

Domestic Relations

I. Marriage

- A. Marriage is valid anywhere unless it is against public policy of state
- B. Marriage can only occur between a male and female
- C. Marriage is a contract requiring capacity
- D. Ante nuptial agreements are legitimate contracts with marriage serving as consideration as long as there is fairness, disclosure and the agreement if not contrary to public policy
- E. Common law marriage is not valid if entered into in Wyoming, but if valid in another state, it is valid in Wyoming

II. Divorce

- A. Three jurisdictional requirements in domestic law: a) divorce – 60 days; b) custody – UCCJA (now UCCJEA); and c) child support – UIFSA
- B. Jurisdiction for divorce—complaint filed by Plaintiff after residing 60 days in state
- C. No fault divorce state (for purposes of divorce only, not property division, alimony or child support, visitation, custody)
- D. Grounds—aggrieved party and irreconcilable differences
- E. Annulment—no valid marriage took place due to bigamy, incompetence, fraud, close relatives
- F. Uncontested—parties enter into agreement, short hearing before judge
- G. Modification
 - 1. Res judicata as to facts at time of entry
 - 2. New civil action
 - 3. Court with original jurisdiction over divorce maintains continuing jurisdiction
 - 4. Cannot modify property except mistake & fraud

III. Property Division

- A. Just and equitable, but not necessarily equal
- B. The court can consider fault in property division
- C. Statutory factors
 - 1. Respective merits of the parties
 - 2. The court can consider fault in property division
 - 3. Through whom the property was acquired
 - 4. Burdens imposed on the property for the benefit of the parties and children
- D. Considerations
 - 1. Trial court has discretion
 - 2. No hard and fast rules but must consider factors
 - 3. Equal division not required
 - 4. Property division likely to be unequal
 - 5. Trial court decision is not to be disturbed on appeal absent abuse of discretion

- E. Marital res-Very Broad
 - 1. Property brought into the marriage by either party is reachable
 - 2. Property acquired during marriage
 - 3. Retirement funds
 - a. Valued as vested at time of divorce
 - b. If Wyoming State retirement funds, they are exempt from execution or attachment and division must be made upon retirement
 - 4. Closely held stock
 - 5. Civil awards
 - 6. Inheritance—properly awarded to person receiving inheritance
- F. Attorney's fees are a legitimate property award
- G. Property settlement agreements—legitimate and incorporated into divorce decree after approval of court and res judicata as to future modifications
- H. Modification
 - 1. Cannot be re-adjudicated or modified like custody, support, or alimony
 - 2. Exceptions: marital debt or res omitted, ambiguity, fraud (WRCP 60)

IV. Alimony

- A. It is not favored under Wyoming Case law, but it is authorized by statute—use property settlement instead
- B. The objective criteria for an award of alimony is that the payor spouse has the ability to pay and the payee spouse needs it
- C. Rehabilitative alimony for period of years most common, but not required, where one spouse stays home to raise kids and gives up career
- D. Modification
 - 1. Court has discretion including statutory and equitable revisory powers to revise.
 - 2. Standard is change of circumstances
- E. Termination
 - 1. Common law modified by Wyoming statute so that death will not terminate alimony if decree states otherwise
 - 2. Decree must state alimony terminates upon marriage; if not, only remedy is to petition court for change of circumstances

V. Child Custody

- A. Child custody and visitation matters involve a fundamental right
- B. Best interest of the children is primary consideration
- C. Spousal and child abuse are contrary to the best interest of the child
- D. Statutory factors in determining best interests of the child
 - 1. Quality of relationship each child has with parents
 - 2. Ability of each parent to care for each child during period of responsibility
 - 3. Relative competency and fitness of each parent
 - 4. Each parent's willingness to accept responsibility of parenting

5. How parents and each child can best maintain and strengthen a relationship with each other
 6. How parents and children interact and communicate with each other and how such interaction and communication may be improved
 7. Ability and willingness of each parent to allow the other parent to provide care
 8. Geographic distance between parents' residences
 9. Current physical and mental ability of each parent to care for each child; and
 10. Any other factors the court deems necessary and relevant
- E. Case law factors in determining custody
1. Relative competency of both parents
 2. Respect for freedom of religion
 3. Moral behavior and lifestyle of parents
 4. Physical, mental and emotional capacity of each party
 5. Cultural and educational needs
 6. Relationship of child to parent
 7. Preference of child
 8. Stability of the parents
- F. No award of custody shall be made solely on the basis of gender of the parent
- G. Joint custody allowed by statute, but not defined by decree and disfavored by WYSC
1. Both parents confer on major life decisions
 2. Does not mean 50% of time with each parent
 3. Joint legal custody can include primary physical custody with one parent
- H. Shared custody (not favored by WYSC) but gaining
1. Each parent has children 40% or more of time
 2. A different support formula is used
 3. Shared custody more easily reopened by court for modification
 4. Court must make specific finding of appropriateness of shared custody
- I. Split custody—each parent is custodian of one or more child
- J. Child preference factors
1. Age of child
 2. The reason for the preference
 3. The relative fitness of the preferred and non-preferred parent
 4. The hostility, if any, of the child to the non-preferred parent
 5. The preference of other siblings
 6. Whether child's preference has been tainted by parent
 7. Children can testify in chambers with consent of parties only
- K. Guardian Ad Litem
1. Guardian ad litem role is evolving in Wyoming
 2. GAL may not be a fact witness at a custody hearing
 3. If parties stipulate, the GAL's report may be presented to the court
 4. A GAL is required in all paternity cases where child is not represented by agency by issue of paternity only

- L. Uniform Child Custody Jurisdiction Act (UCCJA) (Replaced by UCCJEA 7.01.05)
 - 1. UCCJA determines which state has jurisdiction to hear custody issues
 - 2. Does not have jurisdiction to determine support or other monetary awards
 - 3. Wyoming courts have jurisdiction in child custody determination if one of following exists
 - a. Wyoming is child's home state at commencement of proceeding or it was within 6 months before commencement and the child is absent from the state due to removal and the parent lives in Wyoming.
 - b. Parent(s) and child have a significant connection with Wyoming and there is substantial evidence here regarding future care, protection, training, and personal relationships
 - c. child is in Wyoming and has been abandoned or emergency exists
 - d. No other state would have jurisdiction or it denied jurisdiction
 - e. Court which enters custody order has continuing subject matter jurisdiction to enforce or modify the decree
 - f. A court with jurisdiction may decline to exercise jurisdiction if it determines Wyoming is inconvenient forum or child was wrongfully taken from another state

VI. Modification of Custody

- A. The party seeking to modify the custody agreement must show:
 - 1. A substantial and material change of circumstances
 - 2. The change warrants modification of the decree and
 - 3. The change is in the best interest of the child
- B. These words "substantial and material" are words of degree requiring judicial discretion
- C. Change of circumstances includes
 - 1. In a joint custody situation—not getting along
 - 2. Bankruptcy
 - 3. Increase in stability in one parent's life and decrease in stability in the other parent's life
 - 4. Health problems
 - 5. Job advancement or loss
 - 6. Remarriage possibly along with other circumstances (friction with stepparent or siblings) or
 - 7. Proof of repeated, unreasonable failure by the custodial parent to allow visitation in violation of the decree
 - 8. Geographic relocation (Arnett v. Arnett)
- D. Change of circumstances does not include
 - 1. A condition which existed when the divorce decree was entered
 - 2. Remarriage alone

VII. Child Visitation

- A. Standard is the best interest of the child
- B. Child abuse and spousal abuse are contrary to the best interest of the child
- C. Factors in determining whether visitation award is fair
 - 1. Character of parties
 - 2. Residence
 - 3. Employment and stability of parties
 - 4. Potential for flight
 - 5. Likelihood of non-present party being maligned and
 - 6. Ability to obey court orders
- D. Denial of visitation—repeated, unreasonable failure by custodial parent to allow visitation to the other parent in violation of an order may be evidence of change of circumstance
- E. Grandparents may bring a visitation action if court finds that visitation is in the best interest of the child and that rights of the child's parents are not substantially impaired.
- F. Primary caregivers who are not parents of a child but who have taken care of the child for 6 or more months of the last 18 can petition the court for visitation
- G. Modification
 - 1. The party seeking to modify the custody agreement must show:
 - a. A substantial and material change of circumstances
 - b. The change is in the best interest of the child
 - 2. The words "substantial and material" are words of degree requiring judicial discretion

VIII. Child Support

- A. In personam jurisdiction is required
- B. Child support is child's property. A parent cannot contract away a child's right to support
- C. Statutes provide a statutory presumptive child support amount based on both parents' income and number of children
- D. Income
 - 1. Is any form of payment or money or in-kind regardless of source
 - 2. Cannot use federal tax return to compute net income for Wyoming child support
 - 3. Includes only individual's income, not spouse's
 - 4. Net income; business expenses; taxes; health insurance; other court-ordered child support
- E. Deviation—Parties of the court can deviate from these amounts, but in doing so, the court shall consider 13 factors
 - 1. The age of the child
 - 2. The cost of necessary child day care
 - 3. Any special health care and educational needs of the child

4. The responsibility of either parent for the support of other children
 5. The value of services contributed by either parent
 6. Any pregnancy related expenses if the parents were never married or if they were divorced prior to the birth of the child
 7. Cost of transportation to and from visitation
 8. The ability of the parents to furnish health insurance
 9. The amount of time the child spends with each parent
 10. Any other necessary expenses for the benefit of the child
 11. Whether either parent is voluntarily unemployed or underemployed – close look at willingness
 12. Whether or not either parent has violated any provision of the divorce decree, including visitation and
 13. Other relevant factors as determined by the court
- F. Financial affidavit—must be filed with the court and served on the other party showing income, W-2 forms, etc., and provides figures to determine child support
- G. Abatement
1. Child support abates by one-half of the daily support obligation for each day the non-custodial parent has physical custody of child more than 14 consecutive days
 2. To receive child support abatement, non-custodial parent must apply to clerk
 - a. Shared custody—if each parent keeps the children for more than 40% of the year and each contributes substantially to the expenses of the child in addition to child support, a joint presumptive support obligation is determined by statutory formula
 - b. Medical support—in any action to establish or modify a child support obligation, the court orders one or both parents to provide medical support
 3. Cessation of child support—when parents marry or remarry each other, child dies, child becomes legally emancipated, child attains age of majority
 4. Income withholding order
 - a. The court enters an immediate income withholding order with any modification or initial entry of support, which goes to obligor's employer
 - b. Any periodic payment on the date it is due is a judgment by operation of law
 - c. Has priority over any other legal process against the same income and is continuing garnishment
 5. UIFSA
 - a. Two aspects; jurisdiction and Interstate Process
 - b. Allows states to uniformly determine which state has continuing exclusive jurisdiction re: child support issues

- c. After a person files a petition under UIFSA in one state, the initiating state forwards 3 copies of the petition to the appropriate tribunal in responding state
 - d. Responding state can then issue, enforce, or modify a support order, determine parentage, order income withholding, determine arrearages, etc.
- H. If an obligor is in arrears in child support, he or she can lose driver's license, hunting or fishing license, or professional license until back support is paid

IX. Modification of Support – 20% Rule or material change.

- A. A substantial and material change of circumstances includes
 - 1. Commencement of POWER, medical benefits under Title 19, food stamps, SSI, or welfare of any kind
 - 2. Income adjustment
 - 3. Health problems
 - 4. Job advancement or loss
 - 5. Remarriage
- B. No change in circumstances for
 - 1. Inflation
 - 2. Failure to pay child support
 - 3. Voluntary assumption of obligations
- C. Offsets—parents cannot offset child support with other obligations
- D. Financial institutions must agree to provide DFS with information about each non-custodial parent with an account
- E. Any party may petition the court to review child support order if order was entered more than 6 months prior to the petition and the support amount would change by 20% or more per month
- F. If parties originally deviated from presumptive child support, for a modification they must show a 20% change and a substantial change in circumstances to justify a modification
 - 1. Every three years, upon the request of either parent, the court shall review and if appropriate, adjust the order. No change of circumstances is required

X. Minors

- A. Age of majority in Wyoming is 18 years
- B. Emancipation statute
 - 1. 17 years old only
 - 2. Allows them to
 - a. enter into a binding contract
 - b. sue and be sued
 - c. buy or sell real property
 - d. establish a residence and
 - e. be liable under the criminal laws of this state

XI. Parental Rights

- A. The woman who gives birth to a child is deemed the mother
- B. Determining paternity is statutory – unknown and Common Law – strict const.
- C. Definitions:
 - 1. Acknowledged Father – signed affidavit
 - 2. Adjudicated Father – Court w/ jurisdiction has found
 - 3. Alleged Father – Alleges self to be father
- D. Established by:
 - 1. Un rebutted presumption (below)
 - 2. Acknowledgment
 - 3. Adjudication
 - 4. Adoption
- E. Presumptions of paternity
 - 1. Presumption of paternity arises if
 - a. Child is born while parents are married or within 300 days after marriage is terminated
 - b. before birth, attempted marriage or birth within 300 days after
 - c. after birth, marriage or attempted marriage or
 - d. presumed father receives child into home, lives with mother and holds child out as own in first 2 years
 - e. man acknowledges his paternity with consent of the mother by signing an affidavit of paternity
 - 2. Presumption is rebutted by contrary adjudication
- F. Termination of parental rights by statute—the parent-child relationship may be terminated if one of the following facts is established by clear and convincing evidence
 - 1. no provision for parental support and communication for one year
 - 2. child is abandoned and without identity for 3 months and no parents can be found
 - 3. The child is abused or neglected and the family cannot be or refuses to be rehabilitated and the child's well-being is jeopardized
 - 4. The parent is incarcerated due to a felony and is unfit to have custody and control, the child has been in foster care for 15 months and the parent is unfit to have custody of the child or
 - 5. child is abandoned at less than one year old and is abandoned for six months
- G. Termination of parental rights by adoption without consent. Parental rights may also be terminated by adoption without consent if the putative father is unknown or not registered in the putative father registry, or the non-consenting parent or the putative father have:
 - 1. been given notice of the hearing and have failed to appear or answer
 - 2. been judicially deprived of parental rights
 - 3. willfully abandoned or deserted the child

4. willfully failed to contribute to the support of the child for one year immediately prior to the filing of the petition, and also failed to bring the support obligation current within sixty days after service of the petition to adopt
 5. willfully permitted child to be maintained by a public or private institution or the government for more than one year without contributing to support of the child
 6. failed to show interest within 30 days after receiving notice of birth of the child
 7. been convicted of cruelty, abuse, neglect, or mistreatment of the child
 8. if the child was born as a result of rape or incest, the father was convicted of the same or
 9. willfully failed to pay 70% of the court-ordered support for a period of 2 years or more and has failed to bring the support obligation 100% current within 60 days after service of the petition to adopt
- H. Termination of parental rights due to parental wrongdoing.
1. If parent has been convicted of the following, it may be grounds for terminating parental rights without efforts to reunify the family
 - a. Murder of another child of the parent or aiding, abetting, attempting or conspiracy to do the same
 - b. Commission of a felony assault which results in serious bodily injury to another child of the parent
- I. Adoption
1. Adoption is strictly statutory
 2. An irrevocable written consent and relinquishment of custody and consent to adoption must be filed with the adoption petition and must be signed by the biological parents (or mother alone if father's name unknown) after the birth of the child
 3. The petitioners must also file with the petition an affidavit setting forth any psychiatric disorders, felony conviction, or misdemeanors of the parents within the last five years, and the parole status of the parents
 4. Adoption is not revocable unless consent was obtained by fraud or duress
- J. Guardianship
1. The Court may appoint a Guardian for a child if:
 - a. The child is in need of a Guardian **and**
 - b. The child's parents have consented to the appointment or the Court has found that the parents are unfit to act as parents.

Quick index to Domestic Relations Statutes

Marriage	20-1-101 et seq.
Divorce	20-2-101 et seq.
Alimony and Property Division	20-2-114
Child Custody	20-2-201 et seq.
Uniform Child Custody Jurisdiction and Enforcement Act	20-5-201 et seq.
Visitation	20-2-202 et seq.
Rights for Grandparent & Caregivers	20-7-101 et seq.
Child Support	20-2-301 et seq.
Child Support Enforcement	20-6-101 et seq.
Minors	
Age of Majority	14-1-101
Emancipation	14-1-101, 14-1-201 et seq.
Parental Rights	
Paternity	14-2-601 et seq.
Termination of Parental Rights	14-2-308 et seq.
Adoption	1-22-101 et seq.
Adoption Intermediaries	1-22-201 et seq.
Putative Father Registry	1-22-117
Guardianship	3-1-101 et seq.