

Thomson Reuters Law for the Layperson

MARRIAGE AND DIVORCE

Third Edition

Margaret C. Jasper

Legal Almanac Series

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Third Edition

by
Margaret C. Jasper

Legal Almanac Series:
Thomson Reuters' Law for the Layperson

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To My Husband Chris

Your love and support
are my motivation and inspiration

To My Sons, Michael, Nick and Chris

-and-

In memory of my son, Jimmy

ABOUT THE AUTHOR

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AIDS and the Law

The Americans with Disabilities Act

Animal Rights Law

Auto Leasing

Bankruptcy Law for the Individual Debtor

Banks and their Customers

Becoming a Citizen
Buying and Selling Your Home
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Workers' Compensation Law

Your Child's Legal Rights: An Overview

Your Rights in a Class Action Suit

Your Rights as a Tenant

Your Rights Under the Family and Medical Leave Act

You've Been Fired: Your Rights and Remedies

INTRODUCTION

Domestic Relations Law, also commonly known as Family or Matrimonial Law, touches almost every person's life at some point, usually in a very personal way. Issues encompassed in this area of the law are those arising from the most basic and private of life experiences.

This Almanac focuses on the area of Domestic Relations Law that governs marriage and divorce. The requirements for entering into a valid prenuptial agreement are discussed, as well as the grounds for divorce, and the financial implications. An overview of common-law marriage is also presented in this Almanac. Since state laws vary, this legal Almanac presents a general discussion of the various issues related to marriage and divorce.

This almanac explores the law of child custody, and provides a brief history of child custody decision-making in the United States. The modern-day standards by which courts award custody is discussed, including the factors a court considers in making a custody determination. The various types of custody arrangements presently available are also examined, as well as the child support obligations of the non-custodial parent.

In addition, the law as it relates to cohabitation, including property rights, parental rights and financial issues are also explored. The importance of establishing an agreement governing the relationship is discussed, as well as information regarding the items such an agreement should include.

Recent developments regarding same-sex marriage and civil unions are also examined. This Almanac also discusses the more recently enacted laws governing domestic partnerships, which some states have begun to recognize, the limitations and restrictions placed on such relationships, and the benefits provided the unmarried couple under the law.

The custodial rights of unmarried and non-legal parents are also discussed, as well as recent rulings concerning the parental status of

same-sex partners. The Almanac also explores interstate and international custody litigation, and parental child abduction,

The Appendix provides resource directories, sample forms, applicable statutes, and other pertinent information and data. The Glossary contains definitions of many of the terms used throughout the Almanac.

Table of Contents

ABOUT THE AUTHOR	vii
INTRODUCTION	xi

CHAPTER 1: THE EVOLUTION OF MARRIAGE

IN GENERAL	1
EARLY ROMAN LAW	1
Marriage and Divorce Formalities	1
The Julian Marriage Laws	1
Introduction of Canon Law	2
ENGLISH ECCLESIASTICAL LAW	2
Lord Hardwicke's Act	3
AMERICAN COLONIAL LAW	3
MODERN DAY MARRIAGE LAW	3
In General	3
Ceremonial Marriage	4
Common-Law Marriage	5
Abolition of Common-Law Marriage in America	7
MARRIAGE STATISTICS	8
THE UNIFORM MARRIAGE AND DIVORCE ACT	8
UMDA Provisions	9
Part 1: General Provisions	9
Part 2: Marriage	9
Part 3: Dissolution	10
Part 4: Custody	11
Part 5: Effective Date	11

CHAPTER 2: THE PRENUPTIAL AGREEMENT

IN GENERAL	13
THE PRENUPTIAL AND COHABITATION AGREEMENTS COMPARED	14

VALIDITY AND ENFORCEMENT	14
Proper Execution	15
Disclosure	15
Duress	16
Maintenance and Support Provisions	16
Unconscionability	16
Illegal or Invalid Provisions	17
THE UNIFORM PREMARITAL AGREEMENT ACT	17
THE POSTNUPTIAL AGREEMENT	17

CHAPTER 3: SEPARATION AND DIVORCE

IN GENERAL	19
HISTORY OF DIVORCE IN AMERICA	19
DIVORCE STATISTICS	20
SEPARATION	21
ANNULMENT	22
Void Marriage	22
Voidable Marriage	23
UNCONTESTED DIVORCE	24
DIVORCE BASED ON FAULT	25
Fault Divorce Grounds	25
Adultery	25
Cruelty	26
Abandonment	26
Constructive Abandonment	27
Imprisonment	27
Defenses	27
NO-FAULT DIVORCE GROUNDS	28
New York Conversion Divorce	28
MAINTAINING A DIVORCE ACTION	28
Residency Requirement	28
Preparing and Filing the Divorce Papers	29
The Defendant's Response	30
Judgment of Divorce	30

CHAPTER 4: PROPERTY DISTRIBUTION AND FINANCIAL ISSUES

IN GENERAL	31
MARITAL PROPERTY	31
DEBTS	32
INCOME TAXES	32
BUSINESS INTERESTS	32

EMPLOYEE PENSIONS	33
DISPOSITION OF SEPARATE PROPERTY	33
EQUITABLE DISTRIBUTION LAW	34
COMMUNITY PROPERTY LAW	34
THE EFFECT OF MARITAL FAULT ON PROPERTY DISTRIBUTION	35
THE UNIFORM MARITAL PROPERTY ACT	35
ALIMONY AND SPOUSAL MAINTENANCE	36

CHAPTER 5: CHILD SUPPORT

IN GENERAL	37
CHILD SUPPORT AGREEMENT	37
FEDERAL CHILD SUPPORT GUIDELINES	37
ESTABLISHING THE SUPPORT ORDER	38
MODIFICATION OF THE SUPPORT ORDER	38
CHILD SUPPORT ENFORCEMENT	39
Federal Initiatives	39
State Child Support Enforcement Programs	39
Locating the Non-Custodial Parent	40
Establishing Paternity	40
Establishing a Support Order	40
Collecting Support	41
Interstate Child Support Enforcement Legislation	41
TAXATION ISSUES	42
Tax Aspects of Child Support	42
Tax Benefits	42
Dependency Exemption	42
Earned Income Credit	42
Child Care Tax Credit	42
Medical Expenses Deduction	43
Head of Household Filing Status	43
THE EMANCIPATED CHILD	43

CHAPTER 6: CHILD CUSTODY

IN GENERAL	45
PERSONS ENTITLED TO PETITION FOR CUSTODY	46
Biological Parents	46
Non-Biological Parents	47
Adoptive Parent	47
Stepparent	47
Psychological Parent	48
Equitable Parent	48

DETERMINING CHILD CUSTODY	48
Factors Considered	48
Child's Preference	49
Psychological Evaluation	50
TYPES OF CUSTODY ARRANGEMENTS	51
In General	51
Sole Custody	51
Joint Custody	52
Split Custody	52
MODIFICATION OF A CUSTODY ORDER	53
CUSTODY RIGHTS OF SAME-SEX PARENTS	53
In General	53
Rights of Homosexual Parents Following Heterosexual Divorce	55
VISITATION	55
The Non-Custodial Parent's Right to Visitation	55
Visitation Schedule	55
Supervised Visitation	56
Transportation Issues	56
Age as a Factor	56
Relocation of the Custodial Parent	57
Visitation Rights of Third Parties	57
Visitation Rights of a Non-Legal Parent	58
Grandparent Visitation	59
CUSTODIAL INTERFERENCE	59
In General	59
Interstate Custody Litigation	60
Forum Shopping	61
The Uniform Child Custody Jurisdiction Act	61
Home State	62
Significant Connection	62
Emergency Situation	62
Vacuum	62
The Parental Kidnapping Prevention Act	62

CHAPTER 7: COHABITATION AND SAME-SEX RELATIONSHIPS

IN GENERAL	65
STATISTICS	66
THE COHABITATION AGREEMENT	66
The Cohabitation and Prenuptial Agreements Compared	67
Scope of the Agreement	68

Property Ownership and Disposition	69
Accumulated Property versus Pre-Cohabitation Property	69
Real Estate	70
Inherited Property	71
Debts.	71
Household Expenses	71
Credit Cards	71
Bank Accounts	72
Income Taxes	72
Mortgage Interest Tax Deductions	73
Dependent Child Deduction	73
Partner Support	73
Resolving Disputes	74
PARENTING ISSUES	74
Naming the Child	74
Adopting a Child	74
The Co-Parenting Agreement	75
DOMESTIC PARTNERSHIPS	75
Domestic Partnership Registries	76
Domestic Partnership Benefits	76
Types of Benefits Offered	77
Tax Consequences of Benefits	77
SAME-SEX RELATIONSHIPS	78
Same-Sex Marriage	78
Full Faith and Credit Clause of the U.S. Constitution	79
The Defense of Marriage Act of 1996	80
THE VERMONT CIVIL UNION LAW	80
Benefits and Responsibilities	80
Eligibility	82
Terminating the Vermont Civil Union	82

APPENDICES

1: TABLE OF STATE MARRIAGE STATUTES: STATUTORY CITATIONS	85
2: TABLE OF MARRIAGE STATUTES: AGE REQUIREMENTS	89
3: TABLE OF MARRIAGE STATUTES: WAITING PERIOD BEFORE ISSUANCE OF LICENSE	93
4: TABLE OF MARRIAGE STATUTES: DURATION OF LICENSE VALIDITY	97
5: TABLE OF MARRIAGE STATUTES: COMMON-LAW MARRIAGE	101
6: SAMPLE PRENUPTIAL AGREEMENT	105
7: SAMPLE FINANCIAL DISCLOSURE STATEMENT	109
8: STATEMENT OF CLIENT'S RIGHTS	123
9: STATEMENT OF CLIENT'S RESPONSIBILITIES	127

10: SAMPLE SEPARATION AGREEMENT SIMPLE FORM—NO CHILDREN	129
11: TABLE OF DIVORCE STATUTES: LEGAL GROUNDS FOR DIVORCE.	139
12: TABLE OF DIVORCE STATUTES: RESIDENCY REQUIREMENTS	143
13: SAMPLE SUMMONS (FORM A-1) AND VERIFIED COMPLAINT (FORM A-3) FOR DIVORCE.	147
14: SAMPLE POOR PERSON ORDER	155
15: SAMPLE CERTIFICATE OF DISSOLUTION OF MARRIAGE	157
16: TABLE OF DIVORCE STATUTES: PROPERTY DIVISION RULES	159
17: SAMPLE QUALIFIED DOMESTIC RELATIONS ORDER.	163
18: TABLE OF DIVORCE STATUTES: SPOUSAL SUPPORT FACTORS	167
19: CHILD SUPPORT WORKSHEET	171
20: SAMPLE QUALIFIED MEDICAL CHILD SUPPORT ORDER	179
21: SAMPLE INCOME DEDUCTION ORDER	183
22: TABLE OF DIVORCE STATUTES: CUSTODY CRITERIA.	185
23: SAMPLE JOINT CUSTODY AGREEMENT	189
24: TABLE OF DIVORCE STATUTES: THIRD PARTY VISITATION AUTHORIZED BY STATE	193
25: THE UNIFORM CHILD CUSTODY JURISDICTION ACT (SELECTED PROVISIONS).	197
26: THE PARENTAL KIDNAPPING PREVENTION ACT (SELECTED PROVISIONS).	207
27: SAMPLE COHABITATION AGREEMENT.	211
28: SAMPLE CO-PARENTING AGREEMENT.	215
29: TABLE OF STATE LAWS CONCERNING SAME-SEX MARRIAGE	219
30: THE DEFENSE OF MARRIAGE ACT OF 1996.	223
GLOSSARY	225
BIBLIOGRAPHY AND ADDITIONAL READING.	235

CHAPTER 1:

THE EVOLUTION OF MARRIAGE

IN GENERAL

Marriage has been a fundamental institution throughout history. Many of the attributes of modern marriage have their roots in ancient cultures, such as the Hebrew, Greek, and the Roman civilizations. For example, prohibitions against adultery and incest appear in the Old Testament, the Torah and the Talmud.

EARLY ROMAN LAW

Marriage and Divorce Formalities

Under early Roman law, the consent of the parties to live together produced a valid marriage. No forms or ceremonies were necessary. By virtue of the marriage, the husband was granted broad powers over the person and property of his wife.

Divorce was similarly accomplished without legal formalities, requiring only that the parties separate with the intention of ending their marriage. However, the power of the husband over the person and property of his wife continued unless formal procedures were undertaken to dissolve that power. Not surprisingly, access to those procedures were available only to the husband and, thus, divorce in the early Roman era was rare.

By the first century A.D., the husband no longer retained such broad powers over the person and property of his wife, but legal procedures to marry and divorce were still not necessary.

The Julian Marriage Laws

In 18 B.C., adultery in Rome was widespread. Among the upper classes, marriage was increasingly infrequent, and many couples who did marry