

Marriage

General Requirements (i) **Minimum age** (18+ or with approval);
 (ii) Both parties must have **capacity to consent** (the ability to comprehend and voluntarily agree);
 (iii) **intent** to marry

Ceremonial Marriage (1) **License**
 (capacity, waiting period, expiration) (state may require testing but may not condition the license on the results);
 (2) **Solemnization**
 (officiant & 2+ witnesses; must be filed)

No license issued when: Bigamy, Affinity or Consanguinity, Duress or Fraud, Incapacity, Intoxication, "Sham" marriage

Common Law Marriage (mostly abolished but given full faith and credit)
Elements: (the 4 C's)
 (1) Capacity,
 (2) Consent (present agreement),
 (3) Cohabitation,
 (4) Conduct (public "holding out" of marital relationship)

Putative Marriage (for equitable relief only)
What: an innocent party (the "putative spouse") participated in a *ceremonial marriage* & believed in *good faith* that the marriage was valid prior to discovering an impediment to the marriage
Effect: putative spouse can seek legal remedies like spousal support and property distribution

Terminating via Annulment

Void **Bigamy** (*exception:* some states allow the 2nd marriage to become valid once the impediment is removed aka the "Enoch Arden" rule);
Incest (by blood, marriage, or adoption);
Mental Incapacity

Defenses: Lack of impediment (removal still makes the marriage voidable)

Voidable (valid until a party acts) age, incurable impotence, intoxication, fraud, duress, or lack of intent

Defenses: unclean hands, laches, and estoppel

Grounds for Divorce

Type	Grounds	Proof
<i>No-Fault</i>	Marriage is irretrievably broken	(usually) separation for a statutory period & state law factors
<i>Fault</i>	Adultery	opportunity & inclination
	Desertion	willful & without cause or consent, intent to be permanent
	(<i>Constructive Desertion</i>)	one spouse forces the other spouse out, and there is fear of harm if they return
	Cruelty	cohabitation is unsafe or improper (usually requires course of conduct and physical harm)
	<i>Others:</i> Bigamy, Habitual Drunkenness (some), Imprisonment, Institutionalization, Indignity (minority)	...



Grounds for Divorce (cont)

Defenses *Recrimination* & Unclean Hands; *Connivance*, *Condonation*, *Collusion*, Provocation, Insanity, Consent, Justification

Not a defense: Challenge on religious grounds

Divorce

Note: most states have a residency requirement

Jurisdiction: A court with only SMJ jurisdiction but not PJ over both parties can decide status of the marriage but not division of property, support, etc.

Limited Divorce legal separation while remaining married
court may determine support and property division (wide recognition, rare use)

Separate Maintenance support while not separated

Interlocutory Period/Finalizing divorce many states do not finalize until a certain period has elapsed; cannot remarry during

Division of Property

Decree **cannot** be modified once entered

Methods: (Majority) Equitable Distribution
(Minority) Community Property (50/50 presumption)

Marital Property acquired during marriage by any means other than gift, descent, devise

included pensions, damage awards from tort suits from cause of action that accrues during marriage, stock options

not included licenses or educational degrees

Division of Property (cont)

Separate Property acquired: before marriage, by valid agreement, by gift or inheritance, by cause/judgment that accrued prior to marriage
property that a party has sold or granted or conveyed for value (including mortgage) prior to separation

Mixed Property SP may be transformed into MP if commingled & no longer traceable OR by manifested intent (e.g., changing title to property)

Distribution factors
Duration of the marriage;
Existence of prior marriages;
Economic circumstances & needs (age, health, income, needs, earning potential);
Assets, debts, and liabilities;
Standard of living during the marriage;
Child custody provisions;
Contributions to marriage;
Source of money used to purchase property;
Value of separate property;
Dissipation/damage to marital property

Premarital Agreements

Note: must pass **Statute of Frauds** (writing signed by party asserted against)

Requirements (common law)

- (i) full disclosure
- (ii) fair and reasonable
- (iii) voluntary

Premarital Agreements (cont)

UPAA (Uniform Premarital Agreement Act)	(similar to common law) <i>Challenge to enforceability:</i> (a) Involuntariness (duress, fraud, coercion, overreaching behavior); (b) Unconscionability at time of execution (majority) or enforcement (minority); (c) Lack of reasonable knowledge or disclosure of the other's assets and obligations (party can <i>wave</i> full and fair disclosure)
Permissible terms	clause preventing modification of spousal support or property rights
Unenforceable terms	child custody or support
Choice of Law	state with the "most significant relationship" to the marriage & agreement

Parentage, Adoption, and Assisted Reproduction

Other Marital Agreements

Separation Agreement	Typically merged into the divorce decree
Property Settlement Agreement	Settle and finalize economic issues prior to divorce decree
Discretionary exception to enforceability: (also applies to premarital agreements)	agreement will would leave one spouse "woefully impoverished" and a dependent on the state

Spousal Support

Child Support

Custody & Visitation

Parentage, Adoption, and Assisted Reproduction

