear anything...but I got this feeling that Tom beats her. She says she fell down the stairs and one of her kids poked her in the eye...but you don't get a black eye like that from a four-year-old...and ...I don't know...maybe we should call some agency or the police or something...whatdaya think?

Bob: Oh jeeze...that's just what we need! Some stupid government agency or the cops! How do you KNOW she's not telling the truth? Huh? Maybe she is and anyway if she wanted us to know what's really going on she would tell us. I say MIND YOUR OWN BUSINESS ... and DON'T GET INVOLVED. If anything is going on you might make it worse. OK? So just stay out of it!!

Tanya: Well...all right, but...I don't know...

Arlene at the Doctor's office

Arlene: Look Dr. Ray, this is very hard for me to say...I've never told anyone before...and it's embarrassing...but I can't take it anymore...my husband...Tom...he just goes crazy sometimes and beats me. It comes out of nowhere...he just goes nuts and starts hitting me with his fists...he's thrown me down the stairs and into walls...and now he's broken my arm...sometimes it's so bad I can't even leave the house. I mean...I hurt so bad I can't get around much...after he beats me he runs out of the house and stays away for a few hours...sometimes for days...I lie to the kids and my friends about what happened...I think my sister knows what's going on, but I don't know. Then he comes back and promises me he'll never do it again and he's sorry and he doesn't know what happened or why he acts that way...he sometimes brings me presents...he says he's trying to get better...and I believe him...but he hasn't and ...I never know when he's going to go off about something and start hitting me...I need some help, Doctor.

Dr.Ray: Well, Arlene...are you sure you haven't done something to bother him?

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Arlene: No. ... I mean yes. ... I don't know...it just comes out of the blue.

Dr. Ray: You've got to stop and ask yourself: "What am I doing to bring this on?" Now...are you talking back to him? I mean...we both know men can be pig-headed ...but you can control them if you know how.

Arlene: But, uh...I try to be nice to him...I don't know what else to do....He just goes off all of a sudden.

Dr. Ray: Just try to be good to him. Give him a break. Serve dinner on time and bring him his slippers once in a while. You know what I mean, Arlene? I'm sure he'll respond.

Arlene: I've tried that.

Dr. Ray: Well, now, now Arlene ... you know Tom works very hard for you ... and he's tired, he's struggling to make ends meet, to put you through college, to provide for the kids, to pay the rent. I mean to say. ... he has stress at work and at home. Have you REALLY tried to help him? Maybe you're not understanding enough...maybe you don't know how you seem to Tom...you seem a little nervous to me. ...I think you're probably so wrapped up in going to school and your own life that maybe you don't give him enough love or compassion. ...Now,...I want you to take some of these sedatives here and try to be a little nicer to Tom. I'm sure that will stop you from doing anything to upset him.

Arlene on the telephone with her sister, Ann

Arlene: Hello.

Ann: Hi Arlene, it's me. Gee, what took you so long to answer the phone? Any why are you home anyway? I thought you had class today. I was just going to leave a message for you.

Arlene: Oh, it's nothing....I ...uh...just feel kind of sick today, you know...I think maybe I have a cold or something.

Ann: You looked fine to me last night....Arlene, is something going on with you and Tom? You always have those bruises on your arms. Yes, I've seen them. You always seem to be sick or something, and you had a lot of make-up on last week, but it still looked like you had a black eye. Is Tom beating you? Is that it?

Arlene: Well ... it's not really like that ... it's kind of my fault I guess ... the doctor says so anyway. I don't know....
Ann: Don't lie to me, Arlene. I knew that Tom was beating you. He's probably been doing it for years, hasn't he? And it is that bad! I know how often you miss school...or wear those big, baggy sweats when it's 80 degrees out. Arlene, you've got to do something about it. I don't care what that quack doctor says about it being your fault. It's not! You've got to do something about it...before he kills you or the kids. You could call a social worker or one of those hotlines for abused women...they know how to help you.

Arlene: You don't understand, Ann. It's not that easy....It'll probably just make it worse...If Tom ever knew I told anyone....I have to go...

Tom, alone

Tom: So I beat my wife. I'm sorry. I'm not really a bad person. I know I shouldn't...and I'm trying to control myself - I read those books about feelings and stuff, the one by the checkout stands. ... I really do try to stop...but sometimes she just does things that drive me up the wall...and she knows. The other week she serves me dinner FIVE MINUTES LATE...then she gives me this look...and she KNOWS I NEED DINNER ON A REGULAR SCHEDULE! WHY DOES SHE DO IT? Here she is going off to school, and forgetting about my needs. I come home, and have no idea where she's been all day, or who's she's been with. Look, I know how to take care of this.... I saw my father handle my mother pretty good...and my mother made sure to have dinner on the table and ON TIME! Or else! ...OK... that sounds kind of macho or something, but it's just a little slap or something like that... not much... just to keep her in line, that's all. I'm the Man...you know? Anyway that else am I supposed to do?

Police at the door, after a beating

Police: Okay, Ms. Smith, just tell me what happened.

Arlene: Well, ... Tom that's my husband, he just went crazy and started beating me.

Police: How long ago did this happen?

Arlene: About an hour ago, I guess. He left with my car. That's when I called.

Police: Why'd he beat you?

Arlene: I don't know. I brought him his slippers and he accused me of trying to hide something because I was being good to him. He dumped out my
purse and tore everything apart. He said I must have done something wrong and he wouldn't believe me when I said I hadn't.

Police: Well, there's not much I can do about it right now. You seem to be safe anyway... We'll file a report.

Arlene: Then what?

Police: Well, we'll file a report, and arrest him if we can find him. Then he'll probably be released within a few hours. The prosecutor will decide whether or not to press charges. We'll need a statement from you.

Arlene: Uh, Tom would really go crazy if he were arrested. Can you just forget about this?

Arlene, talking on the phone to Lona, a counselor at the battered women's shelter

Arlene: Uh, I need somebody to talk to. My husband just beat me up.

Lona: That's what we're here for. First, are you in any danger right now?

Arlene: I guess so. He just left, but I never know what he'll do when he comes back. Do you have room for me and my two kids--just for a week or so?

Lona: Yes, we do. Can you get a taxi? I suggest you get out of the house as soon as possible. We can discuss your options once you get here.
Alternative family structures are becoming more common. Alternative families include both unmarried heterosexual couples, lesbian and gay couples who live together and have a committed relationship, and single parents. There are specific laws that apply only to married couples, governing property rights, inheritance, insurance benefits, and leave time from work to mourn or care for a sick husband or wife. Unmarried couples, until recently, have had few protections and rights under the law. In fact, a state statute making it illegal for couples to cohabit (live together in a sexual relationship without being married) was in effect until 1976 in Washington. (See discussion on same-sex marriages, above.)

The Washington Supreme Court ruled in 1989 that a woman who had cohabited with a man for over 20 years could not inherit from him unless he had made specific provisions in his will for her. (Peffley-Warner v. Bowen, 113 Wash.2d 243, (1989). The woman had argued that she should be considered the man's "widow," since they had lived together as husband and wife for so long. The court refused to recognize the relationship as equivalent to a marriage.

**Palimony**
Cases such as Marvin v. Marvin, discussed in the national text, have brought attention to the issue of legal rights and responsibilities of unwed couples. The Washington appellate courts have not considered a case like the Marvin case, where one party in a non-marital relationship seeks support from the other party after the relationship has ended. Our courts have, however, ruled on how property owned by parties that lived together, but were not married, should be divided.

In 1984, the Washington Supreme Court and the Court of Appeals decided that property acquired while a couple lived together in a relationship that is like a marriage should be divided in a fair and equitable manner. In re Marriage of Lindsey, 101 Wash.2d 299, 304, 678 P.2d 328 (1984). A 1995 case further refined the rules regarding what the court calls "meretricious" relationships. A meretricious relationship is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist. Relevant factors establishing a meretricious relationship include, but are not limited to: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties. Connell v. Francisco, 127 Wash.2d 339, 349, 898 P.2d 831, 835 (1995). See also Vasquez v. Hawthorne, 33 P. 3d 735 (2001).

The Supreme Court held that a meretricious relationship is not the same as a marriage, and as such, the laws involving the distribution of marital property do not directly apply to the division of property following a meretricious relationship. (For example, property acquired before the relationship will not be considered at
all in the division.) The opinion concludes:

We hold income and property acquired during a meretricious relationship should be characterized in a similar manner as income and property acquired during marriage. Therefore, all property acquired during a meretricious relationship is presumed to be owned by both parties. This presumption can be rebutted.

Before these cases, the law had been that if the couple lived together without being married, the law would not step in to see that each party was treated fairly. Property acquired by unmarried couples was presumed to belong to the person in whose name the property was titled. For example, if Yolanda and Mike bought a house together, and both contributed to the payments, but were not married, the house would belong to Mike, if the title were in his name.

To avoid problems, a cohabitating couple should put all items purchased jointly in both of their names. Since only cars and real property (houses or land) have titles of ownership, it is best to keep receipts, cancelled checks and charge card statements to show who purchased other items, such as furniture or appliances. A joint checking or savings account allows either party to remove and spend all the funds in the account, so be aware of that fact if you decide to open such an account.

To avoid costly litigation and unpredictable results, unmarried couples can and should enter into cohabitation agreements governing their financial arrangements, and any other issues they anticipate arising during the relationship. (Agreements as to child support and custody are reviewed separately because Washington maintains a greater interest in protecting children.)

Such agreements should include statements of property owned jointly, and the amount of each person’s contribution to the property. Both financial and non-monetary contributions (such as childcare or working on a house) should be included. Any agreements as to future support should be mentioned. Future support agreements should be in writing because while the court will usually divide property in a fair manner for unmarried couples, it a court is not likely to order future support payments unless there is a specific agreement.

**Paternity**

In Washington a paternity suit can be brought in the superior court by any of the following persons: the child (represented by a guardian), the child’s natural mother, the man alleged to be the father, the state of Washington, or "any interested party." The state brings most paternity actions, to recover money from the father when the state paid the mother public assistance. The state is also required to bring a paternity action for the mother if she requests.

A paternity action is tried before a judge, not a jury and it must be closed to the
public. If the father cannot afford an attorney, he is not entitled to free counsel, but the state will pay for blood tests, if the father cannot afford to pay.

Under the Washington law, the Uniform Parentage Act, a man is presumed to be the father of a child if the child was born during the time that the man was married to the child's mother, or within 300 days after either: 1) the termination of the marriage; 2) a decree of legal separation; or 3) termination of cohabitation if the marriage was invalid. If the man marries the child's mother after the child's birth, he is considered to be the child's father if he either: 1) acknowledges that he is the father in a sworn statement filed with the state registrar of vital statistics; 2) consents to be named on the birth certificate as the father; or 3) makes a written promise to pay child support either voluntarily or because of a court order.

If the mother is not married to the man, but the child is under 18 and lives with him, and the man openly holds out the child as his, the man is presumed to be the father. Also, if the man acknowledges that he is the father in writing with the registrar of vital statistics and the mother does not dispute this, he will be considered to be the father.

Finally, if the woman is inseminated artificially with the semen of a man not her husband, with the consent of her husband, and under the supervision of a licensed physician, the husband will be considered to be the natural father of the child.

The rules set forth above are rebuttable presumptions, which means that if the man does not believe that he is really the father, he can try to rebut the presumption, but this can be very difficult to prove. Examples of facts that might overcome the presumption of paternity are that the man had a vasectomy or that blood tests show that he is most likely not the father.

**Paternity Case Study**

**Procedures:**
1. Ask students to read the Handout. Make sure that everyone understands the facts of the case, by listing important facts on the board. Then ask students: what does a court need to decide here?

2. Divide students into groups of three to five students each. Assign half of the groups to represent Leon and the other half to represent Kelly. Tell each group to choose a spokesperson and a recorder. Give them about 20 minutes to work. Then, ask for arguments from each group. You might also ask 3 students to be a panel of judges, and make a decision.
3. After students have made their arguments, tell them what the court decided in this case. Ask how they feel about the court's decision.

Breach of an Oral Contract? Whose Rights Count?
Kelly and Leon have dated for six months. They are both 18, and live in Washington state. At the beginning of their sexual relationship, Kelly tells Leon that she has a disease that makes her infertile (unable to have children). Leon insists that Kelly use birth control anyway. Leon does not use any form of contraception.

Kelly becomes pregnant. Leon asks her to have an abortion, since he is not ready to marry, and has plans to go to college. Kelly refuses. They break up, and Leon does not hear from Kelly until a year later, when he is served with papers in a paternity action against him. The suit asks that he be declared the father of the child, and pay support of $350 per month. It also asks for reimbursement of Kelly's medical expenses during the pregnancy, and for past support for the last six months, since the baby was born. Kelly claims that she told Leon after a few months of their relationship that she was no longer using contraceptives.

Leon hires an attorney to represent him because he feels he should not be required to support this child. He denies that Kelly ever told him that she had stopped using birth control.

Leon's attorney argues that Kelly breached an oral contract between them to use birth control. He also argues that her refusal to have an abortion increased Leon's damages caused by her breach of the contract. He also argues that Kelly was careless and negligent in failing to use birth control, and that she intentionally lied to him about whether she was using it.

1. Rank the arguments for Leon as most important to least important?
2. Add and rank any other arguments for Leon. Rank the arguments for Kelly.
3. How should the court rule and why?
4. Does it even make sense to apply contract doctrine to relationships? Why or why not?

Suggested Answers
The arguments for Leon, besides those mentioned in the facts could be that she chose to have this child against his wishes and she should be required to support it; that he should not be required to pay the six month back child support because she did not let him know that she was seeking support for those months, and that he is not the father.

Arguments for Kelly could be that she told Leon she was no longer using birth
control, and he took the risk that she could become pregnant; the child is born and they are both responsible now to provide for the child, regardless of fault; she cannot afford to support herself and the child, and since he is the father he must pay.

In the actual case, the father sought to set off his damages in his action against the mother for breach of contract, to lessen his future child support obligation. The court ruled that it could not consider the father's claims because in a paternity case under the Uniform Parentage Act, the only issues for consideration are the needs of the child, and the parents' ability to support the child. The court stated "Nothing in the UPA [Uniform Parentage Act] permits parents in an action brought thereunder to litigate the issue of whether or not they in fact wanted the child."

The court concluded that the father's claims, even if true, are not facts to be considered by the court in determining the amount of child support to be paid.

**PARENTS AND CHILDREN**

**Responsibilities Between Parents and Children**

In Washington, both parents have a legal obligation to support their children. If one or both parents is not providing support, the state can collect present and past due child support by getting a court order. The money can be taken out of the parent's paycheck by his or her employer, or be subtracted from their federal income tax refund.

The amount of child support is determined by the needs of the child, and the parents' ability to pay. Exactly how the court awards child support will be discussed later in this chapter, in the section dealing with marital dissolution.

In 1987, the Washington legislature enacted a law called the Parenting Act, to ensure that the best interests of the child are served when the parents separate or divorce. The law defines certain "parenting functions," and requires separating parents to allocate these parenting functions so that the child's emotional growth, health and stability, and physical care are maintained. Parenting plans will be discussed more fully later in this chapter.

**Emancipation** - In Washington, there are two types of emancipation:

1. The achievement of the status of adult, when an individual has the right to manage his or her own affairs. A child becomes emancipated by reaching the age of 18 years. A minor may become emancipated before this because of an event, such as marriage, military service, incarceration or economic sufficiency. For example, a person under 18 who is married to someone over 18 is considered to be an adult.

2. A minor at least 16 years of age may petition the Superior Court for
emancipation. S/he must pay a $50 filing fee, and serve a copy of the petition on his or her parents. The court will grant the petition if the youth proves that he or she has the ability to manage his or her financial, personal, social and educational affairs. If the youth's parents oppose the petition, the court will deny it, unless the court finds that denying emancipation would harm the youth's interests. Once the petition is granted the youth is an "emancipated minor" who can make contracts, establish a home and work without permission.

See also discussion of emancipation in Tort law chapter.

**Education** - In Washington, all children between the ages of eight and eighteen are required to attend school unless the child is fifteen or older and the school district superintendent has determined that either the child has achieved reasonable proficiency in the subjects taught in grades 1-9, has a regular job, has already met graduation requirements, or has received a certificate of competence. "School" includes public or approved private schools, and home instruction if it is taught according to the state requirements.

A 1995 law addressed school truancy. If a student has five unexcused absences in a month, or ten in a year, the school must file a truancy petition in juvenile court. The court can order the student to attend school and can order the parent to pay a fine or perform community service at the school. If the student still fails to attend school, and if the court finds the student in contempt for violating its order, it can order the student to spend up to seven days in detention, community service, or attendance at a dropout prevention program.

Parents are not required to pay for their children to go to college. Once the "child" is legally an adult at 18, s/he is legally responsible for his or her own expenses. In some situations, if the parents are separated or divorced, their agreement about child support may require them to pay for the child's college education.

**Runaway Youth/Becca Law**\(^{53}\) -- Prior to 1977, youth who were truant from school or ran away from home were charged with "status offenses," behaviors which if done by adults would not be crimes. In 1977, amendments to the Juvenile Justice Act decriminalized status offenses for youth and created residential and nonresidential services to keep runaway youth safe. However, sufficient funding was never allocated to meet the need.

While a large percentage of runaways return home within a matter of days, those who remain out-of-home are most often from families with serious problems, such as sexual or physical abuse, alcoholism, drug use and mental health problems.  53 Information on the Becca Law derived from "What Do I Do? Working With Out-of-Home Youth and Their Families," OSPI, June 1996.
problems. State resources to deal with children and their families proved to be limited, and the perception grew within the state that the earlier laws had only increased the number of youth on the streets and taken control away from parents.

The Becca law was passed in 1995, in response to these concerns. It was called the Becca Bill after Becca Hedman, a 13-year old girl from Tacoma, who was murdered in Spokane after running away from home. The law governs non-offender at-risk youth, runaways, crisis residential centers, mental health and substance abuse treatment for juveniles, truancy, and other issues affecting non-offender youth and their families. Details of the law pertaining to runaway youth are described below.

The law requires police to return runaways to the parent's home or place of employment. If the parents do not want the child in the home, they may ask the officer to place the child with a relative, responsible adult, or licensed youth shelter. The officer must take the child to a secure crisis residential center (CRC) under certain conditions, including if there is reason to believe the child has been abused. RCW 13.32A.050 and 13.32A.060, WAC 388-73-803.

A runaway youth taken to a secure CRC must be held for no less than 24 hours, but no more than five days, based on the discretion of the CRC administrator. RCW 13.32A.130.

When family reconciliation is not possible within the five-day period, the parents and child are informed of their rights to request:

- a. counseling services;
- b. a child in need of supervision (CHINS) petition;
- c. an at-risk youth (ARY) petition;
- d. the formation of a multidisciplinary team; or
- e. the review of any out-of-home placement.

The law defines a child in need of services (CHINS) to mean an unemancipated child under 18 who:

- is beyond parental control such that the child's behavior endangers the health, safety or welfare of the child or another; or
- has been reported to law enforcement as a runaway for more than 24 consecutive hours or reported absent from a court ordered placement on two or more occasions and has a serious substance abuse problem or has acted in a way to create a risk of harm to the child or others; or
- is in need of necessary services, lacks access or has declined to use the services, and whose parents unsuccessfully tried, or are unwilling to try, to maintain the family.

An ARY petition can be filed by parents as a means of using the courts to reinforce their own parental authority. An ARY is a juvenile who:
• is absent from home for more than 72 consecutive hours without parental consent;
• is beyond the control of his or her parents such that the child's behavior substantially endangers the health, safety, or welfare of the child or any other person, or who
• has a serious substance abuse problem.

Once one of these petitions is filed, the minor will automatically be given a lawyer and the parents have the right to a court appointed attorney if they cannot afford representation. The court will approve the out-of-home placement only if the conflict cannot be resolved by providing services to the child in the home and reasonable efforts have been made to resolve the problem.

If the court grants the petition, it can order the child to meet certain conditions. These can include regular school attendance, counseling, participation in substance abuse treatment program, or other conditions. The child continues to live in the parent's home.

Mental Health/Substance Abuse Treatment: The Becca bill made major changes to mental health treatment for youth. The law contains a provision that a child's parent may apply for the child's admission to a mental health evaluation and treatment center without the child's consent or judicial oversight. On June 27, 1996, the state Supreme Court found part of the law unconstitutional and held that if a minor requests release, involuntary commitment procedures must begin within 24 hours or the minor must be released. In the case, T.B. v. Fairfax, T.B., age 15, was involuntarily strapped to a gurney and taken to Fairfax Hospital, a private facility in Kirkland in a private ambulance. Her parents and a psychiatrist committed her to the private hospital for treatment, even though T.B. disputed the doctor's diagnosis.

Once at the hospital, she remained restrained and was not allowed access to her belongings, which included a written demand for release. Not until hours later was she allowed to call her lawyer.

The Supreme Court held: "Deprivation of these statutory rights in the context of such a massive curtailment of liberty as commitment to a mental institution also constitutes a deprivation of that process due under the 14th Amendment to the United States Constitution because the deprivation is without lawful authority," Justice Richard Sanders wrote in the unanimous opinion.

Responsibility for Injuries - In Washington, parents are only liable for up to $5000 for willful or malicious harm to property or persons caused by their minor children (up to age 18). If the child negligently (carelessly or failing to use due care) injures someone, the parent may be liable under a theory that the parent failed to properly supervise the child, or the child was acting on behalf of the

54 129 Wash.2d 439 (1996).
parent.

The family car doctrine applies in Washington. This means that the child's parents are responsible if the child causes an accident while driving a car that his or her parents provided for the use of the family. If the child is using the car without permission or if the child purchased the car him- or herself, the parents are not responsible.

Child Abuse and Neglect
Referrals to Washington's Child Protective Services Agency, which responds to cases of child abuse and neglect have climbed since the late 1980's. From 1988 to 1994, the rates of referrals to CPS per 1,000 children increased by 68%. Many child advocates believe that most cases of child abuse go unreported. The largest share of children referred to CPS-44%- are five years old or younger.


Washington has special laws dealing with child abuse and neglect. (These laws also protect adult dependent and developmentally disabled persons.) The laws define "child abuse and neglect" as:

...the injury, sexual abuse, sexual exploitation, or negligent treatment of a child by any person under circumstances which indicate that the child's health, welfare, and safety is harmed thereby....

This chapter shall not be construed to authorize interference with child-raising practices, including reasonable parental discipline, which are not injurious to the child's health, welfare, and safety.

Nothing in this section shall be construed to prohibit the reasonable use of corporal punishment as a means of discipline.

RCW 26.44.020; RCW 26.44.015.

Parents do not have a free hand in disciplining their children. It is the policy of the state to "protect children from assault and abuse." The following actions are considered "unreasonable physical discipline" under the state child discipline law, and are treated as crimes:

...throwing, kicking, burning, or cutting a child; striking a child with a closed fist; shaking a child under the age of three; interfering with a child's breathing; threatening a child with a deadly weapon; or doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks. The age, size and condition of the child and the location of the injury shall be considered when determining whether the bodily harm is reasonable or moderate.
RCW 9A.16.100

It is also a crime in Washington for a parent or other person with physical custody of a child to "create a substantial risk of or cause bodily harm to a child by withholding any of the basic necessities of life." The basic necessities of life include food, shelter, clothing, and health care. If the parent cannot afford to provide these things, this may be a defense, if the parent made a reasonable effort to get assistance.

The following persons must make a report to the State Department of Social and Health Services (DSHS) if they have reasonable cause to believe that a child has been abused or neglected: practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, or juvenile probation officer.

If a report of child abuse is made, DSHS or a law enforcement agency has the duty to review the risk-factors and determine whether or not to investigate. If the investigator feels that the child is in danger, s/he is authorized to remove the child from the home.

If there is sufficient evidence of serious abuse, the prosecutor will bring a criminal case against the abuser in Superior Court. Most cases, however, go to Juvenile Court, where dependency proceedings are held. A dependency proceeding is filed by DSHS and it is to decide who should have custody of the abused child.

If there is a criminal case against the abuser, a law passed in 1990 allows child abuse victims under the age of 10 to testify through closed circuit television, if the court finds that to testify in front of the defendant would cause the child serious emotional or mental distress that would prevent him or her from reasonably testifying at trial.

If the child is not returned to the home, s/he will be placed in "shelter care", which is usually a foster home or group home, or with a relative.

The court can order counseling for the abuser. After a period of time the court will review the placement and decide whether the child should be returned to the home, if the child has been removed.
SAMPLE LESSON PLAN--Hypotheticals
The following is a handout for students about Washington's child abuse and
neglect law and some hypotheticals. One approach is to ask the student to act
as lawyers and make arguments for why the actions should or should not be
considered child abuse.

First, ask students to read and think about the hypothetical examples in the
Handout individually. Explain that they are to respond whether or not the
situation described is or is not child abuse or neglect, based on Washington's
law. Then ask them to work with a partner and compare their answers, and
come up with a joint response, if possible.

Finally, ask students to write about what they learned after reviewing the
hypotheticals, and applying the law. For example, students could be asked to
complete the following sentences:
After studying the child abuse law, I learned . . .
I was surprised that . . .

Washington Law on Child Abuse and Neglect:
Child abuse or neglect is any treatment of a child that puts the child's health,
welfare, and safety in danger. There are four types of abuse or neglect:
1.  Physical abuse: injuries to a child that are not accidental. Examples
    would be broken bones, bruises that are more than temporary, cuts, a black
    eye, or burns. Physical abuse may also include cruel or inhumane actions
    that cause physical or mental pain.
2.  Emotional abuse: making a child feel they are not loved or wanted, or that
    they are worthless.
3.  Physical neglect: not providing the child with a safe home, enough to eat,
clothes, or medical care. If the parent cannot afford to provide these things, it
may not be neglect if the parent made a reasonable effort to get assistance.
Neglect also includes the failure to provide adequate supervision.
4.  Sexual abuse: using a child for sex acts, pornographic pictures,
    prostitution or any other type of sexual activity.

Certain acts are considered under the law to be unreasonable when used to restrain or
punish a child. (This is not an exclusive list.) These are:
1.  throwing, kicking, burning, or cutting a child;
2.  striking a child with a closed fist;
3.  shaking a child under the age of three;
4.  interfering with a child's breathing;
5.  threatening a child with a deadly weapon;
6.  doing any other act that is likely to cause and which does cause bodily
    harm greater than transient pain or minor temporary marks.
The age, size and condition of the child and the location of the injury is also
considered when determining whether the bodily harm is reasonable or
moderate.
a. Tom, who is 15, came home four hours late from a basketball game at this school. His father hit him in the face with his fist, giving Tom a black eye.

b. Vannary is 8 years old. Her mother leaves her to take care of her three younger sisters, who are 5, 4, and 2 years old, while she goes shopping. The mother is gone for two hours.

c. Two parents work full-time. During the summer while they go to work, they give their 12 year old daughter full responsibility to take care of the household, including two younger children.

d. Dawit's parents will not allow him to go on any school field trips.

e. Jane is 6 years old. Her parents tie her to the bed while they go out shopping so that she will not run away.

f. Tim, age 9, disobeyed his father. He is asked to kneel on uncooked rice for an hour.

g. Carla is 13. Her stepfather touches her breasts through her clothing and makes her touch his genitals.

h. George, a single parent with three children, is barely able to pay all of his bills each month. He does not buy new school clothes for his kids, and feeds them one meal a day. Somehow, George always seems to find enough money for beer and cigarettes.
Information about the hypotheticals

a. Tom, who is 15, came home four hours late from a basketball game at his school. His father hit him in the face with his fist, giving Tom a black eye. This would be abuse under Washington's law, which prohibits striking a child with a closed fist. (Number 2, under the examples of physical abuse.)

b. Vannary is 8 years old. Her mother leaves her to take care of her three younger sisters, who are 5, 4, and 2 years old, while she goes shopping. The mother is gone for two hours. This would probably be considered neglect, since an 8-year old child is usually not mature enough to handle the responsibility of 3 younger siblings. You might ask students, "Would it make a difference if there were supervision from the next door neighbor?" (Probably not, unless the next-door neighbor lives very close, and has agreed to check in often.)

This example is a good one to use to illustrate how the customs in another country may be very different. For example, the dangers to children in a city in the U.S. may be very different from those they might have faced in a rural area, without cars and other urban hazards.

c. Two parents work full-time. During the summer, they give their 12-year old daughter full responsibility to take care of the household, including two younger children, while they go to work. This might be considered neglect, since a child this young may not be mature enough to be responsible for an entire household and younger children. However, it will depend on the child's level of maturity, and details of the home situation.

d. Dawit's parents will not allow him to go on any school field trips. While, this may not be considered reasonable behavior by some people, this would not be considered child abuse or neglect. You may want to discuss why Dawit's parents do not want him to go on field trips, and ways they could be reassured.

e. Jane is 6 years old. Her parents tie her to the bed while they go out shopping so that she will not run away. This would be considered child abuse, as treatment that might endanger the child's health or safety. For example, what if there were a fire in the house while the parents were gone? Ask students what other information they might want to know? (Do the parents intend to hurt the child?) Intent to harm is not required for a finding of child abuse.

f. Tim, age 9, disobeyed his father. He is asked to kneel on uncooked rice for an hour. This could go either way, but is probably not child abuse. Ask students for arguments for both sides. Does it cause bodily harm greater than transient
pain? Would this treatment endanger the child's health, safety or welfare? It could be considered emotionally harmful, or cruel or inhumane treatment.

g. Carla is 13. Her stepfather touches her breasts through her clothing and makes her touch his genitals. This would definitely be sexual abuse. Sexual touching, even through clothing, is considered abuse.

h. George, a single parent with three children, is barely able to pay all of his bills each month. He does not buy new school clothes for his kids, and feeds them must one meal a day. Somehow, George always seems to find enough money for beer and cigarettes. This might be considered neglect. The question would be whether George is making a reasonable effort to provide for his children.

Child Abuse and Drugs
It is estimated that a baby is born once an hour in Washington to a woman who has a serious problem with drugs or alcohol. Washington taxpayers spend between $29 and $46 million a year on medical care and special education for drug-affected children. These babies become addicted to drugs in the womb, and most suffer serious problems both at birth and later in life, when they may have problems learning and paying attention. Social service workers, legislators and others are struggling with ways to deal with this serious societal problem.

In 1991, a California judge ordered a woman convicted of child abuse to have the Norplant device implanted in her arm for three years, as a condition of her parole. The case was appealed, but the Appeals court ruled it moot (or no longer an open question due to a change in circumstances) because the woman violated her parole by using drugs. In June 1996, the judge was investigated for "allegedly deceiving the woman into consenting" to take Norplant, but was found not to have violated any rules in that sentencing.

In October 1992 a California judge sentenced a mother to 6 years in prison because her breast milk, which was contaminated with methamphetamine, killed her baby daughter. The prosecutor said that the woman could have been charged with second-degree murder. She was, however, charged with child endangerment and pled guilty to that charge.

In July 1997, the South Carolina Supreme Court upheld the prosecution of a woman who used crack cocaine during the third trimester of her pregnancy. In that case, Cornelia Whitner was prosecuted under South Carolina's child abuse statute for criminal child neglect. She pled guilty and was sentenced to eight years in prison. The court held that the word "child" in the statute included a viable fetus. Whitner v. S.C., 492 S.E. 2d 777 (1997) (amended and refiled, rehearing denied). cert. denied, 118 S. Ct. 1857 (1998). Washington refused to follow this reasoning. (See more detailed explanation above, under Opinion Poll
at beginning of Chapter.)

The debate continues in different states. In Florida, in 1989, a young mother was found guilty of two felony counts of delivering cocaine to her newborn babies through her umbilical cord. That conviction was later overturned by the Florida Supreme Court. In Texas, in July 1991, a woman whose baby was stillborn with enough cocaine in its liver to kill an adult was sentenced to 12 years in prison for cocaine possession. The cocaine possession was based on the drug's presence in her child.

Nationwide, prosecutions for prenatal drug abuse dropped off after 1992 because cases usually ended with acquittals or reversals on appeal. Civil libertarians opposed such cases because, taken to their logical conclusion, the state could police legal activities that have been shown to be harmful to fetuses, such as drinking alcohol, excessive exercise, smoking -- and abortion. Others worry that the policy is designed to fail because at the time of greatest damage to the fetus (very early in the pregnancy), women still have a constitutional right to an abortion without state interference. Women’s groups claim using law enforcement efforts against drug-using pregnant women, rather than offering treatment, is another way to reduce women’s right to choose.

Public health officials also support treatment. Twenty-eight public health organizations signed a Supreme Court amicus brief for the upcoming Ferguson case arguing that treatment, not incarceration, is the proper way to address the problem. They also argued strenuously against using medical providers to gather information for subsequent prosecutions of patients.

One private organization has now entered the debate. “C.R.A.C.K.,” Children Requiring a Caring Kommunity, is a California-based organization that pays drug-users, mostly women, $200 in exchange for long-term birth control or sterilization. Critics argue the organization uses coercion. The women argue that it is their right to choose. Legal concerns about informed consent and capacity to contract also arise. Nevertheless, the organization has paid almost 200 women and 1 man for sterilization.5

Birth Control by Law?--Legislative Hearing on "Crack Babies"

Assume that the following law is proposed at the state legislature: "All women of child-bearing age convicted of drug abuse shall have the option of receiving the Norplant birth control insert rather than serving time in jail." (Norplant is inserted into the upper arm, and is an effective birth control device for up to 5 years.) At the hearing the following people testify.

5 Eli Sanders, Controversial Program Gives Addicts $200 to give up their Fertility, SEATTLE TIMES, April 13, 2000.
Loren Patrick, administrator of the Pediatric Critical Care Center: "I am getting impatient with these abusive parents. Many of the drug babies in our center are so hypersensitive they cry or even vomit if you try to pick them up. The ones that appear normal will have problems later in school. Right now we have one child whose mother has had 10 drug-affected children. Her most recent baby has had heart surgery, eye problems, and has been hooked up to oxygen for his entire first year of life. . .if you can call it life. The only way to prevent that woman and hundreds of others from having more children is to require them to accept Norplant. These women are not mentally competent to make their own decisions about birth control. I don't think they should have to pay for the implant, and if they stay clean for a certain amount of time, I think it should be removed if the woman wants. Let's stop worrying about the rights of the mother and worry about the rights of the child!"

Dale Hendricks, civil rights advocate: "The problem here is child abuse, not childbearing. Making it impossible for drug-addicted women to have more children is like forbidding a convicted wife beater from remarrying. Requiring women to use any type of contraceptive device is a violation of a woman's constitutional right of privacy. Women have the right to make their own choices about reproduction, even if we don't happen to agree with them. If drug-addicted women are the targets of laws like this today, who will be next? Teenagers? Women on welfare? Where will it stop? These women need treatment, not forced birth control. More understanding for the circumstances that led these women to use drugs, and more money for drug treatment centers for them are the answers to this critical problem, not "birth control by law." This is the United States, not Hitler's Germany!

1. If you were a legislator, how would you vote on this law? Explain your answer.
2. What other arguments can you think of either for or against this proposed law?
3. Can you think of other possible solutions to this problem?

WILLS AND INHERITANCE

Approximately 70 percent of Americans who die each year leave no will. This can have costly consequences for the family of the person who dies. Also, the dead person has no say in how his or her property should be divided if there is no will. When a person dies without a will, their property passes intestate, which means state law determines how it should be divided. Besides providing for how the person's property should be divided, a will can name a guardian for children, or a trustee to manage property for children.
In Washington, you must be at least 18 years of age and "of sound mind" to make a will. "Of sound mind" means that you must understand what property you own and its value, and who you are leaving it to.

For a will to be valid in Washington, it must be: 1) in writing (with certain exceptions, discussed below), dated and signed; and 2) witnessed by at least two witnesses (who are over 18).

Handwritten wills are valid only if properly witnessed. Members of the armed forces and sailors can make oral wills to leave any property except real estate, if the person is dying, and two witnesses hear the will, and reduce it to writing. You can also leave up to $1,000 of property other than real estate by oral will. The requirements concerning a will's validity are strictly enforced. Most "homemade" wills are not legally binding unless they follow the requirements exactly.

Certain personal items, such as furniture, cars, artwork, boats, jewelry, stamps, and clothing can be transferred through a listing, which is separate from the will. The list is drawn up and signed, and then kept with the will. The list can be changed at any time, without going through the formalities of changing the will. The list must be signed and dated to be valid.

In Washington, a parent can disinherit (leave nothing) to his or her children, as long as it is clear from the will that the parent did not forget the child. For example, Harold could say in his will, "I have intentionally left nothing for my child Mick". If it appears that the parent just forgot to mention a child, the child will receive a portion of the parent's property.

In the case of husbands and wives, the community property laws will apply. When either the husband or wife dies, the survivor receives one-half share of their community property. The other half passes under the will of the person who died. If the person who dies did not have a will, all of the community property goes to the surviving spouse.

Often husbands and wives will enter into a "community property agreement." This is a contract between the husband and wife that states how their community property, (sometimes all community property) will be distributed when either the husband or wife dies. This agreement, if properly executed, can simplify the transfer of property to the surviving spouse when one or the other dies. All community property covered by the agreement is excluded from the dead person's estate, and does not have to go through probate. (Probate is the legal process for transferring property when a person dies. It is a court-supervised procedure.)