

Contents

<i>Preface</i>	xxix
<i>Acknowledgments</i>	xxxi

Chapter I Emerging Family Values in a Complex Society I

1.1. Introduction	1
History of Marriage and Family in America	1
1.2. The Changing Relationship Between Marriage and the American Family	1
1.3. Colonial American Model of Marriage	3
1.4. The American Family at the Time of the Revolution	4
1.5. African Families	4
1.6. Post-Civil War Reconstruction Era	5
1.7. Indigenous Families Post-Civil War	6
1.8. Religion and the Traditional American Family	8
1.9. Nineteenth-Century Patriarchic Model of Marriage	9
1.10. The Mid-Twentieth Century Family Law Revolution	13
Emerging Trends for Defining “Family”	15
1.11. What Is a “Family”?	15
1.12. Unrelated Individuals as a “Family”	16
1.13. Distinguishing Between Familial Relationships	17
Due Process Liberty	20
1.14. Constitutional Challenges to State Regulation of Families	20
1.15. The Value of Family Privacy and Children	21
1.16. The Value of Family Privacy and Husband-Wife Relationships: <i>Griswold v. Connecticut</i>	23
1.17. Extending Family Privacy to Individuals: <i>Eisenstadt v. Baird</i>	25
1.18. Family Privacy and Public Assistance	25
1.19. Unmarried Parents and Family Privacy	27
1.20. Same-Sex Couples and Family Privacy	27
Modern Family Structures and the Future of Family Law	31
1.21. Families in the Twenty-First Century	31
1.22. The Continuing Evolution of Family Law	32

Contents

Chapter 2	Entering Marriage	33
2.1.	Introduction	33
	Marriage Restrictions	33
2.2.	Race	33
2.3.	Abriding the Right to Marry	36
2.4.	Same-Sex Marriage	36
2.5.	Transsexual Marriages	42
2.6.	Polygamy	43
2.7.	Bigamy	44
2.8.	Consanguinity	44
2.9.	Affinity Relationships	45
2.10.	Marriage Between Adopted Children	46
2.11.	Prisoners	46
2.12.	Recognizing Out-of-State Marriage; <i>Lex Loci</i> and Full Faith and Credit	47
	Capacity to Marry	56
2.13.	State of Mind to Marry: Capacity Generally	56
2.14.	Capacity – Guardian’s Consent	57
2.15.	Capacity – Age Restrictions	58
	Marriage Formalities	60
2.16.	Typical Marriage License Requirements	60
2.17.	Solemnizing a Marriage	62
2.18.	Presumption of Validity of Marriage	63
2.19.	Breaking Promise to Marry; Engagements	63
2.20.	Premarital Medical Testing	65
2.21.	Premarital Counseling and Education	66
	Non-Compliance with Marriage Formalities	70
2.22.	Common Law Marriage	70
2.23.	Putative Marriage Doctrine	72
	Other Forms of Marriage	81
2.24.	Proxy Marriages	81
2.25.	Confidential Marriages	84
2.26.	Native American Marriages	84
2.27.	Covenant Marriages	85
Chapter 3	Annulment of Marriage	89
3.1.	Introduction	89
3.2.	Void/Voidable Distinction	91
3.3.	Time Limitations on Seeking Annulment	91
3.4.	Who Has Standing to Bring Annulment Action?	93
	Retroactivity	96

Contents

3.5.	Relation Back of an Annulment—Generally	96
3.6.	Annulment and Relation Back—Alimony	97
3.7.	Relation Back of an Annulment—Uniform Marriage and Divorce Act	99
3.8.	Relation Back—Enoch Arden Statute	100
	Lack of Capacity as Basis for Annulment	100
3.9.	Lack of Mental Capacity	101
3.10.	Underage Marriage	101
3.11.	Marriage Made in Jest	102
	Fraud	105
3.12.	Fraud—General Rule	105
3.13.	Immigration Fraud—Sham Marriage	107
3.14.	Fraud—False Pregnancy Claims	108
3.15.	Fraud—Broken Religious Promises	109
3.16.	Fraud—Concealing Prior Marriage	110
	Other Grounds for Annulment	111
3.17.	Duress Used to Force Marriage	111
3.18.	Impotence as Basis for Annulment	111
3.19.	Does Sexual Preference for Others Form the Basis for Annulment of Marriage?	112
	Defenses	112
3.20.	Continued Cohabitation	112
	Procedure	114
3.21.	In Rem Proceeding	114

Chapter 4 Who May Divorce? Restrictions and Requirements 119

4.1.	Introduction	119
4.2.	History	119
	Grounds for Divorce	123
4.3.	Fault	123
4.4.	Common Law Grounds for Divorce	124
4.5.	Common Law Defenses to Divorce Actions	129
4.6.	Statutes Now Control	135
4.7.	Divorce Reform in the United States—No-Fault Emerges	136
4.8.	Legal Separation	139
4.9.	Right to Jury Trial in Divorce Actions	140
4.10.	Covenant Marriage and Divorce	141
4.11.	Divisible Divorce	142

Contents

Chapter 5	Child Custody	149
5.1.	Introduction	149
	Defining Custodial Relationships	150
5.2.	Overview	150
5.3.	Legal Custody	150
5.4.	Physical Custody	151
5.5.	Parenting Plans	151
	Evolving Presumptions Governing Child Custody	154
5.6.	Overview	154
5.7.	Historical Paternal Presumption	155
5.8.	Historical Tender Years Presumption	155
5.9.	Historical Primary Caretaker Presumption	156
5.10.	Contemporary Natural Parent Presumption	157
5.11.	Contemporary Joint Legal and Physical Custody Presumptions	158
	Model Acts	161
5.12.	Uniform Marriage and Divorce Act	161
5.13.	American Law Institute	162
	Factors for Determining the Best Interests of the Child	162
5.14.	Race	162
5.15.	Religion	163
5.16.	Mental and Physical Health	163
5.17.	Child's Preference	164
5.18.	Separating Siblings	166
5.19.	Parental Conduct Not Affecting the Child: The Nexus Test	166
5.20.	Careers	167
5.21.	Facilitating Other Parent's Relationship with Children	168
5.22.	Intimate Partner Violence	169
	Additional Processes in Custody Proceedings	173
5.23.	Child Custody Evaluations	173
5.24.	Parenting Education	174
Chapter 6	Child Custody Modification and Relocation Disputes	175
6.1.	Introduction	175
6.2.	The State as a Third Party	176
6.3.	Stability Is the Goal	176
	Barriers to Modification Actions	177
6.4.	Res Judicata; Presumption; Change in Circumstances	177

Contents

6.5.	Moratorium	178
	Procedure	180
6.6.	Initial Pleadings Must Demonstrate Necessity of Evidentiary Hearing	180
6.7.	Two-Step Process to Decide Whether Change Is Warranted	181
6.8.	Varying State Modification Standards	182
	Typical Claims Triggering Modification Demands	187
6.9.	Unwarranted Denial of Visitation (Parenting Time)	187
6.10.	Failure to Pay Child Support	188
6.11.	Integration into Noncustodial Parent's Home	188
6.12.	Custodial Parent's Alleged Immoral Conduct	189
6.13.	Poor Parenting/Discipline	190
6.14.	Smoking and Drug Use	191
6.15.	Death of a Parent	192
6.16.	Disability of a Parent	192
6.17.	When a Child Resists or Refuses Contact with a Parent	193
6.18.	Endangerment	194
	The Role of a Child's Preference to Modify Custody	195
6.19.	Maturity	195
	Relocation Disputes	200
6.20.	Introduction	200
6.21.	Relocation and Constitutional Right to Travel	202
6.22.	Model Acts	203
6.23.	Relocation Presumptions	204
6.24.	Burden of Proof for Relocation	205
6.25.	Notice or Petition of Relocation	205
6.26.	Active Military Service	206
Chapter 7	Parenting Time and Visitation	213
7.1.	Introduction	213
	Defining Parenting Time (Visitation)	214
7.2.	Uniform Marriage and Divorce Act (UMDA): Reasonable Visitation	214
7.3.	American Law Institute (ALI)	214
	Modification, Suspension, and Denial of Parenting Time	216
7.4.	Modification of Custody versus Modification of Parenting Time	216
7.5.	Suspension or Denial of Parenting Time	216
7.6.	Restrictions on Parenting Time	217
7.7.	Child Abuse and Intimate Partner Violence	218
7.8.	Alcohol and Substance Abuse	219

Contents

7.9.	Child Abduction	219
7.10.	Cohabitation	219
7.11.	Religious Differences	220
	Enforcement of Parenting Time	224
7.12.	Contempt and Modification of Custody	224
7.13.	Compensatory Parenting Time	224
7.14.	Withholding Child Support	224
7.15.	Wishes of the Child	225
	Visitation by Nonparent Third Parties	226
7.16.	<i>Troxel v. Granville</i>	226
7.17.	Visitation with Grandparents	227
7.18.	Visitation with Stepparents	228
7.19.	Visitation with Other Nonparent Third Parties	229
	Visitation and Custody Rights of Functional Parents	233
7.20.	Functional Parents	233
7.21.	Uniform Nonparent Custody and Visitation Act	235
Chapter 8	Interstate Custody Struggles: PKPA and UCCJEA — History, Restrictions, and Requirements	237
8.1.	Introduction	237
8.2.	Domicile View of Jurisdiction	238
8.3.	Supreme Court Generates Uncertainty	238
8.4.	First Interstate Jurisdiction Model Act—UCCJA	240
8.5.	Parental Kidnapping Prevention Act (PKPA)	241
8.6.	Native Americans—PKPA	243
8.7.	Second Model Act: The Uniform Child Custody Jurisdiction and Enforcement Act-UCCJEA	246
8.8.	The Status Theory of Jurisdiction	251
8.9.	International Child Abduction	252
Chapter 9	Establishing Child Support	271
9.1.	Introduction	271
	History	271
9.2.	Elizabethan Poor Laws	271
9.3.	Common Law	272
	Role of the Federal Government	273
9.4.	Child Support Traditionally a State Issue	273
9.5.	Child Support and Establishment of Paternity Act of 1974	273
9.6.	State Guidelines Mandated	274

Contents

9.7. Omnibus Budget Reconciliation Act of 1993 and ERISA	274
Income Available for Support	275
9.8. What Is Income?	275
9.9. Vested Stock Options	275
9.10. Contribution to Retirement Accounts	276
9.11. Lump-Sum Payments and Commissions	276
9.12. Seasonal Employment	277
9.13. Overtime	277
9.14. Military Retirement Pay and Allowances	277
9.15. Gift Income	278
9.16. Imputation of Income	278
Establishing Basic Child Support	281
9.17. Presumptive Guidelines	281
9.18. Income Shares Model	282
9.19. Percentage-of-Obligor Income Model	283
9.20. Joint Physical Custody and Parenting Time Offsets	285
9.21. Additional Dependent Children	286
9.22. Low-Income Obligor	286
9.23. Deviation from Child Support Guidelines	287
Additional Support	289
9.24. Medical Support	289
9.25. Childcare Costs	290
Duration of Child Support	290
9.26. Emancipation of Child	290
9.27. Educational Support	293
9.28. Support for Non-Minor Disabled Children	294
9.29. Obligor's Death	294
Other Support Considerations	295
9.30. Parenting Time Independent from Payment of Child Support	295
9.31. Payment of Child Support by Custodial Parents	296
9.32. Federal Income Tax Treatment	296
9.33. Stepparent Liability	296

Chapter 10 Child Support Modification and Enforcement 299

10.1. Introduction	299
Standards for Modifying an Existing Award	299
10.2. Substantial Change in Circumstances	299
10.3. Percentage and Amount Changes	302
10.4. Cost-of-Living Adjustments	303
Procedural Considerations	307

Contents

10.5.	Burden of Proof	307
10.6.	Retroactivity	307
10.7.	Court Approval Required for Modification	308
10.8.	Non-Modification Agreements	308
	State Enforcement Efforts	309
10.9.	Child Support Debt	309
10.10.	Contempt of Court	310
10.11.	Criminal Nonsupport	311
10.12.	Interception of Tax Refunds	313
10.13.	Wage Garnishment and Wage Assignment	313
10.14.	Credit Bureau Reporting	314
10.15.	License Suspension	314
10.16.	Publication of a “Most Wanted” List of “Deadbeat Obligor”	315
10.17.	Passport Denial	315
10.18.	Seizing Assets	315
10.19.	Effect of Bankruptcy	316
	Interstate Modification and Enforcement	316
10.20.	Federal Partnership with States	316
10.21.	Early Efforts: URESA and RURES	316
10.22.	Uniform Interstate Family Support Act (UIFSA)	317
10.23.	Full Faith and Credit for Child Support Orders Act (FFCCSOA)	317
10.24.	Personal Responsibility and Work Opportunity Reconciliation Act of 1996	318
10.25.	Federal Crime	318

Chapter 11 Establishing Alimony **323**

11.1.	Introduction	323
	History of Alimony	324
11.2.	Dowry	324
11.3.	Unity Doctrine	325
11.4.	Assignment of Fault	326
11.5.	Fault Adopted by Secular Systems	326
11.6.	Common Law Disabilities and Duties	327
11.7.	Alimony and Gender	328
	The Necessaries Doctrine	330
11.8.	Husband’s Common Law Duty	330
11.9.	Gender-Neutral Application	332
	Uniform Acts	333
11.10.	The Uniform Marriage and Divorce Act (UMDA)	333

Contents

11.11. UMDA Two-Step Analysis	333
11.12. American Law Institute (ALI) Approach	334
Types of Alimony	335
11.13. Permanent Alimony	336
11.14. Rehabilitative Alimony	336
11.15. Reimbursement Alimony	336
11.16. Limited Durational Alimony	337
11.17. Lump-Sum Alimony	337
Determination of Alimony	340
11.18. Initial Eligibility Determination	340
11.19. Statutory Factors	340
11.20. Statutory Guidelines	342
11.21. Amount and Durational Limits	343
11.22. Determining Income	343
Tax Treatment	345
11.23. Tax Treatment of Alimony	345
11.24. Alimony Distinguished from Property Division	346

Chapter 12 Modification of Alimony 347

12.1. Introduction	347
Standard for Modification of Alimony	347
12.2. Substantial Change in Circumstances	347
Procedural Considerations	348
12.3. Existing Order or Reservation of Jurisdiction	348
12.4. Burden of Proof	348
12.5. Retroactivity	349
12.6. Non-Modification Agreements	349
Obligor's Change in Circumstances	351
12.7. Obligor's Unanticipated Increased Income	351
12.8. Obligor's Retirement	351
12.9. Obligor's Change of Employment	352
12.10. Death of an Obligor	353
Recipient's Change in Circumstances	355
12.11. Recipient Becomes Self-Sufficient	355
12.12. Recipient's Need Increases	356
12.13. Remarriage of a Recipient	356
12.14. Cohabitation by a Recipient	357
12.15. Death of a Recipient	358
12.16. Incarceration of a Recipient	359

Contents

Chapter 13	Dividing the Marital Estate Upon Divorce	363
13.1.	Introduction	363
Property Distribution Theories		364
13.2.	Community Property Theory	364
13.3.	Equitable Distribution Theory	365
13.4.	All-Property “Hotchpot” Theory	366
Model Acts		367
13.5.	Uniform Marriage and Divorce Act (UMDA)	367
13.6.	American Law Institute (ALI) Recommendations	368
Identification and Characterization of Property		370
13.7.	Discovery Processes	370
13.8.	Presumptions Applying to Property Division	371
13.9.	Inception of Title Rule versus Source of Funds Rules	372
13.10.	Transmutation Doctrine	373
13.11.	Commingling of Assets	374
13.12.	Active and Passive Appreciation	374
Valuation of Property		382
13.13.	Date of Valuation	382
13.14.	Vested and Nonvested Pension Benefits	382
13.15.	The Role of Experts in Valuing Assets	384
Division of Property		386
13.16.	Factors Guiding Property Division	386
13.17.	Marital Misconduct as a Consideration When Dividing Marital Property	387
13.18.	Economic Misconduct as a Consideration When Dividing Marital Property	388
13.19.	The Marital Home	388
13.20.	Qualified Domestic Relations Order (QDRO)	390
Special Issues		394
13.21.	Degrees and Professional Licenses	394
13.22.	Workers’ Compensation and Personal Injury Issues	396
13.23.	Goodwill	398
13.24.	Social Security	398
13.25.	Military Retirement Benefits	400
13.26.	Virtual Currency	400
13.27.	Unused Sick, Vacation Time	400
Chapter 14	Contracting for Dissolution	403
14.1.	Introduction	403
Approaches to Premarital Agreements		404
14.2.	Common Law and Statutory Approaches	405
14.3.	Model Act Approach: The Uniform Premarital Agreement Act	405

Contents

14.4. Other Model Act Approaches	406
Enforcement of Premarital Agreements	408
14.5. Voluntariness	409
14.6. Unconscionability	411
14.7. Adequacy of Disclosure	411
Provisions of Premarital Agreements	414
14.8. Waiving Child Support and Custody	414
14.9. Waiving Alimony	415
14.10. Contracts Imposing Marital Duties and Obligations	415
14.11. Religious Marriage Contracts	416
14.12. Miscellaneous Issues	417
Postnuptial Agreements	419
14.13. Premarital versus Postnuptial Agreements	419
Separation Agreements	423
14.14. The UMDA and Enforcement of Separation Agreements	423
14.15. Voiding Separation Agreements	423

Chapter 15 Non-Marital Cohabitation 427

15.1. Introduction	427
Changing Lifestyles	428
15.2. A Changing Social Perspective	428
Model Acts	430
15.3. American Law Institute	430
15.4. Restatement of Contracts	430
15.5. Restatement (Third) of Restitution and Unjust Enrichment	430
15.6. Uniform Cohabitants' Economic Remedies Act	431
The Contractual Approach to Economic Rights of Non-Marital	431
15.7. <i>Marvin v. Marvin</i>	432
15.8. The Contractual Approach to Post-Marvin	435
15.9. Contract Theories Applied to Claims of Non-Marital Cohabitants	437
The Traditional Approach to Economic Rights of Non-Marital Partners	445
15.10. <i>Hewitt v. Hewitt</i>	445
15.11. <i>Blumenthal v. Brewer</i>	447
The Status Approach to Economic Rights of Non-Marital Partners	448
15.12. "Committed Intimate Relationship" Status	448
15.13. Designated Beneficiary Status	449

Contents

Other Claims Between Non-Marital Partners	451
15.14. Wrongful Death Claims/Other Insurance Claims	451
15.15. Loss of Consortium Claims	452
15.16. Claiming State and Federal Benefits	452
15.17. Housing Discrimination	453
15.18. Statute of Limitations	454
Chapter 16 Determining Parentage	457
16.1. Introduction	457
Recognition of the Rights of Non-Marital Children	458
16.2. Historic Disparate Treatment	458
16.3. Wrongful Death	459
16.4. Inheritance Rights	460
16.5. Social Security Benefits	461
16.6. Federal Legislation	463
The Uniform Parentage Act	464
16.7. History of the Uniform Parentage Act	464
16.8. The Uniform Parentage Act of 2017	465
Procedural Considerations	470
16.9. Burden of Proof	470
16.10. Right to Counsel in Paternity Proceedings	471
16.11. Statutes of Limitation	472
Parenthood Based on Marriage	473
16.12. The Marital Presumption	473
16.13. Same-Sex Couples and the Marital Presumption	474
Parenthood Based on Biology: Constitutional Rights of Unmarried Fathers	476
16.14. <i>Stanley v. Illinois</i>	476
16.15. Little to No Contact; No Rights: <i>Quilloin v. Walcott</i>	477
16.16. Demonstrated Interest; Protected Rights: <i>Caban v. Mohammed</i>	477
16.17. Putative Fathers and the Right to Notice: <i>Lehr v. Robertson</i>	478
16.18. The “Unitary Family”: <i>Michael H. v. Gerald D.</i>	479
16.19. Sperm Donors or Fathers?	480
Parenthood Based on Intent	481
16.20. Parenting Agreements	481
Parenthood Based on Conduct	482
16.21. Overview of “Functional Parenthood”	482
16.22. De Facto Parentage	482
16.23. The “Holding Out” Presumption	483
16.24. Psychological Parenthood	483
16.25. <i>In Loco Parentis</i>	484

Contents

16.26. Paternity by Estoppel	485
Multiple Parents	487
16.27. Multi-Parent Recognition	487
Disestablishing Parenthood	488
16.28. Children Conceived Through Sexual Assault	488
16.29. “Paternity Fraud”	489

Chapter 17 Adoption 491

17.1. Introduction	491
Historical Background	491
17.2. Development of Adoption Laws	491
17.3. Uniform Adoption Act of 1994	492
Types of Adoption	493
17.4. Overview	493
17.5. Agency Adoption	494
17.6. Private Adoption	494
17.7. Identified Adoption	495
17.8. Stepparent Adoption	495
17.9. Relative (Kinship) Adoption	495
17.10. International Adoption	496
17.11. Adult Adoption	497
17.12. Baby Selling	497
The Adoption Process: Availability to Adopt	500
17.13. Overview: The Adoption Process	500
17.14. Mother’s Consent	500
17.15. Putative Father’s Consent	501
17.16. Adoptee’s or Agency’s Consent	502
17.17. Entitlement to Notice	503
The Adoption Process: Eligibility to Adopt	509
17.18. Race of Adoptive Parents and the Multiethnic Placement Act (MEPA)	509
17.19. Native American Status and the Indian Child Welfare Act (ICWA)	510
17.20. Sexual Orientation of Adoptive Parents	511
17.21. Foster Parents	513
17.22. Persons with Disabilities	513
17.23. Age of Adoptive Parents	514
The Adoption Process: Best Interests of the Child	515
17.24. Home Studies	515
17.25. Sibling Access	515
17.26. Interstate Compact on the Placement of Children	516
Post-Adoption Disputes	517
17.27. Legal Effect of Adoption	517

Contents

17.28. Fraud	517
17.29. Negligent Misrepresentation	518
Chapter 18 Assisted Reproductive Technology	523
18.1. Introduction	523
History	524
18.2. Early History	524
Definitions	525
18.3. Defining ART Procedures	525
Model Acts	526
18.4. American Bar Association Model Act Governing Assisted Reproductive Technology	526
18.5. Uniform Parentage Act	527
Consent to ART Procedures	529
18.6. Failure to Consent to ART	529
Privacy of Gamete Donors	532
18.7. Regulation of Donor Privacy	532
18.8. Known Donors	533
Surrogacy	537
18.9. Surrogacy Overview	537
18.10. <i>In re Baby M</i>	538
18.11. Permissive Jurisdictions	540
18.12. Restrictive Jurisdictions	541
18.13. Prohibitive Jurisdictions	542
18.14. Surrogacy Contracts and Same-Sex Couples	543
Embryo Disputes	547
18.15. Disposition of Frozen Embryos	547
18.16. Frozen Embryos as Biological Persons	550
Liability of ART Providers	551
18.17. Liability of Physicians and Fertility Clinics	551
18.18. Wrongful Life	553
18.19. Wrongful Death	553
18.20. Gamete Bank Regulation and Liability	554
Miscellaneous Issues	556
18.21. Insurance—Who Is Covered?	556
18.22. Inheritance Rights of Posthumously Conceived Children	558
Chapter 19 Domestic Abuse	563
19.1. Introduction	563
Family-Specific Inquiry	564
19.2. Case-by-Case Analysis	564
19.3. Impact on Children and Parenting	566

Contents

Civil Domestic Abuse Statutes	568
19.4. History	568
19.5. Constitutional Challenges	568
19.6. Who Has Standing to File?	570
19.7. What Is Domestic Abuse?	571
19.8. When Can You File?	574
19.9. Why File?: Relief Granted and Effectiveness of Protective Orders	576
19.10. How Can You Enforce a Protective Order?	578
Related Areas of Law	580
19.11. Violence Against Women Act (VAWA)	580
19.12. Criminal Sanctions	582
19.13. Mandatory Arrest and No-Drop Policies	583
19.14. Tort Actions	583
19.15. Hague Convention	585
Chapter 20 Neglect, Dependency, Child Abuse, and Termination of Parental Rights	587
20.1. Introduction	587
20.2. Nature and Scope of the Problem	587
Standards for State Intervention	588
20.3. Parents' Right to Privacy—Liberty Interests	588
20.4. The Child Abuse Prevention and Treatment Act (CAPTA) and Subsequent Amendments	588
20.5. Defining Abuse, Neglect, and Dependency	589
Common Forms of Abuse and Neglect	590
20.6. Use of Unreasonable Force to Correct a Child	590
20.7. Sexual Abuse	591
20.8. Neglect	592
20.9. Medical Treatment and Religious Beliefs	592
20.10. Failure to Protect from Harm	593
20.11. Failure to Protect from Harm: Domestic Violence	594
20.12. Emotional or Mental Abuse	594
20.13. Prenatal Drug Abuse	595
Reporting Abuse and Neglect	601
20.14. Mandated Reporting	601
20.15. Central Registry of Reports	602
Adjudication and Disposition	602
20.16. Emergency Custody/Removal	602
20.17. “Reasonable Efforts” to Reunify Families	603
20.18. Timeline for Child Protective Proceedings	604
20.19. Alternative Dispute Resolution	607
20.20. Prevention and Alternative Responses	607

Contents

Children in Foster Care	609
20.21. Foster Care: Safety and Accountability	609
20.22. Extended Foster Care	610
Involuntary Termination of Parental Rights	610
20.23. Specific Grounds for Termination	610
20.24. Legal Consequences of Termination	611
20.25. Standard of Proof	611
20.26. Parental Right to Counsel	611
The Indian Child Welfare Act and Dependency Proceedings	615
20.27. ICWA—Removal and Placement	615
20.28. “Active Efforts” Pursuant to the ICWA	616
20.29. ICWA—Standard of Proof	616
Chapter 21 Abortion	619
21.1. Introduction	619
Historical Background	619
21.2. History	619
21.3. Twentieth Century View	621
The Scope of the Constitutional Rights to Privacy and Abortion	622
21.4. <i>Roe v. Wade</i>	622
21.5. Scope of the Right to Privacy	623
21.6. Wavering on <i>Roe</i>	625
21.7. A Further Departure from <i>Roe</i>	625
21.8. Abortions with “Admitting Privileges”	627
State Constitutional Right to Abortion	630
21.9. Right to Abortion Under State Constitutions	630
21.10. State Constitutional Amendments Pre-Dobbs	631
Overturing <i>Roe</i> and <i>Casey</i>	631
21.11. Texas Heartbeat Act and Its Judicial Challenges	631
21.12. <i>Dobbs v. Jackson Women’s Health Organization</i>	632
State Legislation Post-Dobbs	635
21.13. Overview of State Legislative Responses	635
21.14. Abortion Trigger Bans	635
21.15. Procedural Requirements	636
21.16. Exceptions to Abortion Bans	636
21.17. Shield Laws	637
21.18. Medicaid Coverage	637
21.19. Parental Notification and Consent	638
21.20. Interstate Travel	640
Post-Dobbs Judicial Challenges to State Abortion Legislation	641
21.21. Overview of Judicial Challenges to State Abortion Legislation	641

Contents

21.22. Challenges Under State Constitutions	641
21.23. Challenges by Patients Denied Abortion Care	642
21.24. Religious Freedom Challenges	643
Regulation of Medication Abortion	646
21.25. Overview of Medication Abortion	646
21.26. Revival of the Comstock Act Mailing Ban	647
21.27. Challenging FDA Regulation of Medication Abortion	648

Chapter 22 Mediation, Collaborative Law, Parenting Coordination, and Arbitration 651

22.1. Introduction	651
Who Should Participate in Alternative Dispute Resolution?	652
22.2. Informed Decision Making	652
22.3. Screening Protocols	652
22.4. Ensuring Safe Participation in Alternative Dispute Resolution	653
22.5. Assessing Capacity to Participate in Alternative Dispute Resolution	654
Mediation	655
22.6. Definition Under the Model Standards	655
22.7. Mediation as an Interest-Based Process	656
22.8. Mediator Qualifications	657
22.9. The Role of the Mediator	657
22.10. Attorney Advice During the Mediation Process	658
22.11. Virtual Mediation	659
22.12. Court Approval of Agreements	659
22.13. Mediator Testimony	659
22.14. Mediation as Condition Precedent to Post-Decree Actions	660
22.15. Mandatory Mediation	661
Collaborative Law	664
22.16. The Collaborative Process	664
22.17. Formal Opinion 07-447	665
22.18. Uniform Collaborative Law Rules (UCLR) and Uniform Collaborative Law Act (UCLA)	665
Parenting Coordination	666
22.19. The Role of the Parenting Coordinator	666
22.20. Legislative Authorization in Some States	667
22.21. Common Practices	668
Arbitration	670
22.22. Use of Arbitration in Family Cases	670

Contents

Chapter 23	Professional Responsibility	671
23.1.	Introduction	671
Conflicts of Interest		672
23.2.	Prior Representation and Prospective Clients	672
23.3.	Dual Representation	672
23.4.	Sexual Relationships with Clients	673
Contingent Fees		676
23.5.	Contingent Fee Arrangements	676
Communicating with Clients		677
23.6.	Emotional Needs of Family Law Clients	677
23.7.	Information and Consultation	678
Self-Represented Litigants		679
23.8.	Self-Representation Becomes More Common	679
23.9.	Attorney Conduct with Self-Represented Parties	680
23.10.	Need for Pro Bono Representation (Rule 6.1)	680
Various Roles of Lawyers		681
23.11.	Ethical Cautions for Lawyers Performing New Professional Roles	681
23.12.	Collaborative Lawyers	682
23.13.	Lawyer as Mediator or Arbitrator	682
Chapter 24	Jurisdiction	685
24.1.	Introduction	685
Subject Matter Jurisdiction in Federal Court		686
24.2.	Domestic Relations Exception	686
24.3.	Probate Exception	689
24.4.	The <i>Rooker-Feldman</i> Doctrine	694
24.5.	Procedural Issues	694
24.6.	Abstention Doctrine	695
Subject Matter Jurisdiction in State Court		697
24.7.	Residency Requirements	697
24.8.	Does Failure to Meet Residency Requirement Void a Divorce Decree?	698
24.9.	Challenging a State’s Subject Matter Determination	700
Personal Jurisdiction in State Court		702
24.10.	Jurisdiction to Grant Ex Parte Divorce—The Divisible Divorce Theory	702
24.11.	State Long-Arm Statute Requirements	704
24.12.	Due Process Barriers to Application of Long-Arm Statutes	707
24.13.	Service Within State During Temporary Visit	708
24.14.	Continuing Jurisdiction	709

Contents

24.15. Waiving Personal Jurisdiction Claim	709
Status as a Jurisdictional Theory	716
24.16. Overview of Status Theory	716
24.17. Restatement of Conflict of Laws—Status	718
Full Faith and Credit	720
24.18. State and Federal Recognition of Same-Sex Marriages	720
24.19. Full Faith and Credit for Child Support Orders Act	721
Special Situations	723
24.20. Indian Child Welfare Act (ICWA)	723
24.21. Servicemembers’ Civil Relief Act	724
24.22. Uniform Interstate Family Support Act (UIFSA)	726
24.23. Hague Convention	728
<i>Table of Supreme Court Cases</i>	733
<i>Index</i>	737