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1 Family law may be defined as that body of law which attempts to regulate the internal relationships within the family and the relationship of the family to the outside world. Family law deals with marriage, divorce, adoption, child custody and support and other domestic-relations issues. In the US, the branch may also be termed domestic-relations law.

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Marriage law

The law in most countries places more emphasis upon marriages legally registered than social arrangements whereby people live together. In Japan, some couples prefer not to register their marriage because the law requires one of them to give up his or her name in favor of the other. The birth and residence documentation of children born to such marriages is different from that of other children and sometimes leads to

discrimination. In Britain, children born outside legitimate marriages have fewer rights to financial support from estranged fathers than legitimate children. In addition, if they are born outside the UK, they are less likely than legitimate children to be granted British citizenship. Their fathers have no automatic right to have contact with them. Some welfare payments are calculated on a different basis according to whether recipients are married or not, and more procedures are available to a married woman than an unmarried one in seeking protection from domestic violence. However, in most industrialized countries, the legal differences between the married and the unmarried are decreasing. It is not surprising this should be the case in a nation like the United States, for example, here 25 percent of babies are now born to unmarried parents.

R. Powell, Law Today

27. ^{grey} The original function of a family was to reproduce, i.e. to conceive and bring up children. Read the following text which introduces the concepts of *legitimate* and *illegitimate* children.

1 A child conceived or born in wedlock is presumed to be the legitimate child of the spouses. Such a presumption can only be rebutted by proof beyond 3 reasonable doubt, which establishes that the husband could not be the father of the child. Where the presumption does not apply, or where it has 5 been rebutted, the child is considered to be illegitimate.

The status of the child [whether he is legitimate or illegitimate] has 7 important consequences in the area of custody, maintenance and succession rights. It should also be noted that the Legitimacy Act, 1931, provides that 9 a person who at the time of birth is illegitimate may be subsequently legitimated by the marriage of his parents, provided the father is domiciled 11 in this country at the time of such marriage, and both he and the mother could have been lawfully married to each other at the time of the birth or 13 sometime during the period of 10 months preceding the birth. With one very minor exception, the position of the legitimated child is identical in all 15 respects to that of the legitimate child.

R. Grimes, P. Horgan, *Law in the Republic of Ireland: An Introduction*

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10. ^{grey} Capacity to marry has already been mentioned. Read the text providing more information (on British family law).

1 The parties to a marriage must have the capacity to marry, otherwise the marriage is void. Parties to a marriage have the capacity if they are: (a) not within the prohibited degrees of relationship; (b) over the age of 16; (c) not already married; and (d) respectively male and female.

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39. All marriages terminate at some point. This may be "natural" due to the death of one of the spouses, or as a result of an agreement between them. As you read the following text, try to think of an appropriate title.

1 Marriage is dissolved by death, decree of divorce, ~~decree of dissolution~~ (in ~~a few states~~), or judgment of nullity.
3 In most states marriage is terminated by divorce only when one of the spouses is guilty of serious fault, such as adultery, physical cruelty, 5 habitual drunkenness or drug abuse, nonsupport, desertion, postmarital insanity, or conviction of a felony. Mental cruelty may be sufficiently 7 serious to justify a divorce. In other states, a long-standing voluntary separation alone may justify divorce.

grey 15. There may be certain grounds rendering the marriage voidable. Read the text through, recalling the distinction between the adjectives void and voidable.

1 The grounds on which a marriage may be voidable are laid down by the law. A marriage can be avoided by decree of nullity on one or 3 more of the following grounds:
5 (a) non-consummation of the marriage due to the incapacity of either party;
7 (b) non-consummation of the marriage due to the respondent's wilful refusal;
9 (c) lack of valid consent to the marriage by either party, whether in consequence of duress, mistake, unsoundness of mind or otherwise;
11 (d) that at the time of the marriage, although capable of giving valid consent either party was suffering (continuously or intermittently) from mental disorder within the meaning of the Mental Health Act 13 1983 of such a kind or to such an extent as to be unfitted for marriage;
15 (e) that at the time of the marriage the respondent was suffering from the venereal disease in a communicable form;
17 (f) that at the time of the marriage the respondent was pregnant by some person other than the petitioner. Standley, K.: Family Law

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Divorce law

Divorce proceedings in England take place in certain County Courts known as divorce county courts. Some matters are also dealt with in the Family Division of the High Court. It is necessary for one of the parties to convince the court that the marriage has broken down irretrievably—without any chance of reconciliation. To do this the person seeking, or **petitioning for** divorce, must prove one of five things: that the other party, or **respondent**, committed adultery (had sex with someone else); that the respondent's behavior has been unreasonable; that the respondent deserted the petitioner at least two years previously; that the couple has lived apart for two years and both agree to a divorce; or that they have lived apart for five years. Even if the court is satisfied that there is enough evidence of one of the above, a divorce will not be issued until satisfactory arrangements have been made for any children of the marriage, including determining who is to have **custody** of the children, the rights of the

children to maintain contact with the other parent, and financial arrangement for the children's welfare.

The High Court or divorce county court has wide powers to order both an ex-husband and an ex-wife to make financial provisions for the other and for their children. This may include periodic payments, a lump sum of cash, transfer of property into the other spouse's name, or sale of property so that the money can be divided. In general, these orders are supposed to support the children and other spouse (usually the one taking care of the children; often the mother) until they become financially independent.

When a couple separates, whether married or unmarried, the welfare of any children and the division of any property are the most important, and often the most difficult problems, to resolve. People who once lived together happily may argue bitterly once the trust between them has dissolved. Although it is possible, and certainly much cheaper, to arrange most of the terms of a divorce privately without lawyers, many couples find that it is impossible for them to reach such an agreement.

In no case will English law allow divorce proceedings to start within a year of the marriage, since it is thought this is too soon for the marriage to have tested itself. It is also feared that people would get married without serious thought if it were quick and easy to get a divorce.

R. Powell, Law Today

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25. As you know, a marriage is not only a matter of love but sometimes, especially when it is breaking down, it may develop into an acrimonious battle over property. Read the following information about how the property of spouses is usually divided.

1 **Community property** is all property acquired by the husband or the wife during marriage other than by gift or inheritance. This legal concept is derived from the system used in medieval Spain to regulate ownership of property within marriage. It affects the laws of Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington. In these community property states, the earnings of husband and wife during marriage are owned equally [in the absence of contrary agreements]. The husband manages the property, but upon dissolution of the marriage or upon the death of either spouse, it is divided equally. Either may will his [or her] share as he [or she] pleases.

11 **Separate property** is property, real or personal, either brought into the marriage by one spouse or acquired by one spouse during marriage by gift or inheritance. It remains separate, and earnings received from it are separate, so long as independent records are kept. If the owner treats it as community property, as by commingling it, it becomes community property.

N.J. Mietus, B.W. West, *Personal Law*

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In the case of property, the courts have to find a balance between two principles. One is that any division should fairly reflect how much each party contributed to the property they held together. In the past, some women suffered when they separated from their husband because the house they lived in was bought with his money and registered in his name. Nowadays, courts look beyond legal ownership and cash contributions. Work done in the home, time spent caring for the family, even emotional support, are all considered as giving some rights to property. In the United States, there have been cases of the lovers of famous entertainers claiming a proportion of the income earned by their partner during the time they lived together, and sometimes millions of dollars have been at issue. When Cindy Nelson separated from her girlfriend, tennis star Martina Navratilova, she produced a contract that the two women had signed when they lived together to support her huge claim for money.

The other principle which courts must consider is the needs of the parties. It is no longer assumed that a woman who was financially dependent on her husband when they were married will remain so after they are divorced, but the length of the marriage and the age and skills of the woman will be considered in deciding how soon—if at all—she is likely to become independent. There are a few cases of a court refusing to grant a divorce at all because the couple in question was elderly and would never recover from the financial shock.

P. Powell, Law Today