

## **LESSON: Family Law – Marriage and Divorce**

**TIME:** 55 minutes

- I. Goals:** A class on marriage and divorce will help students:
- A. Students will have a general understanding of marriage laws in Washington.
  - B. Students will appreciate the complexity of issues surrounding divorce proceedings, including child custody and property distribution.
- II. Objectives:**
- A. Knowledge Objectives: As a result of this class, students will be better able to:
    1. Identify the requirements for getting married in Washington.
    2. Identify the reasons for which an annulment in Washington will be granted.
    3. Recognize factors that courts use in determining property distributions in a community property state.
    4. Recognize the factors that courts use in determining child custody and related child support payments.
    5. Understand how the courts determine alimony payments.
    6. Identify the difference between child support and alimony.
  - B. Skills Objectives: As a result of this class, students will be better able to:
    1. Resolve differences through the use of mediation.
    2. Negotiate and/or advocate for a particular position.
  - C. Attitude Objectives: Students will be better able to:
    1. Appreciate that getting married in Washington is relatively simple; however, ending a marriage can be a complex, costly, and stressful experience.
- III. Classroom Methods**
- A. Open with “mock wedding ceremony.”
    1. Ask for student volunteers for the various roles.
    2. See attached “ceremony.”
  - B. Pass out Handout #4 (General Requirements for Marriage in WA)
  - C. Basic lecture on marriage laws in Washington. Incorporate references from mock ceremony:
    1. General Requirements:
      - a. Legal age for marriage – 18; if 17, you can marry with the written consent of a parent or legal guardian
        - (1) If younger than 17, must also have the consent of a superior court judge.
      - b. Couple may not be closer than second cousins
      - c. Washington does not allow common law marriages
        - (1) Common law marriage – marriage without a blood test, license, or wedding ceremony; created when two people agree to be married, hold themselves out to the public as husband wife, and live together as if married. Only DC and 14 other states allow common law marriage.
        - (2) Washington, though, will recognize a common law marriage that was lawful in another state under Full Faith and Credit
    2. Getting a marriage license

- a. No blood test, witnesses, or identification are required.
  - b. Couple must swear to being 18 years or older.
  - c. Both bride and groom must apply in person at the county auditor's office.
  - d. Fee is \$37 – cash only.
  - e. Must wait at least 3 days after license issuance before completing ceremony; yet, license expires after 60 days
3. Ceremony requirements:
- a. Marriage may be conducted by judge, court commissioner, or any licensed or ordained clergy person of any church (including internet church)
  - b. If marriage conducted by person pretending to be a minister, the marriage is still valid as long as the couple believed the ceremony was valid.
  - c. Two witnesses must be present.
4. Annulment (Declaration of Invalidity in Washington): granted for the following reasons:
- a. One or both of the parties was not 18 and did not retain the required approval.
  - b. One or both of the parties was already married.
  - c. The parties were too closely related.
  - d. One or both parties lacked the capacity to consent either because of mental incapacity or the influence of alcohol or drugs.
  - e. Party was influenced to marry by force or fraud.
5. Sobering-up (or “gee, it seemed like a good idea, but...”)
- a. If the parties have not lived together as husband and wife after either (1) coming of age or (2) becoming capable of consenting, the court will declare the marriage invalid.
  - b. But, if after coming of age or sobering up, they stay together the marriage will be considered valid.
- D. Consequences when Marriages Dissolve:
1. Have the class brainstorm what some of the ramifications or issues are that arise in cases of divorce: Child custody issues, alimony payments, property distribution, child support, etc.
- E. Discuss Alternative Dispute Resolution (ADR) as alternative to Divorce Court – specifically mediation
1. Definitions and differences among ADR alternatives.
  2. Negotiation – process by which people involved in a dispute talk to each other about their problem and try to reach a solution acceptable to all.
  3. Arbitration – both parties to a dispute agree to have another person listen to their arguments and make a decision for them; arbitrator is like a judge, but the process is less formal than a trial
    - a. Arbitrators have the authority to make a final decision and the parties must follow (except in nonbinding arbitration)
  4. Mediation – third person helps the disputing parties talk about their problem and settle their differences
    - a. Unlike arbitrators, mediators do not impose a decision on the parties.
    - b. Mediator acts as a neutral 3<sup>rd</sup> party by listening carefully to both sides and trying to help the parties understand each other's positions and find ways to resolve the dispute.

- c. Mediator cannot impose a decision on the parties.
  - d. Mediation differs from a traditional ‘trial’ in that the parties are much more involved in the process. Instead of hiring attorneys (sometimes at great expense) to argue on their behalf, mediation participants are the ones doing the talking.
- F. Mediation Activity (based on problem 28 in Street Law book)
1. Class will be divided into groups of four. Each group will have a husband, a wife, and two mediators. The class will count off in fours: ones will be husbands; twos will be wives; and threes and fours will be mediators. Prior to the individual mediations, the groups will prepare separately (i.e., the Husbands will meet together, the wives will meet together, and the mediators will meet together). Each teacher should supervise a particular group.
    - a. During this prep time, the Husband and Wife groups will review the case facts on Handouts #1 and #2 and determine important areas to their particular situation. Each of these groups should identify what they intend to seek in the divorce mediation. The Mediators will be instructed on the key areas that should be discussed (Handout #3) during the session.
    - b. After the 10 minute prep by side, the class will assemble into their groups of four.
    - c. Give the students 20 minutes to mediate the divorce situation.
    - d. Reconvene the class and ask the mediators to write the results from their respective mediations on the board.
    - e. Debrief the exercise for 10 minutes.
      - (1) Did both sides negotiate fairly in each role-play?
      - (2) Were there areas upon which the parties could agree? Were there areas where the parties could not reach a consensus?
      - (3) What role did the couple play in each? What role did the mediators play when they were involved?
      - (4) What techniques were used by each?
      - (5) Were the role-plays realistic?
      - (6) What was the tone of each role-play?
    - f. Explain that while mediation might be successful in some situations, it doesn’t necessarily work in all situations. If the mediation is unsuccessful, the parties can always seek redress via more ‘old-fashioned’ court proceedings.
- G. Review WA law on dissolution. Handout #5.
- (1) WA is a no-fault state → either the husband or wife can petition the court and say that the marriage is irretrievably broken (it does not matter who is at fault or whether both spouses agree)
  - (2) Child Custody is decided using the “Residential Schedule” under a parenting plan that sets out the rights and responsibilities of each parent in great detail.
    - (a) The parenting plan covers three major issues: (1) residential schedule for each child; (2) determination as to which parent or whether both parents will make important decisions for each child; (3) process for resolving future disputes of the parents

- (b) 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 parent that is not asking for the modification. Examples of “substantial change” include: (1) The child’s present home environment is unhealthy and the effect of making a change is outweighed by the advantage of the change. Or (2) The child has already begun to live with the party requesting the change, with the consent of the other parent.
- (3) Alimony/Maintenance:
  - (a) Can be awarded the husband or the wife.
  - (b) 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.”
  - (c) Factors considered by court in awarding maintenance: income of the spouse requesting it; how long it will take the spouse to obtain the skills necessary to support himself or herself; how long the parties were married; standard of living during the marriage; age and health of the spouse seeking maintenance and ability of the other spouse to pay
  - (d) Maintenance is usually for a specific period of time
- (4) Child Support:
  - (a) Both mother and father are required to support the child
  - (b) Washington has a statewide uniform child support schedule.
  - (c) Schedule used to determine the basic amount of child support to be paid.
  - (d) 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.
  - (e) If a parent fails to pay support, contempt of court proceedings may be brought and wage assignments or garnishments may be put in place.
  - (f) 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.
- (5) Property Division
  - (a) Washington is a community property state (i.e., property is presumed by the law to belong equally to both the husband and wife). Each party is presumed to own 1/2 of the community property.
  - (b) Property can include physical things like a house or retirement benefits, as well as debts.
  - (c) Exceptions to the community property presumption (separate property):
    - (i) Property either the husband or wife owned before the marriage
    - (ii) Gifts made to one or the other
    - (iii) Property inherited by one of the parties.

- (d) If separate property is used to buy other property, the purchase is separate property. However, separate property can become community property if it is mixed with community property.
- (e) Factors considered by the court in making a fair and equitable division of the community and separate property:
  - (i) Nature and extent of the community property.
  - (ii) Nature and extent of the separate property.
  - (iii) The length of the marriage; and
  - (iv) The economic circumstances of each spouse at the time of the division of property is to become effective (including age, health, education, employment history and future earning prospects).
  - (v) Economic misconduct by either party (e.g., hiding assets).

#### **IV. Evaluation**

- A. Participation in mediation and debriefing exercise.

#### **V. Assignment**

## MOCK WEDDING CEREMONY

Limited Talent Productions presents...Gus and Betty Get Married

Cast:

Narrator

Gus Groom

Betty Bride

Mr. County Clerk

The Reverend

Witness #1

Witness #2

Narrator: Scene #1 – Downtown in Happyville, WA. Our happy little story opens in Happyville, WA with Gus Groom and Betty Bride wondering what they're going to do that evening.

Gus Groom: What do you want to do tonight, Betty?

Betty Bride: I don't know, Gus. What do you want to do tonight?

G. Groom: I don't know. Do you wanna go see a movie?

B. Bride: Nah. What about Tom's party?

G. Groom: I don't feel like a party tonight. What do you say we get married?

B. Bride: Works for me.

Narrator: Gus Groom and Betty Bride are overjoyed and happily walk down to the Happyville County Clerk's office. Scene #2 joins them inside the Happyville County Clerk's office...

County Clerk: Hello happy couple. I'm the Happyville County Clerk.

G. Groom: Hello, Mr. Clerk. I'm Gus Groom and this is my gal, Betty Bride. We'd like to get married.

Clerk: That's nice. I'm so happy for you. Looks like you'll need a marriage license. Are you both 18 years of age?

G. Groom: I am.

B. Bride: Me too. Do you want to see some I.D.?

Clerk: That's not necessary. Just as long as you swear you're both 18 years old.

Bride/Groom: We swear.

Clerk: Super. That'll be 37 dollars.

B. Bride: Can I write you a check?

Clerk: Sorry. This is a cash-only operation.

G. Groom: Here you go. (G. Groom hands Clerk a \$37 bill)

B. Bride: Do we need to take a blood test?

Clerk: Not here in Washington state.

G. Groom: What a relief. I don't do so well at the sight of blood.

Clerk: (Hands them the marriage license) Here's your license.

G. Groom: So are we married now?

Clerk: No, silly. This is just the marriage license. You'll have to wait 3 days before you get married. Besides, I'm just the Clerk and I don't have the authority to marry you.

B. Bride: That doesn't make me very happy.

Clerk: Sorry. But the state of Washington has a 3 day 'waiting period'. After the 'waiting period' expires, you can go ahead and get married. But I must warn you...your marriage license will only be good for 60 days. If it expires, you'll have to come back and get another one.

G. Groom: Gee, thanks Mr. Clerk.

Narrator: Gus Groom and Betty Bride leave the Clerk's office and wait with anticipation for three days to pass. (Turn class lights on and off 3 times). Finally, after three days...

B. Bride: Gee Gus, I can't wait to get married today.

G. Groom: Me neither, Betty. This will be the happiest day of our lives. Let's go.

Narrator: Betty Bride and Gus Groom set off to find someone to marry them. As they are walking down the street, they pass The Reverend...

G. Groom: Excuse me, sir. Are you a judge, a court commissioner, or licensed or ordained minister, rabbi, or priest from any church?

Reverend: You're in luck. I just got ordained last week.

B. Bride: Oh joy. Will you please marry us?

Reverend: Why not. Do you have a valid marriage license?

G. Groom: You bet. We got it 3 days ago from Mr. County Clerk.

Reverend: Splendid. Now all you need are two witnesses.

B. Bride: Mr. Clerk never said anything about that.  
(Calling to Witness #1 and Witness #2) Excuse me. Can you come over here for a few minutes?

Witness #1: We can...

Witness #2: ...but you'll have to hurry.

Witness #1: We're late for an appointment...

Witness #2: ...and we don't want to miss it. (Witness #1 and Witness #2 walk over to G. Groom, B. Bride and The Reverend)

Reverend: Everyone ready?

Groom/Bride: We're ready.

Reverend: Splendid. Ms. Bride, do you want to marry this guy?

B. Bride: I guess so.

Reverend: You're not drunk right now are you?

B. Bride: Only drunk with love.

Witness #1: That's so beautiful. I think I'm going to cry.

Witness #2: That's so lame. I think I'm going to throw up.

Reverend: Splendid. And you haven't been tricked into marrying this man?

B. Bride: Nope.

Reverend: Splendid. How about you Mr. Groom? You sure you want to do this?

G. Groom: I'm sure.

Reverend: No prior history of mental incapacity?

G. Groom: Nope.

Reverend: You aren't related to Ms. Bride are you?

G. Groom: No sir.

Reverend: Okay. (Asking the Witnesses) Did the two of you catch all this?

Witness #1: A truly touching ceremony.

Witness #2: Like a fairy tale, I'd say.

Reverend: Tell you what...let's all sign this marriage license and call it good. (Everyone signs the marriage license). I now pronounce you husband and wife.

Narrator: And they all lived happily ever after in Happyville, WA. The End.

## **HANDOUT #1**

### **GENERAL INFORMATION FOR PAT (HUSBAND)**

Pat and Terry married when both were 27. One year later, they had a baby, Michele. After 5 years of marriage, they fight constantly and are generally miserable. Terry has filed a petition for divorce alleging mental cruelty by Pat that makes a continuing relationship impossible. Pat works as an attorney making \$4,000 a month. Terry works as a sales associate part-time at Nordstrom making \$1,000 per month. The rest of Terry's time is spent taking care of Michele. Pat and Terry own a townhouse in the Redmond area with a monthly mortgage of \$1,400. Besides the mortgage payment, the couple also pays \$500 month for child care.

The couple has the following assets:

\$5,000 savings account

\$10,000 car – 1994 Toyota Camry

\$15,000 car – 1996 Explorer

\$6,000 in other furniture and appliances.

Townhouses in the complex are presently selling for \$255,000, they paid \$190,000.

### **CONFIDENTIAL INFORMATION FOR PAT:**

1. Pat seeks full custody of Michele.
2. The wedding ring that you gave to Terry is a family heirloom from your grandmother. This is more important to you than much of the furniture in the house.
3. Michele's baby pictures are extremely important to you since you don't think that you will be awarded custody over her.
4. If he isn't awarded the house, Pat wants to the sell the townhouse and split the proceeds so that he can have a down payment on a new house.

## **HANDOUT #2**

### **GENERAL INFORMATION FOR TERRY (WIFE)**

Pat and Terry married when both were 27. One year later, they had a baby, Michele. After 5 years of marriage, they fight constantly and are generally miserable. Terry has filed a petition for divorce alleging mental cruelty by Pat that makes a continuing relationship impossible. Pat works as an attorney making \$4,000 a month. Terry works as a sales associate part-time at Nordstrom making \$1,000 per month. The rest of Terry's time is spent taking care of Michele. Pat and Terry own a townhouse in the Redmond area with a monthly mortgage of \$1,400. Besides the mortgage payment, the couple also pays \$500 month for child care.

The couple has the following assets:

\$5,000 savings account

\$10,000 car – 1994 Toyota Camry

\$15,000 car – 1996 Explorer

\$6,000 in other furniture and appliances.

Townhouses in the complex are presently selling for \$255,000, they paid \$190,000.

### **CONFIDENTIAL INFORMATION FOR TERRY:**

1. Maintaining the house is key as Terry does not want to uproot Michele from her school and friends.
2. Terry wants to continue working part-time so that she can be home when Michele arrives home from school.
3. Terry wants to keep Michele's baby pictures.

### **HANDOUT #3**

The role of the mediator is to try and facilitate an open and respectful discussion between the two parties. The mediators' job is not to say who is right/wrong or who should get what. Instead, the mediators should look for ways in which a consensus (common ground) might be reached between the parties. This usually involves asking for each side to compromise now and then.

The mediators should allow one of the parties to speak first, uninterrupted! During that time, the mediators should take notes of what that party's wants/needs are. When the first party is finished, the mediators should repeat that list back to the party to make sure everyone is on the same page.

Repeat above steps with party #2.

Once the mediator has both wants/needs lists, they should begin by identifying areas of common ground (if any). Once those areas have been identified, the mediators should then begin exploring areas of compromise with the two parties.

### **GENERAL INFORMATION FOR MEDIATORS**

Pat and Terry married when both were 27. One year later, they had a baby, Michele. After 5 years of marriage, Terry has filed a petition for divorce.

### **KEY AREAS FOR MEDIATION**

In this particular case between Pat and Terry, the issues the mediator should try and resolve include:

- 1. ALIMONY OR MAINTENANCE – WHO PAYS? HOW MUCH?**
- 2. WITH WHOM DOES THE CHILD LIVE?**
- 3. WHO PAYS CHILD SUPPORT?**
- 4. WILL THE WIFE WORK?**
- 5. WHAT HAPPENS TO THE HOUSE?**
- 6. WHO GETS THE SAVINGS ACCOUNT?**
- 7. WHO GETS THE CAMRY?**
- 8. WHO GETS THE EXPLORER?**
- 9. WHAT WILL HAPPEN TO THEIR STUFF?**

## Handout #4

### GENERAL REQUIREMENTS FOR MARRIAGE IN WASHINGTON

- **Legal age for marriage – 18**
  - **Exceptions:**
    - **If 17, you can marry with the written consent of a parent or legal guardian**
    - **If younger than 17, must also have the consent of a superior court judge.**
- **Couple may not be closer than second cousins**
- **Washington does not allow common law marriages**
  
- **Getting a license**
  - **No blood test, witnesses, or identification are required.**
  - **Couple must swear to being 18 years or older.**
  - **Both bride and groom must apply in person at the county auditor's office.**
  - **Fee is \$37 – cash only.**
  - **Must wait at least 3 days after license issuance before completing ceremony; yet, license expires after 60 days**
  
- **Ceremony requirements:**
  - **Marriage may be conducted by judge, court commissioner, or any licensed or ordained clergy person of any church (including internet church)**
  - **If marriage conducted by person pretending to be a minister, the marriage is still valid as long as the couple believed the ceremony was valid.**
  - **Two witnesses must be present.**
  
- **Annulment (Declaration of Invalidity in Washington): granted for the following reasons:**
  - **One or both of the parties was not 18 and did not retain the required approval.**
  - **One or both of the parties was already married.**
  - **The parties were too closely related.**
  - **One or both parties lacked the capacity to consent either because of mental incapacity or the influence of alcohol or drugs.**
  - **Party was influenced to marry by force or fraud.**
  - **BUT... If the parties have not lived together as husband and wife after either (1) coming of age or (2) becoming capable of consenting, the court will declare the marriage invalid. But, if after coming of age or sobering up, they stay together the marriage will be considered valid.**

## Handout #5

### SUMMARY OF WASHINGTON LAW ON DIVORCE

- WA is a no-fault state
- **Child Custody**
  1. Decided using the “Residential Schedule” under a parenting plan that sets out the rights and responsibilities of each parent in great detail. The parenting plan covers three major issues:
    - (a) residential schedule for each child;
    - (b) determination as to which parent or whether both parents will make important decisions for each child;
    - (c) process for resolving future disputes of the parents
  2. 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 parent that is not asking for the modification. Examples of “substantial change” include: (1) The child’s present home environment is unhealthy and the effect of making a change is outweighed by the advantage of the change. Or (2) The child has already begun to live with the party requesting the change, with the consent of the other parent.
- **Alimony/Maintenance:**
  1. Can be awarded the husband or the wife.
  2. 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.”
  3. Factors considered by court in awarding maintenance: income of the spouse requesting it; how long it will take the spouse to obtain the skills necessary to support himself or herself; how long the parties were married; standard of living during the marriage; age and health of the spouse seeking maintenance and ability of the other spouse to pay
  4. Maintenance is usually for a specific period of time
- **Child Support:**
  1. Both mother and father are required to support the child
  2. Washington has a statewide uniform child support schedule.
  3. 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.
  4. If a parent fails to pay support, contempt of court proceedings may be brought and wage assignments or garnishments may be put in place.
- **Property Division**
  1. Washington is a community property state (i.e., property is presumed by the law to belong equally to both the husband and wife). Each party is presumed to own ½ of the community property.
  2. Property can include physical things like a house or retirement benefits, as well as debts.
  3. Exceptions to the community property presumption (separate property):
    - (a) Property either the husband or wife owned before the marriage
    - (b) Gifts made to one or the other
    - (c) Property inherited by one of the parties.
  4. If separate property is used to buy other property, the purchase is separate property. However, separate property can become community property if it is mixed with community property.
  5. Factors considered by the court in making a fair and equitable division of the community and separate property:
    - (a) Nature and extent of the community property.
    - (b) Nature and extent of the separate property.
    - (c) The length of the marriage; and
    - (d) The economic circumstances of each spouse at the time of the division of property is to become effective (including age, health, education, employment history and future earning prospects).

(e) Economic misconduct by either party (e.g., hiding assets).