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# The Family and the Law

**DISCARD**

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## Contents

What Is a Lawyer? .....	3
Are Lawyers Necessary? .....	3
Why Don't Families Consult a Lawyer? .....	4
When Can a Lawyer Help You? .....	4
Contracts .....	4
Property .....	6
Buying Personal Property .....	6
Buying and Selling Real Estate .....	7
Leasing a House or Apartment .....	8
Accidents Involving Personal Injury or Property .....	8
Traffic Court .....	9
Income and Property Taxes .....	9
Collecting or Paying Debts .....	9
Family Matters .....	10
Finding a Lawyer .....	10

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# The Family and the Law

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In our society today each of us enjoys certain rights, protected by law, such as the right to life, liberty, personal security, personal reputation, and property ownership. For most rights which we enjoy, we have duties to other individuals and to society in general. For example, we have the right to operate an automobile on the highway, but this right also entails the duty to operate the car in a manner which does not endanger the lives and property of our fellow citizens. Our laws attempt to protect *rights* while still enforcing the corresponding duties.

In the United States there are several elements incorporated in the body of our law. The Federal Constitution and the Oregon State Constitution form the foundation on which our law is built. Much of our law is composed of federal statutes passed by Congress, state statutes passed by the Oregon legislature, and city ordinances passed by the councils of the various cities and communities. These written laws cover many phases of government and affect the course of our daily lives.

It is impossible for written laws to cover each situation which may arise in our society. Therefore, there is a part of the law known as "common law" which is composed of court decisions on various matters. If there is no statute to govern a certain situation, the court looks to the decisions of past courts to see what they did with a similar problem. This procedure keeps the law consistent from one day to the next,

while still permitting the courts to change outmoded laws.

Our laws are constantly changing. Although Constitutional amendments, both on the federal and state level, are infrequent, statutes and ordinances are always being revised and updated by the legislatures. A lawyer's business entails keeping abreast of these changes.

## What Is a Lawyer?

A lawyer is, of course, a person educated and authorized to explain the law to his clients and to represent them in court. But he does much more. A lawyer will counsel a client in legal matters and attempt to solve problems concerning the law, out of court if possible. Information given to a lawyer by his client is confidential, and he will not disclose anything unless his client has told him to do so.

To qualify for admission to the Oregon State Bar, a lawyer must have completed at least six years of college and professional training and must pass a comprehensive examination.

## Are Lawyers Necessary?

As long as man has been man, he has engaged in disputes. Therefore, people have always needed the services of lawyers—specialists in the prevention and adjustment of disputes. In the less crowded and complex past, some people could get through life with little or no contact with the law, but now our lives are changing. We have more property—income, a house, a car, and other

possessions. These all entail responsibilities of protection, taxation, and disposition after death.

With increases in population, in wealth, and in man's range of activities, the laws governing his behavior have necessarily increased. We are living in a legal world far too complex to cope with alone and unaided. We need to know about social security, real estate law, workmen's compensation, unemployment compensation, wills, property rights, union rights, automobile ownership, and driving liability. We need many licenses, all having legal aspects. We have many insurance policies covering areas of ownership and liability. We have legal responsibilities and rights as a spouse, a parent, a divorced or single person, and even as an owner of a pet. In today's society, it is practically impossible to live and operate on any scale without the aid of a lawyer.

### **Why Don't Families Consult a Lawyer?**

People are often frightened by false ideas about the law and lawyers. Those people who regard the law as a prohibitive wall rather than as a protective framework around their lives fail to see the preventive nature of most legal work. To them the lawyer is someone to be avoided until a dispute seems likely to end in litigation. Many of these disputes could be avoided, at a small cost to the client, by agreements and contracts correctly and properly drawn and phrased in the first place. Families need to know the situations where "preventive law" can help them avoid trouble and loss.

Many people have a fear of legal fees. One should ask a lawyer for an estimate of the cost of the services desired. The lawyer may not always be

able to tell precisely how much he will have to charge, however. A lawyer charges for the actual time spent in assembling facts and looking up laws affecting the case, so the cost may be unpredictable. There are some standard charges for the fairly standardized procedures and the lawyer can indicate these charges for you.

This bulletin will acquaint Oregon families with some of the legal questions that are a part of their daily living, alert them to times when they may need to consult a lawyer, and encourage them to use lawyers to help prevent legal entanglements as well as to solve legal problems. It is not a substitute for legal advice, which only a lawyer can give.

### **When Can a Lawyer Help You?**

The following list, which is limited, is only intended to suggest some of the areas in which lawyers can be used by families:

- Contracts
- Property ownership
- Sales
- Real estate transactions
- Rentals and leases
- Accidents
- Traffic Court
- Income and property taxes
- Debts
- Family matters
- Wills (See Extension Bulletin No. 807, "A Will of Your Own.")

The important thing to remember is to consult your lawyer **BEFORE** and not **AFTER** you engage in any matters involving the law.

### **Contracts**

The laws which are concerned with contracts are the ones with which the average person has the most contact. The contract is the foundation of all

business, whether large or small. Almost every week, in the course of our everyday lives, we enter into several simple contracts; we therefore need a general idea of the fundamentals of contract laws.

A *contract* is an agreement between two or more competent persons in which each exchanges his promise—to act or not—with the other. At least two persons are needed to make a valid contract. A mere promise made by one person for which no promise or act is asked or expected is not a contract which the law will enforce.

There are *four elements of a valid contract*:

1. *Competent parties.* Those persons whom the law considers capable of making their own contracts are termed competent parties. In the eyes of the law, persons under 21 years of age cannot be bound by the terms of any contract except one for necessities such as food and clothing. In the same manner, an insane person or one of unsound mind cannot make a binding contract except through his guardian.

2. *Offer and acceptance.* To create a contract there must be an offer by one party and an acceptance of that offer by the other party. Generally, an acceptance must be of the offer as made for a contract to result. Any change in the proposition is normally deemed a rejection of the original offer and the creation of a counter offer. Mistake, fraud, false representation, or undue influence may prevent a valid contract from being made.

3. *Legality.* The law will not enforce a contract which concerns the committing of an illegal act or an act which the law considers injurious to the public welfare.

4. *Consideration.* In a contract, each party must act or promise to act in re-

turn for the promise or act of the other party. This exchange of promises or acts is known as consideration. It may be payment of money, the furnishing of goods, the doing of an act, or the refraining from doing an act. The law will not concern itself with the value of the consideration so long as the consideration is stated.

It is always wise to put important agreements into writing. This will avoid future misunderstanding and confusion. There is often need for contracts within a family. For example, if a father who owns a farm makes an agreement with his son whereby the son will become a part owner at some future date, provided he helps his father manage the farm, this agreement should be in writing. When you enter into a contract be sure you understand all of its terms before you sign it. If you don't know everything about what you are signing, you may regret that you made a contract. For your own protection you should keep a copy of the contract whenever possible. This enables you to refer to its terms whenever you desire.

Once a contract is made, it continues in force until both parties have done everything which the contract requires or until they mutually agree to cancel it. If, after a contract has been made, one party refuses to perform his part while the other party has performed his, or is ready and willing to do so, the contract is said to have been breached. In such a case, the party willing to perform may go to court to have the situation remedied. In some cases, the court may award him money damages as the only remedy. In other cases, however, as in a contract to buy or sell land, the court may force the unwilling party to fulfill the contract as was originally agreed. There are often certain steps which a person must take

after the other party has breached a contract before his right to sue for damages or specific performance is established. Hence, it is always advisable to consult a lawyer as soon as a breach of contract has occurred.

## Property

From early times property has been divided into two distinct classes—real property and personal property. *Real property* consists of land and those things which are affixed to it (such as buildings), while all other objects which are subject to private ownership are classified as *personal property*. Examples of personal property are automobiles, furniture, stocks, bonds, money, bank accounts, cattle, tools, machinery, and clothing. Articles of personal property are known in law as chattels.

Real and personal property may be owned by one individual or jointly by two or more people. Since different types of joint ownership have different legal consequences, expert advice is often necessary to protect your interest in the property. (See Extension Bulletin No. 807, "A Will of Your Own," for examples of how different kinds of joint ownership may result in different inheritance and tax consequences.)

## Buying Personal Property

One phase of the law of personal property is that dealing with *sales*. Oregon has adopted the Uniform Commercial Code, which contains numerous sections dealing with this problem alone.

### Cash Sales

Comparatively few problems are connected with a so-called *cash sale*, the type of transaction that occurs when you go into a store and buy an article

for cash. The most important legal problem in this connection is the matter of warranties. There is an implied warranty that the seller of the article has good title to the article and is able to pass such title to you. When the seller has reason to know for what purpose you want the goods and knows that you are relying on his judgment to furnish suitable goods, he warrants, by implication, that they are fit for that purpose. For example, when you buy food from your grocer, he says that the food is fit for human consumption. If you buy goods by description, there is an implied warranty of merchantability which means that goods are of at least average quality. In addition to implied warranties, the seller may also make *express warranties*. The seller is liable to you in damages if the goods do not come up to these warranties. It is the buyer's responsibility to distinguish between an express warranty and mere sales talk. A salesman may state that his product is the best on the market but this is not a warranty by which he may be bound. The law recognizes such statements as mere expressions of opinion and expects the buyer to accept them as such.

You are expected to examine goods before buying and to be aware of any reasonably apparent defects and to buy the goods with knowledge of them. The old adage "Let the Buyer Beware" is good advice. Although the law protects the buyer far more now than it did in past years, it still presumes that he will be reasonably careful in purchasing goods. Express warranties, to be enforceable, must be made before the goods are purchased.

### Credit Sales

Many purchases are made *under contracts* which provide that the price is to be paid in a *series of installments* in-

stead of in a lump sum. The purchaser signs a conditional sales contract. There are many forms in which installment contracts may be drawn, but they all have one characteristic: the title or the legal ownership of the goods sold under such a contract remains with the seller and does not pass to the buyer until the amount of money named in the contract has been paid. The purchaser has possession of the goods and the right to retain possession only as long as the payments are kept up. Be sure to read before you sign and know what security is given. Some contracts have a broad security agreement which may cover everything you own.

## Buying and Selling Real Estate

Next to making a will, which disposes of the accumulation of a person's lifetime, the purchase of a home is probably the most important single activity in the average person's life requiring legal knowledge. A family needs the help and advice of a lawyer when engaging in negotiations for, and purchase of, real estate.

In negotiating for the purchase of property, too many inexperienced buyers fail to realize that an offer which they make, if accepted, constitutes a contract. Having made such an offer, the prospective buyer often goes to his attorney and asks him to crystalize the terms of the deal, only to learn that he has disposed of his rights already. Some of the innumerable matters that should be settled before an offer to purchase is made are:

Exactly what property—real and personal—is included?

When is purchaser to have possession?

What kind of deed must seller give?

Have utilities been installed and paid for?

Are there unpaid real estate taxes or special assessments, and who pays them?

What are you leaving or taking?  
What is part of the house?

How much insurance is in force, and how is it to be prorated?

What are to be the terms of payment?

Are there improvements, and do they conform under zoning regulations?

Is seller to furnish a "marketable title"?

What kind of title insurance is provided for the lending agency and for the owner of the property?

Is there an "easement or restriction of record" clause in the offer to sell?

All of these matters, and others, should be covered in the contract which should be carefully studied by a lawyer and revised, if necessary, before—not after—the prospective buyer makes any offer or signs a purchase agreement. This is one of the most important steps in the whole transaction.

When you have decided on the house you'd like to buy and are ready to make an offer to buy, the seller or his broker usually will ask you to pay a sum of money and/or sign a paper. The money payment is sometimes called a "good faith" or "earnest money" deposit. The paper you are asked to sign is the purchase agreement. It may be called a contract, bid, binder, offer to buy, deposit receipt, or some other name. Whatever it is called, when it is accepted by the seller it is a contract. When you sign it you commit yourself to make the purchase. You become legally obligated not only to buy the property but to do so in exactly the way the contract specifies. This contract governs and controls the completion of the purchase transaction.

## Leasing a House or Apartment

Renting an apartment or a house often entails signing a lease. A lease is a legal document and there is really no such thing as a standard lease. Provisions of many kinds are possible if both tenant and owner agree. To be safe and avoid complications later, be sure you read and understand the lease before you sign it. If you don't understand, ask questions. When you sign you are agreeing to the provisions.

You should check to see what the lease says about the following:

The period of time involved in the lease; the dates it begins and ends.

Who pays for the utilities—tenant or owner?

Who is responsible for repairs, and are there any repairs for which the tenant is responsible?

Make a list of the furnishings and/or equipment that are part of the house or apartment.

Is the house or apartment to be used only for living, or can it be used as a place of business also?

Can you sublet the premises?

What happens if you fail to pay the rent—what recourse does the landlord have?

Is it possible for you to make alterations, and if you do what happens when you move?

When can the owner show or advertise the premises to prospective renters or buyers?

Be sure that any agreements you make with the landlord are included in the written contract and that both of you understand it. Provisions of a lease are open to discussion between you and the owner.

## Accidents Involving Personal Injury or Property

No one wants to have an accident or be involved in a lawsuit, but accidents do occur and a lawsuit may be involved.

In case of an automobile accident, minimize problems after the accident by not volunteering unnecessary information. Oregon law requires only that you show your driver's license and furnish your name and address and the names and addresses of other occupants of your car and give the license number of the car. You are *not* required to give any statement, written or oral, at the time of the accident. Statements made at the time of an accident *may be used against you later*. Consult your lawyer promptly, before you make any statement. This will allow you to protect your legal rights. Don't try to handle the case yourself.

Accident cases are classified legally under the *law of torts*. A tort is a private or civil wrong or injury and tort law concerns itself with the redress of such wrong or injury.

One of the chief factors in the law of tort deals with negligence. Negligence is failure to exercise the care which a prudent person would exercise under the same or similar circumstances. Generally speaking, in an accident case there can be no recovery unless it can be shown that the party making the claim sustained an injury or loss directly attributable to the negligence of the other party. The mere fact of injury does not entitle a person to redress unless negligence can also be shown.

Witnesses in an accident case are very important; the outcome of a suit is often determined by their effectiveness and testimony in court. If you are involved in an accident, gather information and write it down at once. It is a



good idea to have photographs taken immediately, if appropriate. They can provide the best sort of evidence, but are usually available for a short time only.

Families use liability insurance to pay damages for which they are legally liable, up to the policy limits. Every person who drives an automobile should carry automobile liability insurance in case he negligently inflicts personal injury or property damage. Even an ordinarily careful person may be involved in an accident and judged to be at fault.

## **Traffic Court**

Anyone can receive a ticket for a moving violation in an automobile. The first reaction is often to plead guilty, pay the ticket, and forget the whole experience, even if guilt is not certain. A lawyer may help make the decision about what to do. A small amount of money may be involved, but higher insurance premiums would cost much more. Records are kept of moving violations, and several such violations could result in the need of "high-risk" insurance.

Many moving violations are concerned with the basic rule for speed. The Oregon speed law states that no person shall drive faster than is reasonable and prudent, considering traffic, surface and width of highway, the dangers at intersections, and other existing conditions such as weather. It also prohibits driving at a speed greater than will permit you to control the car and to slow or stop to avoid an accident. Know and understand what this basic rule means.

## **Income and Property Taxes**

Taxes are becoming a more important part of daily life. Families need

to consider taxes before taking any steps involving money or property, such as buying a home, making a will, or starting a business. In these situations it is sensible to consult a lawyer about any tax problems before, not after, any move is made.

More and more people with moderate incomes are learning that it is possible to save work, worry, and money by employing a lawyer in the preparation of tax returns. The income tax laws have many provisions and exceptions which an expert can take advantage of in perfectly legal ways. There are many other taxes, too numerous to list, on cars, transportation, inheritances, real estate and its transfer, and on almost every transaction or activity in our modern world. In all these areas the regulations are becoming more numerous and are constantly subject to possible legislative change.

## **Collecting or Paying Debts**

If someone owes you money and you haven't been paid—consult your attorney. Likewise, don't be afraid to see a lawyer about a debt you are trying to pay.

In most cases, seeing your lawyer about past-due or apparently uncollectible debts doesn't mean a lawsuit. Your attorney knows that lawsuits are best used as a last resort only after everything else has failed to effect collection. Many times just a letter from your lawyer may effect a collection. The creditor may be amazed when the first letter from a lawyer brings in money he has been trying to collect for months.

If you owe money and are having trouble in making payments, a lawyer could be of help. He may be able to arrange a more convenient payment schedule which would enable you to retain a good credit rating.

## Family Matters

The law influences many decisions that families make. Knowing how to seek legal help is therefore important.

Dissolution of marriage is common in the United States. At such a time, decisions must be made about children and their support. Often alimony and the amount needed must be decided, as well as the division of possessions that two people have accumulated over their lifetime together. These are questions decided by the courts, but families are faced with making financial decisions.

Many times the decree of dissolution may need to be modified. The decree was made by the court and only the court can modify it. This is a legal as well as a financial decision.

Longer life spans are making it necessary for families to make decisions about children's roles in *parental support*. There are times when children are legally obligated to support parents. When financial decisions about parental support are made, it is wise to put the agreement in writing so that each family member understands his responsibilities.

*Teenagers* and their parents face many problems that may have legal implications. Among these are the draft, the use of drugs, and parental responsibilities towards children. The members of the Oregon Bar are sponsoring a *counseling service for teenagers* who have problems with legal implications. This service is called "P.S."—the *Problem Solvers*.

The service is available in almost every county in the state. The teenager (anyone between 12 and 20 years of age) need only call for a "P.S." lawyer and keep the appointment made to get legal advice. All conversations between teenagers and lawyers are confidential. Payment is not required in money, but

in time and effort—the teenager must keep the appointment and is asked to contribute a like amount of his time to help someone else.

"P.S." is a counseling service only, but the lawyer will tell the teenager where to find help if the problem requires other services. The problem that the teenager has to discuss with the lawyer needs to be a legal one, but nearly all problems have legal implications. Laws are simply rules which have been adopted to help people live together.

## Finding a Lawyer

Do not wait until you need an attorney before you start looking for one. Begin by making inquiries among your friends about lawyers' reputations and willingness to handle simple family matters. Chances are some of them will recommend their own family lawyers. If you are new in town, check with your employer or with the local bar association, which may have a referral service. When you have decided on a lawyer, tell the lawyer in a general way what services you need and ask what the fees will be. The lawyer may be able to estimate; there are some more or less standard charges for the standardized procedures. The extent of legal services needed in any particular situation is so unpredictable, however, that it may be difficult to make a very specific indication of charges. The lawyer must charge for the amount of time that is involved in a particular case.

There are two obvious considerations to bear in mind as you look for a lawyer. First you want someone who is clearly well qualified to advise you on personal and family business matters. And to assure a truly helpful relationship, you want one with who you feel comfortable in seeking and accepting advice.

All lawyers are members of the Oregon State Bar. This is an organization that is concerned with a code of ethics for the profession. The local bar association will refer persons seeking help to competent and reliable lawyers in its area.

In many localities a Legal Aid Office will provide legal services at no cost to persons unable to pay. In other areas a Legal Service Program may be provided under grants from the Office of Economic Opportunity.



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