



8 Marriage

The next two chapters are about family law. This chapter deals with the legal relationship between husbands and wives. It is about marriage and ending marriages legally. Chapter 9 explains the effect of law on children and their parents.

Some of the laws affecting marriage and family life are very old. Some are very new. Like other laws, they reflect changing patterns and values in our society. Note in this chapter how laws have been affected by the changing role of women in society. Also note how changing attitudes about divorce have affected the law.

GETTING MARRIED

A friend says to you, “Gene and I want to get married. Do you know what we have to do? What does the state of Georgia require?” Would you know how to answer?

How is being married different from living together? Marriage is a legally enforceable contract between two people promising to be husband and wife. Two people who live together may agree to split the cost of food. They may even purchase property together. However, in Georgia, they have no special legal rights unless they are married.

In Georgia, to have a valid marriage, the two people must

- be legally competent to contract marriage.
- agree to be husband and wife.
- consummate the marriage (according to the legal definition).

alimony

annulment

ceremonial marriage

child support

divorce

divorce settlement

legal separation

Requirements for Marriage

Who Is Legally Competent to Marry?

Could the following persons legally get married in Georgia?

- a. Terry, whose divorce isn't final, to Wendy?
- b. Tom to his widowed daughter-in-law, Judy?
- c. Maria to her stepson, Jeff?
- d. Ken and Susan, who are first cousins?
- e. June, who is 16, to Bob, who is 17?

Some people are not allowed, by law, to marry. For example, in Georgia, a person must be mentally competent to marry, meaning he or she must be capable of understanding the idea of marriage. Also, a person who is already married to someone else cannot legally marry. In Georgia and elsewhere, a married person who marries again without a divorce is guilty of bigamy, a crime. If the new spouse knows about the bigamy, he or she is guilty of the crime of marrying a bigamist. Terry (in example a) couldn't marry Wendy until his divorce is final.

Two people who are closely related by blood or marriage cannot marry. For example, the law forbids a man to marry his daughter, his stepdaughter, his sister, his aunt, his niece, his mother, or his grandmother. Likewise, a woman cannot marry her corresponding relatives.

These relationships within which marriage is forbidden are known as the degrees of consanguinity. They are set forth in the Official Code of Georgia Annotated §19-3-3. Laws on incest are a direct result of these degrees. If you marry (or have sexual relations) with anyone within these prohibited degrees, you commit incest and may be criminally prosecuted.

In examples b and c, the couples could not marry. The couple in example d could marry. Georgia permits marriages between first cousins. Most states, however, do not permit such a marriage.

Governments also set minimum ages for a legal marriage. To marry in Georgia, you must be at least 16 years old. If you are under the age



A probate court judge issues marriage licenses in Georgia.

of 18, you cannot get a marriage license without parental consent. June and Bob would need parental consent (example e).

Persons under the age of 16 may marry if there is proof that the female is pregnant or that they are the parents of a living child. However, the county probate court is required to notify the parents of anyone under age 18 who is applying for a marriage license.

Ability to Contract Marriage

The first requirement for a valid marriage is the ability (or capacity) of the parties to contract. Ordinarily, an adult has the capacity to enter a contract. There are occasions, however, when an adult lacks the capacity necessary to enter the marriage contract. For example, if an adult has been declared incompetent by a court, he or she lacks the capacity to contract. A married person also lacks the capacity to enter a (second) contract of marriage.

The Marriage Contract

Another requirement for a valid marriage is that the two persons verbally agree to be husband and

wife at the present time. There is no legal marriage if the persons agree to be married in the future. The agreement to marry can be a spoken one. What of the agreements in the following situations? Would the marriages be valid?

SITUATION 1 Sam gets Mildred so drunk that she goes through their marriage ceremony unaware of what is occurring.

SITUATION 2 Holly and Lester decide to get married for a joke—thinking they can quickly get out of it.

Georgia law says that to create a contract of marriage, the parties' consent must be voluntary. No fraud can be practiced upon either one. A marriage in which one party was tricked or defrauded may be voided (or set aside) by court action. Mildred (situation 1) may be able to get the marriage voided because Sam "tricked" her into it by getting her drunk. Similarly, duress that prevents voluntary consent may allow one of the parties (the victim of duress) to set aside the marriage. Duress is any unlawful threat to make another person do something against his or her will. A threat at gunpoint is an example of duress.

Although not true of contracts generally, a marriage contract has been held valid even though it was made in jest. The courts' view has been that there is no way to prove objectively that the parties were acting in a "spirit of fun and jest." How could witnesses know or testify to the parties' true feelings? For this reason, Holly and Lester (situation 2) would have to get a divorce to end their marriage.

Note that in a marriage ceremony the law's concern is with the basic agreement to marry. Promises—such as those to love, honor, and obey—are personal rather than legal commitments.

Consummating the Marriage

Consummation is the third requirement for a valid marriage. The legal definition varies according to the type of marriage. In a ceremonial marriage, consummation may be achieved by obtaining a license to marry and having a ceremony performed by an authorized person. Consumma-

tion may also be accomplished when the man and woman, using words of present tense, agree to marry—but only if they are in a state that recognizes what is called common law marriage. Sexual intercourse is not required to consummate a valid ceremonial marriage.

Kinds of Marriage

Ceremonial Marriage

Marriages begin with a formal marriage ceremony, which may be a religious ceremony or a civil ceremony performed by a judge.

Before a formal marriage ceremony can be performed, the couple must get a marriage license. This license may be obtained from the courthouse in the county in which the marriage will take place or in any county, provided that one of the applicants is a state resident. If the marriage is to be performed in a state other than Georgia, the requirements of that state must be followed in order to have a valid marriage. Laws on marriage and marriage licenses vary from state to state. In Georgia, marriage licenses are issued by judges of the probate courts (see figure 8-1).

Before receiving the license, couples must take a blood test for certain diseases, including syphilis, sickle cell anemia, and rubella (or German measles). The blood tests can be given by the county board of health. Even with a formal ceremony, license, and blood test, however, a marriage is not valid unless the three requirements mentioned earlier are met.

Common Law Marriage

A common law marriage is a marriage formed without a formal ceremony. Although formerly recognized in Georgia, in 1996 the state legislature did away with this form of marriage. However, all of the states, including Georgia, recognize a common law marriage that was properly created in another state that permits such marriages. Furthermore, Georgia recognizes any common law marriage that was valid in Georgia prior to the enactment of the 1996 law.

Living Together

What if a couple lives together—with no intent to marry? In other states, such as California and New York, people have attempted to create a new kind of legal relationship called contract cohabitation. This type of relationship allows two unmarried people to enter into a contract respecting the arrangement of them living together without being married. The Georgia courts have refused to recognize such contracts. According to Georgia law, such contracts are illegal because they involve sexual relations between two people who are not married.

Only the Facts

1. In Georgia, what are the three requirements for a valid marriage?
2. How does a common law marriage differ from a ceremonial marriage? What common law marriages does Georgia recognize? Why does Georgia law not recognize contract cohabitation?
3. How old must you be to be married in Georgia? For what ages is parental consent required?

Think About

1. Marriage is regarded as a legal contract. Compare the requirements for a marriage with those for a contract. How do they differ, if at all?
2. Should an AIDS test be required for a marriage license? Explain.
3. Why do you think the law prohibits some people from marrying? Consider prohibitions regarding bigamy, family relationships, and age.
4. Explain why the state prefers ceremonial to common law marriages.

BEING MARRIED

Prenuptial Agreements

Can any rights and duties be settled before marriage? Consider situation 3.

SITUATION 3 Darrell and Marcia are considering marriage. Marcia is supporting herself as a sales clerk. Darrell has some valuable property and expects to inherit more. He knows marriages don't always work out. He wants Marcia to agree to give up her rights to alimony (support) payments or to any division of property if they divorce. Marcia insists that he agree to pay her \$50,000 if they divorce, in return for her agreement to give up her rights.

Would such an agreement be fair? Would the courts accept it as valid?

Couples sometimes make prenuptial agreements such as that described in situation 3 before they get married. Such agreements settle the rights each will have if they get divorced.

In 1982, the state supreme court said that prenuptial agreements would be recognized in Georgia. The court set up three guidelines for judges to use in deciding whether to enforce a prenuptial agreement. A judge is to consider the following questions:

1. Was the agreement obtained through fraud, duress, or mistake? Were important facts regarding the financial conditions of the parties not disclosed or misrepresented?
2. Is the agreement unconscionable? In other words, is it so one-sided that one party will get a great deal and the other practically nothing?
3. Have the facts and circumstances changed since the agreement? Would it now be unfair or unreasonable?

If any of these conditions are true, the agreement might not be recognized. Using these questions as guidelines, consider whether Marcia and Darrell's agreement in situation 3 would be valid.

Legal Rights and Duties

SITUATION 4 At 3 p.m. on a Saturday, Sara Gomez and Bobby Joe Whitson were single. At 4 p.m. of the same day, they are married.

What does the change mean for them in terms of legal rights and duties?

A marriage creates certain legal rights and duties between two people. Some rights and duties occur right away. For example, upon being married, either spouse has the right in Georgia to give up his or her own surname (family name) and take that of the other. A partner can keep his or her own surname, or a partner can use both surnames with a hyphen. In other words, Sara could be Sara Gomez, Sara Whitson, Sara Gomez-Whitson, or Sara Whitson-Gomez. Sara and Bobby can also call themselves Sara and Bobby Gomez-Whitson or Sara and Bobby Whitson-Gomez.

Generally, a couple cannot sue each other in Georgia once they are married. Exceptions to this law cover special situations, including divorce, child support, legal separation, and abuse. Suppose Sara were injured in an auto accident. Even though Bobby Joe was driving and responsible for the accident, she could not sue him for damages.

The couple may make use of a new tax status. Sara and Bobby Joe can file joint income tax returns for the year in which they were married and thereafter.

Suppose Bobby committed a crime and Sara witnessed it? Could Sara be forced to testify against Bobby? What if Bobby came home and told Sara what he had done? Would that change your answer? What if the crime took place before the marriage and the trial after the marriage? Can Sara be made to testify to what she saw or heard before the marriage?

The answer is “no” to all of the above questions. Spouses cannot be forced to testify against each other in a criminal case, unless the crime (such as abuse) is against the person of a minor child.

In Georgia, a wife and husband have rights to inherit from each other if one spouse dies intestate (that is, without a will). If divorced, spouses may have rights to alimony (or payments of support) from each other. Each also has a right to an equitable division of the property accumulated together during the marriage.

Individual Responsibilities

Under Georgia law, each spouse is an individual able to assume legal rights and duties. Therefore, each can enter into contracts by him- or herself or together (individually or jointly). Each can sue others and be sued by others.

SITUATION 5 Rose buys living room furniture in her married name, Mrs. Larry Jones. Her husband, Larry, however, insists that they cannot afford the furniture. He refuses to pay the charges.

Must he pay?

Before April 1, 1979, in Georgia, a husband was legally responsible for any debts or purchases his wife made for “necessaries” (that is, food, clothes, medical services, and shelter). For example, if his wife signed a contract to lease an apartment, he might be responsible for the rent. He would be responsible even though he never signed the contract.

In 1979, the U.S. Supreme Court decided a very important case, *Orr v. Orr*.¹ The Supreme Court held that it is unconstitutional to put the burden of support on the man in marriages or divorces. It said such laws discriminate against men. One of the results of the decision is that the Georgia legislature repealed the state law that made a husband automatically responsible for his wife’s debts. Now neither husband nor wife is automatically responsible for the debts of the other. In situation 5, Larry would not have to pay Rose’s debt unless he also signed the contract making himself liable for the debt. Payment for the furniture is Rose’s obligation because she purchased it.

Creditors often protect themselves by requiring both spouses to sign credit card applications or leases. Such a requirement makes each spouse responsible for purchases or contracts made by each other.

The Right Not to Be Abused

The government favors and encourages the institution of marriage. It encourages marriages by interfering in them as little as possible. No laws specify proper marital behavior. No laws, for example, state how a couple should divide the household chores. No law states how many children a couple should have, if any.

However, Americans have pushed governments to “interfere” in one aspect of family life: violence to and between family members. Beginning in the 1970s, increased awareness about domestic violence or abuse of children, spouses, and (more recently) the elderly resulted in legal protection for these victims. The need to protect these groups from abuse and neglect outweighs policies of not interfering in family life.

In 1981, the Georgia legislature established court relief for “family violence.” It gave the superior court authority to act to protect victims. The Family Violence Act applies to family members, former spouses, foster families, and other persons living in the same household. It also protects persons who are parents of the same child (regardless of whether they were ever married). Those persons who formerly lived in the same household are also protected. The court can

- direct a person to stop committing such acts.
- exclude the person committing the violence from the household.
- require the abusive party to provide alternative housing for a spouse and children.
- remove minor children temporarily from parental custody.
- award support for children and/or a spouse.

Another recognized offense against family members is sexual battery. A 1990 law defines



Domestic violence is a subject of recent laws reflecting current conditions.

this offense as the touching of another person’s intimate body part(s) without that person’s consent. It also prohibits this act within or outside the family.

Only the Facts

1. Give three examples of legal rights and duties created by marriage.
2. What is the significance of the Supreme Court decision in *Orr v. Orr*?

Think About

1. Consider this statement: “A man’s home is his castle. What he does at home is his business, even if he may be abusing his wife. She can always leave him, can’t she? The government has no right to interfere.” How might you argue against the statement?

ENDING MARRIAGES

Sometimes marriages don’t work out. Others may be void (that is, the marriage is said never to have existed because one of the parties lacked the capacity to enter into a marriage). One or both partners may not want to live together

anymore. They may want to end the marriage. Because marriages are legal contracts, the law requires that they be dissolved by the court. A partner who simply walks out on a spouse deserts the other spouse. In Georgia, to walk out on children or a pregnant wife is abandonment and a crime. Leaving a spouse and children does not eliminate the legal duty to support them. Further, neither spouse can remarry legally until the former marriage is legally ended.

Annulments

What happens if the requirements for a valid marriage are not met? What if after you were married, you discovered that your partner was not eligible to contract a valid marriage? Or what if your new spouse has tricked you into marriage?

SITUATION 6 Deanna has just learned that her new husband Philip was never divorced from his first wife.

What can she do?

One way to end a marriage is to annul it. An annulment is a declaration by a court that a marriage never existed: It was never a valid marriage in the first place. When one of the parties to a marriage is ineligible to enter into a marriage contract under state law, the marriage can be annulled. However, an annulment will not be granted if a child or children have been born or are to be born as a result of the marriage.

In situation 6, Philip is still married. Therefore, his marriage with Deanna is automatically void and may be annulled.

SITUATION 7 Joan and Wayne were married in a religious ceremony. They were married because Joan told Wayne she was pregnant. Wayne now learns that Joan had lied. He would like out of the marriage.

What can he do?

Suppose a person is tricked or forced into marriage. Or suppose one of the parties is insane. In these cases, the marriage is voidable but not automatically void. If no annulment is sought and granted, the marriage remains valid.

Situation 7 is an example of a voidable marriage. Wayne can go to court and obtain an annulment because Joan lied to him. Suppose, however, Joan was really expecting a child. Wayne would not be able to get an annulment. He could, however, obtain a divorce.

SITUATION 8 Gary, 17, and Sandra, 16, get married without parental consent.

Can their parents have the marriage annulled?

A marriage of persons under 18 who have married without parental consent can be voided as long as there is no child or child-to-be. A third party, such as a parent, can legally act to void the marriage. However, suppose one or both partners to a marriage were underage when they married, but they have continued living together until they are both 18. Then, under Georgia law, the marriage would be considered valid.

Legal Separation or Divorce?

Marriages can be ended in several ways under Georgia law. You have just read about the conditions under which marriages can be annulled. In addition, both legal separations and divorces are valid in Georgia and in other states.

How does a legal separation differ from divorce?

Unlike divorce, a legal separation doesn't end a marriage. It provides a legal way to settle some of the issues that arise when spouses decide to separate. For example, when couples separate, one or the other might need financial support. If there are children, custody, visitation, and support must be decided. A legal separation must, like a divorce, be granted by a court. When it grants a legal separation, the court also resolves or helps to resolve the other issues. Acceptable

grounds or reasons are similar to those for divorce (see figure 8-2).

Legal separation is useful when spouses wish to separate but not end the marriage. It is useful for people who do not want to divorce for religious reasons. Or it may be used if one spouse does not want to deprive the other of insurance or pension benefits that person might lose in a divorce.

A divorce is a declaration by a court that a marriage contract is broken and has ended. The divorce occurs on the day the divorce decree is granted by the judge and filed at the courthouse. After the divorce, the two people are legally “single.” They can remarry. This new status may affect their lives in many ways.

Divorce

Grounds for Divorce

CASE STUDY

CASE OF LINDA SMITH V. PETER SMITH

Linda, 45, and Peter, 48, have been married for 25 years. They have three children—Hazel, 14, Bobby, 16, and Charles, 18. Charles is a freshman at Georgia Tech.

Linda taught school before Charles was born. She worked while Peter got his master’s degree. Linda has been a housewife and mother for 18 years.

Peter was a senior vice president in a local company, making \$90,000 per year. He quit his job to start his own computer consulting firm. He expects to make \$50,000 his first year. Peter has moved into an apartment.

Linda goes to see a lawyer, who explains what the grounds for divorce are in Georgia.

Grounds for divorce are the reasons the court will accept as valid for ending a marriage. The grounds have changed and will continue to do so as society changes. For example, there used to be 12 grounds for divorce in Georgia (figure 8-2). All of these were “fault” grounds, meaning that, to get a divorce, one spouse had to prove that the other was at fault in causing the marriage to break down.

FIGURE 8-2

Fault Grounds for Divorce in Georgia

Apply at Time of Marriage

1. Partners closely related by blood or marriage
2. Mental incapacity
3. Impotency
4. Force, menace, duress, or fraud in obtaining the marriage
5. Pregnancy of the wife (by another man) which was unknown to the husband

Apply after Marriage

6. Adultery by either of the parties
7. Willful and continued desertion by either of the parties for the term of one year
8. The sentence of either party to two or more years of prison for an offense involving moral turpitude (such as murder, involuntary manslaughter, rape, embezzlement)
9. Habitual intoxication; drunkenness
10. Cruel treatment
11. Incurable mental illness
12. Habitual drug addiction

However, often people do not feel fault is the reason for the divorce, or—even if fault exists—they do not want to make such accusations in public. In 1973, the legislature passed a law creating another ground for divorce known as the no-fault ground. This ground means that the marriage is irretrievably broken. It is called the no-fault ground because neither party has to prove the other at fault. The court is interested only in whether the marriage contract is irretrievably broken and that there is no hope of reconciliation.

Although fault need not be proved in Georgia, both spouses can still make accusations of each other. Each party can testify about the conduct of the other. Evidence of wrongdoing is relevant to alimony and the division of marital property. However, it does not affect the amount of child support granted.

Filing and Notification

CASE STUDY

CASE OF SMITH V. SMITH, *continued*

After talking to her lawyer, Linda Smith files for divorce. She asks for a no-fault divorce. Her lawyer tells her the suit will be filed in the Superior Court of Bibb County, the county in which Peter lives.

After the petition for divorce is filed, Peter is notified by the court. He hires his own lawyer, Justin Jones. In most cases, it is important that the parties have different lawyers. If a lawyer represents both parties, the lawyer is acting more like a judge than an advocate for one client.

Peter will not contest the divorce. He agrees that the marriage is irretrievably broken.

A divorce must be filed in the proper court. In Georgia, superior courts have exclusive subject matter jurisdiction in divorce proceedings (see chapter 3). The rules governing personal jurisdiction of courts in divorce cases are very specific. For example, all states require some residency before allowing a person to seek a divorce. A person must have lived in Georgia for at least six months before filing for divorce in the state. Further, the lawsuit must be filed in the county in which the defendant, or the person being sued, lives.

In Georgia, a divorce cannot be granted for at least 30 days after the defendant is legally notified of the divorce. The date of notification is therefore very important. In no instance will the court grant a divorce automatically. The person who filed the lawsuit must ask the court for the divorce decree after the waiting period has passed.

The waiting period can be seen as a cooling-off period or a time for possible reconciliation. It is also a time for both partners to settle matters to their satisfaction before the divorce is final. In Georgia, all support, custody, and property division issues must be settled either by agreement of the parties or by trial before the divorce is granted.

Note that Georgia gives divorcing parties the right to a jury trial. Both parties must waive this right for a judge to try the case.

Determining Personal Rights and Obligations

As you will see, many things have to be settled in a divorce.

1. Child custody
2. Visitation rights
3. Child support
4. Alimony
5. Division of property
6. Division of debts

In a divorce, one parent usually is given physical custody of the child or children, meaning that the children live with that parent and visit with the other parent. That other parent has visitation rights. Sometimes, legal custody of the child or children is joint between both parents. In that case, the children live part-time with each parent. (Custody is discussed further in chapter 9.)

CASE STUDY

CASE OF SMITH V. SMITH, *continued*

Peter and Linda agree that Linda should have custody of the children.

Peter wants to see them regularly. Linda agrees to the visitation rights he wants. As you read this section, think about how you might advise that other matters be settled between Peter and Linda. Prepare to make some recommendations for settling their affairs.

Alimony

One important financial question is that of alimony for a dependent spouse. Alimony is a right of one spouse to receive financial support from the other spouse, if there is a need for such support. It is not, however, a guaranteed right of either party.

In the past, the wife was the receiving party and the husband was the paying party. This arrangement is no longer the case necessarily. In

1979, in *Orr v. Orr*, the U.S. Supreme Court said that laws that gave only the wife the right to support payments discriminated against men. The laws were, therefore, unconstitutional.

Even a dependent spouse is not always entitled to alimony. For example, a spouse who commits adultery or abandons the other will probably not receive alimony.

An important consideration when alimony is awarded is how much to pay. In 1981, the Georgia legislature established new factors for determining the amount of alimony to be awarded to a dependent spouse. Basically, the amount of alimony payments reflects the need of one party for support and the ability of the other to pay.

Linda's and Peter's assets and liabilities are shown in figure 8-3. Should Linda receive alimony? How much?

Child Support

A second important issue is child support. It is generally paid in Georgia until a child becomes self-supporting, marries, or reaches the age of 18. However, Georgia law provides that a par-

ent may be required to support a child enrolled in a secondary school until the child reaches the age of 20. Child support is a right that belongs to the child, not the parent. Parents cannot agree between themselves that it will not be paid.

Generally the parent without custody pays child support. The parent with whom the child lives receives child support as trustee for the child, which means that the money is to be used for the benefit of the child. The amount of child support depends on the needs of the individual child and the incomes of each parent. The usual "needs" of children include adequate food, shelter, clothes, and medical and dental care. However, support can include unusual needs, such as special education, private school tuition, or even a car.

Georgia has child support guidelines that became effective in July 1989. These guidelines outline a percentage of the payor's gross income that must be paid for each child (see figure 8-4). The guidelines may be adjusted for special circumstances, however. Any child support amount that is less than what the guidelines establish must be approved by the judge.

FIGURE 8-3

Assets and Liabilities of Linda and Peter Smith

Assets	Liabilities
House: Current worth \$150,000. If sold, they would receive about \$81,000 (\$150,000 less mortgage and \$9,000 real estate agent commission on sale).	Mortgage: \$60,000
Cars: 1995 Honda Civic sedan; 1999 Nissan Frontier pickup (titles in Peter's name); 2003 Toyota Prius hybrid automobile (in both names, driven by Charles)	Auto loan on Nissan truck in Peter's name: \$5,000 still due
Furniture, linens, and kitchen housewares	Business start-up loan in Peter's name: \$50,000
Ski boat: Current value \$8,000 (registered in both names)	Credit cards: \$3,500 in debts
Retirement: Because he left the company for which he worked, Peter will receive a lump sum pension plan payment of \$150,000 that must be placed in an Individual Retirement Account to avoid taxes.	
\$100,000 life insurance on Peter: Cash value—\$15,000	
Money Market Account—\$25,000, titled in both names but originally a gift from Linda's parents to Linda	

FIGURE 8-4**Child Support Guidelines**

Number of Children	Percentage Range of Gross Income
1	17 to 23
2	23 to 28
3	25 to 32
4	29 to 35
5 or more	31 to 37

Division of Property

Another important issue is the division of the couple's property. In December 1980, the Georgia Supreme Court decided the case of *Stokes v. Stokes*,² one of the most important cases in Georgia family law. It concerned the property rights of the parties in a divorce action. The court held that the judge or jury should divide the couple's marital property (that is, any property acquired during the marriage) equitably between the husband and wife, but each could retain any property that he or she owned prior to the marriage. It didn't matter in whose name or names the marital property was listed.

Certain types of property have been designated by the courts as nonmarital. Examples are any property that a person owned before a marriage or received by gift or inheritance during the marriage.

Some important guidelines have come from this case. They are generally followed by Georgia courts in dividing property in divorce or legal separation cases. A judge or jury is to

- assign each spouse's property to that spouse, including the property and assets each owned prior to the marriage or property personally inherited or given to the party during the marriage.
- equitably divide between the parties the real and personal property and assets acquired during the marriage, without considering in whose name the title is (as with a deed to a house or a certificate of title to a car).

FIGURE 8-5**The Smiths' Monthly Budgets**

Peter	
Food	\$ 200
Apartment Rent	\$ 600
Utilities	\$ 150
Clothes	\$ 25
Gas Auto Repairs	\$ 90
Installment Payments	\$ 200
Medical Bills	\$ 20
Haircuts	\$ 30
Laundry and Dry Cleaning	\$ 20
Recreation	\$ 100
Total	\$1,435
Linda	
Food	\$ 400
House Mortgage	\$ 800
Utilities	\$ 250
Clothes	\$ 100
Gasoline and Auto Repairs	\$ 150
(Proposed) Car Payment	\$ 250
Medical and Dental Bills	\$ 75
School Expenses	\$ 35
Pets	\$ 35
Haircuts	\$ 60
Recreation	\$ 250
Miscellaneous	\$ 200
College Expense	\$ 200
Total	\$2,805

To divide marital property, the judge or jury considers

1. the length of the marriage and any earlier marriage of either party;
2. the age, health, occupation, vocational skills, and employability of each party;
3. the service contributed by each spouse to the family unit;
4. the amount and sources of income, property, debts, liabilities, and needs of each of the parties;
5. debts against the property;

6. whether the division is instead of, or in addition to, alimony; and
7. the opportunity of each spouse to earn money or acquire property in the future.

Division of Debts

Another financial issue involves debts that must be paid. The court may divide the responsibility for the debts, or it may order one or the other spouse to pay all debts.

Other Financial Matters

Before getting a divorce, a couple should make a monthly budget showing the amount of money each needs to live. They should also list their assets and their debts. Superior courts have certain budget forms called financial needs affidavits on which this information must be written.

What if financial matters cannot be settled by an agreement? The couple will then need to have a trial by either a judge or a jury. Actually, only a small percentage of divorce cases go to trial in Georgia.

CASE STUDY

CASE OF SMITH V. SMITH, *continued*

The Smiths cannot agree on how their financial affairs should be settled. Pretend you are the judge who must decide for them. Review the case. Look at Linda and Peter Smiths' assets and liabilities (figure 8-3). Look at their budgets (figure 8-5). Note that the budgets total \$4,240. After taxes, Peter's monthly pay is \$3,250. Before he quit his job, it was \$5,500.

Think about your initial recommendations for alimony, child support, and division of property and debts. Here are some of the issues on which Linda and Peter disagree:

- Peter gets angry when Linda's lawyer asks him for \$1,000 a month in alimony and another \$1,000 each month for child support. Peter thinks Linda should go to work. Linda says that it will take at least two years for her to get her master's degree in education. She cannot find a decent job otherwise. What do you think?

- Peter wants to sell the house immediately and divide the proceeds equally. Linda wants to keep the house for the children and herself. She would like to sell it when Hazel (now 14) goes to college. She wants 75 percent of the cash proceeds from the eventual house sale. She also wants half of Peter's retirement benefits. She believes she will need the money more than Peter will. What do you think?

- Peter thinks Linda should pay half the credit card debt. After all, the purchases were for her and the children. Linda's lawyer says the credit cards were in Peter's name, so he is responsible. What do you think is fair?

- Peter wants the motor boat. Linda never uses it. She thinks they should sell the boat and pay off some of the debts. She wants Peter to buy her a new car. Peter says she can use the gift from her parents to get a new car. What would you do with the boat? Should Linda get a new car? Who pays for it?

Now you must determine how the Smiths' property and debts should be divided. You need to recommend how much alimony and child support Peter should pay. Then you must decide, in light of this, how you would adjust the proposed budgets to fit the reality of Peter's current salary. Should Peter agree to pay for Charles and the other children to go to college? Should he go back to his old job if he can?

Settlements

In many divorces, the parties settle all the issues by a written agreement, which is reviewed by the court. The court can change the agreement if it is very unfair to one party or to the children. Usually, a court will change an agreement only if the child's or children's best interests are not met. Courts are most concerned about the welfare of the children.

Suppose it was agreed that Peter would pay Linda \$1,000 each month in child support and alimony. Then Peter's business fails two years

later, or Linda gets a job paying \$1,500 a month, or either of them remarries. Can any changes be made in the settlement?

Very often, the financial circumstances of the mother, father, or both change over the years after the divorce is final. The changes may mean that the alimony or child support needs to be modified.

Support provisions can be changed only once every two years. Any alterations must be based on a substantial change, upward or downward, in the financial condition of either spouse. Alimony can be modified when the spouse receiving the alimony lives continuously and openly in a sexual relationship. The relationship can be either heterosexual or homosexual.

At the time of divorce, parties can agree to waive or give up their future rights to change the amount of alimony. Such a waiver is probably unwise. Unexpected changes may occur in the future. In general, the right to alimony ends when the receiving spouse remarries.

Since 1986, changes in child support may also be modified by the court when a substantial change in the financial condition of either parent or the needs of the child occurs. Parents cannot waive the right to modify child support because it is a right that belongs to the child or children.

Only the Facts

1. How does separation differ from divorce?
2. Define (a) no-fault divorce; (b) alimony; (c) child support; (d) marital property.
3. Name some of the effects of the Supreme Court decision in *Orr v. Orr*.

Think About

1. If you had been in the legislature, why might you have voted for the law establishing no-fault divorce?
2. Why do you think there is a six-month residency requirement for filing a divorce? Why is there not one for obtaining a marriage license?
3. Should both men and women be entitled to alimony? Should anyone be entitled to it?
4. Do you think it is fair that neither parent can be forced to provide support for a child who has reached the age of 18 (or 20 if the child is in secondary school)? List reasons for and against support of this law.
5. Would your decision about division of property change if Peter was divorcing Linda because she had been unfaithful?

SUMMING UP

This chapter has shown that, for the most part, the government favors marriage and families and tries not to legislate on these matters. When the law does interfere in family life, it is often to ensure that children are cared for or to protect the basic rights of individuals. Recent laws about family violence demonstrate how the courts must often choose between interfering and not interfering. In these laws, the government chooses to protect the individual over not interfering in family life. Do you agree with this preference?

Notes

1. 440 U.S. 268 (1979).
2. 246 Ga. 765 (1980).