Marriage

Marriage is a personal, social, economic, legal, and often religious relationship. More than 90 percent of all Americans will be married at some time during their lives. This chapter examines the legal aspects of marriage. It describes the steps that one must follow to get married, the requirements for a legal marriage, the difference between formal and common-law marriage, and what to do about spousal abuse.

Getting Married

To legally marry, a couple must follow certain steps:

- **Blood test.** Most states require a couple to have blood tests for sexually transmitted diseases (STDs), which may include a test for HIV/AIDS, before getting married. A few states also require a physical examination. These tests can make the couple aware of certain medical problems that may affect their marriage.

- **Marriage license.** All states require a marriage license. When they apply for a marriage license, the couple will be asked to provide certain information, such as proof of age and a copy of their blood test results. They then must swear to the truth of the information they provided and pay a small fee.
• **Waiting period.** After applying for a marriage license, the couple often must wait for a short period before receiving it. Some states require another waiting period between getting the license and participating in the marriage ceremony. Waiting periods give people time to carefully think over their decision, encouraging them to be serious about entering into marriage.

• **Wedding ceremony.** A wedding ceremony can be either religious or civil. Weddings may be conducted by members of the clergy or by public officials such as judges or justices of the peace. The law does not require any set form for the wedding ceremony. However, to be legally married, each person must state that he or she agrees to marry in the presence of an official and a witness. After the ceremony, the couple will receive a marriage certificate. Some states recognize common-law marriage, which does not require a ceremony (see page 379).

No state requires premarital counseling as a prerequisite to obtaining a marriage license. However, many people believe that premarital counseling encourages couples to enter marriage more thoughtfully and helps to reduce divorce rates.

**Problem 31.1**

a. Marriage involves many considerations. Rank the following considerations in order of importance: money, desire for children, sexual relations, religious beliefs, similar racial or ethnic backgrounds, common interests, relationships with in-laws, faithfulness, and age differences. Are there any other factors that you consider important to a successful marriage? Explain your answer.

b. Make a list of all the questions you would ask yourself before deciding to get married. Make a separate list of questions you would ask your partner. Are any of the questions the same? Do any of these questions involve the law?

c. What social, religious, and legal arrangements would you have to make in order to get married?
Loving v. Virginia

In 1958, Harvey Loving, a white man, and Diana Jeter, an African American woman, decided to get married. Legal residents of Virginia, they went to Washington, D.C., to get around a Virginia law forbidding marriage between white and nonwhite people. After their marriage, they returned to Virginia, where they were arrested and charged with violating the ban on interracial marriage. The Lovings pleaded guilty and were each sentenced to one year in jail. The judge agreed to suspend the sentence if the Lovings would leave Virginia for 25 years. The Lovings moved to Washington, D.C., but appealed their case to the U.S. Supreme Court. They asked that the state law against interracial marriages be declared unconstitutional.

Problem 31.2

a. What arguments do you think the state made in favor of the law? What arguments do you think the Lovings made against the law?

b. How would you decide this case? Explain.

c. Some marriage regulations are appropriate, and others are not. Should states regulate marriage based on age? Mental capacity? Physical disability? Heath? Religious, ethnic, or racial differences? Explain.

Legal Aspects of Marriage

Marriage is a contract between two persons who agree to live together as husband and wife. It creates legal rights and duties for each party. To be married, a couple must meet certain legal requirements.

In the United States, marriage laws are set by the individual states. State laws vary, but most states have the following requirements:

- **Age.** A couple wishing to marry must meet certain age requirements. Usually, both women and men must be 18 years old. Some states allow younger couples to get married if their parents consent. Some states also allow a couple under the minimum age to marry if the female is pregnant.

- **Relationship.** Every state forbids marriage between close relatives. It is illegal for a person to marry his or her parent, child, grandparent, grandchild, brother, sister, uncle, aunt, niece, or nephew. Many states also prohibit marriages between first cousins. Most of these laws are based on bloodlines. Hence, although the law forbids marriage between half brothers and half sisters, marriage to an adopted brother or sister is often permitted. Marrying or having sexual relations with a close relative is a crime known as incest.

- **Two people.** Marriage is between two persons only. Marrying someone who is already married is illegal. Having more than one husband or wife is a crime known as bigamy.

- **Man and woman.** Marriages between two persons of the same sex have traditionally been considered legally invalid.
- **Consent.** Both persons must agree to the marriage. No one can be forced to marry someone against his or her will. For example, no one can be forced to marry someone at gunpoint.

As a general rule, if a marriage is legal in one state, it will be recognized as legal in all other states. However, if a couple goes through a wedding ceremony without meeting the requirements for a legal marriage, the marriage may be annulled. **Annulment** is a court order declaring that a marriage never existed. It is different from a **divorce,** which is a court order that ends a valid marriage. In other words, a divorce means that a man and a woman are no longer husband and wife. An annulment means that a man and a woman were never legally husband and wife.

The grounds for annulment vary from state to state, but common reasons for annulment include the following:

- **Age.** One or both spouses were too young to be married.
- **Bigamy.** One spouse was already married.
- **Fraud.** One spouse lied to the other about an important matter, such as the desire to have children.
- **Lack of consent.** One spouse was forced to marry against his or her will, was too drunk or incapacitated to understand that a wedding was taking place, or was insane.

Laws place many restrictions on marriage. They prescribe who can marry, some of the obligations created by marriage, and how marriage can be ended. However, states cannot prohibit marriage between consenting adults without a good reason.

Many U.S. marriages take place in a church, mosque, or synagogue. Customs and religious traditions play an important role in married life in the United States. These customs and traditions, however, may not be used as justification for ignoring established civil laws governing marriage.

In 1878, George Reynolds, a Mormon living in Utah, was arrested and charged with the crime of bigamy. At the time, many Mormons regarded plural marriages as a religious obligation. Some believed that refusal to practice **polygamy** when circumstances permitted would lead to “damnation in the life to come.” Reynolds argued that the anti-bigamy law violated his constitutional right to freedom of religion. After his conviction, he appealed his case to the U.S. Supreme Court.
In the case of *Reynolds v. United States*, the Supreme Court upheld the antibigamy law. It ruled that a religious belief cannot justify an illegal act. Reynolds could believe anything he wanted, but he could not put into practice a belief that society condemned. Today, the Mormon Church condemns polygamy and excommunicates members who practice it.

**Common-Law Marriage**

Common-law marriage is a marriage without a blood test, a license, a wedding ceremony, or a certificate. It is created when two people agree to be married, hold themselves out to the public as husband and wife, and live together as if married. As of 2008, only the District of Columbia and nine states (Alabama, Colorado, Iowa, Kansas, Montana, Oklahoma, Rhode Island, South Carolina, and Texas) continue to recognize common-law marriage. Four other states (Georgia, Idaho, Ohio, and Pennsylvania) recognize common-law marriages created before a certain date.

Some of these states require a couple to have lived together for a certain number of years before they are considered legally married. In others, there is no minimum waiting period if a couple agrees that they are married, lives together, and represents themselves as husband and wife. If a couple separates after entering into a common-law marriage, they must divorce legally before either may remarry or they can be charged with the crime of bigamy.

States that do not allow common-law marriages do, however, recognize such a marriage if it originated in a state that recognizes common-law marriage. If a marriage is legal in the state where it begins, other states usually recognize it as legal.

**The Case of...**

**The Common-Law Marriage**

Rick Schwartz and his girlfriend, Sarah, live together in Montana. They talk about having a wedding but never do. They are in love and think it is simpler to tell people that they are married. They buy a house together, open a joint bank account, and are known everywhere as Mr. and Mrs. Schwartz. One day Sarah gets bored and leaves Rick. She soon finds a new boyfriend, Dylan. Coming from a traditional background, Dylan insists that they get married before living together.

**Problem 31.3**

a. What are the requirements of a common-law marriage?

b. Do Rick and Sarah have a valid common-law marriage? Why or why not?

c. If Rick and Sarah had lived together in Arizona instead of Montana, would they have a valid common-law marriage?

d. Can Sarah marry Dylan? Will she have to divorce Rick first? Why or why not?

e. Should all states allow common-law marriage? Explain your reasons.
Human rights protect freedoms, but they also protect the right to one’s culture. Article 27 of the Universal Declaration of Human Rights says that “everyone has the right freely to participate in the cultural life of the community.” Article 16 of the Universal Declaration of Human Rights also states that “marriage shall be entered into only with the free and full consent of the intending spouses.”

The Case of the Arranged Marriage

Sujata, 15 and female, and Ravi, 18 and male, will soon marry after living in the United States for the last ten years. Before that, they lived in a country where their parents agreed, when Sujata and Ravi were 5 and 8, they should marry when they were old enough. The law in the state where they now live requires a female to be 16 and a male 18 to marry without the permission of their parents. Ever since they were young, their parents had told them they would marry each other, as this was part of their culture.

Sujata is not sure she wants to marry Ravi, but her parents convince her it is for the best. So Sujata and Ravi agree to follow their parents’ wishes and marry. Arranged marriages like this are common in the country where they were born, and the divorce rate from such marriages is lower than the divorce rate in the United States. The law where they now live requires both parties to freely enter into a marriage.

Problem 31.4

a. Are human rights involved in this situation? If so, which ones?

b. What are the arguments against allowing Sujata and Ravi to marry?

c. What are the arguments for allowing them to marry?

d. What would you do if you had the power to decide whether they should marry?

e. Can you think of any instances where U.S. law protects cultural rights? Should the law protect cultural rights?
Financial Responsibilities

In the past, the law considered the husband to be the head of the household. He had a duty to support his wife and children. In return for this support, he was entitled to his wife’s household services and companionship. The law reflected this traditional view by giving husbands the legal right to make decisions such as where the family would live and how money would be spent. Over the past several decades, however, this view of marriage has been challenged by economic and social changes in our society. In many ways, the law has also changed to reflect the idea that marriage is a partnership between equals.

Husbands and wives are now required to support one another in accordance with their respective needs and abilities. Many states hold both spouses financially responsible for necessary family items or services that either of them purchases. However, some states retain the traditional rule that the husband has a legal duty to provide his wife with food, clothing, shelter, medical care, and other necessities. In states with this traditional rule, if the husband fails to provide such essentials, the wife can purchase the necessary items and make her husband pay for them. In these states, the wife has no legal duty to pay her husband’s bills.

The Case of...

The Unpaid Bills

Bryan and Kelli have been married for five years. Both are employed, and each earns about $40,000 per year. They have problems paying their bills and often argue over money. One day, Kelli goes shopping and charges groceries, clothes for the children, and an expensive HD television costing over $1,000. Bryan gets angry and tells Kelli that he is not paying for anything.

Problem 31.5

a. Is Bryan responsible for the debts of his wife?

b. Suppose Bryan was out of work and charged the previously mentioned items without telling his wife. Would she have to pay?

c. Do you agree or disagree with the following statement: “Husbands should be required to support their wives, but wives should not have to support their husbands”? Explain your answer.
In addition to basic necessities, some courts require the husband to maintain the family in accordance with his economic position. In general, however, a woman cannot obligate her husband to pay for luxury items bought without his knowledge.

**Property Ownership**

Who owns property acquired during a marriage? At one time, the law considered a husband and wife as one person. This meant that the husband owned the property and the wife had no property rights. Any money or property a woman owned before marriage or acquired during marriage became the property of her husband. In 1887, states began to pass married women's property rights acts that changed the law. These acts gave married women the right to own and control their own property.

For the most part, property owned by either spouse before the marriage remains the property of that person throughout the marriage. This is called separate property. Although each spouse may still collect separate property by gift or inheritance, generally, property acquired by either spouse individually or by the couple during a marriage is called marital property. This includes joint bank accounts, real estate, automobiles, or other property in both names.

During marriage, couples may decide together whether to combine all of their property and earnings or keep them separate. The longer the marriage lasts, however, the more difficult it may be to track each spouse’s separate property. The laws of the state in which they live will determine what happens to that property if the marriage ends.

Nine states—Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin—as well as Puerto Rico have community property systems. These systems, generally derived from French and Spanish law, usually provide that all property acquired during the marriage belongs equally to the husband and the wife, no matter who earns or purchases it. Regardless of the duration of the marriage, if the couple breaks up, either by death or divorce, each spouse is entitled to any separate property brought into or acquired during the marriage, as well as one-half of all the community property acquired during the marriage.
Most states follow a system of **equitable distribution** when dividing property at the end of a marriage. In these states, each spouse is entitled to his or her separate property acquired during the marriage. The marital property, however, is divided based on a variety of factors, including need, financial and nonfinancial contributions of each party to the acquisition of property, and length of marriage. The goals of equitable distribution are to balance ownership rights and equitable claims by both spouses and to consider obligations each spouse has to third parties, such as children.

Contrast the community property system with the equitable distribution system by considering a couple married for 18 months, during which one spouse has not worked outside the home. In a community property state, this spouse is usually entitled to any separate property brought into or acquired during the marriage and half of everything the couple acquired during the marriage, including the income of the other spouse. In an equitable distribution state, this spouse is entitled to his or her separate property, but the court can exercise discretion, considering what an equitable distribution of the marital property would be, based on the spouse’s needs and contributions to the marriage in light of the relatively short duration of the marriage.

**Problem 31.6**

**a.** Lloyd and Veronica were married four months ago. Before they were married, Veronica inherited a large tract of land from her grandfather. Now that they are married, to whom does the land belong?

**b.** Frances and Leon are married and have two children. Frances is an architect making $75,000 a year. Leon is an artist who earns very little money. Frances uses some of her income to buy a vacation home. If Frances and Leon divorce, who owns the vacation home in a community property state? In an equitable distribution state?

**c.** Which is fairer: an equitable distribution or a community property system? Why?

**Decisions in a Marriage**

Married life involves many decisions and responsibilities. Couples need to cooperate, share, and make decisions about their lives together. For instance, how will housework be divided? Who will handle the money? Will they have children? How will any children
Although tradition suggests that a woman take her husband’s last name, it is not a legal rule. What name-change options do couples have when they are married?

- **Name change.** Women have traditionally taken their husbands’ last names as a matter of social custom. However, a woman is not legally required to do so. Legally, a woman can keep her maiden name, take her husband’s name in combination with her own (for example, Smith-Larkin), or use her husband’s name. Likewise, a man may take his wife’s name or use one that is hyphenated. Some people have a professional name they use at work and a family name they use in their personal lives.

- **Support.** A husband used to have a legal duty to support his wife and children. However, these laws have changed in most states, and spouses now have equal responsibility to support each other and their children. Spouses share equally the duty to pay for necessary family items bought by either of them. For more information about support, see page 396.

- **Privileged communications.** The law considers certain relationships private and confidential. Attorney-client, doctor-patient, and husband-wife relationships are all considered privileged. This means that neither person can be forced to disclose information received as part of the relationship. The only information that is covered by this privilege is confidential communications between spouses that occur during the marriage.

Historically, a spouse who was a witness at a trial could not testify against his or her spouse unless the spouse consented, or agreed. However, the U.S. Supreme Court has decided that one spouse could testify against the other in federal criminal prosecutions without the spouse’s consent. Usually spouses cannot testify against each other in a civil case. A person can testify against a spouse under certain circumstances, such as when one spouse is accused of abusing the other. Communications between parents and children are not considered privileged.

they have be brought up? Today, some couples use prenuptial agreements to put some of these issues in writing. A **prenuptial agreement** is a written document made before marriage that sets forth certain rights and responsibilities of the husband and wife (for example, whether any alimony will be paid in the event of a divorce).

In most matters, wives and husbands are free to make their own decisions and to work out their own problems. Except in rare cases, the law does not interfere in everyday family life. There are, however, some issues you should be aware of:
• **Inheritance.** If a husband or wife dies, the other spouse is automatically entitled to a share of the deceased’s estate. This amount varies from one-third to one-half, depending on state law. One spouse may leave the other a different amount of money in a will—either more or less than the statutory share. However, the surviving spouse usually has the option to give up the amount in the will and to take the statutory share instead. Even if a spouse is left out of a will, state laws usually give the survivor the right to receive a portion of the estate.

**Problem 31.7**

a. Raul is in an auto accident with a delivery truck. At the hospital, he tells his wife, Serena, that the accident was all his fault. Later, in a lawsuit for damages resulting from the accident, the delivery company subpoenas Serena to testify about Raul’s statements at the hospital. Does Serena have to testify against her husband? What if Raul had made the statements to his daughter? Could she be forced to testify about those statements?

b. Brent has argued with his wife, Liza, for years. In a fit of anger, he rewrites his will, leaving his entire fortune to charity. If Brent dies, will Liza be left with nothing? Explain your answer.

c. James and his wife, Eleanor, both work for local companies. The company James works for is experiencing financial difficulties. He is offered a better position with a company 400 miles away. Eleanor is doing very well in her job and would rather not move. How do they decide what to do? Who has the legal right to make the final decision? Who should have that right?

**Spouse Abuse**

Domestic abuse occurs across the entire spectrum of relationships. While this section specifically addresses the issue in the context of a traditional marriage, it is important to remember that the same trends, problems, and legal issues apply in all intimate relationships, including heterosexual and same-sex couples and teenage dating situations.

Spouse abuse occurs among families of all economic backgrounds and in all urban, suburban, and rural settings. Spouse abuse is an underreported crime. Victims suffer injuries ranging from psychological damage to severe battering and murder. In fact, spousal assaults are more likely to result in serious injuries than assaults committed by strangers. Approximately 18 percent of all murders in the United States involve people who are related, and many of these are husband-wife killings. Both women and men can be abusers, but women suffer 85 percent of the injuries inflicted by spouses. An estimated four million women are abused each year. In homes where a spouse is abused, there is also a higher risk for child abuse.
Abuse is rarely a one-time incident. Batterers typically repeat the act, often with increasing severity. Spouse abuse, however, often remains behind closed doors and may go undetected or ignored by friends and neighbors.

Historically, the police and the courts have been reluctant to get involved in domestic disputes. In fact, until the late 1800s, it was legal in most states for a man to strike his wife. Even after spousal battering was outlawed, police often refused to respond to requests for assistance from battered women or to arrest battering husbands. Police officers hesitated to become involved in domestic disputes, in part because they lacked training in safe, effective methods of intervention. In the past, most police officers were taught to either “counsel” the abuser and the victim or to make the abuser leave the home for several hours or more.

These practices have changed. Most urban police departments now encourage officers to arrest spouses or domestic partners who are suspected of assault. Most states have enacted statutes that require the arrest of alleged batterers if there is any sign of abuse, even if their injured spouses refuse to sign complaints against them. Advocates of arrest point to studies that show that arrest is the most effective way to prevent repeated abuse.

Still, prosecutors sometimes do not bring charges against abusive spouses and are often more willing to reduce the charges than in cases of assault between two strangers. This may be because the battered spouse feels threatened by the perpetrator or because the evidence against the batterer is weak. Some judges merely dismiss spouse abuse cases or give warnings or probation to spouses who are found guilty. They cite the need to protect family privacy or to promote domestic harmony as the reason for their inaction. However, other judges recognize that there may be little family harmony to protect when one family member is assaulting another.
The federal Violence Against Women Act has created an Office on Violence Against Women in the U.S. Department of Justice. This law addresses domestic violence, sexual assault, and stalking, as well as strengthening federal laws. It also creates protections against dating violence, establishes nationwide enforcement of protection orders, and expands stalking laws to include cyberstalking. The act authorizes expenditures for a wide range of counseling and education programs, shelters and temporary housing, advocacy groups, protections for children and the elderly, and other services.

Despite advances in the law and in society’s recognition of the problem, spouse abuse continues to be difficult to combat because of the intense emotional strain it places on women, its primary victims. Several factors contribute to the vicious cycle of violence that is spouse abuse, often including a woman’s belief that the abuse is somehow her fault and that she can make the situation better. An abuser often apologizes, promises to change, and then provides gifts in an attempt to gain forgiveness.

Additionally, women face enormous barriers to leaving an abusive relationship. These barriers make it difficult to find safety or to successfully prosecute their abusers:

- Women fear retaliation from their abusers if they try to leave, go to the police, or press charges.
- Often, the woman is not the family’s primary wage earner, and she faces economic hardship if she leaves or if her husband goes to jail, especially if she has children.
- A woman may face pressures to stay, including community mistrust, cultural norms, language barriers, and immigrant status.
- A woman may feel that to leave would hurt the family by breaking up the marriage and taking the children away from their father.

While victims of abuse can receive help through counseling, spouse abusers usually need treatment to help them learn to change their pattern of behavior. Abusers are frequently addicted to alcohol or drugs and must deal with their addiction as well as their abusive behavior. Independent men’s organizations, in addition to services started by battered women’s programs, offer men counseling and support. Social service agencies and faith-based organizations often can refer men to nearby programs.
Some state statutes require counseling for spouse abusers as a condition of their probation. So, even though many women do not want their abusive husbands to go to jail, the most effective way to ensure that a batterer receives counseling may be to prosecute him.

At one time, men could not be criminally prosecuted for raping their wives. All 50 states and the District of Columbia now recognize marital rape as a crime. In addition, a battered wife can file a civil damage suit against her husband for rape.

**Problem 31.8**

a. Why do you think that in the past courts did not prosecute husbands for raping their wives?

b. Assume you are a prosecutor. A woman files a complaint against her husband, stating that he forced her at knifepoint to have sexual intercourse with him. She tells you that she and her husband have been arguing violently for years. Knowing that a rape conviction carries a penalty of 20 years in prison, would you file a rape charge against the husband? Explain your answer.

c. Assume that the facts are the same as in question b, except that the husband and wife are legally separated. Should it make any difference in proving rape that the couple is separated rather than living together?

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**The Case of . . .**

**Spouse Abuse**

Late one night, you hear screams and the sounds of crashing furniture coming from the apartment next door. You look out in the hall and see your neighbor, Mrs. Darwin, being slapped and punched by her husband. Before she can get away, Mr. Darwin pulls her back in and slams the door. You hear breaking glass and more screams. You know that Mr. Darwin has a drinking problem. You also know that this is not the first time he has beaten his wife.

**Problem 31.9**

a. If you were the Darwins’ neighbor, what would you do? Would you call the police? If so, what would you tell them? If you would not call the police, explain why not.

b. If you were a police officer, what would you do in this situation? Would you question the couple? Would you arrest the husband? Would you remove the wife from the house?

c. If you were the husband, how would you react to the police in this situation? If you were the wife, how would you react? Would you press charges against your husband? Would you stay in the home? Would you do something else?

d. Suppose you are a judge confronted with the Darwin case. Would you send Mr. Darwin to jail? Would you take some other action? What other information would you want to know?

e. Besides calling the police, what are some other things Mrs. Darwin could do about the problem?
Both victims and their abusers need to seek help to end the cycle of spouse abuse. The first incident of domestic violence is rarely the last. Victims of abuse can take the following steps:

- **Call the police.** Assaulting anyone is a crime, and many consider arrest to be the most effective means of halting spouse abuse. Even if the police do not make an arrest, a police report can support later legal action. For instance, victims can later (1) file charges on their own and testify against their spouses, (2) request protective orders, or (3) file for divorce.

- **Consult a domestic violence advocate.** Various organizations can provide victims of domestic violence with assistance in the areas of economic independence and safe housing. They may also offer the opportunity to participate in a support group for battered persons.

- **Obtain a protective order.** Courts can order an abuser to (1) stop the abuse, (2) cease all contact with his or her spouse, (3) leave the home, (4) get counseling, or (5) do something else. Violating a court order is considered contempt of court, and a person found guilty of contempt can be jailed or fined.

- **Move out.** The law does not require an abuse victim to stay in the family home. Despite the significant barriers they face, it is possible for the victim to leave the home, and help is available. Many communities have protective shelters where a woman and her children can live temporarily. Either the police or crisis hotline personnel can help a victim locate a shelter. She should then notify a friend or relative of her reasons for leaving.

- **Obtain a divorce.** If a couple is legally separated, one spouse has no right to enter the other’s home without permission. Local bar associations, legal aid offices, family courts, and women’s organizations can give victims information about divorce.
Legal Issues for Single People in Nontraditional Relationships

In recent years, there have been increases in the number of unmarried couples living together and in the number of unmarried couples with children. In the past, if a man and a woman lived together, shared household duties and expenses, and then split up, they could usually go their separate ways without legal obligation. On the other hand, if the couple had been married, numerous laws would have set out their legal rights and duties concerning divorce, division of marital property, child support, and other issues.

The situation is changing for single people in nontraditional relationships. Unmarried adults should be aware that legal issues can arise when single people live together. Certain legal rights and duties may exist between the partners.

Some unmarried couples develop a cohabitation agreement—a written or oral contract that outlines how they want to deal with their money, property, or responsibilities during and after their relationship. At one time, courts would not enforce agreements between unwed couples with respect to support or property ownership. Courts did not require that one member of the couple make payments, sometimes called palimony, to the other after the breakup. Courts said that contracts could not be based on an immoral relationship or be used to enforce an agreement for sex. If an unwed couple separated, any property went to the person who had legal title to it. In relationships in which the man was the wage earner and the woman was the homemaker, this meant the man often got all the property. In these situations, the wage earner owned any property acquired with his wages.

The rules changed in 1976 with the California supreme court’s decision in *Marvin v. Marvin*. Since then, some state courts have enforced cohabitation agreements between unwed couples, including same-sex couples. In *Marvin v. Marvin*, the court ruled that unmarried adults who voluntarily live together can make contracts regarding their earnings and property rights. For the first time, a court said that unmarried persons might be entitled to property rights and certain survivor benefits similar to those of married couples. Nevertheless, for this to happen, the court said that there must have been some form of contract between the partners. Only Oregon’s courts recognize such property rights without the existence of a contract, and some states do not do so under any circumstances.
The Model v. The Football Player

After seeing a photograph in a magazine, a professional football player named Bill phoned a modeling agency to arrange a meeting with Heather, one of its models. Bill and Heather began dating. Later, Heather left her career and moved in with Bill. They never married. Three years later, Bill left Heather and moved in with an actress. Heather filed a breach of contract and unjust enrichment suit against Bill. She claimed that she had worked without pay as Bill’s homemaker, chauffeur, and business and public relations manager and that Bill had received financial benefits from these services. She said he had promised to pay her at least $2,000 per month for helping with his career but had never done so. Heather’s suit demands that Bill pay her $680,000 plus attorney’s fees.

Problem 31.10
a. Why did Heather sue Bill?
b. Assuming that an unwritten contract is enforceable in the state where they lived, should the court enforce the agreement?
c. What effect do you think enforcing such unwritten agreements between unmarried couples will have on marriages? What effect will it have on relationships between unmarried couples?
d. Do you think Heather and Bill should have signed a cohabitation agreement? If so, what terms should they have included?

Same-Sex Partners

The U.S. government provides many rights and protections to heterosexual married couples. These include Social Security benefits, veteran’s benefits, health benefits, hospitalization visitation, certain tax benefits, pensions, and family leave. In recent years, gay and lesbian couples have been asking the government to recognize their relationships and to end what some believe is unfair discrimination in conferring marriage rights and protections.

In 1996, the U.S. Congress passed the federal Defense of Marriage Act (DOMA), which President Bill Clinton signed into law. This law created a federal definition of marriage as the union of a man and a woman. DOMA also allowed each state to decide whether or not a same-sex union created in another state would be recognized. This law has been controversial for several reasons. One point of contention is that the legal definition of marriage had traditionally been left to each state. In addition, the U.S. Constitution’s Full Faith and Credit clause (Article IV, Section 1) generally requires each state to recognize the legislative acts and final court judgments from other states, rather than making that recognition optional. For these reasons, some people have argued that DOMA is unconstitutional, but as of 2008 no federal court has ruled on this question.
Since 1996, many states have reconsidered their definition of marriage. Today, more than 30 states have passed state laws or amended their constitution to declare same-sex marriage invalid and to deny recognition in those states of same-sex marriages created in another state.

On July 1, 2000, Vermont became the first state to recognize civil unions. In states that recognize civil unions, many traditional marriage rights are extended to same-sex couples. While it was careful not to define such a union as a marriage, the law allows two persons to establish a relationship that will be recognized by the law and must be dissolved by the law. The civil union law protects many spousal benefits that would apply to partners in a traditional marriage. It also provides the same protections with respect to children as those provided to a married couple. One important difference between civil union and marriage is that only marriage confers federal benefits and protections. The states of Connecticut (2005), New Jersey (2006), New Hampshire (2007), Oregon (2008), and New York (2008) also recognize civil unions.

A few other states, the District of Columbia, and some localities provide limited spousal rights for same-sex couples. These laws are sometimes called domestic partnership laws. They sometimes require that employers who offer fringe benefits such as medical, dental, disability, and life insurance to their employees must include domestic partners in the same way that the benefits would be available to an employee’s spouse. In 2004, Massachusetts became the first state in the United States to recognize legal marriages between people of the same sex. In 2008, the California supreme court found that the state’s prohibition of same-sex marriage was a violation of the state constitution.

Denmark first recognized civil unions in 1989, and the other Scandinavian countries (Finland, Iceland, Norway, and Sweden) followed suit during the 1990s and into the twenty-first century. Many European countries now recognize either civil unions or same-sex marriage. In 2003 Canada granted same-sex couples the right to marry. Outside of Europe and North America, however, there is little recognition of same-sex marriage or civil unions.
Defining *Marriage*: A Legislative Simulation

Assume that a state law says that “only a marriage between a man and a woman is valid in this state.” The same state has laws that provide a specific protection against discrimination based on gender. Five same-sex couples apply for marriage licenses at their respective county clerk’s office. Each request is denied. The couples file a lawsuit against the county clerks, claiming that the state has engaged in illegal discrimination based on gender and also denied them their fundamental right to marry.

The trial judge rules in their favor. On appeal, the state’s high court reverses the lower court decision in a narrowly divided decision. The majority of justices declare that the state’s existing marriage law does not discriminate based on gender and that there is no fundamental right to marry a person of your own gender. But the majority also says that the legislature has the power to change the law.

The dissenting judges contend that a prohibition against same-sex marriage today is like the prohibition against interracial marriage that the Supreme Court struck down in 1967.

After the state supreme court decision is handed down, several legislators introduce a bill that redefines *marriage* in their state as “between two people not otherwise prohibited from marrying.” The state legislature holds a public hearing on the bill, and the following witnesses testify.

**Witness 1:** Public opinion in our state does not favor same-sex marriage. We don’t believe in discrimination, but the current marriage law does not discriminate. Our state supreme court has already decided this. It simply requires that a marriage be between a man and a woman. The purpose of this existing law is to promote family life as we have always known it in this state.

**Witness 2:** If same-sex couples are harmed by our current law, we can pass a law that deals specifically with those harms. For example, I agree that domestic partners should be able to ride in an ambulance together or visit a sick partner in the hospital. We can deal with those problems without the drastic step of redefining *marriage* in our state.

**Witness 3:** Our state’s declaration of rights—“equality of rights under the law shall not be abridged or denied because of sex”—makes it clear that either same-sex marriage or at least some form of civil union is required by law. Same-sex couples in this state are denied many rights enjoyed by every opposite-sex married couple. The new law redefining *marriage* will make it possible for same-sex couples to protect their families just as opposite-sex families do.

**Witness 4:** Tradition cannot be used as a justification for the government’s prejudice or animosity toward one group. Under current law, same-sex partners cannot take family or medical leave to care for a sick partner, visit a partner in a nursing home or hospital, receive Social Security or pension benefits in the event of the partner’s death, or take advantage of government services provided to help families in crisis. This law must be changed. It is a civil rights issue.

**Problem 31.11**

*a.* Organize the class into six groups. One group will be state legislators who should prepare questions for the witnesses. Four groups will prepare statements in favor of or against the new bill. A final group will prepare news accounts of the hearing.

*b.* Conduct the hearing. Decide whether or not to recommend this bill for approval. Give the reasons for your answer.