



Domestic Relations

Class 4

Child Arrangements



FAMILY I

Other Issues Relevant to Property Rights and Marriage

- **Post-Nuptial Agreements**

- Same basic idea as prenuptial agreements, but they are signed after the marriage instead of before it. They can also update or extend a pre-existing prenuptial agreement.

- **Breach of Promise to Marry**

- Many states don't even allow these, since forcing people to marry is against public policy.
- Those states that allow these suits will allow recovery of money spent in anticipation of the marriage (such as wedding expenses) only.



Other Issues Relevant to Property Rights and Marriage

- **Property given in anticipation of marriage**
- Can a gift that was given because of a pending marriage be recovered by the donor if the marriage becomes called off?
 - Majority position: Yes, no matter who calls off the wedding! (but only if it can be shown that the gift was solely based on the assumption of marriage).
 - Minority positions:
 - Yes, only if the marriage was broken off by the donee.
 - Not under any circumstances.



Cohabitation Agreements

- These, in essence, are like prenuptial agreements, except that they apply to unmarried couples (usually, who live together).
- Old Rule: Cohabitation agreements were unenforceable, because supporting these relationships was against public policy.
- New Rule: Because of the general societal acceptance of cohabitation, such agreements will be allowed and will be treated in the same manner as other contracts.
 - Note: A few states (including Georgia, Indiana and Illinois) seem to still abide by the old rule.



Cohabitation without Formal Agreement

- What if parties live together and support each other without formal marriage (so the rules of equitable distribution, etc. don't apply)?
 - Note: A court will never consider a sexual relationship to be something "given" by one party, thus requiring compensation. In addition, to the extent that the court feels that sex is the consideration for any written agreement, it will not enforce it!



Cohabitation without Formal Agreement (cont.)

- Contract concepts that can help parties receive compensation for services as part of a cohabitation relationship:
 - **Express or implied contract** between the parties.
 - **Quantum Merit** - avoiding unjust enrichment.
 - **Constructive Trust** - A court may determine that one person in a cohabitation relationship is holding property that really belongs to the other party. In this case, the court will infer that the holding party is actually holding it only in trust for the other party.
 - **Resulting Trust** - Usually applies when a third party's gift to one party is being held by the other party.



