



Contents

<i>Preface</i>	xxiii
<i>Acknowledgments</i>	xxv
Chapter 1 Marriage and Cohabitation	1
Regulation of the Relationship: A Brief History	2
Married Women’s Property Acts	3
The Move to Legal Equality	4
Entrance into Marriage: Choosing a Spouse	5
Marriage as a Fundamental Right	6
Marital Rights of Same-Sex Partners	7
The Renewed Struggle for Marriage Equality	7
The Backlash: The Campaign to Preserve Marriage as a Heterosexual Institution	8
Marriage Equality Becomes a Reality	8
Marriage Equality: The Law of the Land	9
The Backlash Against <i>Obergefell</i>	11
Restrictions on the Entry into Marriage	12
Incest	13
Multiple Marriages	14
Marital Age	14
Marriage Formalities	16
Obtaining a Marriage License	17
Consequences of Failing to Comply with Licensing Requirements	18
Common Law Marriage	19
Formation Requirements and Consequences	19
Interstate Recognition	20
The Legal Rights of Cohabiting Couples	21
Opening the Door to the Courthouse: The Landmark Case of Marvin v. Marvin	21

	<i>Chapter Summary</i>	25
	<i>Key Terms</i>	25
	<i>Review Questions</i>	25
	<i>Discussion Questions</i>	26
	<i>Assignments</i>	26
	<i>Endnotes</i>	27
Chapter 2	Premarital and Postmarital Agreements	29
	The Traditional Approach	29
	The Growing Acceptance of Premarital Agreements	30
	Legal Requirements	31
	Threshold Considerations	31
	The Fairness Requirement	31
	Requirements of Procedural Fairness	33
	Requirements of Substantive Fairness	36
	The Interdependence of Procedural and Substantive Fairness	37
	Common Types of Provisions	38
	Property	38
	Spousal Support	39
	Child Custody and Child Support	39
	Postmarital Contracts	40
	<i>Chapter Summary</i>	41
	<i>Key Terms</i>	41
	<i>Review Questions</i>	41
	<i>Discussion Questions</i>	42
	<i>Assignments</i>	42
	<i>Endnotes</i>	42
Chapter 3	Domestic Violence	43
	The Traditional Approach: A Brief History	43
	Obtaining Civil Orders of Protection Under Abuse Prevention Laws	45
	Qualifying Relationships	45
	Dating Relationships	46
	Same-Sex Couples	47
	Covered Conduct	48
	Available Remedies	49
	Refraining from Further Abuse	50
	Vacate and Stay-Away Orders	50
	No-Contact Orders	50
	Electronic Monitoring	50

Custody and Visitation	51
Protection of Pets	52
Support and Monetary Compensation	52
Treatment/Counseling	52
Relinquishment of Firearms	53
Statutory Obligations of Police Officers	54
Court Procedure: Obtaining Protective Orders	54
Obtaining a Protective Order	55
Enforcement of Protective Orders	69
Supplementing the Enforcement Process: Criminal	
Anti-Stalking Laws	71
Cyberstalking	72
Specialized Domestic Violence Courts	74
The Federal Response to Domestic Violence: The Violence	
Against Women Act	75
<i>Chapter Summary</i>	79
<i>Key Terms</i>	79
<i>Review Questions</i>	80
<i>Discussion Questions</i>	80
<i>Assignments</i>	80
<i>Endnotes</i>	81
Chapter 4 The Law of Divorce, Annulment, and Legal Separation	83
Historical Overview	83
Fault Divorce: Common Grounds and Defenses	85
Divorce Grounds	85
Adultery	85
Desertion/Abandonment	86
Cruelty	87
Defenses	87
Connivance	88
Condonation	88
Recrimination	88
Collusion	88
No-Fault Divorce	89
No-Fault Laws	90
No-Fault Grounds	90
The No-Fault Divorce Debate	92
The Law of Annulment	95
Distinguished from Divorce	95
Grounds	96
Marital Restriction Laws	96
Lack of Capacity or Intent	96

Consequences of an Annulment Decree	97
Children	97
Spousal Support and the Division of Property	97
Revival	98
Legal Separation	98
The Nature of the Action	98
Distinguished from an Action for Separate Maintenance	99
<i>Chapter Summary</i>	100
<i>Key Terms</i>	100
<i>Review Questions</i>	100
<i>Discussion Questions</i>	101
<i>Assignments</i>	101
<i>Endnotes</i>	102
Chapter 5 Child Custody	103
Historical Overview	104
The Modern Best Interest Test	105
Formulating the Test	105
Applying the Test	106
The Parent-Child Bond	107
Past Caretaking	107
Time Availability	108
Stability of Environment	108
Preference of the Child	109
Domestic Violence	111
Parental Lifestyle and Life Circumstances	113
Considerations of Race and Culture	114
Sexual Activity: Heterosexual	115
Sexual Orientation: Gay and Lesbian Parents	115
Religion	116
Disability/Illness	117
Critiques of and Alternative Approaches to the Best Interest Standard	118
The Primary Caretaker Presumption	119
The American Law Institute's Approximation Rule	121
Custody and Visitation Arrangements	122
Physical and Legal Custody Distinguished	122
Sole and Joint Custody Distinguished	123
A Closer Look at Shared Custody Arrangements	123
The Joint Custody Controversy	124
Legal Status of the Noncustodial Parent	125
Visitation Rights	126
The Visitation Schedule	126

When Unrestricted Visitation Is Not in a Child's Best Interest	128
Parenting Plans, Parenting Coordinators, and Parent Education Programs	129
Post-Divorce Custody and Visitation Disputes	132
Disputes About Custody	133
Disputes About Visitation	134
Relocation Disputes	134
Virtual Visitation	136
The Custodial and Visitation Rights of Grandparents and Stepparents	138
Grandparents	138
Stepparents	141
<i>Chapter Summary</i>	143
<i>Key Terms</i>	143
<i>Review Questions</i>	143
<i>Discussion Questions</i>	144
<i>Assignments</i>	145
<i>Endnotes</i>	145
Chapter 6 Child Support	149
Administrative Framework for the Establishment and Enforcement of Child Support Orders	150
The Federal Office of Child Support Enforcement	150
At the State Level: The IV-D Agency	150
Eligibility for IV-D Services	151
Locating Absent Parents	152
Child Support Guidelines	153
Guideline Formulas	154
Percentage of Income	154
Income Shares	154
The Melson Formula	157
Determining What Income Is Subject to the Child Support Obligation	157
Defining Income	157
Setting the Income Base	158
Consideration of Specific Factors	159
Income of the Custodial Parent	159
Income of a New Partner	159
Income/Resources of the Child	160
Multiple Families	160
Extraordinary Expenses	161
Health Insurance	161

Custody and Visitation Arrangements	162
Financial Disclosure	163
Enforcing the Child Support Obligation	170
Support Enforcement at the State Level	170
Income Withholding	170
Liens	171
Credit Reporting	172
Licenses	172
The Federal Offset Program	172
Federal Tax Offset	172
The Passport Denial Program	173
Interstate Cases	173
The Uniform Interstate Family Support Act (UIFSA) and the Full Faith and Credit for Child Support Orders Act (FFCCSOA)	173
Enforcement Under State Law Procedures	175
Criminal Nonsupport	175
Contempt	175
Enforcement by Private Child Support Collection Agencies	176
Modification and Adjustment of Support Awards	177
Modification Based on Changed Circumstances	177
The Review and Adjustment Procedure	178
Duration of the Parental Support Obligation	179
Termination of Support Prior to Majority	179
Emancipation	179
Parental Death	180
Adoption/Termination of Parental Rights	180
Extension of Support Beyond Majority	180
The Adult Student	180
Mental and Physical Disabilities	182
Tax Implications of Child Support Awards	182
<i>Chapter Summary</i>	183
<i>Key Terms</i>	183
<i>Review Questions</i>	183
<i>Discussion Questions</i>	184
<i>Assignments</i>	185
<i>Endnotes</i>	186
Chapter 7 Spousal Support	189
Historical Overview	189
Support Determinations	191
Factors to Be Considered	192
Searching for Greater Certainty: Alimony Guidelines	193

Different Approaches to Structuring Spousal Support	194
Permanent Alimony	195
Lump-Sum Support	195
Rehabilitative Support	196
The Backlash Against “Permanent” Spousal Support Awards	197
The Professional Degree Cases	198
Medical Insurance	200
Post-Divorce Modification and Termination of Support	200
The General Concept	200
Modifiability and Termination of “Permanent” Support	201
Remarriage	201
Cohabitation	202
Change in Financial Circumstances	203
Modifiability of Specific Types of Support	203
Lump-Sum Support	203
Rehabilitative Support	203
Reimbursement Alimony	204
Agreement of the Parties to Prohibit Modification	204
Enforcement of Support Awards	204
Contempt	204
Other Enforcement Measures	205
Bankruptcy and the Support Obligation	205
Tax Consequences	206
<i>Chapter Summary</i>	207
<i>Key Terms</i>	207
<i>Review Questions</i>	208
<i>Discussion Questions</i>	208
<i>Assignments</i>	208
<i>Endnotes</i>	209
Chapter 8 Division of Marital Property	211
Overview of the Two Marital Property Systems	211
The Community Property Approach	211
The Common Law Approach	212
Equitable Distribution	213
The Property Distribution Process	214
Defining Property	215
The Tangible/Intangible Distinction	215
Divorce and the Family Pet	216
Unvested Pensions and Accrued Leave Time: Are They Property?	218
And What About the Virtual World?	220

Classification of Property	221
Defining Marital and Separate Property	221
The Significance of Timing	222
Same-Sex Couples	223
Looking Beyond Definitions: The Complexities of Classification	224
Transmutation	227
Valuation	228
Valuation Methods	228
The Role of Experts	229
Time of Valuation	229
Distribution	230
The Standard for Division: Equal or Equitable?	230
Consideration of Specific Factors	231
Effectuating the Distribution	232
Tax Consequences of a Property Distribution	235
<i>Chapter Summary</i>	236
<i>Key Terms</i>	236
<i>Review Questions</i>	236
<i>Discussion Questions</i>	237
<i>Assignments</i>	238
<i>Endnotes</i>	239
Chapter 9 Jurisdiction	241
Overview of Subject Matter and Personal Jurisdiction	241
Subject Matter Jurisdiction	241
Personal Jurisdiction	242
Jurisdiction and the Divorce Action	243
Does the Court Have Jurisdiction to Dissolve a Marriage?	243
Does the Court Have Jurisdiction to Award Support?	244
Does the Court Have Jurisdiction to Divide Property?	245
Does the Court Have Jurisdiction to Determine Custody?	246
Jurisdictional Requirements Under the UCCJA and the UCCJEA	247
Initial Custody Determinations	247
Modification Jurisdiction	249
Declining Jurisdiction	250
Deployed Parents	250
Jurisdictional Requirements of PKPA	250
International Child Abduction	251
<i>Chapter Summary</i>	253
<i>Key Terms</i>	253
<i>Review Questions</i>	253
<i>Discussion Questions</i>	254

<i>Assignments</i>	254
<i>Endnotes</i>	255
Chapter 10 The Divorce Process	257
The Initial Client Interview	257
The Emotional Context	258
Conducting the Client Interview	259
The Role of the Paralegal	259
Ethical Considerations	259
The Ethical Framework	259
Specific Practices	260
Developing Good Listening Skills	261
The Interview Itself: A Three-Stage Approach	264
The Divorce Action: Initial Steps and Discovery	268
The Initial Steps	269
The Complaint	269
Filing the Complaint	272
Service of Process	276
The Defendant's Response	278
The Component Parts of an Answer	282
Admission/Denials	282
Affirmative Defenses	282
Counterclaims	286
Discovery	286
General Purpose	286
Scope of Discovery	287
Discovery Methods	287
Discovery Difficulties	296
The Middle Phase: Moving Toward Resolution or Trial	297
Motions for Temporary Relief	298
Overview of Motion Practice	298
Specific Divorce Motions	300
Sample Motion and Supporting Affidavit	303
The Role of the Paralegal	303
Alternative Approaches to Dispute Resolution	306
Negotiation	306
Mediation	308
Arbitration	310
The Collaborative Divorce Approach	311
Unbundled Legal Services	312
Reaching Resolution: The Separation Agreement	313
Drafting the Agreement	313
The Role of the Paralegal	313
Sample Separation Agreement and Comments	314

The Divorce Hearing	314
The Uncontested Case	329
Dissolving the Marriage	330
Approving the Separation Agreement	330
The Contested Case	331
The Pretrial Conference	331
The Trial	331
Trial Preparation and the Role of the Paralegal	332
Post-Divorce Proceedings	332
Post-Trial Motions	333
Motion for a New Trial	333
Motion for Relief from Judgment	333
Appeals	333
Overview of Appellate Practice	333
Appellate Procedure	334
The Role of the Paralegal	335
The Complaint for Modification	335
The Complaint for Contempt	336
<i>Chapter Summary</i>	342
<i>Key Terms</i>	342
<i>Review Questions</i>	343
<i>Discussion Questions</i>	344
<i>Assignments</i>	344
<i>Endnotes</i>	346
Chapter 11 Determining Parentage	349
Historical Overview	349
Constitutional Developments	350
The Equal Protection Challenge to Differential Treatment	350
The Legal Status of the Unwed Father	352
Challenging the Exclusion of Unwed Fathers: Stanley v. Illinois	352
What Makes an Unwed Father a Father?	353
The Biology-Plus Approach Confronts the Presumption of Paternity	354
Establishing Paternity	355
The Adjudication of Paternity	356
Voluntary Acknowledgment of Paternity	361
Following the Determination of Paternity	363
Paternity Disestablishment	363
Considering Best Interest: Conflicting Approaches	365
What Makes a Man a Father?	365

Determining Paternity When the Genetic “Father” Is a Sperm Donor	366
Donor Insemination and the Heterosexual Couple	366
Donor Insemination and the Single Woman	368
Same-Sex Couples and the Establishment of Legal Parenthood	370
The “Other” Mother: The Traditional Legal Approach	370
The Extension of Parental Rights Based on Marriage and Consent	371
De Facto Parental Status	372
<i>Chapter Summary</i>	375
<i>Key Terms</i>	375
<i>Review Questions</i>	376
<i>Discussion Questions</i>	376
<i>Assignments</i>	377
<i>Endnotes</i>	377
Chapter 12 Child Abuse and Neglect	379
Historical Overview	380
The Child Protective System	381
Defining Abuse and Neglect	382
Physical Abuse	383
Sexual Abuse	383
Emotional Abuse and Neglect	384
Neglect	384
Medical Child Abuse	385
Forced Child Marriage	386
The Reporting of Suspected Abuse or Neglect	386
Screening and Investigation	387
Substantiated Cases: Federal Law and the “Reasonable Efforts” Requirement	388
Reasonable Efforts Prior to Removal	390
Removal of a Child	390
The Dependency Proceeding	390
The Reasonable Efforts Requirement	391
Permanency Planning	391
Legal Orphans and the Reinstatement of Parental Rights	393
<i>Chapter Summary</i>	394
<i>Key Terms</i>	394
<i>Review Questions</i>	394
<i>Discussion Questions</i>	395
<i>Assignments</i>	395
<i>Endnotes</i>	396

Chapter 13	Adoption	399
	Historical Overview	399
	Approaches to Adoption	400
	Agency Adoptions	400
	Independent Adoptions	401
	Safe Haven Laws	402
	The Adoption Process	403
	Adoption Based on Parental Consent or Relinquishment	403
	Parental Consent to a Private Placement Adoption	403
	Relinquishment to an Agency	404
	What If a Parent Changes His or Her Mind?	404
	Adoption Based on the Involuntary Termination of Parental Rights	405
	The Adoption Placement	406
	The Home Study	406
	Configuration of Relationships During the Placement	407
	The Social Study	408
	The Adoption	408
	Judicial Review and Approval	408
	Making Adoption More Open	409
	Open Adoption	410
	Access to Adoption Records	410
	Adoption in Specific Situations	411
	Stepparent Adoptions	411
	Adoption by Gay Men and Lesbians	412
	Single-Parent and Joint Adoptions	412
	Co-Parent Adoption	413
	Unwed Fathers	414
	Transracial Adoption	418
	Adoption Abrogation and the Tort of Wrongful Adoption	420
	Chapter Summary	421
	Key Terms	422
	Review Questions	422
	Discussion Questions	423
	Assignments	423
	Endnotes	423
	Glossary	425
	Index	437