UNDERSTANDING
FAMILY LAW
UNDERSTANDING FAMILY LAW

Fourth Edition

John DeWitt Gregory
Distinguished Professor of Law Emeritus
Maurice A. Deane School of Law at Hofstra University

Peter Nash Swisher
Professor of Law
University of Richmond School of Law

Robin Fretwell Wilson
Class of 1958 Law Alumni Professor of Law
Washington and Lee University School of Law
eBook ISBN: 978-1-4224-8661-0

Library of Congress Cataloging-in-Publication Data

Gregory, John DeWitt
Understanding family law / John DeWitt Gregory, Emeritus Distinguished Professor of Family Law, Hofstra University Maurice Deane School of Law, Peter Nash Swisher, Professor of Law, University of Richmond School of Law, Robin Fretwell Wilson, Class of 1958 Law Alumni Professor of Law, Washington and Lee University School of law -- Fourth edition.
p.cm.
Includes index.
1. Domestic relations--United States. I. Swisher, Peter N., 1944- II. Wilson, Robin Fretwell. III. Title.
KF505.G734 2013
346.7301'5--dc23
2013001038

This publication is designed to provide authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

Copyright © 2013 Carolina Academic Press, LLC
All Rights Reserved

No copyright is claimed in the text of statutes, regulations, and excerpts from court opinions quoted within this work.
DEDICATION

To William Wilford Gregory, who taught me whatever I know about the unbought grace of life
— John DeWitt Gregory

To Karen and Stephanie
— Peter Nash Swisher

To Walter Wadlington, a teacher and scholar to emulate
— Robin Fretwell Wilson
# TABLE OF CONTENTS

## Chapter 1  AN INTRODUCTION TO FAMILY LAW  

<table>
<thead>
<tr>
<th>§ 1.01</th>
<th>GENERAL INTRODUCTION</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>[A]</td>
<td>Legislative Regulation of Family Law</td>
<td>2</td>
</tr>
<tr>
<td>[B]</td>
<td>Judicial Regulation of Family Law</td>
<td>2</td>
</tr>
<tr>
<td>[C]</td>
<td>The Role of the Family Law Practitioner</td>
<td>5</td>
</tr>
<tr>
<td>§ 1.02</td>
<td>WHAT IS A FAMILY?</td>
<td>7</td>
</tr>
<tr>
<td>[A]</td>
<td>The Traditional Family</td>
<td>8</td>
</tr>
<tr>
<td>[B]</td>
<td>The Nontraditional Family</td>
<td>12</td>
</tr>
<tr>
<td>§ 1.03</td>
<td>STATE REGULATION OF FAMILY LAW</td>
<td>15</td>
</tr>
<tr>
<td>§ 1.04</td>
<td>FEDERAL REGULATION OF FAMILY LAW</td>
<td>16</td>
</tr>
<tr>
<td>§ 1.05</td>
<td>CONSTITUTIONAL PARAMETERS TO FAMILY LAW REGULATION</td>
<td>18</td>
</tr>
</tbody>
</table>

## Chapter 2  MARRIAGE AND MARRIAGE ALTERNATIVES  

| § 2.01       | INTRODUCTION              | 21 |
| § 2.02       | CONSENSUAL ALTERNATIVES TO MARRIAGE | 22 |
| [A]          | Nonmarital Cohabitation: Contract Implications | 24 |
| [B]          | Nonmarital Cohabitation: Property Issues   | 26 |
| [C]          | Nonmarital Cohabitation: Status Implications of Domestic Partnerships and Civil Unions | 27 |
| § 2.03       | MARRIAGE: A STATUS OR CONTRACT?           | 31 |
| § 2.04       | FORMAL STATUTORY MARRIAGE                | 35 |
| § 2.05       | INFORMAL MARRIAGES                     | 36 |
| [A]          | Common Law Marriage                  | 36 |
| [B]          | Putative Marriage                     | 38 |
| [C]          | Marriage by Proxy                     | 40 |
| [D]          | De Facto “Marriage”                   | 41 |
| [E]          | “Marriage” by Estoppel                | 42 |
| § 2.06       | THE LAST-IN-TIME MARRIAGE PRESUMPTION   | 44 |
| § 2.07       | PROOF OF MARRIAGE                     | 45 |
| § 2.08       | CAPACITY AND INTENT TO MARRY           | 46 |
| [A]          | Void and Voidable Marriages           | 46 |
| [B]          | Same Sex Marriage                     | 47 |
| [C]          | Bigamous and Polygamous Marriage      | 52 |
| [D]          | Incestuous Marriage: Prohibited Degrees of Kinship | 53 |
| [E]          | Underage Marriage                     | 55 |
| [F]          | Mental and Physical Incapacity        | 56 |
| [1]          | Mental Incapacity                     | 56 |
TABLE OF CONTENTS

[2] Physical Incapacity ................................................. 57
[G] Fraudulent Marriage ................................................. 58
[H] Marriage Under Duress ............................................. 59
[I] Sham Marriage ....................................................... 59
[J] Marriage in Jest ...................................................... 60
§ 2.09 CONFLICT OF LAWS: WHICH MARRIAGE LAWS GOVERN? ....... 61
§ 2.10 ANNULMENT OF MARRIAGE ..................................... 62
[A] Annulment Jurisdiction .............................................. 62
[B] Annulment Grounds and Defenses .................................. 63
[C] Property and Support Rights on Annulment ...................... 64

Chapter 3 PROPERY AND SUPPORT RIGHTS DURING MARRIAGE ............... 67

§ 3.01 INTRODUCTION ..................................................... 67
§ 3.02 THE COMMON LAW THEORY OF PROPERTY RIGHTS .................. 68
§ 3.03 THE “FEME SOLE ESTATE” AND THE MARRIED WOMEN’S PROPERTY ACTS ........................................ 69
[A] The “Feme Sole Estate” ............................................... 69
[B] The Married Women’s Property Acts ................................ 70
§ 3.04 CO-OWNERSHIP: HOW PROPERTY IS HELD VIS-À-VIS SPOUSES .. 71
[A] Tenancy by the Entirety ............................................... 71
[B] Joint Tenancy ......................................................... 72
[C] Tenancy in Common ................................................... 73
§ 3.05 COMMON LAW PROPERTY RIGHTS ON DEATH OF A SPOUSE .... 74
[A] Common Law Dower and Curtesy .................................. 75
[B] Elective Share Statutes ............................................... 76
§ 3.06 THE COMMUNITY PROPERTY SYSTEM ................................ 78
§ 3.07 THE UNIFORM MARITAL PROPERTY ACT ........................... 80
§ 3.08 MARRIAGE AS AN “ECONOMIC PARTNERSHIP” ................... 82
§ 3.09 SUPPORT RIGHTS AND OBLIGATIONS ........................... 85
§ 3.10 THE DOCTRINE OF NECESSARIES ................................ 86
§ 3.11 SPOUSAL SUPPORT DURING SEPARATION ....................... 89
[A] Pendente Lite Statutes ................................................. 91
§ 3.12 STATUTORY SUPPORT OBLIGATIONS ............................ 91
[A] Spousal and Child Support Statutes ................................ 91
[B] Criminal Non-Support Statutes .................................... 92
§ 3.13 RIGHTS OF CONSORTIUM ......................................... 93
§ 3.14 RELATIVE RESPONSIBILITY STATUTES .......................... 95
§ 3.15 SUPPORT ENFORCEMENT REMEDIES ............................ 97
### TABLE OF CONTENTS

#### Chapter 4  
**MARITAL CONTRACTS AND AGREEMENTS**  

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 4.01</td>
<td>INTRODUCTION</td>
<td>99</td>
</tr>
<tr>
<td>§ 4.02</td>
<td>MARRIAGE PROMISES AND PREMARITAL GIFTS</td>
<td>102</td>
</tr>
<tr>
<td>[A]</td>
<td>Breach of Promise to Marry</td>
<td>102</td>
</tr>
<tr>
<td>[B]</td>
<td>Fraudulent Inducement to Marry Actions</td>
<td>102</td>
</tr>
<tr>
<td>[C]</td>
<td>Contracts Restraining or Promoting Marriage</td>
<td>103</td>
</tr>
<tr>
<td>[D]</td>
<td>Premarital Gifts</td>
<td>104</td>
</tr>
<tr>
<td>§ 4.03</td>
<td>PREMARITAL AGREEMENTS</td>
<td>104</td>
</tr>
<tr>
<td>[A]</td>
<td>Traditional Versus Modern Approaches</td>
<td>104</td>
</tr>
<tr>
<td>[B]</td>
<td>The Uniform Premarital Agreement Act</td>
<td>108</td>
</tr>
<tr>
<td>§ 4.04</td>
<td>CONTRACTUAL AGREEMENTS BETWEEN HUSBAND AND WIFE</td>
<td>110</td>
</tr>
<tr>
<td>§ 4.05</td>
<td>POSTNUPTIAL AND SEPARATION AGREEMENTS</td>
<td>111</td>
</tr>
<tr>
<td>[A]</td>
<td>Separation Agreements: Necessary Elements</td>
<td>112</td>
</tr>
<tr>
<td>[B]</td>
<td>Separation Agreements: Application of Principles</td>
<td>116</td>
</tr>
</tbody>
</table>

#### Chapter 5  
**PROCREATION**  

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>§ 5.01</td>
<td>INTRODUCTION</td>
<td>119</td>
</tr>
<tr>
<td>§ 5.02</td>
<td>PATERNITY AND LEGITIMACY</td>
<td>120</td>
</tr>
<tr>
<td>[A]</td>
<td>Historical Background and Current Perspectives</td>
<td>120</td>
</tr>
<tr>
<td>[B]</td>
<td>The Presumption of Legitimacy</td>
<td>122</td>
</tr>
<tr>
<td>[C]</td>
<td>Children of Void and Voidable Marriages</td>
<td>125</td>
</tr>
<tr>
<td>[D]</td>
<td>Constitutional Protection of the Nonmarital Child</td>
<td>126</td>
</tr>
<tr>
<td>[E]</td>
<td>Paternity Grounds and Actions</td>
<td>128</td>
</tr>
<tr>
<td>[1]</td>
<td>The Uniform Parentage Act</td>
<td>129</td>
</tr>
<tr>
<td>[3]</td>
<td>Private Promises and Contracts</td>
<td>130</td>
</tr>
<tr>
<td>[F]</td>
<td>Scientific Testing in Paternity Proceedings</td>
<td>131</td>
</tr>
<tr>
<td>[G]</td>
<td>Inheritance Rights</td>
<td>135</td>
</tr>
<tr>
<td>[H]</td>
<td>Artificial Insemination</td>
<td>137</td>
</tr>
<tr>
<td>[I]</td>
<td>Custody Issues</td>
<td>138</td>
</tr>
<tr>
<td>[J]</td>
<td>Claims and Defenses in Paternity Actions</td>
<td>140</td>
</tr>
<tr>
<td>§ 5.03</td>
<td>PROCREATION AND SEXUAL LIBERTY</td>
<td>142</td>
</tr>
<tr>
<td>[A]</td>
<td>The Right to Procreate</td>
<td>142</td>
</tr>
<tr>
<td>[B]</td>
<td>The Right to Sexual Liberty</td>
<td>143</td>
</tr>
<tr>
<td>§ 5.04</td>
<td>CONTRACEPTION</td>
<td>145</td>
</tr>
<tr>
<td>[A]</td>
<td>The Right to Contraception</td>
<td>146</td>
</tr>
<tr>
<td>[B]</td>
<td>Funding Contraception</td>
<td>148</td>
</tr>
<tr>
<td>§ 5.05</td>
<td>ABORTION</td>
<td>150</td>
</tr>
<tr>
<td>[A]</td>
<td>General Introduction</td>
<td>150</td>
</tr>
</tbody>
</table>
TABLE OF CONTENTS

[C] Constitutional Parameters: The State Response ........................................ 153
[1] Rights of the Potential Father ................................................................. 153
[2] Rights of Minors ....................................................................................... 154
[3] Health and Safety Regulations ................................................................. 156
[4] Funding and Facilities ............................................................................... 159
[6] Partial Birth Abortion and Infants Born Alive .......................................... 164

§ 5.06 VOLUNTARY AND INVOLUNTARY STERILIZATION ..................... 167
[A] Voluntary Sterilization ........................................................................... 168
[B] Involuntary Sterilization ......................................................................... 169
[1] Buck and Skinner ..................................................................................... 170

§ 5.07 ASSISTED CONCEPTION ................................................................. 177
[A] Artificial Insemination ............................................................................. 179
[B] In Vitro Fertilization ............................................................................... 188
[1] Legality of and Access to In Vitro Fertilization in General ...................... 189
[2] Leftover “Pre-Embryos” and the Right Not to Parent ............................. 190
[3] Same-Sex Relationships ......................................................................... 193
[C] Surrogate Motherhood ........................................................................... 196
[1] Traditional Surrogacy ............................................................................. 197

Chapter 6 ADOPTION ................................................................. 211

§ 6.01 ADOPTION AND TERMINATION OF PARENTAL RIGHTS .......... 211
[A] Introduction and Overview .................................................................... 211
[B] Involuntary Termination of Parental Rights .......................................... 212
[1] Introduction ............................................................................................ 212
[2] Statutory Requirements .......................................................................... 212
[3] Constitutional Considerations ............................................................... 213
[a] Abandonment ........................................................................................ 215
[b] Child Abuse, Neglect and Dependency ................................................. 217
[c] Failure to Provide Child Support ............................................................ 218
[d] Unfitness ................................................................................................. 219
[e] Mental or Physical Disability of the Parent .......................................... 220
[f] Best Interests of the Child .................................................................... 220
[C] Independent or Private Adoption .......................................................... 221
[D] Agency Adoption ................................................................................... 224
[E] Consent .................................................................................................. 226
TABLE OF CONTENTS

[2] Consent of the Unwed Father ....................... 227
[3] Consent of Minor Parent ........................... 230
[F] Subsidized Adoptions and Children With Special Needs ............. 232
[G] Adult Adoption .................................... 233
[H] Equitable Adoption ............................... 235
[I] Second-Parent Adoption ............................ 235
[J] Open Adoption ..................................... 237
[K] Effects of Adoption ............................... 240

Chapter 7  UNIQUE FAMILY ISSUES ................. 243

§ 7.01 INTRODUCTION ................................ 243
§ 7.02 INTRAFAMILY TORT IMMUNITY AND LIABILITY .......... 244
[A] Interspousal Tort Actions ........................... 244
[B] Child and Parent Tort Actions ........................ 247
§ 7.03 PARENTAL DISCIPLINE OF A CHILD .................... 249
§ 7.04 PARENTAL LIABILITY FOR A CHILD’S ACT ................ 250
§ 7.05 MEDICAL CARE FOR THE CHILD AND THE SPOUSE ......... 251
§ 7.06 WRONGFUL DEATH, WRONGFUL BIRTH, WRONGFUL LIFE, AND WRONGFUL CONCEPTION ...................... 256
§ 7.07 REGULATION OF A CHILD’S EDUCATION ................. 257
§ 7.08 DOMESTIC VIOLENCE ................................ 261
[A] Spousal Abuse ...................................... 263
[B] Child Abuse ........................................ 269
[C] Spousal Rape ....................................... 274
§ 7.09 CHILDREN IN NEED OF SUPERVISION ................. 276
§ 7.10 FAMILY RIGHTS VERSUS INDIVIDUAL RIGHTS ............. 278

Chapter 8  DIVORCE GROUNDS AND DEFENSES ............ 281

§ 8.01 INTRODUCTION ................................ 281
[A] Historical Background .............................. 281
[B] Fault Grounds for Divorce and the No-Fault Revolution ......... 282
[C] Current Divorce Concerns and Statistics .................... 284
[D] The Continuing Debate Over Fault Factors in Contemporary Divorce Actions ........................................ 285
§ 8.02 JURISDICTION AND VENUE ...................... 287
[A] Divorce Jurisdiction in General ........................ 287
[B] The Domiciliary Requirement .......................... 288
[C] Venue ............................................... 292
[D] Service on the Defendant ............................. 292
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>[E]</td>
<td>Bilateral Divorces</td>
<td>293</td>
</tr>
<tr>
<td>[F]</td>
<td>Ex Parte Divorces</td>
<td>293</td>
</tr>
<tr>
<td>[G]</td>
<td>Migratory Divorces</td>
<td>294</td>
</tr>
<tr>
<td>[1]</td>
<td>Sister State Divorces</td>
<td>294</td>
</tr>
<tr>
<td>[H]</td>
<td>The Divisible Divorce Doctrine</td>
<td>300</td>
</tr>
<tr>
<td>[I]</td>
<td>Long-Arm Statutes</td>
<td>302</td>
</tr>
<tr>
<td>[J]</td>
<td>Collateral Attack and Estoppel</td>
<td>303</td>
</tr>
<tr>
<td>§ 8.03</td>
<td>DIVORCE GROUNDS AND DEFENSES</td>
<td>306</td>
</tr>
<tr>
<td>[A]</td>
<td>Introduction</td>
<td>306</td>
</tr>
<tr>
<td>[B]</td>
<td>Fault Grounds for Divorce</td>
<td>306</td>
</tr>
<tr>
<td>[1]</td>
<td>Bed and Board Divorces and Absolute Divorces</td>
<td>306</td>
</tr>
<tr>
<td>[3]</td>
<td>cruelty Grounds</td>
<td>309</td>
</tr>
<tr>
<td>[4]</td>
<td>Desertion Grounds</td>
<td>311</td>
</tr>
<tr>
<td>[5]</td>
<td>Other Miscellaneous Fault Grounds</td>
<td>312</td>
</tr>
<tr>
<td>[C]</td>
<td>Defenses to Fault-Based Divorce</td>
<td>313</td>
</tr>
<tr>
<td>[1]</td>
<td>Connivance</td>
<td>313</td>
</tr>
<tr>
<td>[3]</td>
<td>Condonation and Cohabitation</td>
<td>315</td>
</tr>
<tr>
<td>[4]</td>
<td>Recrimination</td>
<td>315</td>
</tr>
<tr>
<td>[6]</td>
<td>Other Defenses</td>
<td>317</td>
</tr>
<tr>
<td>[D]</td>
<td>Divorce Based upon Living Separate and Apart</td>
<td>318</td>
</tr>
<tr>
<td>[E]</td>
<td>No-Fault Divorce Grounds</td>
<td>320</td>
</tr>
<tr>
<td>[F]</td>
<td>Effect of Fault on Property Division and Spousal Support</td>
<td>322</td>
</tr>
<tr>
<td>[G]</td>
<td>“Economic Fault”</td>
<td>325</td>
</tr>
<tr>
<td>[H]</td>
<td>Divorce Practice and Procedure</td>
<td>325</td>
</tr>
<tr>
<td>[I]</td>
<td>Appellate Review</td>
<td>327</td>
</tr>
<tr>
<td>§ 8.04</td>
<td>ETHICAL ISSUES FOR THE FAMILY LAWYER</td>
<td>328</td>
</tr>
<tr>
<td>[A]</td>
<td>Dual Representation in Divorce Proceedings</td>
<td>328</td>
</tr>
<tr>
<td>[B]</td>
<td>Confidential Information</td>
<td>332</td>
</tr>
<tr>
<td>[C]</td>
<td>Attorney Fees on Divorce</td>
<td>334</td>
</tr>
<tr>
<td>[D]</td>
<td>Sexual Relations with a Divorce Client</td>
<td>335</td>
</tr>
<tr>
<td>[E]</td>
<td>Candor Toward the Court and Withdrawal from the Case</td>
<td>337</td>
</tr>
<tr>
<td>[F]</td>
<td>Pro Se Divorces</td>
<td>338</td>
</tr>
<tr>
<td>[G]</td>
<td>Representing Children</td>
<td>340</td>
</tr>
<tr>
<td>§ 8.05</td>
<td>ALTERNATIVE DISPUTE RESOLUTION</td>
<td>341</td>
</tr>
<tr>
<td>[A]</td>
<td>Divorce Mediation</td>
<td>341</td>
</tr>
<tr>
<td>[B]</td>
<td>Arbitration</td>
<td>345</td>
</tr>
<tr>
<td>[C]</td>
<td>Collaborative Law</td>
<td>348</td>
</tr>
</tbody>
</table>
Chapter 9 SPOUSAL AND CHILD SUPPORT ON DIVORCE

§ 9.01 INTRODUCTION

§ 9.02 JURISDICTION FOR SPOUSAL AND CHILD SUPPORT

[A] The Doctrine of Continuing Jurisdiction

[B] The Doctrine of Divisible Divorce

[C] Interstate Enforcement Legislation

[D] State Long-Arm Statutes

[E] Child Support Jurisdiction: The Kulko Case

§ 9.03 SPOUSAL SUPPORT FACTORS AND JUDICIAL DISCRETION

[A] General Factors

[B] Fault as a Factor in Spousal Support

§ 9.04 FORMS OF SPOUSAL SUPPORT

[A] Temporary Spousal Support Pendente Lite

[B] “Permanent” Spousal Support

[C] “Rehabilitative” Spousal Support

[D] New or Hybrid Forms of Alimony

§ 9.05 MODIFICATION OF SPOUSAL SUPPORT

§ 9.06 CHILD SUPPORT

[A] Basic Concepts

[B] Temporary Child Support Pendente Lite

[C] Statutory Child Support Guidelines

[D] Duration of the Child Support Obligation

[E] Modification of Child Support

[F] Enforcement of Spousal and Child Support Orders

[1] Support Arrearage Issues and Defenses

[2] State Enforcement Remedies

[a] Contempt Proceedings

[b] Other State Law Remedies

[3] Interstate Enforcement

[a] Traditional Interstate Enforcement

[b] The Uniform Reciprocal Enforcement of Support Acts

[c] The Uniform Interstate Family Support Act


[a] Income Withholding

[b] Security for Payments

[c] Income Tax Refund Intercepts

[d] Child Support Guidelines

[e] Parent Locator Service


[g] The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

TABLE OF CONTENTS
TABLE OF CONTENTS

§ 9.07 FEDERAL TAX CONSEQUENCES OF CHILD AND SPOUSAL SUPPORT ............................................. 426
[A] Alimony or Spousal Support Payments ......................................................... 427
[B] Child Support Payments .............................................................................. 429
[C] Dependency Exemption for Children ............................................................. 430
[D] Deductibility of Legal Fees .......................................................................... 431
[E] Other Divorce Related Taxation Issues ......................................................... 431

§ 9.08 BANKRUPTCY .............................................................................................. 435
[A] Support Obligations ....................................................................................... 436
[B] Property Division Debts .................................................................................. 442
[C] Marital Liens .................................................................................................. 442
[D] Automatic Stay ................................................................................................ 444
[E] Exempt Property ............................................................................................. 444

Chapter 10 EQUITABLE DISTRIBUTION OF PROPERTY .......................... 447
§ 10.01 INTRODUCTION ........................................................................................ 447
§ 10.02 COMMUNITY PROPERTY ORIGINS ..................................................... 448
§ 10.03 CHARACTERIZING PROPERTY FOR THE PURPOSE OF EQUITABLE DISTRIBUTION ................................. 449
[A] Dual Property Equitable Distribution Jurisdictions ......................................... 449
[B] All Property Equitable Distribution Jurisdictions ............................................ 451
§ 10.04 CHARACTERIZING PROPERTY AS MARITAL OR SEPARATE: CHANGE IN CLASSIFICATION ....................................................... 452
[A] The Marital Property Presumption .................................................................. 452
[B] Judicial Development of Classification Rules .................................................. 452
[1] Inception of Title ............................................................................................. 452
[2] Source of Funds .............................................................................................. 453
[3] Transmutation ................................................................................................ 454
[C] Tracing ........................................................................................................... 455
§ 10.05 APPRECIATION OF SEPARATE PROPERTY DURING MARRIAGE ......................................................... 455
§ 10.06 GIFTS AND INHERITANCES ................................................................. 458
[A] Statutory Approaches ...................................................................................... 458
### TABLE OF CONTENTS

[B] Judicial Treatment ........................................ 459
[1] Gifts or Inheritances From a Third Party to Either Spouse ...... 459
[2] To the Spouses Jointly .................................... 460
[3] Interspousal Transfers .................................... 460

§ 10.07 PERSONAL INJURIES AND WORKERS’ COMPENSATION ..... 463
[A] Introduction .............................................. 463
[B] Approaches to Classification ................................ 463

§ 10.08 LICENSES, DEGREES AND ENHANCED EARNINGS .......... 465
[A] Overview .................................................. 465
[B] Statutory Treatment ....................................... 465
[C] Degree or License Not Property ............................ 465
[D] Degree or License as Marital Property ..................... 466
[E] Alternative Remedies for the Supporting Spouse ............. 469
[1] Overview .................................................. 469
[2] Reimbursement or Rehabilitation ........................... 470

§ 10.09 PROFESSIONAL GOODWILL ............................ 471
[A] Goodwill: Definitions and Basic Concepts ..................... 471
[B] Classification of Professional Goodwill ...................... 472
[1] Community Property Influences ............................. 472
[a] Professional Goodwill as Divisible Property ................. 476
[b] Professional Goodwill Not Divisible ........................ 476
[c] Professional Goodwill Divisible if Independent of Individual 476
[C] Valuation .................................................. 477
[1] Book Value .............................................. 478
[3] Buy-Sell Agreements ....................................... 479
[4] Discount for Minority Interest ............................... 480

§ 10.10 PENSIONS AND RETIREMENT BENEFITS ................. 480
[A] Overview .................................................. 480
[B] Basic Terms and Concepts ................................ 480
[C] Characterization of Pension Benefits ......................... 481
[1] Majority View — All Pensions Marital Property ............. 481
[D] Valuation and Distribution of Pensions ....................... 483
[E] Disability Benefits ........................................ 485
[F] Federal Pensions .......................................... 486
[G] Qualified Domestic Relations Orders (QDROs) ................. 486
[H] Military Retirement Benefits ................................ 487

§ 10.11 VALUATION OF ASSETS: GENERAL PRINCIPLES .......... 488
### TABLE OF CONTENTS

§ 10.12 FAIR AND EQUITABLE DISTRIBUTION ........................................... 489  
[A] Introduction ...................................................................................... 489  
[B] Factors in Equitable Distribution ...................................................... 490  
[C] Equal Division and Starting Points .................................................... 491  
[D] Dissipation of Assets and Marital Misconduct .................................... 491  
[1] Overview ......................................................................................... 491  
[4] Remedies for Dissipation .................................................................. 493  
[5] Marital Misconduct or Fault .............................................................. 493  
[E] Marital Debts and Liabilities ............................................................. 494  
[F] The Marital Home ............................................................................. 495  

Chapter 11 CHILD CUSTODY AND VISITATION ................................. 497

§ 11.01 INTRODUCTION ................................................................................. 497
§ 11.02 CHILD CUSTODY JURISDICTION .................................................. 497  
[A] Traditional Rules .............................................................................. 500  
[B] The Uniform Child Custody Jurisdiction Act and the Uniform Child  
Custody Jurisdiction and Enforcement Act ....................................... 501  
[1] Jurisdictional Prerequisites ............................................................... 503  
[2] Restraints on Jurisdiction ................................................................. 506  
[1] Scope of Application ....................................................................... 511  
[2] Similarities and Differences between the Federal and State Statutes . 511  
[3] Personal Jurisdiction ....................................................................... 514  

§ 11.03 FACTORS IN DISPUTED CHILD CUSTODY CASES ............... 522  
[A] The Best Interests of the Child .......................................................... 522  
[B] Doctrinal Presumptions .................................................................... 523  
[1] The Tender Years Presumption ......................................................... 523  
[2] The Natural Parent Presumption ....................................................... 525  
[3] The Primary Caretaker Presumption ............................................... 527  
[C] The Effect of Parental Conduct on Custody Determinations .......... 528  
[D] Relative Considerations Between Fit Parents ................................. 532  
[1] The Gender of the Parents ............................................................... 532  
[a] Statutory Treatment ....................................................................... 533
TABLE OF CONTENTS

[b] Judicial Approaches ........................................... 533
[4] Religion ..................................................... 536
[5] Physical Condition of the Custodial Parent ................. 539
§ 11.04 JOINT CUSTODY ............................................. 541
[A] Introduction and Overview .................................. 541
[B] Statutory Joint Custody Provisions ......................... 542
[C] Judicial Treatment of Joint Custody ...................... 543
§ 11.05 VISITATION .................................................... 545
[A] Right of Noncustodial Parent to Visitation ............... 545
[1] Illustrative Statutes ......................................... 546
[a] Statutory Remedies .......................................... 546
[b] Judicial Remedies ............................................ 547
[B] Restrictions on Visitation .................................. 548
[C] Visitation and Child Support ............................... 550
[1] Illustrative Statutes ......................................... 550
[D] Visitation by Third Parties ................................ 551
[4] Stepparent Visitation ....................................... 554
§ 11.06 MODIFICATION OF CHILD CUSTODY ..................... 557
[A] Introduction and Overview ................................ 557
[B] Judicial Standards for Modification of Custody Decrees 558
§ 11.07 RELOCATION OF CUSTODIAL PARENT .................. 559
[A] Statutory Restrictions ........................................ 559
[B] Court Ordered Limitations on Relocation by a Custodial Parent 559
§ 11.08 INTERFERENCE WITH CHILD CUSTODY ................ 562
[A] State Criminal Sanctions .................................... 562
[B] Tortious Interference With Custody ....................... 563
§ 11.09 MEDIATION OF CHILD CUSTODY DISPUTES ........... 563

TABLE OF CASES ....................................................... TC-1

INDEX ................................................................. I-1