

Lesson 13: Family Law

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When talking about family law the most common issue that arises is, of course, the process of divorce and all of its consequences both on the division of assets and child custody issues that it entails.

First of all it is important to clarify some key vocabulary in this area. Two married people are referred to as **spouses**. However, marriage is not the only type of relationship that leads to certain types of rights in family law being created. **Common Law Marriage, Common Law Partnerships** or Civil Unions also give rights upon separation and the scope of these rights varies with each jurisdiction. **Common Law Partners** are simply two people either of the opposite or same sex who live together or, in legal terms, **cohabit** for certain period of time, usually a year or two depending on the jurisdiction. In today's society these types of relationships are becoming more and more common;. Upon the **breakdown** of a Common-law relationship or a civil union both partners are entitled to certain financial supports and have certain rights in terms of child custody; however, this is something that is different in each common law jurisdiction and it is an area of law that continues to be developed through case law.

Coming back to marriages, if spouses wish to protect their personal assets acquired prior to entering into the marriage, they can enter into something called a **prenuptial agreement**. This document is usually prepared with the assistance of a family lawyer and it will ensure that whatever assets the spouses bring into the relationship, these will remain completely secure in the event of the breakdown of the marriage.

Talking about the breakdown of marriage, this is done through a **divorce petition** filed by the petitioner. In this petition all the facts and reasons for the divorce being requested are set out. The court usually sends this divorce petition to the other party, in other words the other spouse called the **respondent**. This is usually sent together with an **Acknowledgement of Service** form in which the respondent should indicate whether or not they will want to **dispute** or **contest** the divorce. In case of an undisputed or uncontested divorce the **petitioner** will simply need to swear an affidavit confirming all the facts set out in the petition and the Court will pronounce the marriage as **dissolved**.

Of course, as part of the divorce, the spouses will need to agree on many issues; some of the key issues are the **division of assets** especially the assets acquired during the course of the marriage; they will need to agree on support or maintenance; this refers to the process of financial assistance to one of the spouses whose financial means are more limited than that of the other. Historically this has usually been the woman who, during the course of the marriage, perhaps gave up employment in order to stay at home and take care of the children and so she lost her earning capacity and therefore her financial resources are more limited. In such circumstances upon divorce the ex husband may be ordered to pay her what is known as **alimony**.

If the court also decides to assign the **custody of the child**, meaning the guardianship of the child, to the mother, then upon divorce the father will usually be ordered to pay **child support** which is a special type of financial support for the maintenance of the child.

In some jurisdictions, before a divorce can be granted, the spouses must first separate, meaning live apart for certain period of time (in many jurisdictions that is one year). This period of **separation** serves later as a proof that the breakdown in the relationship is permanent.

There are also situations in which a marriage can be declared null and void (or, in other words, is **voidable**) at the filing of an annulment petition by one of the parties; the most common ground for this request would be that the marriage was entered into under some sort of **coercion** or **duress** or perhaps that one of the parties lacked the necessary capacity to enter into the marriage.

There are also situations where a marriage can be declared **void ab initio** meaning that it was illegal at the time it was entered into and the most common example of that would be in a situation of **bigamy**, meaning a situation where one of the spouses was already married or was still married when the new marriage took place.