

# CHAPTER 8

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Family Law

# Case File (169-174)

- Read the case file on page 169. Break down the demand's of Mrs. Holmes into a well organized bullet point list.
  - Assume the worst case scenario for Mr. Holmes and assume that he is the father of his assistant's child. Are his wife's demands reasonable? Why or why not? Explain.
- What is a common law marriage? Use the internet and determine if common law marriages are recognized in New Jersey.
  - When marriages are dissolved what party's interests are the most important to the courts?
- What is a prenuptial agreement and what types of things does this type of agreement control? What is the purpose of a prenuptial agreement?
  - What are the three methods utilized to terminate a marriage other than death? Explain the differences between the three methods in an organized table.
  - What is a no fault divorce? Is New Jersey a state that has adopted a No fault divorce system? (use the internet to find out)
- Vocabulary

# Marriage and Termination

- Family Law – deals with domestic relations (relationships between related people / most often married persons)
- Marriage – Considered a Contractual Arrangement – Termination of which requires mutual consent or the court systems to intervene.
  - Prior To Marriage Couples can enter into agreements to protect themselves or their interests in the event of a marriage termination – Prenuptial agreements.
    - Prenuptial agreements can not influence child support
  - If a marriage is ever terminated the primary interests of the courts are the well being and interests of any children

# Marriage Terminations

	What it means	Why would this happen	What the court Does	Children
Annulment	<p>No legal marriage ever existed</p> <p>Parties are free to remarry after courts annul the marriage</p>	<p>The marriage is void based on the illegality of the marriage contract: <b>bigamy, minority, fraud</b></p>	<p>The Court can nullify the marriage the former couple exists as if their marriage never existed</p>	<p>Courts must determine how best to meet the needs for care of children</p>
Divorce	<p>Parties wish to end a valid marriage contract</p> <p>Parties are free to remarry after marriage is terminated by courts</p>	<p>Fault Divorce: One party or another has done something that ended the marriage (adultery / abuse etc.)</p>	<p>The court can bifurcate the issues:</p> <p>The Court can dissolve the marriage in one decision and leave custody / property rights etc. to a later date</p>	<p>Courts must determine how best to meet the needs for care of children</p>
		<p>No Fault Divorce: No party is at fault (irreconcilable differences)</p>		
Legal Separation	<p>Separate legally but still officially married</p> <p>Parties cannot remarry under a legal separation</p>	<p>The couple does not want to end the marriage for whatever (religious / reason but wants to separate any future assets from the marriage</p>	<p>The court can order that the parties are considered separate in terms of property and finances from a certain point forward. The court can later grant a divorce if the couple wishes.</p>	<p>Courts do not consider children as a factor</p>

# Child Custody and Child Support (174-180)

- When marriages end the courts often have to determine the best interests of any children produced by the marriage. Copy the types of custody table on page 175 into your notes. And review Application 8.1. Explain how the statute in 8.1 works to protect the interests of children above all else.
  - Define the various forms of Custody as listed on page 175. Use the internet to determine difference between legal and physical custody?
    - What issues do you think could arise when parents have both joint legal and physical custody of children and either struggle to work together or have different future life plans?
- Read *Wages v Wages* on page 175-176 Answer all Case Analysis Questions
- What is Child Support? What is the URESA?
- Read *McCord v McCord* on page 178-180 Answer Case Analysis Question 1
  - Answer Question 2 but you do not have to write an in depth summary, simply provide a explanation as to the meaning of “voluntarily unemployed” and briefly discuss the case in a few sentences.

# Spousal Support and Property Concerns (180-182)

- What is alimony / spousal support? Review the Spousal Support Statute from California on page 181
  - After reviewing the California statute write a short summary of what you've read. Discuss how courts determine whether or not to grant spousal support in a marriage termination.
  - Read the NJ code on Spousal Support located here:  
<http://law.onecle.com/new-jersey/2a-administration-of-civil-and-criminal-justice/34-23.html>
    - Once you read this code discuss the application of spousal support in New Jersey. What factors does the court consider?
- Discuss the differences between Separate property, Community Property and Quasi Community Property. What are the implications of these types of property in marriage termination?
  - How are these properties divided when a marriage is terminated. Explain why.
- Vocabulary

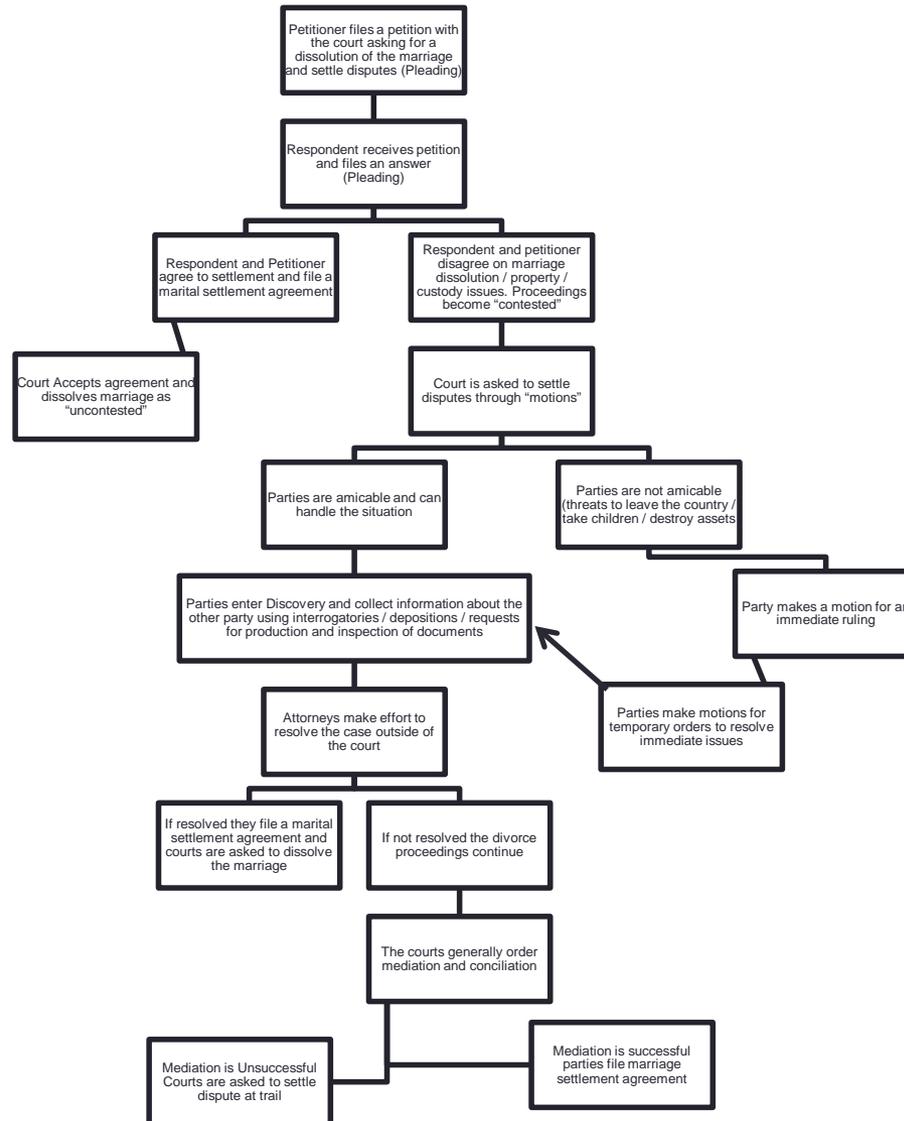
# Types of Property

Type of Property	Meaning	Split
Separate Property	Property belonging to one or the other party and not both. Usually property owned prior to marriage or inheritances	Remains sole ownership of original party
Community Property	Property belonging to both parties and purchased, used or modified during marriage. This includes all earnings made during marriage	Usually split evenly between parties
Quazi-Community Property	Assume the same as community property in practice but remember different vocabulary def.	Assume the same as community property in practice but remember different vocabulary def.

# Family Law Proceedings (182-190)

- How are family law proceedings different in party terminology and filing than most civil cases?
  - Review the difference between a no fault and at fault divorce. What is the difference between the two.
  - Even if the two parties agree in all regards to the marriage termination and come to agreement in property division and child custody is a court action still required? Explain? How is this similar or different to traditional civil cases?
    - What are the proceedings described as when the parties agree to settle all issues?
    - What is a temporary order or temporary restraining order? When are these orders utilized in family law proceedings?
- Given the time it takes to complete family law proceedings what emergency measures exist to protect one party or the other from unfair or detrimental actions by the other?
- (Section 8-8) Discuss the various tools that can be ordered by the court to avoid a trial if the parties can not come to an agreement in divorce proceedings

# Family Law Proceedings



# Unmarried and Homosexual Parties (190-195)

- Do parents only have a right and responsibility to children produced during a marriage?
  - What is a presumption of paternity? When does this apply?
    - In some situations does a paternity test have any validity when there is a presumption of paternity?
      - Do you think this is right?
    - Look up the presumption of paternity laws for New Jersey using the internet. What are the laws for our state? Can presumption of paternity be overridden in New Jersey?
- Read the Opinions of the Justices to the Senate on page 192 to 195
  - Summarize what the justices are writing in this opinion and answer case analysis questions
  - Ignore the opinions of the Justices in regards to the Massachusetts constitution and focus on the federal constitution. What is the opinion of the justices in this regard?

# United States v Windsor / Hollingsworth v Perry

- We will review the United States v Windsor and Hollingsworth v Perry in class and you will write a response regarding this case.