Family Law Outline

Getting Married

A. Requirements for Marriage

1. **Age:** Both parties must be of a minimum age, usually 18, though often younger with parental or judicial approval.
2. **Consanguinity and Affinity:** The parties must not be too closely related.
3. **Mental Capacity:** Both parties must have the capacity to consent, meaning the ability to comprehend and voluntarily agree.
4. **Prior Undissolved Marriage:** Both parties must not have a prior undissolved marriage to a living spouse.

B. Procedural Requirements

1. **License:** Most states require a marriage license obtained from the designated licensing officer before solemnization.
   - **Medical Examination:** Some states may require a medical examination before issuing a license.
   - **Waiting Period:** Some states may impose a waiting period between obtaining the license and the ceremony.
2. **Solemnization:** A ceremony conducted by clergy, judges, or other authorized individuals.
   - **Completion and Filing of License:** The officiant must complete and file the marriage license with the appropriate government office to create a public record.
   - **Proxy Marriages:** Some states allow proxy marriages where one party is absent and authorizes a third party to act as their proxy.

C. State of Mind Requirements

1. **Capacity to Consent:** Each party must possess the ability to comprehend and voluntarily agree to the marriage.
2. **Intent:** Both parties must have the present intent to enter into a permanent, exclusive relationship with the expectation of children.
3. **Marriage for a Limited Purpose:** "Sham marriages" entered for a limited purpose (e.g., immigration) may be considered valid if they meet procedural requirements and the parties intended to assume usual marital obligations.

D. Common Law Marriage

1. **Consent:** Mutual consent to a permanent, exclusive relationship with the expectation of children, not merely cohabitation.
2. **Capacity:** Both parties must meet the capacity requirements for marriage.

3. **Cohabitation:** The parties must live together as spouses.
4. **Holding Out Publicly as Married:** The parties must present themselves to the public as married.
5. **Abolished in Most States:** While abolished in most states, valid common law marriages formed in permitting states are generally recognized in others.
6. **Exceptions to Recognition:** A state may not recognize a common law marriage if it violates a strong public policy of that state.
7. **Residency Requirement:** Some states require parties to reside in the permitting state for a certain period for the marriage to be recognized.

E. Premarital Contracts (Prenuptial Agreements)

1. **Purpose:** To alter the default legal distribution of assets upon divorce or death.
2. **Consideration:** Entering into the marriage is sufficient consideration for the contract.
3. **Statute of Frauds:** Must be in writing and signed by both parties.
4. **Content:** Can cover property rights, spousal support, estate planning, and other matters not violating public policy.
5. **Enforceability:** Generally enforceable if they meet certain requirements.
    - **Voluntariness:** The agreement must be entered into freely without duress or coercion.
        - Factors: Independent legal advice, time to review, party initiating the agreement.
    - **Full and Fair Disclosure:** Both parties must disclose their financial worth.
    - **Fair and Reasonable Provisions:** Economic provisions must be fair and reasonable.
        - **Unconscionability:** May be evaluated at the time of signing or divorce depending on jurisdiction.
6. **Uniform Premarital Agreement Act (UPAA):** Adopted by a majority of states, it focuses on voluntariness and unconscionability for enforcement.
7. **Choice of Law:** Courts typically apply the law of the state with the most significant relationship to the agreement and marriage.
8. **Limitations:**
    - **Divorce:** Provisions relating to divorce are generally enforceable.
    - **Terms of the Marriage:** Agreements concerning daily aspects of marriage (e.g., sexual relations, religion) are usually unenforceable.
    - **Child Custody:** Provisions regarding child custody are generally unenforceable as courts prioritize the best interest of the child.
    - **Child Support:** Provisions limiting a parent's child support obligation are invalid as against public policy.
9. **Invalidity:** Must be proven by clear and convincing evidence.
10. **Void Marriages:** Enforceable only to the extent necessary to avoid an inequitable result.
11. **Limitation of Actions:** Tolled during the marriage, but equitable defenses like laches and estoppel apply.

Being Married

A. Rights and Responsibilities of Spouses

1. **Property:** Each spouse owns and controls their separate property, but agency principles and tenancy by the entirety may apply.
    - **Tenancy by the Entirety:** In some states, joint ownership of real estate creates a tenancy by the entirety, including survivorship rights and prohibiting conveyance or encumbrance by one spouse.
    - **Marital Property:** Courts have broad discretion in equitable distribution of property acquired during marriage upon dissolution.
2. **Support:** Spouses have a mutual obligation of support.
    - **Alimony/Spousal Support:** A spouse may petition for alimony during separation or divorce proceedings, and in some states, at any time.
3. **Evidentiary Privileges:**
    - **Spousal Immunity:** Protects a spouse from being compelled to testify against their spouse in criminal proceedings.
    - **Confidential Marital Communications:** Protects confidential communications made between spouses during a valid marriage.
4. **Family Privacy:**
    - **Common Law Doctrine:** Protects certain aspects of family life from outside interference.
    - **Constitutional Privacy:** Provides fundamental rights to marriage, reproductive choices, family rights, and parental rights to care, custody, and control of children.
5. **Torts and the Family:**
    - **Interspousal Immunity:** Largely abolished, previously prevented spouses from suing each other in tort.
    - **Parent-Child Immunity:** Limited, previously prevented children from suing their parents in tort.
    - **Interference with Marital Relationship:** Includes actions like alienation of affections.
        - **Alienation of Affections:** Requires proof of love and affection, defendant's actions causing loss of affection, actual damages, and causation.
            - **Damages:** Highly subjective, can include mental distress and punitive damages.
    - **Interference with Parent-Child Relationship:** Can involve tortious injury or interference with custody.

B. Marital Agreements (Postnuptial Agreements)

1. **Purpose:** To alter or confirm marital rights or obligations during the marriage or upon separation, dissolution, or death.
2. **Uniform Premarital and Marital Agreements Act (UPMAA):** Adopted in a few states, it governs premarital and marital agreements under similar principles.
3. **Enforceability:** Similar requirements to premarital agreements, including full disclosure, fairness, voluntariness, and writing.

Separation, Divorce, Dissolution, and Annulment

A. Annulment

1. **Definition:** A legal declaration that a marriage is invalid due to an impediment at the time of the marriage, treating the parties as if they were never married.
2. **Types:**
    - **Void Marriage:** A marriage that never legally existed, subject to collateral attack and does not require a court order for separation.
        - **Removal of Impediment:** In some states, cohabitation after removal of the impediment validates the marriage.
    - **Voidable Marriage:** A valid marriage until a judicial decree declares it void, only the aggrieved party can seek annulment.
3. **Grounds:**
    - **Bigamy/Polygamy:** A prior undissolved marriage to a living spouse.
        - **Presumption of Latest Marriage:** A strong presumption exists that the latest marriage is valid.
    - **Consanguinity:** Parties too closely related.
    - **Nonage:** Marriage below the statutory age without parental/judicial consent.
    - **Incurable Physical Impotence:** Inability to consummate the marriage.
    - **Mental Incompetence:** Lack of understanding due to mental infirmity.
    - **Lack of Assent:** Lack of mutual consent to the marriage.
    - **Duress:** Entering the marriage under threat or coercion.
    - **Fraud:** Misrepresentation going to the essentials of marriage (e.g., ability to have sexual relations or bear children).
4. **Defenses:**
    - **Void Marriages:** Only defense is to deny the impediment.
    - **Voidable Marriages:** Equitable defenses like unclean hands, laches, and estoppel apply.
5. **Consequences:**
    - **Children:** Generally treated as marital children with rights to child support and custody.
    - **Spousal Support:** Some states allow for spousal support in annulment cases, even if not explicitly provided by statute.
        - Temporary support may be awarded during the proceedings.
6. **Putative Spouse Doctrine:** Allows a party who entered a marriage in good faith but later discovered it was invalid to claim legal spousal rights, such as alimony and property division.
7. **Jurisdiction:**
    - **State of Domicile:** Either party's state of domicile has jurisdiction.
    - **State of Marriage Celebration:** Many states also grant jurisdiction to the state where the marriage took place.
8. **Recognition of Decree:** Annulment decrees rendered with proper jurisdiction are recognized by other states under the Full Faith and Credit Clause.

B. Divorce and Separation

1. **Divorce:** A legal decree terminating the marriage relationship.

- **Residency Requirement:** Most states require one party to be a resident for a specified period before filing.
- **Grounds:**
  - **No-Fault Divorce:** Based on irretrievable breakdown of the marriage, often demonstrated by separation, incompatibility, or irreconcilable differences.
  - **Fault-Based Divorce:** Requires proof of marital fault by one party.
    - **Grounds:** Adultery, desertion, cruelty, drug/alcohol addiction, mental illness.
      - **Adultery:** Requires proof of voluntary sexual intercourse with someone other than the spouse.
      - **Desertion:** Requires willful abandonment of the marital home for a specified period with no intent to return.
      - **Cruelty:** Can be physical or mental, requiring more than a single incident.
      - **Habitual Drunkenness:** Frequent intoxication causing disruption in the marriage.
      - **Bigamy:** Knowingly entering a second legal marriage while still married.
      - **Imprisonment:** Imprisonment for a specified period.
    - **Defenses:** Collusion, connivance, condonation, recrimination, justification.
      - **Collusion:** Agreement between spouses to fabricate grounds for divorce.
      - **Connivance:** Consent by one spouse to the other's misconduct.
      - **Condonation:** Forgiveness of marital offenses with full knowledge.
      - **Recrimination:** Both spouses are guilty of fault grounds.
      - **Justification:** Leaving the home due to the other spouse's misconduct.

2. **Legal Separation:** A court order allowing spouses to live apart while remaining legally married, addressing issues like property, support, and custody.
   - **Reasons:** Religious beliefs, retaining spousal benefits.
   - **Conversion to Absolute Divorce:** Possible in some states after a specified period.
3. **Jurisdiction and Recognition of Decrees:**
   - **Residency:** One party must be domiciled in the jurisdiction.
   - **In Rem Action:** Plaintiff's domicile alone can grant jurisdiction for divorce, allowing constructive service on the defendant.
   - **Personal Jurisdiction:** Needed for property division and spousal support orders.
   - **Ex Parte Divorce:** Can grant a divorce but not property or support orders without personal jurisdiction over the defendant.
     - **Exception:** In rem jurisdiction over marital property located within the state may exist.
   - **Full Faith and Credit:** Valid divorce decrees from one state are recognized in other states if the granting court had jurisdiction over the subject matter and the parties.
     - **Collateral Attack:** Only the domicile of the petitioner can be challenged in another state.

    - **Foreign Divorces:** Recognition may be granted based on comity and reciprocity, particularly if one party was domiciled in the foreign country.
4. **Preliminary/Interlocutory Decrees and Final Orders:** Some states use interlocutory decrees that become final after a specified time, restricting remarriage and affecting inheritance during the interim period.
5. **Division of Property:** Three main approaches - community property, equitable division of all property, and equitable distribution of marital property.
    - **Equitable Distribution of Marital Property:** Most common approach, separates separate property and equitably divides property acquired during the marriage.
        - **Separate Property:** Owned before marriage, acquired by gift/inheritance, or acquired with proceeds of separate property.
            - **Professional License/Degree:** Generally considered separate property, but may affect alimony.
        - **Marital Property:** All property acquired during the marriage, except for separate property and exclusions by agreement.
            - **Pensions:** Considered marital property if acquired during the marriage.
            - **Personal Injury Awards:** Allocation depends on jurisdiction and nature of damages.
            - **Stock Options:** Marital property even if not exercisable until after divorce.
        - **Mixed Property:** Separate property commingled with marital property, transmutation of separate property into marital property, or improvement of separate property with marital funds.
        - **Factors for Equitable Distribution:** Duration of marriage, prior marriages, economic circumstances, contributions, misconduct, and other relevant factors.
            - **Fault:** Generally not considered in property division except in some states and under the UMDA.
    - **Community Property:** All property acquired during marriage is owned equally, separate property remains separate.
6. **Spousal Support (Alimony):**
    - **Purpose:** To provide financial assistance to a spouse after divorce, considering factors like need, ability to pay, duration of marriage, lifestyle, and contributions.
    - **Types:**
        - **Lump Sum:** A fixed, non-modifiable amount paid at once.
        - **Periodic:** Ongoing payments for an indefinite period, modifiable based on changed circumstances.
        - **Rehabilitative:** Temporary support to help a spouse become self-supporting.
        - **Reimbursement:** Compensates a spouse for supporting the other's education or career development.
    - **Factors for Awarding:** Economic circumstances, duration of marriage, contributions, fault in some jurisdictions.
    - **Tax Consequences:** Deductible by the payer and taxable income for the recipient.
    - **Modification:** Generally modifiable based on substantial changes in circumstances.
        - **Lump sum:** Not modifiable unless fraud is shown.
7. **Child Support:** See information in Child Custody section below.
8. **Mediation:**

- **Role:** A neutral third party facilitates communication and negotiation between spouses.
- **Ethical Standards:** Mediators must be impartial, disclose conflicts, ensure informed decision-making, and address power imbalances.
  - **Mediator Misconduct:** Grounds for setting aside a separation agreement.
- **Confidentiality:** Generally confidential, except in cases of abuse or threats.
- **Agreements:** Enforceable as contracts.

9. **Other Forms of ADR:**
   - **Arbitration:** A third-party makes a binding decision.
     - **Finality:** Decisions are generally final unless fraud or partiality is shown.
10. **Separation Agreements:**
    - **Purpose:** To resolve economic and custody issues during separation or before divorce.
    - **Content:** Can address property division, spousal support, child support, custody, and visitation.
    - **Requirements:** Full disclosure, fairness, voluntariness.
    - **Enforceability:** Governed by contract principles.
      - **Merger into Divorce Decree:** Often merged, making enforcement a matter of enforcing the court order.
      - **No Merger:** Enforced as a contract.
    - **Modification:** Child support and custody provisions can be modified if in the best interest of the child.

I. Child Custody

A. Jurisdiction

1. **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**: The UCCJEA, adopted in all states, aims to minimize jurisdictional disputes between states regarding child custody and visitation, promoting interstate cooperation, and facilitating the enforcement of custody and visitation orders across state lines.

a. **Initial Custody Determination**: * The **home state** holds jurisdiction, meaning where the child has lived with a parent for at least six months before the custody proceeding, or from birth if the child is younger than six months old. * If no home state exists, a state with **significant connections** to the child and at least one parent, and substantial evidence concerning the child's care, protection, training, and personal relationships can exercise jurisdiction. * A court can assert jurisdiction if all states with potential jurisdiction under the home state or significant connection tests decline, deeming the current state a more suitable forum. * In situations where no state meets the criteria above, a court can exercise **default jurisdiction**.

b. **Exclusive Continuing Jurisdiction**: * The court that initially determined custody maintains exclusive jurisdiction until it decides that: (i) neither the child nor their parents reside in the state; or (ii) the child lacks a significant connection with the state, and substantial evidence concerning their care, protection, etc. is unavailable.

c. **Temporary Emergency Jurisdiction**: * A court can exercise temporary emergency jurisdiction if: (i) the child is in danger; and (ii) the child requires immediate protection. * If an existing custody order exists, the court must allow time for parties to return to the original court to argue. If no prior order exists, the emergency order remains until the home state court modifies it.

d. **Enforcement of Another State's Order**: * A court can enforce another state's custody or visitation order using any remedy available to enforce its own orders. The UCCJEA offers additional remedies: * **Registration of Order**: A custody or visitation order can be registered in a new state. Once registered and unchallenged, the court can grant any relief for enforcement. * **Expedited Enforcement**: The UCCJEA provides a process similar to habeas corpus. If a petition is filed, the court orders the respondent to appear at a hearing on the next judicial day after service. The petitioner will be granted immediate physical possession of the child unless the respondent demonstrates specific conditions outlined in the UCCJEA. * **Warrant to Take Physical Custody**: Upon petitioning for enforcement, the petitioner can request a warrant for physical custody. The court will grant it if there's imminent likelihood of serious harm to the child or their removal from the state.

2. **Parental Kidnapping Prevention Act (PKPA)**:
    - While mostly replaced by the UCCJEA, the PKPA focuses on interstate modification of custody decrees, granting full faith and credit to another state's custody or visitation order, subject to similar jurisdictional conditions as the UCCJEA.
3. **Enforcement**:
    - **Habeas Corpus**: Primarily used to determine who has legal right to the child, but some states might reopen the best interest question. Enforceable via contempt proceedings.
    - **Suit in Equity**: Requests the court to prevent conduct violating the custody order. Broader than habeas corpus and has largely superseded it.
    - **Out-of-State Decrees**: Enforceable if a certified copy is filed with the court clerk. The issuing court usually retains jurisdiction for modifications, but another court can modify if: (i) the original court declines jurisdiction; and (ii) the out-of-state party receives proper notice.
    - **Sanctions**: Include compensatory visitation, attorney fees, court costs, fines, and jail time.

B. Standards for Decision

1. **Best Interest and Welfare of the Child**:
    - The primary standard for custody decisions, prioritizing the child's well-being.
    - Considers various factors, including the child's preference (especially if older than 12), primary caregiver status, stability, and parental fitness.
    - Race and religion are not relevant factors.
    - Parental sexual conduct is generally not considered unless it directly impacts the child.
    - Courts prioritize keeping siblings together unless it's detrimental to their well-being.
    - Domestic violence is a crucial factor, often creating a presumption in favor of the non-abusive parent.

2. **Tender Years Presumption**:
   - Obsolete and constitutionally dubious, this presumption favored mothers for custody of young children unless proven unfit. Largely abandoned.
3. **Primary Caretaker**:
   - While gender and financial ability aren’t decisive, the primary caregiver during the marriage and separation is often favored, promoting stability and recognizing established bonds.
4. **Third-Party Rights**:
   - Parents have a fundamental right to raise their children unless deemed unfit or it's detrimental to the child.
   - Non-parents seeking custody or visitation require significant justification, usually involving parental unfitness or potential harm to the child.
   - A fit parent's decision regarding non-parent visitation carries "special weight."

C. Types of Custody

1. **Legal Custody**:
   - The right to make major decisions regarding the child's upbringing, including health, education, and religion. Can be shared (joint legal custody).
2. **Physical Custody**:
   - The right to have the child live with a parent or guardian, with the responsibility for daily care. Can be shared (joint physical custody).
3. **Joint Custody**:
   - Involves shared legal and/or physical custody. Requires parental cooperation and can be challenging if significant hostility exists. Factors considered include parental agreement, ability to communicate, child's needs, and geographic proximity.
   - Mediation can be particularly effective in resolving joint custody disputes.

D. Visitation (Parenting Time)

1. **Noncustodial Parent Rights**:
   - Generally entitled to reasonable visitation, also termed "parenting time." Denial requires extreme circumstances where visitation would harm the child.
2. **Third-Party Visitation**:
   - Stepparents, grandparents, and non-biological co-parents may seek visitation.
   - Often granted if the individual acted *in loco parentis* before the divorce.
   - A fit parent's decision against third-party visitation holds significant weight.
   - Grandparent visitation statutes exist in most states, but none guarantee it. Courts consider the parent's decision, the grandparent-child relationship, and the child's best interest.
   - Unwed biological fathers have visitation rights if they demonstrate commitment to parenting responsibilities. State intervention may occur if the mother is married and refuses paternity action.
3. **Limitations and Restrictions**:
   - Courts can limit visitation based on parental conduct that could harm the child.
   - Restrictions may involve supervised visitation or overnight stays.

- A parent's sexual relationship or cohabitation is generally not a basis for restricting visitation.

E. Modification

1. **Standard**:
   - Requires demonstrating a substantial and material change in circumstances since the prior decree, and that modification serves the child's best interest.
   - The need for stability and continuity in the child's life must be weighed against the changed circumstances.
   - Common grounds include parental relocation, change in child's needs, parental misconduct, and remarriage or cohabitation.
2. **Jurisdiction**:
   - The court issuing the original custody order typically retains exclusive continuing jurisdiction.
   - Another state can modify the order if the original court declines jurisdiction and the out-of-state party receives sufficient notice.
3. **Relocation**:
   - Moving the child out of state can be a modification issue, often addressed in the original custody order.
   - Courts may permit relocation if it benefits the custodial parent and isn’t solely intended to frustrate visitation rights.
   - A custodial parent should seek modification before relocating.
4. **Nonmarital Cohabitation**:
   - Generally, a parent’s cohabitation alone isn't sufficient to modify a custody order.

F. Child’s Representation

1. **Counsel for the Child**:
   - Courts can appoint an attorney or guardian ad litem for the child, especially in highly contested custody disputes.
   - The attorney advocates for the child's best interest, potentially representing their preferences if the child is mature enough.
   - May conduct investigations and provide recommendations to the court. Fees are typically paid by parents.
2. **Approaches to Representation**:
   - Advocating for the child's wishes.
   - Making an independent assessment of the child's best interest.
   - A hybrid approach considering both the child’s wishes and best interest.

II. Rights of Unmarried Cohabitants

A. Contracts Between Unmarried Cohabitants

1. **Enforceability**:

    - Contracts between unmarried partners are generally enforceable if supported by valid consideration beyond sexual relations.
2. **Types of Contracts**:
    - **Express Contracts**: Clearly stated agreements, whether written or oral.
    - **Implied Contracts**: Inferred from the parties' conduct and circumstances.

B. Division of Property

1. **Equitable Distribution**:
    - Courts may apply equitable principles to divide property acquired during cohabitation, aiming to avoid unjust enrichment.
    - Legal theories used include resulting trust, constructive trust, and *quantum meruit*.
2. **Factors Considered**:
    - Contributions to the acquisition of property.
    - Length of the relationship.
    - Intent of the parties.
3. **Distinction from Marital Property**:
    - Property division for unmarried partners is typically based on equitable principles rather than the marital property laws applied to divorcing spouses.

III. Parent, Child, and State

A. Parental Rights and Responsibilities

1. **Fundamental Right to Raise Children**:
    - Parents have a fundamental right to care, custody, and control of their children, protected by due process.
2. **Limitations**:
    - Parental authority is not absolute and can be limited by state interests, including child abuse and neglect laws, compulsory education, and emancipation.

B. Parental Liability for Child's Actions

1. **Common Law**:
    - Parents generally aren't liable for their child's actions unless they authorized or encouraged the behavior, or failed to adequately supervise.
2. **Statutory Liability**:
    - Some states have statutes imposing parental liability for specific acts of their children, such as vandalism or truancy.

C. Children's Rights

1. **Right to Support**:
    - Children have a right to financial support from both parents, which cannot be bargained away.
2. **Right to Education**:

- Parents have the right to educate their children, including choosing private or home schooling, subject to state regulations ensuring educational standards.

D. Termination of Parental Rights

1. **Grounds**:
   - Termination requires clear and convincing evidence of severe parental deficiencies, such as:
     - Abandonment: Failure to provide care or maintain contact.
     - Abuse or neglect.
     - Incapacity: Physical or mental inability to parent.
     - Termination of rights over a sibling.
2. **Due Process**:
   - Parents have a fundamental right to raise their children, requiring due process before termination. This usually involves notice, a hearing, and the right to counsel.

E. Emancipation

1. **Definition**:
   - Emancipation grants a minor the legal status and responsibilities of an adulthood, ending parental control and support obligations.
2. **Grounds**:
   - Marriage.
   - Military service.
   - Financial independence and living apart from parents.
3. **Procedure**:
   - A minor can petition the court for emancipation, demonstrating self-sufficiency and independence.

IV. Adoption

A. Definition and Types

1. **Definition**:
   - A legal process terminating the biological parents' rights and creating a new parent-child relationship with the adoptive parents.
2. **Types**:
   - **Agency Placements**: Licensed agencies facilitate adoptions, conducting background checks and overseeing the process.
   - **Private or Independent Adoption**: Natural parents directly contract with adoptive parents. Legal in some states, often requiring a home study and court approval.

B. Jurisdiction and Venue

1. **Jurisdiction**:
   - The UCCJEA generally excludes adoption, leaving jurisdiction to individual state laws, which often follow the Uniform Adoption Act (UAA) or incorporate adoption into the

UCCJEA.
    - The UAA grants jurisdiction to a state where: (i) the child lived for six months prior to the proceeding; (ii) the prospective adoptive parent resided for six months prior; (iii) the agency placing the child is located; (iv) the child and prospective parent are present, and the child has been abandoned or endangered; or (v) no other state has jurisdiction or declines in favor of the current state.
2. **Venue**:
    - Typically determined by the petitioner's residency, the child's residency, or the location of the placement agency.

C. Procedural Considerations

1. **Consent**:
    - Biological parents' consent is generally required.
    - Exceptions include:
        - Prior termination of parental rights.
        - Unreasonable withholding of consent against the child's best interest, such as in cases of abandonment.
2. **Unmarried Fathers**:
    - The father's consent may not be necessary depending on state law and his level of involvement with the child.
    - An unwed father has a right to opportunity to develop a relationship with the child, especially newborns, and his consent might be required unless he hasn't demonstrated parental responsibility.
3. **Withdrawal of Consent**:
    - Possible before the adoption decree if it's in the child's best interest. After the decree, withdrawal is generally prohibited.
4. **Investigation and Court Approval**:
    - Thorough investigation of the prospective adoptive parents is usually required, focusing on their suitability and home environment. Sometimes waived for close family adoptions.
5. **Payment Prohibition**:
    - Direct payments for adoption are generally illegal. Allowable expenses include medical costs for the birth mother and legal fees.
6. **Confidentiality**:
    - Adoption proceedings and records are typically sealed to protect the parties' privacy.

D. Legal Effects

1. **New Parent-Child Relationship**:
    - Adoption creates a legal parent-child relationship, granting the adoptive parents all rights and responsibilities, and the child all rights of a biological child.
2. **Termination of Biological Parents' Rights**:
    - In most jurisdictions, adoption severs the biological parents' legal rights and obligations.
3. **Visitation**:

- Post-adoption visitation between the adoptee and biological parents is generally prohibited. Stepparent visitation may be allowed depending on their prior relationship with the child.

4. **Dissolution**:
   - Adoptions are typically permanent and difficult to dissolve. Exceptions may exist for undisclosed severe illness or significant harm to the child.

V. Alternatives to Adoption

A. Assisted Reproduction

1. **Uniform Parentage Act (UPA)**:
   - Governs parentage in assisted reproduction cases, aiming to clarify legal relationships when third parties are involved.
   - Adopted in nine states, with varying approaches in other jurisdictions.
2. **Types**:
   - Artificial insemination.
   - In vitro fertilization.
   - Embryo transplantation.
   - Gestational agreements (surrogacy).
3. **Maternity**:
   - The woman giving birth is the legal mother, except in valid gestational agreements.
4. **Paternity**:
   - For married couples using assisted reproduction, the husband is the legal father, regardless of the biological source of sperm or egg.
   - Sperm donors generally don't have parental rights unless agreed in writing by the donor and recipient.
5. **Gestational Agreements**:
   - Involve a woman (gestational mother) carrying a child for intended parents.
   - Require a written agreement where the gestational mother relinquishes parental rights, and the intended parents assume parentage.
   - Need court approval before conception, with strict requirements for validation, including home studies, counseling, and legal representation.
   - If not approved by the court, the agreement is unenforceable, and the gestational mother retains parental rights.
   - Not permitted in some states due to ethical concerns about commodifying children.

B. Ownership of Fertilized Ovum

1. **Legal Status**:
   - Fertilized ova outside the body (in vitro) have a unique legal status, often treated as property. Disputes can arise regarding ownership and disposition, especially in cases of divorce or death.

C. Child Support

1. **Assisted Conception Cases**:
    - Courts can order child support in assisted conception cases, considering the legal parentage established through the UPA or other applicable laws.

D. Other Alternatives

1. **Co-Parenting Agreements**:
    - Unmarried individuals intending to raise a child together can create co-parenting agreements outlining their roles, responsibilities, and decision-making authority.
    - Enforceability varies by jurisdiction.

Key Considerations for UBE

- Always analyze the facts in light of the specific state law provided in the exam question.
- Recognize the constitutional dimensions of family law issues, particularly due process and equal protection concerns.
- Understand the interaction between state and federal laws, including the UCCJEA, PKPA, and UIFSA.
- Articulate the competing interests involved, such as the rights of parents, the welfare of children, and the state’s interest in protecting vulnerable parties.

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