Contents

Preface	xxt
Acknowledgments	xxvii
Chapter 1 Marriage and Cohabitation	1
Marriage: Regulating the Relationship	2
Common Law Origins	2
The Civil Law Tradition	4
Married Women's Property Acts	4
The Move to Legal Equality	6
Entrance Into Marriage: Choosing a Spouse	7
Loving v. Virginia	8
Marital Rights of Same-Sex Partners	9
The Renewed Struggle for Marriage Equality	10
The Backlash: The Campaign to Preserve Marriage as a	
Heterosexual Institution	10
Marriage Equality in the States	10
Marriage Equality: The Law of the Land	11
The Backlash Against Obergefell	14
Restrictions on the Entry into Marriage	15
Incest	16
Multiple Marriages	17
Marital Age	18
Marriage Formalities	20
Obtaining a Marriage License	20
Consequences of Failing to Comply with Licensing Requirements	22
Common Law Marriage	22
Formation Requirements and Consequences	22
Interstate Recognition	23

xii Contents

The Legal Rights of Cohabiting Couples	24
Opening the Door to the Courthouse: The Landmark	
Case of Marvin v. Marvin	25
Chapter Summary	28
Key Terms	29
Review Questions	29
Discussion Questions	30
Assignments	30
Cases for Analysis	31
Loving v. Virginia	31
Obergefell v. Hodges	34
State v. Arlene's Flowers, Inc.	44
Endnotes	49
Chapter 2 Premarital and Postmarital Agreements	53
The Traditional Approach to Premarital Agreements	53
The Growing Acceptance of Premarital Agreements	54
Legal Requirements	55
Threshold Considerations	55
The Fairness Requirement	56
Requirements of Procedural Fairness	57
Requirements of Substantive Fairness	61
The Interdependence of Procedural and Substantive Fairness	63
Common Types of Provisions	63
Property	63
Spousal Support	64
Child Custody and Child Support	64
Postmarital Contracts	65
Chapter Summary	66
Key Terms	67
Review Questions	67
Discussion Questions	68
Assignments	68
Cases for Analysis	69
Simeone v. Simeone	69
Bedrick v. Bedrick	74
Endnotes	81
Chapter 3 Intimate Partner Violence	83
The Traditional Approach	83
Early Reform Impulses	85

	Contents
Procent Local Approach to Domestic Violence	96
Present Legal Approach to Domestic Violence	86
Obtaining Civil Orders of Protection Under Abuse Prevention Laws	87
	87
Qualifying Relationships	87
Dating Relationships	89 92
Same-Sex Couples Covered Conduct	
	92
Available Remedies *Refraining from Further Abuse*	94 95
Vacate and Stay-Away Orders	95 95
No-Contact Orders	95 95
Custody and Visitation	96
Protection of Pets	96
Support and Monetary Compensation	97
Treatment/Counseling	97
Electronic Monitoring	98
Relinquishment of Firearms	99
Statutory Obligations of Police Officers	101
Court Procedure: Obtaining Protective Orders	101
Enforcement of Protective Orders	116
Supplementing the Enforcement Process: Criminal	
Anti-Stalking Laws	118
Cyberstalking	119
Specialized Domestic Violence Courts	121
The Federal Response to Domestic Violence: The Violence Against	
Women Act	122
Select Provisions of VAWA	122
Chapter Summary	125
Key Terms	126
Review Questions	126
Discussion Questions	127
Assignments	128
Cases for Analysis Fowler v. Fowler	128
Baird v. Baird	128 134
Endnotes	137
Chapter 4 The Law of Divorce, Annulment, and Legal Separation	141
Historical Overview	141
Religious Underpinnings	142
Marriage as an Indissoluble Bond	142
The Protestant Reformation	142
The English Experience	142

xiii

xiv Contents

The American Experience	143
Divorce in the Colonies	143
The Rising Tide	144
Fault Divorce: Common Grounds and Defenses	145
Divorce Grounds	145
Adultery	145
Desertion/Abandonment	146
Cruelty	147
Defenses	148
Connivance	148
Condonation	148
Recrimination	149
Collusion	149
No-Fault Divorce	149
The Underpinnings of Reform	150
No-Fault Laws	151
No-Fault Grounds	152
The Divorce Counterrevolution	153
The Debate Over No-Fault Divorce	154
Legal Reforms	156
Premarital Counseling	157
Covenant Marriage	157
The Law of Annulment	159
Distinguished from Divorce	160
Grounds	160
Void Marriages	161
Voidable Marriages	161
Consequences of an Annulment Decree	162
Children	162
Spousal Support and the Division of Property	162
Revival	162
Legal Separation	163
The Nature of the Action	163
Distinguished from an Action for Separate Maintenance	164
Chapter Summary	164
Key Terms	165
Review Questions	166
Discussion Questions	166
Assignments	167
Cases for Analysis	168
Berry v. Berry	168

	ontents
Lawrence v. Lawrence	171
In the Matter of Blaisdell	173
Endnotes	178
Chapter 5 Child Custody	181
Evolving Legal Standards	182
Paternal Preference	182
Shift to Maternal Custody	183
The Modern Best Interest Test	183
Formulating the Test	184
Applying the Test	185
Factoring Parental Characteristics/Identities into the Best Interest Test	194
Critiques of and Alternative Approaches to the Best Interest Standard	201
Gender Bias	201
Lack of Predictability	201
The Primary Caretaker Presumption	202
The American Law Institute's Approximation Rule	203
Custody and Visitation Arrangements	205
Physical and Legal Custody Distinguished	205
Sole and Joint Custody Distinguished	206
A Closer Look at Shared Custody Arrangements	206
The Joint Custody Controversy	207
The Legal Status of the Noncustodial Parent	209
Visitation Rights	210
The Visitation Schedule	210
When Unrestricted Visitation Is Not in a Child's Best Interest	212
Parenting Plans, Parenting Coordinators, and Parent Education Programs	213
Post-Divorce Custody and Visitation Disputes	217
Disputes About Custody	217
Disputes About Visitation	218
Relocation Disputes	219
Virtual Visitation	220
Adding the Covid-19 Pandemic into the Mix	223
The Custodial and Visitation Rights of Grandparents and Stepparents	224
Grandparents	224
Stepparents	228
Chapter Summary	229
Key Terms	230
Review Questions	230
Discussion Questions	232
Assignments	232

χV

xvi Contents

Cases for Analysis	234
Mary Ann P. v. William R.P., Jr.	234
Danti v. Danti	238
Taylor v. Taylor	246
Endnotes	251
Chapter 6 Child Support	257
Historical Overview	258
Administrative Framework for the Establishment and Enforcement of	
Child Support Orders	259
The Federal Office of Child Support Enforcement	259
At the State Level: The IV-D Agency	260
Eligibility for IV-D Services	260
Locating Absent Parents	261
Child Support Guidelines	262
Guideline Formulas	263
Percentage of Income	263
Income Shares	264
The Melson Formula	264
Determining What Income Is Subject to the Child Support Obligation	264
Defining Income	264
Setting the Income Base	266
Consideration of Specific Factors	267
Income of the Custodial Parent	267
Income of a New Partner	268
Income/Resources of the Child	268
Multiple Families	268
Extraordinary Expenses	269
Health Insurance	270
Custody and Visitation Arrangements	270
Financial Disclosure	272
Enforcing the Child Support Obligation	283
Support Enforcement at the State Level	283
Income Withholding	283
Liens	284
Credit Reporting	285
Licenses	285
The Federal Collection and Enforcement Program	285
Federal Income Tax Refund Offset	285
Passport Denial Multistate Financial Institution Data Match	286 286
Interstate Cases	286 286
IIIIEISIAIP CASES	/ an

	Contents
The Uniform Interstate Family Support Act	287
The Full Faith and Credit for Child Support Order Act	288
Enforcement Under State Law Procedures	289
Criminal Nonsupport	289
Contempt	289
Enforcement by Private Child Support Collection Agencies	291
Modification and Adjustment of Support Awards	292
Modification Based on Changed Circumstances	292
Periodic Review and Adjustment of Support Orders	294
Duration of the Parental Support Obligation	294
Termination of Support Prior to Majority	294
Emancipation	295
Parental Death	295
Adoption/Termination of Parental Rights	296
Extension of Support Beyond Majority The Adult Student	296
The Adult Student Mental and Physical Disabilities	296 298
· ·	
Tax Implications of Child Support Awards	298
Chapter Summary	299
Key Terms	300
Review Questions	300
Discussion Questions	302
Assignments	303
Cases for Analysis	304
McLeod v. Starnes	304
Macknight v. Macknight	307
Endnotes	314
Chapter 7 Spousal Support	319
Historical Overview	319
English Roots: Alimony and Fault	319
Alimony on the Eve of the No-Fault Reform Era	320
Impact of No-Fault Reform	321
Property Division as the Primary Distributive Event	321
Shifting the Focus from Moral to Economic Considerations	321
Degendering the Support Obligation	322
Shifting from an Assumption of Female Economic Dependence to ar	
Assumption of Economic Self-Sufficiency	322
Critique of the "Clean Break" Approach	322
Support Determinations	325
Factors to Be Considered	325

xvii

xviii Contents

Searching for Greater Certainty: Alimony Guidelines and the	
American Law Institute's Compensatory Principle	327
Spousal Support Guidelines	328
ALI's Compensatory Principle	329
Different Approaches to Structuring Spousal Support	329
Permanent Alimony	329
Lump-Sum Support	331
Rehabilitative Support	331
The Backlash Against "Permanent" Spousal Support Awards	333
The Professional Degree Cases	334
The Degree as Property	334
Spousal Support Options	335
Medical Insurance	336
Post-Divorce Modification and Termination of Support	337
The General Concept	337
Modifiability and Termination of "Permanent" Support	338
Remarriage	338
Cohabitation	339
Change in Financial Circumstances	339
Modifiability of Specific Types of Support	340
Lump-Sum Support	340
Rehabilitative Support	340
Reimbursement Alimony	340
Agreement of the Parties to Prohibit Modification	341
Enforcement of Support Awards	341
Contempt	341
Other Enforcement Measures	342
Bankruptcy and the Support Obligation	342
Tax Consequences	343
Chapter Summary	343
Key Terms	344
Review Questions	344
Discussion Questions	345
Assignments	346
Cases for Analysis	347
In re Marriage of Line Nang Baccam	348
Loutts v. Loutts	351
In re Marriage of Towne	356
Endnotes	360

	Contents
Chapter 8 Division of Marital Property	363
Historic Overview of the Two Marital Property Systems	363
The Common Law Approach	364
The Community Property Approach	364
The Two Marital Property Systems Today	365
The Property Distribution Process	367
Defining Property	368
The Tangible/Intangible Distinction	368
Divorce and the Family Pet	369
Unvested Pensions, Accrued Leave Time, and Professional	
Goodwill: Are They Property?	372
And What About the Virtual World?	375
Classification of Property	376
Defining Marital and Separate Property	376
The Significance of Timing	377
Looking Beyond Definitions: The Complexities of Classification	379
Transmutation Valuation	382
Valuation Valuation Methods	383 384
The Role of Experts	384
Time of Valuation	385
Distribution	385
The Standard for Division: Equal or Equitable?	385
Consideration of Specific Factors	386
Effectuating the Distribution	388
Tax Consequences of a Property Distribution	391
Chapter Summary	392
Key Terms	392
Review Questions	393
Discussion Questions	394
Assignments	395
	397
Cases for Analysis In re Marriage of Niemi	397
Olesberg v. Olesberg	400
Castle v. Castle	403
Endnotes	409
Chapter 9 Jurisdiction	413
Overview of Subject Matter and Personal Jurisdiction	413
Subject Matter Jurisdiction	413
Personal Jurisdiction	414

xix

xx Contents

Jurisdiction and the Divorce Action	415
Does the Court Have Jurisdiction to Dissolve the Marriage?	415
Does the Court Have Jurisdiction to Award Support?	416
Does the Court Have Jurisdiction to Divide Property?	418
Does the Court Have Jurisdiction to Determine Custody?	419
Jurisdictional Requirements Under the UCCJEA	420
Initial Custody Determinations	420
Modification Jurisdiction	421
Declining Jurisdiction	422
Jurisdictional Requirements of PKPA	423
International Child Abduction	423
Chapter Summary	426
Key Terms	426
Review Questions	427
Discussion Questions	428
Assignments	428
Cases for Analysis	429
Goodin v. Department of Human Services	00
Monasky v. Taglieri	429
Endnotes	434
Chapter 10 The Divorce Process	437
The Initial Client Interview	437
The Emotional Context	438
Conducting the Client Interview	439
The Role of the Paralegal	439
Ethical Considerations	439
The Ethical Framework	440
Specific Practices	440
Developing Good Listening Skills	442
The Interview Itself: A Three-Stage Approach	444
The Divorce Action: Initial Steps and Discovery	449
The Initial Steps	450
The Complaint	450
Filing the Complaint	454
Service of Process	456
The Defendant's Response	461
The Component Parts of an Answer	465
Admissions/Denials	465
Affirmative Defenses	465
Counterclaims	465

	Contents
Discovery	469
General Purpose	469
Scope of Discovery	469
Discovery Methods	470
Discovery Difficulties	479
The Middle Phase: Moving Toward Resolution or Trial	480
Motions for Temporary Relief	480
Overview of Motion Practice	480
Specific Divorce Motions	483
Sample Motion and Supporting Affidavit	486
The Role of the Paralegal	486
Alternative Approaches to Dispute Resolution	489
Negotiation	489
Mediation	491
Arbitration	496
The Collaborative Divorce Approach	497
Unbundled Legal Services	499
Reaching Resolution: The Separation Agreement	500
Drafting the Agreement	501
The Role of the Paralegal	501
Sample Separation Agreement and Comments	502
The Divorce Hearing	518
The Uncontested Case	518
Dissolving the Marriage	519
Approving the Separation Agreement	519
The Contested Case	520
The Pretrial Conference	520
The Trial	521
Trial Preparation and the Role of the Paralegal	521
Post-Divorce Proceedings	522
Post-Trial Motions	522
Motion for a New Trial	522
Motion for Relief from Judgment	522
Appeals	523
Overview of Appellate Practice	523
Appellate Procedure	524
The Role of the Paralegal	524
The Complaint for Modification	525
The Complaint for Contempt	528
Chapter Summary	532
Key Terms	533
Review Questions	533

xxi

xxii Contents

Discussion Questions	535
Assignments	536
Endnotes	539
Chapter 11 Determining Parentage	543
The Emerging Legal Status of Children of Unmarried (Heterosexual) Parents	544
Common Law Status: A Child of No One	544
Early American Reform Efforts	544
The Roots of Reform	544
Creating Limited Family Rights	545
Legitimation	545
The End of Legal Innovation	546
Constitutional Developments	546
The Equal Protection Challenge to Differential Treatment	546
The Legal Status of the Unwed Father	548
Establishing Paternity: Unmarried Heterosexual Parents	552
The Adjudication of Paternity	553
Voluntary Acknowledgment of Paternity	557
Following the Determination of Paternity	559
Paternity Disestablishment	560
Considering Best Interest: Conflicting Approaches	562
What Makes a Man a Father?	563
Determining Paternity When the Genetic "Father" Is a Sperm Donor	563
Donor Insemination and the Heterosexual Couple	563
Donor Insemination and the Unpartnered Woman	565
Dual Mother Couples and the Establishment of Legal Parenthood	567
The "Other" Mother: The Traditional Legal Approach	568
The Extension of Parental Rights Based on Marriage and Consent	569
De Facto Parental Status	570
Chapter Summary	571
Key Terms	573
Review Questions	573
Discussion Questions	574
Assignments	574
Cases for Analysis	575
In re the Paternity of A.R.R.	576
In the Interest of A.E.	582
Endnotes	586

		Contents	xxiii

Chapter 12 Child Abuse and Neglect	589	
Historical Overview		
The Colonial Period		
The Emergence of the Privatized Family	591	
Child Rescue: Preventing Cruelty to Children	591	
The Rescue of Mary Ellen	591	
The Emergence of Societies for the Prevention of Cruelty to Children	592	
The "Rediscovery" of Child Abuse and the Initial Legislative Response	593	
The Child Protective System	594	
Defining Abuse and Neglect	594	
Physical Abuse	595	
Sexual Abuse	596	
Emotional Abuse and Neglect	596	
Neglect	597	
Medical Child Abuse	599	
Forced Child Marriage	600	
Drug Use by Pregnant Women	600	
The Reporting of Suspected Abuse or Neglect	601	
Screening and Investigation	602	
Substantiated Cases: Federal Law and the "Reasonable Efforts"		
Requirement	603	
Reasonable Efforts Prior to Removal	605	
Removal of a Child	606	
The Dependency Proceeding	606	
Permanency Planning	607	
Legal Orphans and the Reinstatement of Parental Rights	608	
The Federal Statutory Framework: The Indian Child Welfare Act (ICWA)	609	
	610	
Chapter Summary Koy Torms	611	
Key Terms		
Review Questions	611	
Discussion Questions	613	
Assignments	614	
Cases for Analysis	614	
In the Interest of A.W.	614	
In re Hicks/Brown	619	
Endnotes	621	
Chapter 13 Adoption	625	
Historical Overview		
Approaches to Adoption		

xxiv Contents

Agency Adoptions	628			
Independent Adoptions	629			
Safe Haven Laws	630			
The Adoption Process				
Adoption Based on Parental Consent or Relinquishment	631			
Parental Consent to a Private Placement Adoption	632			
Relinquishment to an Agency	632			
What If a Parent Changes His or Her Mind?	633			
Adoption Based on the Involuntary Termination of Parental Rights	634			
The Adoption Placement	635			
The Home Study	635			
Configuration of Relationships During the Placement	636			
The Social Study	637			
The Adoption	637			
Judicial Review and Approval	637			
Lifting the Shroud of Secrecy: Post-Adoption Contact and Access				
to Records	638			
Access to Adoption Records	639			
Open Adoption	640			
Adoption in Specific Situations	642			
Stepparent Adoptions	642			
Adoption by Gay Men and Lesbians	643			
Co-Parent Adoption	644			
Unwed Fathers	644			
Transracial Adoption	651			
Adoption Abrogation and the Tort of Wrongful Adoption	654			
Chapter Summary	655			
Key Terms	656			
Review Questions	657			
Discussion Questions	658			
Assignments	659			
Cases for Analysis	660			
In re Adoption of A.M.H.	660			
TD v. State (In the Interest of SMD)	667			
Endnotes	676			
Glossary	681			
Index	699			