Ask a Lawyer

By Steven Leskin

Q~ I'm about to get divorced. How is property split in Oregon?

A~ Oregon has a very common sense approach to splitting property and debt. The rule is that the longer a couple is married, the more "equitably," meaning evenly, the assets and debt will be split between the husband and wife. In a short term marriage, the courts will attempt to put the parties back into the financial position they were before the marriage. In a long term marriage, the court will attempt to split the assets and debts in half.

For example, suppose one of the parties has a million dollars in the bank, and the other works as a dancer. In a long term marriage, the court will split the million dollars between the husband and wife. In a short term marriage, the wife will be able to keep what's left of her million and the husband may have to go back to work as a dancer.

There are two important exceptions to this rule. If the parties intended to, and did, keep their assets and debts separate throughout the marriage, the court will honor what the couple did throughout their marriage. The second exception involves an unequal contribution to the marriage. If there was a substantial and unequal contribution to the marriage, then the court could determine that equity dictates that the partner who made most of the contributions receives "the longer half." However, this does not mean that if you married a lazy person who never took out the trash or did the dishes that there was not a substantial contribution by that person. The exception addresses a situation where someone has left the marriage or has refused to look for work for years, despite being able to contribute.

Q~ What is "hearsay"?

A~ In any trial, the Rules of Evidence govern what testimony can constitute evidence. The jury or judge's decision in a case is based on evidence. It is the judge's role during trial to determine what evidence goes to the jury based on the Rules of Evidence.

The most popularly known rule of evidence is the rule against "hearsay." In Oregon, the rule is defined as "an out of court statement introduced to prove the truth of the matter asserted therein." For example, a witness could not say in court testimony, "I heard the man yell the light was red" to prove that the light was red. The witness could testify, though, that "I saw that the light was red" to prove the color of the light.

There are multiple reasons for this rule. A defendant has the right to cross examine witnesses. In the man yelling about the red light example, the defendant cannot question the yelling man in court about what he saw. The constitution grants the defendant this right. Further, part of the function of a juror is to weigh the trustworthiness and credibility of a witness. If the person repeats a statement made out of court, the juror is not able to determine the reliability of the statement.

There are several exceptions to the hearsay rule. For example, if a dying person reveals something on his or her death bed, that is considered a dying declaration and considered to be inherently reliable. Statements against self-interest are also considered not to be hearsay. So, if someone admits they robbed a bank; that is considered a reliable statement, since people do not generally admit to wrongful conduct if they did not do it. That statement, though it is an out of court statement, can be introduced into testimony.

Confusing stuff, eh?

Q~ What is "guilty but for insanity"?

A~ Generally, there are two parts to a criminal act: an action and an intention. To be guilty of a crime, one must act with a particular criminal intention. The very same action might be considered criminal or not criminal depending on a person's intention.

For example, take the situation of two people hiking along a ridge. If one inadvertently slips and pushes the other off the trail, that is not a criminal act. However, if intentionally pushed, then it is murder. Or, if there was significant drinking involved, it might be considered manslaughter. So, intention matters.

Guilty but for insanity covers the person who, by reason of a mental defect, is not able to form an intention.

Recently, I defended a man who walked up to a woman and inappropriately squeezed her to prove his (or her) gender. The client claimed he believed she was a he. The client was convinced that he was touching a man. He was diagnosed as delusional by multiple medical professionals.

While he certainly engaged in an offensive contact, he would not have squeezed her but for the fact that he thought she was a man. His delusion led him to the wrongful, and criminal act. While his action was offensive, his intention was not because of the delusions.

After the delusional thinking had passed, the client recalled what he had done. He took responsibility for his actions, and wanted to make his amends. But, what was a simple case had great implications about the role of mental illness and criminal and personal responsibility. That, in essence, is what is meant by guilty but for insanity.

Steven Leskin is an attorney in North Portland. He has been in practice since 1992. You can submit a question to him through www.ModestMeansLawOffice.com or through the Vernonia's Voice *website.*

Morrow Gets Vernonia Bands Ready to Perform

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competition on May 16 at Oregon State University. The VHS Band has qualified for state the last three years in row under Izzett's direction, winning first place in 2012 and finishing third last year.

For the High School Band Festival, Morrow has his thirty-three band students working on three pieces of music they will perform. The first is "English Folk Song Suite" by Ralph Vaughn Williams; the band will just play the first movement of this piece. Next is "On a Hymnsong of Phillip Bliss" by David Holsinger, a slow ballad which Morrow says is difficult to play in competition because it is easy for the judges to hear mistakes in the performance. "You can hear every single instrument so if there is a wrong note or a wrong rhythm it stands out," says Morrow. "It's really about the phrasing and how the music is moving-if anything is wrong it's really easy to pick out, so it's a tough piece." The final piece is "The Light Eternal" by James Swearingen. Morrow says this piece has an interesting background story: The music is about a warship in World War II that was sinking and is a tribute to the three chaplins who stayed on board who went down with the ship after giving solace to the many other ill fated sailors. According to Morrow, Swearingen added parts of old hymns into his musical piece.

As you can see it is a very busy spring schedule for Morrow and all of his Vernonia band students.

NOTICE OF BUDGET COMMITTEE MEETING

A public meeting of the Budget Committee of the Vernonia School District 47J. Columbia/Washington counties, State of Oregon,

on the budget for the fiscal year July 1, 2014 to June 30, 2015, will be held at 1000 Missouri Avenue, Vernonia Oregon.

The meeting will take place on May 8, 2014 at 6:00 PM. The purpose of the meeting is to receive the budget message.

This is a public meeting where deliberation of the Budget Committee will take place.

An additional, separate meeting of the Budget Committee will be held to take public comment. Any person may appear at the meeting and discuss the proposed programs with the Budget Committee. The meeting for public comment will be on:

Date: May 22, 2014 Time: 6:00 PM Location: 1000 Missouri Avenue. Vernonia Oregon

A copy of the budget document may be inspected or obtained on or after May 8, 2014 at 1201 Texas Avenue, Vernonia Oregon between the hours of 8:00 AM and 4:00 PM

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