

UNIT 7

Family Law

In This Unit You Will Find:

Chapter 20
Marriage and Divorce

Chapter 21
Insurance and Estate
Planning



.....▶
Looking Ahead Once you finish your education, you may look forward to traveling, getting a good job, or buying a home. *What are some of the aspects of life that require long-term planning?*

Thematic Project Preview

Health Insurance Legislation

As you read this unit, use this checklist to prepare for the unit project:

- ✓ List the laws and the legislation governing health care.
- ✓ Compare advantages and disadvantages of a health care legislation policy.
- ✓ Explain why a particular aspect of health care has been contentious.
- ✓ Determine the outcome of an issue in the health care debate.

Legal Portfolio When you complete the Unit Thematic project, you will have a guide to the politics of health care law for your portfolio.



Protecting Your Future

Log on to glencoe.com to explore various laws and contracts to protect your assets and standard of living. List your findings in your WebQuest folder to share with your class.



Find Unit 7 study tools such as **Graphic Organizers**, **Academic Skills Review**, and **Practice Tests** at glencoe.com.

Ask

STANDARD & POOR'S

Manage Your Finances

Q: I notice that there are now credit cards for students. Should I get one?

A: Credit cards can be more convenient to carry than cash and they can be useful in an emergency. If you use them wisely, they can help you build a strong credit rating that will make it easier to get a car or home loan later. However, you should not accept just any credit card offer. Shop around first and read the fine print on the applications. Look for cards that have low interest rates and no annual fees. Do not be fooled by cards with low introductory rates that go way up after a few months. Do not use a credit card to borrow cash: the interest rates for cash are much higher than they are for store purchases. If you cannot pay off the card every month, pay as much as you can. Credit card balances continue to accumulate interest charges. If you only make the minimum monthly payment, it can take years to pay off the card and cost thousands of dollars in interest.

Language Arts/Reading Standard & Poor's is one of the world's main providers of credit ratings and financial-market indices. Go to glencoe.com and read more about managing your finances.

Marriage and Divorce

BusinessWeek News

Better Loving Through Chemistry?

By Catherine Arnst

On October 11, the largest online dating site, Match.com, launched Chemistry.com, a new service that attempts to use neuroscience to come up with the ideal match for its subscribers. The centerpiece is a lengthy questionnaire designed by Helen Fisher, an anthropologist at Rutgers University whose recent book, *Why We Love: The Nature and Chemistry of Romantic Love*, lays out the biology behind our romantic choices.

So how does Chemistry.com do its magic? By studying brain scans and behavioral studies, Fisher theorizes that the type of person who can ring your bell is hard-wired into your neurons. Embedded in each of our brains is a “love map,” she says, that guides our choice of a mate. Chemistry.com’s questions are meant to decipher that map. It then runs each profile through a proprietary computer algorithm to find that special someone who will light up your neurons. And you thought romance was in the stars.

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to glencoe.com for Flex Your Reading activities, more information on reading strategies for this chapter, and guided practice in reading about marriage and divorce laws.





Age of Consent A marriage is a personal relationship, but it is also a civil contract.
How old do you have to be to get married without parental consent?

What You'll Learn

- ◆ Name the rights and duties involved in marriage.
- ◆ Describe the different types of marriages.
- ◆ Explain the types of marriages that are prohibited by law.
- ◆ List the requirements of a legal marriage.

Why It's Important

If you ever get married, you need to know what the rights, responsibilities, and requirements of marriage are.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

English Language Arts (NCTE 12) Use spoken, written, and visual language to accomplish your own purposes.

Social Studies (NCSS 10) Study the ideals, principles, and practices of citizenship in a democratic republic.

Reading Guide**Before You Read**

Connect A wedding is the final step in a long process. What are some decisions a couple should make before they marry to avoid problems in the future?

Focus on Ideas

Marriage is a legal contract that binds the parties to specific legal rights and obligations.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.

Marriage Rights and Duties**Rights****Duties****Support**

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**Key Terms**

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- marriage
- prenuptial agreement
- common-law marriage
- bigamy
- polygamy
- consanguinity
- affinity

**Academic Vocabulary**

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- spouses
- status
- ceremony

Understanding Marriage Law

What is legally considered a marriage?

Marriage is considered the basis of the family unit and vital to the preservation of traditional values and culture. **Marriage is defined by most states and the federal government as the legal union of one man and one woman as husband and wife.**

The Marriage Contract

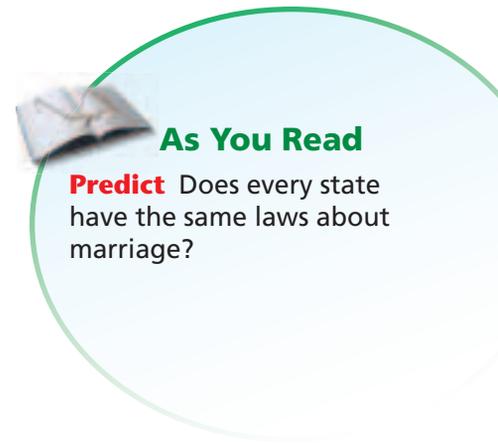
Is an engagement ring a kind of contract?

Marriage is not just a personal relationship between two people. It is also a contract. The engagement represents the offer and acceptance of the contract. The consideration is the promise to give up one's right to remain single. During engagement, the marriage contract is in its executory stage. It is fully executed when the wedding occurs.

In some states, a man is entitled to the return of the engagement ring when an engagement is called off. The legal theory holds that the ring is a contingent gift, dependent upon carrying out the marriage. In other states, the courts have allowed a woman to keep the ring if the man ended the engagement.

Prenuptial Agreements

Before marrying, soon-to-be **spouses** sometimes create a prenuptial, or premarital agreement. **A prenuptial agreement is a written and signed legal contract couples make before getting married dealing with property and support issues.**



As You Read

Predict Does every state have the same laws about marriage?

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.



Ureneck v. Cui

798 N.E.2d 305 (Mass. App. Ct. 2003)

Joseph Ureneck runs Rainbow International Marriage Service, Inc. (Rainbow), a Massachusetts company, from a hotel in Beijing, China. Rainbow maintained a Web site that was marketed as “a personal and convenient way to meet your marriage partner.” Clients paid Rainbow a fee of \$700 to put their profiles on the Internet. If a match led to a marriage, clients agreed to pay Rainbow a second fee of \$7,500 within 60 days of getting married. On May 20, 1995, Ping Cui paid her registration fee, and her profile was placed on the Web site. On November 28, 1997, John Choma met Ms. Cui on the Web site. On May 18, 1998, Ms. Cui sent a letter to Rainbow, stating she was unemployed and could not pay the \$7,500 fee if she found love, and requesting that her profile be removed from the Web site. Ms. Cui and Mr. Choma were married in Massachusetts on April 24, 1999. Ms. Cui did not pay the \$7,500 fee, so Rainbow sued for breach of contract.

Ruling and Resolution

The Massachusetts Appeals Court held that marriage brokerage contracts, where a third party is paid to negotiate or procure a marriage, are void as a matter of public policy in Massachusetts. Therefore, Rainbow could not sue for breach of contract because the contract was void.

Critical Thinking Should marriage brokerage contracts be legal?

This agreement lists the assets of each party, the rights each party has to control their property, and the division of property upon separation, divorce, and death. This formal agreement becomes effective upon marriage.

Marriage Rights and Obligations

Marriage changes a couple's legal **status**. The law gives them new rights and obligations as a married couple. This is not true for people who live together without being married. Marriage includes the right to:

- support by your spouse when necessary
- inheritance from your deceased spouse
- property if the marriage ends
- compensation to continue your standard of living if the marriage ends
- file a joint income tax return



Global Law

Marriage Laws in Kenya

The Kenyan Constitution recognizes five systems of marriage and grants all systems equal importance under the law. The five systems are: Customary Law, Islamic Law, Hindu Law, Christian Law, and Civil Law. The Christian Law and Civil Law systems are identical when it comes to marriage laws.

Civil & Christian Law:

- Civil law is based on the English legal and Christian belief systems.
- Marriages must be monogamous.
- Both the man and the woman must be at least 18 years of age.

Muslim Law:

- Muslim law is based on the Islamic faith and teachings of the Koran.
- In Muslim law a man may have as many as four wives at any given time.
- There is no minimum age for marriage; rather a party can marry once puberty is reached. However, a guardian can give permission for a prepubescent child to marry.

Hindu Law:

- Hindu law is based on the Hindu faith.
- Marriages are monogamous under Hindu law.
- The groom must be at least 18 years of age, while the bride need only be 16. If the bride is 16 to 18 years old, then permission must be granted by a guardian or by a court of justice.

Customary Law:

- Customary law is based on the traditional Kenyan tribal law.
- Under customary law, a man may have as many wives as he wishes.
- Like Muslim law, minimum age to marry is linked to reaching puberty.

Across Cultures: The Kenyan National Motto

The national motto of Kenya is *harambee*, which in Swahili means to pull together. Volunteers nationwide have taken that motto to heart and built numerous schools and hospital clinics throughout the country, and pooled money to send Kenyan children to study abroad.

Critical Thinking *Should different religious and ethnic groups be allowed to follow their own laws, even though their members are citizens of a particular country?*

The primary obligation of marriage is the duty of the spouses to be faithful to each other. This duty cannot be surrendered, even by agreement. In addition, all people, married or not, are obligated to refrain from causing bodily harm to those with whom they live. The law does not tolerate the physical abuse of spouses or children. Doing so is a criminal offense, punishable by imprisonment and the loss of the custody of one's children. In addition, all parents have the duty to support their children.

Types of Marriage

If two people simply claim they are married, are they legally married?

Each state has its own laws regulating the types of marriage it will recognize.

Common-Law Marriage

In the English common law system, people did not need a formal **ceremony** to be married. They could simply agree that they were married in a common-law marriage. A **common-law marriage is an informal type of marriage created by the parties themselves.** Today, 11 states and the District of Columbia still allow common-law marriages. In the remaining 39 states, only ceremonial marriage is recognized. However, under the U.S. Constitution's Full Faith and Credit clause, every state must treat as valid common-law marriages that originated in other states. States that continue to allow common-law marriage require that the parties agree, by words in the present tense, that they are husband and wife. There is no such thing as a common-law divorce.

Ceremonial Marriage

In early colonial times, a marriage ceremony had to be performed by a cleric or magistrate in a specific manner. Today, most states still require some kind of ceremony to formalize the marriage, but no particular form need be followed. However, the parties must declare that they are married in the presence of a person authorized by state law to conduct marriages.

Proxy Marriage

The Uniform Marriage and Divorce Act allows a proxy marriage. A proxy marriage occurs when one or both of the parties cannot be present for the wedding ceremony. Instead, an agent acts on behalf of the absent party.

Covenant Marriage

The covenant marriage, adopted in Arkansas, Arizona, and Louisiana, is an attempt to reduce divorce and protect children. The parties must have counseling before the wedding and during the marriage to solve conflicts. In most cases, the couple can divorce only after a period of separation.



Reading Check

Enumerate List the marriage rights that spouses are entitled to receive from each other.



Bigamy: *n* The state of being married to two people at the same time. From Latin *bi* = two + Greek *gamos* = marriage.

Polygamy: *n* The state of being married to multiple people at the same time. From Greek *poly* = many + *gamos* = marriage.

Vocabulary Builder The Greek root *poly* means *many*. List and define five words that contain this root word.

Look It Up! Check definitions in *Black's Law Dictionary* or an online glossary. For direct links, go to glencoe.com to find more vocabulary resources.



Marriages Performed Internationally

If Americans get married abroad, those marriages are usually recognized in the United States as valid, as long as the marriages are legal in those foreign countries. Similarly, most marriages in the United States are recognized in other countries.

Prohibited Marriages

Is it illegal for first cousins to marry?

Certain types of marriages are prohibited in every state of the country, while others are prohibited in just some states.

Bigamy and Polygamy

Bigamy and polygamy are crimes under the laws of every state in this country. **Bigamy is the illegal act of having two spouses at the same time. Polygamy is the illegal act of having more than two spouses**

at the same time. Thus, any marriage that occurs while one party is already married is void in every state. Any children born of a man and woman whose marriage is void are considered illegitimate. In some states, if one of the parties married without knowing the other party was already married, the second marriage becomes valid upon the death or divorce of the partner to the first marriage.

Marriage between Relatives

Some states have statutes that prohibit marriage between persons related by consanguinity or by affinity. **Consanguinity means related by blood. Affinity means related by marriage.** For example, many states prohibit the marriage of first cousins. Almost half the states do not have a law against marriages between persons related by affinity, such as the brother of one spouse marrying the sister of the other spouse.

Requirements of a Legal Marriage

Why do you have to go through a waiting period before you get married?

Depending on the state, there are various requirements that must be followed in order for a marriage to be legal.

Age Requirement

In nearly every state except Mississippi and Nebraska, you can marry at age 18. Teens younger than 18 can marry only with the consent of a parent or guardian. Laws requiring parental permission are intended to prevent minors from entering into unsuitable or coerced marriages.

Making Wedding Plans

Preparing for marriage includes meeting certain legal requirements, such as obtaining a marriage license. *Where can you obtain a marriage license?*

However, marriage age differs around the world. Some countries allow children to be married as young as age 13.

Marriage License

You must get a marriage license before you can get married. This is a certificate issued by a government office giving permission to marry. Once issued, the license becomes effective after any waiting period required by state law. The license will expire if the couple does not marry during the prescribed time period. A common-law marriage does not require a license.

Waiting Period

Most states require a waiting period to give the couple time to reconsider their decision. Also, a waiting period may allow evidence of fraud, force, or jest to be uncovered. Moreover, the delay gives interested parties, such as the parents, an opportunity to object on other grounds.

Blood Test/Physical Examination

Some states require a blood test before a marriage license is issued. Such tests screen prospective spouses for AIDS, venereal disease, sickle cell anemia, rubella (German measles), and infectious tuberculosis.

Use of Names

After marriage, the parties may use any name provided they do not commit fraud. A wife does not have to adopt her husband's surname. Today, many married women continue to use their maiden name, or they hyphenate their name with their husband's surname.



After You Read

Summarize List the requirements the parties must fulfill in a legal marriage.

SECTION 20.1 ASSESSMENT

Self Check

1. What is the primary obligation of marriage?
2. What types of marriages are prohibited by law?
3. What is required in most states for a marriage to be legal?

Academic Connection

English Language Arts

More and more couples are signing prenuptial marriage agreements before

they marry. A prenuptial marriage agreement is a contract that spells out how a couple will handle the financial aspects of their marriage. Although not very romantic, having this honest financial discussion before a wedding can be a very positive experience. Review samples of prenuptial agreements available on the Internet and use them as a guide to write your own. In class, compare your agreement

with other students' agreements and discuss what you would and would not change.

Critical Thinking Activity

Surnames Although it is traditional when people get married for the wife to take the husband's surname (last name), many women today choose to keep their own surname. Why do you think this is?



Go to glencoe.com to check your answers.

Divorce and Its Legal Consequences

What You'll Learn

- ◆ Describe the differences between an annulment, a legal separation, and a divorce.
- ◆ Identify the common grounds for divorce.
- ◆ Explain the issues involved in a divorce settlement.

Why It's Important

Before you ever consider getting a divorce, you need to know what the legal grounds and consequences of divorce are.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Math (NCTM CS2 3)
Recognize and apply mathematics in contexts outside of mathematics.

Social Studies (NCSS 4)
Study individual development and identity.

Reading Guide



Before You Read

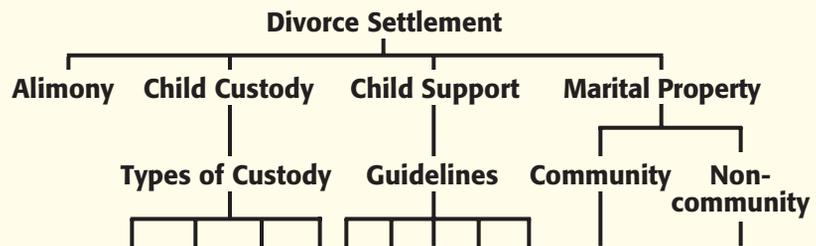
Connect Almost one-half of all marriages end in divorce today. Can you think of ways to help reduce the divorce rate?

Focus on Ideas

In a divorce, issues of alimony, child support and custody, and division of property must be legally settled.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- annulment
- divorce
- adultery
- no-fault divorce
- alimony



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- persistent
- reconciliation
- capacity

How Marriages End

Is divorce the only way a marriage can end?

A marriage comes to an end in one of three ways: the death of a spouse, annulment, or divorce. Couples can also become legally separated, without a divorce or annulment. Annulment and divorce are subject to specific state laws.

Annulment

An **annulment** is a declaration by the court that a marriage was never valid. To have a marriage annulled, the parties must go before a probate court judge and prove certain grounds. Proof varies from state to state, but two common grounds the courts accept are duress and fraud. Duress is when someone is forced to marry against his or her will. Examples of fraud include being below the state's legal age to marry, secretly intending never to have children, or concealing pregnancy by someone other than the husband.

Legal Separation

A legal separation, also called a limited divorce or a separation from bed and board, is a court judgment ending the right to cohabitation. In making a separation judgment, the court will temporarily decide the issues of child custody and support. The two people remain married until there is a final divorce, which does not need to follow immediately.

Divorce

A **divorce** (called **dissolution of marriage in some states**) is a declaration by the court that a valid marriage has come to an end. The procedure for obtaining a divorce varies from state to state. The process may be contested by the parties, or they may agree to the divorce.

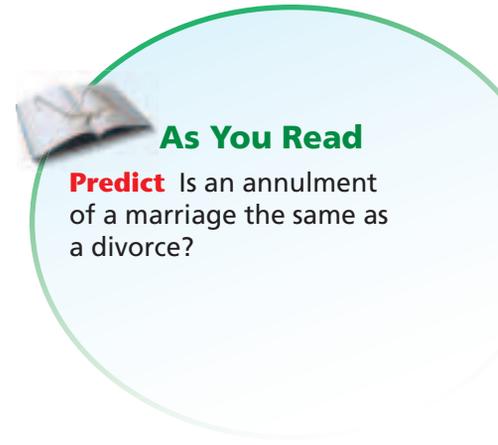
Grounds for Divorce

Do you have to prove anything in court to get a divorce?

States differ on the grounds they accept for divorce. The most common grounds are explained below.

Adultery

Adultery is when one spouse has sexual relations with someone outside of the marriage. It is a crime in some states, in addition to being grounds for divorce. Because of its private nature, criminal adultery is difficult to prove beyond a reasonable doubt. Without solid proof, the injured spouse must show convincing circumstantial evidence that the other spouse had the opportunity to commit adultery and the inclination to do so.



As You Read

Predict Is an annulment of a marriage the same as a divorce?

Reading Check

Analyze Why do the states ask couples to live apart for a while before allowing the divorce to occur?



Cruelty

To prove cruelty, a spouse must show that there was personal violence that endangered his or her life or health. Usually, more than one act of violence is required. Sometimes, a spouse can claim cruelty due to mental suffering, not physical violence.

Other Grounds

Other grounds include desertion, alcohol or drug addiction, and nonsupport. Desertion is the unjustified separation of one spouse from the other with the intent of not returning. The length of separation to qualify as desertion is one year in most states. Alcohol or drug addiction must be confirmed, **persistent**, voluntary, and excessive. Divorce can be based on nonsupport if one spouse can show that the other had the ability to provide economic support but willfully failed to do so. Husbands, as well as wives, may claim nonsupport as grounds for divorce. Many states allow a divorce if one spouse is convicted of a felony or imprisoned for a certain number of years after the marriage occurs.

No-Fault Divorce

Almost all states now have a no-fault divorce law. A **no-fault divorce is a divorce granted without either party having to prove the other party guilty of misconduct**. The parties simply agree that they have a personality conflict so deep that there is no chance for **reconciliation**. Many states require that the spouses live apart for a period of time before the divorce is finalized. Some states have reconciliation bureaus that attempt to save the marriages through counseling.

Divorce Settlement

How do courts decide who gets custody of the children?

The parties in a divorce must come to a legal settlement regarding the issues of alimony, child custody and support, and distribution of property (see **Figure 20.1**).

Alimony

Alimony is an allowance for support paid to one person by the former spouse in a divorce. In an at-fault divorce, the spouse who is found to have been at fault will not be awarded alimony. In determining alimony, each person's age, income, and financial resources are considered. Their obligations and number of dependents are taken into account. Also examined are each spouse's future earning **capacity** and separate property owned. Software is often used to make alimony calculations today.

Child Custody and Support

Parents are considered to be joint guardians of any offspring born during their marriage. Upon divorce, each parent has an equal right to custody of the children. Most states divide custody into two parts:

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Figure 20.1 Divorce Settlement



Marital Property In non-community property states, assets gained during marriage are usually divided according to how much each spouse contributed. In community property states, assets gained during marriage are usually divided in half.



Child Custody Most states divide custody into legal custody and physical custody. Legal custody determines a parent's right to make major decisions about the child's health, education, and welfare. Physical custody deals with the daily living arrangements of the child.



Alimony and Child Support The amount a spouse receives in alimony is based on factors such as the income, earning capacity, financial resources, health, and age of the spouses. Child support is usually paid by the noncustodial parent to the custodial parent and must cover a child's basic needs.

 Federal regulations require every state to adopt child support guidelines. *What information do you think should be in a mathematical formula to determine parents' support obligations?*



Case Study – Adlakha v. Adlakha



Critical Thinking *Should Mr. Adlakha receive alimony? Why?*



Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.

Divorce Settlement Mr. and Ms. Adlakha were married in India in 1984. Immediately after getting married, Ms. Adlakha requested a divorce. She decided to stay in India while Mr. Adlakha moved to the United States. Ms. Adlakha then changed her mind and moved to the United States to study medicine. Between 1985 and 1995, Mr. and Ms. Adlakha lived together for a total of three years. Ms. Adlakha became a doctor, while Mr. Adlakha worked as a nuclear engineer. After Mr. Adlakha lost his job, the two parties lived together from 1996 until 2002. The couple separated in 2002. At the time divorce proceedings began, Mr. Adlakha worked as a salesperson for \$10 per hour. In the divorce decree, the judge determined that Mr. Adlakha would receive \$731,283 in marital assets, plus \$600 per month in alimony for two years. Ms. Adlakha would receive \$504,461 in marital assets and their house in Massachusetts. Ms. Adlakha appealed, arguing Mr. Adlakha deserved no alimony. Mr. Adlakha appealed, arguing that there should be no time limit on his alimony.

Adlakha v. Adlakha, 844 N.E.2d 700 (Mass. App. Ct. 2006)



Go to glencoe.com for more case study practice.

- **Legal custody** deals with a parent's right to make major decisions about the child's health, education, and welfare.
- **Physical custody** deals with which parent the child will live.

Courts can declare sole or joint custody. Sole custody gives all parental rights, duties, and powers to one parent. The children live with that parent and the noncustodial parent has visitation rights. In contrast, joint custody gives both parents rights and duties. Children may live with each parent at different times. In awarding custody, the court attempts to determine the best interests of the child. Some states favor awarding custody to the primary caretaker, that is, the parent who spent the most time caring for the child. Many states give great weight to the child's personal wishes.

Child Support Guidelines Child support is a basic obligation of every parent. This obligation exists regardless of which parent has custody. Federal regulations require every state to adopt child support guidelines, following these principles:

- Both parents should share responsibility for child support in proportion to their income.
- The financial needs of each parent should be considered, but each parent must contribute more than zero.
- Child support must cover a child's basic needs and ensure that the child shares in a parent's standard of living.

- Each child has an equal right to share in a parent's income, the income of a current spouse, and other dependents.
- Each child is entitled to support, even if the parents were not married at the time of the child's birth.

Enforcement of Child Support Child support is enforced using a legal order obtained from a judge or from an administrative hearing officer. If a parent moves out of state, the support order must be enforced in any other state. Support orders can be registered in different states so that parents who do not pay can be found. Out-of-state employers can withhold support payments from an employee's paycheck. Federal and state income tax refunds can be garnished to pay for support. Liens can be placed on out-of-state real estate. Passports may also be denied to enforce child support orders.

Marital Property

State law and judges determine property distribution. Some states are non-community property states. In these states, the assets and earnings gained during marriage are divided proportionately. For example, the higher wage earner might take two-thirds of the assets while the lower wage earner receives only one-third. In contrast, in community property states, each spouse is entitled to a one-half interest in property acquired during the marriage. This applies regardless of which spouse purchased the property or if only one spouse worked. There are exceptions in community property states for property a spouse owned before marriage or received as a gift.



After You Read

Summarize What are the issues that a divorce settlement must cover?

SECTION 20.2 ASSESSMENT

Self Check

1. What are the two common grounds for annulment?
2. What are the most common grounds for divorce?
3. Explain the difference between sole custody and joint custody.

Academic Connection

Mathematics Jay and Kay were married for six years when they got a divorce. They have two children, ages 2 and 4. After taking into account the finances of

Jay and Kay, and granting Kay primary custody of the children, the court ordered Jay to pay 10% of his net income to Kay in alimony for one-half the length of the marriage, and 15% of his net income to Kay for child support until the children are 18. Jay's net income is \$40,000 per year. How much does Jay pay in combined alimony and child support the first four years?

CONCEPT **Number and Operations: Using Multiple Operations**
Calculate the amount for alimony and for child

support by multiplying the net income times the percentage for each. Then multiply the amount for each by the number of years. Keep in mind that Jay pays alimony only for half the length of the marriage.



For more math practice, go to the Math Appendix.

Critical Thinking

No-Fault Divorce Why do you think most states have a no-fault divorce law?



Go to glencoe.com to check your answers.

Chapter 20 Review and Assessment

Summary

Section 20.1 Marriage Laws

- ◆ Most states and the federal government define marriage as the union of one man and one woman.
- ◆ Marriage changes a couple's legal status and gives them new rights and obligations as a married couple.
- ◆ The primary obligation of marriage is the duty of the spouses to be faithful to each other.
- ◆ Types of marriage include common-law marriage, ceremonial marriage, proxy marriage, and covenant marriage.
- ◆ Prohibited marriages include bigamy and polygamy, and marriage between relatives.
- ◆ For a marriage to be legal requires a marriage license, a waiting period, a blood test, and a minimum age of 18 in most states.

Section 20.2 Divorce and Its Legal Consequences

- ◆ A marriage comes to an end in one of three ways: the death of a spouse, annulment, or divorce.
- ◆ An annulment is a declaration by the court that the marriage was never effective and was void from the beginning.
- ◆ A divorce is a declaration by the court that a valid marriage has come to an end.
- ◆ Common grounds for divorce include adultery, cruelty, desertion, alcohol or drug addition, and nonsupport.
- ◆ Almost all states have a no-fault divorce law.
- ◆ The parties in a divorce must come to a legal settlement regarding the issues of alimony, child custody and support, and distribution of property.

Vocabulary Builder

1 On a sheet of paper, use each of these terms in a sentence.

Key Terms

- marriage
- prenuptial agreement
- common-law marriage
- bigamy
- polygamy
- consanguinity
- affinity
- annulment
- divorce
- adultery
- no-fault divorce
- alimony

Academic Vocabulary

- spouse
- status
- ceremony
- persistent
- reconciliation
- capacity



Go to glencoe.com to play a game and improve your legal vocabulary.

Key Points Review

Answer the following questions. Refer to the chapter for additional reinforcement.

- 2 When does the marriage contract actually come into existence? Explain your answer.
- 3 What is a prenuptial agreement?
- 4 List five rights that are given by law to people when they marry.
- 5 What is a common-law marriage and how widely recognized is it?
- 6 What is the difference between an annulment and divorce?
- 7 What is a no-fault divorce?
- 8 What is the difference between legal custody and physical custody of a child?
- 9 How is marital property divided in community and noncommunity property states?

Standardized Test Practice

- 10 Read the following legal excerpt regarding marriage and the rights afforded through a legalized marriage, and then complete questions 1 and 2.

Marriage is the legal union of two people in which a ceremony is performed. Non-religious ceremonies, called civil ceremonies, must be performed by a judge, justice of the peace, or court clerk who has legal authority to perform marriages, or by a person given temporary authority by a judge or court clerk to conduct a marriage ceremony. Religious ceremonies must be conducted by a clergy member (priest, minister, or rabbi). Native American weddings may be performed by a tribal chief or by another official, as designated by the tribe. Federal laws regarding marriage and divorce are listed in the Uniform Marriage and Divorce Act. When you are married, your responsibilities and rights toward your spouse concerning property and support are defined by the laws of the state in which you live.

1. Marriage can best be defined as:

- A the legal union of two people in which a ceremony has been performed
- B two people agreeing to be married and sharing all their assets and debts
- C a legal agreement between two people that is witnessed to be married
- D the legal union of two people that is not witnessed or no ceremony is performed

2. Marriage responsibilities and rights between the spouses are defined by the:

- A Uniform Marriage and Divorce Act
- B state in which the couple resides
- C spouses in their prenuptial agreement
- D adopted customs and practices of society

**Test-Taking Strategies**

As you prepare to answer a question, first identify the verbs or words in the question that give you direction.



Apply and Debate

Read the following scenarios. Get together with other students in pairs or groups of three and take a position on each scenario. Debate your position in class with students taking the opposite position or prepare a written argument justifying your position.

11 Broken Engagement and the Ring

Despite Betty's warning him that she would break off their engagement, Rick took a ten-day fishing trip with his buddies. When Betty broke off the engagement, Rick asked for his ring back, but Betty refused, saying he caused the breakup.

You Debate *Assume the couple lives in a state that allows the woman to keep the ring if the man breaks off the engagement. Is Betty entitled to keep the ring?*

12 Premarital Agreement Difficulties

Reta, a wealthy heiress, fell in love with Darnell. Their premarital agreement allowed him nothing if he divorced her before 24 months, but after that he would be entitled to \$1 million. Darnell asked for a divorce 25 months after the wedding.

You Debate *Do you think Darnell is entitled to the \$1 million?*

13 A Long Separation

Dan and Vicki were married for 12 years. Due to incompatibility, they obtained a legal separation but never divorced. Ten years later, Vicki wanted the divorce and felt entitled to half of the assets Dan acquired after the separation.

You Debate *Assume the couple lives in a community property state. Do you think that Vicki is right to ask for one-half of Dan's assets?*

14 Who Takes the Children?

Luana and Dang have two sons and live in Texas. They are divorcing. Luana wants to move to Idaho to live with her parents. Dang, a wealthy executive who often travels, wants the sons with him. He is remarrying to a woman who will care for the boys.

You Debate *Which parent do you think should get custody of the sons?*

15 Dogs, Cats, and Divorce

Selma has acquired six dogs and eight cats since she and Sam got married. Sam now wants a divorce on grounds of irreconcilable differences. He cannot stand living with so many animals.

You Debate *If you were the judge in this case, would you suggest the couple seek counseling or would you agree to let them divorce?*



**Case Study Practice – Lukich v. Lukich**

16 Divorce or Annulment? In March 1985, George and Phyllis Lukich were married. They lived together as a married couple for 19 years. On August 21, 2002, Ms. Lukich filed for legal separation and an award of alimony, alleging that Mr. Lukich was physically cruel and adulterous. Prior to a decree of divorce, Mr. Lukich began to suspect that Ms. Lukich had never legally divorced her first husband, Charles Havron, whom she had married in 1973. The South Carolina authorities were able to provide a copy of the marriage certificate issued for Ms. Lukich and Mr. Havron. However, there was no evidence that they ever received a divorce decree. On September 25, 2003, Mr. Lukich filed for an annulment of his marriage to Ms. Lukich on the grounds that Ms. Lukich was a bigamist. Prior to a hearing on Mr. Lukich's motion, on October 21, 2003, Ms. Lukich filed for an annulment of her marriage to Mr. Havron on the grounds that they were married while they were intoxicated and that they had never actually lived together after they were married. Ms. Lukich was granted her annulment against Mr. Havron on October 31, 2003, so in the eyes of the law, Ms. Lukich was never married to Mr. Havron.

Source: Lukich v. Lukich, 627 S.E.2d 754 (S.C. Ct. App. 2006)

Practice Can Mr. Lukich still get an annulment of his marriage to Ms. Lukich?

17**Ethics****Application**

Green Card Marriage Rodney, an American, met Zuzana, a woman from Slovakia, in college. After graduating, Zuzana asked Rodney to help her become a permanent resident of the United States by marrying her. Rodney likes her, but is not sure he loves her. He knows that a fraudulent marriage is illegal, but that it is also difficult to prove. He wants to help his friend. The marriage would only be for two or three years.

- ◆ Do you think it is ethical for Rodney to marry Zuzana to help her gain U.S. citizenship?

18**Internet****Application**

Find out about Divorce Laws After twelve years of marriage, Marcus and Sharon have decided to divorce. Since they do not have children, only their assets have to be divided.



Log on to glencoe.com to access the Web site sponsored by FindLaw and find out the steps for filing for divorce, the time line for their steps, and these rights. Assume the couple lives in the same state as you.

**Reading Connection**

Outside Reading Go to glencoe.com for a list of reading suggestions about marriage laws.

Insurance and Estate Planning

BusinessWeek News

Interest Rates and Your Estate

By Anne Tergesen

As everyone knows, the ups and downs of interest rates can have a significant impact on the price of your home, the value of your investments, and what you pay for loans. But rates can also play a big role in estate planning. Indeed, when it comes to many popular types of trusts and other estate-planning techniques, even small moves in interest rates can make a big difference in what you'll be able to pass along to your heirs—or what you'll have to fork over to Uncle Sam. "It's simply a question of knowing which technique works better depending on the interest rate," says Blanche Lark Christerson, a managing director at Deutsche Bank Private Wealth Management. Of course, when shopping for a trust, your decisions should hinge not just on interest rates but also on factors such as the kind of assets you wish to transfer to heirs, the degree of control you'd like to maintain over your wealth, and whether you want to leave something to charity.

Flex Your Reading

Efficient critical reading involves being flexible with speed and comprehension. There are several ways of reading critically, and you need to fit a reading style to your needs and to the material.

Go to glencoe.com for Flex Your Reading activities, more information on reading strategies for this chapter, and guided practice in reading about estate planning.





Uninsured Many people do not have any kind of health insurance. *What can you do if you get injured unexpectedly and do not have health insurance?*

SECTION 21.1 Insurance

What You'll Learn

- ◆ Explain the meaning and purpose of insurance.
- ◆ Describe the different types of property insurance.
- ◆ Distinguish between types of life insurance.
- ◆ Identify the different types of health insurance.

Why It's Important

Knowing the different types of insurance that are available will help you protect your property and your health.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

Social Studies (NCSS 1)
Study culture and cultural diversity.

English Language Arts (NCTE 4)
Adjust the use of spoken, written, and visual language to communicate effectively with a variety of audiences and for different purposes.

Reading Guide



Before You Read

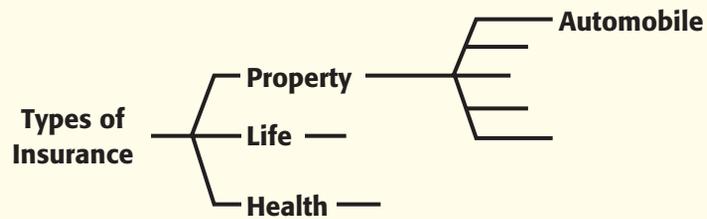
Connect If you drive, you probably have car insurance. What other kinds of insurance are there?

Focus on Ideas

People and businesses buy insurance to protect themselves against the loss of their property, income, health, or life.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- insurance
- premium
- beneficiary
- insurable interest
- straight life insurance
- term life insurance



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- comprehensive
- endowment
- routine

What Is Insurance?

Can you insure your iPod?

Insurance is an agreement in which one party (the **insurer**) compensates another party (the **insured**) for **any losses**. The purpose of insurance is to protect individuals and businesses against losses by spreading the risks of loss among a large number of people. Every state has its own set of laws that governs the various types of insurance offered in that state.

Insurance Basics

An insurance policy is the written contract between a person or business buying insurance and an insurance company. The buyer of the insurance policy is called the policyholder. **The premium is the amount of money an insured pays for insurance coverage.** The proceeds are payments by insurance companies for losses covered by a policy. **The beneficiary is the person named in a life insurance policy to receive the proceeds.**

To acquire an insurance policy, an insurable interest in the person or property insured is required. **An insurable interest is the financial interest (or its possible loss) that a policyholder has in the insured person or property.** For life insurance, the insurable interest must exist at the time you buy the insurance. For property insurance, the insurable interest must exist at the time of loss.



As You Read

Predict How is insurance a type of contract?



Global Law

Russian Automobile Insurance

In 2003, the Russian legislature passed the OSAGO law, requiring all drivers to have liability insurance. Russian car owners must pay a minimum of 1,980 rubles per year (about \$75). However, factors such as car model, location, and driver's experience can push the sum up to 3,760 rubles (about \$140) or more.

Since the law was passed, there have been many complaints. From 2003 to 2005, the insurance companies received 89.6 billion rubles in premiums, but only paid out 26.3 billion rubles in claims, meaning they made 63.6 billion rubles in profits.

Another complaint is that to receive an insurance settlement, persons involved in an accident must have a police report. However, the police do not often respond quickly to an accident, causing

drivers to get frustrated and leave the scene rather than wait to make a police report.

Finally, there is an active black market for fake insurance certificates. People buy the black market certificates to get out of paying for the OSAGO insurance. When one person is in an accident with someone who has a black market certificate, there is no coverage by the OSAGO insurance company.

Across Cultures: Business Etiquette in Russia

There are things you should keep in mind when doing business in Russia. In Russia, meetings begin on time and negotiations can be lengthy. The exchange of business cards is very important. Have one side translated into Russian.

Critical Thinking *Should the government require everyone to buy car insurance?*

Property Insurance

Does homeowner's insurance cover your losses due to flooding?

Property insurance is a contract that covers damage or destruction of property. Buyers can purchase property insurance on such items as cars, homes, boats, and personal items. A special type of property insurance is a floater policy. It insures property that constantly changes value or location, such as a bicycle or an iPod.

Liability insurance covers claims for damages or injuries made against a policyholder. For example, if you hit another car while driving and injure the occupants, your liability insurance pays for the injuries. Vehicle, homeowner's, and renter's insurance policies usually cover both physical property and liability. Businesses can buy insurance to protect against commercial liability.

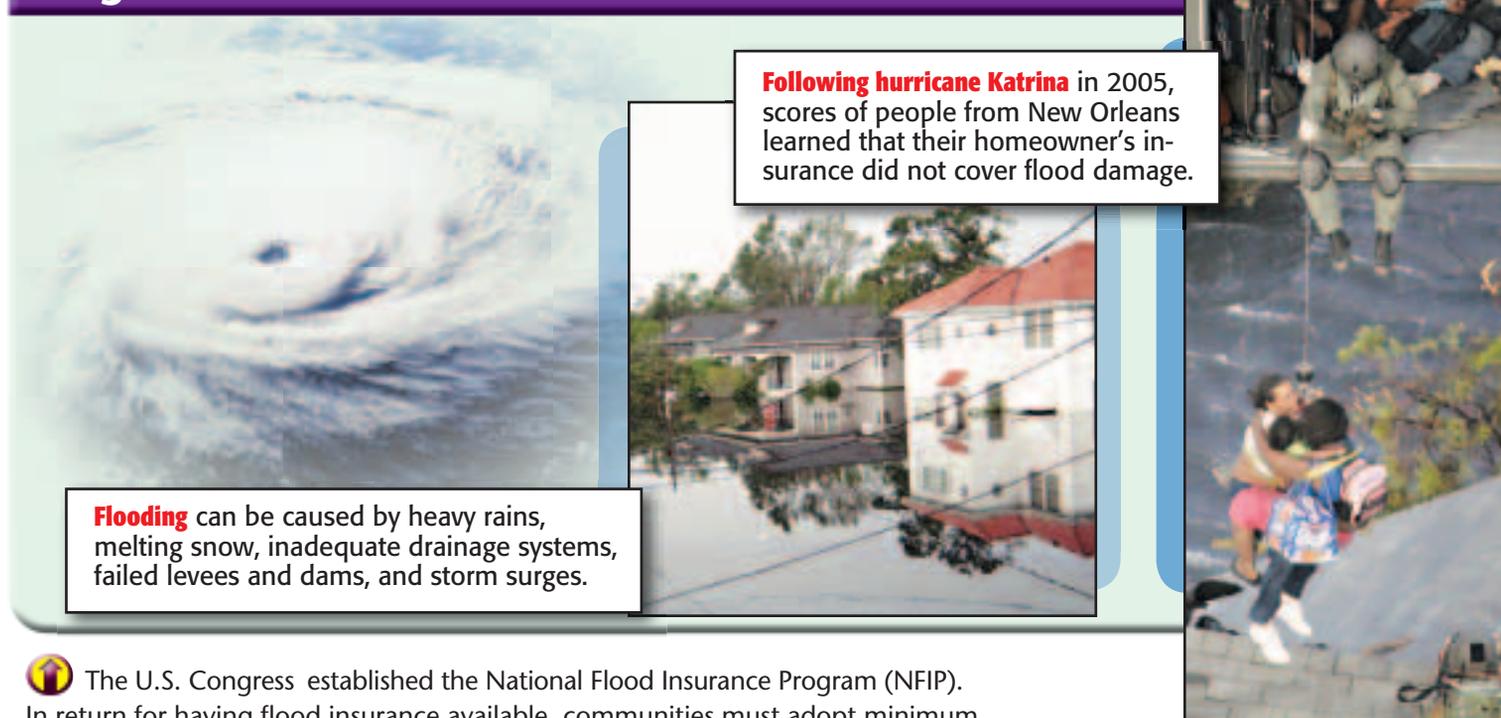
Automobile Insurance

Most states legally require drivers to carry liability insurance to cover any physical injuries or property damage they might cause. There are other types of insurance drivers should also carry.

Collision insurance covers damage to your vehicle if it is in an accident, regardless of who was at fault. **Comprehensive** insurance covers damage to your vehicle from sources other than collision, such as fire, theft, flood, and vandalism. Uninsured motorist insurance provides protection when the insured's auto is in an accident caused by a driver who has no insurance.

Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Figure 21.1 Flood Insurance



Following hurricane Katrina in 2005, scores of people from New Orleans learned that their homeowner's insurance did not cover flood damage.

Flooding can be caused by heavy rains, melting snow, inadequate drainage systems, failed levees and dams, and storm surges.

 The U.S. Congress established the National Flood Insurance Program (NFIP). In return for having flood insurance available, communities must adopt minimum standards. *What might be included in the minimum standards communities must adopt to obtain flood insurance?*

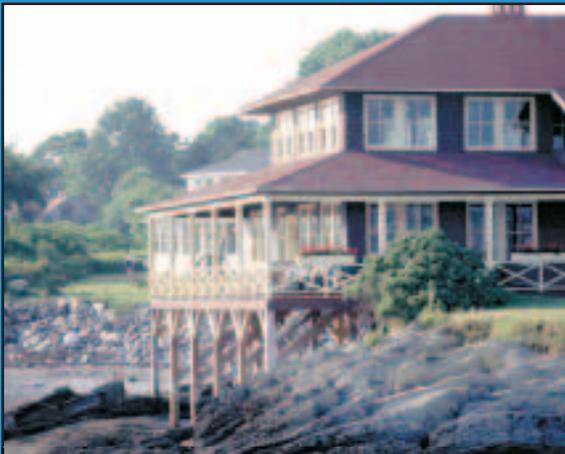
Many states settle auto accident claims under no-fault insurance law. Regardless of who causes an accident, all drivers involved collect any money due from their own insurance company, rather than going to court to determine responsibility.

Homeowner's and Renter's Insurance

Homeowner's insurance protects against losses of both real and personal property related to home ownership. These include fire, windstorm, vandalism, burglary, and injuries suffered by others while on the property. Homeowner's policies also cover personal property anywhere in the world. Mortgage lenders usually require anyone with a mortgage to carry homeowner's insurance so their investment in the home is covered if something happens. Renter's insurance protects renters against loss of personal property and liability for a visitor's personal injury.

Flood Insurance

Homeowner's policies ordinarily do not cover flood damage, and special flood insurance must be obtained (see **Figure 21.1**). Almost all flood insurance is backed by the National Flood Insurance Program (NFIP) established by Congress. Communities that agree to manage flood hazard areas can participate in the NFIP. Communities that do not agree cannot receive flood insurance. Banks that are federally regulated or insured require flood insurance on property located in Special Flood Hazard Areas (SFHAs).



To participate in the National Flood Insurance Program (NFIP), your community must agree to manage flood hazard areas by adopting minimum standards.



Nearly 20,000 communities across the United States participate in the NFIP. They have adopted floodplain management laws to reduce future flood damage. In return, the NFIP makes federally backed flood insurance available to community members.

Reading Check

Enumerate List five types of property insurance.



Fire Insurance

Many businesses purchase fire insurance to cover losses resulting directly from a fire, and damages resulting from smoke and from water used to put out the fire. Damages caused by soot, smoke, water, or heat from a nearby burning building may also be covered.

Marine Insurance

Marine insurance is one of the oldest forms of insurance and dates back to old Venetian traders who sailed the Mediterranean Sea. It covers property that is transported and the means of transportation. Today, ocean marine insurance covers goods shipped at sea. Inland marine insurance covers goods moved by trains, trucks, and airplanes.

Life Insurance

What is the least expensive kind of life insurance you can buy?

Life insurance is an insurance contract that provides compensation for losses due to a person's death. Because the cost of insurance is based on risk, it is less expensive to buy life insurance when you are young because the death rate for young people is low so they are considered low risk.

 **Life Insurance** Term insurance is the least expensive kind of life insurance. *Why do the premiums for term insurance increase at the end of each term?*

Straight Life Insurance

Straight life insurance, also called **ordinary life** or **whole life**, is life insurance that requires the payment of premiums until the face value is reached or the insured

is deceased. The face value is the amount of protection stated in the policy. Straight life insurance also builds up a cash and loan value, which is an amount you can cash the policy in for or borrow on.

Term Life Insurance

Term life insurance is life insurance issued for a particular period, usually five or ten years.

It is the least expensive kind of life insurance because it has no cash or loan value. Premiums for term insurance increase at the end of each term because the insured is older and is considered a greater risk.

Other Types of Life Insurance

Limited-payment life insurance allows you to stop paying premiums after a stated length of time, usually 20 or 30 years. The beneficiary





Health Insurance Benefits

You are the chief executive of a nine-person architecture company in a small town. Under your state's labor laws, companies with 15 or more employees must provide health insurance to their employees. At this time, your company has made the decision not to offer health insurance. However, due to an increase in home building in your area, your company could make much more money if you hired five more architects. You know that you will attract better applicants if you can offer them health benefits.

Critical Thinking: *Should you offer health insurance?*

receives the amount of the policy upon the death of the insured, even if it occurs before the payment period is over.

Endowment insurance is insurance that provides protection for a stated time period and pays the proceeds either when the period is up or at death, whichever occurs first. Endowment policies are typically written for periods of ten, 20, or 30 years.

An annuity is a guaranteed retirement income that is purchased by paying either a lump-sum premium or by making periodic payments to an insurer. You may choose to receive a reduced income for a certain fixed number of years, with a beneficiary receiving whatever remains in the annuity when you die. You may choose to receive full payments as long as you live, but should you die before using up the annuity, your heirs receive nothing.

Health Insurance

What can you do if you cannot afford health insurance?

Two major categories of health insurance are basic and major medical. Major medical coverage typically pays only for long-term hospitalization and the cost of catastrophic illness. It does not cover **routine** medical care and prescriptions. In contrast, basic health insurance includes additional coverage, such as inpatient and outpatient hospital care, physician care, surgery, and prescription drugs.

Individual and Group Insurance

Many people get their health insurance through a group insurance plan where they work. Insurance companies can offer lower premiums to large groups because more people are sharing the expense of medical care. Employers often pay part of the premium and employees pay the remainder. People who work for themselves or for a company that does not offer health insurance may purchase their own individual health insurance. Individual insurance is more expensive than group insurance.



After You Read

Summarize What is the difference between a group health policy and an individual health insurance policy?

Two of the most common types of health insurance plans today are HMOs and PPOs. A Health Maintenance Organization (HMO) is a health care organization that contracts with doctors to provide services for its members. Members pay monthly premiums and must choose from a list of doctors provided by the HMO. A Preferred Provider Organization (PPO) is a group of doctors or hospitals that provide care for employees at reduced rates. PPOs are usually sponsored as part of an employer's group health plan.

Government Health Care Plans

Medicare is a federally funded health insurance program for people who are covered by Social Security. Medicare has two parts. Part A helps pay for inpatient hospital care. Part B pays for 80 percent of doctors' visits and certain other medical services. Many people buy an additional policy, called Medigap insurance, to cover the 20 percent not covered by Medicare. Another government health insurance program is called Medicaid. Medicaid is a health care plan for low-income people, administered by each state government and funded by both state and federal funds. Most states also offer health care plans to cover children from low-income families.

Disability Insurance

Disability insurance pays benefits if the policyholder cannot work because of a disability. Many employers purchase disability insurance for their employees. A long-term disability plan pays if a person cannot perform normal job duties for a year or longer. A short-term disability plan pays for a few months of being disabled.

SECTION 21.1 ASSESSMENT

Self Check

1. What is the purpose of insurance?
2. What is the difference between a policyholder and a beneficiary?
3. What is the difference between straight life insurance and term life insurance?

Academic Connection

Social Studies For every type of risk there is some

form of insurance coverage. For example, Fred Astaire, the famous dancer, had his legs insured for \$650,000. Employers can buy insurance for employees who quit if they win the lottery. You can even buy alien abduction insurance. One company offers insurance not only for alien abductions, but for injury caused by an asteroid or a piece of a falling satellite.

Go to the library or on the Internet and research unusual insurance policies and claims, past and present. Share your findings with the class.

Critical Thinking

Life Insurance Why do you think you cannot take out insurance on anyone you want?



Go to glencoe.com to check your answers.

Reading Guide



Before You Read

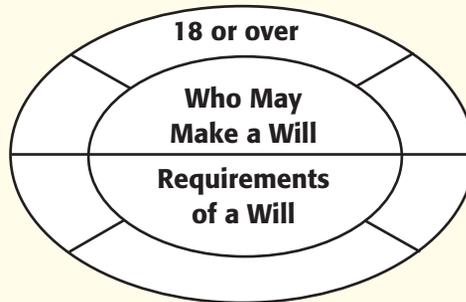
Connect Has anyone in your family ever inherited anything?

Focus on Ideas

It is never too early to plan for retirement.

Take Notes

Create a graph like the one shown and use it to take notes as you read this section. Go to glencoe.com to find graphic organizers and tips on how to improve your note-taking skills.



Key Terms

You will learn these legal words and expressions in this chapter. You can also find these terms in *Black's Law Dictionary* or in an online legal dictionary.

- will
- testator/testatrix
- testamentary intent
- testamentary capacity
- intestate
- probate
- executor/executrix
- trust
- trustee



Academic Vocabulary

You will find these words in your readings and in your tests. Look them up in a dictionary and familiarize yourself with them.

- supplement
- elective
- directive

What You'll Learn

- ◆ Identify the main types of retirement plans.
- ◆ Name the formal requirements of a will.
- ◆ Describe how to revoke or change a will.
- ◆ Identify the different types of trusts.

Why It's Important

Knowing about retirement plan, wills, and trusts will help you plan for the future.

Academic Standards

Reading and completing the activities in this section will help you practice the following academic standards:

English Language Arts (NCTE 7) Conduct research on issues and interests by generating ideas and questions, and by posing problems.

Math (NCTM CS2 3) Recognize and apply mathematics in contexts outside of mathematics.

As You Read

Predict Is it too early to begin planning your retirement if you are only 18?



Protecting your Assets

Why should you care about estate planning?

Estate planning is the process of assuring that a person's assets remain intact to protect the family before and after death. Estate planning includes contributing to one's retirement income as well as using certain legal instruments such as wills and trusts. Large estates can benefit from estate planning, but the process can be financially useful to others, regardless of income. Estate planning does have costs, such as attorney fees for creating wills and trusts. However, individuals can save money by doing their own research on each aspect of estate planning.

Retirement Income

It is important to start a retirement plan as early as you can. This is because the earlier you start a plan, the more valuable it will be later. Social Security is the principal pension plan offered to workers by the U.S. government. Some employers offer pension plans through their companies. An Individual Retirement Account (IRA) is an individual's own personal pension plan. Roth IRA's are attractive because distributions are not required while you are alive. Also, your savings can grow and be taken out tax free. A simplified employee plan (SEP) is an IRA funded by an employer. A Keogh plan is for self-employed people and their employees.

Wills

Do children who are left out of a parent's will have any recourse?

A **will** is a document that is signed during your lifetime that provides for the distribution of your property upon death. Each state has its own requirements for making a will.

Testate means to die with a will. A **testator (male) or a testatrix (female) is a person who dies with a will.** A gift of personal property made by will is called a bequest or legacy. A gift of real property made by will is called a devise in most states. A beneficiary is someone who receives property by will. Beneficiaries are also known in most states as legatees if they receive personal property, or as devisees if they receive real property under a will. An heir refers to one who inherits property under a will or from someone dying without a will.

Who May Make a Will?

Any person who has reached the age of 18 and has both testamentary intent and testamentary capacity may create a will. **Testamentary intent is the intention that the document is meant to be a last will and testament.** **Testamentary capacity is the mental ability (being of sound mind) to create a will.** Sound mind is defined as having sufficient mental capacity to do the following:

WebQuest

Planning for Retirement

Planning for your retirement seems like a long way off. The sooner you begin saving for your retirement, however, the easier it will be to maintain an income. Log on to glencoe.com to research the main types of retirement plans and the benefits each offers you.

Create a table in your WebQuest folder to compare the plans with your class.



- Understand the nature and extent of your property
- Know who would be the natural persons to inherit your property, even though you may leave your property to anyone you choose
- Know that you are making a will
- Be free from delusions that might influence the dispensation of your property

Formal Requirements of a Will

A will must conform exactly to the law of the state where it is made. A will legally made in one state must be recognized in most every other state. However, a few states require that an out-of-state will meet their own state requirements as well.

To be valid, a will must be published, attested, and signed. Published means that it must be written and declare on its face that the will is a true expression of the testator or testatrix's intent. Oral (nuncupative) wills of personal property are allowed for soldiers and mariners. Attested means that the will must be witnessed by the number of people required by the state, usually two.

Case Study – In re: Lars Ingerman Iversen
_ □ ×

Critical Thinking *Can independent affidavits be used in place of witness signatures on a will?*

 **Flex Your Reading** Note key facts in the text below and look up words you do not understand. Restate difficult ideas in your own words. Go back and reread the text quickly to make sure you did not miss any important detail. Now, you are ready to formulate an opinion.

Valid Will or Intestate? Lars Iversen was married twice. His first marriage ended in divorce in 1975. His second marriage to Anna Schoenwandt ended in divorce in 1993. Mr. Iversen remained single until his death in 2003. On April 2, 2000, Mr. Iversen created a document in which he bequeathed all his possessions to Ms. Schoenwandt as his sole beneficiary and gave her full power of attorney to manage his affairs. The April 2, 2000, document was one-page long and typed. It included Mr. Iversen's signature, which he had notarized. However, it did not have the required signatures of two attesting witnesses. After Mr. Iversen's death, the document was filed with the local Probate Court. The Court appointed Ms. Schoenwandt as the administratrix of the estate.

Mr. Iversen's children from his first marriage appealed the court's appointment of Ms. Schoenwandt as administratrix, and claimed that the will did not meet the Texas Code's requirements for a valid will. Therefore, the children argued that the estate should pass intestate. Ms. Schoenwandt introduced two affidavits, from her stepdaughter and daughter-in-law, testifying that they had seen Mr. Iversen sign the document.

In re: Lars Ingerman Iversen, 150 S.W.3d 824 (Tex. Ct. App. 2004)



Go to glencoe.com for more case study practice.

Reading Check

Analyze Why would the states heavily regulate the laws about wills?



Vocabulary You can find vocabulary definitions in the **Key Terms** glossary and **Academic Vocabulary** glossary in the back of this book.

Family Protection State laws have been made to protect surviving family members when a spouse dies. *What does the homestead exemption do?*



The signature on a will can be any mark (even an X) as long as it is intended to be a signature. If a testator cannot write, someone else can sign in the testator's presence with the testator's consent. In many states, a holographic will—a will written entirely in the handwriting of the testator—is valid without witnesses.

Revoking or Changing a Will

States have different rules about changing a will, but in general, a will may be revoked by (a) burning, tearing, canceling, or obliterating it with intent to revoke it; (b) making a new will; or (c) marrying after the will was created. A divorce usually revokes gifts made under a will to a former spouse. A codicil is a formal document used to **supplement** or change an existing will. It must be signed and witnessed just like a will to be valid.

Family and Spouse Protections

State laws contain provisions designed to protect surviving family members. One protection is the homestead exemption, which puts the family home beyond the reach of creditors up to a certain limit. Some states have a property exemption, which allows certain property to remain beyond the reach of creditors. In Indiana, the surviving spouse is entitled to \$25,000 (in money or personal property) from the estate, regardless of what the will provides. If there is no surviving spouse, the decedent's minor children equally share the \$25,000. After the \$25,000 has been distributed, the estate is then probated according to the will or statute.

A surviving spouse who does not like the provisions of a deceased spouse's will may petition to take a different portion of the estate set by state statute. This is known as a spouse's **elective** or forced share.

Children who can prove that they were mistakenly left out of a parent's will also have certain protections in most states. Forgotten children may receive the same share that they would have received if their parent had died without a will. Adopted children are treated, in most states, as though they were the naturally born children of their adoptive parents. However, if a will specifically states that a child has been intentionally omitted from a parent's will, the will must be followed.

Intestate Succession

Intestate means to be without a will. Dying without a will can have serious consequences. The people you want to inherit your estate may not be able to do so. You cannot identify the person responsible for distributing your property. The beneficiaries may have to pay higher legal costs and taxes.

Figure 21.2 Intestate Succession*

If you are survived by:

1. Spouse and child(ren)
2. Spouse, no children, but next of kin (including parents, siblings, niece, nephew, aunt, uncle, cousin, etc.)
3. Spouse, no child, no next of kin
4. No spouse, one or more children
5. No spouse, no child, but next of kin
6. No spouse, no child, no next of kin

Your estate is distributed:

One half to spouse, one half to children

Where the estate is less than \$200,000, all to spouse. If the estate is larger than \$200,000, the first \$200,000 plus one half of everything in excess of \$200,000 to spouse. The remainder to next of kin in this order: parents(s), siblings, nieces and nephews, grandparents, uncles and aunts, cousins.

All to spouse

All to children

All to next of kin, in the order described above in 2.

All "escheats" to the state, that is, all turned over to the state because there are no heirs or beneficiaries.

*Massachusetts Law of Descent and Distribution Law of Intestate Succession (G.L. c. 190 §1)



Each state has its own law of intestate succession. *What does such a law determine?*

Without a will, the deceased's personal property is distributed according to the laws of the deceased's home state. If there is real property, it passes according to the laws of the state in which it is located. The distribution of property is done according to relationship to the deceased. A surviving spouse is usually entitled to one-third or one-half of the estate. The balance is divided equally among any children. If a child has died since the will was written, then his or her children share that portion. If those people have died, the line of succession continues through the decedent's parents, if living, and if not, to brothers and sisters, and then to cousins. If a decedent has no living blood relatives, the property is said to escheat, meaning that the state owns it. **Figure 21.2** shows Massachusetts's laws of intestate succession.

Probate and Estate Settlement

Probate is the process of validating and executing a will. A probate court supervises the process. Its first job is to validate the will. If no one opposes it, the settlement is usually simple. Sometimes heirs may contest the will if they were left out or disagree with the division of assets. When this happens, they must prove either that the will does not conform to state law, that the testate was not of sound mind, or that someone exerted undue influence. Some people intentionally include a clause in their will that bars a contesting heir from inheriting anything.

The **executor (male) or executrix (female)** is the person designated in the will to carry out its terms. If no one is named, if the person named refuses the position, or if there is no will, the court will appoint an executor to carry out the will.



Devise: *n* The act of giving real property by will. From Latin *dividere* = divide.

Codicil: *n* An addition to or modification of a will. From Latin *codicillus* = a short writing.

Vocabulary Builder The words *devise* and *divide* are derived from the Latin prefix *dis* which means *apart*. List and define five words that begin with this prefix.

Look It Up! Check definitions in *Black's Law Dictionary* or an online glossary. For direct links, go to glencoe.com to find more vocabulary resources.



The Importance of Making a Will Not making a will can have serious consequences. *What happens to a person's property if there are no blood relatives?*

That person is called an administrator or administratrix. The responsibilities of the executor or administrator are to inventory the assets, pay any debts and taxes, and distribute any remaining assets as stated in the will or by state law.

Power of Attorney

Another aspect of estate planning involves creating one or more powers of attorney. A power of attorney grants power to a representative to legally act on your behalf. The person giving power of attorney is the grantor. The person receiving the power of attorney is the attorney-in-fact.

A special power of attorney gives authority over a specific item, such as managing the grantor's real property. A general power of attorney gives authority over all matters. A durable power of attorney gives authority to the attorney-in-fact while the grantor is incompetent and can be either specific or general. Elderly people often grant durable general power of attorney to a younger loved one in case the grantor becomes incapacitated and cannot

take care of their personal business. A power of attorney must be completed following a state's specific laws. It must be witnessed, notarized, and recorded in a local government's recording office.

Medical Directives Many people also create a medical **directive**. A medical directive is a special power of attorney that deals solely with medical care. Medical directives allow the appointed attorney-in-fact, rather than a court, to make decisions with regard to the grantor's medical care in the event the person becomes incompetent.

Living Will

A living will is a special power of attorney document that directs whether your life should be prolonged by artificial means if you become incapacitated with no reasonable expectation of recovery. Because technology may allow people to stay alive for a long time, individuals create living wills giving their representative the authority to make health care decisions according to the directives in the living will.

Trust

Why might property bequeathed to a minor be held in trust?

A **trust** is a legal device by which property is held by one person for the benefit of another. The settler is the person who sets up a trust. A **trustee** is a person who holds title to the property for another's benefit. The beneficiary is the person for whose benefit the property is held in trust.

Trusts are a tool in estate planning that help people provide for their children. They also avoid the time and cost of probate, and save on taxes. The legal fees of creating a trust can be costly, which is a disadvantage.

Types of Trusts

Several types of trusts can be established. A private trust is one involving individual settlers and beneficiaries. Most familial trusts are of this type.

A testamentary trust is a trust created by a will. It comes into existence only upon the death of the testator.

A living trust is a trust that comes into existence while the settler is alive. It may be revocable, which means that the settler can take it back or change it while still alive. It may also be irrevocable, which means that the settler cannot change it. Such trusts save money on taxes.

Another type of trust is a spendthrift trust. It protects the settler's assets from being spent recklessly by the beneficiary. There is also a charitable trust, which is established to fund a charitable purpose upon death. It allows the trustee to decide how much will be given to each beneficiary rather than the settler doing so.

Rights and Duties of Parties

Trustees are obligated by law to use a high degree of care in investing the trust funds. They cannot take extraordinary risks or commingle (mix) their own property with the trust property. The beneficiaries are entitled to periodic accountings from the trustee. Beneficiaries also have the right to be notified when a will is probated.



After You Read

Summarize List the types of trusts a person can establish.

SECTION 21.2 ASSESSMENT

Self Check

1. Who may make a will?
2. How may a will be revoked?
3. Define the role of a trustee.

Academic Connection

Mathematics The federal government collects an estate tax on the value of a person's property at the time of the person's death.

As of 2006, the estate tax is 48 percent of everything over \$2 million. As of 2009, the estate tax is 48 percent of everything over \$3.5 million. What is the estate tax in 2006 on an estate worth \$7 million? What is the estate tax for the same estate in 2009?

CONCEPT **Number and Operations:** To calculate the amount for each year, subtract the amount that is

not taxed and multiply the remainder by 48 percent.



For more math practice, go to the Math Appendix.

Critical Thinking

Holographic Will Why do you think a holographic will is valid without witnesses in many states?



Go to glencoe.com to check your answers.

Chapter 21 Review and Assessment

Summary

Section 21.1 Insurance

- ◆ Insurance is an agreement in which one party (the insurer) compensates another party (the insured) for any losses.
- ◆ Property insurance is a contract that covers damage or destruction of property.
- ◆ Liability insurance covers claims for damages or injuries made against a policyholder.
- ◆ Types of property insurance include homeowner's, renter's, fire, flood, and marine insurance, as well as vehicle and business insurance.
- ◆ Principal types of life insurance are straight life insurance, term life insurance, limited-payment life insurance, and endowment insurance.
- ◆ Types of health insurance include individual health insurance, group health insurance, government health plans, and disability insurance.

Section 21.2 Estate Planning

- ◆ Estate planning is the process of assuring that a person's assets remain intact to protect the family before and after death.
- ◆ Main types of retirement income are Social Security, pension plans employers offer through their companies, Individual Retirement Accounts (IRAs), and Keogh plans.
- ◆ A will is a document that provides for the distribution of a person's property upon death.
- ◆ Probate is the process of validating and executing a will. Intestate means to be without a will.
- ◆ A trust is a legal device by which property is held by one person for the benefit of another.
- ◆ Types of trusts include testamentary trusts, living trusts, spendthrift trusts, and charitable trusts.
- ◆ Beneficiaries have a right to periodic accountings from a trustee, and the right to be notified when a will is probated.

Vocabulary Builder

1 On a sheet of paper, use each of these terms in a sentence.

Key Terms

- | | | |
|---------------------------|-------------------------|----------------------|
| • insurance | • term life insurance | • intestate |
| • premium | • will | • probate |
| • beneficiary | • testator/testatrix | • executor/executrix |
| • insurable interest | • testamentary intent | • trust |
| • straight life insurance | • testamentary capacity | • trustee |

Academic Vocabulary

- | | | |
|-----------------|--------------|-------------|
| • comprehensive | • routine | • elective |
| • endowment | • supplement | • directive |



Go to glencoe.com to play a game and improve your legal vocabulary.

Key Points Review

Answer the following questions. Refer to the chapter for additional reinforcement.

- | | |
|---|--|
| 2 What is an insurable interest? | 6 What are the requirements for a valid will? |
| 3 What are the differences between homeowner's and renter's insurance? | 7 What are the responsibilities of an executor or administrator in the settlement of an estate? |
| 4 Describe the principal types of life insurance. | 8 What is required to contest a will? |
| 5 What types of government health care plans are available? | 9 What happens to a decedent's estate when a person dies without a will, or intestate? |

Standardized Test Practice

- 10** Read the following excerpt about indemnification and insurance and complete questions 1 and 2.

An entity seeking to transfer risk (an individual, corporation, or association of any type) becomes the insured party once risk is assumed by an insurer, the insuring party, by means of a contract, defined as an insurance policy. This legal contract sets out terms and conditions specifying the amount of coverage (compensation) to be rendered to the insured, by the insurer upon assumption of risk, in the event of a loss, and all the specific perils covered against (indemnified), for the term of the contract.

When insured parties experience a loss for a specified peril, the coverage entitles the policyholder to make a claim against the insurer for the amount of loss as specified by the policy contract. The fee paid by the insured to the insurer for assuming the risk is called the premium. Insurance premiums from many clients are used to fund accounts set aside for later payment of claims—in theory for a relatively few claimants—and for overhead costs. So long as an insurer maintains adequate funds set aside for anticipated losses, the remaining margin becomes its profit.

1. In reading the above passage, “indemnified” could best be defined as

- A** transferring personal risk to another party
- B** taking an assumption of risk in an activity
- C** protecting against damage, loss, or injury
- D** receiving compensation for an injury

2. The purpose of insurance is to

- A** get money from an insurance company when you have a loss
- B** spread the losses over a greater number of people
- C** set aside an adequate amount of funds for losses
- D** be profitable by anticipating losses before they occur

**Test-Taking Strategies**

While taking a test, if other students finish before you, stay focused on the test in front of you.



Apply and Debate

Read the following scenarios. Get together with other students in pairs or groups of three and take a position on each scenario. Debate your position in class with students taking the opposite position or prepare a written argument justifying your position.

11 Car Insurance Dilemma

Frank's state requires all drivers to have car insurance, which he pays monthly. This month Frank is short on cash and plans to wait until his next paycheck to pay.

You Debate *Should Frank drive without insurance, or find another ride?*

12 Holographic Wills

When Lillian died, her estate was valued at over \$2 million, which she left to her children from her first marriage. However, her second husband of five years produced a holographic will that was authentic and in her handwriting. This will gave him \$1 million, but it did not say "voiding all previous wills."

You Debate *Should the judge give any credibility to the second husband's holographic will?*

13 Medical Quandary

Lisette created a living will authorizing her son, Arthur, to tell doctors not to resuscitate her if she suffered a severe stroke. Unfortunately, this is what happened. Now Lisette's sister insists that Arthur cannot implement his mother's wishes.

You Debate *Should Arthur listen to his mother's sister or should he do as his mother's living will ordered him to do?*

14 Family in Dispute

Jackson and his father simply did not get along. When he was 21, Jackson moved to another state. When his father passed away three years later, he left Jackson's three siblings \$100,000 each, but nothing for Jackson.

You Debate *Should Jackson ask his siblings to share the estate more fairly?*

15 Revocable Trust Change of Mind

Jamal set up a revocable trust giving 75 percent of his estate to one child and 25 percent to the other. He later decided to make it equal. Jamal called his attorney and told him, but died on the way to the lawyer's office. The children are now battling it out in court.

You Debate *Should the judge acknowledge that Jamal had changed his mind?*



**Case Study Practice –****Mr. Padgett v. Georgia Farm Bureau Mutual Insurance Company**

16 Ambiguous Terms Mr. Caravella was injured by a vehicle driven by Mr. Walker. Mr. Padgett was a passenger in the vehicle driven by Mr. Walker. The vehicle was insured by Georgia Farm Bureau Mutual Insurance Co. (Farm Bureau).

Mr. Caravella sued Mr. Walker. He also sued Mr. Padgett on the grounds that he negligently entrusted Mr. Walker with the vehicle. Farm Bureau filed a lawsuit to determine whether it was obligated to defend Mr. Padgett.

The insurance policy defined an “insured” party as “any person using” the insured vehicle. Farm Bureau argued that Mr. Padgett was not “using” the vehicle and, therefore, was not covered. Mr. Padgett argued that in other parts of the insurance contract it states that the driver of the vehicle is the one who “operates” it, and that if Farm Bureau meant only the driver was insured, it should have said “operating.”

Source: Mr. Padgett v. Georgia Farm Bureau Mutual Insurance Company, 625 S.E.2d 76 (Ga. Ct. App. 2005)

Practice Is Mr. Padgett insured under the Farm Bureau contract?

17 Ethics Application

Car Dents and Accidents On Saturday, you dented your car fender by hitting a telephone pole while backing up without looking. A week later, someone hit the back of your car and damaged the area next to the dent you made yourself.

- ◆ Should you tell the insurance company that all the damage was caused at the same time so the insurer will pay to fix all dents?

18 Internet Application

Find out about Health Insurance Your friend Michelle’s family is in a tough position because her parents both recently lost their jobs due to the downsizing of a large company in your city. Right now, Michelle does not have any health insurance, but would like to see a doctor for the sore foot she developed after ice skating with you.



Go to glencoe.com to research health insurance programs available in your state for minors whose parents cannot afford or do not have coverage. Prepare an informational pamphlet of where people can go for help.



Reading Connection

Outside Reading Go to glencoe.com for a list of reading suggestions about insurance.

Phyllis Lile-King

Attorney, Donaldson & Black, P.A.



What do you do at work?

“When a potential client contacts me, my first step is to gather information. Usually, this is as simple as listening to the person and asking questions that will help me assess whether the complaint is something that is legally cognizable. Because I work on several cases at one time, in any given week, I am reviewing psychosocial records in one case, attending a deposition of a treating physician in another case, traveling to the morgue to examine pill bottles on another case, and talking to potential clients every day. I’ll also be answering written discovery, researching case law for another case, and thinking about

strategy and liability issues on another case. The typical life of a lawsuit from the initial call to a jury verdict is three years.”

What skills are most important to you?

“The most important skills I think a lawyer should have are organizational skills, analytical skills, logic/reasoning skills, the ability to write clearly, persuasively and succinctly, and persuasion/storytelling skills.”

What kind of training do you recommend?

“I recommend the study of math, which helps one think analytically. A good analytical mind will usually translate to an ability to write analytically. I also recommend the study of philosophy, because I believe it expands and challenges one’s mind to be creative and consider the policy underpinnings of the law, which are useful in the practice. I also recommend applying to and attending the best law school to which you can be admitted.”

What is your key to success?

“I’m a bootstraps kind of thinker, and I believe that most entitlements of birth (who you are) and genetics (how high your IQ is) can be overcome or at least usually equalized with hard work and perseverance. What often makes or breaks my cases are the degree of my investigation and research. My goal is to prepare more fully than my opponent. The lawyer who knows the most about the case usually has the advantage.”

Résumé Builder

Academic Skills

- Above average reading and writing
- Analytical approach to thinking and problem solving
- Good speaking and debating skills

Education and Training

Obtain a bachelor’s degree in business, English, philosophy, or math. The following high school and college courses will help develop the necessary background knowledge:

- Business, contracts, and consumer law
- Economics
- Mathematics for business
- Philosophy
- Science (chemistry, biology, physics)
- Social Studies
- U.S. Government

Critical Thinking

Why are critical thinking skills so important in the information age?



Go to glencoe.com to find legal careers resources.

Personal Essay Practice

A Secret Account Kiki and Wayne have been renting an apartment together since they got married six years ago. Both came into the marriage with some debt from school loans and car payments. After they married, they opened joint bank accounts. Both are computer consultants, work 60 to 70 hours a week, and pay the bills together. Their goal in working so many hours is to save up and buy a house. When it came time to actually purchase the house, however, the financial loan documents revealed to Wayne that Kiki had a separate savings account worth \$30,000 she had kept secret. This financial infidelity created a huge conflict in their marriage.

Assignments

Research Research money problems in marriages and find out if it is a leading cause of divorce.

Write Consider the situation above and write a personal essay about the role money plays in marriages or other personal relationships.

Writing Tips Before you write your personal essay, ask yourself the following questions to help you make it more meaningful to you:

- ✓ What in your research did you respond to personally?
- ✓ What are your own thoughts and opinions on the subject?
- ✓ Can you relate the subject to any personal experiences?
- ✓ Did you come across any information that you found personally useful or surprising?
- ✓ Did anything you read change any preconceptions you might have had on the subject?

Essay Test Strategies When you are preparing to write an essay, you can often figure out the meanings of unfamiliar words by looking at their context—the other words and sentences that surround them. Look for clues such as a synonym or an explanation of the unfamiliar word in the sentence, a reference to what the word is or is not like, a topic associated with the word, and a description or action associated with the word.



Go to glencoe.com to find more writing resources.

Health Insurance Legislation

For this project, you will use what you have learned to prepare an informational guide on health insurance legislation. You can work on this project alone or with a partner.

Here is a checklist of the skills that you will need to complete this project, and that your teacher will consider when evaluating your work.

Evaluation Rubric	
Academic Skills	
1. Online and library research	1. 10 points
2. Reading for information	2. 10 points
3. Note-taking	3. 5 points
4. Estimation and computation of facts/figures you discover	4. 10 points
5. English composition to summarize findings	5. 15 points
Legal Skills	
6. Researching health care legislation and/or health policy	6. 15 points
7. Contrasting the public interest and the economic theories	7. 15 points
8. Analysis of an aspect of the health care system	8. 15 points
9. Use of technology	9. 5 points
	Total 100 Points



For more resources and for grading rubrics, go to glencoe.com.

Step 1: Preparation

- 1 Write a proposal for the area of health care legislation you plan to research.
- 2 Use all you have learned in this unit, at the library, or on the Internet as tools.
- 3 Complete this project in a format acceptable for portfolio addition.

Step 2: Procedure

- 1 **Review** the text in this unit and make a list of the aspects of the health care system you chose, such as deregulation of the health care industry, federal support of medical research, insurance policy legislation, or Medicare. Go to glencoe.com to find additional help and resources.
- 2 **List** all the various terminology, key issues, and historical turning points that are crucial to creating an outline and understanding the story of your particular area of research.
- 3 **Write** an informational guide about the area you chose, including the parties involved and why it is being debated. Use the Internet to research and download forms, charts, or other important documents. Make enough copies so your classmates can review and annotate your guide.
- 4 **Describe** a real-world federal policy or health care company that is the basis for your area of interest in the politics of health care. Present your guide and conclusion to your classmates.

Step 3: Create an Analysis Report

As a class, compare and contrast the information presented in each guide and look for common themes or areas covered. See if any of the guides stand out and if so what makes the information presented most interesting and surprising. After comparing the guides, answer the following questions:

- 1 How many and what areas of health care legislation were presented?
- 2 Did the guides presented include all the necessary information needed to understand the controversial issues with the politics of health care legislation?
- 3 If not, what should have been added to make the information easier to use?
- 4 How was your guide similar to and different from the other guides presented?



Community Connection

Research volunteer activities and work-based learning experiences in your school or community, such as career and technology education student organizations. Choose one and determine its benefits and service requirements. Prepare a brief report. Go to glencoe.com to find resources.



Competitive Event Prep

Planning for the Future

Situation: Assume the role of apartment dweller. You share your apartment with two friends. All three of you have signed the apartment lease. You just had a visit from your landlord. One of your roommates has failed to pay his/her share of the rent for three months. The landlord is threatening to begin eviction procedures against all of you because the entire amount of rent has not been paid.

Activity: You must explain to your roommates that since all three of you signed the lease, all three of you share responsibility for the rent and the consequences for not paying the rent, even though only one of you failed to pay.



For more Competitive Event preparation, performance tips, and evaluation rubrics, go to glencoe.com.



Marshall v. Marshall

U.S. Supreme Court 126 S.Ct. 1735 (2006)

Read Critically As you read this case, ask yourself the following questions:

1. What did J. Howard's estate plan provide?
2. In what court did Anna Nicole's case begin?
3. What exclusion were the courts applying to this case?
4. What did the U.S. Supreme Court hold with regard to Anna Nicole's case?

Assignment When you are done, write a short summary of the situation. Include the court's decision and a couple of sentences about why or how the court reached its decision.

Facts The Relationship Vickie Lynn Marshall, also known as Anna Nicole Smith (Anna Nicole), met J. Howard Marshall II (J. Howard) in October 1991. The two dated for more than two years and were eventually married on June 27, 1994. J. Howard died a little more than a year later on August 4, 1995. Although J. Howard showered Anna Nicole with a number of gifts and a significant amount of money during their courtship and marriage, J. Howard did not include anything for her in his will.

J. Howard Marshall's Will While J. Howard was alive, he created an estate plan for his vast fortune. The plan consisted of a living trust and a pourover will. As such, a significant portion of his estate was placed in a trust, listing himself as the beneficiary while he was alive. Per the instructions in his will, when J. Howard died, the remaining portion of his estate that was not already in the trust was transferred into the trust. The trust's beneficiary was then changed from J.

Howard to his son, E. Pierce Marshall (Pierce). After his death, Pierce submitted J. Howard's will into probate in the Probate Court of Harris County, Texas.

Anna Nicole's Troubles In January 1996, after Pierce had begun probate proceedings in Texas, Anna Nicole filed for bankruptcy in the United States Bankruptcy Court for the Central District of California. Among the debts Anna Nicole sought to discharge was a debt to Pierce. Pierce then filed a proof of claim in the bankruptcy court, arguing that Anna Nicole's debt was not dischargeable because she had defamed Pierce shortly after J. Howard's death, by telling the press that Pierce had engaged in forgery and fraud to gain control of his father's estate. Under bankruptcy law, debt is not dischargeable if it arises from "willful and malicious injury by the debtor."

Anna Nicole asserted a defense of truth, arguing that her statements to the press could not be defamation since they were all true statements. Further, Anna Nicole filed a counterclaim, alleging Pierce had tortiously

interfered with a gift she expected from J. Howard's estate. Anna Nicole further alleged that Pierce had interfered by imprisoning J. Howard against his wishes, surrounding J. Howard with bodyguards to prevent contact between J. Howard and Anna Nicole, making misrepresentations to J. Howard, and by transferring property against J. Howard's wishes.

Court's Findings After a trial, the Bankruptcy Court entered judgment in favor of Anna Nicole, finding that Pierce had tortiously interfered with Anna Nicole's expected gift from J. Howard. The Court awarded Anna Nicole \$449 million in compensatory damages and \$25 million in punitive damages. Pierce then appealed to the U.S. District Court for the Central District of California, which upheld the finding of the Bankruptcy Court, but changed the award to \$44.3 million in compensatory damages and \$44.3 million in punitive damages. Pierce appealed again, this time to the Ninth Circuit Court of Appeals.

Opinion Ninth Circuit Court of Appeals Proceedings The Ninth Circuit Court of Appeals set aside the judgments entered by the lower courts. In its holding, the Ninth Circuit found that although Anna Nicole's claim did not "involve the administration of an estate, the probate of a will, or any other purely probate matter," the probate exception bars federal jurisdiction in Anna Nicole's case and any determinations on her case must be made by the Probate Court in Harris County, Texas, rather than a federal court in California because the matter arises out of a probate being conducted in Texas.

The Probate Exception The probate exception is a recognized exception to federal jurisdiction, in which the federal courts will defer diversity jurisdiction it would normally have under the Constitution in probate matters to the state courts. The exception dates back to The Judiciary Act of 1789, which stated federal courts had diversity jurisdiction over "all suits of a civil nature at common law or in equity."

Under the current understanding of the probate exception, federal courts reserve

jurisdiction to the state probate courts the probate or annulment of a will and the administration of a decedent's estate. The exception also precludes the federal courts from trying to dispose of property that is currently under the custody of a state's probate court. However, it does not bar federal courts from adjudicating matters outside those confines regardless of whether those matters may be tenuously connected to a probate matter.

Holding The Court's Decision

The United States Supreme Court held that although the probate exception is still a valid exception to federal jurisdiction, the probate exception does not apply to this case. Anna Nicole's claim of tortious interference is against Pierce, personally, and not against the estate of her late husband in probate, or an annulment of J. Howard's will. The Court further found that Anna Nicole did not seek to attack any property that was part of the probate proceedings—her claim was strictly against Pierce. Therefore, the Court held that the California Federal Courts had proper jurisdiction. The Court remanded the case back to the Ninth Circuit to determine whether the factual findings were proper now that the Supreme Court had held jurisdiction was proper.

TRIAL PREP

The National High School Mock Trial Association organizes competitions at the local, regional, and national levels where teams of high school or college students prepare and argue fictional legal cases before practicing attorneys and judges. Mock Trial team members are each assigned a role as either an attorney or witness. Each team must develop a courtroom strategy, legal arguments, and a presentation style.



Go to [glencoe.com](https://www.glencoe.com) to find guided activities about case strategy and presentation.