Pre- and Post- Nuptual Agreements

- governed by the UPAA
- pre-nups are generally enforced if they are voluntary, substantively fair, and were made with full disclosure of the assets
- pre-nups **CAN** protect property rights and obligations, division of property, dependent's interests, spousal support, life insurance, trust/will considerations, and inheritances
- pre-nups **CAN'T** protect child support and custody, day to day household matters, illegal provisions, anything that encourages divorce, anything unfair or unjust
- post-nuptual agreement must be in writing, voluntarily entered into, signed, and notarized

Divorce

Divorce Process

1. Divorce Petition
2. Request TempOrders
3. File Proof of Service
4. Negotiate Settlement
5. Trial, if necessary
6. Finalize judgment

Separation

- trial separation - "informal" separation, couple agrees to live apart and try to reconcile; no court involved, property acquired during this time is marital property
- legal separation - court grants wishes of both parties to separate but not divorce

Property

Marital Property

- all property acquired during the marriage
- When Acquired Rule - anything you or spouse earn or acquire during the marriage

Separate Property

B - before marriage
I - inheritance
G - gifts

Community Property v. Common Law

Property (cont)

common law - assets acquired by one member of a married couple are deemed to belong to that person unless they were put in the names of both

community property - CA, AZ, NV, LA, ID, NM, WA, TX, WI

- community property and debts belong to both spouses, own and owe equally

50/50 v. Equitable Division

- 50/50 - community property divided strictly in half, each spouse gets 50%
- Equitable Division - judge may choose to divide assets in any denomination they consider to be a "just and right" division

Factors that can lead to disproportionate division

- abilities and capabilities
- business opportunities/earning potential
- financial obligations or need for support
- age/health/education
- waste/dissipation of marital estate
- fault in divorce/separate estate size

Reimbursement Claim

- a legal request for compensation when one spouse's property or funds were used to benefit the other spouse during a marriage
- subject to judge's discretion, may order spouse to pay, change division of assets, or disregard

Marriage

- Legal union of individuals

ELEMENTS ->

- parties legal ability to marry each other
- mutual consent of the parties
- marriage contract as required by law

Types of Marriage

- civil marriage - recognized by the state
- religious marriage - recognized by a religious body
- monogamous - most common, legal
- bigamy - includes polygamy and group marriage, illegal in every state, marrige is NOT VALID

Common Law Marriage

Marriage (cont)

- enjoys all rights and benefits of marriage, valid in all states under Full Faith + Credit
- no "common law divorce"

ELEMENTS ->

- two people mean for their relationship to be as a married couple
- they act on that intention by living together and holding themselves out as a married couple
- when they established their marriage relationship they lived in a state that recognizes common law marriage AND
- meet the basic requirements under state law

TX - 18+, not married to someone else, agree to be married and live in TX as H and W, represent to others that they are married

Rights and Responsibilities

- marital misconduct can be grounds for fault divorce
- fiduciary duty
- Duty of Confidential Communication
- acquisition of marital property
- shared retirement benefits
- tax benefits
- right to social security/disability/medicaid benefits
- inheritance right, next of kin status

Alimony/Spousal Support

Jurisdiction

Personal Jurisdiction

- can be waived!

in TX, a court can generally assert personal jurisdiction over a party if:

- party is a resident
- party consents to jdx in TX
- the parties lived together in TX as a married couple
- the cause of the divorce occurred in TX

Subject Matter Jurisdiction

- can NOT be waived!

in TX a court generally has SMJ over a case if

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Jurisdiction (cont)

- at least one spouse has been a resident of TX for the preceding 6 months
- the spouse filing for divorce has been a resident of the country where the case is filed for the preceding 90 days

Military Personnel

Service Member Civil Relief Act - American court may not allow the non-servicemember spouse to proceed with a divorce action unless certain procedural requirements have been met.

- servicemember overseas may be able to temporarily stop divorce proceedings pursuant to the act if he or she is unable to participate due to military obligations

Ex parte **Divorce**

- court has JDX over only one party
- Doctrine of Divisibile Divorce allows a party to obtain an *in rem ex parte* divorce to terminate the marital relationship while retaining the right to later make orders for support, custody, property

Divorcing Abroad

- foreign custody orders not usually enforceable un courts in the US
- states recognize *ex parte* decrees from another state, no state recognizes *ex parte* decrees from a foreign country

Full Faith and Credit Clause

- once a valid FDoD is obtained in one state's court, that decree is valid in all other states pursuant to the FF+C Clause

Res Judicata

- spouse who has an opportunity to contest the jurisdiction of the court when suit for divorce is filed and does not do so may not later collaterally attack the jurisdiction of the court

TX -

- to file, at least one party must be a domiciliary of TX for 6mo preceding the filing AND a domiciliary of the country where the divorce case is filed for 90 days imm. prior to filing

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