



Domestic Relations

Class 5

Child Arrangements



FAMILY I

Marriage – Requirement of Competency

- There are various circumstances that make people ineligible to marry each other, including:
 - **Too close a level of consanguinity** (incest): the level of relationship necessary is up to the state. Half-blooded relatives and relatives by adoption are usually treated in the same manner as biological relatives of full blood
 - **Age**: many jurisdictions require parental consent for under 18 and prohibit marriage altogether below certain ages (e.g., 15)
 - **Certain venereal diseases**: this type of legislation is very much out of favor
 - **Mental incapacity**: similar standard to incapacity with respect to contracts. A person is mentally incapacitated if he or she cannot understand or appreciate the nature and consequences of the agreement
 - **Pre-existing marriage of one party** (polygamy)



Marriage – Other Requirements

- **Good faith agreement to marry by both parties:** A marriage that is entered into completely for an ulterior motive (such as for immigration purposes) is invalid.
- **Marriage license:** This is a formality, but the issuing authority will try to make sure that both parties are competent, etc. before issuing the license.
- **Solemnization:** The parties must agree to enter the marriage relationship on front of someone who is authorized by the state to perform the ceremony. This can be a judge, a public officer or a member of the clergy who has been licensed to perform marriages.
- **Opposite gender:** Historically, the parties were required to be of opposite gender. Today, no state requires the parties to be of opposite gender.
- **“Putuative Marriage” Doctrine**
 - If a person got “married” in good faith and accidentally missed one of the requirements, that person may still be granted the protections (e.g., financial) as if the marriage were valid.





QUIZ TIME!

Conflicts between States Regarding Marriage

- Different states have different rules regarding marriage. So, the question arises as to what happens when people marry in one state and then move to the other!
- **U.S. Constitution Full Faith and Credit Clause:**
- **Article IV**
 - Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.
 - Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.



Conflicts between States Regarding Marriage

- Thus, the **general rule** is:
 - If a marriage is valid where performed, all other states will recognize the marriage even if that marriage would not have been valid under its states laws.
- **Important Exception:**
 - If recognizing this type of marriage would violate the “public policy” of the state, it need not recognize the out of state marriage.
- **Examples:**
 - Marrying in another state because your state would consider the marriage incestuous.
 - Marrying in another state to avoid age or waiting periods in your state.
- Same sex marriage is now legal nationwide under *Obergefell v. Hodges*.

