

Marriage -- legal union of 2 individuals

Requir- ements	Procedural State of mind	License, solemnization Factors of Consent (capacity, intent)
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Limitations	age, consanguin- ity, capacity, and bigamy/po- lygamy	Exceptions: removal of impediment or presumption of validity
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Common Law Marriage requirements

Cohabitation

Holding out publicly as spouses living together

Premarital Agreements

writing

voluntariness

Fair & Full Disclosure of financial worth

Amendment

May be revoked/amended by written agreement signed by both parties

Support Obligation

each spouse has obligations to support the other and one spouse may be held liable for another spouse's purchases

Marriage -- legal union of 2 individuals (cont)

Necess-aries Doctrine one spouse may be held liable to CRs for Necessaries purchased by the other spouse

Termination of Marriage

Annulment

judicial declaration that the marriage was invalid due to some impediment at the time of marriage and, therefore, never occurred

Grounds (voidable): non-age, incurable physical impotence or incapacity to consent (mental incapacity, fraud or duress)

Grounds (Void): Bigamy/Polygamy, consanguinity

JX: state where either party is domiciled

Division of Property

when property is divided upon marriage dissolution (2 approaches)

(1) Equitable Division of Marital Property

Divorce

divorce decree terminates the marriage relationship

Grounds: irretr-ievably broken/Ir-reconcilable differ-ences, living separate and apart for a given time, or incompatibility

Defenses: may exist in some states, but courts will not force a marriage to continue

JX: residency req't/Full Faith & Credit Cl.

(2) Community Property

Termination of Marriage (cont)

each spouse takes their sep property and the court divides property acquired during marriage on equitable basis

all property acquired during marriage split 50/50; all property owned prior to marriage/acquired by gift or inherit. is sep property

Property Division Process

3 steps

(1) Categorize Property Separate v. Marital

(2) Determine Equitable distribution of property

Factors: duration of marriage; std of living during marriage; Income, education/vocational skills, employability of each party; assets, debts & liabilities; Needs of parties; Health of parties, etc.

Support

Spousal

can be awarded if a spouse's separate property is insuff-icient for maintenance (Discr-etion, Purpose, Terms)

Factors: financial resources of each party, std of living during marriage, ability of spouse paying support to meet own needs, time necessary for party seeking support to obtain employment or contri-bution to marriage

Child

BOTH parents have an absolute duty to support child

Guidelines are state based & each state has formula to determine amount

Support (cont)

last until child reaches age of maj. or emancipated

custodial parents cannot deny visitations rights based on a parent's failure to make child support payments

Modification: Mod: substantial change that affects the needs of child OR ability of parent to pay material and unanticipated change (not self-induced)

Custody

Types of Custody

Legal right to make major decisions affecting child's life

Physical possession and control of child

Joint child splits time between each parent's house, and/or Parents share decision making, but child lives with one parent

Custody Factors Courts consider **Child's best interests**; Parent's wishes, child's wishes, C's adjustment to home/school/community; ability/willingness of each parent to provide for c's needs; and interaction/relationships with parents, siblings and others

Visitation when one parent is granted sole physical custody, the other parent is entitled to visitation

Exception V rights might be denied if court determines it endangers child's wellbeing

Custody (cont)

Nonparents May be given VRs if: NP has substantial relationship with child; NP visitation is in C's best interests; and Fit parent does not object

Modification requires parent to show a substantial, material change in circumstances (Best interest of child std)

Adoption

adoption terminates the legal relationship between biological parents and their child, and establishes a new legal relationship between parent & child

Process consent of both bio parents generally req'd (sometimes consent of adoptee is req'd if over 12/14)

cannot withdraw consent **AFTER** adoption, but can withdraw if court determines it is in the adoptee's best interests

Alternatives law has not provided uniformity on rights of parties involved

Donors one who produces sperm/egg used for reproduction generally does not have parental rights in a conceived child (Unless agreed to in writing by donor & parent(s))

Surrogacy where a woman agrees to bear a child conceived through assisted reproduction for the intended parents

Agreement- surrogate, S's husband (if married), and intended parents enter into a written agreement in which surrogate relinquishes her rights/duties as a parent

Unmarried CoHabitants

ks between unmarried cohabitants to share property or engage in other forms of economic sharing are VALID, unless sexual services are the sole consideration

implied k courts may allow unmarried cohabitants to seek a remedy based on an implied-in-fact k theory

division of property when unm. coH breakup, cts may grant an equitable distribution of property based on Rehabilitative alimony or one of the following (resulting trust, constructive trust, quantum meruit)

Nonmarital Children -- born to unmarried woman

Discrimination almost all discrimination based on nonmarital child status is unconstitutional

Establishing Paternity suit may be brought to establish a NMC's biological parent

Admissible Evid--blood/genetics test, prior statements by deceased family regarding pat, Med. Testimony or Admissions/acknowledgments by alleged parent