

Para 201-You & the Law

Chapter 3-Family Law

Wednesday- 9/09/09

**** Duty to report suspected child abuse/neglect:**

- (1) Mandated reporters: look to state statutes; usually includes:
teachers, doctors, nurses, social workers, childcare providers
--usually granted immunity from suit**

XI. Separation, Annulment, & Divorce

A. Legal separation: formalized by court order

- may be tax advantages**

B. Annulment: ruling that marriage was never valid

- usually based on fraud or misrepresentation (prior marriage, criminal record, venereal disease, inability to father/bear children)**
- not the same as a religious annulment**

C. Divorce : dissolution of marriage-decree by court

- some states permit do-it-yourself divorces**
- most divorces are not contested (95%)**
- mediation is popular and mandated in some states**
- most divorces are no-fault: no accusations, no evidence of bad behavior**

(1) No-fault grounds: irreconcilable differences; irretrievable breakdown

(2) Fault grounds: physical/mental cruelty, desertion, habitual drunkenness, drug addiction, impotency, etc.

- may sometimes be considered in determining property allocation & spousal support**

--if wife takes back maiden name, needs to notify gov't agencies & private companies, i.e. Social Security Administration, IRS, post office, DMV, state tax agencies, licensing agencies, etc.

D. Property:

- some states allow parties to keep non-marital or separate property**
- marital property/community property: acquired during the marriage & will be divided equitably (not necessarily equally)**
- community property states (Cal.) : property divided equally (50/50)**

--in equitable division, courts will consider: non-marital property, earning power, services as homemaker, who earned property, length of marriage,

age of parties, fault, education of parties

--parties with negative net worth will usually divide the debts

E. Alimony/Maintenance: spousal support

--tax deductible by payer and reportable as income by recipient

**(1) Rehabilitative alimony/support: intended to provide for education or job training to make financially dependent spouse self-supporting
--usually awarded for limited period-5 years is common**

**(2) Permanent alimony/support: awarded to spouse who can't become economically independent (advanced age, chronic illness)
--may end if recipient remarries**

(3) Spouses who support the other through grad school/advanced education: courts may award "reimbursement alimony" or "alimony in gross"- periodic payments based on other spouse's increased earnings

(4) Insurance: federal law requires most employer-sponsored group health plans to offer divorced spouses of covered workers continued coverage at group rates for as long as 3 years

F. Custody: right/duty to care for child on day-to-day basis & make major decisions about child

--judges base decision on "best interests of the child"

(1) in ND & MN, judges consider numerous factors

(2) in most states, mother & father have equal right to custody

(3) laws on custody have changed over the years:

a) 1800's: kids viewed as property and went to the father

b) mid-1800's & later: "tender years doctrine"-mother received custody (this continued until mid-60's or 80's, depending on the state)

---in most states there are overriding factors that may determine custody: alcoholism, mental illness, domestic violence may be the "deal-breakers"

---some states use primary caretaker factor: more experienced parent

**---child's preference: depends on child's age, maturity, quality of reasons
--two states (Ga. & W. Va.) allow child of 14 "absolute right" to choose parent who child will live with**

---judges will interview child privately in chambers or may appoint custody investigator or *guardian ad litem* to investigate & make recommendations

---parent's non-marital sexual relations usually not a factor unless child is harmed

---homosexual parent: varies dramatically from state to state

--some states treat equally

--some states assume harmful impact on children

---alienation of child's affections: most states have policy favoring relationship between child & both parents; custody may be granted to the parent who encourages a healthy relationship and doesn't "bad-mouth" the other parent

---parents & religion: courts don't favor religion *per se* but court may favor continuity in child's religious life

***Custody decisions can be changed if:

(1) Substantial change in circumstances and

(2) Change in custody is necessary for best interests of child

G. Visitation/Parenting time: non-custodial parent awarded to foster healthy relationship with child:

--may be denied if non-custodial parent molests or abuses child or uses excessive amounts of drugs or alcohol

--may be supervised/restricted visitation

H. Joint Custody: "shared custody" or "shared parenting":

(1) Joint legal custody: both parents share in major decisions about child
--school, health care, religious training, discipline, etc.

(2) Joint physical custody: could be equal time with both parents; some parents rotate in & out of family home

--courts don't have to order joint custody although 10 states have expressed preference for it-see pros & cons, p. 32 of outline

I. Child Support: under federal law, all states must have guidelines by which courts determine amount of child support:

(1) Guidelines = formulas

--courts plug numbers into formulas—see Illinois & Colorado examples on pp. 33 & 34

(2) College expenses: parties can bargain for this in divorce decree although parents in most states are not obligated to pay for child's college

(3) If child support is not paid, court can enforce by contempt order, wage garnishment, tax refund intercepts, professional license suspension, property liens

(4) Child Support Recovery Act of 1992: it's federal crime to willfully fail to pay child support to child who resides in another state-if past due amount has been unpaid for over one (1) year OR exceeds \$5000

--enforced by Child Support Enforcement Agencies (IV-D), state's attys

--unpaid child support: Census Bureau estimates only about half of parents entitled receive child support due; 1/4th receive partial payments, 1/4th receive nothing (\$10 billion unpaid)

****Child Abduction: federal crime for parent to abduct child: PKPA- Parental Kidnapping Prevention Act**

J. Grandparents & Step-parents:

---most states have statutes allowing grandparents to seek visitation of grandchildren but 2000 U.S. Supreme Court decision of Troxel v. Granville held that parents could control who their kids associated with but that some grandparents may have better claim because of close relationship with grandkids

--grandparents can be awarded custody but usually only if neither parent wants the child or both parents are unfit

**** Step-parents: rights & duties depend on state law but usually won't be liable for support unless the step-parent has adopted the stepchild**

****Step-children don't share in step-parent's estate but can be granted survivor's benefits under Social Security if under 18 & unmarried**

K. Mediation:

- common in family law areas like divorce & custody**
- many courts mandate mediation before trial may commence**
- most divorce mediators are mental health professionals or attorneys**
- cheaper, faster, fairer usually**
- mediation may not be appropriate in cases involving domestic violence**

*****See more sources of information at end of chapter on pp. 38-40**